HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL APPEAL No.1012 OF 2006

JUDGMENT:

Feeling aggrieved by the judgment, dated 21.07.2006, passed by the learned Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, in Calendar Case No.12 of 2000, Accused Officer No.1 preferred the present appeal.

2. Vide the aforesaid judgment, the trial Court found the Accused Officer No.1 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 he was convicted and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for three months under each count, while acquitting Accused Officer No.2 of the aforesaid charges.

3. During pendency of the present appeal, the appellant - Accused Officer No.1 died (hereinafter referred to as 'deceased Accused Officer') and his legal heir - son was brought on record as appellant No.2 in the aforesaid appeal.

4. The facts of the case are as follows:

i) The deceased Accused Officer - Mohd. Mahaboob Pasha @ Mahabub Pasha worked as Executive Officer and Accused Officer No.2 - B. Rama Swamy worked as Junior Assistant, in the office of Gram Panchayat, Nagarkurnool, Mahabubnagar District at the relevant point of time.

ii) The deceased Accused Officer demanded an amount of Rs.1500/- from PW.1 as illegal gratification to issue permission certificate and *naksha* for construction of poultry shed.

iii) PW.1 was not interested to pay the said amount of Rs.1500/- to the Accused Officers, approached ACB Officials by lodging Ex.P1 complaint dated 22.03.1999. Thereafter, the ACB Officials after registering case, following due procedure, laid trap on 24.03.1999 and recovered the tainted amount of Rs.1300/- from the deceased Accused Officer.

iv) After completion of investigation, the ACB Officials filed a charge sheet and the same was taken on file vide C.C. No.12 of 2002 for the aforesaid offences.

5. The trial Court framed charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Act. On examination, the Accused Officers denied the said charges and prayed for trial. Accordingly the trial Court proceeded with the trial.

6. During trial, prosecution examined 14 witnesses i.e., PWs.1 to 14, marked Exs.P1 to P21 and MOs.1 to 13 were exhibited. In support of defence, the Accused Officers examined two witnesses i.e., DWs.1 and 2 and marked Exs.D-1 and D-2.

7. After completion of the trial, on consideration of evidence both oral and documentary, the trial Court found the deceased Accused Officer guilty of the aforesaid charges and accordingly convicted him vide impugned judgment, dated 21.07.2006 in C.C. No.12 of 2000 and imposed

the punishment in the manner stated supra, while acquitting Accused Officer No.2.

8. Feeling aggrieved by the said judgment, the deceased Accused Officer preferred the present appeal. It is relevant to note that during pendency of the present appeal, Accused Officer No.1 died and his legal heir was brought on record.

9. Heard Mr. C. Sharan Reddy, learned counsel for the appellants and Mr. T.L. Nayan Kumar, learned Additional Standing Counsel - cum - Special Public Prosecutor for ACB Cases for the State of Telangana appearing on behalf of the respondent.

10. Impugning the judgment, Mr. C. Sharan Reddy, learned counsel for the appellant would contend that the prosecution failed to prove the twin requirements of demand and acceptance. According to him, PW.1 turned hostile and the prosecution did not examine any independent witness to prove the demand of acceptance of illegal gratification by the deceased Accused Officer. He would further contend that, in fact there was no official favour pending with the deceased Accused Officer at the relevant point of time and he was not in a position to do any official favour to PW.1, more particularly issuance of permission certificate and *naksha* for construction of poultry shed as alleged by the prosecution. According to him, there is procedure to be followed as per rules to issue the said permission. Mere recovery of tainted notes is not sufficient and the prosecution has to prove both demand and acceptance by producing relevant witnesses like any other criminal offence. He would further contend that the trial Court without appreciating the depositions and documentary evidence convicted the

deceased Accused Officer only on surmises and conjunctures and by erroneously drawing presumption under Section 20 of the Act and also under Section 114 of the Indian Evidence Act.

i) With the said contentions, the learned counsel for the appellants prayed for acquittal of the deceased Accused Officer by setting aside the impugned judgment.

11. On the other hand, supporting the impugned judgment, the learned Special Public Prosecutor would contend that the prosecution has successfully proved the guilt of the deceased Accused Officer. The trap proceedings and recovery of tainted money is admitted and, therefore, the burden is on the deceased Accused Officer to disprove the guilt. Thus, the trial Court rightly convicted the deceased Accused Officer vide impugned judgment by drawing presumption under Section 20 of the Act and Section 114 of the Evidence Act. According to him, there is no error in the impugned judgment, and with the said contentions, he prayed for dismissal of the appeal.

