

Sri S Prasanna vs State by

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Court : Karnataka

Decided On : Jul-17-2025

Judge : M G UMA

Appeal No. : CRL.A/107/2012

Appellant : Sri S Prasanna

Respondent : State by

Judgement :

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JULY, 2025 BEFORE THE HON'BLE MRS. JUSTICE M G UMA CRIMINAL APPEAL NO. 107 OF 2012 C/W CRIMINAL APPEAL NO. 69 OF 2012 (A) CRIMINAL APPEAL NO. 101 OF 2012 (C) CRIMINAL APPEAL NO. 104 OF 2012 IN CRL.A NO. 107/2012 BETWEEN: SRI. S. PRASANNA S/O. SHESHAMURTHY S.N. AGED ABOUT 47 YEARS RESIDING AT NO.609, 14TH MAIN, 24TH CROSS, B.S.K. II STAGE, BANGALORE APPELLANT (BY SRI. R. NAGENDRA NAIK, ADVOCATE)

Digitally signed AND: by SWAPNA V Location: High STATE BY Court of CENTRAL BUREAU OF Karnataka

INVESTIGATION, GANGANAGAR BELLARY ROAD, BANGALORE
RESPONDENT (BY SRI. P. PRASANNA KUMAR, ADVOCATE) THIS
CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE
ORDER DATED:27.12.11 PASSED BY THE XLVI ADDL.C.C. AND S.J.,
AND SPL.JUDGE FOR CBI CASES, BANGALORE IN
SPL.C.C.NO.266/10 - CONVICTING THE APPELLANT/ACCUSED NO.2
FOR THE OFFENCE P/U/S 120B AND 420 OF IPC & SEC.13(2) R/W
13(1)(D) OF PREVENTION OF CORRUPTION ACT AND ETC., -2-

IN CRL.A NO. 69/2012 BETWEEN: N. REKHA, W/O. S. NAGARAJ
NO.1945, SOUTH D ROAD, 9TH BLOCK, JAYANAGAR, BANGALORE.
APPELLANT (BY SRI. S.G. BHAGAVAN, ADVOCATE) AND: THE
STATE BY CBI, ACB, GANGANAGAR BELLARY ROAD, BANGALORE
RESPONDENT (BY SRI. P. PRASANNA KUMAR, ADVOCATE) THIS
CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE
ORDER DATED:27.12.11 PASSED BY THE XLVI ADDL.C.C. AND S.J.,
AND SPL.JUDGE FOR CBI CASES, BANGALORE IN
SPL.C.C.NO.266/10 - CONVICTING THE APPELLANT/ACCUSED NO.2
FOR THE OFFENCE P/U/S 120B AND 420 OF IPC AND ETC., IN
CRL.A NO. 101/2012 BETWEEN: SMT. A.S. SASHIKALA, W/O P.K.
MANJUNATH AGED ABOUT YEARS, RESIDENT OF NO.390, 6TH
BLOCK, DR.RAJAKUMAR ROAD, RAJAJINAGAR, BANGALORE - 560
010 APPELLANT (BY SRI. CHETHAN .B., ADVOCATE) AND: STATE
BY CENTRAL BUREAU OF INVESTIGATION, ACB, -3- BANGALORE
RESPONDENT (BY SRI. P. PRASANNA KUMAR, ADVOCATE) THIS
CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE
ORDER DATED:27.12.11 PASSED BY THE XLVI ADDL.C.C. AND S.J.,
AND SPL.JUDGE FOR CBI CASES, BANGALORE IN
SPL.C.C.NO.266/10 - CONVICTING THE APPELLANT/ACCUSED NO.4
FOR THE OFFENCE P/U/S 120B AND 420 OF IPC AND ETC., IN

CRL.A NO. 104/2012 BETWEEN: SRI. P.N. SHETTIGAR S/O DOMBA SHETTIGAR, AGED ABOUT 58 YEARS, R/O. MADHU KIRAN, NO.27, 1ST BLOCK, MADHUVANA COLONY, SRIRAMPURA, II STAGE MYSORE.

