SUPREME COURT OF INDIA

L. Laxmikanta

Vs.

State by Superintendent of Police, Lokayukta

Crl.A.No.593 of 2012

(Fakkir Mohamed Ibrahim Kalifulla and Abhay Manohar Sapre JJ.)

05.02.2015

JUDGMENT

ABHAY MANOHAR SAPRE, J.

1. This criminal appeal is filed by the accused against the judgment and final order dated 24.05.2011 passed by the High Court of Karnataka in Criminal Appeal No.1792 of 2004.

2. By impugned judgment, the High Court dismissed the appeal filed by the appellant (accused) and confirmed the judgment of the trial court which convicted the appellant for the offences punishable under Sections 7 and 13 (1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (for short "the Act') and sentenced him to undergo two years' RI and to pay a fine of Rs.5000/- in respect of conviction for the offence punishable under Section 7 and to undergo four years' RI and to pay a fine of Rs.10,000/- in respect of conviction for the offences punishable under Section 13(1)(d) and Section 13 (2) of the Act with respective default clauses therein to suffer further imprisonment. Both the sentences were directed to run concurrently.

3. The question which arises for consideration in this appeal is whether the Courts below were justified in convicting and awarding sentences to the appellant for the offences specified above?

4. In order to appreciate the grievance of the appellant, relevant facts, which lie in a narrow compass, need mention infra.

5. The appellant was working as a Warden of a hostel of college known as "Medical and Engineering College (SC/ST) Hostel at Banashankari I Stage, Bangalore". The Hostel is run by the Social Welfare Department of the State. The complainant (PW-3) was the student of B.E. Course during 1999- 2000 and was occupying one room in the hostel. He failed in second semester and, therefore, appeared in the examination and was declared pass in 2001. This enabled him to join the third semester. However, the complainant was required to apply afresh to seek re-admission in the hostel because he could not clear the examination as provided in the Hostel Rules. The complainant, therefore, made a fresh application to the Hostel Authorities seeking re-admission and allotment of a room. His application was to be forwarded to the District Officer through the appellant after getting countersigned from the Principal of the College. The appellant did not provide hostel facilities to the complainant and compelled him to frequently visit his office to clear his file. The accused also told the complainant that he (complainant) would get re-admission in the hostel only after paying to him (appellant) Rs. 2000/- as illegal gratification.

6. The complainant finding that he would not get re-admission in the hostel unless he pays Rs. 2000/- to the appellant by way of illegal gratification, went to the Office of Lokayukta and lodged complaint (Ex-P- 9) about this incident against the appellant. The Lokayukta officials found substance in the appellant's complaint and accordingly registered the complaint for giving effect to it. Four currency notes of Rs.500/- denomination (total Rs. 2000/-) were, accordingly, prepared by smearing sodium carbonate on each note and were given to the complainant by CW-3. The complainant was asked to keep four notes in his pocket by CW-14. The complainant and raiding party sleuths (CW-2, CW-3 and CW-14) went to the Hostel in Lokayukta's Police Jeep on 03.12.2001 at around 4.15 p.m. At about 6.30 p.m, the appellant came in the office. The appellant entertained the complainant and shadow witness (PW-4) and first took them to his chamber and then told them to go to room No. 5 and wait in the room. The appellant then around 7.00/7.15 p.m. came in the room and demanded the amount from the complainant. The complainant then gave the currency notes of Rs. 2000/- to the appellant, which were smeared with the solution. The appellant took the notes in his right hand and then kept them in the left hand side pocket of his trouser. The raiding party then arrived and trapped the appellant. His hands were immersed in the chemical solution, which on being dipped, turned into pink colour. The appellant's paint was also immersed in the solution, which also turned into pink colour (MO-2).

7. The raiding party then prepared the panchnama (Ex-P-18) and after completing the investigation and obtaining necessary sanction, filed charge- sheet (Ex-P-4)

against the appellant for his prosecution in relation to the offences punishable under Sections 7, 13(1)(d) and 13(2) of the Act. The prosecution examined 8 witnesses, whereas the appellant, in his defense, examined 6 witnesses. His statement was also recorded under Section 313 of the Code of Criminal Procedure.

8. The trial court, by judgment dated 16.12.2004, held that mandatory requirements of Section 7 read with Section 13 namely; demand of illegal gratification and its acceptance were proved against the appellant beyond any reasonable doubt by the prosecution and hence, the appellant was liable to be convicted for the offences in question. He was, accordingly, convicted and directed to undergo sentences as mentioned above.

9. Aggrieved, the appellant filed Criminal Appeal before the High Court. The High Court by impugned judgment, dismissed the appeal and affirmed the conviction and sentence awarded by the Sessions Court. It is against this judgment; the accused felt aggrieved and filed this appeal by special leave.

10. Learned counsel for the appellant while assailing the legality and correctness of the impugned judgment contended that twin requirements of Section 7 namely; demand of illegal gratification and its eventual acceptance by the appellant from the complainant were not proved beyond reasonable doubt by the prosecution and hence, the conviction of the appellant is bad in law. Learned counsel urged that the Courts below should have believed the defence version which was more plausible. Learned counsel elaborated these submissions by taking us through the evidence on record. Learned counsel lastly submitted that since the High Court decided the appeal on merits in the absence of appellant's counsel, hence the case be remanded to the High Court for rehearing of the appeal on merits afresh.

