THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.649 of 2006

JUDGMENT:

This appeal is preferred by the appellant, against the judgment of the Principal Special Judge for SPE & ACB Cases, Hyderabad in CC.No.7 of 2001 dated 05.05.2006, convicting and sentencing him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of one month for the offence punishable under Section 7 of the Prevention of Corruption Act and to undergo rigorous imprisonment for period of one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of one month for the offence punishable under Section 13(1)(d) of the Prevention of Corruption Act (for short 'the Act').

2. The facts of the case, briefly, as per the charge sheet are as follows:

The brother-in-law of the complainant purchased 2.19 acres of land in Gopanapally Village, Zaheerabad Mandal, Medak District from one Kistaiah Chary in the year 1992 and got registered the same on 03.06.1992. His brother-in-law, who is an illiterate and deaf, submitted an application in the MRO's office for transfer of the property in his name in the revenue record. The MRO issued orders transferring the land but the MRI did not make entries in the pass book, though he met the MRI on several occasions. Finally when he met him on 23.02.1999 and requested for making entries, he demanded a bribe of Rs.1,000/- for making entries. In spite of his plea that he is not able to pay the said amount, the MRI became angry and asked him to pay the amount and took away the pass book of his brother-in-law. As he and his brother-in-law were not willing to pay the bribe, he lodged a complaint with the Deputy Superintendent of Police, ACB, Nizamabad on 25.02.1999, for necessary action. The DSP, ACB verified the contents of the said petition and registered a case in R.C.No.2/ACB-NZB/1999 under Section 7 of the Act and took up investigation.

The DSP secured two mediators and prepared pre-trap proceedings and the complainant was asked to be present in the morning hours on 26.02.1999, at the Inspection Bungalow, Sadasivapet. The complainant narrated the facts to the DSP and produced Rs.1,000/- currency notes, which he intended to pay to the accused as bribe. On the date of trap i.e. 26.02.1999, at 4.45 PM, while the complainant, accompanied by L.W.4, was going to the office of MRO, was stopped by the accused. The accused demanded and accepted the bribe amount and kept the same in his left side shirt pocket and thereafter, he was trapped by the DSP, ACB. The phenolphthlein test was conducted on the fingers of the accused and it yielded positive results. The tainted amount of Rs.1,000/- was recovered from the left side shirt pocket of the accused at his instance. In the MRO office and in the presence of the MRO, the accused produced one title deed book of Sy.No.128, pertaining to the brother-in-law of the complainant and one pattadar pass book pertaining to him.

During investigation, the witnesses were examined, relevant documents were acquired and the statement of the complainant under Section 164 Cr.P.C was recorded and after concluding investigation, the charge sheet was laid for the offences punishable under Sections 7, 13(2) read 13(2) of the Act.

The Court below took cognizance of the case and after completing with the required legal formalities framed the aforesaid charges against the accused and recorded the plea of not guilty by the accused. During trial, P.Ws.1 to 9 were examined and Exs.P1 to P13 and M.Os.1 to 9 were marked on behalf of the prosecution. After concluding the prosecution evidence, the accused was questioned about the incriminating circumstances appearing in the prosecution evidence, during examination under Section 313 Cr.P.C, which he denied. D.Ws.1 to 3 were examined and Exs.D1 and D2 and Exs.X1 and X2 were marked in support of his defence.

4. The Court below, after appreciating the evidence and considering the material on record, passed the impugned judgment, against which the present appeal is preferred on the following grounds:

The Court below erred in giving a finding regarding variations of the purpose of loan, on a frivolous consideration and the substratum of evidence of P.W.1 and the defence is that loan was sought by P.W.1, which is not disputed. The purpose for the loan is for the deceased son of the P.W.1, which is also inconsistent. The Court below erred in placing reliance on the statement of P.W.1 alleged to have been made during post trap proceeding, Ex.P10, without considering that it is normal for a person lodging a complaint of bribery to deny that no loan was outstanding on the day of trap. The Court below erred in relying upon the evidence of P.W.1, who gave different versions at different stages of the case. Based on the above grounds, the appellant seeks this Court to set aside the judgment of the Court below.

5. Heard the learned counsel for the appellant and the learned public prosecutor appearing for the respondent.

6. The counsel for the appellant submits that even according to P.W.1 there was a loan taken by P.W.1 from the accused and the same was admitted by P.W.3, who is a mediator. The accused took the same stand when he was trapped by the ACB officials. The same version was reflected in the 164 statement of P.W.1. Hence, any amount of doubt exits in the case of the prosecution, the benefit of which has to be extended to the accused.

