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00&QF.>0¬?,kÖ£!A¬íÖ???lAlAo!4???ÇAÃÃÃÃvvvdÚdvvvÚB¤æhN......ÿÿÿÿHON’BLE SRI JUSTICE U. DURGA PRASAD RAO CRIMINAL APPEAL Nos.501 and 1194 of 2008 COMMON JUDGMENT: Aggrieved by the judgment dated 27.03.2008 in C.C.No.28 of 2002 passed by the learned Special Judge for ACB cases-cum-III Additional District and Sessions Judge, Visakhapatnam convicting the Accused Officer (AO) of the charge under Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 (for short “PC Act”) and sentencing him to undergo RI for one year and pay fine of Rs.1,000/- and in default to pay fine amount to suffer SI for a period of two months, AO—Junnada Rammohana Rao filed Criminal Appeal No.501 of 2008. Whereas State preferred Criminal Appeal No.1194 of 2008 against his acquittal under Section 7 of PC Act. 2) The facts which led to file these Criminal Appeals, can be stated thus: a) Complainant—Venkateswara Pujari (PW1) was the Managing Director of Indo-American Tourism Limited and he is running Educational Institution in the name of Indo-American Hotel Management Academy. b) AO was the Inspector of Police, CID (C&ST), Hyderabad. It is alleged that on 15.06.2001 AO made a telephone call to the office of PW1 and introduced himself as Inspector, CBI and asked him to bring the books and records of the Academy to Room No.402, Sri Raghavendra Lodge, Suryabagh, Visakhapatnam for verification since there was a complaint with regard to non-payment taxes to the Government of India. Accordingly, on 15.06.2001 PW1 went to Raghavendra Lodge along with records; after verifying the records, AO told that he would further look into the records and finalise the report against their Institute and he would close the complaint if he pays Rs.2,000/- as bribe and also asked to bring that amount on 16.06.2001 c) Unwilling to pay bribe, PW1 went to CBI Office, Visakhapatnam and lodged a report before Superintendent of Police, CBI who in turn endorsed the case to Inspector of Police, CBI (PW3) who registered the case in Cr.No.16(A)/01/VSP/CBI and investigated into the matter and successfully laid trap on AO and caught him red-handed. Subsequently the matter was transferred to Deputy Superintendent of Police, ACB, Visakhapatnam on point of jurisdiction, as the AO is the employee of State Government. Thereupon, the ACB Police, Visakhapatnam registered the case in Cr.No.18/RC-WLR/2001 and took up further investigation and laid charge sheet against AO. d) On appearance of AO, the trial Court framed charges under Sections 7 and 13(1)(d) r/w 13(2) of PC Act against him and conducted trial. e) During trial, prosecution examined PWs.1 to 5 and got marked Exs.P1 to P18 and exhibited MOs.1 to 8. No oral or documentary evidence was adduced on behalf of defence. f) The trial Court having found AO guilty of the charge under Section 13(1)(d) r/w 13(2) and convicted and sentenced him as stated supra and acquitted him of the charge under Section 7 of PC Act. Hence, the appeals. 3) Heard arguments of Sri A.Hari Prasad Reddy, learned counsel representing for Smt. D. Sangeetha Reddy, learned counsel for appellant/AO in Crl.A.No.501 of 2008 and respondent in Crl.A.No.1194 of 2009 and Sri M.B.Thimma Reddy, learned Special Public Prosecutor (Spl.P.P) for ACB cases. 4) Learned counsel for appellant/AO in Crl.A.No.501 of 2008 argued that when PWs.1 and 2 categorically deposed in their evidence that AO after receiving the amount from PW1 promised that he would return the amount within two or three days and the said evidence was accepted by the trial Court and acquitted AO of the charge under Section 7 of PC Act, it ought not to have punished AO for the offence under Section 13(1)(d)(ii) of PC Act since the act of AO will amount to only honest borrowing of the amount and it will not constitute ‘misconduct’. He thus prayed to allow the appeal and acquit the AO for the offence under Section 13(1)(d)(ii) of PC Act also. 5 a) Per contra, learned Spl.P.P appearing for appellant/State in Crl.A.No.1194 of 2008 while supporting the judgment of the trial Court in convicting AO for the offence under Section 13((1)(d)(ii) of PC Act argued that even if the AO is not found guilty of the offence under Section 7 on the premise that there was no official favour pending with him, still his act would amount to ‘misconduct’ under Section 13(1(d)(ii) of PC Act since he abused his official position as public servant and obtained pecuniary advantage from PW1 and PW1 would not have lent him money if he were not a public servant and not inspected the documents of his institution. PW1, it would appear, has given the amount for fear that AO was a public servant and he was enquiring his documents and may involve him in a case. As otherwise, in the normal circumstances PW1 