

(2013) 08 KAR CK 0223
In the Karnataka High Court
Case No : Criminal A No. 711 of 2011

Smt. K. Chandrika, I.R.S

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

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

Citation : (2013) 4 AKR 841 : (2013) ILR (Kar) 4737 : (2013) 6 KarLJ 419

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : M.V. Seshachala and Sri. B. Anand, for the Appellant; C.H. Jadhav, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—This criminal appeal is directed against the judgment dated 5.7.2011 in Spl. (Corruption) Case No. 205/2009 passed by the City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore convicting the appellant for the offences punishable under Sections 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act and sentencing to undergo simple imprisonment for a period of two years and to pay fine of Rs. 50,000/- for the offences punishable u/s 7, to undergo simple imprisonment for a period of three years and to pay fine of Rs. 1,00,000/- for the offences punishable u/s 13(1)(d) of P.C. Act. Appellant was working as Assistant Commissioner of Income Tax, Circle 12(5) at Bangalore during the year 2008. The complainant is the Chairman of M/s. Vmoksha Technologies Pvt. Ltd. Bangalore and they were regularly filing income tax returns. In respect of the returns for the assessment year 2005-2006 appellant issued summons u/s 131 of the Income Tax directing the complainant to produce the books of accounts and other concerned documents for scrutiny. Accordingly, on 26.12.2008, the complainant appeared before the appellant, discussed in relation to the returns filed by his company. It is alleged by the complainant that in the discussion on 26.12.2008, appellant demanded bribe of Rs. 10,00,000/-

for regularizing the scrutiny of returns and demanded initial payment of Rs. 2,00,000/- for passing favourable orders. Complainant further alleges that in the event of failure to pay the bribe amount, the appellant will pass final orders for concealment of income to the tune of Rs. 3.00 crores. It is further alleged that appellant has to share the bribe amount with her superior officers. Since the complainant was not willing to pay the bribe amount filed a written complaint on 1.1.2009 with the respondent. Based on this complaint the respondent registered a case against the appellant and conducted a trap on 2.1.2009 and the appellant was caught red handed while demanding and accepting the bribe amount of Rs. 2,00,000/- from the complainant. After completion of trap procedure, seizure of documents, cash, drawing up of mahazar and investigation, the respondent filed charge sheet against the appellant for the offences punishable u/s 7, 13(2) and 13(1)(d) of the P.C. Act. After framing the charges the prosecution examined 12 witnesses as P.W. 1 to P.W. 12 and got marked Exs. P1 to P35 and M.O. 1 to M.O. 8. The appellant examined D.W. 1 as defense witness and got marked Exs. D1 to D28. The Special Judge after hearing arguments framed the following points for consideration:

1. Whether the prosecution proved beyond all reasonable doubt that accused was working as a public servant in the capacity of Assistant Commissioner of Income Tax, Circle 12(5), from 11.6.2007 to 6.1.2009 demanded Rs. 10-lakhs from Rajesh Sawhney, Chairman of M/s. Vmoksha Technologies Pvt. Ltd., Bangalore as illegal gratification other than the legal remuneration with a motive or reward for passing assessment orders in favour of his company and accepted Rs. 2-lakhs as part payment by the complainant and thereby committed the offence punishable U/s. 7 of Prevention of corruption Act-1988?

2. Whether prosecution further proved beyond reasonable doubt that the accused while working as a public servant in the capacity of Assistant Commissioner of Income Tax, Circle 12(5), during the above period demanded Rs. 10-lakhs for passing favourable orders in favour of complainant and initially accepted Rs. 2-lakhs on 2.1.2009 from the complainant and thereby accused by corrupt or illegal means otherwise by abusing her official position as public servant obtained pecuniary advantage of herself and thus committed the offence U/s. 13(1)(d) punishable U/s. 13(2) of Prevention of Corruption Act, 1988?

3. What Order?

2. On appreciation of evidence on record, the Special Judge passed the impugned judgment holding that prosecution has proved the charges leveled against the petitioner and consequently convicted and sentenced the appellant. Hence this appeal.

