HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
CRIMINAL APPEAL No.548 of 2006

JUDGMENT:

This Criminal Appeal is preferred by the State represented by Inspector, SPE/CBI, Visakhapatnam aggrieved by the Judgment dt:07.06.2005 in C.C.No.17 of 2000 passed by learned Special Judge for CBI cases, Visakhapatnam acquitting AO1 and AO2 for the charges under Section 120B IPC and Sections 7, 11 and 13 (2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 (for short "PC Act") and A3 for the charges under Section 120B IPC and Sections 12, 13(1)(d) r/w 13(2) of PC Act r/w 109 IPC.

2) Facts which led to file the instant appeal can be stated thus:

a) M.Sambasiva Rao—(AO1) was the Assistant Administrative Officer, United India Insurance Company (for short "U.I.I.C"), Branch—II, Guntur. Govinda Rao Naidu—(AO2) was the Regional Manager, U.I.I.C, Visakhapatnam and M.Venkata Siva Naga Prasad (A3) was a resident of Guntur and brother of AO1.

b) The prosecution case is that L.Laxma Reddy of Numbur village, Pedakakani Mandal, Guntur District took Janata Personal Accident (JPA) Policy from Branch—II, of U.I.I.C, Guntur on 21.11.1997 for a sum of Rs.8 lakhs and accidentally, he died in an accident on 28.03.1999 leaving behind PW2 who is his wife as nominee. While so, she submitted the claim dated 05.06.1999 in Guntur branch office through her authorised person PW1—T.Koti Reddy who is her maternal uncle. The claim of Srilaxmi was processed in the branch office, Guntur and sent to AO2 for settlement and it was pending for approval. While so, Koti Reddy (complainant) met AO1 for early settlement of the claim. At that time, AO1 abusing his official position demanded an amount of Rs.40,000/- as bribe for himself as well as for AO2 for early settlement of the claim and also threatened that unless the bribe amount was paid, the claim would not be settled.

c) Again on 15.10.1999, when the complainant met AO1 for settlement of the claim, he reiterated his earlier demand and directed the complainant to arrange the bribe amount, so that both of them would go to Hyderabad on 17.10.1999 to meet AO2 and to give his share.

d) The complainant again met AO1 on 20.10.1999 and expressed his inability to pay such huge amount and requested him for early settlement of the claim. At that time AO1 informed the complainant since AO2 was at Hyderabad, he should have to arrange the bribe amount, so that the same could be paid to AO2 on 23.10.1999 at Hyderabad and settle the claim. He instructed the complainant to book two tickets for both of them to go to Hyderabad on 22.10.1999 to meet AO2 and also to bring one whisky bottle, as A.O.2 is fond of liquor. On 21.10.1999 morning, AO1 telephoned to complainant and enquired whether he was willing to pay the bribe amount and go over to Hyderabad or not.

e) Unwilling to pay the bribe amount, complainant gave a complaint on 21.10.1999 to N.Vishnu—Inspector of Police, CBI (PW12) who was on camp at Railway retiring room of Vijayawada Railway Station. On verifying the complaint, PW12 instructed the complainant to purchase tickets in the names of PW1 and AO1. Accordingly, complainant purchased tickets from Vijayawada to Hyderabad on 22.10.1999 by Narsapur Express and intimated the said fact to him over telephone.

f) Basing on the complaint, PW12 secured the assistance of other CBI staff and two independent mediators—M.Radha Krishnan and M.Naga Raju (PW3) and conducted pre-trap proceedings and instructed the complainant to handover the bribe amount and whisky bottle to AO1 or AO2 on their demand.

g) It is the further case of the prosecution that on 22.10.1999, the trap party led by PW12 and PW1 boarded Narsapur Express at Vijayawada station. When the train reached Guntur Railway Station, AO1 along with his brother —M.V.S.N.Prasad (A3) came to the coach of complainant and told that he was not able to come to Hyderabad because of personal problem and his brother i.e. A3 would accompany him to Hyderabad and do the needful. After the train reached the Secunderabad station, the complainant and A3 first went to

Rama Krishna Hotel and from where they went to the house of AO2; A3 introduced the complainant to AO2 as party and told that he brought the bribe amount as instructed by AO1. On that, AO2 told that claim would be settled without further delay and enquired whether the bribe amount was brought; complainant affirmed and as per the instructions of A3, handed over the bribe amount of Rs.40,000/- to him (A3), who after retaining Rs.5,000/- from the said amount as it was the share of AO1, handed over the balance amount of Rs.35,000/- to AO2. Instead of receiving the tainted currency notes AO2 asked the complainant to keep the same on teapoy. Accordingly, complainant kept the bribe amount on the teapoy and A3 took the whisky bottle from the complainant and placed it by the side of sofa in which AO2 was sitting. Complainant came out side of the house and gave pre-arranged signal. On receipt of signal from the complainant, PW12 and other trap party went inside the house of AO2 and seized the bribe money of Rs.35,000/- from the teapoy and balance amount of Rs.5,000/- from A3 and also whisky bottle. A3 was subjected to sodium carbonate solution test and it yielded positive result. The whisky bottle was also found to be the same as mentioned in the first mediators report. Accordingly, case was registered in R.C.No.23(A)/99/CBI/VSP and after completion of investigation, charge sheet was laid against the accused.

h) On appearance of accused, charges under Section 120B IPC and Sections 7, 11 and 13(2) r/w 13(1)((d) of P.C. Act were framed against AO1 and AO2 and Section 120B IPC and Sections 12, 13(1)(d) r/w 13(2) of PC Act r/w 109 IPC against A3 and trial was conducted.

i) During trial, PWs.1 to13 were examined and Exs.P1 to P49 were marked and MOs.1 to 9 were exhibited on behalf of prosecution. DWs.1 and 2 were examined and Exs.D1 to D6 were marked on behalf of defence.

j) The plea of accused is one of total denial of offence. Their further plea is that A3 went along with PW1 only to show the house of AO2 from outside to enable him to go into the house of AO2 to make a request for early disposal of claim pertaining to PW2 and all of them were implicated n a false case by the rival group of AO1 in conspiracy with PW1 and CBI police.

k) The trial Court on appreciation of oral and documentary evidence found the accused not guilty of the charges for which they were charged and accordingly acquitted them.

Hence, the appeal by the State.

l) Pending appeal, 2nd respondent/AO2 viz. N.Govindarao Naidu died on 15.12.2013 and a memo was filed to the effect on his behalf.

3) Heard arguments of Sri P.Kesava Rao, learned Special Standing Counsel (Spl.S.C) for CBI cases and Sri G.Rama Sarma, learned counsel for AO1 and A3.

4) Vehemently criticizing the judgment learned Spl.S.C argued that trial Court recorded a finding on perverse appreciation of facts, evidence and law by projecting minor and inconsequential discrepancies and lapses in prosecution evidence as major ones.

5) More vividly, firstly he argued since inception the trial Court projected PW1 as if conspired with rival group of AO1 and tried to implicate him in the case without there being any iota of evidence in that regard. On the other hand, PW1 was only pursuing the policy claim of PW2 who is his widowed niece and he being an utter stranger to all the accused and not known to them till they submitted claim application, there was no reason for him to nurture grudge against any of the accused to implicate them in a false case, even if under a wild guess, one presumed that some rival group of AO1 approached him. Under a biased and coloured vision the trial Court held as if the evidence of PW1 cannot be accepted without corroboration and ultimately held that prosecution could not establish its case.

