V. Venkata Subbarao vs State Represented By Inspector Of ... on 12 December, 2006

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

CASE NO.:
Appeal (crl.) 970 of 2000

PETITIONER:
V. Venkata Subbarao

RESPONDENT:
State represented by Inspector of Police, A.P.

DATE OF JUDGMENT: 12/12/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T S.B. Sinha, J.

Appellant herein was working as a Surveyor in the Mandal Revenue Office. He was a military personnel.

Admittedly, a demand was made by a Mandal Revenue Officer (MRO) of P. Bhemavaram village of Butchayyupate Mandalam in Vishakhapatnam District for allowing P.W.3 (M. Subrahmanya Raju) to cut and remove casurina trees. P.W.2-Amaraneni Ammarao sold the land in question to P.W.3. He made a complaint before the Inspector of Police, Anti Corruption Bureau alleging that he had purchased 4 acres of land with casurina growth and the same was being objected by the MRO on the premise that a part thereof belonged to the Government.

The MRO, allegedly, wanted determination of the said question and restrained him from lifting any casurina growth. He met the said MRO on the next day informing him that no part of the Government land was mixed up with his land. Allegedly, a demand for a sum of Rs.5,000/- was made from him by the MRO. While the talks were going on, the appellant, allegedly, intervened and asked him to pay a sum of Rs.2,000/-. When he again met the MRO, he was informed that he would not be permitted to remove the casurina trees until the demanded amount was paid. On the basis of the said complaint dated 11.12.1988, a purported pre-trap proceedings started at 3 p.m. on 12.12.1988. The trap party consisting of 8 persons, allegedly, started for the village of which Appellant was a resident. They reached the village in the evening. The informant did not know the location of the residential house of the appellant. According to P.W.2, an unknown person had led

them thereto. The said person examined himself as D.W.1 being Yannamsetti Appalanaidu and not by the prosecution. Offer of the said sum of Rs.2,000/- was, allegedly, made to the appellant by way of gratification, which he allegedly accepted. He is said to have been caught red handed.

Apart from usual pleas, the appellant categorically took the plea of false implication stating that he had animosity with the local M.L.A. Shri Yeeri Naidu and one Shri Rama Murthy, the Surpanch of P. Bhimavaram village. Admittedly, son of the appellant was working as an assistant to Shri Yeeri Naidu. The said Shri Ram Murthy nurtured grudge against the appellant for not granting D-Form pattas to him and his family members. The raid was conducted at the instance of Shri Ram Murthy.

The learned Special Judge analysed the evidences brought on record by the prosecution in great details. In his judgment, the learned Trial Judge considered the matter from various angles, viz., (i) peculiar facts of the case;

(ii) nature and conduct of P.W.2-the complainant (who was held to be wholly untrustworthy); (iii) the manner in which trap proceedings were undertaken by the Anti Corruption Bureau and which were, thus, held to be not reliable as it was brought on records that Shri Ram Murthy also indirectly participated in the said trap proceedings and, in particular, P.W.2 was brought by him to the village; (iv) Although, the prosecution witnesses categorically stated that the appellant, upon acceptance of the tainted amount, counted the same with both of his hands, only fingers of one of his hand turned pink; (v) the trap party came in and asked the A.O. to produce the amount, which he denied to have accepted; and allegedly, at that time three more people entered the house and stated that the amount was available in one of the rooms; (vi) In Exhibit P.7 post trap panchanama, the words 'from bed room corner, the cash has been picked up by A.O. and handed over to the Inspector', has been interpolated; and (vii) there were contradictions and inconsistencies in the evidences of the prosecution witnesses, vis-`-vis, their statements before the Investigating Officer.

On an appeal made by the respondent, the High Court, however, allowed the criminal appeal, principally relying on the provisions of Section 20 of the Prevention of Corruption Act, on the premise that the tainted money had been recovered from the possession of the appellant. As regards the prosecution case that the amount was meant to be given to the Mandal Officer, the High Court opined that the appellant had abetted the offence which is also punishable with equal rigour.

