

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

Criminal Appeal No.529 OF 2008

Between:

N. Viswanadham

... Appellant

And

State of A.P.,
Rep. by Inspector of Police,
ACB, CIU,
Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED:

20.06.2023

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. 529 of 2008

% Dated 20.06.2023

N. Viswanadham

... Appellant

And

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Rep. by Inspector of Police,
ACB, CIU,
Hyderabad. ... Respondent

! Counsel for the Petitioner: Sri Balaram Murthy Talluri

^ Counsel for the Respondents: Sri Vidhya Sagar Rao Chittineni
(SC of ACB)

>HEAD NOTE:

? Cases referred

- 1.(2006) 1 Supreme Court Cases 401
- 2.(2014) 13 Supreme Court Cases 55
3. (2017) 8 Supreme Court Cases 136
4. (2000) 8 Supreme Court Cases 571
5. (1976) 3 Supreme Court Cases 46
6. AIR 1962 Supreme Court 195

HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.529 of 2008****JUDGMENT:**

1. The appellant is questioning his conviction recorded under Sections 7 and Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act and sentencing him to undergo rigorous imprisonment for a period of 1-1/2 year and also to pay fine of Rs.2,500/- under each count vide judgment in C.C.No.3 of 2004 dated 02.04.2008 passed by Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad.

2. Briefly, the case of the prosecution is that the appellant was working as Deputy General Manager & Project Officer, Singareni Collieries Company Limited, Kothagudem. P.W.1/*defacto* complainant was a partner of M/s.B.Girijapati Reddy & Company, Nellore, who was executing subject contract given by M/s.ABC Engineering Works, Vijayawada. The contract work involved blast holes drilling, excavation, loading, transportation and dumping etc., at Goutham Khani

Open Cast Project, Singareni Collieries Company Limited. The duty of the appellant as General Manager, who was in charge was to provide with sufficient blasted rock, sufficient area for drilling operation, arranging for transportation of vehicle. According to the case of the prosecution, the appellant was troubling the contractors without providing sufficient material and area for the purpose of operation. On account of the acts of the appellant, the contractors sustained losses.

3. P.W.1 met the appellant at his office on 19.09.2002 and requested for providing sufficient blasted rock and area for operation, for which, the appellant demanded bribe of Rs.50,000/- and informed that if the demand is not met, he would further create problems which would result in loss to the contractors. P.W.1, thought it fit to complain about the demand to the ACB and approached the DSP ACB on 03.10.2002 and lodged Ex.P1 complaint. P.W.1 narrated in the complaint that the appellant who was in-charge for Singareni Collieries was creating trouble while he was executing the contract work. The contract was given to ABC Engineering

Company. P.W.1 entered into MOU with ABC Engineering Company to execute 80% of the work. The appellant demanded an amount of Rs.50,000/- not to create hurdles and provide necessary area for operation etc to execute the contract.

4. The Deputy Superintendent of Police asked P.W.1 to meet him at Kothagudem on 04.10.2002 and accordingly, the DSP arranged to lay a trap. On 04.10.2002, P.W.1 met the trap party in a hotel at Kothagudem and produced the bribe amount. The independent mediators having questioned P.W.1 regarding the complaint, drafted first mediators report in the Hotel Surya Palace, Kothagudem and the proceedings were concluded at 6.00 p.m. Thereafter, the trap party proceeded to the house of the appellant at his official quarter, Kothagudem. P.W.1 went inside the house and on seeing P.W.1, it is alleged that the appellant demanded bribe amount and in turn, the amount was paid. P.W.1 came out and gave pre-arranged signal indicating acceptance of bribe by the appellant. The trap party entered into the house and

conducted sodium carbonate solution test on the hands of the appellant to find out whether he handled the phenolphthalein smeared bribe amount of Rs.50,000/-. The right hand fingers turned positive. The test on the left hand was negative. On questioning, the appellant produced the amount from the bed room wardrobe. The trap party verified the currency and thereafter post-trap proceedings were drafted under Ex.P4. The investigation was later handed over to the Inspector P.W.7, who concluded investigation and filed charge sheet for the offence under Sections 7 and Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act.

5. Learned Special Judge examined P.Ws.1 to 7 and marked Exs.P1 to P24 on behalf of the prosecution. The appellant examined D.Ws.1 and 2 and marked Exs.D1 to D3.

6. Learned Special Judge came to conclusion on the basis of the evidence adduced that the demand and acceptance was proved by the prosecution and recorded conviction accordingly.

