
(2011) 10 AP CK 0015
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 2334 of 2004

Sayeed Bin Hussain

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 409
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 2

Citation : (2012) 2 ALD(Cri) 469 : (2012) 3 ALT(Cri) 180

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

Bench : Single Bench

Advocate : Venkateswara Rao Dittakavi, for the Appellant; R. Ramachandra Reddy (SC for ACB Cases), for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Sri. Justice B.N. Rao Nalla

1. This Criminal Appeal is directed against the judgment in C.C. No.4 of 1993 dated 15-10-2004 passed by the learned Additional Special Judge for SPE & ACB Cases - cum - V Additional Chief Judge, City Civil Court, Hyderabad, whereby the appellant - accused was found guilty of the offences under Sections 13(1)(c) read with 13(2), 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short "the PC Act") and 409 IPC and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- , in default to undergo simple imprisonment for a period of three months, for all the offences under each count and to run all the sentences concurrently.

2. The case of the prosecution as unfolded from the charge sheet, in brief, is that the appellant - accused was working as Mandal Revenue Inspector, leeza Mandal, Mahbubnagar District during the relevant period i.e. from 01-07-1988 to 10-07-1989. He was a public servant as per the definition of Section (2)(c) of the PC Act. He was entrusted with 13 receipt books by the Mandal Revenue Officer of leeza Mandal for collection of land revenue and other cess from ryots of Pulikallu

village and its hamlets. That he failed to return two receipt books bearing Nos.468401 to 468500 and 468501 to 468600 after collecting the revenue and/or cess from ryots and he failed to remit the amount covered by those receipt books to the Government Treasury. The receipt books containing duplicate used receipts or unused receipts were not returned by him. That on reliable information / source information of the said fact, the ACB officials, Hyderabad Range registered a case against him in Crime No.8/ACB/HR/90 for the offence u/s 13(2) read with 13(1)(c)(d) of PC Act. On 4-6-1990, issued FIR under Ex. P-6 and obtained sanction order from the Government to prosecute the appellant - accused under ExP-5 G.O. Rt. No. 1691 dated 02-11-1992. After completion of the investigation, charge sheet was laid against him into the Court and the same was taken on file by the trial Court as C.C. No.4 of 1993.

3. For the charges framed against the appellant - accused u/s 13(1)(c)(d) read with 13(2) of the PC Act and Section 409 IPC, he pleaded not guilty.

4. That to substantiate its case, the prosecution had examined PWs.1 to 10 and got marked Exs.P-1 to P-7(numbering 34). However, no witnesses were examined on behalf of the defence except marking Exs.D-1, D-2 and D-3 relevant entries in Ex. P-1, record Issue Register.

5. That the trial Court, taking the entire evidence of the prosecution witnesses as well as the entire material brought on record by either side into consideration, found the appellant - accused guilty of the charges under Sections 13(1)(c) and 13(1)(d) read with 13(2) of the PC Act and 409 IPC and sentenced him therefor as has already been stated hereinabove. Assailing the same, appellant - accused preferred this appeal.

6. Now it is the case of the appellant - accused that he had accounted for both the receipt books and the amounts were also deposited into the Court with challans; however, PWs.1 to 3, who were facing departmental enquiry for not accounting 13 receipt books by them, with an intention to falsely implicate the appellant - accused, fabricated the entries in Ex. P-1 Record Issue Register for the year 1988 under Ex. P-1 (a) and P-1(b).

7. The contentions of the Learned Counsel for the appellant-accused are five-fold:

(i) The entries, relating to two receipt books in question, in Ex. P-1 (a) and Ex. P-1(b), were incorporated in Ex. P-1 Record Issue Register at a belated stage subsequent to alteration of their serial numbers. That the receipt book containing receipt Nos.468401 to 500 under Ex. P1(b) entry was issued on 07-10-1988, whereas the receipt book containing receipt Nos.468501 to 600 under Ex. P1(a) entry was issued on 21-09-1988. It is evident from the same that Ex. P1(b) entry should have been recorded first and Ex. P1(a) entry later. That a perusal of the said exhibits also reveal that receipt book Nos.1 and 3 in Ex. P1(b) were found to be in chronological order, however, it appears that in between them, Item No.2 (receipt book No.2, which is one of the receipt books in question) appears to be an insertion.

