THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.910 OF 2006

JUDGMENT:

1 This appeal is filed under Section 378 (3) (1) Cr.P.C. by the State represented by ACB, Vizianagaram Range, Vizianagaram assailing the judgment dated 10.10.2005 passed in C.C.No.20 of 1998 on the file of the Court of the III Additional District & Sessions Judge – cum - Special Judge for SPE and ACB Cases, Visakhapatanam, wherein the respondent / Accused Officer was acquitted of the charges levelled against him under sections 13 (1) (c) and (d) r/w Section 13 (2) of Prevention of Corruption Act, 1988 and Section 409 of IPC.

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

3 The Inspector of Police, ACB, Vizianagaram Range, Vizianagaram *suo motu* registered a case in Cr.No.14/RC-ACB/VZM/93 on the file of Anti Corruption Bureau, Vizianagaram Range, Vizianagaram against the respondent under the sections 13 (2) r/w 13 (1) (e) & (d) of the Prevention of Corruption Act, 1988 (for short 'the Act') and Section 409 of IPC and investigated into the matter. During the course of investigation, it is revealed that the respondent worked as Assistant Engineer in A.P. State Housing Corporation Limited of Vizianagaram district in the year 1993. The District Manager of the A.P. State Housing Corporation Limited (for short 'the Corporation') issued 13 cheques to the tune of Rs.12,54,000/- in the name of the respondent for the purpose of

construction of houses to the weaker section people and also for construction of office building. The respondent opened bank account in his name in violation of the rules and regulations of the Corporation. The respondent misappropriated interest amount of Rs.2,120/-. The investigating officer examined and recorded the statements of the witnesses and after obtaining necessary permission from the competent authority, laid charge sheet against the respondent for the offences punishable under sections 13 (2) r/w 13 (1) (e) & (d) of the Prevention of Corruption Act, 1988 (for short 'the Act') and Section 409 of IPC.

4 After following the due procedure, the trail Court has taken cognizance of the offences against the respondent for the offences punishable under sections 13 (2) r/w 13 (1) (e) & (d) of the Prevention of Corruption Act, 1988 (for short 'the Act') and Section 409 of IPC and numbered the charge sheet as C.C.No.20 of 1998. On appearance of the respondent, copies of all documents were furnished to him as contemplated under Section 207 Cr.P.C. On hearing both parties, the trail Court framed charges under Sections 13 (1) (c) and (d) r/w 13 (2) of the Prevention of Corruption Act and Section 409 of IPC against the respondent, read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

5 During the course of trial, on behalf of the prosecution, P.Ws.1 to 8 were examined and Exs.P.1 to P.7 were marked. After completion of the prosecution side evidence, the respondent was examined under Section 313 Cr.P.C. with reference to the

incriminating evidence deposed against him by the prosecution witnesses, which the respondent denied. However, no oral or documentary evidence was adduced on behalf of the respondent.

6 After appreciating the oral and documentary evidence available on record, the trail Court arrived at a conclusion that the prosecution failed to prove the guilt of the respondent for the offences punishable under sections 13 (1) (c) and (d) r/w 13 (2) of the Prevention of Corruption Act and Section 409 of IPC and acquitted him. Feeling aggrieved by the judgment of the trial court, the State, represented by the Inspector of Police, ACB, Vizianagaram preferred the present appeal.

7 The learned Standing Counsel for the ACB submitted that the oral testimony of P.Ws.1, 2, 3, and 5 coupled with Exs.P.1 to P.5 clearly establishes that the respondent misappropriated the interest amount to the tune of Rs.2,120/- and the same was not considered by the trial court in right perspective. He further submitted that the finding of the trial court that the prosecution failed to prove the ingredients of Section 409 IPC is based on surmises and conjectures. He further submitted that the findings of the trial court are not sustainable either on facts or in law. He further submitted that the judgment of the trial court is perverse, therefore, it is a fit case to allow the appeal.

8 *Per* contra, Sri A. Hariprasad Reddy, learned counsel representing Sri C.Sharan Reddy, the learned counsel for the respondent / Accused Officer submitted that the trial court has rightly considered the scope of Section 13 (1) (c) and (d) r/w 13

(2) of the Prevention of Corruption Act and Section 409 of IPC and arrived at a conclusion that the prosecution miserably failed to prove the guilt of the respondent for the above said offences. He further submitted that the trial court has assigned reasons much less cogent and valid reasons to its findings in acquitting the respondent for the said offences. He further submitted that there is no illegality in the impugned judgment, which warrants interference of this court and hence the appeal is liable to be dismissed.

