

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+CRIMINAL APPEAL No.487 OF 2006

% Delivered on: 15-11-2019

Between:

Sk. Hussain S/o Basheermiya,
Aged about 65 years, Occ: Bank Employee,
R/o Ankashapur village, Velpur Mandal,
Nizamabad District. .. Appellant

Vs.

\$ The State of A.P., rep.by its Inspector of Police,
Anti-Corruption Bureau, Nizamabad Range,
Nizamabad. .. Respondent

! For Appellant : Mr. K. Venumadhav,
^ For Respondent : Mr. T.L. Nayan Kumar,
Addl. Standing Counsel - cum -
Special Public Prosecutor for
ACB Cases.

< Gist :

> Head Note :

? Cases Referred :

1. 2014 (2) ALD (CrL.) 73 (SC)
2. (2015) 10 SCC 152
3. (2009) 6 SCC 587
4. (2011) 6 SCC 450
5. (2013) 12 SCC 406
6. (2015) 3 SCC 247
7. 2018 (2) ALD (CrL.) 952 (SC)
8. 2001 CrL.L.J. 515

HON'BLE SRI JUSTICE K. LAKSHMAN**CRIMINAL APPEAL No.487 OF 2006****JUDGMENT:**

Vide order dated 28.11.2014 in Criminal Appeal No.2518 of 2014, the Hon'ble Supreme Court set aside the judgment dated 05.09.2014 passed by this Court in Criminal Appeal No.487 of 2006 and remanded the matter back to this Court for fresh hearing after giving an opportunity to the Accused Officer to be represented before this Court, if necessary, through his advocate or through an advocate appointed by the Legal Services Committee.

2. Accordingly, the matter was taken up for hearing and heard Sri K. Venumadhav, 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.

3. Feeling aggrieved by the judgment, dated 14.03.2006, passed by the learned Principal Special Judge for SPE & ACB Cases, Hyderabad, in Calendar Case No.28 of 2001, the Accused Officer preferred the present appeal. Vide the aforesaid judgment, the trial Court found the Accused Officer guilty of both charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short 'the Act'). The trial Court sentenced the Accused Officer to undergo rigorous imprisonment for one year and two years and to pay a fine of Rs.1,000/- and Rs.2,000/- and in default to undergo simple imprisonment for three (03) months and six (06) months respectively.

4. The facts leading to the present case are:

(i) The Accused Officer was Supervisor in District Co-operative Central Bank (DCCB), Armoor Branch, Nizamabad District at the relevant time.

(ii) Sri Pendi Pentoji, PW.1 - *de facto* complainant, resident of Argul village of Jakranpally Mandal, Nizamabad District, an agriculturist, absolute owner of Acs.3.20 guntas in all, applied for agricultural loan for the purpose of digging bore-well and erection of electric motor.

(iii) The said loan was sanctioned after following the due procedure, such as verification of documents, physical inspection of land and submission of quotations etc. The cheques were prepared and were kept with the Accused Officer for the purpose of handing over to PW.1. According to the prosecution, the Accused Officer demanded an amount of Rs.1400/- towards bribe from PW.1 to hand over the said cheques.

(iv) Since the said Pendi Pentoji was not interested in meeting the said demand of bribe, approached the ACB Officials on 08.06.1999 and lodged Ex.P-2 complaint.

(v) Thereafter, PW.8, DSP, ACB, conducted trap by following the procedural aspects including pre-trap and post-trap in the presence of mediators. After completion of investigation, the ACB Officials laid a charge sheet and the same was taken on file vide C.C. No.28 of 2001.

(vi) The trial Court framed charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Act, Accused Officer denied the charges, claimed for trial and the trial was conducted. During the trial, PWs.1 to 9 were examined, Exs.P1 to P19 were marked and Exs.MOs.1 to MO.8 were exhibited. DW.1 was examined on behalf of defence. On consideration of

evidence, both oral and documentary, the trial Court, convicted the Accused Officer vide judgment dated 14.03.2006 in C.C. No.28 of 2001 and sentenced him as stated supra.

