

THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL APPEAL No.900 of 2014

JUDGMENT:

The accused/petitioner by name V.Gopal Reddy, Senior Divisional Engineer (West), South Central Railway, Secunderabad, is the appellant, impugned the conviction judgment dated 01.09.2014 in C.C.No.3 of 2011, passed by the learned III Additional Special Judge for CBI cases, Hyderabad, where prosecution laid by S.P.E., C.B.I., Hyderabad, covered by CrI.R.C.No.18(A)/ 2010 – CBI/ HYD, for the offences punishable under Sections 7 and 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988, (for short 'the P.C. Act'), where from the investigation and from the final report of CBI that was taken cognizance by the learned Special Judge for the offences supra against the accused and after framing of charges under Sections 7 and 13 (2) read with Section 13 (1)(d) of the P.C.Act from his denial of prosecution version and sustainability of the accusation, put to trial and in the course of the trial from the thirteen witnesses examined with 19 exhibits P1 to P19 and five material objects as MOs.1 to 5, marked with defence evidence of the accused covered by DWs.1 to 11 and Exs.D1 to D30 in the judgment running in 53 paragraphs and from paras - 46 to 38, the trial Court came to a conclusion in holding that the prosecution is successful in proving the charges under Section 7 and 13(2) read with Section 13 (1)(d) of the P.C.Act, against the accused beyond reasonable doubt and hence is found to be guilty for the charges and is

convicted accordingly for the offences and from hearing of sentence covered by paras 49 to 52, sentenced to undergo Rigorous Imprisonment for three years and to pay fine of Rs.10,000/- and with default sentence of six months simple imprisonment for the offence under Section 7 of the Act and also sentenced to suffer Rigorous Imprisonment for three years and to pay fine of Rs.10,000/- with default sentence of six months Simple Imprisonment for the offence under Section 13(2) read with Section 13(1)(d) of the P.C. Act by saying both sentences shall run concurrently under Section 31 Cr.P.C. by giving set off of the period undergone under Section 428 Cr.P.C.

2. The impugment in the grounds of appeal are that the learned Special Judge erred in convicting the accused for the offences supra by mere copying the prosecution evidence without giving any credence to the defence evidence and against law, weight of evidence, probabilities from the case in the absence of clinching and acceptable evidence to prove any demand and acceptance of alleged bribe amount and also failed to see that the complainant-PW1's allegation of met the accused – appellant on 17.06.2010 and later made demand is false, as accused appellant was away on track inspection, which fact is evident from the official record, the Special Judge should have held, in the circumstances of the case, that the alleged demand was invented by the complainant in foisting false case deliberately and also failed to see that the complainant manipulated in such a way that the amount of alleged bribe was given to the appellant on the date

of trap, which is after 8 days, stating that the amount represented the dues which the appellant had given to labour on 17.06.2010, as revealed by DW3, DW10 and DW11 – railway contractors, learned Special Judge also failed to see that the complainant did not take mediator into the office of the appellant though he was specifically instructed PW12 to keep it as a secret and then give pre-arranged signal. The appellant accused innocently received the amount which was paid by him to the labour on 17.06.2010 and the learned Special Judge failed to see that the complainant having come to know that the appellant was in the office, gave a report to the S.P., C.B.I. on 25.06.2010 at 03.30 p.m. and the trap was laid at 04.30 p.m., learned Special Judge also failed to see that Exs.P7 and P8, pre and post trap proceedings got prepared through computer after one hour and the originals were not placed before the Court, even in those suspect trap proceedings there is no reference of the Chemical powders having been carried to the office of the accused appellant, the mediator PW2 stated that “TLO did not give any opportunity to the A.O. to explain”, nor PWs.12 or 13 gave any notice or opportunity to the A.O. to explain about the money received. The learned Special Judge should have in the circumstances given credence to the written statement of the accused appellant shortly after the trial. Learned Special Judge also failed to see that very receipt of complaint and registration of crime were defective and the C.B.I. Officers fell into the scheme of the complainant, who is a rich and influential railway contractor, there is no proof of official favour which the

