

G. Harinatha Rao

v.

State of A.P. Rep. ACB

(Supreme Court Of India)

HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD HON'BLE MR.
JUSTICE PINAKI CHANDRA GHOSE

Criminal Appeal No. 1378 Of 2011 | 15-01-2014

1. Appellant along with another accused were put on trial for offences under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'). Principal Special Judge for SPE & ACB cases by judgment and order dated 29.10.2013 held the appellant guilty for the aforesaid offences but acquitted the co-accused. The appellant was sentenced to undergo rigorous imprisonment for a period of two years and fine of Rs. 5,000/-, in default, to undergo simple imprisonment for one month each for the offence under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act.

2. Aggrieved by the conviction and sentence, the appellant herein preferred Criminal Appeal No. 1183 of 2003 whereas the State, aggrieved by the acquittal of the co-accused, preferred Criminal Appeal No. 783 of 2004. Both the appeals were heard together and dismissed by the impugned order. It is against the dismissal of the appeal preferred by the appellant herein against his conviction and sentence that he has preferred this appeal with the leave of the Court.

3. Criminal prosecution was set in motion on the basis of a report given by PW-1 P.S. Janardhana Rao before the Deputy Superintendent of Police, ACB City Range, on 3.06.1997. According to the report, the informant had 9.08 guntas of land at Survey Nos. 235 and 223 and 3.25 guntas of land at Survey No. 235 at Gudimalkapur Village, Hyderabad. According to the report, PW-1 had transferred the entire land, excepting 2500 yards, to a Cooperative Society. In the year 1996, he wanted to sell the 2500 yards of land, which he had retained. One Gnanesar along with some other persons demanded money from him which was refused by the informant. Those persons made allegations that the informant had encroached the land and, accordingly, approached the Land

Grabbing Court. On the basis of that, land grabbing case was registered and one Advocate Commissioner was appointed to take measurement of the said land. The Advocate Commissioner directed the informant to be present at the site and, according to the informant, he along with the Officers of the Cooperative Society went to the site. It is alleged that the Advocate Commissioner and the appellant, who at the relevant time was working as the Survey Inspector, and the Assistant Surveyor (since acquitted) had visited the site several times. According to the report, the appellant and the co-accused called him (PW-1) separately and asked him to pay a sum of Rs. 20,000/- for preparing a favourable report. They are alleged to have stated that in case the amount is paid they would prepare the report in his favour and in case he does not do so, they will give an adverse report. In the report it had been further alleged that the informant approached the appellant on 2.06.1997 and requested him to do justice. At this, the appellant is alleged to have demanded Rs. 20,000/- to do justice and when the informant showed his inability to pay the said amount, he had reduced the bribe amount to Rs. 5,000/- and asked him to come in the evening on 3.06.1997 to pay the said amount.

4. On the basis of the aforesaid statement, a case was registered and after the investigation, the Police submitted a chargesheet and the appellant was put on trial. The appellant denied to have committed any offence and from the trend of the cross-examination, his defence seems to be that he never made any demand for illegal gratification.

5. The trial court on analysis of the evidence came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubts so far as this appellant is concerned. However, the trial court acquitted the co-accused. The said order, as stated earlier, has been affirmed by the High Court on appeal.

6. The informant-P.S. Jnardhana Rao was examined as PW-1 during the course of trial. He has a different story to tell during the trial. According to this witness, when the matter was being adjourned, he thought that the appellant would not do the work unless bribe is paid. He has further stated that when he wanted to give bribe to the appellant, he refused but has put the money on the chair. The prosecution declared him as a hostile witness and cross-examined him. During the course of cross-examination, he had admitted to have given the First Information Report marked as Exhibit P-1 and stated that in the said report

it is mentioned that the appellant had called him outside and demanded Rs. 20,000/- for measuring the land. PW-2 P. Syam Prasad is one of the shadow witnesses. He has also not supported the case of the prosecution and has been declared hostile. When cross-examined, he has stated that it may be possible that the appellant had demanded money from PW-1 P.S. Janardhana Rao and kept beneath his left thigh on the chair. He also stated that the informant might have given. However, he has categorically stated that he did not hear the conversation clearly and he cannot say as to whether any demand was made. PW-3 Mr. N. Mallesh Rao, who at the relevant time was working as a Joint Director of Industries, has been examined to support the pre-trap and post-trap proceedings. He has stated about the complaint made by the informant - PW-1, the instruction given by the Investigating Officer before the trap and what has happened after the trap.

7. Mr. Y. Raja Gopala Rao, learned counsel appearing on behalf of the appellant, raises a very short point. He submits that there is no evidence to show that the appellant made any demand for payment of illegal gratification and accepted the same. He submits that mere recovery of the amount from the appellant is not sufficient to hold him guilty. Accordingly, he prays for acquittal of the appellant.

8. On the other hand, Mr. Shiv Ram Sharma, learned counsel appearing on behalf of the respondent, submits that in the cross-examination, the informant PW-1 has admitted to have given the report which contains the allegation of demand by the appellant herein and that is good enough to sustain the appellant's conviction. He further points out that PW-3 Mr. N. Mallesh Rao, the pre-trap and post-trap witness, has clearly stated about the report given by the informant PW-1 and, therefore, the courts below did not err in convicting the appellant.

9. We have bestowed our consideration to the rival submissions and we find substance in the submission of Mr. Rao, learned counsel for the appellant. The informant- PW-1 during the course of trial has nowhere stated that any demand was made by the appellant. So also, the trap witness, PW-2. PW-1 has gone to the extent of saying that as the matter was being adjourned on several dates, he thought that the appellant will not do his work unless he bribed him with cash and with this notion, he went to meet the appellant, gave money, which he

refused. Merely because this witness has admitted to have given the report alleging demand of bribe by the appellant would not be sufficient to hold that he made such a demand. In the present case, the prosecution attempted to prove the guilt of the appellant by direct evidence. The informant PW-1 and shadow-witness PW-2 made statements before the Court which were quite different from the one made by them during the course of investigation. In the light of aforesaid, the demand and acceptance cannot be said to have been proved in accordance with law. In the state of evidence, we feel it unsafe to sustain the conviction of the appellant. Accordingly, we give him the benefit of doubt.

10. In the result, the appeal is allowed, the impugned judgment and order passed by the High Court is set aside. The appellant is on bail. He shall be discharged of his bail bonds.