** **THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI***

+ CRL.A.NO.251 OF 2011

% 11-11-2022

SRI MACDONALD FRANCIS
S/O LATE SYLVESTER FRANCIS

.. APPELLANT

And

$ THE STATE, REP. BY THE INSPECTOR OF
ACB, CITY RANGE HYDERABAD.

.. RESPONDENT
.

! Counsel for the appellants: Sri Mastan Vali Shaik

Counsel for respondent : Sri C. Vidyasagar Rao,
P.S.P. Suresh Kumar

< Gist :
> Head Note :
? Citations:

1. (2017)8 SCC 136
2. (2014)13 SCC 55
3. (2013)14 SCC 153
4. (1979)4 SCC 725
5. (2006)7 SCC 172
6. (2015)10 SCC 230
7. 2019 SCCOnLine TS 2494
8. (2014)14 SCC 295
9. (2019)19 SCC 447
10. (2013)12 SCC 406
11. (2008)4 SCC 54
12. (2009)3 SCC 779
13. (1991) SCC 519
14. Criminal Appeal No.1137 of 2016 and batch (Arising out of SLP (Crl.No.9503 of 2016)
15. (2013)4 SCC 517
16. Criminal Appeal Nos.2187-88 OF 2011
17. AIR 1984 SC 63
18. (1976)3 SCC 46
19. (1998)1 SCC 557
20. AIR 2001 SC 147
21. (2007)7 SCC 625
22. AIR 1964 SC 575
23. Criminal Appeal No.1662 of 2019 (Arising out of SLP (Criminal) No.4074 of 2019
24. (1974)76 BOMLR 627
25. (2015)10 SCC 152

DATE OF JUDGMENT PRONOUNCED : 11—11—2022

SUBMITTED FOR APPROVAL:

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

1. Whether Reporters of Local Newspapers may be allowed to see the Judgments ? : Yes / No
2. Whether the copies of judgment may be marked to Law Reporters/Journals : Yes / No
3. Whether Their Lordship wish to see the fair copy of the Judgment ? : Yes / No

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

CRL.A.NO.251 OF 2011

JUDGMENT

Vide judgment dated 18.02.2011 the court of First Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad in C.C.No.39 of 2008 found the accused officer (AO) guilty for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (briefly hereinafter referred to as ('the Act'). Accordingly he was convicted and sentenced to undergo rigorous imprisonment for a period of three years and also sentenced to pay a fine of Rs.5,000/-, and in default in payment of fine, to undergo simple imprisonment for a period of six months for the offence under Section 7 of the Act. He was further sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-, and in default in payment to fine to suffer simple imprisonment for a period of six months for the offence under Section 13(1)(d) read with Section 13(2) of the Act. Both the sentences were made to run concurrently and the remand period during investigation and trial, if any, was ordered to be given set off under Section 428 Cr.P.C. Assailing the said conviction and sentence, the A.O. filed the present appeal.

2. The case of the prosecution is as under:

(i) A.O. Sri Macdonald Francis worked as Senior Assistant in the office of the Tahasil Office, Rajendranagar Mandal of Ranga Reddy District from 18.6.2007 to 17.10.2007, and by virtue of the post held by him, he falls under the category of Public Servant as defined under Section 2(e) of the Act.

(ii) The de facto complainant by name Sri M.Sree Ram Reddy (hereinafter referred to as P.W.1) has entered into a sale agreement with Shaik Ghouse (L.W.2), who is a GPA holder of his mother and his maternal aunts in respect of agricultural land admeasuring 35 guntas situated at Puppalaguda village in Rajendranagar mandal of Ranga Reddy District, and which was agreed to be sold for a consideration of Rs.60,00,000/-, and an amount of Rs.6,00,000/- was paid in advance.

(iii) Since the name of the mother of Sahik Ghouse (L.W.2) and the names of his maternal aunts were not entered in the revenue records for the land of 35 gts. which was agreed to be sold to P.W.1, a petition was presented by Shaik Ghouse as GPA holder of his mother and maternal aunts dated 05.09.2007 in the office of the Tahsildar, Rajendra nagar mandal of Ranga Reddy district with a request to issue pattedar pass books.

(iv) That on 16.10.2007, P.W.1 along with Shaik Ghouse approached A.O. with a request to process the application dated 5.9.2007 for issuance of pattedar pass books, as they are required for registration of the land, for which, AO demanded Rs.20,000/- towards bribe for processing the application. Then P.W.1 pleaded with A.O. that he (P.W.1) is not in a position to pay such huge amount. Then A.O. advised P.W.1 to pay Rs.10,000/- on 17.10.2007 as an advance, and to pay the balance amount of Rs.10,000/- after issuing the pass books.

(v) P.W.1, who was unwilling to pay the bribe amount to A.O., approached the ACB authorities and lodged a written report with the DSP ACB City Range, Hyderabad on 16.10.2007 at 4.00 p.m. After verifying the genuineness with regard to the contents of the complaint and reputation of AO, the complaint of P.W.1 was registered as a case in Cr.No.33/ACB-CR/2007 under Section 7 of the Act on 17.10.2007 at 10.00 a.m., and investigation was taken up.

