



Crl.A.(MD).No.396 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	12.03.2024

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CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD)No.396 of 2017

A.Thankanadan

.. Appellant/ Accused No.1

Vs.

The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Kanyakumari District.
(In Crime No.5 of 2014)

.. Respondent/Complainant

PRAYER: Criminal Appeal has been filed under Section 374 of the Criminal Procedure Code, to call for the records pertaining to the judgment dated 15.09.2017 in Special Case No.2 of 2015 passed by the learned Special Judge and Chief Judicial Magistrate, Nagercoil and to set aside the same.

For Appellant : Mr.S.Deenadhayalan
For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal has been filed by the appellant/accused No.1 in Special Case No.2 of 2015 before the learned Special Judge and Chief Judicial Magistrate, Nagercoil, dated 15.09.2017. The trial Court convicted the appellant for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and imposed sentence as follows:

Rank of the Accused	Offence under Section	Punishment
Accused No.1	7 of the Prevention of Corruption Act	2 years Simple Imprisonment and fine of Rs.5,000/-, in default, to undergo six months Simple Imprisonment.
	13(2) r/w 13(2)(d) of the Prevention of Corruption Act	2 years Simple Imprisonment and fine of Rs.5,000/-, in default, to undergo six months Simple Imprisonment.

Challenging the same, the appellant filed this appeal.

2. According to the prosecution, the appellant is the Sub-Inspector of the Nithiravilai Police Station. The second accused Deva Kumaradass, is Special Sub Inspector of Police. One Sundara raj and his neighbour Kumar



@ Kumaradass, Sujatha had some dispute over the pathway. On 14.04.2014, the said Sundara raj, Sujatha and P.W.3 are said to have assaulted Kumar @ Kumaradass. Therefore, he gave a complaint to the second accused and he registered the case in Crime No.131 of 2014 for the offence under Sections 294(b), 323, 324 and 506(i) IPC. The allegation against P.W.3 was that he instigated the remaining accused. But, P.W.3 was not present in the scene of occurrence. To delete his name in the FIR, the appellant demanded Rs. 20,000/- as bribe amount on 17.04.2014 and on 25.04.2014 at 8.00 p.m, A1 demanded Rs.20,000/- to delete his name and asked them to hand over the said amount on 26.04.2014 near the Virivilai bridge at 11.00 a.m. On 26.04.2014, P.W3 approached the respondent vigilance department and gave the complaint-Ex.P2 to P.W.17 of the respondent vigilance department. After receiving the complaint-Ex.P2, P.W.17 made enquiry and thereafter, he registered a case in Crime No.5 of 2014 for the offence under Section 7 of the Prevention of Corruption Act. After registration of the case, he called the official witnesses P.W4 and P.W5 and demonstrated the significance of the phenolphthalein test to P.W3 in the presence of P.W4 and P.W5. After that, he smeared phenolphthalein powder on the currency brought by P.W3 and put the same in the pocket of P.W3 and instructed him



to hand over the same to the appellant on his demand. Thereafter, he prepared the entrustment mahazar after noting down the numbers of the said currency and instructed P.W.3 to give signal upon receipt of the bribe amount by the appellant. Thereafter, the trap team went to the place disclosed by the appellant namely, the Virivilai bridge. On the Virivilai bridge when P.W3 and P.W4 were waiting, A1 along with A2 came in a two wheeler, ie., Hero Honda bike and stopped the vehicle in front of P.W3 and P.W4. Thereafter, A1 reiterated the demand of Rs.20,000/-. P.W3 handed over the said amount to A1. A1 received the said amount and counted the same and thereafter handed over the money to A2. The said occurrence took place at 11.15 a.m. A2 also counted the money. After receipt of the money, A1 assured to drop his name from the final report and asked P.W3 to go home. Thereafter, P.W3 and P.W4 came and gave signal to P.W17. On receipt of the signal, P.W19 intercepted the appellant/A1 and A2.

3. When P.W3 showed the identity of A2, he fled away from the place of occurrence along with the tainted currency note. P.W17 and his team members were unable to trace A2. The team conducted test in the hands of



the appellant and the same turned into pink. Upon the positive result, the team questioned about the receipt of tainted currency. He disclosed that he handed over to A2 and also seized the Exhibits from A1. P.W17 prepared the recovery mahazar-Ex.P7 and also the observation mahazar-Ex.P6. Thereafter, they brought A1 to the police station and also conducted house search in A1's house where no incriminating materials were found, produced the accused before the competent court. After that the investigation was conducted by P.W19. After examination of witnesses and collection of documents and obtaining the sanction order, filed the final report against A1 and A2 without arresting A2 and also without recovering the tainted money. The same was taken on file in C.C.No.2 of 2015 by the learned Special Judge and Chief Judicial Magistrate, Nagercoil. After taking cognizance in C.C.No.2 of 2015, the learned trial judge framed necessary charges and questioned the accused and both the accused denied the involvement in the crime and also they pleaded not guilty and they stood for trial.

