**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

CRIMINAL APPEAL No.912 OF 2006

JUDGMENT:

This appeal is preferred by the State represented by Inspector of Police, Anti-Corruption Bureau, Ongole, Nellore Range, under Section 378(3) & (1) of Cr.P.C., assailing the judgment dated 20.9.2005 in C.C. No.27 of 2002 on the file of the Court of the Special Judge for SPE & ACB Cases, Nellore, wherein and whereby the respondent-Accused Officer was found not guilty for the offences charged under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act and consequently acquitted of the said charges.

2. The factual matrix that lead to preferring of the present appeal is thus:

(a) Swarna Narasimha Rao–L.W.1 along with his daughter-in-law and grand-daughter filed W.C. No.245 of 1997 on the file of the Commissioner of Workmen Compensation Act and Assistant Commissioner of Labour, Ongole, claiming compensation for the death of his son-Raghu in a road accident that occurred on 09.12.1995 in the State of Karnataka. The Assistant Commissioner of Labour passed the award–Ex.P.1 on 24.11.1999 granting compensation of Rs.1,80,234/- in favour of the claimants. The Assistant Commissioner of Labour apportioned an amount Rs.90,000/- in favour of Swarna Narasimha Rao; out of which Rs.20,000/- was paid to him by way of pay order, which was received by him under acknowledgement–Ex.P3 dated 06.1.2001, and the remaining amount of Rs.70,000/- was deposited in fixed deposit vide Receipt No.929664, dated 18.9.2000–Ex.P.4 in Andhra

Bank, Court Street Branch, Ongole. On 30.4.2001, Narasimha Rao submitted an application–Ex.P.5 to the Assistant Commissioner of Labour seeking withdrawal of deposited amount on medical grounds.

(b) On 18.6.2001, Narasimha Rao made complaint – Ex.P.15 to the Inspector of Police, A.C.B., Ongole alleging that the Accused Officer, who was working as Senior Assistant in the office of the Assistant Commissioner of Labour, Ongole**,** demanded an amount of Rs.1,000/- for processing his application–Ex.P.5 and ultimately agreed for Rs.500/-. Basing on Ex.P.15 complaint, Sri K.Thimmappa, Deputy Superintendent of Police, A.C.B., Nellore Range–P.W.6 registered a case in Crime No.15/ACB-NPK/2001 under Section 7 of the Prevention of Corruption Act. On 19.6.2001, at about 10.30 am, P.W.6 secured the presence of P.W.5 and other mediators and introduced Swarna Narasimha Rao-*de facto* complainant to them and *vice versa.* At the instructions of P.W.6, P.C.671 applied phenolphthalein powder on currency notes given by the Accused Officer. He conducted chemical test in the presence of the mediators and *de facto* complainant and prepared pre-trap proceedings–Ex.P.10.

(c) After completion of the pre-trap proceedings, P.W.6 instructed the *de facto* complainant to pay the phenolphthalein powder sprinkled currency notes to the Accused Officer as and when demanded by him and give signal to the trap party (P.W.6 and other staff members) by combing his hair thrice. After entering into the Office of the Assistant Commissioner of Labour, the trap party has taken vantage position. After some time, the *de* *facto* complainant gave signal to the trap party, as instructed by P.W.6. On receiving the signal, P.W.6 and other staff members entered into the Office and the *de facto* complainant shown the seat of the Accused Officer. Then P.W.6, after sending out the *de facto* complainant to wait in the veranda, introduced himself to the Accused Officer and questioned him about the money. The accused Officer took out five-hundred rupee notes from the left upper pocket of his shirt and handed over the same to P.W.6 in the presence of P.W.5 and other witnesses. P.W.6 enquired the Accused Officer, who in turn gave spot explanation. P.W.5 prepared post-trap proceedings–Ex.P.14 and obtained the signatures of the mediators. P.W.5 also supplied copy of the proceedings to the Accused Officer under his acknowledgement.

(d) After completion of the post-trap proceedings, the Accused Officer was released on his personal bond. The Inspector of Police, A.C.B., Ongole–P.W.8 examined and recorded the statements of witnesses. After receipt of the sanction order–Ex.P.18 from the Government to prosecute the Accused Officer, P.W.8 laid the charge sheet before the Special Court against the Accused Officer for the offences under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act. The Special Court has taken the cognizance of offence for the above Sections of law.

