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B. HANUMANTHA RAO

v.

STATE OF A.P.

MARCH 26, 1992

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[N.M. KASLIWAL AND S.C. AGRAWAL, JJ.]

*Prevention of Corruption Act, 1947 :*

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*Sections 4 and 5—Charge of receiving illegal gratification—Trap case—Huge amount of money found in the possession of accused—Explaining the circumstances and proving innocence—Burden of proof—Whether shifted on accused.*

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The petitioner, an Excise Sub-Inspector, was charged with the offence of accepting an amount of Rs. 50,000 as illegal gratification from an arrack contractor. The defence of the petitioner was that the Contractor offered him the said amount towards arrears of rental, stating that he could not deposit the amount in Bank since the banking hours were over on that day. Despite his refusal to accept the same and requesting that it may be remitted in Bank the following day, the Contractor placed the cover containing the said amount on the table of the petitioner, it was claimed. The trial court disbelieved the defence version and convicted the petitioner and sentenced him to undergo two years rigorous imprisonment and a fine of Rs. 2000 and in default thereof, to undergo 2 months simple imprisonment.

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On appeal, the High Court confirmed the conviction and sentence awarded by the trial court. Aggrieved against the said order, the petitioner has preferred the present special leave petition, raising the same grounds as were urged before the Courts below.

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Dismissing the special leave petition, this Court,

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**HELD : 1.1.** It remains undisputed that an amount of Rs. 50,000 was recovered from the possession of the accused, lying on a tea-poy in a room of office-cum-residence of the accused. In view of the fact that on washing the hands of the accused by a solution of sodium carbonate, the water turned pink, it leaves no manner of doubt that the amount of Rs. 50,000

was touched and handled by the accused. Under the Excise Rules, the accused-petitioner had no right or authority to accept any arrears of rentals of an excise contract. Even if the bank was closed as suggested by the accused, there was no question of accepting such amount by the accused as the rentals could have been deposited by the Contractor in the bank when it opened. Once the amount of Rs. 50,000 is found in the possession of the accused, the burden shifts on him to explain the circumstances to prove his innocence as contemplated under Section 4 of the Prevention of Corruption Act. [362C-E]

1.2. Even if the statements of the prosecution witnesses who were declared hostile are excluded from consideration, it would not make any difference in believing the substratum of the prosecution story. [362B, C]

2. The circumstance that the Contractor was inimical and had an axe to grind inasmuch as he was instrumental in getting the petitioner transferred and such transfer was subsequently stayed by the Administrative Tribunal, has been considered by the High Court and it rightly took the view that such circumstance cannot improbably the demand and acceptance of the illegal gratification by the petitioner. The conviction is based on concurrent findings of fact and appreciation of evidence. Both the trial court as well as the High Court have considered the facts and circumstances of the case in detail and have placed reliance on the prosecution witnesses and there is no ground or justification to take a different view. [362F-H; 363A]

3. There is no ground or justification to reduce the sentence awarded to the petitioner, in the facts and circumstances of the case.

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Criminal) No. 2369 of 1991.

From the Judgment and Order dated 19.11.1990 of the A.P. High Court in Crl. Appeal No. 1047/88.

P.P. Rao, B. Rajeshwar Rao and Vimal Dave for the Petitioner.

K. Madhava Reddy and G. Prabhakas for the Respondent.

The Judgment of the Court was delivered by

A **KASLIWAL, J.** This special leave petition (criminal) is directed against the judgment of the High Court of judicature Andhra Pradesh at Hyderabad dated 19.11.1990. The petitioner was convicted for offences punishable under Section 161 I.P.C. and Section 5 (1) (d) punishable under Section 5 (2) of the Prevention of Corruption Act and sentenced to rigorous imprisonment for a period of two years and a fine of Rs. 2,000 and in default of payment of fine to suffer two months simple imprisonment under each count with a direction that both the sentences shall run concurrently, by an order of the Principal Special Judge for SPE & ACB cases dated 24.11.1988. The High Court dismissed the appeal filed by the petitioner and confirmed the conviction and sentence awarded by the trial court.

We have heard Mr. P.P. Rao, Learned Senior Advocate on behalf of the Petitioner and Mr. K. Madhava Reddy, Learned Senior Advocate on behalf of the State of Andhra Pradesh.

D This is a trap case in which the petitioner was alleged to have accepted an amount of Rs. 50,000 as illegal gratification on 5.7.1986 while working as Sub-Inspector of Excise at his office-cum-residence at Godavarikhani. Briefly stated the prosecution story is that PW.1 A. Baswa Reddy took arrack contract in partnership of his brother A. Rajender Reddy (PW.2) and one Arjun for the sale of arrack for Ramagundam group in Karimnagar district for one year from 1.10.1985 on payment of Rs.14 lakhs rental permensem payable by 20th of each month. The petitioner was the Excise Sub-Inspector Ramagundam. On 3.6.1986 the petitioner called PW.1 through a constable PW.6 A Narender. PW.1 met the accused-petitioner on the same day at 9.00 a.m. The accused demanded bribe of Rs. 50,000 and threatened that otherwise he would seize the arrack depot at Godavarikhani and its machinery for supplying arrack in polythene sachets without permission. When PW.1 requested the accused to reduce the bribe the accused told him that he used to take 'mamool' of Rs. 5,000 per month from the previous contractor. On 4.7.1986 the accused again called PW.1 to his office-cum-residence and asked him to pay the bribe of Rs. 50,000 by the next evening otherwise, threatened him as done earlier. PW.1 on the same day submitted a complaint Exhibit P.1 to Shri P. Bai Reddy, the then DSP, ACB, Warangal Range. The DSP with the assistance of two mediators planned a trap. On 5.7.1986 at about 2.00 p.m.

