

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**Criminal Appeal No. 504 of 2007****JUDGMENT:**

1) Heard Sri. S.M. Subhani, on behalf of Smt. Manchikala Renuka, Standing Counsel for the Anti-Corruption Bureau representing the State and Sri. Ch Dhanamjaya, learned Counsel on behalf of the Respondent/Accused Officer. This Criminal Appeal is disposed of through BlueJeans video conferencing app.

2) Assailing the Judgment of Acquittal, dated 10.02.2006, in C.C. No. 6 of 2002 on the file of the Special Judge for SPE & ACB Cases, Vijayawada, wherein, the Respondent/Accused Officer who was tried for offences punishable under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, was acquitted, the present Appeal came to be filed by State represented by A.C.B., , under Section 378 (1) & (3) of Cr.P.C.

3) The facts, in issue, are as under:-

- i) The Accused Officer was working as Village Administrative Officer [Nominee], Guravaigudem, West Godavari District, from 01.10.1999 to 01.07.2000. PW1 who is a native of Ramachandrapuram Village, Jangareddigudem Mandal, purchased Ac.0.70 cents of land from PW2, in his name, under Possessory Agreement. PW1 is said to have applied for issuance of

pattadar passbook, for the said land, so as to get released the loan from Co-operative Bank.

ii) It is the case of the prosecution that, PW1 approached the Accused Officer along with PW2 for issuance of pattadar passbook in the name of his wife for Ac.1.00 cents of land and in the name of PW2 to an extent of Ac.0.70 cents by making a claim along with necessary documents.

iii) It is said that, PW1 and PW2 approached the Accused Officer number of times, but, to no avail. Later, the Accused Officer demanded an amount of Rs.400/- from PW1 and Rs.1,500/- from PW2 as bribe. When PW1 and PW2 expressed their inability to pay the amounts, the Accused Officer seems to have told them that passbooks will not be issued unless bribe amount is paid. However, on a later date, i.e., 29.06.2000, the Accused Officer is said to have reduced the bribe amount to Rs.300/- and Rs.1,200/-, respectively, and further instructed PW1 to pay the amount within a period of two days, after collecting from PW2.

iv) As PW1 was not willing to pay the bribe amount, he lodged a report with Dy.S.P., A.C.B., Eluru [PW10]. Ex.P14 is the written report of PW1, dated 29.06.2000. After verifying the credentials of both PW1 and Accused

Officer, on 30.06.2000 at about 9.00 p.m. PW10 obtained oral permission from the Director General A.C.B., for registering a case and to lay a trap against Accused Officer. Thereafter PW10 received the report from the Inspector with regard to the verification done and basing on which, he registered a case in Crime No. 3/ACB-RCT-EWG/2000 under Section 7 of the P.C. Act, at 10.30 p.m. Ex.P15 is the original First Information Report.

- v) On 01.07.2000, PW7 and another person Raja Sairam of Irrigation Circle, Eluru, reported before PW10 to act as mediators. They were introduced to his staff and vice-versa. Thereafter, PW10 called PW1 and PW2 and introduced them to mediators. PW10 gave a copy of the First Information Report to mediators and requested them to verify the contents of the report and ascertain the genuineness of the complaint from PW1. PW1 confirmed the contents of his report as true and correct. Thereafter, PW1 produced the currency notes, which were to be given as bribe. On the instructions of PW10, the mediators verified the serial numbers of the notes and recorded the same in pre-trap proceedings. Thereafter, a Constable applied phenolphthalein powder to the currency notes, made them into a wad and kept them in the empty left side pocket of PW1. Then, the Constable prepared sodium

carbonate solution and when he rinsed both his hands, the sodium carbonate solution turned pink in colour. The significance of phenolphthalein test was informed to PW1 and PW2. At the time of keeping the amount in the shirt pocket of PW1, he was informed that he should not touch the hands to his shirt pocket, and only on demand made by the Accused Officer, the amount shall be removed from his pocket to pay to the Accused Officer. M.O.1 and M.O.2 are samples of sodium carbonate and phenolphthalein powder. Ex.P9 is the pre-trap proceedings of mediators report.

