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T. Bathaiah Vs. the State

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Court : Andhra Pradesh

Decided On : Sep-16-1994

Reported in : 1994(2)ALT(Cri)563; 1995CriLJ1665

Judge : Ramesh Madhav Bapat, J.

Acts : Prevention of Corruption Act, 1988 - Sections 7, 13(1) and 13(2)

Appeal No. : Criminal Appeal No. 799 of 1993

Appellant : T. Bathaiah

Respondent : The State

Advocate for Def. : N. Harisesha Reddi, Adv. and ;Spl. Public Prosecutor

Advocate for Pet/Ap. : A.T.M. Rangaramanujam, ;M. Dorairaj and ;T.C. Krishnan, Advs.

Judgement :

1. The accused-appellant herein was prosecuted for an offence punishable under S. 7 of the Prevention of Corruption Act, 1988. The second charge against the accused-appellant for an offence punishable u/S. 13(1)(d) and S. 13(2) of the said Act. The accused-appellant was tried in C.C. No. 40 of 1992 in the Court of the Principal Special Judge for SPE and ACB Cases, Hyderabad. On evidence, the learned Special Judge came to the conclusion that the prosecution was able to

establish the charges against the accused-appellant and therefore proceeded to convict him and sentence him to suffer imprisonment for 1 1/2 years and to pay fine of Rs. 200/- in default to suffer S.I. for 20 days for the offence punishable under S. 7 of the Prevention of Corruption Act, 1988. The accused-appellant was further convicted for an offence punishable under S. 13(1)(d) read with 13(2) of the said Act and was sentenced to suffer R.I. for 1 1/2 years and to pay fine of Rs. 200/- in default to suffer S.I. for 20 days. The substantive sentences were made to run concurrently.

2. Being aggrieved by the aforesaid order of conviction and sentence, the accused-appellant has preferred this appeal on various grounds as stated in the Memorandum of Appeal.

3. The prosecution story can briefly be narrated as follows : That the Prosecution witness No. 1 belongs to Backward Caste and resident of Yeturu village. The petitioner along with others had made an application to the Collector with a request to allot house site pattas. The said application is produced on record as Ex. P. 1. The demand was made by the petitioner to the Collector for allotment of land in S. No. 281/1 to the extent of Ac. 4-60 cents. The Collector informed P.W. 1 and other persons that the owner of the survey number 281/1 is a small farmer and as such the said land cannot be allotted to P.W. 1 and others. Thereafter, further correspondence had taken place and finally it was decided that the petitioner and others have to be allotted the land from different survey numbers from the same village.

4. It is further averred by the prosecution that after the formalities were completed, P.W. 1 was allotted a piece of land. P.W. 1 was not present when the pattas were distributed by the local M.L.A., but subsequently he learnt that a piece of land was allotted in his name and therefore he approached the accused-appellant on 25-3-1990 at his house and requested him to hand over his patta papers to him. However, the accused-appellant informed that he would not hand over the patta papers unless he pays a sum of Rs. 100/- by way of bribe. Again P.W. 1 approached the accused-appellant on 27-3-1990, which was Ugadi festival day. Even on the same day, the accused-appellant demanded a bribe of Rs. 100/- and

again P.W. 1 approached the accused-appellant on 28-3-1990 at his house, the accused-appellant again demanded a bribe of Rs. 100/- and refused to hand over the patta papers to P.W. 1.

