HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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CRIMINAL APPEAL No.959 OF 2007

Between:

B. Nagaraju, S/o.B. Bapanna,
Hindu, Aged 48 years,
Occ: Line Inspector, AP Transco,
APCPDCL, Pagidyala Village,
Kurnool District. .... Appellant

Versus

The State of AP, Through
Inspector of Police,
Anti Corruption Bureau,
Kurnool Range, Rep. by Special
Public Prosecutor,
High Court of AP,
Amaravathi. .... Respondent

DATE OF JUDGMENT PRONOUNCED : 14.03.2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes/No

2. Whether the copy of judgment may be marked to Law Reporters/Journals? Yes/No

2. Whether His Lordship wish to see The fair copy of the judgment? Yes/No

A.V.RAVINDRA BABU, J

*** HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

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! Counsel for the Appellant : Sri M.B.Chandra Sekhar,
Rep. Sri D.Linga Rao,
Learned Counsel.

^ Counsel for the Respondent : Sri S.M.Subhani,
Learned Standing Counsel-
cum-Special Public Prosecutor
for ACB.

< Gist:

> Head Note:

? Cases referred:

1. **(2022) 4 SCC 574**
2. **Crl.A. No.371 of 2017, Dt.17.08.2022**
3. **(2022) SCC OnLine SC 1724**

This Court made the following:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

CRIMINAL APPEAL No.959 OF 2007

JUDGMENT:

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C'), is filed by the appellant, who was the Accused Officer (AO) in Calendar Case No.24 of 2002, dated 09.07.2007, on the file of the Court of Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad, (for short, 'the learned Special Judge'), where under the learned Special Judge found the AO guilty of the charges under Sections 7 and 13(1)(d) R/w. Section 13(2) of the Prevention of the Corruption Act, 1988 (for short, 'the PC Act'), accordingly convicted him under Section 248(2) Cr.P.C and, after questioning him about the quantum of sentence, sentenced him to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.500/- in default to suffer Simple Imprisonment for three months for the charge under Section 7 of the PC Act and further sentenced him to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.500/- in default to undergo Simple Imprisonment for three months for the charge under Section 13(1)(d) R/w.13(2) of the PC Act. Both the above sentences shall run concurrently.

2. The parties to this Criminal Appeal will hereinafter be referred to as described before the trial Court, for the sake of convenience.

3. The State, represented by Inspector of Police, ACB, Kurnool filed charge sheet pertaining to Crime No.3/ACB-KUR/2001 of ACB, Kurnool Range, Kurnool under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act alleging, in substance, that the AO by name Balapanuri Nagaraju worked as Line Inspector in A.P. Central Power Distribution Company Limited (APCPDCL), O & M Services, Pagidyala Village and Kurnool District from 19.12.1998 to 05.09.2001. He is a '*Public Servant*' within the meaning of Section 2(c) of the PC Act.

Sri Palamuri Venkataiah, S/o. P. Ramudu, *de-facto* complainant had been practicing as a Junior Advocate in the office of Sri Ranga Reddy, a Senior Advocate at Nandikotkur. He used to reside along with his elder brother *viz.,* Sri Samantha Raju in Harijanawada bearing Door No.4/100 of Pagidyala village. On 12.08.2001 at 08:00 p.m., the live service wire of electricity belonging to his neighbor Savaraiah fell down from the pole in the house premises of P. Venkataiah. As it was raining, smoke and sparks came out from the wire and his house was engulfed with smoke. The inmates in the house of Sri P. Venkataiah were terrified and became panic. Then, his younger brother Venkateswarlu switched off the main and removed the said service wire. On the next day *i.e.,* on 13.08.2001 Sri P. Venkataiah informed the AO, Line Inspector, about the incident and requested him to shift the live service wire from that pole to another pole. AO intimated him that he would do the same within 4 or 5 days but he did not attend the work. Again on 19.08.2001 and 20.08.2001, Sri P. Venkataiah met AO and requested him for shifting of the service wire. AO promised that he would attend the work within 2 days but did not do so.

On 24.08.2001 at 08:00 p.m. he met the AO and asked him to shift the wire for which AO demanded Rs.1,000/- as bribe to shift the live wire from that pole to another pole. Venkataiah pleaded his inability and bargained with AO and AO reduced the bribe amount to Rs.700/-. AO also instructed Venkataiah to submit a petition to Assistant Engineer, Nandikotkur for shifting the service wire, as per his requirement, to another pole. On 25.08.2001, the complainant - Venkataiah gave a written complaint in the office of Assistant Engineer, Nandikotkur for shifting the wire. He also handed over a copy of the complaint in the Electric Sub-Station, Pagidyala pertaining to Line Inspector on

26.08.2001. Again, on the same day at 05:00 p.m., he met the AO and requested him for shifting of the wire. AO reiterated the demand for bribe for which the complainant promised that he would arrange it by next day. AO asked him to pay the bribe amount at the Beedi Bunk of one Chandraiah of Pagidyala. Then the complainant unwillingly agreed to pay out of helplessness and approached the DSP, ACB, Kurnool on 26.08.2001 at 07:00 p.m. and preferred a written report against AO, which was registered as a case in Crime No.3/ACB-KUR/2001 of ACB, Kurnool Range, Kurnool.

During the course of trap, LW.13 – Deputy Superintendent of Police, ACB, took the services of G. Reddy Sankar, Deputy Executive Engineer, APSIDC, Sub-Division, Kurnool and K. R. Surya Prakasa Rao, Superintendent, Office of the Assistant Commissioner, Endowments Department, Kurnool as mediators. After observing necessary formalities, he organized a trap on 27.08.2001 against AO. During the course of trap on 27.08.2001 at 06:50 p.m., when the complainant met the AO at Beedi Bunk of Chandraiah, AO demanded him to pay the bribe of Rs.700/- to shift the live service wire from one pole to another. Then the complainant gave a positive reply and gave Rs.700/-. AO received the amount, counted it and kept in his shirt pocket. Both hand fingers of AO, when they were tested in the presence of mediators, gave positive result. Tainted amount of Rs.700/- was recovered from the possession of AO. All this was recorded in the post trap proceedings.

During the course of investigation, the Inspector of Police, ACB, examined the witnesses and recorded their statements. He got recorded the statement of LW.1 under Section 164 Cr.P.C before the concerned Magistrate. The investigation revealed that the AO being a public servant demanded and accepted bribe from the complainant to shift the live wire from the existing pole to another pole and as such he committed the offences under Sections 7 and 13(1)(d) R/w. Section 13(2) of the PC Act.

The Divisional Electrical Engineer, Operations, APCPDCL, Kurnool being the competent authority, to remove the AO, accorded sanction to prosecute the AO *vide* proceedings No.64, dated 12.07.2002.

