

THE HONOURABLE Dr. JUSTICE G. RADHA RANI

CRIMINAL APPEAL No.337 OF 2013

JUDGMENT:

This Criminal Appeal is filed by the sole appellant aggrieved by the judgment dated 04.04.2013 passed in C.C. No.13 of 2008 on the file of the I Additional Special Judge for CBI Cases, Hyderabad in convicting the appellant for the offences under Sections 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 (for short 'PC Act') and sentencing him to undergo rigorous imprisonment for two years and fine of Rs.5,000/-, in default of payment of fine to undergo simple imprisonment for a period of one year separately for each charge, but directed to run the sentences concurrently.

2. The accused officer was working as a Social Security Assistant in Employees Provident Fund Office, Sub-Regional Office, Nizamabad. The prosecution case, in brief as per the charge sheet filed by the Inspector of Police, CBI/SPE, Hyderabad, was that on 26.12.2007, the complainant G. Bhaskar lodged a written complaint to the Superintendent of Police, CBI, Hyderabad against the accused officer regarding demand of bribe of Rs.4,000/- on 17.12.2007 and on

24.12.2007 when the complainant met the accused officer in his office, the latter demanded to pay the first instalment of Rs.2,000/- on 26.12.2007. The Inspector of Police, CBI, Hyderabad, Sri K. Venkateswarlu, who was camping at Nizamabad sent the said complaint to the Head Office at Hyderabad. Sri V. Srikanth Gowd, Inspector, after obtaining orders of S.P., CBI, Hyderabad, registered a case. The Inspector of Police Sri K. Venkateswarlu was authorized to conduct the investigation. On 26.12.2007, the CBI team lead by Sri K. Venkateswarlu and two witnesses Sri S. Surender and Sri N.S. Sharma and the complainant assembled at the Guest House, Nizamabad. The complainant produced 12 currency notes, in which two notes were of Rs.500/- denomination and ten notes were of Rs.100/- denomination. The numbers of those notes were recorded. The CBI officials explained the significance of phenolphthalein test to the witnesses and the complainant and kept the currency notes tainted with phenolphthalein powder in the left side pant pocket of the complainant after recording the proceedings in the first mediators report.

3. Thereafter, the trap team, witnesses and the complainant proceeded to Sri Balaji Mess, Nizamabad, where the complainant was

asked to wait. The complainant and the accompanying witness Sri Surender waited near Balaji Mess. The accused came there and took away the complainant on his scooter bearing No.AP 25 V 3416. In the meantime, the complainant tried to contact the CBI team through his mobile phone, on which, the accused got suspicion and wanted to see the mobile for which the complainant refused to give the phone. On this, the accused got annoyed and left the complainant asking him to hand over the money to one Madhu, resident of Siddipet. Thereafter, the complainant contacted the said Madhu, who expressed his inability to come there. The same was intimated to the accused by the complainant on his mobile phone. In turn, the accused asked him to visit his office. The complainant and the accompanying witness waited accordingly. After some time, the accused came there and picked up the complainant on his scooter. Both of them reached Manohar Hotel situated on the main road, Nizamabad. There, the accused accepted the amount of Rs.2,000/- from the complainant with his left hand, changed it to his right hand and kept the amount in his back side right pocket of his pant. On receipt of signal from the complainant, the CBI team apprehended the accused. The trap laying officer Sri K. Venkateswarlu collected incriminating evidence in the

presence of the independent witnesses i.e. the right hand wash, left hand wash, pant back side right pocket wash, pant of the accused officer and the bribe amount of Rs.2,000/- recovered from the accused officer and sealed all the seized items and labelled them. On tallying the numbers of the currency notes seized with the numbers recorded in the first mediator's report, he drafted the second mediator's report. The Trap Laying Officer collected the concerned file from the office of the SRO, EPFO, Nizamabad and recorded the statements of Manohar, owner of the Hotel, where the trap took place and the other witnesses of the office of the SRO, EPFO, Nizamabad. He also recorded the statements of the other witnesses and sent the seized items to the Central Forensic Science Laboratory (CFSL). After receiving the report confirming the presence of the phenolphthalein in all the exhibits seized at the time of post trap proceedings and after obtaining sanction for prosecuting the accused officer from the Regional Provident Fund Commissioner – I, Hyderabad, the authority competent to remove the accused, he filed charge sheet against the accused for the offences under Sections 7 and 13 (2) read with 13 (1) (d) of the PC Act.

4. The case was taken cognizance by the Special Judge for CBI Cases, Hyderabad and was transferred to the I Additional Special Judge for CBI Cases, Hyderabad for disposal in accordance with law. Charges were framed against the accused as under:

“That you the accused while working as Social Security Assistant, Employee Provident Fund Office, Sub Regional Office, Nizamabad, being a public servant, on 24.12.2007 by abusing your official position demanded bribe of Rs.4000/- and accepted illegal gratification of Rs.2,000/- on 26.12.2007 near Manohar Hotel, as first installment from Sri G.Bhaskar (complainant), for arranging of pension in favour of children of his deceased sister-in-law who worked as beedi roller in Desai Brothers Limited, a Beedi factory, as a motive and thereby committed an offence punishable under Section 7 of P.C.Act, 1988 and within my cognizance.

Lastly that you while working as Social Security Assistant, Employee Provident Fund Office, Sub Regional Office, Nizamabad, on 26.12.2007, being a public servant, abused your official position as public servant and committed grave criminal misconduct by demanding Rs.4,000/- and accepting illegal gratification of Rs.2,000/- as first installment from Sri G.Bhaskar and thereby committed the offence of criminal misconduct punishable under Section 13(2) read with Section 13(1)(d) of P.C.Act, 1988 and within the cognizance of this Court.”

5. During the course of trial, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P.31 and MOs.1 to 6 on its behalf. No defence evidence was adduced by the accused officer and no documents were marked on his behalf.

6. On appreciation of the evidence on record, the trial court found the accused officer guilty for both the charges and sentenced

him as stated above. Aggrieved by the said judgment, the accused officer preferred this appeal contending that the Special Judge ought to have seen that there was no iota of evidence led by the prosecution to establish that the accused was an officer who had the power of sanctioning pension. There was no evidence on record to prove that the accused officer demanded illegal gratification and accepted part payment of Rs.2,000/- for settlement of pension file. The Special Judge ought not to have presumed that the pension claim was not settled for a period of three years anticipating bribe, when admittedly, the concerned pension file was with the Vigilance Department. The Special Court erred in holding that the accused officer made a demand for illegal gratification for settlement of pension claim on presumptions and assumptions. The Special Court ought to have seen that Exs.P6 and P7, the first mediator's report and the second mediator's report, prepared by the trap laying officer would not have probative value and they were not substantive pieces of evidence and no reliance could be placed on them. The learned Judge had taken an erroneous view that PWs.2 and 4 would not subscribe their signatures blindly without knowing the contents of Ex.P7 which was against their evidence before the court. The court failed to see that there was

no mention in Ex.P1 - complaint with regard to demand of bribe by the accused officer. The court failed to consider the material contradictions and serious admissions which were fatal to the case of the prosecution. The learned Judge failed to see that the prosecution failed to produce the electronic micro recorder, which was fatal to the case of the prosecution and an adverse inference could be drawn in favour of the accused officer. No direct witness was examined by the prosecution to prove that the accused had accepted or agreed to accept the illegal gratification to avail the presumption under Section 20 (3) of the PC Act. The learned Judge ought not to have convicted the accused officer basing on piece meal evidence and ought to have given the benefit of doubt to the accused officer and prayed to set aside the judgment dated 04.04.2013 passed in C.C. No.13 of 2008 by the I Additional Special Judge for CBI Cases, Hyderabad.

