HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL APPEAL No.71 OF 2007

JUDGMENT:

This Criminal Appeal has been preferred by the appellant - Accused Officer against the judgment dated 28.12.2006, passed by the learned Special Judge for C.B.I. Cases, Hyderabad in C.C. No.18 of 2001. He was tried for the offences under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988, whereby and where-under the appellant was convicted and sentenced to undergo simple imprisonment for one year each and to pay a fine of Rs.1,000/- each and in default to undergo simple imprisonment for fifteen (15) days each respectively, and both sentences ordered to run concurrently after setting off the period of remand, if any.

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

(i) At the relevant point of time, the Accused Officer was Assistant Superintendent of Post Office, Suryapet. Sri M. Chandrasekhar - PW.1, the *de facto* complainant, was an Extra-Departmental Stamp Vendor. PW.1 was dismissed from service with effect from 09.03.1995, and on his appeal, the Appellate Authority issued Ex.P-7 order of his reinstatement.

ii) On coming to know about his reinstatement, PW.1 met the Accused Officer for posting orders of his choice at Suryapet. For the said purpose, the Accused Officer initially demanded an amount of Rs.5,000/- (Rupees Five Thousand only) which was reduced to Rs.3,000/- (Rupees Three Thousand only) on the request of PW.1.

iii) Since PW.1 disinterested in meeting the said demand of bribe, approached the CBI Officials at Hyderabad on 08.10.2000 by lodging Ex.P-1 complaint on 11.10.2000. On receipt of Ex.P-1 complaint, the CBI

Officials registered a case and after following the procedure, including pre-trap proceedings, laid a trap against the Accused Officer on 11.10.2000 at the office of the Accused Officer. They have also conducted post-trap proceedings etc., and recovered the tainted amount of Rs.3,000/- from the Accused Officer.

iv) After completion of investigation, the CBI Officials laid the charge sheet and the same was taken on file vide C.C. No.18 of 2001for the offences under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short 'the Act').

3. During inquiry, the trial Court framed the 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 claimed to be tried, and accordingly, the trial Court proceeded with the trial.

4. During trial, the prosecution examined as many as eight witnesses as PWs.1 to 8, got marked Exs.P-1 to P-11 and exhibited MOs.1 to 5 in support of its case, whereas the Accused Officer to substantiate his defence, examined as many as three witnesses as DWs.1 to 3 and got marked Exs.D-1 and D-2. Ex.X-1, inquiry report dated 27.11.2006 was also marked.

5. The trial Court, on appreciation of evidence, both oral and documentary, found the Accused Officer guilty of the above said charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Act, and accordingly, convicted him and imposed the sentences as mentioned above.

6. Feeling aggrieved by the said judgment, the appellant - Accused Officer preferred the present Appeal.

7. Heard Sri. T. Suryakaran Reddy, learned Senior Counsel, representing Sri K. Sitaram, learned counsel appearing for the appellant - Accused Officer and Sri K. Surender, learned Special Public Prosecutor for CBI Cases appearing on behalf of the respondent.

8. Impugning the judgment, learned senior counsel contended that departmental proceedings were initiated against PW.1 for committing fraud of Rs.10/- in franking machine and the Disciplinary Authority, Postal Department appointed the Accused Officer to conduct departmental inquiry against PW.1 into the charges leveled against him. Accordingly, the Accused Officer has conducted the inquiry and submitted his report holding that PW.1 was guilty of the charges leveled against him. Basing on the said inquiry report only, punishment of dismissal was imposed on PW.1. Therefore, PW.1 bore-grudge against the Accused Officer and implicated him in a false case in collusion with CBI Officials.

i) The learned senior counsel further contended that in fact the Accused Officer was only an Assistant Superintendent of Post-Office at Suryapet and virtually there was no official favour that was pending with him at the relevant point of time. According to him, the Accused Officer was not in a position to do any official favour to PW.1 and, therefore, the question of Accused Officer demanding bribe and accepting the same does not arise. It is his further contention that the Accused Officer believed PW.1, who was also working in the very same office and handed over Rs.3,000/- i.e., six five hundred rupee notes with a request to get change of hundred rupee notes. Taking advantage of the same, PW.1, who was having animosity with the Accused Officer, implicated him in the case falsely. It is also his contention that it is the consistent defence of the Accused Officer that the said amount of Rs.3,000/- was given to PW.1 with a request to get the change and, accordingly, the Accused Officer received the said amount of Rs.3,000/- from PW.1 on the date of trap and it is not a bribe as alleged.

