

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

Criminal Appeal No.283 OF 2011

Between:

K.Manmohan Reddy

... 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.283 of 2011

% Dated 26.04.2024

#K.Manmohan Reddy

... Appellant

And

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

Respondent/Complainant

! Counsel for the Petitioners: Sri A.Viswanth

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

>HEAD NOTE:

? Cases referred

¹ 1995 CRI.LJ 3978

² 2001 AIR SCW 2415

³ 2010(1) ALD (Cri.) 342 (AP)

⁴ (2022) 4 SCC 574

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.283 OF 2011****JUDGMENT:**

1. The appellant is questioning the correctness of the conviction by the First Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad for the offences under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 sentencing to undergo rigorous imprisonment for a period of three years under both counts, vide judgment in C.C.No.10 of 2006 dated 03.03.2011.

2. Briefly, the case of the prosecution is that P.W.1 is the defacto complainant, who was working as Medical Officer at Primary Health Centre (PHC), Burgula village, Mahabubnagar District. At the relevant time, the appellant was the District Medical and Health Officer (DM & HO). For attending 31 gram panchayats, P.W.1 was allotted vehicle by the department which was on hire. The hire charges of the vehicle was Rs.9,000/- excluding petrol charges. The maximum limit for petrol was Rs.3,000/- per month. As there was no budget

during the year 2004, the hire charges and petrol charges were not allotted from April, 2004 to December, 2004. The appellant allegedly made phone call to P.W.1 stating that budget was released for the said period and asked P.W.1 to claim the said amount subject to paying bribe of Rs.1,000/- per month from the petrol charges totaling Rs.6,000/-. P.W.1 expressed her inability to pay the bribe amount for which the appellant threatened that he would withdraw the vehicle. Though several times, P.W.1 made a request to give time for payment, the appellant insisted that the amount should be paid immediately. On 27.01.2005, the appellant rang up the residence of P.W.1 and when the mother of P.W.1 answered the phone, the appellant threatened that the bribe amount should be paid on or before 31.01.2005.

3. According to the prosecution case, P.W.1 approached the DSP, ACB and lodged Ex.P1 complaint dated 29.01.2005 regarding harassment of the appellant for bribe amount. The trap was arranged on 31.01.2005. P.W.1 went to the office of the DSP along with bribe amount. There, in the presence of

trap party members which included independent mediators, proceedings were conducted. The said pre-trap proceedings were drafted as Ex.P4. P.W.1 informed the DSP that the appellant was in the habit of taking bribes in a cover and accordingly, DSP provided a brown envelope to P.W.1. The said cover was also smeared with phenolphthalein powder along with currency notes kept in it. P.W.1, then informed that the appellant would be available in his house, accordingly, the trap party proceeded to the house of the appellant. Around 3.30 p.m, the trap party reached the residence of the appellant. P.W.1 entered into the house and the appellant was sitting in the first room. The appellant then demanded for the bribe amount and accordingly, cover was handed over to the appellant. P.W.1 came out and gave signal to the trap party indicating acceptance of bribe.

4. Having received the signal, the trap party entered into the house of the appellant and the appellant was questioned regarding the bribe amount. The appellant informed that he did not receive any amount. Then, P.W.1 was called inside the

house and questioned regarding the tainted currency. P.W.1 then informed that the appellant received the amount with his right hand and kept the same in the right side table drawer. Then P.W.2/independent mediator was asked to remove the cover from the upper drawer of the table. Accordingly, cover was taken out by P.W.2 and after verifying the details of the currency notes, post trap proceedings were concluded. Ex.P5 is the post trap proceedings.

5. Investigation was concluded and having taken sanction for prosecution, the Investigating Officer/P.W.8 filed charge sheet.

6. Learned Special Judge framed charges against the appellant and examined P.Ws.1 to 8 and marked Exs.P1 to P10 on behalf of the prosecution. MOs.1 to 10 were also brought on record. In defence, D.W.1 was examined.

7. Learned Special Judge found that in pursuance of the demand made by the appellant, the amount was accepted on the date of trap and accordingly convicted the appellant.

8. Learned counsel appearing for the appellant would submit that false complaint was filed by P.W.1 since she was very irregular to her duties at Burgula and was residing at Hyderabad most of the times. Notice was issued by the appellant seeking her explanation and not satisfied with her explanation, the appellant passed an order withholding HRA. Her irregular functioning is stated by D.W.1, who is P.W.1's colleague and also published in newspaper.

9. Learned counsel further submitted that even according to the investigation, the budget which was released was disbursed in the month of December, 2004, as such, the question of demanding the bribe amount of Rs.6,000/- for release of the amount is unbelievable.

10. The appellant further denied having received any amount on the date of trap itself and where the cover was available, was informed by P.W.1 to the trap party. The recovery is not at the instance of the appellant but at the instance of P.W.1.

11. Learned counsel relied on the judgment of Hon'ble Supreme Court in the case of **M.K.Harshan v. State of Kerala**¹. On facts, the Hon'ble Supreme Court found that the evidence of complainant was not corroborated and suffered from infirmities. Plea of the accused that amount was planted in his drawer without his knowledge was accepted.

