

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE N.K.SUDHINDRARAO

CRIMINAL APPEAL No.1322/2016

BETWEEN:

STATE OF KARNATAKA
REPRESENTED BY POLICE INSPECTOR
KARNATAKA LOKAYUKTHA
HASSAN - 573 201. ..APPELLANT

(BY SRI VENKATESH S ARBATTI, SPP)

AND:

SRI SHIVEGOWDA
SON OF SRI JAVAREGOWDA
AGED ABOUT 45 YEARS
SECRETARY, GRAMA PANCHAYATH
KABBALLI, HIRISAVE HOBLI
CHANNARAYAPATNA TALUK
HASSAN DISTRICT - 573 116. ..RESPONDENT

(BY SRI VEERANNA G TIGADI, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) CR.P.C.PRAYING TO GRANT LEAVE TO FILE THE APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED:23.02.2016 PASSED BY THE PRINCIPAL SESSIONS JUDGE AND SPECIAL JUDGE, HASSAN IN SPECIAL CASE No.56/2012-ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE PUNISHABLE

UNDER SECTION 7, 13(1)(d) R/W SECTION 13(2) OF THE PREVENTION OF CORRUPTION ACT, 1988.

THIS CRIMINAL APPEAL COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Appeal is directed against the Judgment dated 23.02.2016 passed in Special Case No.56/2012 by the learned Principal Sessions Judge and designated Special Judge under the Prevention of Corruption Act, 1988. Appeal is by the State of Karnataka represented by Police Inspector, Karnataka Lokayuktha, Hassan.

2. Appeal is against the Judgment of acquittal passed by the learned trial Judge in Special Case No.56/2012 dated 23.02.2016 wherein the accused person Shivegowda, S/o Javaregowda was found not guilty of the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

3. Learned SPP Sri Venkatesh S. Arbatti represents State-appellant and Sri.Veeranna G. Tigadi, learned counsel represents accused-respondent.

4. The substance of the case of the prosecution is that the complaint is dated 22-07-2010, complainant Honnegowda, is a resident of Mookikere Village and he resides there with his family and engaged in agriculture. He had no house of his own and a Janata house was sanctioned in the name of his wife Kempamma from Kabbalii Grama Panchayath after he submitted the necessary documents. In this connection at the time of issuing a cheque for Rs.12,000/- towards first installment, Secretary of the said institution Shivegowda demanded Rs.2,000/- and complainant assured Shivegowda that he will pay the bribe amount at the time of receiving the cheques towards second and third installments.

5. Complainant and his wife went to the Panchayath office on 19.07.2010 to enquire about the grant. At that time Secretary, Shivegowda demanded Rs.2,000/- as bribe and also stated since the complainant did not pay the bribe amount to the accused he would not prepare the bill for issuance of cheque. The complainant was not interested in paying the bribe amount, he approached Lokayuktha Police and requested them to take action against the public servant who demanded bribe. The Lokayuktha Police received the complaint and registered a case in Crime No.12/2010 against the accused for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

6. Rest of the matter is, formalities were conducted, the trap mahazar as provided by the acceptable procedure was held on 22.07.2010 in the

office and on the same day at 3.35 P.M. accused was caught red handed accepting the bribe. Trap mahazar was conducted, accused demanded and received the amount of Rs.2,000/- as illegal gratification from complainant for doing his official duty being a public servant.

7. Learned Special Judge framed charge against the accused and it was read over to him and he pleaded not guilty.

8. Learned trial Judge framed following points for consideration of the case of the prosecution and accused.

“(1) Whether the accused was a public servant as on 22.07.2010?

(2) Did prosecution obtain valid sanction for subjecting the accused to prosecute?

(3) Whether the prosecution has proved beyond reasonable doubt that, the accused being a public servant, working as Secretary, Grama Panchayath Kabbali, demanded the bribe

amount of Rs.2,000/- from the complainant, who is the husband of CW.4, as illegal gratification other than legal remuneration for doing an official act i.e., for issuing 2nd and 3rd installment cheque in respect of construction of Janatha House, which is allotted to CW.4 and on 22.07.2010 at about 3.35 p.m., accused received bribe in a sum of Rs.2,000/- from the complainant and thereby committed the offence punishable under Section 7 of the Prevention of Corruption Act, 1988?

