

HONOURABLE SRI JUSTICE K.LAKSHMAN

CRL.A.No.1033 of 2006

JUDGMENT:

Feeling aggrieved by the judgment dt.21-07-2006 in C.C.No.8 of 2001 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, the appellant preferred this Criminal Appeal.

2. Vide aforesaid judgment, the trial Court convicted the accused officer for the offences under Sections 7 and 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act, 1988 (herein after referred to 'the Act, 1988'). The trial Court sentenced the accused officer to undergo Rigorous Imprisonment for a period of one year and to pay fine of Rs.400/-, in default, to undergo Simple Imprisonment for one month for the offence punishable under Section 7 of the Act, 1988. The trial Court further sentenced the accused officer to undergo Rigorous Imprisonment for a period of one year and to pay fine of Rs.400/-, in default, to undergo Simple Imprisonment for one month for the offence punishable under Section 13 (1) (d) read with 13 (2) of the Act, 1988. It is further directed by the trial Court vide impugned judgment that both the sentences of imprisonment of accused officer shall run concurrently.

3. The facts leading to filing of the present appeal are as follows:

The accused officer was Village Administrative Officer (VAO) in the office of Mandal Revenue Officer, Nyalkal Mandal, Medak District at the relevant point of time. He being the public servant demanded an amount of Rs.400/- from P.W.1 and accepted the same on 01-07-1999 towards bribe to do official favour i.e. issuance of *pahani* copies for the land admeasuring Ac.2.15 gts of P.W.1 and thereby the accused officer committed offence punishable under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Act, 1988.

4. P.W.1 was not interested to meet the said demand of Rs.400/- towards bribe to the accused officer and therefore approached the A.C.B. officials by lodging Ex.P-15 complaint on 30-06-1999 at 11 a.m. The A.C.B. officials on receipt of Ex.P-15 complaint, registered a case on 01-07-1999 and issued Ex.P-16, FIR. Thereafter, the A.C.B. officials laid trap on 01-07-1999 after following the procedure including preparation of pre-trap and post-trap proceedings and securing mediators etc., On completion of the investigation, A.C.B. officials laid charge sheet and the same was taken on file as C.C.No.8 of 2001.

5. After framing charges, on examination, the accused officer denied the charges levelled against him and prayed the trial Court to proceed with the trial. Therefore, the trial Court conducted the trial.

6. During trial, the prosecution has examined as many as seven witnesses i.e. P.Ws.1 to 7 and marked Exs.P-1 to P-18 documents.

M.Os.1 to 9 were exhibited. The accused officer has examined two witnesses i.e. D.Ws.1 and 2 and no documents were marked on his behalf.

7. The trial Court on consideration of the entire evidence on record, both oral and documentary, convicted the accused officer vide impugned judgment and imposed sentence in the manner stated above.

8. Feeling aggrieved by the said judgment, the accused officer preferred the present appeal.

9. It is the specific case of the prosecution that the accused officer being Junior Assistant, In-charge, Record Assistant/VAO, in the office of M.R.O., Nyalkal Mandal, Medak District; as per his earlier demand on 30-06-1999, demanded and accepted an amount of Rs.400/- on 01-07-1999 from P.W.1 towards bribe for the purpose of issuance of certified copies of pahanies in respect of the land belongs to P.W.1. The prosecution has also referred Ex.P-15, complaint, lodged by P.W.1 on 30-06-1999.

10. According to Ex.P-15, P.W.1 is the resident of Tekuru village and owner of Ac.2.15 gts of land. He has approached Syndicate Bank for loan and they have insisted for certain documents in respect of his land for the said purpose. He has approached M.R.O. office and applied for pahanies, Choupasla, and R.O.R. record etc. He has met M.R.O., Nyalkal Mandal, who in-turn, informed him to get the said documents ready in his office. Therefore, he met the accused officer,

VAO, Nyalkal Mandal, working in M.R.O. Office. Then the accused officer demanded Rs.500/- towards bribe for the purpose of issuance of certified copies of the above said documents. Therefore, P.W.1 met M.R.O. and informed about the said demand made by the accused officer and M.R.O. in-turn informed P.W.1 that not to give anything to him for small things and get the things done with the accused officer.