7. In the present case, the defence taken by the appellant is that P.W.1 had passed on the amount of Rs.50,000/- which was given as a loan to ABC Engineering Company and the amount given on the trap date was towards repayment of the said loan. P.W.3 who was working as Project Engineer in ABC Engineering Company, turned hostile to the prosecution case. He stated before the Court that the appellant had advanced loan of Rs.50,000/- during execution of the work and P.Ws.1 and 3 were given an amount of Rs.50,000/- earlier by the appellant. On the date of trap, Rs 50,000/- was given by PW1 to the appellant in connection with the said hand loan. However, P.W.1 stuck to his version and stated in the Court that Rs.50,000/- was paid towards bribe and denied the suggestion made by the appellant that the said amount of Rs.50,000/- was towards repayment of loan which was given to ABC Engineering Company.

8. Learned counsel appearing on behalf of the appellant would submit that factum of grant of contract work to the ABC Engineering Company is not in dispute. The appellant, who

was in-charge on behalf of the Singareni Collieries in fact had advanced loan of Rs.50,000/- to M/s.ABC Engineering Company which was returned on the said date. P.W.1 bore grudge against the appellant and falsely implicated him in the present case. Further, since the appellant was strict and directed to follow the rules and procedure in executing the work and also for the reason of deducting the rent charges of two dozers, aggrieved by the same, P.W.1 foisted a false case.

9. The defence version is supported by P.W.3, who is the Project Manager of ABC Engineering Company, who categorically stated that the amount of Rs.50,000/- was given towards repayment of loan which was advanced to P.W.1 and himself. Further, P.W.4, who is the Chief General Manager of Singareni Collieries, stated that M/s.ABC Engineering Company achieved the target beyond the fixed target, as such, it cannot be said that the appellant was not providing the necessary infrastructure, which had to be provided by the Singareni Collieries. P.W.5, who is the partner of P.W.1 stated that P.W.1 was looking after the work in the site, but he does

not remember whether P.W.1 informed about any kind of demand that was made by the appellant.

10. Learned counsel for the appellant submits that except for the evidence of PW.1, there is no other corroboration. In fact, when the works were executed above the prescribed target, the question of the appellant creating trouble would not arise and that itself falsifies the version of P.W.1. In the absence of any corroboration to the evidence of P.W.1, it cannot be said that the prosecution was able to prove the demand aspect. Accordingly, the prosecution has failed and conviction has to be set aside.

11. Learned counsel relied on the judgments of Hon'ble Supreme Court in the cases of; i) **T.Subramanian v. State of Tamil Nadu**¹ on the principle that receipt of amount and its recovery would be of no consequence, if the prosecution fails to prove the demand and acceptance as illegal gratification.

¹ (2006) 1 Supreme Court Cases 401

Similar view was taken by the Hon'ble Supreme Court in the case of **B.Jayaraj v State of Andhra Pradesh**².

12. In **Mukhtiar Singh (since deceased) through his Legal Representative v. State of Punjab**³, the Hon'ble Supreme Court held that when bald allegation of demand and acceptance of bribe was not corroborated, the accused has to be acquitted.

13. Learned counsel also relied on the judgment of this Court in Criminal Appeal No.317 of 2007, dated 17.11.2022. In the said case, since demand and acceptance of the amount was uncertain in the facts, this Court found that mere recovery of the amount will not satisfy the ingredients of Section 7 and Section 13(1)(d) of the Act. Accordingly, conviction was set aside.

14. Learned counsel relied on the judgment of **P.Satyanarayana Murthy v. District Inspector of Police** in Criminal Appeal No.31 of 2009, dated 14.09.2015, wherein the

² (2014) 13 Supreme Court Cases 55

³ (2017) 8 Supreme Court Cases 136

Hon'ble Supreme Court held that mere recovery or acceptance of the amount *dehors* proof of demand would not suffice to bring home guilt under Section 7 and Section 13(1)(d) of the Prevention of Corruption Act.

15. On the other hand, the special counsel for ACB submits that P.W.1 has stated regarding the demand made by the appellant. Ex.P1 was lodged aggrieved by the said demand and also on the date of trap an amount of Rs.50,000/- was recovered at the instance of the appellant from his house. Though the appellant had taken the defence that the said amount of Rs.50,000/- was towards repayment of loan, the same could not be established and the appellant has failed to discharge his burden which was shifted on to him under Section 20 of the Act.

16. He relied on the judgments of Hon'ble Supreme Court; i) **Madhukar Bhaskar Rao Joshi v. State of Maharashtra**⁴ and argued that once the prosecution establishes that gratification

⁴ (2000) 8 Supreme Court Cases 571

was paid and accepted by public servant, presumption arises that it was paid or accepted as motive or reward. Further, mere fact that currency notes reached the hands of the appellant is sufficient corroboration of the trap of a witness.

