

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

Criminal Appeal No.1303 OF 2008

Between:

M.Madhava Rao

... Appellant

And

The State ACB, Karimnagar Range.

rep. by Special Public Prosecutor

..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED : .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 |

K.SURENDER, J

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

+ CRL.A. No.1303 of 2008

% Dated 13.03.2024

M.Madhava Rao

... Appellant

And

\$ The State ACB, Karimnagar Range.

rep. by Special Public Prosecutor

..Respondent/Complainant

! Counsel for the Appellant: Sri Badeti Venkata Rathnam

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

>HEAD NOTE:

? Cases referred

¹ 2001 AIR SCW 2415

² 1995 CRI.LJ 3978

³ 1992 CRI.LJ 608

⁴ 2000 CRI.LJ 2273

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.1303 OF 2008****JUDGMENT:**

1. The appellant was convicted for the offence under Section 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of six months and one year respectively vide judgment in C.C.No.22 of 2004 dated 23.10.2008 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad.

2. Briefly, the case of P.W.1, who is the defacto complainant is that he submitted Ex.P1 application for issuance of authorization/licence to run a fair price shop. In October, 2002, interviews were conducted and it was informed by the RDO that agreement, challan etc., have to be submitted for the licence. Accordingly, original challan and other documents were submitted on 13.02.2003 by PW1. On 14.02.2003, P.W.1 met the appellant who was working as Senior Assistant and

enquired about dealership licence, for which appellant demanded Rs.5,000/- for processing the application and issuing the licence. Again on 18.02.2003, P.W.1 met the appellant and requested to issue dealership. However, the appellant insisted for paying bribe amount, but reduced the bribe to Rs.4,500/-.

3. P.W.1 approached the ACB authorities and lodged complaint on 19.02.2003. P.W.6/DSP asked the complainant to come on the next day on which date trap would be arranged. On 20.02.2003, P.W.1 went to the ACB office where DSP, mediators and other members of the trap party were present. The formalities before proceeding to lay a trap were completed. The pre-trap proceedings Ex.P12 was drafted in the office of ACB-DSP.

4. The trap party members went to the office of the appellant around 1.00 p.m. P.Ws.1 and 2 entered into the office of the appellant. On demand made, P.W.1 stated that he brought the bribe amount. Appellant asked P.W.1 to keep the amount on the register which was on the table. PW1 placed bribe amount on

the said register and P.W.2 accompanying witness who is brother of P.W.1, went outside and signaled to the trap party regarding acceptance of bribe by the appellant.

5. The trap party entered into the office room and questioned regarding the bribe amount and the appellant stated that he did not receive any amount. Tests were conducted on the hands of the appellant and test on both the hands remained negative. The shirt and pant pockets of the appellant were searched and cash found in the pockets was verified, however the numbers of currency notes did not tally. The trap party then searched the registers on the table and found bribe amount in between the files. The paper that came into contact with the currency notes was tested. Further, on questioning, the appellant produced file pertaining to P.W.1, which is marked as Ex.P4. Having concluded post trap proceedings, the events were narrated and same was drafted as Ex.P15.

6. The Investigating Officer/P.W.7 examined witnesses and after conclusion of investigation and securing sanction order, filed charge sheet.

7. On behalf of the prosecution, P.Ws.1 to 7 were examined and Exs.P1 to P19 were marked. The appellant examined two witnesses D.Ws.1 and 2 and also marked Ex.D1, which is the copy of post trap proceedings Ex.P15.

8. Learned Special Judge, having considered the evidence on record found that work was pending with the appellant and both P.Ws.1 and 2 are witnesses to the demand and acceptance of bribe. The consequent search and recovery of currency notes was also proved and it is enough proof of the guilt of the appellant. Accordingly, appellant was convicted.

9. Learned counsel appearing for the appellant would submit that even according to the prosecution case, the appellant stated at the earliest point of time that he was not aware about any money being given to him by P.W.1. The test on both hands was negative indicating that the money was not handled by the

appellant. The crucial aspect of a telephone call being made by P.W.1 to P.W.5 was not considered during investigation nor during trial. In the chief examination of P.W.5/Tahsildar, he specifically stated that on the trap day around 1.00 p.m, the appellant telephoned to his office from the RDO Office, which was answered by him. The appellant informed PW5 that P.W.1 complied all the formalities and would send authorization from RDO on 24.02.2003 to the office of P.W.5 and meanwhile informed P.W.5 to accept the demand draft and release the stocks to P.W.1. Admittedly, only one landline telephone was available in the office of RDO and it was not in the room of the appellant. Admittedly, the appellant had to go out of the office to make a phone call to P.W.5 during which time, P.W.1 planted the amount and placed in between the registers on the table of the appellant. The said aspect of planting is strengthened by the fact that the appellant did not have knowledge about currency that was found in the registers on his table.

