APHC010168762007

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3368]
(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY-SIX

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL APPEAL No: 1594/2007

Between:

1. P.SREENIVASULU,, S/O. RAMANAIAH, FORMERLY ADDL. ASST. ENGINEER, O/O. DIVISIONAL ENGINEER (ASSESSMENT) ANDHRA PRADESH, SOUTHERN POWER DISTRIBUTION CORPORATION LIMITED, NEW BALAJI COLONY, MUTHYALAREDDIPALLI,

...APELLANT

AND

1. STATE OF A P, rep.by Inspector of Police-I, ACB, Tirupati Range, Tirupati.

...RESPONDENT

Counsel for the Appellant(S):

RAVITEJA TALASEELA

Counsel for the Respondent:

S.SYAM SUNDER RAO SC cum Spl.P.P. For ACB

The Court made the following:

THE HONOURABLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

CRIMINAL APPEAL No: 1594 OF 2007

O R A L J U D G M E N T:

Heard Sri T.Raviteja, learned counsel for the appellant and Sri S.Syam Sunder Rao, learned Special Public Prosecutor-cum-Standing Counsel representing the respondent/ACB.

2. The appeal is preferred by the convict/Accused in the case, challenging the judgment dated 05.11.2007 rendered by the Special Court for SPE & ACB Cases, Nellore, in C.C.No.30/2002. The appellant was convicted for the offence U/s.7 and 13(2) of the P.C.Act, 1988. The appellant was sentenced to suffer rigorous imprisonment for a period of six (06) months and to pay fine of Rs.1,000/- (Rupees One Thousand only), in default, suffer simple imprisonment for one (01) month for the offence U/s.7 of the P.C.Act, 1988. He was sentenced to suffer rigorous imprisonment for a period of one (01) year and to pay fine of Rs.1,000/- (Rupees One Thousand only), in default, suffer simple imprisonment for one (01) month for the offence U/s.13(2) r/w.13(1)(d) of the P.C.Act, 1988.

3. For the sake of convenience, the parties hereinafter referred to as they were arraigned before the learned Special Court.

CASE OF THE PROSECUTION:

4. The case of the prosecution is that Mr.E.Subrahmanyam (P.W-1) has been running a photo-copier shop in the name and style of Sri Sai Xerox Shop at Puttoor in the premises owned by Smt.K.Rambayamma (P.W-4). On 16.04.2001 in between 03.00 and 04.00 p.m. electricity officials visited the premises and found pilferage of electricity. Mr.B.Ramamurthy (P.W-3) employee of P.W-1 was present at that time. On 30.04.2001 P.W-4 received a demand notice under Ex.P-1 issued by Assistant Divisional Engineer, Puttoor, to pay Rs.72,000/- towards pilferage charge and Rs.20,000/- for compounding fee.

5. P.W-1 visited the office of Assistant Divisional Engineer at Puttoor. P.W-1 agreed to pay Rs.20,000/- towards compounding fee. P.W-1 was advised to pay half of the pilferage charges and to file appeal to the higher authorities. Accordingly, P.W-1 paid Rs.36,090/- on 02.05.2001 apart from service charges under Ex.P-2 receipt. He also paid compounding fee vide Ex.P-3 challan.

6. P.W-1 later filed appeal vide Ex.P-4 before the Divisional Engineer (Assessment) at Tirupathi. He approached one Mr.Anjani Kumar (L.W-8), Assistant Divisional Engineer. He asked P.W-1 to meet the accused, who is working as Assistant Engineer. P.W-1 met the accused and intimated about the appeal. Accused informed P.W-1 that amount will be reduced after verifying the file and demanded

Rs.3,000/- as gratification other than legal remuneration, to reduce the amount.

7. On 18.06.2001 P.W-1 again met the accused. Accused intimated P.W-1 that file is ready, amount is reduced to Rs.25,000/- from Rs.72,000/- and demanded P.W-1 to pay Rs.2,000/- towards gratification other than legal remuneration, to get approval from the Divisional Engineer and issue necessary orders. The accused asked P.W-1 to bring amount on the A.N. of 20.06.2001. P.W-1 approached the Deputy Superintendent of Police, ACB (P.W-10) on 19.06.2001 at 03.00 p.m. and presented Ex.P-5 report. P.W-1 was instructed to come to office again on 20.06.2001.

