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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE RAJESH RAI K

CRIMINAL APPEAL NO.779 OF 2011

BETWEEN

B.V. RAMESH,
S/O. VENKATARAMAIAH,
AGE: 56 YEARS,
FORMER TALUK EXECUTIVE OFFICER,
TALUK PANCHAYAT, YELANDUR,
R/AT. NO.9, G.P.RAJARATHNAM ROAD,
15TH CROSS, BENDRE NAGAR,
BANASHANKARI 2ND STAGE,
BANGALORE-560 070.

...APPELLANT

(BY SRI. ARUN SHYAM.M, SENIOR ADVOCATE FOR
SRI. SUYOG HERELE.E, ADVOCATE)

AND

STATE OF KARNATAKA,
BY LOKAYUKTA POLICE,
CHAMRAJANAGAR,
REPRESENTED BY ITS
PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE- 560 001.

…RESPONDENT

(BY SRI. VENKATESH S. ARABATTI, ADVOCATE)

THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 23.07.2011 PASSED BY THE DISTRICT

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AND SESSIONS JUDGE, CHAMARAJANAGAR IN SPL. CASE NO.126/2009 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S. 7 AND 13(1)(d) R/W. SEC.13(2) OF PREVENTION OF CORRUPTION ACT, 1988. AND THE APPELLANT/ACCUSED SHALL UNDERGO IMPRISONMENT FOR 4 YEARS AND HE SHALL ALSO PAY A FINE OF RS.25,000/-, IN DEFAULT HE SHALL SUFFER FURTHER SIMPLE IMPRISONMENT FOR A PERIOD OF FIVE MONTHS, FOR THE OFFENCES P/U/S 7 AND 13(1)(d) R/W. SEC. 13(2) OF THE PREVENTION OF CORRUPTION ACT, 1988.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 30.06.2023, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal filed by the convicted accused is directed against the judgment of conviction and order of sentence passed in special case No.126/2009 dated 23.07.2011 by the District and Special Judge at Chamarajanagara wherein, the appellant/accused was convicted for the alleged offence punishable under Sections 7 and 13(1)d r/w section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') and directed to undergo imprisonment for a period of 4 years and also to pay a fine of Rs.25,000/- in default, he shall suffer further simple imprisonment for a period of 5 months.

2. The factual matrix of the prosecution case are that:-

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The appellant was working as Taluk Executive Officer of Taluk Panchayat at Yelandur. Under Dr.B.R.Ambedkar self employment scheme, the complainant-Shivamurthy, who was examined as PW.2 in this case and other beneficiaries have applied for loan in the said scheme at Dr. B.R.Ambedkar Development Corporation. The appellant/accused being Executive Officer of Taluk Panchayat had to send recommendation to the said development corporation for sanctioning the loan under the said scheme. In this regard, PW.2-the complainant, PW.4-Ningaraju and CW.8-Nagaraju approached the appellant/accused on 27.11.2007 in Taluk Panchayat office at Yelandur and requested the appellant/accused to see that they were selected as the beneficiaries under the said scheme and they are to be recommended by the Authority. The accused/appellant agreed to comply with their request subject to the condition that they should pay bribe of Rs.2,500/- each, totalling to Rs.10,000/- for doing the said official act. When they said that they are unable to pay that much of amount, the accused agreed to accept Rs.4500/- in total and told that he would do the work, only if the said amount of Rs.4500/- is paid to him on

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28.11.2007, otherwise, he will not do the work and thereby, demanded the illegal gratification. Therefore, the complainant i.e., PW.2 and other beneficiaries of the said scheme, decided not to give any gratification or bribe to the accused/appellant and therefore, PW.2 lodged the complaint to the Chamarajanagara Lokayukta Police.

3. It is the further case of the prosecution that on 28.11.2007 at about 5.15 p.m., in Taluk Panchayat Office at Yelandur, PW.2 i.e., the complainant and PW.3, who is the eye-witness (shadow witness) went to the chamber of the accused/appellant to meet him and at that time, the accused/appellant demanded the bribe amount of Rs.4,500/- and received the alleged amount from PW.2-the complainant in presence of PW.3 and the accused was trapped and money was recovered from his table drawer. As such, the Investigation Officer arrested the accused, the recovery mahazar has been drawn and the tainted money was recovered at the instance of the accused and thereafter, the accused was produced before the Special Court and thereby, remanded to judicial custody. The Investigation Officer, after completion of the investigation, laid the charge sheet against

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the accused for the alleged offence punishable under Sections 7 and 13(1)d r/w section 13(2) of the Act. Before the Special Court, the Special Judge framed the charge against the accused for the aforesaid offences and read over the same to the accused. However, the accused denied the charges levelled against him and claims to be tried.

4. In order to bring home the guilt of the accused, the prosecution in all examined 5 witnesses i.e., PW.1 to PW.5 so also got marked 26 documents as per Exs.P1 to P26 and 9 material objects i.e., MO.1 to MO.9. After completion of the evidence, the learned trail Judge read over the incriminating portion of the evidence of the witnesses deposed before the Court to the accused as contemplated under Section 313 of Cr.P.C. However, the accused denied the same and he did not choose to examine any of the witnesses on his behalf so also he did not mark any documents on his behalf.