4. To prove the case, the prosecution examined P.W1 to P.W21 and Ex.P1 to Ex.P38 and M.O.1. Thereafter, the learned trial Judge



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questioned the appellant under Section 313 of Cr.P.C., by putting the incriminating material available against the appellant. He denied them as false and posted for examination of the defence side witness. Neither the defence witness was examined nor the defence documents were marked on the side of the accused.

5. The learned trial Judge after considering the evidence and argument of the learned counsel for the accused and prosecution convicted the appellant under Section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act 1988, and acquitted A2. Against the acquittal judgement, the Department did not prefer any appeal and the appellant/A1 preferred the appeal against the conviction and sentence on the grounds stated in the memorandum of grounds.

6. The learned counsel for the appellant made the following submissions:

6.1. The acceptance of the bribe amount by the appellant is not proved by the prosecution. According to the prosecution, the appellant received the bribe amount from P.W3 in the presence of P.W4 and after



counting the same, he handed over the said amount to A2. According to the prosecution, A2 fled from the scene of occurrence and hence, they did not recover the money from A2 even after the dismissal of the number of anticipatory bail petitions, A2 was not arrested. Hence, the acceptance of the bribe amount, without the seizure of the bribe amount, was not proved. Mere change of colour in the hands of the appellant without recovery of the currency note, will not be sufficient to hold that the offence under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act are made out and hence he seeks for acquittal.

6.2. The learned counsel for the appellant further submitted that the demand was not proved. According to the prosecution, demand was made on 25.04.2014 and the same was not proved. Even reiteration of the demand in the presence of P.W4, was not proved on the ground that the presence of P.W4 itself is doubtful. Hence, he relied the following judgements of the Hon'ble Supreme: (i) **(2008) 1 MLJ (Crl) 542 (SC)**, (ii) **2021 (1) MWN (Cr.) 602 (SC)**, (iii) **CDJ 2015 MHC 5114**, (iv) **(2019) 1 MLJ (Crl) 176**, wherein the Hon'ble Supreme Court has held that without demand, the conviction under Section 7 and 13 (1)(d) read with 13(2) of the Prevention of Corruption Act is not made out. Even in the complaint, there is no specific



avermment regarding the demand made on 17.04.2014. According to the prosecution, three demands were made on different dates ie., on 17.04.2014, 25.04.2014 and finally he reiterated the amount in the presence of P.W4 on 26.04.2014. The above demands are not proved by the prosecution. The appellant specifically stated that the money was handed over by P.W4 and not by P.W3 and hence the shirt of P.W4 ought to have been subjected to the phenolphthalein test. In the absence of the said proof of handling of money by P.W4, the prosecution case that the money was handed over to the appellant was not proved. The prosecution relied on the evidence of the prosecution witnesses to prove the offence against the appellant and the accused No.2. On the basis of the evidence, the learned trial Judge acquitted A2. In the said circumstances, on the same set of evidence, the conviction passed against A1 is not sustainable. The learned counsel for the appellant submitted that on the same set of facts, when the prosecution evidence relating to A2 is not believed and without any basis, the said evidence of the prosecution is relied by the trial Judge to convict the appellant.

6.3. The learned counsel for the appellant further submitted that the case was registered only by A2 against P.W.3 in Crime No.131 of 2014. In the said circumstances, without holding the accused No.2 liable, the



conviction passed against the accused No.1 is not maintainable. Hence he seeks for acquittal.

6.4. The learned counsel for the appellant brought to the knowledge of this Court number of following contradictions and seeks for acquittal.

6.5. According to P.W3, on 25.04.2014 at 9.15 a.m., he contacted the appellant through phone and he asked to meet him at 8.00 o'clock at Puthukkadai in front of the Aishwarya Hotel situated at Puthukkadai. But in the complaint, it is stated that A1 contacted P.W3 and asked to meet him. According to the appellant, this is a material contradiction. P.W4 in his cross-examination stated that he received only the telephonic communication and he met P.W17 in his office. But the evidence of the trap laying officer is that he sent a written communication to the superior of P.W4 and P.W5. P.W15 stated that under Ex.P23, P.W17 sent the written communication to P.W4. Without production of the written communication, the contradiction is material one to decide the presence of P.W4 and P.W5 in the entire trap proceedings. P.W4 stated that he had no conversation with P.W5. But P.W5 stated that they had conversation upon their introduction. According to P.W6, there is no entry in the general diary about the attendance of A1 and A2 for the patrol duty. But in Ex.P9, it is stated that



four persons attended the patrol duty.

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6.6. According to P.W17, he sent the FIR immediately on 26.04.2014. Even though it reached the learned Special Judge on 26.04.2014 and he acknowledged the receipt of the same, the seal of the Court shows the date as 28.04.2014 and hence, it creates doubt over the reaching of the FIR as alleged by the prosecution. As per the evidence of P.W17, there was no averment in Ex.P7-recovery mahazar regarding the absconding of A2. But in the recovery mahazar, the said averment is there. Therefore, the said contradiction affects the prosecution case. Citing the above contradiction, the learned counsel for the appellant submitted about the cumulative effect of the above contradiction which creates doubt about the prosecution case. The learned counsel for the appellant further submitted that in the recovery mahazar-Ex.P7, the signature of the accused is not obtained. Therefore, the preparation of Ex.P7 in the presence of the accused is doubtful.

