HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL No.385 of 2006

JUDGMENT:

This Criminal Appeal is preferred by the Accused Officer (AO) aggrieved by the judgment dated 06.03.2006 in C.C.No.2 of 1996 passed by learned Principal Special Judge for SPE & ACB Cases, Hyderabad convicting him for the offences under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 (for short "P.C Act").

2) The factual matrix of the case is thus:

a) AO—M.A.Raheem, worked as Excise Sub-Inspector, Mamda Range, Adilabad District. According to prosecution, complainant who is a toddy contractor of Sangampet Village, Laxman Chanda, Adilabad District, applied for renewal of his licence for selling toddy in his village under Tree for Tapper Scheme (TFT) on 01.10.1994, for which the recommendation of AO was necessary. Hence he met AO two or three times in the office; at that time the AO demanded Rs.3,000/- as bribe to do the official favour. The complainant expressed his inability to pay such huge amount but AO did not agree to reduce it and asked to pay the demanded bribe amount at his residence at Nirmal and also bring the relevant file from P.Rajeshwar (LW5), Junior Assistant. Accordingly, the complainant approached Rajeshwar, the concerned clerk on 22.11.1994 and got the relevant file.

b) Unwilling to pay the bribe amount, complainant lodged Ex.P5—report with PW3—DSP, ACB, Karimnagar on 23.11.1994 who after causing discreet enquiries and after obtaining necessary permission from the competent authority, registered the same as case in Cr.No.5/ACB-KNR/94 on 23.11.1999 and successfully laid trap on AO by following the procedure and after completion of investigation, PW4 laid charge sheet against AO under Sections 7, 11 and 13(1)(d) r/w 13(2) of PC Act.

c) During trial, PWs.1 to 5 were examined and Exs.P1 to P10 were marked and MOs.1 to 8 were exhibited on behalf of prosecution. DW1 and DW2 were examined and Ex.D1 was marked on behalf of defence.

d) The trial Court on appreciation of oral and documentary evidence found AO guilty of charges levelled against him, convicted and sentenced him to undergo R.I. for **one year** and to pay a fine of Rs.**1,000/-** and in default to suffer S.I. for **three months** for the offence under Section 7 and to undergo R.I. for **Two years** and to pay a fine of Rs.**2,000/-** and in default to suffer S.I. for six months for the offence under Section 13(1)(d) r/w 13(2) of PC Act. Both the sentences were directed to run concurrently.

Hence, the appeal by AO.

3) Heard arguments of Sri C.Damodar Reddy, learned counsel for appellant/AO and Sri T.L.Nayan Kumar, learned Special Public Prosecutor (Spl.P.P.) for ACB cases (Telangana).

4) The points for determination in this appeal are:

1) *Whether official favour was pending with AO as on the date of trap?*

2) *Whether the demand and acceptance of bribe by AO is established by the prosecution to bring home his guilt of the charges under Section 7 and 13(1)(d) r/w 13(2) of P.C Act?*

3) *Whether judgment of the Trial Court is factually and legally sustainable?*

5) **<u>POINT No.1</u>**: The factual matrix of the prosecution case in narrow compass is that the *defacto* complainant since 10 years prior to the complaint had been pursuing toddy tapping profession and his licence expired on 30.09.1994. So, to get renewal of licence for the period from 01.10.1994 to 30.09.1995, he paid requisite fee of Rs.50/- by way of bank challan and approached AO and also the Circle Inspector, Excise and requested them to issue licence. He was instructed to approach Rajeshwar—office clerk (LW5) and then meet AO after a week. The said Rajeshwar filled up necessary forms in English and obtained the signatures of the complainant and obtained Rs.100/- from him towards stamp. Again in the last week of October, 1994 when complainant met AO, he instructed him to pay rental for the month of October, 1994 and accordingly he paid. Again twice or thrice complainant met AO before 10.11.1994 and when enquired about his renewal of licence, AO made him to move around and one week prior to lodging complaint when the complainant met him at his residence, at that time AO demanded him bribe of Rs.3,000/- to recommend the

