

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

CORAM:

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

+CRIMINAL APPEAL No.1790 OF 2007

% Delivered on: 05-12-2019

Between:

K. Kishan Reddy S/o Malla Reddy .. Appellant
Vs.

\$ The State, ACB through Special Public
Prosecutor for ACB Cases, High Court, Hyd. .. Respondent

! For Appellant : Mr. V. Prabhakar Rao,

^ 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 (CrI.) 73 (SC)
2. (2015) 10 SCC 152
3. (2009) 6 SCC 587
4. (2011) 6 SCC 450
5. 2018) (2) ALD (CrI.) 952 (SC)
6. AIR 1978 SC 1571
7. AIR 1979 SC 1408
8. 2009 (4) Crimes 504 (Bom.)
9. (2009) 3 SCC 779
10. (2006) 1 SCC 401
11. AIR 1981 1191
12. (2016) 3 SCC 26
13. (2016) 3 SCC 19

THE HON'BLE SRI JUSTICE K. LAKSHMAN**CRIMINAL APPEAL No.1790 OF 2007****JUDGMENT:**

Feeling aggrieved by the judgment, dated 05.12.2007, passed by the learned Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, in Calendar Case No.13 of 2002, wherein and whereby, the appellant was found guilty of the charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988, the appellant preferred the present appeal. Vide the said judgment, the trial Court sentenced the Accused Officer to undergo rigorous imprisonment for a period of one (01) year each and to pay a fine of Rs.1000/- (Rupees one thousand only) each and in default to undergo simple imprisonment for a period of one (01) month each for the said charges. Both the sentences of imprisonment were ordered to be run concurrently.

2. The factual matrix of the present appeal is as follows:

i) Accused Officer - K. Kishan Reddy worked as Assistant Executive Engineer, Rural Water Supply, Sub-division Ghanpur (Station), Warangal District at the relevant time.

ii) *De facto* complainant - Kasulabada Damoder was the *Sarpanch* of Venkatadripet village of Ghanpur (Station) Mandal, Warangal District. Pursuant to the General Body Meeting of his Village and the resolution of the Committee held on 07.01.2000, he dug an open well to overcome the drinking water scarcity of his village, at a cost of Rs.1,00,000/- (Rupees one lakh only). In order to prepare a bill for the said amount, the *de facto*

complainant approached the Accused Officer, A.E., RWS, to record the measurements of the well in 'Measurement Book' (hereinafter called as 'M' Book).

iii) The Accused Officer being the competent authority to record the measurements in 'M' Book, demanded an amount of Rs.6,000/- (Rupees six thousands only) as bribe from the *de facto* complainant.

iv) Since the *de facto* complainant was not interested to meet the said demand of Rs.6,000/- towards bribe, approached the ACB Officials on 10.04.2000 by lodging Ex.P17 complaint. Thereafter, PW.10, DSP, ACB, Warangal Range, registered a case on 12.04.2000, laid the trap on the same day by following the procedural aspects including conducting pre-trap and post trap proceedings in the presence of mediators.

v) After completion of investigation, the ACB Officials filed a charge sheet and the same was taken on file vide C.C. No.13 of 2002 for the aforesaid offences.

3. 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 proceeded with the trial.

4. During trial, the prosecution examined ten (10) witnesses i.e., PWs.1 to 10, marked Exs.P1 to P18 and MOs.1 to 8 were exhibited. In support of defence, the Accused Officer examined one witness i.e., DW.1 and marked Ex.D-1, and Exs.X1 to X15 were also marked.

5. 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 05.12.2007 in C.C. No.13 of 2002 and imposed the punishment in the manner stated supra.

6. Feeling aggrieved by the said judgment, the Accused Officer preferred the present appeal.

7. Heard Mr. V. Prabhakar 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.

8. Impugning the judgment, the learned counsel for the appellant would contend that the *de facto* complainant, who gave Ex.P17 - complaint to the ACB Officials against the Accused Officer, was not examined by the prosecution. Non-examination of the *de facto* complainant is fatal to the case of the prosecution and the prosecution did not prove the twin requirements of demand and acceptance which are *sine qua non*. The appellant further contended that PWs.1 to 4 and PWs.6 to 9 were declared as hostile by the prosecution and nothing contra was proved by the prosecution during cross-examination of the said witnesses. It is also his contention that the statement of the *de facto* complainant was not recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') and also under Section 161 of Cr.P.C. It is also his contention that in fact, an inquiry was conducted against *de facto* complainant wherein it was proved that an

