THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

CRIMINAL APPEAL No.1174 OF 2007

JUDGMENT:

Sole accused in C.C.No.19 of 2003 on the file of the Additional Special Judge for S.P.E & A.C.B Cases, City Civil Court at Hyderabad (for short 'the Special Judge'), filed this appeal challenging the judgment dated 12.09.2007 passed in the said C.C., whereunder and whereby he was convicted of the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the P.C. Act, 1988') and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5000/- in default to suffer simple imprisonment for six months, under each count, and both the sentences of imprisonment were ordered to run concurrently.

2. The allegations, in brief, of the charge sheet may be stated as follows:

The appellant/accused worked as Mandal Engineering Officer, Tadimarri mandal, Anantapur district from 16.10.1999 to 13.10.2002. He is a 'public servant' within the meaning of Section 2 (c) of the P.C. Act, 1988. P.W.1 (complainant) is a registered Class III contractor and undertakes contract works. He participated in the tender

process for the work of maintenance of road from Ekapadampalli, Tadimarri mandal to Gunjepalli of Narpala mandal, and completed the work by the end of May, 2002. He was requesting the appellant/accused to record the measurements in M.Book, but the latter did not do so. On 29.8.2002, when he met the appellant/accused and requested to record measurements, the latter asked the former to meet on 30.8.2002. On that day, when he met the appellant/accused and renewed the request, the latter demanded illegal gratification of Rs.30,000/-. On negotiations, the appellant/accused reduced the amount to Rs.20,000/- and asked him to pay the same on 31.8.2002 at 8.00 AM, and made it clear that unless the amount is paid, he would not record the measurements.

Unwilling to pay the amount demanded, P.W.1 approached P.W.5-Deputy Superintendent of Police, Anti Corruption Bureau, Anantapur Range and gave a written report, basing on which, a case in crime No.10/RCT/ATP/ 2002 was registered by P.W.5. P.W.5 secured presence of P.W.2 and another and made arrangements for laying trap under Ex.P5-pretrap proceedings. On 31.08.2002 at about 8.45 AM, when P.W.1 approached the appellant/accused at his residence, the latter reiterated his earlier demand and accepted the tainted amount of Rs.20,000/- from P.W.1 with

his right hand, counted the same with both hands and kept the same underneath the mattress on the wooden double cot in bed room. When P.W.1 gave the pre-arranged signal, the raid party entered the house and recovered the tainted currency notes. Sodium Carbonate solution test conducted on both hand fingers of the appellant/accused gave positive result. The chemical test conducted on cotton swab rubbed against the upper surface of the cot and lower surface of the mattress which came into contact with the tainted currency notes also proved positive. P.W.5 seized the amount and other connected records and Ex.P9-posttrap proceedings were drafted. After obtaining Ex.P11 sanction to prosecute the appellant/accused and after completion of investigation, the charge sheet was laid.

3. The following charges were framed by the learned Special Judge.

> "Firstly: That you, being a public servant employed as Mandal Engineering Officer, Tadimarri Mandal, Anantapur District during the period from 16.10.1999 to 13.10.2002, you have demanded Rs.30,000/- on 30.8.2002 as bribe from Sri G.Hari Babu, Contractor for recording the measurements in M.Book and when Sri G.Hari Babu pleaded his inability to pay the bribe, you have reduced the amount to Rs.20,000/- and accepted illegal

gratification on 31.8.02 for recording the measurements in M.Book and thereby you have committed an offence punishable U/s.7 of Prevention of Corruption Act, 1988 and within my cognizance.

Secondly: That you, being a public servant employed as mentioned in Charge No.1, on 31.8.2002 by corrupt or illegal means abusing your position as public servant obtained for yourself pecuniary advantage to an extent of Rs.20,000/- from Sri G.Hari Babu, as illegal gratification other than legal remuneration for doing official favour i.e. for recording the measurements in M.Book and thereby you have committed an offence specified U/s.13 (1) (d) of the Prevention of Corruption Act, 1988, punishable U/s.13 (2) of the Act, and within my cognizance."

