R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

CRIMINAL APPEAL NO. 861 OF 2014 (C)

BETWEEN:

MR. B.M. VENKATAPPA
S/O MELEGOUDA,
AGED ABOUT 58 YEARS,
SECOND DIVISION ASISTANT,
OFFICE OF THE DIRECTOR,
EMPLOYEES STATE INSURANCE,
R/O B-7, ESI QUARTERS,
FRAZER TOWN,
BANGALORE.

NOW R/O NO.130/A, 12TH MAIN,
2ND CROSS, NAGENDRA BLOCK,
HANUMANTHA NAGAR,
BANGALORE- 50.

...APPELLANT

(BY SRI PARAMESHWAR N. HEGDE, ADVOCATE)

AND:

STATE OF KARNATAKA
THROUGH KARNATAKA LOKAYUKTA POLICE,
BANGALORE,
REPRESENTED BY S.P.P,
HIGH COURT OF KARNATAKA,
BANGALORE- 01.

...RESPONDENT

(BY SRI. B.S. PRASAD, SPL. COUNSEL FOR LOKAYUKTA)

THIS CRL.A. IS FILED UNDER SECTION 374(2) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 30.09.2014 PASSED BY THE XXIII ADDL.C.C. AND S.J., AND SPL. JUDGE, LOKAYUKTHA COURT, BANGALORE IN SPL.C.C.NO.116/2008- CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 7 AND 13(2) OF THE PREVENTION OF CORRUPTION ACT, 1988.

THIS CRIMINAL APPEAL HAVING BEEN RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT, DELIVERED/PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR)

The present appeal is filed under Section 374 of Cr.PC challenging the judgment of conviction and order of sentence passed against the accused by the XXIII Addl. City Civil and Sessions Judge and Special Judge, Bengaluru City, sitting at CCH No.24 as per the judgment dated 30th September 2014 in Spl.CC No.116/2008 wherein the appellant accused was found guilty of committing the offences under Section 7, 13(2) of the Prevention of Corruption Act, 1988 (in short 'the Act').

2. After concluding the investigation, charge sheet came to be registered as Special CC No.116 of 2008. The accused/appellant is sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- and in default of payment of fine, to undergo simple imprisonment for a period of one month for the offence punishable under Section 7 of the Act. He is also sentenced to undergo rigorous imprisonment for a period of one year and a pay a fine of Rs.500/- and in default of payment of fine to undergo simple imprisonment for a period of one month for the offence punishable under Section 13(2) of PC Act. Even set off is also given with regard to the period undergone by the accused in judicial custody as provided under Section 428 of Cr.PC.

3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4. To bring home the guilt of the accused, prosecution has examined in all, five witnesses from PWs. 1 to 5 and got marked Ex.P1 to P21 with respective

signatures and also MO nos. 1 to 12. The case of the accused is one of the total denial of the allegations made against him. The accused was questioned under Section 313 of Cr.PC after closure of the evidence of prosecution. He emphatically denied the existence of any possibility to do any official favour to the complainant and also the alleged demand and receipt of tainted amount. The accused also made defence evidence by examining two witnesses his own officials by name Narasegowda and Panduranga in the shape of DWs. 1 and 2. None of the documents are marked on behalf of the defence.

5. PW.1 Krishne Gowda is the complainant who has filed the complaint against the accused. PW.2 Dr.Raheemunnisha is the Sanctioning Authority to prosecute the accused who has issued sanction as per Ex.P15. PW.3 is the shadow witness who accompanied complainant PW.1 at the time of trap. PW.4 T.V.Sathya Prasad is also a witness to both pre-trap and post-trap panchanamas and PW.5 Prasanna V Raju is the IO.

6. The prosecution has mainly relied on the following circumstances:

i) The Accused was a storekeeper in the office of ESI and to do official favour in the matter of supplying the required injection prescribed by the Doctor of NIMHANS hospital to be injected to the complainant.

ii) There was a demand made by the accused to pay the bribe of Rs.1000/- in the matter of supply of injection from the ESI Department.

iii) Receipt of the alleged tainted amount of Rs.1,000/- from the complainant in the ESI office itself.

iv) Demand and receipt of the tainted amount by the accused in his office.

