HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL No.655 of 2006

JUDGMENT:

This Criminal Appeal is preferred by the Accused Officer (AO) aggrieved by the judgment dated 26.04.2006 in C.C.No.2 of 2000 passed by learned Special Judge for SPE & ACB Cases, Vijayawada convicting him for the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 (for short "P.C Act").

2) The factual matrix of the case is thus:

a) AO—Banda Nageswara Rao worked as Junior Assistant in the office of Chilakaluripeta Municipality. According to prosecution, PW1 who is a retired Sanitary Maistry, applied for sanction of Group Insurance Scheme (GIS) in the month of January, 1999 and in that regard, he personally met PW3—Municipal Commissioner, Chilakaluripeta Municipality who in turn instructed the AO to attend the work. Two days thereafter, when PW1 approached the AO and enquired about his application, AO demanded Rs.500/- as bribe to do the official favour. Thereafter, PW1 again met AO in his office and enquired about his pending work. At that time also AO reiterated his earlier demand and informed him that unless he paid the bribe amount he would not do his work.

b) Unwilling to pay the bribe amount, PW1 lodged Ex.P2—report with PW6—the Inspector, ACB, Guntur, on 03.02.1999 who after causing discreet enquiries submitted the same to PW5—DSP, ACB, Vijayawada who registered the same as case in Cr.No.8/ACB-VJA/99 on 04.02.1999 and took up investigation and successfully laid trap on AO by following the procedure and after completion of investigation laid charge sheet against AO under Sections 7 and 13(1) (d) r/w 13(2) of PC Act.

c) During trial, PWs.1 to 7 were examined and Exs.P1 to P14 were marked and MOs.1 to 8 were exhibited on behalf of prosecution. DW1 and DW2 were examined and Exs.D1 to D4 were marked on behalf of defence. Exs.X1 to X5 were marked through witnesses.

d) The trial Court on appreciation of oral and documentary evidence found the AO guilty of the charges under Sections 7 and 13(2) r/w 13(1) (d) of P.C. Act, convicted and sentenced him to undergo RI for a period of **Two years** and to pay a fine of **Rs.2,500/-** and in default to suffer SI for **three months** on two counts. Both the sentences were directed to run concurrently.

Hence, the appeal by AO.

3) Heard arguments of Sri A.Hari Prasad Reddy, learned counsel for appellant/AO and Sri Udaya Bhaskar Rao, learned Special Public Prosecutor (Spl.P.P.) for ACB cases.

4a) Challenging the judgment of the Trial Court, learned counsel for appellant Sri A.Hari Prasad Reddy, firstly argued that the prosecution has miserably failed to prove the vital ingredients of the offence i.e. demand made by AO for bribe, his further demand and acceptance of bribe on 04.02.1999. Therefore, the Trial Court ought to have acquitted the accused.

Regarding the demand, he would submit that the accused never demanded PW.1 bribe as the group insurance amount which PW.1 was to receive was a very meagre amount and further, PW.1 was the retired employee of the same Municipal Office and therefore, it is highly unbelievable that accused would demand bribe. Added to it, PW.1 did not mention the date of demand in Ex.P.2—report which signifies that there was no demand. Further, on the aspect of alleged demand, except the interested testimony of PW.1, there is no corroboration inasmuch as none others were present at the time of alleged demand. Sofaras further demand and acceptance of bribe on 04.02.1999 are concerned, learned counsel argued, those vital ingredients of offence are also not supported by any reliable evidence except that of PW.1 inasmuch as no shadow witness was deputed by the Trap Laying Officer (TLO) to observe the events transpired between PW.1 and accused. Added to above, the tainted amount was not found on the person of AO but it was found in his table drawer, for which he already submitted cogent explanation to the effect that PW.1 himself had forcibly kept the bribe amount in his table drawer. Therefore, the prosecution cannot claim to have established the essential and vital ingredients of the offence. He relied upon the decision reported in ***M.K. Harshan v. State of Kerala***[1] to argue that when the amount was not found in immediate possession of accused but found in the table drawer, the defence version could be a probable one.

b) Secondly, arguing on the motive for PW.1 to foist a false case, he would submit, after retirement PW.1 started working as a clerk under one

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[1] AIR 1995 Supreme Court 2178

