

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

Criminal Appeal No.85 OF 2018

Between:

Banoth Kishan

... Petitioner/Accused Officer

And

The State of Telangana

... Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED:

27.11.2024

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. 85 of 2018

% Dated 27.11.2024

Banoth Kishan

... Petitioner/Accused Officer

And

\$ The State of Telangana

... Respondent/Complainant

! Counsel for the Appellant: Sri Sripuram Kaumud

^ Counsel for the Respondent: Sri Sridhar Chikyala
Special Public Prosecutor

>HEAD NOTE:

? Cases referred

¹ (2015) 12 Supreme Court Cases 348

² (2015) 7 Supreme Court Cases 720

³ (2016) 1 Supreme Court Cases 709

⁴ (1974) 4 SCC 560

⁵ (1980) 2 Supreme Court Cases 390

⁶ (2006) 12 SCC 277

⁷ (2014) 4 SCC 9

⁸ 2001 (1) SCC 691

⁹ 1998 SCC OnLine AP 761

¹⁰ (1979) 4 SCC 172

¹¹ 2000 (8) SCC 571

¹² 1984 SCC (1) 446

¹³ 2004(6)SCC 488

¹⁴ (2015) 10 Supreme Court Cases 152

¹⁵ 2021 CRI.L.J1353

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.85 OF 2018****JUDGMENT:**

1. The appellant was convicted by the Special Judge for trial of SPE & ACB Cases, Karimnagar for the offences punishable under Section 7 and 13(1)(d) r/w.13(2) of Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of one year under Section 7 of the Prevention of Corruption Act and one year rigorous imprisonment under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, vide Judgment in C.C.No.49 of 2015, dated 22.12.2017. Aggrieved by the same, present appeal is filed.

2. Briefly, the case of the prosecution is that PW.1-owner of M/s.Manikanta Kirana and General Stores, Vidyanagar, Jagitial village, Karimnagar, sought a bank loan for which Turnover Tax (TOT) Registration Certificate was essential. As such, he submitted an application to the Assistant Commercial Tax Officer, Jagitial Circle on 31.07.2009. On 04.08.2009. PW.1 approached the appellant/accused officer and inquired about his TOT registration certificate. Appellant allegedly demanded a bribe of Rs.3,000/- for its

issuance. PW.1 expressed his inability to pay and left the place. On 07.08.2009, PW.1 again met the appellant, who reiterated the bribe demand. Following PW.1's persistent requests, the appellant reduced the bribe amount to Rs.1,500/-, stating that the certificate would not be issued without payment. PW.1 reluctantly agreed to pay the demanded bribe amount within 2 or 3 days. As PW.1 was not willing to pay the demanded bribe amount, he approached the Deputy Superintendent of Police, ACB, Karimnagar-PW.5 and lodged a written complaint. PW.5 obtained necessary permission from competent authority and registered the case in Crime No.19/ACB-KNR/2009 under Section 7 of the Prevention of Corruption Act and took up investigation. During the course of investigation PW.5/DSP secured the services of PW.2 and LW.3 as mediators, PW.1/complainant and others, who formed the trap party. After observing necessary formalities on 12.08.2009 pre-trap proceedings were concluded. The trap party left to the office of the appellant.

3. At about 1:20 p.m., PW.1 entered into the office and met the appellant in his office while other trap party members waited outside. Appellant enquired whether PW.1 brought the demanded bribe amount or not. The appellant informed PW.1 that the TOT

certificate will be prepared within half an hour and asked PW.1 to meet him after one hour. At about 2.35 p.m. PW.1 again entered into the office of appellant. On seeing PW.1, the appellant asked him to wait at his office seat and within few minutes the appellant came to his seat and demanded the bribe amount. He accepted the bribe amount of Rs.1500/- from PW.1 with his left hand and kept it in the left back hip pocket of his pant and issued TOT certificate to him with his right hand. Thereafter, the appellant took signature of PW.1 on the office copy.

