
(2011) 03 AP CK 0020

In the Andhra Pradesh High Court

Case No : Criminal Appeal No's. 1183 of 2003 and 783 of 2004

G. Harinatha Rao

APPELLANT

Vs

State
 State A.C.B. Vs R. Yesurathan, Surveyor

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Prevention of Corruption Act, 1988 — Section 11, 13(1), 13(2), 20, 7

Citation : (2011) 03 AP CK 0020

Hon'ble Judges : B.N. Rao Nalla, J

Bench : Single Bench

Advocate : C. Praveen Kumar and Ghani. A. Musa, SC and SPL. PP for ACB, for the Appellant; Ghani. A. Musa, SC and SPL. PP for ACB and C. Praveen Kumar, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Rao Nalla, J.—A.O. 1 in C.C. No. 12 of 1999 on the file of the Court of the learned Principal Special Judge for SPE and ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, has preferred Criminal Appeal No. 1183 of 2003 assailing the orders of his conviction passed by the said Court in the said case by judgment dated 29-10-2003 finding him guilty for the offences under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (for short "the Act") and convicting and sentencing him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 500/-, in default, to undergo simple imprisonment for one month for the offence u/s 7 of the Act and further to suffer rigorous imprisonment for two years and to pay a fine of Rs. 500/-, in default, to undergo simple imprisonment for one month for the offence u/s 13(1)(d) read with 13(2) of the Act, whereas, the State preferred Criminal Appeal No. 783 of 2004 questioning acquittal of A.O. 2 in the said case for the same offences.

2. The facts, in brief, are that there is a land dispute between P.W. 1 and one Gnaneswar. Both of them are residents of Guddimalkapur village, Hyderabad.

The dispute pertains to the land covered in Survey Nos. 222/1 and 235/1 of the said village. P.W. 1, who owned the land (Acs.9.00) in both the survey numbers, has disposed of the same, by retaining 2500 square yards of land, wherein he constructed a house bearing door No. 1306-34; that Gnaneswar claimed that his land to an extent of 349 square yards was merged with 2500 square yards of land owned by P.W. 1. Therefore, Gnaneswar filed L.G.C. No. 196 of 1996 before the Special Court constituted under the provisions of the Land Grabbing (Prohibition) Act. That the Special Court had appointed an Advocate Commissioner - P.W. 5 to measure the said land and P.W. 5 after complying with the procedure, requested P.W. 1 and Gnaneswar to be preset on 18-01-1997 at the disputed land to facilitate him in measuring the land in dispute. P.W. 1 and Gnaneswar were present at the disputed land on that date. On 18-01-1997, A.Os. 1 and 2 along with P.W. 5 were present at the disputed land. However, it could not be possible to measure the land on that date and thereafter also, on several occasions, the land could not be measured. On 25-05-1997, A.Os. 1 and 2 again went to the land in dispute for surveying and demanded P.W. 1 to give Rs. 20,000/- as illegal gratification promising to safeguard his interest as against the interest of Gnaneswar stating that otherwise the survey would be done in favors of Gnaneswar declaring 340 square yards out of the disputed land as belonging to Gnaneswar. Thereafter, they disbursed from there. On 02-06-1997, when P.W. 1 again visited A.Os. 1 and 2 at their office and requested them to measure the land, they reiterated their earlier demand, for which, P.W. 1 expressed his inability but ultimately he agreed to pay Rs. 5,000/- towards part payment of the bribe on 03-06-1997. On 03-06-1997, P.W. 1 conveniently approached the D.S.P., A.C.B., Hyderabad and preferred a complaint against the accused, basing on which, a case in Cr. No. 14/ACB-CR/97 was registered under Sections 7, 11, 13(2) read with 13(1)(d) of the Act. On the same day, after securing the presence of the mediators, P.W. 3 and another, and after observing legal formalities, arranged a trap at Hotel Annapurna at 7-25 P.M and successfully trapped A.Os. 1 and 2 when they demanded and accepted Rs. 5,000/- from P.W. 1 as illegal gratification for doing an official favours to him in measuring the land in dispute. The phenolphthalein test was conducted on both the hand figures of A.O. 1 and it proved positive. The chair of A.O. 1 was also subjected to phenolphthalein test with cotton swab and it proved positive. The tainted amount of Rs. 5,000/- was recovered from the possession of A.O. 1 in the presence of the mediators under the cover of Ex. P-3 report. Thereafter, A.Os. 1 and 2 were arrested and later charge sheet was laid against them before the Court of the learned Principal Special Judge for SPE fit ACB Cases at Hyderabad for the offences under Sections 7, 11, 13(2) read with 13(1)(d) of the Act in C.C. No. 12 of 1999.

