

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

Criminal Appeal No.1709 OF 2007

Between:

Smt.S.Vaidehamma @ Vaidehi.

...Appellant.

And

State ACB, City Range-II.,
Rep.by its Spl.Public Prosecutor,
High Court, Hyderabad.

... Respondent.

DATE OF JUDGMENT PRONOUNCED: 02.08.2022

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 |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No.1709 of 2007

% Dated 02.08.2022

Smt.S.Vaidehamma @ Vaidehi

... Appellants

And

\$ State ACB, City Range-II.,
Rep.by its Spl.Public Prosecutor,
High Court, Hyderabad

..Respondent.

! **Counsel for the Appellant:** Sri C.Sharan Reddy,

^ **Counsel for the Respondent:** Sri T.L.Nayan KUMar,

Special Public Prosecutor for ACB

> **HEAD NOTE:**

? **Cases referred**

¹ (2015) 10 Supreme Court Cases 152

2 (2021) 3 SCC 687

3 (2014) 13 Supreme Court Cases 55

4 (2000 (8) SCC 571)

5 (2007) 7 Supreme Court Cases 625

6 (1976) 3 Supreme Court Cases 46

7 AIR 1964 SC 575

HON'BLE SRI JUSTICE K.SURENDER**Criminal Appeal No.1709 of 2007**

1. The appellant/Accused Officer(AO) was convicted for the offence under Section 7 of Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs.500/-, in default to pay fine amount, to undergo Simple Imprisonment for one month and also sentenced to undergo rigorous imprisonment for one year for the charge under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988, and also to pay fine of Rs.500/- and in default, to undergo Simple Imprisonment for one month vide judgment in C.C.No.10 of 2004 dated 06.12.2007, passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. Aggrieved by the same, present appeal is filed.

2. The case of the prosecution is that P.W.1 was a retired Head Constable of Government Railway Police (GRP). The bills relating to his retirement benefits, leave encashment and gratuity were sent to the Pay and Accounts Office(PAO) where the appellant was working as Auditor, from the GRP office. According to the

complainant/PW1, he met and enquired with Sona Babu in the office of GRP who asked P.W.1 to personally pursue with the Pay and Accounts Office to receive payments. Accordingly, P.W.1 met the Appellant and she asked P.W.1 to meet him on 24.06.2000. When P.W.1 met the Appellant on 24.06.2000, she demanded an amount of Rs.1,500/- for passing his bills which were about Rs.1,50,000/-. Though, P.W.1 expressed his inability to pay the amount, the appellant insisted, for which reason, P.W.1 approached the ACB and met P.W.10, DSP, on 26.06.2000 and narrated his grievance which was taken down in writing in ACB office and registered as Ex.P1.

3. The trap was laid on 27.06.2000. On 27.06.2000, DSP- P.W.10 sent for two mediators P.W.2 who acted as accompanying witness-cum-mediator and another person namely Sri V.Krupakar Reddy. In the office of ACB, the pre-trap proceedings were drafted in the presence of the trap party. P.W.1 was asked regarding the demand of bribe and after producing the bribe amount, they were smeared with phenolphthalein powder. The phenolphthalein test was shown to the complainant and other trap party members and DSP/PW10

informed that if anyone comes into contact with the tainted currency notes, the contacted portion when tested with sodium carbonate solution would yield pink colour. The pre-trap proceedings Ex.P2 was drafted at 11.00 a.m and the trap party proceeded to the office of the Pay and Accounts, where the Accused Officer was working as Auditor. P.W.1 was asked to handover the bribe amount only on demand and not otherwise. In the event of the amount being demanded and accepted, the same should be intimated to the trap party by relaying a signal.

4. The trap party arrived at Pay and Accounts Office at 12.50 p.m and both P.Ws.1 and 2 went inside the office and came out after five minutes and relayed the signal. The trap party went inside the office and introduced themselves. The accused officer was disturbed and stated that she did not ask for any amount not took any money. The DSP asked her to stay calm. AO2 who was the person sitting on the left side of the appellant was found panicking and informed that he took the amount from P.W.1 and he was on deputation working in the Railway Police from April, 1991. Further, he came down to

the office of Pay and Accounts to assist in pay bill work of GRP office, Secunderabad.

