

State Rep. By Dy. Superintendent Of ... vs P. Venugopal, Si Of Police on 27 July, 2001

Equivalent citations: 2001(2)ALD(CRI)415, 2001(2)ALT(CRI)283, 2001CRILJ4891

ORDER

V. Eswaraiah, J.

1. The State filed these two criminal appeals against the judgment of the Special Judge For SPE & ACB Cases, Vijayawada made in CC.No.65 of 1992 dated 15.5.1995.
2. Crl.A.No.557 of 1995 is filed against the said judgment in acquitting the respondent P. Venugopal, S.I. of Police, Uppada Kothapalli, Pithapuram Mandal, East Godavari District (for short 'the AO') of the offences under Sections 7 and 13(1)(d)(ii) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act').
3. Crl.A.No.558 of 1995 is filed against the said judgment in rejecting the application of the Special Public Prosecutor under Section 340 Cr.P.C. to take necessary steps to prosecute the respondent herein (PW-1) for committing the offence of perjury.
4. The Deputy Superintendent of Police, Anti-Corruption Bureau, Rajahmundry filed a charge-sheet alleging that one Pasupuleti Venkata Lakshmi (PW-1) W/o Arjuna Rao resident of Uppada Kothapalli in Pithapuram Mandal presented a report in Uppada Kothapalli Police Station on 11-11-1991 with a specific allegation of theft of 6,100 bricks from the premises of her house. In that regard, she indicated the name of K. Tatamma @ Thata Rao as the person responsible for commission of theft. The AO was working as SI of Police, Uppada Kothapalli Police Station. The AO sent for Tatamma; and on interrogation, Tatamma admitted the commission of offence; and the AO, without registering the case, made an attempt to compromise the matter between the culprit Tatamma and PW-1. But, the said compromise was not fructified. In an effort to adjust the matter, the AO called PW-3, the husband of PW-1, and gave Rs.200/- as part-payment towards the adjusted amount and wanted him to go and give the same to his wife (PW-1). But, PW-1 insisted for the payment of Rs.2,000/- towards the value of 6,100 bricks and refused to accept Rs.200/-. She did not agree for the compromise of taking Rs.1,100/- from the culprit Tatamma as suggested by the AO. As the compromise proposal was not accepted by PW-1, the husband of PW-1 (PW-3) was asked to return the amount to PW-4, Penke Musalayya, who is said to have been the mediator for the said compromise. The AO was requested to do justice by getting her Rs.2,000/-, which was the cost of the bricks.

5. It is the further case of the prosecution that the AO demanded Rs.300/- from PW-1 for the recovery of money or property from Tatamma; and on pleading her inability to give Rs.300/-, he reduced the demand from Rs.300/- to Rs.200/-. But, PW-1 declined to give the said amount and she made a statement to PW-9 (DSP, ACB, Rajahmundry) on 27.11.1991; and the same was reduced to writing, which is marked as Ex.P-15. On the said report, PW-9 registered a case in Cr.No.4/Rc.Rjy/91 and issued FIR under Ex.P-16. The AO was successfully trapped in his residence on 28.11.1991 at about 2.30 P.M., when he demanded and accepted a sum of Rs.200/- from PW-1. The chemical test was positive and the tainted money was recovered from the money-purse of the AO placed on the Television (for short 'the TV). The explanation given by the AO was not acceptable. After getting the sanction to prosecute the AO (Ex.P-20), the charge-sheet was filed to punish the AO for the commission of the offences under Sections 7, 11 and 13(2) read with 13(1)(d) of the Act.

6. After furnishing all the documents to the AO, he was examined under Section 239 Cr.P.C. He denied the allegations as false. The following two charges are framed against the AO:-

"FIRSTLY:- That you on 28-11-91 at about 2-30 P.M., at your residence bearing door No.3-2-56 in Mangarayapeta at Saibaba Temple Street, Pithapuram, being a public servant namely Sub-Inspector of Police of Uppada Kothapalli Police Station, demanded and accepted Rs.200/- from Smt. Pasupuleti Venkata Lakshmi for yourself as illegal gratification other than legal remuneration for doing favour in exercise of your official functions and thereby committed an offence under section 7 of the Prevention of Corruption Act and within my cognizance.

SECONDLY:- That you on 28-11-91 at about 2-30 P.M., at your residence bearing door No.3-2-56 in Mangarayapeta at Saibaba Temple Street, Pithapuram, being a public servant namely Sub-Inspector of Police of Uppada Kothapalli Police Station, demanded and accepted Rs.200/- from Smt. Pasupuleti Venkata Lakshmi for yourself as illegal gratification other than legal remuneration by abusing your position as public servant obtained for yourself Rs.200/- as pecuniary advantage and thereby committed an offence punishable under Section 13(1)(d)(ii) read with 13(2) of Prevention of corruption Act, 1988 and within my cognizance."

7. In order to prove the prosecution case against the AO, PWs.1 to 9 are examined, and documents Exs.P-1 to P-20 are marked and Material Objects MOs.1 to 8 are marked.

