

APHC010578042008



IN THE HIGH COURT OF
ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3365]

TUESDAY ,THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

CRIMINAL APPEAL NO: 1299/2008

Between:

Tarala Vijaya Babu,

...APPELLANT

AND

The State Of Andhra Pradesh

...RESPONDENT

Counsel for the Appellant:

1.D KRISHNA MURTHY

Counsel for the Respondent:

1.A GAYATHRI REDDY Standing Counsel for ACB cum Spl.
PP

SUBMITTED FOR APPROVAL:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

- | | |
|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to
see the fair copy of the Judgment? | Yes/No |

Dr. V.R.K.KRUPA SAGAR, J

*** HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

+ CRIMINAL APPEAL NO: 1299/2008

% 25.06.2024

Between:

Tarala Vijaya Babu,

...APPELLANT

AND

The State Of Andhra Pradesh

...RESPONDENT

! Counsel for the Appellant(s) : Sri D KRISHNA MURTHY

^ Counsel for Respondent(S): Sri A GAYATHRI REDDY

Standing Counsel for ACB cum Spl. PP

< Gist:

> Head Note:

? Cases referred:

- 1. 1993 CRI.L.J.2051**
- 2. AIR 1958 SC 124**
- 3. 1979 CRI.L.J.633 (SC)**
- 4. (2005) 8 SCC 370**
- 5. (2015) 14 SCC 186**
- 6. MANU/AP/1042/2003**

7. MANU/TN/0138/1994
8. 1953 CRI.L.J.1310
9. MANU/RH/1539/2016
10. MANU/SC/0045/1996
11. AIR Online 1996 SC 177
12. 2010 SCC Online AP 151
13. 2014 SCC Online AP 163

The Court made the following:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CRIMINAL APPEAL No.1299 of 2008

JUDGMENT:

1. **This** appeal by the accused under Section 374(2) of the CrPC is against the conviction recorded against him by the learned trial court. During the relevant period, he was a Work Inspector, Grade II in the office of Executive Director, A.P Housing Board Division Office, Visakhapatnam. On the prosecution initiated by the Inspector of Police, Anti-Corruption Bureau, Visakhapatnam Range, he was charged for the offences under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (herein after referred to as Act, 1988). Section 7 is about a public servant taking gratification other than legal remuneration in respect of an official act. Section 13 is about criminal misconduct by a public servant. Section 13(1)(d) provides that a public servant is said to commit an offence of criminal misconduct if he by corrupt or illegal means obtains for himself any valuable thing or pecuniary advantage. Section 13(2) provides the punishment for criminal misconduct. The learned Special Judge for ACB cases - Cum - III Additional District and Sessions Judge, Visakhapatnam duly tried the case as per C.C.No.7 of 2004 and by a judgment dated 27.09.2008 found this appellant/ accused not guilty for the offence under section 7. However, it found him guilty for the offence under section 13(1)(d) read with Section 13(2) of the Act, 1988. After affording an opportunity of due hearing to the appellant/accused,

it convicted and sentenced him to undergo rigorous imprisonment for one year and pay a fine of Rs.1,000/- with a default sentence of simple imprisonment for two months. By the present appeal, the convict impugns the said judgment.

2. Sri D. Krishna Murthy, the learned counsel for appellant and Smt.A.Gayathri Reddy, the learned standing counsel for ACB – Cum – Special Public Prosecutor for respondent/ State submitted their arguments. Written submissions were also filed on behalf of State.

3. Excepting the crime incident, all the other facts are not in dispute. The learned trial court gave a very detailed account of all the facts. The Andhra Pradesh Housing Board constructed houses at Rathnagiri, HB Colony, Pothinamallayya Palem, Visakhapatnam District. One such house is MIG II-99 bearing Door No.15-149. It was allotted to PW.1. Ex.P5 sale deed dated 16.11.2002 was executed by the Andhra Pradesh Housing Board in favour of PW.1 and this sale deed was registered on 18.11.2002. The sale consideration was Rs.77,879/-. The execution of registration of sale deed took place only after PW.1 paid the entire sale consideration. At the relevant time, the appellant/ accused was endowed with duties which include attending the registration and delivering the registered sale deeds to the allottees/ beneficiaries such as PW.1. It was in the context of these facts, the crime incident allegedly emerged.

