



Crl.O.P.(MD).No.8143 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD)Nos.126 and 132 of 2017

V.Thambi Durai

.. Appellant/Accused No.1
in Crl.A(MD)No.126 of 2017

M.Sakthivel

.. Appellant/Accused No.2
in Crl.A(MD)No.132 of 2017

Vs.

The State rep by,
The Inspector of Police,
Vigilance and Anti-Corruption Detachment,
Tirunelveli,
(Crime No.4 of 2009)

.. Respondent/Complainant
(in both appeals)

COMMON PRAYER: Criminal Appeals filed under Section 374 of the Criminal Procedure Code, to set aside the conviction and sentence passed in Spl.C.No.47 of 2014 dated 11.04.2017 by the Special Court for Trial of Cases under Prevention of Corruption Act, Tirunelveli.

For Appellants : Mr.N.R.Ilango
Senior Counsel
for M/s.A.S.Aswin Prasanna
in Crl.A(MD)No.126 of 2017



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: Mr.N.R.Ilango
Senior Counsel
for M/s.T.Balakrishnan
in Crl.A(MD)No.132 of 2017

For Respondent : Mr. T.Senthil Kumar
Additional Public Prosecutor
(in both appeals)

COMMON JUDGMENT

These appeals have been filed to set aside the conviction and sentence passed in Spl.C.No.47 of 2014 dated 11.04.2017 by the Special Court for Trial of Cases under Prevention of Corruption Act, Tirunelveli.

2. Since the appellants in both appeals are arrayed as accused No.1 and 2 in the same crime number, these two appeals are taken up together for hearing and disposed by way of this common judgment.

3. The Brief Facts necessary for the disposal of this appeal, are as follows:

3.1. According to the prosecution, P.W.3 is the owner of the land comprised in S.No.1057 to the extent of 2 acres 47 cents at Ilanchi Village, Tenkasi Taluk, Tirunelveli District. At the time of occurrence, A1 was the Firka



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Surveyor of the Taluk and A2 was the Village Administrative Officer of the Ilanchi Village. According to P.W.3, he purchased a land in S.No.1057 to an extent of 2.47 acres and he gave an application to the Revenue Department, Tenkasi, to measure the land. On 04.05.2009, P.W.3 approached A1. At that time, A1 demanded a sum of Rs.5,000/- as bribe. On 05.05.2009 also, he reiterated the same. Hence, P.W.3 made a complaint before the respondent namely, the Vigilance and Anti Corruption Detachment, Tirunelveli. Upon receipt of the complaint, P.W.19 (Trap Laying Officer) registered a case in Crime No.4 of 2009 under Section 7 of the Prevention of Corruption Act. Then, he called two official witnesses namely, P.Radhakrishnan, Superintendent (P.W.4) from the department of Assistant Commissioner of Labour, Tirunelveli and Mr.S.S.Arumugam, from the department of HR and CE (not examined). After formalities, P.W.19 demonstrated the phenolphthalein test to P.W.3 in the presence of the official witness namely, P.W.4 and the other official witness. P.W.19 asked the constable to smear the phenolphthalein powder on the currency notes brought by P.W.3 and noted the serial numbers in the mahazar and put the same in the pocket of P.W.3 and instructed to give it to the accused no.1 only on his demand. Thereafter, he prepared entrustment mahazar under Ex.P.8. P.W.19 specifically instructed P.W.3 and P.W.4, to meet the accused as the accused No.1



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demanded the bribe amount, P.W.3 was directed to give bribe amount and asked to give signal.

3.2. Subsequently, P.W.3 and P.W.4 went to the land comprised in S.No. 1057 at Ilanchi Village, Tenkasi District. After their arrival, A1 and A2 reached the occurrence place in a two wheeler. Thereafter, P.W.3 asked to measure the property. Immediately, A1 demanded the amount. Therefore, P.W.3 handed over Rs.5,000/- to A1. A1 asked to give Rs.3,000/- to him and directed to give Rs. 2,000/- to A2. Thereafter, P.W.3 gave the signal to the Trap Laying Officer namely, P.W.19. P.W.19 and his team reached the land of P.W.3. P.W.3 introduced the appellants and informed the fact that both received the bribe amount in their right hands and put the same in their shirt pockets and he was asked to leave from that place. After that, P.W.19 and his team conducted phenolphthalein test on both hands of the first the accused and the solution did not turn pink. Thereafter, phenolphthalein test was conducted on the hands of A2 and his left hand solution turned into pink colour. According to P.W.19, the Trap Laying Officer, the accused admitted that they received the bribe amount from P.W.3 and placed the same in their shirt pockets. Hence, he conducted test in the pockets of the shirts. The said solutions turned into pink. Consequently, he recovered the



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amount and verified the number of currency notes with the entrustment mahazar.

Due to poor light P.W.19 prepared the recovery mahazar under Ex.P.9 in nearby place namely, the toll gate situated in that locality. After that, the accused were arrested and produced before the jurisdictional Court. Subsequently, P.W.19 entrusted the mahazar and all other documents, to P.W.20.

3.3. P.W.20, the Investigation Officer after completing the investigation filed a final report before the Special Court for Trial of Cases under Prevention of Corruption Act, Tirunelveli, under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The Learned Special Judge, after taking the final report on file in Special C.C.No.3/2003, issued summons to the appellants and on their appearance, furnished the copies of documents under section 207 CrPC and thereafter, framed the charge under section 7, 13(2) R/w 13(1) of the P.C Act and questioned them and they pleaded not guilty to the charges framed against them and they stood for trial. The prosecution in order to prove their case, examined P.W.1 to P.W.20 and marked Ex.P.1 to Ex.P.36 and also M.O.1 and M.O.11.



