

**2023 LiveLaw (SC) 819**

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

**BELA M. TRIVEDI; J., DIPANKAR DATTA; J.**

CRIMINAL APPEAL NO. 2173 OF 2011; 21 September 2023

**P. SARANGAPANI (DEAD) THROUGH LR PAKA SAROJA versus STATE OF ANDHRA PRADESH**

**Prevention of Corruption Act, 1988; Section 7 and 20 - Presumption where public servant accepts any undue advantage - Once the undue advantage i.e., any gratification whatever, other than the legal remuneration is proved to have been accepted by the accused, the Court is entitled to raise the presumption under Section 20 that he accepted the undue advantage as a motive or reward under Section 7 for performing or to cause performance of a public duty improperly or dishonestly. No doubt, such presumption is rebuttable. (Para 11)**

**Criminal Trial - the death of the complainant or nonavailability of the complainant at the time of trial could be said to be fatal to the case of prosecution, nor could it be said to be a ground to acquit the accused. It is always open for the prosecution to prove the contents of the complaint and other facts in issue by leading other oral or documentary evidence, in case of death of or nonavailability of the complainant. (Para 9, Referred: Neeraj Dutta v. State (Government of NCT of Delhi), (2023) 4 SCC 731)**

**Prevention of Corruption Act, 1988; Section 7 and 13(1)(d) r/w. 13(2) - In the instant case the pre-trap and post-trap proceedings were duly proved by the prosecution by examining the concerned witnesses, who had duly supported the case of prosecution. Both the courts below have recorded the findings that the prosecution had proved beyond reasonable doubt the conscious acceptance of the tainted currency by the accused and also the recovery of tainted currency from the accused. Therefore, the burden had shifted on the accused to dispel the statutory presumption under Section 20 of the said Act, and prove that it was not accepted as a motive or reward for the performance of his public duty, which the accused had failed to dispel. The explanation offered by the accused did not tally with the statement of the complainant recorded under Section 164 of Cr.P.C. The High Court had also recorded that the defence taken by the accused that the acceptance of tainted currency by him was towards the Audit fees of the Society was not proved by him in as much as there was nothing on record to show that the amount paid by the complainant to the accused was out of the funds of the Society. Both the courts have appreciated the evidence on record threadbare in the right perspective and have found the accused guilty for the offence. (Para 12 - 14)**

*For Appellant(s) Mr. D. Ramakrishna Reddy, Adv. Mr. Hrithik Manchanda, Adv. D. Bharathi Reddy, AOR*

*For Respondent(s) Mr. Sri Harsha Peechara, Adv. Mr. Rajiv Kumar Choudhry, AOR Mr. Duvvuri Subrahmanya Bhanu, Adv. Ms. Pallavi, Adv. Ms. Kriti Sinha, Adv.*

**J U D G M E N T**

**BELA M. TRIVEDI, J.**

**1.** The original appellant P. Sarangapani son of Laxmaiah (accused no.1) having expired pending the present Appeal, his wife Paka Saroja was permitted to proceed further with the Appeal as per the order passed by the court on 31<sup>st</sup> August, 2023.

**2.** The instant Appeal is directed against the judgment and order dated 21<sup>st</sup> March, 2011 passed by the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No.54

of 2005, whereby the High Court had dismissed the Appeal filed by the appellant-accused no.1 and confirmed the judgment and order dated 06.01.2005 passed by the Principal Special Judge for SPE and ACB Cases-cum-IV Additional Chief Judge City Civil Court Hyderabad (hereinafter referred to as the Trial Court) in CC No.08 of 1994. The Trial Court had convicted the appellant accused no.1 P. Sarangapani for the offences under Section 7 and Section 13(1)(d)r/w 13(2) of the Prevention of Corruption Act, 1988 (for short, the PC Act) and sentenced him to imprisonment for one year and pay a fine of Rs.1,000/- in default, to suffer Simple Imprisonment for three months for the offence under Section 7 and to suffer Rigorous Imprisonment for two years and pay a fine of Rs.2,000/- in default, to suffer Simple Imprisonment for six months for the offence under Section 13(1)(d)r/w 13(2) of the P.C. Act.