4. Two more facts are to be noticed here. For the house, originally the prescribed area was 111.11 square yards. It

seemed that for some of the plots abutting the houses, a small piece of extra land was there. In such circumstances, the Andhra Pradesh Housing Board offered to sell that extra piece of land to the allottees. For the house allotted to PW.1, there was 65.97 square yards of site abutting it and the worth evaluated to it was Rs.23,090/-. Thus, the total extent of the land became 177.08 square yards. She had paid the extra price also for that. Therefore, for the entire extent of 177.08 square yards, Ex.P5 registered sale deed was executed in her favour. Another fact to be noticed is that during the relevant time, there was a scheme under which the allottees were given a gift cheque of Rs.1,000/- by the Board. Ex.P2 is the said gift cheque. Ex.P3 is the receipt signed by PW.1 in token of the receipt of the said gift cheque.

5. Coming to the material facts, the allegations are that after Ex.P5 sale deed was registered on 18.11.2002, the appellant/accused made a telephone call to PW.1 on 22.11.2002 informing her that the house registration was completed and she was asked to come to the office and collect her documents. The allegation is that the appellant/accused during this telephonic conversation demanded PW.1 to bring and pay him Rs.1,000/-. On 23.11.2002, PW.1 went to his office to collect her documents and the gift cheque, but the appellant demanded her to pay Rs.1,000/- and then receive the document and the cheque. She told him that she would come on 25.11.2002 and do it accordingly. However, as she was reluctant to bribe the accused, she approached ACB police on 24.11.2002 and narrated the incident and lodged Ex.P1 written complaint at 5.00pm. The then Dy.S.P, Visakhapatnam/

PW.5 asked her to come at 2.30 pm on 25.11.2002 along with the demanded bribe amount. He conducted his confidential enquiry and having been satisfied about the genuineness of the allegations made in Ex.P1, he appraised his superiors and obtained requisite permissions and registered case in Cr.No.28/RC/WLR/2002 under sections 7, 13(1)(d) read with 13(2) of the Act, 1988 and the FIR is Ex.P19. The Crucial date is 25.11.2002. PW.2 went and met PW.5 and ACB decided to lay a trap and accordingly it summoned the services of PW.2 who was the then Assistant Director of Mines and Geology and another individual Sri Appala Naidu (not tendered for evidence). In their presence, the genuineness of allegations made in Ex.P1 were ascertained from PW.1 and Ex.P9/ pre-trap proceedings were made. PW.1 brought one currency note of Rs.1,000/- denomination. It was smeared with required chemical powder and was given to PW.1 and the police party along with mediators and PW.1 reached a place near the office of the accused/ appellant and PW.1 went inside and found the accused in his seat and asked for the documents and the cheque and when he demanded Rs.1,000/-, she gave him the Rs.1,000/- currency note smeared with chemical powder/M.O.5 and he received it and kept in his shirt pocket (shirt as M.O.8) and the registered sale deed and the gift cheque were all handed over to her. She came out of the office and gave the designated signal and the raid party went and reached the accused and his both hands were subjected to chemical test and his right hand fingers on touching the solution, the solution turned pink and on questioning the accused/ appellant, he voluntarily produced Rs.1,000/- currency note that

