

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL APPEAL No.270 OF 2008

Between:

State, rep. by Inspector of Police, Anti-Corruption
Bureau, Prakasam District, Ongole.

(Through the Standing Counsel-cum-Spl. Public
Prosecutor for ACB Cases).

.... Appellant/Complainant.

Versus

1) Sri P.Ch. Ranga Reddy, S/o A. Mallareddy,
Aged 59 years, Retired Sub-Inspector of Police,
Komarole Police Station, Prakasam District.

2) Konda Narisireddy, S/o Nandi Reddy, aged 59 years,
Retired Police Constable No.238, Komarole Police Station,
Prakasam District.

... Respondents/Accused Officers.

DATE OF JUDGMENT PRONOUNCED : 13.12.2023
SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

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|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to see the
Fair copy of the Judgment? | Yes/No |

A.V.RAVINDRA BABU, J

*** HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

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Prakasam District.

... Respondents/Accused Officers.

! Counsel for the Appellant : Sri S.M. Subhani.

**^ Counsel for the Respondents : Sri Sreekanth Reddy Ambati
for Respondent No.1 and
Sri Suresh Kumar Reddy
Kalava, for Respondent No.2.**

< Gist:

> Head Note:

? Cases referred:

This Court made the following:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

CRIMINAL APPEAL No.270 OF 2008

JUDGMENT:

This Criminal Appeal is directed against the judgment of acquittal, dated 04.08.2007, in Calendar Case No.34 of 2002, on the file of the Court of Special Judge for SPE and ACB Cases, Nellore (for short, 'the learned Special Judge'), whereunder the learned Special Judge acquitted the Accused Officer No.1 for the charges under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act and acquitted the Accused Officer No.2 for the charges under Sections 7, 12 and 13(1)(d) R/w. Section 13(2) of the PC Act.

2. The parties to this Criminal Appeal will hereinafter be referred to as described before the trial Court, for the sake of convenience.

3. The State, represented by Inspector of Police, Anti Corruption Bureau, Prakasam District, Ongole filed charge sheet in Crime No.11/ACB-NPK/2000 of ACB, Nellore Range alleging the offences under Sections 7, 12 and 13(1)(d) R/w. Section 13(2) of the Prevention of the Corruption Act, 1988 (for short, 'the PC Act') against the Accused Officers. The case of the prosecution, in brief, according to the charge sheet averments, is as follows:

(i) Potireddy China Ranga Reddy, Accused Officer-1 (AO-1), worked as Sub-Inspector of Police in Komarole Police Station, Prakasam District from 10.07.1999 to 18.10.2000 and Konda Narsireddy, Accused Officer-2 (AO-2), worked as Constable in the same Station from 12.06.2000 to 18.10.2000 and they are '*public servants*' within the meaning of Section 2(c) of the PC Act.

(ii) Sallagolusula Nageswara Rao (LW.1) is a worker in the wine shop named M/s. Venkata Raghavendra Company, Komarole, Prakasam District belongs to one Sare Sesha Narasimhanaidu (LW.2). Prior to 15.10.2000, AO-1 visited the wine shop of LW.2 and demanded LW.1 to pay monthly *mamools* so as to run their business without any obstruction. On 15.10.2000, he again visited the shop and demanded the *de-facto* complainant (LW.1) to pay Rs.3,300/- towards monthly *mamools* for running liquor business for which LW.1 questioned him as to why he has to pay the demanded amount. AO-1 threatened him that he will be in trouble. Complainant intimated the incident to LW.2, owner of the shop, who instructed him to report the matter to the ACB officials. Basing on the report of the complainant, LW.11 - the DSP, ACB registered the same as a case in Crime No.11/ACB-NPK/2000 of ACB, Nellore Range. The DSP, ACB conducted pre-trap proceedings. During the post-trap proceedings