3. Sri M.V. Sheshachala, learned counsel for the appellant contends that the prosecution failed to prove and establish the necessary ingredients u/s 7 and 13(2) and 13(1)(d) of P.C. Act. On the date of complaint and the alleged trap, the appellant became functus officio and as such the question of extending

official favour for illegal gratification will not arise. On the date of alleged trap, the complainant was aware of the fact that appellant has already passed an order of assessment, question of recalling or reviewing the same is not permissible under law and the prosecution has failed to prove the alleged demand of bribe amount. It is contended that the prosecution has failed to prove and establish the acceptance of bribe amount by the appellant from the complainant on the date of alleged trap. From time to time prosecution went on changing its versions and improving the case, important witnesses are not examined and relevant documents are not produced. Reliance is placed on the following decisions:

1. Mahadev Dhanappa Gunaki and Another Vs. The State of Bombay,
2. Mahadev Dhanappa Gunaki and Another Vs. The State of Bombay,
3. Trilok Chand Jain Vs. State of Delhi,
4. Raghbir Singh Vs. State of Punjab,
5. State of U.P. vs. Jagadish Singh Malhotra, (2001) 10 SCC 215
6. Smt. Meena Hemke Vs. The State of Maharashtra,
7. Suraj Mal Vs. State (Delhi Administration),
8. State of Karnataka Vs. Ameer Jan,
9. G.V. Nanjundiah Vs. State (Delhi Administration),

4. Per contra, Sri C.H. Jadhav, learned senior counsel for the respondent supports the impugned judgment passed by the Sessions Judge. It is contended that prosecution has proved and established the charge leveled against the appellant. The evidence on record proves the charge leveled against the appellant beyond reasonable doubt. The sessions Judge has not committed any illegality in passing the impugned judgment Reliance is placed on the following decisions:

1. The State rep. by Inspector of Police, Pudukottai, Tamil Nadu Vs. A. Parthiban,
2. K.S. Panduranga Vs. State of Karnataka,
5. Heard arguments on both the side and perused the entire record. The following points will arise for my consideration:

i. Whether the impugned judgment and sentence passed by the Special Court for CBI is in accordance with law?

ii. What order?

6. Section 7 of the P.C. Act reads as under:

7. Public servant taking gratification other than legal remuneration in respect of an official Act.- Whoever, being, or expecting to be a public servant, accepts or

obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, 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 functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

A reading of the above provisions of law specifies that the following essential ingredients are to be established to commit a person for the offences under consideration.

- i. The person who demanded and accepted the bribe should be a public servant.
- ii. The public servant should have obtained gratification as a motive or reward for doing any official favour.
- iii. There should be actual demand and acceptance of gratification.

Ingredient No. I

7. It is not in dispute that the appellant was working as Assistant Commissioner of Income Tax circle 12(5) at Bangalore during the relevant period in the year 2008. Further the investigating officer has obtained sanction to proceed against the appellant. The Special Judge has rightly held that appellant is a public servant and the order of sanction is valid. There is no serious dispute by the appellant on this finding of Session Judge. I find no ground to interfere with the finding by Sessions Judge on this point.

Ingredient No. II

8. Ex. P1 is the complaint dated 1.1.2009 lodged by the complainant with the respondent police and relevant portion reads as under:

During the said meeting she had demanded a bribe amount of Rs. 10-lakhs for regularizing the scrutiny. She insisted on getting an amount of Rs. 2-lakhs from me as initial payment for passing favourable order by first week of January 2009. She had further threatened that if the said amount was not paid, she would issue penal order for concealment of income to the tune of Rs. 3-crores and would harass me and my company. She had claimed that she has to share the bribe amount with her superior officer.

After investigation charge sheet was filed on 30.10.2009 and the relevant portion reads as under:

The investigation has revealed that Smt. K. Chandrika (A-1) was serving as a

public servant at relevant time and was having official dealings with Shri Rajeev Sawhney of M/s. Vmoksha Technologies Pvt. Ltd., Bangalore. She had demanded and accepted a bribe of Rs. 2 lakhs as a motive or reward for passing favourable order during the assessment of income tax return filed by M/s. Vmoksha Technologies Pvt. Ltd., for the assessment year 2005-06. Thus, Smt. K. Chandrika (A-1) had failed to maintain absolute integrity and honesty while discharging her official duties and had demanded and accepted Rs. 2 lakhs as illegal gratification as a motive or reward for extending official favour to the complainant. That the above said acts of Smt. K. Chandrika, Asst. Commissioner of Income Tax, Circle-12(5), O/o the Addl. Commissioner of Income Tax, Range-12, 4th Floor, Rashthrothana Bhavan, Nrupathunga Road, Bangalore constitute offences punishable u/s. 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act-1988. Hence, the Charge sheet.

