HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL No.639 of 2006

JUDGMENT:

This Criminal Appeal is preferred by the Accused Officer (AO) aggrieved by the judgment dated 25.04.2006 in C.C.No.13 of 2002 passed by learned Additional Special Judge for SPE & ACB Cases, City Civil Court Hyderabad convicting him for the offences under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 (for short "P.C Act") and sentencing him to undergo R.I for a period of **two years** and to pay a fine of **Rs.2,000/-** and in default to suffer SI for **six months** on two counts with a direction that the substantive sentences of imprisonment under both counts shall run concurrently.

2) The factual matrix of the case is thus:

a) AO—N.Sankarappa worked as Agriculture Officer in Kalyandurg Mandal, Ananthapur District during 2001. According to prosecution, O.Sreekanth Reddy—complainant (PW1) who is running fertilisers business under the name and style M/s.Madhu Fertilizers, Kalyandurg, Ananthapur District submitted applications for licence renewals of fertilizers and seeds on 27.08.2001 and 01.09.2001 respectively. In the first week of October, AO returned the applications of PW1 with some remarks through his messenger. PW1 after complying all the remarks resubmitted the applications on 09.10.2001 requesting AO to renew the licences. At that time AO demanded a sum of Rs.6,000/- as bribe and threatened unless he pay the demanded amount, he would return the applications of licence renewals with some more remarks. When PW1 expressed his inability to pay such huge amount, AO reduced the amount to Rs.5,000/- and directed him to hand over the demanded bribe on 11.10.2001 at his residence.

b) Unwilling to pay bribe, PW1 submitted Ex.P.1—complaint to DSP, ACB, Ananthapur (PW6) on 10.10.2001 at 6:30 pm, who registered the same as a case in Cr.No.5/ACB-ATP/2001 on 11.10.2001 at 12:30 pm after conducting discreet enquiries and successfully laid a trap against AO on 11.10.2001 at his residence. On completion of investigation, charge sheet was laid against AO.

c) On appearance of AO, charges under Sections 7 and 13 (1)(d) r/w 13(2) of P.C. Act were framed against him and trial was conducted.

d) During trial, PWs.1 to 6 were examined and Exs.P1 to P11 were marked and MOs.1 to 6 were exhibited on behalf of prosecution. D.Ws.1 to 4 were examined on behalf of defence.

e) The trial Court on appreciation of evidence held that prosecution proved the guilt of the accused beyond reasonable doubt and accordingly convicted the AO, as stated supra.

Hence, the appeal by AO.

3) Heard arguments of Sri T.Bali Reddy, learned senior

counsel representing for Sri R.Balakrishna Rao, learned counsel for appellant/AO and Sri M.B.Thimma Reddy, learned Special Public Prosecutor (Spl.P.P.) for ACB cases.

4 a) Impugning the judgment learned senior counsel firstly argued that the charges being under Sections 7, 13(2) r/w(13(1) (d) of PC Act, the prosecution must by reliable evidence prove two vital ingredients i.e. demand and acceptance of bribe to deserve for drawing mandatory presumption under Section 20 of PC Act. Without proving the demand the prosecution cannot supplicate for conviction merely on the strength of recovery of tainted amount from the possession of accused. On this principle he relied upon the following decisions.

1. ***B.Jayaraj vs. State of Andhra Pradesh***[1]

2. ***Banarsi Dass vs. State of Haryana***[2]

Referring the above legal position, learned senior counsel argued that in this case absolutely there is no tangible evidence to prove the demand and acceptance of bribe since PW1—the complainant has not stated anything positively and on the other hand his case was that he was misled by one Gopal who goaded him to give a false compliant against AO and upon his ill-advise he gave the complaint as if AO demanded him bribe even though in reality AO did not solicit him for bribe. Even on the aspect of acceptance of bribe also the version of PW1 is that himself and Gopal went to the residence of AO in his absence on the date of trap and Gopal implanted the money on the table and they sulked away. Learned senior counsel vehemently argued that in view of such revelation of PW1 it is crystal clear that PW1 did not support prosecution case either on the aspect of demand or acceptance of bribe and except PW1 admittedly there was none other who has witnessed the demand or acceptance of bribe by AO. The mediators and TLO were not the direct witnesses for either of the two ingredients. That being the nature of evidence adduced by prosecution, he argued, trial Court ought to have emphatically held that prosecution failed to prove its case but strangely trial Court convicted the accused basing on the hostile evidence of PW1 on some surmises.

