



2023:APHC:13979

HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE SECOND DAY OF MAY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU

CRIMINAL APPEAL NO: 883 OF 2011

Between:

1. C.N.SESHACHALAPATHI RAJU S/o late C.v.Nagaraju
former Health Supervisor, SVRR GG. Hospital
Tirupathi Chittoor District.

...PETITIONER(S)

AND:

1. STATE OF AP.,REP.BYITS SPECIAL P.P ACB Cases High court of AP
Hyderabad.

...RESPONDENTS

Counsel for the Petitioner(s): V R REDDY KOVVURI

**Counsel for the Respondents: S M SUBHANI (SC FOR ACB AND SPL
PP)**

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL APPEAL No.883 OF 2011

Between:

C.N. Seshachalapati Raju, S/o late C.V. Nagaraju,
Aged about 56 years, Former Health Supervisor,
S.V.R.R.G.G. Hospital, Tirupathi, Chittoor District.
.... Appellant/Accused.

Versus

The State of Andhra Pradesh,
represented by Special Public Prosecutor
for ACB Cases, High Court of Andhra Pradesh.
... Respondent/complainant.

DATE OF ORDER PRONOUNCED : 02.05.2023
SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

1. Whether Reporters of Local Newspapers
may be allowed to see the Order? Yes/No
2. Whether the copy of Order may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
Fair copy of the order? Yes/No

A.V.RAVINDRA BABU, J

*** HON'BLE SRI JUSTICE A.V.RAVINDRA BABU****+ CRIMINAL APPEAL No.883 OF 2011****% 02.05.2023****# Between:**

C.N. Seshachalapati Raju, S/o late C.V. Nagaraju,
Aged about 56 years, Former Health Supervisor,
S.V.R.R.G.G. Hospital, Tirupathi, Chittoor District.
.... Appellant/Accused.

Versus

The State of Andhra Pradesh,
represented by Special Public Prosecutor
for ACB Cases, High Court of Andhra Pradesh.
... Respondent/complainant.

! Counsel for the Appellant :

Sri R. Arun Kumar, representing
Sri V.R. Reddy Kovvuri.

^ Counsel for the Respondent :

Standing Counsel for ACB
and Special Public Prosecutor.

< Gist:**> Head Note:****? Cases referred:**

AIR 2021 SC 766
2022(2) ALT (CrI.) 39 (A.P.)
(2021) 2 ALT (CrI.) 1
(2022) SCC OnLine SC 1724

This Court made the following:

**THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU****CRIMINAL APPEAL NO.883 OF 2011****JUDGMENT:-**

This Criminal Appeal is filed by the appellant, who was the Accused Officer ("A.O." for short) in C.C.No.4 of 2007, on the file of Special Judge for SPE & ACB Cases, Nellore ("Special Judge" for short), challenging the judgment, dated 21.07.2011, whereunder the learned Special Judge, found the A.O. guilty of the charges under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 ("P.C. Act" for short) and convicted him under Section 248(2) of the Code of Criminal Procedure ("Cr.P.C." for short). After questioning the A.O. about the quantum of sentence, the learned Special Judge, sentenced him to suffer rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for three months for the offence under Section 7 of P.C. Act and further sentenced him to suffer rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for three months for the offence under Section 13(2) r/w 13(1)(d) of P.C. Act and further directed that both the sentences, as above, shall run concurrently.



2) The parties to this Criminal Appeal will hereinafter be referred to as described before the trial Court for the sake of convenience.

3) The State, represented by Inspector of Police, A.C.B., Tirupati Range, Tirupati, filed a charge sheet under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act pertaining to Crime No.04/RCT-TCT/2006 of Tirupati Range, Tirupati, alleging in substance as follows:

(i) The Accused Officer, Sri C.N. Sesa Chalapathi Raju, worked as Health Supervisor in SVRR GG Hospital, Tirupati, Chittoor District from 29.04.2002 to 05.04.2006, as such, he is a public servant within the meaning of Section 2(c) of P.C. Act.

(ii) L.W.1-Gudisinti Markondaiah, S/o G. Dora Swamy, is resident of Door No.1087/A, NGO's Colony, Tirupati, Chittoor District. He is doing contract Sweeper work at SVRR GG Hospital, Tirupati. He along with 52 other workers of the same hospital formed themselves as a Society in the name of "Annamayya Welfare Society" and they are working as Sanitary Workers in the said hospital on contract basis from 01.12.2003. The management of the hospital used to pay monthly bill of Rs.1,09,376/- to them. The monthly bills will have to be certified by Health Supervisor of the hospital i.e., A.O. The contract was expired on 09.02.2006 in the name of Annamayya Welfare



Society (09.02.2006 must have been a typographical error because the case of the prosecution is that it was expired on 09.03.2006). Therefore, for a total period of 9 days in March, the bill amount of Rs.31,753-89 ps. has to be paid by the hospital management to them. In order to certify the bills for the period of 9 days in March, 2006, A.O. demanded Rs.3,000/- as bribe. On 03.04.2006 L.W.1 met the A.O. and pleaded that all the workers are very poor and it is their hard earned money and expressed their inability to pay such huge amount of Rs.3,000/- as bribe. Then, A.O. finally reduced the bribe amount to Rs.2,000/- and informed to L.W.1 that he is about to leave the SVRR GG Hospital, Tirupati, on promotion and that the money has to be brought within two days in order to certify the bills. As there was no other go, L.W.1 agreed to pay Rs.2,000/- as bribe. L.W.1, who was not willing to pay the bribe to the A.O., approached the D.S.P., A.C.B., Tirupati and gave a report. The D.S.P., A.C.B. (L.W.11) registered the report as a case in Crime No.04/RCT-TCT/2006 after due verification on 05.04.2006 at 2-00 p.m. and investigated into.

(iii) L.W.11, the D.S.P., A.C.B., conducted pre-trap proceedings in his office room on 05.04.2006 from 3-00 p.m. to 5-00 p.m. in the presence of two mediators, L.W.2-P. Chandra Sekharam, D.C.T.O., Tirupati and L.W.3-Y.J. Padmanabha



Prasad Reddy, Junior Assistant, O/o C.T.O.-II, Tirupati. The other Inspectors, staff and L.W.1 and also present during that time. The required formalities regarding pre-trap proceedings were complied with.

