
(2011) 10 AP CK 0055
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 1567 of 2004

State	Vs	APPELLANT
Dr.Thota Papa Rao, Veterinary Assistant Surgeon, Gantyada, Vizianagaram District		RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 2, 20, 7

Citation : (2011) 10 AP CK 0055

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

Bench : Single Bench

Advocate : Ghani A Musa, Special P.P. and SC for ACB, for the Appellant; C. Praveen Kumar, for the Respondent

Final Decision : Dismissed

Judgement

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

1. This Criminal Appeal is filed by the prosecution being aggrieved by the judgment dated 18-12-2003 passed in C.C. No.38 of 2000 (Old C.C. No.16 of 1995) by the learned III Additional District & Sessions Judge - cum -Special Judge for ACB Cases, Visakhapatnam, whereby the accused was acquitted for the offences under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (in short, the PC Act), contending, inter alia, that the trial Court failed to appreciate and evaluate the evidence of prosecution witnesses and other material on record in proper perspective, and thereby misguided itself in finding the respondent - accused officer not guilty of the offences charged with and in acquitting him.

2. The case of the prosecution, in brief, is that the respondent - accused officer was working as Veterinary Assistant Surgeon, Live Stock Centre, Gantyada, Vizianagaram, during the relevant period i.e., 03-05-1994 to 10-07-1994. He was a public servant within the meaning of Section 2(c) of the PC Act. PW.1, a

resident of Korlam village of Gantyada Mandal, took his she-buffalo for treatment to the Live Stock Centre, Gantyada twice. On both the occasions, the respondent - accused officer had demanded and accepted Rs. 35/- from PW.1 as illegal gratification other than legal remuneration for treating the she-buffalo. On finding that the treatment given by the respondent - accused officer had no effect on the animal, PW.1 again took it to him. Then the respondent - accused officer demanded him to pay a sum of Rs. 100/- towards illegal gratification for treating the animal. Unwilling to comply with the said demand of the respondent - accused officer, PW.1 approached PW.5 - the Deputy Superintendent of Police, ACB, Vizianagaram and presented Ex. P-1 -complaint on 08-06-1994 as per the instructions of PW.2. In view of the said complaint-Ex. P.1 of PW.1, PW.5 conducted a preliminary enquiry about the antecedents of PW.1 as well as the respondent - accused officer. Having found the antecedents of the respondent - accused officer in the negative, he registered a case in Crime No.5/RC-ACB/Vizianagaram/94 dated 22-05-1995, after seeking permission from the higher authorities. The respondent-accused officer was successfully trapped by P.W. 5 and other trap party members on 08.06.1994 at 2.30 p.m. at the Government Veterinary Dispensary, Gantyada when he demanded and accepted Rs. 100/- (M.O.6) from P.W. 1. The respondent-accused officer failed to give proper explanation for possession of tainted amount of Rs. 100/- (M.O.6.). The serial numbers of the tainted amount tallied with the serial numbers of the currency notes produced by the complainant before P.W. 5 during pre-trap proceedings. The chemical test conducted to the right hand fingers of the respondent-accused officer proved positive (M.O.3). After completion of the investigation, PW.5 laid charge sheet against the respondent - accused officer before the Court after obtaining sanction orders from the Government under Ex. P-13.

3. The prosecution, in support of its case, got examined P.Ws.1 to 6 and got marked Exs.P-1 to P-13 and MOs.1 to 9, whereas D.Ws.1 and 2 were examined and Exs.D-1 to D-11 were marked on behalf of the defence.

4. The trial Court, taking into consideration the evidence adduced on both sides and the material on record, found the respondent - accused officer not guilty of the offences and acquitted him. Questioning the legality of the said impugned judgment of the trial Court, and aggrieved thereby, the prosecution has preferred the present Criminal Appeal.

