

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2241 OF 2009

GANESH

..APPELLANT(S)

VERSUS

THE STATE OF KARNATAKA

..RESPONDENT(S)

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Karnataka at Bangalore in Criminal Appeal NO.1081 of 2000, dated 16.10.2008, whereby and whereunder the High Court has set aside the order of acquittal passed by the Trial Court in Spl. C.C. No.110 of 1996, dated 27.05.2000.

2. The prosecution's case is as follows:

The appellant had been employed as a daily-wage literate assistant and was working at the post of Accounts Assistant and In-charge Superintendent under Karnataka Pulpwood Ltd., Bangalore. The complainant (PW-6), who had been employed as a driver at the same organization, had resigned and was to receive certain amounts payable to him, including gratuity, medical reimbursement and

encashment of earned leave. To that end, on 20.03.1995, the complainant met the appellant, who, in turn, demanded a sum of Rs.1,000/- from the complainant in exchange of sanctioning the said amounts. The complainant expressed his inability to pay such a large amount and the appellant agreed to receive Rs.500/- at the time and Rs.500/- after the amounts due to the complainant were sanctioned.

3. On the same day, the complainant filed a complaint before the Deputy Superintendent of Police, Lokayukta, City Division, Bangalore on the basis of which a case was registered as Crime No.11 of 1995. The pre-trap proceedings, including smearing the trap money with anthrocin powder, were completed. Immediately thereafter, the trap team proceeded to the appellant's office. The complainant, accompanied by an independent witness (PW-1), approached the appellant. On the complainant's signal, the trap team entered the appellant's office where the complainant identified the appellant and stated that he had demanded and received the bribe amount from him. The sodium carbonate test was conducted which gave a positive result. The bribe amount was seized, a trap

Mahazar was drawn and the appellant was arrested. Subsequently, on sanction for prosecution being received, the investigation was completed and a charge sheet was filed before the Trial Court.

4. Thereafter, on the appellant appearing before the Trial Court, charges were framed against the appellant for offences under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, "the Act"), to which the appellant pleaded not guilty. Consequently, the case was committed to trial.

5. The prosecution examined 9 witnesses and produced 20 documents and 15 material objects. While no evidence was adduced by the defense, the appellant's statement was recorded under Section 313(1)(b) of the Code of Criminal Procedure (for short, "the Code") wherein he denied the prosecution's case.

6. The Trial Court considered the evidence on record as also the arguments of the parties and noticed that there was no evidence on record to prove that the appellant was responsible for preparing bills for and sanctioning the

amounts due to the complainant and that the prosecution had only been able to show that the appellant had been given the additional responsibility of cash transactions. The Court rejected the appellant's contention that he was not a public servant within the meaning of the provisions of the Act. However, the Court observed that the testimony of the complainant was inconsistent with the allegations made in the complaint; that the testimonies of PWs 1, 2 (panch witness) and 6 contradicted each other; that there was no evidence on record to prove that the bribe amount had been seized from the appellant; that PW-1 was a stock witness for the prosecution and his testimony could not be relied on; and, that merely the testimony of the Investigation Officer (PW-9) was insufficient to establish the appellant's guilt. The Court further observed that the sanction for prosecution had been issued by the sanctioning authority (PW-5) mechanically and without due application of mind and, therefore, was invalid. Consequently, by its judgment dated 27.05.2000, the Trial Court acquitted the appellant.

7. Aggrieved by the said order of acquittal, the respondent-State approached the High Court in Criminal Appeal No.1081 of 2000.

8. By the judgment and order dated 03.07.2006, the High Court set aside the order of acquittal passed by the Trial Court, convicted the appellant for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Act and sentenced him to simple imprisonment for a period of three months, with permission to set-off the period already undergone.

9. Aggrieved by the judgment and order so passed by the High Court, the appellant are before this Court in Criminal Appeal No.843 of 2007. On a perusal of the judgments and orders passed by the Courts below, this Court concluded that the High Court had failed to record adequate reasons for setting aside the judgment of acquittal passed by the Trial Court. Therefore, by order dated 09.07.2007, this Court set aside the High Court's judgment and order and remitted the matter back to the High Court to be decided afresh in accordance with law.

10. By the impugned judgment and order dated 16.10.2008, the High Court re-appreciated the entire evidence on record and observed that the testimonies of the prosecution witnesses adequately proved the fact that the appellant had demanded a sum of Rs.1000/- and received a sum of Rs.500/- from the complainant as illegal gratification and that minor discrepancies in the same would not discredit the prosecution's case.