4. Has the prosecution further proved beyond reasonable doubt that, accused being a public servant, working as Secretary at Kabbali Grama Panchayath, on 22.07.2010 at about 3.35 p.m. accused received bribe, in a sum of Rs.2,000/- from the complainant in the presence of CW.3 Smt.Savithramma as illegal gratification other than legal remuneration as a motive for doing an official act i.e., for issuing 2nd and 3rd installment cheque in respect of construction of Janatha House, which is allotted to CW.4 and thereby committed an offence punishable under Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988?

5. Whether the defence of the accused is true and probable?

6. What order regarding disposal of material objects?

7. What order?"

9. Learned Special Judge was accommodated with the oral evidence of

PW-1 –Honnegowda-complainant, hostile
PW-2 – S.T.Anjankumar –Sanctioning Authority
PW-3 – S.Rangaiah–Junior Engineer, PWD,
C.R.Patna

PW-4- Manjunatha S., Regional Chemical
Examiner, Chikkamagalore

PW-5 –Shivayogi Bheemappa Ullagaddi,
Panch witness
PW-6 – Savithramma, Shadow Witness
PW-7 – Harish R., independent witness
PW-8 – P.L.Rudramuni, I.O.,

Documentary evidence Exhibits P-1- Complaint,
P-1(a) to P31 and M.O.1 to M.O.10 were marked on
behalf of the complainant which are as under:

“Ex.P.1 - Complaint
Ex.P.1(a) - Signature of P.W.1
Ex.P.2 - Entrust Mahazar
Ex.P.2(a-c) - Signature of P.W.1
Ex.P.2(d) - Signature of P.W.2
Ex.P.2(e) - Signature of P.W.6
Ex.P.3 - Trap Mahazar
Ex.P.3(a-c) - Signature of P.W.1
Ex.P.3(d) - Signature of P.W.2
Ex.P.3(e) - Signature of P.W.6
Ex.P.4 - Signature of P.W.1
Ex.P.5 - Sanction order
Ex.P.5(a) - Signature of P.W.2
Ex.P.6 - Another Sanction Order

- Ex.P.6(a) - Signature of P.W.2
- Ex.P.7 - Sketch
- Ex.P.71(a) - Signature of P.W.3
- Ex.P.8 - FSL Report
- Ex.P.8(a) - Signature of P.W.4
- Ex.P.9 - First Information Report
- Ex.P.9(a) - Signature of P.W.8
- Ex.P.10 - Charge Sheet
- Ex.P.10(a) - Signature of P.W.8
- Ex.P.8(a) - Signature of P.W.4
- Ex.P.10 - Charge sheet
- Ex.P.10(a) - Signature of P.W.8
- Ex.P.11 to 29- Photos
- Ex.P.30 - Attendance Register
- Ex.P31 - Seizer Mahazar
- Ex.P.31(a) - Signature of P.W.6"

- "M.O.1 - Seal
- M.O.2 - Bottle containing the resultant wash of both the hands of P.W.5

- M.O.3 - Bottle containing the resultant wash Of the right hand of accused.
- M.O.4 - Bottle containing the resultant wash Of the left hand of accused.
- M.O.5 - Bottle containing the resultant wash of the pant of accused

- M.O.6 - Distilled Water.
- M.O.7 - Phenolphthalein powder
- M.O.8 - Carbonate powder
- M.O.9 - Pant
- M.O.10 - Currency notes."

On behalf of the defence oral evidence of DW-1-Venkateshaiah and documents Ex.R-1 to R-5 were marked which are as under:

“Ex.R.1 - Portion Statement of PW.5
Ex.R.2 - Another Portion Statement of PW.5
Ex.R.3 - Portion Statement of PW.6
Ex.R.4 - Letter dated 01.07.2010
Ex.R.4(a)- Signature of DW.1
Ex.R.5 - Memo dated 29.06.2010”

At the end of the trial learned Special Judge found the accused not guilty and acquitted him of the charge.

10. Learned counsel for appellant-State Sri.Venkatesh S. Arbatti submits that prosecution through witnesses, oral evidence and documents with their reference have proved the commission of both the offences by the accused without any doubt. The substance and factors present ipso facto tells the case of the prosecution is established. He would further submit that the complainant turning back by becoming

hostile does not change the nature of the case or the impact that was already exposed.