(vi) During the course of investigation, on 17.10.2007 at about 2.00 p.m., a trap was laid against AO. During the course of trap, P.W.1 as well as Shaik Ghouse approached AO with the demanded amount of Rs.10,000/- and that AO demanded and received bribe amount of Rs.10,000/- from P.W.1 with his right hand and kept the same in his right pant pocket. SC (sodium carbonate powder) test on right hand fingers of AO as well as inner flap of right pant pocket of AO yielded positive results. The tainted amount of Rs.10,000/- was recovered from the possession of AO on his production by picking out from his right side pant pocket in the presence of mediators.

(vii) The investigation conducted by the DSP and Inspectors of ACB, Hyderabad Range, Hyderabad would reveal that AO has committed the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the Act.

(viii) After obtaining necessary sanction proceedings to prosecute AO in a court of law vide G.O.Ms.No.1101 Revenue Vigilance (VII) Department dated 11-09-2008, charge sheet was laid.

3. The case was taken on file under Sections 7 and 13(1)(d) r/w 13(2) of the Act and notices were issued, and on appearance of the accused and on supply of material documents under Section 207 Cr.P.C., he was examined under Section 239 Cr.P.C. and the charges under Sections 7 and 13(1)(d) r/w 13(2) of the Act were framed and the same were read over and explained to him, and he denied the charges and claimed to be tried.

4. To prove its case, prosecution examined P.Ws.1 to 12 and Exs.P-1 to P-14 and M.Os.1 to 8 were.

5. After closure of prosecution evidence, AO was examined under Section 313 Cr.P.C. and he denied the incriminating material appearing in the prosecution witnesses and filed the written statement under Section 233(2) of the Cr.P.C.

6. In his written statement, he stated inter alia that he attended office on 12.10.2007. During lunch hours, the Inward Clerk Mr. Pandurangam gave some papers to him. As he was not feeling well, and was feeling some giddiness with high palpitation, he forwarded the papers to other officer who was in-charge of processing as per the office memo No.3/2007 dated 31.7.2007, and left home without informing his superiors. On the way to his house, MRO Balraj called him on his mobile and shouted for not attending the office work and leaving the office abruptly without his permission, and that he (AO) expressed his inability on health grounds. Further, he informed to MRO that he was not authorized to deal with the papers circulated to him, and after that he has taken treatment from Dr.Vijay Kumar, who was his regular Physician and as per medical advise, he did not attend office from 12.10.2007 to 16.10.2007.

7. That on 16.10.2007 the MRO Balraj through his mobile instructed him to submit a formal leave letter enclosing medical certificate, as such, on 17.10.2007, he went to the office at 12.30 p.m., since MRO was not present in the office, and he was away, he was waiting for arrival for MRO. Meanwhile, a person by name Ram Reddy came there, and introduced himself, and shook his hands with him, disclosing that he is a close friend of MRO Balraj, and after introduction, Ram Reddy informed to him (AO) that he has land dealings with Balraj, and that he used to arrange the vehicles for personal use of Balraj and after that Ram Reddy took some rolled notes and handed over the said amount to him, to give to Balraj, for repairs of MRO official vehicle. The amount so given in his hand, was given back to Ram Reddy with

instructions to give the same to Balraj directly, as he was expected any moment. Mr. Ram Reddy and another person left his office. Immediately, some civil persons came inside the office and they introduced that they are from ACB.

8. It is further stated that as he has no good terms with Balraj, as he was being compelled by him to do some personal favours, which he refused as he was not authorized to do as per office order No.3/2007 dated 31.7.2007, he was implicated. Eventually he pleaded for clean acquittal.

9. The AO examined himself as D.W.1 after obtaining due permission under Section 313 Cr.P.C. as per the order in Crl.M.P.No.87 of 2011 dated 28.1.2011 and Exs.D-1 to D-3 were marked.

10. Based on the above pleadings, the Trial Court framed the following points for consideration:

1. Whether the AO is the Public Servant as defined under Section 2(c) of the Act?
2. Whether the sanction order accorded to prosecute AO under Ex.P-10 is valid?
3. Whether there was any official favour pending with AO to render the same either to P.W.1 or P.W.2 as on 16.10.2007 and 17.10.2007?
4. Whether the AO demanded and accepted Rs.10,000/- from P.W.1 to do an official favour to P.W.1 and P.W.2 in order to conclude that whether AO has committed the offence punishable under Section 7 of the Act?
5. Whether AO, by abusing his official position, demanded and accepted Rs.10,000/- from P.W.1, as illegal gratification oother than legal remuneration and thereby he committed the offence punishable under Section 13(1)(d) r/w 13(2) of the Act?
6. Whether the prosecution could establish its case beyond all reasonable doubt against AO for the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the Act?

11. The Trial Court answering all the issues in favour of the prosecution, found the accused guilty for the offences with which he was charged, and accordingly convicted him and sentenced him, which is already noted above.

