



Crl.A.No.594 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.594 of 2017

M.Balasubramanian

... Appellant

Vs.

The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Namakkal.

(Crime No.5/AC/2009)

... Respondent

PRAYER : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, pleased to set aside the judgment dated 31.08.2017 passed in Spl.C.C.No.71 of 2010 on the file of the Special Judge/Chief Judicial Magistrate, Namakkal and allow this Criminal Appeal.

For Appellant : Mr.V.R.Balasubramaniam

For Respondent : Mr.S.Santhosh
Government Advocate (Crl.Side)



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JUDGMENT

This Criminal Appeal has been filed against the judgment of conviction and sentence dated 31.08.2017, imposed by the learned Special Judge/Chief Judicial Magistrate, Namakkal, in Spl.C.C.No.71 of 2010, for the offence under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

2. The appellant/accused viz., M.Balasubramanian, who was working as a Junior Engineer Grade-I, Namakkal Rural North, TNEB, Muthalaipattti, Namakkal District, is a Public Servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988. The appellant/accused is alleged to have demanded and accepted the bribe for giving the EB meter box and thereby, committed an offence punishable under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988. The conviction and sentence imposed against the appellant is as follows:-

<i>Under Section</i>	<i>Sentence</i>
7 of the Prevention of Corruption Act, 1988	Two years simple imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988	Two years of simple imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
The sentences shall run concurrently	



3. Prosecution's version :

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3.1. The appellant/accused was working as a Junior Engineer in Namakkal Rural North Division of TNEB between 18.05.2005 and 01.08.2009 and he is a public servant. A complaint dated 01.08.2009, Ex.P3 came to be lodged by the de facto complainant/PW2, before the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Namakkal, in which, he had stated that he is a resident of Bomanpatti and his mother owns three acres of land and the complainant, on behalf of his mother, had given an application Ex P2 dated 07.11.2007 for an electricity service connection for the bore well before three years under the Rs.50,000/- Self Finance Scheme and the same was sanctioned and he remitted a sum of Rs.53,620/- on 02.04.2008 and got the receipt and thereafter, electric poles were erected and wires were connected. On 23.07.2009, at 9.00 am, the complainant had met the appellant/accused at Muthalaipatti TNEB office and requested for issuance of meter box for service connection. At that time, the accused had directed the complainant to pay a fee of Rs.650/- and had also demanded a bribe of Rs.2,000/- for issuing the meter box and for giving electricity service connection. Subsequently, the complainant/PW2 had paid the fee of Rs.650/- and got receipt. Thereafter, on 29.07.2009, at about 10.00 am, when the complainant/PW2 met the accused at



his office, the accused had insisted for the bribe of Rs.2000/- stating that only on payment of bribe amount, the meter box would be issued and electricity connection would be given. Since the complainant was not willing to pay the bribe amount, he preferred the complaint Ex P3 and prayed that suitable action may be taken against the appellant/accused.

3.2. On receipt of the complaint(Ex P3) on 01.08.2009 at about 8.00 am., the Deputy Superintendent of Police/PW17 (Trap Laying Officer) had enquired about the antecedents of the appellant/accused and registered a case in Crime No.5/AC/2009 under F.I.R (Ex P23) for the offence under Section 7 of the Prevention of Corruption Act and a trap was organised by him.

3.3. Pursuant to the same, on 01.08.2009, the complainant/PW2 had met the accused at his office along with the official shadow witness PW3 and handed over the tainted money to the accused and thereupon the accused had handed over the meter box and on receipt of the bribe amount of Rs.2000/-, the accused was caught red-handed. PW17 handed over the case to PW18 for further investigation and thereafter, since PW18 got transferred, further investigation was done by PW19, who has filed the final report against the accused.

3.4. On appearance of the accused before the trial Court and after



hearing the counsel on both sides, the charges were framed against the accused for the offence under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. During trial on the side of the prosecution, PW1 to PW19 were examined and Ex.P1 to Ex.P32, M.O.1 to M.O.14 were marked.

3.5. On conclusion of prosecution side evidence the accused was questioned under Section 313 of Cr.P.C as to the incriminating materials against him produced by the prosecution and the accused had denied the same as false and sought for trial. The accused examined himself as D.W.1 and the neighbouring land owner, Rengsamay as D.W.2 and marked objection petition, Ex.D.1 on his side.

3.6. The trial Court, after hearing the arguments on both sides and on considering the entire materials, found the appellant/accused guilty and convicted him for the offences charged and sentenced him as stated above. Against the order of conviction and sentence, the present Criminal Appeal has been filed.

4. Mr.V.R.Balasubramaniam, learned counsel appearing for the appellant, taking this court through the evidence on record, assailed the judgment of conviction and sentence passed by the trial court and submitted his



arguments as follows :-

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4.1. The trial Court, without properly analysing the evidence on record, has erred in finding the appellant/accused guilty for the offences. The trial Court, failed to take into consideration the material contradictions in the evidence of the prosecution witnesses and the embellishments and exaggerations made by the prosecution to succeed in a stage managed trap based on a false and motivated complainant on account of enmity. The prosecution failed to prove the case of demand, acceptance and recovery beyond all reasonable doubts.

4.2. Insofar as the offence under Section 7 of the Prevention of Corruption Act is concerned, it is a settled position in law that the demand of illegal gratification is *sine qua non* to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 of the Prevention of Corruption Act unless it is proved beyond all reasonable doubts that the accused voluntarily accepted the money knowing it to be a bribe. Further, the presumption permissible to be drawn under Section 20 of the Prevention of Corruption Act is concerned, such presumption can be drawn only on proof of acceptance of illegal gratification, which can follow only if there is a proof of demand. Since the foundational facts have not been proved



in this case, the legal presumption under Section 20 of the Prevention of Corruption Act can be said to have been drawn.

4.3. It is the specific case of the prosecution that the accused had demanded and received a sum of Rs.2000/- for issuance of the meter box on 01.08.2009. It is the admitted case of PW17/TLO that the meter box is the case property. However the meter box was not seized and produced before the court. No such incident as projected by the prosecution had happened and the case of the prosecution is falsified on account of the following reasons.

a) It is the categoric evidence of the official witnesses PW5,PW6,PW7 and PW9 that the electric meter box and other accessory items can be released from the Store Room of the EB only after the entries were made in the Initial Account Register and without there being entries in the Initial Account Register the meter box could not have been available at the office of the Accused and that till 01.08.2009, no orders were passed for release of the meter box from the stores. In such circumstances the non seizure of the Initial Account Register dated 01.08.2009 coupled with the non recovery and non production of the material object the Electric Meter Box for issuance of which the bribe is alleged to have been demanded is falsified and the delay in sending the Entrustment Mahazar/Ex.P4 and Seizure Mahazar/Ex.P7 to the



jurisdictional court on 05.08.2009 fortifies the same and also creates a grave doubt in the prosecution case.

b) Further the evidence of PW8 mother of PW 2 also does not speak about the availability of the electric meter box on 01.08.2009 thereby falsifying the claim of the defacto complainant P.W.2.

