ILR 2007 KAR 559

K. RAMANNA, J

The State of Karnataka by Lokayuktha vs A.V. Sathish*

PREVENTION OF CORRUPTION ACT, 1988-SECTIONS 7, 13(1) (d) r/w SECTION 13(2)-Offences under-Order of Acquittal-Appealed against-Absence of a valid sanction-Finding of the Trial Court-ON FACTS, HELD-The sanction accorded by PW. 8 is not a valid sanction-In the absence of valid sanction, charge sheet filed by the Lokayukta Police against the respondent for an offence under Section 7, 13(1) (d) r/w Section 13(2) of the P.C. Act is liable to be set-aside finding of the Trial Court is upheld.

Appeal is dismissed.

CASES REFERRED:	AT PARAS
1. *AIR 1971 SC Page 1910 Major Sommath vs Union of India and Another*	*(Ref) 5*
2. *2006 (6) Supreme Page 360 State-Inspector of Police, Visakhapatnam vs Surya Sankaram Kurri*	*(Ref) 6*
3. *1998 SCC (Crime) 1000 State of Tamilnad vs M.M. Rajendran*	*(Ref) 6*

* Criminal Appeal No. 1839/2001, Dated 12/14th September 2006

Sri Makbul Ahmed, HCGP, Advocate for Appellant
Sri H.S. Chandramouli, Advocate for Respondent.

JUDGMENT

Ramanna, J

This appeal is filed by the State against the judgment and Order of acquittal passed by the Principal District & Sessions Judge, Chikmagalore in Special Case No.1/1995 whereby the respondent was acquitted of the charges levelled against respondent for the offences punishable under Sections 7, 13(1)(d) r/w. S.13(2) of the Prevention of Corruption Act, 1988.

2. The main grounds urged by the Appellant-State is that the order of acquittal passed by the Trial Court is erroneous and the reasons assigned are untenable. The Special Judge has also erred in not properly considering the evidence of PW.1 complainant, PW.3 shadow witness, PW.2 another trap witness. Though the evidence of PWs.1 to 3 prove that there was demand and acceptance of bribe of Rs.4000/- by the respondent-accused and the amount was recovered from the respondent, the Trial Court has not properly appreciated the said evidence as the witnesses turned hostile. There is no bar to believe and accept the evidence of hostile witnesses. The admissions made by the witnesses should be taken into consideration by the criminal Courts but the Trial Court has not considered the admissions of PWs.1, 2 and 3. There is no much variation, if any, except some minor contradictions but the Trial Court has come to the wrong conclusion in acquitting the respondent. The Trial Court failed to consider the sanction accorded by the Appointing and Disciplinary Authority to the respondent. Sanction accorded is in accordance with the requirement

of law but the Court-below has wrongly held that sanction is not valid though demand and acceptance of bribe has been proved, though the Trial Court records its finding that the prosecution proved Point No.1 regarding demand and acceptance but the Trial Court acquitted the respondent only on the point of 'sanction' which is incorrect. Hence, this appeal.

3. Heard the argument of Sri Maqbul Ahmad, learned Addl. SPP for the appellant and Sri H.S.Chandramouli, learned Counsel for the respondent-accused. During the course of arguments, learned Addl. SPP has argued that the respondent was and is a public servant. In order to show some official favour i.e., not to launch any criminal case against PWs.4 and 5, the respondent demanded a sum of Rs.5000/- as illegal gratification and a sum of Rs. 1500/- was paid and agreed to pay the balance bribe amount of Rs.3500/- on 18.3.1993 but which was not paid. Hence, a complaint was lodged on 21.10.1993 before PW.6 as per Ex.P-2 at about 7 AM. Accordingly, a case came to be registered against the respondent and panchas were secured. A demonstration mahazar was drawn in the presence of PWs.2 and 3. Then after demonstration the bribe amount of Rs.3500/- was given to PW.1 with a direction that on demand only the amount should be given to the respondent. Therefore when the appellant conducted the trap and seized the bribe of Rs.3500/- from the pant pocket of the respondent, a recovery mahazar Ex.P-3 was drawn in the presence of PWs.1, 2, 3 and 6.