11. The tone and tenor of the oral evidence of the complainant who is PW-1 when contextually read, it tells that he is obviously lying before the court. Apart from that he ventures to plan his own story before the court. It was also submitted that the shadow witness PW-6 is nowhere interested either in the prosecution or accused and her version cannot be viewed with a presumption that she is telling lie. Accidental slipperiness may be common. But they do not take away the case of the prosecution. On the other hand learned prosecutor submits complaint, circumstances, evidence of the complainant, evidence of shadow witness, trap mahazar explanation of the accused being absent tell a lot upon the case. He would further submit that accused is not a rustic villager.

12. Learned counsel Sri.Veeranna G. Tigadi for accused-respondent would submit that it is established principle that once complainant has not supported the case, case of the prosecution is bound to fail because the case that was triggered and proceedings initiated were at the instance of the complainant and on basis of the complaint. When the complainant who actually presents the case turns hostile even during cross examination by learned counsel for complainant he stick to guns. As such the sting out of the prosecution case in the form of complainant's hostility is taken out and damage is done. He would also submit that the shadow witness has over reached the norms prescribed. On the other hand she not once but on several times tells accused demanded bribe. Further none of the witnesses except investigating officer tell about the incriminating circumstances in particular against the accused. In the

circumstances it is the duty of the court to evaluate the factors before it and find out whether the accused has been proved guilty by the prosecution beyond reasonable doubt for the offence punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

13. The Prevention of Corruption Act, 1988 which is modified version right from earlier anti corruption laws has faced sea of changes, now we have it in the form of the Prevention of Corruption Act, 1988 with amendment dated 26.07.2018. Some of the hallmark of the Prevention of Corruption Act, 1988 is definition of 'public servant', 'demand', 'bribe', 'competent authority for issuing sanction' etc. Further in the said Act it is aimed at corrupt public servant except one or two sections including 8 of the said Act proceedings could be invoked against the private people also when

they influence a form of instigation to enable the accused to demand and to receive bribe. In the present case the main factors that come for consideration is public servant, issue of sanction, competent authority, demand, pendency of work, receipt of cash by way of illegal gratification and other supporting material factors and Section 20 and also presumption.

14. In the present case complaint was lodged by PW-1- Honnegowda, 55 years, S/o Gangegowda with Lokayukta police and complaint is marked as Ex.P-1 it is dated 22.07.2010. The point that trigger from the complaint is that he is a resident of Mookikere, agriculturist staying with his family. The total amount sanctioned is Rs.40,000/- and it was supposed to be paid depending on the progress in work. He had gone to office of Panchayath to receive first installment of

Rs.12,000/-. At that time the complainant was accompanied by his wife as well. The Secretary Shivegowda insisted and demanded for a bribe of Rs.2,000/-. However, he was requested to spare time till the receipt of the second and third installments and as the amount of Rs.2,000/- was not paid by complainant he could not get the amount of second installment. With that beginning a criminal case came to be registered in Crime No.12/2010 on 22.07.2010 at 12 P.M. Of course the jurisdictional Judge has received the same at 8.30 P.M.

15. Insofar as next procedure of entrustment mahazar is concerned it is conducted at Lokayukta office at Hassan on 22.07.2010 it is marked as Ex.P-2. Witnesses secured for the said mahazar is S.B.Ullagaddi, S/o Bheemappa Ullagaddi, aged 32 years, First Division Assistant, office of the District

Backward class and Minority class Welfare Department, Kuvempunagar, Hassan, residing at opposite to P and T colony, Shankarapuram, Hassan and another witness is Smt.Savithramma, W/o Manjunath, aged 32 years, typist, office of the Controller of Co-operative Society, Kuvempunagar, Hassan, residing at No.719, 8th Cross, K.R.Puram, Hassan.

