

R. SUNDARARAJAN

A

v.

STATE BY D.S.P., SPE, CBI, CHENNAI

OCTOBER 19, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

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Prevention of Corruption Act, 1988—Section 7 r/w Section 13—Demand of illegal gratification by public servant—Complaint—Trap—Accused caught red handed demanding and accepting illegal gratification—Trial after getting sanction—Conviction by courts below—Sanction order questioned—On appeal, held: Accused rightly convicted—Sanction order granted after consideration of abundant material—However, Supreme Court cannot sit in appeal over the sanction order—Code of Criminal Procedure, 1973—Section 197.

C

Appellant-accused, after having come to know about approval for grant of permanent telephone connection to the subscriber, through the officials of his department (PWs 5 and 8), went to the house of allottee and demanded illegal gratification in order to get new permanent number allotted to her. Subscriber filed a complaint through P.W 2. On enquiry it came to light that the accused was in the habit of demanding and accepting illegal gratification from the subscribers. A trap was arranged and he was caught red handed demanding and accepting illegal gratification. After obtaining the sanction, chargesheet was filed.

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Trial Court found the accused guilty under Prevention of Corruption Act, 1988 and punished him under Section 7 thereof. High Court confirmed the conviction and sentence.

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In appeal to this Court, appellant contended that the sanction order was vitiated as the same was passed without any material.

Dismissing the appeal, the Court

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HELD: 1. From the facts on record, it is evident that the appellant was caught red handed taking bribe and it appears that he was in the habit of demanding and accepting illegal gratification from the subscribers. There is

A no reason to disagree with the findings of the trial court and High Court or with the punishment awarded to accused. [503-C]

B 2. It cannot be said that the sanction order was vitiated as there was no material on which it could have been passed. This Court cannot look into the adequacy or inadequacy of the material before the sanctioning authority and this court cannot sit as a Court of appeal over the sanction order. The order granting sanction shows that all the available materials were placed before the sanctioning authority who considered the same at great detail. Only because some of the said materials could not be proved, the same by itself, would not vitiate the order of sanction. In fact in this case there was abundant material before the sanctioning authority. [503-D-F]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1084 of 2006.

D From the Final Judgment and Order dated 31.1.2006 of the High Court of Judicature at Madras in Criminal Appeal No. 43 of 1998.

Dr. A.E. Chelliah, C. Basanjha Kumar Chelliah, K. Ramanujam, P. Karunakaran, A. Annadurai, K. Shiva Kumar, C. Saisullah, S.K. Bandyopadhyay, B.S. Bilwaria and Dinesh Kumar Garg for the Appellant.

E A. Sharan, A.S.G., Amit Anand Tiwari and P. Parmeswaran for the Respondents.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. Leave granted.

F This appeal has been filed against the impugned judgment of the Madras High Court dated 31.01.2006 by which the appeal of the accused-appellant against his conviction under Section 7 read with Section 13 of the Prevention of Corruption Act by the Trial Court was upheld.

G Heard learned counsel for the parties and perused the record.

The facts in brief are that the appellant (hereinafter referred to as 'the accused') was employed as group "D" staff, A/C and Power, Harbour Telephone Exchange, Chennai-1 and as such, he was a public servant. It is alleged that the accused demanded and accepted a sum of Rs. 1500/- on 9.11.1992 from **H** Kumaresan (P.W.2), who is the cousin of Tmt. Nagalakshmi at No. 38, Mosque

Street, Vadapalani, Chennai-26, as illegal gratification for getting permanent telephone connection under OYT. The amount was demanded at 8.05 p.m. on 9.11.1992 in the house of Tmt. Nagalakshmi and the appellant was caught red handed while demanding and accepting the illegal gratification. A

Jayakumar (P.W.5), who is the younger brother of the accused has been working as LDC in Madras Telephones Commercial Section (South), G.R. Complex, Mount Road, Chennai-35 and Narayanaswamy (P.W.8) was also working in the same section as UDC and they were dealing with new telephone connections of Madras Telephones (South) and they used to help the accused and inform with regard to new telephone connections and the movement of files and the accused used to meet the subscribers and by convincing them as if he was helping them in getting new telephone connection, he was collecting money. B C