The Sessions Judge by his order dated 09.12.2010 charged the appellant as under:

Firstly, that you accused, Smt. K. Chandrika, while functioning as public servant in the capacity of Assistant Commissioner of Income Tax, Circle 12(5), Office of the Additional Commissioner for Income Tax, Range 12, IV Floor, Rashthrothana Bhavan, Nrupathunga Road, Bangalore from 11/06/2007 to 06/01/2009 demanded Rs. 10,00,000/- from Sri Raiesh Sawhney, Chairmen. M/s. Vmoksha Technologies Pvt. Ltd., Bangalore as illegal gratification other than legal remuneration with a motive or reward for favourable passing the orders in favour of his company and accepting Rs. 2,00,000/- as part of payment by you, thereby you accused committed the offence punishable u/s 7 of the Prevention of Corruption Act-1988 and within my cognizance.

The complainant was examined as P.W. 1 and the relevant deposition is as under:

In spite of my arguments accused did not get convinced. The accused demanded Rs. 10 lakhs as bribe for reducing the amount from Rs. 3 Crores. The accused also threatened me that there is a pressure on her by her superior by name Pratap Singh and she told me that I must bring Rs. 10 lakhs before 31st December 2008. I told the accused that I go back to my office and inform her later.

(underling is by me)

9. From the complaint Ex. P1, the charge sheet, the charge and the evidence of P.W. 1 it is the specific case of prosecution that on 26.12.2008 accused demanded bribe of Rs. 10 lakhs for passing favourable assessment orders in favour of complainant's company for the assessment year 2005-2006. But in the instant case, the prosecution produced Ex. P22 the current demand and collection register. This register - Ex. P22 was seized on the date of trap on 02.01.2009. In this register at Sl. No. 114 there is an entry specifying that on 26.12.2008 an assessment order came to be passed in respect of the complainant's company for the assessment year 2005-2006. In serialim subsequent entries are made up to Sl. No. 125 in respect of other assesseees.

This document is not in dispute. From this document Ex. P22 it is evident that the appellant passed the order of assessment relating to complainant's company on 26.12.2008.

10. It is not in dispute that once an order of assessment is passed the same cannot be recalled nor reviewed by the Officer who has passed the order of assessment. But the assessing officer can reopen the order of assessment only in case of escaped assessment u/s 148 and rectification u/s 154 of the Income Tax Act. Therefore, the assessing officer became functus officio on 26.12.2008 when she passed the order of assessment. The appellant ceases to have control over the order of assessment. The appellant is not empowered under law to review the order of assessment. Thus it is manifest that the appellant had no motive or intention to demand illegal gratification from the complainant to pass favourable order. If really the appellant demanded bribe amount of Rs. 10,00,000/- on 26.12.2008, then in the natural course, she ought to have waited till the bribe amount is paid instead of passing the order of assessment on the very day of demand. Therefore, the entire story advanced by the prosecution knocks at the bottom of their case.

11. In the evidence of P.W. 1, it is specifically stated that on 26.12.2008, he met the appellant with his auditor Adinarayana-PW. 4. In the complaint at Ex. P1, the presence of P.W. 4 with the complainant on 26.12.2008 is not mentioned. Further P.W. 1 in his evidence specifically stated that the appellant demanded the bribe amount stating that there is pressure on her by her superior officer by name Pratap Singh; that the complainant should bring Rs. 10-lakhs before 31.12.2008. Again in the complaint, Ex. P1 the name of Pratap Singh is not mentioned. There is no explanation offered by P.W. 1 for not mentioning the name of Auditor - Adinarayana and officer of Income Tax Department - Pratap Singh in the complaint, Ex. P1. This is yet another circumstance to disbelieve the version of prosecution.

12. The returns filed by the complainant was for the year 2005-2006. The assessment orders in respect of these returns are to be passed on or before 31.12.2008. P.W. 1 in his evidence specifically stated that the appellant demanded the payment of bribe amount of Rs. 10-lakhs on or before 31.12.2008. But the complaint is dated 1.1.2009 and the same was registered on 2.1.2009. In the complaint an improvement is made stating that appellant demanded Rs. 2-lakhs as initial payment for passing favourable order. When the appellant has already passed an order of assessment on 26.12.2008, the question of she demanding initial payment of Rs. 2-lakhs in the first week of January 2009 is unbelievable.

