



Crl.R.C.(MD).Nos.489 and 492 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.12.2023

Pronounced on : 19.03.2024

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD)Nos.489 and 492 of 2017

and

Crl.M.P(MD)No.4282 of 2018 in Crl.A(MD) No.489 of 2017

Crl.A(MD)No.489 of 2017:

Ramanathan

... Appellant/Accused No.1

Vs.

State Rep. By,
The Inspector of Police,
Vigilance & Anti Corruption,
Thanjavur
(Crime No.7 of 2010)

...Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records relating to the judgment dated 29.11.2017 in Special Case No.30 of 2014 by the learned Special Judge cum Chief Judicial Magistrate, Thanjavur at Kumbakonam and set aside the same and acquit the appellant/A1 by allowing this criminal appeal.



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Crl.A(MD)No.492 of 2017:

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Pasupathi

.. Appellant/Accused No.2

Vs.

State Represented by,
The Inspector of Police,
Vigilance & Anti Corruption Wing,
Thanjavur,
Thanjavur District.
(Crime No.7 of 2010)

.. Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to call for the records in Special case No.30 of 2014 on the file of the learned Special Judge cum Chief Judicial Magistrate, Thanjavur at Kumbakonam, Thanjavur District and set aside the Judgment dated 29.11.2017 and acquit the Accused No. 2 /Appellant of the charges.

For Appellant : Mr.K.Baalasundharam,
Senior Counsel for Mr.R.Paranjothi
in Crl.A(MD) No.489/2017

: M/s.A.L.Gandhimathi,
Senior Counsel for Mr.N.Subramani
in Crl.A.(MD) No.492/2017

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor
in both cases



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COMMON JUDGEMENT

Since these two appeals are arising out of the same crime, these two appeals are taken up together for hearing and disposed of by way of this common judgment.

2.The accused Nos.1 & 2 in Special C.C.No.30 of 2014, on the file of the learned Special Judge cum Chief Judicial Magistrate, Kumbakonam, Thanjavur District filed these Criminal Appeals challenging the conviction and sentence imposed on them by the impugned judgment dated 29.11.2017 in Special case No.30 of 2014, on the file of the learned Special Judge cum Chief Judicial Magistrate, Kumbakonam, Thanjavur District.

Crl.A. (MD). Nos.	Rank of the Accused	Offence punishable under Section	Sentence of Imprisonment
489 of 2017	A1	7 of PC Act	1 year Rigorous Imprisonment and a fine of Rs.1000/-, in default, to undergo 3 months simple imprisonment.
	A1	13(2)r/w13(1)(d) of PC Act	1 year Rigorous Imprisonment and a fine of Rs.1000/-, in default, to undergo 3 months simple imprisonment.



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492 of 2017	A2	12 r/w 7 of Prevention of Corruption Act	1 year Rigorous Imprisonment and a fine of Rs.1,000/- in default to undergo 3 months of simple imprisonment
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3. Brief facts of the case:

According to the prosecution, P.W.1 had decided to purchase the house bearing Door No.28, Harijana Street, Keelamaruthuvakudi Village, Thiruvudaimaruthur Taluk, Thanjavur District from his grandmother Nagammal. Therefore, he purchased the stamp papers on 03.09.2010 and he met the document writer A2-Mr.Pasupathi with the stamp paper on 06.09.2010. A2 prepared the documents. The defacto complainant presented the said prepared documents before the Sub Registrar/A1 on 22.09.2010 to register the document in the Sub Registrar Office, Thiruvudaimaruthur. Upon remittance of entire charges, the same was registered on 22.09.2010. After registration, A1 and A2 had come for spot inspection on 28.09.2010 at 7.30 a.m. During the spot inspection, A1 demanded Rs.1000/- as illegal gratification. P.W.1 visited the office on 30.09.2010 at 3.30 p.m. At that time, A1 reiterated the said demand and directed him to give the amount on 01.10.2010 afternoon. But, P.W.1 was not inclined to pay the illegal gratification. Therefore, P.W.1 made a complaint before P.W.15. P.W.15, after ascertaining the truth in the complaint and making



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enquiry regarding the conduct of the parties, registered the case in Crime No.7 of 2010 for the offence under Section 7 of the Prevention of Corruption Act, 1988.

