V.S. Murthy Vs. State (Cbi)

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Court : Delhi

Decided On : Jan-21-2013

Judge : P.K.Bhasin

Appellant : V.S. Murthy

Respondent : State (Cbi)

Advocate for Pet/Ap. : Mr. Satish Tamta, Ms. Nisha Nayarnan, Mr. R.V. Sinha, Mr. K. B. Andly, Mr. M.L.Yadav, Mr. R.V. Sinha

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % CRL. A. NO.592/1999 + # ! Date of Decision: January 21, 2013 V.S. MURTHY ....Appellant Through: Mr. Satish Tamta & Ms. Nisha Nayarnan, Advs. Versus $ Respondent Through: Mr. R.V. Sinha, Adv. STATE (CBI) AND CRL. A. NO.593/1999 DR. R.S.A. DHANI ....Appellant Through: Mr. K. B. Andly, Sr. Adv. with Mr. M.L.Yadav, Advocate Versus STATE (CBI) * Respondent Through: Mr. R.V. Sinha, Adv. CORAM: HON'BLE MR. JUSTICE P.K.BHASIN JUDGMENT P.K. BHASIN, J: These two appeals were filed by two accused who were convicted by the learned Special Judge vide judgment dated 29th October, 1999 for the commission of the offences punishable under Section 120-B read with Section 420 IPC and Section 13(1)(d) of the Prevention of Corruption Act,1988 order while accused-appellant V.S.Murthy was convicted individually for the substantive offences under Section 420 IPC and Section 13(1)(d) of the Prevention of Corruption Act,1988 also. Vide order dated 30th October, 1999 passed by the learned Special Judge the two accused-

appellants were sentenced to undergo rigorous imprisonment for one year and to fine of ` 20,000/- each with a default clause, for their conviction under Section 120-B IPC while accused-appellant V.S.Murthy was also sentenced to undergo rigorous imprisonment for one year on each count for his conviction for the substantive offences under Section 420 IPC and Section 13(1)(d) of the Prevention of Corruption Act,1988 and fine of ` 10,000/- on both counts, with a default clause. Since both the appeals were heard together they are being disposed of also together by this common judgment.

2. The case of the prosecution against the two accused-appellants was noticed by the learned trial Court in the impugned judgment in paras no. 27and those paragraphs are being re-produced below:2. A case R.C. No.5(S)/94-BSC/DLI was registered against R.B. Sharma, Deputy Manager, State Bank of India, Green Park Extension, New Delhi and others under Sections 120-B read with Sections 420, 406, 409, 467, 468 and 471 IPC. During the course of investigation of aforesaid case it transpired that accused V.S. Murthy while functioning as Director(Finance) of M/s Bharat Dynamics Limited, Hyderabad (hereinafter referred to M/s B.D.L.) a Govt. of India undertaking during the period February and March, 1994 entered into a criminal conspiracy with Dr. B.S.A. Dhani, Managing Director of M/s Continental Systems Pvt. Limited, New Delhi with the object to dishonestly and fraudulently cheated Andhra Bank, B.D.L. Extension Counter, Kanchan Bagh, Hyderabad to the extent of `2 Lacs by the abuse of official position of accused V.S. Murthy 3. It is alleged that at the relevant time accused V.S. Murthy was functioning as Director (Finance) M/s B.D.L., Hyderabad.

4. That Dr. R.S.A. Dhani was the Managing Director of M/s Continental Systems Pvt. Limited, New Delhi and he was operating a current account No.10957 of the aforesaid company with Indian Bank, Janak Puri, New Delhi. As on 27.02.94 aforesaid bank account was showing a debit balance of ` 9,31,681/-. Besides that Dr. R.S.A. Dhani had also availed various credit facilities from the bank in the name of his company and the company owed ` 35 Lacs to the bank. It is alleged that he was in urgent need of funds for disbursement of salary to his staff and others.

5. That M/s B.D.L., Hyderabad was maintaining all its accounts with Andhra Bank, B.D.L. Extension Counter, Kanchan Bagh, Hyderabad and most of the surplus funds of the company were kept with the bank as Fixed Deposit and accused V.S. Murthy as Director (Finance) was one of the authorized signatory to operate the said accounts. It is also alleged that accused V.S. Murthy was also maintaining S.B. Account No.1550 with Andhra Bank, BDL Extension Counter, Kanchan Bagh, Hyderabad.

