

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

CORAM:

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

+CRIMINAL APPEAL No.1430 OF 2006

% Delivered on: 15-11-2019

Between:

J. Srinivas Rao, died per L.Rs. .. Appellants

Vs.

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

! For Appellants : Mr. M. Surender Rao,
Learned Senior Counsel

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

< Gist :

> Head Note :

? Cases Referred :

1. (2014) 13 SCC 143
2. (2013) 14 SCC 153
3. (2010) 15 SCC 1
4. (1996) 11 SCC 720
5. 1995 CrL.L.J. 3656
6. 2001 CrL.L.J. 175
7. 1974 CrL.L.J. 509
8. 1991 CrL.L.J. 1269
9. (2004) 6 SCC 488
10. 2009 CrL.L.J. 3433
11. 2015 (2) ALD (CrL.) 606 (SC)
12. 2000 CrL.L.J. 2110
13. 2014 (2) ALD (CrL.) 73 (SC)
14. (2015) 10 SCC 152
15. (2009) 6 SCC 587
16. (2011) 6 SCC 450
17. (2013) 12 SCC 406
18. 2018 (2) ALD (CrL.) 952 (SC)
19. (2011) 5 SCC 142

HON'BLE SRI JUSTICE K. LAKSHMAN**CRIMINAL APPEAL No.1430 OF 2006****JUDGMENT:**

Feeling aggrieved by the judgment, dated 10.10.2006, passed by the learned Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, in Calendar Case No.5 of 2001, wherein and whereby, the Appellant - Accused Officer was found guilty of the charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988, he preferred the present appeal. The Accused Officer was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.300/- in default to undergo simple imprisonment for a period of one month under each count.

2. It is relevant to note that during pendency of the present appeal, the appellant herein died and, therefore his legal heirs were brought on record.

3. The factual matrix that led to filing the present appeal is as follows:

i) Accused Officer, J. Srinivas Rao, worked as Mandal Educational Officer, Sadasivnagar, Nizamabad District at the relevant point of time.

ii) PW.1 - Head-Master, Mandal Primary School, Dharmaraopet village, Sadasivnagar Mandal, Nizamabad District, submitted an application to the Branch Manager, Andhra Bank, Sadasivnagar, for sanction of loan of Rs.15,000/- for the purpose of purchase of Bajaj Chetak Scooter. On receipt of the said application, the Branch Manager instructed him to submit salary undertaking letter and two sureties. In the said connection, PW.1

approached the Accused Officer, who was Mandal Educational Officer and Disbursing Officer, on which, the Accused Officer demanded an amount of Rs.300/- as bribe from PW.1 to do the official favour i.e., issuing salary undertaking letter.

iii) Since PW.1 was not interested to meet the said demand of Rs.300/- towards bribe, approached the ACB Officials on 20.10.1999 by lodging Ex.P1 complaint. Thereafter, PW.7, DSP, ACB, FAC Nizamabad Range, laid trap by following the procedural aspects including conducting pre-trap and post trap proceedings in the presence of mediators.

iv) After completion of investigation, the ACB Officials filed a charge sheet and the same was taken on file vide C.C. No.5 of 2001.

4. The trial Court framed charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Act. On examination, the Accused Officer denied the said charges and prayed for trial. Accordingly the trial Court conducted the trial.

5. During trial, the prosecution examined eight witnesses i.e., PWs.1 to 8, marked Exs.P1 to P8 and MOs.1 to 8 were exhibited. In support of the defence, Accused Officer examined nine witnesses i.e., DWs.1 to 9 and marked Exs.D-1 and D-2, and Exs.X1 to X3 were also marked.

6. After completion of the trial, and on consideration of evidence both oral and documentary, the trial Court found the Accused Officer guilty of the aforesaid charges and accordingly convicted him vide impugned judgment, dated 10.10.2006 in C.C. No.5 of 2001 and sentenced him in the manner stated supra.

7. Feeling aggrieved by the said judgment, the Accused Officer preferred the present appeal. As already stated above, during pendency of the appeal, the Accused Officer died and his legal heirs were brought on record.

8. Heard Mr. M. Surender Rao, learned senior counsel representing Mr. M. Srinivas Rao, learned counsel for the appellant - Accused Officer and Mr. T.L. Nayan Kumar, learned Additional Standing Counsel - cum - Special Public Prosecutor for ACB Cases for the State of Telangana appearing on behalf of the respondent.

