

(2012) 08 AP CK 0012

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1311 of 2005

State

APPELLANT

Vs

Sri. M. Govardhan Reddy and Sri. M. Subash, H. No. 412,
Maheswari Complex, Hyderabad

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 405, 409, 477A
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2013) 1 ALD(Cri) 179

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : P. Kesava Rao, SC for CBI, for the Appellant; D. Venugopal for the Respondent No. 1 and Sri. T. Bali Reddy, Rep. Sri. K. Suresh Reddy for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Sri Justice R. Kantha Rao

1. This criminal appeal is filed by the C.B.I., against the judgment dated 20-12-2004 passed by the Special Judge for CBI Cases, Hyderabad in CC. No. 13 of 2002. The respondents were tried by the learned Special Judge for CBI Cases, Hyderabad for the charges under Sections 409, 477A IPC and u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and were acquitted of all the charges. Feeling aggrieved, the State preferred the present criminal appeal.

2. Heard Sri P. Keshava Rao, the learned Special Standing Counsel for CBI Hyderabad, Sri P. Venugopal, the learned counsel for respondent No. 1 (A-1) and Sri T. Balireddy representing Sri K. Suresh Reddy, the learned counsel for respondent No. 2 (A-2).

3. The brief facts of the case leading to the filing of the present criminal appeal

are that A-1 was the Assistant Manager (cash) and A-2 was the Assistant Manager (Accounts) in the State Bank of India, Begum Bazaar Branch, Hyderabad from 22-01-1999 to 23-09-2000 during which period the alleged offences of misappropriation and falsification of accounts were committed. They were the joint custodians of the cash and accounts. They possessed one key each relating to the currency chest of the bank and the currency chest could be opened only by using both the keys. The cash and the currency chest have to be maintained in accordance with the Vault Register maintained in the Bank. On 20-11-1999 the Reserve Bank of India got verified the cash in the chest and the said verification revealed that there was no shortage. On 09-09-2000 Mr. K.C. Veeraiah, Chief Manager (Circle Audit) State Bank of India, Hyderabad conducted audit on 09-09-2000, he found that the Vault Register and Currency Register actually did not tally and there was shortage of 12.50 lakhs in the Currency Chest. He informed the same to the Branch Manager. The Cash Chest was re-checked and the shortage of 12.50 lakhs was confirmed. PW-1 informed the shortage of cash to the Zonal Office of State Bank of India through his letter dated 16-09-2000. Thereafter, under the direction of the Zonal Office, PW-1 demanded A-1 and A-2 to make good the shortage and both of them deposited an amount of Rs. 6.25 lakhs each into the Bank.

4. Further it is the prosecution case that the records namely Vault Register and Currency Chest Register {Form T.E.I.} maintained by A-1 and A-2 pertaining to Currency Chest were not tallied with the actual amount in the Currency Chest during the period from 22-11-1999 to 09-09-2000 and thereafter it was alleged against both the accused that they committed the offences of misappropriation and falsification of accounts punishable under Sections 477A, 409 IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

5. PW-2 the Chief Manager, Vigilance Department of State Bank of India, inspected the Begum Bazaar Branch of State Bank of India along with Inspector of C.B.I. collected the report prepared by Mr. Veeraiah which indicated that there was shortage of 12.50 lakhs in the Currency Chest. Thereafter, he got the cash verified once again, prepared a report Ex. P2 and submitted the same to the Bank. Subsequently, PW-4 the Inspector of CBI Hyderabad registered a case against the accused in RC. No. 1/(A) 2002 on 03-1-2002. The said case was registered basing on the surprise check carried on by PW-4 and SBI Officials. PW-5 the Sub-Inspector of Police, CBI Hyderabad took up further investigation in this matter and filed charge sheet against the accused. Thereafter, the accused were tried by the learned Special Judge for CBI Cases, Hyderabad, for the charges u/s 409, 477A IPC and u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

6. In the course of trial, the prosecution examined before the learned Special Judge for CBI Cases, Hyderabad, PWs 1 to 5 and marked Exs. P1 to P9 and on behalf of the accused DW-1 was examined and Exs. D-1 to D8 were marked.

7. After going through the entire evidence oral and documentary, the learned Special Judge for CBI Cases arrived at a conclusion that though the prosecution proved entrustment of cash to A-1 and A-2 who were the joint custodians at relevant time, failed to establish that they misappropriated the amount and also resorted to falsification of accounts and accordingly acquitted them of all the charges.

