

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

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**Criminal Appeal No.1253 OF 2007**

Between:

State rep. by Inspector of Police,  
ACB, Hyderabad Range

... Appellant

And

Sri Mirza Yakub Ali Baig

..Respondent

DATE OF JUDGMENT PRONOUNCED : .03.2024

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

- 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 their fair copy of the Judgment? Yes/No

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*K.SURENDER, J*

**\* THE HON'BLE SRI JUSTICE K. SURENDER**

**+ CRL.A. No.1253 of 2007**

% Dated .03.2024

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ACB, Hyderabad Range

... Appellant

And

\$ Sri Mirza Yakub Ali Baig

..Respondent

**! Counsel for the Appellant:** Sri Sridhar Chikyala,

Special Public Prosecutor for ACB

**^ Counsel for the Respondent:** Sri C.Sharan Reddy

**>HEAD NOTE:**

? Cases referred

2015 AIR SCW 1180

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No.1253 OF 2007****JUDGMENT:**

1. The State is aggrieved by the order of acquittal recorded by the learned Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad vide Judgment in C.C.No.1 of 1997 dated 20.09.2006.

2. The accused was tried for the offence under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 for the reason of demanding and accepting Rs.5,000/- from the *defacto* complainant on 30.10.1995.

3. Briefly, the case of the ACB is that the accused was working as Detective Sub Inspector of Police, Hanumakonda Police Station, Warangal District. The *defacto* complainant /P.W.1 was arrested on 18.05.1995 from his house by the accused and other police personnel of the station. At the time of arrest, certain case property was seized which are marked as MOs.13 to MO37 before the trial Court. The said material objects viz., furniture, electronic gadgets gold and silver

ornaments. P.W.1 was accused in Crime No.158 of 1995 of the said Police Station which was registered under Section 384 of IPC.

4. P.W.1 was later released on bail. On 16.10.1995, the defacto complainant/P.W.1 along with P.W.2 met the accused and requested to return the articles that were seized from his premise and not deposited before the Court. At that juncture, the accused demanded Rs.10,000/- bribe for returning the articles and diluting the case against P.W.1. However, on repeated requests, the bribe amount was reduced to Rs.5,000/-. P.W.1 lodged complaint Ex.P1 before the ACB authorities on 27.10.1995. On the next date, the trap was arranged and the accused was apprehended for accepting bribe in his house on 30.10.1995. During the course of investigation, witnesses were examined, sanction orders were obtained and also the material objects that were lying in the police station were also seized by the ACB authorities. Thereafter, charge sheet was laid.

5. Learned Special Judge, having examined P.Ws.1 to 7 witnesses, marked Exs.P1 to P16 and also material objects MOs.1 to 37 on behalf of the prosecution. In defence, D.W.1, who is the servant of the accused was examined and Exs.D1 to D12 were marked in defence.

6. Later, learned Special Judge recorded acquittal on the following grounds:

i) The evidence of P.W.1 regarding the demand in Ex.P1 complaint was for the purpose of not booking a false case and for not killing P.W.1 in a fake encounter. However, the version was changed and P.W.1 deposed that the amount of bribe was for returning the household articles of P.W.1 which were not produced in the Court, when he was produced after arrest.

ii) P.W.2 who is the accompanying witness turned hostile to the prosecution case and likewise, the independent mediators P.Ws.3 and 4 have also not supported the case of the prosecution;

iii) The presence of D.W.1 was accepted by P.Ws.1 and 2. D.W.1 stated that the amount was thrust into the pocket of the accused who had taken out the amount from his pocket and threw it on the sofa. The amount was recovered on the sofa and not from the person of the accused;

iv) P.Ws.3 and 4 who are independent witnesses stated that after receiving signal from P.W.2, while they were entering into the house of the accused officer, they found P.W.1 keeping the cash in the shirt pocket of the accused and the accused took out the cash and kept it on the sofa. It is also the case of P.Ws.3 and 4 that the amount was found on the sofa and recovered by the DSP.

v) P.Ws.2, 3 and 4, who are witnesses to the transaction did not support nor corroborate the case of the prosecution that the amount was recovered at the instance of the accused;

vi) P.W.1 was a shady character involved in criminal offences and his sole testimony cannot form basis to convict, unless there is some corroboration from other source to infer acceptance of bribe by the accused.

