HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL Nos.504 and 519 of 2006

COMMON JUDGMENT:

Criminal Appeal No.519 of 2006 is preferred by the Accused Officer No.1(A.O.1) aggrieved by the judgment dated 28.03.2006 in C.C.No.9 of 2000 passed by learned Special Judge for S.P.E & A.C.B Cases, Vijayawada convicting her for the offences under Sections 7 and 13(2) r/w13(1)(d) of Prevention of Corruption Act, 1988 (for short "P.C Act") and sentencing her to undergo R.I for a period of **one year** and to pay a fine of **Rs.2,500/-** and in default to suffer S.I for **three months** on first count and suffer R.I for **one year** and to a pay fine of **Rs.2,500/-** and in default to suffer S.I for **three months** on second count with a direction that the substantive sentences of imprisonment under both counts shall run concurrently.

Criminal Appeal No.504 of 2006 is preferred by the Accused Officer No.2 (A.O.2) against his conviction for the offence under Section 12 of P.C Act and sentence of R.I for **one year** and fine of **Rs.1,000/-** and in default to suffer S.I for **three months.**

2) The factual matrix of the case is thus:

a. A.O.1—Smt. Teharunnisa Begum worked as Senior Assistant and A.O.2—Sk.Subhani worked as Attender in the office of Competent Authority and Special Officer, Urban Land Ceiling (U.L.C), Guntur District. According to prosecution, Dandamudi Venkata Rao—complainant (PW.1) is a retired Head Master and he is having two sons. They all intended to sell their property of 820 Sq. yards of house site and filed three applications on 13.02.1998 for Urban Land Ceiling Clearance Certificates for their sites by enclosing necessary documents and on that, the office Superintendent informed PW.1 that Special Officer, U.L.C will issue the Clearance Certificate after getting enquiry report

from the Special Deputy Tahsildar. Therefore, PW.1 met Special Deputy Tahsildar, who informed that he received the application and he will submit the applications to the Special Officer along with his remarks.

b. Again on 24.02.1998, PW.1 met the Special Deputy Tahsildar, who in turn told that he recommended the applications and forwarded the file to A.O.1 and on that PW.1 approached A.O.1 and at that time she demanded Rs.2,500/- as bribe to process his applications. PW.1 expressed his inability to pay the demanded amount. On that, A.O.1 stated that she will issue two permission certificate at first and after disposal of the said sites and after payment of the demanded bribe amount, the third permission certificate will be issued.

c. On 02.03.1998, PW.1 went to the U.L.C office and came to know that the staff members were engaged in election work. Therefore, PW.1 met A.O.1 on 07.03.1998 at her office then A.O.1 gave two permission certificates after taking acknowledgement and when he enquired about the third permission certificate, A.O.1 again reiterated her earlier demand.

d. Unwilling to pay bribe, PW.1 submitted Ex.P.1—complaint on 10.03.1998 to District Inspector, A.C.B, Guntur (PW.10) who informed the same to D.S.P, A.C.B, Vijayawada, who after causing discrete enquires registered a case in Cr.No.6/A.C.B-VJA/98 and laid trap against accused. On completion of investigation, charge sheet was laid against accused.

e. On appearance of accused, charges under Sections 7 and 13(2) r/w 13(1)(d) of P.C Act r/w 34 IPC were framed against them and trial was conducted.

f. During trial, PWs.1 to 10 were examined and Exs.P1 to P29 were marked and MOs.1 to 7 were exhibited on behalf of prosecution. DW.1 was examined on behalf of defence.

g. The plea of accused is one of total denial.

h. A perusal of the judgment would show that having regard to the oral and documentary evidence, the trial Court held that prosecution proved the guilt of the A.Os.1 and 2 beyond reasonable doubt and accordingly, convicted and sentenced them, as stated supra.

Hence, the appeals: i) Criminal Appeal No.504 of 2006 by A.O.2 and ii) Criminal Appeal No.519 of 2006 by A.O.1.

3) Heard arguments of Sri T.Bali Reddy, learned Senior Counsel representing for Sri K.Suresh Reddy, learned counsel for appellant/A.O.1 in Crl.A.No.519 of 2006, Sri A.Hari Prasad Reddy, learned counsel for appellant/A.O.2 in Crl.A.No.504 of 2006, and Sri M.B.Thimma Reddy, learned Special Public Prosecutor (Spl.P.P.) for A.C.B cases.

