



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

**PRSENT**

**THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU**  
**CRIMINAL APPEAL NO: 1486 OF 2006**

**Between:**

1. Endluri Veera Raghavulu, S/o. Venkata Subbaiah,  
Formerly Sr.Assistant,  
Zilla Parishad,  
Ongole,  
Prakasam District.

**...PETITIONER(S)**

**AND:**

1. State of Andhra Pradesh, Rep.by the Standing Counsel for Anti  
Corruption Bureau,  
High Court of A.P.,  
Hyderabad.

**...RESPONDENTS**

**Counsel for the Petitioner(s): K R PRABHAKAR**

**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

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**CRIMINAL APPEAL No.1486 OF 2006**

**Between:**

Endluri Veera Raghavulu, S/o Venkata Subbaiah,  
Aged about 61 years, Formerly Senior Assistant,  
Zilla Parishad, Ongole, Prakasam District.

.... Appellant/Accused Officer.

*Versus*

The State of Andhra Pradesh, rep. by the  
Standing Counsel for Anti-Corruption Bureau,  
High Court of A.P.

... Respondent.

DATE OF ORDER PRONOUNCED : 06.07.2023

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local Newspapers  
may be allowed to see the 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

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



**\* HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**  
**+ CRIMINAL APPEAL No.1486 OF 2006**

**% 06.07.2023**

**# Between:**

Endluri Veera Raghavulu, S/o Venkata Subbaiah,  
Aged about 61 years, Formerly Senior Assistant,  
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.... Appellant/Accused Officer.

*Versus*

The State of Andhra Pradesh, rep. by the  
Standing Counsel for Anti-Corruption Bureau,  
High Court of A.P.

... Respondent.

**! Counsel for the Appellant :** Sri P. Veera Reddy.

**^ Counsel for the Respondent :** Sri S.M. Subhani  
(Standing Counsel and Special P.P.)

**< Gist:**

**> Head Note:**

**? Cases referred:**

(2006) 1 Supreme Court Cases (Crl.) 41,  
(1979) 4 SCC 172,  
(2022) SCC OnLine SC 1724.

This Court made the following:

**HON'BLE SRI JUSTICE A.V. RAVINDRA BABU****CRIMINAL APPEAL NO.1486 OF 2006****JUDGMENT:-**

Challenging the judgment, dated 09.10.2006 in C.C.No.18 of 2001, on the file of Special Judge for SPE & ACB Cases, Nellore ("Special Judge" for short), the unsuccessful Accused Officer ("A.O" for short) filed the present appeal.

2) The appellant (A.O.) faced trial in the above said Calendar Case for the charges under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 ("P.C. Act" for short). The learned Special Judge after conclusion of trial, found the appellant guilty of the charges and after questioning him about the quantum of sentence, sentenced him to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for one month for the offence under Section 7 of the P.C. Act, 1988 and further sentenced him to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for one month for the offence under Section 13(2) r/w 13(1)(d) of the P.C. Act and that both the sentences shall run concurrently.



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

4) The State, represented by the Inspector of Police, Anti-Corruption Bureau ("ACB" for short), Prakasam District, Ongole, filed a charge sheet in Crime No.8/ACB-NPK/2000 of ACB, Nellore Range, alleging as follows:

(i) The Accused Officer (A.O.) Endluri Veera Raghavulu, S/o Venkata Subbaiah, worked as Senior Assistant in the office of Zilla Parishad, Prakasam District, Ongole during the period from August, 1995 to 14.08.2000, as such, he is a public servant within the meaning of Section 2(c) of the P.C. Act.

(ii) One Thanneeru Srinivasa Rao, S/o Laxmaiah, is the Junior Assistant in Z.P. High School, Maddulur, Santhanuthalapadu Mandal, Prakasam District. He is the *defacto-complainant* (L.W.1). The Headmistress, Z.P. High School, Maddulur, S.N. Padu Mandal, Prakasam District i.e., L.W.5-Parankusam Ranganayakamma prepared arrears bill for Rs.6,365/-, as arrears of salary of L.W.1-Thanneeru Srinivasa Rao, Junior Assistant, as per Pay Revision Commission, 1999 in view of his revised fixation for the period from 01.07.1999 to 30.06.2000. It was sent to Z.P. office, Ongole in the first week



of July, 2000. Subsequently, regular salary bill of July month of the staff of Z.P. High School, Maddalur was also sent to Z.P. Office by Headmistress.

(iii) On 28.07.2000 L.W.1 met A.O. at Z.P. Office, Ongole and enquired about his arrears salary bill. A.O. stated to him that things should not be settled at free of cost and he should be paid 10% of the bill amount i.e., Rs.650/- as illegal gratification and asked him to pay the amount and to get the work done. When L.W.1 expressed his inability for paying bribe, A.O. informed him that it was not possible for him to pass the bill.

(iv) On 01.08.2000 L.W.1 and L.W.5 went to State Bank of India, Ongole for encashment of salary and on that day L.W.1 came to know that his arrears salary bill is not included in the cheque of salaries. Then, he approached A.O. on 01.08.2000, who was available at State Bank of India, Ongole and asked him about his arrears bill. Then A.O. informed him that since he (L.W.1) failed to pay the bribe amount to him, his (L.W.1) arrears bill was kept pending. He further demanded L.W.1 to pay Rs.650/- after encashing the salaries and in such a case, he would pass the bill immediately and to arrange payment. Then, L.W.1 promised A.O. to pay the bribe amount on the next day. As he was not willing to pay the bribe to A.O., he approached



the Inspector of Police, ACB, Ongole (L.W.12) on the same day i.e., on 01.08.2000 and presented a report against A.O. The DSP, ACB, Nellore (L.W.11) registered the report of L.W.1 as a case in Crime No.8/ACB-NPK/20000 on 02.08.2000.

(v) The Deputy Superintendent of Police, ACB, Nellore, conducted pre-trap proceedings in the office of Inspector, ACB, Ongole on 02.08.2000 between 9-30 a.m. and 10-30 a.m. in the presence of mediators i.e., L.W.8-Kopparapu Venkata Subba Rao and L.W.9-Thota Prasad Rao, L.W.1 and other ACB officials. On 02.08.2000 at 11-00 a.m., the DSP, ACB, Nellore along with mediators and his staff and also L.W.1 went to Z.P. Office, Ongole. When L.W.1 was proceeding to Z.P. office by walk, A.O. came opposite to him on Scooter and enquired him about the bribe amount. He replied that he brought the bribe amount. Then, A.O. asked L.W.1 to wait for him in the office till his arrival, as he was going on some treasury work. On 02.08.2000 at 5-00 p.m., A.O. returned to the Z.P. office and demanded L.W.1 to pay bribe amount of Rs.650/- at his seat. Then, L.W.1 paid Rs.650/- to A.O. from his shirt pocket and A.O. received it with his right hand and kept the same in his left side shirt pocket and promised to arrange payment of arrears of salary to L.W.1 shortly. Then, L.W.1 came out of the office and gave the



pre-arranged signal to the trap party by wiping his face with handkerchief. Immediately, the DSP, ACB, Nellore along with other team members rushed to Z.P. Office and conducted post-trap in the presence of L.W.8 and L.W.9 mediators. The sodium carbonate solution test conducted on both hand fingers of A.O. yielded positive result. The tainted amount of Rs.650/- was recovered from the shirt pocket of A.O. The serial numbers of currency notes are tallied with the currency note numbers noted in pre-trap proceedings. Therefore, the investigation quietly established the demand made by A.O. to pay the bribe amount of Rs.650/- and acceptance of the same from L.W.1.