3. In order to prove its case, the prosecution has got examined P.Ws. 1 to 8 and got marked Exs. P-1 to P-16 and M.Os. 1 to 9 on its behalf. However, no witnesses were examined and no documents were marked on behalf of the accused officers.

4. The trial Court, inter alia, taking into consideration of the evidence of P.W. 3, who acted as one of the mediators to pre and post trap proceedings under Exs. P-2 and P-3, and also the evidence of P.W. 7, the Investigating Officer, had convicted and sentenced A.O. 1 for the offences as has already been stated in paragraph No. 1 supra while acquitting A.O. 2 for the said offences.

5. It is the case of A.O. 1 that though the prosecution failed to prove his guilt, the trial Court erroneously convicted him while acquitting A.O. 2 for the same offences. The trial Court also erred in not considering the fact that the prosecution had miserably failed to prove the demand of illegal gratification by A.O. 1, which is a very basis and foundation for the case of the prosecution. It is further contended that the trial Court misdirected itself by not bestowing attention to the fact that the de facto complainant, who was examined as P.W. 1, and the witness P.W. 2, who was accompanying P.W. 1 and who was examined as such, were declared hostile, as they did not support the case of the prosecution. Therefore, it is contended that it cannot be said that A.O. 1 has demanded illegal gratification from P.W. 1. When P.W. 1 himself has not supported the case of the prosecution, it is to be noted that the very case of the prosecution is based on Ex. P-1 complaint preferred by P.W. 1, and therefore, there is no basis or foundation for the case of the prosecution in view of P.W. 1 turning hostile and not supporting the case of the prosecution along with the accompanying witness - P.W. 2, as such, it has got to be said that there is no proof with regard to either demand or acceptance of the tainted amount as illegal gratification by A.O. 1 from P.W. 1. Referring to the evidence of P.W. 5 - the Advocate Commissioner, it is contended that there was no deliberate delay on the part of A.O. 1 as well as A.O. 2 in measuring by conducting survey of the land in dispute. It is in the evidence of P.W. 1 himself that A.O. 1 did not accept the tainted amount when he offered the same by stating that he is helpless and he cannot extend any help to him. He has also clearly stated that when he offered the tainted amount, A.O. 1 obstructed him and pushed him back, as such, P.W. 1 placed the tainted amount on the chair of A.O. 1 informing him to accept the same and it was at that juncture, the ACB officials entered the scene of offence. P.W. 1 further testified that he was not examined at that juncture, but on 05-06-1997 i.e. two days after the incident he was examined. Therefore, it is contended that the trial Court had erred in relying on the evidence of P.W. 3, who was not an eyewitness either to demand or acceptance of the bribe. That in any case, the evidence of any witness is of any help to the case of the prosecution, in this context, since P.W. 1 himself retracted from his statement before the ACB officials, and, as such, Ex. P-1 complaint, which is the very basis and foundation for the case of the prosecution lost its sanctity. It is also pointed out that it is a settled law that mere recovery of tainted amount from the accused officer is not sufficient to prove the case of the prosecution without proving the demand, as held by the Hon'ble Apex Court in the decision in Ram Swaroop Rathore Vs. State of M.P., It is further contended that when there is no evidence to prove the demand or acceptance, the case of the prosecution cannot stand and it was held to the

same effect by the Hon"ble Apex Court in State of M.P. v. J.B. Singh 2001 (1) ALD 124 (SC). It is more so when P.W. 1 is declared hostile. Therefore, it is strenuously contended that the trial Court has erred in convicting A.O. 1 in the absence of proof of demand and acceptance of illegal gratification. Further, it is vehemently contended that the trial Court was not justified in observing that the phenolphthalein test conducted on both the hands of A.O. 1 gave positive result as the result was positive because when the tainted amount was offered to A.O. 1, he had touched the hands of P.W. 1 while obstructing him and pushing him back with his (A.O. 1) hands refusing to accept the bribe amount and in that process the hands of A.O. 1 came into contact with the hands of P.W. 1 and the phenolphthalein test proved positive. Further the trial Court was not justified in observing that by way of an abundant caution, A.O. 1 had kept the tainted currency underneath his left thigh on the chair when there is no evidence on record to show that A.O. 1 had accepted the bribe amount and kept it underneath his left thigh on the chair as an abundant caution. The evidence of P.W. 1 himself is that when he offered the tainted amount, A.O. 1 obstructed him with his (A.O. 1) hands by pushing backward his (P.W. 1) hands, from which it is clear that A.O. 1 refused to accept the bribe, and therefore, the question of accepting the tainted amount by A.O. 1 and placing it underneath his left thigh on the chair, as an abundant caution, does not arise. Lastly it is contended that the trial Court without there being any evidence warranting conviction of A.O. 1 had found him guilty on the basis of assumptions and presumptions, which is not tenable in law. Moreover, Ex. P-3 post trap panchanama is not a substantive piece of evidence as it can only be used either to corroborate or to contradict. Therefore, the trial Court has erred in heavily relying on Ex. P-3 and making it basis for conviction of A.O. 1.

