jkHIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

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Criminal Appeal No.371 OF 2007

Between:

M/s.B.Jagajeevan Rao. … Appellant

And

State of AP, rep. by Inspector of Police,
Spl.Public Prosecutor,
ACB, Nizamabad Range … Respondent

DATE OF JUDGMENT PRONOUNCED: 17.08.2022

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

+ CRL.A. No. 371 of 2007

% Dated 17.08.2022

B.Jagajeevan Rao. … Appellant

And

$ State of AP, rep. by Inspector of Police,
Spl.Public Prosecutor,
ACB, Nizamabad Range. …Respondent

! **Counsel for the Appellant:** Sri D.V.Sitharam Murthy, Sr.Counsel
Appearing for Sri V.Prabhakar Rao

^ **Counsel for the Respondent:** Sri T.L.Nayan Kumar, Special
Public Prosecutor for ACB.

>HEAD NOTE:

? Cases referred

[1] Criminal Appeal No.261 of 2022

2 2021 (2) ALT (CRI.) 1 (S.B)

3(1984) 1 Supreme Court Cases 446

4 (1998) 1 Supreme Court Cases 557

5 (1976) 3 Supreme Court Cases 46

6 (2000) 8 Supreme Court Cases 571

7 (1978) 4 Supreme Court Cases 65

8 (1984) 1 Supreme Court Cases 254

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.371 OF 2007

JUDGMENT:

1. The appellant/AO was convicted for the offences under Sections 7 and 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act of 1988") and sentenced to undergo rigorous imprisonment for a period of one year under both counts vide judgment in CC No.34 of 2002 dated 23.03.2007 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court at Hyderabad. Aggrieved by the same, the present appeal is filed.

2. Briefly, the case of the prosecution is that the appellant was working as Sub Treasury Officer, Bodhan, Nizamabad District. P.W.1, who worked as Telugu Pandit in Government Boys School, Bodhan was entitled for Special Grade promotion arrears of Rs.31,887/- and pay fixation arrears of Rs.23,980/-. The Head Master of the school prepared bills and forwarded them on 07.08.2001 to the STO office. Since the bills were not passed, P.W.1/complainant went to the STO office on 16.08.2001 and met the appellant and asked about his pending bills. Appellant

demanded Rs.5,000/- as bribe to get his work done. Again P.W.1 met the appellant on 23.08.2001 and the appellant insisted the bribe of Rs.5,000/- to be paid, but ultimately reduced to Rs.4,000/.

3. P.W.1 went to the ACB office on the same day evening and on the instructions of DSP, gave a written complaint Ex.P1. The trap was arranged on the next day i.e., on 24.08.2001. Around 7.00 a.m, the complainant/PW.1, DSP, independent mediators and others gathered in the office of ACB and after following the due procedures, pre-trap proceedings were prepared. The DSP instructed that the amount should be handed over to the appellant only on his demand. All the trap party members went to the office of the appellant. P.W.1/complainant and PW.2/accompanying witness went inside the office and met the appellant, who demanded the bribe amount. Then, the appellant took P.W.1 to the record room of RDO office situated by the side of the STO office. There, the appellant asked the bribe amount to be paid and after receiving the said amount, it was kept in a cover and placed in between the records in record room of the RDO office, Bodhan.

Thereafter, the appellant assured that the work of P.W.1 would be done. P.W.1 came out of the office and gave pre-arranged signal.

4. The trap party entered into the office and conducted test on the hands of the appellant. The test proved positive and when the DSP questioned about the bribe amount, the appellant kept quite. However, later the envelope containing bribe amount was found in the record room of RDO's office at appellant's instance. The relevant files were seized and after concluding the post-trap proceedings, the investigation was handed over to the Investigating Officer-P.W.7.

5. Sri D.V.Seetharama Murthy, learned Senior Counsel appearing on behalf of Sri V.Prabhakara Rao, learned counsel for the appellant submits that the very recovery of the amount is doubtful. The appellant works in the office of the Sub Treasury Office whereas the amount was found in a cover in the adjoining RDO's office record room. It is apparent that the amount was planted and the appellant was falsely implicated by P.W.1. P.W.1's nature and conduct was stated by his Principal, who was examined as D.W.1. D.W.1 stated that on 16.08.2001 and 17.08.2001, P.W.1

did not attend the duties as he was on election duties on the said dates. D.W.1 also produced the attendance register, which was marked as Ex.X1 and the relevant page Ex.X1-A. D.W.1 further deposed that as a Head Master, complaint was given against P.W.1 to the Inspector of Police and further deposed that P.W.1 was a quarrelsome person. He further submits that according to P.W.4, the appellant did not have the authority to pass the bills submitted under Exs.P2 and P3, as seen from the stamp affixed on the said documents, it is apparent that they were received in the STO's office on 23.08.2001, as such, the claim that the bills were submitted on 07.08.2001 cannot be believed. Further, on 16.08.2001, P.W.1 was on election duty, as such the question of demanding the bribe on the said date as stated in Ex.P1 complaint does not arise. In the said circumstances, when the demand is not proved by the prosecution, there cannot be any conviction under Sections 7 of the Act and consequently under Section 13(1)(d) of the Act. He further submits that the presumption under Section 20 of the Act cannot be raised to shift the burden on to the appellant. In support of his contentions, he relied on the following judgments:

i) K. Shanthamma v. The State of Telangana[1], wherein the Hon'ble Supreme Court held that when demand of illegal gratification was not proved, the offence under Section 7 of the Act is not established.

