HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE NINETEENTH DAY OF FEBRUARY

TWO THOUSAND AND TWENTY ONE

PRSENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL APPEAL NO: 1441 OF 2006

Between:

1. AKURATHI YELLAMANDA, S/o. Punnaiah,
   Mandal Revenue Inspector, Mandal Revenue Office,
   Kollipara Mandal, Guntur District,
   R/o. H.No. 18-7-63,
   Sitaramanjaneya Street,

...PETITIONER(S)

AND:

1. THE STATE ACB, Rep.by its Special Public Prosecutor for ACB Cases,
   High Court of A.P.,
   Hyderabad.

...RESPONDENTS

Counsel for the Petitioner(s): M NAGA RAGHU

Counsel for the Respondents: MANCHIKALA RENUKA (SC FOR ACB ANDHRA)

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

Criminal Appeal No. 1441 of 2006

JUDGMENT:

1) The sole accused in C.C. No. 3 of 2002 on the file of the Special Judge for SPE and ACB Cases, Vijayawada, is the Appellant herein. He was tried for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, and sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.2,500/-, in default, to suffer Simple Imprisonment for three months each under each count. The sentence of imprisonment imposed under each count was directed to run concurrently. M.O.1, M.O.2 and M.Os. 4 to 6 were directed to be destroyed after the expiry of appeal time.

2) The substance of the Charges against Accused Officer is that, while working as Mandal Revenue Inspector, Kollipara Mandal, Guntur District, he is said to have demanded Rs.1,000/- as bribe prior to 27.11.2000 and accepted the same as gratification other than legal remuneration for issuance of Property Valuation Certificate to the wife of one Somaraju Narayana Rao.

3) The facts, as culled out from the evidence of the prosecution witnesses, are as under:

i. PW2 was working as Senior Assistant in the Office of Mandal Revenue Office, Kollipara Mandal, during the year 2000. PW6 who was running a Fair Price Shop at Attota Village, submitted Ex.P1 application before Mandal Revenue Officer, Kollipara Mandal, for issuance of Property Valuation Certificate in favour of PW4's wife, who is none other than his sister-in-law. His enquires later revealed that the application was forwarded to Accused Officer. About two or three days later, he met the Accused Officer in his Office and enquired about the issuance of certificate. PW6 was informed that, he has to observe certain formalities i.e., to pay Rs.1,000/- or Rs.2,000/- as bribe to the Accused Officer. PW6 informed the same to PW4.

ii. PW4 in his evidence states that, his wife is having land admeasuring Ac.3.35 Cents at Attota Village of Kollipara Mandal and, as such, he approached PW1 along with necessary application form. PW1 is said to have forwarded the application, dated 16.11.2000, to Mandal Revenue Office, who valued the property at Rs.1,00,000/- per acre. On coming to know from PW6 that Accused Officer asked PW4 to meet him, PW4 met Accused Officer on 27.11.2000 in his Office and requested him to issue valuation certificate in the name of his wife. At that point of time, the Accused Officer is said to have reiterated his earlier demand for issuance of certificate. PW4 expressed his inability to pay the amount as he is an employee, but, the Accused Officer reiterated the demand saying that work will be done only if the demanded bribe amount of Rs.1,000/- is paid.

Reluctantly, P.W.4 agreed to pay the amount, but, however, presented a report before Deputy Superintendent of Police, ACB, Vijayawada, on 29.11.2000. Ex.P9 is the said report.

iii. PW9 – Deputy Superintendent of Police, ACB, Vijayawada, on receipt of Ex.P9 report from PW4, endorsed the same to PW8 to cause discreet enquiries about the antecedents of PW4 and Accused Officer and to submit his report. On 30.11.2000, PW9 received report from PW8 by way of an endorsement on Ex.P9 [report], basing on which, he registered a case in Crime No.25/ACB-VJA/2000 and submitted the original First Information Report to Court. Ex.P19 is the original First Information Report. Prior to the same, PW9 obtained permission from D.G., A.C.B., Vijayawada, to lay the trap. Requisition for mediators was given to C.T.O., Governorpet, Vijayawada, and accordingly, PW7 and another attended the Office of PW9 on 30.11.2000. On arrival of PW4, he was introduced to the mediators and vice versa and a copy of the complaint was given to the mediators to ascertain the genuineness of the same from PW4. The mediators enquired with PW4 and after being satisfied with the contents therein, PW9 requested PW4 to produce the proposed bribe amount, which he intends to offer to Accused Officer. Accordingly, PW4 produced Rs.1,000/- consisting of ten Rs.100/- notes.

iv. On instructions, the mediators noted the serial number of the notes in the pre-trap proceedings. Thereafter, the Constable was asked to prepare sodium carbonate solution in a glass tumbler and rinse his hand fingers in such solution. On doing so, the solution remained colourless. On instructions of PW9, the Constable applied phenolphthalein powder to currency notes, made them into a wad and kept them in the left side upper shirt pocket of PW4. PW4 was instructed not to touch the currency notes till they were handed over to the Accused Officer on demand. The significance of the phenolphthalein test was explained to PW4 and mediators. PW4 was also instructed to give a signal by wiping his face with handkerchief when the amount is received by the Accused Officer. Ex.P15 is the pre-trap proceedings.

