

Gangamma Vs. State By

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Court : Karnataka

Decided On : Feb-11-2020

Judge : K.Somashekar

Appeal No. : CRL.A 714/2011

Appellant : Gangamma

Respondent : State By

Advocate for Pet/Ap. : Sri. S.G.Rajendra Reddy

Judgement :

:

1. : R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE11H DAY OF FEBRUARY, 2020 BEFORE THE HONBLE MR. JUSTICE K. SOMASHEKAR CRIMINAL APPEAL No.714 OF 2011 BETWEEN GANGAMMA W/O ANNAPPA SUPERVISOR WOMEN AND CHILD WELFARE DEPARTMENT UDAYAGIRI, MYSORE. ... APPELLANT (BY SRI. S. G. RAJENDRA REDDY, ADVOCATE) AND STATE BY LOKAYUKTA POLICE MYSORE. ... RESPONDENT (BY SRI. VENKATESH S. ARBATTI - SPL.P.P.) THIS CRL.A. IS FILED UNDER SECTION3742) OF THE CR.P.C PRAYING TO, SET ASIDE THE ORDER

DATED 22.06.2011 PASSED BY THE PRL. SESSIONS AND SPL. JUDGE, MYSORE IN SPL.C.NO.26/2008 CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S7 13(1)(d) R/W SEC. 13(2) OF PREVENTION OF CORRUPTION ACT AND ETC., THIS CRIMINAL APPEAL COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING: :

2. :

JUDGMENT

This appeal is directed against the judgment of conviction and order of sentence rendered by the trial Court in Spl.C.No.26/2008 dated 22.06.2011 convicting the appellant/accused for the offence punishable under Section 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (for short P.C.Act).

2. The accused was sentenced to undergo SI for a period of one year and to pay fine of Rs.5,000/- for the offence punishable under Section 7 of the P.C.Act. Further, the accused was sentenced to undergo SI for a period of 3 years with fine of Rs.10,000/- for the offence under Section 13(1)(d) punishable under Section 13(2) of the P.C.Act. In default to pay the fine amount, accused was sentenced to undergo SI for a period of six months and one year respectively. The sentence was ordered to run concurrently.

3. It is transpired in the complaint allegations that complainant namely Shanthamma was working as :

3. : Anganawadi Assistant at J.P.Nagar Anganawadi Center for a period of four years and thereafter, she was appointed to newly established Nachanahalli Palya Anganawadi Center, the number of which is 128 and the same was established at I Cross, Nachanahalli Palya and the accused was said to be the Supervisor of the fourth circle. The accused in order to give appointment order to the complainant, alleged to have demanded money and the complainant is alleged to have already paid an amount of Rs.2,000/- in her house. It is alleged in the complaint that accused demanded to pay the balance amount of Rs.4,000/- on 12.10.2006 and told the complainant to come and pay the money in the morning in her house. When the complainant requested to reduce the amount, accused asked her to

come along with Rs.2,000/- to her house or otherwise she will not issue the appointment order and her appointment will be cancelled. The complainant went and discussed the said issue with her husband. Thereafter, the complaint lodged by the complainant with the Lokayukta police has produced along with an amount of Rs.2,000/- and also furnished the address of the :

4. : accused and she also mentioned in the complaint that accused had asked her to bring amount of Rs.2,000/-. Based on the complaint as per Ex.P1, the Lokayukta Police registered the case by recording FIR and thereafter, proceeded with the case for investigation by securing two official witnesses to act as panch witnesses. Subsequent to securing PW.2 - D.V. Diwakar and PW.4 - R.N. Annapoorna by making a correspondence letter to their unit head to act as panch witnesses, the Police Inspector of Lokayukta Police, Mysuru - B.Swamy conducted entrustment mahazar as per Ex.P2 in the presence of PW.1 - Shanthamma and briefed the contents of the aforesaid mahazar and so also, by applying the phenolphthalein powder on the currency notes produced by PW.1 - Shanthamma by preparing sodium carbonate solution and when the government servant comes into contact with the aforesaid currency notes and if the fingers of the government servant are washed in the said solution, the same shall turn into pink in color. The said procedure was briefed to PW.2 - D.V. Diwakar and PW.4 - :

5. : R.N. Annapoorna who were secured as panch witnesses in the presence of PW.1 - Shanthamma.

4. Subsequent to drawing of the entrustment mahazar as per Ex.P2, the Police Inspector of Lokayukta Police, Mysore who led the team along with the materials required for conducting trap on 11.10.2006 on a complaint filed by the complainant as per Ex.P1 and so also in the presence of PW.2 and PW.4, the pre-trap mahazar was conducted by the Police inspector as per Ex.P2 in his office at around 5.30 p.m. But the team could not be led by him on that day to conduct trap mahazar. He gave instructions to come on the next day in order to proceed with the complaint as well as FIR said to be recorded for the purpose of raid of government servant who arraigned as accused. Accordingly, on 12.10.2006, the team led by Police Inspector - Swamy to the house of Accused - Gangamma

wherein the trap was successfully conducted and trap mahazar was drawn as per Ex.P5 where the son of the accused - Gangamma was coming in the way to discharge the duty as government servant that :

6. : too be the police inspector of Lokayukta and his team. Therefore, accused - Gangamma and so also, the entire team members consisting PW.2 - D.V. Diwakar and PW.4 - R.N. Annapoorna returned to the Lokayukta police and drew the trap mahazar as per Ex.P5 wherein during the course of the mahazar the hand fingers of accused - Gangamma was washed with sodium carbonate solution. In the right hand wash of the accused with sodium solution, the same turned into light pink in colour as per the chemical analysis report issued by the FSL authority as per Ex.P11. Subsequently, he secured the sanction order to prosecute the case against the accused by the competent authority as per Ex.P14 and so also secured the documents in a file relating to PW.1 - Shanthamma wherein letter written by PW.5 to Lokayukta Police as per Ex.P10. These are all the material documents as secured by the police inspector of Lokayukta and thereafter, laid the charge sheet against the accused.