11. Per contra, learned counsel for the respondent, in reply, contended that no case is made out to interfere with the impugned judgment as according to him twin mandatory requirements of Section 7, namely; demand of gratification and its acceptance by the appellant from the complainant were made out by the prosecution beyond reasonable doubt and hence the appeal deserves dismissal.

12. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in any of the submissions of the learned counsel for the appellant.

13. With a view to satisfy ourselves as to whether a case of demand and acceptance of illegal gratification which are sine qua non for sustaining conviction under

Section 7 read with Section 13 ibid of the accused are made out, we perused the entire evidence. Having so perused, we are also of the view that twin requirements of demand and acceptance of illegal gratification were rightly held proved against the appellant by the Courts below and hence, no fault can be found in the findings of the Courts below on this material issue for upholding the conviction of the appellant.

14. On perusal of evidence of complainant (PW-3) and the shadow witness (PW-4), we find that it is consistent on the issue of demand and acceptance of illegal gratification from the complainant and is without any contradiction. There is, therefore, no reason to disbelieve the testimony of PW-3 (complainant) when he deposed that the appellant made a demand of Rs. 2000/- from him for allotment of a room in the hostel. It is not in dispute that PW-3 was staying in the Hostel, and had applied for re- admission for allotment of room in the hostel. It is also not in dispute that appellant being the Warden of the hostel knew the complainant. It is also not in dispute that four currency notes (each Rs. 500/- denomination) were given to the appellant which he kept in his trousers' pocket and they changed their colour (pink) when mixed in solution along with his hands and trousers' pocket.(Ex-P-18). PW-7 a police inspector (I.O.) of Lokayukta, who investigated the case, duly proved the articles. We have not been able to find any evidence of the defense to discard the evidence of prosecution on this material issue.

15. We are not inclined to believe the defence version of DW-1 and DW-2 as, in our considered view, the Courts below, rightly did not believe their version. DW-1 is the student who was occupying one room in the hostel. According to him, when he was coming out from the bathroom, he saw that complainant and his friend were forcing the appellant to accept the money, which the appellant was refusing to accept while standing in the passage. He further deposed that he does not know as to what happened thereafter because he went to his room. So far as DW-2 is concerned, he is also the student like DW-1. He deposed that he saw appellant along with the complainant and one person standing in the passage where complainant was seen offering money to the appellant. He said that he then proceeded to his room and did not see what had happened thereafter.

16. This evidence, in our considered view, does not help the appellant in any manner for more than one reason. Firstly, there is nothing in the defence version which deserves acceptance to acquit the appellant of the charges leveled against him. Secondly, the story that complainant was forcing the appellant to accept the money and which he was not accepting is unbelievable in the light of the evidence adduced by the prosecution because the trap was arranged in room No.5 and not in

the passage. Thirdly, both the students (DW-1 and 2) were the chance witnesses who came forward to help the appellant and lastly, even according to appellant, he did not dispute that money was recovered from his body. It was not the case of appellant that there was some previous lawful money transaction between him and complainant pursuant to which complainant repaid the said money to appellant. So far as the evidence of other defence witnesses is concerned, we have perused their evidence and find no relevancy in their evidence. None of these witnesses have witnessed the incident and hence their evidence does not in any way help the appellant.

17. The two Courts below, therefore, rightly rejected the defence version being totally devoid of any merit. We concur with the reasoning of the Courts below on this issue and accordingly uphold the same.

18. It is a settled principle in law laid down by this Court in a number of decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence then conviction must follow under Section 7 ibid against the accused. Indeed, these twin requirements are sine qua non for proving the offence under Section 7 ibid. (See- C.M. Sharma vs. State of Andhra Pradesh [(2010) 15 SCC 1].

19. In the light of our own re-appraisal of the evidence and keeping in view the above-said principle in mind, we have also come to a conclusion that twin requirements of demand and acceptance of illegal gratification of Rs.2000/- were proved on the basis of evidence adduced by the prosecution against the appellant and hence the appellant was rightly convicted and sentenced for the offences punishable under Section 7 read with and Section 13 (1)(d) read with Section 13 (2) of the Act.

20. Coming now to the last argument of the learned counsel for the appellant that the appeal should be remanded to the High Court for its rehearing afresh because no one appeared for the appellant in the High Court at the time of hearing of appeal which caused prejudice to the appellant. In our view, the High Court in such circumstances should have appointed any lawyer as amicus curie on behalf of the appellant to argue appellant's case instead of proceeding to decide the appeal ex parte on merits. Indeed, in our considered opinion, it was the appropriate course which the High Court should have followed for deciding the appeal finally on merits to meet such eventuality.

21. Be that as it may and keeping in view the aforesaid infirmity noticed in the case, we considered it proper and in the interest of justice to undertake the exercise of appreciating the entire evidence in our appellate jurisdiction. We, therefore, do not find any necessity or ground to remand the case to the High Court for its fresh hearing.

22. In the light of the foregoing discussion, we find no merit in this appeal. It fails and is, accordingly, dismissed. Since the accused is on bail, he be taken into custody forthwith to serve out the remainder of his sentence.