THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.734 OF 2006

JUDGMENT:

1 This appeal is filed by the State represented by ACB, Khammam assailing the judgment dated 21.11.2005 passed in C.C.No.5 of 1995 on the file of Principal Special Judge for SPE and ACB Cases, Hyderabad, wherein the respondent / Accused Officer was acquitted of the charges levelled against him under sections 7, 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988.

2 The factual matrix that led to the filing of the present appeal is as follows:

3 One Sri K.Subrahmanyam (P.W.1) had transported seven loads of firewood to the A.P. Residential School Hostel, Kinnerasani project from 09.03.1993 to 09.04.1993 through the lorry bearing No.APK 7492 at the rate of Rs.1,400/- per trip. On 10.04.1993 P.W.1 (hereinafter referred to as 'the complainant') approached B.Ramulu (Accused Officer) who is the Principal of the said school with a request to issue cheque for Rs.9,800/- towards transportation charges for which the Accused Officer demanded an amount of Rs.1,000/- as illegal gratification for issuance of cheque. The complainant again approached the Accused Officer twice i.e., on 19.04.1993 and 22.04.1993 for issuance of cheque for the said amount. However, the Accused Officer reiterated his previous demand. Having no other alternative, the complainant approached the ACB officials on 22.04.1993 and gave complaint. The Deputy Superintendent of Police, ACB Warangal range, after receiving the complaint from the complainant, registered a case in Cr.No.3/ACB/WKH/1993 under section 7, 13(1) (d) r/w 13 (2) of the P.C. Act. After securing mediators, the ACB officials successfully laid a trap on the Accused Officer on 23.4.1993. The phenolphthalein test on the right and left hand fingers of the Accused Officer gave positive result and the tainted amount of Rs.1,000/- was recovered from outside the office room of the Accused Officer. After obtaining necessary permission from the Government, the charge sheet was laid for the offences punishable under sections 7, 13(1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988 against the Accused Officer. After following the due procedure, the trail Court has taken cognizance of the offences against the Accused Officer for the offences punishable under sections 7, 13(1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988. On appearance of the

Accused Officer, copies of all documents were furnished to him as contemplated under Section 207 Cr.P.C. On hearing both parties, the trail Court framed charges under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act against the Accused Officer for which he pleaded not guilty and claimed to be tried.

4 During the course of trial, on behalf of the prosecution, P.Ws.1 to 8 were examined and Exs.P.1 to P.15 and M.Os.1 to 8 were marked.

5 After appreciating the oral and documentary evidence available on record, the trail Court arrived at a conclusion that the prosecution failed to prove the guilt of the Accused Officer for the offences punishable under sections 7, 13(1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988 and acquitted him. Hence the present appeal by the State.

6 Heard Sri R.Ramachandra Reddy, the learned standing counsel for the ACB and Sri A.Hariprasad Reddy, the learned counsel for the respondent / Accused Officer.

7 The learned standing counsel submitted that the trail Court failed to consider that the Accused Officer had accepted the illegal gratification which is manifest from the conduct of the Accused Officer himself immediately after the raid. He further submitted that the trail Court ought to have drawn presumption under Section 20 of the Prevention of Corruption Act. He further submitted that the trail Court ought to have placed reliance on the oral testimony of P.Ws.1, 5 and 8 though the prosecution declared them hostile. He further submitted that the trail Court ought not to have believed the testimony of P.Ws.1, 5 and 8 so far as the version of thrusting of money by P.W.1 into the pocket of the Accused Officer in view of the conspicuous absence of this stand in the post trap proceedings Ex.P.12. He further submitted that the trail Court acquitted the Accused Officer on presumptions and assumption.

8 Per contra, the learned counsel for the respondent / Accused Officer submitted that the prosecution failed to establish the demand and acceptance of illegal gratification by the Accused Officer. He further submitted that mere recovery of the tainted money from outside the chambers of the Accused Officer by itself is not a valid ground to draw the presumption under Section 20 of the Prevention of Corruption Act that the Accused Officer has accepted the illegal gratification. He further submitted that even the testimony of P.Ws.1, 5 and 8 is taken into consideration, the prosecution failed to prove that the Accused Officer has demanded and accepted the amount of

Rs.1,000/- from P.W.1 to do official favour. He further submitted that the Accused Officer has established his stand by preponderance of probabilities which eventually demolished the version put forth by the prosecution. Hence the appeal is liable to be dismissed.