3. The chargesheet for the alleged offences was laid by the Investigating Officer, Deputy Superintendent of Police Shri P.L. Raju, Anti-Corruption Bureau, Warangal Range, Warangal against the appellant accused no.1 P. Sarangapani and one another accused P. Vasudev son of Mallaiah. The said accused P. Vasudev having expired pending trial, the appellant accused alone was tried by the Trial Court. The defacto-complainant Sri Immadi Laxmaiah also had expired prior to commencement of the trial and therefore he could not be examined by the prosecution.

4. The case of prosecution in nutshell was that the appellant accused Sri Sarangapani while discharging his duty as the Sub Registrar, Cooperative Societies had demanded and accepted a sum of Rs.1500/- as gratification other than legal remuneration from the defacto-complainant Sri Immadi Laxmaiah on 27.03.1993, for himself and for the accused no.2 P. Vasudev, the Deputy Registrar Cooperative Societies in the office of Divisional Cooperative Khammam, as a motive or reward for showing an official favour, in allowing the complainant to continue as the President of the Society, and thereby both the accused had committed the offence under Section 7 and Section 13(1)(d)r/w 13(2) of the PC Act.

5. To prove the charges levelled against the appellant-accused, the prosecution had examined PW-1 Shri Dana Pullaiah to prove the contents of the RC No.1496/92C. The PW-2 Sri M. Laxmi Narsu, one of the mediators (panch witness) working as Agricultural Officer, in the office of Joint Director Agriculture Khammam was examined to prove the pre-trap and post-trap proceedings. The PW-3 Sri K.L.N. Krishna Kumar was examined to prove the Sanction orders relating to the accused, accorded by the then Secretary of Agriculture Cooperative – II Department. The PW-4 was Sri B. Pulla Reddy, working as the President of Lachannagudem Village, who succeeded the Vice President of the society, on the previous Vice President B. Pulla Reddy having been suspended. The PW-5 was Sri V. Vengalaiah, Inspector of Police ACB, a member of raiding party; and lastly PW-6 Sri P.L. Raju, the then DSP Warangal Range, was examined as he was the trap laying officer cum investigating officer. The prosecution had also adduced documentary evidence in support of its case.

6. On the closure of prosecution evidence, the appellant-accused P. Sarangapani was examined under Section 313 of Cr.P.C, wherein he had denied the allegations levelled against him and had stated that he was falsely implicated. He also had filed a written statement contending *inter alia* that he never demanded and accepted any illegal gratification from the complainant as alleged. The appellant accused had also examined DW-1 Sri K. Venkateshwarlu, resident of Chintakani Mandal of Khammam District, to substantiate his defence.

7. The Trial Court after appreciating the oral as well as the documentary evidence adduced by the prosecution, held that the prosecution had proved the charges levelled against the appellant/ accused beyond reasonable doubt. Accordingly, the appellant was convicted and sentenced as stated hereinabove. In the Appeal preferred by the appellant before the High Court, against the said judgment of conviction and sentence, the High Court reappreciated the evidence on record and confirmed the conviction and sentence recorded by the Trial Court.

