

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

Criminal Appeal No. 1718 OF 2009

Between:

G.Vijay Sai

... Appellant

And

The State ACB,
Hyderabad Range

... Respondent

DATE OF JUDGMENT PRONOUNCED: 16.07.2024

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 the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

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

+ CRL.A. No. 1718 OF 2009

% Dated 16.07.2024

G.Vijay Sai

... Appellant

And

\$ The State ACB,
Hyderabad Range

... Respondent

! Counsel for the Appellant: Sri E.Venkata Siddhartha rep.
by Sri Pradyumna Kumar Reddy,
Senior Counsel

^ Counsel for the Respondents: Sri Sridhar Chikyala
Special Public Prosecutor

>HEAD NOTE:

? Cases referred

1. (2010) 4 Supreme Court Cases 450)
2. Criminal Appeal No.742 of 2023 dated 01.02.2024
3. (1995) 3 Supreme Court Cases 351)
4. (2015) 3 Supreme Court Cases 220)

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.1718 OF 2009

JUDGMENT:

1. The appellant is questioning his conviction in the present appeal, recorded by the Additional Special Judge for SPE & ACB Cases, City Civil Court at Hyderabad for the offences under Sections 7 and Section 13(1)(d) r/w 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 two years under both counts, vide judgment in CC No.17 of 2005 dated 19.11.2009.

2. Briefly, the case of the prosecution is that P.W.1, who is the defacto complainant lodged a complaint with ACB stating that he is the owner and possessor of agricultural lands and he had a borewell in his land. The borewell fetches sufficient watering, as such, some of the villagers including Sarpanch approached him and requested him to provide drinking water from his borewell to the village and promised to pay money for supply of the water. P.W.1 was being paid Rs.1,500/- per month by the RDO for supplying drinking water to Redlarepaka village. According to procedure,

recommendation would be made by the Assistant Engineer, who was working in the Rural Water Supply Office, Veligonda to the M.R.O. M.R.O, in turn recommends to the R.D.O. Then the payment would be made by way of cheque.

3. According to prosecution case, since Rs.1,500/- per month was less, in the year 2004, an agreement was made to pay Rs.3,000/- per month. Though, he supplied water from January, 2004 to May, 2004, he was not paid water charges. Thereafter, P.W.1 stopped supply of water from June, 2004. In the 1st week of July, 2004, the appellant who was working as Senior Assistant in RDO office informed P.W.1 that a cheque for Rs.15,000/- towards water supply was ready and asked P.W.1 to meet him. However, demand of bribe of Rs.4,000/- was made by appellant to handover cheque. P.W.1 requested to reduce the amount. However, appellant insisted to pay the said amount to deliver the cheque. The demand was made on 17.07.2004 and again on 23.07.2004. Appellant asked P.W.1 to come to RDO's office on 26.07.2004 and pay Rs.4,000/- to collect the cheque. Aggrieved by the said demand, on 24.07.2004,

P.W.1 went to the ACB office and lodged Ex.P1 complaint. The trap was arranged by the DSP on 26.07.2004.

4. On 26.07.2004, P.W.1/complainant, P.W.2/mediator, P.W.8/DSP and others were formed as trap party. Pre-trap proceedings were reduced into writing, which is Ex.P4 after conclusion of the formalities before proceeding to the trial. The trap party, then went to the R.D.O's office. While the other trap party members waited outside, P.W.1 entered into RDO's office and 20 minutes thereafter, he came out and conveyed the signal to the trap party. The trap party entered into the office and questioned the appellant regarding the bribe. The appellant did not say anything and since P.W.1 informed that the appellant took the amount and kept in his right side pant pocket, his pant was tested with sodium carbonate solution, which turned positive. The test on both the hands also proved positive. Since the amount was not found, it is further the case of the prosecution that P.W.1 informed that after he gave the amount to the appellant, he observed the appellant going towards almirah. Then, the trap party searched for the currency and found the amount kept in a log book in the almirah.

The amount was seized including the relevant documents along with the cheque Ex.P5. Thereafter, having concluded the formalities including recording of statements of P.W.1/complainant and seizures, post-trap proceedings under Ex.P9 was drafted. Investigation was concluded by P.W.8 himself and filed charge sheet.

5. Learned Special Judge having framed charges, examined P.Ws.1 to 9 and Exs.P1 to 12 were marked on behalf of the prosecution. MOs.1 to 10 were also placed on record by the prosecution. Neither witnesses were examined nor any exhibits marked on behalf of the appellant. Learned Special Judge, having found the appellant guilty, convicted him accordingly.

6. Learned counsel appearing for the appellant would submit that the prosecution has failed to prove the factum of demand since P.W.1 has turned hostile to the prosecution case and was cross-examined by the Public Prosecutor. According to the version given by P.W.1, false complaint was filed to the narration given by the DSP, ACB as to how the complaint should be filed. P.W.1 admitted during cross-examination that he never met the appellant

personally prior to trap. In the said circumstances, the prosecution has failed to prove factum of demand and accordingly, the recovery on the trap date cannot form basis to convict the appellant for the offence of bribery.

7. Learned counsel relied on the judgment of Hon'ble Supreme Court in the case of **Banarsi Dass v. State of Haryana** (2010) 4 Supreme Court Cases 450). The Hon'ble Supreme Court was dealing with the case wherein the witness turned hostile to the prosecution case and accordingly, benefit of doubt was given. Learned counsel also relied on the judgment of this Court in the case of **Bairam Muralidhar v. State of Telangana, ACB** in Criminal Appeal No.742 of 2023 dated 01.02.2024.