4. The learned Special Judge took cognizance of the case under the above provisions of law and, after appearance of the AO, by complying the necessary formalities under Section 207 Cr.P.C, framed charges under Sections 7 and 13(1)(d) R/w.13(2) of the PC

Act against the AO, read over and explained the same to him in Telugu for which he pleaded not guilty and claimed to be tried.

5. To bring home the guilt of the AO, the prosecution before the Court below, examined PWs.1 to 11 and got marked Exs.P-1 to P-14 and during the course of cross-examination of PW.1 Exs.D-1 and D-2 were marked.

6. After closure of the evidence of the prosecution, AO was examined under Section 313 Cr.P.C with reference to the incriminating circumstances appearing in the evidence let in by the prosecution, for which he denied the same and got filed a written statement and he further examined DWs.1 to 3.

7. AO pleaded in his written statement that he was on camp on 24.08.2001 and 26.08.2001 at N. Gangapuram attending the special drive collection. It is supported by the evidence of PW.3. When PW.1 met him on 26.08.2001, PW.3 intimated him that AO is not available and he went on camp. According to PW.7, the Divisional Engineer, the TA bill of the AO shows that on 23.08.2001 at 08:00 a.m. he left Pagidyala to Lakshmipuram *via* Nandikotkur and returned to Pagidyala by 09:00 p.m. On 24.08.2001 also he left Pagidyala at 07:30 a.m. to Muchemarri *via*

Nandikotkur and returned by 09:00 p.m. The AO did not receive Ex.P-4 application from PW.1 on 26.08.2001 morning at 08:00 a.m. and he did not know who kept the application in the log book and Srinivasulu, Operator, did not inform him about the said application. AO had nothing to do with the log book and log book was not seized. He did not know how Ex.P-4 application was in the log book. PW.1 did not meet the AO on 19.08.2001 and 20.08.2001 and AO never promised to do the work. PW.1 did not meet the AO on 24.08.2001 and AO never demanded any bribe. Further demand alleged against him is false. AO did not meet PW.1 on 26.08.2001 at 07:00 p.m. and did not demand bribe. According to the evidence of PWs.6 and 7, the expenditure relating to electric service wire will have to be borne out by the consumer. AO accepted the amount of Rs.700/- only to purchase the wire but it is not a bribe.

8. The learned Special Judge, on hearing both sides and after considering the oral and documentary evidence on record, found the AO guilty of the charges, as above, and convicted and sentenced him as above.

9. Felt aggrieved of the same, the unsuccessful accused in C.C. No.24 of 2002, filed the present Criminal Appeal before the

erstwhile High Court of Andhra Pradesh at Hyderabad by which time the jurisdiction pertaining to ACB cases from Kurnool Range was vested with ACB Court at Hyderabad. After bifurcation of the State, this case is transferred to the High Court of Andhra Pradesh at Amaravathi from the file of erstwhile High Court of Andhra Pradesh at Hyderabad. Presently, the jurisdiction pertaining to ACB cases from Kurnool Range vests with the Special Court at Kurnool.

10. Now, in deciding this Criminal Appeal, the points that arise for consideration are as follows:

1) Whether the prosecution before the Court below has proved that AO is a public servant within the meaning of Section 2(c) of the PC Act and whether the prosecution obtained a valid sanction to prosecute him under Section 19 of the PC Act?

2) Whether the prosecution before the Court below has proved pendency of the official favour of PW.1 with AO prior to the date of trap and on the date of trap?

3) Whether the prosecution before the Court below has proved that AO demanded the *de-facto* complainant to pay a bribe of Rs.1,000/- and later reduced it to

Rs.700/- prior to the date of trap and on the date of trap accepted the said amount from the *de-facto* complainant within the meaning of Section 7 of the PC Act and by doing so, he obtained any pecuniary advantage from the *de-facto* complainant within the meaning of Section 13(1)(d) of the PC Act?

4) Whether the prosecution has proved the charges framed against the AO beyond reasonable doubt and whether there are any grounds to interfere with the impugned judgment of the learned Special Judge?

11. **POINT Nos.1 to 4**: Sri M.B.Chandra Sekhar, learned counsel, representing Sri D. Linga Rao, learned counsel for the appellant, would contend that the prosecution before the Court below failed to prove pendency of the official favour with that of the AO. The evidence of PWs.3, 4, 7 and 8 did not disclose that the application of PW.1 was sent to the AO. The prosecution miserably failed to prove the same. PW.1 was not a reliable witness. He stated before the learned Magistrate in his 164 Cr.P.C statement that he met AO on 12.08.2001 and got disconnected the electrical supply but, according to Ex.P-1, PW.1 had removed the wire on that day, as it fell, after getting switched off the main etc. The

prosecution did not prove the demands dated 24.08.2001 and 25.08.2001 and further 26.08.2001 with inconsistent evidence. In fact, on 24.08.2001 and 26.08.2001, AO was not in the headquarters, which is deposed by PW.3. The prosecution failed to prove pendency of the official favour and it further failed to prove the allegations of demand on the particular dates. According to the answers spoken by PW.7, the AO claimed TA bill by showing that he was not available in those days because he went on other duty. So, the AO had no knowledge, whatsoever, about the application of PW.1. However, on the date of trap, the defence of the AO before the Court below was that on the date of trap alone PW.1 gave the amount to AO to shift the service wire with a request to purchase the same. It was a practice that the Line Inspectors whenever requested by the consumers would help them by purchasing the wire with the amounts given by the consumers. AO so probabilized his defence theory by eliciting answers from the prosecution witnesses. The prosecution before the Court below neither proved pendency of the official favour nor the demand and acceptance of the bribe amount and AO could successfully dislodge the presumption under Section 20 of the PC Act by examining DWs.1 to 3. The learned Special Judge, without appreciating the evidence in proper perspective, convicted and sentenced the appellant as such the Appeal is liable to be allowed. Learned counsel would rely upon the decision of the Hon'ble Supreme Court in ***K. Shanthamma v. State of Telangana***[1] and a decision of the High Court of Telangana in ***M/s. B. Jagajeevan Rao v. State of A.P***[2].

