

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

CRIMINAL APPEAL No.1162 OF 2017

Between:

B.Balkishan

... Appellant

And

The State ACB, CIU Range

... Respondent

CRIMINAL APPEAL No.301 OF 2018

Between:

The State rep. by Inspector of Police,
ACB, CIU Range

... Appellant

And

Shaik Waheeduddin.

...Respondent

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 Yes/No
 Judgments?
- 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 Yes/No
 Judgment?

K.SURENDER, J

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

CRIMINAL APPEAL No.1162 OF 2017

% Dated 29.01.2025

B.Balkishan ... Appellant.

And

\$ The State of TS,
ACB, CIU Range ... Respondent
±CRIMINAL APPEAL No.301 OF 2018

State rep. by the Inspector of Police,
ACB, CIU, Hyderabad ... Appellant.

And

\$ Shaik Waheeduddin. ... Respondent

! Counsel for the Appellant: Sri Vinod Kumar Deshpande,
Senior Counsel in CrI.A.No.1162
of 2017
Sri Damodar Mundra for
respondent in CrI.A.No.301 of
2018

^ Counsel for the Respondent: Spl. Public Prosecutor for ACB

>HEAD NOTE:

¹ Criminal Appeal No.2646 of 2024, dated 26.11.2024

² (2021) 3 Supreme Court Cases 687

³ (2015) 10 Supreme Court Cases 152

⁴ (2024) 3 Supreme Court Cases 544

⁵ (2021) 3 SCC 687

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL Nos.1162 of 2017 and 301 of 2018****COMMON JUDGMENT:**

1. Criminal Appeal No.1162 of 2017 is filed by appellant/A1 questioning his conviction and Criminal Appeal No.301 of 2018 is filed by ACB, Hyderabad questioning acquittal of Accused No.2 vide judgment in C.C.No.15 of 2015 dated 15.09.2017 passed by the I Additional Special Judge for SPE and ACB cum-V Additional Chief Judge, City Civil Courts, Hyderabad.

2. Since accused in both the cases were tried by the learned I Additional Special Judge for SPE and ACB cum-V Additional Chief Judge, City Civil Courts, Hyderabad in C.C.No.15 of 2015, both the appeals are disposed off by way of this Common Judgment.

3. Heard Sri Vinod Kumar Deshpande, learned Senior Counsel for the appellant in Crl.A.No.1162 of 2017, Sri Damodar Mundra for respondent in Crl.A.No.301 of 2018 and learned Special Public Prosecutor for ACB in both the appeals.

4. The Appellant/A1 was working as Assistant Engineer, Kuravi Mandal, Warangal District and the acquitted Accused No.2 worked as Work Inspector in A.P.State Housing Corporation

Limited. According to the defacto complainant/P.W.1, there were 22 persons in their Thanda who were sanctioned houses under Indiramma Adarsha Grama Housing Scheme. They started construction of their houses and three beneficiaries received 15 bags of cement and 7 beneficiaries received 10 bags of cement and the rest of the beneficiaries did not receive either cement, rice or cash components in accordance with the scheme. P.W.1/defacto complainant approached A1 and requested him to release housing scheme benefits that have to be issued to them. A1 demanded Rs.11,000/- to be paid at the rate of Rs.500/- each from each of the 22 beneficiaries. A1 instructed that the amount should be paid to A2 for releasing the cement, rice and cash to be credited into the beneficiaries account. Though P.W.1 and others pleaded to release amount, however, A1 insisted that Rs.7,000/- should be paid initially. The said demand was reiterated on 02.03.2007 by A2.

5. P.W.1 along with other relatives approached ACB officials and lodged a complaint with P.W.16/DSP. Complaint was given on 05.03.2007 in which FIR was registered on the next day i.e., on 06.03.2007 on which date, the trap proceedings were drafted.

