THE HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL APPEAL No.1204 OF 2006

JUDGMENT:

Feeling aggrieved by the judgment, dated 25.02.2006, passed by the learned Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, in Calendar Case No.31 of 2002, wherein and whereby, respondent - Accused Officer was found not guilty of the charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short 'the Act') and accordingly acquitted him of the said charges, the State - ACB preferred the present appeal.

2. The case of the prosecution is that Accused Officer - Mr. Panderi Srinivas worked as Assistant Engineer, A.P. Housing Corporation Limited, Nizamabad at the relevant point of time. Whereas, PW.1 - *de facto* complainant - Mr. Palle Bala Goud, an Agriculturist is resident of Sarangapur, Nizamabad District. PW.1 lodged Ex.P1- written complaint on 14.02.2001 with the ACB Officials against the Accused Officer alleging that the Accused Officer demanded an amount of Rs.500/- from him as bribe for release of final adjustment cheque and another sum of Rs.500/- from his villager - PW.8 (Smt. P. Venkatamma), daughter of PW.2, for release of 20 bags of cement. Pursuant to Ex.P1 complaint, ACB Officials registered a case under Ex.P13 - FIR and later laid a trap on 15.02.2001 against the Accused Officer. On the day of trap, the Accused Officer had demanded and accepted the aforesaid bribe amount for doing the said official favour from PWs.1 and 2. After completion of investigation, ACB Officials filed charge sheet against the Accused Officer for the offences punishable under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption

Act, 1988 (for short ' the Act') and the same was taken on file vide C.C. No.31 of 2002.

3. Thereafter, 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 as many as eight (08) witnesses i.e., PWs.1 to 8, marked Exs.P1 to P14, and MOs.1 to 9 were exhibited. In support of defence, the Accused Officer examined two (02) witnesses i.e., DWs.1 and 2 and marked Exs.D-1 and D2. Exs.X1 to X4 were also marked.

5. After completion of trial and on consideration of evidence both oral and documentary, the trial Court found the Accused Officer not guilty of the aforesaid charges and accordingly acquitted him vide impugned judgment, dated 25.02.2006 in C.C. No.31 of 2002.

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

7. Heard 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 appellant and Mr. Badeti Venkata Ratnam, learned counsel for the respondent - Accused Officer.

8. Impugning the judgment, the learned Special Public Prosecutor would contend that the Accused Officer being Assistant Engineer in A.P. Housing Corporation Limited pursuant to his earlier demand, on 15.02.2001

demanded and accepted an amount of Rs.500/- each from PW.1 and PW.2 towards release of final adjustment cheque and release of 20 bags of cement to PW.8, daughter of PW.2 and that the said official favour was pending with the Accused Officer as on the day of trap. According to him, Ex.P1 complaint was scribed by PW.2, signed by PW.1 and the twin requirements of demand and acceptance were proved by the prosecution beyond reasonable doubt by examining relevant witnesses. Tainted currency notes were also recovered from the Accused Officer, but without considering all the said aspects, the trial Court solely based on surmises and conjectures, acquitted the Accused Officer which is contrary to the evidence on record. The finding of the trial Court that non-examination of Kondal Reddy is fatal to the case of prosecution is unsustainable and the trial Court did not draw the presumption under Section 20 of the Act and, therefore, the said acquittal is liable to be set aside by recording the conviction.

i) With the aforesaid contentions, the learned Special Public Prosecutor prayed for allowing the appeal.