12. Sri S.M.Subhani, learned Standing Counsel-cum-Special Public Prosecutor for ACB, appearing for the respondent-State, would contend that the prosecution by examining PW.1, PWs.6 to 8 categorically proved the pendency of official favour. Hostility of PWs.3 to 5 was proved by examining PW.10 – Investigating Officer. Though PWs.3 to 5 turned hostile to the case of the prosecution, but the evidence of PWs.6 to 8 is very clear that the application received by PW.6 was duly entrusted to ADE and AAE and, according to the evidence of PW.8, he tried to entrust the work to AO but he could not get him. He strenuously contended that AO had got knowledge about the pendency of official favour. Though, literally the application of PW.1 was not handed over to AO physically by PW.8 but AO had knowledge that he has to do necessary work to the electricity service live wire to another pole because PW.1 made such applications at the instance of AO. He would contend that, as per the defence of AO, PW.1 gave an

[1] (2022) 4 SCC 574
[2] Crl.A. No.371/2017, Dt.17.08.2022

amount of Rs.700/- to him with a request to purchase the wire so as to replace the live wire and connect to another pole. There was no question of AO in putting forth such a theory, if really, there was no pendency of official favour. The plea of AO that he accepted an amount of Rs.700/- from PW.1, at his request, to purchase new wire cannot stand to any reason in view of the categorical evidence of PWs.6 to 8. There was no procedure that the consumers would give the amount to the Lineman so as to request him to purchase live wire for replacement etc. The evidence on record amply proves that the prosecution before the Court below proved pendency of the official favour of PW.1 with AO. The trial Court recorded cogent reasons. The claim made by AO with reference to the TA Bill of August, 2001 was subsequent to August, 2001 and it was after trap as such the learned Special Judge did not find favour with the case of the AO that on 24.08.2001 and 26.08.2001 he was on camp. AO did not examine any witness of his department. On the other hand, PW.3 deposed false deviating from his 161 Cr.P.C. statement. DWs.1 and 2 were examined to prove that PW.1 developed some grudge against AO. The evidence let in by AO by examining DWs.1 and 2 is of no use to his defence. AO failed to probablize his defence theory and failed to rebut the presumption under Section 20 of the PC Act. The amount was recovered from the shirt pocket of AO during the post trap. The learned Special Judge rightly recorded an order of conviction and sentenced the AO with cogent reasons and the prosecution established the essential ingredients of the charges framed as such the Appeal is liable to be dismissed.

13. As seen from the evidence let in by the prosecution, there is no dispute that the AO was a public servant within the meaning of Section 2(c) of the PC Act and he was drawing salary from the account of the Government and this aspect is not at all in dispute. The prosecution to prove a valid sanction for prosecution of the AO for the charges framed before the Court below examined PW.9 and got marked Ex.P-12 sanction order. PW.9 is the retired Superintendent Engineer, in the office of APCPDCL. According to him, being a Divisional Electrical Engineer, he is empowered to appoint and remove the Line Inspectors. He issued proceedings No.64, dated 12.07.2002, against AO to prosecute him in a Court of law. Ex.P-12 is the said proceedings. Before issuing Ex.P-12, he received instructions from his Superintendent Engineer and also received the documents, copies of FIR and mediators report. After perusing the above, he issued Ex.P-12. As seen from the cross-

examination, there remained nothing in his evidence to disbelieve his testimony.

14. The evidence of PW.9 coupled with Ex.P-12 goes to prove that on application of mind PW.9 issued Ex.P-12, the proceedings permitting prosecution of the AO under Sections 7 and 13(1)(d) R/w.13(2) of the PC Act. The learned Special Judge having gone through the evidence available before the Court and with sound reasons upheld the contentions of the prosecution that AO was working as a public servant as on the date of trap and the prosecution obtained a valid sanction to prosecute him. The above said findings given by the learned Special Judge are on reasonable basis. Hence, I am of the considered view that the prosecution before the Court below proved that AO is public servant within the meaning of Section 2(c) of the PC Act and there is valid sanction to prosecute him for the charges framed.

15. Now, I proceed to deal with as to the pendency of the official favour in respect of the work of PW.1 with AO. Coming to the evidence of PW.1, who is no other than the *de-facto* complainant, he has spoken about the incident happened at his house *i.e.,* falling of electric service wire, which was going to the house of Savaraiah, during rainy season. According to him, they got

switched off the main from the pole and later removed the service wire of Savaraiah on 12.08.2001. His further evidence is that on 13.08.2001, he met AO and intimated about the incident and requested him to shift the service wire of Savaraiah to another electric pole for which AO replied that the work will be done within 4 or 5 days but he did not attend the said work. He further submits that again on 19.08.2001 and 20.08.2001 he met the AO, who promised to complete the work within 2 days but in vain. Ultimately on 24.08.2001 at 08:00 or 08:30 p.m. he met the AO near Chandraiah Bunk and requested him to shift the electric service wire and then AO demanded bribe of Rs.1,000/-. PW.1 expressed his inability to pay the demanded bribe amount and agreed to pay Rs.700/-, AO agreed to receive the said amount and asked him to bring the amount on 25.08.2001 to Chandraiah Beedi Bunk. He could not meet the AO on that day as he did not secure the money. On 25.08.2001 he gave written application to Assistant Engineer and Assistant Divisional Engineer in the office of Assistant Divisional Engineer, Nandikotkur which was received by Sub-Engineer on that day. On 26.08.2001 he submitted another application in the Sub-Station, Pagidyala to hand over the same to AO. On 26.08.2001 in the evening he met the AO at 07:00 p.m. AO demanded bribe of Rs.700/-. He promised to pay the bribe on the next day for which AO asked him to pay the bribe amount near the beedi bunk of Chakala Chandraiah in the afternoon. He further lodged Ex.P-1 report to DSP, ACB, Kurnool and that pre trap proceedings were conducted in the office of DSP at 11:00 a.m. on 27.08.2001. According to him, Ex.P-1 is the report lodged by him to the Police. Ex.P-2 is the application submitted him to the Assistant Engineer, AP Transco, Nandikotkur on 25.08.2001. Ex.P-3 is the same representation addressed to the Assistant Divisional Engineer on the same day. Both are in his hand writing. Ex.P-4 is the copy of application dated 25.08.2001 addressed to the Line Inspector, AP Transco, Pagidyala.

16. PW.2, mediator to the pre trap and post trap proceedings, deposed the fact that after completion of the post trap proceedings, he along with the DSP proceeded to Sub-Station, AP Transco, Pallamarri, Pagidyala and they found the application of PW.1 in the log book. They have taken it from the log book and the said application is Ex.P-8. It bears his signature and the signature of the other mediators and the DSP, ACB. PW.10, the Trap Laying Officer, supported this evidence of PW.2 with regard to seizure of

Ex.P-8 application of PW.1 from the log book in the Electricity Office.

17. Prosecution examined PW.3 to speak to the fact that PW.1 on 26.08.2001 at 08:00 a.m. gave Ex.P-4 application to him and he kept Ex.P-4 in the log book and informed the same to Srinivasulu, Operator. The prosecution examined him to prove official favour and he did not support the case of the prosecution. On the other hand, he deposed that on 26.08.2001 when PW.1 came to him and enquired about AO, he told him that AO went on camp. Prosecution got declared him as hostile. During cross-examination he denied that he stated before ACB Inspector as in Ex.P-9.

18. Prosecution examined PW.4 to prove official favour and the role attributed to PW.4 is that after trap PW.4 searched the application made by PW.1 addressed to AO and he found it in log book and handed over to ACB officials. But, he did not support the case of the prosecution. According to him, on the date of trap at 09:30 p.m. some person came to his Sub-Station and asked him log book and he handed over the log book. He did not see the application form, which they took from the log book. The Special Public Prosecutor got declared him as hostile and during cross-

examination, he denied that he stated before ACB Inspector, as in Ex.P-10 (161 Cr.P.C statement).

