

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

Criminal Appeal No.31 OF 2008

Between:

N.Rajendra Prasad

... Appellant

And

The State of Andhra Pradesh,
rep by Inspector of Police, ACB
City Range-II, Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 20.09.2022

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 |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No. 31 of 2008

% Dated 20.09.2022

N.Rajendra Prasad

... Appellant

And

\$ The State of Andhra Pradesh,
rep by Inspector of Police, ACB
City Range-II, Hyderabad.

..Respondent

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

^ **Counsel for the Respondent:** Sri Ch.Vidya Sagar Rao

>HEAD NOTE:

? **Cases referred**

¹ (2009) 3 SCC 779

2 2015 (10) SCC 152

3 (2014) 13 SCC 55

4 (2011) 6 SCC 450

5 2013 (3) ALT (CrI.) (SC) 316

6 (2002) 10 Supreme Court Cases 371

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.31 OF 2008

JUDGMENT:

1. The appellant/AO is convicted for the offence under Sections 7 and Section 13(1)(d) r/w 13(2) of the Act of 1988 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 CC No.28 of 2003 dated 27.12.2007 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court at Hyderabad. Aggrieved by the same, the present appeal is filed.

2. Briefly, the case of the prosecution is that the appellant was working as Assistant Electrical Inspector, Standard Laboratory, Mint Compound, Hyderabad. The defacto complainant was possessing wireman permit. On 16.09.2000, he obtained application form to get 'B' Grade Electrical Contractors Licence from the office of the Secretary, A.P. Electrical Licencing Board, Hyderabad. As per the requirement, a test certificate has to be enclosed along with the application. P.W.1 paid challan of Rs.100/- towards the testing fee. On 21.09.2000, he went to the Standard

Laboratory and on purchasing challan, he was issued instrument testing application form. The said form was filled up by P.W.1 and approached the appellant along with two instruments and requested him to do the necessary test and submit the testing report. To do the needful, the appellant demanded an amount of Rs.650/- i.e., to conduct instrument test and forward test report. Aggrieved by the said demand, a complaint was made on 27.09.2000. The trap was laid on 28.09.2000. On the trap date, the trap party including P.W.1-complainant, P.W.2-independent mediator, Inspector of Police, DSP and others met in the office of ACB. After concluding pre-trap proceedings Ex.P7 report was drafted. Thereafter, they proceeded to the office of the appellant. P.W.1 went inside the office accompanied by P.W.2 at 12.35 p.m. P.W.2 came out of the office and relayed signal indicating the acceptance of bribe by the appellant. The Deputy Superintendent of Police and others went into the office and confronted the appellant regarding the bribe. The appellant was tested with sodium carbonate solution which turned positive on both hands. When questioned regarding the bribe amount, the appellant broke into tears and produced the bribe amount.

3. After concluding the post trap proceedings under Ex.P13, investigation was handed over to the Inspector. After conclusion of investigation, charge sheet was laid for the offences under Sections 7 and 13(1)(d) r/w 13(2) of the Act. The learned Special Judge found the appellant guilty of accepting the bribe amount and convicted as stated supra.

4. The learned counsel for the appellant would submit firstly that there is no evidence of demand, secondly, there was no official favour which was pending with the appellant and thirdly, the learned Special Judge erred in drawing presumption against the appellant when the witness P.W.1 himself turned hostile to the prosecution case and denied having given complaint. In support of his contentions, he relied on the judgments reported in the cases of; i) **C.M.Girish Babu v. State of Kerala**¹; ii) **P.Satyanarayana Murthy v. State of A.P(F.B)**²; iii) **B.Jaya Raj v. State of A.P**³; iv) **State of Kerala v. C.P.Rao**⁴; v) **Sujit Biswas v. State of Assam**⁵;

¹ (2009) 3 SCC 779

² 2015 (10) SCC 152

³ (2014) 13 SCC 55

⁴ (2011) 6 SCC 450

vi) **Punjabrao v. State of Maharashtra**⁶ and argued that i) in the absence of demand, the ingredients under Sections 7 and 13(1)(d) r/w 13(2) of the Act are not attracted. Mere recovery of the amount divorced from the circumstances cannot be made basis for conviction; ii) The version, though not given at the earliest point of time, the version given at the time of Section 313 Cr.P.C examination has to be considered.