he received from PW.1. His shirt pocket inner lining was subjected to chemical tests and that turned pink and since during the pre-trap proceedings, the currency note number was recorded and the same was compared as against Rs.1,000/- currency note produced by the accused and the same stood tallied. The accused/ appellant was questioned, and his statement was independently recorded by the mediators. This was confronted to PW.1 and she denied the truth of what the accused officer allegedly stated to them and evidencing all the incidents, post-trap proceedings/Ex.P18 were prepared. All the necessary statutory formalities were completed. From the office of the accused, various registers as per Exs.P3, P11, P17 and P20 were seized. Accused was arrested and was released on bail then and there itself. PW.5 also prepared Ex.P10/ rough sketch of the scene offence and he seized the shirt of accused officer and gave him a T-shirt to wear. He served Ex.P18/ post-trap proceedings on accused and obtained a written acknowledgment from him in this regard. He made his reports and forwarded the reports and material objects to the court and informed his superiors through radio message. Statement of PW.1 was recorded under Section 164 CrPC by a learned Magistrate. Further investigation was done by PW.6/ the inspector of police. He examined the witnesses and recorded their statements. He applied to the sanctioning authority seeking prosecution sanction. Vice-Chairman and Housing Commissioner of Andhra Housing Board, Gruhakalpa, Mukarmjahi Road, Hyderabad issued Ex.P21/ prosecution sanction orders dated 10.02.2004. On completion of investigation, the charge sheet was filed.

6. Learned special Judge took cognizance and summoned the accused and furnished him with necessary copies of the document. After seeing that the accused was represented by his learned counsel to defend him, it conducted charge hearing and framed charges under Sections 7 and 13(2) of the Act, 1988. When the charges were read over and explained to him, the accused pleaded not guilty.

7. At the trial, the prosecution examined PW.1 to 7 and they were tendered for cross-examination and the defence examined them in cross. Prosecution exhibited Exs.P1 to P21 and M.O.1 to 8. The incriminating material on record was offered to the accused under section 313 CrPC granting him an opportunity to explain. He denied the truth of the evidence. Defence did not adduce any evidence on its behalf. Learned Special Judge heard the arguments advanced on both sides and considered the material on record and passed the impugned judgment.

9. At the trial, the fact that MO.5/ Rs.1,000/- currency note was given to accused by PW.1 and was received by the accused remain admitted and undisputed. Explaining that circumstance, the version of the defence was that PW.1 was to pay charges totalling Rs.555/- consisting of Rs.390/- towards registration charges and Rs.95/- towards user charges and Rs.70/- towards typing charges. Since PW.1 did not pay them, the accused officer himself paid them and therefore towards repayment of it, MO.5/ Rs.1,000/- was given by PW.1 to him. Explaining it, he further said that he did not have the exchange to pay the remaining balance, PW.1 told him to keep the money with him and she

would go out and search for exchange and would come back. She went out and then this false case was foisted. According to defence, the motive for this false case was that towards excess piece of land, PW.1 wanted its registration without payment of consideration but the accused officer denied for that and therefore PW.1 nurtured grudge over him and implicated him in this false case.

10. Learned trial court considered the entire material on record and considered the arguments advanced on both sides and finally found that the allegations made against the accused were proved by the consistent evidence of the prosecution witnesses and the allegations were proved beyond reasonable doubt. It did not find any merit in the contention of defence and stated that the version put forth by the defence could not be believed because if really accused officer had made such payments, he would have obtained receipts and would have given them to PW.1 when she came to him for receiving the registered document and the gift cheque. Since, he did not show any such receipts, the version could not be believed. The learned trial court further stated that the accused officer is only obliged to discharge his duties and PW.1 was not his kith and Kin for him to invest money and get the documents registered without the necessary payments being made by the allottee/ PW.1. For those reasons, it negated the contentions raised by the defence. Since the learned trial court was satisfied with the evidence, it convicted him and sentenced him as indicated earlier.

11. The principal challenge raised in this appeal by the learned counsel on behalf of the appellant/ accused is that Ex.P21 – sanction orders are not in accordance with law. Learned counsel contended that the evidence on record disclosed that ACB furnished a specimen draft sanction order and the sanctioning authority mechanically and without application of mind signed it. Since such sanction is not in accordance with law, the very cognizance is vitiated and as a consequence, the entire trial and conviction shall be set aside.

