NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 31 OF 2009

P. SATYANARAYANA MURTHY ...APPELLANT

VERSUS

THE DIST. INSPECTOR OF POLICE AND ANR. ...RESPONDENTS

J U D G M E N T

AMITAVA ROY, J.

The instant appeal calls in question the judgment and order dated 25.4.2008 rendered by the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 262 of 2002, sustaining the conviction of the appellant under Section 13(1)(d)(i) & (ii) read with Section 13(2) of the Prevention of Corruption Act 1988 (for short hereinafter referred to as "the Act") and sentence thereunder, however setting aside his conviction and sentence under Section 7 of the Act.

2. We have heard Mr. A.T.M. Ranga Ramanujam, learned senior counsel for the appellant and Ms. Prerna Singh, learned counsel for the respondents.

3. The prosecution case stems from a complaint laid by one S. Jagan Mohan Reddy (since deceased) to the Deputy Superintendent of Police, Anti Corruption Bureau, Kurnool alleging that the appellant who, at the relevant time was the Assistant Director, Commissionerate of Technical Education, Hyderabad had on 3.10.1996 demanded by way of illegal gratification Rs. 1000/- for effecting renewal of the recognition of his (complainant) typing institute, being run in the name and style of Rama Typewriting Institute in Laxminagar B. Camp, Kurnool since 1992. The complaint disclosed that on negotiation, the demand was scaled down to Rs. 500/- and the appellant asked him (complainant) to meet him on 4.10.1996 in Room No. 68 of Meenakshi Lodge, Kurnool with the money demanded. Acting on the complaint, a case was registered and a trap was laid on 4.10.1996 and

the tainted currency notes were recovered, in the process thereof, from the possession of the appellant. On completion of the investigation, charge-sheet was filed against the appellant, whereafter the charges under Sections 7 & 13(1)(d)(i) & (ii) read with Section 13(2) of the Act were framed against him to which he pleaded "not guilty". At the trial, the prosecution examined seven witnesses and also adduced documentary evidence in support of the charges. As the complainant- S. Jagan Mohan Reddy had expired prior thereto, he could not be examined by the prosecution.

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4. After the closure of the evidence of the prosecution, the appellant was examined under Section 313 Cr.P.C. and was confronted with all the incriminating materials brought on record. He, however, denied the same.

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5. The learned trial court, on an elaborate analysis of the evidence available, convicted the appellant under Sections 7 and 13(1)(d)(i) & (ii) read with Section 13(2) of

the Act and sentenced him to undergo R.I. for one year on each count and to pay fine of Rs. 1000/-, in default to suffer S.I. for three months for each offence. The sentences of imprisonment were, however, ordered to run concurrently.

6. As adverted to hereinabove, the High Court in the appeal preferred by the appellant, while upholding his conviction under Section 13(1)(d)(i) & (ii) read with Section 13(2) of the Act, did set at naught his conviction under Section 7 of the Act. The sentence qua his conviction under Section 13(1)(d)(i) & (ii) read with Section 13(2) of the Act was, as a corollary, sustained.

7. The learned senior counsel for the appellant has insistently urged that the prosecution had failed to prove any demand for the alleged illegal gratification involved and, thus, the vitally essential ingredient of the offences both under Sections 7 and 13 of the Act being conspicuously absent, the appellant ought to have been acquitted of the charge on both counts. The learned senior

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counsel has maintained that even assuming without admitting that the recovery of the tainted notes from the appellant had been established, sans the proof of demand which is a sine qua non for an offence both under Sections 7 and 13 of the Act, the appellant's conviction as recorded by the High Court is on the face of the record unsustainable in law and on facts. Without prejudice to the above, learned senior counsel has asserted that the money shown to have been recovered from the possession of the appellant was by no means an illegal gratification demanded by him, but was towards fees for renewal of the recognition of the complainant's typing institute together with penalty and incidental expenses, and thus, his conviction under Section 13(1)(d)(i) & (ii)) read with Section 13(2) of the Act as sustained by the High Court, if allowed to stand, would result in travesty of justice.

8. Learned senior counsel for the appellant to buttress his contentions, placed reliance on the decision of

this Court in ***B. Jayaraj vs. State of Andhra Pradesh*** (2014) 13 SCC 55.

9. Learned counsel for the State, as against this, has assiduously argued that the evidence of the prosecution witnesses, taken as a whole, demonstrably proved the demand, receipt and recovery of the illegal gratification sought for and as such no interference with the appellant's conviction is warranted. According to the learned counsel, having regard to the office held by the appellant at the relevant point of time, he was even otherwise not authorized to receive any deposit towards the renewal of recognition of the complainant's typing institute and that the evidence adduced by the prosecution did prove the complicity of the appellant in the offence for which he has been charged, beyond a reasonable doubt. In reinforcement of her pleas, learned counsel has drawn our attention to the relevant excerpts of the evidence on record more particularly that of PW1-S. Udaya Bhasker and PW3-G. Sudhakar.