APPELLANT (BY SRI. R. NAGENDRA NAIK, ADVOCATE) AND: STATE BY CENTRAL BUREAU OF INVESTIGATION/ACB, GANGANAGAR, BELLARY ROAD, BANGALORE RESPONDENT (BY SRI. P. PRASANNA KUMAR, ADVOCATE) THIS CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE ORDER DATED:27.12.11 PASSED BY THE XLVI ADDL.C.C. AND S.J., AND SPL.JUDGE FOR CBI CASES, BANGALORE IN SPL.C.C.NO.266/10 - CONVICTING THE APPELLANT/ACCUSED NO.1 -4- FOR THE OFFENCE P/U/S 120B AND 420 OF IPC & SEC.13(2) R/W 13(1)(D) OF PREVENTION OF CORRUPTION ACT AND ETC., THESE APPEALS COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MRS. JUSTICE M G UMA

ORAL JUDGMENT

The appellant in Crl.A.No.104/2012 being accused No.1, appellant in Crl.A.No.107/2012 being accused No.2, appellant in Crl.A.No.69/2012 being accused No.3 and the appellant in Crl.A.No.101/2012 being accused No.4, are impugning the

judgment of conviction and order of sentence dated 27.12.2011

passed in Special CC No.266 of 2010 on the file of the learned XLVI Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore, convicting accused Nos.1 and 2 for the offence punishable under Sections 120B and 420 of Indian Penal Code (for short IPC) and Section 13(2) R/w Section 13(1)(d) of Prevention of Corruption Act (for short 'the PC Act'), convicting accused Nos.3 and 4 for the offences punishable under Sections 120B and 420 of IPC, and sentencing accused Nos.1 and 2 to undergo simple imprisonment for a period of 1 year each, and to pay a fine of Rs.2,000/- each for the offences punishable under

Sections 120B and 420 of IPC and to undergo

-5- simple imprisonment for a period of 2 years each, and to pay a fine of Rs.5,000/- each for the offence punishable under Section 13(2) R/w Section 13(1)(d) of the PC Act, while sentencing accused Nos.3 and 4 to undergo simple imprisonment for a period of 6 months each and to pay a fine of Rs.2,000/- each for the offence punishable under Sections 120B and 420 of IPC.

2. Brief facts of the case of the prosecution is that,

accused No.1 was the Manager, and accused No.2 was the Senior Assistant (Typist) of M/s. Oriental Insurance Company Ltd., City Branch Office-13, Jayanagara, Bangalore (for short 'the OIC') during the period from 2006 to 2008. Both accused Nos. 1 and 2 by abusing and misusing their official position and by corrupt practice, and with a dishonest intention of cheating 'the OIC' entered into criminal conspiracy with accused Nos.3 and 4 and disbursed commission, by concocting documents showcasing, as if the insurance policies were procured through accused No. 3 and 4 as agents, from M/s. Impact Safety Glassworks Private Limited (for short 'the Company'), even though the policies obtained by the said Company was a direct

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or walk-in policy. It is contended that a commission of Rs.4,41,993.80/- was paid to accused No.3 and commission of Rs.17,887/- was paid to accused No.4 by accused No.1 and in turn, accused No.3 paid a sum of Rs.2,95,000/- to accused No. 2 and Rs.40,000/- to accused No.1, and Rs.24,500/- in the name of the wife of accused No.1. Similarly, accused No.4 paid a sum of Rs.1,43,500/- to accused No.1 through cheques, and thereby accused Nos.1 and 2 got the pecuniary advantage illegally and caused pecuniary loss to 'the OIC'. Thus, they have committed the offence punishable under Sections 120B, 420 of IPC and under Section 13(2) R/w Section 13(1)(d) of the PC Act.

3. On the basis of the source information,

investigation was undertaken by the Investigating Officer and he filed the final report against accused Nos.1 to 4 for the above said offences. The learned Magistrate took cognizance of the offence and summoned the accused. The accused appeared before the Trial Court, pleaded not guilty and claimed to be tried. Prosecution examined PWs.1 to 15, got marked Ex.P1 to 250 in support of its contention. The accused have denied all

-7- the incriminating materials available on record in their statement under Section 313 of Cr.PC, but have not led any evidence in support of their defence. They got marked Exs.D1 to 31 during cross examination of prosecution witnesses. The Trial Court after taking into consideration all these materials on record, came to the conclusion that the prosecution is successful in proving the guilt of the accused beyond reasonable doubt for the offence and accordingly, convicted and sentenced them as stated above. Being aggrieved by the same, the accused are before this Court.

4. Heard Sri. R.Nagendra Naik, learned counsel for the appellant in Crl.A.No.107/2012 and Crl.A.No.104/2012,

Sri.S.G.Bhagavan, learned counsel for the appellant in Crl.A.No.69/2012, Sri. Chethan B., learned counsel for the appellant in Crl.A.No.101/2012 and Sri. P.Prasanna Kumar, learned Special PP for respondent - CBI for the respondent. Perused the materials including the Trial Court records.

