

CASE NO.:
Appeal (crl.) 1309 of 2007

PETITIONER:
K. Subba Reddy

RESPONDENT:
State of Andhra Pradesh

DATE OF JUDGMENT: 28/09/2007

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

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 1309 OF 2007
(Arising out of SLP (Crl.) No. 6306 of 2005)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment rendered by a learned Single judge of the Andhra Pradesh High Court upholding the conviction of the appellant punishable under Section 7 of the Prevention of Corruption Act, 1988 (in short the 'Act'). The appellant had faced trial along with another accused and for the sake of convenience he is described as A-2 hereinafter. Both the accused persons were convicted for the offence punishable under Section 7 of the Act and sentenced to undergo rigorous imprisonment of one year each and to pay a fine of Rs.1,000/- with default stipulation. They were, however, acquitted of the other charges.
3. Sans unnecessary details, the prosecution version as unfolded during trial is as follows:

A-1 worked as an Excise Sub Inspector, at Mydukur, Cuddapah District and A-2 worked as a Home Guard. PW.1 is the de facto complainant. His father by name Subba Reddy was running a wine shop at Mydukur known as "Eswara Wines" since 1987. PW.1 obtained a license to run another wine shop known as "New Eswara Wines" and was running the said wine shop. He was assisting his father in the said business. On 7.2.1988 the enforcement wing of the Excise Department raided the shop of his father in his presence. The raiding party found some stock without license. A case was registered against PW.1 and his father and it ended in conviction in April, 1994. They preferred an appeal and it was pending at the relevant point of time. On 27.4.1994 the Excise Superintendent issued a show cause notice to PW-1 for cancellation of license issued in his favour. On 3.5.1994 A.1 sealed his shop pursuant to the directions of the Excise Superintendent. On 4.5.1994 PW-1 sent Ex.P4 reply, which was received by the Excise Superintendent under Ex.P5 acknowledgement. Subsequently, PW.1 filed W.P. No. 9460 of 1994 before the High Court seeking a direction for the release of the stock seized by A.1 from his shop known as "New Eswara Wines". The High Court passed an order on 11.5.1994 in W.P.M.P. No. 11535 of 1994, in favour of PW. 1, directing the excise officials to release the seized stocks. On 15.5.1994

PW.1 approached the Superintendent of Excise along with the order of the High Court for the release of the stock. On the same day, the Excise Superintendent directed A.1 to open the seal of the shop and handover the stock to PW.1. PW.1 approached A-1 to remove the seals and to open the doors of the shop. At that time A-1 demanded Rs. 5,000/- towards bribe for opening the seals and when PW.1 expressed his inability, A.1 reduced the amount to Rs.3,000/-. Though A.1 opened the shop by removing seals, he refused to give the stock register unless and until the bribe of Rs.3,000/- is paid. PW.1, who had no inclination to pay the bribe to A.1, preferred Ex.P-10 complaint to Anti Corruption Bureau (for short 'ACB') officials on 16.5.1994. On the same day, PW.7 and members of the trap party reached the office of A-1 at about 5.00 p.m. Immediately, PWs. 1 and 2 went to A.1. When A-1 demanded the bribe, PW.1 told him that the money was ready, but A-1 told him to come on the next day i.e. 17.5.1994 and further told that in case he goes for checking of shops, the amount may be paid to A.2, i.e. the present appellant. On the next day i.e. 17.4.1994 at about 11.30 a.m. PW-1 met PW-2 enquiring about A-1 and A-2 came and asked PW-1 to give the bribe of Rs. 3,000/- as demanded by A-1. Accordingly, PW-1 paid the amount to A.2. A.2 counted the notes, kept the amount in his left pocket. Subsequently, the amount was recovered from A-2 and the phenolphthalein test conducted on the fingers of both the hands and the left pant pocket of A-2 proved positive. PW-8 after completion of investigation laid the charge sheet. Charges were framed. Appellant denied the charges and claimed for trial.

4. The prosecution in order to establish the guilt of the accused persons examined 8 witnesses and marked 23 documents and produced 9 material objects. As noted above, the trial Court considering the oral and documentary evidence recorded the conviction. Before the trial Court the prosecution referred to the evidence of PW-1 who claimed that as per the instructions of A-1 money was handed over to A-2. A-1 denied the demand and acceptance of the bribe and pleaded that PW-1 paid the amount to A-2 to hand over the same to one person namely, Subbarayudu for the purpose of remitting the same to the treasury. The trial Court held that the tainted money was delivered to A-2 and it was recovered from A-2. Accordingly, both A-1 and A-2 were guilty. The High Court by the impugned order upheld the conviction of the two accused persons.

5. In support of the appeal, learned counsel for the appellant submitted that no definite role was ascribed to the present appellant and no material has been adduced to show that A-2 had any knowledge that the money was being paid to A-1 as bribe. There is not even any suggestion, much less, no evidence to show that A-2 had any knowledge that he was being used as a conduit for the purpose of payment of bribe to A-1. It is, therefore, submitted that the conviction is not maintainable.

6. Learned counsel for the State on the other hand submitted that the connected SLP (Crl.) No.2113/2006 filed by A-1 has been dismissed. Though there is no direct evidence about the knowledge of A-2-the present appellant about the money being bribe to A-1, it can reasonably be inferred from the background facts that he was actually a conduit and the money was paid to him and he was asked to hand over the same to A-1. On the contrary, the totally unaccepted plea that money was to be paid to somebody else has been raised which has been rightly rejected by the trial Court and the High

Court. The evidence of PW-1 is of vital importance.

7. There is no material to show about the knowledge of A-2 regarding the money being bribe. He had offered the explanation that the money was to be paid to Subbarayudu. In this connection, reference is made to the evidence of PW-1. He has only stated that A-1 asked him to hand over the money to A-2 if he had gone out for checking of shops.

8. Appellant (A-2) at the relevant point of time was working as a Home Guard. He was assigned different duties at different places. It is accepted in the cross examination by PW-1 that there is no Sub-treasury at Mydukur and if anybody wants to remit money to the Government, one has to go out to different places. It is also accepted that there is a practice of giving money to some boys working in the shops or some places to remit the money to the Government treasury at different places indicated by the shop owners. It was also accepted that Subbarayudu was a person who used to remit the amount to Government on behalf of shop owners. It is the accepted position that the present appellant had no role to play in the return of the stock register. It is the prosecution case that A-1 had wanted the bribe to be paid for the return of the stock register.

9. Above being the position, the material is not sufficient to hold the appellant guilty. His conviction is accordingly set aside. He was released on bail pursuant to the order of this Court dated 27.2.2006. His bail bonds shall stand discharged.

10. The appeal is allowed.