12. Assailing the conviction and the sentence the present appeal is filed.

13. Sri Mastan Vali Shaik, learned counsel appearing for the appellant / AO submits that as per Section 7 of the Act, the prosecution has to prove the demand and acceptance of illegal gratification by the AO. In the present case, the prosecution has not proved the demand and, therefore, mere acceptance and recovery of amount thereof by the ACB officials is of no consequence. In the present case, on 17.10.2007 P.W.1 gave the amount for being given to MRO Balraj, for the repairs of his official vehicle, but AO returned the amount asking P.W.1 to give the amount directly to MRO. He submits that even assuming that it was given as a bribe, and the same was recovered from AO, there is no material to show that AO has made any demand, and therefore, mere recovery is of no consequence. In support of this contention, he placed reliance on the judgments of the Apex Court reported in MUKHTIAR SINGH SINCE (DEAD) v. THE STATE OF PUNJAB[1], B.JAYARAJ v. STATE OF A.P.[2], STATE OF PUNJAB v. MADAN MOHAN LAL VERMA[3] and SURAJ MAL v. STATE (DELHI ADMINISTRATION)[4].

14. That, in fact, as per Office Order No.3/2007 dated 31-07-2007 issued by the Office of the Dy. Collector and Tahsildar, Rajendranagar Mandal, which was marked as Ex.D-1, allotments of subjects to the staff members was made, and the AO who was working as Senior Assistant, was not assigned with the job of mutation and issuance of pattadar pass books. He submits that the Trial Court has assumed that there were oral directions to the AO by MRO for undertaking the job of mutation and for issuance of pattedar pass books. He submits that statutory authorities cannot give oral directions and the same should be in writing. For this proposition he placed reliance on the judgment of the Apex Court in STATE INSPECTOR OF POLICE v. SURYA SANKARAM KARRI[5] . Therefore, as there are no instructions in

[1] (2017)8 SCC 136
[2] (2014)13 SCC 55
[3] (2013)14 SCC 153
[4] (1979)4 SCC 725
[5] (2006)7 SCC 172

writing, oral instructions cannot be considered, and as per Office Order dated 31.07.2007,it has to be taken that he is not entrusted with the job of issuance of pattedar pass books, and hence it has to be taken that he has no official capacity to do the alleged favour either to P.W.1 or to P.W.2. Further, the application is alleged to have been presented on 5.9.2007 in the E-seva and as stated above, as per Office Order dated 31.7.2007, he has no capacity, and moreover, from 12.10.2007 to 16.10.2007 AO was on leave due to ill-health and the alleged trap is on 17.10.2007. Hence, it has to be taken that AO has no capacity to attend the work sought for by the de facto complainant and that no official favour is pending with him. In these circumstances, and in the absence of any demand, mere recovery of amount, cannot be considered to hold the accused guilty of the offence either under Section 7 or under Section 13 of the Act. In support of this contention, he relied on the judgments of the Apex Court reported in SELVARAJ v. STATE OF KARNATAKA[6] and J.SRINIVAS RAO vs. STATE, REP. BY ITS INSPECTOR OF POLICE, ANIT-CORRUPTION BUREAU[7].

15. Learned counsel further submits that before seeking sanction to prosecute AO., the investigating office has not placed the above material and the prosecution has also not verified the genuineness of the transaction i.e., the alleged agreement of sale between P.W.1 and P.W.2. Therefore, issuing G.O.Ms.No.1101 granting sanction would become a mere formality and therefore this court may considering for remanding the matter to the sanctioning authority to consider the above events and to issue appropriate G.O. in accordance with law. To buttress this submission, learned counsel has placed reliance on the judgment of the Apex Court in CBI v. ASHOK KUMAR AGGARWAL[8].

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[6] (2015)10 SCC 230
[7] 2019 SCCOnLine TS 2494
[8] (2014)14 SCC 295

16. The learned counsel further submits that as per Ex.P-4, which are pre-trap proceedings, it shows that the proceedings started at 11-00 a.m. and concluded at 11.30 a.m., The entire proceedings are in seven pages, which are drafted in handwriting and rough sketch of the scene of alleged scene of offence was also drawn. Post trap proceedings prepared under Ex.P-7 shows that it started at 2.15 p.m., and stated to have completed at 7.35 p.m. on 17.10.2007. A perusal of these proceedings show that the distance between the ACB office, and the MRO office, where trap was laid, was at a far of distance, and hence it shows that it is only a table investigation, and in fact there is no physical trap.

17. Thus, if the above circumstances are considered, it is clear that the chain of events are not complete and if two views are possible, one in favour of the accused should be taken, and he should be extended the benefit of doubt. He further submits that the burden of proof on accused under Section 20 of the Act is not same as the burden placed on the prosecution to prove case beyond reasonable doubt. Accused only has to prove the preponderance of probabilities. The above circumstances show that the prosecution has not proved the case beyond reasonable doubt and hence, the charges against A.O. cannot be said to have been proved, and he is entitled for benefit of doubt. In support of these contentions, learned counsel relied on the judgments of the Apex Court reported in DEVI LAL v. STATE OF RAJASTHAN[9], SUJIT BISWAS v. STATE OF ASSAM[10], KRISHNA JANARDHAN BHAT v. DATTATRAYA G. HEGDE[11] and C.M.GIRISH BABU v. CBI[12].

18. Learned counsel submits that the jurisdiction of the High Court under Section 386(1)(b) of the Act are very wide and it can review the whole evidence and

[9] (2019)19 SCC 447
[10] (2013)12 SCC 406
[11] (2008)4 SCC 54
[12] (2009)3 SCC 779

it also entitled to go into the entire evidence, and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. For this proposition, he relied on the judgment of the Apex Court in BRATHI v. STATE OF PUNJAB[13]. Therefore, he submits that t in the light of above contentions, this court may re-appreciate the entire evidence and come to a just conclusion.