13. P.W. 1 in his examination-in-chief deposed that on 26.12.2008 the appellant demanded Rs. 10,00,000/- as bribe and the same should be paid on or before 31.12.2008. But an improvement is made in the complaint in Ex. P1 stating that the appellant insisted initial payment of Rs. 2,00,000/- in the first week of January 2009. Admittedly after the hearing of the case on 26.12.2008 no further

date of hearing was given. If really the appellant had demanded the bribe amount then she ought to have given a hearing date. Further it was mandate for the appellant to pass the order of assessment on or before 31.12.2008. Therefore the impugned theory of prosecution that the appellant insisted initial payment of Rs. 2,00,000/- in the first week of January 2009 falls to the ground.

14. P.W. 1 in his evidence admits that in the discussion on 26.12.2008 the appellant stated that the complainants company concealed about Rs. 3.00 crores income. It is further deposed that the appellant was not convinced with the arguments of complainant. In the order of assessment the concealed income was brought to tax. The complainant, on knowing the order of assessment which was against his interest, falsely implicated the appellant in the case. Thus the prosecution failed to prove and establish the second ingredient.

Ingredient No. III

15. On 02.01.2009 at about 05.00 pm P.W. 1 and P.W. 2 went to the chambers of appellant with tainted currency notes and introduced themselves. P.W. 1 further deposes as under:

The accused told me that she already passed orders pertaining to our appeal which was pending before accused. Further she informed that she already handed over the order in the morning to our Auditor by name Adi Narayana. Accused told me to call my Auditor to come back along with the order passed by her.

Thus on the date of trap on 02.01.2009, at the first instance when the complainant P.W. 1 and the shadow witness P.W. 2 met the appellant she informed that she has already passed the order of assessment. Even according to the prosecution there was no demand of bribe amount by the appellant at the first visit of P.W. 1 on the date of trap.

16. P.W. 1 further deposes that at about 05.30 pm he, P.W. 2 and the Auditor - P.W. 4 went to the Chambers of appellant and she stated as under:

After half an hour my auditor arrived and we all three went back to accused chamber. The accused asked me to wait outside the chamber so that she can discuss the problem with our Auditor Adi Narayana. We stayed outside the chamber for about 5-20 minutes. We informed all the incident to Hari Om Prakash. He told us to wait. He told us that entire trap team is already present on different floors. My Auditor came back from accused Chamber and informed me that accused demanded Rs. 10.00 lakhs, after lot negotiations. He told us that it is left to us to handle the situation and he left.

17. From the evidence of P.W. 1 it is clear that in the second visit to the Chamber of appellant she has not demanded the bribe amount from him. The evidence of P.W. 1 is hearsay evidence stating that appellant demanded Rs. 10.00 lakhs with the auditor. This auditor P.W. 4 has not supported the case of prosecution. Though P.W. 4 is treated as hostile nothing is elicited in his cross-examination

which supports the case of prosecution. Thus there is no evidence to suggest that even in the second visit the appellant demanded the bribe amount.

18. In the third visit P.W. 1 and P.W. 2 went to the chambers of appellant and at that time, she demanded a sum of Rs. 12-lakhs. P.W. 1 replied that he had only Rs. 2-lakhs and he need some time to pay the balance of Rs. 8-lakhs. In turn appellant told that on 8th January there is a holiday on account of Moharam festival and on 9th January she had applied for leave and P.W. 1 must bring the balance of Rs. 8-lakhs on 7th January. Thereafter P.W. 1 opened his laptop bag, removed four bundles of currency notes and put one bundle on the table of the appellant. Appellant touched the currency notes and asked P.W. 1 why he has not brought the currency notes in an envelope. Since P.W. 1 had a green cover, he put all the four bundles of currency notes inside the cover and placed on the table of the appellant. This conversation between P.W. 1 and the appellant was recorded in a micro tape recorder carried by PW. 1. The transcription of this tape recorder is produced before the court as per Ex. P8. A perusal of this transcription Ex. P8 do not specify the demand made by the appellant either during the first visit, second visit or third visit on the date of trap. Except the interested testimony of P.W. 1 there is no other evidence on record. Further the evidence of P.W. 2 do not corroborate with the evidence of complainant, P.W. 1. There is no other evidence on record to prove and establish that during the third visit appellant demanded bribe amount from P.W. 1.

19. In the examination-in-chief, P.W. 1 deposes that on 26.12.2008 appellant demanded a sum of Rs. 10-lakhs as bribe amount and the same is to be paid on or before 31.12.2008. In the complaint, Ex. P1 there is an improvement stating that appellant demanded initial payment of Rs. 2-lakhs in the first week of January 2009. On the date of trap immediately after the second visit, auditor-PW. 4 informed P.W. 1 stating that appellant demanded a sum of Rs. 10-lakhs as bribe amount. In the third visit, P.W. 1 says that appellant demanded a sum of Rs. 12-lakhs as bribe amount. This evidence on record specifies that from stage to stage the prosecution went on changing its versions and there is no consistency. In addition to this inconsistency, there is no independent evidence on record. This material on record makes it clear that even during the third visit there is no demand made by the appellant to pay the bribe amount.

