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´4è7G9G9³$¢9Î Î Î ¤rdÎ Î Î rª$Î ¸† ¶$Ú¸'——ÿÿÿÿHON'BLE SRI JUSTICE U. DURGA PRASAD RAO CRIMINAL APPEAL No.935 of 2005 JUDGMENT: This Criminal Appeal is preferred by the Accused Officer (AO) aggrieved by the judgment dated 02.06.2005 in C.C.No.14 of 2000 passed by learned Principal Special Judge for SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad convicting him for the offences under Sections 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 (for short "PC Act") and sentencing him to undergo R.I. for a period of one year and pay a fine of Rs.1,000/- and in default to suffer S.I for three months for the offence under Section 7 of PC Act and also sentencing him to undergo R.I. for a period Two years and pay a fine of Rs.2,000/- and in default to suffer S.I for six months for the offence under Section 13(1)(d) of PC Act. Both the sentences were directed to run concurrently. 2) The factual matrix of the case is thus: AO—B.Yella Swamy worked as Junior Assistant, APSRTC, Parkal Depot, Warangal District during 1998-1999. According to prosecution, Vadlakonda Rajamouli—complainant who is working as Conductor, Parkal Depot filed a representation before the Depot Manager, APSRTC, Parkal Depot for sanction of Special Grade Increment due from 01.04.1998 and requested him to pay arrears of the said increment. Basing on the said request, the Depot Manager sanctioned Special Grade Increment to complainant and included in the salary of December, 1998 payable on 01.01.1999, but arrears of the above increment were not paid. Therefore, complainant approached AO on 22.01.1999 and requested for preparing the arrears bill. At that time, AO allegedly demanded Rs.500/- as bribe for preparing the arrears bill. Unwilling to pay the bribe amount the complainant lodged a complaint before the DSP, ACB, Warangal (PW5) on 25.01.1999. Basing on the said complaint, PW5 registered a case in Cr.No.2/ACB-WRL/99 on 28.01.1999 and took up investigation and successfully laid trap on AO by following procedure. After completion of investigation, he laid charge sheet against AO. On appearance of AO, charges under Sections 7 and 13(2) r/w 13 (1) (d) of P.C. Act were framed against him and trial was conducted. During trial, PWs.1 to 7 were examined and Exs.P1 to P12 were marked on behalf of prosecution. Exs.D1 and D2 were marked on behalf of defence. The trial Court on appreciation of evidence having found the AO guilty of the charges under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act, convicted and sentenced him as stated supra. Hence, the appeal by AO. 3) Heard arguments of Sri P.Prabhakar Reddy, learned counsel for appellant/AO and Sri R.Ramachandra Reddy, learned Special Public Prosecutor (Spl.P.P.) for ACB cases. 4 a) Impugning the trial Court's judgment, learned counsel for appellant/AO firstly argued that in a trap case it is trite law that the Trap Laying Officer (TLO) has to conduct a preliminary enquiry regarding the antecedents of complainant and AO to ward off the possible implication of honest public servant by disgruntled petition mongers and in this case PW5—the TLO has given a go-bye to the principle, which is evident from the evidence of PW1 that after receiving Ex.P1—report on 25.01-1999, PW5 straightaway asked PW1 to come to his office with the proposed bribe amount which implies his predetermination to lay trap without conducting preliminary enquiry. He argued that mere mentioning in Ex.P10—FIR that it was registered 'after due verification" cannot be construed as PW5 translated the same into action. b) Secondly and most importantly, he argued that AO had neither demanded nor occasion to demand bribe from PW1 on 22.01.1999 since he was not the person to prepare or pass arrears bill, but his duty was only to prepare note for sanction of Special Grade Increment which even as per the prosecution witnesses, he completed and obtained orders and remitted the file to PW3 of Accounts Department by 25.12.1998 and after that he had nothing to do with the preparation and passing of arrears bill and further, the arrears for the month of December, 1998 was added to the salary of PW1 and the same was received in the month of January, 1999 and therefore, on 22.01.1999 no official favour was pending with AO to demand bribe from PW1. He relied upon the following decisions on the point that when no work of complainant was pending with the accused, his