19. With the above submissions, learned counsel sought to set aside the impugned judgment and to acquit the A.O.

20. On the other hand, Sri Ch.Vidyasagar Rao, learned Special Public Prosecutor for ACB, has taken this court through the impugned order and also elaborately argued the matter. While vehemently opposing the above contentions raised by the learned counsel for the appellant, submitted that the prosecution has followed the due procedure while laying trap, and based on evidence, both oral and documentary, proved beyond reasonable doubt that A.O demanded bribe of Rs.10,000/- from P.W.1 and accepted the same to do an official favour to P.Ws.1 and 2, which was pending with him as on the date of trap, and hence the Trial Court by recording cogent and convincing reasons, found him guilty and convicted him and accordingly imposed the sentence. He submitted that there are no grounds to interfere with the impugned judgment of the Trial Court, and sought for dismissal of the appeal. He also relied on the judgments of the Apex Court reported in GIRISH KUMAR SUNEJA vs. C.B.I.[14], SYED YOUSUF HUSSAIN v. STATE OF A.P.[15], RAVEEN KUMAR vs. STATEOF HIMACHAL PRADESH[16], STATE OF MAHARASHTRA v. NARSINGRAO GANGARAM PIMPLE[17], CHATURDAS BHAGWANDAS PATEL v. STATE OF GUJARAT[18], STATE OF U.P. v.

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[13] (1991)1 SCC 519
[14] Criminal Appeal No.1137 of 2016 and batch (Arising out of SLP (Crl.No.9503 of 2016)
[15] (2013)4 SCC 517
[16] Criminal Appeal Nos.2187-88 of 2011
[17] AIR 1984 SC 63
[18] (1976)3 SCC 46

ZAKAULLAH[19], MADHUKAR BHASKARRAOJOSHI v. STATE OF MAHARASHTRA[20], GIRJA PRASAD v. STATE OF M.P.[21], DHANVANTRAI BALWANTRAI DESAI v. STATE OF MAHARASHTRA[22] and STATE OF TELANGANA vs. SRI MANAGIPET @ MANGIPET SARVESHWAR REDDY[23]. The learned Special Public Prosecutor also relied on the judgment of the Bombay High Court in VISHNU KRISHNA BELURKAR v. THE STATE OF MAHARASHTRA[24].

21. In view of the rival contentions, the issue that arises for consideration is whether the impugned judgment of the Trial Court warrants any interference?

22. To consider the above issue, it is necessary to note the evidence of the prosecution witnesses and also the evidence of A.O., who was examined as D.W.1.

23. P.W.1 is the de facto complainant, who sought to purchase an extent of 35 gts. of land from Hussainbee and others in the year 2007 for a total consideration of Rs.60,00,000/- and paid an advance of Rs.6,00,000/- under an agreement of sale , which was executed by one Sk. House, who is the GPA holder. After obtaiing agreement of sale, Sk. Ghouse applied for issane of pattedar pass books, which are required for the purpose of registration of the document. In his chief examination, he deposed that on 5.9.2007 himself and Ghouse had been to MRO Office, Rajendranagar and met the A.O., who was the Superintendent in the office. They required AO for issue of pass book in the name of mother of Sk. House, and for that A.O. demanded Rs.20,000/- .

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[19] (1998)1 SCC 557
[20] AIR 2001 S.C. 147
[21] (2007)7 SCC 625
[22] AIR 1964 SC 575
[23] Criminal Appeal No.1662 of 2019 (Arising out of SLP (Criminal) No.4074 of 2019
[24] (1974)76 BOMLR 627

24. In his further deposition in chief examination, he deposed about the filing of complaint before the ACB officials and their instructions for laying the trap.

25. He further deposed that on the date of trap on 17.10.2007, he along with P.W.2 went into the room of A.O. ***A.O. questioned him whether he brought the amount;*** that he replied in the positive and handed over the amount to A.O. A.O. received the same and kept the amount in his purse. He again deposed that A.O. received the amount in his right hand and kept the amount in his pank pocket. After that A.O. informed them that he will attend to his work and complete the work. That he went out along with Ghouse (P.W.2) and gave the pre-arranged signal. That by receiving his signal, the trap party rushed into the office of AO, then himself and Ghouse went out, and waited there. Half an hour, thereafter, he was called by DSP, and questioned about the events there were taken place between him and AO and that he (P.W.1) narrated everything and the same was incorporated in post trap proceedings. After that he was asked to come to the office of DSP on the next day. He went to the office of DSP, on that day, he was examined and his statement was recorded. That he received summons from Court at Nampally and accordingly he appeared before the court concerned and there, his statement was recorded by the Magistrate. He identified his signature on his statement recorded by 4th M.M. on 16.11.2007. Though he was cross-examined at length, nothing contrary to his chief, could be elicited.

26. P.W.2 is the Sk. Ghouse, who is the GPA holder and who executed agreement of sale in favour of P.W.1 He deposed in the same lines as that of P.W.1. His evidence is also to the effect that on the date of trap i.e., on 17.10.2007, he along with P.W.1 went into the room of A.O., P.W.1 sat in front of AO, and that he stood aside. By seeing P.W.1, ***A.O. questioned him whether be brought the amount.*** P.W.1 replied in positive. P.W.1 gave the amount to A.O., and he received the same with his right hand and kept the amount in his right pant pocket.

