

(2011) 07 AP CK 0023

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1540 of 2004

State

APPELLANT

Vs

P. Somaraju, Assistant Commissioner of Labour, Circle- I,
Anjaiah Karmica Bhavan, Ashoknagar, Hyderabad, Flat No. 6,
Ruby Apartments, Yellareddyguda, Near Sarathi studio,
Hyderabad

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Contract Labour (Regulation and Abolition) Central Rules, 1971 — Rule 29, 29(2)
Evidence Act, 1872 — Section 21(1), 8
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7

Citation : (2011) 07 AP CK 0023

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

**Advocate : R. Ramachandra Reddy, Spl. Public Prosecutor and SC for ACB
Cases, for the Appellant; C. Praveen Kumar, for the Respondent**

Final Decision : Allowed

Judgement

Hon'ble Sri. Justice Samudrala Govindarajulu

1. The accused/respondent was working as Assistant Commissioner of Labour, Circle-I, Hyderabad during the relevant time. The Principal Special Judge for S.P.E and A.C.B cases, Hyderabad by judgment dated 28.11.2003 in C.C. No.13 of 1999 acquitted the accused of the offences punishable under Sections 7 and 13(1)(d)/13(2) of the Prevention of Corruption Act, (in short, the Act). Questioning the said acquittal, the State preferred this appeal.

2. P.W-1 was a Labour Contractor and was having two labour contract establishments under the names and style of Sindhu Enterprises and Swetha Enterprises at Hyderabad. He was having licences for his two establishments under the Contract Labour (Regulation and Abolition) Act, 1970. P.W-3 is son of P.W-1's brother. P.W-3 was also having licence for his contract Labour

establishment run under the name and style of Tirumala Enterprises. During the year 1997, both P.W-1 and P.W-3 applied for renewal of their respective licences for their respective establishments to the accused. Ex.P-5 is application for renewal of licence of Tirumala Enterprises of P.W-3. Exs.P-6 and P-7 are applications for renewal of licences of Swetha Enterprises and Sindhu Enterprises respectively belonging to P.W-1. The licences were sought to be renewed for the year 1997-98. It is stated that P.W-1 also produced wages, attendance and bonus registers to the accused for verification. It is alleged that after verifying the registers, the accused instructed P.W-1 to come later and that on 25.09.1997 P.W-1 met the accused and requested him for renewal of licences, for which the accused demanded bribe of Rs.9,000/- from P.W-1 and threatened P.W-1 to keep the file pending without renewing the licences unless the demanded bribe amount is paid and that when P.W-1 paid bribe of Rs.3,000/- the accused demanded for payment of remaining bribe amount of Rs.6,000/- in two days. With the said allegations, P.W-1 gave Ex.P-1 report dated 26.09.1997 to P.W-7 Deputy Superintendent of Police, Anti Corruption Bureau (A.C.B), Hyderabad. After issuing Ex.P-12 F.I.R on the basis of Ex.P-1 report, P.W-7 organised trap for the accused in the presence of mediators including P.W-2. P.W-2 is the then office superintendent in the Directorate of Insurance And Medical Services, Hyderabad. Before proceeding for the trap, pre-trap procedures were conducted under the cover of Ex.P-2 mediators' report on 26.09.1997. It is alleged that the trap was successful and that the accused was caught with possession of M.O-1 tainted currency notes of Rs.6,000/- which was demanded and accepted by the accused. Plea of the accused is one of not guilty". It is his contention that in his absence M.O-1 tainted cash was dropped by P.W-1 in his office table drawer. The lower Court, by the impugned judgment, accepted the defence version and found the accused not guilty of the charges.

3. In this appeal, the Special Public Prosecutor contended that the lower Court did not appreciate the evidence on record in the right perspective and came to an erroneous conclusion in favour of the accused even though abundant material was let in by the prosecution in support of its case and that this appellate Court has to appreciate the material on record afresh by making thorough scrutiny of the evidence and that there are no valid circumstances to accept the defence version. On the other hand, it is contended by the senior counsel for the respondent/accused that when the trial Court acquitted the accused on merits, there is reinforcement of innocence of the accused and that scope of scrutiny by the appellate Court against an order of acquittal is limited and that the appellate Court will be slow in interfering with acquittal recorded by the trial Court unless finding of the lower Court is highly unreasonable or manifestly unjust or perverse.

