

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

Criminal Appeal No.1256 OF 2007

Between:

P. Srinivas.

... Appellant

And

The State CB, CIU Range,,
Hyderabad, rep. by Special Public Prosecutor,
for ACB Cases,
High Court of A.P, Hyderabad.

... Respondent

Criminal Appeal No.1295 OF 2007

Between:

K.Srinivas @ Chinna and another

... Appellants

And

The State CB, CIU Range,,
Hyderabad, rep. by Special Public Prosecutor,
for ACB Cases,
High Court of A.P, Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 30.08.2022

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 |

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No. 1256 & 1295 of 2007

% Dated 30.08.2022

P. Srinivas.

... Appellant

And

\$ The State CB, CIU Range,,
Hyderabad, rep. by Special Public Prosecutor,
for ACB Cases,
High Court of A.P, Hyderabad.

... Respondent

! **Counsel for the Appellant:** Sri Ch. Dhananjaya

^ **Counsel for the Respondent:** Public Prosecutor

> **HEAD NOTE:**

? **Cases referred**

1.Crl.A.No.1276 of 2010 dated 09.10.2018

2 (2017) SCC 136

3 (2017) 15 SCC 560

4 (2014) 13 SCC 55

5 (2015) 12 Supreme Court Cases 348

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL Nos.1256 & 1295 of 2007****COMMON JUDGMENT:**

1. Both these appeals are disposed off by way of this Common Judgment as they arise out of CC No.48 of 2003 vide judgment dated 05.09.2007 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Courts, Hyderabad.
2. CrI.A.No.1256 of 2007 is filed by AO1 and CrI.A.No.1295 of 2007 is filed by AO2 and AO3. AO1 is convicted and sentenced to undergo rigorous imprisonment for six months and one year for the charges under Sections 7 and Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act of 1988') and AO2 and AO3 are sentenced to undergo rigorous imprisonment for six months each for the charge under Section 12 of the Act of 1988. Aggrieved by the same, present appeal is filed.
3. For the sake of convenience, the parties herein will be referred to as arrayed before the trial Court.
4. The case of the prosecution is that P.W.1 is an Electrical Contractor executing erection of sub-station transformers etc.,

for the electricity department. One M/s.Thiparti Constructions had given the work of external electric works for their project at Vijaynagar Colony to PW1. The work entrusted to P.W.1 was to obtain permission from the Department i.e., A.P.TRANSCO and procure material and complete the electricity connection to all the 22 apartments in the said building. Accordingly, P.W.1 filed Ex.P1, which is bunch of 22 applications pertaining to all the 22 flats. The requisite fee, drawings and municipal permissions etc., were enclosed to the said applications. The said applications under Ex.P1 was given along with Ex.P2 covering letter to AO1. With regard to the said work, P.W.1 met AO1 on 11.11.2000. However, he kept on postponing the issue. On 27.12.2000, PW.1 met AO1 on which date, AO1 demanded Rs.60,000/- as bribe for processing the applications. P.W.1 requested to reduce the said amount and on 29.12.2000, AO1 made telephone call and asked to send an amount of Rs.20,000/- as he was in need of the money. Aggrieved by the said demand, P.W.1 lodged a complaint Ex.P3 with the DSP, ACB on 29.12.2000. The trap was arranged on 30.12.2000. The DSP-P.W.7 sent for two independent mediators and pre-trap proceedings were undertaken in the

office of the ACB. After conclusion of pre-trap proceeding-Ex.P4, the trap party proceeded to the office of AO1 around 3.40 p.m on 30.12.2000. On the said date, P.Ws.1 and 2 went into the office of AO1 and on seeing P.W.1, AO1 asked whether P.W.1 brought the amount and AO1 asked P.W.1 to handover the said amount to AO2, who was a contractor. AO2 received the amount and kept it and after receipt of the amount by AO2, AO1 informed that the would prepare the estimates and balance amount has to be paid later. P.Ws.1 and 2 came out of the office and relayed the pre-arranged signal. The DSP ACB entered into the office and questioned AO1 regarding the amount. At that juncture, AO2 tried to leave, for which reason, DSP questioned him. At that point of time, P.W.2, who was accompanying mediator pointed out to AO2 and stated that he was asked by AO1 to take the amount and AO2 has taken the amount and kept in his hip pocket. The DSP-P.W.7 prepared sodium carbonate solution for conducting test. The test of the hands of AO1 proved negative. However, the test of AO2 proved positive. The said solutions were preserved and when questioned AO2, he informed that the said amount was handed over to his nephew, who was AO3. AO3 was

found leaving the office, as such, DSP called AO3 and also conducted test on his hands, which turned positive. The concerned applications and relevant files were seized under post-trap proceedings.