ii) It is also contended by the learned senior counsel that mere recovery of currency notes is not sufficient and that the prosecution has to prove the twin requirements of 'demand and acceptance of illegal gratification' to do an official favour by way of producing evidence and by proving the same beyond reasonable doubt. In the present case, the prosecution failed to do so, and the prosecution also failed to prove the guilt of the Accused Officer by producing cogent and convincing evidence. On the other hand, the Accused Officer proved that he has received the said amount from PW.1 towards change but not towards bribe amount as alleged by the prosecution. The learned senior counsel also referred various contradictions and admissions during cross-examination of prosecution witnesses and also the depositions of DWs.1 to 3. With the said contentions, the learned senior counsel prayed to allow the appeal by setting aside the impugned judgment passed by the trial Court.

9. *Per contra*, supporting the impugned judgment, Sri K. Surender, learned Special Public Prosecutor for CBI Cases, would contend that the prosecution has proved the charges beyond reasonable doubt. According to him, PW.1 gave Ex.P-1 complaint on 11.10.2000 to PW.7, Sri M.M. Rao, DSP/ASP, CBI, Hyderabad, who in turn laid the trap by following the procedure. According to him, on receipt of Ex.P-1 - complaint, the CBI Officials secured the mediators, laid trap and also conducted post-trap

proceedings by way of preparing Ex.P-3, second mediators' report on 11.10.2000 itself and the tainted money of Rs.3,000/- was recovered from the Accused Officer.

i) It is also contended that the Accused Officer demanded an amount of Rs.3,000/- to get the official favour done i.e., posting of his choice at Suryapet from Sri Ramesh Babu, Superintendent of Post Office, Suryapet, who was competent authority to issue posting orders to PW.1. He also referred deposition of Sri Prahalad Sharma - PW.2, one of the mediators, who deposed about the entire trap proceedings including the acceptance of said amount of Rs.3,000/-, recovery of the same from the Accused Officer in his presence. He has also referred the depositions of Sri G.R. Jesudas, Inspector of Police, CBI, PW.5 and Sri M. M. Rao, DSP/ASP, CBI, PW.7 in support of his contentions.

ii) According to the learned Special Public Prosecutor, the prosecution has proved the guilt of the Accused Officer for both the offences under Sections 7 and 13 (1) (d) read with 13 (2) of the Act; that the trial Court on considering the evidence, both oral and documentary, convicted the Accused Officer by giving specific reasoning and that there was no error in the impugned judgment. With the said contentions, the learned Special Public Prosecutor prayed for dismissal of the appeal.

10. In view of the said rival contentions, the following points that arise for consideration:

i) Whether there was any possibility of Accused Officer getting the official favour done to 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):

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

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

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[1]. 2014 (2) ALD (Crl.) 73 (SC)

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

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

iii) The Apex Court in the case of **State of Kerala v. C.P. Rao**[4] held that mere recovery 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.

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2. (2015) 10 SCC 152
3. (2009) 6 SCC 587
4. (2011) 6 SCC 450

iv) In **Sujit Biswas v. State of Assam**[5], the Apex Court also categorically held that suspicion, however, grave, cannot take the place of proof, and there is a large difference between something that `may be' proved, and something that `will be proved', and that in a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between `may be' and `must be' is quite large, and divides vague conjectures from sure conclusions and that in a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. It was further held that the large distance between `may be' true and `must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied and that in such cases, while keeping in mind the distance between `may be' true and `must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record and that the court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused.

v) In **Dashrath Singh Chauhan v. Central Bureau of Investigation**[6], 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

5. (2013) 12 SCC 406
6. 2018 (2) ALD (Crl.) 952 (SC)

twin requirements of "demand and acceptance of bribe money by the accused" proving of one alone but not the other was not sufficient.

vi) In **M. Narsinga Rao v. State of A.P.**[7], a three-Judge bench of Apex Court held that in reaching the conclusion, the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process, the Court may have regarded to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act, 1872. It was further held that presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in Law of Evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts, the court can draw an inference that would remain until such inference is either disproved or dispelled. There is no definition of gratification in the Act; hence, it must be understood in its liberal meaning.

