

THE HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL APPEAL No.1144 OF 2006

JUDGMENT:

Feeling aggrieved by the judgment dated 21.08.2006 passed by the learned Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, in Calendar Case No.29 of 2001, the appellant preferred the present appeal. Vide the aforesaid judgment, the trial Court found the appellant - Accused Officer 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 convicted him of the said charges. He was sentenced to undergo rigorous imprisonment for a period of one (01) year and to pay a fine of Rs.1000/- (Rupees one thousand only) and in default to undergo simple imprisonment for a period of three (03) months under each charge. Both the sentences of imprisonment were ordered to run concurrently.

2. The facts of the case are as under:

i) Accused Officer - Mr. N. Hrudayananda Reddy worked as Junior Assistant in the Office of the Mandal Revenue Officer (MRO), Shamshabad Mandal, Ranga Reddy District at the relevant point of time.

ii) PW.1 - *de facto* complainant - Mr. Budavath Valia S/o Teja is resident of Madanapally Thanda of Shamshabad Mandal, Ranga Reddy District. He is owner of agricultural land to an extent of Acs.1.17 guntas in Survey No.105 of the said Thanda.

iii) He applied for *pahani* copies in respect of the said land on 08.02.2001 for the years 1996-97 to 1999-00. On 09.02.2001 in the morning hours, he went to the office of MRO and met the Accused Officer, who was working as Junior Assistant for the purpose of obtaining the *pahani* copies,

on which the Accused Officer demanded an amount of Rs.1500/- as bribe and requested him to get the said amount by evening of the said day. The Accused Officer threatened PW.1 saying that in the event of non-payment of the said bribe amount, it would take 15-20 days to get the *pahani* copies.

iv) Since PW.1 was unwilling to pay the said bribe amount, he approached the ACB officials on the same day i.e., 09.02.2001 and lodged Ex.P3 - complaint. The ACB Officials after registering a case under Ex.P18 - FIR, laid trap on the same day itself.

v) After completion of investigation, the ACB Officials laid charge sheet against the Accused Officer and the same was taken on file vide C.C. No.29 of 2001.

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 P18, and MOs.1 to 10 were exhibited. In support of defence, the Accused Officer examined two (02) witnesses i.e., DWs.1 and 2 and marked Ex.D-1.

5. After completion of the trial and on consideration of evidence both oral and documentary, the trial Court found the Accused Officer guilty of the aforesaid charges and accordingly convicted him vide impugned judgment, dated 21.08.2006 in C.C. No.29 of 2001 and imposed the punishment in the manner stated supra.

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

7. Heard Mr. B. Rajavardhan Reddy, learned counsel for the appellant 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.

8. It is contended by the learned counsel for the appellant - Accused Officer that the Accused Officer was not competent to do the official favour as he was only a Junior Assistant in the MRO Office. There was no official favour pending with the Accused Officer at the relevant point of time. The ACB officials without conducting discreet enquiries hastily proceeded in laying a trap against the Accused Officer. In the month of January, PW.2 has taken an amount of Rs.1500/- from the Accused Officer by taking Rs.1000/- from DW.2 and by adding Rs.500 of his personal cash. According to the Accused Officer, PW.2 has sent the said amount of Rs.1500/- through PW.1 and the Accused Officer has received the said amount towards repayment of loan taken by PW.2 from him. He neither demanded bribe nor accepted the same as alleged by the prosecution. According to him, the prosecution failed to prove the pendency of any official favour with him and that the Accused Officer abused his official position. The prosecution has also failed to prove the demand and acceptance of illegal gratification. The trial Court without considering the contentions of the Accused Officer and also the depositions of DW.1 and DW.2 convicted the Accused Officer on surmises and conjectures.

According to him, there is no cogent and convincing evidence to record the conviction.

i) With the above said contentions, the learned counsel for the appellant prayed for setting aside the impugned judgment, acquittal of the Accused Officer by allowing the present appeal.

9. *Per contra*, supporting the judgment, the learned Special Public Prosecutor would contend that the Accused while discharging his position as a public servant demanded the bribe amount from PW.1 and in pursuance of the same he has demanded and accepted the bribe amount. According to him, tainted amount was recovered. The loan theory propounded by the Accused Officer is nothing but after thought as the same was not substantiated by any convincing evidence. It is also contended that the prosecution could establish the twin requirements of demand and acceptance, which is *sine qua non* to record conviction. He would further contend that the trial Court having gone through the evidence on record, found the Accused Officer guilty of the aforesaid charges and, therefore, there was no error in recording the conviction. The prosecution has proved the demand beyond reasonable doubt and, therefore, the trial Court convicted the Accused Officer by drawing presumption under Section 20 of the Act. According to him, there is no ground or circumstance that warrants interference of this Court in the present appeal.