Mr. Y. Raja Gopala Rao, learned counsel appearing on behalf of the appellant, in support of this appeal, inter alia, would submit that the High Court should not have interfered with a well-reasoned judgment of the learned Special Judge.

Mr. P. Vinay Kumar, learned counsel appearing on behalf of the respondent would support the judgment.

It is one of the few cases where apparently an innocent officer appears to have been prosecuted for no fault on his part.

P.W.2 had sold away his land to P.W.3. The casurina growth was being cut by its owner, namely, P.W.3. The purported obstruction in his activity came from the Mandal Revenue Officer and not from the appellant. A complaint was made against four persons, the MRO being one of them. Indisputably, it was the MRO who had asked for the said sum. P.W.2, although, went to the said MRO continuously for a few days, no attempt was made by him to offer the sum to the said officer himself. The complaint was made 15 days after the alleged demand. In the meanwhile, the casurina growth was cut and removed by P.W.3 without any further hindrance purported to be relying on or on the basis of the assurances made by P.W.2 that the dispute had been settled. The complaint was made to the Inspector of Police after a period of fifteen days from the date of original demand.

The purported role played by the appellant, when the demand was made by the MRO, was said to be a mere intervention resulting in reduction of the amount of demand from Rs.5,000/- to Rs.2,000/-, which could not be substantiated. It is not the case of the prosecution that he demanded any sum for himself.

If the casurina growth had already been cut and lifted by P.W.3, the question of any demand being persisted would not arise. The deliberate and planned manner in which the trap is said to have been made; the purported demand made by the MRO and the role played by the appellant, betrays all comprehensions. The prosecution did not explain as to why the complaint had been made after 15 days. No evidence has been led as to on what basis P.W.2 could assure P.W.3 that he had already talked to the Mandal Revenue Officer, and thus the latter could remove the casurina growth, which he did. The learned Trial Judge found the evidence of P.W.2 and P.W.3 wholly unreliable, inter alia, on the ground that they had made a lot of improvements in their testimonies. They failed to explain delay in lodging report and in the process prevaricated the case from stage to stage.

It is a matter of great concern that the investigators would interpolate documents. It was found to have been done by the learned Special Judge. The High Court did not reverse the said finding. The learned Special Judge found that Shri Ram Murthy, who was inimical towards the appellant, had scribed Exhibit P.3 report. Even the Investigating Officer did not disclose as to who was the author thereof. Therein the purported amount of bribe demanded was corrected to Rs.2,000/-. What was the original sum mentioned therein is not stated. P.W.2 is said to have met the D.S.P., A.C.B., but P.W.6 says that the said Officer was on leave and he had himself collected the said Exhibit P.3 report from P.W.2.

Illegalities committed in the trap proceedings are galore. The complaint Exhibit P.3 was made on 11.12.1988. P.W.2 did not state that he was asked to report on the next day.

According to P.W.2, he had attended his office on 12.12.1988 at 2.30 p.m., but the documentary evidence brought on records established that he met the Inspector at 12.30 p.m. According to P.W.6, it takes at least 2 to 3 hours to commence pre-trap proceedings, but in this case it was arranged within 40 minutes. The trap party proceeded in an official car. Eight persons travelled in the same car. Why so many persons travelled in one car, is not explained. Why so many persons had to travel together is also beyond our comprehension. A trap proceeding envisages secrecy and not a wide publicity. It reached Chodavaram at about 6.10 p.m. P.W.2, admittedly, was not travelling with

them. He was taken to the spot by the said Shri Ram Murthy.

P.W.2 did not know D.W.1 at all. It was D.W.1 who not only led the raiding party to the house of the appellant, he pressed the call bell also. Why services of an unknown person, who was not known to P.W.2, were taken, remained to be explained. Even the circumstances in which his services had to be obtained were not disclosed.

The appellant, at that time, had already taken his dinner. They were, allegedly, taken inside a bed room, which is again wholly unlikely.