12. In view of the above rival contentions, the following points that arise for consideration:

i) Whether there was any official favour pending with the deceased Accused Officer to do the same to PW.1 at the relevant point of time?

ii) Whether the prosecution could prove the guilt of the deceased 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>:

13. In the present case, the *de facto* complainant - T. Murali - PW.1 was declared hostile by the prosecution and he was cross-examined by the Special Public Prosecutor.

14. It is relevant to note that PW.1 lodged Ex.P1 - complaint dated 22.03.1999 to DSP, ACB, Hyderabad Range, complaining that he has applied for loan of Rs.1,00,000/- from Cooperative Society, Nagarkurnool, for the purpose of construction of poultry shed in his own land in Sy.No.238 of Nagarkurnool in November, 1998 (which was interpolated). For the said purpose, he made an application to PW.1 - Executive Officer of Gram Panchayat, Nagarkurnool in the first week of February, 1999 for construction permission of poultry shed. According to PW.1, he met the deceased Accused Officer on 09.03.1999 in the office of Gram Panchayat, wherein the deceased Accused Officer demanded an amount of Rs.1500/- towards bribe for granting permission for construction of poultry shed and PW.1 met the deceased Accused Officer again on 20.03.1999, wherein also the deceased Accused Officer reiterated his demand of Rs.1500/-. The said Ex.P1 was drafted by PW.4 - Madhusudhan and the same was received by the DSP, ACB on 22.03.1999 at 4.30 p.m. and the same was registered on 24.03.1999 at 9.00 a.m.

15. As per Ex.P1 complaint, the initial demand of bribe by the deceased Accused Officer was on 09.03.1999 at his office and again on 20.03.1999. Two days thereafter i.e., 22.03.1999, PW.1 lodged Ex.P1 - complaint which was registered on 24.03.1999. As stated above, the prosecution declared PW.1 hostile. During cross-examination, PW.1

admitted that on enquiry on 09.03.1999, the deceased Accused Officer informed him that the said amount of Rs.1500/- is towards fee for issuance of construction permission to poultry shed as sought by him. He further admitted that on 09.03.1999 after the deceased Accused Officer asking for money, he came out of his office. On 23.09.1999, he went to the Gram Panchayat Office and enquired with deceased Accused Officer about permission and the deceased Accused Officer requested him to meet him four or five days with the said amount of Rs.1500/-.

16. PW.4 - nephew of PW.1 deposed that PW.1 is his maternal uncle. On 20.03.1999, PW.1 informed him about the demand of Rs.1500/- as bribe by the deceased Accused Officer. Again on 22.03.1999, PW.1 met PW.4 and PW.4 advised PW.1 to lodge a complaint with ACB Officials. Then PW.1 requested PW.4 to prepare a complaint since PW.1 is an illiterate and accordingly, PW.1 wrote an application in the name of PW.1 on his dictation and after read over the contents, PW.1 signed the same. During cross-examination, he has admitted that there is no endorsement in Ex.P1 made by PW.4 that he wrote the same on the dictation of PW.1, read it over to him and on understanding the same, he has signed it.

17. PW.2 - Mediator deposed about the trap proceedings dated 24.03.1999. During cross-examination, he has admitted that there is no reference in the copy of the complaint i.e., Ex.P5 read by them that betterment charges, layout charges and permission for construction charges have been paid by the complainant, the mediators including him did not ask the complainant whether he has paid the said charges by them. He has further admitted that they have not asked PW.1 how much amount towards

those charges had to be paid and how much is due. Accused Officer No.2, LW.5 stated to PW.2 that an amount of Rs.200/- was meant for purchase of paints and that Mallaiah (LW.5) further said that Nagender Reddy (LW.6) refused to receive the said amount stating that the paints have already been purchased on credit basis, the payment was stipulated to be made on the next day and thus refused to receive the amount. Ex.P9 files do not contain any receipts towards payment of betterment charges etc., to the Panchayat by the complainant.

18. PW.3 - Watchman, Office of the Divisional Panchayat Officer, Nagarkurnool deposed about Accused Officer No.2 handing over him Rs.200/- with a request to hand over the same to Bill Collector - Nagender who went to purchase paints. He further deposed that on the way at State Bank, he saw the said Nagender Reddy, offered those Rs.200/- to him stating that the said amount was asked to be given to him by Accused Officer No.2 for purchase of paints. Nagender Reddy did not receive the said amount from PW.3 stating that he has purchased the paints on credit basis and asked him to return the said amount to Rama Swamy (AO.2). During cross-examination, he has admitted that while he was going to the Gram Panchayat Office, he has observed the Executive Officer and two Members going to the room of Sarpanch.

