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B. JAYARAJ

v.

STATE OF A.P.

(Criminal Appeal No. 696 of 2014)

MARCH 28, 2014

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**[P. SATHASIVAM, CJI, RANJAN GOGOI AND
N.V. RAMANA, JJ.]**

C *Prevention of Corruption Act, 1988 – ss.7 and 13(1)(d)(i)(ii) r/w s.13(2) and 20 – Complainant had a fair price shop – He alleged that appellant, Mandal Revenue officer, demanded bribe from him for release of PDS items – Conviction of appellant u/ss. 7 and 13(1)(d)(i)(ii) r/w s.13(2) by the Courts below – Justification – Held: Not justified – PW-2, the complainant, did not support the prosecution case insofar as demand of illegal gratification by appellant is concerned – Prosecution did not examine any other witness, present at the time when the money was allegedly handed over to appellant by the complainant, to prove that the same was pursuant to any demand made by the appellant – When the complainant himself had disowned what he had stated in the initial complaint, and there is no other evidence to prove that appellant had made any demand, the evidence of PW-1 (panch witness) and the contents of the initial complaint cannot be relied upon – Only other material available is recovery of tainted currency notes from possession of appellant – However, mere possession and recovery of currency notes from appellant without proof of demand will not bring home the offence u/s.7 – Proof of acceptance of illegal gratification can follow only if there is proof of demand – As the same is lacking, primary facts on the basis of which legal presumption u/s.20 can be drawn against the appellant are wholly absent.*

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The appellant was working as a Mandal Revenue officer (MRO). PW-2 had a fair price shop. The prosecution case was that PW-2 allegedly approached the appellant for release of essential commodities against his shop whereafter he demanded bribe to issue the release order. The Special Judge for SPE & ACB cases, City Civil Court, convicted the appellant under Sections 7 and 13 (1)(d)(i)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988. The conviction was affirmed by the High Court, and therefore the present appeal.

Allowing the appeal, the Court

HELD:1. The conviction of the appellant cannot be sustained either under Section 7 or under 13(1)(d)(i)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988. [Para 10] [561-F-G]

2. PW-2, the complainant, did not support the prosecution case. He disowned making the complaint (Exbt.P-11) and had stated in his deposition that the amount of Rs.250/- was paid by him to the appellant with a request that the same may be deposited with the bank as fee for the renewal of his licence. He was, therefore, declared hostile. However, PW-1 (panch witness) had testified that after being summoned by LW-9, on 13.11.1995, the contents of Exhibit P-11 (complaint) filed by PW-2 were explained to him in the presence of the complainant who acknowledged the fact that the appellant had demanded a sum of Rs.250/- as illegal gratification for release of the PDS items. It is on the aforesaid basis that the liability of the accused-appellant for commission of the offences alleged was held to be proved. In doing so, the trial court as well as the High Court also relied on the provisions of Section 20 of the Act to draw a legal presumption as regards the motive or reward for doing or forbearing to do any official act after

A finding acceptance of illegal gratification by the accused-appellant. [Para 6] [559-F-H; 560-A-C]

3. Insofar as the offence under Section 7 of the Prevention of Corruption Act, 1988 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. [Para 7] [560-C-E]

C *C.M. Sharma vs. State of A.P.* (2010) 15 SCC 1: 2010 (13) SCR 1105 and *C.M. Girish Babu vs. C.B.I* (2009) 3 SCC 779: 2009 (2) SCR 1021 – relied on.

D 4. PW2 did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. E When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come F to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. The only other material available is the recovery of the tainted G currency notes from the possession of the accused. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Section H 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to

obtain any valuable thing or pecuniary advantage cannot be held to be established. [Para 8] [560-E-G; 561-A-C]

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5. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under 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. 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. [Para 9] [561-D-F]

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Case Law Reference:

2010 (13) SCR 1105 relied on Para 7

2009 (2) SCR 1021 relied on Para 7

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 696 of 2014.

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From the Judgment & Order dated 25.04.2011 of the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No. 99 of 2005.

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Guntur Prabhakar for the Appellant.

Mayur R. Shah, D. Mahesh Babu, Suchitra Hrangkhawl, Amjit Maqbool, Amit K. Nain, B. Ramakrishna Rao, Aditya Jain for the Respodent.

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The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

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A 2. This appeal is directed against the judgment and order
 dated 25.04.2011 passed by the High Court of Andhra Pradesh
 affirming the order of conviction passed by the Additional
 Special Judge for SPE & ACB cases, City Civil Court
 B Hyderabad, whereby the accused appellant has been found
 guilty of commission of the offences under Sections 7 and 13
 (1)(d)(i)(ii) read with Section 13(2) of the Prevention of
 Corruption Act, 1988 (for short "the Act"). The accused
 appellant has been sentenced to undergo rigorous
 imprisonment for one year for each of the offences and also to
 C pay a fine of Rs.1000/- in default to suffer simple imprisonment
 for three months more.