On the basis of the complaint, P.W.16 arranged for the trap on 07.03.2007. P.W.2 and another, independent mediators, P.W.1/defacto complainant, P.W.16/DSP and others were present in the police guest house at Khammam. The DSP asked the mediators to note down the bribe currency numbers and thereafter got applied phenolphthalein powder to the currency and it was explained that anyone handling the phenolphthalein tainted currency, the powder on the same would pass on to the hands of the person and when the hands are dipped in sodium carbonate solution, the solution would turn pink in colour. Ex.P3, the first mediators' report was drafted at 7.15 a.m and thereafter all the trap party members proceeded to the house of A1. Around 8.30 a.m, the trap party reached the house of A1. P.W.1 entered into the house of A1 along with P.W.2/independent mediator. At 10.00 a.m, P.W.1 came out of the house and relayed the signal indicating acceptance of bribe by A1 and A2. The trap party entered into the house and P.W.16/DSP questioned A1 about the bribe amount. He then prepared sodium carbonate solution and asked A1 to rinse his fingers in two separate solutions and right hand wash turned into pink colour. The amount was taken out from back pocket of A1 and handed over

to the trap party. The pant pocket was also subjected to sodium carbonate test. A1, P.Ws.1 and 2 were questioned during the post trap proceedings as to what transpired after they entered into the house and what all transpired was reduced into writing in the second mediator's report, which is Ex.P10. During post trap proceedings, P.W.16 asked A1 to produce relevant documents. Ex.P4 booklet was handed over by A1 and other documents were produced by A2. The investigation was then handed over to P.W.17/Inspector by P.W.16, who concluded investigation and filed charge sheet. P.W.17 obtained sanctioned orders from the Government.

6. Learned Special Judge having examined the evidence placed on record by the prosecution found that A1 was alone guilty and acquitted A2.

7. Learned Senior Counsel appearing on behalf of the appellant/A1 would submit that P.W.1/complainant and other beneficiaries of the scheme have all turned hostile to the prosecution case. Other than the tainted evidence of the interested witnesses P.W.2 and DSP/P.W.16, nothing was placed on record to suggest that there was any demand or acceptance of

bribe by A1 or A2. In fact, the name of P.W.1's wife was not mentioned in Ex.P4 booklet as the beneficiary, as such, complaint itself becomes doubtful.

8. Learned Special Public Prosecutor for ACB would submit that on the date of trap, P.W.2, who is an independent mediator was asked to observe what transpires in between the appellant and P.W.1. P.W.2 stated that when P.Ws.1 and 2 entered into house of A1, A1 was sitting in a chair and on seeing P.W.1, A1 asked him whether he brought the bribe amount. P.W.1 offered amount to A1, who accepted it and kept in his pant's back pocket. Immediately, P.W.1 went out and relayed signal. Though, P.W.1 turned hostile to the prosecution case, the other circumstances including the evidence of the independent witness P.W.2 would go to show that there was demand and acceptance by A1. Learned Special Public Prosecutor relied on the judgment of the Hon'ble Supreme Court in the **State of Karnataka v. Chandrasha**¹, wherein it was held as follows:

"21. It is settled law that the two basic facts viz., 'demand' and 'acceptance' of gratification have been proved, the presumption under Section 20 can be invoked to the effect that the gratification was demanded and accepted as a motive or reward as contemplated under Section 7 of the Act. However, such presumption is rebuttable. Even on the basis of the preponderance

¹ Criminal Appeal No.2646 of 2024, dated 26.11.2024

of probability, the accused can rebut the same. In the present case, the prosecution proved its case beyond reasonable doubt, in respect of the 'demand' and 'acceptance' of the bribe amount from the complainant and recovery of tainted currency notes from the possession of the respondent. The said operation is preceded by recording of the demand in the tape recorder. In such circumstances, the respondent has to rebut the presumption by disproving the case of the prosecution either in the cross-examination of the prosecution side witnesses or by adducing material evidence that the receipt of Rs.2,000/- was not a bribe amount, but a legal fee or repayment of loan. However, he failed to do so and on the contrary, we find the prosecution to have proved the case beyond any doubt."

