

Sri Hanumanthappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Mar-20-2012

Judge : V. Jagannathan

Appeal No. : Criminal Appeal No. 1383 of 2007

Appellant : Sri Hanumanthappa

Respondent : State of Karnataka

Advocate for Def. : Sri. S.G. Rajendra Reddy

Advocate for Pet/Ap. : For the Appellant: C.G. Sundar, Advocate. For the Respondent: S.G. Rajendra Reddy, Advocate.

Judgement :

V. Jagannathan, J

1. The appellant calls in question his conviction and sentence passed by the trial court in respect of the offences punishable under secs. 7, 13 (1) (d) R/w sec. 13 (2) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution is that the accused while working as an Inspector in Karnataka Slum Clearance Board, demanded Rs. 2,000/- as bribe from the complainant. Aslam Pasha to do an official favour to the complainant's wife in the matter of conducting spot inspection and to send a favourable report, so that the

complainant and his wife can avoid vacating the house, where they were put up with and any threat of leaving the house will not arise. The complainant not willing to pay the bribe amount lodged a complaint with the Lokayuktha police as per Ex.P.11. This was followed by the entrustment mahazar being drawn as per Ex.P.2. It is the prosecution case that the trap was successful in the accused being caught after receiving the amount from the complainant in a public place, outside the office of the accused. Ex. P. 7 is the trap mahazar and sanctioned order was obtained at Ex. P.9 before filing of the charge sheet.

3. Following the accused not pleading guilty, prosecution examined 7 witnesses and 15 documents were marked along with M.Os. 1 to 11. The learned trial Judge despite the complainant not supporting the prosecution case, based the conviction on the evidence of the shadow witness, i.e., PW.2 and the evidence of the Investigating Officer. The result was the appellant was sentenced to six months imprisonment and Rs. 5,000/- fine in respect of offence punishable under Sec. 7 of Prevention of Corruption Act and to one year imprisonment and Rs. 10,000/- fine in respect of offence punishable under Sec. 13 (1) (d) of Prevention of Corruption Act with default sentence of four months.

4. Aggrieved by the aforesaid conviction and sentence the accused has preferred this appeal. I have heard Sri Sundar, learned counsel for the appellant and Sri S.G. Rajendra Reddy, learned Counsel for the respondent- Lokayuktha. I also perused the records of this case.

5. Sri Sundar, learned counsel for the appellant referring to the evidence on record argued that the complainant had not supported the prosecution case and consequently, the complainant is not unaware of the content of the complaint and does not speak about any demand being made by the accused. The complainant also does not say in his evidence that accused demanded bribe amount on 27.5.1999. What remains is the evidence of shadow witness - PW.2. His evidence is in quite contrast with the evidence of the complainant with regard to the manner of the amount being passed on to the accused. The complainant says that he gave a cover to the accused, whereas the shadow witness says that the complainant took out the money from his pocket and gave it to the accused, who received it in

the left hand and then transferred it to the right hand before putting it into his pant pocket. Therefore, the evidence of the shadow witness could not have been acted upon by the trial court to base the conviction. The other defence referred to by the learned counsel for the appellant is that the trap mahazar was not drawn at the spot which is near Siddartha lay out and outside the office of the accused, somewhere near the bus stop. Therefore, the trap mahazar said to have been drawn in the Lokayuktha office also cannot be given any credence.

6. As far as the work is concerned, the learned counsel refer to the evidence of PW. 7, the Investigating Officer himself to contend that the Investigating Officer admitted that from his investigation, he was not able to make out any work being carried out by the accused and Investigating Officer also did not verify as to what is the nature of work the accused was performing. Even the file was also not seized from the accused as evidenced from the testimony of PW. 3 who has stated that the files were brought from the office of the accused one Gopalshetty, Second Division Assistant. In the face of such evidence on record, mere recovery of the amount from the accused is not sufficient to award conviction. Even with regard to the amount is concerned, there is variance in the prosecution evidence, in as much as the shadow witness says that the notes were Rs. 100/- denomination numbering 20, whereas, the complainant says that he has given Rs. 2,000/- which were of the denomination of Rs. 100/- and Rs. 50/-. Therefore, even on this aspect also there is no consistent evidence placed by the prosecution. As such, the trial court ought to have given the benefit of doubt to the accused by acquitting him. In support of the aforesaid submission, reliance is placed on the decisions reported in 1987 (Supp) SCC 266 (G.V.Nanjundiah Vs. State (Delhi Administration), 2010 (3) KCCR 1851 (State of Karnataka Vs. M. Gopalakrishanaiah and Ors. And 2012 (1) KCCR 414 (R. Malini Vs. State of Karnataka).

7. On the other hand, the learned counsel Sri Rajendra Reddy for the respondent - Lokayuktha supported the judgment of the trial court and argued that the evidence of the shadow witness coupled with the evidence of the Investigating Officer and the explanation of the accused was taken note by the trial court and as such the conviction is just and proper. The evidence of the shadow witness in particular was

referred to along with that of the evidence of the Investigating Officer. It is also argued that in the statement of the accused, the accused did not come up with any specific defence denying, except denying the prosecution case. Even with regard to the work is concerned, the accused has not stated anything in his statement. Therefore, the judgment of the court below requires no interference.