Bhashu, who was the Contractor of Municipal Slaughter House, Chilakaluripet and in addition to collecting slaughtering charges inside the contract area, PW.1 started collecting the slaughtering tax from the outside butchers and not remitted to Municipality and thereby Municipality suffered loss of revenue and the accused brought the said fact to the notice of the Municipal Commissioner and thereby Commissioner issued an order directing the tax payers to pay the tax directly to the Municipality but not others. By this order, PW.1 having lost his income, met the accused and threatened him with dire consequences. Learned counsel argued that the accused produced cogent evidence to establish the motive of PW.1 but the Trial Court has not appreciated the same in proper perspective.

c) Thirdly, explaining the events transpired on the date of trap, learned counsel argued that as per Ex.P.10—rough sketch, apart from accused, other staff members were also attending work at their respective seats before trap and as such, it is highly preposterous to allege that amidst of so many staff members and other visitors, the accused demanded PW.1 bribe amount. On the other hand, on that day PW.1 came to the seat of accused and enquired about his file and tried to give the tainted bribe amount to him, which was rejected by accused by pushing the same with his both hands. Thereupon, PW.1 forcibly kept the amount in the table drawer of accused, which was slightly opened and rushed away inspite of accused calling him to take back his amount and in the meanwhile the trap party members came and caught him. These facts were submitted by him during his spot explanation and also by a written explanation as well as during the cross-examination of PW.1

and in 313 Cr.P.C examination. However, the TLO has not recorded his full explanation only to implicate him in the case. He relied on ***Punjabrao v. State of Maharashtra***[2], to argue that if the explanation offered by accused during Section 313 Cr.P.C examination is found to be reasonable, the Court cannot throw away the same merely on the ground that he did not offer the said explanation at the time of trap.

He thus prayed to allow the appeal.

5) Per contra, learned Special Public Prosecutor argued that the prosecution amply established the demand and acceptance of bribe by AO by cogent evidence. PW.1 was none other than the erstwhile employee of the same Municipal Office and a known person to accused and therefore, there was no occasion for him to have any bad blood against the accused to implicate. The motive projected by the defence is also flimsy and unacceptable one because PW.1 squarely denied the suggestions given by accused in cross-examination regarding the motive. The accused could not establish by plausible evidence that PW.1 worked under Bhashu as his Clerk. Mere payment of taxes by PW.1 on behalf of Bhashu under Ex.X.2—challans will not make him as his Clerk. That apart, most importantly, as per Ex.X.5—Note, it was not the accused who made the complaint against PW.1 that he was collecting taxes and not remitting to Municipality and thereby Municipality lost revenue but the said complaint to Commissioner was made by one T.V.S.Nageswara Rao, Sanitary Maistry. On his complaint, the Commissioner directed the accused, who was the Junior Assistant to put up

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[2] (2002) 10 SCC 371

note for passing necessary orders and accused only obliged the said order. Therefore, there was no occasion for PW.1 to nurture any grudge specifically against accused for loss of his income. Therefore, the defence theory of motive had no legs to stand which was rightly rejected by the Trial Court. When the motive thus projected by accused is discarded, the evidence of PW.1 can be believed to be genuine as there was no reason for him to fix accused in a false case. He would argue that the Trial Court, therefore, rightly believed the sole testimony of PW.1 on the aspects of demand and acceptance of bribe. He would submit that it is not a mandatory rule that in every case, there must be a shadow witness to corroborate the decoy witness. In this regard, he relied on ***Mukut Bihari and another v. State of Rajasthan***[3]

a) Learned Spl.P.P. further argued that regarding trap incidents, the spot explanation of accused considerably varied with the subsequent explanation offered by him during the trial. Before the trap party, the accused never pleaded that PW.1 himself offered the bribe to accused and tried to keep the same in his hands and when refused, he kept the amount in the table drawer. Such an explanation was brought-forth as an afterthought only during the trial. Similarly, the presence of DW.1 and his watching the events transpired between PW1 and accused was also not stated before the trap party members. Hence, the said explanation of accused was also rightly rejected by the Trial Court. He thus prayed to dismiss the appeal.

[3] (2012) 11 SCC 642

6) The point for determination in this appeal is:

"Whether the conviction and sentence passed by the Trial Court are factually and legally sustainable?"

