

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

Criminal Appeal No.1371 OF 2007

Between:

M.Sudershan

... Petitioners

And

The State ACB, Karimnagar Range,
Hyderabad Rep. by its Special Public
Prosecutor, High Court of A.P.,
Hyderabad.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 13.06.2023

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 |

K.SURENDER, J

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

+ CRL.A. No. 1371 of 2007

% Dated 13.06.2023

M.Sudershan

... Petitioners

And

\$ The State ACB, Karimnagar Range,
Hyderabad Rep. by its Special Public
Prosecutor, High Court of A.P.,
Hyderabad.

... Respondents

! Counsel for the Petitioner: Sri Badeti Venkata Rathnam

^ Counsel for the Respondents: Sri Sridhar Chikyala
Standing Counsel for ACB

>HEAD NOTE:

? Cases referred

¹ 1995 Cri.L.J 3978

² 2005 AIR SCW 3617

³ 2001 AIR SCW 2415

⁴ 2022 LiveLaw (SC) 1029

⁵ Appeal (Cri.)719 of 1995, dated 12.12.2000

⁶ (2004) 3 Supreme Court Cases 753

HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.1371 of 2007****JUDGMENT:**

1. The appellant who was working as Assistant Engineer was entrapped by the ACB for the reason of accepting an amount of Rs.4,000/- from P.W.1/complainant for putting up file pertaining to the complainant with regard to return of his EMD of Rs.11,000/-. Learned Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad found the appellant guilty and convicted him for the offence under Sections 7 and Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act vide judgment in C.C.No.51 of 2003 dated 29.09.2007. Aggrieved by the said conviction, present appeal is filed.

2. The case of P.W.1 is that in the month of January, 2001, civil contract was granted for construction of community shelter at Ibrahimpatnam by the office of the Executive Engineer, Pachayat Raj and he completed the work within six months. Final bill was also given in respect of the said works.

P.W.1 made initial deposit of Earnest Money Deposit (EMD) of Rs.11,000/-, for which reason, an application under Ex.P11 was made for returning EMD.

3. On 14.02.2002, P.W.1 went to the office seeking return of EMD, when demand of Rs.5,000/- was made by the appellant. The demand was reiterated on 27.02.2002. However, the bribe amount was reduced to Rs.4,000/-. On the next day i.e., on 28.02.2002, P.W.1 preferred complaint before the ACB authorities. On the basis of the complaint, after conducting preliminary enquiry, case was registered and trap was laid on 01.03.2002.

4. The trap party met on 01.03.2002 at 4.00 a.m and the 1st mediators' report was drafted. During the 1st mediators' report, P.W.1 was questioned by the independent mediators regarding the complaint and also phenolphthalein powder was applied to the bribe amount in accordance with the procedure. The consequence of phenolphthalein sodium carbonate solution test was demonstrated to the complainant. After conclusion of the proceedings, the trap party went near the

house of the appellant, as PW1 was allegedly asked by the appellant to pay the amount at his house. Around 7.15 a.m, P.W.1 went into the house and entered the drawing room of the appellant and questioned about the processing of EMD application, for which reason, the appellant demanded whether bribe amount was brought. When offered, it is stated that the appellant asked the amount to be placed in Ex.P3 wedding card cover which was on the table in the drawing room. After placing the amount in the wedding card cover, P.W.1 came out and gave pre-arranged signal indicating that the appellant had received the bribe amount.

5. The trap party went into the house of the appellant and questioned regarding the bribe amount. The appellant informed the DSP that PW1 forcibly tried to give some amount, he refused and asked PW1 to go away. Test of sodium carbonate solution was conducted and both the hands of the appellant turned negative indicating that the money was not handled by the appellant. However, the bribe amount was seized from the inside living room of the house where it was

kept on a table, at the instance of the appellant. The appellant refused to touch the wedding card cover.

6. After completing the formalities of recording statements, seizure of documents and bribe amount, 2nd mediators' report Ex.P8 was drafted and thereafter investigation was handed over to the inspector. After completing the investigation, Inspector Sharat Babu filed final report/charge sheet.

7. Learned Special Judge having framed charges under Section 7 and Section 13(1)(d) of the Prevention of Corruption Act, examined P.Ws.1 to 5 and marked Exs.P1 to P10 on behalf of the prosecution. In defence, the appellant examined D.Ws.1 and 2 and also documents Exs.X1 to X3 were marked.

8. Learned Special Judge did not find favour with the defence of the appellant that the money was planted in the wedding cover. He further found that the case projected by the prosecution was convincing and accordingly convicted the appellant. The defence witnesses D.Ws.1 who was examined by the appellant stated about an altercation between the complainant and the appellant. According to him,

complaint/P.W.1 and his associates were trying to get the appellant transferred. The said differences were also published in newspapers. Since evidence of demand and acceptance was convincing according to the learned Special Judge, conviction was recorded.

9. Learned counsel appearing for the appellant would submit that in the back ground of the case when the EMD was Rs.11,000/-, it was highly improbable that demand of Rs.4,000/- was made for returning Rs.11,000/- EMD. Mainly in the back ground of differences, which was also reported in the newspapers and also stated by PW3 and D.W1, the defence of false implication by planting the amount in the wedding cover is more probable. Further, if the money was handled in any manner, test on the hands of the appellant would have turned positive.

