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(2005) 10 SC CK 0115

In the Supreme Court Of India

Case No : Criminal Appeal No. 82 of 2004

State through Inspector of Police, A.P. APPELLANT

Vs

K. Narasimhachary RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Evidence Act, 1872 — Section 45, 47, 67, 74, 76
Prevention of Corruption Act, 1988 — Section 11, 13(1), 13(2), 13(3), 19

Citation : (2005) 3 ACR 3249 : AIR 2006 SC 628 : (2005) AIRSCW 6275 : (2006) 1 ALD(Cri) 32 : (2006) 1 ALT(Cri) 114 : (2006) CriLJ 518 : (2005) 12 JT 553 : (2005) 8 SCC 364 : (2005) 7 Supreme 155

Hon'ble Judges : S. B. Sinha, J;R. V. Raveendran, J

Bench : Division Bench

Advocate : P. Vinay Kumar, D. Bharathi Reddy and Sneha Bhaskaran, for the Appellant; Srinivas R. Rao and Neeru Vaid, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—The State is in appeal before us from a judgment of the Andhra Pradesh High Court dated 20.03.2003 in Criminal Appeal No.1058 of 1996, recording a finding of acquittal as against the Respondent, upon reversing a judgment passed by the Special Judge for SPE & ACB Cases, Nellore, dated 06.12.1996 convicting the Respondent herein for commission of offences punishable under Sections 7, 11, 13(3) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the Act') and sentencing him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-.

2. The Respondent herein was a Mandal Revenue Inspector in the office of Mandal Revenue Office, Cuddapah in the year 1994. The complainant (PW-1) was the owner of some immovable property situated within the jurisdiction of the said Mandal Office. He intended to get himself registered as a contractor with the Public Works Department wherefore a certificate as regard valuation of his property was necessary. An application to that effect was filed before the Mandal

Revenue Officer (PW-3) on 01.03.1994. The Mandal Revenue Officer adopted a peculiar procedure by putting his initial thereon and handed over the same to PW-1 himself and asked him to give it to the accused. When PW1 handed over application to the accused on the same day, he is said to have asked him to present the same before the Village Administrative Officer (PW-4) and to bring cultivation accounts relating to his lands and certain statements. PW-4 thereafter recorded the statements of PW-1 and his grandmother. He granted his own (VAO's) Statement, statement of PW-1, his grandmother and village elders as also certified copies of Adangals, extracts (revenue records) marked as Exs.P-2 to P-6 to the said PW-1. PW-1 allegedly handed over the same to the Respondent on 02.03.1994. The Respondent is said to have demanded a sum of Rs.1,000/- for issuance of the property valuation certificate. He on the next day i.e. on 03.03.1994 met the Respondent at the office of PW-3 and upon negotiation, the amount of alleged illegal gratification was reduced to Rs.600/- from Rs.1000/-. A complaint was made to the ACB on 05.03.1994 at 6.35 A.M. A trap was laid at 12.30 P.M. on the same day upon complying with the usual formalities. A sum of Rs.600/- in the denomination of Rs.50/- is said to have been recovered from the Respondent allegedly kept by him in his right pocket of the trouser.

3. The defence of the Respondent was that certificate valuing the complainant's land for a sum of Rs. one lac was submitted on 04.03.1993 itself whereas PW-1 wanted that the valuation of the lands should be made three lacs; and as the Respondent did not oblige, PW-1 bore grudge against him as a result he was falsely implicated.

4. The learned Special Judge framed as many as five issues and answered them against the Respondent by a judgment dated 6.12.1996, holding the Respondent guilty of the offence punishable u/s 13(1)(d) read with Section 13(2) of the Act.

5. On appeal, the High Court reversed the said findings, inter alia, holding that the order of sanction dated 1.5.1995 was not proved by PW-6 in accordance with law. On merit of the matter also, the High Court opined that the prosecution has not been able to prove its case against the Respondent.

6. Mr. P. Vinay Kumar, the learned Counsel appearing on behalf of the Appellant, in assailing the impugned judgment, would contend that the High Court committed an error in holding that the order of sanction was not admissible in evidence having not been proved by PW-6 in accordance with law.

7. The learned counsel also took us through the evidences of the prosecution witnesses and submitted that PW-3 and PW-5 corroborated the evidence of the complainant (PW-1). It was contended that the fact that the Respondent was merely a recommending authority and not the final authority for the purpose of grant of a valuation certificate cannot be treated to be a ground for disbelieving the entire prosecution case.