9. Impugning the judgment, the learned senior counsel for the appellant would contend that there was no official favour that was pending with the Accused Officer and prosecution failed to prove the same. According to him, there was no demand of bribe by the Accused Officer and the prosecution failed to prove the said demand by way of cogent evidence and, therefore, the question of acceptance of said bribe by the Accused Officer does not arise. Learned senior counsel would further submit that PW.1, Teacher, was irregular in attending the school and the Accused Officer received complaints against PW.1 from the parents of the students as well as the villagers, for which, the Accused Officer warned PW.1. Due to the same, PW.1 bore grudge against him and took advantage when DW.4 requested PW.1 to return an amount of Rs.300/- to the Accused Officer which was taken by DW.4 as hand loan. It is also his contention that the Accused Officer received the said amount of Rs.300/- from PW.1 towards return of the hand loan but not as bribe. PW.1 implicated him in false case by misguiding the ACB Officials. The Accused Officer neither demanded nor accepted the said amount of bribe.

i) The learned senior counsel further submitted that as per Ex.P1 - complaint, dated 20.10.1999, there is no date of alleged demand of bribe by the Accused Officer from PW.1. Ex.P1 only says about demand of Rs.500/- towards bribe to sign the salary deduction undertaking form and the said amount was reduced to Rs.300/-. Whereas, PW.1 in his chief examination deposed that on 16.10.1999 at 5.00 p.m. he met the Accused Officer with a request to sign the said salary undertaking and the Accused Officer demanded bribe. According to the learned Senior Counsel, PW.2, Manager of Andhra Bank, Sadasivnagar, Nizamabad District, deposed that he has given Ex.P2 pro-forma salary undertaking letter to PW.1 around in the first week of October, 1999 informing him to get signature of his Employer thereon. PW.1 requested for sanction of loan to purchase a two wheeler and he could not advance the margin money, he converted his application for education loan to the tune of Rs.15,000/-. In the third week of October, 1999, PW.1 availed the education loan. During cross-examination, PW.2 categorically admitted that Ex.P2 was not submitted to him by PW.1 and Ex.P2 bears the endorsement of ACB Officials that it was seized on 22.10.1999. PW.1 applied for children education loan on 23.10.1999 and PW.2 sanctioned it on the said date itself for an amount of Rs.15,000/-. He did not state that PW.1 converted his two wheeler application into education loan. By referring the said deposition of PW.1 and PW.2 coupled with Ex.P1 complaint, the learned Senior Counsel would contend that there was no demand either on 16.10.1999 or on 20.10.1999 by the Accused Officer. PW.1 with the help of ACB Officials, implicated the Accused Officer in false case. He has also referred to the depositions of DW.9, Branch Manager, who deposed that PW.1 did not apply for vehicle loan and also

referred to the depositions of other defence witnesses wherein they have categorically deposed about official camp held at Suddapally village from 14.10.1999 to 16.10.1999 5.00 p.m. By referring the said depositions coupled with Ex.P5, the learned senior counsel would submit that the prosecution failed to prove the demand and as such, the question of acceptance of bribe does not arise. The prosecution has to prove the twin requirements of demand and acceptance which are *sine qua non* to record conviction and in the present case, according to him, there was no official favour that was pending with the Accused Officer and the prosecution failed to prove the same with cogent and convincing reasons and evidence. The trial Court recorded conviction against the Accused Officer without giving any specific reasoning and the findings of the trial Court are contrary to evidence, both oral and documentary apart from law laid down by the Hon'ble Supreme Court.

ii) The learned senior counsel also relied on the decisions in 1) **Satvir Singh v. State of Delhi**¹, 2) **State of Punjab v. Madan Mohan Lal Verma**², 3) **C.M. Sharma v. State of Andhra Pradesh**³ and 4) **M.K. Harshan v. State of Kerala**⁴.

iii) With the said contentions, the learned senior counsel prayed for allowing the appeal by setting aside the impugned judgment.

10. *Per contra*, supporting the impugned judgment, the learned Special Public Prosecutor would contend that official favour of issuing salary undertaking form to PW.1 for the purpose of availing loan was

¹. (2014) 13 SCC 143

². (2013) 14 SCC 153

³. (2010) 15 SCC 1

⁴. (1996) 11 SCC 720

pending with the Accused Officer. There is no spot explanation that was given by the Accused Officer and Ex.P5 second mediators' report does not speak of any spot explanation of the Accused Officer. According to him, the alleged enmity claimed by the Accused Officer with PW.1 is only created for the purpose of the present case. The learned Special Public Prosecutor by referring Ex.P2 pro-forma undertaking dated 22.10.1999 would contend that there was official favour pending with the Accused Officer and he has demanded bribe for the purpose of doing the said official favour. He has further referred that the trap proceedings and the depositions of PW.1, PW.3, PW.5 and PW.7 coupled with Exs.P1, P2, P5 and would contend that the prosecution has proved the twin requirements of demand and acceptance beyond reasonable doubt. According to him, the trial Court convicted the Accused Officer vide impugned judgment with specific findings on all the issues and there is no error in it which warrants interference of this Court in the present appeal.