renewal of his licence. Though complainant pleaded his inability, AO paid deaf ear. On 23.11.1994 at 1.00 PM, when complainant met AO at his residence at Nirmal and submitted that he would pay Rs.1,000/- expressing his poor financial condition, AO did not agree and stuck to his previous demand saying out of the amount, he has to pay share to CI—Gangaiah and threatened that unless the amount was paid, he would not recommend for renewal of his licence. AO asked him to get the file and demanded bribe amount on the next day and pay at his house and then only he would sign on the file recommending his name for renewal of licence. Since the complainant was not willing to pay bribe amount, he approached PW3 and lodged Ex.P5—report at 3.30 PM on 23.11.1994 which was registered at 21:00 hours on 23.11.1994. PW3 decided to lay trap on AO on 24.11.1994 at his residence and for this purpose secured two mediators—PW1 and DW2 and conducted pre-trap formalities at Pochampadu Rest House. Pre-trap—mediators' report was prepared under Ex.P2. Then PW3 sent PW1—decoy and LW2—B.Ganganna, the shadow witness to the residence of AO with the instructions that the complainant should pay the tainted bribe amount only on the further demand of AO and if he received, LW2 should come out and give pre-arranged signal to the trap party who would be waiting outside his residence at vantage positions. All of them proceeded and reached Nirmal at 7.45 AM. At first, the complainant and LW2 went to the house of AO and returned soon saying to the trap party members that AO went on urgent official work and was expected home at around 2.00 PM. Again, at 2.30 PM complainant and LW2 went to the house of AO while other members took vantage positions nearby. This time AO was found in the house sitting in a chair and attending work. On seeing the complainant and LW2, AO asked whether he brought the amount of Rs.3000/- and his license file and the complainant replied affirmatively. AO then asked them to pay the amount and accordingly the complainant removed the tainted currency notes from his left side shirt pocket and handed over to AO which he received and counted with his both hands and kept in his right side pant pocket. Thereafter, AO took the Ex.P1—license file and signed on it by putting the date as 01.10.1994. In the meanwhile, LW2 came out and gave pre-arranged signal and immediately PW3 and other trap party members rushed into his house. PW3 instructed the complainant and LW2 to stay out and introduced himself and mediators to AO and then conducted sodium carbonate solution test to both hands of AO and test proved positive. Then, on his instructions, mediators enquired whether AO demanded and accepted any amount as bribe from the complainant for renewal of his licence. AO stated that the complainant came with Ex.P1—file and requested to recommend him for the renewal of his licence and he recommended and signed with the date 01.10.1994 as the licence was to be issued w.e.f. 01.10.1994 to 30.09.1995. Later the complainant voluntarily paid him the amount for recommending his licence and on that he counted the amount and kept in his right side pant pocket and kept Ex.P1—file with him to send the same to Excise Circle Inspector for further action. On the instructions of PW3, AO produced the tainted amount which is MO3. The inner linings of his pant pocket were subjected to chemical test which proved positive. On the request of PW3, AO produced Ex.P1—file which was examined by the mediators and they found 1st, 2nd and 7th sheets which were earlier not containing the signatures of AO, were then containing his signatures with the date 01.10.1994 with recommendation to issue licence in the first page. PW3 then called the complainant and LW2 and asked them to narrate what was transpired between them and AO and what all stated by them was incorporated in Ex.P4—Post-trap Mahazar.

This is precisely the prosecution case.

6) The defence of AO as manifested from the cross-examination of the prosecution witnesses, his answers during 313 Cr.P.C. examination and also in his written statement is to the effect that licence of complainant was expired on 30.09.1994 and so he approached the office of AO on 01.10.1994 and met him with challan contained in Ex.P1—file and after obtaining signatures on check memo, surety bond and application of boundaries, AO instructed him to handover the file to LW5—Junior Assistant and thereafter the file of complainant had to be rooted through C.I. Excise for his approval and finally to the Superintendent for renewal of licence. His further version is that there was rivalry between Srinivas Goud and Rajeshwar Goud who were doing excise business. Rajeshwar Goud obtained licence from the excise office and doing business at Mutapur in a flourishing manner. AO used to maintain friendship with both of them. For the education of his children AO set up his family at Nirmal whereas his office was located at Mamda village, at a distance of 20 KMs from Nirmal. Prior to 24.11.1994, AO requested Rajeshwar Goud to lend Rs.3,000/- for meeting his domestic

expenditure and he assured that he would send money through somebody or himself would come and give the money.

