

THE HON'BLE SRI JUSTICE RAKESH KUMAR

Criminal Appeal No.1175 of 2006

JUDGMENT:

The present appeal under Section 374(2) of the Code of Criminal Procedure, 1973, has been preferred by the appellant, who has been convicted and sentenced by judgment, dated 31.08.2006. The judgment of conviction and sentence was passed by the learned III Additional District & Sessions Judge-cum-Special Judge for ACB Cases, Visakhapatnam, (hereinafter referred to as the 'learned trial Judge') in C.C.68 of 2000, on 31.08.2006 (arising out of Crime No.18/RC-ACB/VZM/98 of ACB, Srikakulam District, Vizianagaram Range).

2. The appellant, by judgment, dated 31.08.2006, was convicted for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act') and on the same date by an order was sentenced to undergo rigorous imprisonment for one year on each count and to pay a fine of Rs.1,000/- on each count, in case of default of payment of fine, he was further directed to undergo simple imprisonment for three months on each count. All the sentences were directed to run concurrently.

3. The short fact of the case is that on 03.12.1998, PW1, T.Kubera Chowdary, filed a written complaint before the Deputy Superintendent of Police, ACB, Vizianagaram Range, disclosing therein that he was resident of Sompeta and doing business of readymade garments for the last six years and obtained R.C.No.1698 from the office of ACTO, concerned Government authority, for doing the said business. He was regularly paying the taxes and every year he was properly submitting returns in connection with the Readymade Dresses business to the office of ACTO, Sompeta. He was submitting returns to the ACTO, who after verification, fixing the tax and the

complainant was receiving receipts. As usual, in the same way, return for the assessment year 1997-98, was submitted to the appellant, G.Neelayya, who was the Head Clerk, in the office of the ACTO, Sompeta, where he was visiting the office of ACTO for obtaining the assessment order from the ACTO. On 30.11.1998, when he visited the office of ACTO, Sompeta, and asked the Head Clerk, G.Neelayya (appellant), about issuance of assessment order on which he demanded bribe amount of Rs.650/- and told him to bring the said amount within three or four days for finalizing the assessment order. In the complaint, the complainant/PW1 stated that he was not inclined to pay the bribe amount of Rs.650/- as demanded by G.Neelayya (appellant) and as such, he requested for taking necessary action against the Head Clerk, G.Neelayya. After receipt of the said complaint, it is the case of the prosecution that the complaint was got verified; and, thereafter, on 05.12.1998, an FIR, *vide* Crime No.18/RC was registered at 7 am. Thereafter, a Pre Trap memorandum, which has been marked as exhibit P3, was prepared in the office of Dy.S.P., ACB, Vizianagaram in between 7.30 and 8.30 a.m., in the presence of witnesses and trap party. Signatures of two mediators and inspectors were obtained. During Pre Trap Memorandum proceeding, seven currency notes were produced by the complainant out of which six currency notes were of Rs.100/- denomination and one currency note was of Rs.50/- denomination. In the Pre Trap memorandum, the serial numbers of the currency notes were also noted down. A demonstration was made afterwards. The currency notes were treated with phenolphthalein powder and given to the complainant with instructions to pay the same to the appellant only on demand. The trap team thereafter, proceeded for laying a trap. On the same date, i.e., on 05.11.1998, the appellant was trapped and currency notes mentioned in the Pre Trap memorandum were recovered. Subsequently, Post Trap memorandum was prepared, which took time from 3 pm to 5.45 pm. After completion of Post Trap memorandum, the case was investigated. During investigation,

statements of witnesses were recorded under Section 161 of Cr.P.C. In the case, during investigation, prosecution sanction order was obtained on 01.01.2000 and finally charge sheet was submitted on 15.03.2000. Despite the fact that charge sheet was submitted on 15.03.2000, after obtaining sanction order for prosecution, framing of charges was delayed and finally, on 02.03.2005, charges under Sections 7 and 13(1)(d) read with 13(2) of the PC Act were framed against the appellant, which he denied and claimed to be tried.

