HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL APPEAL No.992 OF 2006

JUDGMENT:

The present Criminal Appeal is preferred by the appellant - Accused Officer challenging the judgment, dated 12.07.2006, passed by the learned Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, in Calendar Case No.4 of 1995, wherein he was convicted for the offences under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988.

2. Vide the aforesaid judgment, the Accused Officer was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.200/- (Rupees two hundred only) and in default to undergo simple imprisonment for a period of one (01) month for the offence under Section 7 of the Prevention of Corruption Act, 1988 and so also for the offence under Section 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988. The trial Court ordered to run both the sentences of imprisonment concurrently after giving set off for the remand period.

3. The case of the prosecution is that the *de facto* complainant - Mohd. Yousufuddin, an unemployed youth, applied for loan of Rs.6,000/- on 30.07.1993 to start cloth business under Ex.P1 with Society for Training and Employment Promotion, Khammam, (hereinafter referred to as 'SETKHAM'). The Accused Officer was Junior Assistant in the said office. According to the prosecution, PW.1 approached the Accused Officer, who is concerned person to process the said application, for which he has demanded an amount of Rs.200/- as illegal gratification from PW.1.

i) Since PW.1 was not interested to meet the said demand of Rs.200/- of the Accused Officer, approached ACB Officials by way of lodging Ex.P2 - complaint, dated 04.03.1994. On receipt of the said complaint, ACB Officials registered a case on 05.04.1994, secured mediators, conducted pre-trap proceedings and laid the trap against the Accused Officer on 05.04.1994. During the trap, the ACB Officials recovered tainted currency notes of Rs.200/- from PW.1. Thereafter, PW.6, DSP, conducted post-trap proceedings including chemical tests etc.

ii) After completion of investigation, Sri Ch. Sudhaman Rao, Inspector of Police, ACB laid charge sheet against the Accused Officer for the offences punishable under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short 'the Act').

4. The trial Court after framing charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Act, examined the Accused Officer about the charges, for which the Accused Officer denied the said charges and requested for trial, and accordingly, the trial Court proceeded with the trial.

5. During trial, in order to substantiate its case, the prosecution has examined as many as nine witnesses, viz., PWs.1 to 9 and got marked Exs.P1 to P13 and exhibited MOs.1 to 8. The Accused Officer examined DW.1 in his support and filed Ex.D1. Exs.X1 to X3 were also marked.

6. The trial Court, on appreciation of evidence, and material available on record, found the Accused Officer guilty of the charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Act and accordingly, convicted him and imposed the sentences as stated above.

7. Feeling aggrieved by the said judgment, the appellant preferred the present appeal.

8. Heard Sri A. Hariprasad Reddy, learned counsel for the appellant - Accused Officer and Sri T. L. Nayan Kumar, learned Additional Standing Counsel - cum - Special Public Prosecutor for ACB Cases appearing on behalf of the respondent.

9. The learned counsel for the appellant contended that the Accused Officer never demanded bribe as alleged by the prosecution, there was no official favour that was pending with the Accused Officer at the relevant point of time. According to him, the Accused Officer was not in a position to do any official favour to PW.1 since he was only a Junior Assistant in SETKHAM and the loan was already sanctioned. The Accused Officer was implicated in a false case and the prosecution failed to prove the twin requirements of demand and acceptance beyond all reasonable doubt and, therefore, the conviction recorded by the trial Court is without any basis. With the said contentions, the learned counsel for the appellant prayed for setting aside the impugned judgment and acquittal of the Accused Officer.

10. On the other hand, supporting the judgment, the learned Special Public Prosecutor for ACB Cases vehemently argued that the prosecution has proved the guilty of the Accused Officer beyond reasonable doubt like any other criminal case by producing cogent and convincing evidence. He has referred to the depositions of PWs.1 and 3 to 9 and also Ex.P2 - complaint, Ex.P3 - statement and Exs.P7 and 10 - first and second mediators' reports. According to him, the trial Court recorded the

conviction by giving specific findings and, therefore, there is no error in it and prayed for dismissal of the appeal.

11. In view of the above said contentions, the following points arise for consideration:

i) Whether the prosecution could prove the guilt of the Accused Officer under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988? and

ii) Whether the judgment of the trial Court is sustainable factually and legally?