5. The defence of the accused is that of total denial of the demand and acceptance of the alleged bribe amount and he stated that the complainant had kept the alleged amount in his drawer without his knowledge. This defence put

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forward by the accused at the initial stage and the same was produced and exhibited before the trial Court as per Ex.P4.

6. After assessment of the oral and documentary evidence placed before the trial Court so also after hearing both the counsels for the accused and the Lokayukta, the learned Special Judge held that the prosecution proved the guilt of the accused for the offences punishable under Sections 7 and 13(1)d r/w section 13(2) of the Act and thereby, passed the impugned judgment by convicting the accused for the aforesaid offences as stated *supra*. The said judgment is challenged in this appeal.

7. I have heard Sri.Arun Shyam, learned Senior counsel for the appellant so also Sri. Venkatesh Arabhatti, learned counsel for the respondent-Lokayukta.

8. Learned Senior counsel for the appellant, vehemently, contended that the judgment under this appeal suffers from perversity and illegality and the learned Special Judge passed the impugned judgment without appreciating the evidence available on record so also the documents produced by the prosecution. He would further contend that

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the learned Special Judge convicted the appellant based on assumption and presumption, without appreciating the evidence available on record. He would further contend that though the prosecution totally failed to prove the demand and acceptance of the bribe by the appellant by leading cogent evidence, in spite of that the learned Special judge convicted the accused which is not sustainable under law. He would further contend that the complainant-PW.2 totally turned hostile to the prosecution case by disowning the complaint as per Ex.P13. As such, the prosecution failed to prove the demand and acceptance of the illegal gratification by the accused. Learned Senior counsel would contend that mere recovery of tainted money is not sufficient to convict the accused since the prosecution failed to prove the demand of the illegal gratification. He would further contend that it is the settled position of law by the Hon'ble Apex Court in catena of judgments that demand of illegal gratification is *sine qua non* for establishing offence under the provision of the Act and mere recovery of tainted money is not sufficient to convict the accused. When the substantial evidence in the case is not reliable unless there is an evidence to prove payment of bribe

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or to show that the money was taken voluntarily as bribe by the accused, then provision under Sections 7 and 13 of the Act does not attract. He would further contend that while invoking the provision of Section 20 of the Act, the Court is required to consider the explanation offered by the accused only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the bribe amount in question was found in his possession, the foundational fact must be established by the prosecution.

9. In the case on hand, since the complainant himself turned hostile and though the shadow witness and the mahazar witness i.e., PW.1 and PW.3 supported the case of the prosecution, their evidence cannot be taken as a gospel truth when there are materials contradictions are forth coming in their evidence. As such, the learned Special Judge has totally erred while passing the impugned judgment by convicting the accused. He would further contend that Section 20 of the Act mandates the Court to raise a presumption that illegal gratification for the purpose of motive or reward as

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mentioned in Section 7 of the Act. The said presumption has to be raised by the Court as legal presumption or presumption in law. In the case on hand, the prosecution totally failed to prove the presumption for the reason that, it is the case of the prosecution that the accused paid the amount for the purpose that he had applied for loan to Dr. Ambedkar Development Corporation and the accused, being the Executive Officer in Taluk Panchayat, had to send recommendation to the said Development Corporation for sanctioning the loan under the said scheme for which, the accused demanded bribe. But the Investigation Officer failed to seize any such documents in the office of the accused. The Investigation Officer also categorically admitted that at the time of the alleged trap, the accused was not in possession of documents pertaining to the complainant-PW.2 and the other beneficiaries. Further, he admitted that there is a committee headed by the accused to select the beneficiaries. All the documents pertaining to the beneficiaries were with one Subbanna, who was Yelandur Taluk Development Officer and Smt. Rukmini i.e., District Manager of Dr. Ambedkar Development Corporation, Chamarajanagar and Investigation

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Officer seized the registers pertaining to Gundlupet and Yelandur Taluk beneficiaries' applications for loan from the said Smt. Rukmini. She was maintaining the said registers. In such circumstance, there is no reason either to give the bribe by PW.2 or as to receive the same by the accused. This aspect of matter is totally not considered by the learned Special Judge. The Hon'ble Apex Court in catena of judgments laid down the law that the allegation of demand of gratification and acceptance made by a public servant has to be established beyond reasonable doubt. When the reliance is placed on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance from which the prosecution wants the Court to draw a conclusion of the guilt. Hence, in the absence of proof of demand for illegal gratification, mere possession or recovery of currency notes from the person or in the office of the accused is not sufficient to constitute the offence. Accordingly, learned Senior counsel prays to allow the appeal by setting aside the impugned judgment.