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

i) Whether there was any official favour pending with the Accused Officer as on the day of trap i.e., 09.02.2001?

- 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):

11. The admitted facts in the present case are that the Accused Officer was Junior Assistant in the office of MRO, Shamshabad Mandal, Ranga Reddy District at the relevant point of time. PW.1 is the owner of agriculture land to an extent of Acs.1.17 Guntas in Sy.No.105 of Madanapally Thand of Shamshabad Mandal, Ranga Reddy District. PW.1 has applied for certified copies of *pahani* in respect of the said land for the years 1996-97 to 1999-00 on 08.02.2001 vide Ex.P2.

12. According to the prosecution, the Accused Officer demanded an amount of Rs.1500/- as bribe from PW.1 for the purpose of furnishing *pahani* copies on the same day. PW.1 was not interested to pay the said amount to the Accused Officer and as such he has approached the ACB Officials by lodging of Ex.P3 complaint on 09.02.2001. It is not in dispute that PW.1 is an illiterate and PW.2 has drafted Ex.P3-complaint. PW.7 - DSP, ACB, has registered a case under Ex.P18-FIR on 09.02.2001 at 2.30 p.m. on receipt of Ex.P3 complaint at 12.15 p.m. on 09.02.2001. PW.7 laid the trap at 4.30 p.m. on the same day. It is relevant to note that PW.1 and PW.2 turned hostile. Thus, PW.1 disowned Ex.P3-complaint drafted by PW.2, a realtor.

13. The charge against the Accused Officer is that on 08.02.2001, he has demanded an amount of Rs.1500/- as illegal gratification from PW.1 for the purpose of issuing *pahani* copies in respect of his above said land for the aforesaid years on the same day. Pursuant to the said demand, the Accused Officer accepted the said amount of Rs.1500/- from PW.1 on the day of trap i.e., 09.02.2001 at about 5.20 p.m. at his office. According to the prosecution, the Accused Officer being the public servant abused his official position obtained the above said Rs.1500/- pecuniary advantage for issuance of *pahani* copies on the same day and thus committed the offences under Sections 7 and 13 (1) (d) read with 13 (2) of the Act.

14. The learned counsel for the appellant by referring the above said charges, Ex.P3-complaint and also the depositions of prosecution witnesses would contend that as per Ex.P3-complaint, the alleged demand of bribe was on 09.02.2001 and as per charge, the same was on 08.02.2001. Therefore, according to the learned counsel for the appellant that there is discrepancy in the date of alleged demand of bribe and the said discrepancy is major. In fact, according to him, there is no official favour that is pending with the Accused Officer and, therefore, the question of demanding bribe by him does not arise.

15. PW.1 deposed that PW.2 first took him to Shamshabad and from there to Hyderabad. It is recorded by the trial Court in the deposition of PW.1 that in spite of persistent questioning by the learned Public Prosecutor, PW.1 stated that he does not know anything at all, nothing happened to his land and that PW.2 knew everything about it. He further deposed that no one asked money from him, nor he paid the same to anyone. He was not

examined by any ACB Official. However, he has admitted that two years ago he went to a Court where the police threatened him to give a statement. He further deposed that he did not go to MRO office, Shamshabad, and gave application seeking certified copies of the *pahanies* in respect of his land. It is relevant to note that during cross-examination nothing contra was elicited from PW.1 by the prosecution.

16. PW.2, a real-estate businessman, deposed that he knew PW.1 with whom he got acquaintance while he was looking plots in Shamshabad area. He further deposed on 08.02.2001, he went to MRO office, Shamshabad on his personal work to meet some landlords. PW.1 met him there and requested him to write an application for issuance of certified copies of *pahanies* and at his request, PW.2 prepared Ex.P2 application for *pahani* copies. PW.1 submitted Ex.P2 application in MRO office. PW.2 further deposed that at that particular point of time in MRO Office, landlords are discussing that the Accused Officer, Junior Assistant, is misleading regarding the title of the lands. He further deposed that he has taken an amount of Rs.1500/- from the Accused Officer, and according to him, the Accused Officer has given the said amount of Rs.1500/- by taking it from another person. He further deposed that the real-estate brokers wanted the Accused Officer to be caught by ACB Officials. According to him, he has sent the said amount of Rs.1500/- to the Accused Officer through PW.1 on the day of trap.