amount of Rs.85,000/- was drawn fraudulently on the pretext of digging a new well. But, in fact, he did not dig the well and by showing the old well he drew the said amount. In support of the said contention, the Accused Officer examined Mr. Hussain Bin Saleh, Extension Officer in Panchayat Raj Department and relied on Ex.X15 - enquiry report. According to the appellant, the said enquiry report dated 21.10.2000 was not disputed by the prosecution. According to him, Ex.P11 - post trap proceedings dated 12.04.2000 were not drafted at the scene of offence and there is contradiction in the timings. The appellant further contended that in Ex.P10- rough sketch of the scene of offence, existence of almirah is not mentioned and as to in which room the said almirah was available, the make, mode, colour and the details such as wooden or steel of the almirah are also not mentioned in Ex.P11. The appellant further contended that PW.10-DSP, ACB admitted the above said facts during cross-examination and PW.10 has also further admitted that no verification/inspection with regard to digging of an open well was done by him before or after the trap.

i) It is his further contention that since the Accused Officer refused to record the measurements having found the mischief played by the *de facto* complainant, he bore grudge against the Accused Officer and implicated him in a trap falsely. The Accused Officer neither demanded any amount, much less the bribe amount, nor accepted the same on the day of trap and in fact, during post-trap proceedings, the Accused Officer offered his spot explanation to the effect that the *de facto* complainant thrust the tainted currency notes into his shirt pocket. But, the trial Court without considering the said evidence and material available on record passed the judgment only on surmises.

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

9. *Per contra*, supporting the impugned judgment, the learned Special Public Prosecutor would contend that there was an official favour of recording measurement in 'M' book was pending with the Accused Officer at the relevant point of time. Pursuant to the earlier demand, the Accused Officer demanded and accepted the bribe amount on the day of trap. According to him, the Accused Officer, Assistant Executive Engineer in RWS was competent authority to record measurements in 'M' Book and without recording the same, the bill in respect of digging of open well will not be sanctioned. Thus, there was an official favour pending with the Accused Officer and that the Accused Officer was in a position to do the said official favour. The Accused Officer abusing his official position demanded bribe amount of Rs.6000/- from PW.1. According to the learned Special Public Prosecutor, in Ex.X-15 report, it is mentioned that DW.1 visited the spot in question, the Sarpanch (LW.1 - *de facto* complainant), nine Ward Members have attended the enquiry, the Accused Officer did not examine the owner of the site in which the open well is situated and also Kanakam Ilaiah and Daida Upendra whose names were there in Ex.X15, Enquiry Officer recorded their statements. Due to non-examination of the said witnesses, the deposition of DW.1 cannot be relied upon and also Ex.X15 is not a trustworthy document, which can be believed.

i) According to the learned Special Public Prosecutor, the tainted currency notes were recovered from the Accused Officer. Non-examination

of the *de facto* complainant would not tilt the case of prosecution in view of circumstantial evidence specifically deposed by other prosecution witnesses. He also referred to the deposition of PW.1 - Investigating Officer and according to him, the said evidence cannot be brushed aside in the absence of disproving his trustworthiness. He further contended that the evidence of Investigating officer cannot be branded as highly interested on the ground that he wanted that the Accused Officer is convicted. In fact, the *de facto* complainant in order to help the Accused Officer did not enter into the witness box despite making efforts by the prosecution, the trial Court issuing non-bailable warrant, they could not secure the presence of the *de facto* complainant. The same is not a fatal to the case of the prosecution. Moreover, it is the *de facto* complainant, who has set the law into motion by way of lodging Ex.P17- complaint with specific allegation of demand of bribe by the Accused Officer and by specifically mentioning about the official favour that was pending with him. Therefore, it can be presumed that the Accused Officer himself prevented the *de facto* complainant not coming to the Court and giving evidence.

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

10. In view of the above rival contentions, the following points arises for consideration:

- i) Whether there was any official favour pending with the Accused Officer on 10.04.2000, the date on which, Ex.P17 - complaint was lodged by the *de facto* complainant with ACB Officials?

