

M.Janardhan Vs. State of A.P. Rep. by Its Pp Acb Cases

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SooperKanoon Citation : sooperkanoon.com/1029957

Court : Andhra Pradesh

Decided On : Nov-16-2012

Judge : The Hon'Ble Mr Justice R. Kantha Rao

Appellant : M.Janardhan

Respondent : State of A.P. Rep. by Its Pp Acb Cases

Advocate for Def. : Sri. G.V.Shivaji Counsel

Judgement :

THE HON'BLE MR JUSTICE R. KANTHA RAO CrI.A.No.1378 o

16. 11.2012 M.Janardhan State of A.P. rep. by its PP ACB Cases Counsel for the Appellant: Sri G.V.Shivaji Counsel for respondent: Sri R.Ramachandra Reddy, Standing Counsel for ACB Cases HEAD NOTE: ?Cases referred:

JUDGMENT

: This appeal is filed at the instance of the accused in C.C.No.10 of 1999 on the file of the Court of Principal Special Judge for SPE and ACB cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad against the judgment dated 31.08.2005 convicting the appellant for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short the Act) and sentencing him to undergo rigorous imprisonment for one year for the offence under Section 7 of the Act and to pay fine of Rs.1,000/- and also further sentencing him to undergo rigorous imprisonment for two years for the offence

under Section 13(2)(1) of the Act and to pay fine of Rs.2,000/-.

2. The indictment against the appellant Mr. M.Janardhan was that while he was working as the Assistant Director of Mines and Geology, Khammam, being public servant, demanded and accepted an amount of Rs.500/- at about 04.25 P.M. on 18.07.1998 as illegal gratification other than the legal remuneration for showing official favour of issuing temporary sand permit and permit book relating to Vemsoor Mandal for a period of 15 days and thereby committed offences as stated above.

3. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

4. The brief facts of the case, according to the prosecution are the following: The de facto complainant-Pollena Seetharam was a sand contractor, he filed an application along with demand draft for Rs.445/- on 02.07.1998 for grant of temporary sand permit and permit book relating to Vemsoor Mandal for a period of 15 days. In that connection, he met the appellant and requested for earlier issuance of permit and permit book. It is said that the appellant demanded from him an amount of Rs.500/- as bribe and made it clear that unless the said amount is paid, permit would not be issued. Thereafter, the de facto complainant (PW1), who was not willing to pay the bribe amount, approached the DSP, ACB, Warangal Range at 12 hours on 18.07.1998 and gave a report against the appellant. PW.6, DSP, ACB on receiving the said report, registered a case in Crime No.5/ACB-WKH/198 under Sections 7 and 11 of the Act at 14.50 hours on 18.07.1998 and took up investigation. It is the version of the prosecution that on the same day at about 04.25 PM a trap was laid by PW.6, the DSP, ACB along with his team consisting of two mediators, during the course of which, the appellant allegedly received an amount of Rs.500/- from the de facto complainant/PW.1, kept the said amount in his table drawer in his office and immediately signed the relevant papers relating to the permit of appellant. Thereafter, it is said that PW.1 went outside and relayed the pre-arranged signal. On receiving the same, the raiding party rushed into the office room of the appellant. On being questioned by PW.6, according to the prosecution, the

appellant denied of receiving any amount from PW.1, but ultimately stated to PW.6 that PW.1 kept the amount in the table drawer. Thereafter, the version of the prosecution is that the phenolphthalein sodium carbonate reaction test conducted on the fingers of the respondent yielded positive result.

5. To substantiate the aforesaid allegations, the prosecution examined PWs.1 to 8, marked Exs.P.1 to P.15 and MOs 1 to 7. On behalf of the defence, DWs.1 and 2 were examined and Exs.D.1 to D.15. Exs.X1 and X.2 were also marked by the trial Court.

6. The learned trial Court took the view that since the prosecution proved receipt of amount of Rs.500/- from PW.1, the presumption under Section 20 of the Act could be raised against him to the effect that unless contrary is proved, he received the said amount as illegal gratification and the appellant having failed to rebut the presumption, is liable for punishment for the graft charge. Taking the said view, the learned trial Court convicted and sentenced the appellant to punishment as mentioned above.

7. The defence version was that PW.1 is a mischievous person, he was quarrying the sand without any valid permit, on the report made by the appellant, he was levied with huge penalty, thus, he developed grouse against the appellant and got involved the appellant in a false charge of graft.

8. Sri C.Padmanabha Reddy, learned senior counsel appearing for the appellant would contend that there is no satisfactory or convincing evidence in regard to the fact that the appellant either demanded or accepted the bribe and the learned trial Court erroneously recorded conviction against the appellant for the offences under Sections 7 and 13(2) of the Act. According to the learned senior counsel appearing for the appellant, the learned trial Court failed to consider the defence version in a proper prospective and accepted the prosecution story which was full of inconsistencies and improbabilities. On the other hand, Sri Ramachandra Reddy, learned standing counsel appearing for the respondent would submit that basing on the evidence available on record, the trial Court drew a presumption under Section 20(1) of the Act and the appellant having failed to rebut the said presumption was rightly convicted by the trial Court.