(vi) The Government of Andhra Pradesh vide G.O.Ms.No.175, PR & RD., (VS) Department, dated 23.05.2001, accorded sanction for prosecution of A.O.

(vii) Hence, A.O. is liable to be punished for the offences under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act.

5) The learned Special Judge took cognizance of the case under the above provisions of law and after appearance of A.O. and after complying the formalities under Section 207 of the Code of Criminal Procedure ("Cr.P.C." for short) with regard to furnishing documents, framed charges under Sections 7 and





13(2) r/w 13(1)(d) of P.C. Act against A.O. for which he pleaded not guilty and claimed to be tried.

6) During the course of trial, on behalf of the prosecution, P.W.1 to P.W.8 were examined and Ex.P.1 to Ex.P.13 were marked. Further M.O.1 to M.O.8 were marked on behalf of the prosecution. After closure of the evidence of the 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 and he let in defence evidence by examining D.W.1 and D.W.2. On behalf of A.O., Ex.D.1 and Ex.D.2 were marked.

7) The learned Special Judge, on hearing both sides and on considering the oral as well as documentary evidence, found A.O guilty of the above charges and accordingly, convicted him under Section 248(2) of Cr.P.C. and sentenced him as above. Felt aggrieved of the same, the unsuccessful A.O., filed the present appeal challenging the judgment of the learned Special Judge in C.C.No.18 of 2001.

8) The substance of the findings of the learned Special Judge were that the prosecution proved a valid sanction against A.O. to prosecute him under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act and the prosecution further proved the pendency of



the official favour in respect of the work of P.W.1 with A.O. as on the date of trap and further the prosecution proved the allegations of demand and acceptance of bribe by A.O. from P.W.1. While holding so, the learned Special Judge found guilty of A.O., convicted and sentenced him.

9) Now, in deciding the criminal appeal, the points for consideration are as follows:

(1) Whether the prosecution before the Court below proved the valid sanction to prosecute A.O. under Section 19 of the P.C. Act 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 that the official favour was pending in respect of the work of P.W.1 with A.O. prior to the date of trap and on the date of trap as alleged?

(3) Whether the prosecution before the Court below proved that on 28.07.2000, 01.08.2000 and 02.08.2000, A.O. demanded P.W.1 to pay 10% of the arrears of salary bill amount i.e., Rs.650/- and accepted the same and further whether such an act on the part of A.O. would amount to criminal misconduct?

(4) Whether the prosecution before the Court below proved the charges as above beyond reasonable doubt and whether there are any grounds to interfere with the judgment of the learned Special Judge?

**POINT NO.1**

10) There was no dispute that A.O. was a public servant within the meaning of Section 2(c) of the P.C. Act. He was drawing salary on account of Government. Insofar as the sanction under Section 19 of the P.C. Act to prosecute A.O. for the charges framed is concerned, the prosecution examined P.W.6, who deposed that he has been working as Assistant Secretary to Government, GAD, A.P. Secretariat, Hyderabad. Previously, he worked as Section Officer, PR & RD (VS) Department, A.P. Secretariat, Hyderabad. He brought the file in connection with issuing of sanction against A.O. At the time of issuing of sanction, he was working as Section Officer in the concerned Section. The D.G., ACB sent final report along with material papers through Vigilance Commissioner to their department. He processed the file and sent it to Law Department for scrutiny. After such scrutiny, the then Secretary, I.Y.R. Krishna Rao, I.A.S. after perusing the material on record and on application of mind, issued sanction to prosecute A.O. Ex.P.12 is the sanction order. He can identify the signature of the Secretary, I.Y.R. Krishna Rao, I.A.S. Witness identified the signature of the said I.Y.R. Krishna Rao, I.A.S. in Ex.P.12. He deposed in cross examination that the signatory of Ex.P.12 is in



service. The D.G., ACB, also sent a draft sanction order along with final report. The list of documents perused by the Secretary is not mentioned in Ex.P.12. He denied that without perusing the documents, it was issued. He denied that it was issued basing on the draft sanction order. He denied that the sanctioning authority would have refused to issue sanction, if the documents are perused.

11) A perusal of Ex.P.12 discloses that the sanctioning authority having regard to the allegations raised against A.O. by the investigating officer with reference to the contents in Ex.P.3 report lodged by P.W.1 and further with reference to the contents in pre-trap and post-trap proceedings and further with reference to the documents that were seized during the course of post-trap was of the view that it is a fit case to accord sanction to prosecute A.O. Though it is not enclosed with the list of documents which the sanctioning authority perused, but a look at Ex.P.12 goes to show that the sanctioning authority duly considered the complaint made by P.W.1, pre-trap and post-trap proceedings and the documents that were seized during the course of investigation. When that is the situation, the contention of A.O. that Ex.P.12 was issued without looking into the material available on record deserves no merits. It is not



necessary that the signatory in Ex.P.12 shall come into witness box. It is not the case of A.O. that P.W.6 was not acquainted with the signature of I.Y.R. Krishna Rao, I.A.S. Apart from this, the sending of draft sanction by the ACB to the sanctioning authority was only to suggest about the proforma in which the sanction was to be issued. The mere sending of the draft sanction order to the sanctioning authority by D.G., ACB, does not make Ex.P.12 as invalid. What is criteria in view of the contentions raised by the appellant in the grounds of appeal is as to whether there was proper application of mind by the sanctioning authority. A look at Ex.P.12 undoubtedly shows the application of mind by the sanctioning authority.

12) The learned Special Judge appreciating the contentions raised by Special Public Prosecutor with reference to the decision in *(2006) 1 Supreme Court Cases (Crl.) 41* in between *State through Inspector of Police, A.P. Vs. K. Narasimhachary*, uphold the contentions of the learned Special Public Prosecutor. The Hon'ble Supreme Court in the above said decision extracted para Nos.17 and 18 in the decision of *Mohd. Iqbal Ahmed v. State of Andhra Pradesh, (1979) 4 SCC 172*. The said observations are as follows:

*Para 17. In Mohd. Iqbal Ahmed v. State of Andhra Pradesh, (1979) 4 SCC 172, the order of*



sanction was found to be invalid as the sanctioning authority did not duly apply its mind.

*Para 18.* Therein this Court held that an order of valid sanction can be proved by the Sanctioning Authority in two ways: either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction; or (2) by adducing evidence aliunde to show that the facts were placed before the Sanctioning Authority and the satisfaction arrived at by it. In this case, the original order of sanction has been produced”.

13) Therefore, in view of the above said decision, it is not necessary that sanctioning authority should be examined before the Court. It is sufficient on the part of the prosecution to produce original sanction and to examine a competent person to speak to the fact that the necessary material was placed before the sanctioning authority and the sanctioning authority duly applied its mind and issued the sanction.

