



**HIGH COURT OF ANDHRA PRADESH**  
MONDAY ,THE FIRST DAY OF MAY  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU**  
**CRIMINAL APPEAL NO: 1491 OF 2007**

**Between:**

1. SHAIK DARBAR BASHA, S/o S. Abdul Rasheed,  
Formerly Counseling Rehabilitation & Marketing Officer,  
O/o District Manager,  
A.P., Vikalangula Cooperative Corporation,  
Kadapa District.

**...PETITIONER(S)**

**AND:**

1. THE STATE OF AP REP BY ITS SPL. PP HYD., FOR ACB., rep. by its  
Spl. Public Prosecutor, for SPE & ACB.,  
High Court of A.P., at Hyderabad.

**...RESPONDENTS**

**Counsel for the Petitioner(s): M VENKATA NARAYANA**

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

**The Court made the following: ORDER**



## HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

\*\*\*\*

**CRIMINAL APPEAL No.1491 OF 2007****Between:**

Shaik Darbar Basha,  
S/o.S.Abdul Rasheed,  
Aged about 49 years,  
Formerly Counselling Rehabilitation  
and Marketing Officer,  
O/o.District Manager, Andhra Pradesh  
Vikalangula Co-operative Corporation,  
Kadapa.

....

Appellant

*Versus*

The State of AP,  
Rep. by Standing Counsel &  
Special Public Prosecutor for  
SPE & ACB Cases,  
High Court of A.P.  
Amaravathi.

....

Respondent

DATE OF JUDGMENT PRONOUNCED : 01.05.2023

**SUBMITTED FOR APPROVAL:****HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

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

---

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



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

**+ CRIMINAL APPEAL No.1491 OF 2007**

**% 01.05.2023**

**# Between:**

Shaik Darbar Basha, S/o.S.Abdul Rasheed,  
Aged about 49 years, Formerly Counselling  
Rehabilitation and Marketing Officer,  
O/o.District Manager, Andhra Pradesh  
Vikalangula Co-operative Corporation,  
Kadapa. ....

Appellant

*Versus*

The State of AP,  
Rep. by Standing Counsel &  
Special Public Prosecutor for  
SPE & ACB Cases,  
High Court of A.P.  
Amaravathi. ....

Respondent

**! Counsel for the Appellant** : Sri M. Ravindra,  
learned counsel, representing  
Sri M. Venkata Narayana,  
Learned Counsel.

**^ Counsel for the Respondent** : Sri S.M.Subhani,  
Learned Standing Counsel-  
cum-Special Public Prosecutor

**> Head Note:**

**? Cases referred:**

1. **1985 CrI.L.J. 1971**
2. **1996 CrI.L.J. 3638**
3. **2006 (1) ALT (CrI.) 114 (SC)**
4. **(1979) 4 SCC 172**
5. **(1997) 10 SCC 600**
6. **1987 CrI.L.J. 533**
7. **(2014) 2 SCC 1**
8. **(2022) SCC OnLine SC 1724**

This Court made the following:

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU****CRIMINAL APPEAL No.1491 OF 2007****JUDGMENT:**

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C'), is filed by the appellant, who was the Accused Officer (AO) in Calendar Case No.29 of 2004, on the file of the Court of Special Judge for SPE and ACB Cases, Nellore, (for short, 'the learned Special Judge'), challenging the judgment, dated 26.10.2007, whereunder the learned Special Judge found the AO guilty of the charges under Sections 7 and 13(2) R/w. Section 13(1)(d) of the Prevention of the Corruption Act, 1988 (for short, 'the PC Act'), convicted him under Section 248(2) Cr.P.C and, after questioning him about the quantum of sentence, sentenced him to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- in default to suffer Simple Imprisonment for one month for the charge under Section 7 of the PC Act and further sentenced him to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- in default to suffer Simple Imprisonment for one month for the charge under Section 13(2) R/w. Section 13(1)(d) of the PC Act. Both the above sentences shall run concurrently.



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

3. The State, represented by Inspector of Police, ACB, Kadapa District, Tirupati Range, filed charge sheet in Crime No.3/RCT-TCD/2003 under Sections 7 and 13(2) R/w. Section 13(1)(d) of the PC Act alleging, in substance, that the AO by name Shaik Darbar Basha, Counselling Rehabilitation and Marketing Officer (CRMO), Office of the District Manager, Andhra Pradesh Vikalangua Co-operative Corporation (for short, 'the Corporation'), Kadapa demanded and accepted bribe of Rs.2,000/- from LW.1 - Kondeti Subbaramaiah to do official favour *i.e.*, for release of loan amount of Rs.25,000/- to LW.4 – Kondeti Subbamma, wife of LW.1.

4. The case of the prosecution, according to the averments in the charge sheet, is that LWs.1 and 4 are the husband and wife and both of them are physically handicapped. LW.4 filed Ex.P-1 application for subsidy loan in the Corporation on 07.05.2002 for establishing a kirana shop. She submitted the necessary documents. LW.1 met the AO for several times and enquired about the loan of LW.4. AO told that Ex.P-1 was sent to the concerned bank for sanction of loan. On 09.12.2002, AO met LW.1 at his



house and informed that the loan of Rs.10,000/- was sanctioned to LW.4 by State Bank of India, Kadapa Branch and an amount of Rs.10,000/- was sanctioned by DRDA, Kadapa towards subsidy and the department has to sanction Rs.5,000/- as margin money and he has to process the file for sanction of Rs.5,000/- and to send the same to the Bank for release of the loan amount of Rs.25,000/-. For that, he demanded a bribe of Rs.3,000/-. LW.1 expressed his inability to pay the said amount as bribe. On 24.01.2003, LW.1 met the AO at the office of the Corporation and enquired about the loan of LW.4. AO reiterated his earlier demand of bribe. LW.1 expressed his inability to pay such huge amount as bribe. AO reduced the bribe amount to Rs.2,000/- and told LW.1 to be ready with the bribe amount and he will visit the house of LW.1 on 29.01.2003 at 10:00 a.m. to collect the same. AO also instructed LW.1 that the work will not be done unless the bribe amount is paid to him. As there was no other go, LW.1 agreed to pay the bribe amount.

LW.1, who was not willing to pay the bribe amount, gave Ex.P-2 report on 28.01.2003 to LW.15 - S. Seshagiri Rao, the then DSP, ACB, Tirupati Range who in turn registered the same as a case in Crime No.3/RCT-TCD/2003 under Section 7 of the PC Act on 29.01.2003 at 07:00 a.m. and took up investigation. He



conducted pre-trap proceedings in the presence of LW.2 – P. Ravindranath Reddy, Mandal Engineering Officer of the office of Mandal Parishad Development Officer, Kadapa and LW.3 – K. Pardhasaradhi, Junior Assistant of the Office of Assistant Director of Seri Culture, Kadapa under the cover of Ex.P-5. At that time the mediators read over Ex.P-4 - carbon copy of FIR to LW.1 and ascertained from him that he gave such report. LW.1 produced the intended bribe amount of Rs.2,000/- and the serial numbers of the same were noted by the mediators. At that time LW.1 produced Ex.P-3 - xerox copy of sanction letter by the SBI, Kadapa which was given to him by AO. Thereafter, the amount was applied with phenolphthalein powder and the same was kept with LW.1. There, LW.15 collected MO.1 and MO.2 samples of sodium carbonate powder and phenolphthalein powder used at that place. The DSP instructed LW.1 not to pay the amount till there is further demand by AO and that after such demand and acceptance of bribe amount by AO, LW.1 has to come out of his house and climb his tricycle and give signal by wiping his face thrice with his handkerchief to HC – Venkataswamy, who in turn was directed to relay the same to LW.16 – J. Sreenivasulu Reddy, who in turn was instructed to relay the signal to the remaining raid party. LW.15 also instructed LW.3 to follow LW.1 to his house



and be present there unobtrusively, witness the transaction and hear the conversation between LW.1 and AO.