5. Feeling aggrieved by the said judgment, the Appellant - Accused Officer preferred the present appeal.

6. Heard Sri K. Venumadhav, 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.

7. Impugning the judgment, the learned counsel for the appellant contended that in case of this nature, the prosecution must prove the guilt of the Accused Officer with cogent evidence, establish all vital ingredients, such as demand, acceptance of bribe and recovery of the same. According to him, all of them would constitute into one integrated incident and one ingredient depends upon other. Therefore, in such a case, all the above vital ingredients must be proved by the prosecution beyond reasonable doubt. He further contended that mere proving of trap incident *de hors* the other vital ingredients will not lead success to the prosecution.

i) The learned counsel further contended that the prosecution failed to establish the above vital ingredients of demand and acceptance by the Accused Officer to do an official favour to PW.1. It is his further contention that the Accused Officer received an amount of Rs.1400/- from PW.1 towards part payment of share capital and membership fee but not towards bribe. According to him, PW.1, for the purpose of obtaining agricultural

loan, shall become member of the society by paying membership fee and he has to pay share capital which is 10% of the loan amount. It is the duty of the Accused Officer to collect the said amount of share capital and membership fee before disbursement of loan and handing over of cheques to loanee - PW.1. Having received the said amount of Rs.1400/- from PW.1, the Accused Officer could not issue receipts since he was not having receipt book with him at that particular point of time and receipt book was with PW.3, who in turn informed the Accused Officer that the same are not readily available. Therefore, the Accused Officer requested PW.1 to get the balance amount of share capital and membership fee, obtain membership and collect the cheques, for which PW.1 informed the Accused Officer that he would come tomorrow and pay the balance amount and collect the cheques. The learned counsel for the appellant further contended that the Accused Officer was implicated in a falsely case by the ACB Officials in collusion with PW.1. According to him, the prosecution has miserably failed to prove the guilt of the Accused Officer by producing cogent and convincing evidence and on the other hand, he could establish that he was implicated in a false case by referring various contradictions of prosecution witnesses and their admissions during cross-examination and also by examining Mr. G. Sudarshan Reddy, Staff Assistant in DCC Bank as DW.1. With the said contentions, he prayed to allow the appeal.

8. *Per contra*, supporting the impugned judgment, the learned Standing Counsel - cum - Special Public Prosecutor for ACB Cases would contend that though PW.1 - *de facto* complainant turned hostile, he was cross-examined. According to him, the ACB Officials have conducted the trap by following the procedure including pre-trap and post trap and

prepared first and second mediators' report, i.e., Exs.P3 and P4. The prosecution has examined PW.2, one of the mediators, who has specifically deposed about the entire trap incident including his presence along with PW.1, enquiry made by the Accused Officer with regard to the said amount of Rs.1400/- with PW.1, receipt of the said amount of Rs.1400/- from PW.1 by the Accused Officer. He further deposed about giving pre-arranged signal and further proceedings conducted by PW.8 - DSP. The learned Public Prosecutor further referred the deposition of PW.3, Mr. G. Ganga Reddy, Secretary of the Cooperative Society, who deposed about the receipt of application from PW.1 to sanction of the loan, preparation of cheques and keeping the said cheques with the Accused Officer with instructions to hand over the said cheques to PW.1 on collection of share capital amount and membership fee. PW.4, the then Accountant and in-charge Manager of DCC Bank deposed about inspection of land of PW.1, submission of report to the Manager. The proprietor of M/s. Triveni Engineering, deposed about issuance of quotations to PW.1 with regard to digging of bore-well and erection of submersible pump set vide Ex.P13 and P14.

i) The learned Public Prosecutor further referred the deposition of Mr. Venkanna, DSP, ACB - Trap Laying Officer, PW.8, who deposed about the receipt of Ex.P2 complaint from PW.1, securing of mediators, conducting trap proceedings, both pre and post and recovery of tainted currency notes from the Accused Officer in the presence of mediators.

ii) According to the learned Special Public Prosecutor, the trial Court gave specific reasons in the impugned judgment by considering the evidence on record, both oral and documentary. According to him, there is a specific

finding by the trial Court that official favour was pending with the Accused Officer at the relevant point of time, he has received tainted currency notes from PW.1 towards gratification and, therefore, the prosecution could prove both the charges under Sections 7 and 13 (1) d) read with 13 (2) beyond reasonable doubt. He further contended that the trial Court has also considered the statutory presumption under Section 20 (1) of the Act and drawn discretionary presumption under Section 114 of the Indian Evidence Act, 1872. Therefore, according to him, there was no error in the impugned judgment and with the said contentions, he prayed for dismissal of the appeal.

9. In view of the above rival contentions, points that arise for consideration are:

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

POINT Nos. (i) & (ii):

10. It is relevant to mention that under Section 374 of the Code of Criminal Procedure, 1973 (for short 'the Code') this Court is having power to reappraise the whole evidence, both oral and documentary in the appeal.

