

2016 SCC OnLine Kar 8622 : (2016) 6 Kant LJ 171 : (2017) 1 RCR (Cri) 762

In the High Court of Karnataka¹
(BEFORE A.N. VENUGOPALA GOWDA, J.)

B. Ramesh Babu

Versus

State By Police Inspector, Karnataka Lokayukta, City Division,
Bangalore

Criminal Appeal No. 1510 of 2001

Decided on May 6, 2016

JUDGMENT

1. The appellant was convicted for the offences punishable under Sections 7 and 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act'), by the learned Special Judge, Bengaluru Rural and Urban Districts, Bengaluru and sentenced to undergo Rigorous Imprisonment for a period of one year and pay fine of Rs. 2,000/- on each count, in default, to suffer Simple Imprisonment for a period of 2 months with the stipulation that both the sentences shall run consecutively.

2. The accusation which led to the trial of the appellant-accused is, that one Rakesh B. Jain (P.W. 2), lodged a complaint *vide* Ex. P.6, alleging that on 18-7-1997, he submitted an application on behalf of his aunt, Smt. Bharati Ashok Jain (P.W. 7), for issue of a 'House plan', along with allotment letter paying the prescribed fee. The application was submitted before the Executive Engineer, Karnataka Housing Board, and in connection with the same, P.W. 2 approached the accused-appellant, who was working as a Junior Engineer, Karnataka Housing Board, No. 2 Sub-Division, Kengeri Satellite Town. It was alleged that the accused being a public servant, demanded Rs. 1,000/- for the purpose of issue of 'House plan' and asked him to approach with the money. As P.W. 2 was not interested in paying the demanded amount, he lodged complaint *vide* Ex. P.6, and the Lokayukta Police registered criminal case in Crime No. 37 of 1997 (Ex. P.12) and arranged for a trap. The Investigating Agency of Lokayukta, after completing the formalities, conducted the trap on 5-11-1997 and 6-11-1997. During the trap conducted on 6-11-1997, Rs. 1,000/- (M.O. 5) was recovered from the person of the accused. After completion of the investigation, sanction order *vide* Ex. P.11 was obtained from T. Timmegowda (P.W. 6) and charge-sheet was placed before the Special Court for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Act. The accused having appeared in response to the summons issued, pleaded innocence and took the plea of false accusation.

3. The prosecution, in order to substantiate its case against the accused, examined 9 witnesses, as P.Ws. 1 to 9 and marked the documents as Exs. P.1 to P.17 and brought on record-M.Os. 1 to 11. The accused, in order to establish his stand, examined one Lakshmamma, as D.W. 1. The accused in



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his statement under Section 313 of Criminal Procedure Code, 1973 denied the allegations and has submitted a statement in connection with his defence.

4. The learned Trial Judge having regard to the rival contentions, raised the

following points for consideration:

- (i) Whether the prosecution proves beyond reasonable doubt that accused, being public servant, working as Junior Engineer, No. 2 Sub-Division, KHB, Kengeri Satellite Town, Bangalore. On 5-11-1997 at about 6.15 p.m. has demanded and accepted an illegal gratification of Rs. 1,000/- from P.W. 2-Rakesh B. Jain as a motive or reward, to show official favour in favour of complainant in connection with issuing of a copy of the plan pertaining to the house belonging to one Smt. Bharathi Ashok Jain, aunt of the complainant and thereby committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988?
- (ii) Whether the prosecution further proves beyond reasonable doubt that accused, while working as a public servant, by corruptor illegal means or by otherwise abusing his position as public servant obtained for himself a pecuniary advantage of Rs. 1,000/- on 6-11-1997 at about 6.15 p.m. from the complainant and thereby committed an offence under Section 13(1)(d) punishable under Section 13(2) of Prevention of Corruption Act, 1988?
- (iii) Whether the sanction order obtained to prosecute the accused persons produced in this case is valid and proper?
- (iv) What order?

5. The learned Trial Judge divided the case into four segments as follows:

1. Pre-complaint stage - wherein the prosecution wants to prove demand of bribe amount and mutual understanding between the accused and the complainant;
2. Entrustment stage - where the intended bribe amount was handed over to the complainant with some instructions to hand over the said amount to the accused only on demand;
3. Demand and acceptance State - wherein the tainted currency notes were received by accused and recovery of the said amount from accused;
4. Lastly, the amount recovered from the accused is referable to any official favour proposed to be shown by accused in favour of the complainant.

