

Non-reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.89 of 2009

State of Andhra Pradesh

.... Appellant

Versus

Kesavapatnam China Swamy

.... Respondent

J U D G M E N T

Uday Umesh Lalit, J.

1. This appeal by Special Leave challenges the judgment and order dated 25.04.2006 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Appeal No.27 of 2001 setting aside the judgment and order of conviction dated 29.12.2000 of the Special Judge for SPE & ACB Cases, Vijayawada in CC No.4 of 1996.

2. One P. Ramakrishna Rao i.e. PW1 wanted to start a Kirana and General Stores at Gudivada and had submitted an application on 22.05.1995 with

necessary enclosures in the office of the Deputy Commercial Tax Officer No.1, Gudivada seeking issuance of registration certificate. The application was forwarded to the respondent who, as Assistant Commercial Tax Officer No.1, Gudivada, District Krishna, was competent to issue registration certificate under the Sales Tax Act. In this connection PW1 met the respondent in his office on 16.06.1995 and requested him to issue registration certificate, at which time the respondent allegedly demanded Rs.1000/- as bribe. PW1 then went along with PW2 K.B. Narayana to meet the respondent on 22.06.1995 and requested for issuance of the certificate. On that day PW1 also furnished additional National Savings Bond in the sum of Rs.500/- as per directions of the respondent. The respondent after accepting the same reiterated his demand. It is alleged that on 23.06.1995 PWs1 and 2 again went to the office of the respondent and repeated the request for issuance of registration certificate. The respondent allegedly informed PW1 that the registration certificate was ready and would be delivered upon payment of bribe of Rs.1000/- as demanded. The respondent also instructed PW1 to produce the Day Book duly written upto 24.06.1995 for affixing his signature. When PW1 expressed his inability, the bribe amount was reduced to Rs.500/-. PW1 along with PW2 thereafter went to the office of the respondent on 01.07.1995 and made the request for registration certificate. The respondent allegedly repeated his demand and PW1 reluctantly agreed to pay the amount.

3. At this stage PW1 presented a report Ext.P1 on 01.07.1995 at 4.00 PM in the office of the Anti Corruption Bureau to PW8 N. Prasad, District Inspector ACB, Vijayawada, who in turn submitted it to PW9 DVSS Murthy, DSP, ACB, Vijaywada. PW9 registered the same as FIR and decided to lay a trap. On 05.07.1995 PW9 conducted pre-trap proceedings (Ext P23) in the presence of PWs1, 2 and the mediators during which time five currency notes of Rs.100/- each produced by PW1 were treated with Phenolphthalein powder and kept in the empty shirt pocket of PW1.

4. Thereafter on the same day at about 12.25 PM PW1 along with PW2 met the respondent in his office and upon being asked by the respondent, PW1 informed the respondent that he had brought the bribe amount of Rs.500/-. On the instructions of the respondent, PW4 Attender E. Kanakam affixed the rubber stamp on the registration certificate and handed over the same to the respondent, who then instructed PW4 to go away. Thereafter PW1 offered to give Rs.500/-as demanded earlier. The respondent asked PW1 to give him Rs.400/- only which amount was so given by PW1 and received by the respondent with his left hand. The respondent kept the amount on the papers lying on his office table. The respondent then called one K. Viswanadham, Junior Assistant dealing with registration work and on his directions PW1 paid the balance amount of Rs.100/- to said Viswanadham, who received the same and went back to his seat. The respondent thereafter took the Day Book (Ext.

P9) from PW1 and affixed his signature putting the date as 23.06.1995 and returned the same to PW1. The registration certificate Ext.P8 was then delivered by the respondent to PW1

5. PW1 thereafter came out of the office leaving PW2 inside the office who kept talking with the respondent. Requisite signal having been given by PW1, PW9 with the raiding party entered the office of the respondent. He conducted appropriate test on the fingers of the respondent and Viswanadham which turned positive. The amount of Rs.400/- was recovered from the office table of the respondent and Rs.100/- from the almirah in front of the seat of Viswanadham. The numbers of the currency notes were verified and tallied by the mediators and the post trap proceedings (Ext. P24) were reduced to writing by the mediators.