4. To prove the case from the prosecution side, altogether three witnesses were examined, who are PW1, T.Kubera Chowdary (complainant), PW2, D.Veerabhadra Rao (Mediator); and, PW3, Ch.Balakrishna, Investigating Officer of the case. During trial, from the prosecution side, altogether nine documents were got exhibited, which are as under:-

- (i) Exhibit P1 - Report/complaint, dated 03.12.1998, of the complainant submitted to the Dy. S.P., ACB, Vizianagaram;
- (ii) Exhibit P2 - Made up file containing return for the Assessment year 1997-98 for the Assessment No.2841;
- (iii) Exhibit P3 - Pre Trap proceedings prepared in the office of the Dy.S.P., Vizianagaram, on 05.11.1998, between 7.30 am to 8.30 am;
- (iv) Exhibit P4 - Attendance Register of Commercial Tax Office, Sompeta;
- (v) Exhibit P5 - Receipt Book No.17319;
- (vi) Exhibit P6 - Rough sketch regarding the place of offence;
- (vii) Exhibit P7 - Post Trap memorandum prepared in the office staff room of ACTO, Sompeta, on 05.12.1998, from 3 pm to 05.45 pm;
- (viii) Exhibit P8 - Sanction Order for prosecution issued, as per G.O.Rt.No.3, dated 01.01.2000, Revenue (C.T.III) Department, Hyd.
- (ix) Exhibit P9 - Original FIR in Cr.No.18/RC.ACB.Vizm.98.

On behalf of the defence, one witness, namely, M.Janardhana Rao, who was working as ACTO in the office of Commercial Tax, Kasibugga, Srikakulam, was

got examined. On behalf of defence, exhibits D1 to D3 were got exhibited.

Those are:-

- (i) Exhibit D1 - 161 Cr.P.C statement of PW1;
- (ii) Exhibit D2 - Xerox copy of D-1 Register at Page 235 for the year 97-98;
- (iii) Exhibit D3 -xerox copy of D-1 Register at page No.210 for the year 1998-99.

After completion of prosecution evidence, statement of accused under Section 313 Cr.P.C was recorded. The learned trial Judge, after examining the entire evidence and on hearing the parties, has passed the judgment of conviction and sentence, which has been assailed in the present appeal.

5. *Sri A.Hariprasad Reddy*, learned counsel for the appellant, after placing the entire evidence, at the very outset, has argued that the prosecution has miserably failed to show as to how the appellant was proposing to give any official favour to the complainant/PW1. According to the learned counsel for the appellant, in the absence of rendering any official favour by the appellant, there was no reason to come to the conclusion that the appellant had either demanded or accepted the bribe amount. He tried to persuade the Court that the appellant had accepted Rs.650/-, which was required to be deposited by the complainant/PW1 as tax. However, with an ill will, the complainant got the appellant trapped after handing over the tax amount in the garb of paying the tax amount. It has been emphasized that there are several contradictions in the evidence of prosecution witnesses and as such those witnesses were not reliable. Even then, the learned trial Judge has passed the impugned judgment of conviction and sentence. It has been reiterated that the recovered amount from the possession of the appellant was not bribe amount; rather it was the tax, which was to be paid by the complainant/ opposite party no.1. Besides this, learned counsel for the appellant has highlighted that before the alleged payment of bribe amount, the assessment order was already passed by the competent authority and as such, there was no occasion for accepting bribe for

rendering official favour to the complainant. In sum and substance, it has been argued that it was a case of false implication of the appellant at the instance of the complainant/PW1, and as such, the judgment of conviction and sentence is liable to be set aside.

6. Learned counsel for the appellant has further argued that despite the fact that in Pre Trap and Post Trap memos, number of witnesses were cited and it was shown that they participated in the trap proceedings, to the reasons best known to the prosecution, most of the witnesses were not examined. As such, the prosecution case, according to him, appears to be not reliable.