4. In Chandrappa and Others Vs. State of Karnataka, the Supreme Court culled out powers of the appellate Court in an appeal against an order of acquittal and enunciated as follows:

(1) An appellate court has full power to review, reappraise and reconsider the

evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

In *Kallu @ Masih and Others Vs. State of Madhya Pradesh*, the Supreme Court observed that in an appeal against acquittal the appellate Court will not reverse decision of the trial Court merely because a different view was possible, in case the view taken by the trial Court is reasonable and plausible. It is further Laid down therein that if the appellate Court decides to interfere, it should assign reasons for differing with decision of the trial Court.

In *Ramanand Yadav Vs. Prabhu Nath Jha and Others*, while observing that there is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based, the Supreme Court cautioned that paramount consideration of the Court is to ensure that miscarriage of justice is prevented and that a miscarriage of justice which may arise for acquittal of the guilty is no less than from the conviction of an innocent.

In *Harijana Thirupala and Others Vs. Public Prosecutor, High Court of A.P., Hyderabad*, the Supreme Court further cautioned that the High Court would not be justified to interfere with order of acquittal merely because it feels that sitting as a trial Court it would have proceeded to record a conviction, and that a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial Court to acquit the accused and then to dispel those reasons.

With this legal background, I initiate scrutiny of evidence let in by both the

parties in the lower Court in support of their respective contentions.

5. Ex.P-9 is mediators' report for post-trap proceedings. P.W-2 and P.W-7 speak to contents of the same. During post-trap proceedings, when both hand fingers of the accused were dipped in sodium carbonate solution, there was no change in colour of that solution. It was the first circumstance relied upon by the lower Court in favour of the accused. Ex.P-9, after incorporating the said fact, further reads that when P.W-7 questioned the accused whether he demanded and accepted bribe amount from P.W-1, the accused stated that he neither demanded nor accepted bribe amount from P.W-1 and that he was present at his office table during the period from 5.00 P.M when P.W-1 entered into his room upto 5.30 P.M when P.W-1 left his room. This statement of the accused is relevant u/s 8 of the Indian Evidence Act. The accused did not plead that he went into bath room while P.W-1 was sitting in his chambers. Evidence of D.Ws 1 and 2 is contrary to this relevant piece of evidence recorded at the earliest point of time.

6. The trap party could locate M.O-1 tainted cash of Rs.6,000/-from table drawer of the accused when P.W-1 informed the same to the trap party. It is evidence of the decoy witness as P.W-1 before the trial Court that one of the two mediators by name Rajender (P.W-2) was instructed by P.W-7 to accompany him and that both he and P.W-2 entered into office of the accused, but P.W-2 sat on stool intended for seating of the office attender located at entrance of room of the accused. P.W-1 alone entered into office room of the accused during the course of trap. He says that when he went into that room the accused was alone in the room and that on seeing the accused he enquired about his licences and that the accused asked him whether he brought the amount demanded by him and that he answered in the positive and picked out tainted currency notes from his shirt pocket and offered to give the same to the accused and that the accused opened table drawer and asked him to place the amount in the table drawer and that accordingly he kept the amount in the table drawer and that thereafter the accused called Abbas, attender (P.W-4) and instructed him to bring licences which were with senior assistant Gopalarao (P.W-5) and that accordingly P.W-4 went and brought the licences within few minutes and that the accused signed in the said licences in his presence and instructed P.W-4 to hand over those licences to P.W-5. P.W-1 collected those licences from the seat of P.W-5 on the instructions of the accused. Since the accused did not receive M.O-1 tainted cash into his hand during the trap and directed P.W-1 to drop the currency notes into his table drawer, which directions were followed by P.W-1, hand fingers of the accused were not tainted with phenolphthalein powder sprinkled on M.O-1 currency notes. Failure of hand fingers dipped in sodium carbonate solution turning pink during post trap proceedings is not decisive to the affect that the accused did not accept M.O-1 tainted cash from P.W-1. Tainting of currency notes with phenolphthalein powder and decoy witness paying the said tainted currency to the accused towards bribe in pursuance of his demand and thereafter turning hand finger washes of the accused in sodium carbonate solution into pink, is one of the methods of nabbing the accused with acceptance of bribe amount by way

of a trap. In order to avoid the same, some public servants adopt several methods of collection of bribe amount instead of receiving the bribe amount with their hands and keeping the same in their pockets. One such method is directing the victim/decoy witness to drop the tainted currency into table drawer or into brief case or into any other place to which the accused alone has got accessibility so that he can pick up the said dropped amount conveniently at a later point of time. If such methods are adopted by clever public servants, then the routine method of phenolphthalein powder and sodium carbonate solution and turning hand fingers as well as pockets of the accused into pink, becomes not possible. From the fact that hand finger rinses of the accused not turning pink in sodium carbonate solution, it cannot be taken as a circumstance which disproves the prosecution case. Though investigating agency may be unsuccessful in nabbing the culprit by adopting such method in certain cases, the prosecution is not precluded from proving that the accused demanded and accepted bribe amount by leading other evidence.

