

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

**THURSDAY, THE TENTH DAY OF JUNE  
TWO THOUSAND AND TWENTY ONE**

**PRESENT  
THE HONOURABLE JUSTICE G. SRI DEVI**

**CRIMINAL APPEAL Nos : 490 and 503 OF 2016**

**Crl.A. No. 490 of 2016 :**

Appeal Under Section 374 (2) of Crl.P.C. against the judgment dated 01.06.2016 in C.C. No. 58 of 2007 on the file of the Court of the Principal Special Judge for SPE & ACB Cases cum – IV Additional Chief Judge, City Civil Court, Hyderabad.

**Between:**

K. Ramesh Goud, S/o.Venkatesham, Hindu, aged 45 years Occ: S.I of Police R/o.House.No. 1-8-256 Soap factory lane, Chikadapally, Hyderabad Telangana state

**...APPELLANT/ Accused No. 1**

**AND**

The State The Inspector of Police, Anti Corruption Bureau, City Range-I, Rep.by Special Public Prosecutor for ACB, High Court, Hyderabad, Telangana

**...RESPONENT**

**Counsel for the Appellant: SRI MASTAN VALI SHAIK**

**Counsel for the Respondent: SRI CHITNENI VIDYASAGAR RAO, SPECIAL  
PUBLIC PROSECUTOR for ACB Cases**

**CRIMINAL APPEAL NO: 503 OF 2016**

Appeal Under Section 374 (2) of Crl.P.C. against the judgment dated 01-06-2016 in C.C. No. 58 of 2007 on the file of the Court of the Principal Special Judge for SPE & ACB Cases cum – IV Additional Chief Judge, City Civil Court, Hyderabad.

**Between:**

K.Peethamber Babu, S/o. Rangaiah, Occu: Police Constable No:7924 Kachiguda P.S, Hyderabad, R/o H.No: 2-19-59/101, Sitaram colony, Kalyanpuri, Uppal, R.R.Dist-39

**...APPELLANT/ A -2**

**AND**

The State, ACB, City Range-I, represented by its Spl. Public Prosecutor, Hyderabad.

**...RESPONENT**

**Counsel for the Appellant: SRI. K L B KUMAR**

**Counsel for the Respondent: SRI V. RAVI KIRAN RAO(SC & SPL. P.P. FOR TG  
ACB)**

**The Court delivered the following: COMMON JUDGMENT**

THE HON'BLE JUSTICE G. SRI DEVI

CRL.A.Nos.490 and 503 of 2016

COMMON JUDGMENT :

1. These two appeals are being disposed of by this common judgment since Criminal Appeal No.490 of 2016 filed by Accused No.1 and Criminal Appeal No.503 of 2016 filed by Accused No.2 are directed against the very same judgment of the learned Principal Special Judge for SPE and ACB Cases-cum-IV-Additional Chief Judge, CCC, Hyderabad, in C.C.No.58 of 2007 dated 01.06.2016, whereby the appellants-A1 and A-2 were convicted of the offences punishable under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 (for short "the Act") and were sentenced to undergo rigorous imprisonment for six months each and to pay a fine of Rs.2,000/- each, in default, to suffer simple imprisonment for three months each for the offence punishable under Section 7 of the Act and they were also sentenced to undergo rigorous imprisonment for one year each and to pay a fine of Rs.2,000/- each, in default, to suffer simple imprisonment for three months each for the offence punishable under Section 13 (2) read with Section 13 (1) (d) of the Act. The sentences imposed under both the counts were directed to be run concurrently.

2. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the trial Court.

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

(i) A-1 worked as Sub-Inspector of Police from 11.08.2005 to 04.11.2006 and A-2 worked as Police Constable from 06.07.2005 to 04.11.2006 in Kachiguda Police Station, Hyderabad. P.W.1 is a resident of H.No. 8-2-682/7, Ministers Colony, Banjara Hills, Road No.2, Hyderabad and was doing business under the name and style of M/s. Mars Data Solutions at Banjara Hills, Hyderabad. P.W.1 purchased the factory equipments relating to mineral water plant from one Hari Govind Singh for Rs.17.00 lakhs and paid Rs.16.00 lakhs in cash and Rs.1.00 lakh through a cheque. But, in the year 2003, the said Hari Govind Singh filed a case against P.W.1 for dishonour of cheque and the Court issued Non-Bailable Warrant against P.W.1 for his non-appearance. On 04.11.2006, in the morning hours, both the accused and other police constables went to the house of P.W.1 in civil dress and informed P.W.2, who is the Manager of P.W.1, that N.B.W. was pending against P.W.1 and they came for execution of the same and P.W.2 has informed the same to P.W.1. Then P.W.1 allowed both the accused into his house and A-1 informed P.W.1 that they have come to arrest him. P.W.1 informed that he wants some time to talk to his advocate, but A-1 demanded Rs.20,000/- as bribe for non-execution of the N.B.W. against him. On bargain, A-1 reduced the bribe amount to Rs.15,000/-. P.W.1 informed A-1 that he would arrange the amount and meet him. A-1

asked P.W.1 to pay the amount as early as possible either to him or to A-2 and if not he would arrest him and put him in trouble.

ii) As P.W.1 was not willing to pay the bribe amount, on the same day i.e., 04.11.2006 at about 11.00 A.M. or 11.30 A.M., he approached the A.C.B. officials and lodged Ex.P1-complaint for taking necessary action against A-1 and A-2. P.W.10, who is the D.S.P., A.C.B., CR, Hyderabad, verified the contents of Ex.P1 and asked P.W.1 to come to his office at about 4.00 P.M., along with the proposed bribe amount of Rs.15,000/-. In the meantime, P.W.10 made a discrete enquiry regarding the genuineness of Ex.P1 and reputation of A-1 and A-2. After obtaining permission from the competent authority, P.W.10 registered a case in Crime No.20/ACB-CR1/2006 under Section 7 of the Act against both the accused, issued Ex.P15-F.I.R. and took up investigation. As instructed by P.W.10, P.W.1 went to the office and meanwhile, P.W.10 secured the presence of two mediators i.e., P.W.5 and one Gandroju Prakash, prepared Ex.P5-Pre-trap proceedings and laid a trap by observing necessary legal formalities, such as applying phenolphthalein powder to the currency notes and noting down the serial numbers and denominations of the currency notes etc. Meanwhile, A-1 telephoned to P.W.1 and informed him that he would send A-2 to his house at 6.15 P.M.

iii) On the same day, the trap party members along with P.W.1 went to the house of P.W.1. At about 7.00 P.M., A-2 came to the



house of P.W.1 and demanded the bribe amount on behalf of A-1 and P.W.1 handed over the bribe amount to A-2. Then, P.W.1 gave pre-arranged signal to the trap party members, who were waiting outside in vantage position. On that the trap party rushed to that place and caught hold of A-2. P.W.10 subjected both the hand fingers of Accused No.2 to the Chemical test, which yielded positive result i.e., pink colour vide M.Os.3 and 4 respectively. At the instance of A-2, P.W.10 recovered the tainted amount (M.O.2) from his T-shirt. P.W.10 also subjected the inner linings of the left side pocket of T-Shirt of A-2 to the test and that also yielded positive result (M.O.5). P.W.10 seized M.O.s 1 to 9 and connected records Exs.P10 to P13 under cover of Ex.P6-Post Trap Proceedings. He also prepared Ex.P9-rough sketch of scene of offence. He also got the house of A-1 searched through P.W.12-Inspector of Police, in the presence of two mediators i.e., P.Ws.7 and 8, but no incriminating material was found. However, the concerned files were seized from A-1 under Ex.P4-panchanama. Then, P.W.10 arrested A-1 and A-2 and sent them to judicial custody. P.W.10 examined and recorded the statement of P.W.1. Later, P.W.10 handed over the file to P.W.11 for further investigation.

iv) During the course of further investigation, P.W.11 recorded the statements of P.Ws.2, 3, 4,9 and one Hari Govind Singh and also got recorded the statement of P.W.1, under Section 164 Cr.P.C., by the Magistrate on 02.04.2007. After collecting docket orders in

C.C.No.484 of 2003, he submitted the draft final report to the Government for prosecution sanction orders. After obtaining the sanctions orders Exs.P7 and P8 from the competent authority and after completion of investigation, P.W.11 filed the charge sheet, which was taken cognizance as C.C.No.58 of 2007.

