THE HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL APPEAL No.785 OF 2006

JUDGMENT:

Feeling aggrieved by the judgment, dated 15.06.2006, passed by the learned Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, in Calendar Case No.30 of 2001, wherein and whereby, the appellant - Accused Officer was found guilty of the charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short 'Act'), he 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 and to pay a fine of Rs.2000/- (Rupees two thousands only) and in default to undergo simple imprisonment for a period of two (02) months under each count. Both the sentences of imprisonment were ordered to be run concurrently.

2. The facts of the case are as under:

i) Accused Officer - V. Subhash worked as Prohibition and Excise Sub-Inspector, Manthani, Karimnagar District at the relevant point of time.

ii) PW.1 - *de facto* complainant - M. Jagannatham Goud was a Member of Toddy Tappers Cooperative Society of Vilasagar Village (for short 'the Society') of Kataram Mandal, Karimnagar District and son of M. Ramaswamy Goud (LW.4), President of the said society. On account of old age of his father, PW.1 was looking after the activities of the said society.

iii) On 03.12.1999, the Accused Officer, Sub Inspector, Prohibition and Excise, Manthani, having jurisdiction over Toddy Tappers Cooperative Society, Vilasagar Village of Kataram Mandal, called PW.1 and demanded him to pay a sum of Rs.3,000/- as monthly *mamool*, or else he would implicate him (PW.1) in adulteration of toddy cases and cancel the license of the society, and reiterated the same on 07.12.1999 and 09.12.1999, on which day, at the request of PW.1, the Accused Officer reduced the quantum of bribe amount to Rs.2,000/-.

iv) Since PW.1 was not interested to meet the said demand of Rs.2,000/- towards bribe, approached the ACB Officials on 10.12.1999 by lodging Ex.P1 - complaint. Thereafter, PW.4 - DSP, ACB, Warangal Range, FAC Karimnagar Range, laid trap 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.30 of 2001 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 and accordingly the trial Court proceeded with the trial.

4. During trial, the prosecution examined seven (07) witnesses i.e., PWs.1 to 7, marked Exs.P1 to P8 and MOs.1 to 8 were exhibited. In support of defence, the Accused Officer examined three witnesses i.e., DWs.1 to 3 and marked Exs.D-1 and D-2, and Exs.X1 to X12 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 15.06.2006 in C.C. No.30 of 2001 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. T. Niranjan Reddy, learned Senior Counsel representing Mr. T. Nagarjuna Reddy, 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 senior counsel would strenuously contend that the prosecution failed to prove the demand and acceptance. As per Ex.P1, the demand was on three occasions i.e., 03.12.1999, 07.12.1999 and 09.12.1999 and the prosecution failed to prove the same. In fact, there was no official favour that was pending with the Accused Officer and, therefore, the question of demanding the bribe and acceptance of the same does not arise. There was delay in registering the crime from 10.12.1999 to 13.12.1999. The Accused Officer received the said amount of Rs.2,000/- from PW.1 towards rentals and tree tax of Vilaspur Toddy Tappers Co-operative Society and not towards *mamool* as alleged by the prosecution. In Ex.P4, spot explanation of the Accused Officer he has categorically stated that he received the said amount towards rentals and tree tax. He has further contended that there are contradictions in the depositions of prosecution witnesses and the prosecution failed to examine any Member of the said Society including its President, Mr. Ramaswamy Goud, father of PW.1. The prosecution has not examined the

person who accompanied and guided PW.1 and also the constables. With the said contentions, he has sought to allow the appeal.