6. By considering the record of the case and after appreciation of the rival contentions, by a judgment dated 22-9-2011 passed in Spl. C.C. No. 33 of 1998, the accused was convicted and sentenced, as stated supra.



7. Challenging the judgment of conviction and the order of sentence this appeal was filed. By a judgment dated 20-7-2006 the appeal was dismissed. In Civil Appeal No. 1570 of 2007, the said judgment was set aside by the Apex Court on 8-9-2015, on the ground that there was no appreciation of evidence on record and the case was remanded for consideration and decision in accordance with law.

8. Sri H.S. Chandramouli, learned Advocate, firstly contended that in the absence of credible evidence in support of the prosecution case, with which the accused was charged, Trial Court has committed error in holding the accused as having demanded and accepted the illegal gratification from the complainant for the purpose of showing an official favor *i.e.*, by abusing his official position as a public servant. Secondly, P.W. 2 being an interested witness and his testimony being untrustworthy and there being inconsistency in the evidence of the prosecution witnesses with regard to the demand of bribe by the accused, the judgment of conviction passed is perverse. Thirdly, the Trial Court has committed error in holding the accused guilty on the basis of the mere

recovery of money, without appreciation of the circumstances under which the money was found with the accused. Fourthly, circumstantial evidence relied upon by the Prosecution being of very weak character, the same could not have been made basis to hold the accused guilty. Learned Advocate submitted that the Prosecution has failed to prove the case beyond all reasonable doubts. Lastly, the assessment and appreciation of evidence by the Trial Court being wholly unjust, there is miscarriage of justice. Learned Counsel submitted that the impugned judgment and order is perverse and based on conjunctures and surmises and hence is liable to be set aside and the appellant acquitted of the charged offences.

9. Sri Venkatesh S. Arbatti, learned Advocate, on the other hand, submitted that there is direct and also circumstantial evidence with regard to the demand and acceptance of bribe amount by the accused. He referred to the evidence of P.Ws. 1, 2, 3 and 9 and submitted that the finding of guilt recorded by the Trial Court being well-founded and there being correct appreciation of the record, no interference is warranted. Learned Advocate made submissions in support of the finding of guilt recorded by the Trial Court and submitted that the appeal be dismissed.

10. There is no dispute with regard to the appellant-accused being a public servant. At the relevant point of time, he was working as Junior Engineer, Sub-Division-2, Karnataka Housing Board, Kengeri Satellite Town, Bangalore. Sanction for Prosecution of the appellant was accorded by P.W. 6, as per Ex. P.11. The finding recorded on Point No. 3 by the Trial Court was not assailed by Sri H.S. Chandramouli.

11. In view of the rival contentions and the record of the case, the points for consideration are:

1. Whether the Prosecution has proved beyond reasonable doubt that the accused while working as a Public Servant demanded and accepted illegal gratification of Rs. 1,000/- from P.W. 1-Rakesh B. Jain, as a motive or reward to show an official favor



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in connection with the plan pertaining to the house belonging to Smt. Bharathi Ashok Jain (P.W. 7) and thereby committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988?

2. Whether the Prosecution has proved beyond reasonable doubt that the accused while working as a public servant abused his position as a public servant and obtained for himself pecuniary advantage of Rs. 1,000/- on 6-11-1997 at about 6.15 pm., from P.W. 2-Rakesh B. Jain and thereby committed an offence punishable under Section 13(1)(d), punishable under Section 13(2) of the Prevention of Corruption Act, 1988?
3. Whether the Trial Court has committed any error in finding the accused guilty of the offences punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 and in sentencing him?

12. To find out, whether a case of demand and acceptance of illegal gratification, which are *sine qua non* for sustaining conviction under Section 7 read with Section 13 of the Act, against the accused has been made out, the record of the case was perused by me. P.W. 1 is the informant-complainant. The complaint is Ex. P.6. P.W. 2 is shadow witness and panch witness to the Entrustment Mahazar (Ex. P.1) and the raid mahazar (Ex. P.5). P.W. 3 is co-panch to P.W. 1. P.W. 4 is the Assistant Executive Engineer, PWD and prepared the sketch (Ex. P.8). P.W. 5 is the Accounts Superintendent, KHB, Metropolitan Division and issued the receipt (Ex. P.3) to P.W. 2.