i) The learned Public Prosecutor relied on the decisions in 1) **Ramesh Kumar Gupta v. State of M.P.**⁵, 2) **Madhukar Bhaskararao Joshi v. State of Maharashtra**⁶, 3) **Mahesh Prasad Gupta v. State of Rajasthan**⁷, 4) **Babarali Ahmedali Sayed v. The State of Gujarat**⁸, 5) **State of A.P. v. R. Jeevaratnam**⁹, 6) **Subbu Singh v. State by Public Prosecutor**¹⁰, 7) **S. Dinesh Kumar v. State Th.Inspector**¹¹ and 8) **Prakash Shankarrao Kamble v. State of Maharashtra**¹² in the context of drawing presumption

⁵. 1995 CrL.L.J. 3656

⁶. 2001 CrL.L.J. 175

⁷. 1974 CrL.L.J. 509

⁸. 1991 CrL.L.J. 1269

⁹. (2004) 6 SCC 488

¹⁰. 2009 CrL.L.J. 3433

¹¹. 2015 (2) ALD (Crl.) 606 (SC)

¹². 2000 CrL.L.J. 2110

under Section 20 when chemical tests are positive and proving the twin requirements of demand and acceptance of bribe.

ii) With the said contentions, the learned Public Prosecutor prayed for dismissal of the appeal.

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

- i) Whether there was any official favour pending with the Accused Officer on 16.10.1999 and 20.10.1999 i.e., on the date of Ex.P1, complaint lodged by PW.1?
- ii) 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?
- iii) Whether the judgment of the trial Court is sustainable factually and legally?

POINT Nos. (i) to (iii):

12. It is relevant to mention that under Section 374 of the Code of Criminal Procedure, 1973, this Court being the Appellate Court is having power to reappraise the whole evidence in the appeal.

13. It is also settled proposition of law that the prosecution has to establish both the twin requirements of demand and acceptance which are *sine qua non* to prove the offence under Sections 7 and 13 (1) (d) of the Act. It is also settled proposition of law that 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**¹³.

i) A three-Judge bench of the Apex Court in **P. Satyanarayan Murty v. State of Andhra Pradesh**¹⁴, 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 there-under.

ii) In **A. Subair v. State of Kerala**¹⁵, the Hon'ble Supreme Court has held that while dwelling on the purport of statutory prescription of Sections

¹³. 2014 (2) ALD (Crl.) 73 (SC)

¹⁴. (2015) 10 SCC 152

¹⁵. (2009) 6 SCC 587

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 illegal gratification, which are vital ingredients necessary to be proved to record a conviction.

iii) The Apex Court in **State of Kerala v. C.P. Rao**¹⁶ 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**¹⁷, 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, 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

¹⁶. (2011) 6 SCC 450

¹⁷. (2013) 12 SCC 406

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) In **Dashrath Singh Chauhan v. Central Bureau of Investigation**¹⁸, 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.

14. 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. Establishing both the said twin requirements beyond reasonable doubt by the prosecution is essential to record the conviction.

15. Coming to the case on hand, it is the specific case of the prosecution that PW.1 Head Master of Mandal Primary School, Dharmaraopet, Sadasivnagar Mandal, Nizamabad District, approached the Accused Officer, who is the Drawing Officer, for the purpose of getting the salary undertaking letter. For doing the said official favour, the Accused

¹⁸. 2018 (2) ALD (Crl.) 952 (SC)

Officer demanded an amount of Rs.300/- from PW.1 for which he was not interested to pay the said amount to the Accused Officer, he lodged Ex.P1-complaint on 20.10.1999. After registering a case, the ACB Officials laid a trap on 22.10.1999 by following the procedure laid down.

