

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

Criminal Appeal No.1582 OF 2007

Between:

D.Suresh Raj

And

... Appellant

The State ACB, City Range-I,
Hyderabad, rep. by
Special Public Prosecutor

... Respondent

DATE OF JUDGMENT PRONOUNCED:

25.07.2023

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 the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

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

+ CRLA. No. 1582 of 2007

% Dated 25.07.2023

D.Suresh Raj

... Appellant

And

\$ The State ACB, City Range-I,
Hyderabad, rep. by
Special Public Prosecutor

... Respondent

! Counsel for the Appellant: Sri D.Linga Rao

^ Counsel for the Respondent: Sri Chitneni Vidya Sagar Rao,

Learned Special Public Prosecutor

>HEAD NOTE:

? Cases referred

¹ AIR 2018 Supreme Court 4720

² (2009) 3 Supreme Court Cases 779

³ (2002) 10 Supreme Court Cases 371

⁴ 2011 (3) ALT (CrI.) 66 (AP)

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.1582 OF 2007****JUDGMENT:**

1. The appellant/ A1 was convicted for the offence under Section 7 and Section 13(1)(d) read with under Section 13(2) of Prevention of Corruption Act, 1988 (for short 'the Act') and sentenced to undergo rigorous imprisonment for a period of one year under both counts vide judgment in C.C.No.34 of 2003 passed by the Principal Special Judge for SPE & ACB Cases, Hyderabad dated 25.10.2007. Aggrieved by the same, present appeal is filed.

2. P.W.1 is the complainant. He approached the ACB and filed complaint Ex.P1 that the appellant who was the Traffic Inspector went to the shops of P.W.1, PW2, PW3 and others and asked to meet them in the police station. Since they failed to meet him in the police station, the appellant went to the shop and picked up 10 pairs of shoes from each of their shops on 16.10.2001. When P.W.1 and others had asked the appellant to return the shoes, the appellant demanded Rs.500/- as monthly mamool, failing which, he would see to that the shops are removed. On 19.10.2001, P.W.1 and others approached the appellant having collected Rs.3,000/-

amongst themselves. However, the appellant did not agree for Rs.3,000/- and demanded Rs.6,000/- to be paid for two months immediately.

3. Aggrieved by the same, Ex.P1 complaint was lodged on 22.10.2001, in the morning. The trap was arranged on the same day. Around 3.00 p.m, P.W.1 took amount of Rs.6,000/- to the DSP office. The members of the trap party were present in the office. Accordingly, Ex.P2 mediators report (pre trap proceedings) was drafted by P.W.4. After concluding pre-trap proceedings, the trap party proceeded to Putlibowli police station. Other trap party members stayed outside the police station while PW1 and other vendors went into the police station at 4.45 pm. Only P.W.1 met the appellant, came outside and relayed signal at 5.15 pm indicating acceptance of bribe by the appellant. The DSP and other Inspectors went into the police station. While entering into the police Station, P.W.1 informed the DSP that the amount was demanded and accepted by appellant and handed over amount to another person in the room. The DSP questioned the appellant and was asked to

rinse his fingers in the sodium carbonate solution. The solution turned pink indicating handling of bribe amount by the appellant.

4. The appellant explained that P.W.1 and other footwear vendors were encroaching on the road and causing hindrance to the traffic, for which reason, shoes were taken from them and several petty cases were also registered.

5. According to P.W.1, after he went inside the office of the appellant, the appellant demanded amount and after handing over, counted the money and gave it to Accused Officer-2 (acquitted by trial Court).

6. All that transpired in the police station was drafted and after conclusion of post-trap proceedings under Ex.P6, investigation was handed over to the inspector. Having concluded investigation, the Inspector filed charge sheet for the offence under Section 7 and Section 13(1)(d) r/w 13(2) of the Act. Charges were accordingly framed against this appellant and AO2, who was found in possession of the currency notes.

7. Witnesses P.Ws.1 to 7 were examined and Exs.P1 to P11 were marked on behalf of the prosecution. The appellant examined D.W.1 in defence.

8. Learned counsel appearing for the appellant would submit that the witnesses deposed that traffic officials used to threaten them not to use foot path for transacting their footwear business. Several times challans were issued. For the said reason, P.W.1 and other vendors have falsely implicated the appellant in a trap case. He relied on the judgment of the Hon'ble Supreme Court in the case of **Dashrath Singh Chauhan v. Central Bureau of Investigation**¹. The Hon'ble Supreme Court recorded acquittal on the ground that the co-accused who was acquitted by the trial court and State did not prefer any appeal against the said acquittal. He also relied on the judgment in the case of **C.M.Girish Babu v. CBI, Cochin, High Court of Kerala**², wherein the Hon'ble Supreme Court held that mere recovery of the amount will not be sufficient to prove the case under Section 7 when demand is not proved.

