

SUPREME COURT OF INDIA

Chittaranjan Shetty

Vs.

C.B.I

Crl.A.No.884 of 2008

(H.L.Dattu, C.J. Arun Mishra, J.)

16.09.2015

ORDER

H.L. Dutta, C,J.

1.This appeal is directed against the judgment and order passed by the High Court of Karnataka in Criminal Appeal No.2702 of 2006, dated 14.12.2007 whereby and whereunder the High Court has upheld the order of conviction but modified the order of sentence passed by the Trial Court in Spl. C.C. No.72 of 2002, dated 02.12.2006.

2. The prosecution's case is as follows:

“The appellant (accused No.1 before the Trial Court) was employed as the Senior Branch Manager of Vijaya Vanivilas Road Branch, Bangalore and was Bank, Signature Not Verified Digitally signed by Charanjeet Kaur Date: 2015.09.21 16:42:09 IST Reason: empowered with the discretionary power of granting loans, including overdraft facilities to the extent of Rs.50,000/-. Accused No.2 was a first class Civil Contractor and had applied for credit facilities to the said branch of Vijaya Bank in relation to a contract for the construction of a parallel taxi- track and Apron-1 at HAL Airport, Bangalore awarded by the National Building Construction Corporation Ltd., Bangalore (for short, "the Corporation"). It is alleged by the prosecution that the two accused entered into a criminal conspiracy with the object of cheating Vijaya Bank. In furtherance of the said conspiracy, accused No.2 applied for credit facility of Rs.1,25,00,000/- to the said bank and the appellant, in his capacity as Senior Bank Manager, recommended that accused No.2 be given overdraft facility to the extent of Rs.50,00,000/- as well as another overdraft facility under the SBP scheme to the extent of Rs.50,00,000/- and a bank guarantee of Rs.25,00,000/-. Based on the appellant's recommendations, the Head Office of the said Bank sanctioned the loan in favour of accused No.2, subject to certain terms and conditions.”

3. It is alleged by the prosecution that, in pursuance of the said criminal conspiracy the appellant permitted accused No.2 to violate the terms and conditions imposed by the bank. Accused No.2 exceeded the limits imposed by the bank on the overdraft facilities, to the extent of Rs.7,28,057/- in the first case and Rs.11,53,877/- in the second case. Further, one of the conditions imposed by the bank was that the appellant would obtain from accused No.2 a power of attorney executed in favour of the bank, authorizing the bank to receive the bill amount payable to accused No.2 from the Corporation so as to enable the bank to receive payments directly from the said Corporation in order to appropriate the same towards the amount due to the bank from time to time. However, it is alleged by the prosecution that though the appellant received the said power of attorney from accused No.2, he did not get the same registered with the Corporation as a result of which the bank was unable

to lay claim to the bill amount due to accused No.2. It was further stipulated in the terms and conditions of the loan that, before the entire permitted amount was released in favour of accused No.2, his performance would be scrutinized for a period of six months. However, as alleged by the prosecution, the appellant permitted accused No.2 to utilize the full overdraft facility without conducting any such scrutiny. Further, though the overdraft facility was permitted to be used only for the purpose for which the loan had been obtained, the appellant permitted accused No.2 to divert funds to the extent of Rs.23,60,000/- to his father-in-law Sadananda Shetty (DW-1), as a result of which accused No.2 was unable to complete the construction work within the stipulated time and consequently, the contract between accused No.2 and the Corporation was rescinded. It is alleged by the prosecution that, as a result of the above acts done by the appellant in collusion with accused no.2, the 27/11/2015 court nic.in/supremecourt/temp/ar 88408p.txt bank sustained loss of Rs.1,29,00,000/-, excluding interest.

