

**THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY**

**CRIMINAL APPEAL No.796 OF 2007**

**JUDGMENT:**

This Criminal Appeal is preferred against the judgment dated 01.02.2006 in C.C.No.18 of 2000 on the file of the Special Judge for A.C.B Cases, Visakhapatnam (for short 'the Special Judge'), whereby the respondent/sole accused was found not guilty of the offences punishable under Sections 7 and 13 (2) read with 13(1) (d) of the Prevention of Corruption Act, 1988 (for short, 'the P.C. Act, 1988') and accordingly acquitted of the same.

2. The allegations, in brief, of the charge sheet may be stated as follows:

The respondent/accused worked as Mandal Revenue Inspector, Garugubilli mandal, Vizianagaram district at the relevant point of time and he is a public servant within the meaning of Section 2 (c) of the P.C. Act, 1988. P.W.1 owned Ac.2.76 cents of wet land and Ac.1.22 cents of dry land in Patta No.291 of Naguru village, Gurugubilli mandal, and in order to enroll as a contractor, he applied for, and obtained, adangal showing particulars of lands owned and possessed by him. Thereafter, he approached the

respondent/accused, ten days prior to Ex.P4, for issuance of solvency certificate, for which the latter demanded bribe of Rs.5,000/- viz. 5% of the solvency of Rs.1,00,000/-. When P.W.1 expressed his inability, the respondent/accused asked P.W.1 to come to his residence on 29.10.1998 and reduced the bribe amount to Rs.2,000/-. P.W.1 paid Rs.1,000/- out of it and handed over Exs.P1 to P3. The respondent/accused stated that the solvency certificate would be given only after payment of remaining bribe amount of Rs.1,000/- before 8.00 AM on 03.11.1998 at his residence.

Unwilling to pay the amount demanded, P.W.1 approached P.W.4-Deputy Superintendent of Police, Anti Corruption Bureau (A.C.B.), Vizianagaram on 01.11.1998 and gave Ex.P4-report, basing on which, a case in crime No.13/RC-VZM/98 was registered under Ex.P11-FIR by P.W.4 for the offences punishable under Sections 7 and 13 (2) read with 13 (1) (d) of the P.C. Act, 1988. After completion of pre-trap proceedings under Ex.P7, trap was conducted on 03.11.1998 at 7.00 AM at the residence of respondent/accused when he demanded and accepted bribe amount of Rs.1,000/- (M.O.5) from P.W.1. Sodium Carbonate solution test conducted on both hand fingers of

the respondent/accused gave positive result. The tainted currency notes were seized from the secret pant pocket of respondent/accused, and when the inner linings of the secret pant pocket were subjected to Sodium Carbonate solution test, it gave positive result. Post-trap proceedings were drafted under Ex.P9. After obtaining necessary sanction Ex.P10 for prosecution of the respondent/accused and completion of investigation, charge sheet was laid.

3. The learned Special Judge framed charges for the offences punishable under Section 7 and 13 (1) (d) read with 13 (2) of the P.C. Act, 1988 against the respondent/accused. When the charges were read over and explained to the accused, he pleaded not guilty and claimed to be tried.

4. To substantiate the charges, the prosecution examined P.Ws.1 to 4 and got marked Exs.P1 to P.11, besides case properties M.Os.1 to 8. No oral or documentary evidence was adduced on behalf of defence.

5. The trial court, on appreciation of the evidence on record, found the respondent/accused not guilty of the charges for the offences under Sections 7 and 13 (2) read with 13(1) (d) of the P.C. Act, 1988 and accordingly,

acquitted him of the same. Challenging the same, the present Criminal Appeal is preferred by the appellant/State.

6. The learned Standing Counsel appearing for appellant-A.C.B. contended that though P.W.1 did not support the case of prosecution, his admissions in cross-examination would show lodging of Ex.P4 by him and payment of tainted amount to the respondent/accused on the date of the trap; that there was demand and acceptance on the part of the accused to show a favour viz. to issue solvency certificate; and therefore an official favour to be shown by the accused to P.W.1 was pending prior to trap and that the Court below did not appreciate the evidence on record in right perspective and came to wrong conclusions. Hence, he prays to set aside the order of acquittal recorded by the trial court and convict the respondent.

7. On the other hand, learned counsel appearing for the respondent/accused contended that there is absolutely no evidence to show that the accused demanded and accepted money from P.W.1; that the necessary ingredients for the offences under Sections 7 and 13(1)(d) of the Act, 1988

have not been established beyond reasonable doubt; that after an elaborate consideration of the evidence on record, the trial Court rightly acquitted the respondent/accused and there are no grounds to interfere with the impugned judgment.

8. Now the point for determination is whether the prosecution proved its case against the respondent/accused for the offences alleged beyond reasonable doubt, and whether the judgment of the trial Court is legal, correct and proper ?

