

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL Nos.1221, 1283 AND 1284 OF 2006

COMMON JUDGMENT:

These appeals are preferred, by the appellants, who are A3 to A6; A1; and A2 before the lower court respectively, aggrieved by the Judgment, dated 13.09.2006, passed in C.C.No.10 of 2001, by the Court of Special Judge for SPE & ACB Cases, Nellore, by virtue of which the trial court convicted, A1 and A2 for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, "the Act") and sentenced him to undergo rigorous imprisonment for a period of two years and also to pay fine of Rs.5,000/- in default to suffer simple imprisonment for five months; A3 to A6 for the offence under Section 13(2) r/w 13(1)(d) of the Act and sentenced them to undergo rigorous imprisonment for a period of one year and also to pay fine of Rs.1,000/- in default to suffer simple imprisonment for a period of one month.

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

Somasila Dam was constructed across the River Pennar at Somasila Village, Nellore District and the same was contemplated to store 78 TMC of water at full reservoir level with height of 330 feet, due to which 105 villages and its lands got submerged in fore shore area, in Cuddapah District and those villages and lands were proposed to be acquired by the State

Government. The said acquisition was proposed to be started in the year 1977-78 and by the end of March, 1999, 79 villages were acquired, at the cost of Rs.179.60 crores and the balance of 26 villages are yet to be acquired with the cost of about Rs.84.40 crores, among which Gattupalli village of Gopavaram Mandal, Cuddapah District was also there.

While the matter stood thus, A1 and A2, who were the Deputy Executive Engineer and Assistant Engineer respectively for Somasila Project and who were attached for preparing the valuation of the lands and structures i.e., estimates of Gattupalli and Rekulakunta villages and A3 and A6, who are the employees in the office of the Executive Engineer, Somasila Project and who were attached to assist A1 and A2, along with their staff, visited Gattupalli village and measured the structures available on the lands of the said village for preparing the estimates, for paying compensation to the villagers, entitled for it. A1 and A2, with an intention to get wrongful gain from the villagers, by preparing the estimates with higher rates, intimated the said villagers, to be present from 06.04.1999 onwards at Vinayaka Lodge, Nellore for preparing the estimates. Thereby, A1 to A6 went to Nellore along with their official records on 06.04.1999 by leaving their headquarters and occupied room Nos.25 to 27 at the said Vinayaka Lodge, Stone Housepet, Nellore, from 06.04.1999 onwards. A1 and A2, being public servants, collected huge amounts as illegal gratification from the beneficiaries who were present at Vinayaka Lodge, Nellore and were preparing estimates in favour of beneficiaries by taking assistance of A3 to

A6. The villagers of Gattupalli village, who are the beneficiaries, came to Nellore and approached A1 and A2 at Vinayaka Lodge, Nellore and paid bribe to A1 and A2, to get the estimates at higher rates. A2 also maintained a list, containing the details of collection of bribe from the Ryots and details of distribution of amounts among all ranks of Engineers and subordinates of Somasila Project Division.

On receiving information about the collection of illegal gratification by A1 to A6, the Inspector of Police, ACB, Nellore, organised check at Vinayaka Lodge, with the assistance of other Inspectors, staff and the mediators. During the course of said check, he searched room No.27 and found A1 and A2 and Gattupalli Singal Reddy Sambasiva Reddy, along with office records and they stated that they were preparing estimates in the said room; they also confessed that they received bribe from the villagers of the said village and they produced amounts of Rs.3585/- and Rs.8,900/- respectively from their persons, stating that the above amounts were received from the Gattupalli Villagers; A2 also picked up a cloth hand bag from underneath the bed, which contained an amount of Rs.74,150/- and stated that it was the amount collected from the Ryots of Gattupalli and the said amount was seized; One G.S.Sambasiva Reddy, who was present in the said room, also stated that he came to room No.27 of Vinayaka Lodge, to enquire about the details of estimates pertaining to the valuation of structures on the land of his father, with an amount of Rs.3,700/- to pay the same to A1 and A2 and he produced the

