

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

Criminal Appeal No.742 OF 2023

Between:

Bairam Muralidhar

... Appellant

And

The State of Telangana
ACB, Nizamabad Range, rep. by
Special Public Prosecutor

..Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED :01.02.2024

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.742 of 2023

% Dated 01.02.2024

Bairam Muralidhar

... Appellant

And

\$ The State of Telangana
ACB, Nizamabad Range, rep. by
Special Public Prosecutor

Respondent/Complainant

! Counsel for the Appellant: Sri P.Yadaviri Reddy

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

>HEAD NOTE:

? Cases referred

¹ 2022 Live Law (SC) 192

² MANU/TL/1334/2022

³ 2023 (1) ALD (CrI.) 624

⁴ 1984 AIR 1453

⁵ (2010) 15 SCC 1

⁶ (2012) 8 SCC 527

⁷ (2015) 3 SCC 220

⁸ (2019) 14 SCC 311

THE HON'BLE SRI JUSTICE K. SURENDER**CRIMINAL APPEAL No.742 OF 2023****JUDGMENT:**

1. The appellant was convicted for demanding bribe of Rs.5,000/- for doing official favour of facilitating PW1 to go back to Dubai without implicating him in the kidnapping case. Further, the bribe was demanded to reduce the gravity of case against his son who was involved in crime No.21/2006 of Kamareddy Police Station for kidnapping.

2. Briefly, the facts of the case are that on 01.02.2006, a complaint was lodged against the son of the *defacto* complainant (PW1) by one Radhakrishna Murthy alleging that his daughter was kidnapped. On the basis of the said complaint, the appellant who was working as Sub-Inspector of Police arrested the son of PW1 on 07.02.2006. Nearly 2 ½ months thereafter on 22.04.2006, PW1 returned to India and went to the Police Station. One of the Constable who was not examined in the Court asked for bribe of Rs.6,000/- for not adding the name of PW1 in the charge sheet to be filed against his son. Thereafter, the appellant demanded Rs.5,000/- on 26.04.2006 and asked PW1 to pay the said amount by 04.05.2006. Aggrieved by the said demand of bribe, PW1 and PW2 who is the cousin of PW1, gave a complaint Ex.P1 on

01.05.2006 to the Deputy Superintendent of Police, ACB, Nizamabad. PW1 was asked to appear before the DSP along with the proposed bribe amount on 04.05.2006. On 04.05.2006 after verifying the antecedents of appellant, the crime was registered. PW2 accompanied PW1 to the office of DSP on the date of trap. PW3 an independent mediator and another person were asked to act as mediators to the trap. In the office of the Deputy Superintendent of Police, Anti Corruption Bureau, the first Mediators report which was marked as Ex.P5 was drafted after completing the formalities, before proceeding to trap the appellant. What all transpired in the office of the DSP, was incorporated in the mediator's report Ex.P5.

3. On the same day at 4.30 P.M., the trap party members, PW1 to PW3, DSP and others went to the Police Station where the appellant was working as SI. The DSP instructed PWs.1 and 2 to go into the Police Station and give bribe amount to the accused on demand. Accordingly, PW1 and PW2 went into the Police Station. However, they were asked to meet the appellant at the R & B Guest House in Kamareddy in the evening at 10.00 P.M. The trap party again reached the guest house premises at 10 PM. PWs.1 and 2 went inside and on demand PW1 handed over the tainted bribe amount to appellant. After passing of the amount, PW2 went

outside and gave pre-arranged signal. The trap party entered into the police station accosted the appellant and conducted test on the hands of the appellant. The test on the hands of the appellant proved positive. The CD file relating to Crime No.21/2006 of Kamareddy Police which was registered under Section 366-A of Indian Penal Code, against the son of PW1 was seized. Having completed the post trap proceedings, mediators report was drafted.

4. Thereafter, the case was investigated and charge sheet was filed. The learned Special Judge having concluded examination of witnesses found the appellant guilty of demanding and accepting the bribe amount and accordingly convicted him.

5. The learned Senior Counsel appearing on behalf of the appellant would submit that even according to the prosecution case, the case against PW1's son was investigated and charge sheet was filed on 20.03.2006. Therefore as on the date of demand i.e. 26.04.2006, there was no official favour pending and the question of implicating PW1 in the case does not arise.

6. Learned Senior Counsel further argued that at the earliest point of time in the 'panchanama' when the second mediators report was drafted in the guest house, the appellant had stated

that money was thrust into his pocket and he never demanded any amount. The said version of the appellant was in fact stated by PWs.1 and 2 during the course of trial. However, they were treated hostile to the prosecution case. Mere recovery of amount from the appellant is not sufficient to convict the accused, unless the 'demand' and 'acceptance' are proved beyond reasonable doubt by the prosecution. Since the demand and acceptance have not been proved on account of hostility of PWs.1 and 2, further there was no official favour pending, the appellant has to be acquitted. He relied on the Judgments of Honourable Supreme Court in ***K.Shanthamma v. The State of Telangana*** in Crl.A.No.261 of 2022 (arising out of SLP (Criminal) No.7182 of 2019)¹ wherein the Honourable Supreme Court held that unless the demand of illegal gratification was proved, the offence under Section 7 and 13 (1) (d) of the Prevention of Corruption Act, cannot be made out. He also relied on the Judgment of this Court in ***Gulam Mohammad v. The Inspector of Police, Anti Corruption Bureau in Crl.A.No.1094 of 2007***² and ***N.Rajendra Prasad v. The State of A.P. in Crl.A.No.31 of 2008***³. In both

¹ 2022 Live Law (SC) 192

² MANU/TL/1334/2022

³ 2023 (1) ALD (Cr.) 624

the cases, on facts and also for the reason of the hostility of the *defacto* complainant, this Court had found that no offence was made out.