6.7. The learned counsel further submitted that the sanctioning authority namely, P.W1 has not applied his mind to the facts of the case. Without any evidence, P.W1 granted sanction to prosecute the appellant. The learned counsel placed reliance on the judgments cited by him and claiming that the ratio laid down in them is applicable to the appellant's



case, he seeks for acquittal.

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7.The learned Additional Public Prosecutor made the following submissions:

7.1. Per contra, the learned Additional Public Prosecutor submitted that the demand is proved in accordance with law. The evidence of P.W3 regarding the demand made on 24.04.2014 is proved through the reiteration of demand made on 27.04.2014 in the presence of P.W4. Hence, the demand is proved in accordance with law. Further, as per the judgment of the Hon'ble Constitution Bench of the Hon'ble Supreme Court, demand can also be proved through the circumstantial evidence. The material circumstance, according to the prosecution is that the seizure of the documents relating to crime number where P.W3 was arrayed as accused and hence according to the learned Additional Public Prosecutor, demand is proved through oral as well as the circumstantial evidence.

7.2. The learned Additional Public Prosecutor submitted that the acceptance was spoken by the four independent official witnesses, who have no grudge against the appellant. The said version of P.W.4 corroborated with the version of P.W3-defacto complainant. Hence, even though money



is not recovered, the specific evidence of P.W3 and P.W4 that the amount was received by the appellant is proved. The appellant was subjected to the phenolphthalein test and his hands turned into pink. Therefore, from the said change in colour, it is clear that the money was handled by the appellant. Even though the money was not recovered, the same is not necessary when P.W4- independent official witness clearly deposed about the receipt of the bribe money. P.W4 further stated that the accused produced the documents relating to the crime number. In the said case though he is not the investigating officer he was keeping custody of the said document and the same is the strong circumstance to show that the appellant was involved in the above case by way of demanding the bribe amount and receiving the bribe amount. The learned Additional Public Prosecutor submitted that the so called contradiction stated by the appellant is not material one and the effect of the said contradictions would not affect the prosecution case, when the evidence of P.W3 and P.W4 is cogent and trustworthy regarding the demand and acceptance of the amount. The learned Additional Public Prosecutor further stated that in the murder case, corpus delicti is not required when the evidence speaks volumes about the murder. The same principle is applicable to the case on hand that even



though money was not recovered but the handling of the money was spoken by P.W3 and P.W4 in cogent manner and hence, the said acceptance is clearly proved through the oral evidence and hence, it is not necessary to recover the amount, more particularly, when the hands of A1 turned into pink colour. Further, there was no explanation on the side of the appellant regarding the change of colour.

7.3. In the recovery mahazar, it is clearly stated that the absconding accused fled from the scene of occurrence and hence the submission of the learned counsel for the appellant that the bribe money was not recovered is admitted by the trap laying officer is not correct. According to the learned Additional Public Prosecutor, that is the statement given by the investigating officer after a long time and hence, the same was not material one. When the demand and acceptance are proved through the evidence of P.W3 and P.W4, the submission of the learned counsel for the appellant that no signature was obtained in recovery mahazar-Ex.P7 is concerned, it is not necessary to obtain the appellant's signature in the recovery mahazar which is not a material one. Regarding the case registered in the Crime No. 131 of 2014, no witness was examined and hence the basic case is not proved and the demand for the alleged deletion of the appellant from the



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said crime number is not correct. The direction regarding the oral permission or written permission to P.W4 and P.W5 to participate in the trap proceedings is immaterial when their presence is clearly proved through the entrustment mahazar and the recovery mahazar. In the absence of any motive between P.W4 and P.W5, the evidence cannot be eschewed without any strong circumstance to disbelieve their evidence. The evidence of P.W4- a Government servant and other official witness cannot be disbelieved without any strong reason about their absence in the place of occurrence as well as during the preparation of the entrustment mahazar. The entry in the general diary has no consequence to the entire proceedings of the trap when the appellant went to the alleged place of occurrence in order to receive the amount. Even otherwise for the reference in Ex.P9, the learned counsel for the appellant submitted that on the same prosecution evidence, after acquittal of A2, the conviction cannot sustain in respect of the appellant/A1 on the very same set of evidence, is not acceptable as per the law laid down by the Hon'ble Supreme Court. Even in the case of acquittal on the basis of the prosecution evidence, in respect of one accused, if the evidence is sufficient in the eye of law against the other accused, the conviction can be recorded. To fortify the same, he made reliance on the



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following Supreme Court judgement in the case of ***Neeraj Dutta Vs. State (Government of NCT of Delhi)*** reported in ***2023 (4) SCC 731***.