27. P.W.3 is the mediator to pre-trap proceedings Ex.P-4 and post trap proceedings Ex.P-7 and he was also scribe to the mediator reports. He supported the case of the prosecution with regard to pre and post trap proceedings.

28. P.W.4 was the Deputy Tahsildar in the office of Deputy Collector – cum – Tahsildar, Rajendranagar from 6/07 to 03/08. He deposed that on 5.7.2007 P.W.2 submitted Ex.P-2 application with annexures and same was endorsed by MRO to inward section. The inward clerk by name Pandurangam received Ex.P-2 and entered into inward register by allotting In.No.B/1277/2007 on 16.9.2007. Ex.P-5 is the said entry in the inward register of their office. After entering into inward register, the application was sent to Smt. Sarada, MRI (P.W.5). That in fact Senior Assistant was in-charage of ROR, but due to heavy work load, she was also entrusted with ROR work. AO worked as Senior Assistant in their office. He used to look after succession cases. Since Ex.P-2 relates to succession matter, MRI Sarda, forwarded Ex.P-2 to AO. That AO endorsed the said file to ARI by name Mr. Pandurangam. That Ms. Sarada, forwarded the file to AO on 22.09.2007. The AO endorsed the same to ARI on 12.10.2007, but the file was handed over to ARI on 16.10.2007. Ex.P-2 bears the endorsement made by AO. That A.O. being Senior Assistant, used to look after grant of succession and issue of pattedar pass books in their office. P.W.4 further deposed that he was examined, and his statement was recorded by Inspector, ACB.

29. In the cross-examination he deposed that they work as per the roaster issued by Deputy Collector – cum – Tahsildar, Rajendranagar mandal. That Ex.D-1 is the original office order dated 31.7.2007 issued by Deputy Collector, Rajendranagar mandal. He stated that some times due to load of work, they attend to different dutues as per the oral instructions of Tahsildar. That a per Ex.D-1, the ROR proceedings have to be looked after by Ms. Sarada and Mr. Panduranga. He

added that Ms. Sarada and Mr. Pandurangam are concerned to issue the proceedings, and once the proceedings are issued, the AO has to prepare pattedar pass book and deliver. There are no written memos directing AO to look after ROR proceedings and he was orally instructed to look after ROR work. The said oral instructions were given by Tahsildar.

30. P.W.5 is Ms. Ch. Sarda, who was working as Senior Assistant in the office of CCLA since 12/2009. She deposed that she worked as MRI in Rajendrtanaar Mandal from 7/07 to 3.12.2009. P.W.4 worked as Deputy Tahsildar during the said period. L.W.6 M. Pandurangam worked as AMRI. AO worked as Senior Assistant in the said office. That on 5.9.2007 P.W.2 submitted Ex.P-2 along with annexures. It was endorsed to inward by MRO. On 22.9.2007 from inward section, she received the same on the same day, and handed over the file to AO, since it pertains to succession. By then A.O. was looking after the succession files. After obtaining acknowledgement from AO in her register, she handed over Ex.P-2 on the same day. Subsequent to 22.9.2007, she does not know anything about the said file. That she came to know that AO endorsed the said file to AMRI on 12.10.2007, but the same was handed over to AMRI on 16.10.2007. AO signed on behalf of Dy. Tahsildar also while handing over the file to AMRI. A.O. being a Senior Assistant was looking after issue of pass books and succession files.

31. P.W.6 is one Mr. Pandurangam, who worked as AMRI in Tahsil Office, Rajendranagar from 2004-2009. He deposed that A.O. worked as Senior Assisant in their office. He knew P.Ws.4 and 5 who worked in their office. The application dated 5.9.2007 was received in their office and MRO endorsed it to inward section. The inward section entered the said application on 16.9.2009, in inward register as in Ex.P-5. It was sent to P.W.5 on 22.9.2007. On the same day, it was handed over to AO by P.W.5. That by then, A.O. was looking after succession files and issue of pattedar pass books. The file was endorsed by A.O. on 12.10.2007 on behalf of

Deputy Tahsildar, and handed over to him on 16.10.2007 for enquiry. He identified the endorsement made by AO on Ex.P-2. On 17.10.2007 he was in field work and he was called by DSP ACB to the office. DSP questioned him about the file and about his receiving the same from AO. He produced ExP-2 with annexures before DSP. His version was recorded by mediator during the of post trap proceedings.

32. P.W.7 worked as Tahsildar, Rajendranagar Mandal Office from 18.2007 till the end of 28.2.2008. He deposed about the procedure of filing application for issuance of pass books and he further deposed in the same lines as that of P.Ws.4 to 6.

33. P.W.8 was the Section Officer in the Vigilance –VII Department, A.P. Secretariat at the relevant time and he deposed about the issuance of G.O.Ms.No.1101 dated 11.9.2008 by Sri G.Sudhir, who was the then Principal Secretary for Revenue. G.O.Ms.No.1101 is the sanction order for prosecuting AO.

34. P.W.9 worked as DSP ACB at the relevant time and he deposed about the filing of FIR and the laying of trap and recording of Section 161 Cr.P.C. statements.

