*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

<u>+ Criminal Appeal No.518 of 2006</u>

%19.01.2015

<u>Between:</u>

<u>V. Venkataswamy. ....</u>

<u>Appellant</u>

AND

<u>The State ACB,</u>
<u>Warangal Range, Warangal</u>
<u>Rep. by Spl. Public Prosecutor for ACB cases,</u>
<u>High Court of Judicature, Hyderabad. ….</u>

<u>Respondent</u>

! Counsel for Appellant : Sri Badeti Venkata Rathnam

^ Counsel for Respondent : Sri R. Ramachandra Reddy

Special Public Prosecutor for ACB

< Gist:

> Head Note:

? Cases referred:

1) (2011) 6 SCC 450
2) (2009) 3 SCC 779
3) AIR 1980 Supreme Court 1558
4) (2006) 1 SCC 401
5) AIR 1976 Supreme Court 294(1)
6) 1972 Crl.L.J. 1293 (SC)
7) AIR 2002 SC 486
8) 2003 (1) ALD (Crl.) 933 (AP)

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

<u>Criminal Appeal No.518 of 2006</u>

JUDGMENT:

This Criminal Appeal is preferred by the Accused Officer (AO) aggrieved by the judgment dated 27.03.2006 in C.C.No.18 of 2002 passed by learned Principal Special Judge for SPE & ACB Cases, 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 **one year** and to pay a fine of **Rs.1,000/-** and in default to suffer S.I for **three months** on first count and to undergo R.I for a period of **two years** and to pay a fine of **Rs.2,000/-** and in default to suffer S.I for **six months** on second count 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—V. Venkata Swamy worked as Executive Officer (Endowments), in Sri Veerabhadra Swamy Devasthanam Temple, Kuravi Village and Mandal, Warangal District. According to prosecution, R.Ravinder Reddy—complainant (PW1) was eking out his livelihood by undertaking small contracts. In the month of June, 2000, he was entrusted with repairing work of Kuravi Sree Veerabhadra Swamy Devasthanam for ensuing Jatara by PW.3—the then Executive Officer, Sri Kumara Swamy, and he had executed the work within a month and Deputy Executive Engineer—Sri D. Prabhakar Rao, Endowments Department estimated it at

Rs.15,847/- and out of it Rs.4,000/- was already paid to PW.1 by the then Executive Officer in cash. PW.4 succeeded PW.3 on his transfer as incharge E.O and later AO succeeded him. On 21.12.2000, the AO has issued cheque for Rs.7,900/-, leaving a balance of Rs.3,947/- and in that connection, PW.1 used to meet AO and wander around him. Atlast on 07.03.2001, during noon time, when PW.1 met AO and enquired about the cheque for balance amount, AO questioned him that he did not pay any percentage earlier when he received the amount and also despite allotting other Devasthanam's contracts and demanded him to pay a sum of Rs.1,000/- as bribe so as to issue cheque for the balance amount of Rs.3,947/-, threatening him that in case his demand was not met, he would delay the payments concerning other works entrusted to him and that PW.1 would sustain loss and also asked him to get Rs.1,000/- any day after ensuing Monday, then only he would write the cheque.

b) Unwilling to pay bribe, PW1 submitted Ex.P.1—complaint to DSP, ACB, Warangal (PW8) on 08.03.2001 at about 11:00am, who registered the same as a case in Cr.No.9/ACB-ACB-WRL/2001 on 13.03.2001 at 8:00am and successfully laid a trap against AO on 13.03.2001 at his office. 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 9 were examined and Exs.P1 to P14 were marked and MOs.1 to 8 were exhibited on behalf of prosecution. Exs.D.1 to D.10 and Exs.X.1 to X9 were marked on behalf of defence.

e) The AO filed written statement on 14.03.2005 contending that he never demanded bribe amount from PW.1 and that PW.1 lodged a false complaint against him. He submitted that after he joined as Executive Officer of Sri Veerabhadra Swamy Devasthanam, Kuravi, he worked sincerely and implemented discipline among the staff and he issued memos to staff and suspended several staff members. He contended that PW.1 having obtained a hand loan of Rs.1000/- from him on execution of Ex.D.2—receipt dated 16.02.2001, while repaying it, got falsely implicated him in this case at the instance of some other staff, who bore grudge against him. He lodged a criminal complaint against some of the staff of Devasthanam and their relatives for forcibly signing on the Attendance register for the period of their suspension and it was registered as Crime No.13/2001 in Mahabubabad Rural P.S. and they were all arrested and remanded to judicial custody on 07.03.2001 and in reaction to said arrest and remand, the instant complaint was lodged with the ACB on 08.03.2001 and he was implicated in a false case and that the sequence of events that preceded the instant trap case clearly establishes that the complaint lodged by PW.1 is definitely a motivated complaint to harm him. He further submitted that he already passed the dues of Rs.7,900/- and ordered to pay balance subject to receipt of final orders from the Commissioner, Endowments, A.P, Hyderabad and noted the same on Exs.P.5 and P.6 and further endorsed on note file directing concerned clerk to put up a letter to the Commissioner for permission.

