* SMT JUSTICE T. RAJANI

\+ CRIMINAL APPEAL No.679 of 2006

% 06.11.2018

P.Madhanaiah

…Appellant

Vs.

$ The State of Andhra Pradesh,
Rep. by its Public Proseuctor.

…. Respondent

! Counsel for the petitioners: SRI T.NIRANJAN REDY

Counsel for the Respondents: SPECIAL PUBLIC PROSECUTOR FOR ACB

<Gist :

>Head Note:

? Cases referred:

1. (2015) 16 SCC 350
2. (2016) 12 SCC 150
3. (2015) 10 SCC 152

In the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh

CRIMINAL APPEAL No.679 of 2006

Between:

P.Madhanaiah

...Petitioner

Vs.

The State of Andhra Pradesh,
Rep. by its Public Prosecutor.

.... Respondent

Date of Judgment Pronounced: 06.11.2018

Submitted for Approval:

SMT JUSTICE T. RAJANI

1. Whether Reporters of Local newspapers may be allowed to see the judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

T.RAJANI , J

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.679 OF 2006

JUDGMENT:

This appeal is preferred, by the appellant, who is the accused before the lower court, aggrieved by the Judgment, dated 10.05.2006, passed in C.C.No.34 of 2001, by the Court of Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, by virtue of which the trial court convicted the accused for the offence under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (for short, "the Act") and sentenced him to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs.2,250/- in default to suffer simple imprisonment for two months for the offence under Section 7 of the Act and also to under go Rigorous Imprisonment for a period of one year and also to pay a fine of Rs.2,250/- in default to suffer simple imprisonment for two months for the offence under Section 13(1)(d) r/w 13(2) of the Act.

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

The complainant was entrusted with the execution of civil work of extension and maintenance of reading room fertilizers and pesticides room. When the complainant executed 3/4th of the above said work, the concerned Engineers prepared bill for payment of Rs.56,800/- to the complainant. On 22.03.2000, when the complainant met the accused and requested him to issue cheque in his favour, for the above said work, he was informed by the accused that a bill for Rs.93,600/-, pertaining to his brother-in-law was also ready for issuing cheque and demanded a bribe of Rs.2,250/- for the issue of the cheques of the above amounts, and also insisted on the complainant for payment of the said bribe amount before release of the cheque. Thereby, the complainant approached the Inspector of Police, ACB, Khammam on 22.03.2000 at 11:00 AM, and lodged a written complaint for taking action against the accused and took up investigation. During the course of investigation, the DSP, ACB, secured the mediators; laid trap against the accused in the office of the accused; conducted phenolphthalein test on the hand fingers of the accused and the left side pant pocket of the accused; recovered the tainted amount; it also came to light that the accused also tampered records in order to create alibi and also to create record in his favour; arrested the accused; released him on bail on the same day; seized the material objects and the relevant records.

3. The trial court took the case on file and after complying with all the legal formalities, framed charge against the accused for the offence under Sections 7 and 13(1)(d) r/w 13(2) of the Act. The accused pleaded not guilty and claimed to be tried. During the course of trial, PWs.1 to 14 and Exs.P1 to P39, Exs.X1 to X3, and MOs.1 to 10 were marked. The accused was questioned about the incriminating circumstances appearing against him in the evidence of prosecution witnesses, when he was examined under Section 313 Cr.P.C. He denied the truth of

the evidence and on his behalf, DWs.1 to 3 were examined and Exs.D1 to D13 were marked.

4. After considering the evidence and material on record, the lower court passed the impugned judgment, convicting the accused, as aforementioned.

5. Aggrieved by the said judgment, this appeal is preferred on the grounds that the trial court should have seen that the ingredients to constitute the said offences are not proved by any legal and reliable evidence. The trial court erred in placing reliance on the highly interested and discrepant testimony of PWs.1 to 14. The trial court failed to see that the prosecution allegation that the appellant demanded Rs.2,250/- on 22.03.200 was proved to be false in view of Ex.D12, which clinchingly proves that leave was sanctioned to the appellant, for 22.03.2000. The trial court should have seen that the cheques of PW1 and PW2 were prepared on 23.03.2000 and the cheque of PW1 was delivered to him on the same date and therefore the question of payment of bribe on 24.03.2000 is improbable. The trial court failed to see that the allegation that the appellant demanded 1½% of the cheque amount is also false as the said demand was for a different amount. The trial court should have seen that the cheque of PW2 was not handed over to PW1 and PW1 would have insisted for the cheque of PW2 also if really payment was made for issuance of both the cheques. The trial court erred in relying on the recitals in Ex.P31, which are not admissible in evidence and which was admittedly prepared in the

