

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

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**Criminal Appeal No.277 OF 2007**

Between:

Thokara Surender Kumar

... Appellant

And

State, rep. by Inspector of Police,  
ACB, Hyderabad Range, Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED:

27.06.2023

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 their fair copy of the Judgment? | Yes/No |

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*K.SURENDER, J*

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

**+ CRL.A. No. 277 of 2007**

% Dated 27.06.2023

# Thokara Surender Kumar

... Appellant

And

\$ State, rep. by Inspector of Police,  
ACB, Hyderabad Range, Hyderabad

... Respondent

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

**^ Counsel for the Respondent:** Sri Sridhar Chikyala  
(SC of ACB)

**>HEAD NOTE:**

**? Cases referred**

<sup>1</sup> (2023) 4 Supreme Court Cases 731

<sup>2</sup> (2004) 3 Supreme Court Cases 753

3 AIR 1976 SC 1497

**HON'BLE SRI JUSTICE K.SURENDER**  
**CRIMINAL APPEAL No.277 OF 2007**

**JUDGMENT:**

1. The appellant, who was working as Deputy Engineer, Panchayat Raj was convicted for demanding and accepting bribe of Rs.4,000/- for the offence under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 (for short 'the Act') and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.2,500/-, in default, to suffer simple imprisonment for a period of six months under both counts, vide judgment in C.C.No.2 of 2003, dated 09.02.2007 by the Additional 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 the witnesses 1 and 2 and 20 others are the labourers for the work of laying of internal road of Jogigudem. Government sanctioned Rs.1,59,000/- under Food for Work Programme. The allegation is that Rs.76,000/- worth rice coupons were issued. However, Rs.39,000/- rice coupons were kept pending. When the labourers who are examined as P.Ws.1 and 2 met the appellant, the appellant informed that he would check the measurement of the work done and also demanded an amount of

Rs.5,000/- and later reduced to Rs.4,000/- for giving remaining rice coupons.

3. The said demand was again made when P.Ws.1 and 2 met the appellant on 26.01.2002. Amount had to be paid in his house on 03.02.2002. On 02.02.2002 at 11.00 a.m, P.W.1 filed a complaint which was registered by P.W.5 after verifying the antecedents and genuineness of the complaint. The trap was arranged on the next day i.e., 03.02.2002. On the said date, P.W.5 secured the presence of P.W.3 and another independent mediator. Pre-trap proceedings were conducted at 6.00 a.m in the morning. After concluding the pre-trap proceedings, the trap party went near the house of the appellant. While the DSP and other trap party members stayed outside, P.Ws.1 and 2 went inside the house of appellant on the instructions of P.W.5-DSP. Thereafter, P.W.2 came out from the house and gave pre-arranged signal indicating acceptance of bribe.

4. The trap party entered the house and found the appellant. Sodium carbonate solution was prepared in two separate glass tumblers and both the hands of the appellant turned positive for the test. Rs.4,000/- was recovered from the left side pant pocket. During proceedings, the concerned documents were seized and post-trap proceedings vide Ex.P11 were concluded. Investigation

was handed over to P.W.5, who concluded investigation and filed charge sheet against the appellant for the offences under Sections 7 and Section 13(1)(d) r/w 13(2) of the Act. Having framed charges for the said offences, learned Special Judge found that the appellant was guilty.

5. Learned counsel appearing for the appellant would submit that the prosecution has failed to prove that there was any demand by the appellant. Secondly, the prosecution also failed to prove that there was any work pending with the appellant or that appellant could show any favour or dis-favour to P.W.1.

6. Learned counsel further submits that it is admitted by the prosecution witnesses that P.Ws.1 and 2 and other labourers received the entire rice coupons and there was nothing pending as on the date of trap. P.Ws.1 and 2 turned hostile to the prosecution case and mere recovery of amount is of no consequence. He relied on the judgment of Hon'ble Supreme Court in the case of **Neeraj Dutta v. State (Government of NCT of Delhi)**<sup>1</sup>. The constitutional bench of Hon'ble Supreme Court held that it is for the prosecution to prove the demand and acceptance of illegal gratification by either

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<sup>1</sup> (2023) 4 Supreme Court Cases 731

oral or documentary evidence or by circumstantial evidence in the absence of any direct evidence.

