2025 INSC 492

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 773 OF 2013

STATE OF KARNATAKA ..... APPELLANT (S)

VERSUS

NAGESH .....RESPONDENT(S)

J U D G M E N T

PRASANNA B. VARALE, J.

1. The present criminal appeal arises out of a judgement and order dated 09.03.2012 passed by High Court of Karnataka, Circuit Bench at Dharwad in Crl. Appeal No. 1290/2006. By the impugned judgment and order, the conviction rendered by the trial court to undergo R.I. for one year and pay fine of Rs. 500/-, and

in default of payment of fine, to further undergo S.I. for one month under Section 7 of the P.C. Act, 1988 and to undergo R.I. for one year and pay fine of Rs. 500/-, and in default of payment of fine, to further undergo S.I. for one month, for the offences under Section 13(1)(d) r/w S.13(2) of the Prevention of Corruption Act, 1988 (hereinafter, 'P.C. Act') was reversed and an acquittal order was passed by the High Court.

BRIEF FACTS

2. The factual matrix of the case is that on 24.01.1995, the complainant gave an application to the tahsildar, Belgaum requesting change of mutation entries in the Revenue Records in respect of certain agricultural lands which had fallen to his share in partition between himself and his brothers. After some time, complainant met the accused who was working as Village Accountant in Kadoli and enquired about his application. The accused informed that he had not received his application. Allegedly, the accused asked the complainant to file another application. Accordingly, on 03.04.1995, he submitted a new application (Ex.P.18). At that time, allegedly, the accused asked for Rs.2,000/- as bribe for attending his work. Since, his inability to pay Rs.2,000/- was expressed, they initially agreed for Rs.

1,500/-. Further, when he was unable to pay Rs.1,500/- at once, it was agreed that Rs. 1000/- would be paid immediately and balance Rs.500/- would be paid after the competition of work. He told the Respondent-Accused that he would come back in 4 days with the money. PW.1 was not willing to pay the bribe as demanded by the accused. Subsequently, P.W.1/Complainant filed Complaint (Ex.P.1) before the Lokayukta, DSP, Belgaum on 07.04.1995. FIR in Crime No.6/1995 was registered and steps were taken to lay a trap.

3. As a prelude to the trap, Entrustment Mahazar (Pre-trap Panchnama) was drawn as per Ex.P.3. 10 notes of Rs.100/- denomination smeared in Phenolphthalein powder was given to P.W.1/Complainant and he was accompanied by P.W.2. All of them went to the office of the Respondent/Accused at about 12.30 PM. P.W.1 and 2 went inside while others were waiting outside. They asked Respondent- Accused if he had brought the money. P.W.1/Complainant replied in affirmative. But the Respondent/ Accused demanded Rs.500/-. The same was given and was accepted by the Respondent/ Accused with his left hand and kept the same in his pants pocket. Other notes were retained by P.W.1. Thereafter, P.W.1 signalled and others came inside. Left hand

fingers of the Respondent/Accused were washed in Sodium Carbonate Solution and the same turned pink. On the right hand, there was no change in colour. The number on the currency notes were tallied with the Entrustment Mahazar.

4. Charge sheet was filed against the accused for offences punishable under Section 7, 13(1)(d) read with S.13(2) of the P.C. Act. Special Case (PC) No.97/1996 was registered.

5. The Trial Court vide its judgement and order dated 14.06.2006 convicted the accused to undergo R.I. for one year and pay fine of Rs. 500/-, and in default of payment of fine, to further undergo S.I. for one month under Section 7 of the P.C. Act, 1988 and to undergo R.I. for one year and pay fine of Rs. 500/-, and in default of payment of fine, to further undergo S.I. for one month, for the offence under 13(1)(d) r/w S.13(2) of the P.C. Act.

6. On appreciation of evidence in record, the High Court vide its judgement dated 09.03.2012, acquitted the appellant accused of all the charges levelled against him. Special Case (PC) No.97/1996 was set aside as the court was of the opinion that the finding recorded by the learned Sessions Judge regarding evidence of PWs.1 and 2 establishing the demand and acceptance of the bribe by the accused, is highly perverse.

