**(2023) 03 TEL CK 0049**

**In the Telangana High Court**

**Case No :** Criminal Appeal No. 692 Of 2012

Ivaturi Venkata Subba Rao — APPELLANT

Vs

State Of A.P. — RESPONDENT

**Date of Decision :** 14-03-2023

**Acts Referred:**
Code Of Criminal Procedure, 1973 — Section 239, 374(2)
Prevention of Corruption Act, 1988 — Section 2(c), 7, 13(1)(d), 13(1)(d)(i), 13(1)(d)(ii), 13(2), 20

**Citation :** (2023) 03 TEL CK 0049

**Hon'ble Judges :** Juvvadi Sridevi, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

1. This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), is filed by the Appellant / Accused Officer, aggrieved by the judgment, dated 13.07.2012, passed in C.C.No.29 of 2010 by the II Additional Special Judge for SPE and ACB Cases, Hyderabad, whereby, the Court below convicted the Appellant / Accused Officer of the offence under Sections 7 of Prevention of Corruption Act, 1988 (for short, 'the Act') and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months.

2. Heard Sri Pappu Nageshwar Rao, learned senior counsel representing Sri Prasad Ivanaboina, learned counsel for the appellant / Accused Officer, Sri T.L.Nayan Kumar, Learned Standing Counsel-cum-Special Public Prosecutor for A.C.B. cases and perused the record.

3. The case of the prosecution, in brief, is as follows:

The de facto complainant Sodagani Sailoo S/o Venkata Ramulu, Revenue Colony, Hanmakonda wanted to start business in maize and bran under the name of M/s.

Rajyalakshmi Maize and Bran Commission Merchants. He made enquiries and came to know that he has to obtain licence from Assistant Commercial Tax Officer (A.C.T.O.), for doing the business. So, he approached the office of A.C.T.O., Hanmakonda on 09.09.2004, made enquiries and ascertained the procedure for registration of his business and then he filled up the application, paid a sum of Rs.500/- in State Bank of Hyderabad, Warangal by way of challan and enclosed challan to the application and also enclosed the documents that are essential to prove his residence and presented the application in the Dealer Service Center of the Office of Assistant Commissioner, Commercial Taxes-II, Hanmakonda for processing.

4. The Accused Ivaluri Venkata Subba Rao worked as A.C.T.O.-II, Hanmakonda of Warangal district from 26.05.2003 to 27.09.2004. By virtue of the post held by him, he falls under the category of Public Servant within the meaning of Section 2 ( c ) of the Prevention of Corruption Act, 1988 (hereinafter referred as "The Act").

5. On 17.09.2004 the de facto complainant approached the accused and enquired with him about his application for grant of license. Then, the accused asked the de facto complainant to come to his office after two days. Accordingly, on 21.09.2004, the de facto complainant approached the accused and requested him to issue the certificate of registration to start the business. Then the accused demanded illegal gratification of Rs.5,000/- apart from legal remuneration to issue the registration certificate. De facto complainant came out by informing that he would come back with the amount. As the defacto complainant was not intending to pay any bribe to the accused, he went to the office of ACB, Warangal on 24.09.2004 itself and presented a written report. Then the DSP, ACB, Warangal, asked him to come on 27.09.2004 with intended bribe amount.

6. The DSP caused enquiries about the genuineness of the complaint lodged by de facto complainant and the antecedents of accused. He registered the report on 27.09.2004 under Section 7 of the Act.

7. The DSP, ACB, Warangal secured the services of B.V.Prasad (LW8) and Sri D.Satyanarayna (LW9), both are Fisheries Department Officers from the Office of Assistant Director, Fisheries, Warangal as mediators. The ACB also secured the presence of de facto complainant and Kathi Mohan (LW2) Battupalli village of Hanmakonda of Warangal district. He has introduced the de facto complainant to mediators and vice versa and conducted pre-trap proceedings in the office. The mediators verified the contents of FIR by confronting with the de facto complainant. The de facto complainant produced the intended bribe amount of Rs.5,000/-. On the instructions of DSP, ACB, phenolphthalein powder was applied to the currency notes by ACB constable after noting their serial numbers in the pre-trap proceedings and the same was kept in the shirt pocket of de facto complainant after ascertaining the pocket was empty. He was instructed not to touch notes till the accused demands and accepts the amount from the de facto complainant. Then the sodium carbonate solution was prepared and when the

 

constable was asked to rinse his fingers in the solution, it turned into pink colour. Solution was prepared in another glass tumbler and when the other trap members including ACB officials, mediators and de facto complainant rinsed their fingers in the sodium carbonate solution, there was no change of colour. Then the DSP explained significance of phenolphthalein powder and sodium carbonate solution and how the colour changes. Then the pre trap proceedings were drafted, attested by the mediators and trap party.

