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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.02.2023

Pronounced on : 06.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.A(MD)No.363 of 2019

Dr.K.Senthilvel Murugan : Appellant/Accused

Vs.

The State rep. by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City-IV Detachment,
Chennai-35.

Crime No.24/AC/2009 : Respondent/Complainant

Prayer: Criminal Appeal filed under section 374 of the Criminal Procedure Code, against the sentence and conviction passed by the Special Judge-cum-Chief Judicial Magistrate, Nagercoil, in Special Case No.3 of 2012, dated 03/08/2019.

For Appellant : Mr.T.Lajapathi Roy
Senior Counsel
for Mr.S.Rajasekar

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor

**J U D G M E N T**

This criminal appeal has been preferred to set aside the judgment of conviction and sentence passed by the Special Judge-cum-Chief Judicial Magistrate, Nagercoil, in Special Case No.3 of 2012, dated 03/08/2019.

2.The case of the prosecution in brief:-

The Deputy Superintendent of Police, Vigilance and Anti-Corruption Unit, Chennai, received a secrete information that certain persons had collected bribe amount from the aspirants for the post of Lab Assistant and Supervisor in Health Department and they were bringing the same in Kanyakumari Express to hand it over to one Dr.Subburam, who is holding the key post in the Department. He proceeded to the Railway Station along with the witnesses, interrogated the accused, his subordinate Balamurugan and one Raveendran, a close friend of Dr.Subburam, seized Rs.7,50,000/- from the accused, Rs.46,300/- from Balamurugan and Rs.5,00,000/- from Raveendran. Upon which, FIR in Crime No.24 of 2009 was registered under sections 120(B) IPC and sections 7, 8, 12, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, at the Vigilance and Anti-Corruption, Chennai Unit-I. After completing the process of investigation, filed



final report before the trial court and it was taken cognizance in CC No.3 of 2012.

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3. On receipt of the summons, the accused appeared before the trial court and copies of documents and statement of witnesses were furnished under section 207 Cr.P.C. The accused pleaded not guilty and claimed to be tried. During trial, on the side of the prosecution, 22 witnesses were examined and 29 documents marked, apart from 7 material objects marked. On the side of the accused, no oral or documentary evidence was adduced.

4. The case of the prosecution as narrated through evidences:-

PW2-Balamurugan was working as Data Entry Operator in District Tuberculosis Centre at Nagercoil. At that time, the accused was working as Deputy Director of Medical Services (TB). PW2 used to do the private works of the accused also. During that period, applications were called for the post of Lab Technicians and Senior Tuberculosis Lab Supervisors and the interviews were scheduled to be held between 14/09/2009 and 18/09/2009 at Chennai. One Sudalai, who was examined as PW3 approached him for the post. The accused demanded Rs.1,65,000/- as bribe amount from various



persons. So, PW2 introduced PW3 to the accused. At that time, he demanded Rs.1,65,000/-. The accused directed PW3 to hand over the money to him. He followed the instructions given by the accused. After arranging money, PW3 informed him to come and collect the money. He also collected Rs.1,65,000/- from PW3. It was in-turn handed over to the accused. At his instruction, he booked three train tickets for travelling to Chennai in Kanyakumari Express, on 08/09/2009. The tickets are meant for the accused and PW2 Balamurugan. The 3rd man one Ravindra, who planned to join the accused at Madurai. So, all of them started their journey in the Kanyakumari Express at about 05.35 pm. The accused handed over six bundles of money and the same was kept in the bag of PW2. Ravindra also joined in Madurai Railway Station. When the train was nearing Tambaram Railway Station on the next day morning, the Vigilance Team entered into the Coach.

5.The further event is spoken by PW16, who was working as Inspector of Police, Vigilance and Anti-Corruption Department, Chennai. He received secrete information that the accused, PW2 and Ravindra were travelling in Kanyakumari Express along with the bribe amount. He requested two Government witnesses to assist them in the raid. Kanyakumari Express arrived at 06.30 am



in Platform No.6. They entered into the Coach occupied by the accused, PW2 and Ravindra. They introduced themselves to the accused and the witnesses. At his instruction, the accused handed over a black colour Travel bag. Similarly, Ravindra also handed over a suite case. PW2 handed over a black colour Sapphire Travel bag. Some of the travellers were requested to present as witnesses, so also one Surendran came forward as a witness. At his instruction, the accused opened the bag and handed over two cash bundles with the wrappers of the interview call letters in the names of Thurupsha and Muthumeerasha. Each call letter was carrying 1,50,000/- each. Another six cash bundles consisting about Rs.7,50,000/-, from Ravindra 5 cash bundles worth about Rs.5,00,000/-, from PW2, 6 cash bundles Rs.4,63,000/- were recovered.