When the charges were read over and explained to the accused, he pleaded not guilty and claimed to be tried.

4. To substantiate the charges, the prosecution examined P.Ws.1 to 6 and got marked Exs.P1 to P.12, besides case properties M.Os.1 to 10. D.Ws.1 to 3 were examined and Exs.D1 and D2 were got marked, on behalf of the accused.

5. The trial court, accepting the evidence adduced by the prosecution, found the appellant/accused guilty of the charges for the offences under Sections 7 and 13(1) (d) read

with Sec.13 (2) of the P.C. Act, 1988 and accordingly, convicted and sentenced him, as stated supra. Challenging the same, the present Criminal Appeal is preferred.

6. Learned counsel for appellant contended that as the material prosecution witness P.W.1 did not support the case of the prosecution, he was declared hostile by the prosecution, and nothing has been elicited in his cross-examination to connect the appellant/accused with the offences alleged; that there is no legal evidence to prove the guilt of the appellant/accused; that the prosecution failed to establish the alleged demand or acceptance of illegal gratification by the appellant/accused, which are necessary ingredients for the offences under Sections 7 and 13(1)(d) of the Act, 1988; that these aspects have not been considered by the trial Court in right perspective. Hence, he prays to set aside the convictions and sentences.

7. On the other hand, the learned Standing Counsel appearing for respondent-A.C.B. contended that merely because P.W.1 was declared hostile, the same is not a ground to disbelieve the entire version of the prosecution; that the chemical test conducted on both hands of the appellant/ accused and on cotton swab rubbed against the upper surface of the cot and lower surface of the mattress which

came into contact with the tainted currency notes, gave positive result and there is no plausible or spontaneous explanation given by the appellant/accused for possession of tainted money; that seizure of tainted currency notes from the possession of the appellant/accused is established and the appellant/accused failed to account for, the possession of tainted currency notes; that the trial Court, upon consideration of the entire evidence on record, rightly found the appellant/accused guilty of the charges leveled against him, and there are no grounds to interfere with the convictions and sentences recorded by the trial court. Hence, he prayed to dismiss the Criminal Appeal.

8. Now the point for determination is whether the prosecution proved its case against the appellant/accused for the offences alleged beyond reasonable doubt, and whether the judgment of the trial Court is legal, correct and proper ?

9. Public Servant taking gratification other than legal remuneration in respect of an official act, is an offence punishable under Section 7 of the Act, 1988.

10. Section 13(1)(d) of the Act, 1988 reads thus:

> "A public servant is said to commit the offence of criminal misconduct, if he,

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

(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) while holding office as a Public servant, obtains for any person any valuable thing or pecuniary advantage without any Public interest."

11. It is the case of prosecution that the appellant/accused, being a public servant, demanded Rs.30,000/- from P.W.1 for recording the measurements of the contract works done by P.W.1 in M.Book and later negotiated it to Rs.20,000/-, and accepted the said amount on 31.08.2002, as illegal gratification other than legal remuneration and obtained himself pecuniary advantage to an extent of Rs.20,000/- from P.W.1 as illegal gratification other than legal remuneration for doing the official favour.

12. P.W.1, who is the informant and who said to have set criminal law of motion, deposed in his evidence that in the month of April, 2002, he participated in tenders invited for the work of maintenance of road from Ekapadampalli in Tadimarri mandal to Gunjepalli in Narpala mandal and was allotted the said work of Rs.2,00,000/- by the Panchayat Raj

Department; he executed the said work in the month of May, 2002 and approached appellant/accused on several occasions to record measurements of the work in M.Book, but the appellant/accused did not record. It is his further evidence that in the month of June, 2002, when he met the appellant/ accused in his office, the latter informed that he executed the work for Rs.1,20,000/- to Rs.1,30,000/- and asked not to influence him, and directed to construct a culvert and put gravel on it, in order to record the work in M.Book for Rs.2,00,000/-. It is his further evidence that on 24.07.2002, a quarrel ensued between him and his friends, on one hand, and the appellant /accused, on the other, and the latter gave a complaint to the Circle Inspector of Police against the former, and the police warned the former. He further deposed that after coming out from the police station, they thought of getting the appellant/ accused transferred from that place.

