

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

Criminal Appeal No. 1094 OF 2012

Between:

- | | |
|--|-----------------------------------|
| 1. Sri Basireddy Ravinder Reddy (died) | ... Appellant/
Accused Officer |
| 2. Smt. Basireddy Padma | ...Appellant/ |

And

State of A.P., rep. by Inspector of Police,
ACB, CIU, Hyderabad, Rep. by
Spl.Public Prosecutor, High Court,
Hyderabad.

... Respondent/
Complainant

DATE OF JUDGMENT PRONOUNCED: 24.07.2024

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 the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.A. No. 1094 OF 2012

% Dated 24.07.2024

1. Sri Basireddy Ravinder Reddy (died)

... Appellant/
Accused Officer

2. 2. Smt.Basireddy Padma

...Appellant/

And

\$ State of A.P., rep. by Inspector of Police,
ACB, CIU, Hyderabad, Rep. by
Spl.Public Prosecutor, High Court,
Hyderabad.

... Respondent/
Complainant

! Counsel for the Appellant: Sri C.Sharan Reddy

^ Counsel for the Respondents: Sri Sridhar Chikyala

Spl.Public Prosecutor for ACB

>HEAD NOTE:

? Cases referred

¹ (2020) 7 SCC

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.1094 OF 2012****JUDGMENT:**

1. The appellant was convicted for the offences under sections 7 and 13(1)(d) r/w.13(2) of the Prevention of Corruption Act, 1988, on the allegation of accepting bribe of Rs.1,000/-.

2. The appellant died during the course of pendency of the appeal and accordingly permission was sought by the legal heirs who are the wife and daughter to prosecute the appeal. Permission was granted.

3. The prosecution case is that the defacto complainant/PW1 was a motor mechanic. One A.Praveen used to give him a two wheeler for repair. However, the Inspector (not prosecuted) along with the appellant who was Constable went to PW.1's mechanic shop of 19.04.2008 and informed that the two wheeler which was given by Praveen was stolen vehicle. An amount of Rs.1,500/- was taken from PW1 and the Inspector also threatened him saying that PW1 knew about the commission of theft of the vehicle. PW1 pleaded with the Inspector and the appellant saying that he does not know anything about the factum of theft of two wheeler by Praveen. The telephone numbers of the Inspector and the

appellant were given to PW1 and asked him to appear in Police Station on 22.04.2008.

4. PW1 along with PW4 who is his friend went to the Police Station on 22.04.2008 on which date it is alleged that inspector made the demand for Rs.10,000/-, failing which, Inspector threatened that case would also be registered against PW1. PW1 requested that he could not arrange for such huge amount. Appellant then met Inspector and informed PW.1 that was reduced by Rs.5,000/-. PW1 thereafter borrowed an amount of Rs.2,500/- from PW.4. However, on the suggestion made by PW4, they went to TV9 news channel net work. PW5 was the head of the team which was running a programme namely 'NIGHA' (surveillance). Then, PW5 deputed one of his camera men, PW2 namely Muralidhar, who fixed Spy Cameras on the person of PWs.2 and PW4.

5. PWs.1, 2 and 4 then went to the Central Crime Station (CCS), Saroornagar Police Station on 24.04.2008 where the Inspector and appellant were present. The amount of Rs.2,500/- was paid by PW1. However, there was demand for remaining amount of Rs.1,000/- out of the total bribe of Rs.5,000/- as demanded by the Inspector and informed by the appellant herein.

6. PW1 then decided to lodge a complaint with ACB. The complaint-Ex.P1 was drafted by PW5 to the dictation of PW1 and handed over to the DSP-PW9. The DSP informed that the trap would be arranged on 26.04.2008. On the said day, PW1, PW2, PW5, PW9 and others formed the trap party and they assembled in the office of the DSP/PW9. The formalities before proceeding to the trap were all followed and what all transpired was reduced into writing as pre trap proceedings which is Ex.P5.

7. Around 11.00 a.m., the trap party went to the police station. While other members of the trap party waited at a distance, PW1 and PW2 entered into the police station. The Inspector was talking with the staff in the police station and he directed PWs.1 and 2 to meet the appellant. Then the appellant received the amount counted it and placed it in his pocket. PW1 signalled to the trap party indicating the demand and acceptance of bribe. PW9 and others then went near the appellant and questioned the appellant regarding the bribe amount. His fingers of both hands were tested for the presence of Phenolphthalein powder, which Powder was smeared to the currency notes. Phenolphthalein powder when mixed with Sodium Carbonate solution would turn into pink colour. When Sodium Carbonate test was conducted on both the hand fingers of the accused, they turned positive.