- 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):

11. It is 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. 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 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. 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) A three-Judge bench of the Apex Court in **P. Satyanarayan Murty v. State of Andhra Pradesh**², 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

¹. 2014 (2) ALD (Crl.) 73 (SC)

². (2015) 10 SCC 152

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**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 there-under 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**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 **Dashrath Singh Chauhan v. Central Bureau of Investigation**⁵, the Apex Court categorically held that in order to attract the rigors of Sections 7 and 13 (2) read with 13 (1) (d) of

³. (2009) 6 SCC 587

⁴. (2011) 6 SCC 450

⁵. 2018 (2) ALD (Crl.) 952 (SC)

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.

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. 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 a very peculiar case, where the *de facto* complainant was not examined by the prosecution to prove the demand and acceptance of bribe. PWs.1 to 4 and PWs.6 to 9 were declared as hostile by the prosecution and they were cross-examined by the Special Public Prosecutor for ACB. By referring to the said facts, the appellant - Accused Officer vehemently argued that the prosecution failed to prove the demand itself which is *sine qua non* to record conviction under the provisions of the Prevention of Corruption Act, 1988.

14. From the record, it is an admitted fact that the *de facto* complainant was Sarpanch of Venkatradipet village, Ghanpur (Station) Mandal, Warangal District at the relevant point of time. He has lodged Ex.P17 Telugu written complaint on 10.04.2000 to the DSP, ACB, Warangal, against the Accused Officer specifically complaining about the demand of bribe of Rs.6000/- from him to do the official favour i.e.,

recording of measurements in 'M' Book which is essential for the purpose of getting the bill to the work done by him as per the procedure. It is also specifically mentioned in Ex.P17 - complaint that the *de facto* complainant met the Accused Officer at his residence on 10.04.2000 who in turn demanded the said amount of Rs.6000/- as bribe to record the measurements in 'M' book. Thereafter, PW.10 - DSP, ACB, registered a case on 12.04.2000 and laid trap by following the due procedure. PW.10 specifically deposed about receipt of the said complaint from the *de facto* complainant on 10.04.2000 at 11.00 A.M. at his office and thereafter he requested him to come on 12.04.2000 at 7.00 a.m. with proposed bribe amount. He has further deposed that he got verified the petition through his Inspector and the antecedents of the Accused Officer and found that the Accused Officer was not enjoying good reputation and the contents of petition are genuine and correct. Thereafter, on obtaining oral permission from the ACB, Hyderabad, to register a case on 11.04.2000, he has registered a case on 12.04.2000 at 6.45 a.m.

i) It is the specific contention of the prosecution that they have made all efforts to secure the presence of the *de facto* complainant before the trial Court to record his deposition and the trial Court has also issued bailable warrant on satisfying the absence of the *de facto* complainant in Court despite receiving the summons. Thereafter, the trial Court on satisfying that the *de facto* complainant avoiding to attend the Court, issued non-bailable warrant and the same could not be executed since the *de facto* complainant avoided the ACB Police. The said facts would reveal that deliberately the *de facto* complainant avoided appearing before the trial Court for giving evidence.

ii) It is relevant to note that the trial Court also recorded the said events and gave a finding that the *de facto* complainant deliberately avoided to appear before the Court and, therefore, there is acceptable force in the contention of the prosecution that to help the Accused Officer, the *de facto* complainant avoided to appear before the Court to give evidence. Therefore, no adverse inference needs to be drawn in the said context against the prosecution.

iii) In Criminal Cases, more particularly in the cases where the offence is under the Prevention of Corruption Act, the prosecution has to prove guilt of the Accused Officers by producing direct evidence. May be for the said reason, the prosecution made all its efforts to secure the presence of the *de facto* complainant and they could not due to the reasons stated supra. However, they have examined other witnesses to prove the guilt of the Accused Officer. But, PWs.1 to 4 and PWs.6 to 9 were declared hostile and, therefore, they were cross-examined by the prosecution.