19. PW.5 - Bill Collector deposed that his duty was to receive the house tax, water tax and issue receipts from the Bill Book and then deposit the said amount in the bank. Ex.P13 is the '*Chillara Jamala*' Receipt Book maintained by him in respect of Gram Panchayat, Nagarkurnool. Ex.P14 is

the '*Irsalnama'* Register maintained by him. It is relevant to extract the deposition of PW.5 which is as under:

> "On 24-03-1999 the A.O.1 took Ex.P.13 receipt book from me. On the same day, he also took such receipt books from other Bill collectors Nagendra reddy and Khaja Moiuddin. The A.O.1 returned those receipt books to us on the next day i.e. on 25-03-1999 and asked me to cut a receipt with the date 24-03-1999, but I refused stating, that the case has already been booked on 24-03-1999 itself. The receipt in Ex.P.13 receipt book dt.27-03-1999 was written by Khaja Moiuddin and I signed it. It is Ex.P.13 (a). On 27-03-1999 A.O.1 asked me to cut receipts from Ex.P.13 with regard to the permission to be given to Murali (P.W.1). In Ex.P.13 I wrote the receipts up to serial No:1572. I did not write the receipt number 1577 as seen from Ex.P.13. It is seen from Ex.P.13 receipt book the receipt bearing No Ex.P.13 (a) is shown dt.27-03-1999, whereas the subsequent receipt Ex.D.1 is dt.24-03-1999. A.O.1 asked me to write Ex.P.14 Irsalnama register regarding Ex.D.1 receipt, but I refused stating that I did not write that receipt. In Ex.P.14 Irsalnama register, I have made the entries up to serial No: 1572. I did not paste the page in which serial No: 1572 is written by me and the subsequent page in Ex.P.14. Thereafter I wrote in Ex.P.14 register the entries up to 1560 seen at page No:270. Regarding these matters I was examined by the Inspector ACB and he recorded my statement. On 30-03-1999 Ex.P.14 receipt was with A.O.1."

During cross-examination, PW.5 categorically admitted that on the day of the trap, Qutubuddin, Habeeb, Ward Members, were present in the office along with the deceased Accused Officer. Two or three days after, the ACB Officials took Ex.P13 receipt book from him and he will keep receipt book in his almirah in his office and another key of which will be with the deceased Accused Officer. PW.1 after the trap day did not come to office and Ex.D1 was written by the deceased Accused Officer. He further admitted that for constructing a poultry shed, one has to pay lay out fee, betterment charges, permission charges and the deceased Accused Officer will decide the quantum of fee. After that, the same will be placed before the President of the Gram Panchayat, then before the Panchayat Body. During re-examination, he deposed that he has no personal knowledge from whom and on what date Ex.P13 was seized by the ACB Officials.

20. PW.6 - Additional Bill Collector deposed about Ex.P13 receipt book and preparation of receipts up to 24.03.1999 on the instructions of the deceased Accused Officer.

21. PW.7 - another additional Bill Collector on daily wage deposed that PW.5, PW.6 and LW.6 were the Bill Collectors in Gram Panchayat, Nagarkurnool and LW.6 Nagender Reddy is no more. PW.5 and LW.6 used to write receipts for the house tax. In Ex.P13 he wrote the receipts bearing Nos.1574, 1575, 1576 and collected the amounts under the said three bills on the respective dates. He also wrote the receipt bearing Nos.1579 and 1582 on the dates mentioned therein. During cross-examination, he has categorically admitted that Ex.P13 is the bill concerned to PW.5 Bill Collector.

22. PW.8 - Executive Officer, FAC Gram Panchayat, Nagarkurnool from 12.04.1999 deposed about the procedure for issuance of permission/certificate for the construction of any building or shed in Gram Panchayat and the same would be issued after receipt of application from the individual, a notification calling objections from the neighbours etc. Ex.P9 is

the file relating to permission of poultry shed of PW.1. As per Ex.P9, application of PW.1 was received by the deceased Accused Officer, Executive Officer on 16.02.1999, endorsed for notification in that application at page No.3 of the said file, and he has endorsed to the Junior Assistant as "please put up, call for layout plan" and put the date as 16.02.1999 at page No.4 of Ex.P9. The deceased Accused Officer endorsed as 'accepted' at page No.3 note file, objections were called for. The second note of the deceased Accused Officer at page No.3 is incomplete. As per procedure, after verifying the type of construction, plinth area, number of doors, windows etc., the Executive Officer will make calculations in accordance with Rules and accordingly fee will be collected.

