

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

Criminal Appeal No.280 OF 2011

Between:

M.Chennaiah

... Appellant

And

The State of A.P,
rep. by Inspector of Police, ACB,
Hyderabad Range.

..Respondent/Complainant

Criminal Appeal No.291 OF 2011

Between:

K.Nagabhushanam

... Appellant

And

The State of A.P,
rep. by Inspector of Police, ACB,
Hyderabad Range.

..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED :26.04.2024

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.280 of 2011

% Dated 26.04.2024

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! Counsel for the Appellants: Sri C.Sharan Reddy in CrI.A.No.280/2011

Sri V.R.Machavaram in CrI.A.No.291/2011

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

>HEAD NOTE:

? Cases referred

¹ 1996(2) ALD (CrI.) 483 (S.C)

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL Nos. 280 and 291 OF 2011****COMMON JUDGMENT:**

1. Criminal Appeal No.280 of 2011 is preferred by A1 and Criminal Appeal No.291 of 2011 is preferred by A2. A1, A2 along with A4 were convicted for the offence under Section 13(1)(c) r/w 13(2) of Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of three years each and they were also sentenced to undergo rigorous imprisonment for a period of six months each under Section 120-B IPC vide judgment in C.C.No.1 of 2008 dated 11.03.2011 passed by the I Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. Since both the appeals arise out of the same judgment, both the appeals are heard together and disposed off by way of this Common Judgment.

2. Briefly, the case of the prosecution is that A1 worked as Deputy Chief Executive Officer, A2 worked as Accounts Officer and A3 worked as Superintendent at Zilla Parishad, Nalgonda,

A4 worked as Branch Manager, FEDCON Branch, Nalgonda, A5 worked as Business Manager, M/s.Nagarjuana District Co-op Marketing Society, Nalgonda, A6 worked as Business Manager, M/s.Neelgiri Super Bazar, Nalgonda and A7 worked as Chief Executive Officer, Zilla Parishad, Nalgonda. All the seven accused colluded for defrauding and misappropriating the government funds by purchasing stationery and other articles at exorbitant rates. The amount of Rs.19,35,477/- was spent. However, the investigation found that the value of the goods purchased resulted in loss to the Government to the tune of Rs.11,30,566/-. Accordingly, charges were framed against A1 to A7 for the offences under Section 13(1)(c) r/w 13(2) of the PC Act against all the accused. Charge was also framed under Section 120-B IPC.

3. The allegation is that the stationery and other articles were purchased at exorbitant rates from FEDCON without calling for quotations of any other persons. The Government Order Ex.P2 in which GORT No.87, MA dated 01.02.1999 directing all the heads of the departments and subordinate

offices and public undertakings under the control of Municipal Administration and Urban Development Department to procure stationery items from FEDCON (National Cooperative Consumers Federation) was followed. The prices of the materials to be supplied by FEDCON are at competitive prices with other agencies, material could be purchased. Accordingly, A2 circulated file through A1 for purchasing stationery and registers for the use of Mandals in the Zilla Parishads from the Zilla Parishad funds. P.W.1, who was the Joint Collector and In-charge as Chief Executive Officer, Zilla Parishad, Nalgonda decided to purchase the stationery from FEDCON, after A1 negotiated for the prices and later was reduced by 5% by FEDCON. Accordingly payment was made by PW.1 by order dated 25.01.2000 under Ex.P7. The stationery purchased was distributed to various Mandals under acknowledgment.

4. After the stationery and other items were distributed, there was an article which was published in Telugu News Daily regarding purchase of stationery and other material from

FEDCON at higher rates than the existing market rate. P.W.1 then caused enquiry and found that there was difference of prices collected by FEDCON over and above the market price. Meanwhile, FEDCON offered a special discount and returned Rs.4.00 lakhs through challan dated 12.05.2000. Having conducted enquiry, P.W.1 filed a report against A1 and A2 for misleading P.W.1 and causing loss to the Government to a tune of Rs.3,86,000/-. Thereafter, ACB had taken up investigation on the basis of information provided to them. Crime was registered and having investigated the case, ACB found that loss of Rs.11,30,566/- occurred on account of the purchase of material from FEDCON.

5. Charges were framed by the Special Judge and P.Ws.1 to 12 were examined. Note file, purchase orders, stock registers, sanctions etc were all filed under Exs.P1 to P44. Learned Special Judge found that A1, A2 and A4 of FEDCON were complicit of the offences and convicted them as stated supra. A3, A5 to A7 were found not guilty and accordingly acquitted.

6. Pending the present criminal appeal, A4 died and his Criminal Appeal No.356 of 2011 was disposed off as abated.

7. Learned counsel appearing for the appellants would submit that according to Ex.P40, the officials of Zilla Parishad and other officers of Panchayat Raj department were directed to purchase the office stationery etc., from FEDCON. The said Memo was dated 20.03.1992. In fact, Ex.P2 G.O dated 01.02.1999 directed that the stationery requirements should be purchased from FEDCON without following any tender process. It was P.W.1 who had asked A1 to negotiate and after negotiations when the price was reduced by 5%, P.W.1 made payments to FEDCON.

8. Learned counsel further argued that on the basis of article which was published in Telugu Daily Newspaper, when enquiry was conducted, P.W.1 came to the conclusion that there was an excess payment of Rs.3,86,000/- and accordingly, FEDCON represented by A4, had returned Rs.4.00 lakhs. However, the investigation by the ACB disclosed that excess payment of Rs.11,30,566/- was arrived

at without giving any details as to how the said amount was arrived at. No evidence was collected by the ACB to substantiate the rates at which purchases were made by P.W.1 and similar goods that were sold in the market. Unless it is specifically shown that the goods purchased by the department were at a higher price by comparing with the very same goods that were available in the open market, the alleged excess payment cannot be considered. Further, there is no evidence that any kick backs were given by the FEDCON to A1 and A2.

