

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

Criminal Appeal No.1671 OF 2007

Between:

A.Kishan Rao

... Appellant

And

The State of A.P,
rep. by Spl. Public Prosecutor,
ACB.

..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED :27.03.2024

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

K.SURENDER, J

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

+ CRL.A. No.1671 of 2007

% Dated 27.03.2024

A.Kishan Rao

... Appellant

And

\$ The State of Telangana
rep. by Spl.Public Prosecutor, ACB

Respondent/Complainant

! Counsel for the Petitioners: Sri D.Laxminarayana

^ Counsel for the Respondent: Sri Sridhar Chikyala, Spl.PP for ACB

>HEAD NOTE:

? Cases referred

¹ (2022 (3) ALT (CrI.) 293

² (2021 (3) AIR Kar R 650)

³ (AIR OnLine 2022 SC 1264)

⁴ (2023 (1) ALD (CrI.)821 (TS)

⁵ 2023(1) ALD (CrI.) 638 (TS)

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.1671 OF 2007****JUDGMENT:**

1. The appellant/A1 aggrieved by the conviction recorded by the Principal Special Judge for SPE & ACB Cases, City Civil Court at Hyderabad for the offences under Sections 7 and Section 13(1)(d) r/w 13(2) of the Act of 1988 of the Prevention of Corruption Act, 1988 (for short "the Act of 1988") and sentenced to undergo rigorous imprisonment for a period of six months and one year respectively, vide judgment in CC No.42 of 2003 dated 28.11.2007, the present appeal is filed.

2. Briefly, the case of the prosecution is that P.W.1/defacto complainant was working as an Attender in the office of the Deputy Director, Social Welfare, Khammam. On 02.11.2000, P.W.1 submitted an application in the APGLI (Andhra Pradesh Government Life Insurance Fund) for loan of Rs.5,000/- to get his house repaired. The said application Ex.P1 was forwarded through his office and after 15 days of the application, he met the appellant, who was working as Senior Accountant in the District Insurance

Office of APGLI. The appellant instructed PW1 to get previous loan details from his office. Accordingly, particulars were provided on 14.12.2000. On 27.12.2000, when P.W.1 met the appellant, the appellant informed that he is eligible for Rs.2,100/- only. However, P.W.1 insisted that he requires Rs.5,000/-, for which appellant demanded Rs.500/- as bribe for sanctioning loan of Rs.5,000/-.

3. On 03.01.2001, P.W.1 approached the DSP, ACB and lodged Ex.P3 complaint. The DSP asked P.W.1 to come back on 05.01.2001 on which date trap was arranged. On the trap date, independent mediator/P.W.8, DSP/P.W.11 and others were present in the office of DSP. Formalities prior to proceeding to laying trap were followed like smearing the bribe notes with phenolphthalein powder. The said process is done by the agency to test whether the currency notes were handled by the public servant. In the event of touching the currency notes, particles of phenolphthalein powder would be transferred onto the hands of the public servant and when asked to rinse in sodium carbonate solution, the test would turn pink indicating handling of the currency notes. Having completed

the procedure, what all transpired during pre-trap proceedings were drafted under Ex.P11.

4. Around 11.00 a.m, the entire trap party went to the office of APGLI. While the other trap party members waited outside, P.W.1 entered into the office. According to P.W.1, on seeing him, the appellant asked for the bribe amount, which was put in the table drawer by him. Again, the appellant asked P.W.1 to take out the amount from the table drawer and took him to the verandah. There, the appellant called A2 and asked P.W.1 to hand over the amount to him. After A2 receiving the amount, P.W.1 went outside the office and signaled the trap party indicating demand and acceptance of bribe by the appellant.

5. The trap party entered into the office and questioned the appellant regarding what transpired in between P.W.1 and himself and also regarding the bribe amount. The said bribe amount was recovered from A2. The tests on the hands of both A1 and A2 proved positive indicating handling the tainted currency notes. The post trap proceedings regarding seizure and statements of

witnesses were recorded. The said post trap proceedings were drafted as Ex.P13.

6. After completion of investigation, charge sheet was filed against both A1 and A2. Learned Special Judge, having examined witnesses on behalf of the complainant-ACB and marking relevant documents, found that A2 was not complicit of any demand and acceptance of bribe, though the amount was recovered from him. However, the appellant was the person in-charge and he demanded the amount from PW1. Accordingly, the appellant was convicted and A2 was acquitted.

7. Learned counsel appearing on behalf of the appellant would submit that the version of P.W.1 cannot be believed since he was eligible only for Rs.2,100/- as loan. The appellant was not competent to grant loan over and above the permitted limit, which is to the knowledge of P.W.1. Even at the earliest point of time, when the DSP questioned the appellant, it was informed that P.W.1 was not eligible for loan. The appellant was not in a position to do any favour, as such, the prosecution case cannot be believed. In support of his contentions, he relied on the following judgments: i)

Smt S.Vaidehamma alias Vaidehi v. State ACB, TS¹; ii) The State of Karnataka v. Ramesh Appanna Mareppagol²; iii) Shiv Kumar Sharma v. State of Rajasthan³; iv) Mohd. Fakruddin v. State of Andhra Pradesh⁴ and v) A.V.Surender Kumar v. State of Andhra Pradesh⁵.