9. On the other hand, the learned counsel for the respondent - Accused Officer supporting the judgment of the trial Court would submit that the prosecution failed to prove the demand and acceptance by examining proper witnesses. According to him, the prosecution failed to prove the official favour that was pending with the Accused Officer. In fact, the Accused Officer was not having any power to release final adjustment cheque to PW.1 and cement to PW.8, daughter of PW.2 and his role was very limited in the said process. PW.2, who is having animosity against the Accused Officer, in collusion with PW.1 and with the assistance of ACB

Officials, got implicated the Accused Officer in the case on hand falsely. On the day of trap, the tainted amount of Rs.1000/- was thrust in the pant pocket of the Accused Officer, who immediately threw away the same, but on the instructions of Mr. Kondal Reddy, ACB Constable, the Accused Officer picked up the said amount from the floor and in the said process only the phenolphthalein powder particles came into contact and that was the reason why the chemical tests proved positive. The credibility of PW.2 is highly suspicious and the trial Court after considering the evidence and on an analysis of the same, acquitted the Accused Officer by giving specific reasons. The trial Court did not commit any error in acquitting the Accused Officer.

i) With the aforesaid contentions, the learned counsel for the respondent 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 official favour that was pending with the Accused Officer as on the date of trap?

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?

<u>POINT Nos. (i) to (iii)</u>:

11. Section 7 of the Act deals with Public Servants taking gratification other than legal remuneration in respect of an official act and the punishment for the said offence. Section 13 of the Act deals with

criminal misconduct by a public servant, whereas, Section 13 (1) (d) of the Act deals with corrupt or illegal means etc., Section 13 (2) of the Act deals with punishment for the said offence.

12. It is settled principle that prosecution has to prove twin requirements of 'demand and acceptance' which are *since qua non* to record conviction under Sections 7 and 13 (1) (d) of the Act. Mere recovery of tainted currency notes is not sufficient unless the demand of bribe by the Accused Officer is proved beyond reasonable doubt. The prosecution has to prove both demand and acceptance like any other criminal cases with cogent evidence. It is also settled principle that proving one alone is not sufficient and the prosecution has to prove both.

13. In view of the above said legal position, coming to the case on hand, it is not in dispute that the Accused Officer was working as Assistant Engineer in A.P. Housing Corporation Limited, Nizamabad at the relevant point of time. The allegation against the Accused Officer by the prosecution is that he has demanded an amount of Rs.500/- each from PW.1 and PW.2 for the purpose of release of final adjustment cheque to PW.1 and release of 20 bags cement to PW.8, daughter of PW.2.

14. According to the prosecution, on 15.02.2001, the Accused Officer at his office as per his earlier demand, demanded and accepted the bribe amount of Rs.500/- from PW.1 and Rs.500/- from PW.2. As per Ex.P1-complaint drafted by PW.2, PW.1 went to the office of the Accused Officer on 12.02.2001 for the purpose of enquiry with regard to the payment i.e., issue of final adjustment cheque, then the Accused Officer demanded an amount of Rs.500/- for releasing the said payment. Thus, according to the

prosecution, the initial demand of bribe by the Accused Officer fromPW.1 was on 12.02.2001. In Ex.P1-complaint, it is also mentioned by PWs.1 and 2 that the Accused Officer has also demanded an amount of Rs.500/- from PW.2 for the purpose of release of 20 bags of cement to PW.8, daughter of PW.2. In Ex.P1, both PWs.1 and 2 alleged that they were not interested to give the said amount of Rs.1000/- (Rs.500/- and Rs.500/-) to the Accused Officer towards bribe, they approached the ACB Officials by lodging Ex.P1-complaint. The said Ex.P1 complaint was submitted to PW.6 - DSP, ACB, Nizamabad Range on 14.02.2001 at about 4.30 p.m. and a case was registered by issuing FIR under Ex.P13 on 15.02.2001 at 8.00 a.m. By referring the aforesaid three dates, the learned counsel for the respondent - Accused Officer would contend that there was no alleged demand of bribe on 15.02.2001 and the prosecution failed to prove the initial demand of bribe alleged to have made by the Accused Officer on 12.02.2001.

