

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

* * * *

Crl.A.No.29 of 2009**Between:**

Nallagatla Krishna Prasad Died (Per L R)
S/o.Sheshavatharam Asst Engineer O/o.MPDO Gurajala
Guntur District and another

.....Appellants

AND

State of A P
rep by Range Inspector III Anti Corruption Bureau Vijayawada Raga
Vijayawada by Spl PP

.....RespondentDATE OF JUDGMENT PRONOUNCED : **03.05.2024.****SUBMITTED FOR APPROVAL**

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgments ? Yes/No
2. Whether copies of Judgment may be
marked to Law Reporters/Journals ? Yes/No
3. Whether Your Lordships wish to see the
fair copy of the Judgment ? Yes/No

VENKATA JYOTHIRMAI PRATAPA, J

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Versus

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.....Respondent

! Counsel for the Appellants : Sri Sudhakara Rao Ambati
^ Counsel for the Respondent : Smt. A.Gayathri Reddy, Standing
Counsel for ACB-cum-Special
Public Prosecutor

< Gist :

> Head Note:

? Cases Referred:

1. (2014) 13 SCC 55
2. (2015) 10 SCC 152
3. (2021) 3 SCC 687
4. Crl.A.No.1669/2009 dt.17.3.2023

Procedure,1973², wherein he was sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.1,000/- (Rupees one thousand only) in default to suffer simple imprisonment for three months for the offence under Section 7 of the Act and further sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/- (Rupees one thousand only) in default to suffer simple imprisonment for three months for the offence under Section 13(1)(d) read with Section 13(2) of the Act and directed to run both the sentences concurrently, the Accused preferred the present Appeal.

2. The appellant and the respondent herein were the accused and the State represented by the Range Inspector-III, Anti Corruption Bureau (ACB), Vijayawada, respectively before the trial Court. During the pendency of the appeal, the accused died. His legal representatives, who are his wife and daughter, came on record to pursue the appeal.

3. The case of the prosecution in brief is as follows:

a. Accused officer worked as an Assistant Engineer in the office of MPDO, Gurazala, Guntur District. The complainant namely, Challa Srinivasa Rao was a Contractor. The complainant was engaged by the Government for construction of protection wall from S.C.Hostel to the house of Yerukala Nagaiah in Gurajala Village under Janma Bhoomi Programme. The worth of the contract was Rs.1,50,000/- and it was agreed

²In short, Code

to complete on or before 31.10.2003. The complainant (P.W.1) executed the work and received rice worth of Rs.45,000/- and the balance to be paid to him was Rs.1,05,000/-.

b. In that regard, on 01.04.2004, he met the accused officer for release of the remaining amount of Rs.1,05,000/-. The accused officer demanded 10% of the total estimation of the contract work, which comes down to Rs.15,000/- as a bribe to clear his due amount. On bargaining, the bribe amount was reduced to Rs.5,000/-, and that the accused officer informed the Complainant that if his demand is not fulfilled, the M-Book and bill would not be processed. The accused officer asked the complainant to pay the bribe amount and they met in the house of accused officer on 27.05.2004 in the evening hours.

c. The complainant, who was not willing to oblige the demand of the accused officer, gave a report to Anti Corruption Bureau. Sri N.Ravi Kumar Reddy (P.W.9) on receipt of the said report from the complainant (P.W.1) and after verifying the antecedents of the accused officer and on the instructions of the Joint Director, ACB, Hyderabad, registered the complaint, vide Crime No.16/RCT-ACB-VJA/2004 of ACB, Vijayawada Range, Vijayawada (Ex.P14) for the offences punishable under Sections 7 and Section 13(1)(d) read with 13(2) of the Act.

d. P.W.9 conducted pre-trap proceedings in the presence of the mediators. The complainant produced Rs.5,000/- and after applying

phenolphthalein powder on the currency notes, P.W.9 asked him to pay the same to the accused officer only on his further demand and in case, the accused officer accepts the bribe amount, to give prearranged signal. The complainant entered into the house of the accused officer at 4.35 p.m. on 27.05.2004 and gave signal to P.W.9 that the accused officer received the bribe amount. Immediately, P.W.9 along with mediators rushed to the scene, conducted Sodium Carbonate solution test and the accused officer voluntarily led P.W.9 and mediators and showed the tainted amount which was on the table cloth.

