

CASE NO.:
Appeal (crl.) 550 of 1997

PETITIONER:
State of Andhra Pradesh

RESPONDENT:
T.Venkateswara Rao

DATE OF JUDGMENT: 04/02/2003

BENCH:
N.Santosh Hegde & B.P.Singh

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE, J.

State of Andhra Pradesh is in appeal against the judgment of the High Court of Andhra Pradesh at Hyderabad made in Criminal Appeal No.491 of 1989 whereby the High Court set aside the judgment and conviction recorded by the Principal Special Judge for SPE & ACB cases at Hyderabad against the respondent herein. Brief facts necessary for disposal of the appeal are that the respondent who while working as Commissioner, Sangareddy Municipality during the year 1986-87 demanded and obtained an illegal gratification of Rs.400/- to show an official favour to award the work order to PW-1 who was a successful tenderer in a municipality contract, thus committed an offence punishable under section 5(1)(d) read with 5(2) of the Prevention of Corruption Act, 1947 (the Act) as also an offence under section 161 IPC. In this regard, the prosecution alleges that on 20.4.1987 when PW-1 met the respondent and requested him for the work order which he was entitled to pursuant to the acceptance of his tender for doing a contract job for the Municipality, the respondent demanded a bribe of Rs.500 to issue the work order. When PW-1 expressed his inability to pay such a huge amount respondent reduced the said amount to Rs.400 and directed PW-1 to pay that amount within 3 or 4 days. PW-1 being aggrieved by such an illegal demand of the respondent went to Nizamabad and contacted PW-5 who was then working as Deputy Superintendent of Police, Anti-Corruption Bureau, Nizamabad District and lodged a complaint Ex. P-9. Pursuant to the said complaint PW-5 directed PW-1 to come back to him on 24.4.1987 at 9 a.m. at Shankarampet Guest House. Prosecution further alleges that PW-5 after verifying the antecedents of PW-1 obtained necessary permission of competent authority for laying a trap. He also made necessary arrangements for requisitioning officers working in the office of the Superintending Engineer, Nizamabad to act as mediators. PW-4 was one such person who was chosen to be the mediator. Prosecution then alleges that on 24.4.1987 PW-5 accompanied by his staff and others including PWs.1 and 2 came to Sangareddy at about 12 p.m. PW-5 by then had already instructed PWs.1 and 2 to carry the pre-marked currency notes totalling Rs.400 in value to be handed over to the respondent. It is the further allegation of the prosecution that on that day after reaching Sangareddy PWs.1 and 2 went to the office of the respondents and offered to pay bribe but then respondent asked them to meet him at his residence during the lunch-break. Accordingly PWs.1 and 2 went and informed PW-5 whereupon all of them proceeded at

about 1 p.m. to the house of the respondent and PWs.1 and 2 went inside the house when the respondent asked them as to the money whereupon PW-1 paid pre-marked currency notes to the respondent who took them inside his bed-room and kept them under mattress. On PW-2 giving the necessary signal PW-5 and other members of the raiding party entered the house of the respondent and asked him whether he had received any money from PW-1. Prosecution alleges that the respondent admitted having received the said amount and on being told by PW-5 he brought the said money from his bed-room and when his hands were tested for the presence of phenolphthalein powder with water, same proved positive. Prosecution further alleges that the proceedings were drawn up which were attested by PW-4 and it is based on the said investigation that the respondent was charged for offences as stated above.

While the prosecution mainly relies on the evidence of PWs.1 to 5 the respondent in his defence examined 9 witnesses to establish his innocence. It was the defence case that the stage of issuing work order had not been reached because the contract in question was yet to be accepted by the Municipal Council or the Collector who was in-charge of the Council then, hence question of demanding bribe did not arise at all. The defence had further pleaded that the respondent was being falsely implicated because he was opposing a cartel of contractors in Sangareddy who were using unfair means to obtain contracts and also because of the enmity he had with PW-3 who was an Engineer in the said municipality and was supporting the said cartel. It is the further case of the defence that at the instance of PW-3 a trap on false allegations was laid. The defence in support of its case also examined the Collector of the District to show that the contract was not ready to be executed. Defence also examined an attendant of respondent's office to show that PWs.1 and 2 did not come to the office of the respondent on the morning of 24.4.1987. It further examined witnesses to show that PW-2 was inimically disposed towards the respondent because of a prior criminal complaint lodged by the respondent against his relative. In his statement recorded under section 313 Cr.P.C. the respondent had pleaded that because of the enmity the contractors and PWs.1, 2 and 3 had with him, a false case of trap was set up on 24.4.1987. He also stated that in fact PWs.1 and 2 had come to his house when he was not in the house on the pretext of making a telephone call and had entered the bed-room and had stealthily kept the tainted money under the mattress and after the respondent came home for lunch, PW-1 came and shook hand with him for a favour which the respondent had supposedly shown to him. That is how his fingers came in contact with the phenolphthalein powder. The trial court after considering the material on record came to the conclusion that the prosecution has established its case and rejecting the defence case found the respondent guilty of an offence punishable under section 161 IPC and section 5(1)(d) read with section 5(2) of the Act and awarded the sentence of one year RI on each of the counts but directed the sentences to run concurrently.

