

K. Shanthamma vs The State Of Telangana on 21 February, 2022

Author: Abhay S. Oka

Bench: Abhay S. Oka, Ajay Rastogi

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NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 261 OF 2022
(Arising out of SLP (Criminal) No. 7182 of 2019)

K. SHANTHAMMA

... APPELLANT

v.

THE STATE OF TELANGANA

... RESPONDENT

J U D G M E N T

ABHAY S. OKA, J.

Leave granted.

1. The Special Court under the Prevention of Corruption Act, 1988 (for short ‘the PC Act’) convicted the appellant for the offences punishable under Sections 7 and 13 (1)(d) read with Section 13(2) of the PC Act. The order of conviction has been confirmed in appeal by the High Court of Telangana.

2. The prosecution case, in brief, is that the appellant was working as a Commercial Tax Officer at Secunderabad. PW1 Shri R.Seetharamulu @ Sharma is the complainant. PW1 was working at the relevant time as a supervisor in Farmers’ Service Co-operative Society (for short ‘the said Society’). He was doing the work of filing returns of commercial tax of the said Society. Though the assessment of the said Society for the year 1997-98 was completed, till February 2000, the returns of the said Society for the year 1996-97 remained pending for assessment. The appellant issued a notice dated 14th February 2000 calling upon the said Society to produce cash book, general ledger, and purchase and sales statements for the year 1996-97. In February 2000, on the instructions of

the Managing Director of the said Society, PW1 attended the office of the appellant along with the concerned record. After PW1 showed the documents to the appellant, she called PW4 Ahmed Moinuddin, ACTO, and directed him to verify the records. The case of PW1 is that on 24th February 2000, when he met the appellant, she demanded a bribe of Rs.3,000/- for issuing an assessment order. Though he showed unwillingness to pay the amount, for consecutive three days, the appellant reiterated the demand. On 29th February 2000, PW1 requested the appellant to issue final assessment order. At that time, the appellant informed PW1 that unless the bribe as demanded is paid, she will not issue final assessment order. On 23rd March 2000, PW1 again approached the appellant when she scaled down her demand to Rs.2,000/-.

3. On 27th March 2000, PW1, along with the Managing Director of the said Society, visited the office of the Anti- Corruption Bureau (ACB) at Hyderabad. PW1 filed a written complaint to the Deputy Superintendent of Police, ACB. Accordingly, a trap was laid. The allegation of the prosecution is that when PW1 tendered the tainted currency notes of Rs.2,000/- to the appellant in her office, instead of taking the amount directly, she took out a diary from her table drawer and opened the same. She asked the appellant to keep the currency notes in the diary. Accordingly, PW1 kept the notes in the said diary. After closing the diary, the appellant kept the same in her table drawer. She locked the table drawer and kept the key in her handbag. After that, she called ACTO along with the record. The appellant signed on the last page of the ledger and cash book by putting the date as 26th February 2000. Thereafter, the appellant directed the attender to affix an official rubber stamp below her signature. Accordingly, a rubber stamp was put by the attender. PW1 collected the general ledger and cash book from the attender, and after coming out of the office, he gave a signal to the trap party. Then the trap party entered the office of the appellant. When the appellant was questioned by the Deputy Superintendent of Police, she showed her right-hand side table drawer. She took out the key of the drawer from her handbag and opened the table drawer. She took out the diary from the drawer and placed the same on the table. After the diary was opened by the Deputy Superintendent of Police, he found a wad of currency notes. The numbers on the currency notes tallied with the serial numbers of currency notes described in pre-trap proceedings. After that, the seizure was carried out, and necessary formalities were completed. The Special Court found that the demand of bribe and acceptance of bribe was proved by the prosecution. The High Court has affirmed the said finding.

