THE HON'BLE SMT JUSTICE T. RAJANI

<u>CRIMINAL APPEAL No.920 of 2006</u>

<u>JUDGMENT</u>:

This appeal is preferred by the appellant, against the judgment of the Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad in C.C.No.10 of 2002 dated 01.07.2006, convicting and sentencing him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for a period of six months for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (for short 'the Act') and also sentencing him to undergo rigorous imprisonment for a period two years and to pay a fine of Rs.2,000/- in default to suffer simple imprisonment for a period of six months for the offence punishable under Section 13(1)(d)(I&II) read with Section 13(2) of the Act.

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

The accused worked as a Manager in the Hyderabad Metro Water Supply & Sewerage Board, Autonagar Section, Vanasthalipuram, R.R. District, from 21.05.1998 to 12.12.2000 and is a public servant. The complainant is a resident of Hasthinapuram Central, R.R. District and he entered into an agreement with the Hyderabad Metro Water and Sewerage Board for supply of drinking water through his tanker. As per the agreement, the tanker of the complainant made 240 trips from 01.11.2000 to 30.11.2000. The concerned manager has to prepare the bills for the month of November 2000 and therefore, on

11.12.2000 the complainant approached the accused at his office at Autonagar and requested him to prepare the bills. The accused demanded Rs.1,200/- as bribe to do official favour i.e. for preparing bill of tanker trips, for November 2000 and directed the complainant to get the same on the next day i.e. on 12.12.2000 and threatened the complainant with dire consequences that if the bribe is not paid, he will deduct the trips. The complainant, who was unwilling to pay the said amount, lodged a complaint with the Deputy Superintendent of Police, ACB, Hyderabad and a case was registered in Cr.No.12/ACB-HR/2000 and trap was organized on the same day.

On 12.12.2000, the complainant approached the accused and asked for log sheet. The accused demanded bribe amount and the complainant replied affirmatively. The accused took the log sheet and prepared the bill in duplicate and recorded the details in the Measurement Book and handed over all the records to the complainant, to produce before the Deputy General Manager and General Manager for effecting payment. Thereafter, the accused again demanded for payment of bribe amount of Rs.1,200/- and instructed the complainant to keep the bribe amount on the table. The complainant kept the tainted currency on the office table of the accused. Then the accused enquired with the complainant as to how much was the said amount and the complainant replied as Rs.1,200/-. The accused kept the said tainted amount on the diary, which was on the table and covered it with another diary. When the DSP subjected the hand fingers of the accused with Sodium Carbonate solution, it gave positive result. The tainted currency was seized from the possession of the accused in the presence of the mediator and two diaries were also seized under the cover of post trap proceedings. Sanction was accorded to prosecute the accused.

3. The accused was charged for the offence under Sections 7 and 13(2) read with 13(1)(d)(i & ii) of the Act and was tried. P.Ws.1 to 7 were examined, Exs.P1 to 13 and M.Os.1 to 7 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, when he was questioned under Section 313 Cr.P.C, which he denied and filed a written statement. He further got examined D.W.1 and marked Exs.D1 to D4.

4. In the written statement, filed by the accused, he stated that P.W.1 was the contractor for supply of drinking water to various colonies in Autonagar section on payment basis and he used to carry M.book along with the bills and log sheet to the Deputy General Manager and then to the General Manager, personally, as there was no field staff during the relevant period. On 11.12.2000, he received a complaint from the General Manager given by Sri K. Ravindra Reddy, councillor of ward No.7, L.B. Nagar Municipality, that the complainant sold the water to private persons. Immediately, the accused and K. Ravindra Reddy rushed to the spot and found the complainant unloading water, to a private school in Hayathnagar. When the accused questioned about it, the complainant revolted against him and threatened him with dire consequences. On 11.12.2000, the accused sent his report to the General Manager, recommending action against the complainant. Therefore, the complainant bore grudge against the

accused and gave a false complaint, though the accused never demanded any amount.

5. 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 ought to have seen that the ingredients to constitute the offence are not made out; it ought to have seen that on 11.12.200, the accused seized the tanker and gave a report dated 11.12.2000 against the complainant, which is proved in the evidence of D.W.1 and Exs.D1 and D2; it failed to note that there was a clash between the accused and the complainant in the presence of D.W.1; it ought to have seen that on the same day, P.W.1 lodged a report and it ought to have seen that the explanation of the accused with regard to his hand turning positive to the test appear to be probable. Based on the above grounds, the appellant seeks this Court to set aside the judgment of the Court below.