9 To substantiate the arguments, the learned standing counsel for the ACB has drawn my attention to the following judgments:

Narayana Vs. State of Karnataka wherein the Hon'ble apex Court held the Court cannot intoto discard the evidence of the hostile witness. The very same principle is reiterated by the Hon'ble apex Court in ***Ramesh Harijan Vs. State of U.P***.

B. Noha Vs. State of Kerala & Another wherein the Hon'ble Apex Court held as under:

> "…..When it is proved that there was voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case. It was held by this Court in Madhukar Bhaskarrao Joshi v. State of Maharashtra (2000 (8) SCC 571) as follows:
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> "The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premises that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

10 On the other hand, the learned counsel for the respondent / Accused Officer has drawn my attention to the following judgments:

Sheo Swarup and Others vs. King Emperor wherein it was held at para No.7 as under:

> "Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

State of Rajasthan Vs. Mohan Lal wherein the Hon'ble Apex Court held at para

No.34 as under:

> 34. From the above decisions, in Chandrappa and Ors. v. State of Karnataka (2007 (4) SCC 415), the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:
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> (1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
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> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
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> (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
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> (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
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> (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

Gaddam Mutyala Rao Vs. State of A.P wherein this Court held at para No.12 as under:

> "When the prosecution itself has no confidence in its own witness and declared them hostile, it is to be noted that the Courts also should reject their evidence. No doubt, it is true that his evidence, which is inconformity with the case of the prosecution, can definitely be accepted but it requires corroboration because of the hostility of the other witness. In fact, in a number of decisions, the Supreme Court expressed the view that the evidence of a hostile witness may not be rejected outright but the Court has at least to be aware that *prima-facie* a witness who made different statements at different times has no regard for truth, and hence, the Courts should, therefore, be slow to act on the testimony of such a witness, and normally, it should look for corroboration to the said evidence."

T. Janaki Rami Reddy Agricultural Officer Vs. State of A.P. wherein this Court held as follows:

> 18. The learned Senior counsel for the appellant also placed strong reliance on a decision in V.Venkata Subbarao Vs. State wherein it is held as follows:
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> "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."
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> 19. The learned counsel for the appellant also relied on the decision in T. Subramanian V. State of Tamilnadu wherein it is held thus:
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> "Mere receipt of Rs.200/- by the appellant from P.W.1 on 10.7.1987 (admitted by the appellant) will not be sufficient to fasten guilt under Section 5 (1) (a) or Section 5 (1) (d) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification."

> 20. The learned senior counsel for the appellant further relied on the decision in Om Prakash Vs. State of Haryana (6) wherein it is held that, even otherwise, where demand had not been proved, Section 20 will also have no application. (Union of India Vs. Purnandu Biswas (2006 (1) ALT (Crl.) 106 (SC) = 2005 (8) SCJ 259) and T. Subramanian Vs. State of T.N. (2006 (1) ALT (Crl.) 262 (SC) = 2006 (1) SCJ 805)
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> 21 From the above decision it is clear that unless there is evidence to show that the accused demanded any bribe amount for doing any official favour, the presumption under Section 20 of the Act, 1988, will not be drawn. In this case, there is absolutely no evidence to show that the accused demanded any amount from P.W.1 towards illegal gratification or showing of any official favour.

11 Let me consider the facts of the case on hand in the light of the principle enunciated in the cases cited supra.

12 The oral testimony of P.W.6 clearly reveals that on 09.02.1993, the Divisional Manager has given information to the Principal A.P.Residential School, Kinnerasani Project for purchase of firewood from Dontaluru forest area in the auction. The testimony of P.W.4 (Deputy Warden in the school) clearly reveals that himself and the Accused Officer participated in the auction for firewood in the forest office, Kothagudem. Ex.P.5 is the file relating to the firewood auction. The oral testimony of P.Ws.4 and 6 coupled with Exs.P.5 and P.9 clearly reveals that the A.P.Residential School, Kinnerasani Project had purchased firewood in the auction.

