

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

Criminal Appeal No.535 OF 2007

Between:

T.Rajeshwar.

... Appellant

And

State, rep. by Inspector of Police,
ACB, Adilabad District,
Karimnagar Range by
its Public Prosecutor.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 30.08.2022

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 |

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K.SURENDER
+ CRL.A. No.535 of 2007

% Dated 30.08.2022

T.Rajeshwar.

... Appellant

And

\$ State, rep. by Inspector of Police,
ACB, Adilabad District,
Karimnagar Range by
its Public Prosecutor..

...Respondent

! **Counsel for the Appellant:** Sri A.Hari Prasad Reddy.

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

Spl. Public Prosecutor

> **HEAD NOTE:**

? **Cases referred**

¹ (2014) 13 SCC 55

² 2006(1)ALT (CrI.) 262 (SC)

³ AIR 2002 Supreme Court 486

⁴ 2002 SC (CrI) 1270

⁵ AIR 1971 SC 520

⁶ CrI.A.No.261 of 2022

⁷ (2000 (8) SCC 571)

⁸ (2007) 7 Supreme Court Cases 625

⁹ (1976) 3 Supreme Court Cases 46

¹⁰ AIR 1964 SC 575

HON'BLE SRI JUSTICE K.SURENDER**Criminal Appeal No.535 of 2007**

1. The appellant is convicted for the offence under Sections 7 and also under Section 13 (1) (d) punishable under Section 13 (2) of the Prevention of Corruption Act, 1988 (for short "the Act of 1988") and sentenced to undergo one year under each count vide judgment in Calendar Case No.40 of 2002, dated 27.04.2007 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad for demanding and accepting bribe of Rs.1,000/-from the *de facto* complainant/P.W.1. Aggrieved by the same, the present appeal is filed.

2. Briefly stated the case of the prosecution is that P.W.1 is the *defacto* complainant who is Proprietor of Bharat Radiators. He applied for APGST registration vide Ex.P1 in the office of the Assistant Commercial Tax Officer (ACTO) on 12.10.2000. On 16.10.2000, P.W.1 received notice from the ACTO asking him to file Rs.2,000/- National Saving Certificate, property

particulars etc. and after receiving the said notice, P.W.1 submitted proper documents under ExP3 to the appellant.

3. On 27.11.2000, PW.1 went to the office and met the appellant and enquired about the registration certificate, for which, the appellant demanded an amount of Rs.2,000/- to be paid as bribe. However, on repeated requests made by P.W.1, the amount was reduced to Rs.1,000/-. The appellant further informed that P.W.1 had to pay the said amount of Rs.1,000/- and take the registration certificate.

4. Aggrieved by the said demand, P.W.1 met PW.6, DSP, Karimnagar, Range and handed over written complaint, which is Ex.P6 on 28.11.2000. The trap was arranged on 29.11.2000. P.W.6 sent for independent mediators and pre-trap proceedings were conducted at 7.45 a.m and concluded at 8.50 a.m in the ACB Office, Karimnagar.

5. Having concluded the first mediators' report Ex.P7 at 8.50 a.m, the trap party proceeded to the office of the accused officer and reached the office at 11.00 a.m. P.Ws.1 and 2 went inside the office of the accused officer and came out at 11.08

a.m and gave the pre-arranged signal indicating acceptance of bribe. The trap party members entered inside and confronted the accused officer regarding demand and acceptance of bribe. Thereafter, the sodium carbonate solution test was conducted, which proved positive. The accused officer when questioned, he stated that P.W.1 offered the said amount for giving it to P.W.4-ACTO, as such, he accepted the amount and kept in his shirt pocket. When questioned again by the DSP-P.W.6, the accused officer stated that he did not demand any bribe from P.W.1, but P.W.1 came to him and offered the said amount to be given to the ACTO-P.W.4.

6. The prosecution, in all examined P.Ws.1 to 7 and marked Exs.P1 to P18. In defence, the accused officer marked Exs.X1 and X2 and after concluding trial, the learned Special Judge found the accused officer guilty as mentioned above.

7. Learned counsel for the accused officer submits that P.W.1 is the Proprietor of Bharat Radiators who applied for APGST registration certificate vide Ex.P1 on 12.10.2000. On 16.10.2000, he received notice from the ACTO, Macherial.