7. Heard Sri T. Niranjan Reddy, learned Senior Counsel representing Sri V.V. Prabhakar Rao, learned counsel for the appellant on record and Sri N. Nagender, learned Special Public Prosecutor for CBI.

8. The learned Senior Counsel for the appellant submitted that the prosecution failed to prove that any official favour was pending with the accused officer and there was any demand by the accused officer. The complainant, who was examined as PW.1, turned hostile. There was no reference of Madhu, who was examined as PW.3 in Ex.P.1. PW.2 was not a witness to thrust the money into the back pant pocket of the accused officer. What transpired between PW.1 and the accused officer was not stated by PW.2. The mediator - PW.4 also turned hostile. The call data between the accused officer and PW.1 was not produced. PW.6 stated that the file was allotted to Seat No.3, whereas the accused officer was dealing with Seat No.1. There were contradictions in the evidence of PW.2 and PW.13 with regard to the evidence of accused testing positive. No preliminary enquiry was made with regard to the antecedents of the accused officer or PW.1 prior to registering the case. The sanction order was passed by PW.4 without application of mind and without considering that no official favour was pending with the accused officer. As such, the same was vitiated. PW.9 stated that he was dealing with the file. The judgment of the trial court was based on assumptions and presumptions, without

proper appreciation of evidence and prayed to acquit the accused officer by setting aside the impugned judgment.

9. The learned Special Public Prosecutor for CBI, on the other hand, supported the judgment of the trial court contending that the conduct of the accused officer in leaving the office during working hours and picking up the complainant on his scooter at odd times and taking him to hotels and chit chatting with him inside the hotel and coming out of the hotel with money, would clearly prove the case of the prosecution. The defence of the accused officer was that the amount was thrust into his pocket, but if really the amount was thrust, the accused officer could have made a hue and cry and the same would have been witnessed by PW.5. PW.5 had not stated that any hue and cry was made by the accused. If the amount was thrust, the hands of the accused officer would not have tested positive. But, both the hands of the accused tested positive. No complaint was given by the accused officer to S.P., CBI, against the CBI officials stating that the amount was thrust by the complainant at the instance of the CBI officials. The accused officer failed to take such defence immediately when he was produced before the Judge at

the time of his remand. The circumstances coupled with the conduct of the accused would prove the case against the accused officer, the mediator's reports were contemporaneous records. The witnesses had not stated that they were forced to sign on the said documents. The oral evidence could not negate the written documents. The complainant might not know that official favour was not pending with the accused officer. Only the accused officer might know the said fact. As such, non-pendency of the official favour before the accused officer was not a material to throw out the case against the accused officer. The evidence of the trap laying officer would disclose that he verified about the antecedents of the accused officer before laying trap. Hence, no interference was required to set aside the judgment of the trial court and prayed to dismiss the appeal by confirming the judgment of the trial court and relied upon the following judgments of the Hon'ble Supreme Court:

- 1. Hazari Lal v. The State (Delhi Admn.)¹,**
- 2. State of U.P. v. Dr. G.K. Ghosh²,**
- 3. Hari & Anr. v. State of Uttar Pradesh³.**

¹ (1974) 1 Cri.L.T. 233

² 1984 AIR 1453

³ Crl.A. No.186 of 2018, dated 26.11.2021

10. The learned Senior Counsel, in reply, would contend that the name of PW.5 would not appear in Ex.P7. The same was introduced by the Investigating Officer at a subsequent stage. What the witness had not stated before the court could not be taken into aid. Non informing the SP or the Magistrate could not be stated as a circumstance supporting the prosecution. No action for perjury was taken against the complainant. Ex.P1 would not prevail over the oral evidence of PW.1 and relied upon the following judgments of the Hon'ble Apex Court:

1. C.M. Girish Babu V CBI, Cochin, High Court of Kerala⁴

2. B. Jayaraj v State of Andhra Pradesh⁵

3. P. Satyanarayana Murthy v District Inspector of Police, State of Andhra Pradesh and Another⁶

4. V. Sejappa v State by Police Inspector Lokayukta, Chitradurga⁷

5. K. Shanthamma v State of Telangana⁸

6. Mohd. Iqbal Ahmed v State of Andhra Pradesh⁹

7. Suraj Mal v State (Delhi Administration)¹⁰

⁴ (2009) 3 SCC 779

⁵ (2014) 13 SCC 55

⁶ (2015) 10 SCC 152

⁷ (2016) 12 SCC 150

⁸ (2022) 4 SCC 574

⁹ (1979) 4 SCC 172

**8. T.K. Ramesh Kumar v State through Police
Inspector, Bangalore¹¹.**

11. On considering the rival contentions, the following points arise for consideration:

- 1. Whether the prosecution proved the guilt of the accused officer for the offences under Sections 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988?*
- 2. Whether the judgment of the trial court is sustainable factually and legally?*

12. **POINT No.1:**

As seen from the record, as per the complaint – Ex.P1 given by the complainant – PW.1, his elder brother Srinivas died in the year 2002 and his wife Smt. Jamuna (sister-in-law of PW.1) died in the year 2003. They were having three children, by name, G. Balakrishna, G. Vijaya and G.Priyanka. The complainant was appointed as a guardian to the said children by the competent court of Medak District. Smt. Jamuna worked as a Beedi Roller in Desai

¹⁰ (1979) 4 SCC 725

¹¹ (2015) 15 SCC 629

Brothers Beedi Company for a period of 14 years. The company provided provident fund and gratuity in the year 2005. After the death of Smt. Jamuna, the Provident Fund and Insurance Amounts were sanctioned by the Provident Fund Officer, Nizamabad. But, no pension was provided to the children of Smt. Jamuna. As such, the complainant gave an application to grant pension in favour of the children of Smt. Jamuna in the Nizamabad Provident Fund Office in the year 2005. On his enquiry, he was informed that the pension papers were missing. As such, he filed a fresh application in September, 2006. When he made enquiries on 07.09.2007 and on 15.09.2007, he came to know that the application was not there in the office at Nizamabad. On that, he met the accused officer and he asked him to wait and after some time, came to him along with his application and told him that if the pension had to be granted, he would need to pay Rs.5,000/- as bribe and directed him to take receipt after submitting the file in the office. As per his instructions, the complainant took the receipt after submitting the file in the office. Again on 24.12.2007 when he met the accused officer, the accused officer demanded bribe of Rs.5,000/- to grant the pension amount. When he expressed his inability to give that amount, the accused

officer reduced the amount to Rs.4,000/- and asked him to give Rs.2,000/- as first instalment on 26.12.2007 and stated to pay the balance amount of Rs.2,000/- after granting the pension and asked him to make a call on his cell number and that he would take the said amount outside the office. The complainant stated that as he was not willing to give the bribe as demanded by the accused, he lodged the complaint.