5. Being aggrieved by the aforesaid demand made by the accused-appellant, who completely refused to hand over the patta papers without payment of Rs. 100/-, P.W. 1 approached the A.C.B., Officer, Tirupathi at 3-00 p.m. on 28-3-1990 and filed a report, which is produced on record as Ex. P-2. The ACB Officer, Tirupathi informed him to come on 30-3-1990. As per the instructions given to P.W. 1, he again went to the Office of the Deputy Superintendent of Police, Anti Corruption Bureau, Tirupathi at 10-00 a.m. on 30-3-1990 and he was asked to wait outside of the Office in the upstairs for some time. At about 1-30 p.m. he was called into the Office room of the D.S.P., and he was noticed two persons in that room. The contents of Ex. P-2 were read over to P.W. 1. He admitted the contents thereof. Thereupon, the D.S.P., ACB, asked P.W. 1 as to whether he had brought an amount of Rs. 100/-. P.W. 1 answered in the affirmative and thereafter handed over the currency notes of Rs. 20/- denomination of two in number and rest of the currency notes of Rs. 10/- denomination of six in number. Thereafter, the two mediator one of them as Malleswara Sarma read over the number of the currency notes and the other mediators name Subrahmanyam noted the numbers of currency notes in the report. Thereafter, the D.S.P., ACB, instructed the Police Constable to carry out the demonstration. Before demonstration was carried out, the D.S.P., ACB, instructed the Police Constable to search on the person of P.W. 1 and no articles were found. Thereafter, the D.S.P., ACB, explained the significance of two powders, which were brought in his room by the Police Constable. Out of them, one powder was smeared to the currency notes and the other powder was poured in the tumbler and by adding water solution was prepared and P.W. 1 was asked to dip his fingers in that solution, which was originally colourless. In spite of dipping the fingers in the tumbler, there was no change in the colour. Thereafter the D.S.P., ACB, instructed the said Constable to apply the phenolphthalein powder on the currency notes. Accordingly the Police Constable applied the phenolphthalein powder on the currency notes and they were put in the left side shirt pocket of P.W. 1 and he was given instructions not to touch the currency notes unless the bribe amount was demanded by the accused-

appellant. Thereafter, the Police Constable who smeared the powder on the currency notes, put his fingers in the sodium carbonate solution and it turned into pink colour. Thereupon P.W. 1 and the mediators were instructed in the manner in which the raid is to be carried out.

6. It is further stated by the prosecution that after full instructions, P.W. 1 along with mediators, few Police Constables and ACB Officers went in two Jeeps to Gangadhara Nellore and stopped the Jeeps at Chandra Talkies. P.W. 1 and others got down from the Jeep. Again the D.S.P., ACB, repeated the instructions to P.W. 1 and he was further instructed to go to the residence of the accused-appellant and hand over the currency notes only on demand. The other Officers, mediators and the D.S.P., who had accompanied P.W. 1, took vantage position so as to enable them to watch P.W. 1 at the residence of the accused-appellant.

7. It is further stated by the prosecution that when P.W. 1 entered the room of the accused-appellant, he demanded the notes and as per the demand P.W. 1 handed over the currency notes to the accused-appellant. The accused-appellant counted the currency notes by both the hands and put them in a small jar which was kept in the adjacent room, P.W. 1 and the accused-appellant were able to see from their room. At the same time, one villager had visited the house of the accused-appellant in connection with some other work. P.W. 1 was earlier instructed that after the accused-appellant demands money by way of bribe and after handing over the same to him, he should give a signal by wiping his face with a handkerchief. Accordingly P.W. 1 gave a signal to the ACB Officials and mediators when the accused-appellant accepted the bribe. Thereafter, on getting signal from P.W. 1, the ACB Officials and mediators entered into the room of the accused-appellant and P.W. 1 was called and was told to narrate as to what had happened. Thereafter a panchanama to that effect was recorded. The D.S.P., seized Exs. P-3 and P-4 which were patta regarding the land handed over to P.W. 1 and the acknowledgment received by the accused-appellant from P.W. 1 for having received the patta. Thereafter, the entire episode was incorporated in the ACB report. P.W. 1 gave a statement before the Judl. First Class Magistrate under S. 164, Cr.P.C. which was produced on record as Ex. P. 6. Thus, according to the allegation made by the prosecution that the accused-appellant was caught red-

handed for accepting the bribe of Rs. 100/- for showing favour to P.W. 1 by using the position of his office.

8. The Investigating Officer recorded the statements of mediators and other persons, who were present at the time of carrying out the raid. Thus, on completion of investigation, the charge sheet was filed.