12. As against it, the learned standing counsel for ACB – cum – special public prosecutor contended that the sanctioning authority considered the entire material on record and after due application of mind decided to grant sanction and accordingly passed Ex.P21 sanction orders and there is nothing to interfere by this court. It is further argued that before the trial court accused did not raise any challenge about legality of Ex.P21 sanction order and therefore such a contention cannot be raised here in the appeal for the first time. In this regard, the attention of the court is drawn to Section 19(3) and 19(4) of the Act, 1988.

13. In response to this, the learned counsel for appellant contended that a plea in challenge to the sanction orders can even be taken for the first time before an appellate court.

14. For appellant, the learned counsel cited: -

1. *N.P.Lotlikar V. C.B.I.*¹

¹ 1993 CRI.L.J.2051

2. *Jaswant Singh V. State of Punjab* ²

3. *Mohd. Iqbal Ahmed V. State of A.P* ³

4. *State of Karnataka Through CBI V. C.Nagarajaswamy* ⁴

5. *Nanjappa V. State of Karnataka* ⁵

15. On behalf of respondent/ State, learned standing counsel cited

1. *The Public Prosecutor, High Court of Andhra Pradesh V. P.Subhash Chandra Reddy* ⁶

2. *K.Nachimuthu V. State* ⁷

3. *State V. S.N.Mehra* ⁸

4. *Prakash Dharu V. State of Rajasthan* ⁹

5. *Superintendent of Police (C.B.I) V. Deepak Chowdary* ¹⁰

6. *State of Madhya Pradesh V. Dr.Krishna Chandra Saksena* ¹¹

7. *K.Srinivasulu V. The Government of A.P* ¹²

² AIR 1958 SC 124

³ 1979 CRI.L.J.633 (SC)

⁴ (2005) 8 SCC 370

⁵ (2015) 14 SCC 186

⁶ MANU/AP/1042/2003

⁷ MANU/TN/0138/1994

⁸ 1953 CRI.L.J.1310

⁹ MANU/RH/1539/2016

¹⁰ MANU/SC/0045/1996

¹¹ AIR Online 1996 SC 177

8. *O.M.Debara V. The Government of Andhra Pradesh*¹³

16. Learned counsel for appellant also submitted that the defence taken by the accused should have been considered by the learned trial court and it committed an error in not accepting the contention. That the judgment of the trial court is against law and weight of evidence and probabilities of the case. Learned counsel prays this court to set aside the impugned judgment. As against it, learned standing counsel for ACB – Cum – Special Public Prosecutor submits that the judgment of the trial court is in accordance with the evidence on record and is in accordance with law and it requires no interference.

17. Therefore, the following points fall for consideration: -

- 1. Whether Ex.P21 prosecution sanction order dated 10.02.2004 is not in accordance with law and that resulted in mis-carriage of justice?**
- 2. Whether the evidence on record, beyond reasonable doubt, disclosed the complicity of the accused/ appellant for the offences under Sections 13(1)(d) read with Section 13(2) of the Act, 1988?**
- 3. Whether the impugned judgment, on facts or law, require interference?**

¹² 2010 SCC Online AP 151

¹³ 2014 SCC Online AP 163

POINT No.1: -

18. At page No.10 and 11 of the impugned judgment, the learned trial court recorded that in terms of Section 2(c) of the Act, 1988, the accused/ appellant is found to be a public servant. To this extent, there is no challenge in this appeal on behalf of the appellant.

19. Since the accused is a public servant, previous sanction is necessary for prosecution as mandated in Section 19 of the Act, 1988. Ex.P21 is the sanction proceedings. It was issued by Vice Chairman and Housing Commissioner. It bears his signature. At the trial, proof of this document was required. In terms of Section 45 of the Indian Evidence Act, 1872, the signature on Ex.P21 was required to be proved. It was in such circumstances, the officer who worked as a secretary under the Vice Chairman was examined by the prosecution as PW.7. He said that Sri Satyanarayana Murthy, IAS was the Vice Chairman of the AP Housing Board and he worked under him. He said that the prosecution file was routed through him and he placed the material before his Vice Chairman. He also said that Ex.P21 bears the signature of the Vice Chairman and the Vice Chairman granted sanction only after verifying the report and the entire material submitted by the ACB police. He also showed to the court his own signing initial on Ex.P21 proceedings. In his cross-examination, he stated that a specimen draft sanction order was furnished by ACB Police along with all the other material records. It was further elicited from him that the contents of Ex.P21 prosecution sanction order are almost similar to the said