23. As seen from Ex.P9, no such fee was calculated by any official of that Gram Panchayat. As per receipt No.1577, it was issued on 24.03.1999 towards file No.90 of 1998 pertaining to PW.1 with regard to collection of betterment charges and permission fee. The said receipt was cancelled by the then Executive Officer - deceased Accused Officer on 25.03.1999. In the said receipt, the amount shown is Rs.1486/-. On the back side of the said receipt, it is written that since ACB Officials seized the amount was not remitted. In the receipts bearing Nos.1573, 1574, 1575 and 1576, the dates are found corrected as has seen from the naked eye, corrections appears to be from 27 to 24 in the dates of those receipts and he has no notice of the said corrections. After taking charge, he collected the fee for issuance of permission for construction of poultry shed by PW.1 on the basis of plan as Rs.660/-, collected the said amount on the receipt No.1650 of Book No.17 and issued permission.

24. During cross-examination, he has categorically admitted that he has collected the said amount of Rs.660/- towards construction charges and he has not collected the betterment charges.

25. PW.9 deposed about purchase of three and half liters Asian Paints amount to Rs.250/- by LW.6 - Nagender Reddy. During cross-examination, he has admitted that he would give articles on credit to the Executive Officer, Gram Panchayat and collect the money later.

26. PW.10 - Paid Secretary, Primary Agricultural Cooperative Society Limited, Nagarkurnool, deposed about receipt of application from PW.1 for loan.

27. PW.11 deposed about sanction Ex.P19 sanction orders to prosecute the Accused Officers.

28. PW.12 - DSP, ACB deposed about receipt of Ex.P1 complaint from PW.1 on 22.03.1999, conducting discreet enquiries and registration of case. He further deposed about laying of trap by following the procedure and recovery of tainted currency notes. He further deposed that on asking the deceased Accused Officer to produce the accepted bribe amount, the deceased Accused Officer took out bribe amount from an almirah adjacent to him on right side at a distance of about 9 inches, took out a brown colour Rexine Bag of Samsonite Brand. From the middle of the branch of the bag, he took out the said amount from the said bag and PW.2 was directed to take the said amount from the deceased Accused Officer to verify whether the numbers are tallied with that of note numbers mentioned in the pre-trap proceedings. He further deposed that on search, it was found that an amount

of Rs.14400/- was in one portion of the bag, one wad of currency notes is hundred rupee denomination worth Rs.10,000/- labelled with SBH, Nagarkurnool dated 23.03.1999 was found, the remaining Rs.4,400/- was also in hundred rupee notes. During cross-examination, he has admitted that he has not made any endorsement on Ex.P1 complaint about confidential enquiries conducted by him etc. There is no reference in Ex.P1 complaint that betterment charges, layout charges etc., have been paid by PW.1 and he did not enquire PW.1 about the said payments. There is no mention in Ex.P8 that sodium carbonate powder has taken to the office of the deceased Accused Officer to conduct test there.

29. PW.13 - Inspector of Police, ACB deposed about recording of statements etc. He further deposed as under:

> "On 20th April, 1999 I went to Nagarkurnool I came to know that the A.O.1 made some entries in receipt No: 16, which is Ex.P.13 and the same was collected. The perusal of it revealed that on receipt No: 1577 mentioned with regard to file No.40/98 in favour of T. Murali son of Ramulu and T. Gopal has collected Rs.1,486-00 towards betterment charges, showing the date of 24-03-1999 and the same was shown as cancelled. On the back side of the same receipt, it is mentioned that on 24-03-1999 at about 4-30 p.m. the said amount of Rs.1486 was taken over by the ACB and the same was signed by E.O. dt.25-03-1999. So on perusal of the receipts, earlier to the receipt no: 1577 (Ex.D1) i.e. the receipts No:1573, 1574, 1575 and 1576 which are Ex.P.13(a) were found some corrections over the date mentioned in the said receipt, which were issued towards the water taxes to various parties. Thereupon the original receipts of the said receipt 1573 to 1576 were secured and on perusal of them found that there were no corrections over the dates, which are Ex.P16 file containing original bill. P.W.8 verified

> the Ex.P.13 receipt book and Ex.P.16 original receipts. Further I collected the file no: 42/98, 112/98 and 34/99 of Gram Pancahayat Nagarkurnool pertaining to issue of permission certificates for construction of the building. Ex.P.16 is the said file consisting of 4 sheets along with original receipts No:1573 to 1576."