4. It is argued by the learned Addl.SPP that when the Trial Court comes to the conclusion by believing the evidence of PWs.1, 2, 3 and 6 that there was demand and acceptance of bribe of Rs.3500/- and the Trial Court ought to have believed the sanction accorded by the appointing authority PW.8 Conservator of Forests as valid. It is also

argued that Ex.P-9 is the order of sanction accorded by PW.8 who is the competent authority who accorded the sanction order at Ex.P-9. It is submitted that it is clearly mentioned that the respondent Mr.Satish has demanded and accepted the illegal gratification from PW.1 i.e., the complainant in order to show some official favour for not registering a case against his son and another i.e., PW.4. The report of the Inspector General of Police, Karnataka Lokayuktha, Bangalore and the evidence brought on record satisfy the requirements which attract the provisions of Sections 7, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988, but the Trial Court wrongly came to the conclusion in recording its findings on Point No.2 with regard to sanction in the negative. Therefore, the Trial Court is totally wrong in coming to the said conclusion. Accordingly, the order of acquittal passed by the Trial Court is liable to be set aside as perverse, illegal and based on incorrect finding.

5. As against this, learned Counsel Sri H.S. Chandramouli for the respondent submitted that PW.1 admitted that he gave the complaint on 21.10.1993 but PW.3 has deposed that the amount was given by Lokayukta Police. The police paid the amount of Rs.3500/-. This by itself is sufficient to record the finding that there was no demand and acceptance of the alleged illegal gratification. It is argued that PW.3 is stated to be a shadow witness who has not supported the case of the prosecution. It is argued that to prove the charges, the evidence of trap witnesses is essential to hold that there was a demand and acceptance. But PW.3 himself admits that he was sitting in the jeep at the time of alleged trap, the Trial Court ought to have disbelieved the version of PWs.1 to 3 with regard to demand and acceptance of bribe. Even though the trial Court has acquitted the respondent, but the finding recorded by the Trial Court on Point No.1 i.e., the alleged demand and acceptance is incorrect, illegal and against the legal

evidence. PW.4 is the son of the owner of the saw-mill. Further it is argued that PW.4 has not supported the case of the prosecution and according to the case of the prosecution, trap was conducted when the respondent was sitting in the Shali Wood Industries but the son of the owner of the said industry has not supported the case of the prosecution. He has given a complete go-bye to the case of the prosecution and he even states that he did not know PW.1. Though he was cross-examined at length, nothing worthwhile has been elicited. He has stated that he had not gone to the house of the respondent on 18.10.1993 at 3pm. and on coming to know that the sons of PW.1 had been taken to the Forest Office and the respondent said to have demanded Rs.5000/- to show some official favour for dropping registration of the case and about his mediation to settle with regard to the bribe amount from Rs.5000/- to Rs.4000/-. It is argued that the respondent being the Forestor of Chikka Agrahara Range, N.R.Pura Taluk, Chikka Agrahara Range, Chikmagalur District has demanded Rs.5000/-. PW.5 is none other than the son of PW.1. According to the prosecution story, on that day the respondent as well as his colleagues took PW.5 and one Siju, his own younger brother, to the Forest Office at N.R.Pura and they were beaten on the ground that they have committed theft of forest wood. In spite of their saying that those forest wood came by floating through the Bakri Halla which was adjacent to their garden land at Aralikatte, some firewood was lying adjacent to the 'halla', some were removed by PW.5 inside their garden, 6-7 pieces of wood might have lying in the land. After coming to know of this fact, PW.1 went to the Forest Office, approached the respondent. At that time the respondent alleged to have demanded Rs.5000/- as illegal gratification for dropping of registration of case against his sons but the evidence of PWs.1 and 2 goes to show that they are all interested persons but the Trial Court has accepted the evidence of PWs.1, 2 and 3. Therefore the Trial Court is wrong in

also recording its finding and holding that the prosecution has proved the demand and acceptance of bribe amount from PW.1. There was no valid sanction as such accorded by PW.8 in prosecuting a public servant like the respondent. Therefore the appeal is liable to be dismissed. In support of this contention, learned Counsel for the respondent Mr.H.S. Chandramouli relied on a decision on the point of 'sanction' to prosecute the accused, reported in the case of *MAJOR SOM NATH .v. UNION OF INDIA & ANOTHER*[1] wherein the Apex Court held that:

> **"Prevention of Corruption Act (1947) S.6-Essentials of sanction:-** For a sanction to be valid it must be established that the sanction was given in respect of the facts constituting the offence with which the accused is proposed to be charged. Though it is desirable that the facts should be referred to in the sanction itself, nontheless if they do not appear on the face of it, the prosecution must establish aliunde by evidence that those facts were placed before the sanctioning authorities."