e. The serial numbers of the said currency notes were compared with that of the numbers mentioned in the pre-trap proceedings (Ex.P9) and the same were tallied. P.W.9 also conducted Sodium Carbonate solution test on the tainted amount, which yielded positive result.

f. During the course of investigation, P.W.9 prepared rough sketch of the scene of offence and conducted post trap proceedings. Ex.P4-measurement book was seized from P.W.2, and the statements of P.Ws.2 to 6 were also recorded. P.W.9 got recorded the statement of P.W.1 under Section 164 of the Code before the learned II Metropolitan Magistrate, Vijayawada. After completion of the investigation, charge sheet was filed against the accused officer for the offences stated above.

Proceedings before the trial Court:

4. On appearance of the accused officer before the trial Court, charges for the offences under Sections 7 and Section 13 (1) (d) read with 13(2) of the Act were framed against the accused officer for which, he pleaded not guilty and claimed to be tried. The trial went on. To substantiate its case, before the trial Court, the prosecution examined P.Ws.1 to 9 and documents Exs.P1 to P14 were marked apart from marking Material Objects M.Os.1 to 8. Ex.X1-Authorisation to P.W.8 to give evidence was marked through P.W.8. The accused officer was examined under Section 313 of the Code by trial Court by placing the incriminating material found in the evidence of prosecution witnesses for which, the accused officer denied the same and reiterated his stand that he neither demanded nor accepted any amount from P.W.1. After hearing and on appreciation of the evidence on record, the learned trial Judge found the accused officer guilty for the said offences and convicted him as stated above.

Grounds of Appeal

5. Having been aggrieved by the impugned Judgment of conviction and sentence passed against him, the accused officer preferred the present appeal on the following grounds:

a. The learned trial Judge failed to appreciate the evidence on record in a right perspective. P.W.1 in his statement recorded under Section 164 of the Code by the learned Magistrate (Ex.P2) itself disowned the contents of

the complaint. The learned trial Judge found the accused officer guilty based on the previous statements of the witnesses during the course of investigation, who did not depose before the Court. Hence, no weight can be attached to the previous statements, but the trial Court committed gross illegality in convicting the accused officer.

b. The learned trial Judge failed to observe that there was no official favour pending with the accused officer and hence the presumption can be drawn in favour of the accused officer. In the absence of the evidence of P.W.1 supporting the prosecution story, the Court cannot consider the pre and post trap proceedings as gospel truth.

c. The trial Court made out the case against the accused officer contrary to the contents of the complaint and the evidence on record.

Arguments Advanced at the Bar

6. Heard Sri Sudhakara Rao Ambati, learned counsel for the appellants and Smt.A.Gayathri Reddy, learned Standing Counsel for ACB-cum-Special Public Prosecutor appearing for the respondent/State. Perused the material on record.

7. Learned counsel for the appellants, in elaboration to the contents of the Memorandum of Appeal, would point out that P.W.1/complainant was examined to speak to the fact that the accused officer demanded bribe of Rs.5,000/- and accepted the said amount, whereas, the evidence of P.W.1 is to the effect that the accused officer never demanded

any bribe amount nor accepted. It is also submitted that, in the statement of P.W.1 recorded by the learned Magistrate under Section 164 of the Code, he stated that the accused officer passed the bill and there is no necessity of money. Submitting so, it is pointed out that, when the evidence of P.W.1 is clear to the effect that there is no demand of bribe from the accused officer, investigating officer ought not to have filed the charge sheet, since there is no other witness or material on record supporting the version of the prosecution.

(ii) Learned counsel further submitted that the evidence of P.W.2 is to the effect that, after obtaining work estimate from the D.E.E, the bill is to be prepared by the accused officer, which means, the preparation of the bill by the accused officer is only after getting approval from P.W.3. He would submit that by the date of trap, the work estimate was pending with D.E.E and no official favour was pending with the accused officer. Learned counsel also states that the evidence of P.Ws.2 and 3 is clinching to the fact that no official work was pending with the accused officer at the relevant time of trap. He would submit that the statement of P.W.1 during the post trap proceedings is that, he offered bribe amount to the accused officer and he took the amount with his right hand and after counting, he kept the amount on the table cloth.