4. On the bank becoming aware of the above facts, a Departmental Inquiry was conducted in the year 1991 against the appellant by the bank as a result of which, the appellant's services were terminated. Subsequently, by notification dated 10.07.2001, the Karnataka State Government accorded consent under Section 6 of the Delhi Special Police Establishment Act, 1946 for the prosecution of the appellant. The investigation was completed by the Central Bureau of Investigation and a charge sheet was filed before the Trial Court.

5. Thereafter, on the accused (the appellant and accused No.2) appearing before the Trial Court, The charges were framed against them for the offence under Section 420 read with Section 120-B of the Indian Penal Code.

“For short, " 13(2) of the appellant was also charged with the offence under Section 13(1)(d) read with Section Prevention of Corruption Act, 1988 (for short "the Act"). The charges were read over and explained to the accused who pleaded not guilty. Consequently, the case was committed to trial. witnesses and”

6. The prosecution examined 23 of the Code of produced 83 documents. The accused's statements were recorded under Section 313(1)(b) Criminal Procedure (for short, "the Code") wherein 27/11/2015 they denied the defense court nic.in/supremecourt/temp/ar 88408p.txt prosecution's case. The further examined one witness. evidence on been able to No.2 had.

7. The Trial Court considered the record as also the arguments of the parties and Noticed that the prosecution had conclusively establish that accused obtained overdraft loan facility of Rs.1,00,00,000/- and a bank guarantee of Rs.25,00,000/-; that one of the conditions of the said loan was the execution of a power of attorney in favour of the bank empowering the bank to receive bill payments from the said Corporation; that the terms and conditions of the said loan further stipulated that the appellant of the to the would obtain 25% cash margin from accused No.2; that the appellant had permitted accused No.2 to over draw the overdraft account and that to balance over drawing in one account, the cash amount second overdraft account were transferred by accused first; and, that the overdraft amount was utilized by issuing drafts in the name of persons unconnected with the contractual work undertaken No.2.

8. The Court observed that the evidence on record was not sufficient to show that the representation made by accused No.2 regarding the contract entered into by him with the Corporation, the obtainment of a loan for the purpose of fulfilling this contract by accused No.2 and the release of the said loan amount by the appellant were false to the knowledge of the two accused or were done in order to deceive the bank. Therefore, the Trial Court concluded that the prosecution had failed to prove the existence of the requisite mens rea for

the offence under Section 420 of the IPC.

9. However, as regards the offence under Section 13(1)(d) of the Act, the Court observed that the appellant, by failing to obtain the requisite margin money from accused No.2, had caused pecuniary loss to the bank. The Court further observed that, by permitting accused No.2 to exceed the permitted limit for the overdraft accounts, the appellant had misused the discretionary power vested in him in the capacity of Senior Bank Manager and had caused pecuniary loss to the bank. The Court observed that, if assessed in of a dishonest the conduct of the appellant, totality, indicated the existence and order dated intention on his part and fell within the definition of criminal misconduct under Section 13(1)(d)(ii) of the Act. Therefore, by judgment him to rigorous 02.12.2006, the Trial Court, while acquitting the accused No.2 under Section 420 read with Section 120-B of the IPC, convicted the appellant for the offence under Section 13(1)(d)(ii) read with Section 13(2) of the Act and sentenced imprisonment for a period of two years and a fine of Rs.15,000/-. 27/11/2015 courtnic.nic.in/supremecourt/temp/ar 88408p.txt

10. Aggrieved by the order of said conviction and sentence, the appellant approached the High Court on the grounds, inter alia, that the two accused had been acquitted of the offence of cheating under Section 420 and that it was improper to convict the appellant for the offence under Section 13(1)(d)(ii) of the Act merely on the basis of certain

“irregularities; that the appellant did not have any mala fide intention to cheat the bank; that, given that the appellant had already been subjected to a disciplinary inquiry, imposing penal liability on him under the Act amounted to imposing two penalties for the same act which was impermissible in law; that the Trial Court had convicted him for certain omissions and commissions which had not been enumerated in the charge framed by the Trial Court; and, that the charge against the appellant was merely for diversion of funds in favour of DW-1 for which the Trial Court had not recorded any specific finding.”