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

7. The counsel for the appellant contends that the demand by the accused, which is an essential ingredient of the alleged offence, is not proved by the prosecution; the reasons for the complainant's grouse against the accused is stated by the accused in his written statement and is proved through the facts elicited in the cross examination of the witnesses; post trap proceedings cannot be given much weight;

there was no official favour pending on the alleged date of offence and hence he seeks to set aside the impugned judgement. He contends that the prosecution case turns to be highly doubtful, due to the evidence brought forth in the form of Exs.D1 to D4. The public prosecutor, on the other hand submits that, the demand by the accused is proved through the evidence of PW.1 and the failure of the accused to explain the post trap proceedings , would allow the court to draw a presumption that the accused committed the offence.

8. Now the points that arise for consideration are as under:

1. Whether the demand by the accused is proved.
2. Whether there was any official favour pending, by the time the alleged offence was committed.
3. Whether the guilt of the accused for the offence alleged is proved beyond all reasonable doubt and whether the judgment of the Court below can be sustained.
4. To what result.

POINT Nos.1 to 3:

9. The decision of the Supreme Court in B. JAYARAJ V. STATE OF ANDHRA PRADESH[1], does not help the appellant, in his contention that when demand is not proved, mere possession of tainted money is not sufficient to prove the guilt of the accused, as in that case the complainant disowned what he stated in the complaint about the demand made by the accused and as there was no other evidence proving the demand. In this case, the complainant stuck to his version given in the complaint and spoke about the demand.

---

[1] 2014 (2) ALD 73 (SC)

The counsel for the appellant relied on a decision of this Court in TRILOK CHANDRA MOURYA (T.C. MAURYA) v. STATE[2]. In that case the court did not believe that the accused was reiterating his illegal demand of bribe in respect of second contract, finding that there was no official favour pending as on the date of demand or by the date of trap. The facts in that case need to be stated, in order to see the distinction between those facts and the facts in the case on hand. The accused, as accounts head, proposed to levy 2% ground rent on the contractor for not lifting the swarf material within the prescribed time. The endorsement was prior to date of trap and date of demand. In those circumstances this court said that it cannot be believed that the accused made a demand for any amount from P.W.3 for the purpose of extending time for lifting the swarf material, when the accused almost did a disfavour to P.W.3 by making the above endorsement in writing on the proposal of the committee to extend time.

10. Let us look at the facts of this case, starting with the defence of the accused, which is that complainant sold drinking water to private persons illegally and threatened the accused in that regard and when he was questioned by the accused, he proclaimed that he would see as to how the accused would continue in his job. The said version of the accused is brought forth before the Court below through the evidence of D.W.1, who is the person, who gave the report to P.W.5. P.W.5, in his cross-examination, also admitted the same. Hence, the above evidence would certainly suggest that the complainant was

[2] 2011 (2) ALD (CRL.) 672 (AP)

supplying water to private persons and a report was filed against him to that extent and the accused questioned him about the same and the complainant threatened the accused as to how he would continue in his job.

11. Independent of the aforesaid evidence, if the other evidence regarding complicity of the accused inspires confidence, the fact that the complainant was also involved in illegal supply of water to private persons and that he threatened the accused, may not come to the rescue of the accused, in escaping the conviction in this case.

12. P.W.1, the complainant, in his evidence, spoke about the manner in which the accused made the demand and also about the work that was pending by the date of that demand. According to him, on 11.12.2000, he approached the accused and requested him to prepare the bill for payment for the month of November 2000 and the accused demanded Rs.1,200/- for recording the trips and preparing the bill. The accused asked him to pay the demanded amount on 12.12.2000 and that if he failed to pay that amount, he would reduce the trips and prepare the bill. The accused also threatened that he would write report to the General Manager that his water tanker is not in good condition and that he would see that the agreement is cancelled. He reported the matter to the ACB officials on 11.12.2000 itself at 5 PM and also gave a report. The DSP, after receiving the report, asked him to come to his office on the next day afternoon, with the proposed bribe amount. As such, he went to the office on the next day at 2 PM and the DSP introduced him to the two officials present at the office and told him that they were going to act as mediators for the

trap proceedings. P.W.1 handed over Rs.1,200/- consisting of twelve hundred rupee notes to the mediators, who noted down the numbers of those currency notes and after that, the DSP got applied some white powder, which is Phen. powder, to the said currency notes. The DSP asked the constable, who applied the powder, to keep those currency notes in P.W.1's shirt pocket, after ensuring that he was not carrying anything else in his pocket. The DSP instructed him to go and meet the accused and pay the tainted currency notes to the accused only on his demand and not otherwise and further asked him to come out after the payment and give a signal to the trap party, by wiping his face with a kerchief.