13. 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

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[7]. 2001 Crl.L.J. 515

Prevention of Corruption Act, 1988. It is also settled principle that establishing both the said twin requirements beyond reasonable doubt by the prosecution is also essential to record the conviction.

14. Coming to the case on hand, it is an admitted fact that PW.1 was removed from service on 18.03.1995 for committing fraud of Rs.10/- in connection with a franking machine. In the departmental inquiry conducted against PW.1, the Accused Officer acted as an Inquiry Officer and conducted inquiry, submitted his report holding that PW.1 was guilty of the charges levelled against him. Basing on the said findings only, punishment of removal was imposed on PW.1 vide order, dated 18.03.1995. It is also an admitted fact that PW.1 preferred an appeal against the order of removal and the appellate authority issued Ex.P7 proceedings directing the reinstatement of PW.1. On coming to know about Ex.P7, PW.1 tried for posting of his choice at Suryapet which was beneficial to him. Therefore, PW.1 approached the Accused Officer with a request to get such posting order of his choice at Suryapet done with Sri Ramesh Babu, Superintendent of Post Offices, Nalgonda. According to him, though Ex.P7 was dated 20.09.2000, posting orders were not given and according to him even till the date of demand and acceptance of amount of Rs.3,000/- towards bribe, he could not get the official favour done through the Accused Officer i.e., posting of his choice at Suryapet. Therefore, since he did not want to pay the said amount of Rs.3,000/- as bribe to the Accused Officer, PW.1 approached the CBI Officials by way of lodging Ex.P1-complaint.

i) PW.1 deposed about lodging of Ex.P-1 complaint with the CBI Officials and pursuant to which, the CBI Officials laying a trap against the

Accused Officer. According to him, the Accused Officer demanded an amount of Rs.3,000/- to get official favour done i.e., posting of his choice at Suryapet from Sri Ramesh Babu, Superintendent of Post Offices, Nalgonda and acceptance of the said amount by the Accused Officer. During cross-examination, he has admitted that the Accused Officer has conducted domestic inquiry and submitted his report holding him guilty of charges leveled against him. He has further admitted that he does not know the competent authority who would issue the posting orders. He further admitted that he would get more salary if he works in the Head Post Office at Suryapet instead of Bank Street Post Office at Suryapet and difference of amount would be Rs.200 to Rs.300/- and so also working hours.

15. PW.2 - Sri Prahalad Sharma, one of the mediators to the trap proceedings, deposed about trap events including pre and post trap proceedings. He deposed that he could not hear the conversation between PW.1 and the Accused Officer and he has seen the Accused Officer receiving the money from PW.1 and keeping it in his watch pocket. During cross-examination, he has admitted that the Accused Officer and PW.1 were talking behind the jeep at about 5.50 P.M. and that he was watching and seeing them at a distance of 45 yards.

16. PW.3 - Sri R. Mattapalli Rao, who was working as Office Assistant in the office of the Superintendent of Post Office, Suryapet, deposed about issuance of Ex.P-7 reinstatement orders of PW.1 on 22.09.2000, preparation of Ex.P6-office note and placing the same before the Accused Officer. He further deposed that the he has prepared the said office note on 22.09.2000, sent the same to the Superintendent of Post

Office, Nalgonda and the said file was with him till 26.09.2000. During cross-examination, he has admitted that he has not received the file of PW.1 after 26.09.2000 and CBI Officials collected the file of PW.1 from the table of the Superintendent of Post Offices.