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3.4. The accused were questioned under Section 313 (1)(b) Cr.P.C, with regard to the incriminating circumstances found in the evidence tendered by the prosecution against them and they denied it as false. Further, they stated that P.W.3's Father was Officer from Commercial Tax Department. Earlier, respondent department registered a disproportionate asset case against him and investigated and final report was filed. In the said case, these appellants being Revenue officials, produced the records relating to lands and they were acted as evidence. P.W.3's father subsequently died by committing suicide. Therefore, a false case was instituted against the Appellants.

3.5. On the side of the accused, D.W.1 and D.W.2 were examined and exhibited one document namely, Ex.D.1.

3.6. The defence witness D.W.1, is another Village Administrative Officer, Ilanchi, Tenkasi Taluk, Tirunelveli District, who was working along with A2 at the time of occurrence. Both were called by the Vigilance and Anti corruption Department relating to the Disproportionate Assets Case initiated against P.W.3's father. D.W.2 is a close relative of both the accused No.2 and P.W.3. He clearly deposed that there was a case registered against the father of P.W.3 and in the



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said case, A2 was a witness. He specifically deposed that P.W.3 repeatedly told him that he had some personal vengeance against A2 for the reason of disclosure of document with regard to Disproportionate Assets case initiated against his father and he alone was responsible for his father's death. Ex.D.1 (Diary) was marked on the side of the defence through D.W.1. It shows that both the accused had attended before the Vigilance Department in the earlier case registered against P.W.3's father in Crime No.4 of 2002.

4.The learned trial Judge after considering the above aspects, convicted the appellants under the following offences:-

Accused	Offences Punishable	Sentence Imposed
A1	i)U/s. 7 of Prevention of Corruption Act, 1988.	i) 3 years RI with fine of Rs.5,000/- i/d 5 months SI.
	ii)U/s.13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.	ii) 3 years RI with fine of Rs.5,000/- i/d 5 months SI.
A2	i)U/s. 7 of Prevention of Corruption Act, 1988.	i) 3 years RI with fine of Rs.5,000/- i/d 5 months SI.
	ii)U/s.13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.	ii) 3 years RI with fine of Rs.5,000/- i/d 5 months SI.

4.1. Aggrieved over the same, A1 filed Crl.A(MD)No.126 of 2017 and A2



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filed Crl.A(MD)No.132 of 2017 before this Court.

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5. The learned Senior Counsel for the appellants submitted that these cases are initiated out of **personal vengeance between P.W.3 and A2**. The specific case of the accused is that in the earlier Disproportionate Assets Case initiated by the Vigilance Department against the father of P.W.3, A1 and A2 were the witnesses. They also were examined by the department relating to the properties standing in the name of P.W.3's father, who was working as Officer in the office of Commercial Tax Department. Subsequently, before the trial of the said case the father of P.W.3 died. Therefore, according to the defence witness, due to the death, P.W.3 had personal vengeance against A1 and A2 and P.W.3 lodged a false complaint against them and this trap was illegally laid. The said deposition of the defence witness is very clear. The learned trial Judge without giving importance to the defence witness on par with the prosecution witness, erroneously convicted the appellants.

5.1. The learned Senior counsel further submitted that the case of P.W.3 and P.W.4 is that A1 and A2 received the amount in their Right hands and put the same in the left side pockets of their shirts. But the phenolphthalein test was not



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positive on both Right hands of the accused. Therefore, the prosecution case that they had received money and put the same, in their shirt pockets is not probable and logic.

5.2. Further, the learned Senior Counsel submitted that the Trap Laying Officer prepared seizure mahazar under Ex.P.9 in which, he stated that there was no colour change in the hands of the first accused and the left hand of second accused alone changed. In the said circumstances, **P.W.19, in his chief examination stated that the left hand of A2 turned into pink colour.** But, P.W.4 clearly deposed that both the hands of A1 and A2 never changed into pink colour. It shows that the evidence of P.W.19 is contrary to evidence of official witness P.W.4. Hence, the evidence of P.W.19 is not reliable and trustworthy.

5.3. The learned Senior Counsel further submitted that as per the procedure, after conducting the phenolphthalein test in the occurrence place, the said solutions were taken in separate bottles and in each bottle, the signature of the accused might have been obtained in order to prove the participation of the accused in the said process and show the genuineness of the trap proceedings and also to prove the Trap Laying Officer conducted test in the occurrence place



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in the presence of the official witnesses. In this case, the Trap Laying Officer did not obtain the signatures of the appellants in the bottles. The said lacuna affects the credibility of the trap proceedings.

5.4. As per the evidence of the official witness, P.W.4, when the Trap Laying Officer was conducting test, the both hands of the appellants did not change any colour. But, the Trap Laying Officer P.W.19, in his evidence stated that the colour changed insofar as the left hand of A2 is concerned. The said contradiction coupled with the absence of the signature of the appellant in the solution bottles clearly proved that the Trap Laying Officer manipulated the solutions in the bottles. Hence, the non-obtainment of signature in the bottles is treated as major lacuna in this case.

5.5. The learned Senior Counsel further submitted that as per the recovery mahazar and the evidence of the official witnesses, the colour had not changed in the solutions prepared in the occurrence place. Further, it is the specific case of P.W.4, the independent official witness that the hand wash of both the appellants never changed into pink colour. It means that at the time of preparation of the solution in the bottles, the colour never changed. Therefore, the colour changes



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noted in the chemical analysis report is not acceptable. In order to sustain the recovery, the same was fabricated by pouring the phenolphthalein powder in the said bottles so as to get the positive report. Therefore, the evidence of the Trap Laying Officer is not acceptable.

