

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

Criminal Appeal Nos.1700 and 1716 OF 2007

Crl.A.No.1700 of 2007

Between:

G.Raja Sekhar Rao

... Appellant/A2

And

Stae of A.P. rep. by Spl.P.P. for ACB cases

... Respondent/
Complainant

Crl.A.No.1716 of 2007

Between:

Rasheed Mohiuddin @ Rasheed

... Appellant/A1

And

Stae of A.P. rep. by Inspector of Police
Warangal Range, Warangal.

... Respondent/
Complainant

DATE OF JUDGMENT PRONOUNCED:

06.03.2024

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 the fair copy of the Judgment? Yes/No

K.SURENDER, J

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

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! Counsel for the Appellants: Sri P.Prabhakar Reddy
Sri A.Hari Prasad Reddy.

^ Counsel for the Respondents: Sri Sridhar Chikyala
SC SPL P.P for ACB cases.

>HEAD NOTE:

? Cases referred

1. (2022) 4 SCC 574
2. (2015) 10 Supreme Court Cases 152
3. (2002) 10 Supreme Court Cases 371
4. 2024 SCC OnLine TS 15

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL NOS.1700 AND 1716 OF 2007****COMMON JUDGMENT:**

1. Criminal Appeal No.1700 of 2007 is filed by Accused No.2 and Criminal Appeal No.1716 of 2007 is filed by Accused No.1. Since both appeals are questioning the Judgment passed in CC.No.53 of 2003, both the appeals are disposed off by this common Judgment.

2. The case of the defacto complainant(P.W.1) is that the house in which they were staying is the property of their ancestors. After his grandfather died, they are staying in the said house. Even prior to the death of grandfather, the father of the complainant died. The house was shared equally and partitioned with his uncle. After the partition, for the portion in which PW1 was staying, he was paying tax. In August, 2001, a notice Ex.P1 was received for payment of house tax of Rs.1,020/-. The junior paternal uncle who was staying in the other portion of the house property also received a notice for paying tax for an amount of Rs.84/-. P.W.1's uncle got his name mutated in respect of his portion of the house, but, PW1 had not made any application for mutation of the house in which he was staying.

3. Since PW1 was asked to pay more than his paternal uncle's tax amount who was occupying one half of the house, P.W.1 went to the municipal office and gave an application to reduce the tax amount equal to his uncle's tax of Rs.84/-. The said petition Ex.P3 was given to Accused Officer No.2 for verification. PW1 met both A1 who is the bill collector and A2-Upper Division Revenue Inspector, for reduction of tax. Both of them demanded Rs.1,000/- as bribe for submitting favourable verification report to the Commissioner for reduction of tax, failing which he would have to continue to pay the tax amount of Rs.1,020/- p.a. as reflected in the notice-Ex.P1, which was sent to PW1.

4. Aggrieved by the said demand, written complaint was filed on 15.12.2001 with DSP, ACB. PW1 was asked to come back with bribe amount on 19.12.2001. Trap was arranged on 19.12.2001. In the presence of P.W.2 who is the independent witness and also other trap party members including DSP, pre-trap proceedings were conducted. In the office of DSP, Warangal, Ex.P8 was drafted after concluding the pre-trap formalities.

5. The trap party then proceeded to the office of the Revenue Inspector at Warangal Municipal Corporation. P.W.1 followed by P.W.2 went inside the office. P.W.1 enquired about A2 and it was

informed that he went to the municipal commissioner's office to attend a meeting. Then P.W.1 enquired about A1 who was available in the sanitary inspector's room. Both P.Ws.1 and 2 then entered into sanitary inspector's room and found two persons in the said room. On seeing P.W.2, A1 enquired about him. P.W.2 replied that he came to the said office and was asking for the address of Raja Reddy, who was an employee in the main municipal office. Then A1 asked P.W.1 whether he brought the bribe amount and A1 asked him to pay the amount so that he would share the said amount with A2. P.W.1 then handed over the amount to A1 who received the said amount, counted the amount with both the hands and kept the amount in his shirt pocket.

6. After receipt of the bribe amount, the trap party was signaled regarding the acceptance of the bribe. Accordingly, DSP and other trap party members entered into the room and questioned A1 regarding the bribe. A1 initially informed that the amount was towards loan and again stated that the amount was towards tax, that P.W.1 was due and liable to pay. The relevant documents were seized and after concluding post trap proceedings, the same was drafted, which post trap proceedings

is Ex.P12. Ex.P1 notice, Ex.P3 requisition given by P.W.1 for reduction of tax and other documents were also seized.

