

**\* THE HON'BLE MR JUSTICE R. KANTHA RAO**

**+ CRL.A.NO. 1251 OF 2005**

**AND**

**CRL.A.NO. 1294 OF 2005**

-

**% DATE: 31.07.2012**

**CRL.A.NO. 1251 OF 2005**

**BETWEEN:**

#B.V.Ratnam

.. Appellant

And

\$ State of A.P. Rep.by its  
Spl.Public Prosecutor for ACB Cases,  
Hyderabad.

.. Respondent

**CRL.A.NO. 1294 OF 2005**

**BETWEEN:**

#K.Ram Mohan Rao

.. Appellant

And

\$State of A.P. Rep.by its  
Spl.Public Prosecutor for ACB Cases,  
Hyderabad.

.. Respondent

! Counsel for the Appellant : Sri K.Suresh Reddy  
Sri M.Venkatanarayana

^ Counsel for respondents: Sri Ghaniamoosa, SPI.PP for ACB

**< GIST:**

**>HEAD NOTE:**

**? Cases referred:**

[1] AIR 1963 SC 1116

<sup>2</sup> AIR 1979 SC 826

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**CRL.A.NO. 1251 OF 2005**

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**COMMON JUDGMENT:**

Both these appeals arise out of the judgment dated 26.07.2005 passed by the Special Judge for SPE and ACB Cases, Vijayawada in C.C.No.15 of 1998.

2. Criminal Appeal No.1251 of 2005 is filed by B.V.Ratnam, the then Joint Sub-Registrar-II, who was the first accused before the trial Court. Criminal Appeal No.1294 of 2005 is filed by K.Ram Mohan Rao, the then Senior Assistant in the Sub-Registrar's Office, Guntur, who was the second accused before the trial Court.

3. Both the appellants were tried by the learned Special Judge for SPE and ACB cases for the following charges:

**CHARGE NO.1:**

*"That both A1 and A2 on 25.07.1994 by corrupt or illegal means or by otherwise abusing their position as public servant under-valued the market value of site of an extent of 8470 sq. yards at Nallapadu from Rs.100/- to Rs.60/- and caused wrongful loss to the government to a tune of Rs.38,985/- by collecting lesser stamp duty and obtained pecuniary advantage for themselves*

*and thereby committed an offence punishable under Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. “*

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**CHARGE No.2:**

*“That A1 and A2 on 15.03.1995 by corrupt or illegal means or by otherwise abusing their position as public servants under-valued the market value of the Apartment of Baba Towers, Ashoknagar, Guntur without fixing the value at 18 times of annual rental value contrary to the guidelines of the Inspector General of Registration and Stamps, A.P., Hyderabad, thereby causing wrongful loss to the government to a tune of Rs.16,429/- for collecting stamp duty, obtained pecuniary advantage for themselves and thereby committed an offence punishable under Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.”*

**CHARGE No.3:**

*“That on 13.06.1995 the first accused by corrupt or illegal means or by otherwise abusing his position as public servant under-valued the market value of the site of 481 2/3 sq. yards, Old Guntur as Rs.10/- instead of Rs.400/- per square yard and thereby caused wrongful loss to the government to a tune of Rs.26,330/- by collecting lesser stamp duty and obtained pecuniary advantage for himself and thereby committed an offence punishable under Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.”*

**CHARGE No.4:**

*“That on 31.03.1995 the first accused by corrupt or illegal means or by otherwise abusing his position as public servant under-valued the building situated in the site of 134.33 sq. yards, Brodipet Guntur contrary to the guidelines of the proceedings of the Inspector General of Registration and Stamps, A.P., Hyderabad by adopting site area of each floor as 1/4<sup>th</sup> of the total site instead of calculating the site value to the extent of floor area for each floor and thereby caused wrongful loss to the government to a tune of Rs.4959/- by collecting*

*lesser stamp duty and registration fee and obtained pecuniary advantage for himself and thereby committed an offence punishable under Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.”*

4. The appellants/A1 and A2 were tried by the learned Special Judge for SPE and ACB Cases for the aforementioned charges. In the course of the trial, the prosecution in order to prove the guilt of the appellants, examined PWs.1 to 5 and marked Exs.P.1 to P.25 and on behalf of the defence, Exs.D.1 to D.7 were marked.