a) While so, on 24.11.1994 in the morning he went to Mamda to attend his office work and returned to his residence at Nirmal around 2.00 PM and while he was relaxing, at that time the complainant came to him saying that Rajeshwar Goud (DW1) had sent money through him and paid the amount. He received money and kept in his pant pocket. In the meanwhile, PW3 and others came inside and implicated him in a false case in spite of his protest that the amount which he received was sent by DW1 towards loan. The said fact was not incorporated in Ex.P4 for which he stoutly protested. His further defence is that he signed Ex.P1—file on 01.10.1994 at his office and the file was in the office with LW5—Rajeshwar; on 24.11.1994 the said file was given by Rajeshwar and he did not put his signature on Ex.P1 on 24.11.1994 in the presence of complainant and he had already signed it a month back. The Excise Superintendent was alone the competent authority to grant licence and AO had no power in that regard. AO stoutly denied demanding any illegal gratification for doing official favour of complainant.

b) Thus, the gist of his defence in brief is that he was not the authority to renew the licence of the complainant; he never demanded any bribe from the complainant and that he signed on Ex.P1—file on 01.10.1994 itself and therefore, no official favour was pending with him on the date of trap and further he received the money with the honest belief that said amount was sent by DW1 through complainant as promised earlier.

c) At this juncture it is pertinent to note that nowhere the AO mentioned that complainant—Bhoja Goud had any animosity or grudge so as to foist a false case against him. We will not find such a suggestion in the cross-examination of the prosecution witnesses or such a plea in 313 Cr.P.C. examination or in his written statement. I will discuss about the effect of conspicuous absence of such plea at the relevant part of the judgment.

7) Be that it may, AO is charged for the offence under Sections 7 and 13(1)(d) of PC Act. The live nerves for establishing these charges are: (i) existence of an official favour to be performed by AO as on the date of demand and trap (ii) demand made by AO for illegal gratification other than legal remuneration and (iii) acceptance of such gratification.

8) The evidence of PW2 coupled with Ex.P1—file would shed light on the existence of official favour. PW2 worked as Assistant Excise Superintendent at District Striking Force, Adilabad during 1994-95. While deposing about the procedure for renewal of excise licence, he stated that the licensee had to submit application for renewal along with old licence, counter part agreement in Form No.V, challan showing remittance of the prescribed renewal fee and indemnity-cum-surety bond to the concerned Sub-Inspector of Excise because the concerned Excise SI has to verify the documents and boundaries of the shop where it is located. After verification Excise SI would submit the file to Excise Superintendent for sanction of renewal of licence. The witness asserted that the SI has to recommend for renewal of the licence. He further stated that all the documents along with application have to be submitted before new excise year commences. During

the relevant period, the excise year used to commence from October of the year and conclude by 30th September. In the cross-examination he stated that Excise Superintendent was the competent authority for renewal or grant of fresh licence. The evidence of this witness that concerned Excise SI has to verify the renewal application and boundaries of the excise shop where it was located and then submit to the Excise Superintendent for renewal of licence was unrebutted. Hence, his evidence manifests that as on 01.10.1994 when the complainant submitted his renewal application under Ex.P1, an official favour, indeed was pending with AO because he was to verify the application, challan etc. and also the boundaries of the excise shop and then recommend to the Excise Superintendent.