He thus claimed that the complaint was motivated and he was innocent.

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

Hence, the appeal by AO.

3) Heard arguments of Sri Badeti Venkat Ratnam, learned counsel for appellant/AO and Sri R.Ramachandra Reddy, learned Special Public Prosecutor (Spl.P.P.) for ACB cases.

4) Criticising the judgment of the trial Court, learned counsel for appellant/AO argued thus:

a) Firstly, he argued that no official favour was pending with AO so as to make any demand. He submitted that PW.3—the earlier E.O entrusted the contract work to PW.1 without obtaining permission from the Commissioner, Endowments and even paid an advance of Rs.4,000/- and after taking the charge AO came to know this fact and so he endorsed on Ex.P.6—note file ordering payment of 3/4th of the contract amount, withholding the balance 1/4th amount to be paid after receiving orders from the Commissioner of Endowments. He also made a side order on the note file to put up a letter to Commissioner of Endowments for permission. Learned counsel vehemently argued that when the AO emphatically made it clear in writing that balance amount should be paid to PW.1 only after receiving order from the Commissioner of Endowments, there was nothing left in his hands to do any official favour and therefore, absolutely there was no occasion for him to demand bribe from PW.1.

b) Secondly, denouncing the demand, learned counsel argued that AO never demanded bribe as alleged and the theory of demand is only a concoction made by PW.1 incited by some of the disgruntled staff of AO who were suspended by him due to their misdeeds. Learned counsel argued that when the AO admittedly did not demand bribe while ordering payment of 3/4th of the present contract amount and other contract amounts, it would be highly unjust to impute that he demanded bribe for a petty balance amount of Rs.3,000/- and odd.

c) Thirdly, regarding further demand and acceptance of bribe on 13.03.2001 learned counsel argued that AO received the amount from PW1 as the loan amount due to him under Ex.D2 but not as bribe and he resonated this fact twice during post-trap proceedings which was also incorporated in Ex.P10—second mediators report. However, the trial Court without appreciating facts and evidence properly, rejected his spontaneous explanation. Learned counsel argued that in the light of PW1 admitting his handwriting and signature on Ex.D2, the onus of proof will be on prosecution to establish that Ex.D2 was a fabricated document. He argued that the doubts expressed by PW1 in his re-examination to the effect that earlier he submitted a number of applications and letters in EO's office and the contents portion of one of such letter or application might have been torn and on the space available above the words "itlu mee videyulu", the contents in Ex.D2 must have been incorporated cannot be accepted for the reason that Ex.D2 contains not only the admitted signature and handwriting of PW1 but also the date as 16.02.2001 and therefore, the burden lies on the prosecution to explain as to what letter or application dated 16.02.2001 was submitted by PW1 in the office of EO to enable AO to utilise the same for fabricating Ex.D2. The prosecution miserably failed to show the nature of application/letter allegedly submitted by PW1 on 16.02.2001 and therefore, it is not apposite to discard Ex.D2 on the strength of doubt expressed by PW1. Learned counsel further argued that mere recovery of money from the person of accused shall not be taken in isolation to decide the guilt of the AO and on the other hand, if the other surrounding circumstances are taken into consideration, they would depict that some of the staff suspended by AO became disgruntled and gheroaed AO on 16.02.2001 along with Sarpanch and PW1 and they were arrested on the compliant lodged by AO and hence they used PW1 to foist a false case against AO. Learned counsel submitted that these back ground facts would show that

PW1 in collusion with his villagers implicated AO in a false case and unfortunately the trial Court without proper appreciation of facts and evidence convicted AO. He relied upon the following decisions to buttress his argument that mere recovery of money divorced from circumstances under which it was paid is not sufficient to convict the accused:

1) ***State of Kerala and another vs. C.P. Rao***[1]
2) ***C.M. Girish Babu vs. CBI, Cochin, High Court of Kerala***[2]
3) ***Gulam Mahmood A. Malek vs. The State of Gujarat***[3]
4) ***T. Subramanian vs. State of Tamil Nadu***[4]

d) He further submitted that for the demand and acceptance of bribe except the sole testimony of PW1 there is no other proof and PW1 being highly interested since his relative was also one of the suspended employees and he was amenable to co-villagers, his evidence cannot be accepted for convicting the accused. He relied upon the following decisions to stress that the evidence of interested or motivated witness shall not be believed without corroboration by independent and reliable witnesses:

1) ***Sat Paul vs. Delhi Administration***[5]

2) ***Ram Prakash Arora vs. The State of Punjab***[6]

e) Learned counsel for appellant argued that AO offered spontaneous explanation and merely because he did not produce Ex.D2—receipt immediately after trap, on the ground alone his explanation shall not be rejected. He submitted that even if an explanation was not offered spontaneously, still the same can be considered if it is reliable though offered at the stage of trial. On this aspect he relied upon the following decisions:

1) ***Punjabrao vs. State of Maharashtra***[7]

2) ***S.V.S. Kodanda Rao vs. State of A.P***[8]

He thus prayed to allow the appeal.

5 a) Per contra, learned Spl.P.P. while supporting the judgment firstly argued that PW1 had no motive to implicate accused in a false case as contended by AO and none of his relations was working in the EO's office and suspended and hence he had no axe to grind against AO. Except harping, AO could not prove the alleged ill-motive for PW1 to foist a false case. Even the incident dated 16.02.2001 is concerned, PW1 had nothing to do with the same and that was why AO did not include his name inEx.D7—FIR. Moreover, even after incident dated 16.02.2001, AO paid amount to PW1 for the works undertaken by him and PW1 issued Ex.X3—receipt dt.26.02.2001. Further, admittedly AO allotted certain other contract works to PW1 as EO of Kuravi temple. All these would show that there were no ill-feelings between PW1 and AO. So, attribution of motive to PW1 is only a vain attempt on the part of AO to wriggle out of genuine compliant given against him by

PW1.

b) Secondly, the pendency of official favour and demand are concerned, learned Spl.P.P argued that as per PW1 the demand was made not only for the paltry balance amount relating to present contract but also for passing bills in other contract works and therefore, merely because AO proposed to obtain permission from Commissioner of Endowments for releasing balance amount, it cannot be said that no official favour was pending with him. He argued that the pendency of official favour and demand are to be viewed in a holistic manner rather than in isolation to the present contract work alone. Regarding demand, he argued that since it became clear that PW1 has not tried to implicate AO, his evidence touching the aspect of AO demanding him bribe of Rs.1,000/- can be accepted and in fact the trial Court rightly believed his evidence in that regard.

c) Thirdly, regarding further demand and acceptance of bribe, he argued that in this case the bribe amount was admittedly accepted by accused and it was found with him therefore, presumption under Section 20 of PC Act would follow. The spontaneous explanation offered by accused is concerned, he argued that the same cannot be believed because he produced Ex.D2—receipt only during trial but did not produce the same at the time of post-trap proceedings or at the time of search of his house. Further, Ex.D2 ex-facie would show that it is a fabricated document because on all the previous occasions

PW1 used to pass receipts in his own handwritings and as such there was no need for him to sign on a typed receipt like Ex.D2. Further, he had enough money because just few days prior to 16.02.2001 he received amounts from AO towards his contract works and therefore, he had no necessity to borrow paltry amount of Rs.1,000/-. Considering all these aspects, the trial Court rightly rejected the defence plea and convicted him. He thus prayed to dismiss the appeal.

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

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

7) **POINT**: The precise accusation of prosecution is that AO being the Executive Officer of Veerabhadra Swamy Devasthanam, Kuravi demanded bribe amount of Rs.1,000/- from PW1 who is the contractor for releasing the balance amount of Rs.3,847/- relating to contract works entrusted to him in June, 2000 by the then EO (PW3) and also for releasing the amounts concerning to other contract works, AO refuted the charges and pleaded innocence. Regarding allegation of further demand and acceptance of Rs.1,000/- on the date of trap i.e. 13.03.2001, his explanation was that he accepted the same towards repayment of loan amount taken by PW1 under Ex.D2-receipt.