6. That as per allegations of the prosecution accused V.S. Murthy visited Delhi in the last week of February, 1994 and illegally agreed to provide funds to Dr. R.S.A. Dhani. In response to the agreement Dr. R.S.A. Dhani issued one cheque no.081606 dated 24.02.94 for ` 2 Lacs favouring V.S. Murthy drawn on Indian Bank, Janak Puri, New Delhi from the account of his company M/s Continental Systems (P) Limited, New Delhi having knowledge that sufficient funds to honour said cheque were not available in the account. Shri V.S. Murthy was also having knowledge of this fact. He came back to Hyderabad with the aforesaid cheque and called Shri C.S.R. Avjneyulu, Branch Manager, Andhra Bank, BDL Extension Counter, Kanchan Bagh Hyderabad on 28.2.94 and handed over the said cheque to him along with requisite pay in slips. He advised Shri C.S.R. Avjneyulu to discount the said cheque under clean bill purchase facility and credited the amount to his S.B. Account no.1550. Though the bank rules did not provide any such facility, Shri C.S.R. Avjneyulu discounted the said cheque under clean bill facility and credited ` 2 Lacs was given to the S.B. Account No.1550 of accused V.S. Murthy on the same day. It is further alleged that accused V.S. Murthy withdrew a sum of ` 2 Lacs in cash from the said account after the credit of the cheque amount and submitted an application for issue of demand draft for ` 197,500/- favouring Dr. R.S.A. Dhani payable at Delhi. Shri C.S.R. Avjneyulu accordingly issued a demand draft no.654841 dated 28.2.94 for ` 1,97,500/- favouring Dr. R.S.A. Dhani and gave it to the accused V.S. Muthy. It is alleged that accused V.S. Murthy visited Delhi on 1.3.94 and handed over the said demand draft to Dr. R.S.A. Dhani who in turn encashed the demand draft across the counter at Andhra Bank, Connaught Place Branch, New Delhi and utilized the fund.

7. That the cheque deposited by Shri V.S. Murthy in his S.B. Account, when sent in outstation clearing by Andhra Bank, BDL Extension Counter, Hyderabad, was returned unpaid on 19.3.94 by Indian Bank, Janakpuri, New Delhi as sufficient funds were not available in the account. When accused V.S. Murthy was informed by the bank about the return of said cheque and advised to return the funds he contacted Dr. R.S.A. Dhani for return of funds. It is alleged that Dr. R.S.A. Dhani visited M/s B.D.L. on 31.3.94 and called on Shri V.S. Murthy for return of the said funds and thereafter he paid ` 2 Lacs to Shri C.S.R. Avjneyulu vide a pay in slip signed by him.

3. On the aforesaid allegations the two accused-appellants were charge-sheeted by the CBI and then in due course they were tried and convicted and sentenced for the offences noted already by the learned Special Judge. Both the convicted accused had felt aggrieved with the judgment of conviction and the order on sentence of the learned Special Judge and so they filed separate appeals which, as noted already, are now being disposed of by this common judgment.

4. The relevant portions from the impugned judgment wherein the learned Special Judge had dealt with the prosecution case in respect of the different offences for which the two accused were charged are being reproduced below:19. The transaction the manner in which it has been conducted by itself is fraudulent and deceitful. From the evidence discussed above, it is obvious that when the cheque of ` 2 lakhs was issued by accused R.S.A. Dhani from the account of M/s Continental Systems (P) Limited in favour of accused V.S. Murthy, he was aware that the aforesaid bank account was already in debit and there was no fund to honour the cheque. This fact was also within the knowledge of accused V.S. Murthy, otherwise there was no occasion on the part of accused persons to enter into such a transaction. Thus, it is clear that accused persons had agreed amongst themselves to use the aforesaid transaction of purchase of cheque by the bank with a view to obtain funds temporarily. This mean that cheque purchase transaction was used by V.S. Murthy as a substitute for a short term loan to provide funds to accused Dr. R.S.A. Dhani. However, as per evidence while requesting the bank manager, Andhra Bank, BDL Extension Counter, Hyderabad the accused Dr. R.S.A. Dhani did not disclose these material facts to the branch

