

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

Criminal Appeal No.442 OF 2013

Between:

E.Rama Rao

... 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

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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.442 of 2013

% Dated 26.04.2024

E.Rama Rao

... Appellant

And

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

Respondent/Complainant

! Counsel for the Petitioners: Sri C.Sharan Reddy

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

>HEAD NOTE:

? Cases referred

¹ (1981) 3 SCC 69

² (2011) 6 SCC 450

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.442 OF 2013

JUDGMENT:

1. The appellant aggrieved by the conviction recorded by the I Additional 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 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.28 of 2008 dated 31.05.2013, the present appeal is filed.

2. P.W.1 *defacto* complainant approached the ACB and filed Ex.P1 complaint, alleging that he was a contractor in the Water Works Department. He did leakage maintenance and chowkage of walls in Jeedimetla Section, which works were within the control of the appellant. As and when works were entrusted by the appellant, the works used to be taken up and completed. After execution of the work, the appellant used to give permission letter and send the same to D.G.M and G.M. After that it would be sanctioned by the General Manager. After obtaining such sanction from the GM,

estimate of the work would be prepared and details would be entered in the measurements book. Total eight works were entrusted by the appellant in the year 2006 and completed by PW1. In December, 2006, P.W.1 met the appellant and requested to record his work in the M Book of all the 8 works for claiming amount and preparation of bills. On 26.12.2006, the appellant demanded Rs.20,000/- for preparing estimates and bills. However, on repeated requests, bribe amount was reduced to Rs.16,000/- on 27.12.2006.

3. P.W.1 approached the DSP, ACB on 02.01.2007 and filed complaint Ex.P1. The DSP/P.W.7 asked P.W1 to come to the office on 03.01.2007 at 6.00 a.m on which date trap was arranged.

4. Accordingly, on 03.01.2007, the trap party gathered in the office of the DSP, ACB. FIR was registered and pre-trap procedure was followed. What all transpired during the pre-rap proceedings were drafted as Ex.P3.

5. The trap party then went to the office of the appellant. Around 9.20 am, PW1 entered into the office to meet the appellant. Nearly after an hour i.e., 10.15 a.m, P.W.1 came out of the office and signaled to the trap party indicating acceptance of bribe by the appellant. The trap party entered into the room and found the appellant. His hands were tested to know whether he has handled the amount and the tests on both the hands turned positive. The amount was recovered from the left side shirt pocket and handed over to the trap party. Ex.P4 is the set of documents pertaining to the works of P.W.1 and same were seized at the instance of P.W.3/mediator who searched the table drawer, almirah and motor cycle of the appellant and other documents were also seized. The post trap proceedings, which is Ex.P6 was drafted after seizure of the documents, examining complainant, appellant and other relevant witnesses.

6. The investigation was handed over by P.W.7 to P.W.8. P.W.8 having concluded investigation filed charge sheet for the offences under Section 7 and Section 13(1)(d) r/w 13(2) of the Act. Charges were also framed for the said offences. Prosecution produced eight

witnesses P.Ws.1 to 8. Further, Exs.P1 to P10 documents were also marked by the prosecution. In defence, D.W.1, who is an independent person, was examined to state that the bribe amount was thrust by P.W.1 on the date of trap. Further, the appellant also filed Ex.D1 which is a copy of an explanation submitted by the appellant to P.W.8. The said explanation also states that at no point of time, any bribe was demanded and the amount was deliberately thrust on to him on the date of trap, since P.W.1 was giving illegal tap connections, which was confronted by the appellant leading to false implication.

7. Learned counsel appearing for the appellant would submit that the prosecution has not produced any evidence to show that P.W.1 had executed eight works which he had mentioned in the complaint. According to the official witness, P.W.6, who is the General Manager, works were entrusted to a person after he grants permission and thereafter such works would be executed. According to P.W.6, there were no permissions which were granted in favour of P.W.1. Both P.W.6 and Investigating Officer/P.W.8 also admitted that no such permission slips were given to P.W.1.

8. Learned counsel further argued that even P.W.1 admitted that the works could only be executed after permission letter is given by the General Manager, who was examined as P.W.6. In the cross-examination of P.W.1, witness himself admitted that there was no evidence available to show that he had executed said eight works. Further, the General Manager also did not grant any permission for the eight works. On the date of trap, the amount was thrust into the shirt pocket of the appellant which was witnessed by D.W.1. D.W.1 is an independent witness who had spoken about thrusting the amount. The reason for thrusting and false implication of the appellant is for the reason of the appellant confronting P.W.1 for giving illegal tap connections.

9. Learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Banshi Lal Yadav v. State of Bihar**¹. It was held that thrusting defence taken by the accused will not raise presumption. He also relied on the judgment of Hon'ble Supreme Court in the case of **State of Kerala v. C.P.Rao**². The

¹ (1981) 3 SCC 69

² (2011) 6 SCC 450

Hon'ble Supreme Court held that mere recovery of amount divorced from the circumstances cannot be held to prove the demand and acceptance of bribe. Further, corroboration is necessary to the testimony of the defacto complainant about the allegation of demand, failing which the prosecution case would fail.

10. On the other hand, learned Special Public Prosecutor appearing for ACB would submit that once the defence of thrusting is taken, presumption arises and the appellant had failed to rebut the presumption. Merely suggesting that amount was thrust is not enough. The circumstances indicate that the amount was seized from the pocket of the appellant. If the amount was seized from the pocket, the question of thrusting would not arise. Since there is no reason why the appellant would be falsely implicated and the conviction recorded by the learned Special Judge is proper.

11. The reason for demand of bribe is the execution of eight works by P.W.1. For the reason of entering such details in M book and also preparing the bills, amount of Rs.20,000/- was demanded and later reduced to Rs.16,000/-. When it is the specific case of P.W.1

that he had executed eight works, it is necessary that the details of the said eight works should be provided to the Investigating Officer and also state before the Court. In the absence of proof of execution of the said eight works, the allegation of demand of bribe becomes doubtful. P.W.1 in his cross-examination deposed as follows:

“I cannot say the names of those eight works, witness adds, all those works are pertains to leakage of pipes. The estimations for 8 works are pending, the measurements of those works are not entered in M Books. The permission letters of all 8 works were in custody of AO. GM did not issue any permission letter for those 8 works to my knowledge.”

“There is no evidence available with me to show that I have executed those 8 works, witness adds, I am ready to produce evidence at the site.”

12. P.W.6 in his cross-examination deposed as follows:

“I came to know that PW1 Ramireddy gave illegal connections and that AO objected the same and that disputes arose between AO and Ramireddy pw.1. The ACB officials have not collected permission slips from me. Accused is sincere and I have not received any complaints against him in his tenure. My office will pay the bill amounts to the contractor by way of cheques.”

13. P.W.8 deposed in his cross-examination as follows:

“I did not ascertain the details of the 14 works previously executed by Pw.1 under the supervision of the A.O as mentioned in Ex.P1 report. It is true that for the purpose of execution of work by a contractor, the permission of the G.M of HMWS & SB is required. The permission slips issued by the G.M in connection with the previous works executed by P.W.1 were not available either with Pw.1 or with the G.M. Apart from the documents collected by Pw.7 during the post trap proceedings, I did not collect any more documents with regard to the works executed by Pw.1.”

14. From the above evidence, details of said eight works for which the amount was pending were not provided by P.W.1 nor investigated by P.W.8 during the course of investigation. Ex.P4 does not reflect that the works mentioned in Ex.P4 were entrusted to P.W.1. It is not the case of the prosecution that the details of works mentioned in Ex.P4 were the works executed by P.W.1. The details of works were available according to PW1. However such proof was not produced. In such circumstances, presumption according to section 114(g) of Evidence Act is that the evidence if produced would be unfavorable to the person withholding it. Adverse inference has to be drawn against prosecution in the present circumstances regarding demand of bribe.

15. P.W.3, P.W.4 and P.W.6 General Manager were examined from the office of the appellant. None of them had stated anything regarding the works executed by P.W.1 nor that was any amount pending to be paid to PW1.

16. The prosecution would succeed only when the factum of demand is proved. The said proof of demand has to be looked into as to whether the reason for demand was made out by the prosecution. The genesis of demand is the completion of 8 works which were entrusted to P.W.1 and the outstanding to be paid for the said works. The prosecution had to lay foundation initially to prove that there were 8 works which were executed and amounts were pending from the department, for which reason, demand was made.

17. Since the very substratum of the prosecution case that 8 works were completed and for which demand was made was not proved, Ex.P1 complaint and subsequent recovery of the amount from the appellant on the date of trap cannot form basis to convict

the appellant. The recovery aspect cannot be considered to infer that the bribe was demanded.

18. D.W.1 was examined to state that as on the date of trap, the tainted amount was thrust in the shirt pocket of the appellant. Further, explanation under Ex.D1 was given and also P.W.6, who is the General Manager stated that there were differences in between P.W.1 and the appellant for the reason of the appellant confronting P.W.1 regarding illegal tap connections that were given by him. The prosecution has failed to prove the factum of demand. In the circumstances, benefit of doubt is extended to the appellant.

19. In the result, the judgment of trial Court in CC No.28 of 2008 dated 31.05.2013 is hereby set aside and the appellant is acquitted. Since the appellant is on bail, his bail bonds shall stand cancelled.

20. Criminal Appeal is allowed.

K.SURENDER, J

Date: 26.04.2024

Note: LR copy to be marked.

B/o.kvs