5. Subsequent to laying of charge sheet against the accused, the trial Court framed the charges against the :

7. : accused for the offence punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C.Act wherein accused did not plead guilty but claimed to be tried. Subsequent to framing of charge, the prosecution in order to prove the guilt of the accused examined in all PWs.1 to 7 and so also, got marked several documents as per Exs.P1 to P15 and M.O.1 to M.O.10. Subsequent to evidence adduced by the prosecution, the accused was examined as required under Section 313 of Cr.P.C. whereby the accused declined the truth of the evidence of prosecution adduced so far. Thereafter, accused herself examined as DW.1 as contemplated under Section 233 of Cr.P.C. The trial Court after hearing arguments advanced by the Special Public Prosecutor for the prosecution and so also, the defence counsel and on perusal of evidence of PWs.1 to 7 and the averments made in the complaint as per Ex.P1 as well as averments made in Ex.P2 - entrustment mahazar and Ex.P5 - Trap mahazar, and on appreciation of material evidence

available on record, rendered the impugned judgment convicting the appellant/accused for the :

8. : aforesaid offences. It is this judgment which is challenged under this appeal by urging various grounds.

6. It is contended by Sri S.G.Rajendra Reddy, learned counsel for the appellant by referring to the evidence of PW.1 - Shanthamma who is no other than the author of the complaint as per Ex.P1 that she was working as an Anganawadi Assistant in the Anganawadi Centre in the limits of Nachanahalli Palya which comes under limits of Corporation. Earlier to that it was in the limits of Mandal Panchayath. She has specifically stated in her evidence that she was working as a Maid servant in the house of the accused and she has asked her to come to her house. Accordingly, the complaint who went to the house of the accused, at that time, the accused was insisting her to give amount of Rs.4,000/- in order to issue appointment order as an Anganawadi Assistant, if not, it would be cancelled.

7. She has further stated in her evidence that she has discussed with her husband and thereafter, filed a complaint before the Police Inspector, Lokayukta as per :

9. : Ex.P1. The complaint was got prepared by a person who was a neighbourer to her house. But the said person who drafted the complaint has not been examined by the Police Inspector during the course of the investigation and even after the trap mahazar was drawn as per Ex.P5. The entrustment mahazar was conducted as per Ex.P2. Therefore, allegation was made in the complaint at Ex.P1 which was filed by PW.1 - Shanthamma against the accused that she insisted her to bring bribe in a sum of Rs.4,000/- and also the same was tendered by her to the accused in her house on 12.10.2006, appears to be inconsistent even to the extent of evidence of PW.2 - D.V. Diwakar and PW.4 - R.N. Annapoorna who are the vital witnesses on the part of the prosecution as wherein the trap mahazar as per Ex.P5 was conducted in the presence of PW.4 - R.N. Annapoorna.

8. On 11.10.2006 at around 5.30 p.m. in the office Lokayukta, PW.1 - Shanthamma said to have given four currency notes of each denomination of Rs.500/- which was applied with phenolphthalein powder and the same :

10. : was counted by PW.2 - D.V. Diwakar. The same was kept in the purse belonging to PW.1 through PW.2 and the amount which was kept in the purse was also kept in the almirah and the IO called the three to come in the morning. PW.4 - R.N. Annapoorna who is a shadow witness was also present at that time. But the entire process of pre-trap mahazar as per Ex.P2 was conducted in the office of Lokayukta at Mysuru.

9. The trap was conducted on 12.10.2006. In the morning all of them went near the house of the accused and PW.1 and PW.4 were sent to the house of accused and the currency notes which was applied with the phenolphthalein powder was tendered by PW.1 to the accused and she kept the same in her purse. Thereafter, as per the instructions given, the complainant had gave signal to the police inspector by moving hand on her head. Subsequent to extending signal, the team headed by police inspector rushed to the house of the accused and thereafter followed the process by washing hand fingers of the accused which turned into pink colour and the :

11. : solution was seized and the bait money was also seized. But the son of the accused was causing obstruction to the police inspector of Lokayukta to discharge his duty and team to draw the mahazar as per Ex.P5. The entire team returned to the office of Lokayukta along with PW.1 - Shanthamma.

