

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

CRIMINAL APPEAL No. 417 OF 2014

Between:

Sri V.V.V.N.S.S.Prasad

...Appellant/Accused

And

The State of Andhra Pradesh

... Respondent/complainant

DATE OF JUDGMENT PRONOUNCED:

29.01.2025

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**

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! Counsel for the Appellant

: Sri M.V.Hanumantha Rao

^ Counsel for the Respondents

: Sri Srinivas Kapatia
Learned Special Public Prosecutor for
CBI

>HEAD NOTE:

? Cases referred

1. 2021 CRI.L.J 1353
2. 2015 (10) SCC 152

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.417 OF 2014

JUDGMENT:

The appellant/Accused officer filed the appeal questioning his conviction and sentence recorded by the Prl.Special Judge for CBI Cases, Hyderabad, in CC.No.30 of 2008, dated 28.03.2014, for the offences punishable under Sections 7 & 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988.

2. Heard Sri M.V.Hanumantha Rao, learned counsel for the appellant and Sri Srinivas Kapatia, learned Special Public Prosecutor for CBI.

3. Briefly, the case of the prosecution is that the Appellant, was employed as Junior Engineer at the University of Hyderabad. A case was registered based on a complaint lodged on 08.07.2008 by PW.1 and PW.2, who were the Managing Partner and Supervisor of M/s.Sri Sai Constructions, respectively. The complainant-PW.1 alleged that the appellant had demanded an illegal gratification of Rs.50,000/- for recommending the clearance of pending bills related to civil work executed by their firm at the University of Hyderabad premises. It was further alleged that the appellant had asked for the bribe to be paid on 08.07.2008.

4. Upon registration of the case on 08.07.2008, a CBI team led by PW.9-Inspector B.Shankar Rao, along with PWs.1 and 2 and mediators LW.3 and PW.3, assembled at the office of the Superintendent of Police, CBI. Pre-trap proceedings were conducted and the details were recorded under Ex.P3-the 1st mediators report.

5. Following the pre-trap proceedings, the trap party, including PWs.1, 2, 3, 9 and LW.3, proceeded to the University of Hyderabad. PW.2 entered the office of the appellant, while PW.1, the CBI team, and other members positioned themselves nearby. It was alleged that the appellant accepted the bribe amount from PW.2 and placed it in the left-side table drawer. PW.2 then exited the office and signaled the trap team. The trap team subsequently entered the office, apprehended the appellant and seized the bribe amount from the top left side table drawer. A hand wash of the appellant resulted in a pink colour for the left hand and a colourless result for the right hand. The serial numbers and denominations of the currency notes seized from the appellant matched those recorded in Ex.P3. Additional items seized included the swab wash of the top left side table drawer, the cotton swab used for the drawer wash and a Citizen SLD 760N calculator found in the same drawer. The trap proceedings were documented in Ex.P4-2nd Mediators Report.

6. Appellant was arrested on 09.07.2008. The M.Os.2 to 5 were sent to CSFL for examination, which comprised the left hand wash of the appellant in a sealed quarter-size bottle, the swab wash of the appellant's left-side table drawer (top left) in a sealed quarter-size bottle, the cotton swab used to collect the wash from the appellant's table drawer in a sealed cover; and the Citizen SLD 760N calculator on which the bribe amount was placed. PW.8, the Expert, opined that MOs.2 to 5 tested positive for the presence of phenolphthalein ions. Furthermore, the presence of sodium and carbonate ions was detected in MOs.2 to 4. It was revealed that the appellant acted as the Site In-charge for the contract work allotted to PW.1's firm at the University of Hyderabad. The appellant managed the measurement book, which formed the basis for the first payment for the completed work. When the process for the second bill was pending, the appellant allegedly demanded an illegal gratification of Rs.50,000/- from PWs.1 and 2 to clear the bill. The relevant measurement books and bills were seized from the appellant's office table. Call details for Landline No.23011833, located at the appellant's residence, were obtained from the BSNL office. The report confirmed that on 08.07.2008 at about 1.32 P.M., the appellant made a call to PW.2's mobile number 9866444885 and spoke for approximately 887 seconds. According to

investigation, it is established that the appellant committed offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act. PW.7, the Vice Chancellor of the University of Hyderabad and the authority competent to remove the appellant, accorded sanction under Section 19(1)(c) of the Prevention of Corruption Act for prosecuting the appellant.