4.4. Comparison of ExP16 (Sanction for B Type Box and Accessories 1 to 4) dated 29.07.2009 and Ex P18(Electricity Test Report) dated 07.08.2009 would expose the falsity of the prosecution case. As per Ex.P16 the Sanction for issuance of the “B” Type Meter Box and other accessory items were issued by the AEE on 29.07.2009 and as per the endorsements in Ex P18 dated 07.08.2009 the equipments viz; the “B” Type Meter Box and the 3-Phase 10-40 A meter were released from TNEB Stores on 07.09.2009 to the de facto complainant and service connection was given to the de facto complainant only on 07.08.2009. If it had been true that the “B” Type box and three phase 10-40A meter were handed over to PW2 on 01.08.2009 itself, there is no requirement for issuance of the "B Type Box" once again to PW2 on 07.08.2009.

4.5. Even as per the complaint/ Ex.P3, though PW2 had stated that the pre trap demands were said to be made on 23.07.2009 at 09.00am and



again on 29.07.2009 at 10.00am, there is no mention about any specific date on which the accused was asked to bring the bribe amount for handing over the meter box and when such being so, the fixing of the trap on 01.08.2009 itself is doubtful. The delay in giving the complaint is also not explained.

4.6. The contradictions and the discrepancies in the evidence of PW2, PW3 and TLO/PW17 would confirm that the money was thrust into the rear pant pocket of the accused and thereafter, the accused was threatened to take out the money.

4.7. Further, it is the case of the appellant in defence that the delay in providing service connection is on account of the objection made by DW2, the neighbouring land owner of PW2 in giving service connection and DW2 had also sent an objection letter for giving electricity connection to the land of PW8. The accused by examining himself as DW1 and the neighbouring land owner as DW2 had proved that the delay in providing connection is on account of the objection letter Ex D1 sent by DW2 and PW2 was having grudge against accused since he was under the impression that the appellant/accused was supporting the neighbouring land owner/DW2.

4.8. The trial Court failed to take into consideration the contradictions in the evidence of PW2 and PW17 with regard to the manner of



registration of the case. PW2, has stated that it is a written complaint whereas, in Ex.P23 in Column 4, it has been stated that it is an oral complaint and it is also accepted by the Deputy Superintendent of Police/PW17 in his evidence that it was an oral complaint reduced to writing by him. This aspect also creates doubt with regard to the registration of the case.

4.9. The F.I.R is said to have been registered at 10.30 am whereas the official witnesses were summoned at 10.00am even prior to registration of the case. The Summoning of the official witnesses even prior to the registration of the First Information Report creates doubt in the prosecution case, when especially neither the requisition letter nor the permission letter was produced or marked before the trial Court.

4.10. The prosecution has failed to prove the foundational facts by proving its case beyond all reasonable doubts by cogent evidence and in such circumstances the presumption under Section 20 of the Prevention of Corruption Act cannot be raised against the appellant. The appellant had by preponderance of probability proved his case. The trial Court erred in disbelieving Ex.D1, the objection letter dated 06.07.2009 given by DW 2 for grant of electricity connection to the appellant/accused through his land. Thereby, the impugned judgment of conviction and sentence is against law and



is liable to be set aside and the appellant/accused is entitled for acquittal.

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5. Per contra, the learned Government Advocate (Criminal Side) contended that the prosecution has proved its case, beyond all reasonable doubts, by examining the witnesses. The further contentions of the learned Government Advocate (Criminal Side) are as follows :-

5.1. The appellant/accused, who was working as Junior Engineer Grade-I, Namakkal Rural North, TNEB, Muthalaipatti, Namakkal District, had demanded a sum of Rs.2000/- for issuance of electric meter box and for providing electricity connection. The de facto complainant who was not willing to pay the bribe preferred the written complaint, Ex.P3 on 01.08.2009. Based on the complaint given by the de facto complainant/PW2, an FIR, Ex.P23 came to be registered at about 8.00 a.m. and a trap was laid.

5.2. The de facto complainant/PW2 had gone to the office of the appellant/accused along with the official witness, during which, the accused had demanded and received the bribe amount Rs.2000/- and was caught red-handed. The phenolphthalein test also proved positive. The respondent, after obtaining sanction, had filed the final report.

5.3. Non recovery or non marking of the meter box will not vitiate



the prosecution case. PW6, Superior Officer of the appellant/accused had signed in the Ex.P7, Seizure Mahazar with regard to the same.

5.4. Further, the prosecution, by adducing cogent and consistent evidence through the witnesses have proved the case beyond reasonable doubts. The trial Court, after considering the evidence on record and the documents produced by the prosecution has found the accused guilty. He further submitted that there is no illegality or infirmity in the impugned judgment of conviction and sentence. Thereby, he sought for dismissal of the appeal.

6. In reply, the learned counsel for the Appellant/accused submitted that it is the specific case of PW6 that he had not seen the accused handing over the electric meter box to the de facto complainant/PW2 and he had also stated that other than signing in last page of Ex.P7, Seizure Mahazar, he is not aware of the contents of Ex.P7. Further the evidence of PW8, mother of PW2 would also prove that no such electric box was handed over to the de facto complainant on 01.08.2009 thus In such circumstance, benefit of doubt should tilt in the favour of the appellant and would seek for acquittal.

7. This Court had anxiously considered the rival contentions put forward



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by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgment of conviction.

8. This Court has to see whether the prosecution has proved the case of demand, acceptance and recovery beyond all reasonable doubts, if so, whether the appellant in defence had rebutted the presumption as raised under Section 20 of the Prevention of Corruption Act. This Court also reminded of the fact that it is trite law that before the accused is called upon to rebut the presumption as required under Section 20 of the Prevention of Corruption Act, a bounden duty is cast upon the prosecution to prove the case beyond all reasonable doubts i.e., to establish the foundational facts of the prosecution case by letting in evidence beyond all reasonable doubts. With this background in mind, this Court has to assess the evidence let in by the prosecution and the defence raised by the accused.