8. On 27.09.2004, the trap party including de facto complainant started from the office of DSP and reached the office of Dy. Commissioner, Commercial Taxes and they stopped at some distance and then the de facto complainant was instructed to go to the office of accused and ask for license and in case the accused demands bribe, he shall pay the bribe amount and on the accused accepting the same, he should come out and give a pre-arranged signal. The DSP also asked Kathi Mohan (LW2) to accompany de facto complainant and to watch what would happen. Then de facto complainant and Mohan went inside the office of accused. The DSP and other trap party took vantage positions outside the office of accused. When PW1 and PW2 went inside the office, the accused was not in the office. Then they have ascertained that the accused went to the office of D.C.T.O. to attend the meeting and so, they came back and informed to D.S.P., and they are made to wait outside the office. At about 01.40 p.m., the accused came to his chambers. Then PW1 approached the accused and PW2 was watching from the door and when PW1 asked the accused about his registration certificate, then the accused demanded the bribe amount and questioned PW1 whether he brought the amount. Then PW1 took out Rs.5,000/- from his shirt pocket and gave it to accused, the accused received the amount with his right hand and kept the amount in his right side pant pocket and asked PW1 to wait for some time for issuing certificate and he opened the drawer and wrote something on the file in the drawer. Then PW1 and PW2 came out and gave the pre-arranged signal. Then ACB DSP and trap party rushed into the chambers of accused. He was not found in the chambers. Then DSP called for PW1 and PW2 who disclosed that they have seen accused going towards the record room. DSP also ascertained from the lady attender that accued went towards the record room. Then the DSP and other trap party went towards record room. The accused was found coming out of the record room. Then DSP disclosed his identity and then the accused started shivering and he was brought to his chambers and when his hands were subjected to sodium carbonate solution test, the solution in which the right hand fingers rinsed turned pink colour, whereas the solution in which the left hand fingers rinsed did not change colour. Then DSP questioned whether he received the bribe amount for which, the accused denied the same. Then he took the trap party to the record room and took out the wad of currency notes which was hidden in the old files and gave it to trap party. The DSP got verified the serial numbers of notes, found them tallying with pre-trap proceedings. The DSP also caused the old files which came into contact with tainted amount and that inner linings of the pocket of pant of accused to sodium carbonate test, which yielded

 

positive result. Then DSP seized the records, including the certificate which was signed by accused by that time and prepared the post trap proceedings, attested by trap party and mediators. The accused was arrested and he was produced before the court for remand. The DSP examined PW1 and PW2 and recorded their statements. Thereafter he has entrusted the investigation to the Inspector, who has examined the other witnesses and recorded their statements. On the requisition given by ACB officials, statements of PW1 and PW2 were recorded under 164 Cr.P.C. The final report was submitted to DG ACB for obtaining the sanction orders. Subsequently sanction orders was obtained and sent to the Investigating Officer for further action.

9. The investigation disclosed that the accused being public servant working as A.C.T.O. II of Hanamkonda has demanded and accepted bribe of Rs.5,000/- from the de facto complainant for issuing registration certificate for running the business by de facto complainant, thereby he committed the offences under Sections 7, 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. As the Government also issued sanction orders vide G.O.Ms.No.1917, dt:16.11.2005 the Investigating Officer completed the investigation and filed charge sheet before Principal Special Judge for SPE & ACB Cases, Hyderabad.

10. The Principal Special Judge for SPE & ACB Case, Hyderabad, took cognizance against the Accused Officer for the offences under Sections 7, 13(2) r/w 13(1)(d) of the Act, numbered the charge sheet as C.C.No.12 of 2006.

11. On appearance of the accused, furnished copies, examined him under Section 239 of Cr.P.C. and then framed charges under Sections 7, 13(2) r/w 13(1)(d) of P.C. Act, 1988, read over and explained to accused, for which he pleaded not guilty and claims to be tried.

12. The case was taken on file under Sections 7 and 13(2) r/w Section 13 (1) (d) of the Act and the Accused Officer was tried for the said offences. The Accused Officer pleaded not guilty for the charges and claimed to be tried.

13. During the course of trial, the prosecution examined P.Ws.1 to 9 and got exhibited Ex.P.1 to P.24 and M.Os1 to 12 were also marked. On the other hand, the Accused Officer got examined D.Ws.1 and 2 and got marked Exs.X.1 to X.6.

14. The trial Court after analyzing the entire material both oral and documentary available on record, came to the conclusion that the Prosecution proved the guilt of the Accused Officer beyond all reasonable doubt and accordingly convicted the Accused Officer of the charged offences and sentenced him as stated supra. Aggrieved by the same, the Appellant / Accused Officer preferred the present Criminal Appeal.

