

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

Criminal Appeal No. 22 OF 2010

Between:

Sri Kayithi Manohar Reddy

... Appellant/
Accused

And

The State of A.P. rep. by the Inspector of
Police, ACB, Nizamabad Range,
Nizamabad, Rep. by Spl.Public Prosecutor,
High Court, Hyderabad.

... Respondent/
Complainant

DATE OF JUDGMENT PRONOUNCED: 24.06.2024

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. 22 OF 2010

% Dated 24.06.2024

Sri Kayithi Manohar Reddy

... Appellant/
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Nizamabad, Rep. by Spl.Public Prosecutor,
High Court, Hyderabad.

... Respondent/
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! Counsel for the Appellant: Sri A.Hariprasad Reddy

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

>HEAD NOTE:

? Cases referred

¹ (2011) 6 Supreme Court Cases 450

² (2002) 10 Supreme Court Cases 371

³ 2015 (2) ALD (CrI.) 883 (SC)

⁴ 2013 (3) ALT (CRL.)(SC) 316 (D.B.)

⁵ (2014) 13 Supreme Court Cases 55

⁶ AIR 1970 Supreme Court 450

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.22 OF 2010****JUDGMENT:**

1. This appeal is filed by the appellant/Accused Officer, questioning the conviction recorded by the Prl.Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, in C.C.No.22/2005 vide Judgement dated 31.12.2009, and sentencing him to undergo Rigorous Imprisonment for a period of six months and to pay a fine of Rs.1,000/- for the offence punishable under Section 7 of the P.C.Act, 1988; and to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.1,000/- for the offence punishable under Section 13(1)(d) r/w.Section 13(2) of the P.C.Act, 1988.

2. Heard learned counsel for the appellant and the Special Public Prosecutor representing ACB.

3. The case of the prosecution is that PW1 who is the defacto complainant was driver of an Auto. The Government allotted Fair Price Shop in the name of his wife. Rice was delivered to daily wage labour under the 'Food for work' Scheme. In the said connection, Rs.6,800/- was due towards commission from the government for distributing the rice according to the scheme. The Accused Officer who was the Deputy MRO informed PW1 about the said commission

amount that his wife would get. PW1 and his wife PW2 met the Accused Officer and asked for the amount. The Accused Officer demanded 25% of the commission amount of Rs.6,800/- which is Rs.1,700/-. Aggrieved by the said demand on 30.11.2003, PW1 approached the DSP, ACB – PW8 and lodged Ex.P1 complaint. Having received the complaint, trap was arranged on 02.12.2003.

4. Both PW1-Defacto Complainant and his wife-PW2 went to the office of ACB on 02.12.2003. Apart from PW1 and PW2, PW8-DSP, PW10-Inspector along with PW3-independent witness and others, formed part of the trap party. The Pre Trap Proceedings were drafted in the office of DSP which is Ex.P4. Having concluded the pre-trap proceedings, the trap party proceeded to the office of the Accused Officer. Both PWs.1 and 2 entered into the office and came to know that the accused officer was on tour. Both of them came out and informed the DSP-PW8 about the absence of the accused officer. The trap party left and after having lunch came back around 3.30 p.m. to the office of the Accused Officer and waited.

5. The Accused Officer came to the office on a motorcycle and having parked the vehicle went to his table. PWs.1 and 2 met the accused and enquired about the amount that would be paid to them for which the accused officer demanded bribe. Bribe amount was

handed over and the accused counted the amount with both hands and kept the same in his left side shirt pocket. Then, PW2 was asked to sign in the acquaintance register and in the meantime, PW1 went out and signalled to the trap party indicating demand and acceptance of bribe by the accused officer. The trap party entered into the office.

