

State of Karnataka, Vs. Nashi Shekarappa Karedappa, Son of Karedappa,

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Court : Karnataka

Decided On : May-25-2011

Judge : V. Jagannathan, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 7, 13(l)(d), 13(2)

Appeal No. : CRL-A.No.1439 OF 2004

Appellant : State of Karnataka,

Respondent : Nashi Shekarappa Karedappa, Son of Karedappa,

Advocate for Pet/Ap. : S G RAJENDRA REDDY. ADV

Judgement :

1. This criminal appeal is by the State by Lokayukta police calling in question the judgment, of acquittal passed by the learned Sessions Judge acquitting the respondent in respect of the offences punishable under Sections 7, 13(1) (d) r/w section 13(2) of the [Prevention of Corruption Act, 1988](#) ('P.C.Act in short).

2. The case of the prosecution in short is that, the accused-respondent while working as a Village Accountant at Halehalli relvenue Circle, demanded a bribe amount of Rs. 1,500/- from the complainant in order to effect change of katha in favour of the complainant. The complainant, after making several attempts to get the katha changed by approaching the accused, finally went to the Lokayukta police and lodged the complaint as per Ex.P4. Thereafterwa r d s. the entrustment

mahazar was conducted as per Ex.P1 and the complainant accompanied by the shadow witness PW-2. went to the office of the accused and accused demanded the bribe and it was given by the complainant to the accused. Thereafterwards, signal was given to the Lokayukta police who came and trapped the accused. The trap mahazar was also conducted as per Ex.P2. On completion of investigation, which included getting the sketch map as per Ex.P3 from PW-4 and the sanction order from PW 7 as per Ex.P10, the charge sheet was submitted.

3. Following the accused not pleading guilty to the charge, the prosecution examined seven witnesses, out of whom. PW-1 was the complainant and PW-2 was the shadow witness. Ex.P1 to P10 were marked and M.Os.1 to 8 were also produced. During trial, accused statement was recorded and accused did not lead any defence evidence.

4. The learned trial judge after appreciating the evidence on record, took the view that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubt and in arriving at this conclusion, learned trial judge recorded the finding that there was no work pending with the accused and secondly there was no corroboration in the evidence of the complainant and the shadow witness and thirdly there was no evidence indicating demand made by the accused. Unless there was demand by the accused the question of prosecution establishing its case against the accused does not arise. It is on this reasoning that the benefit of doubt was given to the accused and the judgment of acquittal was passed.

5. I have heard learned counsel Sri. S.G.Rajendra Reddy for the Lokayukta police and also Sri.Vijay Kumar for respondent-accused and perused the judgment of the trial court as well as the records of this case.

6. Submission of Sri. Rajendra Reddy, learned counsel for the appellant is that, the evidence of PW-1 and PW-2 would go to show that the accused had accepted the bribe amount of Rs. 1,300/- from the complainant and the hand wash of the accused was also tested positive. Therefore, the trial court could not have drawn the inference that there was no demand by the accused. Moreover, by virtue of section 20 of the P.C. Act. once there is evidence indicating acceptance of the amount by the accused, the presumption will have to be drawn that the accused

had accepted the gratification. Therefore. the trial court was in error in holding that there was no demand by the accused.

7. As far as the work is concerned, learned counsel for the appellant referred to the complaint contents to find out that the complainant met the accused number of times and the accused was demanding certain amount which was originally Rs.6,000/- and brought down to Rs.3,000/- and finally Rs. 1.500/-.

8. As far as lack of corroboration of evidence between PW-1 and PW-2 is concerned, learned counsel referred to the evidence of these witnesses to out that the shadow witness was also present when the accused accepted the amount from the complainant.

9. Therefore. the reasoning of the trial court is contrary to the evidence on record and as such, the order of acquittal requires to be set aside and accused be convicted of the offences with which he.

10. On the other hand, submission of Sri.Vijay Kumar, learned counsel for the respondent-accused is that, the trial court committed no error in acquitting the accused because there was no evidence indicating demand made by the accused and secondly. PW-I's evidence did not support the evidence of PW-2 because PW-2 was nowhere near the scene when the alleged incident is said to have taken place and PW-2 even could not bear the conversation between the complainant and the accused.

11. As far as work is concerned, learned counsel for the accused pointed out that no work was pending with the accused and the application had been given by the complainant to the Taluk office and the said application had not been forwarded to the Village Accountant and as such, the question of accused having some work of the complainant to be done, does not arise.

2. The trial court had taken note of all these matters and has rightly given the benefit of doubt to the accused. The order of acquittal therefore does not call for interference.

13. Having thus heard both sides, whether the order of acquittal requires to be interfered with or not is the point for consideration and the Apex Court has held in catena of decisions that, unless the finding recorded is perverse in nature or unreasonable, normally the order of acquittal does not call for interference at the hands of the appellate court and secondly 'the view taken by the trial court is a probable view of the evidence on record and the said view cannot be disturbed by the appellate court.

14. With the aforesaid principles being kept in view. I have examined the evidence on record and so far as the demand is concerned, PW-1 who is the complainant, has stated categorically in his examination-in-chief that, for effecting change of katha, accused did not demand any money from him. Despite this evidence of PW-1, prosecution did not declare him hostile, but went on to examine further.

15. As far as the evidence of PW-2 is concerned, who is said to be the shadow witness, he does not say in his evidence that the accused demanded amount from the complainant, but on the other hand, PW-2 has stated that he was standing near the door, did not go inside the office of the accused. This statement of PW-2 is contradicted by PW-1 himself, who says on the other hand that, he went inside the office of the accused along with PW-2. It is for this reason that the learned trial judge held that there is no corroboration between the complainant and the shadow witness and relying on the decision of this court reported in 2004(2) KCCR 1233, the learned trial judge has held that corroboration of evidence of complainant by a shadow witness is a must and that if there is no corroboration, it is not safe to convict the accused person.

16. As far as the work is concerned. PW-1 has deposed in his evidence during the cross-examination that he gave an application for change of katha to the Taluk office and the accused had told him that as soon as the application reaches the accused, the work of the complainant would be done. This itself shows that no work was pending with the accused as on the date of trap. The above evidence of PW-1 is further strengthened by the fact that, in the cross-examination of PW-5, it has been brought out that in Ex.P5 which is the application, there was no endorsement either of the Taluk office or of the Revenue Inspector's office.

17. Thus, it is clear from the aforesaid material on record that the trial court took the view that, first of all there was no demand by the accused and the prosecution has not proved that the accused did demand Rs. 1,500/- from the complainant. Secondly, the finding that no work was pending with the accused is also borne out from the aforesaid evidence of PW-1 and PW-5.

18. As far as corroboration is concerned. PW-1's evidence that he went inside the office of the accused along with PW-2 is nullified by PW-2 himself who says that he did not go inside the office of the accused but stood at the door.

19. In the light of the aforesaid reasons, the view taken by the trial court cannot be said to be an unreasonable view of the evidence on record or the finding recorded cannot be termed as perverse in the light of the evidence of PW-1 the complainant that accused never demanded any money from the complainant. I therefore see no case made out by the State for this court to interfere with the order of acquittal passed by the trial court.

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