15. PW.1 deposed that he is resident of Sarangapur Village of Nizamabad District. In the year 2001, Housing Corporation sanctioned a loan of Rs.20,000/- to him for the purpose of construction of house, since his hut was gutted in Fire. The Housing Corporation has also supplied cement, steel, doors and windows for construction of house. He was to be paid a final amount by the Housing Corporation. Regarding the said bill, he visited the office of the Accused Officer on 14th March as he remembers then, and met the Accused Officer with a request to release the amount, on which the Accused Officer demanded bribe of Rs.500/- from him. He further deposed that on that day, he went to the office with one Mr. Narayana (PW.2) and the Accused Officer has also demanded an amount of Rs.500/- from him for the purpose of releasing cement to PW.8, daughter of PW.2. According to

PW.1, the Accused Officer requested both PWs.1 and 2 to come after two or three days with the said bribe amount, so that he would prepare the related documents, viz., issue of cheque towards final adjustment amount to PW.1 and release of 20 bags cement to PW.8. Since both PWs.1 and 2 were not interested in paying the bribe amount to the Accused Officer, they approached the ACB Officials.

16. PW.2, father of PW.8, deposed that on 12.02.2001 he took PW.1 to the Housing Corporation and met the Accused Officer, who demanded an amount of Rs.500/- each from them. According to him, they have informed the Accused Officer that they would come day after tomorrow with the amount as demanded by him. On 14.02.2001, PWs.1 and 2 went to the office of the Accused Officer along with an amount of Rs.500/- each, but the Accused Officer was not present in the office. On enquiry, they came to know that the Accused Officer has gone for tour and was expected to return in the evening and accordingly they have waited till 4.30 p.m. or 5.00 p.m. He further deposed that thinking why they should face all these difficulties, they have approached the ACB Officials by way of lodging Ex.P1 complaint scribed by PW.2 and signed by PW.1.

17. By referring the aforesaid depositions of PWs.1 and 2 and the contents of Ex.P1 complaint, the learned counsel for the respondent would contend that there are serious discrepancies in their depositions and contents of Ex.P1. The prosecution did not prove the said demand of bribe by the Accused Officer from PWs.1 and 2 and, therefore, the question of acceptance of bribe does not arise.

18. According to him, the trial Court considered the said aspect of major discrepancies and acquitted the Accused Officer vide the judgment under challenge by giving specific reasons. The trial Court on consideration of credibility/testimony of PW.2, first and second demand dated 12.02.2001, gave a finding that the prosecution failed to prove the said demand of bribe by the Accused Officer.

19. Admittedly, there are major discrepancies with regard to the alleged demand of bribe of Rs.500/- each from PWs.1 and 2. The depositions of PWs.1 and 2 are contradictory to the contents of Ex.P1 scribed by PW.2 and signed by PW.1. In fact, as discussed supra, though as per Ex.P1 complaint, the initial demand was on 12.02.2001, the prosecution failed to prove the same either from the deposition of PW.1 or PW.2. More over, the prosecution also failed to prove the demand of alleged bribe by the Accused Officer from PWs.1 and 2 on the day of trap. Ex.P1 complaint was submitted on 14.02.2001 and a case was registered on 15.02.2001. Trap was laid on 15.02.2001 itself. The prosecution did not examine any independent witness to prove the said demand either on 12.02.2001 and 14.02.2001 or on 15.02.2001. In view of the above said discussion and also the finding of the trial Court, the prosecution failed to prove the demand of Rs.500/- each from PWs.1 and 2 towards illegal gratification by the Accused Officer.

20. With regard to the official favour that was pending with the Accused Officer at the relevant point of time, as per Ex.P1 complaint, it is alleged by PW.1 that in the year 1998, he was allotted a house under 'Indira Avas Yojana Scheme'. Accordingly, he has completed the construction of house. He has to get the final payment of Rs.3,000/- after all deductions

from the Housing Corporation. He has been going to the Housing Corporation Office since last 2-3 months for getting the said amount. On 12.02.2001 ((Monday) he went to the Housing Corporation Office and met the Accused, who in turn demanded an amount of Rs.500/- for the purpose of releasing the said amount. In Ex.P1 complaint, it is stated that the Housing Board has also allotted a house to PW.8, daughter of PW.2 in the year 1998 and she has completed the said house up to basement level. The Housing Corporation has to release 20 bags of cement for completion of the house. For the said purpose of release of cement, father of PW.8 viz., PW.2 along with PW.1 met the Accused Officer, who in turn demanded an amount of Rs.500/- from him. So, according to them, the official favour of release of final bill to PW.1 and release of 20 bags of cement to PW.8 pending at the relevant point of time. To establish the said fact of pendency of official favour, the prosecution has examined PWs.1, 2 and 8 and also PW.6 - Trap Laying Officer.