4. On appearance of both the accused, the learned trial Judge framed the following charges against them.

**Charge No.1:** That you (A-1) being public servant worked as Sub-Inspector of Police, Kachiguda Police Station, Hyderabad from 11.08.2005 to 04.11.2006 and that you (Accused No.2) being the public servant worked as Police Constable No.7924 of Kachiguda Police station, Hyderabad from 06.07.2005 to 04.11.2006; that you (Accused No.1) on 04.11.2006 at about 7.00 P.M., at H.No.8-2-682/7, Minister Colony, Hyderabad, demanded and accepted the tainted amount of Rs.15,000/- through you (Accused No.2) from Mohmood Mohiuddin as gratification other than legal remuneration as motive or reward for doing official favour i.e., for not executing N.B.W. immediately in C.C.No.484 of 2003 under Section 138 of the N.I. Act issued by IV-Additional Metropolitan Magistrate, Hyderabad, against Mohmood Mohiuddin, in pursuance of earlier demand and thereby you (Accused Nos.1 and 2) committed an offence punishable under Section 7 of the Act.

**Secondly:-** That you (Accused Nos.1 and 2) being the public servants employed as mentioned in Charge No.1, that you (Accused No.1) on 04.11.2006 at about 7.00 P.M., at H.No.8-2-682/7, Minister Colony, Hyderabad, by illegal means or otherwise abusing your (Accused No.1) position as public servant obtained for yourself pecuniary advantage to an extent of Rs.15,000/- through you (Accused No.2) from Mohmood Mohiuddin, as illegal gratification other than legal

remuneration for doing official favour i.e., for not executing N.B.W. immediately in C.C.No.484 of 2003 under Section 138 of N.I. Act issued by IV-Additional Metropolitan Magistrate, Hyderabad, against Mohmood Mohiuddin in pursuance of earlier demand and thereby you (Accused Nos.1 and 2) committed an offence punishable under Section 13 (1) (d) read with Section 13 (2) of the Act.

5. When the above charges were read over and explained to both the accused in Telugu, they have pleaded not guilty and claimed to be tried.

6. To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P17 and MOs.1 to 9. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. Neither oral nor documentary evidence was adduced on behalf of the accused.

7. The trial Court upon consideration of entire oral and documentary evidence available on record convicted and sentenced both the accused as stated above. Challenging the same, both these appeals are preferred by A-1 and A-2.

8. Heard and perused the record.

9. Apart from filing written arguments, Sri Shaik Mastan Vali, learned Counsel appearing for the appellant/A1 in CrI.A.No.490 of 2016 would submit across the Bar that the impugned judgment is

not only erroneous but also suffers from error in law as well as facts and prayed to set aside the same by considering the following points:-

- a) Non-appreciation of absence of demand and acceptance of bribe on the part of the appellant;
- b) Non-recovery of tainted amount and alleged N.B.W. from the appellant;
- c) Non-consideration of admitted fact of confusion as to identity of appellant by P.W.1 i.e., *de facto* complainant as to whether the appellant was the person, who had demanded bribe from him over phone or not since there was no personal direct contact or conversation with the appellant by P.W.1.
- d) Non-recovery of cell phone call data or no efforts on the part of the Investigating Officer or mediators to know the mobile number which was said to be the sole mode of alleged communication of the appellant with P.W.1 and was further said to have been used by the appellant in talking with P.W.1 to make subsequent demand;
- e) Non-consideration of material evidence and admitted facts in the cross-examination available on record and consideration of irrelevant points against the material available on record;
- f) Misplace of proof of burden and wrong conclusions as to circumstantial evidence and illogical conclusions against admitted facts;
- g) Non-consideration of settled legal principles and non-consideration of alleged demand on the part of the appellant;

- h) Non-seizure of material objects/ things from appellant even during search and seizure operations subsequent to trap;
- i) Non-consideration of fabrication of false proceedings/ records by Investigating Officer to substantiate their case against the appellant;
- j) Non-consideration of material available on record as to the preponderance of probability in favour of the appellant that on 04.11.2006 appellant did not personally meet P.W.1 as P.W.1 was out of city and was in Sangareddy, which is approximately more than one and half hour journey from the house of P.W.1; did not talk over phone with P.W.1; did not make any demand for illegal gratification for him; did not send Accused No.2 to collect bribe amount from P.W.1; did not voluntarily and consciously accepted and obtained the illegal gratification from P.W.1 to show official favour towards P.W.1 and no bribe amount was recovered from him.

10. Apart from filing written arguments, the learned Counsel appearing for the appellant/A2 in Crl.A.No.503 of 2016, would submit that the trial Court did not consider the fact that there is no independent evidence to support the case of the prosecution. The sanction obtained is not a valid sanction order and suffers from legal proof of sanctioning authority. He further submits that P.Ws.1 to 4 turned hostile and P.W.5, who spoke against the appellant, is none other than the stock witness of the A.C.B. and in his cross-examination he categorically admitted that "prior to this case, he stood as mediator for ACB in one case and that case was pertaining

to the Sub Inspector of Police, Kukatpally”, as no credibility can be given to the said witness. Moreover, P.W.5 is not an eye witness to the alleged version of the prosecution. There is no corroboration of the evidence and the entire version of P.W.5 is inconsistent, unreliable and with full of contradictions and discrepancies on material aspects. He also submits that since the crucial aspect of demand and acceptance is not established, the presumption part will not arise at all. The version of P.W.10 during his cross-examination goes to show that the investigation is not properly done all through and indicates glaring lapses and procedural defects, which eventually point out that the entire investigation is not properly conducted and made to suit the convenience and not a genuine one. He further submits that non-collection of the crucial phone call data as a part of perfect investigation goes to show that the investigation is not properly conducted and it is fatal to the case of the prosecution and the judgment of the Apex Court in *Devi Lal v. State of Rajasthan*<sup>1</sup> squarely covers to the present case. He also submits that there is a lack of genuinity and transparency in the entire episode of alleged occurrence and investigation of the case. There has been no proper investigation, connection or correlation of the alleged narration or the sequence of events of the case on hand. The motive or modus operandi of the appellant is not established and that there is no clinching evidence to substantiate the case of the prosecution. P.W.1 has not surfaced with clean hands and is

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<sup>1</sup> (2019) 19 SCC 447

apparently having criminal antecedents being accused in many cases. When such a person comes up with a complaint, unlike a normal, the officers concerned ought to have been more vigilant and cautious in dealing with the alleged complaint. The entire method and manner in which the investigation went on is very unfortunate, improper and unjustified. During the Course of investigation and trial, the crucial data of the alleged phone conversation was neither secured nor produced. The same is fatal to the case of the prosecution, in proving the guilt. The cardinal principles of fair investigation and trial are apparently noted to be lacking in the present case. As such, the appellant is entitled for benefit of doubt.

