



**HIGH COURT OF ANDHRA PRADESH**  
THURSDAY ,THE THIRTEENTH DAY OF JULY  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU**  
**CRIMINAL APPEAL NO: 474 OF 2015**

**Between:**

1. TALLURI GILBERT SUBHUSHANA KUMAR @ KUMAR, W.G.DIST. S/o.  
George,  
Ex- Revenue Inspector-1,  
O/o. Mandal Revenue Officer, Nallajerla Mandal  
West Godavari District, A.P  
Now, working as Senior Assistant  
Chintalapudi (PO) & (M) W.G.District

**...PETITIONER(S)**

**AND:**

1. SPL.P.P. FOR ACB CASES, HYD & ANO Represented by its Public  
Prosecutor for ACB Cases  
High Court at Hyderabad,  
For the State of A.P.
2. The State of Andhra Pradesh, Represented by its Deputy Superintendent  
of Police, Anti Corruption Bureau, Eluru Range, Eluru (PO) West  
Godavari (A.P.) .

**...RESPONDENTS**

**Counsel for the Petitioner(s): P NARASIMHA RAO**

**Counsel for the Respondents: A GAYATHRI REDDY STANDING  
COUNSEL FOR ACB CUM SPL. PP**

**The Court made the following: ORDER**



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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**CRIMINAL APPEAL Nos.474 & 497 OF 2015**

**Between:**

**CRIMINAL APPEAL No.474 OF 2015**

Talluri Gilbert Subhashan Kumar  
@ Kumar, S/o.George, Aged 53 years,  
Hindu, Ex-Revenue Inspector-1,  
O/o.MRO, Nallajerla Mandal,  
Now Senior Assistant, Chintalapudi (PO) & (M),  
West Godavari District, AP. .... Appellant/AO-1

*Versus*

1. The State of AP,  
Rep. by Spl. Public Prosecutor for ACB cases,  
High Court of A.P.  
Amaravathi.
2. The State of AP.,  
Rep. by Deputy Superintendent of Police,  
ACB, Eluru Range, Eluru (PO),  
West Godavari District (AP)..... Respondents

**CRIMINAL APPEAL No.497 OF 2015**

Chevala Satyanarayana  
S/o.Narayana, Aged about 43 years,  
Occ:Deputy Tahsildar,  
R/o.H.No.12-40, Zaviour Nagar,  
Eluru, West Godavari District. .... Appellant/AO-2

*Versus*

The State of AP,  
Rep. by Spl. Public Prosecutor,  
Anti Corruption Bureau  
High Court of A.P.  
Amaravathi. .... Respondent.



DATE OF COMMON JUDGMENT  
PRONOUNCED : 13.07.2023

SUBMITTED FOR APPROVAL:

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

1. Whether Reporters of Local Newspapers  
may be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may be  
marked to Law Reporters/Journals? Yes/No
2. Whether His Lordship wish to see  
The fair copy of the judgment? Yes/No

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**A.V.RAVINDRA BABU, J**



**\* HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**  
**+ CRIMINAL APPEAL Nos.474 & 497 OF 2015**

**% 13.07.2023**

**# Between:**

**+ CRIMINAL APPEAL No.474 OF 2015**

Talluri Gilbert Subhashan Kumar  
@ Kumar, S/o.George, Aged 53 years,  
Hindu, Ex-Revenue Inspector-1,  
O/o.MRO, Nallajerla Mandal,  
Now Senior Assistant, Chintalapudi (PO) & (M),  
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*Versus*

1. The State of AP,  
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Amaravathi.
2. The State of AP.,  
Rep. by Deputy Superintendent of Police,  
ACB, Eluru Range, Eluru (PO),  
West Godavari District (AP). .... Respondents

**! Counsel for the Appellant (AO-1) : Sri P.Narasimha Rao,**  
(Crl.A.No.474 of 2015) Learned Counsel.

**! Counsel for the Appellant (AO-2) : Sri M.B.Thimma Reddy,**  
(Crl.A.No.497 of 2015) Learned Counsel.

**^ Counsel for the Respondent : Smt. A. Gayathri Reddy,**  
Learned Standing Counsel-  
cum-Special Public Prosecutor

**> Head Note:**

**? Cases referred:**



1. (2009) 15 SCC 200
2. (2013) 14 SCC 153
3. (2014) 14 SCC 516
4. (2014) 13 SCC 143
5. (2022) SCC OnLine SC 1724.
6. (2022) 4 SCC 574
7. (2016) 1 SCC 713
8. 2014 (2) ALD (Crl.) 73 (SC)
9. (2015) 10 SCC 152
10. (2001) 1 SCC 691

This Court made the following:

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU****CRIMINAL APPEAL Nos.474 & 497 OF 2015****COMMON JUDGMENT:**

The judgment, dated 15.05.2015, in Calendar Case No.1 of 2006 on the file of the Court of Special Judge for SPE and ACB Cases-cum-III Additional District and Sessions Judge, Vijayawada (for short, 'the learned Special Judge'), is under challenge in these two Appeals. Criminal Appeal No.474 of 2015 is filed by the appellant, who was the Accused Officer No.1 (AO-1) and Criminal Appeal No.497 of 2015 is filed by the appellant, who was the Accused Officer No.2 (AO-2), in the aforesaid Calendar Case respectively.

2. Both the Appellants, as above, as Accused Officers No.1 and 2, faced joint charges before the learned Special Judge for the offences under Sections 7 and 13(1)(d) R/w. Section 13(2) of the Prevention of the Corruption Act, 1988 (for short, 'the PC Act'). The learned Special Judge found both the appellants herein guilty of the charges and convicted and sentenced them.

3. The parties to these Criminal Appeals will hereinafter be referred to as described before the trial Court, for the sake of convenience.



4. The State, represented by Inspector of Police, Anti Corruption Bureau, Eluru Range, Eluru, West Godavari District filed charge sheet pertaining to Crime No.5/ACB-RCT-EWG/2003 of ACB, Eluru Range, Eluru, West Godavari District alleging the offences under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act against the Accused Officers No.1 to 3. The case of the prosecution, in brief, according to the charge sheet averments, is as follows:

(i) AO-1 - Talluri Gilbert Subashan Kumar @ Kumar worked as Revenue Inspector-1 (RI) from 22.11.2002 to 22.07.2003; AO-2 - Chevala Satyanarayana worked as Mandal Revenue Officer (MRO) from 15.11.2002 to 22.07.2003 and AO-3 - Jukunta Narasimhulu worked as Mandal Deputy Surveyor from 04.10.1997 to 22.07.2003 in the Mandal Revenue Office, Nallajerla Mandal, West Godavari District. By virtue of the positions held by them, all the Accused Officers come under the category of '*Public Servants*' within the meaning of Section 2(c) of the PC Act.

(ii) LW.1 - Chinta Srikrishna Chaitanya is a resident of Nallajerla Village and Mandal. He purchased an extent of Ac.2.43 cents from his villager - Rayudu Dharma Rao in his name and also an extent of Ac.2.21 cents of agricultural land from one Chundru Gandhi of his village in the name of his mother - Chinta



Satyavathi in the year 2001. He got the lands registered at Sub-Registrar Office, Ananthapalli. He intended to dig a bore well in the lands of his mother by obtaining a bank loan. Therefore, he applied for Pattedar Passbooks for the aforesaid two bits of lands to MRO, Nallajerla along with the required documents. MRO, Nallajerla signed the applications and sent to the Revenue Inspector on the same day. LW.1 requested the Revenue Inspector (AO-1) to issue pattedar passbooks. Then AO-1 demanded him Rs.1,000/- as bribe. He approached AO-1 frequently and requested him for issuance of the pattedar passbooks but he demanded bribe of Rs.500/- for each pattadar passbook.

(iii) On 18.07.2003, LW.1 approached the MRO (AO-2) and requested him for issuance of pattedar passbooks. On that AO-2 replied that after receiving the report from the AO-1, he would issue the same. On 19.07.2003, LW.1 met AO-1 at his office and asked about the pattedar passbooks and then AO-1 demanded the bribe amount. LW.1 expressed his inability to pay the demanded bribe to AO-1. AO-1 reduced the bribe to Rs.600/- and informed LW.1 that if the said amount is not paid, he will not process for issuance of pattader pass books. LW.1 was not willing to pay the demanded bribe amount, as such he approached the DSP, ACB,





Eluru (LW.11) and submitted his report on 21.07.2003 at 12:00 noon and requested DSP, ACB, Eluru to take action against AO-1.

