

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Appeal No.1567 OF 2010

Between:

L.Venkateshwara Rao

... Appellant

And

The State of AP, through

Inspector of Police, Hyderabad Range

... Respondent

DATE OF JUDGMENT PRONOUNCED: 02.04.2025

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

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CrI.A. No. 1567 OF 2010

% Dated 02.04.2025

L.Venkateshwara Rao

... Appellant

And

\$ The State of AP, through
Inspector of Police, Hyderabad Range

... Respondent

! Counsel for the Appellant: Sri M.B.Thimma Reddy

^ Counsel for the Respondent: Sri T.Bala Mohan Reddy,
Special Public Prosecutor

>HEAD NOTE:

? Cases referred

¹ (2009) 3 Supreme Court Cases 779

² (2002) 10 Supreme Court Cases 371

³ (1977) 3 Supreme Court Cases 352

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.1567 OF 2010

JUDGMENT:

1. The appellant was convicted for the offences under Section 7 and Sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 and sentenced to rigorous imprisonment for a period of six months and one year, respectively, vide judgment in C.C.No.43 of 2005, dated 07.12.2010. Questioning the said conviction, present appeal is filed.

2. Heard Sri M.B.Thimma Reddy, learned Counsel for the appellant and Sri T.Bala Mohan Reddy, learned Special Public Prosecutor for ACB.

3. Briefly, the case of the prosecution is that the appellant worked as the Special Revenue Inspector in the office of the Mandal Revenue Officer (MRO), Himayatnagar Mandal. The complainant/P.W.1 was the GPA holder of Nawab Mohd.Kabiruddin Khan. He submitted an application along with requisite documents on 04.08.2003 in the MRO office for the issuance of Fasil Pahani copies Nos.1355 and 1356 in Sy.No.2002/2 at Bagh Lingampally.

P.W.1 approached the office of the MRO after one month. Since the MRO was not available, he approached the Dy.MRO-T.Damodar Reddy/P.W.4 and enquired about his application. P.W.4 directed the appellant to attend the work of P.W.1. As such, P.W.1 approached the appellant, who asked him to come after three days. When P.W.1 approached the appellant after three days, the appellant allegedly demanded Rs.500/-.

4. On 03.11.2003, at about 11.00 a.m, when P.W.1 approached the appellant, he enquired about the amount. P.W.1 informed him that he would come with the money the next day. Unwilling to pay the bribe amount, P.W.1 approached the DSP, ACB/P.W.7 and gave Ex.P1/complaint. P.W.7 instructed P.W.1 to come to the office on 04.11.2003 at 1.00 p.m along with bribe amount of Rs.500/-. P.W.7, after verifying the genuineness of the complaint, registered an FIR, which is Ex.P7. At about 2.15 p.m, P.W.7 called P.W.1 to his chambers and introduced P.W.5/mediator and another person, namely Acharyulu (not examined), to him. After following the formalities, pre-trap proceedings were conducted under Ex.P2. Then, all the trap party members went to the office of MRO,

Himayatnagar at 5.00 p.m. As per the directions of P.W.7, P.W.1 and P.W.2 (who was secured from Gandhi Bhavan Bus Stop), went to the office of the appellant. The appellant asked P.W.1 whether he had brought the amount. Then, P.W.1 paid the amount to the appellant, who kept the same in his left side pant pocket. At that time, P.W.3, who was present in the room, requested the appellant to give Rs.200/-. The appellant took the same from his pant pocket and gave it to P.W.3, who in turn gave it to P.W.4/Dy.MRO. P.W.1 came out and gave the pre-arranged signal. Immediately, all the trap party members rushed to the room of the appellant. P.W.7 disclosed his identity to the appellant and P.W.3. The test on the hands of both the appellant and P.W.3 turned positive. When P.W.7 enquired about the amount, the appellant produced an amount of Rs.300/- and informed that he gave Rs.200/- to P.W.3 towards the hand loan. P.W.7 enquired P.W.3, who informed that he paid the amount to P.W.4. Post-trap proceedings were conducted under Ex.P5. P.W.7 instructed P.Ws.5 and 8, along with the Inspector, to go to the residence of P.W.4/Dy.MRO for the recovery of the amount of Rs.200/-. By the time they reached, P.W.4 was not available at his residence. On contacting P.W.4, he came to his house at 8.30

