

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

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**Criminal Appeal No.1819 OF 2009**

Between:

Nemuri Narasingha Rao

... Appellant

And

The State of A.P,  
rep. by Inspector of Police, ACB,  
Hyderabad Range.

..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED :27.03.2024

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

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*K.SURENDER, J*

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

**+ CRL.A. No.1819 of 2009**

% Dated 23.04.2024

# Nemuri Narasingha Rao

... Appellant

And

\$ The State of A.P,  
rep. by Inspector of Police, ACB,  
Hyderabad Range.

Respondent/Complainant

**! Counsel for the Petitioners:** Sri O.Kailashnath Reddy

**^ Counsel for the Respondent:** Sri Sridhar Chikyala

**>HEAD NOTE:**

**? Cases referred**

<sup>1</sup> AIR 2002 Supreme Court 486

<sup>2</sup> (1997) 10 Supreme Court Cases 600

<sup>3</sup> (2014) 13 SCC 55

<sup>4</sup> (2013) 14 SCC 153

<sup>5</sup> (2016) 1 SCC 713

<sup>6</sup> AIR 1987 SC 2402

<sup>7</sup> (2009) 3 SCC 779

<sup>8</sup> (2006) 1 SCC 401

<sup>9</sup> (2005) 8 SCC 364

<sup>10</sup> (2015) 10 SCC 152

<sup>11</sup> 2016(1) ALD (CrI.) 969

<sup>12</sup> 2002(2) ALD (CrI.) 241 (AP)

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No.1819 OF 2009****JUDGMENT:**

1. Since the appellant died, the wife of the appellant filed I.A.No.1 of 2022 under Section 394(2) of Cr.P.C to permit her to prosecute the appeal. Permission granted and appeal is heard.

2. The deceased/accused/public servant was convicted for the offence under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 (for short 'the Act') and sentenced to undergo rigorous imprisonment for a period of six months and one year respectively, vide judgment in C.C.No.9 of 2007 dated 14.12.2009 passed by the Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. Aggrieved by the same, present appeal is filed.

3. Briefly, the case of the defacto complainant/P.W.1 is that he is an Advocate by profession. Defence Housing Co-operative Society at Sainikpuri used to allot plots to its members. Only serving or Ex-service personnel of defence

forces are eligible for allotment of plots in the said society. On enquiry, P.W.1 came to know that Ex-President and Ex-Secretary of the society allotted plots to ineligible persons and grabbed land meant for public use. To question the said illegalities, he wanted to approach the concerned Courts, for which reason, he approached Sub-Registrar Office for obtaining certified copies of the documents of the properties sold in the said society. The accused was working as clerk in the said Sub-Registrar Office Malkajgiri, who provided certified copies after applications were filed. For the four applications, which were filed by P.W.1, the accused demanded Rs.130/- each total of Rs.520/- for preparing certified copies and handing over it to him. Since P.W.1 was not inclined give bribe, he approached ACB authorities and lodged complaint Ex.P4 on 23.02.2006. The DSP, then asked the complainant to come on the next date i.e., 24.02.2006.

4. On 24.02.2006, the trap was arranged. Pre-trap proceedings were conducted in the DSP office room in the ACB Office, in the presence of P.W.1, P.W.2 accompanying witness, who was working as constable and DSP,

independent mediators and others. Ex.P5 is pre-trap mediator's report, which was drafted in the office of the DSP after conclusion of the formalities that were followed prior to proceeding to trap the accused.

5. The trap party proceeded to the office of the Sub-Registrar at Malkajgiri around 1.00 p.m. P.W.1 was accompanied by P.W.2 to witness what transpires in between P.W.1 and the accused. The other trap party members stood at a distance of nearly 300 yards from the office. P.W.1 went inside the office and met the accused. Accused demanded the said amount and accordingly Rs.520/- trap amount was handed over to P.W.1. Having handed over the said amount and taking certified copies, P.W.1 came out and signaled to the trap party confirming receipt of bribe amount by the accused.

6. The trap party entered into the office and questioned the accused regarding bribe. Tests were conducted on the hands of the accused to verify whether he handled the bribe amount. Tests on both the hands turned positive. On persistent questioning by the DSP regarding demand and

acceptance of the bribe amount, the accused opened his table drawer and handed over the amount of Rs.520/- to the DSP. Post trap formalities were followed and having examined P.Ws.1 and 2, and accused during pre-trap proceedings, relevant documents were also seized. What all transpired during post-trap proceedings were drafted as mediators report-II which is Ex.P9.