11. Learned Counsel for the appellants relied on the following judgments:-

1. *Banarsi Das v. State of Haryana*<sup>2</sup>
2. *Devi Lal v. State of Rajasthan* (1 *supra*)
3. *C.M.Girish Babu v. C.B.I. Cochin*<sup>3</sup>
4. *Central Bureau of Investigation v. Ashok Kumar Aggarwal*<sup>4</sup>
5. *Rakesh Kapoor v. State of Himachal Pradesh*<sup>5</sup>
6. *Venkata Subba Rao v. State rep. By Inspector of Police, AP*<sup>6</sup>
7. *G.Ganeshwar v. State of A.P., rep. by Spl. Public Prosectuor for ACB, Hyderabad*<sup>7</sup>
8. *J.Srinivas Rao v. the State*<sup>8</sup>
9. *Nuthalapati Sangaiah v. state of A.P. rep. by its Special Public Prosecutor, Vijayawada*<sup>9</sup>
10. *K.Ramakrishna v. State rep. by Deputy Superintendent of Police*<sup>10</sup>

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<sup>2</sup> (2010) 4 SCC 450

<sup>3</sup> (2009) 3 SCC 779

<sup>4</sup> (2014) 14 SCC 295

<sup>5</sup> (2012) 13 SCC 552

<sup>6</sup> (2006) 13 SCC 305

<sup>7</sup> CrI.A.492 of 2007, dt. 11.06.2020

<sup>8</sup> CrI.A.1430 of 2005, dt. 15.11.2019

<sup>9</sup> CrI.A.936 of 2008, dt. 26.12.2018

12. Per contra, learned Special Public Prosecutor for A.C.B. cases appearing for the respondent, while supporting the judgment, argued that the prosecution could be able to firmly prove the demand and acceptance of the bribe by the appellants with the help of admissible portion of the evidence of P.W.1 and the corroboration offered by the oral evidence of P.W.5 and also other documentary evidence. Therefore, the trial Court has rightly convicted the appellants. On the other hand, the appellants failed to offer plausible explanation. He also submits that non-production of call data was not fatal to the case of the prosecution and that the sanction was issued by the competent authority. He further argued that the appellants cannot raise an objection on sanction for the first time in appeal. In support of his contentions, he relied upon the following decisions:-

1. *Neeraj Dutta v. State (Govt. of NCT of Delhi)*<sup>11</sup>
2. *M.Narsinga Rao v. State of A.P.*<sup>12</sup>
3. *Hazari Lal v. State (Delhi Administration)*<sup>13</sup>
4. *Subbu Singh v. State by Public Prosecutor*<sup>14</sup>
5. *Mahabir Singh v. State of Haryana*<sup>15</sup>
6. *Syed Yousuf Hussain v. State of Andhra Pradesh*<sup>16</sup>
7. *State of Gujarat v. Bhalchandra Laxmishankar Dave*<sup>17</sup>
8. *State of Rajasthan v. Tarachand Jain*<sup>18</sup>

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<sup>10</sup> CrI.A.919 of 2006, dt. 31.12.2018

<sup>11</sup> (2019) 14 SCC 311

<sup>12</sup> (2001) 1 SCC 691

<sup>13</sup> (1980) 2 SCC 390

<sup>14</sup> (2009) 6 SCC 462

<sup>15</sup> (2001) 7 SCC 148

<sup>16</sup> CrI.A.539 of 2013, SC

<sup>17</sup> CrI.A.99 of 2021, SC

<sup>18</sup> 1973 AIR 2131



13. The prosecution story as unfolded during the trial is that both the appellants have together committed the act of demanding and accepting gratification.

14. In the present case, in order to re-appreciate the entire evidence, it would be convenient to reduce into writing the brief statements of the prosecution witnesses, which were recorded before the trial Court.

15. P.W.1, who is the complainant, in his chief-examination stated that on 04.11.2006 in the morning hours A-1 and three other constables including A-2 came to his house and met his Manager (P.W.2) and enquired about him as the warrant is pending against him and that his Manager in turn informed him that the police officials came for execution of warrant against him; that he allowed A-1 into his house and A-1 demanded bribe of Rs.20,000/- for non-execution of the warrant against him and that when he bargained A-1 reduced the amount to Rs.15,000/- and then he informed him that he will arrange the amount; that on the same day at about 11.00 or 11.30 A.M, he went to the office of the DSP, ACB (P.W.10) and informed about the demand of bribe amount by A-1 and gave Ex.P1 complaint against A-1 and A-2 and that P.W.10 asked him to come to his office at about 4.00 P.M. along with the proposed bribe amount and accordingly he went to the office of P.W.10 at about 4.00 P.M.; that P.W.10 introduced two Government employees as mediators and he handed over the amount to the mediators and they

have noted down the serial numbers and denominations of the currency notes; that on the instructions of P.W.10, one constable applied phenolphthalein powder to the said currency notes and kept it in his left side shirt pocket after ensuring that it was empty; that P.W.10 gave instructions to him to hand over the amount to the Accused Officer on his further demand only and if at all he accepts the amount, he has to come out and give a signal by removing the goggles; that before commencement of proceedings, he has received a phone call from A-1 informing him that he would sent A-2 to his house in the evening at about 6.00 or 6.30 P.M. and that he informed the same to P.W.10; that himself, mediators, P.W.10 and his staff proceeded to his house in his car and reached there at 6.15 P.M. and that he went into his house and sat in the drawing room, whereas the trap party members wee in vantage positions at the car parking area; that at about 6.50 P.M. or 7.00 P.M., A-2 came to his house and sat in the chair in the verandah and that A-2 demanded the bribe amount and he handed over the amount to A-2 with his right hand and A-2 received it with his right hand and transferred it into his left hand and kept the same in his left side T-shirt pocket and then he came out and gave the pre-arranged signal to the trap party members and that ACB officials rushed into the house and caught hold of A-2. However, in the cross-examination, P.W.1 stated that even today he was not certain as to whether the man, who demanded for bribe on phone, was A-1 since he did not have any face-to-face talk with him. He further stated that some persons in

the A.C.B. office instructed him to mention the facts in Ex.P1 and accordingly he drafted Ex.P1 as per their dictation. As such, the learned Special Public Prosecutor sought permission of the Court to declare him as hostile. After giving permission, the learned Special Public Prosecutor cross-examined P.W.1, but nothing has been elicited in his cross-examination.

16. P.W.2, who is the Manager of P.W.1, deposed that on one day in the month of November, 2006 at about 9.00 A.M., while he was about to reach the office-cum-residence of P.W.1, he found four persons standing there and when he enquired them as to who they were, they told him that they were the police men and they came to arrest P.W.1 on execution of N.B.W. issued by a Court. A.Os.1 and 2 were among those four persons. A.O.1 sat on a chair and A.O.2 enquired him as to where P.W.1 was. He told them that P.W.1 was not present in the house and requested them to come after arrival of P.W.1 and that they insisted him to contact P.W.1 on phone. Accordingly, he made a phone call to P.W.1 and informed him that police men came to arrest him on execution of N.B.W. issued by the Court. P.W.1 asked him to enquire those police men as to in which case that N.B.W. was issued against him. On his enquiry, A.Os.1 and 2 informed him that in connection with one case filed by one Mineral Water Company against P.W.1 on the allegation of dishonour of a cheque issued by him, the Court issued N.B.W. P.W.1 wanted to talk to the accused and hence he requested A.O.2 to

talk to P.W.1 on his phone. A.O.2 moved to a side and had a talk with P.W.1 on his cell phone. P.W.2 further stated that P.W.1 informed him that he would return home at about 1.00 P.M., and that he told the same to A.Os.1 and 2 and the other police men.

17. Since P.W.2 did not support the case of prosecution, the learned Special Public Prosecutor for A.C.B. Cases, sought permission to declare him hostile and permission was accorded by the trial Court. In the cross-examination conducted by the learned Special Public Prosecutor for A.C.B. Cases, P.W.2 has categorically stated that he did not state before the D.S.P., as in Ex.P2 that A.O.1 proceeded towards P.W.1 and informed that N.B.W. was issued against him and he came to arrest him and that P.W.1 prayed to grant some time to talk with his advocate and then A.O-1 demanded Rs.15,000/- for not arresting him immediately and asked P.W.1 to pay the bribe as earlier as possible either to him or to A.O.2 and if not he would arrest and search the house of P.W.1. He further stated that he did not state before the D.S.P., as in Ex.P3 that A.O.1 threatened P.W.1 that he would put him in troubles in case he failed to pay the demanded bribe amount. He denied the suggestion that he stated all these facts before the D.S.P., only with a view to help A.Os.1 and 2 by entering into a compromise with them.