9. The defence of the accused is of a total denial. It is also suggested by the defence that the incident did not take place as suggested by the prosecution. It is the further case of the accused-appellant that when the ACB Officers and P.W. 1 entered his premises, he sustained Epilepsy Fits and he became unconscious and the currency notes were foisted in his hands and subsequently they were put them in the jar and thus he has been falsely implicated in this case as he did not give a favourable report to P.W. 1 for allotting the land bearing S. No. 281/1.

10. As stated earlier that considering the evidence as led by the prosecution, the accused-appellant was held guilty by the Special Judge dealing with ACB cases and sentenced him as stated above.

11. In order to connect the accused with the crime, the prosecution led the evidence of as many as Eight witnesses including ACB Officers and the mediators. The defence examined in all Five witnesses including the accused-appellant. Certain documents were produced on record by the prosecution and they were marked as Exs. P-1 to P-42. The defence was also produced certain documents and they were marked as Exs. D-1 to D-5.

12. I proceed to scrutinise the evidence on record so as to ascertain whether the prosecution has been able to connect the accused with the crime successfully.

13. To establish the guilt of the accused, the prosecution led the evidence of P.W. 1, who stated in his evidence that a piece of land patta was allotted to him by the Collector at his request and on the request of other persons. But, the accused-appellant refused to hand over the land patta to him when he met him on three occasions to collect the patta. The accused-appellant was demanding a sum of Rs. 100/- by way of bribe. Ultimately P.W. 1 had to take the help of D.S.P., ACB,

Tirupathi. He had approached the said D.S.P., on 28-3-1990 at about 3-00 p.m. but he was called on 30-3-1990 at 10-00 a.m. and at 1-30 p.m. the D.S.P., had called two mediators and those two mediators were introduced to P.W. 1. He was earlier instructed to bring currency notes. Those currency notes were handed over by P.W. 1 to the mediator named Malleswara Sarma and he read over the numbers of the currency notes which was noted by the other mediator named Subrahmanyam. P.W. 1 further stated in his evidence that the D.S.P., instructed the Police Constable to take personal search of P.W. 1 and nothing was found. They were given demonstration in the manner in which two different powders i.e., Phenolphthalein and Sodium Carbonate, to be used in carrying out the raid. P.W. 1 was further instructed that he should give signal when the accused-appellant accepts the bribe and hand over the patta to him. Till then he was instructed not to touch the currency notes which were kept in his left side shirt pocket by applying with Phenolphthalein powder. P.W. 1 and other mediators were also given the demonstration that if the Phenolphthalein powder is mixed with Sodium Carbonate solution, which is originally colourless, it turns into pink colour. After giving full instructions, the raid party along with the mediators and P.W. 1 had gone the Gangadhara Nellore village and the Jeep was stopped at Chandra Talkies. The instructions were repeated by the D.S.P., and P.W. 1 was specifically told not to touch the currency notes unless it is demanded by the accused-appellant and after the accused-appellant and after the accused-appellant accepted the currency notes and after he handed over the patta and other papers to P.W. 1, he should give signal by wiping his face with a handkerchief.

14. P.W. 1 went to the house of the accused-appellant and on demand by the accused-appellant, he handed over the currency notes to him. It is the specific case of P.W. 1 that the accused-appellant counted the currency notes by both the hands, meaning thereby that both the hand fingers came into contact with Phenolphthalein Powder, which was applied to the currency notes. After accepting the bribe, according to the version of P.W. 1 that the accused-appellant handed over the patta and other relevant papers to P.W. 1. Thereafter, he gave a signal by wiping his face with a handkerchief. The Officers of the ACB, and the mediators and secured vantage position and when they got signal, all of them rushed to the house of the accused-appellant and he was made to dip his fingers of both the

hands is Sodium Carbonate solution, which was originally colourless, turned into pink colour, meaning there by that the accused-appellant had accepted the bribe of Rs. 100/-.