v. After completing the formalities, the entire trap party left to the Office of the Accused Officer in two cars and reached the vicinity of the Accused's Office at 12.30 noon. The vehicles were stopped at a distance. PW4 was again instructed to part with the money only on demand made by the Accused Officer and to relay the signal on receipt of the money. At about 1.05 p.m., PW4 came out of the Office of the Accused Officer and relayed the pre-arranged signal. On receipt of the same, PW9 along with other trap party members including the mediators, rushed to the Office of the Accused Officer. They found the Accused Officer sitting on a chair in front of the table in the varandah. The identity of the trap party members were disclosed and after

ascertaining his identity, he was asked not to rub his hands and thereafter one of the Constables prepared sodium carbonate solution in two separate glass tumblers and requested the Accused Officer to rinse his hand fingers and on doing so, the solution turned pink in colour. When questioned about the amount, which he received from PW4, the Accused Officer showed a bound book, a diary and pulled out a wad of currency notes from the pages. On comparing the numbers of the currency notes, the same tallied with those mentioned in Ex.P15. The version given by the Accused Officer, as to how the money came into his pocket, was recorded in the post-trap proceedings, which are placed on record as Ex.P18.

vi. The file relating to PW4 was produced by Accused Officer and the same was seized for further investigation along with Ex.P11 Attendance Register. Thereafter, PW4 was called into the Office of the Accused Officer and was asked to narrate as to what happened between him and the Accused Officer prior to arrival of the trap party. His version is also recorded in the mediators report.

vii. PW9 prepared a rough sketch of the scene, which is placed on record as Ex.P17. He arrested the Accused Officer and later released him on bail. PW9 made a request for recording Section 164 Cr.P.C. statement of PW4 apart from recording the statements of PW1 to PW4 and PW6. Further, investigation in this case was taken by PW8, who after obtaining the copy of the

Section 164 Cr.P.C. of PW4, filed charge sheet, which was taken on file as C.C. No. 3 of 2002.

4) On appearance of the Accused Officer, copies of the documents, as required under Section 207 Cr.P.C., were furnished and later on charges as referred to above came to be framed, read over and explained to the Accused Officer, to which he pleaded not guilty and claim to be tried.

5) In support of its case, the prosecution examined PW1 to PW9 and got marked Ex.P1 to Ex.P19, apart from marking Ex.X1 to Ex.X8 and M.O.1 to M.O.6. After completing the prosecution evidence, the Accused Officer was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses, to which he denied. The Accused Officer examined DW1 and DW2 and got marked Ex.D1 in support of his plea. Out of nine witnesses examined by the prosecution, PW2 and PW3 did not support prosecution case and they were treated hostile by the prosecution.

6) Believing the evidence of PW4, PW6, PW7 and PW9 coupled with Ex.P18, the trial Court convicted the Accused Officer. Challenging the same, the present appeal came to be filed.

7) Sri. M. Naga Raghu, learned counsel for the Appellant mainly submits that, the entire case has to be thrown out in the absence of preliminary enquiry being conducted by the

investigating agency, prior to registration of the crime. He further submits that the sanction order issued by the authority for initiating proceedings against the Accused Officer is not valid. Apart from that, he would submit that there is any amount of doubt with regard to demand made by the Accused Officer, since the evidence of PW4 is silent as to when he approached the Accused Officer. It is his plea that the evidence of PW6 and PW4 is inconsistent with regard to lodging of Ex.P1 application vis-a-vis the evidence of PW1. According to him, there is material on record to show that Accused Officer was not in office on that day, which is evident through Ex.P11. The counsel also took me through 164 Cr.P.C., statement of PW1 to show that there are number of contradictions in the said statement, throwing any amount of doubt on the prosecution case. He further pleads that persons who were present at the time when the phenolphthalein test is being demonstrated should not have been members of the raid party. In other words, his plea appears to be that there is no material to show that the members of the trap party, more particularly, those who demonstrated the significance of phenolphthalein test, washed their hands before proceeding to the office of the Accused Officer. He further pleads that without registering a crime, he has sent a requisition to C.T.O's Office, which would mean that the investigating agency proceeded in a pre-determined manner to somehow foist a case against the Accused Officer. He relied upon the Judgments ***State through Inspector v.***

K.Narasimhachary[1]; ***Krishan Chander v. State of Delhi***[2]; ***State of Kerala & Anr. v. C.P. Rao***[3]; ***Mukhtiar Singh (since deceased) through his L.R. v. State of Punjab***[4]; ***Dashrath Singh Chauhan v. Central Bureau of Investigation***[5]***.***

8) On the other hand, Sri. S.M. Subhani, learned Counsel for A.C.B., would submit that Range Inspector-I, A.C.B., Vijayawada Range, conducted preliminary enquiry and submitted a report on 29.11.2000 at 8.00 a.m., basing on which, a crime was registered. In view of the above, he would submit that, it is not open for the Accused Officer to complain that there was no preliminary enquiry. His plea is that, there cannot be open enquiry, since an open enquiry would make the Accused Officer vigilant and take all precautions. So, in case of this nature, normally enquiries are conducted confidentially.

9) Coming to the issue relating to sanction, Sri. S.M. Subhani, would contend that a reading of the order granting sanction would clearly indicate that there was an application of mind and all the material placed was considered before giving sanction. Referring to the evidence of PW4, PW6 and PW1, he would submit that there is enough material on record to show that the Accused Officer was present in the Office. According to him, the evidence of DW2 itself would indicate that, though, the Accused Officer was on OD, he attended the office.