21. As discussed above, there are serious discrepancies with regard to demand of bribe by the Accused Officer. During cross-examination, PW.1 categorically admitted that he is an illiterate, he can only put his signature and he has to get an amount of Rs.3,000/- approximately. The said amount would be credited into his S.B.A/c No.4502, S.B.H., Sarangapur Branch. He further admitted that he did not remember that he had drawn the amount from the said bank on 22.02.2001. He did not know the Deputy Executive Engineer had issued an order on 05.12.2000 sanctioning Rs.2,043/- and sent the order to the bank. He was not aware that the Dy.E.E., sanctioned the amount on 05.12.2000 and the same was credited into his above account on 18.12.2000. Once he went to his bank and enquired whether his amount was

received and he was told that it has not been received. He further admitted that he cannot tell the day, month and the year on which he went to the bank and made enquiries. He has not got mentioned in his complaint about his going to the Bank and enquiring about deposit of the said amount.

22. PW.2 categorically admitted during cross-examination that the amount to be received by PW.1 would be deposited in his bank account. He did not know exactly as to what amount PW.1 was to get from the Housing Corporation. He enquired PW.1 while scribing Ex.P1, whether he went to the bank and verified if the amount was deposited or not in his account. He further admitted that there is no mention in Ex.P1, that PW.1 went to his bank and verified and learnt that the amount had not been deposited. Even if the amount is deposited, the Accused Officer has to issue a receipt as to the deposit in the bank. The amount would be deposited in the account of beneficiary. The beneficiary cannot draw the amount even if it is deposited in his account. PW.2 further admitted that he was unaware whether the amount was sanctioned to PW.1 by order dated 05.12.2000 and later to it, the amount was credited on 18.12.2000 in the account of PW.1.

23. PW.6 - DSP, ACB - cum - Trap Laying Officer during cross-examination categorically admitted that there is no mention in Ex.P1 as to PW.2 attending his office on the date of its submission. As per Ex.P1, PW.1 had to get Rs.3,000/- from A.P. Housing Corporation. He did not enquire PWs.1 and 2 at the time of registering FIR as to what was the mode of payment and release of cement. The amount to be released by way of check proceedings was signed by Dy.E.E., and sent to the bank and the same would be credited to the account of beneficiary. Once the amount is credited

into beneficiary's account, he can operate the account and withdraw it. He seized Ex.P7 cheque proceedings pertaining to PW.1, and the said Ex.P7 is dated 05.12.2000 and addressed to S.B.H., Sarangapur Branch for a sum of Rs.2,043/-. PW.6 further admitted that as per Ex.P7, the amount due to PW.1 was released on 05.12.2000 and he did not ask PW.1 during the course of Ex.P10 by showing Ex.P7 whether he had verified the amount mentioned in Ex.P7 was credited to his account or not. He further admitted that PW.1 informed them that the Accused Officer told him that the cheque due to PW.1 was already sent to bank through K. Shyam Manohar, Work Inspector, Makloor Mandal, and as per the procedure, A.E. recommends for release of cement bags and the Dy.E.E., would then issue release order. PWs.1 and 2 did not state that they have gone to the office of Accused Officer with the amount of Rs.1000/- even before PW.1 lodged Ex.P1. He has instructed PWs.1 and 2 to give respective amounts to the Accused Officer on his demand separately.