Thereafter, the relevant documents were submitted. The appellant had given spontaneous reply during post trap proceedings that the said amount was received when P.W.1 gave the amount asking him to give the same to P.W.4, which is the amount towards payment of tax. Ex.X1, which is the Form-A2 return of monthly turnover dated 20.11.2000, the payable tax is shown as Rs.1,000/-. Admittedly, the said amount can be collected by P.W.4. On the date of trap when PW.1 handed over the amount stating that it was towards the tax amount, the accused officer had accepted and kept in his pocket to be handed over to P.W.4. P.W.4 has also stated that the amount was towards the tax amount, which is outstanding from P.W.1. He further submits that there are two clear inconsistencies in the version of prosecution case, firstly, there was no preliminary investigation to enquire or any enquiry made to know about the antecedents of the accused officer and secondly, the pre-trap proceedings was fabricated as evident from Ex.P7, which is pre-trap proceedings. Ex.P7 contains the signature of P.W.7, Inspector, who was not in Karimnagar. The DSP-P.W.6 admitted that P.W.7 met him at

Mancheril, when he went there to lay the present trap. It can be said beyond doubt that pre and post-trap proceedings and also the complaint are fabricated subsequent to laying of the trap. He further submits that the version, which is stated during Section 313 Cr.P.C examination can also be considered. In support of his contentions, he relied on the following judgments: i) **B.Jayaraj v. State of Andhra Pradesh**¹; ii) **T.Subramaniam v. State of Tamil Nadu**²; iii) **Punjab Ro v. State of Maharashtra**³; iv) **M.Abbas v. State of Kerala**⁴; v) **P.Sirajuddin v. State of Madras**⁵; vi) **K.Shanthamma v. State of Telangana**⁶.

8. On the other hand, learned Special Public Prosecutor for ACB submits that the accused officer had accepted the receiving of bribe amount, for which reason, presumption

¹ (2014) 13 SCC 55

² 2006(1)ALT (CrI.) 262 (SC)

³ AIR 2002 Supreme Court 486

⁴ 2002 SC (CrI.) 1270

⁵ AIR 1971 SC 520

⁶ CrI.A.No.261 of 2022

under Section 20 of the Act is attracted. The accused officer has failed to prove his case even by preponderance of probability, for which reason, the conviction recorded by the learned Special Judge cannot be interfered with. In support of his contentions, he relied on the following judgments: i) **Madhukar Bhaskar Rao Joshi vs. State of Maharashtra**⁷, the Hon'ble Supreme Court held that in any trial for the offence punishable under Section 7 and Section 13(1)(d), if it is proved that the accused has accepted or obtained or has agreed to accept or attempted to obtain for himself or for any other person, any gratification, it shall be presumed that unless the contrary is proved that the said amount was towards illegal gratification; iii) In **Girija Prasad (dead) by L.Rs. v. State of M.P**⁸, the Hon'ble Supreme Court upheld an order of the High Court reversing the acquittal judgment of the trial Court on the ground of the accused failing to discharge his burden; iv) **Chaturdas Bhagwandas Patel v. State of**

⁷ (2000 (8) SCC 571)

⁸ (2007) 7 Supreme Court Cases 625

Gujarat⁹; v) **Dhanvantrai Balwantrai Desai v. State of Maharashtra**¹⁰, Constitutional Bench judgment of the Supreme Court held that once it is shown that the amount received by any accused is towards illegal gratification, presumption has to be raised.

9. It is the defence of the accused officer that he had never demanded the amount of Rs.1,000/- as bribe. The said amount was received when P.W.1 informed that it was towards tax payable and he was directed by P.W.4 to receive the said amount towards tax. There was no official favour which was pending with him as he was not competent to issue the registration certificate.

10. P.W.4, who is the then ACTO when examined, stated that P.W.1's application which was submitted on 12.10.2000 was signed and thereafter, he issued notice for production of certain documents. On 18.10.2000, the accused officer placed the said file before him and after perusal of the file, signed on

⁹ (1976) 3 Supreme Court Cases 46

¹⁰ AIR 1964 SC 575

Ex.P8 certificate of registration and also on Ex.P5, which is office copy of the certificate. Ex.P8 is the certificate of registration which was signed by P.W.4-ACTO on 18.10.2000.