10. Learned Senior counsel, to substantiate his arguments, relied the following judgments:

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1. B JAYRAJ Vs. STATE OF ANDHRA PRADESH, (2014) 13 SCC 55;

2. P SATHYANARAYANA MURTHY Vs. DISTRICT INSPECTOR OF POLICE, STATE OF ANDHRA PRADESH, (2015) 10 SCC 152;

3. V SEJAPPA Vs. STATE BY POLICE INSPECTOR LOKAYUKTHA CHITRADURGA, (2016) 12 SCC 150;

4. N. VIJAYKUMAR Vs. STATE OF TAMIL NADU, (2021) 3 SCC 687;

5. K. SHANTAMMA Vs. STATE OF TELANGANA, (2022) 4 SCC 574;

6. NEERAJ DUTTA Vs. STATE (GOVERNMENT OF NCT OF DELHI), (2023) 4 SCC 731;

7. NEERAJ DUTTA Vs. STATE (GOVERNMENT OF NCT OF DELHI), (2023) SCC Online 280;

8. P. MANJUNATH Vs. THE STATE OF KARNATAKA AND ANR, WP No.10027/2022, D.D on 16-11-2022;

9. L. SATISH KUMAR Vs. THE STATE OF KARNATAKA AND ANR, WP No.15314/2022;

10. MOHD. IQBAL AHMED Vs. STATE OF ANDHRA PRADESH, (1979) 4 SCC 172;

11. MANSUKHLAL VITHALDAS CHAUHAN Vs. STATE OF GUJURAT, (1997) 7 SCC 622;

12. NANJAPPA Vs. STATE OF KARNATAKA, (2015) 14 SCC 186;

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13. STATE OF H.P. Vs. JAIL LAL AND OTHERS, (1999) 7 SCC 280;

11. Refuting the above arguments advanced by the learned Senior counsel, the learned counsel Sri.Venkatesh Arabhatti appearing for the Lokayukta, vehemently, contended that the judgment under appeal does not suffers from any perversity or illegality and the same is as per the evidence available on record. The learned Special Judge, after considering the entire evidence and materials on record, passed the judgment by convicting the accused for the charges levelled against him. Learned counsel would further contend that though the complainant-PW.2 in this case turned hostile before the Court by disowning his statement, that itself does not take away the case of the prosecution as per the settled law by the Hon'ble Apex Court in the case of *Neeraj Dutta's* case rendered by the Constitution Bench, wherein the Hon'ble Apex Court summarized in paragraph 88.6. (f) that in the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can against let in evidence, either orally or by documentary evidence or the prosecution can

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prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant. As such, in the absence of evidence of the complainant, it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) r/w Section 13(2) of the Act based on the other evidence adduced by the prosecution.

12. It is further contended by the learned counsel for the respondent that though PW.2-the complainant turned hostile to the prosecution case, PW.1 i.e., panch witness and PW.3-the eye-witness (shadow witness) consistently deposed about demand and acceptance of the bribe/illegal gratification by the appellant. By perusal of the evidence of PW.1, who categorically stated that himself, PW.2-the complainant and PW.3 along with PW.5-the Investigation Officer went to the office of the accused on 28.11.2007 in the evening hours and after the entrustment of panchanama as per Ex.P2, he went inside the office and thereafter, PW.2 gave the bribe amount to the accused and the accused kept the same in the drawer of his table and thereafter, the Police held the hands of the accused and dipped both his hands separately in some

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solution and the said solution turned into pink colour and the said solution was collected in the bottle and thereafter, the accused was arrested and the accused gave an explanation. However, the same was false. The panch witness i.e., PW.1 categorically identified his signature on mahazar at Ex.P5. PW.3, who is the shadow witness also categorically reiterated the version of PW.1 and moreover, he being eye-witness to the incident clearly stated about the incident that he was watching the incident through window from outside the chamber of the accused. According to him, PW.2 went inside the chamber and the accused spoke to PW.2 and he received the bribe amount and kept in his shirt pocket and thereafter, the Police held the hands of the accused and washed his hands with sodium carbonate solution. He identified the mahazar at Ex.P5 and also currency notes as per MO.9. This consistent version of PW.1 and PW.3, who are the eye-witnesses, supported by the evidence of PW.5-the Investigation Officer. The Investigation Officer categorically deposed about the incident i.e., demand and acceptance of the bribe amount by the accused. Though the complainant turned hostile to the prosecution case, the prosecution proved

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the case beyond reasonable doubt by leading cogent evidence of PW.1, PW.3 and PW.5. Hence, according to the learned counsel for the respondent, there is no reason to disbelieve the evidence of PW.1 and PW.3 since they are the independent officials and they were not having any ill-will against the accused and as such, their evidence cannot be brushed aside.

13. Learned counsel would further contend that even the Investigation Officer categorically admitted that there were some pending works in the office of the accused relating to PW.2. As such, the presumption under Section 20 of the Act can be drawn in this case since the accused being the Executive Officer of the Taluk Panchayath, he is the officer who has to send the recommendation of the complainant to the Development Corporation for sanctioning of the loan under Dr. B.R. Ambedkar Self-Employment Scheme and as such, the accused demanded the bribe amount. The learned counsel would submit that the defence of the accused by way of Ex.P4-Explanation that the said amount was kept in his drawer by the Police Officials is not in a probable defence for the reason that the accused totally failed to lead any evidence

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to that effect. PW.1 and PW.3 categorically stated that the explanation given by the accused as per Ex.P4 is false. Since the accused failed to prove such defence, the same cannot be believed and the same is not a probable defence. In such circumstances, the learned counsel for the respondent-Lokayukta prays to dismiss the appeal and to confirm the judgment passed by the trial Court.

14. On behalf of his arguments, the learned counsel for the respondent relies the following judgments of the Hon'ble Apex Court in the cases of:-

i) *C.S.Krishnamurthy vs. State of Karnataka* reported in *(2005) 4 SCC* 81;

ii) *Neeraj Dutta vs. State (Government of NCT of Delhi)* reported in *(2023) 4 SCC 731*;

iii) *State of H.P. vs. Jail Lal and others* reported in (1999) 78 SCC 186; and

iv) *Hazari Lal vs. State (Delhi Administration)* reported in *(1980) 2 SCC* 390.