(e) On appearance of the Accused Officer, learned Special Judge had supplied copies of the documents as contemplated under Section 207 of Cr.P.C. After hearing both sides, learned Special Judge framed charges against the accused under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, read over and explained to him in Telugu for which he pleaded not guilty and claimed to be tried.

(f) To prove the guilt of the Accused Officer, on behalf of the prosecution, P.Ws.1 to 8 were examined and Exs.P.1 to P.18 and M.Os.1 to 8 were marked. The *de facto* complainant could not be examined on behalf of the Prosecution as he died. After completion of the evidence on behalf of the Prosecution, the Accused Officer was examined under Section 313 Cr.P.C., with reference to the incriminating material against him for which he denied the same. No evidence was adduced on behalf of the defence.

(g) Basing on the oral and documentary evidence available on record, the Special Court arrived at a conclusion that the Prosecution failed to prove the guilt of the Accused Officer for the offences charged under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act and consequently acquitted him of the said charge. Hence the present appeal by the State.

3. The learned Standing Counsel for ACB vehemently attacked the judgment of the trial Court on the following grounds:

(i) the finding of the trial Court that no official favour is pending before the Accused Officer is not sustainable in view of pendency of Ex.P.5 application;

(ii) the tainted money was recovered from the possession of the Accused Officer, which itself is sufficient to draw a presumption under Section 20 of the Prevention of Corruption Act;

(iii) the trial Court, without properly considering the oral testimony of P.Ws.5 and 6, arrived at a conclusion that the appellant is not found guilty of the charges levelled against him; and

(iv) the findings recorded by the trial Court are perverse and are liable to be set aside and, therefore, it is a fit case to allow the appeal.

***Per contra***, Sri M.Ravinder, learned Advocate, representing Sri M.Venkata Narayana, learned counsel for the Accused Officer, strenuously submitted that the Prosecution failed to prove that the Accused Officer demanded illegal gratification from the *de facto* complainant. He further submitted that mere receiving of tainted amount from the *de facto* complainant, without proof of the demand, is not a valid ground to convict the Accused Officer. He further submitted that the findings recorded by the trial Court are based on evidence much less legally admissible evidence; therefore, it is a fit case to dismiss the appeal.

4. Now the points that arise for consideration in this appeal are:

> (i) Whether the prosecution proved the guilt of the respondent-Accused Officer for the offence under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act beyond all reasonable doubt? and
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> (ii) Whether there is any flaw much less legal flaw in the findings recorded by the trial Court, to warrant interference by this Court?

5. Both the points are inter-linked; hence, this Court is inclined to answer both the points simultaneously in order to avoid recapitulation of the facts and evidence.

6. The first question that falls for consideration is whether the Accused Officer is a public servant as contemplated under Section 2(c) of the Prevention of Corruption Act. It is an admitted fact that at the relevant point of time, the Accused Officer was working as Senior Assistant in the Office of the Assistant Commissioner of Labour, Ongole. The testimony of P.Ws.1, 2 and 3 clearly reveals

that at the relevant point of time, the Accused Officer was working as Senior Assistant in the Office of the Assistant Commissioner of Labour. This fact is not disputed by the Accused Officer. Thus, it can be held that the Accused Officer is a public servant, at the relevant point of time, as postulated under Section 2(c) of the Prevention of Corruption Act.

7. It is needless to say that no public servant can be prosecuted under the provisions of the Prevention of Corruption Act without obtaining necessary sanction from the competent Authority. As seen from the testimony of P.W.7, he worked as Section Officer in Labour, Employment, Training and Practice Department, A.P. Secretariat, Hyderabad from September, 2000 to August, 2003. His testimony further reveals that the Director General, A.C.B., sent all necessary papers to the Government through Vigilance Commissioner seeking sanction for prosecution of the Accused Officer. His testimony further reveals that the Principal Secretary, after satisfying himself with the material placed before him, issued sanction order–Ex.P.18. In the cross-examination of P.W.7, nothing was elicited to shake his testimony. On the other hand, the testimony of P.W.7 remained unchallenged so far as the issuance of the sanction order in accordance with the procedure. The oral testimony of P.W.7 coupled with Ex.P.18 clearly reveals that the competent Authority, after satisfying with the material available on record, granted permission to prosecute the Accused Officer. The trial Court also after considering the testimony of P.W.7 and Ex.P.18 arrived at a conclusion that the Government had issued valid sanction order. I am fully endorsing the finding of the trial Court on this aspect. The material placed before the Court

clinchingly establishes that the charge sheet was laid against the Accused Officer after obtaining necessary sanction from the Government.

