

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

Criminal Appeal No.521 OF 2008

Between:

Nimishakavi Kotilingam

... Appellant

And

The State of A.P

rep. by Special Public Prosecutor

..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED : .03.2024

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 their fair copy of the Judgment? Yes/No

K.SURENDER, J

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

+ CRL.A. No.521 of 2008

% Dated .03.2024

Nimishakavi Kotilingam

... Appellant

And

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! Counsel for the Appellant: Sri G.U.R.C.Prasad

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

>HEAD NOTE:

? Cases referred

¹ 2022(4) SCC 574

² (1979) 4 SCC 725

³ Criminal Appeal No.121 of 1989 dated 08.03.1995

⁴ (2004) 3 Supreme Court Cases 753

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.521 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 CC No.36 of 2004 dated 28.03.2008 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 against the appellant is that while he was working as Senior Assistant in the office of Khammam Municipality, Khammam District, demanded an amount of Rs.2,000/- for the purpose of mutating the name of Banoth Veerabhadra Rao, (defacto complainant, not examined during trial due to his death) in respect of his half share property by virtue of partition decree passed by the Lok Adalat. Pursuant to the said demand, an amount of Rs.700/- was accepted as

part payment on 05.02.2003 on which date, the appellant was trapped.

3. The complaint was filed on 03.02.2003. The said complaint was given to the Deputy Superintendent of Police and the complainant was instructed to get back on 05.02.2003, on which date, trap was arranged. Meanwhile, antecedents of complainant and appellant were enquired. On 05.02.2003, the said complaint was registered for the offence under Section 7 and 13(1)(d) of the Prevention of Corruption Act.

4. On 05.02.2003, pre trap mediators' report Ex.P2 was prepared in the presence of P.W.1, DSP and other officials. Thereafter, the trap party proceeded to the office of the appellant. P.W.1 who was working as Assistant Geologist in the office of Mines and Geology and his colleague were asked to act as mediators to the trap. After the pre-trap proceedings, P.W.1 along with deceased complainant reached the office of municipal Corporation, Khammam around 2.10 p.m. Both of

them went inside the office and other trap party members took positions nearby the office. It was informed that the appellant was not present and the same was conveyed to the DSP. The DSP instructed P.W.1 and the complainant to wait till the arrival of the appellant around 5.30 p.m. P.W.1 was informed by the complainant that the appellant had come to the office in jeep. Around 5.30 p.m, the complainant followed by P.W.1 met the appellant. According to P.W.1, the complainant asked the appellant about mutation of the house in his favour. Appellant asked the complainant whether he brought the demanded amount, for which complainant took out the amount from his shirt pocket and gave it to the appellant. Appellant accepted the amount with his right had, counted the said amount with both the hands and kept the amount in his back side pant hip pocket.

5. The complainant then went out of the office to give pre arranged signal and the DSP and others entered into the office of the appellant. The complainant and P.W.1 pointed out the appellant. Thereafter, the DSP and other trap party members

questioned the appellant. The said amount of bribe was recovered from his right side pant pocket and the amount was handed over by the appellant to trap party. The relevant files of the complainant were asked to be produced by the appellant. The appellant produced movements register Ex.P8. He informed that the application of complainant was with Vijender Reddy Revenue Inspector, who was examined as PW2.

6. The staff searched for the file of the complainant in the almirah of PW2 and found Ex.P4, file of one Nirmala in which Ex.P4(a) application of complainant was found and same was seized. The other relevant documents were also seized.

7. The trap party having concluded the post trap proceedings drafted Ex.P9, which is the second mediators report. Having obtained Sanction Order from the competent authority, the investigating officer concluded investigation and charge sheet was laid.

8. Learned Special Judge examined P.Ws.1 to 6 on behalf of the prosecution and marked Exs.P1 to P15. The colleague of the appellant namely M.Ramachandra Rao was examined as defence witness D.W.1.

9. Since the complainant died even prior to his examination before the Court, reliance was placed on the other evidence that was available. Learned Special Judge found that the demand of bribe and acceptance by the appellant were convincing and accordingly convicted the appellant.

10. Learned counsel appearing for the appellant would submit that in the absence of examination of the complainant, the question of convicting the appellant does not arise. When Rs.2,000/- was demanded, it is highly suspicious as to why Rs.700/- was accepted on the date of trap. The demand and acceptance of the bribe are inconsistent, which inconsistency remains unexplained by the prosecution. P.W.4, who worked as the Commissioner in Khammam District during the relevant period, furnished information regarding the procedure

adopted in the municipal office. According to P.W.4, Ex.P11, application has to be submitted to the municipal Commissioner and thereafter, the application will be endorsed in the Inward Section and from there to the concerned Section. Ex.P4(a) was not at all placed before him.

11. Learned counsel further argued that when the procedure was not followed, the question of appellant dealing with the application of the complainant does not arise. Further the application was seized by the trap party from the almirah of PW2 and not from the appellant.