police station. The trial court failed to see that there are clear discrepancies to show that a false trap was arranged at the behest of PW10. Admittedly the son of PW10 was a partner with PW1 for the business in Ex.P3 works. The trial court has not given any valid and convincing reasons for not accepting the evidence of DWs.1 to 3. The trial court has applied different standards in the appreciation of prosecution and defence evidence. The trial court erred in invoking the presumption under Section 20 of the Prevention of corruption Act, when the amount was not recovered form the possession of the appellant. The trial court was wrong in thinking that the evidence of PWs.4, 5, 6, 8, 9, and 10 would prove that the appellant attempted to create some documents in defence. The trial court should have rejected the evidence of PW1, PW11 and PW13 which is discrepant and inconsistent with probabilities.

6. Heard the counsel for the appellant and the Public Prosecutor appearing for the respondent.

7. The counsel for the appellant contends that the appellant was on leave on 22.03.2000, which is the alleged date of demand, and the same is evidenced by Ex.D12, which is the attendance register, and the from the evidence of DW3, who is the Assistant Secretary in market committee, Khammam during the relevant period. He further submits that PW1 has a business along with the son of PW10, who is the Chairman of the Agricultural Market Committee, Khammam, who has animosity against the accused and the said fact is elicited from the

evidence of the witnesses. He further submits that there was no official favour pending as on 24.03.2000, which is the date of trap, as the accused signed on the cheque on 23.03.2000 itself.

8. The Public Prosecutor, on the other hand, contends that Ex.D12 is fabricated and that the same can be evidenced from the several writings and hence, the evidence of PW1 has to be relied upon in believing that the accused demanded the amount from PW1 on 22.03.2000. He also submits that merely because the son of PW10 and PW1 are business partners, it cannot be assumed that PW10 has animosity against the accused.

9. Based on the above arguments and the material on record, the following points are framed for consideration:

1. Whether there was any official favour pending as on the date of demand or on the date of trap and whether the accused is proved to be on leave on 22.03.2000, which is the alleged date of demand.

2. Whether the prosecution could prove the guilt of the accused for the offences with which he was charged beyond all reasonable doubt and whether the judgment of the court below is sustainable.

3. To what result.

<u>POINT Nos.1 and 2</u>: -

10. The evidence of PW1 is that he was a contractor and he was given the contract of repair of reading room and its colouring, by the Marketing Department, Warangal, in the year 2000. He commenced the work and completed 55% of the work.

The Assistant Engineer and also the Divisional Engineer have taken the measurements of the work and recorded it in the measurement book and they sent it to the Executive Engineer at Warangal, who approved the paper and sent it back to the Market committee office at Khammam. The cheque for Rs.56,000/- was passed. He further deposed that he met the Secretary, who is the accused in this case, in the Market committee office at Khammam and enquired about the cheque and the accused told him that for giving his cheque and also for the cheque of his brother-inlaw for Rs.93,000/-, he has to give one and half percent of both the cheque amounts. Then PW1 expressed that he sustained loss and did not agree for giving cheques. Then he returned from his office and this incident took place on 22.03.2000.

11. Coming to the contention of the appellant's counsel that the appellant was on leave on 22.03.2000 and that the same can be evidenced from Ex.D12, which is the extract of the attendance register, and the evidence of DW3, it is pertinent to go through the contents of Ex.D12 and also the evidence of DW3. Ex.D12-extract of the attendance register shows that the date, which is initially mentioned as, '20.03.2000' was corrected as, '21.03.2000' and the casual leave applied for, which was mentioned as '1' was corrected to '2' and the balance of the casual leaves, which were written as, '6' initially, was changed to, '5'. The attendance register was not seized by the ACB officials and was lying with the department. The accused was on bail. DW3, who is he Assistant Secretary in the Market

Committee, Khammam from November, 1999 to May, 2001 and who looks after the establishment sections, spoke in favour of the accused. In his evidence, he deposed that the accused went on leave from 17.03.2000 to 22.032000, both days inclusive. A perusal of Ex.D12 shows that the leave was not continuous and, in fact, no leave was applied on 17.03.2000. It appears that one leave was applied on 18.03.2000. Hence, the evidence of DW3 does not receive any support from Ex.D12. The fact that Ex.D12 seems to be fabricated would also render the defence taken by the accused nugatory and the evidence of PW1 gets strengthened by the fact of said attempt of fabrication of Ex.D12.

