

\200ITEM NO.1B
(For Jt.)

COURT NO.7

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Cr1.A.No.1165/2010 @

Petition(s) for Special Leave to Appeal (Cr1) No(s).7689/2009

(From the judgement and order dated 25/06/2009 in
of The HIGH COURT OF A.P AT HYDERABAD)

CRLA No. 378/2002

BILLA NAGUL SHARIEF

Petitioner(s)

VERSUS

STATE OF A.P.

Respondent(s)

Date: 06/07/2010 This Petition was called on for judgment today.

For Petitioner(s)

Ms. Rani Jethmalani,Adv.

For Respondent(s)

Mrs.D. Bharathi Reddy,Adv.

Hon'ble Mr. Justice C.K. Prasad
pronounced the judgment of the Bench
comprising Hon'ble Mr. Justice G.S. Singhvi
and His Lordship.

Leave granted.

The Appeal is dismissed.

[SUMAN WADHWA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

Signed Non-Reportable judgment is placed on the file.
THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1165 OF 2010
(ARISING OUT OF SLP(CRL.)NO.7689 OF 2009)

BILLA NAGUL SHARIEF

.... APPELLANT

Versus

STATE OF ANDHRA PRADESH

... RESPONDENT

JUDGMENT

C.K. PRASAD, J.

1. The petitioner, being aggrieved by the judgment and order dated 25.06.2009 passed by learned Single Judge of the Andhra Pradesh High Court in Criminal Appeal No.378 of 2002, affirming the judgment and order of conviction and sentence passed by the Special Judge SPE & ACB Cases, Vijayawada, has preferred this petition for grant of special leave to appeal.

2. Leave granted.

3. The appellant was put on trial for commission of an offence punishable under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "Act"). He was found guilty by the trial court by its judgment and order dated 4th April, 2002 and sentenced to undergo rigorous imprisonment for a period of one year under each count and also to pay fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months under each count. The aforesaid judgment and order of conviction and sentence has been upheld by the High Court in appeal.

4. According to the prosecution the appellant-Billa Nagul Sharief at the relevant time was posted as Junior Assistant in the office of the District Supply Officer, Guntur and thus a public servant within the meaning of Section 2(c) of the Act. He was incharge of works pertaining to grant of composite licence to deal with scheduled grains. PW.1, P.Rama Krishna, de facto complainant, a resident of village Pedaravuru within Block Tenali in the District Guntur possessed a house in Sivalayam Street of the village and had constructed R.C.C. godown in the vacant portion of the house with an intention to carry on business in scheduled commodities; like Redgram, Blackgram etc. For that he obtained registration certificate and C.S.T. Form from Assistant Commercial Tax Officer, Tenali. De facto complainant PW.1, P. Rama Krishna was required to obtain composite licence from the District Supply Officer, Guntur for carrying on the business. Accordingly, on 19.12.1996 he went to the office of the District Supply Officer and submitted an application for grant of composite licence. The District Supply Officer forwarded the

application to the Deputy Tahsildar for enquiry and report, who in turn inspected the godown, recorded the statement of de facto-complainant on 22.12.1996 and submitted his report on 23.12.1996.

5. According to the prosecution on 30.12.1996, de facto-complainant went to the office of the District Supply Officer and enquired about the licence. The appellant asked PW.1 to deposit Rs.1,000/- National Savings Bond, pledged in the name of the District Supply Officer. As directed PW.1 obtained the same and handed over to the appellant. The appellant demanded from de facto-complainant; i.e, PW.1, P. Rama Krishna to pay the bribe of Rs.3,000/- for issuing the composite licence. The de facto-complainant showed his inability to pay the amount and again met the appellant on 6.1.1997 at 11 a.m. and made enquiry about the licence. The appellant made it clear that the licence shall be given to the de facto-complainant only when he pays the bribe of Rs.3,000/-. On de facto-complainant's repeated request the appellant agreed to deliver the composite licence on payment of reduced amount of bribe of Rs.2,500/- with further stipulation that the said amount be paid within two days. De facto-complainant pretended to pay the said amount to the appellant but in fact he was not willing to pay the bribe. Hence, de facto-complainant met PW.4, J.B. Haskarna Rao, on 6.1.1997 at 7 p.m., who was working as Inspector of Police, Anti-Corruption Bureau, Guntur and lodged a report. De facto-complainant was asked to come on 8.1.1997 along with the bribe amount. As instructed, on 8.1.1997 de facto-complainant went to his office where PW.3, M.V. Mallikarjuna Lingam and other members of the trap party were present. De facto-complainant produced 25 currency notes of 100 rupees each. The serial numbers of the currency notes were noted and phenolphthalein powder was applied over the currency notes. De facto-complainant was instructed not to touch the currency notes and to hand over the same to the appellant, only when he makes such a demand.

