(2003) 02 AP CK 0008

Andhra Pradesh High Court

Case No: Criminal Appeal No. 120 of 2000

G. Vishnuvardhan, Assistant Public Prosecutor	APPELLANT
Vs	
State of A.P.	RESPONDENT

Date of Decision: Feb. 18, 2003

Acts Referred:

- Prevention of Corruption Act, 1988 - Section 13(1)(d)(i)(ii), 13(2), 7

Citation: (2003) 6 CriminalCC 10 : (2003) 3 RCR(Criminal) 443

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: C. Praveen Kumar, for the Appellant; G. Peda Babu, SC and Spl. P.P. for ACB Cases, for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.

The appellant was an Assistant Public Prosecutor at the Court of Judicial First Class Magistrate, Shadnagar, Mahabubnagar during 1995-96. P. W. 1 was complainant in C.C.202 of 1994 in the same court. The appellant conducted that case. However, the said court through its order dt.24.10.1995 acquitted the accused therein. Another case being C.C.No.450 of 1995 also came to be tried on the basis of the complaint submitted by P.W.1. It was the case of P.W.I that he intended to carry the Judgment in C.C.202 of 1994 in appeal and for the said purpose he approached the appellant to sign on an application form to obtain certified copies of the depositions in C.C.202 of 1994. P. W. 1 alleged that the appellant demanded an amount of Rs.500/- not only to sign the application form for certified copies of depositions in C.C.202 of 1994 but also to effectively conduct the case in C.C.450 of 1995.

2. P. W. 1 approached the ACB officials at Hyderabad who in turn arranged a trap on 6.2.1996. On the allegation that the trap was successfully laid against the appellant, the prosecution initiated the proceedings under the provisions of the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act) against the appellant before the Court of Additional Special Judge for SPE and ACB Cases-cum-Vth Additional Chief Judge, Hyderabad in C.C.No.21 of 1996. The prosecution examined P.Ws. 1 to 7 and marked Exs.P-1 to P-16 and Mo. 1 to 9. For the defence D. Ws. 1 and 2 were examined and documents D-1 to D-7 were marked. On appreciation of oral and documentary evidence, the trial Court found the appellant herein guilty of offence u/s 7 of the Act and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-, in default to suffer simple imprisonment for 3 months. The trial court also found him guilty of offence u/s 13(1)(d)(i)(ii) read with Section 13(2) of the Act and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- in default to suffer simple imprisonment for 3 months. Both the sentences are directed to run concurrently. Hence this appeal by the appellant.

3. Shri Praveen Kumar, learned counsel for the appellant submits that the prosecution has failed to prove the existence of demand and acceptance of illegal gratification by the appellant. According to him, though in the charge the appellant is alleged to have demanded the amount of Rs.500/- from P. W. 1 on 29.1.1996, P. W. 1 did not depose the same in the evidence and as such the question of there being any demand does not arise. As regards the acceptance, learned counsel submits that admittedly the amount was not recovered from the person of the appellant. According to him P. W. 1 had planted the amount in the almirah which was accessible to any one. It is also his case that the result of the wash of the hands of the appellant with the Sodium Carbonate solution was on account of the fact that P.W.I who handled the tainted notes had also given the application form Ex.P-2 with the same hands, thereby the application from also got tainted and it is how the hands of the appellant who took the same and signed had come in contact with the phenolphthalein powder. The pale colour which emerged in the wash of pocket of the petitioner was on account of the fact that he removed pen from his pocket with the same hand after handling the application form.

4. Shri Peda Babu, learned standing counsel for the ACB submits that the prosecution has placed ample consistent and cogent evidence before the trial court to prove the guilt of the appellant and the judgment of the trial court does not call for any interference. He submits that though P.W. 1 did not depose to the fact that the appellant herein made a demand on 29.1.1996, the said fact was contained in Ex.P-1 and the trial court did not commit any irregularity in taking the same into account. He also relies upon the attendant circumstances, which suggested the involvement of the appellant.