5. It is the case of the appellant - prosecution that though the respondent - accused officer had admitted as to acceptance of the tainted bribe amount from PW.1, he failed to explain the same. His explanation that he had received the tainted bribe amount from PW.1 towards his fee for treating she-buffalo ought not to have been accepted by the trial Court, in view of the respondent - accused officer being a Veterinary Assistant Surgeon. Since he failed to explain properly about his possessing tainted bribe amount, the provisions as to presumption u/s 20 of the PC Act, came into force. However, the trial Court has failed to make note of the same.

6. Though the respondent - accused officer admitted before PW.5 -the Investigating Officer in Ex. P.6 -post panchanama proceedings that he had accepted Rs. 100/- from PW.1 and put the same in his upper shirt pocket and later put it in cash bag and then kept the same in the locker of the almirah in his dispensary room, and he opened the locker and produced the tainted bribe amount of Rs. 100/- , the trial Court failed to take the same into consideration and erroneously came to the conclusion that the respondent - accused officer was not guilty of the offences he was charged with.

7. The evidence of DW.1 was not helpful to the respondent - accused officer as he stated that the animals were to be examined at the Veterinary Dispensary. However, when medicines were not available, they were acquired from the Assistant Director of Animal Husbandry. Of course, in his re-examination, he had stated that if an animal is brought after working hours and if it is treated outside the hospital premises, it is deemed that it is treated by the Government Veterinary Doctor in his private capacity. The trial Court ought not to have considered this part of the evidence since it was not the case of the respondent - accused officer as per his explanation at the earliest opportunity. The evidence of DW.2 ought to have been discarded by the trial Court since it was the case of the respondent -accused officer that on the fateful day and at the relevant time, DW.2 was present at the Veterinary Dispensary. If that was so, he could have stated the same at the earliest opportunity.

8. The trial Court has failed to consider Ex. P4 -statement of PW.1 recorded by the learned Judicial Magistrate of First Class, Cheepurupalli u/s 164 Cr.P.C., wherein he admitted that the respondent-accused officer accepted tainted bribe amount of Rs. 100/- from him.

9. The trial Court ought to have considered the admission made by PW.1 before PW.5 -Investigating Officer in response to the questions put by the mediators, PW.4 and another as to correctness of the contents of Ex. P1 -complaint. Thus the trial Court has committed material irregularities in finding the respondent - accused officer as not guilty for the offences with which he was charged and tried and further the trial Court has also committed an error in turning down the request of the prosecution to accord permission to prosecute PW.1 for perjury and, as such, the impugned judgment of acquittal passed by the trial Court is liable to be set aside.

10. On the other hand, it is the case of the respondent-accused officer that the trial Court has recorded cogent and convincing reasons for acquitting him, and as such, the impugned order of acquittal does not warrant any interference from this Court. That the de facto complainant, who was examined as PW.1 was turned hostile and did not support the case of the prosecution. Though P.W. 1 was subjected to lengthy and severe cross-examination by the learned Public Prosecutor before the trial Court, nothing was elicited from P.W. 1 to support the case of the prosecution. Therefore, there was not even a prima facie case for the prosecution to proceed against the respondent - accused officer. That PW.1 went

a step ahead and alleged that it was at the behest of the A.C.B. officials, his statement was recorded by the learned Judicial Magistrate of First Class, Cheepurupalli u/s 164 Cr.P.C. That it was not a voluntary statement as he was coerced and/or compelled by the A.C.B. officials to make such a statement. Therefore, the 164 Cr.P.C. statement recorded by the learned Judicial Magistrate of First Class lost its sanctity, and, as such, it cannot be accepted and acted upon, that being so, the trial Court did not consider the request of the prosecution to grant permission for prosecution of PW.1 for perjury. That the prosecution has miserably failed to prove the demand made by the respondent-accused officer and also acceptance of the alleged bribe amount by him from PW.1. None of the prosecution witnesses have spoken to with regard to the alleged demand of bribe by respondent-accused officer and its acceptance by him, and as such, the trial Court was justified in coming to a right conclusion that the respondent - accused officer was not guilty of the offences charged with under Sections 7 and 13(1)(d) read with 13(2) of the PC Act.