8. The AO was asked to explain the incriminating circumstances appearing in the evidence adduced by the prosecution under Section 313 Cr.P.C. The AO has not examined any witness on his behalf, but he has filed a written statement.

9. On the oral complaint made by PW-1 to the DSP, ACB, Rajahmundry (PW-9), he reduced the statement of PW-1 into writing on 27.11.1991, which is marked as Ex.P-15. As per Ex.P-15, she is the wife of PW-3 and her husband is doing cooli work and she is doing household work and they are having a tiled house. Four months back, for construction of compound wall around their house, they purchased 13,200 bricks at the rate of Rs.360/- per 1000 bricks from Challadi Babu Rao and piled

them up near their house. One week later, when her husband got heart-attack, he was admitted in Kakinada General Hospital and stayed there more than one month, and her daughter Anantha Lakshmi (PW-2) and other children stayed in the house. She brought her husband to the house on the previous day of Vinayaka Chavithi Festival and found half of the bricks piled were missing. When she questioned her daughter (PW-2), she told that a person by name Tatamma of Kondevaram came in the morning of that day and took away bricks by speaking deceitful words (that he purchased the bricks). When bricks were counted, it was found that they were less by 6,100 and its worth is about Rs.2,000/-. When she questioned Tatamma, he stated that he did not take them at all. Finding no alternative, on the day of Vinayaka Chavithi Festival i.e. on 11.9.1991, she filed a theft case against Tatamma and gave a report at Uppada Kothapalli Police Station. The AO had sent for PW-1 and Tatamma to the Police Station and enquired. Tatamma had confessed that he had taken the bricks; but she did not know as to why the AO had left him off. The AO did not cause payment of money or bricks to them. She met the AO occasionally and requested him to render justice to them. One-day morning, she went to the house of the AO, who is residing in Pithapuram, and again requested him. Then the AO told her that for collecting Rs.2,000/- being the price of the bricks on her behalf, she has to pay him a sum of Rs.300/- as bribe. When, she told him that she is a poor woman and expressed her inability to pay such amount, he said that her work would not be done. Again, 2 or 3 days back, she met the AO in the police station and he agreed to do the needful, if she pays him a sum of Rs.200/-. Finding no alternative, she agreed to pay him Rs.200/- and promised him to bring the amount demanded within 2 or 3 days to his home and returned back. She did not like to pay the bribe to the AO. She requested to take necessary action against the AO. On the basis of Ex.P-15, Ex.P-16 FIR was issued.

10. On the next day, i.e. on 28-11-1991, the 1st Mediators' Report (Ex.P-11) was drafted in the presence of PW-8 (M. Surya Chandra Rao, Lecturer in Commerce, Government College, Rajahmundry) and another person M. Bapuji, Draughtsman. The said Mediators and PW-1 assembled at 9.00 A.M on 28.11.1991 in the office of PW-9; and PW-1 was introduced to them; and all of them constituted as trap party. After observing all the formalities and treating the amount of Rs.200/- given by PW-1 with phenolphthalein powder, they proceeded to the house of the AO at 11.45 AM. After the trap, the 2nd Mediators Report (Ex.P-12) was written by PW-8. The trap proceedings, which commenced at about 2.40 P.M. and concluded at about 5.15 P.M. on 28-11-1991, are recorded in the 2nd Mediators Report (Ex.P-12).

11. According to the said trap proceedings, the trap party left the office of the DSP at about 11.30 AM on 28.11.1991 and reached Pithapuram town at 1.15 PM; and they went to the house of the AO shown by the complainant (PW-1) and the van was stopped at a distance of 11/2 furlong away from the house of the AO. As per the instructions, PW-1 went to the house of the AO to pay him the bribe amount on demand and to give a signal of acceptance to them. The DSP instructed the S.I. Jalaiah, ACB and the Head Constable to follow PW-1 to relay the pre-arranged signal. Few minutes later, the remaining trap party, i.e. the DSP, the mediators and other staff, moved forward towards the house of the AO and took vantage positions around the house at a distance to receive the signal. While the trap party was waiting, after fifteen minutes, the Head Constable came to the DSP and informed that the AO did not return to his house for lunch. The DSP instructed him to wait there till the AO returned to his house. At about 2.35 PM, the Head Constable gave a signal to the DSP that the