POINT Nos. (i) & (ii):

12. According to the prosecution, PW.1 - *de facto* complainant lodged Ex.P2 complaint on 04.03.1994 complaining about demand of Rs.200/- towards illegal gratification by the Accused Officer to prepare Ex.P-1 - loan application of PW.1 for sanction of an amount of Rs.6,000/-. The ACB Officials registered Ex.P-11 FIR and after following the procedure, laid trap against the Accused Officer and after completing the investigation laid the charge sheet against the Accused Officer for the offences under Sections 7 and 13 (1) (d) read with 13 (2) of the Act.

13. According to the prosecution, PW.1 specifically complained about the demand of the said amount of Rs.200/- towards illegal gratification. During trial, PW.1 categorically deposed about the said demand by reiterating the contents of Ex.P2 - complaint.

14. PW.2 - Sri Sk. Abdul Sharief, Painter, deposed that he has also applied for loan like PW.1 and in the said process of obtaining loan they got

acquaintance with each other. Since he turned hostile, he was cross-examined by the prosecution.

15. Sri N. Rama Krishnaiah, Mandal Development Officer, Yellandu, Khammam District, PW.3, deposed about receipt of application from PW.1 for sanction of loan and forwarding the same to the office of the Accused Officer.

16. Sri Bruhaspathi Reddy, Manager, Andhra Bank, Yellandu Branch, Khammam, PW.4, deposed about giving consent by their bank for sanction of loan of Rs.6,000/- to PW.1. Sri A. Appi Reddy, Veterinary Assistant Surgeon, MIPC (SC), Khammam, PW.5, mediator to the trap, deposed about the trap events that were incorporated in Exs.P-7 and P-10 - pre-trap and post-trap proceedings respectively.

17. Sri P. L. Raju, DSP, ACB, Warangal Range, Warangal, Trap Laying Officer, PW.6, deposed about issuance of First Information Report, conducting pre-trap proceedings after securing the mediators, laying trap against the Accused Officer, conducting the chemical tests, recovery of tainted currency notes, recording post-trap proceedings and subsequent searches etc.

18. Sri P. Ramesh Babu, Manager, SETKHAM, Khammam, PW.7, deposed about the processing of PW.1 file for sanction of loan amount. Smt. P. Vijaya Lakshmi, Assistant Secretary to Government, Planning Department, Secretariat, Hyderabad, PW.8, deposed about the issuance of Government Order for initiation of prosecution under the provisions of the Act against the Accused Officer. Sri P. Vengalaiah, Inspector of Police, ACB, Khammam, PW.9 deposed about his taking up investigation from

PW.6, examination of witnesses, recording statements of relevant witnesses and filing charge sheet against the Accused Officer.

19. In support of his evidence and to disprove the prosecution case, the Accused Officer examined Sri K. Padmanabham, Typist in SETKHAM at the relevant point of time. He deposed that the Accused Officer was his colleague; he came to know about the trap by the ACB Officials on 05.04.1994. According to him, Sri M.A. Khaleel and Sri M.A. Gaffar were working as Senior Assistants in his office and the Accused Officer used to claim that he was senior to them. He further deposed that he cannot say with regard to *inter se* seniority dispute among the above said three persons, he took charge under Ex.D.1 after suspension of the Accused Officer.

20. During cross-examination, PW.1 categorically admitted that he has applied for loan of Rs.6,000/-, whereas in Ex.P-1 he has shown Rs.25,000/- against column No.12 and he has also stated about the said amount of Rs.25,000/- in his statement under Section 161 of Cr.P.C. According to him, the loan was sanctioned by the Andhra Bank. In the statement recorded under Section 161 of Cr.P.C., he stated that Sri Khaleel, Clerk was dealing with his file and Sri Khaleel asked him to come after fifteen days for furnishing sureties and as such after fifteen days he went to the office to meet the said Khaleel. He has denied that Khaleel is his cousin. Prior to suspension of Khaleel, he never seen the Accused Officer nor met him.