8. On 20.06.2001 at about 02.00 p.m. P.W-1 went to office of P.W-10 at Tirupathi. He was introduced to the mediators present in the office i.e., P.W-2 and another. Pre-trap proceedings were conducted in the presence of mediators and P.W-1 vide Ex.P-7 in the office of P.W-10. Thereafter, P.W-10, mediators, P.W-1 and staff of P.W-10 visited the office of the accused. P.W-10 instructed P.W-1 to meet the accused. P.W-2 was instructed to follow up P.W-1. P.W-1 went to the accused.

9. The accused was present in the office. He showed a file to P.W-1 stating that amount is reduced to Rs.25,000/-. He demanded P.W-1 about the bribe amount. Thereafter, P.W-1 and the accused went to Laxmi Cool Drink & Fancy Shop. The accused ordered cool

drinks. He demanded P.W-1 to pay the gratification amount other than legal remuneration. P.W-1 paid the amount. The accused received the amount with right hand and kept in the shirt pocket. P.W-1 gave a signal to ACB officials waiting outside the shop.

10. ACB officials came there, caught the accused, asked P.W-1 to wait outside, conducted post-trap proceedings vide Ex.P-8 in the presence of the mediators, seized M.O-8 currency notes from the possession of the accused. P.W-10 recorded statements of P.W-1, accused, P.W-8 (owner of the cool drink shop), prepared Ex.P-9 rough sketch of scene of offence and arrested the accused.

11. The accused produced Ex.P-10 file containing Exs.P-1 to P-4 and Ex.P-11 tour diary. P.W-10 enquired staff in the office of the accused. He seized Exs.P-10 and P-11 under the cover of Ex.P-12 panchanama. He also conducted seizure in the house of accused vide Ex.P-13 search list. Further investigation was conducted by P.W-11, Inspector of ACB. On completion of investigation, laid charge sheet before the Special Court.

12. The appellant/Accused was charged for the offence U/secs.7 and 13(2) r/w.13(1)(d) of the P.C.Act, 1988. Accused denied the same and claims to be tried.

EVIDENCE FOR THE PROSECUTION:

13. The prosecution to substantiate the above charges, examined P.Ws-1 to 10 and got marked Exs.P-1 to P-18, apart from M.Os-1 to 8.

14. The appellant/Accused was examined U/s.313 Cr.P.C. regarding the incriminating circumstances appearing against him from the evidence for the prosecution. He denied the said circumstances as not true and correct. D.Ws-1 and 2 were examined for the defence. Ex.D-1 was marked during the cross-examination of P.W-1.

FINDING OF THE SPECIAL COURT:

15. The Special Court considering the above evidence, convicted the accused for the offence U/secs.7 and 13(2) r/w.13(1)(d) of the P.C.Act, 1988, as mentioned above. Hence, appeal came to be preferred by the accused.

SUBMISSIONS ON BEHALF OF THE APPELLANT/ACCUSED:

16. The learned counsel for the appellant would contend that the case of the prosecution is that, Ex.P-18 FIR was registered on 20.06.2001 at about 09.30 a.m. Ex.P-18 would show that it was received by the Special Court at about 09.55 a.m. on 21.06.2001 i.e. after 24 hours. P.W-10 evidence would show that the road journey on bus between Tirupathi and Nellore i.e., Special Court will take three hours time. The frequency of bus service between Tirupathi and Nellore is very high. Therefore, the prosecution has to explain the

delay in submitting FIR to the Court. No reason was stated by P.W-10 for the delay.

17. The contention of the accused is that FIR was registered subsequent to pre-trap proceedings on 20.06.2001. As per Ex.P-8 mediators report and the evidence of P.W-10, trap proceedings concluded at about 08.10 p.m. on 20.06.2001. Later, they came to the office of ACB. It would show that FIR was registered subsequent to 08.00 p.m. and then submitted to the Special Court. Therefore, it reached the Court on the next day morning at about 09.55 a.m. Had the FIR registered at 09.30 a.m. on 20.06.2001, it would reach the Special Court at least on the evening of 20.06.2001.

18. P.W-1 deposed that he went to ACB Office on 18.06.2001 and presented Ex.P-5 report. He also went to ACB Office on 19.06.2001. At that time, he was asked to put the date on Ex.P-5 as on 19.06.2001. Accordingly, he put the date as 19.06.2001 on Ex.P-5, though he presented the report on 18.06.2001, whereas P.W-10 deposed that P.W-1 came to ACB Office on 19.06.2001 and presented the report at 03.00 p.m. The evidence of P.W-1 and P.W-10 are diametrically opposite to each other and inconsistent.

