

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

Criminal Appeal No.1600 OF 2007

Between:

P.Lakshmana Chary.

... Appellant

And

The State, ACB, CIU, Hyderabad,
Rep. by Special Public Prosecutor
For ACB Cases, High Court,
Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 17.08.2022

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. 1600 of 2007

% Dated 17.08.2022

P.Lakshmana Chary.

... Appellant

And

\$ The State, ACB, CIU, Hyderabad,
Rep. by Special Public Prosecutor
For ACB Cases, High Court,
Hyderabad

...Respondent

! **Counsel for the Appellant:** A.Divya

^ **Counsel for the Respondent:** Sri Vidyasagar Rao,

Spl. Public Prosecutor.

> **HEAD NOTE:**

? **Cases referred**

¹ (2016) 12 SCC 150

2 (1996) 11 SCC 720

³ (2017) 8 SCC 136

4 (2000) 5 SCC 21

5 (2014) 13 SCC 55

6 (2009) 3 SCC 779

7 (2021) 3 SCC 687

8 (2016) 1 SCC 713

9 (1977) 3 SCC 352

10 (2012) 13 SCC 552

11 (2009) 6 SCC 444

12 2015 (10) SCC 152

13 (2022 SCC OnLine SC 213

14 (2019) 19 Supreme Court Cases 87

15 AIR 1976 SC 1497

¹⁶ (1998) 1 Supreme Court Cases 557

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.1600 OF 2007

JUDGMENT:

1. The appellant is convicted under Section 7 of the Prevention of Corruption Act, 1988 (for short "the Act"), Section 13(1)(d) r/w Section 13(2) and 13(1)(d) r/w Section 13(2) of the Act and sentenced to undergo rigorous imprisonment for a period of six months, one year and one year respectively vide judgment in CC No.23 of 2006, dated 31.10.2007 passed by the Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. Aggrieved by the same, present appeal is filed.

2. The appellant/accused officer was working as Junior Assistant in the A.P.Housing Board. P.W.1 was allotted a house in LIG category under Hire Purchase and paid an amount of Rs.30,000/- and also fulfilled the requisite formalities. The appellant allegedly asked for bribe of Rs.300/- for giving the possession letter. P.W.1 was asked to come on 28.03.2000, 29.03.2000 and also on the date of complaint i.e., on 30.03.2000. On all the three days, the appellant allegedly

demanded an amount of Rs.300/-, failing which allotment letter will not be given. Aggrieved by the said demand, complaint was lodged on 30.03.2000 with the DSP, P.W.8. P.W.8, after conducting preliminary enquiry, arranged a trap on the same day.

3. The trap party with the independent mediators, P.W.2 and another person, DSP- P.Ws.8 and IO-PW10, formed trap party. Pre-trap proceedings were conducted under Ex.P9 by concluding all formalities, which concluded at 2.30 p.m. The trap party proceeded to Kukatpally Housing Board Office at 3.30 p.m. Both the complainant, P.W.1 and the accompanying witness namely P.Ganapathy Reddy (not examined during trial) went inside the office of the appellant. Five minutes after they entered the office, the said Ganapathy Reddy, accompanying witness came out of the office and stood at the gate. At 4.25 p.m, complainant came out of the office and gave pre-arranged signal. Thereafter, the trap-party entered inside and the DSP got the hands of the appellant tested, which turned positive for sodium carbonate solution

test. When questioned, the appellant pulled out the right side drawer of his table, in which tainted currency of Rs.300/- was found. Accordingly, the concerned file was seized and thereafter, investigation was handed over to P.W.10, who after completion of investigation, filed charge sheet. Initially charges under section 7 and 13(1)(d) R/W 13(2) of P.C.Act were framed. However charge under section 13(1)(a) R/W 13(2) was framed after evidence of witnesses commenced.

4. Learned counsel for the appellant submits that the case of the prosecution is highly doubtful for the reason of the accompanying witness Ganapathy Reddy in spite of instructions by DSP, was not with the complainant and came out of the office within five minutes. The amount was recovered from the table drawer, which was without any lock. D.W.1, who was present in the office sitting opposite the appellant stated that there was no demand of bribe by appellant. In the said circumstances, when demand is not proved mere acceptance is of no consequence and the question

of raising the presumption under Section 20 of the Act is clearly erroneous.

5. Learned counsel further submits that it is not mentioned in the mediators report as to the time of the testing which was done and when the said information is not found in the mediator's report, adverse inference has to be drawn. Testing is a crucial issue and not stating the exact details, the prosecution has to fail. The prosecution has later come up with the evidence of other witnesses P.Ws.2, 3, 4 and 7, who were examined to state that the appellant was a habitual offender and charge under Section 3(1)(a) was also framed on 10.11.2005, though the charge under Sections 7 and 13(1)(d) were framed on 23.02.2004. The prosecution has come up with the version which cannot be accepted and when the very demand by the appellant is not proved and the amount was recovered from the table drawer, the appellant is entitled to acquittal.