pre-arranged signal was received from PW-1. Immediately, the trap party rushed to the house of the AO; and the DSP along with the mediators entered into the rented portion of the AO and found him wearing lungi and banian and standing in the front hall of the house. The DSP requested the AO to keep his hands apart and not to touch any articles, but the AO was trying to rub his right hand to the curtain of the door. He was sweating and shivering on seeing the trap party. The right hand fingers of the AO were subjected to the colour test by dipping them in the tumbler containing sodium carbonate solution and the solution turned into light pink colour; and his left hand fingers were also dipped in another tumbler containing the sodium carbonate solution but the colour of the solution did not change. The DSP asked the AO to state as to what had happened prior to the arrival of the ACB party to his house. Then, the AO stated that at about 2.15 PM, he returned to his house for lunch and changed his uniform and wore lungi and banian to have lunch; at that time, his son Ravindra Yadav is only present in the house; and when he was about to take lunch, at about 2.30 PM PW-1 came to his house and met him in the front hall; she requested him to recover the stolen property, that is bricks, or to arrange recovery of money from Tatamma; he promised her to recover her property in two or three days and asked her to go away; meanwhile, she took out two hundred rupee notes from her purse and kept it on the table and said that to keep the said money with him towards expenditure; he never demanded her the bribe; and after her departure, he took the money from the table, put it in his purse and kept it on the TV; and meanwhile, the ACB Officials came to his house. The DSP arrested the AO after explaining the grounds for arrest; and on the request of the DSP, the AO went into the 2nd room (bed room) and took out a plastic purse, which was placed on the top of the TV, and took out two one hundred rupee notes from the purse and handed over to one of the mediators M. Bapuji. He also handed over the purse to him as per the instructions of the DSP. The numbers of the notes were compared with the numbers noted in the 1st Mediators Report and the numbers mentioned therein are tallied. The inner liner of the plastic purse, in which tainted amount was kept by the AO, was also subjected to the test of sodium carbonate solution and the test proves positive and the solution turned into light pink colour. Then, PW-1 was asked to state as to what had happened after she was directed to go to the house of the AO. She stated that when she went to the house of the AO, he did not return to his house for lunch and she waited outside the house for one hour. At about 2.30 PM, the AO came to his house on scooter and went inside the house. After two or three minutes, she went into the house and called the AO. AO came into the front hall, who wore lungi and banian, and opened the front grilled door and asked her to come into the hall. She requested him to do justice in her theft case. Then, the AO reminded her about his demanded money of Rs.200/-; and immediately she took out the tainted two hundred rupee notes and gave it to him. He received the money with his right hand fingers and promised her to recover Rs.2,000/- from Tatamma within two or three days. Then she came out of the house and gave the pre-arranged signal by wiping her face with hand-kerchief. After two or three minutes, the DSP and others came to the house of the AO.

12. The tainted money of Rs.200/- is marked as MO.1; the bottle containing the resultant solution by test conducted on the right hand fingers portion of the AO is marked as MO.4; the bottle containing the resultant solution by test conducted on the left hand fingers of the AO is marked as MO.5; the bottle containing the resultant solution of the test conducted on the purse is marked as MO.6; and the plastic purse is marked as MO.8.

13. A rough sketch plan of the scene of occurrence prepared by the Mediator M. Bapuji, Draughtsman and attested by another Mediator (PW-8) and the DSP (PW-9), is marked as Ex.P-13.

14. The DSP deputed one of his Inspectors I. Trinadha Rao authorizing him under Section 165 Cr.P.C. to conduct the house-search of the AO to seize any incriminating documents in the house and to prepare inventory of articles if necessary. No incriminating documents are found in the house as per Ex.P-14 search list.

15. The Police Station, where the AO was working, was searched, in which, a bail bond dated 12.10.1991 executed by P. Musalayya (PW-4) stating that he paid Rs.200/- to PW-3 out of total outstanding amount of Rs.1,100/- payable by Thata Rao (Tatamma) towards bricks amount; and he is standing as surety for payment of balance amount of Rs.900/- by Saturday i.e. 19.10.1991. Thata Rao also signed on the said surety bond, which is marked as Ex.P-4. On the said surety bond, it is stated that PW-1 made a complaint on 23.9.1991, which is marked as Ex.P-5. The search proceedings dated 28.11.1991 prepared by the DSP is marked as Ex.P-17. The General Diary seized from the Uppada Kothapalli Police Station is marked as Ex.P-18.

16. Based on the oral and documentary evidence, the learned Special judge held that the prosecution has failed to prove the guilt of the AO beyond all reasonable doubt on the aforesaid two charges, which were considered under Point Nos.1 and 2, and the AO is not found guilty for the said offences and acquitted him of those offences.

17. The application filed by the prosecution under Section 340 Cr.P.C. requesting the Court to take necessary steps to prosecute PW-1 for giving false statement under Section 164 Cr.P.C., which is marked as Ex.P-10, was also dismissed by the learned Special Judge stating that it is not expedient in the interest of justice to record a finding that PW-1 committed an offence under Section 193 IPC in relation to the proceedings and make a complaint thereof in writing or to hold a preliminary enquiry as to whether PW-1 committed such an offence in order to decide whether or not to record a finding to that effect.

18. Aggrieved by the findings of the learned Special Judge, these two appeals are filed.

19. The questions that arise for consideration in these two appeals are-

1. Whether there was any demand made by the AO and whether the said AO received the demanded amount of Rs.200/- with a motive of reward for doing an official act or forbearing to show in exercise of his official function or to do any favour to PW-1?