appellant could extend. The evidence of PWs.5,6,8 and 13 would reveal that no bill of the complainant was pending, much less, the bill for Rs.40 lakhs and the learned Special Judge should have noted from the written statement filed by the accused as to how much of grudge the complainant had against the accused appellant. The learned Special Judge erred in relying upon solitary evidence of PW1, without corroboration from any other, much less, independent evidence to accept much less to come to a conclusion of demand and acceptance of any amount as bride. Even the learned Special Judge failed to see the testimony of PWs.2 and 12 that no way corroborates the evidence of PW1 to prove above ingredients which are essential to make out the offence and the sanction order issued by PW10 who is of equal cadre under Ex.P12 is not valid, that was not considered by the Special Judge and PW10 himself admitted that the President of India is the competent authority to remove the officers like Senior Divisional Engineer (Group – A officer) and the learned Special Judge should not have presumed under Section 20 of the P.C.Act, without there being any basis on validity of sanction and competence of sanctioning authority and thereby sought for allowing the appeal by acquitting the accused appellant, setting aside the conviction judgment of the trial Court.

3. Learned counsel for the petitioner/appellant accused by reiterating the same, placed reliance on several expressions of the

Constitutional Courts viz., Dasarath Singh Chauhan v. C.B.I.¹, Mukhtiar Singh (Since deceased) Through his L.R.s v. State of Punjab², State through C.B.I. v. Dr. Anup Kumar Srivastava³, Krishan Chander v. State of Delhi⁴, N.Sunkanna v. State of A.P.⁵, P.Satyanarayana Murthy v. District Inspector Police, State of Andhra Pradesh⁶, M.R.Purushotham v. State of Karnataka⁷, Satvir Singh v. State of Delhi⁸, B. Jayaraj v. State of A.P.⁹, State rep. by Inspector of Police, ACB v. D. Anjaiah¹⁰, State of Punjab v. Madan Mohanlal Verma¹¹, Mukut Bihari v. State of Rajasthan¹², M.Janardhan v. State of A.P.¹³, State of Maharashtra v. Dnyaneswar Laxman Rao Wankhede¹⁴, C.M. Girish Babu v. C.B.I., Cochin, High Court of Kerala¹⁵, M.K. Harshan v. State of Kerala¹⁶, G.V.Nanjundiah v. State (Delhi Administration)¹⁷, Suraj Mal v. State (Delhi Administration)¹⁸, Jaswant Singh v. State of Punjab¹⁹, Union Territory, Chandigarh v. Pradeep Kumar²⁰, in support of the contentions referred in the grounds of appeal by

¹ Crl.A.No.1276 of 2010 dt.09.10.2018

² (2017) 8 SCC 136

³ (2017) 15 SCC 560

⁴ (2016) 3 SCC 108

⁵ (2016) 1 SCC 713

⁶ (2015) 10 SCC 152

⁷ (2015) 3 SCC 247

⁸ (2014) 13 SCC 143

⁹ (2014) 13 SCC 55

¹⁰ Crl.A.No.735 of 2006 dt.27.12.2014

¹¹ AIR 2013 SC 3368

¹² (2012) 11 SCC 642

¹³ 2013(2) ALT (cri) 91=(1)ALD(cri)337

¹⁴ (2009) 15 SCC 200

¹⁵ (2009) 3 SCC 779

¹⁶ (1996) 11 SCC 720

¹⁷ 1987 (Supp) SCC 266

¹⁸ (1979) 4 SCC 725

¹⁹ AIR 1973 SC 707

²⁰ Civil Appeal No.67 of 2018 dt.08.01.2018

drawing attention of this Court with reference to the law and facts from the material on record, in seeking to allow the appeal.