11. By the impugned judgment and order the High Court re-appreciated the entire evidence on record and observed that the appellant's conviction by the Trial Court was on the basis of the Court's findings regarding the acts of the appellant in permitting over draw of overdraft facilities by accused No.2, not taking necessary precautions regarding the same, etc. whereas the charge of abuse of official 27/11/2015 courtnic.nic.in/supremecourt/temp/ar 88408p.txt position was only with regard to the diversion of funds and, therefore the Trial Court had committed an error in this regard.

12. The High Court noticed that, under the terms and conditions of the loan issued to accused No.2, overdraft facilities could be utilized only for meeting working capital requirements and for furnishing performance guarantees in favour of the Corporation and that the onus was on the appellant to show that he had exercised due diligence before permitting the accused No.2 to utilise the overdraft facilities.

13. The Court further noticed that, apart from the testimony of DW-1, there was no evidence on record to substantiate the appellant's claim that the said drafts had been issued in favour of DW-1 towards the satisfaction of a loan given to accused No.2 by him for the purpose of initiating the construction project.

14. The Court relied on the testimony of the Asst. Manager, Vanivilas Branch, Vijaya Bank (PW-18) which proved that the appellant had, despite her objections, issued the said drafts in favour of DW-1 without exercising due diligence in ensuring that the same would be utilized in the permitted manner and concluded that this fact, in conjunction with the other commissions and omissions that had been proved against the appellant, proved that the 27/11/2015 courtnic.nic.in/supremecourt/temp/ar 88408p.txt appellant was acting with

mala fide intention.

15. The Court observed that this was not a case of minor irregularities as argued by the defense and the appellant was guilty of criminal misconduct within the meaning of Section 13(1)(d)(ii) of the Act. Therefore, by the impugned judgment and order, the High Court confirmed the order of conviction passed by the Trial Court. However, the High Court modified the sentence imposed on the appellant by the Trial Court to simple imprisonment for a period of one year and a fine of Rs.15,000/-.

16. Aggrieved by the judgment and order passed by the High Court, the appellant is before us in this appeal.

17. We have heard learned counsel for parties to the lis.

18. Learned counsel for the appellant would submit that there is no evidence on record to prove that the appellant was acting with a dishonest intention and therefore, the appellant cannot be held guilty of the offence under Section 13(1)(d)(ii) of the Act. The appellant had, in the bona fide exercise of his discretionary power, permitted the issue of drafts in favour of DW-1 towards the satisfaction of a loan given by DW-1 to accused No.2 for the purpose of the said construction project and the same does not amount to criminal misconduct. Rather, it is a case of minor irregularities which has been adequately dealt with by a departmental inquiry. Per contra, learned counsel for the respondent-State would support the judgment and order passed by the High Court.

19. After carefully perusing the material on record, including the judgments and orders passed by the Courts below, the appellant's case fails to convince us. This Court, in *M. Narayanan Nambiar v. State of Kerala*¹, gave a broad interpretation to Section 5(1)(d) of the Prevention of Corruption Act, 1947, which is in pari materia with Section 13(1)(d) of the Act and held:

"First taking the phraseology used in the clause, the case of a public servant causing wrongful loss; to the Government be benefiting a third party squarely falls within it. Let us look at the clause "by otherwise abusing the position of a public servant", for the argument mainly turns upon the said clause. The phraseology is very comprehensive. It covers acts done "otherwise" than by corrupt or illegal means by an officer abusing his position. The gist of the offence under this clause is that a public officer abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. "Abuse" means misuse i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means. The word 'otherwise' has wide connotation.... The juxtaposition of the word 'otherwise' with the words "corrupt or illegal means" and the dishonesty implicit in the word "abuse" indicate the necessity for a dishonest intention on his part to bring him within, the meaning of the clause. Whether he abused his position or not depends upon the facts of each case; nor can the word 'obtains' be sought in aid to limit the express words of the section. 'Obtain' means acquire or get. If a corrupt officer by the said means obtains a valuable thing or a pecuniary advantage, he can certainly be said to obtain the said thing or a pecuniary advantage... On a plain reading of the express words used in the clause, we have no doubt that every benefit obtained by a public servant for himself, or for any other person, by abusing his position as a public servant falls within the mischief of the said clause."