5. The DSP conducted sodium carbonate test on the hands of both the appellant and AO2. The test on the hands of the appellant was negative, however, it was positive for AO2. The relevant file of P.W.1 was also seized.

6. ACB after completion of investigation, filed charge sheet and the Special Court, after recording evidence, convicted the appellant and acquitted AO2.

7. The counsel for the appellant submits that the amount was recovered from AO2, who was acquitted by the trial Court. However no appeal is filed by the State. Even according to the prosecution, AO2 was not assisting anyone in the office of PAO, but he had come down for taking the details of bills of Railway employees. In the said circumstances, AO2 was a chance witness who had come down to the office and the prosecution has not proved any prior understanding in between AO1 and AO2 to receive the bribe amount or that AO1 and AO2 were acquainted with each other.

8. The trap is further doubtful for the reason of P.W.2 who is an accompanying witness and an independent mediator admitted in the cross-examination that he was at a distance of 3 feet from P.W.1 and AO, however, he did not hear the conversation in between P.W.1 and AO. Learned counsel further submits that P.W.1 visited the ACB office on 24.06.2000, but did not give a report. However, he again visited the ACB office on 26.06.2000 and no explanation is given for such conduct. In his evidence before the Court, P.W.1 deposed that appellant demanded Rs.1,800/-, but he had offered Rs.1,500/- on the day of trap, which again makes the prosecution case doubtful. For the reason of there being no proof of demand by the appellant and no evidence to say that appellant and AO2 were having an understanding, the appellant is entitled to be acquitted.

9. In support of his contentions, he relied upon the following judgments; i) **P.Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh**¹; ii) **N.Vijaykumar v. State of Tamil**

¹ (2015) 10 Supreme Court Cases 152

Nadu²; iii) **K.Shanthamma v. The State of Telangana** (Criminal Appeal No.261 of 2022) arising out of SLP (Criminal) No.7182 of 2019); iv) **B.Jayaraj v. State of Andhra Pradesh**³.

10. Learned Public Prosecutor submits that once it is proved that money was accepted, presumption is drawn under Section 20 of the Prevention of Corruption Act and it is for the appellant to discharge her burden. Except stating that she had not accepted the amount, the other circumstances clearly point towards the appellant's demand and acceptance of bribe. Admittedly, the work was pending before the appellant, as such, all the three requirements of demand, acceptance and pendency of work were proved by the prosecution. The State has not preferred any appeal against acquittal of AO2 as AO2 only handled the amount at the instance of the appellant and was not in any manner party to the demand of bribe by the appellant. In support of his contention, he relied upon the following judgments; i) **Madhukar Bhaskar Rao Joshi vs. State of Maharashtra**⁴, the Hon'ble Supreme Court held that in any trial for

² (2021) 3 SCC 687

³ (2014) 13 Supreme Court Cases 55

⁴ (2000 (8) SCC 571)

the offence punishable under Section 7 and Section 13(1)(d), if it is proved that the accused has accepted or obtained or has agreed to accept or attempted to obtain for himself or for any other person, any gratification, it shall be presumed that unless the contrary is proved that the said amount was towards illegal gratification; iii) In **Girija Prasad (dead) by L.Rs. v. State of M.P**⁵, the Hon'ble Supreme Court upheld an order of the High Court reversing the acquittal judgment of the trial Court on the ground of the accused failing to discharge his burden; iv) **Chaturdas Bhagwandas Patel v. State of Gujarat**⁶ (1976) 3 Supreme Court Cases 46; v) **Dhanvantrai Balwantrai Desai v. State of Maharashtra**⁷, Constitutional Bench judgment of the Supreme Court held that once it is shown that the amount received by any accused is towards illegal gratification, presumption has to be raised.

11. The learned Public Prosecutor relying upon the above judgments would submit that the accused officer had directed P.W.1 to give the amount to AO2 for which reason, P.W.1 handed

⁵ (2007) 7 Supreme Court Cases 625

⁶ (1976) 3 Supreme Court Cases 46

⁷ AIR 1964 SC 575

over the said amount to AO2. The said act of the appellant in asking for bribe and instructing to handover the said bribe to AO2 will amount to demand and acceptance of bribe amount by the appellant. In the said circumstances, the judgment of conviction by the trial Court cannot be interfered with.