17. During cross-examination done by the learned counsel for the Accused Officer, PW.2 categorically admitted about the real-estate business done by him during the year 2001. He also admitted about his borrowing an

amount of Rs.1500/- (i.e., Rs.1,000/- available with the Accused Officer and Rs.500/- procured from his men) from the Accused Officer as a hand loan in the month of January, 2001. He has also admitted about repayment of the said amount of Rs.1500/- to the Accused Officer on 09.02.2001 through PW.1.

18. In the said backdrop of the facts of the case, admittedly PW.1 - *de facto* complainant disowned Ex.P3-complaint drafted by PW.2. Prosecution declared both PW.1 and PW.2 hostile.

19. It is settled principle enunciated by the Apex Court in **Vinok Kumar v. State of Punjab**¹ and **State of Gujarat v. Anirudh Singh**² that though prosecution witnesses turned hostile, their evidence to the extent that would be useful, can be relied on by the prosecution. Whereas, in the present case, PW.1 categorically deposed that he does not know anything and PW.2 knew everything about making application for *pahani* copies etc. He further deposed that he did not go to MRO office, Shamshabad at all and gave application seeking certified copies of *pahanies*. He has put his thumb impression on Ex.P3 - complaint on 09.02.2001. PW.2, a realtor, scribed Ex.P3. In view of the same, there is no useful portion in the evidence of PW.1 to support the case of prosecution.

20. As stated above, PW.2, a realtor also deposed about obtaining an amount of Rs.1500/- from the Accused Officer in the month of January, 2001 as hand loan and repayment of the same on the day of trap through PW.1. It is also relevant to note that according to PW.2, PW.1 went inside the MRO Office on the day of trap to enquire about his documents and after

¹. (2015) 3 SCC 220

². (1997) 6 SCC 514

coming out he has informed PW.2 that the signature on the certified copies were not at all taken and PW.1 was asked to come after half-an-hour. Accordingly, PW.1 went into the office of MRO, got the certified copies of *pahanies* duly attested through Attender. Therefore, the evidence of PW.2 also is not at all useful or helpful to the case of prosecution. As already stated above, nothing contra was elicited by the prosecution either from PW.1 or PW.2 during cross-examination. In order to prove the demand of bribe by the Accused Officer, the prosecution did not examine any other independent witness other than PWs.1 and 2. Admittedly, PWs.1 and 2 did not support the case of prosecution regarding alleged demand of bribe amount of Rs.1500/- by the Accused Officer. As discussed above, there is major discrepancy with regard to date of alleged demand of bribe. Ex.P3 - complaint does not refer any demand of bribe on 08.02.2001 and the alleged demand was only on 09.02.2001. The contents of charge, Ex.P3 - complaint and the depositions of PW.1 and PW.2 are contradictory with regard to the alleged demand itself.

21. In view of the above said discussion, the prosecution failed to prove the demand of bribe by the Accused Officer from PW.1. The learned Special Public Prosecutor would contend that though PW.1 disowned Ex.P3 - complaint, the prosecution has proved the demand by examining PW.7 - DSP - ACB, Trap Laying Officer. But, PW.7 - Trap Laying Officer deposed that on the day of trap at about 5.30 p.m., PW.1 and PW.2 came out and informed him that the Accused Officer informed them that the *pahani* copies are ready, signatures have to be obtained from the Office Superintendent and requested them to come after half-an-hour.

22. It is also relevant to point out with regard to deposition of mediator i.e., PW.3. According to him, he has not accompanied PW.1 to the Office of MRO on the day of trap as per the instructions given by the Trap Laying Officer. Therefore, the evidence of PW.3 is of no use to prove the demand.

23. It is also relevant to point out that as per the ACB Manual, the ACB Officials have to enquire about the genuineness of the allegations made by any complainant against Public Servants with regard to demand of bribe. They have to even conduct discreet enquiries. Of course, the said Manual is only a guiding factor. In the present case, admittedly, PW.7 - DSP received Ex.P3 complaint at 12.15 p.m. on 09.02.2001 and laid trap at about 4.30 p.m. It is not in dispute that the distance between ACB Office and the Office of the MRO, Shamshabad is about 30-35 kilometers and would take one hour time to reach.

24. During cross-examination, PW.7 categorically admitted that the distance between ACB office and the Shamshabad may be around 30-35 kilometers. He has further admitted that before going to the office of the Accused Officer on 09.02.2001, he did not know whether PW.1 gave application for certified copies of *pahanies*. He further admitted that all the cases under Prevention of Corruption Act, enquiry with regard to genuineness of complaint is necessary before registering a case. He did not have any personal knowledge about demand of bribe by the Accused Officer from PW.1. Except his endorsement on Ex.P18 - FIR, there is no other material to show that he obtained permission from his Superior Officer for

organizing the trap. He further admitted that PW.1 is an illiterate and he came to his office along with PW.2 and that he is not the scribe of Ex.P3.