6) Secondly, he argued that the trial Court disbelieved the demand of bribe made by AO1 on two wrong notions. Firstly that long prior to alleged demand on 15.10.1999 he put up note on the claim application of PW2 and recommended for sanction of the policy amount which was approved by the Branch Manager and Senior Divisional Manager and forwarded to RO, Visakhapatnam for consideration of AO2 there and as such, no

official favour was pending with him to demand any bribe either for himself or for AO2 and secondly on the ground, the mother-in-law of PW2 filed a suit for partition against PW2 before the II Additional District Judge, Guntur and obtained an interim injunction against U.I.I.C restraining it from disbursing claim amount and as such there was no occasion for AO1 to demand bribe.

a) Refuting that the two reasons shown by the Court will not impede AO1 from demanding bribe, he argued that the Court only directed U.I.I.C not to disburse the amount to the nominee and others until further orders but it has not injuncted the Insurance Company from setting the claim of PW2. Sanctioning of claim is different from disbursement to the claimant and AO1 who might have experienced a number of such instances like this will not hesitate to demand bribe for settlement of the claim. So, pendency of the suit and injunction order cannot be a ground to discard demand theory.

b) Then, regarding despatch of the file to Regional Office (for short 'RO") long prior to the alleged date of bribe, he argued that this reasoning is also not logically correct. Firstly for the reason that PWs.1 and 2 were not aware that the file was despatched to RO, Visakhapatnam. They only knew that file was sent to Divisional Office, Guntur and so, hushing up the sending of file to RO, Visakhapatnam there was a possibility for AO1 to demand bribe. Even assuming that PWs.1 and 2 knew the fact that the file was long back sent to RO that by itself will not disprove the demand theory because the ground on which demand was made by AO1 was that the file had to route in RO also and if he (AO1) met AO2 who was the RO there, the work would be over and for that purpose PW1 had to pay bribe of Rs.40,000/- to him and AO2. So, the demand is for getting the work done at RO and not for finishing the work at Branch level or Divisional office level. In that view of the matter, he argued, despatching of Ex.P40 file to RO long prior to date of demand does not have any importance.

7) Thirdly, commenting on the observation of the trial Court that there was no room to believe the conspiracy between AO1 and AO2 because of AO2 ordering enquiry against AO1 through the Vigilance Officer on the complaint received against him and also transferring him from Branch No.2, learned Spl.S.C argued that the departmental action if any, cannot be taken as void between AO1 and AO2 and in fact, AO2did not take any serious action against AO1 in spite of Vigilance Officer —Rasool mentioning in his letter—Ex.P30 that AO1 was a awful corrupt officer and on the other hand, AO2 just transferred him to Divisional Office at first and on his request again transferred to local Branch Office No.I under Ex.D4 and therefore, the departmental action was nothing but a fleabite. All these would show that there were no differences between both of them. If really in the esteem of AO2, AO1 was corrupt staff member and transferred him as a measure of punishment, AO1

would not have dared to telephone him on the crucial day of 21.10.1999 that too when AO2 was on leave. This telephonic call under Ex.P36-A speaks volumes of illegal nexus between AO1 and AO2. Added to it, if really there were no good terms between AO1 and AO2 and if the very name of AO1 irritates AO2 as proclaimed by him, AO1 would not have dared to send PW1 to the house of AO2 particularly, when he was on leave and that too through his brother i.e. A3 which action, AO1 knows, will intensify the anger of AO2 against him.

8) Fourthly, criticizing the reasons shown by the trial Court for discarding the trap incident, learned Spl.S.C argued that as per the previous agreement among A1 to A3, PW1 and A3 checked in Ramakrishna Lodge and A3 made a telephone call from the lodge to AO2 and obtained his permission to visit his house along with PW1 which fact is evident from Ex.P32 and then both of them went to the house of AO2 and they were received by him at the gate and then all the three went inside the house where as per the directions of AO2 and instructions of A3, PW1 paid the tainted bribe amount to AO2 through A3, who after retaining the share of AO1 gave the balance amount to AO2 and they also gave MO6—whisky bottle to AO2. He argued that the contention of AO1 that he sent his brother—A3 only to show the house of AO2 from outside and without falling in the gaze of AO2 and the contention of AO2 that he did not know about the impending visit of PW1 to this house till he came to his house and that PW1 alone came to his house and

on enquiry only he told that A3 showed him the house from outside are all proved to be utter false defences in view of phone call made by A3 to AO2 from the lodge and taking his prior permission to visit his house. This phone call, he argued, indicates that as a part of their plan, AO1 sent A3 and PW1 to Hyderabad to meet AO2 and in execution of the instructions of AO1, A3 took prior appointment of AO2 and then only visited his house along with PW1 to the full knowledge of AO2. In such a case, the question of his remaining outside the house and PW1 alone going into the house of AO2 and planting money and whisky bottle without the knowledge of AO2 and later CBI Officers bringing A3 from outside will not arise. Instead of giving a logical conclusion to the facts and evidence, he argued, the trial Court went upon probing unnecessary and inconsequential instances as to whether AO2 was simply standing or watering the plants when PW1 and A3 approached him and whether DW1—the labour contractor was present at the house of AO2 or not and whether Superintendent of Police—Sudhakar Rao participated in the trap proceedings or not and held as if the prosecution case was a false story. He vehemently argued that it is not a case of accepting one of the two available views which is feasible to the accused as observed by the trial Court, but on the other hand, the facts and evidence unmistakenly project the conspiracy among all the three accused and their committing the offence and therefore appeal may be allowed.

9) Per contra, filing the synopsis of his arguments, learned

counsel for AO1 and A3, Sri Rama Sarma argued that the trial Court after meticulous appreciation of facts and evidence only gave a finding that prosecution theory was an utter falsehood and an attempt to implicate innocents and therefore, the appeal does not deserve any merits. He further argued the trial Court, in view of overwhelming documentary evidence showing that the claim file of PW2 was forwarded to RO long prior to alleged date of demand and there was nothing left in the hands of AO1 to demand bribe and further, in view of the fact that AO2 referred the complaint received against AO1 to the Vigilance Officer and transferred him and in view of departmental differences between AO1 and AO2, has held there was no occasion for them to conspire together to demand bribe. The trial Court rightly held that the conspiracy and consequential demand of bribe are myth. He further argued that trap was held to be a created story in view of a number of inconsistencies in the prosecution case and discrepancies in the evidence of their witnesses. Above all, in this case the alleged investigation was completed long before the registration of FIR and for this reason also the trial Court rightly rejected the prosecution case holding it as a fabrication to implicate the innocent accused. He thus while supporting the trial Court judgment, requested to dismiss the appeal.

Finally, he submitted that in view of death of AO2 in the appeal, the case against the other two accused is only of academic interest.

10) In the light of above rival arguments, the points for determination in this Criminal Appeal are:

(1) Whether the judgment of the trial Court is factually and legally sustainable or whether it suffers the vice of perverse appreciation of facts, evidence and law?

(2) To what relief?

11) **<u>POINT No.1</u>**: It should be noted that in an appeal against the acquittal, the Honourable Apex Court in the following judgments has held that though the appellate Court has every power to re-appreciate, review and reconsider the evidence at large both on facts and law, but however it must be kept in mind that its interference will be justifiable only when the judgment of the trial Court suffers from the perverse appreciation of facts, evidence and law but not when there is a mere possibility of appellate Court's coming to a different conclusion basing on the evidence. The Apex Court further observed that the appellate Court should not ordinarily set aside the judgment of acquittal merely because two views are possible, though view of the appellate Court may be more probable one. The trial Court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses. The Apex Court has also observed that the presumption of innocence which was available to an accused before the trial Court, would be reinforced by the acquittal recorded.