- vi) After completing the pre-trap proceedings, the entire raid party including PW7 proceeded in two vehicles to Jangareddygudem and reached the house of the Accused Officer at 11.00 a.m. The vehicles were parked at a distance of 50 yards to the house of Accused Officer. PW1 was instructed to proceed to the house of the Accused Officer and pay the money only on demand. PW1 was further instructed to give a signal after the acceptance of money by the Accused Officer, by combing his hair. Accordingly, PW1 is said to have gone inside the house and at about 12.15 p.m., PW10 received a signal from PW1. He along with mediators rushed in to the house of Accused Officer. They asked PW1 and PW2 to wait

outside. The raid party found the Accused Officer on duty and after ascertaining his identify, disclosed their names. The Accused Officer was found shivering. Immediately, sodium carbonate solution was prepared and both the hand fingers of the Accused Officer when tested proved positive. When asked about the tainted amount, the Accused Officer picked it out from his money purse and, accordingly, PW10 seized the cash of Rs.1,500/- [M.O.3]. The mediators were asked to verify the serial numbers mentioned in the pre-trap proceedings, which tallied. Thereafter, the inner-lining of the money purse was subjected to sodium carbonate, which also proved positive. M.O.5 to M.O.7 the resultant solutions of sodium carbonate of right and left hand fingers of Accused Officer and washings of M.O.4. PW10 enquired with Accused Officer as to what happened in between himself and Accused Officer and his version was recorded in mazahar. Thereupon, PW1 produced Ex.P1 [sale deed], which was seized under panchanama.

- vii) The evidence of PW10 further discloses that, after recording the explanation of the Accused Officer, he called PW1 and PW2 separately and enquired them as to what happened between them and Accused Officer. The statement given by them was recorded in the 2nd mediator

report, which is placed on record as Ex.P11. The Accused Officer was arrested and thereafter, he was released on bail.

viii) PW13 who took up further investigation, examined the witnesses and after collecting all the necessary documents, filed the charge-sheet, which was taken on file as C.C. No. 6 of 2002.

4) On appearance of the Accused Officer, copies of all documents as required under Section 207 Cr.P.C. were furnished and charges as referred to earlier, came to be framed, read over and explained to the Respondent/Accused Officer, to which he pleaded not guilty and claimed to be tried.

5) In support of its case, the prosecution examined PW1 to PW13 and got marked Ex.P1 to Ex.P16, beside MO.1 to MO.8. After completion of the prosecution evidence, the Respondent/Accused Officer was examined under section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses, however, no defence evidence was adduced on his behalf.

6) It is to be noted that, out of 13 witnesses examined by the prosecution, PW1 to PW4, and PW6 did not support the prosecution case and they were treated as hostile by the prosecution. Since, the prosecution failed to prove existence of any

official favor before the Accused Officer; demand of money as gratification other than legal remuneration and also receipt of money pursuant to a demand, the trial court acquitted the Accused Officer. Challenging the same, the present Criminal Appeal came to be filed by State –A.C.B.

7) The learned Standing Counsel for Anti Corruption Bureau would contend that, though, PW1 to PW4 and PW6 did not support prosecution case, but, there is material on record to show that, PW1 gave the report, and that the tainted money was recovered from the possession of Accused Officer. In other words, his plea is that, when the signature on report is not denied by PW1 on Ex.P14 [report], the contents of the report stands established and if the contents of the report are read along with the evidence of PW7 and PW10, it stands establish that the money was received by Accused Officer as illegal gratification other than legal remuneration, for doing a favor, and as such, the Accused Officer is liable for conviction.

8) The learned Standing Counsel would further contend that, when the fingers of the Accused Officer turned positive to phenolphthalein test, a presumption has to be drawn that the amount was accepted as illegal gratification and that the finding given by the trial court that there is no evidence with regard to demand and acceptance is not correct.

9) The same is opposed by the learned Counsel for the Respondent/Accused Officer stating that, when the evidence of PW1 to PW4 is silent with regard to the demand of money by the Accused Officer, a doubt arises as to whether, really, there was any demand or acceptance of money by the Accused Officer.