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10. Learned counsel for the respondents sought to distinguish the decision rendered in *B. Jayaraj* (supra) contending that in the face of persuasive evidence of demand on record, the same is of no avail to the appellant.

11. The materials on record have been duly traversed by us in order to adequately appreciate and weigh the competing contentions. Though dealt with exhaustively by the two courts below, having regard to the profuse reference to the evidence on record made in the course of the arguments, we consider it to be apt to advert thereto in bare essentials and to the extent indispensable. Admittedly, the complainant S. Jagan Mohan Reddy, the then Principal of the Rama Typewriting Institute, Laxminagar, B. Camp, Kurnool could not be examined as a witness for the prosecution, as he had expired before the trial. To reiterate, in his complaint lodged with the Deputy Superintendent of Police, Anti Corruption Bureau, Kurnool Range, Kurnool on 3.10.1996, he alleged that on the same date, the appellant, who was then the Assistant Director,

Commissionerate of Technical Education, Hyderabad, had visited his institute and had pointed out that because of his omission to file an application for renewal of recognition thereof for the year 1997, cancellation of recognition would ensue resulting in loss of seniority of the institute. According to the complainant, situated thus, he requested for the assistance of the appellant who assured that it would be possible only if he was paid Rs. 1000/-. According to the complainant, he pleaded his inability to pay such amount. On this, the appellant reduced his demand to Rs. 500/- and instructed him (complainant) to meet him on 4.10.1996 in Room No. 68, Meenakshi Lodge, Kurnool along with challan of Rs. 360/-, being Rs. 60 as renewal fee and Rs. 300 as penalty. The complainant, being disinclined to pay the illegal gratification as demanded, lodged a complaint with the Deputy Superintendent of Police, Anti Corruption Bureau, Kurnool and sought action against the appellant.

12. After registering the complaint, the investigating agency initiated a proceeding for laying a trap on 4.10.1996 at the venue indicated by the appellant. In the course of preparatory steps, five currency notes of denomination of Rs. 100/- were arranged on which phenolphthalein powder was applied and were handed over to the complainant to be paid to the appellant on demand. PW1-S. Udaya Bhaskar was identified to accompany the complainant as an aspiring owner of a new proposed typewriting institute. The members of the trap team were briefed accordingly and instructions were given to the complainant to flag a signal in time for the interception of the appellant after he had received the tainted notes. Accordingly, the complainant accompanied by PW1-S. Udaya Bhaskar went to the place agreed upon i.e. Room No. 68, Meenakshi Lodge, Kurnool on 4.10.1996 with the trap team waiting outside for the signal to intervene. According to the prosecution, the complainant and PW1-S. Udaya Bhaskar did meet the appellant in Room No. 68, Meenakshi Lodge, Kurnool and on reaching the room, the complainant gave one renewal

application along with the challan to the appellant who enquired as to whether he (complainant) had brought the amount which he had directed him to bring on the previous day. On this, the complainant took out Rs. 500/- from the pocket of his shirt on which the phenolphthalein powder had been applied and handed over the same to the appellant. The prosecution version is that the appellant, accordingly, kept the amount in the pocket of his shirt and it was then on signal being received by the trap team, he was intercepted and apprehended with the money accepted by him.

13. PW1-S. Udaya Bhaskar has stated on oath that at the relevant point of time, he was the Assistant Engineer in Panchayat Raj Department, Orvakal and that as planned by the investigating agency to entrap the appellant, he along with the complainant had gone to room No. 68, Meenakshi Lodge, Kurnool on 4.10.1996 for meeting the appellant. Both of them entered into the room of appellant, whereupon the complainant handed over one

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renewal application along with the challan to the appellant. This witness stated that on this, the appellant enquired as to whether the complainant had brought the amount which he had directed him to bring on the previous day. The witness stated that the complainant then took out the currency notes amounting to Rs. 500/- from the pocket of his shirt as arranged and did hand over the same to the complainant, who after counting the same, kept those in the pocket of his shirt. The witness also testified, that he then told the appellant that he too had started a typing institute and would require a license. The appellant, in reply, asked him to do the needful as others had been doing. According to this witness, while he was talking to the appellant, as previously arranged, the complainant signalled the trap team, whereupon the appellant was apprehended and the currency notes were recovered from him. On verification, the said notes tallied with those which had been decided to be used in the trap operation. The fingers of the hands of the appellants, when dipped in the sodium carbonate solution also turned pink. The

pocket of the shirt of the appellant, as testified by this witness, also turned pink when rinsed in sodium carbonate solution.

