

JUDGMENT: This Criminal Appeal is preferred by the Accused Officer (AO) aggrieved by the judgment dated 07.03.2006 in C.C.No.16 of 2000 passed by learned Principal Special Judge for SPE and 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 SI for three months 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) r/w 13(2) of PC Act. Both the sentences were directed to run concurrently.

2) The factual matrix of the case is thus: a) A.O.—Gulam Rasool Khan worked as General Purpose Employee (GPE), Misrigunj Reservoir, Chandulal Baradari Section, Hyderabad Metropolitan Water Supply and Sewerage Board (for short "H.M.W.S & S.B"), Hyderabad from 1992 to 01.03.1996. According to prosecution, Syed Afsar Hussaini (PW1) who is the owner of Water Tanker bearing No.AP 13 T 1288 gave it on hire to the water works department for supplying water to the scarcity arrears in Chandulal Baradari Section for the past three years. The hire order for the month of February, 1996 was held up by way of non-issuing of water tanker receipts/gate passes, but they reiterated their earlier demand.

b) Unwilling to pay the bribe amount, PW1 went to DSP, ACB office, Hyderabad on 24.02.1996 at about 8:45AM and lodged a complaint with PW8 who registered the same as case in Cr.No.4/ACB-CR/1996 under Sections 7 and 11 of P.C Act and took up investigation and successfully laid trap on AO by following the procedure. During the trap proceedings PW1 along with PW2—the shadow witness proceeded to the office of accused as per the instructions of PW8—TLO, but he could not find Ahmed Ali, Assistant Engineer (figured as A1 in FIR) as he went out on some work and not available in the office and so, he paid the amount to Gulam Rasool Khan (accused in charge sheet) on his further demand and gave pre-arranged signal and thereby the trap party rushed and caught red-handed. PWs.9 and 10 took further investigation in part one after another and ultimately PW10 laid charge sheet against AO for the offence under Sections 7 and 13(2) r/w 13(1)(d) r/w of P.C Act.

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 10 were examined and Exs.P1 to P14 and M.Os.1 to 8 were marked on behalf of prosecution. D.W.1 was examined and Exs.D1 and D6 were marked on behalf of defence.

e) The plea of accused is one of total denial of offence. His explanation for receiving the tainted amount of Rs.400/- was that on the date of trap PW1 met him in his office and requested him to take the amount and hand over to his driver—Waheed if he comes to the office and in spite of AO refusing on the ground that he was on leave and came to the office on some personal work and may not meet his driver, PW1 forced him to receive the amount stating that if he did not meet the driver, then return back the amount to him at his house since both of them were residing in the same locality. Hence, AO obliged him but later PW1 implicated him in the case.

f) The trial Court on appreciation of oral and documentary evidence found the AO guilty of the charges under Sections 7, 13(1) (d) r/w 13(2) of P.C.Act and convicted him as stated supra. The trial court passed the conviction on some of the following important findings. Pending of official favour with AO to enable him to demand bribe is concerned, though AO had no power to issue hire orders, grant their hire bills, still he has to issue receipts/gate passes to the drivers to proceed to the stipulated water scarce localities for supply of water. From the records seized by TLO after trap and particularly Ex.P11-made up file containing water tank receipts/gate passes of water tanker No.1288 of PW1, it is clear that AO with a view to see that PW1 meets his demand of bribe amount did not handover those receipts/gate passes to the driver of PW1 and that was why those receipts were available with him at his house. Thus, Ex.P11 coupled with the evidence of PWs.4 and 5 proves the competency of AO to show official favour and consequently the evidence PW1 established the demand made by AO for bribe. Then acceptance of Rs.400/- by AO as bribe is concerned, the trial Court held that the evidence of PW1 coupled with corroboration offered by PWs.2 and 8 on material particulars is believable. In this regard, the trial Court observed that the explanation offered by AO during trial was not offered spontaneously during trap and the explanation offered at that time was quite different. The sanction for prosecution of AO issued by Sri L.V.Subrahmanyam, the Managing Director is legally valid. The trial Court made it clear that it was not concerned with the demand allegedly made by Ahmed Ali as the Spl.P.P. submitted that sanction to prosecute him was not accorded and he was being dealt with under departmental disciplinary proceedings. Hence, the appeal by AO.