17. PW.4 - Smt. Seema Srivastava, who was a Senior Scientific Officer in CFSL, Hyderabad, deposed about finding the phenolphthalein particles in MO.4, while phenolphthalein and sodium carbonate particles in MOs.1, 2 and 3 and about her giving report vide Ex.P-8 to that effect. During cross-examination, she stated that she has not mentioned the reasons for her conclusion in his report.

18. Sri G.R. Jesudas, the then Inspector of Police, CBI, Hyderabad, PW.5 deposed about his registration of crime in R.C. No.22/2000 as per the instructions of SP, CBI, securing the mediators and conducting pre-trap proceedings and thereafter laying trap against the Accused Officer. He also deposed about recovery of tainted money, observing post-trap proceedings and drawing sketch of scene of offence. During cross-examination, he has categorically admitted about receipt of Ex.P-1 complaint from PW.1 at 10.00 a.m. on 11.10.2000, but he had not endorsed about the verification done by him.

19. Sri B. B. Sudhakar, Director, Postal Services, Hyderabad Region, PW.6, deposed about receipt of requisition from the CBI Officials and he has gone through the entire material enclosed along with the requisition and having convinced that it was a fit case to accord sanction, he has issued Ex.P-10, sanction order to prosecute the Accused Officer. During cross-examination, he admitted that PW.1 never complained to him about demand

of bribe by the Accused Officer and it was not mentioned in the sanction order about the explanation given by the Accused Officer to the CBI on the day of trap.

20. Sri M.M. Rao, DSP/A.S.P., CBI, Hyderabad Branch - PW.7 deposed that as per the orders of SP., CBI, Hyderabad, he assisted the trap party in laying trap against the Accused Officer and that he participated in pre and post trap proceedings. During cross-examination, he categorically admitted that he has not questioned PW.1 about the Accused Officer giving him currency notes of five hundred rupee notes. He further admitted that at the time of trap, the Accused Officer told him that he gave currency notes to PW.1 for getting change. He further admitted that no postal employee signed Ex.P-3 and Sri Ramesh Babu was present in the office throughout the proceedings covered by Ex.P3 and the said fact was also mentioned in Ex.P3.

21. Sri G.P. Vinod Kumar, the then Inspector of Police, CBI - PW.8 deposed about his examining the relevant witnesses and recording their statements and that after receipt of sanction order, laying charge sheet against the Accused Officer. During cross-examination, he categorically admitted that as per his investigation, the Accused Officer was not competent to give posting to PW.1 and that Ex.P-2 did not disclose particulars of the Cassette which was given to PW.1. He also categorically admitted about the explanation offered by the Accused Officer to the CBI Officials during trap to the effect that the Accused Officer gave six currency notes of five hundred denominations to PW.1 to bring change and that he has received back that amount from PW.1.

22. As already stated above, to disprove the prosecution case and to substantiate his defence, the Accused Officer examined three witnesses as DWs.1 to 3.

23. Sri M. Venkata Reddy, Civil Contractor, DW.1, deposed about his presence in the office of the Accused Officer on the day of trap to meet the Superintendent of Post Offices and handing over of six five hundred rupee notes by the Accused Officer to PW.1 with a request to get change and accordingly PW.1 on receipt of the said notes, went out. He further deposed about giving evidence in the Departmental Inquiry conducted against the Accused Officer i.e. Ex.D1.

24. Sri M. Venkata Ramana Murthy, DW.2 a Stenographer in the office of Superintendent of Post Offices, Suryapet, deposed about his attending office on 11.10.2000 at about 9.15 a.m. and PW.1 coming and enquiring him about the Superintendent for which he told PW.1 to come in the evening hours. He further deposed that while he was having lunch along with Sri Mattapalli Rao and the Accused Officer, PW.1 came to the office and met the Accused Officer and after conversation, PW.1 left the office. He gave his deposition, Ex.D2 in the departmental inquiry conducted against the Accused Officer. During cross-examination, he admitted that on the date of incident, the Accused Officer was assisting the Superintendent in scrutinizing the applications and, therefore, PW.1 met him and enquired about the Superintendent and the Assistant Superintendent. He was declared hostile in the Departmental enquiry and was cross-examined by the department.