2. Whether the AO committed the offence of criminal misconduct by abusing his position as public servant obtained for himself the amount of Rs.200/- (valuable thing) from PW-1 as contemplated under Section 13(1)(d)(ii) of the Act and whether the presumption under Section 20 of the Act is applicable in the trial of the offence punishable under Section 13(1)(d)(i) of the Act? And

3. Whether it is expedient in the interest of justice that an enquiry should be made under Section 195(1)(b)(i) Cr.P.C. for the alleged offence said to have been committed by PW-1 under Sections 193 to 196 IPC for giving false evidence in the judicial proceedings?

20. In the oral evidence, PW-1 stated that her daughter (PW-2) informed her that Tatamma took away the bricks by saying that she sold the bricks to him; and when she questioned him about the bricks, he denied about the taking away of the bricks. Then, she went to the Police Station and reported the same, but they did not take any statement from her; and she cannot say to whom she reported the matter. Their President Chinna Rao took her to Rajahmundry to the Office of DSP (PW-9) and asked her to represent to the DSP stating that she gave a report in the police station about the missing of her bricks; and she was taken to the office of PW-9 and the DSP asked her to come to his office on the next day morning; and she did not see the DSP writing anything in her presence. Next day, she went to the office of the DSP along with their President Chinna Rao, who is popularly called as Dora. Chinna Rao gave her Rs.200/-; and the DSP asked her to keep those two hundred rupee notes in her purse and asked her to give those two hundred rupees to the AO after going to his house; and she did not know for what purpose they asked her to give that amount to the AO. She went to the house of the AO and the AO was inside his house; and as per the instructions of the Constable, she kept two hundred rupees in the purse on the TV, which is in the hall. Then, the AO came and asked her as to why she came to his house. She told him about the missing of her bricks. He asked her to come to his police station. Then, she caught hold of his both hands and requested him to help her for recovery of her bricks. Then, she came out of the house and went to her village; and she did not know what happened subsequently. She was declared hostile and she was cross-examined by the Special Public Prosecutor. In the cross-examination, she stated that she put thumb mark on a written paper in the office of the DSP as per the instructions of their President; and she did not know who wrote the contents of that paper. She denied the suggestion of examining her by the ACB Inspector and stated before him as in Ex.P-1 statement under Section 162 Cr.P.C. She admitted that she gave a statement under Section 164 Cr.P.C. before the Judicial I Class Magistrate, Rajahmundry, which is marked as Ex.P-10, stating therein that the AO demanded bribe amount and she gave Rs.200/- as bribe to the AO and he kept that amount in his purse. She voluntarily added that she gave the statement as instructed by the persons at the police station but not on her own accord. She cannot say whether the statement shown to her was the statement given by her before the Magistrate at Rajahmundry, as she is an illiterate. She stated that she did not know Penke Musalayya (PW-4). She also stated that Musalayya did not act as mediator to compromise with Tatamma with regard to missing bricks. She stated that she did not know the AO prior to her going to his house on the date when she kept the amount on his TV at his house. In the cross-examination by the Advocate for the AO, she stated that she was taken to Rajahmundry two days prior to her giving statement before the Magistrate, Rajahmundry. They asked her and instructed her to give statement before the Magistrate according to what they stated and they threatened her that if she did not state before the Magistrate as instructed by them, they will register a case against her and arrest her. Therefore, she gave statement before the Magistrate as instructed by them. Only after giving statement as instructed by them, she was allowed to go to her house.

21. PW-2 is the daughter of PW-1. She stated that a person by name Tatamma took away 6,000 and odd bricks by stating that her mother sold away to him; and at that time, her mother was in the

hospital; and when her mother asked her, she informed her that Tatamma took away the bricks by stating that she sold away the bricks to him. Her mother took her to Tatamma and questioned him about the bricks and Tatamma denied about taking away the bricks. Then, her mother went to police station. ACB Inspector examined her.

22. PW-3 is the husband of PW-1. He stated that he did not know any thing about the missing of the bricks; and he did not know about his wife going to the police station; and he did not receive any amount under the compromise in connection with missing of bricks; and he was not examined by ACB Officials. He was also declared hostile.

23. PW-4, Penke Musalayya who is said to have been the mediator for compromise in regard to the bricks said to have been taken away by Tatamma, stated that on the request of Tatamma, he went to the Kothapalli Police Station; and in the presence of ASI, there was a compromise regarding the value of the missing bricks; and it was settled that that Tatamma should pay Rs.1,100/- to PW-1; and as a part-payment, Rs.200/- was paid to PW-1. He was also declared hostile. In the cross-examination by the Advocate for the AO, he stated that the ASI Venkateswara Rao asked Tatamma to pay Rs.1,100/- towards cost of the bricks and Tatamma agreed to pay the amount; and the A.S.I. dictated something to the Assistant Station Writer Satyanandam and obtained his signature on it. Ex.P-4 is the undertaking taken from him for the remaining amount of Rs.900/- payable by Tatamma.