7.4. Sanction has been granted with application of mind and the sanctioning authority clearly deposed that he applied his mind and granted sanction. According to the prosecutor, the sanctioning authority-P.W1 after considering the entire material, granted the sanction, more particularly, referring to the demand and acceptance of the amount by the appellant. Hence, the learned Additional Public Prosecutor submitted that the case is proved in accordance with law.

8. This Court has considered the rival submissions made by both side and perused the materials available on record and the precedents relied upon by them.

9. From the records, it is clear that P.W8 registered the case against the appellant and others in Crime No.131 of 2014 for the offence under Section 294(b), 323, 324 and 506(ii) IPC. According to P.W3, he was not present in the scene of occurrence and his name was falsely implicated in the FIR. On 25.04.2014, A1 demanded Rs.20,000/- as bribe to delete his



name in the FIR and he also asked P.W3 to meet him at the Nithiravilai-Virvilai bridge on 26.04.2014 at 11.00 a.m to give the bribe amount.

Thereafter, P.W3 gave the complaint to P.W17-the respondent Vigilance Department. PW17 registered the case and prepared the entrustment mahazar and also demonstrated the significance of the phenolphthalein test and he also instructed PW3 to give money to A1 on demand and also instructed him to give signal upon receipt of the said amount. Therefore, when P.W3 and P.W.4 met the appellant, he reiterated the demand and received the amount and counted the said amount and handed over to A2. After that, the appellant assured P.W3 his name in the FIR would be dropped. In the above said sequence of events, this Court raised the following points for determination.

(i) Whether the prosecution proved the case against the appellant /A1 beyond reasonable doubt to sustain the conviction under Section 7 and 13 (1)(d) read with 13 (2) of the Prevention of Corruption Act?

(ii). Whether the conviction of the appellant/A1 is valid where A2 was acquitted by the trial Court?



10. Proof of demand:

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To drop the name of P.W3 in the FIR registered against him, the appellant demanded Rs.20,000/- as bribe. P.W3 clearly stated that on 25.04.2014, the appellant asked P.W3 to give Rs.20,000/- to drop his name in the FIR. The same was reiterated on 26.04.2014 in the presence of P.W4-official independent witness. P.W4's evidence clearly corroborated the version of P.W3. Further Ex.P.12 was recovered from A2. A2 is not the investigating officer, but he handled the file relating to the Crime No.131 of 2014 and since such a strong circumstances is available in addition to the evidence of P.W3 and P.W4, to prove the demand made by the appellant to drop the defacto complainant's name in the FIR, this Court without any hesitation holds that the prosecution proved the demand as required under law so as to hold him guilty under Section 7 of the Prevention of Corruption Act, 1988, on the basis of the circumstances as well as on the unimpeachable evidence of P.W3 and P.W4.

11. Acceptance of money:

The non-recovery of money from the custody of A2 has no significance when the appellant received the amount and counted the tainted



money as per the version of P.W3 and P.W4. P.W3 and P.W4 have clearly deposited before the Court without any contradiction and embellishment.

Further, according to the prosecution the first appellant, after the receipt of the bribe amount handed over the same to the second appellant. He fled away from the occurrence place along with the tainted currency. Therefore, non-recovery of the bribe amount is not material when P.W3 and the independent witnesses stated about the receipt and acceptance of the amount and handling of the amount by A1. But non-explanation of the accused as to why the colour changed in his hands clearly shows that he has handled the money as stated in Vigilance Manual Rule 46 (1) 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.”

12. If the colour changed in the hands of the appellant, the presumption is that he accepted the tainted currency. As per the evidence of P.W3 and P.W4, the amount was received by the appellant and handed over



to A2. Hence, the receipt of the bribe amount was proved through the change of colour in the hands of the appellant and more particularly, in the background that no explanation for the change of colour was given during the questioning under Section 313 Cr.P.C., proceeding. This situation is similar to the absence of the corpus delicti in the case of murder. Corpus is not necessary to convict the accused when the evidence of the witnesses clearly prove the murder of the deceased as held by the Hon'ble Supreme Court in ***Prithi v. State of Haryana***, reported in ***(2010) 8 SCC 536***

20. Sometimes, there may not be any distinction between proof of the fact of the crime and the proof of the actor of it. The evidence of the corpus delicti and the guilt of the person charged of an offence, many a time is so interconnected that one cannot be separated from the other. The same evidence often applies to both the fact of the crime and the individuality of the person who committed it. The question now is, whether the prosecution evidence establishes that Ami Lal was murdered and the commission of crime is made out against the appellant.