7. Aggrieved by the said judgement of the High Court, the appellant is before us.

CONTENTIONS

8. The Learned Counsel for the State of Karnataka vehemently submitted that the reasons given by the trial court, while passing the judgment of conviction are on the basis of evidence on record and without giving scope for contrary view and are not liable for setting aside, only on the basis of minor contradictions pointed out by the Appellate Court and which will not go to the root of the case. It was submitted that only one stray sentence in the evidence of PW.1 to the effect that right hand wash has not shown any change of colour and thereby doubting the evidence of PW.1 is not proper. The Learned Counsel for the appellant also submitted that the importance of Sections 20 of the P.C. Act is not properly appreciated. It was also submitted that the bribe money of M.O.2 recovered from the possession of the accused under trap mahazar Ex.P.2, clearly proves that the accused had accepted the bribe - money and though he had stated in Ex.P.8 that the money was forcibly kept in his pocket, but the same was denied by the complainant and shadow witness and the presumption has been raised as contemplated under Section 20 of the P.C. Act. Learned

Counsel for the state further submitted that the Ex.P.2 trap mahazar clearly discloses numbers of currency notes recovered from the possession of the accused and also number of currency notes of Rs. 500/- which remained with the complainant was separately mentioned and it was also mentioned that the said money was returned to the complainant. Hence, the impugned judgment is liable to be set aside.

9. *Per contra*, Learned counsel for the accused argued that the Complainant in this case had suppressed material facts in his complaint and has not been very truthful about the incidents that have taken place. It was also submitted that the two statements of PW1 and PW2 are completely different from one another which not only indicates the suspicious nature of the complaint, but also shows that the complaint is false. Learned Counsel for the accused submitted that there is no acceptable evidence to substantiate the claim of PW 1 that he filed an application to the accused on 03.04.1995, where according to the complainant, the demand for bribe money was made and hence, the complaint submitted by the Complainant has no firm standing and is based on extremely flimsy evidence. The High Court on appreciation of evidence allowing the Criminal Appeal No. 1290/2006 and thereby,

acquitting the accused is legal and correct in doing so and the appeal of the appellant needs to be set aside.

ANALYSIS

10. Heard Learned Counsel for the appellant as well as Ld. Counsel for the respondent. We have also perused relevant documents on record and the judgment passed by the High Court.

11. The High Court vide its judgement dated. 09.03.12 acquitted the respondent-accused while observing as under:

> *"7. …Ex.P18 is a copy of the application filed by PW.1 to the Tahsildar. In any case, he could not have met the accused on 03.04.1995 in this regard. Therefore, there is serious doubt about the alleged demand made by the accused for the bribe on 03.04.1995 or on any subsequent dates. Therefore, in the absence of any such evidence and in the light of the fact that the application to the Tahsildar was filed only on 06.04.1995, the whole case of the complainant in this regard is highly unbelievable and it is highly unsafe to place utmost confidence on this part of the evidence of PW.1….*
>
> *8. …it is highly unnatural that the accused would ask for only Rs.500/- as against Rs.1000/-…*
>
> *9. …Thus, according to the evidence of PW.1, accused had not handled the marked currency notes by his right hand. However, according to PW.2, the accused handed over the marked currency notes by both the hands and when the*

fingers of both hands were washed separately in sodium carbonate solution, the solution turned into pink colour indicating handling of marked currency notes by both hands. According to PW.2, the police seized the pant and marked with the help of a ball point pen on the right side pant pocket of the accused indicating that the money had been kept in the right pocket of the pant. P.W-2 has also not stated whether or not the inner lining of the pant pocket was washed. Thus there is no consistency in the evidence of PWs. 1 and 2 with regard to handling of marked currency notes by the accused and as to in which side of the pocket of the pant the marked currency notes had been kept...

..This creates great amount of doubt as to the acceptance of the marked currency notes by the accused.

…However, the witness again stated that PW-1 told him about the accused keeping the currency notes in the left side pant pocket... Therefore, the possibility of the currency notes which were in possession of PW.1 having been seized cannot be ruled out. In any case the evidence of PWs.1 and 2 with regard to the acceptance of bribe by the accused is not consistent and cogent and their testimony in this regard is highly unrealiable. ..Therefore, I am of the considered opinion that the finding recorded by the learned Sessions Judge that evidence of PWs.1 and 2 establishes the demand and acceptance of the bribe by the accused, is highly perverse...

10. …In the case on hand, the oral evidence on record does not satisfactorily establish either the demand or acceptance of bribe by the

accused. Therefore, Section 20 of the Act has no application to the facts of the case."

12. At the outset, we are of the opinion that the learned Trial Court, on appreciation of the evidence got before it by the prosecution, arrived at just and proper conclusion that the prosecution proved its case against the accused beyond reasonable doubt and accordingly awarded the sentence and conviction to the accused. We are of the opinion further that the High Court committed serious error in setting aside the well-reasoned judgment passed by the learned Trial Judge on erroneous grounds.

13. Dealing with a charge under Section 7 of the P.C. Act, this Court in the case of ***C.K. Damodaran Nair v. Government of India***[1] has observed that the prosecution is required to prove that:

(i) The accused was a public servant at the material time;

(ii) The accused accepted or obtained a gratification other than legal remuneration; and

(iii) The gratification was for illegal purpose.