demanding bribe from complainant cannot be accepted: 1) Kanhaiyalal v. State of Rajasthan 2) Babu Lal Bajpai v. State of U.P c) Thirdly, learned counsel argued that regarding alleged first demand by AO on 22.01.1999, except the interested testimony of PW1 there was no corroboration and the evidence of PW1 cannot be believed on its face value since he tried to implicate PW1 at the instance of Gnaneswar and the trial Court erred in believing the demand aspect without any corroboration. He relied upon the decision reported in State of Kerala vs. C.P.Rao on the aspect of necessity of corroboration of complainant's version. d) Fourthly, regarding second demand and acceptance of the bribe before trap, learned counsel argued that for this fact also there was no independent evidence except the interested testimony of PW1. Learned counsel argued that prosecution has not sent any shadow witness along with PW1 who could have seen the alleged demand and acceptance of bribe. Even regarding what transpired during the trap also no witnesses were examined. Narrating it, learned counsel argued that according to prosecution, the accused instructed PW1 to go to the roof portion of their office and followed PW1 and there he made further demand and accepted the bribe, but the prosecution did not examine the independent witness like the office staff to establish that AO left his seat and went to roof at the relevant time. Learned counsel argued that lack of sufficient corroboration to the evidence of PW1 on the crucial aspect of acceptance of bribe and events transpired prior to such alleged acceptance would clearly cast a doubt about the veracity of the prosecution case. e) Fifthly, learned counsel argued that the AO has clearly explained the reason for the right hand and left sock yielding positive result to the chemical test, but the trial Court has not properly appreciated his explanation and ultimately convicted him on erroneous grounds. He thus prayed to allow the appeal and set aside the conviction and sentence passed by the trial court in the impugned judgment. 5 a) In oppugnation, learned Spl.P.P. firstly argued that the demand and acceptance of bribe have to be scrutinized in the perspective of necessity for PW1 to falsely implicate AO who is his colleague. He submitted that absolutely there was no necessity for PW1 to implicate his colleague in a false case. He submitted, to wriggle out of the genuine case, the AO gave a vague and untenable suggestion as if PW1 foisted a false case against AO at the instance of one Gnaneswar whom the AO replaced. Learned Spl.P.P vehemently argued that AO did not give any clear suggestion as to the nature of animosity between Gnaneswar and him, so as to probablise PW1's filing false case at the instance of said Gnaneswar. Therefore, he argued, it must be held that PW1 has come up with a genuine case. For another reason also PW1's case can be accepted as truth. Admittedly, during the relevant period arrears of Special Grade Increment were due to him. Therefore, his approaching the AO was not on any pretext or otherwise. He argued that with this back drop the prosecution case has to be taken into consideration. b) Secondly, with regard to demand aspect, he argued that by nature the public servant will demand bribe in seclusion and it is difficult to get corroboration. In such instances, what is to be seen is whether the evidence of complainant regarding demand of bribe is believable or not. He argued that when the facts show that during the relevant period complainant had the official work pending with the office of AO and that he had no motive or enmity to implicate the AO in a false case, it can be concluded that what PW1 deposed about the demand of bribe is true. c) Thirdly, acceptance of bribe is concerned, while admitting that there was no shadow witness or other independent witness who has seen passing of tainted money, learned Spl.P.P argued that still the acceptance of bribe can be believed in view of the same reason that PW1 had no reason to implicate AO in a false case and further, the acceptance of bribe was demonstratively proved by the other circumstantial evidence of PWs.4 and 5 and also the recovery of bribe amount from the person of AO at his instance and his right hand and his left sock yielding positive result to the chemical test. He vehemently argued that though the AO gave lame excuse for the positive result of chemical test, such excuse will not stand to reasoning. Most importantly, though during trial he claims as if tainted amount was not recovered from him and later it was implanted, such an explanation was not forthcoming during the time of recording of mediator's report and therefore, his explanation should be held as an after thought and rejected. He thus prayed to dismiss the appeal. 