

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1593 OF 2007

JUDGMENT:

1. The appellant/AO is convicted for the offence under Section 7 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 and also sentenced to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of one month and also sentenced to undergo rigorous imprisonment for a period of one year and also sentenced to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of one month for the offence under Section 13(1)(d) r/w 13(2) of the Act of 1988 vide judgment in CC No.30 of 2002 dated 17.11.2007 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court at Hyderabad. Aggrieved by the same, the present appeal is filed.

2. Briefly, the case of the prosecution is that the *defacto* complainant was working in M/s. Continental Engineering Constructions and P.W.2 is the Managing Director. Their firm was executing civil works having taken license from the Commissioner of Labour. According to the license, they are eligible to engage 50

labourers per day to work. The accused officer was calling PW.1 at his office and demanding bribe threatening that he will conduct inspection and issue show cause notice if the bribe is not paid. P.W.1 informed P.w.2 and as per the instructions of P.W.2, P.W.1 went to the house of the accused officer to meet him, where Accused Officer demanded bribe of Rs.5,000/-, failing which, the accused officer would conduct inspection and issue show cause notice for not providing facilities to labourers. In such an event the company would incur expenditure of Rs.2.00 lakhs, if such notice is issued.

3. On 18.05.2001, P.W.1 informed P.W.2 about the demand and on the advise of P.W.2, P.W.1 lodged complaint under Ex.P2. A trap was arranged on 23.05.2001. Both P.Ws.1 and 2 went to the ACB office and in the presence of P.Ws.3, 6, 7 and 8, the pre trap proceedings Ex.P4 was drafted and the trap party proceeded to the house of the accused officer. Both P.Ws.1 and 2 entered into the house of P.W.1 around 9.00 a.m and found the accused officer was sitting in the Varandah. P.W.1 introduced P.W.2 and the accused officer demanded whether the bribe amount was brought. PW.1

took out the amount and kept it on the teapoy. The accused officer placed granite paper weight o the currency notes and pushed it towards P.W.1. Thereafter, pre arranged signal was relayed by P.W.3, independent mediator. The trap party entered inside the house and conducted sodium carbonate solution test on the hands of the accused officer. The solution on both the hands of the accused turned positive. When questioned the accused officer informed that the complainant P.W.1 forcibly gave an amount of Rs.5,000/- and the said amount was produced from his shirt pocket.

4. Learned counsel for the accused officer submits that there is no official work of the company pending with the accused officer. The allegation of demand of bribe for not issuing show cause notice for not providing facilities to the labourers is false. The motive for false implication is that the accused officer was upright officer and strict officer. Since the accused officer would not turn blind eye to the company not providing facilities to labours and will not ignore any irregularities, the construction firm owned by P.w.2, falsely

implicated the accused officer as they were engaging labours beyond permitted limits without providing facilities.

5. He further submits that the very demand of bribe is doubtful for the reason, though demand was made in the house of the accused officer, on the day of trap, when P.Ws.1 and 2 went along with the trap party, they could not trace the house of the accused officer and P.Ws.1 and 2 had to make a phone call. The accused officer sent his son to the main road and he took P.Ws.1 and 2 to the house. In support of his contentions, he relied on the following judgments:

i) **State through CBI v. Anup Kumar Srivastava** (2017 (3) ALT (Crl.) 56 (SC), wherein it is held that the proof of demand is an indispensable eventuality and of permeating mandate for an offence under Section 7 and Section 13 of the Act of 1988.

ii) **Kishan Chander v. State of Delhi** (2016 (3) SCC 108, wherein the Hon'ble Supreme Court held that failure of prosecution to prove factum of demand of bribe money made by the accused from the complainant which is "sine qua non" to consider the offence under Sections 7 and 13(1)(d) of the Act.

iii) **C.M.Sharma v. State of A.P** (2012(2) ALT (CrI.) 147 (SC), wherein the Hon'ble Supreme Court held that mere recovery of currency notes from the accused not sufficient. The prosecution has to prove the charge of bribe beyond all reasonable doubt that the accused demanded and voluntarily accepted the bribe.