iv) It is relevant to note that PW.1 - Deputy Executive Engineer, Rural Water Supply is immediate superior officer of the Accused Officer. PW.2 - Work Inspector, who is subordinate to the Accused Officer during relevant point of time. PW.3, PW.6, PW.7, PW.8 and PW.9 are the Ward Members of Venkatadripet Village to which the *de facto* complainant was Sarpanch at the relevant point of time. It is the case of the prosecution that to help the Accused Officer, the *de facto* complainant avoided to appear before the trial Court to give evidence despite making all efforts to secure

his presence including issuance ofailable warrant and non-ailable warrant by the trial Court. Admittedly, the trap was on 12.04.2000 and the depositions of the above witnesses were recorded by the trial Court in 2007 i.e., after lapse of about seven years. By referring the same, the learned Special Public Prosecutor would contend that the Accused Officer with the help of *de facto* complainant - Sarpanch of the said village, managed the above said Ward Members to avoid any evidence which would be adverse to him in the trial Court. It is also his further contention that PW.1 is superior and PW.2 is subordinate of the Accused Officer and all of them to help the Accused Officer resiled from their earlier statements recorded by the ACB under Section 161 of Cr.P.C.

v) As per the record, it is an admitted fact that the prosecution made its efforts to secure the presence of the *de facto* complainant and he has avoided to appear before the trial Court to depose in the matter. The *de facto* complainant having set the law in motion by way of lodging Ex.P17 - Telugu written complaint to the ACB Officials on 10.04.2000, specifically complaining about the demand of illegal gratification of Rs.6000/- by the Accused Officer to do the official favour i.e., recording of measurements in 'M' book. The Accused Officer fails to prove during trial with regard to submission of the above said Ex.P17 - complainant by the *de facto* complainant and subsequently laying of trap wherein on the day of trap, the Accused Officer received the above said amount of Rs.6000/- from the *de facto* complainant. The trap and the receipt of tainted currency notes were proved and there is no contra evidence to the said evidence and the Accused Officer failed to elicit anything contra to disprove the said facts of laying of

trap and receipt of tainted currency notes from him. But, however, the Accused Officer has taken a defence that the *de facto* complainant thrust the said amount of Rs.6,000/- into his shirt pocket. The Accused Officer failed to prove the said thrusting of the amount by the *de facto* complainant into his shirt pocket with any other evidence. The Accused Officer to prove the said thrust theory, relied upon Ex.P11 - post trap proceedings wherein it is mentioned that on enquiry, he has informed PW.10 that the complainant came just a while ago and put a bundle of currency notes in his shirt pocket forcibly stating that to do the work and to distribute the amount among DE and others and stating so, the complainant went away. At that time, he was found shivering and stated the same in a low voice. It is relevant to note that in the very same Ex.P11 - post trap proceedings, it is mentioned that on receiving the pre-arranged signal, the trap party headed by PW.10, mediators, ACB Inspector rushed into the house of the Accused Officer, found a person going inside of the house from the drawing room, PW.10 called him into the drawing room and introduced himself as DSP, ACB. It is also mentioned that the Accused Officer took out the bundle of currency notes from his shirt pocket and placed it on the table. He has also produced 'M' Book containing hundred pages, resolution of Venkatadripet *Gram Panchayat*, detailed extract and abstract estimate concerned to the open well for RWS Scheme of Venkatadripet village and personal diary containing measurements pertaining to Venkatadripet village. The said facts would clinchingly establish that the Accused Officer accepted the above said amount of Rs.6,000/- from the *de facto* complainant, as illegal gratification to do the said official favour.

15. It is also relevant to note that in Ex.X15 - enquiry report, it is specifically mentioned by DW.1 about visiting of spot, presence of Sarpanch (*de facto* complainant) and nine Ward Members (including PWs., 3 and 6 to 9) and also recording statement of Mr. Kanakam Ilaiah and Daida Upendra. But, the *de facto* complainant avoided appearing before the trial Court and PWs.3 and 6 to 9 resiled the statements given by them earlier. The said contents of Ex.X-15 and the depositions of the said prosecution witnesses would establish beyond reasonable doubt that the *de facto* complainant avoided to appear before the trial Court intentionally and PWs.1 to 4 and 6 to 9 resiled from their previous statements only to help the Accused Officer. It is also relevant to note that PW.1 and PW.2, the superior and subordinate officers of the Accused Officers resiled from their previous statements only to help the Accused Officer.