9. It is settled law that there is a presumption under law that the accused is presumed to be innocent unless contrary is proved. That presumption of innocence is further strengthened by an order of acquittal passed by the trial Court. In dealing with the appeals against acquittal, though this Court has full power to re-appreciate the evidence, at the same time, it would be slow in interfering with the order of acquittal because there is a presumption under law that accused is presumed to be innocent unless contrary is proved and that presumption is further strengthened by the order of acquittal. Unless there are substantial or compelling reasons, this Court will not

ordinarily disturb the findings of the trial Court. If the trial Court has given any perverse finding, then it can be a ground to interfere with the order of acquittal. Similarly, if admissible evidence has not been taken into consideration or inadmissible evidence has been looked into for the purpose of arriving at a particular finding, then also it can be said to be a compelling reason to interfere with the same.

10. On this aspect, it is pertinent to refer to a decision in *Harbans Singh & another v. The State of Punjab*<sup>1</sup>, wherein it is held as follows: (para 8)

“The question as regards the correct principles to be applied by a Court hearing an appeal against acquittal of a person has engaged the attention of this Court from the very beginning. In many cases, especially the earlier ones, the Court has in laying down such principles emphasized the necessity of interference with an order of acquittal being based only on ‘compelling and substantial reasons’ and has expressed the view that unless such reasons are present in an Appeal, Court should not interfere with an order of acquittal (Vide *Suraj Pal Singh v. The State*, 1952 SCR 193: (AIR 1952 SC 52); *Ajmer Singh v. State of Punjab*, 1953 SCR 418: (AIR 1953 SC 459)). The use of the words, ‘compelling reasons’ embarrassed some of the High Courts in exercising their jurisdiction in appeals against

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<sup>1</sup> AIR 1962 Supreme Court 439

acquittals and difficulties occasionally arose as to what this Court had, meant by the words 'compelling reasons'. In later years the Court has often avoided emphasis on 'compelling reasons' but nonetheless adhered to the view expressed earlier that before interfering in appeal with an order of acquittal a Court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused and should interfere only if satisfied, after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable."

11. The essential ingredients of Section 7 of the Act are:

- i) that the person accepting the gratification should be a public servant;
- ii) that he should accept the gratification for himself and
- iii) the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or dis-favour to any person.

Insofar as Section 13 (1) (d) of the Act is concerned,

its essential ingredients are:

- (i) that he should have been a public servant;
- (ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant, and
- iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.

12. It is the case of prosecution that the respondent/accused, who was working as Mandal Revenue Inspector, Garugubilli mandal, Vizianagaram district at the relevant point of time and a public servant within the meaning of Section 2 (c) of the P.C. Act, 1988, demanded and accepted illegal gratification to a tune of Rs.1,000/- from P.W.1 on 03.11.1998 for showing official favour viz. issuance of solvency certificate for Rs.1,00,000/- in favour of P.W.1 in respect of Ac.2.76 cents of wet land and Ac.1.22 cents of dry land in Patta No.291 of Naguru village, Gurugubilli mandal, Vizianagaram district. The defence of accused is one of denial.

13. Admittedly, the respondent/accused worked as Mandal Revenue Inspector, Garugubilli mandal, Vizianagaram district and he is a public servant within the meaning of Section 2 (c) of the P.C. Act, 1988. Ex.P10 is the sanction order, vide G.O.Ms. No.755, Revenue (Services-IV) Department, dated 27.10.1999 issued by the Principal Secretary to Government, to prosecute the respondent-accused. The same is not disputed.

14. P.W.1, who set the criminal law into motion by lodging Ex.P4-report and used the machinery of Anti



Corruption Bureau, did not support the case of prosecution. Therefore, the prosecution sought permission from the trial court to declare him hostile. After permission, the prosecution cross-examined him. There cannot be any dispute that, simply because a witness turned hostile, his evidence would not efface from the record, but such part of his testimony which inspires confidence can be used to corroborate the other evidence, if any, available on record.

15. As seen from Ex.P4-report, the respondent/accused demanded illegal gratification of Rs.1,000/- in order to do an official favour viz. issue solvency certificate to P.W.1 in respect of his Ac.2.76 cents of wet land and Ac.1.22 cents of dry land, situated in Naguru village, Gurugubilli mandal, Vizianagaram district and accepted the same on 03.11.1998 at his residence. But, in the evidence, P.W.1 deposed that some of his friends stated to him that he would not get solvency certificate without paying money; that he went to the ACB office in the last week of October, 1998 and the Deputy Superintendent of Police, ACB asked him to write an application as per the dictation of a Sub Inspector. He further deposed that he stated to the Deputy Superintendent of Police that he intended to pay bribe