During cross-examination, he has admitted that he has not enquired with PW.4 with regard to Ex.P1 complaint, PW.1 making application for construction of poultry shed with Gram Panchayat, Nagarkurnool. He did not enquire any of the other poultry owners and placed on record various charges collected by the deceased Accused Officer from them. During his investigation nobody came forward to speak that the deceased Accused Officer demanded and accepted bribe amount for issuance of any permission for construction in Gram Pancahyat.

30. PW.14 - another Inspector of Police, ACB deposed about filing of charge sheet, after completion of investigation and on obtaining sanction orders.

31. DW.1- Ward Member, Gram Panchayat, Nagarkurnool deposed that Qutbuddin is also a ward Member of Gram Panchayat. He further deposed that on 24.03.1999 he along with Qutbuddin was there in the Gram Panchayat Office, PW.1 enquired about the deceased Accused Officer. When they were sitting in the Chamber of the deceased Accused Officer, PW.1 entered, asked him about the permission and other betterment charges, then PW.1 handed over Rs.1500/- to the deceased Accused Officer as per the calculation made by him. The deceased Accused Officer asked Bill Collector to produce the bill and he prepared the receipt for Rs.1486/- and also took the signature of PW.1 on that receipt. Ex.D1 is the said receipt

prepared by the deceased Accused Officer. He further deposed about handing over Rs.200/- to Accused Officer No.2 for purchase of paint etc.

32. DW.2 - Sarpanch of the Nagarkurnool Gram Panchayat deposed about Ex.D2 invitation card etc.

33. In the above said backdrop of the facts, depositions of both prosecution and defence witnesses and also the documents filed by both the parties, the important issue that requires consideration by this Court is whether the deceased Accused Officer was in a position to do any official favour to PW.1, and whether he demanded and accepted the illegal gratification of Rs.1500/- to do the said official favour to PW.1.

34. Admittedly, PW.1 submitted an application on 16.02.1999 with Gram Panchayat for construction of poultry shed and the deceased Accused Officer endorsed on the said application to the Junior Assistant to put up the file, call for the layout on the very same day i.e. 16.02.1999. The said fact discloses from Ex.P9 file.

35. PW.8 - Executive Officer deposed about the procedure for issuance of the said permission for construction by Gram Panchayat. According to him, on receipt of application from individual, a notification should be issued calling objections from neighbours etc. After verifying type of construction, plinth area, number of doors, windows etc., the Executive Officer will make calculations in accordance with Rules. Thereafter, betterment charges and permission fee will be collected. Gram Panchayat resolution is mandatory for granting permission to the poultry shed. His deposition is supported by PW.5 - Bill Collector, who deposed

about the procedure, maintenance of Receipt Books including Ex.P13 *Chillara Jamala R*eceipt Book, PW.14 *Irsalnama* Register. During cross-examination, PW.1 categorically admitted that after trap day, PW.1 did not come to their office, Ex.D1 was written by the deceased Accused Officer. For constructing a poultry shed, one has to pay layout fee, betterment charges, permission charges and the deceased Accused Officer will decide the quantum of fee. Thereafter the same will be placed before the President of the Gram Panchayat and then placed before the Panchayat Body.

36. Admittedly, in the present case, PW.1 submitted his application for permission for construction of poultry shed on 16.02.1999. None of the prosecution witnesses including PW.12 - Trap Laying Officer deposed about the stage of the said application. However, PW.8 deposed about the status of the said application by referring Ex.P9 file, as per which the said application was put up, objections were called for. According to PW.8, as seen from Ex.P9 no fee, such as betterment charges, construction fee etc. was collected from PW.1. None of the prosecution witnesses deposed about taking plinth area, number of doors, windows etc., conducting of physical inspection, if necessary, of the site and submission of report to the concerned authority for the purpose of assessment of fee including betterment charges, layout charges etc. However, PW.8 - Executive Officer, FAC Gram Panchayat, Nagarkurnool, who took charge after the trap, deposed that after taking charge, he has collected fee for issuance of permission for construction of poultry shed by PW.1. He has collected Rs.660/- as per the plan vide receipt No.1650 of Book No.17 and issued permission. During cross-examination, he has admitted that he has not collected betterment charges from PW.1.

37. From the above said depositions, it is clear that after making application, objections have to be called for, fixing the betterment charges, layout charges and permission fee etc., physical inspection, if necessary, and entire report/office note on the said application, placing before the Sarpanch and meeting of the Gram Panchayat for approval of the said permission. In the present case, except proving with regard to receipt of application of PW.1, endorsement to the Junior Assistant, calling for objections, nothing is proved by the prosecution. The Investigating Officers of ACB did not examine the Sarpanch and other responsible officers to prove the said official favour of granting permission to PW.1 for construction of poultry shed.