13. PW.1 in his evidence stated that one Madhu, a Union Leader, introduced the accused officer. He got enquired through the said Madhu in the year 2007 about the pension file and Madhu told him to go to PF office on 17.12.2007. On 17.12.2007, he went to the Provident Fund Office, Nizamabad along with Madhu. Said Madhu called the accused officer from the PF office through phone. The accused officer came out from the PF office. Madhu questioned the accused officer about the pension for the children of the complainant's sister in law. The accused officer stated that he would try to get pension but, for that an amount of Rs.5,000/- was required. Madhu stated the accused officer that Rs.4,000/- would be provided to him to clear the file. Madhu and accused officer went outside and brought

the PF file pertaining to the children of his sister in law. Then, the accused officer left. Madhu informed him to pay Rs.2,000/- in advance and to pay the balance of Rs.2,000/- after completing the work. On 24.12.2007, the complainant enquired with the accused officer over phone as to whether work was completed or not. The accused officer asked him to meet him after two days through Madhu. He informed the said fact to Madhu and asked him to accompany him on 26.12.2007. But, Madhu asked him to go alone.

14. The evidence of PW.1 was recorded in piecemeal. The chief examination itself was recorded on several dates i.e. on 08.06.2009, 12.08.2009, 30.09.2009 and 09.11.2009. On 09.11.2009 the witness was declared as hostile and was cross-examined by the Public Prosecutor and also by the accused officer on the said date. He was also recalled as per orders in Crl.M.P. No.31 of 2013 and was subjected to further cross examination by the Public Prosecutor on 15.03.2013. He was also cross examined by the defence counsel for the accused officer on the same day.

15. In his evidence recorded on 30.09.2009 in chief, PW.1 stated that the accused officer had not advised him to meet him again,

he himself informed to the accused officer that he would meet him on 26.12.2007. On 25.12.2007, he telephoned to S.P., CBI and lodged a complaint through phone. He advised him to meet his officials in Railway Station at 9.00 AM on 26.12.2007. He found the Inspector and two Constables and two witnesses at RPF office. He orally complained before the Inspector, CBI about demand of bribe by the accused officer. On the instructions of the Inspector of CBI, he provided written complaint. On his narration, the Inspector scribed the complaint. The witnesses also signed on Ex.P.1. The Inspector enquired with him whether he brought the amount or not. He answered that he had brought the amount and provided Rs.2,000/- in the denomination of Rs.500/- notes (2 nos.) and Rs.100/- notes (10 nos.). The Officer applied powder to the currency notes and kept the said amount in his shirt pocket. A digital voice recorder was also kept in his right side pant pocket with instructions as to how to operate the same and asked him to record the conversation between him and the accused officer.

16. He along with the complainant and the accompanying witness, by name, Surender, sat in front of Sri Balaji Mess,

Nizamabad Bus stand. The remaining CBI team stood at some distance. He telephoned to the accused officer 10 minutes thereafter. The accused officer came there on scooter and asked him to follow him on his scooter and took him on his scooter towards railway station side to a gas office and asked him to wait there and returned after five minutes and took him on his scooter to Sri Balaji Mess. When he was travelling with the accused officer on his scooter, he received a call from the Inspector, CBI. He informed the Inspector that they were coming to Sri Balaji Mess. On that, the accused officer enquired with him from whom he received the call and asked him to show his cell phone. When he refused to hand over his cell phone he dropped him at Sri Balaji Mess and left. On enquiry by the Inspector, he narrated as to what happened. Then the Inspector asked him to call the accused officer once again. When he telephoned to the accused officer, he had not lifted the phone. On the instructions of the Inspector, CBI, he telephoned Madhu and asked to come there. Madhu informed that he was at Siddipet and he was not in a position to come to Sri Balaji Mess. Then he asked Madhu to contact the accused officer and inform him to come and collect the amount. Madhu informed him that if the accused officer was not taking the amount, asked him to come there so

that he would pay the amount. The complainant requested Madhu once again to contact the accused officer for taking the amount. On instructions by Madhu, he contacted the accused officer. The accused officer asked him to come to his office and that he would not come to Sri Balaji Mess. Once again they all went in a jeep to Provident Fund Office, Nizamabad. He telephoned to the accused officer at about 3.00 PM. After reaching the office, the accused officer came out from his office and took him on his scooter to a chowrastha situated half a kilometre away from the office. They sat in a Tea hotel. The accused officer telephoned Madhu from his mobile and talked with Madhu. He became serious on Madhu and stated that if he wanted, he could take the amount and why he sent the amount to him. They both had tea. The accused officer got up from his seat and tried to come out from the hotel. Then the Inspector, CBI caught hold the accused officer at the gate of that hotel. He informed the Inspector, who caught hold the accused officer, that the accused officer had not taken the amount. Then the Inspector, CBI, asked him to keep the tainted amount in the back pant pocket of the accused officer. Accordingly, he kept the tainted amount in the back pant pocket of the accused officer. Then the accused officer was taken inside the hotel. Sri

Surender, witness came at that time. As per the instructions of the Inspector, CBI, the amount was picked up from the pant pocket of the accused officer through the witness and his hands were tested. After providing a lungi to the accused officer, his back pant pocket was also tested. As public gathered in the hotel, the accused officer was shifted to radio relay station, Nizamabad. The Inspector prepared a report as to what all happened. He along with the witness signed on the said report. The proceedings were completed by 8.00 PM. From there, they dispersed. He further stated that he could not switch on the digital voice recorder as he forgot to operate it. The Inspector collected the digital voice recorder from him.

17. In his cross-examination on 09.11.2009, PW.1 admitted that he received Ex.P.17 letter dated 13.09.2007 addressed from the Regional Provident Fund Office, Nizamabad asking to rectify the defects in his earlier application and to resubmit them. After receiving Ex.P.17 from the Provident Fund officer, he did not approach the PF office upto December 2007. He stated that he did not know whether the accused officer was not handling the PF files of three children of his elder brother. He also admitted that the accused officer never

demanded bribe amount from him for passing the PF applications of the children of his elder brother. In his further cross-examination on 15.03.2013, PW.1 stated that he gave pension papers in the PF office in the year 2005, again in the year 2006 and when the pension papers were not settled, he gave a complaint to the Vigilance Department of PF office in the year 2007, even then when the pension papers were not settled, he approached Madhu the Union Leader, who advised him to approach the CBI officials for settlement of pension and so he approached the CBI. He further stated that till the date of trap, he had not approached nor seen the accused at any time including when the Insurance and PF claims were settled.

18. Thus, PW.1 completely turned hostile and stated that there was no demand by the accused officer and the amount was not received by him and he thrust the amount in the back pant pocket of the accused officer at the instance of the CBI Inspector. The complaint marked under Ex.P1 would not show the involvement of Madhu. But, PW.1 in his evidence stated that he contacted the accused officer through Madhu and made all the negotiations through

Madhu, which is a development in his evidence and a material omission.