16. According to the prosecution, PW.1 deposed about the demand made by the Accused Officer on 16.10.1999 for doing the official favour to PW.1 i.e., issuing salary undertaking letter for the purpose of purchasing two-wheeler. Since the said amount was not readily available with PW.1, informed the Accused Officer that he would meet the Accused Officer after 19.10.1999 since 17th and 18th and 19th were holidays. He has approached the ACB Officials at Nizamabad on 20.10.1999 at about 6.00 p.m., he has already drafted an application and handed over the same i.e., Ex.P1 to the Inspector of Police, ACB. Thereafter, trap was laid on 22.10.1999, on which date the Accused Officer demanded and accepted the said amount of Rs.300/-. During cross-examination, he has categorically admitted that he has not mentioned in Ex.P1 about meeting the Accused Officer on 16.10.1999 at 5.00 p.m. at Mandal Office with a request to issue the salary undertaking letter, for which the Accused Officer demanded bribe. He has further admitted that in Ex.P1, he has mentioned that he met the Accused Officer at Sadasivnagar on 20.10.1999 by mentioning as 'today'. He has further admitted that Janardhan Reddy (DW.4) was President of School Committee. However, PW.1 denied that in the presence of Sarpanch, MPTC of their village, the Accused Officer visited their school and taken him to task and warned him etc. He has further admitted that he did not purchase the Scooter after trap and he has applied for vehicle loan with the said Bank

and after the trap event, he has converted it as personal loan, but he did not purchase the scooter.

i) PW.2, Manager of Andhra Bank, Sadasivnagar, Nizamabad District, deposed about PW.1 approaching his bank for loan and he has handed over Ex.P2 pro-forma in the first week of October, 1999 for purchase of two-wheeler. PW.1 could not advance margin money, he converted his application for education loan for Rs.15,000/-. In the third week of October, 1999, PW.1 availed education loan. During cross-examination, he has categorically admitted that Ex.P2 was not submitted to him by PW.1 and Ex.P2 bears the endorsement of ACB Officials was seized on 22.10.1999. PW.1 applied for a children's education loan on 23.10.1999 and he has sanctioned the said loan on the very same day itself for Rs.15,000/-. He did not state that PW.1 converted his two-wheeler loan application into education loan and he did not state about PW.1 applying for loan.

ii) PW.3, owner of Adarsha Udipi Hotel, deposed about the Accused Officer coming to his Hotel on 22.10.1999 at about 9.45 a.m., a person enquiring about the Accused Officer in the hotel. However, he was declared hostile and was cross-examined by the prosecution. During cross-examination, nothing was elicited from him. PW.4 - one of the partners of M/s. Sai Motors which gave quotation to PW.1 for purchase of Scooter.

iii) PW.5, one of the mediators, deposed about the trap proceedings, both pre-trap and post-trap. He deposed that on 22.10.1999 he along with PW.1 went towards Hotel, PW.1 found the Accused Officer and he went into the Hotel, sat at the nearby table. He further deposed that he found PW.1

and the Accused Officer talking to each other, thereafter PW.1 gave the said amount to the Accused Officer, who received the said amount with his right hand, kept the same in his right side pant pocket. Subsequently, PW.1 tendered Ex.P2 to the Accused Officer, who in turn signed on Ex.P2. During cross-examination, PW.5 categorically admitted that PW.3, owner of the Hotel, did not state before DSP, ACB about PW.5 accompanying PW.1 into the Hotel or about presence of PW.5 in the Hotel at that particular point of time. His position in the hotel is also not indicated in Ex.P6, rough sketch. He further admitted that the Accused Officer represented that he has taken the said amount of Rs.300/- from PW.1, but he did not state that he has taken the said amount as bribe. He has further admitted that in some other case, earlier to the present case, he acted as one of the mediators.

iv) PW.6 deposed about sanction accorded to prosecute the Accused Officer. During cross-examination, he has admitted that in the sanction order at paragraph No.2, it is mentioned that PW.1 submitted an application for sanction of loan of Rs.15,000/- towards purchase of Bajaj Chetak Scooter to the Branch Manager, Andhra Bank, Sadasivnagar.

v) PW.7, DSP, ACB - Trap Laying Officer, deposed about receipt of Ex.P1 complaint by Inspector with his endorsement and subsequent trap proceedings by following the procedure on 22.10.1999, enquiring with the Accused Officer about signing of undertaking letter of PW.1 for bank loan and mentioning of the same in the post trap proceedings. He has further deposed about signing of undertaking in respect of PW.1 with date as 22.10.1999. During cross-examination, PW.7 categorically admitted that Ex.P1 does not disclose that PW.1 met the Accused Officer at any time prior

to 20.10.1999 or that the Accused Officer had, at any time, demanded any amount from PW.1. He has further admitted that he has not cross-checked/enquired about the versions of Teachers with regard to the conduct of the Accused Officer. He is not aware whether PW.1 has handed over the tainted amount to the Accused Officer representing that Mr. Janardhan Reddy, President of School Committee, had sent that amount towards clearance of loan taken by him from the said Janardhan Reddy. He is also not aware with regard to the fact that a few days prior to trap, the Accused Officer put PW.1 to the task in the presence of various dignitaries for PW.1 coming late to the School. On his examination, PW.3, owner of Hotel, did not state before him that PW.5 mediator had accompanied PW.1 or he was present in the Hotel. PW.7 further admitted during cross-examination that he has not verified whether PW.1 has not applied for any loan at all in the bank till the trap had taken place.

vi) PW.8, Inspector of Police, deposed about the recording of statement of PW.1 by the Magistrate under Section 164 of Cr.P.C. and recording of statements of other witnesses and laying of charge sheet.