on 18.10.2000, when the complainant went to Komarole Police Station and approached AO-1, he asked the complainant whether he brought the demanded bribe amount and when the complainant replied in positive, he instructed him to handover the amount to AO-2 – Police Constable. Then, complainant approached AO-2 and AO-2 received Rs.3,300/- from LW.1, counted the same with his both hands and kept in his pant right side pocket. LW.1 intimated to AO-1 that he paid the demanded amount to AO-2. Then, complainant came out from the Police Station and relayed pre-arranged signal. Immediately, the DSP, ACB along with other raid party members rushed into Komarole Police Station. LW.1 informed the DSP, ACB as to what happened. The tainted amount of Rs.3,300/- was recovered from the ground under the Writer's table as AO-2 has thrown out the same on seeing the ACB raid party. The particulars of the currency notes were tallied with the currency notes mentioned in the pre-trap proceedings and chemical test was conducted to both hand fingers of AO-2, which gave positive result. Further, the inner linings of right side pant pocket of AO-2 also yielded positive result. AO-1 was present in his office room adjacent to the room of AO-2 and the test conducted to both hand fingers of AO-1 yielded negative result.

(iii) The Government of Andhra Pradesh accorded sanction to prosecute the AO-1 and A-2 in a competent Court of law *vide* G.O.Ms.No.236-Home (SC.A Dept.) dated 08.08.2002 and G.O.Ms.No.348-Home (SC.A Dept.) dated 11.11.2002. Hence the charge sheet.

4. The learned Special Judge took cognizance of the case under the above provisions of law. After appearance of the accused officers and on complying Section 207 Cr.P.C, the learned Special Judge framed charges under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act against AO-1 and framed charges under Sections 7, 12 and 13(1)(d) R/w. Section 13(2) of the PC Act against AO-2 and explained the same to them in Telugu for which they pleaded not guilty and claimed to be tried.

5. In order to establish the guilt against the accused officers, the prosecution, during the course of trial, examined PWs.1 to PW.9 and marked Exs.P-1 to P-19 and MOs.1 to MO.8. Ex.D-1 was marked on behalf of the defence.

6. After closure of the evidence of the prosecution, AO-1 and AO-2 were examined under Section 313 Cr.P.C with reference to the incriminating circumstances appearing in the evidence let in

by the prosecution for which they denied the same. However, AO-1 filed his written statement under Section 313 Cr.P.C along with the certified copies and xerox copies of FIRs and charge sheets.

7. The learned Special Judge, on hearing both sides and after considering the oral and documentary evidence on record, exonerated both the Accused Officers of the charges framed and accordingly acquitted them under Section 248(1) Cr.P.C.

8. Felt aggrieved of the same, the unsuccessful State, represented by Inspector of Police, ACB, Prakasam District, Ongole filed the present Appeal.

9. Now, in deciding this Criminal Appeal, the points that arise for consideration are as follows:

1) Whether the prosecution before the trial Court proved that AO-1 and AO-2 are '*public servants*' within the meaning of Section 2(c) of the PC Act and whether the prosecution obtained a valid sanction to prosecute them under Section 19 of the PC Act?

2) Whether the prosecution before the trial Court proved that AO-1 demanded PW.1 to pay the bribe amount of Rs.3,300/- and on the date of trap, accepted

the same through AO-2 and further committed misconduct within the meaning of Section 13(1)(d) R/w. Section 13(2) of the PC Act?

3) Whether the prosecution before the trial Court proved that AO-2 facilitated the commission of offence in collusion with AO-1 and whether he committed the offences under Sections 7, 12 and 13(1)(d) R/w. Section 13(2) of the PC Act?

4) Whether the prosecution proved the charges framed against the AO-1 and AO-2 beyond reasonable doubt and whether there are any grounds to interfere with the impugned judgment of the learned Special Judge?

POINT No.1:

10. Insofar as this point is concerned, the evidence of PW.7 coupled with Exs.P-15 and P-16 sanction orders goes to prove that the sanctioning authority on due application of mind accorded sanction to prosecute the AO-1 and AO-2. The positive findings made by the learned Special Judge in this regard are not under challenge by learned counsel for the respondents/accused officers during the course of hearing. However, a careful perusal of the evidence of PW.7, coupled with Exs.P-15 and P-16 proves that

both the AO-1 and AO-2 are public servants and the prosecution obtained a valid sanction to prosecute them.