7. There is no dispute that Exs.P-5 to P-7 applications for renewal of licences under the Contract Labour (Regulation and Abolition) Act, 1970 were pending with the accused. Those applications relate to Tirumala Enterprises of P.W-3 and Swetha Enterprises and Sindhu Enterprises of P.W-1. P.W-1 was looking after on behalf of P.W-3 also as P.W-3 happened to be his brother's son.

It is contended for the respondent/accused that there was no necessity for either P.W-1 or P.W-3 to go round office of the accused for renewal of contract labour licences, because even as per P.W-1's evidence there is a deeming clause in the Rules which renews contract labour licences automatically in case the application for renewal is not disposed of within a particular period of making the application. The said deeming clause is contained in Rule 29 of the Contract Labour (Regulation and Abolition) Central Rules, 1971. The said Rule reads as follows:

29 Renewal of licence:

- (1) Every contractor shall apply to the licensing officer for renewal of the licence,
- (2) Every such application shall be in Form VII in triplicate and shall be made not less than thirty days before the date on which the licence expires, and if the application is so made, the licence shall be deemed to have been renewed until such date when the renewed licence is issued.
- (3) The fees chargeable for renewal of the licence shall be the same as for the grant thereof: Provided that if the application for renewal is not received within the time specified in sub-rule (2), a fee of 25 per cent in excess of the fee ordinarily payable for the licence shall be payable for such renewal: Provided further that in case where the licensing officer is satisfied that the delay in submission of the application is due to unavoidable circumstances beyond the control of the contractor, he may reduce or remit as he thinks fit the payment of such excess fee.

As per Rule 29(2), in case renewal application is made, the licence is deemed to have been renewed "until such date when renewed licence is issued". The said deeming provision is limited to the period of pendency of renewal application before the licencing authority. There is no deeming provision in Rule 29 as if the licence is renewed in case application for renewal was not disposed of within any statutory period. In case renewal application of the Licence holder is rejected by the licencing authority, then deeming provision under Rule 29(2) ceases to operate, since the said deeming provision is operative during pendency of renewal application only and does not extend beyond the period of disposal of the renewal application. Therefore, necessarily labour contractors have to apply for renewal of their licences periodically and have to get their licences renewed for further period.

8. It is further contended for the respondent/accused that contractors never bothered about their renewal of licences after the said applications for renewal of their licences. P.W-5 deposed in cross-examination that no contractor attends their office for taking delivery of the renewed Licences and that they would lie with their office only in some cases for years together. He further says that P.W-1 after remittance of renewal fees during the years 1994, 1995 and 1996 never appeared and that for the first time P.W-1 came to their office on the date of trap to take renewed licence. P.W-5 admits that the accused instructed them to issue notices for production of records of all the contractors including P.W-1 and to keep all the licences ready if renewal licence fees is remitted. It is evidence of P.W-1 that in June, 1997 he applied for renewal of licences in respect of Swetha Enterprises and Sindhu Enterprises and paid necessary fees and that he met the accused in June, 1997 and requested him to renew his licences and that the accused asked him to bring attendance register, wages register, bonus register and accordingly he took those registers to the accused who verified them and also signed in them and returned them to him and that in spite of it the accused did not renew his licences and was postponing renewal of licences on some pretext or the other and that the accused postponed renewal of licences for about three months and that when he met the accused on 25.09.1997 in his office with a request to renew his Licences, some arguments took place between them and that the accused demanded bribe of Rs.9,000/- for renewing the licences and that when he informed the accused about he having only Rs.3,000/- with him and offered to pay the same, the accused opened his table drawer and asked him to put the amount of Rs.3,000/- in that table drawer and that accordingly he kept the amount and the accused asked him to bring the remaining amount of Rs.6,000/- in one or two days. Nobody else was with P.W-1 during that time.