19. PW.2 is an independent witness, who was directed by the Trap Laying Officer to accompany the complainant and who was a signatory to the first and second mediators' reports as well as the complaint. He was a Senior Clerk in the South Central Railway at Secunderabad. He stated that on 26.12.2007, on the instructions of his higher official, he proceeded to the Railway Officers' Rest House at Secunderabad at about 11.00 AM or 11.30 AM. By the time he went to the Railway Officers' Rest House, Secunderabad he found the complainant – PW.1, CBI Inspector, the other witness Sri Sharma and others. He was informed that the accused officer demanded Rs.2,000/- from PW.1 and they intended to lay a trap. He stated that he had gone through the complaint filed by PW.1. A demonstration was conducted. PW.1 provided Rs.2,000/- to the Inspector in the denomination of Rs.100/- notes, 10 in number, and Rs.500/- notes, 2 in number. PW.1 was instructed to pay the bribe amount only when the accused officer demanded. A voice recorder was also provided to PW.1. PW.1 was instructed to switch on the voice recorder at the time

of paying the bribe amount to the accused officer. He stated that he along with Sri Sharma signed on the complaint presented by PW.1. The numbers of the currency notes were recorded in Ex.P.6 – first mediators’ report proceedings. Ex.P.6 was completed by 12.00 Noon. He was instructed to accompany PW.1. He, PW.1 and CBI team proceeded to Balaji Hotel, APSRTC, Nizamabd at 12.10 PM. He and PW.1 sat in the hotel. The remaining persons of CBI team stood near the place. The accused officer came to the hotel at about 12.15 PM. The accused officer came and took PW.1 on his scooter towards railway station of Nizamabad. He met the CBI officer and they followed PW.1 and the accused officer. They did not find the accused officer but PW.1 returned back to APSRTC bus stand, Nizamabad and informed that the accused officer had not taken the amount and left. PW.1 also informed that the accused officer left because he had not handed over the cell phone wherein he received calls. He and PW.1 went to the office of the accused on the instructions of the accused officer. PW.1 went inside the office of the accused officer and came back. The accused officer came out and PW.12 followed on his scooter and went to a hotel situated at the main road. The CBI team followed PW.1 and the accused. By the time he reached the hotel, he

found PW.1, accused officer and the CBI team. The right hand of the accused officer when dipped into the solution, turned pink. The left hand of the accused officer when dipped in the solution, the solution not changed. The amount was taken from the right back pant pocket of the accused officer and the same was seized by the CBI. The amount seized from the accused officer was compared with the amount mentioned in Ex.P6 and the same were tallied. The right side back pant pocket when tested with solution, turned into pink.

20. As could be seen from the evidence of PWs.1 and 2, there are several contradictions. While PW.1 stated that on 26.12.2007, he went to RPF office, Nizamabad Railway Station. PW.2 stated that he proceeded to Railway Officers' Rest House at Secunderabad. There is a vast difference between Nizamabad and Secunderabad where the first mediators' report was prepared. While PW.1 stated that at 9.00 AM itself he found the witnesses at RPF Office, PW.2 stated that he went to the said place around 11.00 AM or 11.30 AM. Though PW.2 was instructed to accompany PW.1, he could not accompany PW.1 as the accused officer took PW.1 on his scooter from Balaji Mess as well as from his office to another hotel situated on the main road. PW.2 is

not a witness to the earlier demand on 17.12.2007 or on 26.12.2007. He is also not a witness to passing of the bribe amount from PW.1 to the accused. PW.2 stated that by the time he reached the hotel by walk from the office of the accused, he found PW.1, accused officer and the CBI team. There was also another contradiction in the evidence of PWs.1 and 2. While PW.1 stated that both the fingers of right and left hand of the accused turned into pink when dipped in the solution, PW.2 stated that only the right hand solution turned into pink colour, but not the left hand solution.

21. PW.2 also stated that the accused officer was shifted to All India Radio Station office at Nizamabad from the hotel and the proceedings under Ex.P7 - second mediators' report were prepared there. In his cross-examination by the defence counsel, he stated that Ex.P6 – first mediators' report was also prepared at All India Radio Station, Nizamabad.

22. The witness, by name, Madhu, was examined as PW.3. PW.3 in his evidence stated that PW.1 was a member of their Union. His sister-in-law was a beedi worker in Desai Brothers Ltd., Company at Rudraram and she died and subsequently her husband also died. He

stated that he was assisting their children for getting pension benefit from EPF office, Nizamabad at the request of PW.1. PW.1 handed over the required forms and documents and he handed over the same in EPF office, Nizamabad. Initially provident fund was sanctioned. They tried for pension also but it was delayed abnormally due to missing of the concerned file. They had submitted new forms along with the documents in the year 2006 or 2007 for pension. As it was getting delayed, PW.1 took him to EPF office, Nizamabad. They met the accused in EPF office and requested him to consider the case since the parties were very poor. Subsequently, PW.1 informed that he was still pursuing the matter. PW.1 or the accused officer had not telephoned to him subsequently about the pension matter. On one day, PW.1 informed him that he was going to Nizamabad with regard to the pension matter and on the next day, he had seen news on the TV channel that the accused officer was trapped by the CBI police. PW.3 was declared as hostile by the Special Public Prosecutor and he denied the suggestions given by the Special Public Prosecutor. He stated that only once, they met the accused officer and requested him to settle the pension papers. He had not stated about the demand made by the

accused officer for payment of any bribe or that he suggested PW.1 to pay bribe amount to the accused officer.

23. PW.4 was the other mediator who signed along with PW.2 on the first and second mediators' report and on the complaint lodged by PW.1. He was a Deputy Station Superintendent, Nizamabad at the relevant time. He stated that as per the orders of the Senior Divisional Operations Manager, he went to the Railway Rest House on 26.12.2007 to meet the CBI officials. He met the CBI Inspector, Sri Aswini Kumar at 11.00 AM, who introduced him to the other witness PW.2 and the complainant and the trap laying officer. They received the complaint from PW.1. He also signed on the back of it as directed by the Inspector. The CBI officials demonstrated the phenolphthalein test by applying some powder to the currency notes provided by PW.1. A voice recorder was also given to PW.1 asking him to switch on the same while giving money to the accused officer. The CBI officials asked PW.1 to contact the PF employee over his cell phone. Accordingly, PW.1 contacted him over phone. The PF employee asked PW.1 to come and wait at a hotel opposite to Nizamabad Bus Stand. He stated that no report was prepared by the Inspector before