11. PW.2 has stated to have advised PW.1 to approach the A.C.B. officials on coming to know from him that the respondent - accused officer had demanded bribe of Rs. 100/- . The evidence of PW.3 shows that he accompanied PW.1 to the A.C.B. officials and scribed Ex. P-1 complaint. That, the evidence of PWs.2 and 3 is not at all relevant in any way to support the case of the prosecution.

12. That PW.4 is one of the mediators to the pre and post-trap proceedings under Exs.P-5 and P-6. That except having been an eyewitness to the recovery of the alleged tainted bribe amount by PW.5 - the investigating officer, he has not stated anything in support of the case of the prosecution, in general, and about the demand and acceptance of the alleged tainted bribe amount by the respondent - accused officer from PW.1 in particular. That further as PW.1 had denied that he was examined by PW.5, the DSP ACB and that his statement was recorded, he was declared hostile, as such, the prosecution cannot be said to have succeeded in its attempt in proving the guilt of the respondent - accused officer for the offences charged with. That moreover as per Government Memo No. 96438/58-1, GAD (Service-C), dated 6-01-1959, Veterinary Assistant Surgeons are entitled to have private practice and they may charge fee subject to such condition that such private practice does not interfere with their legal duties and subject to other restrictions as may be imposed from time to time. That the working hours of the Veterinary Dispensary of Gantyada were from 7-30 am to 11-30 am and from 3-30 pm to 5-30 pm. That PW.1 had taken his she-buffalo for treatment at 2-00 pm, as per the prosecution case itself. That certainly it cannot be said to be during the Dispensary working hours, and, as such, treatment of the said she-buffalo of PW.1 can be said to have been done in his private capacity. Therefore, acceptance of the alleged bribe amount from PW.1 stated to be towards medicines and it cannot be termed or given the colour of bribe. That moreover as per the evidence of DW.1, who was also working as Veterinary Assistant, the medicines were not available in the hospital as per Ex. D-11-Stock Register. Therefore, respondent-accused officer had accepted the

alleged bribe amount towards supplying medicines to PW.1 for treating the she-buffalo. Moreover, it is also in the evidence of PW.5, the investigating officer, that he did not investigate into the working hours of the Live Stock Center, Gantiyada and that it also lends support to the evidence of DW.1 that the buffalo was treated by the respondent-accused at 2-00 PM on the fateful day. The evidence of PW.1 is supported by the evidence of DW.2 that the she-buffalo was treated outside the Live Stock Center under a Banyan tree. Therefore, the trial Court was justified in considering the plea of the respondent-accused officer that he had treated the she-buffalo in his private capacity. Therefore, the trial Court cannot be said to have committed any error, irregularity or illegality, and as such, the impugned order of acquittal as passed by the trial Court is not liable to be interfered with in any manner.

13. The point that arises for consideration is whether the trial Court has committed any error, illegality or irregularity in acquitting the respondent-accused officer for the offences under Sections 7 and 13(2) read with 13(1)(d) of the PC Act?