24. PW-5 is the Station Writer of Kothapalli Police Station. He stated that PW-1 gave him oral complaint about the missing of bricks belonging to her; and he did not record the oral complaint; and the AO was not present at that time; and he informed the AO after he returned to the police station. Then, the AO sent for Tatamma and PW-1 and obtained the thumb mark of Tatamma directing him to appear before him during the enquiry. Ex.P-5 contains the thumb mark of Tatamma. He was also cross-examined by the Special Public Prosecutor. He was also declared as hostile. In the cross-examination, he stated that since PW-1 was in the habit of giving false reports against all, apprehending that she may give a false report he did not record her statement. He came to know that AO compromised the matter, but he did not know personally about the said compromise. He did not bring Tatamma and PW-1 to the police station.

25. PW-6 is a Constable working in Kothapalli Police Station. He stated that he did not see the AO effecting compromise between PW-1 and Tatamma; and he wrote Ex.P-4 at the dictation of ASI of Police. He was also declared as hostile.

26. PW-7 is the Judicial I Class Magistrate, Rajahmundry. He spoke about the recording of statement of PW-1 under Section 164 Cr.P.C.

27. PW-8 is the panch witness for the trap proceedings. He drafted the 1st and 2nd Mediators Reports (Exs.P-11 and P-12). While confirming the contents of Exs.P-11 and P-12 with all other aspects, he stated that before going to the house of the AO after drafting the 1st Mediators Report, the DSP, PW-1, both the mediators and the other staff rinsed their fingers in the sodium carbonate solution, but the colour of the solution did not change. At about 2.30 PM, they received the message.

Then, they all went to the house of the AO; and the AO was with banian and lungi; and the complainant (PW-1) was standing outside the house of the AO; and the AO was found shivering and sweating and attempted to rub his hands to the door curtain; then immediately, the DSP caught hold of the hands of the AO and asked him not to rub his hands. When the right hand fingers of the AO were rinsed in the sodium carbonate solution, the colour of the solution changed. When his left hand fingers were rinsed in the sodium carbonate solution, the colour of the solution did not change. When questioned by the DSP about the tainted amount, the AO went into the adjoining room and brought a purse, which was lying on the TV, and produced the tainted amount. Ex.P-13 is the rough sketch prepared by another mediator and he signed on it and the DSP also signed on it. He was cross-examined on behalf of the AO. In that cross-examination, he stated that by the time they entered the house of the AO, the AO was in the 2nd room and the TV was situated in the 1st room. At the time when the signal was relayed, the constable and the SI were near the house of the AO. But, the DSP first entered the house after receiving the signal and then the remaining trap party followed him. The signal was received from PW-1 but it was not mentioned in the Mediators Report. He stated that they did not know as to what PW-1 did in the house of the AO after she left the trap party and before they received the signal. The house of the AO was not visible to the trap party. They did not record the statements of the SI and the Head Constable, who followed PW-1 to relay the signal in the Mediators Report. He denied the suggestion that when the DSP questioned the complainant (PW-1), she stated that she kept the amount in the purse on the TV as per the instructions of the SI and Head Constable, who followed her. On the request of the DSP, the AO brought the purse and handed over the same to the DSP.

28. PW-9 is the DSP, ACB, Rajahmundry. He stated that at about 2.30 PM, he received the signal from PW-1; and immediately, the trap party rushed to the house of the AO and found the AO wearing lungi and banian and standing in the front hall of his house. On his request, the AO went into the bed-room, took out a plastic purse, which was placed on the top of the TV, and took out two one hundred rupee notes from the purse and handed over to one of the mediators; and he also handed over the purse to him on his request. In the cross-examination by the Advocate for the AO, he stated that he did not see the AO coming to his house for lunch. The Head Constable informed him that the AO came to his house. He admitted that Exs.P-4, 5 and 19 does not contain the signature or initial of the AO and those documents also does not contain the hand-writing of the AO. The house of the AO was not visible to them, from where they took vantage position. He denied the suggestion that when he questioned the AO, the AO denied about the receipt of any amount as bribe from PW-1; and when he questioned PW-1, she stated that she kept the amount in a purse kept on the TV; and then, he asked the AO to bring the purse; and accordingly, the AO brought the purse and gave it to him.

29. From the aforesaid evidence, it is clear that the alleged complaint of PW-1 was not registered at Uppada Kothapalli Police Station and no entry was made in the General Diary, which was seized under Ex.P-18. As per the evidence of PWs.1 to 6, the so-called compromise made at the instance of the ASI, the bail bond dated 12.10.1991 (Ex.P-4), the surety bond (Ex.P-5) and the notice issued by the Head Constable to PW-1 to attend (Ex.P-19) do not contain the signatures or initials of the AO. But, PW-5 stated that PW-1 gave an oral complaint about the missing of her bricks, but he did not record the oral complaint and he informed the same to the AO after his return to the police station;

and immediately, the AO called for Tatamma and PW-1 and obtained the thumb impression of Tatamma directing him to appear before him during the enquiry; and he came to know through the station staff that there was a compromise between the parties. His evidence also does not show that the AO made them to enter into compromise. On the other hand, his colleague constable (PW-6) stated that at the dictation of the ASI, he wrote Ex.P-4; and he did not see any compromise being effected by the AO. Even though the involvement of the AO is not made out as per the oral evidence of PWs.1 to 6 with regard to the compromise relating to the missing of bricks of PW-1, the only other piece of material available for the prosecution is the oral report (Ex.P-15) given by PW-1 and recorded by PW-9, the trap proceedings (Exs.P-11 and P-12) and the statement of PW-1 under Section 164 Cr.P.C (Ex.P-10). The complainant (PW-1) turned hostile and did not confirm the contents of the aforesaid proceedings.

