

SUPR EME COUR T OF I ND I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 817 OF 2006

N. RAJA KANTHAM Appellant (s)

VERSUS

STATE: INSPECTOR OF POLICE, A.P. Respondent(s)

(With appln(s) for bail and office report)

Date: 23/07/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Appellant(s) Mr. P.S.Patwalia,Sr.Adv.
Mr. Y. Raja Gopala Rao,Adv.
Mr. Y.Ramesh,Adv.

For Respondent(s) Ms. Altaf Fathima,Adv.
Mrs.D. Bharathi Reddy,Adv.

UPON hearing counsel the Court made the following
ORDER

The appeal is allowed in terms of the signed order.

[SUMAN WADHWA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.817 OF 2006

N. RAJA KANTHAMAppellant

Versus

STATE: INSPECTOR OF POLICERespondent

ORDER

The accused-appellant was, at the relevant time, working as a Senior
Accountant in the District Treasury Office, Warangal. On 4th June,
1991, a salary bill pertaining to 23 employees of Irrigation Division
No.2 amounting to Rs.43,178/- was submitted in the District Treasury

Office, Warangal. As per the prosecution story, the very same evening, the complainant Venugopal PW-1 and his colleague K. Srinuvas Rao PW-2 approached the accused and enquired about the bill. The accused demanded Rs.700/- as a bribe for getting the bill passed. As the complainant was not willing to pay this amount he approached the DSP, Anti Corruption Bureau, Warangal and lodged a complaint, Ext.P.1 On the basis of this complaint a trap was arranged on 6th June, 1991 when the accused allegedly accepted the amount from PW.1. The tainted money was recovered from the appellant and on the phenolphthalein test, the solution turned pink. On the completion of the investigation, the accused was charged under Sections 11 and 13 (2) read with Section 13(1)(D) of the Prevention of Corruption Act, 1988 and brought to trial.

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The prosecution, in support of its case, examined PWs 1-6 and put on record Exhibits P.1-P.20 and M.Os. 1-8. Four witnesses in defence, DWs.1-4, were also examined by the accused. The trial Judge went through the evidence on record very carefully and in the course of a very elaborate judgment, discussing all aspects of the case held that the evidence of PWs.1 and 2 was not worthy of credence as it was clear that the payment of Rs.700/- had been made towards repayment of a loan which one Prasad, a nephew of PW.1, the complainant had taken from the accused, and that the record indicated that the accused and the complainant represented two different factions of employees union and that was an additional reason for what could be a case of false implication. It was further held that as the accused and PW.1 were residents of the same village it appeared that there was some rivalry between them inter se. The trial Court also observed that the very fact of the trap being struck was itself in doubt as PW.2 who was to give a signal after the money has been passed over had not made any signal on which the DSP had sent Constable Satyanarayana to find out whether the money had been paid, and it was after Satyanarayana reported to the DSP that the

money had in fact been handed over that the raid had been carried out. The Court concluded that as Constable Satyanarayan had not been produced as a witness also indicated the falsity of the case. The Court accordingly acquitted the accused for the offence charged. An appeal was thereafter taken to the High Court and on the basis of a casual examination of the evidence and a brief discussion in one or two paragraphs, the exhaustive judgment of the trial court has been set aside and the accused convicted. This matter is before us by way of special leave.

Mr. P.S. Patwalia, the learned senior counsel for the appellant, has first and foremost submitted that if the trial court had taken a decision which could be possible on the evidence, interference by the High Court in an appeal against acquittal on the plea that a different view was also possible, was not called for. He has also pointed out that the cash recovered was a re-payment of the loan which had been taken by Prasad and the factum of the loan stood proved not only from the statement of the defence witnesses but even from the cross-examination of PW.1 himself. He has also pointed out that as Satyanarayana, the Constable had not been produced in evidence, it appeared that the trap had in fact not been struck but the whole matter concocted for the reason that PW.1 Venugopal have deep animosity towards the appellant.

The learned counsel appearing for the State, Ms. Altaf Fathima, has, however, pointed out that in addition to the unimpeachable evidence of PWs.1 and 2 and the fact that the hand wash of the appellant had indicated the presence of the phenolphthalein powder, the evidence of the mediator Laxminrayana proved the case beyond any doubt. She further submitted that PW.1 was one of 23 persons who would have been the beneficiaries of the amount that was to be disbursed by the Treasury Department for which they had made an application which was to be dealt with by the appellant.