14. Heard both sides and perused the material available on record including the judgment of the trial court.

15. It is seen that the working hours of the Veterinary Dispensary (Live Stock Centre) at Gantiyada are from 7.30 am to 11.30 am and from 3.30 p.m. to 5.30 pm. The same was evident from the evidence of DW.1-Veterinary Assistant. PW.5 in his evidence admitted that he did not make any investigation about the working hours of the Veterinary Dispensary. He also admitted that the respondent-accused officer stated before him that when he asked PW.1 to come later as the working hours are over, PW.1 requested him to treat his she-buffalo. As per the Government Memo No.96438/58-1 G.A.D.(Service-C) dated 6.1.1959, a Veterinary Assistant Surgeon is entitled to private practice and may charge fees subject to the condition that such private practice does not interfere with the legitimate duties and subject to other restrictions as may be imposed from time to time. The case of the prosecution is that the respondent-accused officer demanded and accepted Rs. 100/- as bribe on 08.06.1994 at 2.30 pm for treatment of the she-buffalo of PW.1 at Government Veterinary Dispensary, Gantiyada. The case of the respondent-accused officer is that he received the alleged bribe amount of Rs. 100/- from PW.1 towards medicines supplied by him for treatment of she-buffalo of PW.1 outside the Veterinary Dispensary after morning session of working hours during the course of private practice. It is seen that PW.1 has not supported the version of the prosecution and he was turned hostile. Nothing was elicited in his cross examination. Further in his cross examination, PW.1 stated that two days prior to his giving statement before the Magistrate, ACB officials had taken him and tutored him to give statement. Apart from that, there is no direct evidence to prove the earlier demands of bribe made by the respondent-accused officer as well as the demand and acceptance of Rs. 100/- as bribe. The evidence of PWs 2 and 3 is not helpful to the case of the

prosecution. The evidence of PWs 4 and 5 only indicates recovery of M.O.5-cash bag and M.O.6-tainted amount of Rs. 100/- from the respondent-accused officer and conducting chemical test on the right hand fingers and inner linings of the shirt pocket of the respondent-accused officer resulting in positive. From the evidence of PW.1 coupled with DW.2, it is revealed that the respondent-accused officer treated she-buffalo of PW.1 outside the Government Veterinary Dispensary after working hours in a private capacity. The evidence of DW.2 is that on 08.06.1994, ACB officials brought the respondent-accused officer from Banyan tree to the Veterinary Dispensary which is at the distance of 200 feet from Banyan tree. It is the case of the respondent-accused officer that at the request of PW.1, he treated the she-buffalo which was tied by PW.1 to a tree outside the Veterinary Dispensary after working hours and that during the treatment, he gave medicines Beralgon, Optinueron, Mebendol, Tonic Powder. These medicines are not available at the Veterinary Dispensary and PW.1 agreed to bear the expenses and paid Rs. 100/- towards the cost of the medicines. As per Ex. D.11-stock register, the medicines supplied by the respondent-accused officer are not available in the Veterinary Dispensary. The evidence of DW-1 Veterinary Assistant is that the medicines supplied by the respondent-accused officer to PW.1 for treatment of his she-buffalo are not available in the Veterinary Dispensary on 08.06.1994 and the same is evident from Ex. D.11-stock register. In view of the above discussion, it is clear that the medicines were supplied by the respondent-accused officer to PW.1 for treatment of his she-buffalo and not from the Veterinary Dispensary and that he treated the animal in his private capacity. The respondent-accused officer did not receive Rs. 100/- as bribe and that it was paid by PW.1 to the respondent -accused officer towards value of the medicines supplied by him in his private capacity after morning session working hours of the Veterinary Dispensary without any interruption to his legitimate duties. Therefore, it cannot be said that the tainted amount of Rs. 100/- recovered from the possession of the respondent-accused officer is an illegal gratification for doing official favour.

16. In a decision of the Hon''ble Supreme Court in Babu Vs. State of Kerala, , it was held 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, however while doing so the appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court''s acquittal strengthens the presumption of his innocence, as such, interference in a routine manner where the other view is possible should be avoided unless there are good reasons for interference.

17. In the circumstances, this Court is of the view that the impugned judgment does not suffer from any illegality, infirmity, irregularity or error warranting interference from this Court, and as such the Criminal Appeal is liable to be dismissed.

18. In the result, the Criminal Appeal is dismissed confirming the judgment

dated 18.12.2003 in C.C. No.38 of 2000 on the file of the III Additional District & Sessions Judge-cum-Special Judge for A.C.B. Cases, Visakhapatnam.