8. The point for determination in the present appeal is whether the order passed by the trial court can be sustained?

9. Firstly, I would like to refer the material facts borne out from the evidence of the prosecution witnesses.

10. The evidence of PW-1 Mr. K. Vishnu Prasad, the Branch Manager of Begum Bazaar, State Bank of India discloses that A-1 and A-2 were the joint custodians of the cash in the currency chest, both of them were entrusted with the duties of joint custodians of cash and valuables, passing of cheques, issuing of drafts, checking of balance etc. According to PW-1 the currency chest was operated by A-1 and A-2 jointly, each lock will have two sets of keys, one set was held by A-1 and the other set was operated by A-2 and the chest could be operated only by using both the keys. It is also his evidence that the joint custodians will verify the cash every month and inform the balance of cash in the chest. He spoke about the inspection conducted by Sri K.C. Veeraiah of Circle Audit and the shortage of cash of Rs. 12.50 lakhs found by him in the chest. It is also his evidence that on the instructions of Zonal Office, he demanded both the joint custodians to pay Rs. 6.25 lakhs each and they paid the same. As to the payment of cash of Rs. 6.25 lakhs each, the version of A-1 and A-2 is that they were coerced to pay the said amount, stating that they would be suspended and removed from service if they failed to pay the same and accordingly they paid the amount under the compulsion and force. PW-2 spoke about his conducting joint inspection along with CBI Inspector and noticing shortage of 12.50 lakhs cash in the chest. PW-3 was the Assistant General Manager for five zonal offices of State Bank of India, Hyderabad at relevant time. His evidence only show that on the request of C.B.I. Officials he handed over service sheet of A-1 and A-2 during the course of investigation. The evidence of PW-4 the Inspector of Police, CBI Hyderabad shows that basing on the surprise check carried on along with the bank officials on 17-10-2000 he registered a case on 03-1-2002 against the accused. PW-5 is the Sub-Inspector of Police, Begum Bazaar Police Station at the relevant time. He conducted investigation and filed charge sheet against the accused.

11. DW-1 Mr. V. Harnath Babu, was the Assistant Manager, SBI during the relevant period. He stated in his evidence before the learned trial Court that whenever the custodian of the currency chest and cash was on leave in-charge arrangements were made and the chest was given to the in-charge officer.

12. If a person entrusted with the property or with any dominion over the

property, dishonestly misappropriates or converts to his own use the property or dishonestly uses or disposes of that property the said acts constitute the offence of criminal breach of trust u/s 405 of the Indian Penal Code. If the offence of criminal breach of trust is committed by a public servant or by a banker or merchant or agent it is punishable u/s 409 of the Indian Penal Code.

13. Sri P. Keshava Rao, learned Special Public Prosecutor for CBI cases contended that if the prosecution proves that the accused were entrusted with the property and the said property fell short of the entrusted quantity, the burden lies on the accused to establish as to how it fell short and he has to prove as to how the property entrusted to him was dealt with by him. In the instant case, according to the learned counsel the accused were the joint custodians of the cash in the currency chest of the bank, it was found that there was shortage of 12.50 lakhs of cash in the inspection conducted by the authorities of the bank as well as the joint inspection by the bank officials and the CBI, the accused having failed to establish as to how the cash was dealt with by them, they are liable for punishment u/s 409 IPC and also for misappropriation and falsification of accounts. According to the learned counsel, the trial Court erred in acquitting the accused of the said charges.

14. In support of his contention, he relied on N. Bhargavan Pillai (Dead) by Lrs. and Another Vs. State of Kerala, and State of Himachal Pradesh Vs. Karanvir, . In both the cases, the Supreme Court held that:

The initial burden is on the prosecution to prove the entrustment of the property to the accused. Once the initial burden is discharged by the prosecution, the onus shifts on to the accused to prove as to how the property entrusted to him was dealt with. When the accused fails to prove as to how and in what manner the property entrusted to him was dealt with, he is liable for conviction for the offence punishable u/s 409 IPC.

15. In the instant case, both the accused, who were joint custodians of the cash in the currency chest of the bank cannot deny that they were entrusted with the cash and the currency chest. Since in the inspections conducted by the bank it was found that there was shortage of 12.50 lakhs of property, there is no denial of the fact that the said amount was missing from the bank. It is also not the case of the accused that there was no shortage of cash.