10. Learned counsel relied on the judgment of Hon'ble Supreme Court in the case of M.K.Harshan v. State of Kerala¹,

¹ 1995 Cri.L.J 3978

wherein the Hon'ble Supreme Court found that amount was planted and the same was kept in the table drawer.

11. In **Ganga Kumar Srivastava v. State of Bihar**² and **State of Tamil Nadu v. Krishnan and another**³, the Hon'ble Supreme Court found favour with the defence of the accused that the amount was planted in the facts and circumstances of the case.

12. On the other hand, learned Standing Counsel for ACB would submit that since the official favour was pending with the appellant and money was recovered at his instance on the date of trap, presumption arises under Section 20 of the Act. The appellant has failed to discharge his burden and that the learned Special Judge has given adequate reasons on the basis of facts and circumstances of the case, when the EMD was to be returned and bribe amount was recovered at the instance of the appellant, case of prosecution was believed. Accordingly, prayed to dismiss the appeal.

² 2005 AIR SCW 3617

³ 2001 AIR SCW 2415

13. Learned Special Counsel relied on the judgment of Hon'ble Supreme Court in the case of **Neeraj Dutta v. State (Government of NCT of Delhi)**⁴ and argued that hostility of the complainant cannot be made basis to record acquittal and the Court can rely upon the other evidence adduced by the prosecution to infer demand of bribe. He also relied on the judgment of Hon'ble Supreme Court in the case of **N.Narsinga Rao v. State of Andhra Pradesh**⁵ and argued that the presumption can be drawn on the basis of the amount being recovered from the accused. He also relied on the judgment of Hon'ble Supreme Court in the case of **T.Shankar Prasad v. State of A.P**⁶ wherein the Hon'ble Supreme Court held that presumption under Section 20 of the Act is a legal presumption. However, the said presumption is rebuttal by proof and not by mere explanation.

⁴ 2022 LiveLaw (SC) 1029

⁵ Appeal (Crl.)719 of 1995, dated 12.12.2000

⁶ (2004) 3 Supreme Court Cases 753

14. As seen from the complaint Ex.P2, endorsement is made by DSP that the complaint was received on 28/2/2002 at 9AM. There is another endorsement that “on 01.03.2002 at 4.00 a.m”, since the contents of the complaint made out an offence, after verification and obtaining necessary permission, investigation was taken up. As seen from the document EXP2, the endorsement by P.W.5 that the complaint was received on 28.02.2002 appears to have been made subsequently. There is no mention about the DSP delegating any job either for verification of the complaint or to know antecedents of the appellant to anyone. But the endorsement on 1/3/2002 states about verification and obtaining necessary orders. Observing carefully, the endorsement of DSP dated 28/2 and 1/3 were made after the endorsement on 1/3/2002 at 4 AM. There is no signature of the officer who made the endorsement on 1/3 at 4 AM.

15. The complaint lodged by P.W.1 creates doubt when Ex.X1 GO is considered. According to Ex.X1, the Government has fixed defect liability for a period of two years which means,

EMD paid could be returned after two years of completion of works. However, in the present case the claim was made within six months.

16. The mediator admitted that the wife of the appellant who was examined as D.W.1 was present in the house. She was not examined by the ACB. Having entered into the witness box, the wife of the appellant stated that around 7.10 a.m, while she was in the kitchen, complainant came there. She opened the door and found P.W.1 with measurement book and some other papers with him. P.W.1 requested her to wake up the husband so that he could talk with him and sat on a chair. D.W.1 went inside and woke up the appellant. After brief conversation in between the appellant and P.W.1, several officers entered into the house and conducted proceedings. In spite of the appellant stating that he never took any amount, ACB officials conducted proceedings and thereafter left.

17. The case as projected by the prosecution gives rise to any amount of doubt regarding the registration of crime, time and date of lodging the complaint. There is no explanation as to

why the amount was asked to be placed in the wedding cover. If the amount was asked to be placed in the cover, P.W.1 while handling the tainted notes and placing the same in the cover, undoubtedly, phenolphthalein powder would have been transferred to the cover. In the event of the cover being taken from the drawing room to the inside living room, phenolphthalein powder would be transferred to the hands of the appellant and yielded positive result for the test on his hands. Since the test on the hands of the appellant remained negative and there is no explanation for the said negative result, the case as projected by the prosecution creates any amount of doubt.

18. For the foregoing discussion and also relying on the judgments of the Hon'ble Supreme Court cited supra, planting of tainted notes in the wedding cover can be believed. Benefit of doubt can be extended to the appellant.

19. Accordingly Criminal Appeal is allowed by setting aside impugned judgment of learned Special Judge in CC No.51 of 2003 dated 29.09.2007. Since the appellant is on bail, his

bail bonds shall stand discharged. Consequently,
miscellaneous applications, if any pending, shall stand closed.

K.SURENDER, J

Date: 13.06.2023

Note:LR copy to be marked
B/o.kvs

HONOURABLE SRI JUSTICE K.SURENDER

Criminal Appeal No.1371 of 2007

Date:13.06.2023

kvs