(ii) That a perusal of Ex. P1(a) shows that some of the sub-items thereunder were issued on 03-09-1988, whereas other sub-items were issued subsequently. From the above, it is contended that the appellant - accused had, in fact, collected land revenue from ryots and also remitted the same in the Government Treasury on 03-09-1988. That Exs.P-1(a) and P-1(b) were not issued on the dates as recorded therein and the same is evident from Ex. D-1 - receipts dated 03-09-1988. Therefore, it is contended that the prosecution has failed to prove that the appellant - accused was entrusted with the two receipt books mentioned under Exs.P-1(a) and P-1(b) entries. That even the trial Court has observed to the same effect in its judgment dated 30-03-1999. That, however, the trial Court in its judgment dated 15-10-2004 did not consider the same and thereby came to a wrong conclusion in finding the appellant - accused guilty of the offences with which he was charged. That though a charge was framed against the appellant - accused that he had failed to account for Rs.20,063.71 paise, after conclusion of trial, while delivering the judgment, the trial Court has deducted the amount covered under three receipts amounting to Rs.2,516.10 paise and found the appellant - accused guilty for failing to account for the rest of the amount. In this context, it is contended that the trial Court clearly erred in deducting the amounts covered under the three receipts, which were dated 03-09-1988, which is much prior to issuance of receipt book under Ex. P1(a) issued on 21-09-1988.

(iii) The facts being what they are, as stated herein above, it cannot be said that the appellant - accused had failed to account for the amounts received from the ryots towards the land revenue and/or cess under Exs.P-1(a) and P-1(b), as he had already remitted the amount so collected into the Government Treasury as per the evidence of PW.1 Record Assistant. That PW.3 is stated to have issued 13 receipt books to the appellant - accused. However, none of them were produced before the trial Court. PW.1, who acted as Mandal Revenue Officer of Ileeja Mandal, admitted in his evidence that he did not prepare a reconciliation statement about the revenue accounts. That had he done so, perhaps, the fact would have come to light that the appellant -accused had already remitted the land revenue/cess collected from ryots into the Government Treasury. Even PW.9, the Investigating Officer, has admitted that the reconciliation register was not filed into the Court though the reconciliation was done in the month of July 1998. He has also admitted that during the course of his investigation, neither he collected the remittance register at least from the Office of the Mandal Revenue Officer, Vaddepalli nor from the State Bank of Hyderabad at Vaddepalli.

(iv) The trial Court has observed in its judgment dated 30-03-1999 that though it was necessary to produce reconciliation statements of the Sub Treasury Office, they were not produced. Therefore, it is contended that non-production of reconciliation statement has prejudiced the interest of the appellant - accused and it also goes to prove that the appellant - accused had already remitted the amounts collected by him into the Government Treasury.

(v) It is the further case of the appellant - accused that during the course of enquiry against one Ramulu and PW.3 of the same office, it transpired that the said Ramulu and PW.3 after collecting the receipt books and after collecting land revenue from the ryots, had failed to remit the amount collected into the Government Treasury and they also failed to submit the counter foils of the said receipt books. It is alleged that the said Ramulu and PW.3, with an intention to escape from the liability for what they have done, informed the Enquiry Officer falsely that the receipt books under Exs.P1(a) and P1(b) were given to the appellant - accused and that he had failed to account therefor. Therefore, it is contended that the prosecution has failed to prove entrustment of the receipt books in question to the appellant accused, his abusing official position and also falsification of accounts. Neither can he be said to have any dishonest intention nor can he be said to be guilty of criminal misconduct. It is the bone of contention on behalf of the appellant - accused that for the wrongful acts committed by Ramulu and PW.3, appellant - accused was made a scapegoat by falsely implicating him in this case. It is also the plea of the appellant -accused that the department has not proceeded against him for any misconduct by issuing notice and holding enquiry against him. If any enquiry was held against him, he could have proved his innocence. With the intention of depriving him of such an opportunity, the said Ramulu and PW.3 have conveniently, with an intention to escape from punishment for their misdeeds, falsely implicated the appellant -accused in this case.

