APHC010371302007

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI **[3368]**
(Special Original Jurisdiction)

TUESDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL APPEAL No: 437/2007

Between:

1. SRI PADAVALA SUBBA RAO (DIED), REP. BY HIS LEGAL REPRESENTATIVE, PADAVALA SUMATHI, W/O. LATE P. SUBBA RAO, AGED ABOUT 57 YEARS, OCC HOUSEWIFE, R/O. YSR NAGAR, 10TH LANE, A.K. NAGAR, NELLORE - 500004. SINCE APPELLANT IS DIED, LEGAL REPRESENTATIVE OF APPELLANT I.E., PADAVALA SUMATHI IS BROUGHT ON RECORD AS APPELLANT, AS PER COURT ORDER DATED 23.06.2025 IN I.A.NOS.1 AND 2 OF 2022 IN CRL.A.NO.437 OF 2007.

...APPELLANT

AND

1. THE STATE OF A P THRU DIST INSPECTOR ACB VJA, through District Inspector, ACB, Vijayawada Range, rep. by its Spl. Public Prosecutor for ACB Cases, High Court of A.P., Hyderabad.

...RESPONDENT

Counsel for the Petitioner(S):

1. A HARIPRASAD REDDY

Counsel for the Respondent:

1. S.SYAM SUNDER RAO SC cum Spl P.P. For ACB

The Court made the following:

THE HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

CRIMINAL APPEAL No.437 OF 2007

J U D G M E N T:

The Criminal Appeal is preferred by the appellant U/s.374(2) of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') to set aside the judgment dated 26.03.2007 passed in C.C.No.8/2004 on the file of Special Judge for SPE & ACB Cases, Vijayawada.

02. Heard Sri A.Hariprasad Reddy, learned counsel for the Appellant and Sri S.Syam Sunder Rao, learned Special Public Prosecutor-cum-Standing Counsel for ACB representing the State/respondent.

03. The appeal is preferred by the appellant/convict challenging the judgment dated 26.03.2007 on the file of Special Judge for SPE & ACB Cases, Vijayawada. The appellant/convict was convicted for the offence punishable U/secs.7 and 13 (1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988 (for brevity, the "P.C. Act"). The appellant was sentenced to suffer rigorous imprisonment for a period of two (02) years and to pay a fine of Rs.5,000/- (Rupees Five Thousand only), and in default of

payment of fine, to undergo simple imprisonment for a period of three (03) months for the offence punishable U/s.7 of P.C.Act. The appellant was further sentenced to suffer rigorous imprisonment for a period of two (02) years and to pay a fine of Rs.5,000/- (Rupees Five Thousand only), and in default of payment of fine, to undergo simple imprisonment for a period of three (03) months for the offence punishable U/s.13(1)9d) r/w.13(2) of P.C.Act. Both the sentences shall run concurrently.

04. Pending the appeal, the appellant/convict died. The wife of the deceased/appellant/convict came on record to continue the appeal as per section 394 Cr.P.C.

05. The case of the prosecution is that the appellant worked as Additional Assistant Engineer (Operations), APSPDCL, Machilipatnam. The complainant i.e., P.W-1 is a contractor. He presented Ex.P-1 report to P.W-4 Deputy Superintendent, Anti Corruption Bureau, stating that he executed contract works for APSPDCL. He approached the appellant on 22.03.2003. The appellant demanded Rs.1,000/- as gratification other than legal remuneration to process the bills and submitting the bills to higher authorities for further action. Therefore, P.W-1 presented a report to Deputy Superintendent as mentioned above. P.W-4 registered

a case in Cr.No.14/RCT-ACB-VJA/2003 dated 27.03.2003. Accordingly, on 27.03.2003 P.W-1 along with P.W-3 met the accused. P.W-1 asked the accused about bills. The accused again demanded for gratification amount. P.W-1 paid the gratification amount of Rs.1,000/- to the accused. He received the amount and kept it in the shirt pocket. Immediately, he came out and made a signal to the trap laying team of P.W-4. Then P.W-4 and his team entered into the office, conducted chemical examination test on the hands and shirt pocket of the accused. It gave positive result. He seized Exs.P-2 to P-5 bills from P.W-1, which were handed over to him by the accused after payment of gratification amount. The cash was seized under M.O-3. Proceedings were prepared for post trap proceedings vide Ex.P-11. The accused was arrested. Later, Deputy Superintendent (P.W-4) completed the investigation. P.W-6 further investigated into the case and laid charge sheet, on receipt of Ex.P-13 sanction proceedings issued by P.W-5.