specimen draft sanction order. When it was suggested to him that the sanctioning authority did not apply its mind and did not properly verify the material, he promptly denied it as incorrect and not true. According to PW.7, the appointing authority as well as dismissal authority for a work inspector is the Chief Engineer. Be it noted that according to both sides, Vice Chairman and Commissioner of AP Housing Board is superior to the Chief Engineer.

20. It is from what was deposed by PW.7 about draft specimen sanction order furnished by ACB and its contents are almost similar to what is contained in Ex.P21, the learned counsel for appellant contended that it was a mechanically passed order and cannot be considered as a valid sanction order. It is in this regard, learned counsel for appellant cited the precedent. In ***N.P.Lotlikar V. C.B.I's case (supra 1)***, the Hon'ble Bombay High Court stated that there is no fault on part of the prosecuting authority in submitting a draft sanction order and the sanctioning authority considering the same. Therefore, as a matter of principle, submission of a draft order and consideration of the same and then passing the sanction order by itself is not illegal though the sanctioning authority was required to arrive at its subjective satisfaction that the case warranted a prosecution. In that particular case, the draft sanction order produced before the sanctioning authority was riddled with glaring omissions and there were blunders in it. The sanctioning authority verbatim adopted that draft and passed the sanction orders which repeated all those blunders and glaring errors. It was in such circumstances;

the sanctioning order was found not in accordance with law. In ***Jaswant Singh V. State of Punjab's case (supra 2)***, their Lordships of the Hon'ble Supreme Court of India stated that the facts constituting the offences charged shall bear their mention in the sanction order. The sanction order must disclose that the sanction was given in respect of the facts constituting such offence. It is only then one could say that the sanctioning authority had applied its mind to the facts and circumstances. In ***Mohd. Iqbal Ahmed V. State of A.P's case (supra 3)***, the Hon'ble Supreme Court of India stated that there must be evidence to see what material was considered by the sanctioning authority. Since only on consideration of necessary material alone the sanctioning authority be said to have applied its mind. That was a case where a note was put up by the commissioner and the sanction was granted by the standing committee and the sanction order merely read that as per the note it has granted sanction. What was there in the note and what facts constituted offences necessitating sanction for prosecution were completely missing in the sanction order. Even during the trial, the note of the commissioner was not placed for consideration of the trial court. It was in those circumstances, their Lordships said that there was no primary or secondary evidence to prove the contents of the note of the commissioner and therefore the sanction orders were not maintainable at law.

It is relevant to notice Section 19(3) and 19(4) of the Prevention of Corruption Act, 1988 : -

Section 19:- Previous sanction necessary for prosecution.—

(1).....

(2).....

(3) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice

the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

In ***State of Karnataka Through CBI V. C.Nagarajaswamy's case (supra 4)*** and in ***Nanjappa V. State of Karnataka's case (supra 5)***, their Lordships considered Section 19 of the Act, 1988 and held that on a conjoint reading of Section 19(3) and Section 19(4) of the Act, 1988, it appears clearly that an appellate court can also consider the validity of sanction orders only in those cases where the erroneous sanction order occasioned failure of Justice, and in such cases, the appellate court can interfere and not otherwise.

