

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

Criminal Appeal No. 392 OF 2011

Between:

M.Vidya Sagar

... Appellant

And

The State rep. by ACB,
Hyderabad Range

... Respondent

DATE OF JUDGMENT PRONOUNCED: 22.07.2024

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**

+ CrI.A. No. 392 OF 2011

% Dated 22.07.2024

M.Vidya Sagar

... Appellant

And

\$ The State rep. by ACB,
Hyderabad Range

... Respondent

! Counsel for the Appellants: Sri Badeti Venkata Rathnam

^ Counsel for the Respondent: Sri Sridhar Chikyala for ACB

>HEAD NOTE:

? Cases referred

1. AIR 2015 Supreme Court 3549
2. (2014 CRI.L.J 2433)
3. (1995 CRI.L.J 3978)

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.392 OF 2011

JUDGMENT:

1. Aggrieved by the conviction by the Special Court for the offence under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act vide judgment in C.C.No.22 of 2007 dated 29.03.2011, the present appeal is filed.

2. Briefly, the case of the prosecution is that P.W.1/*defacto* complainant was a sub-contractor of electrical works. He took up the said contract work of fixing electrical transformer and electrical meters to the building 'Aditya Homes' at Nizamapet, Kukatpally. The said work was completed in the month of February, 2006. After completing the work, he met the appellant, who was Additional Assistant Engineer, APCPDCL. After inspecting the work, the appellant intimated to the ADE. However, after inspection, the transformer was not charged (not given electric connection). P.W.1 went around the office of P.W.3/ADE, who informed P.W.1 that he had already instructed the appellant to charge the transformer. However, when P.W.1 met the appellant, demand for Rs.15,000/-

was made for charging the transformer. Again on 14.03.2006, P.W.1 met the appellant and the bribe amount was reduced to Rs.8,000/-. Since connection was not given to the transformer and the appellant insisted for payment of bribe, P.W.1 approached, P.W.6, who is DSP, ACB and filed complaint. The DSP arranged to trap the appellant on 16.03.2006.

3. On 16.03.2006, the trap party members including P.Ws.1, 2, 6 and others gathered in the office of the DSP and the formalities before proceeding to lay trap were concluded. The said proceedings were drafted as Ex.P5, pre-trap proceedings. Thereafter, the entire trap party went to the office of the appellant. P.W.1 and another constable namely Sudershan Reddy (not examined) went inside the office around 12.45 p.m. Around 1.20 p.m, both P.W.1 and the said Sudershan Reddy, constable relayed the signal to the trap party indicating demand and acceptance of bribe. The DSP went inside and questioned regarding bribe amount. Sodium carbonate solution test was also conducted on the hands of the appellant to know whether the phenolphthalein smeared bribe amount was handled by the appellant. The test on both the hands proved positive. The

amount was produced by the appellant from the right side table drawer. All the other formalities were concluded in the post-trap proceedings and proceedings are drafted which is Ex.P8.

4. The DSP/P.W.6 handed over the investigation to the Inspector/P.W.7 who concluded investigation and filed charge sheet. Learned Special Judge, examined the evidence placed on record by both the prosecution witnesses P.Ws.1 to 7 and Exs.P1 to P11 and also the defence witness D.W.1 and Ex.D1. The learned Special Judge found that though P.W.1 turned hostile to the prosecution case, however the other circumstances in the case was proof enough to convict the appellant for the offence of bribery.

5. Learned counsel appearing on behalf of the appellant would submit that no official work was pending with the appellant. Even according to the official witnesses P.Ws.3 and 4, the work of charging the transformer pursuant to application made by P.W.1 was not entrusted to him. Further, the only evidence of demand which was spoken to by P.W.1 during investigation had turned hostile to the prosecution case and supported the version of defence. In the said circumstances, when the factum of demand is

not proved, mere recovery cannot form basis to convict the appellant. The version of the appellant is in fact supported by the admissions of the official witnesses and Ex.D1 whereby the appellant was not person to charge the transformer, but it was the ADE, who is the superior officer.

