

(2014) 12 AP CK 0054

Andhra Pradesh High Court

Case No: Criminal Appeal No. 735 of 2006

State	APPELLANT
	Vs
D. Anjaiah	RESPONDENT

Date of Decision: Dec. 27, 2014

Acts Referred:

- Evidence Act, 1872 - Section 114(e)
- Penal Code, 1860 (IPC) - Section 161
- Prevention of Corruption Act, 1988 - Section 11, 13, 13(1)(d), 13(1)(d)(i)(ii), 13(2)

Hon'ble Judges: U. Durga Prasad Rao, J

Bench: Single Bench

Advocate: M.B. Thimma Reddy, Special Public Prosecutor, Advocate for the Appellant;
Badeti Venkata Rathnam, Advocate for the Respondent

Judgement

U. Durga Prasad Rao, J.

This Criminal Appeal is preferred by the State represented by Inspector of Police, ACB, Sangareddy aggrieved by the Judgment dated 30-01-2006 in C.C. No. 35 of 2001 passed by learned Principal Special Judge for SPE and ACB cases, City Civil Court, Hyderabad acquitting the Accused Officer (AO) for the charges under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 (for short PC Act).

2. Facts which led to file the instant appeal can be stated thus:

a) AOD. Anjaiah worked as Assistant Sub-Inspector of Police (ASI), Jogipet Police Station and he was also in-charge ASI of Pulkal Police Station during the relevant time. The complainant Syed Sadique Ali (PW1) was a Muthavalli of Darga Jindasha Madar of Minpur village, Pulkal Mandal. When Hakim Sharif, Rasool Miya, Yadaiah of Siddipet and Dawood Chand, M.D. Yousuf and others of Minpur village started raising construction of pillar of Fazil Guru Darga in the lands of Jindasha Madar, PW1 made a complaint to SHO, Pulkal police station on 27.04.2000 enclosing copy of the proceedings of MRO dated 08.09.1999 by marking a copy to the Circle Inspector,

Jogipet requesting to stop illegal constructions in Darga. AO also visited the Darga and enquired into the matter but of no avail. Then, PW1 approached AO on 24.05.2000 and requested to take action against the encroachers. On that, it is alleged, AO demanded a sum of Rs. 2,000/- as bribe. When PW1 expressed his inability to pay such a huge amount, AO reduced the bribe amount to Rs. 1,000/- and instructed him to pay that amount at his residence and also informed that after payment of bribe only he would take action against the encroachers.

b) Unwilling to pay bribe, PW1 submitted Ex. P1 complaint on 25.05.2000 and PW5 who was the in-charge DSP, ACB, Nizamabad registered a case in Cr. No. 5/ACB-NZM/2000 under Sections 7 and 11 of PC Act and successfully laid a trap against AO on 27.05.2000 in the presence of two independent mediators i.e. PW2 and LW2 and took up investigation. On completion of investigation, charge sheet was laid against AO.

c) On appearance of AO, charges under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act were framed against him and trial was conducted.

d) During trial, PWs. 1 to 6 were examined and Exs. P1 to P18 were marked and MOs. 1 to 8 were exhibited on behalf of prosecution. Exs. D1 and D2 were marked on behalf of defence.

e) The plea of accused is one of total denial.

f) A perusal of the judgment would show that having regard to the oral and documentary evidence, the trial Court held that prosecution failed to prove the guilt of the accused beyond reasonable doubt and accordingly acquitted the AO, as stated supra.

g) Demand is concerned, the trial Court having regard to the entries in Ex. P7 General Diary (GD) to the effect that complaint dated 27.04.2000 lodged by PW1 was referred by AO on the same day as civil dispute and further on 24.05.2000 i.e. on the date of demand, AO was not in Pulkal police station and he was away at Hyderabad in connection with some investigation, has held that there was no official favour pending with AO to demand any bribe and he was not physically present in Pulkal police station to demand the bribe. Thus, the trial Court disbelieved the demand aspect. Further demand and acceptance of bribe on 27.05.2000 are concerned, the trial Court entertained a doubt on the evidence of PWs. 1 and 2 and accepted the theory of implant taken by the defence side and ultimately acquitted the accused.