Tmt. Nagalakshmi is a widow and was residing at No.38, Mosque Street, Vadapalani, Madras-26 and she applied for new telephone connection under OYT Scheme and she wanted urgent telephone connection in her residence, since she was under medical treatment for diabetes and chest pain. She also applied for temporary telephone connection to the Chief General Manager, Madras-10. enclosing medical certificate. The General Manager (Exchanges), Madras Telephones sanctioned temporary telephone connection on 31.12.1991 to her for six months and it was dealt with by Jayakumar (P.W.5), brother of the accused in providing telephone connection to Tmt. Nagalakshmi. In May, 1992, she applied for extension of six months for the temporary telephone connection and it was processed by V. Narayanaswamy (P.W.8) and extension was approved. As per the release of 747 new telephone connections ordered by AGM (South) on 5.8.1992, Tmt. Nagalakshmi was eligible for new telephone connection and Narayanaswamy (P.W.8), who was dealing with the file, put up note to regularize the temporary line already available with Tmt. Nagalakshmi and to close the temporary line and it was finally approved by the Commercial Officer South (III) on 27.10.1992. On 28.10.1992, the telex message for closing the temporary connection in respect of telephone No. 427112 provided to Tmt. Nagalakshmi and simultaneously for providing permanent connection with the same telephone number was transmitted to the officials concerned and though the temporary telephone connection file had to go to the section dealing with new permanent telephone connection, the temporary connection dealing with new permanent connection was not sent to the section dealing with new permanent connection till 9.11.1992. The accused came to know all the above movements of file, passing orders, etc., through his brother D E F G H

A Jayakumar (P.W.5) and Narayanaswamy (P.W.8), who dealt with the said files and after knowing about the application for release of new permanent telephone connection to Tmt. Nagalakshmi went to her house on 6.11.92 and told her that if she is prepared to pay Rs. 3000/- as bribe she would get a permanent connection, otherwise the temporary connection would be disconnected. The accused also informed her that he would come to her house on 9.11.1992 and at that time Rs. 1500/- should be paid as advance and the balance of Rs. 1500/- on receipt of the allotment letter. The accused himself wrote a letter on behalf of Tmt. Nagalakshmi and obtained signature of Tmt. Nagalakshmi and then informed her that he would come to her house at about 7.00 p.m. on 9.11.1992.

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C Tmt. Nagalakshmi, who was not willing to pay the bribe to the accused, requested her cousin to help in the matter, who on behalf of her sister, lodged a written complaint on 9.11.1992 to the Superintendent of Police, CBI, ACB Madras, and on the basis of which, the complaint was registered by the Inspector of Police (P.W.4) and he made discrete enquiries, in which it came to light that the accused was in the habit of demanding and accepting illegal gratification from the subscribers, who in the normal course had been allotted telephone connections, in the pretext of getting them new telephone connections. Accordingly, a trap was held as directed by the said Inspector of Police (P.W.4).

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E In the trap conducted by P.W.4 in the presence of Govindarajan (P.W.3), Assistant Manager (vig), UIIC, Royapetah, Madras and one G. Sankaran, the accused demanded and accepted a sum of Rs. 1500/- on 9.11.1992 from Kumaresan (P.W.2), who is the cousin of Tmt. Nagalakshmi at No.38, Mosque Street, Vadapalani, Chennai-26, as illegal gratification for getting permanent telephone connection under OYT. The amount was demanded at 8.05 p.m. on 9.11.1992 in the house of Tmt. Nagalakshmi and the accused was caught red handed while demanding and accepting the illegal gratification. Necessary test was conducted and mahazars were also prepared. The proceedings after the acceptance of the bribe by the accused were video-graphed by constable Nagarajan, using the departmental video camera. Then the trap party proceeded to the house of the accused and as per the search made, they recovered eleven diary sheets, out of which in one of the diary sheets, the name of Tmt. Nagalakshmi was written. After obtaining sanction order Ex.P-1 and completing the investigation, the charge sheet was filed.

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H The trial court after considering all the evidence found the accused guilty under the Prevention of Corruption Act and awarded him punishment

under Section 7 of the Act by imposing the sentence of six months Rigorous Imprisonment and a fine of Rs. 500/-, and a further sentence of six months R.I in default of payment of fine. In addition the trial court also held the appellat guilty under Section 13 of the Prevention of Corruption Act and awarded him one year R.I and to pay a fine of Rs. 500/- and in default of it further six months R.I. A

In appeal the High Court after elaborate discussion of the evidence upheld the judgment of the trial court. B

From the facts on record, it is evident that the appellat was caught red handed taking bribe and it appears that he was in the habit of demanding and accepting illegal gratification from the subscribers. We, therefore, see no reason to disagree with the findings of the trial court and High Court or with the punishment awarded to accused. C

There is no dispute that the sanction order was passed by the competent authority. D

Dr. A. Chelliah, learned counsel for the appellat, however, submitted that the sanction order was vitiated as there was no material on which it could have been passed. We do not agree.

In this connection, it may be mentioned that we cannot look into the adequacy or inadequacy of the material before the sanctioning authority and we cannot sit as a Court of appeal over the sanction order. The order granting sanction shows that all the available materials were placed before the sanctioning authority who considered the same at great details. Only because some of the said materials could not be proved, the same by itself, in our opinion, would not vitiate the order of sanction. In fact in this case there was abundant material before the sanctioning authority, and hence we do not agree that the sanction order was in any way vitiated. E F

There is no merit in this appeal. Hence it is dismissed.

K.K.T.

Appeal dismissed. G