6.The accused was enquired about the money. He admitted that the above said money is bribe amount to be handed to the Additional Director namely Subbaram for the Lab Technician and Lab Supervisor posts. PW2 as well as Ravindra also admitted the above said fact. Ravindra also told that the above said amount of Rs.5,00,000/- was collected from various persons from Dindigul and Madurai District to be handed over to the above said Subbaram. PW2 stated that the above said amount of Rs.4,63,000/- was



handed over by the accused to keep safely. The total amount of Rs.17,13,000/- was seized from all the three persons. The balance of Rs.13,000/- was not accounted by the accused. Later, they were taken to the Vigilance and Anti-Corruption Unit-I, Chennai. Mahazar was prepared and he recorded the statement of the witnesses and the co-passenger Surendran. The case was registered in Crime No.24 of 2009 under sections 7, 12, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

7.PW18-Natarajan was the Head of the Team, who carried out the search, raid, etc.

8.Further event is spoken by PW17-Sundarrajan on the information received from the Deputy Superintendent of Police (Vigilance and Anti-Corruption Unit), Nagercoil. He submitted advance intimation to the Chief Judicial Magistrate, Nagercoil regarding the conduct of raid in the the house of the accused, on 09/09/2009 at about 12.00 hours. He seized the note-pad handwritten by the accused. The job application of Renukadevi. He prepared an inventory.

9.Further investigation was undertaken by PW21. He recorded the statement of the witnesses, collected the



documents concerning the crime, recorded the statement of Girija Vaithiyanathan, who was the Principal Secretary to Government, Health Department, who accorded sanction. After that, he was transferred and finally, investigation was undertaken by PW22. He, after perusing the entire records, finding that no further examination was required, prepared final report and after obtaining proper permission, submitted the same before the concerned Court.

10.PW1 was the sanctioning authority, who accorded sanction to prosecute the accused, while she was working as Principal Secretary to Government, Public Health Department.

11.PW3, as noted above, is the friend of PW2. He has spoken about the money paid to him to secure job.

12.PW4 is the father of PW3 and he has spoken about the demand of money.

13.PW5 was Santhi, who is PW3 brother's wife, has spoken about the mobilization of funds, so also PW6 mother-in-law of PW3 spoken about the mobilizing of funds. PW7, PW8, PW9 and PW10 are not the material witnesses. PW11 was the Government witness, who accompanied the raid team along



with the Vigilance Officer and he signed in all the documents, which are prepared during the above said raid.

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14.PW12 has spoken about the raid undertaken by the Vigilance Department in the house of the accused.

15.PW14 was working as Director of Medical and Rural Health Services, who has spoken about the appointment that was called for by the Government and he was also one of the Board Members. PW15 was working as Chief Metropolitan Magistrate, Chennai, who recorded the confession statement of PW2-Balamurugan and Sudalai.

16.At the conclusion of the trial, the accused was put to section 313 Cr.P.C proceedings, he denied the facts narrated by the prosecution witnesses and on his side, none was examined and no document was also marked.

17.At the conclusion of the trial, the trial court found the accused guilty, convicted and sentenced him to undergo 4 years RI and imposed a fine of R.2,00,000/- with default clause for the offence under section 7 of the Prevention of Corruption Act, 1988; to undergo 4 years RI and imposed a fine of Rs.2,00,000/- with default clause for the offence under section 13(2) r/w 13(1)(d) of the



Prevention of Corruption Act and directed the sentences to run concurrently.

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18. Aggrieved over the above said judgment of conviction and sentence, this criminal appeal has been preferred by the appellant.

19. Heard both sides.

20. The charges against the accused reads that:-

(i) The appellant had demanded a bribe of Rs.1,65,000/- during 2nd week of August, 2019 from PW3-Sudalai and directed him to handed over to Balamurugan-PW2, thereby committed the offence under section 7 of the Prevention of Corruption Act, 1988; and

(ii) As demanded by the appellant, PW3 had delivered a sum of Rs.1,65,000/- on 28/03/202009 at 02.00 pm, in Nagercoil Town, Vepamudu Park and after receiving the said amount, the Deputy



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Superintendent of Police, made surprise inspection on 09/09/2009 at 06.30 am to 07.30 am between Tambaram Railway Station and Egmore Railway Station in Kanyakumari Express Train No.2634 and at that time, the accused kept the bribe amount of Rs.1,65,000/- along with the other money and thereby committed the offence under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988.