going to the spot. He stated that the Inspector engaged a Tata Sumo car. PW.2 was instructed to accompany PW.1 and he was instructed to follow the trap team. At about 12.00 Noon, they reached Nizamabad bus stand. After going there, PW.1 contacted the accused officer over phone. Fifteen minutes later, the accused officer came to the spot on his scooter and after speaking to PW.1 for a while, both left the place on his scooter. They followed in the Tata Sumo car but could not trace the scooter due to heavy traffic. The CBI Inspector then directed them to go to PF office. Meanwhile, the CBI Inspector received a phone call from PW.1 stating that he was available near bus stand area. Then they came back and picked up PW.1 and proceeded to PF office. After going there, PW.I was made to contact the PF employee over phone. Ten minutes later, the accused officer came out of the office and again PW.1 and the accused officer left the place on the scooter. Then, they followed the scooter in the Tata Sumo car. They found the accused officer and PW.1 sitting in a hotel situated in Nyalakal Road. The inspector instructed him and PW.2 to stand at a distance. The CBI inspector and the remaining team were waiting outside the hotel. Half an hour later, PW.1 and the accused officer came out of the hotel. When the accused officer was about to leave

the place by starting his scooter, the inspector caught hold his hand and took him back inside the hotel. The CBI inspector took out the money from the right side back pant pocket of the accused officer and the accused officer started weeping and stated that he did not demand the money and that when he was about to come out of the hotel, PW.1 forcibly kept the money in his back pocket. The accused officer stated that he was not dealing with the matter of PW.1. The CBI inspector asked him to count the money and tally the same with the particulars mentioned in the mediators report prepared at the rest house. Accordingly, he verified the notes and found them tallying with the particulars mentioned in Ex P.6. Meanwhile a lungi was provided to the accused officer and his pant was seized. The currency notes were also seized. The hand solutions were sealed in a bottle. As public gathered at the spot, the TLO shifted the accused officer and the material to the office of All India Radio and second mediators report was prepared at that place and obtained their signatures.

24. PW.4 was also declared as hostile by the Special Public Prosecutor. He admitted in his cross examination by the Special Public Prosecutor that as directed by the Inspector, he had taken out

the money from the back side pant pocket of the accused officer as against his evidence in chief that the CBI Inspector took out the money from the right side back pant pocket of the accused officer. In his cross examination by the defence counsel, PW.4 stated that only particulars of the currency notes were noted at the rest house and both the mediators report Exs.P6 and P7 were prepared at All India Radio office. This witness also stated about the defence taken by the accused officer at the first instance immediately after the trap stating that no official favour was pending with him and that the amount was thrust into his back pocket by PW.1 forcibly when he was coming out of the hotel. He was also subsequently, cross-examined by both the Special Public Prosecutor and the defence counsel on 15.03.2013, but no new facts were elicited from him.

25. PW.5 was the person who was running the tea stall at the time of raid by the CBI officials. He stated that about three years back while he was attending to his business between 12.00 Noon and 1.00 PM, four customers came for taking tea. After taking tea, while they were about to leave the tea stall, meanwhile a group of persons came and caught hold the hand of one person among the four persons.

Later, he came to know that they were police party and one of the four customers was the accused officer and he later came to know that he was an employee in PF office. He stated that the officials collected hand washes mixed with some powder and the hand washes of the accused officer had turned into pink colour. The pant of the accused officer was taken of under the instructions of the inspector and the wash of the pocket of the pant was also turned into pink colour. He stated that he did not observe whether anything was seized from the possession of the accused officer. Thus, this witness had not stated about the seizure of the currency notes from the possession of the accused officer.

26. PWs.1 to 5 are the main witnesses examined by the prosecution to prove the demand and acceptance of the bribe by the accused officer from the complainant-PW.1. Out of these witnesses, PWs.1, 3 and 4 were declared as hostile by the Special Public Prosecutor. PWs.2 and 5 also had not stated about any demand or acceptance of bribe by the accused officer from PW.1.

27. The trial court on considering the evidence of the witnesses, observed that PW.1 filed his pension claim papers before the

Provident Fund office in the year 2005 and the trap took place in the year 2007. The pension claim papers were not settled by the provident fund office for nearly two years and having vexed with the attitude of the provident fund office, PW.1 approached PW.3 for settlement of the pension claim. Unless there was an abnormal delay of two years in settlement of the pension claim, there was absolutely no necessity to PW.1 to approach the mediator – PW.3 for settlement of the pension claim.

28. The trial court observed that it would appear that the pension claim could not be settled for over a period of three years mainly expecting some bribe amount for attending the pension file. The evidence of PW.1 would reveal that PW.1 made a complaint to the vigilance department of the Provident Fund Office. The vigilance department also kept the pension claim papers pending months together. The Red Tapism of the vigilance department of Provident Fund Office defeated the very object of pension scheme in favour of members of the deceased families. In case if the pension claim of the children of Smt.Jamuna was settled within one or two months immediately after filing of the pension papers, the question of demand

of bribe amount and recovering the bribe amount from the accused would not have arose. The abnormal delay in settlement of the pension claim for over two years would clinchingly establish that the Provident Fund office intentionally delayed the pension claim perhaps expecting some illegal gratification from PW.1. The circumstances in making the pension claim abnormally delayed also clinchingly would establish the case of the prosecution that the accused demanded illegal gratification for settlement of the pension claim as deposed by PW.1 on 12.8.2009.

29. All these observations made by the trial court are not based upon the evidence on record. The trial court on one hand was blaming the Vigilance Department of the Provident Fund Office for keeping the pension claim papers pending for months together. The accused officer was not part of the Vigilance Department of the PF office, where the file was pending. There was no evidence on record that the file was pending with the accused officer for more than two or three years.

30. On the other hand, the evidence of PW.6, the Section Supervisor of Sub Regional Provident Fund Office, Nizamabad would

disclose that during the relevant period, he was incharge of Accounts Group-4 which dealt with EPF accounts of the employees working in Desai Brothers Limited, Kamareddy and non-beedi workers. He stated that there were seven social security assistants working under his supervision in Accounts Group-4. The accused officer was one among the seven social security assistants and he was allotted the account Nos.1 to 20,000 under Seat No.1. They pertained to the employees working in Desai Brothers Ltd. Altogether they were one and half lakh accounts pertaining to the employees of Desai Brothers Ltd. All the seven social security assistants used to look after the said accounts. He stated that the CBI police enquired with him about the particulars of file bearing No.AP/5203/A/55027. It was received in his section on 26.12.2007 itself. He came to know that the said file was received in their office one week prior to sending to his seat. The said file was allotted to seat No.3. The concerned social security assistant on that seat was one Sri C.R.C.Murthy. Prior to sending the file to his seat, the file was in the Vigilance Department of EPF Organization. He stated that no complaint was made in their office against the accused with regard to the said file.

31. Thus, the evidence of this witness would disclose that the file was with the vigilance Department from 11.09.2007 till 26.12.2007 and it reached their office only one week prior to the date of trap and the said file was allotted to seat No.3, which belonged to some other person but not the accused officer.

32. The witness, by name, C. Ramachandra Murthy, who was allotted seat No.3, was examined as PW.9. He stated that he was working as social security assistant, EPF Office, Nizamabad. In their Section there were seven social security assistants. His seat number was 3. Each social security assistant would deal with 20,000 accounts. He dealt with account Nos.40,000 to 60,000. File No.AP5205/A/55027 was the file belonging to his section but no claim had been received in respect of the said file. He stated that he handed over the file to the Vigilance Section in September, 2007. On 26.12.2007 he received claim for 10-D and he handed over the claim form to the Vigilance Section as the file was already with them. He stated in his cross examination that the file was not accessible to any outsiders or employees of the PF office when it was in the custody of the Vigilance section.