1. ***Bhaskar Ramappa Madar vs. State of Karnataka***[1]

2. ***Govindaraju @ Govinda vs. State by Sriramapuram P.S.***[2]

3. ***Dr. Sunil Kumar Sambhudayal Gupta v. State of Maharashtra***[3]

Therefore, in the light of above observations of the Apex Court, it has now to be seen whether the judgment of the trial Court is factually and legally sustainable or suffers from the vice of defective and perverse appreciation of facts, evidence and law.

12) It is a trap case. So, the prosecution must by cogent evidence able to establish the criminal conspiracy among A1 to A3, demand of bribe by AO1 for himself and AO2 and acceptance of bribe by AO2 and A3 on behalf of AO1 to sustain the charges levelled against them.

a) In this case, PW1 is the corner stone for the demand and acceptance of bribe. Admittedly, except him none others were present for the demand of bribe by AO1 and acceptance of the bribe by AO2 and A3 at the former's residence.

b) PW1 who is the maternal uncle of PW2 is pursuing her policy claim by virtue of Ex.P45—power of attorney executed by her. He deposed about the facts of his meeting AO1 on 15.10.1999 to enquire about the claim application and AO1 informing that the work would be over if AO1 meets AO2—the Zonal Officer at Visakhapatnam and his demanding bribe of Rs.40,000/- for him and AO2 and again PW1 meeting him on 20.10.1999 and AO1 informing about the availability of AO2 at his residence at Secunderabad and his proposing that both of them can go to Secunderabad and pay the money to AO2 to complete the proceedings and unwilling to pay bribe, PW1 going to Railway Retiring Room at Vijayawada on 21.10.1999 and presenting Ex.P4—complaint to PW12—the Inspector, CBI and on his instructions purchasing tickets for AO1 and himself to go to Secunderabad on the night of 22.10.1999 in Narsapur Express and PW12 preparing pre-trap proceedings on the evening of 22.10.1999. He further deposed the facts that on that night himself and mediators boarding S2 coach and other trap members boarding in different coach and at Guntur, AO1 came with A3 and informing that due to some personal work he was not coming and A3 would accompany him to the house of AO2 to do their work and accordingly himself and A3 going to Secunderabad and checking in Ramakrishna Lodge and A3 making phone call to AO2 and after obtaining his permission both of them going to the house of AO2 and paying the bribe amount and whisky bottle to AO2 through A3, his coming out and giving signal to the trap party members and their rushing inside the house and conducting trap etc facts.

Now, the crucial point is what is the probative value of evidence of PW1 and whether he is a wholly reliable category of witness.

13) It is pertinent to note that since inception of judgment, the trial Court observed that there is absolutely no corroborative evidence produced by the prosecution to the evidence of PW1 to prove the allegations levelled against the accused and the

uncorroborated and interested sole testimony of PW1 is not believable. In that process, ofcourse it referred certain documentary evidence and events to hold that the evidence of PW1 and the prosecution case were not trustworthy. Hence, it has now to be seen whether the evidence of PW1 is worthy of credence or liable to be discarded as being motivated to implicate the accused.

14) I have carefully gone through the evidence on record particularly the evidence of PW1. He was working as Foreman in Prajasakthi Newspaper at Vijayawada. As rightly argued by Spl.S.C he did not have any prior acquaintance with any of the accused and in fact he was an utter stranger to them prior to the submission of claim application of PW2. Nothing tangible has been brought on record by the accused to even remotely believe that he joined hands with the rival group of AO1 to implicate them in a false case. Even accepting that possibility, there is no reason for PW1 to nurture grudge against AO2 whom he had never seen and A3 who is quite unconnected to the case. So, it is hard to digest that PW1 would venture to implicate no less than three accused in a false case for apparently no reason. After all he was pursuing the claim of his widowed niece PW.2. So, in such backdrop, logic defies the villainity of PW1. Now, we have to discuss the circumstances and the evidence relied upon by trial Court to discard the evidence of PW1 and also the prosecution case. Before that it is apt to succinctly narrate the defence plea of the respective

accused.

15) From the tenor of cross-examination, answering to 313 Cr.P.C questionnaire, written statement and narration in Para 12 of the judgment, the defence of AO1 to A.3 is precisely thus:

a) AO1 never demanded bribe from PW1 either for himself or AO2. About two days prior to giving Ex.P.4—complaint, PW.1 approached AO1 and on enquiry coming to know that AO2 was available at Secunderabad and also further knowing that AO1 was going to Hyderabad on 22.10.1999 on his personal work. PW.1 requested AO1 to show the house of AO2 so that he would personally request AO2 to help in the matter of the claim of PW.2. Though AO1 agreed to take him to AO2 to facilitate him to make request to AO2, however, he could not accompany PW.1 due to his personal work at Guntur and when his brother (A.3) was going to Hyderabad to express his condolences on the demise of wife of his cousin, AO1 told A.3 to show the house of AO2 to PW.1 and for this purpose AO1 went along with A.3 to the Guntur Railway Station on the night of 22.10.1999 and introduced his brother(A.3) to PW.1 and told that A.3 would show the house of AO2. Except that he does not know any thing.

b) Then the contest of A3 is that after AO1 introduced him to PW1, he went to the general compartment and travelled to Secunderabad and at Secunderabad he met PW1 after alighting train and they both stayed in Ramakrishna Hotel and from there they both travelled by an auto rickshaw upto some distance to the house of AO2 and by sitting in the auto, he showed the house of AO2 to PW1 and PW1 alone proceeded to the house of AO2 and after some time the CBI officials forcibly brought him to the house of AO2 and compelled him to speak falsehood against AO1 and AO2 in the case which they were foisting against them and when he refused to do so, they falsely implicated him in this case. His version is that he never went to the house of AO2 and collected bribe amount of Rs.40,000/- from PW.1 and paid Rs.35,000/- to AO2 and retained Rs.5,000/- as the share of his brother and he did not also collect whisky bottle (M.O.6) from PW.1 and placed on the sofa of AO2. He contended that MO8—shirt does not belong to him and it was planted by CBI officials.

c) Then the contention of AO2 is that on 23.10.1999, PW.1 alone came to his house at about 7:00 or 7:10 am while he was watering the plants in the front yard of his house and PW.1 introduced himself as Foreman in Prajasakthi Daily Newspaper, Vijayawada and on that he asked PW.1 to sit in the hall of the house and then went to the back yard of his house and washed his hands and feet and went into the hall through the Kitchen room where PW.1 was sitting and while PW.1 was talking to him, he received a phone call and when he engaged for sometime to answer the phone call at the other end of the hall and thereafter he returned to the place where PW.1 was sitting, he found PW.1 was not there. He did not notice the amount kept by PW.1 under the newspaper available on Tea-poy and the Whisky bottle kept by him on the side of Sofa. Thus the contention of AO2 was that while he was engaged in attending the phone call, PW.1 might have planted the amount and Whisky and went away and thereafter some CBI officials came inside the house by pushing A.3 and they implicated them in the case. He staunchly denied any conspiracy with other accused or accepting bribe from PW.1 through A.3.

16) Now the veracity of the circumstances projected by the trial Court to discard prosecution case has to be scrutinised.