(iv) LW.11 registered the report of LW.1 as a case in Crime No.5/ACB-RCT-EWG/2003 for the aforesaid offences, after due verification and investigated into. He secured the services of LW.1 as decoy and LW.8 – Rongala Venkateswara Rao and LW.9 – Tangirala Venkata Satya Surya Nagendra Rao as mediators. He complied all the necessary formalities to organize the trap against the Accused Officers.

(v) On 22.07.2003, at 07:55 p.m., LW.1 gave a pre-arranged signal to the trap party. LW.11 and his staff along with the mediators rushed into the office of MRO. LW.1 informed that as per the instructions of LW.11, he went to AO-1, who informed him that the work was completed at his end and directed LW.1 to go to AO-2. He went to AO-2 and as per the instructions of AO-2 he handed over the bribe amount to AO-3 – Mandal Deputy Surveyor, Nallajerla and that AO-3 received the amount and left the office on his motorcycle and thereafter AO-2 signed on the pattedar passbooks and title deeds. Then, LW.11 deputed Sri U.V.Ramesh Babu – LW.12, who is Inspector of Police, ACB, Eluru to trace out AO-3 and produce him. Accordingly, after some time, LW.12 produced AO-3 along with another Police Constable –



Bhimadole Durgaiyah (LW.2) – PC.465 of Ananthapalli PS, West Godavari District. According to the version of AO-3, the amount was given to B. Durgaiyah as such he brought the said Durgaiyah. LW.11 questioned AO-3 to produce the amount received from LW.1. AO-3 stated that he gave the amount to B. Durgaiyah (LW.2) PC.465 of Ananthapalli Police Station. Then, the DSP, ACB conducted sodium carbonate test on the inner linings of right side hip pocket of the pant of AO-3 and the test yielded positive result. On further questioning, B. Durgaiyah produced a wad of currency notes wrapped in a paper from his uniform right side pant hip pocket. The serial numbers of currency notes recovered from B. Durgaiyah were verified by the mediators and found to be tallied with the number of currency notes mentioned in the pre-trap proceedings. B. Durgaiyah stated that he received the amount from AO-3 but he did not know the nature of the money. The investigation revealed that TGS Kumar (AO-1) – MRI-1, Nallajarla demanded the complainant to pay a bribe of Rs.600/- for showing official favour for getting issuance of pattadar passbooks in respect of lands of LW.1 – *de-facto* complainant and his mother. Ch. Satyanarayana (AO-2) demanded the bribe of Rs.600/- and received through AO-3, on the date of trap and AO-3 having received the bribe amount, on the instructions of AO-2, went



away after receipt of the bribe amount from LW.1 and handed over the same to LW.2 – Police Constable. The DSP, ACB arrested the AO-1, AO-2 and AO-3 on 23.07.2003 at 07:30 a.m. and sent them for judicial custody. Later, they were enlarged on bail on 24.07.2003. The statements of LW.1 and LW.2 were recorded under Section 164 Cr.P.C. before the Principal Junior Civil Judge, Tadepalligudem on 26.07.2003.

(vi) During the course of investigation, LW.11 has examined LW.1, LW.2 and LW.3 – Lankapalli Gandhi Babu and further LWs.4 to LW.7 namely Chinta Satyavathi, Pennada Vasu Deva Satyanarayana, Savalam Pullaiah, Challa Penchala Reddy. The material gathered during investigation establishes the offences under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act against AO-1 to AO-3.

(vii) The Government of Andhra Pradesh being the competent authority to remove Accused Officers from service, accorded sanction *vide* G.O.Ms.Nos.514, 515 and 516, dated 20.04.2005 of Rev. (Vig.II) Department respectively.

5. The learned Special Judge took cognizance of the case under the above provisions of law and, after appearance of the Accused Officers, by complying the necessary formalities under Section 207



Cr.P.C, framed joint charges under Sections 7 and 13(1)(d) R/w.13(2) of the PC Act against the Accused Officers No.1 and 2, read over and explained to them in Telugu for which they pleaded not guilty and claimed to be tried. Insofar as AO-3 is concerned, the case against him was abated on 05.09.2007.

6. To bring home the guilt of the Accused Officers, the prosecution before the Court below, examined PWs.1 to PW.13 and got marked Exs.P-1 to P-29 and Ex.X-1 and further marked MOs.1 to MO.18.

7. After closure of the evidence of the prosecution, AO-1 and AO-2 were examined under Section 313 Cr.P.C with reference to the incriminating circumstances appearing in the evidence let in by the prosecution, for which they denied the incriminating circumstances.

8. AO-1 during his 313 Cr.P.C. examination put forth a version that he was not present at the time of trap. The chemical test proved negative. He does not know what happened. He attended the work on his part and PW.1 never made rounds around him. He does not know PW.1. He recently went to Nallajerla and purposefully PW.1 implicated him in the case. AO-2 put forth a



version during his 313 Cr.P.C examination that they did not commit any offence. In fact no report was lodged against him. He did not demand any amount and no amount was recovered from him. The chemical test proved negative and he was falsely implicated in the case.

9. The learned Special Judge, on hearing both sides and after considering the oral and documentary evidence on record, found both the Accused Officers guilty of the charges and convicted them under Section 248(2) Cr.P.C. The learned Special Judge after questioning AO-1 and AO-2 about the quantum of sentence, sentenced each of them to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.20,000/- each in default to undergo Simple Imprisonment for three months each for the charge under Section 7 of the PC Act. The learned Special Judge further sentenced them to undergo Rigorous Imprisonment for one year each and to pay a fine of Rs.20,000/- each in default to suffer Simple Imprisonment for three months each for the charge under Section 13(2) R/w. Section 13(1)(d) of the PC Act. Both the sentences shall run concurrently.

10. The learned Special Judge, by virtue of the impugned judgment, directed the Chief Administrative Officer to lodge a



complaint before the III Additional Chief Metropolitan Magistrate, Vijayawada against PW.1 – Ch. Srikrishna Chaitanya and PW.10 – Chinta Satyavathi for perjury.

11. Felt aggrieved of the conviction and sentence imposed against AO-1 and AO-2, they filed Criminal Appeal Nos.474 and 497 of 2015 seperately.

12. Now, in deciding these Criminal Appeals, the points that arise for consideration are as follows:

1) Whether the prosecution before the Court below has proved that AO-1 and AO-2 were '*public servants*' within the meaning of Section 2(c) of the PC Act and whether the prosecution obtained a valid sanction to prosecute them under Section 19 of the PC Act for the charges framed against them?

2) Whether the prosecution before the Court below has proved pendency of official favour in respect of the work of PW.1 and his mother with Accused Officers No.1 and 2 prior to the date of trap and on the date of trap?

3) Whether the prosecution before the Court below has proved that AO-1 and AO-2 demanded PW.1 to pay a



bribe of Rs.600/- and accepted the said bribe amount in consequence of demand within the meaning of Section 7 of the PC Act and if so whether such act on the part of AO-1 and AO-2 would amount to criminal misconduct in terms of Section 13(1)(d) R/w Section 13(2) of the PC Act?

4) Whether the impugned judgment, dated 15.05.2015, is sustainable under law and facts and whether there are any grounds to interfere with the judgment of the learned Special Judge?

13. **POINT No.1**: The case of the prosecution before the Court below was that both the appellants *i.e.*, AO-1 and AO-2 were *public servants* within the meaning of Section 2(c) of the PC Act and the prosecution obtained a valid sanction to prosecute them in terms of Section 19 of the PC Act for the charges framed against them. Though the prosecution examined PW.9, concerned Section Officer, to prove a valid sanction against both the appellants and got marked Exs.P-15, P-16 and P-17 - which is relating to AO-3, who died during pendency of the Criminal Appeal but, it appears from the judgment of the Court below that the appellants



herein did not agitate about the validity of the sanction. Even as evident from the judgment of the Court below, it appears that both the appellants did not canvass any contention with regard to the validity of the sanction even in the grounds of Appeals before this Court. Learned counsel for the appellants did not agitate anything about the validity of the sanction proceedings. However, as these are the Criminal Appeals against conviction and as the prosecution was bound to prove a valid sanction, I would like to appreciate the evidence on record.