38. The trial Court without considering the said aspects, made an observation that official favour was pending with the deceased Accused Officer and the prosecution has proved the same. The said finding is contrary to the record and depositions of the witnesses on both sides. Admittedly, the permission was issued by PW.8, Successor Executive Officer of the deceased Accused Officer after collecting Rs.660/- towards permission fee. Even PW.8 did not depose about the said procedure. Thus, the prosecution failed to prove that the official favour was pending with the deceased Accused Officer at the relevant point of time.

39. The next issue for consideration by this Court is whether the prosecution proved the demand and acceptance of illegal gratification by the deceased Accused Officer. PW.1 lodged Ex.P1 - complaint on 22.03.1999 and as per the said Ex.P1, the deceased Accused Officer demanded illegal gratification on 09.03.1999 at his office. But, PW.1 did not mention

anything about acceptance of the said demand or refusing to pay the same on 09.03.1999. However, PW.1 further stated in Ex.P1 - complaint that he met the deceased Accused Officer again on 20.03.1999 and he demanded the said amount of Rs.1500/- towards bribe. He has further stated that the deceased Accused Officer informed him that he will not grant permission unless and until PW.1 pay the said amount of Rs.1500/- as bribe. PW.1 was again silent on the aspect of acceptance or refusal to meet the said demand of bribe. However, he has lodged Ex.P1 complaint on 22.03.1999.

40. It is also an admitted fact that PW.1 is an illiterate and the said fact was deposed by PW.4, nephew of PW.1. According to PW.1, PW.4 written Ex.P1 complaint and admittedly the said Ex.P1 complaint was prepared after meeting the DSP, ACB (PW.12). PW.1 also deposed that he is an illiterate and the said fact was also informed to PW.12 and according to PW.1, PW.12 requested him to get the complaint prepared through PW.4. The prosecution declared PW.1 hostile in the present case.

41. During cross-examination, PW.1 himself admitted that he enquired with the deceased Accused Officer about the quantum of fee to be paid for getting the permission after the deceased Accused Officer asked him to pay Rs.1500/-. As discussed supra, both on 9.03.1999 and 20.03.1999, when PW.1 met the deceased Accused Officer, PW.1 enquired about the status of his application for construction of poultry shed. PW.1 further admitted that on 24.03.1999, on enquiry with regard to permission by the mediators, he did not state to them that the deceased Accused Officer demanded bribe. He has further admitted about issuance of permission by the successor Executive Officer.

42. PW.1, during cross-examination, has admitted that PW.4 is having close relationship with ACB Inspectors and staff. Though he has stated to the Inspector, ACB that the deceased Accused Officer asked to pay him the amount due to the Panchayat towards grant of permission, but the Inspector got written in the complaint through PW.4, his nephew as if the deceased Accused Officer demanded that amount as bribe. His nephew pressurized him to write in the complaint as directed by the Inspector, ACB. PW.1 has further admitted that the deceased Accused Officer is a good and strict officer. On the day of trap, on enquiry by the deceased Accused Officer, PW.1 paid the said amount of Rs.1500/- after the deceased Accused Officer making calculations, preparing receipts and the deceased Accused Officer issued Ex.D1 receipt. He further admits that Ex.D1 receipt No.16 contains his signature. Thereafter, he left the room of the deceased Accused Officer and went to the Sarpanch room in a different block which is 100 feet away. However, he has admitted that there is no date on Ex.D1 receipt.

43. PW.2 - Mediator deposed that despite specific instructions by PW.12 to accompany PW.1 to the place of trap, he did not accompany. According to him, PW.1 gave pre-arranged signal and then they all rushed to the office. PW.2 further deposed that on request of PW.12, the deceased Accused Officer opened the almirah which is placed on the right side of his table, quite adjacently and took out a brown colour Rexine Bag and he has kept that amount in the middle chamber. On the instructions of PW.12, PW.2 taken out that amount from that bag and counted it. The deceased Accused Officer informed him that Rs.200/- was given to Accused Officer No.2 and Accused Officer No.2 replied that the said amount was given to

him by the deceased Accused Officer to get paints. Then, Accused Officer No.2 gave that amount to PW.3 for purchase of the paints.