(iii) It is further argued that the accused officer asked P.W.1 to prepare name boards and photos. At this juncture, learned counsel

vehemently argued that the learned trial Judge recorded the name of one Udaya Kumar, who is the eldest son of the accused officer, with reference to his statement during the post trap proceedings. The statement of the said Udaya Kumar is that at about 4.30 p.m. while his father was about to go to bathroom, one person entered and talked to his father and they both came to second room and that person offered some currency notes and placed it on the table and the new person went away and thereafter, ACB officials entered into the room.

(iv) Learned counsel would submit that the son of the accused officer was not examined by the prosecution as a witness and his alleged statement in the post trap proceedings has no value at all in the eye of law. He would submit that the learned trial Judge placed reliance on the statement of the said Udaya Kumar, during post trap proceedings to convict the accused officer, which is contrary to law. Learned counsel further submits that the statement of the said Udaya Kumar was not examined by P.W.8 nor was he cited as a witness before the court below. It is stated that such an appreciation of evidence by the trial Court is a dangerous trend in the adjudication of the criminal proceedings. Learned counsel, therefore, submits that the learned trial Judge erroneously convicted the accused officer without there being any evidence on record to connect the accused officer with the alleged crime, which is manifest.

(v) To buttress his contentions, learned counsel for the Appellant placed reliance on the authorities in *B.Jayaraj v. State of Andhra Pradesh*³, *P.Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another*⁴, *N.Vijaya Kumar v. State of Tamil Nadu*⁵ and *Neeraj Dutta v.State (Govt. of N.C.T. of Delhi)*⁶. Learned counsel thus prays to allow the appeal by setting aside the impugned Judgment.

8. Learned Standing Counsel for ACB-cum-Special Public Prosecutor appearing for the Respondent/State would submit that, after fifteen days of the alleged trap, the statement of P.W.1 under Section 164 of the Code was recorded by the learned Metropolitan Magistrate, Vijayawada, wherein, he has not supported the case of the prosecution. Learned counsel fairly submits that, except the fact that the amount recovered from the second room of the house of the accused officer, nothing is placed on record.

Points for Determination

9. Considering the submissions made by the learned counsel and on perusal of the record, the points that would emerge for determination are:

- a. Whether the Accused officer demanded and received illegal gratification from the complainant/P.W.1 to attend the official favour pending with him?

³. (2014) 13 SCC 55

⁴. (2015) 10 SCC 152

⁵. (2021) 3 SCC 687

⁶ [in Criminal Appeal No.1669 of 2009 , dated 17.03.2023 of the Hon'ble Apex Court

- b. Whether the prosecution has proved the guilt of the accused officer for the offences alleged against the petitioner beyond all reasonable doubt?
- c. Whether the impugned Judgment of the conviction and sentence imposed against the accused officer is sustainable on facts and law or any interference is warranted while sitting in the Appeal?

Determination by the Court

10. Before going to discuss on the points framed in this appeal, it is appropriate to have a clear idea, about the power and duty of a Criminal Appellate Court. The Hon'ble Apex Court in *Bakshish Ram v. State of Punjab*⁷, held as follows;

“10) The High Court, as a first Court of appeal, on facts must apply its independent mind and record its own findings on the basis of its own assessment of evidence. Mere reproduction of the assessment of trial Court may not be sufficient and in the absence of independent assessment by the High Court, its ultimate decision cannot be sustained. The same view has been reiterated by this Court in Sakatar Singh & Ors. vs. State of Haryana, (2004) 11 SCC 291. 11) In Arun Kumar Sharma vs. State of Bihar, (2010) 1 SCC 108, while reiterating the above view, this Court held that in its appellate jurisdiction all the facts were open to the High Court and, therefore, the High Court was expected to go deep into the evidence and, more particularly, the record as also the proved

⁷2013 CrIj 2052 (SC)

documents. Contrary to the above principle, we are satisfied that in the case on hand, the High Court failed to delve deep into the record of the case and the evidence of the witnesses. The role of the appellate Court in a criminal appeal is extremely important and all the questions of fact are open before the appellate Court. The said recourse has not been adopted by the High Court while confirming the judgment of the trial Court.”