same; the paper sheets containing the details of collection of bribes from the Ryots and details of distribution of amounts among officers and subordinates till then were found; the said papers and other files found in the said room were seized; A3, A4 and A6 were found in room No.26 with same office records; A5 was found in room No.25 with same office records; A3 to A6 confessed that they are assisting A1 and A2 in preparing the estimates and the villagers of Gattupalli are paying amounts to A1 and A2; A3 to A6 also confessed that A1 and A2 paid some amounts to them out of the amount received by them; A3 to A6 produced Rs.710/-, Rs.100/-, Rs.1420/- and Rs.340/- respectively and stated that it was the amount received by them from A1 and A2; the above amounts and records were seized; search was conducted in room Nos.16, 17, and 19 and LWs.5 to 9, 14 were found in the above rooms and they stated that they came to Nellore to meet A1 to A2 to get the estimates prepared with high rates and they further stated that they came prepared with money to pay to A1 and A2 for the above purpose and produced the money, which was returned to them; a mediators report was also drafted. After conducting the check, the Inspector of police submitted a report to the Director General, Anti-Corruption Bureau, AP, Hyderabad and thereby a case in Crime No.7/ACB-RC(O)-NLR/99 was registered and investigated into.

During investigation, the Inspector of Police examined the witnesses, who stated that they went to Nellore along with cash and paid the bribe to A1 and A2 to get more compensation;

seized the papers and sent the questioned documents for comparison, to Government examiner, along with the admitted and specimen hand writings of A1 to A6; the hand writing expert gave his opinion, opining that the handwriting of A2 tallied with the hand writings on the seized couple of papers. The investigation revealed that A1 and A2 conspired with A3 to A6 and committed misconduct and received illegal gratification from the beneficiaries of Gattupalli village, by preparing estimates with huge amounts. The Government of India accorded sanction to prosecute A2 to A6 vide G.O.Ms.No.14 to 18, Irrigation and Command Area Development (Service-IV) Department, dated 23.01.2001. No sanction was required to prosecute A1 as he retired from service. After completion of investigation, the Inspector of police filed charge sheet.

3. The trial court took the case on file and after complying with all the legal formalities, framed charges against the accused for the offence under Section 13(2) r/w 13(1)(d) of the Act. The accused pleaded not guilty and claimed to be tried. During the course of trial, PWs.1 to 21 were examined and Exs.P1 to P60, and MOs.1 to 6 were marked. The accused were questioned about the incriminating circumstances appearing against them in the evidence of prosecution witnesses, when they were examined under Section 313 Cr.P.C. they denied the truth of the evidence and on their behalf, DWs.1 to 3 were examined and Ex.X1 was marked.

4. After considering the evidence and material on record, the lower court passed the impugned judgment, convicting the accused, as aforementioned. Aggrieved by the said judgment, these appeals are preferred on the following grounds:

The court below erred in holding that PW1 and his officers, along with mediators, conducted raid on 10.04.1999 on Vinayaka Lodge, Nellore and seized the money, documents and material objects, without taking into account the material contradictions and discrepancies in the evidence of PWs.1 and 2, who were treated hostile; court below ought to have held that, from the said material discrepancies, no raid was conducted and nothing was seized; The court below erred in holding that PW21 seized material objects from the possession of the appellants and it ought to have held that, in the light of the discrepancies pointed out in the evidence of PWs.1, 2 and 21 and Ex.P17 and, particularly, in the light of the fact that, PWs.3 to 14 did not support the case of the prosecution and also the statement of PW21, that the villagers, alleged to be present to bribe the appellants are also liable to be prosecuted and that the case of the prosecution is false; the court below ought to have held that, Ex.P18 report has not been proved as PW1 was ignorant of the contents thereof and Ex.P18 does not contain all the particulars stated by PWs.1 and 21 and also about the presence of Deputy Superintendent of Police; the court below ought to have held that absolutely there is no cogent and reliable evidence; the court below ought to have held that PW1 and LW1 were under the influence of Anti Corruption Bureau, as a raid was conducted