7. Learned Public Prosecutor, on the other hand, contends that even if the loan is proved to be existing, when the evidence of P.W.1 is clear that the amount was given as bribe for doing an official favour, the same can accepted and the judgment of the Court below needs to be upheld.

8. The points that need to be considered are:

1. Whether the evidence of the prosecution succeeds in proving that the amount, allegedly, given by the complainant to the accused is towards bribe, for getting the official favour.
2. To what result.

POINT No.1:

9. The complainant, as P.W.1, stated the facts, which were stated in the complaint given by him, which are that one Mohd. Jilani Miya, is his brother-in-law. During the year 1992, his brother-in-law purchased 2.19 acres of land at Gopanapally village from one Kistaiah and got it registered in his name. As his brother-in-law was illiterate and deaf person, the complainant attended to his work. His brother-in-law applied for mutation of the above said property in the revenue record. The MRO issued proceedings for mutation. Thereafter, on behalf of his brother-in-law, he approached the office of MRO, Zaheerabad and gave the pattadar pass book and title deed of his brother-in-law to the R.I B. Srikanth, who is the accused. The accused did not make entries and did not return the pass book and title deed to his brother-in-law. Since then, he has been requesting the accused to make entries and return the documents. During February 1999, he once again met the accused and requested to make entries in the pass book and title deed, but the accused asked him to come on the next day. The accused did not attend the work on the next day. Then he went to the ACB office and submitted a petition since the accused demanded money for payment of bribe two days prior to the lodging of the complaint. The accused demanded Rs.1,000/- as bribe and told that the works cannot be done free of cost.

After receiving the complaint from P.W.1, DSP, ACB, instructed him to be present at the R&B guest house, Sadasivapet and also asked to bring the proposed bribe amount. As such, he went to the said place along with the amount. The DSP introduced two persons to him as mediators, who verified with him whether he gave the complaint and whether he brought the amount. The mediators noted down the currency note numbers and the notes were handed over to one of the constables, who smeared them with white powder and the notes were handed over to the one of the mediators, Dhana Singh, who kept the tainted notes in his front left shirt pocket, by ensuring that there was nothing in it. The DSP instructed him to handover the amount only on demand made by the accused. They also demonstrated the test that would be conducted to trace the tainted currency notes. Thereafter, they started and reached Zaheerabad at 2.45 PM and he was dropped near the office of the accused and the DSP asked him to go inside and the DSP also asked Dhana Singh to accompany him. Both of them entered the MRO's office and found that the accused was not present. They returned to the DSP and informed the same. They were informed at the MRO's office that the accused has gone to attend the Eye Camp and that the accused would return at about 4 PM or 5 PM. Later, they were taken to a near by office and at about 4.30 PM, they all came back near the MRO's office and again himself and Dhana Singh started proceeding to the office and found the accused coming to the office on his scooter from behind. He stopped his scooter and asked him whether he had brought the amount and he answered in the affirmative. He asked him to give the pass book and the accused asked him to collect the pass book in the next morning and then the accused asked him to give the amount. He handed over the tainted amount to him and the accused received it with his right hand and kept it in his front left side shirt pocket. When he again asked the accused for giving pass book, the accused repeated to collect the pass book in the next morning. When the accused started the scooter and was about to move, one ACB constable stopped him and at the time of stopping the scooter, he displayed the prearranged signal. Then the DSP came there along with the trap party and introduced himself to the accused and he was asked by the DSP to stay aside and two hours later, he was called inside the MRO's office and was enquired whether he has taken any loan from the accused and he stated what all transpired.

In the cross-examination, he admitted that after purchasing the land for getting mutation effected in the name of the purchaser, the purchaser has to submit an application to MRO and then the MRO issues notices to the interested parties, which should be sufficiently in advance, at least giving a gap of 45 days, to raise objections and if no objections are received, the necessary transfer would be effected. He admitted that entries have to be made simultaneously in both the pass books and they cannot be separately made. He admitted that only after ascertaining that possession was taken by the vendee, the relevant entries would be made. He further admitted that he has taken Rs.1,000/- from the accused since he had to meet the funeral expenses of his son and promised the accused that he would repay it after getting compensation. He also admitted that the said amount was provided by the accused from one Dhanraj and that he promised to return the same. He was given Rs.1,000/- by the accused by stopping his scooter on the date of trap, stating that it represents that amount provided by him from Dhanraj and that he was returning the amount. He also admitted that in his statement under Section 164

Cr.P.C, he did not state as to any demand being made by the accused for payment of bribe amount and that he made a written complaint, Ex.P1, to the DSP. He admitted that he stated before the Magistrate that he voluntarily gave Rs.1,000/- by keeping it in the hand of the accused to meet tea expenses. He also admitted that he did not state in 164 statement about DSP questioning him as to whether he borrowed Rs.1,000/- from the accused earlier. It was further elicited that that VAO has asked him to get the vendor of P.W.2 after submitting Exs.P2 and P3, to make entries. It was also elicited that he used to attend the work of the villagers in the MRO's office, by taking money to meet the expenses.

