

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1462 of 2009

Mohd. Idris ...Appellant

Versus

The State of Andhra Pradesh ...Respondent

WITH

CRIMINAL APPEAL NO. 702 of 2009

V.S. Ramprasad ...Appellant

Versus

State of Andhra Pradesh ...Respondent
Through CBI

O R D E R

These appeals arise out of the judgment of the High Court of Judicature, Andhra Pradesh at Hyderabad passed in Criminal Appeal Nos. 177 of 2001 and 190 of 2001 whereby the High Court confirmed the judgment of the Trial Court in C.C. No. 85 of 1996 dated 31.12.2000 on the file of the Court of the Special Judge for C.B.I. Cases, Hyderabad. The appellants herein were Accused Nos. 1 and 2 respectively in C.C. No. 85 of 1996.

Both the accused were charged for the offences punishable under Sections 120-B read with 406 of the Indian Penal Code (for short

“IPC”) as well as Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (for short “PC Act”). The Trial Court on evaluation of the material on record convicted these accused for the said offences and sentenced them to undergo simple imprisonment for one year and to pay a fine of Rs. 1,000/- each on each count, totalling Rs. 2,000/-. The judgment of conviction and sentence passed by the Trial Court was confirmed by the first appellate Court.

The brief facts leading to these appeals are as follows:

On 02.11.1988, M/s Hindustan Cables Ltd (HCL) issued a purchase order to M/s Bangalore Coppers Profile Limited (BCPL) for the conversion of 1 metric tonne (MT) copper rods into Annealed Bright Copper Wires (ABC wires). The purchase order was subsequently amended from 1 MT to 10 MT. A second order was placed with BCPL for 10 MT of copper rods, which was further amended to 14 MT, and then to 19.14 MT. A third order was placed for conversion of 36 MT, and was reduced to 30.86 MT, but then enhanced to 80.86 MT. There was a shortfall in the quantity of finished product received.

We are of the opinion that the Trial Court and the High Court are justified in coming to the conclusion that the following material facts have been proved by the prosecution:-

- i. An office order HD/ED dt. 12.8.89 was issued stating that A1 was in charge of the Purchases and Stores Section as Chief Commercial Manager, and was assisted by the Dy. Manager and Assistant Manager of the Section.
- ii. As the head of the Department of Purchases and Stores, A-1 was responsible for the final approval of all transactions in the department.
- iii. P.W.10 was relieved from the post of Assistant Commercial Manager (Purchases) in the middle of February 1990.
- iv. A-2 was transferred and posted as Dy. Commercial Manager of the Department of Purchases.
- v. A-3 was allotted the portfolio of conversion of Cable Wires. The Purchases Department used to deal with the subject of raw material for ABC Wires.
- vi. It was the duty of the Chief Commercial Manager (A-1) to see that a clause for furnishing a bank guarantee for the amount equivalent to the value of the material to be given was stipulated in every purchase order. It was also his duty to ensure that the said clause was implemented.
- vii. The Purchase Assistant, who worked under the directions of the Assistant Commercial Manager, held the custody of all files and bank guarantees.

- viii. It was the responsibility of the Purchases Department to see whether contractual conditions were complied with and whether deliveries were covered by the bank guarantee.
- ix. The Purchases Department could verify the quantity received by HCL from contractors from the Receipt-cum-Inspection Report (RIR).
- x. A-1's permission was necessary to return the rejected material to the contractor.
- xi. There were general instructions (including oral instructions from A-1) to return the rejected material to the contractor.
- xii. The Chief Commercial Manager was primarily responsible as head of the Department of Purchases and Stores for approving delivery orders as well as for issue of delivery challans.
- xiii. It was the duty of the Finance Department to monitor the situation of issue of raw material and receipt of finished product, and invoke bank guarantees if required.
- xiv. It was also the responsibility of the Purchases Department to monitor what was going out and coming into the stores.
- xv. After verification of the bank guarantee existing with the Finance Department, the material would be released to the extent of the bank guarantee to the Stores Department.
- xvi. The bank guarantees submitted by contractors were maintained

in the Purchases Department.

Thus, we are inclined to hold that the Trial Court and the High Court rightly found that A1-5 entered into a criminal conspiracy and issued purchase orders to BCPL violating rules and regulations. Further, A1-3 breached the trust reposed on them while they were holding their official positions at HCL and conspired with A4-5, directors at BCPL, causing a loss of 39,480.85 kg of copper raw material.