35. P.W.10 is the investigating officer, who recorded the Section 161 Cr.P.C. statements of P.Ws.4, 5 and 6.

36. P.W.11 is the second investigating officer and P.W.12 filed the charge sheet.

37. D.W.1 is the AO, who worked as Senior Assistant in Tahsildar office, Rajendranagar mandal. He deposed that he joined in the said office in the month of 7/07. He was incharge of ROR, succession, court cases and other miscellaneous works. From the day he joined in the office, he had strained relationship with the then MRO Balraju. During the month of 8/07, the subjects of ROR and succession

were deleted from him, and he was left with court cases and miscellaneous works. Though those two subjects were removed from him, still the then MRO - Balraju was insisting him to attend specific files of those two subjects, if he desired. That he refused to attend those files, becaue, those two subjects does not come under his job chart as per the office memo No.3/2007 dated 31.7.2007, which is marked as Ex.D-1.

38. That on 12.10.2007 in the afternoon, the inward clerk P.W.6 has given some papers to him, which were asked to be handed over to M.R.O. by him. On that day as he was not doing well, and was suffering with palpitation and with high BP, he wanted to leave the office immediately. He simply forwarded those papers to P.W.6 to process the papers, as he was in-charge of the concerned subjects as per Ex.D-1. That thereafter, he left the office immediately without informing anybody. While he was on his way to home, MRO - Baslraj, called him on his mobile, shouted at him for not attending the official work, as per his direction, and also for leaving the office abruptly without taking permission from him. That he informed that his health was very bad and for that reason, he left the office without informing anybody.

39. That on 16.10.2007, he informed Balraj MRO that he is going to extend the leave, since he has not recovered from illness. MRO Balraj asked him to submit an official leave letter along with medical certificate, on next working day. On 17.10.2007, he went to the office of Tahsildar, Rajendranagar in the after noon at 12.30 to submit his leave letter along with MC. At that time, nobody was in the office, including the MRO - Balraj. He waited for MRO - Balraj, meanwhile one person approached him, introduced himself, as Ramreddy, that he shook hands with him, and had a talk for 10 minutes. He told him that he is close friend of MRO, and he came to the office to handover the amount to MRO for repair of office jeep, as it was in the bad condition. He told him that MRO is expected any moment and he returned back the money to Ramreddy, with instructions to handover the same to MRO personally. After that Ramreddy left the office along with another person. Then

suddenly some persons came into his office and they started searching for one person by name Francies. Looking at their anxiety, he introduced himself to them as Francis working as Senior Assisant in the office. They caught him and searched his person. They could not find any money in his person. From his pant secret pocket, he took his personal amount of Rs.520/-, which he kept it for emergency purpose and handed over that money to ACB authorities, and they took that amount. MRO Balraj was very much available in the office premises at the time along with ACB authorites. That his casual leave register was in the custody of MRO. That ACB authorities recorded his statement. He stated that he was innocent, and at the instance of MRO, Balraj, this case was foisted against him.

40. Now from the above evidence, it is to be examined whether the prosecution could prove the guilt of the accused for the offences with which he is charged, beyond reasonable doubt.

41. There is no dispute that the accused, who worked as Senior Assistant at the relevant time in the office of the Tahsildar, Rajender Nagar Mandal of Ranga Reddy from 18.6.2007 to 17.10.2007, falls within the meaning of 'public servant' as defined under Section 2(c) of the Act.

42. There is also no dispute that P.W.2 – Sk. Ghouse, who is the GPA holder, filed application on 05-09-2007 under Section 6-A of the ROR Act along with necessary annexures, which was marked Ex.P-2 seeking for issuance of pattedar pass book for the subject land, for which he is stated to have executed agreement of sale in favour of P.W.1. After receipt of Ex.P-2, it was entered in the inward register, which was allotted No.B/1277/2007 on 16.9.2007 and the said entry was marked as Ex.P-5, and on 22.09.2007 it was sent to P.W.5 Smt. Sarada, MRI, and it is found that A.O., who was working as Senior Assistant in the Tahsil Office, was looking after the succession and issuance of pass books work, due to heavy work load, and

P.W.5, after obtaining the acknowledgment from A.O. in her register, handed over the same to A.O. on the same date i.e., 22.09.2007.

43. Though the contention of A.O. is that as per job chart i.e., office memo No.3/2007 dated 31.7.2007, he was not allotted the job of looking into succession and issuance of pass books, it has come on record based on the evidence of P.Ws.4, 5, 6 and 7, that A.O. was directed orally to attend the duties of succession and issuance of pass books.

44. Further, from the evidence of P.Ws.4 to 7 it is proved that A.O. endorsed the file on 22.09.2007 and handed over to P.W.6 on 16.10.2007. And as per the evidence on record it is the A.O., who has to issue pattedar pass books as sought for by P.W.2. Therefore it is clear that official favour i.e., issuance of pattedar pass books is pending with AO on 16.10.2007 and also on 17.10.2007, on which date, trap was laid. The finding of the Trial Court in this regard, warrants no interference.

45. Now the allegation against A.O. is that on 16.10.2007 P.Ws.1 and 2 met A.O. for issuance of pass book in the name of mother of P.W.2, and for that A.O. demanded P.W.1 Rs.20,000/- towards bribe and that when he expressed inability, he advised to pay 1st instalment of Rs.10,000/- on 17.10.2007 as an advance and pay the balance amount of Rs.10,000/- after issuing the pass books. As P.W.1 was not willing to pay the bride, he approached the ACB authorities and lodged a written report on 16.10.2007 at 4.00 p.m. and it was registered as a case in Cr.No.33/ACB-CR/2007 under Section 7 of the Act, which was marked as Ex.P-1.

