

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

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**Criminal Appeal No. 37 OF 2009**

Between:

Sajja Radhakrishna Murthy

... Appellant/  
Accused no.1

And

The State of A.P. rep. by its Spl.Public Prosecutor,  
High Court of Andhra Pradesh, Hyderabad.

... Respondent/  
Complainant

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 |

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**K.SURENDER, J**

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

**+ CRL.A. No. 37 OF 2009**

% Dated 16.07.2024

# Sajja Radhakrishna Murthy

... Appellant/  
Accused

And

\$ The State of A.P. rep. by its Spl.Public Prosecutor,  
High Court of Andhra Pradesh, Hyderabad.

... Respondent/  
Complainant

**! Counsel for the Appellant:** Madhuri Kuchadi, rep. by Sri Avinash  
Desai, learned Senior Counse.

**^ Counsel for the Respondents:** Sri Sridhar Chikyala  
Spl.Public Prosecutor for ACB

**>HEAD NOTE:**

**? Cases referred**

<sup>1</sup> (1972) 3 SCC 280

<sup>2</sup> MANU/TN/3340/2017

<sup>3</sup> MANU/KS/8299/2006

<sup>4</sup> (2006) 1 SCC 401

<sup>5</sup> (2020) 1 ALT (Cri) 82

<sup>6</sup> MANU/TL/1334/2022

<sup>7</sup> 2014 (13) SCC 55

<sup>8</sup> 2015 (10) SCC 152

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No.37 OF 2009****JUDGMENT:**

The trial Court convicted this appellant/A1 and A2 (A2 died during pendency of appeal) for the offence under Section 7, 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988. Aggrieved by the said conviction, the appellant is before this Court.

2. Briefly, the case of the prosecution is that PW1 approached the DSP and filed a complaint alleging that due to heart problem, he underwent Angiogram as per the advice of the doctor. Thereafter, he submitted medical bills in the Division office while he was in service. After his retirement he underwent heart surgery at NIMS hospital on 03.08.2002. PW1 requested the Superintendent Engineer to sanction Rs.75,000/- towards medical expenditure and the same was sanctioned and cheque was issued to NIMS for Rs.72,923/-. Since the bills of NIMS hospital was Rs.72,923/-, request was made by PW1 to give the remaining balance of Rs.2,077/- since acknowledgment of PW1 was taken for Rs.75,000/-. Earlier also the bill for Angiogram was pending. He met appellant/A1 on 09.10.2002 and requested to settle his medical bills of Rs.7,300/- and balance amount of Rs.2,077/- for which appellant demanded Rs.1,500/- as bribe for processing his

medical bill. Though PW1 repeatedly requested appellant, the appellant did not budge and demanded that the amount should be paid.

3. PW1 went to ACB and filed complaint. On the basis of complaint filed, under Ex.P6, the DSP registered the case on 17.10.2002. The DSP arranged to entrap on the next day i.e. 18.10.2002 and asked PW1 to come to the ACB office. On the date of trap in the presence of PW1-complainant, PW3-independent mediator, DSP and others who gathered in the office of the DSP, the preliminary proceedings before going to trap the accused were followed. What all transpired in the office of DSP before proceeding to trap was reduced into writing which is Ex.P9-pre trap proceedings.

4. It is further the case of prosecution that the trap party reached the office of the appellant. PW1 entered into the office and the other trap party members waited outside the office. PW1 went inside and on the alleged demand made by the accused, the amount was offered but the appellant directed the amount to be handed over to A2. PW1 came out and relayed signal to the trap party indicating demand and acceptance of bribe by the appellant. The trap party entered inside and conducted test on the hands of

appellant which turned positive. Thereafter, the hands of A2 were tested which turned positive. The amount was seized from A2. The relevant file regarding medical bills etc. were all collected. What all transpired during the trap proceedings in the office of appellant was also reduced into writing which is Ex.P16-post trap proceedings.

