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BABJI

v.

STATE OF ANDHRA PRADESH

(Criminal Appeal No. 2159 of 2009)

B

AUGUST 9, 2018

[R. BANUMATHI AND VINEET SARAN, JJ.]

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E
Prevention of Corruption Act, 1988 – s.8 – Conviction under – When not sustainable – PW-4 complained that when he had approached Indian Airlines Office for reservation of a seat, an Airlines employee advised him to contact Appellant – Appellant told him that though, there was long waiting list but he can arrange a confirmed ticket and demanded Rs.2,100/- as against the actual fair of Rs. 1646/- – Appellant convicted u/s.8 – Held: Evidence adduced by the prosecution is vague as to for whom the appellant demanded the money and whether the person for whom the appellant demanded and received the money was a public servant – Though the receiver of the money may not be a public servant, like in the present case, the prosecution has to establish that the amount was received for inducing a public servant for doing something in his official capacity – In the absence of evidence to show that the appellant received money to induce a public servant to get the confirmation of the ticket, the conviction of the appellant cannot be sustained and he is acquitted.

F
Prevention of Corruption Act, 1988– s.8– Offence under– Factors to be proved– Discussed.

Allowing the appeal, the Court

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HELD: 1.1 In order to establish the offence under Section 8 of the Prevention of Corruption Act, 1988 it must be proved: (i) That the accused accepted or obtained, or agreed to accept, or attempted to obtain, from someone; (ii) For himself or for some other person; (iii) Any gratification whatever; (iv) As a motive or reward for inducing by corrupt or illegal means any ‘public servant’ to do or forbear to do any official act or to show favour or render any service to any of the persons specified in the section. [Para 5] [1062-D-E]

1.2 In the present case, the evidence adduced by the prosecution is vague for whom the appellant had demanded the money and whether the person for whom the appellant demanded and received the money is a public servant. Though the receiver of the money, like in the present case may not be a public servant, the prosecution has to establish by convincing evidence that the amount must have been received for inducing a public servant for doing something by that public servant in his official capacity. So far as confirmation of the seat in the Indian Airlines, there may be persons in the middle who may be a public servant or a travel agency or others. In the absence of convincing evidence to show that the appellant had received the money from PW-4, to induce a public servant to get the confirmation of the ticket, the conviction of the appellant cannot be sustained. The appellant is acquitted. [Para 6] [1062-G-H; 1063-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2159 of 2006.

From the Judgment and Order dated 09.09.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No.421 of 2000.

P. Venkat Reddy, Prashant Tyagi, Anil Kumar Tandale, Advs. for the appellant.

P. K. Dey, Ms. Sunita Rani Singh, A. K. Sharma, Mukesh Kumar Maroria, Advs. for the respondent.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Being aggrieved by the conviction under Section 8 of the Prevention of Corruption Act, the appellant has preferred this appeal.

2. The case of the prosecution is that PW-4 Sumeet Asthana gave Ex.P1-complaint to Vigilance Officer, Indian Airlines, Hyderabad, stating that he had approached the Indian Airlines Office on 20.06.1995 for reservation of a seat in Flight I.C. No. 948 for his travel to Madras on 21.06.1995 but there was a long waiting list and that an employee of the Indian Airlines, whom he does not know, had told him contact Babji (A-1) of M/s Varun Movies at Srinagar Colony, Hyderabad. PW-4 had approached A-1 on 01.06.1995 and A1 told him that there was long

A waiting list but he can arrange a confirmed ticket and demanded Rs.2,100/- as against the actual fair of Rs. 1646/-. On receipt of the said complaint PW-1, the Manager, Vigilance, Indian Airlines, Hyderabad, gave report Ex.P-2 to the Superintendent of Police, CBI Hyderabad stating that A-1 and A-2 are cheating the public.

B 3. Based on the evidence of PW-4 and PW-2 who accompanied PW-4, the Trial Court has convicted the appellant under Section 8 of the Prevention of Corruption Act (for short the 'Act') which was confirmed by the High Court.

C 4. We have heard Mr. P. Venkat Reddy, learned counsel appearing for the appellant as well as Mr. P.K. Dey, learned counsel appearing for the CBI.

5. In order to establish the offence under Section 8 of the Prevention of Corruption Act it must be proved:

D (i) That the accused accepted or obtained, or agreed to accept, or attempted to obtain, from someone;

(ii) For himself or for some other person;

(ii) Any gratification whatever;

E (iv) As a motive or reward for inducing by corrupt or illegal means any 'public servant' to do or forbear to do any official act or to show favour or render any service to any of the persons specified in the section.

F 6. In order to constitute an offence under Section 8 of the Act, three things are essential. In the first place there must have been the solicitation or receipt of the gratification. Secondly, such gratification must have been asked for or paid as a motive or reward for inducing a public servant to do an act or do a favour or render some service as stated under Section 8 of the Act. In the present case, the evidence adduced by the prosecution is vague for whom the appellant had demanded the money and whether the person for whom the appellant demanded and received the money is a public servant. Though the receiver of the money, like in the present case may not be a public servant, the prosecution has to establish by convincing evidence that the amount must have been received for inducing a public servant for doing something by that public servant in his official capacity. So far as confirmation of the seat in the Indian Airlines, there may be persons in

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the middle who may be a public servant or a travel agency or others. In the absence of convincing evidence to show that the appellant had received the money from PW-4, to induce a public servant to get the confirmation of the ticket, the conviction of the appellant under Section 8 of the PC Act cannot be sustained. In the result the appeal is allowed and the appellant is acquitted. A

7. The appellant is on bail. His bail bonds shall stand discharged. B

Divya Pandey

Appeal allowed.