Hence, the appeal by State.

3. Heard arguments of Sri M.B. Thimma Reddy, learned Special Public Prosecutor (Spl. P.P.) for ACB cases and Sri Badeti Venkata Rathnam, learned counsel for respondent/AO.

4. Fulminating the judgment of the trial Court, learned Spl. P.P. firstly argued that the trial Court totally misread the facts and evidence and acquitted the accused though prosecution by cogent evidence could able to prove the demand and acceptance of bribe by AO.

a) Expatiating his version on the aspect of demand, he argued that PW1 clearly deposed that when he met AO on 24.05.2000 he demanded Rs. 2,000/- to prevent Hakim Sharif and others from entering Jindasha Madar Darga and when PW1 expressed his inability to pay that much amount, he reduced the bribe to Rs. 1,000/- and asked to pay that amount at his house. He argued that this part of the evidence of PW1 clearly proves demand made by AO and AO sought to disprove the above evidence of PW1 through GD entries in Ex. P7 to the effect that AO and PC 397 were away from Pulkal police station to Hyderabad from 23.05.2000 to 25.05.2000 in connection with some investigation. He vehemently argued that except relying upon the entries, AO did not examine himself or the PC 397 to substantiate those GD entries and therefore, it must be held that the demand aspect was established beyond reasonable doubt.

b) Then, regarding further demand and acceptance of bribe on 27.05.2000, he argued, evidence of PW1 establish that AO demanded and accepted bribe at his residence and the evidence of PW1 in this regard was corroborated by PW2 and PW5 and the acceptance of bribe was further corroborated by chemical test which yielded positive result on both hands of AO. Learned Spl. P.P. argued that since the acceptance of bribe is established as above, the presumption under Section 20 of PC Act shall squarely follow and even assuming prosecution failed to prove the demand, still presumption under Section 20 of P.C. Act, can be drawn if the acceptance of gratification other than legal remuneration is established and demand need not be proved. On this proposition, he relied upon the decision reported in [C.K. Damodaran Nair Vs. Govt of India,](#). He submitted that since the prosecution could establish the acceptance of gratification other than legal remuneration presumption will follow and AO failed to rebut the presumption since his plea of implanting of money by PW1 has no teeth in view of the fact that his hands proved positive to the chemical test. He argued that if really the amount was implanted as argued, there was no possibility of AO coming into contact with tainted bribe amount and in such an event, chemical test should yield negative result. Since that is not the case, the implant theory must be held false. He thus prayed to allow the appeal by setting aside the judgment of the trial Court.

5 a) Per contra, supporting the judgment of the trial Court, learned counsel for respondent/AO argued that in order to prove the trap case the prosecution must establish the two vital ingredients i.e. demand and acceptance. Demand is concerned, the prosecution miserably failed to establish the same since the demand theory was blasted by Ex. P7GD which would show that AO was away at Hyderabad from 23.05.2000 to 25.05.2000, so the question of his demanding bribe was a myth.

He argued that there was absolutely no possibility for AO to fabricate GD entries because the TLO seized Ex. P7 along with other registers immediately after trap and so the genuinity of GD entries can not be doubted and therefore, AO need not examine the Constable to establish plea of alibi and on the other hand, prosecution should examine him to disprove the GD entries. He argued the trial Court rightly rejected the demand theory.

b) Sofaras further demand and acceptance of bribe are concerned, learned defence counsel argued that in fact PW1 did not meet AO at his house and during temporary absence of AO in the main hall, PW1 implanted money in the hip pocket of the pant hanging on the wall and if really PW1 met AO in the hall, PW2 who was also present at the door step would not have missed seeing them both but PW2 did not say anything in this regard which would establish that PW1 did not meet AO at all. He thus argued that prosecution failed to prove further demand and acceptance also. He submitted that since the prosecution failed to prove both demand and acceptance, the trial Court rightly refused to draw presumption under Section 20 of PC Act. He argued that in order to deserve for drawing presumption, the prosecution must prove the demand aspect also. On this proposition, he relied upon the following decisions.