15. I have bestowed my anxious consideration on the arguments advanced by both the parties so also the

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documents available on record i.e., including the trial Court record.

16. Having heard both the counsels and on perusal of the records, the points that would arise for my consideration are:-

1. Whether the judgment under appeal suffers from any perversity or illegality?

2. Whether the Special judge justified in convicting the accused/appellant for the offence 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988?

17. This Court being the Appellate Court, the re-appreciation of the entire evidence is very much required.

(i) PW.1-Doreswamachari, who was as SDA in Minor Irrigation Sub-Division, Chamarajanagara and panch witness, deposed that on 28.11.2007, his Assistant Execute Engineer deputed him and CW.3 to go to Lokayukta Office, Chamarajanagara. Accordingly, a memo was given to them as per Ex.P1. Therefore, himself and CW.3 went to Lokayukta Office at about 3.45 p.m. At that time, the Police Inspector Dharmendra i.e., CW.23, the complainant-Shivamurthy i.e.,

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PW.2 and the Police staff were there. Later, CW.23 introduced PW.2-Shivamurthy to them and CW.23 informed them that PW.2-Shivamurthy has given a complaint alleging that himself Shivamurthy, Jayashree, Doreswamy and Mahadevaswamy have given a petition for sanction of loan under Self-Employment scheme and for sanctioning the said loan, the accused has demanded bribe amount of Rs.2,500/- each (in all Rs.10,000/-) and they agreed to pay Rs.4,500/-. I have also enquired CW.1 and the complaint was given to us and they read the said complaint. He further deposed that the PW.2-the complainant produced Rs.4,500/- before Lokayukta Police. Then the said amount was handed over to one Lingaraju, who dictated the currency numbers and he noted the currency note numbers. There were seven 500 rupees and 10 hundred rupee notes. Then Phenolphthalein powder was smeared on the said notes and handed over to him and he verified the notes. Then on the instruction of Police Inspector, he kept the said currency notes in the shirt pocket of Shivamurthy. Then it is informed to the complainant that if the accused demanded, he has to give a signal by wiping his face with hands and a voice recorder was also given to PW.2.

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Then, his both hands were dipped in Sodium Carbonate solution and the said solution turned into pink colour. Then they all left the Lokayukta Office at about 5.00 p.m., and they reached Yelandur by 5.20 p.m., and thereafter, the Police sent CW.1 and CW.3 to the office of the accused. Then they were all outside the office. Within 10 minutes, the complainant came out of the office and gave a signal by wiping the face, then himself and the Police went inside the office of the accused. The Inspector enquired the complainant and told that the accused has asked the bribe and he has paid the bribe and the accused, after receiving the bribe, has kept the bribe amount in the table drawer. On enquiry, the accused told when he went for urinals, the bribe amount was kept in the drawer by the complainant. Then the Police held the hands of the accused and dipped both the hands separately in some solution and the solution turned into pink colour. Then the Police got removed the bribe amount from the table of the accused and the numbers of the currency notes were compared with the numbers earlier noted and they were tallying. The said note number recorded sheet marked as Ex.P3 and the mahazar was drawn as per Ex.P5. This witness

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identified his signature on Ex.P5 and also identified the cash marked at MO.9. However, in the cross examination, he stated that he came to know that the documents relating to sanctioning of the loan was in the custody of one Subbappa, who was working in the office of accused. On that day, the said Subbappa was not in the office and he did not know whether at the time of writing the mahazar, Subbappa had given all the documents to the accused. Further, he agreed that he came to know that there was a committee for concerned application for sanction of loan. He further admitted that the powder was smeared to the currency notes by the Lokayukta staff. The said Lokayukta staff, who smeared the powder to the currency notes, washed his hands with some solution.

(ii) PW.2-Shivamurthy is the complainant in this case, who lodged the complaint before the Police as per Ex.P13. This witness deposed that he has given application for loan to Dr.Ambedkar Development Corporation under the Self-Employment Scheme about 2 years back. After that, he enquired the Manager of Dr.Ambedkar Development Corporation and he told that his application was forwarded to

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Yelandur Taluk Panchayat Office. Then he went to Yelandur Taluk Panchayat Office and he enquired the accused, who was the Executive Officer of the Taluk Panchayat. He told that he had no power and asked him to go and enquiry in Dr.Ambedkar Development Corporation and then he went to enquire in the said Corporation and there he was told that they have no powers and Taluk Panchayat Yelandur has to do the same. Then he was disappointed due to the wandering from the office to office. Hence, he kept quite. Then some person informed him to go to Lokayukta Office and his work will be done. Then he went to Lokayukta Office, Chamarajanagar and he told about his grievance and the Lokayukta Officers informed him to give a complaint. Then he agreed and the Lokayukta Police dictated the complaint and he wrote the complaint. He identified the said complaint as Ex.P13 and his signature on it as per Ex.P13(A). However, he deposed before the Court that the accused has not demanded any money from him to do his work and he has given Rs.4,500/- to the Lokayukta Police on their request. Hence, the said witness treated as hostile to the prosecution case. Though the learned Public Prosecutor cross examined the said

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witness in length, nothing has been elicited from the mouth of the said witness.

