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

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# Criminal Appeal No.214 OF 2007

Between:

Ch. Pattabhi Seetha Rama Rao … Appellant

And

The State of A.P., rep by
The Inspector of Police,
Anti Corruption Bureau,
Hyderabad Range,
Ranga Reddy District. … Respondents

DATE OF JUDGMENT PRONOUNCED: 28.06.2023

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**

+ CRLA. No. 214 of 2007

% Dated 28.06.2023

# Ch. Pattabhi Seetha Rama Rao … Appellant

And

$ The State of A.P., rep. by
The Inspector of Police,
Anti Corruption Bureau,
Hyderabad Range,
Ranga Reddy District. … Respondent

**! Counsel for the Petitioner:** Sri Kowturu Pavan Kumar

**^ Counsel for the Respondents:** Sri Sridhar Chikyala

(SC Special Public Prosecutor ACB T.S)

**>HEAD NOTE:**

**? Cases referred**

[1] AIR 2021 SC 766

[2] Crl.A.No.987 of 1999, dated 11.12.2015

3 Criminal Appeal No. 1592 of 2022, dated 17.04.2023

[4](2023) 4 Supreme Court Cases 731

5 2021 (2) ALD (Crl.) 662(AP)

6 (1996) 1 Supreme Court Cases 542

7 1984 Cri.L.J 1423

8 (1998) 1 Supreme Court Cases 557

9 (2001) 8 Supreme Court Cases 86

10 (2004) 3 Supreme Court Cases 753

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

**CRIMINAL APPEAL No.214 OF 2007**

**JUDGMENT:**

1. Aggrieved by the conviction recorded under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 (for short 'the Act') for demanding and accepting bribe of Rs.5,000/- from defacto complainant/P.W.1, present appeal is filed.

2. Briefly stated, according to the complaint lodged by PW1, P.W.1 was a business man, who obtained loan from Andhra Pradesh State Financial Corporation (for short 'the APSFC'), Mahabubnagar. The appellant was working as Branch Manager of APSFC. P.W.1 and his family members obtained several loans from the APSFC and substantial amounts have to be paid. Previously advertisements in the news papers regarding outstanding and also seizures of vehicle JCB, excavator of complainant and his relatives was published twice. On account of the publication of the advertisements, the relatives, friends and others, who invested the amount in his

business, have forcibly taken away their amounts. All the business transactions collapsed.

3. Further according to the complainant, due to the illegal seizure of the JCB vehicle, he has suffered loss and put to lot of inconvenience. In such a situation, the appellant threatened that he would again give paper advertisement regarding outstanding of PW1 and his relatives to APSFC. Though there were repeated requests, the appellant sent two notices on 21.01.2001 and also on 22.01.2001 demanding to repay the loans failing which the house kept as a collateral security would be auctioned. In the third week of July, 2001, P.W.1 met the appellant and requested not to give paper advertisement. Appellant allegedly demanded Rs.5,000/- as bribe for not publishing advertisement. Again PW1 met appellant on 13.08.2001, at 6.30 a.m and requested the appellant not to give paper advertisement, but the appellant insisted for bribe amount. On the very same day, i.e., on 13.08.2001, P.W.1 approached the DSP, ACB and lodged a telugu written complaint Ex.P1. The DSP/P.W.8 asked P.W.1

to come to his office on 16.08.2001 in the morning. Accordingly, the DSP arranged for entrapping the appellant and trap party members gathered at 5.30 a.m in the office of ACB.

4. P.W.3 and another acted as independent mediators. P.W.1, his friend P.W.2 were present. P.W.8 and other ACB officials were also present when the pre-trap proceedings Ex.P6 had taken place. P.W.1 was questioned by the independent mediators regarding the complaint. Thereafter, Ex.P6, pre-trap proceedings were drafted. After concluding the pre-trap proceedings, all the trap party members reached the flat of the appellant at Baghlingampally, Hyderabad. Both P.Ws.1 and 2 went inside and P.W.1 requested the appellant not to publish notice in newspapers, then the appellant demanded the bribe amount. P.W.1 handed over the bribe amount to the appellant, who received it with right hand and kept the same besides him on the sofa and covered a newspaper over the currency notes. P.W.3 went out and gave the pre-arranged signal. Thereafter, the trap party members

went inside the room and questioned the appellant regarding the bribe amount that was handed over. Sodium carbonate solution test was conducted on the hands of the appellant and his right hand proved positive. However, the left hand test remained negative. Eenadu news paper which was placed on the notes by the appellant was also subjected to sodium carbonate test solution. The test proved positive.