1. [B. Jayaraj Vs. State of A.P.,](#)

2. [V. Venkata Subbarao Vs. State, represented by Inspector of Police, A.P.,](#)

3. [Banarsi Dass Vs. State of Haryana,](#)

c) Finally, learned counsel argued that the complainant had given a false compliant with an ill motive and considering it and inherent defects in prosecution case, the trial Court rightly acquitted the accused and there are no merits in the appeal and hence appeal may be dismissed.

6. In the light of above rival arguments, the point for determination in this appeal is:

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

7 a) POINT: It is a trap case and charges are under Sections 7 and 13(1)(d) r/w 13(2) of PC Act. Before scrutinizing the merits of the appeal in the light of rival arguments, first of all it is incumbent upon this Court to ruminate the ingredients that have to be established by the prosecution to prove the above two charges.

b) Reminding the duty of prosecution, the Apex Court in a recent decision in the case of [B. Jayaraj Vs. State of A.P.,](#) has observed thus:

In so far 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 Vs. State of A.P. Th. I.P.](#), and [C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala,](#).

The Supreme Court further observed thus:

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 in so far as the offence Under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification (emphasis supplied), 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.

Thus, in the above decision the Honourable Apex Court emphatically laid down that for establishing the offences under Sections 7 and 13(1)(d)(i)(ii) the prosecution shall by cogent evidence establish the two vital ingredients i.e. (i) demand of illegal gratification other than legal remuneration and (ii) voluntary acceptance.

b) Then presumption under Section 20 of P.C. Act is concerned, it reads thus:

Section 20 Presumption where public servant accepts gratification other than legal remuneration:

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) or sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) xxxx

(3) xxxx

On the aspect whether prosecution is required to prove demand to draw presumption under Section 20 of P.C. Act, there is a legal dichotomy. In [C.K. Damodaran Nair Vs. Govt of India](#), cited by learned Spl. P.P., a Division Bench (Two Honourable judges) of Apex Court opined that demand aspect need not be proved for drawing presumption under Section 4(1) of PC Act, 1947 (old Act) (Section 20 of PC Act, 1988). It observed thus:

Para 11: From a combined reading of S. 161 I.P.C. and Section 4(1) of the Act it is evident that if, in the instant case, the prosecution has succeeded in proving that the appellant was a public servant at the material time and that he had "accepted" or "obtained" Rs. 1,000/- from PW 9 as gratification not only the first two ingredients of

the former would stand proved but also the third, in view of the presumption under the latter which the Court is bound to draw unless, of course, the appellant, in his turn, has succeeded in rebutting that presumption. According to Shorter Oxford Dictionary "accept" means to take or receive with a "consenting mind". Obviously such a "consent" can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to "acceptance" within the meaning of Section 161 I.P.C. It cannot be said, therefore, as an abstract proposition of law, that without a prior demand there cannot be "acceptance".

Thus, in the above decision it was held that acceptance of illegal gratification other than legal remuneration by the accused with a consenting mind is sufficient to draw mandatory presumption under Section 20 of PC Act and for that purpose prior demand need not be established. However, it appears in the subsequent decisions the above view was not followed.

c) In V. Venkata Subbarao Vs. State, represented by Inspector of Police, A.P., another Division Bench (Two Honourable Judges) of Supreme Court observed on the same aspect as follows:

Submission of the learned Counsel for the State that presumption has rightly been raised against the appellant, cannot be accepted as, inter alia, the demand itself had not been proved. In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved.

In the above case it was emphatically laid down that without proof of demand the question of raising presumption 20 of PC Act, 1988 would not arise.

d) In B. Jayaraj Vs. State of A.P., Full Bench of Honourable Apex Court has held thus:

In so far 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 Section 13(1)(d)(i)(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. (emphasis supplied) 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.

So, in the latest judgment, the Full Bench of Honourable Apex Court observed that proof of acceptance of illegal gratification can follow only if there is proof of demand and only when these two ingredients are established, presumption under Section 20 of P.C. Act would follow.