11. According to Ex.P-15, P.W.1 met the accused officer on 26-06-1999, Saturday, who in-turn, informed him that the certified copies are ready and therefore demanded an amount of Rs.500/- towards bribe and the accused officer has shown the said papers by taking from almairah. Finally accused officer demanded to pay an amount of Rs.400/- towards bribe from P.W.1 to get the certified copies of the pahanies. On enquiry, P.W.1, came to know that the accused officer will not hear any word, he is not interested to pay the bribe as demanded by the accused officer and therefore he has approached the A.C.B. officials by way of lodging Ex.P-15 complaint on 30-06-1999.

12. According to the said Ex.P-15 complaint, the initial demand of bribe was much prior to Ex.P-15. Final demand was on 26-06-1999 on which day, the accused officer demanded an amount of Rs.400/- from P.W.1 towards bribe.

13. It is relevant to note that P.W.1 having set the law in motion by way of lodging Ex.P-15 complaint, disowned the said complaint and therefore, the prosecution declared him as hostile.

14. It is settled principle of law that though the witness is declared as hostile, the evidence of hostile witness can be relied upon to the extent useful to the prosecution. On perusal of P.W.1 deposition, it is useful only to the extent of making application with M.R.O. office for certified copies of *pahani* etc. and approaching the M.R.O. He did not depose about the demand of bribe made by the accused officer.

15. On the other hand, P.W.1 deposed that he met Narsimhulu and Golla Bakkanna at M.R.O. office and on enquiry, he informed about making of application for certified copies of *pahanies* etc. to them. After hearing P.W.1, they have informed him that his work would be done, if go on wandering to the MRO's office as the staff members of the MRO office have become lazy and unless bribe amounts were paid, they did not attend work and advised him to lodge complaint with ACB against any of the staff member naming one of them. According to him, both of them drafted complaint and asked P.W.1 to sign on it and therefore, he has signed it. They have taken him to the ACB office, Sangareddy and handed over Ex.P-15 complaint to the Inspector, A.C.B.

16. During cross examination, he has admitted that he has studied up to 5th class. He knows reading to some extent but he does not

know writing. He has admitted his signature on Ex.P-15 complaint dt.30-06-1999. He has further admitted during cross examination that he does not know whether the accused officer has worked as VAO, Nyalkal Mandal, and he was not having acquaintance with the accused officer, on which, he has handed over an amount of Rs.400/-.

17. It is relevant to note that P.W.1 specifically deposed that at the instance of Narsimhulu and Golla Bakkanna, he has lodged Ex.P-15 complaint. According to him, the said Narsimhulu and Golla Bakkanna have drafted Ex.P-15 complaint. But the prosecution did not examine both of them or any of them. The non-examination of the said Narsimhulu and Golla Bakkanna is fatal to the case of the prosecution.

18. According to prosecution, one Rukkaiah acted as mediator and the said Rukkaiah proceeded to M.R.O. office along with P.W.1. The prosecution did not examine said Rukkaiah for the reasons best known to them. In fact, P.W.5, trap laying officer, instructed the said Rukkaiah to accompany P.W.1 to the place of trap and the said fact was deposed by P.W.1, P.W.5 and also recorded in Ex.P-3, pre-trap proceedings. The said Rukkaiah was not examined by the prosecution. According to this Court, non-examination of said Rukkaiah is also fatal to the case of the prosecution since the other mediator i.e. P.W.2 did not depose about the demand of alleged bribe by the accused officer. In fact, the said Rukkaiah did not follow the instructions given by P.W.5, trap laying officer.

19. During cross examination, P.W.1 admitted that while he was waiting at varandah, he observed a tray, in which the letters that were addressed to the staff members, and he picked up one inland letter which was containing the address of the accused officer. He took the tainted amount from his shirt pocket and inserted in that inland letter. Again he approached the accused officer to confirm whether his papers were ready. He opened the inland letter to keep the tainted amount inside so as to see that it was not visible to the accused officer and he did not tear it. According to him, it got opened when he tried to open it. Again he approached the accused officer and found that he was writing some thing. He has handed over the said inland letter containing the tainted amount to him stating that it had fallen down and he has picked it up. The accused officer has looked at the address and kept it in his shirt pocket having received it with his left hand.

20. During cross examination, P.W.1 further admitted that the accused officer did not handover the certified copies to him and asked him to come again after some time and then he came out and displayed the pre-arranged signal. During cross examination, P.W.1, however, admitted that he had no acquaintance with Narsimhulu and Bakkanna earlier till he met them in M.R.O. office and only on that day, he came into acquaintance with them. He has no dispute with the accused officer.

