

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.1094 OF 2007

Between:

Gulam Mohammed

... Appellant

And

The Inspector of Police,
Anti Corruption Bureau,
Hyderabad Range.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 26.07.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No. 1094 of 2007

% Dated 26.07.2022

Gulam Mohammed

... Appellant

And

\$ The Inspector of Police,
Anti Corruption Bureau,
Hyderabad Range.

..Respondent.

! **Counsel for the Appellant:** A. Hari Prasad Reddy

^ **Counsel for the Respondent:** T.L.Nayan Kumar,

> **HEAD NOTE:**

? **Cases referred**

¹ AIR 2002 SC 486

² (2014) 13 SCC 55

³ (1980) 2 SCC 390

⁴ (2001) 1 SCC 691

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.1094 OF 2007

JUDGMENT:

1. The appellant is convicted for the offence under Sections 7 and also under Section 13 (1) (d) punishable under Section 13 (2) of the Prevention of Corruption Act, 1988 (for short "the Act of 1988") vide judgment in Calendar Case No.3 of 2003, dated 13.08.2007 passed by the Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad and sentenced to undergo RI for two years and to pay fine of Rs.2,000/-, in default, to suffer SI for six months, under each count. Aggrieved by the same, the present appeal is filed.

2. The case of the ACB is that the *de facto* complainant/P.W.1 had land to the extent of Acs.3.15 guntas in Sy.No.473 at Pillamarri village, Suryapet Mandal, Nalgonda District. Since no boundary stones were fixed around the land, the husband of P.W.1 submitted an application in the MRO office at Suryapet by paying the requisite fee for demarcation of her land. The accused officer went to the said land 3 months prior to the complaint but did not conduct any survey. On 03.07.2000, when requested to conduct survey, the accused officer demanded bribe of Rs.25,000/-failing which he

refused to survey and demarcate her land. In spite of several requests accused officer did not yield and finally directed that he would come to the house of P.W.1 on Monday morning at 11.00 a.m on 10.07.2000 and then an amount of Rs.10,000/- has to be paid and the remaining Rs.15,000/- has to be paid after concluding survey. Aggrieved by the demand and not willing to pay the bribe, the husband of P.W.1 approached the ACB authorities and filed complaint Ex.P3. Ex.P1 is her signature on the complaint Ex.P3.

3. The ACB formed a trap party for entrapping AO at the house of P.W.1. Prior to proceeding for the trap, the complaint was registered as FIR under Ex.P11.

4. The trap party including DSP, mediators, complainant, inspectors conducted pre-trap proceedings on 10.07.2000 in the ACB office at Khammam at 7.30 a.m under Ex.P4. After concluding the pre-trap proceedings, the trap party went to the house of PW1 and stopped at a distance of one furlong from her house and took positions nearby her house. In the evening around 6.30 p.m, the accused officer was found entering into the house of the complainant. At 6.40 p.m, the trap party received the pre-arranged

signal from the complainant and accordingly trap party rushed to the ground floor around 6.45 p.m and found the accused officer in the room. The DSP introduced himself and when questioned regarding bribe amount, the accused officer stated that P.W.1 had given an amount of Rs.10,000/- for utilizing to meet the expenditure of survey. The trap party after concluding post trap proceedings prepared post trap mediators report under Ex.P7. Thereafter, the accused officer was taken to his residence and file pertaining to the complainant was handed over by the accused officer. Separate proceedings under Ex.P9 was prepared in proof receiving the said file. The ACB inspector to whom investigation was handed over after concluding the investigation, filed charge sheet for the offences under Sections 7 and also under Section 13 (1) (d) punishable under Section 13 (2) of the Prevention of Corruption Act, 1988 and accordingly the learned special Judge framed charges for the said offences.

5. During the course of trial P.W.1 turned hostile to the prosecution case and stated in her chief examination that her husband who had lodged the complaint had 40 sq.yds of land by

the side of the land of the accused officer at Nalgonda. Her husband sold the land to the accused officer for Rs.30,000/-, out of which Rs.10,000/-was paid to her husband, subsequently the accused officer demanded her husband to execute the registered sale deed, for which, P.W.1 and her husband objected and demanded Rs.80,000/- to be paid. Then the accused officer expressed his inability to purchase the land at Rs.80,000/-and asked to return the said amount of Rs.10,000/-. P.W.1 met one Mahender Reddy and took loan of Rs.10,000/- and paid to the accused officer on the day of trap. She further stated that she never approached any of the ACB officials and she was never examined by any ACB official. P.W.1 refused to identify the complaint, however identified her signature on the complaint, which was marked as Ex.P1.