9. The defence of A1 is that he was falsely implicated in the case. Further there was no official work which was pending insofar as P.Ws.3 to 11 were concerned. Ex.P4, which is booklet contained details of all the beneficiaries in the villages under A1's jurisdiction. Exs.P5 to P8 documents were not in his possession and he had no knowledge about the pending benefits of all the beneficiaries. There was no official work, which is pending with him. On the date of trap, P.W.1 entered into the house and placed currency notes on his table and went away, in spite of asking P.W.1 to take away the amount. A1 took the amount to return it to him at a later date. Though A1 explained that he had never demanded any amount, however, the said version was not recorded in the second mediator's report.

10. P.W.1/complainant and P.Ws.3 to 11 beneficiaries of the scheme, have all turned hostile to the prosecution case.

11. P.W.12, who was working as MPDO in Kuravi Mandal stated that the list of beneficiaries to whom houses were sanctioned, was prepared and thereafter attested by him, A2 and MRO and it was forwarded to the District Manager (Housing). The beneficiaries list would be sanctioned by the Collector and sent back through District Manager. The construction of the beneficiaries' houses would then commence and on the basis of the Work Inspector's inspection report of the construction of the houses and considering measurements in the M Book, the bills would be prepared by A1. However, in the cross-examination, P.W.12 stated that the cash component would be released and deposited in the bank accounts of the beneficiaries. According to the procedure, the Work Inspector after recording measurements along with MRO, MPDO and Special Officer in the M book, the M-book would be given to A1 for forwarding the bill.

12. According to P.W.13, Dy.A.E, after the beneficiaries list is sanctioned, A2 will inspect the field and give markings and prepare the documentation work. Thereafter, the beneficiaries would make arrangements for the stone etc. Then A2 would recommend for cement bags to A1 and on that A1 would issue cement bags to the beneficiaries. Further, on the

recommendation of A2, A1 would recommend for payment to the beneficiaries, which would be deposited into their bank accounts. P.W.13 admitted that the initial work was not completed by A2 and Ex.P5 applications of various beneficiaries of Cheemla Thanda were not forwarded to A1. P.W.13 admitted that some of the beneficiaries of Cheemla Thanda were granted houses in the first list and some others in the second list.

13. The name of the wife of P.W.1 was in the second list of beneficiaries according to P.W.16, at serial No.315 which is Ex.P8. P.W.16/DSP further admitted that all the applications that were seized were pending for physical verification of the constructions.

14. The version of A1 is that applications were not even sent to him, as such, the question of pending work or sanctioning any benefits under the scheme does not arise. P.W.16/DSP admitted in his cross-examination as follows:

“It is true that the complaint Ex.P1 shows that the alleged demand is to release the cement, rice and cash components to the beneficiaries. It is true that for the purpose of release of cement, rice and cash components the list has to be finalized by the MPDO. It is true that after release of the list of beneficiaries the list has to be physically verified by the Tahasildar and MPDO and it has to be approved by them and then only it will be possible for the Assistant Engineer housing to effect the release of the cement, rice and cash

components. It is true that unless the list of the beneficiaries are placed before the Assistant Engineer, he cannot do anything. It is true that in this situation no official favour will be pending with the Assistant Engineer to render the beneficiaries.”

15. P.W.1 and other beneficiaries have all turned hostile to the prosecution case. None of the official witnesses stated that the list No.2 in which the name of P.W.1's wife was reflected was even sent to A1. It is admitted that insofar as the 2nd beneficiaries list under Ex.P8, the mandatory physical verification was not completed either by the Tahasildar or the MPDO by the date of trap i.e., 07.03.2007.

16. It is admitted that Ex.P8 was not seized from the appellant and the requirement of completing the formalities of making enquiry and then forwarding the application was also not completed. When both Ex.P5 applications and Ex.P8 applications were not forwarded to A1, the question of A1 recommending for payment, does not arise. The field inspection was not complete nor finalization of the beneficiaries list. The prosecution has failed to prove that there was any official work pending with A1. As already discussed, all the beneficiaries P.Ws.1, 3 to 11 have turned hostile to the prosecution case.