8. On the other hand, learned Special Public Prosecutor for ACB would submit that the appellant was the person who processed the loan application believing his version that he would get enhanced loan of Rs.5,000/-, bribe was paid which was demanded and accepted on the trap date. In the said circumstances, when the appellant has abused his position as a public servant to demand bribe, the findings of the learned Special Judge is in accordance with the facts and law. The findings of the learned Special Judge which are reasonable cannot be interfered with.

¹ (2022 (3) ALT (CrI.) 293

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9. P.W.1 is also public servant. He approached the insurance department for loan, which loan application was forwarded through his office. It cannot be said that he did not have knowledge about the limitations of granting loan, which is subject to restrictions imposed by the department while granting loan. Even according to P.W1, he was informed on 27.12.2000 itself by the appellant that he was eligible for loan of R.2,100/- only, after assessing his previous loan history, salary etc. If P.W.1 did not have any eligibility for loan over and above Rs.2,100/- which was calculated and informed, there is no possibility of loan being given over and above Rs.2,100/.

10. On the date of trap, when the appellant was questioned by the DSP, ACB after the trap party entered into the room having received signal from P.W.1, the appellant stated that he informed P.W.1 that he was eligible for a loan of only Rs.2,100/-, which was already sanctioned. P.W.1 then opened the table drawer and kept some currency requesting him to sanction Rs.6,000/- loan. The appellant then stated that the loan was already sanctioned and there is no question of further sanction of loan. He took out the currency notes placed in the table drawer by P.W.1 and returned it to him.

However, the said amount was again handed over to A2 in the verandah of the office by PW1.

11. P.W.3 was the then Assistant Director in the APGLI. According to his statement, on 07.09.2000, the appellant was entrusted with the processing of loan application of P.W.1. Ex.P8 is the personal loan register pertaining to sanction of loan to P.W.1 and it discloses that an amount of Rs.2,100/- was granted at the instance of appellant by P.W.3. During cross-examination, P.W.3 specifically stated that the ACB officials questioned him on the trap date regarding the loan eligibility of P.W.1 and it was informed to the trap party that P.W.1 was not eligible for more than Rs.2,100/-. Further, as on 27.12.2000, appellant processed loan application and calculated that P.W.1 was entitled for Rs.2,100/- and forwarded the application to the concerned Superintendent for further course of action.

12. It is not the case of the prosecution that P.W.1 was eligible for loan over and above Rs.2,100/-. P.W.1 himself stated that after calculating the eligibility of loan, appellant informed that he was eligible only for Rs.2,100/-. In the said circumstances, when it is to

the knowledge of P.W.1 that there is no possibility of enhancing loan, he being a public servant, it cannot be said that he was misinformed or misled by the appellant. The very demand of bribe becomes suspicious for the above reasons.

13. It is for the Courts to determine the allegation of demand and acceptance by a public servant taking into consideration all the factors surrounding the alleged demand of bribe. If it is not possible for a public servant to extend any such favour or benefit, which is to the knowledge of the complainant, the entire version of demand becomes doubtful. Only for the reason of there being a complaint and subsequent recovery of the amount, such complaint and recovery cannot be made basis to come to a conclusion regarding the guilt of the accused ignoring all the attending circumstances in the case. It has to be tested by the Courts whether it is probable that in a given case on the basis of the facts of that particular case, the version of demanding and accepting bribe is probable and acceptable.

14. P.W.1 was a public servant, who was informed and aware about his eligibility of loan was to the maximum extent of R.2,100/- and not beyond. Having such knowledge, the version of P.W.1 that amount was demanded for grant of Rs.5,000/- loan cannot be believed since it is not the case that P.W.1 was ignorant of his ineligibility and in spite of such ineligibility, appellant was competent in his position to grant loan of Rs.5,000/-.

15. The version given by the appellant on the date of trap is supported by other prosecution witnesses. No evidence is placed by the prosecution to even remotely suggest that P.W.1 was misled by the appellant and P.W.1 believed that the appellant was competent to grant loan of Rs.5,000/-.

16. Collectively, in the peculiar facts of the case, the aspect of demand is highly doubtful and not proved by the prosecution.

17. The recovery of currency notes was from A2. Not a single witness is examined to support the version of P.W.1 that initially, the amount was received by the appellant and then PW1 taken into the verandah and in the verandah, A2 was called and asked to

accept the amount from P.W.1. There is no witness corroborating the version of P.W.1 on facts narrated by him on any aspects spoken to him by regarding any of the events on the trap date. It appears to be improbable that P.W.1 has entered into the office and thereafter went to the verandah and not a single witness was available to speak about such facts. The DSP has also not taken any steps to ask the independent mediator/P.W.8 or another to accompany P.W.1 to witness as to what transpires in between P.W.1 and the appellant.

18. As already discussed, the very version of the prosecution that demand of bribe was for grant of Rs.5,000/- loan, cannot be accepted. Benefit of doubt is extended to the appellant.

19. In the result, the judgment of trial Court in CC No.42 of 2003 dated 28.11.2007 is set aside and the accused is acquitted. Since the appellant is on bail, his bail bonds stand cancelled.

20. Accordingly, Criminal Appeal is allowed.

K.SURENDER, J

Date: 27.03.2024

Note: LR copy to be marked.

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