THE HON'BLE SRI JUSTICE K.LAKSHMAN

CRIMINAL APPEAL No.7 OF 2006

JUDGMENT:

Feeling aggrieved by the judgment dated 27.12.2005 in C.C.No.29 of 2001 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad (for short, the trial Court), the appellant-accused officer preferred the present appeal.

2. Vide the aforesaid judgment, the trial Court convicted the appellant-accused officer for the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, the Act). The trial Court sentenced the appellant/accused officer to undergo Rigorous Imprisonment for one year for the charge under Section 7 of the Act and also to pay a fine of Rs.1,000/-, and in default, to undergo Simple Imprisonment for three months. The appellant/accused officer is further sentenced to undergo Rigorous Imprisonment for two years for the charge under Section 13(1)(d) punishable under Section 13(2) of the Act and also to pay a fine of Rs.2,000/-, and in default, to undergo Simple Imprisonment for two months. The trial Court also directed that both the substantive sentences of imprisonment shall run concurrently.

3. The facts which lead to file the present appeal are as follows:

The appellant/accused officer was an Assistant Divisional Engineer (Operations) in A.P.State Electricity Board, Padmarao Nagar, Secunderabad at the relevant point of time. The *de facto* complainant (P.W.1) was a building contractor at the relevant point of time. According to P.W.1, he has made eight applications to the Department for supply of electricity for a building constructed by him at Gokul Nagar, Secunderabad in November, 1997. The Department did not consider the same and the Officers of the APSEB have also did not visit the said premises.

4. After some time, P.W.2 and appellant-accused officer visited the said premises. P.W.2 requested P.W.1 to meet the appellant-accused officer. Accordingly, P.W.1 met the appellant-accused officer on 05.07.1998 with a request to process the said eight applications for the purpose of supply of electricity to the above said premises building submitted by him.

5. According to P.W.1, the appellant-accused officer has demanded an amount of Rs.40,000/- as bribe for sanction of the said electrical meters and asked P.W.1 to get the said amount on 14.07.1998. P.W.1 did not want to pay the said amount to the appellant-accused officer and therefore, he approached the ACB Officials by way of lodging Ex.P.1-complaint. On receipt of the said complaint, the ACB Officials registered a case vide Crime No.12 of 1998 and issued Ex.P.5-FIR. Thereafter, P.W.6-trap laying officer laid the trap after following due procedure laid down under law both pre-trap and post-trap proceedings. The trap was laid on 14.07.1998 at 7.00 am. After completion of investigation, the ACB Officials filed charge sheet and the same was taken on file vide C.C.No.29 of 2001.

6. The trial Court framed the charges under Sections 7, 13(1)(d) of the Act. The appellant-accused officer denied the charges framed against him and requested the trial Court to proceed with the trial. Accordingly, the trial Court proceeded with the trial.

7. During the trial, the prosecution has examined as many as seven witnesses i.e., P.Ws.1 to 7 and also filed Exs.1 to 17. M.Os.1 to 9 were exhibited. The appellant-accused officer neither examined any witness nor filed any document.

8. After completion of trial, on consideration of the entire evidence both oral and documentary, vide judgment dated 27.12.2005, the trial Court convicted the appellant-accused officer and sentenced him in the manner stated supra. Feeling aggrieved by the said judgment, the appellant-accused officer preferred the present appeal.

9. Heard Smt.K.Sesha Rajyam, learned senior counsel appearing for Sri K.Chaitanya, learned counsel for the appellant-accused officer and Sri T.L.Nayan Kumar, learned Additional Standing Counsel-cum-Special Public Prosecutor, ACB, Telangana.

10. Impugning the judgment of the trial Court, the learned senior counsel would contend that P.W.1 claims to be GPA holder of the owner of the building as per Ex.P.1-complaint, but P.W.1 did not produce copy of the said GPA either before the ACB Officials or during the course of trial. Learned senior counsel would further submit that the ACB Officials did not collect copy of the said GPA

during the course of investigation. In the absence of copy of the said GPA, P.W.1 is not authorized/competent to make any allegation against the appellant-accused officer and he is also not authorized to represent the owner of the building. According to her, non-filing of copy of the said GPA is fatal to the case of the prosecution.