(iv) On 05.04.2006 at 5-00 p.m., the D.S.P., A.C.B., Tirupati, along with staff and two mediators and L.W.1 left A.C.B. Office, Tirupati and reached near Geethanjali Public School, Tirupati at 5-20 p.m. L.W.1 went to the house of A.O. and found A.O. sitting on a cot at his house. On seeing him, A.O. asked whether he brought the bribe amount. P.W.1 replied positively and handed over the tainted currency notes of Rs.2,000/- to A.O. The A.O. received the same with his right hand, counted with both hands and kept the same with him. Then, L.W.1 came out and gave the pre-arranged signal. The D.S.P., A.C.B., received signal at 5-30 p.m., rushed into the house of A.O. along with trap party and found A.O. sitting on the cot. The D.S.P., A.C.B., got prepared sodium carbonate solution in two glass tumblers and subjected both hand fingers of A.O. to the chemical test which yielded positive result. The A.O. voluntarily took out a wad of currency notes from a cupboard in his bedroom, where he hidden underneath clothes. One of the mediators received the amount from A.O., counted the same and compared with numerical numbers of the notes with that of



the numbers already recorded in pre-trap and they were found tallied. The D.S.P., seized the said amount of Rs.2,000/-. He arrested A.O. after explaining the grounds of arrest. The above proceedings were reduced into writing in the form of mediator report No.2. The D.S.P. seized the sanitation work satisfactory certificate, advance stamped receipt, muster record and dispatch register produced by A.O. in the SVRR GG hospital, Tirupati. A.O. was produced before the Special Judge for judicial custody. Later, he was released on bail. During the course of investigation, trap laying officer examined L.W.1, L.W.4-N.M. Abdul Salam, L.W.5-T. Tharachand Naidu, L.W.6-Mariyanna, L.W.7-Seetipalli Peramma, L.W.8-Daram Chandra Babu and L.W.9-Kakularam Kumar Reddy and recorded their statements under Section 161 of Cr.P.C. Further the trap laying officer got recorded the statement of L.W.1 under Section 164 of Cr.P.C. before III Additional Judicial Magistrate of First Class, Tirupati. The investigation reveals that A.O. demanded and accepted the illegal gratification of Rs.2,000/- from L.W.1 for doing official favour for process the bills of the Society of L.W.1 and to submit the same to SVRR GG Hospital, Tirupati.

(v) The Government of Andhra Pradesh accorded sanction to prosecute A.O. vide G.O.Ms.No.11, dated 08.01.2007.

Hence, the charge sheet.



4) The learned Special Judge took cognizance of the case under the above provisions of law and issued summons to A.O. On appearance of A.O., copies of case documents were furnished to him as contemplated under Section 207 of Cr.P.C. A.O. was examined under Section 239 of Cr.P.C. with reference to the allegations in the prosecution case, for which he denied the allegations. Then, the learned Special Judge framed charge under Section 7 of P.C. Act, 1988 and further charge under Section 13 (2) r/w 13(1)(d) of P.C. Act, 1988, against A.O. and explained to him in Telugu for which he denied the charges and pleaded not guilty and claimed to be tried.

5) In order to establish the guilt against A.O., the prosecution before the Court below, examined P.W.1 to P.W.10 and got marked Ex.P.1 to Ex.P.20 and M.O.1 to M.O.6. After closure of the evidence of prosecution, A.O. was examined under Section 313 of Cr.P.C. with reference to the incriminating circumstances appearing in the evidence let in, for which he denied the same. A.O. chosen to examine the defence witnesses i.e., D.W.1-M.Nagendra Babu and D.W.2-P.N. Karunakaran and got marked Ex.D.1 to Ex.D.3 and Ex.C.1. Further as part of Section 313 of Cr.P.C. examination, he also filed a written statement.



6) The learned Special Judge on hearing both sides and on considering the oral as well as documentary evidence, found A.O guilty of the charges under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act and accordingly convicted and sentenced him as above. Challenging the same, the unsuccessful A.O. filed the present Criminal Appeal.

7) Here, in deciding this Criminal Appeal, the points for determination are as follows:

(1) Whether the prosecution before the Court below proved that A.O. was a public servant within the meaning of Section 2(c) of P.C. Act and as to whether the prosecution obtained a valid sanction under Section 19 of the P.C. Act to prosecute A.O. for the offences alleged under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act?

(2) Whether the prosecution before the Court below proved the pendency of the official favour of P.W.1 with A.O. prior to the date of trap and on the date of trap?

(3) Whether the prosecution before the Court below proved that A.O. demanded P.W.1 to pay bribe of Rs.3,000/-, later, reduced it to Rs.2,000/- and accepted the same from P.W.1 for doing official favour in the manner as alleged?

(4) Whether the prosecution proved the charges under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against the A.O. beyond reasonable doubt?

**Point No.1:-**

8) The prosecution before the Court below examined P.W.7 to prove the sanction against A.O., P.W.7 deposed that he is working as Section Officer in Health, Medical & Family Welfare Department, A.P. Secretariat, Hyderabad. He is authorized to depose in this case as per G.O.Rt.No.58, dated 01.03.2011. It is Ex.P.17. D.G., ACB, Hyderabad sent a preliminary report along with copies of FIR, Mediators Reports 1 and 2 and final report along with statements of witnesses under Section 161 of Cr.P.C. Upon the advice of the Vigilance Commissioner, it was put in circulation through Assistant Secretary, Deputy Secretary and Principal Secretary to the Minister. Law Department scrutinized the sanction orders. Sri P.K. Agarwal went on through the entire material and upon application of mind, issued sanction orders to prosecute A.O. under Ex.P.18. Ex.P.18 contains the signature of Sri P.K. Agarwal and he (P.W.7) can identify the same. During the course of cross examination, he deposed that in Ex.P.18, there is no specific reference as to the nature of documents verified by Sri P.K. Agarwal. The file brought by him to the Court contains a draft sanction order along with final report by DG, ACB. He denied that he is



incompetent to depose in respect of Ex.P.18 and that it has been issued without application of mind.

9) The learned counsel for the appellant in the grounds of appeal pleaded that the Court below failed to see that the sanction accorded by the competent authority is bereft of reasons, as such, it is not legal. In the light of the above, I would like to look into the same. Ex.P.18 discloses that the sanctioning authority looked into the allegations against A.O. right from the alleged demand made by A.O., contents of the report and further pre-trap and post-trap proceedings. Further it reads literally that on application of mind only, Ex.P.18 sanction was issued. The evidence of P.W.7 that he can identify the signature of signatory under Ex.P.18 was not at all challenged during the course of cross examination.

10) Having regard to the above, this Court is of the considered view that the evidence of P.W.7 that necessary material was sent to the sanctioning authority i.e., the FIR, Mediators Reports 1 and 2 and final report along with the statements of witnesses under Section 161 of Cr.P.C. is liable to be believed. Therefore, this Court is of the considered view that the evidence on record is sufficient to say that the prosecution obtained a valid sanction under Ex.P.18 to prosecute A.O. under Sections 7 and 13(2) r/w 13(1)(d) of the P.C. Act. There is no



dispute that A.O. was drawing salary from the account of Government. Hence, I hold that the prosecution before the Court below categorically proved that A.O. is a public servant within the meaning of Section 2(c) of the P.C. Act and the prosecution obtained a valid sanction under Section 19 of the P.C. Act against A.O. for his prosecution before the Special Judge under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act.

