

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL APPEAL No.1535 OF 2006

JUDGMENT:

Feeling aggrieved by the judgment, dated 28.12.2005, passed by the learned Special Judge for CBI Cases, Hyderabad, in Calendar Case No.19 of 2002, the State represented by Central Bureau of Investigation, Hyderabad, preferred the present appeal. Vide the aforesaid judgment, the trial Court found the Accused Officer not guilty of the charges under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 and accordingly acquitted him of the said charges.

2. The facts of the case are as follows:

3. Accused Officer - Ram Avatar Chirania worked as Superintending Engineer in Life Insurance Corporation of India, Zonal Office, Hyderabad at the relevant point of time.

4. PW.1 - *de facto* complainant - T. Vallinath was the proprietor of Tolety Office Makers, Ameerpet, Hyderabad. His proprietary concern stood as successful bidder in the tenders called for by the LIC for modernization of Civil (interiors) and Electrical installations at CB-12 Branch of LIC of India, Habsiguda, Hyderabad, worth of Rs.16,73,360/-. According to prosecution, the Accused Officer being the Superintending Engineer, LIC of India was in charge of execution of the said work by the Contractor and was in a position to do official favour to PW.1.

5. According to PW.1, the Accused Officer started claiming that he was instrumental in awarding the work to PW.1 and started demanding bribe of 4% of the value of the work and the same was reduced to 2.5% and

accordingly, the Accused Officer demanded an amount of Rs.10,000/- as first installment/advance.

6. Since PW.1 was not interested to meet the said demand of Rs.10,000/- towards bribe, approached the CBI Officials on 29.08.2001 by lodging Ex.P1 - complaint. Thereafter, PW.7 - Inspector, CBI, Hyderabad, registered the case and laid trap with the assistance of other Inspectors by following the procedural aspects including conducting pre-trap and post trap proceedings in the presence of mediators.

7. After completion of investigation, PW.9 filed a charge sheet and the same was taken on file vide C.C. No.19 of 2002 for the aforesaid offences.

8. 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. Accordingly the trial Court proceeded with the trial.

9. During trial, the prosecution examined (12) witnesses i.e., PWs.1 to 12, marked fifteen documents i.e., Exs.P1 to P15 and exhibited six material objects i.e., MOs.1 to 6. The Accused Officer did not examine any witnesses and no documents were marked on his behalf.

10. After completion of the 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 28.12.2005 in C.C. No.19 of 2002.

11. Feeling aggrieved by the said judgment, the CBI preferred the present appeal.

12. Heard Mr. K. Surender, learned Special Public Prosecutor for CBI Cases and Sri V. Surender Rao, learned counsel for the respondent - Accused Officer.

13. Impugning the judgment, the learned Special Public Prosecutor specifically contended that the Accused Officer being the Superintending Engineer, LIC of India at the relevant point of time, was In charge in executing the work i.e., modernization of Civil (interior) and Electrical works at LIC of India, CB-12 Branch, Habsiguda, Hyderabad for worth Rs.16,73,360/- by the Chief Engineer, LIC of India. Tolety Office Makers stood as successful bidder in the tender process for awarding the said work and accordingly the work was awarded to the said proprietary concern to which PW.1 was the proprietor. The said allotment of work was intimated to PW.1 vide letter dated 02.08.2001, received by him 14.08.2001. The Accused Officer being the Superintending Engineer, in-charge of execution of the said work including preparation of measurements, mentioning the same in 'M' book etc. in respect of the said work. Thus, PW.1 has to maintain cordial relationship with him for execution of the said work and getting his bills passed promptly. According to prosecution, the said official favour was pending with the Accused Officer.