10. It is further stated in the evidence of PW.1 that while complainant was insisting the accused to provide a sum of Rs.4,000/- nobody was present with her. Subsequent to one month Lokayukta police had issued a cheque to PW.1 - Shanthamma. But as on the date of complaint filed by her, panchas 1 and 2 did not come to that office but on the date of giving complaint in the office of Lokayukta, she was present in that office till 7.00 p.m. But she has given complaint as well as produced the money. But in the cross-examination she has specifically stated that prior to the entrustment mahazar, no personal search was conducted. She cannot say specifically that while she was given the purse along with the complaint during the demonstration panchanama, the currency :

12. : notes number which was noted in sheets of paper, but prior to proceeding to the house of the accused on the next day, the sheets containing the currency

notes was with the police. She cannot say specifically the time of raid and in all 5 to 6 persons were with the team. But the purse which was carried by her was not taken by the police inspector by affixing any seal. Even at the time of raid in the house of accused on 12.10.2006 neither herself nor the panch witnesses undergone the personal search. These are all the evidence that has been given by PW.1 - Shanthamma who is the author of the complaint as per Ex.P1. But there is no dispute that aforesaid Shanthamma was working as maid servant in the house of accused - Gangamma prior to filing of complaint. But the accused to issue appointment order was insisting to give bribe amount in a sum of Rs.4,000/- but she has already been provided a sum of Rs.2,000/-. But the remaining amount was yet to be received. Therefore, she has disclosed with her husband and thereafter they decided to file a complaint before the police inspector of Lokayukta against the Accused. Accordingly, she has filed :

13. : a complaint against the accused that itself indicates that a motive relating to landing in trouble to accused - Gangamma who was working in the Department of Women and Child Development.

11. PW.2- D.V. Diwakar was secured as panch witness in respect of Ex.P2 - pre-trap mahazar and so also Ex.P5 - trap mahazar said to be conducted by police inspector in their presence. But PW.2 has specifically stated in his evidence that while Lokayukta police was briefing to the complainant and also handing over amount on which the phenolphthalein powder was applied to tender the currency notes to the accused and so also pancha - 2 who accompanied with the complainant and PW.4- R.N. Annapoorna was also provided voice recorder in order to record the conversation that took place in between them. Though the charge sheet has been laid by the IO, but no voice recorder has been produced for having recorded the conversation in between the accused and complainant. PW.2 - D.V. Diwakar has specifically stated in his evidence that in the sodium carbonate :

14. : solution when the right hand was dipped and washed, the same turned into light pink colour. Both the bottles were seized separately as per M.O.2 and M.O.3.

12. Subsequent to trap mahazar, police inspector of Lokayukta obtained the explanation of the accused as per Ex.P4 in which she has specifically stated that the amount tendered by the complainant was not the bribe amount but it was the amount which was taken by her for the purpose of postpartum care of her daughter. It was the said amount which was returned by her to the accused and not the bribe amount as alleged in the complaint in order to issue appointment order. Therefore, the explanation given by the accused in detail as per Ex.P4 in which secured by the Police Inspector is contrary to the evidence of PW.1 - Shanthamma in respect of Ex.P1 - complaint and further contrary to the fulcrum of Ex.P2 - pre-trap mahazar and trap mahazar at Ex.P5.

13. PW. 5 said to be the CDPO who produced the file containing Ex.P10 and Ex.P11 the documents relating to :

15. : PW.1- Shanthamma but he is a formal witness. But the appointment order said to have been issued by the CDPO and not by accused - Gangamma by discharging her service as Supervisor. Therefore, there is no pendency of work relating to complainant - Shanthamma. Therefore, as per contents of Exs.P6 to P8 seized by the police inspector during the course of investigation it is only attendance register and inward register but the same has been seized by drawing seizure mahazar as per Ex.P9. Therefore, the evidence of PW.5 CDPO is of no avail to the prosecution to prove the guilt of the accused.

14. PW.2 said to be the panch witness who has specifically stated in his evidence that the Lokayukta police had applied phenolphthalein powder on the currency notes except that no identifiable marks has been made, but during the demonstration mahazar as per Ex.P2 in all there were four officials were present but he cannot say as to who applied the phenolphthalein powder on the currency notes produced by PW.1 - Shanthamma. But the phenolphthalein powder was applied on both the :

16. : sides of currency notes. He has specifically stated in his evidence in the team led by the police inspector women police were also accompanied but he do not know which materials have been carried by the police in order to proceed to the house of the accused. But one woman police who accompanied in the team had

held the hands of the accused but the amount in which seized from the possession of the accused no receipt has been issued to the accused. But on the next day that they have been present in the Lokayukta police station and confirmed the currency notes and also its denomination. But the pre- trap panchanama as per Ex.P2 has been drawn on 11.10.2006 at around 5.30 p.m. the same was kept in the almirah in the office of police inspector but the raid was conducted on 12.10.2006 the same reveals in the trap mahazar as per Ex.P5. But prior to proceeding for raid there was no personal search made with PW.1 - Shanthamma as this evidence which runs contrary to the evidence of PW.7 said to be police inspector who laid the charge sheet against the accused. But the entire investigation has been done by the Police Inspector :

17. : namely - Swamy but he is said to have died. Therefore, PW.6 said to be the police inspector who completed the entire investigation and secured the sanction order as per Ex.P14 from the competent authority and thereafter, he has laid the charge sheet against the accused. But this PW.6 said to be the IO in part he has identified the signature of the then Police Inspector - Swamy at Ex.P2, P5 and so also, explanation given by the accused as per Ex.P4. But there are some omissions and commissions in respect of evidence of PW.2 and PW.4 who are the panch witnesses to Ex.P2 and P5 and so also, the explanation given by accused - Gangamma as per Ex.P4. But the evidence of PW.6 runs contrary to the evidence of PW.2 and PW.4 who are the material witnesses in respect of contents of Ex.P2 and P5 said to have been drawn by Police Inspector - Swamy.