Ram Gulam Chaudhary v. State of Bihar, (2001) 8 SCC 311 at page 319



23. There can be no dispute with the proposition of law set out above. As is set out in the various authorities (referred to above), it is not at all necessary for a conviction for murder that the corpus delicti be found. Undoubtedly, in the absence of the corpus delicti there must be direct or circumstantial evidence leading to the inescapable conclusion that the person has died and that the accused are the persons who had committed the murder. Both the courts below have come to the conclusion, based upon the evidence of PWs 3 and 4 (who were eyewitnesses) that Appellant 9 had killed the accused before the body was taken away by all the appellants. We have read the evidence of all the witnesses. We have given a careful consideration to the material on record. We see no reason to take a different view. The evidence in this case is direct and there is no reason to disbelieve this evidence. We see no substance in the submission of Mr Mishra that these two ladies could not have seen the boy being killed and could not have in any case come to a conclusion that he had died. Their presence at the place of incident could not be doubted. **Their evidence clearly indicates that the incident took place before their eyes.**



Sevaka Perumal v. State of T.N., (1991) 3 SCC 471 at page 476

5.... In a trial for murder it is not an absolute necessity or an essential ingredient to establish corpus delicti. The fact of death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. Take for instance that a murder was committed and the dead body was thrown into flowing tidal river or stream or burnt out. It is unlikely that the dead body may be recovered. If recovery of the dead body, therefore, is an absolute necessity to convict an accused, in many a case the accused would manage to see that the dead body is destroyed etc. and would afford a complete immunity to the guilty from being punished and would escape even when the offence of murder is proved. What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other factum of death was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be traced.

Therefore, the similar principle is applicable to this case also and hence non-recovery of the money cannot be held against the prosecution to suspect



the acceptance when the evidence of P.W3 and P.W4 is cogent and trustworthy. P.W3 and P.W4 have clearly stated that the accused received the bribe money. Further, P.W.9 independent witness stated that he knew A1 and A2. On 26.04.2014, A1 and A2 were sitting in the motor cycle and A1 was in uniform and A2 was in civvies. At the time, six or seven persons ran towards the accused persons. On seeing the same, A2 fled away from the scene of occurrence. On enquiry, it was revealed that they received the amount from P.W.3 and before recovery he escaped from the scene of occurrence. From the above, it shows that A2 escaped from the scene of occurrence. P.W4 and P.W.17 deposed that A2 escaped with money. The said conduct is admissible to prove that he fled away from the place of occurrence with money. The law does not require the proof of the factum of acceptance of the bribe amount only through the mode of recovery of the money when the witnesses clearly speak about handing over of the bribe amount and its receipt by the accused. In the considered view of this Court, the prosecution discharged the duty of the receipt of money. In similar circumstances, the *Hon'ble Mr.Justice Dalveer Bhandari* (as he then was) held in the case of *Teka Ram v. State*, reported in *1998 SCC OnLine Del 157*:



19....The learned Additional Sessions Judge rightly gave emphasis to this aspect of the prosecution version that at the crucial time, when the trap was laid and the accused was about to be apprehended, he slipped away from the office of the SDM without any intimation to anyone. Therefore, neither the accused was apprehended nor the tainted money could be recovered. Now, the accused cannot be permitted to take any benefit of the circumstance by which he evaded his arrest from the spot. Apart from that this is one of those un-usual cases, where the SDM himself has been examined and he has fully supported the prosecution version. The independent panch witnesses have also corroborated the prosecution version. The prosecution has been able to establish its case beyond any shadow of doubt. The conviction is accordingly upheld.

Hence, this Court is not inclined to accept the submission of the learned counsel for the appellant that the acceptance is not proved for the reason that the amount was not recovered. The said fact also finds place in the recovery mahazar-Ex.P7 which reached the Court on the same day. Further, according to the investigating agency, A2 absconded from the scene of occurrence along with the tainted money. Hence, they were unable to trace him. The said abscondence is clearly spoken to by P.W4. P.W3 clearly



stated in his evidence that the amount was first received by the appellant and then handed over to A2. In all aspect, acceptance is proved in accordance with law.

13. The contradiction as stated by the appellant is not material in this particular case and the same no way affected the evidence of P.W3 and P.W4 with regard to the material particulars of the prosecution case, ie., the demand and acceptance of the amount. The contradiction is quite natural, more particularly, in the case on hand where the recording of statement of the witnesses has been done in the year 2014 and the evidence was taken in the year 2016. Since the delay in recording the evidence is normally caused, such contradiction is not material and the same does not affect the prosecution case as held by the Hon'ble Supreme Court in the following judgement.

Jaiprakash Vs. State of U.P., reported in (2020) 17 SCC 632 at page

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20... The witnesses who have deposed in the court after considerable lapse of time of course, cannot be expected to have photographic memory of the case. We are conscious of the well-settled position that the minor



discrepancies not touching upon the core of the prosecution case, would not affect the credibility of the witnesses or the prosecution case.

In ***Rakesh v. State of U.P.***, reported in (2021) 7 SCC 188 at page

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9. ...There may be some minor contradictions, however, as held by this Court in a catena of decisions, minor contradictions which do not go to the root of the matter and/or such contradictions are not material contradictions, the evidence of such witnesses cannot be brushed aside and/or disbelieved.