8. The DSP questioned PWs.1 and 2 and their versions were recorded in Ex.P6 which is Post-trap proceedings. The seizure of documents etc. and what all transpired during the course of Post trap proceedings were also mentioned in Ex.P6.

9. The investigation was thereafter handed over by PW9 to PW10-Inspector. Having examined witnesses, collecting spy cam footage which was converted into Compact Disks and taking sanction orders to prosecute the appellant, charge sheet was filed by PW.10.

10. It needs to be mentioned that though ACB sought sanction for prosecuting the Inspector who was arrayed as A1 in the FIR, the Government declined sanction to prosecute the Inspector and sanction was only granted to prosecute the appellant-Constable.

11. The learned Special Judge having framed charges for the offence under Sections 7 and 13(1)(d) of the to the Prevention of Corruption Act, examined PWs.1 to 10 witnesses on behalf of prosecution and also marked Exs.P1 to P12. The resultant solutions, tainted currency etc. which are M.Os.1 to 8 were also brought on record. The accused marked portions of 161 Cr.P.C. statement of PW2 as Exs.D1 to D5. The learned Special Judge found that though the Inspector was not prosecuted the

prosecution had clearly made out its case against the appellant/constable and accordingly convicted him.

12. Learned Counsel appearing for the appellant would submit that the recordings which happened on 24.04.2008 and 26.04.2008 with the help of spy cameras were converted into Compact Disks which are marked as Exs.P2 and P3. There is no certification as required under Section 65-B of Indian Evidence Act, for which reason the said CDs cannot be looked into.

13. Learned Counsel relied on the Full Judge Bench of Honourable Supreme Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and others**¹.

14. Counsel further argued that even according to PW.1, the inspector was the person who demanded the amount from PW1 according to PW.1. However the appellant acted as an agent or mediator between the Inspector and PW1. Inspector reduced the bribe amount to Rs.5,000/-. Since there is no direct demand by the appellant, the question of convicting him on the basis of recovery on the trap date is bad in law. Counsel further argued that mere recovery of the amount without proof of there being a demand made by the appellant, the conviction has to be set aside.

¹ (2020) 7 SCC

15. On the other hand, learned Special Public Prosecutor appearing for the ACB would submit that though the Inspector was not prosecuted it will have no impact on the prosecution of the appellant. Even going by the evidence on record and the video recordings would reflect that demand was made and accepted by him. In the said circumstances, argument of the counsel regarding there being no demand is wholly incorrect.

16. There is no dispute with respect to the proposition laid down by the Honourable Supreme Court in **Arjun Panditrao's case** regarding the requirement of 65-B certificate. However, since the Court below did not rely upon the recordings under Exs.P2 and P3, no further discussion is required.

17. Ex.P1 is the complaint which was given at the earliest point of time. Having gone through the complaint, which contents are admitted by PW.1, on the first visit, as narrated in the complaint, on 19.04.2008, it is stated that Police from Saroornagar had forcibly taken Rs.1,500/- from him. However, it is not mentioned that the appellant had forced him in any manner. Further, the Inspector Prasad had given his number and the appellant's number and he was asked to appear in the Police Station on 22.04.2008. Even on 22.04.2008, it is stated that the Inspector

Prasad had threatened PW.1 when he met him and did not show sympathy, though PW1 pleaded that he had nothing to do with theft committed by the said Praveen. Inspector asked him to pay Rs.10,000/- as bribe. Thereafter, Inspector-Prasad informed PW1 to meet the appellant and discuss about the remaining issues. PW1, then pleaded with the appellant about his incapacity to pay the amount. Then the appellant went inside, talked to the Inspector Prasad and informed PW1 that the bribe was reduced to Rs.5,000/-. PW1 pleaded that he did not have money for which reason a bond was taken from PW4, friend of PW.1 and informed that the bribe should be paid on 24.04.2008. On 24.04.2008 PW.1 and PW.4 met PW5 who arranged for spy cameras with help of the cameraman PW2, to record proceedings when they meet the Inspector and the appellant. It is further stated by PW1 that on 24.04.2008, he met the Inspector Prasad and gave him Rs.2,500/- through the appellant. PW1 was informed that in all Rs.4,000/- was received and the remaining Rs.1,000/- has to be paid on 26.04.2008. The said demand was made by both Prasad and the appellant.