4 a) Impugning the conviction against A.O.1, learned Senior Counsel Sri T.Bali Reddy, firstly argued that in this case absolutely there is no acceptable evidence against A.O.1 to hold that she demanded bribe from PW.1 and that on the date of trap she instructed A.O.2 to collect the bribe amount from PW.1. Expatiating his argument on the aspect of demand and acceptance, learned Senior Counsel submitted that in this case admittedly PW.1 was the solitary witness for the two vital ingredients but his evidence would show that he never supported the prosecution case in definite terms that A.O.1 demanded him specific amount on a specific date and so also on the date of trap she instructed A.O.2 to collect bribe amount from PW.1 on her behalf. When these vital aspects were sorely missing in his evidence and consequently he was declared hostile by the prosecution, the writing

on the wall would be that the prosecution miserably failed to prove the demand and acceptance of bribe by A.O.1. Learned Senior Counsel criticised that instead of awarding clean acquittal to A.O.1, the trial Court convicted her on surmise that there is acceptable evidence against A.O.1.

b) Secondly, describing the conduct of A.O.1, learned counsel argued that A.O.1 promptly attended the three applications of PW.1 and his two sons and she processed the applications and prepared the note to the higher official immediately after receiving them and she also tendered two ceiling permission proceedings pertaining to the sons of PW.1 and thereby A.O.1 exhibited an immaculate conduct and proved that she was never sought after bribe. Even in respect of the application of PW.1 also there was no delay on her part but it was delayed a bit because of non-furnishing of legible copy of the sale deed by PW.1 which was promptly intimated to PW.1 and another legible copy was obtained by A.O.1 and as such, throughout the case A.O.1 never delayed processing the files with expectation of bribe and in fact no official favour was pending with her ever to demand bribe. Unfortunately, the trial Court has not considered this aspect in proper perspective.

c) Thirdly, learned counsel argued that it is the firm case of A.O.2 that A.O.1 never instructed him to collect the amount from PW.1 on her behalf and he too also independently did not demand any bribe from PW.1 but on the other hand PW.1 at first tried to keep the amount in his hands and when he refused to receive, thrusted the amount in his hip pocket and rushed away. He argued that when it is the specific case of A.O.2 that A.O.1 never instructed him to receive the amount, the question of finding fault with A.O.1 does not arise and consequently, the question of drawing presumption under Section 20 of P.C. Act also does not arise. On the above submission, learned Senior Counsel prayed to allow the appeal. He placed reliance on the following decisions:

1. ***B.Jayaraj vs. State of Andhra Pradesh***

2. ***Banarsi Dass vs. State of Haryana***

3. Unreported judgment of this High Court dated 27.12.2012 in Criminal Appeal No.1744 of 2005 (***T. Venkateshwarlu vs. State of A.P.***)

4. Unreported judgment of this High Court dated 21.04.2011 in Criminal Appeal No.511 of 2004 (***State, rep. by Deputy Superintendent of Police, A.C.B, Vizianagaram Range, Vizianagaram vs. K.Suryanarayana and another***)

5 a) Learned counsel for A.O.2 Sri A. Hari Prasad Reddy, while criticising the conviction against A.O.2 for the offence under Section 12 of P.C. Act, firstly argued that admittedly A.O.2 never demanded bribe from PW.1 either previously or on the date of demand and further, he was not competent to do any official favour to PW.1 as he being only an attender in the office. In fact, PW.1 tried to keep the amount in his hands and when he refused, he thrusted the amount in the hip pocket and went away and this fact was clearly deposed by DW.1. As such, A.O.2 does not know whether the amount was bribe amount or some other amount and also the reason for PW.1 thrusting amount in his pocket. The trial Court ought to have acquitted him but erroneously convicted him under Section 12 of P.C. Act as if he abetted the offence. Learned counsel further argued that even there is no clinching evidence against A.O.1 to hold that she solicited bribe from PW.1, in which case the question of A.O.2 accepting bribe on her behalf does not arise. He relied upon the decision reported in ***Sadashiv Mahadeo Yavaluje and Gajanan Shripatrao Salokhe vs. The State of Maharashtra***.

b) Nextly, learned counsel argued that sanction against A.O.2 was granted mechanically without independent application of mind by the sanctioning authority. Further, sanction against him was granted for the offences under Section 7 and 13(2) r/w 13 (1)(d) of P.C. Act only but not for any other offence and as such his prosecution and conviction under Section 12 of P.C. Act is not maintainable. In this regard, he relied upon the decision reported in ***Mohd. Jaffrullah Khan vs. State***. He thus prayed to allow the appeal.

6) Per contra, while supporting the judgment learned Spl.P.P. argued that prosecution by oral and documentary evidence has clearly established the guilt of both the accused. Inspite of PW.1 not supporting prosecution case on some minor aspects, still his admissions in the cross-examination by the Spl.P.P, coupled with the corroborative evidence offered by the mediators, the T.L.O and other supporting documentary evidence prosecution clinchingly established the guilt of both accused and therefore, the trial Court was right in convicting them. Further narrating his argument, learned Spl.P.P. argued that though PW.1 fumbled in his chief-examination in not clearly deposing the date of demand of bribe by A.O.1 but during the cross-examination by Spl.P.P, he clearly stated that A.O.1 demanded him bribe and he further deposed that A.O.2 received the amount on the instructions of A.O.1. These aspects would clearly show that both accused were guilty of the charges levelled against them. When the prosecution could able to prove that A.O.2 accepted the gratification for A.O.1, the presumption under Section 20 of P.C. Act would squarely follow and rightly drawn by trial Court. He would submit, A.O.2 failed to rebut the presumption since the explanation of stuffing of the amount in his hip pocket by PW.1 besides being bereft of logic and truth, not offered at the earliest opportune time before trap party.

a) Regarding the sanction, he submitted that it was issued on considering the material on record by application of mind and further, the sanction was issued not only for the offences under Section 7 and 13(2) r/w 13(1)(d) of P.C. Act but also for other cognate offences and as such, the argument of learned counsel for A.O.2 is unsustainable. He thus prayed to dismiss both the appeals.