Therefore, it is submitted that in the instant case the appellant-prosecution failed to prove that PW.8 considered the materials placed by the Inspector General of Lokayukta and accorded sanction and accordingly the Trial Court is right in coming to the conclusion that the prosecution failed to prove Point No.2 with regard to sanction.

6. Learned Counsel for the respondent has also relied on the decisions rendered by the Apex Court in the case reported in:

1. A.I.R. 1971 S.C. page 1910

STATE-INSPECTOR OF POLICE, VISAKHAPATNAM vs SURYA SANKARAM KURRI[2] wherein it has been held as follows:-

> "Section 17 provides for investigation by a person authorised in this behalf. The said provision contains a non-obstante clause. It makes investigation only by police officer or the ranks specified therein to be imperative in character."

STATE OF TAMILNAD vs M.M. RAJENDRAN[3] HEAD NOTE 'B' which reads as follows:-

> "SECTION 19:- Order of sanction found to be invalid finding on merit about prosecution case impermissible – proper course would be to drop the proceedings."

So also, the finding recorded by the Trial Court but the sanction accorded to prosecute the respondent is illegal, capricious, arbitrary and without proper appreciation of the evidence.

7. Having heard the arguments of the learned Counsel for both parties, the point that arises for consideration and decision is whether the findings recorded by the Trial Court with regard to demand and acceptance of the bribe amount is perverse, illegal and capricious.

8. My findings on the aforesaid point is as under. The allegations of the appellant-prosecution that the respondent was working as a Forestor of Chikka Agrahara Range being a public servant demanded and accepted Rs.4000/- as illegal gratification to show some official

2. 2006 (6) Supreme page 360 3. 1998 SCC (CRIME) 1000

favour of PW.1 Paulose. PW.1 paid Rs.500/- four days prior to 21.10.1993. Since PW.1 was not willing to pay the balance of bribe amount, therefore, he went to Lokayuktha Office and gave his complaint Ex. P-2 on 21.10.1993.

According to PW.1 Paulose, resident of Aralikoppa village in N.R. Pura Taluk owns 9 Acres of land adjacent to a halla called 'Kabbina Sethuve Halla" in Aralikoppa village. During rainy season there will be heavy flow of water in that 'halla.' About eight years back, his sons namely, PW.5 P.P. Biju and another son namely, Siju were taken to the Forest Office by the forest officials on the allegations that some forest logs were found near the land of PW.1 Paulose. So after coming to know about his sons being taken to the Forest Office, PW.1 went to the Range Forest Office and found that his sons were being beaten by the forest guards. Then the respondent is alleged to have told him that if he pays Rs.5000/-, he would leave his children. Later PW.4 Saju, son of the owner of the Shali Wood Industries also alleged to have accompanied PW.1 to the Forest Office and he said that the amount demanded by the respondent was more. Finally the respondent agreed to receive Rs.4000/- instead of Rs.5000/-. PW.1 paid Rs.500/- on the very same day and got released his sons. Thereafter got treatment to his son Biju. On 23rd October he complained before PW.6 Police Inspector of Lokayukta. He made an oral complaint which has been recorded in Kannada and secured the presence of panchas PWs.2 and 3 namely, Siddaramegowda and K. Venkatesh who was working as S.D.A. in the Office of the Director, Backward Classes & Minorities Department. In their presence, a demonstration was made and demonstration panchanama was drawn. Initially PW.1 has given a go-bye with regard to the contents written in the complaint Exercise of.P-1 and he has stated that the Lokayukta Police themselves paid the amount of Rs.3500/-. He handed over

that amount to the respondent-accused as bribe which was accepted and immediately he was caught. Lokayukta people took out the money from the hip-pocket of the pant of the accused and they washed the hands of the accused in water.

9. According to the admissions made by PW.1, the persons who were in the jeep were Lokayukta staff members. Thereafter PW.1 paid Rs.3500/-, the respondent kept it in the hip pocket of his pant but nobody saw him paying the amount to the accused in the saw-mill.