19. P.W-1 though cross-examined by the Public Prosecutor before the trial Court, the statement recorded Us.161 Cr.P.C. was not confronted to him to impeach his statement that he gave false

evidence before the Court regarding date of presenting Ex.P-5 report to help the accused.

20. On the other hand, the facts and circumstances of the case would probable that report is received from P.W-1 after trap proceedings on 20.06.2001 at about 08.00 p.m. and he was asked to put date as 19.06.2001 to show that FIR was registered prior to the trap proceedings by P.W-10 for the reasons best known to him. In those circumstances, he could not give any reason about delay in submitting FIR to the Court. The time of FIR reaching the Court would establish that Ex.P-5 was received subsequent to trap proceedings and Ex.P-18 was registered to suit the case of the prosecution, and therefore, it was received in the Court on the next day.

21. He would also submit that the evidence of P.W-1, mediator (P.W-2), cool drink shop owner (P.W-8) regarding visiting of P.W-1 and the accused and P.W-10 to the shop and happenings occurred there are not corroborating with each other. P.W-1, P.W-8 shop owner and P.W-2 mediator deposed three versions making the prosecution case untrustworthy.

22. He would submit that the prosecution case is obtainment of illegal gratification. Therefore, the prosecution must establish the demand and receipt of illegal gratification amount by the accused. The evidence of P.W-5/Assistant Engineer, P.W-6/Divisional Engineer and P.W-7/Assistant Divisional Engineer, D.W-2/another Assistant

Divisional Engineer of electrical department working at that point in time, would disclose that the role of the accused is only to prepare a note on the appeal, basing on the report submitted by the squad, which found pilferage of electricity. The accused can not take any decision on the appeal. The Divisional Engineer will consider and take a decision on the appeal. Therefore, the accused cannot do any official favour to P.W-1. Hence, their evidence would rebut the presumption as laid down U/s.20 of the P.C.Act, 1988. P.W-10 Investigation Officer also admitted that the role of the accused is only preparation of note on the appeal. No evidence on record to establish that accused can make any recommendations to the Divisional Engineer for disposal of the appeal. The evidence on record is not sufficient to establish the demand and receipt of the amount by the accused.

23. The case of the prosecution is that P.W-1 changed the version during cross-examination, as he was won over by the accused. But nothing was elicited during the cross questions put by the Public Prosecutor before the Court below, to impeach his statement regarding presenting report on 18.06.2001. The trial Court did not consider all the above facts, therefore, came to an erroneous opinion. Therefore, judgment of the trial Court is not sustainable.

24. The learned Special Public Prosecutor-cum-Standing Counsel for ACB argued that the trial Court found that P.W-1 evidence was corroborated by the evidence of mediator/P.W-2 regarding demand

and receipt of illegal gratification amount by the accused. The trial Court found that P.W-1 intentionally gave false statement about presenting Ex.P-5 report on 18.06.2001. The evidence on record would show that P.W-1 filed the appeal to reduce the pilferage amount. It was entrusted to the accused. Therefore, the accused made demand for illegal gratification to process the file. Then, P.W-1 presented report to P.W-10. It was registered as Ex.P-18 FIR. Exs.P-7 and P-8 and the evidence of mediator/P.W-2 proved post trap proceedings. The evidence of cool drink shop (P.W-8) corroborated the evidence of P.W-1 and P.W-2. Therefore, the prosecution proved the offence U/s.7 and 13(2) of the P.C.Act, 1988. Hence, there are no grounds to interfere with the judgment of the trial Court.

25. In the light of above rival contentions, the point that arose for consideration in this Criminal Appeal is as under:

> ***"Whether the judgment of the Special Court is not sustainable?"***

ANALYSIS:

26. The learned counsel for the appellant argued that the evidence of P.W-1 coupled with the endorsement of the Magistrate of the Special Court on Ex.P-18 would establish that Ex.P-5 was received after Ex.P-8 post trap proceedings and Ex.P-18 was registered after post trap proceedings and therefore, it reached the Special Court on the next day i.e., on 21.06.2001. Hence, it would show that Ex.P-5 and

Ex.P-18 are brought into existence by P.W-10 and P.W-1 to suite the case of the prosecution. Further, Ex.P-5 is hit by section 161 Cr.P.C., as it was registered after commencement of investigation in the case.