3) Heard arguments of Sri V.Shyam Sunder Murthy, learned counsel for appellant/AO and Sri R.Ramachandra Reddy, learned Special Public Prosecutor (Spl.P.P.) for ACB cases.

4) The point for determination in this appeal is: "Whether the conviction and sentence passed by the trial Court are factually and legally sustainable?"

5) POINT: The prosecution case as projected in Ex.P1—complaint and Exs.P2 and P8—pre-trap and post trap proceedings and as per the evidence on record is succinctly thus: PW1 who is the owner of water tanker AP 13T 1288 had hired the same to Water Works Department for supply of water to scarcity areas surrounding Chandulal Baradari Section since last three years. The hire order has to be issued every month by the General Manager (Engineering Division-I). One Waheed was the tanker driver of PW1. The water tanker has to make 8 trips covering 60 KMs. on average per day. PW1 would get gross amount of Rs.16,000/- per month. AO prepares the receipts/gate passes and issues them for each trip. PW1 received his order for January, 1996. But for February, 1996 the order was held up for want of non-issue of water tanker receipts/gate passes by AE—Ahmed Ali and tanker in-charge i.e. AO because the AO retained some of the gate passes by collecting from the driver of PW1. Since one week prior to lodging of report both of them demanded Rs.500/- for Ahmed Ali and Rs.400/- for AO respectively per month and they have threatened that gate passes will not be issued till he pays the bribe amount. They also threatened that they would get his hire contract cancelled and engage another tanker. While so, on 24.02.1996 when PW1 went to Water Works Department Reservoir at 7.30 AM and requested them to issue water tanker receipts/gate passes, they reiterated their earlier demand. Since he was not willing to pay bribe he reported the matter to PW8 who got reduced his statement into writing under Ex.P1 and registered Ex.P14—FIR after due enquiry and laid trap against Ahmed Ali and AO with the help of PWs.2 and 3—mediators. PW1 avouched the genuineness of contents of Ex.P1 before the mediators. After completion of pre-trap proceedings in the office of PW8 and after preparing Ex.P2—pre-trap proceedings, all of them proceeded to the office of AO. As per the instructions of PW8, PWs.1 and 2 went inside the office and other members took vantage position around the office. PW1 enquired about Ahmed Ali and learnt that he went out along with Deputy Executive Engineer, Sri Lakhan Singh and so he met AO who was sitting in Varandah. AO demanded bribe amount of Rs.400/- and PW1 took out and gave it to him. Then, PW1 came out and displayed pre-arranged signal. Then PW8 and other trap members rushed into the office and found PW1 and AO present in front of the office room of Kishan Rao—Supervisor. PW8 brought AO to the office room of Kishan Rao and asked PW1 to wait outside and conducted trap proceedings. PW1 informed PW8 that he paid Rs.400/- to AO as demanded but could not pay the amount to Ahmed Ali as he went out. PW8 conducted chemical test to the hands of AO to which his right hand proved positive and left hand yielded negative result. AO became perplexed and could not give any answer when questioned the reason for his right hand showing positive result. When again questioned by PW8 about bribe amount AO took out a wad of currency notes from his hip pocket and handed over to the mediators. The description and numbers of those notes were tallied with numbers mentioned in Ex.P2. When the pockets of AO were checked some more papers i.e. Ex.P3—note book containing trip particulars of water tanker bearing No.AP 28T 2240 and Ex.P4 a sheet of white paper on which trips made per day to various places by different water tankers on 19.02.1996 and 20.02.1996 and cash of Rs.45/- were found. The inner flap of AO's hip pocket was subjected to Sodium Carbonate Solution test and it yielded positive result. Then, PW8 asked about the explanation of AO and he told that on 24.02.1996 at 12.45p.m PW1 came to him and exchanged pleasantries and PW1 took out some currency notes and asked him to take; when he refused PW1 forcibly put in his hands and went away and without knowing why the money was given AO put in his pocket. PW8 called PW1 and confronted the version of AO and recorded his version. PW8 checked the office premises and seized some records. When the proceedings were in progress, Ahmed Ali returned to office and PW8 examined him. He admitted that he demanded Rs.500/- from PW1. Thus, PW8 completed the trap proceedings by getting them recorded in Ex.P8. This is precisely the prosecution case.