6. After completing investigation and obtaining appropriate sanction, charge sheet was filed against the respondent and Viswanadham and charges under Sections 7, 13(2) read with 13(1)(d)(ii) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act) were framed against them. In support of its case the prosecution examined ten witnesses and marked thirty six documents. In defence, the respondent and Viswanadham filed their statements in writing. The respondent stated that he had never demanded and received the bribe from PW1 and that the trap proceedings dated 05.07.1995 were stage managed at the instance of one Hanumantha Rao, a tax consultant.

It was submitted that PW1 had clandestinely put currency notes on the papers lying on his table and when PW9 entered the office he directed the respondent to pick up those notes and to give them to one of the officials present with him and that he had accordingly picked up said notes with his left hand. It was submitted that the registration certificate of PW1 was approved by him as early as on 24.06.1995 and that PW1 was asked to collect the registration certificate immediately and that nothing relating to PW1 was pending with him after 24.06.1995. Viswanadham in his written statement stated that on the relevant date PW1 met him and informed that the respondent had sent PW1 with instructions to give Rs.100/- to him and therefore he had accepted the same and kept in the open almirah. Further he had taken the amount as he was under the impression that the respondent had sent the amount for the purposes of buying some provisions or other articles, which he normally used to do for the respondent.

JUDGMENT

7. After considering the material on record and rival submissions, the trial court rendered following findings:

- (1) No reliable evidence was produced on record nor anything was elicited in cross-examination of the witnesses which could substantiate the theory that the trap proceedings were stage managed at the instance of Hanumantha Rao.
- (2) The evidence of PW1 and PW2 as regards the demand and acceptance was completely trustworthy and reliable.
- (3) The evidence of PW1 as corroborated by that of PW2 proved beyond reasonable doubt that the respondent had demanded bribe

amount of Rs.1000/- which was then reduced to Rs.500/- for issuance of registration certificate and that on 05.07.1995 the respondent in the presence of PW2 had demanded and received Rs.400/- from PW1 and thereafter delivered the registration certificate Ext.P8 after getting the relevant endorsement made by PW4.

(4) PW4 in his examination-in-chief deposed that when the endorsement of delivery of registration certificate was made on 05.07.1995, PWs 1 and 2 were present and on the instructions of the respondent PW4 had left his office.

(5) The evidence of PW1 as corroborated by that of PW2 proved that registration certificate Ext.P8 though prepared on 24.06.1996 was not delivered to PW1.

(6) The evidence of PW9 as corroborated by that of PW7, Government official who had acted as *panch*, proved that the hands of the respondent were first subjected to test which yielded positive result and only thereafter on the instructions of PW9, PW7 had picked up the currency notes from the table top. Thus there was no force in the contention of the respondent that PW9 had made him pick up the currency notes.

With these findings the trial court held that the case was proved beyond any doubt as regards the respondent. It however found that Viswanadham had not at any point of time demanded any bribe and that the case against him was not proved at all. Viswanadham was, therefore, acquitted of all the charges. The respondent was convicted under Sections 7 and 13(1)(d)(ii) read with Section 13(2) of the Act and sentenced on each of the aforesaid two counts to suffer simple imprisonment for one year and to pay a fine of Rs.1000/-, in default whereof to undergo further simple imprisonment for four months .