9. In order to prove its case the prosecution had examined PW1 to PW18 and Exs.P1 to P32 were marked and Mos.1 to 14 were produced. The evidence of the prosecution as culled out from the deposition of witnesses are as follows:-

9.1. PW1 is the Sanctioning Authority, who had accorded sanction to



prosecute the accused. He had deposed that while he was working as a Superintendent Engineer of EB at Namakkal, the accused was working as a Junior Engineer and that on 17.05.2009, he received a letter from the Directorate of Vigilance and Anti-Corruption seeking permission to prosecute the accused. Based on the investigation report, the statement of the accused and other connected records including the First Information Report, and other connected records and he being satisfied that there are *prima facie* materials available to prosecute the accused, had accorded sanction to prosecute the accused. The sanction order is Ex.P1.

9.2. PW2 is the de facto complainant. He had deposed that he is a resident of Allalapuram Village, Tiruchengode Taluk and he had studied upto 8th standard and he is an agriculturist. His father Kandasamy had passed away in 2008 and there are 3 acres of land in the name of his mother and there is a bore well in the agricultural field. He had applied for an electricity connection on 07.11.2007 in the name of his mother and paid an amount of Rs.500/- as an advance and Rs.50/- towards fees. The application form is Ex.P2. Based on that, an estimation was prepared on 02.04.2008 he had paid a sum of Rs.53,620/- and obtained the receipt in the name of his mother. Thereafter, electric posts were laid and wiring was done. Then, the wireman after



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completion of his work, instructed that if the amount was paid for the meter box, the service connection would be given. Thereby, on 23.07.2009, at 9.00 a.m., he had gone to the office of the accused at Muthalaipatti Rural, TNEB Office and at that time, the accused had enquired PW2 and told him that for obtaining the meter box, he should pay the fee of Rs.650/- for meter box and also told that he had to pay a sum of Rs.2000/- for him for handing over the meter box.

9.3. Thereby, on the same day, he paid the fee, got the receipt and also informed that he was not having the amount. Again, on 29.07.2009, at 10.00 a.m., the complainant met the accused at his office, during which, the accused reiterated the demand and asked the complainant to come with money and only thereafter, he would hand over the electric meter box and give service connection. PW2 was not willing to pay the bribe and thereby, took Rs.2,000/- along with him and went to the office of the Vigilance and Anti-Corruption, Nallipalayam and gave a written complaint (Ex.P3) to PW17/Trap Laying Officer on 01.08.2009 at 8.00 a.m., based on which, PW17 had registered the First Information Report/Ex.P23 in Crime No. 5/AC/2009 and handed over a copy to him. Thereafter, PW17 asked him whether he was ready to fix the trap



against the accused and on agreeing for the same, he was asked to wait in the office of the respondent. Thereafter, two official witnesses namely one Veerappan/PW3 from the Agriculture Department and one Kandasamy School Head Master had arrived there.

9.4. After the arrival of the shadow/official witnesses, they were introduced to him and they were also handed over with the complaint and FIR/Ex.P23 for perusal. Thereafter, PW17 enquired PW2 whether he had brought the amount meant for trap and PW2 had handed over the amount viz.,Rs.2000/-, M.O.1. to M.O.8 (Rs.500/- denomination 3 notes, and Rs.100/- denomination 5 notes). PW17 had noted the serial numbers of the currency notes. Thereafter, the mock phenolphthalein test was conducted in the presence of the witnesses and PW2 and they were apprised of the importance and significance of the phenolphthalein test and the solutions were destroyed and the balance Sodium Carbonate and phenolphthalein were kept in sealed covers.

9.5. The Entrustment Mahazar/Ex.P4 was prepared between 10.40 and 11.45 hours in the presence of PW2 and official witnesses and PW17 had entered the serial numbers of the tainted notes in the Ex P4 and obtained Signatures from him as well as from the official witnesses. Then, PW17 had instructed him to hand over the bribe amount to the appellant/accused only on



demand give a pre-arranged signal to the trap team, after the accused received the same. Further, PW17 had instructed the Shadow witness/PW3 to accompany him and observe the happenings closely.

9.6. At 12.45 hours, he along with PW3 went to the office of the appellant/accused in a motorcycle and PW17 and his party followed them in a jeep and PW2 parked his vehicle in front of Canara Bank. He and PW3 went inside the office of the accused. At that time, the senior officer of the accused, PW6/Assistant Executive Engineer, was sitting near the table of the accused and was writing something and the accused was sitting next to the left of his senior facing north. On seeing him, the accused signalled him to wait outside and after 10 minutes, the accused had come out and went to the foreman's room on the eastern side and he and PW3 followed him. The accused asked him whether he had brought the money as demanded by him and also enquired about PW3. PW2 replied that PW3 had come to take the meter box. Thereafter, the accused had taken them to the nearby room and handed over the meter box and asked PW3 to go out and when PW3 went about 10 feet away from them, the accused had reiterated the demand at 1.15 pm and received the money in his right hand and transferred it to his left hand and kept it in his left side pant pocket and asked PW2 to go and fix the meter box and told him that



the electricity connection will be given.

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9.7. Then, he along with PW3 came outside at 1.20 pm and gave the pre-arranged signal. Thereby, the Trap Laying Officer (PW17), who was standing near the Andavar grocery store opposite the office of the accused, proceeded to the spot along with his team, enquired him and he had narrated the incidents. Thereafter, PW17 had entered the office and at that time, the accused was wiping his hands in the foreman's room and he identified the accused to PW17 and PW17 asked him to wait outside along with the meter box and he was waiting outside till 3.45 pm. Later, PW17 had called him inside and saw the meter box, obtained a signature in the Mahazar and after handing over the meter box to him, instructed him to fix it. The signature in the Mahazar is Ex.P5 and the currency notes were marked as M.O.1 to M.O.8.