b) Secondly, commenting on the aspect of drawing presumption under Section 20 of PC Act, learned senior counsel argued that since the prosecution utterly failed in proving the demand and acceptance there is no room for drawing mandatory presumption basing on mere recovery of tainted amount in the house of AO and even wildly assuming that recovery is sufficient to draw a presumption, still the AO could successfully rebut the presumption by showing probabilities through the evidence of DW4 to the effect that AO was innocent and he just returned home and surprised by finding the amount on the table and at that moment, the trap party surrounded him and thus he was innocent. Learned senior counsel submitted that it is a trite under criminal jurisprudence that accused need not prove his innocence to the hilt, but suffice to show by preponderance of probabilities. On this legal proposition he relied upon the following decision:

C.M.Girish Babu v. CBI, Cochin, High Court of Kerala[3]. Learned senior counsel thus prayed to allow the appeal.

5) Per contra, opposing the appeal learned Spl.P.P. firstly argued that merely because PW1 did not support the prosecution case on some vital aspects and showed volte-face that was not the end of the matter and on the other hand Court can, as it rightly did, accept the admissible portion of his evidence in corroboration of other reliable witnesses and in the instant case, the trial Court having undertaken such a judicial exercise, could find that despite PW1 turned hostile due to his back ground adjustment with AO, his admissible portion of evidence coupled with the evidence of other witnesses proved guilt of the accused. Learned Spl.P.P. argued that though AO and PW1 connived and brought forth the non-existent person viz. Gopal, they could not substantiate it and therefore, the trial Court rightly rejected the alleged influence of said Gopal over AO in lodging complaint and implicating AO. He submitted that the judgment of the trial court does not suffer from any perversity in appreciation of evidence and that there were no merits in the appeal. He thus prayed to dismiss the appeal.

6) In the light of above rival arguments, the point for determination in this appeal is:

"Whether judgment of the trial Court is factually and legally sustainable?"

7 a) **<u>POINT</u>**: The AO in this case was charge sheeted for the offences under Sections 7, 13(1) (d) r/w 13 (2) of PC Act. Hence, before scrutinizing the merits of the appeal in the light of rival arguments, it is obligatory on this Court to ruminate the ingredients that have to be established by the prosecutions to prove the aforesaid two charges.

b) Reminding the duty of prosecution, the Apex Court in a recent decision in the case of ***B.Jayaraj*** (1 supra) has observed thus:

> *"In so far as the offence Under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence Under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in* ***C.M. Sharma vs. State of A.P.*** *(2010) 15 SCC 1= AIR 2011 SC 608 = 2011 AIR SCW 297 and* ***C.M. Girish Babu*** *v.* ***C.B.I.*** *(2009) 3 SCC 779 =AIR 2009 SC 2022 = 2009 AIR SCW 1693."*

The Supreme Court further observed thus:

> *"…Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence Under Section 7. The above also will be conclusive in so far as the offence Under Section 13(1)(d)(i)(ii) is concerned as in the absence of any <u>proof of demand for illegal gratification</u> (emphasis supplied), the use of*

corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established."

Thus, in the above decision the Honourable Apex Court emphatically laid down that for establishing the offences under Sections 7 and 13(1)(d)(i) (ii) the prosecution shall by cogent evidence establish the two vital ingredients i.e. (i) demand of illegal gratification other than legal remuneration and (ii) voluntary acceptance.

c) Then, drawing of presumption under Section 20 of PC Act is concerned, there is a legal dichotomy as to whether the prosecution is required to prove demand to draw the said presumption or not.

d) In ***C.K.Damodaran Nair v. Govt. of India***[4] referred by the trial Court, the Apex Court opined that demand aspect need not be proved. It observed thus:

"Para 11: From a combined reading of S. 161 I.P.C. and Section 4(1) of the Act it is evident that if, in the instant case, the prosecution has succeeded in proving that the appellant was a public servant at the material time and that he had 'accepted' or 'obtained' Rs.1,000/- from PW9 as gratification not only the first two ingredients of the former would stand proved but also the third, in view of the presumption under the latter which the Court is bound to draw unless, of course, the appellant, in his turn, has succeeded in rebutting that presumption. According to Shorter Oxford Dictionary 'accept' means to take or receive with a 'consenting mind'. Obviously such a 'consent' can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement, If an

acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to 'acceptance' within the meaning of Section 161 I.P.C. It cannot be said, therefore, as an abstract proposition of law, that without a prior demand there cannot be 'acceptance'."