16. Entrustment mahazar is marked as Ex.P2 and the persons who are present are: S.B. Ullagaddi and G.P.Savithramma. It was conducted on 22-07-2010 in the Lokayukta Office at Hassan. The necessary formalities regarding introduction of the witnesses to the complainant and the purpose were explained. The complainant also produced currency notes of Rs.500 x 4 they were verified by the witnesses, numbers were noted, thereafter spread over phenolphthalein powder,

sodium carbonate solution was prepared, currency notes were smeared with phenolphthalein powder, with all necessary instructions currency notes were kept by the witness in the pocket of the complainant with necessary warning by the Lokayukta police not to touch that without reason and other required formalities of entrustment mahazar including that the amount of bribe demanded by the accused will have to be paid only in case demanded. Shadow witness Smt.Savithamma, PW6 was supposed to be along with the raid party which consisted of Police inspector and they went in the jeep and it was stopped close to the office of the accused and instructions were reminded to the complainant and the shadow witness. Totaliy in the entrustment mahazar, introduction of the witnesses, contents of the complaint, demanding for bribe, mutual introduction of one witness to another witness, responsibility of the complainant,

shadow witness, preparation of sodium carbonate solution smeared with phenolphthalein powder are made available to the respective parties. So far as drafting, insisting of complainant witnesses they left to the destination in the vehicle and the trap team was lead by Police inspector- Rudramuni and also there were other staff members. The complainant was instructed to pay the amount to the accused only in case demanded by him and shadow witness Savithramma was asked to observe the activities and tell the same to the Inspector later.

17. The trap team on the said date i.e., on 22.7.2010 went by the official jeep bearing No.KA.01.G.4102 and it was about 3.20 p.m. when they reached Kabballi Village Panchayat. The instructions were reminded and complainant was instructed to pay the bribe only in case of demand and

pass on the signal by taking out the towel on the shoulder and to wave it. Thereafter, the complainant accordingly after going into the office of the accused came back and passed on the signal by waving the towel taking it out from his shoulder and thereby signaling that the accused demanded the bribe of Rs.2,000/- and he paid it. Trap team immediately rushed into the office, inspector introduced himself and the witnesses in the team and the staff were introduced and the name of the accused was asked he told he was Shivegowda son of Javaregowda, Secretary, Kabballi Village Panchayat. His both hands were held and sodium carbonate solution was prepared, it was colourless and the right hands of the accused were dipped in it and at that time colourless solution turned into pink colour. The solutions were seized in glass bottles, lidded and tied with thread and cloth. Similarly, the other bottle containing

ordinary solution was also seized. Thereafter, Police sub inspector asked the accused about the currency which he received from the complainant, accused took out the currency notes of Rs.500 x 4 and the serial numbers which were noted during the entrustment mahazar Ex.P2 were compared with those currency notes and it was tallied and it was seized as well as per article No.5. Thereafter, an alternative pant was arranged, accused was asked to remove his pant and wear the alternative pant and in the remaining solution right side pocket portion of the pant was dipped in the solution which turned out into pink colour, it was seized as item No.6 and 6(a). Later the investigating officer packed all the articles including the currency notes of 500 x 4 and ordinary sodium carbonate solution covered from tainted water etc. According to the prosecution, the trap mahazar was successful and the accused demanded bribe, accepted

and he was arrested. Further, accused was asked to give explanation. He does not have any explanation to tell regarding the incident dated 22.11.2010 and whatever he wants to say he would say in the court. Thereafter, the statement of the witnesses and others were recorded.

18. Out of 08 witnesses examined on behalf of prosecution, Savithamma who was examined as PW6 tells that at 3.20 p.m. she went into the office of the accused along with the complainant and as per the instructions, she stood at a distance and the complainant went inside the office and she stood near the window from where and complainant and accused both were visible. The complainant asked regarding Janatha house and the accused stated that first to give 2000 and thereafter bill will be prepared. The complainant stated that he is ready with the amount,

took out the currency and accused asked him to give it and the complainant after giving the same, signaled the trap team as indicated earlier. Insofar as amount is concerned, the accused received through right hand, counted it with both hands and kept it in the pocket. Shadow witness Savithamma tells that she has heard the conversation between the complainant and the accused, tainted currency notes were seized from the accused as per the procedure. The rest is, file pertaining to the transaction were seized and detailed mahazar was drawn. The file that was seized was bearing No.32/2009-10 and trap mahazar is a formality and explanation of each of the witnesses were explained and thereafter they have signed the mahazar.

19. Now so far as trap procedure is concerned, the prosecution went on step by step, procedure was followed and even statement of all the witnesses were

recorded, the purpose of the mahazar is also made known.