8. Per contra, Sri R. Ramachandra Reddy, Standing Counsel for ACB, contends that the appellant - accused was given 13 receipt books and out of which he had returned 11 books only and failed to return two receipt books containing receipts bearing Nos.468501 to 468600 and 468401 to 468500. He contends that PW.3 has testified that when he visited Pullikal, Raichur, Vidyanagar, Kisannagar and Boyepalli, the villagers informed him that they had paid land revenue to the appellant - accused and shown 26 receipts under Ex. A-2 containing the signatures of the appellant - accused. He also contends that the appellant - accused having collected land revenue/cess from the ryots under the two receipt books in question failed to remit the amount covered by those receipt books into Government Treasury.

9. Learned Standing Counsel for ACB also contends that the evidence of PWs.1 and 3 is corroborated by the evidence of PWs.4 to 7 ryots; that when PW.3 visited their villages, they have informed and also showed him the land revenue receipts under which they had paid land revenue/cess to the appellant - accused for the period from 1983-84 to 1986-87 in June, 1989.

10. PW.3 has admitted in his cross-examination that in some of the receipt books under Ex. P-1 Receipt Issue Register contained some corrections in their numbers. He further admitted that there was an enquiry against him and one B. Ramulu in respect of the same receipt books. However, the said books were not available at leerja Mandal M.R.O. office. However, the learned Standing Counsel

for ACB contends that it is pertinent to observe that this witness has denied when the case of the defence was put in the form of a suggestion that the two receipt books containing the receipts bearing Nos.468501 to 600 to 468401 to 468500 were included subsequently for the purpose of this case to create a base in the case against the appellant - accused, even though they were earlier accounted for and closed and that the same books were concealed by him for the purpose of this case.

11. The learned Standing Counsel for ACB further contends that the trial Court basing on the evidence of PW.1, the then Mandal Revenue Officer of Ieeja Mandal of Mahbubnagar District, PW.2 - the Record Keeper - cum - Inward and Outward Clerk and PWs.4 to 7 - ryots, who have paid the land revenue / cess to the appellant - accused, found the appellant - accused guilty of the offences charged with and accordingly convicted and sentenced him as stated hereinabove. He further contends that the impugned judgment does not suffer from any error or infirmities, as such, the same is not required to be interfered with by this Court.

12. this Court gave its earnest consideration to the submissions made by Sri Dittakavi Venkateswara Rao, Learned Counsel appearing for the appellant - accused, and Sri R. Ramachandra Reddy, learned Standing Counsel for ACB, perused the impugned judgment and other material on record.

13. Considering the rival contentions, now the only point that arises for consideration is whether the trial Court has committed any error, infirmity or irregularity in finding the appellant - accused guilty of the offences charged with?

POINT:

14. It is interesting to note that Criminal Appeal No. 1319 of 1999 was preferred before this Court against acquittal order of the trial Court in C.C. No.4 of 1993 dated 30-03-1999 and this Court considering the appeal along with other appeals involving inordinate delay in concluding the trial, allowed all the appeals and passed a common order giving one years time to the prosecution to adduce evidence on filing application to that effect and the appeal in this case was also allowed and the case was remanded back to the trial Court. The trial Court considering the application made by the prosecution, granted time to adduce evidence. Then, the prosecution has examined two more witnesses viz., PW.9 - the Investigating Officer, who investigated the case and who laid the charge sheet, and PW.10 who initially registered First Information Report -Ex. P-6 on source of information. Thereafter, on conclusion of trial, the trial Court, while re-appreciating and re-considering the evidence of the prosecution witnesses as well as other material available on record, had come to a contrary conclusion than as was done at the earlier instance and found that the appellant - accused is guilty of the offences punishable under Sec. 13(1)(c) & (d) of Prevention of Corruption Act and also for the offence punishable under Sec. 409 of the Indian Penal Code.