(iii) PW.3-Lingaraju, who was working as FDA, is a shadow witness of the trap. He reiterated the version of PW.1. As far as the alleged raid is concerned, he deposed that on the said date, at about 5.00 p.m., himself and PW.1 and other Police Officers went in a car to the office of the accused and PW.2 brought a bicycle and then himself and PW.2 went in the bicycle to the office of the accused and the accused was alone in his chamber and he watching the same through the window from outside of the accused chamber. PW.2 i.e., the complainant went inside the accused chamber and the accused spoke to PW.2 and thereafter, he received the money (bribe) and the accused, after receiving the bribe amount, verified the same and kept in the right side table drawer and told that he will do his job and asked him to go. Then, PW.2 came out from the chamber of the accused and gave signal to the police by wiping his face. Then Lokayukta Police came inside the office and thereafter, held his both hands and dipped in the sodium carbonate which was prepared by the police and washed both hands of the accused separately. The

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said wash turned into pink colour and the same was collected in 2 bottles and sealed. This witness also deposed about the recovery of the said bribe amount from the table and also in respect of the explanation given by the accused as per Ex.P4 so also the detailed panchanama as per Ex.P5. He identified his signature on Ex.P5. In the cross examination, this witness admitted that after removing the cash from the accused table drawer, his hands were washed. He also admitted that the date mentioned in trap mahazar as per Ex.P5 was written on 29.11.2007 and it was wrongly written. But the mahazar written on 28.11.2007. He also admitted that after the alleged trap, himself and the Police heard/listened the conversation recorded by PW.2, but the conversation was not so clear.

(iv) PW.4-Ningaraju, who is one of the beneficiary of the loan under Self-Employment Scheme i.e., Dr.Ambedkar Development Corporation. However, this witness turned hostile to the prosecution case.

(v) PW.5-Dharmendra, who is the Investigation Officer in this case and registered the FIR against the accused based on the complaint given by PW.2 as per Ex.P13 and the

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FIR was marked as Ex.P16 and thereafter, he conducted the entrustment panchanama and seized the currency notes i.e., MO.9 and also drawn a mahazar as per Ex.P5 and recorded the statement of all the witness and laid the charge sheet against the accused for the offence punishable under Sections 7 and 13(1)d r/w section 13(2) of the Act.

18. On careful perusal of the above evidence available on record, the first and foremost question would arise is the demand of illegal gratification by the accused, who is the Executive Officer of Taluk Panchayat, Yelandur to send the recommendation of PW.2 and others to the Development Corporation for grant of loan under Dr.Ambedkar Self-Employment Scheme. It is the case of the prosecution that the appellant being the beneficiary, he approached the accused and thereafter, the accused agreed to forward the said recommendation subject to the condition that himself and other beneficiaries should pay a bribe of Rs.2,500/- each totalling to Rs.10,000/- and thereafter, they agreed to pay Rs.4,500/- in total. On that aspect of the matter, he demanded the illegal gratification. To prove the said aspect, the prosecution relied the evidence of PW.1 i.e., mahazar

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witness, PW.3 i.e., shadow witness, PW.5 i.e., Investigation Officer. PW.2-the complainant in this case, turned hostile to the prosecution case. PW.2, who lodged the complaint as per Ex.P13, disowned the contents of complaint i.e., Ex.P13 and stated that the accused did not demanded any illegal gratification from him nor he paid the same. Further, he deposed that on the request of Lokayukta Police, he gave Rs.4,500/- to them on the date of incident. Though this witness admitted his signature on complaint i.e., Ex.P13, he denied the contents of the said complaint. As such, for the demand and acceptance of the illegal gratification by the appellant, the prosecution has to prove its case by the evidence of PW.1 and PW.3.

19. By careful perusal of the evidence of PW.1 and PW.3, PW.1, who is the panch witness, though deposed in the chief examination that himself, PW.2 and PW.3 went to the office of the accused and the accused demanded the bribe amount, he categorically stated that the accused demanded the bribe amount from PW.2 and the accused and PW.2 only were discussing inside the office and himself and all others were standing outside the office. Thereafter, the complainant-

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PW.2 came out of the office and gave signal by wiping his face. Then the Police and himself went inside the office of the accused and when the Inspector enquired complainant-PW.2, he told that the accused was asked the bribe and he has paid the said bribe and after receiving the bribe, the accused kept the said bribe amount in the table drawer. By perusal of this portion of evidence of PW.1, it is clear that the complainant-PW.2 informed PW.1, PW.3 and all other witnesses that the accused demanded the bribe amount and also received the said amount. Hence, as far as the demand and acceptance of the bribe amount is concerned, PW.1 is totally hearsay witness since he was standing outside the office of the accused and the complainant-PW.2 informed him that the accused demanded and received the money. Further, as admitted by this witness in respect of the voice recorder is concerned, though the voice recorder was seized, which was given to PW.1, but PW.3-the shadow witness categorically stated that the voice record was not so clear. Even the Investigation Officer also categorically stated that the voice recorder was not clear. Further, according to PW.1, the bribe amount was kept in the drawer of the accused and thereafter,

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the Police held the hands of the accused and dipped both the hands separately in the Sodium Carbonate solution and the same was turned into pink colour. Hence, once again it is clear that the bribe amount was seized from the drawer of the accused and not from the person or pocket of the accused. As such, though the hand wash turned into pink colour, the hand wash was done after the amount kept in the table of the accused as per the evidence of PW.3.