Point Nos.2 to 4:

11) Sri R. Arun Kumar, learned counsel, representing the learned counsel for the appellant, would contend that the case of the prosecution is that in respect of 9 days salary of Annamayya Society group of people, they submitted bills under Ex.P.4 and A.O. as Health Supervisor, who had to certify the bonafidies and entitlement and that to do the same, A.O. demanded P.W.1 to pay bribe of Rs.3,000/-, later, reduced it to Rs.2,000/- and accepted the same on the date of post-trap. He would contend that even it is borne out from the evidence that A.O. had already signed the bills and given a satisfactory report and the bills were only pending before him for verification of the attendance register maintained by P.W.1 which is a procedure to be followed. The evidence on record would disclose that there was no official favour pending in respect of the work of P.W.1 before A.O. It is not the case of the prosecution that in previous



occasions when the bills of the said workers were submitted before A.O., he demanded any bribe amount. A.O. was going on promotion during the period of trap and it is quiet improbable that at the risk of his career, he would demand the brie of Rs.2,000/-. Ex.P.4 reveals that already there was signature of A.O. A.O. was waiting only for verification of the attendance register maintained by P.W.1. P.W.1 disowned his responsibility by saying that attendance register was not being maintained by him. But, the evidence of P.W.4 and P.W.5 discloses that attendance register used to be in the custody of P.W.1 alone. So, P.W.1 twisted the facts for the reasons best known to him. The prosecution failed to prove the pendency of the official favour. The learned Special Judge did not appreciate the evidence on record in proper perspective and erroneously held that official favour of P.W.1 was pending with A.O. When A.O. already signed the bill with necessary certification and was only waiting for the attendance register to be produced by P.W.1, there was no question of making any demand for bribe. The Court may look into the previous conduct of A.O. in clearing the bills without there being any demand for bribe. The evidence on record did not prove the pendency of the official favour. He would further contend that to prove the charges under Sections 7 and 13(2) r/w 13(1)(d) of the P.C. Act, proof of demand is a



sin qua non and the evidence on record goes to prove that there was no question of A.O. demanding P.W.1 for doing official favour. In fact, at the instance of P.W.1, A.O. extended some loan amount to one Narasimhulu, who was the member of Annamayya Welfare Society and Narasimhulu did not pay back the amount lent by the A.O. So, A.O. complained the same to P.W.8, who played a key role in forming Annamayya Welfare Society. Therefore, as A.O. complained against P.W.1 before P.W.8, P.W.1 hatched up a plan to rope A.O. under some false allegations. The amount received by A.O. was only towards the amount lent by him to Narasimhulu and it is not at all bribe amount. P.W.1 admitted in cross examination that whenever there was delay in payment of wages, some of the workers used to request A.O. for hand loans. So, the defence of A.O. is probable in the circumstances of the case. P.W.1 failed to produce the attendance register along with Ex.P.4 and A.O. beforehand just signed it and was waiting for arrival of attendance register. In fact, the bill was submitted before A.O. on 05.04.2006 alone. According to P.W.4, Annamayya Welfare Society usually monitors the attendance of the sanitary workers and attendance register used to be in their custody and they have to produce it before the Health Supervisor to prepare necessary wage bills and A.O. should have necessarily verified



it. When this is the situation, without producing any attendance sheets, P.W.1 cannot ask A.O. to give the bill to P.W.1 for submission before the concerned. Even P.W.8 admitted that the contract employees used to obtain loans from the permanent employees including A.O. since they used to receive the wages irregularly. A.O. examined D.W.1 and D.W.2 in support of his defence and got marked Ex.D.1 to Ex.D.3. The Court below without proper reasons went on to convict A.O.

12) The learned counsel for the appellant in support of the contentions would rely upon the decisions in (1) **N. Vijayakumar vs. State of Tamil Nadu**¹ (2) **R. Jagadeswara Reddy vs. State of A.P.**² (3) **Akuathi Yellamanda vs. State ACB**³ and (4) **Neeraj Dutta v. State (Government of NCT of Delhi)**⁴. He would contend that the prosecution failed to prove the charges under Sections 7 and 13(2) r/w 13(1)(d) of the P.C. Act, as such, A.O. is liable to be acquitted by allowing the appeal.

13) Sri S.M. Subhani, learned Standing Counsel for ACB and Special Public Prosecutor, appearing for the respondent/ State, would contend that the prosecution examined P.W.1, the

¹ AIR 2021 SC 766

² 2022 (2) ALT (CrI.) 39 (A.P)

³ (2021) 2 ALT (CrI.) 1

⁴ (2022) SCC OnLine SC 1724



complainant, P.W.3, P.W.4, P.W.5 and P.W.6 to prove the pendency of the official favour. Even prosecution examined P.W.8 to controvert the defence set forth by A.O. during post-trap that he accepted the amount which was indebted from somebody. In Ex.P.4 A.O. signed already and put his stamp also, but, he did not return the same for further action. These documents were seized on the date of trap from the office of A.O. A.O. had no business to sign Ex.P.4 with stamp and he had no right to expect production of attendance sheets when he already signed it. So, having got knowledge about the contents in attendance register only, he could sign the said documents. Though P.W.1 deposed that the attendance register was not with him, but, other witnesses spoken that P.W.1 used to maintain the attendance register. Hence, after the signature of A.O. on Ex.P.4, it was not supposed to be in his custody for further action. All these go to show that for ill-motive only, he was keeping Ex.P.4 with him without taking further action. The prosecution established the pendency of the official favour categorically. Both hand fingers of A.O. yielded positive result when chemical tests were conducted to both hand fingers. A.O. produced the tainted amount from a cupboard in his bedroom where he hidden underneath clothes. There is no dispute before the Court below that the tainted amount was recovered from the



possession of A.O. A.O. failed to probabalize his defence that he accepted the amount as due to him on account of hand loan given by him to some other. Though A.O. afterthought set forth such defence during post-trap, but, he failed to probabalize his defence theory and the defence theory cannot stands to any reason. The Court below with cogent reasons disbelieved the defence theory. The benefit of presumption under Section 20 of the P.C. Act is available to the case of the prosecution. Though there is no dispute about the principles laid down in the decisions cited that demand is the *sin qua non* to prove the charges under Sections 7 and 13(2) r/w 13(1)(d) of the P.C. Act, but, the evidence on record proves the essential ingredients of the said Sections. The Court below with sound reasons found A.O. guilty and convicted and sentenced him, as such, the appeal is liable to be dismissed.

14) In the light of the above, firstly I would like to deal with as to whether the prosecution before the Court below proved the pendency of the official favour.

15) P.W.1 was no other than the defacto-complainant. In this regard his evidence in substance is that he was doing contract Sweeper work at Sri Venkateswara Ramanarayana Ruya Hospital, Tirupati. Along with him 52 persons were also working there. They constitute themselves as a Society under



the name and style of Annamayya Welfare Society. The period of work was commenced from 01.12.2003. It was concluded by 09.03.2006. A sum of Rs.1,09,376/- paid to them towards their wages every month. In the month of March, they are entitled for 9 days salary which amounts to Rs.31,753.89 ps. The procedure for passing of their bills was that concerned Health Supervisor would certify that they attended to the work regularly and satisfactorily and then only concerned authorities would pass the bill. A.O. was the Health Supervisor by then. A.O. had to certify the bill for 9 days during March, 2006. On behalf of the Society, he approached A.O. for necessary certificate, as he was the President of the Society. A.O. demanded Rs.3,000/- as bribe for endorsing necessary certificate on bill with his seal. He told them that unless he paid the amount, A.O. would not certify. He told their members about the demand made by A.O. But, they requested him to contact A.O. again and request for certification since they were entitled to the salary. He went to A.O. on 03.04.2006 and told him that they are all contract labourers, who are unable to pay the amount as demanded. A.O. reduced the bribe of Rs.2,000/- and told that unless the amount is paid, bill would not be passed. He also told him that he would leave the office on promotion and as such he asked him to get the bribe of Rs.2,000/- within two



