

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

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**Criminal Appeal No.532 OF 2007**

Between:

Atthar Hussain

... Appellant

And

State ACB, Karimnagar Range,  
Adilabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 22.09.2022

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 |

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**K.SURENDER, J**

\* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No. 532 of 2007

% Dated 22.09.2022

# Atthar Hussain

... Appellant

And

\$ State ACB, Karimnagar Range,  
Adilabad.

..Respondent

! **Counsel for the Appellant:** Sri B.Venkata Ratnam

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

>HEAD NOTE:

? Cases referred

<sup>1</sup> AIR 2017 Supreme Court 3382

22010 Cri.L.J 2419

3 (2021) 3 Supreme Court Cases 687

<sup>4</sup> (2006) 1 Supreme Court Cases

5 2013 CRI.L.J 4050

6 (2005) 8 Supreme Court Cases 364

7 2003(1) ALD (Cri.)656 (AP)

8 (1975) 2 Supreme Court Cases 227

9(1976) 1 Supreme Court Cases 644

10 (1998) 1 Supreme Court Cases 557

11 (1974) 4 Supreme Court Cases 560

12 (1976) 3 Supreme Court Cases 46

**HON'BLE SRI JUSTICE K.SURENDER**  
**CRIMINAL APPEAL No.532 OF 2007**

**JUDGMENT:**

1. The appellant/AO is convicted for the offence under Sections 7 and Section 13(1)(d) r/w 13(2) of 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.23 of 2002 dated 23.04.2007 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 *defacto* complainant/P.W.1 was Sarpanch of Kamole Village in Bhainsa Mandal, Adilabad District and the Grampanchayat passed resolution during March and April, 1999 for construction of slabs over side drains at Kumsara, Hamlet of Kamole village and other works at the cost of Rs.1,30,000/-. P.W.1 undertook and completed the works during the month of October, 1999 and approached the appellant for recording in M books. However, no such recording was done though P.W.1 went around office of the appellant several times. On 27.01.2000, P.W.1 again requested the appellant at

Mandal Parishad Office and the appellant demanded an amount of Rs.15,000/- to record in M books and reduced the said amount to Rs.10,000/-. P.W.1 lodged complaint Ex.P1 with the Inspector-P.W.9 on 01.02.2000. DSP-P.W.6 was also in Karimnagar ACB office on 01.02.2000. Having conducted preliminary enquiry, the trap was arranged on 03.02.2000 at Nirmal.

3. After registration of the crime, the trap party assembled in a lodge at Nirmal and after concluding the pre-trap proceedings drafted Ex.P7. The trap party went to the house of the appellant. While the other trap party members waited outside. P.Ws.1 and 2 entered into the house at 9.00 am and at 9.15 am P.W.2 came out and gave pre-arranged signal to the trap party to indicate that the bribe amount was passed on to the appellant.

4. The trap party entered into the house of the appellant and conducted sodium carbonate solution test on the hands of the appellant, which turned positive. The amount was recovered from the table and the amount was wrapped in Urdu paper. The trap proceedings were concluded and Exs.P2 to P4 M-books were seized

and also Exs.P8 to P10 estimates. Having completed the formalities, Ex.P11 post trap proceedings were drafted.

5. P.W.6 handed over investigation to P.W.9, who investigated and filed charge sheet for the said offences. The learned Special Judge, having framed charges under Sections 7 and 13(1)(d) r/w Section 13 (2) of the Act, examined P.Ws.1 to 9 and marked Exs.P1 to P14, which were produced by the prosecution and also marked Exs.D1 to D10 in defence by the appellant. After conclusion, the learned Special Judge found the appellant guilty and convicted as stated above.

6. Learned counsel for the appellant would submit that there is no proof that any work was entrusted to P.W.1 for execution. The M-books which are Exs.P2 to P4 do not relate to the work in question as admitted by P.W.4. The most important factor is that P.W.1 who was Sarpanch of Kamole Grampanchayat during 1995 to 2006 was prohibited from drawing the Grampanchayat funds, since P.W.1 did not execute the works. Ex.D10 which was issued on 06.02.1999 is a proceeding of District Panchayat Officer, according to which, the Sarpanch/P.W.1 was prohibited from drawing the

Grampanchayat funds as P.W.1 did not execute any works. The local MLA requested to authorize any officer to arrange for execution of works in the Grampanchayat. In the absence of any documentary proof or any other oral evidence supporting the claim of P.W.1 that he was entrusted with the Grampanchayat works, the question of claiming the amount for execution of work does not arise. P.W.1 had a criminal back ground and falsely implicated the appellant. For the said reasons, counsel prayed for acquittal of the appellant of the charges. In support of his contentions, he relied on the judgments reported in the cases of; i) **Mukhtiar Singh (since deceased) through his L.R v. State of Punjab**<sup>1</sup>, wherein the Hon'ble Supreme Court set aside the conviction of the accused therein since the amount was placed in card board box on table instead of being kept with the complainant; ii) **Bansari Dass v. State of Haryana**<sup>2</sup>, wherein it was held that mere proof of recovery of bribe amount from accused is not sufficient to prove offence; iii) **N.Vijayakumar v. State of Tamil Nadu**<sup>3</sup>; iv) **T.Subramanian v.**

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<sup>1</sup> AIR 2017 Supreme Court 3382

<sup>2</sup> 2010 CrI.L.J 2419

<sup>3</sup> (2021) 3 Supreme Court Cases 687

**State of Tamil Nadu**<sup>4</sup> wherein it was held that mere recovery of tainted money, divorced from the circumstances under which such money and other articles were found not sufficient to convict the accused; Counsel also relied upon v) **State of Punjab v. Madan Mohan Lal Verma**<sup>5</sup>; vi) **State through Inspector of Police, A.P v. K.Narasimhachary**<sup>6</sup> and vii) **B.Doraswamy v. State of A.P**<sup>7</sup>.