14. PW.9, the Section Officer, having got authorization under Ex.X-1 from the Deputy Secretary to Government, deposed that on 08.08.2003, the DG, ACB sent a preliminary report along with copy of FIR, Mediators Reports-I and II. On 12.02.2004, they received final report from the DG, ACB. The then Assistant Section Officer put up the note file and from him the file was circulated the SO, Deputy Secretary and Principal Secretary and Minister for Revenue. After scrutiny by the Law Department, the then Principal Secretary to Law Department – Sri J.P. Murthy issued sanction orders after duly satisfying with the material placed before him. Ex.P-15





is the sanction order issued against Chavala Satyanarayana (AO-2). Ex.P-16 is the sanction order issued against Talluri Gilbert Subashan Kumar @ Kumar (AO-1) and Ex.P-17 is the sanction order issued against Jukunta Narasimhulu (AO-3). Exs.P-15 to P-17 bears the signatures of J.P. Murthy. So, the prosecution before the Court below examined the person who was acquainted with the signatures of the sanctioning authority. As seen from Exs.P-15 and P-16, they clearly disclose the application of mind by the sanctioning authority with reference to the material sent by the DG, ACB. Mere sending of draft sanction orders so as to suggest a proforma to the sanctioning authority would not make Exs.P-15 and P-16 as invalid.

15. Having regard to the above, I am of the view that the prosecution before the Court below proved Exs.P-15 and P-16, the original sanction orders against AO-2 and AO-1. PW.9 categorically explained the signatures of the sanctioning authority and Exs.P-15 and P-16 discloses the application of the mind by the Sanctioning Authority. Hence, I am of the considered view that the prosecution proved a valid sanction in terms of Section 19 of the PC Act to prosecute the AO-1 and AO-2, who are no other than



the appellants herein, for the charges under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act. The point is answered accordingly.

**POINT Nos.2 to 4:**

16. Sri P. Narasimha Rao, learned counsel for the appellant in Criminal Appeal No.474 of 2015, would contend that in the report lodged by PW.1 the allegation is that the present appellant demanded bribe of Rs.1,000/- to do official favour. During the course of trial, he turned hostile to the case of prosecution. He did not depose that AO-1 demanded him to pay bribe of Rs.1,000/- to do official favour. In fact, AO-1 duly attended the official favour relating to PW.1. According to the evidence of PW.1, he did not depose any demand against AO-1. Even as on the date of post trap, his evidence is that when he approached AO-1 to enquire about the Pattedar Passbooks, he asked him to meet AO-2. Later, AO-1 did not know as to what happened. No tainted amount was recovered from the possession of AO-1. There was no substantive evidence to prove that AO-1 demanded bribe of Rs.1,000/- and reduced it to Rs.600/- and, on further demand, accepted the same from PW.1. The prosecution failed to prove the allegations of demand of bribe by AO-1 from PW.1 and consequent acceptance of the bribe



amount. AO-1 has nothing to do with AO-3, to whom complainant was alleged to have handed over the amount. According to the case of prosecution, PW.1 did not depose that he handed over the amount to AO-3, who died. The amount was recovered from PW.2, a constable who was on traffic duty. The learned Special Judge read Ex.P-1 – report of PW.1 and 164 Cr.P.C statement in substantive evidence which is quite irregular. Absolutely, there was no legal admissible evidence before the Court below to prove the charges against the appellant herein. The Court below on mere assumptions and presumptions convicted and sentenced the present appellant without any basis, whatsoever. The learned Special Judge recorded an order of conviction as such the Appellant herein is entitled for an acquittal. Learned counsel for the appellant (AO-1) in support of his contentions relied upon the decisions of the Hon'ble Apex Court in ***State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede***<sup>1</sup>, ***State of Punjab v. Madan Mohan Lal Verma***<sup>2</sup>, ***Prabhat Kumar Gupta v. State of Jharkhand and another***<sup>3</sup> and ***Satvir Singh v. State of Delhi***<sup>4</sup>. He would further rely upon a recent decision of the Hon'ble Apex

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<sup>1</sup> (2009) 15 SCC 200

<sup>2</sup> (2013) 14 SCC 153

<sup>3</sup> (2014) 14 SCC 516

<sup>4</sup> (2014) 13 SCC 143



Court in ***Neeraj Dutta v. State (Government of NCT of Delhi)***<sup>5</sup>, presided over by a Constitution Bench. He would further submit that the Court below also read post trap proceedings in substantive evidence and when PW.1 did not adhere to the version written in post trap proceedings, the post trap proceedings cannot be a basis to sustain a conviction and, at any rate, there is no legal admissible evidence in Criminal Appeal No.474 of 2015 as such the Criminal Appeal is liable to be allowed.

17. Sri M.B. Thimma Reddy, learned counsel for the appellant in Criminal Appeal No.497 of 2015, would contend that Ex.P-1 alleges that AO-1 demanded complainant to pay bribe of Rs.1,000/- and later reduced it to Rs.600/-. There is no whisper about the name of AO-2 in the report. At the time of post trap only the name of AO-2 was brought into picture. Having alleged the allegation of demand against AO-1 the complainant gave a go bye to the said version at the time of post trap as well as during the course of trial and brought into picture the name of AO-2. According to the post trap version, when PW.1 went to AO-2 at the instructions of AO-1, AO-2 questioned him as to whether any of the staff members demanded bribe and when he replied in positive, AO-2 called AO-3 and asked

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<sup>5</sup> (2022) SCC OnLine SC 1724



him to take the amount from PW.1. When it comes to evidence, PW.1 did not support the case of prosecution. He deposed that just AO-2 asked him as to whether any staff members demanded the bribe for which he replied that the Superintendent (not an accused in these cases) demanded bribe and then AO-2 signed the pattedar passbook and asked the Attender to make seals and then he (PW.1) went to the seat of Superintendent and when the Superintendent handed over the pattedar passbooks, he just kept the amount on the table. So, basing on the theory of AO-3 in the post trap that AO-2 asked him to take the amount from PW.1, the name of AO-2 was brought into picture. AO-3 died during the course of trial and the case against him was abated. So, it is not a case where PW.1 deposed that AO-2 demanded him to pay the bribe. PW.1 is a unreliable witness whose evidence cannot be believed. He changed his versions from time to time right from Ex.P-1 till he deposed the facts before the Court below. The amount was not recovered from the possession of AO-2. Even the amount was not recovered from the possession of AO-3. It was recovered from a Constable who was on traffic duty by then and the version of PW.2, the said Constable is that AO-3 handed over the amount to him but he does not know the purpose for which it was handed over. In the cross-examination, PW.1 categorically deposed that AO-1 and AO-2 never



demanded him to pay the bribe. So, absolutely there was no evidence of demand of bribe against AO-2 and acceptance of the same and the amount was not recovered from AO-2. The Court below read the post trap proceedings in substantive evidence. The Court below further read 164 Cr.P.C statement of the witness in substantive evidence. Without there being any legal admissible evidence, the Court below recorded an order of conviction basing on the assumptions and presumptions. Section 20 of the PC Act has no application because the amount was not recovered from the possession of AO-2. Mere evidence of PW.1 that when he met AO-1, he asked him to go to AO-2 cannot be a circumstance to prove the guilt against the accused. The evidence of PW.1 that AO-2 asked him as to whether anybody demanded him the bribe is nothing but false. On the other hand, AO-2 discharged his duty by signing the pattedar passbooks and handed over to the Attender. Even PW.1 failed to put forth his evidence in tune with the post trap proceedings. At any rate, the judgment of the Court below is not sustainable under law and facts and the AO-2 is liable to be acquitted.

18. Learned counsel for the appellant (AO-2) would rely upon the decisions of the Hon'ble Apex Court in **K. Shanthamma v.**



**State of Telangana**<sup>6</sup>, **N. Sunkanna v. State of Andhra Pradesh**<sup>7</sup> and **B. Jayaraj v. State of Andhra Pradesh**<sup>8</sup>. Learned counsel would further rely upon a decision of the Hon'ble Apex Court in **Neeraj Dutta** (5<sup>th</sup> *supra*).