14) Having regard to the above, this Court is of the considered view that the prosecution before the Court below quietly proved that under Section 19 of the P.C. Act, the investigating officer obtained a valid sanction to prosecute A.O. under Sections 7 and 13(2) r/w 13(1)(d) of the P.C. Act.

**Point Nos.2 to 4:**

15) Sri P. Veera Reddy, learned Senior Counsel appearing for the appellant, would contend that the case of the prosecution is that on 28.07.2000 A.O. demanded P.W.1 to pay 10% of the arrears of salary out of Rs.6,500/- which comes to Rs.650/- to pass the bill pertaining to the arrears bill of P.W.1. The date of trap was on 02.08.2000. On 01.08.2000 P.W.1 claimed to have lodged a report with the ACB. The very evidence let in by the prosecution stating that firstly when trap party along with P.W.1 and other officials went to the office of A.O. at 10-45 a.m. or 11-00 a.m., A.O. went outside on other work and that P.W.1 waited till 5-00 p.m. is quietly improbable. P.W.1 was not supposed to enter into the office and to sit opposite of the seat of A.O. for his arrival. So, the very act of P.W.1 allegedly waiting for arrival of A.O. right from 11-00 a.m. to 5-00 p.m. shows improbabilities in the case of the prosecution. Even according to the documents that were seized by ACB during post-trap, on 18.07.2000 A.O. taken necessary steps to send the arrears bill of P.W.1 to Audit Office. It is quietly evident from the documents seized during post-trap. Even the evidence of P.W.2 to P.W.4 reveals that the salary arrears bill of P.W.1 was pending with Audit Office for necessary



scrutiny and the bill was not returned to Z.P. office. Under the cover of Ex.P.4, A.O. taken necessary steps to forward the arrears bill to the Audit Office, Local Fund Accounts, Prakasam Bhavan, Ongole. From the evidence of P.W.2 to P.W.4, it is clear that the bill was not sent to A.O. office after necessary scrutiny. Hence, A.O. attended the arrears bill relating to P.W.1 in time and as on 28.07.2000 or 01.08.2000 or 02.08.2000, nothing was to be done by him because the bill was not sent back to the office of A.O. from the office of Audit Officer. Therefore, when the bill pertaining to P.W.1 was not there before A.O., there was no question of demanding bribe. Prosecution failed to prove the pendency of the official favour as on 28.07.2000, 01.08.2000 and 02.08.2000. When A.O. got cross examined P.W.1 with this aspect, P.W.1 purposefully denied the defence theory with a malafide intention. P.W.1 had knowledge that bill of him was not with A.O. prior to the date of trap or as on the date of trap. The evidence of P.W.3 and P.W.4 goes to prove that for want of the concerned clerk in the office of Audit, the bill relating to P.W.1 could not be looked into and it could not be sent back to the office of A.O. According to the evidence of P.W.4, he had to scrutinize the bill relating to P.W.1, but as he was on O.D. from 26.07.2000 to 30.07.2000 and as he returned to the





headquarters on 31.07.2000 and after that he could attend some arrears bills, he did not attend the bill of P.W.1. Later, he went on leave till 10.08.2000. So, no malafides can be attributed to A.O. as he did his job on 18.07.2000 itself. The prosecution failed to prove the pendency of the official favour. P.W.1 purposefully denied the defence theory that prior to 28.07.2000 when P.W.1 approached A.O. to enquire about the bill, he duly intimated to him that the bill was already sent to Audit Office. P.W.1 never attended before A.O. on 28.07.2000. Even A.O. did not go to State Bank of India, Ongole on 01.08.2000 and there was no question of A.O. demanding again P.W.1 to pay the bribe at State Bank of India.

16) Insofar as the post-trap events are concerned, the learned Senior Counsel would strenuously contend that A.O. and P.W.1 had acquaintance with each other much before 28.07.2000. P.W.1 worked in the Z.P. Office from 01.11.1999 to 28.02.2000 on deputation, which he admitted in cross examination. P.W.1 was in the habit of availing necessary P.F. loans and other financial benefits to meet the ill-health of his father. When he was in need of money, he approached A.O. on 01.09.1999 with a request for hand loan and ultimately, A.O. arranged a sum of Rs.3,000/- from one Rayapati Kotaiah and



P.W.1 along with his ailing father went to the shop of Rayapati Kotaiah where Kotaiah paid Rs.3,000/- to A.O. and A.O. in turn paid the amount to P.W.1. Though P.W.1 promised to pay back the amount within month, but he failed to do so. Whenever A.O. demanded P.W.1 to pay the amount, he used to evade and in that connection, same verbal exchanges also took place. During the post-trap, P.W.1 wished A.O. when he was going out and at 5-00 p.m. he approached A.O. and handed over Rs.650/- by saying that it is the interest part of the hand loan till 30.07.2000 @ 24% per annum, as such, A.O. took the amount so as to pay the same to Rayapati Kotaiah. In furtherance of the defence, A.O. examined D.W.1, the so-called Kotaiah and D.W.2 in whose presence there was a verbal quarrel took place between A.O. and P.W.1 in connection with that amount. A.O. dealt with the amount of Rs.650/- only towards the interest payable by P.W.1 as on 30.07.2000. D.W.1 supported the defence of A.O. Even D.W.2 supported the defence of A.O. In the spontaneous version itself, A.O. revealed that the amount was paid towards interest part of the hand loan of Rs.3,000/-. The trap laying officer and the mediator distorted the version of A.O. by omitting to mention the name of Kotaiah. Therefore, there was no official favour pending prior to the trap and on the date of



trap even according to the evidence let in and further A.O. probabalized the defence theory. The Court below on erroneous appreciation of the evidence went on to convict A.O. without proper reason, as such, the appeal is liable to be allowed.

17) Sri S.M. Subhani, learned Standing Counsel for ACB and Special Public Prosecutor, appearing for the respondent/ State, would contend that the prosecution has cogently established 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. Merely because A.O. taken steps to forward the bill on 18.07.2000, it does not mean that there was no official favour pending with him. Even according to Ex.P.4, the request of Parishad Educational Officer to the Audit Officer was to approve the bill and return the bill at an early date to the office of Parishad Educational Officer for taking further action. Therefore, the bill was supposed to be returned after necessary approval from the Audit Office to the office of A.O. The evidence of P.W.2 is very clear that A.O. had to attend further steps after the bill is received from the Audit Office. Even according to P.W.2, if the bill is admitted by Audit Office, A.O. has to prepare a letter addressed to L.F. Audit Office after processing in the section. Hence, A.O. was supposed to attend further again after bill is



returned by the Audit Office. Absolutely, P.W.1 had no knowledge whatsoever about the action taken by A.O. on 18.07.2000. If A.O. revealed the same to P.W.1 when he approached on 28.07.2000, there was no question of P.W.1 lodging a report to ACB. Not only on 28.07.2000 even on 01.08.2000 also A.O. demanded P.W.1 to pay the bribe of 10% of the arrears salary bill i.e., Rs.650/-. The demand and acceptance of the amount by A.O. on 02.08.2000 was in consequence of earlier demand on 01.08.2000. During post-trap A.O. produced the file pertaining to arrears bill of P.W.1. The action taken by A.O. in processing the bill under Ex.P.4 was only a step forward to get the approval of Audit Office. After approval of the Audit Office, A.O. was to take further action. So, P.W.1 had no knowledge about the action taken on 18.07.2000. A.O. made P.W.1 to believe that he did not take any action because he did not pay the bribe amount. Therefore, the prosecution has categorically proved the pendency of the official favour. Admittedly, the evidence of P.W.3 and P.W.4 is not useful to the defence of A.O. The prosecution did not deny Ex.P.4. Hence, the pendency of the bill pertaining to P.W.1 in the Audit Office may be on account of several reasons, but, A.O. hidden the fact that he forwarded the bill to the Audit Office.



