HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

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Criminal Appeal No.1461 OF 2008

Between:

K.Raghunatha Rao. ... Appellant

And

The State of A.P,
Rep. by Public Prosecutor for ACB. ... Respondent

DATE OF JUDGMENT PRONOUNCED: 08.09.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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.1461 of 2008

% Dated 08.09.2022

K.Raghunatha Rao. ... Appellant

And

$ The State of A.P,
Rep. by Public Prosecutor for ACB. ...Respondent

! **Counsel for the Appellant:** Sri V.Surender Rao

^ **Counsel for the Respondent:** Sri Ch.Vidya Sagar Rao,
Spl. Public Prosecutor

>HEAD NOTE:

? Cases referred

[1] 2010(1) ALD (Crl.) 497 (SC)

2 2014 (2) ALD (Crl.) 73 (SC)

3 AIR 2015 Supreme Court 3549

4 2018 (2) ALD (Crl.) 952 (SC)

5 2022 (1) ALD (Crl.) 96 (TS)

6 2020 (1) ALD (Crl.) 917 (TS)

7 2020 (1) ALD (Crl.) 507 (TS)

8 2013 (1) ALD (Crl.) 934 (AP)

9 2013 (1) ALD (Crl.) 331 (AP)

10 2010 Cri.L.J 2867

11 1997 (1) ALD (Crl.) 231 (S.C)

12 2004 (1) ALD (Crl.) 697 (AP)

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1461 of 2008

JUDGMENT:

1. The appellant is aggrieved by the conviction recorded under Sections 7 and Sections 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act of 1988') and sentenced to undergo rigorous imprisonment for a period of six months and one year, respectively, vide judgment in C.C.No.29 of 2003, dated 06.11.2008 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, present appeal is filed.

2. The case of the ACB is that the appellant worked as Junior Accounts Officer in the office of APCPDCL, Mint Compound. The acquitted Accused No.2 worked as LDC in the same office. The complainant/P.W.1 was working as Accounts-cum-Administrative Assistant in M/s.Embedded Infotech (Private) Limited. PW1 approached the appellant requesting to change the name of electricity service connection in the name of the company as the company shifted their premises to new address. An application was made to change the old service connection in

the name of the company M/s.Embedded Infotech Private Limited as instructed by P.W.2, who is the Manager (Operation) in the said company. Appellant refused to process the file and demanded an amount of Rs.1,500/- for processing the file. The acquitted accused also allegedly demanded Rs.1,500/- for processing. Aggrieved by the said demand, on 16.04.2002 P.W.1 as instructed by P.W.2 filed a complaint stating that the appellant and another have demanded Rs.1,500/- to be paid on the very same day i.e., 16.04.2002. Accordingly, the said complaint was registered at 12.30 p.m on 16.04.2002 and P.W.1 was asked to come at 2.00 p.m on the same day. The pre-trap proceedings under Ex.P6 were drafted from 2.30 p.m in the office of ACB and concluded at 4.00 p.m.

3. At 4.00 p.m, the trap party which included DSP, P.W.1, Inspector, independent mediators and others proceeded to the office of the appellant. The complainant P.W.1 entered into the office along with P.W.3 one of the independent mediators and after receipt of the said tainted bribe amount by the appellant, P.W.1 came out and gave the pre-arranged signal to indicate that the amount of bribe has been received by the appellant. The DSP

and others entered into the office after receipt of the signal and conducted tests on the hands of the appellant, which proved positive. The said amount was produced by the appellant from his left side pant pocket. Thereafter, after concluding the post trap proceedings, the investigation was handed over to P.W.9, who concluded the investigation and filed charge sheet for the offences under Sections 7 and 13(1)(d) r/w Section 13(2) of the Act against the appellant and another. After concluding the examination of the witnesses, the learned Special Judge found that this appellant is guilty and acquitted accused A2 not guilty for the said offences.

4. Learned counsel for the appellant submits that the complainant/P.W.1, P.W.2 at whose instance the complaint was lodged and also P.W.3 who is an independent mediator have all turned hostile to the prosecution case. Further, according to the prosecution case, the work of PW.1 was already complete and file was already processed by the appellant.