11. Ex.X1 is the statement of turnover and the tax payable for Rs.1000/-, pertaining to PW1. During the course of cross-examination, P.W.4 stated that the certificate was in fact sent through an attender to P.W.1. However, the same could not be served as P.W.1 was not available. Thereafter, P.W.4 handed over the file to the accused officer to serve it on P.W.1. P.W.1 had to pay Rs.1000/- towards sales tax which had to be collected by the end of November, 2000 and as on the date of trap, P.W.1 did not pay any tax in the office. Further P.W.1 informed that he would pay the tax on 21.11.2000 for which reason, Ex.P13 original receipt and Ex.P13(a) duplicate of the said receipt were prepared.

12. As seen from the record, after the cross-examination of PW4, the learned Special Judge on the request of the Special Public Prosecutor treated the witness hostile on the ground that witness supported the defence in cross-examination and

thereafter, the learned Special Judge permitted to cross-examine P.W.4. A party can cross-examine his own witness as laid down under Section 145 of the Evidence Act, which reads as follows:

“145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

13. The learned Special Judge erred in permitting the learned Public Prosecutor to cross-examine PW.4 on the ground that he had supported the defence in cross-examination. Immediately, after the chief-examination, the Public Prosecutor did not seek permission of the court to cross-examine the witness since what all was stated in the chief examination was the version sought to be adduced by the prosecution and stated previously under section 161CRPC. Under Section 145 of the Indian Evidence Act, a witness can be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question without such writings being shown to him or being

proved, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The statement made by P.W.4 was on the basis of the documents produced by the prosecution itself and stated the contents of the documents in cross-examination. In the said circumstances, it cannot be said that such statement made during cross-examination of defence counsel, by the witness can be subjected to cross-examination by the public prosecutor, when the witness did not disown his statement in chief-examination nor stated anything contradicting his earlier version during investigation. As seen from cross-examination, there are no questions which are put to the witness either contradicting the version stated in the cross-examination or any previous statement. For the said reason, permission to cross-examine P.W.4 is incorrect and P.W.4 cannot be treated as a hostile witness to the prosecution case. Though the evidence of a hostile witness cannot be rejected in totality, the procedure adopted by the learned Special Judge in permitting

cross examination and also the cross-examination done by the Public Prosecutor is not in accordance with law.

14. Coming to the facts of the present case, the prosecution has failed to show that the amount of Rs.1,000/- which was outstanding was paid by P.W.1 for getting the registration certificate prior to the date of trap. P.W.1 admitted that as on the date of trap, he did not pay the tax in the ACB office pertaining to his shop. It is also not in dispute that the ACTO/P.W.4 is competent to collect the said tax and thereafter issue the registration certificate. The registration certificate was made ready on 18.10.2000, however, the same was not collected by P.W.1 by paying the outstanding of Rs 1000/-.

15. On the date of trap, the accused officer spontaneously gave an explanation that the said amount of Rs.1,000/- was due to be collected by ACTO from P.W.1. When the tax payable Rs.1,000/- is not paid till the date of trap, the circumstances create a doubt regarding P.W.1's version being correct. Unless the payment of outstanding tax of Rs.1,000/- is made, the registration certificate cannot be handed over to P.W.1. In the

event of P.W.1 carrying the tax payable separately and the bribe amount separately, it can be said that the accused officer demanded the bribe amount. Without paying tax, the question of handing over the registration certificate does not arise. At the cost of repetition unless the amount of Rs 1000/- is paid, the registration certificate cannot be given by ACTO office, which is to the knowledge of PW1 and such tax was not paid. The question of accused officer handing over the certificate unless the tax of Rs 1000/- is paid, does not arise.

16. In the said circumstances, prosecution has failed to prove that the tainted currency was towards bribe and not the tax payable as stated by the accused officer during post trap proceedings. Therefore the conviction recorded by the trial Court in CC No.40 of 2002 is liable to be set aside and accordingly set aside and the appellant is acquitted.

17. In the result, the Criminal Appeal is allowed. Since the appellant is on bail, his bail bonds shall stand cancelled.

K.SURENDER, J

Date: 30.08.2022

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

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.535 OF 2007

Date: 30.08.2022

kvs