14. It is further contending by the learned Special Public Prosecutor that to do the said official favour, the Accused Officer initially demanded 4% of the total value of the work, the same was reduced to 2.5% and demanded first installment/advance of Rs.10,000/-. Since PW.1 was not

ready to pay the said amount of bribe, lodged Ex.P1 complaint dated 29.08.2001 with CBI, who in turn registered a case under Ex.P8, laid trap. He further contended that the trap and recovery of tainted money of Rs.10,000/- were proved beyond reasonable doubt by the prosecution. Therefore, the Accused Officer being the public servant taken gratification other than legal remuneration in respect of an official act and, therefore, liable for punishment. In view of proving of demand and acceptance by the prosecution, a presumption under Section 20 of the Act has to be drawn. But, unfortunately, the trial Court without considering the depositions of prosecution witnesses, without drawing the said presumption under Section 20 of the Act and also the principle held by the Apex Court acquitted the Accused Officer. The trial Court by referring minor discrepancies and by giving undue importance to the said minor discrepancies, acquitted the Accused Officer. The trial Court also recorded a finding that the presence of PW.2 during trap was not believable and accordingly acquitted the Accused Officer erroneously. Thus, according to the learned Special Public Prosecutor, the impugned judgment is not sustainable both under law and on facts

15. With the said contentions, the learned Special Public Prosecutor prayed for setting aside the impugned judgment of the trial Court.

16. *Per contra*, Sri V. Surender Rao, learned counsel appearing for the Accused Officer strenuously argued that the prosecution miserably failed to prove the official favour that was pending with the Accused Officer and also failed to prove that the Accused Officer was in a position to do an official favour to PW.1. He would further contend that the prosecution

failed to prove the demand of bribe by the Accused Officer by producing relevant witnesses and, therefore, when the prosecution failed to prove the demand of bribe at the first place, the question of acceptance of the same does not arise.

17. The learned counsel for the Accused Officer has also referred to the depositions of prosecution witnesses including PW.1, PW.2, PW.7, more particularly, the admissions of the said witnesses during cross-examinations. He also referred to Ex.P1 complaint, Ex.P4 letter dated. 30.08.2001 submitted by PW.1, both pre-trap and post trap proceedings under Exs.P2 and P3 and contend that as per the said documents, the prosecution failed to prove the demand and acceptance which are *sine qua non* for proving the offences under P.C. Act.

18. According to the learned counsel for the respondent - Accused Officer, none of the witnesses deposed about the demand and acceptance of the bribe by the Accused Officer. Prosecution did not examine any independent witnesses to prove the said demand and acceptance. The prosecution though referring the names of Uday Kumar, Satish Babu etc., did not examine the said persons and, thus, non-examination of relevant witnesses is fatal to the case of the prosecution.

19. With the said contentions, the learned counsel for the respondent - Accused Officer would contend that the trial Court rightly acquitted the Accused Officer under impugned judgment and there is no error in it. Thus, he prayed for dismissal of the appeal.

20. 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 to do the same to PW.1 at the relevant point of time?
- ii) Whether the prosecution could prove the guilt of the Accused Officer under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988?
- iii) Whether the judgment of the trial Court is sustainable factually and legally?

POINT Nos. (i) to (iii):

21. As discussed supra, to prove the guilt of the Accused Officer, the prosecution has examined as many as twelve (12) witnesses - PWs.1 to PW.12, filed fifteen (15) documents - Exs.P1 to P15 and exhibited MOs.1 to 6 during the trial.

22. From the record, it is not in dispute that the Accused Officer was Superintending Engineer (hereinafter referred to as 'S.E.') in LIC of India at the relevant point of time. The said LIC of India called for tenders with regard to modernization of Civil (Interiors) and Electrical Installation Works at CB-12 Branch, LIC of India, Habsiguda, Hyderabad. PW.1 was proprietor of Tolety Office Makers deals with the said works and thus participated in the said tender. The said proprietary concern stood as lowest bidder by quoting an amount of Rs.16,73,360/-. It is also an admitted fact that the work was allotted to the said Tolety Office Makers, to which PW.1 is a proprietor, letter of allotment dated 02.08.2001, was issued to the said proprietary concern. PW.1 received the said allotment letter on 14.08.2001.