8. The learned counsel for the appellant vehemently submitted that both the courts had committed gross error of law in misappreciating evidence on record and in holding the appellant guilty of the alleged charges, though the prosecution had miserably failed to prove the demand of illegal gratification allegedly made by the appellant. Placing reliance on the decision of this Court in case of **B. Jayaraj v. State of Andhra Pradesh**<sup>1</sup>, he submitted that it was required to be proved by the prosecutor beyond reasonable doubt that the accused had voluntarily accepted the money knowing it to be a bribe, and in absence of proof of demand for illegal gratification, presumption under Section 20 could not be drawn against the accused. According to him in the instant case, the complainant having expired before the commencement of trial, could not be examined and hence the very allegation of demand of money as bribe was not proved by the prosecution. The learned counsel for the appellant placed reliance on the statement of complainant recorded before the Additional I-Class Magistrate under Section 164 of Cr.P.C. to submit that the complainant himself had stated therein that he had paid the amount to the accused towards the Audit fees of the society and that the accused was falsely implicated by the former President of the society Pulla Reddy, who had a grudge against the accused.

9. In our opinion, there is no substance in any of the submissions made by the learned counsel for the appellant. It is well settled proposition of law that the death of the complainant or non-availability of the complainant at the time of trial could be said to be fatal to the case of prosecution, nor could it be said to be a ground to acquit the accused. It is always open for the prosecution to prove the contents of the complaint and other facts in issue by leading other oral or documentary evidence, in case of death of or nonavailability of the complainant. Recently, the Constitution Bench in case of *Neeraj Dutta vs. State* (Government of NCT of Delhi)<sup>2</sup>, has held that: -

“88.6. (f) In the event the complainant turns “hostile”, or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.”

10. In the instant case the appellant/ accused in his explanation under Section 313 had accepted the receipt of alleged amount. The court therefore was required to appreciate the evidence laid by the prosecution in the light of the said explanation and to consider as to whether the said amount was an illegal gratification other than the legal remuneration or not. It cannot be gainsaid that if the accused offers reasonable and probable explanation based on the evidence that the money was accepted by him other than as illegal gratification, the benefit of doubt should be granted to the accused. It is also true that the accused is not required to establish his defence beyond reasonable doubt as the prosecution, and can establish the same on the preponderance of probability. However,

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<sup>1</sup> (2014) 13 SCC 55

<sup>2</sup> (2023) 4 SCC 731

the court cannot be oblivious to the statutory presumption permissible to be raised under Section 20 of PC Act with regard to the motive of the accused. Section 20 reads as under:-

“20. Presumption where public servant accepts any undue advantage. — Where, in any trial of an offence punishable under section 7 or under section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11.”

**11.** In view of the above, once the undue advantage i.e., any gratification whatever, other than the legal remuneration is proved to have been accepted by the accused, the Court is entitled to raise the presumption under Section 20 that he accepted the undue advantage as a motive or reward under Section 7 for performing or to cause performance of a public duty improperly or dishonestly. No doubt, such presumption is rebuttable. The Constitution Bench in **Neeraj Dutta** (supra), also had dealt with the issue of presumption under Section 20 of the Act and held as under: -

“88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.”

**12.** In the instant case the pre-trap and post-trap proceedings were duly proved by the prosecution by examining the concerned witnesses, who had duly supported the case of prosecution. Both the courts below have recorded the findings that the prosecution had proved beyond reasonable doubt the conscious acceptance of the tainted currency by the accused and also the recovery of tainted currency from the appellant. Therefore, the burden had shifted on the appellant to dispel the statutory presumption under Section 20 of the said Act, and prove that it was not accepted as a motive or reward for the performance of his public duty, which the appellant had failed to dispel. The explanation offered by the appellant did not tally with the statement of the complainant recorded under Section 164 of Cr.P.C. The High Court had also recorded that the defence taken by the appellant that the acceptance of tainted currency by him was towards the Audit fees of the Society was not proved by him in as much as there was nothing on record to show that the amount paid by the complainant Immadi Laxmaiah to the appellant was out of the funds of the Society.

**13.** Both the courts have appreciated the evidence on record threadbare in the right perspective and have found the appellant guilty for the offence under Section 7 and Section 13(1)(d) r/w 13(2) of the PC Act. We do not see any valid ground to interfere with the well-considered findings recorded by both the courts below.

**14.** In that view of the matter, the criminal appeal being devoid of merits is dismissed.