6) Be that it may, in the instant case, the admitted fact is that the accused has accepted Rs.400/- and what he received is not a legal remuneration, in the sense that the said amount was not required to be paid by PW1 to AO in the form of fees or deposit to enable

him to get the gate passes from AO. In view of this, the mandatory presumption under Section 20 of PC Act follows to the effect that the AO has accepted the said amount as a motive or reward for doing an official favour. Therefore, in the instant case, the burden is on the AO to rebut the presumption. 7) AO in his attempt to rebut the presumption put-forth the following arguments. a) The first and foremost argument on behalf of AO is that he was a General Purpose Employee (GPE) i.e. Mazdoor in Water Works Office and he was not having any power either to issue work order or grant the monthly bills of PW1 and except issuing receipts/gate passes for the trips to be made by the drivers of respective water tankers, he had no other role to play and therefore, no official favour was pending with him to demand bribe. Learned counsel argued that trial Court basing on Ex.P11—receipt book seized from the house of AO, has wrongly held as if AO forcibly took return of the receipts/gate passes from the driver of PW1 so as to demand bribe and thus, the pendency of official favour and demand of bribe were established. Learned counsel vehemently argued that receipts/gate passes covered under Ex.P11 no doubt, relate to water tanker of PW1 but they relate to the trips which were not made by the driver but not the trips which were already made which is evident from the fact that those receipts do not contain signatures of the receivers of the concerned locality as an acknowledgement. He submitted that when there is no official favour pending, the question of demanding bribe does not arise. On this aspect he relied upon the decision reported in Chodagudi Sambasiva Rao v. State. b) Secondly, learned counsel argued that AO did not demand any bribe either one week prior to the date of trap or on the date of trap. PW1 foisted a false case against him. Learned counsel argued that for the alleged demand and acceptance of bribe there was no independent corroboration except self-serving testimony of PW1. Referring the contradictions under Exs.D1 to D6, he argued that the evidence of PW1 suffered so many discrepancies and inconsistencies and thereby rendered itself wholly unbelievable. Hence, the trial Court ought not to have carried away by the evidence of PW1 to convict the accused. He relied upon the decision reported in Suraj Mal vs. State (Delhi Administration) on the aspect that when the evidence of a witness suffers inconsistencies such witness becomes unreliable. c) Thirdly, regarding the incident relating to date of trap, learned counsel argued that AO did not make any demand at about 7.30 AM as alleged, because he was on leave since three days prior to date of trap and hence the question of his demanding bribe does not arise. He further argued that on account of his private work he came to office on the scooter of DW1 at about 12:30 noon and at that juncture, PW1 accosted him and paid him Rs.400/- and requested him to give to his driver—Waheed and when he declined and said he was on leave and may not meet his driver, PW1 insisted that if he did not meet his driver, he can return back the amount to him (PW1) since both of them were residing in the same locality. In those circumstances, AO received the amount not as bribe but for a different purpose. He submitted that in a trap case the accused can establish his defence plea by preponderance of probabilities and not by rigid proof but in this case he established his defence through an independent witness i.e. DW1. On this legal aspect he relied upon the decision reported in M.P.Suresh v. State of A.P.. Learned counsel further argued that in spite of his cogent explanation through independent witness, the trial Court discarded the same on a wrong premise that AO did not propound such explanation spontaneously during trap. He argued that it is trite law that merely because an accused came out with an explanation for the first time during trial that cannot be discarded on the ground that it was not offered during trap and the same could be accepted if it is believable. On this position of law he relied upon the decision reported in T.S.Laxman Rao v. State of A.P. The contention of learned counsel is that in fact he offered a spontaneous explanation as stated supra, but his true explanation was not incorporated in Ex.P8—post trap proceedings and that was why his signature was not obtained on Ex.P8 and no copy was served on him. d) Fourthly, he argued that PW8 hurriedly registered FIR and laid trap on the same day without conducting preliminary enquiry which is mandatory. On the necessity of preliminary enquiry, he relied upon the decision reported in P.Sirajuddin v. State of Madras. e) Fifthly, he argued that there is no valid sanction in this case and Ex.P13 sanction proceedings do not disclose proper application of mind by the issuing authority. Further, Ex.P13 was not issued on the letterhead of HMWS & SB and there was no office seal underneath the signature of sanctioning authority and the concerned sanctioning authority was not examined. He further argued that the prosecution did not file the order issued by the Board conferring power on the Managing Director to accord sanction. He relied upon the decision reported in State of Karnataka vs. Ameer Jah on the aspect of requirements of valid sanction order. f) Finally, he argued that the complaint and trap originally aimed against Ahmed Ali, the AE but because ACB Constable—Nayeem Khan happened to be the friend and relative of the said Ahmed Ali, he alerted him and saw that he was absent from the office and since the trap failed in order to save their skin, the TLO instructed PW1 to pay amount to any one of the employees in the water works office to create a make believable trap and that was why PW1 paid the tainted amount to AO apparently to handover to his driver. He thus prayed to allow the appeal and set aside the conviction and sentence passed by the trial Court. 