It is the further evidence of P.W.1 that one Nageswar Rao met him and told him that ACB officials were known to him and he would see that Rs.2,00,000/- be paid to him, and took him to ACB Office, Anantapur where he informed the DSP that he had to get bill of Rs.2,00,000/- for the work executed by him and that the appellant/accused was not recording the measurements in M.Book for Rs.2,00,000/-.

He further deposed that on 29.8.2002, again, the said Nageswar Rao took him to the DSP, who assured that he would get Rs.2,00,000/- for the work executed by him and asked me to bring Rs.20,000/- on the next day i.e. on 30.08.2002, and on the said date, they both went to the DSP and the said Nageswar Rao brought Rs.20,000/- and handed over the said amount to the Inspector, ACB. He further deposed that on 31.8.2002, the Inspector, ACB obtained his signature on a written paper, and one hour later, a Constable came and kept Rs.20,000/- in his left side shirt pocket after removing his cell phone from his shirt pocket. He further deposed that thereafter, the DSP and two mediators took him in a jeep to the house of the appellant/accused and stopped at a distance of 200 yards from the house and asked him to go and pay the amount of Rs.20,000/- to the appellant/ accused. He further deposed that he went to the house of the appellant/accused and one boy opened the door, and the appellant/accused came to entrance of the house and asked him to come inside and sit in sofa in the first room of the house; that he asked the appellant/accused whether his wife is there in the house, and on that, the appellant/accused asked as to why he was enquiring about his wife and P.W.1 replied that he borrowed Rs.20,000/- from her, and intended to return the said amount to her; that the appellant/accused

informed that she was in bath room and asked him to hand over the said amount to him and accordingly he handed over the amount to the appellant/accused. He further deposed that his wife and the wife of appellant/accused are close friends and the former used to take hand loan from the latter.

It is his further evidence that after handing over the amount to the appellant/accused, he came out and informed the same to the Inspector, ACB; then, the DSP and other trap party members rushed into the house of the appellant/ accused and he stayed near the door of the house; that the appellant/accused cried loudly on seeing the officials and questioned him as to why I approached the ACB officials having returned the amount of loan taken by his wife. He further deposed that when enquired by the Inspector of Police, ACB whether his wife borrowed money from the wife of appellant/accused, he replied in affirmative, and then, he was asked to go away. He further deposed that on the same day evening, the said Nageswar Rao took him to ACB Office, Anantapur, where the Inspector, ACB obtained his signature on a written paper in English. He further stated that DSP did not examine him and record his statement.

P.W.1 denied a suggestion put by the prosecution that he gave Ex.P1 voluntarily and that on 30.8.2002, the appellant/accused demanded Rs.30,000/- as bribe to record

measurements of work done by him and finally agreed to receive Rs.20,000/- and directed him to pay the said amount on 31.8.2002 at 8.00 AM at his residence. He denied suggestions with regard to recitals in Ex.P5-pretrap proceedings and Ex.P9-posttrap proceedings.

In cross-examination of P.W.1 by the learned counsel for appellant/accused, Ex.D1-promissory note under which wife of P.W.1 borrowed amount from wife of the appellant/ accused on 29.07.2002, is marked.

13. P.W.2, who worked as Agriculture Officer in the office of the F.C.O. Laboratory, Anantapur at the relevant point of time of the incident, deposed that he acted as mediator during the pre-trap and post-trap proceedings.

14. P.W.3, who worked as Deputy Executive Engineer, Panchayat Raj Department, Dharmavaram at the relevant point of time of the incident, deposed that P.W.1 became the lowest bidder for the work of maintenance of road from Ekapalem palli to Gunjepalli, Tadimarri mandal, Anantapur district and he was allotted the said work; he executed agreement with the Department and executed the work partly.

15. P.W.4, who worked as Section Officer, Panchayat Raj Department, A.P. Secretariat, at the relevant point of time, deposed regarding issuance of Ex.P11-sanction order to prosecute the appellant/accused.