Thus, it is amply clear that the appellants committed the offence under Section 406, IPC, i.e. they had committed criminal breach of trust. However, the offence committed by the appellants does not fall under Section 13(2) read with 13(1)(d) of the PC Act. Importantly, though the Trial Court in paragraph 67 of its judgment stated that all the ingredients of Section 406, IPC have been proved, there is no whisper regarding the offence under Section 13(2) read with 13(1)(d) of the PC Act. Though the entire judgment of the Trial Court revolves around the offence committed by the appellants under Section 406 IPC, the Court strangely went on to convict A-1 and A-2 under Section 13(2) read with 13(1)(d) of the PC Act as well, for which absolutely no reason, much less any valid reason, was assigned. Unfortunately, the High Court overlooked this aspect of the matter.

Be that as it may, having gone through the material on record, we are in agreement with the judgments of the Trial Court and High Court in respect of the offence under Section 406 IPC. Since there is no material against these appellants for the offence under Section 13(2) read with 13(1)(d) of the PC Act, the judgments of the Trial Court as well as of the High Court convicting the appellants herein for the offence under Section 13(2) read with 13(1)(d) of the PC Act stand set aside.

Mohd. Idris, appellant in Criminal Appeal No. 1462 of 2009 is stated to be aged about 92 years, whereas V.S. Ramprasad, appellant in Criminal Appeal No. 702 of 2009 is aged about 86 years. It is brought to our notice that both of them are ailing due to old age and they are not in a position to move on their own, in other words, they are wheelchair bound. Keeping in mind the said facts and having heard the learned counsel for the parties on sentence, we deem it proper to pass the following order:-

(a) The appellants herein are convicted for the offence under Section 406, IPC read with 120-B, IPC and are sentenced to pay a fine of Rs. 5 lakhs each.

(b) In default of payment of the fine of Rs. 5 lakhs each, the appellants shall undergo simple imprisonment for six months.

(c) The judgments and orders passed by the Trial Court and the High Court convicting the appellants under Section 13(2) read with 13(1)(d) of the PC Act stand set aside.

The appeals are disposed of accordingly.

.....**J.**
(N.V. RAMANA)

.....**J.**
(MOHAN M. SHANTANAGOUDAR)

.....**J**
(AJAY RASTOGI)

NEW DELHI
JULY 23, 2019

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1464 of 2009

Mohd. Idris ...Appellant

Versus

The State of Andhra Pradesh ...Respondent

WITH

CRIMINAL APPEAL NO. 1463 of 2009

S. Shankar ...Appellant

Versus

The State of Andhra Pradesh ...Respondent
Rep. by CBI

O R D E R

CRIMINAL APPEAL NO. 1464 of 2009

This appeal arises out of the judgment of the High Court of Judicature, Andhra Pradesh at Hyderabad passed in Criminal Appeal No. 175 of 2001 whereby the High Court confirmed the judgment of the Trial Court in C.C. No. 86 of 1996 dated 31.12.2000 on the file of the Court of the Special Judge for C.B.I. Cases, Hyderabad.

The appellant Mohd. Idris (Accused No. 1 in C.C. No.86 of 1996),

was charged for the offences punishable under Sections 120-B read with 406 of the Indian Penal Code (for short "IPC") as well as 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (for short "PC Act"). The Trial Court on evaluation of the material on record convicted the accused for the said offences and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs. 1,000/- on each count. The judgment of conviction and sentence passed by the Trial Court has been confirmed by the first appellate Court.

The brief facts leading to this appeal are as follows:

During 1989-90, M/s Hindustan Cables Ltd (HCL) issued a purchase order to RS Wires for the conversion of 1 metric tonne (MT) copper rods into Annealed Bright Copper Wires (ABC wires). Another order was placed with RS Wires on 7.5.1990 for 8 MTs, which was further amended to place orders for 13 MTs, 43 MTs and then 143 MTs, without requiring that bank guarantees had to be furnished alongside. There was a shortfall in the quantity of finished product received.

We are of the opinion that the Trial Court and the High Court are justified in coming to the conclusion that the following material facts have been proved by the prosecution:-

- i An office order HD/ED dt. 12.8.89 was issued stating that A1 was in charge of the Purchases and Stores Section as Chief Commercial Manager, and was assisted by the Dy. Manager and Assistant Manager of the Section.
- ii. As the head of the Department of Purchases and Stores, A-1 was responsible for the final approval of all transactions in the department.
- iii. P.W.10 was relieved from the post of Assistant Commercial Manager (Purchases) in the middle of February 1990.
- iv. A-2 was transferred and posted as Dy. Commercial Manager of the Department of Purchases.
- v. A-3 was allotted the portfolio of conversion of Cable Wires. The Purchases Department used to deal with the subject of raw material for ABC Wires.
- vi. It was the duty of the Chief Commercial Manager (A-1) to see that a clause for furnishing a bank guarantee for the amount equivalent to the value of the material to be given was stipulated in every purchase order. It was also his duty to ensure that the said clause was implemented.
- vii. The Purchase Assistant, who worked under the

directions of the Assistant Commercial Manager, held the custody of all files and bank guarantees.