11. Learned senior counsel would further contend that P.W.1 is not having any authority to represent the owner of the building in the absence of the said GPA and hence, submission of eight applications by P.W.1 for providing electricity connections to the said premises does not arise.

12. Learned senior counsel would further contend that there was no official favour that was pending with the appellant-accused officer as on the date of lodging Ex.P.1-complaint or at the time of laying the trap. When there is no official favour pending with the appellant-accused officer, the question of appellant-accused officer demanding an amount of Rs.40,000/- towards illegal gratification from P.W.1 and accepting of the same by the appellant-accused officer does not arise.

13. Learned senior counsel further contended that procedure is contemplated for providing electricity connections. As per the said procedure, on receipt of application, the concerned official will forward the said application, the Field Staff would inspect the premises and make the recommendations. Basing on the said

recommendations of the Field Staff, sanction proceedings would be issued informing the applicants with regard to the necessary charges to be paid. On such payment, electrical meters would be supplied. Thus, in the entire process, the role appellant-accused officer, being Assistant Divisional Engineer, is very limited and he is not having any authority or power to provide electricity connections to any consumer including P.W.1 in the present case. Thus, virtually there is no official favour pending with the appellant-accused officer at the relevant point of time and therefore, the question of he demanding and accepting the said amount of Rs.40,000/- from P.W.1 does not arise.

14. Learned senior counsel would further submit that P.W.6-trap laying officer did not conduct the trap by following the procedure laid down under law. He has not conducted discrete enquiries with regard to genuineness of the allegations made by P.W.1 in Ex.P.1-complaint. It is further contended by the learned senior counsel appearing for the appellant-accused officer that even according to Ex.P.1-complaint, P.W.1 has submitted eight applications in November, 2017 and he has lodged complaint with P.W.6-DSP, ACB on 13.07.2018 and thus, there is abnormal delay of about one year and there is no explanation by the prosecution for the said delay. There is no direct witness to prove the alleged demand and P.Ws.2 and 3 were declared hostile and nothing was elicited form them during cross-examination by the prosecution. It is further contended by the learned senior counsel that according

to the prosecution, P.W.6 has recovered amount from the wife of appellant-accused officer, she was arrested, released on bail and she was neither cited as witness nor examined by the prosecution during trial. P.W.1 claims to be GPA Holder of the subject property, he has not filed copy of GPA and therefore, the prosecution failed to examine the owner of the said premises and therefore it is fatal to the case of the prosecution.

15. It is further contended that prosecution failed to examine any of the eight applicants. Ex.P.14-sanction proceedings are *non-est* since the same were issued by the sanctioning authority without consideration of relevant materials and reasons. Thus, it was issued without application of mind. In this regard, she has relied upon a judgment of the Apex Court in **T.K.Ramesh Kumar v. State**[1]. She would further contend that the ACB Officials first deputed Mr.T.Sambi Reddy on the date of trap and the said Sambi Reddy was neither shown as listed witness nor examined by the prosecution during trial. With the said contentions, the learned senior counsel prayed to allow the appeal, acquit the appellant-accused officer by setting aside the impugned judgment.

16. Learned senior counsel relied upon a decision of the Apex Court in **State v. Anup Kumar Srivastava**[2] on the principle of ingredients of illegal gratification. She has also relied upon judgments of this Court in **M.Radha Krishna Murthy v. State of**

[1] (2015) 15 SCC 629
[2] (2017) 15 SCC 560

A.P.[3]**, State of A.P. v. T.Venkateswara Rao**[4] and **Muralikonda v. State of A.P.**[5] on the principle of receipt of illegal gratification in the presence of a third party is not believable. She has also relied upon another judgment of the Apex Court in **Man Singh v. Delhi Administration**[6] on the principle that the accused is not required to prove his defence by strict standard of proof of reasonable doubt, but, it is sufficient, if he offers an explanation or defence which is probable and once the same is done, the presumption under Section 20 of the Act stands rebutted. She has also relied upon another judgment of the Apex Court in **B.Jayaraj v. State of A.P.**[7], wherein the Apex Court held that the prosecution has to prove both demand and acceptance beyond reasonable doubt like any other criminal offence.