7a) **POINT**: The prosecution case in brief is that AO is working as Junior Assistant in the Office of Chilakaluripeta Municipality, Guntur District and hence he is a *public servant* within the meaning of Section 2(c) of PC Act. PW1 is a retired Sanitary Maistry and resident of Subhaninagar, Chilakaluripeta Town, Guntur District and in the month of January, 1999 he personally met PW3—Municipal Commissioner and presented the application for sanction of GIS during 1998-99. Then, PW3 called the AO and instructed him to do the work. Two days thereafter, PW1 again met the AO and enquired about his application. At that time AO demanded an amount of Rs.500/- as bribe to do the official favour and PW1 expressed his inability to pay the said amount. Thereafter, PW1 again met AO in his office and enquired about his pending work; then the AO reiterated his earlier demand and informed unless he paid the said amount, his work will not be done. Unwilling to pay the bribe, PW1 presented Ex.P2—report to PW6—Inspector, ACB, Guntur, who after causing discreet enquiries submitted the same to PW5—DSP, ACB, Vijayawada who in turn registered the case under Ex.P13, took up investigation and successfully laid trap by following due proceeding and after completion of investigation laid charge sheet.

b) AO denied the prosecution case and submitted his written statement that he never demanded nor accepted any money from PW1 and he was falsely implicated in a trap case. He stated that he was incharge of A1 seat which deals which collection of market taxes, leases etc. He further stated that PW1 after his retirement worked under a mutton contractor—Shaik Bhashu at Chilakaluripeta and on behalf of his contractor he used to collect the taxes unauthorisedly from the meat shop keepers @ Rs.300/- per day and not remitting the same to Municipality. Immediately he brought the said fact to the notice of the Commissioner, who ordered to notify by way of wide publicity to all the shop keepers to pay the slaughtering tax to Municipality only and not to PW1 and also by way of beating tom tom. Thereafter, PW1 approached him and picked up a quarrel stating that he (AO) was responsible for his loss of income and threatened with dire consequences and thereby bore grudge against him. On 17.12.1998, he was transferred from A1 seat to B1, relating to GIS etc. He received the application of PW1 on 23.01.1999 and immediately he enquired about the procedure for processing, which is to the effect that he has to secure the Service Register of the concerned employee and he has to collect the Group Insurance Contributions and payment challans from the Record Room and arrive at the total contribution of the employee during his service towards Group Insurance and interest has to be calculated and thereafter, it has to be entered in the Service Register and then only note has to be put up before the Commissioner for approval and knowing the procedure, he tried to secure the GIC challans from the record room. He was intimated that in the year 1997 fire accident had taken place in the office and most of the records were burnt for which a report was given and the same was intimated to Audit Officer, Local Funds. On 3.2.1999 when PW1 approached him, he informed all the above facts to him but he grew wild and left the place. He further stated besides his routine duties, Special Drive of collection of taxes was entrusted to him by the Commissioner. Therefore, pendency of application of PW1 was neither wilful nor due to negligence but because of the reasons beyond his control. On the date of trap when he was attending his duty as usual, PW1 approached him and enquired about his application and when he reiterated what he stated on the previous occasion, suddenly PW1 took some amount from his pocket and tried to keep the same in his hands and when he refused and pushed the same with his both hands, they fell in his table drawer and then PW1 hurriedly went away in spite of his calling and immediately ACB Police came, before whom he represented that neither he demanded nor accepted any bribe amount from PW1 and his spontaneous reply was not correctly noted. He further stated that because of grudge only PW1 implicated him in the trap case.

8a) The charges against AO are under Sections 7 and 13(1)(d) r/w 13(2) of PC Act. To bring home the charges levelled against accused, the prosecution shall establish:

(i) The accused was a public servant at the relevant time of offence;

(ii) Official favour relating to PW1 was pending with the accused to be performed;

(iii) The accused demanded and accepted or agreed to obtain any gratification other than the legal remuneration as a motive or reward for doing the official favour.

(iv) Whereas to sustain the charge under Section 13(1) (d) r/w 13(2) of PC Act, the prosecution shall establish that the accused being a public servant by corrupt or illegal means by abusing his position as a public servant obtained for himself or for any other person any valuable thing or pecuniary advantage.

b) The respective cases of the parties, the arguments on their behalf have already been succinctly stated supra. In the light of above, it has now to be seen whether the prosecution could able to bring home the charges levelled against accused.

