
(1999) 1 ALD 734 : (1999) 1 ALD(Cri) 600 : (1999) 1 ALT(Cri) 680

Andhra Pradesh High Court

Case No: Criminal A. No. 323 of 1995

D.V. Dattatreyyulu

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Jan. 22, 1999

Acts Referred:

Penal Code, 1860 (IPC) " Section 405, 409, 477#Prevention of Corruption Act, 1988 " Section 13(1)

Citation: (1999) 1 ALD 734 : (1999) 1 ALD(Cri) 600 : (1999) 1 ALT(Cri) 680

Hon'ble Judges: Vaman Rao, J

Bench: Single Bench

Advocate: Mr. C. Praveen Rao, for the Appellant; Mr. M.R. Reddy Spl. P.P. for CBI cases, for the Respondent

Judgement

1. This appeal is directed against the judgment of a Special Judge for C.B.I. Cases, Hyderabad dated 28-4-1995 rendered in CC No. 10 of 1994

under which the appellant/accused has been convicted for the offence u/s 409 of IPC and sentenced to undergo rigorous imprisonment for one

year and to pay a fine of Rs.2,000/-in default to undergo rigorous imprisonment for three months; for the offence u/s 477A of IPC and sentenced

to undergo rigorous imprisonment for three months and to pay a fine of Rs. 1,000/- with default sentence of one month; and for the offence under

Sections 13(1)(c)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for one

year and to pay a fine of Rs.2,000/- with default sentence of rigorous imprisonment for three months.

2. The facts relating to this appeal may be stated briefly as follows:

The appellant-accused has been working as Manager of Sri Venkateswara Grameena Bank, Vijalapuram Branch, Chittoor District during the

period between 16-7-1990 to 30-4-1991 has mis-appropriated an amount of Rs.84,000/- by creating false and forged documents pertaining to

certain account holders. The accused is also said to have sanctioned and released fraudulent loans against security of deposit receipts. It is further

alleged that the accused debited certain sums from the accounts of Agricultural Term Loans (ATL) and Agricultural and Allied Term Loans

(AATL) and credited them into certain Saving Bank Accounts and withdrew the said amounts. He is said to have passed Immediate Credit of

Outstation Cheques and credited the proceeds into Savings Bank Account No.2880 standing in the name of himself and his wife.

On 21-6-1991, PW1-the Inspector of Branches, Sri Venkateswara Grameena Bank visited the branch and during the inspection he noticed

fraudulent transactions in the Bank. On the instructions of the higher authorities, he conducted a detailed inspection and submitted a report under

Ex.P8 on 22-7-1991.

On 26-6-1991, PW2-the another Inspector of Branches conducted a snap inspection of Vijalapuram Branch and noted that the records are not

maintained properly. On 5-1-1993, PW2 conducted a regular inspection of the Vijalapuram Branch and noticed irregularities committed during the

tenure of the accused and also during the tenure of PW10. PW13-the Inspector of Police, C.B.I, registered a case in Rc.3(A) of 1993, dated 22-

2-1993 and issued FIR under Ex.P125. PW13 conducted investigation during which he examined PWs.1 to 8 and 11. He collected the

documents under Exs.P1 to P106, 108 to 124. PW13 after obtaining sanction from PW9 filed the charge-sheet.

3. In support of the case of prosecution, PWs. 1 to 14 and Exs. P1 to P125 were marked. On behalf of accused, he examined one K. Srinivas as

DW1 and marked a contradiction in 161 Cr.PC statement of PW6 as Ex.D 1.

4. The irregularities alleged against the accused fall under three categories. The first category is the one in which loans against the security of

deposit receipts was sanctioned irregularly. The 2nd category of irregularity is the one in which the accused is said to have debited certain amounts

to ATL and AATL accounts and credited the same to some Savings Bank Accounts. The third category consists of transactions in which the

accused is said to have debited certain amounts to ICOOC Account and credited the proceeds to S.B. Account No.-2880 belonging to his wife

and himself.

5. There are five transactions under the first category. The evidence in respect of each transaction will now be examined.

Loans Against Security of Deposit Receipts:

i. The first such transaction pertains to the fixed deposit placed by PW3-Venkata Munisetty for a sum of Rs.15,000/- under receipt No.28947.