19. Smt. A. Gayathri Reddy, learned Standing Counsel-cum-Special Public Prosecutor for ACB, appearing for the respondent-State, would contend that, admittedly, it is a case where PW.1 turned hostile to the case of the prosecution, for obvious reasons best known to him. The Court below ordered prosecution against him for perjury and directed the concerned Chief Administrative Officer to make a complaint against PW.1 and PW.10 - mother of PW.1. She would further contend that Ex.P-1 discloses the allegation of demand of bribe as against the appellant in Criminal Appeal No.474 of 2015. PW.1 deposed that during the post trap when he approached AO-1, he directed him to meet AO-2, AO-1 has no right to direct PW.1 to approach AO-2. In fact, it is for AO-1 to take necessary steps as regards the request of PW.1 and PW.10 to issue pattedar passbooks. PW.1 turned hostile to the case of prosecution deliberately by not speaking demand against

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<sup>6</sup> (2022) 4 SCC 574

<sup>7</sup> (2016) 1 SCC 713

<sup>8</sup> 2014 (2) ALD (Crl.) 73 (SC)



AO-1 and even he did not stick on to his version in the post trap and even did not speak about the demand against AO-2 as mentioned in the post trap. On the other hand, he deliberately and falsely brought into picture the name of the Office Superintendent in the office of MRO, Nallajerla *i.e.*, PW.3 as the person who demanded bribe, according to the version of AO-1. He deposed as if AO-1 told to him that the Superintendent of the Office is demanding the bribe. It is nothing but false. So, PW.1 turned hostile to the case of the prosecution being in collusive course with the accused and brought into picture the name of PW.3 as the person who demanded bribe according to AO-1 and deposed the facts. The Court below by relying upon the decisions and also the circumstantial evidence found favour with the case of the prosecution. Though, amount was not recovered from the possession of the appellants herein but it was recovered from PW.2, to whom AO-3 (died) handed over the bribe amount. According to AO-3, in the post trap he took the amount from PW.1 on the instructions of AO-2. The circumstance that when PW.1 approached AO-1, AO-1 asked him to meet AO-2 and when PW.1 met AO-2, he asked him as to whether anybody demanded bribe *etc.*, goes to prove the case of the prosecution. The Court below basing on the circumstantial evidence found favour with





the case of the prosecution. Even according to the decision of the Hon'ble Apex Court in **Neeraj Dutta** (5<sup>th</sup> *supra*), the prosecution need not prove the allegations of demand and acceptance of the bribe by direct evidence and even those facts can be proved by way of circumstantial evidence.

20. With the aforesaid submissions, learned Standing Counsel-cum-Special Public Prosecutor for ACB, would further contend that both the Appeals are liable to be dismissed. She would further submit that the pendency of official favour in respect of the work of PW.1 and PW.10 was not in dispute before the Court below and it was categorically established by the prosecution.

21. In the light of the above, firstly, I would like to deal with as to whether the official favour in respect of the work of PW.1 and PW.10 was pending with the Accused Officers.

22. Coming to the evidence of PW.1, who is the *de-facto* complainant, his evidence regarding the material aspects is that he has land of an extent of Ac.2.43 cents in Nallajerla village. There was also an extent of Ac.2.21 cents of land in the name of his mother. He wanted to dig a bore well in the said fields. So, he approached the MRO for pattedar passbooks of his land and the



land of his mother. He submitted claim forms of both of them. When he met the MRO, he signed on both the forms and sent to Revenue Inspector. Witness identified AO-1 and AO-2 as Revenue Inspector and Mandal Revenue Officer. According to him, he filed application on 05.07.2003 before MRO to issue pattedar passbooks and title deeds. Ex.P-4 is the form along with the sale deed. Ex.P-4 bears his signature. Ex.P-5 is the application of his mother. During the course of cross-examination, the factum of submission of applications by PW.1 of him and his mother before the MRO and later entrusting of the said work to AO-1 is not in dispute.

23. Coming to the evidence of PW.3 – G. Gandhi Babu, he deposed that he was retired Deputy Tahsildar and prior to that worked as Office Superintendent in the office of MRO. He deposed that one Chinta Srikrishna Chaitanya, resident of Nallajerla Village submitted two applications on his behalf and on behalf of his mother with a request to issue pattedar passbooks and title deeds on 05.07.2002 or 2003. The same came before him on 07.07.2003 and 22.07.2003 respectively through the Revenue Inspector – TGS Kumar. On the next day, he verified, signed and sent to MRO. According to the records, mother of PW.1 possessed



Ac.2.00 cents and odd land. He further deposed on 22.07.2003, he verified the application of Ch. Srikrishna Chaitanya and sent to MRO. Ch. Srikrishna Chaitanya possessed Ac.2.43 cents in Nallajerla Village. Exs.P-7 to P-10 (already marked) are the relevant documents.

24. Coming to the evidence of PW.4, the then Sub-Registrar, Ananthapalli, West Godavari District, he testified the fact that Chinta Srikrishna Chaitanya *i.e.*, PW.1 possessed Ac.2.43 cents of land in Nallajerla Village and Smt. Chinta Satyavathi, mother of PW.1, had possessed an extent of Ac.2.21 cents. There was no cross-examination for both the Accused Officers in this regard.

25. Coming to the evidence of PW.6, who was examined by the prosecution relating to pendency of official favour and to prove the procedural aspects, his evidence is that in order to issue pattedar passbooks, the applications submitted by the applicants have to be enquired by the Revenue Inspector and on submission of his report, Office Superintendent would process the files to MRO and the MRO will issue pattedar passbooks to the applicants. In respect of the title deeds, they will be forwarded to RDO by the MRO. After the signature of RDO, the title deeds will be issued to the concerned applicants through MRO.



26. According to the evidence of PW.8, the mahazar witness to the pre trap and post trap proceedings, he deposed that during the course of post trap, the complainant handed over to the DSP pattedar passbooks and title deeds belonging to him and his mother stating that those were issued by the MRO. So, the signature of AO-2 during the post trap as regards the above documents is not in dispute. There is no dispute that PW.1 came into custody of the pattedar passbooks and revenue title deeds signed by the MRO during the course of post trap.

27. PW.10 is no other than the mother of PW.1 and she did not support the case of prosecution. According to her, she did not know whether she purchased Ac.2.21 cents of land in her favour and her son purchased Ac.2.43 cents. Though she did not support the case of prosecution, there is no dispute that an extent of Ac.2.21 cents was standing in her name by virtue of the evidence of PW.1. Having regard to the above, absolutely, there is no dispute in respect of the application of PW.10 pending before AO-1 and AO-2 as on the date of trap.

28. PW.11, the Trap Laying Officer, deposed that during the post trap proceedings, he obtained the pattedar passbook and



revenue title deed which he came into possession from AO-2 during the post trap. Even these facts are not in dispute.

29. Having regard to the above, this Court is of the considered view that insofar as the official favour of PW.1 and PW.10 is concerned, it was pending before AO-1 and AO-2 prior to the date of trap and as on the date of trap and the prosecution before the Court below categorically established the same.

30. Now, another crucial aspect that has to be seen here is as to whether the prosecution before the Court below proved that AO-1 demanded PW.1 to pay the bribe of Rs.1,000/- and later reduced to Rs.600/- and that both the Accused Officers No.1 and 2 during the post trap demanded PW.1 to pay the bribe and accepted the same for doing official favour.

31. Admittedly, it is a case where the complainant did not support the case of the prosecution. There is no dispute that the name of AO-2 was not there in the report lodged by PW.1 *i.e.*, Ex.P-1. There is also no dispute that PW.1 during the course of trial did not depose that AO-1 demanded him to pay the bribe in the manner as alleged in Ex.P-1 or in the manner as alleged in the post trap proceedings. So, it is a case where the complainant



alleged something in Ex.P-1 and during the post trap the names of AO-2 and AO-3 were brought into picture and further during the course of trial, he turned hostile to the case of the prosecution. So, what was the case of the prosecution in the report alleged by PW.1 and what was the case of prosecution during the post trap and what was the evidence let in by the prosecution during the course of trial and as to whether there was any legally admissible evidence or whether there were any chain of circumstances to prove the guilt against the accused, it becomes absolutely necessary to look into the case of the prosecution right from Ex.P-1. Without referring here the case of the prosecution, as above, appreciation of evidence cannot be done in an effective manner.

32. As seen from Ex.P-1, the substance of the allegations is that PW.1 has an extent of Ac.2.43 cents having purchased in the year 2000 from Rayudu Dharma Rao, native of his village. He also purchased an extent of Ac.2.21 cents from Chundru Gandhi in the name of his mother *viz.*, Chinta Satyavathi in the year 2001. He wanted to dig a bore well in the said lands and that is why he approached the MRO requesting to issue pattedar passbooks so as to enable him to dig bore well. About 25 days prior to Ex.P-1



he submitted claim forms with enclosures of land documents to MRO – Satyanarayana, MRO – Satyanarayana handed over the same to Revenue Inspector. Then, he approached the Revenue Inspector and requested him to issue pattedar passbooks for which he demanded bribe of Rs.1,000/-. Since then, though he approached him several times and asked him to process his request. He was demanding bribe and ultimately he demanded that for each pattedar passbook he needs Rs.500/-. When he approached MRO with a request to issue pattedar passbooks, he informed that he will look after the same once the Revenue Inspector processed the same. Ultimately on 19.07.2003, when he approached the Revenue Inspector – Kumar in MRO Office, he demanded bribe of Rs.600/- at least and he promised to pay the amount within two days.

