

CASE NO.:
Appeal (crl.) 1009 of 2002

PETITIONER:
State, C.B.I., Hyderabad

RESPONDENT:
Edwin Devasahayam

DATE OF JUDGMENT: 13/07/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. This appeal is directed against the judgment rendered by a learned Single Judge of the Andhra Pradesh High Court, directing acquittal of the respondent (hereinafter described as 'accused'). The Trial Court, i.e., Special Judge for C.B.I. Cases, Hyderabad in Calendar Case No.80 of 1996, had held the respondent guilty of offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (in short 'the Act'), while directing his acquittal in respect of the offence punishable under Section 13(2) read with Section 13(1)(d) of the Act. He was sentenced to undergo rigorous imprisonment for six months and also to pay a fine of Rs.1,000/- with default stipulation.

2. The prosecution version, as unfolded during trial, is as follows:

The accused herein is a public servant. He demanded a sum of Rs.300/- from PW-1, a Traveling Ticket Examiner in South Central Railway on 11.1.1995 and accepted the same on 16.1.1995 at 5.40 p.m.

PW-1 was working as TTE in South Central Railway and the accused was working as Assistant Commercial Manager, Ticket Checking Division. He was the controlling authority of PW-1, who joined in Railway service in the year 1981 as Clerk in Hubli Division. In the year 1989-1990 he was promoted as Ticket Collector. The performance of PW-1 was not satisfactory. Therefore, he was repatriated to Hubli Division. However, the accused cancelled those orders. The accused was not granting leave to PW-1. During January 1995, PW-1 went to the accused with an application to grant leave for 10 days. Then the accused asked whether he has taken the charge-sheet issued against him. Thereupon, PW-1 replied that it was not served on him but he collected the same from the Chief Ticket Inspector's office. Ex. P.1 is the charge sheet dated 10.1.1995.

After receiving the charge sheet, PW-1 went to the office of the accused and explained him orally about the charges leveled against him. The accused told PW-1 that he was prepared to grant leave if he gives explanation to the charges in writing immediately. PW-1 refused to give explanation immediately. The leave application given by PW-1 was torn

away by the accused stating that he would pass the orders of repatriation.

On 12.1.1995 PW-1 met the accused and asked for cancellation of repatriation orders and also for leave. Then the accused allegedly demanded a sum of Rs.300/- as consideration for the work. PW-1 left the office of the accused saying that he will get the money.

On 14.1.1995 PW-1 was present at Sankranti Mela organized by Rail Nilayam. The accused was also posted there. In the Mela the accused asked PW-1 whether he brought full money. PW-1 replied that since the banks were closed, he could not get the money and that he would pay the money after the banks reopen.

On 16.1.1995 PW-1 went to PW-8, the CBI Inspector. On the basis of the complaint given by PW-1, he registered the case in R.C. 2 (a)/95, Hyderabad against the accused. Ex. P.14 is the FIR. PW-8 took up further investigation. He mobilized two persons to act as mediators for the trap. On 16.1.1995, he prepared first mediators report Ex. P.5 in the presence of trap party which included the mediator PW-2 and other CBI officers. PW-2 was instructed to accompany PW-1 to give a signal by wiping the face when the accused accepts the money.

The trap party proceeded to the office of the accused at about 5 p.m. At about 5.25 p.m., PWs. 1 and 2 entered into the office of the accused where the other members of the trap party stood outside the office. At about 5.40 p.m. PW-2 came out of the office and gave pre-arranged signal. The entire trap party entered into the office. PW-8 questioned the accused who told him that money was kept in the left side shirt pocket. When questioned by the trap party, the accused told them that the money was returned as hand loan taken by PW-1 from him on 15.1.1995 in the presence of PW-3. After complying with all formalities, the second mediator's report Ex. P-7 was prepared. PW-8 seized M.Os. 1 to 5 and other documents during the trap. PW-8 investigated into the matter and thus on completion of investigation, the charge sheet was filed.