20. At this juncture, it is relevant to note that the explanation given by the accused as per Ex.P4 that while he had gone to urinals, the amount was kept in his table drawer. By perusal of the evidence of PW.3, who is an eye-witness to the incident, he also categorically stated that he was standing outside the office of the accused i.e., 6 to 7 ft. away from the chamber of the accused and the accused and PW.2 only discussed about the demand and acceptance of the bribe and stated that they were all outside the chamber of the accused. Hence, even according to PW.3 also, PW.2-the complainant informed him about the demand and acceptance of the bribe amount by the accused. Hence, version of PW.3 also cannot be relied to prove the guilt of the accused for the reason that

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as far as the demand and acceptance of bribe amount is concerned, PW.2 i.e., the complainant who informed PW.1 and PW.3 that the accused demanded and received the bribe amount. Moreover, the voice recorder was not so clear and it was not in an audible condition. Hence, the evidence in respect of demand of bribe amount is concerned, there is no cogent evidence and the prosecution failed to prove the same by leading cogent evidence.

21. As far as acceptance of the bribe amount is concerned, though the witnesses i.e., PW.1 and PW.3 stated that the amount was recovered in the drawer of the accused, but the defence of the accused that the amount was kept in his table by the Officials appears to be probable one, for the reason that PW.3 in his evidence categorically deposed that when he was standing by the side of the window of the accused chamber along with the complainant, at that time, another person belonging to the complainant accompanied to the chamber of the accused. Further, he admitted that the person accompanied along with PW.2 was not asked anything to the accused and he does not know why the another person accompanied PW.2 to the chamber of the accused. This

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admission of PW.3 absolutely not explained by the prosecution in the evidence of Investigation Officer i.e., PW.5. Further, it is deposed by PW.3 in the cross examination that the Police held the hands of the accused after the accused kept the amount in the drawer of his table and dipped both the hands separately in some solution and the said solution turned into pink. In such circumstances, the hand wash of the accused and the solution turned into pink colour does not point out the guilty of the accused of receiving the bribe for the reason that the hand was done after the amount kept in the drawer of the table. Admittedly, no documents were seized in the office of the accused pertaining to the loan aspect of the complainant. Per contra, it was seized in the head office at Yelandur as stated by PW.5 i.e., Investigation Officer. PW.4, though the beneficiary of the loan amount as that of PW.2, is not supported the prosecution case. Admittedly, the table/drawer in which the accused allegedly kept the bribe amount is not seized by the Investigation Officer. The amount of Rs.4,500/- i.e., seized by the Police from the drawer of the accused is concerned, PW.2-the complainant admitted that on the request of Lokayukta Police,

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he paid Rs.4,500/- to them. Such being the case, the defence of the accused seems to be probable one.

22. Learned counsel for the respondent, vehemently, contended that the Hon'ble Apex Court laid the law in the case of ***Neeraj Dutta vs. State (Government of NCT of Delhi)*** reported in ***(2023) 4 SCC 731*** that even if the complainant turned hostile by disowning his complaint, then also based on the available evidence, the accused can be convicted under the provisions of the Act.

23. On careful perusal of the dictum laid down by the Hon'ble Apex Court in the case of ***Neeraj Dutta vs. State (Government of NCT of Delhi)*** reported in ***(2023) 4 SCC 731*** held that for recording conviction under Sections 7, 13(1)(d)(i) and (ii) of the Act, the prosecution has to first prove the demand and acceptance of illegal gratification either (1) by direct evidence which can be in the nature of oral evidence or documentary evidence, or, (2) by circumstantial evidence in the absence of direct and oral documentary evidence. The Hon'ble Apex Court, in paragraph 88, held as under:-

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"88. What emerges from the aforesaid discussion is summarised as under:

88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the Section is a sine quo non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

88.2. (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3. (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4. (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply

accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both case f (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior

demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment of under Sections 13(1)(d)(i) and (ii) of the Act.

88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

88.6. (f) In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can against let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

88.8. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature. "

Hence, the Hon'ble Apex Court laid the dictum that the proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a *sine qua non* in order to establish the guilt of the accused public servant under Section 7 and 13(1)(d)(i) and (ii) of the Act and also that though the complainant turned hostile or died or is unavailable to let in his evidence during, the prosecution can prove the guilt of the accused by the circumstantial

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evidence. However, the Hon'ble Apex Court clarified the position of law that in order to bring home the guilt of the accused, the prosecution has to first prove the demand and acceptance of illegal gratification and the subsequent acceptance as a matter of fact.

24. In the case on hand, as discussed *supra,* the prosecution failed to provide cogent evidence to prove the demand of illegal gratification by the appellant herein since the complainant-PW.2 turned hostile and PW.1 and PW.3, being the hearsay witness, they deposed that PW.2 only informed them and the police about the demand and acceptance of the bribe by the accused. When the complainant himself turned hostile, then evidentiary value cannot be attached to the evidence of PW.1 and PW.3 and moreover, the audio clip in respect of the demand is not clearly admitted by the Investigation Officer-PW.5 so also the witness PW.3.