4. PW.1 came out and signaled to the trap party indicating the demand and acceptance of bribe by the appellant. The DSP-PW.5 along with mediators and the other trap party members went into the office and conducted Sodium Carbonate Solution test on the hands of the appellant to know whether the bribe amount was handled by him. The left hand fingers of appellant yielded positive result, whereas the right hand fingers of appellant remained colourless. The tainted amount was recovered at the instance of appellant from his left side hip pocket of the pant. The statements of complainant and appellant were recorded and other details as to what all transpired during post-trap proceedings were incorporated

in the post-trap proceedings-panchanama, which is Ex.P5. Further investigation was done and after conclusion of investigation charge sheet was filed.

5. The defence of the appellant during examination of witnesses and also during the statement recorded under Section 313 Cr.P.C. is that PW.1 gave authorization to one Gangadhar, a tax consultant practitioner, to submit application for TOT certificate-Ex.P2 authorizing him to handle the application. PW.1 never met him before date of trap i.e. 12.08.2009. PW.1's allegation of demanding bribe amount of Rs.3,000/- on 04.08.2009 was contradicted by his admission during cross-examination that after the trap party disbanded at 1:30 p.m. on 12.08.2009, he directly went to the second floor of the CTO office, where the appellant was not stationed. The appellant worked on the first floor (ACTO office). PW.1's lack of knowledge about the appellant's seat prior to Ex.P11 indicated that they had not interacted earlier. Ex.P10-TOT certificate was prepared on 04.08.2009, but PW.1 did not collect it. PW.1 had not applied for any bank loan, nor could he provide relevant bank details. PW.1 applied for the TOT certificate at the behest of one Venkat Ramana, who previously worked at the appellant's position. Venkata Ramana,

who was working on the second floor, influenced the complainant-PW.1 to falsely implicate the appellant. PW.3-V.Rajesham, a former Senior Assistant in the office, confirmed that Venkat Ramana's seat was on the second floor. Ex.D1 (order dated 16.01.2009) documented that the appellant took over Venkat Ramana's seat. Further, PW.5-trap laying officer and PW.6-investigating officer, failed to verify as to whether PW.1 applied for a bank loan or whether the loan was necessary. PW.5 laid a false trap without proper investigation into PW.1's and the appellant's credentials.

6. The learned counsel appearing for the appellant argued on similar lines of defence taken by the appellant.

7. Learned Special Public Prosecutor argued that recovery of the amount on the trap date would suffice to infer that there was a demand by the appellant. Further if the public servant is an authority that would be enough even though such public servant did not have the power to do the favour as sought by the complainant. He also relied on the following Judgments of Honourable Supreme Court.

- i) D.Velayutham v. State*¹**
- ii) Chaitanya Prakash Audichya v. CBI*²**
- iii) Indravijay Alok v. State of M.P.*³**
- iv) Raghubir Singh v. State of Haryana*⁴**
- v) Hazari Lal v. Delhi Administration*⁵**
- vi) B.Noha v. State of Kerala*⁶**
- vii) Phula Singh v. State of H.P*⁷**
- viii) N.Narsinga Rao v. State of Andhra Pradesh*⁸**
- ix) B.Parameswaran v. State*⁹**
- x) Mohd.Iqbal, Ahmad v. State of Andhra Pradesh*¹⁰**
- xi) Madhukar Bhaskarrao Joshi v. State of Maharashtra*¹¹**
- xii) State of Maharashtra v. Narsingrao Gangaram Pimple*¹²**
- xiii) State of A.P. v. R.Jeevaratnam*¹³**

8. Learned Special Judge mainly relied on the evidence of PW.1 regarding the demand and acceptance of bribe for the TOT certificate, which was required for application of a bank loan. The

