HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

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Criminal Appeal No. 270 OF 2007

Between:

B.Jamuna Bai ... Appellant

And

The State, rep. by Inspector of Police,
ACB, Warangal Range ... Respondent/

DATE OF JUDGMENT PRONOUNCED: 27.06.2024

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

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K.SURENDER, J

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

+ CRL.A. No. 270 OF 2007

% Dated 27.06.2024

B.Jamuna Bai ... Appellant

And

$ The State, rep. by Inspector of Police,
ACB, Warangal Range ... Respondent

! Counsel for the Appellant: Sri T.Niranjan Reddy, Senior Counsel
For Sri Ch.Siddartha Sarma

^ Counsel for the Respondents: Sri Sridhar Chikyala
Special Public Prosecutor

>HEAD NOTE:

? Cases referred

1. (2014)14 SCC 295
2. (1997) 7 Supreme Court Cases 622
3. (1976) 4 Supreme Court Cases 233
4. AIR 1958 Supreme Court 124
5. AIR 1966 SC 1762
6. AIR 1999 Supreme Court 3706

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.270 OF 2007

JUDGMENT:

1. The appellant was convicted for the offence under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of one year under both counts, vide judgment in C.C.No.15 of 2002 dated 28.02.2007 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. Aggrieved by the same, present appeal is filed.

2. The appellant, while working as Assistant Civil Surgeon in the Government Area Hospital, Mahaboobabad was entrapped by the ACB on the basis of complaint of P.W.1. The grievance of the defacto complainant/P.W.1 is that in the year 1999, his mother was suffering from stomach pain for which reason, she was taken to the hospital and the appellant had prescribed certain medicines. Tests were conducted and the appellant had attended on to the mother of P.W.1 on 30.09.1999 and 13.10.1999. Appellant advised for removal of uterus of mother and for the operation, demanded an

amount of Rs.2,500/- as expenditure on 13.10.1999. They expressed their inability. However, P.W.1's mother was again taken to the hospital on 20.08.2000. The appellant demanded the said amount. However, asked to arrange for an amount of Rs.1,600/- and directed to pay the amount of Rs.1,600/- on 05.09.2000 on which date, operation would be conducted.

3. Aggrieved by the said demand made on 20.08.2000, P.W.1 approached the ACB office and filed Ex.P3 complaint on 02.09.2000. Having taken the complaint, the DSP/P.W.11 asked P.W.1 to come on 05.09.2000 on which date trap was arranged. The trap party gathered in the office of the DSP around 7.00 a.m on the said date. The formalities required before proceeding to trap were followed and pre-trap proceedings were drafted which is Ex.P9. The mother of P.W.1 was also present during the pre-trap proceedings. The trap party reached the government hospital around 10.45 a.m. The appellant was in the operation theatre and she came out around 12.00 noon. When P.W.1 and her mother met the appellant, she prescribed the mother to undergo blood and urine test. After the test was undertaken in a private lab, both P.W.1, his mother

along with P.W.2, who was a police constable and part of trap party met the appellant. Appellant then asked whether Rs.1,600/- was brought. P.W.1 took the amount from his shirt pocket and handed over to the appellant. She counted the amount and wrote the name of the mother on a small slip by mentioning the numerical number 16. The said amount was kept in her small black colour bag. The said slip on which 16 was written which is Ex.P6 was inserted in between the currency notes. Thereafter, another slip Ex.P7 was handed over directing to take the mother of P.W.1 to the Government Hospital and admit her in the said hospital. P.W.1 came out and gave the pre-arranged signal to the trap party that there was demand and acceptance of bribe.

4. The trap party entered into the hospital and questioned whether the appellant had received any amount from P.W.1. Test was conducted on both the hands and both the hands turned positive for sodium carbonate test solution reflecting that the currency notes were handled by the appellant. The currency notes were then handed over by appellant from her leather bag. In between the amount, Ex.P6 slip was also found. There was other

currency also in the said bag which was seized by the trap party. During the course of the post-trap proceedings, the appellant, complainant and others were examined and relevant documents were also seized. Post-trap proceedings were drafted which is Ex.P11 after conclusion of proceedings.

5. Investigation was handed over to the Inspector/P.W.12 who concluded investigation and filed charge sheet for the offence under Sections 7 and 13(1)(d) r/w Section 13(2) of the Act. Learned Special Judge having taken cognizance of the offence, framed charges for the said offences and examined P.Ws.1 to 12 and marked Exs.P1 to P17 on behalf of the prosecution and MOs.1 to 9 were also placed on record during trial.

6. On the basis of the evidence of P.Ws.1, 2 and other circumstantial evidence, the learned Special Judge found that demand was made by the appellant, pursuant to which, the amount was accepted on the date of trap for the purpose of performing surgery on the mother of P.W.1 at the government hospital, Mahabubabad. Accordingly, the appellant was convicted.