20. On conclusion of investigation, final report came to be filed for the offence punishable under Section 7 read with Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The relevant file was seized from the office of the accused regarding the work, exhibits includes attendant certificate to the effect that accused was present in the office on duty. Totally, to sum up, at this stage, demand regarding bribe was made by the accused and complainant was instructed to pay bribe of Rs.2,000/- and it was demanded for granting Rs.12,000/- from which complainant is entitled to construct a house with low cost. In this connection, complainant gave complaint, necessary formalities of securing two independent witnesses were done, complainant was asked to bring the currency of

2,000/- he brought the currency with the denomination of Rs.500 x 4. Necessary formalities of trap mahazar were completed. On the day of trap mahazar, the team led by Police Inspector went in a jeep to the office of the accused along with witness and shadow witness, complainant entered into the office. Complainant went near the accused and shadow witnesses stands near the window from where both the complainant and accused were visible and bribe amount was demanded by accused and thereafter, it was paid by the complainant and thereafter signal was passed on for further formalities as stated above. Thus, trap mahazar proceeding was completed.

21. So far as investigation is concerned, final report is filed, cognizance was taken, the learned Principal Sessions Judge and Special Judge raised seven points for consideration as mentioned above. Point

Nos. 1 and 2 raised by the Special Judge is whether he accused was a public servant as on 22.7.2010 and whether the prosecution obtained valid sanction for subjecting the accused to prosecute and answered them in the affirmative.

22. The other points which the learned Special Judge formulated was regarding demand, receipt or commission of offence and answered them in the negative and finally acquitted the accused of the offences alleged against him.

23. The offences alleged against the accused are punishable under Sections 7,13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Here it is necessary to mention the said provisions which read as under:

Section 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 six months but which may extend to five years and shall also be liable to fine.

(Explanations) —(a) “Expecting to be a public servant”. If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) “Gratification”. The word “gratification” is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) “Legal remuneration”. The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

Section - 13(1)(d)

13. Criminal misconduct by a public servant.—

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

(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; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

Section- 13(2)

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

24. The concept of admission cannot be through writing or through words only. Regard being had to the fact that, in this case admission is overlapping. Accused being the person who is working for public in the office of village panchayat and expecting the public to pay bribe, accepting the same is not permissible.

25. The complainant Honnegowda is examined as PW1. He takes U turn to his complaint. When it matters, substance according to the complainant is, his wife Kempamma has applied for sanction of house at Mookkinakere village under Ashraya scheme,

Government allotted one house and Secretary of Kabballi Grama Panchayat has paid Rs.12,000/- to his wife, house was constructed and accused told that he would give the amount after finishing construction in part. When they enquired with the accused about the remaining amount, he informed that Panchayat Development Officer will take steps to pay the same. PDO informed them that they will pay the remaining amount after payment of tax. He further states that, one person by name Kumar who died six months back from the date of giving evidence by PW1, took him to Lokayukta office, Hassan, collected 2,000/- rupees from him and again he came back, amount was returned and later he was taken to Kabballi Grama Panchayat office and when he was about to pay tax to the PDO, he was not present there, then he paid Rs.2,000/- was given to the accused towards kandaya/tax as he was due of Rs.1,600/-. Later some

persons came and held the accused and signatures were obtained. Thus, the very language of the complainant tells that the incident did not happen, there was no demand nor compliance and he says he gave amount to one Kumar who died recently i.e., six months back. Totally through telling false his version exposes him that he is hostile to the truth.

26. PW2-S.T.Anjani Kumar is the sanctioning authority for having given sanction as per Ex.P5 and corrected the sanction order.

27. PW3-B.S.Rangaiah is the Junior Engineer working in PWD and he deposes for having prepared the sketch as per Ex.P7.

28. PW4-Manjunatha, was working as Chemist at Chikmagalur he deposes regarding report given by him as per Ex.P8.

29. PW5-Shivayogi Bheemappa Ullagaddi, working as Clerk in BCM Office, Hassan is the trap witness. He tells about the entrustment mahazar. After the incident i.e. after getting the signal from the complainant they went inside the office of the accused, he was caught hold and was asked to give the currency notes, literally his hands were held, the explanation was asked from the accused. However, he did not give any explanation. He also tells about the activities regarding preparation of sodium carbonate solution, dipping the hands of the accused, seizing the colourless solution, tainted solution and right hand of the accused was dipped in the solution, packing seized articles in order.

