A STATE OF ANDHRA PRADESH

v.

P. VENKATESHWARLU

(Criminal Appeal No.1317 of 2008)

B MAY 06, 2015

[PINAKI CHANDRA GHOSE AND UDAY UMESH LALIT, JJ.]

C *Prevention of Corruption Act, 1988 – ss. 7 and 13(1)(d) r/w s. 13(2) – Case of illegal gratification – Trap laid and the accused caught demanding and accepting bribe – Conviction and sentence u/s. 7 and 13(1)(d) r/w s. 13(2) by trial court, however set aside by the High Court – On appeal, held:* D *Essential ingredient of demand and acceptance of bribe proved by the prosecution – Recovery of tainted money proved – Same was witnessed by key eye witnesses and their testimonies corroborated by other material witnesses – Offence u/s. 7 confirmed by the unchallenged recovery of* E *the tainted amount – Defense raised various presumptions to disprove the prosecution case – However, no evidence adduced by accused, to rebut the presumption u/s. 20 – Further, the probability of the accused not being present cannot be considered – Suggestion that document writers* F *set up the trap to implicate the accused cannot be accepted – Thus, the order of acquittal by the High Court set aside and the order of conviction and sentence by the trial court restored.*

G **Allowing the appeal, the Court**

HELD: 1.1 In the instant case, the factum of demand and acceptance was proved by the recovery of the tainted amount and the factum of there being a H **demand has also been stated. The essential ingredient**

of demand and acceptance has been proved by the prosecution based on the factum of the case. It has been witnessed by the key eye witnesses and their testimonies have also been corroborated by other material witnesses. The offence under Section 7 of Prevention of Corruption Act has been confirmed by the unchallenged recovery of the tainted amount. Thus, it is the obligation of the court to raise the presumption mandated by Section 20 of P.C. Act. It is for the accused respondent to rebut the presumption, by adducing direct or circumstantial evidence, that the money recovered was not a reward or motive as mentioned u/s. 7 of the P.C. Act. The defense raised various presumptions to disprove the prosecution case. However, it has not been able to adduce evidence, on the basis of which the presumption u/s. 20 could be rebutted. [Para 10, 11] [271-D-G; 272-B-C]

1.2 The accused has neither taken the plea of alibi for the visit on the 18.3.1995 and nor has proved the factum of not being present on the first date when the alleged demand was made, beyond all doubt. Therefore, the probability of his not being present cannot be considered. The suggestion as to document writers setting up the trap to implicate the accused due to the inimical relations seems to be very farfetched. All the remaining suggestions were not adduced by any direct or circumstantial evidence, as required under law. [Paras 12-13] [272-G-H; 273-A, D-E]

1.3 The order of acquittal passed by the High Court is set aside. The judgment and order passed by the Principle Special Judge convicting and sentencing the accused respondent u/s. 7 and 13(1)(d) rw s. 13(2) is restored. [Para 14] [273-G]

A Narendra Champaklal Trivedi Vs. State of Gujarat **2012 (6) SCR 165: (2012) 7 SCC 80**; State of Punjab vs. Madan Mohan Lal Verma **2013 (7) SCR 1130: (2013) 14 SCC 153**; C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala **2009 (2) SCR 1021: (2009) 3 SCC 779;**
B Jitendra Kumar Vs. State of Haryana **2012 (4) SCR 408:(2012) 6 SCC 204 – referred to.**

Case Law Reference

2012 (6) SCR 165	**Referred to.**	**Para 10**
2013 (7) SCR 1130	**Referred to.**	**Para 10**
2009 (2) SCR 1021	**Referred to.**	**Para 11**
2012 (4) SCR 408	**Referred to.**	**Para 12**

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1317 of 2008.

From the Judgment and Order dated 10.07.2006 of the High Court of A.P. at Hyderabad in Criminal Appeal No. 149
E of 2000.

S. Udaya Kumar Sagar, Krishna Kumar Singh, D. Mahesh Babu for the Appellants.

T. Anamika, B. V. Chandan for the Respondent.
F

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. - 1. This appeal, by special leave, has been filed by the State of Andhra Pradesh
G against the judgment and order dated 10.7.2006 passed by the High Court of Andhra Pradesh at Hyderabad, whereby the High Court has set aside the conviction and sentence of the respondent herein and acquitted him allowing the criminal appeal filed by him.
H

