

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

Criminal Appeal No.1046 OF 2008

Between:

D.Ravindra Babu.

...Appellant.

And

State ACB, City Range-I.,
Rep.by its Spl.Public Prosecutor,
High Court, Hyderabad.

... Respondent.

DATE OF JUDGMENT PRONOUNCED: 03.08.2022

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 |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No.1046 of 2008

% Dated 03.08.2022

D.Ravindra Babu.

... Appellants

And

\$ State ACB, City Range-I.,
Rep.by its Spl.Public Prosecutor,
High Court, Hyderabad

..Respondent.

! **Counsel for the Appellant:** Sri O.Kailashnath Reddy,

^ **Counsel for the Respondent:** Sri R.Ramachandra Reddy,

Special Public Prosecutor for ACB

> **HEAD NOTE:**

? **Cases referred**

¹ (2014) 13 SCC 55

² (2013) 14 SCC 153

3 2020 (1) ALD (CrI.) 917 (TS)

4 2016 (1) ALD (CrI.) 969

5(2017) 8 SCC 136

6 2022 LiveLaw (SC) 192

7 (2015) 10 Supreme Court Cases 152

8 (2000 (8) SCC 571)

9 (2007) 7 Supreme Court Cases 625

10 (1976) 3 Supreme Court Cases 46

11 AIR 1964 SC 575

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.1046 of 2008****JUDGMENT**

1. The appellant/Accused Officer(AO) was convicted for the offence under Section 7 of Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.2,500/-, in default to pay fine amount, to undergo Simple Imprisonment for three months and also sentenced to undergo rigorous imprisonment for one year for the charge under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988, and also to pay fine of Rs.2,500/- and in default, to undergo Simple Imprisonment for three months vide judgment in C.C.No.6 of 2004 dated 14.08.2008, passed by the Principal 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 P.W.1 is the proprietor of M/s.United Seeds, Hyderguda and obtained licence for running his shop from the agriculture office. The said license

is renewable every three years. Since the license expired on 23.11.2002, P.W.1 approached the office of the accused officer and filed challan. However, he did not get the renewal license for which reason, he approached the office of the Assistant Director and enquired with the accused officer regarding renewal of licence. The accused officer informed that he should get the NSC bond for Rs.500/- and also undertaking letter. On 24.06.2003, P.W.1 gave the renewal application along with the said documents.

3. On 26.06.2003 when P.W.1 met the accused officer regarding his license, the accused officer asked him to file his application once again in the office of the Joint Director of Agriculture. Though he submitted an application in the said office, he did not receive any communication, for which reason on 24.07.2003, P.W.1 met the accused officer, who demanded an amount of Rs.10,000/- for processing the file. On 30.07.2003 again P.W.1 called and enquired the accused officer regarding his license. The accused officer asked him to meet him at 4.15 p.m. On the same day, the accused officer

questioned whether he had brought the bribe amount. The accused officer asked PW1 to get Rs.5,000/- on 01.08.2003 and remaining Rs.5,000/- after issuance of license. Aggrieved by the repeated going around the office for renewal of license and the accused officer demanding bribe, P.W.1 lodged complaint Ex.P1 with the ACB on 30.07.2003.

4. The trap was arranged on 01.08.2003. P.W.1 went to the office around 11.00 a.m where the pre-trap proceedings were conducted in the presence of independent mediators. The said proceedings were concluded at 1.00 p.m and the trap party members proceeded to the office of the Assistant Director of Agriculture, Hyderabad. Before entering the office, the DSP asked P.W.1 to enter into the office and only on demand to pay the bribe amount. P.W.1 entered into the office and after handing over the bribe on demand by the accused officer, PW1 came out and gave pre-arranged signal to the trap party. On receiving signal, the trap party entered into the room of the accused officer and questioned him whether he had received any bribe. The accused officer produced an amount of

Rs.5,000/- from his left side pant pocket and kept it on the table. The test was conducted on the hands of the accused officer which proved positive. The accused officer produced the file from his almirah which was titled as M/s.United Seeds containing ten sheets which was seized by the DSP during the post-trap proceedings under Ex.P9.

5. The learned counsel for the accused officer would submit that P.W.1 was admonished earlier and his license was cancelled for the reason of involving in activities of purchase and sales contrary to the license conditions. Since the accused officer had inspected the shop on 28.07.2003 and fearing that licence would not be renewed falsely implicated the accused officer in the trap. Admittedly, even according to P.W.1, the accused officer was working under the Assistant Director of Agriculture and above the Assistant Director, there is one Joint Director who is license granting and renewal authority. The accused officer as an agricultural officer, was only a processing officer and that he has no power to grant, cancel, or renew the license. In the said circumstances, when P.W.1

was acquainted with the procedure regarding renewal of license, PW1 approaching accused officer and the demand of bribe by the accused officer is highly improbable. Further when it is the Joint Director, who is the person responsible to renew the licence, it is highly improper that P.W.1 would pay the bribe amount to the accused officer. P.W.1 further admitted that after the accused officer submits his report to the Assistant Director with regard to renewal of licence, the accused officer will have no role to play in the said matter and as on the date of trap, the renewal application was pending with the Assistant Director for his signature.