8. The next question that falls for consideration is whether any official work of the *de facto* complainant is pending before the Accused Officer as on 19.6.2001. P.W.1 is the then Assistant Commissioner of Labour, Ongole; P.W.2 is the then Labour Officer, Ongole and P.W.3 is the then Junior Assistant in the Office of the Assistant Commissioner of Labour, Ongole. These three witnesses are competent to speak about the pendency of application of the *de facto* complainant. As observed earlier, P.W.1 passed Ex.P.1-Award in favour of the *de facto* complainant and other claimants. The oral testimony of P.W.2 coupled with Ex.P2-Order dated 22.12.2000 reveals that he apportioned the compensation amount among the three claimants and allotted an amount of Rs.90,000/- to the *de facto* complainant. A perusal of Ex.P.3 reveals that an amount of Rs.20,000/- was paid to the *de facto* complainant under Ex.P.3–Acknowledgement, dated 06.1.2001. A perusal of Ex.P.4–Receipt reveals that an amount of Rs.70,000/- was deposited in Andhra Bank, Court Street Branch, Ongole by way of fixed deposit for a period of three years. It is the case of the Prosecution that the *de facto* complainant filed two Applications–Exs.P.5 and P6 seeking withdrawal of the amount kept in the F.D.R., on medical grounds. In order to process the same, the Accused Officer said to have demanded Rs.1,000/- and ultimately agreed for Rs.500/-. On 19.6.2001, at the time of conducting trap, Ex.P.11–Entire file relating to W.C.245 of 1997 was seized by P.W.6. There is no specific mention in Ex.P.14 about the seizure of Exs.P.5 and P.6.

P.Ws.5 and 6 categorically deposed that Ex.P.11 was seized at the time of the post-trap. In the cross-examination P.W.6 deposed that he seized Ex.P.11–Entire file, which was marked through P.W.5, who is one of the mediators at the time of the post-trap proceedings. Thus the fact remains that Ex.P.11 contains Exs.P.5 and P.6.

9. Whether Exs.P.5 and P.6–Applications were seized at the time of the trap or not will be considered along with other aspects. Ex.P.5 is the Application dated 30.4.2001 received by P.W.1 on 02.5.2001. The testimony of P.Ws.1, 2 and 3 clearly reveals that after receipt of Ex.P.5– Application by the Assistant Commissioner of Labour, he made endorsement and sent the same to the Distribution Clerk for the purpose of numbering. A perusal of Ex.P.5 reveals that the Distribution Clerk has assigned number. It is not in dispute that the *de facto* complainant submitted Ex.P.5–Application seeking withdrawal of money on health grounds. P.W.1, in unequivocal terms, deposed that an application for withdrawal of money without medical certificate will not be considered. P.W.4 is the Advocate, who appeared on behalf of the *de facto* complainant in W.C.245 of 1997. The testimony of P.Ws.1 and 4 clearly reveals that the *de facto* complainant has not annexed the medical certificate to Ex.P.5–Application. The testimony of P.W.1 clearly reveals that Ex.P.5–Application was deemed to be seized for want of medical certificate. The testimony of P.W.4 reveals that P.W.1 advised him to file another application as they cannot process Ex.P.5–Application without medical certificate. As per the testimony of P.W.4, he filed Ex.P.6–Application on 13.6.2001 before the Assistant Commissioner of

Labour. The testimony of P.W.1 reveals that he made endorsement on Ex.P.6 directing the Labour Officer to enquire into the Application and submit report.