7. The learned counsel for the appellant-accused has submitted his arguments contending, inter alia, amongst others, the grounds urged in the appeal memo that there was absolutely no scope to do any official favour to the

complainant by this accused. There was a prescription supplied by the NIMHANS hospital that was to be supplied by the Government. Therefore, the complainant approached the accused, being the storekeeper of the ESI Department and gave a requisition. According to him, as there was no supply of such injection, to get such injection, the time was required. Therefore, the same was conveyed to the complainant, but he forced the accused to supply the same immediately and forcibly thrust the amount into the pocket of the accused by hatching a plan to falsely implicate him. He is innocent. It is argued that the material witnesses have not supported the prosecution case. The main ingredient of alleged demand and receipt of bribe amount from complainant PW.1 is not at all proved.

8. Learned counsel for the appellant accused further argued that the prosecution has failed to prove the receipt of a bribe amount of Rs.1,000/- by the accused in his office. The material witnesses have not supported the

demand and acceptance of the bribe amount. The very trap is a farce and is opposed to the provisions of Art.20 of the Constitution of India. It is submitted that the foundation laid by the prosecution is very weak and the evidence does not even prove its case, much less the proof beyond reasonable doubt. It is alternatively contended that the prosecution has failed to prove the receipt of bait money being preceded by demand. The learned counsel for the appellant relied upon several decisions in support of his contentions raised during the course of his arguments.

9. The learned counsel for the respondent Sri.B.S.Prasad, representing Lokayukta, has argued that the inconsistencies here and there found in the prosecution case cannot be blown out of proportion to throw the case of the prosecution out of the Court. He submits that a proper explanation has not been given by the accused with regard to the receipt of tainted money in view of the presumption that is available under Section 20

of the Act and that the same is not done. It is argued that receipt of Rs.1,000/- by the accused to do official favour of supplying injection is proved by the prosecution. It is argued that the presence of a shadow witness with the complainant even at the time of preparation of pre-trap and post-trap panchanama clinchingly establishes that there was a demand to favour the complainant to pay Rs.1,000/- to supply the government-supplied injection. The shadow witness has spoken about his presence all along and he has withstood the rigor of cross-examination. It is his submission that the trial Court was right in convicting the accused and sentenced him accordingly. It is further submitted that the judgment of conviction and order of sentence is neither opposed to law nor facts nor prababilities. According to him, the trial Court has adopted the right approach to the real state of affairs. Thus, he submits to dismiss the appeal.

10. I have given my anxious consideration to the arguments of both side. Meticulously perused the records.

In view of the rival submissions, the points that arise for consideration are as under:

i. Whether the prosecution has established that the accused, being the Government servant, is expected to supply the Government-supplied injection worth Rs.9000/- demanded bribe amount from the complainant to supply the same and thereby put a demand for bribe?

ii. Whether prosecution has proved beyond reasonable doubt that accused had demanded PW.1 to pay R.1,000/- as bribe and receipt by the accused was preceded by the demand, as contemplated under Section 7 of the Act?

iii. Whether the trial Court is justified in convicting and sentencing the accused for the offences for which he was charged?

iv. Whether any interference is called for by this Court in so far as sentence of

imprisonment and fine is concerned and if so, to what extent?

11. The aforesaid points require common discussion as they are mixed up with each other, i.e., a finding to be given on one point has a direct bearing on another point; therefore, they are discussed together; however, a separate finding is given on each point.

12. So far as demand is concerned, the scope for demanding a bribe by a public servant would arise if there is a possibility of doing any official favour. Therefore, the prosecution is under obligation and is expected incidentally to make out a case that the accused had the opportunity to do official favour and therefore demanded Rs.1,000/- from the complainant Krishne Gowda, examined as PW.1 to supply Botex injection, which was costing Rs.9,000/- It is expected to make out a case that there was a demand and acceptance of the tainted money by the accused. So far, the position of the accused as a government servant working in the ESI Department . as

storekeeper is not in dispute. That means he is a government . servant defined under the provisions of IPC. In a trap case relating to the role of a public servant receiving bribe money, the prosecution is expected to discharge the initial burden to prove that the public servant in question had capacity to do some official favour in order to demand bribe and that the said bribe amount was received only after demand as stated under Section 7 of the Act. The Hon'ble Apex Court in ***State through Inspector of Police, AP vs. K.Narasimhachary*** reported in ***AIR 2006 SC 628*** specifically held that the Court is expected to look into closely as to whether the accused had the official role to play in order to do an official favour. As per the facts of this case, as brought on record, in the cross examination, the accused was a storekeeper and has to recommend the supply of Botex injection as prescribed by the doctors of NIMHANS to the complainant. This fact is also admitted by the accused. The only defence of the accused is that forcibly the complainant put the tainted money in his hands.