16. P.W.5 was the D.S.P., A.C.B., Anantapur at the relevant point of time of the incident. He deposed that on 30.08.2002 at 10.30 AM, P.W.1 presented Ex.P1-report to him, and on the strength of the same, he registered a case in crime No.10/RCT-ATP of ACB, Hyderabad Range, Anantapur under Ex.P4-FIR. He also deposed about conducting pre-trap proceedings, arranging the trap on 31.08.2002 and drafting of post-trap proceedings.

17. P.W.6, who worked as Inspector of Police, A.C.B., Anantapur Range, Anantapur, deposed that as per the instructions of P.W.5, he took over investigation on 01.09.2002, examined and recorded statement of P.W.3 on 08.09.2002, and on 25.04.2003, he received Ex.P11-sanction order and after completion of investigation, he filed the charge sheet.

18. On behalf of defence, D.Ws. 1 and 2 were examined. They deposed that they signed as witnesses to Ex.D1-promissory note and also about the transaction took place

under Ex.D1 between wife of P.W.1 and wife of the appellant/ accused.

19. P.W.1 is the material witness. According to the prosecution, on the report Ex.P1 lodged by P.W.1, Ex.P4-FIR was registered by P.W.5. Though P.W.1 admitted that he gave the report to P.W.5 and it is in his hand-writing, he denied a suggestion in cross-examination that he gave Ex.P1 voluntarily. It is his case that he gave Ex.P1 at the instance of one Nageswara Rao and that the said Nageswara Rao brought Rs.20,000/- and gave it to P.W.5.

20. On a perusal of evidence of P.W.1, it is clear that he gave a complete go-by to the version stated in the report Ex.P1, and deposed totally a different version in his evidence, as stated supra, that the amount has been paid to the appellant/accused towards the repayment of the amount borrowed by his wife from the wife if the appellant/accused under Ex.D1. He denied the suggestions contra given by the prosecution in his cross-examination and the entire version of the prosecution with regard to the alleged demand by the appellant/accused, conducting of pre-trap proceedings and post-trap proceedings, the seizure of tainted currency from the appellant/accused, etc.

21. The entire case of prosecution rests on the evidence of P.W.1. But, he did not support the prosecution case and he was treated hostile by the prosecution. P.W.1 gave a complete go-by to the recitals in the First Information Report and gave a new version in the evidence. It is settled law a First Information Report can only be used either for corroboration or for contradiction. It is not a substantive piece of evidence. The evidence that has been given in the Court alone has to be taken into account.

22. On this aspect, it is pertinent to refer to a decision in ***N. Vijay Kumar Vs. State of Tamilnadu***[1], wherein it is held thus :

> "9. In these appeals, it is to be noticed that PW2 is the key witness, and was the complainant. He was working as a Supervisor in a Voluntary Service called NACSS which was awarded sanitation work on contract basis for Ward No.8 of Madurai Municipal Corporation. The sanctioning authority, who sanctioned to prosecute the appellant was examined as PW1 and the complainant Thiru D. Gopal was examined as PW2. It is evident from the deposition of PW2, 3, 5 and 11 that they reached the office of the accused at 05:30 p.m. on 10.10.2003, and at that point of time the accused was not found in the seat and they have waited for him, and appellant has come

[1] **(2021) 3 SCC 687**

to the office at 05:45 p.m. on his bike and took his seat. PW2, in his deposition has stated that when he met the appellant/accused along with other witnesses, Sri Shanmugavel and Sri Ravi Kumaran appellant has made a demand for Rs.500/ and cell phone. He has stated that in view of such demand he has handed over the powder coated currency notes and cell phone which were received by the accused and kept in the left side drawer of the table. The official witness Thiru Shanmugavel is examined as PW3. He also stated in his deposition, that when they reached the office of the accused, accused was not in the seat. Therefore, they have waited and accused arrived in the office at 05:45 p.m. PW2 in his deposition has clearly stated that he met the accused earlier several times and again when he met on 09.10.2003 along with PW5, the appellant accused has demanded for Rs.500/- and a cell phone as illegal gratification. In the cross examination PW2, has admitted that he never saw the accused earlier and the appellant has made a demand when he met firstly on 09.10.2003. It is also clearly deposed by PW2 in the cross examination that he was ill treated by the accused several times earlier as he belonged to scheduled caste community. From his deposition it is clear that there were ill feelings between the appellant and the PW2. It is also clear from the evidence, after handing over currency and cell phone, he along with other witnesses who have accompanied him they came out of the office and signalled to the inspector. PW2 also admitted in the cross-examination that he was not having any details regarding the purchase of M.O.2 cell phone. It is also clear from the evidence