2. The facts of the present matter before us are that the accused respondent was working as Sub Registrar in the office of Sub Registrar and Assurance, Sattypali, Khammam District. On 18.3.1995 one Sri Burra Venkateshwara Rao, complainant, approached the respondent to get a Will deed registered in the name of his wife for transfer of certain extent of land. As alleged, the accused respondent demanded a sum of Rs.1000/- for the said registration work. After some bargain the demand was reduced to Rs.500/. Since the complainant was not willing to pay the said bribe amount, he approached the Deputy Superintendent of Police, Anti Corruption Bureau, Warrangal (P.W. 8) and lodged a complaint on 20.3.1995, who registered a case in Crime No.1/ACB-WKH/95 under Sections 7 and 11 of Prevention of Corruption Act, issued FIR and took up investigation. Thereafter, P.W.8 requested the complainant to come to Neeladri Guest House at Penuballi on 21.3.1995 with the necessary amount. Accordingly the complainant along with his friend, namely, V. Edukondalu (P.W.1), went to Neeladri Guest House at Penuballi on a motorcycle at about 1.00 P.M. and P.W.8 introduced the complainant to one V. Yugender (P.W.7) and another. Thereafter, the complainant was asked to give the money only when the officer demanded it. The trap party consisting of P.W.8, two mediators, two inspectors and two constables, left the Guest House in a Jeep while the complainant, P.W.1 and P.W.2 went on a motorcycle. The raid party stopped the Jeep at a little distance from the office of the respondent at Sattupally. The complainant and P.W.1 went to a hut situated within the premises of Sub Registrar's office, where the complainant collected the Will document prepared by P.W.5 N.V. Chalapathi Rao, the document writer and stamps necessary for registration from P.W.4 B. Lakshmaiaha, the stamp vendor. Before handing over the Will document to the

A B C D E F G H

A complainant, attestation was obtained from P.Ws. 1 and 2. Later on the complainant along with P.Ws. 1 and 2 went to the office of the respondent and gave the Will deed to the respondent, who after examining the Will deed, obtained the signatures of P.W.1, P.W.2 and P.W.3 K. Srinivas Rao, who B were present there. When the complainant enquired about the registration fee of the document, the respondent said it would amount to Rs.81/-. The complainant took out Rs.81/- from inner pocket of his banian (vest) and gave it to respondent, who C placed it in the table drawer. Thereafter, he prepared a receipt and handed it over to the complainant. It was subsequently alleged that the respondent demanded the bribe of Rs.500/- and that the complainant took out the tainted amount from his shirt pocket and gave it to the respondent, who kept the amount D in the table drawer. Then P.W.1 came out of the office and gave the pre-arranged signal, pursuant to which the trap party entered into the office and P.W.8 - the Deputy Superintendent of Police (ACB) asked the respondent whether he has received the bribe amount to which the respondent denied. E Then the phenolphthalein test was performed on fingers of both the hands of the respondent and the test on the right hand fingers proved positive. The respondent denied having received any bribe even when he was so asked by the F mediators. On instructions of P.W.8, the mediators searched the right side drawer of the office table of the respondent and found three batches of currency notes in it, out of which one bundle containing currency notes of Rs.500 and Rs.100 denominations, tallied with the numbers noted by the G mediators. The other bundle of Rs.9000/- was given account according to the records. An amount of Rs.9.50 paise was found in the drawer which was left by the customers due to non availability of change. Again on being asked, the respondent said that he did not know who kept the amount H

in the drawer. Post trap Panchnama was prepared and the respondent was arrested and released on bail. After completion of investigation, the Inspector of Police filed the charge-sheet. During the pendency of the trial, the *de facto* complainant Burra Venkateshwar Rao died on 10.6.1997.

3. In the Court of the Principal Special Judge for SPE & ACB cases, at Hyderabad, the learned judge after considering the material facts and evidence, found the accused guilty under Sections 7 and 13 (1)(d) read with Section 13 (2) of Prevention of Corruption Act. He was awarded conviction under Sections 7 and 13 (1)(d) read with Section 13 (2) of Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for one year under each count and also to pay a fine of Rs.1000/- under each count, and in default, he would suffer simple imprisonment for 2 months.