iv) **Paira Singh v. State of Himachal Pradesh** (2014 (1) ALT (Cri) 4 (SC), wherein the Hon'ble Supreme Court held that mere recovery of money by itself can't prove the charge against the appellant without any evidence to prove that, money recovered was bribe amount.

v) **N.Sunkanna v. State of Andhra Pradesh** (2016 (1) SCC 713, wherein the Hon'ble Supreme Court held that unless there is proof of demand for bribe, mere recovery of money does not give rise to draw presumption under Section 20 of the Act.

vi) **B.Jayaraj v. State of A.P (2014 (13) SCC 55)**, wherein the Hon'ble Supreme Court held that presumption under Section 20 of the PC Act shall only in relation to Section 7 and not under Section 13(1)(d).

vii) **J.V.Ramana Murthy v. State of A.P**, (2017 (1) ALT (Cri) 76, wherein it is held that presumption can be rebutted by preponderance of probabilities and no explanation by the accused officer before the trap officers for possession of tainted amount, but he could offer explanation before trial Court. The explanation during trial cannot be discredited since the same was not offered before the trap officer and the said explanation can be accepted if appeals to the conscious of the court.

viii) **Mukthair Singh v. State of Punjab** (2017 (1) ALT 27 (DN) (SC), wherein it is held that the court has to look for independent corroboration before convicting the accused person and that mere recovery of currency notes itself does not constitute the offence under the Act, unless it is proved beyond all reasonable doubt that, the accused voluntarily accepted the money knowing it to be bribe for the court to draw presumption under Section 20 of the Act.

ix). **The State of A.P rep. by Inspector of Police v. R.Krishnaiah** (2013 (2) ALT (Cri) 118 AP, wherein it is held that demand and acceptance can be proved by direct or circumstantial

evidence. Prosecution failed to prove official favour pending on the date of trap.

x) **V.Sejappa v. State by Inspector of Police, Lokayukta, Chitradurga** (2016 (12) SCC 150), wherein it is held that mere recovery of tainted money was not enough to draw presumption under Section 20 of the Act and the court is required to consider the explanation offered by the accused, if only, only on the touch stone of preponderance of probability and not on the touch stone of proof beyond all reasonable doubt.

xi) **State, rep. by Inspector of Police, ACB v. D.Anjaiah** (2014 SCC Online AP 1099, wherein it is held that no official favour was pending with the accused officer and that without proof of demand, the presumption under Section 20 cannot be drawn on the basis of mere recovery of money.

xii) **B.Suresh Babu v. State of A.P, rep. by Inspector of Police, CBI** (2010(1) ALT (Cri) 121 A.P, held that when there is a possibility of the complainant having grouse against the accused officer, the evidence of P.W.1/complainant cannot be wholly reliable and that his evidence required corroboration.

xiii) **Mudunuri Bapiraju v. The State of A.P** (2010 (1) ALT (Cri) 202, wherein it is held that even evidence of witness put in the category of wholly reliable, there is no bar to base conviction on solitary witness.

xiv) **Addala Subramanyam v. State, rep. by Inspector of Police, ACB, Visakhapatnam** (2013 (1) ALD (Cri) 934, wherein it is held that when demand for bribe by the accused is doubtful, then the defence witness could prove by preponderance of probabilities.