3. According to the prosecution, the accused appellant
 was, at the relevant point of time, working as a Mandal Revenue
 officer (MRO) in the Ranga Reddy District of the State of
 D Andhra Pradesh. The complainant K.Venkataiah (PW-2) had
 a fair price shop in Dadupally village. On 8.11.1995, the
 complainant, it is alleged, had approached the accused
 appellant for release of essential commodities against his shop
 for the month of November, 1995. The accused appellant, it is
 E claimed, demanded a bribe of Rs.250/- to issue the release
 order. As the complainant was not willing to pay the said
 amount, he had approached listed witness No.9 K.Narsinga
 Rao, (since deceased) Deputy Superintendent of Police, ACB,
 Hyderabad on 9.11.1995 and submitted a written complaint
 F (Exbt.P-11) before him. According to the prosecution, LW-9 after
 verifying the contents of the complaint registered a case and
 issued Exhibit P-12 (FIR). LW-9 directed the complainant to
 come with the bribe amount on 13.11.995. It is also alleged that
 LW-9 summoned PW-1, S. Hanuma Reddy, Deputy Director
 G of Insurance to act as a panch witness and explained the
 details of the complaint (Exbt.P-11) to him. Furthermore,
 according to the prosecution, LW-9 got the currency notes
 treated with phenolphthalein powder and also explained to PW-
 1 the significance of the sodium carbonate solution test. The
 H details of the trap that was planned was explained to all

concerned including the complainant. Accordingly, the plan was put into execution and on receipt of the pre-arranged signal to the trap laying officer, the police party headed by LW-9, which also included PW-5, rushed into the office of the accused appellant. Thereafter, according to the prosecution, the sodium carbonate solution test was conducted on the right hand fingers of the accused as well as the right shirt pocket. Both tests proved to be positive. The tainted currency notes were recovered from the possession of the accused.

4. Chargesheet was filed against the accused-appellant on completion of investigation. Upon grant of sanction for prosecution, cognizance of the offences alleged was taken and charges were framed to which the accused pleaded not guilty. In the course of the trial 5 witnesses were examined on behalf of the prosecution and 12 documents (Exbt. P-1 to P-12) besides 10 material objects (MOs 1 to 10) were exhibited. The plea of the accused was that on the date of the trap, PW-2, the complainant had put the currency notes in his shirt pocket with a request to have the same deposited in the bank as fee for renewal of the licence of the complainant. It was at this point of time that the police party had come and seized the currency notes after taking the same from his pocket.

5. We have heard Mr. Guntur Prabhakar, learned counsel for the appellant and Mr. Mayur R. Shah, learned counsel appearing on behalf of the respondent-State.

6. PW-2, the complainant, did not support the prosecution case. He disowned making the complaint (Exbt.P-11) and had stated in his deposition that the amount of Rs.250/- was paid by him to the accused with a request that the same may be deposited with the bank as fee for the renewal of his licence. He was, therefore, declared hostile. However, PW-1 (panch witness) had testified that after being summoned by LW-9, K. Narsinga Rao, on 13.11.1995, the contents of Exhibit P-11 (complaint) filed by the complainant PW-2 were explained to him in the presence of the complainant who acknowledged the

- A fact that the accused appellant had demanded a sum of Rs.250/- as illegal gratification for release of the PDS items. It is on the aforesaid basis that the liability of the accused-appellant for commission of the offences alleged was held to be proved, notwithstanding the fact that in his evidence the complainant
- B PW-2 had not supported the prosecution case. In doing so, the learned trial court as well as the High Court also relied on the provisions of Section 20 of the Act to draw a legal presumption as regards the motive or reward for doing or forbearing to do any official act after finding acceptance of illegal gratification
- C by the accused-appellant.

7. 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
- D 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*
- E *A.P.*¹ and *C.M. Girish Babu Vs. C.B.I.*²

8. In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other
- F witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-11) before LW-9, and there
- G is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made

H 1. (2010) 15 SCC 1.
2. (2009) 3 SCC 779.

by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive 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, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. 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. 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.

10. For the aforesaid reasons, we cannot sustain the conviction of the appellant either under Section 7 or under 13(1)(d)(i)(ii) read with Section 13(2) of the Act. Accordingly, the conviction and the sentences imposed on the accused-appellant by the trial court as well as the High Court by order dated 25.4.2011 are set aside and the appeal is allowed.

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Appeal allowed.

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