10. Based on the answers given by him, he was declared hostile by the prosecution. During the cross-examination done by the Public Prosecutor, he admitted that he signed on Ex.P1, after going through the contents. He also stated that in his 164 statement, he stated that he has given Rs.1,000/- to one Dhana Sing, one of the mediators and he did not state, when DSP called him inside and questioned him whether there were any money dealings between himself and the accused, that there were no such dealings between the accused and himself. The accident in which his son died had taken place in December 1999 and he took Rs.1,000/- in the same month. He stated that he knows the accused from either 1975 or 1976 during which time, he was working as typist in MRO's office, Zaheerabad. He admitted that for the first time he stated the fact of his requisitioning Rs.1,000/- from the accused and the accused assisted

him in providing that amount from the foot wear shop owner and he did not state this fact anywhere earlier, as none asked him.

11. This being the evidence of P.W.1, the fact remains that in his statement under Section 164 Cr.P.C, he stated that he has taken Rs.1,000/- from the accused as loan. The same seems to be the defence taken by the accused immediately after the trap proceedings. In Ex.P1 also the version seems to be that he gave Rs.1,000/- on his own to the accused for tea expenses. A reading of the evidence of P.W.1 shows that he is not a trustworthy witness, as he has been taking different stands during evidence, which was taken before the Court.

12. P.W.2 is the brother-in-law of P.W.1. He corroborates the evidence of P.W.1 regarding his entrusting of the work to P.W.1. But since he stated that he does not know to whom P.W.1 handed over Exs.P2 and P3 and that P.W.1 never informed him about the demand made at the office where his work had to be done, he was declared hostile by the prosecution.

He denied the suggestion given by the Public Prosecutor in the cross-examination, that the accused demanded Rs.1,000/- as bribe for mutating his name in the revenue records. In the cross-examination done by the accused, he admitted that he did not request P.W.1 to get his job done in the revenue office but it was P.W.1, who came and offered him that he would get his job done.

13. P.W.3 is the mediator, who corroborates the evidence of P.W.1 with regard to the fact of his accompanying P.W.1 to the MRO office.

Speaking about the happenings at the MRO office, he states that while himself and P.W.1 were proceeding to the MRO office on foot, the accused was returning on scooter from camp. Since P.W.1 recognizes him, he addressed the accused as 'Sir' and stopped him. P.W.1, who was slightly ahead of him, was stating to the accused that he was giving loan amount (Kharza Ke Paisa) and kept that amount in the front left side shirt pocket of the accused though there was no demand by the accused and though the DSP asked P.W.1 to give the amount only on demand. On that, P.W.3 was declared hostile. An objection was recorded while declaring him as hostile on the ground that there was no previous statement by the witness and hence, he cannot be treated as hostile. It is an admitted fact that the statement of P.W.3 was not recorded in the post trap proceedings in Ex.P6. But he signed on Ex. P6, which means that he subscribed to the version reflected in Ex. P6, which is contrary to the evidence given by him in the court and thereby exhibited hostility. Section 154 of the Evidence Act gives discretion to the court to permit the cross examination by the party who calls the witness. Existence of a prior statement is not a pre requisite for exercise of such discretion.

In the cross-examination done by the Public Prosecutor, it is stated that only at the time when P.W.1 was keeping the amount in the shirt pocket of the accused, stating that it represents the loan amount taken by him, that he came to know for the first time about it. The DSP did not ask P.W.1 requiring him to answer as to the accused representing that he had returned the amount as loan amount and when the DSP asked P.W.1 whether he had given the amount, P.W.1 answered that he had given the amount. At that juncture, he told the DSP that the accused had not demanded for payment of bribe amount and that P.W.1 stated that it was towards discharge of loan amount and kept it in the front left side shirt pocket of the accused but the said fact was not recorded in the post trap proceedings and despite that omission, he singed on it.