23. As per the terms of work order, he has to deposit certain amount as Security within a specific period. However, PW.1 during cross-examination stated that he cannot say without seeing the record, whether he has to deposit 7.5% of the tender value as security deposit within fourteen (14) days of awarding the work or furnishing equivalent bank guarantee.

24. PW.1 deposed in chief that the said work of modernization of working branch of LIC was allotted to him, he has to execute the work during day time without causing any disturbance or noise to the office work causing noise or disturbance has to be attended after the office work. He has commenced the execution of work, executed wooden frame work in the office as part of the contract, he has not raised any bill for the work till today i.e., as on the date of his deposition (07.11.2003). Any work done by Contractor will be reflected in the Measurements Book (M book), the said wooden work was not reflected in M Book. He has further deposed that he has not mentioned in the complaint as well as not stated before the CBI Officer about commencement of work. After allotment of the said work, he has not deposited any amount towards security deposit or furnished any bank guarantee towards security deposit. He has not taken back EMD paid at the time of submitting the tender. There was default clause in the contract for payment of liquidated damages in case the work is not executed within the time stipulated. However, PW.1 deposed in chief that he cannot say whether the time limit fixed for work was up to 19.10.2001, the terms of the contract without verifying the tender sheet.

25. During cross-examination, PW.1 categorically admitted that he has mentioned in letter dated 28.07.2001 that “as the contract is in a working

branch, we have to work after office hours during nights, in holidays for which the labour expenses are more. As per the terms of acceptance letter dated 02.08.2001, I have to take possession of the site immediately and commence the work, has to pay the balance of security deposit after adjusting the EMD within ten days.” He has not purchased required material for the contract. PW.1 further admitted during cross-examination that he cannot say the date on which the alleged bribe was demanded for the first time, but was after submitting the tender. He cannot say even approximately how many days after submissions of tender, the alleged first demand was made. The alleged first demand was made in the office cabin of the Accused no-one was present when he made that first demand. He further admitted that he do not remember the occasion for which he met the Accused when the first demand came out.

26. During cross-examination, PW.1 further admitted that he do not know whether the Accused had no role in inviting tenders or finalizing the tenders as the Accused Officer is not a Member in Tender Opening Committee. As per the terms, 50% of the security deposit will be retained by LIC till the completion of the defects liability period, after completion of work, a certificate will be issued by the Chief Engineer. On 27.07.2001, the Accused Officer and his team requested PW.1 to reduce his tender rate further and he has agreed to some extent. After negotiations, PW.1 refused to agree for further reduction of price on the ground that labour component was there as the work has to be attended after office hours. He has further admitted that during the said meeting, the Accused Officer has informed him that he has to strictly adhere to the quality, there cannot be any compromise in respect of the quality. He has further admitted that the work order dated

18.08.2001 was signed by the accused on the same day and he has received it on 28.08.2001. Mr. Srinivas, A.E. and Sudheer Belagali, were present when he met the Accused Officer on 28.08.2001. When he went to Nampally Branch and met the Accused Officer, Sudheer Belagali was present. He further admitted that the alleged demand on 29.08.2001 was around 10.00 a.m., after making a phone call at 10.30 a.m., he has decided to give a complaint against the Accused Officer.

27. Even PW.3 - Assistant Executive Engineer, LIC admitted that PW.1 is Contractor for City Branch in respect of modernization of work, he is the successful Tenderer for the said work, allotment of work, issuance of work order etc. During cross-examination, he has admitted that by the date of alleged trap, the Contractor commenced the work by completing marking and procuring some material. He has to record the measurements, prepare inspection notes for electrical works in 'M' Book, he has not written anything in 'M' book relating to the said work, he might have visited the site in dispute for at least ten times. He has not informed any issue to the Chief Engineer. After the incident, the Contractor refused to do the work, in spite of Deputy Chief Engineer asked him to continue.