Following this decision, in *SK Kale v. State of Maharashtra*², this Court held that the abuse of position by a public servant must necessarily be dishonest and it must be proved that the accused caused deliberate loss to the department:

"The abuse of position, as held by this Court, must necessarily be dishonest so that it may be proved that the appellant caused deliberately wrongful loss to the Army by obtaining pecuniary benefit for P.W. 2."

The dictum in this judgment was followed in *SP Bhatnagar v. State of Maharashtra*³, where the importance of the element of dishonest intention was again reiterated. On a perusal of the abovementioned judgments, it can be concluded that in order to prove the offence under Section 13(1)(d)(ii) of the Act, it must be established that a public servant has abused his position in order to obtain for himself or for any other person, any valuable thing or pecuniary advantage, and that, in this context, the "abuse" of position must involve a dishonest intention.

20. In the present case, it is not disputed that the appellant is a public servant. As regards the element of "obtaining a valuable thing or pecuniary advantage" for himself or another person, the Courts below have made concurrent findings that the appellant, by permitting accused No.2 to divert the overdraft facilities towards payment to DW-1, has obtained a pecuniary advantage for DW-1 and we concur with the same.

21. The crucial fact that needs to be determined is whether the appellant, with dishonest intention, abused his position in order to obtain for DW-1, the considered there is that the overdraft and for said pecuniary advantage. It is our opinion that, in the present case, sufficient evidence on record to prove appellant was acting with a dishonest intention. The terms and conditions of the loan granted to the appellant categorically state that the facilities could be utilized only for the purpose of meeting working capital requirements furnishing performance guarantee in favour of the said Corporation and the same could not have been utilized for payment of the debt owed by accused No.2 to DW-1. The Courts below have relied on the testimony of PW-18 to conclude that the appellant 27/11/2015 court.nic.in/supremecourt/temp/ar 88408p.txt knowingly and willfully disregarded the objections of PW-18 and permitted accused No.2 to divert funds from the overdraft facility towards payment to DW-1 and that this fact is proof of dishonest intention on the part of the appellant. We concur with the Courts below in this regard. The testimony of PW-18 has been corroborated by the testimony of the Sub-

“Manager of Karnataka Bank (PW-9) who has stated that cheque of Rs.3,60,000/- was deposited in the of the Street, current account

Senior Manager,
Mangalore (PW-10).
of DW-1 as Corporation
well as that
Bank, Car appellant's from the dishonest facts”

22. Furthermore, the intention can be inferred from the circumstances of the case and from the conduct of the appellant himself. During the course of these transactions, the appellant has committed several irregularities in order to favour accused No.2 and has acted in blatant disregard of the rules and regulations of the bank and the terms and conditions of the loan issued to accused No.2 and in fact, even compelled PW-18, an officer under his supervision, to do the same. Therefore, it can be concluded that the appellant has acted with dishonest intention and has abused his position as a public servant. Thus, the necessary it can be concluded that all of the elements of the offence under Section 13(1)(d)(ii) of the Act have been proved in this case.

23. In light of the aforesaid, we are of the considered opinion that in the instant case, no good ground exists for our consideration and interference. The appeal, being devoid of any

merit, is liable to be dismissed and, I accordingly dismissed.

24. The appellant is directed to be taken into custody forthwith to serve the remaining period of his sentence. Ordered accordingly.

Cases Referred.

¹ (1963) SCR Supl. (2) 724

² (1977) SCR 2 533

³ (1979) SCR 2 875