5.6. The learned Senior Counsel further submitted that there was no allegation either in the complaint or in the evidence of P.W.3 that A2 made any initial demand. Therefore, as per the Hon'ble Constitution Bench judgment of the Supreme Court in *Neeraj Dutta Vs. State (Government of NCT of Delhi)* reported in **2023 4 SCC 731**, without proof of demand, the conviction under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, is not sustainable even if the case of the recovery of amount from A2 is assumed to be proved.

5.7. The learned Senior Counsel further submitted that recovery mahazar was not prepared in the place of occurrence i.e., the land of P.W.3 and the same was prepared in the toll gate situated 1 ½ km away from the occurrence place. The case of the Trap Laying Officer is that due to poor light, he prepared



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the mahazar in the nearby toll gate situated 1 ½ km away from the occurrence place. But, P.W.3 clearly stated that the sufficient light was present in the occurrence place and hence, he gave the signal to P.W.10, the Trap Laying Officer. The said contradiction clearly shows that the recovery mahazar was not prepared as stated by the Trap Laying Officer. In all fairness, the Trap Laying Officer ought to have obtained the signature of the toll gate officers in the recovery mahazar in order to prove the genuineness of the preparation of recovery mahazar. Therefore, the preparation of recovery mahazar is doubtful one.

5.8. The learned Senior Counsel further submitted that P.W.19, Trap Laying Officer has not recorded the statement under Clause 47 of the Vigilance Manual. Consequently, the accused had no opportunity to explain their defence at the time of trap. Therefore, they disclosed the facts during 313 Cr.P.C proceedings and examination of the defence witness. To substantiate the appellants' defence, they examined D.W.1 and D.W.2. Even though lengthy cross-examination of D.W.1 and D.W.2 was done, there was no material elicited to disbelieve the version of D.W.1 and D.W.2 that A1 and A2 were the witnesses in the earlier Disproportionate Assets Case initiated against P.W.3's father.



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5.9. The learned Senior Counsel finally submitted that in all aspects, the prosecution miserably failed to prove the case beyond reasonable doubt. More particularly, the prosecution failed to prove the demand and acceptance of the bribe amount beyond reasonable doubt. Further, the defence of the accused that purported trap was laid to wreak vengeance i.e., the appellants were the witnesses in the earlier Disproportionate Assets Case initiated by the Department against P.W.3's father is established going by the principle of the preponderance of the probability. Hence, the learned Senior Counsel seeks to set aside the conviction and sentence imposed upon the appellants by the Court below.

6. Per contra, the learned Additional Public Prosecutor submitted that the appellants had not cross examined P.W.3 as far as motive is concerned. Hence, the alleged motive pleaded by the accused cannot be taken into consideration and the same was addressed by the learned trial Judge in paragraph 55 of the judgment dated 11.04.2017, and hence, no interference is required in the said case.

6.1. The learned Additional Public Prosecutor further submitted that when



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the acceptance is proved by the prosecution through the evidence of P.W.3, no further proof of demand and other requirement is necessary in view of the presumption under Section 20 of Prevention of Corruption Act.

6.2. The learned Additional Public Prosecutor further submitted that the defence of the accused that there was a false case registered against the accused at the instance of P.W.3 is not established since it is a after thought explanation and the same cannot be accepted without any evidence to prove that he was a witness in the said Disproportionate Assets Case initiated against P.W.3's father.

6.3. The learned Additional Public Prosecutor further submitted that P.W.3 and P.W.4 clearly stated that A2 received the amount on his own volition with the knowledge that it was bribe amount. He relied the paragraph 88.5 of the Hon'ble Constitution Bench judgment in *Neeraj Dutta Vs. State (Government of NCT of Delhi)* reported in **2023 4 SCC 731**, according to the learned additional public prosecutor, in all the aspects, the impugned judgment rendered by the learned trial Judge is in accordance with law. Hence, he prays for dismissal of the appeals.



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6.4. This Court considered the rival submission and perused the records and the precedents relied upon by both the parties.

6.5. Now, the question that arises in these appeals is that **whether the prosecution proved its case of demand and acceptance of the bribe amount from P.W.3 by the appellants beyond reasonable doubt in order to sustain their conviction and sentence of imprisonment under Section 7 and 13(2) r/w 13(1(d) of Prevention of Corruption Act, 1988.**

7. Proof of acceptance of the bribe amount:-

In the Trap Case, it is the primordial duty of the prosecution to prove that the accused obtained the bribe amount. The same is further to be proved through positive result of the Phenolphthalein Test.

7.1 The Phenolphthalein test is a corroborative piece of evidence to establish the acceptance of the tainted money by the accused officer. Therefore, Rule 46 of the Vigilance manual prescribes certain procedures. Though, the same may not be mandatory, in order to prove the legitimate trap, the said procedure



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has to be followed. The lapse in the following said procedure may be determined in each facts and circumstances of the case.

7.2 The Rule 46 of manual of the Directorate of Vigilance and Anti-Corruption, Tamil Nadu clearly prescribed the procedure to conduct the phenolphthalein test which reads as follows:-

“46. Phenolphthalein Test

(1) Before recovering the tainted money or other articles in the course of trap proceedings, what is known as "Phenolphthalein Test" should invariably be conducted the fingers of both hands of the Accused Officer and on other items such as his pant/shirt pocket, dhoti, etc., with which the notes/articles are known to have come into contact. It will be a corroborative piece of evidence to establish the acceptance of tainted money by the Accused Officer.