i) PW.1 admitted about Ex.P1 resolution, Ex.P2 technical sanction for Rs.1,00,000/- by him for the said work estimate. He further deposed about the *de facto* complainant informing him in the month of January, 2000 about non-preparation of bill pertaining to execution of the work by the Accused Officer and he instructing the Accused Officer to prepare the bill of the complainant. He has also deposed about the procedure to be followed to clear the bill etc. During cross-examination, he has admitted the said facts apart from deposing in his chief examination.

ii) PW.2 - Work Inspector, subordinate to the Accused Officer, deposed that on the instructions of the Accused Officer, he only scribed Ex.P2 - Work Estimations pertaining to digging of well at Venkatadripet

village and *de facto* complainant meeting the Accused Officer. PWs.3 and 6 to 9 - Ward Members deposed about convening of meeting, passing of resolution for digging of well etc. However, PW.3 specifically admitted during cross-examination about lodging of complaint to the Chief Minister and ordering enquiry etc. He further admitted that from his childhood, he observed that there was an old well in the land of G. Krishna Reddy, abutting their village tank bund, LW.1 expanded the cap of the old well, did not dig any new well and wrongly claimed bill for Rs.85,000/-.

iii) PW.4, mediator, deposed about securing his presence by the ACB Officials, going to the office of ACB on 12.04.2000 along with LW.12, meeting PW.10 at 7.00 a.m. He also admitted about the entire pre-trap proceedings including production of currency notes, denomination etc. He only drafted Ex.P8 - pre trap proceedings. He further deposed that after receiving the pre-arranged signal, PW.10, himself and other trap party members entered into the house of the Accused Officer and found the Accused Officer going inside the room of his house from drawing room. He further deposed that the DSP called the Accused Officer and introduced himself and others. DSP questioned the Accused Officer whether he accepted any bribe from LW.1 - complainant and on which the Accused Officer took out the money from his shirt pocket and tendered the same to the DSP. He has also admitted about the chemical test, recovery of tainted currency and seizure of documents from the Accused Officer with regard to the said well of Venkatadripet village. He was declared hostile only on the ground that he deliberately did not identify the Accused Officer. However, during cross-examination, he has admitted "*I am recollecting my memory about the identity of AO and now I am able to identify the AO as such who is*

now present in the Court Hall. Due to lapse of seven years time, I could not identify him during my chief-examination.” During cross-examination of PW.4 admitted that the Accused Officer tried to establish the thrust theory and PW.4 admitted that during post-trap proceedings Accused Officer stated that the complainant came to him just while ago, put bundle of currency notes in his shirt pocket forcibly stating to do the work, to distribute the amount among DE and others and the said aspects are mentioned in page-2 of Ex.P11.

iv) PW.10 – DSP, ACB, specifically deposed about receipt of Ex.P17 - complaint from LW.1, registering of FIR, laying of trap, preparation of pre and post trap proceedings recovery of tainted currency notes from the Accused Officer including chemical tests. He has also deposed about recording of statement of the *de facto* complainant and seizure of Exs.P1, P2, P4 and P9. He has further deposed about recording of statements of other witnesses and after completion of investigation, laying charge sheet. During cross-examination of PW.10, nothing contra was elicited by the Accused Officer. He has failed to disprove the contents of Ex.P17 - complaint lodged by the *de facto* complainant.

16. The said depositions and documents would clinchingly establish beyond reasonable doubt that the Accused Officer demanded and accepted the said amount of Rs.6,000/- towards illegal gratification of the *de facto* complainant to do an official favour of recording measurements in ‘M’ Book.

17. On analysis of the entire evidence, the trial Court gave a finding that the *de facto* complainant deliberately avoided to appear before the trial

Court to give evidence to help the Accused Officer and no adverse inference needs to be drawn in the said context against the prosecution. There is no error in the said finding. The trial Court on the analysis of the depositions of the witnesses and also by referring the principle held by the Apex Court in the decisions referred therein, gave a specific finding that there are no circumstances to come to a conclusion that either under threat, undue influence or as the result of any fraud or deception, signature of LW.1 was obtained on Ex.P17 complaint. In fact, as discussed supra, the Accused Officer failed to disprove lodging of Ex.P17 - complaint specifically complaining about demand of Rs.6000/- as bribe and the contents thereof. As held by the Apex Court in **State of Kerala v. M.M. Mathew**⁶ the evidence of Investigating Officer cannot be branded as highly interested on the ground that they want to the Accused is convicted.