4. Whereas, learned Special Public Prosecutor for C.B.I. submits that the entire material evidence on record clinchingly pointing the factum of demand and acceptance of bribe by the accused covered by the trap proceedings that is proved from the evidence of the witnesses of accepting or attempt to obtain the bribe as per Section 13 (1) of the P.C.Act, which is nothing but criminal misconduct by corrupt or illegal means, in obtaining the pecuniary advantage by abusing the position as Senior Divisional Engineer, while holding office as such, in his obtaining a pecuniary advantage and the variation of amount given by the complainant to the accused accepted by him is not from any demand as pecuniary advantage, is not correct, having so taken and the version of it is the amount of later payable that is introduced through defence witnesses that was rightly not believed by the trial Court, which is fresh in mind of the facts, having come to a conclusion by the appreciation and merely because another view possible, the appellate Court shall not reverse the reasoned and just conclusions arrived by the trial Court, thereby there is nothing to interfere, including on the validity of the sanction and application of the presumption with reference to the Sections 19 and 20 of the Act, thereby sought for dismissal of the appeal, by saying each case depends upon own facts and there are no precedent of facts and the principal laid down in any of the expressions though not in dispute, these decisions have no application to the facts from the

ingredients of the offences are proved as rightly concluded by the trial Court.

5. Heard both sides and perused the material on record.

6. The facts that the accused was working as Senior Divisional Engineer, South Central Railways, Secunderabad Division and within the meaning of public servant under the P.C.Act are not in dispute. As per the prosecution version, the accused was over all In-Charge of the civil works that is proposed relocating of mid section take off of Cement Corporation of India (CCI) siding at Tandur Railway Station, Tandur, which was allotted to PW1 complainant P.Srinivas Prasad from M/s.Bhaskara Enterprises, Uppal, Hyderabad.

7. On 25.06.2010, PW1 given the complaint/report Ex.P1 against the accused saying to demand the bribe of Rs.10,000/- for clearing the bills for the executed items submitted by the complainant in connection with the civil works. PW12 B.Ramdas, C.B.I. Inspector – the Trap Laying Officer registered the crime supra having gone through the said complaint averments in issuing F.I.R. and taken up investigation. There were pre and post trap proceedings in saying the accused was caught red handed by accepting bribe amount of Rs.10,000/- from PW1 in the cabin of the accused in his office, which is from the complainant PW1 for clearing of pending bills. PW.12 B.Ramdas, Inspector, stated he conducted Sodium Carbonate, Phenolphthalein test on both hands of accused and wash turned into pink, so also the wash of left side

pant pocket of accused and from the post trap proceedings with reference to the above and further speaks of seizure of the tainted currency notes of Rs.10,000/-supra, in laying the charge ultimately from that after obtaining sanction by saying there is substantial material from the investigation showing the illegal gratification demanded and accepted for clearance of pending bills in connection with civil works executed by the complainant. PW10 Sri S.K.Agarwal accorded the sanction and he is the competent authority to remove the accused from service.

8. Two of the main contentions are that there is no demand and acceptance which is a pre requisite, there is no valid sanction for the sanctioning authority equal in rank cannot accord sanction.

9. PW1 deposed on 30.01.2013 that he is the Managing Partner of Bhaskar Enterprises who undertook civil and track contract works in various divisions of South Central Railways, Secunderabad, with 16 years experience and knows the accused for the past 8 years. He nowhere deposed that accused even knows to him for past 8 years, ever made earlier any demand for bribe or any adverse on the credentials of him, other than present so called demand, covered by Ex.P1 report of him dt.25.06.2010.

10. Coming to the contract for Secunderabad-Wadi section of Cement Corporation of India siding work at Tandur Railway Station, Ranga Reddy District covered by agreement No.20/ W/ 8, dated 15.04.2008, for Rs.1.66 crores was awarded to it under Ex.P2 and

the work was allotted earlier on 23.08.2007, even agreement entered on 15.04.2008 and work commenced even in September, 2007 and as per the terms of which 90% of work completed and trials are running and he received amount to an extent of Rs.1 crore from the Account Section, Engineering Department, SCR, Secunderabad. It is not even the case of P.W.1 that accused demanded any amount for release of said one crore earlier.