20. P.W. 1 in his evidence deposes that on the date of trap he carried a sum of Rs. 2-lakhs to the office of CBI in a laptop bag. In the CBI office in the presence of shadow witness ? P.W. 2 and other trap team, the currency notes were counted and their serial numbers were noted, phenolphthalein powder was smeared on the currency notes and put it into a laptop bag. From the mahazar and also from the evidence of P.W. 1, it is clear that P.W. 1 was asked to carry the laptop bag containing currency notes, micro tape recorder and a mobile phone and he was instructed not carry any other thing with him. According to the prosecution four bundles of currency notes were found in a green colour envelop on the table of appellant at the time of trap. There is no acceptable explanation

as to how this green envelope cover came into the scene of offence. There is no satisfactory explanation by the prosecution in respect of green envelop cover. This is one of the circumstance that is to be taken into consideration in assessing and appreciating the version of prosecution.

21. Further it is seen that appellant touched one bundle of currency notes and asked P.W. 1 to put all the bundles in one cover and to keep the same on her table. The trap mahazar specifies that the left hand of the appellant answered positively that she has touched the cover containing currency notes. If really appellant has accepted the currency notes from P.W. 1, then in the normal course, the right hand of the appellant ought to have answered positive. The version of the appellant that when the cover containing currency notes were pushed towards her, she refused the same in her left hand appears to be natural in the course of circumstances. In the normal course whenever a person accepts the money, he/she will accept the same through right hand. It is possible that from left hand one may refuse to accept the money. Since the left hand of the appellant has answered, I am of the considered opinion that she might have refused to accept the currency notes. Further from the transcription of the micro tape recorder as per Ex. P8 do not specify that appellant accepted the bribe amount as contended by the prosecution. Thus the prosecution has miserably failed to prove and establish the acceptance of bribe amount by the appellant from the complainant - P.W. 1.

22. The case of the prosecution in that on 26.12.2008, appellant demanded bribe amount with a motive to pass favourable assessment orders in favour of the complainant. The material on record establishes that appellant passed the order of assessment on 26.12.2008. On the date of trap i.e. on 2.1.2009, the complainant, the shadow witness and their auditor came to know that appellant has already passed the assessment order before the alleged demand, payment and acceptance of the bribe amount. In the assessment order the appellant brought a sum of Rs. 3-crores escaped income and levied tax. It is not the case of prosecution that appellant demanded and accepted the bribe amount for reviewing, altering or modifying the order of assessment. It is settled position of law that the assessing authority has no power to review the order of assessment except to reopen the order of assessment in case of escaped income u/s 148 and for rectification u/s 154 of the Income Tax Act. Either in the case of reopening or in the case of rectification the assessing authority cannot show any favour to the complainant. Thus the prosecution has failed to prove and establish the motive, the demand and the acceptance of bribe amount by the appellant. The trial Court committed an illegality in not appreciating and assessing the evidence available on record in accordance with law. The non-consideration of available evidence on record by the trial Court resulted in failure of justice. The entire approach of the Session Judge is based on surmises, conjunctures and inferences. This approach of the Session Judge resulted in miscarriage of Justice. Therefore, the impugned judgment is liable to be set-aside. The material on record discloses that on 26.12.2008, complainant and his auditor appeared before the appellant and

discussed the returns filed by them. In the course of discussion the arguments advanced by the complainant and his auditor are not accepted by the appellant. Further the appellant has passed the order of assessment on the very same day bringing Rs. 3-crores of income under assessment and levied tax on it. Aggrieved by this the complainant lodged a false complaint against the appellant and implicated her in the case. The trial Court committed an illegality in not appreciating the entire case of the prosecution in this background. Therefore, the impugned judgment passed by the trial Court is liable to be set-aside.

For the reasons stated above, the following:

ORDER

- i) Appeal is hereby allowed.
- ii) The impugned judgment of conviction and sentence dated 05.07.2011 passed by the Spl. Judge for CBI Cases, Bangalore is hereby set-aside.
- iii) Appellant is acquitted of all charges leveled against her and she is discharged,
- iv) The bail bonds stand cancelled.
- v) Ordered accordingly.