p.m. Though the sodium carbonate test was conducted on the hands of P.W.4, the same turned negative. However, his right-side pant pocket and the car steering yielded positive results. When the trap party enquired P.W.4 about the Rs.200/-, he informed that he had thrown the amount along with his money in the Musi river. Though a search was conducted at the Musi river, the same could not be recovered. All the events were recorded under Ex.P4, and thereafter, they proceeded to the office of MRO, Himayathnagar. P.W.7 seized the attendance register/Ex.P8, Ex.P3, Ex.P10/pahani copies, and also prepared a rough sketch under Ex.P9.

5. During the course of the investigation, P.W.7 examined P.Ws.1 and 2, and recorded their statements. Further, the investigation was handed over to P.W.8, who concluded the investigation, and filed a charge sheet on 29.06.2005, after obtaining the sanction orders under Ex.P8.

6. The trial Court examined P.Ws.1 to 8, and Exs.P1 to P10 and MOs.1 to 16 were marked on behalf of the prosecution. D.Ws.1 and 2 were examined on behalf of the defence, and Ex.D1, a copy of the complaint dated 04.11.2003, was marked.

7. Learned counsel appearing on behalf of the appellant would submit that there was no official work pending with the appellant; as such, the question of demanding a bribe does not arise. P.W.1 has given two complaints, one is Ex.P1 and the other is Ex.D1. The amount mentioned in Ex.D1 is Rs.1,000/-, whereas in Ex.P1, it is mentioned as Rs.500/-. The bribe amount of Rs.300/- only was recovered on the date of the trap, and the remaining amount of Rs.200/- was not recovered. It is the prosecution case that P.W.4 threw the amount in the Musi river. Learned counsel, in support of his contentions, relied upon the following judgments: i) **C.M.Girish Babu v. CBI, Cochin, High Court of Kerala**¹, ii) **Punjabrao v. State of Maharashtra**², and iii) **Hari Dev Sharma v. State (Delhi Administration)**³.

8. On the other hand, the learned Special Public Prosecutor for ACB would submit that work was pending with the appellant, as the copies were not furnished to P.W.1. After the amount was handed over to the appellant in the presence of the independent witness-P.W.2, an amount of Rs.200/- was given to P.W.4. The said

¹ (2009) 3 Supreme Court Cases 779

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events that transpired on the trap date clearly indicate the role of the appellant in demanding and accepting the bribe amount.

9. The defence of the appellant is that the work of issuing copies was never entrusted to him, and it was P.W.4-Deputy MRO who was responsible. Even on the trap date, the amount was not given to him. On the date of the demand, i.e., on 03.11.2003, the appellant was on leave. In fact, the trap was laid for P.W.4, and on the date of the trap, Rs.300/- was given by P.W.3 towards the repayment of a loan taken from him earlier, which he kept in his pant pocket. However, when the said version was stated to the DSP, the same was not recorded in the post-trap proceedings.

10. Having gone through the record, according to Ex.P8-attendance register, the appellant was on leave on 03.11.2003. In the present case, two complaints were brought on record, i.e., Ex.P1 and Ex.D1. The signature on both the complaints are admitted by P.W.1. In Ex.P1, the bribe amount is mentioned as Rs.500/-, whereas in Ex.D1, it is mentioned as Rs.1,000/-. The date on Ex.D1 is 04.11.2003, and Ex.P1 is dated 03.11.2003.

11. P.W.1 admitted that he gave Ex.D1 on 04.11.2003. The complaint Ex.P1 was already given on 03.11.2003. No reason is given as to why another complaint, Ex.D1, was given on 04.11.2003.