19. Prosecution further examined PW.5, younger brother of the *de-facto* complainant, and he did not support the case of the prosecution with regard to the incident that was happened on 12.08.2001 at his house. However, he deposed that he came to know that service wire attached to his house was cut off and fell in their house. The evidence of PW.5 was challenged by the Special Public Prosecutor and he denied during the course of cross-examination that he stated before ACB, Inspector as in Ex.P-11.

20. The prosecution further examined PWs.6 and 7, the important witnesses, to prove the pendency of the official favour. The evidence of PW.6 in substance is that previously he worked as Sub-Engineer, APCPDCL at Nandikotkur. At that time, Sri P. Venkateswarlu was his ADE. The then AE (Operation) was Sri Sahadevudu and AAE, Nandikotkur was Sri Y. Achireddy. On 25.08.2001 one person by name P. Venkataiah came to his office at 11:00 a.m. and presented two applications; one is addressed to Assistant Engineer and another is addressed to ADE. On that day, both ADE and AEE were not present as they went on other duties. After receiving the said applications from PW.1, he made an

endorsement on both the applications. Exs.P-2 and P-3 are the said applications, which he received. Witness identified his endorsements on them. The said applications were for change of damaged service wire of neighbor of PW.1. On the next day happened to be Sunday, on Monday *i.e.,* on 27.08.2001 at 10:00 a.m. both AEE and ADE came to the office and he handed Ex.P-2 to AAE and Ex.P-3 to ADE. They made endorsements on Exs.P-2 and P-3 respectively. The ADE made an endorsement with instruction to him to inform the same to AE, Rural, Nandikotkur to attend the complaint. Accordingly, he informed the same to Achi Reddy. Nagaraju *i.e.,* AO was the Line Inspector of Nandikotkur, Pagidyala at that time.

21. The evidence of PW.7 is that previously he worked as Assistant Divisional Engineer, Nandikotkur. PW.6 worked as Sub-Engineer and Achireddy worked as AE Rural. AO worked as Line Inspector, Pagidyala. On 25.08.2001, he went for taking H.T. Reading in Jupadu Bungalow. Next day happened to be a Sunday, he attended the office on 27.08.2001. On that day, Achireddy and PW.6 also attended the office. PW.6 handed over him one application, Ex.P-3, which was received by him on 25.08.2001. He made endorsement on it giving the instructions to Achireddy, AE

Rural, to attend and report back the compliance. The application was for replacement of damaged service wire. He further testified that the registered consumer or the person affected due to damage of the service wire can supply for the new service wire and after verification the new service wire can be connected to avoid the danger. The local Lineman shall attend the line work of the pole along with the helper. The Lineman or Helper has no authority to collect money from the registered consumer or any other person to purchase service wire or any other material. The Department Rules will not permit such things. The Lineman or Helper is not entitled to collect from the consumer or any other person the labour cost to replace the service wire.

22. Prosecution further examined Y. Achireddy, whose evidence in substance is that on 27.08.2001 he, PW.7 and PW.6 attended the office at Nandikotkur. PW.6 handed over him an application dated 25.08.2001 presented by PW.1 and another application of P. Venkataiah to ADE. He (PW.8) made an endorsement on Ex.P-2. PW.7 instructed him to verify and if required change the service wire. He (PW.8) tried to entrust the said work to AO but he could not get him. He further has spoken about the duties of the Line Inspector *i.e.,* to attend maintenance of transformers and 33 KV

Line fault rectifications, LT Line fault rectifications, low tension fault rectifications, attending the complaints of the consumers and changing of the service wire from one place to another place. Helper is there to help the Lineman. Registered consumer has to supply the service wire. Line Inspector is not authorized to collect money from the consumer.

23. Admittedly, it is a case where the prosecution examined PW.3 to speak to the fact that on 26.08.2001 PW.1 came and presented Ex.P-4 to him and in turn he informed the same to Srinivasulu, Operator, to communicate the said application to AO. He did not support the case of the prosecution. So, PWs.3 and 4 exhibited hostile attitude. It is amply proved by virtue of the evidence of PW.11, the ACB Inspector, who deposed that PWs.3 and 4 stated before him as in Exs.P-9 and P-10 respectively. As seen from the evidence of PW.4, he was a custodian of the log book. So, when he was custodian of the log book, he was supposed to say what was there in the log book. According to him, he did not see the application form which the ACB officials took from log book. All this goes to show that, for obvious reasons, PWs.3 and 4 turned hostile to the case of the prosecution. Though PW.5, the brother of PW.1, turned hostile but his evidence is not material

here for the reason that there was no dispute about the fact on 12.08.2001 when there was rain, the live wire which was connecting to the house of Savaraiah fell into the premises of PW.1. Hence, merely because PWs.3 to 5 did not support the case of the prosecution, the case of the prosecution cannot be disbelieved.

24. On the other hand, prosecution examined PWs.6, 7 and 8 to speak to the fact that on 25.08.2001 PW.1 came to the electricity office at Nandikotkur and presented Exs.P-2 and P-3 applications. Turning to the evidence of PW.6, in cross-examination, he deposed that PW.1 did not meet him prior to 25.08.2001. Without the consent of the consumer, department cannot rectify the deficiency/discrepancy in the service wire. Department would not supply service wire to the consumer. It would be purchased by the consumer in the market. On the applications under Exs.P-2 and P-3 department can take action with consent of both the consumers. Turning to the evidence of PW.7, there is no dispute that PW.1 met PW.6 on 25.08.2001 and submitted Exs.P-2 and P-3 applications. During the course of cross-examination of PW.6 also these facts are not in dispute. PW.7 testified in cross-examination that the consumer has to bear the expenses for purchase of new service wire. If there is necessity to erect another

pole, consumer has to pay the costs of the pole also. He cannot say that there was no understanding between PW.1 and AO to replace the service wire and that PW.1 requested the Lineman to purchase the required material. The said procedure is not correct. In order to avert the danger, the consumer and lineman can come to an understanding to replace the old service wire by purchasing wire from the market.

25. It is to be noticed that the defence of the AO before PW.1 was that PW.1 handed over a sum of Rs.700/- to AO during the post trap with a request to purchase new service wire and that amount was not on account of any demand to pay bribe. In that view of the matter, certain questions were suggested to PWs.6 and 7 during cross-examination and they did not support the theory of the AO. According to them, it was the consumer, who had to purchase the wire and the department will not permit for purchase of such live wire by any Lineman.