Thus, in the above decision it was held that acceptance of illegal gratification other than legal remuneration by the accused with a consenting mind is sufficient to draw mandatory presumption under Section 20 of PC Act and for that purpose prior demand need not be established. However, it appears in the subsequent decisions the above view was not followed.

e) In ***V.Venkata Subbarao vs. State rep. by Inspector of Police, A.P.***[5] another Division Bench (Two Honourable Judges) of Supreme Court observed on the same aspect as follows:

"Submission of the learned Counsel for the State that presumption has rightly been raised against the appellant, cannot be accepted as, inter alia, the demand itself had not been proved. In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved."

In the above case it was emphatically laid down that without proof of demand the question of raising presumption 20 of PC Act, 1988 would not arise.

f) In ***B.Jayaraj***'s case (1 supra) Full Bench of Honourable

Apex Court has held thus:

> *"In so far as the presumption permissible to be drawn Under Section 20 of the Act is concerned, such presumption can only be in respect of the offence Under Section 7 and not the offences Under Section 13(1)(d)(i)(ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn Under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. <u>Proof of acceptance of illegal gratification can follow only if there is proof of demand</u>. (emphasis supplied) As the same is lacking in the present case the primary facts on the basis of which the legal presumption Under Section 20 can be drawn are wholly absent."*

So, in the latest judgment, the Full Bench of Honourable Apex Court observed that proof of acceptance of illegal gratification can follow only if there is proof of demand and only when these two ingredients are established, presumption under Section 20 of P.C Act would follow.

8) Having regard to the above legal position, the appeal is to be decided. Admitted facts are that the AO was the Agricultural Officer, Kalyandurg Mandal during the relevant period of the case and PW1—the complainant was the proprietor of M/s.Madhu Fertilizer, Kalyandurg and PW1 submitted applications for renewal of fertilizers and seeds licence on 27.08.2001 and 01.09.2001 respectively to the AO. It is a further admitted fact as spoken by PW3—Assistant Director of Agriculture that PW3 is the licensing authority to issue licence to the fertilizers dealers in his jurisdiction for a period of three years on the recommendation of concerned Mandal Agricultural

Officer whereas the Joint Director of Agriculture is the authority to issue seed licence on the recommendations of concerned Mandal Agricultural Officer for a period of three years. In the instant case, in respect of Ex.P2—applications of PW1 the recommending authority is the AO being concerned Agricultural Officer. Then, it is the case of prosecution that at the first instance AO returned the applications of PW1 on some queries and thereafter on 09.10.2001 when PW1 met AO and re-submitted his applications, it is alleged, AO demanded illegal gratification of Rs.6,000/- for recommending his applications to the concerned authorities and on the request of PW1 reduced the bribe to Rs.5,000/- and threatened that he would return the applications if the amount was not paid. Unwilling to pay bribe, PW1 gave the complaint to PW6 who laid trap against AO on 11.10.2001 with the help of two mediators i.e. PW2 and LW3.

In the light of above facts, it has to be seen whether prosecution could establish demand and acceptance of bribe by AO.

9) Pendency of official favour is concerned, PW1 submitted Ex.P2—licence renewal applications to AO, who was the Agricultural Officer. It is contended that AO was only recommending authority but not licence issuing authority and therefore, no official favour was pending with him to demand any bribe. It must be said that this argument has no teeth to accept. AO may not be an issuing authority but as already deposed by PW3, fertilizer and seed licenses will be issued by the

concerned authorities only on the favourable recommendations of the AO. Therefore, the role of AO is not such an insignificant one so as not to demand bribe. AO did not challenge the evidence of PW1 that on 09.10.2001 PW1 met him at his house at 7.30 PM and re-submitted the applications. In fact, after trap the TLO seized Ex.P2 file containing the applications from the residence of AO which infers that the applications were pending with AO by the date of trap. Therefore, indeed official favour was pending with AO to demand bribe.