7. The learned Sessions Judge did not find favour with the defence of the appellant that no official favour was pending. Further on the basis of other evidence adduced in support of the prosecution, the appellant was convicted.

8. The defence of the appellant is that;

i) **No Official Favor is Pending:** The testimonies of PW.4 and PW.6 confirm that the only pending amount in the final bill to be paid to PW.1 is Rs.45,347/-. The final bill (Ex.P13) was already prepared, and both the appellant and PW.4 had signed it. However, PW.1 had not signed the bill, and he himself admitted that without his signature, pass orders could not be issued. There was no pending bill of Rs.1,70,000/- with the appellant, nor was the appellant authorized to prepare or pass such a bill, as his role was limited to supervising the work executed by the contractor (PW1).

ii) **Improbability of Demand:** Since the final bill (Ex.P13) was ready and already signed by PW.4 and the appellant, while PW.1 had not signed it, the alleged demand for recording measurements and passing bills, as claimed by PWs.1 and 2 and documented in Ex.P1, appears highly improbable.

iii) **Improper Trap Laying:** The trap laid through PW.2 is impermissible and contrary to law, as PW.2 had no authorization to represent PW.1 in any capacity. Consequently, the statements and actions of PW.2 lack legal validity.

iv) **Malafide Intent by PW.1:** PW.1 lodged a false complaint against the appellant out of malafide intention. This is evident from PW1's habitual conduct of filing frivolous cases against officers. Additionally, PW.1 was motivated by the fact that the appellant had previously lodged complaints with PW.4 regarding the quality of PW.1's work.

9. Further, according to the appellant, on 08.07.2008, PW2, a stranger, entered the office room. He enquired about the bill of PW.1, falsely representing that he was a supervisor. The appellant told PW.2 that the bills were ready by 9.6.2008 and that PW.1 had to come and sign the bill, which was already prepared and signed by PW.4 and himself. On this, PW.2 informed him that PW.1 was

waiting outside the office. The appellant was about to call PW.1, when, the CBI officials entered into his office room, and one person by the name Raghavendra Kumar caught hold of his hands. Further, when the appellant left the room to fetch PW.1, PW.2 was positioned at the left file rack side on the left side, making it possible for PW.2 to have access to the left side table drawer. Additionally, the appellant mentioned to PW.6 that he had not taken any bribe and that when he went out to call PW.1, PW.2 was in the chamber, and after he returned, he noticed money there. Regarding the colour change of the solution on the appellant's left hand, the defence argues that Raghavendra Kumar is a material witness and was not examined. It is alleged that Raghavendra had phenolphthalein on his hands and caught hold of the appellant's hands, subsequently putting the appellant's hands in the solution. Further, Raghavendra Kumar's hands were not tested before he caught hold of the appellant's hands, and appellant was asked to dip his fingers in the solution. There is a possibility of phenolphthalein traces on the appellant's hands due to the newspaper that was accessible to Raghavendra, raising the question of why he was the selective person to catch hold of the appellant's hands. The appellant's plea is that he did not touch the currency notes at all and had no knowledge that PW2 was carrying

tainted notes and came to trap him. Appellant further pleaded that PW.2 shook hands with him.

10. According to PWs. 1 and 2, the total value of the contract work was Rs 13,90,877/-, and they stated that they completed the repairs by April, 2008. Regarding the bills, they mentioned that except for an outstanding amount of Rs.1,70,000/-, the university had paid the remaining amount. Thus, as per PWs.1 and 2, the final bill amount pending with the appellant was Rs. 1,70,000/-.

11. According to PW4's testimony, the final amount pending for payment to PW.1 was Rs.45,347/-. He further stated that part payments were made to PW.1, leaving a balance amount of Rs. 45,347/-.

12. According to PW.6, for part-measured works, an amount of Rs.11,41,656/- was paid to PW.1 as per Ex.P8, the Measurement Book. He also deposed that PW.1 submitted a final bill for Rs. 45,347/- prior to the trap.

13. Moreover, PW.4 stated that Ex.P12 is the bill dated 5.11.2007 for Rs.13,97,206.14 ps., and Ex.P13 is the bill dated 9.6.2008 for Rs.45,347.32 ps.