7) In the light of above arguments, the point for determination in these appeals is:

“Whether the judgment of the trial Court is factually and legally sustainable?”

8) **POINT**: It being a trap case, the prosecution shall by cogent evidence able to establish the two vital ingredients i.e, demand and acceptance of bribe. Sofaras A.O.1 is concerned, the prosecution in order to invoke conviction shall be able to establish that she demanded bribe and on the date of trap, she instructed PW.1 to pay bribe amount to A.O.2. Then A.O.2 is concerned, the prosecution shall be able to establish that he accepted the bribe amount from PW.1 on the instructions of A.O.1 and predominantly, knowing fully well that what he received was bribe amount.

9) In the instant case, in respect of the aforesaid two vital ingredients i.e, demand and acceptance of bribe, except PW.1 no other witness was present to directly witness the demand and acceptance of bribe. So the evidence of PW.1 assumes primacy. Whereas other oral and documentary evidence in this regard such as mediators, Trap Laying Officer, mediator reports etc., will play only second fiddle as corroborative evidence. Hence at the first instance, the evidence of PW.1 has to be scrutinised to know whether his evidence help establish the prosecution case.

a) In the above context, a clinical dissection of evidence of PW.1 gives an impression that he fumbled and did not support prosecution case on some material aspects. For instance, on the aspect of demand, in his chief-examination he did not clearly state as to how much amount was demanded by PW.1 and the date of demand. He only stated that on 09.03.1998 when he approached A.O.1, she asked him whether he brought the Mamul. Then further demand and A.O.1 instructing PW.1 to pay bribe amount to A.O.2 on the date of trap are concerned, PW.1 only stated that when he met A.O.1 she picked out some papers and gave to A.O.2, who obtained his signatures on the copy of proceedings and in the meanwhile, A.O.1 went to the office seat of Superintendent. He further deposed that A.O.2 gave the proceeding papers to him and asked to pay Mamul as he was asked by A.O.1 and Deputy Tahsildar. Therefore, in the evidence of PW.1, the further demand by A.O.1 and her instructing him to pay amount to A.O.2 are missing. It is due to this reason, PW.1

was declared hostile and cross-examined by Spl.P.P.

b) Now the contention of A.O.1 is that PW.1 did not speak any fact against A.O.1 to sustain a charge against her. Whereas the contention of A.O.2 is that PW.1 deposed falsehood and A.O.2 never demanded him bribe rather PW.1 stuffed the amount in his hip pocket. Per contra, the prosecution's claim is that though PW.1 owing to his old age or being won over by accused did not support prosecution case, still his admissions in his cross-examination coupled with the corroboration offered by other witnesses will amply establish the prosecution case. Hence, the point is what is the probative value of the hostile evidence of PW.1.

c) One of the well-known canons of appreciation of evidence of hostile witness is that the evidence of a hostile witness cannot be rejected in toto merely because prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent reliable on a careful scrutiny. This principle was reiterated umpteen times by Hon'ble Apex Court and in its latest judgment (***Paulmeli and another vs. State of Tamil Nadu, Traffic Inspector of Police*** *(MANU/SC/0505/2014)*), Hon'ble Apex Court again confirmed this principle by discussing its previous judgments. It observed thus:

> *"Thus, the law can be summarized to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence."*

So in the light of above principle laid down by Apex Court, merely because PW.1 was declared hostile by the prosecution on the ground that on some aspects he did not support its case, on that count his entire evidence cannot be effaced off the record. On the other hand, his entire evidence has to be carefully scanned to know whether any reliable and useful material can be culled out which is helpful to the prosecution in conjunction with the corroboration offered by other reliable witnesses. It is in that direction, the evidence of

PW.1 is scrutinised. Before discussing his evidence, it must be mentioned that the record does not show that PW.1 had any ill-motive against AOs.1 and 2 to implicate them in a false case. No such suggestion was given in the cross-examination of either A.O.1 or A.O.2. He was a retired Headmaster and for the first time he happened to accost A.O.1 and A.O.2 in connection with his Exs.P.2 to P.4—applications. It is in this backdrop, his evidence needs to be scrutinised.