viii. It was the responsibility of the Purchases Department to see whether contractual conditions were complied with and whether deliveries were covered by the bank guarantee.

ix. The Purchases Department could verify the quantity received by HCL from contractors from the Receipt-cum-Inspection Report (RIR).

x. A-1's permission was necessary to return the rejected material to the contractor.

xi. There were general instructions (including oral instructions from A-1) to return the rejected material to the contractor.

xii. The Chief Commercial Manager was primarily responsible as head of the Department of Purchases and Stores for approving delivery orders as well as for issue of delivery challans.

xiii. It was the duty of the Finance Department to monitor the situation of issue of raw material and receipt of finished product, and invoke bank guarantees if required.

xiv. It was also the responsibility of the Purchases

Department to monitor what was going out and coming into the stores.

xv. After verification of the bank guarantee existing with the Finance Department, the material would be released to the extent of the bank guarantee to the Stores Department.

xvi. The bank guarantees submitted by contractors were maintained in the Purchases Department.

Thus, we are inclined to hold that the Trial Court and the High Court rightly found that A1-5 entered into a criminal conspiracy during 1990-91 and issued purchase orders to RS Wires exceeding the bank guarantee limit and violating rules and regulations. Further, A1-3 breached the trust reposed on them while they were holding their official positions at HCL, and conspired with A4-5, directors at RS Wires, causing a loss of 17,335.25 kg of copper raw material.

Thus, it is amply clear that the appellant committed the offence under Section 406, IPC, i.e. he had committed criminal breach of trust. However, the offence committed by the appellant does not fall under Section 13(2) read with 13(1)(d) of the PC Act. Importantly, though the Trial Court in paragraph 77 of its judgment stated that all the ingredients of Section 406, IPC have been proved, there is no whisper regarding the offence under Section 13(2) read with 13(1)(d) of

the PC Act. Though the entire judgment of the Trial Court revolves around the offence committed under Section 406 IPC, the Court strangely went on to convict the appellant under Section 13(2) read with 13(1)(d) of the PC Act as well, for which absolutely no reason, much less any valid reason, was assigned. Unfortunately, the High Court overlooked this aspect of the matter.

Be that as it may, having gone through the material on record, we are in agreement with the judgments of the Trial Court and High Court in respect of the offence under Section 406, IPC. Since there is no material against the appellant for the offence under Section 13(2) read with 13(1)(d) of the PC Act, the judgments of the Trial Court as well as of the High Court convicting the appellant herein for the offence under Section 13(2) read with 13(1)(d) of the PC Act stand set aside.

The appellant is stated to be aged about 92 years. It is brought to our notice that he is ailing due to old age and is not in a position to move on his own, in other words, he is wheelchair bound. Keeping in mind the said facts and having heard the learned counsel for the parties on sentence, we deem it proper to pass the following order:-

(a) The appellant herein is convicted for the offence under Section 406, IPC read with 120-B, IPC and is sentenced to pay a fine of Rs. 5

lakhs.

(b) In default of payment of the fine of Rs. 5 lakhs, the appellant shall undergo simple imprisonment for six months.

(c) The judgments and orders passed by the Trial Court and the High Court convicting the appellant under Section 13(2) read with 13(1)(d) of the PC Act stand set aside.

The appeal is disposed of accordingly.

CRIMINAL APPEAL NO. 1463 of 2009

This appeal arises out of the judgment of the High Court of Judicature, Andhra Pradesh at Hyderabad passed in Criminal Appeal No. 209 of 2001 whereby the High Court confirmed the judgment of the Trial Court in C.C. No. 86 of 1996 dated 31.12.2000 on the file of the Court of the Special Judge for C.B.I. Cases, Hyderabad.