16. However, there are certain crucial points noticed by the learned trial Court from the evidence of prosecution witnesses as well as the defence witnesses. PW. 1, the Branch Manager gave evidence before the enquiry officer in the course of departmental enquiry conducted against the accused. He admitted in the cross-examination that he stated in the departmental enquiry that the currency notes were stacked on the floor of the room where the currency chest, is situate and they were taken out of the trunk boxes for inspection purpose. He also specifically admitted before the enquiry officer that currency notes were lying in the floor of strong room for inspection purpose. He further admitted in the cross-

examination that whenever they receive deposits from the other branches, they will only count the bundles and there will not be any detailed physical verification of the entire cash. He further admitted that whenever there is a shortage in the section of the hundred notes, the branch which deposits the amount is responsible for the said shortage. He also admitted in the cross-examination that after 20.11.1999 there was no inspection in their branch till 09.09.2000 and he further admitted that every day the joint custodians will not count the entire cash. It is also his admission that on 29.06.1999 during half yearly inspection, they did not find any shortage of cash. He also admitted that it is mentioned in Ex. P.3 that large number of currency notes were stacked on the floor of strong room. He further answered positively to the suggestion that due to pressure of work it is not possible for A2 to accompany the other joint custodian to the cash chest on each and every occasion for removal of cash or for deposit of cash. He also specifically admitted that the statements that are being prepared in the cash department are to be signed by Joint custodians and the joint custodians do not verify the entire cash in the chest every day. According to him they only do mathematical work by verifying the previous day balance and physical verification of cash withdrawn and deposited on that particular day and make necessary entries accordingly in the registers.

17. PW. 5 the inspecting officer stated in his evidence that A1 agreed to take up the moral responsibility for the shortage and to repay the amount in the presence of Sri K.C. Veeraiah. He further stated in the cross-examination that his investigation discloses that both the accused reimbursed 6.25 lakhs each before the registration of the FIR and these payments were made on the demand raised by the bank against A1 and A2. He also stated that he verified the source of repayment by the accused persons. PW. 1 as well as DW1 admitted in their evidence that whenever the custodians of cash go on leave, in-charge arrangements will be made and the chest will be given to the in-charge officer.

18. According to the prosecution, the misappropriation was committed between 20.11.1999 and 09.09.2000. The evidence of PW. 1 reveals that the staff from the Reserve Bank of India inspected the currency chest and submitted a report confirming the cash balance. Sri K.C. Veeraiah, Circle Officer inspected the branch on 09.09.2000 and he found shortage of cash of Rs. 12.50 lakhs in the cash chest. From the evidence of PW. 1 it appears that there was no inspection by anybody between 20.11.1999 and 09.09.2000. It is also the evidence of PW. 1 that it is mentioned in Ex. P.3 that large number of currency notes were stacked on the floor of the strong room. Ex. P.3 letter dated 16.10.2000 addressed by the Deputy Joint Manager, SBI, Zonal Office revealed that he noticed certain deficiencies and lapses relating to the security aspects. It is mentioned in the letter that the grill door of the strong room was not being locked from inside when the currency chest was operated and the inside locking system of the grill door was not functional and large number of currency notes were stacked on the floor of the strong room. He also mentioned in the letter that he noticed that verification of chest was not carried out soon after making

outward currency remittances to other centers authorized by Reserve Bank of India. He further mentioned in the letter that he noticed the emergency light available in the strong room was not in working condition.

19. PWs. 1 and 2 admitted in their evidence that both the accused availed some kind of leave during the alleged period of misappropriation, though they were unable to give the exact dates on which the accused went on leave. They also stated in their evidence before the trial Court that whenever joint custodians went on leave, the keys were entrusted to some other officer. They further admitted that whenever keys were entrusted to some other officer there was no physical verification of the chest with reference to entries in the register as to the cash available in the chest. It is also their evidence that the accused after return from their leave were not again in the habit of verifying the currency chest with reference to the entries in the chest or with reference to the cash available in the chest.

20. The learned trial Court therefore, rightly took the view that when there was no physical verification of currency chest and handing over the keys to the other officer and also the position being the same at the time of taking back the currency chest from the in-charge officer, it cannot be concluded that shortage was only during that period when the accused were the joint custodians of the currency chest. Under these circumstances, as rightly held by the trial Court it was not possible to fix the responsibility on these two accused, when the evidence clearly indicated that some in-charge officers have also held the currency chest during the relevant period in the absence of the accused while they were on leave.

21. Therefore, the crucial question would be whether in the absence of explanation from the accused as to how they had dealt with the cash entrusted to them, mere shortage of cash amounts to misappropriation.