18. It is also relevant to mention that the Accused Officer failed to prove animosity between him and any of the ACB Officials/prosecution witnesses/persons to implicate him in the above said case. As discussed above, laying of trap against the Accused Officer is proved and recovery of tainted currency notes is also proved. The Accused Officer failed to prove the thrust theory, the defence taken by him by producing the relevant witnesses. The trial Court on examination of signature on Ex.P17 and contents of Ex.P17 gave a specific finding that there was demand of bribe by the Accused Officer. The trial Court also gave a specific finding that there is no dispute from the defence that MO.3 tainted amount was recovered from

⁶. AIR 1978 SC 1571

AO and that the said chemical tests yielded positive results. Therefore, the trial Court safely held that there was demand and acceptance of gratification by the Accused Officer. The trial Court has also drawn a presumption under Section 20 of the Act.

19. On the analysis of the entire evidence and the material on record, the trial Court also gave a specific finding with regard to the defence taken by the Accused Officer including the spot explanation of thrust theory. The evidence of PW.10 - DSP/Trap Laying Officer is that when he disclosed his identity to AO, the said AO found shivering and it is an important circumstance in favour of the case of the prosecution and the said conduct and body language of the Accused Officer is admissible under Section 8 of the Indian Evidence Act, 1872. When the DSP and trap party members entered into the house of the Accused Officer, they found the Accused Officer going inside of his house from the drawing room. Had LW.1 complainant thrust the amount forcibly into shirt pocket of AO, the natural conduct of AO was to follow the complainant to return back the amount or at least to throw away the said amount on the ground, but there are no such circumstances. On the other hand, the trap party found the Accused Officer entering inside his house by keeping the tainted amount in his shirt pocket and, therefore, the explanation of the Accused Officer is not at all convincing even by preponderance of probability. With regard to Ex.X-15 report also, the trial Court gave a specific reasoned finding that there are no circumstances to believe the said report.

20. From the above discussion, this Court would safely conclude that there is no error in the conviction recorded by the trial Court. This Court is

satisfied with the reasons given by the trial Court on the impugned judgment and the same are on analysis of the entire evidence, material available on record and the principle held by the Apex Court.

21. However, the appellant relied upon the principle held by the Apex Court in **B. Jayaraj**¹ wherein it was held that on proof of acceptance of illegal gratification, presumption can be drawn under Section 20 of the Act. Whereas, in the present case, the prosecution has proved beyond reasonable doubt that there is acceptance of illegal gratification by the Accused Officer to do the official favour and thus the prosecution has proved both the demand and acceptance in the present case. Therefore, with due respect, the said principle held by the Hon'ble Supreme Court is not applicable to the facts of the present case.

i) He has also relied on the principle held in **Suraj Mal v. State (Delhi Administration)**⁷ that where the witnesses make two consistent statements in their evidence either at one stage or two stages, the testimony of such witnesses become unreliable and unworthy of credence and in the absence of special circumstances, no conviction can be based on the evidence of such witnesses. In the present case, there are no two statements and as discussed above, the prosecution has proved both the twin requirements of demand and acceptance including pendency of official favour with the Accused Officer at the relevant point of time beyond reasonable doubt.

ii) In **Arjun Bajirao Kale v. The State of Maharashtra**⁸, it was held that mere acceptance of money by itself would not be sufficient for the

⁷. AIR 1979 SC 1408

⁸. 2009 (4) Crimes 504 (Bom.)

purpose of convicting the Accused who is charged with an offence punishable under Section 7, 13 (1) (d) read with 13 (2) of the Act. But, in the case on hand, the prosecution has not only proved the demand, but also proved the acceptance. In fact, the Accused Officer failed to prove the thrust theory and failed to disprove the contents of Ex.P17 - complaint and lodging of the said complaint by the *de facto* complainant with ACB Officials.

iii) The appellant relied on the principle held in **C.M Girish Babu v. CBI, Cochin⁹**, **T. Subramanian v. State of Tamil Nadu¹⁰**, **Dashrath Singh Chauhan⁶**, **P. Satyanarayana Murthy²** and **Mst. L.M.S. Ummu Saleema v. B.B. Gujaral¹¹** and the facts and circumstances of the present case are entirely different from that of the said cases. As discussed supra, the prosecution has proved the guilt of the Accused Officer and on the analysis of the evidence and documents, the trial Court recorded the conviction against the Accused Officer and there is no error in it. It is a reasoned order.