(2) While conducting phenolphthalein test, the following instructions should be observed.-

(a) The standard amount of sodiurn carbonate powder for preparing the solution will be one teaspoonful for a tumbler of water (250 MI.)

(b) Fresh sodium carbonate solution should be prepared for every occasion when the test is to be conducted to prove the presence of phenolphthalein in different parts of the body or wearing apparel or any other matter. For example, all fingers of



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one hand may be dipped in one solution, but a separate solution should be prepared when the fingers of the other hand are to be dipped. Likewise, separate solution should be prepared for testing the pockets of the Accused Officer's shirt OF pant. etc.,

(c) The coloured solution on each occasion after test No. should be kept in a separate bottle duly labelled and sealed with the signatures of witnesses. Investigating Officer.

1.The sealed bottle or bottles Should be sent without delay through the Court for chemical analysis to prove the fact that the solution contains sodium carbonate as also phenolphthalein powder. The Chemical Examiner must also be requested to record his observation of the colour of the solution at the time of his examination along with the details of the tests conducted by him on the solution and the reasons for arriving at the conclusions.

7.3. As per the procedure contemplated under the manual of the vigilance department, after the receipt of the signal from the defacto complainant, the Trap Laying Officer to ascertain the passing of the bribe amount from the defacto complainant to the accused officer, the Trap Laying Officer has to prepare the sodium carbonate solution to dip the hands of the accused officer and find the change of colour. The object of the test is to know whether the accused accepted



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the tainted money. If there was colour change, prima facie as per Rule 46 of the manual, the accused not only handled the tainted currency and also it is corroborative piece of evidence that the accused accepted the bribe amount. If there was no colour change, prima facie it discloses that the accused did not handle the tainted money. In some cases, the accused officer would cleverly ask the party to place the amount in some place without receiving the currency. In the said case, his disclosure of the place of amount is admissible under Section 27 of the Evidence Act and also his conduct is admissible under Section 8 of the Evidence Act. In the said situation, the positive result of the phenolphthalein test in the so called place assumes the corroborate piece of receipt of evidence to prove bribe amount. In all cases, the said solution is to be preserved in separate bottles and signature of the accused and the official witnesses are to be obtained in order to show the test was properly conducted and also to ascertain the hands of the accused are subjected to test in proper manner. The signature of the accused must have been obtained in order to prove the participation of the accused in the said process. The Investigation Officer is to send the said solution to the chemical lab to obtain the result of solution. The said object of the process is intended to prove that the Trap Laying Officer conducted the said test in the hands of the accused officer to find that whether the accused officer handled the



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tainted currency and accepted the same. The said process is a part of legitimate trap.

7.4. According to P.W.3 and P.W.4, A1 and A2 received the amount in their right hands and put the same in the left side pocket of their shirts. In that process, the phenolphthalein test was not positive in so far as both the hands of the accused. There was no explanation on the side of the prosecution as to how the amount reached the pockets of the appellants without any trace of the phenolphthalein powder in the right hands of the appellants. It is the specific case of P.W.3 that A1 only received Rs.3,000/- and he directed to give Rs.2,000/- to A2. Both the appellants received the money in their hands and put the same into their left side shirt pockets. In the above sequence, non-availability of the trace of the phenolphthalein powder, sensitive chemical in the right hand of both appellants clearly creates doubt over the receipt of the amount as deposed by P.W.3 and P.W.4.

7.5. Even as per the evidence P.W.19, both right hands of the A1,A2 did not change into pink colour. But, the expert opined that there is positive result in all solution which read as follows:-



7.5.1 The relevant part of Chemical Analysis Report as follows:-

A1-Thambidurai	Colour scene in the Bottle	Test Report
Right Hand	Light Pink turbid liquid	Positive
Left Hand	Light Pink turbid liquid	Positive
Shirt	Light Pink turbid liquid	Positive

7.6. The specific case of the official witness P.W.4 is that when P.W.19 conducted test in both the hands of the appellants, the colour never changed into pink colour. But, according to the recovery mahazar and the evidence of P.W.19, the right hand of the accused No.2 never changed and the left hand of the accused No.2 changed into light pink colour. The relevant contradictory version is as follows:-

7.7. P.W.4 is the trap witness. P.W.19 only called P.W.4 official to watch over the entire trap proceedings. Both are not interested in success of the trap. In like situation, their evidence have to be uniform about the trap. Their evidence also have to corroborate with the material particulars. In such situation, the above contradiction plays high in assessing the credibility of the trap



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proceedings. Yet another circumstance is that P.W.3 gave the signal after one hour which creates reasonable doubt about the handing over of the bribe amount to the appellants. Therefore, from the above mysterious circumstances attached with recovery of money, this Court is unable to presume the acceptance on the part of A1 and A2. Moreover mere recovery of money is not sufficient to prove the acceptance as required under Section 7 and 13(1)(d) of Prevention of Corruption Act.

7.8. In this case, the Trap Laying Officer did not obtain the signature of the appellant in the bottles. The said lacuna affected veracity of the trap proceedings. As per the evidence of the official witness P.W.4 when the Trap Laying Officer conducted the test, both the hands of the appellants did not change any colour. But, the Trap Laying Officer P.W.19, in his evidence stated that the colour changed. The said contradiction coupled with the absence of the signature of the appellants on the solution bottles clearly proved that the Trap Laying Officer manipulated the solutions in the bottles.