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[1] (2005) AIR SCW 6275
[2] (2016) AIR SC 298
[3] (2011) 6 SCC 450
[4] 2017(7)SCJ 432
[5] 2019(1) SCJ 151

10) Insofar as the plea that the members who demonstrated the phenolphthalein test should not be part of the raid party, he would contend that PC1171, who has demonstrated the phenolphthalein test to the mediators and PW4 was asked to stay back and he never accompanied the trap party. Therefore, no prejudice is caused to the Accused Officer. He further took me through the evidence to show that there was a favour pending before the Accused Officer and that the said amount came to be demanded for issuance of valuation certificate.

11) Insofar as acceptance of money is concerned, he would contend that when the test conducted to both hands of the Accused Officer, yielded positive, and in view of the demand made, it stands established that the money was accepted as illegal gratification other than the legal remuneration. Having regard to the above, he would submit that the judgment of the learned Special Judge requires no interference.

12) The point that arises for consideration is, ***whether the prosecution was able to bring home the guilt of A.O. beyond reasonable doubt for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988***?

I. *Is the Accused Officer a Public Servant?*

13) The fact that the Accused Officer is a Public Servant is not in dispute. According to prosecution, he was working as Mandal Revenue Inspector in Mandal Revenue Officer's Office, Kollipara Mandal, Guntur District as on 30.11.2000.

II. *Is there a valid sanction to prosecute Accused Officer?*

14) As stated earlier, the main argument of the learned counsel for the Appellant is that, there was total non-application of mind while awarding sanction. On the other hand, the case of the prosecution is that the sanction issued by the Government to prosecute the Accused Officer is valid. In support of the same, the prosecution relied upon the evidence of PW5, who was working as Assistant Secretary in Agriculture Co-operation Department, A.P. Secretariat, Hyderabad and Ex.P13 – G.O.Ms. No. 629, dated 22.09.2001, of Revenue (Vigilance-II) Department, ordering prosecution.

15) This court in ***A.P. CBI, SPE, Hyderabad v. P.Muthuraman***[6] held as under:-

> "*If the sanction order is a speaking order, then the matter ends there. Otherwise, evidence should be adduced to prove that the sanctioning authority had perused the material before according sanction, which may not be in a particular form.*"

16) Keeping in view the judgment of this court, I shall now proceed to deal with the issue as to whether there was a valid sanction.

17) A reading of Ex.P13, dated 22.09.2001, would show that PW4 – S. Narayana Rao approached the Village Administrative Officer, Attota, at the first instance on 19.11.2000 with an application for issuance of property valuation certificate for the

[6] 1996 Crl. Law Journal, 3638

land standing in the name of his wife, so as to secure loan from the bank, to meet the educational expenses of their daughter, who was studying 2nd year B.Tech course. The sanction order shows that the said application was forwarded to M.R.O., for issuance of the certificate, who made an endorsement on it and referred the same to Mandal Revenue Inspector to verify and put up to him with his report. Basing on the statement of PW4, it has been stated that, as he is an employee in Guntur, he requested his brother PW6 to pursue the mater and accordingly, PW6 when met the Accused Officer, is alleged to have demanded money for doing the need. The sanction order refers to the manner in which the incident in question took place, apart from referring to the mediator report, gist of statement of witnesses, copy of the FIR etc.

18) PW5 in his evidence submits that draft final report was received on 17.01.2000 through Vigilance Commissioner along with gist of witness statements, FIR and mediator report. After considering the material on record, the Assistant Section Officer put up a office note and placed before PW5 for approval. After his approval, the file was moved to the Officer on Special Duty, Secretary and thereafter to the concerned Minister, who approved the file, after considering the material available on record. Then, the Principal Secretary to Government issued proceedings according sanction against Accused Officer. Though, PW5 was cross-examined at length, nothing useful came to be elicited to discredit his testimony. On the other hand,

it has been elicited that the documents considered were noted in Ex.P13. Therefore, the argument of the learned counsel for the Appellant that there was total non-application of mind while granting sanction may not be correct

III. *Whether there was any preliminary enquiry before registering the crime?*

19) Sri. Subhani, learned counsel appearing for A.C.B., would submit that, after receiving the report, PW8 was directed to cause verification of the antecedents of Accused Officer and PW4, and only after receipt of report, the case was registered. It is to be noted there that the enquiry caused should be discreet and confidential and no amount of suspicion should be created either to the Accused Officer or to PW4. In other words, his plea appears to be that, there cannot be an open enquiry, since, if it is done, the Accused Officer would become vigilant.

20) As seen from the record, PW9 received the report on 29.11.2000 at 8.00 a.m., while he was present in his Office. Immediately, he endorsed the same to PW8, to cause discreet enquiries about the antecedents of PW4 and Accused Officer and to submit a report. The evidence of PW8 show that, on receipt of the instructions, he caused enquiries and submitted his report to Deputy Superintendent of Police by way of an endorsement on Ex.P9 –report, which was on 30.11.2000. Pursuant to the endorsement made, the crime was registered. In the cross-examination, PW8 admits that the endorsement on Ex.P9 does

not disclose that he received Ex.P9 at 8.00 a.m. He further admits that, except his endorsement on Ex.P9 there is no other evidence recorded evidencing his discreet enquiries. Further, to a suggestion that he did not conduct any discreet enquiries against Accused Officer and that the endorsement on Ex.P9 is a table endorsement was denied by him.