11. What P.W.1 deposed further is that during the execution of the above works different new items of works other than the schedule works were done and he gave a letter in the month of January, 2008 for variation of works to the department and the department has prepared variation statement bill for Rs.40 lakhs for different items of works at different stations. PW1 further deposed that said variation statement works to be approved by Senior Divisional Engineer(West)-V.Gopal Reddy-accused and the Additional Divisional Railway Manager-A.K.Malik and same were kept pending for one year by the accused and when he approached the accused many a times to approve the variation quantities, he did not do so. It is not even his deposition that accused demanded bribe and for his unwilling to pay the variation of works bills claim supra was not cleared for past one year.

12. What P.W.1 deposed further is that it was in the meantime as he did not pay any bill percentages as bribe to the

various officers namely- S.S.C (Works)-Patak, ADEN-Chandra Mohan and other officers, to threaten him, they prepared different variation statements quoting low rates and quantities, reducing the total works amount from 40 lakhs to 30 lakhs, without his knowledge and without obtaining his signature. What is deposed further by P.W.1 is that they given him letter to obtain signature for Rs.30 lakhs which he did not append. His root cause to have vindictiveness on the officials including accused who is superior to all is their not accepting his extraneous claim of so called additional works. It is in this background the genesis of the allegation of pre-trap and arranging trap to be appreciated. It is thus not a plain case of complainant-P.W.1 is innocent and fair, but tried to get a false and excess claim and it was not allowed and there is motive to revenge therefrom.

13. In this regard before proceeding further, it is necessary to keep in mind the precautions to be taken from the guidelines to be followed in case of a public servant before registration of crime as per the expressions of the Apex Court. In P. Srajuddin Etc. Vs. State of Madras²¹ the Apex Court held that before a public servant, whatever be his status, is publicly charged with acts, of dishonesty which amount to serious misdemeanor or misconduct of the type alleged in the case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant

²¹ AIR 1971 SC 520

occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the, Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any pre-conceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeccable. The constitution Bench of the Apex Court in Lalitha Kumari vs. Govt. of U.P.²², also issued directions in this regard referring to the guidelines of CVC and the guidelines in CBI Manual.

14. There is nothing to show any such enquiry conducted on the credibility of the information in the report before its registration as Ex.P1 of PW.1 and antecedents of the officers including the accused in relation to the allegations in the report and what the previous facts that made PW.1 to report. Had it been properly done particularly fairly and impartially it could have been thrown light of the complainant got extraneous reasons in reporting against the officials and not for the alleged demand of bribe as his

²² (2014) 2 SCC 1

main grievance is so called extra works bill claimed of Rs.40 lakhs reduced by the officials to only Rs.30 lakhs. P.W.1 did not give report against any of them earlier. His main grievance appears therefrom is for arriving a reduced sum of 10 lakhs difference to his claim by those officials. This portion of statement of the witness is a pre-determined, incredible and unbelievable and untrue version on its face. It is not even his case that any of them demanded any amount as bribe, but for his something inferring as if of for his non payment of percentages they reduced the work amount from 40 lakhs to 30 lakhs.

15. He did not depose for the one year there was any demand for bribe by the accused in saying for the past one year the excess work claim of Rs.40 lakhs not paid. What he deposed was that again on 17.06.2010, when he met the accused in his chambers and requested to settle the variation bill saying he sustained loss and is in difficulties, accused demanded Rs.10,000/- to pay on 25.06.2010. He never deposed of he met the accused specifically earlier at any particular date, leave about what is referred supra demanded any amount earlier, what he stated is that the bills were delayed for the letter given by him for the different new items of works in January, 2008, for one year. His grievance in the deposition against others for allegedly not paid percentage to them and not deposed met accused earlier at any particular date leave about when he last approached did not even made mention. When the officers estimated for 30 lakhs from his claim of Rs.40 lakhs not correct from their verification with correlation to the

claim and work on field, leave about he did not mention of when prior to 17.06.2010, he met accused, but for saying only on 17.06.2010 when he met to settle the variation bills, accused demanded Rs.10,000/- as bribe and asked him to pay on 25.06.2010. It is hardly believable on its face to give any credibility to the version of PW.1. His Ex.P1 report is only on 25.06.2010 and not even immediately after 17.06.2010. Even there he deposed further in page 3 of his chief examination para 2 as not willing to pay bribe amount, he decided to give a report and only to approach the S.P., C.B.I., later, on 25.06.2010. If not willing to pay any bribe of what accused allegedly demanded on 17.06.2010 to pay by 25.06.2010, why for about 8 days after the so called demand by accused of Rs.10,000/-, PW.1 waited without any report covered by the present one, but for some oblique motive in creating a cause in giving report and to implicate the accused, though accused is not directly concerned with approachable seat for preparation of bills and verifying and finalizing the claims of the works and additional works respectively.

