HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

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Criminal Appeal Nos. 1035 & 1036 OF 2008

Between:

Mir Mustafa Ali Hasmi & another … Appellants

And

The State of Andhra Pradesh,
Through Inspector of Police, ACB,
Hyderabad Range,
rep by its Spl. Public Prosecutor,
High Court for the State of A.P,
Hyderabad … Respondent

DATE OF JUDGMENT PRONOUNCED: 02.08.2022
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

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No. 1035 & 1036 of 2008

% Dated 02.08.2022

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! **Counsel for the Appellants:** 1) Sri D.Purnachandra Reddy for A2
2) Sri M.Venkat Ram Reddy for A1

^ **Counsel for the Respondent:** Sri T.L.Nayan Kumar, Standing Counsel for ACB

>HEAD NOTE:

? Cases referred

[1] CRLA No. 261 of 2022

[2] (2022) 1 ALD (Crl.) 109 (TS)

[3] (2015) 10 SCC 152

[4] (2000) 8 SCC 571

[5] (2007) 7 SCC 625

[6] (1976) 3 SCC 46

[7] AIR 1964 SC 575

HON'BLE SRI JUSTICE K.SURENDER

Criminal Appeal Nos.1035 and 1036 of 2008

COMMON JUDGMENT

1. Since both these appeals arise out of judgment in C.C.No.10 of 2004 preferred by the Accused Officers 1 and 2, they are being heard together and disposed off by way of this Common Judgment.

2. Criminal Appeal No.1035 of 2008 is preferred by the Accused Officer No.2 and Criminal Appeal No.1036 of 2008 is preferred by the Accused Officer No.1. For the sake of convenience, parties herein after will be referred to as arrayed in the Calendar Case.

3. The AOs. 1 and 2 were convicted for the offence under Section 7 of Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for one year each and to pay fine of Rs.1,000/-, in default to pay fine amount, to undergo Simple Imprisonment for three months and also sentenced to undergo rigorous imprisonment for one year each for the charge under Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988, and also to pay fine of Rs.1,000/- each and in default, to undergo Simple Imprisonment for a period of three months vide

judgment in C.C.No.10 of 2004 dated 05.08.2008, passed by the Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. Aggrieved by the same, present appeal is filed.

2. The case of the prosecution is that AO1 is the Forest Section Officer, AO2 is the Forest Guard and both were part of Flying Squad. On 06.01.2003, AOs 1 and 2 went to the Saw-mill maintained by P.W.1 at Vanasthalipuram, which was taken on lease in the name of his wife from one Sri Ramachary. Both AO's threatened that a case would be booked against them for possession of teakwood. On the request of P.W.1, AO1 booked the case against one Ashok, worker in the Sawmill and collected compounding fee of Rs.50,000/- and issued a receipt. Thereafter, AOs 1 and 2 started demanding mamool of Rs.5,000/- and threatened P.W.1 that they wood book a case and that he cannot run business and used to make threatening calls every day.

3. On 21.01.2003, AO2 called PW.1 and asked him to keep money ready and he would call to receive the same. On 22.01.2003 AO1 called P.W.1 and asked him to come to Hotel Quality-Inn Residency, Nampally and bring the demanded bribe amount of

Rs.5,000/-. Vexed with the demands, P.W.1 lodged a complaint Ex.P1 on 22.01.2003 with P.W.10, Deputy Superintendent of Police and a crime was registered.

4. On 23.01.2003, trap was arranged and P.W.1 along with the bribe amount and his friend P.W.2 went to the DSP office. DSP secured two independent witnesses, P.W.3 and another. The trap party, having gathered in the ACB Office on 23.01.2003, conducted pre-trap proceedings under Ex.P4. Thereafter, the trap party proceeded to Quality-Inn Hotel at 10.30 a.m after completing pre trap proceedings in the ACB Office at 9.45 a.m. P.Ws.1 and 2 entered into the Coffee shop and met AO1. AO1 showed some papers to P.W.1 which he took out from the rexine bag he was carrying. All the happenings in between AO1 and P.Ws.1 and 2 was visible to the trap party, who were waiting in the hotel lobby. At about 11.15 a.m, P.Ws.1 and 2 came out and walked towards the cellar of the hotel. The DSP and other trap party members also followed them at a distance. When P.Ws.1 and 2 and AO1 went near the cellar, at about 11.25 a.m, P.W.2 gave pre-arranged signal to the trap party. The trap party then proceeded and questioned AO1

regarding the bribe amount. P.W.1 informed that AO1 demanded and accepted an amount of Rs.5,000/- and placed it in the rexine bag he was carrying. AO1 was asked to rinse his fingers in sodium carbonate solution and his right hand fingers turned positive to the test. AO1 then informed on questioning that he had accepted the amount towards compounding fee and opened the bag he was carrying, the mediator took out the currency notes and on verification found to have tallied with the bribe amount. The bribe amount and diary were seized. The diary had come into contact with bribe amount, which was also tested for phenolphthalein and seized. Money receipt book which was in the bag was also seized. The trap party concluded the post trap proceedings, which is Ex.P11.