33. As seen from Ex.P-1, as referred to above, there is no allegation insofar as AO-2 is concerned. So, the complainant raised a direct allegation against AO-1 as if he demanded the bribe of Rs.1,000/- *i.e.*, for each pattedar passbook and ultimately on 19.07.2003 asked him to pay at least Rs.600/- towards bribe. This is the sum and substance of the allegation. Even the FIR was registered as against AO-1 only.



34. There is no denial of the fact that by virtue of the events that were alleged to have been happened during the post trap, the name of AO-2 and further the name of AO-3, who died during the course of trial, were brought into picture.

35. Now, it is pertinent to look into the chronological events that were alleged to have been happened during the post trap.

36. According to Ex.P-27, the post trap proceedings, the DSP, ACB along with the mediators and trap party members at about 07:55 p.m. received pre arranged signal from the complainant and then they all rushed to the office of MRO. Then the complainant informed to DSP, ACB that as per the instructions of MRO, the Mandal Deputy Surveyor – Narasimhulu accepted the bribe amount from the complainant by stretching a paper and folded wad of bribe amount into it and only thereafter the MRO – Satyanarayana signed on the pattedar passbook related to him and handed over the same to him for affixing the stamp underneath his signature and also handed over the pattedar passbook and title deeds of his mother for affixing stamps and seals also. MRO called one of the Attenders and instructed him to affix seal and stamps and in the meantime, Surveyor –





Narasimhulu who received the bribe amount went away on his motorbike.

37. Further allegation is that the then DSP, ACB instructed the complainant to wait outside till he was called. Then, the DSP, ACB entered into office room of MRO along with the trap party and ascertained his identity and got prepared sodium carbonate solution into two separate glass tumblers and requested the MRO - Ch. Satyanarayana to rinse his both hand fingers and when he did so, there was no change in the colour. So, according to Ex.P-27, the chemical test conducted to both hand fingers of AO-2 yielded negative result.

38. It further alleges that the DSP, ACB asked the MRO as to what was happened prior to the arrival of ACB trap party and he disclosed that at 08:00 p.m. on 22.07.2003 one person belonging to Nallajerla village approached him to issue pattedar passbook and then he signed on the passbook and issued to him and after some time the ACB officials came to him and asked about the Surveyor on which he replied that Surveyor went out. The so called version of AO-2 before the DSP, ACB is as if he duly signed the pattedar passbook.



39. Ex.P-27 further alleges that the then DSP, ACB instructed U.V.Ramesh Babu, Inspector ACB, to trace out the Mandal Deputy Surveyor - Narasimhulu with the help of the Deputy Mandal Officer – Gandhi Babu and one of the mediators T.V.S.S. Nagendra Rao and Police Constable.

40. It further alleges that the then DSP, ACP requested the MRO to wait in his office room *i.e.*, staff room of MRO and introduced himself and after ascertaining his identity conducted chemical test to both hand fingers of AO-1 and it yielded negative result. So, the prosecution alleges that insofar as the chemical test against AO-1 is concerned, it yielded negative result. It further alleges that when the DSP, ACB asked him as to what happened, he replied that about 16 days ago the complainant approached him for issuance of pattedar passbooks and title deeds along with the claim application forms for processing same along with the initials of MRO and the complainant used to periodically meet him for getting issuance of pattedar passbooks and title deeds. While so on 22.07.2003 at about 06:30 p.m. when he was sitting with the Superintendent in his room, the complainant approached him for pattedar passbooks and then he instructed the complainant to meet MRO by accompanying up to



the entrance room of the MRO. Thereafter, he was engaged in his work. After some time, the Superintendent-cum-Deputy MRO – Gandhi Babu forwarded the pattadar passbooks and title deeds on to the table of MRO for his signatures. It runs that AO-1 denied any demand of amount from the complainant. It further alleges that AO-1 had given his written explanation to the DSP, ACP to that effect. Ex.P-27 further alleges that in the meantime Inspector U.V. Ramesh Babu, entered into the office room of MRO along with Mandal Deputy Surveyor and Police Constable and ACB, Inspector claimed that the Mandal Deputy Surveyor informed him that at the instructions of MRO, he took the amount from PW.1 into a folded paper and after that he handed over the amount to a traffic constable. The sodium carbonate solution said to have been conducted to both hand fingers of AO-3 yielded negative result. AO-3 was alleged to have put forth a version before DSP, ACB that on 22.07.2003 evening at about 07:10 p.m. the MRO asked him to come to office room. Then, he went into the room of MRO with a view to take permission but by then Chinta Srikrishna Chaitanya was physically present and he requested MRO to sign on the pattedar passbooks and MRO replied that he will sign and asked the complainant as to whether the Revenue Inspector or Superintendent or any one of them



asked any amount and the complainant replied that the Revenue Inspector demand the amount and then MRO asked the complainant as to whether he brought the same for which he replied positively and then MRO asked him (AO-3) to receive the amount from the complainant and MRO stated that he will receive his amount from him tomorrow. It further alleges that AO-3 stated that he received the amount through a paper and folded the same with wad of currency notes and kept it in his right side pant hip pocket after that he left the office along with Attender and met the constable – Durga Rao and informed him that he will attend the Court tomorrow and handed over the amount to Constable – Durga Rao. The chemical test that was conducted to the inner linings of the trouser pocket of AO-3 was said to be positive.

41. The post trap narration is such that the names of AO-2 and AO-3 were brought into picture during the post trap. AO-3 stated to DSP, ACB when enquired that at the instructions of MRO, he accepted the amount from PW.1 and later he handed over the amount to traffic constable. Insofar as AO-1 is concerned, in the post-trap the complainant did not allege anything that he demanded any bribe amount. On the other hand, it is his version



that AO-1 had asked him to meet AO-2. So, basing on the post trap events the names of AO-2 and AO-3 were brought into picture. The charges that are framed against AO-1 and AO-2 are under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act. Section 7 deals with the demand of bribe. Section 13(1)(d) R/w. Section 13(2) of the PC Act deals with criminal misconduct by a public servant.

42. Now, it is a matter of appreciation to decide as to whether the evidence of PW.1 proves the allegations of demand and acceptance of bribe by AO-1 and AO-2 and further the act of criminal misconduct alleged against them.

43. Now, coming to the evidence of PW.1, he supported the case of prosecution with regard to pendency of official favour is concerned. Regarding the allegations of demand of bribe, his evidence is that when he met the Revenue Inspector – TGS Kumar and asked him about the pattedar passbooks, three days after MRO handed over the documents to RI, he was informed by AO-1 – TGS Kumar that the Office Superintendent demanded Rs.1,000/- for issuance of pattedar passbook *etc.*, Even after that he used to meet him occasionally and he used to repeat the same. When he again met the Revenue Inspector, he told him to meet



Gandhi Babu. As Gandhi Babu demanded the bribe amount, he refused to give any amount to Gandhi Babu – Superintendent. He deposed that when he went to Revenue Inspector, he directed him to meet Gandhi Babu and then Gandhi Babu demanded amount and he refused to give and he returned the pattedar passbooks by saying that if the amount is not paid, he will not comply the request. There was a quarrel between him and the Superintendent – Gandhi Babu. Then he went and met Bapiraju, who told it is not possible for him to attend immediately and that he would talk with the Superintendent later.

44. He further deposed that he saw the photo of Trinatha Rao, the then DSP, ACB while he was going through the newspaper and the boy who was adjacent to him told him to meet the ACB Officials. So, he went to the Office DSP, ACB and presented Ex.P-1 report. DSP, ACB asked him to come on the next day morning. Accordingly he went to the DSP, ACB on the next day and he was introduced with the mediators and they were also introduced to him. He also told to the mediators that Superintendent also demanded the bribe amount. He took the proposed bribe amount of Rs.600/- to the Office of DSP, ACB during the pre trap proceedings. One constable applied phenolphthalein powder to



the currency notes and kept it in his left side shirt pocket. Pre trap proceedings were concluded on that day. Later, the DSP, ACB asked him to give the amount to anybody whoever asks for it and he was also directed to give the pre-arranged signal after accepting the said amount. When they reached the MRO office, he came to know that MRO and the RI are not available since the RDO, Eluru is on tour at Nallajerla Mandal. So, he came back and informed the same to DSP, ACB. DSP, ACB asked him to stay there up to 05:00 p.m. and thereafter he again went to the MRO Office at about 07:30 p.m. RI came to the MRO office along with MRO. RI went into the office of MRO. After RI came out from the office of MRO, he met him and asked him about the pattedar passbook. Then, he replied that he forwarded the pattedar passbook to the MRO and asked him to meet the MRO. Then, he met the MRO in his office chamber and asked him about the pattedar passbook. Then the MRO signed on the pattedar passbook and asked him whether any of his staff demanded the amount. Then he replied that the Superintendent in the office demanded an amount of Rs.600/- for issuance of pattedar passbook. Then the MRO asked him to go to the Superintendent and handed over the pattedar passbook to the Attender. Then the Attender affixed seals on the passbooks and gave them to the