7.9. Normally absence of signature of the accused in the solution bottles may not be taken into consideration to test the veracity of trap proceedings. But,



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the non-obtainment of signature on the bottle in this peculiar circumstance of this case is treated as a major lacuna in this case.

7.10. It is the specific case of P.W.4, independent official witness that the hands of both the appellants never changed into pink colour. At the time of the preparation of the solution in the bottles, the colour never changed. But, the colour changes were noted in the chemical analysis report. The prosecution is unable to explain as to how the colourless solution had become coloured solution when it reached the forensic lab. It creates reasonable doubt on the case of the prosecution. The submission of the learned Senior counsel appearing for the appellants that after preparation of the said bottles in the spot in the occurrence, the Trap Laying Officer in order to sustain the recovery, fabricated the bottles solution into coloured solution by pouring the phenolphthalein powder in the said bottles in order to get the positive report deserves to be accepted. Therefore, the evidence of the Trap Laying Officer is not acceptable and also acceptance money with right hand of the appellant and put them into the pocket is not beyond suspicion.

8. Proof of demand:-



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8.1. Proof of demand on the part of A2:-

As per Ex.P.2 and the evidence of P.W.3, he approached A1 to measure his land. A1 alone demanded bribe. A2 never made any demand. In this case, demand on the part of A2 was not proved even as per the document Ex.P.2 (complaint), Ex.P.7 (First Information Report) and entrustment mahazar Ex.P.8. In the entrustment mahazar, it is specifically stated that on demand by A1, entire bribe amount of Rs.5,000/- is to be handed over to him with instruction to give to A1 upon his demand. Therefore, the prosecution miserably failed to prove the demand on the part of A2.

9. Proof of demand on the part of A1:-

To prove the demand on the part of A1, there was no corroborate evidence available on record. In the evidence of P.W.4 also, A1 directed P.W.3 to give Rs. 3,000/- to him and to give Rs.2,000/- to A2. A1 enquired with P.W.3 whether he had brought the money. Except the sweeping statement made by P.W.3 and P.W.4 there is no corroborative evidence adduced by the prosecution to prove the demand on the part of A1.

It is relevant to note that the following portion of the judgment of the Hon'ble Supreme Court in *Mukhtiar Singh Vs. State of Punjab*, reported in



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(2017) 8 SCC 136.

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“24..... Viewed in this perspective, the statement of the complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act.”

9.1. Further, the recovery of document and measurement tape from the appellant in the recovery mahazar has no relevance to presume the demand as a circumstantial evidence when the appellant went to the spot only to measure the land. In addition to that as per the evidence of P.W.19, no document or any other incriminating materials were recovered from the house of the appellants at the time of search in connection with the present case.

9.2. As held in the previous paragraph acceptance has not been proved. Therefore in the peculiar circumstance of this case, the prosecution, in considerable view of this Court, never proved the demand as required under law.



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10. Preparation of Recovery Mahazar:-

The recovery mahazar is the important basic document in the trap proceedings. Therefore, the prosecution must prove the preparation of said the mahazar without any shred of suspicion.

10.1. P.W.4 is the trap witness. P.W.19 only called the P.W.4 official to watch over the entire trap proceedings. Both are not interested in success of the trap. In like situation, their evidence have to be uniform with material particulars. But, P.W.4 deposed that both hands of the both the appellants did not turn into pink colour. Contrary to the said deposition, in the mahazar Ex.P.9 it is noted that the left hand of A2 turned into pink colour. P.W.19 also deposed that the left hand of A2 turned into pink colour. In such situation, the above contradiction plays high in assessing the veracity of the preparation of the recovery mahazar.

10.2. The same is further strengthened from the fact that the preparation of the recovery mahazar was 1½ Km away from the place of occurrence. The explanation furnished by the P.W.19 that due to the poor light, they prepared the



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mahazar at the place of toll gate is quit contrary to the following version of P.W.

3:-

வெளிச்சம் இருந்ததால் என் இடது கையால் என்
தலையை இரு முறை தடவி சைகை காட்டினேன்.

10.3. P.W.19 also stated that at 08.20 p.m, he prepared a sketch under Ex.P.32 at the scene of occurrence. Therefore, the case of the P.W.19 due to the inadequate light, he prepared the mahazar at the toll gate without obtaining any signature of the toll gate officers creates strong suspicion in the manner of the preparation of the recovery mahazar.

11. Therefore, in the above circumstances, in this case, a serious doubt shrouds over the preparation of the recovery mahazar.

12. Genesis of the complaint (Ex.P.2):-

P.W.4 stated that நான் படித்துப் பார்த்த முதல் தகவல் அறிக்கை டெ
ஜராக்ஸ் நகலில் வாதியின் நிலத்தை அளந்து அத்துமால் காட்ட
எதிரிகள் இரண்டு பேரும் லஞ்சம் கேட்டதாக இருந்தது. But in the complaint
Ex.P.2, only allegation is that A1 alone demanded Rs.5,000/- and he only
informed to come with bribe amount on 05.05.2009 at 04.00 p.m. Therefore, the



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prosecution agency has not disclosed the true version. i.e., prosecution agency suppressed the true version regarding the demand. The FIR also registered only against A1 under Section 7 of Prevention of Corruption Act. Therefore, the genesis of the registration of the case itself doubtful.

13. Proof of foundational facts to draw presumption under Section 20

of Prevention of Corruption Act:-

13.1. The Hon'ble Constitution Bench Judgment in *Neeraj Dutta v. State (NCT of Delhi)* reported in (2023) 4 SCC 731, which held as follows:-

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 prosecution is a sine qua 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



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evidence or documentary evidence.