25. The above stated facts would clearly establish that the entire alleged trap was concluded within a span of four hours. PW.7 did not depose about discreet enquiries/preliminary enquiry conducted by him with regard to genuineness of the allegations made by PW.1 against the Accused Officer vide Ex.P3 complaint before registering a crime.

26. It is also relevant to mention that on both dates i.e., 08.02.2001 and 09.02.2001, PW.2 accompanied PW.1 to the office of MRO, Shamshabad. On the analysis of the above depositions, contents of Ex.P3-complaint, Ex.P6- pre-trap and Ex.P14-post-trap proceedings, the prosecution failed to prove the demand of bribe/illegal gratification to do the official favour to PW.1 by the Accused Officer either on 08.02.2001 or on 09.02.2001.

27. On the other hand, the Accused Officer examined DW.1 and DW.2. DW.1 - Mr. K. Sreekanth Reddy, resident of Shankarapur Village deposed that he has applied for certified copies of *pahanies* in respect of his land in Sy.No.20/2 on 03.02.2001, which was available at page No.15 of Ex.P10. According to him on the day of trap, he went to the room of the Accused Officer for collecting the certified copies and enquired with him. DW.1 further deposed that at that time one Lambada person along with another came to the Accused Officer and the said Lambada person handed over a wad of currency notes to the Accused Officer stating that the said amount relates to the repayment of hand loan taken by one Madhusudhan Rao and then the Accused Officer separated the amount in two wads and

kept one wad in his right side pant pocket and another in his left side pant pocket. After some time, other persons came to the room of the Accused and introduced themselves as ACB Officials.

28. DW.2 - Mr. A.V. Jagan Mohan Reddy, resident of Narkoda village deposed that he has applied for the certified copies of *pahanies* in respect of his lands in Sy.Nos.315 and 319. When he went to the MRO office in the last week of January, 2001 for ascertaining procedure to obtain certified copies of *pahanies*, the Accused Officer requested him to lend an amount of Rs.1000/- and at that time PW.2 was with Accused Officer and introduced to him. Accordingly he gave Rs.1,000/- to the Accused Officer who in turn gave the same by adding another sum of Rs.500/-, making a total of Rs.1500/- to PW.2. Thereafter, he has submitted the application in the name of his father which is at serial No.18 of Ex.P10. Ex.D1 is the application dated 07.02.2001 submitted by him. In this regard, it is relevant to note that PW.4, Office Superintendent, during cross-examination categorically admitted about the said application Ex.D1. The prosecution failed to elicit anything contra from DW.1 and DW.2 except making a suggestion of speaking falsehood in order to help the Accused Officer.

29. From the above stated discussion and on the critical analysis of the above said depositions and documents, it can safely be concluded that the prosecution miserably failed to prove the demand of bribe itself. The Hon'ble Supreme Court in **A. Subair v. State of Kerala**³ held that the prosecution has to prove the guilt of the Accused like any other criminal case by producing cogent evidence. Proving one alone is not sufficient to

³. (2009) 6 SCC 587

record conviction as held by the Apex Court in **Dashrath Singh Chauhan v. Central Bureau of Investigation**⁴. It is relevant to mention that recovery of tainted notes is not sufficient and the prosecution has to prove the demand at the first place beyond reasonable doubt. The said principle is also held by the Apex Court in **B. Jayaraj v. State of Andhra Pradesh**⁵. In the present case, the prosecution failed to prove the demand itself.

30. On the other hand, the learned Special Public Prosecutor would contend that the defence theory put forth by the Accused Officer i.e., loan theory is only an after thought and invented the same to get over from the clutches of present case. According to him, the trap as well as recovery of tainted amount was proved and also the chemical tests conducted over the hands of Accused Officer proved positive. There is no spot explanation offered by the Accused Officer during post-trap proceedings regarding the alleged loan theory introduced by him. According to him, by considering the said facts, the trial Court came to a just conclusion and recorded conviction. The learned Special Public Prosecutor would further contend that though PW.1 with the help of PW.2 set the law into motion by lodging Ex.P3 complaint turned hostile for the reason that they were gained over by the Accused Officer. According to him, the trial Court recorded the conviction by giving specific reasons. Therefore, in view of proving demand, presumption under Section 20 of the Act was drawn by the trial Court. But, it is a rebuttal presumption that can be rebutted by producing proper proof.