6. The learned Special Public Prosecutor submits that the amount was recovered from the shirt pocket of the accused officer, for which reason, the presumption under Section 20 of the Act has to be drawn. The accused officer was corrupt officer and demanding amount from such constructions firms, threatening of taking action for not giving facilities to labourers and that such public servants should not be tolerated and the trial Court has correctly come to a conclusion of guilt. In support of his contentions he relied on the judgments; i) **Madhukar Bhaskar Rao Joshi vs. State of Maharashtra**¹, the Hon'ble Supreme Court held that in any trial for

¹ (2000 (8) SCC 571)

the offence punishable under Section 7 and Section 13(1)(d), if it is proved that the accused has accepted or obtained or has agreed to accept or attempted to obtain for himself or for any other person, any gratification, it shall be presumed that unless the contrary is proved that the said amount was towards illegal gratification; iii) In **Girija Prasad (dead) by L.Rs. v. State of M.P.**², the Hon'ble Supreme Court upheld an order of the High Court reversing the acquittal judgment of the trial Court on the ground of the accused failing to discharge his burden; iv) **Chaturdas Bhagwandas Patel v. State of Gujarat**³; v) **Dhanvantrai Balwantrai Desai v. State of Maharashtra**⁴, Constitutional Bench judgment of the Supreme Court held that once it is shown that the amount received by any accused is towards illegal gratification, presumption has to be raised.

7. Counsel submitted that the alleged demand was made on 17.05.2001, six days prior to the trap. The case of the accused officer is one of denial. If at all P.W.1 had visited the house of the

² (2007) 7 Supreme Court Cases 625

³ (1976) 3 Supreme Court Cases 46

⁴ AIR 1964 SC 575

accused officer on 17.05.2001, the question of not remembering the house and taking the assistance of the accused to locate his house sounds improbable. No such effort to locate the house was made by P.W.1 on the day when the alleged demand was made i.e., on 17.05.2001. However, the assistance of the son of the accused officer was required on the day of trap, gives rise to any amount of suspicion whether P.W.1 had in fact visited the house of the accused officer on 17.05.2001.

8. The defence taken by the accused officer is one of false implication. According to P.W.3, when they went inside the house, the accused officer stated to P.Ws.1 and 2 that the construction company had engaged 70 to 80 labourers and there were no facilities and when P.W.2 informed that he was on tour and he would see to it and no such mistake will be committed in future and he would attend to the same. Then, P.W.2 instructed P.W.1 to pay the amount to the accused officer. The said amount was placed on the teapoy and the accused officer placed the paper weight on the said notes. The counsel submitted that the very act of the accused officer placing granite paper weight on the notes would suggest that

he was reluctant to accept the amount and the defence version that the amount was forcibly given is probable.

9. The conduct of the accused officer in placing the paper weight on the tainted notes does not give rise to any doubt regarding the acceptance of the amount. In fact on the date of trap, the accused officer threatened that more laborers were engaged by PW2's company and that no facilities were provided, which only corroborates the version of PW1 and PW2 that accused officer demanded the amount. When the trap party entered into the house, the amount was taken out from the shirt pocket and produced. In the said circumstances, it is apparent that the amount was taken and kept in the shirt pocket by the accused officer. The same amounts to acceptance of the bribe amount pursuant to the demand.

10. On the date of trap, P.Ws.1 to 3 were present in the house when the amount was demanded. The version of the accused officer that he was falsely implicated for the reason of rivalry in between two trade unions of the sugar factory where construction

was carried out by the company of P.W.2 is farfetched and not believable.

11. The other argument that there was no pending work with the accused officer is not tenable. The bribe was demanded for the reason of not implicating the company of P.W.2 for not providing facilities to the labour and also for engaging more labourers than the permitted figure. In such an event, the question of pending work in the office of the accused officer does not arise. It is a case of misuse of his official position to take bribe on the threat of filing cases. There are no reasons to disbelieve the evidence of P.Ws 1 and 2 regarding the demand made by the accused officer. Not finding the house of the accused officer on the date of trap and seeking help from the son of the accused officer to go to his house will not in any manner help the accused officer to say that there was no prior demand.

12. For the foregoing discussion, this Court finds no reason to disbelieve the evidence of prosecution witnesses regarding the demand and acceptance of bribe amount. Accordingly, the conviction recorded by the learned Special Judge is upheld.

13. In the result, Criminal Appeal is dismissed. As a sequel thereto, miscellaneous petitions, if, pending, shall stands closed.

Date:11.08.2022
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K.SURENDER, J

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