Superintendent in the office of MRO. Superintendent gave the patteddar passbooks and obtained his signature in the Register. Then, he kept the tainted amount of Rs.600/- on a paper available on the table of Superintendent, went outside and gave prearranged signal by lighting match stick as instructed by the DSP, ACB. The trap party members rushed to the office of MRO. He was asked to stay back by the DSP, ACB. He informed to the DSP, ACB about the Narasimhulu (AO-3) - the Surveyor taking the amount out. He again says that the Narasimhulu (AO-3) did not take out the amount. After some time, he was called inside and was asked to indicate about what had occurred from the moment he departed from trap party and till giving pre-arranged signal. The version of AO-3 was not confronted to him. He has no idea as to whether DSP, ACB recorded his statement or not. Later, he was asked to come to the DSP Office next day. It is true that he gave statement before the learned Judicial First Class Magistrate, Tadepalligudem. The signatures of the witness which are 7 in number in his 164 Cr.P.C statement are marked as Ex.P-2. The thumb impressions 7 in number which are beneath his signatures in 164 Cr.P.C statement are marked as Ex.P-3. He is having patteddar passbook of him and his father. DSP, ACB took





the xerox copies of the pass books and handed over the originals to him.

45. The learned Special Public Prosecutor got declared PW.1 as hostile and during his cross-examination he deposed that he did not remember whether he stated before the learned Magistrate as in his 164 Cr.P.C statement. He denied the case of the prosecution during cross-examination by the learned Special Public Prosecutor.

46. The learned Special Public Prosecutor cross-examined PW.1 with reference to his report during pre trap and post-trap proceedings and he denied the suggestions given by the learned Special Public prosecutor. During the course of cross-examination on behalf of AO-1 and AO-2, PW.1 deposed that he did not lodge any report against the MRO. Superintendent of the MRO Office by name Gandhi Babu handed over pass books to him on the date of trap and obtained his signatures on the endorsement of Exs.P-4 and P-5. AO-1 and AO-2 *i.e.*, the Revenue Inspector and Mandal Revenue Officer did not demand any bribe amount from him and he did not give any bribe to them. The MRO (AO-2) did not instruct him to give any amount to AO-3 or to any other person. On his submission of Ex.P-4 and P-5 to the MRO, he referred the



same to MRO on 05.07.2003 as per Exs.P-4 and P-5 and Exs.P-6 to P-7. The RI submitted the same after verification and preparation of passbooks to the Superintendent on 07.07.2003. So, it is a case where PW.1 turned hostile to the case of prosecution. He deviated from the contents of Ex.P-1 and further deviated from the contents of post trap proceedings that were recorded under Ex.P-27.

47. The prosecution examined PW.8, the mediator to the pre trap and post trap proceedings and further PW.11 – the Trap Laying Officer. According to their evidence, the versions of AOs-1 to AO-3 were recorded in the post trap proceedings. Prosecution examined PW.2, the so called Constable to establish that AO-3 handed over a cover containing the tainted amount and he deposed accordingly. Prosecution examined PW.3, the so called Superintendent who testified about the ACB raid. He was hearsay witness about version of AO-3 to PW.2 when PW.2 secured the presence of AO-3. Now, this Court would like to deal with as to whether the prosecution proved the essential ingredients of legal principles covered under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act.



48. Turning to the decision of the Hon'ble Apex Court in ***Dnyaneshwar Laxman Rao*** (1<sup>st</sup> *supra*), cited by learned counsel for the appellant (AO-1), the learned Special Judge recorded an order of conviction against the accused therein and on an Appeal filed by him, the High Court of Maharashtra allowed the Appeal. Felt aggrieved of it, the State of Maharashtra filed Criminal Appeal before the Hon'ble Apex Court. The Hon'ble Apex Court dealing with Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act, categorically held that the demand of illegal gratification is a *sine-qua-non* to constitute the offences to arrive at a conclusion as to whether all the ingredients of the offences *i.e.*, demand, acceptance and recovery of the amount are satisfied are not. The Court must take into consideration the facts and circumstances brought on record in the entirety before the accused is called upon to explain how the amount was found in his possession. The foundational facts must be established by the prosecution for the purpose of Section 20 of the PC Act. While holding so, the Hon'ble Apex Court found favour with the defence of the accused and dismissed the Criminal Appeal filed by the State.

49. Turning to the decision of the Hon'ble Apex Court in ***Madan Mohan Lal Verma*** (2<sup>nd</sup> *supra*), the accused was convicted



before the learned Special Judge. An Appeal was filed by the accused before the High Court of State of Punjab and Appeal was allowed. Felt aggrieved of the same, State of Punjab filed an Appeal before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court going through the essential ingredients of Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act held that the demand of illegal gratification is *sine-qua-non* for constituting the offence. Mere recovery of tainted amount is not sufficient to convict the accused when the substantive evidence in the case is not reliable. It further held that while invoking Section 20 of the PC Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. While holding so and looking into the essential ingredients of Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act, the Hon'ble Apex Court found favour with the case of the accused and dismissed the Appeal preferred by the State.

50. Turning to the decision of the Hon'ble Apex Court in **Prabhat Kumar Gupta** (3<sup>rd</sup> *supra*), the Hon'ble Apex Court reiterated that demand and acceptance of illegal gratification by the public servants are *sine-qua-non* to constitute the offences



under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act and further held that in the absence of evidence to establish the voluntary acceptance of gratification by the accused, presumption under Section 20 of the PC Act would not arise. It is a case where the learned Special Judge acquitted the accused and on an Appeal filed by the State, the High Court of Jharkhand allowed the Appeal and subjected the accused to punishment under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act and when the accused challenged the same, the Hon'ble Apex Court allowed the Appeal.

51. Turning to the decision of the Hon'ble Apex Court in **Satvir Singh** (4<sup>th</sup> *supra*), the same principles are reiterated by the Apex Court. The Hon'ble Apex Court especially dealing with Section 20 of the PC Act, categorically held that the demand, acceptance and recovery of the illegal gratification from the appellant was not proved as such there is no presumption under Section 20 of the PC Act.

52. Turning to the decision of the Hon'ble Apex Court in **N. Sunkanna** (7<sup>th</sup> *supra*), the Hon'ble Apex Court held that unless there is proof of demand of illegal gratification, presumption under Section 20 of the PC Act will not follow



53. The Hon'ble Apex Court in **B. Jayaraj** (8<sup>th</sup> *supra*) held that mere possession and recovery of the tainted amount from the accused without proof of demand is not sufficient for conviction under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act. While holding so, the Hon'ble Apex Court set-aside the judgment of the High Court under which the High Court confirmed the conviction and sentence awarded by the trial Court. The Hon'ble Apex Court further held that the presumption under Section 20 of the PC Act cannot be drawn in the absence of proof of acceptance of the bribe amount.

54. Turning to the decision of the Apex Court in **K. Shanthamma** (6<sup>th</sup> *supra*), the Hon'ble Apex Court looked into the legal position with reference to the decision in **P. Satyanarayana Murthy v. District Inspector of Police, State of A.P. and another**<sup>9</sup> and held that proof of demand of illegal gratification is the gravamen of the offences under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act and in the absence thereof, the charge would fail.

55. It is to be noticed that the decision of the Hon'ble Apex Court in **Neeraj Dutta** (5<sup>th</sup> *supra*), is a constitutional Bench

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<sup>9</sup> (2015) 10 SCC 152



decision, wherein the Hon'ble Apex Court considered its various earlier judgments especially whether there was any inconsistency or conflict with reference to the judgments in **B. Jayaraj** (8<sup>th</sup> *supra*) and **P. Satyanarayana Murthy** (9<sup>th</sup> *supra*). The Constitutional Bench in **Neeraj Dutta** (5<sup>th</sup> *supra*), elaborately considered its three earlier decisions and held that proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a *sine-qua-non* in order to establish the guilt of the accused public servants under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act. The prosecution can prove such an act either by direct evidence which can be in the nature of oral or documentary evidence. The Hon'ble Apex Court further held therein that such an aspect can also be proved by circumstantial evidence in the absence of direct oral or documentary evidence. The Hon'ble Apex Court further held therein that the presumption of fact with regard to the demand and acceptance or obtainment of illegal gratification may be made by a Court of law by way of inference only when the foundational facts have been proved by the relevant oral and documentary evidence and not in the absence thereof. In the event, the complainant turns hostile or has died or is unavailable to let in his evidence during trial, demand of illegal gratification



can be proved by letting in the evidence of any other witness. Insofar as Section 7 of the PC Act is concerned, on proof of the facts in issue, Section 20 of the PC Act mandates the Court to raise a presumption that the illegal gratification was for the purpose of a motive or reward. The Court has raised such a presumption as a legal presumption or a presumption in law. Of course, it is also subject to rebuttal. Ultimately, the Hon'ble Apex Court held therein that there is no conflict in the three judge Bench decisions of the Court in **B. Jayaraj** and **P. Satyanarayana Murthy** with the three judge Bench decision in **M. Narsinga Rao v. State of Andhra Pradesh**<sup>10</sup>.