10) Demand on 24.02.1998 is concerned, as per prosecution when PW.1 approached A.O.1 on 24.02.1998 she demanded Rs.2500/- as bribe i.e, Rs.1250/- to Deputy Tahsildar and remaining Rs.1250/- for herself and when PW.1 expressed his inability, she curtly told that unless bribe amount was paid U.L.C permissions would not be issued. On his further request, she told that at first two certificates would be issued and after disposal of the sites of his two sons and on payment of the demanded bribe amount, the third permission would be issued. When PW.1 again approached A.O.1 on 07.03.1998, she reiterated her earlier demand and finally on 10.03.1998 she demanded the bribe amount from PW.1 and instructed him to pay to A.O.2. In Ex.P.1—complaint, the version of PW.1 is as stated above. However, in his evidence he did not say so. In his evidence, he deposed that on 24.02.1998 when he met A.O.1 he was told by her that she did not receive the file and asked him to meet her later. Thus, he did not depose about the demand made by A.O.1 on 24.02.1998. However, after he was declared hostile, during cross-examination of Spl.P.P on perusing Ex.P.1, he admitted as follows:

> *"I have mentioned in my report that A.O.1 herself demanded to give Rs.2500/- as bribe i.e, Rs.1250/- for her and Rs.1250/- to Deputy Tahsildar and when I pleaded my inability to give the amount A.O.1 demanded me to give the amount after clearing of my two sons applications and she will issue third application sanction proceedings after giving the demanded bribe amount. He further stated that it is true that I stated before D.S.P at the time of my examination that on 24.02.1998, A.O.1 demanded bribe of Rs.2500/- and out of it Rs.1250/- for herself and remaining Rs.1250/- for Deputy Tahsildar."*

So the above admission on the part of PW.1 clearly explains the demand made by A.O.1 on 24.02.1998. Added to above admission, during the cross of defence counsel, PW.1 stated as follows:

> *"It is true that when I met A.O.1 on 24.02.1998, I was told by her that our applications were not received by her but she promised that the moment the applications are received, she will complete my work. It is not true to suggest that at that time A.O.1 did not demand any bribe amount from me."*

So in the cross-examination of defence counsel also his version appears to be that on 24.02.1998, A.O.1 demanded him bribe. This version is further reiterated in the following answer given by PW.1 to the question of Defence Counsel:

> ***Question**: Can you give the reason as to why you have not reported the matter to the A.C.B when the A.O.1 demanded bribe amount on 24.02.1998 till the date of Ex.P.1 is presented?*
>
> ***Answer**: From 24.02.1998 onwards I expressed my inability to pay the demanded bribe amount and on 07.03.1998 when the proceedings of my sons were issued and handed over to me, then A.O.1 reiterated her demand, I felt necessary to give the report.*

11) As rightly observed by the trial Court, the admissions made by PW.1 during cross-examination by Spl.P.P coupled with the answers given by him in the cross-examination of defence counsel cumulatively and clinchingly establish that A.O.1 indeed made a demand of bribe on 24.02.1998. Though we do not find such demand in his chief-examination but his cross-examination reveals the said fact. The admissions made by him in his cross-examination regarding the aspect of demand were amply corroborated by the documentary evidence such as Ex.P.1—complaint, Ex.P.7—164 Cr.P.C statement and also by the oral evidence of PW.6—G. Hanumantha Rao, one of the mediators who deposed that on the date of trap, the D.S.P introduced the mediators to PW.1 and gave copy of FIR to them and requested them to read over the contents and ascertain truth or otherwise from PW.1 and accordingly they read over the contents to PW.1 and he asserted that the contents were true and correct and as a token of their perusal of the copy of the FIR, they put their initials on

the copy of FIR vide Ex.P.19. So a logical analysis of the facts and evidence on record would show that PW.1 had no ill-motive to implicate accused in a false case and he gave Ex.P.1—complaint to D.S.P, A.C.B alleging that A.O.1 demanded him bribe for issuing ceiling permission proceedings on 24.02.1998 and he asserted the genuinity of his allegations before independent mediators on the date of trap and he admitted in the cross-examination of Spl.P.P about his giving Ex.P.1—complaint and mentioning therein about the demand made by A.O.1. So despite PW.1 turned hostile with a view to help accused, still the admissible portion of his evidence coupled with the corroboration found in the form of other documentary and oral evidence, it can be said that prosecution established the demand of bribe made by A.O.1. In this context, the arguments of the defence side that since PW.1 turned hostile and not spoken about the demand by A.O.1 no charge is maintainable against her cannot be accepted. As already stated supra, the admissible portion of his evidence clearly depicts the demand made by A.O.1.

a) Consequently, the decision of Apex Court in ***B.Jayaraj***'s case(1 supra) cited by A.O.1 can be distinguished on facts. In that case, the accused/appellant who was M.R.O allegedly demanded bribe of Rs.250/- from the complainant for release of essential commodities for his fair price shop. On his complaint, trap was arranged and charge-sheet was filed. The trial Court and High Court found accused guilty, despite the fact that PW.2—the complainant did not support the prosecution case. The Apex Court observed that PW.2—the complainant disowned making the complaint (Ex.P.11) and had stated in his deposition that the amount of Rs.250/- was paid by him to the accused with a request that the same may be deposited with the bank as fee for the renewal of his licence. PW.1(panch witness) testified that in their presence PW.2—the complainant acknowledged the correctness of Ex.P.11-complaint. In that context, Hon'ble Apex Court held that when the complainant disowned what he stated in the initial complaint (Ex.P.11), the evidence of PW.1 and contents of

Ex.P.11 cannot be relied upon for proof of demand allegedly made by accused. It must be said that factually the present case differs from the cited decision. In the instant case, PW.1 did not deny his giving Ex.P.1—complaint to A.C.B police. On the other hand, he admitted his giving Ex.P.1—complaint and also admitted the contents therein to be true not only before the mediators but also during his cross-examination. Hence, the said decision will not help accused.