28. PW.5 - Chief Engineer, South Central Zone, LIC of India, deposed that the Accused Officer was S.E. at the relevant point of time. The duty allotted to the Accused Officer was planning and execution of modernization works in Andhra Pradesh. Tolety Office Makers was selected for execution of the said work and the same was approved under Ex.P7 - office note, dated 06.07.2001. After a note was put up for acceptance of

lowest Tender of M/s. Tolety Office Makers, the same was approved by him vide his office note dated 01.08.2001.

29. PW.6 - Deputy Chief Engineer, LIC of India at the relevant point of time deposed that he came back to Hyderabad by cancelling his official tour to Raichur on receipt of information. On 30.08.2001, he has received Ex.P4 letter from the Contractor i.e., PW.1. Thereafter, he instructed his Engineer Mr. Srinivasa Rao, to secure the said contractor to have a talk with him and accordingly on 03.09.2001, the Contractor came to his office. Despite request to continue the work, the Contractor did not complete the work and addressed a letter expressing his unwillingness to do the said work. Accordingly they have received the letter of PW.1 dated 29.09.2001 on 03.10.2001. Thereafter, they have terminated his contract as per Rules and forfeited his EMD.

30. From the above depositions, it is clear that PW.1 did not comply with the tender formalities of payment of balance amount of security deposit after adjusting EMD within the stipulated time, nor he furnished any bank guarantee towards security deposit. He has not even taken back the EMD amount paid at the time of submitting tender. Though there was default clause and liquidated damages, PW.1 did not execute the work in terms of the tender conditions and work order. During cross-examination, he has specifically admitted the same, and also admitted that he has not purchased required material for doing the said work. He has further admitted that on 27.07.2001, the Accused Officer and his team requested PW.1 to reduce the tender rate further for which he has agreed to some extent after negotiations, but he has refused to further reduce the price on the ground that labour

component was there as the work has to be attended after office hours. He has further admitted that in the very same meeting, the Accused Officer informed him that he has to execute the work strictly adhering to quality and there cannot be any compromise in respect of quality. He has further admitted that by the time of submitting tenders he is aware that the Chief Engineer is the only authority to finalize the tenders. PW.6, Deputy Chief Engineer, LIC of India, categorically admitted about submission of Ex.P4 letter by PW.1 and that despite specific request, PW.1 did not execute the work, expressed his unwillingness to execute the same. Accordingly, PW.1 addressed a letter dated 29.09.2001, received by them on 03.10.2001. Thereafter, they have terminated the contract as per the Rules and forfeited the EMD.

31. The said depositions would clinchingly establish beyond reasonable doubt the fact that PW.1 was unwilling to execute the said work despite submission of tender, stood as successful bidder. He has not even complied with the formalities of tender, such as submission of security deposit, procuring material etc. He has reduced some amount during negotiations with the Accused Officer and his team as per the tender procedure and the Accused Officer informed PW.1 that he has to execute the work without compromise in the quality. The said facts would establish that PW.1 was not willing to execute the work and he has not complied with the formalities of the Tender in executing the work. Finally, the Tender was cancelled on his own letter dated 29.09.2001.

32. It is relevant to note that in Ex.P1 - complaint, PW.1 stated that the Accused Officer, after awarding the contract started demanding 4% of

the contract amount as bribe and insisted for not less than 2.5% of the contract amount. He further stated that when he visited Nampally Branch of LIC on 27.08.2001, the Accused Officer was present, requested him to drop him near his residence and accordingly, he dropped the accused Officer at Himayatnagar. During the said time, the Accused Officer reiterated his demand and insisted to pay 2.5% of amount at least and to pay a sum of Rs.10,000/- as first installment and the balance amount to be paid immediately on receipt of first bill payment.