At about 3.05 PM, P.W.1 started on his scooter, whereas the DSP and his trap party followed in a jeep and an ambassador car and proceeded to Auto nagar and reached by 3.45 PM. The jeep and the car were parked at some distance from the office of the accused. P.W.1 proceeded to the office of the accused, he found in charge Sri Ramesh but he did not find the accused. The said Ramesh handed over the log sheet, containing the details of the trips made by the tanker and stated that he prepared the log sheet as instructed by the accused over phone and that the accused asked him to come and meet him at white tank, with that log sheet. Stating so, the said Ramesh handed over the log sheet to P.W.1. He returned to the trap party and informed the same to the DSP and all of them proceeded to white tank, where another office of the accused is situated. From there, P.W.1 again started on his scooter whereas the trap party followed in their jeep and car. At the white tank, P.W.1 entered into the premises through the gate, whereas the trap party stood outside. He parked his scooter. He found the accused in his office room and handed over the log sheet to him stating that it was given by Ramesh and requested him to prepare the bill. The accused asked whether he brought the amount and P.W.1 replied affirmatively.

The accused, as per the log sheet made entries in the measurement book and issued pass order and handed over the bills in duplicate and log sheet to P.W.1. Then again the accused asked P.W.1 to give the money to him. P.W.1 took out the tainted currency notes from his shirt pocket and offered the accused and the accused asked him to keep them on his table and he placed the said currency notes on his table. Then the accused verified those currency notes with his left hand and ensured whether the notes are twelve in number and kept that amount on a dairy and kept another diary like book on the notes. Then P.W.1 went out and gave the pre-arranged signal to the trap party. Then the trap party went inside.

In the cross-examination, he admitted that entries made in the departmental log sheet as well as in their note book, with regard to the trips, cannot be reduced by anybody.

13. The counsel contends that from the said admission it has to be noted that no official favour was pending by the time of the trap. But the chief examination of P.W.1 is very clear, which shows that there was some work pending with the accused and it is only after he handed over the log book to the accused, he made entries in the measurement book and issued pass order and handed over the bills in

duplicate and log sheet to him. Moreover, the demand is made prior to the preparation of the log sheet. From the evidence, it can be understood that after making the demand from the complainant and after the complainant agreed to comply with the demand, he instructed one Ramesh to prepare the log sheet. It appears that the accused, with all faith in the complainant that he would bring the amount, instructed the said Ramesh to prepare the log sheet, which according to P.W.1, cannot be changed later. But it is very clear that by the time the demand was made, the official favour was pending with the accused. It is only after the accused ensured that the complainant brought amount, he made entries in the measurement book and prepared the bill. Hence, it cannot be said that no official favour was pending by the date of the bills.

14. The evidence of the mediator would become more important to understand the truth with regard to the trap proceedings. P.W.3, who is the mediator, is an Assistant Director of Agriculture in the office of the Commissioner and Director, Agriculture. He along with L.W.4, who also works in the same office, on the directions of their Commissioner, reported to DSP, ACB on 12.12.2000 at about 2 PM. At about 2.15 PM, they along with other officials assembled in the office of DSP, ACB and the DSP called a person from outside and introduced him as Srinivasa Reddy, who has given the complaint. The complainant narrated the contents of the complaint given to ACB, to them and then the DSP asked the complainant to produce the amount intended to be given as bribe to the accused. The complainant produced Rs.1,200/- consisting of twelve hundred rupee denomination

notes and he recorded the numbers and denomination of those currency notes. The DSP got applied a thin layer of Phen powder through a head constable, after removing what all the complainant possessed in his left side shirt pocket and kept those tainted currency notes in that pocket. The DSP instructed the complainant to got to the office of the accused and pay to him the currency notes only on demand and in case, the accused accepts that amount, he shall come out and give a signal to them by wiping his face with a hand kerchief. The DSP got prepared sodium carbonate solution in a glass tumbler, into which all of them present there, except the constable who applied Phen power to those currency notes, rinsed their fingers, but there was no reaction, whereas when the head constable rinsed his hand fingers in the same solution, the solution assumed pink colour. The DSP explained to them the significance of the said test. The samples of used Phen and sodium carbonate powders were preserved in separate covers and sealed and attested by them.