a) Then, a perusal of Ex.P1 shows that the 1st sheet of it is a printed format under heading "check memo for T.F.T." Column 9 is to the effect "*Recommendation of the Excise Sub-Inspector and Circle Inspector*". Against the said column, the concerned clerk, probably LW5 has written as "*the counter licence may be issued*". Beneath it, he left some space for signature and wrote as "*Excise Sub-Inspector Range, Mamda*". Beneath the same he left some place and wrote as "*the licence may be issued*" and underneath it he affixed the seal of Excise Inspector Circle, Nirmal. Above the writing Excise SI, Range Mamda, we will find the signature of AO with date 01.10.1994 about which we will discuss a little while later. Sheet 2 relates to certification to be made by the Excise SI Range, Mamda about the boundaries of the shop. It is intended that SI has to physically verify the boundaries of the shop and note at the space provided for four boundaries mentioned in that page. Beneath the boundaries portion there is a certification that the boundaries mentioned above are correct and satisfied the conditions laid down in Rule 5 of A.P.Excise (Arrack and Toddy Licences General Conditions) Rules, 1969. Beneath the certification the space is meant for the signature of Excise SI, Range Mamda. At this space also we will find the signature of AO with the date 01.10.1994. Then in 7th sheet, after date, it is mentioned as "*Counterpart Agreement Lease of Right to Sell Toddy in Retail*" (as required under Section 29 of A.P.Excise Act, 1968). On the reverse of this sheet, the complainant has to sign as licensee and the AO has to affix his signature as identifying the complainant. In this sheet also we will find the signature of AO with the date 01.10.1994. Thus, in sheets 1, 2 and 7 the AO was required to put his signatures by performing certain acts. The correctness of Ex.P1-file is not controverted by AO, rather, he wanted to take advantage of the date 01.10.1994 appearing beneath his signatures on Sheets 1, 2 and 7 to contend that he signed the file of the complainant on 01.10.1994 itself and therefore, no official favour was pending with him as on the date of trap. Be that it may, what can be distilled from the evidence of PW2 and Ex.P1 is that indeed an official favour was pending with AO as on 01.10.1994.

9) Now, coming to the contention of AO that since he signed Ex.P1—file already on 01.10.1994 and thereby no official favour was pending with him on 24.11.1994, we will find the falsity of said contention from the oral evidence of PWs.1 and 3 and documentary evidence under Exs.P2 and P4—pre-trap and post trap proceedings.

10) Regarding evidentiary value of Exs.P2 and P4, the trial Court placed reliance on the judgments of Apex Court in ***V.A.Abraham vs. Superintendent of Police, Cochin***[1] and ***P.Krishna Pillai vs. State of Kerala***[2] wherein it was held that these Mahazars cannot be styled as 161 Cr.P.C. statements because the facts narrated in those Mahazars were not the facts which were in the knowledge of witnesses about an offence to bring them under the purview of 161 Cr.P.C. but those Mahazars are the contemporaneous records containing the statements of what transpired before the witnesses and Police Officers and therefore, they do serve only the purpose of corroboration but they do not contain the communication to the Police Officer during the course of investigation. Basing on the above judgments the trial Court opined that Exs.P2 and P4 can be looked into for corroboration of the evidence of mediators and Trap Laying Officer (TLO) under Section 157 of Indian Evidence Act, provided the Mahazars were not tainted with any vice of illegality.

11) Similarly, on the probative value of the testimony of Government Servants, Police Officers, Trap Laying Officers etc. the Trial Court placed reliance on the decisions of Apex Court in ***Som Prakash v. State of Delhi***[3]***; State of Gujarat v. Raghunath Vamanrao Baxi***[4] *and* ***State of U.P v. Zakaullah***[5], wherein it was held that evidence of such witnesses cannot be disregarded merely because they are police officials and on the other hand,

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[1] 1988 Crl.L.J. 1144
[2] 1989 (1) Crimes 700
[3] AIR 1974 SC 989
[4] AIR 1985 SC 1092
[5] AIR 1998 SC 1474

the Court has to view their evidence in the light of probabilities and intrinsic credibility.

On a perusal of precedential jurisprudence on the subject in issue, I do endorse the same view. Hence, to know whether AO signed on Ex.P1 on 01.10.1994 or 24.11.1994, the evidence of PWs.1, 3 and Exs.P2 and P4 can be looked into.