amount to R.I., Gurugubilli and the Deputy Superintendent of Police, ACB asked him to give a written report, and that he scribed Ex.P4 on 01.11.1998 on the dictation of a staff of ACB office and submitted to same to the Deputy Superintendent of Police, ACB, Vizianagaram. It is his further evidence that he was directed to go to the residential house of respondent/accused and to give that amount and come back, and an S.I. closely followed him; that by the time, he reached the house of respondent/accused, the latter was writing in a book; when asked about his solvency certificate, the respondent/accused stated that the certificate would be issued after going to office. It is his further evidence that when somebody called, the respondent/accused went inside the house, and in the mean while, he kept the tainted amount in the pant pocket hanging on the window door, and when the respondent/accused came out, he caught hold of his hands and requested him to issue the certificate and came out. In cross-examination by the prosecution, though he stated that nobody forced him to write a complaint, he volunteered that the ACB officials compelled him and therefore he scribed Ex.P4.

16. The other evidence remains on record is only circumstantial in nature and it is with regard to the Sodium Carbonate solution test giving positive result and the recovery of tainted amount M.O.5 from the secret pant pocket of respondent/accused. P.W.2 is the then Mandal Revenue Officer, Garugubilli mandal. He deposed about the procedure for issuing a solvency certificate and that the respondent/accused worked as Mandal Revenue Inspector during March, 1996 to November, 1999. It is his further evidence that Ex.P1-application submitted by P.W.1, does not bear his initial or seal of his office.

17. P.W.3 is one of the mediators to pre-trap proceedings under Ex.P7 and post-trap proceedings under Ex.P9. P.W.4 is the investigating officer. It is his evidence that on receipt of Ex.P4-report, he arranged trap. P.Ws.3 and 4 deposed about the pre-trap and post-trap proceedings under Exs.P7 and P9, yielding of positive result when both hand fingers of respondent-accused were subjected to Sodium Carbonate solution test, recovery of M.O.5-tainted amount from the secret pant pocket of respondent/accused and subjecting the secret pant pocket of respondent/accused to chemical test and it yielding positive result.

P.W.4 further deposed about getting statement of P.W.1 under Section 164 CrPC recorded by the learned Judicial Magistrate of First Class, Parvathipuram on 07.11.1998, and laying of charge sheet, by the Inspector of Police, ACB, Vizianagaram Sri M.Appa Rao (L.W.10).

18. In order establish the charge under Section 7 of the P.C. Act, 1988, the prosecution has to establish that the respondent/accused, being a public servant, accepted or obtained illegal gratification for himself or for any other person and the acceptance of such a gratification was as a motive or reward for showing official favour. To establish the charge under Section 13 (2) read with 13 (1) (d) of the P.C. Act, 1988, the prosecution has to establish that the respondent/accused, by corrupt or illegal means, obtained illegal gratification.

19. In the case on hand, as already discussed supra, the material prosecution witness P.W.1 did not support the case of the prosecution. He gave a complete go-by to his earlier version and gave entirely a different version on all material particulars in his evidence. A perusal of the evidence of P.W.1 clearly shows that there was no demand by the respondent/accused for illegal gratification. There

is no legal evidence on record to prove the alleged demand made by the respondent/accused for doing an official favour. Ex.P5-statement of P.W.1 under Section 161 CrPC cannot help the prosecution to prove its case as it is not a substantive piece of evidence. The alleged demand and acceptance of illegal gratification to do an official favour by the respondent/accused is in the exclusive knowledge of P.W.1. Even if the evidence of P.W.1 is to be accepted as true and correct, it does not indicate that there was a demand from the respondent/accused for showing any official favour in discharge of his duties as public servant. Admittedly, there is no legal evidence to show that the respondent/accused demanded and accepted illegal gratification for showing an official favour as a public servant.

20. Even assuming for a moment that tainted currency notes were recovered from the possession of the respondent/accused and the Sodium Carbonate solution test gave positive result, that by itself is not a ground to infer that the respondent/accused committed the offence punishable under Section 7 and 13 (1) (d) read with 13 (2)

of the P.C. Act, 1988, in view of the decision in *Suraj Mal v. State (Delhi Admn.)*<sup>2</sup>, wherein it is held thus:

“Mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.”

21. In view of the foregoing discussion, this court has no hesitation to hold that the prosecution failed to establish the guilt of the respondent/accused for the offences alleged against him beyond reasonable doubt. The trial Court, on appreciation of the evidence on record in right perspective, found the respondent/accused not guilty of the offences with which he was charged and there are no compelling or substantial reasons to interfere with the impugned judgment.

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<sup>2</sup> (1979) 4 Supreme Court Cases 725

22. In the result, Criminal Appeal is dismissed, confirming judgment dated 01.02.2006 in C.C.No.18 of 2000 on the file of the Special Judge for A.C.B Cases, Visakhapatnam.

Miscellaneous petitions pending, if any, in the Criminal Appeal shall stand closed.

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(K.SREENIVASA REDDY,J.)

27.06.2022  
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