10. In the cross-examination P.W.3 categorically deposed that Ex.P.8 Distribution Register does not bear his initials from 13.6.2001 to 19.6.2001. No distribution number was given to Ex.P.6 Application. In such circumstances, it is not possible to process Ex.P.6 further. As per the recitals of Ex.P.15, the *de facto* complainant himself submitted the second application to P.W.1. The testimony of P.Ws.1 and 4 clearly reveals that the *de facto* complainant has not submitted the second application to P.W.1. The material placed before the Court clinchingly establishes that P.W.4 submitted Ex.P.6–Application to P.W.1 on 13.6.2001. A perusal of the record reveals that Ex.P.6– Application was prepared on 20.5.2001 and submitted to P.W.1 on 13.6.2001. Be that as it may be, Ex.P.6 was submitted to P.W.1 on 13.6.2001 only. P.W.1, in unequivocal terms, deposed that he did not see the *de facto* complainant in his Office at any point of time.

11. The crucial question that falls for consideration is whether the Accused Officer can do official favour without processing Ex.P.6–Application. As observed earlier, the Distribution Clerk after allotting number will send the applications to the concerned clerk for processing the same. P.W.2 deposed that he has not received Exs.P.5 and P.6. The material placed before the Court clinchingly established that Ex.P.5 cannot be processed in view of non-annexing the medical certificate. Basing on Ex.P.5 – Application, it is very difficult for the Court to come to a conclusion

that in order to process Ex.P.5, the Accused Officer demanded bribe from the *de facto* complainant. Further, the Accused Officer cannot process Ex.P.6 without allotting distribution number. In such circumstances, demanding of bribe by the Accused Officer from the *de facto* complainant for doing official favour is somewhat doubtful. The trial Court, after considering the material available on record, arrived at a right conclusion that no official favour is pending before the Accused Officer.

12. The learned Standing Counsel for A.C.B., submitted that by examining P.Ws.5 and 6, the prosecution clearly established recovery of tainted currency notes–M.O.3 from the Accused Officer, which itself is a sufficient ground to convict the Accused Officer. A perusal of the testimony of P.W.5-the Sub-Treasury Officer, Ongole, clearly reveals that on 19.6.2001, he went to the Office of the A.C.B., Ongole. His testimony further reveals that P.W.6 introduced the *de facto* complainant to P.W.7 and other witnesses. His testimony further reveals that P.W.6-Deputy Superintendent of Police handed over Exs.P.15 and P.16–complaint of the *de facto* complainant and the F.I.R. His testimony further reveals that the *de facto* complainant admitted the recitals of Exs.P.15 and P.16 as true and correct. His testimony further reveals that thereafter P.W.6 directed P.C.671 to collect M.O.3–currency notes from the *de facto* complainant. As per the directions of P.W.6, P.C.671 mixed sodium carbonate solution in two glass tumblers and rinsed his hand fingers into the solution. There was no change of colour. Then P.C.671 rubbed the wet of his fingers with the kerchief, took phenolphthalein powder in a tumbler and after rinsing with his fingers, it was turned into pink colour. P.W.6 explained the

importance of the test to P.W.7 and mediators and seized M.Os.1 and 2. His testimony further reveals that as per the directions of P.W.6, P.C.671 applied phenolphthalein powder to the hundred rupee notes and handed over the same to the *de facto* complainant. P.W.6 directed the *de facto* complainant to handover the phenolphthalein powder coated currency notes to the Accused Officer on further demand and give signal. P.W.6 prepared Ex.P.10–pre-trap proceedings and obtained the signatures of the mediators. In the cross-examination of P.W.5, nothing was elicited to shake his testimony so far as conducting of chemical test in their presence. The testimony of P.W.6 is fully corroborating with the testimony of P.W.5 on all aspects referred above. The oral testimony of P.Ws.5 and 6 coupled with Ex.P.10 and M.Os.1 to 3 clearly reveals that P.W.6 conducted pre-trap proceedings in accordance with law.

13. The testimony of P.W.5 reveals that on the same day at about 12O clock, they proceeded to the Office of the Assistant Commissioner of Labour, Ongole. His testimony further reveals that as directed by P.W.6, the *de facto* complainant went inside the chamber of Assistant Commissioner of Labour and after sometime he came back and gave signal as directed by P.W.6. His testimony further reveals that the trap party entered into the office of Assistant Commissioner of Labour and found the Accused Officer in the seat. P.W.6 disclosed his identity and questioned the Accused Officer about the money. The Accused Officer handed over five one-hundred rupee notes to him; thereafter P.W.6 conducted chemical test with sodium chloride, which proved to be positive. As per the testimony of P.W.5, P.W.6 asked the Accused

Officer to submit his explanation. After completion of necessary formalities, P.W.6 prepared Ex.P.14–post-trap proceedings. The oral testimony of P.Ws.5 and 6 reveals that tainted currency notes were received from the possession of the Accused Officer.