12) PW1 deposed that during the pre-trap proceedings when PW3 asked whether the complainant brought any file along with him, he produced Ex.P1—file which contained 8 sheets and the mediators signed on the reverse of each sheet (the mediators have signed at the bottom of each page but not on the reverse side). This witness further deposed that after trap was over, the DSP seized Ex.P1—file from AO and on verifying the same they found the signatures of AO on Pages 1, 2 and 7 which were earlier not occurring when they initialed them. PW.3—the TLO also deposed in same manner stating that during the pre-trap proceedings on his enquiry the complainant produced Ex.P.1—file consisting of 8 pages and both mediators have initialed on the reverse of the sheets on which AO was supposed to sign. He corrected himself and stated that the mediators have initialed on each sheet. He affirmed that at that time the signatures of AO were not occurring on sheets 1, 2 and 7. He further deposed that after trap he has seized Ex.P1—file from the possession of complainant in which AO has made signatures by putting ante-date as 01.10.1994. Thus PWs.1 and 3 have unequivocally stated that Ex.P.1—file was produced by the complainant during pre-trap proceedings and it did not contain signatures of AO but after

trap when they seized the said file, it contained signatures of AO with back date as 01.10.1994. In Exs.P.2 and P.4 also, these facts were clearly mentioned. So the version of PWs.1 and 3 was amply corroborated by Exs.P.2 and P.4 whose assistance can be taken for such corroboration in view of the above precedential jurisprudence. The inconsistency in the evidence of PW.1 is that he stated as if the mediators initialed on Ex.P.1—file on the reverse of each sheet. However, PW.3 stated that the mediators have initialed on each sheet. As already stated supra, the initials of PW.1 and DW.2 are found at the bottom of each sheet of Ex.P.1 but not on reverse side. Another inconsistency is that PW.1 stated that on seizure of Ex.P.1—file after trap, the mediators have again initialed on each page. However, we do not find the second set of initials of mediators on Ex.P.1—file. The question is whether these inconsistencies will debilitate the prosecution case in the light of contention of AO in his written statement that in fact Ex.P.1—file was given to him by Rajeshwar(LW.5)—Junior Assistant on 24.11.1994. Thus his claim was that the complainant did not bring Ex.P.1—file before trap and he did not sign on it putting the ante-date as 01.10.1994, rather he signed on Ex.P.1 on 01.10.1994 itself and the file was given to him by LW.5 on 24.11.1994. In my considered view, the small inconsistency in the evidence of PW.1 will not cut-across prosecution case but a logical analysis would only expose the futility of the contention of AO. If really, the complainant did not carry Ex.P.1—file to AO before trap and on the other hand, AO signed the file on 01.10.1994 itself, there was no need for LW.5—Rajeshwar to give the file again to AO on 24.11.1994. Instead, he would have sent Ex.P.1—file to CI of Police, for his certification long back. This circumstance gives scope to conclude that AO did not sign Ex.P.1 on 01.10.1994 but it was brought to him by the complainant on 24.11.1994 and on that day only, AO signed with back date. The reason for putting the date was that the excise year commences from October and ends by September, next year. Thus Point No.1 is concerned, we can safely conclude that official favour was pending with AO on 01.10.1994 and also on the date of trap i.e, 24.11.1994.

13) **POINT No.2**: Severely fulminating the judgment, learned counsel for AO would argue that in this case prosecution has not examined the complainant and the shadow witness to establish the demand and acceptance of the bribe. Hence in this case there is no proof of vital fact of demand *sans which* the AO cannot be punished. The evidence of other witnesses may at best prove the receipt of tainted money by AO, which is an admitted fact and as per his defence, the said amount was received by him honestly believing that the complainant was tendering the same as a loan forwarded by DW.1 but not as a gratification other than legal remuneration. The AO clearly stated this fact in his spontaneous explanation before the trap party members. However, in order to make the trap a believable success, PW.3—the TLO hushed up the said fact in Ex.P.4. Learned counsel would argue that DWs.1 and 2 have categorically deposed that the tainted amount was sent by DW.1 through the complainant as a loan and the said fact was stated by AO before the trap members. Inspite of the said cogent and convincing evidence, the Trial Court gave a go-by to it and convicted the accused on

surmises and assumptions. He placed reliance on the following decisions on the proposition that mere recovery of money from AO without proving the demand of bribe will not establish the charges under Sections 7 and 13(1)(d) of PC Act:

i) ***Banarsi Dass v. State of Haryana***[6]

ii) ***A. Subair v. State of Kerala***[7]

iii) ***Ashok Nayak v. State of Madhya Pradesh***[8]

iv) ***P. Satyanarayana Murthy v. Dist. Inspector of Police and another***[9]

v) ***N. Sunkanna v. State of Andhra Pradesh***[10]

He thus prayed to allow the appeal and set aside the conviction and sentence passed by the Trial Court.