9. The Lower Court failed to note the fact that previously there was no practice of labour contractors going round office of the licencing authority for renewal of their licences. Rule 29 does not contemplate the licencing authority to make any enquiry before renewing the licence of a Labour contractor. The questions to be considered at the time of renewal of licence are whether renewal application was

filed in time with the prescribed fees in the prescribed proforma and if the application was filed beyond time, whether late fees was paid along with such Late application. Giving of notices to all the labour contractors who applied for renewal of their licences and directing them to produce their books etc., for such renewal, are not contemplated by the Rules. In spite of it, the accused invented a new procedure and started giving notices to all the labour contractors directing them to produce their registers. Such notices can be given to the Labour contractors in case any statutory enquiry is contemplated at that stage. When the statute does not contemplate any enquiry at that stage, giving of such notices to the labour contractors and direction to them to produce their registers etc., is only with a view to see that labour contractors go round the accused as if an official favour is pending with the accused for renewal of their licences. The accused adopted this method with a view to keep the labour contractors in his grip so that he can exploit them with this creative procedure. The lower Court did not advert to the relevant provisions under the Contract Labour (Regulation and Abolition) Act, 1970 and the Rules of the year 1971 to infer the intentions of the accused by starting novel procedure of giving notices to all the labour contractors and directing them to produce their registers etc., and withholding the renewal applications without renewing the licences for more than three months.

10. P.W-5 deposed that out of three renewal files, one licence was already renewed and two licence files were pending as per Exs.P-5 and P-6 and that file of Sindhu Enterprises was already cleared. As per evidence of P.W-1, he paid Rs.3,000/- on 25.09.1997 out of the total demanded bribe amount of Rs.9,000/-. The total amount of Rs.9,000/- is stated to be the bribe for renewal of three licences. When P.W-1 paid Rs.3,000/-, one file out of the three files was cleared by the accused. This aspect of clearing of one file only out of three files of P.Ws 1 and 3 by the accused, was not taken note of by the lower Court.

11. The lower Court referred to evidence of D.Ws 1 and 2 mainly and came to the conclusion that there is possibility of P.W-1 dropping the tainted cash M.O-1 into table drawer of the accused during his temporary absence in his chambers when he went to bath room attached to his room. During post-trap proceedings the accused did not plead by way of spontaneous explanation about the said possibility. On the other hand, the accused stated that he was in his room from 5.00 to 5.30 P.M. when P.W-1 was in his room. Except denying demand and acceptance of bribe from P.W-1, there is no further explanation to the effect that when P.W-1 was in his chambers, he went into attached bath room for attending calls of nature leaving P.W-1 alone in his chambers. Even though spot explanation given by the accused during post-trap proceedings may be relevant u/s 8 of the Indian Evidence Act as spontaneous response or reaction of the accused, failure to give any explanation by the accused during post-trap proceedings may not prevent the accused from putting forward his pleas at subsequent stage of the criminal proceedings. For the first time, the accused put forward the theory of he going into bath room when P.W-1 came to his chambers, while giving Ex.D-2 explanation to P.W-8 on 28.01.1998. It was after

4 months of the trap. It has to be seen whether the accused was able to probabalise his defence from the evidence on record. The decoy witness as P.W-1 denied the suggestion that he placed M.O-1 tainted currency notes in the table drawer of the accused when the accused went into bath room. P.W-4 in cross-examination deposed that on 26.09.1997 at request of the accused he gave Ex.D-1 statement to the accused as to what happened on that day. The accused is not competent to make enquiry into his own affair. He says that he himself wrote contents of Ex.D-1 and signed it on 27.09.1997. P.W-4 did not speak to the contents of Ex.D-1, except stating that contents of Ex.D-1 are true. In further cross-examination by the Additional Public Prosecutor, P.W-4 stated that whatever he stated before A.C.B officials alone is correct but not the version in Ex.D-1. The said exercise of the accused obtaining Ex.D-1 letter from P.W-4 indicates that the accused tried to tamper the prosecution evidence by winning over the prosecution witnesses like P.W-4 during investigation. This aspect of the case was not taken notice by the lower Court.