21) In view of the above, Sri. M. Nagu Raghu, learned Counsel for the Appellant would contend that, there was no preliminary enquiry or discreet enquiry as required before registering a crime.

22) It may be true that the endorsement may not contain the names of the persons he has enquired. As stated earlier, the enquiry to be done, cannot be an open enquiry, since, such open enquiry would definitely give a clue to the Accused Officer and make him vigilant. Therefore, merely because the endorsement does not disclose the source information, the discreet enquiry so conducted, cannot be found fault with.

IV. *Whether there was any demand of bribe amount; acceptance of bribe as illegal gratification other than legal remuneration, and also whether there was any official favour pending before the Accused Officer?*

23) In order to bring home a charge under Section 7, the prosecution has to prove that the Accused Officer accepted illegal gratification, which was not the remuneration for which

he was legally entitled to, and that he has accepted the same as motive for doing an official act.

24) Insofar as offence under Section 13(1)(d) read with 13(2) of the Act is concerned, the prosecution has to prove that the Accused Officer by corrupt or illegal means obtained for himself a valuable thing or pecuniary advantage and that he has committed criminal misconduct being a public servant.

25) In order to appreciate the same, it would be useful to first refer to the evidence of PW4, at whose instance the law was set into motion.

26) The evidence of PW4 would show that he was working as Telephone Supervisor, Dachepalli and that PW6 is his elder brother. In order to obtain loan from Indian Overseas Bank, for education of his daughter, he has to submit a property valuation certificate. As he was not having any property of his own, he wanted to obtain valuation certificate of the property, which is in the name of his wife. (Ac.3.35 cents of agricultural land at Attota of Kollipara Mandal). He is said to have approached PW1 along with necessary application forms [Ex.P1 to Ex.P3], who forwarded the same to M.R.O., by making necessary entries thereon. Ex.P1 is the application form, which is dated, 16.11.2000. According to him, PW6 also approached the M.R.O., who asked him to meet the Accused Officer and that PW6 met the Accused Officer and enquired about the property valuation certificate. Further PW4 was informed by PW6 that he met the

Accused Officer, who demanded bribe of Rs.1,000/-. On 27.11.2000 PW4 met the Accused Officer in his office and requested him to issue the certificate in the name of his wife, wherein, Accused Officer reiterated the earlier demand of Rs.1,000/-. As PW4 was not willing to pay the bribe amount and as the Accused Officer refused to do the needful until money is paid, he lodged a report with A.C.B., Vijayawada. Ex.P9 is the said report.

27) Before dealing with the cross-examination of PW4, it is to be noted here that 164 Cr.P.C. statement of PW4 was recorded, which is placed on record as Ex.P10. Though, it is not a substantive piece of evidence, but, the same can be used to contradict the maker. In the 164 Cr.P.C. statement, it has been stated that PW4 sent his brother for the purpose of obtaining valuation certificate, as it was not possible for him to go every time. His brother met the M.R.O. twice or thrice, who told him that the said certificate is not yet prepared. The M.R.O. asked his brother to meet the Revenue Inspector [Accused Officer]. The Revenue Inspector is said to have told PW6 [brother of PW4] that M.R.O. is demanding Rs.1,000/-. Subsequently, PW4 went to the office of the M.R.O., met the Revenue Inspector and informed him that he has no capacity to pay Rs.1,000/-. But, the Revenue Inspector informed that the amount of Rs.1,000/- has to be paid. As he was not willing to pay the amount, a complaint came to be lodged.

28) In the cross-examination of PW4, when the contents of 164 Cr.P.C. statement were put to him, he admitted that, he approached the M.R.I. and gave bribe amount of Rs.1,000/- to him and asked him for preparation of Property Valuation Certificate. He also stated that Accused Officer prepared a certificate and gave it to him. It was further admitted by him, when confronted with 164 Cr.P.C. statement, that, Accused Officer received the amount and kept the amount underneath a book. He further admits that his 161 Cr.P.C. statement does not disclose the Accused Officer taking the file to the room of M.R.O. for his signature. He further admits that the Deputy Superintendent of Police has not seized the original of Ex.P2 i.e., Property Valuation Certificate from PW4.

29) This version of PW4 has to be tested with the evidence of PW6 and other witnesses to show as to whether the Accused Officer was present in office i.e., on 27.11.2000, i.e., the date of demand.

30) PW6, as stated earlier, is none other than the brother of PW4. He in his evidence-in-chief deposed that, he has submitted Ex.P1-application before M.R.O., Kollipara Mandal, for issuance of Property Valuation Certificate in favour of the wife of PW4. According to him, he has submitted Ex.P1 either in the month of October or November, 2000. On enquiry with M.R.O., he was informed that Ex.P1 was forwarded to Accused Officer for enquiry and report. Two or three days thereafter, he met the

Accused Officer in M.R.O's Office and on enquiry, he was informed that he has to observe some formalities i.e., has to pay one or two thousand rupees as "mamools". He informed the same to PW4 and 10 days thereafter, himself and PW4 met the Accused Officer in the Office and enquired about the Property Valuation Certificate. Accused Officer reiterated the demand of Rs.1,000/- or Rs.2,000/- for processing the valuation certificate. PW4 agreed to pay the amount for issuance of valuation certificate.