Thereafter, the raid party went to the house of LW.1. LW.3 was in the northern side room. LW.1 and LW.4 were in their house. At 10:20 a.m. AO came to the house of LW.1. LW.3 came out of the northern side room and stood in the verandah of LW.1 and peeped into the room of LW.1. There AO demanded and accepted the tainted amount of Rs.2,000/- from LW.1 and kept the same in his right side pants pocket and told LW.1 to wait outside on the ground that he has to talk with LW.4. LW.3 witnessed the incident and heard the conversation between AO and LW.1. Thereafter, LW.1 came out of the house and gave signal. DSP and other raid party went there. Both the hands of AO were tested in sodium carbonate solution and both gave positive result. Thereafter, the AO produced the amount. The serial numbers of the currency notes were compared with the serial numbers already noted in Ex.P-5 and both were tallied with each other. The inner linings of the pants pocket of AO were tested in sodium carbonate solution. It gave positive result. The resultant solutions were transferred into separate bottles, sealed and labeled. They are MO.3, MO.4 and MO.6. MO.5 – currency notes of Rs.2,000/-, MO.7 – pant of AO was seized by LW.15. LW.15





collected MO.8 – sample of sodium carbonate powder used at that place. LW.15 enquired AO and AO stated that he collected the money from LW.1 as margin money dues, but not as bribe. He further stated that LW.1 was granted loan under Self-Employment Scheme in the year beyond 1989 and that LW.1 was due of the margin money to the Corporation and the same was recovered by him as per the instructions of the Managing Director. DSP seized the file Ex.P.6, which was with AO. Ex.P-6 file was containing Ex.P.1 and enclosures. Thereafter, LW.8 - N. Eswar Reddy, Photographer, was called and the said Photographer took photos - Exs.P.7 to P.10. LW.16 prepared Ex.P.11 – rough sketch of the scene of offence. Thereafter, DSP enquired LW.1, LW.3 and LW.4 and their versions were noted in Ex.P.12 - panchanama.

Thereafter, the raid party went to the office of AO and there the DSP seized Ex.P.13 – Attendance Register, Ex.P.14 – Subsidy Sanction proceedings 2002-03, Ex.P.15 - letter No.C1/125/2002, dt.30.12.2002 of Assistant Director of the Corporation, addressed to PDDRDA for sanction of subsidy. Ex.P.16 – Register of submitting the applications reported to Bank from 01.04.2000 to 23.01.2003, in which there is Ex.P.16(A) – relevant entry in page No.950, Ex.P.17 – loan documentation file concerned to Loan Ledger Membership. The above said documents were produced by



the District Manager of the Office and they were seized by LW.15. DSP, ACB enquired LW.6 - S.G.F. Stephenson, District manager, LW.5 - Smt. Mannuru Ammanamma, Junior Assistant in the Corporation and both of them stated that since 1991 they were not issuing notices to the persons, who did not pay the margin money. The above said documents were seized and above versions were noted in Ex.P.18 - panchanama. Thereafter, the raid party went to the house of AO and searched his house but found no incriminating material. Ex.P.19 is the formal search list. LW.15 submitted the material objects and records to the trial Court. He handed over further investigation to LW.16.

LW.16 got recorded the 164 Cr.P.C. statement of LW.1 through Spl. Judicial First Class Magistrate for Proh. & Excise Offences, Kadapa. He examined LW.5, LW.6, LW.7 - M.J. Samuel, Assistant Manager, Development Banking Division, SBI, Kadapa, LW.8 - N. Eswar Reddy of Malli Photo Studio and Video, LW.9 - M. Gopal Reddy, Assistant Project Officer, DRDA, Kadapa, LW.10 - Korivi Narayana, whose house is opposite to the house of LW.1, LW.11 - Naguri Rajaiah and LW.12 - Cheppali Venkateswarlu, beneficiaries of the Corporation. LW.16 collected Ex.P.24 - Savings Bank Account of LW.1 and LW.4 of Syndicate Bank, Kadapa. Thereafter, LW.16 served a notice dt.07.03.2003 to AO calling for



his explanation. On that AO submitted a letter on 10.03.2003 requesting LW.16 to supply copies of documents. Then LW.16 sent a letter to AO to come to Office and to verify the documents. But AO did not turn up. After completion of investigation, LW.16 submitted final report to Director General, ACB for sanction orders. LW.13 – B.D.V. Prasad Murthy, Managing Director of the Corporation, Hyderabad issued Ex.P.14 – sanction order to prosecute the AO. Thereafter, LW.16 filed charge sheet.

5. The learned Special Judge took cognizance of the case under the above provisions of law and, after appearance of the AO, by complying the necessary formalities under Section 207 Cr.P.C, framed charges under Sections 7 and 13(2) R/w. Section 13(1)(d) of the PC Act against the AO, read over and explained the same to him in Telugu for which he pleaded not guilty and claimed to be tried.

6. To bring home the guilt of the AO, the prosecution before the Court below, examined PWs.1 to PW.9 and got marked Exs.P-1 to P-15, P-15(A), P-16, P-16(A), P-17, P-17(A), P-17(B) and P-18 to P-24.



7. After closure of the evidence of the prosecution, AO was examined under Section 313 Cr.P.C with reference to the incriminating circumstances appearing in the evidence let in by the prosecution, for which he denied the same and got filed certain documents and got marked as Exs.D-1 to D-25 and also filed his statement under Section 313 Cr.P.C.

8. The learned Special Judge, on hearing both sides and after considering the oral and documentary evidence on record, found the AO guilty of the charges, as above, and convicted and sentenced him as above.

9. Felt aggrieved of the same, the unsuccessful accused in C.C. No.29 of 2004, on the file of the Court of Special Judge, Nellore filed the present Criminal Appeal.

10. Now, in deciding this Criminal Appeal, the points that arise for consideration are:

- 1) Whether the prosecution before the Court below proved that AO is a public servant within the meaning of Section 2(c) of the PC Act and whether the prosecution obtained a valid sanction order to prosecute him for the charges framed?



2) Whether the prosecution before the Court below proved pendency of official favour pertaining to the work of PW.1 with AO prior to the date of trap and on the date of trap?

3) Whether the prosecution before the Court below proved that AO demanded PW.1 to pay the bribe prior to the date of trap and on the date of trap, accepted the said amount from PW.1 towards bribe within the meaning of Section 7 of the PC Act and by doing so, he obtained any pecuniary advantage within the meaning of Section 13(1)(d) R/w. Section 13(2) of the PC Act?

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

11. **POINT No.1**: In the grounds of Appeal, the appellant challenged the findings of the Court below on the ground that the learned Special Judge erred in holding Ex.P-22 – sanction order is valid. The contention of learned counsel for the appellant in the grounds of Appeal is that in view of the admissions made by PW.7,



the DG, ACB sent the draft sanction order along with the final report as such the sanctioning authority issued Ex.P-22 basing on the draft sanction order without any application of mind and the Court below failed to look into the same.

12. In the light of the above, now it is appropriate to refer the evidence of PW.7. Coming to the evidence of PW.7, he is a Junior Assistant in the office of Managing Director, A.P. Vikalangu Corporation, Hyderabad. Since two months, he was looking after the Establishment Section. Prior to that, he used to look after the files under which sanction orders are issued to prosecute the employees of their Corporation. He brought the file under which sanction order is issued to prosecute the AO. Their Managing Director authorized him to give evidence. DG, ACB sent copies of FIR, Mediators Reports 1 and 2, final report and gist of the statements of the witnesses. After processing of the file, it was sent to the Legal Officer and thereafter to B.D.V.Prasad Murthy, the then Managing Director of his Corporation. Murthy issued Ex.P-22 sanction order to prosecute the AO. He can identify his signature. Ex.P-22 contains the signature of Murthy. During cross-examination, he deposed that he is giving evidence basing on the record. He denied that he is not competent to speak about Ex.P-22



and Ex.P-22 was issued without application of mind as such it is invalid.