30. The question that arises for consideration in these two appeals is, whether was there any demand by the AO and whether the AO received the amount of Rs.200/- from PW-1 as the gratification other than the legal remuneration as a motive of reward for doing or showing any favour in exercise of his official function; and whether he has received the valuable thing (Rs.200/-) abusing his position as a public servant?

31. No doubt, the money was recovered from the purse of the AO. As per Ex.P-12, on the request of the DSP, the AO went into the bed room and took out plastic purse, which was placed on the TV, and took out two hundred rupee notes from the purse. But, as per the oral evidence of PW-8, by the time they entered into the house, the AO was in the 2nd room, but the TV was situated in the 1st room. But, according to DSP (PW-9), the TV was situated in the 2nd room. It is the evidence of PW-1 that when she entered into the house of the AO, the AO was inside the house; and as per the instructions of the Constable, she kept the money in the purse on the TV, which is in the 1st hall. The evidence of PWs.1 and 8 is inconformity; and PW-8 is not declared as hostile; and there is no question by the Public Prosecutor to clarify the position as to whether the TV was in the 1st room (hall) or in the 2nd room (bed room). As per the evidence of PWs.1 and 8, the TV is in the 1st room (hall). If the TV is in the 1st hall, there is a possibility of keeping the money in the purse without the knowledge of the AO. Except PW-1, no one knows what happened after she entered into the house, as admittedly, the SI Jalaiah and the Head Constable are outside the house. PW-1 alone knows with regard to the happening before the trap party entered into the house of the AO. PW-1 deposed that when she entered into the house, the AO was not present and his son informed that his father will come for lunch; and the AO came at about 2.30 PM and went into his house; and as per the instructions of the Constable, she kept the tainted money of RS.200/- (MO.1) in the purse on the TV, which is in the hall; then, the AO came and asked her as to why she came to his house; then, she told him about the missing of her bricks and the AO asked her to come to the police station; then, she caught hold of his both hands and requested him to help her for recovery of her bricks; then she came out of his house. On the background of this evidence, the Trial Court discussed the evidence, which is as follows:

"..... But it is the evidence of PW-1 that she put the amount of Rs.200/- in the purse of the accused officer, which was kept on the T.V. in the main hall. It is also the evidence of PWs.8 and 9 that the tainted amount of Rs.200/- was found only in the purse of the accused officer, which was lying on the T.V. PW-9 has deposed that the

T.V. was in the bed room. PW-8 has stated that the T.V. was in the first room while the A.O. was in the second room when the trap party entered into his house. As per PWs.1, 8 and 9 the A.O. was not present in his house when PW-1 first went to his house after getting down from the vehicle at Pithapuram and she had to wait for one hour because till then the accused officer did not return to his house for lunch. The possibility of the tainted amount of Rs.200/- being kept in the purse of the accused officer, which was on the T.V. without his knowledge, cannot be ruled out. As the phenolphthalein powder was applied to the tainted amount, the test of the purse M.O.8 proved positive. It was possible even without the accused officer receiving the tainted amount of Rs.200/-. Of course it is the evidence of PW-9 that when the right hand fingers and left hand fingers of the accused officer were subject to test, only the S.C. solution in the glass in which the accused officer rinsed his right hand fingers turned into light pink colour, but the S.C. solution in the glass in which the accused officer rinsed his left hand fingers did not turn into pink colour. But it is the evidence of PW-1 that she caught hold of both the hands of the accused officer and requested him to help her in recovery of her bricks before leaving the house of the accused officer. If what has been stated by PW-1 is correct, naturally the test of right hand fingers would prove positive. For argument sake, if the evidence of PW-1, that she caught hold of the both hands of AO., while making request, it need not necessarily result in both his hands getting tainted. It might be that PW-1 kept the tainted amount of Rs.200/- in the purse of the accused officer without his knowledge with one of her hands only and that particular hand might have come into contact with only the right hand of the accused officer when she caught hold of his hands while making the said request."

32. When the AO was examined under Section 313 Cr.P.C., he stated that PW-1 caught hold of his both hands and earnestly requested him to help her for recovering the bricks. Then, he asked her to come to the police station on the next day; and on that day, while going to the police station, he forgot his purse, which was kept on the TV; and he did not know who kept the amount of Rs.200/- in his purse.

33. At the time of his examination under Section 313 Cr.P.C., the AO also filed a written statement stating that after his return to his house for lunch, he went inside and then he heard some noise in the TV room and came from inside; and to his utter surprise, he found the lady (PW-1) near the TV and then he questioned her as to why she came; and she simply represented about the stolen bricks and held his hands as though she was begging for help; and then he told her that she should go to the police station and give complaint.