9a) Admittedly, the accused being the Junior Assistant in the office of Chilakaluripeta Municipality during the relevant period was a public servant within the meaning of Section 2 (c) of PC Act. Sofaras pendency of official favour with the accused during the relevant period of demand of bribe is concerned, it is the version of PW1 that during 1998 he submitted an application to Municipal Commissioner for granting the benefit under GIS, but due to his ill-health he could not pursue his application. So, again he submitted Ex.P1—application dated 13.01.1999 to the Commissioner. Four or five days thereafter, he met the Commissioner and at that time AO was the concerned seat clerk. The Commissioner called AO in his presence and instructed him to dispose of his application at the earliest. A perusal of Ex.P1—application would show that it was presented by PW1 to the Commissioner on 13.01.1999 seeking to arrange Group Insurance Fund. His version is corroborated by PWs.2 and 3.

b) PW2 who worked as Accountant and in-charge Manger of Chilakaluripeta Municipal Office deposed that as a part of his duty he would place the applications received through tappal to the Commissioner and after putting initials of the Commissioner, he will distribute to the relevant sections. He further stated on 21.01.1999, he received Ex.P1—application and after it was initialled by the Commissioner, he marked the same to be dealt with by B1 clerk i.e. to the seat of AO. Thereafter, distribution clerk gave distribution No.178 after entering in Ex.P4—Distribution Register. Ex.P5 is the relevant entry at page No.18 showing Ex.P1—application was received by B1 clerk i.e. AO. PW2 identified the signature of AO on Ex.P5 stating that AO received Ex.P1—application on 23.01.1999. These facts spoken by PW2 were not denied by AO in the cross-examination. In fact, the cross-examination was made in respect of some other issue such as occurrence of fire accident in the Municipal Office during November, 1997.

c) PW3—Municipal Commissioner deposed that in January, 1999 PW1 approached her in connection with his GIS application. Then, she instructed AO to dispose of his (PW1) application as early as possible. In the cross-examination she stated she received Ex.P1—application on 21.01.1999 and two days thereafter PW1 approached her. PW1 was not cross-examined with regard to the aspect of her giving instructions to AO to dispose of his Ex.P1—application.

d) Thus, a close scrutiny of the evidence of PWs.1 to 3 and Exs.P1, P4 and P5 which are not controverted, would unerringly show that by the relevant date of demand and trap, official favour concerning to PW1 was indeed pending with AO.

10) Demand is concerned, PW1 deposed that two days after PW3 gave instructions to AO for early disposal of his application; he met AO who told him that it was not easy to process his application and demanded him Rs.500/- as bribe for processing; he kept quite and left the office; two days thereafter, again he met the AO in his office and then also AO reiterated his earlier demand of Rs.500/- as bribe; since there was no other go, he agreed to fulfil his demand and as he did not like to give him bribe, he presented Ex.P2—report to Inspector of Police, ACB, Guntur on 03.02.1999. This is the version of PW1 regarding the demand which is staunchly denied by AO. Admittedly, except the version of PW1 there is no other independent witness who saw AO demanding bribe. Therefore, the prosecution primarily relied upon the testimony of PW1 on the aspect of demand.

11) In ***Mukut Bihari***'s case (3 supra) cited by learned Spl.P.P, the Apex Court on perusal of several of its earlier decisions expressed the view that acceptance of the submission of accused that the complainant's version required corroboration in all circumstances, in abstract would attract the bribe taker to take illegal gratification in privacy and then insist corroboration of the prosecution, cannot be countenanced and therefore it was not necessary in the trap cases that the evidence of a reliable witness is necessary to be corroborated by another witness and ultimately held that though it was always desirable to have a shadow witness in the trap party

but mere absence of such a witness would not vitiate the whole trap proceedings when there was no contradiction in the depositions of the witnesses and their version was without any embellishment and improvement. Though the aforesaid observation of the Honourable Apex Court was made in the context of trap, the said observation would equally apply in respect of initial demand where there was no independent witness who noticed AO demanding bribe from complainant. Thus, in essence, if the evidence of PW1 is genuine, trustworthy and infuse confidence in the mind of Court on the aspect of demand of bribe, the same can be accepted without corroboration.