30. PW6- Savithramma, SDA/Typist, working in the office of the Deputy Registrar of Co-operative Societies, Channarayapatna, who is the shadow witness to the case. She goes along with the complainant and her introduction to all are stated earlier. She tells about the procedure of entrustment mahazar is told by her chronologically. She identified the trap mahazar, lokayukta inspector collected the amount from the accused. This witness has referred the name of the complainant and accused in opposite manner. For example, in the entrustment mahazar, receiving two thousand from the accused in denomination of 500 and then using the same for the purpose. Thus uttering the word as accused for complainant contextually makes it clear that it is an accidental slip. She identifies entrustment mahazar and also the material objects. She tells about going to the office of the accused, herself and accused, herself

and complainant going inside the office of the accused, she was standing near the window, complainant requesting the accused to issue cheque, accused demanding bribe, complainant removed currency notes of two thousand and paid it to the accused, he collected, counted the notes and kept it in pocket, complainant came out and passed on the signal, the Lokayukta Inspector thereafter went inside. Lokayukta inspector introduced himself and caught hold the hands of the accused, chemical solution was prepared, it was colourless, turned into pink colour when the hands of the accused were dipped into it. Currency notes were removed, verified with the notes furnished and subjected to entrustment mahazar before lokayukta.

31. PW6 identifies the pant seized by the lokayukta under panchanama. She also tells about the

attendance register extract of the accused and further details. She has been cross examined at length. No significant contradictions are elicited.

32. PW7 Harish R. is the Panchayat Development Officer. He is a circumstantial witness. He neither helps the prosecution or the accused.

32. PW8-P.L.Rudramuni, Inspector who was present in the proceedings from the beginning of the proceedings till the end. He tells about the complaint given by the complainant on 22.7.2010 as per Ex.P1, FIR being registered as per Ex.P9. Thereafter, conducting entrustment mahazar after securing official witnesses following necessary formalities including preparation of chemical solution, conditions of the chemical effect i.e. colourless solution turned into pink, among the witnesses one witness Savithamma to go as shadow witness and another witness as

panch witness. The other aspects of directing the accused to produce the currency notes treating them with chemically by applying phenolphthalein powder. Both the witnesses and complainant were made aware of the effect of touching the currency, notes smeared with phenolphthalein powder and thereafter preparing sodium carbonate solution the effect would be colourless solution turns out into pink colour. By the deposition of this witness, it is clear that necessary formalities are followed.

33. In this case, accused has examined one Venkateshaiah as his defence witness. He says that he was working as Executive officer in Taluk Panchayat, Channarayapatna, in the year 2010 and Kabbali Grama Panchayat comes within their jurisdiction. Accused was working as Secretary of Kabbali Grama Panchayat. At that time, President is

one Nagarathnamma and PDO is one Harish and only president and PDO had authority to issue cheque. They have sent specimen signature of the PDO and the elected president of the panchayat to the bank and he has identified the same which is marked as Ex.D4 and as per the said document PDO had authority reported for duty on 25.6.2010.

34. In the circumstances, through the defence evidence accused wants to drive the point that accused was not a competent authority and he was only a Secretary. Then the first installment amount of cheque which was handed over by the accused will have to be answered. So far as authorization is concerned, the charter is amount was received, signing of the cheque denied, authorization letter with respect to financial matters and wrong utilization and its effect. It is for the bank to look into the same.

35. The scope of the present case is on the day of trap mahazar whether the accused demanded and received currency notes for doing official favour.

36. Regarding presumption, learned counsel for the accused/respondent relies on the judgment of the Hon'ble Apex Court in the case of **B. JAYARAJ VS. STATE OF ANDHRA PRADESH reported in (2014)13 Supreme Court Cases 55**, wherein, Head Note A reads as under:

"A. Public Accountability, Vigilance and Prevention of Corruption –Prevention of Corruption Act, 1988,- Ss. 7, 13(1)(d)(i) & (ii) and 20 -Conviction under – Reversal of, as demand of illegal gratification not proved."

Regarding presumption, it is necessary to mention Section 20 of the Prevention of Corruption Act. The said Section reads as under:

"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) of 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) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give 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.

(3) Notwithstanding anything contained in subsections (1) and (2), the court may decline to draw the presumption referred to in either of the said subsections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

The Hon'ble Apex Court in the said judgment has held in Paragraph-9 as under:

"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."