17. In support of his case and to disprove the charges levelled against him, the Accused Officer examined as many as nine witnesses i.e., DWs.1 to 9. DW.1, a retired Head-master, deposed that the Accused Officer was competent to issue salary undertaking letters the Accused Officer did not demand and accept any amount from him or others for issuance of salary undertaking letters for the purpose of applying personal loans. He further deposed about PW.1 informing the trouble faced by him and warning given by the Accused Officer in the presence of School Education Committee

Members for coming late. Nothing contra was elicited from him during cross-examination.

i) DW.2, teacher, deposed about applying of loan for the purpose of purchasing vehicle, obtaining signature of the Accused Officer on the salary deduction certificate and the Accused Officer did not demand any amount for issuance of the said certificate. DW.3, another teacher, deposed in the same lines.

ii) DW.4, President of School Education Committee, deposed about complaints received from the parents of the students about late coming of PW.1. He further deposed about warning PW.1 on the said issue in his presence and in the presence of other committee members. He has borrowed hand loan of Rs.300/- from the Accused Officer on 10.10.1999 and sent the said amount towards repayment through PW.1 on 20.10.1999 as PW.1 informed that he was going to the Accused Officer to obtain signature of the Accused Officer on salary certificate. He came to know about trap of ACB Officials on 23.10.1999. On enquiry, PW.1 sought excuse from him. During cross-examination, DW.4 categorically admitted that none were present when he borrowed Rs.300/- from the Accused Officer on 10.10.1999, so also when he handed over Rs.300/- to PW.1 to repay the said amount to the Accused Officer to discharge the said loan amount on 20.10.1999. In the morning hours of 20.10.1999, at about 11.00 a.m. or 11.30 a.m., he gave Rs.300/- to PW.1 in the denomination of hundred rupee notes numbering two and fifty rupee notes numbering two.

iii) DW.5, Sarpanch of Dharmaraopet deposed about the complaints received against PW.1 and warning given to him. DW.6, Mandal

Educational Officer, deposed about the Assistant Project Officer conducting training camp on orientation of MEOs on quality improvement of all the MEOs of Nizamabad District at Suddapally village, Ditchpally Mandal from 14.10.1999 to 16.10.1999. DW.6, Accused Officer and other MEOs attended the said programme by staying at Suddapally village itself. Attendance Register was also maintained at the said Training Programme for three days, Ex.X1 is the attested copy of the said attendance sheet which contains his initial and also the initials of the Accused Officer and other MEOs who participated in the training programme. TA and DA were paid to them as per the eligibility. On 16.10.1999, after 6.00 p.m. DW.6, the Accused Officer and other participants left the said village. Ex.X2 is the attested copy of TA Bill pertaining to DW.6, Accused Officer and Sri Ramreddy, as per which, an amount of Rs.95/- was paid to the Accused Officer towards TA and DA.

iv) During cross-examination, DW.6 categorically admitted that the distance between Suddapally and Sadasivnagar, is about 50 kilometers by road, the Accused Officer was his classmate in Degree. The training was given in High School, which commences from 9.00 a.m. to 5.00 p.m. He has further admitted that there is possibility of attending training at Suddapally by coming over from Sadasivnagar, but no such permission was given to any of the participants of the training to leave Suddapally during the said training period. There was some interpolation in DA claim put forth by the Accused Officer.

v) DW.7, Mandal Educational Officer, deposed about conducting of training camp in the same lines as deposed by DW.6. During cross-

examination, nothing contra was elicited from him. DW.8, teacher in Dharmaraopet Primary School, deposed about the details of school committee members, complaints against PW.1, warning given to him for late coming. Nothing contra was elicited from him during cross-examination. DW.9, Branch Manager, Andhra Bank, Sadashivnagar Branch, Nizamabad District, deposed about PW.1 applying for education loan of Rs.15,000/- and it was sanctioned on 23.10.1999 vide loan account No.99/4. He has further deposed that PW.1 did not apply for any loan in their bank to purchase vehicle. Ex.X3 is the Photostat copy of the salary undertaking letter submitted by PW.1 in their bank. During re-examination, he has categorically deposed that in none of the records maintained by their bank, there is a mention that PW.1 first applied for vehicle loan and then it was converted to children's education loan.