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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 cases of (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 7 or 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*



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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 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 again 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) In so far 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.*



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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.”*

14. From the above dictum of the Hon'ble Supreme Court, it is the duty of prosecution to prove the demand as one of the foundational fact before drawing the presumption under Section 20 of the Act. But, one of the foundational fact namely, the demand has not been proved by the prosecution either orally, or by documentary evidence or by the circumstantial evidence. In addition to that another foundational fact acceptance also not been proved as held above. Therefore, this Court already held that the prosecution miserably failed to prove the demand and acceptance and hence, presumption under Section 20 of the Act, never arise.

15. Explanation of Appellant under 313 Cr.P.C:-

It is admitted case of the Trap Laying Officer (P.W.19) that he has not recorded statement as required under Rule 47 of the manual which reads as follows:-

47. Questioning of Accused Officer

(1) Questioning of the Accused Officer and recovery of the bribe money should be after the phenolphthalein test. If the test proves positive, arrest of the Accused Officer may be made and



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recovery of notes effected on the basis of Accused Officer's statement, if any. In this event, the provisions of Section 27 of the Indian Evidence Act would be available to the prosecution.

(2) Immediately after recovery and seizure of the bribe money or article, the Accused Officer must be further interrogated and his detailed statement separately recorded in the case diary under section 162 of the Code of Criminal Procedure, 1973. If there is any need to examine him still further in the light of any fresh evidence that might come up later during the investigation of the case, the same can be done at a later stage and further statement of the Accused Officer recorded.”

15.1. Non-recording of said statement is not vital in all cases. When the said opportunity was not given at the time of trap proceedings, explanation given by the accused under Section 313 Cr.P.C., proceedings ought to have been considered by the Court below. It is relevant to note the judgment of the Hon'ble Supreme Court in **Punjab rao Vs. State of Maharashtra** reported in **2002 10 SCC 371**. The Hon'ble Supreme Court has held as follows:-

*“3. It is undisputed that from 24th to 26th the Patwari was collecting loans in a collection campaign. It is, of course, true as observed by the High Court that **when the investigating officer seized the amount from the accused Patwari, he did not offer the explanation that it was in***



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relation to a collection of loan, but that by itself would not be sufficient to throw away the explanation offered by the accused in his statement under Section 313 when such explanation could be held to be reasonable under the facts and circumstances of the case, as indicated by the learned Special Judge while acquitting the accused.”

15.2. The appellant made the following answer during the course of 313 Cr.P.C.,:-

15.2.1. 313 Cr.P.C Answer of A1 – V.Thambidurai :-

கேள்வி : இவ்வழக்கு ஏதேனும் கூற வேண்டுமா-

பதில் : வெள்ளைத்துரை பாண்டியன் என்பவரிடம் நான் லஞ்சமாக ஏதும் கேட்கவோ பெறவோ இல்லை. அ.சா.3ன் தகப்பனார் வணிகவரித்துறையில் பணிபுரிந்தவர், ஒரு லஞ்ச வழக்கில் கைது செய்யப்பட்டு பணி இடைநீக்கம் செய்தார்கள். அவர் பின்னிட்டு தற்கொலை செய்து கொண்டார். அதனால் யாரையாவது பழி வாங்க வேண்டுமென்ற நோக்கத்தில் இருந்த அ.சா.3 நான் ஒரு தாழ்த்தப்பட்ட சமுதாயத்தை சேர்ந்தவன் என்பதால் என்னை பழிவாங்கி விட்டார். இது பொய் வழக்கு.

15.2.2. 313 Cr.P.C Answer of A2 – M.Sakthivel

கேள்வி : இவ்வழக்கு ஏதேனும் கூற வேண்டுமா?-



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பதில் : அ.சா.3 வெள்ளைத்துரை பாண்டியனிடம் நான் லஞ்சமாக ஏதும் கேட்கவோ பெறவோ இல்லை. அ.சா.3ன் தகப்பனார் வணிகவரித்துறையில் பணிபுரிந்தவர். லஞ்ச வழக்கில் கைது செய்யப்பட்டார். அவருக்கு எதிரான வழக்கில் நான் மதுரை நீதிமன்றத்தில் அரசு சாட்சியாக சாட்சியளித்தேன் அந்த காத்ப்புணர்ச்சி காரணமாக அ.சா.3 என் மீது பொய் வழக்கு தாக்கல் செய்ய வைத்து விட்டார். பழிவாங்குவதற்காக என் மீது போடப்பட்ட பொய் வழக்கு.

15.3. Further, the relevant portion of the judgment of the Hon'ble Supreme Court in **Reena Hazarika v. State of Assam** reported in **2019 13 SCC 289** is as follows:-

“19. Section 313 CrPC cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2) CrPC. The importance of this right has been considered time and again by this Court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) CrPC the Court is duty-bound under Section 313(4) CrPC to consider the same. The mere use of the word “may” cannot be held to



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confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available, is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 CrPC, in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 CrPC and to either accept or reject the same for reasons specified in writing.

20. Unfortunately neither the trial court nor the High Court considered it necessary to take notice of, much less discuss or observe with regard to the aforesaid defence by the appellant under Section 313 CrPC to either accept or reject it. The defence taken cannot be said to be irrelevant, illogical or fanciful in the entirety of the facts and the nature of other evidence available as discussed hereinbefore. The complete non-consideration thereof has clearly caused prejudice to the appellant.”