b) The other cited decision in ***Banarsi Dass***'s case (2 supra) also can be distinguished on facts. In that case, PW.2—the complainant and PW.4 who overheard accused demanding bribe from PW.2 did not support prosecution case and showed a volte-face during trial. When their previous statements were confronted during the cross-examination by Spl.P.P, PW.2 stated that she had signed the memos but she did not read them as she was quite puzzled, whereas PW.4 denied that he had made any statement before the police. In that context, since there was no material to corroborate the witnesses who already turned hostile, acquittal was recorded. That is not the case here. Despite PW.1 turning hostile, he admitted to have given Ex.P.1—complaint and further admitted his 164 Cr.P.C statement under Ex.P.7, which offer corroboration.

12) Then the demand dated 07.03.1998 is concerned, as per Ex.P.1—complaint when PW.1 met A.O.1 on 07.03.1998 she handed over the two ceiling permission proceedings relating to his sons and when he asked about his certificate, she reiterated her demand for Rs.2500/-. However, during chief-examination PW.1 did not depose in tune with Ex.P.1 but stated that on 07.03.1998 when he approached A.O.1 in her office, she gave the two ceiling permission proceedings and when he asked for his permission, she told him that the document given by him was not legible and asked him to bring a fresh photostat copy within 2 or 3 days. So in the chief-examination he did not speak about the reiteration of demand by A.O.1. However, that is not the end of the matter. In the cross-examination by Spl.P.P, he stated thus:

> *" Ex.P.1 is my written report. xxxx…*

It is true that I stated before the D.S.P at the time of my examination that on 24.02.1998, A.O.1 demanded me bribe of Rs.2500/-, out of it Rs.1250/- for herself and the remaining Rs.1250/- for Deputy Tahsildar. I also stated before D.S.P that when I met A.O.1 on 07.03.1998, she reiterated her earlier demand."(Emphasis Supplied).

So the above admission by PW.1 would show that he admits the contents in Ex.P.1 and he further admits that he stated before D.S.P as if A.O.1 reiterated her demand for bribe when he met her on 07.03.1998. Not only that, during the cross-examination of defence side, his answer to a question (question and answer were extracted earlier) would reveal that on 07.03.1998, A.O.1 reiterated her demand. Added to above, in Ex.P.7—164 Cr.P.C statement also PW.1 deposed before the Magistrate about the demand made by her on 07.03.1998. So despite PW.1 not stating this fact in his chief-examination, his admissions in the cross-examination with reference to Exs.P.1 and P.7 would clinch the issue. Thus, the prosecution could establish the demand made by A.O.1 on 24.02.1998 and 07.03.1998.

13 a) At this juncture, the argument advanced by A.O.1 against demand of bribe needs a mention. It is vehemently argued that the conduct of A.O.1 would show that she promptly processed all the three applications of PW.1 and his sons and put up the notes and in fact tendered the two ceiling permission proceedings of the two sons of PW.1 and the application of PW.1 is concerned, since the application was not enclosed with legible copy of sale deed, that was obtained from PW.1 on 07.03.1998 and thereby a little delay was occurred in respect of his application and as such, no official favour was pending with A.O.1 to demand any bribe from PW.1. This argument though apparently sounds correct but does not stand to scrutiny. In this context as per the evidence of PW.2, PW.1 submitted three applications vide Exs.P.2 to P.4 on 13.02.1998 and she entered in Ex.P.8—register called “26 register” under three entries vide Exs.P.9 to P.11 (application Nos.213/98, 214/98 and 215/98). PW.2 stated that after entering the applications in Ex.P.8—register,

she forwarded them to A.O.1 to put up a note and forward to the Deputy Tahsildar for making a field enquiry with reference to the applications. Her further evidence is that the Deputy Tahsildar after making enquiry, will send back Exs.P.2 to P.4 to her and she will enter the same in another register called as “26 Enquiry Report Register” (vide Ex.P.12) and then forward to A.O.1. She entered them on 26.02.1998 and forwarded to A.O.1 on 27.02.1998.

b) So the above evidence of PW.2 would show that A.O.1 received the files for the first time on 17.02.1998 and she prepared a note for ordering appointment of an Enquiry Officer to enquire the applications with reference to U.L.C Act. In this context, Exs.P.21, P.22 and P.23 —files relating to PW.1 and his sons would show that A.O.1 prepared note on 17.02.1998 seeking for appointment of an Enquiry Officer. So to that extent she acted promptly. Then again she received the files through Tappal on 27.02.1998 and on the same day she put up the note to Special Officer in respect of Exs.P.22 and P.23. The Special Officer approved those two applications on 04.03.1998 and A.O.1 received the same on 05.03.1998 and put up draft proceedings to the Special Officer on the same day. Those two proceedings were admittedly tendered by A.O.1 to PW.1 on 07.03.1998. To this extent, the record would apparently show that A.O.1 acted promptly.