18) The learned Standing Counsel with regard to the demand made by A.O., relied upon the evidence of P.W.1 and would further contend that the amount that was dealt with in the pre-trap and was recovered from the physical possession of A.O. in post-trap. A.O. admitted that he dealt with the tainted amount. He did not state in the post-trap that one Kotaiah lent an amount of Rs.3,000/- at his request to P.W.1. He did not reveal the name of Kotaiah. On the other than, post-trap version is that he received Rs.650/- towards interest of the hand loan taken by P.W.1 from him. The trap laying officer duly enquired A.O. during post-trap as to whether he had any proof to that effect for which he did not submit any proof. A.O. during the course of trial developed the theory introducing the name of Kotaiah without any basis in Ex.P.3 post-trap proceedings. P.W.5, the mahazar witness, was an independent witness who was a public servant. Prior to this case, he never acted as a mediator. Neither trap laying officer nor the mediator had any reason to distort the version of A.O. in the post-trap. So, what all A.O. disclosed was noted in the post-trap. The mere availment of loans by P.W.1 under festival advances or G.P.F. does not mean that he was in need of money and he was indulging in borrowing the amounts from outsiders. No



semblance of proof is there to show that P.W.1 borrowed the amount from A.O. The evidence of D.W.1 and D.W.2 is not at all believable. D.W.1 would not have lent any amount without there being any document to A.O. The so-called verbal exchanges spoken by D.W.2 cannot stand to any reason. The evidence of D.W.1 and D.W.2 was rightly disbelieved by the Court below with cogent reasons. As the prosecution proved the demand alleged against A.O. and acceptance of bribe, prosecution has benefit of presumption under Section 20 of the P.C. Act that A.O. accepted the amount for doing official favour. A.O. failed to prove the contrary. With the above said contentions, the learned Special Public Prosecutor seeks to dismiss the Criminal Appeal.

19) In view of the above rival contentions advanced and the points framed for determination, firstly, I would like to deal with as to whether the prosecution proved the pendency of the official favour in respect of the work of P.W.1 with A.O. prior to the date of trap and on the date of trap.

20) Turning to the evidence of P.W.1, he deposed that previously he worked as Junior Assistant, Z.P. High School, Madduluru, Santhanuthalapadu Mandal, Prakasam District from 31.03.1996 to 28.02.2004. In the year, 1999 there was a Pay



Revision. He had to get arrears from 01.07.1999 to 30.06.2000 to a tune of Rs.6,365/-. The bill was prepared in their office for the arrears and it was sent to Z.P. Office with a covering letter of Headmistresses on the first week of July, 2000. Ex.P.1 is his option form. Ex.P.2 is his bill. Their Headmistress signed Ex.P.2. Subsequently, a regular salary bill of the staff for the month of July was prepared and it was sent to Z.P. Office by Headmistresses. On 28.07.2000 in the morning he went to Z.P. Office, Ongole and met A.O. who was dealing with the bills. He enquired him about his P.R.C. arrears bill as to whether it was passed. Then he said that it would not be settled at free of cost and he has to pay 10% of the arrears salary bill i.e., Rs.650/- as illegal gratification. He said that he cannot pay such huge amount. Then A.O. said that it was not possible to pass the bill, if the amount is not paid. On 01.08.2000 he went to State Bank of India, Ongole along with Headmistresses for encashment of salary. Though the salary was encashed, but his arrears bill of pay fixation was not received in the bank. He found A.O. at State Bank of India, Ongole and asked him about his arrears bill, since it was not received in the bank. A.O. told him that since he did not pay the bribe amount, bill was kept pending and he was asked to pay Rs.650/- after encashing his salary and that he



would pass the same. He told A.O. that he would come and meet him on the next day morning i.e., on 02.08.2000. As he was not willing to pay the bribe amount to A.O., he went to the ACB Office, Ongole on the same day at 2-00 p.m. and presented a report. Ex.P.3 is the report presented by him which bears his signature. ACB Inspector asked him to come to his office on 02.08.2000 at 9-30 a.m., by bringing a sum of Rs.650/- which is the amount demanded by A.O. He further spoken about the pre-trap proceedings which will hereinafter be discussed.

21) Insofar as the post-trap proceedings, his evidence is that during post-trap, he along with DSP, ACB and other staff reached the office of A.O. at 11-00 a.m. He found A.O. coming out on Scooter and he met him at Municipal Park. He asked him (P.W.1) whether he brought the amount. He replied that he brought the amount. Then he said that he was going to the Treasury Office on urgent work and asked him to wait till he arrived at his seat. When he intimated the said fact to the DSP, DSP asked him to go and wait at the seat of A.O. Accordingly, he went to the seat of A.O. and was waiting. At 5-00 p.m., A.O. returned to his office and again asked him whether he brought the amount demanded by him. He answered in the affirmative. A.O. asked him to pay the amount and he paid Rs.650/- to A.O.





A.O. took the amount with his right hand and kept the same in his shirt pocket. He asked A.O. about his arrears bill and he said that he would see that his bill would be ready since he paid the amount. He came out and gave pre-arranged signal to the raid party. On receipt of signal all the raid party members came and the DSP asked him to wait outside. After one hour he was called inside by the DSP and asked as to what happened and he narrated incident. He was examined by the DSP. So, the substance of evidence of P.W.1 is that the official favour in respect him was pending with A.O.

22) Turning to the evidence of P.W.2, he worked as Superintendent in Z.P. Office, Ongole from 21.10.1999 till his retirement. A.O. worked as Senior Assistant in their Section. He was present in the office at the time of trap on 02.08.2000. A.O. attended the office at 10-30 a.m. At 11-00 a.m., he left for Treasury work. After 11-00 a.m. one person came and was sitting to the opposite seat of A.O. and waiting for him. A.O. came to the office at 5-00 p.m. After arrival of A.O. at 5-00 p.m., the said person who was waiting there talked, with A.O. for 10 minutes and went away. Later, ACB people came to the seat of A.O. He does not know what transpired between A.O. and the said person. He came to know that the said person was



waiting for A.O. is Srinivasa Rao, working in Z.P. High School, Madduluru. He further deposed that PRC arrears bill of Srinivasa Rao and three others were received by the concerned Clerk. Thereafter, he received the same on 15.07.2000. He again deposed that he received letter along with the bills which was addressed to L.F. Audit Office. He put his side initial in the said letter. The letter came to him in duplicate. It is Ex.P.4. It was signed by Parishad Educational Officer. In the L.F. Audit Office, the bill would be scrutinized. If the bill is correct, the L.F. Audit Office mention that the bill is admitted and would send back to their Section. After processing the same in their Section, they will send the bill to L.F. Audit Office with a letter to release funds. If the bill is not proper, the Audit Office will take objection and would send it to their Section and then they will return to the concerned Headmistresses for compliance. The bill relates to P.W.1 was pending with Audit Office and it was not returned to their Section. If the bill is admitted, A.O. has to prepare a letter addressing to L.F. Audit Office after processing in the Section.