13. Firstly, this Court is of the considered view that during the course of cross-examination of PW.7, AO did not dispute that PW.7 worked under the then Managing Director – Murthy as such he can identify his signature. So, PW.7 is competent to identify the signature of Murthy. As seen from Ex.P-22, the sanctioning authority looked into the allegations in the light of the report lodged by PW.1, further pre-trap and post-trap proceedings. Further, it literally reads that the sanctioning authority looked into final report, copy of FIR, copy of mediator reports, statements of the witnesses, looking into the circumstances of the case and on satisfaction arrived, came to a conclusion that AO should be prosecuted in a Court of law for the offences under Sections 7 and 13(2) R/w. Section 13(1)(d) of the PC Act. So, Ex.P-22 speaks about the material sent by the DG, ACB and application of mind by the sanctioning authority. It is no doubt true that during cross-examination, PW.7 deposed that in Ex.P-22 file there is a draft sanction order sent by the DG, ACB. It is to be noticed that the DG, ACB sent the draft sanction order for the notice of the sanctioning authority with regard to the form in which sanction is



to be issued. It does not make Ex.P-22 invalid. What is criterion is the application of mind by the sanctioning authority. Ex.P-22 discloses application of mind by the sanctioning authority.

14. Before the Court below, the AO canvassed a contention by relying upon the decision of the High Court of Orissa in ***Md. Tafajul Rahman v. State of Orissa***<sup>1</sup> and a decision of this Court in ***CBI/SPE, Hyderabad v. P. Muthuraman***<sup>2</sup> that Ex.P-22 is invalid. Those are the cases where there was no application of mind and further there was no evidence as to the material perused by the sanctioning authority. The learned Special Judge distinguished the facts of those cases with that of the present one. The learned Special Judge relying on the decision of the Hon'ble Apex Court in ***State, through Inspector of Police, A.P. v. K. Narasimhachary***<sup>3</sup>, wherein it was held that the order of the authority sanctioned can be proved (1) by producing the original sanction, which itself contains the facts constituting the offence and the grounds of satisfaction or (2) by adducing evidence *alinude* to show that the facts were placed before the Sanctioning Authority and the satisfaction arrived at by it, held that Ex.P-22

---

<sup>1</sup> 1985 CrI.L.J. 1971

<sup>2</sup> 1996 CrI.L.J. 3638

<sup>3</sup> 2006 (1) ALT (CrI.) 114 (SC)





discloses perusal of the material by the sanctioning authority as such it is valid one.

15. In **Narasimhachary** (3<sup>rd</sup> *supra*), the Hon'ble Apex Court by relying on the decision in **Mohd. Iqbal Ahmed v. State of Andhra Pradesh**<sup>4</sup> held the manner of proof of sanction as above. Under the circumstances as PW.7 was competent to identify the signature of the sanctioning authority and as Ex.P-22 discloses that necessary material was forwarded by the DG, ACB to the sanctioning authority and as the sanctioning authority having gone through the said material issued the sanction order, it cannot be held that Ex.P-22 is invalid. In my considered view, the prosecution before the Court below proved a valid sanction under Section 19 of the PC Act so as to prosecute the AO under Sections 7 and 13(2) R/w. Section 13(1)(d) of the PC Act. The point is answered accordingly.

16. **POINT Nos.2 to 4**: Sri M. Ravindra, learned counsel, representing learned counsel for the appellant, canvassed the case of the prosecution in brief and would contend that the AO was Counselling Rehabilitation and Marketing Officer in the Office of District Manager of the Corporation. The beneficiaries under the

---

<sup>4</sup> (1979) 4 SCC 172



Corporation are physically handicapped persons. In the light of the above, nature of the duties of AO are somewhat different. As admitted by PW.5, as part of duty and as the beneficiaries are physically handicapped, AO has to go the beneficiaries for counselling, documentation and for recovery of loan and in that view of the matter only AO visited the house of PWs.1 and 3 on the date of trap, that too on their request to collect the previous dues relating to margin money of the year 1986 only. So, the presence of AO on the date of trap at the house of PW.1 and PW.3 was not with any *mala-fide* intention. The office of AO received Ex.P-1 from PW.3 on 07.05.2002 and it was duly forwarded to proper authorities. In the report lodged by PW.1 under Ex.P-2, there was no date of demand of alleged bribe. According to Ex.P-3, the State Bank of India sanctioned the loan amount to PW.3 on 09.12.2002 only. PW.1 deposed that on 09.12.2002 itself AO came to their house and demanded the bribe of Rs.3,000/-. According to the evidence of PW.4 and PW.5, they handed over Ex.P-3 proceedings to AO on 13.12.2002. So, it was rather improbable that AO could visit the house of PW.1 and PW.3 on 09.12.2002. By 09.12.2002, AO was not capable of doing any official favour. PW.1 deposed deliberately attributing the demand against AO on 09.12.2002. By that date, there was no official favour pending. The evidence of



PW.4 and PW.5 disproves the case of the prosecution that on 09.12.2002, AO proceeded to the house of PWs.1 and 3 and demanded the bribe. The question of his going to the house of PWs.1 and 3 does not arise because by then, he did not receive Ex.P-3.

17. He would further contend that the prosecution has also alleged that on 24.01.2023 when PW.1 went to the Office of AO and met him, he again demanded the bribe amount as that of Rs.2,000/-. As admitted by PW.1 during cross-examination AO shown PW.1 as defaulter as he committed default several times with regard to the previous loans. Apart from this, on one occasion, PW.1 was not sanctioned with the loan under NHFDC. So, PW.1 bore grudge against AO thinking that AO was responsible for not sanctioning of that loan. Apart from this, AO shown PW.1 as defaulter consistently in the relevant register maintained *i.e.*, the reason why PW.1 falsely implicated the AO in this case. He would contend further that on the date of trap, PW.1 informed AO through landline that if he comes to their house on 29.01.2003 he will pay some margin money towards earlier dues of the loan pertaining to the year 1986 as such AO visited the house of PW.1 and also carried the documents pertaining to the



request of PW.3 under Ex.P-1 as such he was trapped falsely. PW.1 categorically admitted about the non-payment of margin money of the year 1986 till the date of trap. The said due of Rs.2,000/- coupled with the interest thereon was not in dispute. So, when PW.1 expressed his intention to pay the part of the above dues, AO went to the house of PW.1 and collected the same and within no time without allowing AO even to issue a temporary receipt, he was trapped. PW.2 was a stock witness, who obliged the ACB officials to support the case of the prosecution as accompanying witness and as having witnessed the events between AO and PW.1. In the post trap, PW.2 claimed that he witnessed the events by remaining in verandah but in the rough sketch no such verandah was shown. So, without witnessing anything, he claimed as if he witnessed the events between PW.1 and AO during the post trap proceedings.

18. He would further contend that according to the case of the prosecution, PW.1 and PW.3 are the husband and wife. Their answers in cross-examination prove that in Ex.P-1 PW.3 did not mention the name of PW.1 as husband. PW.1, who was working as an Attender in MDO Office Rajampet, did not show the name of PW.3 in the Service Register as his wife and on the other hand he



has shown the name of another woman as his wife. Though PW.1 claimed that he married PW.3 without getting any divorce *etc.*, but it is not at all proved. So, when PW.1 and PW.3 were not the husband and wife, PW.1 had no *locus-standi* to lodge Ex.P-2 report against AO. The conduct of PW.1 is such that he was a chronic defaulter and AO was duty bound to show him as defaulter and PW.1 eventually trapped AO by asking AO to come to his house to collect earlier dues of Rs.2,000/- under margin money for the loan availed in the year 1986. He would further contend that as on 09.12.2002, there was no official favour of PW.1 pending with AO and there was no demand of bribe on that day and further the evidence of PW.1 and PW.3 with regard to the allegations of demand of bribe is not believable as PW.1 was a chronic defaulter who was shown in the relevant register as defaulter by AO as such it is un-safe to believe their evidence. The entire amount that was received by AO from PW.1 was only relating to part of earlier dues of margin money in connection with the loan of the year 1986. AO spontaneously, when he was questioned by the DSP, ACB, revealed in the post trap proceedings that he received Rs.2,000/- from PW.1 as margin money but not as bribe. The evidence of PW.5 reveals that AO was competent to receive the amounts for loan recoveries by visiting the houses of the beneficiaries. Learned



counsel for the appellant in support of his contentions relied upon the decisions of the Hon'ble Apex Court in ***Mohmoodkhan Mahboobkhan Pathan v. State of Maharashtra***<sup>5</sup>, ***Bal Krishan Sayal v. State of Punjab***<sup>6</sup> and ***Lalita Kumari v. Government of Uttar Pradesh and others***<sup>7</sup>. He would further contend that a duty was cast upon the DSP, ACB to conduct preliminary enquiry basing on the contents in Ex.P-2 and according to the evidence of PW.8, the DSP, ACB he conducted discreet enquiry and neither Ex.P-2 nor the FIR would reveal the same as such it is also fatal to the case of the prosecution. With the above contentions, he would submit that the prosecution failed to prove the charges before the Court below beyond reasonable doubt, but the learned Special Judge on erroneous appreciation of the facts and law convicted and sentenced the appellant as such the judgment of the learned Special Judge is liable to be set-aside by acquitting the appellant of the charges.

