

STATE OF A.P.

v.

P. SATYANARAYANA MURTHY
(Criminal Appeal No. 580 of 2001)

OCTOBER 3, 2008

**[DR. ARIJIT PASAYAT, P. SATHASIVAM AND AFTAB
ALAM, JJ]**

Prevention of Corruption Act, 1988:

s. 13(2) r/w s.13 (1)(d)(i) and s. 20 – Accused, a public servant, demanding illegal gratification – Caught with bribe money – Conviction by trial court – Acquittal by High Court – HELD: Evidence of complainant does not suffer from any infirmity. – Mere non-examination of any other person would not render his evidence suspect – Accused was caught red handed with bribe money – High Court has not considered effect of presumption flowing from s.20 – It has not given any reason as to how conclusions of trial Court are wrong – Trial court had elaborately dealt with evidence to record conviction – Judgment of High Court set aside – Conviction and imposition of fine as ordered by trial Court upheld – Custodial sentence reduced to one year.

The respondent, a Development Officer of A.P. Khadi and Village Industries Board, was prosecuted for commission of offence punishable u/s 13(2) read with s.13(1)(d)(i) of the Prevention of Corruption Act, 1988, on the allegations that he, in the presence of PW-2, demanded Rs.500/- as bribe from PW-1 to revive his lapsed loan. PW-1 informed the Dy. Superintendent of Police, A.C.B. A trap was laid and the respondent was caught with the bribe money. The trial Court convicted the respondent and sentenced him to two years rigorous imprisonment and to pay a fine of Rs.1000/- , but the High Court acquitted him.

A In the instant appeal filed by the State, it was con-
tended for the appellant that the High Court erred in set-
ting aside, by a cryptic order, the well reasoned judgment
of the trial Court; that merely because some persons were
not examined, the same could not be a ground to discard
B the evidence of a reliable witness; and that High Court's
conclusions were based on surmises and conjectures
and it did not keep in view the presumption u/s 20 of the
Act.

C Allowing the appeal in part, the Court

HELD: 1.1 The High Court did not discard the evi-
dence of PW-1, but it observed that there was no corrobora-
tion to his evidence and, therefore, it recorded the order
of acquittal. The evidence of PW-1 does not suffer from
any infirmity. Mere non- examination of any other person
D would not render his evidence suspect. The IO has cat-
egorically stated that the other person, namely, 'NR' was
not available to be examined as a witness. Reasons for
his non examination have been disclosed by the prosecu-
E tion. [para 5] [217,G-H; 218,E]

1.2 There was no suggestion given by the accused
that money was forced on his hands and thereafter he
put it on the table. For the first time during examination
under Section 313 of the Code of Criminal Procedure,
F 1973 such a stand was taken. [para 5] [218,A]

1.3 The High Court has also not considered the ef-
fect of the presumption flowing from Section 20 of the Pre-
vention of Corruption Act, 1988. The accused did not dis-
pute that the application form (Ext.P5) was found in a brief
G case. In fact the bribe money given by another person,
namely, 'NR' was also seized. It has been clearly indicated
by the witness that the money given by PW-1 and money
given by 'NR' were kept side by side and were not mixed
up. [para 5] [218,B-C]

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1.4 The trial Court had elaborately dealt with the evidence to record conviction. The High court has not indicated any reason as to how the conclusions of the trial Court are wrong. In any event, the High Court by a cryptic conclusion held that the evidence led was not sufficient. The judgment of the High Court is clearly unsustainable and is set aside. Considering the background facts, custodial sentence is reduced to one year, and the fine of Rs.1,000/- as was imposed by the trial Court is restored. [para 5-6] [218,D-E]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 580 of 2001

From the final Judgment and Order dated 15.12.2000 of the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No. 129 of 1994

Somiran Sharma and D. Bharathi Reddy for the Appellant.

R. Santhan Krishnan, Radha Rani, P.C. Pandey, Vijaya Kumar and D. Mahesh Babu for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Andhra Pradesh High Court directing acquittal of the respondent who faced trial for alleged commission of offence punishable under Section 13(2) read with Section 13(1)(d)(i) of the Prevention of Corruption Act, 1988 (in short the 'Act'). The trial Court i.e. the Court of Principal Special Judge for SPE & ACB Cases, Hyderabad, found the accused guilty. He was convicted and sentenced to two years rigorous imprisonment under each count. Both the sentences were directed to run concurrently. He was also fined with Rs.1000/- under each count with default stipulation.