6. So far as A.O. 2 is concerned, who is the Respondent in Criminal Appeal No. 783 of 2004, absolutely there was no evidence against him and he was not at all referred to in Ex. P-2, pre trap panchanama and moreover there was no allegation of demand or acceptance by him and the phenolphthalein test proving negative. Hence, the trial Court was justified in acquitting him, and, as such, the impugned judgment of acquittal of A.O. 2 as passed by the trial Court is not liable to be interfered with by this Court.

7. Per contra, the learned Special Public Prosecutor for ACB Cases submits that the criminal proceedings were initiated at the behest of and on the basis of Ex. P-1 complaint preferred by P.W. 1, the de facto complainant. He further submits that P.W. 1 has admitted in his cross-examination of his having stated in Ex. P-1 dated 25-05-1997 that A.O. 1 demanded Rs. 20,000/- from him for measuring the land and giving report in his favors that P.W. 5, Advocate Commissioner, has stated in his report under Ex. P-13 that on 25-05-1997 A.Os. 1 and 2 conducted survey of the disputed land. Therefore, he contends that there was every possibility on the part of A.O. 1 in demanding illegal gratification for measuring and giving the report in favors of P.W. 1

8. It is the case of the prosecution that as per the evidence of P.W. 3, the ACB officials based on the contents of Ex. P-1 complaint and having discussed the same with P.W. 1 and after agreeing as to the truth or otherwise of Ex. P-1, proceeded with for initiating the proceedings i.e., laying a trap and accordingly Ex. P-2 pre trap panchanama was drafted and thereafter by following the prescribed procedure, they have successfully trapped A.Os. 1 and 2 since phenolphthalein test proved positive. It is the further case of the prosecution that the evidence of P.W. 7, the investigating officer, is also to the same effect and after completion of the process of trap, Ex. P-3 post trap panchanama proceedings were drafted.

9. To put in nutshell, it is the case of the prosecution that A.Os. 1 and 2 and P.Ws. 1 and 2 went to Annapurna Hotel, where P.W. 1 paid the tainted amount to A.O. 1 on his demand and A.O. 1 accepted the same by receiving it with his left hand and kept the same beneath his left thigh on the chair and as per the prearranged signal of P.W. 2, the trap party entered into the hotel and seized the tainted amount after conducting phenolphthalein test and thereafter Ex. P-3 post trap proceedings were drafted. The other proceedings like recording explanation of the accused and other things followed.

10. It is contended on behalf of the prosecution that while recording Ex. P-3 mediators report, both A.Os. 1 and 2 have admitted the demand and acceptance of tainted amount. However, the case of A.O. 1 that when P.W. 1 offered the tainted amount, he obstructed him (P.W. 1) by pushing his (P.W. 1) hands backward with his (A.O. 1) hands and did not accept the same, is a story invented for the purpose of escaping from punishment. It is further the case of the prosecution that the circumstance of A.Os. 1 and 2 going to Annapurna Hotel along with P.Ws. 1 and 2 itself shows their suspicious nature. No motives can be attributed to P.Ws. 3 and 7 in proceeding against A.Os. 1 and 2 since there was no enmity between them. It is contended that the trial Court rightly came to the conclusion that A.Os. 1 and 2 had admitted while recording Ex. P-3 mediators report that the bribe was demanded by them and the trap party recovered the same and further the phenolphthalein test proved positive. That being so, the trial Court was justified in finding A.O. 1 guilty of the charges and it went wrong in acquitting A.O. 2.

11. In view of the evidence of the prosecution witnesses and also having regard to the pleas raised on either side, it cannot be said that the demand of bribe by A.O. 1 is not proved and that the presumption u/s 20 of the Act cannot be drawn and consequently it cannot be said that the trial Court went wrong in finding that the prosecution proved its case and thereby convicting A.O. 1 and acquitting A.O. 2. Further, the test conducted on the person of A.O. 1 as well as the chair occupied by him proved positive and the same goes to prove the case of the prosecution that A.O. 1 had accepted the tainted amount and kept the same underneath his left thigh on the chair.

12. In the peculiar circumstances, this Court is of the view that the trial Court

cannot be said to have committed any error or illegality and or it was perverse in finding A.O. 1 guilty of the offences charged with while holding A.O. 2 not guilty of the offences charged with and consequently convicting A.O. 1 and acquitting A.O. 2.

13. In the result, both the appeals are dismissed confirming the impugned judgment and conviction and sentence of A.O. 1 and acquittal of A.O. 2.