9. There are certain crucial aspects in this case which probabalise the defence version in all respects, but those aspects have been overlooked by the learned trial Court. PWs.4 and 5 are the mediators in this case. But, according to the prosecution, PW.1 alone went into the office room of the appellant. The version of PW.1 is that the appellant received Rs.500/- from him as bribe, counted the amount and kept the same in the table drawer. Whereas, it is the version of the appellant that when he went outside, PW-1 kept the amount in the table drawer, signalled the raiding party as per the prior arrangement.

10. The version of PW.1 is that since 02.07.1998, the appellant demanded bribe from him on several occasions for the purpose of processing his application seeking permission for issuing the permit and the permit book. According to him, on 18.07.1998 i.e. on the date of trap also the appellant demanded bribe from him. PW.2, Senior Assistant in the office of Assistant Director, Mines and Geology, Khammam stated in his deposition that enclosing the way bill books to the application for sand transport temporary permit is a must for granting temporary sand transport permit and PW.1 did not enclose the way bill book as required. It is also his evidence that on 18.07.1998 also PW.1 came to the office and enquired about the permit and he told him that since he had not enclosed the way bill book, the permit could not be issued. On that day, according to PW.2, PW.1 brought the way bill book with him. PW.2 further stated in his deposition that the appellant issued permits to PW.1 number of times prior to 18.07.1998. According to him, after authorization is given by the Additional Director, the Assistant Geologist can issue permits, one Rajaiah was the Geologist during the period whenever the appellant was on leave or on camps, and the appellant was authorizing Rajaiah to issue permits on those occasions.

11. It is also the evidence of PW.2 that as per Ex.P.9-attendance register, the appellant was on tour on 02.07.1998. The evidence of this witness further discloses that even prior to 02.07.1998 PW.1 applied for temporary permission in the name of Vishnu and Brahma about ten times and the appellant refused permits on the ground that they are fictitious persons. PW.2 further stated in his evidence that one Kiran Kumar sent a report against PW.1 for illegal quarrying by PW.1 in the Buruguam padu Mandal after the expiry of the lease period and on the said

report, the appellant recommended action against PW.1 and thereafter penalty was levied against PW.1. According to this witness, as per Ex.D.12 the appellant was on tour on Gudimalla Village for the purpose of checking mineral transport on 13.07.1998. The evidence of this witness further discloses that there was specific increase in the revenue collection during the tenure of the appellant in the form of collecting penalties.

12. Therefore, in this case, from the evidence available on record, it is clear that PW.1 had strong and enough motive to implicate the appellant in a false charge of graft. Further, when enclosing the way bill books to the permit application is mandatory and the fact was informed by PW.2 to PW.1, the very theory put forward by the prosecution that the appellant was continuously demanding PW1 bribe amount of Rs.500/- from 02.7.1998 to 18.07.1998 is highly unconvincing and unacceptable. Even according to PW.1, he filed the way bill book on 18.07.1998 and on the same day, the appellant signed the papers and permit was granted to him. All these circumstances create any amount of doubt on the very allegation levelled by PW.1 against the appellant that he was consistently demanding bribe of Rs.500/- for temporary sand lease permit.

13. PW.4 is one of the mediators. According to him, PW.1 alone went inside the office of the appellant at about 04.00 PM, the other trap party members were waiting outside in vantage positions, when questioned by PW.6, DSP, ACB, the appellant in the first instance denied of receiving any amount and later on, he pointed out towards his table drawer, the DSP instructed him to search the table drawer and when he searched, he found wade of currency notes kept under a book in the drawer. This is the version given by PW.4 in his chief examination. But, in the cross-examination, he stated that DSP asked him to search the table as soon as the test was conducted on the fingers of the appellant, then, he searched the table drawer and found the tainted money. He specifically stated that the appellant had not stated to him that the money was in the table drawer. He also stated that by the time he entered the office chambers of the appellant, they found him smoking a cigarette, when they searched the left side table drawer, they found cigarette packet and match box in it. According to him, the DSP had not subjected the cigarette which the appellant was holding to phenolphthalein sodium carbonate

reaction test. For not supporting the prosecution version that the appellant himself pointed out towards the table drawer when questioned by DSP ACB about the tainted amount, this witness was treated hostile by the prosecution. When cross-examined, this witness stated that his version in the cross-examination that he searched the left side table drawer of the appellant only as per the instructions of the DSP alone is correct but the version given by him in his chief-examination that he searched the said table drawer as the appellant had pointed out towards it is not correct.