22. The accused reimbursed the amount only on demand made by the bank officials and obviously under the apprehension that they would be removed from the service, if they failed to deposit the amount. Therefore, by the act of reimbursing the cash to the bank, it is not possible to draw an adverse inference against the accused. They deposited the amount on demand made by the bank as per the directions of the Zonal Office and only in compliance of the said demand.

23. Further, in this case, the shortage of cash was noticed on 09.09.2000 in the course of inspection conducted by K.C. Veeraiah, Circle auditor. It was confirmed in the surprise joint check carried out by the bank officials along with CBI officials on 17.10.2000. The FIR was registered by PW. 4-Inspector of Police, CBI, Hyderabad on 03.01.2002. Thus, there was a delay of nearly 15 months in registering the first information report. The delay has not been properly explained by the prosecution. The delay in filing the FIR in this case is very much material and also fatal to the case of the prosecution because from the delay it

can be understood that the bank was wavering in its decision to fix up the responsibility relating to the act of misappropriation committed in the bank.

24. The indictment against the accused is that they have conspired to commit the acts of mis-appropriation and falsification of accounts, the prosecution is under a duty to prove the said indictment. From the evidence, it seems that there was scope for some other officials/employees of the bank to take away the cash from the bank. The evidence on record, as already stated reveals that the security measures have not been properly taken in the bank during the relevant period. The cash was stacked on the floor of the strong room for the purpose of inspection. The cash was not physically verified after each day's transactions or at least periodically. Therefore, it is not known as to at what point of time exactly the mis-appropriation of the amount was committed.

25. The proof required to fasten the criminal liability and the proof relating to the charge in the departmental enquiry are altogether different and distinct. In the former, it is that of the standard of proof beyond all reasonable doubt and in the latter it is the preponderance of probability. It is settled law that in a case based on circumstantial evidence, the circumstances from which the guilt is required to be established should be conclusive in character, they should be complete in forming a chain and further they must be consistent only with the hypothesis of the guilt of the accused and should be totally inconsistent with the innocence of the accused.

26. In *Sardar Singh Vs. State of Haryana*, the Supreme Court held that:

Mere failure or omission to return property is not sufficient to constitute the offence of criminal breach of trust. According to the Supreme Court the prosecution had to go further and show that the appellant dishonestly mis-appropriated or converted the receipt book to his own use dishonestly disposed of it.

27. In *Moola Vs. Financial Commissioner, Revenue, Chandigarh and Others*, the Supreme Court held that:

Before a conviction u/s 409 IPC can be recorded, the prosecution must prove two essential facts i.e. 1) the factum of entrustment and (2) factum of mis-appropriation of the entrusted articles.

28. In *C. Chenga Reddy and Others Vs. State of Andhra Pradesh*, the Supreme Court held that:

Where dishonest intention is absent, the accused cannot be convicted though they acted in violation of the Financial Code, Government circulars and the Government instructions.

29. The facts of the cases relied on by the learned Special Public Prosecutor for CBI cases first and second cited supra are altogether different from the facts of the present case. In the facts and circumstances of the instant case, it is not

possible to draw an inference of the guilt of the accused on the mere proof by the prosecution, the facts viz. the entrustment and shortage of cash. The facts and circumstances of the instant case obviously reveal that apart from the accused, there was scope for some other officials/employees of the bank to take away the amount from the bank. The circumstances pointed out against the appellants are not conclusive in nature. It is therefore, not possible to conclude positively that the accused only are the perpetrators of the crime. There is no evidence forthcoming in this case to show conclusively that the accused committed the acts of misappropriation and falsification of the accounts.

30. Further even though the appellate Court while sitting over judgment of acquittal has ample power to re-appreciate and reconsider the evidence, there are certain limitations for exercising the said power. The appellate Court is justified in upsetting the finding of acquittal only when it is perverse, not based on evidence or rendered considering some irrelevant or inadmissible material. In criminal law the accused is presumed to be innocent till found guilty by competent Court. The presumption of innocence available to him in criminal jurisprudence will be further strengthened when he is acquitted of the criminal charge by the trial Court. On facts and evidence even if two views are possible the appellate Court shall not reverse the order of acquittal. The appellate Court will interfere with the order of acquittal only when it is recorded by the trial Court on flimsy grounds and if it is wholly unjustified. In the instant case the learned trial Court in my view after carefully analyzing the evidence on record, rightly arrived at the conclusion that the accused are entitled for benefit of doubt, and the order of acquittal passed by the trial court does not call for any interference in the appeal. For the foregoing reasons, the order of acquittal passed by the trial Court is confirmed and the appeal is dismissed.