a) Before adverting to the findings of the trial Court on the aspects of demand and acceptance of bribe and explanation offered by the AO, I consider it apt to discuss whether the complaint lodged by PW1 with ACB police is motivated to implicate him in a false case. According to AO, the complaint was a motivated one. As per his written statement, after he joined as Executive Officer of Veerabhadra Swamy Devastanam, Kuravi he worked sincerely and tried to implement discipline among the staff who were very irregular and indisciplined prior to his joining. He issued memos and suspended four staff members of Devasthanam. Ex.X9 is a memo issued to PW2. Of the four suspended staff members N.Jagadishwara Rao and M.Somi Reddy are related to Sarpanch—N.Prasad Rao and PW1. On 16.02.2001 the suspended employees along with some villagers and Sarpanch and PW1 entered the office when AO was attending his work and waiting for arrival of Regional Joint Commissioner in connection with an enquiry against him and they gheroaed AO and the suspended employees forcibly signed in the attendance register for the period of their suspension and further they demanded to raise the suspension and pay the salaries. Against their atrocious acts, AO lodged a compliant in Cr.No.13/2001 in Mahabubabad Rural Police Station vide Ex.D7—FIR and the accused were arrested by the police and enlarged on bail on 07.03.2001. Thereafter all of them including PW1 colluded together and dubbed the date of their release i.e. 07.0.32001 as the date of first demand allegedly made by AO and PW1 lodged a false complaint against AO on 08.03.2001. None of the facts in Ex.P1—report is true, since Ex.P1 is a motivated one. It is the further argument of AO that PW1 in fact borrowed Rs.1,000/- on 16.02.2001 to meet the medical expenditure of his son who was indisposed and on the date of trap i.e. 13.03.2001 he paid Rs.1,000/- towards repayment of loan and got him trapped as if the said amount was bribe. In light of this argument, the facts and evidence are to be scrutinized.

b) When the contention of AO is scrutinized the motive alleged against PW1 can be believed if it is established that one of his relations was suspended by AO causing heart burn to him and the suspended employees prevailed upon PW1 to lodge a false complaint against AO to wreak-vengeance against him. AO though not by strict proof, atleast by preponderance of probabilities must bring forth the nexus between suspending employees and PW1. Atleast he must able to prove the presence of PW1 along with mob on 16.02.2001 so as to infer that PW1 was one among the participants. In that context the evidence of PW1 in the cross-examination is pertinent. He stated thus:

> *"I know the entire staff of AO's office. I know M.Somi Reddy, M.Jagadishwara Rao, Sri C.Srinivas and R.Narayana Rao, Jaya Shanker and Sudhershan. Somi Reddy is not my relative. I have no acquaintance with Prasad Rao who is Sarpanch of Korvi village. Only I heard his name. I do not know Jagdishwar Rao is the brother of Sarpanch. I learnt that Somi Reddy, Jagadishwara Rao, Srinivas and Narayana Rao were suspended by the AO on 20.12.2000 but I do not know whether he was suspended by the AO and whether it was on 20.12.2000. It is not true to suggest that on 16.02.2001 myself and all 4 of them along with Sarpanch went to the office of the AO and created nuisance by abusing him and that the*

suspended officers forcibly signed in the attendance register from the date of their suspension. I do not know whether AO has given compliant in that connection against the suspended clerks and the followers of the Sarpanch and whether the Crime No.13/2001 of P.S. Mahabubabad Rural was registered and whether they were sent to judicial remand on 07.03.2001. It is not true to suggest that on account of that incident from the next day onwards in collusion with the above staff members and the Sarpanch, I have lodged Ex.P1 levelling all false allegations."

So, from the above evidence it is clear that PW1 staunchly denied his relationship with Somi Reddy one of the suspended employees. He also denied his acquaintance with Sarpanch—Prasad Rao. Most importantly he denied his associating with the suspended employees and Sarpanch and going to the office of AO on 16.02.2001 and creating nuisance and abusing the AO etc. facts. Therefore, it must be said that nothing could be extracted from the evidence of PW1 to substantiate that PW1 bore grudge due to the suspension of employees and due to AO lodging complaint. Apart from this denial, the AO in Ex.D7—complaint has not at all included the names of PW1 and Sarpanch as participants and even after investigation also the police have not shown them as accused in Ex.D9—charge sheet. So, absolutely PW1 is nothing to do with the suspension of employees and their attacking AO on 16.02.2001. As rightly observed by the trial Court, from the mere coincidence of date of demand i.e. 07.03.2001 with the date of arrest and remand of four suspended employees, it cannot be readily inferred that PW1 was incited by them to lodge a false complaint particularly when the nexus between

PW1 and accused in Cr.No.13/2001 was not even remotely established. Added to above, the record shows that even after 16.02.2001 there were work transactions between PW1 and AO evidenced by X3—money receipt passed by PW1 in favour of AO on 26.02.2001. Under Ex.X3 PW1 passed money receipt for Rs.13,000/-. Had PW1 participated in the attack on 16.02.2001, certainly AO would not have paid money of Rs.13,000/- on 26.02.2001. So, the motive alleged against PW1 has no legs to stand.