7. *Smt. M.Renuka*, learned Standing Counsel for ACB, opposing the appeal has argued that it was a clear cut case of demand of bribe, acceptance of bribe and its recovery from the possession of the appellant. She further submits that it is the consistent case of the prosecution that after obtaining assessment order in respect of shop of the complainant for the year 1998-99, he had filed return and for getting the assessment order, the complainant was pressurized by the appellant to pay bribe amount of Rs.650/-. The said bribe amount was produced by the complainant before the Investigating Officer; those were seven currency notes, out of which one currency note was of Rs.50/- denomination, however, remaining six currency notes were of Rs.100/- denomination. After production of the said currency notes, the same was treated with phenolphthalein powder and returned back to the complainant/PW1 with specific instructions to give the said amount to the appellant on demand and he was also given instruction to give signal after handing over the bribe amount. Immediately after receiving appropriate signal, the Dy SP., along with the mediators arrived in the office of the appellant and on being asked, the appellant himself took out those currency notes from his upper pocket of the shirt and produced the same before the Investigating officer. According to *Smt. M. Renuka*, learned Standing Counsel, all those facts are

categorically incorporated in the Post Trap memorandum/exhibit P7. Besides this, she submits that the complainant/PW1 in his evidence has made consistent statement as to how the appellant had demanded bribe amount of Rs.650/-, accepted the same and being trapped and on being asked by the trap team, the appellant took out those currency notes from his upper shirt pocket and handed over to the trap party. Immediately thereafter, the appellant was perplexed and on being asked, he had handed over bribe currency notes after taking out from his upper pocket. After recovery of the said currency notes, its serial numbers were compared with the serial numbers mentioned in the Pre Trap memorandum and the same were tallied.

8. Regarding the official favour, *Smt. Renuka*, learned Standing Counsel has argued that despite the fact that return was filed by the complainant much earlier, i.e., for several months, no assessment order was passed and after the appellant was trapped with the bribe amount, it was noticed that the assessment order was passed by the competent authority. She submits that even though the order of assessment was passed, the same was not given to the complainant and the appellant was demanding bribe from the complainant. She further submits that it is not necessary in a trap case, all the persons, who were members of the trap team, may be examined, since their examination only show repetition of almost similar evidence. According to the learned Standing Counsel, of course, during trial, three witnesses were examined, but all the three witnesses are consistent and the prosecution has been able to establish the case of demand, acceptance and recovery of the bribe money from the appellant and material has been found that the bribe was demanded for rendering official favour, i.e., handing over of the assessment order to the complainant/PW1. *Smt. M.Renuka*, learned Standing Counsel, by way of referring to paragraph No.7 of the decision reported in **Viswesham v. State of**

Andhra Pradesh¹ has argued that since it was the established case of acceptance and recovery of the bribe amount from the appellant in the office premises and assessment order was yet to be received by the complainant, even by taking aid of Section 20 of the PC Act, a presumption can be drawn that the said amount was accepted for rendering official favour to the complainant by the appellant. It would be just and proper to reproduce paragraph No.7 of the judgment, which is quoted herein below:

“In the instant case, there was no dispute about the fact that the appellant received an amount of Rs.2,000/- from PW.1. Spontaneously the appellant offered an explanation that he received the said amount through PW1 for the purpose of arranging telephone connection to the mother-in-law of PW2. The prosecution is able to establish by positive evidence and also from the defence version of the appellant himself that he received an amount of Rs.2,000/- from PW1. In such an event, the presumption would arise under Section 20 of the Prevention of Corruption Act, 1988 to the effect that unless rebutted the Court has to presume that the said amount was taken as illegal gratification.”

Learned Standing Counsel has also argued that the prosecution has established its case beyond all reasonable doubt and there is no reason for interfering with the judgment of conviction and sentence.