P.W. 7 is the allottee of plot in respect of which the plan sanction was sought and she is the aunt of P.W. 2. P.W. 8 received the written complaint from P.W. 2 and endorsed it to P.W. 9. FIR was registered by P.W. 9 and after conducting of investigation, the charge-sheet was filed. P.W. 6 was the Divisional Commissioner and has accorded the sanction (Ex. P.11) for Prosecution of the appellant.

13. P.W. 7 was allotted with a plot bearing No. HIG-162-B2 type, at Kengeri Satellite Town, Bengaluru. She was the aunt of P.W. 2, who represented P.W. 7, in the matter of obtaining of plan sanction from the Office of KHB. On 18-10-1997, P.W. 2 along with P.W. 7 had submitted an application for issue of 'House plan' along with allotment letter. Rs. 100/- being the prescribed fee, was paid and was signed by the Executive Engineer. P.W. 2 was instructed to approach the case worker (accused-appellant), submit the receipt and collect the plan. P.W. 2 approached the accused at Kengeri Office of KHB. Accused responded 'if you want the plan immediately, i.e., tomorrow - I will work for the whole night and prepare the plan for you'. P.W. 2 having not understood the gesture, was told by the accused to come after ten days to collect the plan. Accordingly, after about 9 to 10 days, the informant met the accused at the Rajajinagar Office of KHB and the accused demanded Rs. 1,000/-. The informant replied that he would consult his uncle and aunt. On 4-11-1997, the informant enquired as to whether the plan was ready and the accused replied that, unless the informant pays the money, he is not ready to issue the plan and told the informant to come on the next day along with the money and collect the plan. Unwilling to pay the amount



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demanded for doing of the official work, complaint (Ex. P.6) was lodged on 5-11-1997 and the FIR (Ex. P.12) was registered. Entrustment Mahazar (Ex. P.1) was prepared and the FIR was submitted to the learned Special Judge. Raid party went to the office of the accused and he being not there, returned. Raid was conducted on 6-11-1997. The bribe money having been demanded and accepted, a mahazar was prepared and the phenolphthalein test conducted having proved positive, the post-trap panchanama was prepared. After completion of the investigation, P.W. 9, by obtaining the sanction for Prosecution, filed the charge-sheet.

14. On perusal of the evidence of the complainant (P.W. 2) and the shadow witness (P.W. 1), I find that it is consistent on the issue of demand and acceptance of illegal gratification from P.W. 1 by the accused. There is no material contradiction in the evidence of P.Ws. 1 and 2. The testimonies of material witnesses are trustworthy and there is corroborative evidence. The phenolphthalein test conducted has proved the demand and acceptance of the tainted money. The recovery of the tainted money is unchallenged by the accused.

15. However, mere recovery of tainted money alone being insufficient and the demand and acceptance of the amount as illegal gratification being a *sine qua non* for constituting an offence under the Act, the Prosecution is duty bound to establish that there was demand for bribe and its acceptance and the same has to be founded on facts.

16. In the present case, the factum of demand and acceptance has been proved by the recovery of tainted amount and that the fact of there being a demand has also been stated by P.Ws. 1 and 2. The essential ingredient of demand and acceptance has been proved by the prosecution from the evidence of P.Ws. 1 and 2. The evidence of said two witnesses has been corroborated by other witnesses examined by the Prosecution. Hence, presumption under Section 20 of the PC Act, 1988 arises.

17. It is for the accused to rebut the said presumption by adducing evidence to the effect that the money recovered was not a reward or motive as appearing in Section 7 of the Act. Evidence of D.W. 1, an attender in the office of the accused and an interested witness does not inspire the confidence. In the circumstances, the accused has failed to rebut the presumption under Section 20 of the Act.

18. The Trial Court has analysed the evidence in great detail. The finding of guilt recorded against the appellant has the support of credible evidence. Hence, the findings recorded by the Trial Court being well-founded, the conviction of the accused is sustainable. There is no merit in the contentions urged by Sri H.S. Chandramouli, as the record of the case proves otherwise.

19. In view of the above, the appeal being devoid of merit is dismissed and the judgment of conviction and order of sentence passed by the Trial Court is affirmed. The bail bonds cancelled and the accused shall surrender to serve out the remainder of the sentences.

† Principal Bench at Bengaluru

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