25. The Hon'ble Apex Court in *Neeraj Dutta's* case (*supra*) after the law laid down by the Constitution Bench and the said matter was disposed by the Hon'ble Apex Court which

was reported in ***2023 SCC Online SC 280*** wherein the Hon'ble Apex Court held in paragraph 15 by referring the case of ***N.Vijayakumar vs. State of Tamil Nadu*** reported in ***(2021) 3 SCC 687*** held that "absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence and the presumption under Section 20 of the Act can be drawn only after the demand for and acceptance of illegal gratification is proved. Further, the Hon'ble Apex Court in paragraph 18 held as under:-

> *"18. The allegation of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench does not dilute this elementary requirement of proof beyond a reasonable doubt. The Constitution Bench was dealing with the issue of the modes by which the demand can be proved. The Constitution Bench has laid down that the proof need not be only by direct oral or documentary evidence, but it can be by way of other evidence including circumstantial evidence. When reliance is placed on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance from which the prosecution wants the*

Court to draw a conclusion of guilt. The facts so established must be consistent with only one hypothesis that there was a demand made for gratification by the accused. Therefore, in this case, we will have to examine whether there is any direct evidence of demand. If we come to a conclusion that there is no direct evidence of demand, this Court will have to consider whether there is any circumstantial evidence to prove the demand."

26. It is settled position of law laid down by the Hon'ble Apex Court in the above said judgment that the prosecution must establish each and every circumstances from which the prosecution wants the Court to draw a conclusion of the guilt. Moreover, the Hon'ble Apex Court in the case of ***P.Sathyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another*** reported in ***(2015) 10 SCC 152*** held that, the proof of demand cannot be proved by the evidence of other witnesses, in such eventuality though such recovery proved, the benefit of doubt should be extended to the accused. Mere acceptance of any amount allegedly by way of demand, *ipso facto*, would not be sufficient to bring home the charges under Sections 7 and 13 of the Act. In the said judgment, the

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Hon'ble Apex Court by referring the judgment of ***Sujit Biswas vs. State of Assam*** reported in (***2013) 12 SCC 406*** held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.

27. In the instant case on hand, since the complainant himself disowned his statement and totally given go by to the prosecution case and also there is a cloud in the evidence of PW.1 and PW.3, in such eventuality, the benefit of doubt should be extended to accused.

28. The Hon'ble Apex Court in the above relied judgment further held that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would not be sufficient to bring home the charges under Sections 7 and 13

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and 13(1)(d)(i) of the Act. As a corollary, the failure of prosecution to prove the demand of illegal gratification would be fatal and mere recovery of the amount from the person of the accused of the offence under Sections 7 or 13 of the Act would not entail his conviction there under. In the instant case, the amount of Rs.4,500/- recovered is not from the person of the accused, but from the table drawer of the accused. When PW.1-the complainant himself categorically denied the aspect of demand and acceptance of the bribe and the audio clipping was also not clear, in such circumstances, inference cannot be drawn against the accused.

29. Though the learned counsel for the respondent, vehemently, contended that the amount of Rs.4,500/- recovered in the table drawer of the accused and in such eventuality, though the complainant turned hostile, when the evidence of PW.1 and PW.3 are very much available on record, then the burden shifts on the accused to prove as to how the said amount finds place in his table drawer and in respect of recovery of the same. If the accused failed to explain such circumstances, then adverse inference can be drawn against he accused. But the Hon'ble Apex Court in the

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case of ***V.Sejappa vs. State by Police Inspector Lokayukta, Chitradurga*** reported in ***(2016) 12 SCC 150*** held that mere recovery of tainted money is not sufficient to convict the accused. The presumption under Section 20 is concerned, the Court is required to consider explanation offered by the accused, if any, only on touchstone of preponderance of probability and not on touchstone of proof beyond all reasonable doubt. However, before accused is called upon to explain as to how the amount in question was found in his possession, foundational facts must be established by prosecution.

30. In the case on hand, the accused offered the explanation that the amount was kept in his drawer by PW.5 while he gone for urinals. Even PW.3 stated in his evidence that, along with PW.2, another person known to PW.2 accompanied to the chamber of the accused. Further, PW.2 and another person were went inside the chamber of accused and also he admitted in his cross examination that "it is true to suggest that after removing the cash from the hands of accused from his table drawer, his hands were washed". In such circumstances, the defence of accused appears to be

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quite probable one. As such, as far as the hand wash of accused and the same was turned into pink colour, does not survive for consideration. Hence, the presumption under Section 20 rebutted by the accused in this case as laid down by the Hon'ble Apex in the judgment stated s*upra*.

31. Learned counsel for the respondent, vehemently, contended that the evidence of PW.3 and PW.5 are corroborative and consistent in respect of the demand and acceptance of the bribe by the accused since they both categorically deposed that they went along with PW.5 and PW.2-the complainant and thereafter, PW.2 and the accused both were discussed and at that time, the accused received bribe amount from PW.2 and kept the same in his drawer and subsequently, the Police recovered the same and the mahazar drawn to that effect as per Ex.P5. Hence, though the complainant turned hostile to the prosecution case, by the evidence of PW.1 and PW.3 coupled with the evidence of PW.5, the prosecution proved the case beyond reasonable doubt.