13. The allegation of the accused, as could be seen from the charge framed by the learned trial Court is that the accused, being the public servant had demanded a bribe of Rs.1,000/- to supply the Botex injection prescribed by the Nimhans doctor to the complainant. As stated above, in order to make such a demand, the public servant must have an opportunity to do some official favour to the complainant, since that could be the main foundation/ground for demanding a bribe. Therefore, in the case on hand, it is just and relevant to know whether the prosecution is able to establish such a demand and thereby there was acceptance of tainted money by the accused.

14. PW.1 Mr.Krishnegowda at the relevant time, was working as Security Supervisor Group-4S Security Services (India) Pvt. Ltd., Indiranagar. As per his evidence, he had suffered a problem regarding neurology; therefore, he approached the doctors at NIMHANS Hospital and consulted them. The doctors advised him to

take a Botex injection, which cost Rs.9000/-. A letter was addressed to the ESI Hospital to provide such an injection to him. Accordingly, he went to the director of ESI, wherein he was asked to approach the accused, the storekeeper working in ESI at that time.

15. In turn, this accused asked the complainant to arrange for documents and told that to supply the said injection it would take six months and demanded Rs.1,000/- bribe, stating that he required to give the same to the doctor, Accounts Office. It is stated by the complainant that he was not interested in paying the bribe amount; therefore, he decided to lodge a complaint before the Lokayukta. Accordingly, on 4.10.2007, he lodged a complaint as per Ex.P1 under his signature. It is his evidence that on going through the complaint, the Police Inspector Lokayukta secured two witnesses from the Government Dept. as PW.3 and 4 and introduced the complainant to them and also explained the contents of the complaint. He was asked to produce an amount of

Rs.1,000/-. Accordingly, he produced two Rs.500/- denomination notes. The witness so called wrote the Sl.Nos of currency notes on the paper, which is marked at Ex.P2, thereafter phenolphthalein powder was smeared on currency notes. It was verified by a witness. A seal was prepared. Even the sodium carbonate solution was prepared in the Lokayukta office, which was marked at MO No.1. When the witness smeared the phenolphthalein powder was asked to dip his hands in another bowl of solution, it turned into a light pink color. The IO has seized the same under MO No.2. The shadow witness Venkat Deshika, was asked to follow the complainant and IO gave some instructions.

16. It is his evidence that the photographs were taken as Ex.P1 to P5, and a panchanama was prepared as per Ex.P6. As per the instructions of the IO, the amount so demanded by the accused was given to the complainant and accordingly, all of them went to the office of the accused. Stopped at a distance of 500 feet

from the ESI Hospital, Rajajinagara. It is his further evidence that PW.3 Venkata Deshika was following him as a shadow witness. When they went to the office of the accused, it was noticed that the accused had gone for lunch. When he came back, he asked the complainant, by taking his name, whether he had come much earlier. Then the accused went to the chambers and sat on his chair. When complainant inquired about his injection, at that time, accused asked him whether complainant had brought money as demanded. The complainant gave a positive answer and handed over the amount of Rs.1,000/- which was kept in his pocket. It is his further evidence that, thereafter, he gave a pre-arranged signal by wiping his face with a kerchief to the trap officials at 3.15 p.m. Immediately, the trap officials came to the office of the accused and apprehended the accused by catching his hands. It was the complainant who showed the accused to the police inspector that he had demanded and received money. The hands of the accused were washed in the solution that was prepared there, which

turned a pink color. This PW.1 identified the said solution as MO No.3. Even the right hand of the accused was also washed and the solution is marked at MO No.4. The left hand was washed and there was no change of color. It was marked at MO NO.5. The IO has seized all these articles. He further states that when the accused was asked about the money, he removed the same from his pant pocket. The currency denomination was tallied with Ex.P2. The IO prepared the solution and the pocket portion of the accused was washed, which turned pink. The said solution was kept in a bottle, MO NO.6 and it was seized.

17. There the Police Inspector prepared the sketch as per Ex.P7, took photographs Ex.P8 to P11 and prepared the proceedings as per Ex.P12. When the Police Inspector asked for the explanation, the accused submitted the same as per Ex.P14. Even the hands of the complainant were also washed. PW.1 identifies the

currency notes and also handed over the metal seal when the said trap was conducted.