According to P.W.2, after him several other persons entered the room whom he did not know. Why persons who were not connected with the raid gathered and entered into the room and even could know in which room the money was lying is a mystery.

Although, according to P.W.2, he and the appellant met in one room alone, when the Inspector asked him to disclose as to where the money was, response came from three other persons and not from the appellant. Strangely P.W.2 did not disclose the fact of availability of the money in a particular room to the Inspector.

P.W.2 stated the appellant had counted the money with both of his hands, but only the fingers of his right hand, when dipped in the sodium carbonate solution, rendered the positive result.

We fail to understand as to why in post trap panchnama Exhibit P.7, the words that 'the money was found to be in a bed room corner and the cash had been picked up by A.O. and handed over to the Inspector', had to be interpolated.

It is a mystery as to why no offer was made to the M.R.O. directly or why the raiding party did not visit his house? The prosecution witnesses even did not know in which village the M.R.O., Surveyor and Revenue Inspector had their respective residences. A short intervention made by the appellant was purported to be in relation to the quantum of amount. The offer, therefore, should have been made to the M.R.O. directly. He was named in the complaint, but along with him and the appellant, two others were also named. Why no action had been taken as against three other persons, is not known. Why M.R.O., who had made a demand, on whose behalf the appellant had accepted the amount, had escaped prosecution has not been explained.

It is also accepted that before the Sanctioning Authority, the vital documents showing involvement of the M.R.O. had not been produced. The Sanctioning Authority, therefore, did not have any occasion to apply their mind to the entire materials on record and in that view of the matter, the sanction is, therefore, vitiated in law. Conduct of the officers of the respondent who had taken recourse to suppressio veri deserves serious condemnation.

Submission of the learned counsel for the State that presumption has rightly been raised against the appellant, cannot be accepted as, inter alia, the demand itself had not been proved. In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the

Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved. It reads as under :

> "20. Presumption where public servant accepts gratification other than legal remuneration. (1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) or sub- section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

Furthermore, even in such a case, the burden on an accused does not have to meet the same standard of proof, as is required to be made by the prosecution.

In M.S. Narayana Menon @ Mani vs. State of Kerala & Anr. [(2006) 6 SCC 39], this Court held :

> "Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with a defendant in a civil proceeding."

In Union of India through Inspector, CBI vs. Purnandu Biswas [(2005) 12 SCC 576], it was opined :

> "In this case demand of illegal gratification by the respondent has not been proved. Furthermore, Section 20 of the Act is not attracted as the respondent had been charged for commission of an offence under Section 13(1)(d) read with Section 13(2) of the Act."

Moreover, the High Court recorded a judgment of acquittal. The High Court should not have dealt with a detailed judgment of acquittal in such a slipshod manner.

In State through Inspector of Police, A.P. vs. K. Narasimhachary [(2005) 8 SCC 364], this Court held that when two views are possible, a judgment of acquittal is to be justified.

In Kalyan Singh vs. State of Maharashtra [2006 (12) SCALE 577], this Court has held :

> "The High Court while dealing with the matter, in our considered opinion, failed to apply the proper tests in deciding a case where a judgment of acquittal has been recorded. The views of the learned Trial Judge cannot be said to be wholly unsustainable. It is now well known that if two views are possible, the Appellate Court shall not ordinarily interfere with the judgment of acquittal. We do not, however, mean to lay down the law that the High Court, in a case where a judgment of acquittal is in question, would not go into the evidence brought on records by the

> prosecution or by the State but we would like to point out that even if the High Court reversed the judgment of acquittal recorded by the Trial Court, it is incumbent on the High Court to arrive at the conclusion that no two views are possible."

{See also Samghaji Hariba Patil vs. State of Karnataka [2006 (10) SCALE 283]; and Umrao vs. State of Haryana & Ors. [AIR 2006 SC 2152].} For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. The appellant is on bail. He is discharged from the bail bonds.