6. Prosecution case further is that thereafter, the trap party

consisting of the de facto-complainant, PW.3 and PW.5, D.V.S.S. Murthy went to the office of District Supply Officer where de facto-complainant met the appellant at 12.20 p.m. and enquired about his licence. The appellant asked as to whether he had brought the bribe amount demanded by him and when told that he had come with the amount, appellant took him outside the room, stopped at the curve of the staircase and demanded the amount. At this de facto-complainant took out the currency notes from his shirt pocket and gave it to the appellant who counted the same with both hands and kept it in the left side of his trouser pocket. Thereafter both of them went inside the office, appellant took out the file from almirah, removed the licence granted in the name of Ramakrishna Traders and gave it to the de facto-complainant after obtaining the acknowledgment. As instructed, de facto-complainant came out and gave the signal. Immediately the trap party entered into the office, apprehended the appellant and conducted phenolphthalein test on his both hands which turned pink. According to the prosecution the appellant removed the money from his pant pocket and gave it to PW.5, D.V.S.S. Murthy, the Deputy Superintendent of Police.

7. After usual investigation chargesheet was submitted and the appellant was put on trial and charged for commission of the offence under Section 7 and Section 13(2) read with 13(1)(d) of the Act. The appellant denied to have committed any offence and claimed to be tried. From the trend of the cross-examination and the witnesses examined on his behalf his defence is of false implication and alibi.

8. In order to bring home the charge the prosecution altogether examined five witnesses out of whom PW.1 happens to be the de facto-complainant himself. PW.2, P. Sivarama Krishna was working as the Superintendent in the office of the District Supply Officer and had proved the application (Ex.P-5) given by de facto-complainant for grant of composite licence. He had also detailed various steps taken for grant of licence and also proved the composite licence dated 6.1.1997, which was delivered to the

de facto-complainant. PW.3, M.V. Mallikarjuna Lingam, is a member of the trap party and witness to the recovery of the money from the appellant and the colour of the solution getting pink when his fingers were rinsed with it. PW.4, J.B. Haskarna Rao, at the relevant time posted as Inspector, Anti Corruption Bureau and to whom the de facto-complainant met for the first time and narrated his grievance. He conducted discreet enquiries and made recommendation. He was also a member of the trap party. PW.5, D.V.S.S. Murthy, was posted as Deputy Superintendent of Police in Anti Corruption Bureau and in his evidence, gave details of pre-trap proceedings. He is also witness to the recovery of the bribe money from the appellant. He has deposed in detail the steps which he had taken leading to the trap and also recorded the statement of the appellant.

9. Appellant in order to prove his innocence has examined five witnesses. DW.1, K. Amma Mohana Rao, is a clerk working with the Rice Millers Association and has stated that at the request of the de facto-complainant he had filed his application for doing pulses business in the office of the District Supply Officer. He has also stated that the appellant on perusal of the application informed him that the de facto-complainant is required to deposit National Savings Bond and he accordingly informed the de facto-complainant. DW.2, Uppu Nagaratana Raju, at the relevant time was working as Deputy Tahsildar in the office of District Supply Officer and has stated about the altercation said to have taken place between the appellant and de facto-complainant on 30.12.1996 in the office. Besides DW.2, DW.3, P. Mohana Krishna and DW.4, Devarakanda Nagar Raju Rao who were at the relevant time working as Junior Assistants in the office of the District Supply Officer have also stated about the altercation which had taken place between the appellant and the de facto-complainant on 30.12.1996 between 3.15-3.30 p.m. DW.5, D.V. Ranga Rao, a Deputy Tahsildar working in the office of the District Supply Officer had brought the Treasury Book maintained by the District Supply Officer for the financial year

1996-97. According to him the appellant was authorized to present five bills on 30.12.1996 and the appellant was further authorized to present two bills on 6.1.1997. According to him the appellant must have spent three and a half hours in treasury on both the dates.