He also called two official witnesses namely P.W.2 and P.W.11 to his office. In their presence, he demonstrated the *modus operandi* of the phenolphthalein test.

Thereafter, P.W.15 prepared the entrustment mahazar-Ex.P.6. P.W.15 instructed P.W.1 to meet the appellant/A1 in his office and he specifically directed to

handover the tainted currency in the event of demand made by A1. P.W.15, further directed P.W.2 to accompany P.W.1 and watch the entire events. Both

P.W.1 and P.W.2 went to the office of A1. P.W.1 showed the receipt of the registration of the document and requested A1 to furnish the document. A1

furnished the document and directed to pay the demanded bribe amount to A2.

As per the direction, P.W.1 and P.W.2 met A2 and at that time A2 reiterated the demand and received the bribe amount of Rs.1000/- and also he received Rs.

200/- towards document charge and kept the amount inside the document.

Thereafter, P.W.1 came out of the office of A2 and gave signal to the trap laying officer P.W.15. P.W.15 & P.W.11 entered into the office of A2 and introduced

themselves. After introduction, P.W.15 conducted the phenolphthalein test in the hands of A2 and the wash turned into pink colour. Due to the change of colour,

P.W.15 questioned A2 about the receipt of the amount. A2 pointed out the



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amount and the said amount was recovered from the document. After recovery of the tainted currency, the same was checked with the numbers of the currency note mentioned in the entrustment mahazar-Ex.P6 by the official witness-P.W.11. The 10 numbers of 100 Rupees note alone tallied with the numbers mentioned in the entrustment mahazar. But the additional amount received by A2 towards the additional document charge did not tally with the currency numbers. Thereafter P.W.15 conducted the phenolphthalein test in the document into which the amount was kept by A2. The said wash also turned into pink. The said document was recovered. Then, A2 informed that the amount of Rs.1000/- was received at the instance of A1. Hence, P.W.15 and his team proceeded towards A1's office and recovered the documents relating to P.W.1's transaction and prepared the recovery mahazar-Ex.P7 by arresting the accused. Following the said process, observation mahazar under Ex.P8 and Sketch-Ex.P23 were prepared. After that, a house search was conducted in the house of A1 but nothing was recovered. Therefore, he completed the proceedings and sent the report to the investigation officer under Ex.P25. The investigation officer completed the investigation by examining the witnesses, collecting the documents and obtaining the sanction. The investigation officer filed the final report before the learned Special Judge cum Chief Judicial Magistrate, Thanjavur at Kumbakonam and the same was



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taken on file in Spl.C.C.No.30 of 2014. Thereafter, the learned trial Judge summoned the accused/appellants and served copies under Section 207 of Cr.P.C., framed the necessary charges and questioned the appellants. They pleaded not guilty and they stood for trial.

4. To prove the charges, the prosecution examined P.W.1 to P.W.16, exhibited Ex.P1 to Ex.P26 and marked M.O.1 to M.O.5.

5. The learned trial Judge, questioned the accused under Section 313 of Cr.P.C., by putting the incriminating materials available against them. They denied the same as false. No witness was examined on the side of the appellants and Ex.D1 alone was exhibited through the investigation officer.

6. The learned trial Judge, considering the above materials, convicted the appellants for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced them as follows:

Rank of the Accused	Offence punishable under Section	Sentence of Imprisonment
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A1	7 of PC Act	1 year Rigorous Imprisonment and a fine of Rs.1000/-, in default, to undergo 3 months simple imprisonment.
A1	13(2)r/w13(1)(d) of PC Act	1 year Rigorous Imprisonment and a fine of Rs.1000/-, in default, to undergo 3 months simple imprisonment.
A2	12 r/w 7 of PC Act	1 year Rigorous Imprisonment and a fine of Rs.1000/-, in default, to undergo 3 months simple imprisonment.