7. Learned Public Prosecutor would submit that once the amount was received by the accused, presumption under Section 20 of the Prevention of Corruption Act, 1988 arise and it is for the accused to rebut the evidence. However, he failed to do so. Further, P.W.1/defacto complainant, P.Ws.6 and 7, Investigating Officers supported the version of demand. Further the household articles and other articles under MOs.13 to 37 were produced by the prosecution, which supports the version that the bribe was demanded for the purpose of returning the articles. The said articles were not deposited before the Court and were seized from the police station. For the said reasons, the trial Court has committed an error in acquitting the accused and accordingly, the appeal has to be allowed and accused has to be convicted.

8. The Hon'ble Supreme Court in the case of **Sudershan Kumar v. State of Himachal Pradesh**<sup>1</sup> while dealing with an appeal against acquittal under Prevention of Corruption Act, held that there is presumption of innocence of the accused

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<sup>1</sup> 2015 AIR SCW 1180

which is reinforced by an order of acquittal. Unless there are substantial and compelling reasons to interfere, the appellate Court shall not reverse an order of acquittal.

9. P.W.1 in Ex.P1 stated that the bribe was demanded by the accused whenever he attended the Court in Hanumakonda. Further, according to P.W.1, the accused was demanding amount on behalf of CI Veereshwar Rao. However, during the course of evidence, he did not state anything about CI Veereshwar Rao, but stated that the amount was towards return of the articles, though in the complaint it is specifically stated that the demand was towards diluting the case against P.W.1 and to see to that he is not killed in an encounter.

10. Exs.D1 and D2 are the bail application and petition for return of property. It is not mentioned in the said exhibits that the property was retained wrongfully by the police. Even in the writ petition filed against CI Veereshwar Rao for wrongfully arresting P.W.1, there is no mention that the property was taken. Even according to the writ petition Ex.D3 filed before



the Court, the accused was not the Officer who arrested P.W.1 nor the person who has taken the property. The articles which were produced before the trial Court were also not recovered at the instance of the accused.

11. According to P.W.1, the accused accepted the money with left hand and put it in his shirt pocket and then placed it on sofa and covered with newspaper. P.W.2 is the accompanying witness, P.Ws.3 and 4 mediators and also D.W.1, the servant of the accused, whose presence is spoken to by P.W.1. All of them have stated that P.W.1 had thrust money in the shirt pocket of the accused and the accused has taken out the amount and thrown it on the sofa. Even in the post trap proceedings under Ex.P7, the accused has given spontaneous explanation that the amount was thrust into his shirt pocket by P.W.1. Apart from the statement of P.W.1 regarding the demand and acceptance of bribe, all other circumstances surrounding the case falsifies the case of P.W.1 that the accused had demanded bribe for return of the articles. Admittedly, the accused did not arrest P.W.1 nor any

articles were seized by him. Initially in the complaint and also in the writ petition allegations were leveled against CI Veereshwar Rao and not the accused. However, during trial, there is no mention about said Veereshwar Rao and came up with a new version against the accused for demanding bribe.

12. The prosecution has utterly failed to make out any grounds for reversing the judgment of acquittal. There are no compelling reasons or strong circumstances for this Court to interfere in the well reasoned judgment of acquittal. Unless there are such glaring mistakes that have been committed by the trial Court, an order of acquittal cannot be reversed since such acquittal reinforces and strengthens the innocence of the accused. Even if the appellate Court dealing with the appeal against acquittal finds that there are two views that are possible in the prosecution case, one against the accused and one in favour, in view of acquittal that is recorded by the trial Court giving probable reasons, the appellate Court cannot interfere with such an order of acquittal.

13. Accordingly, the Criminal Appeal filed by the State is dismissed.

Date: 06.03.2024

Note: LR copy to be marked.

B/o.kvs

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**K.SURENDER, J**