15. PW.4 - R.N. Annapoorna who is a shadow witness and also a main witness on the part of the prosecution in respect of trap mahazar said to have been conducted by the police inspector of Lokayukta as per :

18. : Ex.P5. She has specifically stated in her evidence that when the right hand of the accused was washed in the solution, it did not turn into any colour but when the left hand of the accused was washed in the sodium carbonate solution, the same turned into red in colour and the same has been seized in a bottle. But Ex.P11, the chemical analysis report which indicates that the sodium solution which was collected and also seized by the police inspector has been sent to the

FSL in order to subject to examination to detect the presence of phenolphthalein factors. Accordingly, FSL report was issued as per Ex.P11. Therefore, there is a contradiction in this regard and the same has not been appreciated by the trial Court but it has misread and so also, misinterpreted the evidence of PW.1 - Shanthamma in respect of contents of Ex.P1 - complaint and so also, contents of Ex.P2 - pre-trap mahazar and Ex.P5 - trap mahazar. Therefore, in this appeal it requires re-appreciation of entire evidence, if not, there shall be miscarriage of justice as where the accused had given explanation as per Ex.P4 and she has withstood to her explanation that the complainant - PW.1 who :

19. : obtained hand loan from accused to meet the expenditure since her daughter was in a confinement period for delivery of baby. But in order to return the said amount, PW.1 - Shanthamma had been to her house and given that amount and the same was turned into bribe amount as per the theory as put forth by the prosecution to prove the guilt of the accused. But the explanation given by the accused it is to be proven her case even though there is specific provision as under Section 21 of the P.C.Act.

16. In support of his contentions, learned counsel for the appellant has placed the following reliance: i) Punjabrao vs. State of Maharashtra (2002) 10 SCC371 In this judgment, the Honble Apex Court has held that Section 5(1) (d) r/w Section 5(2) of PC Act, 1947 and Section 161 of IPC, 1860 - Illegal gratification - where accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established - the accused can establish his defence by preponderance of probability - if the explanation offered by :

20. : him under Section 313 Cr.PC is found to be reasonable, then it cannot be thrown away merely on the ground that he did not offer the said explanation at the time when the amount was seized - On facts, explanation offered by the accused is found to be probable, reasonable and acceptable by trial Court - High Court erred in disbelieving the same without examining the reasons advanced by the trial court - High Courts conclusion based on misreading of relevant evidence - Reversal of acquittal by High Court set aside - interference by High Court with

acquittal - Impropriety. ii) (1976) I SCC145Raghubir Singh vs. State of Punjab In this judgment the Honble Supreme Court has extensively dealt with Section 5(1)(d) read with 5(2) of PC Act, 1947 - Conviction based on oral evidence - whether, on facts, proper - accused in no position to benefit the complainant. The Apex Court held that where the accused who was alleged to have demanded and accepted the bribe for granting exemption from goods tax was in fact not dealing with such application, held, a serious infirmity is introduced in the prosecution case. On facts, where the :

21. : application for exemption was made on a particular date no question of demand and acceptance of bribe can arise two or three days before. Moreover, on facts, the officer on whose behalf the appellant is also alleged to have demanded bribe was not concerned with the complainants case at that time. The prosecution evidence is clear that the complainant was aware of this fact. This falsifies the case set up by the complainant. Since, no independent or respectable witnesses were included in the raid or in giving testimony for the prosecution the present conviction based solely on the testimony of interested witnesses cannot be sustained. The evidence as to recovery of the bribe money from the accused also does not inspire confidence. In the instant case, accused - Gangamma was working as a Supervisor in the Department of Women and Child Development, Mysuru. It is the case of the prosecution that accused who working as Supervisor demanded bribe money of Rs.4,000/- from the complainant - Shanthamma to show official favour to issue appointment order and accepted an amount of Rs.2,000/- on 12.10.2006 by misusing her official :

22. : position and thereby committed criminal misconduct. PW.1 is the complainant, PW.2 is the panch witness and PW.4 is the shadow witness and all these three witnesses in their evidence stated that the Lokayukta police based on the complaint of PW.1 called PW.2 and PW.4 and got introduced PW.1 and she gave the money and pre-trap mahazar as per Ex.P2 and trap mahazar as per Ex.P5 was conducted by the IO. But appellants counsel submits that above reliance are clearly applicable to the case on hand as wherein the accused has offered her explanation as per Ex.P4 narrating the whole sequences the receipt of amount tendered by PW.1 who was working as maid servant in her house prior to

filing of complaint as per Ex.P1. But the same has not been considered by the trial Court in a proper perspective but only believed the theory put forth by the prosecution by giving credence only to the evidence of PW.1, PW.2 and PW.4. He contends that it would be desirable if in cases of this kind where a trap is laid for a public servant, the marked currency notes, which are used for the purpose of trap, are treated with phenolphthalein powder so that the handling of such :

23. : marked currency notes by the public servants can be detected by chemical process and the court does not have to depend on oral evidence which is sometimes of a dubious character for the purpose of deciding the fate of the public servant. It is but meet that science-oriented detection of crime is made a massive programme of police, for in our technological age nothing more primitive can be conceived of than denying the discoveries of the science as aids to crime suppression and nothing cruder can retard forensic efficiency than swearing by traditional oral evidence only, thereby discouraging liberal use of scientific research to prove guilt.

