

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

Criminal Appeal No.15 OF 2010

Between:

Maddu Veera Reddy

... Appellant

And

The State rep. by Public Prosecutor.

..Respondent

DATE OF JUDGMENT PRONOUNCED : 06.03.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 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.15 of 2010

% Dated 06.03.2024

Maddu Veera Reddy

... Appellant

And

\$ The State rep.by Public Prosecutor

...Respondent

! Counsel for the Appellant: Badeti Venkata Rathnam

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

>HEAD NOTE:

? Cases referred

¹ 2014 CrI.L.J 2433

² AIR 2015 Supreme Court 3549

³ AIR 2009 Supreme Court 2022

⁴ 2016 CrI.L.J 1079

⁵ 2015 CrI.L.J 1715

⁶ AIR 1977 Supreme Court 170

⁷ 2022(4) SCC 574

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.15 OF 2010****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 two years and also fine of Rs.1000/- under both counts, in default to undergo simple imprisonment for a period of three months vide judgment in C.C.No.38 of 2005 dated 29.12.2009 passed by the 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 a Constable in Chandhurthy Police Station, Karimnagar District. P.W.1/Defacto complainant, his father/P.W.2 and brother/P.W.3 were having disputes with one Bhoomaiah, who is the uncle of P.W.1. A complaint was lodged by P.Devaiah against P.Ws.1 to 3 for intervening in the altercation that happened in between the said Devaiah and Bhoomaiah. On the basis of the said incident that happened

on 10.12.2003, petty case was booked against P.Ws.1 to 3. P.Ws.1 to 3 were appearing before the Court. On 21.01.2004, when they appeared, it is alleged that the appellant demanded to pay Rs.2,000/- to see to that nothing adverse would happen in the case, failing which, they would have to face dire consequences in the case. Aggrieved by the said threats and demand of bribe, P.W.1 approached ACB authorities on 06.02.2004 and filed a complaint.

3. On the basis of the complaint, trap was arranged on 07.02.2004 on which date, the case of P.Ws.1 to 3 stands posted before the Magistrate. On 07.02.2004 in the presence of complainant, mediators and the DSP, pre-trap proceedings were conducted under Ex.P5. Thereafter, trap party members proceeded to the JFCM Court at Sircilla. P.Ws.1 to 3 went inside the Court premises and came out around 12.15 p.m along with the appellant. At that juncture, P.W.1 conveyed the signal to the trap party regarding acceptance of bribe by the appellant. Immediately, the trap party accosted the appellant and conducted tests on the hands of the appellant, which

proved positive. Accordingly, proceedings were concluded and Ex.P7 post trap proceedings were drafted near the Court premises.

4. Learned Special Judge examined P.Ws.1 to 7 and marked Exs.P1 to P11 on behalf of the prosecution. D.Ws.1 to 3 were examined on behalf of the defence/appellant and Exs.D1 to D4 were marked. Relevant GD entries on 21.01.2004 and 07.02.2004 were marked as Exs.X1 and X2 during trial.

5. Learned Special Judge found that the version of the demand of bribe was believable though P.Ws.1 to 3 have turned hostile to the prosecution case. On the basis of recovery and also on the ground that though the appellant stated that money was taken towards payment of fine on behalf of P.Ws.1 to 3, since no such fine was imposed by the JFCM Court, acceptance of money as bribe was believed by the Special Court.

6. Learned counsel appearing for the appellant would submit that the trial Court had committed grave error in convicting the appellant when the aspect of demand was not

proved. P.Ws.1 to 3 have turned hostile to the prosecution case and specifically stated that the amount was given towards payment of fine. Even in the post trap proceedings, the immediate explanation of the appellant as recorded in Ex.P7 post trap proceedings is that the amount was accepted as payment of fine before the Court. According to appellant, he further explained during post trap proceedings that in petty cases, the amount would be collected from the accused and paid in the Court and obtain receipts which is general practice. Counsel further submitted that in the absence of proof of demand, there cannot be any conviction on mere recovery of the amount.

7. Learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **B.Jayaraj v. State of Andhra Pradesh**¹, wherein it is held that when there was no other evidence adduced by the prosecution to prove demand, the recovery of amount from the accused cannot form basis to convict the accused. In **P.Satyanarayana Murthy v. District**

¹ 2014 CrI.LJ 2433

Inspector of Police², the Hon'ble Supreme Court held that mere recovery or acceptance of the amount dehors the proof of demand, would not be sufficient to convict an accused under Sections 7 and 13 (1)(d) of the Prevention of Corruption Act. In **C.M.Girish Babu v. C.B.I, Cochin, High Court of Kerala**³, the Hon'ble Supreme Court held that the explanation of the accused that the amount was received towards repayment of loan can be believed and burden cast upon the accused is by preponderance of probability. In **Krishan Chander v. State of Delhi**⁴, when the complainant had turned hostile and there was no other evidence regarding the demand and acceptance by the accused, the Hon'ble Supreme Court held that no case was made out since demand was not proved. Similar view was taken by the Hon'ble Supreme Court in **C.Sukumaran v. State of Kerala**⁵. He also relied on the judgment of the Hon'ble Supreme Court in the case of **Rabindra Kumar Dey v. State**

² AIR 2015 Supreme Court 3549

³ AIR 2009 Supreme Court 2022

⁴ 2016 Cr.L.J 1079

⁵ 2015 Cr.L.J 1715

of Orissa⁶, wherein it is held that the prosecution has to stand on his own legs and cannot derive any strength from the weakness of the defence.