Challenging the above conviction and sentence, the A1 filed the appeal in Crl.A.(MD).No.489 of 2017 and A2 filed the appeal in Crl.A.(MD).No.492 of 2017.

7. Submission of Mr.K.Balasundharam, the learned Senior Counsel for the appellant in Crl.A.(MD).No.489 of 2017:

7.1. P.W.1, defacto complainant has been treated as hostile. He specifically deposed before the Court that the appellant/A1 never demanded any bribe amount. On his arrival to the registration office, he met A2 and requested to return the document. A2 demanded Rs.1,500/- from P.W.1., to return the document. Therefore, he gave the complaint and trap proceeding was initiated. A1 handed over the document on 01.10.2010 without making any demand.



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Thereafter, he gave the amount to A2 and gave a signal. P.W.15 recovered the amount from A2. A2 disclosed that A1 asked to receive the amount and hence, on behalf of A1, he received the amount. From the above, neither demand nor acceptance was proved on the part of the appellant. Therefore, without proof of the demand and acceptance, the appellant ought not to have been convicted by the learned trial Judge under Sections 7, 13 (1) (d), r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and relied on the following judgements:

1. C.Sukumaran Vs. State of Kerala, reported in 2014 11 SCC 314

2. N.Sunkanna Vs. State of Andhra Pradesh reported in 2016 SAR (Crl)

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3. V.Sejappa Vs. State by the Police Inspector Lokayukta, Chitradurga reported in 2017 (3) SCC (Crl) page 699

4. P.Sathiyannarayana Moorthy Vs. The District Inspector of Police and others reported in 2016 91) SCC (Crl) 11

5. K.Shanthammal Vs. State of Telangana reported in 2022 (3) MLJ Crl 491 (SC)

6. Krishnan Chandar Vs State of Delhi reported in 2016 (3) SCC 108

7. N.Vijayakumar Vs. State of Tamilnadu reported in 2021(2) SCC (Crl)

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8. V.Venkata Subbarao Vs. State reported in 2006 (13) SCC 305

9. Singh Chauhan Vs. CBI reported in 2020 (3) SCC (Crl) 396

10. B.Jeyaraj Vs. State of Andrapradesh reported in 2014 (Crl) LJ 2433

11. Soundarajan Vs. State Rep of the Inspector of Police, Vigilance Anticorruption, Dindigul reported in 2023 (Crl) LJ 2123

12. Jagtar Singh Vs. State of Punjab reported in 2023 AIR (Crl) 319

7.2. The sanctioning authority granted sanction mechanically, without application of mind. Therefore, taking cognizance on the basis of the invalid sanction is not legally valid. Hence he seeks for acquittal. In support of his contentions, he relied on the following judgment:

Mansukhlal Vithaldas Chauhan Vs. State of Gujarat reported in **1997 7 SCC 622**

7.3. Non examination of any of the officials from A1/Sub- Registrar office creates doubt over the recovery of documents from the custody of A1. Hence, in all aspect the prosecution miserably failed to prove the case beyond reasonable doubt against A1.

Submission of Ms.AL.Gandhimathi, the learned Senior Counsel for



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the appellant in Crl.A.(MD).No.492 of 2017:

8.1. As against the appellant/A2, the learned trial Judge framed charge under Section 12 of the Prevention of Corruption Act. According to the prosecution, the appellant is said to have received the bribe amount on behalf of A1. Therefore, he committed the offence under Section 12 of the Prevention of Corruption Act. The prosecution failed to prove the demand as against the appellant/A1. In the said circumstances, offence under Section 7 is not made out against A1. As a sequel, the charge under Section 12 framed against the appellant/A2 automatically goes.

8.2. The prosecution failed to prove the acceptance of the bribe amount Rs.1000/- from P.W.1 on behalf of A1 and hence, the charge under Section 12 does not stand alone.