PW8-S Mohd. Ali who worked in the Inspection Department of the Bank. In his evidence, he mentions about the procedure for opening a fixed

deposit receipt and for obtaining loans on the security of the same. The deposit holder is required to submit an application form for deposit and

furnish his specimen signatures or thumb impressions as the case may be. He should be introduced by some known person. The Manager of the

Grameena Bank will check the correctness of the particulars and issue fixed deposit receipt. Whenever the depositor wishes to avail loan facility

against his own deposit, he would pledge the deposit receipts in the bank duly discharged. An amount equal to 75% of the deposit amount will be

given as a loan. For obtaining such a loan, the depositor has to file an application form and also execute a demand promissory note. In the case of

the deposit of Rs. 15,000/- by PW3, a sum of Rs. 10,000/- was sanctioned by the accused as a loan on 16-7-1990. Ex.P70 is the deposit

opening form. Ex.P16 is the deposit receipt. Ex.P61 is the debit voucher of LOD No,77 of 1990 dated 16-7-1990 showing the withdrawal of

Rs.10,000/- as loan. Ex.P93 is the ledger folio of the said account in which the particulars of deposit were not noted.

PW3-the deposit holder in his evidence stated that he had not obtained any loan on 15-7-1990 and the signature on the reverse of Ex.P61

voucher does not belong to him. There is no reason to disbelieve the evidence of PW3 that she had not obtained any loan on his fixed deposit. At

any rate, the fact that on security of deposit receipt, a loan was said to have been sanctioned but the said security deposit receipt was admittedly

not in the bank, strengthens the evidence of PW3 that he was not sanctioned any loan on his deposit receipt.

(b) The crucial point is whether the accused has sanctioned and passed the voucher?

PW10-K. Raghupathmaidu worked as a clerk-cum-cashier in the same branch where the accused was the manager. PW10's competence to

identify the initials and signature of the accused as claimed by him cannot be questioned. But, the fact remains that PW10 himself was suspected to

be involved in some of the irregularities in that Branch. It is in the evidence of PW7-the Development Manager of the Grameena Bank, Chittoor

that an enquiry against PW10 was pending at the time of his deposition in respect of irregularities detected against PW10. Thus, the evidence of

PW10 is required to be apprised with caution and circumspection.

(c) PW10 in his examination in chief stated that Exs.P55 to P67 which includes Ex.P1 voucher are in the hand-writing of the accused and they

were passed for payment by the accused. It was neither elicited nor even suggested during the cross-examination of PW10 that the voucher under

Ex.P61 was not passed by the accused. If Ex.P61 was passed by PW10 as Accountant, this could have been confronted to him during his cross-

examination but that was not done.

Under the circumstances, considering the evidence of PW3 and considering the circumstances that the accused as a manager has responsibility for

passing of all transactions in the Bank, it must be held that it was the accused who passed the debit voucher, Ex.P6t pertaining to alleged loan over

the fixed deposit of PW3 who in fact did not apply for any loan. It has to be held so notwithstanding the fact that the evidence of hand-writing

expert, PW12 has no bearing on Ex.P61. Thus, it has to be held that the loan transaction was passed by the accused.

ii. The next transaction pertains to Re-Investment Plan (R.I.P.) No.28940 dated 10-9-1987 for Rs.30,000/- on which a sum of Rs. 16,000/- was

said to have been sanctioned as a loan on 16-11-1989. Ex.P14 is the relevant deposit receipt which was placed by PW5. It is in the evidence of

PW10 that the relevant debit voucher Ex.P75 passing the loan is in the hand-writing of the accused. PW5, the loanee, in her evidence stated that

she did not avail any loan. Though it was elicited in the cross-examination of PW10 that signatures of the accused are not found on several other

documents, Ex.P75 was not confronted to this witness and there was no suggestion that Ex.P75 does not contain the writing or the signature of the

accused. In respect of several other documents, during his cross-examination PW10 admitted that they do not bear the signatures of the accused

but no suggestion was made in respect of Ex.P75. For the reasons mentioned while discussing the first transaction above, vide para No.5(i) supra

it has to be held that the voucher for sanction of loan was passed by the accused. Here again, the deposit holder PW5 has denied that she has

taken any loan. The deposit receipts were not in the Bank when the loan was alleged to have been sanctioned. Under these circumstances, it has to

be held that the accused has passed the said voucher and appropriated the loan amount.