15. The evidence of P.W. 1 was further corroborated by P.W. 2. As a matter of fact, P.W. 2 was an independent witness. He was not a member of the raiding party. He happened to go to the house of the accused-appellant to secure some hand loan. He had visited Gangadhara Nellora village in connection with his own work. But for his return journey, he was not having sufficient money, he had visited the house of the accused-appellant to borrow some hand loan on 30-3-1990 at about 5-20 p.m. The entire transaction of receiving patta papers by P.W. 1 and handing over of currency notes to the accused-appellant by P.W. 1 was done in his presence. He had seen the accused-appellant accepting the bribe of Rupees 100/- and handing over the patta and other relevant papers by the accused-appellant to P.W. 1. He further stated that the currency notes were counted by the accused-appellant with his own hands and he further stated that within a very short time some Officers i.e., ACB Officers entered into the room of the accused-appellant and the accused was caught red-handed. Thus, it can be seen from the evidence of P.W. 2 that he corroborated the evidence of P.W. 1. As a matter of fact, P.W. 2 was not at all interested in the above transaction, accidently he happened to be present at the time of raid.

16. The prosecution led the evidence of P.W. 3, who happened to act as mediator. P.W. 3 is working as Junior Assistant in the Office of the Deputy Executive Engineer, R and B, Tirupathi from 1988. He stated that the ACB Officers had given a requisition of the Executive Engineer to depute two officers and as per the instructions he had visited the Office of the ACB, to act as mediator.

17. The evidence of P.W. 3 further disclosed that after going to the Office of the ACB, P.W. 1 and other mediator were introduced each other by ACB Officers. P.W. 1 handed over the currency notes to other mediator named Malleswara Sarma as per the instructions given by the ACB Officers. The numbers were read out to this witness by the other mediator named Malleswara Sarma and this witness had noted down the numbers of the currency notes on a piece of paper.

Accordingly Ex. P. 11 came to be prepared in the handwriting of P.W. 3. He further stated that he and other mediator including P.W. 1 were given demonstration regarding the use of Phenolphthalein Powder as well as Sodium Carbonate Powder. After giving, full instructions by the D.S.P., to the mediators and P.W. 1, the raiding party went to the village of the accused-appellant. The instructions were again repeated by the D.S.P., and P.W. 1 was made to go to the house of the accused-appellant for handing over the bribe. P.W. 3 further stated in his evidence that the ACB Officers instructed P.W. 1 not to touch the currency notes unless the bribe was demanded by the accused-appellant, P.W. 3 further stated in his evidence that after accused-appellant accepted the currency notes and after he handed over the patta and other papers to P.W. 1, he should give signal by wiping his face with a handkerchief. P.W. 3 further stated in his evidence that after getting signal from P.W. 1, he and other mediator and the ACB Officers entered into the room of the accused-appellant. He was made to dip his fingers in the sodium carbonate solution, which was originally colourless, it turned into pink. As per the evidence of P.W. 3 that the accused-appellant handed over the currency notes, which were also attached under the panchanama. The solution was collected in a separate bottle and labelled it and it is signed by P.W. 3, other mediator and the ACB Officers. Thus, the evidence of P.W. 3, who is an independent witness and nothing to do with the land in question, has supported the prosecution in all respects.

18. P.W. 4, Mr. V. Muni Kumar is a senior Assistant in the Office of the M.R.O., V. Kota. The said witness was examined to show that P.W. 1 was allotted a piece of land as per the Government decision. He produced Ex. P. 25, which is a register relating to the village house sites. The details of house site pattas issued to the villagers are mentioned in Ex. P. 25 and the house site which was particularly allotted to P.W. 1 was entered at page 32 of Ex. P. 25. Thus, it can be seen that P.W. 4 was examined in order to establish only to the limited extent regarding the allotment of patta to P.W. 1. He further stated that some of the pattas were distributed to the incumbents in formal ceremony on 'Ugadi Festival day' and the M.R.O., was directed by the Collector to hand over the respective pattas to the incumbents and the M.R.O., in his own turn had directed the accused-appellant to hand over the pattas to the respective incumbents. The said witness has produced

the different orders and correspondence, which was done between the Collector and the M.R.O. He further stated in his evidence that Ex. P. 5 is a patta, which was issued in the name of Jayachandra Reddy. Thus, it can be seen from the evidence of P.W. 4 that his evidence is only to the limited extent showing that P.W. 1 was given a piece of land by the order of the Government.

