

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

Criminal Appeal No.24 OF 2010

Between:

Soma Raghavender

... Appellant

And

The State of A.P,
rep. by DSP, ACB, Warangal Range

..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED :23.04.2024

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.24 of 2010

% Dated 23.04.2024

Soma Raghavender

... Appellant

And

\$ The State of A.P,
rep. by DSP, ACB, Warangal Range

Respondent/Complainant

! Counsel for the Petitioners: Sri A.Hariprasad Reddy

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

>HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.24 OF 2010

JUDGMENT:

1. The appellant aggrieved by the conviction recorded by the Principal Special Judge for SPE & ACB Cases, City Civil Court at Hyderabad for the offences under Sections 7 and Section 13(1)(d) r/w 13(2) of the Act of 1988 of the Prevention of Corruption Act, 1988 (for short "the Act of 1988") and sentenced to undergo rigorous imprisonment for a period of one year under both counts vide judgment in CC No.14 of 2005 dated 29.12.2009, the present appeal is filed.

2. Briefly, the case of the *defacto* complainant/P.W.1 is that he was sub-contractor of P.W.4, who secured the contract for laying road from Ramagudem to Pandavarigudem with the R & B Department. The agreement in between P.W.4 and R & B is Ex.P9. The said work had to be completed within 2 months from the date of agreement. P.W.4 was unable to execute the work and handed it over to P.W.1. Accordingly, P.W.1 completed work within stipulated time having invested money for completion of the work. The

appellant was the concerned Assistant Engineer who recoded measurements in the M Book. P.W.1 was given an amount of Rs.2.00 lakhs and also 34 tons of rice towards part payment of the contract. According to P.W.1, he was yet to receive an amount of Rs.1.00 lakh and 19 tons of rice.

3. For the reason of settling his outstanding payment from the department, P.W.1 approached the appellant on 20.07.2003 requesting him to prepare the bills for the remaining amount. The appellant demanded Rs.30,000/- towards bribe and when requested, the said amount was reduced to Rs.20,000/-.

4. P.W.1 then decided to approach ACB authorities with the grievance of the demand of bribe by the appellant. P.W.2 is the scribe of the complaint Ex.P1. The said complaint was handed over to the DSP, ACB on 18.08.2003 and the trap was arranged on 20.08.2003. In the meanwhile, according to the prosecution case, the antecedents of the appellant were enquired into and also the correctness of the complaint. Permission from the competent authority was also taken before laying trap. The DSP and Inspector

(died prior to commencement of trial) along with defacto complainant and other independent witnesses gathered in the guest house and pre-trap proceedings were conducted. Having concluded the pre-trap proceedings, Ex.P3 first mediator's report was drafted. After the pre-trap proceedings, P.W.1 called the appellant over phone and the appellant informed that he would come to P.W.1's house. Accordingly, around 11.50 a.m, the appellant went to the house of P.W.1. After entering into the house of P.W.1, P.W.1 asked about the outstanding payment whether it was ready. In turn, the appellant asked for the bribe which was paid to him. The appellant counted the amount and kept in his back pant pocket. P.W.1 offered tea to the appellant and came out and relayed signal to the trap party. The trap party entered into the house of P.W.1 and questioned the appellant regarding the bribe. The appellant informed the trap party that Rs.20,000/- was asked as hand loan. Accordingly, P.W.1 promised that he would provide either on 19.08.2003 or 20.08.2003 and the amount received was the loan amount.

5. The said amount was seized by the DSP, ACB. From the house of P.W.1, the trap party went to the house of the appellant as the appellant informed that the concerned M Books and other documents were in his house. Two M books, which are pertaining to the complainant and rough book of appellant, were seized from the house of the appellant. Ex.P10 was drafted for the seizure of the documents.

6. Investigation was handed over by the DSP to the Inspector. Having concluded investigation, the Inspector filed charge sheet for the aforesaid offences.