14. As per the recitals of Ex.P.14, the Accused Officer gave spot explanation that the *de facto* complainant voluntarily gave the currency notes. If the recitals of Ex.P.14 are taken into consideration, the *de facto* complainant voluntarily paid the amount to the Accused Officer. In the cross-examination, P.W.5 in unequivocal terms deposed that the Accused Officer stated to P.W.6 that he never demanded the bribe from the *de facto* complainant. P.W.5 was not treated as hostile at least to the extent of above statement. If the testimony of P.W.5 is taken into consideration as true and correct,spot explanation of the Accused Officer is not reflected in Ex.P.14. There is no material on record to establish that *de facto* complainant was ever seen in the Office of the Assistant Commissioner of Labour, Ongole, at any point of time. P.W.1 also categorically deposed that the *de facto* complainant did not visit his Office at any time.

15. At this juncture, learned counsel for the Accused Officer has drawn the attention of this Court to **P.Satyanarayana Murthy v District Inspector of Police, State of A.P.**[1], wherein a Full Bench of the Hon'ble apex Court held at paragraph No.23 as follows:

> 23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(*d*)(*i*) and (*ii*) of the Prevention of Corruption Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring

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[1] (2015) 10 SCC 152

home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.

16. In order to resolve the issue, this Court is placing reliance on the following decisions:

(i) **Sita Ram v State of Rajasthan**[2], wherein the Hon'ble apex Court held at paragraph No.9 as follows:

> 9. … … The result is that not only the story of demand of bribe by appellant from the complainant is not proved but even the story of payment of the money by the complainant is not established beyond reasonable doubt. That being so the rule of presumption engrafted in Section 4(1) of the Prevention of Corruption Act cannot be made use of for convicting the appellant.

(ii) **C.M.Girish Babu v CBI, Cochin, High Court of Kerala**[3], wherein the Hon'ble apex Court at paragraph Nos.**18 and 22 or** 23 to 26 held as follows:

> 18. In *Suraj Mal* v. *State (Delhi Admn.)*, (1979) 4 SCC 725, this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.
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> 22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.
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>> "*4.* … It is well established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict

[2] (1975) 2 SCC 227
[3] (2009) 3 SCC 779

> of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. *As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts* i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt."

(iii) **Rakesh Kapoor v State of Himachal Pradesh**[4], wherein the Hon'ble apex Court held at paragraph No.21 as follows:

> 21. In para 25, this Court quoted the decision rendered in *C.M. Girish Babu* v. *CBI*, (2009) 3 SCC 779, and held that: (*Banarsi Dass case*, SCC p. 457)
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> > "*25. … mere recovery of money from the accused by itself is not enough in absence of substantive evidence for demand and acceptance.*"
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> In the same para (*Banarsi Dass case*, SCC p. 457, para 25), a reference was also made to *Suraj Mal* v. *State (Delhi Admn.)*, (1979) 4 SCC 725, (SCC p. 727, para 2) wherein this Court took the view that mere recovery of tainted money from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. This Court further held that mere recovery by itself cannot prove the charge of the prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. After underlying the above principles, and noting that two prosecution witnesses turned hostile, while giving the benefit of doubt on technical ground to the accused, this Court set aside the judgment of the High Court and acquitted the accused of both the charges i.e. under Section 161 IPC and under Section 5(2) of the 1947 Act.

(iv) **B. Jayaraj v. State of A.P.**[5]**,** wherein the Hon'ble apex Court held at paragraph Nos.7 and 9 as follows:

> 7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P., (2010) 15 SCC 1 and C.M. Girish Babu v. CBI, (2009) 3 SCC 779.
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> 9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal

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[4] (2012) 13 SCC 552
[5] (2014) 13 SCC 55

> gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.

17. The same principles were reiterated in **M.R.Purushotham v State of Karnataka**[6] and **C.Sukumaran v State of Kerala**[7]

18. As per the principle enunciated in the cases cited supra, establishment of demand and acceptance of illegal gratification is *sine qua non* to prove the guilt of the Accused Officer under Sections 7 and 13 of the Prevention of Corruption Act; and, mere recovery of tainted amount from the Accused Officer itself is not a sufficient ground to base conviction.