18. Learned counsel for the appellant further contends that the accused is not the appointing authority and PW.1 - Shanthamma states that she paid an amount of Rs.2,000/- but where she paid the amount has not been stated. Further, there is no material to show that, the amount was paid to the accused and in the cross-examination it is elicited that the complaint was written by one of the neighbourer and that neighbourer was not :

24. : examined. The evidence of the prosecution witnesses clearly discloses that the accused has been implicated in a false case. There are inconsistencies and contradictions in the evidence of PW.1 coupled with the evidence of PWs.2 and 4. The evidence of PW.1 is not corroborated by the evidence of PW.4 and the safeguards are not followed while trapping the accused and the appointment order is not seized. The complainant was working as maid servant and there was a loan transaction and evidence of PW.5 supports the contention of the accused and not the prosecution. The delay in lodging the complaint is not properly explained by the prosecution. On all these grounds, appellants counsel contends that the prosecution has failed to establish the guilt of the appellant/accused beyond all

reasonable doubt and sought for setting aside the conviction judgment rendered by the trial Court by allowing the present appeal and acquit the accused of the offences charged against her.

19. Whereas, learned Spl.PP for the Lokayukta has specifically concentrated in respect of ingredients of :

25. : Section 7 and so also, Section 13(1)(d) of the P.C.Act relating to demand and accepting the bribe amount. He contends that the prosecution has proved beyond reasonable doubt that the accused who was working as Supervisor in the Department of Women and Child Development, demanded a sum of Rs.4,000/- from the complainant as illegal gratification other than the legal remuneration as a motive for showing official favour that is to issue appointment order to the complainant who was appointed as Anganawadi assistant at Nachanalli Palya. Further, the prosecution has also proved beyond reasonable doubt that on 12.10.2006, the accused misusing her official position by corrupt and illegal means obtained pecuniary advantage to an extent of Rs.2,000/- to issue appointment order to the complainant and thereby the trial Court has rightly convicted the accused for the offence punishable under Section 7, 13(1)(d) r/w 13(2) of the P.C.Act, 1988. The trial Court on perusal of the entire evidence found that there was a demand for bribe amount by the accused which was clear from the evidence of PW.1 and PW.2 coupled with the evidence of :

26. : PW.4 and the prosecution has proved its case beyond all reasonable doubt. In order to handing over the appointment order, the accused has insisted complainant to pay bribe amount or otherwise, the appointment order would be cancelled. Therefore, the delinquent official was caught red handed in a trap laid by the police inspector of Lokayukta and the evidence of complainant is corroborated with the evidence of PW.2 and PW.4 being panch witnesses and there is no arbitrariness or inconsistencies found in the findings recorded by the trial Court.

20. As per Section 20 of the P.C.Act there shall be a presumption which is always based upon the evidence put forth by the prosecution. Under Section 20 of Prevention of Corruption Act, there is a presumption available in respect of offence

under Section 7. On proving acceptance of pecuniary advantage by accused without public interest by corrupt or illegal means or by abusing his position as a public servant, criminal mis-conduct of accused under Section 13(1)(d) of Prevention of Corruption Act will also be established. On proof of demand and acceptance, even :

27. : presumption under section 20 of Prevention of Corruption Act is available to the prosecution. Though this presumption can be rebutted by accused by preponderance of probability, there is no such probable defence found in the evidence of D.W.1 and materials placed by accused. Though accused can show that her defence is highly probable, as against the case of prosecution which is to be proved beyond reasonable doubt.

21. PW.1-Shanthamma was appointed as Anganawadi assistant but the accused insisted her to pay bribe in a sum of Rs.2,000/- for issuing appointment order. Accordingly, PW.1 tendered the bribe amount in a sum of Rs.2,000/- in denomination of four notes of Rs.500/-. The same was seized by the police inspector by drawing trap mahazar as per Ex.P5 in the presence of PW.2 and PW.4. The currency notes were tendered by PW.1 to the accused as indicated in Ex.P1 - complaint. Subsequent to succeeding in a trap, the hands of the accused were washed in sodium carbonate solution which :

28. : turned into light pink colour as per Ex.P11-FSL report. But mere there is some variation and minor discrepancies in the evidence of the prosecution, the same should not cut the root of the case of the prosecution. The said discrepancy has been noticed by the trial Court and has rightly appreciated the evidence put forth by the prosecution in order to prove the guilt of the accused beyond all reasonable doubt.

22. The second limb of the argument advanced by the learned Spl.PP that no doubt there are minor discrepancies in the evidence of PWs.2 and 4 in respect of Ex.P2 and P5 inclusive of evidence of PW.1 - Shanthamma as per Ex.P1. It is alleged that PW.1 was working as a maid servant prior to the incident. But nothing worthwhile has been put forth by the defence counsel to disbelieve the theory of the prosecution. PW.1 has categorically stated in her evidence that she paid the

bribe amount in a sum of Rs.2,000/- on 12.10.2006. Subsequently, the trap mahazar was conducted as per Ex.P5. The acceptance of bribe amount has been proved by the prosecution and the :

29. : same is in conformity with the evidence of PW.4 who is a shadow witness.