iii. The third transaction under this category pertains to fixed deposit receipt of PW4 for Rs.50,000/-. An amount of Rs.5,000/- is said to have

been advanced as a loan on security of fixed deposit on 14-9-1990 in favour of PW4. Ex.P69 is the account opening form of PW4. Ex.P62 is the

debit voucher showing withdrawal of the loan. It is in the evidence of PW10 that Exs.P55 to P67 which includes Ex.P62 are in the handwriting of

the accused and that they were passed by the accused. As noted while discussing the above two transactions, no suggestion was made specifically

in respect of Ex.P62 and the document was not confronted to the witness suggesting that it did not bear the signature of the accused. PW4 has

been examined who denies that any loan has been applied for or was obtained by him against the fixed deposit. It may be mentioned here that the

fixed deposit was in the name of his minor daughter. PW4 has stated that the signature on the reverse of Ex.P62 does not belong to him. The

evidence of expert PW12 does not help in this case inasmuch as he stated that it is not possible to link the authorship of the writings marked Q.12

and Q.13 on Ex.P62 with that of the person who wrote S1 to S13 which are the standard writings of the accused. Here again, the circumstance

that the fixed deposit receipt was not in the bank when loan was sanctioned is itself a strong pointer to the fact that the loan was fictitious and the

accused being the Manager and over all incharge of the Branch must be held responsible for it unless it is shown that it was passed without

reference to him.

iv. Another transaction in this category is that of loan of Rs.13,000/- sanctioned on 3-1-1991 in favour of one Buddamma against a fictitious

deposit. The said Buddamma has not been examined. The evidence of handwriting expert is not available to connect the signature of Ex.P77, pay-

in-slip with that of the accused, it is significant to mention here that PW10 in his cross-examination admitted that under Ex.P77 he received the

cash. Under these circumstances, the accused cannot be held liable for this transaction.

v. The last transaction under this category" is in respect of a loan of Rs.12,000/- said to have been sanctioned on 3-1-1991 in the name of Muni

Venkalappa Chetty against RIP deposit for Rs.10,000/- dated 28-9-1987. PW9 the Chairman of the Bank in his evidence admitted that this

transaction was not taken into consideration to arrive at misappropriation of Rs.84,000/-. There is no specific material in respect of this

transaction. Hence, it has to be held that the alleged irregularity in respect of this transaction is not proved against the accused.

6. The next category of transactions pertains to diversion of amounts from Agricultural Term Loan (ATI,) and Agricultural and Allied Term Loan

Accounts (AATL) to the credit of various Savings Bank Accounts,

(i) The prosecution case is that on 3-1-1991 the accused made debit entry in day book under AATL Head for Rs.6,500/-and credit was shown in

the S.B.A/c.No.2766. Ex.P6A is the relevant entry in the monthly balance book. This amount was shown under Folio No.97 in Ledger No.4. The

Corresponding Folio No.97 in ledger No.4 is blank. It is true there is no specific evidence that Ex.P6A entry was made by the accused. The

evidence of hand-writing expert is also not available. But it is the accused as the Manager who alone has the authority to sanction AATL loan.

When debit was made in AATL Account for Rs.6,500/-and it was credited in a closed account, the irresistible and only inference is that it was

done by the accused as the Manager of the Bank.

ii. The other three transactions under this category pertains to withdrawals from ATL Account a sum of Rs.5,000/-, Rs.5,200/- and Rs.5,300/-.