8 a) In oppugnation, learned Spl.P.P, Sri R.Ramachandra Reddy, firstly argued that, in the instant case, the accused could not establish any motive or animus for PW1 to implicate him in a false case. In that view of the matter, the evidence of PW1 on the vital aspects of demand and acceptance of bribe by AO can be held to be genuine and so held by the trial Court. He argued, few discrepancies and inconsistencies found in his evidence will not cut across the basic fabric of prosecution case. b) Secondly, he argued that the submission of accused that no official favour was pending with him to demand bribe is farfetching because AO was in the position of issuing gate passes without which PW1 cannot claim the bills. Hence, it is obvious that an official favour was indeed pending with AO. Further, the gate passes issued by AO were taken back by him which were found under Ex.P11 during his house search and therefore, he cannot plead absence of official favour with him. Learned Spl.P.P further argued that the argument that Ex.P11 receipts/gate passes were relating to the trips that were not made does not hold water because if that were the case, AO should not at all prepare gate passes. He alternatively argued that competency of public servant to perform a particular official favour is not relevant to determine the offence under Section 7 against him. What is required is whether as a public servant he accepted or obtained gratification other than legal remuneration on the promise of performing an official favour or not. On this point he relied upon the decision of the Apex Court reported in Syed Ahmed v. State of Karnataka c) Thirdly, regarding demand and acceptance, learned Spl.P.P. argued that PW1's evidence was trustworthy on vital ingredients and his evidence was amply corroborated by PWs.2, 3 and 8 and further, in view of the fact that the tainted amount was recovered from the person of AO and his admission of receiving the tainted amount, the mandatory presumption under Section 20 of PC Act comes into operation and rebuttal burden lies on AO who failed to discharge his burden. The evidence of DW1 being interested one was rightly rejected by the trial Court. d) Finally, regarding the validity of Ex.P13—sanction proceedings, learned Spl.P.P. argued that it is a self-contained and comprehensive order containing all relevant details and it discloses proper application of mind and therefore, the trial Court was convinced with the validity of sanction and approved the same. He argued that the case law on the requisites of valid sanction would show that the competent authority should see whether the facts placed before it and the material collected by the complainant or the investigating agency prima facie discloses commission of offence by a public servant and if so, it can accord sanction and in this case these requirements were well met. He argued that no rowing enquiry is necessary before accorded sanction. Regarding requirements of valid sanction he relied upon the decision reported in Subramanian Swamy v. Manmohan Singh. He thus prayed to dismiss the appeal. 9) Now, it has to be seen whether the AO could rebut the mandatory presumption with the aid of the above arguments advanced by him. a) The first argument is that AO was only a General Purpose Employee i.e. Mazdoor in Water Works Office and not competent to grant hire order or grant monthly bills and except issuing gate passes to drivers, he has no other significant work and hence no official favour was pending with him during the relevant period to demand any bribe. His argument raises an important question as to whether the competency of public servant to do an official favour is a pre-requisite to hold him guilty of the charge under Section 7 of PC Act. The argument of learned Spl.P.P is that the competency is insignificant and suffice if a public servant solicits bribe on the pretext of getting the official favour done. In this context, I perused the decision of Apex Court in Syed Ahmed's case (7 supra) cited by Spl.P.P. In that case, the Apex Court relying upon the evidence of PWs.1 and 2 who spoke about demand of bribe by the public servant and basing on Section 7 Explanation (d) of PC Act held thus: "We agree with the High Court that in view of Explanation (d) to Section 7 of the Act, the issue whether Syed Ahmed could or could not deliver results (as it were) becomes irrelevant in view of the acceptance of the testimony of Nagaraja (PW1) and Sidheshwara Swamy (PW2)." Hence, Explanation (d) to Section 7 needs a perusal and it reads thus: "7. Public servant taking gratification other than legal remuneration in respect of an official act.- Explanations.- (a) xxx. (b) xxx. (c) xxx. (d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression." b) So, from the expression "is not in a position to do" clearly signifies that the competency of a public servant to do an official favour is irrelevant and suffice, if it is established by cogent evidence he solicited bribe for doing official favour. However, in the instant case, the competency of AO is not an issue. Though AO is only a General Purpose Employee and Man Mazdoor and not competent to either