11. It is settled position of law that to prove the offence under Section 7 of the Act, the prosecution shall establish the following ingredients; (i) the Accused Officer was a public servant at the relevant time of the offence; and (ii) the Accused Officer accepted or obtained or agreed to accept or agreed

to obtain illegal gratification other than legal remuneration as a motive or reward for doing an official favour. Whereas, to prove the charge under Section 13 (1) (d) read with 13 (2) of the Act, the prosecution shall prove beyond reasonable doubt that a public servant by a corrupt or illegal means or by abusing his position as a public servant obtained for himself or for any other person any valuable thing or taken advantage. It is also settled principle of law that mere recovery of currency notes is not the criteria to establish the said offences under Sections 7 and 13 (1) (d) of the Act. Demand and acceptance of bribe to do an official favour is a *sine qua non* to establish the said offences. The said principle was held by the Apex Court in **B. Jayaraj v. State of Andhra Pradesh**¹.

i) In **P. Satyanarayan Murty v. State of Andhra Pradesh**², a three-judge bench of the Apex Court held that proof of demand of illegal gratification is, thus, the gravamen of the offence under Sections 7 and 13 (1) (d)(i) and (ii) of the Act, and in absence thereof, unmistakably the charge therefore, would fail. It was further held that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, *de hors* the proof of demand, *ipso facto*, would not be sufficient to bring home the charge under these two Sections of the Act, and as a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of amount from the accused person, the offences under Sections 7 and 13 (1) (d) of the Act would not entail conviction thereunder.

¹. 2014 (2) ALD (Crl.) 73 (SC)

². (2015) 10 SCC 152

ii) In **A. Subair v. State of Kerala**³, the Hon'ble Supreme Court has held that while dwelling on the purport of statutory prescription of Sections 7 and 13(1)(d) of the Act ruled that the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered innocent till it is established otherwise by proper proof of demand and acceptance of the illegal gratification, which are vital ingredients necessary to be proved to record a conviction.

iii) The Apex Court in the case of **State of Kerala v. C.P. Rao**⁴ held that mere recovery of tainted currency notes by itself would not prove the charge against the accused in the absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

iv) In **Sujit Biswas v. State of Assam**⁵, the Apex Court also categorically held that suspicion, however, grave, cannot take the place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved', and that in a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions and that in a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. It was further held that the large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict,

³. (2009) 6 SCC 587

⁴. (2011) 6 SCC 450

⁵. (2013) 12 SCC 406

and the basic and golden rule must be applied and that in such cases, while keeping in mind the distance between `may be' true and `must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record and that the court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused.

v) By referring **Jayaraj¹** case, the Apex Court in **M.R. Purushotham v. State of Karnataka⁶** once again held that the prosecution has to prove that there was a demand and acceptance of illegal gratification by the accused to do some official favour by abusing his official position.

vi) In **Dashrath Singh Chauhan v. Central Bureau of Investigation⁷**, the Apex Court categorically held that in order to attract the rigors of Sections 7 and 13 (2) read with 13 (1) (d) of the Act, the prosecution was under a legal obligation to prove the twin requirements of “demand and acceptance of bribe money by the accused” proving of one alone but not the other was not sufficient.

vii) In **M. Narsinga Rao v. State of A.P.⁸**, a Three-judge bench of Apex Court held that in reaching the conclusion, the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to

⁶. (2015) 3 SCC 247

⁷. 2018 (2) ALD (Crl.) 952 (SC)

⁸. 2001 Crl.L.J. 515

the court to presume the existence of any fact which it thinks likely to have happened. In that process, the Court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act, 1872. It was further held that presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in Law of Evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts, the court can draw an inference that would remain until such inference is either disproved or dispelled. There is no definition of gratification in the Act; hence, it must be understood in its liberal meaning.

12. As per the principle held in the above referred decisions, demand and acceptance of gratification to do an official favour to a person are *sine qua non* to prove the offences under Sections 7 and 13 (1) (d) of the Prevention of Corruption Act, 1988. It is also settled principle that establishing both the said twin requirements beyond reasonable doubt by the prosecution is also essential to record the conviction.

