S Mallappa vs the State of Karnataka by

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Court : Karnataka

Decided On : Jan-24-2025

Judge : V Srishananda

Appeal No. : CRL.A/852/2012

Appellant : S Mallappa

Respondent : The State of Karnataka by

Judgement :

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JANUARY, 2025 BEFORE THE HON'BLE MR JUSTICE V SRISHANANDA CRIMINAL APPEAL NO. 852 OF 2012 BETWEEN: S MALLAPPA SON OF SIDDALINGAPPA, (SINCE DECEASED) REP BY LR., SRI.ANIL KUMAR M.C, S/O LATE.S.MALLAPPA, AGED ABOUT 35 YEARS, OCCUPATION: AGRICULTURIST, RESIDENT OF BHARAMAPUR, AIMANGALA HOBLI, HIRIYUR TALUK, CHITRADURGA DISTRICT, PIN CODE - 577 558. APPELLANT (BY SRI. P PRASANNA KUMAR., ADVOCATE FOR LR'S OF APPELLANT)

Digitally signed by MALATESH AND: KC THE STATE OF KARNATAKA BY Location: HIGH LOKAYUKTHA POLICE, COURT OF REP. BY STATE PUBLI PROSECUTOR, KARNATAKA OFFICE OF THE KARNATAKA LOKAYUKTHA, M S BUILDING, AMBEDKAR VEEDHI, BANGALORE - 560 001. RESPONDENT (BY SRI. B S PRASAD., ADVOCATE) -2- THIS CRL.A. IS FILED U/S.374(2) CR.P.C BY THE ADV. FOR THE APPELLANT/ACCUSED PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT AND

ORDER OF CONVICTION AND SENTENCE DATED 24.07.2012

PASSED BY THE II ADDL. SESSIONS AND SPL. JUDGE, TUMKUR IN S.C.NO.9/2008 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 7 AND 13(1)(d) R/W SEC.13(2) OF PREVENTION OF CORRUPTION ACT, 1988. THIS APPEAL, COMING ON FOR HEARING, THIS DAY,

JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri.P.Prasanna Kumar, learned counsel for legal representatives of the appellant and Sri.Lakshman for B.S.Prasad, learned counsels for the respondent.

2. Accused, a Government servant by name Sri.

Mallappa, who worked in the Deputy Director of Public Instructions office (hereinafter referred to as 'DDPI'), Tumkur, who suffered an order of conviction for the offence punishable under Section 7, 13(1) (d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 in S.C.No.09/2008 on the file of II Additional District and

Sessions Judge, Tumkur has preferred this appeal -3- challenging the validity of the judgment passed by the learned Special Judge.

3. During the pendency of the appeal, appellant died. In order to remove the stigma attached to the appellant by virtue of the impugned judgment and also to question the validity of the judgment, legal representatives of the said Mallappa were permitted to

come on record in terms of the principles of law enunciated by the Hon'ble Apex Court in the case of Ramesan Vs State of Kerala reported in (2020) 3 Supreme Court Case 45. Later on, son of the appellant, by name Anil Kumar came on record and cause-title came to be amended and the matter is posted for hearing.

4. Sri.P.Pransanna Kumar, learned counsel for the

appellant representing the legal representatives of the appellant reiterating the grounds urged in the appeal memorandum contended that in the case on hand, the demand and acceptance of the bribe money has not been established by the prosecution by placing cogent and -4- convincing evidence on record, resulting in miscarriage of justice and sought for allowing the appeal.

5. Per contra, learned counsel for the respondent

supports the impugned judgment by contending that the trap has taken place in the shop of the complainant and very fact that the accused has visited the shop of the complainant for making an illegal gratification shows the hollowness in the arguments put forward on behalf of the legal representatives of the appellant and sought for dismissal of the appeal.