In ***Mritunjoy Biswas v. Pranab***, reported in (2013) 12 SCC 796 at page 809

28. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take the place of a material omission and, therefore, minor



contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (see Leela Ram v. State of Haryana [(1999) 9 SCC 525 : 2000 SCC (Cri) 222] , Rammi v. State of M.P. [(1999) 8 SCC 649 : 2000 SCC (Cri) 26] and Shyamal Ghosh v. State of W.B. [(2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685]).

In view of the above judgment, the minor contradiction cannot affect the prosecution case. Further, the above contradiction is not at all material one.

14. P.W9 was examined as an independent witness to prove the fact that the occurrence took place on 26.04.2014. This witness specifically corroborated the version of P.W3 and P.W4 in respect of the presence of the appellant. According to P.W3, A1 was in uniform and A2 was in civvies on the date of occurrence and A2 was drinking tea. When the trap team approached the accused persons, A2 escaped from the scene of occurrence. On enquiry, it was revealed that A2 escaped from the scene of occurrence



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with tainted money. Even though P.W9 did not identify the persons, but before the Court, he answered as follows:

“தங்கநாடானும், தேவகுமாரதாசும் இன்றைய
தினம் கோர்ட்டிற்கு வந்துள்ளார்களா என்று
கேட்டால் வெளியே பார்த்தால்தான் தெரியும்.”

Further, P.W9 was not cross examined by the appellant. Therefore, the presence of the appellant in the scene of occurrence was clearly spoken by P.W9 and hence the submission of the learned counsel for the appellant that the prosecution has not proved the incident is not correct.

15. It is well settled principle that even though A2 was acquitted on the basis of the evidence of the prosecution witnesses, the conviction against the appellant is maintainable, since the prosecution witnesses clearly speak about the involvement of the appellant in the alleged offence. When the evidence adduced by the prosecution is intrinsically inseparable and the conviction is passed in favour of one accused and the acquittal is passed on the other accused, the principle of parity is applicable. When the evidence is separable, it would be open to the Court to convict the accused notwithstanding the fact that the evidence has been found to be deficient to



prove the guilt of other accused. The Hon'ble Supreme Court in the case of

Gangadhar Behera v. State of Orissa, reported in **(2002) 8 SCC 381** is as

follows:

15. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end.

The said principle was reiterated by the Hon'ble Supreme Court in number of cases. In the latest decision, the Hon'ble Three Member Bench of the Supreme Court re-affirmed the same in the following terms:

In Achhar Singh v. State of H.P., (2021) 5 SCC 543

26. The learned State counsel has rightly relied on Gangadhar Behera [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] to contend that



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even in cases where a major portion of the evidence is found deficient, if the residue is sufficient to prove the guilt of the accused, conviction can be based on it. This Court in Hari Chand v. State of Delhi [Hari Chand v. State of Delhi, (1996) 9 SCC 112 : 1996 SCC (Cri) 950] held that : (Hari Chand case [Hari Chand v. State of Delhi, (1996) 9 SCC 112 : 1996 SCC (Cri) 950] , SCC pp. 124-25, para 24)

“24. ... So far as this contention is concerned it must be kept in view that while appreciating the evidence of witnesses in a criminal trial especially in a case of eyewitnesses the maxim falsus in uno, falsus in omnibus cannot apply and the court has to make efforts to sift the grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found acceptable the remaining part of evidence has to be scrutinised with care and the court must try to see whether the acceptable part of the evidence gets corroborated from other evidence on record so that the acceptable part can be safely relied upon.”

(emphasis supplied)



16. Sanction

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16.1.The learned counsel for the appellant has stated that the sanctioning authority has not applied his mind and granted sanction in mechanical manner. According to the learned counsel for the appellant, sanction is a sacrosanct act and the sanctioning authority is duty-bound to apply his mind independently and grant the sanction.

16.2.Before Further elaboration on submission of Appellant regarding non application mind while according sanction, this Court has a duty to find out the meaning of “sanction” and precedents relating to the accord of sanction. The word ‘sanction’ has not been defined in the Code of Criminal Procedure.

<i>Dictionary</i>	<i>Meaning</i>
<i>Webster's Third New Internal Dictionary</i>	<i>Explicit permission or recognition by one in authority that gives validity to the act of another person or body; something that authorizes, confirms, or countenances.</i>
<i>The New Lexicon Webster's Dictionary</i>	<i>Explicit permission given by some one in authority.</i>



<i>The Concise Oxford Dictionary.</i>	<i>Encouragement given to an action etc., by custom or tradition; express permission, confirmation or ratification of a law etc; authorize, countenance, or agree to (an action etc.)</i>
<i>Stroud's Judicial Dictionary</i>	<i>Sanction not only means prior approval; generally it also means ratification.</i>
<i>Words and Phrases—</i>	<i>The verb 'sanction' has a distinct shade of meaning from 'authorize' and means to assent, concur, confirm or ratify. The word conveys the idea of sacredness or of authority.</i>
<i>The Law Lexicon by Ramanath Iyer</i>	<i>Prior approval or ratification.</i>
<i>Rameshwar Bhartia Vs. State of Assam reported in 1952 2 SCC 203, the Hon'ble Supreme Court has stated that</i>	<i>Sanction is in the nature of permission.</i>

16.3.In ***Om Prakash v. State of U.P., 2001 SCC OnLine All 818*** at page 1248. Hon'ble Mr.Justice G.P.Mathur (as he then was) made detailed discussion on this aspect and finally has held that

6..... The word 'sanction' has been used as a “verb” and therefore it will mean to assent, to concur or approval.