13 The testimony of P.W.1 clearly reveals that he transported seven loads of firewood to the A.P. Residential School Hostel, Kinnerasani Project from 09.03.1993 to 09.04.1993 on the lorry bearing No.APK 7492 at the rate of Rs.1,400/- per trip. As per the testimony of P.W.1, A.P. Residential School, Kinnerasani Project owe an amount of Rs.9,800/- towards transportation charges. In that connection he requested the Accused Officer for issuance of the cheque. The testimony of P.W.3 coupled with Exs.P.2, P.5 and P.6 clearly reveals that on 23.4.1993 he prepared cheque after receiving advance receipt from P.W.1. His testimony further reveals that he prepared the cheque at the instructions of the Accused Officer. The oral testimony of P.W.1 coupled with P.W.8 reveals that on 22.04.1993, P.W.1 lodged a complaint (Ex.P.1) to Deputy Superintendent of Police, ACB who in turn registered a case in Cr.No.3/ACB-WKH/93 under Sections 7, 11, 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act and issued F.I.R-Ex.P.14. The oral testimony of P.W.7 coupled with Ex.P.13 clearly reveals that the Government has sanctioned permission to the ACB officials to lay charge sheet against the Accused Officer. On 23.04.1993 the ACB officials conducted raid on the office of the Accused Officer in the presence of mediators. The above referred aspects were clearly proved by the prosecution.

14 The crucial question that falls for consideration is "whether the prosecution has established demand and acceptance of illegal gratification by the Accused Officer from P.W.1 as well as recovery of the tainted money from the Accused Officer?"

15 P.W.1 is the competent person to speak whether the Accused Officer has demanded and accepted bribe from him or not for issuance of cheque towards transportation charges. As seen from the testimony of P.W.1 on 10.04.1993, 19.04.1993 and 22.04.1993 he requested the Accused Officer for issuance of cheque who in turn told him to come after some time. When he was moving in the corridors, one of the staff members approached him and told that he won't get the cheque unless he pays money to the Accused Officer. There is no whisper in the testimony of P.W.1 that the Accused Officer demanded an amount of Rs.1,000/- for issuance of the cheque. The learned Public Prosecutor cross examined this witness. In the cross examination of P.W.1 it is not elicited that the Accused Officer demanded Rs.1,000/- for the issuance of cheque. Moreover, the testimony of P.W.8 reveals that the investigating officer has not taken any steps to identify the staff member who advised P.W.1 to pay an amount of Rs.1,000/- to the Accused Officer in order to get the cheque. Non-examination of the so called staff member creates some sort of suspicion with regard to the version of the prosecution.

16 As seen from the testimony of P.Ws.5 and 8, on 23.04.1993 on receiving signal from P.W.1 they entered the room of the Accused Officer. By the time they entered the chamber of the Accused Officer he is coming from his rest room. The Investigating Officer disclosed his identity. The testimony of P.W.5 further reveals that the Investigating Officer instructed the constables to prepare Sodium Carbonate solution in two glasses and requested the Accused Officer to rinse his hand fingers in the solutions. Then the solutions turned into pink colours. M.O.3 is the resultant of the solutions of the right hand wash. But M.O.3 resultant solution was not showing pink colour. The evidence of P.W.8 also shows that M.O.3 resultant solution was not showing pink colour. The trial Court considered this aspect in right perspective. This also creates a doubt whether the Accused Officer has touched the tainted money or not with his right hand.

17 As per the testimony of P.W.1, he thrusted the money into the pocket of the Accused Officer, who in turn promptly replied that there is no such procedure. Even as per the mediators report, the Accused Officer threw the money through the

window of his rest room. The learned standing counsel submitted that if really the Accused Officer has not demanded and accepted the bribe, why he has not returned the money spontaneously to P.W.1 and that the trial Court has not considered this aspect in the light of the other attending circumstances. The Court cannot expect pig iron reaction from each and every individual in the same set of fact and circumstances. The fact remains that the Accused Officer has not touched the tainted money with his right hand. The prosecution has not placed any material to establish that the Accused Officer threw the money knowing fully well that raiding party was waiting outside. The oral and documentary evidence placed before the Court clinchingly establishes that waiting of raid party outside is not known to the Accused Officer by the time of throwing the money from the window. As per the testimony of P.W.5 (mediator) and P.W.8, who assisted the Investigating Officer, on 23.04.1993 they recovered tainted currency notes – M.O.6 outside the window of the chambers of the Accused Officer. As per the testimony of P.Ws.5 and 8, the Accused Officer admitted before them that he threw the tainted money (M.O.6) to outside through the window of his chambers. The fact remains that the tainted money – M.O.6 was not recovered from the possession of the Accused Officer. The Court shall not lose sight of this aspect also while appreciating the rival contentions. Therefore, mere throwing of money from the window would not automatically amount to proof of demand and acceptance of bribe by the Accused Officer. The Accused Officer has taken a specific stand that P.W.1 thrusted money in his pocket though he did not demand bribe. As per the testimony of P.W.1, he thrusted the money in the shirt pocket of the Accused Officer. The statement of P.W.1 was recorded by the learned III Metropolitan Magistrate under Section 164 Cr.P.C. It is not out of place to extract the relevant portion of the testimony of P.W.1 here.