We have heard learned counsel for the appellant and perused the record. We endorse Mr. Patwalia's submission that the view taken by

the trial Court on a very elaborate and comprehensive discussion of the entire evidence was not merely possible but was the correct one. Interference by the High Court, therefore, by a sketchy and ill-considered judgment was, therefore, not called for. We find that the trial Court had given very good reasons as to why the prosecution story did not inspire confidence and that the defence version represented the true state of affairs. It is significant that the appellant had, at the very time of his arrest, given a statement that the money recovered from him was towards the repayment of the loan that Prasad had taken from him. This fact finds clear mention in Ex.P.12 the report tendered by the mediator PW.3. The factum of the loan is admitted even by PW-1 but the story is further clarified by the testimony of DW.2 a retired District Treasury Officer, who deposed that Bhadriah was the brother of PW1 and Prasad the latter's son, and that he had, in fact, borrowed rupees one thousand from the appellant towards the medical expenses that he had to incur for the treatment of his father and that in May 1991 the brothers of the appellant had demanded the repayment which had led to a quarrel. He further stated that as all the parties were living in close proximity to each other, he along with others, had intervened and assured the brothers that the amount due from Prasad would be paid in the first week of June 1991. Significantly, the trap was struck on 6.6.1991. It is also clear from the record that there were 23 persons who would have been the beneficiaries on the passing of the bill which had been made over to the appellant, but only PW1, the complainant, who was also one of the beneficiaries has been examined by the prosecution. On the contrary, the accused examined DW1, an Assistant Engineer, Irrigation Department, Warangal who deposed that he was one of the claimants in the bill but nobody ever told him that any amount was required from him as his contribution towards the bribe to be paid to the appellant. He further stated that it was not within the knowledge of any of the other employees as to whether a demand of bribe had been made or that PWs.1 and 2 were doing the follow up towards the payment of the bill. This statement completely belies the evidence of PW1 who deposed that after the

DSP had asked him to bring the bribe amount to be passed over during the trap, he had returned to his office and asked the other employees to make a contribution towards that fund but they had told him that as they had no cash in hand, he should advance the amount from his own resources which would be re-imbursed at a later stage. There is yet another extremely relevant circumstance. As per the evidence of PW3, PW2 was to give a signal after the money had been handed over but as this was not done Constable Satyanarayana had been deputed by the DSP to go to the office and find out as to what had transpired. Satyanarayana apparently returned after few minutes and told the DSP that the money had been passed over and the raid was then carried out. As noted by the trial court, and completely ignored by the High Court, Satyanarayana was not even examined as a witness. There is, in this situation, no witness other than PW.1 to the passing over of the tainted money.

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It also appears from the evidence that there was apparent rivalry between the parties. As already noted above PW1 had admitted that Prasad had taken a loan from the appellant in the month of April 1991 and in the month of May 1991 when the appellant's brothers had demanded the repayment an altercation had ensued. The matter does not end here. PW1 admitted that he was a member of the Telangana Non-Gazetted Officers' Employees Association and that this association was divided into two groups, one led by Krishnareddy and the other by Sathireddy and whereas he belonged to the group of the former the appellant belonged to the latter group. He further testified that elections to the association had been held in January 1991 i.e. shortly before this incident when he, along with several other members of his group, had gone to the appellant and had asked him to support Krishnareddy which request had been declined by him and that it was the Sathireddy group which was successful, with the appellant also being elected the Joint Secretary. We find from the evidence that the fact that there seemed to be substantial rancour between PW1 and appellant is supported by the evidence of PW1 himself. It appears to us that this was a crucial

factor and was the reason for the concoction of a false story using the
excuse of the repayment of the loan as a means of reaching the
appellant on the vital day.
We accordingly, allow this appeal, set aside the judgment of the High
Court and restore that of the trial court and order the appellant's
acquittal. The appellant is on bail; his bail bonds shall stand
discharged.

.....J.
(Harjit Singh Bedi)

.....J.
(B.S. Chauhan)

New Delhi,
July 23, 2009