SUPREME COURT OF INDIA

State of A.P

Vs.

M. Radha Krishna Murthy

Crl.A.No. 386 of 2002

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

06.03.2009

JUDGMENT

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 was convicted by a learned Special Judge for SPE and ACB Cases for offence punishable under Section 7 and 13(2) read with Section 13(1)(d) of the *Prevention of Corruption Act, 1988* (in short the `Act'). The respondent was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- with default stipulation.

2. Background facts in a nutshell are as follows: The accused was working as Excise Inspector, Jogipet, Medak District and joined in Government service as L.D.C. on 27-12-1962 in the office of Excise Superintendent. Medak District. Later he was promoted as Excise Sub-Inspector on 2-11-1971 and as Excise Inspector on 9-7-1985. He worked as Excise Inspector at Jogipet, Medak District from 8-4-1987 to 15-7-1989. He held Additional charge of the post of Tekmal Excise Range. Thus, he is a "public servant" within the meaning of Section 2 (c)(i) of the Act. One Sri Goundla Joginath Goud, son of Yella Goud is a resident of Muslapur village. He and his father were running a toddy shop. On 12-6- 1989 the accused searched the cattle shed of one Burra Narsimlu of Muslapur village, situated adjacent to their toddy shop and seized 1 kg. of Chloral Hydrate, On 13-6-1989 the accused called Joginath Goud to his office and demanded a bribe of Rs.5,000/- stating that he would drop action and threatened that if they do not pay the monthly mamools regularly, cases would be booked against them. Then the complainant pleaded that he has no connection with his father and/or nor with the said case and requested not to book a case against them. After some bargaining the amount of bribe was reduced to Rs.4,000/- and accused asked him to pay Rs,2,000/- immediately. Accordingly he paid Rs.2,000/- as part payment on the same day and the balance was to be paid on 19-6-1989. Since the complainant was not willing to pay the balance of Rs.2,000/- he approached the DSP, ACB, Nizamabad Range on 16-6-1989 and lodged a complaint on which the DSP, Nizamabad Range, registered it as a case in Crime No:5 ACB-NZB/89 Under Sections 7 & 11 and Section 13 (1)(d) of the Act. The

investigation disclosed that the accused drafted a panchanama for the proceedings conducted in the house of Sri Burra Narsimhulu and seized a plastic bag of 1 Kg of Chloral Hydrate on 12-6-1989 and registered it as a case in Cr. No:40/88-89 under Section 34 (a) of A.P. Excise Act against Burra Narsimhulu and also against the father of the complainant. Further investigation disclosed that the accused after demand and part payment sent up a preliminary report on grave crime part-I showing that accused is not traceable and he showed official favour by not mentioning the name of the father of the earlier demand, the accused demanded and accepted the balance of Rs.2,000/- as gratification other than legal remuneration on 19-6- 1989 at about 3.40 p.m. from the complainant Joginath Goud at his residence at Jogipet. Medak District in the presence of G. Anjaiah Goud and the accused was caught red-handed by the ACB in the presence of the mediators at 3.50 p.m. on 19-6-1989. The fingers of both the hands of the accused yielded positive results when subjected to Sodium Carbonate test. The tainted amount was recovered from the cot in the presence of the mediators. Therefore, the Government accorded sanction for prosecution vide G.O. Ms. No:757, dated 29-8-1991 Revenue (Excise I) Department and accordingly the accused was held liable for punishment under the abovesaid sections of law. Copies of documents relied on by the prosecution were furnished to the accused. The accused was examined and charges under Sections 7 and 13(2) read with Section 13(1)(d) of the Act were framed, read over and explained to him for which he pleaded not guilty and claimed to be tried. The prosecution examined P.Ws.1 to 7 and filed Exs.P.1 to P.15 and marked M.Os.1 to 10. The trial Court found the evidence to be acceptable and directed the conviction. In appeal the High Court held that since part of the prosecution version about demand and acceptance has not been proved, the remaining part of the case cannot be accepted. It was pointed out that according to the prosecution an amount of Rs.4,000/- was demanded and accepted and the first vital part of the prosecution version was that payment of Rs.2,000/- said to have been accepted by the respondent is not proved, therefore, when the part of the same is not accepted the remaining part of the case shall also not be accepted. Placing reliance on a decision of this Court in *Hari Dev Sharma v. State (Delhi Admn.)*[1] the conviction as recorded was set aside. The High Court found that the prosecution case was that there was demand and an amount of Rs.2,000/- was paid on 13.6.1989 which has not been proved and with regard to the trap conducted by the prosecution while the accused was receiving Rs.2,000/- from P.W.1 on 19.6.1989. Even if the trap is proved beyond all reasonable doubt, the prosecution version cannot be upheld in view of the aforesaid decision of this court.

3. In support of the appeal, learned counsel for the appellant submitted that the conclusions of the High Court are without any foundation and legal basis.

4. Learned counsel for the accused on the other hand supported the judgment of the High Court contending that the decision of this Court in Hari Dev Sharma's case (supra) is clearly applicable.

5. On a bare reading of the judgment in Hari Dev Sharma's case (supra), it is clear that no rule of universal application was laid down that whenever a part of the case relating to demand and acceptance is not acceptable, the whole case would fail even if the case relating to trap, recovery of money and chemical test by the prosecution is established. When part of

the prosecution version relating to demand and acceptance of bribe stands by itself, the ratio of the decision does not apply. Unfortunately, in the instant case the High Court has lost sight of the aforesaid aspects and by placing reliance on the aforesaid decision has directed acquittal.

6. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. V. Horton*[2], Lord Mac Dermot observed: "The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

7. In *Home Office v. Dorset Yacht Co.*[3] Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition It will require qualification in new circumstances." Megarry, J[4] observed: "One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board*[5] Lord Morris said: "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

8. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

9. The following words of Lord Denning in the matter of applying precedents have become locus classicus: "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive." *** *** *** "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

10. In that view of the matter the judgment of the High Court is clearly unsustainable and is set aside and that of the trial Court is restored.

11. The appeal is allowed.

[1]*(1977 (3) SCC 352)*
[2]*(1951 AC 737 at p.761)*
[3]*(1970 (2) All ER 294)*
[4]*(1971) 1 WLR 1062*
[5]*(1972 (2) WLR 537)*