8.3. Even assuming that the receipt of amount is accepted without proof of demand and unless any other incriminating material is proved to show that the appellant/A2 received the amount on behalf of A1, the conviction and sentence under Section 12 of the Prevention of Corruption Act imposed by the learned trial Judge is liable to be set aside. The evidence of another trap witness stating



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that the constable attached with the respondent detachment prepared the phenolphthalein solution in the bottle at Thanjavur office, ie., shifting the place of conducting the phenolphthalein test in the hands of A2, creates suspicion about the presence of P.W.2. The learned Senior counsel further submitted that the evidence of P.W.2 is that while meeting the appellant/A1 he showed the receipt and requested to return the document and A1 returned the document. After receipt of the document, it is not necessary for P.W.1 to see A2 in his office which is situated opposite to the Registration Office. The above said event itself is not probable one and hence, according to the learned Senior Counsel, the entire trap proceedings is bristled with surmise and suspicion. The learned Senior counsel to substantiate her contention relied on the following judgments:

- 1. 2015(10)SCC152 [P.Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another]***
- 2. 2022(4)SCC 574[K.Shanthamma v. State of Telangana]***

Submission of the learned Additional Public Prosecutor:

9. Per contra, the learned Additional Public Prosecutor submitted that the sanctioning authority in his evidence clearly stated that he applied his mind and also was satisfied that A1 demanded the bribe amount from P.W1 and he directed



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A2 to receive the amount. The fact, he applied his mind is clearly stated in Ex.P10. Therefore, the contention of the learned Senior Counsel cannot be accepted. In this aspect, it is relevant to note the following judgements :

2004 7 SCC 763,

2007 1 SCC 1,

2004 4 SCC 615.

10. The learned Additional Public Prosecutor submitted that the learned Senior counsel's submission on behalf of A1 and A2 that there was no evidence to prove the demand cannot be accepted. Even though P.W.1 was treated as hostile, he admitted the contents of the FIR and he also admitted the preparation of the entrustment mahazar. He also admitted that he handed over the tainted currency amount, namely, bribe amount to A2. He only omitted in his statement regarding the direction given by A1 to handover the bribe amount to A2. He never disputed the contents of the entrustment mahazar/ Ex.P6. In the said circumstances, his oral evidence against the contents of the documentary evidence cannot be accepted.

11. The learned Additional Public Prosecutor further submitted that A1



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never denied the meeting of P.W1 and P.W2 on the date of occurrence and also he never denied the recovery of documents relating to the transaction of P.W1.

12. P.W2 independent official witness specifically deposed before the Court that A1 directed to give the bribe amount to A2 and the same can not be disbelieved without any circumstances elicited in the course of the cross examination. Hence, his evidence is to be accepted for proof of the demand. The learned Additional Public Prosecutor further submitted that the tainted currency is recovered from A2. A2 has taken different stands at different stages regarding the recovery of amount. He stated that no amount was recovered from him. During the cross-examination of the witnesses, he suggested that Rs.200/- alone was received towards the additional document charge. In the 313 Cr.P.C proceedings, he stated that he never received the amount and totally denied the occurrence.

13. Further, not only contra stand was taken by A2, there was no explanation at all regarding the positive result of the phenolphthalein test in the hands of A2. As per the manual, if the colour turned into pink, there is a presumption that the tainted currency was handled by that person. The said



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presumption could not be rebutted by A2. There was no explanation for the change of colour and recovery of the amount. The recovery from his custody is proved through the evidence of official witnesses P.W2, P.W11 and P.W15-trap laying officer. In the said circumstances, charge against him under Section 12 of the Prevention of Corruption Act is clearly proved. For convicting the appellant/A2 under Section 12 of the Prevention of Corruption Act, it is not necessary to prove the ingredients of Section 7 of the Act against the appellant/A2. It is well settled principle that obtainment is a distinct offence and the sufficient materials, namely, recovery of the tainted currency is a material circumstance to constitute the offence and the same was clearly proved. Therefore, the conviction and sentence imposed against A2 under Section 12 of the Act has to be confirmed.