17) The demand aspect is concerned, the trial Court has for two reasons held that the alleged demand by AO1 is unbelievable.

a) Firstly for the reason that AO1 put up the note on the claim application wayback on 16.08.1999 itself (vide Ex.P.19) and thereafter the Branch manager also approved the same and recommended the claim to Senior Divisional Manager of the Divisional Office on 20.08.1999 and thereafter at Divisional Office, Guntur, the note was put up by Assistant on 25.08.1999 and by Assistant Divisional Manager on 09.09.1999(vide Ex.P.20) and finally the note was perused by Senior Divisional manger on 15.09.1999 and recommended the claim of Rs.8,00,000/- and referred the file to RO (for short “R.O”), Visakhapatnam for its approval. The learned trial Judge wondered, when all those recommendations were there, he failed to understand as to what remained for AO1 to enter into bargain for a bribe with PW.1 and enter into criminal conspiracy with AO2.

b) The second reason which prompted the trial Judge to discard the demand theory was that the mother-in-law of PW.2 issued Ex.P.5—legal notice dt: 10.08.1999 to U.I.I.C informing that she along with PW.2 is the legal heir of the deceased policy holder and she came to know that PW.2 was making hectic efforts to take away the amount and therefore the U.I.I.C should not pay the amount to her till disposal of the suit which she was going to file. Further, one T. Thati Reddy got issued Ex.P.26—legal notice to the family members of the deceased and to the Manager, U.I.I.C, Guntur stating that the deceased borrowed Rs.50,000/- from him and after his death his family members were trying to alienate his properties and trying to withdraw the amounts lying with U.I.I.C. He called upon the addressees 1 to 7 to discharge his debt and demanded U.I.I.C not to pay the policy amount to them. Above all, the mother-in-law of PW.2 namely L.Vijaya Laxmi filed O.S.No.163 of 2009 before the II Additional District Judge, Guntur for partition of the family properties and in the said suit, she obtained interim injunction in I.A.No.1163 of 1999 restraining U.I.I.C from disbursing the policy amount to the nominee pending disposal of the suit. Having regard to the legal notices and court order, the learned Judge observed that there was no occasion for AO1 and AO2 to collude together to demand any bribe from

PW.1. Thus precisely lack of official favour pending with AO1 and policy claim of PW.2 tangled in Court litigation were the reasons which prompted the trial Judge. Apparently, these reasons may sound well but the evidence and circumstances defy these reasons.

18 a) Before rushing to accept the first reason, one must carefully see the ground on which the bribe was demanded by AO1. A perusal of Ex.P.4—complaint and the evidence of PW.1 would give an understanding that AO1 demanded bribe from PW.1 not on the ground that claim file was with him and unless the bribe amount was paid to him, he would not put up the note and send it to Divisional Office. If that was the ground projected by PW.1, one may reject his allegation in view of the strong documentary evidence covered by Exs.P.19 and P.20 showing that long prior to the alleged date of demand, AO1 put up the note on the claim file and sent it to Branch Manager and Branch Manager approved the same and sent the same to Divisional Office and the Divisional Office also sent the file for approval to RO at Visakhapatnam. However, the demand was made by AO1 not on the aforesaid ground but on a different ground. AO1, according to PW1, demanded bribe of Rs.40,000/- on the ground that the claim file has to be passed at RO, Visakhapatnam by AO2 (specifically mentioning the name of R.M as Sri Naidu) and AO1 and AO2 have to work hard on the claim file and if AO1 go and meet AO2 at Visakhaptnam, the work would be over. He reiterated that AO2

had share in the bribe. If this ground is accepted for demanding bribe, then already dispatching of claim file to RO will not impede AO1 to demand bribe because he was demanding bribe to liaison with AO2 in the R.O and see that the work was completed. Therefore, sending of claim file to R.O long prior to the date of demand on 15.10.1999 is of no consequence for AO1 to demand bribe. Unfortunately the trial Judge without appreciating the complaint allegations and evidence on record in proper perspective, rejected the demand theory on erroneous reasons.

b) On careful analysis, the second reason projected by the trial Court also will not deter AO1 from making a demand. Under Ex.P.27—order dt:18.08.1999, what all the learned II Additional District Judge, Guntur injuncted was that he only restrained the U.I.I.C from disbursing the policy amount shown in the plaint schedule to the nominees until further orders but he had not restrained it from settling the policy claim filed by PW.2. Therefore, under law U.I.I.C was not restrained from processing the claim file and also settling the same if it was in order. That was why in Ex.P.20, the Assistant Divisional Manager in his note inspite of mentioning about the suit filed by L.Vijaya Laxmi and Court passing an interim injunction order, still recommended to settle the claim of Rs.8,00,000/- with an observation that the payment may be made subject to the Court judgment/direction. He further observed that since the claim amount exceeded Divisional Office limit, the file may be referred to the RO for approval. He submitted his note dt:09.09.1999 to Senior Divisional manager and on 15.09.1999, the Senior Divisional Manager approved the said note and referred the file to RO for its approval. So inspite of the Court orders, the Branch Office and Divisional Office processed the claim file in the direction of settling the claim and submitted to RO for approval since the Court Order did not restrain them from settling the claim altogether. In that context Ex.P.4—complaint allegations have to be understood. Since the claim file has to get the approval of AO2 at R.O, there was every possibility for AO1 to demand bribe to get the claim settled through AO2 at R.O. Hence the Court Order cannot be treated as a reason for disbelieving the demand of bribe theory propounded by the prosecution.

c) Therefore, I hold from the unimpeachable evidence of PW1, that AO1 did make a demand for bribe for himself and AO2.

19) Then before analysing the reasons shown by the trial Court to reject the trap incidents projected by prosecution, I deem it apt to discuss at this juncture the reasons shown by the trial Court for arriving at a conclusion that there was no criminal conspiracy among the accused particularly AO1 and AO2.

a) We find in the middle of the Para 10 of the judgment that on receiving Ex.P.49—complaint from one K.Venkat Reddy of Namboor, Guntur District on 10.08.1999 complaining that in the matter of instant policy claim, AO1 demanded 10% of the policy amount as bribe for distribution among higher officers and asked the complainant to pay the amount through the investigator—Srinivas Rao and that the officers in Branch Office-II are corrupt and earning money on dead bodies using the higher officers name and therefore action may be taken against them, AO2 referred the said complaint to one Md.K.N.Rasool, the Vigilance Officer in the RO at Visakhapatnam for investigation, whereupon the Vigilance Officer addressed Ex.P.30—letter dt:11.08.1999 to the Vigilance Department of Head Office at Chennai wherein he categorically stated that Regional Manager (AO2) was trying to set right the Divisional Office, Guntur but he was in such a position that he could not lay his hands even to transfer one corrupt officer Mr.M. Sambasiva Rao (AO1) from Branch office II, Guntur through whom all the corrupt practices were taking place and that on 11.08.1999, AO2 had a talk with him about the future plan at Guntur. In his letter he requested the Head Office to send some other Vigilance Officer to Guntur to verify atleast the GPA claim quoted in the complaint. The learned trial Judge observed that on receiving Ex.P.49—complaint, AO2 after referring the complaint to Rasool as stated supra, transferred AO1 to Divisional Office, at Guntur on 12.08.1999 itself under Ex.D.6—order but ofcourse again on the request of AO1, he modified the said order and passed another order dt: 07.10.1999 under Ex.D.4 and transferred him to Branch Office —I, Guntur. The learned Judge mentioned that thus the overwhelming documentary evidence referred supra would unequivocally establish that AO1 and AO2 were not in cordial terms and on the other hand AO2 had been taking one action or other against AO1 since the time of receiving complaint against him and therefore, there was not even a single circumstance which can lend support to the allegation of prosecution that AO1 and AO2 had conspired to demand bribe from PW.1.