on their office and therefore they are not independent witnesses and, therefore, ExP18 cannot be relied on; the court below ought to have held that Section 22 of the Act, Section 100 of CrPC, which are mandatory provisions, were not complied with and there are any number of discrepancies in relation to pre arranged plan and information, regarding the availability of the person in room Nos.19, 17 & 16 in Vinayaka Lodge, Nellore and identity of the appellants and PW7 and also PW11. The court below ought to have held that, obtaining of specimen hand writing of the appellants was not done in accordance with law and evidence of the witnesses in that behalf is of no use. The court below failed to appreciate about the delay in registration of the case and also non-explanation of the same and also the delay in forwarding MO6-Cash and other material objects to the court below; the court below ought to have held that PW21 is not competent to mark Exs.P56 & P57 and non examination of the expert is fatal to the case of the prosecution and that there was no evidence that the alleged admitted hand writing belongs to the appellant; the court below ought to have held that non-examination of the higher officer concerned and the expert is also fatal to the case of the prosecution; the court below ought to have held that the Deputy Superintendent of Police is not cited as witness and it ought to have held that PW21 is not competent to investigate, in the absence of any authorization to him as contemplated under Section 17 of the Act; the court below failed to consider the contentions of the appellants in the above said connection and also about marking of Ex.P17 and

also various authorities cited by the appellants; the court below ought to have held that, there is no official favour pending with appellants and no official misconduct by the appellant was proved and no presumption would arise under Section 20 of the Act. The court below should have seen that there was no valid sanction to prosecute the appellants and Exs.P41 to P44 do not contain the seal under the signature of the sanctioning authority; the court below erred in ignoring the evidence of PW19 that DG ACB sent a draft sanction order and it was signed by the sanctioning authority without application of mind; the court below failed to notice that none of the witnesses referred to the presence of the appellants to any conspiracy between them and A1 and A2; the court below should have seen that PWs.3 to 14 did not support the prosecution case and they were declared hostile by the prosecution; the court below failed to notice that PWs.1 and 2 did not implicate the appellants and they were also declared hostile by the prosecution; the court below should have seen that PW21 did not explain why he took 8 days in sending the report to the DG(ACB) and why he did not register any case till 08.05.1999; the court below failed to notice that the mere presence of the appellants in Vinayaka Lodge does not incriminate them in any manner having regard to the fact that A3 to A6 were directed to assist A1 and A2 by their superiors; the court below should have seen that there is absolutely no legal evidence to prove the conspiracy and not a single witness was examined to prove the ingredients of Section 120-B IPC.

5. Heard the counsel for the appellants and the learned special public prosecutor. The counsel for the appellants contends that since all the farmers, who allegedly gave amounts to the accused, did not support the case of the prosecution, the demand made by the accused stands not proved. He also argues that the police obtained specimen signatures of the accused, which is not permitted by the code of criminal procedure. The other contention is that the expert, who issued the opinion on the admitted and disputed hand writings of the accused, was not examined before this court for the purpose of affording an opportunity to the accused to cross-examine him. The counsel contends that the opinion of the hand writing expert cannot form a basis for the guilt of the accused, as an expert opinion is not a conclusive proof of the hand writings and obviously the hand writings, which are compared by the expert, do not appear to be similar even to a naked eye. The counsel contends that the prosecution miserably failed in this case to either prove the demand or the acceptance. The further contention is that the prosecution evidence itself would prove that no official favour was pending with any of the accused.

6. The Public Prosecutor, on the other hand, contends that the opinion of the expert can be relied upon and the court has power to compare the hand writings in order to believe or not to believe the expert opinion. He further contends that the evidence of DW1 would show that the official favour was still pending with the accused.

7. On the basis of the above arguments and the material on record, the following points are framed for consideration:

1. Whether the prosecution could prove the demand of bribe allegedly made by the accused and whether any official favour was pending with the accused by the date of the said demand.
2. Whether the opinion of the hand writing expert conclusively proves that Ex.P57 was written by the accused and whether the guilt of the accused can be gathered from Ex.P57 independently.
3. Whether the judgment of the court below is sustainable.
4. To what result.

POINT No.1: -

8. Unfortunately, all the farmers, who allegedly offered and gave bribe in the form of currency, to the accused, for getting compensation fixed at a higher rate for the structures and lands that were acquired from them, turned hostile. They were examined as PWs.3 to 14. None of them supported the case of the prosecution and expressed that they do not know the accused at all. Hence, the allegation of the demand made by the accused falls to ground. As regards, the official favour pending with the accused, the evidence of PWs.16, 17 and 20 is relevant.

