A STATE OF ANDHRA PRADESH

v.

R. JEEVARATNAM

JULY 30, 2004

B [S.N. VARIAVA AND ARIJIT PASAYAT, JJ.]

Prevention of Corruption Act, 1988:

S.7, s.13(1)(d) r/w. s.13(2)—Public servant demanding and accepting illegal gratification—Accused, Secretary of a Port Trust demanding bribe to clear tender of a company—Trap laid by CBI and accused caught with C *marked currency—Trial court convicting the accused—Acquittal by High Court holding that there was no proof of demand—Held, the evidence of complainant and another independent witness clearly established demand and acceptance of money—Accused convicted of the offences charged.*

D *S.20(1)—Presumption—Applicability of.*

Respondent, at the relevant time, was Secretary of a Port Trust and a member of its Tender Committee. The said Port Trust floated a tender in response to which the Company, whereof the complainant was the Manager, submitted its quotation which was the lowest. The E **prosecution case was that the respondent demanded money from the complainant as bribe to clear his company's file and asked him to pay Rs. 10,000 in advance in a particular hotel on a given date; that the complainant reported the matter to the Central Bureau of Investigation which laid a trap and caught the respondent in the said hotel with marked currency of Rs. 10,000 in his brief case. The trial court** F **convicted the respondent and sentenced him to R.I. for two years on each count and to pay a fine of Rs. 3000 on each count. The appeal filed by the respondent was allowed by the High Court holding that before the respondent-accused was stated to have demanded the money, the file of the company had already been cleared to the** G **knowledge of the complainant and, therefore, the question of doing or not doing favour did not arise and that the evidence did not establish that any demand was raised. Aggrieved, the State filed the present appeal.**

Allowing the appeal and convicting the respondent of the offences H **charged, the Court**

HELD : 1. The High Court was entirely wrong in coming to the conclusion that there was no proof of demand. The evidence of P.W. 1, i.e., the complainant, and P.W.2, an independent witness and who had acted as a Panch witness, clearly established demand and acceptance of money. P.W.1. has deposed about the demand made on 23rd December, 1991 and it being repeated on 30th December, 1991 when the respondent asked him to pay at least Rs. 10,000 on 31st December, 1991 in the named hotel. The evidence of P.Ws. 1 and 2, to the effect, that when the respondent came into the hotel room and asked P.W.1 whether he had brought the money demanded as bribe, P.W.1 introduced P.W. 2 as the Group Finance Manager, who had come from Bombay and had brought Rs. 10,000 as demanded, and the further evidence that the respondent assured that the file would be cleared, clearly establish that there was a demand and receipt of the money was as a bribe. On this evidence which has not been shaken in cross-examination, besides the offence under s.7, the offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 had also been made out. The High Court erred in acquitting the respondent merely on the basis of conjectures and surmises. [236-F-H; 237-C-F; 238-D-E]

2. The Respondent was caught red-handed with the marked money in a briefcase carried by him. The presumption under Section 20(1) of the Act thus arose. The High Court unfortunately overlooked this aspect. The submission made on behalf of the respondent, that the presumption under Section 20 does not arise in a case under Section 13(1)(d) of the Act and that for an offence under Section 13(1)(d) the demand had also to be proved, overlooks the fact that the respondent had been accused of an offence under Section 7 also which offence was proved to have been committed. The only condition for drawing the presumption is that during trial it should be proved that the accused had accepted or agreed to accept any gratification. [237-G; 238-B; 236-C]

***State of Andhra Pradesh* v. *C. Uma Maheswara Rao,* [2004] 4 SCC 399 and *Raghubir Singh* v. *State of Punjab,* [1974] 4 SCC 560, relied on.**

***Subhash Parbat Sonvane* v. *State of Gujarat,* [2002] 5 SCC 86, cited.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1057 of 1998.

A From the Judgment and Order dated 10.12.1997 of the Andhra Pradesh High Court in Criminal Appeal No. 54 of 1995.

A.D.N. Rao and B.V. Balram Das for the Appellant.

Mahendra Anand, S. Sadasiva Reddy and Mrs. S. Usha Reddy for the B Respondent.