12. D.W-1 is a Trade Union leader. He was president of Bakelite Hylam Limited Contract Workers Union. D.W-2 is an advocate. D.W-1 deposed that when he went to office of the accused at 5.15 P.M in connection with a case relating to payment of bonus to contract labours of his union, P.W-4 on enquiry informed him about completion of all cases by the accused and the accused going into bath room. D.W-1 says that he removed door curtain of chamber of the accused and found P.W-1 sitting on left side of seat of the accused and that the accused was not found in his seat. He says that D.W-2 was in the Varandah and that when he was talking with D.W-2, P.W-4 went inside chambers of the accused and that thereafter he also went inside the chambers of the accused and that at that time P.W-1 was alone sitting in the chambers of the accused and that the accused came out of the bath room and talked to P.W-1 with regard to registers and thereafter P.W-1 went away. D.W-2 deposed that on 26.09.1997 at about 5.10 P.M when he went to chambers of the accused for making representation in W.C case No. 11 of 1997 and 13 of 1997, the accused was about to leave the chambers and was in standing position and that he enquired the dates of the cases and that the accused verified the records and gave him the dates and that thereafter he left the chambers of the accused. He says that while leaving the chambers he saw the accused going towards toilet located in his chambers and that when he was leaving the chambers of the accused, he found P.W-1 going into chambers of the accused. None of D.Ws 1 and 2 saw P.W-1 dropping anything muchless cash into table drawer of the accused. The accused who was working as Assistant Commissioner of Labour was an adjudicating authority under Labour and Industrial Laws; and union leader like D.W-1 and advocate like D.W-2 would be at his command, as they have to appear before the accused in several matters. There is every possibility of persons like D.Ws 1 and 2 obliging the accused to accommodate him.

13. It is contended by the Special Public Prosecutor that chambers of the accused is not part of the public office and that P.W-1 could not have entered into

chambers of the accused without prior permission of the accused and when the accused was not in his seat. Admittedly P.W-4 was the attender attached to chambers of the accused. It is not P.W-4's case that during temporary absence of the accused in his chambers when he went into bath room/toilet, P.W-1 entered into the said chambers and sat in a chair located in the chambers. Taking advantage of the modus operandi of the accused asking the party to drop bribe amount into his table drawer so that the accused would not be touching the said bribe amount with his hand, the accused had woven the story of he going into bath room during which time P.W-1 dropped tainted cash into his table drawer without his knowledge. By any stretch of reasoning, evidence of D.Ws 1 and 2 is not believable. In my opinion, the Lower Court did not discuss evidence of D.Ws 1 and 2 meticulously and accepted their evidence by superficial scrutiny. P.W-1 could not have entered into chambers of the accused without prior permission of the accused and during temporary absence of the accused in his chambers when he went to bath room.

14. It is contended for the appellant that in Ex.P-1 report P.W-1 gave name of the accused in a different manner than correct name. P.W-1 gave correct name of the accused also in Ex.P-1, but gave another name which sounds similar to that name. But P.W-1 described the accused in Ex.P-1 as A.C.L-I (Assistant Commissioner of Labour-I) Hyderabad. Criminal law does not attach importance on names of the accused, but gives importance to identity of the accused. One person may be called with many names, but all those names refer to one and the same person and not different persons. It cannot be a circumstance either to disbelieve the prosecution case or to discredit P.W-1's evidence.

15. It is contended for the appellant that P.W-1 was bent upon giving report against the accused and involve him in a false trap and that it is evident from the fact that P.W-1 gave report to P.W-7 even prior to the alleged demand for bribe by the accused. According to P.W-1, when he met the accused in his office on 25.09.1997 with a request to renew his licences, the accused demanded for bribe of Rs.9,000/- and that he met the accused in the evening of that day. In cross-examination P.W-1 deposed that he wrote Ex.P-1 report on 25.09.1997 in the morning at his house and that after scribing it he took it to the office of P.W-7 in the morning of 26.09.1997 and presented it at 11.00 A.M. There is discrepancy in P.W-1's evidence with regard to the time and date of drafting of Ex.P-1 by him at his house. When P.W-1 was giving evidence in the lower Court after five years of the incident, such discrepancies regarding time and date of drafting Ex.P-1 report are but natural. It is not as if P.W-1 was nurturing any grouse against the accused previously in order to involve him in a false trap. Either recording date of preparation of report as 25.09.1997 is a mistake, or P.W-1 gave the date as 25.09.1997 instead of 26.09.1997. Otherwise the said discrepancy is innocuous.

16. It is evidence of P.W-2 that he and P.W-1 went to chambers of the accused and that on learning that the accused alone was present in the chambers, P.W-1 went into the chambers and he (P.W-2) waited outside the chambers. Thus,

before entering into chambers of the accused, both P.Ws 1 and 2 ascertained whether the accused was available in the chambers. Neither P.W-1 nor any other person could have straight away walked into chambers of the accused as if it is a thorough fare or a public passage. P.W-4 would not have allowed P.W-1 to enter into chambers of the accused when the accused was not in his seat and went into bath room. In my opinion, the lower Court gave undue weight to evidence of D.Ws 1 and 2 to which they have not entitled to.

