

GANAPATHI SANYA NAIK

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v.

STATE OF KARNATAKA

SEPTEMBER 14, 2007

[S.B. SINHA AND H.S. BEDI, JJ.]

B

Prevention of Corruption Act, 1947—s. 13(1)(d) r/w s. 13(2)—Demand of illegal gratification—Prosecution for—Trap arranged—Money recovered from the table and not from the person of accused—Defence of false implication on account of animosity—Acquittal by trial court—Conviction by High Court—On appeal, held: In view of the facts of the case, accused liable to be acquitted.

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Appellant-accused was prosecuted for an offence punishable u/s 13 (1) (d) r/w s. 13(2) of Prevention of Corruption Act, 1947. Prosecution case was that the accused a village accountant had demanded bribe from PW 6 for effecting mutation entries and for providing revenue documents. On complaint of PW 6, trap was arranged. Two Panchas including PW 4, were engaged. Recovery of the cash by the trap party, was from the table under the files. Immediately thereafter PW 6 was provided with necessary documents. Defence version was that the money had been put on the table surreptitiously and without the knowledge of the accused as the accused had animosity with PW6. Trial Court acquitted the accused holding that prosecution has not been able to prove demand and recovery of money. High Court convicted him. Hence the present appeal.

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Allowing the appeal, the Court

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HELD: The view taken by the trial court was clearly possible on the evidence in the case. The Court had observed that the plea of the defence at the very initial stage was that PW-6 had serious animosity towards the appellant and that the currency notes had been put on the table by the former was a plausible explanation. It is in the evidence that the currency notes had not been touched by the appellant or recovered from his person. It is also the prosecution case that the relevant documents had been handed over to PW 6 immediately after the money had been put on the table. The argument therefore that there was no occasion to make a demand for any bribe is also plausible.

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A In an appeal against acquittal where the High Court's interference is in a manner circumscribed, there was no justification in upsetting the judgment of the trial court. [Para 8] [942-D, E, F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1218 of 2007.

B From the Judgment and Order dated 31.03.2006 of the High Court of Karnataka Bangalore in Criminal Appeal No. 696 of 2000.

Lakshmi Raman Singh for the Appellant.

C Sanjay R. Hegde, Vikrant Yadav, Amit Kumar Chawla and Ramesh S. Jadhav for the Respondent.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. Leave granted.

D 2. This appeal arises out of the following facts.

E 3. The accused/appellant was at the relevant time working as a Village Accountant in Bisalkoppa in Sirsi Taluk in the State of Karnataka. PW.6 Nagaraj had purchased some agricultural land from Smt. Janaki on which he approached the appellant and requested him to effect mutation entries in his name and to issue the requisite record of rights. The appellant told Nagaraja to come after a few days and thereafter told him that some objections had been received with respect to the sale in his favour. It appears that an enquiry was also held by the Deputy Tehsildar who passed an order in Nagaraja's favour.

F 4. Armed with this order, Nagaraja again approached the appellant requesting him to enter the necessary mutation and to provide a certified copy of the revenue documents. The accused demanded a sum of Rs.1,000/- from him for this purpose and asked for Rs. 500/- as an advance, which was reduced to Rs. 450/-. As Nagaraja was apparently not willing to pay the amount, he approached the Lok Ayukta and made a written complaint to the Police on which a case was registered by PW.9 Police Inspector Shambhulingappa. The said police officer requested the Asstt. Director of Agriculture and Asstt. Director of the Employment Exchange, Karwar to depute a Pancha each to report to him at 6 a.m. on 14.8.1996. Two Panchas **G** **H** PW.4 Mailarappa Neellappa Sunkad and R.N.Cholvekar were accordingly

deputed by the said officers. The Police Officer thereafter informed the two Panchas as to what had transpired. Nagaraja also produced MO5, four notes of hundred rupee denomination, and one note of fifty rupees denomination. The Inspector also explained the phenolphthalein/Sodium Carbonate procedure to the Panchas. Phenolphthalein powder was then smeared on the currency notes where were thereafter handed over to PW6. and PW.4 was instructed to accompany the appellant and he was asked to make a signal for the raiding party after the money had been handed over. The party thereafter made its way to the office of the appellant. The two PWs. then met the appellant. PW.6 stood near the table of the appellant whereas PW4 stood at the door of the office. On enquiry from the appellant, PW-6 told him that he had brought the money on which the appellant demanded the same from him and asked him to put in on the table. The appellant thereafter took some files and put them on the currency notes. PW-6 thereafter came out and gave a signal to the Police Inspector on which PW9 rushed in and recovered the money and was told by PW 4 and PW 6 that the appellant had demanded and received the money. On completion of the investigation, the accused/appellant was charged for an offence punishable under section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

5. The trial court observed that the foremost question to be established by the prosecution was as to the demand for money from the complainant, PW-6 and the recovery of the money at the instance of the appellant. The Court also observed that the evidence of PW4 and 6 with regard to the recovery of the cash from the table under the files was not believable and the defence version that the money had been put on the table surreptitiously and without the knowledge of the accused/appellant appeared to be more plausible and worthy of acceptance. The trial court accordingly acquitted the accused. The State thereafter preferred an appeal before the High Court. The learned Judge in judgment dated 31.3.2003, which has been impugned before us, however set aside the acquittal and convicted the accused and sentenced him to rigorous imprisonment for 6 months and to pay a fine of Rs. 20,000/- and in default to suffer simple imprisonment for 6 months observing that Nagaraja's statement as to the recovery had been corroborated by PW4 an independent witness and that no doubt could be created in the story merely because the currency notes had not been touched by the appellant. The Court also observed that the plea of the appellant that there was no occasion for the demand of money as the necessary documents had already been prepared was not acceptable as the possibility that the documents had been prepared

A in anticipation of the receipt of the money, could not be ruled out. It is in these circumstances that this matter is before us by way of special leave.

6. It has been argued by the learned counsel for the appellant that the High Court had ignored the principle, reiterated time and again by this Court, that a finding of fact arrived at on a proper appreciation of the evidence should not be interfered with merely because the appellate court was of an opinion that a view different from the one taken by the trial court was possible. It has been pointed out that the currency notes had not been touched by the appellant and the defence version that they have been surreptitiously put on the table while the appellant was otherwise engaged in some activity was a possibility on the evidence and could not be ruled out.

7. The Government Advocate has however supported the judgment of the High Court.

8. We have heard the learned counsel for the parties. We find that the view taken by the trial court was clearly possible on the evidence in the case. The Court had observed that the plea of the defence at the very initial stage was that PW-6 had serious animosity towards the appellant and that the currency notes had been put on the table by the former was a plausible explanation. It is in the evidence that the currency notes had not been touched by the appellant or recovered from his person. It is also the prosecution case that the relevant documents had been handed over to Nagarja immediately after the money had been put on the table. The argument therefore that there was no occasion to make a demand for any bribe is also plausible. We are thus of the opinion that in an appeal against acquittal where the High Court's interference is in a manner circumscribed, there was no justification in upsetting the judgment of the trial court. Accordingly we allow the appeal, set aside the judgment of the High Court, and order the appellant's acquittal.

K.K.T.

Appeal allowed.