16. Ex.P2 is the file in relation to the allotment of track works to the entity under agreement dated 15.04.2008, and Ex.P3 is the file in relation to ADEN Office, South Central Railways, Tandur, to show the allotment of work for proposed reallocation of mid section take off point of Cement Corporation of India siding at Tandur Railway Station, Tandur and Ex.P4 is the tender agreement for the work, which is not in dispute. Coming to Ex.P5 dated 19.03.2010, which is three months one week (100 days) prior to

Ex.P1-report. Ex.P5 speaks reference only letter dated 11.01.2010 of Senior Divisional Engineer (West)-(accused) and there is no whisper about earlier met accused. What all stated is earlier variation statement prepared proposing some additional and excess items and PW.1 signed. But it is given to understand that earlier proposed items were removed and fresh items were included which is not acceptable and complainant thereby did not come to sign the statement. If payment for items originally included for which items were already executed is not made, will be left with no option than to hold dharna before chambers of the accused till the payment is made. In one case earlier complainant issued similar notice to hold dharna, but was withdrawn in view of promise made by the accused. However, it is regretted to note that assurance --- hence request accused to arrange payment within a week and avoid awkward situation. Copy of the letter marked to Principal Chief Engineer and General Manager of FC Railway to instruct the senior DEN (accused) to arrange payment failing which compelled to translate into action, which include hunger strike and responsible for any untoward incident.

17. Above Ex.P5 letter of PW.1 dated 19.03.2010 which is 100 days prior to Ex.P1 report shows from its plain reading how animosity PW.1 got against the accused and how brow beating the letter is by threatening the officials' superiors to accused and also accused. PW.1 in his Ex.P1 report did not at all mention the threatened letter covered by Ex.P5 addressed to accused with copies to superiors. It is nothing but suppression of a material fact

and incredible conduct with ill-will PW.1 developed against accused. In this background when Ex.P5 supra 100 days prior to Ex.P1 no where mentioned accused ever made any demand, even any officer extraneously for non-payment of percentages not preparing additional bills claim or intentionally reduced Rs.10 lakhs out of the claim, the first time mention in his Ex.P1 dated 25.06.2010 that too by suppressing the factum of Rs.40 lakhs claim on verification arrived untrue and reduced to Rs.30 lakhs claim by the subordinate officers of the accused (deposed by PW.1 supra) and what deposed of for the past one year to the report the bill was not settling and dragging on is untrue from what stated in Ex.P1 of bill pending for the only last six months. The version in Ex.P1 of as if many a time met the accused by PW.1 earlier for settlement of the bill and to include the variation, even not correct for what Ex.P5 speaks of PW.1 never met accused prior to Ex.P5 dated 19.03.2010. In this background is it acceptable of any demand by accused of PW.1 to pay Rs.10,000/- as bribe, for nothing whispered in Ex.P5. From combined reading of the two with evidence of PW.1 clearly proves that as what he demanded with threats accused by Ex.P5 for not obliged so also by his superiors to his excess claim for the so called additional works to accept for what was reduced as false and untenable claim by the subordinates of the accused and PW.1 tried to brow beat and failed by Ex.P5 threatened letter laid a false complaint implicating accused by resorting to abuse of the process of criminal law rather than legitimate vindication of any truthful grievance to set