12. P.W.2 is the accompanying witness. According to the case of the prosecution, after the pre-trap proceedings in the ACB office, while they were going to the office of the appellant, the trap party picked up P.W.2, who was standing at the bus stop of Gandhi Bhavan. According to P.W.2, one ACB constable met him at 2.15 p.m, and he was taken to the ACB office at 4.15 p.m. The first mediators' report/Ex.P2 was drafted at 4.00 p.m on 04.11.2003. However, the name of P.W.2 is not mentioned in Ex.P2. According to P.W.2, he stayed with the trap party until 2.00 a.m the next day. It is not known why P.W.2 was picked up from the bus stand when the DSP had sent for two mediators, P.W.5 and another.

13. According to the prosecution case, L.W.7, namely C.Rajender, was enlisted as a witness for the prosecution. According to him, he was a circumstantial witness and spoke about the presence of the ACB officials in the office on the trap date and also the test

conducted on the hands of the appellant. He was given up by the prosecution, and the appellant examined him as D.W.1. D.W.1 stated that around 5.00 or 5.30 p.m, he went to the MRO office to verify about his application. While he was talking about the application, P.W.3 came there, and handed over Rs.300/- to the appellant, who kept the same in his pocket. Ten minutes thereafter, some ACB personnel entered the office, and the appellant informed them that P.W.3 had given the said amount.

14. The version of the prosecution is that Rs.500/- was demanded by the appellant on the date of the trap. After Rs.500/- was handed over to the appellant, P.W.3 met the appellant and asked for Rs.200/-. P.W.3 took Rs.200/- from the appellant and paid it to P.W.4. According to P.W.4, P.W.3 had earlier taken a loan of Rs.200/-.

15. On the date of the trap, according to the DSP/P.W.7, when he entered the office of the appellant, he questioned the appellant. The appellant, having admitted receiving the amount, informed the DSP that out of the bribe amount of Rs.500/-, Rs.200/- was given to P.W.3. P.W.3 was also summoned. His hands were tested for the

presence of phenolphthalein powder, which proved positive. Prior to testing P.W.3's hands, appellant's hands were also tested for the presence of phenolphthalein powder, and the test on both hands proved positive.

16. According to P.W.3, he informed that he handed over Rs.200/- to P.W.4. When P.W.4 had left for his house, P.W.5, who is the mediator, Inspector/P.W.8-Muthyam Reddy, and Inspector Krishna went to the residence of P.W.4.

17. According to P.W.4, he took Rs.200/- from P.W.3, and left from the office after 6.30 p.m. He went to Chikkadpally, and around 7.30 p.m, P.W.3 called P.W.4 to come to the office. By the time he returned, he stated that he stopped at Moosarambagh river and attended to nature's calls, and the amount could not be found. The test on the steering and pant pocket proved positive.

18. The appellant entered the witness box and examined himself as D.W.2. In his statement before the Court, he stated that on the date of the trap, he returned to the office around 5.30 p.m, and he found D.W.1 and another. While they were in the office, P.W.3 met him and handed over Rs.300/-, and informed that he was repaying

the amount borrowed from him as a hand loan. Immediately, the ACB officials entered the office, and the pahanies and other relevant documents were not seized from him or at his instance. Though the DSP made efforts to search for the documents in the office, but nothing was found.

19. P.W.5-independent mediator stated in his 'further chief-examination' that two persons took out Ex.P3 file from a box, and he could not remember who those two persons were. The witness was allowed to peruse the post-trap proceedings in the Court, and after going through the post-trap proceedings, he stated that it was the appellant who produced the Ex.P3 file. Further, along with Ex.P3, the appellant also produced pahani patrika-Ex.P10.

20. Learned Special Judge had committed an error in permitting P.W.5 to go through the second mediators' report after he deposed that he does not remember who produced Exs.P3 and P10. During the post-trap proceedings, the events that transpired on the trap date are reflected in the post-trap proceedings. The appellant has disputed the second mediators' report, stating that it is a false document and the exact version was not reflected in the second

mediators' report. The second mediators' report further contains the statements of the witnesses, which are the "earlier statements of the witnesses".