would not have lent money to an utter stranger. So, even if the facts and evidence are accepted as they are, though there is no material to sustain a charge under Section 7 of PC Act, still the available material is sufficient to hold that the AO being a public servant abused his official position and obtained pecuniary advantage for himself and thus liable for the offence of ‘misconduct’. b) Learned Spl.P.P alternatively argued that in fact, the trial Court erred in acquitting the AO for the offence under Section 7 of PC Act on a wrong premise that no official favour of PW1 was pending with AO and he obtained the amount from PW1 towards expenses. He argued that the evidence would show that AO asked PW1 to bring the records pertaining to his institution for verification on the pretext that some complaint relating to their institution was pending and while verifying the record he demanded PW1 to give Rs.2,000/- and also to provide a car to go to Simhachalam and PW1 complied with his direction and as such, when the entire facts and evidence are studied in a holistic manner, one can understand that the AO demanded gratification other than legal remuneration by creating an impression in PW1 to do an official favour. Hence, non-pendency of official favour in reality is not a criterion and therefore, AO is liable for the offence under Section 7 of PC Act also. He thus prayed to allow the appeal and convict AO for the offence under Section 7 of PC Act also. 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 a) POINT: The first and foremost aspect for consideration is whether the trial Court was right in acquitting the accused for the offence under Section 7 of PC Act. It is an admitted case that AO obtained Rs.2,000/- from PW1 on 16.06.2001 in Room No.401 of Raghavendra Lodge, Visakhapatnam. Hence, the point is whether he obtained that amount as a gratification other than legal remuneration for doing any official favour or only as a hand loan with a promise to repay the same after few days. In this context, a perusal of evidence of PWs.1 and 2 is necessary to know under what circumstances PW1 paid the amount to AO. In the chief-examination PW1 narrated those circumstances as follows: “I went to Ragavendra Lodge, Room No.402. I went to the Ragavendra Lodge along with the documents. We both knocked the room door and we received the invitation from inside as come in. At that the door was not bolted. Accordingly, we both entered inside the room. We found one person in the room who is the AO present in the court hall. I introduced myself to AO and submitted the documents which were demanded by the AO on phone call. AO inspected the documents. When I enquired with the AO about the demand of documents, he replied that he received some complaint. Again, I asked AO about the nature of complaint and the name of complainant. But AO did not disclose. AO enquired with me about the car and I replied that I had a car. AO asked me to send the car on the next morning as he was intending to go to Simhachalam temple and he also asked me to send Rs.2,000/-. I was not intending conversation with AO and I informed the AO that my subordinate will speak and I asked to return the documents. The AO agreed to return the documents but not returned to me stating that he will verify the documents. Thereafter, I left the room stating that my subordinate will explain the information whatever he want. I went to my office. One hour later my subordinate Potti returned to my office and informed that on the next morning the car will be sent at 7.30 AM along with demanded amount but I was not willing.” b) So, a close perusal of above evidence would show that nowhere PW1 in categorical terms deposed that AO demanded Rs.2,000/- as bribe to do any particular official favour. It may be noted that in Ex.P1—report PW1 narrated as if the AO told him that he would take care of complaint against his institution provided if PW1 fulfils the formalities and PW1 asked as to what were the formalities; AO stated he has to pay Rs.2,000/- and may have to pay him some more amount on later date to satisfy his superior officials and asked him to bring Rs.2,000/- at 7.30 AM on the next day i.e. 16.06.2001 and give him in the hotel. It must be noted that this narration as found in Ex.P1 is absent in his evidence. Except saying that AO asked him Rs.2,000/-, PW1 did not specifically depose that it was a demand for bribe. Unfortunately, learned PP has not sought for clarification on this aspect during trial. Be that it may, in the cross-examination it was elicited from PW1 as to the purpose for which the amount was tendered by PW1 to AO as follows: “AO informed me that some of his money was misplaced and asked him to arrange Rs.2,000/-. I do not remember whether AO informed me that he