12. Hence, from the above scrutiny of the evidence of PW1; extract of the attendance register-Ex.D12, coupled with the evidence of DW3, it can be believed that the appellant was very much present in the office on 22.03.2000 and thereby, the contention of the appellant's counsel that the appellant was on leave on 22.03.2000, is not at all tenable.

13. Coming to the further evidence of PW1, he deposed that after the accused refused to issue the cheque, he approached the ACB office at Khammam, met the inspector and told him what happened and on his instructions he drafted a complaint addressed to the DSP, ACB and gave it to the Inspector. The Inspector asked him to come on 24.03.2000 by 09:00 AM, along with the proposed bribe amount. Then he went to the office of his brother in law at Khammam and informed him

about the same. On 24.03.2000 he went to the office of the DSP, ACB, Khammam. He was asked to sit in one room and half an hour later he was called inside. The DSP introduced two mediators to him and asked him to tell, as to what all happened, to the mediators. The pre-trap proceedings were prepared and the phenolphthalein test was demonstrated to PW1. The tainted amount as kept in his pant pocket with appropriate instructions. Then they proceeded to the office of the market committee and parked the car at the cold storage. PW1 was asked to go inside the office and he was instructed to pay the tainted currency notes only on demand by the accused and after demand and acceptance of bribe by the accused, to give signal by wiping his face with his handkerchief. PW1 went inside the office and there he found the accused and the accounts officer in the room. The accused told him that his cheque was ready and asked him to take his cheque and asked him to go along with the accountant, who will give cheque to him. Then while he started going behind the accountant, again the accused called him back and enquired him whether he brought the amount. Meanwhile, somebody came to that room, then the accused asked him to go and take the cheque and then pay the amount to him. Then he went to the room of the accountant and obtained the cheque. The accountant obtained his signatures in M book and CC forms and also on the counter foils of the cheque. Then he went to the room of the accused for getting the attestation of his signature. He found three agricultural officers talking with the accused. The accused attested his signature on the cheque. Then the accountant was also with him at that time and the accountant, after giving the cheque to him went away. The agricultural officers, who are present there and the accused, got up from their seats to go out. The Agricultural officers were going ahead of the accused and himself and at that time the accused enquired him whether he brought the money. PW1 took out the currency notes with his left hand and kept them in his pant pocket. After coming out of the office, he gave prearranged signal to the trap party. The trap party went there and stopped the accused and took him inside the office while he was asked to wait outside. After 20 minutes, he was called, the DSP came out and took him in a car and they went to the Circle Place Station at Khammam. He was asked to wait outside. One hour later he was called inside and he was enquired as to what all happened. He stated everything, which was recorded by the mediators.

In the cross-examination, nothing material was elicited except some clarifications. He stated that he informed the accountant-Poornachandra Rao when he went to his room that the accused asked him to give bribe after taking the cheque, for which the accountant replied that it is left to him. while the agricultural officers were walking ahead of them, the accused was talking with him behind their back. After giving the tainted currency notes to the accused, he came out of the office hall behind the back of the agricultural officers and then gave signal to the trap party. In his further cross-examination, he deposed that Mr.Ramesh, son of PW10, is not a partner along with him for the cheque work of Rs.56,800/-.

14. PW2, who is the brother-in-law of PW1, also corroborated the evidence of PW1 with regard to PW1 giving information to him about the demand made by the accused. He also declined to give any bribe to the accused and advised him to give complaint to the ACB. In the cross-examination, he stated that on 16.03.2000, he came to know that his bill was passed in the office of the Executive Engineer at Warangal and that on the same day his papers were returned and were sent to the Market committee Office at Khammam. On the date of trap, ACB officials did not come to him to show his cheque. He did not meet the accused before the trap, to take his cheque. He did not know as to whether his cheque was ready as on the date of trap in this case. He took the cheque on 25.04.2000 from the accountant. He could not say on which date the chairman signed on the said cheque. Accused attested his cheque. In the cross-examination he stated that he did not pay any amount to PW1 towards his share to be paid to the accused. It was suggested to him that he is speaking falsehood at the instance of PW1 in order to accommodate PW10.

15. PW3 is a Deputy Executive Engineer, Marketing Ongole, who was holding full additional charge of EE Marketing Warangal during the relevant period. By the time he joined the office on 02.02.2000, the tenders work was completed. After the approval of tenders he concluded the agreement. He spoke about the allotment of the works to PWS.1 and 2 and about their commencing the works and submitting bills for payment. He scrutinised the bills and forwarded them to the Chairman.