As stated by PW11 the related vouchers are not available in the Bank. The entries have not been debited to any account in the ledgers. However,

as stated by PW11, in the balance book while tallying the monthly transactions, the accused had raised the monthly balances under Ex.P6, the

ATL balance book from October, 1989 to May, 1991. The accused added a sum of Rs.5,000/-under folio No.23173; Rs.6,000/-under folio

No.53/2 and Rs.4,500/- under folio No.81/2. Thus, the total increase in the balance of Rs.15,500/- was made to match with the withdrawals to

cover up fraudulent transactions of Rs.15,500/-. As slated by PW11, the relevant entries in the jotting books are Exs.P5(a), P5(b) and P5(c). It is

true that there is no specific evidence that the entries in Exs.P5(a), P5(b) and P5(c) have been made by the accused. It is necessary to remember

that as the Manager of the Branch, it was the accused alone who was empowered to draw the purported loans under ATL or AATL heads after

completing the various formalities like applications, documents pertaining to title of the land, guarantees etc. In the absence of any such formality,

drawing the amounts is clearly traceable to the accused and these entries are also required to be made by the accused. It must be presumed that

these entries were made by the accused. Hence, the accused must be held liable for these transactions.

7. The third category of transactions pertains to Immediate Credit of Outstation Cheques (ICOOC) Account into S.B.A/c. No.2880.

One of these transaction pertains to an amount of Rs.2,000/- which was debited on 8-12-1990 from ICOOC Account and credited into

S.B.A/c.No.2880 out of which the accused's wife had withdrawn Rs. 1,900/- and Rs.900/- on 11-12-1990. It is relevant to note here that

S.B.A/c.No.2880 belongs to the wife of the accused. Ex.P53 is the original extract of S.B.A/c.No.2880. The relevant credit entry is Ex.P83(a) in

S.B.A/c.No.2880 and the relevant withdrawal entries are Exs.P83(b) and (c). The relevant debit voucher in respect of ICOOC Account for

crediting to S.B. Account No.2880 dated 8-12-1998 in Ex.P55. It is in the evidence of PW10 that the entries in Ex.P55 are in the hand-writing

and under the signature of the accused. The evidence of hand-writing expert PW12 also corroborates that the writing in Ex.P55 tallies with the

standard writing of the accused S1 to S9 in Ex.P109 to 121. It is not the case of the accused that the crediting of this amount to the Savings Bank

account of his wife was supported by any deposits or payments. It is in the evidence of PW11-the then Inspector of Branches of Grameena Bank

that no material was available during his inspection to show that there was any instrument sent for collection to cover these credits in the Savings

Bank Account of the wife of the accused. The evidence of PW11 to this effect has not been challenged during his cross-examination.

The other two transactions under this category pertain to Rs. 1,000/- each. A sum of Rs. 1,000/- was raised on 22-4-1991 in the name of the

wife of the accused under Ex.P58. Ex.P72 was withdrawal slip under which the amount was withdrawn by the accused from S.B.A/c.No.2880. It

is in the evidence of PW10 that Ex.P72 is in the handwriting of the accused and signed by him.

Similarly, a sum of Rs. 1,000/- was raised in the name of the wife of the accused. Ex.P57 is the debit voucher on ICOOC Account which was

credited to S.B.A7c. No.2880 of D.K. Praimela Devi wife of the accused. This was withdrawn by the accused on the same day under withdrawal

slip by Ex.P74. It is in the evidence of PW10 that Ex.P57 and Ex.P74 are in the handwriting and bear the signature of the accused. It is apposite

to mention here that during the cross-examination of PW10 these documents were not confronted to him to challenge his statement that they bear

hand-writing and signature of the accused. Under these circumstances, there is no reason to disbelieve the evidence of PW 10 and PW 11, even

taking into account the circumstances that for the reasons stated above, the evidence of PW10 requires to be scrutinised cautiously considering his

own probable involvement in some alleged irregularities which are said to be under enquiry. Thus, the role assigned to the accused under the above

transactions must be held to have been proved.

Apart from this evidence, the accused himself in reply to the charges framed under Ex.P105, admitted the allegations of all transactions mentioned

in the charge except charges 10 and 12 which at any rate have been held not proved by me as seen above in para Nos.5(c)(iv) and (v).

8. The next question is what are the offences made out against the accused on the basis of the above findings.

The first charge framed against the accused is u/s 409 of IPC. The offence of criminal breach of trust u/s 409 of IPC applies to criminal breach of

trust committed by a "Public Servant or a Banker" in respect of property entrusted to him as such public servant or banker. Section 405 of IPC is

extracted below:

Section 405: Criminal breach of trust:--Whoever, being in any manner entrusted with property or with any dominion over the property,

dishonestly mis-appropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction

of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he was made touching the

discharge of such trust, or wilfully suffers any other person so to do, commits "Criminal breach of trust" "".