PW.1 met the accused at his office-cum-residence and on a demand made by the accused he gave an amount of Rs. 50,000. Immediately thereafter PW.1 gave a signal to the raiding party and thereupon DSP, ACB (PW.9) and other members of the raiding party rushed into the office-cum-residence of the accused. The hands of the accused were got washed by a solution of sodium carbonate and the solution turned pink. An amount of Rs. 50,000 was recovered from the possession of the accused. The accused was then charged for offences under Section 161 I.P.C. and Section 5 (1)(d) read with Section 5(2) of the Prevention of Corruption Act. The accused denied the charges. The prosecution examined (1) witnesses in support of its case. The accused in his explanation under section 313 of the Code of Criminal Procedure, 1973 gave a long statement. But in substance, his defence was that on 5.7.1986 at about 2.00 p.m. while he was at his office-cum-residence PW. 7 an Excise constable told him that PW.1 had come to meet him. The accused then called in PW.1. Then PW.1 gave a slip Exhibit D.7 showing the remittances made by him towards arrears of rental till 4.6.1986. The same was in the handwriting of PW.2. The accused further stated that PW.1 informed him that he could not deposit the amount towards arrears of rental on that day as banking hours were over, as it happened to be a Saturday and then offered to give him a cash of Rs. 50,000 towards payment of arrears. So saying, PW.1 took out a cover containing currency notes and pushed it on the table towards the accused asking him to remit the same towards rentals. Then the accused told him that he had no safe to keep the amount and apart from that he was going to Karimnagar and therefore asked PW.1 to remit the amount in the bank. PW.1 then told that his licence was cancelled previously for non payment of rentals and therefore it would not be proper to allow the arrears to be accumulated, but inspite of that the accused pushed back the packet towards PW.1 and asked him to remit the rentals on the next working day. By that time PW.1 went out leaving the packet of currency notes on the table on the pretext of bringing some papers from outside. PW.1 went near the jeep and talked with the driver and again came back with some papers. Immediately thereafter the DSP, ACB and others entered the house and subjected him to phenolphthalein test. The accused told the DSP that PW.1 had offered him the amount of Rs. 50,000 towards payment of arrears of rentals. He admitted that when his fingers were washed in sodium carbonate solution it turned into pink colour on account of the reason that he

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A had shaken hands with PW.1.

The Learned Special Judge accepted the case of the prosecution and disbelieved the version of the accused. The High Court affirmed the decision of the trial Judge.

B We have heard Shri P.P. Rao, Learned Senior Counsel for the petitioner at length. Shri Rao made strenuous effort to convince us to believe the version given by the accused-petitioner, but in vain. Even if the statements of PW.6 and PW.7, Excise constables who were declared hostile are excluded from consideration, it would not make any difference in

C believing the substratum of the prosecution story. It remains undisputed that an amount of Rs. 50,000 was recovered from the possession of the accused, lying on a tea-poy in a room of office-cum-residence of the accused. In view of the fact that on washing the hands of the accused by a solution of sodium carbonate, the water turned pink, it leaves no manner

D of doubt that the amount of Rs. 50,000 was touched and handled by the accused. Under the Excise Rules, the accused-petitioner had no right or authority to accept any arrears of rentals of an excise contract. Even if, the bank was closed as suggested by the accused, there was no question of accepting such amount by the accused as the rentals could have been

E deposited by PW.1 in the bank when it opened. Once the amount of Rs. 50,000 is found in the possession of the accused, the burden shifts on him to explain the circumstances to prove his innocence as contemplated under Section 4 of the Prevention of Corruption Act. A great stress was laid by Shri Rao that PW.1 was inimical and had an axe to grind with the petitioner

F inasmuch as he was instrumental in getting the petitioner transferred from Godavarikhani by order dated 16.5.1986 and such transfer was subsequently got stayed by the Administrative Tribunal by order dated 20.5.1986 in a petition filed by the petitioner. The above circumstance has been considered by the High Court and we agree with the High Court that when the fact that the accused demanded and accepted illegal gratification

G of Rs. 50,000 on 5.7.1986 is acceptable then such circumstance cannot improbably the demand and acceptance. The conviction is based on concurrent findings of fact and appreciation of evidence. Both the trial court as well as the High Court have considered the facts and circumstances of the case in detail and have placed reliance on the prosecution

H witnesses and we do not find any ground or justification to take a different

view. Shri Rao also submitted that even if this Hon'ble Court was not inclined to take a different view from the lower courts, a lenient view may be taken in awarding the sentence. We find no ground or justification to reduce the sentence awarded to the petitioner, in the facts and circumstances of the case. A

In the result, we find no force in this petition and the same is dismissed.

G.N.

Petition dismissed.