days. Under compelling circumstances, he accepted to pay the demanded bribe amount of Rs.2,000/-. Later, he went to the office of DSP, ACB on 04.04.2006 and informed him about the demand made by A.O. and his unwillingness to pay. The DSP, ACB asked him to give a report. He drafted Ex.P.1 report. The DSP, ACB asked him to come on 05.04.2006 at 3-00 p.m. along with Rs.2,000/-. P.W.1 deposed about his involvement in the pre-trap proceedings. His evidence in respect of post-trap proceedings is that during post-trap at 5-00 p.m., on 05.04.2006 they went to the house of A.O. The DSP, ACB asked him to go to the house of A.O. and in the pre-trap, he directed him to pay the bribe amount only on further demand. He went into the house of A.O., who was found sitting on the cot. He asked A.O. to certify the bill. A.O. asked him whether he brought the money. He replied positively and handed over the amount to A.O. A.O. received it with his right hand and counted them with both hands. A.O. asked him to come to the office on the next day and he would endorse the necessary certificates on the bill. Then he came out and relayed pre-arranged signal at 5-30 p.m. This is the substance of the evidence of P.W.1 with regard to the pendency of the official favour. The prosecution during his chief examination also got marked Ex.P.2 and Ex.P.3 the entries relating to dispatch register and Ex.P.4 the workers



pay bill which discloses the attendance register of the members and their entitlement. As far as Ex.P.2 and Ex.P.3 are concerned, they have nothing to do with Ex.P.4.

16) The prosecution examined P.W.3, the Junior Assistant in S.V.R.R. G.G. Hospital, Tirupati, regarding procedural aspects. The evidence of P.W.3 is that the sanitary work contract was given to Annamayya Welfare Society, Tirupati. The contractor would submit the bills to the Health Supervisor, who has to certify the same. A.O. was the Health Supervisor by then. He further deposed that he did not receive the bills relating to March, 2006 for a period of 9 days for the value of Rs.31,754/-. Ex.P.14 is the proceedings relating to the contract. He handed over Ex.P.14 and Ex.P.15 to the ACB. ACB shown to him a bunch of attendance sheets relating to 9 days work in March, 2006 which is Ex.P.4. They also shown him Ex.P.10 satisfactory certificate and Ex.P.11 advanced stamped receipt of P.W.1. According to this witness in cross examination by the defence counsel, attendance sheets have to be produced along with the bills to show that a particular number of workers had attended the work. They will be maintained by the contractor. Annamayya Society maintained such record. It was the responsibility of A.O. to verify the daily attendance sheets and he has to sign on the sheet every day. He denied that these



records could be handed over to the contractor for obtaining counter-signature.

17) According to the evidence of P.W.4, sanitary workers were being outsourced in their hospital and Health Supervisor used to monitor the performance of the duties of sanitary workers and it was the responsibility of the Health Supervisor to take care of attendance of its workers. He has to certify relating to work satisfaction and to submit the muster rolls for a counter-signature of C.S. R.M.O. A.O. was following the same procedure. He knows about the ACB case against A.O. As per the record, A.O. did not forward the work satisfaction certificate and muster rolls to him for counter-signatures. The DSP, ACB examined him.

18) The prosecution examined P.W.5, who deposed that he knows the A.O. Whenever A.O. was on leave, he was being posted as in-charge. But, he was not issuing any certificates as in-charge. He was supervising the roll call.

19) According to P.W.6, he was a worker in Annamayya Welfare Society. P.W.1 was its President and he was its Secretary. There were 53 workers. He and P.W.1 used to subscribe their signatures on the bills. Ex.P.4 and Ex.P.11 bear his signatures which are relating to salary of March, 2006.



20) Prosecution examined P.W.8, who deposed that he is a Secretary of C.I.T.U. an affiliated body of C.P.M. Annamayya Workers Welfare Society is affiliated to C.I.T.U. In case of disputes between the workers and management, they usually negotiate with the concerned. He knows A.O. and the duty of A.O. is to take attendance of the workers and to prepare pay bills and forward to the superiors. He never asked P.W.1 to get Rs.2,000/- for him. He did not ask P.W.1 to pay Rs.2,000/- to A.O. for being paid to him (P.W.8). He knows P.W.1 since they belonged to same organization. There is no possibility of any mediator to collect such amounts. During the course of cross examination, he deposed that he knows Narasimhulu, a worker in Annamayya Society, who left the Society. At one instance A.O. paid amounts to one of the workers of Annamayya Society at request of P.W.1 which was not repaid and when it was brought to his notice, he directed P.W.1 to repay the same to A.O. which P.W.1 agreed to pay. This incident took place about 15 days prior to ACB trap laid against A.O. He does not remember whether the worker, who received amounts from A.O. was Narasimhul. P.W.1 did not telephone him at any time that he was repaying the amount to A.O.

21) The evidence of P.W.2 and P.W.9 as regards the post-trap proceedings relating to seizure of documents is that



after concluded the post-trap proceedings at the residence of A.O., they went to the office of A.O. and A.O. opened his office and produced the documents and the DSP, ACB seized the dispatch register and it is Ex.P.9. He also seized sanitation workers satisfactory certificate and stamp receipt, they are Ex.P.10 and Ex.P.11 respectively. He also seized three sheets of muster rolls which are Ex.P.4. They signed on Ex.P.9 to Ex.P.11 and Ex.P.4 along with DSP, ACB.

22) As seen from Ex.P.1 report lodged by the defacto-complainant i.e., P.W.1 on 04.04.2006, the substance of the allegation is that he and 52 others formed themselves as Annamayya Welfare Society, got registered it and they are working in SVRRG Hospital, Tirupati for sanitary contract work since 01.12.2003. The monthly amount was Rs.1,09,376/-. Every month they have to submit the bill to the Health Supervisor, C.N.S. Raju, for necessary certification. Their contract period was over by 09.03.2006. So, pertaining the salary bill of March, 2006 for 9 days when they claimed the amount, A.O. demanded bribe of Rs.3,000/-. Being the President of the Society, on 03.04.2006 he met A.O. and informed him that all the contract workers are hard workers and they are not able to pay such amount and then A.O. reduced the bribe of Rs.2,000/- and stated that unless that amount is paid,



bill cannot be processed and he is going on promotion, directed them to pay the bribe amount within two days. Therefore, P.W.1 presented the report at 11-00 a.m. on 04.04.2006. The endorsement on Ex.P.1 reads that the ACB, DSP after conducting necessary enquiries with regard to the reputation of A.O. opined that A.O. is not carrying good reputation in the eyes of general public and complainant has no ill-motive to take revenge against A.O., as such, he registered the same as F.I.R. on the next day i.e., on 05.04.2006 at 2-00 pm. As seen from the evidence of P.W.1, he deposed in accordance with the contents in Ex.P.1. Literally, the contents of Ex.P.1 corroborate the evidence of P.W.1.

23) The facts which are not in dispute are that A.O. was working as a public servant and he was working as Health Supervisor in SVRRG Hospital and that P.W.1 and 52 others formed themselves as Annamayya Welfare Society, got registered it and they were working in SVRRG Hospital as sanitary workers. There is no further dispute that initially their contract was commenced from 01.12.2003 for a period of two months under the cover of Ex.P.14 and later it was being extended and by virtue of the order under Ex.P.15, their services were terminated by 09.03.2006 and from 10.03.2006 one Tirumalesu Agency was awarded with the said work. These



facts are not at all in dispute. Further as evident from the evidence of P.W.3 and P.W.4, the duties of A.O. were such that he has to scrutinize the bill submitted by the sanitary workers with reference to the entries in the attendance register. He has to give a satisfactory certificate and after making necessary verification and certification, he has to forward the bill to P.W.4. These facts are not at all in dispute. So, the case of the prosecution is that P.W.1 and its Secretary submitted the bill under Ex.P.4 to A.O., who had to certify and to do official favour, demanded bribe from P.W.1.