For an offence u/s 409 of IPC, the ingredients stipulated in Section 405 of IPC have to be satisfied when the said offence is alleged to have been

committed by the Public Servant or Banker in respect of property entrusted him. Thus, for constituting an offence u/s 409 of IPC, the following

ingredients have to be established.

(i) that the accused has been a public servant or banker etc.,

(ii) that in his capacity as public servant or banker, merchant or agent he was entrusted with or with any dominion over any property;

(iii) that the accused has dishonestly misappropriated or converted to his own use that property or has disposed of that property in violation of

direction of law prescribing the mode in which such trust is to be discharged or wilfully suffers any other person so to do.

In this case, the accused admitted was a public servant or at any rate "a Banker" inasmuch as he was working as Manager of Grameena Bank at

the relevant time. It is obvious, as Manager of the Bank he was principal officer of that Branch and as such he was authorised to sanction loans on

security of fixed deposits and also loans under ATL and AATL Schemes. He was also authorised to credit the amount under the cheques

immediately under the Rules related to Immediate Credit of Outstation Cheques. It is not disputed that as a Manager of the Bank he was the

custodian of all the monies held by or received into the Bank. It is also apparent that the accused as a Manager was authorised to dispose of or

transfer the funds of the Bank strictly in accordance with the Rules applicable to the particular transaction inasmuch as it has been proved that the

accused has sanctioned loans on fixed deposits without obtaining fixed deposit receipts as security and by preparing false debit vouchers and mis-

appropriated the amounts for his own use. It is also been proved that he credited certain amounts to the account of his wife under ICOOC on the

basis of cheques which were false and which were not sent for collection at all. The accused has also sanctioned ATL and AATL loans in the

names of fictitious persons without obtaining necessary documents like promissory notes, evidence of holding of land etc. It leads to an irrefutable

inference that the accused mis-appropriated the funds of which he was the custodian, dishonestly for his own use. Thus, the ingredients of Section

409 of 1PC have been satisfactorily established against the accused.

In regard to charge u/s 477A of IPC, it is in the evidence that the accused prepared false debit vouchers for the purpose of sanction of loans on

the security deposit receipts and accordingly falsified the relative ledger folios and other related documents with an intent to defraud the bank. It

has also been seen that the accused discounted the cheques and credited the amounts under those cheques to the account of his wife and omitted

to mention those cheques in the relevant registers for the purpose of collecting amounts under those cheques. Thus, the ingredients of Section

477A of IPC must be held to have been established against the accused.

The next charge against the accused is u/s 13(1) (c) and (d) of the Prevention of Corruption Act, 1988. As seen above, there is ample evidence to

show that the accused had diverted the money of the bank with which he was entrusted for his own-self by setting up fraudulent transactions. This

satisfies the requirement of Section 13(1)(c) of the Prevention of Corruption Act, 1988. It is also obvious that by corrupt and illegal means, the

accused diverted the banks funds for his own use which satisfy the requirement of Section 13(1)(d)(i) of the said Act of 1988. Thus, the offences

under Sections 13(1) (c) and (d) punishable u/s 13(2) of the Prevention of Corruption Act, 1988 must be held to have been proved.

Thus, the offences under Sections 409, 477A and Sections 13(1) (c) and (d) read with Section 13(2) of the Prevention of Corruption Act, 1988

against the accused are held to have been proved beyond reasonable doubt. The findings of the trial Court in this regard are, therefore, confirmed.

With regard to sentence, it is represented that the accused has already suffered on account of these charges inasmuch as he lost his job. But, the

substantive sentence of rigorous imprisonment for one year for the offence u/s 13(1) (c) and (d) read with Section 13(2) of the Prevention of

Corruption Act, 1988 is the minimum sentence which cannot be altered.

Under the above circumstances, the appeal is dismissed and the conviction and sentence awarded by the trial Court for the offences under

Sections 409 and 477A of IPC and 13(1)(c)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 are confirmed.