5. After conclusion of investigation, AO1 was charged for the offence under Sections 7 and 13(1)(d) r/w 13(2) of the Act and AOs 2 and 3 were charged for the offence under Section 12 of the Act.

6. Learned counsel for AO1 submits that no work was pending with AO1 and the file was not found with him but with the AE. The question of estimating the applications does not arise for the reason of arrears pending to be paid to the department. The Superintendent Engineer issued letter dated 20.12.2000 to pay an amount of Rs.49,365/- towards supervision charges. There was an outstanding of Rs.21,941/- by the owner of the premises where P.W.1 had taken contract of electric service for connections to 22 flats. P.W.1 also admitted that there was existing service connection by the time of filing applications and arrears were pending. Unless the said arrears are paid, no new service connection would be provided in the

said premises. Admittedly, arrears have to be paid in respect of existing electricity service connections for the flats in the premises and for the said reason, the applications were not processed by the department. He further submits that by the time AO1 had took charge as ADE, the work was sanctioned.

7. Learned counsel for AO1 further argued that AO2 and PW.1 are known to each other and the said amount was passed on to AO2 for purchase of electrical meters. The amount on the trap date was not in fact handled by AO1, which itself is an indication that the amount which was given to AO2 was towards purchase of meters from AO2. Though P.Ws 1 and 2 were together, P.W.2, independent mediator did not hear the conversation between AO2 and P.W.1 and P.W.2 admitted that he cannot say whether the amount was passed on to AO2 for supply of meters. P.W.2 further admitted that AO1 was not present when P.W.1 handed over the amount to AO2. The concerned file was with the AE by name Prasad and the said file was recovered from the office of the said Prasad. However, the said Prasad was not examined during the post-trap proceedings. There is no official work that was pending with AO1 and it is to the knowledge of P.W.1 that

AO1 had nothing to do with the amount of Rs.20,000/- which was passed on to AO2 for purchase of meters.

8. The learned counsel for AOs.2 and 3 submits that their names are not mentioned in the complaint. As on the date of trap, it is an admitted fact that AO2 was supplier of meters. AO2 and P.W.1 were previously acquainted with each other, for which reason, amount was passed on to AO2. In support of his contention, D.w.1, who is the then Assistant Engineer was examined, who stated that P.W.1 did not pay any supervisory charges as mentioned in Ex.D2. Further, P.W.1 did not obtain any permission from the Chief Electrical Inspector since the height of the building was more than 15 meters and permission was mandatory. P.W.1 also asked DW.1 to provide electric supply, for which D.W.1 stated that AO1 was the concerned officer to supply electricity and refused the request of P.W.1 to manage AO1 to give the electrical supply without clearing the supervisory charges and the outstanding due in the said building.

9. D.W.2 was working as Electricity Sub-station Operator. On the date of trap at about 3.30 p.m, P.W.1 met AO2 when DW2

was sitting along with them. P.W.1 came there and paid Rs.20,000/- to AO2 and asked him to supply 20 three phase meters. AO2 received the amount from P.W.1 and kept in his pocket and thereafter, gave it to AO3 to deliver 20 three phase electric meters to PW1. Immediately, the trap party entered and conducted tests. It is further the evidence of D.W.2 that AO1 informed that no money was taken from P.W.1 and thought the trap party was informed that the amount was given by P.W.1 towards purchase of three phase meters, but the said statement was ignored by the DSP.

10. In support of their contentions, learned counsel for the appellants relied on the following judgments; i) **Dashrath Singh Chauhan v. CBI** [Crl.A.No.1276 of 2010 dated 09.10.2018]; ii) **Mukthiar Singh (since deceased) through his LR v. State of Punjab** [(2017) SCC 136; iii) **State through CBI v. Dr. Anup Kumar Srivastava** [(2017) 15 SCC 560] and argued that proof of demand is *sine qua non* to convict a person under Sections 7 and 13(1)(d) of the Act; iv) **B.Jayaraj v State of A.P** [(2014) 13 SCC 55], wherein the Hon'le Supreme Court held that mere possession and recovery is not sufficient to constitute an offence

under the Act and only on the basis of proof of demand of bribe, presumption can be raised and mere recovery of money diverse from the circumstances cannot be made basis to convict the accused.