9. *Per contra*, supporting the impugned judgment, the learned Special Public Prosecutor would contend that there was every possibility of Accused Officer demanding the bribe amount by abusing his position as a public servant. In pursuance of the earlier demands, the Accused Officer demanded and accepted the bribe amount on the date of trap and that the amount was recovered from the Accused Officer and that the chemical tests conducted over the hands of the Accused Officer proved positive. The Accused Officer is not supposed to receive the cash from PW.1 for any purpose and the receipt of the said amount of Rs.2,000/- from PW.1 on the day of trap itself would show that he has received the said amount towards *mamool.* According to him, the prosecution has established the said fact. The defence taken by the Accused Officer is an after thought and the same is invented only to get over from the present case.

i) 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 that arise for consideration:

i) Whether there was any possibility of Accused Officer demanding any bribe amount from PW.1 by abusing his position as a public servant?

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. Impugning the judgment, the learned senior counsel for the appellant would contend that as per Ex.P1 - Telugu written complaint given by PW.1, the first demand was on 03.12.1999. In Ex.P1 complaint, PW.1 stated that the Accused Officer called him to Manthani on 03.12.1999 and demanded Rs.3,000/- towards *mamool,* failing which, the Accused Officer threatened PW.1 that he would implicate PW.1 in toddy adulteration case. Thereafter, PW.1 sought time from the Accused Officer stating that he would discuss with the Members of the Society for which the Accused Officer granted four days time. In Ex.P1 complaint, PW.1 further stated that on 07.12.1999 he went to Manthani and met the Accused Officer and thereafter the Accused Officer enquired about *mamool* as demanded by him for which PW.1 sought some more time. Thereafter, the Accused Officer granted two days time to PW.1. Accordingly, on 09.12.1999 at about 1.00 p.m. PW.1 met the Accused Officer at Prohibition and Excise Station, Manthani and the Accused Officer enquired about the said *mamool.* PW.1 then requested the Accused Officer to reduce the said amount to Rs.2,000/- for which the Accused Officer accepted and granted two more days time to PW.1 and the Accused Officer threatened him in the event PW.1 fails to pay the said amount of Rs.2,000/- he would implicate in some case and get the license cancelled.

i) During trial, PW.1 deposed that during the year 1999, the Accused Officer informed him through a Constable to come and meet him at Manthani and he does not remember the month and year. Accordingly, PW.1 met the Accused Officer, who in turn demanded an amount of Rs.3,000/-. He further deposed that the Members of the Society did not accept for the said *mamool* of Rs.3,000/- as demanded by the Accused Officer. According to PW.1, again the Accused Officer has reminded him of the demand and threatened him that in case they could not meet his demand, he would get the license cancelled and register cases against the Members of the Society for adulteration of toddy. PW.1 further deposed that Accused Officer again sent a constable to meet him and accordingly he went and met the Accused Officer. Then, PW.1 told the Accused Officer that he would be able to pay Rs.2000/- and beyond it, they had no capacity to pay. Thus, the Accused Officer did not mention the dates, month etc. except the year. However, PW.1 categorically deposed that the demand of *mamool* by the Accused Officer was on three occasions.

ii) However, during cross-examination, PW.1 categorically admitted that he does not know the name of the Excise Constable who approached him for the first time, after constable informing, he met the Accused Officer at Manthani at about 1.00 p.m. He did not bring the said demand to the notice of Mr. Sunder Rao, Inspector (PW.3). He has also not informed about the said demand of *mamool* by the Accused Officer to any Higher Officials. He further admitted that he did not know the name of the Excise Constable who came to him second time. At about 1.00 p.m. he went to the Excise Police Station during second time, Accused Officer was available there. He further admitted that during third occasion, he met the Accused Officer at about 1.00 p.m or 1.30 p.m. at Excise Police Station, Manthani.

iii) By referring the said deposition and also Ex.P1 - complaint, the learned senior counsel would contend that the demand was on three occasions i.e., 03.12.1999, 07.12.1999 and 09.12.1999. According to him, the prosecution failed to prove the demand on the said three occasions.

iv) It is relevant to note that even PW.2 during cross-examination categorically admitted that in his presence, Accused Officer has not demanded PW.1 for payment of bribe amount.