24. PW.7, who is an Agriculturist and former M.P.P., during cross-examination, admitted that A.E. is only supervising officer and he has recommend for release of cement to the Dy.E,.E., who would issue the release order. He did not ask the Dy.E.E., at the time of writing of Ex.P14 as to why the cement was not released.

25. PW.8, another beneficiary, during cross-examination, categorically admitted that the loan was sanctioned five years back. She did not know how much loan amount was sanctioned to her, and the initial payment of Rs.2,000/- was made only up to basement level. She further admitted that she did not know whether the amount of Rs.2,000/- was

released in July, 2000, and she cannot say whether the Accused Officer was Engineer on 13.07.2000 or somebody else was there when the initial payment of Rs.2,000/- was made. She further admitted that Accused Officer has taken charge, after she completed the construction of basement, and she cannot say the date, month and year on which the Accused Officer has visited the proposed construction for inspection.

26. DW.1 - Mr. K. Balakrishna Prasad, Manager, SBH, Sarangpur Branch, has categorically deposed that as per Ex.X1 Credit voucher, dated 19.12.2000, pertains to credit of Rs.2,043/- in S.B. A/c No.4502 pertains to PW.1. The voucher is for Rs.10,693/- under which three credits of Rs.2,043/- in S.B. A/c No.4502; Rs.4650/- in S.B. A/c No.1105817 pertains to K. Savithri; and Rs.4,000/- in S.B. A/c No.1105874 pertains to Syed Inayath Ali, were credited. The said amounts were received under respective cheque proceedings issued by the A.P. Housing Corporation Ltd., Nizamabad by Dy.E.E., dated 05.12.2000 and 04.12.2000 respectively. He further deposed that Exs.X2, X3 and X4 were the cheque proceedings, and Ex.X2 cheque proceedings pertain to PW.1 under which Rs.2,043/- was sanctioned and issued to the credit of S.B. A/c No.4502. The amount covered under Ex.X2 was credited in S.B. A/c of PW.1 on 19.12.2000 under Ex.X1, and the beneficiary is entitled to draw the amount after the credit of the amount on 19.12.2000. During cross-examination, DW.1 categorically admitted that the amount was credited on 19.12.2000 itself in the name of PW.1, and unless he verifies the statement of accounts of PW.1, he cannot say when PW.1 withdrew the amount of Rs.2,043/- and so also whether the said amount was withdrawn or not.

27. The deposition of the above said witnesses and the documents under Exs.X1 to X4, Exs.P3, P4, P6, P7 and P8 would reveal that final bill amount in respect of PW.1 was already released on 05.12.2000 itself and the amount of Rs.2,043/- was credited to the account of PW.1 vide S.B. Account bearing No.4502 on 19.12.2000 itself. Thus the said deposition including cross-examination coupled with the above referred documents would reveal that there was no official favour that was pending with the Accused Officer at the relevant point of time. Even as per the deposition of PW.6 - Trap Laying Officer that the amount to be released by way of cheque proceedings signed by Dy.E.E., and sent to the bank and the same would be credited to the account of beneficiary. Once the amount is credited into the account of beneficiary, he can withdraw the same. Ex.P7 cheque proceedings pertaining to PW.1 is dated 05.12.2000 and the same was addressed to SBH, Sarangapur Branch and the amount is Rs.2,043/-. The said amount as per Ex.P7 due to the beneficiary was released on 05.12.2000 itself. Even according to PW.6, PW.1 informed them that the Accused Officer told them that cheque amount due to PW.1 was already sent to the bank through Sri K. Shyam Manohar, Work Inspector. Even as per the admission of PW.6 during cross-examination that the Accused Officer, Assistant Engineer is only having recommendation power for release of the cement bags and the Dy.E.E., would then issue release order.

28. Thus, the above stated depositions and documents would clearly establish that there was no official favour pending with the Accused Officer as the amount was already credited into the account of PW.1 on 05.12.2000 itself. In view of the same, admittedly there was no official favour that was pending with the Accused Officer as on the dates of 12.02.2001, 14.02.2001

and 15.02.2001. As discussed above, when there is no official favour pending with the Accused Officer, the question of demand of bribe as alleged by the prosecution does not arise.