5. In view of the rival contentions urged by learned counsel for both the parties, the point that would arise for my consideration is: -8-

Whether the appellants-accused Nos.1 to 4 have made out a case to interfere with the impugned judgment of conviction and order of sentence passed by the Trial Court? My answer to the above point is 'in the Affirmative' for the following:
REASONS

6. It is the contention of the prosecution that accused

No.1 being the Manager, accused No.2 being the Senior Assistant (Typist) of 'the OIC', conspired with accused Nos.3 and 4 by abusing their official position,

cheated 'the OIC', and caused loss to it by paying huge sum of money as referred to above as commission to accused Nos.3 and 4, even though the policies that were obtained by 'the OIC', were direct policies or walk-in-policies and not through accused Nos.3 and 4, as agents.

7. PW1 is the Deputy General Manager of 'the OIC', is

the Sanctioning Authority, who has accorded sanction as per Exs.P1 and 2. PW2 is the Regional Manager of 'the OIC', who speaks about the procedure that is followed in his company, -9-

while issuing insurance policies and deposes that, if an agent gives a lead to the Branch Manager, then it will be considered as Policy through Agent. On the other hand, if the insured voluntarily approaches the branch and takes the insurance policy, it will be considered as a Direct Business or Walk-in- business for which no agent is entitled for any commission.

8. The prosecution has not explained as to what is

meant by lead, referred to by PW2. Learned counsel for the respondent fairly concedes that the word lead may be meant as only giving information about the prospective customer to the branch. The evidence of PW2 also discloses that, once the lead is given by an agent, it is the duty of the Manager or any other official of the OIC to go and approach the prospective customer to get the business i.e. to get the policy issued. Therefore, it is clear that only a reference made by an agent about a prospective customer is sufficient, as per the rules Governing the General Insurance Company to treat the business as through agent and if once the lead is provided by the agent, all future policies will be considered as through such agent.

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9. In the present case, it is the contention of the

prosecution that the Company had taken various policies as referred to by PW3, since from 2006 till 2008, the period during which, accused Nos.1 and 2 were

working in Jayanagara branch as a Manager and Assistant respectively.

10. PW3 in his evidence states that he was the Senior

Export Executive in the Company since, May 2000 and one Sri.R.K.Datta was the Managing Director. This witness states that it was one Mr.Yogesh, the husband of PW10, met accused No. 1 for the first time to have the Insurance business. But the witness pleads his ignorance as to how the said Yogesh came in contact with accused No.1.

11. PW10 - one of the Directors of the Company,

deposed before the Court, that it was her husband Mr.Yogesh, who was looking after the insurance transactions pertaining the Company, while her father-in-law Sri. R.K.Datta was the Managing Director. Unfortunately, the Investigating Officer has not questioned either Sri.R.K.Datta, the Managing Director of the Company, or Mr.Yogesh, who was also one of the Directors of the Company, to know as to how the insurance policies

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were first obtained from the the OIC', whether it was the direct policy/walk-in-policy, or it was through any agent. When it is the specific contention taken by the accused that the the OIC took the insurance policies through agent, i.e., accused No.3, it is the bounden duty of the prosecution to place on record some materials to prove its contention that it was a direct business. But the evidence of PWs.3 and 10 directly points to Mr.Yogesh, the husband of PW10, as the person who was dealing with the insurance business of the Company at the relevant point of time i.e. during 2006 to 2008.

12. Learned counsel for the respondent contends that,

now Mr.Yogesh, the husband of PW10 is no more. It is not brought on record as to when the said Mr.Yogesh died. It is also not made clear as to whether the said Mr.Yogesh was alive, when the investigation was held and the charge sheet came to be filed. It is not in dispute that, the Managing Director R.K. Datta, the father-in-

law of PW10 was alive even during trial before the Trial Court. But strangely, the Investigating

Officer has not made any effort to subject them for investigation. Not even recorded their statements about the - 12 -

clinching issue as to how the Company , first approached the OIC to take the insurance policy. The investigation in this regard was very much needed in view of the evidence of PW2 - the Regional Manager of the OIC, who in explicit words states that if agent provides lead to the branch Manager or to the development officer, he will go there and procure the business. Such business to which 'lead' was given by the agent will be entitled for commission not only for the first policy but even for the subsequent renewals and business from the same client.

13. When PW2 being the Regional Manager of the OIC,

a responsible officer contends that, if once a lead is given by the agent, to have the insurance policy, that is sufficient to give credit to the agent and to treat even the subsequent policies as business through the said agent to give credit to them in form of commission, it was the bounden duty of the Investigating Officer to place on record the materials to prove as to how the first policy of the Company with the OIC was effected. The evidence of PW2, PW3 or PW10 are not helpful to the prosecution to prove the same.