(emphasis supplied)

11. Coming to the instant case, there is no dispute about the fact that the accused officer was working as an Assistant Engineer in the office of the MPDO, Gurazala at the relevant point of time. Nothing is in dispute about the status of the accused officer as public servant, within the meaning of Section 2(c) of the P.C. Act. It is not in dispute that the construction of protection wall from SC hostel to the house of Y.Nagaiah in Gurazala was entrusted to the complainant/P.W.1 and the worth of the contract was Rs.1,50,000/-. There is no dispute about the fact that the complainant/P.W.1 has received the rice worth of Rs.45,000/- and the remaining amount of Rs.1,05,000/- was due to him.

12. The prosecution alleges against the accused officer that, when P.W.1 met the accused officer on 01.04.2004 for realisation of the remaining amount, the accused officer demanded bribe of 10% on the total contract, which comes to R.15,000/- and on bargaining, it was reduced to Rs.5,000/-.

13. P.W.2 is the Junior Technical Officer in the office of the Panchayat Raj Department. He was examined to speak about the circulation of the

file relating to P.W.1. P.W.3 is the Deputy Executive Engineer, who is the approving authority, to the claim of the complainant. P.W.4 is the colleague of P.W.1, who is the Assistant Engineer, and who prepared the file for circulation. P.W.5 is the Executive Engineer who was examined to speak about the despatch register maintained with the officer to know the details of the movement of the file. P.W.6 is the in-charge Mandal Panchayat Development Officer, Gurajala, who was examined to speak about the maintenance of the attendance register which would prove that the accused officer attended the office on the relevant date. P.W.7 acted as a mediator to pre and post trap proceedings. P.W.8 is the authorised person, who spoke about the sanction order issued to prosecute the accused officer. P.W.9 is the Investigating Officer who filed charge sheet against the accused. It is interesting to note that the complainant, who presented the report to ACB did not support the case of the prosecution. The evidence of P.W.1 is that he has completed the work and he was given rice worth of Rs.45,000/-. He met the accused officer to get the remaining amount and he was informed that he prepared the estimation which was sent to the Deputy Executive Engineer for approval. It is further deposed that he has approached the Deputy Executive Engineer and he was asked to come after four days since he was busy.

14. It is the evidence of P.W.1 that he has inimical terms with the Sarpanch of Gurzala Gram Panchayat and he suspected that he may

influence the officers to see that the bill could not be passed. He was informed that the said Sarpanch created hurdles in passing the bill by influencing the accused officer. He was advised to contact the ACB officials. Accordingly, he met the ACB officials along with the complaint. But the ACB Inspector informed him that his constable would prepare a report. Now, P.W.1 disowned the contents of Ex.P1 saying that the petition in fact, he presented to ACB officials is not Ex.P1 and it was prepared by the Constable on the direction of the Inspector. P.W.1 further stated that he went to ACB office along with Rs.5,000/- as directed by ACB officials. They have kept the amount in the shirt pocket and along with ACB officials as directed by them, he entered the house of the accused officer. The evidence of P.W.1 is that the accused officer was present in the second room and enquired about the purpose of his visit and then he has informed that he had to receive the remaining bill amount. On that, the accused officer instructed him to produce two photographs and erect the name board on the work spot. P.W.1 further deposed that when he offered the amount of Rs.5,000/- to the accused officer, he refused to receive it and pushed the same with both hands and then P.W.1 kept the amount on the table cloth and the accused officer asked him to take away the amount. P.W.1 came out of the house and wiped his face with hand kerchief. Then the ACB officials rushed to the house of the accused officer and asked him to wait outside for ten

minutes. It is his evidence that his statement was not recorded. Fifteen days thereafter, he gave a statement before the learned II Metropolitan Magistrate, Vijayawada. He identified his signature in that statement which is marked as Ex.P2. It is pertinent to mention here that, whatever deposed by P.W.1 before the Court was stated before the learned Magistrate while recording the statement of P.W.1 under Section 164 of the Code. It is not that he resiled from his statement which was recorded by the learned Magistrate under Section 164 of the Code and introduced the new version before the Court. Nothing has been elicited in the cross-examination of the P.W.1 by the learned Assistant Public Prosecutor.