32. But on careful perusal of the evidence of PW.1, PW.3 and PW.5, there are much contradictions and omissions

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in their evidence in respect of the demand and acceptance of the bribe by the accused. They categorically admitted that the accused demanded bribe amount from PW.2-the complainant and the complainant in turn informed them that the accused demanded the bribe and accepted the same. Admittedly, the voice recorder was not audible/clear as stated by the Investigation Officer i.e., PW.5.

33. Even otherwise as per the settled principle of law laid down by the Hon'ble Apex Court in the judgment of *N.Vijayakumar's* case state *Supra,* it is clear that mere recovery of the tainted money, dehorse from the circumstances under which such money was found, held, not sufficient to convict accused when the substantive evidence in the case is not proved.

34. Though the learned counsel for the respondent relied the judgment rendered by the Hon'ble Apex Court in the case of ***Hazari Lal Vs. State (Delhi Administration)*** reported in ***(1980) 2 SCC* 390** wherein it held that the acceptance of illegal gratification - passing of money to the possession of accused can be proved by direct as well as

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circumstantial evidence - circumstances leading to the only inference of acceptance of money by the accused, presumption under Section 114 of Indian Evidence Act and Section 4(1) of the Act can be raised against accused, however, the said dictum laid down by the Hon'ble Apex Court has been diluted by the subsequent judgments rendered by the Hon'ble Apex Court in the case of *Jayaraj vs. State of Andhra Pradhesh*, *P.Sathyanarayan Murthy vs. District Inspector of Police, State of Andhra Pradesh, V.Sejappa vs. State by Police Inspector Lokayukta, Chitradurga* and *N.Vijaykumar vs. State of Tamilnadu* as discussed Supra.

35. The Hon'ble Apex Court in catena of judgments held in respect of burden of proof and doctrine of innocence. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle form the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The Courts must be on guard to see that merely on the application of the presumption, the same may not lead any injustice or

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mistaken conviction. My view is fortified by the judgment rendered by the Hon'ble Apex Court in the case of ***Babu vs. State of Kerala*** reported in ***(2010) 9 SCC 189***.

36. The Hon'ble Apex Court in the case of ***Narendra Singh and another vs. State of Madhya Pradesh*** reported in ***(2004) 10 SCC 699*** held that the suspicion, however grave may be, held, cannot take the place of proof. There is a long distance between "may be" and "must be". Hence, by considering the above principles laid down by the Hon'ble Apex Court, in the case on hand, the prosecution failed to prove the charges leveled against the accused beyond reasonable doubt for the reason that, PW.2-the complainant himself disowned the contents of the complaint lodged by him so also he failed to depose against the accused in respect of demand and acceptance of the bribe amount.

37. Though the learned counsel for the respondent, vehemently, contended that there is a consistent/verbatim evidence of PW.1 and PW.3, which proved the demand and acceptance of the bribe amount, on careful perusal of their

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evidence, they being the hearsay witnesses, their version cannot be relied as the gospel truth.

38. The Hon'ble Apex Court in the catena of judgments laid the law that the hearsay evidence cannot be relied solely without their being any corroboration. Though the Investigation Officer i.e., PW.5 deposed in respect of the demand and acceptance of the bribe amount by the accused, but in his evidence, he categorically admitted that the audio clippings in respect of the demand of bribe amount is not clear or audible. Moreover, in his cross examination, he categorically admitted that the accused was not in possession of the documents pertaining to PW.2-the complainant and other beneficiaries. He also admitted that there is a committee headed by the accused to select the beneficiaries. Further, all the documents pertaining to the beneficiaries including the accused were with one Subbanna, who was Yelandur Taluk Development Officer and Smt.Rukmini, District Manager of Dr.Ambedkar Development Corporation. Later, he seized those documents on 29.11.2007 at the instance of one Rukmini as the same was maintaining by her. He also admitted that the committee consist of 7 members including

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the President has to take a decision to which beneficiaries of the loan have to be sanctioned and accordingly, list will be prepared. In such circumstances, the presumption under Section 20 cannot be drawn in this case since the prosecution failed to prove the foundational facts. Per contra, the accused offered the explanation on the touchstone of preponderance of probability. Hence, in my considered view, as per the settled principles laid down by the Hon'ble Apex Court in the above discussed judgments, the prosecution failed to prove the guilt of accused in this case beyond reasonable doubt.

39. It is the golden thread runs through the web of criminal justice system that if two views are possible, the favorable view has to be considered in favour of the accused. Hence, in my considered opinion, the prosecution failed to prove the guilt of accused beyond reasonable doubt. Accordingly the conviction held against accused by the trial Court is liable 8 to be set-aside. Accordingly, I answered the points raised above and proceed to pass the following:

ORDER

i. The appeal preferred by the appellant/accused under Section 374 of Cr.P.C. is hereby allowed.

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ii. The judgment of conviction and order of sentence passed in special case No.126/2009 dated 23.07.2011 by the District and Special Judge at Chamarajanagara is hereby set aside.

iii. The appellant/accused is hereby acquitted of the charges levelled against him.

iv. The bail bond and surety bond executed by the appellant stands cancelled and the fine amount, if any deposited, before the trial Court, the same shall be refunded to him on proper identification.

v. Registry is directed to send back the trial Court records along with copy of this order to the learned Sessions Judge, forthwith.

Sd/-
JUDGE

HKV/VM