⁴. 2018 (2) ALD (Crl.) 952 (SC)

⁵. 2014 (2) ALD (Crl.) 73 (SC)

31. It is relevant to note that presumption under Section 20 of the Act is a rebuttable presumption. In the present case, the Accused Officer rebutted the said presumption. As discussed supra, on the analysis of the entire evidence, contents of documents, the prosecution failed to prove demand itself. The prosecution has also failed to approve pendency of official favour with the Accused Officer and that he has abused his official position to do the official favour to PW.1, more particularly in view of deposition of PW.1, PW.2 and PW.7 that on the day of trap at about 5.30 p.m., the Accused Officer informed PW.1 that the certified copies are ready, signature of the Office Superintendent has to be obtained and requested him to come after half-an-hour. Accordingly, after half-an-hour, PW.1 approached the Accused Officer and obtained the certified copies of *pahanies*.

32. In support of the contentions, the learned Special Public Prosecutor relied on the decision of the Apex Court in **M. Narsinga Rao v. State of A.P.**⁶ to the effect that a legal or mandatory presumption can be drawn from a factual or discretionary presumption under Section 114 of the Evidence Act. By relying on the said principle, the learned Special Public Prosecutor would contend that the trial Court rightly convicted the Accused Officer. But, as discussed supra, the prosecution failed to prove the demand itself, the said presumption is a rebuttable presumption and the Accused Officer successfully rebutted the same. Therefore, the principle in the said decision is not applicable to the case on hand.

⁶. (2001) 1 SCC 691

33. He also relied on the principle held by the Apex Court in **C.K. Damodaran Nair v. Govt. of India**⁷ to the effect that thrust of money is not admissible. In the present case, it is not the defence that complainant thrust the money. The defence taken by the Accused Officer is loan theory and, therefore, the said decision is not helpful to the case of the prosecution.

34. Whereas, the learned counsel for the appellant relied on the decision of the Apex Court in **Mukhtiar Singh v. State of Punjab**⁸, wherein the Apex Court referring decisions in **P. Satyanarayana Murthy v. State of A.P.**⁹ and **B. Jayaraj**⁵ considered the issue of indispensability of proof and held that bald allegation of complainant regarding demand and acceptance of illegal gratification by the Accused remains uncorroborated and failure on the part of the prosecution to prove the charge levelled against the accused beyond reasonable doubt, recording conviction is unsustainable. He also relied on the decision in **Banarsi Dass v. State of Haryana**¹⁰ wherein the Apex Court held that in the absence of proof of demand by the accused and acceptance of the same, the Accused is entitled for acquittal.

35. In view of the aforesaid discussion, it is clear that the prosecution failed to prove the demand of bribe by the Accused Officer from PW.1 either on the alleged date 08.02.2001 or 09.02.2001 by examining relevant witnesses, there is no corroboration of evidence of prosecution witnesses and there is also no circumstantial evidence to prove the demand itself. In the absence of same, the finding of the trial Court drawing presumption under Section 20 of the Act and recording conviction is erroneous. The further

⁷. 1997 CrL.L.J. 739

⁸. (2017) 8 SCC 136

⁹. (2015) 10 SCC 152

¹⁰. AIR 2010 SC 1589

finding of the trial Court that the Accused Officer failed to rebut the said presumption is also unsustainable in view of the failure on the part of prosecution proving the demand and acceptance of bribe.

36. The other finding of the trial Court with regard to loan theory to the effect that if really there were true facts occurred, the Accused Officer would have stated during post trap proceedings. It is also settled principle that the Accused Officer need not disclose his defence to the prosecution including during the course of post-trap proceedings. Just because the Accused Officer did not offer spot explanation during post-trap proceedings about loan theory, it cannot be said that prosecution could prove the demand of bribe. It is settled principle that the Accused need not disclose his defence and the silence on the part of the Accused Officer during post-trap proceedings cannot be taken into account as a circumstance to record conviction. Burden lies on the prosecution to prove the twin requirements of demand and acceptance which are *sine qua non* to record conviction under the provision of the Act. As discussed above, the said twin requirements are lacking in the case on hand, the Accused Officer is entitled for acquittal. Therefore, the finding of the trial Court recording conviction and imposing sentences of imprisonment as stated above are liable to be set aside.

37. Accordingly, the present Criminal Appeal is allowed and the conviction and sentences recorded by the Additional Special Judge for SPE & ACB Cases, Hyderabad, in Calendar Case No.29 of 2001 vide judgment dated 21.08.2006 against the appellant - Accused Officer 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 and he is acquitted of the charges

framed against him. The Accused Officer is on bail, and his bail bonds shall stand cancelled. Fine amount, if any, paid by the Accused Officer is ordered to be returned to the Accused Officer.

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

JUSTICE K. LAKSHMAN

10th January, 2020
Mgr