15. On the other hand, P.W.1 in the cross-examination strongly reiterated his stand stating that the accused officer –Krishna Prasad never demanded him any bribe. He deposed that the contents of his report are not correct. In the cross-examination, P.W.1 further stated that he met the Deputy Executive Engineer, who told him that he received the work estimate from the accused officer and he would look into it later. In clear terms, he deposed before the court that the accused officer never demanded any amount nor accepted Rs.5,000/- from him.

16. P.W.2 the Assistant Engineer deposed before the Court that he has received the approval from the accused officer on 26.05.2004 at 5.00 p.m. along with M-Book. The Deputy Executive Engineer was on camp and he put his initials on the technical approval on the same day at 7.00 p.m.

and placed before the Deputy Executive Engineer, who came to the office at 7.30 p.m. According to this witness, on the date of trap i.e., on 27.05.2004, he has furnished the relevant record to the ACB officials. The work estimate along with M-Book was marked as Ex.P4. In cross-examination, he re-affirmed that unless the Deputy Executive Engineer approves the estimation, the accused officer cannot process the bill. By the date of trap, the work estimate was pending in the office of the Deputy Executive Engineer for approval. It is apt to note here that P.W.2 stated that the accused officer signed on the file on 01.05.2004 at about 4.00 p.m. and on 27.05.2004 he received a call from ACB officials, who instructed him and the Deputy Executive Engineer to be present in the office stating that the accused officer was trapped.

17. Coming to the evidence of P.W.3- Deputy Executive Engineer, he deposed that the final bill was prepared by the accused officer for the work done till 30.04.2004. On 26.05.2004, he received the work estimate and M-Book from the accused officer through P.W.2 and he has approved the same on the same day at about 7.30 p.m.

18. P.W.4 is the Assistant Engineer and he deposed about the completion of construction of protection wall by P.W.1.

19. P.W.5 is the Executive Engineer. He deposed that they maintained despatch register. It is his evidence that the office of the Deputy Executive Engineer has failed to examine the despatch register.

20. P.W.6 is the In-charge MPDO. He deposed that the attendance register and the booklet relating to Janmabhoomi programme and the resolution of the gram panchayat entrusting the work to P.W.1 are marked through this witness as Exs.P5 to P7 respectively.

21. P.W.7, who is the mediator for pre and post trap proceedings, is the crucial witness. The pre-trap proceedings are marked as Ex.P9. He testified that after receiving the signal from P.W.1, the trap party rushed into the house of the accused officer and found him sitting on the cot in the front room wearing a towel. When the Inspector asked to show the currency notes, he went to the second room and showed the currency on the cloth of the table. The Inspector seized the amount of Rs.5,000/-. According to this witness, the spontaneous version of the accused officer was that P.W.1 pulled out the currency notes from his pant pocket and forcibly thrust the same into the hands of the accused officer. The accused officer refused to take the said amount, but P.W.1 did not listen to his words and did not take the amount and then the amount was kept on the table cloth by P.W.1. His further evidence is that the accused officer represented to ACB Inspector that the name Board has to be prepared by P.W.1 and put the same at work spot and that P.W.1 has to get the photographs of the work executed by him. He did not do so till the date of trap. The accused officer further stated that the work executed by P.W.1 was not technically completed and prepared the work estimate and sent

the same to the Deputy Executive Engineer for sanction of work estimate and after sanction proceedings received from the Deputy Executive Engineer, the bill has to be prepared. P.W.7 further stated that the accused officer informed the Inspector, ACB that he was informed P.W.1 about the photographs and the name board. He went out and in the meanwhile, the ACB officials arrived to the spot. He never demanded any bribe amount nor accepted the same from him.

22. P.W.8 is the Section Officer, who deposed relating to sanction proceedings to prosecute the accused officer, *vide* G.O.Ms.No.343 dated 28.09.2005, which was marked as Ex.P13.

23. P.W.9 is the Investigating Officer, who narrated about the investigation done by him with all minute details. It is important to note that in cross-examination, this witness admitted that by the date of trap, no paper relating to P.W.1 was either pending with the accused officer or seized from the accused officer. Unless the accused officer sends the work estimate to P.W.3 and receives the sanction orders from P.W.3, the accused officer cannot process the bill of P.W.1. The work estimate under Ex.P4 was sent by the accused officer on 01.05.2004.