9. PW16, who is the Deputy Executive Engineer, Somasila Project, Division-IV, during the relevant period, deposed that he knows all the accused. A5 worked in his sub-division as Work Inspector. He sent A5 on deputation to the Sub-Division-I for fair

copying purpose. The said sub-division was dealing with land acquisition. A2 was the Assistant Engineer in Sub-Division-I. He deputed A5 in April, 1999 and gave oral instructions to him, with the permission of their Executive Engineer. Accordingly, A5 went and worked in Sub-Division-I. In the cross-examination, it was elicited that the revenue department dealt with compensation that can be awarded in respect of the land and their department dealt with structures and houses and their department has no concern with the lands. He admitted that by the date of deputation of A5, estimates were completely prepared by A2. He also admitted that it is the duty of A1, who was the Deputy Executive Engineer, to check the estimates prepared by A2 at random, to the extent of 30% and that the Executive Engineer would take up further random check up to the extent of 10 to 20%, and SE would further random check up to the extent of 5%. According to his evidence, the fair copies have to be ultimately submitted to the Special Deputy Collector. He further added that he does not know the stage of the estimates, whether they were partly completed or totally completed. But he stated that the question of fair copying arises only after the estimates were prepared. In the cross-examination he admitted that the Executive Engineer is the only competent person to depute the staff and within the sub-division the DEE is the competent person. He further clarified that the Division is the same, but the sub-division to which A5 was deputed to work, is different. He further states that for a deputation for one or two days written orders are not necessary and he also admits that

there is nothing in writing to show that A5 was deputed to work in the sub-division.

10. Hence, by the evidence of PW16, though a scope was left to infer that the estimates were not prepared, his evidence that the question of fair copying arises only after the estimates are prepared and that he deputed A5 for the purpose of fair copying would suggest that the estimates were already prepared by them. PW17, however, is more certain with regard to the completion of the preparation of estimates. He is retired Assistant Engineer, Irrigation Section, Atmakur. He worked in the same capacity in Somasila Project, division-IV during the relevant period. He deposed that A3 worked as Work Inspector in his section. As per the instructions of their DEE he deputed A3 to work under A2 from 07.4.1999 to 11.04.1999. As such, he worked during that period. But he does not know the work done by him under A2. He stated that A2 was doing Estimate work of submersion area in Somasila Project during that time. In the cross-examination, he admitted that A3 was deputed to prepare fair copies of the estimates, which were already prepared. He further admits that after preparation of the estimates by A2 and checked by the DE, SE and EE at random and before the estimates were sent to the Deputy Collector, land acquisition, fair copies would be prepared. He also admits that A3 was deputed to fair copy the same and states that once the estimates are prepared, there is no scope of changing them.

11. Hence, it is clear from the evidence of PW17 that the estimates were already prepared by the accused and A3 was deputed to prepare fair copies of the estimates, which were already prepared. It is also evident that once the estimates are prepared, no scope for changing them would be left.

12. PW20 is the office superintendent, Somasila Project, Division IV during the relevant period. According to him, A1 was the Deputy Executive Engineer in Sub-Division I in Division No.IV and A2 was the Assistant Engineer in Sub-Division I. But he does not know the work that was entrusted to A1 and A2 during the year 1999 and he could not state about the work entrusted to A3 to A6. Hence, he was declared hostile.

13. The evidence of DW1, on which the prosecution seeks to place reliance, to prove that official favour was pending, is that of the Assistant Technical Officer or draughtsman in Division IV Somasila Project during the relevant period. He worked under one M.Narasimha Rao, Executive Engineer, from 1998 to 2002. He spoke about the designations of the accused in the said sub-division. In this case, the government issued Gazette notification in respect of the structures of the lands in Gattupalli Village. Ex.P11 is stated to be the approved data issued by the Deputy Engineer. Exs.P7 to P10 are the draft declaration regarding the structures in the fields of Gattupalli village. He further deposed that A2 has to prepare estimates basing on the draft declarations and approved data. If there is any deviation in the estimates, when compared to the draft declarations and approved data, the