c) Then Ex.P.21 file of PW.1 would show that it was also received by A.O.1 on 17.02.1998 and she put up a note for appointing Enquiry Officer. Thereafter, though A.O.1 received Ex.P.21 along with Exs.P.22 and P.23 on 27.02.1998, she did not process Exs.P.21 till 07.03.1998. Her version is that since PW.1 did not furnish a legible copy of sale deed, it was withheld but not with any ulterior motive. Ofcourse PW.1 also admitted in his cross-examination that on 07.03.1998 A.O.1 asked him to furnish legible copy of sale deed in respect of his pending application and he furnished his legible copy. It is in this background, the defence side argues that there was absolutely no occasion for A.O.1 to demand bribe as she promptly attended all the three applications. This argument is only apparently correct but not in reality. As rightly observed by the trial Court, we

don't find any endorsement in Ex.P.21—file that no legible copy of sale deed was furnished by PW.1 at the first instance and hence he was asked to furnish a legible copy. However, since PW.1 admits his furnishing copy of sale deed on the instructions of A.O.1, that fact has to be admitted. Now the question is since two applications were processed promptly and third application was withheld for lack of legible copy, can it be said that A.O.1 had not made any demand for bribe. The answer is emphatic no. The reason is that it was already held that PW.1 had no ill-motive to implicate accused in a false case and no such suggestion was given either. That being so, if his two applications were complied within 20 days and third application was withheld only for lack of legible copy of sale deed, no prudent man would give a false complaint against accused. Viewing in that angle, one can say that if the two applications were promptly processed that was only as per the earlier understanding on 24.02.1998 to the effect that the two clearance certificates will be given to enable PW.1 to effect sales and obtain money and pay bribe. So the prompt processing of the two applications of the sons of PW.1 was not due to honesty but understanding. Similarly, withholding of third application of PW.1 was also not due to lack of legible copy but in anticipation of the bribe. Lack of legible copy in the given circumstances can be termed as a ruse, that was why it was not specifically mentioned in Ex.P.21—file. So the defence argument regarding demand cannot be appreciated.

14) Then coming to the aspects of further demand of bribe by A.O.1 on 10.03.1998 and her instructing A.O.2 to tender the U.L.C. clearance proceedings to PW.1 and receive the amount from PW.1 are concerned, it is the case of prosecution that when PW.1 approached A.O.1 on 10.03.1998 at 4:15pm at her office, A.O.1 reiterated her earlier demand of Rs.1250/- as her share and when he offered the same, A.O.1 instructed him to pay to A.O.2 and when PW.1 offered the same to A.O.2, he accepted the same with his right hand and kept the same in his right hip pocket and thus he accepted the amount on behalf of A.O.1. From the above narration, it is clear

that PW.1 was the sole witness for further demand and acceptance of bribe. Hence, prosecution sought to prove the above incidents through PW.1 and also ofcourse through the corroborative evidence of PWs.6 to 8 and PW.10 and documentary evidence such as Exs.P.1, P.7, P.20, P.28 and M.Os.1 to 7. The defence of A.O.1 as already stated supra is one of total denial and her case is that she only instructed A.O.2 to tender the U.L.C. clearance proceedings and she never instructed A.O.2 to receive bribe on her behalf. Whereas the version of A.O.2 is that after tendering Ex.P.5—U.L.C. clearance proceedings, he obtained the acknowledgment of PW.1 on the copy under Ex.P.6 and he never demanded PW.1 any bribe and on the other hand PW.1 at first tried to thrust the amount in his hands and when he refused he thrusted the amount in his hip pocket and rushed away and it was witnessed by his office staff including DW.1. Hence, in the light of above defence version, the facts and circumstances and the evidence should be scrutinised.

a) PW.1 deposed that on that day firstly he approached Deputy Tahsildar (A.O.3) and informed that he brought the Mamul but he refused to receive and then PW.1 went to A.O.1 who told him that she would give the proceedings but asked him to meet Deputy Tahsildar and so he again approached him and he was again told by him to go and meet A.O.1 and she would give the papers through A.O.2 and hence PW.1 again visited the seat of A.O.1. Then his version is that A.O.1 picked some papers and gave to A.O.2 and A.O.2 obtained the signatures of PW.1 on a copy of proceedings and in the meanwhile, A.O.1 went to the seat of Superintendent. Then A.O.2 gave the proceeding papers to PW.1 and asked him to pay Mamul as he was asked by A.O.1 and Deputy Tahsildar. This is the evidence of PW.1 relating to further demand and acceptance of bribe. It is evident that he did not support prosecution case relating to A.O.1 making further demand and instructing A.O.2 to receive amount on her behalf. Basing on this evidence of PW.1, it is argued on behalf of A.O.1 that she has not demanded him bribe and instructed A.O.2 to receive on

her behalf. In the cross-examination on behalf of A.O.2, PW.1 admitted that on previous occasions when he went to the office, A.O.2 never demanded him any bribe. He further admitted that A.O.2 does not know as to the nature of Rs.1250/- given by him. Basing on this admission, A.O.2 claimed to be innocent. Ofcourse in the further cross-examination on behalf of A.O.2, PW.1 made certain denials as follows which are worth perusal.