10) Then demand is concerned, it must be said that PW1 has not supported the prosecution case. His version was that on 09.10.2001 when he went to the office of AO and met him and re-submitted the applications, AO received them and promised that he would do the job and for some days AO could not go to office. Thereafter, one Gopal informed PW1 that AO would not do his work unless money was paid to him and further told he would get the work of PW1 done at Ananthapur. On this assurance the said Gopal took PW1 to Ananthapur and got presented Ex.P1—complaint to ACB police on 10.10.2001. So, as per PW1 AO did not demand him bribe but on the advise of Gopal he gave a false compliant to ACB police. Basing on the aforesaid evidence of PW1 it is contended that prosecution failed to prove demand aspect. Hence, probative value of hostile evidence of PW1 is to be scrutinized. Before that it is pertinent to mention the principle laid down by the Apex Court on appreciation of hostile evidence.

a) In a latest judgment in ***Paulmeli and another vs. State of Tamil Nadu, Traffic Inspector of Police*** *(MANU/SC/0505/2014)*), Honourable Apex Court happened to discuss its previous judgments on the above subject and observed thus:

> *"Thus, the law can be summarized to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence."*

b) With reference to the above precedential jurisdiction when the evidence of PW1 is put under threadbare analysis, despite his turning hostile not supporting prosecution case on the aspect of demand, still some interesting and useful material emanates from his evidence in the cross-examination which is worth perusal.

In the cross-examination by Special P.P. he admitted thus:

> *"It is true I have given a complaint to DSP, ACB on 10.10.2001. DSP read my said complaint and asked me to come to his office with the amount of Rs.5,000/- on 11.10.2001 at 4 PM. It is true accordingly I went to DSP office with the said amount of Rs.5,000/- consisting of two 500 rupee notes and forty 100 rupee notes and found in the DSP in office – DSP two mediators and other officials present. The DSP introduced me to the mediators as complainant. It is true when a copy of compliant was given to mediators, they read and enquired with me whether I have written it, I answered it affirmatively."*

The above fact was corroborated by PW2—the mediator also who deposed thus:

> *"We (mediators) met Inspector, ACB and the DSP, ACB in their chambers at 4.15 PM. Then the DSP introduced to us one Srikanth Reddy as complainant and handed over the compliant to us. We read the copy of complaint and asked Srikanth Reddy whether the matter stated therein are correct or not and put our initials. Ex.P4 is the said copy of compliant which bears my signature."*

Then, a perusal of Ex.P4 which is a copy of Ex.P1—complaint would reveal that AO demanded bribe. Therefore, despite PW1 turning hostile, his earliest admission before the mediators was to the effect that AO demanded him bribe and that was why he presented Ex.P1—complaint to ACB police. PW2 is an independent mediator and nothing could be brought on record for his motive to speak false hood. Therefore, the admission of PW1 gets ample corroboration from the reliable evidence of PW2 on the aspect of demand to hold that AO has solicited bribe from PW1. At this juncture the argument of defence side is that since PW1 knowingly presented a false complaint against AO under the influence of Gopal, there was nothing strange if he affirmed the contents of Ex.P1 to be true before mediators, though they were indeed false. Though this argument apparently sounds logical but will not stand for scrutiny. It is true that it is the version of PW1 in his chief examination that he presented Ex.P1 with false contents under the influence of one Gopal. If he were really influenced by Gopal, his affirmation before the mediators would not be strange and in that case such affirmation cannot be taken as proof of admission by AO. So, truth or falsity of admission pivots on the existence of Gopal. It is pertinent to note that in his written statement also AO referred about Gopal stating that the said Gopal was a piravikar in his office and he checked and prevented him and so eventually he nursed severe grouse against him (AO) and misused the complainant and falsely involved him in this case. He further stated that he has close contacts with ACB officers and he was their informant. He deliberately misguided the complainant as AO found some defects and omissions during scrutiny and asked him to comply the objections and Gopal took full advantage of it and misguided on account of his own grouse. Thus both PW1 and AO proclaimed as if one Gopal was in existence and he is a piravikar and was an informer to ACB police and he ran the show. We find in the evidence of PW1 as if Gopal and PW1 went to the residence of AO and Gopal planted money on the table in the absence of AO. So, in this context, billion dollar question is whether such Gopal who is said to have incited PW1 is in existence. It is interesting to note that though PW1 claimed that on 10.10.2001 Gopal took him to ACB office and got presented complaint and DSP told Gopal to bring Rs.5,000/- and on the next day i.e. 11.10.2001 both himself and Gopal went to the ACB office and attended pre-trap proceedings and DSP instructed him (PW1) to give the amount to whomsoever