4. On appeal by the respondent before the High Court, the learned Single Judge was of the view that the lower Court erred in coming to the conclusion that the accused was guilty of the offences under the above mentioned Sections of the Prevention of Corruption Act and the conviction and sentence imposed on the accused by the Court below were set aside and the accused was acquitted of the charges against him. The reasons adduced by the High Court for acquitting the accused respondent are as follows: The High Court disbelieved the testimony of P.W.1 as truthful. The High Court considered the theory of the defence that the document writer had foisted a false case, from the cross examination of P.W.1 and came to the conclusion that Chepu Chennaiah had visited the room of the Public Prosecutor. Another circumstance was that the prosecution did not record the statement of the so called complainant under Section 164 Cr.P.C. The prosecution got the statement of P.W.1 recorded, but not that of the complainant,

A under Section 164 Cr.P.C. However, the High Court noticed that it was not imperative in the instant case. The alleged trap was dated 21.3.1995 and the complainant died on 10.6.1997. Thus, the prosecution cannot take the plea that the complainant was not available for the recording of statement under Section
B 164 Cr.P.C. Another circumstance favouring the accused as noticed by the High Court was that whether it was necessary for the complainant to execute a Will in favour of his wife. The High Court was of the view that the complainant was a petty
C vendor, having no legal heirs, with only a second wife. In such a situation the property would automatically devolve upon her and there was no necessity to execute a Will deed. The Court was of the view that the positive result of the phenolphthalein test was not enough to hold the accused guilty. The High Court
D observed that it was not disputed that the complainant was carrying one set of amount in his banian pocket and the other in his shirt pocket. So the possibility of his touching the tainted currency notes at the time of taking out the registration amount could not be ruled out.
E

5. We have heard the learned counsel appearing for the State of Andhra Pradesh as also the learned counsel appearing for the respondent.

F 6. Learned counsel appearing for the State of Andhra Pradesh contended before us that it was evident that P.W.1 accompanied the complainant to the place where the trap was laid. In addition, he narrated the events in sequence and his evidence was corroborated with the evidence of
G P.W.2 and other witnesses. The suggestion made by the accused respondent that P.W1 and P.W.2 were set up by Chepu Chennaiah and Nageshwar Rao was wrong, as nothing was elicited from their cross examination. As per the
H prosecution, the High Court in the impugned judgment had

given more weightage to the evidence of defense with regard to cancellation of the license of document writers than the evidence of prosecution with regard to the test conducted by P.W.8. Also the High Court failed to appreciate that non-recording the statement of the complainant under Section 164 is not fatal to the case of the prosecution. The High Court also failed to appreciate that the evidence of D.W.1 and D.W.2, who are subordinates to the accused respondent, would naturally be in support of their colleague.

7. Learned counsel appearing for the respondent, on the other hand, argued that mere recovery of money by itself cannot prove the charge of the prosecution against the accused respondent in the absence of any evidence to establish payment of bribe or to show that the accused respondent voluntarily accepted the money. The positive phenolphthalein test is not the conclusive proof that the accused respondent took the bribe. The learned counsel cited a number of cases in support of the respective contentions raised by them. In addition, it was submitted that the complainant in a trap case stands in the position of an accomplice and his evidence cannot be accepted without corroboration.

8. We are of the opinion that the case of the prosecution depends on the testimonies of P.Ws.1, 2, 7 & 8. P.Ws. 1 and 2 are alleged to be the eyewitnesses for the demand and acceptance of the tainted money. P.Ws.7 and 8 are the mediators and Head of the raiding party that recovered the money from the table drawer in the office of respondent. The evidence of P.W.1 makes it clear that on 21.3.1995, he went to the house of the complainant where he was informed that the *de facto* complainant had given a complaint against the A.O. for demanding a sum of Rs.500/-. Both of them went to

A the Penuballi Guest house, where they were introduced to the mediator (P.W.7) by the D.S.P. (P.W.8) and was given instructions regarding the trap. His evidence further showed that after the Will was presented and registration fee paid, the A.O. demanded from the *de facto* complainant to pay the bribe B amount. From the evidence of P.W.2, it becomes clear that on 21.3.1995, he went to the office of the M.R.O. on account of personal work and was reckoned by Bora Venkateshwara Rao and P.W.1 to attest the Will Deed. His evidence further goes C to show that he accompanied P.W.1 and *de facto* complainant to the office of the A.O. where he witnessed that the A.O. firstly collected the registration fee of Rs.81/- and later demanded and accepted the tainted amount. He has thus fully corroborated the evidence of P.W.1 on the question of D presence, on the question of signing as identifying witness and also on the fact of demand and acceptance of the tainted money.

9. Coming to the testimonies of P.W.7 and P.W.8, their E testimonies fully corroborate the testimony of P.W.1. The testimonies of the material witnesses have been fully corroborated and we find them to be trustworthy. The Phenolphthalein test goes further to prove that there was demand and acceptance of the tainted money. The recovery F of the tainted money has gone unchallenged by the accused respondent. Thus, we find that the High Court has wrongly disbelieved the testimony of P.W.1.