He counter signed on the bills and on the measurement books. In the cross-examination, he deposed that he handed over those bills to the AE on 16.03.2000 and he does not know whether from their office, the said bills were hand delivered at Khammam office or whether they were dispatched.

16. From the evidence of PWs.5 and 6, it appears that they were examined to state that the accused tried to manipulate the measurement register by showing his presence at the check post at 11 AM on 24.03.2000. The evidence of PW1, however, does not show the timings of his going to the office of the accused and about the happenings in the office of accused. The evidence of the Investigating Officer-PW13 shows that after completion of the first mediators report at about 10:45 AM, he proceeded to the agricultural market committee and reached the office at Khammam at 11:00 AM. The evidence of PW12, does not show that the accused was arrested. Hence, it can be understood that, the accused, after the trap, manipulated the movement register to support the plea of alibi that he would be taking in future.

17. PW7 is the attender in the office of Agricultural Market Committee, Khammam. He attended the duty on 24.03.2000 late. He saw the accused being taken into the room and in order to know for what purpose he has been taken, he went there but he was asked to go out. After some time, the accused was taken away in a car from the office. He went and represented to the Chairman that the accused was a good person and injustice was caused to him and the Chairman asked him to give in writing.

But he did not give in writing to him. On the next day morning, he got written through his granddaughter, a letter and gave to the Chairman. Thereafter, the Chairman issued a memo to him for giving that letter. He gave reply to that memo that he had committed a mistake by giving that letter. He categorically stated that the contents of his letter Ex.P14 are not true. He was declared hostile by the prosecution.

18. Ex.P14 is the letter given by PW7 to PW10, stating that the accused is a good man and he is not a corrupt fellow and he sought for action against the persons, who attacked him. The letter is dated 24.03.2000. The Memo issued to PW7 is dated 08.04.2000, which was marked as Ex.P20. The evidence of PW7 shows that he gave the letter on the next day of the trap, which must be on 25.03.2000, but the date on the letter is 24.03.2000. Hence, unless the said discrepancy is explained, it cannot be said that the letter was given on 24.03.2000 and it is possible that the letter might have been brought into existence after the trap, with an ante date. But, however, before the court, PW7 testifies that the contents of the said letter are not true. Whatever be the truth, PW7 stands as an unreliable witness. In the cross-examination done by the Public Prosecutor, he admits that he signed on the said letter at the request of the accused. He further stated that the accused took that signed paper and asked him to leave.

19. PW8, who worked as a Supervisor, during the relevant period in the Agricultural Market Committee, Khammam,

deposed that he saw the accused being taken in a car on 24.03.2000. On the same day the accused came to the office at about 6 or 7 PM. PW8 stayed in the office beyond 09:10 PM, while others left office at 09:10 PM. He stayed back and when he was alone, the accused took statement from him and thereafter the chairman called him and issued a memo in respect of the said statement, which was marked as Ex.P19. He gave a reply to that memo stating that he has not witnessed the incident and he was upstairs, in his office room and that he wrote the letter as requested by the accused.

20. Hence, from the evidence of PW8 it becomes clear that the accused returned to the office after he was taken by the ACB Officials and he made all efforts to manipulate the things. It also can be understood that after he was released by the ACB Officials he went to the check post at 05:30 PM, as stated by PWs.5 and 6, and tried to manipulate the movement register.

21. PW9, who is the Secretary Grade II, Agricultural Market Committee, Khammam during the relevant period, spoke about the file, which was circulated to him on 07.04.2000, containing the note, which was prepared by one B.Rajeswara Rao, for issuing memos to PWs.7 and 8 and one Vijaya Kumari. He also stated that on 11.04.2000, when he wanted to sign in the attendance register, he did not find the same in the morning time. He put a note and informed the matter to the Chairman. In the cross-examination, it was suggested to him that he is a supporter of the Chairman and is giving false evidence. PW10,