31) On the date of trap i.e., 30.11.2000, PW6 claims to have visited to the Office of M.R.O., along with PW4. Both of them met Accused Officer in his office and enquired about the certificate. Then, the Accused Officer asked them as to whether the bribe amount was brought, for which, they gave affirmative reply, and that an amount of Rs.1,000/- was paid by PW4 to Accused Officer. Accused Officer received the same and gave the original of Ex.P2. In the cross-examination, he admits that, he did not state before the Deputy Superintendent of Police that he met M.R.O. two days after presenting Ex.P1, and that the Accused Officer demanded Rs.1,000/- or Rs.2,000/- to observe formalities, and that himself and his brother met the Accused Officer within 10 days after presenting Ex.P1-application, and at that time Accused Officer demanded Rs.1,000/-. It would be useful to extract the same, as under:

> *"It is true that, I did not state before the Deputy Superintendent of Police that I met M.R.O. two days after*

> *presenting Ex.P1, and that Accused Officer demanded Rs.1,000/- or Rs.2,000/- to observe formalities, and that myself and my brother met the Accused Officer within 10 days after presenting Ex.P1-application, and at that time Accused Officer demanded Rs.1,000/."*

32) PW6 further admits that, he did not state before the Deputy Superintendent of Police as in Ex.D1 that his brother submitted Ex.P1 to M.R.O. It would be useful to extract the same, as under:

> *"I did not state before the Deputy Superintendent of Police as in Ex.D1 that my brother Narayana Rao submitted Ex.P1 to M.R.O."*

33) A reading of the evidence of these two witnesses would show variations, with regard to they meeting the Accused Officer. While the evidence of PW6 is to the effect that, after informing PW4 about the demand made, 10 days thereafter, both of them met the Accused Officer in the M.R.O. Office and enquired about the certificate, wherein, he demanded payment of Rs.1,000/- or Rs.2,000/- for processing and issuance of certificate, and that PW4 agreed to pay Rs.1,000/-, but, the version of PW4 nowhere indicate that he along with PW6 met the Accused Officer seeking issuance of valuation certificate, wherein, he demanded Rs.1,000/- or Rs.2,000/- for processing and issuance of valuation certificate. The version of PW4 in-chief appears to be quite contra. According to him, he entrusted the work of pursuing the valuation certificate to his brother [PW6]. But, however, he claims to have met the Accused Officer in his

office on 27.11.2000, on which date, the Accused Officer reiterated the earlier demand of Rs.1,000/-.

34) Two things are required to be noted here i.e., there was a demand prior to 27.11.2000; and second demand was on 27.11.2000. Insofar as first demand i.e., prior to 27.11.2000 is concerned, the version of PW6 falsifies the version of PW4. As stated earlier, their evidence is mutually inconsistent. For the purpose of repetition, it can be said that, while the evidence of PW6 is to the effect that, himself and PW4 met the Accused Officer, wherein, he demanded bribe of Rs.1,000/- or Rs.2,000/- for processing valuation certificate, the same is silent in the evidence of PW4.

35) Coming to the demand on 27.11.2000, the learned counsel for the Appellant mainly submits that, there is enough material on record to show that the Accused Officer was not present in the Office on 27.11.2000. Sri. Subhani, learned counsel for A.C.B., submits that merely because the Accused Officer was 'on other duty', does not by itself mean that he has not visited the Office on that day and met PW4.

36) Before proceeding further, one fact, which is required to be noted here, is the evidence of PW4 being silent as to the time when he met the Accused Officer on 27.11.2000. Be that as it may, the issue is, whether the Accused Officer was present in the Office on that day? Though a suggestion was given to PW4 that, on 27.11.2000, Accused was 'on duty' and that he was not

in office on that day; but, subsequently, a suggestion came to be made, which was admitted that prior to the trap date, PW4 met the Accused Officer on 27.11.2000. But, the evidence of PW7 – mediator shows that, the Deputy Superintendent of Police seized Ex.P11 –Attendance Register from the Office of Accused Officer, which was attested by him, other mediator and the Deputy Superintendent of Police. The version of M.R.O. and the Attender were also incorporated in the Mahazar. In the cross-examination of PW7, it has been elicited that, by the side of Accused Officer seat, they found Senior Assistant/PW2 sitting in a chair. It was also elicited that except Accused Officer and PW2, none were present when they rushed to Accused Officer. It is appropriate to extract the said admissions, as under:

> *"It is true that by the side of Accused Officer seat we found the Senior Assistant/PW2 was sitting in a chair. It is true that except Accused Officer and PW2, none were present when we rushed to Accused Officer."*

37) PW7 further admits that, when he verified the entries in Ex.P12, it would show that Accused Officer signed against date 24th and it was noted as 'OD' on 25th. He further states that, there was no initial of Accused Officer from 27th to 29th of November 2000. The Deputy Superintendent of Police is said to have enquired with Accused Officer about the entries of OD in Ex.P12 and he admits that he does not know whether the same were incorporated in Ex.P18 i.e., post-trap panchanama. He further admits that, he is not aware as to whether Deputy Superintendent of Police enquired the M.R.O. or PW2 about the

entries in Ex.P12. The relevant admissions in the cross-examination of PW7, is as under:

> *"I verified the entries in Ex.P12 so also Dy.S.P. Ex.P12 shows that the Accused Officer signed on dated: 24th and it was noted as 'OD' on 25th. It is true that there was no initial of Accused Officer from 27th to 29th of November 2000. The Deputy Superintendent of Police enquired the Accused Officer about the entries of OD in Ex.P12. I do not remember whether the same was incorporated in Ex.P18. I do not remember whether Deputy Superintendent of Police enquired either M.R.O., or PW2 about the entries in Ex.P12."*

38) The evidence of PW7 also discloses that Deputy Superintendent of Police has not seized the original of Ex.P2 from PW4 in his presence. According to him, PW4 did not state that PW6 accompanied him when he went to the office room of Accused Officer, and that PW7 categorically deposed that he did not notice PW6 at the Office of the Accused Officer. The further admissions in the cross-examination of PW7, is as under:

> *"It is true that PW4 did not state during the course of his version that anybody including PW6 accompanied him when he went to the office room of A.O. I did not notice PW6 at the office of A.O."*

39) From the evidence of mediator –PW7, it is clear that the attendance register, which was there in the office, came to be seized at the time of trap and there is no initial of the Accused Officer from 27th to 29th November 2000. PW7 categorically admits that he is not aware as to whether any enquiry was made from PW2, who was sitting next to Accused Officer and also with

the M.R.O. of that office about the entries in the attendance register.

40) At this stage, it very much essential to refer to the evidence of PW9- investigating officer. His evidence is to the effect that, Ex.P11 – attendance register discloses that Accused Officer did not put his initial in token of attendance in his office on 27th to 29th as they were kept blank. It further shows that Accused Officer was 'on duty' in all the days of the month except on 24th. He further admits that he did not make any investigation about the presence of Accused Officer from 27th to 29th. He further admits that he has not recorded the evidence, evidencing the attendance of Accused Officer to the office on 27th and that Ex.P18 does not disclose the presence of PW6 at the time of trap in the office of the Accused Officer. The admission in the cross-examination of the investigating officer, are as under:

> *"Ex.P12 attendance register disclosed that A.O., did not put his initial in token of his attendance in the office on 27th to 29th are kept it blank. It further shows that A.O. was on O.D. in all the days of the month except 24th. Witness adds 27th to 29th are kept blank. I did not make any investigation about the presence of the A.O. from 27th to 29th.*
>
> *I have not recorded evidence evidencing that A.O. was attended to the office on 27th. Ex.P18 does not disclose that I found PW6 during the trap proceedings in the office of the A.O."*

41) Therefore, the evidence adduced makes it very clear that no evidence has been collected to show that Accused Officer was present in office on 27.11.2000. PW2, who was examined, did

not support the prosecution case and he was treated hostile by the prosecution. On the other hand, PW2 was made to speak about the incident, which took place on 30.11.2000, which he did not support.

42) At this stage, the evidence of DW2, who was working as M.R.I. of Kallipara Mandal along with Accused Officer, would be of some importance. According to him, he worked as M.R.I., along with Accused Officer and Ex.P12 is the attendance sheet for the month of November 2000, which goes to show that Accused Officer was on 'on duty' for the entire month and that he was also on duty along with Accused Officer during those days. Ex.P12 further shows that Accused Officer was on 'on duty' upto 25.11.2000. The date column of 27th to 29th was kept blank. He further states that from 27th to 29th, both of them were on 'on duty' at Vallabhapuram Village and distributed rice and kerosene coupons at Vallabhapuram Village. Their signatures were found place in Ex.X4, Ex.X6 and Ex.X8, which are Entry Nos. 15, 17 and 23 of the relevant register indicating their presence in Vallabhapuram Village from 9.00 a.m. to 7.00 p.m. But in cross-examination of the learned Public Prosecutor, he admits as under:

> *"Our office Superintendent used to note if we were on O.D. in the attendance register. I cannot say the reason as to why for the remaining dates it was not mentioned that we are on O.D. Though we were on O.D., we used to attend the office in case of necessity. Though we attended the office on some days there may be no evidence evidencing the same. It is not true to*

suggest that the A.O. was not with me on 27.11.2000 and that subsequent to the trap in order to facilitate A.O. I got obtained his signature in Ex.X4, Ex.X6 and Ex.X8 in order to help him. It is not true to suggest that A.O. attended the office on 27.11.2000. It is not true to suggest that A.O. was present along with me from 9.00 a.m. to 7.00 p.m. at Vallabhapuram on 27.11.2000.

There are no written instructions issued to me and A.O., to attend Vallabhapuram on 27.11.2000."

43) Though the evidence of this witness, by itself, cannot be made the basis to show that the Accused Officer was not in office on 27.11.2000, but, however, the prosecution has not made any effort to independently establish that he was present in the office on 27.11.2000. On the other hand, the investigating officer himself admits that he did not make any investigation about the presence of Accused Officer from 27th to 29th. In view of the evidence of PW4 and PW6, which is mutually inconsistent with each other and other circumstances referred earlier, a doubt arises as to whether really the Accused Officer was present in the office on 27.11.2000. When once his presence is doubtful, as a necessary corollary the demand made on that day also has to be viewed with suspicion.