8. The respondent appealed in the High Court. It was submitted on his

behalf that Phenolphthalein powder was not only applied to the tainted notes but also to the Day Book, that day Day Book was not subjected to any test by PW9 and therefore there was definitely a doubt about the veracity of the trap proceedings. It was further submitted that normal practice is to receive money with right hand whereas the respondent had allegedly received the amount with his left hand, which further created doubt. The High Court observed as under:

“So after carefully going through the evidence, I entertain a doubt whether the day book is free from phenolphthalein powder and also there is a doubt whether A.1 received the amount with his left hand when the normal practice is to receive with his right hand. The explanation of A.1 is that while he was writing a book, the cash was kept on the table. To be more probable, there was no phenolphthalein powder struck to the right hand of the accused. At the post trap proceedings also, the D.S.P. did not make any attempt to conduct the sodium carbonate test on the daybook. It is also creating a doubt whether the phenolphthalein powder struck to the left hand fingers is that of the day book or of the tainted notes. Therefore, I am inclined to give the benefit of doubt to the accused.”

With this view the High Court allowed the appeal and set aside the order of conviction and sentence recorded by the trial court.

9. The State being aggrieved has preferred the instant appeal by special leave. Mr. G. Pramod Kumar, learned Advocate appearing for the appellant submitted that the theory as regards the Day Book was not even spelt out at the initial stage and if it was so done, it was possible for the investigating officer to subject the Day Book for appropriate test. The other reason which weighed with the High Court in his submission was purely in the realm of conjectures.

It was further submitted that none of the findings as recorded by the trial court was even adverted to and found to be incorrect. Ms. T. Anamika, learned Advocate appearing for the respondent contended that the entire trap proceedings were stage managed at the instance of Hanumantha Rao and that the High Court was completely justified in entertaining doubts as expressed by it.

10. We have gone through the record and considered the submissions. Right since the beginning the contention of the respondent had been that he was asked to pick up the currency notes by PW9 and that is how his fingers got smeared. That part of the case was elaborately considered by the trial court and it rendered a finding that his hands were subjected to test first and only thereafter PW7 had picked up the currency notes which were lying on the table on the instructions of PW9. It was never the contention that the Day Book itself had traces of Phenolphthalein powder and by handling said Day Book his fingers had got smeared. If it was so contended the investigating officer could immediately have subjected the Day Book itself to appropriate test. The evidence on record shows that the respondent accepted Rs.400/- only out of Rs.500/- offered by PW 1 as per demand and instructed that Rs.100/- be given to Viswanadham, which would negate the theory of any accidental touching of tainted notes. This part of the case and aspects concerning demand and acceptance completely stood proved. The contention, therefore, deserves to be

rejected. The other contention that a person would not normally receive money by his left hand, again has no basis and is purely in the realm of surmises and conjectures. The High Court did not in any way deal with the reasons and findings recorded by the trial court while finding the respondent guilty of the offences in question. The assessment and conclusions of the High Court cannot even be termed as a possible view in the matter.

11. We, therefore, set aside the judgment and order passed by the High Court. The appeal is allowed and the judgment of conviction and sentence as recorded by the trial court against the respondent is restored. The respondent shall be taken into custody forthwith to undergo the sentence as awarded.

.....J
(Pinaki Chandra Ghose)

.....J
(Uday Umesh Lalit)

New Delhi,
May 06, 2015

ITEM NO.1B
(for Judgment)

COURT NO.11

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 89/2009

STATE OF ANDHRA PRADESH

Appellant(s)

VERSUS

KESAVAPATNAM CHINA SWAMY

Respondent(s)

Date : 06/05/2015 This appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. Guntur Pramod Kumar, Adv.
Mr. Guntur Prabhakar, Adv.
Mr. D. Mahesh Babu, Adv.

For Respondent(s) Ms. T. Anamika, Adv.

Hon'ble Mr. Justice Uday Umesh Lalit pronounced the non-reportable judgment of the Bench comprising Hon'ble Mr. Justice Pinaki Chandra Ghose and His Lordship.

The appeal is allowed and the judgment of conviction and sentence as recorded by the trial court against the respondent is restored. The respondent shall be taken into custody forthwith to undergo the sentence as awarded in terms of the signed non-reportable judgment.

(R.NATARAJAN)
Court Master

(SNEH LATA SHARMA)
Court Master

(Signed non-reportable judgment is placed on the file)