33. PW.1 submitted Ex.P4 letter dated 30.08.2001 to the Chief Engineer, LIC of India i.e., next day of the trap stating that he was ready to start work on 10.08.2001 etc., on 25.08.2001, Deputy Executive Engineer visited the site, shown him dimensions etc. In due course, the Accused Officer forcing him to pay bribe, used to threat repeatedly by demanding bribe on the ground that he would help in measurements and other possible ways. He stated about calling him by the Accused Officer to Habsiguda Branch to visit the site, while returning he said that he would discuss at some Hotel etc., where the Accused Officer demanded 4% of the contract value, fulfill 2% of demand at the time of work order etc. It is further stated by him in Ex.P4 letter dated 30.08.2001 about contacting Srinivas Rao, Electrical Engineer, explaining problem etc. and he met the Accused Officer on 27.08.2001. The next day i.e., 28.08.2001, when he went to Office for some clarification, the Accused Officer told him to arrange money on or before 31.08.2001 and finally PW.1 wanted to prove the nature of Accused and his attitude with all proof.

34. The above stated contents of Ex.P4, dated 30.08.2001, are contrary to contents of Ex.P1 - complaint dated 29.08.2001 and also deposition of PW.1. By referring the same, the learned counsel for the respondent - Accused Officer would contend that the total contract value is Rs.16,73,000/-, of which 4% would be Rs.67,000/- and 2.5% would be Rs.41,834/-. Therefore, the question of demanding of Rs.10,000/- by the Accused Officer as alleged by PW.1 does not arise. More over, PW.1 himself admitted that the Accused Officer is not having any role in award of the contract.

35. Admittedly, though the name of Satish Prabu was mentioned in Ex.P3 - post trap proceedings as scribe of Ex.P3 and names of Vijay Kumar, Regional Manager, LIC, Bhaskar Rao, Administrative Officer, LIC of India, signatories to Ex.P3, were mentioned, they were not examined by the prosecution.

36. On the analysis of the said depositions of PW.1, PW.2, PW.3, PW.5, PW.6 and contents of Exs.P1, P2, P3 and P4, it can be safely concluded that there was no role of the Accused Officer in allotting the contract to Tolety Office Makers to which PW.1 is the proprietor, PW.1 was not interested in executing the work right from the beginning and with the said reason, he has not completed the tender formalities, such as submission of security deposit, procuring raw material etc. He was cautioned by the Accused Officer during negotiations on reduction of price, adhering to the terms and conditions of the contract strictly and maintenance of quality etc. With the said reason, PW.1 ultimately did not execute the said work and the same was informed by him vide his letter dated 29.09.2001 received by the

LIC of India on 30.10.2001 and thereafter the contract was terminated, EMD was forfeited. Thus, the prosecution failed to establish about pendency of official favour with the Accused Officer at the relevant point of time.

37. The prosecution failed to examine any independent witness other than PW.1, who was not happy with the Accused Officer due to approach of the Accused Officer in negotiating with PW.1 for reduction of tender price and cautioning him to adhere to the terms and conditions of tender strictly and maintenance of quality, to prove the demand of bribe. There were strained relations between PW.1 and the Accused Officer. PW.1 was not willing to execute the work and looking for way out to escape from the execution of work by getting over penal and liquidated damages clauses. Admittedly, the value of the contract was Rs.16,73,360/- of which 4% would be about Rs.67,000/- and 2.5% would be about Rs.42,000/-. The demand of Rs.10,000/- by the Accused Officer appears to be unbelievable and the said conclusion can be drawn on the analysis of the entire evidence as discussed supra.

38. The trial Court gave a specific finding that there is no satisfactory evidence to believe the version of prosecution that the Accused Officer demanded the bribe from PW.1 and acceptance of the same. The trial Court also observed that the self-serving evidence of PW.1 regarding demand of bribe, his giving bribe (MOs.1 and 2) to the Accused Officer is not corroborating by any other witness since the presence of PW.2 at the time of pre-trap and post trap proceedings covered under Exs.P2 and P3 respectively is highly doubtful. On the analysis of the entire evidence, the trial Court also observed in the impugned judgment that the uncorroborated testimony

of PW.1 who wanted to escape from the penal liability due to his failure of doing contract work, cannot be made sole basis to convict the Accused Officer. This Court satisfied with the said reason given by the trial Court.