POINT Nos.2 to 4:

11. Sri S.M.Subhani, learned Standing Counsel for ACB-cum-Special Public Prosecutor, would contend that PW.1 supported the case of prosecution. He spoke about the demand made by AO-1 prior to the trap and on the date of trap for monthly *mamools*. PW.2 and PW.3 – Police Constables, who were present at the time of post-trap, did not support the case of prosecution. PW.5, who was a clerk in the wine shop of PW.4 also did not support the case of prosecution. Unfortunately, even PW.4, the owner of the wine shop, also turned hostile to the case of prosecution. However, PW.1 in this regard spoke of the demand made by AO-1 prior to the trap and on the date of trap and that he accepted the bribe amount through AO-2. Both hand fingers of AO-2 when they were subjected to chemical test yielded positive result. Even the inner linings of his trouser also yielded positive result. The learned Special Judge, on erroneous appreciation of the evidence on record, extended an order of acquittal. Merely because there were some criminal cases registered by AO-1 against PW.1, PW.4 and his associates, it does not mean that the evidence of PW.1 is to be

disbelieved. He would further submit that the prosecution adduced sufficient evidence so as to prove the guilt as such the judgment is liable to be interfered with.

12. Sri Sreekanth Reddy Ambati, learned counsel for the respondent No.1 (AO-1), would contend that by virtue of Ex.D-1, the representation made by AO-1 to the Vigilance Commissioner, Hyderabad after the trap and by virtue of the Para wise remarks obtained by the Director General, ACB from PW.9 under Ex.P.18 and Ex.P.19, it is clear that many cases were filed by AO-1 against PW.1, PW.4 and his associates for violation of law. So, there was every possibility for PW.1 and PW.4 to take course against AO-1 to implicate him in a false case. Ultimately, PW.4 realized about his mistake and did not support the case of prosecution. The evidence of PW.1 was held to be not believable by the learned Special Judge. Prosecution did not establish the nexus between the AO-1 and AO-2. AO-1 had nothing to do with the allegations raised against AO-2. The learned Special Judge on thorough appreciation of the evidence on record, exonerated AO-1 of the charges framed against him as such the Appeal is liable to be dismissed.

13. Sri Suresh Kumar Reddy Kalava, learned counsel for the respondent No.2 (AO-2), would contend that AO-2 had nothing to

do with the allegations raised against AO-1. In fact, on the date of trap, when PW.1 happened to visit the Police Station, AO-2 served summons on PW.1 in connection with a criminal case and obtained his signatures and this fact was not disclosed by PW.1 during the post-trap and he admitted the same in his cross-examination. The tainted amount was not recovered from the possession of AO-2 and it was alleged to have been recovered on ground underneath a table. Purposefully, PW.1 kept the amount on ground after putting his signature on the served summons and as PW.1 had conducted to phenolphthalein powder on the tainted amount, possibility of the phenolphthalein substance on his hands coming into contact with the hands of AO-2 while serving summons cannot be ruled out. Learned Special Judge made findings that the Investigating Officer did not test the surface/ground where the tainted amount was found lying. The learned Special Judge with proper reasons extended an order of acquittal, which is not liable to be interfered with. The findings of the learned Special Judge were supported with proper reasons. Hence, the Appeal is liable to be dismissed.

14. As seen from Ex.P-1, the allegations were that prior to 15.10.2000 and 15.10.2000 the AO-1 visited the wine shop of

PW.4 in which PW.1 was working as a clerk, demanded him to pay the monthly *mamools* of Rs.3,300/- for which he refused and he intimated the same to his owner and the owner instructed him to lodge a report with the ACB officials. This is the substance of the allegation.

15. Coming to the evidence of PW.1, he spoke of the facts about the manner in which AO-1 was alleged to have demanded bribe and his lodging Ex.P-1 report. His evidence relating to the post-trap proceedings is that when he approached AO-1 during the post-trap, AO-1 was doing something in his room. He asked him whether he brought the money demanded by him. He replied in positive. AO-1 directed him to pay the amount to AO-2 – Police Constable. Then, he went to AO-2 and informed to him that he has to receive the amount as directed by AO-1. Firstly, AO-2 told him that he can pay the amount to AO-1 and ultimately he received the amount. He came back and informed AO-1 that he paid the amount to AO-2. While he was coming out, AO-2 called him and handed over the summons by obtaining his signature. Then, he came out and relayed a pre-arranged signal. So, admittedly, PW.1 supported the case of prosecution.