6) In the light of above rival arguments, the point for determination is: "Whether the judgment of the trial Court is factually and legally sustainable?" 7) POINT: It is a trap case. The prosecution by cogent evidence shall establish the two vital ingredients i.e. demand and acceptance of bribe by AO to bring home the charges levelled against him. In this case, admittedly, prosecution case mainly pivots on the evidence of PW1—the complainant on the aforesaid ingredients since no other witness was present at the time of alleged demand of bribe by AO and also admittedly the TLO did not send any shadow witness to accompany PW1 to observe the events transpired between him and AO. Therefore, the evidence of PW1 assumes very much importance and it needs a close scrutiny. a) PW1's version is that he worked as Conductor in Parkal depot from 1990 to 2000 and on 09.12.1998 he gave an application to Depot Manager, Parkal requesting him to release Special Grade Increment and also arrears and on 22.01.1999 when he met AO and requested him to release the arrears, AO demanded Rs.500/- as bribe for release of arrears and asked him to tender the amount before 28.01.1999 and unwilling to pay bribe, on 25.01.1999 he met PW5 and submitted Ex.P1—report and PW5 instructed to come to his office on 28.01.1999 along with proposed bribe amount and accordingly he went to DSP office on 28.01.1999 and PW5 conducted pre-trap proceedings in the presence of mediators at his office and thereafter, all of them proceeded to

Parkal depot and reached there at 12.00 noon and then DSP as instructed earlier sent him with tainted bribe amount and accordingly, he went to the seat of AO and wished him and asked about his arrears, for which AO enquired whether he brought bribe amount and he affirmed and then AO instructed him to go to the upstairs of their office and wait there and accordingly he went to the upstairs and after some time AO came there at about 2.15 or 2.30 PM and on further demand by AO he gave the tainted currency notes and AO received with his right hand and asked him to wait at his seat and while coming down the stairs he gave pre-arranged signal to the trap party and went to the seat of AO and then DSP and trap party came there and asked him to wait outside and after one hour he was called inside and enquired by PW5 and he narrated what all transpired between him and AO which was incorporated in Ex.P6—second mediator's report. b) The above is precisely the version of PW1 regarding demand and acceptance of bribe by AO. Now, the crucial question is how far his evidence is reliable in the light of points raised by AO. The first attack on the veracity of PW1 and also on the prosecution case is that PW5 after registering FIR straight away laid trap without ascertaining the truth or falsity of complaint allegations and conduct of AO. When the evidence in this regard is perused, PW1 admitted after he lodged Ex.P1—report, PW5 instructed him to come to his office on 28.01.1999 along with proposed bribe amount. Basing on this evidence, it is argued that PW5 was predetermined to lay trap without conducting preliminary enquiry. However, it must be noted that PW5 in his evidence deposed that on receiving Ex.P1, he asked PW1 to come on 28.01.1999 at 9 AM to his office and in the meanwhile he verified the contents of complaint and antecedents of complainant as well as AO through his Inspector—Shaik Ismail (PW6). In Ex.P10—FIR also he mentioned that as per the contents of petition he registered a case in Cr.No.2/ACB-WRL/99 under Sections 7 and 11 of PC Act after due verification and took up investigation. So, according to PW5, he plunged into action only after conducting preliminary enquiry. No doubt, PW6 in specific terms has not stated in his chief examination that he was instructed by PW5 to conduct preliminary enquiry. It must be noted that preliminary enquiry is a discrete type of enquiry conducted stealthily by ACB police before registering the FIR and laying trap. Since it is a privileged communication received from secret sources, the particulars of the enquiry cannot be questioned in a Court of law. Even otherwise, every TLO knows that if he straightaway embarks upon laying trap without conducting preliminary enquiry, the trap may end in failure due to the honesty of public servant who did not demand bribe and due to false complaint. So, the endorsement made on Ex.P10 can be accepted. 