12a) Therefore, the crucial question is, whether the evidence of PW1 on the aspect of demand of bribe by AO is trustworthy to proceed further. Admittedly, by the date of alleged demand official favour was pending with AO. Further, PW1 is none other than the erstwhile employee of same Municipal Office and he knew AO. Therefore, apparently there cannot be any reason for him to foist a false case against AO unless the motive projected by AO is correct. Therefore, the veracity of PW1 has to be tested on the touch stone of motive.

b) The alleged motive of PW1 to foist a false case against AO is already discussed supra. It should be noted PW1 in his cross-examination denied the motive as suggested by AO. He denied to have worked under one Shaik Bhashu, the mutton contractor. However, he admitted to have paid monthly instalments of the mutton market on behalf of Shaik Bhashu on some occasions. PW1 denied the suggestion that he was in the habit of collecting slaughter tax from the meat shop keepers to a tune of Rs.300/- per day and that he know that AO reported this issue to Commissioner and as per the his instructions, tom tom was made in the market instructing the shop keepers that slaughter tax should be paid to the Municipality only and not to PW1. He denied the further suggestion that he approached AO and had altercation with him on the ground AO was responsible for the loss of his income and he filed a false complaint against AO. Thus, PW1 denied having any ill-motive against AO to foist a false case.

c) To probablise his version, the AO examined DW2 who was the retired Municipal Commissioner of Chilakaluripeta who deposed that he knew AO; during the year 1998, Shaik Ibrahim s/o Shaik Bhashu was the mutton contractor of Chilakaluripeta Municipality. Ex.X1 is the Council resolution of the Municipality making allotment of contract works. After retirement PW1 worked under Shaik Ibrahim and Shaik Bhashu as their clerk, he used to make payment of monthly kisti on their behalf vide Ex.X2. He further deposed that PW1 was illegally collecting slaughter fees from the mutton shop keepers at the rate of Rs.300/- and thus causing loss to municipal revenue and the same was reported to him (DW2) by one T.V.S.Nageswara Rao—Sanitary Maistry, on that PW3 instructed AO to put up a note on 21.01.1998, on which he passed orders on 21.01.1998 to the effect that the contractors cannot collect slaughter fees from other places and instructed to give notice to that effect. Ex.X3 is the note prepared by AO on which he passed orders. Ex.X4 is the copy of the notice dated 28.09.1998.

Since there was no improvement in the municipal revenue, on the submission of T.V.S.Nageswara Rao, he instructed AO to put up a note and again AO put up note on 29.09.1998 and he passed orders to make announcement in the mike and by way of beating tom tom stating slaughter fees should be paid to municipal officials only and not to private individuals. Ex.X5 is the note put up by AO on 29.09.1998. In the cross-examination he admitted that as per his instructions only AO prepared the office note but not on his own accord. He denied the suggestion that PW1 never worked under the contractor and he never collected slaughter fee unauthorizedly and he deposing falsehood.

13) I have given my anxious consideration to the evidence of DW2 and Exs.X1 to X5. Ex.X1 is the Municipal Council Resolution dated 23.03.1998 which shows that Chandramouli Meat and Fish market was allotted to the contractor by name Shaik Ibrahim for the year 1998-1999; X2 are the bunch of tax receipts, some of which contain the name of PW1 as payer. It should be noted that PW1 himself admitted that some times he paid tax on behalf of Shaik Ibrahim but not as his clerk. Exs.X1 and X2 are other documents which do not show PW1 as the clerk of Shaik Ibrahim or Bhashu. Then, X3 and X5 would show that one T.V.S.Nageswara Rao—Sanitary Maistry reported to the Commissioner that during year 1998-99 the contractor of meat and fish market was collecting tax from sheep slaughterers and Municipality was not getting revenue. On the instructions of Commissioner, note was put up by AO to the effect that as per the letter of T.V.S.Nageswara Rao dated 19.10.1998, PW1 who was the clerk of

contractor, was unauthorizedly collecting slaughtering charges and thereby revenue of the Municipality was plummeted from Rs.300/- per day to Rs.10/-. On that an order was passed by the Commissioner that slaughtering charges have to be paid to the staff of the Municipality but not others and to that effect a notification has to be issued through mikes and tom tom. Ex.X4 is the notification issued by the Municipality, wherein it is mentioned that T.V.S.Nageswara Rao—Sanitary Maistry should inform to the sheep slaughterers not to pay slaughter fee to the contractor of fish and meat and pay the same in municipal office.