39. As discussed above, there are contradictions in the version of PW.1, more particularly to that of Exs.P1 and P4, and his deposition. The said contradictions are not minor and they are major contradictions. It is settled principle of law that the prosecution has to prove the guilt of the Accused Officer beyond reasonable doubt with cogent evidence like any other criminal offence. The said principle was also held by the Apex Court in **A. Subair v. State of Kerala**¹. The burden is on the prosecution to prove the demand and acceptance. Without proving the said demand of illegal gratification, the trial Court cannot draw presumption under Section 20 of the Act. As rightly held by the trial Court, there are major contradictions in the version of PW.1 and thus the prosecution miserably failed to prove the demand of illegal gratification by the Accused Officer and pendency of official favour with him. On the other hand, the Accused Officer has proved safely that PW.1 was trying to escape from the penal liability and with the said reason, he has not complied with the tender formalities, furnishing security deposit, procuring raw material etc. Ultimately the said tender was terminated, EMD was forfeited pursuant to the letter dated 29.09.2001 addressed by PW.1. It is also relevant to mention that on the next day of trap, PW.1 submitted another letter, dated 30.08.2001 vide Ex.P4 and the contents of the same are contradictory to Ex.P1 complaint, dated 29.08.2001 and his deposition.

¹. (2009) 6 SCC 587

40. On the entire analysis of the said depositions and documents, this Court can safely conclude that the prosecution failed to prove the pendency of official favour with the Accused Officer at the relevant point of time and the demand of illegal gratification of Rs.10,000/- from PW.1. It is also settled principle that the prosecution has to prove both demand and acceptance, twin requirements, which are *sine qua non* to prove the offence under P.C. Act as held by the Apex Court in **B. Jayaraj v. State of Andhra Pradesh**², and proving one alone is not sufficient as held by the Apex Court **Dashrath Singh Chauhan v. Central Bureau of Investigation**³.

41. On receipt of Ex.P1 complaint, the Superintendent of Police, CBI, SPE, Hyderabad, entrusted the investigation to Inspector - Mr. B. Shankar Rao - PW.7 to lay the trap to detect the offence. Accordingly, PW.7 laid the trap by securing presence of two mediators and by following procedure including preparing of pre and post trap proceedings. PW.2 acted as mediator and he deposed about the pre and post trap proceedings. According to PW.2, all the proceedings were written between 3.45 p.m. and 4.15 p.m. and signed by the witnesses and the trap team. They reached the place of trap i.e., Central Court Hotel at 4.50 p.m.

42. During cross-examination, PW.2 categorically admitted that the first mediators' report was prepared after completion of the events that took place at CBI office, he do not remember who wrote the first mediators' report and thereafter he stated that the first mediators' report was written by PW.7 Mr. Shankar Rao. He further admitted that all the persons present at the time of events that took place in CBI office including Satish Babu,

². 2014 (2) ALD (Crl.) 73 (SC)

³. 2018 (2) ALD (Crl.) 952 (SC)

Inspector of Police, was not examined, and so also Santosh Kumar, Sub-Inspector, CBI, Anoj Kumar, Inspector, signatories to Ex.P2- pre-trap proceedings. PW.2 further admitted that PW.7 Shankar Rao, drafted second mediators' report Ex.P3 to their dictation on the table where they sat and it took 30-40 minutes. He further admitted that he has not put any initial on the corrections and interpolations in Ex.P3 and he has prepared a small rough note slip for giving dictation of Ex.P3 and he has not handed over the said slip to PW.7. He has further admitted that there is a correction at page No.12 of Ex.P3 with reference to the version of the Accused Officer and he do not remember whether currency notes were sealed or handed over to Shankar Rao in the same condition. VIP Company is a very popular company for manufacturing briefcases, there are no identification marks on MO.6 to say that it is the same briefcase as no signed slips or any kind of identification marks are pasted on it. He has further admitted that he cannot say that MO.6 is a similarly looking briefcase as there were no specific identification marks.

43. It is relevant to note that though the prosecution claimed that they have secured Mr. K. Ibrahim, Chief Manager, Vigilance, SBI, cited as LW.3 - mediator, did not examine him during trial.