46. The trap was laid on 17.10.2007. P.W.1 deposed that the pre-trap proceedings commenced at 10.00 a.m. and concluded at 11.30 a.m. That thereafter he along with P.W.2 went to the office of A.O. on his motor cycle and rest of the trap party followed them in a jeep. They stopped their vehicles near the office of MRO

around 1.30 p.m. There they got down from the vehicles and that DSP reiterated the earlier instructions to them and after that they both went into the office of AO. The trap party took vantage positions. He parked his motor cycle within the compound of MRO office and they both went into the room of AO. ***That AO questioned him whether he brought the amount,*** then he replied in the positive and handed over the amount to AO, then the AO received the same and kept the amount in his purse. On repeating the question, by Special P.P., he again stated that A.O. received the amount in his right hand and kept the amount in his pant pocket. After that, A.O. informed them that he will attend to their work and complete the work. That he went out along with Ghouse and gave the pre-arranged signal. That by receiving his signal the trap party rushed into the office of AO., then himself and P.W.2 went out and were waiting there. Half an hour, thereafter, he was called by DSP, and was questioned about the events that have taken place between him and AO, and that he narrated everything, and the same was incorporated in the post trap proceedings

47. P.W.2 also deposed in the same lines as that of P.W.1. P.W.3 is the mediator to the pre and post trap proceedings. P.W.9 is the DSP ACB. As per his evidence, at 2.00 p.m., when they received the pre arranged signal from P.W.1, they rushed into the office of AO., then P.W.1 informed them that A.O. was sitting in his B seat. P.W.9 further deposed that he introduced himself and mediators to the A.O. as trap party. He stated that he got prepared fresh sodium carbonate solution and instructed AO to rince his both hands fingers separately in two tumblers, and when AO did so, the solution in which AO rinsed his right hand fingers, turned into pink colour, whereas the solution in which AO rinsed his left hand fingers, remained colourless. Then he questioned AO about the tainted amount, then he picked out the amount from his right pant pocket and produced before them. The mediators verified those currency notes with the currency note numbers already noted in Ex.P-4 and found tallied. After that the currency notes were seized, and it was marked as

M.O.5. That he got prepared fresh SC solution, and the inner linings of pant pocket of AO was subjected to SC test, and it turned into pink. The RS. Was transferred into bottles, sealed and signed by him and mediators. The seized pant of AO was marked as Ex.A-7.

48. Thus from the above it could be seen that P.W.9 seized the money alleged to have been given as bribe by P.W.1 to A.O.

49. At this stage it is necessary to consider Sections 7 and 13 of the Act, which deals with public servant taking illegal gratification in respect of an official act. And if the same is proved, it amounts to public servant committing criminal misconduct and liable for punishment prescribed under the provisions. The said provisions are extracted as under for ready reference:

> ***7. Public servant taking gratification other than legal remuneration in respect of an official act.—***Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than 1 [three years] but which may extend to 2 [seven years] and shall also be liable to fine.
>
> Explanations.—(a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, be may be guilty of cheating, but he is not guilty of the offence defined in this section.
>
> (b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.
>
> (c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.
>
> (d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than 3 [four years] but which may extend to 4 [ten years] and shall also be liable to fine.

50. Thus from a reading of the above provisions, it could be seen that in order to prove charges under Sections 7 and 13 of the Act, prosecution has to establish by proper proof, the demand and acceptance of illegal gratification and till the same is proved, accused should be considered to be innocent.

51. The Apex Court in the decision reported in P.SATYANARAYANA MURTHY v. STATE OF A.P.[25], while relying on its earlier decision in B.JAYARAJ v. STATE OF A.P. (2 supra), held that mere possession and recovery of currency notes from an accused without proof of demand, would not establish an offence under Section 7 as well as Section 13(10(d)(i) and (ii) of the Act. It was held that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable things or pecuniary advantage, cannot be held to be proved. That, not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the act, it was held as well qua Section 20 of the Act that any presumption thereunder would arise only on such proof of demand. The Apex Court in the said decision, considering its earlier decisions, held as under:

> "23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance, thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."

52. Thus from a reading of the above provisions under Sections 7 and 13 of the Act, and the law laid down by Apex Court in the above cited judgments (25 supra), it is clear that mere acceptance of any amount allegedly by way of illegal gratification, or recovery thereof, without the proof of demand, would not by itself be sufficient to bring home the charges under these sections of the Act. It was further held that presumption available under Section 20 of the Act, would arise only on such proof of demand.

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53. So from the above it is required to be examined whether the prosecution could prove the demand for illegal gratification and unless such demand is proved, mere recovery of the amount from the person of the accused would not entail his conviction under Sections 7 or 13 of the Act.

54. P.W.1 is the de facto complainant and the trap was conducted on 17.10.2007. Therefore, on the said date, the prosecution has to prove that A.O. has made 'demand for illegal gratification' and unless the same is proved, recovery of the amount is of no avail. P.W.1 in his evidence deposed that he along with P.W.2 went into the room of A.O. A.O. questioned him whether he brought the amount. He replied in positive and handed over the amount to A.O. P.W.2 also deposed in the same lines as that of P.W.1.