10. The evidence of PWs.2 and 3 is contrary to that of PW.1. According to PW.3 he is a shadow witness. All of them went in a jeep to N.R.Pura and reached N.R.Pura at about 2.30 PM. They were waiting for the Forester as he had gone for lunch. So as per the directions of the Sub Inspector he was sitting in the jeep only and if the trap was successful he would call him. According to the prosecution, the respondent herein came in a motorcycle. PW.1 and the respondent herein were talking to each other by standing at a distance of 50ft. from the jeep. Both of them went inside the Saw-mill. At that time he was sitting in the jeep only. Only after 10 minutes Lokayukta Police came running to him. Then both himself and PW.2 were taken by the Police Constable to the room of the saw-mill. By that time the Sub Inspector held the hands of the Forester Satish and a mahazar was drawn. The hands of respondent was washed. After providing 'panche,' the pant of the respondent was removed and they applied some solution to the pant pocket. It turned into pink colour. Sub Inspector removed 35 notes of 100 denomination from the pocket of respondent. Therefore the question of hearing the conversation that took place between PW.1 and the respondent herein does not arise as he was sitting in the jeep until police constable came and called him. He being a shadow witness has not seen or heard about

respondent demanding money and PW.1 paying the same. He was treated as hostile and cross-examined at length. But admissions made by PW.3 show that PW.1 and PW.1 did not go to the office of the accused and the saw-mill was not visible from the road. So in view of the evidence of PWs.1, 2 and 3 the finding recorded by the Trial Court that there was a demand and acceptance of bribe amount of Rs.3500/- by the respondent from PW.1 appears to be doubtful. Of course, the respondent herein has not challenged the findings recorded by the Special Judge on Point No.1 in affirmative that there was a demand and acceptance of bribe amount but the Trial Court acquitted the respondent on the ground that there was no valid sanction obtained to prosecute the respondent. Of course, the State has challenged the order of acquittal passed by the Special Judge but PW.1's evidence is that the respondent demanded Rs.5000/- when he went to see his sons and at that time, PW.4 Saju also came there. It is also in the evidence of PW.1 that it was settled for Rs.4000/- but PW.4 has given a clear go-bye to the case of the prosecution and he even stated that he did not even know PW.1. Though PW.4 was cross-examined at length, nothing worthwhile has been elicited. Therefore the story put forth by the prosecution that when PW.1 approached the respondent in the office to release his son and PW.5, the respondent said to have demanded Rs.5000/- and finally in the presence of PW.4 it was settled for Rs.4000/- is not proper. Since there is no corroboration from PW.4 to believe the version of PW.1 with regard to alleged demand made by the respondent to do some official favour. Of course, PW.1 has complained before PW.6. Mere admission made by PWs.2 and 3 that they had gone to Lokayukta Office is not a ground to accept their evidence to corroborate the evidence of PW.1. Though PW.1 states that he did not see any demonstrations held in the office of Deputy Superintendant Lokayukta by drawing mahazar but the trial Court believed the version of PW.1. Since money has been kept in

the pocket of PW.1 after applying some powder that itself is sufficient to show that demonstration panchanama has been proved. According to PW.2 the amount has been kept by PW.1 in the pant pocket of respondent, whereas PW.2 Siddaramegowda states that notes were given to the hands of PW.1 and he was asked to keep them in the pocket but the trial Court believed his version about keeping of the amount by PW.2 in the pant pocket of PW.1 which is doubtful. PW.3 Venkatesh is another panch witness who has not given clear evidence in favour of the prosecution regarding smearing of phinolpthelin powder on the currency notes of Rs.100/- denominations amounting to Rs.3500/-. He too also denies the suggestion that the amount was kept by PW.2 in the pant pocket of the respondent. Even then the trial Court believes his version which is incorrect and improper appreciation of legal evidence, but P.W.6 the Police Inspector, Lokayukta has deposed that the hand wash of PW.1 was taken in a bottle but the contents of demonstration panchanama Ex.P-2 is not clear. According to the prosecution story PWs.1, PW.2, PW.3 and the raiding officer all went in a jeep. The jeep was parked nearby the Range Forest Office but the evidence given by PW.1 that it was stopped near the Post Office, at that time respondent came in a motorbike which was stopped by PW.1. At that time PW.2 and the raiding party were sitting inside the jeep. The further case of prosecution is that the respondent took PW.1 to the office of Shali Wood Industries. They went there and paid the money. According to PW.6 Police Inspector, Lokayukta asked PW.3 to accompany the PW.1 and after receiving signal, PW.2 and others went there but the trial Court believed the version of PW.1 and PW.6 though they have not supported the prosecution case that they accompanied PW.1 and had come to the conclusion that there was demand and acceptance of bribe amount which is incorrect and purverse. In spite of major contradictions in the evidence of PWs.1, 2 and 3, the trial Court holds