v) Admittedly, the prosecution did not examine the constables through whom the Accused Officer informed PW.1 to meet him at Manthani and also the constable who informed PW.1 on 13.12.1999 that the Accused Officer was not there in the Excise Station and he was at his residence.

vi) On perusal of Ex.P1 - complaint, there was demand on three occasions in the manner stated above. Even the contents of Ex.P1 disclose the said fact; whereas, the deposition of PW.1 was altogether different. However, PW.1 admitted that the demand was on three occasions and he deposed about Constables coming to him and informing about the request of the Accused Officer to meet him at Manthani. Accordingly, he met the Accused Officer. Thus, there are clear contradictions with regard to the demand of Rs.2,000/- as *mamool,* illegal gratification in Ex.P1 as well as in the deposition of PW.1.

vii) As discussed supra, PW.2 himself admitted during cross-examination that the Accused Officer has not demanded PW.1 for payment of bribe amount in his presence. PW.1 himself is not clear on what date the demand was made by the Accused Officer with regard to payment of Rs.2,000/- towards *mamool.*

viii) It is relevant to note that according to PW.1, he was only a Member of the Vilasagar Toddy Tappers Cooperative Society and his father was President at that particular point of time. To attend any activity on behalf of the said Society, as per Excise Rules, *noukarnama* is required and the said fact was deposed by the prosecution witnesses themselves. Admittedly, PW.1 was not having that *noukarnama* and his own deposition discloses the said fact.

ix) The learned senior counsel appearing for the appellant - Accused Officer also strenuously argued with regard to procedural aspects, such as obtaining *noukarnama* to represent the Society and in the absence of *noukarnama*, PW.1 cannot represent the said society. He has also referred about the payment of tax arrears of the Society by Excise Officials. He has also contended that there was animosity between PW.1 and the Accused Officer with regard to dispute pending between the Tappers of Dhanwada and Gangaram Villages in connection with tapping of Trees of Budidapalle, and he has referred to the depositions of witnesses in support of his contention.

12. On the analysis of the evidence, during cross-examination, PW.1 categorically admitted that there was no resolution of the society authorizing him to look after the affairs of the Society. No case was booked against their Society by the Excise Department, much less by the Accused Officer prior to December, 1999. The Accused Officer did not come to their society for picking up any sample of toddy. According to him, during third occasion he met the Accused Officer at about 1.00 p.m. or 1.30 p.m. at Excise Police Station, Manthani. Ex.P1 was written at the office of the Inspector, ACB. Ex.P1 was not scribed by him. He has further admitted that the said amount of Rs.2,000/- was collected from the Members of the Society. It is relevant to note that the prosecution did not examine any Member of the Society to prove the said fact of collection of Rs.2,000/- from the members of the society. It is also relevant to note that PW.1 himself admitted that he has not

informed to any Member of the Society about the said demand of Rs.2,000/- towards '*mamool*' by the Accused Officer, threat given by the Accused Officer saying that he would get the license of the Society cancelled, book cases for adulteration of Toddy against the Members in the event of not meeting the demand of Rs.2,000/- towards *mamool.*

13. It is also relevant to note that during cross-examination, PW.1 further admitted that there were 70 to 80 Societies in Manthani during relevant point of time and some societies would be directly crediting the amounts in banks towards rentals, some societies would be tendering the amounts to the Excise Sub-Inspector for crediting in the bank and later they would be collecting the challans depending on their convenience. Some times, Manikyam of Excise Office used to credit the rentals in the bank as requested by their President. There were occasions of the President tendering the amount to the Accused Officer for the purpose of crediting the same towards rentals.

