

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 331 OF 2015
(Arising out of S.L.P.(CRL) No. 3565 of 2012)

T.K. RAMESH KUMAR ... APPELLANT(S)

VERSUS

STATE TR. POLICE INSPECTOR,
BANGALORE ...RESPONDENT(S)

O R D E R

Leave granted.

The appellant, who is aggrieved of the judgment and order of concurrent finding of conviction and sentence passed by the High Court of Karnataka for the charges under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act"), is under challenge in this appeal urging various legal contentions.

Firstly, the contention urged by Mr. V. Giri, learned senior counsel appearing on behalf of the appellant is that the demand of bribe made by the accused-appellant on 18.10.2003 with the complainant PW-1, as per Exhibit P-1, the complaint lodged by him with the Deputy Superintendent of Police, Karnataka Lokayukta, Bangalore on 21.10.2003. To prove this important material aspect of demand, the evidence of

PW-1 is not corroborated by examining the father of PW-1, who was with him at the time of alleged demand made by the appellant, therefore, the demand of illegal gratification alleged to have been made is not proved by the prosecution as required under Section 7 of the Act, and the question of payment of demand, acceptance and recovery of bribe money from the appellant to constitute an offence under Section 13(1) (d) of the Act to punish him under Section 13(2) of the Act is mandatory, the same is not proved by producing evidence on record and, therefore, conviction on the charges of the appellant is not legal and valid. He further submits that this view is consistently taken by this Court in catena of cases by interpreting Section 7 of the Act, the relevant decisions on this aspect will be adverted to in the reasoning portion of this order.

Secondly, he would contend that the first charge made by the learned Special Judge against the accused is that the accused has accepted Rs. 1,500/- as illegal gratification from PW-1 on 20.10.2003 as a reward to show an official favour to the complainant for the purpose of issuing Katha extract of the property and thereby the appellant has committed an

offence punishable under Section under Section 13(1) (d) of the Act, which charge made against the appellant did not survive for consideration before the trial court as well as the first appellate court. The essential ingredient of demand which is very much relevant for constituting an offence under Section 13(1)(d) of the Act is not proved by the prosecution. Alternatively, he made another submission that the charges made by the learned Special Judge for the offence under Sections 7 and 13(1)(d) of the Act is itself inconsistent with the material evidence collected by the Investigating Officer PW-6, therefore, the demand, payment and acceptance of illegal gratification are not proved. On this count also the finding of conviction is liable to be set aside and consequently the sentence imposed upon him also unsustainable in law.

Thirdly, the sanction accorded by PW-2, the employer, under the Karnataka Civil Services Rules, the Commissioner of Bangalore Mahanagara Palike ("BMP") in exercise of his statutory power under Section 19 of the Act to prosecute the appellant for the aforesaid offence after perusal of the material available for his consideration on the accusation that

the appellant has demanded illegal gratification of Rs. 2,000/- for issuing a Katha extract of the property to the *de-facto* complainant (PW1). He is examined as PW-2 by the prosecution before the trial court to prove the fact of sanction order and charges made against the appellant. At paragraph 5, in his evidence, he had spoken about the demand of bribe of Rs. 2,000/- by the appellant from the complainant for the purpose of transfer of Katha in respect of the property in favour of the complainant and his father jointly and for issuance of the extract of Katha Certificate in respect of the said property. Therefore, there is a material contradiction between the first charge framed by the learned trial Judge, the sanction order and evidence adduced by both PW-1 and PW-2, therefore, the finding of conviction for the aforesaid charges is wholly unsustainable in law.

Fourthly, the contention advanced by learned senior counsel for the appellant is that in the absence of positive evidence on record, the finding recorded by the trial court on the charges in its judgment that there is a demand made by the appellant with the complainant of Rs. 2,000/- as illegal gratification for issuance of the certified copy of Katha extract of

the property is contradictory with the allegations contained in the complaint Exhibit P-1 and the deposition of PW-1 before the trial court and the evidence elicited in the cross-examination of PW-1. These material aspects are not considered by the High Court while affirming the finding of demand of illegal gratification by the appellant from the *de-facto* complainant and his father and without proper reappraisal of evidence on record while exercising its appellate jurisdiction by the appellate court, and therefore, the concurrent finding of fact with regard to the demand of illegal gratification by the appellant is mandatory for the purpose of conviction under Section 13(1)(d) of the Act by the appellate court, therefore, the impugned judgment and order is vitiated in law and requested for setting aside the same.

Fifthly, learned senior counsel has brought to our notice that both the trial court and the appellate court have placed reliance upon Exhibit P-4, which is alleged to have been written by the appellant to the Police Inspector, Karnataka Lokayukta on 21.10.2003, the date on which the complaint was given by the complainant and the raid was also conducted on the

same evening, is hit by Section 25 of the Evidence Act and further invited our attention to the questions framed and put to the appellant under Section 313 CrPC statement with regard to this document wherein the appellant has categorically stated that it has been forcibly obtained from him by the police. Therefore, placing reliance on this document by the courts below to record a finding on the charges is erroneous in law and the finding recorded in this regard is liable to be set aside.