6. Learned counsel for the appellant relied upon the following judgments; i) **B.Jayaraj v. State of Andhra Pradesh**¹; ii) **State of Punjab v. Madan Mohan Lal Verma**²; iii) **Sk.Hussain v. State of Andhra Pradesh**³; iv) **Gundappa v. State**⁴; v) **Mukhtiar Singh (since deceased) through His LR**

¹ (2014) 13 SCC 55

² (2013) 14 SCC 153

³ 2020 (1) ALD (CrI.) 917 (TS)

⁴ 2016 (1) ALD (CrI.) 969

v. State of Punjab⁵; vi) K.Shanthamma v. The State of Telangana⁶; vii) P.Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh⁷.

7. The learned counsel for the appellant, while relying on the aforesaid judgments submits that;

- i) There are no independent witnesses to the demand;
- ii) P.W.2, who is mediator did not accompany P.W.1 into the office;
- iii) Mere recovery of amount will not constitute an offence under Section 7 of the Act of 1988 unless it is proved beyond reasonable doubt that the amount was voluntarily accepted knowing it to be bribe;
- iv) The complainant is interested and partisan witness and his evidence must be tested in the same way as that of interested witness and look for corroboration before convicting;

⁵ (2017) 8 SCC 136

⁶ 2022 LiveLaw (SC) 192

⁷ (2015) 10 Supreme Court Cases 152

v) Before invoking Section 20 of the Act of 1988, the Court should consider the explanation offered by the accused officer on the touchstone of preponderance of probability and not seek proof beyond reasonable doubt from the accused officer;

vi) When there is no official favour pending, the question of receiving bribe does not arise and recovery if any cannot be made basis in the absence of any pending work.

8. On the other hand, learned Special Public Prosecutor submits that the defence taken by the accused officer is that PW1 had taken loan from P.W.4 and on the instructions of PW4, the accused officer received the amount on the day of trap. However, P.W.4 stated that he had never given any loan amount to PW1 nor asked the accused officer to receive the same from PW1 on the day of trap. However P.W.4 had instructed the accused officer to complete the work of P.W.1, which clearly establishes that the work was pending with the accused officer and for the said reason, the prosecution has proved that there was demand and consequential acceptance

on the date of trap. Further, the file was with the accused officer for the reason of processing. In support of his contentions, he relied on the following judgments: i) **Madhukar Bhaskar Rao Joshi vs. State of Maharashtra**⁸, 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**⁹, 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 Gujarat**¹⁰; v) **Dhanvantrai Balwantrai Desai v. State of**

⁸ (2000 (8) SCC 571)

⁹ (2007) 7 Supreme Court Cases 625

¹⁰ (1976) 3 Supreme Court Cases 46

Maharashtra¹¹, 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. The explanation of accused officer for the recovery of bribe amount was that the amount of Rs.5,000/-was borrowed by PW1 from P.W.4, who is the Assistant Director prior to the trap amount used the amount to trap the accused officer. Both the accused officer and Assistant Director P.W.4 were sitting in the same room and at the instance of P.W.4, repayment of loan amount due to P.W.4 was handed over to P.W.1.

10. The main ground on which the accused officer is seeking reversal of the judgment is that admittedly according to P.W.1, the power of renewal of license is that of the Joint Director and the accused officer had nothing to do with granting or renewal of license. However the Assistant Director P.W.4 stated that the accused officer was instructed on the date of trap to clear

¹¹ AIR 1964 SC 575

the file of P.W.1 and on seeing P.W.1, he went away and on his return, he was informed that the accused officer was trapped.

11. During cross-examination P.W.4 submitted that any act of purchasing seeds from unauthorized distributors, would entail cancellation of the license. P.W.1 was also issued suspension of license proceedings under Ex.D8. Admittedly, according to P.W.4, the processing of the license file of P.W.1 was the duty of the accused officer and that such processing was not done even according to P.W.4. On seeing P.W.1 on the date of trap, PW4 instructed the accused officer to prepare the file and put up.

12. The defense of the accused officer is that the amount was received on the instructions of P.W.4, which was denied by PW.4 For the reason of accepting that he has received the amount, however, for the reason of being instructed by P.W.4, presumption under Section 20 of the Act of 1988 would attract and shifts the burden on to the accused officer to explain the receipt of amount. At the earliest point of time, during post trap proceedings, the accused officer had stated that he had

received the amount from PW1 and placed the same on the table when asked by DSP, during post trap proceedings. However, during the course of trial, accused officer has taken the defence that the amount was accepted at the instance of P.W.4, but P.W.4 denied the version of accused officer and stated as discussed supra.

13. When the processing of file was the duty of the accused officer and file being in the possession of the accused officer, it cannot be said that no work was pending only on the basis of the evidence of P.W.3, who stated that draft letter under Ex.P6(a) was prepared and file given to the Assistant Director and the almirah was used by both P.W.4 and accused officer from where the file of PW1 was produced on the date of trap. For the reason of the accused officer not processing the file, it was not put to P.W.4 and the reason given for the recovery of the amount was palpably wrong. The prosecution has proved its case of demand and acceptance by the accused officer.

14. Though the witness D.W.1 was examined to state that PW.4 while going outside, instructed the accused officer to

receive the amount from P.W.1, the said defence cannot be accepted for the reason of improbability. If at all P.W.1 had taken loan from P.W.4 and he came to the office to return the loan to PW.4, P.W.4 would have accepted the amount, the question of asking P.W.1 to keep the amount stating that he would collect later, sounds highly improbable. For the said reason, the evidence of D.W.1 cannot be believed.

15. For the aforesaid reasons, the finding of the trial Court needs no interference and the appeal is liable to be dismissed.

16. In the result, the Criminal Appeal is dismissed.

K.SURENDER, J

Date: 03.08.2022

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1046 OF 2008

Date: 03.08.2022

kvs