17. Per contra, learned Additional Standing Counsel-cum-Special Public Prosecutor, ACB, Telangana, would contend that ACB Officials received Ex.P.1-complaint from P.W.1, wherein it is specifically complained about the demand of Rs.40,000/- from him towards illegal gratification by the appellant/accused officer. In Ex.P.1, it is specifically mentioned about the pendency of official favour at the relevant point of time with the appellant/accused officer. P.W.1 deposed in his chief examination before the trial Court reiterating the contents of Ex.P.1-complaint. Though P.Ws.2 and 3 were declared hostile, the relevant portions of their evidence,

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[3] 2001 (2) ALD (Crl.) 339 (AP)
[4] (2004) 13 SCC 227
[5] 2002 (2) ALD (Crl.) 249 (AP)
[6] AIR 1979 SC 1455
[7] (2014) 13 SCC 55

which are relevant to the prosecution, can be relied upon by the prosecution. According to him, the said principle was also held by the Apex Court in catena of judgments.

18. Learned Additional Standing Counsel-cum-Special Public Prosecutor would further contend that conducting discrete enquiries is not mandatory and the ACB Manual is a guiding document and the same is not fatal to the case of the prosecution. Moreover, this is not a case of *inter se* dispute or seniority issue between P.W.1 and the appellant-accused officer and therefore, conducting of discrete enquiries as per ACB Manual is not mandatory, and even then, P.W.6-trap laying officer has conducted the same. He would further contend that the defence theory of the appellant-accused officer with regard to receipt of the said amount of Rs.40,000/- towards providing transformer is an afterthought and there is no spot explanation offered by him and thus, he has taken the said defence theory only to get away from the present case.

19. He would further submit that the trap is proved, recovery of tainted notes is also proved and chemical test turned positive and therefore, the prosecution has proved the demand beyond reasonable doubt. The trial Court, on the analysis of entire evidence, recorded a finding that the prosecution has proved the demand beyond reasonable doubt and therefore, by drawing presumption under Section 20 the Act, it convicted the appellant-accused officer vide impugned judgment. The entire prosecution

witnesses deposed about the said illegal gratification and the evidence is corroborative. Though there are minor discrepancies, the same cannot be fatal to the case of the prosecution. Minor discrepancies and omissions can be ignored, if the prosecution proves the guilt of the accused and more particularly, when the tainted currency notes were recovered from the accused officer and the chemical tests are positive.

20. Learned Additional Standing Counsel-cum-Special Public Prosecutor would further contend that the impugned judgment is a reasoned judgment and the trial Court considered all the aspects including pendency of official favour with the appellant-accused officer, laying of trap, recovery of tainted notes, acceptance of illegal gratification by the appellant-accused officer and chemical test and accordingly gave specific reasons on each and every issue involved in the case. Therefore, there is no reason/ground that warrants interference by this Court in the present appeal.

21. In view of the above said rival contentions, the points that arise for consideration by this Court in the present appeal are as follows:

(a) Whether the prosecution could prove the guilt of the appellant-accused officer for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Act?

(b) Whether the impugned judgment is sustainable both on facts and law?

Points (a) and (b):

22. It is the contention of the learned senior counsel that P.W.1 is claiming that he is the GPA Holder of the subject property, and in

the said capacity, he has submitted eight applications for providing electricity connections including meters to the said Indira Apartment. He has neither produced a copy of the said GPA to the ACB Officials and the ACB Officials did not collect the same. The prosecution failed to examine the owner of the subject property. Therefore, according to learned senior counsel, P.W.1 is not having any right or title over the subject property and his contention that he is the GPA Holder of the owner of the subject property, and in the said capacity, he has submitted eight applications in November, 2018 is not believable. P.W.1 is not a reliable witness and his evidence is not trustworthy.