that though the trap was at about 05:45 p.m., phenolphthalein test was conducted only at 07:00 p.m. There is absolutely no evidence to show that why such inordinate delay occurred from 05:45 p.m. to 07:00 p.m. The office of the Town Assistant Health Officer and other officials of the department is also near to the office of the appellant. PW3 in clear terms, has deposed that only on demand of anticorruption officials, the accused had taken and produced the money and cell phone, which was in the drawer of the table. The Circle Health Inspector of Madurai Corporation, who was examined as PW4 has deposed in the cross examination that he had no idea what was going on before he reached the office and he has also deposed that he was not aware about Rs.500/ and cell phone, by whom and when it was kept. He, too has deposed in the cross-examination that only on the direction of the inspector the appellant-accused has taken out the money and the cell phone. The deposition of Mr. Ravi kumaran who was examined as PW 5 is also in similar lines. Another key witness on behalf of the prosecution is PW11, i.e., the Deputy Superintendent of Police, Bodinayakkanur Sub-Division, who was working as the Deputy Superintendent of Police, Vigilance and Anticorruption Wing, Madurai during the relevant time. He also in his deposition has clearly stated that the appellant accused was tested with the prepared Sodium Carbonate Solution at 19:00 hrs. It is clear from the deposition of all the witnesses, i.e., PW2, 3, 5 and 11 that trap was at about 05:45 p.m. and the hands of the appellant were tested only at 07:00 p.m. Further in the cross-examination, PW11 has clearly stated

that when they were monitoring the place of occurrence for about one hour and during that period many persons came in and out of the office of the appellant. Added to the same, admittedly, after completion of the phenolphthalein test, statement of the appellant was not recorded as required under Rule 47 Clause 1 of the Vigilance Manual. Further PW11 also clearly deposed in the cross-examination that he did not test the hands of the appellant-accused immediately after payment and handing over of the money and cell phone. Further PW4 and PW11 both have stated in their evidence that, only when TLO has asked the bribe amount and cell phone, the accused produced the same by taking out from the left side drawer of his table. It is fairly well settled that mere recovery of tainted money, divorced from the circumstances under which such money and article is found is not sufficient to convict the accused when the substantive evidence in the case is not reliable. In view of the material contradictions as noticed above in the deposition of key witnesses, the benefit of doubt has to go to the accused-appellant.

10. Mainly it is contended by Sri Nagamuthu, learned senior counsel appearing for the appellant that the view taken by the trial court is a “possible view”, having regard to evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378 Cr.PC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in the case of

Chandrappa &k Ors. V. State of Karnataka (2007) 4 SCC 415 has laid down the general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under :

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge :

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental

principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court." Further in the judgment in the case of Murugesan (supra) relied on by the learned senior counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of "possible view" to "erroneous view" or "wrong view" is explained. In clear terms, this Court has held that if the view taken by the trial court is a "possible view", High Court not to reverse the acquittal to that of the conviction. The relevant paragraphs in this regard where meaning and implication of "possible view" distinguishing from "erroneous view" and "wrong view" is discussed are paragraphs 32 to 35 of the judgment, which read as under :

"32. In the above facts can it be said that the view taken by the trial court is not a possible view? If the answer is in the affirmative, the jurisdiction of the

High Court to interfere with the acquittal of the appellant/accused, on the principles of law referred to earlier, ought not to have been exercised. In other words, the reversal of the acquittal could have been made by the High Court only if the conclusions recorded by the learned trial court did not reflect a possible view. It must be emphasised that the inhibition to interfere must be perceived only in a situation where the view taken by the trial court is not a possible view. The use of the expression "possible view" is conscious and not without good reasons. The said expression is in contradistinction to expressions such as "erroneous view" or "wrong view" which, at first blush, may seem to convey a similar meaning though a fine and subtle difference would be clearly discernible.