23) The prosecution examined P.W.3, who worked as Senior Auditor in Assistant Audit Office, Local Funds, Z.P., Ongole from July, 1998 to July, 2004. At about 5-00 p.m., on



02.08.2000 when he came to the down floor of his office, ACB officials came and asked him about the service register and pay bill of P.W.1. He said that the S.R. and pay bill of P.W.1 were with B. Sivaramamohan Rao (P.W.4), who kept the papers in his lock and key. He was not present and he did not attend duty on that day and he was on leave. He intimated the same to ACB officials. They asked him about the PRC register and the bill. The bill was not traced. He handed over PRC register to ACB. He did not produce PRC pay bill of P.W.1 before DSP, ACB.

24) Coming to the evidence of P.W.4, Burle Sivaramamohan Rao, who was supposed to take appropriate action on the bill in the Audit Office, he testified that on 18.07.2000 he received the PRC arrears bill of P.W.1 and three others along with a letter from Zilla Parishad Educational Officer, Ongole. He put his initial in Ex.P.4. He handed over the same to the Junior Assistant to enter the same in the register. On 19.07.2000 the Junior Assistant entered the same in the register and returned to him. Ex.P.5 is the said register. Relevant entry at page Nos.116 and 117 is Ex.P.5-A. In Ex.P.5-A he put his initial in token of receipt of the pay bills along with letter. Ex.P.1 and Ex.P.2 documents of P.W.1 were received in their office along with other bills. From 18.07.2000 to 20.07.2000 he



verified and checked the regular pay bills. From 21<sup>st</sup> onwards up to 24.07.2000 he was on camp on O.D. Again he came to the office on 25.07.2000. He attended regular pay bill work on 25.07.2000. From 26.07.2000 to 30.07.2000 he was on camp on O.D. He returned to the Headquarters on 31.07.2000. On 01.08.2000 he checked and verified the P.R.C. arrears bills of Masthan Rao and Madhava Rao which were sent along with the P.R.C. arrears bill of P.W.1. He did not attend the arrears bill of P.W.1 and Jakraiah on 01.08.2000. He went on leave from 02.08.2000 on health grounds. By 02.08.2000 the pay bills of P.W.1 and Jakaraiah were pending for verification by him. He was on leave till 10.08.2000. He kept the pay bills which were attended and unattended on the table itself while he was going on leave. After his verification and checking pay bill, it would be sent to the Assistant Audit Officer and he would be sent the same to the Audit Officer. By the time he returned from leave, the pay bill of P.W.1 was not available on his table.

25) Firstly, this Court would like to make it clear that office of P.W.1 was in the Z.P. High School, Madduluru. Office of A.O. was in Z.P. Office, Ongole. P.W.2 also worked in the same office. Office of P.W.3 and P.W.4 was in Audit Office, Local Funds, Z.P., Ongole.



26) P.W.5, the mediator and P.W.7, trap laying officer, deposed that during post-trap when they questioned A.O., A.O. produced a file relating to P.W.1. On verification of such file, they could notice Ex.P.4 which was processed on 18.07.2000 and was sent to Audit Office. By looking into Ex.P.4 and by looking into the evidence of P.W.2 to P.W.4, there is no dispute that A.O. taken initiative in forwarding the bill relating to P.W.1 to the Audit Office. Though A.O. was not a signatory to Ex.P.4 and he was not sanctioning authority, but his role in processing the bill relating to P.W.1 is not in dispute. Undoubtedly, A.O. was the proper person as Senior Assistant who had to attend the bills and to place appropriate note before the Superintendent as well as the drawing officer to take necessary action. In that process, Ex.P.4 covering letter was sent to Audit Office with a request to approve the bill relating to P.W.1 and return to the office of A.O. for taking further action.

27) It is to be noticed that during the cross examination, P.W.1 denied that prior to 28.07.2000 he met A.O. and enquired A.O. about his PRC arrears bill, for which A.O. replied that his PRC arrears bill along with PRC arrears bills of S. Masthan, Watchman, Z.P. High School, Uppugonduru, S. Jakraiah, Record Assistant, Z.P. High School, T. Naidupalem and M. Madhava Rao,



Attender, Z.P. High School, Muppavaram were processed and they were sent to Parishad Educational Officer. P.W.1 denied the said theory. It is to be noticed that the evidence of P.W.1 is such that first he made enquiry with A.O. on 28.07.2000 as to the fate of his bill for which he demanded bribe of 10% of amount on the arrears bill amount. On the other hand, the theory of A.O. is that it was prior to 28.07.2000 P.W.1 approached him and enquired the bill and he duly intimated to him that it was already sent to the Audit Office. It is to be noticed that if really A.O. intimated to P.W.1 that he duly attended the bill pertaining to P.W.1 and forwarded to Audit Office, definitely, P.W.1 would have gone to Audit Office so as to make enquiry. He would not have invented an allegation that A.O. demanded him to pay 10% of the amount on Rs.6,500/- towards bribe. It appears that P.W.1 had no knowledge whatsoever that his bill was pending with Audit Office right from 18.07.2000. The whole contention of A.O. is that because the bill was sent to Audit Office on 18.07.2000 itself, it was not pending with him, as such, there was no pendency of the official favour.

28) It is to be noticed that even according to the language in Ex.P.4, the request of the signatory i.e., the Parishad Educational Officer, Z.P., Ongole to Audit Officer, Local



Fund Accounts, Prakasam Bhavan, Ongole, was to scrutinize the bill of P.W.1 along with others and to approve the same and to return at an early date. Hence, even after necessary scrutiny and approval in pursuance of the request in Ex.P.4, the bill has to be forwarded to the office of Parishad Educational Officer, Z.P., Ongole for further action. It is categorically elicited from the mouth of P.W.2 in chief examination by the learned Special Public Prosecutor. During the course of cross examination, it is elicited by A.O. that when the bill sent by the Senior Assistant reached to him, he put his side initial and sent the same to P.E.O. The letter addressed by the P.E.O. along with pay bill would be received by him from P.E.O. and he would send the same to the Senior Assistant, who in turn send the same to Audit Office. It is true that Senior Assistant sent Ex.P.4 along with pay bill to the Audit Office on 18.07.2000 and obtained acknowledgement from L.F. Audit Office. He admitted that after the bill is admitted in L.F. Audit Office, it would be returned to their Section.