9.8.PW3 is the official witness. He had deposed that while he was working at Paramathi, the Joint Director of Agriculture called him over phone in the morning of 01.08.2009 and directed him to go to the office of the respondent at 10.00 a.m to assist the vigilance officials in the trap and thereby, he appeared before PW17 at 10.30 pm., and that PW17 had introduced another official witness and PW2 had informed that the accused had demanded bribe from PW2. PW17 had handed over the complaint and FIR to him and



another official witness for perusal and thereafter, PW2 had handed over the money meant for the trap to PW17 and PW17 had noted the serial numbers in his presence in the entrustment Mahazar and also conducted a mock phenolphthalein test and also obtained his signature in the entrustment Mahazar. The balance of phenolphthalein and sodium carbonate powder was collected in a sealed cover labelled and marked as M.O.9 and M.O.10. Thereafter, the tainted money was handed over to PW2 with an instruction to hand over the same to the accused only on his demand and further, he was instructed to accompany PW2. The Entrustment Mahazar was prepared between 10.45 to 11.45 hours.

9.9. Thereafter, he, along with PW2, went to the office of the accused in a two wheeler and reached at 1.00 pm. PW17 and the trap team followed them in a jeep and waited outside the office of the accused. He and PW2 went inside the office, where the AEE/PW6 was sitting in the seat of the accused and the accused was sitting next to him. On seeing them, the accused directed them to wait outside and they were waiting in the asbestos shed. After 10 minutes, the accused went to the foreman's room on the eastern side and they followed the accused. The accused had enquired PW2 whether he had brought the amount of Rs.2000/- for the meter box and the PW2 had affirmed



the same, thereafter, the accused told PW2 that the meter box was available in the next room and asked him to take that and thereby PW2 went to the nearby room, picked up the meter box and the accused instructed PW2 to hand over the same to him and thereby, he took the meter box and moved 10 feet away and watched the happenings. At that time, PW2 had taken the money from his right pocket and handed it over to the accused, who had received it in his right hand, transferred it to his left hand and kept it in the pant pocket on the back side. Thereafter, he came outside and PW2 followed him gave the pre-arranged signal and thereby, PW17 who had waited on the opposite side had enquired what happened and directed PW2 to identify the accused. At that time, the accused was found wiping his hands and PW2 was asked to stand outside with a meter box. Then, PW17 had introduced himself and other prosecution witnesses to the appellant/accused, during which the accused was perturbed and informed that he had not demanded any money and the PW2 himself has given the money and he was washing his hands for lunch. Thereafter, PW17 asked the accused to sit in his seat and conducted a phenolphthalein test and wash of both hands turned lightly pink and the solutions were collected and labelled as L and R and they were marked as M.O.11 and M.O.12. Thereafter, PW17 enquired about the money and the accused had taken out the money



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from his back pocket and handed it over to PW17. PW17 compared the serial numbers of the currency notes with the serial numbers in the entrustment Mahazar and they tallied. Thereafter, the pant worn by the accused was recovered and his back pant pocket was subjected to phenolphthalein test and the same also turned positive and the said solution was collected under MO14 and the pant worn by the accused was marked as M.O13.

9.10. Thereafter, PW17 enquired whether the accused had any other money and the accused had handed over Rs.15,000/- to him and told that the amount was for paying college fees for his daughter and thereby, it was handed over to the accused. Thereafter, PW17 asked for the applications of PW2's mother and the accused verified the register and informed that PW2 had paid an application fee of Rs.50/- and an advance amount of Rs.500/- on 07.11.2007 an amount of Rs.54,620/- on 02.04.2008 and also paid an amount of Rs.645/- for meter box on 11.07.2009 and that there were no dues. Thereafter, the accused handed over the files relating to electricity connections and the accused handed over the Readiness Register which contains the details of electricity connection containing 1 to 76 pages (Ex.P6) and PW17 recovered the same. When PW17 had enquired whether there were other registers, the accused had informed that the Sanction Register and Estimation Report were



available at the office of the Executive Engineer. When he had enquired AEE.

Muruganantham (PW6), who was in the office, he had informed that he had come for inspection at 01.00 pm and that since he had wanted the accused to give him a drop, he had asked the accused to have his lunch. When PW17 had asked for the meter box, the accused had told him that the person who had come along with PW2 had taken the meter box with him.

9.11. PW17, thereafter, asked the policeman to bring PW2, who was standing outside and PW2 had come inside the office along with the meter box. PW17 had, thereafter, entered the description about the meter box in the Mahazar and obtained the acknowledgement of PW2 and handed over the meter box to PW2 for fixing. Thereafter, PW17 after informing the accused of the reasons arrested him at 3.55. pm. The arrest was also informed to PW6 and thereafter PW17 prepared the Seizure Mahazar in respect of the happenings between 1.20 pm and 4.00 pm. PW3, PW2 and other official witness signed in the Seizure Mahazar/Ex.P7 and PW6 signed in the last page of the Seizure Mahazar. PW2 had made acknowledgements for receipt of the meter and the signature was also obtained from him. Thereafter, PW17 prepared the Rough Sketch /Ex.P8 and after intimation, conducted a house search under Ex.P9 between 4.30 pm and 5.30 pm and during the house search, no incriminating



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materials were recovered. Thereafter, the accused was brought to the office of PW17 at 6.00 pm and PW17 asked PW3 to come on the next day.

9.12. PW4 is the Village Administrative Officer. He had deposed that the wife of Kandasamy /PW8 owns 2.66 acres of land in Bommanpatti Village in Survey No.39/2A and that she was given a joint patta. The FMB sketch is Ex.P10, Adangal is Ex.P11 and the certificate given by PW4 relating to the property in the EB application is Ex.P12.

9.13. PW5 is the Executive Engineer of TNEB. She had deposed that PW8, mother of PW2 had applied for agricultural electricity connection under the self-finance scheme viz., Rs.50,000/- scheme and her application was registered in the register for the year 2007-2008 in serial number 178 on 07.11.2007 and the register was marked as Ex.P13. The sanction was under serial number 237 and the permission was granted on 16.02.2008 and such register was marked as Ex.P14. The entry for payment of Rs.500/- on 09.11.2007 by PW8 was made by PW5 and it was shown in the register in serial No.177 and the register is Ex.P15.

9.14. PW6, Muruganantham Assistant Executive Engineer had deposed that on 01.08.2009, he had gone to the EB office at Namakkal Rural



North for inspection and around 1.00 pm., the accused was sitting near him and he had gone out for lunch and thereafter, at about 1.30 pm., PW17 had come in and told him that they had to enquire the accused and thereby, he had left the room and went to the Revenue Section and continued his inspection. Later, at about 3.30 pm, PW17 had enquired him and during such time, PW2 had come there and informed that he had received the meter box from the accused and shown the same. PW17 had entered the details of the meter box in the Mahazar and returned the same to PW2. Later PW17 had arrested the accused by 3.55 pm and thereafter, prepared the seizure Mahazar/Ex.P7 and obtained the signature of PW6 in its last page. He had further deposed that based on the request made by PW8, the Executive Engineer he granted permission on 16.02.2009 and based on the same, an initial work order was issued on 16.04.2008, later, sanction for releasing the materials Ex.P16 required was issued by him on 25.07.2009. He had further deposed that the balance work order dated 05.08.2009 given by the Executive Engineer containing pages 1 to 5 is marked as Ex.P17.