26. Turning to the cross-examination part of PW.8 – Y. Achi Reddy, he deposed in cross-examination that the neighbor of PW.1 Savaraiah is also their consumer. On the consent PW.1, registered consumer and Savaraiah they can act for replacement of the service wire. Without application of the registered consumer, the

registered consumer and neighbor can come to an understanding to replace the wire. They did not take any action against Exs.P-2 and P-3 applications. It is basing on all these answers elicited from the mouth of PW.8 the contention of AO is that the applications of PW.1 did not reach to him.

27. In the light of the peculiar facts and circumstances, the prosecution established the fact that PW.1 approached PW.6 and submitted two applications under Exs.P-2 and P-3 and they ultimately reached PW.8. According to PW.8, he did not try to contact AO as he could not get him. Now this Court has to see as to whether simply because PW.8, the concerned AEE failed to communicate to AO about the applications of PW.1 *i.e.,* Exs.P-2 and P-3 can it be said that the official favour in respect of the work of PW.1 was not within the knowledge of AO, as such it was not pending with AO?

28. At the outset, this Court would like to make it clear that PW.1 did not allege that either on the next day of 12.08.2001 *i.e.,* on 13.08.2001 or 19.08.2001 or 20.08.2001 AO demanded him to pay bribe. His case is that on those dates AO assured to attend the work but he did not attend the work. So, the first allegation about the demand of bribe of AO was said to be on 24.08.2001. So,

according to the contents in Ex.P-1 and according to the evidence of PW.1 when he met the AO at Chandraiah Beedi Bunk on 24.08.2001, AO demanded bribe of Rs.1,000/- and he agreed to pay Rs.700/-. According to Ex.P-1, AO asked him to file a written request in the electricity office. So, till 25.08.2001 PW.1 did not make any application with the office of PW.6. So, the case of the prosecution is to be appreciated with the regard to the incidents that were happened from 24.08.2001. So, 24.08.2001 was the day on which AO is alleged to have demanded PW.1 to pay bribe. 25.08.2001 was also the day on which PW.1 submitted written application to the Assistant Engineer and Assistant Divisional Engineer in the office of Assistant Divisional Engineer. 26.08.2001 was the day on which PW.1 submitted another application in the Sub-Station, Pagidyala means for AO. It was also the so called date on which AO demanded him to pay bribe of Rs.700/- to bring on the next day.

29. Now, I proceed to deal with as to whether pendency of the official favour of PW.1 was within the knowledge of AO. Though, PW.8 did not contact the AO to explain about the request of PW.1, as seen from the cross-examination part of PW.1, he deposed that on 12.08.2001 he did not get the wire removed by Nagaraju (AO)

by disconnecting the sub line. He stated before the Magistrate that on 12.08.2001 he met the AO and got disconnected the electric supply and also got the wire removed through AO. It is to be noticed that the evidence of PW.1 with regard to the fact that on 12.08.2001 when the live wire fell into theIR premises, it gave huge smoke and sparks as such they got disconnected it has corroboration from Ex.P-1. It is immaterial as to whether PW.1 got it done on his own or with the help of AO. Simply because PW.1 stated before the Magistrate that on 12.08.2001 he got disconnected electric supply with the help of AO, he cannot be branded as an unreliable witness as contended by the appellant. He further during the course of cross-examination deposed that the trap took place at 07:00 p.m. At that time there was a light at the bunk of Chandraiah. Chandraiah was present in the Beedi Bunk at that time of conversation that took place between him and AO he and AO were very nearer to the bunk. AO stated before the DSP, ACB, Kurnool and mediators that he (PW.1) gave the amount of Rs.700/- towards the costs of the service and other materials. He denied that he gave the amount to the AO requesting to get the material to give fresh wire connection to the house of Savaraiah, since Savaraiah did not apply for the fresh wire connection.

30. As seen from Ex.P-7, post trap proceedings, there was a whisper that AO stated before the DSP that PW.1 gave an amount of Rs.700/- to him with a request to purchase new wire for fresh service connection to the pole. There is no dispute about the duties to be performed by the AO. AO was the Line Inspector, who was supposed to shift the live wire to another pole. This aspect is not in dispute. So, it is altogether a different aspect as to whether AO has accepted the amount of Rs.700/- from PW.1 at all towards bribe as alleged by the prosecution or towards purchase of the wire at the instance of PW.1 as claimed by the AO. So, the fact is that AO was within his knowledge by virtue of his defence in the post trap proceedings that he had to attend the official favour in respect of the work of PW.1. If AO was not having any knowledge whatsoever with regard to the official favour to be done in respect of the application of PW.1, there would be no occasion for him to accept Rs.700/-, even according to his defence to purchase the wire. Therefore, irrespective of as to whether Exs.P-2 and P-3 applications could reach the AO or irrespective of the evidence of PW.8 that he could not get the AO with regard to the request of PW.1 but the thing is that AO had knowledge about the official favour in respect of the work of PW.1 to be performed by him. In my considered, the prosecution before the Court below

categorically proved that the AO had to attend the official favour in respect of the application of PW.1 so as to shift the live wire to another pole which was passing through the premises of PW.1.

31. Now, another crucial thing that has to be considered by this Court is as to whether the prosecution proved that prior to the trap and on the date of trap AO demanded PW.1 to pay bribe of Rs.700/- and ultimately accepted the same during the post trap. The substance of the allegations under Ex.P-1 are such that on 24.08.2001 at about 08:00 p.m. when the complainant was at the hotel and when he met the AO to shift the live wire, he demanded bribe of Rs.1,000/- and he expressed his inability to do so and ultimately he agreed to pay only Rs.700/- and AO asked him to give a report to the AE with such request for shifting of the live wire. It is also alleged in Ex.P-1 that on 26.08.2001 also AO demanded him to pay the bribe and asked him to bring the bribe amount by the next day. PW.1 in his testimony has spoken about the demand alleged to be made by the AO on 24.08.2001 and 26.08.2001. So, the evidence of PW.1 with regard to the allegations of demand of bribe on 24.08.2001 and 26.08.2001 has support from the contents of Ex.P-1. During the cross-examination, PW.1 denied a suggestion that he did not meet AO on 24.08.2001 and

26.08.2001 because on those days AO was on camp. He denied AO was on camp at Kusumalli on 24.08.2001 and at Nandikotkur on 26.08.2001 and on those days he was attending special drive collection. He denied that his version that he met the AO on those days and AO demanded the bribe amount is false. So, the defence of AO is that on the dates of alleged demand on 24.08.2001 and 26.08.2001 there was no possibility for PW.1 to meet him because he was attending on special drive.