17. Placing reliance on *Ayyasami Vs. State of Tamil Nadu*, and *M.K. Harshan Vs. State of Kerala*, of the Supreme Court, it is contended for the appellant that in the absence of corroboration for P.W-1's evidence particularly when hand finger rinses of the accused did not turn pink in sodium carbonate solution, no reliance can be placed on the sole testimony of P.W-1. There cannot be any dispute with regard to the proposition that corroboration cannot be sought as a matter of rule, but it is only a matter of prudence. No particular number of witnesses need be examined to prove a fact. Even evidence of a single witness may be sufficient to prove a fact in case evidence of that witness is found to be truthful and believable. It is only when evidence of the sole witness is shrouded in the midst of infirmities, then the Court can seek for corroboration before accepting the sole testimony of the defacto-complainant. In *M.K. Harshan* (6 supra), the Supreme Court did not place reliance on sole testimony of the prosecution witness as the said evidence was suffering from infirmities and as the defence version was probable. So, ultimately the result emerges as a matter of fact after thorough scrutiny of P.W-1 's evidence and probability of the defence version.

In *State of Tamil Nadu V. Krishnan* AIR 2001 SCW 2415 , the Supreme Court confirmed acquittal recorded by the High Court of Madras on the ground that defence version that money was planted by the prosecution witnesses while the accused was in bath room, was probable. It was a decision rendered by the Supreme Court on facts of that case. Evidence on record is liable to be scrutinised before coming to any conclusion whether prosecution version is proved beyond reasonable doubt or whether the defence version is probable. Similarly *Har Bharosey Lal Vs. State of U.P.*, of the Allahabad High Court is also one rendered basing on facts of that particular case. There can be no hard and fast rule with regard to acceptability or otherwise of the prosecution evidence; and it all depends upon nature of evidence let in by the prosecution in that particular case. *M. Pydi Raju V, State of A.P* 2004(1) ALT (Cri.) 269 (A.P) of this Court is also one based on facts of that particular case.

18. On the other hand, placing reliance on *Madhukar Bhaskarrao Joshi Vs. State of Maharashtra*, and *State of Andhra Pradesh Vs. R. Jeevaratnam*, of the Supreme Court it is contended by the Public Prosecutor that the fact that public servant was found in possession of currency notes smeared with phenolphthalein, is sufficient to draw legal presumption u/s 20(1) of the Act and that the prosecution need not further prove that money was paid to the public servant. In *Banarsi Dass Vs. State of Haryana*, the Supreme Court ultimately

held that in the absence of proof of demand and acceptance of bribe, mere possession of tainted cash with the accused, is not sufficient to draw presumption u/s 20(1) of the Act. In the case on hand, the prosecution is able to prove its case beyond doubt.

19. In this case, modus operandi of the accused in collecting bribe amount by way of opening his table drawer and asking him to drop the bribe into it, was already by P.W-1, in Ex.P-1 report itself. The same method was followed by the accused when he received tainted cash of Rs.6,000/- from P.W-1 during the trap. There are absolutely no circumstances to disbelieve P.W-1's evidence. P.W-1's evidence is trustworthy and does not suffer from any infirmities.

20. Therefore, for all the above reasons, I do not agree with reasoning and conclusion of the lower Court which are highly unreasonable and manifestly unjust. The evidence on record undoubtedly drives this Court to one and only conclusion to the effect that the accused/respondent is guilty of the offences with which he was charged in the lower Court. I find that the accused demanded for bribe from P.W-1 and accepted the bribe for doing official favour of renewing contract labour licences of P.W-1 and P.W-3. I find that the accused is guilty of the offences under Sections 7 and 13(1)(d)/13(2) of the Act.

21. In the result, the appeal is allowed setting aside the judgment passed by the lower Court and convicting the accused/respondent for the offences under Sections 7 and 13(1)(d)/13(2) of the Act and sentencing him to rigorous imprisonment for one year and fine of Rs.10,000/- on both the counts separately. In default of payment of fine of Rs.10,000/-each, the accused shall undergo simple imprisonment for two months each. Substantive sentences of imprisonment on both the counts shall run concurrently.