55. Now whether the A.O. asking the de facto complainant whether he has brought the amount, would amount to demand of illegal gratification, has to be examined. In this regard, it is necessary to look into the facts and the law laid down by Apex Court in the decision reported in *MUKHTIAR SINGH v. STATE OF PUNJAB* (1 supra), relied on by the learned counsel for the appellant / A.O. The facts of the said case disclose that accused therein served as SHO of Police Station, and he was entrusted the investigation of case launched against the de facto complainant by his wife under Sections 406 and 498-A IPC. De facto complainant therein alleged that accused, in order to favour him in investigation, demanded and received bride of Rs.3,000/- from him and in the process, and at the fag end of probe, demanded a further amount of Rs.2,000/- as illegal gratification, to file a final report of exoneration. It is also alleged that the accused therein threatened to harass the de facto complainant, if he did not submit to his demand. In these circumstances, the complainant approached DSP, vigilance and lodged complaint disclosing the above facts. Trap to intercept accused was laid and trap team was set up including P.Ws.2 and 3. Currency notes furnished by de facto complainant were smeared with

phenolphthalein powder and handed over to the de facto complainant to be delivered to accused on demand. That on the appointed day, trap team visited police station, where accused was serving, whereupon complainant and P.W.2 (shadow witness) met accused in his room. Thereafter, it was alleged that the accused having enquired as to whether money was brought, complainant handed over the prepared currency notes to former, who kept in a cardboard box placed on his table. On signal of shadow witness, other members of trap team waiting outside, entered the room, confronted accused with demand and receipt of currency notes, whereupon, he took out the same from cardboard box and handed over those to trap team. After completion of formalities, prosecution against accused was lodged. The conviction imposed by the Trial Court in these set of facts and circumstances, was upheld by High Court.

56. On further appeal to Apex Court, on overall appreciating of evidence in the context of elucidation of law pertaining to proof of ingredients of Sections 7 and 13 of the Act, it was held that prosecution failed to prove charges leveled against accused beyond all reasonable doubt. It was held that courts below failed to analyse factual and legal aspects as involved in their true perspectives and resultantly determinations made are not sustainable. Accordingly, the Apex Court has set aside the conviction and sentence imposed by the trial court, which was confirmed by High Court.

57. The relevant portion of the said judgment, is extracted as under for better appreciation:

> 24. It would thus be patent from the materials on record that the evidence with regard to the demand of illegal gratification either of Rs.3,000/- which had been paid or of Rs.2,000/- as made on the day of trap operation is wholly inadequate to comply with the pre-requisites to constitute the ingredients of the offence with which the original accused had been charged. Not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather omnibus, vague and sweeping, even the person in whose presence Rs.3,000/- at the first instance is alleged to have been paid i.e. Santosh Singh

> Lamberdar, has neither been produced in the investigation nor at the trial. In other words, the bald allegation of the complainant with regard to the demand and payment of Rs.3,000/- as well as the demand of Rs.2,000/- has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. ***Viewed in this perspective, the statement of complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused.*** Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act.
>
> (emphasis added)

58. In the above case before the Apex Court, the facts disclose that on the date of trap, the accused officer who is entrusted with the investigation of the case filed by the wife of the complainant and who is required to file final report against the complainant, has enquired with the complainant where money had been brought or not, then the complainant therein handed over Rs.2,000/- . The Apex Court by considering such enquiry made by the accused, held that it can by no means constitute demand as enjoined in law as an ingredient of the offence leveled against the original accused.

59. The above facts are akin to the facts of the present case. In the present case also, on the date of trap, the A.O. questioned the de facto complainant whether he brought the amount. When this is considered in the light of the above facts and circumstances of the case before the Apex Court (1 supra), which are extracted above, it can be held that such enquiry by the A.O., ***whether the amount was brought***, cannot constitute demand as envisaged under Section 7 of the Act, and thus the accused can be extended the benefit of doubt.

60. When the prosecution failed to prove beyond all reasonable doubt, that accused made demand by way of illegal gratification, mere recovery of the amount *ipso facto* would thus be not sufficient to bring home the charge under Sections 7 and

13 of the Act, and in the absence of proof of demand, the presumption available under Section 20 of the Act would not be available to the prosecution.

61. In view of the above judgment of the Apex Court, which is squarely applicable to the facts of the present case, the other contentions raised by the learned counsel, and the judgments referred to by both the parties, need not be gone into.

62. The Trial Court has not considered the above issue in proper perspective, while finding the accused guilty for the offences with which he is charged.

63. In the result, the accused is entitled for benefit of doubt, and he is acquitted of the charges under Sections 7 and 13(1)(d) read with Section 13(2) of the Act, and the conviction and sentence recorded by the Trial Court in the impugned judgment is set aside and the appeal is accordingly allowed.

64. The bail bonds executed by the accused stands cancelled and the M.O. 5 shall be returned to P.W.1 on proper identification and other M.Os. shall be destroyed after appeal period is over. Fine, if paid, shall be refunded.

65. Interlocutory Applications pending, if any, shall stand closed.

M.G.PRIYADARSINI,J

DATE:11 --11--2022

Note: L.R. copy to be marked.

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