9.15. PW7 is the Assistant Engineer in the Electricity Board at Namakkal Rural West Section. He had deposed that from 01.08.2009, he was in additional charge of Namakkal North section and on enquiry by the



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respondent about the connection given to PW8, he had handed over Ex.P18 containing pages 1 to 6.

9.16. PW8 is the mother of PW2. She had deposed that she had applied for an electricity connection under Rs.50,000/- self-finance scheme on 07.11.2007 for which, she had paid a sum of Rs.53,620/-. The application is Ex.P2. Thereafter, her son/PW2 was dealing with those affairs and that her son had informed that the Junior Engineer/accused had demanded a sum of Rs.2000/- for handing over the meter box.

9.17. PW9 was the Commercial Inspector in the Namakkal Rural North EB office. He had deposed that on 01.08.2009, he came to know that the respondent had arrested the accused. He further deposed that he was maintaining the attendance register of the employees and that on 01.08.2009, the accused had attended the office and signed in the attendance register on page No.15, which is marked as Ex.P19. He further deposed that PW8 had paid for the electricity connection and he has prepared the estimation report, based on which, PW8 had paid an amount of Rs.53,620/- on 02.04.2008. The status Register is Ex.P20, in which PW8 had affixed her signature in serial no.3 at page 47.

9.18. PW10 to PW15 are the EB employees working in the office



of the accused. They had deposed that they came to know that the accused was arrested for having demanded and received the bribe from PW2.

9.19. PW16 is the Scientific Officer. He had deposed that on 25.08.2009, he had received the sealed items from the respondent, which were marked as items 1 to 5. Item 1 was a sealed paper parcel containing the sample of phenolphthalein powder, item 2 was a sealed paper parcel containing the sample of Sodium Carbonate powder and items 3 to 5 were the sealed glass bottles with the metallic screw cap containing pink colour solutions. He further deposed that on examination, in item No. 1 he found phenolphthalein powder and there was no sodium carbonate, and in item No 2, he found sodium carbonate powder and there was no phenolphthalein found and in items 3 to 5, phenolphthalein and sodium carbonate were found in the solutions. Based on the test, he had issued the Chemical Analysis Report/Ex.P22.

9.20. PW17 is the Trap Laying Officer. He had deposed that on 01.08.2009, at 8.00 a.m., based on the complaint given by PW2 that the accused had demanded bribe for giving the meter box, he had conducted the preliminary enquiry through informers and finding that there was no enmity between the accused and PW2, he had registered a case in Crime No.5/AC/2009 for the offence under Section 7 of the Prevention of Corruption



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Act at 10.30 am after obtaining the permission from the Director. The First Information Report is Ex.P23. He had sent a copy of the FIR along with the complaint to the Court and summoned the official witnesses. The official witnesses had appeared before him at 10.30 am and after introducing them to PW2, he handed over the complaint and the FIR to them for perusal. Thereafter, PW2 had handed over the currency notes meant for trap (M.O.1 to M.O.8) and the mock phenolphthalein test was conducted and he also appraised the significance and importance of the phenolphthalein test to PW2 and the official witnesses. Thereafter, the solutions were destroyed and the remaining phenolphthalein and sodium carbonate powders were collected in separate covers and labelled as 'P' and 'SC'. The covers were marked as Exs.P9 & P10. Thereafter, the tainted currency notes were given to PW2 with a direction to hand over the bribe amount to the accused only on demand and PW2 was asked to give a pre-arranged signal to the trap team, after the accused received the same and he also instructed the Shadow witness/PW3 to accompany PW2 and observe the happenings between PW2 and the appellant/accused. Thereafter, he had prepared the Entrustment Mahazar/Ex.P4 between 10.45 am and 11.45 am.

9.21. He further deposed that he along with the trap team started



from his office at 12.45 pm and reached the office of the accused at 1.00 pm.

After reaching the office of the accused, PW2 and PW3 went inside the office and he along with his team stood at the opposite side of the office of the accused. At about 1.20 pm., PW2 and PW3 had made the pre-arranged signal by combing their hair, thereby, he along with his trap team went near them and enquired them. PW2 and PW3 had informed him that the accused had handed over the meter box and thereafter, demanded the money and received the same. Thereafter, PW2 identified the accused and PW17 entered into the office and at that time, the accused was wiping the wetness in his hands. He further deposed that he instructed PW2 to wait outside and introduced himself to the accused, during such time, the accused was found perturbed and informed that he had not demanded any money and PW2 himself had given the money and he was washing his hands for eating. Later, he asked the accused to sit in his seat and conducted a phenolphthalein test and it turned positive. The wash of both hands was collected and labelled as L and R and they were marked as M.O.11 and M.O.12. Thereafter, on enquiry, the accused had taken out the money from his left side pant pocket and handed it over to him, thereby, he compared the serial numbers of the currency notes with the serial numbers in the Entrustment Mahazar and found it to be tallying. Thereafter, the pant worn by the accused



was recovered and its left side pant pocket was subjected to phenolphthalein test and the same also turned positive and the solution was collected under MO14 and the pant worn by the accused was marked as M.O13

9.22. On enquiry, the accused informed that he was having his personal cash towards paying college fees for his daughter and thereby, it was returned to him. On further enquiry, the accused after perusing the records, informed that PW2 had paid an application fee of Rs.50/- and paid an advance amount of Rs.500/- on 07.11.2007 and paid an amount of Rs.53,620/- on 02.04.2008 and also paid an amount of Rs.645/- towards meter box charges on 11.07.2009 and that there was no dues. Thereafter, the accused said that there was no flag day collection and informed that the application of PW8 was entered in the Status Register of 2007-2008, further the files relating to the electricity connection were recovered and the accused informed that the application register and the sanction register were maintained at the office of the Executive Engineer. The accused further told him that the meter box was handed it over to PW2 and thereby, the description of the meter box was noted and it was returned to PW2. Thereafter, the accused was arrested at 3.55 pm and it was intimated to PW6 and the seizure Mahazar/Ex.P7 in respect of the happenings between 1.20 pm and 4.00 pm was prepared and PW3, PW2, PW6



and other official witness signed in the Seizure Mahazar and he prepared Rough Sketch/Ex.P8 and after prior intimation to the Court vide Ex.P25, he conducted a house search between 5.30 pm to 6.00 pm and during the house search, nothing incriminating was recovered. The house search memo is Ex.P9. Thereafter, he reached the office at 6.00 pm and the accused was sent to remand. The properties were sent to the Court vide Form 91, Ex.P26 and thereafter, the offence was altered to one under Sections 7, 13(2) r/w 13(1)(d) of the PC Act. The alteration report is Ex.P27. Later, after completing the formalities, he (PW17/TLO) had handed over the case to PW18.