25. Sri G. Malakondaiah, Enquiry Officer, DW.3 deposed that he was the Inquiry Officer and conducted the inquiry against the Accused Officer and also recording statements of DWs.1 and 2 as Exs.D1 and D2. During cross-examination, he stated that Ex.X-1 is the copy of inquiry report submitted by him and that he did not rely on the statement given by DW.1.

26. From the above stated discussion, it is clear that there was animosity between PW.1 and the Accused Officer with regard to submission of findings holding PW.1 as guilty of charges levelled against him. The charge against the Accused Officer is that he has demanded bribe from PW.1 for getting an official favour done i.e., getting the choice of posting on his reinstatement and for the said purpose, the Accused Officer has accepted an amount of Rs.3,000/-. Admittedly, on appeal, Ex.P7 - reinstatement orders were issued to PW.1 and he was waiting for posting order and tried for posting of his choice. Posting orders whether it is choice or otherwise would be issued by the Superintendent of Post Office, Nalgonda. In the present case, Sri Ramesh Babu was the Superintendent of Post Offices at the relevant point of time. But, unfortunately, prosecution did not examine the said Ramesh Babu during trial to prove the fact of pendency of file of PW.1 with him and the Accused Officer approaching him with a request/proposal to get the said official favour done to PW.1. PW.7, DSP, CBI, categorically deposed that Sri Ramesh Babu was present in the office throughout the proceedings covered by Ex.P3, second mediators' report and the said fact was also mentioned in Ex.P3. PW.3, Office Assistant categorically deposed about issuance of Ex.P7 reinstatement orders, preparation of Ex.P6 office note on 22.09.2000, sent the same to the Superintendent of Post Office, Nalgonda and the said file was with him till 26.09.2000. He has also

admitted that the said file of PW.1 was collected by the CBI Officials from the table of the Superintendent of Post Offices. PW.5, during cross-examination, categorically admitted about the seizure of the said file containing pages 1 to 213 pertaining to the complainant from Sri Ramesh Babu, Superintendent of Post Offices. Thus, the prosecution miserably failed to prove that there was possibility of the Accused Officer getting the official favour done to PW.1. Admittedly, it is the Superintendent of Post Office, who has to issue the posting orders. Non-examination of Sri Ramesh Babu, Superintendent of Post Office, Nalgonda is fatal to the case of the prosecution.

27. As discussed above, according to PW.1, he was reinstated into service on 20.09.2000 and was trying for posting and the file was with the Accused Officer. To get the said favour done to him, the Accused Officer demanded an amount of Rs.5,000/-, PW.1 requested the Accused Officer to accept Rs.1,000/- and finally the Accused Officer accepted for Rs.3,000/-. But, in Ex.P1, PW.1 complained about demand of Rs.3,000/- towards bribe by the Accused Officer. There is no mention about demanding of Rs.5,000/- etc., in Ex.P1. There is no answer to the said discrepancy by the prosecution.

i) According to PW.1, he has approached the CBI Officials on 08.10.2000 and lodged complaint Ex.P1 on 11.10.2000. The said fact of approaching the CBI Officials on 08.10.2000 was also not mentioned in Ex.P1 and admittedly Ex.P1 is dated 11.10.2000. Even Ex.P2 first mediators' report discloses the said fact of PW.1 giving Ex.P1 complaint on

11.10.2000 to the CBI Officials. There is no explanation by the prosecution to the said discrepancy.

28. PW.1 categorically admitted that he along with CBI Officials reached Suryapet at 9.30 a.m. on 11.10.2000 and he went to the office of the Accused Officer between 11.00 a.m. to 12.00 noon and he met the Accused Officer at about 1.05 p.m. at the office of the Superintendent of Post Offices. He has also deposed during re-examination that Ex.P2 was prepared at about 8.00 a.m. at CBI Office. According to PW.1, Ex.P-2, first mediators' report, was prepared at about 11.00 a.m. at CBI Office and he along with CBI Officials reached Suryapet at about 9.30 a.m. on the day of trap. But, as per PW.2, mediator, he attended CBI Office at about 10.30 a.m. on 11.10.2000. According to PW.5, Inspector, CBI, they have reached Suryapet at about 2.30 p.m. on 10.11.2000 (may be wrongly typed as 10.11.2000 instead of 11.10.2000). According to him, Ex.P2 was prepared between 10.30 a.m. to 11.30 a.m. at CBI Office on 11.10.2000.