8. Having regard to the above legal propositions, the appeal is to be decided.

9. In this case demand was said to be made by AO on 24.05.2000. The contention of AO is twofold. That no official favour was pending with him by that date and he was not present in Pulkal Police Station on 24.05.2000 to solicit bribe. With regard to first contention, his submission is that the complaint filed by PW. 1 on 27.04.2000 was closed by him on 27.04.2000 itself referring it as a civil dispute which is evident from Ex. P.7G.D. Hence no official favour was pending with him by 24.05.2000. Then the second contention of AO was in the nature of plea of alibi i.e., he claims that on 24.05.2000 he was not available at Pulkal P.S. and on the other hand himself and PC 397 were at Hyderabad from 23.05.2000 to 25.05.2000 on some investigation work which is evident also from the entries in Ex. P.7G.D. Hence the demand theory projected by the prosecution has to be tested with reference to the above defence plea.

10. In this context, admittedly AO was placed in-charge of Pulkal P.S. as ASI through Ex. P.9 memo dated 17.03.2000 issued by PW. 3 Inspector of Police, Jogipet P.S. and AO received the complaint given by PW. 1 on 27.04.2000. Then with regard to the closure of complaint, the evidence of PW. 1 is thus:

On 27.04.2000, when I gave complaint to the AO he made a G.D. entry and gave a receipt to me. I do not know whether AO entered in G.D. to the effect that the complaint given by me on 27.04.2000 pertains to civil matter and that he instructed us to go to civil court and accordingly issued notice to me (the witness volunteers that no notice was given to them). I gave the receipt given by AO in token of receipt of my complaint to DSP, ACB along with my Ex. P.1 complaint. It is not mentioned in Ex. P.1 about the myself enclosing the receipt given by the AO.

Then PW. 3-the Inspector of Police, Jogipet Circle in his chief-examination deposed as follows:

On 30.04.2000, the accused produced both the parties with regard to the dispute of a Darga situated at Minpur village before me. I asked both the parties to settle the matter amicably in the village itself. To that effect both the parties have given an undertaking to me in writing. Ex. P.10 is the said undertaking.

In his cross-examination he further stated thus:

Ex. P.10 compromise memo also bears the signature of Sadiq Ali (PW. 1) I advised compromise between the parties calling the village elders with regard to the dispute of raising a wall. Ex. P.10 compromise memo was executed on 30.04.2000. After Ex. P.10 I did not receive any complaint over that dispute.

Apart from the above oral evidence, the entry dated 27.04.2000 in Ex. P.7 General Diary reads in Telugu as follows:

Sd/-

ASI

a) So when the above evidence relating to the pendency of official favour is scrutinized, it would reveal that AO closed the complaint on 27.04.2000 itself mentioning the same as civil dispute and referring the parties to the Court. Further on 30.4.2000, AO produced the parties before PW3 the Inspector of Police, and he effected a sort of compromise under Ex. P.10 between the parties. Thus the aforesaid unimpeachable oral and documentary evidence demonstratively shows that no official favour was pending with AO by 24.05.2000 to demand any bribe. In this regard the argument of AO that if he was really a bribe monger he would have kept the complaint pending without referring it as civil dispute for soliciting bribe is logically quite appropriate.

11. Then the first demand dated 27.04.2000 is concerned, the evidence of PW. 1 is thus:

On 24.05.2000, I went to the AO. The AO asked me to pay Rs. 2000/- to prevent the Hakim Shareef and rasool miya and others from entering into the Jindashah Madar Darga, when I expressed my inability to pay that much amount, he reduced the bribe to Rs. 1,000/- and asked me to pay at his house. On 25.05.2000 by 12 noon I went to the office of the DSP, ACB and gave a written complaint to the Head Constable.