14. The learned Additional Public Prosecutor submitted that even though P.W1 was treated hostile, the evidence of P.W1 cannot be totally effaced. The evidence of P.W2 is clear in respect of the demand and acceptance and hence, the conviction and sentence imposed by the learned trial Judge is in accordance with the law. He placed reliance on the following judgements:

1. 2014(6)SCC495 [Rajat Prasad v. CBI]



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2. 2009(9)SCC729 [State through CBI v. Parmeshwaran Subramani and anr.]

15. This Court considered the rival submissions made by both side and perused the records and the precedents placed before this Court by both side counsel.

Discussion on merits:

16. Now the following questions arise for consideration in this appeal:

16.1. Whether the prosecution has proved the case against A1 to convict him under Section 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act?

16.2. Whether the prosecution has proved the case against A2 to convict him under Section 12 of the Prevention of Corruption Act?

17. For the Sake of convenience, the appellants will be referred to as per their rank in Special Case No.30 of 2014 on the file of the learned Special Judge cum Chief Judicial Magistrate, Thanjavur District at Kumbakonam.

18. The Proof of Demand



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In this case the primordial submission of the learned Senior counsel appearing for A1 and A2 is that no evidence was adduced by the prosecution to prove the demand either on the part of A1 or A2. P.W.1 never deposed about the demand. Therefore, evidence of P.W.2 regarding the demand is without any corroboration. There was no recovery from A1 and the recovery from A2 has not been established. As against A1, the prosecution failed to prove the ingredients of Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act as per the dictum laid down in the Hon'ble Constitution Bench in 2023 (4) SCC 731. So far as the offence against A2 is concerned, without proof of the demand on the part of A1, the offence under Section 12 of the Act cannot be sustained.

181.To appreciate the said contention, this Court now decides to deal with the demand against conviction for the offence under Section 7 r/w 13(2) of the PC Act, and the demand against A2 for the offence under section 12 of the PC Act, separately.

19.Proof of the demand on the part of A1

The repeated contention of the appellant is that P.W.2 was declared hostile and hence, the demand is not proved. Even in the case of the complainant



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declared as hostile, the demand can be proved through the other proved circumstances, namely, from the inferential deduction of the complainant's evidence, from the testimony of the other witnesses and the circumstantial evidence and the same is fortified by the following portion of the Hon'ble Constitution Bench Judgment in the case of ***Neeraj Dutta v. State (NCT of Delhi)***, (2023) 4 SCC 731 at page 777

a88.6. (f) In the event the complainant turns “hostile”, or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

90. Accordingly, the question referred for consideration of this Constitution Bench is answered as under:

In the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution.



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87. Therefore, this Court cautioned that even if a witness is treated as “hostile” and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the Judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared “hostile” does not result in an automatic rejection of his evidence. Even, the evidence of a “hostile witness” if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a “hostile witness” testimony if corroborated by other reliable evidence.”

Sat Paul v. Delhi Admn., (1976) 1 SCC 727 at page 745

“52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of



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the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.”

19.1. From conjoint reading of the paragraph No.52 of the “*sat paul*” case and Paragraph No.87 of the “*Neeraj Dutta*” case, the following principles are to be followed to appreciate the prosecution witnesses examined and contradicted by the prosecution under Section 154 of the Indian Evidence Act, with the leave of Court:

(i) To read the evidence of witnesses as a whole with due care and caution and circumspection.

(ii) If the credit of the witness has not been completely shaken, the portion of the deposition to be considered along with other available evidence.



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(iii) If the credit of the witness is subjected to any receipt of other corrupt inducement to give his evidence as stated in the Section 155 (2) of the Indian Evidence Act, his evidence can not be taken against the prosecution. There are cases where the witness admitted his signature in the complaint and disowned the contents of the complaint or admitted the contents and signature of the complaint but taken a stand that he made it under the influence. The Court has to consider the complaint in consonance with the other prosecution evidence.