19. Let me consider the facts of the case on hand in the light of the above legal principles. The *de facto* complainant is competent person to say whether the Accused Officer demanded bribe from him or not. Admittedly none of the prosecution witnesses was present at the time of alleged demand of bribe by Accused Officer from the *de facto* complainant. Even if the recitals of Ex.P.15 are taken to be true and correct, the Accused Officer demanded bribe from the *de facto* complainant on 18.6.2001. On the same day itself, he submitted Ex.P.15 complaint to the A.C.B. people. Absolutely there is no material on record to establish that the *de facto* complainant visited the Office of Assistant Commissioner of Labour, Ongole, at any point of time much less on 18.6.2001. One way, P.W.4 is the competent person to say whether the Accused Officer demanded the money from the *de facto* complainant. It is

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[6] (2015) 3 SCC 247
[7] (2015) 11 SCC 314

not out of place to extract relevant portion of cross-examination of P.W.4.

> "*S.Narasimha Rao did not inform me that A.O. demanded him for a bribe to process the 2nd application filed by me on behalf of Narasimha Rao nor the A.O. demanded bribe from me.*"

20. The testimony of P.W.6 clinchingly establishes that the *de facto* complainant did not inform P.W.4 about the demand of bribe by the Accused Officer to process his second application. The learned Standing Counsel for the A.C.B., mainly placed reliance, on Exs.P.10 and P.14-pre and post-trap proceedings, Ex.P.15-complaint and Ex.P.17-Section 161 Cr.P.C., statement of the *de facto* complainant, to prove the demand of money by the Accused Officer. P.W.1 denied the suggestion that he stated to the Investigating Officer-P.W.8 that Accused Officer did not process Ex.P.11 File and Exs.P.5 and P.6 Applications, and they were not sent to the Labour Office, Ongole. If really, P.W.1 has stated the same to P.W.8, at the time of recording his statement under Section 161 Cr.P.C., it is the duty of the prosecution to elicit the same from P.W.8. Interestingly this contradiction was not put to P.W.8 for confirmation of this aspect. It was not elicited from the testimony of P.W.8 that P.W.1 stated before him as in Ex.P.7. It is a settled principle of law that suspicion however strong shall not dispense the legal proof. It is also equally settled principle of law that conviction cannot be based on assumptions and presumptions. A person can be convicted basing on substantive piece of evidence. The mediators' report can be used for the purpose of corroboration only. Section 162 Cr.P.C., statement or the complaint copy can be used either for corroboration or

contradiction as contemplated under Sections 157 and 145 of the Indian Evidence Act respectively. In the instant case, the *de facto* complainant died before commencement of the trial. There is no opportunity for the Accused Officer to contradict the recitals of Ex.P.17–Section 162 Cr.P.C. statement in view of death of the *de facto* complainant. Same is the case of Ex.P.15 complaint also. Merely because Ex.P.17 was marked subject to objection, that it self is not a sufficient ground to place reliance on it, to base conviction. Exs.P.15 and P17 are no-way helpful to the prosecution, as there is no opportunity for the accused Officer to test the veracity of those two documents.

21. The material placed before the Court falls short to establish that (1) the Accused Officer demanded bribe from the *de facto* complainant in order to do official favour, and (2) the *de facto* complainant paid the bribe amount to the Accused Officer in pursuance of his demand. In the absence of proof of demand and acceptance, it is not safe to place reliance on Exs.P.10 and P.14. Mere recovery of tainted amount itself is not a valid ground to convict the Accused Officer, in view of the principles enunciated in the cases cited supra.

22. The trial Court considered the oral and documentary evidence in right perspective and arrived at a conclusion that the prosecution failed to prove that the Accused Officer demanded illegal gratification from the *de facto* complainant. There is no flaw much less legal flaw in the findings recorded by the trial Court. The findings recorded by the trial Court cannot be termed as perverse, as the same are based on evidence much less legal

admissible evidence. I am fully endorsing the findings recorded by the trial Court. There are no grounds much less valid grounds to interfere with the findings recorded by the trial Court. The appeal lacks merits and is liable to be dismissed.

23. Accordingly, the appeal is dismissed. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

**T. SUNIL CHOWDARY, J**

Date: 30.1.2018
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