14. As per the evidence the bill amounting to Rs.13,97,206.14 ps. has already been cleared. The work order issued for the repairs to the C Block hostel was for Rs. 13,97,206.14 ps.. The evidence confirms that part payments were made to PW.1, who himself admitted to signing on page 40 of M-Book No. 1231/2007, accepting the part bill value of Rs. 13,97,206.14 ps.. After permissible deductions, an amount of Rs.11,41,656/- was paid to him via cheque as part payment, as reflected on page 43 of M-Book No. 1231/2007, where he also signed. Additionally, according to the testimonies of PWs.4 and 6, the final bill amount pending for payment to PW.1 was only Rs.45,347.32 ps., which represented the balance remaining after the part payments were made to PW.1.

15. PW.4 further deposed that Ex.P14 is the bill dated 15.10.2007 for Rs.1,54,596.15 ps. He clarified that Ex.P14 lists the extra works carried out by PW.1, which were submitted to the university engineering section for approval. As on the date of the trap, this approval was pending. Once the approval was obtained, a new bill for the amount covered by Ex.P14 would be prepared. Nevertheless, PW.4 confirmed that he and appellant had signed Ex.P12 to Ex.P14. Though Ex.P14 is pending approval, as per the procedure explained by PW.6, it is PW.4 who has to finally approve it and pass it over for technical check. PW.4 himself has admitted

that he and appellant had signed on Ex.P14 as well. According to PW.6, the procedure is that, on being satisfied, PW.4 will cause PW.1-contractor to sign on the M-Book and then PW.4 will prepare the bill form and forward the same to university engineer's office for technical check. After the technical check, the bill would be sent to the university's finance section for processing payment to the contractor.

16. Appellant's work was completed when he verified the measurement and passed it on to PW.4 for physical verification. It is PW.4's responsibility to then prepare the bill and pass it on to university's engineering section. It cannot be said that Ex.P14 was pending. Since Ex.P14 bill has already been signed by the appellant and passed over by PW.4 to the university's engineering section for approval. Further PW.6 does not mention that there is any final bill of Rs.1,54,596.15 ps. that is pending to be given to PW.1, he only speaks that there is a final amount of Rs. 45,347/- that needs to be given to PW.1.

17. It is evident that the final bill amount due to PW.1 was Rs.45,347.32 ps., not Rs.1,70,000/- as claimed by PWs.1 and 2. Ex.P14-bill pending approval has no relevance to accused as accused and PW4's work regarding Ex.P14 was already complete.

18. The allegation whether the appellant had intentionally withheld the bills of Rs.45,347.32 Ps. for the purpose of bribe has to be assessed.

19. PW6 stated that upon completion of the work, the contractor submits the particulars of measurements of the works executed by him to the appellant. The appellant, being the junior engineer, along with the contractor-PW1, physically verifies the measurements. If satisfied, the Appellant records them in the M-Book and submits it to the assistant engineer, i.e., PW4, for further physical verification and authentication. Upon being satisfied, PW4 causes PW1-contractor to sign the M-Book, prepares the bill form, and forwards it to the university engineer's office for technical checks. Once the technical check is completed, the bill is sent to the university's finance section for processing payment to the contractor. The finance officer then issues a pass order, and payment is made to the contractor in the form of a cheque.

20. PW.1 identified the document shown to him as the final bill dated 9.6.2008, prepared by PW.4, for Rs. 45,347.32. He stated that he had not signed this bill. PW.1 also deposed that as of 9.6.2008, pass orders were not prepared. He admitted that unless

he signed the final bill, agreeing to the amount mentioned therein, pass orders could not be prepared.

21. In his cross-examination, PW.1 admitted (as reflected on page 40 of M-Book No. 1231/2007) that he had signed, accepting the part bill value of Rs. 13,97,206.14. After permissible deductions, an amount of Rs. 11,41,656 was paid to him by cheque as part payment, as recorded on page 43 of M-Book No. 1231/2007, where he also signed.

22. PW.4 deposed that upon completion of work, bill forms were submitted by the Appellant. As the Assistant Engineer, he also signed these bill forms. He stated that the bill forms were prepared based on Ex.P8, which contains the values of the measurements. PW4 identified Ex.P12 as the bill dated 5.11.2007 for Rs. 13,97,206.14 Ps. and Ex.P13 as the bill dated 9.6.2008 for Rs. 45,347.32 ps.