criminal law in motion and as such PW.1's evidence is highly incredible untrustworthy and there is nothing even to show any past adverse record of the accused in relation to his antecedents. In fact the deposition of PW.1 in chief of accused kept the additional works claim for one year besides false from what FIR speaks additional works claim is only of six months prior to the report, the question of keeping with the accused does not arise even from what deposed earlier of the subordinate officers of accused were not preparing for not giving percentage of works already done and the bill already received of more than Rs.1 crore and again of immediate subordinate to accused by name Malik has to approve after subordinates verification and put up, before reaching to the accused for final approval. From this deposition if read Ex.P5 what he deposed is false on its face so also Ex.P1 with reference to Ex.P5 as discussed supra. Importantly what he further deposed of on 17.06.2010 he met the accused to settle the variation bill and accused demanded Rs.10,000/- bribe to pay by 25.06.2010 and he was not willing and decided to give a report. On its face it is absurd to believe still he waited for 8 days till report dated 25.06.2010. In his deposition he did not state when prior to 17.06.2010 he met accused if any and what was his response. In Ex.P5 he did not mention about met accused and any demand made. Thus, on its face the alleged demand is nothing but a false and weaved story from accused failed to respond even to the threatened letter of the PW.1 covered by Ex.P5 dated 19.03.2010 which is 100 days prior to Ex.P5. Thus prima facie

there is no any demand at all which is a pre-requisite for so called acceptance to constitute an offence under Section 7 & 13(2) r/w 13(1)(d) PC Act from the settled expressions of the Apex Court, more particularly from the constitution bench expression of the Apex Court in the recent past in P.Satyanarayana Murthy supra (without need of going into the other citations placed reliance by appellant-accused) where also charge-sheet was filed against appellant-Satyanarayana Murthy, and charges under Sections 7 & 13(1)(d)(i) & (ii) read with Section 13(2) of the Act were framed and was put to trial and convicted and in appeal acquitted for offence under Sections 7 and not for other and in appeal before the Apex Court it was held in paras 18 to 22 that:

“18. This Court in A. Subair vs. State of Kerala (2009)6 SCC 587, while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(d) of the Act ruled that the prosecution has to prove the charge there under beyond reasonable doubt like any other criminal offence and that the accused should be considered to be 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.

19. In State of Kerala and another vs. C.P. Rao (2011) 6 SCC 450, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused.....

20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand.

Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge there for, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction there under."

18. As discussed supra there is no basis to say any demand and the very allegation of demand for first time on 17.06.2010 by accused and PW.1 not willing decided to complain forthwith and still waited till 25.06.2010 is per se untrue and false version so also for he got motive against accused for not accepted the rejected claim of difference Rs.10 lakhs out of Rs.40 lakhs by subordinates of the accused despite Ex.P5 threatened letter of accused 100 days prior to Ex.P1, by marked copy to superiors of the accused. Without going into the defence evidence of DWs.1 to 11 with Exs.D1 to D30 that probablizes by preponderance the defence of accused of he is innocent and never demanded any bribe and PW.1 with a spite and ill-will foisted false case with explanation of what the amount of Rs.10,000/-, the prosecution since miserably failed to bring home the guilt of the accused on the two charges from what is discussed supra accused is entitled to acquittal and the trial Court's conviction judgment is unsustainable. Even any disproportionate assets case in RC.No.19A/2010 covered by charge sheet showing income above 428% to known sources will not infer any demand which is a pre-requisite from the settled legal position

referred and discussed supra to sustain the charges. The seizure of the pending bills filed with accused also does not infer any demand for what PW.1 deposed so also the prosecution case of the final accepting authority to process the bill is the accused.

19. Having regard to the above, there is no necessity to go into validity of sanction aspect from the contention of the sanctioning authority equal in cadre to accused cannot accord sanction to the prosecution of the accused and from the evidence of prosecution shows accused is removable only by Hon'ble President of India's order.

20. As the prosecution miserably failed to bring home the guilt of the accused on both the charges for the offences supra from what is discussed supra, the conviction judgment of the trial Court is unsustainable and liable to be set aside by allowing the appeal acquitting the accused.

21. Accordingly and in the result, the Criminal Appeal is allowed and the conviction judgment of the trial Court with sentence imposed against the accused is set aside in toto by acquitting the accused and his bail bonds are cancelled and fine amount paid if any is ordered to be refunded. Miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date: 08-04-2019
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