¹ (2015) 12 Supreme Court Cases 348

² (2015) 7 Supreme Court Cases 720

³ (2016) 1 Supreme Court Cases 709

⁴ (1974) 4 SCC 560

⁵ (1980) 2 Supreme Court Cases 390

⁶ (2006) 12 SCC 277

⁷ (2014) 4 SCC 9

⁸ 2001 (1) SCC 691

⁹ 1998 SCC OnLine AP 761

¹⁰ (1979) 4 SCC 172

¹¹ 2000 (8) SCC 571

¹² 1984 SCC (1) 446

¹³ 2004(6)SCC 488

TOT certificate was sought for Kirana Shop of PW.1. However, PW.1 did not produce any records that he owned Kirana shop. In his cross-examination, he stated that;

“..... To run a shop one should have trade licence from Municipality. I have no properties in Jagtial. I do not have a trade licence to run a Kirana shop or a lease deed to show tenancy of my shop. I cannot say who is the landlord where I used to run Kirana shop. I never opened any bank account in jagtial.....I do not have voter identity card in Jagtial. There is no document with me to show that I am resident of Jagtial.”

However, the complaint was filed and acted upon by the DSP. PW.5-DSP admitted that PW.1 did not produce any record regarding the Kirana shop to show that he had filed any application for TOT certificate before the ACTO. The necessity for taking TOT certificate as stated by PW.1 is that it was for applying a bank loan. However, the prosecution has not collected any evidence nor PW.1 produced any evidence to show that he had approached any bank for applying bank loan. The details of any bank nor the name of the bank etc. are given for the Court to infer that the necessity to obtain TOT certificate was for the reason of obtaining the bank loan. The version of PW.1 that taking a TOT certificate from the ACTO office was

necessitated by the appellant to secure loan from the bank is falsified even according to him.

9. PW.1 stated that he was not the scribe of Ex.P2 which is an application for TOT certificate and also states that he does not know who the scribe is. However, he again asserted that he authorized one consultant namely Gangadhar for submitting application for TOT certificate. He also admitted that it was the duty of a consultant to obtain and deliver the TOT certificate and PW.1 had signed a form authorizing the consultant to submit Ex.P2 in the ACTO office. If the said admission of PW.1 is considered, the services of Gangadhar were taken to obtain the TOT certificate. However, the said Gangadhar was not examined by the Investigating Officer during the course of investigation. PW.1 admitted that he did not know the procedure to obtain the TOT certificate and also admits that he was unaware of whether Ex.P2 application should be submitted to ACTO office or CTO office. It again raises doubt regarding PW.1 approaching the office. If at all the services of Gangadhar were already taken due to the absence of knowledge of obtaining TOT certificate, no reason is given as to why PW.1 again went to the office of ACTO and met the appellant. PW.1 admitted that he was unaware

whether the TOT certificate would be issued by the ACTO or the CTO and he never met the ACTO regarding the TOT certificate.

10. The defence taken by the appellant is false implication by one Venkat Ramana who was Record Assistant and holding J8 post that was given to the appellant on 16.01.2009. To that effect Ex.D1-office order was placed on record which is not disputed by the prosecution. The said Ex.D1 was marked through PW.3 who was the then Senior Assistant in the CTO office. PW.3 stated that the seat of the said Venkat Ramana was in the second floor of the CTO office and the appellant was sitting in the first floor. Though, the mediators' report and the rough sketch which is filed by the prosecution indicate that the trap proceedings had taken place in the first floor, however, PW.1 went to the second floor at 1.30 p.m. on his first visit where Venkat Ramana was sitting. In fact, the appellant was sitting in the first floor. He came back to the first floor and having met the appellant he went back since he was asked to return after half an hour. According to PW.1 even on the second visit on the trap date at 2.20 p.m., he again went to the second floor where the said Venkat Ramana's seat was located. PW.1 stated that the trap party had called him to

second floor during post-trap proceedings and they did not go to any other floor. PW.1 admitted;