18. The above stated discussion would reveal that PW.1 was Head-master and the Accused Officer was the Mandal Educational Officer and Disbursing Officer at the relevant point of time. It is the case of the prosecution that PW.1, Head Master, with an intention to avail vehicle loan, approached the Accused Officer, Disbursing Officer, to sign the Salary Undertaking Letter which is to be submitted to the Bank for the purpose of sanctioning of the said vehicle loan. According to the prosecution, the said official favour of issuance of salary undertaking letter was pending with the Accused Officer at the relevant point of time.

19. PW.1 in his chief examination deposed that on 16.10.1999 at 5.00 p.m., he went to the Accused Officer with a request to issue salary undertaking letter for the purpose of obtaining vehicle loan i.e., Bajaj Chetak

with Andhra Bank, Sadasivnagar Branch and to do the said favour, the Accused Officer demanded an amount of Rs.300/- towards illegal gratification. The said amount was not readily available with PW.1, 17th, 18th and 19th of October were holidays and, therefore, PW.1 informed the Accused Officer that he would meet the Accused Officer after 19th and pay him the amount and accordingly left that place. PW.1 was not interested to meet the said demand and, therefore, approached the DSP, ACB, Nizamabad Range at about 6.00 p.m. on 20.10.1999 and lodged Ex.P1-complaint.

20. In Ex.P1-complaint, dated 20.10.1999, PW.1 stated that the Accused Officer has to sign salary deduction undertaking and when he approached the Accused Officer to do the favour, the Accused Officer demanded him to pay a bribe of Rs.500/- to sign the said form which was reduced to Rs.300/- on his request. There is no explanation to the said discrepancy. The prosecution failed to examine any independent witness to establish the said fact of demanding illegal gratification by the Accused Officer either on 16.10.1999 or on 20.10.1999. There is no independent witness to the said effect and there is no explanation from the prosecution. During cross-examination, PW.1 categorically admitted that he has not mentioned in Ex.P1 about meeting the Accused Officer on 16.10.1999 at 5.00 p.m. at Mandal Education Office with a request to issue salary undertaking letter, for which the Accused Officer demanded the said illegal gratification. He has also admitted that in Ex.P1 he has mentioned that he met the Accused Officer at Sadasivnagar on 20.10.1999 by mentioning as "TODAY". According to the prosecution, the Accused Officer demanded illegal gratification on 20.10.1999 and PW.1 lodged Ex.P1-complaint with ACB Officials on 20.10.1999 at 6.00 p.m. and they have registered a case on

21.10.1999 at 9.00 p.m. Thereafter, trap was laid on 22.10.1999. Thus, there are clear discrepancies in the date of PW.1 approaching the Accused Officer with a request to issue salary undertaking letter which is an official favour that was pending with the Accused Officer and demand of Rs.300/- towards illegal gratification by the Accused Officer to do the said official favour.

21. PW.2, Manager of Andhra Bank, Sadasivnagar, Nizamabad, deposed that in the first week of October, 1999, PW.1 approached his bank for loan of Rs.15,000/- for the purpose of purchase of two-wheeler. Accordingly, after explaining the procedure, PW.2 handed over Ex.P2, pro-forma to PW.1. He further admitted that PW.1 applied for children's education loan on 23.10.1999 and he has sanctioned the said loan on the very same day itself for Rs.15,000/-. He did not state that PW.1 converted his two-wheeler loan application into education loan and he did not state about PW.1 applying for education loan. Thus, the said evidence clinchingly establishes the fact that PW.1 applied for children's education loan on 23.10.1999 and the same was sanctioned on the same day itself for Rs.15,000/-. It is relevant to note that Ex.P1, complaint, was lodged by PW.1 on 20.10.1999, ACB Officials registered the same on 21.10.1999 and laid trap on 22.10.1999. Surprisingly, as per the deposition of PW.2, PW.1 applied for children's education loan on 23.10.1999 and the same was sanctioned on the same day itself for Rs.15,000/-. But, it is the contention of PW.1 that he has applied for vehicle loan and for the purpose of securing salary undertaking letter, he approached the Accused Officer on 16.10.1999 on which the Accused Officer demanded an amount of Rs.300/- towards illegal gratification. The said evidence also clearly establish that there is

ambiguity as to whether PW.1 applied for vehicle loan or for children's education loan and the date on which he converted the vehicle loan to education loan. The said depositions of PW.1 and PW.2 coupled with Exs.P1 and P2 would establish that the prosecution failed to prove the pendency of official favour with the Accused Officer either on 16.10.1999 or on 20.10.1999 and also the demand of illegal gratification by the Accused Officer on 20.10.1999.