7. On the other hand, learned Public Prosecutor relying on the judgment of Hon'ble Supreme Court in the case of **T.Shankar Prasad v. State of A.P**<sup>2</sup> and **Chaturdas Bhagwandas Patel vs The State Of Gujarat**<sup>3</sup> argued that once the amount is recovered from the appellant, presumption arises and since the appellant has failed to discharge his burden, the conviction has to be sustained.

8. Admittedly, both P.Ws.1 and 2 turned hostile to the prosecution case. There is nothing in the evidence to remotely suggest that there was any kind of demand made by the appellant. In fact, during the course of examination in the Court, both P.Ws.1 and 2 stated that all the coolies received rice in lieu of wages and coupons were supplied to them and they collected rice from the ration shop dealer. P.W.1 further stated that he has received 150 kgs of rice for 15 days work. P.W.1 accompanying witness deposed on same lines denying any demand by the appellant.

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<sup>2</sup> (2004) 3 Supreme Court Cases 753

<sup>3</sup> AIR 1976 SC 1497

9. In the absence of any such direct evidence, it has to be seen whether the other circumstances which were relied upon by the prosecution have a bearing on the allegation of demand of bribe by the appellant. The circumstances when examined cumulatively should unerringly point towards version of the prosecution that there was demand and acceptance of bribe.

10. The evidence of both the *defacto* complainant and accompanying witness is of no consequence. The mediators and the DSP are not direct witnesses to either demand or the acceptance of bribe. However, it is stated that the amount was recovered at the instance of the appellant from his right side pant pocket.

11. As projected by the prosecution, the reasons for lodging the complaint is that there was demand of Rs.4,000/- for paying coolies/labourers who worked under the government program. It is not disputed by the prosecution that the entries were made in the measurement book and corresponding rice coupons were also supplied to all the labourers, who in turn collected rice from the fair price shop dealer. Some of the admissions made by the official witnesses are relevant to be considered.

PW5 ACB officer stated-

*“The work mentioned in Ex.P1 was by A.E. Amarender Reddy. The labourers employed under the scheme are nothing to do with the quantum of the work executed by them and the food grains distributed to the labour etc.”*

*By the time of conclusion of the second mediator report, it was not possible to determine whether the accused received the amount as bribe. I cannot arrest a person unless he is involved in a cognizable offense.”*

Further, the investigating officer/P.W.6 deposed as follows:

*“During my investigation I came to know that Amarender Reddy got the work in question executed.*

*“I did not try to know whether any payment was due for the work done.”*

*“As per Ex.P4, P.W.1 worked for 15 days. It is true that Ex.P4 shows that P.W.1 acknowledged the receipt of the food grains for 15 days. The other workers who worked also acknowledged the receipt of the food grains in Ex.P4 and P15 to Ex.P20. I collected the Ex.P4. Ex.P15 to Ex.P20 on 04.02.2002. I did not feel it necessary to examine any witness to know the working of the scheme for food for work programme.”*

12. In view of the said admissions, the prosecution is not in a position to prove that there was any kind of favour that was pending with the appellant. There is no proof of demand. The very basis of the prosecution case is denied by the trap laying officer/P.W.5 and Investigating Officer/P.W.6, which is evident from the admissions made during their cross-examination.

13. Admittedly, the work was completed. The labourers were issued coupons against which rice was drawn. The measurement



books and other documents collected reflect the same. Very substratum of the prosecution case cannot be believed. For the foregoing discussion the appellant is entitled to be acquitted of all the charges.

14. In the result, the judgment of the trial Court in C.C.No.2 of 2003 dated 09.02.2007 is hereby set aside. Since the appellant is on bail, his bail bonds shall stand cancelled.

15. Accordingly, the Criminal Appeal is allowed. Consequently, miscellaneous petitions, if any, pending, shall stand closed.

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**K.SURENDER, J**

Date: 27.06.2023

Note: LR copy to be marked.

B/o.kvs

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

CRIMINAL APPEAL No.277 of 2007

Date: 27.06.2022.

kvs