21. During cross examination by the accused officer, P.W.1 categorically admitted that by the time P.W.1 and trap party came to

Nyalkal, M.R.O. office, the said Narasimhulu and Bakkanna were present near the MRO office. Despite the said evidence, the prosecution did not examine or make any attempt to examine the said Narsimhlulu and Bakkanna. Therefore, it is fatal to the case of the prosecution. P.W.1 further admitted that in view of threat, he did not inform the Magistrate that he was making statement under Section 164 Cr.P.C.,. He has further admitted that the accused officer never demanded any bribe amount and he has not paid any amount as bribe to the accused officer.

22. P.W.2, mediator, deposed that D.S.P, A.C.B., reiterated him about the earlier instructions to P.W.1 and Rukkaiah, another mediator, and the said Rukkaiah stayed outside the MRO office. Thus, Rukkaiah did not follow the instructions of DSP, A.C.B. Therefore, other than P.W.2, there is no other direct witness to depose about the alleged demand of bribe by the accused officer from P.W.1. P.W.2 further deposed that Ex.P-4 is the inland letter and Ex.P-5 is the *chit* which bear the initials of the said mediator Rukkaiah and attested by DSP and does not bear initials of P.W.2. He further deposed that DSP enquired about papers of P.W.1, accused officer called one M.Shanker, who was inside the record room and at the instructions of the accused officer, the said Shanker brought the papers relating to P.W.1. Despite the said specific evidence, the prosecution did not examine the said Shanker and also not cited him as witness for the reasons best known to the prosecution.

23. As per the deposition of P.W.4, the MRO, the said Shankar was engaged by the accused officer as private employee. According to him, the MRO, Nyalkal, is situated close to Karnataka State and many people who knows *kannada* will come to MRO office for various works. Therefore, the accused officer has engaged him to assist him in preparation and reading of documents etc. Despite the said specific evidence by P.W.4, prosecution did not examine the said Shanker. In fact, P.W.1 also deposed that the DSP called and enquired Shanker about the said private engagement by the accused officer on daily payment basis. Even then, prosecution did not examine the said Shankar for the reasons best known to them.

24. During cross examination, P.W.2 categorically admitted that the DSP enquired three junior assistants and one Senior Assistant who were available in the MRO office as to whether they did watch what transpired during trap proceedings between P.W.1 and the accused officer, for which, they stated that they did not observe anything as they were busy with their work. As stated above, Ex.P-9, post-trap proceedings, was prepared by P.W.2.

25. P.W.3, the younger brother of P.W.1 and he was also declared as hostile by the prosecution. The deposition of P.W.3 is not useful to the prosecution to prove pendency of official favour, demand and acceptance of bribe amount.

26. P.W.4 is the MRO, Nyalkal. He deposed about procedure for issuance of certified copies of pahanies. According to him, the certified copies required under the applications i.e. Exs.P-1, 10 and 12 have to be prepared by the accused officer and after they were prepared, the Head Assistant would sign on them. Thereafter, the record section Jr. Assistant would deliver the same to the applicant. The note on Exs.P-1, 10 and 12 were prepared by the accused officer. The certified copies of pahanies, numbering six, relating to applicant, under Exs.P-1, 10 and 12, were prepared by the accused officer are Ex.P-13 in Ex.P-7 file. In Ex.P-13, pahanies, only the initials of the accused officer are available and the signature of Head Assistant was not made.

27. P.W.4 further deposed that since most of the people in Nyalkal Mandal are Kannadies, they used to take the assistance of private person by name Shanker in obtaining documents from the MRO office. It is relevant to note that even P.W.4 was declared as hostile, he was cross examined by the Special Public Prosecutor, A.C.B. During cross examination, nothing contra was elicited from P.W.4 by the prosecution. His deposition to the extent of procedure of issuance of pahani copies is useful to the prosecution.

28. During cross examination, P.W.4 categorically admitted that at the time when DSP questioned accused officer, besides himself, one Narasaiah, Senior Assistant, Narasimha Rao, Jr. Assistant, Shiva Shantaiah, Jr. Assistant, Chandrasekhar, Assistant Statistical Officer,

Mangalai Shanker and Hanumanth Reddy, VAO, were present. He has further admitted that Golla Bakkana and E.Narasimhulu belong to Nyalkal. They have no work and very often they used to consume drinks and come to MRO office and creating nuisance. The said two persons used to black-mail (canvassing) the applicants stating that they would get issuance of certified copies etc. done. The prosecution did not examine any of the above said personnel. On the other hand, accused officer has examined Siva Shantaiah as D.W.1, V.Narasaiah as D.W.2 in support of his case.