44) Coming to the theory of *acceptance*. I may have to refer to the evidence of PW4 and PW6 once again. While the evidence of PW6 is to the effect that, on 30.11.2000, he went to the office of M.R.O. along with PW4 and met the Accused Officer, who demanded as to whether the said amount was brought and when he replied in affirmative, asked them to give the said

amount; pursuant thereto, PW4 gave cash of Rs.1,000/- to Accused Officer, who upon receiving the same, gave original of Ex.P2; further, PW6 claims to have been present (a) when police caught the Accused Officer and (b) when sodium carbonate solution was applied to both hand fingers of Accused Officer, the same proved positive and also (c) when the amount was recovered from Accused Officer. However, a totally contrary version is given by PW4. His evidence with regard to trap shows that, after giving a complaint, the pre-trap formalities were prepared and thereafter, at about 11.00 a.m. himself and trap party proceeded in two cars and reached the headquarters of Kollipara mandal at 11.30 noon. The vehicles were stopped in the vicinity of the office of Accused Officer. Deputy Superintendent of Police instructed PW4 to proceed to the office of Accused Officer by reiterating his earlier instructions with regard to demand, acceptance and relay of signal. Accordingly, PW4 proceeded to the office of Accused Officer. He found the Accused Officer working at his seat. He approached him and enquired him about the property valuation certificate to be issued in the name of his wife and on that, the Accused Officer asked him whether he has brought the demanded bribe amount. PW4 replied positively and when he was about to give the money, Accused Officer asked him to wait, thereupon, he took the file and went to the office room of M.R.O. and came back with the file. According to him, the Accused Officer went to the office room of M.R.O. only to obtain signatures in the valuation

certificate. Again the Accused Officer demanded PW4 the bribe amount, upon which PW4 gave the amount, which was received by Accused Officer with his right hand, counted the same and kept it in the diary, which was in front of the table. Thereafter, he gave the property certificate in the name of his wife. Then, PW4 came out and gave a pre-arranged signal to the members of the trap party.

45) A comparison of the evidence of PW6 and PW4 would show that, though, PW6 claims to have gone and met Accused Officer along with PW4 on 30.11.2000, but, the evidence of PW4 is totally silent about the presence of PW6 in the office of Accused Officer on 30.11.2000. There is no whisper about him in his evidence. Further, the evidence of PW6 is silent about the act of Accused Officer not taking the money initially though demanded; taking file into the office of M.R.O., for his signature and thereafter, making the demand for payment of money.

46) On the other hand, the evidence of PW6 is to the effect that, PW4 gave cash of Rs.1,000/- to Accused Officer, who received the same and gave the original of Ex.P2. While the evidence of PW4 is to the effect that after receipt of bribe amount, the Accused Officer counted the same and kept in a diary, which was found in front of the table. Apart from all these things, it is also to be noted that, there is variation in the evidence of these two witnesses with regard to the quantum of amount demanded on meetings prior to 27.11.2000. If really the

amount was paid as demanded, and that it was kept by the Accused Officer in his diary, there was no reason for this contradiction in the evidence of these two witnesses. As PW6 was not declared hostile by the prosecution, his evidence-in-chief remained unimpeached by the prosecution and when the said evidence is totally inconsistent with the evidence of PW4, I am of the view that it may not be safe to act on the evidence of these two witnesses.

47) Further, in the cross-examination of PW4, it has been elicited that, though, Accused Officer is said to have given the original valuation certificate to PW4 immediately after receipt of the bribe amount, the same was not seized. No explanation is forthcoming as to why the said certificate was not seized. In my view, the same would have established the link in the case. Further, the version now set-out by PW4 that, when he wanted to pay the amount to the Accused Officer, he denied the same and went into the room of M.R.O. to obtain the signature, was not stated either before the Magistrate when his 164 Cr.P.C. statement was recorded or before the Deputy Superintendent during the course of investigation.

48) The case of the Accused Officer is that, money was kept in the book without his knowledge and while leaving he shook his hands, because of which the phenolphthalein test proved positive. But, of course, no concrete evidence has been placed on record to show that Accused Officer shook hands with PW4

when he left the office. But, the fact remains that there is variation in the evidence of PW6 and PW4 also with regard to the recovery of money. While the evidence of PW4 show that Accused Officer after accepting the money, kept it in his diary, which is in-front of the table, but, the evidence of PW6 is silent on the said aspect. On the other hand, his evidence goes to show that he received the money and thereafter gave the certificate. Things would have been different had PW6 was treated hostile by the prosecution and subjected him to cross-examination. PW2 who was examined to speak about these transactions did not support prosecution, and PW7-mediator, and the investigating officer entered the office after receiving signal from PW4, but, they did not notice PW6 in the office room, nor anywhere nearby. Therefore, a doubt lingers in the mind of the court that all is not well with the way in which the prosecution has adduced evidence in this case.

49) Though the trial court observed that, since the version of PW4 was recorded in post-trap panchanama i.e., Ex.P18 and copy of the same furnished to the Accused Officer immediately, and as no effort was made to object to the contents by making a representation to the higher authorities, felt that the incident in question can be believed. But, one should imagine the position of the Accused Officer after the trap. He would have been in shatters and may not even know the contents of the post-trap panchanama that was prepared. In-fact, nowhere in the evidence of the witnesses it has been categorically stated that

the copy of the post-trap panchanama was furnished to the Accused Officer immediately.