The Judgment of the Court was delivered by

S. N. VARIAVA, J. : This Appeal is against the Judgment dated 10th December, 1997 of the Andhra Pradesh High Court.

C

Briefly stated the facts are as follows:

The Respondent was, at the relevant time, functioning as the Secretary of Visakhapatnam Port Trust. He was also a Member of the Tender Committee. He was also officiating as the Secretary of the Board D of Trustees of Visakhapatnam Port Trust. The Visakhapatnam Port Trust had floated a tender, in response to which one M/s Ramesh Chandra & Company had submitted a quotation for Rs. 1,33,84,702.80. The tender of M/s. Ramesh Chandra & Company was the lowest. The complainant one Mr. G. Subrahmanyam was the Manager and General Power of E Attorney holder of M/s. Ramesh Chandra & Company. According to the prosecution, on 23rd December, 1991 the Complainant was called to the house of the Respondent. He was there informed that there were many complications in the tender and that in order to clear those complications a sum of Rs. 1,00,000 would have to be paid to the Respondent as bribe. F According to the prosecution, the Complainant expressed financial disability in paying the amount and was told by the Respondent that the amount could be paid in 5 instalments. According to the prosecution, the Respondent told the Complainant that if the amount was not paid the file would not be cleared. According to the prosecution, on 30th December, 1991, the Complainant again met the Respondent when he was told that at least a G sum of Rs. 10,000 had to be paid as an advance. The said amount of Rs. 10,000 was to be paid on 31st December, 1991 in Hotel Apsara in Visakhapatnam. The Complainant then reported the matter to the Central Bureau of Investigation, who laid a trap. The Respondent was caught coming out of the hotel room with marked currency totaling Rs. 10,000 H in a briefcase which was carried by the Respondent.

The Respondent was therefore prosecuted under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The prosecution examined 14 witnesses including the Complainant and one Mr. M. Veerabhadrarao who was examined as P.W.2. P.W.2 was an absolutely independent witness who had acted as a Panch witness and who knew neither the Complainant nor the Respondent. P.W.2 had no enmity with either party and it is not even alleged that he was trying to favour either party.

On the evidence before him, the Special Judge convicted the accused and sentenced him to R.I. for two years on each count and to pay a fine of Rs. 3,000 on each count. The Appeal filed by the Respondent has been allowed by the High Court by the impugned Judgment. The High Court concludes, on the basis of evidence, that by 23rd November, 1991 the file had already been cleared to the knowledge of the Complainant. The High Court concludes that as the file was already cleared the question of doing favour or not doing favour did not arise. The High Court concludes that it was improbable that the Respondent would have demanded Rs. 1,00,000. The High Court concludes that the Respondent's version that the money must have been put into his briefcase when he had gone to the toilet was probable. The High Court concludes that the evidence of P.Ws. 1 and 2 does not establish that any demand was made. On this basis the High Court acquits the Respondent even of the offence under Section 7 of the Prevention of Corruption Act.

At this stage, it must be mentioned that on a complaint made by the same Complainant, in respect of another incident, another officer of Visakhapatnam Port Trust had also been prosecuted. In that case also the Trial Court had found the Officer guilty but the High Court had acquitted her. This Court, in its Judgment in the case of *State of Andhra Pradesh* v. *C. Uma Maheswara Rao* reported in [2004] 4 SCC 399, set aside the Judgment of the High Court and convicted the accused in that case. While so doing, this Court noticed Section 20(1) of the Prevention of Corruption Act which reads as follows:

> *"20.(1) Presumption where public servant accepts gratification other than legal remuneration.*— (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or

A clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is
B proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

C This Court then analyzed the law on subject and held that the term "shall be presumed" in Section 20(1) showed that Courts had to compulsorily draw a presumption. It held that the only condition for drawing the presumption is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. It is held that the condition
D need not be satisfied only through direct evidence. It is held that proof did not mean direct proof as that would be impossible but the proof must be one which would induce a reasonable man to come to a particular conclusion. It was held that once it is proved that gratification has been accepted the presumption automatically arose. This Court cited with
E approval the observations of a three Judge Bench in the case of *Raghubir Singh* v. *State of Punjab* reported in [1974] 4 SCC 560 that the very fact that the accused was in possession of marked currency notes against an allegation that he demanded and received the amount is *"res ipsa loquitur"*. We are in full agreement with the observations made in that Judgment.
F