In appeal the High Court of Andhra Pradesh took a contrary view and came to the conclusion that the prosecution has failed to establish beyond reasonable doubt its case against the respondent hence allowed the appeal. In that process the court came to the conclusion that there was evidence to support the defence case regarding the existence of a cartel of contractors which used to corner tenders by unethical means and the same was opposed to by the respondent, hence the contractors in Sangareddy had a good reason to falsely

implicate the respondent. It also came to the conclusion agreeing with the trial court, that the Municipal Engineer PW-3 had enmity with the accused and had all the reason to join hands with the said contractors hence his evidence cannot be relied. The High Court also came to the conclusion that the occasion for demanding bribe as on 14.4.1987 or 24.4.1987 did not arise because though there was only one tender for the works advertised by the Municipality, the same had not yet been accepted and the agreement having not being executed, the stage for awarding the work order had not reached, therefore, there could not have been a demand for any bribe. The High Court also noticed the fact that if really the respondent had demanded a bribe from PW-1 he would not have accepted that in the presence of PW-2 because admittedly PW-2 had some enmity with the respondent because of a criminal complaint lodged by him against a close relative of PW-2. Thus High Court noticing the improbabilities in accepting the bribe gave the benefit of doubt and allowed the appeal of the respondent, setting aside the conviction and sentence awarded by the trial court.

In this appeal, Ms. K Amareshwari, learned senior counsel appearing for the appellant-State contended that the High Court has seriously erred in rejecting the prosecution case especially that of PW-5 the officer who conducted the raid and PW-4 an official of the Department of Engineering who had no enmity with the accused whose evidence established beyond reasonable doubt that the amount in question was paid to the respondent on 24.4.1987. She also contended that even if the evidence of PWs.2 and 3 are to be ignored evidence of PWs.1, 4 and 5 are sufficient to base a conviction on the respondent.

Having heard learned counsel for the parties and having perused the records, we are unable to accept the argument addressed on behalf of learned counsel for the appellant. We think the High Court was justified in coming to the conclusion that the contract for which PW-1 had offered his bid was only under consideration and was not finally accepted therefore, the question of the respondent agreeing to give the work order on payment of bribe did not arise. The High Court was also justified in coming to the conclusion that on 24.4.1987 between 11 a.m. and 1 p.m. respondent was not in his office hence the prosecution case that PWs.1 and 2 approached him in his office on that day to pay the bribe cannot be accepted. The High Court was also justified in coming to the conclusion that no reasonable man would have agreed to accept the bribe in the presence of PW-2 who admittedly had a grievance against the respondent. These findings, in our opinion, are based on material on record and there is no perversity involved in the conclusions arrived at by the High Court in regard to these findings. Though learned counsel for the appellant is justified in contending that PWs.4 and 5 are independent witnesses hence their evidence ought not to have been rejected by the High Court, in our opinion the fact that they are independent witnesses ipso facto does not establish the prosecution case that the respondent demanded or received a sum of Rs.400 in the form of tainted currency notes on the said date. Their evidence only establishes the fact that when they entered the house, Rs.400 was recovered from under the mattress in the bed-room of the respondent and on testing the respondent's hand tested positive for having handled the tainted money. This evidence even if it is accepted as true would not lead to an irresistible conclusion that this money was received by the respondent as bribe money because of the explanation given by the respondent wherein it is stated that the money in question was kept in advance by PWs.1 and 2 before his arrival in the house

and he was asked to bring that money by PWs.4 and 5 when they came to his house which he did. Because of his handling the currency, he came in contact with the phenolphthalein powder. Bearing in mind the findings of the High Court in regard to the genesis of this bribery demand we think the explanation given by the respondent by way of defence and supported by evidence cannot be rejected as improbable or far-fetched.

In this view of the matter, we find no merit in this appeal. The appeal fails and the same is hereby dismissed.

JUDIS