19. Sri S.M.Subhani, learned Standing Counsel-cum-Special Public Prosecutor for ACB, appearing for the respondent-State, would contend that PW.3 submitted an application under Ex.P-1.

---

<sup>5</sup> (1997) 10 SCC 600

<sup>6</sup> 1987 CrI.L.J. 533

<sup>7</sup> (2014) 2 SCC 1



PW.1 and PW.3 are the husband and wife affected with Polio and they are physically handicapped. There was no dispute about receipt of Ex.P-1 application of PW.3 by the AO and sending of the application under Ex.P-1 by the AO to his superior authorities. State Bank of India on 09.12.2002 issued the proceedings sanctioning the loan, out of which the subsidy amount is Rs.10,000/- and margin money is Rs.5,000/-. It is the specific case of prosecution that AO brought copy of that order and shown to PW.1 at his house and demanded bribe of Rs.3,000/-. PW.1 categorically testified that AO visited his house on 09.12.2002 and shown the copy of loan sanction order. During the course of cross-examination it was not denied. Though on record AO came into possession of the documents from PW.4 and PW.5 on 13.12.2002 but the evidence of PW.1 goes to prove that AO came to their house on 09.12.2002 and shown the copy of the order and demanded bribe. Even otherwise, AO was the proper person to process the request of PW.3 and even according to him, he was authorized to visit the house of PW.1 and PW.3 to collect necessary papers as such prosecution before the Court below proved pendency of the official favour with AO as on 09.12.2002.



20. He would further contend that further allegation is that on 24.01.2003 when PW.1 went to the office of AO, AO demanded him to pay the bribe of Rs.2,000/- and by stating that he would come to the house of PW.1 while going to his office on 29.01.2003 and would collect the amount. This narration was there in Ex.P-2 report and it is also deposed by PWs.1 and 3. The prosecution adduced convincing evidence to prove pendency of official favour and demand made by AO on 09.12.2002 and 24.01.2003. PW.1 – *de-facto* complainant and PW.2, accompanying witness and mediator, further deposed about the demand made by AO on 29.01.2003 during the post trap to pay a sum of Rs.2,000/- as bribe and payment of the same by PW.1 to AO and later recovery of the same. Their evidence is quite consistent in this regard. The chemical test conducted to both hand fingers of AO yielded positive result. PW.1 and PW.3 withstood the cross-examination. Before the Court below, the validity of the marriage between PW.1 and PW.3 was not supposed to be proved. It is sufficient to establish that they are residing under one roof as husband and wife. There is no dispute about the visit of AO to the house of PW.1 and PW.3 when they were residing together. Recovery of the tainted amount is admitted. AO set up a false defence that what he received from PW.1 was dues of margin money of the year





1986. He was not supposed to collect such amount without there being any receipt. It is not his case that he carried any receipt book to the house of PW.1 and PW.3. Even according to the evidence of PW.5, whenever AO collects any amount at least he was supposed to issue temporary receipt. So, the plea of the AO that he collected the amount of Rs.2,000/- towards margin money dues of the year 1986 is not tenable. The fact that Ex.P-6 was seized from AO during the post trap means that AO went to the house of PW.1 in connection with official favour only. The Court below with cogent reasons believed the case of the prosecution as such Appeal is liable to be dismissed.

21. In the light of the above contentions advanced, firstly the Court has to decide the pendency of official favour of PW.1 and PW.3 with AO prior to the trap and on the date of trap. PW.1 deposed that he is an Attender in the office of MDO, Rajampet. K. Subbamma - PW.3 is his wife. His both legs were Polio affected. His wife was also affected with Polio to her legs. Both of them are physically handicapped. Previously, they used to run STD Booth at Kadapa Town. As the STD Booth owner vacated them from the said site, they had no work. He got applied through his wife for a subsidized loan to the Assistant Director, A.P. Handicapped Co-



operative Corporation for running a kirana shop. He submitted medical, income and residential certificates of his wife. Ex.P-1 is the application along with enclosures. AO is Counselling Rehabilitation and Marketing Officer in the Corporation. They met AO several times. AO revealed that their application was forwarded to the SBI and DRDA and the loan amount would be sanctioned. On 09.12.2002, AO came to their house and informed them that SBI sanctioned a loan of Rs.10,000/- and DRDA sanctioned Rs.10,000/- as subsidy and if the Corporation sends Rs.5,000/- as margin money, the Bank would give Rs.25,000/- to them and for doing the said work, AO demanded Rs.3,000/- as bribe. They expressed their inability to do so. He has shown the letter of Bank and sanction order of the DRDA. AO told them that if the said amount was not given the loan will not be granted. On 24.01.2003, he (PW.1) went to the office of AO and met him and at that time AO told him that unless the bribe amount is given, his work will not be done. AO demanded him to pay at least Rs.2,000/- as bribe. AO told him that on 29.01.2003 while going to his office he would come to their house and then he (PW.1) has to pay the said amount. So, he thought of to give a report to ACB Officials. On 28.01.2003, he presented Ex.P-2 report to the DSP, ACB. He further spoken about the pre-trap proceedings on



29.01.2003 and further post trap proceedings. His evidence with regard to pendency of the official favour as on 29.01.2003 is that AO came to their house on his motorbike on 29.01.2003 and he stopped the vehicle and came into his house. AO enquired PW.1 whether he secured the bribe amount. He answered in an affirmative. Then, he demanded PW.1 to pay the bribe amount. While giving the amount PW.1 told to AO that till the loan is sanctioned he is responsible and so saying he paid the amount to AO. AO received the amount with his right hand, counted the same with his both hands and kept it in his right side pant pocket. AO asked him to go outside as he has to talk something with his wife and he came out and gave a pre-arranged signal. ACB Party came into his house and asked PW.1 not to come inside till he was called by them. Two hours thereafter he was called inside of the house and he was enquired what happened and he narrated the facts.

22. Coming to the evidence of PW.3, the applicant under Ex.P-1, who claimed to be the wife of PW.1, she deposed about her application under Ex.P-1. According to her, they met AO in his office who told her that he would come to their house after one day after they met the AO. When he came to their house he told them



that the margin money was sanctioned but subsidy was not sanctioned and for that he demanded a bribe of Rs.3,000/-. They expressed their inability to do so. Her husband, PW.1 went to the office of AO and AO reiterated his demand. AO told her husband to pay at least Rs.2,000/- and he would come to their house on 29.01.2003. She advised her husband to give report to ACB. On 29.01.2003, AO came to their house and sat on a chair. Another person was there in the vacant space by holding a rafter. AO enquired them as to whether they are ready with the bribe. Her husband gave Rs.2,000/- to AO. AO received the same with his right hand, counted the same with his both hands and kept the same in his right side pant pocket. Then her husband went outside. In the meanwhile, ACB officials came there. DSP, ACB examined her.

23. PW.2, the mediator to the pre-trap and post-trap proceedings insofar as the seizure of documents is concerned, testified that during the post trap after AO was trapped in the house of PW.1, after he accepted the bribe amount of Rs.2,000/- DSP, ACB seized Ex.P-6 file which is Ex.P-1 and enclosures from the custody of AO. He further testified about seizure of certain documents after going to the office of AO.