iv) It is relevant to mention the appellant - Accused Officer heavily relied on the principle held by the Apex Court in **A. Subair³** on the aspect of non-examination of the *de facto* complainant. In the said case, the prosecution could not examine the *de facto* complainant on the ground of the *de facto* complainant was not available in India and, therefore, the High Court held that since the Special Judge made attempts to secure the presence of the complainant and those attempts failed because of his non-availability

⁹. (2009) 3 SCC 779

¹⁰. (2006) 1 SCC 401

¹¹. AIR 1981 1191

in India, there was justification of non-examination of the complainant. The Apex Court held that it is difficult to countenance the approach of the High Court in the absence of semblance of explanation by the Investigating Officer for non-examination of the complainant, it was not open to the Courts below to find out their own reason for not tendering complainant in evidence. Whereas, in the present case, there is specific finding by the trial Court at page No.17, paragraph No.12 (i) that the prosecution had made all its efforts to secure the presence of the *de facto* complainant, summons were served on him, he was called absent, bailable warrant was issued against him, the same was returned stating that the *de facto* complainant avoiding attending the Court. Then, non-bailable warrant was issued, but it was also not executed as LW.1 avoided the ACB Police. All the said aspects reveal that deliberately LW.1 avoided to appear before the Court and there is acceptable force in the contention of the learned Special Public Prosecutor that to help the Accused Officer, the said LW.1 avoided to appear before the trial Court and give his evidence and, therefore, no adverse inference need to be drawn in the said context against the prosecution. Therefore, the facts in **A. Subair**³ are different to the facts to the case on hand. It is also relevant to note that in the said case, conviction was recorded on the evidence of PW.10, police constable, subordinate to PW.12 and the Apex Court held that it would be not only unsafe but dangerous to rest conviction upon his testimony, whereas, in the present case, the facts and circumstances are different. It is the *de facto complainant*, who set the law in motion by lodging Ex.P17 complaint wherein there is specific allegation of demand of bribe by the Accused Officer. The Accused Officer failed to disprove the

contents of Ex.P17 and the receipt of same by the PW.10 - DSP, ACB. The Accused Officer failed to elicit anything contra to the same to disprove the contents of Ex.P17 and receipt of the same by PW.10 during cross-examination.

v) It is relevant to note that the Hon'ble Supreme Court in **Sudip Kumar Sen alias Biltu v. State of West Bengal with batch**¹² categorically held that the Court may act on the testimony of single witness though uncorroborated, provided that the testimony of single witness is found reliable. In the facts of the case on hand, the prosecution examined PW.4, mediator, who categorically deposed the entire facts and also PW.10 - DSP, ACB. At the cost of repetition, as discussed supra, the Accused Officer failed to disprove the contents of Ex.P17 and receipt of the same by PW.10. Nothing contra was elicited from PW.4 and PW.10. Therefore, there is no circumstance that warrants disbelieving their depositions.

vi) It is also relevant to mention the principle held by Apex Court in **State of Assam v. Ramen Dowarah**¹³, wherein it is categorically held that *“men may lie but the circumstances do not is the cardinal principle of the evaluation of evidence.”* In the present case, the *de facto* complainant despite lodging Ex.P17 complaint and giving statement to ACB, he has avoided to appear before the trial Court. Similarly, PWs.1 to 4 and 6 to 9 resiled from their previous statements to help the Accused Officer. Thus, the trial Court did not commit any error, much less *manifest* error in recording conviction against the Accused Officer on the analysis of entire evidence and consideration of material on record.

¹². (2016) 3 SCC 26

¹³. (2016) 3 SCC 19

22. Therefore, the trial Court, on the analysis of the entire evidence and material on record, convicted the Accused Officer. This Court satisfied with the reasons given by the trial Court in the impugned judgment. Therefore, this Court do not see any reason warranting interference in the impugned judgment.

23. In view of the aforesaid discussion, the appeal fails and accordingly, the same is dismissed confirming the judgment, dated 05.12.2007, passed by the learned Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, in Calendar Case No.13 of 2002.

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

JUSTICE K. LAKSHMAN

5th December, 2019

Note:

L.R. Copy to be marked
(B/O) Mgr