3. After investigation, charge sheet was filed. The defence of the accused was of total denial and, therefore, the trial was conducted. On behalf of the prosecution, 8 witnesses were examined and certain documents were exhibited as exhibits P.1 to P.14. On behalf of the accused one witness was examined. On consideration of the evidence on record, the trial court, as noted above, found the respondent-accused guilty. The trial court did not find any substance in the stand of the accused that there was defect in the sanction accorded. It was urged that the Secretary Railway Board/Director could not have signed/issued the order of sanction. The trial court held that the Secretary was competent to sign/issue the order. It was also the stand of the accused that since the Secretary was not examined to prove the sanction order, therefore, it was fatal to the prosecution. This plea was also not accepted by the trial court. It was noted that PW-7, who was well conversant with the Secretary's signature, and had knowledge of the sanction order (Exhibit P.13) had been examined. He was the then Joint Director (Vigilance) of the Railway Board. A categorical finding was recorded that the Railway Board which was the authority to accord sanction had, in fact, accorded sanction under Section 19(1) of the Act for prosecution of the accused. The entire record along with self-contained note was

put up by the Secretary and the Member (Traffic) Board approved the same. One Member of the Board was competent to give sanction. The trial court noted that a reading of the sanction order prima facie shows that there has been application of mind and all the relevant materials have been examined by the concerned officer. The trial court also noted that non-examination of the sanctioning authority is not fatal when the sanction order contained details showing application of mind by the concerned authority. The non-examination of the Secretary of the Railway Board was held to be not vulnerable. On merits also, the trial court found that the accusations against the respondent have been established. In the appeal filed, it was contended by the accused that the entire file had not been placed before the Board and the evidence of PW-7 established the same. The High Court noted that with reference to the materials on record it was satisfied that the accused was guilty of accepting the bribe and was liable to be punished for offence punishable under Section 7 of the Act, but on technical ground that the entire record was not placed before the Railway Board or its President, the sanction was held to be defective.

4. Learned counsel for the appellant submitted that the High Court having accepted that materials on record are sufficient to establish the accusations, should not have interfered with the well-reasoned order of the trial court holding the accused guilty. The issue relating to sanction was examined at length by the trial court. It was held that the Secretary was authorized to sign/issue the order. The Board alone was competent to accord sanction. PW-7 had in categorical terms stated that it was not necessary for the entire Board to sit and take a decision and only the Member (Traffic) was the competent authority who could have and had, in fact, accorded sanction for prosecution. It was also specifically stated that one Member of the Board can sit as the Board as per the Board's Rules. There was no material before the High Court to come to the conclusion that the entire record was not placed before the Board. On the contrary, with reference to the evidence of PW-7 and the materials on record the trial court had held that all relevant records were placed before the Board. Learned counsel for the respondent submitted that PW-7 had accepted that he had not produced the rules authorizing the Secretary to sign the sanction order. It was also submitted that if the sanction itself is defective, the trial is vitiated.

5. It is to be noted that before the trial court the stand of the respondent was in relation to the authority of the Secretary to sign the sanction order. The trial court, after analyzing the materials on record, came to hold that the Secretary had the authority. Before the trial court there was no plea raised that the relevant records were not placed before the Board. The plea relating to lack of authority of the Secretary appears to have been given up before the High Court and what seems to have been urged is that the relevant records were not placed before the Board. The trial court had categorically noted that all the relevant records were placed by the Secretary before the Member (Traffic). Without indicating any basis for the conclusion that records were not placed for consideration, the High Court could not have drawn an adverse conclusion that the relevant records were not produced before the Board.

6. Though learned counsel for the respondent urged that nothing was shown to substantiate the stand that Member

(Traffic) could act as the Board, the same has no substance. In the re-examination, PW-7 has categorically stated that it was not necessary for the entire Board to sit and, as per the Board's Rules, the Member (Traffic) was authorized and competent to accord sanction. There was no cross-examination. Provisions contained in Section 19(3) of the Act also need to be noted. The principles relating to alleged defect in sanction have been highlighted by this Court in Central Bureau of Investigation v. V.K. Sehgal and Anr. (1999 (8) SCC 501) and Shankerbhai Laljibhai Rot v. State of Gujarat (2004 (13) SCC 487). Learned counsel for the respondent has placed great emphasis in State Inspector of Police, Vishakhapatnam v. Surva Sankaram Karri (2006 (7) SCC 172) more particularly in paragraphs 25 and 26 thereof. There is no quarrel with the principles laid down in that decision. But, on facts of the present case, it has not been shown that there was any defect in the sanction and the High Court was not justified in taking a contrary view. This being the position, the order of the High Court is unsustainable and is set aside and that of the trial court is restored.

7. The appeal is allowed accordingly.