6. Having heard the parties, this Court perused the material on record meticulously. Facts in brief on such perusal, following essential facts are necessary to appreciate the rival contentions of the parties: 6.1. Case of the prosecution in the nutshell is that complainant being the owner of a Sports Accessories Shop, dealing in sports items, was is the business of

supplying the sports items to the schools. He owned a -5- shop in M.G. Road, Maruthi Plaza, Tumkur, in the name and style of Manjunatheshwara Stores. 6.2. He had participated in the tender called by the office of the DDPI for supply of sports items. Complainant was a successful bidder and he was supposed to supply the sports items especially, the sports robes (clothes) which are required for the playing the sports to the tune of Rs.1.70,000/-. 6.3. After supply of the goods as per the tender, there was a delay in clearing the bill amount in the office

of DDPI. In that regard, complainant said to have contacted the accused, who demanded illegal gratification in a sum of Rs.11,000/-. Complainant said to have replied stating that he has supplied quality goods and therefore he was even not in a position to meet the illegal demand. Since the accused insisted for the payment of illegal gratification, complainant was compelled to pay sum of Rs.3,000/- in December, 2006 and he made a request to settle the bill at earliest by writing a letter to the DDPI.

-6- Thereafter, his bill was being processed and on 03.02.2007, again the accused demanded a sum of Rs.3,000/- for handing over the cheque and balance Rs.5,000/- is to be paid after encashment of the cheque. 6.4. Complainant being not interested in parting

away with the subsequent illegal demands, approached the Lokayukta Police and lodged a written complaint. Based on the same, Lokayuktha Police registered the case in Crime No.1/2007 for the offences punishable under Sections 7, 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 and formed a raid team; two independent witnesses were secured by the head of the raid party. After securing them, he read over

the contents of the complainant to them and demonstrated the chemical reaction of Phenolphthalein powder with Sodium Carbonate solution took the intended bribe money from the hands of the complainant and smeared the Phenolphthalein powder in the presence of panch witnesses and thereafter, drew the experimental mahazar and read over the contents thereof and -7- instructed the complainant and shadow witness to hand over the tainted currency on demand made by the accused. 6.5. Thereafter, raid team proceeded to the place which is the shop of the complainant where the accused had come. On demand made by the accused, complainant handed over the tainted currency to his hands, in the presence of shadow witness and gave a pre-designated signal to the rest of the raid party members. Immediately, raid party members arrived on the scene. Head of the raid party enquired the accused, seized the tainted currency from the custody of the accused and drew

mahazar. Hands of the accused were washed in the Sodium Carbonate Solution, it's turned into pink colour, which were also seized by the raid party. Explanation was also obtained from the accused and accused was arrested and produced before the learned Special Judge. Learned Special Judge thereafter remanded the accused to the custody.

-8- 6.6. Subsequent thereto, the investigating agency conducted the detailed investigation collected necessary documents from the office of the DDPI with regard to the tender, bill furnished by the complainant and such other documents and completed the investigation and filed the charge-sheet for the aforesaid offences.

7. Learned Special Judge taking cognizance of the

aforesaid offences, secured the presence of the accused and after complying Section 207 of Cr.P.C, framed the charges. Accused did not plead guilty and therefore, trial was held.

8. In order to bring on the guilt of the accused,

prosecution in all examined 7 witnesses as PWs.1 to 7, comprising of the panch witnesses, complainant, head of the raid party and another member of the raid party. As many as nine documents were placed on record, which were exhibited and marked as Exs.P.1 to P.9 comprising of spot sketch, complaint, experimental mahazar, trap -9- mahazar, sanction order, FIR, F.S.L. report and photographs.

9. Prosecution also placed on record, 10 material objects which were marked as M.Os.1 to 10 comprising of

documents which were seized pertaining to the complainant with regard to the tender, samples collected and the cash of Rs.3,000/- from the pant pocket of the accused wherein tented currency were kept.

10. After conclusion of recording of prosecution

evidence, the learned Special Judge recorded the statement of the accused as is contemplated under Section 313 of Cr.P.C. Accused denied all the incriminating circumstances, which were found in the prosecution evidence and put to him. Accused did not offer any explanation whatsoever. However accused proceeded to placed on record defence statement. He did not choose to exam any witness.