5. Having examined the inmates of the house and also P.Ws.1 and 2, post-trap proceedings Ex.P8 were drafted. The investigation was handed over to P.W.9, Inspector, who concluded the investigation and filed charge sheet against the appellant for the offences under Sections 7 and Section 13(1)(d) r/w Section 13(2) of the Act. Charges were also framed for the said offences.

6. Learned Special Judge examined P.Ws.1 to 9 and marked Exs.P1 to P16 on behalf of the prosecution. The appellant examined D.Ws.1 and 2 and marked Exs.D1 to D21 in his defence. Learned Special Judge found that the appellant failed to discharge his burden and accordingly, having found that

the appellant demanded and accepted Rs.5,000/-, convicted the appellant.

7. Learned counsel for the appellant would submit that the allegations made by P.W.1 in the complaint cannot be believed. The alleged demand of bribe was to see to that the details of outstanding and names of P.W.1 and others would not be published in newspapers. However, it was already published thrice. When the details of outstanding were already published thrice, the question of the appellant again demanding money for not publishing in newspapers cannot be believed. For the reason of the appellant being the Manager and taking steps to recover the outstanding amount on behalf of the APSFC, a false trap was laid. In support of his contention, he relied on the judgments reported in the case of **N.Vijayakumar v. State of Tamil Nadu**[1] in which the Hon'ble Supreme Court held that mere recovery of the bribe amount would not suffice in the absence of proof of demand for illegal gratification.

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[1] AIR 2021 SC 766

8. He also relied on the judgment of the Karnataka High Court in the case of **R.Manthra Murthy v. The State of Karnataka**[2]. In the said case, the Court found that there was any amount of discrepancy in the evidence of witnesses with regard to the events that have taken place in the chamber of the accused where the amount was allegedly passed on. Since such discrepancies arose and there was no corroboration to the version given by the witnesses, the conviction was set aside.

9. In **Soundarajan v. State, rep. by the Inspector of Police, Vigilance, Anticorruption, Dindigul**[3], the Hon'ble Supreme Court, placing reliance on the case of **Neeraj Dutta v. State (Government of NCT of Delhi)**[4], wherein the constitutional bench of Hon'ble Supreme Court held that presumption under Section 20 of the Act can only be invoked when the demand of gratification is proved and consequent acceptance, acquitted the accused.

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[2] Crl.A.No.987 of 1999, dated 11.12.2015

[3] Criminal Appeal No.1592 of 2022, dated 17.04.2023

[4] (2023) 4 Supreme Court Cases 731

10. In the judgment of **Akurathi Yellamanda v. The State, ACB**[5], similar view was taken stating that mere recovery would not suffice and prosecution is bound to prove that there was demand by the accused.

11. On the other hand, learned Standing Counsel for ACB would submit that the bribe amount was recovered from the appellant at his instance. The complainant had supported the prosecution case and P.W.2, the accompanying witness has also spoken about the demand and acceptance of bribe. Since the prosecution has proved the demand and acceptance of bribe, presumption under Section 20 of the Act arises. The appellant has utterly failed to discharge the burden shifted on to him under Section 20 of the Act. Learned counsel relied on the judgment of Hon'ble Supreme Court in the case of State of **Maharashtra v. Ishwar Piraji Kalpatri and others**[6], wherein the Hon'ble Supreme Court held that the animus of complainant can only be proved during trial. Since allegations

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[5] 2021 (2) ALD (Crl.) 662(AP)

[6] (1996) 1 Supreme Court Cases 542

are made against the complainant that would not suffice to disbelieve his evidence. He also relied on the judgment of Rajasthan High Court in the case of Guru Singh v. State of Rajasthan[7], wherein it was held that suggestions made during cross-examination has no evidentiary value. In the case of **State of U.P v. Zakaullah**[8], the Hon'ble Supreme Court held that a pedantic approach rejecting the evidence of a complainant simply on the premise that he was aggrieved against the bribe-taker, would only help corrupt officials getting insulated from legal consequences.