11. The High Court further observed that, though the appellant was not the sanctioning authority for the amounts due to the appellant, the testimony of PW-7 had proved the fact that the appellant was an official concerned with the sanction of the said amounts. The Court, relying on the testimony of PW-5, further rejected the appellant's contention that the sanction for prosecution was invalid.

12. The High Court concluded that the prosecution had been able to prove its case beyond reasonable doubt and therefore, by the impugned judgment and order, convicted the appellant for the offences under Section 7 and Section 13(1)(d) read with Section 13(2) and sentenced him to simple imprisonment for a period of one year and a

fine of Rs.1000/- for the offence under Section 7 and simple imprisonment for a period of six months and a fine of Rs.500/- for the offence under Section 13(1)(d) read with Section 13(2) of the Act.

13. Aggrieved by the judgment and order passed by the High Court, the appellant is before us in this appeal.

14. We have heard learned counsel for parties to the *lis*.

15. Learned counsel for the appellant would submit that the sanction for prosecution issued by PW-5 is invalid due to non-application of mind. The learned counsel would further submit that the factum of demand has not been proved in the present case and therefore, the appellant cannot be convicted for the offence under Section 7 of the Act. The learned counsel further submits that, even if an offence under Section 7 of the Act is made out against the appellant, the necessary elements of the offence under Section 13(1)(d) read with Section 13(2) of the Act have not been proved by the evidence on record and therefore, the appellant's conviction under Section 13(1)(d) read with Section 13(2) of the Act cannot be sustained.

16. Having considered the submissions made before us and having gone through the material on record including the judgments and orders passed by the Courts below, the appellant's case fails to convince us. On a perusal of the order of sanction for prosecution, we find that PW-5 had duly examined the documents before him and had issued the sanction for prosecution after due application of mind. Therefore, the sanction for prosecution cannot be said to be invalid.

17. As regards the learned counsel's second contention, proof of the *factum* of demand is necessary for the purpose of Section 7 only in cases where it is to be proved that the accused has "obtained" or for himself or any other person, illegal gratification. However, the precise terminology employed in Section 7 of the Act is "*accepts or obtains or agrees to accept or attempts to obtain from any person*". It is clear from a plain reading of Section 7 that mere acceptance of or agreement to accept the illegal gratification, will be sufficient to constitute an offence under Section 7 of the Act. However, where it has been proved that a public servant has demanded and accepted pecuniary advantage for himself

or another person, the offence under Section 13(1)(d) will be made out as well. Therefore, though the offences under Section 7 and Section 13(1)(d) are distinct, in certain fact situations, both offences can be made out.

18. In the present case, the High Court has correctly concluded that the evidence on record is sufficient to prove that the appellant had demanded and accepted illegal gratification from the complainant and is, therefore, guilty of the offences charged against him and we concur with the same.

19. In light of the aforesaid, we are of the considered opinion that in the instant case, no good ground exists for our consideration and interference. The appeal, being devoid of any merit, is liable to be dismissed and, is dismissed accordingly.

20. The appellant is currently on bail. The authorities are directed to take him into custody forthwith in order

to serve out the remaining period of sentence, if not already served.

Ordered accordingly.

.....CJI.
(H.L. DATTU)

.....J.
(ARUN MISHRA)

NEW DELHI,
SEPTEMBER 15, 2015.

ITEM NO.1

COURT NO.1

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

Criminal Appeal No(s). 2241/2009

GANESH

Appellant(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

(office report)

Date : 15/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr.Basava Prabhu S.Patil,Sr.Adv.
Mr. B. Subrahmanya Prasad,Adv.
Mr.Anirudh Sanganeria, Adv.
Mr.Chinmay Deshpande, Adv.
Mr.Amjid Maqbool, Adv.

For Respondent(s) Mr.Joseph Aristotle, S., Adv.
Ms.Priya Aristotle, Adv.
Mr.M.B.Elakkumanan,Adv.

Mr. Sanjay R. Hegde,Adv.(NP)

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

The appeal is dismissed and the authorities are directed to take the appellant into custody forthwith to serve out the remaining period of sentence, if not already served, in terms of the signed order.

(G.V.Ramana)
AR-cum-PS
(Signed order is placed on the file)

(Vinod Kulvi)
Asstt.Registrar