21. It is in the light of the principles laid down in the above rulings Ex.P21 has to be decided. A perusal of Ex.P21 shows that it is in four typed pages. It consists of all the details concerning the accused and PW.1 and about allotment of house to PW.1. It thereafter, contains a narration of all the facts from 18.10.2002 and about intimation given to PW.1 concerning extra area of land

and as to what had happened and then it mentions about the events that took place in November, 2002 and payment of Rs.10,500/- by PW.1 towards stamp duty and registration charges and then it narrated the facts about Rs.1,000/- being demanded by the accused. It contained the details as to events that took place on 22.11.2002 and about the telephonic conversation between the accused and PW.1 and then the incident that took place on 23.11.2002 and PW.1 personally meeting the accused officer and then it went on referring to PW.1 lodging a complaint on 24.11.2002 with ACB and mentions about the decision of ACB to lay a trap and about successful trap that was laid. In the other paragraphs and pages it also mentioned that the version given by the accused to ACB at the trap and that it has considered the same and found it not satisfactory. At paragraph No.9 at page No.3, it recorded that the facts on record indicated to it that they constitute offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act, 1988. It also made a mention that it had carefully examined the entire material placed before it which include copy of first information report, pre-trap, post-trap, mediator's report and other records of investigation etc., and then finally granted sanction for prosecution.

22. Thus on the face of Ex.P21, it discloses a full consideration of facts and due application of mind to the facts and thereafter granting sanction. Ex.P21 also discloses very clearly that the facts the sanctioning authority considered are the facts that are borne out from the first information report, pre-trap proceedings, post-trap proceedings and some other relevant papers.

Therefore, Ex.P21 by itself never allow anyone to think that there was no application of mind. In other words, one cannot say that it is a mechanically passed order. One has to say that Ex.P21 is an order passed on due application of mind.

23. That a draft order was produced and was considered by the sanctioning authority is the evidence of PW.7. The draft sanction order was not brought on record either by the prosecution or by the defence. Going by the evidence of PW.7, the draft order and Ex.P21 contain almost same contents. Whether utilising a draft sanction order itself is impermissible or not is the question that arises for consideration. In ***N.P.Lotlikar V. C.B.I's case (supra 1)*** cited by the appellant itself indicates that a sanctioning authority considering a draft sanction order produced by the prosecuting agency is always in accordance with law. In ***Prakash Dharu V. State of Rajasthan's case (supra 9)***, the Hon'ble Rajasthan High Court held that it is common knowledge that the sanction orders are drawn up after an active discussion is held between the sponsoring and the sanctioning authority. In its opinion, the draft sanction if prepared would virtually be an expression of the sanctioning authority. Even if it is accepted for arguments sake, that the draft sanction and the order according sanction are identical, then too, it hardly affects the merits of the order granting sanction because the narration of facts mentioned therein would not have been deviated in the slightest. In ***State V. S.N.Mehra's case (supra 8)***. It held that if the sanctioning authority perused the papers placed before it, it must be deemed to have exercised its mind about it and therefore such a sanction order cannot be

called defective. In ***Superintendent of Police (CBI) V. Deepak Chowdary's case (supra 10)***, their Lordships of the Hon'ble Supreme Court of India held "the grant of sanction is only an administrative function.....What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. *Prima facie*, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction. The grant of sanction, therefore, being administrative act, the need to provide an opportunity of hearing to the accused before according sanction does not arise. In ***K.Srinivasulu V. The Government of A.P's case (supra 12)***, it was held that an order of sanction could not be considered in a pedantic manner. The order of granting sanction must be demonstrative of the fact that there had been proper application of mind on part of the sanctioning authority. It need not contain detailed reasons. It must clearly indicate the specific provision of a section for which sanction for prosecution is granted.

24. On applying the above principles to the case at hand, it is crystal clear that Ex.P21 is an appropriately passed sanction order. Learned counsel for appellant referring to page No.4 of Ex.P21 points out a word "him" used therein and argued that the sanctioning authority merely copied the draft sanction order and therefore the word "him" finds place in Ex.P21. As otherwise, it would have mentioned the word "me" or "this authority". This vain attempt on part of the appellant has no force. For appreciating the

submission of the learned counsel, paragraph No.10 in Ex.P21 is reproduced here: -