[1] (1997) 9 SCC 477

Applying these legal principles to the facts at hand, we are of the opinion that these ingredients have clearly been established by the prosecution in the present case.

14. The High Court gave an undue importance to the minor discrepancies and failed to appreciate the trust-worthy evidence in the form of ocular testimony of the witnesses as well as the documentary evidence. PW1/Complainant in his testimony before the court gave a detailed account establishing the basic and important facts such as the demand and acceptance of bribe by the accused. PW1 makes a reference to his first application seeking the entry in the revenue records. The said application was secured in the process of investigation and in the part of the documentary evidence namely Ex. P22. This application was submitted to the office of Tehsildar as there was no action on the said application. When PW1/complainant met with the accused, the accused responded to the complainant initially by stating that he had not received the application, then the application – Ex. P18 was submitted. The accused then asked for the bribe amount and with this demand the accused stated that if PW1 complainant pays the amount of bribe, he will do the needful. For this obligation the accused made a demand for Rs. 1500/- and when the PW1

complainant expressed his inability to pay an amount of Rs. 1500/-, the accused stated that he should pay at least Rs. 500/-. As the complainant was not willing to pay the bribe amount he approached a Lokayukt Police. It may not be necessary to refer to the facts again in detail as reference is already made to these facts in earlier part of this judgment. Perusal of the testimony of PW1, shows that though there is a little departure in his testimony prompting the Special Public Prosecutor to declare the witness as hostile but in our opinion, the limited part of the version of this witness in respect of the date of submitting the application this minor departure is not sufficient to discard the other detailed and reliable version of the witness in so far as the demand and acceptance of the accused is concerned. PW1 stated before the court that on 07.04.1995 at 12.20 PM he along with PW 2 (Shadow Witness) approached the accused. He further stated in clear words about the demand as well as acceptance of the bribe amount of Rs. 500/- with a rider that the complainant would pay the balance bribe amount of Rs. 1000/- after the work is over. Then he stated about giving the signal to raiding party and the raiding party approaching the accused.

15. It is also noteworthy that, Ex. 22 dated 24.01.1995 is a joint application filed by PW1 and his brother to effect mutation in the revenue records as per their partition deed (vatani patra). This application is in Marathi language, which is part of the record that the learned Trial Judge as well as PW4 was well-conversant with Marathi and incidentally one of us are also conversant and can read and write in Marathi language. We have also perused the said Ex. 22.

16. The Trial Court appreciated the evidence of PW1 in great detail. However, the High Court observed that there are discrepancies in the evidence of PW 1 and evidence of PW 1 shows that on washing by phenolphthalein, only one hand i.e. right-hand fingers of the accused, the colour got changed to pink colour. The High Court made observations that there is no material on record to support the prosecution case and particularly version of PW 1 that the accused after accepting the money i.e. Rs. 500/- kept the notes in his pant pocket. Now, these observations of the High Court are not in consonance with the evidence which is well appreciated by the Trial Court. The learned Trial Judge while appreciating the evidence, particularly oral evidence, makes a detailed reference to the oral testimony of PW 2 who is the Shadow

Witness. As per the version of PW 2 the accused accepted the bribe of Rs. 500/-, counted the bribe amount and then kept the money in his pant pockets. PW2 stated before the court *"the police washed both the hand fingers of accused in washing soda solution of white colour, and thereafter it changed to kempu gulabi colour and it was seized separately in 2 bottles. He further stated before the Court that the police also seized the accused pant and marked the right pocket by ball pen".* This witness was subjected to detailed cross – examination and the witness stood firm, thus, the High Court totally ignored the version of PW 2 (Shadow Witness) and erroneously observed that the prosecution failed to establish the demand in so far as the prosecution failed to show that colour of the solution from both the hands did not change and further the accused kept the bribe amount in his pant pockets.

17. The High Court observed that the version of PW 1 is doubtful as PW1 stated in the complaint, as well as, before the Court that he had filed an application before the Tehsildar two months prior to 07.04.1995, whereas there was an application submitted to the Tehsildar only on 06.04.1995 and as such the version of PW1 that he met with the accused on 03.04.1995 is doubtful. Now, on perusal of the record clearly shows that even before the application

dated 06.04.1995, an earlier application (Ex 22) was already submitted by PW1 and the same was collected during the course of investigation and the Investigating Officer in his testimony stated about collecting this application in course of investigation.