i) PW.1 further admitted that there were disputes/quarrel between Dhanwada and Gangaram Tappers concerning the tapping of trees located in Budidapalle village. Tati Ramulu, resident of Gangaram village, relative of PW.1 was TFT member. He made complaint complaining that Dhanwada Tappers were illegally tapping the trees of Budidapalle trees and requested for making arrangements for tapping of trees by Gangaram Toddy Tappers. In the said connection, the C.I., Excise asked the Accused Officer to enquire and submit a report and PW.1 accompanied the said Tati Ramulu to the Excise Station. Ex.X1 is the attested Photostat copy of the complaint handed over to Excise Inspector. The Accused Officer requested the said Tati Ramulu and PW.1 to bring Toddy Tappers of Dhanwada and Gangaram

Villages to enable him to make an enquiry and PW.1 did not do so. According to PW.1, even by 13.12.1999, i.e., day of trap, the issue under Ex.X1 complaint was still pending.

ii) On critical analysis of the above said evidence would reveal that it is an admitted fact that *noukarnama* is required to PW.1 to represent the said Society and admittedly there is no *noukarnama* to PW.1 to represent the Society. PW.1 did not inform about the Accused Officer sending constables asking him to come to Manthani and demand of the above said *mamool* of Rs.3,000/- (reduced to Rs.2,000/-) on three occasions. The entire evidence would not reveal PW.1 discussing about the said demand with the Members of the Society though there are only 11 Members in the Society including PW.1 and his father. Prosecution did not examine father of PW.1 and any Member of the Society. Admittedly, there are disputes between Tappers of Dhanwada and Gangaram Villages in connection with tapping of Trees of Budidapalle village and Ex.X1 discloses the said aspect. The depositions of PW.1, PW.3, PW.4, DW.1 and DW.2 would show the said fact of pendnecy of the said dispute. On an analysis of the said evidence, would also establish the fact of animosity between PW.1 and the Accused Officer. PW.1 was under the apprehension that the Accused Officer may not help PW.1 and others in connection with Ex.X1 - complaint.

iii) PW.1, during cross-examination, categorically admitted that Shaik Dadu would be preparing Illicit Distilled Liquor and selling it. On 18.06.1999, a case was registered against the said Dadu by raiding his house. The said Dadu was elected as Sarpanch of the said village during that time.

It is relevant to note that the Accused Officer has taken a defence that there was animosity between PW.1 and the Accused Officer since PW.1 was under the impression that the Accused Officer would not support PW.1 and others in connection with Ex.X1 complaint and the Accused Officer has not released the said Dadu, the Accused Officer may implicate PW.1 in false cases.

The above said facts would reveal the animosity between PW.1 and the Accused Officer and also the apprehension of PW.1 that the Accused Officer may not support PW.1 and other Members with regard to dispute pending under Ex.X1.

14. The learned senior counsel would also vehemently contend that there is practice of the Excise Officials making payment of arrears in the bank by receiving cash from the Societies and its Members. There would be lot of pressure from the Higher Officials with regard to collection of arrears of tax from the Societies. Under the said pressure, they would receive the cash from the Societies and remit the same in the bank on their behalf. It is only facilitation to the Societies and its Members. In support of his contention, the learned senior counsel referred the deposition of PW.3.

15. PW.3 - Mr. E.J. Sunder Rao, Circle Inspector, Prohibition and Excise Station, Manthani, categorically deposed in examination-in-chief that in the crime meeting held on 10.12.1999, the Excise Superintendent has given instructions orally to collect excise dues as well as current rentals, he has passed on the same orders to the Accused Officer who was then Sub-Inspector. He further deposed that generally the amount should be credited through bank challans.

i) During cross-examination, he has categorically admitted that the Accused Officer has no power to book any cases without his instructions. Any person can remit the rental fee with regard to Toddy Tappers Cooperative Societies or any Excise dues to the department on behalf of the society or the defaulter. There has been practice of cash being handed over to the Officials of the department towards excise rentals and dues and the staff would be crediting in the bank at the request of the persons who were tendering the amounts. Even part of the rental amounts on behalf of the Societies can also be remitted. He has further admitted about submission of Ex.X1 representation by Tati Ramulu with regard to tapping of trees of Budidapalle Village and the same was submitted in his office on 03.11.1999. He made endorsement on Ex.X1 directing the Accused Officer to cause enquiry and settle the issue. The said endorsement is in his writing. During cross-examination, he has further admitted that the rental fee due by the Societies for a particular month has to be paid by the Societies between 10^{th} to 15^{th} of the next month. By 13.12.1999, Vilasagar Society fell due of the rental fee for the month of November, 1999 and for the current month i.e., December, 1999. Thus, the society fell due of two months rental fee. PW.3 and the Accused Officer used to stay in the same house.