24. It was elicited in the cross-examination of P.W.9 that, when they have questioned the accused officer whether he demanded and accepted the bribe from P.W.1, accused officer represented that he never demanded and accepted the bribe but, P.W.1 forcibly kept it on the table cloth. P.W.9

deposed that he has not verified to ascertain the truth or otherwise of the statement of the accused officer, and he has not visited the work spot of P.W.1 to ascertain the truth or otherwise of the explanation of the accused officer. It is stated that he did not visit the work spot of P.W.1 to ascertain whether P.W.1 has fixed the name board at the work spot. P.W.9 further stated that even as per the 164 Cr.P.C statement of P.W.1, there is no statement of demand and acceptance of the bribe amount by the accused officer. In the explanation submitted by the accused officer in response to his notice and also as per the written statement given by the accused officer during post trap proceedings, the accused officer clearly stated that he neither demanded nor accepted any bribe amount from P.W.1 and that when P.W.1 forcibly thrust the amount in his hands, he refused to take the same and P.W.1 kept the same on the table cloth and went out without hearing him, and in the meanwhile, the ACB officials arrived. P.W.9 admitted that in the rough sketch they have not shown that the accused officer was sitting on the cot in the front room by the time the trap party entered into the house of the accused officer.

25. The fact remains that the amount was recovered from the house of the accused officer, which was kept on the table in the second room of the house of the accused officer. The explanation of the accused officer at the time of trap as stated by P.W.7 is to the effect that he never demanded any bribe but P.W.1 pulled out the currency notes from his pant pocket

and forcibly thrust the same into the hands of the accused officer and the accused officer refused to take the amount but P.W.1 did not listen to his words and did not take the amount and kept the same on the table cloth. This is the spontaneous explanation of the accused officer at the time of trap.

26. Needless to say, very recovery of money from the accused officer is not suffice to convict the accused officer for the offences registered against him, unless it is proved that he demanded and received the bribe as illegal gratification for attending the official favour, which is pending with him. The evidence of P.Ws.1, 7 and 9 would go to show that the accused officer was in towel at the time when P.W.1 entered into his house, which means that there was no prior planning of the accused officer and he did not expect the presence of P.W.1 at his house at that moment. P.W.1 being the contractor, must have prior acquaintance with the accused officer, as such, he entered into the second room of the house of the accused officer. The record further shows that P.W.1 in his 164 Cr.P.C. statement before the learned Magistrate at the threshold of the investigation stated that the accused officer never demanded any bribe. The evidence also would indicate that on the instructions of the Inspector, the ACB officials prepared the complaint. Admittedly, P.W.1 is not a signatory. The crucial witnesses are P.Ws.3 and 4, to speak to the fact of the official favour pending with the accused officer. But their evidence is to the effect that

the work-estimate and M-Book relating to the work done by P.W.1 were received by P.W.3 and he has approved the same on the very same day. P.W.2 testified that he received the approval from P.W.1 on 26.05.2004 at 5.00 p.m. along with M-Book and P.W.3 was on camp and he put his initials on the same day at 7.00 pm. P.W.3 also approved the same at 7.30 p.m. The date of the trap is 27.05.2004, which indicates that, by the date of trap, there is no official favour pending with the accused officer, and in fact, the accused officer has attended the work, which is pending with him, by previous day. It is not the evidence of P.Ws.7 and 9 that the amount has been recovered from any of almyrah in the house of the accused officer. The spot explanation which was given by the accused officer and the statement of P.W.1 before the learned Magistrate coupled with the evidence of P.W.9 would show and probablise the version of the accused officer that he has not accepted the amount but P.W.1 thrust the amount into his hands and when he refused to take the amount, P.W.1 kept the same on the table cloth.