24. Coming to the evidence of PW.4 and PW.5, who are examined by the prosecution regarding the procedural aspects to process the application of PW.1, PW.4 deposed that the procedure of processing the loan application of a handicapped person is that after they receive the application they would enter the same in the loan application receiving register (Ex.P-16). They will send the same to the concerned Bank for issuance of loan sanction letter. After receipt of provisional sanction from the Bank, they would send the file to the Counselling Rehabilitation and Marketing Officer for obtaining documents. AO is the CRMO. After documentation, AO will submit the same to the District Manager. Then, they would circulate the file to the Joint Collector. Application of PW.3 was received to their office on 07.03.2002. The Junior Assistant, in charge of the Register entered the same in Ex.P-16 register. The relevant entry is Ex.P16-A. Then the application was sent to SBI, Kadapa Main Branch on the same day *i.e.*, on 07.03.2002. The Bank sent original provisional sanction letter on 09.12.2002, Ex.P-20. They received the same on 10.12.2002. They entrusted the file to AO on 13.12.2002. From then the file was with AO till the date of trap.



25. According to the evidence of PW.5, Ex.P-1 was application of PW.3 received on 07.05.2002 and it was entered in Ex.P16-A register and was sent to SBI, Kadapa. They received Ex.P-20 consent letter from the Bank on 10.12.2002. They handed over the file to AO on 13.12.2002 for documentation, subsidy and margin money. From then the file was with AO till the date of trap. DRDA sanctioned subsidy of Rs.10,000/-. Till the entire amount including the loan amount, margin money and subsidy amounts are paid to the applicant, file will be with the AO.

26. PW.8, the Investigating Officer and Trap Laying Officer, spoken about the seizure of Ex.P-6 file at the house of PW.1 and PW.3 from the custody of AO and further certain documents at the office of AO.

27. During cross-examination, PW.1 deposed that in his Service Record the name of his wife is noted as Venkatamma. Witness says that Venkatamma is his first wife. He married her in the year 1984. He has one daughter and two sons through Venkatamma. Their particulars are also noted in the service record. He married LW.4 – Subbamma in the year 2001 at Tirumala. There is no documentary proof to that effect. By the time of his second marriage, his first wife was alive and even now she is alive. He did



not inform to the Government that LW.4 – Subbamma is his second wife. In Ex.P-1 application, LW.4 - Subbamma even did not state her husband's name but only stated her father's name. He does not know whether Subbamma married one Chenchu Nagalla Subbarayudu on 29.06.1999 and the same was registered with the Registrar of Marriages, Kadapa. He does not know whether Subbamma and Subbarayudu married under the Special Marriage Act. He denied that he knows the marriage of Subbamma with Subbarayudu.

28. Coming to the evidence of PW.3 in cross-examination, she deposed that she married PW.1 on 06.03.2001 at Tirumala. She does not know the *kalyanamandapam* in which her marriage was performed. She has no proof to prove the marriage with PW.1. Subbarayudu is her first husband. It was registered before the Joint Sub-Registrar, Kadapa on 29.06.1999. She obtained divorce from her first husband by lodging a complaint in Taluq police station. Her first husband gave an undertaking that he has no connection with her.

29. By virtue of the above answers elicited from PW.1 and PW.3, the contention of the appellant is that as PW.1 and PW.3 were not the real husband and wife, PW.1 had no *locus-standi* to lodge



Ex.P-1. It is to be noticed that according to Ex.P-2, report lodged by PW.1, and the evidence of PW.1 and PW.3, their case is that they are husband and wife respectively. Both are claiming that they got married and further clearly admitted that they have first wife and first husband respectively. They did not file any proof of divorce etc. However, while deciding a case under the PC Act, with the set of allegations like in Ex.P-2, the Court below was not supposed to look into or was not supposed to adjudicate as to whether the marriage between PW.1 and PW.3 is valid. There is no denial of the fact that PW.1 and PW.3 are residing as husband and wife under a single roof. Even according to the case of AO, it is AO who visited the house of PW.1 and PW.3, even according to the admissions made by him at the time of trap. So, when PW.1 and PW.3 were residing as husband and wife, absolutely, PW.1 had *locus-standi* to espouse the cause of PW.3 under Ex.P-1. Hence, the contention of AO that PW.1 has no *locus-standi* to lodge Ex.P-2 is not tenable.

30. Admittedly, according to Ex.P-3, it was the letter issued by the SBI on 09.12.2002. As seen from Ex.P-2, there was a whisper that AO came to the house of PW.1 and PW.3 and shown the letter, dated 09.12.2002 and demanded bribe of Rs.3,000/-.





According to the evidence of PW.1, it was on 09.12.2002 AO came to their house and shown the letter of sanction granted by the SBI. It is no doubt true that according to the evidence of PW.4 and PW.5, they received copy of Ex.P-3 on 10.12.2002 and handed over the same on 13.12.2002. Basing on the above, the contention of AO is that by 09.12.2002 no official favour was pending with him as such allegations of demand and bribe as on that date proved to be false.

31. To appreciate the said contention, it is pertinent to look into the crucial answers spoken by PW.1 during cross-examination. During cross-examination, PW.1 deposed that it is true that AO is Counseling Rehabilitation and Marketing Officer and the beneficiaries being physically handicapped, he has to go to the house of beneficiaries for recovery of the loan amounts. Witness volunteers that though AO is having such duty, he never demanded him to pay the loan amount and on the other hand he was informing him and other physically handicapped persons to apply for loans under various schemes and that he will look after sanctioning of the loan amounts and requesting the persons to pay something to him. He admitted that he did not state the said allegations either in Ex.P-2 report or in his 161 and 164 Cr.P.C.



statements. It is to be noticed that during the probing cross-examination made by AO when PW.1 deposed such an answer, it cannot be taken as an improvement or contradiction. It is not as if PW.1 developed the case during chief-examination, though it was not there in Ex.P-2 or in his 161 or 164 Cr.P.C. statements. The answers that are elicited from the mouth of a particular witness cannot be taken as omissions. The spontaneous answer spoken by PW.1 goes to reveal that AO was going around the physically handicapped persons and asking them to apply for loans with an assurance that he will look after sanctioning of the loan amounts and further used to request them to pay something to him. So, it is AO who elicited such answers during cross-examination of PW.1 which reveals that AO was fond of money. If that be the case, a person like AO, who was fond of money, when he forwarded Ex.P-1 to the Bank would certainly be eager to know the status of the application. The sanction order under Ex.P-3 is dated 09.12.2002. So, AO having knowledge of Ex.P-3 ventured to go to the house of PW.1 and PW.3 on 09.12.2002 though on record he came into possession of the documents handed over by PW.4 and PW.5 on 13.12.2002. But according to the evidence of PW.1, AO has shown the copy of sanction letter to him on 09.12.2002. During the course of cross-examination of PW.1 nothing was suggested to



PW.1 that on 09.12.2002 AO did not visit the house of PW.1 and did not show the copy of the sanction letter. So, in the circumstances it was not difficult for AO to get a copy of Ex.P-3 directly from the Bank on 09.12.2002. Under the circumstances, the contention of AO that no official favour in respect of the work of PW.3 was pending with him as on 09.12.2002 cannot stand to any reason.

32. The further evidence of PW.1 is that on 24.01.2003 when he went to the office of AO, he demanded a bribe of Rs.2,000/-. Even according to the admissions made by AO and the evidence of PW.4 and PW.5 by 13.12.2002 AO was in possession of Ex.P-3 and consequential documents. So, as on 24.01.2003 also official favour in respect of PW.1 was pending with AO.

33. There is no denial of the fact that the Investigating Officer seized Ex.P-6 during the post trap from the custody of AO in the house of PW.1 and PW.3. Ex.P-6 contains Ex.P-1 file and its enclosures. So, undoubtedly, as on the date of trap, official favour in respect of the work of PW.1 was pending with AO.

34. The contention of AO is that as PW.1 was a chronic defaulter, his evidence is not believable. It is to be noticed that



during cross-examination AO elicited certain answers with regard to due of Rs.2,000/- by PW.1 under margin money in respect of the loan of 1986 and it will be appreciated hereafter while looking into the defence theory that what AO received is only that amount.