34. On this, the learned Trial Judge observed:

"...The test of right hand fingers of the accused officer proving positive does not assume much significance when it is the evidence of PW-1 that she caught hold of both the hands of the A.O. when he questioned her why she came to his house because one of her hands with which she kept the tainted amount of Rs.200/- in the

purse of the accused officer would naturally get tainted without his noticing the same. It was also possible that the right hand of the accused officer got tainted only when he produced the purse before PWs.8 and 9 and they took out the amount from the purse and handed over the same to one of the mediators. The innocence of the accused and his lack of knowledge that the tainted amount of Rs.200/- was kept in his purse which was left on the TV until he was surprised by the trap party cannot be ruled out in view of the evidence of PW-1."

35. With regard to the statement of PW-1 under Section 164 Cr.P.C. recorded by the Magistrate (Ex.P-10), PW-1 stated that she stated that she was taken to Rajahmundry two days prior to the day on which her statement was recorded by the Magistrate; and she was not allowed to see her husband and children during those two days; and she was instructed to state before the Magistrate as told by the ACB Officers; and she was also threatened stating that if she did not state before the Magistrate as instructed by them, they would register a case against her and arrest her; and out of fear, she gave statement before the Magistrate as instructed by the ACB Officers.

36. As per the evidence available on record though it can be presumed from the facts available on record that the concerned police did not act according to law as they have not registered the case on the complaint of PW-1 and it was also not entered in the General Diary, and therefore, it can be presumed (though it was not stated by any other witnesses--PWs.1 to 6 except PW-5) about the involvement of the AO in the issue of compromise to recover the money with regard to the bricks.

37. Even if it is presumed that the AO demanded money from PW-1, whether the demanded was accepted has to be considered in this case. The money was not recovered from the person of the AO; and admittedly, it was recovered from the purse kept on the TV in the 1st hall (room); but according to the DSP (PW-9), the purse was kept on the TV situated in the 2nd room. It is not possible to believe totally the evidence of PW-9, as there is a contradiction in the evidence of PW-9 that the purse of was on the TV in the 1st hall. If that be so, the evidence of PW-8 is corroborated by PW-1, who stated that without the knowledge of the AO, she kept the money in the purse, which was on the TV in the hall (1st room). If that be so, it cannot be said that the AO has obtained or accepted the money. It cannot also be stated that the AO accepted the illegal gratification. Unless the initial burden cast on the prosecution is proved, the question of drawing presumption under Section 20 of the Act does not arise. When once the AO accepted or obtained any gratification or valuable thing under Section 7 or 11 or 13(1)(b) or (c), the legal presumption under Section 20 of the Act applies, unless the contrary is proved. The charge in this case is under Section 13(1)(d)(ii), for which, section 20 has no application to draw the legal presumption. Even otherwise, unless it is proved that the AO accepted or obtained the money, the presumption cannot be drawn. In view of the suspicious circumstances of receiving the money by the AO, it cannot be said that the prosecution has proved the guilt of the AO beyond all reasonable doubt that he has demanded and accepted the money of Rs.200/- from PW-1.

38. Sri G. Pedda Babu, the learned Standing Counsel for the ACB submits that even though the complainant (PW-1) has become hostile and the case of the prosecution was not supported by other witnesses and even though the evidence of PW-8 is in contradiction with that of the I.O., still, the

AO is liable to be punished for the said offences based on the oral evidence of the I.O.(PW-9).

39. It is true to say that in a given case, the guilt of the accused can be proved even on the sole testimony of the I.O. in the absence of support of prosecution case by other witnesses. In *HAZRI LAL vs. STATE (DELHI ADMN.)*¹ cited by the learned Standing Counsel, the accused was held guilty only on the statement of the I.O. In that case, the accused took the money and kept it inside the right hand pocket of his trousers; and on seeing the trap party, he threw it across the wall into the adjoining room. Some of the notes were lying on the table of the Duty Officer in that room while others had fallen on the ground near the chair of the Duty Officer. Both the hands of the accused were dipped in the sodium carbonate solution and the solution turned pink. The same test was repeated with the handkerchief, which was taken out of the right hand side pocket of the accused, and also with the trousers of the accused. Each test resulted in the sodium carbonate solution turning pink. When the accused was examined under Section 313 Cr.P.C., he totally denied the guilt and stated that he knew nothing about it. In those circumstances, the legal presumption under Section 114 of the Evidence Act and Section 4(1) of the old Prevention of Corruption Act was drawn, as it was not at all rebutted. Whereas in the instant case, as stated above, it was not recovered from pocket of the trousers or the pocket of the shirt, but it was recovered from the purse kept on the TV, which according to PWs.1 and 8 is in the 1st hall, and according to PW-9, it is in the 2nd room. Therefore, the facts in the aforesaid case are distinguishable from the facts of this case.