18. The statement of P.W.2 under Section 161 Cr.P.C. was recorded by P.W.11 after 14.11.2006. When the statement of P.W.2 was confronted to P.W.11, he has categorically stated and admitted

that P.W.2 did not state before him as deposed before the Court. The relevant portion of confrontation is extracted hereunder:

"It is true that P.W.2 did not state before me that P.W.1 wanted to talk to the accused and hence he requested A-2 to talk to P.W.1 on his phone. It is true that P.W.2 also not stated before me that A.2 moved to his side and had a talk with P.W.1 on my cell phone. So also he did not state that after a while he returned his mobile phone to him."

19. P.W.3, the then Constable in Kachiguda Police Station, Hyderabad, deposed in his evidence that during the year 2006 he was discharging his duties in connection with the execution of N.B.Ws. The Inspector of Police used to entrust the N.B.Ws. to him for execution. A.O.1 worked as the Sub-Inspector of Police and A.O.2 worked as the Police Constable in Kachiguda Police Station in the year 2006. A.O.2 was also discharging the same duties as those of him. On 04.11.2006 in between 7.30 A.M., and 8.00 A.M., he along with A.Os.1 and 2, proceeded to the residence of P.W.1 situated in Adaam Colony, Toli Chowki for execution of N.B.W. against him. The complainant in a private complaint by name Govind Singh and his Advocate Sridhar Reddy were also present along with them in order to assist them in identifying P.W.1. After reaching Toli Chowk at about 8.30 A.M., they came to know that P.W.1 was not residing in the said address. At about 9.00 A.M., they reached the house of P.W.1 and P.W.2, who was present there, told them that P.W.1 was not present in the house and thereafter they returned to police

station. He further stated that A.O.1 had no private talk with P.W.2. Since P.W.3 did not support the case of prosecution, the learned Special Public Prosecutor for A.C.B. Cases, sought permission to declare him hostile and permission was accorded by the trial Court. In the cross-examination conducted by the learned Special Public Prosecutor for A.C.B. Cases, P.W.3 categorically stated that he did not state before the Inspector, A.C.B. as in Ex.P4 to the effect that A.Os.1 and 2 and P.W.2 proceeded to the first floor of the house of P.W.1 and later returned; and that A.O.1 threatened P.W.2 that he would conduct the search of the entire house with woman constable in case the warrantee did not come before them and later on A.O.1 and P.W.2 had gone to some distance in the house premises and had a talk for five minutes. However, he admitted that A.Os.1 and 2 were trapped by the A.C.B. officials in connection with the execution of a warrant. In the cross-examination conducted by the Counsel for A.O.2, he categorically stated that A.O.2 was in his company and he did not have any private talk with P.W.2 and A.O.2 had also not contacted anybody on phone at that time. He also admitted that A.O.1 had also thought of executing N.B.W. against P.W.1 in the evening of that day since P.W.1 was not present in the house in the morning and this fact was within the knowledge of P.W.2.

20. P.W.4 deposed in his evidence that one Takur Hari Govind Singh is the client of his senior P.Shiva Kumar and the said Takur Hari Govind Singh filed a complaint under Section 138 of N.I. Act

against P.W.1 and in that case due to non-appearance of P.W.1, the Court has issued N.B.W. against him. He received the Non-Bailable warrant issued against P.W.1 from the said Court, since no Court constable was available, and he went to Kachiguda Police Station on 04.11.2006 at about 7.30 A.M., and at that time the Inspector of Police B.V.Ratnam was present in the Police Station and he informed about the issuing of N.B.W. against P.W.1 by the Court and at that time T.Hari Govind Singh was also accompanied to him to the police station. Then the Inspector of Police called A.O.1 and one or two constables in the Police Station and asked them to look into the matter and execute the N.B.W. He further stated that himself, T.Hari Govind Singh went to the house of P.W.1 along with A.Os.1 and 2 and another Police Constable in the car brought by T.Hari Govind Singh; that P.W.2, who is said to be the Manager of P.W.1, informed them that P.W.1 was not available in the house and asked them to come later and thereafter they returned to the Police Station.

21. P.W.5 deposed in his evidence that he is one of the mediators of Ex.P5-Pre-trap proceedings, Ex.P6-Post-trap proceedings and Ex.P9-Rough Sketch of the scene of offence; that on the date of trap they along with the DSP and his trap party and P.W.1 went to the house of P.W.1 in a Government Sumo vehicle at 6.15 P.M. and were in vantage position; that at about 7.00 P.M. they saw a person wearing T-shirt entering into the house of P.W.1 and by that time, P.W.1 was in the verandah of his house and the person who came

has approached P.W.1 and talked with him; that after five minutes, P.W.1 came out from the verandah and gave the pre-arranged signal and then they all rushed into the house of P.W.1; that the said person was perturbed on seeing them and the DSP has ascertained the identity of the said person and that he revealed his identity as Constable in Kachiguda Police Station i.e., A-2 and that P.W.10-DSP conducted chemical test on both the hands fingers of A-2, which yielded positive result. P.W.5 in his cross-examination categorically admitted that prior to this case, he stood as mediator for A.C.B. in one case and the said case was pertaining to the Sub Inspector of Police of Kukatpally Police Station.

22. P.W.6-Section Officer, Home Department, Telangana, deposed that on 06.11.2006 his Home (SC) Department received radio message from A.C.B., Hyderabad, regarding trapping of A.Os.1 and 2 by the A.C.B. Subsequently, after receiving preliminary report from A.C.B., on 21.11.2006, along with F.I.R., mediator's reports, direction orders were issued to place A.Os.1 and 2 under suspension and to file a caveat petition in A.P.A.T. and before the High Court. Subsequently, in the month of June, 2007, final report has been submitted. Thereafter, sanction orders were issued to prosecute A.O.1 and A.O.2 and Exs.P7 and P8 are the prosecution sanction orders.

23. P.W.7, who is the retired Superintendent, O/o. Commissioner, Endowments, Hyderabad, deposed that on 04.11.2006 the A.C.B.



officials, approached his Commissioner to depute employees to assist them in their investigation and then, his Commissioner, deputed him. On the same day, he followed the A.C.B. officials to Chikkadpally at about 7.00 P.M., and thereafter he has been taken to the house of one Ramesh Goud of Police Department (A-1) and they have searched the said house and no incriminating material was seized from that house. After making enquiries, they left the said house and went to Kachiguda Police Station. One Sambasiva Rao (P.W.8), also accompanied with the ACB officials. Then the A.C.B. Inspector asked the said Ramesh Goud to produce the personal diary, order copy and warrant and on production, the same were seized under a cover of panchanama. In the cross-examination, he admitted that he does not know whether the A.C.B. officials gave a written requisition to his superior to depute him. He also admitted that he scribed Ex.P14 to the dictation of A.C.B. Inspector, whom he accompanied.