12. Learned counsel further submitted that in the absence of proof of pending work with appellant and since file was with P.W.2, the question of appellant demanding bribe does not arise. He relied on the judgment of Hon'ble Supreme Court in the case of **K.Shanthamma v. The State of Telangana**¹ and argued that if the element of 'demand' is not proved, the prosecution has to fail. He also relied on the judgment of the Hon'ble Supreme Court in the case of **Suraj Mal v. State**

¹ 2022(4) SCC 574

(Delhi Administration)² wherein it is held that mere recovery of amount divorced from circumstance would not be sufficient to convict public servant for the acceptance of bribe. He also relied on the judgment of Hon'ble Supreme Court in the case of M.K.Harshan v. State of Kerala³ and argued that burden on the appellant is one of preponderance of probability and accordingly appellant has discharged his burden. He also relied on the judgment of Hon'ble Supreme Court in the case of **T.Shankar Prasad v. State of Andhra Pradesh**⁴ to support his argument that presumption is rebuttable and any explanation given by the accused, which is plausible can be accepted for rebutting presumption.

13. On the other hand, learned Public Prosecutor would submit that death of the complainant is of no consequence. In fact PW1 was a witness to the demand and the amount was recovered from appellant's pant pocket, which is sufficient to

² (1979) 4 SCC 725

³ Criminal Appeal No.121 of 1989 dated 08.03.1995

⁴ (2004) 3 Supreme Court Cases 753

presume that appellant demanded and accepted the amount. The findings of the trial Court are reasonable and cannot be interfered with.

14. The *sine qua non* for proving any case of acceptance of bribe amount is the 'demand' initially and subsequent 'acceptance' by the public servant. The prosecution has the burden of laying foundation of proving the demand beyond reasonable doubt as held by the Hon'ble Supreme Court in several judgments. Mere recovery of the amount will not suffice and prosecution has the burden to prove the demand initially and thereafter, the acceptance can be made basis to prove the case against the appellant.

15. In the absence of the complainant not being examined on the death or for any reason, Court has to look into the other factors and the evidence placed by the prosecution, both oral and documentary to prove the case of demand and acceptance of bribe by the public servant.

16. P.W.1 is the accompanying independent witness to the conversation in between the complainant and the appellant. He is also witness to the demand of bribe and acceptance on the date of trap. The said amount was recovered from the back pocket of the appellant.

17. P.W.4, who is the Commissioner, was examined and he stated that the application of the complainant was not received by him. However, P.W.2 the Revenue Inspector from whom the application Ex.P4(a) of the complainant was seized, stated that the appellant had handed over the file of one Smt.Nirmala for the purpose of enquiry. However, he did not enquire into the issue. The DSP when questioned about the application filed by the complainant, the appellant informed that the application of the complainant was in the file of Smt. Nirmala. The said application of the complainant was found in the file of said Smt. Nirmala.

18. P.W.2 did not have knowledge about the application made by the complainant. The complainant's case is that he had given the application to the appellant. The application was

not forwarded to the Commissioner/P.W.4 nor procedure was followed when any application was received. The appellant had kept the mutation application Ex.P4(a) of the complainant in the file of another person namely Nirmala, without taking any steps on the application and further according to the complainant, demanded amount of bribe for mutation. The said application was in fact pointed out by the appellant during course of investigation when questioned by the DSP. The appellant had exclusive knowledge about the application of the complainant. In the said circumstances, it can be safely inferred that having taken the application from the complainant, the appellant had placed the application in the file of one Nirmala without processing the said application. It was not forwarded to P.W.4, in accordance with the procedure laid down. It cannot be said that no work was pending with the appellant nor the appellant did not have anything to do with the said application. According to P.W.4, the appellant was in charge of A1 Section and responsible for undertaking mutation.

19. Counsel argued that since no work was pending, the case of the prosecution cannot be accepted. In fact, the appellant had come up with the version of taking loan from the complainant. He examined D.W.1, who is his colleague in the office to state that the amount of Rs.700/- was towards repayment of loan. Having accepted the acceptance of amount, presumption under Section 20 of the Act arises and the burden shifts on to the appellant to prove that the said amount was received as repayment of loan. Both during the course of post trap proceedings and during the examination of P.W.1, the said defence of accepting the amount towards repayment of loan was not taken. The said defence was taken later. Having not taken defence of repayment of loan during examination of P.W.1, who is an eye witness to the demand and acceptance of bribe, later appellant took defence that the amount was towards discharge of loan. As already stated, there is no evidence that is produced by the appellant to show that the complainant was an acquaintance or known to him or on which date the said loan was advanced by the complainant. In the absence of any such evidence, it cannot be said that the

appellant had discharged his burden by merely suggesting that the said amount was accepted towards repayment of loan.

20. In the present case, it clearly indicates that the appellant had misused his official position to demand bribe from the complainant. The stand taken by the appellant that the property for which mutation was sought, was acquired by virtue of decree passed in the Lok Adalat, but the said decree of the Lok Adalat was not placed by the prosecution before the Court to accept the version that the complainant had the property in his name for which mutation was required, cannot be accepted

21. Not filing the said Lok Adalat decree is of no consequence. The application made by the complainant for mutation of property was in fact pointed out and produced by the appellant. Having taken defence of repayment of loan, no proof or evidence was produced in support of his defence.

22. In the facts and circumstances of the present case, prosecution has proved the factum of demand and the

consequent acceptance of bribe. This Court is not inclined to interfere with the conviction of the appellant by the trial Court.

23. Criminal Appeal is dismissed.

Date: 06.03.2024

Note: LR copy to be marked.

B/o.kvs

K.SURENDER, J