37. Insofar as present case is concerned, the evidence of the complainant has to be compared and evaluated with reference to the evidence of the shadow witness. Insofar as the percentage of evidence is concerned, what requires to appreciate an evidence is inspiring confidence. It is not a general appreciation of evidence wherein the majority of the witnesses supports the prosecution and other than the facts. It is not the case of evaluation of evidence. It is not that how many witnesses are spoken in favour of the prosecution or the accused, whose evidence and which documents inspire confidence to come to a conclusion that whether accused is guilty or not. Out of ten witnesses and 500 documents, two witnesses might have supported and 08 witnesses have turned hostile and their evidences are corroborated and substantiated by relevant documents which are of primary importance then we call it as inspiring

confidence. Even the concept of question of facts is that, it is set of incidents when selected and when they fall in row which tells that the accused is innocent i.e. the real benefit of doubt. On the other hand, when there is no chain of events falling in a row to show that accused is not innocent it cannot be said as benefit of doubt. It is not simply excluding two versions saying when two versions or inference are possible, one in favour of the accused and another one in favour of the prosecution and benefit of doubt is selecting the version in favour of the accused or prosecution.

38. The complainant uses so much of intelligence to turn the table as immediately he invents a person called Kumar, his friend took him to Lokayukta Office, asked him to pay two thousand rupees and went inside and came back and gave back Rs.2,000/- and

asked him to go to Panchayat Office, as he wanted to give it for tax and Rs.2,000/- he kept in pocket, complainant gave it to accused, some people came and held him. The evidence of PWs. 2,3,5,6 and 8 coupled with trap mahazar and entrustment mahazar inspires confidence. The theory of the complainant is blown out of air. To expose him he tells the name of the person as Kumar without full name and address, morefully according to him Kumar died three months back before recording his evidence, so he could not call him as a witness. This kind of theory of the complainant may be for several reasons, either it will be due to threatening or other financial work and whatever bad reasons which are not acceptable.

39. It is the case of the prosecution that, pocket of the pant of the accused was washed, his hands were washed chemical effect happened through change of

colour and states that he had not participated in the entrustment mahazar. He does not want to tell anything about the conversation which took place. Certain times, silence or no explanation turns risky to a person. When a person is supposed to talk, he stops he is dumb and when a person is supposed to listen he is a deaf.

40. When a person who is bound to and is in position to give explanation or offer explanation has to give it. When no explanation is given and explanation given by him proves to be false it lands in unacceptable position of guilt. In this connection, learned counsel for appellant relied on the following judgment of the Hon'ble Supreme Court in the case of **Vinod Kumar Vs. State of Punjab reported in AIR 2015 SC 1206.**

41. As I have stated above, the inspiring confidence is the crux of the ratio of the case. It does not depend purely on hostility. In this connection, the Apex court in the case of Hazari Lal Vs. The State (Delhi Admn..) reported in AIR 1980 Supreme Court 873 has held in paragraph No.10 as under:

"We will now refer to the two decisions of this Court on which Shri Frank Anthony relied. In Sita Ram v. The State of Rajasthan, (supra) the evidence of the complainant was rejected and it was held that there was no evidence to establish that the accused had received any gratification from any person. On that finding the presumption under s.4(1) of the Prevention of Corruption Act was not drawn. The question whether the rest of the evidence was sufficient to establish that the accused had obtained the money from the complainant was not considered. All that was taken as established was the recovery of certain money from the person of the accused and it was held that mere recovery of money was not enough to entitle the drawing of the presumption under s.4(1) of the Prevention of Corruption Act. The Court did not consider the further question whether recovery of the money alongwith other circumstances could establish that the accused had obtained gratification from any person. In the present case we have found that the circumstances established by the prosecution entitled the Court to hold that the accused

received the gratification from P.W.3. In *Suraj Mal v. The State (Delhi Administration)* (supra) also it was said mere recovery of money divorced from the circumstances under which it was paid was not sufficient when the substantive evidence in the case was not reliable to prove payment of bribe or to show that the accused voluntarily accepted the money. There can be no quarrel with that proposition but where the recovery of the money coupled with other circumstances leads to the conclusion that the accused received gratification from some person the Court would certainly be entitled to draw the presumption under s.4(1) of the Prevention of Corruption Act. In our view both the decisions are of no avail to the appellant and as already observed by us conclusions of fact must be drawn on the facts of each case and not on the facts of other cases. In other words there can be no precedents on questions of facts. The appeal is, therefore, dismissed."

