

(2011) 04 AP CK 0015
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 211 of 2004

State ACB

APPELLANT

Vs

J. Chandrasekhar Reddy Special Public Prosecutor and IV
Addl. District and Sessions Judge (SC and ST Court)

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157
Prevention of Corruption Act, 1988 — Section 13, 13(2), 20, 7

Citation : (2011) 04 AP CK 0015

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

Bench : Single Bench

Advocate : Ghani Abdul Musa, S.C. and Spl. P.P, for the Appellant; T.C. Krishnan, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Rao Nalla, J.—The State preferred this Criminal Appeal questioning acquittal of the accused officer - Respondent by the learned Special Judge for SPE fit ACB Cases, Nellore in C.C. No. 2 of 1909 vide judgment dated 17-12-2002 for the offences under Sections 7 and 13(2) read with 13(i)(d) of the Prevention of Corruption Act, 1988 (for short "the Act").

2. The facts of the case are that the brother of the de facto complainant herein (PW.1) is accused in Crime No. 81 of 1997 on the file of Gajulamandyam Police Station of Chittoor District and he was remanded to judicial custody by the learned Judicial Magistrate of First Class, Tirupati on 13-02-1998. The bail petition filed on behalf of the accused in Crime No. 81 of 1997 was dismissed by the learned IV Additional District and Sessions Judge, Tirupati as the accused officer, who was happened to be the Additional Public Prosecutor of that Court at that time, opposed the bail petition. Then, the de facto complainant approached the accused officer on the same day evening at the Court premises asking to help him and the accused officer alleged to have demanded him Rs. 2,000/- as

bribe.. On expressing his inability to pay the same, the bribe amount was reduced to Rs. 1,000/- and again it was reduced to Rs. 500/-. On 19-02-1998, second bail petition was filed and it came up for hearing on 23-02-1998 and adjourned to 26-02-1998 due to absence of the advocate of the accused. On 25-02-1998, PW.1 preferred Ex.P.1 - complaint before the Deputy Superintendent of Police, A.C.B., Tirupati against the accused officer and basing on the same, a case in Crime No. 1/RTC-TVT-98 was registered and on the same day, trap was laid successfully after complying with the legal formalities and recording Ex.P-4 - pre trap panchanama proceedings. The phenolphthalein test conducted on the person of the accused officer yielded positive result and Ex.P-7 - post trap panchanama proceedings were recorded after the trap.

3. On accused officer denying the charges levelled against him, he was prosecuted for the offences under Sections 7 and 13(2) read with 13(1)(d) of the Act.

4. In support of its case, the prosecution has got examined PWs.1 to 6 and got marked Exs.P-1 to P-17 and MOs.1 to 7 on its behalf. On behalf of the accused officer, DWs.1 and 2 were examined but no documents were marked.

5. The trial court after appreciating the evidence of the prosecution witnesses and also assessing the other material on record, found the accused officer not guilty of the offences charged with and accordingly acquitted him for the said offences. Assailing the same, the State preferred this appeal, inter alia, on the following grounds:

(a) that the trial Court failed to appreciate the evidence and other material on record in the right perspective;

(b) that the trial Court erred in holding that DWs.1 and 2 are planted witnesses;

(c) that the trial Court also erred in considering that the tainted amount was paid to the accused officer by PW.1 towards fee paid for some advice in a civil dispute;

(d) that the trial Court was wrong in opining that probably PW.1 himself approached the accused officer, entered into a discussion with him and paid the amount in that context; and

(e) that the trial Court failed to draw presumption u/s 20 of the Act though the Respondent had admitted to have demanded and accepted the tainted amount as bribe for not opposing the bail petition of the brother of PW.1.

6. The case of the prosecution is that since the accused officer had admitted in Ex.P-7 mediators report-II that he had demanded and accepted the tainted amount from PW.1, the burden shifts on him to prove his innocence; that it is rpt permitted to take a contrary view that he accepted the said amount towards fee for rendering a legal advice in a civil case; that if the said tainted amount was paid towards legal advice in a civil case, the accused officer ought to have stated so in his explanation under Ex.P-7. It is more so, he did not state that he had

received the tainted amount towards rendering a legal advice either at the time of recording Ex.P-7 or while he was being examined in the Court of law, as such, the said plea taken by the accused officer is nothing but an after thought. Though the case of the accused officer is that the accused officer has received the tainted amount for rendering legal advice in a civil suit for injunction, the trial Court was not justified in believing the evidence of DWs.1 and 2. Therefore, it is contended that the impugned judgment of acquittal of the accused officer by the trial Court is perverse, suffers from error and the same is liable to be set aside.