16.4. Therefore, in the considerable opinion of this Court, sanction is the independent act of sanctioning authority with due application of mind over the material forwarded by the investigating agency to prosecute the accused before the Court of law under the penal provision constituting the offence.

16.5. The Hon'ble Supreme Court in ***State of Maharashtra v. Mahesh G. Jain, (2013) 8 SCC 119*** after considering the earlier various decisions of the Hon'ble Supreme Court reported in ***AIR 1958 SC 124, AIR 1979 SC 677, 1995 6 SCC 225, 2005 4 SCC 81, 2006 12 SCC 749, 2007 11 SCC 273, 2011 1 SCC 491***, has expounded the following detailed principles of law governing the validity of sanction:

“14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.



14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper technical approach to test its validity.”

16.6. In this case P.W.19, after collecting the material documents and recording the statements of the witnesses recorded under Section 161 of Cr.P.C, produced the same before P.W.2 to accord sanction. P.W.2 after



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considering and applying his mind granted sanction under Ex.P2 The material portion of the sanction order is as follows:

Whereas, I Dr.S.Murugan, I.P.S., Deputy Inspector General of Police, Tirunelveli Range, Tirunelveli being the authority competent to remove the said Tr.A.Thanga Nadan, formerly Sub-Inspector of Police, Nitravilai P.S. From his service, after fully and thoroughly examined the materials and records such as Firs Information Report, Statement of witnesses and accused Tr.Thanga Nadan and other connecting records including Forensic Science Lab report etc. placed before me in this regard and circumstance of the case having applied my mind and fully satisfied that said Tr.A.Thanga Nadan, formerly Sub Inspector of Police, Nitravilai P.S., shall be prosecuted for the offences punishable under Sections 7, 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

16.7. The sanctioning authority examined as P.W.2 and he also deposed before the Court that he accorded sanction under Ex.P2 after applying his mind in the following words:

கன்னியாகுமரி மாவட்டம் நித்திரைவிளை காவல் நிலையத்தில்
சார்பாய்வாளராக பணிபுரிந்த திரு.தங்கநாடர் என்பவர் நாகர்கோவில் ஊழல்



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தடுப்பு கண்காணிப்பு பிரிவு குற்ற எண்.5/2014 ச/பி.7, 13(2) உ/இ. 13(1) (டி) ஊழல் தடுப்பு சட்டம் குற்ற வழக்கில் சம்பந்தப்பட்ட முதல் தகவல் அறிக்கையின் நகல், மகசர்களின் நகல், சாட்சிகள் மற்றும் எதிரி தங்கநாடரின் வாக்குமூலங்களின் நகல்கள், வேதியியல் அறிக்கையின் நகல், மற்றும் வழக்கு தொடர்பாக அனுப்பப்பட்டிருந்த அறிக்கையில் குறிப்பிடப்பட்டிருந்த இதர ஆவணங்கள் ஆகியவைகளை பெற்றும் நாகர்கோவில் ஊழல் தடுப்பு மற்றும் கண்காணிப்பு துறை காவல் ஆய்வாளர் அவர்களை நேரில் வரவழைத்தும், வழக்கு நாட்குறிப்பை பார்வையிட்டும், அனைத்து ஆவணங்களை பரிசீலனை செய்தும், என் மனதை செலுத்தியும், சார்பாய்வாளர் திரு.தங்கநாடார் மீது நீதிமன்றத்தில் வழக்கு தொடர்வது அவசியம் என நான் முழு திருப்தி அடைந்ததால் அதன் அடிப்படையில் திரு. தங்கநாடார் சார்பாய்வாளர் மீது நீதிமன்றத்தில் வழக்கு தொடர எனது செயல்முறை நடவடிக்கை எண். சி.நம்பர்.சி1/6586/2014 நாள்.04.04.2015படி ஒரு இசைவாணை வழங்கினேன்.

16.8.From the above, this Court finds that the sanction order itself is eloquent about the fact that the accused had demanded and accepted the bribe amount. The sanctioning authority also came into the witness box and he deposed that he accorded sanction for prosecution after proper application of mind. Therefore, this Court finds that the sanctioning authority has applied his mind to the fact that the appellants made a demand



and accepted illegal gratification.

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17. Further, Section 19 of the Prevention of Corruption Act 1988 and Section 465 of Cr.P.C., specifically state that the conviction cannot be set aside on the ground that there was an error in granting sanction unless accused established failure of justice. For better appreciation, the relevant portion of the Sections are extracted as follows:

<i>Section 19 of the Prevention of Corruption act 1988</i>	<i>Under Section 465 of Cr.P.C.</i>
19.3...(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;	465. <i>Finding or sentence when reversible by reason of error, omission or irregularity.</i> —(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.