5. On the other hand, learned Special Public Prosecutor submits that at the earliest point of time, the money was recovered from the shirt pocket, which indicates that the said recovery was pursuant to the demand that was made by P.W.1. There is no necessity for P.W.1 to falsely implicate the appellant. However, for the reason of being won over during the course of trial, P.W.1 was declared hostile to the prosecution case and cross-examined. The said hostility will not have impact on the prosecution case for the reason of the other attending circumstances collectively proving that the appellant had demanded and accepted bribe. In the said

⁵ 2013 (3) ALT (CrI.) (SC) 316

⁶ (2002) 10 Supreme Court Cases 371

circumstances, the well reasoned judgment of the Special Court cannot be reversed.

6. P.W.1 who is the *defacto* complainant has disowned his own complaint made to the ACB and refused to acknowledge the contents of the complaint, for which reason, his signature on the complaint was marked. The accompanying witness, P.W.2 who went along with P.W.1 into the office of the appellant on the trap day stated that the amount was not passed over from P.W.1 to the appellant. However, the appellant had taken P.W.1 into another room and in the said room money must have been paid. Admittedly, P.W.2 is not a witness to the demand and acceptance of amount from P.W.1. However, the money was recovered from the shirt pocket of the appellant. The crucial aspect that has to be considered in the present case is whether the prosecution has established the factum of demand by the appellant.

7. P.W.1 stated that he did not give any complaint to ACB and also he never met the appellant on 21.09.2000 or 22.09.2000. Even on the trap date, P.W.2 was not a witness to the passing of

money by the appellant. He states that the said passing of money has taken place in another room.

8. The appellant during the course of Section 313 Cr.P.C examination stated that while he was talking to D.W.1, who was the then Licenced Electrical Contractor present along with him on the date of trap, P.W.1 thrust the amount into the pocket of the appellant and immediately the ACB trap party accosted the appellant and conducted tests. Though the said version was stated before the DSP, the same was not incorporated in the second mediators report.

9. The alleged demand was for the purpose of giving certificates to P.W.1. P.W.3, who is the Assistant Electrical Inspector stated that on 28.09.2000 while he was in the office, P.W.1 met the appellant and asked about his test certificates. Then the appellant informed that they were ready and it was with the Junior Assistant namely Shaik Rafee. P.W.4, who was working as a Tester in the appellant's office stated that he conducted tests of the instruments of P.W.1 and the result was given on the same day. The test certificates are Exs.P4 and P5. P.W.6 was the Junior Assistant in

the office of the appellant. As per Exs.P11 and P12, on 22.09.2000 itself, on the instructions of the appellant, he entered instrument test result pertaining to P.W.1. On the date of trap the appellant instructed P.W.6 to handover the certificates to P.W.1 as they were ready. Accordingly, the said certificates were handed over to P.W.1 after taking acknowledgments Exs.P11 and P12.

10. From the evidence on record, the prosecution has failed to prove that there was a demand that was made by the appellant for the purpose of giving certificates for the instruments of P.W.1. Admittedly, the said certificates Exs.P4 and P5 were in fact made ready on 22.09.2000 itself and same were entered in Exs.P11 and P12 register. In the said circumstances, it cannot be said that the official work was pending with the appellant.

11. Though P.W.1 has turned completely hostile to the prosecution case, the prosecution has failed to prove the demand that was made by the appellant by circumstantial or direct evidence. The prosecution further failed to prove that there was official work that was pending before the appellant. Though, according to the prosecution, the appellant failed to give any

explanation as on the date of trap and the money was recovered from his shirt pocket, the same would not entitle the prosecution to claim that the prosecution has proved its case. Mere recovery divorced from circumstances cannot be made basis to convict the appellant. In fact, the certificates were made ready five days prior to the complaint made before the ACB. P.W.1 has totally refused to acknowledge any kind of meeting with the appellant at any point of time.

12. Though witnesses have turned hostile to the prosecution case, that would not entail discarding the evidence of P.Ws.1 and 2 in its totality but the entire case rests upon only the recovery aspect. On multiple occasions, the Hon'ble Supreme Court held that once the demand is not proved, any recovery which is not in consonance with the facts of the case and circumstances, benefit of doubt has to be extended to the accused. Accordingly, this Court is of the considered opinion that the trial Court has erred in convicting the accused officer. In the said circumstances of the case, benefit of doubt is to be extended to the appellant.

13. In the result, the judgment of trial Court in CC No.28 of 2003 dated 27.12.2007 is set aside and the accused is acquitted. Since the appellant is on bail, his bail bonds stand cancelled.

14. Accordingly, Criminal Appeal is allowed.

K.SURENDER, J

Date:20.09.2022

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.31 of 2008

Date: 20.09.2022.

kvs