29. The trial Court on the analysis of the entire evidence, both oral and documentary, gave a finding that there was no official favour that was pending with the Accused Officer. This Court is satisfied with the said reasoning. Thus, in view of the above said discussion, the prosecution has miserably failed to prove the pendency of official favour with the Accused Officer and the demand made by him as per Ex.P1 - complaint.

30. PW.1 in his chief examination deposed that on the date of trap, the Accused Officer asked PW.2 to wait for some time, he would come and after some time, the Accused Officer came out. First Narayana met the Accused Officer and the Accused Officer enquired whether he brought the money and Mr. Narayana replied in affirmative. At that time, Mr. Narayana instructed him to give his amount also and accordingly he gave the amount to the hands of Mr. Narayana (PW.2), who in turn paid the amounts to the Accused Officer and that the Accused Officer held the amount in a handkerchief which was in his hands. PW.1 further deposed that Mr. Narayana came aside and gave signal by wiping his face with handkerchief, and on receiving the same, the trap party came and caught the Accused Officer, and on seeing them, the Accused Officer thrown the said amount on to the ground. The constable instructed the Accused Officer to pick that amount, but the Accused Officer did not pick that amount immediately and after insistence, the Accused Officer picked up that amount

on the ground and that water was brought and the hands of the Accused Officer were washed and so also the handkerchief.

31. PW.2 in his chief examination deposed that on the day of trap, the Accused Officer enquired with him and PW.1 about getting the bribe amount and thereafter PW.2 handed over the amount entrusted to him taking out from his pocket and also the amount of PW.1 taking it from him to the Accused Officer, who held those amounts in the handkerchief. Then PW.2 went out and wiped his face with the towel and gave the signal, and on receiving the same, the trap party rushed in and on seeing them, the Accused Officer threw those amounts on the ground. PW.2 further deposed that the amount which was thrown on to the ground was picked up by the Accused Officer and then all the trap party members and the Accused Officer went inside and they were instructed to stay out. During cross-examination, PW.2 categorically admitted that on the date of trap, the Accused Officer came out of the room, went towards the open space and held a handkerchief while coming out of his office room.

32. PW.3, one of the mediators to the trap events, deposed in his chief examination that the DSP instructed him to go along with PW.1 and PW.2 and observe and hear what transpires there. He was standing at the main entrance within the compound wall of the office and he was observing the beneficiaries were sitting with the Accused Officer and PWs.1 and 2 returned after some time and said that the formalities were over and then Pw.2 wiped his face with his towel and gave that signal to the constable, who was standing nearby. Then the DSP and his staff, Ashok Purohit all rushed into that office. During cross-examination, PW.3 categorically

admitted that it was written in Ex.P10 at page Nos.5 and 6 that PW.1 and PW.2 having stated on being enquired that the Accused Officer accepted Rs.500/- each from them with the left hand by holding a napkin in that hand. No-where in Ex.P10 it was mentioned that the Accused Officer received that amount with bare hands. He has further admitted that it is also not mentioned in Ex.P10 that Kondal Reddy, Constable stopped the Accused Officer. There is no mention in Ex.P10 whether they have examined Kondal Reddy as to what he has seen. The DSP had not instructed Kondal Reddy, Constable to go ahead to the office and watch the events.

33. PW.6 - DSP, ACB deposed that on the day of trap, after receipt of pre-arranged signal, himself and other trap party members rushed inside the office of Dy.E.E., and on entering inside the main entrance of that office, they have found a person standing to the right side of main entrance, who was stopped by Kondal Reddy, Constable. PW.6 also deposed that the Accused Officer picked up the currency notes lying on the floor. During cross-examination, PW.6 categorically admitted that he has found the amount on the floor along with napkin by the time he along with trap party entered. He did not mention the standing positions of PWs.1 and 2 in Ex.P10 and P11 as they entered into the Dy.E.E. Office. He has not examined Kondal Reddy, Constable. He has also not examined PW.3 during post trap proceedings. As per Ex.P10, the Accused Officer picked up the tainted amount from the floor. Ex.P10 does not reflect that PW.1 stating that the Accused Officer has thrown away the tainted currency notes.