24) Turning to the cross examination of P.W.1, he deposed that whenever their salaries are prepared, they used to prepare the documents as like Ex.P.4 basing on the attendance information with them and take it to A.O. for certification for passing bill. Attendance register is maintained by A.O. He denied that after noting the presence, A.O. used to return the attendance register to them and he (P.W.1) was the custodian of the record. Ex.P.1 was prepared by him as per the entries in the attendance register. Ex.P.4 bears the names of all the 53 members of their society and not outsiders. Attendance register will not contain the names of the absentee members and it will not mention the persons of their members, who are absent and on a particular day against their names, but there will be an



absent mark. Ex.P.4 discloses that all the 53 members of their society regularly attended the work for 9 days in discharging the duties. He denied that 53 members of their society did not attend to their work as reflected in Ex.P.4 and some of them are recorded absent in the attendance register. The bill used to be drawn in the name of their society members and the absentee of the society member has to pay proportionate wages to the worker, who had substituted in his place. He denied that along with Ex.P.4, they were required to produce the attendance register also before A.O. for certification whenever the bills have to be drawn. He volunteers that the attendance register would be with A.O. himself. He denied that A.O. has to certify the bill after looking into the attendance register. After they were asked to stop the work, the work was entrusted to Sri Tirumalesu Security and Sanitation under a contract. He submitted Ex.P.4 with A.O. during March end of 2006. He denied that he presented Ex.P.4 before A.O. on 05.04.2006. He deposed that after certifying the bills as per Ex.P.4, A.O. used to return the bills to him and he used to present it before the concerned being passed. He denied that he presented Ex.P.4 to A.O. on 05.04.2006 and A.O. certified the same and asked him to produce the attendance register, so that, he can handover the bill to him. He used to put the dates in the bills prepared as in



Ex.P.4. Ex.P.4 bears the signature of him and one Peramma, the Secretary. Ex.P.4 also bears the signature of A.O. with the same. He denied that A.O. told him that unless he bring the attendance register, he would not put the date under the signature and that he promised him to produce the attendance register, but, he did not produce. He denied that there is no question of A.O. demanding him to pay the bribe for certification of the bill for 9 days since A.O. already signed and certified Ex.P.4. He denied that he is deposing false.

25) Coming to the evidence of P.W.3 during the cross examination, he deposed that the attendance sheets have to be produced along with the bills to show that a particular member of the workers attended the work. They will be maintained by the Contractor. Annamayya Society maintained such record. It was the responsibility of the A.O. to verify the bill, attendance sheets and he had to sign on the sheet every day. The attendance sheets (muster rolls) satisfactory certificate and advance receipt have to be placed before the Health Supervisor, who in turn certifies to Civil Surgeon-R.M.O. The same has to be sent through usual office procedure by local tapal to Civil Surgeon-R.M.O. for counter-signature and later to him. He denied that such procedure is not there. He denied that records could be handed over to the Contractor for obtaining counter-



signature from Civil Surgeon-R.M.O. and that he is deposing false.

26) Coming to the evidence of P.W.4 in cross examination, he deposed that the attendance register of the workers will be in the custody of the contracting agency. The contracting agency has to produce the attendance register to prepare the necessary wage bill. While forwarding the muster rolls, A.O. should have necessarily verified the attendance register. A.O. was forwarding after due verification of the attendance register with muster rolls and the work satisfaction certificate to him. If attendance register is not produced, Health Supervisor cannot forward the muster roll to Civil Surgeon-R.M.O. He denied that it was not the responsibility of A.O. to take care of attendance of the sanitary workers. During re-examination, he deposed that Ex.P.4 is the muster roll and A.O. had signed in it as a Health Supervisor after due verification of attendance register maintained by the contracting agency. He is identifying the signature of A.O. on Ex.P.4 and it is Ex.P.16. Ex.P.10 is the work satisfaction certificate that bears the signature of A.O. as Health Supervisor issued for the month of March, 2006. It is also supported by advanced stamped receipt under Ex.P.11.



27) By virtue of the above, though P.W.1 denied that he was maintaining the attendance register, but the evidence of P.W.3 and P.W.4 goes to prove that the attendance register is to be maintained by the contracting agency. It is to be noticed that the defence before P.W.1 is that as P.W.1 did not produce the attendance register along with Ex.P.4, A.O. insisted P.W.1 to produce the same. It is the further defence that A.O. used to return the bill like Ex.P.4 to P.W.1 after due verification and certification with reference to the entries in the attendance register and P.W.1 has to submit the bill to the proper authorities. This procedure suggested during cross examination of P.W.3 was not admitted by him. In fact, P.W.4 was the proper person to ascertain as to whether P.W.1 was in the habit of receiving the bill like Ex.P.4 after certification by A.O. through proper process i.e., through dispatch register or he was receiving the same from P.W.1. So, what all the defence of A.O. as if he used to return the bill like Ex.P.4 to P.W.1 after necessary certification is nothing but contra to the procedure. It is quiet improbable to assume that when a person like P.W.1 laid a claim for salary, the bill will be returned to P.W.1 after necessary verification to be presented before proper authorities. On the other hand, A.O. being the Health Supervisor had to see that the bill would reach the proper designated officer like P.W.4



after necessary verification. So, the fact remained is that though P.W.1 stated that the attendance register used to be in the custody of A.O., but, the evidence of P.W.3 and P.W.4 is very clear that the contracting agency used to maintain the attendance register.

28) It is to be noticed that the evidence of P.W.4 is very specific that Ex.P.4 is the muster roll and A.O. signed it as a Health Supervisor after due verification of attendance register maintained by the contracting agency. Therefore, he identified the signature of A.O. on Ex.P.4 and signature is Ex.P.16. Apart from this, there is Ex.P.10 work satisfactory certificate and advanced stamped receipt under Ex.P.11. The above portion of the facts that were elicited by the learned Special Public Prosecutor during re-examination of P.W.1 was not further impeached during further cross examination by the learned defence counsel before the Court below. On the other hand, what P.W.4 deposed is that during further cross examination he did not state in respect of Ex.P.4, Ex.P.10 and Ex.P.11 specifically before D.S.P., ACB, Tirupati. The signature of the President and Secretary of Annamayya Society are there on Ex.P.4. Ex.P.4 bears the signature of A.O. with date as 05.04.2006. Insofar as the evidence of P.W.4 that Ex.P.4 bears the signature of A.O. with date as 05.04.2006 was found fault



by the Court below by giving finding that P.W.4 deposed mistakenly about the date as 05.04.2006. Admittedly, the date as 05.04.2006 was not there. On the other hand, the ACB trap party put their signatures as 05.04.2006 on Ex.P.4. So, whatever the reason may be the possibility of P.W.4 deposing by looking into Ex.P.4 the date 05.04.2006 as put by A.O. cannot be ruled out. It is not going to affect the case of the prosecution in any way.

