

E.Venkataiah Vs. the State of A.P. Rep. by Its Special Pu

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Court : Andhra Pradesh

Decided On : Jan-24-2013

Judge : Hon'Ble Sri Justice R.Kantha Rao

Appellant : E.Venkataiah

Respondent : The State of A.P. Rep. by Its Special Pu

Advocate for Def. : Sri. Dittakavi Venkateswara Rao Counsel

Judgement :

HON'BLE SRI JUSTICE R.KANTHA RAO CrI.A.No.1726 OF 200.24.01.2013
E.Venkataiah The State of A.P. rep. by its Special Public Prosecutor for ACB
Cases, High Court of A.P., Hyderabad. Counsel for appellant: Sri Dittakavi
Venkateswara Rao Counsel for respondent : Sri M.B.Thimma Reddy, Standing
Counsel-cum-Special Public Prosecutor for ACB Cases. HEAD NOTE: ?Cases
referred:

JUDGMENT

: This appeal is filed by the appellant (A-1) in C.C.No.15 of 1996 on the file of the
Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad.

2. The appellant/A-1-E.Venkataiah who was the Senior Assistant on the date of
trap i.e. on 20.08.1994 in the office of the Mandal Revenue Officer, Maheswaram,
Ranga Reddy District and A-2, Junior Assistant in the same office were tried by
the learned Special Judge for the offences under Sections 7 and 13(1)(d)(i)(ii) r/w

Sec.13(2) and under Section 12 of the Prevention of Corruption Act, 1988. After trial and on hearing either side, the learned Special Judge acquitted A-2 of the charge under Section 12 of the Prevention of Corruption Act, 1988, but convicted the appellant/A-1 for the charges under Sections 7 and 13(1)(d)(i)(ii) r/w Sec.13(2) of Prevention of Corruption Act, 1988 and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- for the offence under Section 7 of Prevention of Corruption Act, 1988 and further sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- for the offence under Section 13(1)(d)(i)(ii) r/w Sec.13(2) of Prevention of Corruption Act, 1988.

3. The indictment against the appellant/A-1 was that for the purpose of entering the name of PW-1, his brother and his father in the Record of Rights in respect of land of an extent of Ac.56.34 guntas which stood in the name of the father of PW-1 demanded bribe of Rs.4,000/- and accepted the same in the course of trap laid against him by the DSP-ACB on 20.08.1994. The specific allegation against A-2 who was acquitted by the trial Court was that he conspired with A-1 in the commission of offence and received an amount of Rs.4,000/- which was kept in a cover at the instance of A- 1. The prosecution in order to establish the aforementioned charges, examined PWs.1 to 9, marked Exs.P-1 to P-15 and M.Os.1 to 8. The accused on their behalf examined DWs.1 to 3 and marked Ex.D-1.

4. PW-1, the de facto complainant supported the prosecution version. He stated in his evidence before the trial Court that A-1 demanded illegal gratification of Rs.4,000/- from him for doing official favour viz. entering his name and that of his father and his brother in Record of Rights in respect of land of an extent of Ac.56.34 guntas and asked him to submit a partition deed along with form No.1 in the Mandal Revenue Office, he submitted the same on 17.08.1994 and informed the same to A-1 and the appellant-A-1 in turn reiterated his demand to pay the amount of Rs.4,000/- within two days. According to PW-1, as he was not willing to pay the bribe amount, approached the DSP-ACB and lodged the complaint Ex.P-1 on 18.08.1994, on the strength of which a case in Crime No.9/ACB-HR/94 was registered and a trap was laid on 20.08.1994. He further deposed that in the

course of trap, as directed by the DSP-ACB he along with PW-2, the accompanying witness went to the room of the appellant, then the appellant enquired as to whether he brought the amount of Rs.4,000/- for which PW-1 responded positively, then the appellant took the file of PW-1 to the Mandal Revenue Officer for his signature, the appellant talked to the Mandal Revenue Officer for some time and came back, went into the computer room situated opposite to his room, there the appellant handed over a cover to PW-1, instructed him to put the currency notes in the said cover, PW-1 put the currency notes in the cover and handed it over to the appellant (A-1), A-1 received it and in turn he handed over the same to A-2 who is Junior Assistant in the office of the Mandal Revenue Officer, Maheswaram. Subsequently, it is said that on the pre-arranged signal relayed, the raiding party rushed in, thereafter the chemical test conducted on the fingers of both A-1 and A-2 yielded positive result, the tainted amount of Rs.4,000/- was recovered from the possession of A-2 which was kept by him in his front shirt pocket.