21. The entire case revolves around the loan of PW.1. According to him, he has applied for loan of Rs.25,000/- on 30.07.1993 under Ex.P1 for the purpose of cut piece business. According to Ex.P1, he has applied for

the loan with State Bank of Hyderabad, Yellandu Branch. As per Ex.P6, dated 28.09.1993, proceedings issued by the District Collector/Chairman, SETKHAM, Khammam, sanction was accorded for release of an amount of Rs.21,000/- on the terms mentioned therein and the name of PW.1 was shown at serial No.6 of the statement appended thereto. As per the said statement, Rs.3,000/- is the margin money, Rs.3,000/- bank loan, Rs.6,000/- outlay and name of the bank is Andhra Bank, Yellandu. The said loan was under 'APP Scheme'. The said statement also discloses that 'recommended for sanction of Rs.21,500/- towards Margin Money Loans to eight beneficiaries of Yellandu Mandal'. As per Ex.P6, beneficiaries including PW.1, has to open a saving bank account, bank will proportionately debit the margin money along with bank loan, the bank will utilize the margin money and also release the bank loan portion within a period of three months. As per the note appended to Ex.P6, the said margin money was sanctioned to the beneficiaries under APP/SES Programme, Distribution of M.M. sanction orders during the celebrations of Gandhi Jayanthi (2.10.1993). But, unfortunately, none of the witnesses of the prosecution could depose about the scheme of the loan and complete procedure to be followed. It is relevant to note that the prosecution did not examine any witness to speak about the said procedure in its entirety. However, as discussed above, PW.1 applied for loan under Ex.P1 on 30.07.1993 and margin money was sanctioned under Ex.P6 and according to Ex.P6, the margin money sanction orders would be distributed to the beneficiaries during Gandhi Jayanthi Celebrations to be held on 02.10.1993. Ex.P4 is the letter dated 23.08.1993 issued by the Andhra Bank, Yellandu Branch informing about selection of candidates under SETKHAM Scheme 1993-94 and in the said letter PW.1

name is mentioned at serial No.6 and it is also requested the Mandal Development Officer to send proposals to SETKHAM office at the earliest and on receiving margin money, he would ground the units. Ex.P5 is the letter dated 19.09.1993, issued by Mandal Development Officer, Yellandu, to the Chief Executive Officer, SETKHAM, submitting the consent given by the Manager, Andhra Bank, Yellandu, dated 23.08.1993, with a request to release the eligible margin money at an early date. Ex.P6 is the proceedings dated 28.09.1993 issued by the District Collector/Chairman, SETKHAM, Khammam, informing about sanction of margin money loan to the candidates under S.E.S./ESP Scheme.

22. In the said background, the prosecution has to prove that whether any official favour was pending with the Accused Officer as on the day of trap and whether the Accused Officer demanded illegal gratification from PW.1 to do the said official favour and if so, whether the Accused Officer accepted the same towards bribe.

23. In Ex.P2, PW.1 complained that he has applied for a loan of Rs.6,000/- with SETKHAM, Khammam about six months back and he came to know that about preparation of file about two months back. It is further stated in Ex.P2 that about one month back PW.1 met the Accused Officer, who is the Record Assistant in SETKHAM and enquired about his file and the Accused Officer in turn informed PW.1 that he would process the Yellandu Section file after sometime. Thereafter, PW.1 met the Accused Officer five to six times who in turn informed him that file was not ready and C.O. did not sign the same. According to PW.1, he met the Accused Officer lastly on 28.02.1994 and the Accused Officer demanded an amount

of Rs.200/- towards bribe for preparation of file. The Accused Officer requested PW.1 to meet him on 05.03.1994 with the said amount of Rs.200/- along with photograph.

24. From Exs.P1 and P6 it appears that PW.1 applied for loan of Rs.25,000/- and sanction was Rs.6,000/-. Margin money was also mentioned in the above said proceedings.