7. The DSP/P.W.6 after conclusion of post trap proceedings handed over investigation to inspector/P.W.7 who was also part of the pre and post trap proceedings. Having obtained sanction from the competent authority and concluding investigation, P.W.7 filed charge sheet for the offence under Section 7 and Section 13(1)(d) R/W 13(2) of the Act.

8. Learned Special Judge framed charges for the said offences and examined witnesses P.Ws.1 to 7 and marked Exs.P1 to P14 on behalf of the prosecution. MOs.1 to 8 were also brought on record. In defence, the accused during the course of cross-examination of witnesses, marked Exs.D1 to D3.

9. Learned Special Judge, having assessed the evidence on record found that the defence taken by the accused that the amount of Rs.20/- was folded in Rs.500/- note which was handed over for the purpose of the four applications fee of Rs.70/- totaling Rs.280/-, which had to be paid by P.W.1 having taken application forms from the accused when the trap amount was handed over was not convincing.

10. The defence of the accused is that Rs.70/- was to be paid for one application and in total Rs.280/- had to be paid. Additional Rs.20/- towards non-judicial stamps had to be affixed to the application. On the date of trap, after receiving four certified copies, P.W.1 asked for four more applications. The said applications were handed over to P.W.1 and towards payment of Rs.280/- for the applications, P.W.1 handed over Rs.500/- note and went away staying that he would come back with Rs.80/-(Rs.20/- for each application) non-judicial stamps to be affixed on the applications and submit the same. Further, according to the accused, there were nearly 40 applications which were processed and certified copies were handed over to P.W.1

including 4 certified copies which were handed over on the trap date.

11. Learned Special Judge did not find favour with the defence taken by the accused and found that the version was subsequently developed as defence. The said version was not given at the earliest point of time during post-trap proceedings. In the said circumstances, the Special Judge found that the amount of Rs.520/- which was handed over on the trap date was towards bribe for the purpose of handing over four certified copies as mentioned in the complaint and also during trial by P.W.1.

12. Learned counsel appearing for the accused would submit that the approach of the learned Special Judge is erroneous. Learned Special Judge ought to have considered the evidence in the larger perspective. Admittedly, four applications were taken on the date of trap while handing over the bribe amount. Rs.20/- note was kept inside Rs.500/- note and handed over. P.W.1 left the place stating that he was getting Rs.20/- stamps to be affixed on the applications and he would take change after coming back



with stamps. However, he went and signaled to the trap party. The accused is at liberty to take defence even at the stage of trial and also during Section 313 Cr.P.C examination. Even the Court found that the defence is probable, the same can be accepted and need not consider whether the said version was given at the earliest point of time. The Hon'ble Supreme Court in the case of **Panjabrao v. State of Maharashtra**<sup>1</sup> held that any defence taken during trial and even at the stage of Section 313 Cr.P.C examination was probable and believable, the said defence can be accepted by the Court.

13. Learned counsel further submitted that when the factum of demand is doubtful, the aspect of recovery cannot be taken into consideration to convict the accused. In support of his contention, he relied on the following judgments: i) **Mohmoodkhan Mahboobkhan Pathan v. State of Maharashtra**<sup>2</sup>; ii) **B.Jayaraj v. State of Andhra**

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<sup>1</sup> AIR 2002 Supreme Court 486

<sup>2</sup> (1997) 10 Supreme Court Cases 600

**Pradesh<sup>3</sup>; iii) State of Punjab v. Madan Mohan Lal Verma<sup>4</sup>; iv) N.Sunkanna v. State of A.P<sup>5</sup>; v) G.V.Nanjundiah v. State (Delhi Administration)<sup>6</sup>; vi) C.M.Girish Babu v. CBI, Cochin, High Court of Kerala<sup>7</sup>; vii) T.Subramanian v. State of Tamil Nadu<sup>8</sup>; viii) State Through Inspector of Police, A.P v. K.Narasimhachary<sup>9</sup>; ix) P.Satyanarayana Murthy v. District Inspector of Police, State of A.P<sup>10</sup>; x) Gundappa v. State<sup>11</sup> and xi) Dr.A.Y.Prasad v. State<sup>12</sup>.**

14. On the other hand, learned Special Public Prosecutor for ACB would submit that Ex.P4 complaint corroborates with the evidence of demand. Both P.Ws.1 and 2 were

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<sup>3</sup> (2014) 13 SCC 55

