HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

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Criminal Appeal No.1404 OF 2007

Between:

Edla Mallesh. … Appellant

And

The State ACB, Warangal Range,
Rep. by its Spl.Public Prosecutor,
High Court of AP, Hyderabad. … Respondent

DATE OF JUDGMENT PRONOUNCED: 13.09.2022

Submitted for approval.

<u>THE HON'BLE SRI JUSTICE K.SURENDER</u>

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.1404 of 2007

% Dated 13.09.2022

Edla Mallesh ... Appellant

And

$ The State ACB, Warangal Range,
Rep. by its Spl.Public Prosecutor,
High Court of AP, Hyderabad ..Respondents

! **Counsel for the Appellant:** Sri D.Purnachandra Reddy.

^ **Counsel for the Respondent:** Sri T.L.Nayan Kumar,
Special Public Prosecutor for ACB

> HEAD NOTE:

? Cases referred

[1] (1978) 4 Supreme Court Cases 32

2 1963 Supp(1) SCR 485

3 (2004) 9 Supreme Court Cases 333

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1404 of 2007

JUDGMENT:

1. The appellant is convicted and sentenced to undergo rigorous imprisonment for a period of six months for the charge under Section 7 of the Prevention of Corruption Act, 1988 (for short 'the Act of 1988') and also sentenced to undergo rigorous imprisonment for one year for the charge under Section 13(1)(d) punishable under Section 13(2) of the Act of 1988, vide judgment in C.C.No.54 of 2003, dated 28.09.2007 passed by the Principal 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 P.W.1 is an agriculturist running a small flour mill. A capacitor to control the electricity supply was installed to his electricity service connection. One lineman of his locality saw his electricity bills and informed that the capacitor charges were being levied in the electricity bills and suggested him to meet the Assistant Engineer in the department. The AE inspected the house and having found that the capacitor was installed, left the house. Thereafter, P.W.1 met the appellant, who was working as UDC

in the office and informed that Rs.2,350/- was paid in excess for capacitor and letter was addressed vide Ex.P1 to the Assistant Accounts Officer, Warangal. The appellant after receiving the said letter Ex.P1, demanded an amount of Rs.1,000/- since P.W.1 was being benefitted by Rs.2,350/-. Aggrieved by the said demand on 02.04.2002, a complaint Ex.P2 was given to the ACB which was written by P.W.2.

3. The trap was arranged on 04.04.2002. P.W.1 produced tainted currency and after concluding pre-trap proceedings Ex.P6 in the office of ACB, the trap party went to the office of the appellant around 1.30 p.m on the said date. P.W.1 entered into the office and when demanded, handed over an amount of Rs.1,000/- and came out and relayed pre-arranged signal to trap party indicating acceptance of bribe. The trap party entered and the DSP asked the appellant to rinse his hands in the sodium carbonate solution. The said solution turned positive for both hands. When questioned, the appellant stated that due to oversight, an amount of Rs.2,779.24 ps was calculated as in excess and sought to be adjusted in the subsequent bills, for which reason, an amount of Rs.1,000/- was asked as bribe and accordingly, accepted the said amount.

4. After conclusion of post trap proceedings Ex.P11, the investigation was handed over to Inspector and after concluding investigation, the Inspector filed charge sheet.

5. Learned counsel for the appellant submits that P.W.1 has filed a false complaint when capacitor charges were not being collected from P.W.1. According to P.W.1, appellant was a billing clerk and he had no power to adjust excess payment if any or to waive the charges. The reason for filing the complaint is that power to the flour mill of the complainant/P.W.1 was disconnected for non payment of bill in February, 2002 and suspecting that the appellant was responsible for disconnection, P.W.1 has falsely implicated him in this case. Lastly, learned counsel submits that the sanctioning officer/P.W.8 who granted sanction was Superintending Engineer of A.P.TRANSCO, who was not competent to remove the appellant from his service as such, the sanction was bad in law. Since the appellant was tried without a valid sanction, the trial is void. He also submits that During Section 164 Cr.P.C statement P.W.1 stated that only Rs.500/- was given to the appellant and stated that he would pay remaining Rs.500/- later. In support of his contentions, the counsel relied on the following judgment: i)

Parmanand Dass v. State of Andhra Pradesh[1] and argued that since P.W.8 was not competent authority to remove the appellant from his service, the sanction accorded is void.

6. On the other hand, learned Special Public Prosecutor submits that during the post trap proceedings, the appellant had accepted that he has received amount towards bribe, for which reason, the burden shifts on to the appellant and the appellant failed to discharge his burden, as such, the conviction cannot be interfered with. Further no prejudice is caused assuming that the sanction was not granted by the competent authority. In support of his contentions he relied on i) Dhanvantrai Balwantrai Desai v. State of Maharashtra[2] and A.Abdul Kaffar v. State of Kerala[3] and argued that since the appellant did not give any defence as to the receipt of the amount, the conviction cannot be interfered with.