5. PW-2, the accompanying witness, however, did not support the prosecution case. He stated in his evidence before the trial Court that when PW-1 offered to give the tainted amount kept in the cover to the appellant-A-1, he refused to receive the same, and thereafter PW-1 by force gave the amount to the appellant. This witness was treated hostile by the prosecution.

6. PW-3, the mediator, however, supported the version of the prosecution and he spoke about the chemical test conducted on A-1 and A-2 which yielded positive result and the recovery of amount of Rs.4,000/- kept in a brown envelop from the pocket of A-2. PW-4 is the Village Administrative Officer. He stated in his evidence that on 17.08.1994 the appellant instructed him to submit his verification report in respect of agricultural land of PW-1 and accordingly he submitted his verification report Ex.P-6 basing on partition deed Ex.P-5. PW-5, the then Junior Assistant stated in his evidence that on 17.08.1994 he received the file relating to Record of Rights of PW-1 from the appellant and he made entry in the inward register Ex.P-11. PW-6, the Head Assistant in the office of the Mandal Revenue Officer, Maheswaram stated in his evidence that the appellant was looking-after the files of Record of Rights and Ex.P-8 is the file relating to PW-1 which contained the

signature of the appellant. PW-9 is the Inspector of Police, ACB Ranga Reddy District. His evidence shows that he assisted the DSP- ACB, the trap laying officer who was no more on the date of trial. He spoke about the pre-trap and post trap proceedings. His evidence also reveals that the chemical test conducted on the fingers of A-1 and A-2 yielded positive result and the tainted amount was recovered from the possession of A-2. The Mandal Revenue Officer, Maheswaram mandal was cited as LW-8 by the prosecution, but for the reasons best known to the prosecution he was given up by the prosecution.

7. It is basing on the aforesaid evidence, the learned trial Court acquitted A-2 and convicted the appellant/A-1 of the aforementioned charges.

8. The point for consideration in this appeal is whether the trial Court is correct in acquitting A-2 and convicting A-1 on the same evidence and whether the conviction and sentence passed against the appellant (A-1) can be sustained.

9. I have heard the learned counsel appearing for the appellant and the learned Special Public Prosecutor for the respondent-ACB.

10. The learned trial Court proceeded on the basis that even though PW-2 did not fully support the prosecution case, his evidence goes to show that PW-1 offered the tainted amount to A-1, but A-1 refused to receive the same. The evidence of PW-1 is categorical and consistent as to the demand of bribe made by the appellant and his receiving the amount which was kept in cover and in turn handing it over to A-2 and therefore, there is voluntary acceptance of tainted amount by the appellant and as such, a presumption could be drawn against the appellant under Section 20 of the Prevention of Corruption Act, 1988. The learned trial Court accordingly drew presumption as envisaged under Section 20 of the Act and held that the appellant could not be able to rebut the said presumption by adducing any evidence and consequently convicted him of the charges aforesaid and sentenced him to punishment as mentioned above.

11. It is true that the presumption envisaged under Section 20 of the Act is a legal presumption and on proof by the prosecution that the accused received the tainted amount, it is obligatory on the part of the Court to draw a presumption in each and

every case. But, it is to be kept in mind that the prosecution has to positively establish that there is voluntary acceptance of tainted amount by the accused. In this case, the version of PW-2, the accompanying witness clearly shows that the appellant refused to receive the amount offered by PW-1. As regards the demand of bribe by the appellant, the evidence of PW-1 shows that the appellant has been repeatedly demanding the amount and one Narsimha Reddy was present when the appellant demanded Rs.4,000/- from PW-1 for doing the official favour. The prosecution did not examine the said Narsimha Reddy who was the Village Assistant of Kolla Padakal village. On the other hand, the appellant examined him as DW-2. DW-2 specifically stated in his evidence before the trial Court that he never heard the appellant demanding amount of Rs.4,000/- from PW-1 for influencing the Mandal Revenue Officer, Damodar Reddy.