¹ AIR 2018 Supreme Court 4720

² (2009) 3 Supreme Court Cases 779

9. In **Punjabrao v. State of Maharashtra**³, the Hon'ble Supreme Court held that the accused can discharge his burden by preponderance of probability and the explanation given during Section 313 Cr.P.C examination can be considered.

10. Learned counsel also relied on the judgments reported in the case of **State ACB rep. by Public Prosecutor, High Court of A.P v. J.Chandrsaekhar Reddy, Special Public Prosecutor**⁴, unreported judgments in Criminal Appeal No.426 of 2006, dated 18.04.2013 and Criminal Appeal No.2 of 2003, dated 04.03.2010.

11. On the other hand, learned Special Public Prosecutor would submit that both the aspects of demand and acceptance have been proved by the prosecution. Ex.P1 complaint coupled with the evidence of P.Ws.1, 2 and 3 goes to show that the appellant was harassing for bribes and to pay monthly mamools. He had collected 10 pairs of shoes from each of the vendor and kept in the police station. On the trap day, the hands of the appellant turned positive and the amount was recovered from AO2. Since all the ingredients

³ (2002) 10 Supreme Court Cases 371

⁴ 2011 (3) ALT (CrI.) 66 (AP)

of Section 7 and Section 13(1)(d) are made out, conviction cannot be reversed.

12. The defence of the appellant is that he was discharging his official duties and ensuring that the foot path vendors such as P.W.1 and others did not cause any hindrance to the traffic. Petty cases were being booked and challans were also issued. For the said reason, the vendors bore grudge against the appellant and falsely implicated him in the case. It is not in dispute that the appellant was a person in authority in the said area and also cautioned the foot path vendors from doing business on foot path since it was causing traffic problems. Challans were also issued. It is further not in dispute that ten pairs of shoes from each of the vendors were taken by the appellant and kept in the police station. The appellant gave an explanation on the trap day that the shoes would be returned after payment of amount of challan.

13. The circumstances in the present case are; i) that P.Ws.1, 2 and 3 and others were doing business on foot paths; ii) the appellant had warned them from doing such business; iii) ten pairs of shoes from each of the vendors were taken and placed in the

police station; iv) No entries were made either in the GD register nor petty cases were registered after getting the shoes; v) P.W.1 lodged complaint Ex.P1 alleging that the appellant was insisting for payment of mamool every month; vi) complaint was lodged and on the date of trap; and vii) test on the hands of the appellant turned positive indicating handling of the bribe amount as stated by P.W.1.

14. The factum of payment is proved by the prosecution. The other circumstance of getting shoes and keeping them in the police station without making any entries in any of the records of the police station also indicates that the appellant had approached P.W.1 and others for mamools. No reasons are assigned by the appellant as to why shoes were taken from P.W.1 and others and placed in the police station. At the time of taking shoes, there is no acknowledgment given by the appellant nor any record in the police station reflects that the shoes were taken from P.W.1 and others.

15. The argument that AO2 was acquitted and this appellant also stands on the same footing and following the judgment in **Dashrath Singh Chauhan v. Central Bureau of Investigation's** case (supra), the appellant has to acquitted, cannot be accepted. In the said case,

the prosecution had alleged criminal conspiracy amongst two accused and in pursuance of conspiracy, amount was received. In the peculiar facts of the case, the Hon'ble Supreme Court found that when the co-conspirator was acquitted, the conviction for the very same allegation cannot be maintained.

16. The facts in the said case differ from the case on hand. There is no mention of 2nd accused in the complaint nor did P.W.1 or any others have even met AO2. Only on the date of trap, money was handed over by this appellant to AO2. In the said circumstances, the question of criminal conspiracy does not arise. Giving benefit of doubt, in the present facts, when AO2's role was never stated till the date of trap, AO2 was acquitted. The judgment of **Dashrath Singh Chauhan v. Central Bureau of Investigation** has no application to the facts of the present case on hand.

17. This is a case where the demand was proved by the prosecution and also the recovery of the amount. Though the amount was recovered from AO2, the said recovery from AO2 will not absolve the appellant from the offence. The tests on the hands

of the appellant proved positive indicating acceptance of bribe amount corroborating the statement of P.W.1.

18. Though, an explanation was given that the appellant had warned P.W.1 and others and for the said reason, he was falsely implicated, cannot be believed. If the appellant was discharging his duty by initiating action against P.W.1 and others, the same would have been reflected in the records like GD entries or petty case register. The evidence that 10 pairs of shoes were taken from each of the vendor corroborates the testimony of P.W.1 regarding the appellant misusing his authority as an Inspector demanding monthly payment of bribe. There are no grounds to interfere with the findings of the learned Special Judge since both the demand and acceptance of bribe are proved and the appeal is liable to be dismissed.

19. Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petition, if any, pending in this Criminal Appeal are dismissed.

K.SURENDER, J

Date: 25.07.2023

Note: LR copy to be marked.

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HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1582 of 2007

Date: 25.07.2023.

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