> "It is true, I have stated that I have kept the tainted amount in the pocket of the Accused Officer and the Accused Officer returned the amount stating that there was no such practice to pay such amount and then I came out and gave signal."

18 Though the learned Public Prosecutor cross-examined P.W.1 at length, it is not established that P.W.1 paid the money to the Accused Officer on demand. Immediately after completion of the raid, the investigating officer prepared the mediators report Ex.P.12. It is not mentioned in Ex.P.12 that the Accused Officer informed to the investigating officer that P.W.1 thrusted money in his pocket. In the

cross examination P.W.5 deposed that the Accused Officer represented to the Deputy Superintendent of Police that P.W.1 thrusted money into his pocket, he threw the amount near the window. For better appreciation, it is not out of place to extract hereunder the relevant portion of the chief examination of P.W.8.

> "It is true, Accused Officer has given spontaneous explanation that P.W.1 thrusted the amount into his shirt pocket and he has taken it out and thrown it away through the window of his rest room."

19 Immediately the learned Public Prosecutor has taken permission of the Court to cross-examine this witness. In the cross-examination P.W.8 stated that in Ex.P.12 it is not mentioned that by way of spontaneous explanation the Accused Officer stated that P.W.1 has forcibly thrusted tainted amount in his right pocket and that he had taken out and thrown away from his rest room window. The fact remains that the spontaneous explanation submitted by the Accused Officer is not finding place in Ex.P.12. In order to strengthen the prosecution version, the possibility of non-mentioning of spontaneous explanation submitted by the Accused Officer in Ex.P.12 is very much probable. In Section 313 Cr.P.C. examination also the Accused Officer categorically stated that P.W.1 thrusted money in his pocket. The oral testimony of P.Ws.1, 5 and 8 is supporting the version of the Accused Officer that P.W.1 thrusted money in his shirt pocket. As per the testimony of P.W.8, on receipt of any information, the ACB officials have to verify the antecedents of the accused and obtain the necessary permission from the D.G.P. before conducting of raid. In the cross-examination, P.W.8 admitted that on Ex.P.14 there is no endorsement as to the verification of the antecedents of the Accused Officer as well as the prior permission of D.G.P. was obtained. If really the Investigating Officer had verified the antecedents of the Accused Officer and obtained prior permission from the D.G.P. before conducting the raid, the same might have been reflected in Ex.P.14. The trial Court doubted the credibility of the raid basing on Ex.P.14. It is a settled principle of law that the prosecution has to establish the guilt of the accused beyond all reasonable doubt, whereas, the accused can establish his stand by preponderance of probabilities only. While appreciating the rival contentions, the Court has to keep in mind the above referred principle in order to ascertain the truthfulness or otherwise of the version of the prosecution.

20 As per the principle enunciated in ***B. Noha case (3 supra)*** and ***T. Janaki Rami Reddy case (7 supra)*** the Court can draw a presumption by taking aid of Section 20 of the Prevention of Corruption Act if the prosecution establishes the demand, acceptance of bribe and recovery of tainted money from the possession of the accused. However, the Court is not justified to draw the presumption automatically. In the instant case, the prosecution failed to prove that the Accused Officer demanded an amount of Rs.1,000/- as bribe from P.W.1 and accepted the same. In the absence of proof of the above two aspects, the Court is not justified to press into service Section 20 of the Prevention of Corruption Act. Therefore, I am unable to acceded to the contention of the learned standing counsel for the ACB that it is a fit case to draw presumption under Section 20 of the Prevention of Corruption Act. The principle enunciated in ***Sheo Swarup*** and ***Others vs. King Emperor and State of Rajasthan Vs. Mohan Lal,*** deal with the scope of the appellate Court while deciding the appeal filed against acquittal. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that it is not a fit case to upset or modify the findings recorded by the trial Court. The trial Court has assigned cogent and valid reasons to its findings. Therefore, I am fully agreeing with the findings recorded by the trial Court. I am of the considered view that there are no grounds much less valid grounds to interfere with the well considered judgment passed by the trial Court and the appeal lacks merits and bonafides.

21 In the result, the appeal is dismissed. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

T. SUNIL CHOWDARY, J.

Date:10-04-2015

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