14. P.W.4 is the MRO, who stated that he knows the accused, who worked as Revenue Inspector in their office during 1999 and Ex.P7 is the file containing the application of Jilani Miya (P.W.2) for transfer of purchased land in his name. According to him, on 26.02.1999, when he was at the office at 5 PM, the DSP, ACB came and introduced himself and informed that the accused was trapped.

15. P.W.5 is a resident of Gopanpally village, who worked as VAO and his evidence is that in 1992, P.W.2 submitted an application for transfer of his purchased land in the revenue records. After mutation proceedings were issued, the pass books of P.W.2 were given to him and he does not remember whether they were given by P.W.2 or by P.W.1 and he asked P.W.1 to get the vendor's pass book also so as to effect the entries. Since they were not brought, he kept Exs.P2 and P3 in the almirah of the accused and he does not know what had happened on 26.02.1999 at MRO's office, Zaheerabad. An attender came to him and told him that P.W.4 called him, he went to the MRO's office at 5.30 PM and when asked about Exs.P2 and P3, he told that he kept them in the almirah of the accused.

This part of the evidence of P.W.5 contradicts the evidence of P.W.4, who stated that the almirah is in the exclusive custody of the accused. P.W.5 was also treated hostile by the prosecution.

In the cross-examination done by the Public Prosecutor, he admitted that he stated in his 161 Cr.P.C. statement that Exs.P2 and P3 were with the accused and that the accused took out Exs.P2 and P3 and handed over to the DSP in the presence of P.W.4.

In the cross-examination done on behalf of the accused, he stated that after he told P.W.4 that he kept Exs.P2 and P3 in the almirah of the accused, they were taken out by the accused. He stated that along with Exs.P2 and P3, he also kept some other pass books in the almirah, pertaining to their villagers which were available when Exs.P2 and P3 were taken out.

16. P.W.6, who is the Section Officer in the Revenue Department, Secretariat, stated that he worked as Assistant Section Officer in R&B Department during 2000 and Ex.P9 is the sanction order to prosecute the accused. P.W.7, who worked as Assistant Executive Engineer, R&B, at the relevant point of time, stated that he acted as a mediator. He corroborated the evidence of P.W.1 with regard to their going to the Dy.E.E, R&B Division and around 4.45 PM. He states that P.Ws.1 and 3 started towards the MRO's office, whereas they stayed at the place where earlier they took vantage positions. From a distance of 50 or 60 yards, they found the accused proceeding on his scooter towards MRO's office and on seeing P.W.1, he stopped the scooter. They also found the accused and P.W.1 talking to each other and

P.W.1 gave something to the accused, who received it, but he could not see what it was. Later, P.W.1 displayed pre-settled signal. He spoke about the test that was conducted on the fingers of the accused and on rinsing his both hands in the sodium carbonate solution, it turned into pink. The accused produced the notes from his shirt pocket and the DSP asked the accused about the receipt of the tainted money. The accused stated that it represents the loan amount which was contracted by P.W.1 earlier and it was paid towards discharge. The said explanation was incorporated in the post trap proceedings. He further stated that when the DSP called the staff of the MRO's office and enquired them whether the accused demanded any bribe amount, they expressed their ignorance about the instant transaction.

In the cross-examination, he admitted that he cannot say as to who stopped whom i.e. whether P.W.1 stopped the accused or the accused stopped himself on seeing P.W.1, as they were at a distance of 50 or 60 yards.

17. P.W.8, who worked as DSP, ACB at the relevant point of time, corroborated the evidence of P.W.6. In the cross-examination, he admitted that they were at some distance from the place where the accused stopped the scooter whereas P.Ws.1 and 3 and two constables and CI, Narsing Rao were at nearer spots and within audible distance. They did not enquire the two constables and the Inspector and P.W.3 as to what transpired between P.W.1 and the accused and the two constables and the Inspector were not cited as witnesses. He admitted that in the very first instance when he asked the accused, he gave a

spontaneous explanation that the amount was kept in his pocket by P.W.1 and that he did not ask for it and he also stated that he earlier gave amount to P.W.1 as loan and that P.W.1 repaid. He also admitted that even at Page No.6 it is recorded that when he again questioned the accused, he reiterated the said loan transaction. They also conducted house search after Ex.P8 proceedings and did not find any gold ornaments except what were worn by his wife. He admitted that the accused stated in Ex.P8 that he has lent the amount to P.W.1 about one and half year prior thereto but he did not state that P.W.1 was exploiting the villagers by extracting amounts for doing their work in MRO's office as suggested and for these two issues, he has taken P.W.1 to task, prior to the alleged trap.

