HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.118 of 2007

JUDGMENT:

1. The appellant/Accused officer(AO) is convicted for the offence under Section 7 and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1,500/-, in default, to undergo simple imprisonment for a period of three months for the offence under Section 7 of the Prevention of Corruption Act, 1988 (for short 'the Act of 1988') and further convicted for the offence under Section 13(1)(d)(i) & (ii) r/w Section 13(2) of the Act of 1988 and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1,500/-, in default, to undergo simple imprisonment for a period of three months vide judgment in Calendar Case No.16 of 2002 dated 12.01.2007 passed by the Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. Aggrieved by the same, present appeal is filed.

2. P.W.1 filed a complaint before the ACB stating that he was running a Fair Price Shop at Kapra. Every month the allotted quota of rice, sugar, kerosene and oil will be sold and entries would made in the sales register. For allotment of next month quota coupons of sales and sales register have to be shown to the checking inspector. The Checking Inspector, who is the AO was causing inconvenience in registering the sales certificate and sales register. P.W.1 was asked to pay Rs.500/- every month for certifying the sales register and demanded total of Rs.1,500/- to be paid for the past three months. The said demand was made on 3rd April, 2001 and again on 6th April, 2001. P.W.1 went to the office at Uppal and asked for April month's sales register, then the Accused Officer replied that if Rs.1,500/- is paid, she would certify the sales register, otherwise she will not certify the said register. Aggrieved by the said demand, complaint was filed before the ACB on 07.04.2001 under Ex.P1.

3. The DSP P.W.8 arranged a trap on 09.04.2007 afternoon. Accordingly, P.W.1 went to the DSP office on the said day. Pre-

trap proceedings Ex.P10 was prepared in the presence of independent mediators and after concluding Ex.P10 at 3.40 p.m, the trap party proceeded to the office of the accused officer at Uppal. PW1 entered into office, came out and relayed the prearranged signal as instructed by DSP. On receiving signal from P.W.1, the trap party entered into room of the accused officer and conducted test on her hands and both the hands of the accused officer turned positive. Then the DSP asked the accused officer to produce the amount, for which accused officer refused stating that she had not received any amount. The DSP asked to rinse her hands in sodium carbonate solution, which turned into pink colour, which is the proof of accepting the tainted currency. But the accused officer was adamant and argued that she has not received any amount. The DSP called Rangaiah (PW.4), who was the Head of the office and at his instance, the accused officer took the trap party into the adjacent record room and the tainted amount was found on the trunk box, from where the amount was recovered by DSP.

4. The learned counsel for the appellant submits that no work was pending with the accused officer and the register was already signed. P.W.2, who is the mediator who accompanied P.W.1 into the office stated that *"in my presence the accused officer did not take any bribe nor she accepted any amount from P.W.1"*. For the said reason and when the amount was recovered from the room in the open trunk box, it cannot be said that the accused officer had demanded and accepted the amount of bribe. He also relied on the judgments; i) **K.Shanthamma v. The State of Telangana**[1] the Hon'ble Supreme Court held that proof of demand of bribe is *sine qua non* for establishing an offence under Section 7 of the Act of 1988; ii) **S.Shankar v. State, ACB, Karimnagar Range**[2], this Court held that presumption under Section 20 of the Act of 1988 cannot be drawn unless *prima facie* evidence is found regarding the demand and acceptance of bribe; iii) **Ganga**

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[1] 2002 LiveLaw(SC) 192

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

Kumar Srivastava v. State of Bihar[3], wherein the Hon'ble Supreme Court held that respective independent witnesses have to be secured by the ACB to give credibility to the allegation of demand and acceptance. He further submits that the evidence is circumstantial in nature and all the circumstances have to be proved beyond reasonable doubt, failing no reliance can be placed on the prosecution case. Since prosecution failed to prove that there was any pending work with the accused officer and also for the reason of demand not being proved, the accused officer is entitled to be acquitted.

5. On the other hand, learned Special Public Prosecutor submits that at the instance of the accused officer, money was recovered from room. Further, only upon stating that P.W.1 had brought amount then the concerned registers were signed by the accused officer. In support of his contentions, he relied on the judgment reported in the cases of: i) State of U.P v.