29) Now, it is appropriate to look into exactly as to what is there in Ex.P.4. Ex.P.4 is styled as Annamayya Welfare Society contract workers bill. As many as 53 names were there in seriatim opposed to the dates 1, 2, 3, 4, 5, 6, 7, 8, 9 of March, 2006. Against each name the letter "P" is there which indicates the presence of the sanitary workers. So, it can be construed as a muster also. According to P.W.4, it is also a muster roll. It is to be noticed that Ex.P.4 bears the signature of G. Markondaiah (P.W.1) being the President of the Society and Settipalli Peramma (P.W.6) as Secretary of the Society under the stamp. Similarly, it contains the signatures of A.O. with stamp on three sheets. Apart from this, on each sheet there is calculation that each sanitary worker attended 9 days duty. Therefore, P.W.1 and P.W.6 claimed that all the 53 sanitary workers attended for duties from 01.03.2006 to 09.03.2006, as



such, they submitted the bill. The signature of A.O. on Ex.P.4 with stamp indicates that after due verification only, he could put his signature. Though he did not put the date, but, it is rather improbable to assume that after verification entries in the attendance register and if the entries are found to be not correct, he would withdraw his signature on Ex.P.4. Therefore, there was no question of putting his signature on Ex.P.4 unless he verified duly the entries in attendance register. According to P.W.4, the signature of A.O. could only be after verifying the necessary entries in the attendance register. So, a look at the physical condition of Ex.P.4, amply proves the fact that A.O. could only sign there after due verification of the claim made by P.W.1 and P.W.6 that 53 workers attended duties for a period of 9 days. Apart from this, there is also Ex.P.10 sanitary work certificate which is signed by A.O. to the effect that "this is to certify that sanitary work executed by Annamayya Welfare Society Contract Work Association, Tirupati, in the month of March, 2006 is quiet satisfactory and the Society has arranged 477 duties of sanitation workers during the month of March, 2006". Ex.P.11 the advanced stamped receipt is dated 31.03.2006 signed by P.W.1 and P.W.6. The evidence of P.W.1 is that at the end of March, 2006, he submitted the bill under Ex.P.4.



30) The contention of A.O. before P.W.1 during cross examination is that it was only 05.04.2006 P.W.1 submitted Ex.P.4 bill and then he signed the bill and asked P.W.1 to produce the attendance register. The act of A.O. in this regard is nothing but improbable and not a man of reasonable prudence. It is to be noticed that already there was Ex.P.1 on 04.04.2006 before ACB, DSP and P.W.1 was asked to him to come on 05.04.2006 along with bribe at 2-00 p.m. It is very difficult to say that P.W.1 could take such a risk of presenting Ex.P.1 on 04.04.2006 without submission of Ex.P.4 on 31.03.2006. Therefore, the defence of A.O. that P.W.1 submitted the bill on 05.04.2006 cannot stand to any reason. A person like A.O. who was discharging the duties as Health Supervisor, when P.W.1 allegedly brought the bill under Ex.P.4 on 05.04.2006 would not sign it unless he verifies the genuineness of the claim. So, the alleged act of A.O. in signing Ex.P.4, Ex.P.10 and Ex.P.11 without verification of the attendance register is not that of a man of reasonable prudence. Hence, the contention of A.O. in this regard is devoid of merits. So, the contention of A.O. that there was no question of doing official favour as he already put his signatures on Ex.P.4, Ex.P.10 and Ex.P.11 falsify his contention to any extent. If that be the case, how he could keep



the bill with him without sending the same to P.W.4 or atleast without returning to P.W.1 for presentation before P.W.4.

31) There is no dispute that after trapping A.O., ACB, DSP along with P.W.2 and P.W.1 went to the office of A.O. and seized Ex.P.4, Ex.P.10 and Ex.P.11 from the office of A.O. In the light of the above, I am of the considered view that official favour in respect of work of P.W.1 was pending with A.O. prior to the trap and on the date of trap.

32) Now, this Court has to see as to whether the prosecution before the Court below proved the allegations of demand made by A.O. for bribe prior to trap and on the date of trap and acceptance of the same from P.W.1 during post-trap. As pointed out Ex.P.1 speaks that on 03.04.2006 P.W.1 approached A.O. and expressed his inability to pay the bribe for which he reduced the bribe of Rs.2,000/- and asked P.W.1 to pay the amount within two days and he is going on promotion. Though Ex.P.1 did not contain the date on which A.O. allegedly made demand to pay bribe of Rs.3,000/- prior to 03.04.2006 but according to P.W.1 even prior to 03.04.2006 also A.O. made such demand. The demand on 03.04.2006 is interlinked with the date of demand during post-trap i.e., 05.04.2006. The prosecution examined P.W.1 to prove the allegations of demand of bribe against A.O. and further examined P.W.2-the mediator



and P.W.9-the trap laying officer, to speak about the events that were happened in the pre-trap and post-trap proceedings.

33) It is no doubt true that the Hon'ble Supreme Court in *N. Vijayakuamar's case (1 supra)* dealing with an appeal under the Prevention of Corruption Act filed by the appellant held that to prove the offence under Sections 7 and 13(2) r/w 13(1) (d) of the P.C. Act, the prosecution has to establish the allegations of demand and mere recovery of tainted amount is of no use.

34) This Court in *R. Jagadeswara Reddy's case (2 supra)* also dealt with the said aspect. Similar is the situation in respect of another decision filed by the learned counsel for the appellant in *Akuathi Yellamanda's case (3 supra)*. Apart from this, the Hon'ble Supreme Court in a Constitutional Bench in *Neeraj Dutta's case (4 supra)* so as to resolve the issue of as to whether there was any inconsistency between three decisions i.e., *B. Jayaraj vs. State of Andhra Pradesh (2014) 13 Supreme Court Cases 55*, *P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another (2015) 10 Supreme Court Cases 152* and *M. Narsinga Rao vs. State of A.P., (2001) 1 SCC 691* gave series of clarifications and one of those clarifications is to the effect that in proving the charges under Sections 7 and 13(2) r/w 13(1) (d) of the P.C. Act,



demand is *sin qua non* which the prosecution has to establish. Apart from this, the Hon'ble Supreme Court also held that upon proof of fact in issue or foundational facts insofar as the charge under Section 7 of the P.C. Act is concerned, the presumption under Section 20 of the P.C. Act will arise and it is a legal presumption which the court has to draw.

35) Now, I would like to appreciate as to whether the evidence adduced by the prosecution proves the essential ingredients of Sections 7 and 13(2) r/w 13(1) (d) of the P.C. Act. Insofar as the allegations of demand of bribe on 03.04.2006 are concerned, as pointed out P.W.1 spoken the same and his evidence has corroboration from the contents of Ex.P.1. Insofar as the demand made by A.O. during post-trap, P.W.1 paid the bribe of Rs.2,000/- to A.O. and consequent acceptance of the same, the prosecution sought to prove the guilt against A.O. basing on the evidence of P.W.1, P.W.2-the mediator and P.W.9-the trap laying officer, Ex.P.6-pre-trap and Ex.P.8 post-trap proceedings.