35. Turning to the contention of AO that PW.1 and PW.3 bore grudge against AO, PW.1 deposed that he applied for loan under NHFDC after the loan covered under Ex.P-17(A) was pending and he deposed that it was not sanctioned. He denied that as the loan covered under Ex.P-17(A) was pending, the loan under NHFDC was rejected. Witness volunteers that he did not pay the bribe amount to AO as such the loan was not sanctioned to him. He further admitted that he was defaulter with regard to the loan availed previously. This Court would like to make it clear that though PW.1 was a defaulter and even assuming that AO used to show the name of PW.1 as defaulter but the fact remained is that SBI under the cover of Ex.P-3 sanctioned Rs.10,000/- towards loan and Rs.10,000/- towards subsidy and Rs.5,000/- towards margin money. Absolutely, when the request of PW.3 was considered positively by the Corporation and SBI with sanction of loan to PW.3, it is rather improbable that PW.1 and PW.3 would bore grudge against AO so as to implicate him in the false case.



Hence, the contention of AO that PW.1 bore grudge against him is not tenable.

36. In the light of the above, I am of the considered view that prosecution before the Court below categorically proved pendency of the official favour in respect of the application under Ex.P-1 of PW.3 was pending before the AO and PW.1 was pursuing the same before the trap as well as on the date of trap.

37. Next aspect that has to be considered is as to whether the prosecution has proved before the Court below that AO demanded PW.1 the bribe, prior to the trap and on the date of trap and accepted bribe amount from PW.1. As seen from Ex.P-2, the case of the complainant is that on 09.12.2002 AO came to his residence and informed him about Ex.P-3 and demanded bribe of Rs.3,000/- for which he expressed his inability. Further allegation is that on 24.01.2003, when he met the AO at his office, he demanded Rs.2,000/- and though he expressed his inability, AO informed PW.1 to get the money arranged and he would collect by coming to his residence on 29.01.2003, while going to his office. Further case of the prosecution is that on 29.01.2003 at the residence of PW.1 and PW.3, AO was caught red-handedly while accepting the bribe amount on further demand. Further things that were narrated in



Ex.P-12, post trap proceedings, were deposed by PW.1. PW.1 in his evidence deposed the three dates *i.e.*, 09.12.2002, 24.01.2003 and 29.01.2003 as the dates of demand. According to the evidence of PW.3, though she did not speak about the incident, dated 09.12.2002 but she claimed that she came to know about the demand made by AO on 24.01.2003 through her husband *i.e.*, PW.1. PW.1 and PW.3 further deposed about the demand made by AO during the post trap on 29.01.2003. There is a whisper in Ex.P-18, the post trap proceedings, that PW.3 was physically present when AO demanded PW.1 during the post trap the bribe of Rs.2,000/- and accepted the same from PW.1. The Trap Laying Officer also corroborated the version of PW.3 in Ex.P-12, post-trap proceedings. PW.3 deposed about the demand made by AO on 29.01.2003 during the post trap and acceptance of the bribe amount.

38. The prosecution examined PW.2, the accompanying witness. According to him, he participated in the pre trap proceedings and the contents of Ex.P-2 were referred to by PW.1, who confirmed the same and when PW.1 produced the proposed bribe amount of Rs.2,000/-, it was applied with phenolphthalein powder and it was kept in the shirt pocket of PW.1 with directions to give the same



on further demand by AO when he visited their house on 29.01.2003. He further spoken that he was instructed by the DSP, ACB to follow PW.1 during the post trap and to closely observe the events between PW.1 and AO. So, the evidence of PW.2 as regards the post trap proceedings is that they started at 09:35 a.m. in a Government jeep and it was stopped near Saibaba Temple in Mrutunjayakunta by 09:45 a.m. DSP, ACB reiterated instructions to him, PW.1 and Head-Constable. They proceeded towards the house of PW.1. PW.1 went into southern room of his house. He (PW.2) was on the eastern side of the house of PW.1. At 10:20 a.m. AO came there. PW.1 and his wife were present. He (PW.2) went to the place which is by the side of the door of the house so as to hear the events between PW.1 and AO. AO enquired PW.1 whether he secured the amount demanded by him and PW.1 stated that he secured the bribe amount and then PW.1 took out the amount from his shirt pocket and gave it to AO. AO received the amount with his right hand, counted the same and kept it in his right side pant pocket. AO stated that he has to talk with the wife of PW.1 and asked PW.1 to go out. Then, PW.1 went outside, climbed his tricycle and gave pre-arranged signal. The Head-Constable received the same and gave signal to DSP, ACB. Then, all the raid party members came into the house of PW.1 along with them. He



also went into the house of PW.1. DSP, ACB told PW.1 to be there till he was called. He further spoken about the chemical test conducted to both hand fingers of AO which yielded positive result and amount was recovered from the AO. He further spoken about the recovery of Ex.P-6, made up file. So, it is a case where insofar as the demand, dated 29.01.2003, is concerned, apart from the evidence of PW.1, the evidence of PW.2 and PW.3 is also available. The demand dated 24.01.2003 is interlinked with the demand in the post trap on 29.01.2003. The prosecution alleged that it is in pursuance of the demand dated 24.01.2003, PW.1 secured the proposed bribe amount and was waiting for arrival of AO on 29.01.2003.

39. The contention of AO is that PW.2 had no chance to witness the events between AO and PW.1 in the light of the things that were narrated in the post-trap proceedings and in the rough sketch, there was no mention about the existence of verandah. As seen from Ex.P-12, the DSP, ACB after recovery of the tainted amount asked PW.2, the accompanying witness, as to what happened between AO and PW.1 and he stated that he along with the complainant went into the house of the complainant and stayed there. Complaint stayed in the southern room and he





(PW.2) stayed in the northern room. They waited for the arrival of AO. AO came on his motorbike, parked his motorbike in front of the house of the complainant and entered into southern room of the house *i.e.*, residential room of the complainant where the complainant and his wife were there. He (PW.2), on noticing the entry of AO came out of the northern room into the front verandah and peeped into the room. He noticed and heard the AO enquiring about the demanded bribe amount of Rs.2,000/- with the complainant. Complainant answered positively and AO asked him to pay the bribe. Complainant took out the tainted bribe money from his left side shirt pocket and handed over to AO and AO took the same and counted with his both hands and kept it in his right side pant pocket. When he assured him the needful the complainant came out while AO was chitchatting with the wife of the complainant. This is the version of PW.1 in the post trap.

40. During cross-examination, PW.2 stated that in his version in Ex.P-12 at Page No.7, it is not written that he stated that he was on the eastern side of the house of PW.1. He went into the room at about 10:30 a.m. after arrival of AO. Till then he was in the eastern side of the house of PW.1. He did not enter into the room but he was outside. In Ex.P-12, it is written that he stated as



complainant stayed in southern room and he (PW.2) stayed in the northern room. He denied that there were discrepancies. Having looked into the contents of Ex.P-12 with regard to the version of PW.2 during the post trap, the evidence of PW.2 in chief and cross-examination, this Court is of the considered view that absolutely, there were no discrepancies. What the Court has to see is as to whether there was possibility or probability for PW.2 to witness the events. In Ex.P-11, the rough sketch of the scene of offence, vantage position by PW.2 was clearly shown and looking into the same, he has every chance to observe the events between PW.1 and AO. Hence, the contention of AO that there was no possibility for PW.2 to witness the events between PW.1 and AO is not tenable.

41. There is no dispute that the tainted amount was recovered from the possession of AO. The evidence of PW.2, the mediator, PW.8 – Trap Laying Officer and even the evidence of PW.1, the *de-facto* complainant means that the amount that was kept in the shirt pocket of PW.1 during the pre-trap and the amount that was recovered from the possession of AO during the post-trap is one and the same. The denomination of the currency notes as mentioned in Ex.P-5 – pre-trap proceedings tallied with the



description in Ex.P-12 – post-trap proceedings. Therefore, the prosecution is able to establish that the amount that was dealt with in the pre-trap proceedings and the amount that was recovered from AO during the post-trap is one and the same. AO did not dispute that his both hand fingers yielded positive result when chemical test was conducted to him. So, the recovery of the tainted amount from AO absolutely is not in dispute.

42. Now this Court has to see further the defence of the AO during the course of trial that what all he received from PW.1 is no other than the amount due by PW.1 towards the margin money relevant to the loan of the year 1986. .