12. In **Sukhdev Yadav and others v. State of Bihar**[9] the Hon'ble Supreme Court held that minor variations in prosecution case cannot be made basis to refuse the case of witnesses. In **T.Shankar Prasad v. State of A.P**[10]**,** the Hon'ble Supreme Court failed to accept the version of the accused that

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[7] 1984 Cri.L.J 1423

[8] (1998) 1 Supreme Court Cases 557

[9] (2001) 8 Supreme Court Cases 86

[10] (2004) 3 Supreme Court Cases 753

the amount was paid towards taxes since there was no tax that was due on the date of trap and convicted the accused.

13. The evidence of P.W.1/complainant would be crucial to determine whether there was a demand of bribe. The crux of the allegations is that the appellant demanded Rs.5,000/- from P.W.1 to refrain from publishing the details of his and his relatives outstanding to APSFC in newspapers.

14. It is admitted by P.W.1 that his mother, brother-in-law, wife, daughter, brother's wife and one Parmeshwar Reddy, who was the business partner have all obtained the loans from APSFC during the year 1996. P.W.1 stood as surety for the loans obtained by Venkateshwar Reddy, who is the son-in-law of Parmeshwar Reddy. One Rathnavathi, and PW1's daughter Madhavi Latha, had taken Rs.5.00 lakhs. The APSFC issued notice on 12.09.1998 for default of Rs.2,81,188/- and informed that they are taking steps for recovery of Rs.9,07,611/- outstanding in the account of P.W.1. The appellant took charge on 01.07.1998. The APSFC sent telegram on 10.10.1998 to PW1 for appearing before the

General Manager with regard to outstanding. On 21.10.1998, undertaking was given by his partner Parmeshwar Reddy for repayment of Rs.50.00 lakhs and on failure to do so, P.W.1 and his partner would handover vehicles to the Corporation. On 18.09.1999, P.W.1 was given notice by the APSFC that they were taking steps for recovery of Rs.8,17,752/-. P.W.1 sent a telegram on 25.05.1999 asking APSFC to extend time till October, for clearing the outstanding. APSFC sent a reply on 02.12.1999 denying the request of P.W.1. P.W.1 and his partners were asked to surrender all vehicles immediately, failing which, collateral security property will be advertised for sale without further notice. On 11.01.2000, both P.W.1's vehicle and his mother's vehicle were seized. On 07.06.2000, the APSFC published a notice in Eenadu daily showing the properties of P.W.1 and his mother's property, fixing the date of auction as 05.07.2000. P.W.1 also issued letters promising APSFC to regularize the account.

15. PW1 further admits that Exs.D1 to D4 is the correspondence regarding the undertaking given by P.W.1 for

repayment of loan. Ex.D5 notice was issued by the appellant. Exs.D7 to D11 is the correspondence with the APSFC by P.W.1 and his partner regarding the outstanding amounts to be paid. D.W.13 is the notice dated 15.10.1997 for the loan default of Parmeshwar Reddy, mother, sister and another partner of P.W.1. Ex.D14 is the seizure panchanama dated 11.01.2000 under which vehicle of mother of P.W.1 was seized. On 20.06.2000, the APSFC published a notice in Eenadu daily for sale of property of P.W.1 and the property of mother of P.W.1. The partner Parmeshwar Reddy gave cheques for repayment. However, the said cheques were returned. On 03.10.1998, APSFC again published in Eenadu newspaper for sale of collateral security of P.W.1. Ex.D18 is the telegram dated 03.01.1998 intimating about the publication in Eenadu daily about the outstanding.

16. P.W.1 further admitted that he has not made any payments to APSFC towards the loan borrowed by him or his group members i.e., partners mother, wife and sisters. Ex.D15 is the publication which according to P.W.1, harmed his

reputation. Though there was repeated requests to adjust an amount of Rs.5,24,048/-, according to P.W.1, the same was not done. Exs. D15, D20 and 21 are the publications in newspapers regarding the outstanding of P.W.1 and partner i.e., mother, sister etc.