6. The DSP questioned the Accused officer about the bribe amount and even prior to that tested both the hands in the presence of mediators with Sodium Carbonate powder solution. Phenolphthalein powder was smeared on the currency notes. To verify whether the said notes were handled by the accused, test was conducted. The Sodium Carbonate solution test turned positive on both hands of the accused officer. Thereafter, the accused handed over the bribe amount from his shirt pocket. The accused was examined during post trap proceedings. The complainant and others were also examined. The relevant documents pertaining to the work, commission bills etc. were seized during the said Proceedings. After conclusion of the Post Trap proceedings, investigation was handed over to PW10. Investigating Officer-PW10, having examined the relevant witnesses and collecting documents and after obtaining sanction from the competent authority filed charge sheet.

7. The Special Judge framed charges under Section 7 and 13(1)(d) of the P.C.Act. On behalf of the prosecution PWs.1 to 10 were

examined and Exs.P1 to P16 were marked. M.Os.1 to 8 were also placed on record by the prosecution. DW1 who was Fair Price Shop dealer was examined in defence.

8. The learned Special Judge found that the evidence of PW1 and also the other circumstances relied on by the prosecution are convincing and accordingly convicted the appellant.

9. Learned Counsel appearing for the appellant would submit that the learned Special Judge committed an error in convicting the accused when the complainant-PW1 and his wife both turned hostile to the prosecution case. The very case of the prosecution regarding the demand and acceptance was not spoken to by PWs.1 and 2, as such, the question of convicting the accused does not arise. Further, DW1 who was present when the incident had taken place had clearly stated that the amount was given towards repayment of loan. In the background of the witnesses turning hostile and the defence of the accused being probable, the conviction has to be reversed. At the earliest point of time, even according to the mediator-PW3 and DSP-PW8, and also as seen from the Ex.P10-Post Trap Proceedings, the demand of bribe was denied by the accused.

10. Learned Counsel relied on the Judgment of the Honourable Supreme Court in ***State of Kerala and another v. C.P.Rao***¹ wherein, the Honourable Supreme Court held that mere recovery of the bribe amount itself is not sufficient to prove charge of bribery and unless demand is proved, conviction cannot be sustained.

11. In ***Punjabrao v. State of Maharashtra***² the Honourable Supreme Court held in the circumstances of the case that the statement made during examination under Section 313 of Cr.P.C. was convincing and accordingly acquitted the accused.

12. In ***P.Satyanarayana Murthy v. District Inspector of Police and another***³ the Honourable Three Judge bench of the Supreme Court held that proof of demand is indispensable essentiality to prove the offence under Section 7, 13 (1)(d) of the P.C.Act. In the absence of proof of such demand, the recovery of currency from possession of the accused would not establish the offence of bribery.

13. In ***Sujit Biswas v. State of Assam***⁴ the Honourable Supreme Court held that the circumstances in a criminal case has to be established beyond reasonable doubt.

¹ (2011) 6 Supreme Court Cases 450

² (2002) 10 Supreme Court Cases 371

³ 2015 (2) ALD (CrI.) 883 (SC)

⁴ 2013 (3) ALT (CRL.)(SC) 316 (D.B.)

14. Learned Counsel also relied on the Judgment of Honourable Supreme Court in ***B.Jayaraj v. State of Andhra Pradesh***⁵; ***Lachman Dass v. State of Punjab***⁶ wherein the Honourable Supreme Court while dealing with trap cases held that the defence of an accused has to be tested on the basis of probability and uncorroborated testimony of the complainant cannot form basis to convict the accused.

15. On the other hand, learned Special Public Prosecutor appearing on behalf of the ACB would submit that whatever was stated by PW1 during chief-examination corroborates with the version of demand and acceptance of bribe by the accused. The cross-examination was deferred and later, PW1 turned hostile to the prosecution case during cross examination and stated that the amount was returned to the accused which was taken as loan. The witness was won over and thereafter has turned hostile. In the said circumstances, when PW1 had specifically stated regarding the demand of bribe and the recovery on the trap date would suffice to make out an offence of bribery against the accused. Since the hostility was on account of PW1 being won over by the accused, the portion of his statement involving the accused in the case should be considered and accordingly, appeal has to be dismissed.

