

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

Criminal Appeal No. 779 OF 2010

Between:

Kotla Narsimlu

... Appellant

And

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

... Respondent/

DATE OF JUDGMENT PRONOUNCED: 19.06.2024

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**

+ CRL.A. No. 779 OF 2010

% Dated 19.06.2024

Kotla Narsimlu

... Appellant

And

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

... Respondent

! Counsel for the Appellant: Sri C.Sharan Reddy

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

>HEAD NOTE:

? Cases referred

1. 2014 (13) SCC 55
2. 2012(3) SCC 687
3. 2015 (10) SCC 152
4. MANU/SC/0218/2022
5. 2002(10) SCC 371
6. 1981(3) SCC 69

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.779 OF 2010****JUDGMENT:**

1. The appellant was convicted for the offence under Sections 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 two years under both counts, vide judgment in C.C.No.8 of 2007 dated 18.06.2010 passed by the Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. Aggrieved by the same, present appeal is filed.

2. Briefly, the case of the P.W.1/Defacto complainant is that he purchased land of Ac.1.24 guntas in Shaipur village under an agreement of sale. In order to fix the boundaries, he went to the land, but the neighbors objected. For the said reason, GPA was obtained from the vendor/P.W.2 and having filed civil suit, obtained injunction orders. On 19.01.2005, application was filed before the MRO for making correction of the survey number in the revenue

records. Since the land, which was sought to be purchased was shown as Sy.No.22/E2 instead of 22/AA. Again an application was filed with the RDO on 18.03.2005, who endorsed it to the MRO.

3. A1/appellant herein was working as the Senior Assistant in the office of MRO. A2 (acquitted) was working as Deputy MRO. The appellant demanded an amount of Rs.5,000/- for attending to the work of P.W.1. P.W.1 again met the appellant on 13.04.2005. However, the bribe amount of Rs.5,000/- was reduced to Rs.2,000/-. Aggrieved by the demand made by the appellant, complaint Ex.P1 was filed with the ACB on 19.04.2005. The trap was arranged by the DSP on 21.04.2005.

4. P.W.1 went to the ACB office on 21.04.2005 where independent mediator/P.W.3 and another along with DSP, Inspector and other trap party members were present. Pre-trap proceedings were conducted and concluded around 8.45 a.m. The trap party reached the office of accused at Tandur around 11.30 AM. P.W.1 went inside the office and met the appellant. When enquired about his work of

correcting entries in the revenue record, the appellant demanded to pay the amount. Accordingly, P.W.1 handed over the amount. Then the appellant gave the original memo Ex.P4 to P.W.1. Thereafter, P.W.1 went out and signaled to the trap party. The trap party entered inside the office. Sodium carbonate solution test was conducted on the hands of the appellant to know whether the appellant handled the smeared currency bribe amount. The right hand test turned positive while left hand tested negative. Further, the appellant handed over Rs.1,500/- from his right side pant pocket. When questioned about the remaining Rs.500/-, it was allegedly informed that the amount was with the 2nd accused, who is the Deputy MRO. Rs.500/- was seized from table drawer of A2. Sodium carbonate solution test was done on the hands of A2 but test on both the hands remained negative.

5. Post trap proceedings under Ex.P12 were concluded and what all transpired including the seizure of documents and statement given by the appellant were incorporated in the panchanama which is Ex.P12.

6. Investigation was handed over to the Inspector/P.W.8 who filed charge sheet after concluding investigation. P.W.8 had also assisted P.W.7 trap laying officer during trap and member of trap party.

7. Learned Special Judge having framed charges under Section 7 and 13(1)(d) of the Act, commenced trial. P.Ws.1 to 8 and Exs.P1 to P21 were brought on record on behalf of the prosecution. MOs.1 to 13 were also placed on record. On behalf of the appellant, D.Ws.1 and 2 were examined and Exs.D1 to D4 were marked.

8. Learned Special Judge found that the demand as stated by P.W.1 was convincing and the recovery corroborated with the version of demand. Further, the amount of Rs.500/- was passed on by the appellant to 2nd accused. However, learned Special Judge extended benefit of doubt to 2nd accused on the ground that the hands of 2nd accused remained negative and further, there was no mention against A2 in the complaint.

9. Learned counsel appearing for the appellant submits that P.W.1 was not the purchaser, but pyravikar or agent who used to take money and extend his services in the office of the MRO to persons who had work in the MRO office. Since the appellant asked P.W.1 to get the original land owner for effecting entries, P.W.1 questioned the appellant and also entered into an altercation with him. For the said reason, a false case was foisted against appellant. It is further argued that Ex.P6, which is the copy of GPA when produced, the memo Ex.P4 was handed over to P.W.1 after taking acknowledgment on Ex.P5. Further, when appellant was placing file in the almirah, P.W1. thrust the amount in his pocket. The version of the appellant is probable and there is no explanation by the prosecution regarding the amount recovered from A2. In the said circumstances, there arises any amount of doubt regarding the prosecution version being correct and accordingly sought reversal of the judgment.

10. Learned Special Public Prosecutor, on the other hand, would submit that filing of an application and pendency of the work with the appellant is not disputed. There is no

explanation as to recovery of the amount from the pocket of the appellant. In the facts of the present case, presumption arises against the appellant, who failed to discharge his burden. For the said reason, the conviction recorded by the trial Judge, cannot be interfered with.

