

CASE NO.:
Appeal (crl.) 709 of 1999

PETITIONER:
V. RADHAKRISHNA REDDY

RESPONDENT:
STATE OF A.P.

DATE OF JUDGMENT: 11/01/2005

BENCH:
B.P. SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

B.P.Singh, J.

Delay condoned.

Application for substitution is allowed.

In this appeal by special appeal the judgment and order of the High Court of judicature of Andhra Pradesh at Hyderabad dated 20th November, 1998 in Criminal Appeal No.196/94 has been challenged.

The High Court by its impugned judgment and order affirmed the conviction of the appellant under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'). The High Court upheld the sentence of one year rigorous imprisonment under Section 7 of the Act but reduced the sentence of one and a half years under Section 13(1)(a) read with Section 13(2) of the Act to one year rigorous imprisonment.

The facts of the case are that at the relevant time the appellant was In-charge General Manager of the District Industries Centre at Ongole. His co-accused was an Attender in the District Industries Centre.

The case of the prosecution is that PW-1 Samapathkumar wanted to set up a small scale industry and for that purpose he was required to apply for registration of the industry as a small scale industry. On 29.7.1991 at 10.00 A.M. he met the appellant in his office, who demanded a sum of Rs.200/- for granting him the requisite certificate. On the persuasion of PW-1 he reduced the amount to Rs.150/-. Similarly, the co-accused who was a Attender in the same office initially demanded Rs.30/- and later reduced the sum to Rs.20/- for getting the certificate signed and issued from the office.

On the very next day i.e. 30th July, 1991 the complainant PW-1 went to the Deputy Superintendent of Police, Anti Corruption Branch and lodged a report, but the same was not registered immediately. On the following day, however, i.e. on July 1, 1991 a first information report was registered and a trap was arranged by DSP,ACB PW-5. Thereafter, PW-1 went to the office of the appellant and after handing over the marked currency notes to the appellant as well as to the co-accused gave a signal pursuant to which DSP,ACB PW-5 who was waiting outside for a signal, entered the room of the appellant and recovered tainted currency notes from the right side pocket of his trousers. In fact, the appellant himself took out the currency notes and handed them over to PW-5. Similarly, the tainted currency notes were recovered from the co-accused. At that time the appellant gave the explanation that the amount had been paid to him towards payment of challan. It is stated before us that every application made for the

registration of a small scale industrial unit has to be accompanied with a challan of Rs.50/- being the fees payable on such application.

The appellant as well as co-accused A-2 were put up for trial before the Special Judge for SPE & ACB Cases, Nellore. The trial court after considering the evidence of witnesses produced by the prosecution including the evidence of PW-1 Samapathkumar and the DSP, ACB PW-5 found the appellant guilty of the offences with which he was charged and sentenced him to undergo one year's rigorous imprisonment and to pay a fine of for Rs.500/- under Section 7 of the Prevention of Corruption Act. In default of payment of fine, he was to undergo imprisonment for one month. Under Section 13(1)(d) read with Section 13(2) of the Act, the appellant was sentenced to undergo one and a half years rigorous imprisonment and to pay fine of Rs.500/- in default to undergo one month's imprisonment. The trial court, however, acquitted the co-accused A-2 of the charges levelled against him.

The State of Andhra Pradesh as well as appellant herein preferred appeals before the High Court. The High Court by its impugned judgment and order affirmed the conviction of the appellant while reducing the sentence to one year under Section 13(1)(d) read with Section 13(2) of the Act. The appeal preferred by the State against the acquittal of A-2 was rejected.

In this appeal, it was contended by learned counsel appearing on behalf of the appellant that PW-1 Samapathkumar is in fact, a journalist. He was not a bona fide applicant interested in setting up a small scale industry. He only wanted to get the appellant involved in a criminal case out of personal grudge. It was submitted that another journalist namely, one Prasad had misbehaved with one Chander Shekhar, who was working in the office of the District Industrial Centre and since the aforesaid Chander Shekhar had reported the matter to the appellant herein, the appellant had forwarded his complaint to the police for registration of a case. For this reason PW-1 bore a grudge against the appellant and he got him falsely involved in this case. Learned counsel also drew our attention to the explanation offered by the appellant in the course of investigation as also his statement under Section 313 Cr.P.C. The explanation furnished by the appellant was that PW-1 had indeed approached him for filing an application for registration of the unit which he intended to set up as a small scale industry. He had not demanded any amount from him by way of illegal gratification. On the date and time in question he had given him three currency notes of Rs.50/- each. The amount payable by way of challan was only Rs.50/- for one application. However, PW-1 left his office leaving the three currency notes on his table stating that he shall be making two more applications and that he shall come back within half an hour with those two applications. So saying PW-1 Samapathkumar left his chamber and thereafter re-entered his chamber along with DSP, ACB PW-5. He has also explained that since the amount had been kept on a corner of the table, it fell on the ground and he picked up the currency notes and put them in his pocket.

It thus appears that the appellant had not denied the fact that PW-1 gave him a sum of Rs.150/- which was recovered from his pocket by PW-5.

The only question which arises for consideration is whether the amount was paid to him by way of illegal gratification or it was paid for any other lawful purpose. The sole question, therefore, is whether the explanation offered by the appellant can be accepted.

We do not attach much importance to the fact that PW-1 may not be a genuine

applicant for registration of a small scale industrial unit. That fact is wholly immaterial in judging the guilt of the appellant. PW-1 has stated that he had met the appellant on 29.7.1991 at 10.00 A.M. and the appellant had made the demand. On the next day, he had reported the matter to the police and thereafter, on 31st July, 1991 a trap was arranged and the amount was recovered from him.

The explanation offered by the appellant is most unconvincing. If an applicant is required to pay a sum of Rs.50/- by way of fee on the application for registration of a small scale industrial unit, the same has to be paid in the treasury under a challan. It is unbelievable that an applicant would go to the General Manager of the District Industrial Centre and pay him in cash the amount which is required to be deposited in the treasury with a challan. Apart from this, the fact remains that the sum recovered is Rs.150/- and not Rs.50/- which was the fee payable for one application. The explanation of the appellant is that Rs.100/- had been paid to him in advance for two applications which were yet to be made. The explanation is wholly unconvincing and there appears to be no special reason for the appellant to show such a favour to the complainant PW-1. In normal course it was expected that the applicant would deposit the amount in the treasury and file a receipted challan with his application for registration of his small scale industrial unit.

We have, therefore, no hesitation in rejecting the explanation offered by the appellant as has been done by the courts below. We, therefore, find no reason to set aside the conviction and sentence passed against the appellant.

It was stated before us that the appellant died on 17th May, 2004 and his legal representatives have been brought on record. Since the result of this appeal may affect the payment of dues to the family of the appellant, the legal representatives have pursued this appeal before this Court.

In the result, this appeal is dismissed.

We may, however, observe that no counsel appeared for the State of Andhra Pradesh in this matter to oppose the appeal.