23. In support of his contentions, learned Spl.PP has placed the following reliance:

i) Dhaneshwar Narain Saxena Vs. The Delhi Administration (AIR 1962 SC195 In the said reliance, the Honble Supreme Court has held that Prevention of Corruption Act - Section 5(1)(d) - Misconduct by public servant need not be in connection with his own official duty. It is further held that The offence under Section 5 is wider and not narrower than the offence of bribery as defined in Section 161 I.P.C. In order to bring the charge home to an accused person under cl.(d) of Section 5(1), it is not necessary that the public servant in question, while misconducting himself, should have done so in the discharge of his duty. It would be anomalous to say that a public servant has misconducted himself in the discharge of his duty. Duty and Misconduct go ill together. If a person has misconducted himself as a public servant, it would not ordinarily be in the discharge of his duty, but the :

30. : reverse of it. It is not necessary to constitute the offence under cl.(d) of the section that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is equally wrong to say that if a public servant were to take money from a third person, by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other public servant, without there being any question of his misconducting himself in the discharge of his own duty, he has not committed an offence under Section 5(1)(d). It is also erroneous to hold that the essence of an offence under Section 5(2), read with Section 5(1)(d), is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage. ii) Phula Singh vs. State of Himachal Pradesh (AIR 2014 SC1256 In this judgment the Honble Apex Court has held that Sections 7, 13(2) PC Act - illegal gratification - proof - complainant lodged FIR alleging demand of bribe by appellant for canceling demarcation report - no explanation :

31. : furnished by the appellant in respect of recovery of Rs.1,000/- from pocket of his pant - nor he could furnish any information as to how his fingers turned pink on being washed, with sodium carbonate solution - appellant also failed to furnish explanation in his statement under Section 313 Cr.P.C. regarding any incriminating material that has been produced against him - order of High Court reversing judgment of acquittal is not perverse - no interference. iii) Krishna Pillai Sree Kumar and another vs. State of Kerala (AIR 1981 SC1237 The Honble Supreme Court in the above judgment has held that It is not a sine qua non for the success of the prosecution that the motive must be proved. So long as the other evidence remains convincing and is not open to reasonable doubt, a conviction may well be based on it. The prosecution evidence no doubt suffers from inconsistencies here and discrepancies there but that is a short coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies, etc., go to the root of the matter or pertain to insignificant aspects thereof. :

32. :

24. Based upon the above reliance, learned Spl.PP vehemently contends that the accused demanded money to hand over the appointment order to the complainant and the evidence adduced by the witnesses on behalf of the prosecution is very clear that there was demand and acceptance of money. The possession of money with the accused is admitted and explanation is not sufficient. Hence, the trial Court on appreciation of oral and documentary evidence on record, has rightly rendered the impugned judgment which needs no interference. The appeal being devoid of merits, is liable to be set-aside.

25. In the backdrop of the contentions as taken by the learned counsel for the appellant and learned Spl.PP for respondent - Lokayukta, it is relevant to refer to Section 5(1)(d) of P.C. Act, 1947 which is equivalent to provision under Section 13(1)(d) of the P.C. Act, 1988, which reads as under:

13. 1)(d): A public servant is said to commit the offence of criminal misconduct:-
(d) if he,- :

33. : (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or Section 13(1)(d) and Section 7 of the P.C. Act, 1988 are relatable terms in respect of the public servant taking gratification other than legal remuneration in respect of an official act. Section 13(1)(d) indicates misconduct of the Government servant said to be an accused. The gratification other than legal remuneration in respect of an official act, an act does not seem to become an official act. A public servant may have power to do certain official act by virtue of the rank by holding as a public servant.

26. In the instant case, accused Gangamma said to be discharging her duties as a Supervisor of the 4th Circle :

34. : in the office of the Department of Women and Child Development at Mysuru demanded money from PW-1 Shanthamma to give the appointment order who was working as Anganawadi Assistant at J.P.Nagar Anganawadi Centre for a period of four years and thereafter, she was appointed for newly established Nachanahalli Palya Anganawadi Centre. It is the case of the complainant that when she approached her higher officer regarding issuance of appointment order to her, she demanded an amount of Rs.4,000/- in respect of her honorarium. But as could be seen from the discussion made above, the accused Gangamma is not a competent authority to issue an appointment order as stated by PW- 1. The complainant has stated that she paid an amount of Rs.2,000/- to the accused in her house five days back and the accused demanded PW-1 to pay the balance amount of Rs.4,000/- on 12.10.2006. On her complaint, a trap was conducted by the Lokayukta Police.

27. PW-5 - CDPO in his evidence has stated that the Lokayukta Police conducted the trap and the said fact :

35. : came to his knowledge after the trap. He was subjected to examination on behalf of the prosecution and has produced a file regarding the documents

pertaining to PW-1. The entire file even though contain Ex.P9, appointment order and Ex.P10, letter written by PW-5 to the Lokayukta Police, but Section 7 of the P.C. Act states that the Government servant said to be taking a gratification other than legal remuneration in respect of an official act is said to be an offence.