34. As per the above depositions, more particularly PWs.2 and 6, PW.2 thrust the tainted amount by keeping the same in the hand-kerchief

and the same was thrown on the floor by the Accused Officer. It is the specific contention of the Accused Officer that on the insistence of Mr. Kondal Reddy, Constable, ACB, he has picked up the amount from the floor. Though PW.6 admitted about presence of Mr. Kondal Reddy, Constable during trap, prosecution failed to examine him. He is the relevant and necessary witness. He was neither listed as witness nor examined him by the prosecution during trial. His non-examination is fatal to the case of prosecution. Thus, the prosecution failed to disprove the defence theory put forth by the Accused Officer as to throwing the amount on the floor and taking the same on the insistence of Mr. Kondal Reddy, Constable. On the other hand, in view of the above discussion, the Accused Officer proved the thrust theory beyond reasonable doubt. It is relevant to note that the trial Court on the critical analysis of the entire evidence gave a specific finding with regard to thrusting theory and that the testimony of PW.2 is not believable.

35. In view of the above discussion, it is clear that the prosecution failed to prove the acceptance of tainted amount by the Accused Officer. At the cost of repetition, non-examination of Mr. Kondal Reddy, Constable, is fatal to the case of prosecution. The learned Special Public Prosecutor would contend that there is no spot explanation offered by the Accused Officer with regard to the thrusting theory. It is settled principle that there is no need to disclose his defence by the Accused Officer during post-trap proceedings. It is also relevant to note that in Ex.P10 - post trap proceedings, it is clearly mentioned that the Accused Officer was silent and he has not given any spot explanation either way. Non-mentioning of

thrusting theory during post-trap proceedings is not fatal to the case of the Accused Officer. Therefore, the said contention is unsustainable.

36. The learned Special Public Prosecutor also would contend that the Accused Officer or his office did not issue any proceedings / notice / communication to PW.1 about deposit of final payment amount into the account of beneficiary. They have intentionally suppressed the same with a view to demand the bribe and also taking advantage of illiteracy of PW.1. Therefore, an inference can be drawn that the Accused Officer suppressing the said fact, demanded the bribe. In pursuance of the same, demanded and accepted the bribe on the date of trap. But, in view of the aforesaid discussion, there was no official favour pending as the amount was already deposited into the account of PW.1 and that the Accused Officer was only a recommending authority and he is not having any independent power either to release final adjustment payment to PW.1 or to release 20 bags cement to PW.8. In view of the same, the contention of the learned Special Public Prosecutor is unsustainable.

37. It is also contended by the learned Special Public Prosecutor that the discrepancies which are minor in nature and they can be ignored in view of proving trap, demand and acceptance and also recovery of tainted currency notes by drawing presumption under Section 20 of the Act. But, as discussed above, the said discrepancies are not minor. Further, the prosecution failed to prove the official favour, demand and acceptance. The prosecution did not examine relevant witnesses, such as Mr. Kondal Reddy, Constable and Mr. Shyam Manohar, Work Inspector etc. Thus, it can safely be concluded by this Court that there is no error or mistake committed by the

trial Court in the impugned judgment warranting interference by this Court. Therefore, the appeal is liable to be dismissed.

38. Accordingly, the present Criminal Appeal is dismissed, confirming the judgment, dated 25.02.2006, passed by the Principal Special Judge for SPE & ACB Cases, Hyderabad, in Calendar Case No.31 of 2002, acquitting the Accused Officer for the charges punishable under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988.

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

JUSTICE K. LAKSHMAN

10th January, 2020
Mgr