56. In the light of the above, it is very clear that for the charges under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act, proof of demand of illegal gratification and acceptance thereof is a *sine-qua-non* to establish the guilt against the accused. Further, unless and until such foundational facts are proved, the benefit of presumption under Section 20 of the PC Act is not available to the case of prosecution. Even in the cases where the complainant turned hostile or died or is unavailable, the fact in issue can be proved by circumstantial evidence.

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<sup>10</sup> (2001) 1 SCC 691





57. As already pointed out, the complainant turned hostile to the case of prosecution. He did not stick on to the version mentioned in Ex.P-1. He did not stick on to the version mentioned in Ex.P-2 post trap proceedings. The amount is not recovered from the possession of either of the appellants herein. However, the Court below found favour with the case of prosecution. Now, it is a matter of appreciation to decide as to whether the evidence on record warrants the Court to hold that the prosecution established the guilt against the accused with reference to the charges beyond reasonable doubt.

58. Insofar as the allegations of demand of bribe against AO-1 is concerned, PW.1 in Ex.P-1 report alleged that AO-1 demanded him several times to pay the bribe of Rs.1,000/- and later reduced it to Rs.600/-. The said demands alleged to be made by AO-1 prior to the date of trap are not spoken to by PW.1. Even it is not his evidence that on the date of trap, AO-1 demanded him to pay the bribe. Even it is not the case of prosecution to that effect. But the case is that when PW.1 approached him, he asked him to meet AO-2. As evident from the cross-examination done by the learned Special Public Prosecutor, after getting declared that PW.1 turned hostile, even PW.1 denied the case of the prosecution



with reference to his statement before the Investigating Officer under Section 161 Cr.P.C as well as his statement under Section 164 Cr.P.C before the learned Magistrate and further his so called statement in the post trap proceedings under Ex.P-27 before the Trap Laying Officer in the presence of the mediators. So, at best, Exs.P-1 and P-27 can only be used to contradict the testimony of PW.1 by the learned Special Public Prosecutor. It is no doubt true that his evidence has been negated by virtue of his earlier statements in Ex.P-1 161 Cr.P.C statement and 164 Cr.P.C statement and post trap proceedings. His hostility to the case of prosecution is quietly evident but merely because he turned hostile to the case of prosecution, there is no supposition that the case of prosecution is true. Ex.P-1 - report, his statement under Section 161 Cr.P.C as well as his statement under Section 164 Cr.P.C and further his statement in the post trap narration cannot be read in substantive evidence.

59. Insofar as AO-2 is concerned, his name was brought into picture in the post trap proceedings. As this Court already pointed out, case of the prosecution with regard to Ex.P-27 is that when PW.1 met AO-2 at the instructions of AO-1, AO-2 asked him as to whether anybody demanded him for the bribe for which he



replied that AO-1 demanded the bribe and AO-2 then called AO-3 and asked him (PW.1) to handover the amount to AO-3 and then AO-3 went away. So, the prosecution alleged that AO-2 impliedly demanded PW.1 and further asked him to pay the bribe amount to AO-3. These aspects are not deposed by PW.1 in his evidence, as pointed out.

60. On the other hand, he brought into picture the Superintendent *i.e.*, PW.3 as if he demanded the bribe amount and AO-2 after signing passbooks asked him to meet the Superintendent and then he went to Superintendent and collected passbooks and later kept the amount on the table. Even it is not his evidence that he handed over the tainted amount to AO-3. So, absolutely, with regard to the allegations in the post trap that AO-2 asked PW.1 to pay the demanded bribe amount to AO-3 is not spoken to by PW.1. So, his narration in the post trap proceedings can only be used to contradict the testimony of PW.1. The tenor of his evidence goes to show that he is wholly unreliable witness. Even he has gone to the extent of deposing that even in the pre trap he disclosed the name of Superintendent as one of the persons who demanded the bribe. If that be the case, the name of the Superintendent would have been found place in



Ex.P-1. So without there being any foundation in Ex.P-1, PW.1 deposed facts which are contrary to Ex.P-1 as well as Ex.P-27. Either the statement under Ex.P-1 must have been false or the statement under Ex.P-27 must have been false or the statement before the Court in his evidence must have been false. There is no denial of the fact that he gave 164 Cr.P.C statement before the learned Magistrate. It is well settled that the statement under Section 164 Cr.P.C cannot be read in substantive evidence. So, his hostility to the case of prosecution is evident from the record. So, on the ground that PW.1 turned hostile to the case of prosecution even against AO-2 it does not lead to a conclusion that the case of the prosecution is true.

61. Admittedly, it is a case where the prosecution alleged that AO-3, after collecting the bribe amount from PW.1, left out the office and handed over the amount to PW.2, traffic constable. The evidence of PW.2 establishes the fact that AO-3 handed over the cover containing the money to him with a request to keep it and that he would secure the same on the next day when he attends the Court pertaining to a criminal case.

62. PW.12, the Inspector of Police, ACB testified the fact that at the instructions of DSP, ACB he secured the presence of AO-3



and brought before the Trap Laying Officer. According to the evidence of PW.3, the Superintendent, AO-3 told to Inspector, ACB that upon the instructions of AO-2 he collected the amount from PW.1. Even PW.3 was not a witness to the presence of AO-3 in the chamber of AO-2 when AO-2 allegedly asked PW.1 to pay the amount to AO-3. So, even his evidence is hearsay in nature. Absolutely, it is a case where PW.1 appears to have given false evidence before the learned Special Judge. Absolutely the facts and circumstances are such that he is wholly un-reliable witness. Having raised allegations against AO-1 in Ex.P-1, he did not support the case of prosecution. Having raised allegations against AO-2 in the post trap, he brought into picture the name of PW.3 as a person who demanded the bribe and destroyed the case of the prosecution. So, insofar as the demand alleged against AO-1 and AO-2 is concerned, PW.1 did not support the case of the prosecution. He is wholly unreliable witness. His evidence before the Court below that AO-2 asked him as to whether anybody demanded the bribe and then he told him that Superintendent asked the bribe amount is not at all inspiring confidence. It is unsafe to believe his evidence as if Superintendent demanded him to pay the bribe. So, even it is not believable that AO-2 asked him as to whether anybody demanded the bribe amount. In cross-



examination, he totally destroyed the case of the prosecution. According to him, AO-1 and AO-2 never demanded him any bribe.

63. It is a case where the disputed amount was not recovered from the possession of AO-1 and AO-2. Even, none of the witnesses testified that AO-3 was physically present when AO-2 signed the pattedar passbooks of PW.1. However, the learned Special Judge found favour with the case of the prosecution.

64. Now, this Court has to see as to what was the basis for the learned Special Judge to convict the accused by holding that the evidence on record proves the charges against them. The learned Special Judge at Para Nos.20, 21 and 22 of the judgment discussed as to how PW.1 did not support the case of prosecution and how he deliberately introduced certain facts without any basis from the records. At Para No.20 of the judgment while holding that the statement under Section 164 Cr.P.C is not substantive evidence but held that in view of Section 80 of the Indian Evidence Act, 1872 (for short, 'the Evidence Act'), it shall be presumed that it is duly recorded and it is a public document.

65. It is to be noticed that the presumption under Section 80 of the Evidence Act runs as follows:



**“80. Presumption as to documents produced as record of evidence:-** Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume –

That the document is genuine; that any statement as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.”