29) Therefore, it is quietly evident from the cross examination of P.W.2 that once the Audit Office approved the bill, it has to be returned to the office of A.O. where further action is to be taken. So, it is clear that as rightly contended by



the learned Special Public Prosecutor that Ex.P.4 letter was only a carry forward step to submit the bill of P.W.1 to the Audit Office for necessary scrutiny and approval. It is no doubt true that Audit Office cannot take further action except scrutiny and approval and further action was supposed to be taken by A.O. in view of the evidence of P.W.2. Though the scrutiny and approval was pending with Audit Office prior to the trap and on the date of trap, but, it cannot be held that A.O. had no further role to play in the episode. P.W.1 was kept in dark absolutely without revealing to him that bill was pending in the Audit Office. The very request in Ex.P.4 to send back the bill at an early date to take further action would mean that ultimately the logical conclusion was to be done to the bill of P.W.1 in the office of A.O. and further A.O. had to take appropriate action in the event of approval to see that P.W.1 would receive the amount of arrears of salary. It is quietly evident from the evidence of P.W.2.

30) Even A.O. during the course of cross examination of P.W.1 put forth a version that after the scrutiny by the L.F. office, he has to receive the file and then he has to submit the same to the Parishad Educational Officer, who is the competent authority to pass the bill.





31) In view of the above reasons, I am of the considered view that the official favour in respect of the work of P.W.1 was pending with A.O. as on the date of trap and prior to the date of trap. A.O. cannot escape from the liability by just contending that he duly got forwarded the arrears bill relating to P.W.1 to the Audit Office.

32) It is to be noticed that even according to the evidence of P.W.4 as well as the contents in Ex.P.4, four bills were forwarded under a single covering letter i.e., the bills of S. Masthan, S. Jakraiah, T. Srinivasa Rao and M. Madhava Rao. According to P.W.4 on 01.08.2000 he checked and verified the PRC arrear bills of Masthan Rao and Madhava Rao which were sent along with the PRC arrears pay bill of P.W.1. He did not attend the arrears pay bill of P.W.1 and Jakaraiah on 01.08.2000. Admittedly, what is evident is that there appears to be every latch in the Audit Office in not taking proper action about the arrears bill of P.W.1 and another. Therefore, A.O. had knowledge that ultimately the PRC arrears bill of P.W.1 would come to his seat to process further. His contention that P.W.1 had knowledge that the bill was with the Audit Office is not at tenable. Whatsoever the reason may be for pendency of bill of P.W.1 in the Audit Office, but ultimately A.O. was supposed to



take further action after necessary approval from the Audit Office. He made P.W.1 to believe that the process relating to the bill of him was pending with him.

33) Having regard to the above, I am of the considered view that the findings of the learned Special Judge that official favour in respect of the work of P.W.1 was pending with A.O. as on the date of trap cannot be said to be erroneous.

34) Now, this Court would like to deal with as to whether the prosecution proved before the Court below that prior to the date of trap and on the date of trap, A.O. demanded P.W.1 to pay the bribe of Rs.650/- and accepted the same. In view of the language employed in Section 7 of the P.C. Act, demand and acceptance of bribe is the *sin qua non* to prove the charge. Undoubtedly, it is for the prosecution to establish the essential ingredients of Sections 7 and 13(2) r/w 13(1)(d) of the P.C. Act. As pointed out, P.W.1 spoken about the demand made by A.O. on 28.07.2000, 01.08.2000 and further during post-trap.

35) The evidence of P.W.1 relating to pre-trap in substance is that when he attended the DSP Office on 02.08.2000 at about 9-30 a.m., DSP introduced the mediators to him and the mediators confirmed from him about the bonafidies of contents of the report lodged by him and that he



produced the proposed bribe of Rs.650/- before the DSP and the mediators and with the instructions of DSP, Police Constable applied phenolphthalein powder to the currency notes and kept the same in the shirt pocket of P.W.1 and he explained the consequences of the phenolphthalein test and he specifically instructed him not to touch the amount and to give the same to A.O. only on further demand. The post-trap proceedings are also spoken to by P.W.5, one of the mediators, as well as P.W.7 the trap laying officer. As this Court already pointed out P.W.1 spoken about the demand made by A.O. on 28.07.2000, 01.08.2000 and further during post-trap on 02.08.2000.

36) The evidence of P.W.5, the mediator, in substance relating to post-trap proceedings is that the DSP instructed P.W.1 to pay the bribe amount to A.O. only on further demand. They all started to office of A.O at 10-45 a.m. They reached Municipal Park, near Z.P. Office, at 11-00 a.m. and stopped the vehicles. The DSP reiterated his earlier instructions to P.W.1 about payment of amount and giving signal. P.W.1 proceeded to the office of Z.P. While he was proceeding, one person was coming on a scooter in his opposite direction and both of them talked with each other for 10 minutes and the said person who talked with P.W.1 went away on his scooter. P.W.1 came to DSP



and informed him that the person who proceeded on the scooter is the person, who demanded for illegal gratification and he replied that he brought the amount and he asked him to wait in the office since he is going to Treasury office and return back. The DSP instructed P.W.1 to go and wait there. Ultimately, at 5-10 p.m., they received pre-arranged signal from P.W.1 and they rushed to the office of A.O. The DSP asked P.W.1 to wait outside. Then they went into the office of A.O. and found A.O. there. The chemical test conducted to both hand fingers of A.O. yielded positive result. The DSP asked A.O. as to what happened and his version was recorded in the post- trap. A.O. stated that he received Rs.650/- towards interest component of hand loan of Rs.3,000/- taken by P.W.1 from him and DSP asked him whether there is any documentary evidence and he replied that there is no document. By saying so, he produced vat of currency notes of Rs.650/-. They were tallied with denomination mentioned in the pre-trap. Later, by providing alternative shirt to A.O., the chemical test was conducted to the inner linings of the shirt pocket of A.O. which yielded positive result. On questioning by the DSP, A.O. produced the file relating to P.W.1 and a letter in Ex.P.4. P.W.2 produced Ex.P.8, attendance register and further pay fixation arrears bill containing in a file.



P.W.2 produced Ex.P.5 receipt register. He produced Ex.P.5 and Ex.P.9 by going to the Audit Office, Z.P. Later, DSP confronted with the version of A.O with P.W.1 and P.W.1 repeated his version. This is the evidence of P.W.5 during post-trap.

37) The evidence of P.W.7, trap laying officer, is consistent with the things happened as spoken by P.W.5 during post-trap.

38) As evident from the denomination of currency notes as mentioned in pre-trap, they are found tallied with the denomination of currency notes whose numbers are mentioned in the post-trap. There is no dispute that the tainted amount was recovered from the possession of A.O. There is no dispute that A.O. dealt with the tainted amount with his both hands. It is not the case of A.O. that no chemical test was conducted to his both hand fingers and that no chemical test was conducted to the inner linings of his shirt pocket. Therefore, the fact that the amount was recovered from the possession of A.O. is not in dispute. According to P.W.1, he paid the amount to A.O. only in pursuance of further demand in the post-trap and in fact A.O. demanded him to pay the amount on 01.08.2000 when he met him at State Bank of India, Ongole. Hence, the demand, dated 01.08.2000 and the demand, dated 02.08.2000 are interlinked



with each other. So, the prosecution can prove the demand, dated 01.08.2000 by relying on the evidence of P.W.1 with reference to the post-trap.