40. The learned Standing Counsel cited another decision in *M. NARSINGA RAO vs. STATE OF A.P.*² In that case also, the money received from the complainant was recovered from the pocket of the accused, and therefore, the defence version was disbelieved and the accused was punished, solely based on the evidence of the I.O., though the complainant has not supported the case of the prosecution. In the cases cited by the learned Standing Counsel for the ACB, the money was recovered from the pocket or person of the accused; whereas as held by the Trial Court in the instant case, there was a probability of keeping the money by PW-1, without the knowledge of the accused, in the purse said to have been kept on the TV in the front hall. Therefore, the said decisions are not applicable to the facts of the instant case.

41. On the other hand, Sri T. Bali Reddy, the learned Senior Counsel appearing for the respondents relied on the decision in *MEENA BALWANT HEMKE vs. STATE OF MAHARASHTRA*.³ In this case, both the Trial Court as well as the High Court held that the accused was found guilty for the offence under Section 161 IPC and under Section 5(1)(d) read with Section 5(2) of the Act. In that case, the accused was said to have received the money of Rs.20/-; and on arriving the trap party, she threw the currency notes on the table; and her hands and the notes were subjected to Sodium carbonate test, which was positive. But, it was the case of the accused therein that the complainant only attempted to thrust the currency notes into the hands of the accused and the accused refused to receive the same by pushing her hand; then the currency notes came in contact with her hand and also fell on the pad and table, from where it was taken and seized. On the facts and circumstances of that case, while re-appreciating the evidence on record, the Apex Court held that to establish the ingredients under Sections 7 and 13, which are equivalent to Sections 161 IPC and 5(1)(d) of the Act, the prosecution has to prove the charges framed beyond all reasonable doubt, as in the case of criminal offence, and till the guilt is established beyond all reasonable doubt, the accused should be

considered innocent. In that case also, the currency notes were not recovered from the person or from the table drawer of the accused. But, when the trap party arrived, the money was found on the pad on the table. The question that was considered in that case was as to whether the accused accepted the money placed on the table or that the currency notes fell on the pad on the table in the process of the accused refusing to receive the same. In that case also, the complainant turned hostile. The prosecution case was not corroborated as to what actually transpired at the time of the alleged occurrence and the acceptance of the bribe, which is very vital and genesis of the case. In those circumstances, the Apex Court held that the prosecution has not proved the guilt of the accused beyond all reasonable doubt, and on the facts and circumstances of the case, allowed the appeal of the accused. In the instant case also, the learned Special Judge meticulously considered the evidence available on record and rightly held that the prosecution has failed to prove the charges beyond all reasonable doubt, and therefore, the benefit of doubt was given to the AO and the AO was found not guilty of the offences under Sections 7, and 13(1)(d)(ii) read with 13(2) of the Act. I, therefore, do not see any reasons to interfere with the judgment under appeal. Accordingly, Crl.A.No.557 of 1995 is dismissed.

42. With regard to Crl.A.No.558 of 1995 to launch prosecution under Section 340 Cr.P.C., it is filed under Section 378(3) Cr.P.C.

43. Under Section 340 Cr.P.C., when upon an application made to the Court and if the Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into the offence referred to in clause (b) of sub-section (1) of Section 195 Cr.P.C. which appears to have been committed in or in relation to the proceeding in that Court in respect of the evidence in a proceeding in that Court, such Court may after such preliminary enquiry, if any, as it thinks necessary, make a complaint thereof in writing and send it to the Magistrate of the I Class having jurisdiction and take sufficient surety for the appearance of the accused before such Magistrate.

44. Under Section 341 Cr.P.C., any person on whose application any Court other than the High Court refused to make a complaint under Section 340, may appeal to the higher court.

45. In this case, the Sessions Judge rejected the application of the appellant under Section 340, and therefore, appeal lies under Section 341 but not under Section 378(3). But, however, merely because under the wrong provision of law the appeal has been filed, I am not inclined to dismiss it on technical ground. But, it has been taken as if the appeal has been filed under Section 341 Cr.P.C.

46. With regard to the sanction of prosecution for perjury of the Court, the Supreme Court held in CHAJOO RAM vs. RADHEY SHYAM4:

"The prosecution for perjury should be sanctioned by the Courts only in those cases, where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inclusive and doubtful material defeats its very purpose. Prosecution should

be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge."

47. In the instant case, PW-1 explained under what circumstances she has given the statement before the Magistrate under Section 164 Cr.P.C. The respondent herein, i.e. PW-1, has not completely disowned the giving of the statement before the Magistrate; but she made an attempt to explain in her own way; and therefore, the learned Judge thought it fit that it is not expedient in the interests of justice to record a finding that an offence under Section 193 IPC is committed by the respondent (PW-1) in relation to the proceedings and to make a complaint thereof in writing or to hold preliminary enquiry as to whether PW-1 has committed such an offence in order to decide whether or not to record a finding to that effect. Accordingly, he rejected the application of the appellant herein under Section 340 Cr.P.C. I also do not see any reason to come to a different conclusion from that of the Lower Court, and I am also of the opinion that it is not a fit case in the opinion of the Court to launch prosecution under Section 340 Cr.P.C. Accordingly, CrI.A.No.558 of 1995 is also dismissed.

48. In the result, both the criminal appeals are dismissed.