23. On perusal of entire record including the evidence both oral and documentary, it is not in dispute that the ACB Officials did not collect copy of the said GPA during the course of investigation and the same was not filed during trial. It is also not in dispute that the owner of the said Indira Apartment was not examined by the prosecution and his statement was not recorded by the ACB Officials during the course of investigation. But, in Ex.P.1, P.W.1 specifically mentioned that he has applied for eight meters by paying registration fee of Rs.25/- per each meter on 24.11.1997. Exs.P.3 to P.10 are the copies of said applications submitted by P.W.1. It is also stated in Ex.P.1-complaint by P.W.1 that he has submitted the said eight applications in the office of Assistant Engineer (Operations), Tarnaka, but no action was taken to install the meters except visiting the building. At last, the Assistant

Engineer by name Ganga Reddy asked him to meet the accused officer, who is Assistant Divisional Engineer at the relevant point of time. Accordingly, he met P.W.1 on 05.07.1998 at his apartments i.e., Giridhar Apartments, Chilaklguda, Secunderabad, as instructed by him wherein he has demanded an amount of Rs.50,000/- for his inspection, sanction and installation of the said meters. Finally, the appellant-accused officer reduced the said amount to Rs.40,000/- and asked P.W.1 to pay the said amount at his residence on 14.07.1998.

24. Despite specific mention in Ex.P.1 that P.W.1 is the GPA Holder of the subject property, and in the said capacity, he has submitted Exs.P.3 to P.10-applications way back on 24.11.1997 by paying Rs.25/- each, neither the appellant-accused officer nor any official concerned of the Department requested P.W.1 to furnish copy of the said GPA. It is relevant to note that it is the defence of the appellant-accused officer that he has received the said amount of Rs.40,000/- from P.W.1 for providing transformer to the very same apartment. Thus, as per the said defence, the appellant-accused officer has received the said amount of Rs.40,000/- on the date of trap for providing transformer to the said apartment. But, he has not demanded/requested P.W.1 to furnish copy of the said GPA and accepted the said amount of Rs.40,000/- for providing transformer for the very same apartment. In view of the same, having received the said amount of Rs.40,000/- from P.W.1 for providing transformer, now the

appellant-accused officer cannot contend that P.W.1 is not having authority to represent the owner of the said Indira Apartment. Therefore, the contention of the learned senior counsel with regard to non-production of GPA, P.W.1 is not having authority to represent the owner of the said building and non-examination of owner is fatal to the case of the prosecution cannot be accepted. The appellant-accused officer cannot blow hot and cold together.

25. Learned senior counsel would further contend that there is no official favour that was pending with the appellant-accused officer at the relevant point of time. She has referred to the depositions of P.W.3-Additional Assistant Engineer at the relevant point of time, P.W.6-DSP, ACB and P.W.7-Inspector, ACB. According to her, P.W.3-Additional Assistant Engineer explained the procedure to be followed for providing service connection to any consumer. According to the said procedure, the consumer has to submit application, on receipt of application, the concerned official will forward the said application, the Field Staff would inspect the premises and make the recommendations. Basing on the said recommendations of the Field Staff, sanction proceedings would be issued informing the consumer about the necessary charges to be paid. On such payment, electrical meters would be supplied. Thus, in the entire process, the role of the appellant-accused officer, being Assistant Divisional Engineer, is very limited and he is not having any authority or power to provide electricity connections to any consumer including P.W.1 in the present case.

26. On the other hand, the learned Additional Public Prosecutor submits that P.W.1 has submitted eight applications vide Exs.P.3 to P.10 on 24.11.1997 itself by paying an amount of Rs.25/- to each of the application. As per the procedure, on receipt of the application, the Field Staff has to inspect the premises and submit feasibility report for the purpose of providing the service connections. According to Ex.P.1-complaint, the subject property was visited by the time of submission of Ex.P.1. Thus, according to the Public Prosecutor, the appellant-accused officer, being the Assistant Divisional Engineer (Operations), is the person competent to inspect the said premises, submit feasibility report basing on which service connections would be provided to the said premises at the relevant point of time. Thus, according to him, the appellant-accused officer was in a position to do favour to P.W.1 at the relevant point of time.

