

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

Criminal Appeal No.569 OF 2009

Between:

Chandragiri Yellaiah

... Appellant

And

The State ACB, Hyderabad Range
rep. by Special Public Prosecutor

..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED : 13.03.2024

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 |

K.SURENDER, J

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

+ CRL.A. No.569 of 2009

% Dated 13.03.2024

Chandragiri Yellaiah

... Appellant

And

\$ The State ACB, Hyderabad Range
rep. by Special Public Prosecutor

..Respondent/Complainant

! Counsel for the Appellant: Sri G.Vidya Sagar, Senior Counsel for

Sri Vanam Vishwanatham

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

>HEAD NOTE:

? Cases referred

2022(4) SCC 574

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.569 OF 2009****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 one year under both counts vide judgment in C.C.No.26 of 2007 dated 30.04.2009 passed by the Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. Learned Special Judge found him guilty for demanding and accepting bribe of Rs.4,000/-.

2. Briefly, the case of P.W.1 is that he inherited Acs.3.10 guntas of land at Adibatla village after the properties were shared amongst four brothers. Since partition was done, for the purpose of fixing boundaries to his property, P.W.1, who is the complainant approached the MRO office on 30.08.2006 and submitted an application Ex.P2 along with challan Ex.P3. MRO/P.W.5 endorsed on the said application Ex.P3 as "Surveyor, pl get it surveyed urgently". The appellant did not

give any receipt on that day but asked PW1 to take photocopy of the application which is with the endorsement of the MRO. Appellant demanded an amount of Rs.5,000/- for the purpose of giving notice to other pattadars and to do survey. Again P.W.1 met the appellant on 11.09.2006 and the appellant insisted on the bribe, however, reduced the bribe amount to Rs.4,000/-.

3. Aggrieved by the persistent demand of bribe by the appellant, P.W.1 approached the ACB authorities, after drafting complaint Ex.P1 with the help of his son. Having received the complaint on 11.09.2006, P.W.1 was asked to come on 13.09.2006 with the bribe amount. The proceedings started at 7.00 a.m on 13.09.2006 and the formalities before proceeding to lay a trap were followed by the DSP in the presence of the other trap party members. Ex.P5 pre-trap proceedings were drafted before proceeding to the office of the MRO to handover bribe when demanded by the appellant.

4. The trap party approached the office around 9.00 a.m and P.W.1 went inside. The appellant was sitting along with

two persons and after they left, appellant asked whether bribe amount was brought. The amount was handed over by PW1 to the appellant, which was kept in his shirt pocket; P.W.1 signalled to the trap party intimating acceptance of bribe by the appellant. The trap party entered into the room where the appellant was sitting and confronted regarding acceptance of bribe. According to mediator and DSP, initially, the appellant stated that P.W.1 offered the amount which was kept in his left shirt pocket and again stated that the amount was forcefully thrust into his shirt pocket though he resisted.

5. The hands of the appellants were tested and right hand turned positive and left hand tested negative for the test. The amount was handed over to the trap party. Appellant was asked to give the application filed by P.W.1, however, on searching the almirah, the application was not found. P.W.3 another clerk also searched but the application could not be traced. Then P.W.1 produced photocopy of the application stating that he had taken the photocopy after the MRO endorsed on it to the appellant. Having concluded the

formalities during post-trap proceedings, the proceedings were concluded and Ex.P11 was drafted.

6. The Investigating Officer examined witnesses, obtained sanction and filed charge sheet after completion of investigation. The prosecution examined witnesses PWs.1 to 8 and marked Exs.P1 to P15. On behalf of the defence, DWS.1 & 2 were examined and two documents Exs.D1 & D2 were marked. Having considered the evidence on record, the Special Judge convicted the appellant.

7. Learned counsel appearing for the appellant would submit that firstly, no proof is filed by P.W.1 to show that he was in possession of Acs.3.10 gutas after the property was partitioned in between the brothers. In fact, Ex.D1 is the certified copy of the sale deed which reflects that all the brothers sold Acs.18.10 guntas to M.Vijay Bhaskar Reddy on 29.04.1987 under registered sale deed and it was accepted by the witnesses. The version of P.W.1 that the sale deed was cancelled and that they were in possession from 2004 is not proved by the prosecution. In the absence of possessing any

land after land being sold, the question of seeking survey does not arise. It appears that on the pretext of survey, P.W.1 wanted to create litigation and illegally encroach upon the land which was already sold. Appellant was falsely implicated when it was informed that survey could not be conducted, since PW1 did not possess any land. The prosecution has failed to prove that the application Ex.P3 was handed over to the appellant/surveyor for the purpose of conducting survey. He relied on the judgment of Hon'ble Supreme Court in the case of **K.Shanthamma v. The State of Telangana**¹. The Hon'ble Supreme Court held that unless the prosecution proves the factum of "demand", by convincing evidence, mere recovery of the amount cannot be made basis to convict the accused.

