

(2017) 01 KAR CK 0083
In the Karnataka High Court
Case No : Criminal Appeal No. 953 of 2011

State by Lokayuktha Police

APPELLANT

Vs

Dr. M. Hanumantharayappa

RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

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

Citation : (2017) 2 CriCC 360 : (2017) CriLJ 1258

Hon'ble Judges : Mr. Anand Byrareddy, J.

Bench : Single Bench

Advocate : Shri Venkatesh S. Arabatti, Special Public Prosecutor, for the Appellant; Shri B. Anand, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Anand Byrareddy, J.—This appeal is preferred against the acquittal of the respondent for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (Hereinafter referred to as the "PC Act", for brevity).

2. It was the case of the prosecution that the respondent herein was working as a Senior Specialist Medical Practitioner at the M.G.Hospital, Chikkamagalur, during the year 2008. On 17-11-2008, one Shruthi, PW-5, was said to have been admitted to the hospital and she was to undergo surgery on her feet on account a condition known as foreign body Granuloma. She was said to have been placed under the care of the respondent herein. One Kantharaju, PW-1, said to be the brother-in-law of Shruthi, was attending to her at the hospital and he is said to have enquired with the respondent as to the probable date on which surgery would be performed on Shruthi. At which, the respondent is said to have made a demand for illegal gratification of Rs.1000/- before a date could be fixed. Though Kantharaju is said to have readily paid Rs.500/-, the respondent is said to have insisted on being paid a further sum of Rs.500. As Kantharaju was not inclined to pay any more amount, he had chosen to approach the Lokayukta Police Station,

Chikkamagalur on 19-11-2008 with a complaint. And the same was said to have been registered at 1-00 PM on the said day, as Crime no.6/2008 and the First Information Report (FIR) was said to have been sent to Court. The police are then said to have procured two official witnesses, namely, a Panchayath Development Officer, PW-2 and a teacher working in the Government Junior College, PW-3 and they were said to have been appraised of a proposed trap to be set against the respondent herein to apprehend him red handed while receiving the illegal gratification he had demanded from Kantharaju. In this regard, it is stated that the bait money supplied by the complainant was said to have been treated with Phenolphthalein powder and the currency notes were placed in the shirt pocket of Kantharaju, PW-1 and other steps were taken as recorded in the entrustment Mahazar that was said to have been drawn up. PW-3 was to act as the shadow witness during the trap.

The raiding party comprising the police officials, the complainant PW-1, along with PW-2 & PW-3 , are said to have arrived at MG Hospital at about 4-45 PM. The complainant and the witnesses are said to have occupied positions as directed by the police, outside the Out Patient department. Even before the complainant could reach the chamber of the respondent -accused, he is said to have met him on the way and he had immediately told him that he had brought the remaining amount. The accused is said to have told PW-1 to follow him to his chamber. Just then some other person is said to have come up to the accused and had engaged him in a discussion. After the said person had left, the accused is said to have turned towards PW.1, who was said to be behind him and asked him to hand over the money, which he is said to have handed over and the accused had placed the same in his trouser pocket. PW.1 immediately gave the pre-arranged signal to the raiding party who were readily waiting and thus the accused immediately immobilized by the police personnel having held him by his arms. But the accused is said to fiercely resisted and temporarily freed himself sufficient to remove the currency notes from his pocket and throw the notes to the ground. The Police Inspector present is said to have introduced himself to the accused and proceeded to direct his staff to wash the hands of the accused with sodium carbonate solution which is said to have turned pink, as was expected indicating that the accused had handled the tainted currency notes. Similarly, the trouser pocket of the accused was also subjected to the same test, in order to complete the gathering of evidence on the aspect of the accused have handled and received the bait money. Further steps were said to have been taken as recorded in the detailed Mahazar that was drawn up of the raid and seizure, as per Exhibit P-5.

After having taken further steps, such as recording the statement of the concerned witnesses and having sent the seized samples to the Forensic Science Laboratory and after gathering particulars of the accused etc., the Police Inspector, PW-8 is said to have submitted a final report to the Disciplinary Authority of the accused for sanction to prosecute him. Thereafter, the further investigation and proceedings were said to have been handed over to the Deputy

Superintendent of Police, Karnataka Lokayuktha, PW-6. A charge sheet is said to have been submitted to the Court on 3-10-2009.

The accused had pleaded not guilty and claimed to be tried. The Prosecution is said to have examined eight witnesses and marked several exhibits and material objects. The trial court after having recorded the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, had framed the following points for consideration.

"1. Whether the sanction order is proper?

2. Whether the prosecution proves beyond reasonable doubt that on 19.11.2008 at 4.50 P.M. in M.G.Hospital, Chikmagalur the accused demanded and received the bribe amount of Rs.500/- from the complainant/P.W.1 for surgery of the feet of his sister-in-law/Shruthi, who was admitted on 17.11.2008?

3. Whether the prosecution further proves that the accused person mis-used his position as a public servant to show official favour to P.W.5/Shruthi?"

Point no.1 was answered in the affirmative and Point no.2 in the negative and the accused was acquitted. It is that judgment which is under challenge.

3. The learned Special Public Prosecutor, Shri Venkatesh Arabatti, appearing for the appellant would contend that the reasoning of the trial court in acquitting the respondent is inexplicable. In that, it is pointed out that the court having found that the prosecution had proved beyond reasonable doubt that the accused had, at the time and place specified, demanded and accepted illegal gratification from the complainant in order to perform his official duty, has proceeded to further hold that the prosecution had failed to prove that the accused had used his position as a public servant to show any official favour. Elaborating further, it is pointed out that the entire findings in the impugned judgment are in favour of the prosecution, hence it would be unnecessary to reiterate the same. It is that portion of the judgment by which the trial court has arrived at its final conclusion, to which the learned counsel would seek to draw particular attention.