29. P.W.5, the DSP, ACB, trap laying officer, deposed about receipt of Ex.P-15 complaint, and on receipt of the same, on 01-07-1999 at 10.00am, he registered the same and issued FIR, Ex.P-16.

30. It is relevant to note that though as per A.C.B. manual, the ACB officials on receipt of complaint, have to make discrete enquiries with regard to genuineness of the allegations made by the complainants against the accused officer so that innocent officials cannot be implicated in false cases, so also, complaints cannot be entertained on personal grudges.

31. In the present case, P.W.5 did not depose about conducting discrete enquiries on Ex.P-15 complaint and the contents therein. He has deposed that he has instructed Rukkaiah, mediator, to accompany accused officer and further instructed him that the bribe amount has to

be paid to the accused officer only in case of demand by the accused officer. Thereafter, Rukkaiah has to give pre-arranged signal after acceptance of demanded amount by the accused officer. He has also admitted that Rukkaiah remained outside and did not accompany P.W.1 at the time of trap.

32. During cross examination, P.W.5 categorically admitted that in the hall, in which the accused officer was sitting, Kulkarni Narasimha Rao, Jr. Assistant, B.Narsaiah, Sr. Assisnat, Shiva Shantaiah and R.Hanumanth Reddy, Jr Assisants, were all sitting in the said hall-cum-varandah and Golla Bakkana and Y.Narasimulu were available outside the MRO office. He has also further admitted that Ex.P-6 does not reflect whether Golla Bakkanna and Y.Narasimhulu were present. He has further admitted that accused officer stated, on his repeated question, that he did not demand any amount from P.W.1.

33. By referring the above said depositions, more particularly, declaration P.Ws.1, 3, 4 as hostile, learned counsel for the appellant/accused officer would strenuously contend that the prosecution did not examine any independent witness to prove pendency of official favour, abusing of official position of accused officer in getting the official favour done and also to prove the demand and acceptance of alleged bribe. He would also point out with regard to the discrepancies in Ex.P-15 complaint, P-16 FIR and deposition of P.W.1. According to him, as per Ex.P-15, the demand was on 26-06-1999 and the prosecution failed to prove the said

demand. As per the charge framed against the accused officer, the accused officer demanded and accepted the bribe on 01-07-1999 and according to him, prosecution did not prove the said demand also. To prove the said fact of alleged demand of bribe on the day of trap, the prosecution did not examine any witness though the above said personnel were present. Even learned counsel for the appellant/accused officer would point out that as per the charge, the earlier demand was on 30-06-1999 and Ex.P-15 complaint, does not disclose the said fact. According to him, there are serious discrepancies in the versions of prosecution including Ex.P-15 complaint, deposition of P.W.1 and charge and the same are major discrepancies. The said major discrepancies would give suspicion and that the evidence of prosecution witnesses cannot be believed and they are not trustworthy.

34. On perusal of the contents of Ex.P-15, would reveal that the demand of alleged bribe by the accused officer from P.W.1 was on 26-06-1999 and there was no demand on 30-06-1999. The trap was on 01-07-1999. In fact, there was no demand of alleged bribe by the accused officer from P.W.1 on 01-07-1999. Therefore, there are serious/major discrepancies in the version of the prosecution with regard to the very alleged demand of bribe itself. More over, prosecution did not examine any independent witness to prove the pendency of official favour and the role of the accused officer as VAO in preparing and the issuance of certified copies of *pahanies*. The

prosecution has also failed to prove the genuineness of the contents of Ex.P-15 complaint. In the absence of the evidence of independent witness and proving of genuineness of the contents of Ex.P-15 complaint, the evidence of trap laying officer cannot be believed. Even P.W.5, trap laying officer, did not depose about the alleged demand of bribe by the accused officer from P.W.1. In fact, he has instructed, Rukkaiah, mediator, to accompany and the said Rukkaiah did not accompany. Though there were several persons in the MRO office at the time of trap, prosecution did not examine any of them. If the prosecution proves the bribe and contents of Ex.P-15 then the evidence of trap laying officer can be believed.

35. In the present case, admittedly, the prosecution failed to examine any independent witness to prove the demand. As discussed above, the prosecution has not examined Rukkaiah, mediator.