16. On perusal of the said evidence, it is clear that there is practice of payment of rentals by the Excise Officials/Staff by receiving cash from the Societies and Members. There were instructions to the Excise Officials including the Accused Officer to collect the rentals from the Societies and see that there would not be any arrears of rentals. In the Crime Meeting held on 10.12.1999, the Excise Superintendent has given instructions orally to

collect Excise dues as well as current rentals and he has passed on the same to the Accused Officer.

i) DW.2 - V. Manikyam, Junior Assistant in Prohibition and Excise Station, Manthani deposed that Rajashekar is his son, Mr. G. Jay Raj, Tree Marker. Ex.X6 is the photostat copy of challan written by him on 09.12.1999, remitted an amount of Rs.7,432/- in the bank towards Excise arrears collected by PW.3 - Sunder Rao, SHO and the same was remitted by him in the bank under the said Ex.X-6. PW.3 collected amount from V. Ramulu of Lagnapur Village and remitted the same under Ex.X6. On 09.12.1999, PW.3 and the Accused Officer went to conduct raids and returned at 2.00 p.m. and PW.3 handed over the amount to remit the same under Ex.X6. Exs.X8 to X.10 are the attested photostat copies of challans, dated 07.11.1998, 01.12.1999 and 05.02.1999 and the same bears the signature of G. Jay Raj, Tree Marker. Ex.X12 is the challan dated 27.10.1999 which was filled up by his son Rajashekar in respect of rentals of Toddy Tappers Cooperative Society, Vilasagar. The amount mentioned there was remitted into the bank by his son. The officials used to hand over the rentals to him and his son and also to Mr. G. Jay Raj with instructions to remit the same in the bank. Ex.X11 is the challan dated 15.07.1999 in respect of remittance of rentals of the Toddy Tappers Cooperative Society, Vilasagar which bears the signature and he has remitted the rentals in the bank.

ii) During cross-examination, DW.2 admitted that he has 35 years of experience in Excise Department and he knows the procedure for collection of toddy rentals. As per Rules, S.I., Excise has no power to collect the toddy rentals. Either in writing or orally if the C.I. instructs the S.I., they would collect the rental and remit the amounts to the Government.

The said deposition of PW.3 and DW.2 would clinchingly establish that there was practice of collection of rentals from the Societies/members and remitting the same into the bank accounts by the Excise Officials including the Accused Officer. Nothing contra was proved by the prosecution.

17. By referring the said depositions, the learned senior counsel would contend that the Accused Officer has received the said amount from PW.1 towards arrears of rentals but not as *mamool* or bribe or illegal gratification as alleged by the prosecution. On the analysis of the above depositions of PW.3 and DW.2 would reveal that there was practice of collection of cash towards rentals from the Societies and the Members and remitting the same in the bank by the Excise Department Officials/Staff. DW.2, his son and Jay Raj, Tree Marker remitted the amounts into the bank. Ex.P4 - post trap proceedings contains the spot explanation of the Accused Officer, wherein he has also stated that he has received the said amount from PW.1 towards toddy rentals and tree tax of Vilasagar Society. It is the defence of the Accused Officer right from post-trap proceedings that he has received the said money towards rentals and tax, but not towards *mamool.* Thus, the Accused Officer has proved the said defence during cross-examination of prosecution witnesses, more particularly PW.3 and also by examining DW.2, Junior Assistant of Prohibition and Excise Station, Manthani and also by referring Exs.X6 to X12.