The relevant paragraph is reproduced verbatim for ready reference:

"22. There is consistency in the evidence of P.W.1 and P.W.3 with regard to passing of the currency notes to the accused and the accused wriggling out his hands when he was caught by the Lokayuktha officials and throwing the same on the ground. There is corroboration in this regard in the trap mahazar that immediately after Lokayuktha Police caught hold of him, accused removed the notes from his pocket and threw it on the ground. But P.I. has a different version to tell before the court. As per his examination-in-chief evidence" after receiving the signal, he has gone to the accused, introduced himself, enquired with him about his acquaintance with the complainant, requested his co-operation in the investigation and thereafter instructed his staff to hold the hands of the accused separately and subjected his hands for solution test and thereafter enquired with the accused about the bribe amount and the accused has shown the currency

notes thrown by him on the floor." This portion of the evidence of the P.I. does not match with the evidence of P.W.1 and P.W.3, wherein they have stated that after the Lokayuktha Staff caught hold of his hands, the accused wriggled out to throw the currency notes on the ground. Perhaps the I.O. is making effort to place the events in chronological order. The benefit of any contradiction found between the evidence of the I.O. and the direct eye witness with regard to the accused throwing away currency notes, is not a negligible factor; it goes to the very root of merit of the case. The enthusiasm of the I.O. to streamline the facts in a chronological order has resulted in serious discrepancy in the prosecution case. As such with regard to demand of bribe by accused either in the morning or in the evening, there is no corroboration. Though there is evidence of P.W.1 and P.W.3 about accused receiving the amount, placing the same in his pocket, throwing it on the ground, after he was held by Lokayuktha Staff, the evidence of I.O. is contradictory to their evidence. Though phenolphtheline is found in the shirt pocket of accused, how to entirely rely on the scientific evidence when the ocular evidence is confusing and contradictory. Hence, I have to told that the prosecution has failed to prove that the accused demanded bribe amount of Rs.1000/- from the complainant to carryout surgery on the patient of Shruthi."

4. It is pointed out that the trial court has not pointed out any inconsistency in the evidence of PW-1, PW-3 and PW-5 in so far as they have uniformly narrated the sequence of events up to the stage where the accused had received the bait money and placed it in his pocket. The "inconsistency" according to the court below, which is termed as "going to the root of the matter", is the narration by PW-1 and PW-3 to the effect that immediately on the accused receiving the currency notes handed over by PW-1, and on the pre-arranged signal given by PW-1, the waiting members of the raiding team had immediately moved in and held the accused by his arms. And that he had put up a struggle and shook himself free and immediately removed the wad of tainted currency notes that he had received, from his pocket and threw it on the floor. Whereas the version by PW-5, on this particular aspect, was that immediately on receiving the signal from PW-1, he had gone up to the accused and enquired with him about his acquaintance with the complainant and had sought his co- operation in the investigation and had thereafter instructed his staff to hold the hands of the accused separately and subjected his hands to the phenolphthalein wash test and is said to have then enquired about the currency notes, which the accused is said to have shown him the currency thrown on the floor.

It is seen that the crucial evidence as to the demand and acceptance of the bribe amount by the accused is consistent. It is only the circumstance whether the accused removed the currency notes from his pocket before or after he was held by his hands by the raiding team - on which there are differing versions, which appear to be inconsistent in some minor detail. This would not matter at all, in considering whether the prosecution had proved its case beyond all reasonable doubt as to the demand and acceptance of illegal gratification by the accused. Hence, the trial court was certainly in error in making much of the so called

inconsistency, when the trial court has opined on the first point for consideration to the effect that the prosecution had proved its case beyond reasonable doubt.

5. Though the learned counsel for the accused would vehemently contend that the proof of demand of illegal gratification is the gravamen of the offence and in the absence thereof, the charge would fail and in this regard, reliance is placed on a recent decision of the Apex Court in *P.Sathyanarayana Murthy v. District Inspector of Police*, (2015) 10 SCC 152, it still would be of no avail.

6. The point sought to be made by the counsel for the respondent is that when the complainant met the accused in the corridor of the hospital and informed him that he had brought the amount with him, the accused is said to have told him to go over to his chamber and while moving forward had been met with another person, who had briefly engaged the accused in conversation and had left. The accused is then said to have turned towards the complainant who was right behind and held out his hand and grunted. In other words, non-verbally communicating that the complainant was to hand over the bribe amount. The counsel for the respondent possibly seeks to contend that since there was no verbal demand for bribe, there is no demand. To accept such a proposition would be naive. It was as much a demand as could be made vocally. The same was duly witnessed by the raiding team.

7. Therefore, the trial court was in gross error in acquitting the accused on such a finding as is highlighted above. Consequently, the appeal is allowed the judgment of the court below is set aside.

8. The accused - respondent is convicted for an offence under Section 7 of the PC Act and is sentenced to simple imprisonment for a period of six months and also liable to pay a fine of Rs.5000/-, in default of payment of the fine, shall suffer a further period of simple imprisonment for a period of one month.

9. The accused - respondent is also convicted for an offence under Section 13(1) (d) read with Section 13(2) of the PC Act and is sentenced to simple imprisonment for a period of one year.

10. The above sentences shall run concurrently.