that they are minor contradictions which is improper. Because of major variations and contradictions in the evidence of PW.1, but trial Court wrongly came to the conclusion that the amount said to have been recovered from the possession of the respondent, even though nobody heard about the demand and acceptance of the amount except PW.1 who is the complainant who is an interested party who had filed a complaint against the respondent on account of alleged assault made by the respondent nor forest officials on the ground that the logs were lying near the land of PW.1. It is the case of the appellant that after trap, the respondent has not explained anything but he was silent which does not mean that he has accepted the alleged trap and seizure of the amount from his pocket. It is the bounden duty of the prosecution to prove the charge levelled against the respondent. The trial Court accepts that the signature found in the mahazar, the same is inadmissible in evidence and the statement of the respondent has not been recorded. The explanation offered by the respondent that he was frightened and unable to make any statement immediately is quite reasonable. The delay, if any, in giving the statement by the respondent as per Ex.P-10 and P-11 does not amount to proof of the fact that he has demanded and accepted the bribe amount namely MO.2 from the complainant as illegal gratification. The prosecution has to stand or fall on its own leg. The trial Court has entirely believed the version of PWs.1 and 6 and had come to the conclusion that there was a demand and acceptance of the bribe which in my opinion is not correct. When the trial Court accepts that there are discrepancies in so far as the evidence adduced to prove demand and acceptance of money, it ought not to have accepted the explanation offered by respondent as per Exs. P-10 and P-11 to record a positive finding on that aspect. A discrepant evidence could not have been made the basis to record a finding against the accused. Such an exercise amount to basing a conclusion on mere presumption which can never take the place of proof in a criminal

proceeding. The evidence of PWs.2 and 3 indicates that they were sitting in a jeep which was parked nearby the Saw-mill. After receipt of the signal from the constable, they went to the Saw-mill. Therefore the conclusion arrived at by the trial Court about demand and acceptance cannot be believed. The trial Court has not properly appreciated or analysed the evidence to answer Point No.1 in the affirmative.

11. As far as Point No.2 is concerned with regard to sanction, the Trial Court has elaborately discussed about the sanction. In the instant case, the sanction accorded by PW.8 Mr.B.Natarajan, Conservator of Forests, Shimoga. Under Section 19 of Prevention of Corruption Act the appointing and disciplinary authority is the proper person to accord sanction to prosecute accused persons. In the instant case, mere reading of Ex.P-9 shows that the Inspector General of Police, Karnataka Lokayukta requested PW.8 to accord sanction for taking action. Therefore PW.8 issued the Order of sanction at Ex.P-9. Mere going through the report of the Inspector General of Police, Karnataka Lokayukta and the records is not sufficient to accord sanction. Ex.P-9 does not disclose about what are the documents submitted to him by the Inspector General of Lokayukta to accord sanction to prosecute the respondent. The trial Court while relying on the decision of this Court reported in I.L.R. 2001 KARNATAKA SHORT NOTES 14 held that sanction to prosecution must be accorded after careful scrutiny of the materials collected. There is no mention in the sanction order Ex.P-9 about the fact that the records were either received or perused and after going through the report and the perusal of the records and the evidence brought on record the decision was taken. It is only in the cross-examination PW.8 has stated that he has perused the records and also the mahazar but Ex.P-9 does not say so. The facts and circumstances of the case on hand are

different from the facts and circumstances of the decisions relied upon by the Public Prosecutor before the Trial Court. Since the sanction accorded by PW.2 is without applying its mind i.e. after going through the records namely the statement of the witnesses, contents of the complaint and other witnesses. So in the absence of a valid sanction, charge sheet filed by the Lokayukta Police against the respondent for an offence under Sections 7, 13(1)(d) r/w.S.13(2) of the P.C. Act is liable to be set aside. Therefore the Trial Court came to the right conclusion in answering Point No.2 in the negative holding that the prosecution has failed to prove that the sanction accorded by PW.8 as per Ex.P-8 as entirely dependent on the report of the Inspector General of Lokayukta Police and accorded sanction.

12. Therefore, viewed from any angle, I do not find good reasons to reverse the findings recorded by the Trial Court in answering Point No.2 against the prosecution. Hence the appeal filed by the State is hereby dismissed.