Executive Engineer would correct the estimates since he is the final authority in fixing the rates. Three sets of fair copies of estimates are required, out of which one has to be sent to the Special Deputy Collector, second set has to be sent to the Special Collector and the third set has to be sent to the SE, 4th set also would be prepared to retain the same in their file. He was the section clerk at that time and he had to receive the estimate sent by the AE and DE. He stated that he can speak about the correctness or otherwise of the figures mentioned in the estimates when compared with the approved data and draft declaration, if they are shown to him at random. An objection was raised by the Public Prosecutor at this stage on the ground that he is not a proper person to speak about the correctness or otherwise of the figures mentioned in the estimates, and the said objection was sustained. In the cross-examination, he deposed that there is a possibility to note down less rates than the approved datas by the AE and the DE.

14. It is this particular statement made by DW1 in his cross-examination that the Public Prosecutor seeks to rely upon, to draw support to his contention that the official favour was pending as on the date of raid conducted by the ACB Officials. But in the considered opinion of this court, when the evidence of PW16 shows that the estimates were already prepared by the date of the said raid, the possibility of reducing the rates would not be available. The evidence of DW1, moreover, does not offer any clarity as to the scope of there being a possibility for reducing the rates. Hence, one stray sentence in the cross-

examination of DW1 cannot be taken into consideration for disbelieving the evidence of PW16, who is a prosecution witness and who speaks with clarity that the estimates were already prepared and there is no scope for changing the estimates, once they are prepared. Hence, it is very clear that no official favour was pending as on the date of raid conducted by the ACB officials. The oral evidence does not help the prosecution in proving the demand made by the accused and in proving that any official favour was pending with the accused.

15. Now it has to be seen whether the documentary evidence collected by the prosecution would prove the acceptance of bribe by the accused.

16. PW21 is the Investigating Officer. He speaks about collecting the specimen signatures from the accused in order to get them compared with the contents of Ex.P1, which is a made up file containing 21 pages, with details of persons from whom the bribe amount was collected. He speaks about the apprehension of the accused at Vinayaka Lodge, Nellore along with Ex.P1 file and other material. In order to prove that the accused were present in Vinayaka Lodge, the prosecution examined PW2, who is a clerk in the said lodge during the relevant period. According to his evidence, some persons came and straight away went into the rooms. They questioned him about the occupants of the lodge, for which he answered that he would be in a position to answer, by perusing the register. He perused the register and furnished the particulars.

Ex.P17, which is the register, was also seized by PW21. From the register, PW2 stated that room Nos.26 and 27 were booked in the name of P.Ramanaiah-A6, room No.25 is booked in the name of P.Subba Reddy-A5. The rooms are not vacated till the arrival of the ACB Officials. The fact that PW2's evidence proves is that room Nos.26 and 27 were booked in the name of A6 and that room No.25 is booked in the name of A5, but it does not conclusively prove that it was A5 and A6, who booked the said rooms. PW21 along with the check party went to the said lodge. The check party entered into the first floor of the said lodge and they came to know that room Nos.25 to 27 were occupied by the employees of Somasila Project, Atmakur and they are available in the said rooms. As per the pre-arranged plan, himself and the mediators surprised room No.27. LW26 proceeded towards room No.26 and others went to other rooms, which were occupied by the farmers. PW21 checked the rooms one after another in the presence of mediators and the check revealed that A1 and A2 and PW7 were available in room No.27 along with official records. A1 voluntarily stated that they finalised the valuation of land structures belonging to Gattupalli village of Gopavaram Mandal, Kadapa District and that the villagers, whose lands were affected, are visiting the rooms and giving their details of land structures on their lands and its valuations and paying some amounts as formalities. Saying so, he produced an amount of Rs.3,585/- from his shirt and pant pockets. A2 also produced Rs.8,900/- from his pant and shirt pocket and when further questioned, A2 produced a cloth and bag from underneath the

bed, which contained Rs.74,150/-, for which A2 stated that it was the amount collected from the Gattupalli villagers. He took possession of the above amounts for further verification. When they enquired with PW7 he stated that his father was having 15 cents of agricultural land at Gattupalli village, which was under submersion. On knowing that A1 and other officials were preparing estimates by staying in Vinayaka Lodge, he came to the lodge and while he was contracting the said officials, the ACB officials reached room No.27.