The operative portion of the judgment of the Trial Court convicting and sentencing the appellant S. Shankar, who was Accused No. 5 in C.C. No. 86 of 1996, reads thus:-

“82. I, therefore convict A.1 to A.3 and A.5 for the offences U/Sec. 120-B r/w 406 I.P.C., A.1 to A.3 U/Sec.13(2) r/w. 13(1)(d) of P.C. Act, 1988 and A.5 for the offence U/S. 406 I.P.C.

x x x x x x

Having regard to the circumstances explained by A.1 to A.3

and A.5, I am of the view that ends of justice would meet if A.1 to A.3 are sentenced to undergo simple imprisonment for One year U/Sec.120-B r/w 406 IPC and U/Sec.13(2) r/w. 13(1)(d) of P.C. Act, 1988 and to pay fine of Rs. 1,000/- each on each count, in default to undergo simple imprisonment for One month each and A.5 U/Sec.120-B r/w. 406 and U/Sec.406 IPC and pay Rs. 1,000/- (Rs. 500/- on each count) each, in default to undergo simple imprisonment for One month. A.1 to A.3 and A.5 are sentenced accordingly and their sentence shall run concurrently.”

From the aforesaid conclusion, it is amply clear that Accused No. 5 in C.C. No. 86 of 1996 was convicted for the offence under Section 120-B read with Section 406, IPC and for the offence under Section 406, IPC separately. He was only sentenced to pay a fine of Rs. 500/- on each count, thus totalling Rs. 1,000/-, and in default to undergo one month's simple imprisonment. No sentence of imprisonment was passed against him.

The appellant herein has already paid the fine imposed upon him. He is not interested in pursuing this appeal. Mr. R. Basant, learned senior counsel appearing for the appellant, is justified in arguing that the High Court had wrongly construed the operative portion of the judgment of the Trial Court as one imposing a sentence of imprisonment of one year against the appellant.

Since we find that the Trial Court had merely imposed a sentence of payment of fine of Rs. 1,000/- on the appellant, the judgment of the

High Court is clarified accordingly.

In view of the above, the appeal stands disposed of, making it clear that no sentence of imprisonment was imposed on Accused No. 5 in C.C. No. 86 of 1996 by the Trial Court and the High Court in Criminal Appeal No. 209 of 2001.

.....**J.**
(N.V. RAMANA)

.....**J.**
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI
JULY 23, 2019

.....**J.**
(AJAY RASTOGI)

ITEM NO.102

COURT NO.3

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s).1462/2009

MOHD.IDRIS

Appellant(s)

VERSUS

THE STATE OF ANDHRA PRADESH

Respondent(s)

WITH

CrI.A. No.702/2009 (II)

CrI.A. No.1464/2009 (II)

CrI.A. No.1463/2009 (II)

Date : 23-07-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s) Mr.R.Basant, Sr.Adv.
In CrI.A.No. Mr. Venkateswara Rao Anumolu, AOR
1463/2009 Mr.Chandra Mohan Anisetty, Adv.

In CrI.A.Nos. Mr.Pijush K.Roy, Adv.
1462 & 1464/09 Mrs.Kakali Roy, Adv.
Mr. Sunil Kumar Verma, AOR

In CrI.A.No.702/09 Mr.Manu Shanker Mishra, AOR
Mr.Nishant Kumar, Adv.

For Respondent(s) Mrs.Vibha Datta Makhija, Sr.Adv.
Mr.T.A.Khan, Adv.
Mr.Ravindera Kumar Verma, Adv.
Mr.Praveen Gaur, Adv.
Mr.Arvind Kumar Sharma, Adv.
Mr. B. Krishna Prasad, AOR

UPON hearing the counsel the Court made the following
O R D E R

CrI. A. No.1462/2009 & CrI.A.No.702/2009

(a) The appellants herein are convicted for the offence under Section 406, IPC read with 120-B, IPC and are sentenced to pay a fine of Rs. 5 lakhs each.

(b) In default of payment of the fine of Rs. 5 lakhs each, the appellants shall undergo simple imprisonment for six months.

(c) The judgments and orders passed by the Trial Court and the High Court convicting the appellants under Section 13(2) read with 13(1) (d) of the PC Act stand set aside.

The appeals are disposed of in terms of the signed order.

Cr1. A. No.1464/2009

(a) The appellant herein is convicted for the offence under Section 406, IPC read with 120-B, IPC and is sentenced to pay a fine of Rs. 5 lakhs.

(b) In default of payment of the fine of Rs. 5 lakhs, the appellant shall undergo simple imprisonment for six months.

(c) The judgments and orders passed by the Trial Court and the High Court convicting the appellant under Section 13(2) read with 13(1) (d) of the PC Act stand set aside.

The appeal is disposed of in terms of the signed order.

Cr1.A.No.1463/2009

The appeal stands disposed of in terms of the signed order, making it clear that no sentence of imprisonment was imposed on Accused No. 5 in C.C. No. 86 of 1996 by the Trial Court and the High Court in Criminal Appeal No. 209 of 2001.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Two signed orders are placed on the file)