9. Besides hearing learned counsel for the parties, I have minutely examined the entire material available on record. Before proceeding further, it would be necessary to cursorily examine the evidence, which has been brought on record. After receipt of the complaint, which was filed by PW1, and lodging of FIR, a Pre Trap memorandum, i.e., called ‘Mediator Report I’ was prepared. The same has been marked as exhibit P3. It was prepared in the office of the ACB, Srikakulam on 05.12.1998, from 7.30 am in the presence of two Mediators, namely, D.Veerabhadra Rao (PW2) and G.Parvatheesam (not examined). The first mediator/PW2 was the Assistant Executive Engineer,

¹ 2012 Law Suit (AP) 603

R.W.S. Project, Srikakulam. The mediators, on being requisitioned by the Inspector of Police, ACB, Srikakulam, attended the ACB office at Srikakulam at about 6.30 am in the morning. They were called inside the office room by the Dy. S.P., ACB. Thereafter, the Dy.S.P., called one person into office room and introduced him to them as T. Kubera Chowdary (complainant)/PW1. Thereafter, the mediators were given original copy of the FIR in Crime No.18/RC and requested them to go through the contents of the complaint and after going through the same and on being satisfied; both the mediators had put their signatures on the original FIR. In their presence, the Dy. SP questioned the complainant (PW1) as to whether he had brought the proposed bribe amount of Rs.650/- to be given to the appellant, Senior Assistant, Office of the ACTO, Sompeta. The complainant produced the said amount. Thereafter, one of the mediators noted down the serial numbers of the currency notes. There were six currency notes of Rs.100/- denomination and one currency note of Rs.50/- denomination. Thereafter, the mediators were shown the bottles containing Sodium Carbonate powder and another bottle containing phenolphthalein powder and gave explanation and also demonstration. In the said demonstration itself, the said currency notes were treated with phenolphthalein powder and it was shown as to how if finger is dipped in solution of water, the colour is changes. After completion of entire formalities, the proceedings of preparation of Pre Trap memorandum was concluded at 8.30 am on 05.12.1998, which was signed by the two officers of ACB besides signatures of the Mediators. After all those formalities, and instructions, the trap was laid, which was successful. Thereafter, the Investigating officer examined the appellant and on being asked by the trap party, the appellant produced the bribe amount of Rs.650/- after taking out from his shirt pocket and subsequently, Post Trap memorandum was prepared, which has been marked as exhibit P7.

10. During the course of evidence of PW1, the complainant-T.Kubera Chowdary in his evidence has stated that he was doing Readymade Dresses business under the name and style of 'Manohara Readymade Dresses', Sompeta, Srikakulam, for the last 14 years. He had obtained R.C.1698 from the office of the ACTO, Sompeta, for doing the business. Every year, he was submitting returns in connection with his business. For assessment year 1997-98 also, he had submitted return some time in the month of June, 1998 to the appellant and he disclosed the name of the appellant, who was the Head Clerk in the ACTO office, Sompeta. He further deposed that for obtaining assessment order, he had visited four or five times to the ACTO office, but the assessment order was being delayed. On 30.11.1998, at about 11 am, he visited the office of the ACTO, Sompeta, and asked the appellant about issuance of assessment order in respect of his return submitted for the assessment year 1997-98, whereupon, the appellant replied that a sum of Rs.650/- was to be paid to him towards bribe for finalizing the assessment order. The complainant/PW1, in his evidence, has stated that he expressed his inability to pay the bribe amount. Then, the appellant insisted for paying the same within four or five days. Since this witness was not inclined to pay the bribe amount, he approached the Dy S.P., ACB, Vizianagaram range, on 03.12.1998 at 10 am and lodged report. Thereafter, he was instructed by the Dy. S.P., to come to the office of Inspector, ACB, Srikakulam, on 05.12.1998, at 7 am with the demanded bribe amount of Rs.650/-. On 05.12.1998, at 7 am, he visited the office of ACB, Srikakulam, with demanded amount of Rs.650/- and he was introduced to the mediators in the said office. He further stated that the mediators had gone through the FIR (Exhibit P1) and he, in his evidence, had stated that in his presence, the currency notes were tainted with phenolphthalein powder and thereafter, on the instructions of Dy S.P., the wad of tainted cash of Rs.650/- was put in the shirt pocket of the complainant and he was instructed that after acceptance of the bribe amount by the appellant, he may come out from the