who is the Chairman, Agricultural Market Committee, Khammam, deposed that on 23.03.2000, he received the part bills with M-Books and files, relating to the works of reading room, pesticides shops and soil testing laboratory of the contractors i.e., PWs.1 and 2. Immediately he signed on the M Books, files, and two cheques for Rs.56,800/ pertaining to PWs.1 and 2. He came to know on 24.03.2000, that the accused was trapped by the ACB. It was noticed that on 07.04.2000, the accused obtained statements from PWs.7 and 8 and one Vijaya Kumari, to the effect that the money was given by force and the accused was taken by force. In the cross-examination, it was suggested to him that he was present in the office on 24.03.2000 and organised the trap of the accused. He admitted that under Ex.D7, the director of marketing issued directions to the accused to instruct not to attend the office and accordingly, the accused did not attend the office from 03.04.2000. But the said fact does not bear any relevance to the defence of the accused. It was admitted by him that his son is the partner in some business of PW1. It was suggested that since PW1 is a partner in the business with his son, he obliged and aided him in implicating the accused. It was also suggested to him that he was in the habit of implicating the special selection grade secretary in some way, in some trouble, causing hardship to them, to get themselves transferred from those places. But no basis was laid by the accused for the suggestions given to PW1.

22. PW11, who is the Assistant Executive Engineer, Khammam, during the relevant period, deposed that on

23.03.2000, a letter was delivered at their office by ACB Office, Khammam, asking their authorities to depute one gazetted officer and as such, he was deputed and he went to the ACB Office, Khammam on 24.03.2000 at 10:00 AM. There was other mediator present at that place. There, they were introduced to PW1. Pre-trap proceedings were prepared in their presence and he proceeded to the office of the accused along with PW1 and others. They took vantage positions. While PW1 went inside the office and after receiving the pre-arranged signal from PW1, they went inside along with the DSP, ACB. The DSP, introduced the mediators to the accused. The DSP questioned the accused whether he had received the money a while ago. The accused immediately took out currency notes from his left side pant pocket and threw them on the ground and started weeping and what all he stated was incorporated in the proceedings, by PW11. The DSP got prepared sodium carbonate solution in two glass tumblers and asked the accused to rinse his both hand fingers separately into them. The accused did not heed to the request but on persistence by the DSP he rinsed his both hand fingers into those solutions separately. The right hand wash remained colourless whereas the left hand wash turned into light pink colour. After that the accused, in exasperation, pushed away the glass tumblers with resultant solution. One of the glass tumblers broke and the other one fell but did not break. As the accused is not cooperating, they all took the accused to the Circle Inspector Office, Khammam. When the amount was thrown out by the accused on the ground, he counted and found it as Rs.2,660/- and when the particulars were compared with the ones noted earlier, by him, during pre trap proceedings. The currency notes of Rs.2,250/- tallied and he kept the amount with him. The accused was again asked to rinse his both hand fingers separately and when he did so, the right hand wash remained colourless whereas the left hand wash gave light pink colour, which is lighter than the one that resulted when the test was conducted on that hand in the office of the Accused. The two resultant solutions were drawn into separate bottles, sealed and attested by them. The wearing pants of the accused was obtained after providing him with a lungi and then the inner flap of the left side pants pocket was subjected to sodium carbonate solution test and it also gave pink colour and it was also drawn in a separate bottle. In the cross-examination, he deposed that when they went into the office of the accused, the staff was present and working. He heard the breaking sound of the glass tumbler and commotion that occurred in the office room of the accused, the other staff members have come there. He admitted that MOS.3 and 4 solution appear to be white in colour and among MOs.3 to 5 resultant solution it is seen that MO5 solution is light pink in colour.

23. Hence, the facts elicited from the cross-examination of PW11 would only support the case of the prosecution and do not in any manner help the accused. But one fact that was elicited in the cross-examination of PW11 is that Ex.P27 shows that it was received by PW1 on 22.03.2000. Ex.P27 is a counter foil of the cheque issued to PW1. A perusal of the said counter foil would

show that the lower court has appreciated it in the right perspective. The date put underneath the signature of PW1 is with a different ink, the ink being similar to the other contents on the reverse of the counter foil. The seizure of the said counter foil is not done by the ACB Officials at the time of the trap. It is only PW10 who spoke about the said counter foil. The cross-examination did not try to get any clarification with regard to the time of seizure under Ex.P27 and no suggestion was given that the same was seized by the ACB Officials at the time of trap and it was in the custody of the ACB officials and beyond any scope of manipulation. In such circumstances, it has to be assumed that the date put on the counter foil, Ex.P27, is part of the work of manipulation that was taken up by the accused, after he returned from the custody of the ACB Officials.