6. Learned counsel relied on the judgment of Hon'ble Supreme Court in the case of **P.Satyanarayana Murthy v. District Inspector of Police** (AIR 2015 Supreme Court 3549) and argued that proving demand is on the prosecution and once the prosecution fails to prove its case of demand, mere recovery of the bribe amount cannot form basis to convict the appellant.

7. In the other case of **B.Jayaraj v. State of A.P** (2014 CRI.L.J 2433) cited by appellant, the Hon'ble Supreme Court while dealing with case of hostility of the complainant and having found that the demand was not proved, held that mere recovery is not sufficient to convict the accused. Learned counsel also relied on the judgment in the case of **M.K.Harshan v. State of Kerala** (1995 CRI.L.J 3978). The Hon'ble Supreme Court in the said judgment found favour with

the plea of the accused that the tainted currency was planted in his table drawer without his knowledge.

8. On the other hand, learned Special Public Prosecutor submitted that the relevant file pertaining to P.W.1 was seized at the instance of the appellant. Even on the trap date, his hands had turned positive for handling the amount, as such, defence taken by the appellant that amount was planted cannot be accepted. Since the prosecution has proved its case of demand and acceptance, the appeal is liable to be dismissed.

9. P.W.1 did not support the case of the prosecution. During the course of his chief examination, he stated that the appellant inspected the work and instructed him to meet the ADE. The ADE/P.W.3 then informed P.W.1 that he would ask appellant to charge the transformer. Since the appellant and ADE were asking to meet the other person for charging, he lodged a complaint with the DSP, ACB. The complaint was drafted to the dictation of the DSP/P.W.6. P.W.1 further stated that he along with another constable went inside the office on the date of trap and P.W.1 was

asked by the DSP to place the bribe amount in the table drawer of the appellant.

10. Since P.W.1 did not speak about appellant demanding any bribe, the Court has to look into the other circumstances of the case ignoring the hostility of the complainant to conclude whether the case is made out against the appellant or not.

11. The only witness to the alleged demand made by the appellant is P.W.1. He has turned hostile to the prosecution case. It is on record that one Sudershan Reddy, constable also accompanied P.W.1 into the office on the date of trap when the amount was handed over to the appellant. However, for the reasons best known to the prosecution, he was not examined before the Court nor cited as a witness in the charge sheet. In the absence of proof of demand, the prosecution has to establish beyond reasonable doubt, but the prosecution has miserably failed to prove the demand aspect.

12. Ex.D1, which was marked during the course of trial are the rules whereby it is the Assistant Divisional Engineer/P.W.3 who is competent to give connection/charge the transformer. Though it is stated by P.W.3 that he has endorsed to the appellant that

transformer should be charged, however, during the course of cross-examination, he admitted that in accordance with the department manual only the ADE or the DE have powers to charge the transformer. Further, it is not in dispute that the meters were provided by the appellant in accordance with the rules and procedure.

13. P.W.1/defacto complainant himself has refused to support the version of the prosecution that there was demand for bribe. Though, P.W.3 stated that he has endorsed on the file that the transformer has to be charged, it is not specifically mentioned in second page of Ex.P9 that direction was given to the appellant to charge the transformer.

14. On the date of trap, the amount was recovered from table drawer. According to P.W.1, he had planted the said amount in the absence of the appellant after he went inside the house. According to P.W.1's version after placing the amount, he shook hands with the appellant and came out. The said version is relied on by the defence to explain the test on both the hands of the appellant turning positive.

15. In view of the law laid down by the Hon'ble Supreme Court that initial burden of proving the demand is on the prosecution, since, the prosecution failed to prove demand beyond reasonable doubt, keeping in view the hostility of P.W.1 and not examining the constable, who accompanied P.W.1 on the date of trap, benefit of doubt is extended to the appellant.

16. In the result, the judgment of trial Court in C.C.No.22 of 2007, dated 29.03.2011 is hereby set aside and the appellant is acquitted. Since the appellant is on bail, his bail bonds shall stand cancelled.

17. Accordingly, Criminal Appeal is allowed.

Date: 22.07.2024
kvs

K.SURENDER, J