14) So, the above evidence would only show that one T.V.S.Nageswara Rao made a complaint to the Commissioner against PW1. The AO only put up note on the instructions of Commissioner and except that he had no prominent role in the entire episode. Even X4—notification reads the name of T.V.S.Nageswara Rao but not AO. Hence, logically speaking PW1 had no reason to grind an axe against AO. Therefore, the argument of AO cannot be countenanced. No other reason was projected by the AO for foisting a false case against him. So when the ill-motive projected by AO is discarded, the evidence of PW1 regarding the demand of bribe by AO can be accepted to be true. It may be noted that the AO has argued that the preparation of bill relating to GIS of PW1 is a big task as he has to collect his service register and also the periodical payments made by him and to calculate the interest thereon to arrive the amount and during 1997 fire accident was occurred and some records were burnt and in January, 1999 he worked for only few days and due to all these reasons the work of PW1 was delayed and not for bribe

amount. This argument though apparently looks sound but does not have substance. It is true that as per the evidence of PW2 a fire accident was occurred in the Municipal Office in 1997 and some records were burnt. However, it is nobody's case GIS file relating to PW1 was also gutted in the fire. If that be the case, AO would have reported the same to the Commissioner at the first instance. Hence fire accident has nothing to do with the non-attending the file of PW1. It is also true that as per Ex.P6 the AO attended only six days in January, 1999. However, if really the short attendance during the relevant period and his engaging in other duty i.e. Special Drive for collection of taxes were the reasons for non-attending the work of PW1 and the same was informed to PW1, certainly PW1 can understand the difficulties of AO being the former employee of the very same office. So, the delay in attending the file of PW1 was only because PW1 has not fulfilled the demand of AO.

15) Now, coming to further demand and acceptance of bribe by AO and consequent trap, PW1 deposed on 04.02.1999 himself and trap party members reached the office of AO and on the instructions of TLO, he proceeded to the first floor of the office building and found AO present in his seat. He enquired AO about his work, then AO asked whether he brought the amount of Rs.500/-. Then, he took out a wad of currency notes and gave to AO who took the amount with his right hand and kept the same in his table drawer which was on his left side. Again PW1 requested AO to complete his work and came out of the office and gave pre-arranged signal to trap party members who came and caught the AO red-handed. The

version of PW1 regarding trap incident was sought to be corroborated by PW4—the mediator and PW5—TLO. It is to be noted here that as per the evidence of PWs.4 and 5 and as per MOs.5 and 6, the chemical test conducted to the fingers of both hands of AO yielded positive result indicating that he handled MO3—tainted bribe amount. It is also to be noted that MO3 was recovered from the left side table drawer of AO at his instance. Thus, the aforesaid evidence would clearly show that AO made a further demand and accepted the bribe amount. Therefore, the presumption under Section 20 of PC Act comes into play shifting the burden on the AO to rebut the same. The defence of AO is already narrated in the aforesaid para. His version is that when PW1 tried to give him bribe amount, he pushed with his both hands and then PW1 dropped the amount in the left side table drawer which was slightly opened and went away in spite of his calling.

Now, it has to be seen how far the explanation of AO is true.

16) As per PW4, the trap party reached the office of AO at about 2.40 PM and TLO sent PW1 into the office and they received the signal from PW1 at 3.20 PM. So, admittedly the trap was laid during the office hours. As per Ex.P10—sketch, the seats of AO and other staff members are located in the same hall. Though PW1 stated that when he went to the seat of AO he was alone in his seat and other office staff were not present, however, PW4 admitted in his cross-examination that in Ex.P12—second mediators report he mentioned that other staff members were there in their respective seats.