15.4. The Hon'ble Supreme Court judgment in *Jai Prakash Tiwari Vs.*

***State of Madhya Pradesh* reported in 2022 SCC OnLine SC 966 is as follows:-**



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30. Moreover, it is the solemn duty of the courts below to consider the defence of the accused. The same must be considered with caution and must be scrutinised by application of mind by the judge. The Court may accept or reject the same, however it cannot be done cursorily. The reasoning and the application of mind must be reflected in writing. However, from the observations extracted above, it is clear that the courts below have failed to undertake this solemn duty. Rather, the evidence of the accused has been dealt by the Court in a casual manner.”

15.5. From the above principle, it is clear that if the accused gave the explanation during 313 Cr.P.C questioning whether it is afterthought or genuine to be considered on each facts and circumstances of the case. If it is genuine explanation, it is the duty of the Court to consider the explanation. By applying the above stated principle laid down by the Hon'ble Supreme Court, the Court below failed to consider the explanation offered by the accused that they were falsely implicated on account of their involvement in the disproportionate wealth case initiated against the father of the P.W.3 and the same was supported with the evidence of D.W.1 and D.W.2.

16. Proof of defence of Appellants:-



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16.1. The appellant raised two specific defences;

16.1.1. The P.W.3's father was a Commercial Tax Officer. The respondent

police registered Disproportionate Wealth Case against him in Crime No.4 of 2002. In the said investigation, both the appellants participated along with the other officials and disclosed the facts within their knowledge to the investigation officer. The said case was investigated and proper final report was filed. Subsequently, before trial, he committed suicide. Therefore, P.W.3 in order to wreak vengeance he lodged the said false complaint about the demand of bribe amount to measure his land. To prove the same, they examined D.W.1 and D.W.

2. D.W.1 specifically deposed that he was the Village Administrative Officer of Illanchi Village and A2 is the Village Assistant of his Office and A1 is Surveyor of the said Village. The criminal case for the assessment of the wealth in Crime No.4 of 2002 was registered against the father of P.W.3. The Investigation Officer examined himself and the second accused in this case namely, the appellant in Cr.A(MD)No.132 of 2017. They also produced the relevant records pertaining to the lands stand in the name of the mother of the P.W.3. அவ்வாறு

லஞ்ச ஒழிப்பு போலீசார் என்னை விசாரித்த போது நில அளவரும் அங்கு விசாரணைக்கு வந்திருந்தார். He also deposed that in the said investigation, A1 also participated. They also produced the records to the Investigation Officer of



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that case. The evidence of D.W.1 is not scattered in his cross-examination and he withstood the lengthy cross-examination by the prosecution and no useful evidence could be elicited to disbelieve his evidence.

16.2. D.W.2 is a known person of the Ilanchi Village and he is known to both the appellant and the accused No.2. The accused No.2, Sakthivel took the relevant records and produced the same before the respondent police in the case registered against the P.W.3's father. Subsequently, P.W.3 challenged that he would take revenge against A2 for his involvement in the investigation of the case registered against his father. The said witness even though cross-examined in length, there was no material circumstances to disbelieve his evidence.

16.3. Further in this case, when P.W.3 also has motive against A1 and A2, the Investigation Officer must have enquired the same before registering the case and during the investigation. When P.W.20 was recording the statement of the accused, he must have enquired about the Disproportionate Assets Case and the role of the accused officer during the course of investigation conducted in the said Disproportionate Assets case. When the Investigation Officer filed the document relating to the death of P.W.3's father and consequently, the closure of



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the case under Ex.P.25, Ex.P.35 and Ex.P.36, in all fairness, the investigation officer should have filed final report with list of the witnesses and established the fact that A1 and A2 have no role in the said investigation. Admittedly, A1 and A2 are the Revenue Officials during the relevant period of investigation conducted in the Disproportionate Assets Case initiated against the P.W.3's father. They are the competent persons to disclose the agriculture land standing in the name of P.W.3's father. Therefore, the defence of the appellants that they furnished particulars that the land stands in the name of P.W.3's father during the course of the investigation in Crime No.4 of 2002 is probable one. This Court, without any contra evidence, by applying the principle that the defence witness also is to be treated in the same footing as prosecution witness, accepts the evidence of D.W.1 and D.W.2 and holds that P.W.3 initiated the proceedings with a motive and the same resulted into illegitimate trap. Further, to substantiate the same, this Court also take the adverse inference against the investigation officer in not producing the final report filed in the Disproportionate of Case initiated against the P.W.3's father to disprove the case of the appellants that they were arrayed as the witnesses in the said case. Therefore, this Court in all aspects comes to the conclusion that P.W.3 lodged the complaint with personal vengeance. Motive is the double edged weapon. In this case, the edge of weapon



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caused injury to the appellant with false allegation as argued by the learned Senior counsel for the appellants. P.W.19 without making enquiry, registered the case in Crime No.4 of 2022 for the offence under Sections 7 Prevention of corruption Act against the appellants. P.W.20 also filed a final report without any enquiry into the motive.

16.4. Therefore, the appellants established their defence that P.W.3 in order to wreak vengeance made this complaint and created the story as if the appellants received the bribe amount.