“..... I did not go to first floor prior to going to second floor at 1.30 p.m. on 12.08.2009. I got down from the second floor without going to first floor and went to Trap Laying Officer who was standing on the main road.....After I came out from CTO office at first instance at 1.30 p.m. I went to have tea, trap party did not accompany me and trap party stayed at CTO office itself. Even on my second visit to CTO office on 12.08.2009 I went to the same floor to which I went earlier on that day i.e. second floor where Ramana’s seat is located. I do not remember in which floor I received TOT certificate. It is true accused gave me Tot certificate on disclosing my identity and took my acknowledgment in proof of giving certificate..... I gave pre-arranged signal after coming down on to the road in front of CTO office. I was asked to stay there while the trap party rushed into the CTO office. After five minutes I was called to second floor, then DSP enquired me to whom I have given the tainted currency. Atleast 5 to 6 staff members were working at that time in the second floor. Trap party did not go to any other floor.”

11. When admittedly, the appellant was in the first floor, the admission of PW.1 as extracted above creates any amount of doubt

regarding the proceedings taking place, whether it was in the first floor or the second floor.

12. According to PW.5-DSP, he stated that the trap party rushed to the appellant's office in the first floor and all the proceedings had taken place and concluded in the first floor. In the post-trap proceedings, PW.1 stated that he went to the ACTO office which is on the second floor of the CTO office. The defence of the appellant that a false trap was laid at the instance of Venkat Ramana, who was sitting in the 2nd floor, appears to be correct.

13. Ex.P10 which is TOT registration certificate which was seized on the date of trap is dated 04.08.2009. According to PW.1, he went to the office on 04.08.2009 on which date the demand for bribe was made. However, as seen from the cross-examination of PW.1, he stated that he does not know who issues TOT certificate whether it is CTO or ACTO. In such circumstances, the meeting of PW.1 with the appellant creates any amount of doubt.

14. The background of a case has to be looked into and cannot be lost sight of. The Court cannot selectively consider the evidence placed on record by prosecution and defence. It is the duty of Court

to consider the circumstances in their entirety. Only when the entire evidence that is placed on record is considered and it makes out a case against the accused, without leaving any gaps or doubts or suspicion about the demand and acceptance, conviction can be recorded. There cannot be any selective approach in a case.

15. PW.1, initially contends that he had engaged the services of one Gangadhar to obtain TOT certificate and he deposed that he did not have any residence proof or any proof to show that he was running a Kirana shop for which he sought TOT certificate. No details are given of the Bank from where he intended to take loan and for which he had to provide the TOT certificate. His acquaintance with the Venkat Ramana and on both the occasions on the trap date, PW.1 going and meeting the said Venkat Ramana on the second floor though appellant was on the first floor, all these admitted aspects create any amount of doubt regarding the prosecution case being correct. The DSP/PW.5 has not asked either of the two independent mediators to accompany PW.1 on the trap date to observe what transpired in between PW.1 and appellant. The burden on the prosecution to prove demand beyond reasonable doubt has not been discharged.

16. The Hon'ble Supreme Court in the case of ***P.Satyanarayana Murthy v. District Inspector of Police***¹⁴ and in ***N.Vijayakumar v. State of Tamil Nadu***¹⁵, held that the burden is on the prosecution to prove the aspect of demand beyond reasonable doubt and mere recovery of the amount divorced from the circumstances cannot form basis to convict the accused.

17. In view of the aforesaid reasons, the appellant succeeds and the appeal is allowed setting aside the conviction and sentence recorded by the learned Special Judge for trial of SPE & ACB Cases, Karimnagar, in C.C.No.49 of 2015, dated 22.12.2017. Since the appellant/Accused is on bail, his bail bonds shall stand discharged.

K.SURENDER, J

Date: 27.11.2024

Note: L.R copy to be marked.

tk

¹⁴ (2015) 10 Supreme Court Cases 152

¹⁵ 2021 CRI.L.J1353