4. Mrs. V. Mohana, the learned Senior counsel appearing for the appellant, has taken us through the evidence of the prosecution witnesses. Her first submission is that the demand for a bribe by the appellant was not proved, and the evidence of PW1 to that effect is an improvement. Moreover, LW8, who was instructed by the Deputy Superintendent of Police of ACB to accompany PW1 inside the chamber of the appellant, did not enter the chamber along with the appellant. She pointed out that when the sodium carbonate test was conducted, the fingers of the appellant did not turn pink; therefore, it was not established that she accepted the currency notes. The alleged recovery of currency notes was shown from a diary. The recovery has not been proved. She pointed out the appellant's defence that PW1 deliberately kept the currency notes in the diary lying on her table when she went to the washroom before leaving her office. Her submission is that the recovery of currency notes has not been proved.

5. The learned Senior Counsel pointed out that the notice dated 26th February 2000 issued by the appellant was admittedly served on the said Society on 15th March 2000, which recorded that the net turnover of the said Society was nil in the year 1996-97. Therefore, the Society was not liable to pay any tax. Her submission is that this makes the entire prosecution case about the demand extremely doubtful. She pointed out that PW4, ACTO had a grudge against the appellant as, admittedly on 22nd March 2000, the appellant had served a memo on him pointing out the defaults committed by him in the discharge of his duties. The learned counsel relied upon various decisions of this Court in support of the proposition that unless the demand and acceptance of bribe are established, a presumption under Section 20 of the PC Act will not apply. She urged that the demand and acceptance have not been proved. She also pointed out the case made out by the appellant in her statement under Section 313 of the Code of Criminal Procedure, 1973 (for short “the CrPC”). Her defence is that at about 5.30 pm on 27th March 2000, she went to the washroom attached to her chamber before leaving the office. When she came back, she found PW1 sitting in her room. She informed PW1 that the file was no longer pending with her. Afterward, she called PW4-ACTO through the attender and returned the account books to PW1. She pointed out that PW7, P.V.S.S.P. Raju, and PW8, U.V.S.Raju, the then Deputy Superintendent of Police, ACB, Hyderabad, accepted that there is a washroom attached to the chamber of the appellant. She submitted that both the Courts have committed an error by convicting the appellant.

6. Ms. Bina Madhavan, the learned counsel appearing for the respondent, supported the impugned Judgments. She pointed out that the evidence of PW1 on continuous demands made by the appellant is trustworthy as there is no reason for PW1 to make any false allegation or falsely implicate the appellant. She submitted that the tainted notes were found in the diary of the appellant, which was kept in her table drawer. She was in possession of keys of the table drawer. She herself opened the table drawer and produced the diary from her custody in which tainted notes were kept. Her submission is that though communication may have been served on the said Society on 15th March 2000 recording that the Society is not liable to pay any amount, the appellant did not issue the final assessment order. She pointed out that the demand made by the appellant was for issuing final assessment order, which was issued on the day of the trap. Her submission is that the Special Court and the High Court, after appreciating the evidence, have recorded findings of fact based on evidence on record. Her submission is that under Article 136 of the Constitution of India, no interference is called for.

7. We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the PC Act. In the case of P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another¹, this Court has summarised the well-settled law on the subject in paragraph 23 which reads thus:

(2015) 10 SCC 152 “23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail.

Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.” (emphasis added)

8. The prosecution’s case is that the appellant had kept pending the return of commercial tax filed by the said Society for the year 1996-97. The appellant had issued a notice dated 14th February 2000 to the said Society calling upon the said Society to produce the record. Accordingly, the necessary books were produced by the said Society. The case made out by PW1 is that when he repeatedly visited the office of the appellant in February 2020, the demand of Rs.3,000/- by way of illegal gratification was made by the appellant for passing the assessment order. However, PW1, in his cross- examination, accepted that the notice dated 26th February 2000 issued by the appellant was received by the said Society on 15th March 2000 in which it was mentioned that after verification of the books of accounts of the said Society, exemption from payment of commercial tax as claimed by the said Society was allowed. PW1 accepted that it was stated in the said notice that there was no necessity for the said Society to pay any commercial tax for the assessment year 1996-97. According to the case of the PW1, on 23rd March 2000, he visited the appellant’s office to request her to issue final assessment order. According to his case, at that time, initially, the appellant reiterated her demand of Rs.3,000/-. But she scaled it down to Rs.2,000/-. Admittedly, on 15th March 2000, the said Society was served with a notice informing the said Society that an exemption has been granted from payment of commercial tax to the said Society. Therefore, the said Society was not liable to pay any tax for the year 1996-97. The issue of the final assessment order was only a procedural formality. Therefore, the prosecution’s case about the demand of bribe made on 23rd March 2000 by the appellant appears to be highly doubtful.