8. Mr. Srinivas R. Rao, the learned counsel appearing on behalf of the Respondent, on the other hand, would submit that the prosecution was bound to

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prove the order of sanction in accordance with law. The learned counsel in this behalf relied upon a decision of this Court in R.J. Singh Ahuluwalia Vs. The State of Delhi, .

9. The learned counsel would take us through the judgment of the High Court and submit that the High Court has taken into consideration all the facts and circumstances of this case in arriving at a finding that the State has not been able to prove its case against the Respondent.

10. The order of sanction dated 02.03.1995 has been produced in original. The order of sanction is a Government Order No.GOMs. No.76 dated 02.03.1995 A bare perusal of the order of sanction shows that the allegation as against the Respondent herein for taking into consideration that the Government of Andhra Pradesh, who was the competent authority to remove the said Sri K. Narasimha Chari, Mandal Revenue Inspector, Cuddapah, from the Government Service, after fully and carefully examining the material placed before them in respect of the said allegations and having regard to the circumstances of the case considered that the Respondent should be prosecuted in the court of law; whereupon the order of sanction was issued in the name of the Governor. Shri N. Madanmohan Reddy, Secretary to the Government, merely authenticated the said order of sanction which was issued in the name of the Governor of Andhra Pradesh. The order of sanction was, thus, issued by the State in discharge of its statutory functions in terms of Section 19 of the Act. The order of sanction was authenticated. The said order of sanction was an executive action of a State having been issued in the name of the Governor. It was authenticated in the manner specified in the Rules of Executive Business. The authenticity of the said order has not been questioned. It was, therefore, a public document within the meaning of Section 74 of the Indian Evidence Act. PW-6 proved the signature of Shri N. Madanmohan Reddy. He identified his signature. He was not cross-examined on the premise that he did not know the signature of Shri N. Madanmohan Reddy. In answer to the only question put to him, he stated "By the time the Secretary signed in Ex.P.17 I was in G.A.D."

11. Nothing was, thus, elicited in the cross-examination of the said witness to show that he was not a competent witness to identify the signature of Shri Madanmohan Reddy.The Respondent, therefore, allowed the said document to be exhibited without any demur. He did not question the admissibility of the said document before the Trial Court, either when the same was exhibited or at the final hearing before the trial court. He, therefore, could not be permitted to question the admissibility of the said document for the first time before the appellate court. [See Ranvir Singh and Anr. v. Union of India.

12. A public document can be proved in terms of Sections 76 to 78 of the Evidence Act. A public document can be proved otherwise also. The High Court, therefore, was not correct in invoking the provisions of Section 47 of the Indian Evidence Act in the instant case as it was not called upon to form an opinion as to by whom the said order of sanction was written and signed. PW-6 was not

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examined as an expert or was required to give his opinion as regard the correctness or otherwise of the signature of the said N. Madanmohan Reddy. The authenticity of the said document was never in question.

13. The High Court relied upon a decision of this Court in Gulzar Ali Vs. State of H.P., , wherein this Court observed :

"It must be remembered that expert evidence regarding handwriting is not the only mode by which genuineness of a document can be established. The requirement in Section 67 of the Evidence Act is only that the handwriting must be proved to be that of the person concerned. In order to prove the identity of the handwriting any mode not forbidden by law can be resorted to. Of course, two modes are indicated by law in Sections 45 and 47 of the Evidence Act. The former permits expert opinion to be regarded as relevant evidence and the latter permits opinion of any person acquainted with such handwriting to be regarded as relevant evidence. Those and some other provisions are subsumed under the title "Opinion of third persons, when relevant". Opinions of third persons, other than those enumerated in the fasciculus of provisions, would have been irrelevant. Among the permitted opinions those mentioned in Sections 45 and 47 are also included. So it cannot be said that identity of handwriting of a document can be established only by resorting to one of those two sections. There can be other modes through which identity of the handwriting can be established"

It is, therefore, evident that the High Court misread and misconstrued the law laid down by this Court in the aforementioned decision. It also wrongly applied Section 47 of the Indian Evidence Act.

14. In R.J. Singh Ahuluwalia (supra), this Court was concerned with the validity of the sanction; inasmuch as therein the Home Ministry, which was the sanctioning authority did not make any sanction, as a result whereof it was conceded by the State that in absence thereof the prosecution must fail.

15. In Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, , the order of sanction was found to be invalid as the sanctioning authority did not duly apply its mind.

Therein this Court held that an order of valid sanction can be proved by the Sanctioning Authority in two ways : either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction; or (2) by adducing evidence aliunde to show that the facts were placed before the Sanctioning Authority and the satisfaction arrived at by it. In this case, the original order of sanction has been produced.