5. PW.1 is the District Registrar, Guntur. His evidence before the trial Court reveals that the audit party found out in the audit of collecting lesser stamp duty for the properties mentioned in the aforesaid charges by fixing the market value at a lesser rate and thereafter the department by issuing notices to the parties concerned collected the short levied stamp duty as per Section 41-A of the Indian Stamp Act, 1899. According to him, the first accused registers the sale deeds and the second accused gives the market value of the property sought to be registered. He admitted in the cross-examination that since the short levied stamp duty was collected under the provisions of Section 41-A of the Indian Stamp Act there was no loss to the Government. He also admitted in the cross-examination that the Endowments Department by G.O.Ms.No.251, Revenue (Endowments) Department, dated 20.03.1993 fixed the market value of the temple lands at Rs.10/- per square yard for the sale of temple lands covered by Exs.P.15 to P.19 executed in favour of the persons who are not the cultivating tenants of the lands belonging to the endowments department. It was on account of mistaken identity of the vendees and ultimately the said sale deeds were cancelled.

6. PW2 is the Vigilance officer in Registration and Stamps Department at relevant time. In the departmental enquiry initiated against A1 and one, Yanadaiah, he was appointed as Enquiry Officer. His enquiry was with regard to the registration of lands covered by Exs.P.15 to P.19. He also admitted that G.O.M.S.No.251, dated 20.03.1993 was issued by the Government to the effect that the temple lands have to be sold at the rate of Rs.1/- per square yard to the existing cultivating tenants. But, the version of this witness is that A1 has registered the land Rs.400/- per sq. yard in favour of the persons other than the tenant Venkateshwara Reddy.

7. PW3 is the Executive Officer, Mandadam Group Temples, Guntur at relevant time in Mohanaranganayaka Swamy Devasthanam, Guntur. According to him, one Konda Venkateswara Reddy was the tenant of an extent of Ac.1.16 cents of the land belonging to the said Devasthanam. But, somebody falsely representing to be the tenant of the land executed Exs.P.15 to P.19 sale deeds in favour of third parties and subsequently, the said sale deeds were cancelled. The witness expressed his view that since there is a loss to the Government, he presumes that there is pecuniary advantage to the first accused.

8. PW.4 is the Range Inspector II during the relevant period. He deposed before the trial Court that as per the directions of the Director General, ACB, Hyderabad, a case in Crime No. 16/ACB-VJA/97 of ACB, Vijayawada Range, Vijayawada was registered on 03.10.1997 against A1 and A2.

9. PW.5 is the Section Officer in General Administration Department. He only spoke about according sanction by the

competent authority to prosecute A1 and A2. The validity of the sanction having not been challenged by the appellants, no importance can be given to the evidence of this witness.

10. It is basing on the above evidence, the learned Special Judge held that the prosecution proved charges 1 and 3 against A1 and failed to prove charges 2 and 4 against him and accordingly convicted A1/appellant in Criminal Appeal No.1251 of 2005 for the offence punishable under Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 under two counts i.e. for charges 1 and 3. He also convicted A2, the appellant in Criminal Appeal No.1294 of 2005 for the offence punishable under Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 under one count i.e. for the charge No.1. He sentenced each of the accused i.e. A1 and A2 to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-. Challenging the said order of conviction and sentence A1 and A2 filed the present appeals separately.

11. I have heard the learned counsel appearing for the appellants-A1 and A2 and the learned Standing Counsel for ACB Cases representing the State.

12. Learned counsel appearing for the accused No.1 would contend that merely because lesser amount of stamp duty was collected owing to mistake or inadvertence on the part of the appellants, it cannot be said that the said act was done with a view to obtain any pecuniary advantage for themselves or with a view to cause wrongful loss to the Government and there being no evidence showing such misconduct on the part of A1 and A2, the trial Court erroneously convicted the appellants for the offence punishable under Section

13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 and sentenced them, and hence, the conviction and sentence passed against A1 and A2 are liable to be set aside.

15. On the other hand, the learned Special Public Prosecutor for ACB case argued that as per Section 13(1)(d) of the Prevention of Corruption Act, 1988 the pecuniary advantage obtained may be for himself by the public servant by using his position as public servant while holding office as a public servant, or for any other person. Thus, according to the learned Special Public Prosecutor in the instant case, the pecuniary advantage was obtained by the appellants is for the benefit of the persons, who presented the sale deeds for registration and therefore, the learned trial Court rightly convicted A1 and A2.