11. Learned counsel appearing for the appellant relied on the following judgments:

i) **B.Jayaraj v. State of A.P** (2014(13) SCC 55: A three judge bench of the Supreme Court held that proof of demand is sine qua non to prove the offences punishable under Section 7 & 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. It was held that mere recovery of the bribe amount is not sufficient to prove the above offences. It was also held that proof of acceptance of a bribe can only follow if there is proof of demand. Moreover it was held that the presumption under section 20 of the Act can be drawn only if there is proof of acceptance of demand of bribe.

ii) **N.Vijayakumar v. State of T.N** (2012(3) SCC 687).

A three judge bench of the Supreme Court upheld and

followed the above judgment of B.Jayaraj v. State of A.P-2014(13) SCC 55.

iii) **P.Satyanarayana Murthy v. District Inspector of Police, State of A.P** (2015(10) SCC 152). A three judge bench of the Supreme Court held that proof of demand of illegal gratification is the gravamen of the offences punishable under Section 7 & 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and in the absence of the same, the charge would fail. It was also held that mere acceptance and recovery of the illegal gratification would not be sufficient to prove the above charges.

iv) **K.Shantamma v. State of Telangana-** MANU/SC/0218/2022: A two judge bench of the Supreme Court relied upon and followed P.Satyanarayana Murthy v. District Inspector of Police, State of A.P-2015(10) SCC 152.

v) **Punjabrao v. State of Maharashtra-**2002(10) SCC 371: The accused is acquitted by taking into consideration his probable explanation under section 313 of Cr.P.C.

vi) **Bansilal Yadav v. State of Bihar-**1981(3) SCC 69: The presumption under Section 20 of the Act cannot be

raised when the defence of thrusting is taken by the accused.

12. It is an admitted fact that the work in question was completed on 06.04.2005. P.W.1 was not the land owner and no application was made by P.W.1 for changes in the revenue records. The alleged agreement of sale entered into in between P.Ws.1 and 2 was also not filed. Under Exs.D1 to D3, it was P.W.2 who filed for injunction against his neighbors in the civil court and thereafter, disputes were settled.

13. The alleged agreement of sale in between P.W.1 and P.W. 2 was not filed to establish the alleged agreement of sale transaction in between P.W.1 and P.W.2. Ex.P6 is filed which shows that in respect of Ac.1.24 guntas, Special Power of Attorney was given. However, no where it reflects regarding the agreement of sale entered into in between P.W.1 and P.W.2. Non filing of the agreement of sale which was executed admittedly between P.W.1 and P.W.2, an adverse inference has to be drawn regarding the sale transaction being correct. Further, no proof is filed to show

that money was paid to P.W.2 by P.W.1. The trap was laid on 21.04.2005. Two years thereafter charge sheet was filed. However, no sale deed or any document reflecting sale transaction in between P.Ws.1 and 2 was filed.

14. According to P.W.3, independent mediator and the DSP/P.W.7, the appellant denied having demanded any amount and further, the work was completed nearly 15 days prior to the date of trap. The said explanation was given spontaneously during the post trap proceedings.

15. On the day of trap, the bribe amount of Rs.2,000/- was allegedly handed over to the appellant when demanded by the appellant. However, Rs.500/- was recovered from A2 from his table drawer, who was in the other room. No evidence is placed by the prosecution as to when the appellant went to A2 and placed the said amount in his table drawer. P.W.1 specifically states that immediately after taking memo, he went outside and gave signal and the trap party rushed into the office and questioned the appellant. No witnesses were examined in the office to show that after P.W.1 left from the room of the appellant, the

appellant went to the other room in which A2 was present. The specific time frame of the trap party accosting the appellant after signal was received is also not reflected from the record. In the absence of any evidence, it cannot be assumed that the appellant went to the room of A2 and placed the amount in his table drawer. What transpired in the room of the appellant, the witnesses are P.W.1 and the appellant. P.W.1 or any other witness did not speak about the appellant leaving the office room. The appellant spontaneously stated that P.W.1 was not the owner and he asked P.W.1 to get the land owner. However, after he produced GPA copy Ex.P3, original memo was handed over to him. As already discussed, the case of the appellant is that P.W.1 is pyravikar and there was no sale transaction in between P.W.1 and P.W.2. Admittedly, no proof is filed by the prosecution regarding any kind of sale transaction in respect of the said land in between P.Ws.1 and 2.

16. It is for the prosecution to prove their case beyond reasonable doubt. The prosecution failed to explain the sale transaction in between P.W.1 and P.W.2 and also as to how the amount of Rs.500/- was recovered from A2. Only for the

reason of recovery of Rs.500/- from A2, who is acquitted, it cannot be inferred that appellant must have passed on the amount and placed it in the table drawer of A2, unless there is convincing evidence to prove as to how the amount of Rs.500/- travelled into the table drawer of A2, who was in another room. The prosecution has failed to prove 'demand' and the alleged partial recovery of the bribe amount from the appellant cannot be made basis to draw any inference of the version of P.W.1 being correct. In the back ground of the present case, the version given by the appellant appears to be more probable.

17. The Hon'ble Supreme Court in Jayaraj's case, Satyanarayana's case and K. Shanthamma's case as stated (supra) held that in the absence of proof of 'demand', the 'recovery' cannot form basis to prove demand. In the said circumstances, benefit of doubt is extended to the appellant.

18. In the result, the judgment of trial Court in C.C.No.8 of 2007 dated 18.06.2010 is set aside and the appellant is acquitted. Since the appellant is on bail, his bail bonds shall stand closed.

19. Accordingly, Criminal Appeal is allowed.

Date: 19.06.2024

kvs

K.SURENDER, J