b) A careful analysis of the facts and evidence does not allow me to conclude that AO1 and AO2 were not in cordial terms so as not to conspire together. It is true, the record shows that on receiving Ex.P.49—complaint from one K.Venkat Reddy, AO2 marked it to Rasool, the Vigilance Officer for investigation. It would be a common reaction of any officer in his place to refer it to Vigilance Officer to make a fact finding enquiry and on that ground we cannot readily conclude that AO2 had any abhorrence towards AO1 so as to not to conspire with him on opportune occasions. Then Ex.P.30—letter and subsequent events are crucial to determine whether indeed AO2 had any righteous indignation towards AO1 or showering favour on him inspite of his misconduct. If we carefully observe, in Ex.P.30—letter dt:11.08.1999, the Vigilance Officer made a scathing remarks about the conduct of AO1 stating that he was the corrupt officer in Branch Office II, Guntur through whom all the corrupt activities were taking place but he did not stop there and he went on saying that on that day AO2 had a talk with him about the future plan at Guntur but he don't think that AO2 would be in a position to take some decision. This mentioning will give an insinuation about the incapacity of AO2, as in the middle of his letter, in strong words, he stated that the present Regional Manager is trying to set right the Divisional Office but he is in such a position that he could not lay his hands even to transfer one Corrupt Officer i.e., AO1 through whom all the corrupt activities are taking place. Thus the Vigilance Officer referred in his letter about the incapacity of AO2. Probably, having come to know these remarks, it appears AO2 wanted to exhibit some action at his end by transferring AO1, on the very next day. The crucial question is whether the transfer made by him under Ex.D.6—order is a measure of punishment or as put it by learned Spl.S.C, a fleabite? Inspite of Vigilance Officer's referring AO1 as an awful corrupt staff, AO2 without taking a stern action transferred him to a much higher office i.e., Divisional Office that too locally at Guntur. By this action, one cannot conclude that there was some void between them. Within short time, again on the request of AO1 he transferred him to Branch Office-I, at Guntur. Thus these actions on the part of AO2 will not allow me to conclude that there were departmental differences between AO2 and AO1. In the normal circumstance, one can expect AO2 to be more harsh and transfer him atleast out of Guntur but that was not the case here. Therefore, the apparent fleabite act of AO2 cannot be taken as a reason to discard the criminal conspiracy between the AO1 and AO2.

On the other hand, from the following instances one can reasonably infer the criminal nexus between AO1 and AO2.

c) In the evidence of PW5, the then Assistant General Manager in the RO, Visakhapatnam we will find one day prior to 10.09.1999 AO2 called him and asked whether JPA file belonging to L.Laxma Reddy was received or not and after confirming from his assistant this witness informed that the file has been received. Then AO2 intimated this witness to keep the said file pending. Then on 23.10.1999 the DSP, CBI seized the said file from him. The prosecution claim is that AO2 with an ulterior motive i.e. due to conspiracy with AO1 instructed to keep the file pending. However, the trial Court basing on the facts elicited in the cross-examination of PW5 to the effect that PW5 was engaged in different official works from 15.09.1999 to almost 16.10.1999 and that file has to route through him to Deputy Manager, Manager and finally to Regional Manager and also basing on the fact that if any complaint is received with reference to any file and the if the complaint is marked to Vigilance Department then the file will not be processed till instructions are received from Vigilance wing has held that AO2 did not at all keep Ex.P40—file pending in pursuance of his alleged demand of bribe but it was not processed by PW5 on account of his busy schedule and also due to referring the compliant in respect of the said file to the Vigilance Department for enquiry. Thus, learned trial Judge disbelieved the evidence of PW5. This observation of trial Court cannot be approved in the light of Ex.P49. In Ex.49 the complainant—K.Venkat Reddy made two requests to Regional Manager thus:

> *"In view of the above, kindly interfere in this matter, and arrange claim payment from your office directly and do the justice to the poor widow, who lost her young husband aged 30 years. Finally my request to you is that kindly take suitable action against those officers and also on Investigator."*

Thus, he requested for early disposal of the claim file and to arrange payment to the poor widow and also to take suitable action against corrupt officers. It is already held that AO2 referred this complaint to Vigilance Cell on 10.08.1999 for investigation relating to the allegations. However, his task was not ended there. He has to see that claim file has to be processed at the earliest to settle the claim if it is in order because the complainant will not be satisfied only with the action taken against the corrupt officials but he needs the disposal of the file at the earliest. In such situation, being the head of RO the duty was cast on AO2 to see that file was processed. If by departmental rule, file has to be kept pending in view of vigilance enquiry, atleast that fact has to be mentioned on Ex.P40—file. There is no such endorsement on Ex.P40. So, being the Regional Manager he had to see that the claim file processed. Even assuming that PW5, due to his other pre-occupation did not process Ex.P40—claim file, AO2 should have seen that the said file was processed through some other employee. That he did not do. This conduct of AO2 makes me to believe the version of PW5 that he was asked by AO2 to keep the file pending. Thus, it can be inferred that as per the pre-arrangement between AO1 and AO2, he instructed PW5 to keep the file pending.

20) Another instance which clinches the conspiracy between AO1 and AO2, is the telephonic call made by AO1 on the night of 21.10.1999 from his residence telephone. PW9, the Chief Accounts Officer of Telecom Department, Guntur provided the particulars of the out going calls from the telephone to phone No.358621 belonging to AO1 under Ex.P36. Ex.P37 is the covering letter for Ex.P36. As per Ex.P36A entry, a phone call was made from this telephone No.7745462 which admittedly belonging to AO2 on the night of 21.10.1999 at 21.39 hours. In the cross-examination of PW9 except denying that Ex.P36 particulars are not correct and unauthenticated nothing was brought on record to disprove the authencity of call particulars furnished by a responsible officer like PW9. Therefore, there is no reason to disbelieve Ex.P36A call particulars which would show that on the crucial date i.e. one day prior to the proposed visit of AO1 and PW1 to AO2 at Hyderabad, AO1 made a call to AO2. If AO1 and AO2 were not in good terms, there was no occasion for AO1 to make a call to AO2 that too when he was on leave and stayed in his house at Secunderabad. When we believe that the aforesaid call was made by AO1 to AO2 the logical conclusion is that AO1 owed a responsibility to divulge as to the reason for his calling AO2. As already stated supra,

he was totally denying the authenticity of Ex.P36 and specifically Ex.P36A calls. It could have been a different thing had he admitted that he made a phone call to AO2 and gave a reason for calling. In such circumstances, the authenticity of his explanation would have been discussed and decided. On the other hand, he simply denied the authenticity of Ex.P36 and P36A. As already held, the authenticity of Ex.P36 cannot be doubted in view of evidence of PW9. It confirms that AO1 indeed made a phone call to AO2. His flat denial of making phone call on the pretext of inauthenticity of Ex.P36 prompts me to draw an adverse inference against him to the effect that the phone call was nothing but part of conspiratorial talk between AO1 and AO2. In my esteem, this phone call and another phone call made by A3 to AO2 about which I will discuss at the relevant part of the judgment, are the crucial pieces of evidence which fortify the prosecution case on one hand and blast away the defence of all the accused. Unfortunately the trial Court, it must be said, on a perverse appreciation, has discarded the aforesaid valuable piece of evidence. For discarding such a valuable piece of evidence covered by above two phone calls, the trial Court did not make a logical analysis basing on the facts, evidence and circumstances but came to slipshod conclusion. It is pertinent to narrate its conclusion covered by para-26 of the judgment which reads thus:

> *"<u>Para 26</u>: Even with regard to the telephone calls allegedly made to A2 by A3, there is absolutely no dependable*

evidence as to who actually spoke those calls and as to what was that conversation. The same is the result of the analysis with regard to the telephone call allegedly made by A1 to A2 in the night of 21.10.1999."