We now set out briefly the evidence in the matter. P.W. 1, i.e., the Complainant, has deposed about the demand made on 23rd December, 1991 and it being repeated on 30th December, 1991 when the Respondent asked him to pay at least Rs. 10,000 on 31st December, 1991 in a hotel
G room in Hotel Apsara. He has deposed that he made a complaint to CBI and that CBI arranged the trap. The Complainant deposed that he had booked the room and he and P.W. 2 went into the Room no. 202. He deposed that on receiving a call from the reception he went and brought the Respondent, who came to Hotel Apsara, to Room No. 202 where P.W.
H 2 was waiting. He deposed that he introduced P.W. 2 as the Group

Financial Manager who had come from Bombay. P.W. 1 deposed that the Respondent then asked whether he had brought the money demanded as a bribe. He deposed that he opened a rexin bag and offered the marked currency amounting to Rs. 10,000 but that the Respondent asked him to put the money into the briefcase and, therefore, he put the amount into the briefcase. P.W. 1 deposed that thereafter the Respondent took the briefcase and was about to leave the room when he gave the prearranged signal and CBI nabbed the Respondent. In cross-examination this version of P.W. 1 could not be shaken at all. This evidence clearly established demand and acceptance of money.

This version is supported by the deposition of P.W. 2. P.W. 2 was at that time the Assistant Director of Post Office at Visakhapatnam. He was asked by his superior Officer to go to the CBI Office. He did not know the Complainant or the Respondent. He deposed that P.W. 1, himself and the CBI officers along with marked currency went to Room No. 202 in Hotel Apsara. He deposed that a phone call was received from the reception and P.W. 1 went out and brought the Respondent into the room. He deposed that he was introduced to the Respondent as a Group Finance Manager of the company. He deposed that P.W. 1 mentioned that as agreed earlier money had been brought for payment of the first instalment and that the rest of the amount would be paid afterwards. He deposed that P.W. 1 asked the Respondent to clear the file. He deposed that the Respondent thereupon assured P.W. 1 not to worry about the file and that he (the Respondent) would see to it that the file is cleared within one month. P.W. 2 deposed that P.W.1 offered the money to the Respondent, but the Respondent asked him to place the money into his briefcase. He deposed that P.W.1 therefore placed the money into the briefcase and the Respondent then picked up the briefcase and was going out of the room when he was apprehended pursuant to a pre-arranged signal.

The Respondent was thus caught red-handed with the marked money in a briefcase carried by him. The presumption under Section 20(1) thus arose. The High Court unfortunately overlooks this aspect.

Faced with this situation it was submitted by Mr. Anand, on behalf of the Respondent, that the presumption under Section 20 does not arise in a case under Section 13(1)(d) of the Prevention of Corruption Act. He

A submitted that for an offence under Section 13(1)(d) the demand had also to be proved. In support of his submission he relied upon the case of *Subash Parbat Sonvane* v. *State of Gujarat* reported in [2002] 5 SCC 86.

This submission overlooks the fact that the Respondent had been B accused of an offence under Section 7 also. His explanation that the money must have been put into his briefcase when he had gone to the bathroom is unbelievable. Both P.Ws. 1 and 2 have denied that the Respondent went to the bathroom. There is no explanation worth its name as to why the Respondent had gone into the hotel room. Even his explanation that he had gone to the hotel to book a table for the night of 31st December is C belied by the fact that there is no evidence that any table was booked by the Respondent. Thus it was proved that an offence under Section 7 of the Prevention of Corruption Act had been committed.

Even otherwise, in our view, the High Court was entirely wrong in D coming to a conclusion that there was no proof of demand. The evidence of P.Ws. 1 and 2, to the effect, that when the Respondent came into the room he was told that P.W.2 was the Group Finance Manager, who had brought Rs. 10,000 as demanded and the further evidence that the Respondent assured that the file would be cleared clearly establish that there was a demand and receipt of the money was as a bribe. On this E evidence which has not been shaken in cross-examination, in our view, the offence under Section 13(1)(d) read with Section 13(2) had also been made out. The High Court erred in acquitting the Respondent merely on the basis of conjectures and surmises.

F In this view of the matter, we set aside the Judgment of the High Court and convict the Respondent under Section 7 and Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act. In our view, the ends of justice would be met, by sentencing the accused under both the counts to one year's rigorous imprisonment. The fine and default stipulations will be as G stipulated by the trial Court.

The Appeal is allowed to the extent indicated above. The Respondent is directed to surrender to serve out the remaining sentence.

R.P. Appeal allowed.