13. Coming to the case on hand, it is the specific case of the prosecution that the Accused Officer being the Supervisor of the DCC Bank, in possession of the cheques to be handed over to PW.1 as per the procedure. Therefore, he was in a position to do an official favour to PW.1 and to do the

said official favour, he has demanded an amount of Rs.1400/- and accepted the same from PW.1 on the day of trap. In support of their case, the prosecution has examined nine witnesses. The prosecution has relied upon the evidence of PW.2, 3, 4, 5, 6 and 8. According to the prosecution, the Accused Officer is not competent/authorized to collect the share capital amount and membership fee and it is the Secretary of the Bank who is authorized to collect the same. Therefore, the defence taken by the Accused Officer that he has received the said amount of Rs.1400/- towards the share capital and membership fee but not bribe amount is nothing but an after-thought. It is also the specific case of the prosecution that the Accused Officer was in a position to do an official favour of handing over the cheques to PW.1 in the capacity of Supervisor of the Bank and for the said purpose, he has accepted the same on the day of trap as illegal gratification.

14. During trial, *de facto* complainant - PW.1 turned hostile, and he was cross-examined by the learned Public Prosecutor. During cross-examination, PW.1 has categorically admitted that due to threat of ACB Officials, he gave statement before the Magistrate under Section 164 of the Code. However, he admits his signature on Ex.P-2 i.e. Ex.P19 and the same was obtained subsequently. PW.2, who is a mediator, categorically deposed that after pre-trap proceedings, PW.8 instructed him to accompany PW.1 to observe the conversation between PW.1 and the Accused Officer. PW.1 further deposed that he and PW.2 went to the office of the Accused Officer and PW.1 requested the Accused Officer to hand over the cheques, on which the Accused Officer enquired with PW.1 with regard to the money which the Accused Officer has demanded. PW.1 informed the Accused Officer that he brought the said amount of Rs.1400/- and gave the tainted amount to the

Accused Officer, who in-turn received the same with his right hand and kept it in his left side shirt pocket. Thereafter PW.2 went out and gave pre-arranged signal. On such signal, PW.8-DSP, ACB came and caught hold the Accused Officer and conducted post-trap proceedings including the chemical tests etc. He further deposed that on enquiry by PW.8, the Accused Officer admitted the receipt of the said amount of Rs.1400/- from PW.1 stating that it was not the bribe amount but it was towards share capital amount. He further deposed that the spontaneous explanation given by the Accused Officer was also incorporated in post-trap proceedings i.e., Ex.P4.

i) During cross-examination, PW.2 categorically admitted which is as under:

“I was standing at the door and the seat of the AO was at a distance of 5 or 6 yards from the door. The AO had seen me but he did not ask to come to me. The AO did not ask PW.1 about my identity. I was there at the door for about 10 minutes. During that time, Ganga reddy secretary was in another room. Exs.P6 to P10 were brought by Ganga reddy secretary and handedover to the DSP. I do not remember whether the AO represented before the DSP that PW.1 had to pay some amount towards share amount and because of that he kept Rs.1,400/- given by PW1 in his shirt pocket. I also do not remember whether the AO represented that the receipt book was with Ganga reddy and because of that he did not issue the receipt.”

15. PW.2, mediator to the trap events, categorically deposed about the entire trap proceedings. However, during cross-examination, he has categorically admitted that on enquiry by PW.8, DSP, ACB, the Accused Officer admitted the receipt of the said amount of Rs.1400/- from PW.1 stating that it was towards part payment of share capital and membership fee

amount but not the bribe and the same was also recorded in Ex.P-4, post trap proceedings.

16. Mr. G. Ganga Reddy, Secretary of the Cooperative Society, PW.3, deposed about the receipt of the application from PW.1, preparation of inspection report, verification of documents, physical inspection of the land and sanction of loan to PW.1. He deposed about preparation of two cheques on 07.06.1999 in the name of the firm, signing on the cheques and also obtaining the signatures of the President of the society on the said cheques. He further deposed that he has handed over the said cheques to the Accused Officer on 09.06.1999 with instructions to hand over the same to PW.1. He further deposed that he has informed PW.1 about handing over of the said cheques to the Accused Officer.

i) During cross-examination, PW.3 has categorically admitted that there was office-note in Ex.P-10 wherein it is specifically mentioned that the share capital amount and membership fee should be collected from the borrower before disbursement of the loan. He also further admitted that it was not mentioned in the said note that only Secretary has to collect the share capital and that before handing over the cheques, share capital and membership fee should be collected and that whoever disburses cheques should collect the share capital amount and membership fee and remit the same in the office.

17. Mr. B. Shanker, the then Accountant and in-charge Manager of the DCC Bank, Argul Branch of Nizamabad District, PW.4 deposed to the effect that on 16.01.1999, he, PW.3 and the Accused Officer inspected the lands of PW.1 and submitted inspection report to the Manager - Mr. U.