06. The prosecution examined P.Ws-1 to 6 and filed EXs.P-1 to P-13 documents apart from Ex.X-1 letter issued to P.W-5, authorizing him to give evidence.

07. The accused was examined U/s.313 Cr.P.C. He denied the case of the prosecution, contended that a false case was foisted against him, as he questioned P.W-1 about lifting of material from the construction place without permission. Further, on 24.03.2003 P.W-1 came to him. On that day, he handed over all the four bills along with M-Book. But, P.W-1 left the office with three bills. He forgot one bill and M-Book on the table of the accused. Therefore, the accused forwarded the said bill with M-Book to higher authorities through local tappal on 26.03.2003. On 27.03.2003 P.W-1 came to office, thrusted the cash(M.O-3) in his hands. Then he pushed away the cash. But, P.W-1 again thrusted cash into his pocket and left office hurriedly. Immediately, the trap team came to the office and implicated him in the case.

08. The appellant has examined three witnesses as D.Ws-1 to 3 in support of the defence mentioned above.

09. The learned Special Court considering the above evidence for the prosecution and the defence, found the guilty for the offence U/secs.7 and 13(1)(d) r/w.13(2) of P.C.Act, 1988 and sentenced him as mentioned above. Hence, the present appeal

came to be preferred, challenging the judgment of the learned trial Court.

10. The learned counsel for the appellant/convict would argue that the trial Court made a gross error in believing the testimony of P.Ws-1 and 2 regarding the alleged obtainment of the gratification amount. The evidence of D.W-1 which would probablise the defence of the accused in the given circumstances of the case.

11. He would further submit that on 24.03.2003 P.W-1 to the accused and asked about the bills. Then the accused prepared the bills and handed over the bills and M-Book to P.W-1. But, P.W-1 left the office collecting only three bills, while leaving one bill and M-Book on the table of the accused. Therefore, the accused forwarded the said bill and M-Book on 26.03.2003 to the office of P.W-2. Hence, no bill is pending with him on 27.03.2003. But, P.W-1 for the reasons mentioned above, implicated him in the case.

12. He would further submit that P.W-1 himself admits that earlier the accused processed and cleared bills of P.W-1 for a sum of Rs.9,50,000/- and at that time, the accused did not made

any demand for gratification. Surprisingly, he makes allegation that the accused made demand for gratification for a bill amount of Rs.77,000/-.

13. He would further argue that the evidence of D.W-1, which stood test of the cross-examination would show that P.W-1 came to the office of accused on 24.03.2003 and further, it would also show that the accused on 26.03.2003 informed D.W-1 that he handed over all the four bills and M-Book to P.W-1 on 24.03.2003. But, he left one bill and M-Book in the office. Hence, he forwarded the said bill and M-Book to the office of P.W-2 in local tappal. This evidence would show that the version deposed by P.W-1 that the accused handed over three bills to P.W-1 on 27.03.2003 is not correct. It is highly improbable to say that the accused with an intention to create some evidence, forwarded one bill and M-Book on 26.03.2003 i.e., one day prior to the trap and also informed D.W-1 about the same. These circumstances would show that some circumstances which are within the knowledge of P.W-1 are happened prior to 27.03.2003. But, P.W-1 suppressed those facts and came with a coloured version with a sole aim of getting conviction of accused for the reasons known to him.

14. The learned counsel for the appellant/convict would further submit that the prosecution in order to bring home the guilt of the accused for the offence U/secs.7 and 13(1)(d) r/w.13(2) of P.C.Act, 1988, shall prove the obtainment i.e., demand and receipt of the gratification amount beyond reasonable doubt. Both the ingredients sine qua non to prove the case of the obtainment as well as the offence U/s.13(2) of P.C.Act, which also deals with the obtainment, as laid down by the Hon'ble Apex Court in several cases, including the Constitutional Bench Judgment of the Hon'ble Apex Court in the case of **Neeraj Dutta V. State (Govt. of NCT of Delhi)**[1].