office and give signal by wiping his face with a hand kerchief. He further deposed that the Constable, who had kept the tainted currency notes in the pocket of the complainant, dipped his fingers in the Sodium Carbonate solution and thereafter, the solution turned to pink colour. The Police Constable, who demonstrated the tests to him, was instructed to remain in the office itself by the Dy. S.P., ACB. He further deposed that Pre Trap proceedings were prepared by one of the mediators. In his evidence, PW1 has stated that at 11 am, on the same day, they left for Sompeta in two vehicles and reached RTC Complex, Sompeta, at 02.45 am. They got down from the vehicles at RTC complex and the Dy.S.P., reiterated the earlier instructions to him. The complainant, thereafter, proceeded to the office of the ACTO, Sompeta, who was followed by the Sub Inspector of Police, ACB, namely, Venkata Rao, in close proximity to the office of the ACTO. Then, he went inside the room of the appellant where, he saw the appellant in his room. Immediately on seeing him, the appellant asked him whether the demanded bribe amount was brought or not. Then, he replied in positive and handed over the tainted amount of Rs.650/- to the appellant, who took the same with his right hand and he counted the currency notes and kept in his left side shirt pocket. Then, the appellant instructed him to go saying that he would send the assessment order through his Clerk to him. PW1 further deposed that he came outside the office and gave pre-arranged signal by wiping his face with a hand-kerchief. On seeing the same, the SI of Police, ACB, in turn, relayed the signal to the trap party and within two or three minutes, the trap party rushed to the office of the ACTO. He had further clarified that by the time the trap party entered into the office of ACTO, he remained present in the verandah of ACTO office. Subsequently, he was called inside the office. Then, Dy S.P., asked him as to whether the tainted amount of Rs.650/- was paid to the appellant towards tax or not. Then, this witness had replied that he had paid the said amount to the appellant towards bribe; but not towards tax; and, no receipt was issued by the

appellant. This witness was cross-examined at length. In cross examination, he had stated that since about four or five years, the appellant was Head Clerk in the office of ACTO, Sompeta, however, earlier he had never paid bribe to the office of ACTO, Sompeta. Of course, he was cross-examined at length, but no important material has come in his evidence to raise any doubt on the credibility of this witness.

11. PW2, D.Veerabhadra Rao, is one of the mediators, who was working as Assistant Executive Engineer, RWS Project, Srikakulam, at the relevant time. He, in his evidence, had deposed that on 05.12.1998, he along with G.Parvatheesham went to the office of Dy S.P., ACB, Srikakulam, at 6.30 am and on the same date, he was called inside the office of the Dy S.P., ACB. He was introduced to sub-staff members as well as PW1 (complainant). The Dy. S.P., furnished exhibit P1, i.e., complaint of the complainant for verification of the contents. Accordingly, he had gone through the contents and PW1, in his presence, admitted the contents to be true and correct. This witness attested the same, i.e., exhibit P1. In his evidence, he further stated that in his presence, the Dy. S.P., asked the complainant about the proposed bribe amount of Rs.650/- and thereafter, PW1 produced the sum of Rs.650/-, i.e., six currency notes of Rs.100/- denomination and one currency note of Rs.50/- denomination. Thereafter, on instructions of Dy.S.P., he noted down the serial numbers of the currency notes in the pre-trap proceedings, which was prepared by him. In his evidence, he further stated that thereafter, PW1 was asked to wait outside the office; and, thereafter, the Dy. S.P., shown two bottles containing Sodium Carbonate solution and phenolphthalein powder and explained its use and significance in detection of the trap case. Then, one Police Constable-K.Rama Rao was called and was asked to give demonstration regarding its use, which was done thereafter. After demonstration, PW1 was called inside the office. In his presence, on instructions of the Dy. S.P., the Constable applied a thin layer of phenolphthalein powder over the proposed