43. During cross-examination PW.1 deposed that in the year 1986 he had obtained a loan from Corporation with margin money of Rs.2,000/-. In that loan Rs.2,000/- is the margin money and Rs.3,000/- is the subsidy. He had to pay the loan amount in 24 equal monthly installments. He did not pay Rs.5,000/- to the Bank or Rs.2,000/- margin money to the Corporation even till the date of trap. He denied that on the date of trap, he paid Rs.2,000/- towards margin money of his loan taken in the year 1986. Witness volunteers that till today no notices were received by him for paying margin amount to the Corporation or loan amount to the



Bank. He denied that from 1986 till the date he received number of notices in writing and also oral demands to pay the margin money to the Corporation and that as the Corporation is not having postage, they sent the notices to him through postcards. PW.3 during cross-examination denied the defence of the AO in this regard. It is no doubt true that according to the evidence of PW.2, the mediator, and PW.8 – the Trap Laying Officer the version of AO during the post-trap when the DSP, ACB asked him as to why he received the amount is that he received Rs.2,000/- from PW.1 for recovery of the margin money. So, the defence of the AO before the Court below is that he received Rs.2,000/- from PW.1 towards margin money of the year 1986. It is to be noticed that during the course of evidence of PW.2, Exs.P-4 to P-19 are marked. After chief-examination of PW.2 only PW.1 was cross-examined. In that view of the matter, with regard to the contention of AO that what all he received is only margin money, the attention of PW.1 was drawn in cross-examination to the contents of Ex.P.17(A). So, he deposed in cross-examination that as per Ex.P-17(A), he was due of Rs.2,000/- principal and Rs.2,085/- as interest and in total Rs.4,085/- by 11/1997. The contention of AO is that when PW.1 was due of Rs.4,085/-, he received a sum of Rs.2,000/- principal regarding the margin money.



44. Now, it is appropriate to look into as to whether there is any reasonableness in the contention of AO in this regard. PW.5 was examined by the prosecution regarding the procedural aspects, who supported the case of the prosecution. During the course of cross-examination by the learned defence counsel before the Court below, he deposed the nature of duties of AO as if he had to visit the beneficiaries because they were disabled and he was duty bound to recover loan amounts etc. In that view of the matter, defence counsel elicited from PW.5 in his cross-examination that for loan recovery, he (PW.5) has to issue permanent receipt. Whenever AO recovers the loan amount, he (AO) will issue a temporary hand receipt. After he shows the same, to him, he (PW.5) would issue permanent receipt, which will be in the book of receipts and AO will take and handover the permanent receipt to the beneficiaries. As per Ex.P-17(A) PW.1 was due to them Rs.4,085/- out of which Rs.2,000/- is the principal and Rs.2,085/- is the interest. Those are mentioned in Ex.P-17(A). PW.1 remained defaulter. PW.5 during the course of re-examination by the learned Special Public Prosecutor deposed that there is no prescribed procedure that AO has to issue a temporary receipt and thereafter has to obtain permanent receipt. In that view of the matter, the Special Public Prosecutor got permission to



treat the witness as hostile and cross-examined him further. Then, he deposed that whenever a notice is issued to the beneficiary for recovery of the loan, it will be entered in the relevant loan register *i.e.*, Ex.P-17, which will be signed by the District Manager. The notice has to be prepared by the concerned clerk and AO. As per Ex.P-17(A) only two notices were sent to PW.1 *i.e.*, on 12.07.1989 and on 08.05.1991 and no notices were sent after 08.05.1991.

45. Irrespective of the genuinity of the version of PW.5 that AO had to issue a temporary receipt only and he (PW.5) has to issue a permanent receipt but the contents in Ex.P-17(A) excludes the defence of AO that several notices were issued to PW.1 calling upon him to pay the margin money. The defence of the AO is that as the Corporation had no postage, they used to send the letters through postcards. It is rather improbable that Handicapped Co-operative Corporation which was funded by the Government had no postage to send notices. Further, irrespective of the postage, entries were supposed to be made in Ex.P-17(A) whenever notices were issued to the beneficiaries. So the contention of AO that several notices were issued to PW.1 to pay the margin money of the year 1986 was not at all probabilized before the Court below. Even otherwise, according to the evidence of PW.5, AO was duty



bound to issue a temporary receipt. Obviously, there is no proper explanation from AO as to why he could not issue any receipt. It is to be noticed that even according to AO, PW.1 was a defaulter. A man with reasonable prudence, who visited the house of PW.1 and PW.3 especially when he recovered earlier dues of the year 1986, would not keep quiet without issuing even a temporary receipt. It is not the defence of AO that he carried temporary receipt book to the house of PW.1 and PW.3 on the date of trap. Even it is not his case that he carried any white paper and he was about to issue a white paper receipt at least for receipt of the amount of Rs.2,000/-. The contention of AO is that after receipt of the amount from PW.1 within no time, ACB trapped him. The above said contention deserves no merit. AO was evidently chitchatting with PW.3 after receipt of the amount from PW.1 and according to the case of the prosecution PW.1 was asked to go out. Considering the same, absolutely, AO would have definitely issued a temporary receipt or white paper receipt, if really, he got the amount from PW.1 regarding the so called margin money of the year 1986.

46. Another improbability in the case of AO is that he carried Ex.P-6 file containing Ex.P-1 and enclosures thereof to the house of PW.1 and PW.3 and received a sum of Rs.2,000/-. The fact that



AO was in the custody of Ex.P-6 that too at the residence of PW.1 and PW.3 means that he collected the amount of Rs.2,000/- only towards bribe for doing official favour pertaining to Ex.P-6 file. Exs.P-4 to P-19 were seized at the office of AO. AO had relied upon Ex.P-17(A) to contend that PW.1 was due of Rs.4,085/-. If really, he went to the house of PW.1 and PW.3 to recover the said amount, he would have carried Ex.P-17(A) register to the house of PW.1 and PW.3 to accept the due amount. Apart from this, when the total amount was of Rs.4,085/- he would not have accepted only a part of Rs.2,000/- from PW.1. All these circumstances falsify the defence of AO to any extent. The so called version of AO during the post-trap was only an afterthought to escape from the case.

47. It is the AO who elicited certain answers from the cross-examination of PW.1 that till date no notices were received by him for paying margin amount to the Corporation or loan amount to the Bank. This version of PW.1 had support from the contents of Ex.P-17(A). Apart from this, it is a fact that when PW.1 applied a loan under NHFDC, after the loan covered by Ex.P-17(A), it was not sanctioned and it was rejected. According to the version of PW.1 as he did not pay the bribe amount to AO that loan was not





sanctioned to him. The contention of AO is that as he was responsible for rejection of the said loan for non-payment of the amount covered by Ex.P-17(A), he was implicated falsely. If that be the defence, it is for the AO to explain why when the amount was due under Ex.P-17(A), as on the date of Ex.P-1, how he processed the file under Ex.P-1 and got sanctioned the amount covered under Ex.P-3. Apart from this, prosecution examined another witness *i.e.*, PW.6 to speak that in the year 1992 and 1997 he and other beneficiaries with regard to the loan taken in the year 1986 gave a representation to the Assistant Director of the Corporation stating that they cannot pay the margin money and requested them to convert the margin money as subsidy and they did not receive any notices from the Corporation on the margin money. So, the prosecution examined PW.6 to falsify the defence of the AO that what he received from PW.1 was only due of the margin money of the year 1986, because the beneficiaries already made a claim that they were not able to pay it and it may be converted into a subsidy. Though the prosecution did not explain the further consequent action taken by the Corporation, but various circumstances referred by this Court as above, shows that absolutely the defence of the AO that he received Rs.2,000/- from



PW.1 towards recovery of the margin money is nothing but a fabricated version to escape from the case.

48. AO before the Court below relied upon Exs.D-1 to D-6. In fact, he got marked several documents *i.e.*, Exs.D-1 to D-25 subject to proof and relevancy. Those documents were relating to correspondence made by the Assistant Director and District Manager of the Corporation etc. As seen from Exs.D-1 to D-6, Corporation had no funds towards the subsidy as on the date of trap. By relying on the above contention of AO that as there were no funds with the Corporation, as on the date of trap, the question of demand made by him for bribe would not arise as he was not capable of processing the request of PW.1. It is very difficult to accept the said contention. The evidence of PW.4 and PW.5 is that they handed over the file on 13.12.2002 and file has to be with AO till the final result. So, the contention of AO that as the Corporation had no funds the question of demand of bribe by him does not arise has no legs to stand.