<sup>4</sup> (2013) 14 SCC 153

<sup>5</sup> (2016) 1 SCC 713

<sup>6</sup> AIR 1987 SC 2402

<sup>7</sup> (2009) 3 SCC 779

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<sup>11</sup> 2016(1) ALD (CrI.) 969

<sup>12</sup> 2002(2) ALD (CrI.) 241 (AP)

witnesses to the demand and acceptance of bribe. Though P.W.2 was a constable, working under Deputy Superintendent of Police, ACB, there was no necessity for him to speak any falsehood. In fact, the accused accepted the receipt of amount, for which reason, presumption arises and the burden shifts on to the accused. The accused, except making suggestions to witnesses, has not produced any evidence in his support to convince the Court regarding his defence version being correct. In the event of four applications being received and amount of Rs.70/- had to be paid for each of the application, there is no reason why Rs.20/- note apart from Rs.500/- was accepted by the accused when the total amount for applications fee would be Rs.280/-. For the said reasons, since the finding of the Special Judge is convincing, conviction may be confirmed.

15. P.W.1 admitted that he has earlier filed several applications for certified copies. The accused delivers encumbrance certificates, market value certificates and marriage certificates also. Further, on the date of trap, he has purchased four applications and for each application

Rs.70/- has to be paid along with Rs.20/- non judicial stamps.

16. It is not the case of the prosecution that separately for the four applications that were taken on the trap date by P.W.1 any amount was paid other than Rs.520/- bribe amount that was handed over to the accused. The defence of the accused is that for every application Rs.70/- cash has to be paid along with Rs.20/- non judicial stamps. The said procedure is also admitted by P.W.1. P.W.1 also admitted that even prior to the four certified copies that were received on the date of trap, the accused had processed certified copies for nearly 40 applications. The said copy applications were made on 07.02.2006, 13.02.2006, 14.02.2006 and 15.02.2006 and certified copies were also delivered. 19 applications were marked as Ex.D1 through P.W.1 which were processed. It is not the case that at any point of time the accused had refused to handover certified copies unless bribe of Rs.130/- was given towards each certified copy.

17. P.W.2 is an accompanying witness who stated about the bribe amount being given and then the accused handing over the certified copies. However, P.W.2 is silent about four applications that were taken from the accused at the time of handing over the bribe amount. The Investigating Officer also pleads ignorance of the applications that were received by P.W.1 on the trap date. P.W.2 is a constable in the ACB and subordinate of the DSP and Inspector. The DSP has not taken any steps to send either P.W.3 or the other independent mediator along with P.W.1 to watch as to what transpires in between P.W.1 and the accused. No explanation is given by the Investigating Officer as to why his subordinate police constable was sent along with P.W.1 when the independent mediators were available.

18. According to the cross-examination of P.W.1, he had taken four fresh applications from the accused for the purpose of obtaining certified copies. If at all the bribe was handed over for the purpose of taking four certified copies, it is the duty of the prosecution to explain as to why four applications were taken and no money was passed on for the purchase of applications. It is not specifically stated by

P.W.1 as to whether the amount was handed over after receiving four applications or prior to it, but the fact remains that no amount was paid towards four applications and the non-judicial stamps of Rs.20/- of the application were also not handed over. The said transaction creates any amount of doubt regarding the bribe amount, whether it was towards the alleged bribe amount or the fresh applications which were received by P.W.1. The defence of the accused that P.W.1 has received four applications towards which Rs.280/- had to be paid and he had handed over Rs.500/- note in which Rs.20/- was also placed and went away informing accused that he would come back with non-judicial stamps of Rs.20/- appears to be probable. The circumstances create any amount of doubt regarding the amount which was passed on the trap date being towards bribe amount and not the application amount.

19. The prosecution has failed to convince as to why the four applications were taken and no separate amount was paid to P.W.1 on the date of trap. What was the necessity to take four applications without paying the amount on the

trap date, when P.W.1 went to hand over the trap amount. In the present circumstances, the prosecution failed to prove the demand of bribe beyond reasonable doubt. The recovery of amount from accused is of no consequence when demand for bribe is not proved. In view of the same, benefit of doubt is extended to the accused.

20. In the result, the judgment of trial Court in C.C.No.9 of 2007 dated 14.12.2009 passed by the Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, is hereby set aside.

21. Criminal Appeal is allowed.

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**K.SURENDER, J**

Date: 23.04.2024

Note: LR copy to be marked

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