14) Per contra, learned Spl.P.P would argue that in this case unfortunately the complainant—Bhoja Goud expired pending trial and LW.2—shadow witness left for Dubai and hence unavailable and so the prosecution had no advantage of their direct evidence on the aspect of demand and acceptance of gratification other than legal remuneration. However, he would argue, direct evidence is only one mode of proof but not be all and end all of establishment of guilt in a criminal case and hence, the prosecuting agency in a corruption case, can establish the demand and acceptance of the bribe through circumstantial evidence like any other criminal case. He would submit that the evidence of PWs.1 and 3 would show that during pre-trap

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[6] 2010 (3) ALT (Crl.) 330 (SC)
[7] 2011 (3) ALT (Crl.) 261 (SC)
[8] 2011 (4) Crimes 289 = 2011 (7) LAWS (MPH) 29
[9] 2015 Law Suit (SC) 861
[10] 2015 Law Suit (SC) 1045

proceedings the complainant stated to them that AO demanded him bribe and unwilling to pay, he gave complaint. Since the direct evidence is not available, the Trial Court relying upon other hearsay evidence held, demand was proved. Since the acceptance of money by AO was an admitted fact and as the said amount was not legally liable to be paid by complainant to him, the Trial Court drew presumption under Section 20 of PC Act. Thereupon, having found that the AO could not successfully rebut the presumption through the evidence of DWs.1 and 2, rightly convicted the accused and therefore, the judgment is unimpeachable. He relied upon the decision in ***M.Narsinga Rao v. State of Andhra Pradesh***[11], to buttress his argument that from a factual presumption under Section 114(a) of Indian Evidence Act, the Court can draw legal presumption under Section 20 of PC Act. He thus prayed to dismiss the appeal.

15) In the instant case, as submitted by the Spl.P.P, the complainant died and shadow witness is unavailable and so to prove the theory of demand and acceptance of gratification other than legal remuneration, the court had no opportunity of hearing from horse's mouth. The judgment would show the Trial Court, therefore, following the ratio in ***State of Andhra Pradesh v. V.Vasudeva Rao***[12] and ***M.Narsinga Rao***[11], embarked upon considering the circumstantial evidence of PWs.1 and 3 and Exs.P.2 and P.4 and ultimately held that the said evidence coupled with other circumstances, would give irresistible inference that unless AO demanded for payment of gratification other than legal remuneration, there was no occasion for him to postpone the

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[11] AIR 2001 SC 318 = (2001) 1 SCC 691
[12] (2004) 9 SCC 319

recommendation for renewal of licence. It then sieved the testimony of DWs.1 and 2 and discarded the same as unbelievable to effectively rebut the presumption under Section 20 of PC Act.

16) I have given my anxious consideration to the above findings arrived at by the Trial Court. ***V.Vasudeva Rao***[12] has a direct bearing on the instant case as in that case also, the complainant in a trap case died pending trial. The Trial Court having regard to the circumstantial evidence, held that though complainant was not examined, there was sufficient evidence otherwise to prove the accused had made demand and he in fact received the tainted amount from the complainant on the date of the trap and the plea of hand loan could not be established. Thus the Trial Court convicted the accused. However, the High Court held, there is no material to show any demand was made and hence Section 4 of the PC Act, had no application. In this context, the Apex Court held that only condition for drawing legal presumption under Section 4 was that during trial it should be proved that the accused has accepted or agreed to accept gratification and the Section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification and direct evidence is one of the modes through which a fact can be proved but that is not the only mode envisaged in the Evidence Act. The Apex Court in that context referred its earlier decision in ***M.Narsinga Rao***[11]. It further held that the illustration under Section 114(a) of Evidence Act could profitably be used to the case on hand. From the fact that the prosecution could prove the recovery of the

money from accused and his admitting the receipt and recovery of money from him, the Apex Court having applied Section 114(a), has drawn the presumption under Section 4 of PC Act.