17. Complaint was given on 13.08.2001 and trap was arranged on 16.08.2001. On the trap day, the trap party went near the flat of the appellant which is situated in the fourth floor of the building. The defence of the appellant is that P.W.1 entered into the house and placed the amount and covered the same with the newspaper and thereafter, he shook hands with the appellant and left. The appellant was not aware of the amount placed by P.W.1 and for the reason of shaking hands with P.W.1, test on his hand proved positive.

18. As stated above, P.W.1 is partner and his relatives have obtained loans from the APSFC in the year 1996 and continuously defaulted in repaying the said amounts, which ran into Crores of rupees. Though, the exact figure is not stated, as seen from the cross-examination, as admitted by

P.W.1, the total outstanding as suggested by witnesses is that P.W.1 and his credit runs into several Crores. It is not denied that loans were taken repeatedly and the APSFC were pressurizing for recovery of the amounts, the vehicles were seized and publications were made in the newspapers stating that the collateral securities would be auctioned.

19. In the said back ground, it has to be tested whether the allegation in the complaint that the appellant had asked for Rs.5,000/- to refrain from publishing the details of outstanding of P.Ws.1 and others is prudent. There are series of taking loans and defaulting over the period of five years from 1996 till August 2001. Several demands were made by SFC to recover the amounts. However, for one reason or the other, P.W.1 and his group failed to repay the amounts. Meanwhile, after taking charge as Manager on 01.07.1998, Appellant ensured publication in newspapers regarding the outstanding of PW1 and his group.

20. In the said back ground of (i) mounting pressure by APSFC on PW1, PW1's mother, daughter, partner and other

relatives to pay outstanding of loan (ii) continuous defaults of repayment (iii) telegrams and correspondence being made by APSFC (iv) details of outstanding of PW1 and his group being published thrice in news papers (v) APSFC taking steps to auction properties of PW1 and his group, the allegation that Rs.5,000/- was asked for not publishing in newspapers appears to be highly improbable.

21. Appellant was doing his duty to recover dues running into crores of rupees from PW1 and his group. Viewed from any angle of probability and prudence, the said allegation of demand of bribe was falsely made and appellant entrapped to keep APSFC officials at bay. The admission of P.W.1 would be relevant. He stated during cross-examination as follows:

> *"I have not made any payment to the S.F.C. towards the loan obtained by me or my group ;borrowers Madavi latha, Ratnavathi, Venkateswar reddy after the trap. I do not know that the outstanding amount on this date to the SFC by our said group would be crores of rupees."*

22. The plan of P.W.1 to put scare amongst the APSFC officials was successful. On his own admission he could evade the payment to the APSFC by lodging a false complaint with

the ACB. The trap ensured that the APSFC was put to loss of the entire outstanding payable by P.W.1 and others. P.W.1 has taken the services of the ACB to evade his outstanding. It is necessary that the concerned official who receives complaint should apply his mind to the facts narrated in the complaint and initiate action. The DSP and the Investigating Officer have totally failed in their duties and were a party to the false implication of the appellant. Necessary steps should be taken by the agency before registering a complaint and laying a trap to ensure that public servants are not falsely implicated.

23. The bribe amount of Rs.5,000/- was found beneath the newspaper, it appears that P.W.1 had deliberately planted the said amount. No reason why the appellant would keep the money on sofa and cover it with a newspaper. The sequence narrated during cross examination and the back ground of the case clearly suggests false implication.

24. In the present case, no harm or loss would ensue if details of default of PW1 and his group are published for the fourth time. The Court can reject the version of demand of

bribe on the basis of probability, logic and prudence in the peculiar facts of a case. Mere recovery in the present case cannot be basis to infer demand and acceptance of bribe nor draw presumption under Section 20 of the Act.

25. For the aforementioned reasons, conviction is liable to be set aside.

26. In the result, Criminal Appeal is allowed. Judgment of the trial Court in C.C.No.17 of 2002 dated 02.02.2007 is set aside. Consequently, miscellaneous petitions, if any, pending, shall stands closed. Bail bonds are discharged.

**K.SURENDER, J**

Date: 28.06.2023
Note: LR copy to be marked.
B/o.kvs

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

CRIMINAL APPEAL No.214 of 2007

Date: 28.06.2023.

kvs