16. So far as the merit of the matter is concerned, as would appear from the discussions made hereinbefore that the prosecution case is not entirely free from doubt. PW-1 intended to obtain a signature as regard valuation of his lands so as to enable him to get himself registered with the Public Works Department as a contractor. He went to PW-3. PW-3 did not send the same to the Respondent by following the existing procedure. He merely initialed the same and handed over it

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back to PW-1 allegedly for the purpose of giving it to the Respondent who in turn asked to take it to PW-4.

17. It is really curious that when PW-1 handed over the application to PW-4 on 2.3.1994, on the same day his statement as also the statement of his grandmother were recorded and all the documents, namely, Ext. P-2 and P-6 were handed over by him to PW-1 who in turn handed them over to the Respondent. It was at this stage the purported demand was said to have been made. Strangely enough he met the Respondent in the evening of 03.03.1994, although a demand was said to have been made by the Respondent on 02.03.1994 in the office, presumably after office hours and then the amount of gratification was reduced from Rs.1,000/- to Rs.600/-. PW-1 did not make any complaint to PW-3 on the said date i.e. 03.03.1994 and even on 04.03.1994, although from the conduct of PW-1 and PW-3, it is evident that they were very close to each other. PW-3 apparently intended to help him out of way. The valuation certificate was sent to PW-3 by the Respondent on 04.03.1994 which was signed by PW-3 on the same day. It was also certified by PW-4. It is wholly unlikely that although his demand was not met, the Respondent would forward his certificate to PW-3. The natural conduct of the Respondent, if he had in fact demanded any amount by way of gratification, would have been to wait for PW-1 to meet his demand.

18. It is not in dispute that it was PW-4, who was to evaluate the property and it was PW-3 who was to grant the certificate. The Respondent was merely a recommending authority. In the aforementioned situation, the High Court has arrived at the following findings :

The evidence on record in this case discloses that Ex.P1 was submitted by PW1 directly to PW3 and it has moved with almost jet speed. The local verification, recording of statements, furnishing of certified copies of revenue record etc., had taken place within one day. The file reached PW3, in all probability on 03.03.1994 and he signed on the next day. PW3 was very much accessible to PW-1. If he sensed and delay or if there were any hindrances, he could have brought the same to the notice of PW.3 himself. When PW3 received Ex.P1 directly from PW.1 without any objection, there should not have been any impediment in handing over the Ex.P.8 to PW.1 directly. The accused was neither the issuing authority nor was the outward clerk. He figured somewhere in between. The handing over of Ex.P8 by PW3 to the accused appears to be deliberate and planned. Suggestions to PW3 that he was suspended for certain irregularities on earlier occasion, he bore grudge against the accused and wanted to implicate him gains credence in this regard.

19. Shri K. Kumar (PW-8) was the Deputy Superintendent of Police, ACB, at Tirupathi. On 05.03.1994, he was at Cuddapah. According to PW- 1, he approached PW-8 at 6.35 a.m., whereas according to PW-8, he came to him at 8.00 a.m. The mediators were summoned and the trap was laid after making all arrangements therefore at about 12.30 p.m. After the transaction was

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completed, the Respondent was found having not only the tainted amount of Rs.600/- but also a sum of Rs.235/- in different denominations and wads. Why the said amount of Rs.235/- which was recovered from the right pocket of the accused was not subjected to phenolphthalein test is a matter of guess. The amount of Rs.235/- was kept in the same pocket of his trouser, it must have come in contact with the tainted amount.

20. PW-1 appears to be an influential person. He could approach PW-3 directly. He was in a position to obtain a certificate, copies of various documents from PW-4 on the same day as also obtain a certificate from him on the same day. Thus, as the valuation certificate was sent to PW-3 by the Respondent on 04.03.1994, there does not appear to be any good reason as to why PW-1 would not come to know thereabout. According to him, he came to know that PW-8 was at Cuddapah and be approached him in the early morning at 6.35 on 05.03.1994.

21. Having regard to the facts and circumstances of this case, we are of the opinion that two views are possible and the view of the High Court cannot be said to be wholly improbable; it cannot be said, in view of the discussions made hereinbefore, that the materials brought on records would lead to only one conclusion, i.e., the guilt of the accused. The impugned judgment, therefore, is sustained. For the reasons aforementioned, we do not intend to interfere with the impugned judgment of the High Court. The Appeal is dismissed accordingly.

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