Gopal suggested and even went to the extent of saying that himself and Gopal started on one motor cycle and Gopal planted the money in the residence of AO in his absence, we do not find support from other witnesses regarding above version of PW1. PW2—the independent mediator and PWs.5 and 6 never stated about the presence of Gopal along with PW1 at any point of time. No suggestion was given to PW2 about the presence of Gopal during crucial period of pre-trap, trap and post-trap proceedings. When it was the case of AO in his written statement that Gopal was the cause for false complaint, he should have suggested about the presence of Gopal during the relevant time. Further, the AO did not try to elicit through DW3 who is none other than the attender in his office about the existence of one Gopal who is said to be piravikar in his office and whom AO chided. DW3 also did not depose about Gopal. In these circumstances, basing on the sole evidence of PW1, it is difficult to believe about the existence of said Gopal and his influencing PW1. Therefore, on a conspectus of facts and evidence the existence of Gopal and his alleged influencing PW1 cannot be believed. Consequently, the demand made by AO as is spelt out in Ex.P1 whose contents were avouched by PW1 before the mediators can be believed.

11) Then acceptance is concerned, as stated supra, again it is the version of PW1 that himself and Gopal went to the

residence of AO in his absence and Gopal planted money on the table. This version of PW1 will not have legs to stand when the existence of Gopal is highly doubtful, as discussed supra. So, when implant by fictitious person—Gopal is omitted, the only other possibility left over is PW1's approaching AO and paying money on his further demand because MO5—currency notes which were found in the house of AO were none other than those notes which were smeared with phenolphthalein powder and given to PW1 by PW6—TLO to pay to AO on his further demand and further, the serial numbers of MO5—notes were tallied with the serial numbers of the notes mentioned in Ex.P5—first mediators report. Hence, there was no possibility of those notes finding place in the house of AO if not paid by PW1.

a) Then the explanation of AO projected through the cross-examination of prosecution witnesses, his written statement and through the evidence of DW4 is to the effect that he did not know how the amount appeared in his house and after returning home he found the amount on the table and holding the same he was thinking surprisingly as to who kept the amount there and in the meanwhile trap members came and caught him. This explanation was not offered by AO during post trap proceedings and hence it did not find place in Ex.P7—second mediator's report. If it is his case that his explanation was not incorporated in Ex.P7 he should not have acknowledged the receipt of copy of Ex.P7 or atleast he should have received the copy under protest or he should have made a compliant before the higher authorities of ACB or before the trial Court at the earliest opportune time. That he did none of the acts but coolly endorsed on Ex.P7 and received copy of proceedings containing pages 1 to 9 indicates that true facts relating to his conduct was only mentioned in Ex.P7. Therefore, it must be held that the explanation offered by him was only an after thought. The evidence of DW4 being the daughter and interested witness will not help his case in view of his supine inaction against Ex.P7 PWs.2 and 6 have deposed about the conduct of AO during the post-trap events in corroboration to Ex.P7. PW2 deposed that on receiving signal they entered the house and found AO sitting in the chair holding cash in his right hand and after subjecting hands of AO to chemical test when the DSP asked AO about the notes whatever reply was given by AO was incorporated in Ex.P7 proceedings. When Ex.P7 is perused, it is mentioned therein as if AO stated that amount was received by him from the complainant. Therefore, in spite of PW1 turning hostile, prosecution with the help of other evidence and circumstances could establish the factum of AO receiving bribe from PW1 and the explanation offered by AO was not convincing. The decisions relied upon by the appellant will not help his case.

12) So, on a conspectus of facts, circumstances and evidence on record, I hold that prosecution could establish the charges levelled against AO and trial Court rightly convicted the accused for the offences under Sections 7 and 13(1)(d) r/w 13(2) of PC Act.

13) In the result, this Criminal Appeal is dismissed by confirming the conviction and sentence passed by the trial Court in C.C.No.13 of 2002. Consequently, appellant/AO is directed to surrender before the trial Court on or before **22.01.2015** and on such surrender, the trial Court shall commit him to jail for serving sentence.

As a sequel, miscellaneous applications pending, if ay, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 31.12.2014

<u>Note</u>: L.R. Copy to be marked: Yes / No

Murthy

---

[1] 2014 (2) ALD (Crl.) 73 (SC)

[2] 2010 Crl.L.J.2419 = 2010 (1) ALD (Crl.) 924 (SC)

[3] AIR 2009 SC 2022 (1)

[4] AIR 1997 SC 551

[5] 2007 Crl.L.J. 7