

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.162 OF 2012

S. DINESH KUMAR Appellant

Versus

STATE TH. INSPECTOR & ANR. Respondents

J U D G M E N T

Uday Umesh Lalit, J.

1. This appeal arises out of judgment and order dated 27.07.2011 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No.1057 of 2005 setting aside the judgment of acquittal passed by the Special Judge at Mysore in Special Case No.95 of 1995 and convicting the appellant herein for the offences punishable under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the PC Act')

2. According to the prosecution complainant Jayaramu was the proprietor of Murugan Furniture and Woodworks and because of arrears of sales tax in the sum of Rs.30,302/- the machinery in his factory was sealed. He had therefore filed writ petition in which the High Court had directed the authorities to consider his representation and that upon payment of 50 per cent of the amount in question, the

attachment be lifted and the machinery be released in his favour. In this connection he approached the appellant who was then working as Commercial Tax Inspector (Recovery) and was told that for removal of seals, Rs.1,000/- would be required to be paid to the appellant by way of gratification. The complainant then approached Lokayukta Police on 09.07.1993 and lodged his complaint Ext.P-1. After taking requisite steps a trap was laid.

3. On 09.07.1993 the appellant along with his driver (A-2) and peon came to the office of the complainant and demanded the amount of Rs.1,000/-. As directed by the appellant, the complainant gave the amount to the driver (A-2) who kept the amount with himself. After a signal was given, Lokayukta Police came and caught hold of the appellant as well as the driver (A-2) from whose person the amount of Rs.1,000/- was recovered. On completion of investigation and grant of sanction vide Ext.P-2, the charge sheet was submitted.

4. The Special Judge acquitted the appellant and the driver (A-2) mainly on two grounds. It was observed that the amount of Rs.1,000/- was not given towards the bribe but was paid towards the arrears of tax and that, the machinery having been released in favour of the complainant no work was in fact pending. In the Appeal preferred by the State it was submitted that 50% of the arrears on tax would come to about Rs. 15,000/- and it was unimaginable that the complainant would pay Rs. 1,000/- only towards arrears of tax. It was further submitted that the facts on record would show that the complainant PW1 and shadow witness Umesh PW3 had deposed

consistently about the appellant demanding Rs. 1,000/- as bribe and that the amount was paid as per his directions to accused No.2.

5. The High Court after analyzing the evidence on record found that in the explanation given by the appellant (Exhibit P-9) immediately after the trap, nothing was suggested that the amount in question was received towards arrears of taxes. On the other hand the explanation offered was that the amount was forcibly thrust by the complainant. After going through the entirety of the matter, the High Court found the approach adopted by the Special Judge to be perverse and that the acquittal had resulted in miscarriage of justice. The High Court, therefore, convicted the appellant for the offence (a) under Section 7 of the Prevention of Corruption Act, 1988 sentencing him to undergo simple imprisonment for six months and to pay fine of Rs. 5,000/-, in default whereof to undergo further simple imprisonment for one month (b) and under Section 13(1)d read with Section 13(2) of the Prevention of Corruption Act, 1988 sentencing him to undergo imprisonment for one year to pay fine of Rs. 15,000/- and in default whereof to undergo simple imprisonment for 3 months. The acquittal of accused No. 2 was affirmed.

6. In this appeal after grant of special leave to appeal, the appellant was directed to be released on bail. Mr. P. Vishwanatha Shetty, Learned Senior Advocate appearing for the appellant submitted that he had visited the premises of the complainant in connection with recovery of tax which was evident from the fact that the receipt book was lying in the vehicle. Further, the machinery having been

de-sealed, there was in fact no occasion for the complainant to pay the bribe amount to the appellant. Mr. V.N. Raghupathy, Learned Advocate appearing for the state submitted that though the seal in respect of machinery was opened the lock was yet to be removed and that the view taken by the High Court was absolutely correct.

7. Having heard the learned counsel and after having perused the entire material on record, we affirm the view taken by the High Court. We are conscious of the fact that in an appeal against acquittal, if two views are possible and the court below has acquitted the accused, the appellate court would not be justified in setting aside the acquittal merely because the other view is also possible. In the present case, the recovery of bribe amount from the person or possession of the accused having being firmly established, the immediate explanation offered by the appellant (namely Exhibit P-9) is absolutely crucial. Secondly, it is unimaginable that as against 50% of the arrears of taxes which the complainant was supposed to deposit, Rs. 1000/- only would be paid and accepted. The aspects of demand and acceptance having been established, in our assessment no two views are possible in the matter and the approach adopted by the Special Judge was perverse, justifying interference by the High Court.

8. We, therefore, dismiss this appeal. The bail bonds are cancelled and appellant is directed to surrender within three weeks from today to undergo the remaining sentence.

.....J.
(Dipak Misra)

.....J.
(Rohinton Fali Nariman)

.....J.
(Uday Umesh Lalit)

New Delhi,
December 12, 2014

ITEM NO.1B
(For judgment)

COURT NO.6

SECTION IIB

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

Criminal Appeal No(s). 162/2012

S.DINESH KUMAR

Appellant(s)

VERSUS

STATE TR.INSPECTOR & ANR

Respondent(s)

Date : 12/12/2014 This appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. P. Vishwanatha Shetty, Sr. Adv.
Mr. Shailesh Madiyal, Adv.

For Respondent(s) Mrs. Vaijayanthi Girish, Adv.
Mr. V. N. Raghupathy, Adv.
Mr. Parikshit P. Angadi, Adv.

Hon'ble Mr. Justice Uday Umesh Lalit pronounced the non-reportable judgment of the Bench comprising Hon'ble Mr. Justice Dipak Misra, Hon'ble Mr. Justice Rohinton Fali Nariman and His Lordship.

The appeal is dismissed. The bail bonds are cancelled and appellant is directed to surrender within three weeks from today to undergo the remaining sentence in terms of the signed non-reportable judgment.

(R.NATARAJAN)
Court Master

(H.S. PARASHER)
Court Master

(Signed non-reportable judgment is placed on the file)