In the cross-examination on the demand aspect he admitted as follows:

On 24.05.2000 I met the AO at Pulkal police station. I do not remember the time when I met the AO. It is true, it is not mentioned in Ex. P1, the time at which I met the AO on 24.05.2000. It is also not mentioned in Ex. P.1 whether (sic where) I met the AO on 24.05.2000. It is not true to suggest that I did not meet the AO on 24.05.2000 in the police station and that the AO was at Hyderabad in connection with the investigation along with PC 397.

a) The above is the version of PW. 1 regarding demand. However, when the entries in Ex. P.7G.D. of Pulkal Police Station relating to 23.05.2000, 24.05.2000 and 25.05.2000 are perused, they reveal the facts contrary to the claim of PW. 1:

i) The entry at 12:30 noon of 23.05.2000 reads as follows in Telugu:

Sd/-

ASI

ii) Then the entry at 7:00 am on 24.05.2000 relating to the roll call of the staff of Police Station reads thus:

ASI along with PC 397 I/D duty Hyd.

iii) Similarly the G.D. entry at 7:00 am on 25.05.2000 relating to roll call of the staff of P.S. reads as follows:

ASI, PC 397 I/D duty Hyd.

iv) Then the entry in Sl. No. 15 at 23:00 hours on 25.05.2000 reads in Telugu as follows:

ASI, PC 397

The above G.D. entries were confirmed by PW. 3 in his cross-examination as follows:

Ex. P.7 shown to me is the General diary of Pulkal Police Station. As seen from the General Diary entry dt. 27.04.2000 in Ex. P.7 at Page No. 104 it is written by the accused that with reference to the complainant by said ali (PW1) the complaint was closed as civil nature and to go to court, and accordingly a notice was issued to the parties. It is true as seen at Page No. 133 of Ex. P.7, it is written at GD dt. 17.05.2000 by the accused at 1.00 PM that he is going on casual leave. It is true as seen at page No. 144 of Ex. P7 the accused wrote the GD dt. 23.05.2000 at 12:23 that he joined the duty after availing the CL one day late. Under it the accused further wrote at 12.30 noon that along with P.C. 397 on the instructions of the Inspector he is proceeding to the Hyderabad in connection with the investigation. It is true as seen at page No. 146 of Ex. P7 dt. 24.05.2000 it is written at 7 A.M. at the time of roll call the accused along with P.C. 397 was on investigation duty at Hyderabad. It is true the accused reported for duty at Jogipet P.S. on 25.05.2000. After that date the accused was not supposed to do any duty at Pulkal P.S.

PW. 5 the TLO also avouched about the above G.D. entries. The genuineness of the above G.D. entries is concerned, it must be noted that immediately after trap, PW. 5 has seized Ex. P.6, P.7 and other records and therefore, manipulation of those entries is impossible. For this reason, the genuinity and authenticity of the G.D. entries can be accepted. Further, since the above entries are maintained in a public document by a public office, the presumption under Section 114(e) of Indian Evidence Act to the effect that the above entries were regularly maintained will follow. The prosecution has not placed any evidence to rebut the presumption and to establish that those were the manipulated entries. Learned Spl. P.P. argued that the AO has not examined himself or PC 397 to confirm that they were at Hyderabad from 23.05.2000 to 25.05.2000 and hence the G.D. entries cannot be given weight. I am afraid, this argument does not hold conviction in view of my earlier observation that Exs. P.6, P.7 and other documents were seized by T.L.O. immediately after trap and there was absolutely no possibility for AO to manipulate the entries to suit his case. That being so, non-examination of PC 397 is not a consequence at all. The trial Court, it must be said, has properly appreciated the facts and evidence concerning to the demand aspect and held that AO could substantiate his plea of alibi and the

prosecution failed to prove by satisfactory evidence, the demand. In that process, the trial Court also considered the argument of the prosecution to the effect that though AO went to Hyderabad on official duty, still there was a possibility for him to come down to Jogipet on 24.05.2000 and demand bribe from PW. 1 since the distance between Hyderabad and Jogipet was short. The trial Court rightly noticed that such an argument was based purely on conjuncture since prosecution could not bring out any circumstance to hold in that line and even PW. 1 himself could not give the time when he met AO on 24.05.2000. Thus the trial Court rightly rejected this argument and ultimately held that prosecution failed to prove the demand aspect. I endorse the same view.

