CASE NO.:
Appeal (crl.) 121 of 1998

PETITIONER:
Varada Rama Mohana Rao

RESPONDENT:
State of Andhra Pradesh

DATE OF JUDGMENT: 25/03/2004

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE,J.

The appellant before us was charged for the offences punishable under Sections 7, 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 before the court of Special Judge (SPE & ACB Cases), Nellore and was found guilty of the said offences by the said court which sentenced the appellant to undergo R.I. for 2 years and to pay a fine of Rs.1,000/- for the offence punishable under Section 7 of the said Act and it also sentenced him to undergo R.I. for 2 years and to pay a fine of Rs.1,000/- for the offence punishable under Section 13 (1) (d) read with Section 13 (2) of the said Act. Both the substantive sentences were however ordered to run concurrently.

The appeal filed by the appellant before the High Court of Andhra Pradesh at Hyderabad came to be dismissed but the High Court reduced the sentence to one year on both the counts while the sentences of fine imposed by the trial court was sustained.

Prosecution case briefly stated is as follows :

The appellant while working as Additional Public Prosecutor, Grade I (APP) at Nellore demanded a sum of Rs.2000/- as illegal gratification on 31.7.1991 from PW-1 for effectively pursuing a criminal complaint filed under Section 138 of the Negotiable Instruments Act against one Mahiratnam Gupta. It is stated that after negotiation the appellant agreed to receive Rs.1500/- instead of Rs.2000/-. But PW-1 being aggrieved by such demand lodged a complaint with the Anti-Corruption Bureau pursuant to which a trap was laid. In the said trap, the appellant was caught receiving the said sum of Rs.1500/- and the phenolphthalein test conducted pursuant to the said trap proved positive in his hand and inner lining of the shirt pocket where he had kept the amount received by him during the trap.

The case of the defence was that there was serious rivalry between himself and one Sethu Madhava Rao who was then APP Grade II with whom he originally worked in a common senior's office. The said Sethu Madhava Rao entertained a grievance that the appellant had got promotion earlier to him, hence, was entertaining ill will against the appellant and it is pursuant to the said ill will in collaboration with the Superintendent of Police who also was inimically disposed towards the appellant for having refused to withdraw certain criminal cases on the recommendation made by the said Superintendent of Police, had conspired to falsely implicate the appellant through PW-1. It is also the defence case that appellant never handled the case with which PW-1 was connected hence, there was no question of the appellant demanding any bribe in that regard. The defence also challenged the genuineness of the trap and had given an explanation that PW-1 at

the relevant time brought some files below which some currency notes were kept which was not known to the appellant and at that time two of his colleagues who were also APPs were present. It is stated soon after the file was handed over to the appellant by PW-1 the team which had organised the trap along with the panch witnesses came to the office of the appellant and asked the colleagues of the appellant to leave the room and recovered the money from the file. The defence admitted that the appellant's fingers had turned positive for the phenolphthalein test which the appellant contended was because in the process of holding the file he might have touched the currency notes. In support of its case the defence examined two APPs who were allegedly present in the office of the appellant when PW-1 brought the file. The trial court rejected the defence version and relying on the prosecution evidence, including the evidence led in support of the trap convicted the appellant, as stated above, which conviction has been confirmed by the High Court. It is in this background the appellant is now before us in this appeal.

Shri M.N.Rao, learned senior counsel appearing for the appellant firstly submitted that the appellant's case was totally prejudiced by the appointment of said Sethu Madhava Rao as the Prosecutor in the case. He submitted that these two persons were working as Junior Advocates in the office of a common senior and were appointed as APPs simultaneously but during the course of their service the appellant having been found to be a better counsel was promoted as APP-I which was not to the liking of the said Sethu Madhava Rao. He also pointed out that there is sufficient material to show that this Sethu Madhava Rao was inimically disposed towards him. He also contended that the concerned Superintendent of Police had recommended the withdrawal of about 1000 criminal prosecutions which the appellant had opposed, therefore, this police officer was also inimically disposed towards the appellant, hence, these two persons in connivance with PW-1 had managed to organise a trap so as to create a false case against the appellant. The learned counsel submitted that at the initial stage itself the appellant had represented to the Government not to appoint the said Sethu Madhava Rao as a Prosecutor in the case because it would prejudice his defence and having failed to convince the Government on this ground he had filed a criminal petition under Section 482 of the Code of Criminal Procedure before the High Court for removing the said Sethu Madhava Rao from the post of Prosecutor in this case, but the High Court erroneously rejected the said prayer. Learned counsel also pointed out that there has been some serious irregularities in the framing of the charges which is indicated from the records of the case, therefore, the trial stood vitiated on that ground also. He also pointed out that the trap in question did not prove the fact that the appellant had demanded and received any illegal gratification. Though he admitted that the fingers of the appellant did turn positive in the phenolphthalein test, he stated that the lining of the pocket most probably turned positive because in all probability the appellant being nervous might have touched his shirt pocket. He also argued that the evidence led by the prosecution was wholly unreliable. He contended that per contra, the defence evidence clearly showed that the prosecution case was false.