10. We are aware of the position in law, as laid down G in cases involving the relevant provisions under the Prevention of Corruption Act, that mere recovery of the tainted amount is not a *sine qua non* for holding a person guilty under Sections 7, 11 and 13 of the Act. This Court has observed in H ***Narendra Champaklal Trivedi Vs. State of Gujarat***, (2012)

7 SCC 80, that there has to be evidence adduced by the prosecution that bribe was demanded or paid voluntarily as bribe. The demand and acceptance of the amount as illegal gratification is a *sine qua non* for constituting an offence under the Prevention of Corruption Act. The prosecution is duty bound to establish that there was illegal offer of bribe and acceptance thereof and it has to be founded on facts. The same point of law has been reiterated by this Court in ***State of Punjab Vs. Madan Mohan Lal Verma***, (2013) 14 SCC 153. In the present case the factum of demand and acceptance has been proved by the recovery of the tainted amount and the factum of there being a demand has also been stated. The essential ingredient of demand and acceptance has been proved by the prosecution based on the factum of the case. It has been witnessed by the key eye witnesses and their testimonies have also been corroborated by other material witnesses. The offence under Section 7 of P.C. Act has been confirmed by the unchallenged recovery of the tainted amount. Thus, it is our obligation to raise the presumption mandated by Section 20 of P.C. Act. It is for the accused respondent to rebut the presumption, by adducing direct or circumstantial evidence, that the money recovered was not a reward or motive as mentioned under Section 7 of the P.C. Act.

11. In ***C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala,*** (2009) 3 SCC 779, this Court stated:

> "It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has and

A then it can be held by the court that the prosecution has proved the accused received the amount towards gratification."

In the instant case, the defense has raised various B presumptions to disprove the prosecution case. However, it has not been able to adduce evidence before us, on the basis of which the presumption under Section 20 of P.C. Act could be rebutted.

C 12. On the question of demand, learned counsel for the respondent stated that the allegations in the complaint with regard to prior demand were false as the A.O. was on election duty on 9.3.1995 and 10.3.1995. The defense contended that the bribe was made for the first time on 9th or 10th of March D 1995 as alleged in the complaint. The defense has tried to take the plea of *alibi*. However, in the complaint the exact date of visit is not mentioned. On the basis of an approximation, we cannot assume that the demand was made on 9th or 10th of E March, 1995. The facts of the case also bring to light that the complainant went to the office of the accused on 18.3.1995, he again went to the office of the A.O. and as a result the demand was reduced from Rs.1000/- to Rs.500/-. This Court has observed in ***Jitendra Kumar Vs. State of Haryana***, F (2012) 6 SCC 204, that "the plea of *alibi* in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the home of their relatives." The accused has neither taken the plea of *alibi* for the visit on the 18.3.1995 G and nor has proved the factum of not being present on the first date when the alleged demand was made, beyond all doubt. Therefore, we are of the view that the probability of his not being present cannot be considered.

H

13. One of the suggestions given by the accused respondent is that the entire trap was laid down due to the inimical relations with document writers, Chepu Chennaiah and his son-in-law Nageshwar Rao. The defense also suggests that the complainant was a petty vendor who has no children and the second wife alone is in existence, and therefore, execution of the Will Deed was not required. Another possibility as stated by the defense was that the complainant was carrying two sets of amounts, one in his banian pocket and other in the shirt pocket. The amount of Rs.81/- he was carrying in the banian pocket, whereas the tainted amount he was carrying in the shirt pocket and he could have touched the tainted amount at the time of taking out the registration fee. The suggestion as to Nageshwar Rao and Chepu Chennaiah setting up the trap to implicate the accused seems to be very farfetched. All the remaining above mentioned suggestions are not adduced by any direct or circumstantial evidence, as required under law.

14. Thus, the accused respondent has not successfully rebutted the presumption under Section 20 of the P.C. Act. The prosecution, on the other hand, has established the demand and acceptance of the tainted money. The recovery also has gone unchallenged. Therefore, we strike down the order of acquittal passed by the High Court in Criminal Appeal No.149 of 2000. We restore the judgment and order dated 24.1.2000 rendered by the Principle Special Judge for SPE & ACB cases, City Civil Court, Hyderabad, in C.C. No.10 of 1996, convicting the accused respondent under Sections 7 and 13(1)(d) read with Section 13(2) of P.C. Act and sentence him to suffer one year rigorous imprisonment under each count and also to pay a fine of Rs.1000/- under each count, in default to suffer simple imprisonment for two months under each count.

A Both the substantive sentences are to run concurrently. This appeal is accordingly allowed.

Nidhi Jain Appeal allowed.

B

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