manager. In my opinion had he disclosed to the branch manager that there were no funds in the account of M/s Continental Systems (P) Limited and accused persons had agreed to use the above referred cheque purchase transaction to raise a short term loan managers decision would definitely have been affected and cheque would not have been purchased. Thus, by concealing these material facts accused V.S. Murthy has deceived the branch manager concerned fraudulently and because of said deception and concealment of facts the branch manager had purchased the aforesaid cheque and credited the sum of ` 2 lakhs in the account of accused V.S. Murthy before the realization of the amount. Therefore, in my opinion, the ingredients of the offence of cheating in this case are made out and accused V.S. Murthy is guilty of offence punishable u/s 420 IPC.

21. In this case, the transaction in question is not a normal transaction, but it was a fraudulent way devised by the accused persons to practice deceit upon the bank and exploit the cheuqe purchase transactions. Therefore, the ratio of the above referred judgment in my respectful opinion is not applicable to the facts of this case. While deciding a cheating case, the Court is required to look into the aspect of dishonest intention of the accused at time of transaction and not on a date subsequent thereto. From the nature of transaction, it is obvious that accused persons were aware that Dr. R.S.A. Dhani or V.S. Murthy was not entitled to withdraw a sum of ` 2 lakhs from the account of V.S. Murthy, which did not have sufficient balance and therefore they devised a fraudulent transaction of issue of cheque by Dr. R.S.A. Dhani to V.S. Murthy and subsequently V.S. Murthy got it purchased by his banker and obtained wrongful gain of ` 2 lakhs. At that time accused V.S. Murthy was not entitled to credit of ` 2 lakhs in his S.B. Account No. 1550, therefore, by obtaining the wrongful gain to that extent through cheque purchase transaction he has acted dishonestly. Thus, in view of discussion above, prosecution in my opinion has been able to prove the guilt of accused u/s 420 IPC beyond a shadow of reasonable doubt.

22. Now the question arises whether or not the accused V.S. Murthy has committed an offence punishable u/s 13(1)(d) of P.C. Act, 1988..........

25. Bare perusal of aforesaid provision would show that as per definition u/s 13(1)(d) of P.C. Act, 1988 a public servant can commit criminal misconduct in above three ways. In view of my discussion above, accused V.S. Murthy has obviously obtained wrongful gain of ` 2 lakhs in the garb of deceitful and fraudulent cheque purchase transaction by practicing fraud upon the bank manager concerned and cheating him. Therefore, it is obvious that he has obtained a pecuniary advantage to the extent of ors. 2 lakhs on 28.2.94 by corrupt and illegal means. From the nature of transaction and the evidence on record, it is also obvious that M/S B.D.L.Hyderabad was a very important client of Andhra Bank and accused V.S. Murthy was one of the authorized signatories of the account of M/s B.D.L. Hyderabad. Admittedly, he was holding a very important position as Director (Fin.) of aforesaid Govt. of India Company. Therefore, it is obvious that in the matter purchase of aforesaid cheque position of accused V.S. Murthy as Director (Fin.) of M/S B.D.L. Hyderabad must have influenced the concerned branch manager because he could have taken chance to lose an important account holder of the bank. It has come in evidence that branch manager C.S.R. Anvjynulu was handed over the cheque in question in the chamber of the accused. This circumstance also shows that accused V.S. Murthy has used his client as Director (Fin.) to influence the branch manager decision in purchasing the said cheque besides practicing deception and fraud. Thus, under the circumstances, I am of the view that requirement of Section 13(1)(d) of P.C. Act, 1988 are fulfilled in this case and the charge u/s 13(2) r/w 13(1)(d) of P.C. Act is proved against the accused V.S. Murthy.