10. Counsel further submitted that P.W.2 accompanying witness had specifically stated that D.W.2 was present in the

office when the trap had taken place and D.W.2 informed when P.Ws.1 and 2 entered into the office and enquired about the appellant with him, D.W.2 stated that appellant went to the bath room and will be back in few minutes. After few minutes, the appellant came back to the seat and discussed about fair price shop dealership with PW1 and again appellant left his seat and came back after some time. He then informed P.W.1 that he contacted MRO office on phone and he would send the papers and authorization on 24.02.2003. Immediately, the ACB authorities had raided. D.W.2 was examined during prost trap proceedings and also in the departmental enquiry that was conducted against the appellant. The prosecution has failed to explain as to how the telephone call would have been made by the appellant while P.Ws.1 and 2 are in the office during trap proceedings. All the circumstances would indicate that the money was planted by P.Ws.1 and 2.

11. Learned counsel relied on the judgment of Hon'ble Supreme Court in the case of State of Tamil Nadu v. Krishnan

and another¹, wherein it was held on facts that planting of bribe amount was probable and accordingly found favour with the accused.

12. In M.K.Harshan v. State of Kerala², the Hon'ble Supreme Court accepted the plea of planting the amount also for the reason of the hands of the accused turning negative for the tests conducted.

13. In Ayyasami v. State of Tamil Nadu³, the Hon'ble Supreme Court found that there was no independent evidence about the demand of bribe and held that on mere probabilities, conviction cannot be based.

14. In Smt.Meena Balwant Hemke v. State of Maharashtra⁴, the Hon'ble Supreme Court held that mere recovery from the

¹ 2001 AIR SCW 2415

² 1995 CRI.L.J 3978

³ 1992 CRI.L.J 608

⁴ 2000 CRI.L.J 2273

table drawer would not conclusively lead to the inference of acceptance of bribe.

15. On the other hand, learned Special Public Prosecutor would submit that the file pertaining to P.W.1 was in fact pending with the appellant and same is not disputed. Both P.Ws.1 and 2 have stated that the appellant demanded bribe and asked bribe amount to be placed in between the register. For the reason of denying acceptance of bribe, it cannot be said that the appellant did not demand bribe since work was pending with him and recovery was also made from the table of the appellant.

16. Admittedly, according to the evidence of P.W.5, he stated in his chief examination that he received phone call around 1.00 p.m. on trap day from the appellant asking him to entertain the demand draft given by P.W.1 and release stocks in favour of P.W.1. The telephone was not in the room of the appellant. D.W.2, who was admittedly present in the office had stated that when P.W.1 entered into office, the appellant was in

the bath room. After coming from the bath room, having spoken to P.W.1, he went outside apparently for the reason of making phone call and came back. There are two occasions on which P.W.1 was present in the room of the appellant in the absence of the appellant. Initially, when P.Ws.1 and 2 entered into office, appellant was not present and subsequently, appellant went outside to make a phone call to P.W.5 and then came back.

17. On the date of trap, the bribe amount was not recovered at the instance of the appellant. On questioning by the DSP, the appellant stated that he was not aware about any bribe money. Accordingly, the pant and shirt pockets of the appellant were checked and when the amount was not found, the table was searched by the trap party. The amount was found by the trap party in between the registers which were lying on the table of the appellant. During post trap proceedings, the factum of the appellant going out of the room and making phone call to P.W.5 was not mentioned. Even during the course of subsequent investigation, though P.W.5 stated that around 1.00 p.m on trap day when P.Ws.1 and 2 met the appellant, phone call was

made by the appellant to P.W.5, however, there was no investigation regarding the phone call and the reason of suppression of information regarding phone call by P.Ws.1 and 2. The presence of D.W.2 was also stated by P.W.2 in his cross-examination. At the earliest point of time, during second mediators' report, the appellant specifically stated that he was not aware as to how the amount was found on his table in between the registers. The money was not recovered at the instance of the appellant.

18. There arises any amount of doubt regarding the prosecution case mainly in the back ground of suppression of the appellant going out and making phone call to PW.5 while P.Ws.1 and 2 were present in the room. The said aspect is in consonance with the defence taken by the appellant that money was planted. Cumulatively, the facts in the present case do not make out a case of demand of bribe by the appellant beyond reasonable doubt. Accordingly, benefit of doubt is extended to the appellant.

19. In the result, the judgment in C.C.No.22 of 2004 dated 23.10.2008 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad is hereby set aside. Since the appellant is on bail, his bail bonds shall stand discharged.

20. Criminal Appeal is allowed.

Date: 13.03.2024

Note: L.R.copy to be marked.

B/o. kvs

K.SURENDER, J