c) Then, official favour is concerned, it is the strong argument on behalf of AO that as the predecessor of AO entrusted contract work to PW1 without obtaining permission from Commissioner Endowments, the AO wanted to straighten the issue and so while ordering on Ex.P6—note file for payment of 3/4th of contract amount, he endorsed that balance amount will be paid after receiving final order from the Commissioner Endowments and he also made an order on the side note to put up a letter to the Commissioner for permission. It is argued that the aforesaid order of AO would show that he wanted to deal with the matter as per procedure and since he already made such an order, nothing more was left with him to do official favour and so the question of his demanding bribe does not arise.

d) It is true that the order passed on Ex.P6—note file would show that while ordering payment of 3/4th of the contract amount he made it clear that balance amount will be released on receiving orders from the Endowment Commissioner. He also directed PW2 to put up a letter to the Commissioner for permission. So, the point is whether by virtue of the above order, any official favour was pending with AO. To answer this question, we should verify the evidence of PW1 and Ex.P1 to know in what context AO demanded bribe. As per the evidence of PW1 whenever he used to approach AO for payment of balance amount of Rs.3,947/-, he used to postpone it on one or other pretext. Thereafter on 07.03.2001 when he met AO he asked him to give percentage in that amount by saying that he (PW1) had not given any percentage in the bill amount already received and that he would allot some more works to him and on that ground he demanded Rs.1,000/- as bribe for releasing the balance amount. Then, in Ex.P1 also PW1 mentioned that when he met AO on 07.03.2001 and asked about his balance amount he stated that he did not give any percentage for the amounts already taken and further he entrusted some more contract works and so if he pay Rs.1,000/-, he would issue the cheque for the balance amount of Rs.3,947/- or otherwise he would delay the payment of amounts concerning to other works and thereby he would suffer loss. Therefore, the pendency of official favour and demand are concerned, as rightly argued by Spl.P.P. we have to visualise in holistic manner rather than isolating the present contract. It is no doubt, the present contract is concerned, AO made an endorsement on Ex.P6 that the balance amount would be paid after receiving the order from the Endowment Commissioner. However, that is not the only point to decide the issue. PW1 was the contractor attending different contract works in Veerabhadra Swamy Temple and AO was the Executive Officer. The demand of bribe was not only for payment of balance amount concerning the present contract work but also for entrustment of other works for smooth payment of the amounts. Viewing in that broader view, it can be said that official favour was pending with AO. Then demand is concerned, as stated supra, as per PW1 when he met AO on 07.03.2001 he demanded bribe of Rs.1,000/-. Demand was attacked firstly on the ground that when AO admittedly did not demand bribe on previous occasions, it would be highly improbable to believe that he would demand bribe for paying a paltry amount of Rs.3,947/-. Further, on the aspect of demand except the interested and motivated testimony of PW1 there was no independent corroboration. I am unable to accept the argument of AO. No doubt, AO did not demand bribe while ordering payment of $3/4^{th}$ of contract amount and also paying amounts covered by other contract works. However, that is not the end of the matter. When the evidence of PW1 and Ex.P1 are scrutinized, we would know that AO demanded bribe for the past bills and also for paying the balance amount covered by present contract work. So, merely because he did not demand bribe on previous occasions, it cannot be concluded that he was not a bribe monger. Then, demand is concerned, no doubt, PW1 was the sole witness for demand said to be made by AO and it is natural because nobody would like to make a demand for bribe in the presence of others. Now, the veracity of the evidence of PW1 is concerned, we have already discussed that there was no ill-motive for PW1 to implicate AO in a false case and that AO failed to establish such motive. When such a motive is excluded, there can be no hurdle to believe the evidence of PW1 on the aspect of demand made by AO. His evidence is corroborated by Ex.P1—complaint and also PW6—mediator.

e) PW6 deposed that when himself and Sarangam (LW10) approached DSP on 13.03.2001, he introduced PW1 to them and gave a copy of FIR and they have gone through FIR. They enquired about the contents of Ex.P1 with PW1. He avouched the contents therein and as a token of going through the copy of FIR, they attested on Ex.P8—copy of FIR. So, the evidence of PW6 would show that on their enquiry also PW1 narrated about the demand made by AO and his giving compliant to ACB police. In this regard, the cited decisions reported in ***Sat Paul*** and ***Ram Prakash Arora***'s cases (5 and 6 supra) will not help the case of AO. As laid down in those decisions, there can be no demur that evidence of interested and motivated witness should be viewed carefully and if necessary corroboration has to be sought for from independent reliable witnesses. However, in the instant case, PW1 being not motivated, his evidence is reliable and further his evidence gets corroboration from Ex.P1 and PW6.