17. In **Chaturdas Bhagwandas Patel v. The State of Gujarat**⁵, the Hon'ble Supreme Court held that it is not necessary that a public servant should be in a position to do any official favour and in such cases, it is sufficient when the offence of taking gratification is established by the prosecution.

18. Lastly, learned counsel relied on the judgment reported in **Dhaneshwar Narain Saxena v. The Delhi Administration**⁶ and argued that since the appellant failed to discharge his burden, the conviction has to be sustained.

19. The appellant has not disputed that he was the person in-charge on behalf of Singareni Collieries when PW1 and

⁵ (1976) 3 Supreme Court Cases 46

⁶ AIR 1962 Supreme Court 195

M/s.ABC Engineering Company were executing the contract. Further, P.W.1 was the person who was sub-contractor and executing the said work. However, the appellant has disputed the demand as alleged by P.W.1 and the subsequent recovery that was made on the trap day was on account of the loan that was advanced by him earlier to M/s.ABC Engineering Company.

20. Since the appellant had received the amount and his defence is that it was towards repayment of the loan, the burden shifts on to the appellant to prove his case by preponderance of probability.

21. Under Section 20 of the Act, though a presumption is raised, the burden is on the prosecution to prove the case beyond reasonable doubt by cogent and convincing evidence initially. The appellant can also rely on the evidence of both oral and documentary that is placed on record by the prosecution to discharge his burden.

22. Admittedly, on the date of trap, no such explanation regarding the amount being towards discharge of loan was

stated by the appellant. The version of the appellant that Rs 50,000/- was towards loan, can be decided on the basis of evidence that has been adduced by the prosecution and the appellant.

23. During the course of cross-examination of P.W.1, specific defence is taken that an amount of Rs.50,000/- was advanced to M/s.ABC Engineering Company, who was the main contractor. However, no names were suggested to P.W.1 as to who borrowed the amount on behalf of M/s.ABC Engineering Company. During the evidence of P.W.3, who was the Project Engineer in M/s.ABC Engineering Company, he stated that P.W.1 and himself used to take hand loans from the appellant in the case of necessity to execute the work and by the date of trap i.e., 04.10.2002, both P.Ws.3 and P.W.1 were due an amount of Rs.50,000/- to the appellant. The said version was stated during the cross-examination of the appellant after the cross-examination of Public Prosecutor, who declared witness hostile to the prosecution case.

24. The reason suggested to P.W.1 for false implication was that the appellant was insisting them to follow the rules and procedure in executing the work and also deducted certain amount towards the rent for two dozers. Further, the appellant's case is that superiors of the appellant had addressed letters to M/s.ABC Engineering Company on the basis of information provided by the appellant that there was theft of coal and the concerned authorities are proposing to take action, for which reason, appellant was falsely implicated.

25. The burden that is shifted on to the appellant was not discharged even by preponderance of probability. On one hand, it is the case of the appellant that he was strict and asking to follow the rules and procedure and also complained about the theft of coal by the workers. On the other hand, the appellant had given loans to P.W.1 and M/s.ABC Engineering Company's personnel. During the course of P.W.1's cross-examination, it is the specific case of P.W.1 that the loan was given to the personnel of M/s.ABC Engineering Company without taking any names. However, during the course of

examination of P.W.3, who turned hostile, it was the case that both P.Ws.1 and 3 had taken loans and collectively, which amounted to Rs.50,000/-. Further, according to P.W.3, the appellant never created any hurdles or intervened or troubled the contractors in any manner during the execution of the work. In the back ground of such discrepant versions in the defence case, this Court cannot rely on such evidence, which is unconvincing and consequently, the appellant has failed to discharge his burden even by preponderance of probability. The factum of demand remains proved. Thereafter, the acceptance of the amount towards earlier demand is also proved.

26. In the said circumstances, I do not find any grounds to interfere with the judgment of conviction and accordingly, the Criminal Appeal is dismissed. However, since the case is of the year 2002, this Court deems it appropriate to reduce the sentence of imprisonment to the period of one year under both counts. The trial Court is directed to cause the appearance of the appellant and send him to prison to serve out the

remaining part of sentence. Consequently, miscellaneous applications, if any pending, shall stand closed.

K.SURENDER, J

Date: 20.06.2023

Note: LR copy to be marked.

B/o.kvs

HONOURABLE SRI JUSTICE K.SURENDER

Criminal Appeal No.529 of 2008

Date:20.06.2023

kvs