18. This PW.1 was directed with intensive cross-examination. So far as the prescription issued by the doctors of NIMHANS to purchase the injection, it is not in dispute. It is not in dispute that, the said injection could be supplied only from the ESI department as it is a Government supply. The accused was the concerned storekeeper of the ESI dispensary at Rajajinagar at the relevant time who was in charge of the said supply. A docket to that effect is also seized by the IO. That means with regard to the health condition of the complainant, his requirement of said injection is not at all disputed by the defence. According to the evidence of PW. 1, there were other officials in the office of the accused at that time; he does not know their designations. It is suggested to PW. 1 that himself and PW.3 together forcibly put currency notes MO No.11 to the right side pant pocket of the accused, but this suggestion is denied by this PW.1. The other facts

that are not relevant were brought our in the cross-examination. Throughout the evidence of PW.1, he is consistent about demand of bribe of Rs.1,000/- by the accused so as to get supply of said injection to the complainant. Even he had prepared the office notes to that effect. PW.2 Dr.Rahimunnisa sanctioning authority also corroborates about the role of the accused as a storekeeper. Based upon the requisition and on going through the records produced by the IO, she has issued sanction as per Ex.P15. She speaks about the movement of the file pertaining to the complainant. Thus, the evidence of PW.2 proves the role of the accused in the office of ESI.

19. PW.3 Venkata Deshika is none else than the shadow witness, who was very much present when pre-trap panchanama was prepared. He accompanied PW.1 and when he went to the office of ESI, in his presence there was a demand and acceptance of the bribe money by the accused. He identifies all the MOs as well as speaks

about conducting raid in his presence and in the presence of other panchas.

20. Though this PW.3 is directed with searching cross-examination, his evidence throughout the cross-examination is corroborative in nature with that of evidence of PW.1 and IO. Nothing worth is elicited from the mouth of this witness so as to disbelieve his version spoken in his examination in chief. There may be some minor contradictions and omissions brought on record in the cross-examination; in a case of present nature, such contradictions and omissions are bound to occur when the witnesses are examined belatedly. They will not shake the basic evidence of PWs. 1 and 2. Throughout his cross-examination, he is consistent about the demand and acceptance of bribe money by the accused. He is not an interested witness, to see that, the accused is being convicted and sentenced. He is also a Government servant having responsibility to the society and has

spoken before the Court. Therefore, the evidence of PW.3 is trustworthy and has to be accepted.

21. PW.4 T.V.Satyaprasad Pancha to Ex.P2, i.e., pre-trap panchanama, so also seizure of MOs who accompanied IO when the trap was conducted. Throughout his evidence, he speaks in line with the contents of his statement before the police, as well as the contents of panchanamas. He too has been cross-examined, but he has withstood the test of cross-examination. Where exactly there was a demand made by the accused and at what time the bribe money was given to the accused is spoken to by PW.3 and 4 in material particulars. Even it is stated that acceptance of money is recorded in Ex.P12. Therefore, evidence of PW.4 proves the demand and acceptance of bribe money by the accused in the manner stated in the complaint and other prosecution papers.

22. The evidence of these PWs. 1 to 4 is corroborated by the evidence of IO, who is examined as PW 5. He is

consistent about receipt of the complaint, conducting of pre-trap and post-trap panchanama, seizure of MOs, apprehension of the accused, seizure of bait money from the possession of the accused. He too has been cross-examined at length by the defence. But he is consistent about the procedure he has followed from the date of receipt of the complaint till filing of the charge sheet. To disbelieve the evidence of PW.5 except the bald cross-examination directed to him, nothing is brought on record. Therefore, evidence of PWs. 1 to 5, if cumulatively read, goes without saying that all these witnesses are consistent about the position of the accused, his demand and acceptance of bribe money and seizure of the same by the IO.

23. DW.1 and DW.2, the defence witnesses by name Narse Gowda and Panduranga, who were the pharmacist and SDA in the ESI Hospital office at Rajajinagar in Bengaluru, have deposed in favor of the accused, stating that there was no demand by the

accused, so also there is no acceptance of bribe money. But, in the cross-examination, they say that they do not know what transpired between the complainant and the accused at that time. Even DW.2 could not hear the conversation between the accused and those two unknown persons. They speak with regard to the trap conducted on the accused and the recovery of tainted money from the possession of the accused. Therefore, evidence of these DW.2 and 3 would not help the defence of the accused that there was no demand and acceptance of bribe money in the manner contended by him.