7. Sri T.Niranjan Reddy, learned Senior Counsel appearing for the appellant would submit that at the earliest point of time, during the post-trap proceedings, when questioned by the DSP, the appellant explained that the said money was taken to meet the expenditure for the operation. The said explanation was in fact corroborated by P.W.7, who was working as anesthetist and stated that whenever an operation was conducted on the patients in the Government Hospital, Mahaboobabad, the appellant used to pay Rs.400/- towards remuneration for each case. P.W.9 was also another Doctor who stated that he had instructed the appellant to arrange private anesthetist for giving anesthesia to the patients who undergo major operation as there was no post of anesthetist in the said hospital. Both the witnesses have stated regarding the reason for collecting the amount is that it was done to meet the surgery expenditure, since all the facilities required for surgery were not available in the hospital. In fact, P.Ws.7 and 9 had stated so during the course of their examination under Section 161 Cr.P.C before the Investigating Officer.

8. Learned Senior Counsel further argued that the sanction Ex.P16 was mechanically granted for prosecuting the appellant without considering the material on record. It is apparent from Ex.P16 that the entire material in the case was not submitted to the sanctioning authority. If at all Section 161 Cr.P.C statements of P.Ws.7 and 9 were looked into by the sanctioning authority, sanction would not have been granted. Prejudice was caused on account of the investigating agency not providing the entire material to the sanctioning authority at the time of seeking sanction for prosecution.

9. Learned Senior Counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Central Bureau of Investigation v. Ashok Kumar Aggarwal** (2014)14 SCC 295) wherein it is held as follows:

> *"13. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the*

> *case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought."*

10. Learned Senior Counsel also relied on the judgment in the cases of: i) **Mansukhlal Vithaldas Chauhan v. State of Gujarat** (1997) 7 Supreme Court Cases 622; ii) **Sri Rabindra Kumar Dey v. State of Orissa** ((1976) 4 Supreme Court Cases 233; iii) **Jaswant Singh v. State of Punjab** (AIR 1958 Supreme Court 124).

11. Learned Senior Counsel submits that grant of sanction is not an ideal formality but a solemn and sacrosanct act. Unless the sanctioning authority applies its mind before granting sanction on the entire material that was placed by the prosecution, it cannot be said that it is a valid sanction.

12. Learned Senior counsel also relied on the judgment in the case of **V.D.Jhingan v. State of Uttar Pradesh** (AIR 1966 SC 1762), wherein the Hon'ble Supreme Court held that if the appellant discharges the onus of proof lying on him by preponderance of

probability, the same would suffice. Initially it is for the prosecution to prove the case beyond reasonable doubt.

13. On the other hand, learned Special Public Prosecutor appearing for ACB relied on the judgment in the case of **CBI v. V.K.Sehgal** (AIR 1999 Supreme Court 3706). In the said judgment, the Hon'ble Supreme Court held referring to Section 19(3)(a) of the Prevention of Corruption Act that any conviction and sentence cannot be altered or reversed only on the ground of absence of sanction or want of competency of authority who granted sanction. Learned counsel further submitted that P.W.1, complainant and P.W.2, accompanying witnesses had stated that there was demand of Rs.1,600/- for the purpose of operation and the amount was also recovered. The appellant having accepted that Rs.1,600/- was taken from P.W.1, there is a presumption under Section 19 of the Act and the appellant had failed to rebut the said presumption by admissible evidence. In the said circumstances, conviction of the appellant cannot be interfered with.

14. Firstly, adverting to the grounds raised by the learned Senior Counsel regarding sanction that the entire material was not placed before the sanctioning authority and sanction was given mechanically without application of mind, has to be dealt with. P.W.10 was working as Assistant Secretary, who stated that the concerned file of appellant was received in the department on 23.08.2001. The said file contained final report, preliminary report, FIR, mediators report and the entire file was placed before the Assistant Secretary, then the Joint Secretary and thereafter before the Special Chief Secretary. The material papers were considered and the material was referred to Ministry of Health and the Health Minister approved the sanction orders against the appellant. Ex.P16 is the original G.O which bears the signature of the Special Secretary. The Special Chief Secretary had signed on the G.O after that it was also referred to the law department. From a reading of Ex.P16, the sanction order gives the details of the complainant's case in brief and also that the appellant was trapped. The test on both hands turning positive and recovery of tainted currency from her possession is also stated in the sanction order.

15. The main argument of the learned Senior Counsel is that Section 161 Cr.P.C statements of P.Ws.7 and 9 were not placed before the sanctioning authority. As seen from the evidence of P.W.10, there is no cross-examination to the said effect. P.W.10 had given the details of the material considered by the sanctioning authority before granting sanction. The argument of the learned Senior Counsel that the sanctioning authority would have arrived at a different conclusion if the statements of P.Ws.7 and 9 were placed before the sanctioning authority is on the basis of assumption. An assumption that the sanctioning authority would have been influenced by the statements under Section 161 Cr.P.C, cannot form basis to suggest in any manner that the entire material was not placed before the sanctioning authority. There is no specific reference to Section 161 Cr.P.C statements of P.Ws.7 and 9, in the sanction order and so also there is no reference specifically to any of the documents furnished to the Authority. However, in view of the sanctioning authority considering the facts of the case that prima facie case was made out to prosecute the appellant for the offence under Prevention of Corruption Act, had granted sanction, it cannot be said that any irregularity or illegality was committed. It is

the law that Section 161 Cr.P.C statements cannot be signed by the witness and such statements can only be used for the purpose of confronting and contradicting a witness during trial.