24. PW12 is the Section Officer, Agricultural Cooperative Department, secretariat, Hyderabad, who gave the signal for prosecuting the accused. PW13 is the DSP, ACB, Warangal during the relevant period, who received the complaint of PW1, who verified the incidents of both the complainant. He prepared the pre-trap proceedings and conducted trap proceedings. He corroborates the evidence of PWs.1 and 11. PW14, who is the Inspector of ACB, Khammam during the relevant period, deposed that he took the investigation from PW13 and filed charge sheet after concluding the investigation. The cheque book, which is stated to have been seized by him, is bearing No.11225, but the cheque book containing the counterfoil Ex.P27 is with cheque book No.11224. Even if it is assumed that it is the

same cheque book, the evidence of PW14 shows that it was seized on 25.03.2000, by which time the dates could have been manipulated.

25. The cheque of PW2 was not collected by PW1 and in the cross-examination of PW14, he stated that he did not enquire with PW1 as to why he did not collect the cheque of PW2, but that may be an improbability but would not definitely throw away other credible evidence of the prosecution. It can be assumed that PW1 might have been anxious with the execution of the trap proceedings and might not have insisted upon the issuance of the cheque of PW2.

26. The witnesses, who were examined on behalf of the accused, are DWs.1 to 3. DW1's evidence shows that the accused was present in the office on 24.03.2000 during the time of trap. He states that on 24.03.2000 himself, accompanied by Krishnaiah and Ramireddy, the Assistant Directors, went to the office of the accused at 11.30 or 11.45 AM. They went to inspect a building situated in the premises of the office of the accused, to locate oil testing laboratory, initially, to the chambers of the accused. They sat there for five minutes and conversed with the accused. At that time a person came there and obtained the signature of the accused on the reverse of the cheque and left that room. Then they, led by the accused started towards the said premises. When they reached the threshold of the premises, ACB people, numbering about 3 or 4 persons and got disclosed the identity of the accused by asking him and apprehended him.

27. So the above evidence of DW1, unfortunately, instead of supporting the defence of the accused, supports the case of the prosecution and renders all the efforts of the accused, which was made to manipulate the timings under the movement register, futile. He stated that the accused was apprehended at the house at 11:30 or 11:45 AM on 24.03.2000, giving ample support to the evidence of PW1 and the other prosecution witnesses.

28. DW2 is also not an useful witness for the accused. He was more interested in speaking against PW10, as he was suspended at the instance of PW10. But his evidence does not bring forth any animosity between the accused and PW10. The animosity between DW2 and PW10 is evidenced by the evidence of DW2 writing a representation to the Director, stating that though there is no necessity, the fertilisers were purchased in bulk quantity by agricultural marketing committee, which is headed by the Chairman. As already observed, the said evidence does not help the accused. Coming to the evidence of DW3, whose evidence was already discussed on the aspect of the accused going on casual leaves from 17.03.2000 to 22.03.2000, it is already found incredible.

29. The above evidence would clinchingly prove that there was a demand by the accused on 22.03.2000, by which time there was an official favour pending with the accused. By the date of 24.03.2000, there may not be any official favour pending with the accused, as he already signed on the cheque, but it appears that only on his instructions, PW1 could take the cheque and

before going to collect the cheque, the accused made it certain to himself, that the amount demanded was brought by PW1.

30. The judgments relied upon by the appellant's counsel also would not help the case of the appellant. The Supreme Court in *Khaleel Ahmed v. State of Karnataka*[1], held that demand of illegal gratification is a *sine qua non* for offences under Sections 7 and 13(1)(d) and conversely, in absence of proof of demand of illegal gratification, offences aforementioned cannot be made out. There is no quarrel with the said proposition, but unfortunately in this case, the demand stands proved beyond all reasonable doubt. The judgment of the Supreme Court reported in *V.Sejappa vs. State*[2], is also on the same aspect. So also, the judgment of the Supreme Court reported in *P.Satyanarayana Murthy vs. State of A.P.*[3]

31. In the light of the above appreciation of the evidence, this court holds that the prosecution proved the guilt of the accused beyond all reasonable doubt and hence, the judgment of the court below needs no interference.

32. Accordingly, points 1 and 2 are answered.

<u>POINT No.3</u>: -

33. In the result, the Criminal Appeal is dismissed confirming the conviction and sentence, imposed against the appellant, by Judgment, dated 10.05.2006, passed in C.C.No.34 of 2001,

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1 (2015) 16 SCC 350
2 (2016) 12 SCC 150
3 (2015) 10 SCC 152

by the Court of Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad.

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

T. RAJANI, J

November 6, 2018
LMV