11. On the other hand, learned Special Public Prosecutor for ACB submits that if arrears are pending, AO1 ought not to have entertained the application. Entertaining the said application would itself go to show that AO1 demanded for bribe. He further submits that if AO1 knew that there was outstanding, the applications ought to have been returned. The defence that the amount was given to AO2 for purchase of meters was taken for the first time during trial, as such the defence cannot be accepted. In support of his contentions, he relied on the judgment of Hon'ble Supreme Court in the case of **D.Velayutham v. State, rep.by Inspector of Police, Salem Town, Chennai** [(2015) 12 Supreme Court Cases 348, wherein the Hon'ble Supreme Court at paras 5 and 6, on facts held that the amount was recovered from AO2 and presumption was drawn. In the said case, the allegation was against A1, Superintendent and A2 Inspector of Central Excise Department.

Both had demanded Rs.1000/- each from the complainant therein, but, however, on the date of trap, AO2 had accepted Rs.2000/- for both AO1 and AO2. In the said circumstances, conviction was upheld.

12. The said facts of the case vary from the present facts of the case. In the complaint, the names of AO2 and AO3 are not mentioned. Further, even according to the case of the prosecution, AOs 2 and 3 were present in the office and they had received money at the instance of AO1. The following facts are admitted:

i) There is an outstanding with regard to the building where P.W.1 was executing his contract and the said outstanding of Rs.25,000/- was not paid.

ii) Under Ex.D2, supervisory charges of Rs.49,365/- had to be paid which was also not paid.

iii) The concerned file was pending before AE Prasad, who was not examined by the prosecution.

iv) AO2 and P.W.1 are acquainted with one another and had previous transactions;

v) P.W.2, the independent witness admitted that the conversation between P.W.1 and AO2 could not be heard though he was standing nearby.

13. P.W.1 admitted that unless the outstanding arrears if any are paid for the building, the question of giving new connections by the department does not arise. In the present case, having knowledge that there is an outstanding, P.W.1 who is the Contractor, knowing the procedure of the department could not have insisted for the connections without paying the arrears. The procedure of processing file was in fact known to P.W.1 and when the said file was pending with AE Prasad, the question of demand by AO1 is doubtful in the back ground of P.W.1 being an electric contractor having knowledge about all the procedures.

14. On the date of trap, P.Ws.1 and 2 entered into the office and found AOs.1 and 2. The specific instructions by the DSP, ACB was to handover the amount to AO1 only on his demand. However, P.W.1 handed over the said amount to AO2 in the office

after a brief conversation. The defence taken by the Appellants is that the amount of Rs.20,000/- was given towards purchase of three phase meters 20 in number. Admittedly, AO2 was a person supplying electric meters. One glaring infirmity in the case of the prosecution is that on the trap day, AO2 was having food and washed his hands when the ACB officials entered. Though AO2 had food and washed his hands, the tests on the hands of AO2 turned positive, which is highly improbable. A person having food would have washed his hands prior to eating and after eating also. The possibility of hands of AO2 turning positive is highly suspicious.

15. The names of AOs 2 and 3 are not mentioned in the complaint. They are convicted for the offence of abetment under Section 12 of the Act, which is extracted hereunder:

“12. Punishment for abetment of offences defined in section 7 or 11.—Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.”

16. Even according to the prosecution both AOs 2 and 3 were present in the office at that point of time when P.W.1 entered. The question of abetting AO1 to take bribe does not

arise. Even according to P.W.1 he handed over the amount to AO2 at the instance of AO1 and subsequently, AO2 handed over the amount to AO3. Intentional aiding or abetting to do a thing or instigating a person engaging in conspiracy amounts to act of abetment and the said factors are missing in the present case, as such, offence under Section 12 of PC Act is not attracted.

17. As discussed in preceding paragraphs, the demand by AO1 is highly improbable and cannot be believed, in the back ground of P.W.1 being a contractor and knowing the procedure. The applications would not have been processed without payment of arrears of Rs.25,000/- and odd and also the supervisory charges. The file was also not pending consideration with AO1. Ao2 was a seller of electrical meters and PW1 and AO2 were earlier acquainted and did business. In the said circumstances, benefit of doubt is extended to the appellants.

18. The prosecution has failed to prove its case beyond reasonable doubt for which reason, the conviction recorded by the trial Court is liable to be set aside.

12. The conviction recorded by the trial Court in CC No.48 of 2003 dated 05.09.2007 is set aside and the appellants are acquitted. Since the appellants are on bail, their bail bonds shall stand cancelled.

13. Accordingly, Criminal Appeals are allowed.

K.SURENDER, J

Date:30.08.2022

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

Cr1.A.Nos.1256 & 1295 of 2007

Dated:30.08.2022

kvs