8) Then coming to further demand and acceptance of bribe,

as per prosecution on 13.03.2001 PW1 on the instructions of PW8 went to the office of AO at about 11.30 AM and found AO in his seat talking with pilgrims and he also found PW2—the UDC and Sudharshan (LW3) working in their seats and so he sat and waited upto 12.30 PM. Thereafter, he told AO that he wanted to go away. On that AO stated he was leaving to Hyderabad and returning on the next day and after return from Hyderabad he would issue cheque. Then AO enquired whether he brought the proposed bribe amount and PW1 affirmed and then AO took PW1 inside the anteroom and there on further demand of AO, PW1 handed over the tainted amount to AO which he received and counted and kept in his left side pant pocket. Then, PW1 came out and gave pre-arranged signal and thereafter trap party members rushed and caught hold AO and conducted further proceedings. This is precisely the prosecution version on further demand and acceptance of bribe by AO. The prosecution in order to prove the aforesaid aspects relied upon the evidence of PWs.1, 2, 6 and 8 coupled with Ex.P10—second mediators report.

a) In this case, AO admits to have accepted the amount from PW1 but of course, his contention as already narrated earlier is that on 16.02.2001 PW1 approached him at his house and took a hand loan of Rs.1,000/- for meeting the medical expenditure of his ailing son and on the date of trap PW1 handed over the tainted amount as if he was repaying the loan contracted under Ex.D2. So, the crucial point is whether the AO accepted the amount as bribe as contended by prosecution or whether he innocently received the amount towards discharge of loan. It should be noted that AO during the post-trap proceedings twice stated that he received Rs.1,000/- from PW1 towards loan amount due to him and this fact was admitted by PWs.6 and 8 and incorporated in Ex.P10 also. Since PWs.6 and 8 are not the direct witnesses for what has transpired between PW1 and AO before trap, their evidence is not useful to clinch whether AO accepted the amount as bribe or towards discharge of loan. Hence, the prosecution case on the aspect of further demand and acceptance of bribe mainly pivots on the evidence of PWs.1 and 2.

b) PW1 in his evidence clearly stated that AO told him that he was going to Hyderabad on next day and after returning from Hyderabad he would issue a cheque and then enquired whether he brought the proposed bribe amount and PW1 affirmed and thereafter AO took him to the ante-room attached to his room and there, on his demand PW1 handed over the amount which he received and counted and kept in his left side pant pocket. So, as per PW1 he accepted the amount only as bribe but nothing else.

c) PW2—Ch.Jayashankar who is a Senior Assistant in the EO's office is concerned, his version is that on 13.03.2001 he and Sudharshan (LW3) and AO were present in their office and PW1 came to their office at about 11.30 AM and at that time they were talking with the employees of electrical department with regard to ensuing Jatara and PW1 sitting in front of the seat of AO for about one hour and talked to AO and thereafter at first PW1 went into the back room and AO also went inside of the room and 5 or 10 minutes thereafter, PW1 came out of that room and went outside and AO sat in his seat and within 5 minutes thereafter ACB officials came their and conducted trap proceedings. So, the evidence of PW2 is to the effect that he witnessed AO and PW1 going into the anteroom. This way the prosecution sought corroboration from PW2. The AO sought to nullify the version of PW1 through loan repayment theory. PW2 is concerned, the contention of AO is that PW2 and LW3 were not at all present in the office at the crucial time and prosecution inducted them to give a colour of truth to its story and PW2 was enimically disposed of towards AO, since he issued Ex.X9—charge memo against him.

d) In the light of above respective stands of both parties, it has to be examined whether AO accepted the amount as bribe or towards discharge of loan. Before that, since the demand aspect projected by the prosecution is believed and since acceptance of the amount was admitted and also established through the recovery of tainted amount from the pant pocket of AO and chemical test conducted on his both hands and inner linings of the pant pocket proved positive, the mandatory presumption under Section 20 of PC Act shall follow to the effect that AO accepted the amount as motive or reward for doing an official favour. Hence, it has to be seen whether the

AO could rebut the presumption through the explanation offered by him. Before scrutinizing veracity of his explanation it is apt to discuss the evidence of PWs.1 and 2 regarding the nature of amount offered by PW1.