7. P.W.1 has knowledge about the appellant being incompetent to waive any capacitor charges, as admitted during his cross-examination. He further admitted that the

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[1] (1978) 4 Supreme Court Cases 32

[2] 1963 Supp(1) SCR 485

[3] (2004) 9 Supreme Court Cases 333

appellant had no power to adjust excess payment. In the said circumstances, when P.W.1 was aware that the appellant was not competent to either waive or adjust surcharge or adjust any excess amount to be paid, the bribe amount demanded and subsequent payment to the appellant is doubtful. No prudent person having knowledge that a particular public servant is incompetent or has no power to do such official act that was requested by a person, the question of agreeing to pay bribe amount or even asking such public servant to do the said official work does not arise. When it is known to a person that no purpose would be served if a bribe is given, the said person would never venture into parting any amount as bribe.

8. P.W.4 had stated that a letter Ex.P8 was addressed on 22.12.2000 to delete the capacitor chares. In fact, in the month of December, 2000, P.W.1 produced Ex.P3 bills before P.W.4 to verify that capacitor chares were being levied, addressed the said letter Ex.P8. P.W.6, who was AAE stated that he provided Ex.P1 letter and handed over to him. In the cross-examination P.W.6 admitted that he was aware that the capacitor charges were stopped on the electricity bills of P.W.1 from 2001 onwards.

9. P.W.6 who provided Ex.P1 admitted that the service connection of PW.1 was disconnected from February, 2002 for non-payment of bills. P.W.1 admitted that he used to pay electricity bill amount to the appellant. He further admitted that the appellant was not competent person to either levy any surcharge or adjust any surcharges. According to P.W.6, levying surcharges were stopped from January, 2001. In the said circumstances, the demand made by the appellant becomes doubtful. For the said reason of disconnection of the electricity connection to P.W.1's flour mill, P.W.1 lodging complaint against the appellant holding him responsible for the power disconnection cannot be said to be improbable.

10. Under Section 19(1)(c) of the Act, no Court shall take cognizance of an offence under Sections 7 and 13, except the previous sanction of the authority competent to remove such public servant from his office. P.W.8 was the then Superintendent Engineer of AP TRANSCO, who gave sanction order Ex.P13. In Ex.P13, it is mentioned that he was the person competent to remove the appellant from his service, as such, in exercise of his powers conferred under Section 19(1)(c) of the Act, he accorded sanction. During his examination before the court, P.W.8 admitted that he was not competent to

remove the appellant from his service. Extract of the question which was put to P.W.8 and Court recording demeanor :

> *"Question: are you aware of the fact that an officer who can remove the AO from his services can alone accord prosecution sanction orders?*
>
> *Ans: I was under impression that I was competent to issue such a prosecution sanction orders".*
>
> *The witness gave the said answers after taking considerable time.*

11. Sub-section (3) to Section 19 starts with a non-obstante clause and prohibits reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Section 465 of Cr.P.C. is a similar provision which prohibits reversal of finding or sentence when there is an irregularity in grant of sanction unless a failure of justice has occasioned thereby.

12. P.W.8, who was not competent to grant sanction, has accorded sanction stating that he was the person competent to

remove the appellant from his service, which admittedly is incorrect. In the back ground of the case wherein the capacitor surcharges were already deleted and the official witnesses stated that no such surcharge was being levied from February 2001, which was evident from the documents filed under section 207 of CRPC before Court, collected during investigation, the question of demand does not arise. The subsequent admissions during cross-examination of witnesses during trial also disclose that 'demand' was not proved. If the entire file was placed before the competent authority on proper application of mind, the competent authority may have refused to sanction prosecution in the background of the discrepancies in the prosecution case and the very basis for demand is belied by documents filed by prosecution. In the said circumstances, it can be said that the appellant was prejudiced for the reason of not placing the file granting sanction before the competent authority, who is the Chairman and Managing Director of APTRANSCO.

13. Though the incompetence of the sanctioning authority was brought to the notice of the Special Judge during cross-examination of PW8, the Special Judge erred in finding that the CMD of TRANSCO had authorized PW8 to grant sanction,

which is contrary to EXP13 sanction order in which there is no mention of any such authority. In fact it is mentioned that PW8 was competent to remove appellant from service.

14. In the present facts and circumstances of the case, I am of the view that there occasioned a failure of justice to the appellant for not placing the file before the competent authority for grant of sanction. On facts, the demand of bribe cannot be believed and prosecution was sanctioned by the authority that was not competent to accord sanction resulting in prejudice, for which reasons the appeal succeeds.

15. Accordingly the conviction is set aside. Bail bonds stand discharged.

K.SURENDER, J

Date:13.09.2022
Note: LR copy to be marked
B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

Crl.A.No.1404 of 2007

Dated:13.09.2022

kvs