

B.Jayaraj vs State Of A.P on 28 March, 2014

Equivalent citations: 2014 AIR SCW 2080, 2014 (13) SCC 55, AIR 2014 SC(CRI) 1041, (2014) 58 OCR 175, (2014) 2 GUJ LH 149, (2014) 1 ORISSA LR 1014, (2014) 2 ALLCRIR 1215, (2014) 137 ALLINDCAS 41 (SC), (2014) 85 ALLCRIC 1000

Author: Ranjan Gogoi

Bench: N.V. Ramana, Ranjan Gogoi, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 696 OF 2014
(Arising Out of SLP (Crl.) No.2085 of 2012)

B. JAYARAJ

... APPELLANT (S)

VERSUS

STATE OF A.P.

... RESPONDENT (S)

J U D G M E N T

RANJAN GOGOI, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 25.04.2011 passed by the High Court of Andhra Pradesh affirming the order of conviction passed by the Additional Special Judge for SPE & ACB cases, City Civil Court Hyderabad, whereby the accused appellant has been found guilty of commission of the offences under Sections 7 and 13 (1)(d)(i)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short “the Act”). The accused appellant 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 more.

3. According to the prosecution, the accused appellant was, at the relevant point of time, working as a Mandal Revenue officer (MRO) in the Ranga Reddy District of the State of Andhra Pradesh. The complainant K.Venkataiah (PW-2) had a fair price shop in Dadupally village. On 8.11.1995, the complainant, it is alleged, had approached the accused appellant for release of essential

commodities against his shop for the month of November, 1995. The accused appellant, it is claimed, demanded a bribe of Rs.250/- to issue the release order. As the complainant was not willing to pay the said amount, he had approached listed witness No.9 K.Narsinga Rao, (since deceased) Deputy Superintendent of Police, ACB, Hyderabad on 9.11.1995 and submitted a written complaint (Exbt.P-11) before him. According to the prosecution, LW-9 after verifying the contents of the complaint registered a case and issued Exhibit P-12 (FIR). LW-9 directed the complainant to come with the bribe amount on 13.11.995. It is also alleged that LW-9 summoned PW-1, S. Hanuma Reddy, Deputy Director of Insurance to act as a panch witness and explained the details of the complaint (Exbt.P-11) to him. Furthermore, according to the prosecution, LW-9 got the currency notes treated with phenolphthalein powder and also explained to PW-1 the significance of the sodium carbonate solution test. The details of the trap that was planned was explained to all concerned including the complainant. Accordingly, the plan was put into execution and on receipt of the pre-arranged signal to the trap laying officer, the police party headed by LW-9, which also included PW-5, rushed into the office of the accused appellant. Thereafter, according to the prosecution, the sodium carbonate solution test was conducted on the right hand fingers of the accused as well as the right shirt pocket. Both tests proved to be positive. The tainted currency notes were recovered from the possession of the accused.

4. Chargesheet was filed against the accused-appellant on completion of investigation. Upon grant of sanction for prosecution, cognizance of the offences alleged was taken and charges were framed to which the accused pleaded not guilty. In the course of the trial 5 witnesses were examined on behalf of the prosecution and 12 documents (Exbt. P-1 to P-12) besides 10 material objects (MOs 1 to 10) were exhibited. The plea of the accused was that on the date of the trap, PW-2, the complainant had put the currency notes in his shirt pocket with a request to have the same deposited in the bank as fee for renewal of the licence of the complainant. It was at this point of time that the police party had come and seized the currency notes after taking the same from his pocket.

5. We have heard Mr. Guntur Prabhakar, learned counsel for the appellant and Mr. Mayur R. Shah, learned counsel appearing on behalf of the respondent-State.

6. PW-2, the complainant, did not support the prosecution case. He disowned making the complaint (Exbt.P-11) and had stated in his deposition that the amount of Rs.250/- was paid by him to the accused with a request that the same may be deposited with the bank as fee for the renewal of his licence. He was, therefore, declared hostile. However, PW-1 (panch witness) had testified that after being summoned by LW-9, K. Narsinga Rao, on 13.11.1995, the contents of Exhibit P-11 (complaint) filed by the complainant PW-2 were explained to him in the presence of the complainant who acknowledged the fact that the accused appellant had demanded a sum of Rs.250/- as illegal gratification for release of the PDS items. It is on the aforesaid basis that the liability of the accused-appellant for commission of the offences alleged was held to be proved, notwithstanding the fact that in his evidence the complainant PW-2 had not supported the prosecution case. In doing so, the learned trial court as well as the High Court also relied on the provisions of Section 20 of the Act to draw a legal presumption as regards the motive or reward for doing or forbearing to do any official act after finding acceptance of illegal gratification by the accused-appellant.

7. In so far as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma Vs. State of A.P.[1] and C.M. Girish Babu Vs. C.B.I.[2]

8. In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-

11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) 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.

9. In so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the Act. In any event, 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. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.

10. For the aforesaid reasons, we cannot sustain the conviction of the appellant either under Section 7 or under 13(1)(d)(i)(ii) read with Section 13(2) of the Act. Accordingly, the conviction and the sentences imposed on the accused-appellant by the trial court as well as the High Court by order dated 25.4.2011 are set aside and the appeal is allowed.

.....CJI.

[P. SATHASIVAM]J. [RANJAN GOGOI]J. [N.V. RAMANA] NEW DELHI, MARCH 28, 2014.

- [1] (2010) 15 SCC 1
- [2] (2009) 3 SCC 779