27. On perusal of entire record including Ex.P.1-complaint, Exs.P.3 to P.10-applications and depositions of P.Ws.1 and 3, it is not in dispute with regard to the procedure for providing service connection to the premises in dispute in the present case. It is not the case of the appellant-accused officer that the Department has not received the said eight applications along with necessary fee of Rs.25/- each on 24.11.1997 itself. It is also not the contention of the appellant-accused officer that he cannot receive any cash from the consumer for providing service connections or transformers. In fact, it is the contention of the appellant-accused officer that he has

received the said amount of Rs.40,000/- from P.W.1 on the date of trap in cash for providing transformer. In view of the said defence taken by the appellant-accused officer, he has received the said amount towards providing transformer, and thus, he was in a position to do official favour to P.W.1 at the relevant point of time i.e., conducting field inspection, submission of feasibility report, basing on which the connections would be provided to the property in dispute. The above said discussion would also reveal that the versions of the appellant-accused officer are self-contradictory. On one hand, he is contending that he was not having any favour, much less official favour, to P.W.1 and his role in the entire process is very limited, and on the other hand, he is claiming that he has received the said amount of Rs.40,000/- in cash from P.W.1 on the date of trap for providing transformer to the subject property. It is relevant to note that during cross examination, he has admitted that the appellant-accused officer had to conduct inspection of that apartment. P.W.2 was electrical contractor and he was carrying out works at Indira Reddy Apartments (subject property) which falls within the jurisdiction of the appellant-accused officer. It is also relevant to note that P.W.3-Additional Assistant Engineer declared hostile. During cross examination, he has admitted about the procedure to be followed in the manner stated above and further admitted that Departmental rules do not permit providing the said connection from the Government transformer and therefore, it was proposed that the applicants should install their own transformers. He has further admitted that all the applications were received in their office and received by him in the first week of June, 1998. He has further admitted that he has inspected the building along with the appellant-accused officer. Mr.Ganesh (L.W.4), assistant of P.W.3, also accompanied them at the time of inspection. Thus, the said depositions would clearly reveal that the appellant-accused officer was in a position to do official favour to P.W.1 at the relevant point of time. In view of the above said discussion, the contention of the learned senior counsel that the appellant-accused officer was not in a position to do any official favour to P.W.1 at the relevant point of time is rejected and it cannot be accepted.

28. It is relevant to note that the trial Court, on the critical analysis of the entire evidence both oral and documentary, gave a specific finding that the appellant-accused officer was in a position to do official favour to P.W.1.

29. Learned senior counsel further contended that the prosecution failed to prove the very demand itself which is *sine qua non* to record conviction under Section 7 of the Act and therefore, the question of drawing presumption under Section 20 of the Act does not arise. According to her, the prosecution failed to examine any witness, much less independent witness, to prove the demand. P.W.2-electrical contractor turned hostile and nothing was elicited from him during cross exanimation. P.W.4-accompanying witness did not accompany P.W.1 at the time of trap and therefore, there is no independent witness to prove the demand. According to learned senior counsel, the trial Court without considering the said aspect,

recorded conviction against the appellant-accused officer and therefore, the impugned judgment is not sustainable both on facts and law. She would further submit that mere recovery of tainted currency notes from the appellant-accused officer is not sufficient to record conviction and the prosecution has to prove both demand and acceptance, twin requirements, to record conviction. She would further submit that the ACB Officials sent T.Sambi Reddy-mediator to accompany P.W.1, but the prosecution, neither listed him as witness nor examined him during trial. Non-examination of the said Sambi Reddy is fatal to the case of the prosecution.

30. In Ex.P.1-compalint, P.W.1 specifically complained about the demand of bribe for providing service connection to the subject property. He has also specifically mentioned about the meeting of the appellant-accused officer at his residence i.e., Giridhar Apartments, Chilkalguda, Hyderabad, on 05.07.1998. In his deposition also, P.W.1 deposed in terms of Ex.P.1-complaint. Except taking the plea that P.W.1 is not having any authority to represent the owner of the subject premises since he has not furnished a copy of GPA, there is no other plea with regard to demand and acceptance of Rs.40,000/- by the appellant-accused officer. In fact, it is the defence of the appellant-accused officer that he has received the said amount of Rs.40,000/- from P.W.1 on the date of trap for providing transformer to the very same subject

property. As discussed supra, the contention of the appellant-accused officer that P.W.1 is not having authority to represent the owner of the subject property cannot be accepted.

31. The other contention of the appellant-accused officer is that there was delay in lodging Ex.P.1-compalint. According to the learned senior counsel, Exs.P.3 to P.10-eight applications were submitted way back on 24.11.1997 and whereas, Ex.P.1-complaint was lodged on 13.07.1998. There is no explanation, much less plausible explanation, by the prosecution for the said delay. The prosecution failed to examine the owner of the subject property and none of the eight applicants.