7. It is the case of the accused officer that Ex.P-12 - FIR was filed on 25-02-1998 at 9-00 am, however the same was registered at 7-00 p.m. Ex.P-12 FIR bears the seal of the Special Court for SPE and ACB cases, Nellore stating that it was received on 27-02-1998. Therefore, it is contended that there is a delay of two days and the same is in violation of the provisions contained in Sub-sections (i) and (ii) of Section 157 of the Code of Criminal Procedure 1973, which requires the Investigating Officer to send such report forthwith. Therefore, it is contended that the delay of 2 days is fatal to the case of the prosecution. As per Ex.P-1 complaint, though the second bail petition was posted for hearing to 23-02-1998, it was adjourned to 26-02-1998 for want of presence of Applicant's counsel, whereas it is found in the cross-examination of PW.1 - the de facto complainant that on 23-02-1998, Applicant's counsel appeared and argued the bail application. That being so, it is contended that realising that he is contradicted with his own statement and in order to rectify the; same, he has added in his cross-examination that because the bail petition was adjourned from 23-02-1998 to 26-02-1998, the accused officer insisted for payment of Rs. 1,000/- or at least Rs. 500/- by 26-02-1998.

8. It is the case of the accused officer that since he was appointed as Additional Public Prosecutor, the persons who have vested interest in that post and who are against him have got filed the present false complaint against him through PW-1. Though the prosecution has examined about six witnesses in support of its case, none of them supported its case. It is evident from the observations of the trial Court that substantive evidence adduced on behalf of the prosecution is not at all reliable; that as soon as bail petition was made over to the trial Court on 23-02-1998, a notice was ordered to the Additional Public Prosecutor (AO) and posted the matter to the following day i.e., 24-02-1998 for that purpose. After compliance of the said notice on 24-02-1998, it was posted for hearing on 26-02-1998, on which day it was heard and allowed and thereby the contents of Ex.P-1 complaint stands falsified.

9. PW-1 has stated in his complaint Ex.P-1 that after the bail petition was made over to the trial Court on 23-02-1998, it was heard on the same day and was adjourned to 26-02-1998 for further hearing due to the absence of the counsel for PW-1.

10. It is further the case of the accused officer that he did not receive the tainted

amount towards any bribe and/or illegal gratification and that in fact it was received towards fees for rendering legal advice in a civil matter, which was discussed. The legal advice was rendered to the de facto complainant in the presence of DWs.1 and 2, as such, the trial Court ought to have believed the evidence of DWs.1 and 2 and rightly believed their evidence. They were not planted witnesses and that they were natural witnesses having been present at the time of discussing the civil dispute.

11. The evidence of PW-1 is against the factual position of hearing the bail petition of his brother. The procedure requires that as soon as bail petition is filed before the Sessions Court, it may be heard by the Sessions Judge himself or made over to other Presiding Officer. In this case, the Sessions Judge made over it to the learned IV Additional Sessions Judge, Tirupati on 23-02-1998 and it was posted to next day for issuing notice to the Additional Public Prosecutor as per the procedure and on being the same complied with on 24-02-1998, it was posted to 26-02-1998 for hearing and in fact it was heard on that day and orders were also passed. Therefore, what PW-1 stated in his complaint Ex.P-1 and also in his evidence is contrary thereto.

12. Moreover, it is to be seen that there is no corroborating evidence in support of PW.I's evidence. Having regard to the factual possession as well as considering the evidence of prosecution witnesses and other material on record, the trial Court had rightly come to the conclusion that the prosecution failed to prove its case as has already been stated herein above.

13. In any case, it is settled law that the appellate Court while dealing with an acquittal order has to tread cautiously and follow the guidelines as laid down by the Hon"ble Apex Court in the decision in Babu v. State of Kerala (2010) 9 SCC 189 at paragraph Nos. 12, 15 and 19, which are as under:

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12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may" be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were, perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof also be a subject-matter of scrutiny by the appellate court. Vide Balak Ram Vs. State of U.P., , Shambhoo Missir and another Vs. State of Bihar, , Shailendra Pratap and Another Vs. State of Uttar Pradesh, , Narendra Singh and Another Vs. State of M.P., , Budh Singh and Others Vs. State of U.P., , State of Uttar Pradesh Vs. Ram Veer

Singh and Others, , S. Rama Krishna Vs. S. Rami Reddy (D) by his LRs. and Others, , Arulvelu and Another Vs. State represented by the Public Prosecutor and Another, , Perla Somasekhara Reddy and Others Vs. State of A.P. rep. by Public Prosecutor, , and Ram Singh @ Chhaju Vs. State of Himachal Pradesh,

15. In Chandrappa and Others Vs. State of Karnataka, this Court reiterated the legal position as under:(SCC p.432, para 42)

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

14. It is also clear from the impugned judgment that the trial Court has disbelieved the evidence of PW.1 as well as other prosecution witnesses with regard to demand made by the accused officer and also reducing the bribe amount and ultimately accepting Rs. 500/-.

15. It, is further clear from the decisions referred to and relied on by the trial Court that it is a settled law that mere recovery of tainted amount from the accused officer divorced from the circumstances is not sufficient to prove the case of the prosecution, as such, the trial Court cannot be said to have taken a perverse view in accepting the same as well as considering the evidence of prosecution witnesses and other material on record and coming to the conclusion that the prosecution has failed to prove -its case beyond all reasonable doubt and consequently acquitting the accused officer. Hence, the impugned judgment is not liable to be interfered with.

16. In the result, the Criminal Appeal is dismissed confirming the impugned judgment and acquittal of the accused officer.