

**SMT JUSTICE T. RAJANI**

**CRIMINAL APPEAL No.990 of 2007**

**ORDER:**

This appeal is preferred, by the appellant, who is examined as PW1 in C.C.No.28 of 2001 on the file of the court of Special Judge for SPE & ACB Cases, Vijayawada, questioning taking cognizance of the complaint, dated 19.06.2007, filed under Section 340 r/w 195(1)(b) of Cr.P.C. for the offence under Section 211 IPC against him in C.C.No.1271 of 2016 on the file of the Court of III Additional Chief Metropolitan Magistrate, Vijayawada.

2. Heard the counsel for the appellant and the Public Prosecutor, appearing for the respondent.

3. The allegations made in the complaint are that the accused is the president of Vaddavalli Fisherman Co-operative Society, Sattenappalli, Guntur District and his society took lease of the Tanks at Bethapudi, Tondepi and Damalapadu villages and growing fish, up to 1999. He submitted application for renewal of fish tanks, to the Assistant Director of Fisheries, Guntur and as there was no response, he met the Executive Officer and requested for renewal of the tanks. He demanded Rs.6,000/- as a bribe and stated that only on giving the said bribe, he would renew the same. When the accused expressed his inability to pay the same, the Assistant Director directed him to pay Rs.2,000/- as advance and pay the balance amount after it was

collected from the society members. Based on the report given by the accused, who was the complainant in the said case, a crime was registered in crime No.23/ACB/RCT-VJA/2000 and after due investigation charge sheet was laid.

4. But when the accused was examined as PW1, in CC.No.28 of 2001, in his chief examination, he stated that after submitting his application for renew of fish tanks to the AO, as well as the Assistant Inspector, Fisheries, Sattenappalli, as he could not get proper response from them, he proceeded to the office of the AO but he could not meet him. He found one Ramana Reddy, who was a tea vendor to the staff members of the AO. The tea vendor enquired with him the purpose of his visit and he informed the same. On that, said Ramana Reddy assured him that his work would be completed, if he would pay an amount of Rs.10,000/- to the AO. He agreed to pay Rs.6,000/- and the said Ramana Reddy asked him to pay the amount directly to the AO. Then he approached ACB Officials and gave a report. The Deputy Superintendent Of Police (D.S.P), ACB informed him that the report given by him is not in accordance with the legal provisions of Prevention Of Corruption Act and that the mediators did not ascertain anything about the contents of his report during pre-trap proceedings and the DSP instructed him to pay the amount on his further demand only and in case, if AO fails to demand any bribe amount, he was asked to keep the amount on the table of AO and in case he accepts the same, he was asked to relay the prearranged signal. He and the trap party proceeded to the house of AO. He found AO talking with another person,

at his verandah and noticing him the AO went inside the house and he went into the house and had a talk with AO and enquired about his pending renewal work. He also informed the AO that he brought the demanded bribe amount as informed by Ramana Reddy and when he offered the amount to the AO, he refused to receive the same and that he kept the amount in the wall shelf and the same was observed by the AO. In the cross-examination, on behalf of AO, the accused stated that ACB police have torn out the report given by him at the first instance and that when he offered the tainted amount to AO, he pushed with his both hands and he kept the tainted amount at the wall shelf, on a paper, near a photo.

5. Basing on the above, the trial court came to a conclusion that the accused knowing fully well that the contents of the carbon copy of the FIR are not true and correct, gave the report against AO to the DSP, ACB to take the complaint to file against him for the offence under Section 211 IPC.

6. The case was taken on file for the offence under Section 211 IPC. Questioning the said order of cognizance, this appeal is preferred on the grounds that the learned Magistrate erred in taking the complaint on file for the offence under Section 211 IPC and issuing summons to the accused; that the Magistrate failed to see that the ingredients of the said offence are not attracted; that the Magistrate ought to have seen that what has been mentioned in Ex.P1 is not substantive evidence and going back on contents of Ex.P1 does not amount to any offence; that

the Magistrate failed to see that the report given by the appellant herein was torn by the ACB Officials; that the Magistrate should have seen that the amount given by the appellant herein was refused by the accused officer and the said money was planted in a clock; that the Magistrate should have seen that the injured i.e., the accused in the original case did not complain about any injury being caused to him; that the Magistrate ought to have seen that the complaint was never instituted with an intent to injure any person and the actual report given was torn by the ACB Officials and a new report was prepared at their instance.