With regard to phone call made by A3 to AO2 and the perversity of finding of trial Court I will discuss later.

a) Sofaras first phone call made by AO1 to AO2 is concerned, from the above observation of the trial Court what we can understand is it disbelieved the said phone call on the ground that there is no dependable evidence about phone call and it is not known who actually spoke and what was the nature of conversation. This observation is quite inappreciable. Dependability of evidence is concerned, a responsible officer of calibre of PW9 avouched authenticity of Ex.P36 and P36A call data particulars. The trial Court did not give any plausible reason for not accepting his evidence. So, the dependability of Ex.P36 and P36A is not a question at all. Then, the question of who spoke is concerned, there can be no doubt because the call was emanated from the residential telephone of AO1 and not from a public booth or from some other telephone. The recipient of the call being the higher officer of AO1 none else than AO1 must have talked to AO2. It is true that the Court has no benefit of conversion between AO1 and AO2. However, as already observed supra, from the flat denial of every thing by AO1 the adverse inference can be drawn that they must have talked about the proposed visit of AO1 and PW1 to the residence of AO2. It must be noted that the trial Court gave illogical reasoning to hold that the conversion between AO1 and AO2 even if believed must not be in connection with the claim of PW2 and bribe etc. The trial Court observed that if the said phone call is accepted as the proof for the alleged criminal conspiracy between AO1 and AO2 to come to a common understanding regarding quantum of bribe of Rs.40,000/- how come that on that day morning itself PW1 could already mention the said amount as demanded by AO1 in Ex.P4—complainant and held that there was no conspiracy at all. It must be noted that it is not the case of the prosecution that through this phone call only, AO1 and AO2 for the first time conspired and fixed the bribe amount. They might have discussed about their conspiracy and fixed the bribe amount through another phone call by a different phone number. What the prosecution intended to establish is that the phone call in Ex.P36A is a part of their conspiracy but not the first one for fixation of bribe amount. Hence, the above circumstances clearly establish the conspiracy between AO1 and AO2.

21) Then, we have to discuss about the facts and evidence touching the trap incident. As per prosecution, the TLO trapped AO2 and A3 through PW1 at the residence of former on the morning of 23.10.1999. Admittedly, AO1 was not present but the prosecution alleges that he brought A3 to Guntur Railway Station on previous night and introduced him to PW1 and informed that he would do the needful at the house of AO2 and instructed A3 to collect his share of bribe amount. The defence

of respective accused was already discussed in the early part of this judgment. Their defence touching the trap incident is that AO1 sent A3 who was going to Hyderabad on his personal work along with PW1 as a good gesture to show the house of AO2 from the outside only and A3 never went inside the house of AO2 and collected bribe amount and whisky bottle from PW1 and paid to AO2 and that AO2 did not know that PW1 and AO2 were coming to his house and in fact on that day PW1 alone came to his house and when he was engaged in answering a phone call PW1 might have planted the bribe amount and whisky bottle and went away and later CBI officers implicated him and A3 by forcibly bringing him to his house. Learned trial Judge disbelieved the trap incident as projected by prosecution on narrating certain instances emanated from evidence and held that the accused were innocents and they were implicated in a false case. I have carefully gone through the evidence and judgment touching the trap incident. I am constrained to hold that the ultimate finding of trial Court was based on its chasing after some minor, irrelevant and trivial instances in the prosecution evidence and perverse and nil appreciation on some important and crucial aspects. Had learned trial Judge bestowed his careful attention on one important fact of A3 making phone call to AO2 and obtaining his permission to go to his house along with PW1 and analyse the evidence in a proper perspective and come to a right conclusion on the truth or otherwise of the said phone call, it would have helped him to come to a correct conclusion on the trap incident. Conversely, without discussion and analysis of the evidence relating to said phone call he jumped into the conclusion that the phone call cannot be believed. Hence, importance of the aforesaid phone call and evidence touching to it needs discussion before discussion of trap events.

a) In the further chief examination of PW1 he deposed that from Room No.317 in Ramakrishna Lodge A3 made four phone calls and this witness did not know to whom he made the three phone calls but the 4th call was made to AO2 and after talking with AO2, A3 told him that AO2 had permitted them to meet him hence they should go to the house of AO2. The factum of A3 making a phone call to AO2 from Ramakrishna Lodge was also mentioned in the earliest document after trap i.e. Ex.P8—second mediators report. Before determining the truth or otherwise of this part of evidence, we must bear in mind that this is a crucial piece of evidence sofaras prosecution case is concerned, because, if this part of evidence is believed, virtually it will establish the fact that in pursuance of criminal conspiracy among AO1, AO2 and A3 only A3 made that phone call to inform AO2 that as planned earlier, himself and PW1 landed in Hyderabad and they were intending to come to his home and sought his permission. Further, if this evidence is believed, it will probablise the prosecution case that as per the pre-arrangement, A3 and PW1 went to the house of AO2 and paid the bribe amount and it will blast away the defence of all the accused. To be more vivid, if A3 made phone call and took appointment of AO2 is correct, then the question of his remaining outside the house in auto and PW1 alone going into the house of AO2 does not arise. Similarly, the pretence of AO2 that he did not know about PW1 till he came to his house and that he alone came to his house and planted money also goes to wind. Such is the impact of the aforesaid phone call.

b) The prosecution to prove the phone call made by A3 to AO2 from Room No.317, examined PW6, one of the Directors of Ramakrishna Lodge and filed Ex.P32—bill issued by the lodge towards phone call charges made from Room No.317. They also produced Ex.P33 duplicate bill relating to charges of Room No.317 occupied by PW1 and A3. PW6 stated that Ex.P32 is the local calls bill made from Room No.317 on 23.10.1999. As per Ex.P32, four calls were made from Room No.317 on 23.10.1999. Of them, the 4th call was made to phone No.7745462 at 7.14 AM. This phone number admittedly belongs to AO2. It may be noted that in Ex.P33—bill, telephone charges were shown as nil. Probably basing on this PW6 was cross-examined to the effect that if customer while staying in one room of hotel makes a telephone call using the telephone available at the reception counter, the charges of the said call would be billed to the charges to be claimed by the occupants of that room. He denied the said suggestion. So, from the evidence of PW6 it is clear that the phone call was made on the morning of 23.10.1999 from Room No.317 which was occupied by PW1 and A3. It is interesting to note that as against the evidence of PW1, virtually there was no cross-examination by A3. Except putting a question that PW1 was stating this fact for the first time, A3 did not even bother to give a suggestion that he did not make a phone call to AO2. Of course, in the cross-examination by AO2 it was elicited that PW1 had no personal knowledge about A3 making phone call to AO2 but he came to know this fact when A3 informed him that he made a phone call to AO2. He denied suggestion that the CBI Officers made the said call to the house of AO2 to confirm about the presence of AO2 and the said call was shown as if made from Room No.317. PW1 emphatically stated the said call was made from the room and not from the reception counter. So, on a careful perusal of evidence of PW1 and PW6 and Ex.P32 and particularly due to absence of denial from the horse's mouth of A3, it can be safely accepted that A3 telephoned to AO2 and got his permission to go to his house along with PW1. As stated earlier, by virtue of this evidence, the trap incident as propounded by prosecution gets probablised and the contention of A3 that he did not go inside the house of AO2 along with PW1 and similar contention of AO2 falls to ground.