18. Another very important factum which missed the attention of the High Court is that the incident took place in the year 1995, the trial got delayed and after span of 10 years the witnesses were subjected to their ocular testimony before the Court. PW 1 was examined on 24.03.2005, PW 2 was examined on 22.08.2005 and the other witnesses were examined in the year 2006. In view of this fact, it can safely be said that the long span would certainly result in some minor discrepancies in the version of the witness particularly PW1 who is the rustic villager. The High Court ought to have seen that these were some minor discrepancies and they were not of such a nature so as to discard the other version of the witnesses, particularly PW1 and PW2, which are truthful and reliable.

19. The learned Trial Judge rightly made observation by referring to this fact in the following words:

> *"The court is of the view that the trap is dated 07.04.1995 and PW1 is examined before the court on 24.03.2005 i.e. almost after 10 years. Hence, possibility of lapse of*

memory regarding the names of panchas and the date of trap cannot be ruled out".

20. PW2 gave a detailed account in his examination in chief and also in his cross examination he re-affirmed that the accused accepted the money, counted it and kept it in his pocket. The trouser of the accused was seized and another trouser was provided to the accused by police. PW 4 also supported the version of PW 1 and PW2, particularly about the trap. It may also be noted that though the aspect of grant of sanction was not seriously taken up by the appellant before the High Court nor did the High Court refer to the same, but the Trial Court dealt in detail with the fact of sanction also by making reference to the oral evidence and the documentary evidence and arrived at the conclusion that there was a proper sanction in the matter supporting the case of prosecution.

21. The other oral testimonies namely testimony of PW3, PW 4, PW 5 and PW 6 also support the case of prosecution. The High Court gave undue weightage to some confusion about the name of PW2 and PW4 in the version of PW1 /complainant but as stated above, the witnesses were subjected to testimony after 10 years and PW 2 and PW 4 had no earlier acquaintance with the

complainant, as such some confusion in names of witness is possible and thus, it is not sufficient to discard the version of PW 1 on this minor discrepancy alone.

22. It may not be necessary for us to refer to the version of other witnesses in detail. Suffice to say that the Trial Court appreciated this evidence in detail and accepted the same as the reliable evidence in support of the prosecution by assigning the just and cogent reasons.

23. Considering all these aspects, we are of the opinion that that the prosecution proved its case against the accused beyond the reasonable doubt and the charges against the accused namely under Section 7,13(1)(d) read with Section 13(2) of P.C. Act are proved so as to hold the accused guilty of these offences.

24. On the contrary, the High Court committed the serious error in setting aside the judgment of the Trial Court. Needless to state that in this situation the appeal needs to be allowed. In so far as, the sentence awarded the accused is concerned the learned Senior Counsel Mr. Nuli appearing for the respondent-accused attempt to submit before this Court that as the incident is of the year 1995 and by passage of time now the accused in his advanced age, this court may consider reducing the quantum of sentence. Somewhat

similar submission was made before the Trial Court that some leniency be shown to the accused while awarding sentence and the learned Trial judge in Para. 67 and 68 dealt with this aspect of sentence in following words:

> *"67) In this case, the accused is convicted for the offence under Sec. 7 and Sec. 13(1) (d) read with Sec. 13 (2) of P.C.Act 1988. As per Sec 7 of the P.C. Act, the punishment provided is imprisonment which shall be not less than six months but which may extend to five years, and shall also be liable to fine. Further, Section 13 (2) of said Act provides that any public servant who commits criminal is conduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years, and shall also be liable to fine.*
>
> *68) So, considering the facts and circumstances of the case in hand, I feel that if the accused is sentenced to undergo R.l. for one year pay fine of Rs. 500/-, and in default of payment of fine to further undergo S.l. for one month, for the offence under Sec. 7 of the P.C. Act, it will meet the ends of justice. Likewise, if the accused is sentenced to undergo R.l for one year and pay fine of Rs. 500/-,and in default of payment of fine to further undergo S.l. for one month, for the offence under Sec. 13(1) (d) r/w Sec 13(2) of the P.C.Act, 1988, it will meet the ends of justice."*

25. The record indicates that the respondent- accused enjoyed a liberty during the trial as he was on bail and post the judgment of the Trial Court as also during the pendency of the appeal before the High court, he was enjoying the liberty by way of bail. As such, we are unable to show any kind of indulgence on the aspect

of the quantum of sentence and accordingly, the conviction and sentence recorded by the Trial Court is upheld. Resultantly, the accused is to surrender before the Trial Court within two weeks from today.

26. Consequently, this appeal is allowed and disposed of in terms of the aforesaid observations.

27. Pending application(s), if any, shall also be disposed of accordingly.

.....J.
[BELA M. TRIVEDI]

.....J.
[PRASANNA B. VARALE]

NEW DELHI;
APRIL 16, 2025.