5. Learned counsel for the appellant relied upon the following judgments; i) **A.Subair v. State of Kerala[1]; ii) B.Jayaraj v. State of A.P[2]; iii) P.Satyanarayana Murthy v. District Inspector of Police[3]**; iv) **Dashrath Singh Chauhan v. Central Bureau of Investigation[4]; v) C.Giriprasad Babu v. State, ACB, Nizamabad Range, Nizamabad[5]; vi) Sk. Hussain v. State of Andhra Pradesh[6]; vii) J.Srinivasa Rao v. State of Andhra Pradesh[7]; viii)Addala Subrahmanyam v. State[8]; ix) State v. R.Krishnaiah[9]; x) Utpal Das v. State of West Bengal[10]; xi) Chinnammal v. State of Tamil Nadu[11] and**

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[1] 2010(1) ALD (Crl.) 497 (SC)

[2] 2014 (2) ALD (Crl.) 73 (SC)

[3] AIR 2015 Supreme Court 3549

[4] 2018 (2) ALD (Crl.) 952 (SC)

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[10] 2010 Cri.L.J 2867

[11] 1997 (1) ALD (Crl.) 231 (S.C)

Dumala Mallaiah v. State of A.P[12] and on the basis of the aforesaid judgments argued that mere recovery divorced from circumstances cannot be made basis to convict when the aspect of demand is not proved. The presumption cannot be come to the rescue of the prosecution and the same is not attracted in the present facts of the case.

6. On the other hand, learned Special Public Prosecutor submits that recovery was made from the pant pocket of the appellant, for which reason, the burden shifts on to the appellant under Section 20 of the Act and the appellant has failed to discharge his burden of disproving the case of the prosecution for which reason, the conviction recorded by the learned Special Judge cannot be interfered with.

7. The application which was made by P.W.1 on behalf of his company was in fact processed by the appellant. P.W.7, who is the trap laying officer admitted in his cross-examination that this appellant and the acquitted accused

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[12] 2004 (1) ALD (Crl.) 697 (AP)

were not competent to issue any letter to change the name of the electric service connection. It was further found that the file of P.W.1's company was already processed and ordered by the Accounts Officer and it was pending with the dispatch clerk Satyabala. Further, Ex.P3 letter was received from the said dispatch clerk Satyabala by PW1.

8. Admittedly, there was no official work pending with the appellant. P.W.1 has turned hostile to the prosecution case and stated that the appellant had never demanded any amount. In fact PW1 stated that he forcibly thrusted the amount in the pocket of the appellant, though he resisted and that immediately all the trap party cornered the appellant. P.W.2 did not state that demand was made by this appellant. P.W.3 is the independent mediator who accompanied P.W.1 into the office of the appellant. He stated that he did not witness giving or taking of bribe in between P.W.1 and the appellant and in fact, when the documents were seized, it was mentioned in page No.6 of Ex.P10 that the said letter was handed over to P.W.1 by Smt.Satyabala after obtaining his

signature. P.W.3 further stated that since he had signed on the post trap proceedings Ex.P10, he had come to the Court to give evidence. However, he has not heard any demand being made by the appellant nor any passing of money by P.W.1.

9. The prosecution has failed to prove that the appellant had demanded any amount for processing the file of P.W.1's company for change of its name. It is further on record that PW.1 had already received Ex.P3 letter from Satyabala, who is the clerk. Through Ex.P3 letter it was informed that the change of name was affected from M/s.Clarixxon Technologies Limited to M/s.Embeded Infotech Private Limited in which P.W.1 worked. Ex.P3 is dated 16.04.2002 on which date the appellant was entrapped.

10. Learned Special Judge in his judgment has made Ex.P2 complaint which was disowned by P.W.1 and also Section 164 of Cr.P.C statement to infer that the appellant had demanded the bribe from P.W.1 for processing the file. The averments in Ex.P1 complaint were disowned and P.W.1 also did not state that there was any demand. The learned Special Judge erred

in relying upon the said complaint Ex.P2 and also statement recorded under Section 164 of Cr.P.C to infer that the demand was made by the appellant. A complaint when disowned by complainant, the contents of the complaint cannot be read in evidence.

11. Secondly, Section 164 Cr.PC statement is a previous statement which can be used by the prosecution or the defence for the purpose of contradicting any statement that was subsequently made in Court. Section 164 of Cr.P.C statement is not substantive evidence to rely upon by the Court to draw inference regarding the culpability of an accused.

12. In the said circumstances, the appellant is entitled to be acquitted of all the charges leveled against him. In the result, the conviction recorded against the appellant vide impugned judgment in CC No.29 of 2003 dated 06.11.2008 is set aside. Since the appellant is on bail, his bail bonds shall stand cancelled.

11. Accordingly, the Criminal Appeal is allowed.

K.SURENDER, J

Date: 08.09.2022
Note: LR copy to be marked.
B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

Crl.A.No.1461 of 2007

Dated: 08.09.2022

kvs