22) Another instance which will further probablise the prosecution case and which was not at all addressed by the trial Court is that of A3's hands yielding positive result to Sodium Carbonate test suggesting an inference that he handled the tainted currency notes just before trap. PW1 in his chief deposed that on the instructions of A3 he gave cash i.e.

tainted currency notes of Rs.40,000/- to A3 and A3 counted the cash and kept 10 notes in his shirt pocket and gave the remaining amount to AO2 and AO2 asked him to keep the notes on the teapoy and A3 kept them on the teapoy. In the latter part of his chief, PW1 further deposed that CBI officers got tested the fingers of both hands of A3 in the solutions separately and the solutions turned into pink colour and they were preserved in two bottles under MO3 and MO4. During the cross, A3 suggested that no chemical test was conducted on his fingers and the said suggestion was denied by PW1. Apart from PW1, PW3 and PW12 also deposed that fingers of both hands of A3 were subjected to Sodium Carbonate Solution Test and the said test proved positive. A3 vehemently contended as if no test was conducted and Mos.3 and 4 were fabricated by the CBI Officers. If that were the case, they could have manipulated a positive result to the similar test conducted on the fingers of AO2 also to strengthen their case and they clearly stated that the test conducted on AO2 yielded negative result which shows genuinety of their evidence in this regard. Further, in Ex.P8—second mediators report all the instances touching trap including the chemical test conducted to the hands of AO2 and A3 are clearly mentioned. Both AO2 and A3 acknowledged receipt of copies of Ex.P8. If the events as narrated in Ex.P8 did not take place and they were falsely mentioned, nothing prevented them from either not to receive copies or to make an endorsement about the falsity of contents in Ex.P8. They did not do so which proves the genuinety of

Ex.P8.

a) Thus the chemical test on A3 is a proof positive of the trap incident showing that A3 handled the tainted currency before trap. Unfortunately the learned trial Judge did not address this aspect in his judgment. So, from the facts that A3 accompanied PW1 to Hyderabad and his making phone call to AO2 and the visit of PW1 and A3 to the house of AO2 and the hands of A3 yielding positive result to the Sodium Carbonate Solution Test would all cumulatively and unerringly point out the guilt of the accused in this case.

23) Now, we will look into the factors that weighed with the trial Court to discard the prosecution case.

a) During trap PW12 got conducted Sodium Carbonate Solution Test on the surface of cardboard box of whisky bottle through a cotton swab and it yielded positive result. The trial Court wondered when as per Ex.P7—first mediators report, no phenolphthalein powder was applied either on the cardboard box or whisky bottle how the chemical test conducted on MO6 yielded positive result. Learned Spl.S.C argued that as per PW1 at first he handed over the tainted cash to A3 on his instructions and on his further instructions, he gave him bottle after removing it from polythene cover and since PW1 already handled the tainted currency amount, the phenolphthalein powder on his hands must have transferred to the surface of cardboard box of the whisky bottle and thereby the chemical test yielded positive result. I find this explanation plausible.

b) The next ground was that as per Ex.P8, the colour of A3's shirt from which the bribe amount of Rs.5,000/- was recovered was white but MO8—shirt produced in the Court was in moss colour and due to this difference in colour, the trial Court concluded that the alleged recovery of Rs.5,000/- from A3 is a myth. The submission of learned Spl.S.C is that MO8 was seized way back in October, 1999 and it was packed and kept along with other properties and due to efflux of time, its white colour might have been withered away due to dust and by that count alone the prosecution case need not be discarded. In the considered view of this Court the said explanation appears to be reasonable.

c) Then, the next alleged material contradiction noticed by trial Court is that as per PW3 and also AO2, repair works were going on in the upstairs portion of house of AO2 on the date of trap. Be that it may, PW1 and PW12 denied the repairs. The trial Court found that there was a material contradiction in the evidence of PWs.1 and 12 on one side and PW3 and DW1 on the other and thus entertained a doubt on the prosecution case.

At this juncture, it should be mentioned that AO2 examined DW1 to show that he was a labour contractor and on 23.10.1999 at about 7AM he went to the house of AO2 as some flooring work was going on in the second floor and at that time a mini lorry with sand came to the house of AO2 and AO2 was watering the plants and at about 7.15 AM one person (PW1) came and enquired about AO2 and this witness showed AO2 to him and AO2 enquired PW1 as to who he was and he (PW1) told that his name was Reddy and gave his particulars and AO2 asked him to sit in the hall and then AO2 went towards the kitchen and washed his feet and then went to the hall through kitchen and this witness stood at the entrance door of the house and labourers were unloading the sand and he heard the conversation between AO2 and PW1 and PW1 told that he had come with elder brother of M.Sambasiva Rao (AO1) and AO2 enquired him where that person was and asked him to bring that person and in the meanwhile AO2 got a phone call and when AO2 went to receive the phone call, PW1 came out of the hall and moved out and within 2 or 3 minutes some 10 to 12 persons came into the hall through main gate by pushing one person (A3) and AO2 questioned them as to who they were, they caught hold AO2 and made him to sit in the sofa. They also enquired this witness and he replied that he was the labour contractor and they told that they were CBI Officers and threatened him to sit outside and not to move. DW1 further stated that some time thereafter SP—Sudhakar Rao called him inside and enquired him. Thus, DW1 supported the defence plea of AO2. The trial Court in disbelieving the trap incident, relied upon the evidence of DW1 also to some extent.

Sofaras the alleged controversy in respect of repairing works is concerned, it is a minor one as argued by learned Spl.S.C. The probative value of DW1 is concerned, AO2 did not suggest in the cross of PW1 about the presence of DW1 and his talking with him when PW1 came to his house. It goes without saying that DW1 was subsequently introduced after prosecution evidence was over to render some support to his defence plea.

d) Another reason, it must be said perversed one, which prompted the trial Court to discard the entire trap theory projected by the prosecution is that during cross PW1 stated that when himself and A3 were entering into the house of AO2, he looked up and saw the presence of trap team all together. Basing on this part of evidence, the trial Court wondered that when all the trap party members were already inside the house of AO2, how AO2 and A3 would demand and receive bribe and liquor bottle from PW1 and thus the entire trap incidents were false and commented that the evidence of PW1 gave a irretrievable death blow to the prosecution case.

It must be said that the trial Court misread the evidence of PW1 out of context. As per prosecution the understanding was that PW1 should go along A3 to the house of AO2 and after paying the bribe amount he should come out and give the pre-arranged signal by wiping his face, so that the trap party members who were taking vantage position outside the house of AO2 would rush into the house and catch the accused. That being so, it would be hard to presume that the trap party members would take vantage position inside the house of AO2 even before PW1 and A3 entered the house. Such presumption is quite illogical in the context of the facts of the case. From the evidence of PW1 what we can understand is that while going into the house, probably he raised the head and saw outside the compound to confirm that the trap party members were waiting at the vantage position. Even by wild guess, one cannot say that the trap team members were already inside the house to scuttle the trap.

e) Then the next reason for suspecting the prosecution case was due to presence of Sudhakar Rao, SP, CBI, Visakhapatnam during the trap and his alleged sly hint to AO2 that there was no case against him but he should be wise enough to deal with the matter to come out of the case. The prosecution version before the trial Court was that the SP returned from Chennai to Hyderabad and on 23.10.1999 he attended the meeting held at RO at Hyderabad with the DIG but he did not give any hints to AO2 as alleged. Even assuming that the SP who was present at Hyderabad, went to the scene on knowing about the trap, from that fact it cannot be readily inferred as if he gave some hints to AO2 as alleged. It appears AO2 tried to wriggle out of the case taking advantage of his/SP's presence.