49. In the light of the above, I am of the considered view that the evidence on record is fully convincing and it is believable. Turning to the decision relied upon by learned counsel for the appellant in ***Mohmoodkhan Mahboobkhan Pathan*** (5<sup>th</sup> *supra*), the Hon'ble



Apex Court dealing with the Prevention of Corruption Act, 1947 and Section 4(1) held that the presumption would arise only when the prosecution proves that what was received by the accused was gratification. If there is reason to doubt that what was received by the accused was towards lawful charges, he is entitled to the benefit of doubt.

50. Turning to the case on hand, in the light of the findings given by this Court that what all the accused received from PW.1 was only relating to bribe the aforesaid decision is of no use to the AO.

51. In **Bal Krishna Sayal** (6<sup>th</sup> *supra*), the case is such that the alleged bribe amount recovered from AO was equal to the amount the complainant would be required to pay legally as such benefit of doubt was extended. By relying upon the decision of the Hon'ble Apex Court in **Bal Krishna Sayal** (6<sup>th</sup> *supra*) obvious contention of AO is that as Ex.P-17(A) reveals the due of Rs.4,085/- by PW.1 the amount which he received from PW.1 *i.e.*, Rs.2,000/- is only relating to that as such he is entitled to benefit of doubt. As this Court already pointed out the very defence of AO in this regard is totally untenable and improbable and it is nothing but a fabricating defence to escape from the case. Even otherwise, in **Bal**



**Krishna Sayal** (6<sup>th</sup> *supra*), when the complainant was due of Rs.102/- towards the penal rent in respect of the official residence occupied by him, AO received a sum of Rs.100/- and was able to probabilize his defence. Under the above said circumstances, the Hon'ble Apex Court in **Bal Krishna Sayal** (6<sup>th</sup> *supra*) held the amount which was recovered from the AO was about to equal to that of the amount due by the complainant. Turning to the present case on hand, the amount due was Rs.4,085/- and this Court clearly dealt with the abnormalities and improbabilities in the evidence of AO. The decision of the Hon'ble Apex Court in **Bal Krishna Sayal** (6<sup>th</sup> *supra*) is of no use to the AO.

52. Turning to the decision of the Hon'ble Apex Court in **Lalita Kumari** (7<sup>th</sup> *supra*), the Hon'ble Apex Court dealt with the mandatory registration of FIRs in cognizable cases and in conducting preliminary enquiry. The decision of the Hon'ble Apex Court in **Lalita Kumari** (7<sup>th</sup> *supra*) was delivered on 12.11.2013. The Hon'ble Apex Court in **Lalita Kumari** (7<sup>th</sup> *supra*) at Para No.120.6 dealt with the category of cases in which preliminary enquiry be conducted and shown (d) therein as cases relating to corruption cases. It is to be noticed that PW.8 categorically deposed that on 28.01.2003 at 11:45 a.m. PW.1 presented Ex.P-2



report when he was present at the office of Inspector, ACB, Kadapa. He instructed PW.1 to come in the morning on next day along with the intended bribe amount. In the meanwhile, he made discrete enquiries against PW.1 and AO and his enquiry revealed that AO is ill-reputed and PW.1 has no ill-motive to implicate AO in a false case. So, he obtained oral instructions from DG, ACB to register the case and lay a trap. It is no doubt true that he deposed in cross-examination that in Ex.P-23 and Ex.P-2 he did not make any endorsement regarding his discrete enquiries made against PW.1 and AO. He denied that he did not make any discrete enquiries. It is to be noticed that conducting of preliminary enquiry or discrete enquiry is only to see that public servants will not be subjected to the cases under the PC Act unnecessarily when the complainant approaches ACB with ill-motive etc., When this Court already pointed out in the light of the answers elicited from PW.1 by AO, AO is such a person he would go around the houses of the physically handicapped and encourage them to apply for various loans with an assurance to process and also request them to pay something to him. So, it is a case where according to the answers of PW.1, AO was such an ill-reputed person. The incident in question was happened in the year 2002/2003. The directions of the Hon'ble Apex Court in **Lalita**



**Kumari** (7<sup>th</sup> *supra*) were delivered on 12.11.2013. In the light of the answers spoken by PW.8 in his chief and cross-examinations I am of the considered view that mere non-making of any endorsement in Exs.P-2 and P-23 about causing discrete his enquiries against AO and PW.1 is not going to affect the case of prosecution in any way.

53. In the light of the above, I am of the considered view that evidence adduced by the prosecution that AO demanded PW.1 to pay bribe prior to trap and on the date of trap and accordingly accepted the amount from PW.1 is fully convincing. The act of the AO in demanding PW.1 to pay the bribe and accepting the same clearly constitutes an offence under Section 7 of the PC Act. Further, the act of AO in demanding PW.1 to pay Rs.2,000/- and accepting the same is nothing but obtaining pecuniary advantage, a criminal misconduct within the meaning of Section 13(1)(d) R/w. Section 13(2) of the PC Act.

54. As the prosecution has proved the foundational facts, now there arises a presumption under Section 20 of the PC Act, which runs as follows:



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

(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

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

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



55. The Hon'ble Apex Court in **Neeraj Dutta v. State (Government of NCT of Delhi)**<sup>8</sup>, presided over by a Constitutional Bench elaborately dealt with the essential ingredients of Sections 7, 13(1)(d) R/w.13(2) and 20 of the PC Act. This Court already pointed out that the prosecution categorically proved the above. The Hon'ble Apex Court in **Neeraj Dutta** (8<sup>th</sup> *supra*) further held that when the fact in issue is proved by the prosecution, the prosecution has the benefit of presumption under Section 7 of the PC Act insofar as the charge under Section 7 of the PC Act is concerned. So, as the prosecution has proved the foundational facts, it has the benefit of presumption under Section 20 of the PC Act and according to it, the AO accepted the bribe amount of Rs.2,000/- for doing an official favour. AO failed to prove the contrary. As he miserably failed to prove his defence that what was received by him from PW.1 was only relating to due of margin money of the year 1986, there remained nothing in support of him to rebut the presumption. The case of the prosecution is further strengthened by virtue of Section 20 of the PC Act.

56. The learned Special Judge for SPE and ACB Cases, Nellore rightly appreciated the evidence on record and rightly held that the

---

<sup>8</sup> (2022) SCC OnLine SC 1724





prosecution has established the ingredients of the offences under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act. Having regard to the above, I am of the considered view that there are no grounds to interfere with the judgment of the learned Special Judge.

57. In the result, the Criminal Appeal is dismissed as such the judgment, dated 26.10.2007, in C.C. No.29 of 2004, on the file of the Court of Special Judge for SPE and ACB Cases, Nellore stands confirmed. MO.5, tainted currency notes of Rs.2,000/-, is ordered to be returned to PW.1. MOs.1 to 4 and MOs.6 to 8 are ordered to be destroyed after appeal time is over, if available before the Court below.

58. The Registry is directed to take steps immediately under Section 388 Cr.P.C to certify the judgment of this Court to the learned Special Judge for SPE and ACB Cases, Nellore and on such certification, the learned Special Judge shall take necessary steps to carry out the sentence imposed against the appellant/Accused Officer in Calendar Case No.29 of 2004, dated 26.10.2007, and to report compliance to this Court. Registry is directed to dispatch a copy of this judgment along with the lower Court record, if any, to the learned Special Judge for SPE and ACB



Cases, Nellore on or before 15.05.2023 in the name of the Presiding Officer concerned. A copy of this judgment be placed before the Registrar (Judicial), forthwith, for giving necessary instructions to the concerned Officers in the Registry. A copy of this judgment shall also be forwarded to the Head of the Department of AO for information and further action, if any.

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

---

**JUSTICE A.V.RAVINDRA BABU**

Date: 01.05.2023  
DSH