6. The learned counsel for the appellant/accused officer submits that P.W.1 has totally disowned her complaint and was declared hostile to the prosecution case. In fact she narrated the version of accused officer that the amount of Rs.10,000/-was returned on trap day as the said amount was given towards advance for purchase of 40 Sq.yds of land that belongs to the husband of P.W.1, adjoining

land of the accused officer in Nalgonda. For the reason of there being no other witnesses to the handing over of the bribe on the trap day and P.W.1 refused to acknowledge that there was any demand. In the said circumstances, when demand is not proved, the conviction of accused officer is improper and has to be reversed. In support of his contentions, he relied upon the judgment in the case of **Panjabrao v. State of Maharashtra**¹, wherein their Lordships have held that it is enough for the accused officer to come up with defence during the course of Section 313 Cr.P.C examination. Only for the reason of not coming up with the defence at the earliest point of time, the defence taken at the time of Section 313 Cr.P.C examination cannot be disbelieved. In **B.Jayaraj v. State of A.P**²

The Supreme Court held that proof of 'demand' in a trap case is sine qua non and failure to establish demand, the prosecution fails.

7. P.W.1 has turned hostile to the prosecution case and stated that there was never any kind of demand by the accused officer. Even during the course of her Section 164 Cr.P.C statement

¹ AIR 2002 SC 486

² (2014) 13 Supreme Court Cases 55

recorded after trap, she stated that there was no demand from the accused officer. The Hon'ble Supreme Court in B.Jayaraj's case held that unless demand is proved, the subsequent recovery of amount is of no consequence.

8. Learned Special Standing Counsel for ACB relied on the following judgments: In support of his contentions i) **Hazari Lal v. State (Delhi Administration)**³, ii) **M.Narsing Rao v. State of A.P**⁴, wherein the Hon'ble Supreme Court has held that in the facts and circumstances though the de facto complainant turned hostile to the prosecution case, the court below had correctly convicted on the basis of the other evidence available. Since recovery was proved and the accused officer had failed to state his defence at the earliest point of time and came up with a totally different version at trial, the defence cannot be believed and conviction has to be maintained.

9. The case of the prosecution is that the amount of Rs.10,000/- was demanded from P.W.1 for the purpose of conducting survey in her land. Aggrieved by the demand of bribe, the husband of P.W.1 lodged a complaint. The prosecution has not examined the husband

³ (1980) 2 Supreme Court Cases 390

⁴ (2001) 1 Supreme Court Cases 691

of PW.1 in the court to substantiate that he filed the complaint Ex.P3 before the ACB authorities. Though he was examined during the course of investigation and his name was listed in the memo of evidence, the prosecution has given up the said witness. Further, the prosecution has marked Ex.P8, the 'concerned file' through PW2, who acted as a mediator in the trap. However, none of the witnesses from the office were examined to show that there was any application which was made before the MRO for surveying the land of P.W.1.

10. The learned Standing Counsel for ACB submits that since Exs.P5 and P8 were marked, the entire file has to be looked into to see whether an application was made and the official work was pending with the accused officer.

11. Merely marking files Exs.P5 and P8 through the mediator, P.W.2 will not absolve the prosecution from proving the contents of the said files to show that any official work was pending with the accused officer and pursuant to which there was a demand of bribe. P.W.2, the mediator is not competent person to speak regarding the facts mentioned in Exs.P5 and P8 files. He deposed only to the

extent of saying that Exs.P5 and P8 files were seized during the course of investigation. No inference regarding the pendency of any work can be inferred unless the prosecution examines any officer from the office of the MRO. For the reasons best known to the prosecution, neither the MRO nor any officer from the MRO office was examined to speak about the pending work with the accused officer.

12. The prosecution has failed to prove that there was any demand by the accused officer and also failed to prove that there was any work pending with the accused officer. Mere recovery of the said money from the accused officer will not entail the prosecution to claim presumption in their favour. The very initial burden of proving that there was demand and acceptance for doing some official favour is not proved by the prosecution, the question of raising presumption under Section 20 of the Act of 1988 does not arise.

13. In view of the findings that there is no demand and official work, which was pending, there is no necessity to go into the defence of the accused officer regarding the amount of Rs.10,000/-

being part of sale transaction and also the evidence of D.W.1 who was examined to state regarding the sale transaction.

14. For the above mentioned reasons, the prosecution failed to prove its case. Accordingly, the conviction recorded by the learned Sessions Judge under Section 7 and 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988 vide impugned judgment dated 13.08.2007 in C.C.No.3 of 2003 is set aside. Since the appellant is on bail, his bail bonds stand cancelled.

20. Accordingly, the Criminal Appeal is allowed. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

K.SURENDER, J

Date: 26.07.2022

Note: LR copy to be marked.

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HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1094 of 2007

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kvs