32. On the other hand, the learned Public Prosecutor would contend that it is the contention of P.W.1 that he has submitted eight applications in the capacity of GPA Holder and the same were received by the Department without any resistance. According to him, in Ex.P.1-complaint, P.W.1 specifically contended that despite receiving and acknowledging eight applications on 24.11.1997 along with registration fee, so far they have not taken any action to install the meters in spite of his several personal requests except visiting the building. Therefore, according to him, the appellant-accused officer cannot claim that there was delay in lodging Ex.P.1-complaint.

33. On perusal of entire material, it is not in dispute that Exs.P.3 to P.10-application forms were submitted along with registration

fee on 24.11.1997 itself. Ex.P.1-complaint was on 13.07.1998. It is the specific contention of P.W.1 that despite lapse of time, no action was taken for installation of meters despite personal requests except visiting the building. It is relevant to note that during cross examination, certain suggestions with regard to details of eight applications including names of the applicants, capacity, etc., were made to P.W.1 by the appellant-accused officer. P.W.1 has specifically admitted during cross examination with regard to the said details of eight applicants, payment of fee, etc. Nothing further which was useful to the appellant-accused officer was elicited from P.W.1 during cross examination. P.W.2-electrial contractor was declared as hostile since he has deposed contrary to his statement recorded under Section 161 Cr.P.C. It is settled principle that though a prosecution witness is declared as hostile, his evidence which is useful to the prosecution can be relied upon. P.W.2, in his chief examination, deposed about enquiry of the appellant-accused officer with P.W.1 with regard to getting transformer amount. Thus, it can be safely concluded that the appellant-accused officer was in a position to do official favour to P.W.1 at the relevant point of time.

34. It is also relevant to note that P.W.1 categorically admitted during cross examination that what all had transpired on the date of trap which was on 14.07.1998, he has narrated to the DSP under Ex.P.12-post-trap proceedings. It is also relevant to note that in Ex.P.12-post-trap proceedings, there is no mention about

the alleged enquiry made by the appellant-accused officer with P.W.1 with regard to getting the said amount of Rs.40,000/- towards cost of transformer. On the other hand, even according to the appellant-accused officer, he has received the said amount of Rs.40,000/- from P.W.1 for providing transformer to the subject property. Therefore, the contention of the appellant-accused officer that there was delay in lodging Ex.P.1-complaint is not acceptable.

35. With regard to demand, P.W.1 specifically contended in Ex.P.1-complaint and deposed as P.W.1 in terms of Ex.P.1. Nothing contra was elicited from him. Through P.W.2, the appellant-accused officer made an attempt to prove that he has received the said amount of Rs.40,000/- towards providing transformer and not towards bribe. The appellant-accused officer failed to examine any official witness and to file any document to show that he is having authority to receive cash from any consumer for providing transformer. Thus, the appellant-accused officer cannot claim that he was not having any official favour to do to P.W.1 at the relevant point of time and that he has received the said amount of Rs.40,000/- on the date of trap from P.W.1 for providing transformer. The said contradictory version disclose that the defence theory of receipt of tainted currency notes towards providing transformer to the subject property is not believable, reliable and not trustworthy.

36. The further contention of the learned senior counsel that the prosecution failed to examine Sambi Reddy, wife of the

appellant-accused officer, owner of the subject property and any one of the applicants and therefore, non-examination of the said personnel is fatal to the case of the prosecution. It is relevant to note that the said Sambi Reddy is an accompanying witness as deposed by P.W.4-mediator. However, the prosecution has proved the very demand by the appellant-accused officer from P.W.1. It is relevant to note that the amount was received from the wife of the appellant-accused officer i.e., an amount of Rs.32,000/- from almarah and Rs.32,400/- from refrigerator. The wife was arrested initially and released immediately on bail. The ACB Officials/investigating officer is having every power either to add or to delete any person from the array of accused basing on the incriminating material collected during the course of investigation. In the present case, on the day of trap, the ACB Officials have arrested the wife of the appellant-accused officer on the ground that the amount was recovered from her in the manner stated above. During the course of investigation, they came to a conclusion that the wife of the appellant-accused officer did not demand and accept the bribe from P.W.1 and there is no incriminating material to the said effect and therefore, they have not arrayed her as accused. Therefore, the appellant-accused officer cannot claim that non-examination of his wife is fatal to the case of the prosecution. Non-examination of owner of subject property and any one of the applicants of Exs.P.3 to P.10-applications is not fatal to the case of the prosecution.