12. Then the further demand and acceptance of bribe are concerned, the prosecution depends upon the evidence of PWs. 1, 2 and 5 and of course Ex. P.3. The version of PW. 1 is thus:

Myself and one of the mediators by name Chalapathi rao went to the house of the AO. The mediator chalapathi rao was standing at the door and I alone entered inside the house of the AO since it was a small house. The AO on seeing me enquired whether I brought the amount and I answered affirmatively and gave the amount, it was received by him and he also counted the amount and then he kept the amount in his khaki pant hip pocket which was hanging to the wall. At that time AO was wearing banian and underwear. AO asked me to go and wait for him at the police station. Then I went out and gave prearranged signal. Trap party came there and entered inside the house by asking me to wait outside. 2 or 3 hours later I was called inside and I told the trap party as to what all happened.

So the version of PW. 1 is that though himself and PW. 2 went to the house of AO, PW2 remained at the door since the house was small and he himself went inside the front hall and on the further demand of AO tendered the bribe amount to him. Then the spontaneous reactive explanation of AO at two different stages during post trap proceedings as can be found in Ex. P.3 is as follows:

i) This reaction at the first instance is noted thus:

The DSP questioned Sri Anjaiah whether he had just before demanded and accepted any bribe amount from the Old Muslim person. Sri Anjaiah denied that he did not take any amount from any one and also denied any acquaintance with the Muslim person. However, when the DSP drew his attention to the Pink Coloured Solutions which resulted from his hands washed, Sri Anjaiah reluctantly accepted to have received the amount and when asked by the DSP about the received amount he pointed towards the Uniform pant (kaki) hanging on the wall at and he took out from the Right Side Hip pocket a wad of currency notes.

At another instance his explanation is noted as follows:

Sri D. Anjaiah, ASI stated that he worked as the SHO, of Pulkal P.S. during the last April upto 15th May, as there was no S.I. at Pulkal and on the instructions of the C.I. Jogipet, for the last 1 week, he is working as the Guard In-charge at Jogipet P.S. He further stated that while he was SHO of Pulkal P.S. Syed Sadiq Ali Mutawali Darga Zinda Shah Mazar Minpur gave a complaint to him on 27.04.2000 (to his remembrance) and as it was of civil nature, he advised the person to approach the Court. He also stated that due to extremists problem, Pulkal P.S. is also functioning just behind Jogipet P.S. He stated that he does not know why the person Sadiq Ali complained against him and that he did not meet him during the last 1 month. However, he could not explain for receiving the amount.

a) So in the first version it would appear as if AO admitted to have received the bribe amount but in the second version he pleaded total ignorance even about PW. 1 coming to his house. During trial, AO confined to his second version and took the plea that when he was in the Kitchen PW. 1 might have entered the hall and planted the tainted amount in the hip pocket of his uniform pant hanging on the wall to the left side of the door. Now the crucial aspect is whether the version of PW. 1 was correct or the explanation of AO was right. It may be noted that in view of the law laid down by Apex Court in its latest judgment, without the proof of demand, the presumption under Section 20 of P.C. Act cannot be drawn basing on mere recovery of the money from the pant of AO because prosecution failed to prove the demand aspect. Therefore, the prosecution has to independently prove the acceptance of gratification other than legal remuneration by convincing evidence. In this context when the evidence of PW. 1 on one hand and the explanation of AO on the other are scrutinized, the defence explanation, rather than the evidence of PW. 1, appears to be reasonable and convincing for the following reasons:

i) Even according to prosecution, PW. 1 was the only witness for further demand and acceptance of bribe since PW. 2 claims that he remained at the door and did not witness what transpired between AO and PW. 1. Since the evidence of PW. 1 touching the aspect of demand was held to be unbelievable in the light of entries in Ex. P.7G.D. his evidence concerning further demand and acceptance of bribe needs a microscopic scrutiny. As per PW. 1, when he met AO, he was in banian and underwear. However, his version before the DSP in Ex. P.3 second mediator report was that when he saw AO he was wearing lungi and banian. Even the trap party members found AO in lungi and banian and they mentioned this fact in Ex. P.3. Generally, the little difference regarding wearing apparel of AO as spoken by PW. 1 will not have much impact on the veracity of the evidence of PW. 1 but this difference assumes great importance in the light of spontaneous explanation of AO that PW1 did not meet him at all on the date of trap. Therefore, the evidence of PW. 1 gives raise a doubt as to if he really met AO on the date of trap, he would not have faltered regarding the dress worn by AO. It must be noted that the trial Court has not given much importance to this discrepancy in the evidence of PW. 1 but in my view this discrepancy weighs against the case of prosecution.

