

(2003) 01 AP CK 0093
In the Andhra Pradesh High Court
Case No : Criminal A. No. 957 of 1996

Buddha Mahalakshmi Naidu (died) and Another	APPELLANT
Vs	
The State of A.P.	RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 465
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 19(3), 19(4), 7

Citation : (2003) 2 ALT(Cri) 462

Hon'ble Judges : K.C. Bhanu, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Bhanu, J.—This criminal appeal is directed against the judgment in C.C. No. 16/1993, dated 30.10.1996, on the file of the Special Judge for S.P.E. & A.C.B. Cases-cum-III Additional District and Sessions Judge, Visakhapatnam, wherein the accused-appellant was convicted and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for three months for the offence punishable u/s 7 of the Prevention of Corruption Act, and to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for three months for the offence punishable u/s 13(2) read with Section 13(1)(d) of the same Act. The substantive sentences were ordered to run concurrently.

2. The brief facts that are necessary for disposal of the present appeal are that on 23.1.1993 at about 9.00 a.m., P.W.1, an Advocate, approached the accused-appellant for payment of land revenue, that he paid an amount of revenue of Rs.105.60 Ps., that after paying the land revenue P.W.1 requested the accused to issue a copy of 10(1) Adangal for which the accused demanded an amount of Rs.100/- as bribe, that again on 25.1.1993 P.W.1 met the accused in the morning

and requested him to supply a copy of 10(1) Adangal, that again the accused demanded a sum of Rs.100/- as bribe and asked him to approach on 27.1.1993 with the proposed bribe amount of Rs.100/- and take the Adangal copy, that on 26.1.1993, P.W.1 approached the Dy. Superintendent of Police, Anti Corruption Bureau and apprised him of the demand made by the accused, that P.W.1 gave a complaint in writing to the Dy. Superintendent of Police, that the Dy. Superintendent of Police summoned two mediators at 9.00 a.m., and gave a Rs.100/- note to P.W.1 to be paid to the accused as bribe, that the note was tainted with Phenolphthalein powder, that then all the mediators, P.W.1 and the police went to the accused, that as per the prior arrangement, after giving the Rs.100/- note to the accused P.W.1 gave a signal to the riding party, that then the riding party entered into the office of the accused and found the Rs.100/- note in his possession, that they prepared Sodium Carbonate solution in two different glasses and asked the accused to rinse his both hands and fingers separately in the solution, that the colourless solution turned into light pink, that when the police asked the accused about the receipt of Rs.100/-, he denied to have demanded and accepted any amount from P.W.1, that then the police seized the Rs.100/- note from the pocket of the accused, and that thereafter the Deputy Superintendent of Police filed the charge sheet against the accused under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. On behalf of the Prosecution, P.Ws. 1 to 4 were examined and Exs.P1 to P12, besides M.Os. 1 to 10, were marked. On behalf of the accused-appellant, D.Ws. 1 to 3 were examined. The lower Court, after considering the evidence on record, came to the conclusion that the Prosecution proved its case beyond all reasonable doubt, and that the accused received the amount of Rs.100/- towards illegal gratification for furnishing 10(1) Adangal copy, and accordingly convicted and sentenced the accused as aforesaid. Aggrieved by the said judgment, the accused preferred the present appeal, questioning the legality and correctness thereof.

3. Learned counsel for the appellant contended that the fact that P.W.1 met the accused on 23.1.1993 for payment of the land revenue was not mentioned in Ex.P1 and thus P.W.1 suppressed that fact, that as the accused was Village Administrative Officer, he was not competent to issue copy of the 10(1) Adangal, that P.W.1 is not a trustworthy witness, that immediately after the trap the accused gave a proper explanation for being in possession of the Rs.100/- note, that P.W.1 did not explain his stay at the time of the trap for about 45 minutes, and that the sanction procedure was defective. He, therefore, prays to set aside the judgment under appeal. On the other hand, the learned Standing Counsel for the respondent contended that the accused was found in possession of M.O.1 which was given by P.W.1 as bribe to get copy of 10(1) Adangal, that there was no reason for P.W.1 to foist false case against the accused, that the circumstances would clearly go to show that the accused received the amount as bribe, but not as a part of the land revenue, and that the Court of Appeal is debarred from reversing the judgment of conviction on account any error or

irregularity in the procedure of sanction for the prosecution of the accused. He, therefore, prays to dismiss the appeal.

4. The short point that falls for consideration is whether the accused received the amount towards illegal gratification for issuing copy of 10(1) Adangal as contended by the Prosecution, or he received the amount towards a part payment of the land revenue?