8) The second and most important argument to attack the veracity of PW1 is that no official favour was pending with AO to demand bribe. His case was that he was only concerned to put up the note for granting Special Grade Increment and after sanction was received he would send the file to Accounts Department for preparation of bill and thereafter, he will have no concern with the file and since the sanction in the instant case was given even by 25.12.1998 and arrears for the month of December, 1998 included in the salary of December, 1998 and PW1 received his salary in the first week of January, 1999 itself, there is no question of PW1 approaching him on 22.01.1999 seeking to prepare arrears bill and his demanding bribe. The specific allegation in Ex.P1 for demanding Rs.500/- as bribe was to prepare the Special Grade Increment arrears bill of PW1 and since it was not the duty of AO, the evidence of PW1 shall be held to be false. In this regard, the AO quoted the evidence of PWs.2, 3 and 6. So, the point is whether there was no existence of any official favour pending with AO to demand bribe. a) As per prosecution, Special Grade Increment was due to PW1 since 01.04.1998. PW1 having waited till December, 1998, applied on 09.12.1998 to PW2, who was the Office Superintendent in Parkal depot. The evidence of PW2 is that he endorsed the application to AO who was working as Junior Assistant (Personnel) in Establishment Section and who was the concerned clerk in that regard and AO put up the file on the next day before him for sending the same to audit and on the same day it was sent to audit and after audit the file was returned back to their office within 10 days and then it was given to Accounts Section in the same office for implementation. PW2 stated that arrears were included in the January, 1999 salary bill. The Regional Office sanctions the Special Grade Increment. Then, speaking on the role of AO, PW2 stated in his cross-examination that Special Grade increment will be processed by Personnel Section and arrears preparation and presentation of the bills will be done by Accounts Section and duty of AO as Junior Assistant (Personnel) was to get the Special Grade increment fixed and get it audited. He stated that Ex.P2 is the office order issued by the Regional Office sanctioning Special Grade to 38 candidates including PW1. As per Ex.P3—Service Record of PW1, pay fixation was done by AO which was signed by him and this witness. PW2 clearly stated that AO was not concerned with the preparation of bills or claiming the arrears of Special Grade Increment after it was fixed as mentioned in Ex.P4. He further stated that Ex.D1 is the pay slip of PW1 for the month of January, 1999 and Ex.D2 is the statement of arrears prepared by PW3 and as per Ex.D1, the arrears worked-out in Ex.D2 to a tune of Rs.1440/- were shown to have been paid to PW1 along with salary of January, 1999. He further stated on the date of instant case there were no bills of arrears or increments pending in the office with the accused. b) Then PW3, Junior Assistant in Parkal depot who is looking after the salary bills deposed that on 25.12.1998 AO sent Ex.P4 to him for enhancing the basic pay of PW1 and accordingly Accounts Section enhanced the basic pay and included in December, 1998 salary of PW1 and also included arrears in January, 1999 salary. He stated that arrears were from 01.04.1998 to 30.11.1998. In the cross-examination he clearly stated that Ex.P4 was handed over to Accounts Section. The AO was not concerned with either preparation of bills or calculations or claiming of bills. He further stated that after December 1998 bill, in the succeeding bill of January, 1999 the arrears were worked out from 01.04.1998 to 30.11.1998 at Rs.1440/- and submitted to the higher officers through Audit Office at Warangal. The said arrears of Rs.1440/- were paid to PW1 in January, 1999 salary as per Ex.D1—slip. He stated after that he handed over Ex.P4 to PW3 on 25.12.1998. c) Then, PW6—Investigating Officer in his cross-examination stated that investigation disclosed that AO put up file before PW2 on 10.12.1998 and it was sent to audit on the same day. He further stated that Special Grade Increment was implemented during the month of December, 1998 and arrears were claimed in January, 1999. 