44. PW.1, during chief examination, deposed that on 24.03.1999 he went inside the office of the deceased Accused Officer, he found Habeeb (DW.1) and Qutbuddin, Ward Members of Gram Panchayat, Nagarkurnool. He further deposed that he wished the deceased Accused Officer and gave shake hand to him. Then the deceased Accused Officer also called PW.1 inside his office room and enquired about the fee to be paid towards permission of poultry shed. Accordingly, PW.1 handed over the said amounts and on the instruction of the deceased Accused Officer, Accused Officer No.2 prepared bill for Rs.1486/- and gave it to him.

45. PW.12 categorically deposed about giving pre-arranged signal by PW.1 himself at 4.30 p.m. He also admitted about taking the amount from almirah adjacent to him by the deceased Accused Officer from Rexine Bag of Samsonite brand and taking of the said money by PW.2 from the middle of the said bag. PW.12 also deposed that on search, he found an amount of Rs.14,400/- in the said bag and on enquiry, the deceased Accused Officer informed him that the said amount was given by the Sarpanch of Nagarkurnool by way of cheque which was encashed. During cross-examination, he has categorically admitted that he has not enquired with PW.1 about payment of betterment charges, layout charges, permission etc. by PW.1 and Ex.P1 did not contain the said facts. He has further admitted that he did not call Sarpanch of the village during post-trap proceedings and enquire about the charges, procedure for granting permission etc.

46. PW.13 - Inspector of Police, ACB deposed that the original receipt Nos.1573 to 1573 were secured, and on perusal of the same, he found that there were no corrections over the dates which are Ex.P16 file containing original bill. During cross-examination, he has categorically admitted that he has not made any enquiries with other poultry owners and placed on record various charges collected by the deceased Accused Officer from them, and during his investigation, nobody came forward to speak about the deceased Accused Officer demanding and accepting bribe amount for issuance of permission for construction in Gram Panchayat, Nagarkurnool.

47. In Ex.P12 - second mediators' report, it is mentioned that the deceased Accused Officer opened the almirah, getting the amount from Samsonite Rexine Bag etc. DW.1 - Ward Member deposed that he along with Qutbuddin, another Ward Member, was there in Gram Panchayat, Nagarkurnool on 24.03.1999 with the deceased Accused Officer. PW.1 entered into the office room of the deceased Accused Officer, enquired about permission and paid Rs.1500/- to him towards betterment charges etc., as per the calculation made by the deceased Accused Officer. He further deposed about preparation of receipt by Accused Officer No.2 and issuance of receipt for Rs.1486/- under Ex.D1 and obtaining the signature of PW.1. He has also deposed about handing over of Rs200/- to Accused Officer No.2 for purchase of paints etc. DW.2 - Sarpanch deposed about Ex.D-2 invitation card, spending of money and payment of Rs.8000/- to the deceased Accused Officer for expenditure for conducting programme.

48. During cross-examination, nothing was elicited from DW.1 and DW.2.

49. Admittedly, prosecution did not examine any independent witness to prove the demand of Rs.1500/- by the deceased Accused Officer towards bribe for doing official favour. As discussed above, there was no official favour that was pending with the deceased Accused Officer at the relevant point of time in view of the procedure to be followed for issuance of permission for construction of poultry shed. Prosecution did not examine any witness to prove with regard to said procedure followed by the Gram Panchayat, Nagarkurnool in processing the application submitted by PW.1 and getting approval of the same. The prosecution did not examine Sarpanch, Ward Members etc. to prove the said fact. Though the prosecution examined PW.5 - Bill Collector, PW.6 - Additional Bill Collector and PW.7 - another Additional Bill Collector, they have not deposed anything about the said procedure followed by the Gram Panchayat, Nagarkurnool. They have not even deposed about the status of the application of PW.1. In fact, prosecution declared PW.7 as hostile and nothing contra was elicited from him.

50. It is the contention of the deceased Accused Officer that he has received the said amount of Rs.1500/- from PW.1 towards betterment charges, permission fee etc., and on receipt of the same, he has instructed Accused Officer No.2 to prepare a receipt. Accordingly, Accused Officer No.2 prepared Ex.D1 receipt and original was given to PW.1 by obtaining signature and Ex.D1 bears the signature of PW.1. PW.2 did not accompany PW.1 to the place of trap. Admittedly, Ex.P1 is not specific about demand

of alleged bribe by the deceased Accused Officer and the respective dates of the said demand. Vagueness of the contents of Ex.P1 reveals the said fact. Thus, the prosecution failed to prove the demand of bribe by the deceased Accused Officer beyond reasonable doubt. It is settled principle by the Hon'ble Supreme Court in **Selvaraj v. State of Karnataka**[1]to the effect that when two views are possible, benefit of doubt shall be given to the Accused. Until and unless it is proved by the prosecution beyond reasonable doubt that the Accused has received the amount towards illegal gratification voluntarily, he shall be treated as innocent. Mere recovery of tainted amount is not sufficient to record conviction and the prosecution has to prove the demand and acceptance beyond reasonable doubt. In the present case, in view of Ex.D1 and depositions of prosecution witnesses and DWs.1 and 2, the prosecution miserably failed to the demand and acceptance.