He recorded the happenings in a mediatornama, which concluded at 3 PM, which is marked as Ex.P6, as the pre trap proceedings. At about 3.05 PM, they proceeded from the DSP office in a car and a jeep, to Autonagar, whereas the complainant proceeded ahead of them, on his scooter. At about 3.45 PM, they all reached the Autonagar section office and got down from their vehicle. From there the complainant proceeded into the section office whereas the trap party members took vantage positions in front of the office. There is a reservoir in the said Autonagar section office. At about 4 PM, the complainant returned to them and informed that the accused is not available in the offence and he came to know through one Macharla Ramesh that the accused is available at Vanastalipuram office white tank premises. They then proceeded to the said spot. The complainant proceeded on his scooter and reached the white tank premises at 4.20 PM and the officials again took vantage positions. The complainant proceeded into the office and at about 4.45 PM, he came out and gave the pre-arranged signal to them, by wiping his face with his hand kerchief. On that, they went into the office, after enquiring with the complainant as to what happened inside the office. The DSP ascertained the name and designation of the accused and then disclosed his identity and introduced him to all the trap party members. The accused became nervous and stated his version. The DSP got prepared sodium carbonate solution in two glass tumblers and asked the accused to rinse his both hand fingers separately into those solutions, when the accused did so, the left hand wash turned into pink colour whereas the right hand wash remained colourless. The DSP asked the accused to produce the amount he has just received from the complainant but the accused kept silent. After a few moments, the accused himself pointed out the amount on the left hand side of his table in between two diaries. On stating of the DSP, he picked out that amount form there, counted and compared their numbers with the ones noted earlier and found them tallying in their denomination and numbers. He again noted the numbers of those currency notes. The amount was seized by the DSP. The two diaries were also seized.

15. The evidence of P.W.3 would clinchingly show that the amount that was offered by the complainant was touched by the accused and it was kept between the two diaries. It also shows that the accused was aware of the place where the amount was kept. Except for the instructions of the accused to keep the amount between the two diaries, there is no need for the complainant to keep the amount between the two diaries, clandestinely. After the complainant kept the amount, unless the accused touches the amount, his left hand fingers wash could not have turned to pink colour, when they were tested. The suggestion given to P.W.3 would prove the weakness of the case of the accused, which being that the DSP made the accused pick out the currency notes from between the diaries and then the hands of the accused were tested in sodium carbonate solution. There is absolutely no motive made out against the DSP to implicate the accused in this offence. Having failed to resist the case of the prosecution and the evidence of D.W.1, the accused makes such baseless suggestion to P.W.3. Simply because the complainant is also an unscrupulous person, it cannot be said that the accused is innocent in this offence. In spite of the deterrence posed by the complainant, he could not safeguard himself, by putting a control on his greed. The contention that, counting with left hand is impossible and hence the evidence of PW.1 has to be disbelieved and cannot be accepted as a ground to acquit the accused. Counting with left hand depends on the adeptness of a person. It cannot be said to be an impossible act. Hence, on the above reasoning, the judgment of the Court below needs to be sustained.

16. At this stage, the learned counsel for the appellant requests the court to reduce the sentence of imprisonment.

17. Considering the said request, this court is inclined to reduce the sentence of imprisonment, imposed by the court below, from two years rigorous imprisonment to one year rigorous imprisonment retaining the sentence of fine as imposed by the court below, so also the default sentence.

The points are answered accordingly.

<u>POINT No.4</u>:

In the result, the criminal appeal is partly allowed upholding the conviction and sentence imposed against the appellant in C.C.No.10 of 2002 dated 01.07.2006 by the Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad. However, the sentence of imprisonment, imposed by the court below, is reduced from two years rigorous imprisonment to one year rigorous imprisonment retaining the sentence of fine as imposed by the court below, so also the default sentence.

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

____
T. RAJANI, J

September 11, 2018
DSK