9 To substantiate the arguments, the learned counsel for the respondent has drawn my attention to the ratio laid down in State of Rajasthan vs. Mohan Lal[1], wherein the Hon'ble Apex Court held at Para Nos.17 and 34 as follows:

> 17. Upholding the decision of the High Court and following the proposition of law in Sheo Swarup (supra), a six-Judge Bench held as follows:
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> > "6. It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under Section 417, Criminal Procedure Code, to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate court has in some way or other misdirected itself so as to produce a miscarriage of justice."
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> > (emphasis supplied)
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> 34. From the above decisions, in Chandrappa and Ors. v. State of Karnataka (2007 (4) SCC 415), the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:
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> (1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
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> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
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> (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to

[1] **AIR 2009 SC 1872**

> interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
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> (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
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> (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

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

11 The case of the prosecution is based on the following two grounds viz., 1) the respondent opened the bank account in his personal name in contravention of the rules and regulations of the Corporation, and 2) the respondent misappropriated the interest amount to the tune of Rs.2,120/-.

12 It is needless to say that the prosecution has to prove the guilt of the accused beyond all reasonable doubt. It is not in dispute that at the relevant point of time, the respondent worked as Assistant Engineer in the Corporation, Vizianagaram. It is also an admitted fact that the Corporation issued 13 cheques to the tune of RS.12,54,000/- for the purpose of construction of houses for the weaker section people as well as the office building. It is also an equally admitted fact that interest to the tune of Rs.1,657/- was accrued on the amount deposited by the respondent. The respondent will fall within the definition of public servant as contemplated under Section 2 (c) of the Act. The oral testimony of P.W.8 coupled with Ex.P.6 clearly reveals that P.W.8 obtained

necessary sanction from the competent authority to prosecute the respondent in the court of law.

13 As seen from the testimony of P.W.1, the respondent opened account bearing No.6612 in his personal name in Punjab National Bank, Vizianagaram. The testimony of P.W.2 clearly reveals that the respondent opened account bearing No.9565 in Cooperative Central Bank, Vizianagaram. The testimony of P.W.3 reveals that the respondent opened account bearing No.2976 in Indian Oversees Bank, Vizianagaram. The testimony of P.W.5 reveals that the respondent opened account bearing No.1841 in Andhra Bank, Vizianagaram. The oral testimony of P.Ws.1, 2, 3 and 5 coupled with Exs.P.1, P.2, P.3 and P.5 reveals that the respondent opened bank accounts in his personal name and operated the same. The oral testimony of P.Ws.4 and 6 reveals that the then District Manager issued 13 cheqeus for an amount of Rs.12,54,000/- in the name of the respondent. The respondent deposited the above said cheques in Andhra Bank, Punjab National Bank, Cooperative Central Bank and Indian Oversees Bank.

14 The first question that falls for consideration is whether the respondent opened the bank accounts in his personal name in gross violation of the rules and regulations of the Corporation. P.W.4 is the District Manager, P.W.6 is the Accounts Manager and P.W.7 is the Deputy Executive Engineer of the Corporation. These three witnesses are competent to say whether the respondent has opened the bank accounts in contravention of the rules and regulations of the Corporation or not. As per the testimony of