18. Admittedly, the trap was laid on 13.12.1999 and to prove the said fact, the prosecution examined PW.1, PW.2, PW.3 and PW.4.

19. PW.1 deposed that on 13.12.1999, one Ramachander was the Excise Constable present at the Station and informed him that the Accused Officer was at his residence. It is relevant to note that the said Ramachander was not examined by the prosecution. On the said day, he went to the residence of the Accused Officer where in the second room, one Madhu, owner of local brandy shop, businessman, was present along with the Accused Officer. It is also relevant to note that the prosecution did not examine the said Madhu as prosecution witnesses and on the other hand, the Accused Officer examined him as DW.1.

20. PW.1 during cross-examination categorically admitted that on 13.12.1999 when he went to the second room of the residence of the Accused Officer, on enquiry with regard to bringing of Toddy Tappers of Dhanwada and Gangaram Villages stating that the issue covered by Ex.X1 was still pending. After the trap, Mr. Simon Prabhakar was the Station House Officer, Excise Police Station, Manthani, and in his presence, an agreement was arrived at for tapping of trees at Budidapalle by Budidapalle Tappers on rental basis. PW.1 was present at that time.

i) On the day of trap i.e., 13.12.1999, PW.2 was behind PW.1 at a distance of six or seven feet when PW.1 entered into the second room of the Accused Officer. The conversation between PW.1 and the Accused Officer might be slightly audible to PW.2. Rs.1000/- was the monthly rentals of PW.1 Society. The said Society was due rentals of one or two months by 13.12.1999. During cross-examination, PW.1 categorically admitted that *"it might be that our society was due two months rentals by 13.12.1999."*

Except Budidapalle Trees issue under Ex.X1, no other issues were asked by the Accused Officer on 13.12.1999.

ii) PW.2 - mediator deposed about the entire trap proceedings. On the day of trap, when PW.1 and PW.2 went inside the office of the Accused Officer, on enquiry, they came to know that the Accused Officer was not available and that the Accused Officer was available at his house. He further deposed that on entering into the house of the Accused Officer, he asked *"PW.1 and myself entered inside the house of the AO. AO then questioned PW.1 as to what happened to what he told PW.1. PW.1 by replying that he had brought and taken the tainted amount from his shirt pocket and handed it over to AO. On seeing it, telling him that I would go back and come back, I went out and displayed the pre-arranged signal."* The said facts were also recorded in Ex.P4 - post trap proceedings.

iii) During cross-examination, PW.2 further admitted that on enquiry PW.1 informed him that PW.1 himself scribed Ex.P1. He has drafted Ex.P3. No corrections or additions or deletions were made in Ex.P3. The signature of PW.1 was obtained in Ex.P3 at the office of DSP and Ex.P3 does not contain the signature of PW.1. He has further admitted that DSP has not examined the constable and not recorded the statement of the said constable who informed PW.1 and PW.2 that the Accused Officer was at his residence. During cross-examination he has categorically admitted that *"I was following them at a distance of 6 or 7 feet distance. After they entered inside the second room, no conversation took place between them (witness adds) while proceeding into the second room there was conversation between them. I only heard the conversation between them while both of them* *entering into the second room to the extent of AO asking PW1 as to what had happened to the matter he had asked. Except that I could not hear any conversation between them."*

iv) He further admitted that having witnessed PW.1 handing over the cash to the Accused Officer in the second room, he came out and displayed pre-arranged signal to the trap party. Accused Officer gave a spontaneous explanation to the DSP stating that PW.1 gave the said amount with a request to remit it in the bank towards rentals and that he received the said amount and kept on the bed sheet. In his explanation, the Accused Officer has also told the DSP that he did not demand any amount from PW.1. He has drafted Ex.P4 when the Inspector, ACB narrating in a sequence and he has scribed Ex.P3 on the dictation of Inspector, ACB. During cross-examination, PW.2 categorically admitted that *"it is true in my presence AO has not demanded PW1 for payment of bribe amount."*