9) So, from the evidence of above witnesses it is clear that the application dated 09.12.1998 put up by PW1 to PW2 for fixation of Special Grade Increment and payment of arrears was sent by PW2 to AO and AO prepared Ex.P4 and obtained signatures of PW2 on 10.12.1998 and then sent Ex.P4 file to Audit Department, Warangal and it was pre-audited and passed on 19.12.1998 and sent back to Parkal and on 25.12.1998 AO sent Ex.P4 to PW3 in Accounts Section for preparation of arrears bill and further processing. In view of this evidence, it is vehemently argued that on 22.01.1999 no official favour was pending. a) It is true that by 22.01.1999 the Special Grade Increment of PW1 was already sanctioned. Since AO put up note to PW2 and obtained sanction order and after pre-audit sent the file to PW3 in Accounts Section by 25.12.1998 itself, now the point is on that count can it be said the AO has no opportunity to demand bribe. Though PW1 and AO were working at the same depot at Parkal, the nature of their work is quite different. PW1 was a Conductor who was moving in the bus whereas AO was working in the office i.e. Establishment Section (Personnel). Therefore, the chances of PW1 knowing nature of works attended by employees in Establishment and Accounts Sections etc. are very remote. Though Special Grade Increment was given to PW1 and arrears of December, 1998 was included in the December month salary and paid to him in the first week of January, 1999, still the arrears from 01.04.1998 to 30.11.1998 were billed under Ex.D2 and included in the salary bill of January, 1999 and paid to him in the month February, 1999 only. In that view of the matter, the arrears from 01.04.1998 to 30.11.1998 of PW1 are very much pending as on 22.01.1999. It may be true that AO was not concerned to prepare the bill for the aforesaid arrears. However, PW1 had no occasion to know this fact and therefore, when PW1 met AO and requested him there was every occasion for AO to demand bribe for doing his work. It must be noted that merely because a public servant is not competent to do an official favour there cannot be an automatic conclusion that he will not demand bribe. Of course, in such instances the burden will be heavy on the prosecution to establish that indeed, he demanded bribe. In the instant case, it is not that AO was totally unconnected with the file of PW1. On the other hand, being a clerk in Establishment Section he was responsible to put up the note for sanction of Special Grade Increment and after getting signatures from PW2 he has to send it to Audit Section and after receiving the file then he has to send to Accounts Section for preparation of bill. In that scenario, the chances of his soliciting bribe cannot be ruled out. Then, the veracity of PW1 is concerned, except vaguely suggesting that he implicated AO in a false case at the instance of Gnaneswar, the AO did not clarify the reason for Gnaneswar to have any animosity with AO to connive with PW1 to implicate him. It is also not clarified as to why PW1 should heed to Gnaneswar. So, when this suggestion, which fail to stand scrutiny is omitted, virtually we do no find any reason for PW1 to foist a false case against AO. Therefore, his evidence on the aspect of demand made by AO on 22.01.1999 can be accepted as true. In this regard, the cited decisions can be distinguished on facts. 10 a) In Kanhaiyalal's case (1 supra) the facts are that the accused who was the Field man allegedly demanded bribe for himself and Assistant Engineer for measuring the depth of the well of the complainant's mother to enable them to obtain subsidy for purchasing of water pump under Dry Land Agriculture Development, Pilot Project. The trap said to have taken place in Hotel. The defence of accused was that even the application for subsidy was not filled up and submitted by applicant and he paid Rs.5/- for purchasing application form and in that back ground, the question of making demand will not arise. His further plea was that earlier the complainant with the help of subsidy purchased an engine but sold away and in that context, the accused gave complaint against him to Project Officer and due to grudge the complainant implicated accused in a false case and the said defence was found favour and he was