ii) In a judgment dated 29.03.2022 in the case of Rajesh Gupta v. State, CBI, the Hon'ble Supreme Court held that there was no proof of demand at the pre-trap stage or during trap. The courts must not overlook the fundamental principal of an accused being not guilty unless the case is established beyond reasonable doubt.

iii) While relying in the case of Akuathi Yellamanda v. State ACB[2] , learned Senior Counsel argued that mere recovery of amount divorced from the circumstances is not sufficient to convict the accused.

iv) He also relied on the cases of the State by S.P.through the SPE, CBI v. Uttamchand Bohra, Criminal Appeal No.1590 of 2021, decided on 09.12.2021, Gaurav Pandey v. the State of Madhya

[1] Criminal Appeal No.261 of 2022

[2] 2021 (2) ALT (CRI.) 1 (S.B)

Pradesh [Criminal Appeal Nos.119 of 2016 and 357 of 2016, decided on 25.07.2022]

6. On the other hand, Sri T.L.Nayan Kumar, learned Special Public Prosecutor for ACB submits that the bribe amount was recovered at the instance of the appellant, as such the presumption arises under Section 20 of the Act. The appellant failed to discharge his burden by proving his case even by preponderance of probability. When once the amount was recovered at the instance of the appellant, the Hon'ble Supreme Court held that presumption attracts and once the accused fails to discharge his burden, the conviction cannot be interfered with. In support of his contentions, he relied on the following judgments; i) **State of Maharshtra v. Narsingrao Gangaram Pimple**[3]; ii) **State of U.P v. Zakaullah**[4]; iii) **Chaturdas Bhagwandas Patel v. The State of Gujarat**[5]; iv) **Madhukar Bhaskarrao Joshi v. State of Maharashtra**[6]; v) **State of**

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[3] (1984) 1 Supreme Court Cases 446

[4] (1998) 1 Supreme Court Cases 557

[5] (1976) 3 Supreme Court Cases 46

[6] (2000) 8 Supreme Court Cases 571

Kerala v. M.M.Mathew and another[7]; vi) **State of U.P v. Dr.G.K.Ghosh**[8] and argued that a) pendency of work is established; b) the amount was recovered at the instance of the appellant which is admissible under Section 27 of the Evidence Act; c) The prosecution witnesses are not interested witnesses; d) Any discrepancies trivial in nature cannot be looked into.

7. P.W.1 stated that the bills were processed in the office of STO on 07.08.2001. However, Exs.P2 and P3 bills are stamped as submitted on 23.08.2001. Even according to P.W.4, the bills Exs.P2 and P3 cannot be passed by the appellant and the competent authority was the ATO. Though P.W.4 stated that Exs.P2 and P3 were submitted on 07.08.2001, there is nothing on record to accept the said oral evidence. Admittedly, the originals of Exs.D4 and D5 which are paper tokens, the originals of which were not submitted along with Exs.P2 and P3 bills. Admittedly, the bills as per the record were submitted on 23.08.2001 by P.W.4. The register Ex.P10 shows that the token numbers were provided after the bills were

[7] (1978) 4 Supreme Court Cases 65

[8] (1984) 1 Supreme Court Cases 254

passed and sent to the Bank. The prosecution failed to prove that the bills were submitted on 07.08.2001, which is apparent from the stamp of the STO on Exs.P2 and P3 made on 23.08.2001 and after passing the bills, paper tokens were issued as mentioned in Ex.P10 register. As on the date of alleged complaint, the bills of P.W.1 were passed and also tokens were issued, which is within the knowledge of P.W.1 and the bills were submitted by P.W.4, who is the Junior Assistant in the school where P.W.1 was working as Telugu Pandit.

8. The prosecution case is that demand was made on 16.08.2001. However, the Principal of the college D.W.1 entered into the witness box and deposed that P.W.1 was on election duty at MPDO Office, Makloor from 7.00 a.m and also working as Polling Officer on 16.08.2001 and 17.08.2001. The said election duty is not disputed by the prosecution. When P.W.1 was on election duty as Polling Officer, it is for P.W.1 to explain as to when he visited the office of STO and met the appellant.

9. The alleged demand made on 16.08.2001 cannot be believed for the said reason. The other date mentioned in the complaint is 23.08.2001 on which date, the appellant informed that the bills

would be passed only when the bribe amount is paid. However, the bills were submitted on 23.08.2001 passed, sent to the Bank and tokens were issued, as is evident from Ex.P10(A). The said demand on 23.08.2001 also becomes doubtful since the bills were already passed which apparently is within the knowledge of P.W.1.

10. On the date of trap, the amount was recovered from the adjoining RDO's office record room. The said amount was found in a cover in between the files of the record room of the RDO's office. The said recovery is also doubtful. It is not explained as to how the appellant had access to the record room of the RDO's office while the appellant was working in the STO office. Why the amount was placed in between the files in the record room of RDO's office is also not explained. The files in the RDO's office are accessible to the staff of the RDO office and the said recovery and placing the amount in a cover in the record room is again a matter of suspicion and doubtful. In the absence of any plausible explanation given by the prosecution regarding the recovery from the adjacent office and in the back ground of demand not being proved on 07.08.2001 and 23.08.2001, the prosecution has failed to prove its case.

11. In the result, the judgment in CC No.34 of 2002 dated 23.03.2007 is set aside and the appellant is acquitted. Since the appellant was on bail, his bail bonds stand cancelled. As a sequel thereto, miscellaneous petitions, if, pending, shall stands closed.

12. Accordingly, the Criminal Appeal is allowed.

K.SURENDER, J

Date:17.08.2022
Note: LR copy to be marked.
B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.371 of 2007

Date: 17.08.2022.

kvs