5. Investigation was then handed over by the DSP-Uma Kanth Reddy to PW16 who investigated the case and filed charge sheet.

6. The DSP who arranged the trap died prior to commencement of trial.

7. Learned Special Judge having examined the witnesses PWs.1 to 16 and considering the documents Exs.P1 to P24 marked on behalf of the prosecution found favour with the version of the prosecution regarding the demand and acceptance of bribe by A1 and involvement of A2 on the date of trap. Learned Special Judge found though PW1 turned hostile to the prosecution case, however the other circumstances in the case clearly indicate that the accused 1 & 2 were involved and accordingly convicted them.

8. The leaned Senior Counsel Sri D. Avinash Reddy, appearing for the appellant, submits that the conviction has to be set aside,

mainly on two grounds. Firstly, PW1 has turned hostile to the prosecution case and did not support the case of the prosecution regarding demand and stated that the amount given was towards donation for union fund. Secondly, the amount of Rs.75,000/- was already released in favour of PW1 and in accordance with Ex.P3-proceedings dated 16.07.2002 any expenditure over and above Rs.75,000/- had to be borne by PW1 himself. In the said circumstances, the question of passing any bills above Rs.75,000/- does not arise and no official work was pending with appellant. Counsel further argued that when witness turns hostile, his 164 Cr.P.C.statement cannot be looked into.

9. He relied on the following Judgments to substantiate that the statement made under Section 164 of Cr.P.C. is not substantive evidence.

***i) Ram Kishan Singh v. Harmit Kaur and others<sup>1</sup>***

***ii) Sacha v. State<sup>2</sup>***

***iii) T.Diwakara v. State of Karnataka<sup>3</sup>***

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<sup>1</sup> (1972) 3 SCC 280

<sup>2</sup> MANU/TN/3340/2017

<sup>3</sup> MANU/KS/8299/2006

10. He also submits that when two views are possible, benefit of doubt should be given to the Accused Officer. In support of his contention he relied on the following Judgments;

***i) T.Subramanian v. State of T.N*** <sup>4</sup>

***ii) SK Hussain v. State of A.P.*** <sup>5</sup>

11. Senior Counsel further argued that demand and pending official work has to be proved and mere recovery of money from the accused officer will not entail the prosecution to claim presumption in their favour. In support of the said contentions, he relied on the following Judgment.

***Gulam Mohammed v. The Inspector of Police, ACB*** <sup>6</sup>

12. Finally, the learned Senior Counsel would submit that at the earliest point of time, during post trap proceedings, A1 informed the DSP that the amount which was given by PW1 was towards union fund and during trial, the said version was supported by PW1. In the said circumstances, the conviction has to be set aside.

13. Learned Special Public Prosecutor appearing for the ACB would submit that the hostility of PW1 is of no consequence when the other circumstances of the case are looked into. The learned

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<sup>4</sup> (2006) 1 SCC 401

<sup>5</sup> (2020) 1 ALT (Cri) 82

<sup>6</sup> MANU/TL/1334/2022

Special Judge has rightly assessed the facts and committed the accused. In fact, bills were pending with the appellant/A1 and it was for him to release the bills. For the reason of releasing the amount due, the demand was made and consequently he was trapped and money was recovered. The prosecution has proved its case beyond reasonable doubt.

14. PW1 did not support the case of the prosecution. In the chief-examination, he stated that the amount of Rs.1,500/- was given towards donation. He further stated in chief-examination that the appellant/A1 enquired with him whether PW1 brought the demanded donation, PW1 handed over the amount. After the trap party entered, A1 specifically informed the DSP and the trap party members that the complainant has already received Rs.75,000/- towards Angiogram surgery and the amount of Rs.2,077/- was also deposited in the SBI account. The amount of Rs.1,500/- was given towards donation for the union fund.

15. In the said circumstances, when the amount of Rs.75,000/- was already given, which is on record and not denied by any of the witnesses, it is highly improbable that the appellant would have demanded bribe for releasing the amount over and above Rs.75,000/- which is prohibited as evident from Ex.P3.