5. It is a fact that P.W. 1 did not mention in Ex.P1 that he had approached the accused on 23.1.1993 at about 9.00 a.m., and paid land revenue of Rs.105.60 Ps. and that he paid Rs.10/- to the accused towards "Mamool" for receiving the land revenue. An F.I.R. is not an encyclopedia to contain every minute detail. Non-mentioning by P.W. 1 of the purpose of his visit to the house of the accused on 23.1.1993 in Ex.P1 cannot be taken as a sole ground to disbelieve his evidence.

6. The case of the Prosecution is that P.W.1 paid Rs.100/- to the accused towards illegal gratification for supply of copy of 10(1) Adangal. The evidence of P.W.1 would further go to show that when the accused asked him whether he brought the proposed bribe amount of Rs.100/-, he stated in the positive and took out the Rs.100/- note from his pocket and handed over the same to the accused, who received it with his right hand and kept in the left side pocket of his shirt along with some other amount. The purpose of demanding Rs.100/-, according to the Prosecution, was for supply of copy of 10(1) Adangal. The land in Survey No. 42 was owned by the father of P.W. 1. According to P.W.1, there was a partition between himself and his father. P.W.1 and his brothers have been living separately for the past 15 years. Whether the land in Survey No. 42 fell to the share of P.W.1 or was still in the name of the father of P.W. 1 by the date of Ex.P1, it makes no difference, because the fact remains that P.W. 1 went to the house of the accused to pay the land revenue in respect of the land in survey No. 42. As a matter of fact, Ex.P3 is the land revenue receipt issued by the accused on 23.1.1993 for Rs.105.05 Ps. It is inconsequential whether he went to the office of the accused to make any payment towards land revenue or not. If the evidence of P.W.1 is accepted, then it is clear that the accused demanded Rs.100/- for supplying copy of 10(1) Adangal. It also makes no difference that subsequent to the trap P.W.1 did not obtain any Adangal extract, because P.W. 1 might not have required it. Even after his lengthy cross-examination, nothing has been elicited to discredit the testimony of P.W.1. He is a practicing Advocate at Anakapalle. There is absolutely no motive for him to implicate the accused in a case of this nature.

7. Coming to the plea of defence, there cannot be any dispute that the accused need not prove his defence beyond all reasonable doubt. It is sufficient to show that by preponderance of probabilities if his case is accepted as true, then he is entitled for acquittal.

8. The case of the accused is that on 23.1.1993 the accused did not pay the

entire amount of the land revenue of Rs.105.05 Ps. Instead, he paid Rs.50/-, but the accused issued a receipt for total amount and deposited the amount into the treasury, on the assurance given by P.W. 1 that he would pay the balance amount on the next date. On 27.1.1993 P.W.1 paid Rs.100/- towards the balance amount and the accused returned Rs.50/- to P.W.1. Therefore, it is the case of the accused that the amount that was given by P.W.1 was towards part payment of the land revenue but not as illegal gratification or bribe and that he gave the receipt for the full amount of land revenue though P.W.1 paid only a part of that amount because P.W.1 assured him that he would pay the balance amount on the next day. This Court is not inclined to accept the said contention, because whenever a Ryot pays any amount towards payment of land revenue, a receipt would be issued only for the amount actually paid, and, in this case, especially in view of the fact that when P.W.1 was alleged to be a defaulter the accused would not have issued receipt for the entire amount though P.W.1 paid only a part amount of Rs.50/-

9. Admittedly the amount of Rs.105.05 Ps. paid by P.W.1 was reflected in Ex.P8. On this aspect, D.W.1, the Village Servant, stated that prior to January 1993 he approached P.W.1 on one or two occasions for payment of land revenue, that on 23.1.1993 while he was present in the office of the accused, P.W. 1 came there and requested the accused to issue a receipt for payment of the entire land revenue for three years, but paid only Rs.50/- and promised to pay the balance amount of Rs.55/- on the next day. The evidence of D.W.1 does not inspire confidence for the simple reason that, as already stated above, whenever a Ryot pays a part amount of land revenue, a receipt would be issued only to the extent of the amount actually paid, but not for the entire amount. Furthermore, he was working under the accused. Therefore, no implicit reliance can be placed on his evidence.

10. D.W. 2 is no other than the son of the accused. According to him, the accused informed him that he issued a receipt to P.W.1 for Rs.105/- though P.W.1 paid Rs.55/- only. It is only hear-say evidence. No evidentiary value can be attached to the evidence of D.W.2.