> *"It is not true to suggest that A.O.2 is nothing to do with the alleged offence and that I am deposing falsehood. It is not true to suggest that I attempted to keep the tainted amount in the right hand of A.O.2, he refused to receive it and then I forcibly thrusted the amount in his hip pocket."*

b) So when we carefully analyse the entire evidence of PW.1 on the aspect of further demand and acceptance of bribe by A.O.1 through A.O.2, PW.1 in his chief did not state that A.O.1 instructed A.O.2 to receive bribe on her behalf. However, in his further chief-examination he stated that A.O.2 after giving proceedings asked him to pay Mamul as A.O.1 and Deputy Tahsildar instructed him to receive the amount. Then in the cross-examination by A.O.2, PW.1 at first admitted A.O.2 does not know the nature of the money but in the further cross-examination he denied the suggestion that A.O.2 has nothing to do with the offence and he also denied about thrusting theory. It is true that there are some inconsistencies in his evidence with regard to the role of A.O.1 and A.O.2. Since he has not supported the prosecution case on the role of A.O.1, he was declared hostile and cross-examined by Spl.P.P. Therefore, it is apt to extract the relevant portions of his cross-examination by Spl.P.P to come to an overall understanding on the evidence of PW.1 touching the aspects of further demand and acceptance of bribe. He admitted before Spl.P.P thus:

> *"It is true to that I also stated before the D.S.P at the time of post-trap proceedings that I paid the amount to A.O.2 on the instructions of A.O.1 (emphasis supplied). It is true that the contents in my 164 Cr.P.C statement are true and correct. It is true that the Magistrate read over the contents and after explaining them I have signed in the statement. It is not true to suggest that I entered into*

compromise with A.O.2 so that I am deposing by twisting the facts that A.O.1 has not demanded any bribe amount etc."

So from the above admission of PW.1, it is clear that at the earliest point of time after the trap he stated before the D.S.P and also subsequently before the Magistrate who recorded his 164 Cr.P.C statement to the effect that he paid the amount to A.O.2 only on the instructions of A.O.1. It must be noted that it is not the case of PW.1 that he was forced by A.C.B police to state so before the D.S.P and also before the Magistrate. That being the case and those statements were given at the earliest point of time after trap, they should be given preference to the version given by him in his evidence after long time. In Ex.P.28—second mediator report we will find that when the D.S.P enquired PW.1 after trap, PW.1 narrated that he met A.O.1 in her office and she enquired him whether he brought the demanded bribe amount and when he affirmed she called A.O.2 and entrusted the copies of U.L.C permission proceedings and instructed him to serve copy of the same under proper acknowledgment and to receive Rs.1250/- bribe amount towards her share and A.O.2 obliged and after giving copies and obtaining acknowledgment A.O.2 took him to the staircase demanded bribe amount of Rs.1250/- on behalf of A.O.1 and PW.1 paid Rs.1250/- from his shirt pocket which was received by A.O.2 with his right hand. Despite PW.1 turning hostile he admitted this part of his narration before the D.S.P which was incorporated in Ex.P.28 by PW.6 who scribed it. He stated that PW.1 was called by D.S.P and enquired as to what transpired between himself and A.O.1 prior to the arrival of trap party members and his version was recorded by this witness (PW6). Ofcourse during the cross-examination of A.Os.1 and 2, he stated that he scribed Ex.P.28 to the dictation of D.S.P but he denied the suggestion that the actual events were not incorporated in Ex.P.28. So when the evidence of PW.6 who is scribe of Ex.P.28 is perused, it would show that the D.S.P enquired PW.1 about the events transpired between him and A.O.1 and A.O.2 and his narration was incorporated by PW.6 in Ex.P.28. He denied that true events were not incorporated. It is true that under law a mediator report is not a substantive piece of

evidence but only a corroborative evidence. Since PW.1 in his cross-examination admitted to state as contained in Ex.P.28 and since PW.6—the scribe and also Ex.P.28 corroborates his version, it can be safely believed that PW.1 paid the amount to A.O.2 only on the instructions of A.O.1. The aforesaid corroboration also comes from Ex.P.7—164 Cr.P.C statement of PW.1. Ex.P.7 though cannot be used as a substantive evidence, still it can be used as a corroborative piece.

15) Now coming to the explanation of A.O.2 that the amount was thrusted in his hip pocket, the same has no legs to stand. Firstly, for the reason that we don't find such an explanation in Ex.P.28 at the earliest point of time before trap party. Though the accused claimed that the events as happened were not incorporated in Ex.P.28, such defence cannot be accepted because both A.Os.1 and 2 acknowledged receipt of copy of Ex.P.28 without any protest. Even subsequently also they did not raise any protest before the higher officials of A.C.B or before the trial Court but raised that plea only during trial.

a) The second reason for rejecting the defence plea is that it is practically impossible for a person to thrust amount in the hip pocket of another person against his will. One may thrust amount in the front shirt pocket to some extent against the resistance of the other but such thrusting in the hip pocket is impossible in the natural course. So such a defence plea raised by A.O.2 and tried to be substantiated by DW.1 is against the natural course of events and hence cannot be believed. DW.1 is an attender and a colleague of A.O.2. So his evidence that he witnessed PW.1 trying to thrust the amount at first in the hands of A.O.2 and when he refused he thrusted the amount in his pant pocket and ran away cannot be believed as he being an interested witness on one hand and his evidence as stated supra is contrary to natural course. So it is clear that A.O.2 received the amount on the instructions of A.O.1 fully knowing that the said amount was nothing but bribe amount. Hence he too is liable for conviction along with A.O.1.