9.23. PW18, is the Investigating Officer. He had deposed that he had taken up the case on 02.08.2009 and examined the witnesses and later sent the requisition letter/Ex.P28 to the Court on 24.08.2009 for chemical examination of the recovered articles and between 09.09.2009 and 26.09.2009, he had examined the witnesses and also received the preliminary work order /Ex.P29 from the TNEB and since he was transferred further investigation was taken up by PW19, Deputy Superintendent of Police who was his successor.

9.24. PW19 had deposed that he had examined the Sanctioning Authority and obtained the Sanction Order and filed the final report against the



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accused for offences under Sections 7, 13(2) r/w 13(1)(d) of the PC Act 1988.

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10. On completion of the prosecution witnesses, when the accused was questioned under Section 313 Cr.P.C pertaining to the incriminating evidence tendered against him by the prosecution witness, he denied the charges levelled against him and he examined himself as DW1 and the neighbouring land owner was examined as DW2 and marked the objection petition, Ex.D1 on the defence side.

11. DW1/the accused had deposed that he was working as a Junior Engineer in TNEB at Namakkal North Zone and that PW8 had applied for an electricity connection for her bore well under the Rs.50,000/- self-finance scheme. The application was handed over to the office of the Superintendent Engineer and it was forwarded to him. He had conducted an inspection and at that time, PW2 and his neighbouring land owner, Rangasamy were there. The said Rangasamy had given objection stating that the connection can be given only after cutting palmyra trees in the ridges in between the agricultural lands. DW1 had noted down the objections and on 06.07.2009, the said Rangasamy had appeared in person and given an written objection stating that the electric



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lines should not be taken through his lands and once again, DW1/accused had gone to the lands at 11.00 am and at that time, PW2 quarrelled with him stating that he was supporting the neighbouring land owner and he had compelled him to give the connection irrespective of the objection and that he was having grudges against him.

12. DW1 further deposed that on 23.07.2009, he prepared an estimate regarding the meter box, electric wire and other requisite items and sent it to the Assistant Executive Engineer. The Assistant Executive Engineer accepted the estimate and passed the sanction order on 29.07.2009. However, the sanction order did not reach his office till 01.08.2009 and thereby, the meter box and other items needed for giving electricity connection were not sent to his office till then and since the meter box and other requisite accessories had not been received in his office and thereby there was no entry in the Initial Account Register. On 01.08.2009 at 11.30 a.m., the Assistant Executive Engineer/PW6 had come to his office and conducted inspection and he had requested him to drop him at his office. PW6 had asked him to complete the lunch and when he had gone to wash his hands, PW2 came near him and asked him as to what had happened to his service connection. At that time, he had informed him that the



order for connection had not been received from the office of the Assistant Executive Engineer, Vallayapatti and that after receipt of the same and other articles, the connection would be given. At that time, PW2 who had come from, behind had thrust a paper like thing into his pocket and during such time, the respondent and his team entered into his office and enquired him and compelled him to take it out from his pocket. Only thereafter he saw that PW2 had thrust the currency notes of Rs.2000/-, therefore, he informed PW17 that he had not demanded any money from PW2 and PW2 had thrust the money into his pocket, whereas, PW17 had asked him to explain the same in the court. He further deposed that the objection petition dated 06.07.2009 given by the said Rangasamy, the neighbouring land owner was available in his office and the copy was marked as Ex.D1.

13. DW2, Rangasamy, who is the neighbouring land owner of the complainant had deposed that PW2 is his neighbouring land owner and that PW2 and his mother/PW8 had applied for giving electricity connection for their well from his connection and that he had informed them that the connection could be given after cutting the common palmyra trees on the ridges between their lands and they have left the place. Whiles, without his knowledge,



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electric posts were laid in his patta land and he had informed the accused that he was going to put up a poultry farm and thereby he had objected to give connection through his land had given an objection petition on 06.07.2009. He had further deposed that he had objected for giving electricity connection through his land and PW2 had threatened him and the accused that he would use his influence in getting the connection.

14. The trial Court, after hearing the arguments had found the accused guilty and convicted him as stated above.

15. Now, what is to be seen is that whether the trial Court has properly analysed the evidence on record to convict the accused. Coming to the genesis of the First Information Report/Ex.P23, though it is the case of the de facto complainant/PW2 that he had preferred the written complaint/Ex.P3, in S.No.4 of Ex.P23, the type of information is shown as oral, and it is also the evidence of PW17/TLO that an oral complaint was given by PW2 and it was written down by him. It is the evidence of PW 8 mother of the complainant that her son had given a written complaint. Thereby, there is a contradiction with regard to the manner of giving the complaint.



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16. The next contention raised by the learned counsel for the appellant is that, even before the registration of the First Information Report/Ex.P23, the official witnesses were summoned which also creates a doubt with regard to the genesis of the case. In this regard, while perusing Ex.P23, it is seen that the complaint is stated to have been given at 8.00 a.m., and the FIR was registered at 10.30 a.m., whereas, it is the admitted evidence of PW17 that even before the registration of the case, the superior officers of the shadow witnesses were informed at 9.a.m., itself. It is also the evidence of PW3 that he was instructed by his superior officer at 10.00am on 01.08.2009 to assist PW17 in the trap and that he reached the office of PW17 by 10.30 am. It is seen that neither the request seeking to send the official/shadow witnesses nor the permission granted to the official witnesses by their respective superior officers have been marked in this case and this aspect also creates a doubt in the prosecution case.