33. Thus, the evidence of PW.6 and 9 would disclose that the accused officer was not the concerned person who was looking after the file, it was PW.9, the concerned clerk and the file was in the Vigilance Section from September 2007 to one week prior to 26.12.2007. PW-9 also stated that claim form 10-D was received by him and he handed over the same to the Vigilance section.

34. The Senior Social Security Assistant, who worked in the Vigilance Section, was examined as PW.10. He stated that the file No.AP/5205/A/55027 was pending in their section since 11.09.2007 to attend the grievance mentioned therein. On 26.12.2007 Sri CRC Murthy – PW.9 working in AG-4 section Seat No.3 handed over him 10-D claim form in the evening hours of 26.12.2007. CBI people came to him and took possession of the file bearing No.AP/5208/A/55027 and 10-D claim form from him. In his cross-examination, he stated that he was only a clerk in the PF office at Nizamabad and the file bearing No.AP/5205/A/55027 was in the vigilance section from 11.09.2007 to 26.12.2007. Except himself and the Regional PF Commissioner, no other person would have access to the file during the said period.

35. Thus, the evidence of all these witnesses would disclose that the concerned file was in the vigilance section and no others had access to it and no official favour was pending with the accused officer. The trial court, on considering the evidence on record observed that the crucial witnesses were PWs.1, 2 and 4 for proving that the accused officer accepted the tainted bribe amount of Rs.2,000/- on 26.12.2007. On considering the evidence of PW.1 that the Inspector, CBI asked him to keep the tainted amount in the back pant pocket of the accused officer, when he informed the Inspector that the accused did not take the amount, the trial court observed that PWs.2 and 4, the mediators did not depose to support the said evidence of PW.1 that he forcibly kept the tainted amount into the pant pocket of the accused at the instance of PW.13 and dis-believed his evidence on the said aspect. The trial court further observed that if really PW.1 had thrust the tainted bribe amount of Rs.2,000/- into the pant pocket of the accused officer at the instance of the CBI Inspector, definitely PWs.1, 2 and 4 would have protested to sign the trap proceedings under Ex.P7. They did not make any remarks on the trap proceedings under Ex.P7 and the trial court observed that PWs.2 and 4 were not laymen, they were Government Employees and they

would not blindly subscribe their signatures on the proceedings under Ex.P7 contrary to the events that took place in connection to the trap proceedings.

36. Thus, the trial court relied upon Exs.P6 and P7 rather than the evidence of the witnesses examined before the court. The trial court observed that there was absolutely no evidence on record to believe that there was any enmity in between PW.1 and the accused officer or PW.13 and the accused officer. Had there been any enmity in between PW.1 and the accused officer or between PW.13 and the accused officer, there might be reasons to believe that PW.1 thrust the bribe amount of Rs.2,000/- into the back pant pocket of the accused officer, more particularly at the instance of PW.13 to implicate the accused in this case. These observations of the trial court are based on surmises and conjectures rather than on any evidence on record.

37. The trap laying officer was examined as PW.13. He stated about the investigation conducted by him. He stated that he got verified the antecedents of the accused before registering the case and came to know that the reputation of the accused officer was bad, but

no document was filed in the said regard to support his statement about verification of the antecedents of the accused. He stated about his camping at Nizamabad on 26.12.2007 and receiving a message from the SP, CBI, ACB, Hyderabad, instructing him to meet the complainant and on the same day, the complainant met him in the Railway Officers' Rest House and lodged a written complaint. Immediately, he faxed Ex.P.1 after making his endorsement on it. Then, he got verified the antecedents of the accused officer. On the same day, he received return fax from SP, CBI, ACB, Hyderabad, informing that a case in RC No.30/2007 was registered against the accused officer with instructions to lay a trap and appointing him as a Trap Laying Officer. His evidence was not specific as to at what time the complainant met him, when he verified the antecedents of the accused, when he received the return fax about registration of case and when he secured the mediators. His evidence also would disclose that he handed over the digital voice recorder to the complainant explaining him as to how to operate it and instructed him to switch on the recorder before arrival of the accused officer and to record conversation between the complainant and the accused officer, he recorded the specimen voices of both the mediators prior to handing

over the digital voice recorder to the complainant. Then he instructed the complainant to call the accused. Accordingly, complainant spoke to the accused officer from his mobile and informed that the accused officer asked him to come to Balaji Mess near APSRTC Bus stand, Nizamabad and to wait there. The evidence of PW.1 is silent on his calling the accused officer prior to conducting trap. The evidence of PW.2 is also silent on the said aspect. PW.4 stated about the CBI police asking PW.1 to contact the accused officer over his cell phone and accordingly, the complainant contacted him over phone and the accused officer asked the complainant to come and wait at a hotel opposite to Nizamabad Bus stand. This material piece of evidence was not stated by the complainant as well as PW.2, who was asked to accompany PW.1.

38. PW.13 stated that while they were waiting at Balaji Mess at about 12.25 Hours, the accused officer came by a navy blue scooter to Balaji Mess and asked the complainant to sit on his scooter. After some discussion, the complainant sat on the scooter and both of them left from there. Meanwhile, the accompanying witness came running to him and informed about it and he along with his team followed the

scooter. After going about 500 meters, the accused officer stopped his scooter and he observed the accused officer telling something to the complainant and thereafter, left the complainant there and went away. Then the complainant came to him and informed that the person who came on the scooter was the accused officer and he asked him to sit on his scooter and while he was sitting on the scooter, the accused officer asked whether he brought the money with him. Then, the complainant tried to contact the Trap Laying Officer through his mobile, then the accused questioned, to whom he was speaking and wanted to see the mobile. As the complainant refused to show his mobile, the accused officer got annoyed and told the complainant to hand over the amount to one Madhu, Union Leader with whom he had acquaintance. On his instructions, the complainant spoke to Madhu on his mobile and asked whether he could come to take the bribe amount and hand over it to the accused officer. It came to know that said Madhu was out of town and he was not able to come. Then, on his instructions, the complainant contacted the accused officer and informed that Madhu was not available in Nizamabad. Then, on the said information, the accused officer asked the complainant to come to his office and wait outside as he was on the way to the office. Then, the team reached at

about 13.10 Hours to the Sub Regional Provident Fund Office, located on Nyalkal Road, Nizamabad by a private vehicle. On his instructions, the accompanying witness PW.2 and the complainant got down from the vehicle and waited outside the office. At about 13.15 Hours, the accused officer came on his scooter and gestured the complainant to sit on his scooter and both of them were going by the scooter. Then he along with the team followed the scooter on the private vehicle. After travelling some distance, the accused officer stopped his scooter and he and the complainant went into a tea stall on the main road. On observing the same, he along with the team got down and took convenient positions around the tea stall. Sometime later, he observed the complainant coming out of the tea stall and giving a pre-arranged signal by wiping his face with a kerchief. On that he rushed to the entrance of the tea stall and stopped the accused officer by holding his hand duly disclosing his identity and challenged him whether he demanded and accepted the amount of Rs.2,000/- from the complainant. On that, the accused officer became nervous and started pleading to spare him. He asked the complainant to hand over the digital voice recorder and observed that it was not switched on and he conducted test on the hands of the accused. The solution on both the

hands turned pink. He asked the accused officer about the bribe amount and the latter informed that it was in his right side back pocket of his pant. Then, he instructed PW.4 to take out the cash and both the witnesses compared the notes and confirmed that the numbers tallied. Then, he conducted test on the right side back pant pocket of the accused officer. The said test also yielded positive.