11. In the written statement, the accused has stated that he had no power to process the bill and his job - 10 - was only to make an endorsement after assessing the quality of the goods supply and therefore contended that he is innocent and sought for acquittal.

12. Thereafter, learned Sessions Judge heard the parties in detail and on cumulative consideration of the oral and documentary evidence placed on record, convicted the accused for the aforesaid offences and sentenced as under:

1. The accused is sentenced to under go

rigorous imprisonment for 1 year and pay fine of Rs.5,000/- in default to under go further imprisonment for 3 months for the offence punishable u/s 7 of P.C.Act, 1988.

2. Similarly accused is sentenced to

under go rigorous imprisonment for 3 years and pay fine of Rs.10,000/- in default to under go further imprisonment for 6 months for the offence under Section 13 (1) (d) punishable u/s 13(2) of P.C.Act, 1988.

3. Both sentences shall run concurrently.

4. The period of detention undergone by the accused if any, is to be set off against the sentence of imprisonment.

5. Deliver entire copy of the judgment to the accused immediately free of cost.

6. The bail bond executed by the accused and his surety stands cancelled. - 11 -

13. Being aggrieved by the same, accused has preferred this appeal.

14. As referred to supra, since the appellant is no more, the son is now prosecuting the appeal.

15. Having heard the parties and notice the material on record, following points would arise for consideration:

> Point.No.1: Whether the defendants/ legal representatives of the appellant established before the Court that the order of conviction recorded by the learned Special Judge suffers from legal infirmity or perversity and thus calls for interference? Point.No.2: Whether the material evidence placed on record by the prosecution is sufficient enough to uphold the order of conviction recorded by the learned Special Judge against the deceased appellant? Point.No.3: Whether the sentence needs a modification? Point.No.4: What order? - 12 -

16. Regarding point Nos.1 and 2:- In the case on

hand, there is no serious dispute as to the sanction order

as well as the fact that accused was trapped in the shop of the complainant on 03.02.2007. Admittedly, the appellant was a public servant as he was working in the office of DDPI, Tumkur. It is also not disputed that complainant was the successful person in participating the tender floated by the office of the DDPI, Tumkur for supply of cloths for the sports in a sum of Rs.1.75 lakhs. There is no dispute that as per tender terms, complainant supplied necessary sports items as per the order and bill was also sent to the office of DDPI, Tumkur.

17. When the bill was not processed for long,

complainant visited the office of DDPI and contacted the accused. It is at that juncture, accused demanded a sum of Rs.11,000/- as illegal gratification for processing the bill. Complainant negotiated and handed over a sum of Rs.3,000/- in the month of December 2006. Thereafter, bill was processed and cheque was ready. In order to hand over the cheque, the accused further demanded a sum of

- 13 - Rs.3,000/- to be paid on 03.02.2007 and he had also demanded that after the encashment of the cheque issue by the office of DDPI, balance amount of Rs.5,000/- is to be paid by the complainant to the accused.

18. Material evidence depict that at that juncture,

complainant was not interested in parting away with the further illegal gratification and approached the Lokayukta police and lodged the written complaint. Complaint came to be registered at about 2:15 p.m. and experimental mahazar was conducted in the office of the Lokayukta between 2:45 p.m. to 3:15 p.m. Actual trap has taken place on the very same day between 15:45 to 16:45.

19. Trap mahazar is marked as Ex.P4. Same is

singed by the complainant as well as the shadow witness and the yet another witness. In trap mahazar, it has been specifically mentioned about the handing over of the tainted currency and the complainant giving the pre-designated signal. On enquiry by the head of the raid party, accused voluntarily took out the tainted currency - 14 -

from the right side pant packet and thereafter, the currency was tallied with the serial numbers noted in the experimental mahazar. Tainted currency consisted of six currency notes of five hundred rupee denomination each and the serial numbers found on the tainted currency tallied with the numbers noted in the experimental

mahazar vide Ex.P3. Color test stood positive and thereafter, seizure of the tainted currency has taken place.