42. The complainant turns hostile for the reasons best known to him. Hostility does not mean that a person who speaks against the prosecution as hostile. In the circumstances of the case, whether a person knows the truth and when he is expected to speak about the truth, but fails and speaks diagonally opposite. Speaking on oath itself is presumption of

truth i.e. when a person speaks two different versions on oath he would be treated as hostile. Just speaking against the prosecution in all the cases may not be called as hostile. Hostile means going against the event narrating about the incident and things which are purely within his personal knowledge. In the circumstances, the offence knowingly happened and amount may be Rs.2,000/-. The observation of the trial judge in paragraph No.11 does not convey anything regarding appreciation of evidence.

43. Insofar as the witness who is quoted as Kumar is concerned, he died six months earlier to the recording of the evidence of the complainant. The learned trial Judge goes on with a conclusion that the accused is innocent in paragraph No.15 of his judgment, when overwhelming evidence was in the line of prosecution charge and prosecution proves

beyond reasonable doubt that accused committed the offence. The learned trial judge failed to apply suitable principles of law in appreciating the evidence on the matter ignoring the complainant who turns hostile and it was intentional to save the skin of the accused and never cared to look into the evidence of PW6 and PW5. From the evidence of PWs 6 and 5 there is a direct corroboration between the complaint, entrustment mahazar and trap mahazar but only the hostility of the complainant cannot be having vetoing effect. Behind every offence there will be an offender. Court takes cognizance of the offence and not that of the offender. It is to be remembered that the complainant is not the holder of copy right for a criminal case. Hostility of the complainant does not mean that entire final report is hostile. In the circumstances, it is to be visualized whether complainant is rider like to some of the offences. For

example, adultery, cheating and the related. But not in all cases. For example, when a wife of a murdered person lodges a complaint and states that her husband was found murdered, later if she tells in the witness box that she has not given such a kind of complaint case cannot be dropped to the dustbin.

44. Just when a witness turns against the version what is contained may not be hostile, same thing applies to the statement of a person under Section 161 Cr.P.C or even when a person who is summoned as a witness without there being a statement.

45. Truth which is the unseparable part of justice whoever knows the truth and its consequences but wants to crush the truth to cause its disappearance causes hurt to justice and the truth. He is hostile. A hostile witness who speaks lie deliberately but he

knows the truth. This is what the complainant has done here. Hostile witness is one tries or makes money out of a crime committed by him or any other person.

46. Learned trial Judge erred seriously in properly applying the principles of law for appreciation of evidence. The judgment and order of acquittal passed by the learned trial judge is liable to be set aside and the accused is found guilty of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Hence, I proceed to pass the following:

ORDER

The appeal preferred by the State is hereby allowed.

The order of acquittal passed by the trial judge in Special Case No.56/2012 on 23-02-2016 is set aside.

The accused is found guilty and he is convicted for the offences punishable under Sections 7, 13(1)(d), read with Section 13(2) of the Prevention of Corruption Act, 1988.

The amendment to punitive Section under Prevention of Corruption Act came into force from 16-01-2014 wherein the minimum punishment for the offence punishable under Section 7 is three years and maximum is Seven years. Similarly, minimum imprisonment for the offence punishable under Section 13(1)(d) is four years and maximum is Ten years. But the amended provisions of imprisonment cannot be inflicted on the present case, because the date of offence is earlier to amendment. According to un-amended provision of law under Prevention of

Corruption Act, the minimum imprisonment for the offence punishable under Section 7 is six months and maximum is five years and for the offence under Section 13(1)(d), minimum is one year and maximum is seven years.

Learned counsel for accused would submit lenient view may be taken against the accused/respondent as he may lose his job. Considering the submissions and the circumstances, the accused is sentenced to undergo imprisonment of 7 months for the offence punishable under Section 7 and to pay a fine of Rs.2,000/- in default to undergo SI for 15 days and simple imprisonment for a period of 13 months for the offence punishable under Section 13(1)(d) of the Prevention of Corruption Act and to pay a fine of Rs.5,000/- and in default to undergo SI for two months.

Both the sentences shall run concurrently and period of judicial custody of the accused shall be given set off.

Send a copy of this judgment to the trial court.

**Sd/-
JUDGE**

SBN/tsn*