39. Thus, the evidence of PW.4 and PW.13 would disclose that the complainant made calls to the accused officer and Madhu prior to conducting trap on the instructions of PW.13. But, no call record of the complainant or the accused officer or the witness Madhu, who was examined as PW.3, was collected by the Investigating Officer. The digital voice recorder which was handed over to the complainant after recording the voice of the mediator's and the complainant was also not produced before the court. There were contradictions in the evidence of PW.1 and PW.13 as to who called the complainant, while he was going on the scooter of the accused officer, due to which the accused officer got suspicion.

40. PW.13 in his cross examination though stated that he made an endorsement on Ex.P.1 but admitted that he had not noted about the

bad reputation of the accused officer on it and that he did not specifically enquire to know the antecedents and veracity of PW.1. He also admitted that he did not enquire with the complainant to know who was dealing with the PF claim applications. He further admitted that he was not aware whether the pension papers in Forms 10-C and D-10 were required to be submitted by PW.1 for processing the pension claim. He stated about the complainant giving signal which was also contradictory to the evidence of PW.1.

41. The Hon'ble Apex Court in **P. Sirajuddin v. State of Madras**¹² held that:

“Whatever be his status, is publicly charged with acts, of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general.”

The Hon'ble Apex Court found fault with the ACB officials in not conducting discreet or preliminary enquiry with regard to the genuineness of the allegations.

¹² 1971 CrL.L.J. 523

42. Thus, the evidence of PW.13 also would disclose that he did not verify the contents of Ex.P.1 complaint given by the complainant and did not make any enquiries in the Provident Fund office to know as to who was dealing with the pension applications prior to registering the case. If the said enquiry was conducted, he would have known whether the official favour was pending with the accused officer and about the truth of the complaint given by PW.1.

43. The learned Special Public Prosecutor for CBI relied upon the judgment of the Hon'ble Apex Court in **Hazari Lal v. The State (Delhi Admn.)** (1 supra), wherein it was held that:

“Where the evidence of the Police Officer who laid the trap is found entirely trustworthy, there is no need to seek any corroboration. There is no rule of prudence, which has crystallized into a rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the facts and circumstances of another case the Court may unhesitatingly accept the evidence of such an Officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any precedential guidance.”

44. He also relied upon the judgment of the Hon'ble Apex Court in **State of U.P. v. Dr.G.K. Ghosh** (2 supra) on the aspect that:

“3: 1. The evidence of a police officer cannot be brushed as that of an interested witness. That he has an interest is true only to an extent a very limited extent. is Interested in the success of the trap to ensure that a citizen, who complains of harassment by a Government officer making a demand for illegal gratification, is protected and the role of his department in the protection of citizens is vindicated. Perhaps it can be contended that he is interested in the success of the trap so that his ego is satisfied or that he earns a feather in his cap. At the same time it must be realised that it is not frequently that a police officer, himself being a Government Servant would resort to perjury and concoct evidence in order to rope in innocent Government servant. In the event of the Government servant concerned refusing to accept the currency notes offered by the complainant, it would not be reasonable to expect the police officer to go to the level of concocting a false seizure for prosecuting and humiliating him merely in order to save the face of complainant, thereby compromising his own conscience. The court may therefore, depending on the circumstances of case, feels safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the police officers even if the trap witnesses turn hostile or are found not to be independent. When therefore besides such evidence there is circumstantial evidence which is consistent with the guilt of the accused and not in consistent with his innocence, there should be no difficulty in upholding the prosecution case. The present appears to be a case of that nature.”

45. The trial court mainly relied upon the evidence of PW.13 in recording the conviction against the accused officer. The trial court observed that there was no enmity in between the CBI officials more particularly PW.13 and the accused officer. PW.13 had absolutely no necessity to implicate the accused officer in a false case. The trial court observed that since PWs.1, 2 and 4 turned hostile to some extent, there was a possibility of occurrence of some minor discrepancies in the prosecution case, the evidence produced by the

prosecution was quite convincing, reliable and trustworthy that the accused made demand of bribe from PW.1 and accepted bribe amount in MO1 on 26.12.2007 and thereby being a public servant mis-conducted himself for pecuniary advantage. Thus, the trial court held that the prosecution proved its case against the accused beyond all reasonable doubt.

46. The trial court relying upon the evidence of PW.1 recorded on 12.08.2009 wherein he stated about the accused demanding Rs.5,000/- for settlement of pension file and that Madhu PW.3 requested the accused to provide pension and that Rs.4,000/- would be provided, but on subsequent adjournment, PW.1 deposed self contradictory evidence observed that it might be perhaps to help the accused officer. But, the evidence of PW.1 recorded on 12.08.2009 is also contradictory to the contents of the complaint marked under Ex.P1 with regard to the presence of Madhu and contradictory to the evidence of PW.3 – Madhu, who had not stated about any demand made by the accused officer. The said evidence of PW.1 had also no corroboration.

47. The trial court mainly relied upon the conduct of the accused officer in leaving the office in working hours on receiving a phone call from PW.1 and taking away PW.1 on his scooter to remote places and considered that the said conduct itself was sufficient to believe that the accused officer demanded bribe amount for settlement of the pension file. The trial court observed that unless there was such demand of bribe amount, the accused officer had no necessity to leave the office during office hours and for taking away PW.1 on his scooter to different places. Considering the conduct of the accused officer in leaving the office during working hours, the trial court presumed that the accused demanded bribe amount for settlement of pension file contrary to the evidence on record. There was no evidence with regard to the demand of bribe from the accused officer or any official favour pending with the accused officer. The observations made by the trial court are not based on evidence on record, but on presumptions and assumptions.

48. Learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court in **C.M. Girish Babu v. CBI, Cochin, High Court of Kerala** (4 supra), wherein it was held that:

“Mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show the accused voluntarily accepted the money knowing it to be bribe.”

It was also further held therein that:

“The crucial question is whether the appellant had demanded any amount as gratification to show any official favour and whether the said amount was paid and received by the appellant as consideration for showing such official favour.”

49. He also relied upon the judgment of the Hon’ble Apex Court in **B. Jayaraj v. State of Andhra Pradesh** (5 supra), wherein it was held that:

“7. In so far as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma Vs. State of A.P. [(2010) 15 SCC 1] and C.M. Girish Babu Vs. C.B.I. [(2009) 3 SCC 779].

8. In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ex.P-11)

before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as 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 thing or pecuniary advantage cannot be held to be established.”