11. D.W. 3, an Agriculturist, went to the office of the accused to pay land revenue. He stated that at the time when he went to the office of the accused, the accused asked P.W.1 as to why he had not paid the balance amount and P.W.1 stated to the accused that he came there to pay the balance amount. D.W.3 did not give the date on which he went to the house of the accused. According to the Prosecution D.W.3 is one of the persons present at the house of the accused. But, his presence is not at all spoken to by any of the witnesses. Further it is not even suggested to P.W.1 that in the presence of D.W.3, the accused questioned P.W.1 about the payment of the balance amount. Therefore, the evidence adduced on behalf of the accused does not inspire confidence.

12. Before going to the house of the accused, the person of P.W.1 was searched by the Anti Corruption Bureau and immediately after the trap he was again

searched. The amount that was in the possession of P.W.1 before the trap was the same amount found by the police after the trap. If really the accused had returned Rs.50/- to P.W.1, as claimed by the accused, then certainly P.W.1 would have had more amount than what was in his possession before the trap.

13. On this aspect, learned counsel for the accused-appellant contended that the amount returned by the accused to P.W.1 must have been thrown in the room or outside the room. There is no basis for arriving at such conclusion simply because there was a time gap of 45 minutes between P.W.1 entering into the house of the accused and giving a signal to the police. If really the accused had not received the amount from P.W.1 towards illegal gratification, he would certainly have explained the same immediately after being questioned by the Deputy Superintendent of Police.

14. At the time when P.W.4 entered into the house of the accused and revealed his identity to him, the accused started shivering and was perplexed. If really the amount of Rs.100/- was received by him as part payment of the land revenue, there was no need for him to fear for anybody and there was also no need for him to shiver or get perplexed. After finding the disputed note and after testing the shirt, the Rs.100/- note and the hands of the accused in the relevant solutions, P.W.4 once again questioned the accused for his explanation. Then the accused gave an explanation that he received the amount of Rs.100/- from P.W.1 towards part payment of the land revenue. In the earliest occasion, when P.W.4 questioned the accused as to whether he received any amount from anybody just prior to the arrival of the riding party, he denied to have received any amount from anybody. Had the accused made any explanation to P.W.4 when he questioned him at the earliest point of time, it could have certainly been taken into consideration. But after the entire trap was conducted, he gave the above explanation. So, it is clearly an after-thought. These circumstances are against the accused. From the evidence on record, the accused failed to show, by preponderance of probabilities that he received the amount of Rs.100/- from P.W.1 towards balance amount of the land revenue.

15. The other contention raised by the learned counsel for the appellant is that the sanction procedure was not valid. In Central Bureau of Investigation Vs. V.K. Sehgal 1999(8) Supreme 490 it was held that a Court of Appeal or Revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the sanction for prosecution, unless failure of justice has been occasioned on account of such error or irregularity.

16. Sections 19(3) and 19(4) of the Prevention of Corruption Act are analogous to Section 465 of the Code of Criminal Procedure. For marking the sanction order-Ex.P12, no objection was taken at the trial stage. When the accused failed to raise the issue of valid sanction, the question of failure of justice on the mere premise that no sanction was accorded, does not arise.

17. The other point raised by the learned counsel for the appellant is that a

Village Administrative Officer is not competent to issue supply of 10(1) Adangal. Though a Village Administrative Officer is not competent issue 10(1) Adangal, the concerned Mandal Revenue Officer is competent to issue it. The fact that a Village Administrative Officer is the custodian of revenue records is not in dispute. So, there was every possibility for the accused to give an unauthorized copy of the Adangal and there was every possibility of demanding money for giving copy of the Adangal to be certified by the Mandal Revenue Officer.

18. Learned counsel for the appellant also relied upon a decision reported in Bhagwan Jathya Bhoir Vs. The State of Maharashtra 1992 CRI. L.J. 1144.1 wherein it was held that since the amount of bribe involved in that case was very petty, there was no need to file a charge sheet inasmuch and departmental proceedings could have been initiated and hence the sanction order had to be quashed.

19. However, in view of the decision of the Supreme Court in Central Bureau of Investigation (1 supra), the validity of the sanction cannot be questioned in a revision or appeal. Hence, the above Ruling in Bhagwan Jathya Bhoir (2 supra) cannot be applied to the facts of the present case. Even though the bribe amount of Rs.100/- was a very meager amount, but a number of Ryots approach the accused for one reason or other, as he is the custodian of all records. In that perspective, the amount of Rs.100/- cannot be said to be trifling amount so as to warrant the conduct of any departmental proceedings against the accused.

20. In view of the above discussion, I hold that the lower Court after considering all the aspects came to the right conclusion. There are no absolutely no grounds to interfere with the reasoning given by the trial Court in so far as the offences alleged against the accused.

21. In the result the appeal is dismissed.