22. At the cost of repetition, there is no explanation from any of the prosecution witnesses with regard to the said alleged demand of Rs.300/- by the Accused Officer either on 16.10.1999 or on 20.10.1999. On the other hand, the Accused Officer examined DW.1, Head Master, DWs.2 and 3, Teachers, who categorically deposed that the Accused Officer never demanded any illegal gratification when they applied for vehicle loans or other loans. The prosecution has to prove with clinching evidence that there is demand of illegal gratification to do an official favour by the Accused Officer. In the present case, the prosecution failed to prove the demand of illegal gratification to do an official favour by the Accused Officer. If the initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim *sublato fundamento cadit opus* is applicable, meaning thereby, in case a foundation is removed, the superstructure falls. The said principle was also held by the Apex Court in **Chairman - cum - Managing Director, Coal India Limited v. Ananta Saha**¹⁹.

¹⁹. (2011) 5 SCC 142

23. As discussed above, the prosecution has to prove the demand which is *sine qua non* with clinching and cogent evidence beyond reasonable doubt, like any other criminal offences, whereas, in the present case, the prosecution failed to prove the same.

24. PW.3, owner of the Hotel, was declared hostile by the prosecution. During cross-examination, prosecution could not elicit anything to prove demand and acceptance of bribe by the Accused Officer. PW.4 deposed about issuance of quotation to PW.1 for purchase of two-wheeler. PW.5, one of the mediators, during cross-examination, categorically admitted that PW.3, owner of the hotel, did not state before DSP, ACB about his accompanying PW.1 into the hotel or about his presence in the hotel at that particular point of time. His position in the hotel is also not indicated in Ex.P6-rough sketch. He further admitted that the Accused Officer represented that he has taken the said amount of Rs.300/- from PW.1, but he did not state that he has taken the said amount as bribe. Admittedly, PW.5 is also a mediator in some other case of ACB. PW.7, DSP, ACB, categorically admitted that Ex.P1 does not disclose about PW.1 meeting the Accused Officer at any time prior to 20.10.1999 and that the Accused Officer had, at any time, demanded any amount from PW.1. PW.7 being Trap Laying Officer did not cross-check/enquire about the versions of Teachers with regard to the conduct of the Accused Officer i.e., coming late to the School etc. He has further admitted that he was unaware whether PW.1 handed over the tainted amount to the Accused Officer representing that DW.4, President of School Committee, had sent the said amount towards repayment of hand loan taken by him. He further admitted that on his examining, PW.3, owner of the hotel, did not state to him that PW.5 -

mediator, had accompanied PW.1 or he was present in the hotel. He also admitted that he has not verified whether PW.1 applied for any loan at all in the bank till the trap had taken place.

25. The above said admissions of prosecution witnesses and non-examination of any independent witness by the prosecution to prove the demand of Rs.300/- by the Accused Officer towards illegal gratification for the purpose of issuance of salary undertaking letter to PW.1 so as to submit the same in the Bank for availing vehicle loan, are serious infirmities in the prosecution case. In fact, prosecution itself is not clear whether PW.1 approached the Accused Officer for issuance of said salary undertaking letter to be submitted in the bank for availing loan of either for purchase of two-wheeler or education loan. PW.2 admitted that PW.1 applied for children's education loan only on 23.10.1999 and the same was sanctioned on the very same day itself. There is no explanation as to the sanction of the said loan on the same day including submission of salary undertaking letter. But, prosecution is silent with regard to conversion of vehicle loan into education loan, if converted, the date on which it was converted etc. Thus, the prosecution, in fact, failed to prove the official favour that was pending with the Accused Officer i.e., issuance of salary undertaking letter beyond reasonable doubt with clinching evidence and that in the said process, the Accused demanded bribe of Rs.300/- from PW.1, which is *sine qua non* to record conviction under Section 7 of the Act. On the other hand, it is the consistent defence of the Accused Officer that there are strained relations between him and PW.1. The Accused Officer was Mandal Educational Officer, whereas PW.1 was the Head Master of Mandal Primary School at the relevant point of time. The School Committee Members and the

Accused Officer received complaints against PW.1 for late coming in which context, the Accused Officer warned PW.1 in their presence, and thereby PW.1 bore grudge against the Accused Officer and relationship between them strained.