8. Having thus heard the submission on both sides, whether the evidence on record can be said to have lead to the conclusion that the prosecution has proved its case beyond all reasonable doubt?

9. This takes us to the evidence on record and the first and the most important witness for the prosecution, namely, complainant, examined as PW.6. This witness, Aslam Pasha has not supported, the prosecution case and he was treated hostile. He does not speak about any demand being made by the accused. Secondly, he does to say that there was a demand made by the accused on 27.5.1999. The third aspect is that except saying that he gave a cover to the accused near a hotel and also denies of having taken out the amount from his pocket and handing it over to the accused, the over all evidence PW.6 does not come to the prosecution case. He has specifically denied the suggestion put to him by the prosecution that the accused demanded the bribe amount and pursuant there to the complainant gave the amount to the accused.

10. That apart, the complainant has also stated in the cross examination by the defence that the Lokayuktha police made the accused to take out the currency not from the cover and thereafterwards, hand wash of the accused was taken. Thus, the prosecution case suffers a serious blow in view of the aforesaid evidence of the complainant.

11. PW.2 is the shadow witness upon whose evidence the trial court has placed much reliance. However, this witness does not help the prosecution case because of lack of trustworthiness. It is his evidence that the accused demanded the bribe amount and thereafterwards, the complainant took out the currency notes from the shirt pocket and gave it to the accused and the accused received it in the right hand and then transferred it to the left hand and then put it into his left side pocket. Thereafterwards, the complainant gave the signal. This evidence is not supported

by the complainant himself, because the complainant says that he never gave any signal to Lokayuktha police or about the amount being received by the accused in the manner spoken to by PW.2. The Apex court in the case reported in 1987 (Supp) SCC 266 referred to above, has found the manner of receiving the amount and putting it into the pocket as an unusual circumstance, because in the said case also the accused is said to have received the amount with his left hand and transferred it to the right hand and put into his pocket. The manner of accused receiving the amount in the instant case also more or less akin to the aforementioned circumstance mentioned by the Apex Court and coupled with the witness being found to be unreliable, no reliance was placed on the evidence of the witness by the Apex Court. In the case on hand also it is established that shadow witness's evidence is not supported by complainant with any material particulars and no demand having been made by the accused as could be seen from the evidence of PW.6 - complainant, the trial court could not have banked upon the evidence of PW.2 to convict the accused.

12. Coming to the evidence of the Investigating Officer examined as PW.7, it has come in his evidence that the accused had nothing to do with the work of the complainant. Secondly, the Investigating Officer also did not verify as to the nature of work performed by the accused. Apart from this, PW.4, as the sanctioning authority has also deposed to the effect that he has no knowledge as to who was attending the work of the complainant in respect of the application given by the complainant.

13. The trap mahazar was not drawn on the spot, but according to the Investigating Officer, the trap mahazar, Ex.P. 7 was drawn in the office of the Lokayuktha. As the accused has denied having given the explanation as mentioned in the trap mahazar, the drawing up of the trap mahazar at the place far away from the place of incident also has given rise to doubt the prosecution case, more so, when no work was pending with the accused and record also not seized from the accused.

14. In the light of the decisions referred to by the learned counsel for the appellant, mere recovery of the amount from the accused itself will not be sufficient to hold

that the case has been proved against the accused in respect of the offence in question. This court in the decision reported in 2012 (1) KCCR 414 referred to above has held that in the absence of any evidence of demand and acceptance of the amount as illegal gratification, mere acceptance of money by the appellant will not be sufficient to fasten the guilt on the accused. Similar is the view taken by this court in the decision reported in 2010 (3) KCCR 1851 referred to above. The Apex Court also has held in the decision reported in 2000 (4) Crimes 162 (State of Madhya Pradesh Vs. J.B. Singh) that the complainant himself did not support the prosecution case and there was no material to show that the payment was made to the accused pursuant to the demand. In the case on hand also PW.6 himself does not say in his evidence that the accused demanded any bribe amount on 27.5.1999 and as such the prosecution cannot be said to have proved its case beyond reasonable doubt. One other aspect which also has to be taken note of is that the panch witnesses were called a day earlier to the filing of the complaint, which is clear from the testimony of PW.1 - Shivamadaiah.

15. For the aforesaid reasons, the over all evidence on record was not properly appreciated by the trial court and as the material on record gives rise to doubt on the case of the prosecution with regard to the accused demanding and accepting the bribe amount from the complainant, the course open to the trial court was to give the accused the benefit of doubt, as the findings, recorded by the court below cannot be sustained in law and conviction therefore, cannot be based on the aforesaid nature of evidence as the prosecution is expected to prove its case beyond all reasonable doubt.

For the above reasons, the appeal is allowed. Conviction of the appellant by the trial court is set aside. The appellant is acquitted of the offences for which he was put on trial. The bail bond shall stand cancelled.

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