25. PW.1 deposed that after coming to know about sanction of his loan, he went to SETKHAM in February, 1994 and came to know that the Accused Officer, a Clerk in SETKHAM, who would look after his loan. PW.1 met the Accused Officer on 28.02.1994 finally, on which day the Accused Officer demanded an amount of Rs.200/- for preparing the file. In fact, during chief-examination, PW.1 deposed that initially the Accused Officer demanded an amount of Rs.300/- and finally the Accused Officer accepted for Rs.200/- with a request to come on 05.03.1994 with the said amount of Rs.200/-. According to PW.1, he do not want to pay the said amount and, therefore, with the help of PW.2, met the ACB Officials and lodged Ex.P2-complaint. But, in Ex.P2, complaint, PW.1 did not mention about the said initial demand of Rs.300/- by the Accused Officer and he has stated demand of only Rs.200/-. During cross-examination, PW.1 categorically admitted that he has stated the name of Khaleel as the Clerk dealing with his file in his statement under Section 161 of Cr.P.C. and Khaleel asked him to come on after fifteen days for furnishing sureties, fifteen days thereafter he went to the office to meet the said Khaleel and he was informed about Khaleel suspension. He further admitted that prior to suspension of Khaleel, he never seen the Accused Officer nor met him.

26. PW.2, another applicant of the said loan, deposed that he was not sanctioned the loan by the date of trap and after trap his loan was sanctioned. On 28.02.1994 he and PW.1 went to SETKHAM office in connection with loan, they met the Accused Officer who was working in that office, the Accused Officer has not directly demanded him to pay Rs.200/- in connection with his loan, but PW.1 told him that the Accused Officer demanded an amount of Rs.200/- for issuing proceedings. He further deposed that he and PW.1 went to ACB Office on 05.03.1994. It is relevant to note that according to PW.1, he met the Accused Officer finally on 28.02.1994 on which date according to PW.1, the Accused Officer demanded an amount of Rs.200/- to prepare the loan file. The fact of meeting the Accused Officer on 28.02.1994 was deposed by PW.2. But, PW.2 categorically deposed during chief-examination that the Accused Officer has not directly demanded him to pay Rs.200/- in connection with his loan. According to PW.2, PW.1 told him about the demand of Rs.200/- by the Accused Officer. Therefore, except PW.1, there is no other witness of prosecution deposed about the said demand of Rs.200/- by the Accused Officer. To prove the said demand, there is no other direct or circumstantial evidence produced by the prosecution. As discussed above, in fact, PW.2, a prosecution witness, himself deposed that the Accused Officer did not demand him to pay the said amount of Rs.200/- and it is PW.1, who informed him about demand of Rs.200/- from PW.1 towards bribe. In fact, the prosecution is silent with regard to the delay in lodging Ex.P2 complaint from 28.02.1994 to 04.03.1994.

27. As discussed above, none of the prosecution witnesses deposed about the complete procedure right from application of loan to disbursement

of the loan under the said Self Employment Scheme with SETKHAM except PW.7 to some extent. PW.1 himself deposed in chief examination about his statement under Section 161 Cr.P.C. wherein it is mentioned about his meeting Khaleel, a Clerk in SETKHAM for persuasion of his file and Mr. Khaleel requested him to come after fifteen days for furnishing sureties, meeting Khaleel after fifteen days etc. Mr. P. Ramesh Babu, Manager, SETKHAM, during relevant time, PW.7 deposed that Khaleel was in-charge clerk of Yellandu and he was placed under suspension on 22.02.1994 on the ground of misappropriation. Thereafter, the Accused Officer was kept as in-charge for that division, as per the orders of the Collector, he has conducted *panchanama* with regard to the file contained in the almirah and handed over the charge to the Accused Officer on 23.02.1994. Ex.X1 is the original *panchanama* which bears his signature. Whereas, in Ex.P2 dated 04.03.1994, he mentioned that about a month back he met the Accused Officer in SETKHAM office and thereafter he met the Accused Officer about five or six times and he met the Accused Officer finally on 28.02.1994. The said versions of PW.1 with regard to meeting the Accused Officer and demand of alleged bribe and the contradictions in the date, the concerned clerk dealing with preparation of his file etc., are not trustworthy.