19. The prosecution had examined P.W. 5, Mr. B. Chandrasekhara Reddy, who was working as Village Assistant of Gangadhara Nellore village. The said witness speaks about a small function carried out for distribution of pattas and some of the pattas were distributed on Ugadi festival day in the year 1990 by the hands of local M.L.R. named Kuthuhalamma. He further stated that on 25-3-1990 the M.R.O., instructed him and the accused person to prepare house site pattas of the remaining lands. Thus, it can be seen from the record that he evidence of P.W. 5 is also on limited issue.

20. P.W. 6 was examined in order to prove that sanction was granted to prosecute the accused-appellant. The sanction order is produced on record as Ex. P. 32. That sanction was accorded by one I. Narasimha Rao, who was the Secretary to Government, Revenue Department and who was signed the original sanction order. Thus, the prosecution proved the sanction order Ex. P. 32 through P.W. 6.

21. P.W. 7 happened to be the D.S.P., who had carried out the raid. He has repeated the same story which has been narrated by P.W. 1 and the mediators. It is not necessary for me to repeat the entire evidence of P.W. 7. But it is suffice it to say that P.W. 7 corroborates the evidence of P.W. 1 and other mediator in all respects. But it appears from the evidence of P.W. 7 that he made a little jumbling regarding the currency notes, which were produced by P.W. 1 before the mediators which were to be used as bribe amount to be paid to the accused-appellant. He has stated that P.W. 1 had handed over three currency notes in the denomination of Rs. 20/- and six currency notes in the denomination of Rs. 10/- meaning thereby P.W. 1 in all paid a sum of Rs. 120/-.

22. The prosecution further led the evidence of P.W. 8, who happened to be the Inspector of Police, who had assisted P.W. 7 in carrying out the investigation. He has corroborated the testimony of P.W. 7 in all respects.

23. The learned counsel for the accused-appellant herein submitted at the Bar that as a matter of fact, the accused-appellant became unconscious as he had Epilepsy Fits when P.W. 1 and others entered into his room. He further stated that the accused-appellant did not accept the money from P.W. 1 whereas the money was foisted in his hands when he was unconscious. The accused-appellant has examined himself as D.W. 1. It has been the grudge of the accused that P.W. 1 was interested in getting the site out of S. No. 281/1 but he was one of the persons to report to the person that the said land belongs to small farmer. He along with others had recommended to the Collector to allot the house site to P.W. 1 and others in S. Nos. 203/2 and 204 and therefore it is the positive case that the accused-appellant had a grudge against him. However, I am not prepared to accept the said submission made on behalf of the accused-appellant, for the reason that P.W. 1 was a poor man. He was interested in getting house site. Beggers are not choosers. He was only interested in getting house site allotted in his name whether it is from one survey number or another survey number. After all he was getting the house site free of charge from the Government. Under such circumstances I find no reason as to why P.W. 1 should have grudge against the accused-appellant.

24. As stated earlier it has been the positive case that he became unconscious when the Police Party and the prosecution witnesses entered into his house. The said version is falsified by the defence evidence itself. The accused had led the evidence of D.W. 4, who happened to be the Health Assistant. He has stated that he was called at the house of the accused-appellant on 30-3-1990 at about 7-15 p.m. informing him that the accused-appellant fell with Epilepsy Fits. He had treated the accused-appellant. It is to be noted that D.W. 4 is specific on the point of time. According to the version of D.W. 4, he had visited the house of the accused-appellant at 7-15 p.m. of 30-3-1990. As per the version of the prosecution witnesses that the entire raid was carried out 5-30 p.m. It also appears from the evidence of P.W. 1, P.W. 3 and the Investigating Officer that the accused-appellant had counted the notes with his two hands the accused-appellant was made to dip the fingers of both his hands in two different solutions of sodium carbonate. Both the solutions turned into pink. Thereafter, he might have got the Epilepsy Fits. Therefore, I hold that the evidence of defence is totally shattered by

the evidence of prosecution witnesses.