ii) PW. 2 was specifically employed by the TLO to follow PW. 1 to witness the happenings between AO and PW. 1 but he did not do so. The reason given in his chief-examination is thus:

Then on the instructions of the DSP myself and PW1 went to the house of the AO. The house of the AO is a small house and I was standing at the door PW. 1 entered the house. Within one or two minutes PW. 1 came out and then gave signal.

In the cross-examination he stated thus:

As the room of the AO is very small I did not enter inside the room. There is a kitchen in the house of the AO towards right side. There is wall in between the room and kitchen. The hanger to the wall is quite opposite to the door. As seen from Ex. P.4 rough sketch the hanger to the wall is shown by the side of the door

When the above evidence of PW. 2 is perused with reference to Ex. P.4 sketch, it would appear that the quarter of AO is a two roomed house consisting of one main hall and right side abutting kitchen. Admittedly this quarter is a small quarter. If that is so when PW. 2 stood at the door of the main hall and when PW. 1 accosted AO at the main hall and gave bribe amount on his further demand, it is most unlikely that PW. 2 who was standing at the door could not or would not watch the happenings. Surprisingly PW. 2 did not state anything about the interaction between PW. 1 and AO. That means in a way he is not supporting the version of PW. 1. Thus from the evidence and conduct of PW. 2 a doubt again lingers as to whether really PW. 1 met AO in the hall of his house on the date of trap.

iii) Though in Ex. P.3 it is the version of prosecution that on seeing the trap party AO got perturbed and started rubbing his right hand to the cot and he also murmured that he does not have any connections with the persons, surprisingly PW. 2 the independent mediator has not spoken anything about this impulsive reaction of AO creating doubt on him. The prosecution in Ex. P.3 projected the above conduct of AO to show his guilty consciousness but that was not affirmed by the independent mediator. So there is no corroboration to the alleged guilty conduct of AO as mentioned in Ex. P.3 which is not a substantive piece of evidence. Further, PW. 5 TLO did not subject the portion of the cot to which the AO was allegedly rubbing his right hand to the Sodium Carbonate Test.

iv) The motive for PW. 1 to implicate AO is concerned, the following version of PW. 1 in his cross-examination is important.

During 1994 My brother in law Mohd. Jahangir was head constable and he worked in Kangti check post during that time. AO was also worked as head constable in the said check post I do not know whether my brother in law Mohd. Jahangir was charged for drunken high handed behaviour against Dy. Director Yesudas and also for tearing the attendance register. I do not know whether DSP sangareddy enquired into the said charges against my brother in law and the AO also gave

statement in the said enquiry. I do not know whether Mohd. Jahangir was removed from service 09.06.94 on the report of the DSP. It is not true to suggest that I contacted the AO and requested him not to give statement against my brother in law in the said enquiry for which he refused and that I bore grudge against him. It is not true to suggest that I threatened the AO that I will see his end.

It is true that PW. 1 is denying, his having grudge against AO but when the totality of the circumstances i.e., his falsity on the aspect of demand is considered, his bearing grudge against AO cannot be totally ignored.

13. So when the above glaring defects in the prosecution case are considered, it cannot be said that the prosecution could prove the charges against AO merely because the bribe amount was recovered from his pant pocket. It must not be forgotten that it is not the case of recovery of tainted amount from the person of the accused so as to even remotely connect the accused to the case.

14. In the light of the facts and circumstances, the evidence adduced by the prosecution miserably fell short of proving the charges against AO and so it must be held that the judgment of the trial Court is factually and legally sustainable.

15. In the result, this Criminal Appeal is dismissed by confirming the acquittal recorded by the trial Court in its judgment in C.C. No. 35 of 2001.

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