9) As stated supra, PW1 emphatically stated that he paid the amount to AO only as bribe on his further demand. Further, in his cross-examination he denied receiving any loan from AO. His evidence on this aspect is thus:

> *"It is not true to suggest that I have received Rs.1,000/- as per the contents in that typed receipt and signed in it (the witness volunteers) whenever I received amount I would be passing a receipt in my own hand. Ex.D2 is the said receipt (marked for identification purpose and only to the extent of signature of PW1). It is not true to suggest that on 16.02.2001 in the morning hours I approached AO at his house and requested him to give a loan of Rs.1,000/- as my son was unwell and the AO has given that amount and obtained Ex.D2. On the day I gave 164 Cr.P.C. Statement, before I went to the Court the AO has telephoned me and threatened me that he has got receipt and I should not give statement adverse to him. Then only I came to know about Ex.D2. It is true I have mentioned in 164 Cr.P.C. statement that AO has threatened me that he got receipt that I have taken loan and that he would get a case booked against me for getting him falsely implicated and according to me it is a false receipt which I have mentioned in it."*
>
> *x x x x…*

He further deposed thus:

> *"It is not true to suggest that Ex.D2 is a genuine receipt passed by me and to overcome it, I have concocted a story and thereby even referred that story in my 164 Cr.P.C. statement. It is not true to suggest that even on the date of trap the AO has received an amount of Rs.1,000/- and that I told him that I was returning that amount as the amount borrowed from him and that he asked me to come on that evening to pass a receipt and*

thereafter only I came outside the office. It is not true to suggest that myself and AO did not at all go into ante-room and that at that time myself and AO alone were present in his office room and Jayashanker and Sudharshan were not at all present in that room. It is not true to suggest that the suspended staff and Sarpanch instigated me having paid me Rs.10,000/- to lodge false complaint and to get the AO implicated falsely by arranging the instant trap."

a) So, when the above cross-examination is perused, it is clear that nothing specific was extracted from PW1 to make him admit that the amount was paid towards discharge of loan contracted under Ex.D2. What all extracted was that even after knowing before giving 164 Cr.P.C. statement that AO was in possession of Ex.D2, PW1 has not taken any steps and ACB officials have not investigated in those lines. Merely because they have not done these acts, the veracity of evidence of PW1 will not be affected and authencity of Ex.D2 will not be established particularly, when AO failed to establish any motive for PW1 to foist a false case against him. So, at the outset there is nothing on record to discard the evidence of PW1.

b) PW2 is concerned, as stated supra, AO disputes about the very presence of PW2 and LW3 at the office of AO at the crucial time. It must be said that this argument does not have teeth. The trap took place in the office of AO on a working day and during working hours. PW2 and LW3 being the employees of AO their presence in the office is a natural phenomenon. Further, Ex.P7—attendance register shows that both PW2 and LW3 signed on 13.03.2001 indicating their attending the office. Further, as observed by the trial Court, in Ex.P11-sketch the seats of PW2 and LW3 are mentioned near the seat of AO in the same room and Ex.P11 is not controverted. Above all, in Ex.P10 it is mentioned that the TLO examined PW.2 and LW.3 and recorded their statements during post-trap proceedings. Both of them signed on Ex.P.10. Therefore, in my view, the presence of PW.2 and LW.3 at the crucial time need not be doubted. As rightly observed by the trial Court, if really TLO wanted to project the presence of PW.2 and LW.3 at the time of trap despite their absence, he can only plan it subsequently but cannot incorporate their presence instantaneously while preparing Ex.P.10. It is difficult to get their signatures on Ex.P.10 in their absence. Further, if he falsely mentioned their presence in Ex.P.10, the AO while endorsing receipt of copy of Ex.P.10 would certainly protest about it. However, AO did not make any such protest but simply acknowledged the receipt of copy of Ex.P.10. All these would avouch the presence of PW.2 and LW.3. So the evidence of PW.2 proves a vital circumstance connecting to the case about PW.1 and AO going to rear room and after few minutes their coming out and then PW.1 going out of the office. Their conduct gives scope for suspicion. Had PW.1 only to repay the loan amount, there was no need for AO to take him to the rear room. Here, with regard to the veracity of PW.2, it is contended that AO issued charge memo against him under Ex.X.9 and subsequently placed him under suspension and hence out of spite PW.2 deposed falsehood to help prosecution as if AO and PW.1 went into the rear room. In my view, this argument was effectively dealt with by the trial Court with reference to Ex.X.9—file and conduct of AO after trap. It is true that AO issued charge memo dated 23.12.2000 directing PW.2 to submit his explanation within 7 days and PW.2 received the memo on 23.12.2000. However, record shows that he did not submit his explanation till the date of trap and AO too, it appears, did not take any further action. However, surprisingly on 15.03.2001 i.e, immediately two days after trap, AO issued another memo dated 15.03.2001 directing him to submit explanation within 7 days and placed him under suspension. As rightly pointed out by the trial Court, the very fact that within a couple of days after the trap, AO placing PW.2 under suspension having kept mum for about 2 ½ months shows that merely because of the memo dated 23.12.2000, PW.2 did not entertain any grudge to speak falsehood against AO but on the other hand due to the statement of PW.2 in Ex.P.10, AO suspended him within two days after the trap. So the evidence of PWs.1 and 2 projects a strong circumstance that the amount paid by PW.1 to AO was towards bribe but not towards discharge of loan.