50) The Trial Court relied upon the evidence of PW7, PW9, Ex.P9 –earliest report and Ex.P10 -164 Cr.P.C. statement to believe that there was a demand prior to and on 27.11.2000 and also demand and acceptance on 30.11.2000. It would be appropriate to extract the findings of the trial court at para 73, which are as under:

> *"73). Thus, on a careful reading of the evidence of P.W.4 – the defacto complainant, P.W.7 – the mediator, P.W.9 – the Trap Laying Officer and Ex.P-9 – earliest report given by P.W.4, Ex.P10 – 164 Cr.P.C. statement recorded by the Magistrate and pre trap and post trap proceedings under Exs. P15 and 18, I do not see any reason to disbelieve their evidence not only in respect of demand prior to and on 27.11.2000, but also for the demand and acceptance on 30.11.2000."*

51) A reading of the said findings does not anywhere indicate consideration of evidence of PW6, who was also examined to speak to the demands made prior to trap and also on the date of trap. As held above, his evidence is totally inconsistent with the evidence of PW4 and PW7. Since, he was not treated hostile by the prosecution and as he was not subjected to cross-examination by the prosecution, his evidence remains unimpeached. Though the evidence of PW6 was referred to in the judgment, but, it was mainly taken into consideration with regard to movement of Ex.P1-application and meeting the A.O. But, a close perusal of the evidence of PW6, in my view would

show that the same is at total variance with the evidence of PW4 in material aspects.

52) Further, mere recovery of money by itself, in my view, may not be sufficient to show that the money was received as an illegal gratification by Accused Officer from PW4 for doing official favor. Definitely things would have been different had any material been placed to show that this amount was paid as bribe by PW4. Since, the evidence of PW6 and PW4 are per se contradictory with regard to demand made prior to 27.11.2000 and also with regard to incident that took place on 30.11.2000, I am of the view that it is a fit case where benefit of doubt can be extended to the Accused Officer.

53) In ***N. Vijayakumar Vs. State of Tamil Nadu***[7] the Hon'ble Apex Court while dealing with the situation where the prosecution failed to prove the demand, held as under:

> *"12. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in the case of* ***C.M. Girish Babu v. CBI, Cochin, High Court of Kerala*** *(2009) 3 SCC 779 and in the case of* ***B. Jayaraj v. State of Andhra Pradesh*** *(2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that accused voluntarily accepted money knowing it to be bribe.*

[7] Criminal Appeal Nos. 100-101 of 2021 arising out of S.L.P. (Crl.) Nos. 4729-4730 of 2020

Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court. The relevant paragraphs 7, 8 and 9 of the judgment in the case of B. Jayaraj (supra) read as under:

> *"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P. [(2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI [(2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] .*

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court

as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved.

54) In ***P. Satyanarayana Murthy v. District Inspector of Police and Anr.,***[8] the Apex Court held that, mere possession and recovery of currency notes from an accused without proof of demand would not establish Section 7 as well as Section 13(1)(d)(i) & (ii) of the Prevention of Corruption Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Dealing with the same, the Court observed as under:

"The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."

[8] (2015) 10 SCC 152

55) The said principle was reiterated by the Apex Court in ***Mukhtiar Singh (since deceased) through His Legal Representative v. State of Punjab***[9], as under:-

> *"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 and 13 of the Act would not entail his conviction thereunder."*

56) From the judgments referred to above, it is clear that the Apex Court has categorically held that, in order to prove a charge under Sections 7 and 13 of 1988 Act, the prosecution has to establish by proper proof, the demand and acceptance of illegal gratification. The Apex Court held that till that is accomplished, accused should be considered to be innocent. The proof of demand of illegal gratification, thus, is the gravamen of offence under Sections 7 and 13(1)(d)(i) and (ii) of 1998 Act and in the absence thereof, unmistakably the charge, therefore, would fail. The Apex Court went on to hold that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de-hors proof of demand, ipso facto, would thus not be sufficient to bring home the charge under aforesaid two sections.

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[9] (2017) 8 Supreme Court Cases 136

57) In ***State of Punjab v. Madan Mohan Lal Verma***[10], the Hon'ble Supreme Court held that, *mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification*'. It is appropriate to incorporate paragraph No.7 of the said judgment, which reads thus:

> *"7. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the 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.* ***However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution.*** *The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness.* ***In a proper case, the court may look for independent***

[10] 2013(3) MLJ (Crl) 565

corroboration before convicting the accused person."

58) In view of the evidence adduced by the prosecution and having regard to the judgments referred to above, I am of the view that, the amount, which was recovered from the diary which was in front of the Accused Officer, was not the amount paid by the PW4 as illegal gratification for doing a favour. This finding is based on the evidence referred to above, wherein, the prosecution failed to prove that there was a demand on 27.11.2000, a favour pending with the Accused Officer either on the date of alleged demand or on the date of acceptance of money in view of the inconsistent evidence of PW4 and PW6 on the date of trap.

59) Therefore, in my view, the prosecution has failed to prove the demand and in the absence of evidence to show that the money was paid as illegal gratification; mere recovery of money is not sufficient to convict the Accused Officer for the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

60) Accordingly, the Criminal Appeal is ***allowed*** and the conviction and sentence imposed against the appellant – A.O., for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988 in C.C.No.3 of 2002 on the file of Special Judge for SPE & ACB Cases, Vijayawada, by judgment dated 05.10.2006, is set aside. The

appellant – A.O. is ***acquitted*** and he shall be set at liberty forthwith, if he is not required in any other case. Fine amount paid, if any, shall be refunded to the appellant – A.O.

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

JUSTICE C.PRAVEEN KUMAR

Date: 19.02.2021.

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THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

Criminal Appeal No. 1441 of 2006

Dt. .02.2021

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