2. Background facts in a nutshell are as follows:

One Gande Vaikuntam (PW-1) was sanctioned a loan of

A Rs.15,000/- in the year 1986 by the A.P. Khadi & Village Industries Board, Sangareddy. But due to some unavoidable circumstances he could not avail the facility. After about three years between April and May 1989 he approached the respondent-accused officer who was the Development Officer of A.P. Khadi & Village Industries Board and requested him for revival of the
B lapsed loan. According to the defacto complainant, respondent dodged him on 25th May, 1989 when he went to his office at Sangareddy and asked him to see him in the Head Office of A.P. Khadi & Village Industries Board at Hyderabad on 27th May, 1989. Accordingly, the complainant and one Balreddy (PW-2)
C met the respondent at the Head Office in Hyderabad on 27.5.1989. The respondent demanded bribe of Rs.500/- from him so that his loan case could be revived. He also told PW-1 to meet him on 31st May, 1989 at 8.00 a.m. at his residence. PW-1 approached the Dy. Superintendent of Police, A.C.B. Nizamabad and gave a report. On 31.5.1989 at about 7.25 a.m. PW-1 met the respondent who demanded and accepted the sum of Rs.500/- from him in presence of D. Sridhar Reddy and Ch. Narsimha Reddi. The respondent was caught red handed and bribe money was recovered in presence of mediators from the respondent. To prove the accusations the prosecution examined eight witnesses and 31 exhibits were exhibited. Accused examined one witness and exhibited 2 exhibits.

F The trial Court found the evidence of PWs 1 and 2 to be clear and cogent and accordingly recorded the conviction and sentence as afore-stated. In appeal before the High Court it was submitted that the accusations have not been established so far as the respondent is concerned. The High Court held that according to the evidence of prosecution the application given by PW-1 was found in the brief case of the accused person. But
G the High court observed that normally one would expect that if the accused officer kept the application in the brief case he would also keep the money in the brief case and it is not expected that he would keep the money on a tea-pot and the application in the brief case. This according to the High Court cre-
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ated doubt whether any money was demanded and received by the accused person. It was further observed that the evidence of PW-1 was not corroborated. Although there was an independent witness available, he was not examined. The High Court also observed that non examination of one Narsimha Reddi rendered the prosecution version fragile. Accordingly, the conviction was set aside and acquittal was directed.

Questioning the acquittal, the State of Andhra Pradesh has filed this appeal.

3. Learned counsel for the appellant-State submitted that the High Court by a cryptic order has set aside the well reasoned judgment of the trial Court. Merely because some persons were not examined, same cannot be a ground to discard the evidence of a reliable witness. It is pointed out that the bribe money purported to have been given by Narsimha Reddi was also seized. The Investigating Officer had clearly stated the reasons for the non examination of Narsimha Reddi. It was stated that he had joined naxalites. The presumption available under Section 20 of the Act was not kept in view by the High Court. It is submitted that the High Court's conclusions are based on surmises and, therefore, the judgment of acquittal cannot be maintained.

4. Learned counsel for the respondent on the other hand submitted that the High Court has analysed the evidence in great detail to find that the prosecution version is not believable. That being so, there was no scope for any interference in this appeal.

5. It is to be noted that the evidence of PW-1 has not been discarded by the High Court. But it is observed by the High Court that there was no corroboration to the evidence of PW-1 and therefore it recorded the order of acquittal. The evidence of PW-1 does not suffer from any infirmity. Mere non-examination of any other person would not render his evidence suspect. The IO has categorically stated that Narsimha Reddi was not available to be examined as a witness. Further, there was no sug-

A gestation given by the accused that money was forced on his hands and thereafter he put it on the table. No such suggestion was given and for the first time during examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') such a stand was taken. The High Court has also not
B considered the effect of the presumption flowing from Section 20 of the Act. It is not understood as to the basis on which the High Court found that accused would not put the application form and the money in different places. The conclusion has no basis. The accused did not dispute that the application form
C (Ext.P5) was found in a brief case. In fact the bribed money from Narsimha Reddi was also seized. It has been clearly indicated by the witness that the money given by PW-1 and money given by Narsimha Reddi were kept side by side and were not mixed up. In the present case, the trial Court had elaborately
D dealt with the evidence to record conviction. The High court has not indicated any reason as to how the conclusions of the trial Court are wrong. In any event, the High Court by a cryptic conclusion held that the evidence led was not sufficient. As noted above, reasons for Narsimha Reddi's non examination has been disclosed by the prosecution.

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F 6. Above being the position, the judgment of the High Court is clearly unsustainable and set aside. Considering the background facts, one year custodial sentence with fine of Rs.1,000/- as was imposed by the trial Court are imposed. The respondent shall surrender to custody forthwith to serve the remainder of sentence.

7. The appeal is allowed to the aforesaid extent.

R.P.

Appeal Partly allowed.