6. In support of her contentions, counsel relied on the following judgments; i) **V.Sejappa v. State**¹ and argued that mere recovery is not sufficient to point the guilt of the accused and that since the complainant is interested in success of the trap, his evidence has to be looked into independently to corroborate his version; ii) **M.K.Harshan v. State of Kerala**² iii) **Mukhtiar Singh v. State of Punjab**³ and argued that the version of accused is probable that anyone entering the room could access the table drawer and put anything and that the evidence of complainant has no corroboration; iv) **Meena v. State of Maharashtra**⁴ and argued that the material witnesses were withheld by the prosecution which adversely affects the prosecution story; v) **B.Jayaraj v. State of A.P**⁵; vi) **C.M.Girish Babu v. CBI, Cochin, High Court of Kerala**⁶; vii)

¹ (2016) 12 SCC 150

² (1996) 11 SCC 720

³ (2017) 8 SCC 136

⁴ (2000) 5 SCC 21

⁵ (2014) 13 SCC 55

⁶ (2009) 3 SCC 779

N.Vijayakumar v. State of Tamil Nadu⁷ and argued that when there is no demand, acceptance of amount is of no consequence, as such, presumption under Section 20 of the Act cannot be drawn; viii) **N.Sukanna v. State of A.P**⁸; ix) **Hari Dev Sharma v. State (Delhi Administration)**⁹; x) **Rakesh Kapoor v. State of H.P**¹⁰; xi) **State of Punjab v. Sohan Singh**¹¹ and argued that no independent witness was examined to support the prosecution version of demand case as such the case fails; xii) **P.Satyanarayana Murthy v. DI Police, State of A.P**¹² and argued that suspicion however grave, cannot replace the proof and that the prosecution cannot afford its case on ‘may be true’ or ‘should be’ but ‘must be true’. xiii) **K.Shanthamma v. State of Telangana**¹³, wherein the Hon’ble Supreme Court held that when the

⁷ (2021) 3 SCC 687

⁸ (2016) 1 SCC 713

⁹ (1977) 3 SCC 352

¹⁰ (2012) 13 SCC 552

¹¹ (2009) 6 SCC 444

¹² 2015 (10) SCC 152

¹³ (2022 SCC OnLine SC 213

amount was recovered from the table drawer and once demand is not proved, which is *sine qua non* proof, an offence under Section 7 of the Act is not proved, the prosecution fails.

7. On the other hand, learned Special Public Prosecutor submits that P.W.4, though tried to help the appellant, it is of no avail. The recovery is at the instance of the appellant from his table drawer, for which reason, the presumption has to be raised. The official work of handing over the possession letter was also pending with the appellant on the date of trap and after receipt of the bribe amount, the said letter was issued to P.W.1, which itself goes to show that official favour was pending. In support of his contentions, he relied on the judgment in the case of **State of Telangana v. Managipet alias Mangipet Sarveshwar Reddy**¹⁴, Supreme Court of India, wherein their Lordships have held that preliminary enquiry was not necessary; ii) **Chaturdas Bhagwandas Patel v. State of Gujarat**¹⁵ to state that when official favour is pending and the amount is recovered, the presumption would be raised. He

¹⁴ (2019) 19 Supreme Court Cases 87

¹⁵ AIR 1976 SC 1497

also relied on **State of U.P. v. Zakiullah**¹⁶, wherein their Lordships have held that the evidence of bribe giver cannot be rejected on the ground that he is an interested witness. Further, the trap party, which forms the DSP and independent mediator, cannot be treated as interested witnesses. He further argued that the mediator coming out of the office is of no consequence and it might have been for the reason of appellant getting alert due to his presence. In the said circumstances, he argued that the conviction cannot be interfered with.

8. The case of the appellant is that when the appellant had gone inside for the purpose of obtaining signatures on the possession letter, the amount has been placed in the table drawer. Thereafter, the complainant shook hands with him, for which reason, test on his hands turned positive. One glaring infirmity in the case of the prosecution remains unexplained, when specific instructions were given to one Ganapathy Reddy, who was an independent mediator to witness what transpires between P.W.1 and the appellant, he

¹⁶ (1998) 1 Supreme Court Cases 557

comes out of office within five minutes of entering into the office. Such conduct is not explained by the prosecution plausibly.