Per contra, Mr. V.N. Raghupathy, learned counsel for the respondent-State, made his submission controverting each one of the submission made on behalf of the appellant inviting our attention to the complaint Exhibit P-1, evidence of PW-1 and the findings recorded by the trial court on the charges as affirmed by the first appellate court in the impugned judgment contending that the same is based on legal evidence on record except some minor discrepancies in the evidence and the first charge framed by the trial court with regard to the date 20.10.2003, the same cannot be a ground for this Court to set aside the concurrent finding of conviction against the accused

on the aforesaid charges. Therefore, he submitted that the contention urged by the learned senior counsel on behalf of the appellant with regard to the demand made by the accused-appellant with the complainant is not proved is factually and legally not correct. He further contended that the trial court on proper evaluation of legal evidence on record with regard to Exhibit P-1, evidence of PW-1 coupled with the evidence of PW-2, PW-3 and PW-4, the demand of payment of illegal gratification with the complainant and acceptance of the same by the appellant is proved by producing the material evidence in this regard, therefore, the concurrent finding of fact recorded by the first appellate court in the impugned judgment in exercise of its appellate jurisdiction has rightly accepted the correctness of the finding of the trial court on the charges levelled against the appellant, it has properly reappreciated the evidence on record and concurred with the findings of fact on the charges levelled against the appellant, therefore, there is neither erroneous findings on the charges nor the same are vitiated in law, and therefore the impugned judgment and order of conviction and sentence do not warrant interference by this Court for the reason that

there is no miscarriage of justice in the case.

With reference to the aforesaid legal rival contentions, we have heard the learned counsel for the parties at length with reference to the complaint, the oral evidence of PW-1 and PW-2 and Exhibits P-4 and P-6 to examine the correctness of the findings recorded by the first appellate court on the charges framed against the appellant are proved or not. Further, on a careful perusal of the entire material evidence on record, particularly Exhibit P-1 and evidence of PW-1 and PW-2 on the question of demand of illegal gratification alleged to have been made by the appellant with the complainant and his father, as required under Section 7 of the Act to constitute an offence under Section 13(1)(d) of the Act, is required to be established by the prosecution which is mandatory as held by this Court in catena of decisions. In this regard we have examined the correctness of the finding of the trial court recorded in its judgment. The trial court placed strong reliance upon the evidence of the prosecution, namely, Exhibit P-1, the complainant and oral evidence of PW-1 to record a finding on the question of demand of illegal gratification made with the complainant by the

appellant, we have noticed in the complaint Exhibit P-1, which reads as follows:

"...On 18.10.2003 we have paid Rs. 125 for Katha extract charges and when we i.e., my father and me met Mr. Ramesh he further demanded a sum of Rs. 2000 to give Katha Extract. Lastly it was settled for Rs. 1500/-."

The above allegations made in the complaint by the complainant, Exhibit P-1 read with the evidence of PW-1, who is examined in the case by the prosecution, has stated that application dated 18.10.2003 for issuance of Katha Extract submitted by his father shown to him at the time of his deposition, further he has categorically admitted in his evidence that the same was submitted by them in the office on 18.10.2003, which is marked as Exhibit D-2 and further he has answered in the cross-examination that he does not know whether the said application is required to be placed before the Manager for his initial. Further, it is elicited from his evidence that the application, Exhibit D-2, it can be seen that there are two initials underneath dated 20th October is written and further he has admitted in his evidence that he did not know whether the said application was forwarded to the accused on 21.10.2003 after signature of the Manager

and Assistant Revenue Officer "A.R.O." The said evidence is very crucial to testify the veracity of the evidence of PW-1. If PW-1 is not definite in his evidence that the appellant had received the application of his father for issuing Khata extract in respect of his property on 21.10.2003, both the trial court as well as the first appellate court failed to evaluate and reappraise the aforesaid important piece of evidence on record which is very material for the purpose of recording a finding on the important aspect of demand of illegal gratification alleged to have made by the appellant with the complainant and his father on 18.10.2003 which is mandatory to record the finding on the charge under Section 13(1)(d) of the Act. In our considered view, the said approach adopted both by the trial court and the appellate court is not only erroneous but also error in law and, therefore, the finding recorded on the above aspect of demand of illegal gratification made by the appellant with the complainant and his father cannot be sustained in law. Therefore, submission of learned senior counsel that the finding on the charges against the appellant is erroneous for the reason that demand of illegal gratification by the appellant, as required under

Section 7 of the Act, with the complainant and his father for issuing Katha Certificate of the property is not established by the prosecution. His submission is well founded. The same must be accepted. In this regard it would be appropriate for this Court to refer to the decision of this Court in the case of Mukut Bihari & Anr. vs. State of Rajasthan, (2012) 11 SCC 642, which reads thus:

"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The

complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person."