17. The only evidence is that of P.W.2, who states that on the date of trap, he witnessed A1 demanding and accepting bribe. P.W.16 admitted that Ex.P3/first mediators' report does not reflect that P.W.16 instructed P.W.2 to accompany P.W.1 to the house of A1. P.W.16 further admitted that apart from his oral evidence, there is no other evidence to show that he has instructed P.W.2 to accompany P.W.1. P.W.2 admitted that he had earlier acted as a mediator in another case. P.W.2 further admitted that in Ex.P10, 2nd mediators report, it is not reflected that A1 demanded bribe and when P.W.1 affirmatively replied, A1 accepted the amount and kept in his hip pocket. Before considering the recovery aspect, it has to be looked into whether the prosecution proved the demand of bribe beyond reasonable doubt.

18. In **N.Vijay Kumar v. State of Tamil Nadu**², the Hon'ble Supreme Court held that unless the demand aspect is proved beyond reasonable doubt by the prosecution, the question of relying on recovery of the amount, to prove the case against appellant is unacceptable.

² (2021) 3 Supreme Court Cases 687

19. In **P.Satyanarayana Murthy v. District Inspector of Police, State of A.P**³ the Hon'ble Supreme Court reiterated that mere acceptance of any amount dehors proof of demand would not be sufficient to bring home charge under Sections 7 and Section 13(1)(d) of the Act.

20. The prosecution has failed to prove beyond reasonable doubt that A1 demanded bribe. P.W.1/complainant and P.Ws.3 to 11 beneficiaries have turned hostile. Further, as already discussed, there was no official work pending with A1. The prosecution cannot rely on the recovery of the amount from the appellant as the basis to infer demand. In the judgment cited by learned Special Public Prosecutor in **Chandrasha's case (supra)**, the demand was tape recorded. In the said circumstances, the Hon'ble Supreme Court found that the burden was on the accused to rebut the prosecution that the bribe was a legal fee or for repayment of loan. However, since the accused failed to do so, the Hon'ble Supreme Court found that the case was proved beyond reasonable doubt. The facts in the present case differ. The *defacto* complainant and all other beneficiaries have turned hostile. No instruments were used to record video or audio

³ (2015) 10 Supreme Court Cases 152

during trap proceedings. The entry of P.W.2 into the house of A1 on the date of trap is doubtful as already discussed.

21. Insofar as the appeal filed by the State is concerned, learned Special Public Prosecutor has not made out any case against A2. As already discussed, the list of beneficiaries in which P.W.1's wife name was mentioned was not finalized by the MPDO or MRO and others, which is the procedure.

22. In ***Mallappa and others v. State of Karnataka***⁴ the Honourable Supreme Court summarised the principles whereby appeals against acquittals can be interfered with. At para-42 of the Judgment, it was held as follows;

“42. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarised as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive — inclusive of all evidence, oral or documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

⁴ (2024) 3 Supreme Court Cases 544

(iii) If the court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the trial court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate court is inclined to reverse the acquittal in appeal on a reappreciation of evidence, it must specifically address all the reasons given by the trial court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate court must demonstrate an illegality, perversity or error of law or fact in the decision of the trial court.”

23. The Hon’ble Supreme Court in the case of [N. Vijayakumar](#)

[v. State of T.N.](#)⁵ held as hereunder:—

“20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a “possible view”, having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under [Section 378](#) CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in [Chandrappa v. State of Karnataka](#), [(2007) 4 SCC 415] has laid down the general principles regarding the powers of the appellate Court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432) “42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

⁵ (2021) 3 SCC 687

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The [Code of Criminal Procedure](#), 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

23. There are no grounds to interfere with the order of acquittal of A2 and also in view of the discussion, insofar as A1’s appeal is concerned, it deserves to be allowed.

24. Accordingly, Criminal Appeal No.1162 of 2017 is allowed and the appellant/A1 is acquitted. Criminal Appeal No.301 of

2018 is dismissed. Since the appellant in Cr1.A.No.1162 of 2017 is on bail, his bail bonds shall stand discharged.

K.SURENDER, J

Date: 29.01.2025

Note: LR copy to be marked.

B/o.kvs