17. Now coming to the next aspect regarding the trap proceedings on 01.08.2009, it is the case of PW2/ de facto complainant that when he and PW3 had entered into the office of the accused, the accused was sitting with his superior officer and he had signalled him to wait for 10 minutes and thereafter,



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he had come out and taken them to the foreman's room and handed over the electric meter box and that he had handed over the same to PW3 and he had taken the same outside. It is the case of the defence that no orders have been issued to the stores till such time for release of electric meter box and as such the claim of the PW2 regarding handing over of the electric meter box is false . As per the procedure, the electric box can be released only after the order has been passed by PW6 to the stores for release of the same and it could also be released only after making entries in the Initial Account Register. In this regard, the learned counsel for the appellant took this Court to the evidence of PW1, PW5 ,PW6,PW7,PW9 officials of EB and also PW8, the mother of the de facto complainant/PW2. PW6, in his evidence, had stated that the procedure for release of all the items including the electric meter box from the stores that it would be released only after necessary orders are passed and entries are made in the Initial Account Register.

18. P.W.6 has deposed that 01.08.2009ம் தேதி வரையிலும் இன்சியல் அக்கவுண்ட் ரிஜிஸ்டரில் மகேஜ்வரி என்பவருக்கு மின் இணைப்பு வழங்குவதற்குரிய மின் பெட்டி மற்றும் மின் உபகரணங்களை ஸ்டோர் ரூமில் பெற்று வாங்கி வரவில்லை. அ.சா.ஆ.16 ஆன கடிதத்தில் 6வது அயிட்டமான பி டைப் பாக்ஸ் ரூ.903/- மதிப்புள்ளது என குறிப்பிடப்பட்டுள்ளது. நான் 25.07.2009ல் தான் அனுமதி வழங்கியதாக போலீசார் விசாரணையில் சொல்லியிருக்கிறேன்



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என்றால் சரிதான். ஆனால் 29.07.2009ல் தான் அனுமதி வழங்கியிருக்கிறேன். நான் அனுமதி உத்தரவு கடிதத்தை எதிரிக்கு சார்வு செய்யவில்லை என்றால் சரிதான். பொதுவாக அனுமதி உத்தரவு வழங்கப்படும் பட்சத்தில் அதனை பிரிவு அலுவலகத்திற்கு வரப்பெற்று சம்மந்தப்பட்ட பிரிவு அலுவலர் தேவைப்படும் பொருட்களை பண்டகசாலையில் வேண்டுகோள் தயார் செய்து அதன் அடிப்படையில் பண்டகசாலையில் பொருட்களை பெற்றுக் கொள்ளவேண்டும். வேண்டுகோள் கடிதம் இல்லாமல் பண்டகசாலையில் எந்த பொருட்களை வாங்க முடியாது. இந்த வழக்கை பொருத்தவரையிலும் 01.08.2009 வரையில் வேண்டுகோள் கடிதம் பண்டகசாலைக்கு அனுப்பப்படவில்லை. அவ்வாறு பண்டகசாலையில் இருந்து பெறப்படும் பொருட்கள் எல்லாமே இன்சியல் அக்கவுண்ட் ரிஜிஸ்டரில் கண்டிப்பாக பதிவு செய்ய வேண்டும். அவ்வாறு பதிவு செய்யாமல் எந்த பொருட்களையும் வைத்திருக்க கூடாது என்பது விதி.

..... குணசேகரன் மீட்டர் பெட்டி வாங்கியதை நான் நேரடியாக பார்க்கவில்லை.

..... மகசரை டி.எஸ்.பி. தான் தயார் செய்தார். என்னிடம் விசாரித்ததை கடைசி பக்கத்தில் எழுதியிருந்ததால் மகசரின் கடைசி பக்கத்தில் டி.எஸ்.பி. என்னிடம் கையெழுத்து வாங்கினார். கடைசி பக்கத்தை தவிர மற்ற பக்கத்தில் என்ன எழுதியிருந்தது, எப்போது அதை எழுதினார்கள் என்ற விவரம் எனக்கு தெரியாது.

19. Further P.W.8 has deposed that மீட்டர் பெட்டியை வெளி மார்கெட்டில் எனது

மகன் வாங்கி வந்தார் என்றால் வாங்கி வரவில்லை. டி.எஸ்.பி. கொடுத்த மீட்டர் பெட்டியை எனது மகன் வாங்கி வந்தார் என்றால் எனக்கு தெரியாது. நான் அப்படி மீட்டர் பெட்டியை நான் பார்க்கவில்லை. நான் சர்வீஸ் கொடுக்கும் மீட்டர் பெட்டியையும் பார்க்கவில்லை. புகார் கொடுக்கும் அன்று காலையில் எனது வீட்டில் வைத்து புகார் மனு எழுதினார்.

20. Though it was argued by the prosecution that PW6 had deposed



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about having seen the meter box and made an endorsement in Ex.P7/seizure Mahazar about the seizure of the electric meter box, PW6, in his cross examination, has stated that he has signed only on the last page of Ex.P7 and was not aware of its contents.

21. The procedure for release of the electric items namely electric meter box has been spoken by PW1, the official witness of ED and sanctioning authority 5 & 7, the staff of electricity board who have deposed that only after making entries in the Initial Account Register, the electrical items could be released from the stores.

22. P.W.1 has deposed that எங்கள் மின்வாரிய விதிகளின்படி மேற்படி உதவி செயற்பொறியாளரிடம் மின் இணைப்பு கொடுக்க அனுமதி வாங்கப்பட்ட பின்பு தான் மேற்படி பொருட்களை கொடுக்க வேண்டும் என்றால் சரி.

..... 01.08.09 ம் தேதியன்று உதவி செயற்பொறியாளரிடமிருந்து மேற்படி மீட்டர் பாக்ஸ் மற்றும் இதர உபகரணங்களை கொடுப்பதற்கு உத்தரவு பிறப்பிக்கப்படவில்லை.