16. Now, coming to the evidence of PW.2 and PW.3 – Police Constables, who were said to be present in the Police Station, turned hostile to the case of prosecution. Though, they testified arrival of PW.1 to the Police Station but they claimed that they do not know as to what happened. Apart from this, PW.4, owner of the wine shop, totally turned hostile to the case of prosecution. According to him, PW.1 never complained against AO-1 and AO-2 and he is not at all concerned with the wine shop because PW.5 – Palakurthi Srinivasa Rao and Ramayanapu Chanti took the wine shop from him on lease and were running the same. Admittedly, the evidence of PW.1 is not corroborated by the evidence of PW.2 to PW.5.

17. Now, the Court has to consider as to whether the uncorroborated evidence of PW.1 in the facts and circumstances can be a basis to sustain the conviction. During the course of evidence of PW.9 – Trap Laying Officer, admitted about Ex.D-1 – representation made by AO-1 to the Commissioner, Vigilance, Hyderabad, expressing his grievance that PW.1 and PW.4 colluded with ACB officials and implicated him falsely. The Director General of Police, ACB called for para wise remarks from the Trap Laying Officer and the said remarks were marked under Exs.P-18 and P-

19. The contents of Exs.P-18 and P-19 about the factum of registration of several cases by AO-1 against PW.1 or PW.4 or their close associates, as the case may be, are not in dispute. In Ex.P.18 P.W.9 at para No.3 stated as follows:

“It is a fact that Sri P.Ch. Rangareddy, S.I. (A.O.1) registered number of cases against S.S. Narasimha Naidu, Owner of Venkata Raghavendra Wines, Komarole and against friends and relatives of Sri S. Nageswara Rao (Complainant) prior to trap. AO.1 arrested Sri S.S. Narasimha Naidu, owner of the wine shop on 28.4.2000 in Cr.No.19/2000, U/s 324 & 379 IPC and A.O.1 also laid charge sheet in the court in the said case during July, 2k. Further Sri S.S.Narasimha Naidu, owner of the wine shop also figured as accused in Cr.No.47/2000, U/s 447, 427, r/w 34 IPC of Komarole P.S. dated 23.9.2000 registered by A.O.2. Further, there were number of cases pending against the friends and relatives of S. Nageswara Rao (complainant) vide Cr.Nos.9/2000, 24/2000, 31/2000, 34/2000 and 41/2000 by the time of trap. In those cases A.O.1 effected arrests by serving notices on complainant being the relative of arrested persons in token of arrest effected by him and the complainant personally signed the notices. As such, there is ample scope to A.O.1 to claim that it was a motivated case.”

In Ex.P.19, PW.9 gave the particulars of the cases registered against PW.4 and the relatives of PW.1 as follows:-

“Particulars of cases against Sare Sesa Narasimha Naidu (Wine shop Owner):

1) Cr.No.19/2000 U/s 324, 379 R/w.34 IPC: This case was registered on 16.4.2000 by SHO, Komarole PS on the statement given by Nagi China Bala Raju of Chinthalapalli village, Komarole Mandal against Sare Sesa Narasimha Naidu (Wine shop owner) and 7 others. The A.O. being the SI, Komarole arrested 7 accused persons including S.S. Narasimha Naidu (Wine shop owner) on 28.4.2000 and sent them for remand. The AO charged the case on 29.4.2000 and it is in PT stage vide CC No.803/2000 in the Court of Judicial First Class Magistrate, Giddalur.

2) Cr.No.47/2000 U/s 447, 427 R/w.34 IPC: This case was registered by the accused officer being the SI, Komarole P.S. on 23.9.2000 on the report given by K. Subbamma of Gonepalli, Komarole Mandal. According to FIR Gone Pandu and 5 others were shown as accused and during first investigation Sri P.Ch. Ranga Reddy, SI, Komarole added Sri S.S. Narasimha Naidu (Wine shop owner, Komarole) as 7th accused. Subsequently the case was charged on 13.4.2002 and it is in PT stage.”