7. Learned Special Judge, having framed charges, examined P.Ws.1 to 7 and marked Exs.P1 to P13 on behalf of the prosecution. Exs.D1 to D3 were marked during the course of cross-examination of prosecution witnesses. Learned Special Judge found the appellant guilty and accordingly convicted him.

8. Learned counsel appearing for the appellant would submit that there was no work which was pending with the appellant. According to P.W.7, who was the Executive Engineer, R & B, he

stated in his chief-examination that the bill was prepared by the appellant and also recorded measurements in Exs.P6 and P7 measurement books. After the appellant measured the work, P.W.7 checked the measurements and forwarded it to the Executive Engineer. In the cross-examination, P.W.7 stated that unless the contractor lifts the rice component, appellant cannot prepare the abstract to be submitted. As per the record, as on August, 2003, Contractor (P.W.4) did not lift the rice component and only in the month of September, 2003, he lifted the rice component. Basing on the admission of P.W.7, it is not disputed by the prosecution that no work was pending with the appellant. Further, the appellant had spontaneously stated before the DSP during the post-trap proceedings that he wanted loan of Rs.20,000/-. Accordingly, the said amount was provided on the date of trap. Even the Bank account was searched and according to the investigation, there were less than Rs.1,000/- in his bank account. The reason for falsely implicating the appellant is due to the action of the appellant in removing the shop of P.W.1 which was illegally encroached and erected, along with other shops. Holding grudge against the

appellant, under the garb of providing loan, the appellant was falsely trapped.

9. On the other hand, learned Special Public Prosecutor appearing for the ACB would submit that the version of the appellant runs contrary to probability. If at all P.W.1 developed grudge against the appellant, the question of providing loan amount would not arise. Only for the reason of giving explanation during the post-trap proceedings that Rs.20,000/- was taken as loan, such explanation cannot disprove the case of the prosecution that the amount was towards bribe.

10. P.W.1 had admittedly undertaken contract work as a sub-contractor which was awarded to P.W.4. Earlier bills were cleared. It is not in dispute that the work was completed, but the total outstanding was not settled. Though it is argued by the learned counsel that, according to P.W.7, initially rice component has to be lifted and thereafter, the bill would be settled, the same in any manner will not disprove the case of the prosecution that the work of finalizing the bill was still pending. According to P.W.7, the said

work was completed and Rs.1.00 lakh cash component was yet to be paid to P.W.4.

11. The appellant had accepted the receipt of amount of Rs.20,000/-, however, stated that the said amount was towards loan that was asked by the appellant and P.W.1 agreed to provide the said loan. The said defence runs contrary to the facts of the case. Even according to the appellant, P.W.1 had illegally encroached into the government land and constructed shop. His shop along with other shops was demolished by the appellant. In the event of the appellant demolishing the shop of P.W.1, again the question of asking loan from P.W.1 is highly improbable. The burden that is shifted on to the accused under Section 20 of the Act can be discharged by preponderance of probability. Though, an explanation was given at the earliest point of time during the post trap proceedings that the amount was towards loan, however, the circumstances in the present case regarding the appellant projecting that P.W.1 was holding grudge for demolishing his shop is not convincing. No promissory note was executed nor any receipt. The reason for which the loan was sought is not explained. The

answer given to the DSP at the earliest point of time that bribe amount was towards loan, without any other convincing evidence is not sufficient to discharge the burden shifted onto the accused to explain the allegation of bribe.

12. Since the prosecution succeeded in proving that there was pending work, which is clearance of the final bill and the amount of Rs 20,000/- was paid by P.W.1 towards bribe on the date of trap, the appeal fails.

13. In the result, Criminal Appeal is dismissed. The trial Court is directed to cause the appearance of the appellant and send him to prison to serve out the remaining period of imprisonment. The remand period, if any, shall be given set off under Section 428 of Cr.P.C.

K.SURENDER, J

Date: 23.04.2024

Note: LR copy to be marked

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HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.24 of 2010

Date: 23.04.2024

kvs