39) The theory of the defence of A.O. is that when P.W.1 was in dire need of money in view of ill-health of his father, he arranged Rs.3,000/- to P.W.1 from D.W.1 and P.W.1 promised to pay the amount by October, 2000 and he demanded P.W.1 several times to pay the amount and there were also verbal exchanges in this regard, as such, P.W.1 bore grudge against him and implicated in a false case. His contention is that what he received from P.W.1 on the date of trap was only regarding interest part as on 30.07.2000 which was to be paid to D.W.1.

40) Now, the prime question to be considered here is as to whether the amount that was received by P.W.1 on 08.09.1999 from A.O. was the amount in consequence of the demand for bribe or towards the interest portion of the amount arranged by A.O. at the instance of P.W.1 by D.W.1. It is also well settled that A.O. can succeed in his defence by preponderance of probabilities. Keeping in view the evidence is to be appreciated.

41) It is no doubt true that during the course of cross examination, P.W.1 deposed that he took festival advances and



P.F. loan from their department after he joined in Madduluru. He also deposed that it is true that he obtained G.P.F. loan amount of Rs.4,400/- while he was working in Z.P. Office, Ongole. According to his cross examination, though he was working as Junior Assistant in Z.P. High School, Madduluru, but he was posted to Z.P. Office, Ongole on deputation as per the proceedings, dated 01.11.1999 and worked as such till 28.02.2000. Ex.D.1 was the deputation proceedings and Ex.D.2 was the cancellation of the deputation proceedings.

42) It is to be noticed that a public servant like P.W.1 may have benefits of availment of P.F. loan and Festival advances, etc. P.W.1 specifically denied in his cross examination that he was in dire need of money because of ill-health of his father. During cross examination, he deposed that his father opted voluntary retirement and he was given posting on compassionate grounds due to the ill-health of his father. His father continued to suffer ill-health even after he joined in the service. His parents are living with him. He denied that he was in financial troubles due to ill-health of his father and other family affairs and that he took loans and advances in the department. Witness volunteers that his father received his retirement emoluments. At the outset, simply because a public



servant was availing the benefits of festival advances and P.F. loans, etc., it cannot be said by any stretch of imagination that he is in dire need of money.

43) Apart from the above, the fact that the father of P.W.1 was suffering with ill-health does not leads to an automatic conclusion that P.W.1 was in dire need of money. Therefore, basing on the evidence only, A.O. is supposed to succeed in his defence. P.W.1 denied that he had acquaintance with A.O. and used to go to his house. He denied that he approached A.O. on 01.09.1999 during early hours at his house and requested him for a loan and A.O. said that he would try. He further denied that A.O. informed him that one Rayapati Kotaiah adjusted the loan of Rs.3,000/- and asked him to come to his house on 06.09.1999 and that he went to the house of A.O. along with his father and since he took his father for treatment on that day, from there they all went to the shop of Rayapati Kotaiah at about 8-30 a.m. and Rayapati Kotaiah paid Rs.3,000/- to A.O. and in turn A.O. paid the said amount to him and that he promised to repay the same within one month and that he went along with his father.

44) It is to be noticed that P.W.1 was working as Junior Assistant in Z.P. High School, Madduluru, Santhanuthalapadu





Mandal, prior to the so-called date of 01.09.1999. The evidence of P.W.1 is that he had no prior acquaintance with A.O. May be a fact that vide proceedings, dated 01.11.1999, A.O. was deputed to Z.P. High School, Ongole and worked there till 28.02.2000. Therefore, absolutely, A.O. failed to probabalize his defence theory that P.W.1 and he himself had prior acquaintance with each other prior to 01.11.1999.

45) As seen from Ex.P.3, post-trap proceedings, after recovery of the tainted amount from A.O., the DSP asked A.O. as to what happened. He claimed to have disclosed that what he received is only the interest amount on the loan amount of Rs.3,000/- from P.W.1. It is obviously missing from Ex.P.3, post-trap proceedings, that A.O. claimed before DSP that he was an intermediary for arrangement of loan to P.W.1 for a sum of Rs.3,000/- from Rayapati Kotaiah. On the other hand, when the DSP asked A.O. to show the proof of hand loan given by A.O. to P.W.1, he stated that he has no proof. Hence, A.O. was alleged to have claimed in the post-trap that he received Rs.650/- towards interest on the principal amount of Rs.3,000/- due by P.W.1 to him.

46) It is to be noticed that A.O. had sufficient time during post-trap to ponder over as to what type of version has



to be put up before the DSP during the further questioning. It is a case firstly A.O. was caught red handedly after accepting the bribe and thereafter his hand fingers were subjected to chemical test. Therefore, in the meantime, A.O. had sufficient time to invent a version to escape from the case. So, after due thinking only, he put-forth a version that he lent Rs.3,000/- to P.W.1 and P.W.1 paid interest of Rs.650/-. Therefore, if really he was an intermediary between P.W.1 and D.W.1 for arrangement of Rs.3,000/-, definitely, he would have revealed the same before the trap laying officer in the post-trap. Absolutely, P.W.5, a mediator, who acted for the first time in the ACB case, had no reason to depose false. He was not a stock witness to ACB. Neither the trap laying officer nor the mediator had any reason to distort the version of A.O. in the post-trap. A.O. did not disclose in the post-trap that he arranged loan of Rs.3,000/- from D.W.1 to P.W.1. Hence, what all he developed during the course of trial by examining D.W.1 and D.W.2 is only afterthought after laying some foundation in cross examination of P.W.1. It is the case of A.O. by virtue of the evidence of D.W.1 that P.W.1 promised to repay the amount of Rs.3,000/- to D.W.1 within one month and D.W.1 agreed the same. It is a case where P.W.1 worked in the Z.P. Office by virtue of the



proceedings, dated 01.11.1999 from 01.11.1999 to 28.02.2000. During the cross examination, it is suggested to P.W.1 that A.O. asked him to repay the amount of Rs.3,000/- in the first week of October, 2000 stating that Rayapati Kotaiah was demanding for repayment of Rs.3,000/- but he failed to pay the same and requested time for one or two months. The above said suggestion before P.W.1 is meaningless for the reason that when the date of trap was 02.08.2000, the suggestion put forth before P.W.1 as if A.O. asked him to repay the amount of Rs.3,000/- in the first week of October, 2000 cannot stand to any reason. It is not understandable how A.O. set forth such a defence. At one hand his contention is that the amount was supposed to be repaid by P.W.1 within one month from 08.09.1999. Before P.W.1 he contended that the amount was supposed to be repaid in the first week of October, 2000. The defence of A.O. as above runs contra with each other. Even according to A.O., he arranged a sum of Rs.3,000/- to P.W.1 from D.W.1 on humanitarian grounds when the father of P.W.1 was suffering with ill-health. Admittedly, there was no acquaintance between P.W.1 and D.W.1. A.O. failed to elicit any acquaintance between him and P.W.1 prior to 01.09.1999. The so-called loan was on 06.09.1999. In the absence of a version



by A.O. in the post-trap, revealing name of D.W.1 any amount of evidence let in during the course of trial is of no use.