28. According to Ex.X1 and deposition of PW.7 supported DW.1, charge was handed over to the Accused Officer only on 23.02.1994 with regard to Yellandu division. Admittedly, PW.1 loan belongs to Yellandu division and the Accused Officer was in-charge of Yellandu division only from 23.02.1994. PW.6, during cross-examination categorically admitted that no margin money was released in pursuance of Ex.P6, in fact, on that issue, the said Khaleel was suspended in the month of October, 1993. PW.7

has also categorically admitted that a general circular was issued to dispose of the relevant files by 31.03.1994, but he has not specifically told the Accused Officer at the time when the Accused Officer took charge to dispose of any particular file. He further admitted that it would take fifteen to twenty days for the Accused Officer to know about each file taken by him under Ex.X1, they have got repaired the locks broken while conducting *panchanama* and got them repaired and given to the Accused Officer. According to him, the files handed over to Accused Officer would have access to Technical Assistant - cum - Supervisor as he has to prepare the feasibility reports. The said admissions of PW.7 coupled with deposition of PW.1, PW.2 and DW.1, the prosecution failed to prove that there was official favour pending with the Accused Officer as on 28.02.1994 i.e., preparation of PW.1 loan file. It is the legal obligation on the part of the prosecution to prove the said procedure by producing cogent evidence to establish that there was official favour pending with the Accused Officer on the day of demand and trap. In view of the above discussion, the prosecution miserably failed to establish the said fact of official favour that was pending with the Accused Officer either on the date of demand or on the day of trap.

29. As discussed above, the prosecution has to prove the demand and acceptance of illegal gratification by the Accused Officer to do the said official favour. To prove the said fact of demand, the prosecution relied upon the depositions of PWs.1 and 2. PW.1 himself stated in Ex.P2 complaint dated 04.03.1994 that he met the Accused Officer about a month back to know the status of his file, for which the Accused Officer informed him that he would not prepare the Yellandu division files and he would

prepare the same thereafter. According to PW.1, he met the Accused Officer five or six times thereafter, for which the Accused Officer replied him stating that his file was not ready and C.E.O. did not sign. On 28.02.1994, PW.1 met the Accused Officer in his office finally and on which day, according to PW.1, the Accused Officer demanded Rs.200/- for preparation of his file and requested PW.1 to come on 05.03.1994. There was no explanation either by PW.1 or any prosecution witness about the said delay from 28.02.1994 to 05.03.1994.

30. As discussed above, the Accused Officer took charge only on 23.02.1994 under Ex.X1 on suspension of Mr. Khaleel, concerned Clerk dealing with Yellandu division files. Even, DW.1 deposed that M.A. Gaffar was transferred to Warangal, relieved on 21.01.1994, Khaleel was placed under suspension, though under Ex.X2, the said Gaffar was directed to hand over the charge of his post to the Accused Officer and suspension of Khaleel, they have not handed over the charge to the Accused Officer as per Ex.X2 and Ex.P12, dated 21.01.1994. Therefore, their C.E.O. after obtaining permission from District Collector, Khammam, conducted *panchanama* and handed over the charge of posts of two Senior Assistants to the Accused Officer on 23.02.1994 under Ex.X3 proceedings dated 23.02.1994. Therefore, the Accused Officer was in-charge of the Yellandu division/section only from 23.02.1994 and according to PW.7, a general circular was issued to dispose of relevant files by 31.03.1994, he did not specifically instruct the Accused Officer to comply the same at the time of handing over charge. Even according to PW.7, it would take 15-20 days for the Accused Officer to know about each file taken by the Accused Officer under Ex.X1.

31. PW.2, a prosecution witness, a loanee, categorically deposed in chief examination that the Accused Officer has not directly demanded him to pay an amount of Rs.200/- in connection with his loan application and it is PW.1 who informed him about the said demand of Rs.200/- towards bribe for issuing proceedings. In fact, the entire evidence does not disclose the gap between 28.02.1994 to 05.03.1994 except PW.1 saying that the Accused Officer requested him to come and meet him on 05.03.1994. The relevancy of 05.03.1994 was not explained. The entire evidence of prosecution is also silent with regard to lodging of Ex.P2 complaint by PW.1 on 04.03.1994 though according to PW.1 the demand of bribe was finally on 28.02.1994.

32. As discussed above, Ex.P1 loan application was on 30.07.1993 and Ex.P4 selected list of Andhra Bank was on 23.08.1993, Ex.P5, letter by the Mandal Development Officer to the Chief Executive Officer, SETKHAM was on 13.09.1993 and the proceedings of the District Collector/Chairman, SETKHAM, Khammam was on 28.09.1993. The prosecution witnesses including PW.1, PW.2 and PW.7 are silent with regard to the said delay of alleged demand of bribe from the said date to 28.02.1994, the day on which according to PW.1, the Accused Officer finally demanded the bribe. In fact, as per Ex.P6, the bank would utilize the margin money and release bank loan portion within a period of three months and the bank should return the utilized money to the society after three months. The very same exhibit Ex.P6 also discloses the fact that the margin money sanction orders would be distributed to the beneficiaries during Gandhi Jayanthi Celebrations held on 02.10.1993.