7. Heard the counsel for the appellant and the Public Prosecutor appearing for the ACB.

8. Now the point for consideration is whether the appellant is liable for prosecution under Section 211 IPC based on his evidence?

**POINT: -**

9. The trial court, at paragraph 7 of its judgment passed in C.C.No.28 of 2001 on the file of the Court of Special Judge for SPE & ACB Cases, Vijayawada, recorded the contentions of the Public Prosecutor that PW1 is liable for prosecution under Section 211 IPC, as he categorically stated that the report was given by him with false allegations. It was also observed in the discussion that it was found that the contents in the report dated 07.11.2000 are incorrect and false, which was categorically

stated by PW1 that during the course of his cross examination and it ordered for a complaint to be made against the appellant herein.

10. It would be necessary for this court to peruse the evidence of PW1 in order to see whether he had any intention to go back on his report given by him, which, in fact, initiated the entire proceedings. In the chief-examination, the variance with his report is with regard to the AO refusing to receive the amount. He, however, did not soft pedal on the fact of the demand made by the AO. He narrates all the facts pertaining to the demand made by the AO and subsequent to the AO refusing to receiving the amount he kept the tainted amount in the wall shelf. He states that AO observed the keeping of tainted amount in the wall shelf and later he came out and relayed the prearranged arranged amount to the trap party. On which they immediately rushed to the house of AO.

11. Hence, going by the tenor of the deposition of PW1, it is clear that he did not want to resile completely from his earlier version. He, nevertheless, spoke about the complicity of the AO by stating that the AO observed while he was keeping the tainted amount in the wall shelf. According to him, the report given by him was torn off by the officials. May be he reflected his version given before this court in the said report. The said fact also cannot be brushed aside holding it as false. In the cross-examination, he did not state, as contended by the Public Prosecutor. It was observed in the judgment at paragraph 70

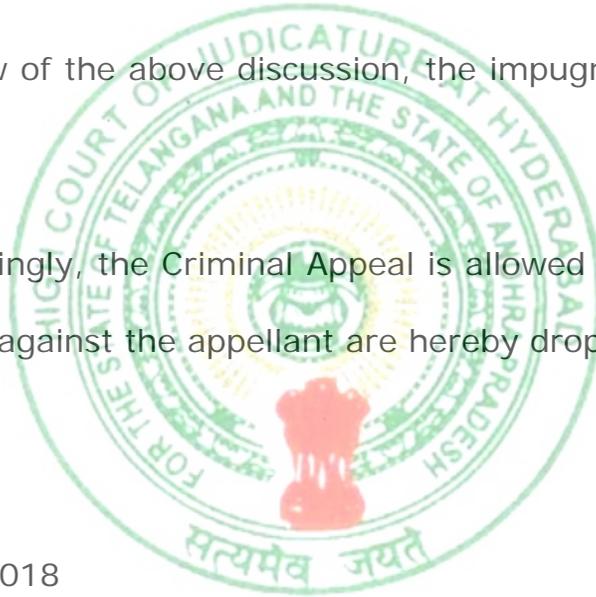
that he categorically stated that the report was given by him with false allegations. He only reiterated the fact that he stated in the chief examination that when he made the offer, AO pushed the amount with his both hands and that he kept the amount in the wall shelf.

12. Hence, merely because there is some variance in his evidence, from the report given by him or the earlier statement, it cannot be said that PW1 has committed an offence punishable under Section 211 IPC.

12. In view of the above discussion, the impugned order is set aside.

13. Accordingly, the Criminal Appeal is allowed and the further proceedings against the appellant are hereby dropped.

August 28, 2018  
LMV



T. RAJANI, J