50. He also relied upon the judgment of the Hon’ble Apex Court in **P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another** (6 supra), wherein it was held that:

“23 The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery 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.

26. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in *Sujit Biswas vs. State of Assam* (2013) 12 SCC 406 had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of “may be” true but has to upgrade it in the domain of “must be” true in order to steer clear of any possible surmise or conjecture. It was held, that the Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.”

51. He also relied upon the judgment of the Hon’ble Apex Court in **V. Sejappa v. State by Police Inspector, Lokayukta, Chitradurga** (7 supra), wherein it was held that:

“18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and a presumption would arise under Section 20 of the Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of the Act.

21. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to following observation in *Mukut Bihari and Anr. v. State of Rajasthan* (2012) 11 SCC 642, wherein it was held as under:-

“11. The law on the issue is well settled that demand of illegal gratification is sine qua non for

constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person.”

52. He also relied upon the judgment of the Hon’ble Apex Court in **K. Shanthamma v. State of Telangana** (7 supra), wherein it has held that:

“Facts and circumstances of case show that prosecution's case about demand of bribe made by appellant appears to be highly doubtful. PW 1 (complainant) is the only witness to alleged demand and acceptance by appellant - PW 1 did not state that appellant reiterated her demand at the time of trap His version is that on his own, he told her that he had

brought the amount. What is material is cross-examination on such aspect. In cross-examination, PW 1 accepted that his version regarding demand made by appellant on various dates was an improvement. Thus, version of PW 1 in his examination-in-chief about demand made by appellant from time to time is an improvement - LW 8 (who was to accompany PW 1 at the time of offering bribe to appellant) did not enter appellant's chamber at the time of trap. There is no other evidence of alleged demand. Thus, evidence of PW.1 about demand for bribe by appellant is not at all reliable. Hence, demand made by appellant has not been conclusively proved.”

53. The learned Special Public Prosecutor for CBI relied upon the judgment of the Hon’ble Apex Court in **Hari and another v. The State of Uttar Pradesh** (3 supra) on the aspect that:

“It is well settled that the evidence of prosecution witnesses cannot be rejected in toto. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of testimony which he finds to be creditworthy and act upon it. Even if the witnesses have turned hostile, their evidence can be accepted, if they are natural and independent witnesses and have no reason to falsely implicate the accused. The credible evidence even of a hostile witness can form the basis for conviction in a criminal trial.”

54. As seen from the above judgments mere recovery of tainted currency is not sufficient and the prosecution has to prove

payment of bribe or show that the accused voluntarily accepted the money knowing it to be bribe as prescribed under Section 7 of the PC Act.

55. The other contention taken by the learned counsel for the appellant was with regard to non-application of mind by the officer while granting sanction. The Regional Provident Fund Commissioner, Hyderabad at the relevant time, was examined as PW.14. He stated that he was the competent authority to remove the Social Security Assistants in the Employee Provident Fund Organization. The Sub Regional office of Employee Provident Fund, Nizamabad was within his jurisdiction. He stated that CBI, Hyderabad, addressed a letter along with copies of documents and other material papers seeking sanction orders to prosecute the accused who was working as Social Security Assistant in Sub Divisional Office in Employee Provident Funds Organization, Nizamabad. He also submitted that there was Vigilance Wing in their Department and the said department having perused the documents enclosed by the CBI i.e. the Trap Laying Officer's report, FSL report, complaint against the accused officer and the bunch of documents filed along with it, put up the file before him

to sanction the prosecution orders against the accused officer and after going through the records and on applying his mind, he passed the prosecution orders as against the accused. In his cross-examination, he admitted that he did not ascertain whether the accused was dealing clerk to process the pension papers of the complainant's brother's children. He stated that he was not aware that the file was pending before the Vigilance department and stated that he did not remember whether he had gone through Ex.P7 report. He also admitted that he had not paid attention with regard to explanation given by the accused in Ex.P7. He stated that he could not say whether he had gone through the statement of Sri Chavali Ramachandra Murthy. He denied that without ascertaining whether the accused was dealing with the file or whether C.R.C. Murthy was dealing with the pension claim file or that the said pension claim was pending before the vigilance cell and without applying his mind, he passed the sanction order.

56. The learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court in **Mohd. Iqbal Ahmed v. State of A.P.** (9 supra), wherein it was held that:

“It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence.

This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab initio. ... what the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact which may come into existence after the resolution granting sanction has been passed, is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.'

57. He also relied upon the judgment of the Hon'ble Apex Court in **T.K. Ramakrishna v. State through Police Inspector, Bangalore** (11 supra) wherein it was held that:

"17. Further, it is noticed that PW-2, the employer of the appellant, who is a seniormost IAS Officer, while exercising his statutory power under Section 19 of the Act is required to apply his mind very carefully while granting sanction to prosecute the appellant herein under the Act. He has accorded sanction for the prosecution of the appellant on the charges of demand and acceptance of illegal gratification by the appellant from the complainant for issuance of a Katha Certificate of the property. In the evidence of PW2 before the Special Judge at para 5 of his examination- in-chief he has categorically stated that the sanction was accorded by him for the prosecution against the appellant under Sections 7, 13(1)(d) read with Section 13(2) of the Act. The demand made for payment of illegal gratification for change of Katha as well as issuance of Katha Extract, this would clearly go to show that there is non application of mind on the part of the sanctioning authority for according sanction to prosecute the appellant on the above charges. On this count also the appellant must succeed.

18. In this regard it would be useful to refer to the decision of this Court in the case of Mansukhlal Vithaldas Chauhan vs. State of Gujarat, (1997) 7 SCC 622, which reads thus:

“19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution.”

58. The evidence of PW.14 would not disclose applying his mind to the explanation given by the accused officer or to ascertain whether there was any official favour pending with the accused officer. He appeared to have acted mechanically and given sanction.

59. As seen from the evidence on record, the prosecution failed to prove the very demand itself, which is *sine quo non* to record conviction under Section 7 of the PC Act. Therefore, drawing presumption under Section 20 of the PC Act also would not arise. The

prosecution also failed to prove the acceptance of the money by the accused officer from the complainant and failed to prove the pendency of any official favour with the accused officer. The prosecution also failed to prove that the sanction proceedings were issued by the sanctioning authority by considering all the relevant facts and material including the explanation given by the accused officer for the pendency of official favour with him. The accused officer immediately in the post trap proceedings itself stated about the money thrust into his pocket by the complainant and that no official favour was pending with him. His defence is consistent. The findings of the trial court are based on surmises and conjectures, but not upon the evidence on record. Hence, it is considered fit to set aside the impugned judgment by allowing the appeal.

60. In the result, the Criminal Appeal is allowed setting aside the conviction and sentence recorded by the I Additional Special Judge for CBI Cases, Hyderabad against the appellant-accused in C.C. No.13 of 2008 dated 04.04.2013 and acquitting him for the offences under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. The bail bonds of the appellant -

accused officer shall stand cancelled. The fine amount, if any paid, by the appellant – accused officer is directed to be returned to him

Miscellaneous Applications, if any pending, shall stand closed.

Dr. G. RADHA RANI, J

February 21, 2023
KTL