25. D.W. 2 was examined in order to show that the accused-appellant had not demanded any bribe from him, who was also one of the allottee of house sites. The evidence of D.W. 2 will carry no meaning. The accused-appellant might not have demanded any money from him but it does not mean that he did not demand bribe from P.W. 1. D.W. 3 was examined by the defence in order to show that the accused-appellant was one of the persons, who had brought into limelight some bogus ration cards, which were in possession of Krishnamandadi. It is alleged by the defence that the said Krishnamandi was a friend/relation of P.W. 1 and, therefore, P.W. 1 had grudge against the accused-appellant. However, it can be seen that P.W. 1 has denied his relationship with Krishnamandadi. D.W. 5 has deposed to the effect that P.W. 1 had bore grudge against the accused-appellant as he was not allotted house site from the survey No. 281/1. This evidence is already rejected by me. Considering the entire evidence of defence, I hold that that will not help the defence in any manner.

26. As stated earlier that it has been the defence version that the accused-appellant suffered with Epilepsy Fits when P.W. 1 had entered into his house. I have already discussed earlier that the defence version holding that that is totally falsified by their own witnesses.

27. The learned counsel for the accused-appellant submitted at the Bar that the sanction given by the Secretary to Government, Revenue Department is given without applying his mind, the sanction was mechanically given. The learned counsel for the accused-appellant pointed out certain stray admissions from the evidence of P.W. 6, who has stated in his evidence that C.D. files of ACB and the statements of witnesses and final report of the ACB was placed for consideration before issuing the sanction order. He further stated that in para 4 of the sanction order it is not noted that the final report and the other material was placed before the sanctioning authorities. The learned counsel tried to made a capital the aforesaid stray admission and submitted that only by reading the final report, the Revenue Secretary Mr. I. Narasimha Rao had given sanction to prosecute the accused-appellant and, therefore, the presumption must fail on the ground that the

sanction was mechanically given. However, I am not inclined to accept the said submission only because by reading Ex. P. 32 it is evident that all the material was placed before the sanctioning Officer for issue of sanction.

28. The learned counsel for the accused-appellant herein relied upon a ruling reported in Suresh Chandra Gupta v. State of U.P., (1994) 1 CCR 397 (A1). It was held therein that the cognizance cannot be taken - without previous sanction of the authority who is competent to remove him - Prosecution must prove - Sanction granted after due consideration of facts.' I have no hesitation in relying upon the aforesaid ruling. Applying the ratio of the said ruling to the present set of facts, I hold in the present case the proper sanction was given which is evident from Ex. P. 32. Further reliance was kept on a ruling reported in Rajkumar Garg v. State of Punjab (1994) 1 CCR 404 (Punjab & Har). The same principle is laid down in the said ruling. Further reliance was kept on a ruling reported in Mohd. Iqbal Ahmed v. State of Andhra Pradesh, : 1979 CriLJ633 . It was held by their Lordships that it is incumbent upon the prosecution to prove that a valid sanction has been granted by the sanctioning authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction, and (2) by adducing evidence aliunde to show the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. In the present case, I am of the firm view that the Sanctioning Authority did apply his mind by looking to all the material papers placed before him and was satisfied that the case is made out against the accused and it would be proper to prosecute the accused-appellant.

29. The learned counsel for the respondent relied upon the following ruling reported in Shiv Raj Singh v. Delhi Administration (1969 Cri LJ 1). It was held by their Lordships of Supreme Court that 'Prosecution of Police Officer for offence under - Sanction - Order of sanction by D.I.G. after fully and carefully examining the material before him in regard to the aforesaid allegations - Order on face of it showing which were facts constituting offence charged - Order of sanction held fulfilled the requirements of Section 6'. As stated above that looking Ex. P-32 itself would show that the sanction was properly granted by applying the mind and on

being satisfied, the case is made out against the accused-appellant.

30. Considering the entire facts involved in this case, I hold that there is no reason to interfere with the order of conviction and sentence passed against the accused. Hence, the Criminal Appeal stands dismissed.

31. Appeal dismissed.

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