f) Then the next reason assigned for discarding the prosecution case was that in this case entire investigation was completed even prior to registration of FIR which is against law. As per the evidence of PW12, on 21.10.1999 while he was camping in Room No.5 of Railway Retiring room he received Ex.P4—report from PW1 at about 9 AM and after going through its contents and in view of the allegations made in Ex.P4—report he instructed PW1 to purchase train tickets for him and AO1 and thereafter, he contacted SP, CBI, Visakhapatnam through phone and informed about the receipt of Ex.P4 and received the instructions and verified the antecedents of AO1 and AO2 and on the same day, he sent the report to SP, CBI, Visakhapatnam by ordinary post. Then the evidence of PW11—DSP, CBI, Visakhapatnam is that in compliance to the written orders of SP, he registered RC23(A)/99 on 24.10.1999 at 9.45 hours and sent Ex.P41—FIR to the Court. It appears the trial Court accepting the argument of accused that FIR was registered belatedly to suit the case of the prosecution and it has not produced even the postal cover through which the complaint was sent to the SP, CBI, Visakhapatnam, held that the investigation preceded registration of FIR which was illegal and contrary to law. It must be said that above observation was without noting the ground realities. The facts would show PW12 received Ex.P4—report on 21.10.1999 at about 9 AM while he was camping at Vijayawada, faraway from SP's office at Visakhapatnam. After informing this fact and getting telephonic instructions from SP, he sent the complaint by ordinary post on the same day and in view of peculiar circumstances involved in the case that PW1 and AO1 were going to Hyderabad to pay bribe to AO2 he had plunged into the action. It is true that the object of prompt and in time registration of FIR is to see that at a later point of time, police may not manipulate the FIR to suit its investigation. In the instant case, the registration of FIR has to be done at Visakhapatnam but not at Vijayawada. So, to facilitate the registration of FIR, PW12 sent the same by ordinary post but ofcourse after obtaining due instructions from SP, CBI. Visakhapatnam. In my view, prosecution could be blamed if PW12 was authorised to register FIR by himself on receiving the report but he neglected the same and registered FIR only after completion of investigation. That is the not case here. He was on office work at Vijayawada where he received Ex.P4 which would show, on the next day PW1 and AO1 were proceeding to Hyderabad to pay bribe and due to this exigency, after obtaining telephonic instructions from SP, CBI, Visakhapatnam, he despatched Ex.P4 by ordinary post and commenced the investigation. Therefore, on the ground of delay due to peculiar circumstances and facts of the case, it is not apt to discard the prosecution case.

g) The next reason to discard the prosecution case was that Ex.P8—second mediator's report was prepared belatedly, obviously to suit the case of the prosecution. This reason cannot be appreciated because of the fact that AO2 and A3 acknowledged the receipt of copies of Ex.P8 on 23.10.1999 without any protest.

24) So on a conspectus, the trial Court committed serious error in appreciation of facts, evidence and law which in certain respects perverse. In this regard, the argument of learned counsel for accused that the appreciation and findings arrived at by the trial Court are right and even if two views are possible from the record, the view which was taken by the trial Court to acquit the accused shall not be disturbed cannot be appreciated. As already stated supra, on crucial aspects the appreciation of the trial Court was totally wrong. Therefore, this type of arguments and the judgments cited to buttress such argument cannot be accepted.

25) The offences are concerned, A1 is guilty of offences under Section 120B IPC and Sections 7, 13(2) r/w 13(1)(d) of PC Act. A3 is concerned, he is guilty of offences under Section 120B IPC and Sections 12, 13(1)(d) r/w 13(2) of PC Act r/w 109 IPC. AO2 is concerned, since he died pending appeal, he cannot be punished.

26) In the result, this Criminal Appeal filed by the prosecution is allowed and the judgment of the trial Court in C.C.No.17 of 2000 is set aside and

> *AO1 is held guilty of the offences under Section 120B IPC and Sections 7, 13(2) r/w 13(1)(d) of PC Act;*
>
> *A3 is held guilty of the offences under Section 120B IPC and Sections 12, 13(1)(d) r/w 13(2) of PC Act r/w 109 IPC.*

Since AO2 died pending appeal, the case against him is abated.

27) On the quantum of sentence, following the decision of Hon'ble Apex Court reported in ***Suryamoorthi and another vs. Govindaswamy and others***[4], this Court prefers to hear AO1 and A3 before passing sentence. Today, AO1 and A3 and their counsel are not present at the time of passing of the judgment. Hence, Registry is directed to issue NBWs. against AO1—M.Sambasiva Rao and A3—M.Venkata Sivanaga Prasad for securing their presence to hear them on the quantum of sentence to be imposed.

Call on **08.09.2015.**

U. DURGA PRASAD RAO, J

Date: 21.08.2015
Murthy/scs

Date: 08.09.2015:

A.1 and A.3 are present.

Learned counsel Sri G.R.Sudhakar and learned counsel Sri S.Chandra Mohan Reddy, who filed memo of appearance on behalf of A.1 and A.3 respectively are also present.

Learned Special Standing Counsel for CBI is present.

Heard both sides on the quantum of sentence to be imposed.

For pronouncement of sentence, post on **09.09.2015**. Accused shall present in Court tomorrow i.e, 09.09.2015.

U. DURGA PRASAD RAO, J

Date: 08.09.2015
scs

Date: 09.09.2015:

Quantum of Sentence:

It was urged on behalf of A.1 that he is a Senior Citizen aged about 64 years and underwent Coronary Artery Bypass Surgery during 2009 and subsequently he underwent several health complications due to his advanced age and he has been under constant psychiatric treatment since 25.06.2010 and still undergoing treatment and he is also undergoing kidney treatment and further he is the head of the family and he has responsibilities to discharge and considering his plight, minimum sentence may be imposed. His medical record is submitted.

Whereas on behalf of A.3, his learned counsel submitted that he is aged about 60 years and suffering with Coronary Artery disease and he is under constant medication. It was further submitted that he being the head of the family has to discharge responsibilities and therefore, lenient view may be taken in imposing the sentence. His medical record is also filed.

Learned Special Standing Counsel for CBI left the matter to the discretion of the Court.

Having regard to the nature of the offences and circumstances under which they were committed and also considering the submission of respective counsel for accused on the old age and health issues of the accused, this Court is of the considered view that in the interest of justice lenient view in imposition of sentence can be taken into consideration.

Accordingly, A.1—M.Sambasiva Rao is sentenced to undergo Rigorous Imprisonment for a period of **One(1) year** and to pay fine of **Rs.5,000/- (Rupees Five Thousand only)** on three(3) counts for the offences under Sec.120B IPC and Sec.7, 13(2) r/w 13(1)(d) of P.C.Act and in default of payment of fine, additionally he shall undergo Simple Imprisonment for a period of **two(2)** months.

Whereas A.3—M.Venkata Siva Naga Prasad is sentenced to undergo Rigorous Imprisonment for a period of **One(1) year** and to pay fine of **Rs.5,000/- (Rupees Five Thousand only)** on three(3) counts for the offences under Sec.120B IPC and Sec.12, 13(1)(d) r/w 13(2) of P.C.Act r/w Sec.109 IPC and in default of payment of fine, additionally he shall undergo Simple Imprisonment for a period of **two(2)** months.

All the substantive sentences imposed against A.1 and A.3 shall run concurrently. The remand period of A.1 and A.3 if any, shall be given set-off.

The accused are informed of their right to appeal.

The Registry is directed to provide a free copy of this Judgment to the accused forthwith.

At request of learned counsel for accused, A.1 and A.3 are directed to surrender before the Trial Court on or before **07-10-2015** and on such surrender, the Trial Court shall commit them to jail for serving sentences.

U. DURGA PRASAD RAO, J

Date: 09.09.2015
scs

[1] 2009 (1) ALD (Crl.) 773 (SC)
[2] AIR 2012 SC 1292
[3] (2010) 13 SCC 657
[4] AIR 1989 SC 1410