10) The point that arises for consideration is, ***whether the prosecution was able to bring home the guilty of the Accused Officer beyond reasonable doubt?***

11) In a case arising under the provisions of Prevention of Corruption Act, the prosecution mainly has to prove the *demand*, *acceptance*, and whether any *official favor is pending with the Accused Officer*.

12) As stated earlier, in order to prove the case, the prosecution examined 13 witnesses. PW1 and PW2 are the two main witnesses, who were examined to speak about the demand, existence of official favor and also acceptance of money as *bribe*.

13) PW1 in his evidence deposed that, he owns Ac.3.60 cents of land, out of it, Ac.1.00 cents stood in the name of his wife. PW1 is said to have purchased Ac.0.70 cents from PW2, by way of an Agreement of Sale. PW1 further deposed that, he is having registered Sale Deed for the land owned by him, except the land admeasuring Ac.0.70 cents. Ex.P1 is the photostat copy of the registered Sale Deed, which is in the name of his wife. According

to PW1, the Accused Officer took the amount of Rs.1,500/- from him, in order to scribe a registered Sale Deed about 4 or 5 years ago and that he cannot say the exact date, month and year. According to him, Accused Officer took Rs.1,500/- but did not complete his work. PW1 in his cross admits that he did not give any report to anybody much less to Anti-Corruption Bureau. PW1 categorically states that, he never approached Anti-Corruption Bureau, though admits his signature on Ex.P14 [report], which is marked as Ex.P2 [signature]. PW1 also pleads ignorance of he being examined by the Anti-Corruption Bureau. PW1 emphatically states that, he does not know the facts of the present case. At that stage, PW1 was declared hostile and he was cross-examined at length. In the cross-examination, suggestion given with regard to a favor pending before the Accused Officer, demand of bribe amount and also acceptance of money of Rs.1,500/- as bribe, were denied.

14) Therefore, from the above, it is clear that, PW1 completely resiled from his earlier statement and goes to an extent of denying lodging of a report with Anti-Corruption Bureau. PW1 emphatically states that, he never went to the office of the Anti-Corruption Bureau and never lodged a report and that he does not know how his signature on Ex.P14 [report] was taken.

15) PW2, accompanied PW1 to the office of Accused Officer and was also present when PW1 lodged the report. He too did not support prosecution case and he was also declared hostile by the prosecution.

16) According to PW2, he never gave any report in connection with his pattadar passbook against anybody. PW2 pleads ignorance of PW1 giving report against anybody in that connection. PW2 also denies accompanying PW1 while lodging the report. All the suggestions given to this witness, with regard to the earlier statement were denied by him. Therefore, the evidence of PW1 and PW2 may not be any help to prosecution to prove the demand and acceptance of money by Accused Officer, as illegal gratification.

17) Coming to the evidence of PW3. PW3 is a resident of Jangareddygudem, but does not know PW1, PW2 and Accused Officer. PW3 identifies his signature, which belongs to him, but, however, says that, the writings on report, dated 29.06.2000, does not belong to him and he has not signed therein.

18) Similarly, PW4 who is working as Village Talari of Guravaigudem deposed that, he knows the Accused Officer, but, however, admits that, he does not know PW1 and PW2. According to him, he never worked under Accused Officer. PW4 was also declared hostile by the prosecution.

19) Insofar as PW5 is concerned, he worked as Village Administrative Officer from 1992 onwards and according to him, he was on sick leave from July 1999 onwards. At that time, Accused Officer worked as his Assistant. During the leave period, he nominated Accused Officer to act as Village Administrative Officer, which was approved by Superior Revenue Authority. According to him, he came to know that trap was laid against Accused Officer. Subsequent to trap, Accused Officer handed over the charge to one Appa Rao, who is no more. The evidence of this witness does not in any way help the prosecution, as he only speaks about nomination of Accused Officer to work, in his place, as Village Administrative Officer and handing over of the charge after the trap.

20) PW7 is the mediator, who was examined to speak about the pre-trap proceedings and the post-trap proceedings. Before going into the evidence of PW7, it is to be noted that, from the evidence of PW1 to PW5, there is nothing which is useful to the prosecution. The evidence of these witnesses does not establish any demand or acceptance of money as illegal gratification other than legal remuneration. At the same time, the evidence does not, in any way, establish the existence of any official favor pending with the Accused Officer.