10) Now coming to the defence explanation, the same is not believable because of the different reasons cogently cited by the trial Court.

a) As rightly pointed out by the trial Court, just few days prior to 16.02.2001, AO paid contract bill amounts to PW.1. On 12.02.2001, PW.1 received Rs.10,000/- (vide Ex.X.1—receipt) and on 15.02.2001 i.e, a day prior to the alleged loan transaction, again PW.1 received Rs.7,000/- (vide Ex.X.2—receipt). In such circumstances, when PW.1 was having money with him, it would be highly improbable to believe that he would borrow a paltry sum of Rs.1,000/- on the morning of 16.02.2001 from AO. Further, AO is the Executive Officer and PW.1 is a Contractor and it is difficult to believe they have such intimacy to borrow loan. This is one of the strong circumstances belying the loan theory.

b) The next circumstance is that during the trap proceedings though AO proclaimed that he received amount from PW.1 towards the discharge of loan, surprisingly he did not whisper about Ex.D.2—receipt. Assuming that in the charged circumstances he forgot to bring to the notice of trap party members about Ex.D.2, nothing prevented him to show Ex.D.2 to them during his house search conducted after trap on the same day. In my considered view, that was the proper time to divulge about the Ex.D.2, if it were really in existence. Instead he belatedly mentioned about Ex.D.2 during his explanation under Ex.D.4. Be that it may, he divulged about Ex.D.2 before Court only during trial. The conduct of AO concerning Ex.D.2 creates any amount of doubt regarding the genuinity of Ex.D.2. It is true that merely because an accused failed to offer a spontaneous explanation regarding his possession of the bribe amount, the same cannot be rejected on the ground that it was offered belatedly during trial, provided the explanation is believable. Similarly, when an accused offered spontaneous explanation but failed to produce spontaneous proof in support of his explanation, the same cannot be rejected when the proof is produced during trial if the said proof is believable. So the believability of the explanation is important. The believability depends on the nature of explanation offered. In the instant case, the explanation pivots on Ex.D.2 document. Had this vital piece of evidence was not in the custody and reach of AO till it was produced in Court, no inference of manipulation can be drawn against AO, however it was admittedly said to be in his own custody and still it was not produced at the earliest point of time without any plausible reason. In such an event, the genuinity of Ex.D.2 cannot be accepted. Further, Ex.D.2 appears on a small piece of paper and contents appear to be typewritten in English and thereunder it is mentioned in the handwriting of PW.1 as "*itlu mee videyulu*" and beneath it, his signature and date as 16.02.2001 and within brackets Contractor are written. When PW.1 is an educated person, there is no reason why he did not write the contents of the receipt also in his handwriting. So the appearance of Ex.D.2 also throws doubt.

11) So on a conspectus of the facts, circumstances and evidence relating to Ex.D.2, no reliance can be placed on Ex.D.2. The cited decisions will not advance the cause of A.O. Therefore, it must be said that AO failed to rebut the presumption through the explanation offered by him. The trial court rightly convicted and sentenced him for the offences

under Section 7 and 13 (1)(d) r/w 13(2) of P.C. Act and I find no merits in the appeal to set aside the judgment of the trial Court.

12) In the result, this Criminal Appeal is dismissed by confirming the conviction and sentence passed by the trial Court in C.C.No.18 of 2002. Consequently, appellant/AO is directed to surrender before the trial Court on or before **09.02.2015** 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.

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U. DURGA PRASAD RAO, J

Date: 19.01.2015

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

Murthy / scs

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[1] (2011) 6 SCC 450

[2] (2009) 3 SCC 779

[3] AIR 1980 Supreme Court 1558

[4] (2006) 1 SCC 401

[5] AIR 1976 Supreme Court 294(1)

[6] 1972 Crl.L.J. 1293 (SC)

[7] AIR 2002 SC 486

[8] 2003 (1) ALD (Crl.) 933 (AP)