18. P.W.9, who worked as Inspector, ACB, at the relevant point of time, stated that he recorded the statement of the accused and after receiving sanction order, he laid the charge sheet. In the cross-examination, he stated that he filed the requisition for recording the statement of the witness under Section 164 Cr.P.C of P.W.1 and in the said statement, P.W.1 did not state anything about the demand being made by the accused. He also stated that P.W.1 mentioned in the said statement that he has given Rs.1,000/- voluntarily by keeping it in the hands of the accused to meet the expenses of 'Chaai Pani'.

19. D.W.1, who is running a Slippers Shop under the name and style of Dhanraj Shoe Mart at Zaheerabad, stated that he knows the accused since they are childhood friends. According to him, during 1997, the accused brought P.W.1 to him and requested him to lend Rs.1,000/- to P.W.1, as he was in need of money as his son died.

P.W.1 did not repay the amount even four months after he lent the amount. The accused enquired him whether P.W.1 had repaid the amount, he told him that P.W.1 did not discharge. The accused paid the amount on behalf of P.W.1. One and half years later, he learnt that P.W.1 utilized that opportunity of repaying the amount borrowed from him, having handed over it to the accused and got him falsely trapped in the instant case.

20. D.W.2, who is a resident of Gopanpally village, stated that he approached P.W.1 to secure his services for obtaining income certificate with regard to his children's education and paid Rs.300/- to P.W.1 for the same. He further stated that when P.W.1 was deceiving others of their village, there used to be quarrels between P.W.1 and others. He also spoke about the death of the son of P.W.1 in an accident.

21. D.W.3, who is a person known to P.W.1, stated that he also paid Rs.300/- to P.W.1 for getting his work done in Revenue Department and when P.W.1 did not get his work done, twice or thrice he questioned P.W.1 in that regard. Later, he himself approached the MRO office and got the work done. He further stated that P.W.1 would be taking amounts from villagers, impressing upon them that he will get their work done but he would not get them done.

22. From a combined reading of the evidence of the witnesses, the case of the prosecution becomes very shaky and shabby. The prosecution rests its case on the complaint given by P.W.1, who is believed to be an untrustworthy person. The case collapses

even when it is tested on the testimony of P.W.1 alone. He is the person, who has initiated the prosecution, but the versions given by him in Ex.P1 and in his 164 statement, are inconsistent and he admitted the said fact before the Court and the same is also proved through the Investigating Officer, examined as P.W.9. The evidence of P.W.1 with regard to the loan is also that the accused took him to D.W.1 and requested him to lend Rs.1,000/-, which fact is supported by the evidence of D.W.1. Hence, in view of the above doubtful evidence, this Court opines that the benefit has to be extended to the accused, and the judgment of the Court below cannot be sustained.

23. The decisions relied upon by the counsel for the appellant are on the aspect of the fact of recovery of tainted money from the accused in the absence of demand for illegal gratification. The Supreme Court in STATE OF PUNJAB v. MADAN MOHAN LAL VERMA[1] held that the law on the issue is well settled that demand of illegal gratification is *sine qua non* for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount is illegal gratification.

The decision in P. SATYRNARYANA MURTHY v. STATE OF AP[2] is also on the same principle.

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[1] (2013) 14 SCC 153
[2] (2015 190 SCC 152

The decision in OM PRAKASH v. STATE OF HARYANA[3] is on the aspect of non-examination of one of the two constables and non explanation of the same.

The decision in SUBASH PRABAT SONVANE v. STATE OF GUJARAT[4] is to the effect that when from the evidence of panch witness it is not clear that there was any demand by accused and amount was paid to him by the complainant, the accused needs to be acquitted.

In this case also, there is no corroborating evidence for the demand spoken to by PW.1. The 164 statement of PW.1 throws any amount of doubt, with regard to the demand. The instant explanation of the accused would support the version of loan. DW.1's evidence comes as a strong support to the defence. Hence, with all these doubts in the prosecution case and probabilities in favour of defence, it would not be safe to hold the accused guilty of the alleged offences.

The point is answered accordingly.

<u>POINT No.2</u>:

In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant-accused in CC.No.7 of 2001 dated 05.05.2006 by the Principal Special Judge SPE & ACB Cases, Hyderabad. The appellant-accused is acquitted of the offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 and he shall be set at liberty forthwith, if he is not required in any other case.

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[3] AIR 2006 SC 894

[4] AIR 2003 SC 2169

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

October 24, 2018
DSK