16.5. It is the specific case of the appellants that they never received the bribe amount and the same was stuffed in their shirt pockets. The same is clearly substantiated by the appellants through the evidence of the prosecution witnesses and the circumstances emanating from the proved facts. According to P.W.19, they were hiding and watching P.W.3, P.W.4 and the accused from a visible distance. His specific evidence is that he and another official witness did not see the receipt of the money by the appellants from P.W.3 and relevant portion evidence is as follows:-



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நாங்கள் மறைந்திருந்த இடத்திலிருந்து நிலத்தை அளக்க வேண்டிய இடத்தில் அ.சா.3. அ.சா.4 ஆகியோர் நின்றிருந்த இடம் எங்களுக்கு நன்றாகத் தெரிந்தது. அப்படி 5-நிமிட நேரம் எதிரிகளும் அ.சா.3-ம் பேசிக் கொண்ட போது அ.சா.3 பணம் கொடுத்ததை நான் பார்க்கவில்லை. நானோ அல்லது என்னோடு மறைந்திருந்த அரசு சாட்சியான திரு.எ!..எ!..ஆறுமுகம் என்பவரோ அ.சா.3 பணம் கொடுத்ததை பார்க்கவில்லை, Further, the right hand of both appellants never changed into pink colour when the test was conducted by P.W.19. The left hand of A1 also did not change to pink colour. The left hand of A2 has changed. The same is not supported by P.W.4. P.W.4 in his chief-examination clearly stated that both hands of both the appellants never changed into pink colour.

16.6. One more reason is that it is the specific case of P.W.3 that the appellant received the amount in their right hands and put into their pockets i.e., the amount was received in their right hands and inserted into their left pockets. The said two acts are inseparable and inter linked to prove the acceptance of money. Therefore, the test to be positive both in right hand and shirt pockets. The same does not find place in the recovery mahazar. The phenolphthalein test conducted in the shirts turned into pink colour in the occurrence place and the same was visible. But, the phenolphthalein test was conducted in the right hands of both the accused did not turn into pink colour and the same was not visible. Their evidence is not even to the extent of the solution became turbid.



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Resultantly, non-availability of trace of the phenolphthalein powder, in the hands of the right hands of the accused, the sensitive chemical used in the trap proceedings to verify the handling of the bribe amount by the appellants clearly creates doubt over the receipt of amount as deposed P.W.3 and P.W.4. The prosecution, in the peculiar circumstances, is duty bound to explain how the amount reached the pockets of the appellants without any trace of phenolphthalein powder in the hands of the appellants. Therefore, the defence of the appellants that the bribe amount was thrust in their pockets is probable one and the same is established by preponderance of the probabilities.

17. Discussion over the finding of the Court below:-

The learned trial Judge has not taken into consideration of the following facts:-

- (i) the demand was never proved.
- (ii) the acceptance of bribe amount has not at all been proved.
- (iii) Material discrepancy between the evidence of the Trap witnesses and the Trap Laying Officer relating to the change of colour in the hands of the appellant accused No.2 and the preparation of the recovery mahazar.
- (iv) Evidence of defence clearly probalises the case of the appellant that due to the motive, they are falsely implicated in the



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offence. When there was no evidence to prove the demand on the part of A2, the alleged colour changes in the left hand of A2 is not sufficient to draw the presumption under Section 20 of the Act. When there was no evidence to prove the acceptance of the bribe amount on the part of A1 and colour also not changed, the presumption under Section 20 of the Act, does not arise. As per the Hon'ble Constitution Bench, before drawing presumption there must be evidence to prove the foundational facts namely, the demand and acceptance. In this case, as per the above finding, prosecution never established the above demand and acceptance beyond reasonable doubt and hence, the learned trial Judge erred in taking presumption under Section 20 of the Act and convicting appellants.

18. The learned trial Judge without considering the above facts and law, erroneously convicted the appellant under Section 7 and 13(1)d) r/w 13(2) of the PC Act. In view of the above perversity in the judgment of the learned trial Judge, this Court is inclined to allow these appeals.

19. Conclusion:-

The prosecution failed to prove the demand and acceptance beyond reasonable reasonable doubt. The receipt of the bribe amount by the appellants in the right hands and put it in their shirt pockets proved to be false on the basis of



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the contradictory version of the colour change in the hands of the appellants between the evidence of P.W.9 and P.W.4. The appellants have also established the case that motivated complaint was lodged by P.W.3 on account of their assistance in the disproportionate Assets case investigation initiated against the father of P.W.3 who died before conclusion of trial. The preparation of the recovery mahazar shrouded with suspicious circumstances. The learned trial Judge without considering that the prosecution failed to discharge its duty to prove the foundation facts namely demand and acceptance before drawing presumption under Section 20 of the Prevention of Corruption Act, convicted the appellant under Section 7 and 13(1)(d) of the Prevention of Corruption Act. The appellants also proved their defence of false implication to the satisfaction of this Court on the basis of the prosecution documents and evidence and giving the reasonable explanation under Section 313 Cr.P.C., questioning and established the same through the cogent and trustworthy evidence of D.W.1 and D.W.2. Hence, this Court without any hesitation holds that the prosecution failed to prove case against the appellant beyond reasonable doubt. Accordingly, the question framed in this case is answered in favour of the appellants.



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20.In the result, these Criminal Appeals are allowed. The Judgment of conviction and sentence passed by the Special Court for Trial of Cases under Prevention of Corruption Act, Tirunelveli, in Spl.C.No.47 of 2014 dated 11.04.2017, is hereby, set aside. The appellants/accused are acquitted of the charges under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1985. Bail bond if any executed by them, shall stand cancelled. Fine amount if any paid by them shall be refunded forthwith.

17.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
dss/sbn



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- To
1. The Special Court for Trial of Cases
under Prevention of Corruption Act,
Tirunelveli.
 2. The Inspector of Police,
Vigilance and Anti-Corruption Detachment,
Tirunelveli,
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 4. The Section Officer,
Record Section (Criminal)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

dss/sbn

Predelivery Judgment made in
Crl.A(MD)Nos.126 and 132 of 2017

17.07.2023