24. P.W.8, who is also one of the mediators of Ex.P14, also deposed on the same lines what was deposed by P.W.7.

25. P.W.9, who was working as Inspector of Police, Kachiguda Police Station at the time of offence, deposed that A.O.1 was in charge of Sector-1 consisting of the areas Barkathpura and Lingampally and he has to investigate all the cases except grave offences reported in those areas, petition enquiries and execution of N.B.W. and bundobust duties pertaining to those areas. A.O.2 and

one P.C.No.4001 were also assigned duty of execution of N.B.Ws pertaining to Kachiguda Police Station. He also deposed that on 04.11.2006 at 8.00 A.M., when he was proceeding to his residence, he found A.O.2 and asked him regarding what he was doing and he stated that he was proceeding to execute N.B.W and he returned to P.S. at 11.00 A.M., on the same day. On that day, at about 11.30 A.M., one advocate K.Sridhar Reddy, along with his client, came to P.S. and informed to him that A.Os.1 and 2 have not executed the N.B.W. issued against P.W.1 and then he assured to get the warrant executed. The said advocate has not handed over the said N.B.W. to him. Therefore, he did not endorse on the said N.B.W. which was directly handed over by that advocate to A.O.1. Usually, the N.B.W. issued by the Court has to be given to the S.H.O. and the S.H.O. has to endorse the said N.B.W. to the concerned for execution. In this case, the Advocate did not hand over the said N.B.W. to him. On the same day, he handed over one notice to A.O.2 in the name of Praveen Kumar for service in Siddipet of Nizamabad District by giving him bus warrant and passport and he obtained acknowledgement for the same. He left the P.S. at 4.30 P.M. and returned to P.S. at 7.30 P.M. By that time, A.C.B. inspectors were present in the P.S. and were enquiring A.O.1. The A.C.B. Inspectors informed to him that on that evening A.O.2 was trapped by them at the house of P.W.1 and they asked him to be in the P.S. itself since they are enquiring the matter. The A.C.B. officials have seized one

Duty Roaster Register, General Diary and N.B.W. issued against P.W.1 under a seizure panchanama.

26. P.Ws.10 to 12, who are the ACB Officials, deposed with regard to the Pre-trap and Post-trap proceedings.

27. A perusal of the evidence of the prosecution witnesses and the judgment of the trial Court, the following points would arise for consideration of the appeal.

1. Whether the prosecution proved beyond all reasonable doubt the twin requirements of demand and acceptance of bribe amount by the appellants-A-1 and A-2?
2. Whether the judgment of the trial Court is factually and legally sustainable in law?

**28. POINTS 1 and 2:**

The case of the prosecution is that A-1 worked as Sub-Inspector of Police and A-2 worked as Police Constable in Kachiguda Police Station during the relevant period. On the complaint of L.W.4, Hari Govind Singh, a case was registered against P.W.1 for dishonour of cheque and N.B.W. was issued against P.W.1 by the Court. Based on the complaint of P.W.1 in Ex.P1 that the accused demanded bribe amount, the ACB officials organized a trap and arrested A-2. Based on the confession of A-2 that he was sent by A-1, A-1 was also arrested and later charge sheet was filed against both the accused.

29. After trial, the trial Court found guilty of both the accused on assumptions that A-1 had sent A-2 on his behalf and tried to obtain the bribe from P.W.1 and accordingly convicted both A-1 and A-2.

30. Criminal Appeal No.490 of 2016 has been filed questioning the correctness of the impugned judgment on the grounds that though the tainted amount was not recovered from A-1, the trial Court convicted him assuming the plea of A-2 that A-1 demanded bribe amount from P.W.1 for non-execution of the pending N.B.W. in a private cheque bounce case and agreed to accept the bribe amount of Rs.15,000/- through A-2, who was trapped by the A.C.B. officials, and took a plea that he was sent by A-1.

31. Now it would be convenient to discuss the evidence of the prosecution witnesses, in order to come to a conclusion, as to whether A-1 demanded bribe amount or not.

32. Coming to the evidence of P.W.1, he admitted that he did not talk to A-1 personally and he conversed with him on phone and except listening his voice on phone, he did not know who was on the other end of the phone and he never saw A-1 and he also did not see him on 04.11.2006 and he did not mention in Ex.P1 about the mobile number to which he contacted in order to talk to A-1. As per the statement of P.W.1 before the learned Magistrate, A-1 never instructed him to pay the bribe amount to A-2. He did not receive any phone call from A-1 prior to the commencement of drafting of

mediators report during the pre-trap proceedings. He did not furnish the cell number of A-1 either during the pre-trap proceedings or in Ex.P1 or in his 164 Cr.P.C. statement. He stated that the ACB officials did not verify the call details of his mobile phone so as to know from whom he received the call or to whom he contacted on phone on that day. P.W.1 further admitted in his evidence that he was not available at home when the police came to execute NBW. He stated that as per the dictation of ACB officials, he drafted Ex.P1. P.W.1 was declared hostile by the prosecution.

33. PWs.2 and 3 denied to have stated as in Exs.P2, P3 and P4 respectively and they were also declared hostile by the prosecution.

34. PW.5 and PW.10 in their evidence admitted that the cell phone of P.W.1 was not verified at the time of proceedings under Ex.P5 and either the cell phone number of P.W.1 or the cell phone number from which P.W1 received a call were not noted in Ex.P5 and though P.W.1 stated that he received a phone call, but in their presence PW.1 did not receive any phone call.

35. The trial Court itself in the impugned judgment observed that P.W.1 made inconsistent statements and has resiled from his 161 Cr.P.C statement, however, accepted his evidence in spite of his turning hostile. The trial Court ought to have appreciated the facts that the inconsistencies on material particulars will led to different views and conclusions, which becomes the part of chain of events to be proved by the prosecution beyond all reasonable doubt. In his

statements, P.W.1 nowhere stated that he had confronted A-1 on 04.11.2006 and admittedly P.W.1 did not meet A-1 on the morning of 04.11.2006 or even thereafter till he was arrested. The trial Court in the judgment observed that "even assuming that A-1 demanded amount on phone, the same cannot be thrown out". This assumption of the Court below clearly indicates that phone conversation might have taken place and there is a scope and chance to say that a personal meeting had not taken place between A-1 and P.W.1.

36. According to the statements of the witnesses, i.e., P.W.1, P.W.5, P.W.10 and P.W.11, P.W.1 was very well present in the office of the D.S.P., A.C.B., Hyderabad, from the commencement of mediators report No.I to till the arrest of both the accused. According to the prosecution case, A-1 called P.W.1 over phone and asked him to handover money to A-2, who would go to the house of P.W.1 in the evening after 6.30 P.M. At that time, P.W.1 was in front of his house and P.W.5 was preparing 1<sup>st</sup> mediators report. Since the demand made by A-1 was very crucial for the purpose of laying trap and for further investigation, it was the duty on the part of P.W.10 to verify about the mobile number of A.1 and to incorporate the same in the 1<sup>st</sup> mediators report. Even the mobile phone of P.W.1 should have been verified by the Investigating Officer to disprove the chances and scope leading to assumptions and presumptions in this regard, but the Investigating Officer did not do so, which is fatal to the case of prosecution and goes to the root of the issue. There is

nothing on record to show, without there being any proof regarding the demand made by A-1, either personally or through mobile conversation, as to how P.W.10 would come to the conclusion that A-2 would go to the house of P.W.1 on behalf of A-1 to demand and accept the bribe. There is no iota of evidence on record to prove that there was any pre-meeting of minds between A-1 and A-2 to demand and accept bribe from P.W.1, for not to execute the N.B.W. issued against P.W.1. According to P.W.9, the N.B.W (Ex.P10) was not entrusted by him to anybody, nor he has seen the N.B.W. in the Police Station. There is no evidence on record to prove that Ex.P10 was within the domain of either A-1 or A-2 till the same was seized by P.W.12. The said N.B.W. was very well lying in the Police Station and the same along with other records were handed over to P.W.12 by one of the constables of the Police Station who was also a writer in the said Police Station, as demanded by him.

37. The eyewitnesses P.Ws.3 and 4 did not state in their chief examination and cross-examination that the appellants demanded the bribe from P.W.1 for non execution of NBW against PW.1 and even PW.1 in his cross-examination also did not state that A-1 demanded the bribe from him for showing official favour. Thus, the prosecution failed to prove beyond all reasonable doubt that the appellants met PW.1 in his house on 04.11.2006 during morning hours and made a demand for bribe.

38. As already discussed above, the cell phone communication or cell phone number of A-1 and P.W.1 is the material aspect to establish the complicity of A-1 regarding the demand made by him which was not done, hence liability cannot be fastened upon A-1 that during morning hours he made the demand and thereafter he made the second demand over phone with regard to handing over the bribe amount to A-2 at the house of P.W.1.