9. Learned counsel for the appellants relied on the judgment of Hon'ble Supreme Court in the case of **C.Chenga Reddy and others v. State of Andhra Pradesh**¹. The Hon'ble Supreme Court held that irregularities give rise to a strong suspicion regarding the bonafides of officials of the department, but such suspicion cannot be substitute of proof. Courts cannot draw inferences by placing burden on the accused which course is impermissible. Unless the

¹ 1996(2) ALD (Cri.) 483 (S.C)

prosecution profess its case beyond reasonable doubt, conviction cannot be recorded.

10. On the other hand, learned Special Public Prosecutor would submit that the collusion in between the FEDCON and the appellants is apparent. The costs of the stationery and other material were inflated and purchased from FEDCON. The Investigating Officer had examined P.Ws.6, 9 and 10 and compared the prices of the material that was purchased. Accordingly, the Investigating Officer concluded that excess payment of Rs.11,30,566/- was made. In the said circumstances, when the prosecution had produced all the evidence in support of its case and proved its case, the appeals filed by A1 and A2 have to be dismissed.

11. Admitted facts in the case are:

i) Direction to Government departments for purchasing stationery and other material from FEDCON is evident from Exs.P2 and P40.

ii) A2 put up the requirement of purchase to A1 and A1 in turn put up the file with P.W.1.

iii) P.W.1 asked A1 to negotiate the prices and after negotiation when the prices were reduced by 5%, P.W.1 authorized purchase and paid amount.

iv) Funds were never entrusted by department to A1 and A2 but to P.W.1.

v) The specific details of purchase made by the department are no where mentioned.

vi) The details of prices were taken from P.Ws.6, 9 and 10, who are retail sellers and not from manufacturers.

12. For the sake of convenience, Section 13(1)(c) of PC Act is extracted hereunder:

"13. Criminal misconduct by a public servant - (1) A public servant is said to commit the offence of criminal misconduct,

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do."

13. An offence under Section 13(1)(c) of the Act would be made out when there is a fraudulent misappropriation of property entrusted. Admittedly, the funds were entrusted to P.W.1 and not to A1 and A2.

14. P.W.1 admitted in his cross-examination as follows:

“It is true the AO1 was being a Deputy CEO has no authority to take policy decision, he only implements the decision taken by CEO. As per the note file vide Ex.P1, the Dy.CEO i.e., AO1 followed whatever the decision taken by me.

It is true I have not mentioned in my enquiry report with whom I got the details about the market rate. Witness adds. I made local enquiries but I have not recorded any statements. I did not obtained any quotations during my local enquiry. I do not remember the name of the persons with whom I made local enquiry.

It is true I being CEO of ZP was at liberty to reject any note or part of any note when it was not to my satisfaction. It is true I have carefully gone through the note file and after satisfying

myself that all the guidelines of the government followed I passed the order as OK.”

15. The Investigating Officer/P.W.12 admitted in his cross-examination as follows:

“It is true AO1 being Dy.CEO of ZP, he had no authority to take decision and he has to implement only the decision taken by CEO i.e, P.W1. It is true as per Ex.P1 file AO1 has simply followed the decisions taken by P.W.1 and there was no deviation on part of AO1.”

“It is true the price lists I secured from the traders are the basis for arrival of monetary loss suffered by the ZP.”

“It is true in ZP, P.W.1 alone being CEO was having dominion over the funds of the ZP. It is true there are no cash transactions in the purchases made pertains to this case all the payments were made through cheques only signed by P.W.1. I did not collected any evidence to show the FEDCON and other suppliers have paid any amount to any of the accused officer.”

16. The prosecution witnesses admission, nothing was entrusted to A1 and A2. When there is no entrustment, the question of misappropriation does not arise. No evidence was collected either to show that any amount was received by the appellants after payment by P.W1. The decision to purchase the goods was taken by P.W.1 and amounts were also paid by P.W.1.

17. The prosecution has not verified the prices at which FEDCON had purchased from the manufacturers and items sold to the department. The details of the manufacturers, specifications of the stationery purchased were never tallied during investigation. The assistance of P.Ws.6, 9 and 10, who are retail sellers was taken to state that the stationery was purchased at exorbitant rates. Even the details taken from P.W.6 under Ex.P25, price list, does not contain the specifications of any stationery product. Ex.P31 price list given by PW.9 also does not contain any details of the manufacturers or specifications of any product. P.W.10 was treated as hostile to the prosecution case.

18. Any product would be sold in the market which will be available at cheaper rates and also basing on the quality of the materials, prices would differ. Unless the Investigating Officer had taken steps to collect the exact and specific details of the products, which were purchased and available in the open market, the question of assuming that the products were purchased at higher rates on the basis of Exs.P25 and P31, which are typed copies provided by P.Ws.6 and 9 will not prove the allegation against A1 and A2.

19. The case is one of circumstantial evidence. The prosecution has failed to prove the circumstances of collecting higher amounts by FEDCON for the very same products, which are available at cheaper rates. The basis for the prosecution is exorbitant rates by FEDCON, which is not proved by any reliable evidence. Accordingly, the appellants succeed.

20. In the result, the judgment of trial Court in C.C.No.1 of 2008 dated 11.03.2011 passed by the I Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, is

hereby set aside. Since the appellants A1 and A2 are on bail, their bail bonds shall stand discharged.

21. Both the Criminal Appeals are allowed.

K.SURENDER, J

Date: 26.04.2024

Note: LR copy to be marked.

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THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No. 280 and 291 OF 2011

Dt. 26.04.2024

kvs