37. On perusal of the entire material including Ex.P.1, Exs.P.3 to P.10-applications and depositions of P.Ws.1, 3 and 6 would reveal that P.W.1 has submitted Exs.P.3 to 10-applications in the capacity of GPA Holder. The appellant-accused officer having received the said amount of Rs.40,000/- from P.W.1 for the purpose of providing transformer without insisting to furnish copy of GPA and without insisting to show P.W.1's authority to pay the said amount of Rs.40,000/-, now cannot contend that owner of the said premises and any one of the applicants were not examined. It is relevant to note that trap, recovery of tainted currency notes and chemical test turned positive are not in dispute. In view of receipt of the said amount of Rs.40,000/- from P.W.1, the prosecution has discharged its burden of proving the demand and acceptance of bribe. Therefore, heavy burden lies on the appellant-accused officer to prove that he has received the said amount for providing transformer. But, the appellant-accused officer failed to establish or prove the said defence theory of receipt of amount for providing transformer. At the cost of repetition, his versions with regard to pendency of official favour is contradictory. Therefore, the said defence theory is highly improbable and not reliable. Thus, the appellant-accused officer failed to discharge his burden of proving defence theory. On the other hand, the prosecution has discharged its burden of providing demand and acceptance.

38. Learned senior counsel relied upon the principle held by the Apex Court in **B.Jayaraj** (supra), wherein it was held that mere

recovery of tainted currency notes is not sufficient and the prosecution has to prove both demand and acceptance beyond reasonable doubt like any criminal offence. According to her, in the present case, the prosecution has failed to prove the very demand itself, and hence the question of accepting the same by the appellant-accused officer does not arise. But, as discussed supra, the prosecution has proved the very demand itself and also the acceptance of illegal gratification beyond reasonable doubt like any other criminal case. Whereas, the appellant-accused officer failed to disprove the same and also failed to prove his defence theory. In fact, his defence theory is not reasonable and believable. Though the accused is not required to prove the defence by the strict standard of proof of reasonable doubt and it is sufficient if he offers an explanation or defence which is probable and once the same is done, the presumption under Section 20 of the Act cannot be drawn. Whereas, in the present case, there is no spot explanation offered by the appellant-accused officer in Ex.P.12-post-trap proceedings. He tried to prove the said defence theory only through P.W.2-electrical contractor of the said apartment, but P.W.2 himself admitted that the appellant-accused officer was in a position to official favour to P.W.1. Therefore, the explanation offered by the appellant-accused officer is not probable and believable.

39. The contention of the learned senior counsel that receipt of bribe amount in the presence of third party is not believable. In

the present case, according to P.Ws.1 and 2, when P.W.1 went inside the house of the appellant-accused officer during trap, he found one electrical contractor sitting in sofa of the house of the appellant-accused officer. On seeing P.W.1, the appellant-accused officer asked him whether he brought the money and then P.W.1 gave tainted currency notes to him. Thus, the appellant-accused officer has received the said amount from P.W.1 in the presence of P.W.2. It is relevant to note that even P.W.2 deposed that the appellant-accused officer enquired P.W.1 whether he brought transformer amount, for which P.W.1 relied in affirmative and handed over the said amount to the appellant-accused officer, who in turn, took away the amount inside the house. Thus, the prosecution has proved receipt of the said amount of Rs.40,000/- from P.W.1 by the appellant-accused officer with cogent evidence and more particularly the fact that the appellant-accused officer was in a position to do official favour to P.W.1 at the relevant point of time. In view of the same, the contention of the learned senior counsel that receipt of illegal gratification in the presence of third party cannot be believable is not acceptable.

40. Learned senior counsel has relied upon the principle held in **M.Radha Krishna Murthy** (supra), **Muralikonda** (supra) and **T.Venkateswara Rao** (supra). As discussed supra, the prosecution has proved receipt of Rs.40,000/- from P.W.1 by the appellant-accused officer on the day of trap with cogent evidence, more particularly in view of the fact that there was official favour pending

with the appellant-accused officer at the relevant point of time. Therefore, the principle held in the above said decisions is not applicable to the facts of the present case.