33. In view of the above said discussion, the prosecution miserably failed to prove the demand of illegal gratification by the Accused Officer from PW.1. It is settled principle of law that the prosecution has to prove the twin requirements of demand and acceptance of bribe by the Accused Officer to do an official favour. In the present case, the prosecution failed to prove the demand of illegal gratification by the Accused Officer. It is also settled principle of law that the prosecution has to prove the twin requirements of demand and acceptance like any other criminal offence by producing cogent reasons. Proving one alone is not sufficient. As discussed above, prosecution failed to establish the official favour that was pending with the Accused Officer and the demand of illegal gratification. Therefore, the question of acceptance of said illegal gratification by the Accused Officer from PW.1 does not arise. It is also settled principle of law that mere recovery of tainted money is not sufficient to record the conviction and the prosecution has to prove the demand and acceptance beyond all reasonable doubt.

34. The defence taken by the Accused Officer is that he is having disputes with regard to *inter se* seniority with Mr. M.A. Gaffar and Khaleel, Senior Assistants of the very same office. It is relevant to note from the record that that both the said Gaffar and Khaleel were placed under suspension and disciplinary proceedings were initiated against them. PW.7 - Manager, SETKHAM during the relevant period categorically admitted about *inter se* disputes among the said M.A. Gaffar, Khaleel and the Accused Officer. DW.1 also deposed that the Accused Officer used to claim that he was senior among himself and the said M.A. Gaffar and Khaleel. It appears that there are strained relations between the said M.A. Gaffar,

Khaleel and the Accused Officer with regard to *inter se* seniority. It is the contention of the Accused Officer that to deprive him the promotion and also due to *inter se* seniority, at the instance of Mr. Gaffar, PW.1 lodged complaint and implicated the Accused Officer in a false case. According to the Accused Officer, PW.1 is cousin of Mr. Gaffar, but PW.1 denied the said suggestion during cross-examination. PW.2 deposed that DSP, ACB called him and PW.1 to his office on 05.03.1994, after they reaching ACB Office, ACB Official called PW.2 alone inside and after 10-15 minutes, PW.1 was also called inside. The said fact proves that the trap procedure lacks transparency. PW.2 further deposed that PW.1 and himself reached the office of the Accused Officer on 05.03.1994 at about 11.00 a.m. or 11.30 a.m., PW.1 asked him to wait outside, so he did not enter into the office room of the Accused Officer along with PW.1. PW.2 further deposed that PW.1 told him that if the Accused Officer accepts the amount, he would come out and inform him that fact on which PW.2 can give a pre-arranged signal. Sometime thereafter, PW.1 came out and asked him to give a signal on which he relayed the pre-arranged signal to the trap party on noticing which the trap party entered into the office of the Accused Officer, DSP, ACB got the door closed keeping him outside and after 20 minutes thereafter, he was asked to come inside. He further deposed that his signature was obtained by the DSP and sent him away. Later he was not examined by the Inspector of Police, ACB and his statement was not recorded. PW.2 and PW.1 were taken to Court at Khammam, but only PW.1 made a statement before the Court and PW.2 has not made any statement before the Court. As discussed above, PW.2 turned hostile and during cross-examination, nothing was elicited by the prosecution from PW.2. Thus, there is no other evidence supporting the evidence of PW.1 with regard to acceptance of bribe amount and the demand.

35. The learned Special Public Prosecutor by referring Section 8 of the Evidence Act would contend that the Accused Officer received the said amount of Rs.200/- from PW.1. The fact of not throwing the said amount of Rs.200/- itself establishes that the Accused Officer received the said amount towards bribe. According to him, no spot explanation was given by the Accused Officer, but in Ex.P10, mediators report, it is mentioned that "when questioned about the said currency notes, Sri K. Pitchaiah could not give any explanation and kept in a nervous mood". It is relevant to note that the Accused Officer was only a Junior Assistant at the relevant point of time and may be he felt nervous on seeing the ACB Officials. Not giving spot explanation by the Accused Officer cannot be taken advantage by the prosecution. The learned counsel for the appellant Accused Officer relied upon the principle enunciated by the Hon'ble Supreme Court in the case **Punjabrao v. State of Maharastra**[1], wherein it was held that in a case where the Accused Officers offered an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to be established, the Accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability. According to him, in the present case, the Accused Officer has established his explanation by preponderance of probability.