28. Section 7 of the P.C. Act, 1988 reads as under:

7. Public servant taking gratification other than legal remuneration in respect of an official act.- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or dis-favour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local :

36. : authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

29. In the instant case, it is stated by the accused that PW-1 had obtained hand loan of Rs.2,000/- from her even prior to filing of complaint for the purpose of postpartum care of her daughter and therefore, the accused insisted the complainant to repay the loan amount. Therefore, on 12.10.2006, PW-1 had been to the house of the accused and she tendered that amount to her. It is stated by the accused that PW-1 was just a maid servant in her house and the said amount was took by PW-1 during the confinement period of her daughter. But by receipt of that amount, the PI of Lokayukta who swing into operation to the house of the accused. The team consisting of PW-2 D.V. Diwakar and PW-4 R.N. Annapoorna entered into the house wherein the accused and PW-1 were present and PW-1 was :

37. : discharging her duties as maid servant. But the PI has not stated anything about the materials which were secured during the course of investigation and even did not say in respect of trap mahazar said to be conducted by the Police Inspector, namely, Swamy. Except the materials secured by the I.O. and framing charge-sheet, nothing is put forth by the prosecution to prove the guilt of the accused of demand and acceptance of bribe money. The accused was taken to Lokayukta office and was subjected to hand wash in sodium carbonate solution and it turned to pink colour and the solution was seized and the bribe amount was also seized. Ex.P11 is the chemical analysis report issued by the F.S.L. Authority for having subjected the accused to examination. The solution which was sent in a sealed bottle after the hand wash of the accused indicates as light pink in colour. But the prosecution has set up a theory putting forth the evidence that after hand wash of the accused, the solution turned into red in colour. But chemical analysis report at Ex.P11 indicates as light pink in colour. This is the contradiction and discrepancy on the part of the prosecution which is :

38. : required to be appreciated in a proper perspective manner.

30. In the instant case, it is relevant to refer the evidence of PW-4 R.N. Annapoorna who is a shadow witness and also an witness on the part of the prosecution in respect of Ex.P5. In the cross-examination of this witness, it is elicited that the appointment of PW-1 was made one month earlier prior to filing of complaint as per Ex.P1 dated 11.10.2006 and so also the trap conducted on 12.10.2006. In the complaint, it is not mentioned that the accused demanded her or insisted her to pay the bribe amount in a sum of Rs.2,000/- on 12.10.2006 or even prior to filing of complaint as per Ex.P1. But the amount of Rs.2,000/- has been found in possession of the accused but the tainted currency notes have been tendered by PW-1 which was kept in her purse. But merely because the tainted currency notes were said to have been received by the accused from PW-1, the accused cannot be said to be guilty of the offences charged. The appointing authority is said to be the CDPO but the accused even :

39. : though working as a Supervisor in the Department of Women and Child Development, has no authority to issue an appointment order either on request or

insisted by PW-1. But the power was vested with CDPO who was examined as PW-5.

31. When the accused was asked by the police inspector to produce the file containing the documents of PW-1, the file was not in the custody of the accused but whereas it was maintained by CDPO. Therefore, the entire file relating to PW-1 was produced by PW-5, CDPO and he produced the said file consisting the documents of PW-1 and the same has been seized under seizure mahazar as per Ex.P9, which bears the signatures of PWs-2 and 3. PW-3 who is a police constable and was also one of the team member led by P.I Swamy who subscribed his signature at Ex.P9 said to be conducted by him as seizure mahazar for having seized the documents of PW-1.

32. M.O.1 is the bottle containing sodium carbonate solution, M.O.2 is a cover containing phenolphthalein powder, M.O.3 and M.O.4 are said to be the bottles, which were used for washing both the hands :

40. : of the accused. M.O.6 and 7 are said to have been the resultant wash of cotton swab which was used to wash the purse of PW-1 wherein the tainted currency notes M.O.10 were kept. M.O.8 is a cover containing sodium carbonate solution. M.O.9 is a distilled water bottle. These are all the material objects that have been got marked on behalf of the prosecution.

33. PW-5 CDPO in his evidence has stated that the Lokayukta police conducted the trap and the said fact came to his knowledge after the trap. They came to his office in order to seize the documents and Ex.P6 and Ex.P8 were seized in his presence by drawing the mahazar and he also identified his signature at Ex.P9. It is his evidence that on the same day, the P.I wrote a letter to the complainant to come and join the duty on 20.10.2006 and he identified his signature on both the letters at Exs.P10 and P11.

34. PW-6 is the subsequent Investigating Officer who laid the charge-sheet against the accused. In his evidence he has stated that he obtained the chemical report on :

41. :

16. 01.2007 and also received the spot sketch as per Exs.P11 and P12 and he filed the charge-sheet after obtaining the sanction from the concerned by completing the investigation. He has also stated that his predecessor Swamy registered the case and sent the FIR to the Court and he identifies the signature of the said Investigating Officer and also stated that while preparing the final report, he verified the investigation done by the predecessor and also the complaint and other documents and he identified the signature of previous Investigating Officer in Ex.P2 to Ex.P5 and so also in Ex.P9.

35. PW-7 is the sanctioning authority who issued the sanction order as per Ex.P14. In his cross- examination, he has specifically stated that prior to getting the appointment order by the complainant, since a month she is discharging her duty as an Anganawadi Assistant, the same has been stated in her complaint at Ex.P1. Ex.P14 is the sanction order, which is produced in order to prosecute the case against the accused. It is elicited that the original appointment order in respect of :

42. : PW-1 Shanthamma was issued by the accused and the entire file has been produced by PW-5 CDPO according to the request made by P.I of Lokayukta as in respect of the accused alleged to demand bribe from PW-1 and also accepting the bribe amount as at M.O.10.