44. PW.7 - Inspector, CBI, to whom the investigation including laying of trap was entrusted, deposed about the pre and post trap proceedings.

45. During cross-examination, he has categorically admitted that he do not remember whether PW.1 was carrying any purse or bag, after completion of demonstration, other proceedings, Ex.P2 was drafted but not

simultaneously. He only typed Ex.P2 proceedings. Currency note numbers were dictated while typing Ex.P2, which does not contain the signature of Uday Bhasker. Entire proceedings including drafting of Ex.P2 were held within half an hour. He has further admitted that the word “TLO and his Party were” was added in page No.2 of Ex.P3 and it was done at the same time. He has dictated second mediators’ report to Satish Prabhu and the addition was also made by Satish Prabhu. He has further admitted that they have property register in the office, the property room is known as ‘*Malkhana*’. Ex.P3 was prepared in the Lobby after requesting the Manager of the Hotel to provide a table for writing. PW.8 during his cross examination admitted that he cannot say whether he has taken MO.1 to MO.6 from *Malkhana* unless he see the property register, CD is silent about his taking properties from *Malkhana* or seeing properties at *Malkhana*. Case diary dated 30.08.2001 discloses deposit of MO.1 and MO.2 in *Malkhana*, depositing of MOs.3 to 6 is not seen in the case diary.

46. PW.8 categorically admitted during cross-examination that he has not examined any clerical staff working in the office of the Accused Officer. His investigation did not disclose that running bills will be certified by three officers before actually coming to the table of the Accused Officer for certification. The said aspect was covered when he examined PW.5 - Rama Murthy, Chief Engineer.

47. By referring the said depositions and contents of the documents, the learned counsel for respondent - Accused Officer would contend that PW.2 is a planted witness and his presence was not there during trap

proceedings and the entire trap proceedings are created for the purpose of this case.

48. The trial Court on the analysis of the evidence, more particularly the evidence of PWs.1,2 and 7, observed that the presence of PW.2 at the time of pre-trap proceedings is doubtful, because of various inconsistencies in the evidence. It was further observed that the pre trap proceedings is a typed matter on four sheets, it shows that it was prepared on 29.08.2001 at CBI Office and the persons present etc. PW.2 Chief Manager, State Bank of Mumbai deposed that it took about 15-20 minutes to prepare Ex.P2, first mediators' report, and according to PW.7, the Trap Laying Officer, pre trap proceedings under Ex.P2 were concluded by 4.15 p.m. as mentioned in it. The prosecution has not examined another mediator - LW.3 i.e., K. Ibrahim. With the said discussion, the trial Court held that it is hard to believe that Ex.P2 pre trap proceedings were prepared within 10 or 15 minutes as stated by PW.2 or within 30 minutes as mentioned in Ex.P2 and the contradictory versions and finally in view of the said discrepancies, the presence of PW.2 at the time of trap was very much doubtful. When his evidence cannot be relied upon, the only other evidence left is the complainant and the Trap Laying Officer. On the analysis of their evidence also, the trial Court held that the circumstances also go to show that the Accused Officer is not in the nature of demanding the bribe from Contractors and the complainant and Trap Laying Officer - PW.1 and PW.7, have not identified MO.6 briefcase carried by the Accused Officer on that day.

49. On the analysis of the above said evidence, the prosecution failed to prove the acceptance of bribe towards illegal gratification pursuant to the

demand made by the Accused Officer. This Court is satisfied with the reasons given by the trial Court in the impugned judgment. Therefore, finding of the trial Court acquitting the Accused Officer of the charges framed does not warrant interference by this Court.

50. In view of the aforesaid discussion, the Criminal Appeal filed by the CBI fails and accordingly the same is dismissed, confirming the judgment, dated 28.12.2005, passed by the learned Special Judge for CBI Cases, Hyderabad, in Calendar Case No.19 of 2002, acquitting the respondent - Accused Officer for charges 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.

10th January, 2020
Mgr

JUSTICE K. LAKSHMAN