32. PW.3, as pointed out, was a hostile witness. He was examined by the Trap Laying Officer to speak about pendency of the official favour but he deposed that on 26.08.2001 Sunday morning he was available in the office of AP Transco and at 08:00 a.m. PW.1 came there and asked him about the AO and he informed him that AO went on camp. As pointed out, the testimony of PW.3 was found to be hostile by virtue of the evidence of PW.11 - ACB Inspector, who recorded his statement. He testified that PW.1 stated before him as in Ex.P-9. It is interesting to note that PW.3 did not testify that on 24.08.2001 AO was on special drive. AO got elicited from the mouth of PW.7, the then Assistant Divisional Engineer, during cross-examination, that as per TA Bill on 23.08.2001 AO left Pagidyala by 08:00 a.m. to Lakshmapuram

via Nandikotkur and returned to Pagidyala by 09:00 p.m. On 24.08.2001, AO left Pagidyala at 07:30 a.m. to Muchumarri *via* Nandikotkur and returned by 09:00 p.m. He (PW.7) counter-signed the TA Bill. It is to be noticed that 23.08.2001 had nothing to do with reference to the allegations of the prosecution attributed against AO that on 24.08.2001 and 26.08.2001 AO demanded PW.1 to pay bribe. So, it is clear that PW.7 did not testify anything in his cross-examination with regard to the so called absence of the AO on 26.08.2001. If really, AO was on special drive on 26.08.2001 he would have elicited an answer from cross-examination of PW.7 with regard to the claim of AO for TA Bill on 26.08.2001 also.

33. Now, it is a matter of appreciation as to whether the so called TA Bill pertaining to the month of August with regard to the date 24.08.2001 showing the time of departure of AO from Pagidyala and returning to the Headquarters at 07:30 a.m. and 09:00 p.m. respectively is believable or not. At the outset, this Court would like to make it clear the so called claim made by AO for the month of August, 2001 was subsequent to the trap. So, it is quite natural for a person like AO to make something borne out by the record to escape from the allegations of the demand of bribe

on 24.08.2001. Apart from this, the evidence adduced by the AO negatives his defence to any extent. AO examined DW.2 to speak the motive for his false implication. So, in that context, DW.2 was examined by the AO to put forth a theory that PW.1 was due some amount to Chandraiah, the owner of the Beedi bunk, and Chandraiah, the owner of the beedi bunk instructed PW.1 to pay the said amount to AO, as such PW.1 bore grudge against AO. It is altogether a different aspect as to whether the evidence of DWs.1 and 2 is believable. To negative the defence theory that AO was on camp on 24.08.2001 as such there was no possibility for him to meet PW.1, the evidence of DW.2 is very crucial. Needless to point out here that, according to the allegations in Ex.P-1 and the evidence of PW.1, PW.1 met the AO on 24.08.2001 at Chandraiah bunk around 08:00 or 08:30 p.m. Here the evidence of DW.2 means that on 24.08.2001 he went to beedi bunk of DW.1 at 07:00 p.m. for paper collection and during that time AO, PW.1 and DW.1 were present at the shop. Here is a case that AO got an answer from PW.7 that according to the TA bill of AO on 24.08.2001 he could return to headquarters 09:00 p.m. but here according to DW.2, AO was physically present at 07:00 p.m. on 24.08.2001 at kirana shop of DW.1 at Pagidyala village. So, the evidence of DW.2 negatives the defence theory that on 24.08.2001

AO was not available at Pagidyala at 08:00 or 08:30 p.m. It goes to show that purposefully AO made a TA claim showing the timings as per his convenience. So, the evidence spoken to by PW.1 with regard to the presence of AO in Pagidyala village at 08:00 or 08:30 p.m. is fully convincing and it is supported by the evidence of DW.2. So, the AO miserably failed to probablize a theory that he was not available on 24.08.2001 at the alleged time when he demanded PW.1 to pay bribe.

34. Coming to the allegations dated 26.08.2001, if really, AO was on a special drive, he would have got a favourable answer from PW.1 with regard to TA bill dated 26.08.2001. Even according to the evidence of PW.1 on 26.08.2001 evening, he met the AO at 07:00 p.m. and then AO demanded bribe of Rs.700/-. According to the evidence of PW.3, as this Court already pointed out, his evidence is not at all believable. AO did not examine any person to show his absence on 26.08.2001 at Pagidyala village. Hence, the evidence of PW.1 even with regard to the demand attributed against AO on 26.08.2001 to the effect that on that day evening when he met AO, he demanded bribe of Rs.700/- is found to be reliable. AO miserably failed to probablize his defence theory with regard to his absence on 24.08.2001 and 26.08.2001.

35. In the light of the above reasons, the evidence of PW.1 is fully convincing. By examining PW.1, the prosecution has categorically proved *i.e.,* the demand made by AO on 24.08.2001 and 26.08.2001 with PW.1 to pay the bribe amount.

36. According to the allegations on 27.08.2001 AO demanded PW.1, during the post trap, to pay the bribe of Rs.700/- and accepted the same. There is evidence in this regard of PW.1. His evidence with regard to pre trap and post trap proceedings is such that after he presented Ex.P-1, the DSP asked him to come on the next day at 11:00 a.m. along with the proposed bribe of Rs.700/-. He deposed that he went to the State Guest House, Kurnool along with the bribe and DSP introduced the mediators and the mediators enquired him as to the allegations in Ex.P-1 and he confirmed the same and the DSP took the bribe amount and directed the constable to apply phenolphthalein powder to the currency notes and that amount was kept in his left side shirt pocket and the DSP explained the importance of phenolphthalein powder and demonstrated chemical test and asked him to pay the tainted amount to the AO on further demand and to relay the pre arranged signal. With regard to the post trap, he deposed that at 04:00 p.m. he waited near the Chandraiah bunk. He did not find

the AO. He informed the same to DSP. DSP, ACB asked him to wait till arrival of AO. AO came to Chandraiah beedi bunk at 07:00 p.m. As asked by AO, he informed that he brought the amount. AO asked him to pay the bribe. He took the amount from his shirt pocket and gave it to AO. AO counted it and kept it in his left side shirt pocket. Then, he relayed a pre arranged signal. Trap party members came there. DSP asked him as to what happened. He stated to the DSP as to what happened. He was asked to stay at a distance for some time and after some time DSP called him and mediators asked him as to what happened. He narrated the things. Mediators noted down what all he stated. ACB Inspector examined him and he recorded his statement. He also gave a statement before the learned Magistrate under Section 164 Cr.P.C.

37. The evidence of PWs.2 and 11, the mahazar witness to the trap proceedings and Trap Laying Officer shows consistency with the evidence of PW.1. The evidence of PWs.2 and 11, shows that after receiving pre arranged signal they rushed to the beedi bunk of Chandraiah and asked the AO as to whether he demanded the bribe and AO produced the tainted amount and when both hand fingers of AO were subjected to chemical test, they yielded positive result and the serial numbers of the currency notes which were

noted in the pre trap proceedings were found to be tallied with the tainted amount recovered from the AO. The evidence of PW.1 that he handed over the amount to AO during the post trap on further demand and the evidence of PWs.2 and 11 that amount was recovered from the AO means that AO accepted the tainted amount from PW.1 and later it was recovered from AO during the post trap. Therefore, it is proved that AO dealt with the tainted amount.