(iv) If the witness deposed in chief examination admitting the entire transaction and disowned during the course of cross examination, the deposition made in the chief examination is to be taken.

(v) If the witness deposed in the chief examination partly disowning his case stated in the complaint, the Court is duty bound to see his credit worthiness by subjecting his deposition with relevant circumstances whether he got influenced to any corrupt inducement to give false evidence. In that event, his evidence cannot be taken against the prosecution.

19.2. The Hon'ble Supreme Court in the case of ***Kishan Chand Mangal v.***



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State of Rajasthan, (1982) 3 SCC 466 at page 471 also has held in the following paragraphs that the demand can be proved through the tell-tale circumstances:

11. It was next contended that once Rajendra Dutt is not available for evidence there is no evidence as to the demand of bribe on November 20, 1974, and it is not open to the court to spell out the demand from the contents of Ex. P-12. It is undoubtedly true that Rajendra Dutt was dead before the commencement of trial. It is equally true that the FIR lodged by him on November 22, 1974, cannot be used as substantive evidence nor the contents of the report can be said to furnish testimony against the appellant. Such an FIR would not be covered by any of the clauses of Sections 32 and 33 of the Evidence Act and would not be admissible as substantive evidence. The question still remains whether there is any evidence of demand of bribe on November 20, 1974, in this case. A fact may be proved either by direct testimony or by circumstantial evidence. If appellant did not visit the factory of Rajendra Dutt on November 20, 1974, and made no overtures demanding the bribe, on what rational hypothesis can one explain the visit of Rajendra Dutt to the office of Dy SP, ACD on November 22, 1974; his producing currency notes worth Rs 150; a superior officer like the Dy SP, ACD, making all arrangements for the trap and the raiding party going to the house of the accused on



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November 22, 1974. The visit of Rajendra Dutt soon followed by the raiding party at the house of the accused on November 22, 1974, is admitted. Coupled with this, the fact that Keshar Mal, PW 2 in his evidence stated that after Rajendra Dutt entered the room in which appellant was sitting, Rajendra Dutt on entering the room asked the appellant, 'Hullo, how do you do?' He further stated that the appellant replied, 'I am sick and suffering from cold'. He deposed that thereafter the appellant asked, 'Have you brought the money', whereupon complainant Rajendra Dutt replied, 'Yes, I have brought the money'. He further stated that thereafter Rajendra Dutt took out the amount of currency notes from his diary and gave the same to the appellant who took the amount and kept it under the pillow on the cot. If there was no prior demand the subsequent events remain unexplained as also the demand as deposed to by PW 2 Keshar Mal. But Mr Anthony urged that this part of the evidence of Keshar Mal cannot be accepted because he has not stated this fact in his statement recorded in the course of investigation. Simultaneously it was pointed out that the other motbir Ram Babu is totally silent in his evidence about this conversation between the appellant and the complainant. Undoubtedly, the omission in the police statement of Keshar Mal and non-mentioning all these facts by the co-motbir would raise some doubt in the mind of the court about this conversation but as pointed out earlier



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there are tell-tale circumstances which do indicate that there must have been a demand and, therefore, these circumstances as hereinbefore set out will render support to the statement of Keshar Mal that the demand at the time of visit of Rajendra Dutt must be pursuant to earlier demand by the appellant. Therefore, it is not proper to say that there is no evidence of the demand of bribe as on November 20, 1974.