12. In **State of Tamil Nadu v. Krishnan and another**², the three Judge Bench of the Hon'ble Supreme Court found favour with the defence version of planting bribe by the prosecution witness. Learned counsel also relied on the judgment of this Court in the case of **T.Ramesh Reddy v. State of Andhra Pradesh**³ and also in the case of **K.Shanthamma v. State of Telangana**⁴. The Hon'ble Supreme Court held that both demand of illegal gratification and acceptance there of has to be proved beyond reasonable doubt. In the absence of proving

¹ 1995 CRI.LJ 3978

² 2001 AIR SCW 2415

³ 2010(1) ALD (Cri.) 342 (AP)

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demand, the subsequent recovery of tainted currency will be of no consequence.

13. On the other hand, learned Special Public Prosecutor submits that the colour test on the right hand proved positive insofar as appellant is concerned. That itself would support the version of the prosecution that he had demanded and accepted money and kept it in the drawer. There was no necessity for P.W.1, who is the subordinate of the appellant to falsely involve him in a criminal case. Since the reasons given by the learned Special Judge are probable, appeal may be dismissed.

14. The reason given by P.W.1 for demand of bribe is with regard to release of budget for the car allotted. The appellant allegedly threatened that if Rs.6,000/- was not given at the rate of Rs.1,000/- per month for six months, vehicle facility would also be withdrawn. It is admitted by the Investigating Officer that his investigation disclosed that the budget was already released and the appellant was no way concerned

either with the preparation of the bill or payment of hire charges.

15. It is the specific case of the appellant that as on the date of trap or prior to it, there was never any demand for bribe. On the date of trap, PW.2 and the Investigating Officer/P.W.6, the appellant denied having demanded or accepted any bribe amount. Further, appellant stated during post trap proceedings under Ex.P5 that P.W.1 came inside the house and on seeing her, he offered her a chair. Then, the appellant went inside the room to wear his shoe and came back into the front room after a while. The appellant was about to ask the reason for P.W.1's visit and she immediately got up and went outside. Thereafter, the trap party arrived. The said answer was recorded in the post trap proceedings and also accepted by the DSP and the mediator.

16. The case of the appellant is that he had issued notice to P.W.1 vide Rc.No.6235/B1/2004, dated 30.11.2004, which is

part of Ex.P2 file. The said notice, contents are extracted which would be relevant:

“I am to submit, Dr.P.Vijaya Kumari, Medical Officer working at PHC, Burgula since 01.03.1995. She is most irregular in attending her duties. She is not writing OP and not conducting Antinatal Clinic in her Sub-Centres. She will attend PHC once in a week and marks ‘T’ in the Attendance Register without performing tour. She reluctant to submit her tour programme. During my visit to PHC on 05.11.2004 and 20.11.2004, she was absent for duty. Several instructions have been issued to rectify her defects, but all are in vain. She keeps all the records such as MBBS, Sukhibava and Stores in her custody and not maintaining properly. She is not maintaining bonafide headquarters and operating from Shamshabad for which her HRA has been stopped with effect from 01.10.2004 vide this office Rc No.13211/E1/04 dated: 05.10.2004. Copy enclosed.

Further, it is submitted that, the infrastructure of the PHC building is very sufficient and Theatre facility is available for conducting of Tubectomy operations, but she is unwilling for opening Theatre at PHC, for which rural people are suffering and facing difficulty to come over to Shadnagar for Tubectomy operations. She is not performing institutional deliveries.

Due to her irregular duties, number of complaints are receiving from the public as well as press during my visit to PHC, Burgula, over all her performance in all the National Programmes are very poor.

In view of the above circumstances and being a long standing she may be shifted from this place apart from initiating disciplinary action against her by posting a suitable substitute at an early date.

This may be treated as most urgent.”

17. The said fact of issuing notice and receiving notice is also not in dispute. It is apparent that P.W.1 had a motive for false implication. The following circumstances have to be assessed and considered collectively:

i) Issuance of notice to P.W.1 by the appellant on 30.11.2004 regarding her irregular duty and also initiating disciplinary action;

ii) The allegation that to release the funds, demand of Rs.6,000/- was made is falsified by the evidence of the Investigating Officer that the funds were already released by the date of complaint and appellant has no say;

iii) On the date of trap, the appellant specifically stated that after P.W.1 entered into the room, he went inside to wear his shoes and came out. On questioning P.W.1, the reason for her visit, P.W.1 went outside and immediately trap party arrived.

iv) When questioned by DSP, the appellant denied having received any bribe at the instance of P.w.1. The money was

recovered from the right side table drawer by P.W.2 mediator after P.W.1 informed about the cover. The said fact is also not disputed by P.Ws.1 and 2, P.W.6/DSP.

18. When all the said circumstances in the case are collectively viewed, the version of the appellant that the amount was planted in the table drawer his absence, when he went inside the house to wear shoes is probable and convincing. At the earliest point of time, the appellant had narrated the events that transpired after P.W.1 entered into the house. The said narration is in consonance with his defence of planting the amount in the table drawer particularly in the back ground of the departmental action sought to be initiated by the appellant and also the funds being already disbursed.

19. In view of above discussion, the irresistible conclusion is that the appellant was falsely implicated and the trap amount was planted by P.W.1 in the absence of the appellant in his house.

20. Accordingly, the conviction by the learned Special Judge in C.C.No.10 of 2006 dated 03.03.2011 is hereby set aside and the appellant is acquitted. Since the appellant is on bail, his bail bonds shall stand cancelled.

21. Criminal Appeal is allowed.

K.SURENDER, J

Date: 26.04.2024

Note: LR copy to be marked.

B/o.kvs