15. It is the specific case of the appellant - accused that PW.3 and one B. Ramulu, who had faced a departmental enquiry for the two receipt books in

question that they, having collected land revenue / cess from the ryots under the receipt books in question neither accounted for the same nor remitted the land revenue into the Government Treasury by playing mischief, have conveniently got the appellant - accused falsely implicated in this case to save themselves from the responsibility and punishment in that enquiry. Further, the trial Court, after remand of C.C., basing on the evidence of PWs.9 and 10 - investigating officers, whose evidence is helpful only as to the way in which investigation has been conducted by them in the case and neither proves the case of the prosecution nor disproves it, found the appellant - accused guilty of the offences charged with erroneously by reversing the earlier judgment of acquittal without any cogent reasons.

16. The evidence of PW.1 discloses that the appellant - accused, as per Ex. P-1(a) entry, was given two receipt books bearing Nos.468501 to 468600 and 882401 to 882500 and as per Ex. P-1(b) entry he was given three receipt books bearing Nos. 375201 to 375300, 468401 to 468500 and 375301 to 375400 on 07-10-88. That he had acknowledged the same by his endorsements on the said exhibits. However, PW.1 in his cross-examination has given a go-bye to his version in his chief-examination that the appellant - accused asked for a fortnight time to produce the receipt books and deposit the amount collected by him thereunder. He further admitted in his cross-examination that he was not aware as to who had handed over challans to PW.9, ACB Inspector, pertaining to 13 receipt books. That he was not aware whether they were pertaining to two missing receipt books in question. Thus, the evidence of this witness is not helpful to the case of the prosecution.

17. The evidence of PW.3 shows that the appellant - accused failed to return two receipt books in question. But, in his cross-examination, he has admitted as to corrections of numbers, over-writings and insertions under Exs.P-1(a) and P-1(b) entries, and the same create a doubt as to truthfulness or otherwise of the case of the prosecution.

18. The case of the prosecution is that if the appellant - accused did not collect any land revenue from PWs.4 to 7, he could, as well, cross-examine them on that point, however he did not choose to do so, and from the same it can be said that he had collected land revenue from them and did not remit the same into Government treasury.

19. In this connection, it is pertinent to observe that PWs.4 to 7 ryots from Pullikal, Raichur, Vidyanagar, Kisannagar and Boyepalli are not subjected to cross-examination, for which the defence of the appellant - accused is that the defence could not cross-examine the said witnesses since the two receipt books in question were already accounted for and the land revenue / cess collected thereunder was already remitted.

20. Further, the case of the appellant - accused is that a perusal of Ex. D-1 also clearly reveals that the land revenue amount collected under Ex. P-2(m), Ex.

P-2(n) and Ex. P-2(p) was remitted and the same goes to show that the two receipt books in question were not issued to the appellant - accused and the evidence of PW.3 also lends support to the same.

21. In this connection, it is pertinent to note that it was for the prosecution to establish that the appellant - accused had collected the said amount and misappropriated the same. However, it appears from the impugned judgment of the trial Court that it has relied on the evidence of PWs.1, 3, 4 to 7 and 9 in finding that the appellant - accused is guilty of the offences leveled against him.

22. PWs.4 to 7 - ryots have testified that they had paid the land revenue to the appellant - accused for the relevant period under land revenue receipts. However, it is the case of the appellant - accused that he was not issued the two land revenue receipt books in question by the Record Assistant. PW.2, who succeeded the appellant - accused in the office of Mandal Revenue Officer did not support the case of the prosecution. He was declared hostile. His cross-examination did not yield any useful information in support of the case of the prosecution. As per the evidence of PW.3 - Record Assistant and PW 9 - Investigating Officer, it is revealed that the numbers of the receipt books mentioned in Exs.P-1(a) and Ex. P-1(b) viz., 468501 to 468600 and 468401 to 468500 were introduced subsequently by overwriting the previous numbers and the same creates a doubt as to handing over two receipt books in question to the appellant - accused.