23. P.W.5 has deposed that பொதுவாக மின் இணைப்புக்கு தேவைப்படும் உபகரணங்களான மின் பெட்டி, மின் மீட்டர், ஓயர்கள் ஸ்டோரேஜிலிருந்து வாங்கி இன்சியல் அக்கவுண்ட் ரிஜிஸ்டரில் அந்த பொருட்களை குறித்து வரவு செய்வோம். இன்சியல் அக்கவுண்ட்



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ரஜிஸ்டரில் குறிப்பிடப்படாத எந்த பொருளும் எதிரியின் அலுவலகத்திலோ ஸ்டோர் ரூமிலோ ஆகிய எந்த இடத்திலும் வைத்துக் கொள்ள முடியாது. 01.08.2009ம் தேதி வரை மகேஷ்வரிக்கு மின் இணைப்பு வழங்குவதற்குரிய உபகரணங்கள் எதுவும் எதிரியின் அலுவலகத்தில் பெறப்படவில்லை என்றால் எனக்கு தெரியாது. Further P.W.7 has deposed that எந்த பொருட்களை வாங்கி வந்தாலும் அது குறித்து இன்சியல் அக்கவுண்ட் ரஜிஸ்டரில் பதிவு செய்ய வேண்டும். மீதமுள்ள பொருட்களை குறித்து ஸ்டாக் ரஜிஸ்டரில் பதிவு செய்ய வேண்டும். ஸ்டோரில் வாங்கிய பொருட்களை அக்கவுண்ட் மூலமாக தான் வைக்க முடியும். எங்கள் அலுவலக வணிக உதவியாளர் தான் இன்சியல் அக்கவுண்ட் ரஜிஸ்டரை பராமரிப்பார். நான் பணி பொறுப்பேற்கும் வரையிலும் மகேஷ்வரிக்கு உரிய உபகரணங்களை அனுப்பும்படி ஸ்டோருக்கு வேண்டுகோள் எதையும் அனுப்பவில்லை.

24. Further, taking into consideration the Sanction orders/ Ex.P16 and Ex.P18, it is the evidence of PW6 that though the sanction order is dated 25.07.2009, it was signed by him only on 29.07.2009 and as per Ex.P18, the 6th item is shown as B-type box and the 9th item is shown as 3 phase 10-40A meter. These two items have been released by PW6 only on 07.08.2009 after the date of the trap. It has also been clarified by the evidence of PW7.

25. It is also the evidence of PW7 that only after he took additional charge on 01.08.2009, after the arrest of the accused, sanction order in respect of the B type box was sent to the stores and that the box and the meter were



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fixed on 07.08.2009 and the electricity connection was also effected on the same day.

26. In this regard, the evidence of PW8, the mother of PW2, she has also stated that she did not see any electric meter box on 01.08.2009, thus inferring that if the electric meter box had been handed over to PW2 on 01.08.2009 as claimed by him. PW8 would have seen it.

27. Further, in this case, the preparation of Entrustment Mahazar/Ex.P4 and the trap and Ex.P.7/Seizure mahazhar were on the same day i.e., 01.08.2009, however, Ex.P4 and Ex.P7 have reached to the Court only on 05.08.2009. The analysis of the documents and non-recovery of the meter box coupled with the fact that the delay in sending Ex.P4 and Ex.P7 to the court also creates a doubt with regard to case of the prosecution that the money was demanded for handing over the meter box. These aspects creates doubt with regard to the case of the prosecution.

28. In ***P.Sathyannarayana Murthy Vs. District Inspector of Police, State AP and another***, 2015 10 SCC 152, the Apex Court has held as under:-



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"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.

....

26. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in [Sujit Biswas v. State of Assam \[\(2013\) 12 SCC 406 : \(2014\) 1 SCC \(Cri\) 677\]](#) has 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" true 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. The materials on record when judged on the touchstone of the legal principles adumbrated herein above, leave no manner of doubt that the prosecution, in the instant case, has failed to prove unequivocally, the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly unsafe to sustain the conviction of the appellant under [Sections 13\(1\)\(d\)\(i\) and \(ii\) read with Section 13\(2\) of the Act](#) as well.

29. Now coming to the defence raised by the accused/appellant. It is the



settled position of law that the prosecution is bound to prove its case beyond all reasonable doubts and it is also a settled law that though a burden is cast on the accused to rebut the presumption as mandated under Section 20 of the Prevention of Corruption Act, 1988, the burden on the accused is not as heavy as that of the prosecution. It is suffice if the accused proves his case in defence by preponderance of probabilities.

30. In this case, the accused, by cross examining the witnesses PW3 and PW17, had brought out the discrepancies with regard to the trap proceedings. It is the case of the appellant in defence, that the amount was thrust into his right side rear pant pocket and that the discrepancies in the evidence would also prove the case in defence.

31. It is the case of PW2 that the accused had received the money in his right hand and transferred it to his left hand and kept the same in his left side pant pocket, whereas it is the evidence of PW3 that after receiving the money, the accused had kept the same in his rear pant pocket, whereas it is the evidence of PW17 that when he had questioned the accused, the accused had taken the money from the left side pant pocket and handed over the same to



him.

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32. Further, the accused had also projected a defence that the neighbour land owner/DW2 had objected to the grant of electricity connection and he had also given an objection by way of Ex.D1. The accused has also stated that the de facto complainant/PW2 was having an enmity towards him, since he was under an impression that the appellant/accused was supporting DW2 and thereby, delaying in giving electricity connection to his mother/PW8's land.

33. The trial Court, finding that there was no seal of the electricity department, had refused to believe Ex.D1, however, a perusal of records shows that the appellant/accused had received the objection petition on 06.07.2009 and on the same day he has also initialled for acceptance of the same.

34. As discussed above, right from the registration of the case, summoning the official witnesses and the trap proceeding there exist suspicion which makes the case of the prosecution doubtful.



35. In *N.Vijayakumar vs. State of Tamil Nadu [(2021) 3 SCC 687]*, the Hon'ble Apex Court, following its earlier discussions in the case of *C.M.Girish Babu vs. CBI* reported in (2009 3 SCC 779 and in the case of *Jayaraj v. State of Andhra Pradesh*, reported in (2014) 13 SCC 55, has held that while considering the case under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, it is reiterated that to prove the charge, it has to be proved beyond reasonable doubts that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. The Apex Court also held that even the presumption under Section 20 of the Prevention of Corruption Act can be drawn only after demand and acceptance of illegal gratification are proved.

36. This Court, finding that the entire case of the prosecution being doubtful and also finding that the appellant/accused has proved his case by examining himself and DW2 as defence witness and marking ExD2 to prove that the defacto complainant having grudge against him and thereby this court has come to a conclusion that the trial Court had erred in convicting the accused without properly analysing the evidence on record and thereby, the appellant is



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entitled to be acquitted.

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37. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is hereby set aside. The Appellant is acquitted from the charges leveled against him. The bail bond, if any executed by the Appellant, shall stand canceled and the fine amount, if any paid by him, shall be refunded to him.

27.02.2024

NCC: Yes/No
Internet: Yes/No
Index: Yes/No
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To

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1. The Special Judge/Chief Judicial Magistrate,
Namakkal.
2. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Namakkal.
3. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA,J.

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27.02.2024