16. For the sake of convenience, Section 19(3)(a) of the Prevention of Corruption Act,1988 reads as follows:

> "*19(3)(a):*
>
> *No finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of Justice has, in fact, been occasioned thereby;"*

17. Sub-Section (2) of Section 465 of Cr.P.C reads as follows:

> "*In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."*

18. I do not find that any prejudice was caused to the appellant even accepting for a moment that Section 161 Cr.P.C statements of P.Ws.7 and 9 were not placed before the sanctioning authority. What fell for consideration with the sanctioning authority is whether a *prima facie* case was made out against the appellant, as

seen from the wording and facts stated in the sanction order. The sanctioning authority would only consider whether *prima facie* case was made out before granting sanction. However, it is the duty of the trial Court to assess and adjudicate upon the claims and counter claims made before the trial Court by the prosecution and the defence. Accordingly, the ground of non application of mind by the Sanctioning Authority on account of assumptions of not furnishing the entire material to the sanctioning authority and the sanctioning authority would have refused to grant sanction if P.W.7 and P.W.9's Section 161 Cr.P.C statements were considered, has no legs to stand. The sanctioning authority is not expected to embark on an exercise of marshalling facts to ascertain the probability or correctness of complaint. It is not stated by P.Ws.7 and 9 that they asked appellant to collect Rs.1,600/- from the complainant. In the present facts, the argument regarding an invalid sanction or that sanction would not have been given is negatived.

19. Admittedly, the appellant when questioned during the post-trap proceedings, her spontaneous reply was that she received Rs.1,600/- from the complainant for admitting his mother in the

Government Hospital for operation and the said amount of Rs.1,600/- would be used for purchasing medicines and part of the amount has to be paid to the anesthetist. It has to be seen whether the said explanation spontaneously given at the earliest point of time and subsequently defence taken during the course of trial explaining the receipt of the amount can be accepted. P.W.7 stated in his chief examination as follows:

> "*I am retired from service as Civil Surgeon at M.G.M. Warangal in the year 2005. Earlier I worked as Professor in Anesthetist. I worked as Civil Asst.Surgeon at M.G.M Warangal from 1992 to 2003. I know AO Dr.Jamuna Bai. I used to attend Government Civil Hospital, Mahabubabad as Anesthetist whenever operation was conducted on the patients at the said hospital and AO used to pay Rs.400/- to me towards remuneration for each case. ACB officials examined me and recorded my statement.*"

Similarly, P.W.9 stated in his chief examination as follows:

> "*I am retired from service as Government Civil Surgeon. Previously I worked as District Coordinator of Hospital service at Jangam in Warangal District from 01.02.00 to 31.06.02. I know the AO who worked as Women Assistant Surgeon, Area Hospital, Mahabubabad in Warangal District. On 05.07.00 I gave instructions to AO for arranging private anesthetist for giving anesthetia to the patients who undergo major operation at the said area hospital Mahabubabad as there was no post of anesthetist in the said hospital. ACB Inspector examined me and recorded my statement in this case.*"

20. The said version of P.Ws.7 and 9 was elicited by prosecution in chief examination and also during investigation. The version that

P.W.7/anesthetist received Rs.400/- for remuneration in each case and P.W.9, who was the District Coordinator of the Hospital had instructed the appellant to arrange private anesthetist as there was no post of anesthetist is in tandum with the defence of appellant. Apparently, when the services of outside Doctor are sought during operation, the expenditure had to be borne by the patient and the appellant cannot pay on behalf of the patients. It is not the case of prosecution that the Government Hospital at Mahabubabad was totally equipped with Doctors, medicines and other paraphernalia required for conducting operations. No investigation is done to disprove the explanation given by the appellant at the earliest instance, to show that what is stated regarding expenditure being incurred during operation, for medicines and payment to outside Doctors, is incorrect.

21. In fact, the prosecution witness P.W.9 stated that the appellant was asked to take the services of an outside anesthetist since no anesthetist was working in the hospital. P.W.7 anesthetist stated that he used to receive Rs.400/- towards his services in every case. In the present circumstances, when the prosecution

case itself is that the facilities required for operation were not completely provided in the hospital and outside help was sought in the form of anesthetist and procuring medicines, explanation of the appellant for collecting Rs.1,600/- has been probablised during trial. The presumption that is raised against the appellant has been clearly explained and burden discharged by the appellant in view of the foregoing discussion.

22. In view of the same, the judgment of the trial Court in C.C.No.15 of 2002 dated 28.02.2007 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, is hereby set aside. Since the appellant is on bail, her bail bonds shall stand cancelled.

23. Accordingly, Criminal Appeal is allowed.

K.SURENDER, J

Date: 27.06.2024
Note: LR copy to be marked.
B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.270 of 2007

Date: 27.06.2024

kvs