v) During cross-examination, PW.4 - DSP, ACB categorically admitted that no material is filed before the Court to show that T. Sharat Babu has caused enquiries on the complaint submitted by PW.1 and he has not given instructions to T. Sharat Babu to cause enquiry on the complaint. He has further admitted that only on 13.12.1999 he has visited the office of the Accused Officer. He did not know whether the Accused Officer had no power at all to register any crime concerning Excise Offences and he has to act under the supervision of C.I. Excise. As per record, the first demand was on 03.12.1999, second demand was on 07.12.1999 and final demand said to be on 09.12.1999 at 1.00 p.m. at the office of the Accused Officer. He has not collected any documents pertaining to Vilasagar Society prior to registering the crime. He has categorically admitted that he did not know whether *Noukarnama* is must as per Excise Rules to conduct business or to look after the affairs of the business and he did not know whether the Accused Officer has booked any case against Vilasagar society prior to 10.12.1999. He has not enquired about two months rental dues by 13.12.1999 by the said Society.

vi) During cross-examination, PW.3 further admitted that he knew Putta Madhu, resident of Manthani, a Liquor Trader. On 03.12.1999, PW.3 and the Accused Officer along with other staff raided the Illicit Distillation at Brahmanapally vagu of Kataram Mandal and they have apprehended a person who was trying to escape along with illicit distillation liquor. A case was registered against him and he was Gaddam Rajesh under Ex.X2 and Ex.X3 is the *panchanama* conducted under the supervision of DW.3 by the Accused Officer. Ex.X4 is the remand case diary and Ex.X5 is the arrest report. Around 3.30 p.m., PW.3, Accused Officer returned to Manthani on 03.12.1999. He has further admitted that after collection of the amount from V. Ramulu, he got remitted the said amount in the bank through V. Manikyam, his office Clerk. On 09.12.1999, PW.3 and the Accused Officer returned to Manthani at 2.00 p.m. Ex.X6 is the attested copy of the bank challan for remittance of the amount collected from V. Ramulu in the bank. Ex.X7-attested copy of extract of general diary dated 18.06.1999 and as per which, the Accused Officer booked a case against one Shaik Dadu, resident of Vilasagar for indulging in distillation of I.D. Liquor. The Accused Officer issued FIR in Crime No.54 of 1999-00. As per Ex.X7, PW.1 along with Sarpanch of the village threatened the Accused Officer to release Shaik Dadu, accused in the said case. He has further admitted that Manikyam was the Clerk in their office during relevant point of time, G. Jay Raju was the Tree Marker working in their office and Rajashekar is the son of the said Manikyam. During his service of tenure at Manthani, there were no adverse remarks against the Accused Officer.

21. On the analysis of the above said depositions of PW.2, PW.3 and PW.4 would clearly establish the fact that PW.2 - mediator did not hear the conversation between PW.1 and the Accused Officer. Two months rentals were pending by 13.12.1999 and Rs.1000/- was the monthly rental of Vilaspur Toddy Tappers Cooperative Society. PW.2 himself during cross examination categorically admitted that in his presence, the Accused Officer has not demanded PW.1 for payment of bribe amount.

22. As discussed supra, as per Ex.P1 complaint and also as per the depositions of prosecution witnesses including PW.1, there was demand of bribe on 03.12.1999, 07.12.1999 and 09.12.1999 from PW.1 by the Accused Officer. But, the prosecution failed to prove the said demand by producing relevant witnesses and cogent evidence. The deposition of PW.1 reveals the demand of bribe on three occasions. But, his deposition with regard to dates was silent. Thus, there are clear contradictions between the deposition of PW.1 and contents of Ex.P1. Admittedly, the prosecution did not examine the person who accompanied and guided PW.1 to lodge Ex.P1 complaint. No independent witness was examined by the prosecution to prove the demand. Thus, the prosecution miserably failed to prove the demand of bribe by the Accused Officer. On the other hand, the Accused Officer proved the receipt of an amount of Rs.2,000/- from PW.1 towards monthly rents of Vilaspur Toddy Tappers Cooperative Society to which PW.1 is a