36. As discussed supra, prosecution failed to prove with regard to discrete enquiries said to have been conducted by the ACB officials before registration of crime or after registration of crime. There is no other evidence or any document to show the said alleged discrete enquiries conducted by P.W.5 or P.W.6. Thus, the prosecution miserably failed to prove the official favour pending with the accused officer and his role in getting the official favour i.e. issuance of certified copies of pahanies and other documents done to P.W.1. The prosecution also miserably failed to prove the demand by way of examining any independent witness in view of declaring P.W.1 as

hostile and major discrepancies in Ex.P-15 complaint, and deposition of P.W.1.

37. Learned counsel for the appellant-accused officer has relied on the principle laid down by the Supreme Court in the case reported in **Khaleel Ahmed v. State of Karnataka**¹, wherein the Supreme Court, after relying on various judgments including the principle held in **B.Jayaraj v. State of A.P.**², categorically held that in view of disowning the complaint by the complainant, the prosecution has to examine independent witness to prove the demand and in the absence of the same, the conviction recorded basing on the suspicion is not sustainable. Burden of proof lies on the prosecution to prove the same. Whereas in the present case, the prosecution failed to discharge the said burden and failed to prove the demand itself. Further, prosecution witnesses including P.Ws.4, 5 and other witnesses have specifically deposed about presence of Shanker, V.Narasaiah and Shiva Shantaiah, but the prosecution has not examined the said witnesses.

38. On the other hand, the accused officer examined the said Shiva Shantaiah, Jr. Assistant as D.W.1, who deposed that the accused officer always wears *pancha (dhoti)*. The accused officer picked up the contents of the shirt pocket and forcibly placed the same on the table. The contents of the shirt pocket of the accused officer, which were thrown on the said table, were a kerchief, some court fee stamps,

¹ 2015 (16) S.C.C. 350

² (2014) 13 S.C.C. 55

some *chits* of papers, inland letter and some amount. He further deposed that when the accused officer threw inland letter forcibly on the table, some currency notes were found in the folds of the said inland letter. On seeing the said currency notes in the folds of inland letter, DSP again questioned the accused officer as to how that amount came into the pocket.

39. D.W.1 further deposed that the accused officer narrated the DSP in his presence and also in the presence of Narsaiah, Sr. Assistant, K.Narsimha Rao, Jr. Asst., Hanumanth Reddy, Jr. Asst., Chandra Shekhar, ASO and Narayana, MRO, that 10 minutes prior to the raid party entering into the office, P.W.1 came to the accused officer and said *namasthe* sir and then the accused officer asked the said person as to who he was. P.W.1 then informed that earlier he applied for certified copies of pahanies. The accused officer informed P.W.1 that the certified copies were ready long tack, he would obtain signatures of Sr. Assistant and deliver the same to him. Then P.W.1 left the table of the accused officer saying that he would return back after few minutes. Little later, P.W.1 again came to the table of the accused officer stating that some inland letter had fallen on the floor near the table of accused officer, picked it up and handed over the same to the accused officer. The accused officer has taken the said inland letter with his left hand and after verifying that his name contains in the inland letter, he tucked it in his shirt pocket. No

panchanama was conducted by the DSP in their presence or in the presence of the accused officer on that day at MRO office.

40. Nothing contra was elicited from D.W.1 though he deposed about the entire incident specifically.

41. P.W.2, Sr. Assistant, also deposed in the similar lines. The prosecution did not elicit anything contra from him.

42. In view of the said back drop of the facts, the prosecution failed to prove the role of the accused officer in getting the official favour done i.e. issuance of *pahani* copies etc. to P.W.1. The prosecution also failed to prove the demand of bribe by the accused officer and acceptance of the same. On the other hand, the accused officer has proved that P.W.1 gave the accused officer inland letter which contains his name and he kept the same in his shirt pocket without knowing that there is money in it. According to the accused officer, he is not having knowledge of money in the inland letter. He could prove the same by examining the D.Ws.1 and 2 coupled with the evidence of P.W.1.

43. As discussed above, P.Ws.1, 3 and 4 have turned hostile. The prosecution did not examine any independent witness to prove the demand and acceptance, twin requirements which are *sine quo non* to record conviction under the provisions of the Act. In view of the same, the conviction recorded by the trial Court and the findings

therein in the impugned judgment are contrary to the evidence, is not sustainable.