If this important aspect of demand alleged to have made by the appellant with the complainant and with his father is not established then the other evidence of PW-2, PW-3 and PW-4 cannot be accepted for convicting the appellant for the aforesaid charges levelled against him.

Further, as could be seen from the finding and reasons recorded in the impugned judgment by the appellate court, in our considered view, it has not reappraised the evidence on record properly which is very important aspect of the matter, which we have noticed to set aside the concurrent finding of the appellate court on the charges in the impugned judgment as the learned Judge of the appellate court has failed to apply his mind properly to the charges, material evidence on record, particularly Exhibit P-1 and evidence of PW-1. As could be seen from Exhibit P-1 it is the case of complainant, PW-1 that the demand of illegal gratification from the complainant was made by the appellant in the presence of his

father. He was a crucial witness to be examined in the case by the prosecution at the time of investigation, whose evidence is not recorded by the investigating officer. Not recording his statement by the Investigating Officer is fatal to the case of the prosecution for the reason that the evidence of PW-1 in the backdrop of the allegation made in the complaint and the material evidence elicited on behalf of the appellant makes it abundantly clear that there is material contradiction in the allegations made against the appellant in Exhibit P-1 and evidence of the PW-1, in his evidence.

In view of the above conclusion arrived at by us after careful perusal of the evidence on record and law on the important aspect of demand of illegal gratification made by the appellant must be proved and the concurrent findings recorded by the High Court, and the submission made by Mr. Rathupathy that there is minor discrepancy with regard to the averments made in the complaint and the evidence of PW-1 and the first charge framed by the learned Judge having regard to the nature of the allegation of illegal gratification, demand and acceptance of the same proved to be correct by the prosecution on the basis

of phenolphthalein test to prove the acceptance of gratification money and recovery from the appellant, therefore, this Court need not interfere with the impugned judgment and order of the High Court. Therefore, the submission made by learned counsel on behalf of the State cannot be accepted by us as there is material contradiction and it is not minor discrepancy with regard to the complaint and the evidence on record, as urged by him. Reliance has been placed upon the decision of this Court in the case of *B. Jayaraj vs. State of A.P.*, (2014) 13 SCC 55, which reads thus:-

"8.. there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or

abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established"

(emphasis laid by this Court)

Further reliance has been placed upon the decision of this Court in C.M. Sharma vs. State of A.P., (2010) 15 SCC 1, which reads thus:

"23. We do not have the slightest hesitation in accepting the broad submission of Mr. Rai that demand of illegal gratification is sine qua non to constitute the offence under the Act. Further mere recovery of currency notes itself does not constitute the offence under the Act, unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe. In the facts of the present case, we are of the opinion that both the ingredients to bring the act within the mischief of Sections 7 and 13(1)(d)(ii) of the Act are satisfied."

Further, it is noticed that PW-2, the employer of the appellant, who is a seniormost IAS Officer, while exercising his statutory power under Section 19 of the Act is required to apply his mind very carefully while granting sanction to prosecute the appellant herein under the Act. He has accorded sanction for the prosecution of the appellant on the charges of demand and acceptance of illegal gratification by the appellant from the complainant for issuance of a Katha Certificate of the property. In the evidence of PW2

before the Special Judge at para 5 of his examination-in-chief he has categorically stated that the sanction was accorded by him for the prosecution against the appellant under Sections 7, 13(1)(d) read with Section 13(2) of the Act. The demand made for payment of illegal gratification for change of Katha as well as issuance of Katha Extract, this would clearly go to show that there is non application of mind on the part of the sanctioning authority for according sanction to prosecute the appellant on the above charges. On this count also the appellant must succeed. In this regard it would be useful to refer to the decision of this Court in the case of Mansukhlal Vithaldas Chauhan vs. State of Gujarat, (1997) 7 SCC 622, which reads thus:

19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any

extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution.

For the foregoing reasons, we are of the view that the impugned judgment and order of conviction and sentence is liable to be set aside and is hereby set aside accordingly. The appellant is on bail, he shall be discharged of his bail bonds.

.....J.
(V. GOPALA GOWDA)

.....J.
(C. NAGAPPAN)

NEW DELHI,
FEBRUARY 18, 2015

ITEM NO.1

COURT NO.11

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 3565/2012

(Arising out of impugned final judgment and order dated 18/01/2012 in CRLA No. 794/2006 passed by the High Court of Karnataka At Bangalore)

T.K.RAMESH KUMAR

Petitioner(s)

VERSUS

STATE TR.POLICE INSP.BANGALORE

Respondent(s)

Date : 18/02/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA

HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s) Mr. V. Giri, Sr. Adv.
Ms. T.S. Shanthi, Adv.
Mr. Prashant S. Kenjale, Adv.
Mr. Mohd. Sadique T.A., Adv.
Mr. Narendra Kumar, Adv.

For Respondent(s) Mr. V. N. Raghupathy, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order. The impugned judgment and order of conviction and sentence is set aside. The appellant is on bail, he shall be discharged of his bail bonds.

(S. K. RAKHEJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)