

N.Sunkanna vs State Of A.P on 14 October, 2015

Equivalent citations: 2015 AIR SCW 6764, 2016 (1) SCC 713, AIR 2015 SC (CRI) 1943, AIR 2016 SC (SUPP) 711, (2016) 1 ORISSA LR 8, (2016) 4 PAT LJ 418, 2015 CRILR(SC MAH GUJ) 1164, (2016) 92 ALLCRIC 468, (2016) 4 MH LJ (CRI) 8, (2016) 1 ALLCRIR 789, 2016 (1) SCC (CRI) 544, (2015) 4 RECCRIR 797, (2015) 4 BOMCR(CRI) 780, (2015) 4 ALLCRILR 768, (2015) 10 SCALE 690, (2016) 157 ALLINDCAS 179 (SC), (2016) 157 ALLINDCAS 73 (SC), (2015) 4 CRILR(RAJ) 1164, (2015) 4 CURCRIR 173, (2015) 4 JLJR 329, (2015) 62 OCR 1129, 2015 CRILR(SC&MP) 1164, 2015 ALLMR(CRI) 4551, (2015) 3 UC 2042, (2016) 1 ALD(CRL) 230, 2015 (4) CRIMES 308 SN

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Bench: C.Nagappan, M.Y. Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1355 OF 2015
[Arising out of SLP (CrI.) No.2958 of 2011]

N. Sunkanna

...

Appellant

versus

State of Andhra Pradesh

...

Respondent

J U D G M E N T

C. NAGAPPAN, J.

Leave granted.

This appeal is directed against the Judgment dated 2.7.2010 passed by the High Court of Andhra Pradesh affirming the conviction and sentence passed by the Additional Special Judge for SPE and ACB cases, City Civil Court Hyderabad, whereby the appellant-accused has been found guilty of commission of offences under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The appellant-accused has been sentenced to undergo rigorous imprisonment for one year for each of the offences and also to pay a fine of Rs.1000/- in default to suffer simple

imprisonment for three months.

The case of the prosecution is that the appellant-accused was, at the relevant point of time working as Deputy Tahsildar, Civil Supplies Mandal Revenue Officer, Kurnool in the State of Andhra Pradesh. The complainant PW- 1 K. Sudhakar Reddy had a Fair Price Shop at Narsimha Reddy Nagar Kurnool. It is alleged by the complainant that the appellant-accused used to collect Rs.50/- per month from each fair price shop dealer in Kurnool as monthly mamool and when he visited the shop of the complainant on 17.9.1993 he demanded Rs.300/- towards the monthly mamools from April 1993 by threatening to seize the stocks and foist a case against him. As the complainant was not willing to pay the said amount he had approached PW-7, Deputy Superintendant of Police, ACB, Kurnool and submitted Exh.P.1 complaint in writing on 18.9.1993 to him.

PW-7 the Deputy Superintendant of Police, registered a case and issued Exh.P.9 F.I.R. On 20.9.1993 he secured PW-2 N. Ravindranath Reddy, Senior Assistant in the office of State Housing Corporation, Kurnool and LW-3 Abdul Jallel, to act as Panch Witnesses and explained the significance of chemical test to them. He got the currency notes treated with phenolphthalein powder and entrusted the same to the complainant. Exh.P-3 is the pre-trap proceedings. They reached Mandal Revenue Office Kurnool at 1.30 p.m. Thereafter, according to the prosecution the complainant relayed pre-arranged signal to them at 1.45 p.m. and they entered the office and sodium carbonate solution test was conducted on the right hand fingers of the accused as well as the left shirt pocket. Both the tests proved to be positive and tainted currency notes were recovered from the possession of the accused. On completion of investigation the sanction was obtained and charge-sheet was filed against the appellant-accused. The charges were framed to which the accused pleaded not guilty. In the trial PWs 1 to 8 were examined and Exh. P1 to P9 and M.Os 1 to 9 were marked on the side of the prosecution. The accused filed written statement and examined DWs 1 to 4 and marked Exh. D1 to D8 on his side. The plea of the accused was that target was fixed by the Department to collect contribution for purchase of National Savings Certificate and the amount that was given by the complainant was towards that only.

We heard Mr. Guntur Prabhakar, learned counsel for the appellant and Mr. A. Venkateswara Rao, learned counsel appearing on behalf of the respondent- State. The complainant K. Sudhakar Reddy was examined as PW-1 and he did not support the prosecution case. He has testified that Exh.P-1 complaint is in his hand writing but the contents are not true and he wrote the same as dictated by the ACB officials and he gave the amount of Rs.300 to the accused with a request to purchase National Savings Certificates. The prosecution declared him as hostile. PW-2 N. Ravindranath Reddy, the Panch witness had testified that he was summoned by PW-7 DSP E. Damodar on 20.9.1993 and he went through the complaint and verified the contents from the complainant who acknowledged the fact that the accused had demanded a sum of Rs.300/- as illegal gratification. Though the complainant did not support the prosecution case it is on the aforesaid basis the trial court as well as the High Court held the offences as proved and in doing so they have also relied on the legal presumption under Section 20 of the Act.

The prosecution examined the other fair price shop dealers in Kurnool as PWs 3, 4 and 6 to prove that the accused was receiving monthly mamools from them. PWs 4 and 6 did not state so and they

were declared hostile. PW-3 though in the examination-in-chief stated so, in the cross-examination turned round and stated that the accused never asked any monthly mamool and he did not pay Rs.50/- at any time. The prosecution has not examined any other witness present at the time when the money was demanded by the accused and also when the money was allegedly handed-over to the accused by the complainant. The complainant himself had disowned his complaint and has turned hostile and there is no other evidence to prove that the accused had made any demand. In short there is no proof of the demand allegedly made by the accused. The only other material available is the recovery of the tainted currency notes from the possession of the accused. The possession is also admitted by the accused. It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine-qua-non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of three-Judge Bench of this Court in B. Jayaraj vs. State of Andhra Pradesh [(2014) 13 SCC 55] and P. Satyanarayana Murthy vs. The District Inspector of Police and another [(2015) (9) SCALE 724]. In the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent. The judgments of the Courts below are, therefore, liable to be set aside. For the aforesaid reasons the appeal is allowed and the conviction of the appellant under Section 7 and under Section 13(1)(d) read with Section 13(2) of the Act and the sentences imposed are set aside and he is acquitted of the charges. The bail bond, if any, furnished by the appellant be released.

.....J. (M.Y. Eqbal)J. (C.Nagappan) New Delhi;

October 14, 2015