36) The evidence of P.W.1 in respect of the post-trap proceedings is that on 05.04.2006 he went to ACB, DSP Office along with bribe of Rs.2,000/-. The DSP introduced the mediators to him and they asked him as to the contents of Ex.P.1 and he confirmed the same. He produced the proposed



bribe of Rs.2,000/- in hundred rupee denomination before DSP and DSP asked the Constable to prepare sodium carbonate solution and Constable applied the said solution to the amount and asked him to keep the same in the shirt pocket and instructed him to pay the said amount only on further demand by A.O. His evidence during post-trap is that on 05.04.2006 they left to the house of A.O. All of them got down from the Jeep near Geethanjali School. DSP asked him to go to the house of A.O. and reiterated the earlier instructions. He found A.O. in his house sitting on the cot. He asked A.O. to certify the bill. A.O. asked him whether he had brought the money and told him that he brought the money and gave him Rs.2,000/- by picking out from his shirt pocket. A.O. received it and counted them with his both hands. A.O. told him to come to the office on the next day and he would endorse the necessary certificates on the bill. Then, he came out of the house of A.O. and relayed pre-arranged signal at 5.30 p.m. Then, DSP, ACB officials and staff entered into the house of A.O. DSP asked P.W.1 to wait outside. After some time, he was called by DSP inside the house and DSP asked him as to what happened and he narrated before the DSP as to what happened.

37) The evidence of P.W.2, the mediators, supports the evidence of P.W.1 insofar as the pre-trap proceedings are



concerned. Insofar as the post-trap proceedings, evidence of P.W.2 is that during pre-trap they left from the DSP Office and reached near the house of A.O. and at 5-30 p.m., DSP asked P.W.1 to get down the Jeep and asked to go to the house of A.O. by reiterating the earlier instructions. At 5-30 p.m., they received pre-arranged signal. They entered into the house of A.O. P.W.1 was there. DSP asked him to wait outside. They found A.O. sitting on the cot. DSP ascertained the identity particulars of A.O. DSP got conducted chemical test to both hands of A.O. which yielded positive result. When DSP asked as to how his hand fingers yielded positive result, A.O. stated his version and took them into another bedroom and from the cupboard he shown the amount. As per the instructions of the DSP, he took out the cash of Rs.2,000/-. When he compared numbers, they tallied with the numbers mentioned in the pre-trap. The DSP interrogated A.O. and his version was recorded in the post-trap proceedings. After that the DSP confronted with P.W.1 about the version of A.O. and further version of P.W.1 was recorded. Ex.P.7 is the rough sketch. From the house of A.O., they went to S.V.R.R.G. Hospital where the DSP seized Ex.P.9 dispatch register, Ex.P.10 sanitation work satisfactory certificate, Ex.P.11 stamped receipt and three sheets of muster



rolls under Ex.P.4. Post-trap proceedings were prepared under Ex.P.12.

38) The evidence of P.W.9, the trap laying officer, corroborates the evidence of P.W.2 insofar as the pre-trap and post-trap proceedings are concerned.

39) As seen from the case of the prosecution, there is no dispute that the amount that was put into the shirt pocket of P.W.1 during pre-trap and the amount that was recovered from the possession of A.O. during post-trap is one and the same. There is no dispute that the tainted amount was recovered from the possession of A.O. At this juncture, it is pertinent to look into the cross examination part of P.W.1 so as to appreciate the defence of A.O. During cross examination P.W.1 deposed that he does not know one Mr. Narasimhulu, who was also a member of their Society during the year 2003 and 2004. Bills of workers are paid sometimes every month and sometimes once in two or three months. He denied that whenever there was delay in payment of wages, some of the workers used to request A.O. for hand loan. He denied that during January and February of the year 2003, he arranged loan of Rs.1131/- for Narasimhulu from A.O. when he was a contract worker and that after formation of the Society, Narasimhulu was their reliever and on 23.03.2004 he got paid Narasimhulu Rs.580/- towards his wages as reliever.



He denied that A.O. advanced money to Narasimhulu at his request. He denied that A.O. demanded him several times to get paid the amount due by Narasimhulu and he did not evince any evidence. He denied that A.O. represented the matter to Kumar Reddy and sought for his intervention in recovering the dues from Narasimhulu. He does not know whether Kumar Reddy told to A.O. that he would get the amounts after Narasimhulu repays the same to him. He denied that Kumar Reddy asked him to see that A.O. is paid back Rs.1721/- with accrued interest and settled the debt at Rs.2,000/- and that he (P.W.1) informed Kumar Reddy that their contract was cancelled and that his relation with A.O. is not good and that he has to pay the money to Kumar Reddy directly for onward transmission. He denied that on 05.04.2006 he telephoned to Kumar Reddy informing him that he is ready with money and would pay to A.O. He denied that he developed grudge against A.O. and taking advantage of liability of Narasimhulu, he planned this trap and falsely trapped A.O. So, the defence of A.O. before P.W.1 was denied.

40) The contention of A.O. in this regard is that what all he received the amount from P.W.1 was only regarding the liability of Narasimhulu, but, not towards any bribe. It is to be noticed that A.O. sought to impeach the testimony of P.W.2 on



the ground that Mr. K. Prasad, worked as ACTO in their office at Tirupati, complained against A.O. by a petition that A.O. behaved rudely with the wife of K. Prasad when she entered into the corridor while cleaning process was going on, as such, he is deposing false. It is to be noticed that P.W.2 was a public servant. Though he was working in Commercial Tax Department, but it is improbable to assume that at the instance of one K. Prasad, he deposed false. Absolutely, P.W.2 has no reason to depose anything false. His evidence remained unshaken during cross examination. The contents of Ex.P.8 post-trap is such that after both hand fingers of A.O. yielded positive result, DSP asked A.O. as to whether he received any amount from P.W.1 for which A.O. replied that he received the amount from P.W.1 and then leads the ACB party to his bedroom and shown the amount. After counting the amount and after tallying with the same with reference to the entries in post-trap, DSP further questioned A.O. and then replied that he accepted the amount from G. Markondaiah in order to give the same to one Kumar Reddy, one of the leaders of C.I.T.U. However, A.O. failed to explain the purpose for which Markondaiah vows money to Kumar Reddy. A.O. stated that he is only a middleman for having received the money in between Markondiah and Kumar Reddy. So, in Ex.P.8 post-trap



proceedings, A.O. did not reveal the role of one Narasimhulu. Therefore, it is for the first time during the course of trial by deviating from his defence in Ex.P.8, he introduced the name of Narasimhulu. So, it is a case where A.O. changed his defence from stage to stage. P.W.2, the mediator and P.W.9, the trap laying officer had no reason to distort the version of A.O. in the post-trap. Hence, A.O. did not examine the so-called Narasimhulu in support of his defence. It is to be noticed that in the light of the post-trap version of A.O. that he was only intermediately and he received the amount from P.W.1 so as to give the same to one Kumar Reddy, the investigating officer duly examined P.W.8, Kumar Reddy during the investigation and during investigation P.W.8 did not support the version of A.O.