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17.1.The Hon'ble Supreme Court has held as follows in ***State v. T.***

Venkatesh Murthy, (2004) 7 SCC 763 at page 765,

14.In the instant case neither the trial court nor the High Court appear to have kept in view the requirements of sub-section (3) relating to question regarding “failure of justice”. Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice.

17.2.In State of M.P. v. Virender Kumar Tripathi, (2009) 15 SCC

533 at page 536

9. Further, the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of/ or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the court a failure of justice has in fact been occasioned thereby.

29.3.The Hon'ble Supreme Court in Tshering



Bhutia v. State of Sikkim [Ashok Tshering Bhutia v. State of Sikkim, (2011) 4 SCC 402 referring to the earlier precedents has observed that
...A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby...

17.3. These two foundational facts to prosecute the appellants under Section 7 and 13(1)(d) r/w 13(2) and 12 of the Prevention of Corruption Act 1988 are found in the sanctioning order/Ex.P2 and P.W.2's deposition. Further, in the case of ***State of Bihar v. P.P. Sharma***, reported in **AIR 1991 SC 1260**, the Hon'ble Supreme Court has held as follows:

When the Government accorded sanction, Section 114(e) of the Evidence Act raises presumption that the official acts have been regularly performed. The burden is heavier on the accused to establish the contra to rebut that statutory presumption.

18. In this case also as discussed above, the sanctioning authority accorded sanction by applying his mind and hence, the presumption under Section 114(e) of the Indian Evidence Act comes into play that the



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sanctioning authority properly discharged his duty. The accused is duty bound to establish *the contra to rebut that statutory presumption and also* to establish the failure of justice. In this case, the accused never established the both.

19. In this case, all the witnesses clearly speak about the demand and acceptance of the bribe amount and the same was proved through the evidence of P.W3, P.W.4, P.W17-trap laying officer and P.W9 and the seizure of the documents relating to Crime No.131 of 2014. The same was correctly appreciated by the learned trial Judge while rendering the judgment of conviction and sentence against the accused. The recovery of the amount was proved through the examination of P.W21. P.W21 is the Manager of the Reserve Bank of India and he specifically stated that the currency note number mentioned in the entrustment mahazar-Ex.P5 is the corresponding currency note printed by the Reserve Bank of India. Therefore, according to the prosecution, the acceptance is proved through Ex.P5 wherein the currency number was clearly mentioned and the same was corroborated by the version of the P.W21. P.W18 clearly has spoken about the positive result on the first accused's hands. According to the trap



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laying officer-P.W17, after conducting the phenolphthalein test in the hands of the accused/appellant, the same was sent to P.W18 for the analysis. The said report clearly speaks about the presence of the phenolphthalein powder in the hand wash. Therefore, the handling of money is also proved through the scientific analysis report. In all aspect, the prosecution clearly proved the case. It is quite natural that, due to the passage of time, some contradiction may happen which is unavoidable as held by the Hon'ble Supreme Court. Without any contradiction, the witnesses cannot be treated as a true witness. Hence, this Court finds no merit in the appeal and hence the criminal appeal deserves to be dismissed.

20. The accused is aged about 67 years and he is suffering from various illness and he also lost his job. Therefore, this Court considering the said facts inclines to reduce two years sentence of simple imprisonment imposed by the Court below for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of corruption Act, into one year each and the same are to run concurrently. Fine amount imposed by the Court below with the default sentence is hereby confirmed.



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21. Accordingly, this Criminal Appeal is partly allowed in the following terms:

(i) the conviction passed against the appellant for the offence under Sections 7 and 13(2) r/w 13(2)(d) of the Prevention of Corruption Act in Special Case No.2 of 2015, by the learned Special Judge and Chief Judicial Magistrate, Nagercoil, vide judgment dated 15.09.2017 is hereby confirmed.

(ii) the sentence of imprisonment to undergo two years simple imprisonment and a fine of Rs.5,000/-, in default, to undergo 6 months simple imprisonment for the offence under Section 7 of the Prevention of Corruption Act; and to undergo two years simple imprisonment and a fine of Rs.5,000/-, in default, to undergo 6 months simple imprisonment for the offence under Section 13(2) r/w 13(2)(d) of the Prevention of Corruption Act

is modified into

“to undergo one year simple imprisonment for the offence under Section 7 of the Prevention of Corruption Act; and to undergo one year simple imprisonment for the offence under Section 13(2) r/w 13(2)(d) of the



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Prevention of Corruption Act and the said sentences are to run concurrently and the judgment relating to the fine amount is hereby confirmed”.

12.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PJJ/*sbn*

To

1. The learned Special Judge and Chief Judicial Magistrate,
Nagercoil.
2. The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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Predelivery Judgment made in
CrI.A(MD)No.396 of 2017

12.03.2024