a) ***M.Narsinga Rao***[11] is a trap case, wherein the complainant (PW.1) and shadow witness (PW.2) made a *volte-face* and did not support prosecution case. The defence of AO was that the tainted currency notes were forcibly stuffed into his pocket. The Trial Court and High Court did not believe the stuffing theory and convicted the AO. In that backdrop, the Apex Court considered the question as to whether a legal presumption under Section 20 of PC Act can be based on a factual presumption under Section 114(a) of Evidence Act. The Apex Court answered the question affirmatively basing on the facts that PW.1 lodged complaint with PW.7—the DCP alleging that the accused demanded bribe of Rs.500/-; the currency notes were smeared with phenolphthalein powder and prepared by PW.1 and when the AO was caught red-handed the very same notes were recovered from him and AO did not deny he has not received those notes but took the plea of stuffing after a lapse of 4 years during trial. The Apex Court accordingly upheld the conviction.

17) From the jurisprudence available above, one can without demur say that the demand and acceptance of gratification other than legal remuneration can be proved by circumstantial evidence also to draw the presumption.

a) In that context, when the evidence of PW.1 is perused, he stated that on 24.11.1994 when himself and DW.2 went to Pochampadu Rest House, PW.3 introduced the complainant and gave copy of FIR. They have gone through the contents thereof and when enquired, the complainant informed them that he lodged the said complaint with the ACB officials voluntarily.

b) PW.3—TLO deposed in similar lines stating that on 23.11.1994 at 3:30pm, the complainant approached him and submitted Ex.P.5—written complaint and after registering it he asked complainant to come at 6AM on the next day morning to Pochampadu Rest House. He secured PW.1 and DW.2 as mediators. On the next day, when all of them assembled, he gave copy of FIR to mediators, basing on which, the mediators enquired the complainant regarding the allegations in Ex.P.5 and he affirmed the contents were true. Then he conducted the pre-trap proceedings and got smeared the tainted amount with phenolphthalein powder and kept the amount in the left side front shirt pocket of the complainant and instructed him to give to AO on his further demand. It should be noted that DW.2 the other mediator though examined by AO, however, deposed about himself and PW.1 attending before PW.3 on 24.11.1994 and witnessing the presence of complainant and Ganganna(LW.2) there and drafting of Ex.P.2—proceedings. Then a perusal of further evidence of PWs.1 and 3, would show that during trap conducted at the house of AO, they recovered MO3—tainted currency notes from the pant pocket of AO and his hands and inner linings of pant pocket proved positive to the chemical test indicating that he handled the tainted amount.

c) The above facts spoken by PWs.1 and 3 and recovery made by them, could not be shattered. As rightly observed by the Trial Court, though the mediator and TLO were Government Servants, on that ground alone their evidence cannot be discarded particularly when no animosity could be established between them and AO. Exs.P.2 and P.4 corroborates their evidence on material particulars. From all these, a factual presumption can be drawn to the effect that AO must have demanded bribe from the complainant. It is worthwhile to note, it is not the defence of AO that the complainant had any grudge against him to lodge a false complaint to implicate him. Therefore, the factual presumption cannot be said to be contaminated by a false complaint. It can be further presumed that what was given and accepted by AO was a gratification other than legal remuneration, because the complainant under law was not obligated to pay any amount to AO for recommending the renewal of his licence. So obviously, the amount received by AO was an illegal amount. From these factual presumptions, the Court can draw the legal presumption under Section 20 of PC Act to the effect that the gratification was received by AO as a motive to perform an official favour pending with him as on the date of the trap, which was already held so in point No.1 supra. Therefore, the contention of the appellant that mere recovery of the amount from AO without proving the vital facts such as demand and acceptance, cannot be countenanced because the prosecution by other evidence could amply establish the demand and acceptance of gratification other than legal remuneration by AO.

Consequently, the decisions relied upon by the learned counsel for appellant are of no avail.

