
(2013) 09 KAR CK 0058
In the Karnataka High Court
Case No : Criminal Appeal No. 1369 of 2007

State	Vs	APPELLANT
C. Narayanappa		RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235(1), 378(1), 378(3)
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2013) 09 KAR CK 0058

Hon'ble Judges : V. Suri Appa Rao, J

Bench : Single Bench

Advocate : T.M. Gayathri, SPP, for the Appellant; M. Vijaya Krishna Bhat, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

V. Suri Appa Rao, J.—The State represented by the Lokayukta Police, Kolar, has filed this appeal under Sections 378(1) and (3) of the Code of Criminal Procedure, challenging the order of acquittal in C.C. No. 8/2003 on the file of the Principal Sessions Judge, Kolar. For the sake of convenience, the parties are referred to as they are arrayed before the Trial Court.

2. The accused faced trial for the offences punishable under Sections 7, 13(1)(d) of the Prevention of Corruption Act, 1988 read with Section 13(2) of the said Act. According to the prosecution, the accused was working as Health Inspector in the Town Municipality of Mulbagal Town of Kolar District, during November 2002. He had demanded and received bribe of Rs. 600/- from M.S. Raju, PW3 to do the official favour in connection with the application filed for permission to effect repairs to his house at Mulbagal On 14.11.2002 the accused was trapped while receiving bribe of Rs. 600/- from PW3 in the office of T.M.C. Mulbagal at about 2.15 p.m. It is also the case of the prosecution that four or five days prior to the trap, the accused demanded PW3 to pay a sum of Rs. 600/- stating that out of Rs. 600/-, Rs. 200 would be paid to the Chief Officer and the balance of Rs.

400/- is for him. As PW3 was not interested in paying the bribe, he lodged complaint to the Inspector of Lokayukta, Kolar. After following the procedure, the accused was trapped by the Lokayukta Police at 2.15 p.m. on 14.11.2002 while he was accepting and receiving the bribe of Rs. 600/- from PW3 in his office.

3. After hearing the Public Prosecutor and the learned Counsel for the accused, the Trial Court framed charges under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

4. The plea of the accused is one of total denial.

5. The prosecution in order to bring home the guilt of the accused for the aforesaid offences examined PWs. 1 to 6 and relied on Exs. P1 to P14 and M.Os. 1 to 8.

6. During the course of cross-examination of PW5, the defence got marked Exs. D1 and D2 statements. After appreciating the entire evidence produced by the prosecution, the learned Sessions Judge found the accused not guilty for the offences for which he was charged. Accordingly, the accused was acquitted u/s 235(1) Cr.P.C. Aggrieved by the order of acquittal recorded by the Trial Court, the State represented by Lokayukta Police has filed this appeal.

7. The learned SPP submits that the learned Sessions Judge has not properly appreciated the evidence produced by the prosecution in proper perspective resulting in miscarriage of justice. The witnesses examined by the prosecution supported the prosecution case, which clearly establishes the fact that the accused has demanded and accepted illegal gratification of Rs. 600/- from PW3 to do an official favour with regard to issuing permission to effect repairs to his house. Though there are no major contradictions or omissions in the evidence of the prosecution witnesses, the Trial Court was not justified in acquitting the accused for the offences u/s 235(1) of Cr.P.C.

8. The learned SPP therefore contends that the judgment of acquittal recorded by the learned Sessions Judge is liable to be set aside and accused is liable for conviction for the offence for which he was charged.

9. Per contra, the learned Counsel for the accused submitted that the complaint is silent about the demand of Rs. 200/- to be given to the Chief Executive Officer and Rs. 400/- to the accused. In fact, the complainant PW3 has not submitted any application to the accused for permission to effect repairs to his house. Therefore, the question of demand of illegal gratification by the accused does not arise. It is further submitted that the accused is not the competent authority to sanction the plan. It is further submitted that it is the specific case of the prosecution that both the hands of the accused turned pink. But the evidence on record indicates that the accused kept the amount in his right side pocket with right hand. It is further submitted that the complainant has not produced any kind of evidence to prove that he is the owner of the house sought for permission to effect repairs.

10. In the evidence PW3 complainant has stated that one Sumangalamma, is his aunt. The old house belonged to himself and his aunt i.e., the wife of his Uncle. He wanted to demolish the said house for re-constructing the same. He submitted an application to. the Municipality for licence, but the Municipality did not give any permission to him. At that time Varadaraju was Chief Officer of the Municipality. The accused is working as Health Inspector, He further stated that whenever he approached the accused for issue of licence, he used to demand illegal gratification. He demanded for payment of Rs. 600/- stating that out of Rs. 600/-, Rs. 200/- has to be given to the Chief Officer and the remaining amount of Rs. 400/- has to be paid to the staff. Therefore, on 14.11.2002 he approached KLA office and gave Ex. P6 complaint. The Inspector summoned two panch witnesses Srinivasamurthy and Shivakumara PWs. 4 and 5. He then gave Rs. 600/- of Rs. 100 denomination, six in number. He noted down the numbers of the currency notes. On the same day at about 12.30 p.m. himself, both PWs. 4 and 5 and the Inspector and other staff members left the Lokayukta Office and reached Mulbagal at 2.00 p.m. and visited the Municipal Office. As per the instructions of the Inspector, PW3 and Shivakumar PW5 went inside the office. Shivakumar stayed at the door of the room where the accused was sitting in the office. He approached the accused and asked him to give permission to construct the house. The accused then asked him as to whether he brought money. He said he brought money and handed over the powder treated currency notes to the accused. The accused received currency notes in his right hand and kept them inside his pant's right side pocket. Thereafter he went out of the office and gave signal to the police who were waiting outside. The Inspector and others came inside and showed the accused to the Inspector. The accused produced the amount. Thereafter the Inspector washed fingers of both hands of the accused which changed the colourless solution into pink and after verifying the numbers of the currency notes they were seized. In the cross-examination he has stated that he is not having any document to show that he is owning a house in Mulbagal Town. He further admitted that all the applications for renewal of permission to repair his house given to the Chief Officer Mulbagal Municipality, but the applications were not considered by the Chief Officer. He further admitted in this evidence that there were disputes between himself and his aunt by name Sumangalamma in civil courts with regard to the property. He denied the suggestion that Chief Officer informed him that his aunt had raised objection that there was dispute. Therefore he was not granted permission for construction of his house. In the evidence he has clearly admitted that he has not given any application addressing the accused in respect for renewal of the licence to repair the house. He further admitted in the evidence there were about 6 or 7 persons working in the Hall where the accused was sitting and he paid the money to the accused.