44. On the other hand, learned Special Public Prosecutor would contend by referring various provisions of Chapter 35 of Cr.P.C. and also Sections 106 and 165 of the Evidence Act, 1872, that though the witness/*de facto* complainant turned hostile, the evidence which is useful to the prosecution can be relied upon. According to him, official favour was pending and accused officer was in a position to do the said official favour of issuance of certified copies of pahanies etc. Though P.Ws.1, 2 and 4 declared hostile, the prosecution could prove the guilt of the accused with the evidence of other prosecution witnesses which is circumstantial in nature. According to him, though P.Ws.1, 2 and 4 declared as hostile, their evidence to the extent of proving the trap, demand, signatures etc. can be relied upon as circumstantial evidence to prove the guilt of the accused. Non-examination of Rukkaiah, Narasimhulu and Bakkana are not fatal to the case of the prosecution in view of proving pendency of official favour, trap, recovery of tainted currency and demand and acceptance of bribe by the prosecution.

45. According to him, the accused officer did not claim any animosity between him and P.W.1. Learned Special Public Prosecutor would further contend that the accused officer did not examine the said Shanker who was working under him as private employee and he used to pay daily wages to him. According to him,

all other issues except demand such as pendency of official favour, pre and post trap, possession of currency notes and recovery of the same were proved beyond reasonable doubt by the prosecution. Therefore, on the analysis of the entire evidence, the trial Court, after giving a finding about proving of demand by drawing presumption under Section 20 of the Act, 1988, convicted the accused. Therefore, according to him, there is no circumstance that warrants interference by this Court in the present appeal.

46. The learned Special Public Prosecutor relied upon the principle held by the Hon'ble Apex Court in **Mukut Bihari and Another v. State of Rajasthan**³, wherein the Supreme Court held with regard to the standard of proof and corroboration and also the desirability of shadow witness in trap party etc. Whereas in the present case, there is no such standard of proof and corroboration of evidence. The prosecution did not examine any mediator/independent witness to prove the demand itself. Mr. Rukkaiah, mediator, did not accompany P.W.1 and other mediator did not depose about alleged bribe. Therefore, the principle held by the Supreme Court in the said judgment is of no use for prosecution.

47. He has also relied upon another judgment reported in **S.Kumara Swamy v. State of Andhra Pradesh**⁴ wherein this Court held that though the *de facto* complainant turned hostile, the conviction can be recorded basing on the circumstantial evidence

³ (2012) 11 SCC 642

⁴ 2014 (1) ALD Criminal 434

available. As discussed supra, there is no circumstantial evidence in the present case and there is no corroboration of evidence at all. Therefore, the said principle is of no use to the prosecution.

48. He also relied upon the judgment of the Supreme Court reported in **Gijra Prasad (dead) By LRs. v. State of M.P.**⁵, wherein by referring that with regard to the standard of proof, preponderance of probabilities, where no evidence was adduced by the accused to rebut the presumption raised under the law etc. and also judicial credibility, interested witnesses and held that conviction can be recorded basing on the circumstantial evidence etc. whereas in the present case, there is no circumstantial evidence and corroborative evidence and therefore, the said principle is also not useful to the prosecution. Moreover, the presumption is a rebuttable presumption and the accused has successfully rebutted in the manner stated above.

49. As discussed above, there are serious discrepancies in Ex.P-15 complaint and prosecution failed to prove the genuinity of the said complaint. In view of the major discrepancies on the dates, and no proper explanation offered by the prosecution and in the absence of any independent witness, the Ex-P15 complaint, is of no use to the prosecution to prove the demand. Thus, the prosecution miserably failed to prove the demand itself. It is settled principle that mere recovery of tainted notes is not sufficient and the prosecution has to prove the guilt of the accused like any other criminal case with cogent

⁵ 2007 (7) S.C.C. 625

evidence beyond reasonable doubt. In the present case, the prosecution miserably failed to prove the same.

50. The findings of the trial Court in the impugned judgment are not supported by any evidence and the said findings are contrary to the evidence both oral and documentary. In view of the same, the conviction recorded by the trial Court against accused officer is not sustainable both on law and on facts.

51. Therefore, the present Criminal Appeal is allowed. The impugned judgment dt.21-07-2006 in C.C.No.8 of 2001 passed by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, is liable to be set aside and accordingly the same is set aside. The appellant-accused officer is acquitted. Since the appellant/accused officer is on bail, his bail bonds are cancelled herewith.

52. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE K.LAKSHMAN

Date: 10-01-2020

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