47) Apart from that, the answers spoken by D.W.1 in cross examination means that he was doing a petty business and he had to pay the rentals, etc. for running STD and his income was meager. It is really doubtful as to whether with such a meager income he was having he ventured to pay the amount of Rs.3,000/- to P.W.1 with whom he had no acquaintance. Apart from this, there was no document between P.W.1 and D.W.1 or P.W.1 and A.O. to probabalize the defence theory. Any amount of evidence let in like by examining D.W.1 is of no use to the case of A.O. If the defence of A.O. is bonafide, he would have certainly revealed it to the trap laying officer about D.W.1 in the post-trap as a person from whom he arranged the money to P.W.1.

48) Coming to the evidence of D.W.2, A.O. examined him to probabalize the theory that there was a verbal exchange of words in loud voice between A.O. and P.W.1 as P.W.1 did not repay the amount. As seen from the evidence of D.W.2, he was not a witness to the so-called transaction involving P.W.1 and D.W.1 and A.O. According to D.W.2, P.W.1 worked on deputation in their office for a period of four or five months from



August, 1999 to January, 2000. He cannot say the exact period but it is four months. On one day he heard cries in the corridor of the office and he went there and there was a verbal altercation between A.O. and P.W.1 and when he asked as to what happened, A.O. said that he got obtained a loan from D.W.1 to P.W.1 for Rs.3,000/- and though P.W.1 promised to repay the same, but he did not repay and that D.W.1 demanded to repay the amount. During cross examination, he is not able to say the date of incident regarding the so-called altercation. The learned Special Public Prosecutor challenged the evidence of D.W.2 that A.O. never asked P.W.1 about repayment of money in a loud voice. It is very easy to examine a person like D.W.2. As this Court already pointed out, the very defence of A.O. was developed at the time of cross examination of P.W.1 and P.W.1 denied the same. Absolutely, the probabilities are not in favour of the case of A.O. It is rather improbable that D.W.1 could lend an amount of Rs.3,000/- to P.W.1 though he had no acquaintance. There was no close friendship between P.W.1 and A.O. Under the circumstances, absolutely, A.O. failed to probabalize his defence theory. No reliance can be placed upon the evidence of D.W.1 and D.W.2 in my considered view. P.W.1 had absolutely no reason to implicate A.O. falsely simply



because A.O. allegedly demanded P.W.1 to pay back the amount to D.W.1. The whole defence of A.O. appears to be improbable.

49) It is to be noticed that A.O. during cross examination of P.W.1 categorically admitted the arrival of P.W.1 when A.O. was going out at 10-30 a.m. or 11-00 a.m. P.W.1 denied that he stopped A.O., wished him and except general conversation, there was no mention about money at that time. It is to be noticed that the official favour in respect of the work of P.W.1 was pending with A.O. Even according to him, P.W.1 met him prior to 28.07.2000. Apart from it, P.W.1 allegedly wished him when he was going out. If really the loan theory set up by A.O. was true, definitely, he would have demanded P.W.1 to pay the loan amount due by him to D.W.1 when P.W.1 attended before him prior to the trap and on the date of trap. The very presence of P.W.1 in the office, when A.O. went out was testified by P.W.2. After completion of the cross examination by the learned defence counsel, when the Court below posed a question to P.W.2, he testified that P.W.2 had been waiting at the seat of A.O. from 11-00 a.m. to 5-00 p.m. continuously and he went out twice or thrice and come back. Therefore, the case of the prosecution that when A.O. went out, P.W.1 was asked to wait for arrival of A.O. is quietly established



from the evidence of P.W.1 and P.W.2. As this Court already pointed out official favour was pending with A.O. P.W.1 testified the demand made by A.O. on 28.07.2000, 01.08.2000 and 02.08.2000. The contention of A.O. is that he did not go to State Bank of India on that day. As this Court already pointed out the demand, dated 02.08.2000 was interlinked with the demand, dated 01.08.2000. The tainted amount was recovered from the possession of A.O. A.O. miserably failed to probabalize his theory. Hence, the evidence on record quietly proves the fact that A.O. demanded P.W.1 prior to the dates of trap and on the date of trap and accepted the amount of Rs.650/- towards bribe.

50) It is to be noticed that there is a presumption available to the case of the prosecution under Section 20 of the Prevention of Corruption Act.

**Section 20 of the Act, 1988, 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 inference of corruption may fairly be drawn.

51) In a land mark judgment, the Hon'ble Supreme Court in ***Neeraj Dutta v. State (Government of NCT of Delhi)***<sup>1</sup> (The Constitutional Bench), dealing with Section 20 of the Prevention of Corruption Act, held that upon proving all the foundational facts and further upon proving the allegations of demand, a legal presumption is to be raised in view of Section 20 of the Act that public servant had accepted or agreed to accept the gratification for doing official favour. It is no doubt

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<sup>1</sup> (2022) SCC OnLine SC 1724





true that the presumption under Section 20 of the Act is a rebuttal presumption. A.O. failed to prove the contrary.

52) So, the legal presumption contemplated under Section 20 of the Act further lends an assurance to the case of the prosecution as regards the charge under Section 7 of the P.C. Act. In my considered view, the Court below rightly believed the evidence let in by the prosecution. The act of A.O. in making demand to pay 10% of the arrears bill amount and consequently obtaining the amount from P.W.1 would prove the charges under Section 7 of the P.C. Act and also Section 13(2) r/w 13(1)(d) of the P.C. Act. The act of A.O. in obtaining an amount of Rs.650/- from P.W.1 by such demand would also amount to criminal misconduct within the meaning of Section 13(2) r/w 13(1)(d) of the P.C. Act. In my considered view, the learned Special Judge rightly appreciated the evidence on record and rightly held that the prosecution proved the charges against A.O. beyond reasonable doubt. The evidence on record warrants this Court to hold that the prosecution before the Court below categorically proved both the charges framed against A.O. beyond reasonable doubt. Hence, the judgment, dated 09.10.2006 in C.C.No.18 of 2001, on the file of Special Judge for



SPE & ACB Cases, Nellore, is sustainable under law and facts, as such, appeal must fail.

53) In the result, the Criminal Appeal is dismissed and the judgment, dated 09.10.2006 in C.C.No.18 of 2001, on the file of Special Judge for SPE & ACB Cases, Nellore, shall stand confirmed.

54) The Registry is directed to take steps immediately under Section 388 Cr.P.C. to certify the judgment of this Court to the trial Court on or before 12.07.2023 and on such certification, the trial Court shall take necessary steps to carry out the sentence imposed against the appellant (accused) and to report compliance to this Court.

55) Registry is directed to send copy of the order along with original record to the Court below on or before 12.07.2023.

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

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**JUSTICE A.V. RAVINDRA BABU**

Dt.06.07.2023.

Note:

**L.R. Copy marked.**

PGR



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

**CRL. APPEAL NO.1486 OF 2006**

Note:

Registry is directed to send copy of the order along with original record to the Court below on or before 12.07.2023.

**L.R. Copy be marked.**

**Date: 06.07.2023**

PGR