26. DW.1 - Head Master, DW.4 - President of School Education Committee, DW.5 - Sarpanch of Dharmaraopet village, deposed about the complaints and warning given by the Accused Officer to PW.1. With the said depositions, the Accused Officer could prove the strained relations between him and PW.1.

27. The other defence taken by the Accused Officer is that there was a training camp on orientation of Mandal Educational Officers on their quality improvement at Suddapally village of Ditchpally Mandal from 14.10.1999 to 16.10.1999. The said camp was ended at 5.00 p.m. on 16.10.1999. The said fact was specifically deposed by DW.5. DW.6- MEO also specifically deposed about the said camp conducted by the Assistant Project Officer and the Accused Officer attending the said camp, maintaining attendance register and payment of TA and DA to the participants, copies of which were marked as Exs.X1 and X2. Thus, the depositions of DWs.5, 6 and 7 coupled with Exs.X1 and X2 would prove that there was a training camp from 14.10.1999 to 16.10.1999 till 5.00 p.m. The Accused Officer participated in the said camp at Suddapally throughout. In the said circumstances, the contention of PW.1 that he approached the Accused Officer on 16.10.1999 for issuance of salary undertaking letter on which the Accused Officer demanded him to pay an amount of Rs.300/- towards illegal gratification is without any basis and the same would fall to the ground. As such, the prosecution has miserably failed to prove the

official favour that was pending with the Accused Officer either on 16.10.1999 or on 20.10.1999 as alleged by PW.1 and also the alleged demand of bribe by the Accused Officer on the said dates.

28. It is pertinent to note that when once the prosecution failed to prove the pendency of official favour and in pursuance of the same, demand of bribe by the Accused Officer, the question of acceptance of amount by the Accused Officer does not at all arise.

29. Though the learned Public Prosecutor would contend that the theory of hand loan propounded by the Accused Officer and the training camp from 14.10.1999 to 16.10.1999 are all created to escape from the clutches of criminal liability as the same was not supported by any evidence. The Accused Officer did not offer any explanation during post-trap proceedings (Ex.P5) and the same is not substantiated keeping in view the defence evidence put forth by the Accused Officer through DWs.1 to 9.

30. As stated above, the prosecution failed to prove the very pendency of official favour with the Accused Officer on the aforesaid dates, like wise demand of bribe by him on the said dates. In the said circumstances, decisions relied upon by the learned Pubic Prosecutor in the context of drawing presumption under Section 20 of the Act on account of proving chemical tests would not help him as the facts and circumstances occurring in the said decisions are totally different to the facts and circumstances of the case at hand.

31. On the other hand, the learned senior counsel relied on **Satvir Singh¹**, wherein the Apex Court categorically held with regard to inference

that can be drawn from recovery of tainted amount and non proving the acceptance of illegal bribe. As already held, in the present case, the prosecution failed to prove the demand of bribe by the Accused Officer, the question of acceptance of same does not arise.

i) In **Madan Mohan Lalverma**² relied on by the learned senior counsel, the Apex Court categorically held that prosecution has to establish the foundational facts of pendency of official favour, demand and acceptance of bribe by examining independent witnesses with corroboration of evidence of prosecution witnesses. Whereas in the present case, as discussed above, the prosecution failed to prove the said foundational facts. The Court has to examine the explanation offered by the Accused Officer, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

ii) In **C.M. Sharma**³ relied on by the learned senior counsel, the Apex Court held that mere recovery of tainted currency notes is not sufficient and the prosecution has to prove the demand of illegal gratification which is *sine qua non* to constitute an offence. As discussed above, the prosecution failed to prove the very demand itself and relied only on the recovery of tainted currency notes and trap.

iii) In **M.K. Harshan**⁴, the Apex Court held that Courts have cautioned that as a rule of prudence, some corroboration is necessary and that in cases of bribery, two aspects are important i.e., demand and acceptance, in the sense, that the accused has obtained the illegal gratification and that mere demand by itself is not sufficient to establish the offence and that therefore, the other aspect, namely, acceptance is very

important and when the accused has come forward with a plea that the currency notes were received by him for a different purpose. In the said case, prosecution has to establish the demand and acceptance with clinching evidence, whereas, in the present case, as already pointed out that the prosecution failed to prove the same. As held by the Apex Court that where two views are possible, benefit of doubt shall be given to the Accused.

32. In view of the above discussion and viewed from any angle, it is a fit case that warrants interference of this Court in the appeal and that the impugned judgment is liable to be set aside and accordingly is set aside.

33. 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.5 of 2001 vide judgment dated 10.10.2006 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

Note: L.R. copy to be marked.
(B/O.) Mgr.