26. Now, it is to be seen if the aforesaid offences have been committed by both in furtherance of a conspiracy amongst each other. It has been argued on behalf of both the accused that there is no evidence of conspiracy. It is common knowledge that conspiracy is normally hatched behind the curtains. Thus it is not possible to prove a conspiracy between two or more persons by direct evidence. It is settled law that in order to prove conspiracy the Court can resort to circumstantial evidence and draw inference from circumstances. If the circumstances so proved leads to irrebutable conclusion that there was an existence of conspiracy between accused persons, then conviction can be recorded. In the light of aforesaid legal position if we analyse the transaction it is apparent that above referred exercise of

issue of cheuqe by Dr. R.S.A. Dhani in favour of V.S. Murthy and subsequent purchase of cheque by the bank and credited of amount in the account of V.S. Murthy and reversion of the fund in the form of bank draft to Dr. R.S.A. Dhani on the same day leads me to one and only one conclusion that there was a conspiracy and since Dr. R.S.A. Dhani was in need of money both the accused persons entered into a criminal conspiracy and agreed amongst themselves to use the above said device of cheque purchase transaction in order to procure the funds for accused Dr. R.S. A. Dhani which he could not have otherwise received from Andhra Bank, BDL Extension Counter, Kanchan Bagh, Hyderabad or his own bank. Therefore, this circumstance leads me to irresistible conclusion that there was existence of conspiracy and in furtherance of said conspiracy accused V.S. Murthy abused his official position as a public servant and misconducted himself and also cheated Andhra Bank, BDL Extension Counter, Kanchan Bagh, Hyderabad. Thus, the charge of conspiracy punishable u/s 120 IPC read with 420 IPC as well as 13(2) r/w 13(1)(d) of P.C. Act, 1988 is made out against both the accused.

5. A perusal of the trial courts judgment shows that the facts are really not in dispute and in fact most of them were clearly admitted by the two accused themselves when their statements under Section 313 Cr.P.C. were recorded. The undisputed facts are that the two accused, out of whom accused V.S.Murthy was a public servant at the relevant time when the offences for which they have been convicted were committed, were known to each other. Accused Dr.R.S.ADhani had given a cheque dated 24.02.1994 for a sum of ` 2 lacs to accused V.S.Murthy from the bank account of his Company in Indian Banks branch in Janakpuri, New Delhi. On the date of issuance of the said cheque by D.R.Dhani in favour of V.S.Murthy there was no balance in the account and in fact in the account there was a debit balance of Rs.9,31,681/-. Accused V.S.Murthy was during those days the Finance Director of a public sector undertaking M/s Bharat Dyanamics Ltd. which had its accounts in one of the extension counters of Andhra Bank in Hyderabad of which V.S.Murthy was the authorized signatory and in that extension counter itself V.S.Murthy also had his personal account. Accused Dr. R.S.A. Dhani gave a cheque for two lacs of rupees to accused V.S.Murthy which he deposited in his account with Andhra banks bank extension counter and on his request the

manager purchased that cheque and after charging usual commission prepared a demand draft for ` 1,97,500/favouring accused Dr. R.S.A.Dhani who on receiving the same got it encashed. His cheque for Rs. two lacs given to V.S.Murthy however was not honoured by his bank when presented to it by Andhra Bank. On being informed by Andhra Bank about the dishonor of that cheque V.S.Murthy informed Dr.R.S.A.Dhani who immediately deposited the payment with interest with Andhra Bank.

6. It is significant to notice that Andhra Bank on getting its money did not feel cheated and so no complaint of any kind was made by it against any of the two accused. However, CBI while investigating some case against many persons, including accused V.S.Murthy for their involvement in defrauding Bharat Dyanamics Ltd. noticed this transaction between Dr.R.S.A.Dhani and V.S.Murthy and came to the conclusion that V.S.Murthy had abused his position as a public servant by getting the cheque for two lacs of rupees purchased by the Manager of Andhra Banks extension counter in Hyderabad where his Company had many accounts and but for his misusing his status as the Director of his Company that cheque would not have been purchased by his bank as that not permissible and by getting payment of that cheque without its first getting cleared Andhra Bank stood cheated.

7. Learned counsel for CBI simply supported the impugned judgment and submitted that circumstances highlighted by the trial court were sufficient to infer the guilt of both the accused and so they were rightly held guilty. Counsel for the appellants however submitted that the trial courts judgment is based only on surmises and conjectures and without any evidence being there supporting its conclusions against the two accused persons.