15. The learned counsel for the Appellant / Accused Officer submitted that the learned Judge erred in not considering the fact that the prosecution has miserably failed to prove the demand and acceptance of the bribe inasmuch as the de facto complainant / PW.1, who is a witness for demand of bribe, did not

 

support the case of the prosecution and was declared hostile. The learned counsel further submitted that the learned Judge also erred in placing reliance on the complaint (Ex.P22) and the FIR (Ex.P23) which are not substantive pieces of evidence. The Court below failed to see that there existed union rivalry evidenced under Ex.X1 to X6 and the evidence of DWs.1 and 2 and certain categorical admission of the prosecution witnesses and such evidence totally falsifies the prosecution case and that the appellant / accused officer is a victim of the said union rivalry. The learned counsel for the petitioner further would submit that the learned Judge has totally erred in coming to a conclusion that the official work of the de facto complainant / PW.1 was pending with the appellant / accused officer whereas the evidence on record clearly established that no work of the de facto complainant / PW.1 was pending with the accused officer, either on the day of the complaint or the trap day and ultimately prayed to allow the appeal by setting aside the conviction and sentence recorded by the Court below. In support of his contentions, learned counsel had relied on the following decisions.

1. B.Jayaraj v. State of A.P 2014 CRI.L.J.2433

2. Meena (SMT) W/o Balwant Hemke Vs. State of Maharashtra (2000) 5 Supreme Court Cases 21

3. Subash Parbat Sonvane Appellant Vs. State of Gujarat 2002 CRI.L.J.2787

4. N.Sunkanna Vs. State of Andhra Pradesh 2015 CRI.L.J.4927

5. M.R.Purushotham Vs. State of Karnataka 2015 CRI.L.J.72

6. P.Satyanarayana Murthy Vs. Dist. Inspector of Police 2015 CRI.L.J.4670

7. C.Sukumaran Vs. State of Kerala 2015(1) ALD (Crl.) 717 (SC)

16. On the other hand, learned Standing Counsel-cum-Special Public Prosecutor for A.C.B. cases submitted that the Accused Officer worked as A.C.T.O.II, Hanmakonda of Warangal district as on the date of trap and he was a public servant by virtue of the post held by him. PW1, in order to run business in Maize and Bran, presented an application in the office of D.C.T.O., for issuing registration certificate. The application was forwarded to Accused Officer for processing and for issuing registration certificate. When PW1 approached the accused Officer, he demanded the bribe of Rs.5,000/- for issuing registration certificate. PW1 was not willing to give bribe. So he gave report before the ACB DSP Warangal and then ACB DSP arranged trap. In the trap, the accused officer demanded and accepted bribe of Rs.5,000/- from PW1. He further submitted that PW1 and PW2, who are de facto complainant and direct witness for demand of bribe and taking of bribe, turned hostile.

PW3, one of the mediators and the Investigating Officer has categorically stated how the trap was laid and how the accused demanded and accepted the bribe and they have also seized the official documents from the office of the accused officer. The Government also issued sanction orders. There is sufficient evidence on record to establish both the charges against the accused. He submitted that though PW1 and PW2 turned hostile, there is sufficient evidence to establish both the charges against the accused officer. In the case on hand, the trial Court in its findings and reasons given in the impugned judgment has categorically stated that the prosecution proved the guilt of the accused beyond all reasonable doubt and had rightly convicted and sentenced the accused officer, and hence there are no merits in this appeal and accordingly prayed to dismiss the appeal. In support of his contentions, learned Standing Counsel-cum-Special Public Prosecutor for A.C.B. Cases relied on the following decisions.

1. Subramanian Swamy Versus Manmohan Singh And Another (2012) 3 Supreme Court Cases 64

2. Kishan Chand Mangal Versus State of Rajasthan (1982) 3 Supreme Court Cases 466

3. Hazari Lal Versus State (Delhi Administration) (1980) 2 Supreme Court Cases 390

4. Chaturdas Bhagwandas Patel Versus The State of Gujarat (1976) 3 Supreme Court Cases 46

5. Neeraj Dutta Versus State (Govt. of N.C.T. of Delhi) Decided on 28.08.2019 by the Hon'ble Supreme Court of India in Crl.A.No.1669 of 2009

6. Sudip Kumar Sen Alias Biltu V State of West Bengal & others (2016) 3 SCC 26

7. Subramanian Swamy Versus Director, Central Bureau of Investigation and Another (2014) 8 SCC 682

8. M.Narsinga Rao v. State of A.P. (2001) 1 SCC 691

17. Now the point for consideration is:

"Whether the trial court has committed any error in convicting the Accused Officer? If so, whether there are any grounds to interfere with the impugned judgment?