23. During cross-examination, PW.4 confirmed that the bill amount of Rs. 45,347.32 ps., recorded on page 90 of Ex.P8, was signed by him and the appellant, but not by PW.1. He stated that this amount represented the final bill to be paid to PW.1.

24. PW.6 further deposed that based on the copy of the final bill, the bill amount was sanctioned to PW.1. However, PW.1 did not sign the copy of the final bill, nor did he protest against the final bill amount. PW.6, also stated that the final bill was signed by the appellant and PW4 on 9.6.2008.

25. PW.2, stated that the appellant prepares the bills, and PW.4 signs both the M-Book and the bill. Subsequently, PW.1 and the appellant sign these documents, and PW.4 forwards the bill to the Executive Engineer's office.

26. PW.10-Inspector, stated that PW.1 has not signed on the bill by the date of examination of PW.4.

27. From the above, it is evident that PW.1 was also required to sign Ex.P13, the bill dated 9.6.2008, for Rs. 45,347.32 ps., alongside PW.4 and the appellant. PW.4 admitted that PW.1 had not signed the bill, and PW.1 himself confirmed the same. PW.1 further acknowledged that pass orders could not be prepared unless he signed the final bill, agreeing to the amount mentioned therein. This procedure is consistent with the earlier part bill of Rs. 13,97,206.14 ps, where PW.1 admitted (as reflected on page 40 of M-Book No. 1231/2007) that he signed, accepting the part bill

value. Subsequently, the cheque for the permissible amount was issued to him, clearly establishing the process.

28. Further, PW.4 and appellant both work under PW6. Hence, PW.6's testimony becomes more relevant. According to PW.6, the work given to PW.1 fell under the jurisdiction of PW.4, the Assistant Engineer (Civil), with the Appellant, serving as the Junior Assistant (Civil), assigned to assist PW.4. PW.6 further mentioned that PW.4, after physically verifying the measurements, would prepare the bill and forward it for a technical check. This also needs to be considered when determining whether any official favour was pending with the Appellant and whether he intentionally withheld the clearance of bills. Since PW.6's testimony is clear that PW.4 is the one who has to prepare the bills and forward the same to the university engineer's office for technical check.

29. As per Ex.P1, the allegation is that Appellant demanded Rs 1 lakh initially for making entries in measurement books and passing the final bill, and thereafter, demanded Rs.50,000/- for passing the bill. As per the procedure, only when the entries are made in the measurement book, the bills will be prepared and then forwarded by PW.4, once the Appellant, PW.4, and PW.1 sign on the same. In

this case, the bill was already prepared. Hence, there is no question of Appellant's pending work of recording entries in the measurement books. Further, both PWs. 4 and 6 nowhere depose about Appellant's authority to pass the bill. Appellant's work is only to record the entries and forward the same to PW.4 for physical verification. At the risk of repetition, PW.6's evidence is also clear that it is PW.4's responsibility to prepare the bills. Hence, the question of Appellant preparing them does not arise.

30. PW.4 in his testimony stated that Appellant prepares the bills and passes it over to him, it nevertheless has no effect because as per the facts, the final bill pending to be given to PW.1 was already prepared—Ex.P13 and signed by Appellant and PW.4. It was PW.1 who was left to sign the same.

31. Therefore, it is clear that the work of PW.4 and the accused was complete, as their signatures were already present on Ex.P13, dated 9.6.2008. The only pending step was PW.1's signature, without which pass orders could not be prepared, as admitted by PW.1 himself. As on the date of the trap, no official favour was pending with the Appellant.

32. Moreover, PW.6 stated that although the bill amount was sanctioned to PW.1, he neither signed the copy of the final bill nor

protested against the final amount. This indicates that PW.1 accepted the final amount of Rs.45,347.32 ps.