has to meet some expenses. xxx It is true that AO informed me that he will return back the money within two days after his reaching Hyderabad.” So, from the above, it is clear that PW1 was asked to arrange Rs.2,000/- since the amount of AO was misplaced and he was assured that the amount would be returned within two days after AO reached Hyderabad. Then, coming to evidence of PW2 in his cross-examination he admitted thus: “It is true AO informed to the Inspector —Sankar that he received the amount from PW1 for his personal expenses and agrees to return within two or three days and the same fact was informed to PW1.” c) It is interesting to note that as against the above evidence of PWs.1 and 2 the prosecution did not choose to declare them hostile and cross-examine them on the veracity of their statement. Therefore, their evidence stood un-rebutted. When that is the case, what is to be inferred from the evidence of PWs.1 and 2 is that AO asked money for meeting his expenses as his money

was misplaced but he did not demand bribe. As rightly observed by the trial Court, he was having only paltry sum of Rs.180/- apart from the tainted amount of Rs.2,000/-. So, when the prosecution witnesses themselves say that the money which was asked was in nature of hand loan and when there is no other material to treat the payment as bribe, the charge under Section 7 of PC Act cannot be sustained and the trial Court, in my considered view, is right in acquitting the AO for the charge under Section 7 of PC Act. 8) Now, the next aspect is whether the trial Court was right in convicting the AO for the charge under Section 13(1)(d)(ii) of PC Act. The contention on behalf of AO is that when the trial Court accepted that amount was received by AO only for meeting his expenses and not as bribe, it ought not to have convicted him for the offence under Section 13(1)(d)(ii) since the act of AO do not constitute 'misconduct'. I am afraid this argument is not correct. Section 13(1)(d)(ii) reads thus: Section 13 - Criminal, misconduct by a public servant: (1) A public servant is said to commit the offence of criminal misconduct— (a) x x x (b) x x x (c) x x x x (d) if he,— (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or….." c) To attract the above offence, the public servant need not necessarily accept bribe from any person to do any official favour. Suffice if he by abusing his official position as a public servant obtains any valuable thing or pecuniary advantage for himself or any other person. The thrust in this instance is abusing of official position by public servant and by such abusing, obtains valuable thing or pecuniary advantage. 9) Coming to the instant case, the evidence of PW1 narrated supra would show that AO summoned PW1 with documents to his hotel room and he verified documents and when PW1 asked for return of documents, he replied that he received some complaint and after verification of documents he asked PW1 to send car to Simhachalam and also Rs.2,000/-. Ofcourse, in the cross-examination PW1 stated that the said amount was for meeting his expenses and he promised that the amount would be returned within two days after AO reached Hyderabad. Be that it may, even if the entire evidence is accepted, it would show that AO abused his official position as public servant and obtained pecuniary advantage for himself. As rightly pointed out by learned Spl.P.P but for AO being a public servant and told that a complaint was received against the institution of PW1, he would not have given money even as a hand loan. Therefore, the act of PW1 would clearly falls within the meaning of 'misconduct' under Section 13 (1)(d)(ii) of PC Act. The contention of AO that an honest borrowing will not amount to 'misconduct' does not arise since PW1 and AO were utter strangers before the incident and but for AO's official position and his representation, PW1 would not have lent the money. Therefore, in the considered view of this Court, the trial Court rightly convicted and sentenced the AO under Section 13((1)(d)(ii) of PC Act. Hence, both the appeals are liable to be dismissed. 10) In the result, Crl.A.No.501 of 2008 filed by AO and Crl.A.No.1194 of 2008 filed by State are dismissed by confirming the conviction and sentence passed by the trial Court in C.C.No.28 of 2002. Consequently, appellant/AO is directed to surrender before the trial Court on or before 29.06.2015 and on such surrender, the trial Court shall commit him to jail for serving sentence. As a sequel, miscellaneous applications pending, if ay, shall stand closed. ___________________________ U. DURGA PRASAD RAO, J Date: 03.06.2015 Note: L.R. Copy to be marked: Yes / No Murthy PAGE PAGE 10 UDPR,J Crl.A.Nos.501 & 1194 of 2008

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