27. He would further submit that the evidence of P.W-1, P.W-2 and P.W-8 regarding happenings at the cool drink shop would show that they suppressed the truth and deposed the suit the case of the prosecution. The evidence of D.W-1 would show that the accused has no capacity to make any recommendations to the Divisional Engineer about reducing the pilferage amount. Hence, the presumption U/s.20 of the P.C.Act 1988 stands rebutted that no official favour is pending with the accused at the time of alleged demand or receipt of the amount.

28. Undisputedly, Ex.P-18 FIR would show that it was received by the Special Court on 09.55 a.m. on 21.06.2001. It is the case of the prosecution that it was registered on 20.06.2001 at 09.50 a.m. Admittedly it was received in the Court only after 24 hours. P.W-10 evidence does not disclose any reason for delay in submitting FIR to the Special Court. Ex.P-8 would disclose that post trap proceedings concluded at 08.10 p.m.

29. P.W-1 in the chief-examination deposed that he went to ACB office on 19.06.2001 and presented Ex.P-5 report at 03.00 p.m. But, in the cross-examination, he deposed that he went to the ACB office on 18.06.2001 and presented Ex.P-5 report with anti date. Again, he went

to the ACB office on 19.06.2001. At that time, he was asked to put the date as 19.06.2001. Accordingly, he put the date as 19.06.2001 on Ex.P-5 report.

30. Here, it is pertinent to note down that the Public Prosecutor in the Court below put cross questions to P.W-1 regarding Ex.P-5 report. But he did not confront statement of P.W-1 recorded U/s.161 Cr.P.C. or 164 Cr.P.C. to P.W-1 to impeach the credit of his testimony regarding the date of Ex.P-5 report and visiting office of ACB on 18.06.2001. He made attempt to suggest that P.W-1 was won over by the accused. Except suggestion, no material was elicited from P.W-1 to show that he received bribe, or he agreed to receive bribe offered by accused. Therefore, the statement of P.W-1 made an oath before the Court below remains unimpeached. Hence, his evidence would show that he put the date as 19.06.2001 on the request of P.W-10.

31. Ex.P-18 would show that it was received by the Court below on 21.06.2001 at 09.55 a.m. though it was registered on 20.06.2001 at 09.30 a.m. P.W-10 admitted that road journey time between Tirupathi and Nellore i.e., ACB Court is around three hours. He also admitted that frequency of bus service between Nellore and Tritupathi is high. In those circumstances, Ex.P-18 FIR could reach the Special Court, on latest by the evening/night of 20.06.2001. Surprisingly, it reached the Court on the next day morning at about 09.55 a.m. Ex.P-8 would show that the trap proceedings were concluded at 08.10 p.m. All these

circumstances would probable the defence plea that Ex.P-5 pressed into service after trap proceedings and then, P.W-1 was asked to put the date as 19.06.2001 to enable P.W-10 to show that Ex.P-18 was registered on 20.06.2001 after making preliminary enquiry. In those circumstances, it probable defence plea that Ex.P-5 report, registered subsequent to commencement of investigation i.e., trap proceedings and therefore, hit by section 161 Cr.P.C.

32. The trial Court did not consider issue in proper perspective. It did not notice that the statement of P.W-1 was not impeached by confronting with his previous statements, as laid down U/s.162 Cr.P.C. and 145(3) of the Indian Evidence Act, 1872. Therefore, the trial Court came to an erroneous opinion on this aspect.

33. The evidence of P.W-1, P.W-2 and P.W-8 about happenings in the cool drink shop of P.W-8 occurred on 20.06.2001 also creating a doubt about the truth of happenings. P.W-1 deposed that they went to cool drink shop; Accused ordered cool drinks; They had cool drinks. Later, Accused Officer paid the amount for cool drinks; Then, he demanded P.W-1 to pay the bribe amount; P.W-1 paid the amount; The accused received the amount and kept the same in shirt pocket. P.W-2 deposed that he admitted P.W-1 and the accused to the cool drink shop; P.W-1 and the accused went into the shop; They had cool drinks; During conversation between P.W-1 and the accused, P.W-1 picked up money and it was received by the accused; He counted the