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[3] 2005 Law Suit(SC) 971

Zakaullah[4], wherein the Hon'ble Supreme Court held that the testimony of complainant cannot be rejected outright only for the reason of demand not being heard by the independent witness.

6. According to the second mediator's report Ex.P12, she was standing in the record room near the table of one attender Sri Vittalaiah, who was examined as D.W.2. The said witness stated that the certification in the sales register was already done and it was collected by the ACB. He further deposed that when ACB officials came into the office, the accused officer was standing near his table and looking into the stamp register. The ACB officials came into the office and thereafter asked him to go away from the room and he did not find any amount that was on Ashok Kumar's trunk from which the amount was allegedly recovered.

7. The prosecution has examined PWs.1 and 2 to prove the demand by the accused officer. However, on the day of trap,

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[4] (1998) 1 Supreme Court Cases 557

P.W.2 refused to acknowledge that he has heard the accused officer demanding money from P.W.1.

8. P.W.1 stated that the accused officer asked whether he has brought the amount, however, PW.1 did not hand over the amount to the accused officer according to PW1. However the accused officer asked PW.1 to take April month's register to the attender and get it stamped. D.W.2, attender Vitalaiah stamped on the register and the accused officer put her initials and thereafter she went inside the A.S.O's room and returned from the room and stood at the seat of the Superintendent. After some time, Superintendent came to his seat and the accused officer spoke with Superintendent and thereafter, the accused officer handed over the register to him and accordingly, P.W.1, went to Vittalaiah in the next room and got stamped on the register. Then the accused officer followed P.W.1 and asked him to pay the amount, as such, P.W.1 took the amount and gave it to her. Accordingly, he came out and gave pre-arranged signal.

9. The case of P.W.1 is that when the accused officer asked whether the amount was brought, P.W.1 did not give amount to the accused officer nor offered it to her. It is not the case of P.W.1 that after demand, the accused officer asked P.W.1 to keep money with him and that she would collect it later. Admittedly, the accused officer had put her initial and she went into the A.S.O's room and thereafter, she had conversation with the Superintendent. At no point of time, the said amount was taken by the accused officer. Such conduct is not explained by the prosecution. Admittedly, when the demand was made, neither PW.1 offered the said amount nor the accused officer has taken the same, however, the case is that the accused officer followed P.W.1 and again asked for the amount. In the back ground of the amount being recovered when found on the trunk box, in which room D.W.2 Vittalaiah was sitting, raises any amount of doubt vis-a-vis., the conduct of P.W.1 in not handing over the amount and the accused officer denying receiving the amount from P.W.1. Even according to the second mediator's report, the said attender

Vittalaiah was sitting in the record room where the amount was found. Strangely, the said Vittalaiah though a crucial witness to the prosecution was not examined, though cited as a witness. However he was examined in defence as D.W.2.

10. The said sequence of events; i) though demand was made money was not passed on; ii) PW.2 mediator not hearing any demand that was made, though according to P.W.1, she had demanded twice; iii) attender Vittalaiah was admittedly in the room where the amount was found but given up by the prosecution; iv) unusual conduct of the accused as projected by the prosecution regarding not accepting the money when demanded.

11. In the facts and circumstances, the prosecution has failed to prove the factum of demand by accused officer. The money was also recovered from the top of trunk box in the record room which is suspicious for the reasons discussed above. Admittedly, the accused officer had denied demanding any amount. In the said circumstances of the prosecution case, it cannot be said that there was demand by the accused

officer. When once the demand is not proved by the prosecution, mere recovery of the notes is of no consequence.

12. In the facts and circumstances, for the reason of the prosecution failing to prove the case beyond reasonable doubt and failure to prove the demand, the conviction recorded by the trial Court is liable to be set aside.

13. In the result, the conviction and sentence recorded against the accused officer vide impugned judgment in CC No.16 of 2002 dated 12.01.2007 is set aside and the accused is acquitted. Since, the accused is on bail, her bail bonds stand cancelled.

Criminal Appeal is allowed.

K.SURENDER, J

Date: 03.08.2022

kvs

HONOURABLE SRI JUSTICE K.SURENDER

Criminal Appeal No.118 of 2007

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kvs