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N. SUNKANNA

v.

STATE OF ANDHRA PRADESH

(Criminal Appeal No.1355 of 2015)

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OCTOBER 14, 2015

[M.Y. EQBAL AND C. NAGAPPAN, JJ.]

*Prevention of Corruption Act, 1988 – ss.7, 13(1)(d) r/w
C 13(2) and 20 – Allegation of demand and acceptance of bribe
– Trap arranged – Recovery of tainted notes from the accused
– During trial complainant turned hostile – The courts below
relying on the Panch Witnesses and drawing presumption u/
s.20 convicted the accused – On appeal, held: There was no
D evidence to prove that the accused made any demand –
Mere recovery of the tainted currency notes from the accused
without proof of demand will not bring home the offence u/
s.7 – In absence of proof of demand offence u/s. 13(1)(d) is
E also not established – Unless there is proof of demand, proof
of acceptance will not follow – Presumption u/s.20 can be
drawn only on proof of acceptance – Therefore, courts below
wrongly drew presumption u/s.20.*

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Allowing the appeal, the Court

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HELD: 1. The complainant himself had disowned his complaint and has turned hostile and there is no other evidence to prove that the accused had made any demand. The only other material available is the recovery of the tainted currency notes from the possession of the accused. The possession is also admitted by the accused. It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under

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Section 7, since demand of illegal gratification is *sine-qua-non* to constitute the said offence. The above also will be conclusive insofar as the offence u/s. 13(1)(d) of Prevention of Corruption Act 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 6] [886-F-H; 887-A-B]

2. 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. Unless there is proof of demand of illegal gratification, proof of acceptance will not follow. In the present case, the primary facts on the basis of which the legal presumption u/s. 20 can be drawn, are wholly absent. The conviction of the appellant u/s.7 and u/s. 13(1)(d) r/w. s.13(2) of the Act and the sentences imposed are set aside and he is acquitted of the charges. [Paras 6 and 7] [887-B-F]

B. Jayaraj vs. State of Andhra Pradesh 2014 (4) SCR 554: (2014) 13 SCC 55; P. Satyanarayna Murthy vs. The District Inspector of Police and another 2015 (9) SCALE 724 – referred to.

Case Law Reference

2014 (4) SCR 554 referred to. Para 6

2015 (9) SCALE 724 referred to. Para 6

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1355 of 2015.

From the Judgment and Order dated 02.07.2010 of the High Court of Judicature Andhra Pradesh at Hyderabad in CrI.

A Appeal No. 65 of 2006.

Guntur Prabhakar, G. Pramod Kumar, Advs., for the Appellant.

B A. Venkateswara Rao, D. Mahesh Babu, Advs., for the Respondent.

The Judgment of the Court was delivered by

C. NAGAPPAN, J. 1. Leave granted.

C 2. This appeal is directed against the Judgment dated
D 2.7.2010 passed by the High Court of Andhra Pradesh affirming
E the conviction and sentence passed by the Additional Special
Judge for SPE and ACB cases, City Civil Court Hyderabad, whereby the appellant-accused has been found guilty of commission of offences under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The appellant-accused has been sentenced to undergo rigorous imprisonment for one year for each of the offences and also to pay a fine of Rs.1000/- in default to suffer simple imprisonment for three months.

F 3. The case of the prosecution is that the appellant-accused was, at the relevant point of time working as Deputy Tahsildar, Civil Supplies Mandal Revenue Officer, Kurnool in the State of Andhra Pradesh. The complainant PW-1 K. Sudhakar Reddy had a Fair Price Shop at Narsimha Reddy Nagar Kurnool. It is alleged by the complainant that the appellant-accused used to collect Rs.50/- per month from each fair price shop dealer in Kurnool as monthly mamool and when he
G visited the shop of the complainant on 17.9.1993 he demanded Rs.300/- towards the monthly mamools from April 1993 by threatening to seize the stocks and foist a case against him. As the complainant was not willing to pay the said amount he
H had approached PW-7, Deputy Superintendent of Police, ACB, Kurnool and submitted Exh.P.1 complaint in writing on

18.9.1993 to him.