21) PW7, who was working as Deputy Executive Engineer, Irrigation Department, Eluru, deposed that, during the year 2000, he worked as Assistant Executive Engineer in the same Division. According to him, he along with one R. Sai Ram, were deputed to act as mediators to the trap proceedings. PW7 in his evidence deposed about PW10 the investigating officer calling farmers into his chambers and introducing them to him and vice-versa. Thereafter, PW10 gave carbon copy of the First Information Report, asked them to go through the contents and ascertain the genuineness of the contents therein from the farmers [PW1 and PW2]. PW7 identifies the carbon copy of the First Information Report as Ex.P8. PW7 deposed about the pre-trap proceedings and also the recovery of the money purse of the Accused Officer, after receipt of money by him from PW1. PW7 also speaks about phenolphthalein test conducted on both hands of the Accused Officer and the test proving positive. In the chief-examination itself, PW7 deposed that the Dy.S.P., and others searched the room of the Accused Officer, but, did not find any incriminating material. Ex.P12 is the search list attested by PW7 and other. It would be useful to extract the same, which is as under:

“The Dy.S.P., searched the room of A.O. in our presence but we did not find any incriminating material. Ex.P12 is the search list. Myself, other attester put our initials thereon. The copy of Ex.P12 is served on A.O., under his acknowledgment.”

22) In the cross-examination, PW7 admits that, because of the orders from the higher authorities, they were deputed to act as mediators. He also admits that all Government servants are afraid of Anti-Corruption Bureau. However, to a suggestion that no trap was conducted was denied by him. This evidence of PW7, in my view, would only establish three things; that, a report being lodged by PW1; pre-trap proceedings in the office of Anti-Corruption Bureau; and the raid party going to the house of Accused Officer and cash of Rs.1,500/- being seized from the money purse, apart from the result of test proving positive.

23) But, the evidence of these witnesses by itself does not establish that there was any demand of gratification by Accused Officer or acceptance of money as illegal gratification. Mere recovery of money by itself, in my view, may not be sufficient to show that the money that is recovered was an illegal gratification received by Accused Officer for issuance of pattadar passbook. Definitely things would have been different had any material been placed to show that this amount was paid as bribe for issuance of pattadar passbook. On the other hand, PW1 and PW2 do not anywhere indicate the payment of money for issuance of pattadar passbook. The version spelt out by them for payment of Rs.1,500/-, is something different, which is not the case of the prosecution. Therefore, in my view, the prosecution failed to prove the demand and in the absence of evidence to show that the

money was paid as illegal gratification; mere recovery of money, may not be sufficient to convict the Accused Officer for the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

24) Further, the other evidence available on record is that of the Investigating Officer [PW10]. His evidence does not anywhere establish seizing of any incriminating material from the possession of the Accused Officer. The evidence of PW10 also does not show of existence of any official favor with Accused Officer. Ex.P1, which is said to have been seized from the possession of Accused Officer, is only a photostat copy of the Sale Deed bearing No. 541/19 executed by Suramma in favour of K.Nagaraju along with three photographs of K. Nagaraju. But, the prosecution failed to establish, how this document is relevant to the case on hand. Apart from this, no other material was seized either from the possession of the Accused Officer or from the office of the Accused Officer, or from his residence. As admitted by the mediator [PW7], nothing incriminating was found at the premises of the Accused Officer when search was conducted.

25) In ***P. Satyanarayana Murthy v. District Inspector of Police and Anr.***,¹ the Apex Court held that, mere possession and recovery of currency notes from an accused without proof of demand would not establish Section 7 as well as Section 13(1)(d)(i)

¹ (2015) 10 SCC 152

& (ii) of the Prevention of Corruption Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Dealing with the same, the Court observed as under:

"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 therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors 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) The said principle was reiterated by the Apex Court in ***Mukhtiar Singh (since deceased) through His Legal Representative v. State of Punjab***², as under:-

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

² (2017) 8 Supreme Court Cases 136

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 and 13 of the Act would not entail his conviction thereunder."