8. After having gone through the evidence of all the five witnesses examined by CBI, out of whom one was the official from Andhra Bank(PW2) who had in fact purchased the cheque of two lacs in the name of accused V.S.Murthy, one was the investigating officer and one was the sanctioning authority who had sanctioned the prosecution accused V.S.Murthy, I find myself in full agreement with the submissions of the learned counsel for the appellants that the learned Special

Judge had convicted them on the basis of inferences without there being any evidence, even circumstantial from which it could be inferred that the two accused had conspired to cheat Andhra Bank and also that in order to fulfil the object of their conspiracy accused V.S.Murthy had abused his position as a public servant. A perusal of the impugned judgment as well as the evidence led by CBI shows that there was no evidence that Andhra Banks Manager at the extension counter could not have purchased the cheque. On the contrary banks official examined by CBI as PW-2 categorically admitted that the cheque in question could be purchased and was rightly purchased by him with the permission of his senior manager. This is what PW-2 had said in his evidence:In February 1994, I was Branch Manager, Andhra Bank, B.D.L. Extension Counter, Kanchan Bagh, Hyderabad. I know accused V.S. Murthy, present in the Court. He was maintaining saving bank accounts and Abhya Saving Bank Account in Andhra Bank, BDL Extension Counter Kanchan Bagh, Hyderabad. Bharat Dynamics Limited was also maintaining an account in Andhra Bank, BDL Extension Counter, Kanchan Bagh, Hyderabad. Shri V.S. Murthy, Director (Finance) of the said company was authorized signatory of the said account along with others. I have seen credit voucher for ` 2 Lacs Ex.PW2/A. It bears signatures of Shri Z.B. Niak, Officer of my branch, whose signatures I identify. Said pay-in-slip/credit voucher was presented by accused V.s. Murthy and thereafter it was authorized by me. Ex.P.W.2/A bears my initials at encircled portion-A. I purchased the cheque after obtaining permission from the then Chief Manager Shri B.S. Murthy, of Santosh Nagar Branch. Thereafter, the credit voucher Ex.P.W.2/A was prepared and authorized by me. Amount of ` 2 Lacs was credited in account No.1550 of accused V.S. Murthy. Ex.PW 2/B is certified copy of the relevant ledger account pertaining to account no.1550 of V.S. Murthy. For purchasing aforesaid bank, my branch charged commission of ` 1608/-..After the amount of ` 2 Lacs was credited in the account of Shri V.S. Murthy he withdrew the sum of ` 2 Lacs from his account vide withdrawal slip Ex.P.W.2/E, which was authorized by Shri P. Balwant Reddy Sub Manager and Shri Z.P. Nayak, Officer. .. Ex.P.W.2/F is draft application form submitted by Shri V.S. Murthy for getting prepared a draft worth ` 1,97,500/- in favour of Shri. R.S.A. Dhani. On the basis of said application draft Ex.P.W.2/G was prepared by the bank. This draft is signed on behalf of the bank by Shri M. Ram

Chander Rao Officer and myself. The cheque which was purchased by accused V.S. Murthy on presentation was returned by Indian Bank, Janak Puri unpaid. After the cheque was returned back dishonoured, I asked V.s. Murthy about it and told him to repay the amount to the bank. Before contacting accused V.S. Murthy I informed my Chief Manager about dishonor of the cheque and thereafter I contacted Mr. V.S. Murthy. On 31-3-94, when I was sitting in some department of Bharat Dynamics Limited, Mr. Laxman Rao P.A. to accused V.S. Murthy called me to the chamber of accused V.S. Murthy. One person was present in the room of Shri V.S. Murthy and he repaid ` 2 Lacs in cash to me against the dishonoured cheque.

9. So, in view of this evidence adduced by the prosecution itself there could be no occasion for accused V.S.Murthy abusing his position as a public servant by getting his cheque purchased and the conclusion of the trial Court that he had misused his position as a public servant is unsustainable. Similarly, the learned Special Judge was not justified in coming to the conclusion that Andhra Bank stood cheated by the two accused when this bank itself did not come forward to claim that it had been cheated in any way by accused V.S.Murthy getting his cheque purchased and the same getting dishonoured on being presented for encashment to the bank of his co-accused. So, conviction of the two accused for their having entered into a conspiracy to cheat Andhra Bank and succeeding in cheating it of two lacs of rupees also cannot be sustained.

10. Both these appeals are accordingly allowed and the judgment dated 29th October,1999 of the learned Special Judge convicting the two appellants is set aside as also the order of sentence dated 30 th October,1999 and both the appellants stand acquitted of all the charges. Their bail bonds stand discharged. P.K. BHASIN, J JANUARY 21 2013