24. The learned trial Court considering the evidence of PWs. 1,3,4 and 5 and the seizure of tainted money from the possession of the accused, has categorically observed that the evidence is acceptable. The evidence of the Police Officer cannot be discarded merely because he is a police officer, whose evidence is corroborated by the evidence of other witnesses. As it is an offence under the provisions of the P.C Act, to dispel the presumption available under

Section 20 of the Act, the accused has to conduct a proper cross-examination. When there is a demand for illegal gratification, which is the *sina qua non* for the offence under the Act, it is true that mere recovery of tainted currency is not enough to establish the guilt. The recovery of the said tainted money from the accused is not disputed. The other evidence of PW.1 and PW.3 being the direct eyewitnesses about demand and acceptance of bribe money, coupled with the other corroborative evidence led by the prosecution, dispels the said presumption, which was available to the accused under Section 20 of the Act. Though the learned counsel for the accused relied upon various evidence and submitted that PW.1 is the interested witness, no animosity or ill will is established in between PW.3 and the accused to speak falsehood against the accused by the shadow witness. When the convincing evidence has been led by the prosecution about the commission of crime by the accused, it can very well be stated that, even re-appreciation of the evidence led by

the prosecution, one cannot come to a different conclusion than the conclusion arrived by the trial Court.

25. Therefore, the entire oral and documentary evidence placed on record by the prosecution points at the accused as guilty of committing the offence charged against him. I do not find any factual or legal error committed by the trial Court in coming to such a conclusion. Though the learned counsel for the appellant-accused vehemently submitted about the interestness of PW.1 Complainant and highlighted certain contradictions in the evidence led by the prosecution, those contradictions would not disprove the case of the prosecution. The witnesses so examined are consistent about the demand having been made by the accused.

26. The learned HCGP submits that it is usual practice in the office of ESI to demand bribes from the employees who seek encashment of medical bills, supply of medicines, etc. According to him, this is one of the

examples of exploiting the members of the ESI who approaching ESI to get the benefit from the Government.

27. In view of the facts and circumstances brought on record by the prosecution, the submission of the HCGP with regard to the affairs of ESI appears to be probable. Such an attitude of the employees in demanding bribe from the employees to do official favour has to be dealt with iron hands.

28. Now the question of sentence is concerned; as stated supra, the accused was sentenced to undergo rigorous imprisonment for a period of six months and pay a fine of Rs.500/- with default sentence for the offence under Section 7 of the Act and is also sentenced to undergo RI for a period of one year and pay a fine of Rs.500/- with default sentence for the offence punishable under Section 13(2) of the Act. This case is from the year 2007 and the trial was concluded in the year 2014. Already substantial time has elapsed, and the accused-appellant must have suffered physically, mentally and

even financially. With all this mental shock, he must be living. As per the cause-title of the trial Court judgment, his age is shown as 52 years as on the date of impugned judgment. Now he must have attained superannuation. Learned counsel for the appellant submits that, in view of the age of the criminal case against the appellant as well as his superannuation, some leniency may be shown in imposition of sentence.

29. In view of the facts and circumstances brought on record and also the time consumed for this litigation right from 2007 onwards, it is just and proper to show some leniency in the imposition of sentence. Therefore, looking to the aforesaid facts and circumstances, if the accused appellant is sentenced to undergo rigorous imprisonment for a period of three months for the offence under Section 7 and also six months rigorous imprisonment for the offence under Section 13(2) of the Act, it would meet the ends of justice. However, as ordered by the trial court, the accused is entitled to set off

for the period from 4.10.2007 to 6.10.2007, in which period he was in custody. Both sentences shall run concurrently.

30. So far as fine imposed by the trial Court is concerned, it shall remain unaltered.

Resultantly, I pass the following:

ORDER

i) Appeal is ***allowed in part***.

ii) So far as conviction of the accused for the offence under Section 7 and 13(2) of the Prevention of Corruption Act, 1988 is confirmed. However, there shall be modification in the sentence imposed by the trial Court.

iii) The accused shall undergo rigorous imprisonment for the period of three months for the offence under section 7 of the PC Act and to undergo RI for six months for the offence punishable under section 13(2) of PC Act, 1988.

iv) Set off is given under Section 428 of Cr.PC for the period of sentence already undergone by the accused-appellant.

v) So far as imposition of fine by the trial Court is concerned, it remains unaltered.

vi) The trial Court is directed to secure the presence of the accused in accordance with law and shall commit him to the prison to undergo sentence by issuing fresh conviction warrant.

vii) Send back the trial Court records along with a copy of this judgment forthwith.

viii) Send the operative portion of the order by through mail to the trial Court for compliance forthwith.

Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE

SK
List No.: 19 Sl No.: 5