“Particulars of cases against friends and relatives of Sallagolusula Nageswara Rao, S/o Peda Guravaiah, (complainant in ACB Case) investigated by accused officer :
Prior to Trap incident:

1. Cr.No.9/2000 U/s 431, 447 IPC: This case was registered on 25.2.2000 by the A.O on the report given by MRO, Komarole. Jangala Peddi Raju and Jangala Bala Raju of Muttupalli (V), Komarole (M) are the friends of Sri S.

Nageswara Rao (Complainant). The A.O. arrested both the accused on 23.3.2000 and a notice was served on the complainant (S. Nageswara Rao) at the time of arrest being known persons to the accused. The A.O. charged the case on 27.3.2000 and the same was in PT stage vide CC No.66/2000 in the court of JFCM, Giddalur.

2. Cr.No.24/2000 U/s 324 R/w 34 IPC: It was registered by SHO., Komarole PS on 30.5.2000 on a statement given by Sk. Khadar vali of Dwarakacherla (V), Komarole (M) against accused Batthula Ranga Swamy and 3 others of same village. The A.O. arrested the all the accused on 5.6.2000 and sent them for remand. As per case diary Sri S. Nageswara Rao (Complainant) was issued notice by AO while effecting arrests of the accused being the known person to the accused. The case was in PT stage vide CC No.802/2000 (charged on 11.7.2000).

3. Cr.No.31/2000 U/s 324 R/w 34 IPC: It was registered by SHO, Komarole PS on 31.3.2000 on the statement given by Sk. Khasim bee of Dwarakacherla (V) against the accused Tandra Subbarayudu, Tandra Srinu, Tandra Venkateswarlu of the same village. The AO arrested the above accused on 13.7.2000 and sent them for remand. Out of the accused Tandra Srinu is the cousin of S. Nageswara Rao (complainant). Though the AO filed charge sheet in the said case on 31.7.2000 the same was not yet taken on file by the Court due to some technical remarks.

4. Cr.No.41/2000 U/s 147, 148, 324, 307 R/w 149 IPC: It was registered by AO on 11.8.2000 on the statement given by Sk. Khadar Vali of Dwarakacherla (V), against the

accused Tandra Peda Subbarayudu and 21 others of same village. The A.O. arrested 22 accused persons on 22.8.2000 and sent them for remand. Out of arrested accused brother-in-law of complainant Sri Bontha Subbarayudu, nephew of complainant Bontha Subba Rao and cousins of complainant Tandra China Venkateswarlu and Sallagolusula China Guravaiah were involved. The AO served a notice to the complainant informing about the arrests of 22 accused persons on 22.8.2000 being the relative/known person to the accused.

5. Cr.No.35/2000 U/s 107 Cr.P.C: It was a bind over case filed by the A.O., against Battula Ranga Swamy and 7 others of Dwarakacherla village who are the relatives/friends of the complainant S. Nageswara Rao.”

18. So, it is a case where the AO-1 registered several cases against PW.1 or PW.4 or their kith and kin and their close associates. So, naturally PW.1 and PW.4 had every reason to develop grouse against AO-1. It is altogether a different aspect that PW.4 turned hostile to the case of prosecution. As evident from the cross-examination part of PW.1, though he had to admit registration of certain FIRs but he pretended ignorance as if he does not know. So, the evidence on record warrants the Court to scrutinize the evidence of PW.1 with great and care and caution. When Ex.P-1 speaks of that, AO-1 allegedly directed PW.1 to pay the bribe either to him or to the station writer, it is not known how

PW.1 ventured to pay the amount to Police Constable, merely because he was directed to do so. Absolutely, there is no corroboration to the testimony of PW.1.

19. Now this Court has to look into the genuineness or otherwise of the trap. On the date of trap, the case of the prosecution is that PW.1 paid the amount to AO-2 and he dealt with the same with his both hands and kept it in his right trouser pocket.