39. The Hon'ble Supreme Court in catena of decisions held that when the tainted money is not seized from the prime accused, the burden heavily lies upon the prosecution to prove that there was a demand by the accused and the same was meted out by the *de facto* complainant and the tainted amount was in fact received by the accused. Admittedly, in the instant case, the tainted money was not seized from A-1 and only based on the alleged confessional statement made by A-2, it seems that A.1 was falsely implicated in the case, without there being any proper verification regarding the reputation of A-1.

40. P.W.10, the Investigating Officer admitted that based on the alleged phone call from A-1 during pre-trap proceedings, a trap was laid at the house of PW.1, but no call data was obtained, and he has categorically admitted that he has not taken any steps to collect the call data of either from P.W.1 or A-1, either before pre-trap proceedings or during the course of investigation.



41. In similarly situated circumstances, the Hon'ble Supreme Court in **Rakesh Kapoor v. State of HP**<sup>19</sup> held as under:-

“In the case on hand, though prosecution heavily relied on the evidence of PW.1, the complainant that the demand was made to him over mobile phone admittedly the call details have not been summoned. No doubt, the statement of PW.1 according to the prosecution is corroborated by Ashwani Bhatia (PW.3) who stated that he overheard PW.1 saying that he had brought the money, when the latter went to the office of the appellant in the evening of 05.05.2003. Interestingly, the IO who was examined as PW.18 has mentioned that PW.1 received the demand from the accused over landline and, hence, he could not secure those call details. Whatever may be the reason, the fact remains that except the oral testimony of PWs.1 and 3, there is no other proof in respect of the demand of bribe money and the IO could not collect the call details as stated by PW.1 from the department concerned. Accordingly, learned senior counsel for the appellant is right in contending that there is no material/evidence for the demand of bribe. In the light of the categorical enunciation in Banarsi Dass (supra) in the absence of the demand and acceptance, the accused is entitled to the benefit of doubt.....

42. The observations made in the aforesaid decision squarely applicable to the peculiar facts of the present case. The Investigating Officer failed to collect the call data of either P.W.1 or A-1 to prove that there was ever any demand by A-1 during the morning hours on 04.11.2006, or that he further demanded during pre-trap proceedings and asked P.W.1 to handover bribe amount at his house

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<sup>19</sup> (2012) 13 SCC 522

during evening hours. The cell phone numbers or call data record was not even produced by the prosecution during trial also, which is fatal to the case of the prosecution.

43. Further, the job chart and admission made by P.W.9 in the cross-examination as well as the documents i.e., general diary, N.B.W. and the order book of Kachiguda Police Station seized by the prosecution would show that A-2 being special party constable to execute NBW of Kachiguda Police Station was not under the control and supervision of A-1 to unduly influence A-2 and that A-2 was under the direct control and supervision of the Inspector of Police, Kachiguda Police Station. Under the circumstances, there was no occasion to carry the N.B.W. by A-1 along with A-2 and other Constables to the house of P.W.1 for execution of the same. Another important factor is that the N.B.W. was neither in the custody of A-1 or A-2, but was lying at the police station, as is evident from the depositions of P.W.9 and P.W.12.

44. Thus, the prosecution miserably failed to prove through direct or indirect evidence of cell phone call data report that there was any nexus between A-1 and A-2 to demand or to collect bribe from P.W.1. The prosecution has also failed to prove beyond all reasonable doubt that A-1 demanded P.W.1 subsequently over phone during pre-trap proceedings and that he sent A-2 to collect bribe on his behalf. Further, since there was no recovery of any bribe amount from A-1, the presumption contemplated under

Section 20 of the Prevention of Corruption Act cannot be attracted in the present case and as such he deserves to be acquitted.

45. So far as A-2 in CrI.A.No.503 of 2016 is concerned, it is the case of the prosecution that A-2 had accompanied A-1 along with other constables to the house of P.W.1 on 04.11.2006 in the morning hours and A-1 initially demanded Rs.20,000/- from P.W.1 for non-execution of NBW against him and on bargain A-1 reduced the bribe amount to Rs.15,000/- and that A-1 asked P.W.1 to pay the amount as early as possible either to him or to A-2, otherwise he would execute the warrant. It is the further case of the prosecution that as P.W.1 was not willing to pay the bribe amount, on the same day i.e., on 04.11.2006 at about 11.00 A.M. or 11.30 A.M, he approached P.W.10-D.S.P.,A.C.B. and presented Ex.P1-complaint against A-1 and A-2 and as directed by P.W.10, P.W.1 again went to the office of D.S.P., A.C.B. on the same day at 4.00 P.M., and while the first mediators report-Ex.P5 was being drafted, A-1 again called P.W.1 over phone and informed him that he would sent A-2 to his house between 6.00 P.M. and 6.30 P.M., and asked him to hand over the money as demanded by him. Thereafter, a trap was laid at the house of P.W.1 and when A-2 had gone to the house of P.W.1 at 7.00 P.M., and accepted the bribe amount of Rs.15,000/-, the trap party caught hold of A-2 red handedly. Post trap proceedings were conducted and the A.C.B. Officials have arrested A-2. Thus, it is the specific case of the prosecution that the tainted amount was received

by A-2 on behalf of A-1 on 04.11.2006 at 7.00 P.M. It has already been observed in the aforesaid paragraphs that while preparing the first mediators report, though P.W.1 was very well present in the A.C.B. office and he provided the information that A-1 will be sending A-2 to his house during evening hours to collect the bribe amount, the cell phone numbers or the call data records of either P.W.1 or A-1 were not collected by the A.C.B. officials for the reasons best known to them. P.W.1 specifically stated in his evidence that "P.W.10-D.S.P. instructed him to hand over the amount to A-2 only on his further demand and if at all he accepts the amount, he has to come out and give a pre-arranged signal of removing the goggles. In this regard, P.W.5, who is said to be one of the mediators for pre-trap and post-trap proceedings, also specifically stated in his evidence that the D.S.P., has instructed P.W.1 that he shall not touch the tainted currency notes till he pays the same to the Constable and he also instructed P.W.1 that he has to pay the said amount to the Constable only if he demands for it. P.W.10-D.S.P in his chief-examination stated that on his instructions, one Police Constable by name A.Kameshwara Rao has kept the tainted notes in the left side shirt pocket of P.W.1 and that he instructed P.W.1 not to touch the tainted currency notes and after reaching to his house and when A-2 approaches him and demands for bribe amount, he has to hand over the tainted currency notes to him. Thus, according to the prosecution, the tainted currency notes were to be handed over to A-2 only on the demand made by him.

46. Thereafter, the A.C.B. officials along with mediators and P.W.1 have gone to the house of P.W.1 during evening hours at 6.15 P.M. In this regard also there are variations in the evidence of P.W.1 on one hand and P.Ws.5 and 10 on the other hand. According to P.W.1, he along with A.C.B. officials proceeded to his house in his car and reached by 6.15 P.M and he went into his house and sat in the drawing room and they were sitting in his car in the parking area; that at about 6.50 P.M., or 7.00 P.M. A-2 came to his house and sat in the chair in the verandah and then he demanded the bribe amount and that P.W.1 handed over the amount with his right hand and A-2 received with his right hand and transferred to his left hand and kept it in his left side T-shirt pocket and thereafter P.W.1 gave the pre-arranged signal. However, P.W.5 has stated in his evidence that he along with another mediator, P.W.1 and the A.C.B. Officials started in a Government SUMO vehicle to the residence of P.W.1 and reached there at 6.15 P.M. He further stated that at about 7.00 P.M., they saw a person entering into the house of P.W.1; that the said person was wearing T-shirt and by that time P.W.1 was in the verandah of his house; that the person, who came has approached P.W.1 and talked with him; that subsequently, after five minutes, P.W.1 came out from the verandah and got down from his house and has given the pre-arranged signal of removing his spectacles. He also stated that when P.W.1 went inside his house, they have taken vantage positions in the premises of P.W.1. But, P.W.10 has stated in his evidence that on the same day at about 5.45 P.M., he