bribe amount. The said wad of currency notes of Rs.650/- was thereafter kept in the left side pocket of PW1 and PW1 was asked not to touch the wad of currency notes till there was further demand by the appellant and acceptance of the currency notes by the appellant. He was further instructed that after acceptance of the bribe by the appellant to come out of the office and give a signal by wiping his face with a hand-kerchief to SI-Venkata Rao, who was instructed to thereafter to relay the signal to remaining riding party. He deposed that the Pre Trap proceeding, that is, exhibit P3 was prepared by him and attested by him and one another mediator. In his evidence, he further stated that on the same day, at 11 am, he along with others left for Sompeta in two vehicles and reached RTC complex, Sompeta, at 2.45 pm. They got down from the vehicles near RTC complex, Sompeta. As instructed, PW1 proceeded to the office of ACTO, Sompeta, and Sub Inspector, Venkata Rao, followed PW1 whereas this witness and other trap party members took vantage positions before the office of ACTO, Sompeta. At about 3 pm, they got signal and thereafter, they rushed to the office of the ACTO, where PW1 was present near the appellant. This witness identified him, who was present in Court. He further deposed that when asked by the Dy.S.P., the appellant disclosed his name regarding which this witness stated that he incorporated the same in the Post Trap proceedings. As per the evidence of PW2, on noticing the identity of Dy. S.P., the appellant started shivering and PW1 was asked by the Dy.S.P., to wait outside the office. The appellant, on being asked by the Dy.SP, dipped his right hand fingers in the sodium carbonate solution and on doing so, the right hand fingers of the appellant turned to pink colour. However, solution in which the left hand fingers of AO (appellant) were put turned no change. Both the resultant solutions were duly sealed and labeled and attested by this witness and other mediators. After being asked by the Dy. S.P., the appellant took out the wad of currency notes from his left side shirt pocket, which was took by Parvatheesham and on comparing the serial numbers of the currency notes

recovered from the possession of the appellant, the same tallied with the serial numbers mentioned in the Pre Trap proceedings. In his evidence, he further stated that in his presence, other officials are examined and those facts are incorporated in the Post Trap proceedings. This witness further stated that whatever was stated by PW1 was incorporated by him in the Post Trap proceedings and when PW1 was confronted to the version of the appellant, PW1 (complainant) stated that he had paid the amount towards bribe to the appellant and the said explanation was incorporated in his Post Trap proceedings. This witness further stated that the inner linings of the left shirt pocket of the appellant was subjected to test and it turned to light pink colour. In his presence, Rough Sketch map of the scene was also prepared, i.e., exhibit P6 and the same was got attested by this witness. In his evidence, it has come that in his presence, the appellant was arrested and thereafter, he was released on bail. He reiterated that the post trap proceeding was drafted from 3 pm to 5.45 pm and it was also attested by other witnesses. Besides, he identified the Post Trap memorandum, which was marked as exhibit P7. This witness was cross-examined at length. However, instead of raising any doubt on the basis of his cross-examination, certain fact has come in his cross-examination, which goes against the defence. In his cross-examination, he stated that on being questioned by the Dy. S.P., the appellant stated that PW1 had paid the amount towards tax, which fact was reduced into writing in exhibit P7, that is, Post Trap memorandum. Only up to the extent of defence taken by the appellant, no other material points could be extracted from PW2 to consider his evidence as doubtful; rather, on examination of his entire evidence, it appears that his evidence stood truthful.

12. PW3, Ch.Balakrishna, who on the date of deposition, was a retired police personnel, has stated that while he was working as Dy. S.P., Intelligence, Kakinada, he worked as Dy. S.P., ACB, Vizianagaram, from 27.9.1998 to 27.6.2001. He, in his evidence, deposed that on 03.12.1998 at 10 am, PW1