23. PW.9 is the Investigating Officer. He was examined subsequently after the matter was remanded back to the trial Court by this Court by the judgment in Criminal Appeal No. 1319 of 1999 dated 30-12-1999 which was filed against the earlier judgment in the C.C. dated 30-03-1999. It is in his evidence that he was working as Sub-Inspector of Police, Anti-Corruption Bureau, Hyderabad Range at the relevant time. He was entrusted with investigation of the case, as such, he took up the investigation, examined and recorded the statements of PWs.1 to 7 and others, who have stated the facts in support of the prosecution case. That after obtaining the sanction orders under Ex. P-5 from the Government, he laid charge sheet into the Court against the appellant - accused.

24. In his cross-examination, PW.9 has stated that the revenue accounts, challans and receipt books were reconciled in the month of July, 1988. However, he has admitted that reconciliation register was not filed into the Court. He further admitted that the revenue collections have to be remitted into the State Bank of Hyderabad through challans. However, he did not verify the said fact from the said Bank. He has also admitted in his cross examination that a departmental enquiry was conducted against PW.3 and one Ramulu. However, he has stated that he did not know that, in the enquiry, the responsibility for missing of the used revenue receipt books was fixed on PW.3 and Ramulu. He has also admitted as to erasers and over-writings of the entries in Ex. P-1(a) contained in Ex. P-1 Record Issue Register as to the numbers of the books issued thereunder. PW.9, being an investigating officer, has only testified as to mode of

his investigation by recording the statements of witnesses and as to obtaining sanction orders and laying charge sheet.

25. Thus, the evidence of PW.9 reveals as to his examining and recording the statements of PWs.1 to 7 and others, obtaining sanction orders under Ex. P-5 from the Government and laying charge sheet in to the Court against the appellant - accused for the offences charged with. Further, the cross-examination of this witness reveals that though the receipt books were reconciled in the month of July 1988, reconciliation register was not filed in to the Court. It also reveals that he (PW.9) did not verify the challans through which the revenue collections were remitted into the Bank. He also admitted as to erasers and over-writings of the entries in Ex. P-1 (a) in Ex. P-1 Record Issue Register as to numbers of the books issued thereunder. Thus, evidence of this witness helpful to the prosecution to show only as to how he has investigated the case, but neither proves the prosecution case nor disproves it.

26. The case of the appellant - accused is that PW 10, the Investigating Officer, who registered the crime, testified that he has registered the case in Cr.No.8/ACB-HR/90 u/s 13(2) read with Section 13(1)(c) & (d) of Prevention of Corruption Act, as well as under Sec. 409 of Indian Penal Code against the appellant - accused on credible information and issued Ex. P-6 First Information Report, and thereafter, he entrusted the investigation to his successor PW 9.

27. A perusal of Ex. P-6 First Information Report reveals that the appellant - accused has collected land revenue from farmers of Pullikallu and Maddikonda villages and their hamlets. That out of Rs.2,58,055.17 ps he had remitted only an amount of Rs.2,17,838.60 paise into Government Treasury through various challans, and the balance amount of Rs.40,286.57 paises was misappropriated by him. In this context, it is the case of the appellant - accused that as per the charges framed against him by the trial Court and the charge sheet, appellant - accused was alleged to have misappropriated an amount of Rs.20,053.41 paise, whereas Ex. P-6 First Information Report discloses that the appellant -accused has misappropriated an amount of Rs.40,286.57 paise, and that amounts, as shown in the charge sheet and charges framed by the trial Court as well as under Ex. P-6 First Information Report, are different and distinct, and the same resulted in prejudice to the appellant - accused. On the other hand, the case of the prosecution is that in the charge sheet only one village i.e. Pullikallu and its hamlets were included, whereas under Ex. P6 First Information Report" Pullikallu village, its hamlets and Maddikonda village and its hamlets were included, therefore, the amount is shown differently under Ex. P6 First Information Report. However, it is to be observed that nowhere in the proceedings it is shown that the appellant - accused has collected land revenue/cist from two villages viz. Pullikallu village and its hamlets and also Maddikonda village and its hamlets, as such, there is no material on record for reconciling the same. Further, as contended by the Learned Counsel for the appellant - accused, a perusal of Ex. P-6 First Information Report shows that the appellant - accused remitted the land