21.'The accused received the appointment order in pursuance of the G.O.Ms.No.15/10/2008. After receiving the interview card, Sudalai approached him, at the time, the accused demanded Rs.1,65,000/- as bribe amount for appointment. Further reads that the money must be given to Balamurugan.'

22.This charge is relied by the accused for the purpose of argument that actually, it is not the case of the prosecution. No appointment was made, only interview card was received by PW3 and that too, after the alleged occurrence. So, according to him, the charge itself is improper and does not even indicate the offence, for which, the accused has been charged. No doubt that the charge is



not framed in a meaningful manner or properly worded.

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23. Here is a case, which involves large scale scam of Government posts in various positions in the Health Department in Tamil Nadu. One of the main erstwhile accused Subburam was the Director of Medical Services (TB) at Chennai, former Additional Director, TB Training Centre and he was one among the Committee Members, which was formed by the Government for selecting the candidates for various posts as mentioned in the preamble portion.

24. The case of the prosecution is that PW2, who was also one of the accused, subsequently granted pardon by the Chief Judicial Magistrate alleged to have collected amount from PW3-Sudalai for the post of Lab Supervisor, a sum of Rs.1,65,000/- as bribe amount for providing the above said post. Here, Dr. Subburam, even though, the actual beneficiary, was not arrayed as an accused due to non-availability of the alleged evidence against him, he was deleted from the final report. But however, Disciplinary Proceedings were initiated against him for possessing the money, which was not accounted by him properly. Ultimately, he was imposed with penalty of compulsory retirement. The order is, dated 02/03/2016, during the pendency of the trial process.



25. Similarly, one Ravichandran, who is the third party, not official, even though originally named as A2, again, he was deleted due to the alleged non-availability of the evidence. The amount that was recovered from him namely Rs.5,00,000/- during the course of investigation, was also returned to him during the pendency of the trial process.

26. PW2, who played a vital part of the entire transaction was also deleted from the final report, apparently, due to supporting the prosecution as an Approver.

27. By pointing out this, it has been contended on the part of the appellant that the prosecution suffers from guilt of the selective prosecution.

28. No doubt that the investigation was not properly undertaken to bring all the persons to Book. The evidence on the side of the Investigating Officer that he was not in a position to collect sufficient materials against those two persons is not convincing and acceptable. Because the entire selection lists have been recovered from the residence of the above said Subburam, which contains the list of candidates and place of the persons and the cadres.



The entire lists has been prepared in the District wise manner. Even the place of posting is also mentioned. Among which, we find the name of PW3 in serial No.2 and the place of posting is also mentioned as 'Kanyakumari'. How the list was prepared in advance by the above said Subburam was not properly investigated. We find that had it been investigated properly, the above said Subburam would also have been brought to include in the final report. The bald statement by the Investigating Officer that he was not able to collect the evidence, connecting the above said Subburam, as mentioned earlier, is not convincing. But, no purpose is going to be served by ordering re-investigating the matter, since already, he was compulsorily retired, as mentioned above and due to lapse of time. Suffice to say that the ultimate beneficiary has been let off for unknown reasons.

29.It is not denied by the accused that posting list was recovered from the residence of the above said Subburam. The above said document ought to have been sent for Forensic Science Laboratory for examination to verify the handwriting. That was also not done. Similarly, the persons, who are mentioned in the above list ought to have been examined or enquired. But that was also not done. A simple bald statement of the Investigating Officer is that



he could not collect any evidence against the above said Subburam, as mentioned earlier, is not at all convincing.

We can stop with this, since no purpose is going to be served for ordering re-investigation.

30. Similarly, one Ravindran is known to this accused. The above said Subburam engaged him for collecting money from various persons, who were the aspirants for the above said circumstances. A sum of Rs.5,00,000/- was recovered from him. The above said amount was also unaccounted. The story that has been projected by the appellant is that he was known to him, through some other source and by choice and chance, he about to travel to Chennai along with him, is not convincing and acceptable. So, the involvement of the above said Ravindran cannot be ruled out. But his name has been deleted from the final report for unknown reasons.

31. Again the statement of the Investigating Officer that no enough materials have been collected against him is also not convincing and satisfying the conscience of the court. He was also let off for unknown reasons.