18. Aggrieved by the said demand of bribe, PWs.1 and 4 then approached the ACB authorities and lodged the complaint. On the date of trap, according to PW2 as admitted in his cross-

examination he was not sure who among the Inspector or appellant the bribe had to be paid. PW1 in his chief-examination stated that when he entered into the Police station, he found the Inspector talking outside the station with his staff. Then the Inspector instructed PW1 to approach the appellant. When he went inside and met appellant, the appellant enquired regarding the amount. Then PW1 was taken outside the police station by appellant near parking area and PW.1 paid the amount to the appellant.

19. According to PW2, on 24.04.2008 and also on 26.04.2008 the happenings were video recorded. However it is strange that the conversation with the Prasad-Inspector could not be recorded and only the conversation with the appellant was recorded. It is admitted by PW2 that the conversation with Prasad-Inspector was not recorded due to technical failure in the camera. As seen from the version of PWs.1, 2 and 4, PW1 met the Inspector first and then the appellant on both the days. However, the recordings, strangely, were only the conversaion with the appellant and not with the Inspector. That itself shows that the evidence of video recording was tampered during investigation and placed on record as Exs.P2 and P3.

20. Two crucial aspects have to be proved by the prosecution. Firstly, the demand has to be proved beyond reasonable doubt and only then, the Court can rely on the factum of recovery of the amount from the accused. As already discussed on 19.04.2008, it is stated that Rs.1,500/- was forcibly taken without mentioning the name of appellant. On 22.04.2008, Inspector Prasad threatened PW1 and the appellant was present. On the same day though demand for Rs.10,000/- was made by the Inspector Prasad, the appellant met him and thereafter the amount was reduced to Rs.5,000/- by the Inspector which was conveyed by the appellant to PW1. On 24.04.2008 also PW1 met the Inspector and according to him, the amount of Rs.2,500/- was paid to the Inspector through the appellant.

21. It is not the case of PW1 that the appellant had demanded any amount separately or over and above the amount demanded by the Inspector-Prasad. In fact, when Prasad-Inspector made a demand for Rs.10,000/-, the appellant convinced Inspector and saw to that the bribe amount was reduced to Rs.5,000/-. Even on the date of trap, PW1 met Prasad-Inspector who asked him to meet the appellant. According to PW1 on all the days including the trap day, the bribe was intended to be paid to Prasad-Inspector

and since Prasad had asked PW1 to pay the said bribe amount to the appellant, it was handed over to the appellant.

22. Section 7 of the Prevention of Corruption Act, 1988 reads as under;

“7. Public Servant taking gratification other than legal remuneration in respect of an official act__ Wherever being or expecting to bear a Public Servant, accepts or obtains or agrees to accept or attempts to obtain from any person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any Local Authority, Corporation or Government Company referred to in clause (c) of Section 2, or with any Public Servant whether named or otherwise shall be punishable with imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine.”

23. The ingredients of the offence are;

- i) The accused being a public servant accepts, obtains or agrees to accept or makes attempt to obtain illegal gratification from any person

ii) for himself or any other person and such gratification is not remuneration to which the accused is entitled to;

iii) The accused accepted such gratification as a motive or reward for

a) Doing an official act or to show favour or disfavour to someone in exercise of his official duties

b) Or render any service or disservice to any person with the Central Government or State Government.

24. The *sin-qua-non* for attracting an offence of bribery punishable under Section 7 is the voluntary act of demand and accepting the same for doing any official act in exercise of his official functions to do any favour or disfavour.

25. Admittedly, the demand was made by Inspector-Prasad. It is not the case of the prosecution that the appellant has the official capacity of doing any favour as in the present case to either drop any criminal proceedings against the complainant-PW1 or involve him in any case. In such circumstances, when the appellant was not in a position or had the capacity to do any official favour, the offence under section 7 would not attract. As already discussed the demand was made by Inspector-Prasad who according to the

prosecution had the powers to either involve or not involve PW1 in the criminal case of theft along with one Praveen.

26. The prosecution has failed to prove that the appellant had any capacity to do any favour or disfavour to PW1. Further, the demand was made by Inspector-Prasad and the appellant was acting in accordance with the directions of the said Inspector. At the cost of repetition it is not the case of prosecution that any part of the amount was either meant for the appellant or that the appellant had asked for any amount from PW1.

27. Accordingly, Criminal appeal is allowed and the appellant/accused is acquitted. The conviction recorded by the First Additional Special Judge for SPE and ACB Cases, City Civil Court, in CC.No.39/2009, dated 19.10.2012, is hereby set aside. Since the appellant is on bail, his bail bonds shall stand discharged.

Date: 24.07.2024
tk

K.SURENDER, J