i) According to PW.5, Ex.P1 bears the endorsement of S.P. without time of receipt of the same. The requisition for summoning of PW.2 and other mediator was at about 9.45 a.m. In Ex.P2, first mediators' report, it is clearly mentioned that on 11.10.2000 at about 10.30 hours, the proceedings were drawn. In Ex.P3, second mediators' report, it is mentioned that the after completion of pre-trap proceedings, they have reached Suryapet at 14:30 hours in Tata Sumo. Admittedly, PW.1 is a resident of Suryapet, Nalgonda District and CBI Office is at Hyderabad. Ex.P-9 FIR discloses that the date and time of the report as 11.10.2000 at 10.00 hours. There is no explanation with regard to said contradictions in the timings by the prosecution.

29. There are also contradictions with regard to place and time of receipt of the money by the Accused Officer from PW.1. According to PW.1, on 11.10.2000 he along with PW.2 went to the office of the Accused Officer at about 2.30 p.m. and on seeing him, the Accused Officer came out from his room and confirmed about bringing of money and asked him to come to his office at 5.30 p.m. or 6.00 p.m. Thereafter, PW.1 met the Accused Officer at 5.30 p.m., the office room of the Accused Officer is situated in first floor, on seeing PW.1 in the compound of his office the Accused Officer signalled him to wait in the compound. There was jeep parked on the side of the ground, PW.1 and the Accused Officer went behind the jeep and according to PW.1, the Accused Officer received the said amount of Rs.3,000/- from him and kept in the watch pocket of his pant. PW.2, mediator, who accompanied PW.1, deposed that at 5.45 p.m., he and PW.1 reached inside the compound of the office near a jeep, the Accused Officer asked them to come near the jeep and he came down. The jeep was standing ten yards from the gate where he was standing near the gate and for paucity of place, PW.1 and the Accused Officer went to the parking place. He could not hear the conversation between PW.1 and the Accused Officer and the Accused Officer took the money from PW.1 and kept in the watch pocket of pant and went into his office.

i) PW.5, Inspector of Police, CBI, deposed that they went to the office of the Accused Officer at 5.30 p.m. on 11.10.2000, as they entered in stair-case, the Accused Officer took PW.1 to a corner of that building, where garage is located and he was speaking to PW.1, within two or three minutes, PW.2 who was close to them, gave a pre-arranged signal. He has also admitted that he did not see the Accused Officer taking the bribe money from PW.1 and he and PW.2 did not hear the conversation that took place between PW.1 and the Accused Officer.

Thus, there are contradictions with regard to the timing and the place of receipt of money from PW.1 by the Accused Officer. There is no explanation from the prosecution to the said contradictions.

30. With regard to demand of bribe, except PW.1, there is no other witness to depose about the said demand and the prosecution did not examine any other witness other than PW.1 to prove the demand. However, according to the defence, PW.1 is having animosity with the Accused Officer and their relations are strained in view of the adverse findings given by the Accused Officer in the Departmental Inquiry. Even PW.2 deposed only about receipt of money by the Accused Officer from PW.1 and according to him, he did not hear the conversation between him and the Accused Officer. According to PW.2, he was standing at about 45 yards from the place where PW.1 and the Accused Officer were discussing. PW.5 also categorically admitted that he and PW.2 did not hear the conversation that took place between PW.1 and the Accused Officer. PW.7 has also admitted that he did not hear the conversation that took place between PW.1 and the Accused Officer. PWs.5 and 7 both have admitted that they have not seen the Accused Officer receiving money from PW.1. Except PW.1 there is no other witness to speak about demand of bribe.