acquitted. However, the facts in this case are quite different. b) In Babu Lal Bajpai's case (2 supra) the facts are that for pre-auditing of two bills of the complainant who was a contractor, the accused who was an Accounts Officer, demanded bribe. The defence of the accused was firstly that no bills were pending with him at the relevant time and further that the complainant tried to thrust the money in his pocket and he resisted the said attempt and thrown down the money on the floor. The trial Court having accepted the above defence acquitted him. However, the High Court of Allahabad reversed the judgment and convicted him. The Honourable Apex Court approved the judgment of the trial Court. Factually, this judgment differs with the case on hand. c) In C.P.Rao's case (3 supra) CW1 who was the complainant was not examined as he was not available and PWs.1 and 2 said to have supported the version of accused. In that context, it was held that the accused was not guilty. 11) Then, acceptance of bribe is concerned, it is the version of PW1 that on the date of trap, as per the instructions of PW5 he went to the seat of AO and AO enquired whether he brought the amount, he affirmed and then AO instructed him to go upstairs and wait there. Accordingly, he went to upstairs and after some time AO came there at 2.15 or 2.30 P.M. and asked him to give the amount and he gave the tainted currency notes which were received by AO with his right hand then asked him to go and wait at his seat and while coming down PW1 gave pre-arranged signal to trap party who later came to the seat of AO and trapped him. The version of PW1 is supported by PW4—mediator and of course by PW5—TLO. Further, he was also supported by positive results yielded in the chemical test conducted to the right hand and left sock of the accused. The defence version in this regard is one of total denial of acceptance of bribe amount. However, on a conspectus of entire facts and evidence it must be held that the defence theory is false for the following reasons. a) Firstly, it is already held earlier that PW1 had no enmity with AO to implicate him in a false case and the defence suggestion in that regard was unacceptable. That being so, the evidence of PW1 on the aspect of his tendering bribe amount on further demand of AO also can be accepted to be true. Further, PW4 who is an independent mediator and PW5—TLO also supports the version of PW1 to the extent of AO and PW1 going to the roof and coming down and there recovering money from the left sock of AO at his instance. There is no reason why PW4 and PW5 think of implicating AO in a false case, if he really did not receive the bribe amount. b) Secondly, in Ex.P6—second mediator's report there is no spontaneous explanation of AO to the effect that he did not receive any bribe amount and it was fabricated as if recovered from his left sock. Such an explanation was given by him for the first time during trial. It must be noted that AO received copy of Ex.P6 and endorsed that he received Panchanama copy and signed. If he really tendered any explanation and it was not recorded in Ex.P6, he should have received the copy under protest but he did not do so. It signifies AO did not offer any explanation at the time of Ex.P6. From this, it is clear that the tainted money was accepted by AO and the same was recovered from his left sock by PW5 during trap. 12) So, for all these reasons, it can be held that the prosecution by cogent evidence established the demand and acceptance of bribe by AO and thereby mandatory presumption under Section 20 of PC Act follows. The AO could not rebut the presumption by showing any plausible explanation. Therefore, the judgment passed by the trial Court is legally and factually sustainable. 13) In the result, this Criminal Appeal is dismissed by confirming the conviction and sentence passed by the trial Court in C.C.No.14 of 2000. Consequently, the appellant/AO is directed to surrender before the trial Court on or before 26.06.2015 and on such surrender, the trial Court shall commit him to jail for serving sentence. As a sequel, miscellaneous applications pending, if any, shall stand closed. __________________________ U. DURGA PRASAD RAO, J Date: 02.06.2015 Note: L.R. Copy to be marked: Yes / No Murthy 1999 Crl.L.J. 3155 (Raj) AIR 1994 SC 1538 (2011) 6SCC 450 PAGE 3 PAGE 18 UDPR,J Crl.A.No.935 of 2005 GOQRŠ‹ü !

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