32. Now the question, which arises for consideration is whether by letting off these two persons, the



prosecution has selected this appellant only, the prosecution suffers from selecting the prosecution defects.

But this sort of argument cannot be accepted for the simple reason that simply because, some of the accused persons have been left for unknown reasons, continuation of the criminal proceedings against this appellant must be also set aside or quashed or disbelieved, should not be accepted.

33.The learned Senior counsel appearing for the appellant would rely upon the following judgments:-

(1)Arban Manoranjan Goswami Vs. State of Maharashtra and others [(2020)2 SCC 427];

(2)Romila Thapar and others Vs. Union of India [(2018)10 SCC 753];

(3)Mallada K.Sri Ram Vs. The State of Telangana and others [(2022)3 SCR 5];

(4)M.Maridoss Vs. State and others (2022-1-LW-324); and

(5)Mohammed Bhava and others Vs. Mohammed Musthafa and others [(2022)2 SCR 1093].

34.The Hon'ble Supreme Court, by relying the earlier judgment in ***Romila Thapar and others Vs. Union of India (UOI) and others [(2018)11 SCR 951]*** has reiterated the above said principle that the State should not involve in pick and choose some of the accused, leaving the



similarly placed persons for prosecuting. It has been consistently held that the above trend must be addressed at the threshold. Even though dealing with the action of the State in prosecuting the persons, who are not having similar views like that of the Government are not supporting the State in other aspects, the political selecting prosecution may also apply to the ordinary criminal offences also. But however, in the above said facts and circumstances of the case, I am of the considered view that even though, similarly placed persons namely Subburam and Ravindran have been let off, this is not a fittest case to extend the very same benefit to this appellant also, since direct evidence is available against him. So, the contention that Article 14 of the Constitution of India is violated for prosecuting him is not available and cannot be accepted. So, the first ground that has been advanced by the appellant is without any basis and rejected outright.

35. Now coming to the other aspect of non-disclosure of the materials collected during the course of investigation by the prosecution, it is also very unfortunate to note that the first Investigating Officer namely PW21-Ali Basha is also not fair to the court. The reason for my observation is that for better appreciation,



let me extract the relevant portion of his evidence:-

"இந்த வழக்கில் முதன் முதலாக 15.09.2009 அன்று புலன் விசாரணையை தொடங்கி 11.10.201 வரை நான் விசாரணை செய்தேன். பின்னர் மாறுதல் ஆகிவிட்டேன். எனக்கு பின்னர் சுதாகர் என்ற DSP-யும் விசாரணை செய்தார்கள். நான் கடைசியாக 11.10.2011 அன்று முதன்மை செயலாளர் கிரிஜா வைத்தியநாதன் அவர்களை விசாரணை செய்தேன். என்னுடைய விசாரணை கால கட்டத்தில் நான் மொத்தம் எத்தனை சாட்சிகளை விசாரித்து வாக்குமூலம் பதிவு செய்துள்ளேன் என்றால் 162 சாட்சிகளை விசாரித்து வாக்கு மூலங்கள் பதிவு செய்திருக்கிறேன் புலன் விசாரணை அதிகாரி பதிவு செய்யும் வாக்குமூலங்கள் அனைத்தும் நீதிமன்றத்திற்கு அனுப்பப்படவேண்டும் மற்றும் குற்றப்பத்திரிக்கையுடன் இணைக்கப்பட வேண்டும் என்றால் சரிதான். நான் தயாரித்த 162 சாட்சிகளின் வாக்குமூலங்களும் இந்த வழக்கில்குற்றப்பத்திரிக்கையுடன் இணைக்கப்படவில்லை என்றால் சரிதான். நான் விசாரித்த சாட்சிகளை எனக்கு பின்னால் வந்த புலன் விசாரணை அதிகாரிகள் மீண்டும் விசாரணை செய்தார்களா என்று எனக்கு தெரியாது. நான் இவ்வழக்கில் முதல் தகவல்



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அறிக்கையை

தெளிவாக

பாசீலனை

செய்தேன்."

36. Soon after recording the statement of the witnesses, he has to send all the documents to the trial court immediately, but he failed to do so.

37. In this context, let us go to the evidence of PW22-Shanmugam, who took up the further investigation from PW21-Alibasha. PW21-Alibasha investigated the matter from 10/09/2009 to 11/10/2011. PW22-Shanmugam took up the investigation from 20/02/2012. What happened in between is not known. But PW22 did not examine any further witnesses. According to him, on perusal of the entire case diary, statement and materials, he was of the opinion that the above said materials were sufficient enough to prosecute the accused. So, he filed final report, on 10/04/2012. So probably, PW22 would have missed the above said materials at the time of filing of the final report.