⁵ (2014) 13 Supreme Court Cases 55

⁶ AIR 1970 Supreme Court 450

16. PW1 has stated during chief-examination, initially, that there was demand and acceptance of bribe. However, the accompanying witness-PW2 who is wife of PW1 has completely turned hostile to the prosecution case and did not state anything about any kind of demand and acceptance. However, PW1 though in the chief-examination stated against the accused, however, during cross-examination supported the version of accused that the amount was given towards repayment of loan. Apparently, PW1 is a self-condemned witness. He has given two different versions before the Court. One version corroborating with the complaint and one version denying demand, which denial statement was also made before the Magistrate under Section 164 of the Cr.P.C. PW1 admitted that he was examined by the Magistrate on 23.12.2003 i.e. 20 days after the trap. During the statement before the Magistrate, he stated that the amount paid to accused was towards repayment of loan taken by him.

17. PW1 is the witness who has no respect for truth. Before the Magistrate, 20 days after the trap, he stated that the bribe amount was paid towards loan. He further stated in his cross-examination that the ACB authorities had threatened him to speak about the version of demand of bribe by accused before chief-examination commenced in the Special Court. A self contradictory witness who states different versions at different times, his evidence cannot be

relied upon selectively and in such circumstances. The Court has to look into other evidence that has been placed before the Court to infer demand and acceptance of bribe.

18. The other corroborating accompanying witness regarding the demand and acceptance is PW2 and she has turned hostile to the prosecution case. During the course of cross-examination of PW1, he stated that in fact he was running the Fair Price Shop which was in the name of PW2 and on 02.10.2003, proceedings were issued by the R.D.O. cancelling the dealership of his wife. The reason was the allegation of misappropriation of the rice around 13.15 Quintals for which show cause notice was also issued in July, 2003. There appears to be anger on account of cancellation of licence of fair price shop, which adversely affects PWs.1 and 2's income.

19. The Honourable Supreme Court in ***Punjab Raos's case (supra 2)*** held that if the defence taken by the accused during trial appears to be probable, the same can be considered. The version of all the accused is consistent stating that the amount on the trap date was towards repayment of the loan amount which was supported by both PWs.1 and 2 and also DW1-independent witness. Further the Fair Price Shop dealership in the name of PW2 was cancelled on the allegation of misappropriation of rice. As seen from the evidence, there is no other witness apart from the evidence of PWs.1 and 2 regarding

the demand. In fact, the contents of Ex.P1 were disowned by PW1 during trial. There is absolutely no evidence in the case which establishes by admissible evidence and proof beyond reasonable doubt the factum of demand by the accused. The Honourable Supreme Court in ***State of Kerala and another v. C.P.Rao (supra 1), P.Satyanarayana Murthy v. District Inspector of Police and another (supra 3), B.Jayaraj v. State of Andhra Pradesh (supra 5)***, held that in the absence of proof of demand, the subsequent evidence of recovery cannot form basis to prove the offence of bribery against the accused. The only evidence that is relied on by the prosecution is the recovery and the unreliable evidence of PW1 regarding demand.

20. In the said circumstances, since the factum of demand is not proved by the prosecution, mere recovery of the amount from the accused on the date of trap cannot form basis to sustain the conviction recorded by the trial Judge.

21. Accordingly, the appeal succeeds and allowed, setting aside the conviction recorded by the Prl.Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, in C.C.No.22 of 2005 dt.31.12.2009, under Sections 7 & 13(1)(d) r/w.13(2) of the P.C.Act, 1988. Since the appellants/accused officer is on bail, his bail bonds shall stand

discharged. As a sequel, miscellaneous applications, if any, pending shall stand closed.

K.SURENDER, J

Date: 24.06.2024

Note: LR copy to be marked.

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