5. Learned counsel for the AO1 submits that the very trap itself is doubtful for the reason of the delay in passing of the amount by P.W.1 to AO1. Though AO1 and P.Ws.1 and 2 were sitting in the hotel visible to the trap party, there was no passing of amount to AO1. However, it is the case of the prosecution that when they got down to the cellar, P.W.2 had given the signal and thereafter money

was recovered. AO1 was falsely implicated by placing the amount in the bag and there was no demand. Further, P.W.1 did not have any licence to run the saw-mill. According to the prosecution, it was the owner of the Saw-mill one P.Ramachary, who has not examined and neither any lease deed or any memorandum of understanding between P.W.1's wife and Ramachary are placed before the Court to say that P.W.1 had anything to do with the Saw-mill. Since there is no evidence that the said Saw-mill was being run by P.W.1 or his wife, the very case of the prosecution fails.

6. On the other hand, learned counsel for AO2 submits that the trial Court committed grave error in convicting AO2 when he was not even present and only on the statement of P.W.1 that he had made telephone call demanding bribe, the Court erred in convicting AO2 on such frail evidence.

7. Learned counsel for the appellants, in support of their contentions, relied upon; i) **K.Shanthamma v. The State of Telangana**[1]; ii) **S.Shankar v. State, ACB, Karimnagar Range**[2]; iii)

[1] Criminal Appeal No.261 of 2022

[2] 2022 (1) ALD (Crl.) 109 (TS)

P.Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh[3].

8. On the other hand, learned Special Public Prosecutor for ACB submits that the demand and acceptance was proved by the prosecution. The amount was recovered from the bag, which was held by AO1, for which reason, it cannot be said that AO1 was falsely implicated. AOs1 and 2 had inspected the saw-mill and also levied fine, which is not disputed by AOs.1 and 2, for the said reason, it cannot be said that AOs 1 and 2 had nothing to do with the bribe asked regarding saw-mill. For the said reason of recovery from the hand bag of AO1, presumption is attracted under Section 20 of the Prevention of Corruption Act and it is for AO1 to discharge his burden and prove that the recovered amount was not towards bribe.

9. In support of his contentions, he relied upon the following judgments; i) **Madhukar Bhaskar Rao Joshi vs. State of Maharashtra**[4], the Hon'ble Supreme Court held that in any trial for

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[3] (2015) 10 Supreme Court Cases 152

[4] (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 an 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**[5], 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**[6]; v) **Dhanvantrai Balwantrai Desai v. State of Maharashtra**[7]**,** 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.

11. The factum of imposing fine in the saw-mill is not disputed by AOs 1 and 2. In fact, it is the case of AO1 that when he was sitting in the hotel along with P.Ws.1 and 2, he left the rexine bag on the

[5] (2007) 7 Supreme Court Cases 625

[6] (1976) 3 Supreme Court Cases 46

[7] AIR 1964 SC 575

table and taking advantage, P.W.1 planted the said amount in the rexine bag and handed it over to him when he was leaving from the cellar of the hotel.

12. The conversation between P.Ws.1, 2 and AO1 in the hotel was for about half an hour. The reason why he had met P.W.1 in the hotel is not stated by AO1. If he did not have acquaintance or did not demand bribe amount from P.W.1, there was no necessity for AO1 to visit the hotel and spend time with P.Ws.1 and 2. The version of forgetting bag on the table, subsequently handing it over to AO1, was not stated at the earliest point of time and it is apparent that it is an afterthought. In the said circumstances, the prosecution is able to prove that AO1 has demanded and accepted the amount from P.W.1 in the hotel. Further in pursuance of his demand earlier, he had visited the hotel and received the amount from P.W.1. For the said reason, there are no grounds to interfere with the conviction of AO1.

13. AO2 was convicted even though he was not present in the hotel only on the basis of phone call made to P.W.1. It is the case of AO2 that he was not having the said phone number which the

prosecution alleges to have made phone calls to PW1. The learned Special Judge found that though there was no direct evidence of the complicity of AO2, however, considering the totality of the circumstance of AO1, it was found that AO2 conspired with AO1 in demanding and accepting bribe. The said finding of the learned Special Judge is without any basis. In criminal cases it cannot be assumed that a person is complicit of any criminal acts unless the prosecution proves the case beyond reasonable doubt. Even assuming that a call was made to P.W.1 by AO2, it cannot be assumed that it was for the purpose of demand of bribe. Only in the event of the prosecution producing any recorded phone call of AO2, it cannot be confirmed that the call was made towards bribe. The inference drawn by the learned Special Judge that it has to be assumed that AO2 has demanded the amount from P.W.1 is farfetched and not supported by any reliable evidence except the oral testimony of PW1. For the said reason, the benefit of doubt is extended to AO2 and accordingly, his conviction is liable to be set aside.

14. In the result, the impugned judgment in CC No.10 of 2004 dated 05.08.2008 in so far as AO1 is concerned remains confirmed and unaltered. However the conviction of AO2 is set aside. Since AO2 is on bail, his bail bonds shall stand cancelled.

15. Accordingly, Criminal Appeal No.1036 of 2008 is dismissed and Criminal Appeal No.1035 of 2008 is allowed.

K.SURENDER, J

Date: 02.08.2022
Note: LR copy to be marked.
B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL Nos.1035 & 1036 OF 2008

Date: 02.08.2022

kvs