The first argument of the learned counsel for the appellant that the appointment of Sethu Madhava Rao has prejudiced the case of the appellant because he was inimically disposed towards the appellant has to be rejected on more than one ground. It is to be noted that when Sethu Madhava Rao was appointed as the Prosecutor in the present case, the appellant did represent to the Government and that representation was obviously not considered because of which the appellant had moved the High Court by way of a criminal petition. The High Court, for reasons mentioned in the said order, rejected the prayer for change of the Prosecutor and

there being no further challenge the same became final and it is not open to the appellant now to question the same in these proceedings. Learned senior counsel appearing for the appellant relied on a judgment of this Court in the case of Satyadhyan Ghosal & Ors. Vs. Sm.Deorajin Debi & Anr. {1960 (3) SCR 590} wherein this Court had held that the appellant in that case was not precluded from raising before this Court the question of tendency involved in that case merely because he had not appealed from the earlier adverse order made by the High Court on remand. This Court in that case had held interlocutory order which did not terminate the proceedings and which had not been appealed because no appeal lay or even if the appeal lay, the same was not taken, could be challenged in an appeal from the final decree or order.

Apart from the fact that the ratio laid therein does not apply to the facts of the present case, it is to be seen that in this case the appellant had independently challenged the appointment of the Prosecutor in a criminal petition. This was not a proceeding initiated in the course of the present trial and the challenge to the said appointment was on facts and circumstances outside the scope of the prosecution case, therefore, he having failed in that attempt and the High Court having upheld the appointment of Sethu Madhava Rao as a Prosecutor in this case, that issue stands closed. Therefore, it is not open to the appellant to re-open the same for the first time in this appeal. That apart it is to be noted that the appellant has not been able to establish how the conducting of a criminal trial by a counsel who according to the accused is inimically disposed towards him would prejudice his trial because the learned counsel does not give evidence in this case and the manner in which he presents his case is always subject to judicial scrutiny by the concerned court. His personal opinion has no place in the decision making process of the court. At the most he may present his case with vehemence and with a touch of vengeance but this would not in any manner either influence the decision making process of the court or would cause any prejudice to the accused in his defence. This, however, does not mean that we approve the fact that a person who is admittedly on bad terms with the accused should be appointed as a prosecuting counsel unless for good reasons. May be in this case in view of the strained relationship between the parties, the learned prosecutor could have recused himself but that was a choice left entirely to him and that by itself does not prejudice the trial in any manner. The learned counsel for the appellant also has failed to show any prejudice that has occurred to the accused because of the selection of the prosecutor.

The next argument of the learned counsel for the appellant that there has been some serious suspicion in regard to the correctness of the charges framed in this case is based on the contents of a certified copy of the charge framed by the trial court. The learned counsel contended that this certified copy of the charge does not show that the appellant was accused of demanding illegal gratification while the order framing charge as found in the court papers shows that such a charge was framed. The learned counsel contended that this gives rise to a suspicion that there must have been some manipulation of the court records. We are unable to accept this argument primarily because this was not raised either in the trial court or in the first appellate court. The appropriate forum would have been the trial court which could have given a finding in this regard. Since no such attempt was made in the trial court, we decline to entertain this complaint.

The next contention of the learned counsel for the appellant is that the prosecution has failed to establish the factum of the appellant having received the illegal gratification. Apart from the fact that two courts below have after considering the material on record produced both by the prosecution and the defence have come to the conclusion that the prosecution has established its

case, we notice that it is an admitted fact by the appellant himself that PW-1 did conceal the currency notes worth Rs.1,500/- along with the case papers which he brought to the appellant, and while handling the said case papers he did come in contact with the said currency notes without knowing of its placement. This explanation has been considered and rejected by the two courts below and we find no reason to accept the same. From the evidence of PW-1 coupled with the facts proved by way of trap, we are satisfied that the accused did receive the money as contended by the prosecution. The learned counsel for the appellant then contended that the presence of phenolphthalein powder found in the pocket of the shirt of the accused could have been due to the fact that the accused accidentally touched his shirt pocket. This is not the defence of the accused in the courts below and the same does not also stand to reason because the phenolphthalein powder was found in the inner lining of the shirt of the accused which could not have been possible by the accused merely touching the pocket and could have been only possible if the tainted money was kept in his pocket.

The courts below, in our opinion, have rightly rejected the defence evidence. Therefore, in our opinion, the prosecution in this case has proved the guilt of the appellant beyond all reasonable doubt.

For the reasons stated above, this appeal fails and the same is dismissed.