7. The Investigating Officer having collected relevant documents filed chare sheet.

8. The learned Special Judge examined P.Ws.1 to 9 and Exs.P1 to P19 were marked on behalf of the prosecution. No one was examined on behalf of defence.

9. Learned counsel appearing for A1 would submit that P.W.1 has completely turned hostile to the prosecution case and did not speak about any demand of bribe. In fact it was accepted that Rs.500/- was towards payment of tax. P.W.4 who was present in the room admittedly did not support the version of demand and acceptance of bribe by A1. In fact, P.W.1 totally disowned the complaint and even passing of the amount to A1. In the said back ground when the factum of demand is not proved, mere recovery from A1 cannot form basis to convict him.

10. The counsel relied on the judgment of Hon'ble Supreme Court in **K.Shanthamma v. State of Telangana (2022) 4 SCC 574**), wherein the Hon'ble Supreme Court held that to attract an offence of Section 7 of Prevention of Corruption Act, 1988, it is

the duty of the prosecution to prove the factum of demand beyond reasonable doubt. Failure to prove demand, the prosecution case fails. He also relied on the Full Bench judgment of the Hon'ble Supreme Court, in the case of **P.Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh (2015) 10 Supreme Court Cases 152)** wherein it was held that mere recovery of amount dehors the proof of demand would not be sufficient to bring home the charges under Section 7 and 13(1)(d) of the PC Act.

11. In **Punjabrao v. State of Maharashtra (2002) 10 Supreme Court Cases 371)** the Hon'ble Supreme Court held that defence of accused can be taken at any time during trial and also at the time of examination under Section 313 Cr.P.C. If the defence is believable, the same can be accepted by the Court. He also relied on the judgment of this Court in the case of **Bairam Muralidhar v. State of Telangana (2024 SCC OnLine TS 15)**.

12. Learned counsel appearing for A2 would submit that the only basis for convicting A2 is for the reason of stating the name of A2 in the complaint that money was demanded. Since P.W.1 has disowned the complaint, the trial Court has erred in convicting A2.

13. In the back ground of P.W.1 turning totally hostile to the prosecution case, the other circumstances in the case has to be looked into to find out whether the prosecution is able to prove the demand and acceptance by the accused.

14. P.W.2 accompanied P.W.1 to the office where A1 accepted amount from P.W.1. The presence of P.W.2 when the amount was passed on is not disputed, since P.W.4 who is the colleague of A1 stated regarding the presence of P.W.2 in the office. P.W.2 specifically spoke about the demand of the bribe from P.W.1 by A1. It is the evidence of P.W.2 that A1 had taken amount from P.W.1 having demanded the same and also informed P.W.1 that the amount would be shared with A2. After the trap party entered, A1 initially stated that the said amount was taken as loan from P.W.1 and again stated that the said amount was towards payment of tax, for which notice was issued to P.W.1.

15. The very purpose of P.W.1 visiting the municipal office is for reduction of the tax. The house was equally apportioned in between P.W.1 and his paternal uncle. P.W.1 received notice, the copy of which is Ex.P1 for Rs.1,020/- whereas for the same extent of the house occupied by his paternal uncle notice for payment of tax was Rs.84/- was sent. Aggrieved by the exorbitant

tax that was asked to be paid which is more than ten times the tax which was asked by the paternal uncle to be paid, PW1 filed application under Ex.P2. The question of PW1 paying tax of Rs.500/- does not arise in the background of his application for reduction of the tax pending consideration by the Municipal office.

16. Though, PW1 had turned hostile, the circumstances in the case regarding pending application for reduction of tax, the statement of P.W.2 who is a witness to the demand and acceptance of bribe by A1 are sufficient to prove the guilt of A1. However, A2 was not present nor any communication was made on the date of trap. In the said circumstances, there is no evidence of demand for bribe by A2. Ex.P1 complaint was disowned by P.W.1 in which the name of A2 was mentioned as the person who demanded bribe along with A1. Accordingly, there is no evidence to convict A2.

17. In the said circumstances, the conviction against A2 is set aside and the conviction of A1 is sustained.

18. Criminal Appeal No.1716 of 2007 filed by A1 is dismissed and Criminal Appeal No.1700 of 2007 filed by A2 is allowed. Since A2 is on bail, his bail bonds shall stand cancelled. The trial

Court is directed to cause appearance of A1 and send him to prison to serve out the remaining period of imprisonment.

Miscellaneous applications, pending if any, shall stand closed.

Date: 06.03.2024
Note: LR copy to be marked
B/o.tk

K.SURENDER, J