The first argument raised by the AO was that in view of presence of other staff members, the question of AO demanding bribe does not arise. This argument does not hold much water. It may be true that when PW1 went to the seat of AO, other staff members were present in their respective seats. However, that does not prevent AO from demanding and accepting amount from PW1. The reason is that PW1 was not a stranger but a former employee of that office. When he was paying amount, the staff members may not view the same with suspicion as they would not expect AO would demand and accept bribe from former employee. So, the presence of other staff members at the relevant time is not a consequence.

17) Then, the explanation of AO is concerned, in Ex.P2—second mediators report we do not find similar explanation as offered by him during trial. In Ex.P12 what is recorded is that after chemical test on his both hands yielded positive result, when TLO enquired AO about the tainted currency, AO pointed out towards left side of table drawer which was slightly opened and there a wad of currency notes were found in a slanting position and currency was recovered at the instance of AO. Then, the TLO questioned him as to how he came in possession of currency notes. The AO replied that a little while ago PW1 came to him and asked him to settle the work pending with him and he replied that he was not concerned with that work and at that time without heeding to his words, PW1 kept wad of currency notes on his table and went out. Then, DSP questioned him who would look after the work of GIS and why he accepted the currency placed in his table. Then he admitted that he has to submit note on the GIS file. He did not give

any satisfactory explanation for keeping the wad of currency notes in his table drawer. Ex.P12 was furnished to AO under his acknowledgement. So, in the earliest explanation it was not the case of AO that PW1 forcibly tried to give the amount to him on which he refused and pushed the amount with his two hands and then PW1 forcibly kept the amount in his table drawer. His version was that the amount was kept by PW1 on his table and went away. There is a marked difference between the two explanations.

18) In this regard, in ***Punjabrao***'s case (2 supra) cited by learned counsel for appellant/accused, it was held that if the explanation offered by the AO during Section 313 Cr.P.C. examination is found to be reasonable, then it cannot be thrown away merely on the ground that he did not offer the said explanation at the time of trap. There is no demur with this principle. Some times the accused though innocent and honest, due to fear and anxiety may not offer any explanation before the trap party members but he may come up with plausible explanation for possessing the tainted amount during trial. If such an explanation is found to be reasonable having regard to the facts and circumstances of the case, then the Court shall not discard the same on the sole ground that the said explanation was not offered at the earliest point of time. However, in my considered view, this principle will have no application when the AO deliberately changes his version from time to time as in the instant case. Therefore, the explanation offered by AO during trial cannot be accepted to be an honest one.

19) It is to be noted that to buttress his explanation AO examined DW1 who was the Attender in his office. His version is that on 04.02.1999 at about 3.50 PM, PW1 came to AO and tried to keep hundred rupee currency notes in his hands, when AO refused to receive and pushed the same, then PW1 dropped those currency notes in his table drawer and went out without heeding to the words of AO. Then, AO asked him (DW1) to call PW1. When he was calling PW1, he went down to ground floor and immediately 7 or 8 officials came to their office and informed that they were ACB officials and asked all the staff members not to move and they ascertained the identity of AO and when enquired AO informed them that he did not demand and accept any amount from PW1 and explained what had happened. It is to be noted that if really AO instructed DW1 to call back PW1 to take return of his amount, certainly AO would have mentioned this fact in his earlier explanation in Ex.P12. However, we do not find anything about DW1 in Ex.P12. It appears, since he is an Attender in the office, AO tried to build up a case for him through his witness.

20) So, on a conspectus of facts and evidence, it is clear that prosecution could by cogent evidence establish the vital ingredients of demand and acceptable of bribe by AO but, however, AO failed to substantiate his defence plea. Since his plea is not acceptable, the judgment in ***M.K.Harshan***'s (1 supra) relied upon by him will not come to his aid.

21) In the result, the conviction passed by the trial Court in C.C.No.2 of 2000 is confirmed. However, the sentence is concerned, considering the

submission of learned counsel for appellant that AO is now 60 years old and suffering with old age ailments and also that he has dependants on him, the substantive sentence imposed by the trial Court on each count for the offences under Sections 7 and 13(2) r/w 13(1)(d) of PC Act is reduced from RI two years to RI one year and six months. However, the fine imposed by the trial and default sentence shall hold good. Accordingly, this Criminal Appeal is allowed to the extent mentioned above.

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

U. DURGA PRASAD RAO, J

Date: 14.08.2018
scs/Murthy