8. On the other hand, learned Special Public Prosecutor for ACB would submit that the amount was recovered from the shirt pocket of the appellant. He had given two versions at the time of post trap proceedings. Taking advantage of the

¹ 2022(4) SCC 574

application not being traceable, the appellant had stated that he had not received Ex.P3 and it must have been handed over to P.W.3. However, PW.3 stated that no such application was given to her. In the back ground of pending work before the appellant and the consequent recovery on the date of trap would only go to show that the appellant had demanded and accepted bribe amount.

9. The prosecution had relied on Ex.P3 which is an application given by P.W.1 for the purpose of surveying Acs.3.10 gutnas of land. It is admitted by P.W.1 that the application was given to P.W.5, who had endorsed on the said application and forwarded it to the appellant. In the complaint, it is not mentioned that P.W.5 handed over original Ex.P3 to P.W.1, in turn to hand it over to the appellant. However, the said version of the application being signed by P.W.5 and handing it over to P.W.1 had come up for the first time during post trap proceedings. Having failed to trace out the original application Ex.P3, the DSP had taken photocopy of Ex.P3, which is Ex.P2 and proceedings were concluded. Ex.P3

original was traced on 01.11.2006 after nearly 50 days of the trap. The said application was handed over by P.W.5 to the Investigating authorities.

10. No proceedings were conducted by P.W.5 when the said original was traced. P.W.3 did not state as to where from the original Ex.P3 was traced. Likewise, P.W.5 also did not state as to where from Ex.P3 was traced. However, P.W.5 stated that in between two almirahs in the room of the appellant, application Ex.P3 was found. In the back ground of P.W.1 not mentioning that the original application was endorsed by P.W.5 and handed over to him, creates any amount of doubt regarding the version given by P.W.1 and P.W.5, subsequently.

11. The MRO who is P.W.5, without following the process would not have endorsed on the application Ex.P3 and handed over the same to P.W.1. Admittedly, there is no record in the office apart from endorsement made on Ex.P3 and stated by P.W.5 that he had endorsed on it, to show that the application was received in the office. According to the procedure, registers are maintained and entry should have been made in

the said register for receiving the said application. None of the registers in the MRO office reflect receipt of the said application. P.W.5 did not explain as to why he had not followed the procedure in case of P.W.1 while receiving the application Ex.P3 for survey.

12. The other important aspect is the failure of the prosecution to prove that P.W.1 was possessing Acs.3.10 guntas of land in Sy.No.45 of Adibatla village. Having admitted that the land was sold by him and his brothers vide Ex.D1 on 29.04.1987 in which P.W.1's name is shown as 4th vendor, no document is produced to show that the said sale deed was cancelled nor the purchaser M.Vijay Bhaskar Reddy was examined. Once a claim is made that the said sale deed was cancelled, duty is cast upon P.W.1 to produce the relevant documents to show that he was in possession of the said land and Ex.D1 was cancelled. In the absence of any proof to show that Ex.D1 was cancelled and P.W.1 being in possession of Acs.3.10 guntas of land, the question of causing survey does not arise.

13. Ex.P3, which is an application seeking survey was given to P.W.5, who did not follow the procedure. Ex.P3 was not traced in the office and it was traced only 50 days after the trap. The question of appellant surveying the land and to fix boundaries of the property would not arise. The Government Surveyor would only demarcate the extent of land in a particular survey number and will not demarcate land on the basis of any settlement or partition in between six brothers. In the event of any such settlement in between members of the family distributing land amongst themselves, it is for the brothers to engage a private surveyor to demarcate their respective extents in accordance with the division of land. None of the five other brothers are examined to state that Ex.D1 was cancelled or that PW1 was in possession of land to an extent of Ac.3.10 guntas.

14. In the above mentioned circumstances there would arise any amount of doubt regarding demand made by the appellant in the absence of P.W.1 possessing any land. For the said reason, recovery of the amount from the appellant cannot be

made basis when the very prosecution version of P.W.1 possessing land is not proved. For the aforementioned reasons, benefit of doubt is extended to the appellant.

15. In the result, the judgment of trial Court in C.C.No.26 of 2007 dated 30.04.2009 passed by the Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, is hereby set aside. Since the appellant is on bail, his bail bonds shall stand cancelled.

16. Criminal Appeal is allowed.

K.SURENDER, J

Date: 13.03.2024

Note: L.R. copy to be marked.

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