31. It is the consistent defence of the Accused Officer that he has given Rs.3,000/- (six five hundred rupee notes) to PW.1 with a request to get change and accordingly he has brought the change. He never demanded bribe from PW.1. The said fact was also incorporated in Ex.P3-post-trap proceedings. PW.7 has categorically admitted that when the Trap Laying Officer questioned, the Accused Officer immediately said that he gave currency notes to PW.1 for bringing change. PW.5 also admitted the said fact. PW.2 only scribed the second mediators' report to the dictation of PW.5. During cross-examination, PW.5 has also categorically admitted that the Accused Officer soon after the trap claimed that the amount was change asked for by him. The said defence was also supported by DWs.1 to 3. The prosecution did not elicit anything contra from the defence witnesses.

32. The trial Court convicted the Accused Officer on the ground that the prosecution successfully proved the demand and acceptance of Rs.3,000/- covered by MO.1 from PW.1 and the presumption under Section 20 of the Act is available which is not dislodged by the defence. The trial Court referred the depositions of DWs.1 and 2 and dislodged the said depositions on the ground that the same are doubtful. With regard to the discrepancies in timings, though the trial Court gave a finding about discrepancy in timing and according to the trial Court it does not in any way dislodge the presumption available under Section 20 of the Act in favour of the prosecution. The trial Court further held that the discrepancies found in its version about timings, prosecution is still able to prove the demand and acceptance of bribe amount by the Accused Officer from PW.1 since recovery of tainted amount and the raid is admitted by the defence, the discrepancies pointed out are not of such magnitude so as to dislodge the

presumption under Section 20 of the Act available to the prosecution. The said finding is without proper reasoning and therefore not convincing. As discussed above, mere receipt of tainted money is not sufficient to prove the guilty of the Accused Officer and the prosecution has to prove the demand and acceptance of bribe by the Accused Officer to do an official favour beyond reasonable doubt. In the present case, the prosecution miserably failed to prove the same. As discussed above, in fact, there was no official favour of PW.1 pending with the Accused Officer. Even to get the said official favour of choice posting from Sri Ramesh Babu, Superintendent of Post Offices, Nalgonda, to PW.1, the prosecution did not examine the said Sri Ramesh Babu to prove that the Accused Officer approached him with a request to get the said official favour done to PW.1. In fact, it is the case of the prosecution that the Accused Officer demanded bribe from PW.1 to get official favour i.e., choice posting to PW.1. Non-examination of Sri Ramesh Babu to prove the said fact is fatal to the prosecution case. Therefore, prosecution cannot take shelter under Section 20 of the Act.

33. As discussed above, it is settled principle that proving of one requirement i.e., either demand or acceptance alone is not sufficient to record conviction and the prosecution has to prove both. In the present case, the prosecution failed to prove both the twin requirements of demand and acceptance of bribe which are *sine qua non*. The prosecution has to prove the said charges beyond reasonable doubt like any other criminal offices. The Hon'ble Supreme Court also held that miscarriage of justice is avoided if the facts and circumstances of the case so demand, then the benefit of doubt must be given to the Accused Officer. When two views are possible, benefit of doubt should be given to the Accused Officer.

34. It is the contention of the Accused Officer that his wife died due to the mental agony caused to her in view of the imposition of punishment of dismissal from service on the Accused Officer and on considering the said ground only, the Appellate Authority issued Ex.P7-reinstatement order. The Accused Officer has also contended that he underwent surgery, illness due to mental agony and the fact of bringing the Accused Officer in wheel-chair was also recorded by the trial Court in the impugned judgment.

35. As discussed above, the prosecution failed to prove the twin-requirements of demand and acceptance of bribe by the Accused Officer. Thus, the Accused Officer is entitled for acquittal and accordingly, impugned judgment is not sustainable, both under law and on facts, and therefore the same is hereby set aside.

36. In the result, the present Criminal Appeal is allowed and the conviction and sentence recorded by the learned Special Judge for CBI Cases, Hyderabad, in Calendar Case No.18 of 2001 vide judgment dated 28.12.2006 against the appellant - Accused Officer for the offences punishable under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988, are set aside. The Accused Officer is on bail. The bail bonds of the Accused Officer shall stand cancelled.

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

JUSTICE K. LAKSHMAN

15th November, 2019
Mgr