9. The very reason for asking the independent witness to accompany complainant is to lend credibility to the version of complainant-P.W.1 regarding the allegation of bribe made by P.W.1 and to see what transpires between the accused and complainant regarding bribe. Further, though the trap party entered into the office at 3.40 p.m, PW1 came out only after 45 minutes at 4.25 p.m. The said time of 45 minutes is also not explained except stating that when P.W.1 entered into the office, the amount was asked by the appellant and when he gives it to him, it was kept in the right side drawer of the table. There is no reason why P.W.1 would wait for 40 minutes when the amount was immediately demanded and accepted by the appellant. The specific instructions of the DSP was to relay the signal immediately after the acceptance. The independent witness Ganapathy Reddy violated the directions of the DSP and so also the P.W.1. In spite of specific instructions, P.W.1 did not relay the signal immediately after the accepting the

amount and waited nearly 35 to 40 minutes in the office room and the said Ganapathy Reddy, contrary to the instructions, comes out of the office and stays outside the office. Both the said circumstances give rise to a reasonable conclusion that the version of the appellant, that when he went inside the room to meet Assistant Estate Officer (PW4), the amount must have been planted is correct.

10. The AEO was examined as P.W.4. She stated that when she was in the office on the trap day, she signed on the possession letter of P.W.1 and she also signed on the handing over letter of P.W.2. According to P.W.4, the file was signed in between 3.45 and 4.00 p.m. P.W.1 stated that the appellant accepted the amount and placed in his table drawer and thereafter, the possession letter was handed over to him. What transpired in between 4.00 p.m to 4.25 p.m is again not explained by the prosecution. The circumstances cumulatively suggest that P.W.1 was waiting for a chance to plant the amount in the table drawer of the appellant.

11. D.W.1, who worked as Works Inspector in the said office stated that he has seen P.W.1 placing some currency notes in

the drawer when the appellant went into the office room of AEO. Further, according to the evidence of D.W.1, it was stated by the appellant, when questioned by DSP that the amount must have been planted and he never demanded the said amount. However, the said version is not reflected in the post trap proceedings.

12. Following circumstances make the prosecution case doubtful; i) The independent mediator, though directed comes out of the office within five minutes after entering inside; ii) Though the alleged bribe amount was handed over by P.W.1 to the appellant immediately after entering into the office, he stayed there for 45 minutes, which is not explained; iii) Though the possession letter was ready by 4.00 p.m, still P.W.1 stayed inside the office; iv) Both P.W.1 and Ganapathy Reddy acted contrary to the directions of DSP; v) The crucial witness Ganapathy Reddy was not examined by the prosecution; vi) D.W.1, who was working in the room of the appellant stated that P.W.1 had planted the amount. Apparently there was no demand by appellant and the bribe amount was planted.

13. According to P.W.1, he met the appellant on 29th and 30th of March, 2000. It is not explained when the demand was made at Kukatpaly office on 30.03.2000 and from there, how P.W.1 travelled to ACB office at Mojamzahi Market, which is nearly one hour to one and half hour during morning hours and filed complaint at 10.00 in the ACB office.

14. The appellant was also convicted for the offence under Section 13(1)(a) r/w 13(2) of the Act. The said conviction was based on the evidence of P.W.2, 3 and P.W.7, who deposed that they gave bribe amount of Rs.150/-, Rs.150/- and Rs.200/- respectively to the accused officer on the date of trap. According to the post trap proceedings, an amount of Rs.350/- apart from the Rs.300/- trap amount was found in the table drawer. If the amount allegedly collected on the trap day was Rs.500/- from P.Ws.2, 3 and 7, the said amount was not recovered and the witnesses failed to specify or identify Rs.350/- recovered from the table drawer on the trap day as the amount given by them. There are no separate complaints by any of the witnesses. The work of all the said witnesses was complete and there is no reason why P.W.2, 3 and 7 were

waiting in the office. In the post trap proceedings, it was mentioned that part of the amount collected by the accused officer was given to P.W.4. However, there is no recovery of the amount from P.W.4 nor P.W.4 is made an accused in the present case. In the said circumstances, it cannot be said that the accused officer was an habitual offender to convict under Section 13(1)(a) of the Act.

15. For all the above reasons, this Court is of the considered view that the prosecution has failed to prove its case beyond reasonable doubt.

16. In the result, the judgment in CC No.23 of 2006, dated 31.10.2007 is set aside and the appellant is acquitted. Since the appellant is on bail, his bail bonds stand cancelled.

15. Accordingly, the Criminal Appeal is allowed.

K.SURENDER, J

Date:17.08.2022

Note: LR copy to be marked

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HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1600 OF 2007

Date: 17.08.2022.

kvs