Narasimha. M. Gangadhar, proprietor of Triveni Engineering, Armoor, PW.5, deposed about issuance of quotations to PW.1 for bore-well and submersible pump set vide Exs.P13 and 14.

18. Mr. K. Mohan Reddy, Deputy General Manager, State Cooperative Bank, Hyderabad, PW.6 deposed about issuance of sanction proceedings against the Accused Officer vide Ex.P-15.

19. Mr. M. Surya Rao, Inspector of Police, ACB, Nizamabad - PW.7 deposed about receipt of prosecution of sanction proceedings and laying of charge sheet against the Accused Officer.

20. Mr. D. Venkanna, DSP, ACB - Trap Laying Officer, PW.8, deposed about receipt of Ex.P-2 complaint from PW.1, registration of FIR, securing mediators, conducting pre-trap proceedings, laying the trap against the Accused Officer, conducting post-trap proceedings etc. He specifically deposed about the trap events on 09.06.1999 in the presence of mediators, recovery of tainted currency notes from the Accused Officer, conducting chemical tests etc. He also deposed about positive results of the chemical tests. He further deposed that he has asked the Accused Officer to produce cheque book, connected documents pertaining to PW.1, for which the Accused Officer informed that the cheque book is available with PW.3, Secretary, and PW.3 produced Ex.P6 long term disbursement voucher, Ex.P7 current account cheque book etc. which contained Ex.P12 cheque in favour of M/s. Triveni Engineering, Armoor for Rs.22,000/- and another cheque for Rs.12,500/- in favour of M/s. Triveni Bore-wells. He further deposed about Ex.P-3 pre-trap proceedings and Ex.P-4 post-trap proceedings.

i) During cross-examination, PW.8 categorically admitted that the Accused Officer stated to him that the cheques would be handed over to PW.1 only after share capital amount being paid by PW.1 and that the office note at page No.3 shows that under condition No.1, requisite 'A' Clause, share capital and membership fee should be collected from the borrower before disbursement of loan. He further admitted that out of Rs.34,500/-, 10% of it has to be collected from PW.1 towards share capital amount, and all the documents relating to the loan of PW.1 were with PW.3. He further admitted that PW.1 did not state to him that he has to pay the share capital amount before receiving the cheques from the Accused Officer. However, he denied the suggestion that he made up a false case at the instance of one Mr. Sravan Kumar and others against the Accused Officer.

21. Mr. A. Rami Reddy, Inspector of Police, ACB, Nizamabad - PW.9, deposed about conducting of further investigation and examining of witnesses and recording of statement of PW.1 under Section 164 of the Code by the Judicial Magistrate of First Class, Armoor on 23.06.1999 and submission of report to Higher Officials recommending for prosecution of the Accused Officer. PW.7 filed charge sheet on receipt sanction proceedings.

22. As stated above, the admissions and deposition of PW.1 reveal that PW.1 has applied for agricultural loan from DCC Bank, Armoor, Nizamabad District, which is a Cooperative Bank. Loanee has to obtain membership by paying membership fee and share capital. In the present case, admittedly, PW.1 has applied for loan and, therefore, he has to obtain membership by paying requisite fee and the share capital amount. It is the

specific case of the Accused Officer right from the beginning including Ex.P4 second mediators' report which contains spontaneous explanation of the Accused Officer that he has received the said amount of Rs.1400/- from PW.1 towards part payment of share capital amount and membership fee leaving a balance of Rs.2050/- i.e., 10% of the loan amount. It is also his case that he has not issued the receipts since the receipt book was with PW.3 and according to PW.3 receipt books are not available at that relevant point of time. Though the prosecution contended that the Accused Officer is not authorized/competent to collect the share capital amount and membership fee, according to depositions of PW.3 and PW.8, it is the duty of the Official to collect share capital amount and membership fee before disbursement of loan amount and handing over cheques to the loanees (in the present case PW.1). The said fact is also recorded in Ex.P4, post-trap proceedings. In proof of the same, the depositions of PWs.3 and 8 and also DW.1 are relevant. DW.1, who is Office Assistant of the bank, also specifically deposed about receipt of Rs.1400/- from PW.1 by the Accused Officer towards part payment of share capital and membership fee leaving a balance of Rs.2050/-. He also specifically deposed that unless PW.1 pays the balance amount of Rs.2050/- cheques would not be handed over either to PW.1 or to M/s. Triveni Engineering and, therefore, PW.1 having handed over Rs.1400/- left the office of the Accused Officer stating that he would get the balance amount. During cross-examination of DW.1, nothing contra to the above was elicited by the prosecution.