along with P.W.1, two mediators and his staff left their office in their TATA SUMO vehicle and reached the house of P.W.1 at 6.15 P.M. and when P.W.1 entered into his house, they took vantage positions inside the house compound of P.W.1 as well as outside his house; that at about 7.00 P.M., one person wearing T-shirt came to the house of P.W.1 and that he entered into the house of P.W.1 and after two or three minutes, P.W.1 came out from his house and has given the pre-arranged signal. Thus, there are contradictions in the version of these three witnesses on the material points. According to P.W.1, all have reached his house in his car, he went into his house and waiting in his drawing room and that the others were waiting in his car in the parking area, whereas according to P.Ws.5 and 10, they all have gone to the house of P.W.1 in the Government Vehicle, but no number whatsoever has been mentioned by both these witnesses. Further, according to P.Ws.5 and 10, they have taken the vantage positions in the premises of P.W.1, however, the vantage positions of these witnesses and other A.C.B. officials were not shown in Ex.P9-rough sketch, which has been admitted by both these witnesses during the cross-examination made by the respective Counsel of A-1 and A-2. Thus, the vantage positions of the A.C.B. officials and the mediators at the house of P.W.1 are not clear. It is also pertinent to mention that, according to P.W.5, at the house of P.W.1 Ex.P9-rough sketch of the house of P.W.1 was prepared by some staff of A.C.B., whereas according to P.W.10-D.S.P., Ex.P9-rough sketch was got prepared with the assistance of

mediators. Thus, there is a discrepancy in the evidence of P.Ws.5 and 10 and as such the preparation of Ex.P9-rough sketch at the house of P.W.1 is also doubtful.

47. The other major contradictions in the evidence of P.Ws.5 and 10 is that, according to P.W.5, A-2 entered into the house of P.W.1, they talked for about five minutes and thereafter P.W.1 came out of his house and has given the pre-arranged signal. But according to P.W.10, A-2 went into the house of P.W.1 at 7.00 P.M., and immediately after two to three minutes, P.W.1 came out and gave the pre-arranged signal. Thus, even according to P.W.10, there was no demand whatsoever has been made by A-2 and the suggestion given by the Counsel to these witnesses that A-2 has not demanded any bribe amount whatsoever rather, P.W.1 thrashed the tainted amount into his shirt pocket, though denied by P.W.5 and P.W.10, cannot be ruled out.

48. It is also surprising to note that there was no phone call from A-1 to P.W.1, as alleged by the prosecution, with regard to sending of A-2 to his house to collect the bribe amount and there was no occasion for P.W.1 to see or talk to A-2 till the evening hours. Then, how the A.C.B. officials and P.W.1 came to know about the arrival of A-2 to the house of P.W.1 during evening hours, has not been properly explained by the prosecution. Another interesting factor in this case is that, according to the evidence of P.Ws.5 and 10, P.W.10 asked A-2 to remove his T-shirt and to hand over the same during trap proceedings and that he has given another T-shirt to A-2 which

was brought by them. It is also surprising to note that how the A.C.B. officials could come to know about the guilt of A-2 and that A-2 would come to the house of P.W.1 by wearing T-shirt, which has to be taken from him by providing another T-shirt and there was no plausible explanation to this extent also.

49. The other interesting factor in this case is that as per the mediator report No.II (Ex.P6), the arrest of A-2 was affected by P.W.10 on 04.11.2006 at 10.45 P.M at the house of P.W.1, whereas according to the documents filed by the prosecution itself and even according to evidence of P.W.9, who is the Inspector of Police of Kachiguda Police Station, on 04.11.2006 he handed over a notice along with bus warrant and duty passport to A-2 directing him to go to Siddipet of Medak District, to serve notice on one Praveen Kumar, who is accused in C.C.No.948 of 2003 arising out of Crime No.162 of 2003 and P.W.9 has also obtained acknowledgment for the same from A-2. A perusal of the Duty Passport, dated 04.11.2006, would show that the same was issued on the same day at 4.00 P.M., which was received by A-2 and immediately thereafter at 1920 hours the same was entered into the General Diary vide G.D. Entry No.14. Therefore, it is crystal clear that A-2 was very well present in the Kachiguda Police Station and received the passport at 7.20 P.M. and the same was entered in the General Diary. If that be so, the alleged trap proceedings at the house of P.W.1 are concocted to suit the prosecution case. Hence, the General Diary entry at 1920 hours



clearly falsifies the case of prosecution with regard to the alleged trap as well as the arrest of A-2 at the house of P.W.1. If at all, A-2 had received the passport before he started to the house of P.W.1, it is the duty of the prosecution to produce the documents through cogent evidence that A-2 was not made available at Kachiguda Police Station rather he was in the custody of A.C.B. officials at the relevant point of time, but it seems that purposefully prosecution has withdrawn to get this document exhibited before the Court. No evidence whatsoever has been produced by the prosecution in this regard.

50. The learned Counsel for appellant/ A-2 has contended that the sanction proceedings (Ex.P7 and Ex.P8) have been issued by the sanctioning authority without following due procedure, without considering the entire material available on record and without application of mind. In support of the said contention, he referred to the evidence of P.W.6, who deposed that his department received the preliminary report along with F.I.R. and mediators report on 21.11.2006 and during June, 2007, the final report was submitted by A.C.B. officials, Hyderabad to their department. Accordingly, on 11.09.2007, the prosecution sanction orders were issued against A-1 and A-2 vide Exs.P7 and P8 for the offences under Sections 7 and 13 (2) read with Section 13 (1) (d) of the P.C. Act. During cross-examination, P.W.6 has categorically admitted that along with the final report and the requisition for issuing sanction orders, the A.C.B., Hyderabad, has sent draft sanction orders also. He also

admitted that the draft sanction orders and the sanction orders under Exs.P7 and P8 are one and the same except corrections with regard to grammatical and typographical errors. Referring to the admissions made by P.W.6 and also the contents of Exs.P7 and P8, learned Counsel for the appellants would contend that the relevant material was not placed before the sanctioning authority and the sanctioning authority has not verified any of the documents, which were collected during the course of investigation and also not verified the contents of the statements of P.W.1 recorded under Sections 161 and 164 of Cr.P.C., which are contradictory to each other. The learned Counsel for the appellants would also submit that the sanctioning authority, without application of mind and without coming to a conclusion that there was a *prima facie* material to prosecute A-1 and A-2, had mechanically issued Exs.P7 and P8. Learned Counsel for the appellants relied upon the judgment of the Apex Court in *C.B.I. v. Ashok Kumar Aggarwal* (4 supra). In the said case, it was held by the Apex Court that in every individual case, the Court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the

protection available to the accused against whom the sanction is sought. It was further held that it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty. The order of sanction must *ex facie* disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the Court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction, *inter alia*, on the ground that the order suffers from the vice of total non-application of mind. Thus, where there is no reason in the order passed by the Authority/Court, a presumption can be drawn that the said order was passed without application of mind as per the principle held by the Hon'ble Apex Court.

51. A perusal of the sanction proceedings-Exs.P7 and P8 would show that the relevant material papers were not placed before the sanctioning authority and there was no reference about the sending of 161 Cr.P.C. and 164 Cr.P.C., statements of P.W.1, whose statements were quite contradictory with each other. It is the duty cast upon the sanctioning authority to go through the entire material, examine the same and then come to a conclusion with regard to *prima facie* evidence to prosecute any of the accused and that specific reason has to be given while according sanction and the same should be reflected in the sanction proceedings. In the instant case, nothing has been stated by P.W.6 that the sanctioning authority has perused the material and came to a conclusion that there is *prima facie* evidence to prosecute the accused and there is nothing on record to show that in both Exs.P7 and P8, what documents were referred. No reasons were given by the sanctioning authority in support of his conclusion that he has satisfied himself that there was *prima facie* case against the accused to prosecute them. Therefore, in the light of the observations made by the Apex Court in *CBI v. Ashok Kumar Aggarwal (4 supra)* it can be safely held that Exs.P7 and P8-Sanction Proceedings have been issued without considering any material.