38. Now the learned Senior counsel, who is appearing for the appellant would submit that the statements were not submitted to the Court. The prosecution failed to produce those statements before the concerned court before the trial court.



39.No doubt, those documents are not available, either before the trial court or this court. What sort of statement, that was recorded is also not clear on record. So, as mentioned above, not only PW21-Alibasha, but also PW22-Shanmugam is not fair in their conduct of investigation. They failed to do so. But, nothing prevented this accused to call the persons to prove their defence. So, *prima facie*, it has been established on the side of the prosecution that money has been collected from PW3 for securing job at the instance of the appellant to be handing over to the above said Subburam.

40.The recovery of money, as mentioned above, is not disputed by the appellant. He has given some sort of explanation for the possession of money, which will deal later. So naturally, the duty cast upon the appellant is to examine those persons on his side, but failed to do so.

41.The circumstances of the case and the failure on the part of the prosecution to place all the materials before this court, no doubt would have been avoided. It is nothing, but illegality, that has been committed by PW21 and PW22 in not submitting all the records before the trial court. But the appellant cannot take any advantage of this omission or lapse, as the case may be.



42. Coming to the next point of argument, the prosecution failed to identify the subject bribe amount in the above said booty. No doubt that the prosecution failed to identify the subject bribe amount. But the evidence is clear to the effect that from PW3, PW2 received Rs.1,65,000/- and in-turn, handed over to the appellant, who in-turn handed over some portion of the above said bribe amount to PW2 for carrying safely along with PW2, Ravindran and this appellant. Rs.7,30,000/- was recovered or seized. So, it is nothing, but a mistake on the part of the Investigating Officer to identify that Rs.1,65,000/- was not given by PW3. But this will not affect the case of the prosecution in its entirety. Huge amount is involved in the above said scam. The failure on the part of the Investigating Officer to single out or separate the above said subject bribe amount is not sufficient enough to doubt or throw away the entire prosecution case. Such a course is not available to this court.

43. More-over, as mentioned above, it is the duty of the accused to account the money, which was in his possession. But that was not properly accounted. Even in the Departmental enquiry, he was found guilty and removed from the service. So, the appellant cannot take advantage of the simple lapse on the part of the prosecution. Even



during the course of the trial process, it is humanly impossible for PW3 to identify the money given by him to PW2. So, this contention also cannot be accepted and rejected outright.

44. With this preliminary issue in mind, let us go to the other aspects.

45. The factual circumstances of the case shows that PW2 was a temporary employee under the control of the accused. He was acting on behalf of him not only in the official duty, but also personally. So, it is seen that he was the confidant of the accused, so, he was called to accompany him to Chennai and hand over the money to the above said Subburam. So the collection of money from PW3 by PW2 is clearly established, which does not suffer from any doubt. Simply because, he was released on bail immediately by the Arresting Officer does not indicate that the prosecution was one sided. The argument that by promising non-prosecution, PW2 was gained by the prosecution turned 'Approver' in support of the prosecution is not acceptable.

46. Now let us go to the evidence of PW3. He would say that he was known to PW2 and requested him to arrange a job for him. He was taken to the accused in the second week



of August, 2009. The accused informed him that for acquiring or arranging job, he must pay Rs.1,50,000/- so as to pay the same to the higher authorities. He has also spoken about the manner of source, from which, the above said money was arranged by him. After making of the money arranged, he contacted PW2, on 28/08/2009. In turn, PW2 asked him to come to Nagercoil Veppamud Village. On that date, at about 02.00 pm, he has given Rs.1,65,000/- to PW2. That was received by PW2 stating that the money will be given to the accused and will arrange an Interview Card. He received the Interview Card, on 18/09/2009. It was corroborated by PW4-father, PW5-sister-in-law, PW6-mother-in-law regarding the arrangement of money. PW5 was corroborated by PW7 over the jewel loan.

47.PW6 is corroborated by PW8 regarding the withdrawal of money from her account. PW4 is corroborated by PW9 regarding the withdrawal of money.

48.So from the evidence of those persons, fully corroborates the evidence of PW3 regarding the arrangement of Rs.1,65,000/- to be paid to the accused through PW2.

49.Now much argument has been advanced by the accused to show that there are contradictions with regard



to the arrangement of money, which was handed over the same to PW2, etc., facts.

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50.Now let us take the argument.