10. On appreciation of evidence, the trial court came to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt and accordingly convicted and sentenced the appellant as above. The appeal preferred by the appellant has been dismissed by the High Court.

11. Mr. A.T.M. Ranga Ramanujam, learned Senior Counsel, appears on behalf of the appellant and submits that according to DW.1, K. Amma Mohana Rao, the application for grant of composite licence was filed by him and, therefore, the story put forth by the prosecution that it was filed by the de facto-complainant is false. According to the learned counsel once this story is disbelieved the entire prosecution case fails and the appellant deserves to be acquitted. We do not find any substance in the submission of Mr. Ranga Ramanujam. De facto-complainant in his evidence has clearly stated that it was he who had filed the application for grant of composite licence. In his cross-examination he had denied the suggestion that any body else presented the application in the office of the District Supply Officer. In any view of the matter, we are of the opinion that the gravamen of the charge against the appellant being of taking bribe for giving the composite licence, who presented the application for grant of composite licence is not of much consequence. It is to be borne in mind that discrepancy in regard to the part of the story itself does not go to the root of the case but discrepancy in regard to the material facts only has bearing to test the veracity of the prosecution case. Here in the present case, there is ample evidence on record that for the purpose of grant of composite licence the appellant demanded bribe, which was paid to him and recovered from his possession.

12. Mr. Ranga Ramanujam, then submits that according to the prosecution the composite licence was ready on 6.1.1997 and

had the appellant demanded bribe for giving the same to the de facto-complainant, he ought to have made a complaint to the District Supply Officer. His failure to do the same and approaching the Anti Corruption Bureau, in his submission, is absolutely unnatural. This submission has only been noted to be rejected. The contention that grievance can be remedied by the superior officer in the hierarchy of the system of the department concerned, if accepted, perhaps there shall be no case in which the demand for bribe can be made. The feeling of a common man that when the work is entrusted to different persons bribe is demanded by one of them, when all are invariably in collusion, cannot be lost sight of. If Senior Officers ensure that the works of the citizens are done without payment of bribe, Junior Officers and employees may abandon the demand and this country would not have prominently figured as one of the most corrupt nations of the World, as it is widely accepted that the corruption flows from the top. Here de facto-complainant, was entitled to have the composite licence but he was not willing to pay the bribe demanded, accordingly he had approached the Anti Corruption Bureau and we do not find anything unnatural in the conduct of the de facto-complainant.

13. Mr. Ranga Ramanujam has referred to the evidence of the defence witnesses and contended that from their evidence it is evident that the appellant was falsely implicated as the de facto complainant had quarrelled with the appellant a few days earlier to the date of occurrence. He also points out that the defence witnesses have also deposed that on 6th of January, 1997 when the appellant demanded the bribe money and on 8th of January, 1997 when the trap was laid and the bribe paid, the appellant was assigned the duty of presenting bills in the treasury and, therefore, his presence on both the dates is doubtful. He also refers to the evidence of the defence witnesses wherein it has been stated that the money was thrust in the pocket of the appellant. All these facts, according to Mr. Ranga Ramanujam lead to the conclusion that the prosecution has not been able to

prove its case beyond all reasonable doubt.

14. We have considered all these submissions and they do not commend us. Defence witnesses have clearly stated that the time which one may spend for presenting the bills could be maximum three and a half hours. They have not stated in their deposition that the appellant or for that matter anybody presenting the bills have to remain in the treasury continuously for three and a half hours. In the face of the evidence of the prosecution witnesses that the appellant demanded bribe on 6.1.1997 and received the same on 8.1.1997 cannot be doubted on the ground that for few hours the appellant was assigned the duty of presenting the bills in the treasury. The alleged quarrel between the appellant and the de facto-complainant on 30.12.1996 is also of no consequence in view of the specific and consistent evidence about the demand and payment of bribe unfolded by the prosecution witnesses. The plea put forth by the appellant that the money was thrust on his pocket is not fit to be believed in the face of the categorical and consistent evidence of the prosecution witnesses.

16. In the result, we do not find any merit in the appeal and it is dismissed accordingly.

.....J.
(G.S. SINGHVI)

.....J.
(C.K. PRASAD)

New Delhi,
July 6, 2010.