Member. The Accused Officer also disproved the contents of Ex.P1 and the allegations of demand and acceptance of bribe as alleged by the prosecution. The Accused Officer also proved the animosity between him and PW.1 and also the apprehension of PW.1 with regard to Ex.X1 dispute and that the Accused Officer may not support him and the Members of the said Society.

23. The Accused Officer also proved that there was practice of collection of rentals in cash by the Excise Officials and remitting the same into the Bank. The documents referred supra also disclose the said fact. Thus, the defence taken by the Accused Officer that he has received the said amount towards rentals and tree tax and there is no other contra evidence to disbelieve the said defence taken by the Accused Officer.

24. It is the further contention of the learned senior counsel that there was no official favour that was pending with the Accused Officer and the Accused Officer is not having any power either to register cases or to cancel the license independently. There is procedure even to register case and cancel license. In support of his contention, he has referred to various admissions of the prosecution witnesses and also depositions of DWs.1 to 3. On the analysis of the same, the Accused Officer was not having any independent power either to register case of toddy adulteration or cancellation of license of Vilaspur Toddy Tappers Cooperative Society. Thus, the prosecution failed to prove the official favour that was pending with the Accused Officer and also the demand of bribe.

25. The learned Special Public Prosecutor would contend that the trap and recovery of tainted money are proved and, therefore, presumption under Section 20 of the Act has to be drawn. According to him, the prosecution

has proved the demand and acceptance of bribe by the Accused Officer beyond reasonable doubt. The Accused Officer, a public servant, abusing his official position, demanded the above said amount towards illegal gratification and the prosecution has proved the same by examining the relevant witnesses including PW.1 and Ex.P1. He has further contended that the chemical tests conducted over the hands of the Accused Officer proved positive, and in view of the above said contentions and on an analysis of the evidence only, the trial Court recorded conviction. Therefore, according to him, there are no grounds to interfere with the impugned judgment. But, as discussed above, there are contradictions in the depositions of the prosecution witnesses and in view of the consistent defence taken by the Accused Officer, the above said contentions of the learned Special Public Prosecutor are unsustainable. The prosecution failed to prove the demand itself. It is well-settled principle that mere recovery of amount is not sufficient and the prosecution has to prove the twin requirements of demand and acceptance by examining relevant witnesses. In the present case, the prosecution failed to prove the same. Once the demand is not proved, the question of drawing presumption under Section 20 of the Act does not arise.

26. The trial Court despite observing that PW.1 did not depose the said date i.e. 03.12.1999, month, may be on account of time lapse, but Ex.P1 crystal clear in the said context, recorded conviction. The trial Court further observed that the evidence of PW.3 that as on the date of trap two months rentals were due by the said Society, supporting the defence stand, is not at all believable. The said observation is contrary to the record and depositions of prosecution witnesses. The further observation of the trial Court that the evidence of DWs.1 to 3 cannot be believable is without any basis and not on

satisfactory reasons. Therefore, it is a fit case to interfere with the conviction recorded by the trial Court in the impugned judgment. Accordingly, the impugned judgment is liable to be set aside and the same is set aside.

27. In the result, the present Criminal Appeal is allowed and the conviction and sentences recorded by the learned Principal Special Judge for SPE & ACB Cases, Hyderabad, in Calendar Case No.30 of 2001 vide judgment dated 15.06.2006 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 and he is acquitted of the charges framed against him. Bail bonds of the Accused Officer shall stand cancelled. The fine amount, if any, paid by the Accused Officer is ordered to be returned to him.

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

JUSTICE K. LAKSHMAN

5th December, 2019
Mgr