8. On the other hand, learned Special Public Prosecutor appearing for the ACB would submit that the prosecution has proved its case against the appellant though P.W.1 has turned hostile to the prosecution case. The other circumstances have to be looked into when the witnesses turn hostile. Since it was appellant who had to issue the cheque and admittedly, Ex.P5 cheque was made ready on 30.06.20004, however, till the date of trap i.e., on

26.07.2004 cheque was not handed over. It is clearly indicated that only for the purpose of bribe, cheque was not issued to P.W.1. In the said circumstances, the Court below has rightly convicted the appellant. Learned Special Public Prosecutor relied on the judgment of the Hon'ble Supreme Court in the case of **M.O.Shamsudhin v. State of Kerala** (1995) 3 Supreme Court Cases 351) and **Vinod Kumar v. State of Punjab** (2015) 3 Supreme Court Cases 220).

9. In **Vinod Kumar's case** (supra), the Hon'ble Supreme Court found fault with the cross-examination being deffered. In the said case, the witness had given different version during cross-examination and turned hostile. The Hon'ble Supreme Court found that the cross-examination should be directed to be completed on the very same day or the next day. It is for the trial Court to safeguard the interest of both the prosecution and the defence.

10. P.W.1 during his chief examination in the Court below, stated that an amount of Rs.15,000/- was due for supply of water from January, 2004 to May, 2004. When he came to know that the cheque was ready in the RDO's office, he rang up the RDO's office and one attender lifted who identified himself as Sai. According to

P.W.1, the said person namely Sai was working as Senior Assistant. The said Sai informed that the cheque was pending regarding some queries. The said version was stated by P.W.1 on 18.01.2008. His chief examination was stopped and he was recalled for further chief examination after six months i.e., on 14.07.2008. In his chief examination on 14.07.2008, he stated that he made phone call to RDO's office on 23.07.2004 and the appellant received phone and informed that there were queries and demanded Rs.4,000/- for issuance of cheque. Having informed that he would come to the office on 26.07.2004, he approached the ACB office on 24.07.2004 and lodged Ex.P1 complaint. According to P.W.1, the ACB officials asked him to write a complaint as though P.W.1 met the appellant personally and demanded bribe. Thereafter, on the date of trap, P.W.1 enquired about the appellant and met him. He asked about the cheque and the appellant asked him to get the revenue stamp. When P.W.1 went outside for the revenue stamp, the appellant followed him and demanded to give the bribe amount. Then, P.W.1 passed on the bribe amount. After the appellant received the bribe amount, P.W.1 relayed signal indicating demand and acceptance of bribe by the appellant. Further, in his chief examination itself,

P.W.1 denied having informed the DSP that he met the appellant in the first week of June and in person and there was demand of Rs.4,000/- for issuing the cheque.

11. The Public Prosecutor then declared the witness hostile and cross-examined P.W.1.

12. During cross-examination also, P.W.1 stated different versions stating that bribe of Rs.5,000/- was demanded by the appellant before the Magistrate. He denied a suggestion that different versions are given by P.W.1 to help the appellant.

13. During cross-examination of the counsel for the appellant, P.W.1 stated that he never met the appellant personally prior to the date of trap. He also denied suggestions that there was any demand by the appellant.

14. As discussed above, P.W.1 had given different versions during his chief examination which was six months apart. However, in chief-examination, he did not support the case of the prosecution regarding demand of bribe being made by the appellant. P.W.1 stated that one Sai in the RDO's office had asked him to come down

to RDO's office and again he says that it was the appellant who had received the phone call. However, P.W.1 stated that for the first time, he met the appellant on the date of rap. The prosecution has relied upon the evidence of P.W.1 only to prove the factum of demand. P.W.1 stated that Ex.P1 complaint was drafted at the instance of ACB officials and to their narration. P.W.1 never stated that it was the appellant who had demanded bribe for the purpose of issuing a cheque. Such different versions stated by P.W.1 cannot form basis to infer demand made by the appellant. The burden is on the prosecution to prove the aspect of demand beyond reasonable doubt as stated by the Hon'ble Supreme Court in the case of **K.Shanthamma v. State of Telangana** (2022) 4 Supreme Court Cases 574) and **B.Jayaraj v. State of A.P** (2014) 13 SCC 55). Such contradictory versions not supporting the prosecution, it cannot be said that the prosecution has proved the aspect of demand.

15. Regarding recovery, recovery was admittedly made from the almirah in a book. According to the version of the mediator and the DSP, the appellant denied knowledge of any bribe. Further, at the instance of P.W.1, almirah was searched and the trap party found

the amount in the book. It is not the case of the prosecution that the appellant had pointed out as to where the amount was kept to make such evidence admissible under Section 27 of the Evidence Act. Such shaky evidence regarding demand and recovery which is not at the instance of the appellant, cannot in any manner prove the case against the appellant.

16. In view of above discussion, since the prosecution has failed to prove its case against the appellant with reliable and convincing evidence, benefit of doubt is extended to the appellant. Accordingly, appellant succeeds.

17. In the result, the judgment of trial Court in CC No.17 of 2005 dated 19.11.2009 is hereby set aside and the appellant is acquitted. Since the appellant is on bail, his bail bonds shall stand cancelled.

18. Criminal Appeal is allowed.

K.SURENDER, J

Date: 16.07.2024
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