66. A perusal of the above means that the said presumption is applicable to a record or memorandum of evidence, or any part of the evidence given by a witness in a judicial proceeding or in respect of the statement or confession made by any prisoner or accused. It is to be noticed that the statement of PW.1 under Section 164 Cr.P.C cannot be brought under the purview of the evidence though it was taken on oath. Even otherwise, the said presumption is relating to the procedure that it is taken in accordance with law and it is signed by the Magistrate or Judge and that the document is genuine. So, the presumption under



Section 80 of the Evidence Act cannot be made applicable to the statement got recorded by the investigating agency under Section 164 Cr.P.C from a witness. Apart from this, Section 80 of the Evidence Act does not mean that the statement under Section 164 Cr.P.C is to be read in substantive evidence. So, placing reliance by the learned Special Judge under Section 80 of the Evidence Act with reference to the statement of PW.1 under Section 164 Cr.P.C is not proper.

67. The learned Special Judge at Para No.20 of the judgment made an observation that the case of the prosecution is corroborated by the version of PW.1 in 164 Cr.P.C statement and his statement in the post trap. It is to be noticed that when PW.1 supported the case of prosecution, then only Ex.P-1 and Ex.P-27 can be used to corroborate his testimony. So, when he turned hostile, the statement under Section 164 Cr.P.C and Ex.P-1 and the version of PW.1 in Ex.P-27 cannot be used and they cannot be read in substantive evidence to find favour with the case of the prosecution. The observation made by the learned Special Judge is nothing but erroneous, in my considered view.

68. The learned Special Judge at Para No.23 of the judgment held that when PW.1 entered into the chamber of 2<sup>nd</sup> accused at





07:55 p.m., he signed on the passbooks and his signing the passbooks even during the odd time and even after busy tour is a favourable circumstance in the case of the prosecution. It is very difficult to support such an observation. There is no dispute that AO-2 came back to his office late after attending an extensive tour along with RDO. He cannot be found fault for signing pattedar passbooks in odd hours. The observation made by the learned Special Judge that signing of pattedar passbooks at 07:55 p.m. is a favourable circumstance to the case of prosecution is not sound in the circumstances of the case.

69. The learned Special Judge at Para No.25 of the judgment commented that AO-1 and AO-2 did not question PW.1 in the cross-examination as to what is the motive for lodging a false case against them and even they did not advance any arguments suggesting the reason for filing false case. The above said observation made by the learned Special Judge is not tenable, in my considered view. When the prosecution did not let in substantive evidence in tune with Ex.P-1 and Ex.P-27 and when PW.1 destroyed the case of the prosecution, the case of the prosecution cannot be strengthened on the ground that AO-1 and AO-2 did not question PW.1 as regards the false implication.



70. The learned Special Judge at Para No.33 of the judgment observed that the material goes to show that AO-1 and AO-2 did not dispute about the presence of Narasimhulu (AO-3) in the chamber of 2<sup>nd</sup> accused when PW.1 entered into the chamber. The Court below made a further observation that presence of AO-3 in the chamber and evidence of PW.3, PW.7 and PW.12 goes to show that the 3<sup>rd</sup> accused was brought back with the tainted amount. It is to be noticed that neither PW.1 nor PW.2 and PW.3 testified the fact that AO-3 was present in the chamber of AO-2 when PW.1 entered into the chamber of AO-2 with regard to the issuance of the passbooks. What PW.12 deposed is that he brought back AO-3 on the instructions of the DSP, ACB after AO-3 went away. None of these witnesses testified the presence of AO-3 in the chamber of AO-2 when PW.1 entered into the chamber of AO-2. So, when the prosecution witnesses did not testify about the presence of AO-3 there was no question of AO-1 and AO-2 suggesting any theory that AO-3 was not present in the chamber of AO-2. The observation of the learned Special Judge that all the above goes to infer that 1<sup>st</sup> accused demanded the amount and the 2<sup>nd</sup> accused demanded and accepted the amount through 3<sup>rd</sup> accused is without any proper basis from the record. The learned Special Judge placed reliance on the judgment in **M. Narsinga**



**Rao** (10<sup>th</sup> *supra*). It is to be noticed that even as per the decision of the Hon'ble Apex Court in **Neeraj Dutta** (5<sup>th</sup> *supra*), when the complainant turned hostile and died or is unavailable, the prosecution can prove the case by relying upon the circumstances. Absolutely here, there are no circumstances to support the prosecution theory. PW.1 is wholly un-reliable witness. There is no evidence that AO-1 and AO-2 demanded PW.1 to pay the bribe. They did not deal with the tainted amount. The purported version of AO-3 in post trap proceedings cannot be read in substantive evidence. So, absolutely, the prosecution miserably failed to establish any chain of circumstances to prove the guilt against the accused. The learned Special Judge, without there being convincing and legally admissible evidence found guilty of AO-1 and AO-2 basing on assumptions and presumptions.

71. In the light of the decision of the Hon'ble Apex Court in **Neeraj Dutta** (5<sup>th</sup> *supra*), it is the bounden duty of the prosecution to prove the foundational facts. There is no evidence that AO-1 and AO-2 dealt with the tainted amount. There is no evidence that AO-2 directed AO-3 to take the amount from PW.1. The demand and acceptance of bribe which are *sine-qua-non* to



establish the charges in view of the principles laid down by the Hon'ble Apex Court, as above, are not proved by the prosecution in the light of the evidence adduced. When that is the situation, the judgment of the learned Special Judge in convicting the accused basing on the assumptions and presumptions is not at all sustainable under law and facts.

72. This Court would like to make it clear that the prosecution moved an application to initiate perjury case against PW.1 before the learned Special Judge and insofar as the observations made by the learned Special Judge as against PW.1 is concerned they are tenable. It is evident that PW.1 appears to have given false evidence for which the learned Special Judge with proper reasons ordered perjury against him and directed the Chief Administrative Officer of the Court to lodge appropriate complaint before the III Additional Chief Metropolitan Magistrate, Vijayawada. It appears that there was no request from the prosecution to initiate perjury case against PW.10, the mother of PW.1. As evident from the judgment of the learned Special Judge, the learned Special Judge ordered perjury case against PW.10 also basing on her 161 Cr.P.C statement before the ACB, Inspector. It is not a statement signed by her. According to the evidence of PW.1, he looked after entire



affairs of submission of application of him and his mother to get pattedar passbooks. PW.10 did not support the case of prosecution. What she deposed is that she did not know anything in the case but she was examined by ACB officials and her statement was recorded by them. She denied in cross-examination that she gave her statement as in Ex.P-28. Simply because she deviated from Ex.P-28, which was not signed by her, she cannot be prosecuted for the offence of perjury. Apart from that, the learned Special Judge made an observation that even she deposed that she is not aware whether she purchased lands or she made application for obtaining pattedar passbooks. When PW.1 categorically testified that he looked after everything on behalf of his mother, it cannot be held that PW.10 purposefully deposed false. The observations made by the learned Special Judge that PW.10 deposed false cannot stand to any reason and it is not a case where there is any material to launch prosecution of perjury against PW.10.

73. In the light of the above reasons, I am of the considered view that the prosecution before the Court below miserably failed to prove the charges against AO-1 and AO-2 beyond reasonable doubt and the judgment of the learned Special Judge is not at all



sustainable under law and facts and the same is liable to be set-aside. Apart from that, as PW.1 appears to have given false evidence, the proceedings pending against PW.1 before the competent Court of law shall continue and proceedings pending against PW.10, shall stand dropped as there is no material to prosecute her for the offence of perjury.

74. In the result, both the Criminal Appeals are allowed setting aside the judgment, dated 15.05.2015, in C.C. No.1 of 2006 on the file of the Court of Special Judge for SPE and ACB Cases-cum-III Additional District and Sessions Judge, Vijayawada as such both the appellants *i.e.*, AO-1 and AO-2 shall stand acquitted of the charges under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act and they are entitled to claim refund of the fine amount, if any paid, after Appeal time is over. Further, the tainted amount of Rs.600/- (rupees six hundred only) shall be confiscated to State and the material objects are ordered to be destroyed after appeal time is over, if available before the Court below.

75. The Registry is directed to take steps immediately under Section 388 Cr.P.C to certify the judgment of this Court along with the lower Court record, if any, to the learned Special Judge for



SPE and ACB Cases-cum-III Additional District and Sessions Judge, Vijayawada and further directed to mark a copy of this judgment to the learned III Additional Chief Metropolitan Magistrate, Vijayawada where the perjury complainant against PW.1 and PW.10 is pending. On receipt of a copy of this judgment, the learned III Additional Chief Metropolitan Magistrate, Vijayawada shall proceed with the perjury case against PW.1 and shall drop the perjury case against PW.10.

Consequently, Miscellaneous Applications pending, if any, shall stand closed.

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**JUSTICE A.V.RAVINDRA BABU**

Date: 13.07.2023  
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