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14. It is pertinent to note that, Ex.P16, which is marked

as the first policy obtained by the Company from the OIC, refers to the agent code of accused No.3. When it is the contention of the prosecution that, even though the said policy was obtained by the Company directly from the branch, the agent code was falsely and fraudulently included by accused No.1, some materials should have been placed before the Court in support of the same. None of the prosecution witnesses speak about the procedure that was adopted at the time of taking the first policy-Ex.P16, and who was the person who contacted the branch directly to take the policy, to term it as direct business. Evidence of PW2, PW3 and

PW10 are not helpful in this regard as PW2 does not say anything about the first policy as to whether it is direct or through agent, and PW3 and PW10 refers to Mr. Yogesh, the husband of PW10 as the person who was dealing with insurance policies during the period from 2006 to 2008, but, he is not the witness cited by the prosecution.

15. It is pertinent to note that according to the learned counsel for the respondent, payment of commission to the - 14 -

agent, and carrying on the business of insurance by the the OIC regarding direct business or business through agent, is governed by Insurance Regulatory And Directory Authority Rules (IRDA Rules). Unfortunately, even those rules, which are relevant to be taken into consideration in the present case, are not placed on record. It is also pertinent to note that the Investigating Officer never refers to such rules to contend that

the procedure adopted by accused Nos.1 and 2 is in contravention of such rules.

16. Learned counsel for the respondent contended that

the evidence of PW6, PW8 and PW11 go to show that, immediately after payment of commission to the account of accused Nos.3 and 4, they used to transfer some portion of the amount to the account of accused Nos.1 and 2 and therefore it is to be presumed that it is the kick back that was obtained by accused Nos.1 and 2. Unless the prosecution is successful in proving that the insurance policy obtained by the Company was a direct business and not through the agent, and payment of commission to accused Nos.3 and 4 was not permissible under the rules, any amount of materials that are placed before

- 15 - the Court to show that accused Nos.3 and 4 have transferred some portion of the amount to the account of accused Nos.1 and 2 cannot constitute an offence.

17. Even though the prosecution has placed voluminous

materials before the Trial Court, it has failed to prove the basic requirements as to what are the Rules and Regulations governing the business of the OIC, what is the

role of an agent, under what circumstances the commission could be paid to the agent, and whether the first policy taken by the Company is a direct policy or a policy through agent. It is hard to believe the version of the prosecution that it was a direct business, accused Nos.3 and 4 have not given the lead to

accused No.1 regarding the prospective customer, and therefore accused Nos.3 and 4 were not entitled for commission, cannot be not accepted.

18. It is also pertinent to note that, it is the contention

of the prosecution that accused Nos.1 and 2, by their act, caused pecuniary loss to the OIC. It is important to note that admittedly, the OIC has not initiated even the departmental enquiry against accused Nos.1 and 2 till date. If at all the OIC - 16 -

which is a public sector undertaking has suffered loss, definitely, it would have initiated criminal action, or at least would have initiated the departmental enquiry against its officials. No such steps are taken by it. It is also to be noted that no financial loss is caused to the Company as the payment of commission is by the OIC and no extra charge is imposed on the customer while issuing policy and collecting insurance premium.

19. If in fact, financial loss is caused to the OIC,

definitely, there would have been an enquiry by the Company itself. There is absolutely no reasonable explanation as to why no such enquiry or investigation was held. There is also no explanation as to why there was no complaint whatsoever by any of the officials of the OIC, but the investigation was based on the source information. In view of the above, I am of the opinion that the prosecution has failed to prove the guilt of the accused for the above said offences, and they are entitled for acquittal.

20. I have gone through the impugned judgment of conviction and order of sentence passed by the Trial Court. - 17 - The Trial Court proceeded to accept the contention of the

prosecution and convicted the accused. However, it has not considered the discrepancy in the case of the prosecution as highlighted above. The impugned judgment of conviction and

order of sentence passed by the Trial Court is liable to be set

aside, and the same needs interference by this Court. Hence, I answer the above point in the Affirmative and proceed to pass the following:

ORDER

(i) The Criminal Appeal is allowed.

(ii) The judgment of conviction and order of sentence

dated 27.12.2011 passed in Special CC. No.266/2010 on the file of the learned XLVI Additional City Civil and Sessions Judge and Special Judge for CBI cases, Bengaluru, is hereby set aside.

(iii) Consequently, accused Nos.1 and 2 are acquitted

for the offences punishable under Sections 120B and 420 IPC and Section 13(2) R/w Section 13(1)(d) of the PC Act. Accused Nos.3 and 4 are acquitted for the offences punishable under Sections 120B and 420 of IPC. - 18 -

(iv) Bail bond of the accused and that of their sureties shall stand cancelled.

(v) Fine amount, if any, deposited by the accused shall

be refunded to them after the appeal period is over. Registry is directed to send back the Trial Court records along with copy of this judgment, for information and needful action. Sd/- (M G UMA) JUDGE BH CT:VS List No.: 1 SI No.: 8

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