award hire order or grant monthly bills, still he places a key role in enabling PW1 to realise his monthly bills. c) We will find in the evidence of PW1 that General Manager of Water Works passes order for payment of hire amount and per day the tanker has to make 8 trips; for each trip a gate pass will be issued by Manager who entrusted that work to AO and AO has to write the locality name in which the water has to be supplied and after the end of the month tanker owners will submit all the gate passes with the Manager and he would prepare the bill. d) PW4—G.Venkatesham, the in-charge of Reservoir also deposed in similar lines and stated that the Manager used to instruct for sending tankers to the areas where there used to be short supply of water and in the absence of Manager the AO used to send tanker and write their particulars in the receipt books which are called as gate passes. He further stated that after writing receipt books he used to give receipts to the driver of the tanker. In the cross-examination with reference to Ex.P6—receipt book he stated that it would contain three parts and first receipt would be retained in the office and remaining two portions of the receipts would be given to the tanker driver mentioning the area where the water has to be supplied and the driver retains one portion and obtains signature of the locality person on one of the receipts as an acknowledgement and shows the same to AO and then only the AO prepares gate pass for the second trip. e) The above version of PWs.1 and 4 disclosing the procedure of issuing gate passes by AO is not disputed. Therefore, it is clear that without receipts/gate passes PW1 cannot realise his monthly bill amount. In that view, it can be said that an official favour indeed pending with him. It is the case of PW1 that AO has retained some of the gate passes by collecting them from his driver and when PW1 met AO on 24.02.1996 and requested for return of gate passes he demanded bribe. f) Thus, from the above evidence it is clear that official favour was pending with AO during the relevant period. The contention of AO is that he has not taken return of the gate passes issued to the driver—Waheed. However, this argument is false because the bunch of receipts issued by AO to driver of PW1 were seized at his house by TLO under Ex.P11. Each of the receipts/gate passes under Ex.P11 is in duplicate relating to tanker No.1288. They were issued while the tank was carrying water to different localities. Thus, Ex.P11 gives strength to the claim of prosecution that they were taken back by AO from the driver of PW1. It may be noted that in the appeal a new argument is advanced to the effect that Ex.P11—bunch of receipts relate to the trips which were in fact not made by driver and hence, they were retained by the AO. This argument is untenable because if the driver did not undertake trips as per the gate passes issued, the AO should not have prepared subsequent gate passes and should have reported to the higher authorities. On the other hand, Ex.P11 contains receipts of different dates indicating that gate passes were issued on different dates. So, the argument of AO that driver did not undertake trips and hence the receipts/gate passes were seized is illogical. Further, there appears to be no complaint from the public for non-supply of water by the driver—Waheed. g) So, from the above discussion, it is clear that official favour was very much pending with AO. In this regard, the cited decision in Chodagudi Sambasiva Rao's case (1 supra) can be distinguished on fact and it will not help AO. In that case, no official favour was pending with AO to justify the demand and acceptance of bribe. However, in the instant case, the facts and evidence would establish