41. Learned senior counsel would further contend that Ex.P.14-sanction orders are *non est* since the ACB Officials did not produce the entire relevant material with the sanctioning authority to enable him to examine the same and accord sanction to prosecute the appellant-accused officer. According to her, in Ex.P.14, there is no mention about furnishing of entire relevant material and consideration of the same by the sanctioning authority. In fact, there are no reasons mentioned by the sanctioning authority in Ex.P.14. In support of the same, the learned senior counsel relied upon the principle held in **T.V.Ramesh Kumar** (supra), wherein it was held that the Department has to produce the entire material before the sanctioning authority for consideration and the sanctioning authority shall consider the entire material in proper perspective and issue sanction proceedings by giving proper reasons.

42. On the other hand, the learned Public Prosecutor would contend that the entire relevant material was placed with the sanctioning authority, who in turn, considered the same and issued Ex.P.14-sanction proceedings to prosecute the appellant-accused officer on *prima facie* satisfaction only.

43. On perusal Ex.P.14-sanction proceedings supported by the deposition of P.W.5, Junior Personal Officer, A.P. TRANSCO, wherein he has deposed that he has worked under Member Secretary of APSEB during relevant point of time and by considering the entire material, Ex.P.4 were issued by him. During cross examination, nothing was elicited from him. In fact, there were no suggestions to P.W.5 with regard to placing of material, non-consideration of the same and *prima facie* opinion arrived at by the sanctioning authority while issuing Ex.P.14-sanction proceedings to prosecute the appellant-accused officer. Therefore, the principle held by the Apex Court in the aforesaid judgments is not applicable to the facts of the present case and the contention of the learned senior counsel that Ex.P.14-sanction proceedings are *non est* is not acceptable.

44. The defence theory of the appellant-accused officer that he has received the said amount of Rs.40,000/- from P.W.1 on the day of trap for providing transformer to the subject property is not acceptable since it is not believable and trustworthy. P.W.6-DSP ACB (trap-laying officer) categorically admitted that there was no spot explanation offered by the appellant-accused officer during post-trap proceedings. There is no mention about the said defence theory in Ex.P.12-post-trap proceedings. The appellant-accused officer tried to prove the same through P.W.2-electrical contractor of the subject property. As discussed supra, P.W.2 was declared hostile and during cross examination, he has categorically admitted

that he came into acquaintance with the appellant-accused officer just six months prior to 14.07.1998, the appellant-accused officer was sick, he paid a courtesy visit on 14.07.1998 even before P.W.1 came to the house of the appellant-accused officer. He has further admitted that by 14.07.1998 itself, he was carrying out works at Indira Reddy Apartments and that the appellant-accused officer had to conduct inspection of the said apartment. Thus, the appellant-accused officer failed to establish the said defence theory with cogent evidence and there is no spot explanation. In the absence of the same, the defence theory of receipt of tainted currency notes for providing transformer is not probable and not trustworthy. Therefore, the same is not acceptable.

45. The trial Court, on the critical analysis of entire evidence, gave a specific finding that the appellant-accused officer was in a position to do official favour to P.W.1 and prosecution has proved the demand and acceptable beyond reasonable doubt. The trial Court has also held that the defence theory of the appellant-accused officer is not believable. According to this Court, the trial Court gave specific reasons for the said findings in the impugned judgment and this Court is satisfied with the said reasons. The appellant-accused officer failed to establish any ground or circumstance to interfere with the said findings of the trial Court in the impugned judgment. Thus, the present appeal fails and is liable to be dismissed.

46. Accordingly, the Criminal Appeal is dismissed, confirming the judgment dated 27.12.2005 in C.C.No.29 of 2001 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. The appellant-accused officer shall surrender before the trial Court within one month from the date of receipt of a copy of this judgment. The ACB Officials shall take necessary steps for execution of the impugned judgment, confirmed by this judgment.

K.LAKSHMAN, J

Date:12-06-2020
TJMR

THE HON'BLE SRI JUSTICE K.LAKSHMAN

CRIMINAL APPEAL No.7 OF 2006

Date:12.06.2020

TJMR