27. Had the version of P.W.9 that the accuse officer demanded and received the bribe is correct, the accused officer would have kept that amount at a safe place. It probablizes the version of the accused officer that when he has not accepted the amount, P.W.1 kept the same on the table cloth. As rightly argued by the learned counsel for the appellant, the learned trial Judge surprisingly, recorded the version of the eldest son of

the accused officer, namely, Udaya Kiran, in the post trap proceedings to support his finding that the accused officer demanded and received the amount from P.W.1. The learned Judge did not notice that said Udaya Kiran was neither cited nor examined as witnesses in this case. None of the witnesses spoke before the Court about the pendency of the official favour with the accused officer, but the learned trial Judge failed to observe the same and held that the official favour is pending with the accused officer. It appears that the learned trial Judge has given much weight to the contents of the mediatorsnama by ignoring the evidence of the witnesses on material aspects which were elicited in their cross-examination by the defence. Learned trial Judge mistakenly presumed the things while appreciating the evidence of P.W.1 stating that the accused officer, only to receive the amount, brought P.W.1 to the second room. If such is the case, he never intended to take the amount and he would have talked with P.W.1 in the first room itself and would have sent him back. The observation of the learned trial Judge is completely based on the assumptions and presumptions without any basis.

28. In **B.Jayaraj's** case (supra) at paragraphs-7 and 8, it was held as under:

7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7

unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P. [(2010) 15 SCC 1: (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI [(2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1.

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or

illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.

29. Mere recovery of the tainted currency notes from the possession of the accused officer without any proof of demand, will not bring home the offence under Section 7 of the PC Act. If the prosecution is able to establish that the accused officer accepted the illegal gratification, then the presumption can be drawn under Section 20 of the Act. In the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable things or pecuniary advantage cannot be held to be established.

30. Coming to the facts of the present case, P.W.1 did not support the case of the prosecution. In addition to that, in 164 Cr.P.C. statement before the learned Magistrate it is stated that, immediately after the trap at the

threshold, he deposed that the accused officer never demanded any bribe from him. The prosecution failed to establish that there was a demand from the accused officer and he accepted the illegal gratification from P.W.1. Therefore, the question of presumption under Section 20 of the PC Act cannot be helpful to the case of the prosecution.

31. In **P.Satyanarayana Murthy's case** (supra), at paragraphs-22 and 23 it was held as under:

22. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(0) and (if) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(1) and (if) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand.

Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(f) and (if) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.

32. In **N.Vijaya Kumar's** case (supra), at paragraph -26, it was held as under:

26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI and in B. Jayaraj v. State of A.P.¹⁰ In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It

is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.

33. In **Neeraj Dutta's case** (supra), the Hon'ble Apex Court in Criminal Appeal No.1669 of 2009 by Judgment dated 17.03.2023 held as under:

10. The Constitution Bench was called upon to decide the question which we have quoted earlier.

In paragraph 74, the conclusions of the Constitution have been summarised, which read thus:

"74. What emerges from the aforesaid discussion is summarised as under:

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

34. To sum-up, the prosecution has failed to prove that there is a demand or acceptance of bribe by the accused officer. In the absence of

proof of demand of illegal gratification, mere recovery of currency notes on the table in the house of the accused officer is not suffice to constitute the offence under Section 7 of the PC Act. As such, when the prosecution is not able to establish the proof of demand, the question of applying the legal presumption under Section 20 of the PC Act does not arise. In the present case, the evidence of the officials that no official favour was pending with the accused officer as on the date of the trap coupled with the spontaneous explanation of the accused officer and recovery of the currency notes on the table cloth in the house of the accused would probablise the defence that P.W.1 tried to give the amount but the accused officer rejected to receive the same and then P.W.1 kept the same on the table cloth and in the meanwhile, the trap party rushed to the scene. In that scenario, finding the accused (deceased) guilty of the offence under Section 7 and 13(1) (d) read with 13 (2) of the PC Act is not sustainable on the facts and law.

35. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant No.1/accused (deceased) in the Judgment dated 30.12.2008 in CC No.17 of 2006 on the file of the Court of Special Judge for SPE and ACB Cases, Vijayawada, for the offence under Sections 7 and 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act, is set aside and he is acquitted for the said offences. The accused shall be set at liberty forthwith. The fine amount, if

any, paid shall be returned to the Appellant No.2/wife of Appellant No.1/accused (deceased).

Miscellaneous petitions pending, if any shall stand closed.

JUSTICE VENKATA JYOTHIRMAI PRATAPA

03.05.2024

*Mjl**

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HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Criminal Appeal No.29 of 2009

03.05.2024

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