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[1]. (2002) 10 SCC 371

36. According to the learned Special Public Prosecutor, once the trap and recovery of tainted amount is admitted and the demand and acceptance of bribe were established through prosecution witnesses including circumstantial evidence, benefit of presumption under Section 20 of the Act can be drawn. According to him, the prosecution has proved the guilty of the Accused Officer beyond reasonable doubt and the trial Court on consideration of evidence, both oral and documentary, convicted the Accused Officer. There is no error in the impugned that warrants interference by this Court in the present appeal.

37. The trial Court recorded the conviction with a finding that Ex.P6 conditions may not be applicable to Ex.P1, the Banks will consider the unit cost, economic viability of the loanee and his repaying capacity while sanctioning of loan, there is no evidence or circumstance in this case that the SETKHAM informed PW.1 by issuing proceedings that such a loan was sanctioned to him with a request to furnish sureties. With the said finding, the trial Court held that official favour was pending with the Accused Officer. The said finding is not based on the record and evidence both oral and documentary, more particularly when the charge itself in respect of Yellandu division/section was handed over to the Accused Officer only on 23.02.1994. The question of PW.1 approaching the Accused Officer before a month to Ex.P2, meeting him five or six times and finally meeting him on 28.02.1994 on which the Accused Officer made a demand of Rs.200/- towards bribe does not arise. It appears that the trial Court lost sight of the said fact and recorded conviction. The trial Court also held that the evidence of PW.2 is not at all helpful, there is material to prove the demand and acceptance in Ex.P10 that PW.2 accompanied PW.1 to the office of the

Accused Officer and witnessed the demand and acceptance of bribe - MO.3 by the Accused Officer from PW.1 on the date and at the hour of trap. The said finding is not based on cogent reasons and it is contrary to the evidence on record. As discussed above, PW.2 was declared hostile and nothing was elicited from him during cross-examination by the prosecution. When such is the fact, the trial Court simply cannot brush aside the evidence of PW.2.

38. The learned Public Prosecutor relied upon the principle held in the case of **Prakash Shankarrao Kamble v. State of Maharastra**[2]**; M. Narsinga Rao v. State of A.P**[3], **Syed Yousuf Hussain v. State of A.P.**[4]. The principles held in the said judgments are on a different set of facts and, therefore, they are not helpful to the facts of the present case, since in the present case, the prosecution failed to establish the official favour that was pending with the Accused Officer, demand and acceptance of bribe by the Accused Officer to do an official favour beyond all reasonable doubt like any other Criminal offence. This Court is having power to re-appreciate the entire evidence in the present case under Section 374 of Cr.P.C.

39. The learned Public Prosecutor referred to Section 8 of the Indian Evidence Act, 1872, which says about motive, preparation and previous or subsequent conduct. As discussed supra, the said provision is not at all useful in the facts and circumstances of the present case. In view of the said finding, presumption under Section 20 of the Act do not attract in the case on hand.

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[2]. 2000 Crl.L.J. 2110
[3]. (2001) 1 SCC 691
[4]. Crl.A.No.539 of 2013 (Arising out of SLP (Crl) No.6354/2012)

40. In view of the above discussion, the Accused Officer is entitled for acquittal and accordingly, impugned judgment is not sustainable, both under law and on facts, and therefore the same is hereby set aside.

41. In the result, the present Criminal Appeal is allowed and the conviction and sentence recorded by the learned Principal Special Judge for SPE & ACB Cases, Hyderabad, in Calendar Case No.4 of 1995 vide judgment dated 12.07.2006 against the appellant - Accused Officer for the offences punishable under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988, are set aside. The Accused Officer is on bail. The bail bonds of the Accused Officer shall stand cancelled.

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

JUSTICE K. LAKSHMAN

15th November, 2019
Mgr