Apparently, nothing was pending before A1. Even according to PW4 and PW16-Investigating Officer, there was no official work pending with PW1 as on the date of trap. The Investigating Officer-PW.16 himself admitted during cross-examination;

*“As per Ex.P11 proceedings of Chief Engineer, dt.16.07.2002, PW1 has bsworn (has to bear) expenditure over and above Rs.75,000/- by himself.*

*The A.O.1 approved the note prepared by A.O.2 on 24.09.2002. By 24.09.2002, A.O.1 discharged his duty by endorsing in the note prepared by A.O.2 and submitted it to the Executive Engineer for his approval; and that there is no official favour to be done by A.O.1 to PW1 by 24.09.2002, pertains to this case.*

*When the DSP, ACB asked A.O.1, he represented that the informed PW.1 that PW.1 is not entitled for the medical bill as per the Government orders and that with regard to Rs.2,077/- a cheque was deposited at SBH bank into PW.1's account No.1038, and that PW1 offered some amount towards union fund.”*

16. The finding of the learned Special Judge that demand was made since work was pending with appellant, is incorrect which is evident from the documents filed by the prosecution under Exs.P3-copy of proceedings dt.16.07.2002, Ex.P11-made up file and also evidence of PWs.4 and 16. PW1 admitted before the Court that A1 was working as President of the Union for the past

20 years and at the behest of rivals, he had lodged complaint against A1.

17. The demand aspect has to be initially proved by the prosecution beyond reasonable doubt. Once the prosecution succeeds proving demand then they can place reliance on corroboratory evidence of recovery. Unless the initial burden is discharged, the Court cannot form its opinion of guilt and convict the accused officer only on the basis of recovery of the amount. It is well settled that mere recovery of amount divorced from circumstances is of no consequence as held by the Honourable Supreme Court in the following Judgmnets;

i) In **B.Jayaraj v. State of A.P**<sup>7</sup> the Honourable Supreme Court held that proof of demand is sine qua non to prove the offences punishable under Section 7 & 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. It was held that mere recovery of the bribe amount is not sufficient to prove the above offences. It was also held that proof of acceptance of a bribe can only follow if there is proof of demand. Moreover it was held that the presumption under section 20 of the Act

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<sup>7</sup>2014 (13) SCC 55

can be drawn only if there is proof of acceptance of demand of bribe.

ii) In **P.Satyanarayana Murthy v. District Inspector of Police, State of A.P**<sup>8</sup> a three judge bench of the Supreme Court held that proof of demand of illegal gratification is the gravamen of the offences punishable under Section 7 & 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and in the absence of the same, the charge would fail. It was also held that mere acceptance and recovery of the illegal gratification would not be sufficient to prove the above charges.

18. Though PW1 turned hostile to the prosecution case, the learned Special Judge placed reliance on the 164 Cr.P.C. statement of PW1 to conclude that there was demand and acceptance or bribe. The statement recorded by the Police under Section 161 of Cr.P.C. and also the statement recorded under Section 164 of Cr.P.C. by the Magistrate can only be used for the purpose of contradicting a witness regarding his earlier statement, while the witness is in the witness box. The

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<sup>8</sup> 2015 (10) SCC 152

statement recorded under Section 164 of Cr.P.C. is not substantive evidence to place reliance upon, when the contents are denied by the witness. The learned Special Judge committed an error in placing reliance on the statement recorded under Section 164 of Cr.P.C., when the witness-PW1 had turned hostile to the prosecution case and did not support the version earlier given in the complaint and 164 Cr.P.C. statement.

19. In the present case, the prosecution has failed to prove the case of demand and acceptance by the appellant and accordingly, the findings of the Special Judge and consequent conviction is hereby set aside.

20. Criminal Appeal is allowed and the appellant/A1 is acquitted. Since the appellant is on bail, his bail bonds shall stand discharged.

Date: 16.07.2024  
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**K.SURENDER, J**