revenue collected by him to the extent of Rs.2,17,838.60 paise through various challans, however, all the challans therefor were not filed into Court by the prosecution and the same would result in prejudice to the appellant - accused. Further, though Ex. P-6 First Information Report is stated to have been recorded by PW.10 on source of information, as admitted by him in his evidence, the numbers of the revenue receipt books alleged to have been assigned to the appellant - accused are not mentioned in such source of information. Hence, it can be said that Ex. P-6 First Information Report is registered falsely implicating the appellant -accused for the alleged offences.

28. It is strange to note that the prosecution alleged that the appellant - accused and PW.3 had colluded with each other, whereby the appellant - accused was given the missing two receipt books unauthorisedly without any acknowledgment, whereas, it is the case of the appellant - accused that it was PW.3 and one Ramulu, who were facing departmental enquiry with regard to same receipt books, with an intention to save themselves from the responsibility and punishment, had falsely implicated the appellant - accused in this case. That being so, it is difficult to reconcile and/or to concede to the case set up by the prosecution that PW.3 and the appellant - accused colluded in this case. Further, no material is brought on record to show the same which would certainly create a doubt in the case of the prosecution.

29. As discussed hereinabove, the evidence of the prosecution witnesses is not convincing and the same was rebutted by the defence during the course of cross-examination of the prosecution witnesses. However, the trial Court though acquitted the appellant - accused earlier disbelieving the evidence of the prosecution, thereafter, on remand of the matter from this Court, found the appellant - accused guilty of the offences charged with believing the same evidence put forth by the prosecution along with the evidence of PWs.9 and 10 - investigating officers, whose evidence neither proves nor disproves the case of the prosecution as has already been stated hereinabove. Further, as seen from Ex. P-1 Record Issue Register, in Exs.P-1(a) and P-1(b) entries, there are corrections, over-writings and insertions as admitted by PWs.3 and 9 themselves. There is also dispute as to actual date of issuance of the two receipt books in question since as per Ex. D-1 challan, amount covered by the receipts bearing Nos.468549 and 468554 dated 03-09-1988 respectively were deposited into Government Treasury on 05-09-1988, whereas the receipt book containing those receipts i.e. the receipt book bearing No.468501 to 468600 was entrusted to the appellant - accused subsequently i.e. on 21-09-1988 as is evident from Ex. P-1 (a) entry in Ex. P-1 Record Issue Register and the same also creates a doubt as to whom the receipt books in questions were issued. There is also dispute as to actual amount that is alleged to have not accounted for by the appellant - accused. Furthermore, as observed by the trial Court in its earlier judgment dated 30-03-1999 in the C.C., though it was necessary to produce reconciliation statements of the Sub Treasury Office, which could have given clear picture of the case, they were not produced by the prosecution for the

reasons best known to it, which is fatal to the case of the prosecution. Thus, there are so many laches in the case of the prosecution. These circumstances create any amount of doubt as to truthfulness or otherwise of the prosecution case, as such, it can be held that the prosecution failed to prove its case beyond reasonable doubt. However, the trial Court erroneously found the appellant - accused guilty of the offences charged with without any valid reasons. The point is accordingly answered.

30. In the circumstances, since it is a settled law that the prosecution has to prove its case beyond reasonable doubt, this Court is of the view that impugned judgment of the trial Court is untenable in law as the veracity of the case of the prosecution is in doubt and the benefit of which, as per law, must be extended, to the appellant -accused and the same is hereby extended.

31. For the aforesaid reasons, the Criminal Appeal is allowed. The impugned judgment in C.C. No.4 of 1993 dated 15-10-2004 passed by the learned Additional Special Judge for SPE & ACB Cases cum - V Additional Chief Judge, City Civil Court, Hyderabad, is set aside and the appellant - accused is acquitted for the offences charged with.