16 a) In this context, the decision in ***T. Venkateshwarlu***'s case (3 supra) cited by A.O.1 can be distinguished on facts and held inapplicable. In that case, the prosecution case was that on the date of trap A.1 said to have instructed PWs.1 and 2 to pay the amount to A.2 and accordingly they paid the amount. However, during trial PWs.1 and 2 turned hostile and they deposed as if A.2 refused to receive the amount and then PW.1 thrusted the amount in the pocket of A.2. A.2 died pending trial. In that background, since A.2's voluntarily receiving bribe amount on behalf of A.1 was not supported by PWs.1 and 2 learned Single Judge of this Court held that no presumption under Section 20 of P.C. Act can be drawn against A.1 and ultimately acquitted him. Needless to emphasise that the facts are altogether different in this case where, even in the chief-examination, PW.1 stated that A.O.2 demanded and accepted amount stating that he was instructed by A.O.1 and Deputy Tahsildar.

b) The other decision in ***K.Suryanarayana***'s case(4 supra) cited by A.O.1 can also be distinguished on facts. It was a trap case, the complainant—Dr.P.V.V. Raja Rao died even before trial and his relations who were examined as PWs.1 to 3 did not support prosecution case. In those circumstances, the trial Court and High Court held that case against A.1 and A.2 was not established.

c) The decision in ***Sadashiv Mahadeo Yavaluje and Gajanan Shripatrao Salokhe***'s case (5 supra) cited by A.O.2, can also be distinguished on facts. In that case, even according to prosecution A.2 was not the person chosen by A.1 to instruct PW.1 to pay the bribe amount. In fact A.2 does not know about the alleged agreement between the A.1 and PW.1 regarding the payment of the bribe amount. Further, twice allegedly A.1 cited two different persons for receiving the amount but PW.1 did not pay the amount. On the third occasion PW.1 himself paid the amount to A.2 to pass it on to A.1. In that backdrop, it was held that A.2 had absolutely no knowledge about the bribe agreement between the parties and he was innocent. That is not the case here.

17) It may be noted that A.O.2 challenged the sanction proceedings, firstly on the ground that it was issued without application of the mind by the concerned officer, secondly, PW.4, who deposed about Exs.P.15 to P.17—sanction proceedings had nothing to do with them and thirdly, in Ex.P.16—sanction proceedings, permission to prosecute specifically under Section 12 of P.C.Act was not accorded against A.O.2. It must be said that this argument does not hold water. PW.4 who deposed about sanction proceedings clearly stated that he can identify the signatures of the Principal Secretary to Government who accorded sanction under Exs.P.15 to P.17. He identified the signatures of Sri J.Ram Babu, Principal Secretary (Revenue) on Exs.P.15 to P.17. Therefore, it cannot be said that PW.4 had nothing to do with the sanction proceedings. Then a perusal of the sanction proceedings would show that the sanctioning authority has issued sanction on his independent application of the mind and nothing specific could be brought on record to prove the contrary. Then under Ex.P.16, sanction was accorded not only for the offences under Sections 7 and 13(2) r/w 13(1)(d) of P.C.Act but also for other cognate offences punishable under any other provisions of the law for the time being in force which infers that the sanction proceedings deemed to cover offence under Section 12 of P.C. Act also. Hence the defence argument does not hold water. The cited decision in ***Mohd.Jaffrullah Khan***'s case (6 supra) can be distinguished on facts. In that case, neither the person who signed Ex.P.11-sanction order was examined in the Court nor the person who has seen the sanctioning authority signing the sanction order nor the person who was acquainted the signature of the sanctioning authority were examined by the prosecution. On the other hand, the sanction order was filed through only the investigating agency. In that backdrop, it was held sanction order was not duly proved. In the instant case, PW.4 duly identified the signature of the sanctioning authority and sanction orders were marked through him.

18) Sofaras A.O.3 is concerned, the trial Court rightly acquitted him

as no case was proved against him and it appears the prosecution has not preferred any appeal against his acquittal.

19) Thus on a conspectus of entire facts and evidence, I find no merits in the two appeals preferred by the A.O.1 and A.O.2.

20) Accordingly, the two Criminal Appeals are dismissed by confirming the conviction and sentences passed by the trial Court against A.O.1 and A.O.2 in its judgment in C.C.No.9 of 2000. Consequently, A.O.1 and A.O.2 are directed to surrender before the trial Court on or before 20.01.2015 and on such surrender, the trial Court shall commit them to jail for serving the sentences.

As a sequel, pending miscellaneous applications if any, shall stand closed.

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U. DURGA PRASAD RAO, J

Date: 22.12.2014

Note: L.R. Copy to be marked: Yes / No

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