14. PW.5 gave altogether a different version on this aspect. According to him, the DSP, ACB asked the appellant about the money and then the appellant replied that PW.1 kept the money on the left side of the table drawer and thereafter, the DSP got conducted phenolphthalein sodium carbonate reaction test.

15. PW4 stated in his evidence in the cross-examination that PW.1 waited near the chambers of the appellant for 10 to 15 minutes. He also stated that later two officers came out of the office room of the appellant and went into the room of the appellant. PW.1 entered the Assistant Geologist room within 15 minutes and the time has been shown in the rough sketch. He also admitted that PW.1 went into the office room of the appellant, after 15 minutes he came out, gave pre-arranged signal to the trap party members. According to this witness, except PW.1 and the appellant, none was in the office room during that five minutes time. Whereas, PW.5 stated that PW.1 did not wait at the entrance door of the appellant and he straight away entered the office room of the appellant and that PW.1 came out of the appellant's office room after 20 minutes. According to this witness, the appellant stated before them that PW.1 kept the currency notes in the table drawer without his knowledge. In this case, admittedly, PW.1 gave complaint to PW.6, DSP, ACB at 12 noon on 18.07.1998. Basing on his report, he registered a case at 02.30 PM on the same day. He admitted in his evidence that prior to registering the crime, it is necessary to verify the antecedents of the accused and also the genuineness of the complaint. He further admitted that he visited the office of the appellant only on the date of trap at 04.00 PM. He also admitted that for grant of temporary sand lease, the appellant has to enclose way bill book along with his application and the complaint was received by him on 18.07.1998. Therefore, in

this case, the trap was laid without verifying the antecedents of the appellant and also the genuineness of the complaint within two hours from the date of registering the crime.

16. PW.7, the Inspector of Police, ACB, Khammam stated in his evidence that as per the instructions of PW.6, he sent requisition to secure the presence of mediators PWs.4 and 5 on 17.07.1998 and that he did not know whether by that time there was any complaint pending against the appellant.

17. DW.1 is the Assistant Geologist in the office of the appellant. According to him, on 18.07.1998 the sand permit application of PW.1 was sent to him at 01.30 PM, immediately after initialing the file he sent it to the appellant on the same day i.e. on 18.07.1998 at 04.00 PM, he went to the chambers of the appellant for discussing some office matter, he discussed with him for about 10 to 15 minutes and after that, the appellant went to toilet and returned back and while he was coming out of the chambers, he found PW.1 entering into his chambers. He also stated that while he was discussing with the appellant in his chamber, he did not find any file at his table.

18. From careful analysis of the aforesaid evidence in the light of the facts and circumstances of the case, it would appear that the entire trap is stage managed. Though, PW.6 admits that prior to registering the crime, it is necessary to verify the antecedents of the accused and also the genuineness of the complaint, it is not understandable as to why the trap was laid within two hours after registering the crime in such a haste. PW.7 specifically stated that as per the instructions of PW.6, he sent requisition to secure the mediators, PWs.4 and 5 on 17.07.1998. According to PW.6, the mediators were secured only after registering the crime. The prosecution in this case did not explain this material inconsistency which goes to the root of the case through PW.6. The situation therefore, enables the court to draw an inference that the prosecution did not fairly present the circumstances leading to laying the trap. The manner in which the trap was laid in this case and the material infirmities and inconsistencies pointed out above probabilise the defence version that PW.1 without disclosing the true facts to the DSP, ACB planted the amount in the table drawer of the appellant in his office room and

stated to the DSP, ACB that the appellant received the tainted amount from him. The evidence forthcoming in this case discussed hereinabove also probabalizes the defence version that as soon as PW.1 submitted the way bill books, the appellant cleared the application, informed the same to PW.1 when he came to his chamber and PW.1 shook hands with the appellant and for the said reason, the phenolphthalein sodium carbonate reaction test held on the fingers of the appellant yielded positive result. Thus, in the instant case, there is no satisfactory and convincing evidence regarding the factum of payment of bribe by PW.1 to the appellant. Therefore, the learned trial Court ought not have raised a presumption against the appellant under Section 20(1) of the Act. Even otherwise, the appellant could be able to displace the presumption, if any, by adducing positive evidence and by pointing out the circumstances required for rebutting the presumption against him under Section 20(1) of the Act. The learned trial Court therefore, in my view, erroneously recorded conviction against the appellant, and the conviction and sentence passed by the trial Court are liable to be set aside.

19. In the result, the conviction and sentence passed in C.C.No.10 of 1999 on 31.08.2005 by the Principal Special Judge for SPE and ACB cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad against the appellant are set aside and the appellant is found not guilty of the charges with which he stood charged and accordingly, he is set at liberty. The fine amount, if any, paid by the appellant shall be refunded. Accordingly, the appeal is allowed.

_____ R.KANTHA RAO,J Date:

16. 11.2012

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