pendency of official favour to demand bribe by AO. 10) Then, the second argument of AO relates to demand and acceptance of bribe. His argument is that he never demanded bribe either previously or on the date of trap and the amount was given to him by PW1 to handover to his driver—Waheed. His main thrust in this regard is that the evidence of PW1 is unworthy of credence and his evidence suffers from inconsistencies and discrepancies and there is no corroboration on material particulars. Per contra, the argument of Spl.P.P is that there is no proven animosity for PW1 to foist false case and the discrepancies and inconsistencies in his evidence are minor ones not affecting the main case. a) I find force in the submission of learned Spl.P.P. It is true that there is no independent witness for demand and acceptance of bribe by AO. However, the point is whether the evidence of PW1 is not trustworthy to discard. The facts and evidence would show that PW1 and AO belong to same religion and they are residing in the same locality. No previous enmity between them was established by AO to think of the necessity of PW1 to foist a false case against him. In that view of the matter, this Court finds no reason to disbelieve the evidence of PW1 on the aspects of demand and acceptance of bribe. His evidence is corroborated on material particulars. Demand is concerned, his evidence is corroborated by Exs.P1, P2 and PWs.2, 3, and 8. In Ex.P1, PW1 clearly mentioned about AO demanding him bribe. PW2 stated that he and PW3 appeared before DSP at 11 AM on 24.02.1996 and DSP introduced PW1 to them and explained the contents of Ex.P1 and when DSP questioned about correctness of contents, PW1 admitted them to be true and correct and then PWs.2 and 3 signed on Ex.P1. Thus, PW1 has confirmed the demand said to be made by AO on 24.02.1996 before the members of trap party. The contention of AO is that he was on leave since last three days and he was not present in his office at about 7.30am and did not make any demand. This argument proved to be palpably false by Ex.P5—attendance register which shows that AO was absent from duty from 21.02.1996 to 23.02.1996 but he was present on 24.02.1996 i.e. on the date of trap as he signed in the register on that day. The absence of enmity between PW1 and AO, the availability of gate passes under Ex.P11 in his house and his attending duty on 24.02.1996 contrary to his claim lend support to the evidence of PW1 that AO demanded him bribe. Then contradictions and omissions elicited under Exs.D1 to D6 in the evidence of PW1 are concerned, on a careful scrutiny, it would appear they do not have any direct bearing on the prosecution case and they are all minor discrepancies and will not shatter the credibility of prosecution case and evidence of PW1. AO could not demonstrate as to how any of those contradictions will discredit the evidence of PW1 and consequently, the cited decision in Suraj Mal's case (2 supra) will not help AO. 11) Then, acceptance of bribe is concerned, as already stated supra, admittedly AO received MO6—tainted amount from PW1 and it was found in his pant pocket (MO7) which is confirmed by PWs.2, 3 and 8 and also chemical test. The explanation of AO in this regard is already stated supra. AO mainly relies upon the evidence of DW1 to establish his defence claim. a) DW1 claims that he knows PW1 and AO and AO's house is intervened by five houses from his house and on 24.02.1996 he was proceeding to reservoir at 12.30 PM to request the authorities to send water to his locality and on the way AO met him and told that he was going to water works office; so, he carried him on his scooter and when he enquired AO about his availability at that place during office hours, AO told him that he was on