17. Hence, this part of the evidence of PW21 shows that there was no demand made by the officials from PW7 and PW7 himself, on knowing that the officials were present in the lodge went there. PW7 further informed PW21 that he brought Rs.3700/- to pay the same as formalities to the officials. Said information given by PW7 would only prove that he brought the amount to give it to the officials but it does not prove that there was any demand by the accused. After conducting check in room No.27, they went to room No.26 and found A3, A4 and A6 along with office records. They also stated to him that the villagers of Gattupalli were paying certain amounts to A1 and A2 for recommending higher compensation to their land structures. Saying so, they produced the amounts from shirt pockets and the same were seized. After conducting search in room No.26, they proceeded to room No.25 in which A5 was found. He also produced some amount stating that it was given by A1 and A2 and the same was seized. The information given to him is that the officials were finalising the estimates for compensation.

18. From the evidence of PW21, it can be understood that except the confession made by the accused, he could not collect any other evidence with regard to the collection of the amounts by the accused.

19. In a ruling of the Full Bench of the Supreme Court reported in *B.Jayaraj v. State of Andhra Pradesh*¹, which is to the effect that when the complainant does not support the prosecution case insofar as the demand by the accused is concerned and when prosecution does not adduce any other evidence to prove the demand, it was held that mere demand of gratification cannot be held to be proved only on the basis of the complaint filed and evidence of panch witness and mere possession and recovery of tainted money from the accused, without proof of demand.

20. In view of the above discussion, this court is of the view that neither the oral nor the documentary evidence proves any demand of bribe made by the accused from the villagers and the prosecution failed to prove any official favour pending with the accused.

Accordingly, point No.1 is answered in favour of the accused.

POINT No.2: -

21. Now coming to the opinion of the handwriting expert with regard to the writings of the accused under Ex.P57, it is necessary to go through the evidence of PW21. According to his

¹ 2014(2) ALD (CrL.) 73 (SC)

evidence, Ex.P1 is the note file containing the details of the villagers, who gave amounts to the accused. In order to prove that Ex.P1 note file was prepared by the accused, he obtained the specimen hand writings of all the accused for the purpose of forwarding them to the expert. The expert sent opinion, which was marked as Ex.P57, stating that the person, who wrote the red enclosed writings, stamped and marked S1 to S6, S27 to S56, A3, A4, A11 to A42, also wrote the red enclosed writings similarly stamped and marked Q1 to Q29. The said report was marked as Ex.P57. The expert, who issued Ex.P57, was not examined.

22. Section 293 Cr.PC prescribes the procedure of accepting the reports. It is beneficial to extract the said provision, which reads as follows:

“293. Reports of certain Government scientific experts.

(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject- matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:-

- (a) any Chemical Examiner or Assistant Chemical Examiner to Government;
- (b) the Chief Inspector of- Explosives;
- (c) the Director of the Finger Print Bureau;
- (d) the Director, Haffkine Institute, Bombay;
- (e) the Director , Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
- (f) the Serologist to the Government.”

23. In this case, the court did not think it fit to summon and examine the expert. The accused also did not make any prayer for summoning the expert. When the court does not summon the expert, it should be in a position to render proper reasons for not feeling the necessity of summoning the expert and the reasons for believing the opinion given by the expert. The lower court, except relying on the expert's opinion, did not give any reasons for relying on the said opinion. According to the expert's opinion, the hand writings in S1 to S6, S27 to S53, A3, A4 and A11 to A42 are similar to the questioned writings in Q1 to Q20. But on a comparison of the writings in the above, they do not show absolute similarities. For a naked eye also, the writings in A24 and A25 do not seem to be similar. Starting from the font size to the manner of writing, this court finds some variance. So also with A28. Though apparently some similarities are found between the writings in 'Q' series, there are obviously several dissimilarities between the writings in A24 and the questioned writings. The lower court, based on the expert's opinion, concluded that all the accused are guilty. But the expert's opinion seems to be only in respect of one accused,

which according to the Public Prosecutor is A2. But the prosecution did not adduce any evidence with regard to the writings collected from the other accused and with regard to the questioned writings being written by A2.