21. A witness can refresh his memory by going through the earlier panchanama or proceedings drafted, which is admissible under Section 159 of the Indian Evidence Act. However, such reference cannot be to the prejudice of an accused. P.W.5 was examined in chief on 27.04.2010. Thereafter, he was cross-examined on the same day by the appellant. The witness was again recalled on 30.08.2010, and 'further chief-examination' was taken up. Initially, the witness stated that he did not remember who produced Ex.P3 file from the box. However, the witness was permitted to peruse the post-trap proceedings, and later, he deposed that the appellant produced Ex.P3 file and also pahani patrikas-Ex.P10.

22. Sections 137 and 138 of the Indian Evidence Act read as follows:

137. Examination-in-chief.

"The examination of a witness by the party who calls him shall be called his examination-in-chief. Cross-examination - The examination of a witness by the adverse party shall be called his cross-examination. Re-examination. - The examination of a witness, subsequent to the cross-

examination by the party who called him, shall be called his re-examination.”

138. Order of examinations.

“Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief. Direction of re-examination. - The re-examination shall be directed to the explanation of the matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”

23. Under Sections 137 and 138 of the Indian Evidence Act, once the chief-examination is complete, the witness can be cross-examined. Thereafter, the examination of a witness subsequent to the cross-examination would be re-examination. The re-examination can only be for the purpose of explaining the matters referred to in the cross-examination. Only in the event of a new matter being introduced by the permission of the Court during re-examination, would the adverse party have the opportunity to further cross-examine the witness.

24. As seen from Sections 137 and 138 of the Indian Evidence Act, once the examination-in-chief is complete, the question of ‘further chief-examination’ does not arise. The course adopted by the prosecution and permitted by the Court is not in accordance with

the Evidence Act. The prosecution cannot adopt the method of further chief-examination to fill in other lacunae, and the scope of re-examination is confined. To overcome such confined scope of re-examination, permitting the prosecution to conduct further chief-examination is not the procedure that can be followed and is contradictory to the scheme of examination of witnesses under Sections 137 and 138 of the Indian Evidence Act.

25. There are two versions, one presented by the prosecution, which claims that there was a demand for Rs.500/- on the date of the trap, and the other based on the account of eye-witness. On the other hand, the defence of the appellant is that D.W.1-C.Rajener, whose presence in the room of the appellant was admitted by the prosecution witnesses, P.Ws.3 and 7, stated that P.W.3 entered the chambers of the appellant and handed over Rs.300/- as repayment for an earlier loan.

26. P.Ws.3 and 4 stated that Rs.200/- was taken by P.W.3 from the appellant, and P.W.3 then handed it over to P.W.4, but this amount was not recovered. These circumstances create doubt

regarding the correctness of the prosecution version, especially when P.W.1 admits to submitting two complaints-Ex.P1, which reflects a demand of Rs.500/- by the appellant, and Ex.D1, which mentions a demand of Rs.1,000/-, but was suppressed by the prosecution. Several discrepancies and inconsistencies in the prosecution case have raised doubts about the manner in which the trap was laid, as well as the events on the trap day. No reasons were given as to why independent mediator-P.W.5 or the other witness, whose presence was secured for the purpose of the trap proceedings, were not asked to accompany P.W.1 to witness what transpired between P.W.1 and the appellant. As already discussed, in view of Exs.P1 and D1 being admitted by P.W.1, the demand for the bribe itself becomes doubtful. The recovery is only partially done, and the explanation given by P.W.4 regarding the missing of the Rs.200/- bribe amount is also questionable. Accordingly, benefit of doubt is extended to the appellant.

27. In the result, the judgment of the trial Court in C.C.No.43 of 2005 dated 07.12.2010 is set aside, and the appellant is acquitted.

Since the appellant is on bail, his bail bonds shall stand discharged.

28. Accordingly, Criminal Appeal is allowed.

Date: 02.04.2025
kvs

K.SURENDER, J