leave for the past few days and he was going to his office on private work. He further stated that they went inside the compound of the office and parked the scooter and at that time PW1 came and called AO and handover Rs.400/- asking him to handover to his driver—Waheed, but AO replied that he was on leave and came to office on his private work. PW1 insisted him to receive the amount and hand it over to Waheed and in case Waheed did not come to office before he left, he can give back the amount at the house of PW1 and so that AO received the amount and kept in his back pocket and within few minutes ACB officials came and caught hold AO. AO explained about his possessing the amount but they did not hear him and took him inside the office. DW1 claimed that he too explained the ACB officials about the circumstances under which AO received the amount but they did not hear. On the strength of the above evidence AO tried to explain the purpose of his holding the money. When the evidence of DW1 is scrutinized it appears to be false and intended to bail out the AO from the case. According to him, while he was proceeding to water works office at 12.30 noon, on the way he met AO and he gave lift to AO on his scooter. During conversation he came to know that AO was on leave. The entire evidence of DW1 is belied by Ex.P5—attendance register which shows that AO very much attended duty on 24.02.1996. When he was on duty at his office, there can be no truth in the claim of DW1 that he met AO at 12.30 noon at some other place and carried him to office. On his own admission DW1 says he knows AO for the past 20 years. Due to this acquaintance, it appears, DW1 extended a helping hand to AO to bail out from the case. When the evidence of DW1 is omitted, the explanation offered by AO regarding his possessing the tainted amount falls to ground. Added to it, the explanation which he offered during trial surprisingly will not be found in Ex.P8—post-trap Mahazar. In Ex.P8 his explanation was altogether a different one as if PW1 forcibly paid him the money. In this regard, basing on the absence of his acknowledgement on Ex.P8 AO contended that his true explanation was not incorporated in Ex.P8 and that was why a copy of Ex.P8 was not provided to him. PW8—TLO categorically denied the suggestion that copy of Ex.P8 proceedings was not furnished to AO. So, merely because Ex.P8 does not contain the acknowledgement of AO, he cannot contend that no copy was furnished to him and his spontaneous explanation was distorted therein. b) It is true that as per the decision in T.S.Laxman Rao's case(4 supra) merely because an explanation was not offered at the earliest point of time, the same cannot be discarded if it is trustworthy. However, in the instant case, the AO gave different explanations at different times; first one as if PW1 forcibly gave the amount which he could not substantiate and the second one during trial was that PW1 gave the amount to hand over to his driver—Waheed. This explanation was also not believable because assuming that PW1 gave the amount to hand over to his driver, AO should have refused stating that having come all the way to the office PW1 himself can give the amount to his driver. There is no truth in the explanation of AO. Further the supporting evidence of DW1 is also not trustworthy. c) Then, the next argument is that PW8 has hurriedly registered FIR and laid trap without conducting preliminary enquiry about the antecedents of PW1 and AO. It is true that on Exs.P1 and P14, we do not find any endorsement to the effect that preliminary enquiry was conducted before registering the FIR. However, PW8 in his evidence has clearly deposed that he verified the antecedents

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