24. Ex.P1 shows that some amounts were mentioned against certain names and certain amounts were shown as paid. One Peddireddy Konda Reddy, whose name was found in Ex.P1, was examined as PW9. His evidence is that he never paid any amount to the accused and Ex.P1-file also states that the amount of Rs.3,200/- mentioned against his name was paid. The amount shown against the name of one Jogi Reddy is shown as paid, but he, who was examined as PW14, does not support the said fact. Moreover, the suggestion given to him is that he paid Rs.14,800/- to A2, but Ex.P1 shows that he paid Rs.6,800/- at one instance and Rs.4,000/- at another instance. When the witnesses, who allegedly gave the amounts, turned hostile, documents suggesting that they paid some amounts cannot be taken as an evidence.

25. As regards, the propriety of the police taking the hand writings, the ruling relied upon by the appellant's counsel itself would answer the said question. The said ruling is reported in *Selvaraj v. State of AP*², wherein the court while considering the contention of the counsel for the appellant therein held that there is no blanket prohibition to take the writings of the accused. But, only to create confidence and reliability, it was

²

2005(2) ALT (CrL.) 69 (DB) (AP)

found desirable that, such finger prints are to be taken in the presence of a Magistrate or under the Order of the Magistrate. Hence, the burden of the prosecution would be to show that the hand writings of the accused were taken by the police and that they are not fabricated.

26. The evidence of PW18 is that of mediator in whose presence the specimen hand writings of the accused were taken. His evidence shows that the hand writings were taken from the accused and that they are not fabricated. Hence, there can be no reason to disallow those hand writings being appreciated by the court. The judgment of the apex court reported in *Ajay Kumar Parmar v. State of Rajasthan*³ by considering its ruling in { *Murari Lal v. State of M.P.* [1979(3) SCC 612]} held that while dealing with the issue of summoning the hand writing expert, when there is no expert opinion to assist the court in respect of handwriting available, the court should seek guidance from the said authoritative textbook and the court's own experience and knowledge, however, even in the absence of the same, it should discharge its duty with or without expert and with or without any other evidence. In this case, several dissimilarities are observed between the admitted and questioned hand writings and the court below did not render any reason for relying on the expert opinion. The appellants' counsel relies upon the ruling of the Supreme Court in CrI.A.No.1163 of 2017 between *Mukhtiar Singh v. State of Punjab*. Relevant portion whereof reads as follows:

³ (2012) 12 SCC 406

“This Court thus in P.SATYANARAYANA MURTHY VS. DISTRICT INSPECTOR OF POLICE, STATE OF ANDHRA PRADESH AND ANOTHER [(2015) 10 SCC 152] on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder:

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 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, de hors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these 6 (2014) 13 SCC 55 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 Sections 7 and 13 of the Act would not entail his conviction thereunder.” (emphasis supplied)

27. Several rulings were also relied upon by the counsel for the appellants, which are also on the same principle. However, they are not taken up for discussions as they touch upon the same issue.

28. In view of the above discussion, it can be said that the court below went wrong in merely relying on the opinion of the expert without there being any proper reason and hence this court holds that Ex.P57 is not a reliable document and the guilt of the accused cannot be gathered from it.

Accordingly, point No.2 is also answered in favour of the accused.

POINT No.3: -

29. In view of the conclusions reached by this court on points 1 and 2, this court holds that the judgment of the court below cannot be sustained and accordingly, point No.3 is answered.

POINT No.4: -

30. In the result, the Criminal Appeals are allowed setting aside the conviction and sentence recorded against the appellants in judgment, dated 13.09.2006, passed in C.C.No.10 of 2001, by the Court of Special Judge for SPE & ACB Cases, Nellore. Consequently, the appellants are acquitted of the charges leveled against them. The appellants shall be set at liberty forthwith, if not required in any other crime. The fine amount, if any, paid by the appellants shall be refunded to them.

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

T. RAJANI, J

November 28, 2018
LMV