P.W.8 the Investigating Officer, the respondent opened the savings bank account in violation of the rules and regulations of the Corporation. However, a perusal of the testimony of P.Ws.4, 6 and 7 clearly reveals that the Assistant Engineers who worked in the Corporation opened the bank accounts in their individual names. Their testimony further reveals that then District Manager issued cheques in the names of the Assistant Engineers and not in their official designation. The testimony of P.W.7 clearly reveals that prior to 1994 the Assistant Engineer opened the savings bank account in their individual names in order to distribute the Corporation money for execution of works. His testimony further reveals that the Assistant Engineers disbursed the amounts to various persons by issuing the cheques. Ex.P.7 is the Assistant Engineer's advance register maintained by the concerned authority. As per the testimony of P.Ws.4, 6 and 7 whatever the amounts received by the respondent was disbursed for the purpose of construction of houses for the weaker section people and other buildings. In the cross examination P.W.8 categorically deposed that he did not examine the then Manager who issued the cheques in the name of the respondent. His testimony further reveals that at the relevant point of time seven Assistant Engineers worked in the Corporation of Vizianagaram division. His testimony further reveals that he did not examine and recorded the statements of other Assistant Engineers in order to ascertain the manner of depositing of the amounts and distribution of the same. There is no whisper in the testimony of P.Ws.4, 6 and 7 that the respondent opened the bank account in violation of the rules and regulations of the Corporation. P.W.8 in unequivocal terms deposed that none of the officials of the Corporation lodged complaint against the respondent in this regard. The oral testimony of P.Ws.4, 6 and 7 coupled with Ex.P.7 clearly reveals that the Assistant Engineers who worked in Vizianagaram division at the relevant point of time opened the account in their personal names only. The material placed before the court clincingly establishes that the Assistant Engineers have distributed the money of the Corporation to different individuals through their personal savings bank accounts. It is not the case of the prosecution that the respondent misappropriated the amounts entrusted to him for the purpose of construction of houses to the weaker section people and office building. The material placed before the Court falls short to establish that the respondent opened the bank account in gross violation of the rules and regulations of the Corporation. On the other hand, the material placed before the court clearly establishes that the respondent opened the savings bank bank accounts as per the instructions issued by the District Manager. Therefore, the respondent has not violated the rules and regulations of the Corporation. The trial court considered the oral and documentary evidence and arrived at a right conclusion that the prosecution failed to prove that guilt of the respondent that he opened the bank account in his personal name in violation of the rules and regulations of the Corporation. I am fully endorsing the findings recorded by the trial court on this aspect. There is no illegality or irregularity in the findings recorded by the trial court in this regard, which warrants interference of this Court.

15 The next question that falls for consideration is whether the respondent has dishonestly and fraudulently misappropriated the interest amount to the tune of Rs.2,120/- as put forth by the prosecution?

16 Simply because the interest amount lying in the savings bank account of the respondent itself would constitute an office punishable under Section 409 of IPC or not is the crucial question to be considered by this Court. A perusal of the testimony of P.Ws.1, 2, 3 and 5 reveals that interest amount was credited on different dates. The interest amount is ranging from Rs.60/- to 200/-. As per the testimony of P.Ws.1, 2, 3 and 5, the interest accrued in different accounts was Rs.1657/-. The prosecution miserably failed to establish that the interest accrued in different accounts comes to Rs.2,120-60 ps. The material placed before the court clinchingly establishes that the respondent did not withdraw the interest amount accrued on the deposit amount. There is no whisper in the testimony of P.Ws.4, 6 and 7 that the respondent retained the interest amount fraudulently for personal gain.

17 A perusal of the record reveals that the Corporation initiated enquiry against the respondent and the enquiry officer submitted his report on 30.11.2002. The accusation herein made against the respondent is identical and similar to the charge No.4 in the enquiry. The enquiry officer dropped Charge No.4 on the ground that there is a technical lach on the accounts side as well as there was no malafide intention on the part of the respondent. This clearly establishes that there is no *mens rea* on the part of the

respondent to swallow the interest amount. Inadvertent laches on the part of an employee while discharging his official duties cannot be equated with fraudulent or dishonest intention. Fraudulent or dishonest intention is something different with that of dereliction of duties as rightly pointed out by the trial Court.

18 Having regard to the facts and circumstances of the case, I am of the considered view that the prosecution failed to prove the guilt of the respondent for the offences punishable under Sections 13 (1) (c) and (d) r/w 13 (2) of the Prevention of Corruption Act and Section 409 of IPC. The trial court has considered the material available on record in touch stone with 13 (1) (c) and (d) r/w 13 (2) of the Prevention of Corruption Act and Section 409 of IPC and arrived at a conclusion that the prosecution failed to prove the guilt of the respondent beyond all reasonable doubt for the charged offences. The trial Court has assigned cogent and valid reasons to its findings. Therefore, I am fully agreeing with the findings recorded by the trial Court.

19 Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that it is not a fit case to upset or modify the findings recorded by the trial Court. I am of the considered view that there are no grounds much less valid grounds to interfere with the well considered judgment passed by the trial Court and the appeal lacks merits and bonafides.

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

T. SUNIL CHOWDARY, J.

Date:22-01-2018
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