5. It is settled proposition of law that to establish offence under the Act particularly those relating to the trap cases, the prosecution has to establish the existence of demand as well as acceptance by the public servant. Both aspects are treated as concomitant parts of the offence. Therefore, it has to be seen whether the prosecution has been able to

establish beyond reasonable doubt the two aspects of demand and acceptance of the illegal gratification by the appellant herein. The basis for demand of the illegal gratification by the appellant said to be his enabling the P.W.1 to obtain certified copies of the depositions in C.C.202 of 1994 and also to effectively handle the case in C.C.450 of 1995. From a reading of the charges, it is evident that the appellant is said to have made the demand on 29.1.1996. Nowhere in his evidence, P.W. 1 has referred to this date. It is true that in his complaint marked as Ex.P-1 he has referred to this date. However, unless spoken to by P.W.I, the statement contained in Ex.P-1 does not gain any evidentiary value. It is quite possible for the prosecution to drive home its point independent of such lapse in the oral evidence obviously by leading certain other relevant and cogent evidence. The same is not forthcoming in this case. The Court can also consider the existence of circumstances, which may probablise the allegation as to demand Examination of such circumstances in this case would, however, lead to a different conclusion. Admittedly C.C.202 of 1994 ended up in acquittal way back on 24.10.1995. P.W.1 was consistent throughout that the demand by the appellant was to sign on the copy application. The relevant portion of his evidence reads as under:

After the said case ended in acquittal, I met the A.O. to obtain certified copy of my deposition in the said C.C.No.202 of 1994 as I want to prefer an appeal against the acquittal of the accused in the said C.C. Then 1 took C.A. Application Form and asked the A.O. to sign on it in order to obtain certified copy of my deposition in the said C.C. Then the A.O. asked me to pay Rs.500/- and after payment of the said amount only he will sign in the Form C.A. and he has thrown the C.A. Form by saying so. This was happened 15 days after acquittal in the said C.C.202/94.

It however needs to be observed in this regard that even without the help of the appellant, P.W.1 has secured a copy of the judgment in C.C.202 of 1994 through his advocate. This was much before he approached the appellant with Ex.P-2, which is the copy application for securing depositions in C.C.202 of 1994. If P. W. 1 was able to secure a copy of the judgment, it is rather incomprehensible that he needed the help of the appellant in securing the certified copies of depositions. Therefore, it is rather impossible to believe that P. W. 1 had depended on the appellant to secure the copy of the depositions and that the same were needed for preferring appeal. From the deposition extracted above, it is evident that the so called demand of Rs.500/- was 15 days after the acquittal in C.C.No.202 of 1994 which takes us somewhere to 10th of November, 1995. The date of demand furnished by him in Ex.P-1, though not spoken to in his oral evidence, was 29.1.1996. The other limb of this aspect is that the appellant is said to have demanded the amount for effectively conducting trial in C.C.450 of 1995. The appellant has placed before the trial Court the case diary relating to C.C.450 of 1995 which revealed that the cognizance of it was taken on 27.11.1995 whereas the demand is said to have been made by the appellant somewhere around 10.11.1995. It has also come in the evidence of P.W.11 that a different Assistant Public Prosecutor has handled trial of that case i.e., C.C.450 of 1995. The cumulative effect of these inconsistencies and improbabilities is

that there did not exist any demand by the appellant from P. W. 1.

6. Coming to the acceptance, P.W.1 had categorically admitted that the place where the appellant used to sit was not locked and was accessible to any one. Admittedly the amount was not recovered from the body of the appellant and it was recovered from the Almirah. It is not in dispute that P.W. 1 handled the tainted notes as well as Ex.P-2, the application form. It is that form which was handed over to the appellant who in turn had handled the same and appended his signature upon it by taking out his pen with those hands. Therefore, the result of wash with the Sodium Carbonate solution stands sufficiently explained. Even where a successful trap is laid, the Court has to see as to whether there are circumstances which can explain the possibility of the accused officer coming into contact with the phenolphthalein powder otherwise than through acceptance of the illegal gratification. It is, therefore, evident that the prosecution has failed to establish existence of the acceptance of the amount by the appellant.

7. In view of the findings of this Court that the prosecution failed to establish the demand and acceptance of illegal gratification by the appellant, this Court does not intend to go into the other aspects of the matter argued by the learned counsel for the appellant.

8. For the foregoing reasons, the criminal appeal is allowed and the convictions and sentences against the petitioner are set aside. Fine amount, if any, paid by the appellant shall be refunded to him.