51. The learned counsel for the appellant relied on judgment of Apex court in **N. Sunkanna v. State of Andhra Pradesh**[2], wherein it was held that the complainant himself has disowned his complaint and has turned hostile there is no other evidence to prove that the Accused has made any demand. There is no proof of demand allegedly made by the Accused, only other material available is the recovery of tainted currency notes from the possession of the Accused. The possession is also admitted by the Accused. Mere possession and recovery of currency notes from the Accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is *sine qua non* to constitute the said offence. The same is also conclusive in so far as offence under Section 13 (1) (d) of the Act as in the absence of any proof of demand for illegal gratification the

1. (2015) 10 SCC 230
2. (2016) 1 SCC 713

use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. By referring the said judgment, the learned counsel would submit that in the present case also, the prosecution did not examine any independent witness to prove the said alleged demand of illegal gratification by the deceased Accused Officer. According to him, none of the prosecution witnesses deposed about the same.

52. The learned Special Public Prosecutor pointed out that the deceased Accused Officer did not give any spot explanation and Ex.P12 does not refer about the same. Therefore, the defence taken by the deceased Accused Officer that he has received the said amount of Rs.1500/- from PW.1 towards betterment charges etc. cannot be believed, and it is an after thought. In reply, the learned counsel for the appellants answering the said contention, relied on **Punjabrao v. State of Maharashtra**[3], wherein the Apex Court categorically held that non disclosure of defence by way of spot explanation by the Accused Officer is not compulsory and in the absence of spot explanation, the defence taken by the Accused Officer can be believed basing on the facts and circumstances of the case.

53. The learned Special Public Prosecutor relied upon the principle held by the Apex Court in **State of U.P. v. Zakaullah**[4], and contends that the evidence of Trap Laying Officer can be believed. As stated above, the

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3. AIR 2002 SC 486
4. AIR 1998 SC 1474

prosecution failed to prove the demand by examining any independent witness. Admittedly, in the present case, PW.12 – Trap Laying Officer did not accompany PW.1 to the place of trap and he did not depose about demand of illegal gratification by the deceased Accused Officer. Therefore, the principle held by the Apex Court in the said judgment is not applicable to the facts of the present case.

54. The learned Special Public Prosecutor also relied upon the principle held by the Apex Court in **S. Dinesh Kumar v. State The Inspector**[5], wherein it was held that the defence of the Accused Officer that the amount was received, as arrears of tax not bribe cannot be accepted. In fact, in the said judgment, the Apex Court on consideration of the entire material on record, held that it is firmly established the demand and acceptance by the Accused Officer, whereas, in the present case, as discussed supra, the prosecution failed to prove the very demand itself. It is also settled principle that proving one alone is not sufficient and the prosecution has to prove both demand and acceptance of illegal gratification by the accused which are twin requirements. In the present case, the prosecution failed to prove pendency of official favour, demand and acceptance by the deceased Accused Officer.

55. The trial Court convicted the deceased Accused Officer by drawing presumption under Section 20 of the Act and also under Section 114 of the Evidence Act. The presumption under Section 20 of the Act can be drawn by the trial Court only on the prosecution proving the demand of illegal gratification by the Accused Officer. As discussed supra, the

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[5]. 2015 (2) ALD (Crl.) 606 (SC)

prosecution miserably failed to prove the very demand of illegal gratification by the deceased Accused Officer at the first place and, therefore, the question of accepting the same by the deceased Accused Officer does not arise.

56. In view of the above discussion and viewed from any angle, it is a fit case that warrants interference by this Court in the appeal and that the impugned judgment is liable to be set aside and accordingly the same is set aside.

57. In the result, the present Criminal Appeal is allowed and the conviction and sentence recorded by the learned Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad in Calendar Case No.12 of 2000 vide judgment dated 21.07.2006 against the deceased appellant - Accused Officer No.1 for the offences punishable under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988, are set aside. The deceased Accused Officer is on bail. His bail bonds shall stand cancelled. The fine amount, if any, paid is ordered to be returned to the legal heir of the deceased Accused Officer.

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

JUSTICE K. LAKSHMAN

10th January, 2020
Mgr