33. The expressions "erroneous", "wrong" and "possible" are defined in Oxford English Dictionary in the following terms:

"erroneous.— wrong; incorrect.

wrong.—(1) not correct or true, mistaken.

(2) unjust, dishonest, or immoral.

possible.—(1) capable of existing, happening, or being achieved.

(2) that may exist or happen, but that is not certain or probable."

34. It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement.

But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.

35. A consideration on the basis on which the learned trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may, however, be disagreement on the correctness of the same. But that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 CrPC was not called for." Further, in the case of Hakeem Khan & Ors. v. State of Madhya Pradesh (2017) 5 SCC 719 this Court has considered powers of appellate court for interference in cases where acquittal is recorded by trial court. In the said judgment it is held that if the "possible view" of the trial court is not agreeable for the High Court, even then such "possible view"

recorded by the trial court cannot be interdicted. It is further held that so long as the view of trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of trial court cannot be interdicted and the High court cannot supplant over the view of the trial court. Paragraph 9 of the judgment reads as under :

"9. Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code. The most important reason of the trial court, as has been stated above, was that, given the time of 6.30 p.m. to 7.00 p.m. of a winter evening, it would be dark, and, therefore, identification of seventeen persons would be extremely difficult. This reason, coupled with the fact that the only independent witness turned hostile, and two other eyewitnesses who were independent were not examined, would certainly create a large hole in the prosecution story. Apart from this, the very fact that there were injuries on three of the accused party, two of them being deep injuries in the skull, would lead to the conclusion that nothing was premeditated and there was, in all probability, a scuffle that led to injuries on both sides. While the learned counsel for the respondent may be right in stating that the trial court went overboard in stating that the complainant party was the aggressor, but the trial court's ultimate conclusion leading to an acquittal is certainly a

possible view on the facts of this case. This is coupled with the fact that the presence of the kingpin Sarpanch is itself doubtful in view of the fact that he attended the Court at some distance and arrived by bus after the incident took place."

11. By applying the above said principles and the evidence on record in the case on hand, we are of the considered view that having regard to material contradictions which we have already noticed above and also as referred to in the trial court judgment, it can be said that acquittal is a "possible view". By applying the ratio as laid down by this Court in the judgments which are stated supra, even assuming another view is possible, same is no ground to interfere with the judgment of acquittal and to convict the appellant for the offence alleged. From the evidence, it is clear that when the Inspecting Officer and other witnesses who are examined on behalf of the prosecution, went to the office of the appellant-accused, appellant was not there in the office and office was open and people were moving out and in from the office of the appellant. It is also clear from the evidence of PW3, 5 and 11 that the currency and cell phone were taken out from the drawer of the table by the appellant at their instance. There is also no reason, when the tainted notes and the cell phone were given to the appellant at 05:45 p.m. no recordings were made and the appellant was not tested by PW11 till 07:00 p.m. There are material contradictions in the deposition of PW2 and it is clear from his deposition that he has developed animosity against the appellant and he himself has stated in the

cross-examination that he was insulted earlier as he belonged to scheduled caste. Further there is no answer from PW11 to conduct the phenolphthalein test after about an hour from handing over tainted notes and cell phone. The trial court has disbelieved PW2, 3 and 5 by recording several valid and cogent reasons, but the High Court, without appreciating evidence in proper perspective, has reversed the view taken by the trial court. Further, the High Court also has not recorded any finding whether the view taken by the trial court is a "possible view" or not, having regard to the evidence on record. Though the High Court was of the view that PW2, 3 and 5 can be believed, unless it is held that the view taken by the trial court disbelieving the witnesses is not a possible view, the High Court ought not have interfered with the acquittal recorded by the trial court. In view of the material contradictions, the prosecution has not proved the case beyond reasonable doubt to convict the appellant.

12. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in the case of C.M. Girish Babu v. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779 and in the case of B.Jayaraj v. State of Andhra Pradesh (2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case under Sections 7, 13 (1) (d) (i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that accused voluntarily accepted money knowing it to be bribe.

Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court. The relevant paragraphs 7, 8 and 9 of the judgment in the case of B. Jayaraj (supra) read as under :

"7. Insofar 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 v. State of A.P.. [(2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M.Girish Babu v. CBI [(2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] .

8. In the present case, the complainant did not support the prosecution case insofar 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 (Ext. P11) 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 Ext. P11 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 insofar as the offence under Sections 13 (1) (d) (i) and (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.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13 (1) (d) (i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that

presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand.

As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent." The above said view taken by this Court, fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cell phone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a "possible view" as such the judgment of the High Court is fit to be set aside. Before recording conviction under the provisions of Prevention of Corruption Act, courts have to take utmost care in scanning the evidence. Once conviction is recorded under provisions of Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record.

13. Learned counsel for the appellant has also submitted that the judgment and conviction for the

offence under Section 7 of the Act dated 22.09.2020 and 29.09.2020 is contrary to Section 362 of Cr.PC. As we are in agreement with the case of the appellant on merits it is not necessary to decide such issue. The learned counsel for the State has submitted that as per the amended copy of the memo, the appellant has challenged only judgment/order dated 22.09.2020 and 29.09.2020 and there is no challenge to the earlier judgment of conviction dated 28.08.2020 and the order of sentence dated 15.09.2020, but at the same time it is to be noticed when the judgment is subsequently rendered on 22.09.2020 for the offence under Section 7 of the Act and further sentence is also imposed vide order dated 29.09.2020, the appellant had filed interlocutory application seeking amendment and the same was allowed by this Court. In that view of the matter, merely because in the amended memo the appellant has not mentioned about the judgment dated 28.08.2020 and the order dated 15.09.2020, same is no ground to reject the appeals on such technicality. Further the judgments relied by the learned counsel for the State also are of no assistance in support of his case to sustain the conviction recorded by the High Court."

23. The informant (P.W.1) did not support the prosecution case insofar as demand of illegal gratification by the appellant/ accused or acceptance thereof by him. 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.P4), and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ex.P4 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. Therefore, this Court has no hesitation to hold that the trial 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 of the P.C. At, 1988. The above also will be conclusive insofar as the offence under Sections 13 (1) (d) (i) and (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.

24. The evidence of other witnesses is not much relevant to establish the case of the prosecution against the appellant/accused. Since P.W.1 did not support the prosecution case, it is unsafe to place an implicit reliance on

the evidence adduced by the prosecution for convicting the appellant/accused. There is no legal evidence to find the appellant/accused of the charges leveled against him.

25. In view of the foregoing discussion, this Court no hesitation to hold that the prosecution failed to establish its case against the accused for the offences alleged, beyond reasonable doubt, and the appellant/accused is entitled for benefit of doubt. The trial Court did not consider the evidence on record in right perspective and came to wrong conclusions. Hence, the impugned judgment is liable to be set aside.

26. In the result, Criminal Appeal is allowed, setting aside the judgment dated 12.09.2007 passed in C.C.No.19 of 2003 on the file of the Additional Special Judge for S.P.E & A.C.B Cases, City Civil Court at Hyderabad. The appellant/accused is found not guilty of the offences punishable under Section 7 and 13 (1) (d) read with 13 (2) of the P.C. Act, 1988 and is accordingly acquitted of the same. The bail bonds of the appellant/accused shall stand cancelled, and the fine amount, if any, paid by the appellant/accused shall be refunded to him forthwith.

Miscellaneous Petitions pending, if any, in the Criminal Appeal shall stand closed.

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(K.SREENIVASA REDDY,J.)

25.07.2022
DRK

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

CRIMINAL APPEAL No.1174 OF 2007

25.07.2022