13. According to P.W.1, he was pursuing with the auditor in the RPD (Railway Police Department) for his bills. However, it was informed that he should pursue with the Pay and Accounts Office for which reason, he went to the Pay and Accounts Office on the advice of one Sona Babu. P.W.1 admits that he went to the ACB office on 24.06.2000 itself in the evening hours and the DSP recorded his statement and took his signature. However, as seen from Ex.P1, complaint recorded by the DSP, it was recorded on 26.06.2000 from 11.30 a.m onwards. The prosecution failed to explain as to what happened to the statement that was recorded on 24.06.2000. When P.W.1 was competent to read and write, why the complaint Ex.P1 was recorded by the DSP. Though P.W.1 stated that he knew Urdu and Telugu, the DSP translated and wrote Ex.P1.

14. The other factor which raises doubt is the relation between AO1 and AO2. It is not explained by the prosecution as to how AO1 and AO2 were related and under what circumstances and as to why AO2 would accept money from a stranger that too at the instance of the appellant. On the trap day, there were several persons in the office namely V.Raghupathi, Auditor, Hari Babu, Auditor who sat on either side of the accused officer, M.Venkateshwarlu, Mohan Rao, Auditors, who sat on the opposite site, Nageshwar Rao, Ramchander Rao, Lakshman Rao, Auditors. D.Chandramoulu Superintendent, A.Surya Prakash Rao, M.Seetharammurthy, Joseph, Auditors and Rajalingam, Assistant Auditor and Attenders Munawar and Pruthviraj. Though all the said persons were examined on the day of trap, none of them witnessed any conversation between P.W.1 and the accused officer. It is further more doubtful that P.W.2, the accompanying mediator who was at a distance of three feet also failed to hear the conversation between the appellant and P.W.1. P.W.2 deposed in his cross examination as follows:

“Myself and P.W.1 entered into the hall of the said Pay and Accounts Office. When we entered AO1 was attending to her

work by bending her head. The distance between me and P.W.1 was about 3 feet and I was behind him. I did not talk to AO1. I did not hear the conversation between P.W.1 and AO1. I saw P.W.1 giving the amount to AO2.”

15. The accused officer had specifically denied during post trap proceedings about any demand or acceptance of bribe from P.W.1. There is no admission by the accused officer that she knew AO2 and prosecution also did not prove any prior acquaintance of appellant and AO2. The entire staff including P.W.2 did not hear any conversation between P.W.1 and the accused officer. In the said circumstances, it cannot be said that there was a demand made by the accused officer. Mere recovery from AO2 would not entail the prosecution to seek drawl of presumption under Section 20 of the Prevention of Corruption Act and shift the burden on to the appellant.

16. According to the complaint Ex.P1 there was a demand of Rs.1,500/- according to P.W.1. However, during the course of chief examination, he states that the accused officer asked for the bribe amount and she questioned as to why P.W.1 did not bring the amount of Rs.1,800/- as demanded by her. In reply, P.W.1 stated

that he brought only Rs.1,500/- and that too with great difficulty. Even according to P.W.1, all this conversation has taken place on the date of trap. But the version stated in the Court is not reflected in the second mediator's report. Further, in the cross-examination, P.W.1 stated that on seeing him, appellant asked him to wait after demanding bribe and after 2 to 4 minutes, the appellant asked P.W.1 to handover bribe to AO2. These different versions coupled with the evidence of P.W.2, who did not corroborate the evidence of P.W.1, this Court is of the opinion that the prosecution has failed to prove the factum of demand, for which reason, benefit of doubt has to go in favour of the accused officer.

17. In the result, the appeal is allowed. The impugned judgment in C.C.No.1705 of 2007 dated 06.12.2007 is set aside. Since the accused officer/appellant is on bail, her bail bonds shall stand cancelled.

K.SURENDER, J

Date: 02.08.2022

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1709 OF 2007

Date: 02.08.2022

kvs