15. He would further submit that the judgment of the Hon'ble Apex Court in the case of **Lachman Dass Vs. State of Punjab**[2] held that "*defence witness should be considered on par with prosecution witness. Their testimony cannot be brushed aside without valid reasons*". In the case on hand, D.W-1 is also a Public Servant worked in the office of the accused. He came to the Court and made a statement on oath as mentioned above. His evidence was not jettisoned in any manner as per section 155 of the Indian Evidence Act. Therefore, his evidence stands

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[1] **(2022) SCC OnLine SC 1724**
[2] **AIR 1970 SC 450**

against the case of the prosecution, creating a reasonable doubt about the version deposed by P.W-1 and P.W-2. Further, P.W-2 who was shown as accompanying witness is also acted as mediator and his evidence shall be weighed with circumspect in the light of judgment of the Hon'ble Apex Court.

16. He would further submit that in the light of above facts and circumstances, which are not considered by the learned Special Court, interference of this Court is required, as the judgment of the learned trial Court is not sustainable either on facts or in law.

17. Sri S.Syam Sunder Rao, learned Special Public Prosecutor-cum-Standing Counsel for ACB vehemently argued that the testimony of P.W-1 and P.W-2 would establish that the accused made demand and received the gratification amount on 27.03.2003. Further, the evidence of P.W-1 would also establish that the accused made such demands earlier. The evidence of P.Ws-1 and 2 was corroborated by the Investigation Officer regarding the happenings on 27.03.2003. The evidence of P.W-2 would establish that official favour is pending with the accused, and therefore, it corroborates the case of the prosecution that the accused made the demand to do the official favour. The prosecution also obtained sanction proceedings from P.W-5.

Therefore, the prosecution has proved all the ingredients to establish both demand and receipt of gratification by the accused. Hence, the trial Court rightly came to an opinion that the prosecution proved the offence beyond reasonable doubt. The evidence of D.W-1 cannot be relied on, as he worked with accused for longer period in the office, and therefore, he made a statement in favour of the accused suppressing the truth. In those circumstances, there are no grounds to interfere with the judgment of the learned trial Court.

18. In the light of above rival contentions, the point that arose for consideration in this Criminal Appeal is as under:

> ***"Whether the judgment of the trial Court warrants interference of this Court and liable to be set aside as prayed for?"***

19. **POINT:**

P.W-1 is the complainant in the case. As per his evidence made before the Court, he executed contracts for APSPDCL at Machilipatnam at the relevant point in time. There is no dispute about the said fact. He deposed that he met the accused several times for preparing the bills, to submit the bills to the higher authorities for further action. Accordingly, on 23.03.2003, he met the accused in his office and requested him for preparation of the bills. Then the accused made a demand for gratification other than legal remuneration. He demanded Rs.1,000/- and asked P.W-1 to pay the amount on or before 27.03.2003. Then only, he will prepare and process the bills. P.W-1 is not interested to pay the gratification amount. Then he approached the Deputy Superintendent, Anti Corruption Bureau at Vijayawada on 26.03.2003 and presented Ex.P-1 report.

20. Later, on 27.03.2003 he went to the office of Deputy Superintendent at about 07.00 a.m. and handed over the cash of Rs.1,000/- in the presence of mediators and pre-trap proceedings were conducted by the Deputy Superintendent in the presence of the mediators. Thereafter, on the instructions of the Deputy Superintendent, he went to the office of P.W-1 at about 10.45 a.m. The accused was not found in the office. Again he was asked to go to the office. Later, he went to the office at about 11.45 a.m. Thereafter, he went to the accused along with P.W-2 to enquire about the bills. Then the accused reiterated the demand for gratification amount to process the bills. Therefore, he gave the amount to the accused. Accused received the same with his right hand and kept the money in his shirt pocket.

Immediately, he signed on the bills and handed over the bills to P.W-1. Then P.Ws-1 and 2 came out and informed to P.W-4. Later, P.W-4 along with his staff conducted the post-trap proceedings as mentioned above and seized money from the accused and also seized Exs.P-2 to P-5 bills from P.W-1 in the post-trap proceedings.

21. P.W-2 deposed more or less in the similar lines.

22. In the cross-examination, P.W-1 admitted that the earlier he also did contract works for the Department for a sum of Rs.9,50,000/-. At that time, the accused did not make any demand for gratification. P.W-1 also did not make any such allegation against the accused earlier. Admittedly, the bill amount covered under all the four bills is only Rs.77,000/-. P.W-1 says that the accused demanded gratification to process these bills, which are for only Rs.77,000/-, though earlier he did not make any such demand, when those bills involve a sum of Rs.9,50,000/- and odd.

