

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

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**Criminal Appeal No.1175 OF 2008**

Between:

N.Tirumala Chary

... Appellant

And

The State of A.P

rep. by Special Public Prosecutor

..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED : 27.03.2024

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.1175 of 2008**

% Dated 27.03.2024

# N.Tirumala Chary

... Appellant

And

\$ The State of A.P,  
rep. by Special Public Prosecutor

..Respondent/Complainant

**! Counsel for the Appellant:** Sri D.Purna Chandra Reddy

**^ Counsel for the Respondent:** Sri Sridhar Chikyala,  
Special Public Prosecutor for ACB

**>HEAD NOTE:**

? Cases referred

<sup>1</sup> (2009) 3 Supreme Court Cases 779

<sup>2</sup> AIR 2002 Supreme Court 486

**THE HONOURABLE SRI JUSTICE K.SURENDER**  
**CRIMINAL APPEAL No.1175 OF 2008**

**JUDGMENT:**

1. The appellant was convicted for the offence under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 sentenced to undergo rigorous imprisonment for a period of six months and one year respectively, vide judgment in C.C.No.24 of 2004 dated 17.09.2008 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. Aggrieved by the same, present appeal is filed.

2. Briefly, the case of the defacto complainant, who was examined as P.W.1 is that his father-in-law gifted Acs.3.00 of land in Sy.No.24 of Edulapuram village to his wife by registered gift deed and the same was being cultivated by P.W.1. The service connection to the land bearing No.31 standing in the name of Laxminarayana, who is late father-in-law was disconnected on the ground that there was Rs.2,550/- arrears that had to be paid. P.W.1 then went to the office of Additional Assistant Engineer, ERO, Khammam

and paid Rs.1,800/- under Ex.P2 on 23.04.2003. On the next day i.e., on 24.04.2003, Rs.750/- was paid and another Rs.50/- was paid towards reconnection charges.

3. On 24.04.2003, P.W.1 met the appellant, who was working as Additional Assistant Engineer (AAE) and gave application Ex.P3 enclosing copies of receipts for reconnection of electricity. Having received the application, the appellant demanded Rs.3,000/- as bribe for restoring the electricity connection. P.W.1 again met the appellant on 26.04.2003. Appellant insisted that Rs.1,500/- has to be paid immediately and the remaining after reconnection.

4. P.W.1 then approached the ACB authorities and filed complaint which is Ex.P4. The DSP, ACB having received the complaint informed P.W.1 to come on 02.05.2003 on which date the trap was arranged. On the day of trap, the trap party including P.W.1, independent mediators, DSP and others gathered at 9.00 a.m in the R & B Guest house. The formalities before proceeding to trap were concluded. Ex.P7

was recoded which is pre-trap proceedings. All the trap party members reached the office of the appellant around 11.30 a.m. P.W.1 entered into the office of the appellant. On seeing P.W.1, the appellant demanded bribe amount and accordingly P.W.1 passed on bribe amount. He then came out and gave signal to the trap party indicating acceptance of bribe by the appellant. The trap party led by the DSP entered into the office and questioned the appellant. Test was conducted on both his hands and right hand test proved positive for presence of phenolphthalein powder, indicating handling of smeared currency notes.

5. During post trap proceedings, at the instance of DSP, the appellant produced the amount from the right side table drawer, which was seized by the trap party. Thereafter, application Ex.P3 and other documents were taken from N.Tirumalachary, Additional Assistant Engineer. The said application of P.W.1 was endorsed by the appellant earlier. The same was seized. Having concluded the post trap proceedings, Ex.P13 was drafted narrating all the events.

6. After investigation, the ACB filed charge sheet for the offence under Sections 7 and 13(1)(d) r/w 13(2) of the Act. The Special Judge having framed charges for the said offences, examined witnesses P.Ws.1 to 6 and marked Exs.P1 to P16 on behalf of the prosecution. D.Ws.1 and 2 were examined by the appellant in defence. Learned Special Judge found that there was demand by the appellant for bribe to provide reconnection and accordingly convicted the appellant.

7. Learned counsel appearing for the appellant would submit that P.W.1 is a person of poor moral fiber. His criminal antecedents were admitted by him. There was departmental enquiry for misconduct and indiscipline against P.W.1. He further admitted that there were civil and criminal cases against him including murder case, however, he was acquitted in all the cases. Further, P.W.1 was remanded to judicial custody in a case of murder and abduction for two months.