*“And whereas, the Vice Chairman and Housing Commissioner, A.P.Housing Board, Hyderabad, being the competent authority to remove the aforesaid Sri Tarala Vijaya Babu, Work Inspector, Grade – II, Office of the Executive Engineer (Hg), Visakhapatnam Division, A.P.Housing Board, from the service, after fully and carefully examining the material placed before **him** (i.e. copy of first information report, pre trap and post trap Mediators Reports and other records of investigation etc.,) in respect of the above said allegation and having regard to the circumstances of the case consider that the said public servant Sri Tarala Vijaya Babu, Work Inspector, Grade – II O/o E.E., A.P.Housing Board, Visakhapatnam, should be prosecuted in a court of law for the aforesaid offences”*

25. A reading of the above makes it clear that use of the word “him” does not reflect that there was no application of mind on part of the sanctioning authority concerning the facts it considered.

26. From the discussion made above, this court holds that Ex.P21 is a legally valid sanction order and it does not suffer from any defects. It has to be stated that the appellant has not pointed out occasioning of any injustice to him even if Ex.P21 is considered as a defective sanction order. If that is the case, as the law provides, there is no warrant for this court to interfere. The

learned trial court properly considered the aspect of sanction though it was not argued before it. Hence this point is answered against the appellant.

POINT Nos.2 and 3: -

27. This court has gone through all the evidence on record. The consistent version of PW.1 was that towards registration charges, she had paid (Rs.8,000/- + Rs.2,500/-) totalling Rs.10,500/-. As Ex.P series documents indicate, it was only after all payments due were made, the registration of sale deed was done. If there was any amount due there should have been some letter or notice addressed to the allottee/ PW.1 by the office of the Housing Board. There were no such proceedings as is evident from the record. That indicates nothing was due from PW.1. The version of the appellant that he expended Rs.555/- towards certain charges was a theory suggested by him to prosecution witness and was denied by them. From the record, he did not demonstrate any such money spent by him. There was neither oral evidence nor documentary evidence in that regard. Thus, it was a theory based on no facts. Learned trial court rightly considered all the facts and circumstances and held that if really accused had paid, he would have certainly obtained receipts for such payments and would have certainly tendered them to PW.1 when she came to receive the documents from him. The fact that he did not tender any such receipts to her is a clear indication that there were no such payments made by him.

28. While cross-examining PW.1, the defence suggested to her that without any demand from the accused, she handed over Rs.1,000/- to him. She denied it was false. It is rightly argued by the prosecution before the trial court as well as here that the immediate response of the accused when he was questioned about receiving Rs.1,000/- does not indicate that he expended any money for registration. A fact is a truth. If really there was a fact, he would have told the same when he was questioned about receiving Rs.1,000/- from PW.1. The fact that he failed to say it is indicative that there were no facts on his behalf which means the version he has been now arguing is a version he has developed only to circumvent the prosecution. The Learned trial court rightly rejected the version of the defence. This court finds no error in the approach of the trial court and finds no error in appreciation of the evidence on its part and finds no error in considering the law. Therefore, there was nothing to interfere by this Court. There are no merits in the appeal. Hence, point Nos.2 and 3 are also answered against the appellant.

29. This court by order dated 24.10.2008 in CrI.A.M.P.No.2034 of 2008, the execution of substantive sentence was suspended and bail was granted to the appellant. During hearing of this appeal, the appellant has been on bail. Therefore, he should surrender before the learned trial court to undergo the sentence.

30. In the result, this appeal is dismissed. Consequently, the conviction and sentence recorded against the appellant/ accused in the judgment dated 27.09.2008 of learned III Additional District and Sessions Judge – Cum – Special Judge for ACB Cases,

Visakhapatnam in C.C.No.7 of 2004 is confirmed. The appellant/accused – Sri Tarala Vijaya Babu shall submit himself before the learned trial court on or before 04.07.2024 failing which the learned III Additional District and Sessions Judge – Cum – Special Judge for ACB Cases, Visakhapatnam shall secure his presence and enforce the punishment.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 25.06.2024

Dvs

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CRIMINAL APPEAL No.1299 of 2008

Date: 25.06.2024

Dvs