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4. PW-7 the Deputy Superintendent of Police, registered a case and issued Exh.P.9 F.I.R. On 20.9.1993 he secured PW-2 N. Ravindranath Reddy, Senior Assistant in the office of State Housing Corporation, Kurnool and LW-3 Abdul Jallel, to act as Panch Witnesses and explained the significance of chemical test to them. He got the currency notes treated with phenolphthalein powder and entrusted the same to the complainant. Exh.P-3 is the pre-trap proceedings. They reached Mandāl Revenue Office Kurnool at 1.30 p.m. Thereafter, according to the prosecution the complainant relayed pre-arranged signal to them at 1.45 p.m. and they entered the office and sodium carbonate solution test was conducted on the right hand fingers of the accused as well as the left shirt pocket. Both the tests proved to be positive and tainted currency notes were recovered from the possession of the accused. On completion of investigation the sanction was obtained and charge-sheet was filed against the appellant-accused. The charges were framed to which the accused pleaded not guilty. In the trial PWs 1 to 8 were examined and Exh. P1 to P9 and M.Os 1 to 9 were marked on the side of the prosecution. The accused filed written statement and examined DWs 1 to 4 and marked Exh. D1 to D8 on his side. The plea of the accused was that target was fixed by the Department to collect contribution for purchase of National Savings Certificate and the amount that was given by the complainant was towards that only.

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5. We heard Mr. Guntur Prabhakar, learned counsel for the appellant and Mr. A. Venkateswara Rao, learned counsel appearing on behalf of the respondent-State. The complainant K. Sūdhakar Reddy was examined as PW-1 and he did not support the prosecution case. He has testified that Exh.P-1 complaint is in his hand writing but the contents are not true

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A and he wrote the same as dictated by the ACB officials and he gave the amount of Rs.300 to the accused with a request to purchase National Savings Certificates. The prosecution declared him as hostile. PW-2 N. Ravindranath Reddy, the Panch witness had testified that he was summoned by PW-7
B DSP E. Damodar on 20.9.1993 and he went through the complaint and verified the contents from the complainant who acknowledged the fact that the accused had demanded a sum of Rs.300/- as illegal gratification. Though the complainant did not support the prosecution case it is on the aforesaid basis
C the trial court as well as the High Court held the offences as proved and in doing so they have also relied on the legal presumption under Section 20 of the Act.

D 6. The prosecution examined the other fair price shop dealers in Kurnool as PWs 3, 4 and 6 to prove that the accused was receiving monthly mamools from them. PWs 4 and 6 did not state so and they were declared hostile. PW-3 though in the examination-in-chief stated so, in the cross-examination
E turned round and stated that the accused never asked any monthly mamool and he did not pay Rs.50/- at any time. The prosecution has not examined any other witness present at the time when the money was demanded by the accused and also when the money was allegedly handed-over to the
F accused by the complainant. The complainant himself had disowned his complaint and has turned hostile and there is no other evidence to prove that the accused had made any demand. In short there is no proof of the demand allegedly made by the accused. The only other material available is the recovery
G of the tainted currency notes from the possession of the accused. The possession is also admitted by the accused. It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine-qua-non to constitute the said offence.
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The above also will be conclusive insofar as the offence under Section 13(1)(d) 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. 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. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of three-Judge Bench of this Court in B. Jayaraj vs. State of Andhra Pradesh [(2014) 13 SCC 55] and P. Satyanarayna Murthy vs. The District Inspector of Police and another [(2015 (9) SCALE 724)].

7. In the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent. The judgments of the Courts below are, therefore, liable to be set aside. For the aforesaid reasons the appeal is allowed and the conviction of the appellant under Section 7 and under Section 13(1)(d) read with Section 13(2) of the Act and the sentences imposed are set aside and he is acquitted of the charges. The bail bond, if any, furnished by the appellant be released.

Kalpana K. Tripathy

Appeal allowed.