12. The main contention of the appellant is that the Mandal Revenue Officer, Damodar Reddy was demanding bribe from PW-1 as the appellant who has to process the file was not obliging the Mandal Revenue Officer, the appellant was implicated in the trap. Though the appellant was dealing with the files relating to Record of Rights in the office of Mandal Revenue Officer, the Mandal Revenue Officer is the ultimate authority to pass orders relating to the entries made in the Record of Rights. The Mandal Revenue Officer can direct any other subordinate to deal with the files of PW-1 instead of the appellant. It is the evidence of PW-1 that he met the Mandal Revenue Officer 5 or 6 times in connection with his file. It is also his evidence that he met the Mandal Revenue Officer on the date of trap. If that is so, it is not understandable as to why PW-1 did not inform the Mandal Revenue Officer that the appellant was demanding bribe of Rs.4,000/-. The natural course of conduct of PW-1 must have been to inform the Mandal Revenue Officer about the demand made by the appellant to find out as to whether it was at the instance of Mandal Revenue Officer or not. If it was at the instance of Mandal Revenue Officer, PW-1 ought to have made complaint against the Mandal Revenue Officer. Therefore, the prosecution in this case did not come forward with a true picture as to how and from whom the actual demand of bribe came. When the specific defence of the appellant is that the Mandal Revenue Officer was in fact demanding bribe but he never asked for any bribe, the prosecution ought to have examined the Mandal Revenue Officer as its witness. The prosecution cited

him as LW-8 but omitted to examine him as its witness for the reasons best known to it. From the non-examination of Mandal Revenue Officer as its witness, an adverse inference against the prosecution can be drawn to the effect that had the Mandal Revenue Officer been examined, he would not have withstood the cross-examination, which was to the effect that he in fact demanded the bribe and made the appellant a scape-goat in the entire episode. Therefore, in the instant case, non-examination of Mandal Revenue Officer is certainly fatal to the prosecution and the prosecution did not properly explain about withholding the evidence of Mandal Revenue Officer. According to the prosecution, in this case the amount was initially given to the appellant by PW-1, A-1 gave the said amount in turn to A-2 and curiously the amount had to be ultimately handed over to Mandal Revenue Officer, Kandukur. The prosecution did not explain as to why the arrangement was made in the office of Mandal Revenue Officer, Maheswaram to hand over the tainted amount to the Mandal Revenue Officer, Kandukur who was not at all concerned with the file of Record of Rights relating to PW-1. From this it is therefore obvious that the prosecution has not come up with a correct and true version regarding the demand and acceptance of bribe. Further, as per the pre-trap proceedings, the DSP-ACB instructed PW-1 to directly hand over the amount to the appellant (A-1), then what prompted PW-1 to keep the amount in a sealed cover contrary to the instructions of the DSP-ACB is not explained by the prosecution. Admittedly, the tainted amount was not recovered from the appellant-A-1. The appellant is not the authority to make entries in the Record of Rights, though he was handling the file on the directions of the Mandal Revenue Officer. In the light of the aforementioned circumstances, the prosecution is under a duty to project the clear picture as to the demand and acceptance of bribe. A presumption under Section 20 of the Act could be drawn against the appellant to the effect that he received the tainted amount for doing some official favour only when the prosecution is successful in proving that there is voluntary acceptance of tainted amount by the appellant. In this case, the material available on record does not reveal that the appellant voluntarily accepted the tainted amount from PW-1. Therefore, the learned trial Court in my view is not correct in raising a presumption against the appellant under Section 20 of the Act. Even if any such presumption is raised as was done by the learned trial Court, the accused could be able to rebut

the presumption not only by adducing direct evidence but also by showing the circumstances which probabalise his version. The circumstances, which are pointed out hereinabove, clearly reveal that the appellant did not in fact demand or accept the bribe. The crucial aspects in this case which cast shadow on the purity of the prosecution case are that the prosecution failed to explain as to why it withheld the evidence of LW-8, MRO, Maheswaram and also as to why the amount was ultimately intended to be given to the Mandal Revenue Officer, Kandukur.

13. In view of all these circumstances, I am of the considered view that even though the appellant/A-1 is entitled for benefit of doubt, the learned trial Court erroneously convicted him for the offence under Sections 7 and 13(1)(d)(i)(ii) r/w Sec.13(2) of Prevention of Corruption Act, 1988. The appellant/A-1 is therefore entitled for acquittal.

14. For the foregoing reasons, the conviction and sentence passed against the appellant/A-1 by the trial Court are set aside and the appellant/A-1 is acquitted of the offences with which he stood charged. The fine amount, if any, paid by the appellant/A-1 shall be refunded to him. The appeal is allowed. _____

R. KANTHA RAO, J Date:24.01.2013

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