(complainant) came to the ACB office, Vizianagaram, and presented a report/ exhibit P1 with certain allegations against the appellant. He further stated that then he instructed PW1 to come to the office of ACB, Srikakulam, on 05.12.1998 at 7 am with the proposed bribe amount. He further stated that he instructed his Inspector, Srikakulam, by giving particulars of the report given by PW1 to verify the antecedents of PW1 as well as the appellant. On 03.12.1998, the Inspector informed him over phone that the appellant was having bad reputation and PW1 was a genuine person. This witness obtained sanction from his higher authority to register a case and instructed the Inspector, Srikakulam, to secure Government officials to act as mediators and one vehicle with instructions to be present in the office of ACB, Srikakulam, on 05.12.1998, at 7 am. On 04.12.1998 evening, he left Vizianagaram with the raid party and reached Srikakulam at about 20.00 hours and thereafter, he halted in the night there. On 05.12.1998, at about 7 am, a case was registered in Crime No.18/RC.ACB.VZM/98 for the offences under Sections 7, 13(2) read with 13(1)(d) of the PC Act. He identified the original FIR, which was marked as exhibit P9. In his evidence, he further stated that thereafter, he called PW2 and one another and PW1 in the office of the Inspector and introduced to his staff and vice versa. He, in consonance with the evidence of PW2, thereafter stated that how the bribe currency notes were produced by the complainant, Pre Trap memorandum was prepared and thereafter, on 05.12.1998, at 11 am, the raid party, PW1 and the mediators left in two Government vehicles and reached RTC Complex, Sompeta, at 2.45 pm. He has stopped the vehicle and reiterated the earlier instructions to PW1 and SI, Venkata Rao. This witness and others took vantage positions and thereafter, PW1 proceeded to the office of the appellant followed by SI, Venkata Rao. At about 3 pm, he received pre-planned signal and immediately, he along with other trap members rushed to the office of AO. In his evidence, he stated that when he rushed to the office of the appellant, PW1 was present outside of the office and he asked PW1 to

remain there until further instructions. At this juncture, it is necessary to indicate that the learned counsel for the appellant had harped upon the situation and tried to create doubt on the prosecution case. **He stated that the Dy. S.P., in his evidence had stated that while the trap party rushed to the office of the appellant, he found PW1 (Complainant) outside the office, whereas PW2 in paragraph No.8 of his examination-in-chief had stated that by the time he and others reached the office of ACTO, PW1 was found present near the appellant.** It is true that there is some deviation in between the evidence of PW2 and the Dy. S.P., on the point of presence of the appellant, whether it was inside the office or outside. But, the Court is of the opinion that on such trivial deviation, the entire prosecution case, which is otherwise reliable, cannot be doubted or ignored.

13. PW3 further deposed that he and other members entered into the office room of the appellant, which was front room of the office and he disclosed his identity and on hearing identity of this witness, the appellant became perturbed and finally disclosed his name as G.Neelayya. This witness identified the appellant, who was present in the Court. This witness stated that he prepared Sodium Carbonate solution in two glasses and asked the appellant to dip his right and left hand fingers in the said solution and on doing so, the solution in which the right hand fingers were dipped, turned to light pink colour and the solution in which his left hand fingers were dipped remained colourless. **Again, learned counsel for the appellant on the basis of this evidence of PW3 had argued that once it was the case of prosecution that after accepting the bribe money, the appellant had counted the same, there was every possibility of changing the colour of solution on dipping fingers of both hands, however, in the present case, on dipping fingers of right hand only colour had changed.** Of course, learned counsel for the appellant tried to raise some suspicion on the extent of non-change of colour by dipping fingers of left hand, but, there is no explanation as to how his right hand fingers when

dipped in the solution turned pink and also the linings of pocket of the shirt when dipped in the solution shown colour as pink. He has not been able to raise any doubt regarding production of currency notes by the appellant after picking out from his own pocket. In such a situation, the plea of the learned scounsel for the appellant regarding non change of the colour in dipping the finger of the left hand does not make any sense. This witness further deposed that on questioning, the appellant became perturbed and shivered for some time and then, he produced the wad of currency notes from his left side shirt pocket. Thereafter, the serial numbers of currency notes were verified and the serial numbers of the currency notes were found to be similar, which were mentioned in the Pre Trap memorandum, exhibit P3. The tainted currency notes recovered was Rs.650/- This witness further deposed that on being asked, the appellant produced exhibit P2, i.e., docket sheet for assessment year 1997-98 in respect of 'Mrs. Manohara Readymade Dresses'. A perusal of this document shows that Rs.1362/- was already paid, which was Rs.40/- excess to 'tax due'. This witness further stated that he secured the presence of other witnesses and then, he called the complainant/PW1 inside and asked him to narrate the events, which had taken place in the presence of raid party, who, in turn, had stated whatever reiterated by PW2 in exhibit P7, Post Trap memorandum. This witness also seized the shirt, provided one alternate shirt to the appellant and after removal of the shirt left hand shirt pocket of the appellant was subjected to chemical test and the solution turned into pink colour. This witness was also cross-examined, but nothing could be extracted to create doubt on his evidence.