18. As seen from the material placed on record, as well as the impugned judgment, PWs.1 and 2 who are the crucial witnesses turned hostile. Further, the tainted amount was not seized from the accused and there is possibility of PW1 keeping the tainted amount in the record room without the knowledge of accused. PW1 also admitted in his evidence that he gave shake hand to accused officer, so the test of right hand fingers of accused officer might have given positive result and it was also found that when the accused officer kept his hand in the pocket, there is every possibility of phenolphthalein touching the pant of accused officer. There are several discrepancies in the evidence of prosecution witnesses. As seen from the record, no official favour or official act was pending with the accused officer by the date of trap. PW4 has deposed that the accused

 

officer has signed the Registration Certificate and sent it to him and he has to deliver the same to PW1 and obtain acknowledgment. Thus, issuance of registration certificate by the Accused Officer was completed. Thus, the official work was completed by the time of trap and it is only the office Superintendent i.e. PW4, who has to deliver the same.

18. I have gone through the decisions relied upon by the learned Standing Counsel-cum-Special Public Prosecutor for A.C.B. Cases mentioned supra. The facts of the said decisions are quite different from the facts of the case on hand and as such, the said decisions are not helpful to the case of the respondent. Further it is settled law that each case has to be decided on its own merit.

19. In B.Jayaraj's case (2014 CRI.L.J.2433 supra) relied by the learned counsel for the appellant/Accused Officer, the complainant therein disowned to have made the complaint. Under those circumstances, the Hon'ble Supreme Court held that demand of gratification cannot be held to be proved only on the basis of complaint filed and evidence of panch witness; in absence of proving of demand, mere recovery of tainted money from the accused is not sufficient for his conviction.

20. In Meena's case ((2000) 5 Supreme Court Cases 21 supra), the Hon'ble Supreme Court held that mere recovery of currency note and positive result of phenolphthalein test is not enough to establish the guilt of the accused on the basis of perfunctory nature of materials and prevaricating type of evidence.

21. In Subash Parbat Sonvane's case (2002 CRI.L.J.2787 supra), the complainant therein did not support the case of prosecution on the points of demand and acceptance. Under those circumstances the Hon'ble Supreme Court held that from the evidence of panch witness, it was not clear that there was any demand by the accused and amount was paid to him by complainant and accordingly acquitted the accused.

22. In N.Sunkanna's case (2015 CRI.L.J.4927 supra), the Hon'ble Supreme Court held that mere possession and recovery of currency notes from the accused without proof of demand would not constitute offence under Section 7 of the Prevention of Corruption Act.

23. In P.Satyanarayana Murthy's case (2015 CRI.L.J.72 supra), a Full Bench of the Hon'ble Supreme Court held that the proof of demand of illegal gratification is the gravamen of the offence under Sections 7 and 13(1) (d)(i) and (ii) of the Prevention of Corruption Act and in the absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under Sections 7 and 13(1) (d)(i) and (ii) of the Act.

24. In C.Sukumaran's case (2015(1) ALD (Crl.) 717 (SC) supra), the Hon'ble Supreme Court held that demand of illegal gratification by the accused is sine

 

qua non for constituting offence under the Prevention of Corruption Act and the burden to prove the accusations against the accused for the offences with regard to acceptance of illegal gratification from the complainant lies on the prosecution.

25. A careful examination of the evidence placed on record makes it clear that the prosecution failed to prove the guilt of the Accused Officer by leading substantial and constructive evidence that he had demanded and accepted the bribe. Since the prosecution failed to establish its very root of the case with regard to demand and acceptance, presumption under Section 20 of the Act cannot be drawn. Since the demand is not constructively proved, acceptance and recovery of the same cannot be believed. There are several omissions and contradictions in the evidence of prosecution witnesses and the defence succeeded in establishing the same.

26. For the foregoing discussion, this Court is of the view that the prosecution failed to establish the guilt of the accused for the offence charged under Section 7 of the Prevention of Corruption Act, 1988 and accordingly he is entitled to acquittal.

27. In the result, the appeal is allowed by setting aside the judgment dated 13.07.2012, passed in C.C.No.29 of 2010 by the II Additional Special Judge for SPE and ACB Cases, Hyderabad. Consequently, the Appellant is acquitted of the offence under Section 7 of the Prevention of Corruption Act, 1988. The fine amount, if any, paid by the appellant shall be returned to him. The bail bonds of the appellant shall stand cancelled.

Miscellaneous applications, if any, pending in this Criminal Appeal shall stand closed.

 