7. On the other hand, learned Special Public Prosecutor appearing on behalf of ACB would submit that though the witnesses have turned hostile to the prosecution case, the circumstances in the case have to be considered. When the circumstances are viewed in the case, it clearly makes out an offence of demand and acceptance of bribe by the appellant. There is no reason as to why PW1 would go to the guest house unless called by the appellant. Further, no person would dare to thrust the amount in the pocket of Police Officer and implicate him falsely in a criminal case. Since the amount was recovered from the pocket of the appellant, the element of demand and acceptance are proved. Accordingly, conviction cannot be interfered with.

8. He relied on the Judgments rendered by the Honourable Supreme Court in;

- i) ***State of U.P. v. Dr.G.K.Ghosh***⁴;
- ii) ***C.M.Sharma v. State of A.P.***⁵;

⁴ 1984 AIR 1453

⁵(2010) 15 SCC 1

- iii) ***Syed Ahmed v. State of Karnataka***⁶;
- iv) ***Vinod Kumar v. State of Punjab***⁷;
- v) ***Neeraj Dutta v. State (Govt. of NCT of Delhi)***⁸

9. P.W.1 was examined in chief, wherein he stated that the appellant had demanded Rs.6,000/- not to involve P.W.1 in the case and to file charge sheet against P.W.1's son by diluting the case. The said demand was made on 24.04.2006 and 26.04.2006. The amount of bribe was reduced to Rs.5,000/- by the appellant and asked to pay the amount on 04.05.2006. However, during the course of cross-examination, he stated that on 22.04.2006 he consulted his Advocate and came to know that charge sheet was already filed and also admitted that there was no possibility of making modification in the charge sheet and there was no scope for P.W.1 to be added as an accused. P.W.1 spoke contrary to the contents of pre and post trap proceedings during cross examination. He further stated that he thrust the amount in the left side shirt pocket of the appellant. However, PW1 was treated as hostile to the prosecution case and Public Prosecutor cross-examined the witnesses. He denied the suggestions of the Public Prosecutor in the cross-examination regarding the correctness of

⁶ (2012) 8 SCC 527

⁷ (2015) 3 SCC 220

⁸ (2019) 14 SCC 311

the trap laid and the demand and acceptance of the bribe by the appellant.

10. P.W.2, accompanying witness did not support the prosecution case in the chief examination and stated that he accompanied P.W.1 to the guest house and P.W.1 thrust the amount in the shirt pocket of the appellant.

11. From the record, it is apparent that the charge sheet was filed on 20.03.2006 itself and it was to the knowledge of P.Ws.1 and 2 that charge sheet was filed. P.W.1 further admitted that his counsel had informed that there was no scope of involving P.W.1 in the case or diluting the case against his son. The very genesis of complaint being lodged is not to implicate P.W.1 and dilute the case against the son of PW.1. When both favours cannot be done even according to the knowledge of P.W.1 on 22.04.2006, it creates any amount of doubt regarding PW1 approaching the appellant and the demand made on 24.04.2006 and 26.04.2006. P.W.1 later denied the contents of the complaint. He is a self-condemned witness who has given different versions during investigation and trial.

12. The Court can rely upon the documentary evidence filed in the case to infer the complicity of the appellant by ignoring the

hostility of P.W.1 to arrive at a conclusion of guilt or otherwise of the appellant. The record speaks that nearly five weeks prior to the alleged demand of bribe, charge sheet was filed. The investigating officer becomes functus officio when charge sheet is filed after investigation, unless there would be further investigation under Section 173(8) of Cr.P.C, which is not the case of the prosecution. The said circumstance creates any amount of doubt regarding the version given by P.W.1 at the time of lodging complaint being correct, since PW1 has knowledge about the charge sheet and the incapacity of the appellant to do any official favor.

13. The Hon'ble Supreme Court in several judgments held that mere recovery of the amount from the accused officer divorced from the circumstances of the case cannot be made basis to convict the accused officer. As discussed above, in the facts of the present case, it gives rise to any amount of doubt regarding the allegation of demand being correct. The subsequent recovery cannot be made basis to assume that demand was made by the accused officer. The prosecution failed to prove the demand allegedly made by the appellant.

14. The Hon'ble Supreme Court in the case of ***K.Shanthamma v. The State of Telangana's case (supra)***, held that when the demand of illegal gratification is not proved by the prosecution which is *sine quo non* for establishing an offence under Section 7 of the Prevention of Corruption Act, the prosecution fails.

15. In the result, the judgment of trial Court in C.C.No.95 of 2015 dated 22.08.2023 is hereby set aside. Since the appellant is on bail, his bail bonds shall stand cancelled.

16. Criminal Appeal is allowed.

K.SURENDER, J

Date: 01.02.2024

Note: L.R copy to be marked.

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