8. Learned counsel further argued that there is no evidence filed by P.W.1 regarding the property being transferred to his

wife's name. Further, the application was made when the person in whose name connection stood already died. In fact, P.W.1 and the appellant were neighbours and well acquainted with each other. P.W.1 further admitted that his wife used to supply milk to appellant's family. His wife used to take hand loans from the appellant's wife whenever she needed. There was an outstanding of Rs.2,000/- to Rs.3,000/- which had to be paid by the wife of P.W.1 to the appellant's wife. The amount which was handed over on the date of trap was the outstanding amount that was due by the wife of P.W.1. Admittedly, the said amount was towards repayment of the outstanding. The prosecution has failed to prove the factum of demand and the appellant has proved that there was an outstanding that had to be paid and the said amount on the trap date was towards discharge of loan. There is any amount of doubt about the version of P.W.1 regarding demand of bribe in the above back ground and accordingly, the lower Court conviction has to be set aside.

9. Learned counsel relied on the judgment of Hon'ble Supreme Court in the case of **C.M.Girish Babu v. CBI, Cochin, High Court of Kerala**<sup>1</sup>. Hon'ble Supreme Court held that mere recovery of tainted currency without substantive evidence was not reliable and will not suffice to record conviction under Section 7 of the Act. It was further held that rebuttal of presumption by the accused is by preponderance of probability. Counsel argued that since the prosecution failed to prove the factum of demand and that the amount was accepted towards bribe, the appeal has to be allowed.

10. On the other hand, learned Special Public Prosecutor would submit that at the earliest point of time, when the 2<sup>nd</sup> mediators' report was drafted, appellant did not state the version of there being any outstanding in between the wife of P.W.1 and the appellant's wife. The version was later stated to defend himself. The work was pending with the appellant, as such, the conviction recorded on facts cannot be interfered with.

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<sup>1</sup> (2009) 3 Supreme Court Cases 779



11. P.W.1 had approached DSP, ACB and filed complaint. However, he suppressed the fact that the appellant was a prior acquaintance. No proof was provided to show that the land standing in the name of Laxminarayana, who is the father-in-law was transferred in favour of P.W.1's wife. In the background of admitted money transactions in between the wife of P.W.1 and the wife of appellant and there being an outstanding that had to be paid by P.W.1's wife to an extent of Rs.2,000/- to Rs.3,000/- as admitted by P.W.1, the suppression of the fact that the appellant was well known person before the DSP has to be viewed with suspicion. It is further admitted by P.W.1 that there were differences between them. However, it was not regarding the money but purity of milk.

12. P.W.2, independent mediator stated during cross-examination as follows:

“DSP, ACB confronted the version of AO about that he did not demand or accept any bribe from PW1 and that P.W.1 has repaid part of the amount due from his wife.”

13. The independent witnesses clearly admitted that the DSP, ACB confronted the version of the appellant that he did not demand or accept any bribe from P.W.1, but it was part of repayment due from his wife, however, the said version is not mentioned in the 2<sup>nd</sup> mediators report. The said admission by the mediator also throws any amount of doubt regarding the events and narration made in the 2<sup>nd</sup> mediators report. In the event of the appellant stating that the money was received towards repayment of loan by P.W.1's wife, the said version ought to have been recorded in the 2<sup>nd</sup> mediators report. Such omission clearly indicates that the 2<sup>nd</sup> mediators' report was drafted with incorrect recitals suppressing the actual version.

14. As admitted by P.W.1, he was involved in several criminal cases including the case of abduction and murder. There was also departmental enquiry which was conducted against him for misconduct. He has deliberately suppressed regarding his acquaintance with the appellant when he lodged complaint and also the money transactions in between his wife and the amount due to the wife of the appellant.

15. Cumulatively, taking into consideration the facts discussed above there arises any amount of doubt regarding the prosecution version of demand being made by the appellant. Though no corroboration would be necessary under normal circumstances to prove demand, however, in the present facts of the case, the prosecution ought to have produced some independent corroborative evidence in support of demand and acceptance of bribe by the appellant. No reason is given as to why anyone of the two independent mediators were not asked to accompany P.W.1 and to watch what transpires in between them.

16. The Hon'ble Supreme Court in the case of **Panjabrao v. State of Maharashtra**<sup>2</sup> held that any defence taken during trial and even at the stage of Section 313 Cr.P.C examination was probable and believable, the said defence can be accepted by the Court.

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<sup>2</sup> AIR 2002 Supreme Court 486

17. In view of above discussion, I find that there is any amount of doubt regarding the prosecution version in the back ground of the material suppression of facts including incorrect recitals in the second mediators report. Benefit of doubt is extended to the appellant.

18. In the result, the judgment in C.C.No.24 of 2004 dated 17.09.2008 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad is set aside. Since the appellant is on bail, his bail bonds shall stand cancelled.

19. Criminal Appeal is allowed.

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**K.SURENDER, J**

Date: 27.03.2024

Note: LR copy to be marked.

B/o.kvs

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

**CRIMINAL APPEAL No.1175 OF 2008**

**Dt. 27.03.2024**

kvs