8. On the other hand, learned Special Public Prosecutor argued that though at the earliest point of time, the version given by the appellant was that he had taken the money for payment of fine, it is on record that the Court has not imposed any fine. In the said circumstances, the question of money being accepted by the appellant does not arise. Since the very basis for which the money was accepted, was found to be false, the trial Court has rightly convicted the appellant.

9. P.W.1 is the complainant, P.W.2 is relative and P.W.3 is the father of P.W.1. All three witnesses have turned hostile to the prosecution case. They stated during the course of their evidence during chief examination that the Magistrate enquired with them when they were produced before Magistrate, whether they would pay the fine amount and when P.Ws.1 to 3 informed that they would pay fine, they were

⁶ AIR 1977 Supreme Court 170

asked to stay outside the Court. While they were standing outside the Court, the appellant went there and P.Ws.1 to 3 asked the appellant to pay fine amount and handed over the bribe amount which is Rs.1,500/-. All the three witnesses were declared hostile and cross-examined by the Public Prosecutor. P.Ws.1 to 3 stuck to their version that the amount of Rs.1,500/- (bribe amount) was handed over to the appellant towards payment of fine in the Court, in the petty case, they were charged for. It is admitted that the case was pending and it is to the knowledge of P.Ws. 1 to 3 that they have to pay fine amount in the said case.

10. The appellant when confronted immediately after the trap, during post trap proceedings stated that he accepted the money to pay the fine amount into the Court on behalf of PWs.1 to 3 in petty case STC No.6 of 2004. When further questioned by the Inspector whether the fine amount was ordered by the Magistrate, the appellant replied that every Saturday, the Court disposes off petty cases and collects fine amount from the accused therein.

11. Learned Special Judge relied on the statement made by P.W.1 in his own handwriting under Ex.P1 and also under Section 164 CrPC statement which was given by the witnesses. The contents of Ex.P1 complaint cannot be relied upon when the author i.e., P.W.1 has stated that the contents in Ex.P1 were incorrect. Section 164 Cr.P.C statement of a witness is a previous statement and it can only be used for the purpose of confronting the witness either for the purpose of any omissions or contradictions during trial. It is not a substantive piece of evidence to rely upon to infer guilt of an accused, when the witness turned hostile to his earlier statement. The learned Special Judge had heavily relied on Section 164 Cr.P.C statement made before the Magistrate to infer that demand was made by the appellant and found that the witnesses were won over subsequently.

12. The factum of demand has to be proved by the prosecution beyond reasonable doubt. On the basis of assumption that the witness must have been won over by the accused, cannot form basis to infer that there was a demand.

The Hon'ble Supreme Court in **K.Shanthamma v. The State of Telangana**⁷ held that proof of demand is *sine qua non* for establishing guilt of an accused under Section 7 of the Prevention of Corruption Act. Unless the factum of demand is proved, the recovery if any cannot form basis to convict the accused.

13. In the present case, recovery was made from the appellant. However, at the earliest point of time, appellant explained regarding the possession of the tainted currency. He informed that on Saturdays petty cases would be taken up by the Magistrate and fine would be imposed, which would be paid to the Court through the Constables. The said procedure was adopted in the said Courts. P.Ws.1 to 3 when they appeared before the Magistrate, it is their case that the Magistrate questioned them whether they are ready to pay the fine amount and when accepted, they were asked to wait for sometime outside the Court. P.Ws.1 to 3 came out and handed

⁷ 2022(4) SCC 574

over the amount to the appellant towards fine amount and thereafter trap party had accosted the appellant.

14. In the circumstances of the witnesses turning hostile and the explanation at the earliest point of time that the amount was towards fine is corroborated by the evidence of the hostile witnesses P.Ws.1 to 3, factum of demand is not proved. Mere recovery of the amount from the appellant cannot be made basis to record conviction. Accordingly, benefit of doubt is extended to the appellant.

15. In the result, the judgment of Special Court in C.C.No.38 of 2005 dated 29.12.2009 is hereby set aside. Since the appellant is on bail, his bail bonds stand discharged.

16. Criminal Appeal is allowed.

K.SURENDER, J

Date: 06.03.2024

kvs