14. From the defence side, one witness, who was working as ACTO in the office of the CTO, was got examined. He produced one Exhibit D-1 register for the year 1997-98 and 1998-99, which was being maintained in the office of the ACTO, Sompeta. This witness verified exhibit D-1 register for assessment year 1997-98 pertaining to 'Ms.Manohara Readymade Dresses', Sompeta, which is at

Page no.235. It was shown that a sum of Rs.1322/- was to be paid by the said 'M/s. Manohara Readymade Dresses' towards tax for the year 1997-98. The said firm had paid Rs.1362/-, i.e., in excess of Rs.40/-. This witness further verified exhibit D-1 register for the year 1998-99 pertaining to M/s. Manohara Readymade Dresses'. Since this assessment year was not having any relevance to the present case, there is no need to further examine the same.

15. Learned counsel for the appellant at the time of arguments had tried to persuade the Court that Rs.650/-, which was received by the appellant and recovered, was actually the tax amount for the assessment year 1997-98 and he has taken a plea that the tax amount, i.e., Rs.1,322/- was divided into four installments and as such the said amount was one of the instalment of the tax for the said assessment year. Of course, such argument was attractive but the same is required to be noticed only for its rejection. There is no basis for coming to this conclusion, particularly, in a case where the complainant in a specific term had stated that the appellant had demanded Rs.650/- for issuance of assessment order for the year 1997-98. The amount was received by him and it was recovered also. Of course, by re-examining this witness, a suggestion was given that as per exhibits D2 and D3, tax was paid in instalments.

16. On going through the entire evidence, which I have discussed herein above, there is no reason to raise any doubt on the prosecution case. It was the specific case of the prosecution that the assessment order in respect of 'M/s. Manohara Readymade Dresses' of the complainant for the year 1997-98 was pending in the office of the ACTO. It has also come in the evidence of PW1 that for the said assessment order, he had visited the office of the ACTO on four or five times earlier and finally, on 30.11.1998, when he visited the office of ACTO, the appellant had out-rightly demanded Rs.650/- towards bribe. Thereafter, he filed a complaint before the Dy. S.P., ACB. The credibility and

integrity of the appellant was also verified, which was indicative of the fact that he was not having good integrity. Thereafter, FIR was registered. A Pre Trap memo was prepared and trap party left for laying a trap, which remained successful. I had already discussed herein above that on being trapped, the appellant himself took out the bribe money from his upper shirt pocket and handed over to Dy. S.P., ACB. The serial numbers of the currency notes were tallied with the serial numbers mentioned in the Pre Trap memorandum and thereafter, Post Trap memorandum was also prepared and the witnesses were examined. PW2, since at the relevant time, was posted as Assistant Executive Engineer, in a different office; there is no reason to raise any doubt on his evidence. There is no material to show that PW2 being official of another office was having any grudge or malice with the appellant. After going through the entire evidence, I do not find any error in the impugned judgment of conviction and sentence, rather, I am satisfied that the prosecution has proved its case beyond all reasonable doubt.

17. Accordingly, the impugned judgment of conviction and sentence is approved and the appeal stands dismissed. In view of the dismissal of the present appeal, the bail granted to the appellant earlier stands automatically cancelled and the appellant is directed to surrender forthwith before the Court below for undergoing the sentence, failing which, the Court below is directed to take all steps for securing his attendance to serve the sentence.

23rd March, 2020
RAR

RAKESH KUMAR, J

THE HON'BLE SRI JUSTICE RAKESH KUMAR

Criminal Appeal No.1175 of 2006

RAR

DATED: 23-03-2020