9. PW1 described how the trap was laid. In the pre-trap mediator report, it has been recorded that LW8, Shri R.Hari Kishan, was to accompany PW1 - complainant at the time of offering the bribe. PW7 Shri P.V.S.S.P. Raju deposed that PW8 Shri U.V.S. Raju, the Deputy Superintendent of Police, ACB, had instructed LW8 to accompany PW1 - complainant inside the chamber of the appellant. PW8 has accepted this fact by stating in the examination-in-chief that LW8 was asked to accompany PW1 and observe what transpires between the appellant and PW1. PW8, in his evidence, accepted that only PW1 entered the chamber of the appellant and LW8 waited outside the chamber. Even PW7 admitted in the cross- examination that when PW1 entered the appellant’s chamber, LW8 remained outside in the corridor. Thus, LW8 was supposed to be an independent witness accompanying PW1. In breach of the directions issued to him by PW8, he did not accompany PW1 inside the chamber of the appellant, and he waited outside the chamber in the corridor. The prosecution offered no explanation why LW8 did not accompany PW1 inside the chamber of the appellant at the time of the trap.

10. Therefore, PW1 is the only witness to the alleged demand and acceptance. According to PW1, firstly, the demand was made of Rs.3,000/- by the appellant on 24th February 2000. Thereafter, continuously for three days, she reiterated the demand when he visited the appellant’s office. Lastly, the appellant made the demand on 29th February 2000 and 23rd March 2000. On this aspect, he

was cross-examined in detail by the learned Senior Counsel appearing for the appellant. His version about the demand and acceptance is relevant which reads thus :

“In the vicinity of office of AO the jeep, in which we went there was stopped and I was asked to go into the office of AO and the trap party took vantage positions. Accordingly, I went inside the office of AO. I wished AO. At that time apart from AO some other person was found in the office room of AO and he was talking to the AO. AO offered me a chair. After discussion with the AO the said other person left the room of AO. I informed AO that I brought the bribe amount as demanded by her and also asked her to issue the Final Assessment Orders. Then I took the said tainted currency notes from my shirt pocket and I was about to give the same to the AO and on which instead of taking the same amount directly by her with her hands she took out a diary from her table drawer, opened the diary and asked me to keep the said amount in the diary. Accordingly, I kept the amount in the said diary. She closed the said diary and again kept the same in her table drawer and locked the drawer and kept the keys in her hand bag which was hanging to her seat. She pressed the calling bell and a lady attender came into the room of AO, then she instructed the lady attender to call concerned ACTO to her along with the concerned society records.

Accordingly, ACTO came to AO along with record. After going through the Ledger and Cash Book etc., AO signed on the last page of the said Ledger and Cash Book mentioning 26.02.2000 below her signature in the said register though she signed on 27.03.2000 in my presence. AO directed her attender to affix official rubber stamp below her signature in the Ledger and Cash Book and accordingly attender affixed the same. AO also signed on the office note of Final Assessment Orders at that time. Thereafter, I collected the General Ledger and Cash Book from the attender after affixing the said rubber stamp thereon and came out of the office of AO and relayed the pre-arranged signal to the trap party.” (underlines supplied)

11. Thus, PW1 did not state that the appellant reiterated her demand at the time of trap. His version is that on his own, he told her that he had brought the amount. What is material is the cross-examination on this aspect. In the cross- examination, PW1 accepted that his version regarding the demand made by the appellant on various dates was an improvement. The relevant part of the cross-examination of the appellant reads thus:

“I did not state to ACB Inspector in section 161 Cr.P.C. statement that on the evening of 24.02.2000 I met the AO and that she demanded the bribe. I did not mention in Ex.P3 complaint that continuously for 3 days after 24.02.2000 I met the AO and the AO reiterated her demand. I did not mention in Ex.P3 complaint that on 29.02.2000 I approached the AO and the AO demanded bribe of Rs.3,000/-

and that unless I pay the said bribe amount she will not issue final assessment orders. I did not state in my Sec.164 statement before the Magistrate that 13.03.2000 to 16.03.2000 I was on leave and from 01.03.2000 to 12.03.2000, I was engaged in recovering the dues of the society. It is not true to

suggest that I did not meet the AO continuously 3 days i.e., on 25th, 26th and 27th of February, 2000 and that 27.02.2000 is Sunday. It is not true to suggest that I did not meet the AO in the evening of 24.02.2000 and that AO did not demand any money from me. I did not state in my section 161 Cr.P.C. statement to Inspector of ACB that before I left the office of DSP on the date of trap I made a phone call enquiring about the availability of AO and the AO was in the office and informed me that she should be available in the office from 6.00 to 7.00 P.M. on that day so also in my Sec.164 Cr.P.C. I made such a phone call from the office of the DSP, ACB. I do not remember as to from which phone number I made phone call on that day. I cannot describe office telephone number of the AO. It is not true to suggest that I did not make any such phone call to AO and that she did not give any such reply to me. I did not state to ACB Inspector in my 161 Cr.P.C. statement or to the Magistrate in my S.164 Cr.P.C. statement that I went inside the office of AO and I wished AO and at that time apart from AO some other person was found in the office room of AO and that he was talking to the AO and that the AO offered me a chair and that after discussion with the AO the said person left the room of AO and then I informed the AO that I brought the bribe amount. I did not state that said aspects to DSP during the post trap proceedings also.

(underlines supplied)

12. Thus, the version of PW1 in his examination-in-chief about the demand made by the appellant from time to time is an improvement. As stated earlier, LW8 did not enter the appellant's chamber at the time of trap. There is no other evidence of the alleged demand. Thus, the evidence of PW1 about the demand for bribe by the appellant is not at all reliable. Hence, we conclude that the demand made by the appellant has not been conclusively proved.

13. PW2, Shri B.D.V. Ramakrishna had no personal knowledge about the demand. However, he accepted that on 15th March 2000, the said Society received a communication informing that the said Society need not pay any tax for the year 1996-97. PW3 Shri L. Madhusudhan was working as Godown Incharge with the said Society. He stated that on 15th March 2000, when he visited the appellant's office, ACTO served the original notice dated 26th February 2000 in which it was mentioned that the Society was not liable to pay any tax. It is his version that when he met the appellant on the same day, she enquired whether he had brought the demanded amount of Rs.3,000/-. However, PW3 did not state that the appellant demanded the said amount for granting any favour to the said society.

14. PW 4 Ahmed Moinuddin was ACTO at the relevant time. He deposed that on 27th March 2000, the appellant instructed him to prepare the final assessment order, which was kept ready in the morning. He stated that he was called at 6 pm to the chamber of the appellant along with books of the said Society. At that time, PW1 was sitting there. He stated that the appellant subscribed her signature on a Register of the said Society and put the date as 26th February 2000 below it. He was not a witness to the alleged demand. However, in the cross-examination, he admitted that the appellant had served a memo dated 21st March 2000 to him alleging that he was careless in performing his duties.

15. Thus, this is a case where the demand of illegal gratification by the appellant was not proved by the prosecution. Thus, the demand which is sine quo non for establishing the offence under Section 7 was not established.

16. Hence, the impugned Judgments will have to be set aside. Accordingly, the appeal is allowed. The conviction of the appellant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act is set aside and the appellant is acquitted of the charges framed against her.

.....J (AJAY RASTOGI)J (ABHAY S. OKA) New Delhi;

February 21, 2022.