16. The Hon'ble Supreme Court in **M.NARAYANA NAMBIAR v STATE OF KERALA**<sup>[1]</sup> explained the meaning of the words accepts or obtains or agrees to accept or attempts to obtain in Section 5(1)(d) of the Act as follows:

*"There is no reason why when a comprehensive Statute was passed to prevent corruption this particular category of corruption should have been excluded therefrom because the consequences of such acts are equally harmful to the public as acts of bribery. On a plain reading of the express words used in the clause, we have no doubt that every benefit obtained by a public servant for himself or for any other person by abusing his position as a public servant falls within the mischief of the said clause."*

17. Following the above said decision, the Hon'ble Supreme Court in **S.P.BHATNAGAR AND ANOTHER v THE STATE OF MAHARASHTRA**<sup>[2]</sup> held as follows:

*"The abuse of position in order to come within the*



*mischief of Section 5(1)(d) must necessarily be dishonest so that it may be proved that the accused caused deliberate loss to the department. It is for the prosecution to prove affirmatively that the accused by corrupt or illegal means or by abusing his position obtained any pecuniary advantage for some other person.”*

18. From the ratio laid down by the Supreme Court in the aforesaid citations there is no doubt that the pecuniary advantage obtained by the public servant need not always be for himself, but it may be for some other person. However, the prosecution has to prove by positive evidence that the public servant intended to obtain pecuniary advantage either for himself or for somebody. In the context of the present case the prosecution by merely proving that the appellants calculated lesser amount of stamp duty cannot claim that it established that they intended to obtain any pecuniary advantage either for themselves or parties to the transaction or that they intended to cause loss to the Government. Admittedly, the department after having found in the audit that a lesser stamp duty was collected in respect of the documents covered by the charges, recovered the short levied stamp duty as per Section 41-A of the Indian Stamp Act after issuing notice to the parties concerned. The stamp duty was collected under Sub Section 1 of Section 41-A of the Act, the proviso to the said provision lays down that if the short levied stamp duty was on account of fraud or collusion in contravention of the Act with an intent to evade the payment of duty, the collector may within 10 years from the date of registration can collect the same from the parties concerned along with penalty of three times of a deficit stamp duty. In the instant case, the collector did not collect any penalty from the parties to the registered documents. The short levied penalty was only recovered under sub-Section 1 of Section 41-A of the Indian Stamp Act. Therefore, even the

department is not specific on the aspect that collecting lesser duty is on account of any fraud or collusion. More importantly in this case, absolutely the prosecution did not adduce any evidence to prove affirmatively that collecting lesser stamp duty is on account of fraud or collusion between the appellant and the parties to the documents concerned. It is also not possible to infer from the circumstances that the act of collecting lesser stamp duty by the appellants is the result of any fraud or collusion with the parties to the respective documents. Admittedly, there is no evidence forthcoming indicating that the appellants intended to have pecuniary advantage either for themselves or for the parties to the respective documents. PW.4 in his evidence stated that he presumes that there is pecuniary advantage to the first accused since there was loss to the Government by levying lesser stamp duty in respect of the impugned documents. The view expressed by PW.4 does not stand to reason since it is not possible to presume that the appellants/A1 and A2 intended to have any pecuniary advantage by mere levying lesser stamp duty on the impugned documents. As there is no direct or circumstantial evidence showing that the appellants/A1 and A2 collected lesser stamp duty with a fraudulent or dishonest intention by collusion with the parties to the respective documents, I am of the considered view that the learned trial Court went wrong in finding the appellants/A1 and A2 guilty for the offence under Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. The conviction and sentence passed by the learned trial Court against the appellants/A1 and A2 are liable to be set aside.

19. For the reasons aforementioned, the conviction and sentence passed by the Special Judge for SPE and ACB Cases, Vijayawada in

C.C.No.15 of 1998 are set aside. The appellants/A1 and A2 are acquitted. Both the criminal appeals are allowed.

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**R.KANTHA RAO,J**

Dated: 31.07.2012

Note: L.R. Copy to be marked  
b/o kvrm

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