27) In fact, in **C.M. Sharma v. State of Andhra Pradesh etc.**,³ the Apex Court held as under:

"In support of the submission reliance has been placed on a decision of this Court in the case of Panalal Damodar Rathi v. State of Maharashtra (1987) Suppl. SCC 266 and our attention has been drawn to the following paragraph of the judgment:

"26. Therefore, the very foundation of the prosecution case is shaken to a great extent. The question as to the handing over of any bribe and recovery of the same from the accused should be considered along with other material circumstances one of which is the question whether any demand was at all made by the appellant for the bribe. When it is found that no such demand was made by the accused and the prosecution has given a false story in that regard, the court will view the allegation of payment of the bribe to and recovery of the same from the accused with suspicion."

*In **Suraj Mal v. State (Delhi Admn.)**, (1979) 4 SCC 725 this Court took the view that (at SCC p. 727, para 2) 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 that the accused voluntarily accepted the money knowing it to be bribe.*

³ LAWS (SC) 2010 11 84

*Another decision on which reliance is placed is the decision of this court in the case of **State of Maharashtra v. Dyaneshwar Laxman Rao Wankhede**, (2009) 15 SCC 200 in which it has been held as :*

“16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz. demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety.”

28) From the judgments referred to above, it is clear that the Apex Court has categorically held that, in order to prove a charge under Sections 7 and 13 of 1988 Act, the prosecution has to establish by proper proof, the demand and acceptance of illegal gratification. The Court held that till that is accomplished, accused should be considered to be innocent. The proof of demand of illegal gratification, thus, is the gravamen of offence under Sections 7 and 13(1)(d)(i) and (ii) of 1998 Act and in the absence thereof, unmistakably the charge, therefore, would fail. The Apex Court went on to hold that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors proof of demand, ipso facto, would thus not be sufficient to bring home charge under aforesaid two sections.

29) The learned Standing Counsel for the Anti-Corruption Bureau would contend that, once the money is recovered from the Respondent/Accused Officer and when the hand of Accused Officer turned positive to phenolphthalein test, a presumption has to be drawn that the said money was accepted as bribe.

30) The circumstances and the place from where the money was recovered does not by itself establish the guilt of the accused, as the demand of money as illegal gratification was not established beyond reasonable doubt by the prosecution. Things would have been different had there been evidence to establish demand and acceptance of money as bribe by the Accused Officer. Mere recovery of the tainted amount from the Accused Officer may not by itself fix him with liability of accepting the same for doing an official favour, more so, when existence of official favour was not established beyond doubt and when the demand of money as illegal gratification is clouded with suspicion.

31) In ***State of Punjab v. Madan Mohan Lal Verma***⁴, the Hon'ble Supreme Court held that, *mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification*'. It is appropriate to incorporate paragraph No.7 of the said judgment, which reads thus:

⁴ 2013(3) MLJ (CrI) 565

"7. 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 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 a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, 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 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. **In a proper case, the court may look for independent corroboration before convicting the accused person.**"

32) It is also to be noted that, this being an appeal against acquittal, interference is impermissible, unless the judgment of acquittal tends to be perverse or unless the inferences drawn in

acquitting the accused was not reasonable. [***The State Rep.By CBI, Hyderabad v G.Prem Raj***]⁵.

33) In the case of ***M.S. Narayana Menon @ Mani v. State of Kerala & Anr.***⁶, the Apex Court has narrated the powers of High Court in appeal against the order of acquittal. In para 54 of the decision, the Apex Court has observed as under:

"54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two views are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

34) Having regard to the law laid down by the Apex Court and as the evidence available on record is not cogent and convincing; this court is of the opinion that, the Judgment under challenge requires no interference.

35) In the result the appeal fails and it is accordingly ***dismissed***, confirming the acquittal of the Respondent/Accused Officer for the offences punishable under Section 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, passed in C.C. No. 6 of 2002, on the file of the Special Judge for SPE & ACB Cases, Vijayawada, on 10.02.2006.

⁵ AIR2010SC793

⁶ (2006) 6 S.C.C. 39

36) Consequently, miscellaneous petitions pending, if any, shall stands closed.

JUSTICE C. PRAVEEN KUMAR

Date: 01.12.2020
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THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

Criminal Appeal No. 504 of 2007

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