23. P.W-1 in his evidence did not specify how many bills were signed by the accused in his presence on 27.03.2003. He simply deposed that accused signed on the bills and handed over to him.

The case involves four bills and M-Book. P.W-1 did not say anything why the accused signed only three bills at that time. Why he did not question the accused that what happened to the other bill and M-Book? It is the case of the prosecution that the accuse made demand for gratification to process all the bills and sending the same along with M-Book to the higher authorities for further action.

24. D.W-1 evidence would disclose that he saw P.W-1 coming to the office on 24.03.2003 and meeting the accused. It is the case of the accused that on 24.03.2003 P.W-1 came to him and he processed all the four bills and handed over all the four bills and M-Book to P.W-1. But, P.W-1 collected only three bills and forgot one bill and M-Book on the table of the accused. Therefore, he forwarded the said bill and M-book on 26.03.2003 to the office of P.W-2. P.W-3 evidence would show that their office received one bill and M-Book forwarded by the accused on 26.03.2003. D.W-1 evidence would show that on 26.03.2003 accused informed him that he forwarded one bill and M-Book to the higher authorities in local tappal as P.W-1 forgot the bill and M-Book on his table, though he handed over all the bills on 24.03.2003.

25. D.W-1 was cross-examined by the prosecution. Suggestion is that he gave favourable evidence to the accused, since he worked with the accused for several years. It was denied by D.W-1. Nothing more was elicited from the cross-examination to jettison his testimony made on oath before the Court. When evidence of D.W-1 is read together with the evidence of P.W-3 as mentioned above, it would disclose that the accused forwarded one bill and M-Book on 26.03.2003 itself. Therefore, as rightly argued by the learned counsel for the appellant, it cannot be assumed or presumed that the accused with an intention to create some evidence in his favour, forwarded one bill and M-Book on 26.03.2003, while keeping the other three bills with him, waiting for gratification amount.

26. Therefore, these circumstances would create a reasonable doubt in the mind of the Court as to whether the version deposed by P.W-1 that on 27.03.2003 accused received the gratification amount and handed over only three bills. P.W-1 will not remain silent about another bill and M-Book at that time. It would go a long way. It shows that something happened prior to 27.03.2003. The plea of the accused is more probable in the circumstances of the case rather than the version of P.W-1.

27. It is also pertinent to note down that it is the specific version of P.W-s1 and 2 that the accused received money with right hand and kept the same in shirt pocket. Whereas post-trap proceedings would show that both the hands of the accused were found positive during sodium carbonate test.

28. The contention of the accused is that P.W-1 thrusted money into his hands forcibly. He refused to receipt it. Then, P.W-1 forcibly thrusted money into his shirt pocket and left the room hurriedly. Therefore, his both hands resulted positive. All the circumstances would probablise the version of the accused more probable. In those circumstances, this Court is of the considered opinion that it is not at all safe to rely on the testimony of P.Ws-1 and 2.

29. In the light of foregoing discussion, this Court is of the considered opinion that the judgment of the Trial Court is not sustainable on facts. Benefit of doubt shall be given to the accused. Therefore, the judgment of the Trial Court is liable to be set aside. Accordingly, the point is answered.

30. In the result, the Criminal Appeal is allowed. Therefore, the conviction and sentence imposed by the learned Special Judge

for SPE and ACB Cases, Vijayawada, in C.C.No.8/2004, dated 27.03.2007 against the appellant/accused for the offence U/secs.7 and 13(1)(d) read with Section 13(2) of the P.C.Act, 1988, is set aside. The accused is acquitted for the above said offence. The bail bonds of accused shall stand cancelled. The fine amount, if any, paid by the accused, shall be refunded to his legal representatives in accordance with law. This judgment be certified to the lower Court, as per section 405 of Cr.P.C.

As a sequel, Interlocutory Applications pending, if any, shall stand closed.

JUSTICE B.V.L.N. CHAKRAVARTHI

17.02.2026

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THE HONOURABLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

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<u>CRIMINAL APPEAL No: 437 OF 2007</u>

Date: 17.02.2026

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