38. The defence of the AO in this regard is two fold. One is the motive on the part of the PW.1 regarding the so called false implication; another is that he accepted the amount from PW.1 to purchase a new wire for the purpose of replacement. Firstly, I would like to deal with the so called motive for false implication. During cross examination, PW.1 denied a suggestion that he owed Rs.5,000/- to Chandraiah, beedi bunk owner and Chandraiah directed him to pay the said amount to AO and that AO demanded him to pay the said amount to him and therefore being insulted before the beedi bunk by others, he got laid a false trap against the AO. So, PW.1 denied the defence of the AO. From the above said suggestion it is not understandable as to why AO could intermediate between PW.1 and beedi bunk owner Chandraiah to

see that PW.1 would hand over the amount to AO and that AO would hand over the amount to Chandraiah. However, in pursuance of the defence theory, AO examined DWs.1 and 2. Their dates of examination before the Court below was on 13.06.2006 and 26.06.2006 respectively and further chief examination of DW.3 in different context was on 26.06.2006. After completing the evidence, AO got recalled PW.1 on 09.01.2007. PW.1 was recalled on 25.01.2007. He deposed in cross-examination that he executed Ex.D-1 promissory note in favour of Chandraiah for the amount due to him for purchase of groceries from DW.1. He executed a promissory note on 05.04.2000. One Arjun and Sri Ramulu witnessed and attested Ex.D-1. On 05.02.2003, he made part payment of Rs.1,000/- to Chandraiah and got endorsed it. Ex.D-2 is the part payment endorsement. During re-examination by the learned Special Public Prosecutor, he denied that Exs.D-1 and D-2 are brought into existence recently at the instance of the AO. So, the prosecution denied the genuinity of Exs.D-1 and D-2. It is no doubt true that the AO did not examine the so called Arjun and Sriramulu. Even otherwise, the evidence of PW.1 in further cross-examination went contra to his earlier denial that was made in cross-examination that he owed a sum of Rs.5,000/- to the beedi bunk owner Chandraiah and Chandraiah directed him to pay the amount to AO. All this goes to show that for one reason or the other AO managed PW.1 after examination of DWs.1 to 3 and got an answer that he executed Ex.D-1 in favour of beedi bunk owner Chandraiah. By virtue of the above answer his examination-in-chief remained un-affected in any way.

39. Even otherwise, any amount of inconsistency can be seen in the evidence of DWs.1 and 2. To find any genuineness in the testimony of PW.1 in his cross-examination by way of recall after completion of the evidence, it is appropriate to look into the conduct of DWs.1 and 2. According to DW.1 - Chandraiah, PW.1 became due of Rs.5,000/- to him. He demanded PW.1 to repay his debt. In the 2nd week of August, 2001, PW.1 and AO came to him and he asked PW.1 to repay the amount of Rs.5,000/-. Prior to that he borrowed Rs.5,000/- from AO and promised to repay the amount, after PW.1 paid the amount to him. So, he asked AO to collect the amount of Rs.5,000/- from PW.1. PW.1 agreed to pay the amount to AO. AO asked PW.1 to pay Rs.5,000/- to him. PW.1 replied that he had no money. PW.1 expressed his inability to pay the amount to AO and asked him to do whatever he wanted to do. All this in the evidence of DW.1 was not suggested to PW.1 during the course of original cross-examination or the cross-examination

after recall. So, it is an afterthought that AO examined DW.1 to come out from the case. Further exaggeration in the evidence of DW.1 is that according to him on 27.08.2001 PW.1 and AO came to his beedi bunk during evening and PW.1 asked AO that his service wire was damaged and requested him to replace and AO asked PW.1 to get the service wire and PW.1 asked the AO to purchase it and PW.1 informed to AO that he got Rs.700/- with him and so saying he kept the amount in the shirt pocket of AO. It is to be noticed that it is not the defence of AO that PW.1 thrust the amount in his shirt pocket. So, according to AO in the post trap version, PW.1 gave the amount to him with a request to purchase the wire. The version of AO in the post trap is a matter for consideration. So, it is clear that the evidence of DW.1 that PW.1 kept the amount in the short pocket of AO is nothing but an improved version with falsity. No reliance can be placed upon the evidence of DW.1.

40. Similarly, DW.2 claimed to be an agent of Eenadu news paper and as this Court already pointed out, he supported the presence of AO on 24.08.2001 around 07:00 p.m. As this Court already pointed out the defence of the AO with regard to the fact that he owed a sum of Rs.5,000/- to PW.1 and further PW.1 owed

a sum of Rs.5,000/- to DW.1 and DW.1 asked PW.1 to pay the amount to the AO and PW.1 expressed his inability and ultimately PW.1 developed grudge against AO is nothing but improbable and it is not believable. Now, coming to the evidence of DW.2, he has gone to the extent of saying about the things that were happened during the post trap. According to him on 27.08.2001 at 07:00 p.m. Nagaraju and Venkataiah were present at the shop of DW.1. Then Venkataiah kept money in the hands of AO stating that it is the amount for service wire to be purchased. As this Court already pointed out, it is never the defence of the AO that PW.1 thrust the amount in his shirt pocket or thrust the amount in his hands. On the other hand, his version is that PW.1 handed over a sum of Rs.700/- to purchase wire. So, even the evidence of DW.2 suffers with any amount of exaggeration. The conduct of AO is such that he developed various versions from stage to stage to suit his defence with any amount of inconsistency. So, virtually the evidence of DW.2 deserves no consideration.

41. When the evidence of DWs.1 and 2 suffers with any amount of untruth and improbable circumstances, their evidence cannot be believed.

42. Turning to the testimony of DW.3 – Savaraiah, his evidence has nothing to do with the post trap events. The AO got examined Savaraiah. He deposed that the service wire passes from the terrace of PW.1 to his house was cut at the house of PW.1. PW.1 with a private electrician and through him it was reconnected. He told him that since the service wire was creating problem, he would ask Deputy Transco to erect a pole near their house and that he will incur the necessary expenditure in that regard.

43. In my considered view, the evidence of DW.3 at best further supports the case of the prosecution with regard to the wire which was passing through his house fell into the house of PW.1. It is not his evidence that he was physically present during the post trap. His evidence is not on the similar lines of the evidence of DWs.1 and 2. Therefore, the evidence of DW.3 in any way is not useful to the case of the AO.