33. It is not PW.1's case that though the bill was ready, the appellant didn't let him sign on Ex.P13. PW.1's case is that the appellant had not entered the measurements in M-Books and prepared the bills, whereas the appellant had completed both these things, as evidenced by Ex.P13 and the signature of PW.4 and the appellant on Ex.P13. It cannot be assumed that PW.1 did not sign on Ex.P13 because the appellant was demanding a bribe, since the allegation is that the bribe was demanded for entering measurement values and preparation of bills, not for allowing clearance of bills. Hence, from the record it is apparent that appellant did not intentionally withheld the bill Ex.P13.

34. Further, with regard to bribe, what needs to be determined is whether Appellant called PW.2 on 8th around 1:30 pm and whether PW.2 called Appellant at 4:00 pm, after which Appellant told them to come to his office and give Rs.50,000/-.

35. Firstly, from the evidence of PW.5, two things are clear: that telephone No. 23011833 was allotted to Appellant and that Ex.P16 shows a call was made from the telephone of Appellant to the cell phone No. 9866444885 on 8.7.2008 at 1:32 pm. However, the

prosecution was not able to establish that the cell phone No. 9866444885 belongs to PW.2, since, PW.5 admitted that from Ex.P16, he cannot give the particulars of the names of the persons to whom phone calls were made from phone No. 23011833. Hence, from Ex.P16, one can only see the number but not the names of the owner of the number. The prosecution did not place evidence on record to prove that the number belongs to PW.2.

36. PW.10 deposed that his investigation revealed that the cell phone No. 9866444885 belongs to PW.2; however, no evidence was placed on record to prove the same. PW.5 stated that the CBI did not give him a requisition for providing the call particulars of the cell phone bearing No. 9866444885.

37. Further, PW9-Inspector stated that during the investigation, he did not collect information from the nodal officer as to in whose name the cell phone bearing No. 9866444885 stands. He also did not seize the cell phone with this number. Additionally, he did not observe where the office landline telephone in the appellant's office was located. PW.2 admitted that he does not know his cell phone number and that his cell phone was not seized by the CBI officer.

38. According to PW.2 and other witnesses, PW.2 got a call from the appellant around 1:32 pm on 8.7.2008. However, in Ex.P4, it is specified that the TLO enquired with PW.4 after the trap, and PW.4 stated about the appellant coming to the office at 1:55 pm on 8.7.2008. If this is taken to be true, the whole case of the appellant calling PW.2 around 1:32 pm on 8.7.2008 becomes doubtful.

39. PW.3's statement that PW.2 informed them on 8th morning about the appellant demanding him a bribe of Rs.50,000/- is also contradictory to other witnesses' testimonies, as, according to the prosecution, PW.2 got a call around 1:32 pm.

40. PW.10's evidence is completely contradictory. PW.10 deposed that the landline telephone No. 66792313 belongs to the office of the appellant, whereas, according to PW.5, telephone No. 23011833 was allotted to Appellant.

41. Hence, the prosecution has not successfully established that the appellant called PW.2's cell phone on 8.7.2008 around 1:32 pm and that PW.2 called the appellant again at 4:00 pm. Only after the calls, did they come to know that they were supposed to give the bribe amount of Rs.50,000/- to the appellant at his office. This is again contradictory to PW.1's testimony of the appellant calling him on 8th morning and contrary to Ex.P1 as well.

42. The Honourable Supreme Court in ***N.Vijayakumar v. State of Tamil Nadu***¹ held that mere recovery of the amount divorced from the circumstances cannot form basis to convict, when the substantive evidence in the case was not reliable.

43. In ***P.Satyanarayana Murthy v. District Inspector of Police, State of A.P*** (2015(10) SCC 152). A three judge bench of the Supreme Court held that proof of demand of illegal gratification is the gravamen of the offences punishable under Section 7 & 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and in the absence of the same, the charge would fail. It was also held that mere acceptance and recovery of the illegal gratification would not be sufficient to prove the above charges.

44. In the background of the discussion above, it emerges that no work was pending with the appellant as claimed by PW.1 nor any demand was made. The demand of bribe for clearing the bill for Rs.45,347/- is highly improbable. Hence, even if there was recovery in the present case, the same

¹ 2021 CRI.L.J 1353

cannot be made basis to convict the appellant in the light of the above two Judgments.

45. Accordingly, the appellant is extended benefit of doubt and the appeal is allowed. Since the appellant/accused officer is on bail, his bail bonds shall stand discharged.

Date: 29.01.2025
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K.SURENDER, J