52. It is unfortunate but true that both P.Ws.1 and 2 made statements before the Court, which were quite different from the statements made by them before the police during the course of investigation. It is also unfortunate but true that the statement made

by P.W.1 before the Magistrate under Section 164 Cr.P.C. is quite different from the statement made by him under Section 161 Cr.P.C. and also the allegations made in the complaint. Though after being declared hostile, in his cross-examination, P.W.1 supported some part of the prosecution case, but he has virtually denied the essential ingredients to bring home the guilt of the accused. The statements made by P.W.1 under Section 161 Cr.P.C. and Section 164 Cr.P.C. and the evidence made before the Court during trial are self-contradictory and there are several inconsistencies in his statements at different levels, therefore, his statements cannot be wholly relied upon in convicting the accused.

53. Lastly, it was the contention of the learned Counsel for the appellant/A-2 that since the crucial part of demand and acceptance is not proved by the prosecution, the presumption under Section 20 of the Act will not arise at all.

54. In *M.K.Harshan v. State of Kerala*<sup>20</sup> the Apex Court held as under:-

".....It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching

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<sup>20</sup> 1996 (11) SCC 720

evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW-1. Since PW-1's evidence suffers from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence of PW-1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to hold that the accused tacitly accepted the illegal gratification or obtained the same within the meaning of Section 5(1)(d) of the Act, particularly when the version of the accused appears to be probable".

55. In *Suraj Mal v. State (Delhi Admn.)*<sup>21</sup> the Apex Court took the view that mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

56. In *Madhukar Bhaskar Rao Joshi v. State of Maharashtra*<sup>22</sup> it was observed by the Apex Court that "The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act".

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<sup>21</sup> 1979 (4) SCC 725

<sup>22</sup> (2000) 8 SCC 571

57. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption, the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt. It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence of proof his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4 under the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts, i.e.;

that of establishing on the whole case the guilt of the accused beyond a reasonable doubt. (**V.D.Jhangan Vs. State of U.P.1966 (3) SCR 736**).

58. In the background of the aforesaid principles, I have examined the contentions of the appellants and a perusal of the entire evidence available on record, it is established that the charges under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Act have not been proved against them.

59. The circumstances found by the learned trial Court in totality do not establish that the appellant/A-1 demanded the bribe amount or that appellant/A-2 has accepted the amount of Rs.15,000/- as gratification.

60. A perusal of the entire evidence on record would also show that the evidence of all the prosecution witnesses is full of contradictions and discrepancies with regard to the material aspects. P.W.1 states that he has handed over the amount to A-2 on his demand, P.W.2, who is the Manager of P.W.1, deposed that A-2 had talked to P.W.1 over phone during the morning hours. P.W.5 states that A-2 has demanded the bribe amount, whereas P.W.10 states that within two minutes P.W.1 came out of the house and gave the prearranged signal. According to P.W.2, A-2 had talked to P.W.1 over phone, but the conversation between them was not noted, however he states that A-2 demanded bribe amount from P.W.1, which is quite contrary to the initial version of the prosecution.



Further, through the cross-examination of these witnesses, A-2 has proved that he has neither demanded nor accepted the tainted amount, rather P.W.1 himself thrushed the same into his left side pocket, the same was also not incorporated in the 2<sup>nd</sup> mediators report and only to suit the prosecution case, the 2<sup>nd</sup> mediators report-Ex.P6 was brought into existence. From a perusal of the entire evidence available on record, it seems that the alleged trap was made at the house of P.W.1 rather it seems that the entire trap proceedings and mediators reports etc., were prepared in the A.C.B. Office only but not as alleged by the prosecution. Therefore, the prosecution failed to prove the alleged demand made by either of the appellants or receipt of the bribe amount by A-2 by adducing cogent and reliable evidence. Without there being any demand, the alleged tainted amount, which was said to have been recovered from the left side pocket of the T-shirt of A-2, cannot be said to have been accepted by him.

61. Having examined the entire material available on record, I am satisfied that the appellants have proved their case by test of preponderance of probability and it can safely be concluded that A-2 had not gone to the house of P.W.1 and the amount was not accepted by him as gratification on behalf of A-1. The circumstances under which the alleged trap proceedings were conducted, clearly proves that the amount was forcibly thrushed into the pocket of A-2, and there was no demand or acceptance by A-2, from P.W.1. The

prosecution has failed to establish the guilt of A-2, beyond all reasonable doubt that A-2 received any gratification. Hence, A-2 is also entitled to the benefit of doubt. In the said circumstances and foregoing discussion, it can be inferred that the trial Court has failed to appreciate the evidence properly and came to wrong conclusions.

62. For the aforesaid reasons and having regard to the principles of law laid down in the aforesaid judgments, I am of the considered view that the prosecution has failed to prove its case against the appellants/A-1 and A-2 beyond all reasonable doubt. Hence, the impugned conviction and sentence imposed against the appellants/A-1 and A-2 is liable to be set aside.

63. In the result, both the Criminal Appeals are allowed. The conviction and sentence imposed against the appellants/A-1 and A-2 in C.C.No.58 of 2007 on the file of the Principal Special Judge for SPE and ACB Cases-cum-IV-Additional Chief Judge, City Civil Court, Hyderabad, are hereby set aside and the appellants/A-1 and A-2 are acquitted for the said offences. Further, the bail bonds of the appellants/A-1 and A-2 shall stand cancelled and their sureties are discharged. The fine amount, if any, paid by the appellants/A-1 and A-2 shall be refunded to them.

64. Miscellaneous petitions, if any, pending shall stand closed.

Sd/-K.SREENIVASA RAO  
JOINT REGISTRAR

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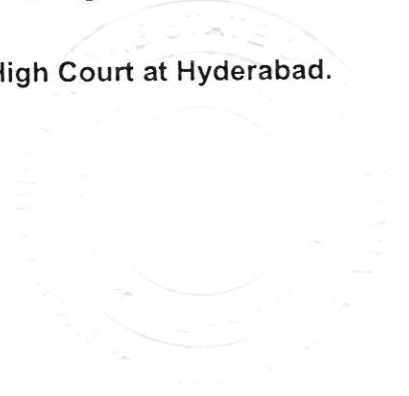
SECTION OFFICER

To

1. The Principal Special Judge for SPE & ACB Cases cum – IV Additional Chief Judge, City Civil Court, Hyderabad
2. The Inspector of Police, Anti Corruption Bureau, City Range –I, Hyderabad.
3. Two CCs to Special Public Prosecutor for ACB, High Court for the State of Telangana at Hyderabad (OUT)
4. One CC to SRI. MASTAN VALI SHAIK Advocate [OPUC]

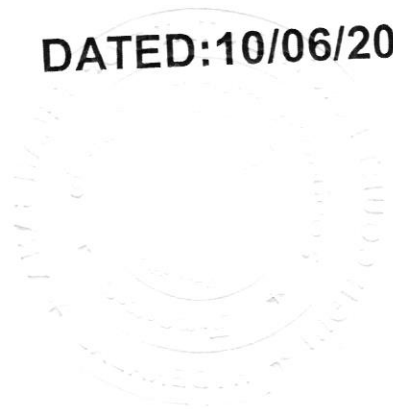
5. One CC to SRI. CHITNENI VIDYASAGAR RAO, SC for ACB , High Court at Hyderabad
6. One CC to Sri V. RAVI KIRAN RAO, Spl. P.P. for ACB , High Court at Hyderabad.
7. Two CD Copies

V. S.



**HIGH COURT**

**DATED:10/06/2021**



**COMMON JUDGMENT**

**CRLA.Nos.490 & 503 of 2016**



**ALLOWING THE BOTH CRL.APPEALS.**

⑨ NW  
16/6/21