44. In the light of the above, AO miserably failed to probabilize the motive for his false implication. Coming to the defence theory in the post trap proceedings that PW.1 handed over the amount to AO to purchase a new wire, his evidence from the testimony of PW.6 such a course of action is not at all possible and it is against the Rules. He categorically deposed in cross-examination that the

consumer has to purchase the wire in the market and it will be purchased by the consumer and lineman will attend the repair works. Prosecution got elicited from PW.7, keeping in view the defence theory in the post trap and according to PW.7 the consumer has to meet out the expenditure. His specific evidence is also that the department will not permit any things for purchase of the wire by the lineman and collecting the amounts from consumer. Though AO is able to elicit that if the consumer and the lineman can arrive at a conclusion that the lineman can purchase the wire by taking the amount from the consumer, but the facts and circumstances are such that any such probability or possibility can altogether be excluded in the given situation. The defence theory is that PW.1 bore grudge against AO when AO asked him to pay the amount due by him to the beedi bunk owner. In such circumstances, no man of reasonable prudence would venture to accept the amount from a person like PW.1 to purchase the electricity wire. In my considered view, the defence of AO in the post trap proceedings is nothing but an afterthought when he was caught hold red-handedly while accepting the bribe amount from PW.1. In view of the above, I am of the considered view that the contention of AO that he accepted the amount from PW.1 to purchase wire cannot stand to any reason. The conduct of AO in improving his defence from stage to stage even by going to the extent of adducing evidence with any amount of untruth further negatives his defence that he accepted the amount for purchase of new service wire only. As AO dealt with the tainted amount, now there arises a presumption under Section 20 of the PC Act. Section 20 of the PC Act runs as follows:

> "**20. Presumption where public servant accepts gratification other than legal remuneration** —
> (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.
> (2) Where in any trial of an offence punishable under Section 12 or under clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that

valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.
(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

45. Coming to the present case on hand, as this Court already pointed out prosecution has proved the allegations of demand prior to the date of trap and on the date of trap and acceptance of the bribe amount from AO. The Hon'ble Supreme Court in ***Neeraj Dutta v. State (Government of NCT of Delhi)***[3], presided over by a Constitutional Bench elaborately dealt with the essential ingredients of Sections 7, 13(1)(d) R/w.13(2) and 20 of the PC Act and insofar as Section 7 of the PC Act is concerned on the proof of the facts in issue, Section 20 mandates the Court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the Section and such presumption has to be raised by the Court as a legal presumption or a presumption in law. Of course the said presumption is also subject to rebuttal.

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[3] (2022) SCC OnLine SC 1724

46. Coming to the present case on hand, the prosecution has the benefit of presumption under Section 20 of the PC Act. The defence of the AO with regard to the false implication is not tenable. Further, the defence of the AO that he accepted the amount of Rs.700/- from PW.1 to purchase new wire cannot stand to any reason. In my considered view, AO failed to rebut the presumption available to the case of the prosecution under Section 20 of the PC Act.

47. Turning to the decision of the Hon'ble Supreme Court in ***Shanthamma*** (1st *supra*), relied upon by learned counsel for the appellant, it is a case where the learned Special Judge recorded an order of conviction against the AO. The Appeal filed by the AO was dismissed, and then the AO filed an Appeal before the Hon'ble Supreme Court. It is a case where the prosecution, according to the evidence available on record, did not prove the demand of illegal gratification. The Hon'ble Supreme Court dealt with the situation that when there was no evidence to prove the allegations of demand mere recovery of the amount from the AO would not entail in conviction under Sections 7 and 13(1)(d) R/w.13(2) of the PC Act. Apart from this, the amount was not recovered from the physical possession of the AO in the above said case. Under the

circumstances, the Hon'ble Supreme Court allowed the aforesaid Appeal.

48. Coming to the present case, the amount was recovered from the physical possession of AO *i.e.,* from the left side shirt pocket. The prosecution adduced consistent and cogent evidence to prove the allegations of demand. The defence theory for false implication is not tenable. Further, defence theory that AO accepted the amount to purchase new wire is not tenable. Hence, the above said decision is of no help to the AO.

49. Turning to the decision of the High Court of Telangana in ***M/s. B. Jagajeevan Rao*** (2^{nd} *supra*), this Court would like to make it clear that the factual aspects in the above said case are that the prosecution alleged two dates on which AO demanded the bribe *i.e.,* 16.08.2001 and 23.08.2001 and it was held that the evidence adduced by the prosecution to prove the demands were doubtful. Under the aforesaid circumstances, the Appeal filed by the appellant was allowed. Apart from this, the amount was not recovered from the physical possession of the AO therein. The cover containing the bribe amount was found in the record room of RDOs office. The prosecution did not explain as to how the cover was found in the record room of RDO office when he was

working in the Sub-Treasury Office. The factual aspects in the above said case stood in a different footing. The appellant in this case cannot strengthen his defence by relying upon the above said decision in any way.

50. In the light of the above, this Court is of the considered view that the prosecution before the Court below categorically proved the allegations of demand and acceptance of bribe by AO from PW.1 prior to the date of trap and on the date of trap. The act of the AO in demanding PW.1 to pay bribe of Rs.700/- and consequent acceptance of the same is nothing but an offence under Section 7 of the PC Act. Further, the amount obtained by the AO would squarely attract the allegation that he obtained pecuniary advantage from PW.1 by demanding the bribe as such it would further establish the essential ingredients of Section 13(1)(d) R/w.13(2) of the PC Act. It is nothing but a criminal misconduct within the meaning of Section 13 of the PC Act. The prosecution before the Court below proved the charges under Sections 7 and 13(1)(d) R/w.13(2) of the PC Act beyond reasonable doubt. Hence, in my considered view, the learned Special Judge rightly appreciated the evidence on record and rightly convicted

and sentenced the AO. Hence, I see no reason to interfere with the impugned judgment.

51. In the result, the Criminal Appeal is dismissed as such the judgment, dated 09.07.2007, in C.C. No.24 of 2002 on the file of the Court of Additional Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad shall stands confirmed. MO.5, tainted currency notes of Rs.700/-, is ordered to be returned to PW.1. MOs.1 to 4 and MOs.6 to 11 are ordered to be destroyed after appeal time is over, if available before the Court below.

52. The Registry is directed to take steps immediately under Section 388 Cr.P.C to certify the judgment of this Court to the learned Special Judge for SPE and ACB Cases at Kurnool and on such certification, the learned Special Judge for SPE and ACB Cases at Kurnool shall take necessary steps to carry out the sentence imposed against the appellant/accused in Calendar Case No.24 of 2002, dated 09.07.2007, and to report compliance to this Court. Registry is directed to dispatch a copy of this judgment along with the lower Court record, if any, to the learned Special Judge for SPE and ACB Cases at Kurnool on or before 21.03.2023 in the name of the Presiding Officer concerned. A copy of this judgment be placed before the Registrar (Judicial), forthwith, for

giving necessary instructions to the concerned Officers in the Registry. A copy of this judgment shall also be forwarded to the Head of the Department of AO for information and further action, if any.

Consequently, Miscellaneous Applications pending, if any, shall stand closed.

JUSTICE A.V.RAVINDRA BABU

Date: 14.03.2023
DSH