7. On the other hand, learned Special Public Prosecutor submits that the learned Special Judge had given cogent reasons for believing the version of P.W.1 regarding demand of bribe. Exs.P2 to P4 contains the measurements and though it does not disclose specifically to which works they relate to, however, there are records of measurements of some works pertaining to Kumsara village, Kamole. The said findings of the learned Special Judge are logical. Since the amount was recovered at the instance of the appellant, presumption has to be drawn. In support of his contention, he relied on the judgments reported in the cases of: i) **Sita Ram v. State**

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<sup>4</sup> (2006) 1 Supreme Court Cases

<sup>5</sup> 2013 CRI.LJ 4050

<sup>6</sup> (2005) 8 Supreme Court Cases 364

<sup>7</sup> 2003(1) ALD (CrI.)656 (AP)

**of Rajasthan<sup>8</sup>; ii) Maha Singh v. State (Delhi Administration)<sup>9</sup>; iii) State of U.P v. Zakaullah<sup>10</sup>; iv) Raghubir Singh v. State of Haryana<sup>11</sup> and Chaturdas Bhagwandas Patel v. The State of Gujarat<sup>12</sup>.**

8. The basis for lodging the complaint is that P.W.1 executed works in the Grampanchayat of Kamole and for the reason of making entries in M books, the appellant had demanded bribe amount. Firstly, the prosecution has to prove that the works were in fact entrusted to P.W.1 for execution. None of the documents produced by the prosecution remotely suggest that any work was entrusted to P.W.1. Exs.P2 to P4 Measurements Books do not show the details of works as claimed by P.W.1. P.W.4, who is the Deputy Executive Engineer specifically, stated that Exs.P2 to P4 did not pertain to any work that was executed by P.W.1 and there is no description of the nature of work that was entrusted to P.W.1. P.W.4 further stated that P.W.1 was entrusted with the work of construction of new latrines and did not remember whether they

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<sup>8</sup> (1975) 2 Supreme Court Cases 227

<sup>9</sup> (1976) 1 Supreme Court Cases 644

<sup>10</sup> (1998) 1 Supreme Court Cases 557

<sup>11</sup> (1974) 4 Supreme Court Cases 560

<sup>12</sup> (1976) 3 Supreme Court Cases 46



pertain to the year 1998. P.W.4 also stated that Rs.85,000/- advance amount was drawn by P.W.1 for the said construction of latrines work, which were not executed and it was ordered to recover the said amount from P.W.1. According to Ex.D10, P.W.1 was prohibited from drawing Grampanchayat funds.

9. Admittedly, P.W.1 had committed irregularities in execution of works, for which reason, the amount of Rs.85,000/- was sought to be recovered from him. Further, Ex.D10 proceedings dated 06.02.1999 prohibited P.W.1 from drawing Grampanchayat funds and the Extension Officer of Mudhol was requested to execute the development works in Grampanchayat in the place of P.W.1. Unless the prosecution proves that P.W.1 was entrusted with any work and the measurements books Exs.P2 to P4 relate to the works entrusted to him, it cannot be said that the appellant who was working as Assistant Engineer would ask for bribe to make entries in M Books when no work was entrusted to P.W.1. The question of demanding money for making entries in M Books does not arise in the scenario.

10. On the day of trap, the money was found on the table and amount was wrapped in Urdu newspaper. P.W.2, who was the independent mediator stated in his chief examination that when they entered into the house, the appellant went inside the house and in the absence of the appellant, P.W.1 wrapped the amount in a Urdu Newspaper and kept it on the table. When the appellant came inside the room, where P.Ws.1 and 2 are sitting, P.W.1 shook hands with the appellant and thereafter, the signal was relayed to the trap party indicating the acceptance of bribe. Though the independent mediator P.W.2 was declared hostile to the prosecution case, the said version can be believed in the back ground of the earliest version stated by the appellant that "*he did not do anything and nothing had happened*"(stated in Hindi and translated). The three persons, who were present in the room are the appellant, P.Ws.1 and 2. Both the appellant and P.W.2 have stated that there was no demand by the appellant, however, it was P.W.1 who wrapped the amount and kept it on the table. Admittedly, the amount was recovered from the table wrapped in Urdu newspaper.

11. At the cost of repetition, the very basis of the prosecution case regarding the demand and acceptance of bribe is belied for the reason of the prosecution failing to prove that any work was entrusted to P.W.1 and that he has executed any such works.

12. The prosecution has failed to prove that the appellant had demanded any amount. Merely, for the reason of recovery of the amount from the table in the house of the appellant, it cannot in any manner attribute the demand and acceptance of bribe by the appellant. For the foregoing reasons, the benefit of doubt is extended to the appellant.

13. In the result, the judgment of trial Court in CC No.23 of 2002 dated 23.04.2007 is set aside and the accused is acquitted. Since the appellant is on bail, his bail bonds stand cancelled.

14. Accordingly, Criminal Appeal is allowed.

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**K.SURENDER, J**

Date:22.09.2022

Note: LR copy to be marked.

B/o.kvs

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

CRIMINAL APPEAL No.532 of 2007

Date: 22.09.2022.

*kvs*