41) Now, coming to the evidence of P.W.8, he categorically deposed that he never asked P.W.1 to get Rs.2,000/- for him. He did not ask P.W.1 to pay Rs.2,000/- to A.O. for being paid to him. There is no possibility of any mediator to collect such amounts. He had no necessity to collect any money from A.O. During the cross examination, he deposed that he knows Narasimhulu, a worker in Annamayya Welfare Society. He left the Society. At one instance A.O. paid amount to one of the workers at Annamayya Welfare Society at request of P.W.1 which was not repaid and when it was brought to his



notice, he directed P.W.1 to repay the same to A.O. which P.W.1 agreed to pay. This incident took place about 15 days prior to ACB trap laid against A.O. Therefore, the evidence of P.W.8 is of no use in support of version of A.O. during post-trap. However, A.O. did not clarify in the post-trap how he received the amount from P.W.1 so as to give the same to Kumar Reddy. Here P.W.8 did not support the defence of A.O. and he denied the defence of A.O. as projected in Ex.P.8 post-trap. During cross examination of P.W.1, A.O. twisted the version and made an attempt to connect Kumar Reddy with that of Narasimhulu and P.W.1 denied the said theory. It is to be noticed that the defence of A.O. before P.W.1 is that it was in January and February of the year 2003 P.W.1 arranged a loan of Rs.1131/- for Narasimhulu from A.O. when he was a contractor and on 23.03.2004 he got paid Rs.580/- towards his wages, as such, Narasimhulu had a liability to pay the amount to A.O. and P.W.1 looked after the said payment of money by A.O. to Narasimhulu during January and February of the year 2003. As already pointed out P.W.8 negated the defence of A.O. A.O. made a vain attempt during the cross examination of P.W.8 so as to say that at one instance A.O. paid some amounts to one of the worker of Annamayya Welfare Society and in that connection Kumar Reddy directed P.W.1 to repay the amount to A.O. It is



to be noticed that according to P.W.8, he did not speak the name of Narasimhulu as the person to whom P.W.1 arranged payment from A.O. Apart from this, according to P.W.8 in cross examination the said incidence took place about 15 days prior to ACB trap. It means that it must have been in the month of February, 2006. So, according to defence of A.O. before P.W.1, P.W.1 arranged payment to Narasimhulu from A.O. in January and February of the year 2003. Absolutely the defence of A.O. before P.W.1 was further falsified by the evidence of P.W.8 and further answers spoken by P.W.8 in cross examination. Absolutely, A.O. had nothing to probabalize his defence before the Court below.

42) A.O. examined D.W.1 to speak something about Ex.D.1. Ex.D.1 was a complaint against P.W.1 with regard to other issues. The evidence of D.W.1 and Ex.D.1 has nothing to do with the defence of A.O. Ex.D.2 and Ex.D.3 are relating to the promotion of A.O. before the trap. In my considered view, the allegation of the prosecution is that A.O. demanded P.W.1 to pay the bribe within two days as he was going on promotion. Therefore, the fact that A.O. was going to be promoted is not in dispute. However, in my considered view, the evidence of D.W.1 and D.W.2 and Ex.D.1 to Ex.D.3 is of no use to the defence of



A.O. Ex.C.1 served copy of summons on D.W.1 had nothing to do with the defence of A.O.

43) In the light of the above, I am of the considered view that the prosecution categorically established before the Court below that in pursuant to the demand made by A.O., P.W.1 chosen to lodge a report on 04.04.2006 and accordingly, the ACB after conducting necessary preliminary enquiry, chosen to trap A.O. and ultimately during post-trap, A.O. demanded P.W.1 to pay the bribe of Rs.2,000/- and accepted the same from P.W.1. There is no dispute that A.O. dealt with the tainted amount and that the amount was recovered from his possession. It is no doubt true that mere recovery of the amount does not *if so facto* would not prove the facts. As this Court already pointed out, the prosecution categorically proved the pendency of the official favour of P.W.1 before A.O. prior to the date and on the date of trap. There is evidence of P.W.1 which remained unshaken in cross examination to prove that A.O. demanded him to pay the bribe of Rs.3,000/-, later it was reduced to Rs.2,000/- and accepted the same during post-trap. This Court has no reason to disbelieve the evidence of P.W.1. On the other hand, A.O. changed his defence from stage to stage and miserably failed to probabalize his defence theory. He did not examine so-called Narasimhulu for obvious reasons best



known to him. Hence, in my considered view, the evidence on record categorically proves the essential ingredients of Sections 7 and 13(2) r/w 13(1)(d) of the P.C. Act. The act of the A.O. in demanding P.W.1 to pay the bribe and acceptance of the bribe amount would constitute the offence under Section 7 of the P.C. Act. The further act of the A.O. in obtaining the amount of Rs.2,000/- from P.W.1 on the ground that he will do official favour would also amounts to obtaining of peculiar advantage which is nothing but a criminal misconduct within the meaning of Section 13(2) r/w 13(1)(d) of the P.C Act. The prosecution has categorically proved before the Court below the foundational facts and the facts in issue.

44) As this Court already pointed out, the Hon'ble Supreme Court in *Neeraj Dutta's case (4 supra)* categorically held that upon proving the foundational facts and facts in issue, the presumption would arise in favour of the prosecution under Section 20 of the P.C. Act.

45) Section 20 of the P.C. Act runs as follows:

20. Presumption where public servant accepts gratification other than legal remuneration.—

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept



or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

46) Therefore, as the evidence on record proves the foundational facts alleged by the prosecution, prosecution has



benefit of the presumption under Section 20 of the P.C. Act that A.O. demanded P.W.1 and obtained the amount for doing an official favour. A.O. has miserably failed to rebut the said presumption. Having put up a theory in post-trap that he accepted the amount from P.W.1 for one Kumar Reddy, he failed to probabalize his defence in the light of the elaborate reasons furnished supra.

47) A perusal of the judgment of the Court below reveals that the Special Judge for SPE & ACB Cases, Nellore, rightly looked into the oral as well as documentary evidence and with sound reasons, upheld the contention of the prosecution that official favour in respect of the work of P.W.1 was pending with A.O. The learned Special Judge duly looked into the defence theory and with cogent reasons disbelieved the defence theory and further held that the prosecution has proved the essential ingredients of Sections 7 and 13(2) r/w 13(1)(d) of the P.C. Act. Further with sound reasons, the learned Special Judge applied the benefit of presumption in favour of the prosecution under Section 20 of the P.C. Act. In the light of the above, this Court is of the considered view that the prosecution before the Court below proved the charges as above against A.O. beyond reasonable doubt.



48) Having regard to the above, I am of the considered view that absolutely there are no merits in the appeal, as such, the appeal is liable to be dismissed.

49) In the result, the Criminal Appeal is dismissed, as such, the judgment, dated 21.07.2011 in C.C.No.4 of 2007, on the file of Special Judge for SPE & ACB Cases, Nellore, shall stand confirmed in all respects.

50) The Registry is directed to take steps immediately under Section 388 Cr.P.C. to certify the order of this Court to the trial Court on or before 08.05.2023 and on such certification, the trial Court shall take necessary steps to carry out the sentence imposed against the appellant and to report compliance to this Court.

51) The Registry is further directed that a copy of this judgment shall forward in the name of the Presiding Officer and also to the Head of the Department of the Accused Officer.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt. 02.05.2023.

Note: L.R. Copy be marked.

B/o
PGR



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

CRL. APPEAL NO.883 OF 2011

Registry to circulate a copy of this judgment
to the Court below on or before 08.05.2023.

Date: 02.05.2023

Note: L.R. copy be marked.

PGR