18) It has now to be seen, whether the AO could thwart the presumption under Section 20 of PC Act. His version is that he received the tainted amount with an honest belief that the complainant was just transmitting the said amount sent by DW.1 as a loan to him. DW.1 would avouch that in 3rd week of November, 1994 when he went to the excise office on his work, the AO requested him to lend Rs.3000/- for his personal needs as he did not get his salary and he promised that he would lend 4 or 5 days later and on 23.11.1994, when complainant came to his house to meet his son, on knowing that the complainant was going to Nirmal, on his work, this witness gave over Rs.3000/- to him to handover the same to AO. Later, on the night of 24.11.1994, he learnt that the complainant trapped AO and he admonished him for implicating AO. He stated that AO was a good person and he knows him since prior to November, 1994 and AO never caused any inconvenience to him or others in pursuing their profession of tapping.

19) When his evidence is tested on the anvil of credibility, at the very first blush, the artificiality in it could be sensed. It may be true that people for their day-to-day requirements, borrow hand loans from others, it is something unusual that the AO being a Police Officer and a public servant, allegedly ventured to borrow loan from none other than one of the toddy businessman, who was having regular dealings with excise office. The fallacy of loan theory is also exposed by the fact that according to DW.1 his income was around to Rs.3000/- to Rs.4000/- p.m and he has four children.

If so, it would be highly improbable that towards the end of the month, he could still have Rs.3000/- to lend to AO. He stated to have secured the amount from his bank account but he conveniently said he lost the bank passbook. All these facts would discredit his evidence. For another reason also, his testimony is unworthy of credit. Assuming he gave Rs.3000/- to the complainant to handover to AO, it is beyond one's comprehension why the complainant would use that amount to implicate the AO in a false case, when admittedly he had no animosity with AO. It should be noted that DW.1 avouched that Bhoja Goud was a nice gentleman. Therefore, the evidence of DW.1 can be discarded as being cooked up to extricate AO from the case. The loan theory is thus a myth.

20) Then DW.2—the other mediator was examined by AO to depose that before trap party as if AO had stated that no work of Bhoja Goud was pending with him and that DW.1 sent amount through Bhoja Goud and he received. Admittedly, this alleged spot explanation did not appear in Ex.P.4. When cross-examined by Addl. P.P, this witness admitted that Ex.P.4 bears his signature and he has not reported either to his superiors or the superior officers of the ACB department that the explanation of AO to the DSP was not incorporated in Ex.P.4. This witness is an Assistant Engineer, in the office of Irrigation Department at Yellareddy and thus not an illiterate. When the alleged explanation was not incorporated in Ex.P.4, nothing prevented him from complaining to the higher authorities. Thus as rightly observed by the Trial Court, he testified only with a view to help AO. Hence his evidence cannot be believed.

21) Thus on a conspectus of facts and evidence, the prosecution could establish the demand and acceptance of bribe by AO.

22) **POINT No.3**: In view of the findings in points 1 and 2, the conviction recorded by the Trial Court against AO for the offences under Sections 7 and 13(1)(d) r/w 13(2) of PC Act is factually and legally sustainable. Sentence is concerned, learned counsel for appellant would submit that AO is an old man of more than 65 years and suffering with old age diseases and therefore, sentence may be reduced. Considering the said submission, while upholding the conviction, the sentence of R.I. for Two years imposed by the Trial Court for the offence under Section 13(1)(d) r/w 13(2) of P.C Act is reduced to **One year and Six months**. However, the sentence of fine of Rs.2,000/- imposed for the offence under Section 13(1)(d) r/w 13(2) of P.C Act and the sentence of imprisonment of R.I for **One year** and fine of Rs.1,000/- imposed by the Trial Court for the offence under Section 7 of P.C Act shall hold good. Both the substantive sentences shall run concurrently. The remand period if any, undergone by the AO shall be given set off. The Trial Court shall issue NBW against AO for securing his presence and committing him to prison.

23) Accordingly, this Criminal Appeal is dismissed.

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

U. DURGA PRASAD RAO, J

Date: 27.09.2018
Murthy/Scs