20. It is to be noted that the tainted amount was alleged to be recovered from the ground underneath a table. The amount was not recovered from AO-2 physically. The evidence of PW.6 – mediator to the pre-trap and post-trap proceedings and the evidence of PW.9 – Trap Laying Officer means that AO-2 has thrown out the tainted amount on seeing the trap party. It is to be noted that on receipt of the pre-arranged signal, the ACB trap party was in hurry to rush into the Police Station. Till they entered into the room of AO-2, they had no occasion to look into as to what AO-2 was doing in the room. Their evidence that AO-2 has thrown away the amount on the ground and that they witnessed the same cannot stand to any reason. Their evidence as if they witnessed AO-2 throwing the amount to ground is nothing but

improbable. It is to be noted that the post-trap proceedings did not disclose that after paying the alleged tainted amount to AO-2, AO-2 served summons on PW.1 in connection with a criminal case and obtained his signatures but it is during chief-examination, he disclosed the same. In cross-examination, on behalf of AO-2, PW.1 deposed that when he went into the room of AO-2 along with tainted currency notes, AO-2 served summons in C.C. No.100 of 1999 on the file of the JMFC, Giddalur, wherein he was cited as a witness and obtained his signature on the back of the summons. He obtained his signature on the office copy of the summons after serving summons to him. He may file it before the Court. Immediately after serving summons, he obtained his signatures and kept the office copy of the summons in the right side pocket of his pant. This is the categorical admission made by PW.1 during his cross-examination. He further made an admission that, according to him, he gave tainted amount to AO-2 after he served summons to him. It is to be noted that the evidence let in by the prosecution that the mediator and trap laying officer witnessed AO-2 throwing the amount to ground can be ruled out. Now, AO-2 has to probabalize as to why his both hands and right side trouser pocket yielded positive result. When it was the categorical evidence of PW.1 in cross examination that he signed on the office copy of

the summons and AO-2 took the same and kept it in his right side trouser pocket, there was every probability that the hands of PW.1 might touch the paper on which he signed thereby there was a scope for contacting of phenolphthalein powder from the hands of PW.1 into the office copy of summons. So, when AO-2 kept the served summons into the right side trouser pocket, there is every possibility that the inner linings of the pant of AO-2 may yield positive result. So, virtually as the evidence was lacking that amount was recovered from the physical possession of AO-2, various circumstances referred to above probabilize a theory that AO-2 might have contacted with phenolphthalein powder to his hands and to his right side trouser pocket during the course of service of summons to PW.1.

21. It is to be noted that, according to the case of prosecution, strict instructions were given to PW.1 by the trap party to act strictly in accordance with the instructions without any deviations. PW.1 had every knowledge that his hands contacted with phenolphthalein substance prior to the so-called payment of tainted amount to AO-2 or after payment of tainted amount. When that is the situation, he was not supposed to put his signatures on the papers, when requested by AO-2. The theory of signing

summons was not introduced during the course of post-trap proceedings. In anticipation of the defence by AO-2 as the amount was not recovered from his physical possession, this theory was pressed into service, during the course of chief-examination because service of summons by AO-2 on PW.1 was born out by the record. So the manner in which the amount was recovered from AO-2 is not believable. Apart from this, crucial link is missing in the evidence to prove the nexus between AO-1 and AO-2. Evidence is lacking that AO-2 was aware of the alleged demands made by AO-1 to PW.1 to pay the monthly *mamools*. The learned Special Judge rightly appreciated the entire evidence on record with great care and caution and made findings that the case of prosecution is not believable. The findings made by the learned Special Judge were supported with tenable and proper reasons. The findings were not at all un-reasonable.

22. Having regard to the above, I am of the considered view that, absolutely, the judgment of the learned Special Judge is on thorough appreciation of the evidence on record and it is not liable to be interfered with. Prosecution failed to prove the charges framed against the AO-1 and AO-2 beyond reasonable doubt. The

learned Special Judge rightly exonerated AO-1 and AO-2 of the charges.

23. In the result, the Criminal Appeal is dismissed.

Consequently, Miscellaneous Applications pending, if any, shall stand closed.

JUSTICE A.V.RAVINDRA BABU

Date: 13.12.2023
DSH