11. He also further admitted in his evidence that when the Inspector asked the accused about the money received by him, the accused told the police that PW3 thrust the money forcibly into his pocket and he gave the same explanation in

writing.

12. PW4 Srinivasmurthy has stated in his evidence that on 14.11.2002 at about 12.30 p.m. himself, PW5, complainant, inspector of Police and other staff members reached Mulbagal Municipal Office at 2.00 p.m. after about 15 minutes, the complainant and PW5 came out and gave signal. Then they all went inside the office. The complainant showed the accused and told that he demanded money. The Inspector washed the right hand fingers of the accused. The wash made the solution pink in colour and it was collected in a separate bottle. The police seized the pant of the accused. The pocket was washed and it also changed the colour. He further stated in the chief-examination itself that the accused gave explanation in writing stating that the complainant forcibly kept the money in his pocket.

13. PW5 Shivakumar, who acted as panch witness also stated in his evidence that all of them went to the office of the accused at about 2.00 p.m. and he was standing outside the office, the complainant went inside the office and asked about his work. Then the accused asked the complainant to what he had done about the matter. Then the complainant told him that he had brought the amount and took out the currency notes from his shirt's chest pocket and gave them in the hands of the accused. The accused kept currency notes in his right side pant pocket. Therefore, himself and the complainant came out and gave signal to the Inspector. The Inspector came inside and arrested the accused and asked about the currency notes. The accused took out the amount. Then the Inspector washed both the hands of the accused in some solution. Both the hands of the accused were separately washed and they turned colourless solution into pink. The pant of the accused was also washed and the colour was changed. He also admitted in the evidence that when the Inspector asked the accused as to how money was found in his pocket, the accused gave his explanation in writing stating that he did not demand and receive any amount, but the complainant forcibly trusted the currency notes in his pant pocket. Thus the evidence of PWs. 3, 4 and 5 clearly shows that immediately after the accused was apprehended he gave explanation that when he was questioned by the Inspector of Police stating that the accused forcibly thrust the amount in his right side pant pocket and that he never demanded the amount. The evidence of the complainant also clearly indicates that he has not submitted any application to the accused seeking permission for effecting repairs to his house. According to him, he submitted application to the Chief Officer but not to the accused. The prosecution has not produced any iota of evidence to prove that Chief Officer in turn marked the application of the complainant to the accused for taking necessary steps. Therefore, by the evidence of PWs. 3 and 4 it is clear that the accused is not competent person to issue permission for effecting repairs. The evidence of PWs. 4 and 5 clearly indicates that; both the hands of the accused turned pink when the Inspector of Police applied solution, But the evidence of the complainant clearly shows that after he gave the amount the accused took the same with his right hand and kept the same in right side pant pocket with his right hand.

Therefore the question of turning both the hands into pink would not arise. Immediately after the accused was apprehended and was questioned about the amount the accused gave explanation stating that the complainant forcibly thrust the amount in his right side pocket. Admittedly, PW5 was not present along with the complainant at the time when the accused was said to have demanded and received the amount of Rs. 600/-. He was at a distance of 5-10 ft. when PW3 went to the seat of the accused.

14. The complainant himself admitted that there was dispute between himself and his aunt Sumangalamma. His evidence further discloses that his aunt was raising objection for issuing permission to the accused to the complainant and there was civil disputes between himself and his aunt is having joint partnership in those properties.

15. The Trial Court after appreciating the entire evidence on record came to the conclusion that the prosecution failed to prove that the accused was owning a house and that the accused is competent person to issue permission to effect repairs and accepted the contention of the accused that the complainant thrust Rs. 600/- to his right side pocket forcibly and that the accused never demanded the amount from the complainant and has found the accused not guilty of the offence for which he was charged.

After considering the entire evidence on record, I find that there are no merits in this appeal and there are no valid grounds to interfere with the judgment of acquittal recorded by the Trial Court. The appeal filed by the State is therefore dismissed.

The valuable assistance rendered by Sri M. Vijaya Krishna Bhat, learned Amicus Curiae is placed on record while deciding the matter. In recognition thereof, the Office is directed to pay Rs. 5,000/- (Rupees Five Thousand only) as honorarium to the learned Amicus Curiae.