20. Complainant and the shadow witness withstood

the searching cross-examination with regard to the date, time and place of the trap. The explanation offered by the accused at the time of trap was imaginary in nature and therefore head of the raid party arrested the accused. The pant in which the tainted currency was kept by the accused was also seized after getting an alternate pant to the accused is found from the trap mahazar itself and there is no dispute that the said pant belongs to the accused. Liquid wash of the pant packet also turned into pink and therefore handling of the tainted currency by the accused on the date of trap stood established by placing

 overwhelming evidence on record on behalf of the prosecution.

21. Learned counsel for the appellant has no doubt

argued that there was no demand as the shadow witness did not support the demand portion nor the micro cassette recorder is placed on record as evidence to prove the demand.

22. But the complainant in his examination-in-chief as well as in his cross-examination has specifically stated that the accused kept the bill pending by demanding the illegal gratification.

23. Cross-examination of P.W.3 does not indicate

any artificial answers and minor contradictions pointed out by the learned counsel for the appellant shows that the witness is natural witness. Moreover, the very presence of the deceased appellant in the shop of complainant is itself sufficient to infer the intention of deceased appellant in demanding bribe. No explanation is forthcoming on record to his presence at the shop on the day of trap.

24. Taking note of these aspects of the matter and

the bill of the complainant had not been processed till the date of trap, all ingredients would attract the offences under Sections 7, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 is thus established the opinion of the learned Special judge in the impugned

judgment while recording the order of conviction against

the deceased appellant.

25. In the light of the arguments put forward on

behalf of the Legal Representatives of the appellant, this Court re-appreciated the material on record on such re-appreciation this Court does not find any illegal infirmity or perversity in recording an order of conviction by the learned Special Judge. The defence statement was not sufficient to rebut the presumption available to the

prosecution under Section 20 of the Prevention of Corruption Act especially after establishing necessary ingredients to draw presumption in favour of the prosecution. - 17 -

26. No explanation whatsoever is also forthcoming on behalf of the accused either in the cross-examination of the prosecution witness or in the defence statement as to why the accused was found in the shop of the complainant. Admittedly, the shop of the complainant is situated far away from the office of DDPI, Tumkur.

27. What made the accused to visit the shop of the

complainant especially after entire goods had been supplied and the bill was already furnished by the complainant which was under process. Therefore, non-explanation as to the presence of the accused in the shop of the complainant is a factor that would be sufficient enough in inferring fact that there was a demand for illegal gratification made by the accused and in that regard he had visited the shop of the complainant on the day of trap.

28. Therefore, this Court is of the considered

opinion that even after re-appreciation of the material on record, hardly there is any scope to interfere with the well reasoned order passed by the learned Special Judge. - 18 -

29. In view of the foregoing discussion, point Nos.1 and 2 are answered in the negative and affirmative respectively.

30. Regarding point No.3:- Since the appellant is no

more, the jail sentence in the impugned judgment would be insignificant. The fine amount, if not already paid, the legal representatives of the appellant is directed to pay the fine amount on or before 20.02.2025. Accordingly, point No.3 is answered in the negative.

31. Regarding point No.4:- In view of the finding of this Court on point Nos.1 to 3 as above, following order is passed:-

ORDER

(i) Appeal is meritless and hereby dismissed.

(ii) However, time is granted for the legal representatives of the appellant to pay the fine amount as ordered by the learned Special Judge in the impugned judgment, if not already paid, till - 19 - 20.02.2025. Failing which, same shall be recovered as arrears of land revenue.

(iii) Office is directed to return the Trial Court records forthwith, along with the copy of this Order. Sd/- (V SRISHANANDA) JUDGE BKN, KVR List No.: 1 Sl No.: 41