36. DW-1 Gangamma said to be arraigned as accused was subjected to examine as a defence witness and also she has been subjected to cross-examination but she has specifically stated in her defence evidence and so also in her explanation at Ex.P4 that the complainant borrowed the money from her and the said amount was repaid and not the bribe amount as stated in the complaint at Ex.P1 and so also at Ex.P5, trap mahazar said to have been conducted by P.I, Lokayukta in the presence of PW-2 - D.V. Diwakar and PW-4 - R.N.Annapoorna. In order to substantiate her defence, she has been examined as DW-1. PW.1 who availed loan of Rs.2,000/- as advance and she has worked for fifteen days and thereafter, she did not turn up to work as a :

43. : maid servant but in the oral evidence, she has stated that she took an amount of Rs.2,000/- as advance.

37. That DW-1 Gangamma being the accused who was taken to her office and therein the team led by the Police Inspector of Lokayukta, Mysuru verified the almirah and they did not find any documents pertaining to PW-1 and they recovered the documents from the office of PW-5. But in the cross-examination, there was a suggestion that she was entrusted with the work of serving the copy of the appointment order to the complainant and the said suggestion was denied. Merely because of denial of a suggestion, it cannot be said that the accused did not demand bribe and accepted the bribe amount as at M.O.10. As this is the contention taken by the learned Special Public Prosecutor for Lokayukta but unless positive evidence is furnished in order to prove that the accused specifically demanded or insisted PW-1 to provide bribe amount so as to issue appointment order to her, this vital evidence on the part of prosecution is required to be :

44. : considered but the same has not been considered by the Trial Court as this contention is also taken by the learned counsel for the appellant. But the accused who was examined as a defence witness and also the entire evidence put forth by the prosecution and the incriminating statements made against the accused has been examined as required under Section 313 of Cr.P.C. wherein it reveals that the complainant worked in the house of the complainant for six months and in order to meet her daughters delivery expenditure as she was in need of money. Therefore, she took an amount of Rs.2,000/- as advance but she did not return the same but when the accused insisted PW-1 to return the said advance amount, PW-1 had come to the house of the accused on 12.10.2006 in the morning under the guise of returning amount of Rs.2,000/-. But whereas, on the other hand, she filed a complaint against the accused as per Ex.P1 stating that the accused has demanded bribe in order to issue the appointment order to her as an Anganawadi Assistant. But the case of the prosecution is that the accused is not an appointing authority but was :

45. : discharging her duties as a Supervisor in the Department of Women and Child Development, wherein the complainant who after discussion with her

husband filed a complaint as per Ex.P1 and thereafter, went to the office of Lokayukta and gave complaint before the P.I and based on her complaint, the FIR was recorded and thereafter, PW-2 and PW-4 were secured to act as panch witnesses in respect of Ex.P2 and Ex.P5. But it is relevant to refer that the appointment order was issued on 05.10.2006. The same has been issued by the appointing authority CDPO- PW-5. But the complainant who requested the accused to issue the appointment order. PW-5 has categorically stated in his evidence that regarding the certificates of the appointment order, there is no other letter correspondence between him and the accused.

38. In view of the discussion made above, in this appeal, it is required to rescan the entire evidence of PW-1 who is the author of complaint at Ex.P1 and so also the evidence of PW-2 in respect of entrustment mahazar and trap mahazar as per Ex.P2 and Ex.P5 respectively. The :

46. : entire case of the prosecution revolves around the evidence of PW-1. At a cursory glance of the evidence of prosecution, it is seen that when the left hand fingers of the accused was dipped into the sodium carbonate solution, the same turned into light pink colour but the evidence of the vital witness inclusive of PW-1 reveals that when left hand of the accused was washed, it turned into red in colour. Therefore, it is said that there is a plausible evidence on the part of the defence where the accused was examined as DW-1 and so also explanation given by her at Ex.P4 to substantiate her case.

39. Under the facts and circumstances of the case, it requires revisiting of the entire judgment rendered by the Trial Court and so also the evidence of PWs-1, 2 and 4, requires to be re-appreciated, as the trial Court has misdirected and misinterpreted the entire case of the prosecution and erred in holding that the prosecution has proved the guilt of the accused beyond all reasonable doubt. The doctrine of criminal justice system states that the case has to be established by the prosecution by :

47. : putting forth cogent, corroborative and consistent evidence and also there should be an acceptable evidence to arrive at a conclusion against the accused. Even if there is any minor discrepancy or any doubt that arises in the mind of the

Court, the benefit of such doubt should be accrued in favour of the accused alone. It is the duty cast upon the prosecution to put forth unimpeachable evidence to prove its case beyond reasonable doubt. Therefore, it is said that in this appeal, it is required to be intervened with the impugned judgment rendered by the trial Court, where the prosecution did not put forth cogent, corroborative and acceptable evidence to prove the guilt of the accused beyond reasonable doubt. Therefore, the accused deserves for acquittal. For the aforesaid reasons and findings, I proceed to pass the following:

ORDER

i) The appeal is hereby allowed. ii) The judgment of conviction and order of sentence dated 22.06.2011 passed by the Principal Sessions and Special Judge, Mysuru in Special Case No.26 of 2008 convicting the appellant/accused for the offence punishable :

48. : under Sections 7, 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act, is hereby set aside. Consequently, the accused is acquitted of the charges leveled against her. iii) If the appellant has executed bail bonds, the same shall stand cancelled. iv) The fine amount deposited, if any, shall be returned to the accused, on proper identification, in accordance with law. Sd/- JUDGE DKB/DH

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