currency notes and kept the same in the shirt pocket; Later, accused paid amount for cool drinks; P.W-8 deposed that accused and two unknown persons came to the shop at about 05.20 p.m; They ordered two cool drinks One of them paid the amount; They had cool drinks; Later, four or five persons came there and they caught one person stating that he has taken bribe; She did not depose anything about payment of amount by P.W-1, accused receiving the amount or counting currency notes given by P.W-1; Therefore, P.W-1 deposed that they went to cool drinks shop; They ordered cool drinks; Accused Officer paid the amount for the cool drinks; Later, he demanded the amount of bribe, whereas P.W-2 deposed that he witnessed P.W-1 and accused went into shop, they ordered cool drinks and then P.W-1 paid amount to the accused; Later, accused paid amount for the cool drinks, whereas, P.W-8 deposed that two persons came to the shop; They ordered cool drinks and one of them paid the amount. Subsequently, four or five persons came there; P.W-2 deposed that he was standing at a distance of 20 feet and observed accused counting cash; P.W-8, who is sitting in the shop did not corroborate the statement of P.W-2; Therefore, the above evidence of P.W-1, P.W-2 and P.W-8 not consistent regarding happenings occurred in the cool drink shop and receiving of amount by the accused, as alleged by the prosecution. It gives a doubt as to whether the accused really received the bribe amount, at that time.

34. The evidence of P.W-5, P.W-6 and P.W-7 examined by the prosecution i.e., officials of electricity department do not disclose anything that accused is competent to reduce the amount imposed by the squad for pilferage of electricity. It is the case of the prosecution that one Mr.Anjani Kumar asked P.W-1 to go to the accused as the file was entrusted to the accused. The prosecution cited Mr.Anjani Kumar as witness, but did not choose to examine him, to corroborate the testimony of P.W-1 that Mr.Anjani Kumar asked P.W-1 to visit the accused regarding appeal filed by P.W-1.

35. The evidence of the above witnesses and the evidence of D.W-1 another employee of electricity department would establish that accused has no capacity to make any recommendations, to the Divisional Engineer for reducing the amount. The role of the accused is only to prepare a note about the details of pilferage basing on the report of the squad conducted the search, and the compounding fee imposed in the case, to enable the Divisional Engineer to dispose of the appeal, passing necessary orders. Therefore, the evidence on record does not disclose any material to say that an official favour was pending with the accused as alleged by the prosecution. P.W-10 in the cross-examination admitted that the role of the accused is only to prepare estimation of the pilferage amount and compounding fee basing on the material collected by the raid party members, and to place the same before the Divisional Engineer for fixing penalty

amount. He tried to say that accused can write recommendations on the note file. No record is placed before the Court below to show that the accused made any such recommendations in this case or any other case, and basing on the recommendations made by the accused, the Divisional Engineer passed orders on the appeal. Therefore, the evidence on record could not establish that official favour was pending with the accused. As already mentioned above, the evidence of P.W-1, P.W-2 and P.W-8 contain many material discrepancies, creating a reasonable doubt, about the receipt of bribe amount by the accused from P.W-1, in the shop of P.W-8.

36. The prosecution must prove the two ingredients i.e., demand and receipt beyond reasonable doubt, to establish 'obtainment' as laid down U/s.7 as well section 13 of the P.C.Act, 1988. The evidence mentioned above not inspiring any confidence in the mind of the Court to conclude that the prosecution proved the said ingredients beyond reasonable doubt.

CONCLUSION:

37. In the light of foregoing discussion, this Court is of the considered opinion that judgment of the Special Court is not sustainable on facts and in law.

RESULT:

38. In the result, the Criminal Appeal allowed. The judgment dated 05.11.2007 rendered by the Special Court for SPE & ACB Cases,

Nellore, in C.C.30/2002 is set aside. Accordingly, the appellant/Accused acquitted for the offence U/secs.7 and 13(2) r/w.13(1)(d) of the P.C.Act, 1988. The bail bonds of the accused stands cancelled. The fine amount if any paid by the appellant/Accused, shall be refunded to him, in accordance with law. This judgment be certified to the trial Court, U/s.405 Cr.P.C.

As a sequel thereto, interlocutory applications, if any, pending shall stand closed.

JUSTICE B.V.L.N. CHAKRAVARTHI

28.04.2026

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THE HONOURABLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

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Date: 28.04.2026

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