23. As discussed above, PW.2 was also present on the day of the trap at the door of the seat of the Accused Officer which was about five to six yards from the door. There is categorical admission by PW.2 that the

Accused Officer has seen him, but he did not enquire about him, his presence at that time and also his identity. According to PW.2, he was there for about ten minutes. During cross-examination, PW.2 categorically admitted that he did not remember whether the Accused Officer represented before PW.8, DSP, ACB, that PW.1 had given some amount towards share capital and membership fee because of that the Accused Officer kept Rs.1400/- given by PW.1 in his shirt pocket. The said contradictions and inconsistencies of the depositions of the prosecution witnesses categorically support the defence taken by the Accused Officer.

24. As discussed supra, mere recovery of tainted currency notes is not sufficient to prove the guilty of the Accused Officer and the prosecution must establish the twin requirements of 'demand and 'acceptance of illegal gratification' to do an official favour to PW.1 beyond reasonable doubt. Failure of the prosecution to prove the same would be fatal to its case and the Accused Officer would not entail conviction thereunder. The prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and that the Accused Officer should be considered innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification which are vital ingredients necessarily to be proved to record a conviction. The Accused Officer cannot be convicted on mere conjectures or surmises, but it should be only on sure and safe evidence. The Court must maintain the vital distance between mere conjunctures and sure conclusions to be arrived at, on the touch stone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record and that the Court must ensure, that miscarriage of justice

is avoided, and if the facts and circumstances of the case so demand, then the benefit of doubt must be given to the accused. It is also settled principle that where there are two views are possible, benefit of doubt should be given to the Accused Officer.

25. It is relevant to mention that in the present case, the *de facto* complainant himself turned hostile and during cross-examination, nothing useful to prove the guilt of the Accused Officer was elicited from him by the prosecution. There is categorical admission by PW.2, mediator that though Accused Officer has seen him along with PW.1, but he did not enquired about PW.2 identity. Thus, according to PW.2, the Accused Officer has received the said amount of Rs.1400/- from PW.1 in the presence of PW.2. The further admission of PW.2 that the Accused Officer did not enquire his identity with PW.1 itself would establish that the amount received by the Accused Officer, that too in his office, is not bribe.

26. The deposition of PW.3 that before handing over cheques, share amount and membership fee has to be collected from PW.1 and loan cheques were given to the Accused Officer with instructions to handover to PW.1 on collection of share capital amount and admission fee which was supported by Ex.P10, office note. PW.8, DSP, ACB, admitted with regard to contents of Ex.P10, office note, wherein at page No.3, it was specifically mentioned about collection of share capital and membership fee before disbursement of loan. In fact, there is no direct evidence adduced by the prosecution to prove the twin requirements of demand and acceptance. Proving one alone is not sufficient and the prosecution is under the legal obligation to prove both and in the present case, the prosecution failed to prove the same. The said

admissions of prosecution witnesses supported by DW.1 deposition and Ex.P4, the second mediators' report, which contains the spot explanation of the Accused Officer. It is also relevant to note that to obtain loan from Agricultural Cooperative Bank, PW.1 has to become member, pay share capital and membership fee before disbursement of loan amount. In the present case, the prosecution failed to establish the said fact of PW.1 admission into the said Society as a member and payment of membership and share capital amount. The prosecution did not examine any witness to that effect. Moreover, it is the consistent stand of the Accused Officer that he has received the said amount of Rs.1400/- from PW.1 towards part payment of share capital and membership fee. By the day of trap, the loan of PW.1 was already sanctioned, cheques were prepared and ready, the Accused Officer has to just hand over the cheques by receiving the membership and share capital amount from PW.1. Therefore, virtually, there was no effective official favour that was pending with the Accused Officer.

27. From the above stated discussion, it can safely be concluded that the prosecution failed to establish the guilt of the Accused Officer beyond reasonable doubt. The trial Court convicted the Accused Officer relying only on trap proceedings, depositions of prosecution witnesses which are inconsistent and also drawing discretionary presumption under Section 114 of the Evidence Act, 1872. The trial Court also did not accept the testimony of DW.1 on the ground that he is not a truthful witness without giving any reason. Thus, 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.

28. 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.28 of 2001 vide judgment dated 14.03.2006 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.

15th November, 2019

Mgr

L.R. Copy to be marked.

JUSTICE K. LAKSHMAN