51.It has been submitted that as per the evidence of PW3, money was given for arranging a job. But it is not the case of the prosecution that for arranging interview card only, the above said money was given. But PW2 has stated in his evidence stated that on 28/08/2009 itself, PW3 handed over the interview card along with money. But the interview card has stated only on 18/09/2009. So according to the appellant, the basis for the above said occurrence itself is contradictory in nature, upon which, no reliance can be placed.

52.PW3 would say that Ex.P4 is the interview card, which was received by him. Ex.P4 is, dated 31/08/2009. Even though, it was made ready, on 31/08/2009, on which date it was received by PW3 is not clear. But it has been admitted that the schedule for the interview was fixed between 14/09/2009 and 18/09/2009. So, probably PW3 would have received the interview card before that date. Even though, some contradictions with regard to the availability of the interview card with PW3 on the date of the above



said demand of money and acceptance by PW2 on behalf of the appellant herein, it does not affect the foundation of the prosecution case.

53. Absolutely, there is no motive for PW3 to implicate PW2 and the accused in the above said demand. So, the minor contradictions cannot be given any importance at all.

54. It is further contended that PW3 has not taken any steps so far to get the money by making proper application. Simply because, PW3 has not taken any steps to get the money back, the ownership of the money cannot be doubted, since it is amply corroborated by the other witnesses. So, absolutely, I find no reason to doubt the evidence of PW3.

55. Now coming to PW2, as mentioned above, he might have been shown as one of the accused. But he turned 'Approver'. The contention on the part of the accused that by giving promise of non-prosecution, the above said evidence has been obtained is without any basis at all. The arresting officer, even though released PW2 on bail, he ought to have been shown him as an accused. So that will not help the case of the accused to show that PW2 was given



false promise of non-prosecution and obtained the statement and evidence.

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56. Perusal of the evidence of PW2 creates no doubt in the mind of this court, as his evidence was very cogent, natural and convincing also. Absolutely, I find no reason to doubt the genuineness.

57. Now the next point is that there is no occasion for the accused to demand the money on behalf of Subburam. Even though, the appellant was not one of the members of the Selection Committee, the documents that have been recovered from the house of the above said Subburam clearly takes the chain and link to this case. He was not able to give any proper explanation. Even though, Subburam was the competent person to appoint, it is the accused acted in aid of the above said Subburam.

58. As mentioned earlier, not only this appellant, but also the above said Subburam also involved in receiving the money from the job seekers for giving appointment. The argument that the appellant is not the competent person to make the appointment and there is no possibility or probability to demand and accept the money, is rejected outright.



59. With regard to the denomination of the money, that was recovered, of course, there are contradictions, which bound to occur. A sum of Rs.17,00,000/- and odd has been seized from three persons on board, the Kanyakumari Express. When huge money has been recovered, there is every possibility for the witnesses to contradict themselves with regard to the denomination. Since, it may not be humanly possible to identify and keep it in memory. So, this argument is also out of place and cannot be accepted. It is only hyper-factual argument.

60. Another argument is that, what was the statement given by one Thurupsha, whose name found place in the wrapper containing the above said money is also not available on record and also sent to the court also. But this argument has already discussed by me. Now the charge against this appellant is only with regard to demanding and accepting of the bribe amount from PW3 and not from Thurupsha and others.

61. As observed earlier, this sort of mistake ought to have been avoided by the Investigating Officer at the time of filing the final report or at the earliest stage or soon-after recording the statement. That mistake does not improve the case of the appellant. So, all the arguments



that have been advanced by the appellant are not sufficient enough to rebut the presumption under section 20 of the Prevention of Corruption Act.

62. For all the reasons stated above, I find no reason to differ from the view that has been taken by the trial court. So, the judgment of conviction rendered by the trial court for the offences under sections 7 and 13(2) r/w 13(1)(e) of the Prevention of Corruption Act are liable to be confirmed. In so far as the sentences are concerned, the trial court imposed four years RI on both counts. Since the offence occurred in 2008, considering the facts and circumstances of the case and also considering the age of the appellant now about 62 years, the sentence period alone can be modified to **one year RI** on both counts. Fine amount is sustained.

63. In the result, this Criminal Appeal stands dismissed. But however, the sentence alone is modified to one year RI on both counts for the above said offences. In respect of the fine, the order of the trial court is confirmed.

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G. ILANGO VAN, J. ,

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To,

- 1.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City-IV Detachment,
Chennai-35.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.A(MD)No.363 of 2019

06/06/2023



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