14. The evidence of PW3-S. Sivaiah Naidu is to the effect that he, on 6.8.1996 had made an application to the Technical Board for recognition of his institute, whereafter on 3.10.1996, the appellant in the capacity of Assistant Director of Technical Education, inspected his institute and verified all records. According to this witness, when he enquired about the recognition certificate, the appellant stated that unless some amount was paid to him way of gratification, he would not issue the recognition certificate. The witness alleged that he too was asked to meet the appellant in Room No. 68, Meenakshi Lodge,Kurnool at 8.30 P.M.

15. PW7-Iliyase Sait, who at the relevant time was posted as Deputy Superintendent of Police, Kurnool Range, Kurnool, in his evidence narrated in detail the steps taken to arrange for the trap to nab the appellant, instructions

to the members of the trap team, recovery of five currency notes amounting to Rs. 500/- smeared with phenolphthalein powder from the possession of the appellant and submission of charge-sheet against him on completion of the investigation.

16. The evidence of other witnesses being not essentially related to the aspect of demand, receipt and recovery of the amount of illegal gratification with which the appellant had been charged, does not call for a detailed reference.

17. It is expedient at this juncture to set out the relevant extracts of Sections 7 (as it stands today) and 13 of the Act under which the appellant had been charged.

> **"7. Public servant taking gratification other than legal remuneration in respect of an official act:** Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or

attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than [three years] but which may extend to [seven years] and shall also be liable to fine."

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"**13. Criminal misconduct by a public servant**

(1) A public servant is said to commit the offence of criminal misconduct,-

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(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage;"

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18. This Court in ***A. Subair vs. State of Kerala*** (2009)6 SCC 587, while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(d) of the Act

ruled that the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction.

19. In ***State of Kerala and another vs. C.P. Rao*** (2011) 6 SCC 450, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in *B. Jayaraj* (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand

would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder.

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23. The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW1-S. Udaya Bhaskar. The substance of his testimony, as has been alluded to hereinabove, would disclose qua the aspect of demand, that when the complainant did hand over to the appellant the renewal application, the latter

enquired from the complainant as to whether he had brought the amount which he directed him to bring on the previous day, whereupon the complainant took out Rs. 500/- from the pocket of his shirt and handed over the same to the appellant. Though, a very spirited endeavour has been made by the learned counsel for the State to co-relate this statement of PW1- S. Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap operation and also the chemical reaction of the sodium carbonate solution qua the appellant, we are left unpersuaded to return a finding that the prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of PW1- S. Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal gratification as enjoined by law to hold that the offence under Section 7 or 13(1)(d)(i)&(ii) of the Act has been proved. True it is, that on the demise of the

complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 3.10.1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e. 4.10.1996. However, the testimony of PW1-S. Udaya Bhaskar does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under Section 7 or 13(1)(d)(i)&(ii) of the Act against the appellant has been proved beyond reasonable doubt.

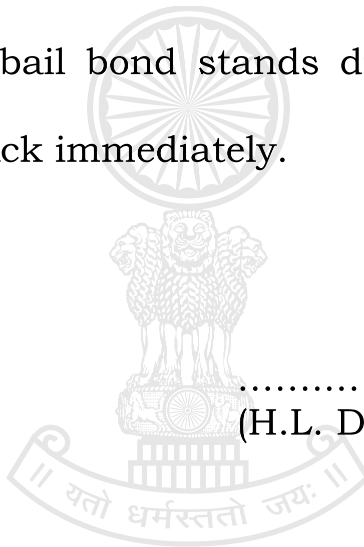
24. In our estimate, to hold on the basis of the evidence on record that the culpability of the appellant under Sections 7 and 13(1)(d)(i)&(ii) has been proved, would be an inferential deduction which is impermissible in law. Noticeably, the High Court had acquitted the appellant of the charge under Section 7 of the Act and the State had accepted the verdict and has not preferred any appeal against the same. The analysis undertaken as

hereinabove qua Sections 7 and 13(1)(d)(i)&(ii) of the Act, thus, had been to underscore the indispensability of the proof of demand of illegal gratification.

25. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in ***Sujit Biswas vs. State of Assam*** (2013)12 SCC 406 had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.

26. The materials on record when judged on the touch stone of the legal principles adumbrated hereinabove, leave no manner of doubt that the prosecution, in the instant case, has failed to prove unequivocally, the

demand of illegal gratification and, thus, we are constrained to hold that it would be wholly un-safe to sustain the conviction of the appellant under Section 13(1)(d)(i)&(ii) read with Section 13(2) of the Act as well. In the result, the appeal succeeds. The impugned judgment and order of the High Court is hereby set-aside. The appellant is on bail. His bail bond stands discharged. Original record be sent back immediately.



……………………………….CJI.
(H.L. DATTU)

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(V. GOPALA GOWDA)

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……………………………….J.
(AMITAVA ROY)

NEW DELHI;
SEPTEMBER 14, 2015.