19.3. In this case, the demand was proved through the tell-tale circumstances. As per the complaint/Ex.P1, the complainant approached A2, document writer to prepare the sale deed. The document was registered on 22.09.2010 through him in Sub-Registrar office. A1 is the in charge Sub-Registrar to register the document. A1 and A2 came to the house and made field inspection on 28.09.2010 at 07.30 p.m. After inspection, A1 directed to give Rs. 1,000/- and get the document. He also directed to give Rs.250/-for the car rent. On 30.09.2010 at 03.10., p.m., P.W.1 approached A1 and requested him to return the registered document. A1 demanded Rs.1,000/-. P.W.1 replied that he did not bring the amount. Therefore, A1 directed P.W.1 to hand over the said amount in the afternoon on 01.10.2010. Hence, he made a complaint/Ex.P1 to P.W.15(Trap Laying Officer). Even though P.W.1 was treated hostile in some aspects, he



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admitted the above contents of the FIR and also the signature in the FIR. He also admitted the handing over the bribe amount of Rs.1,000/- in the presence of the trap witness P.W.2. He also admitted the demonstration of the Phenolphthalein test. He also admitted the preparation of the entrustment mahazar. He specifically deposed that after demonstration of the phenolphthalein test, he was instructed to give the bribe amount to A1 upon his demand in the following words: சார் பதிவாளர் பணம் கேட்டால் மட்டுமே பணம் கொடுக்க வேண்டும் என்று சொன்னார்கள். He also admitted the meeting of A1 in his office on the date of the trap. He also admitted that, he handed over Ex.P3, Ex.P4 and Ex.P5 to A1. After meeting P.W.1, A1 made signature in the receipt and handed over the document with proper acknowledgement from P.W.1. He also admitted that he met A2 and handed over the bribe amount to A2.

19.4. *“P.W.2 has deviated from his statement under Section 161 of Cr.P.C., that A1 demanded the money and asked to hand over the money to A2.”* He gave different version contradictory to the contents of the documents including Ex.P6/Entrustment Mahazar. In the said circumstances, as held by the above Hon'ble Constitution Bench, it is the duty of this Court to consider the testimony of P.W.1 in this aspect whether it is trustworthy or not?



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19.5. In Ex.P6, it is clearly stated that he brought the bribe amount demanded by A1 ie., சாட்சிகளும் வாதியிடம் விசாரித்து புகாரின் உண்மைத்தன்மையை உறுதி செய்து கொண்டார்கள். பிறகு எதிரி திருவிடைமருதூர் சார் பதிவாளர் பொறுப்பு திரு.ராமநாதன் கையுட்டாக கேட்ட ரூபாயை அவரிடம் கொடுத்து பிடிப்பதற்கான பணத்தை ஆய்வாளர் கேட்க வாதி தன்னிடம் இருந்து பத்துநூறு ரூபாய் நோட்டுக்கள் அடங்கிய ரூ.1000 ஐ எடுத்து ஆசர் செய்தார். The preparation of the Entrustment Mahazar has been clearly spoken by P.W.2, P.W.11 and P.W.15. It is clear that the contents of Ex.P6 cannot be contradicted or varied by the oral evidence of P.W1. The said evidence is cogent and trustworthy. There is no reason to disbelieve his version. Further, P.W.2, trap witness, who has no motive against A1 and A2 narrated the events that A1 reiterated the demand and asked to give the money to A2. A2 received the bribe amount after making enquiry whether A1 asked to give the money. The relevant portion of the evidence of P.W.2 is follows: அங்கு வாதி பிரபாகர் ரசீதை காண்பித்தவுடன் சார்பதிவாளர் அதை வாங்கி கையெழுத்தை போட்டு கொடுத்தார். அதில் பிரபாகர் பெற்றுக் கொண்டேன் என்று கையெழுத்து போட்டார். ராமநாதன் பணத்தை பசுபதியிடம் கொடுக்குமாறு சொன்னார். நானும் வாதி பிரபாகரனும் டாக்குமெண்ட் ரைட்டர் பசுபதி ஆபிசிற்கு வந்தோம். அந்த ஆபிஸ் சார்பதிவாளர் அலுவலகத்திற்கு எதிரில் உள்ளது. அவர் பணத்தை கொடுக்க சொன்னாரா என்று கேட்டு ஆயிரம் ரூபாயை வாங்கி வைத்துக்



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கொண்டார். P.W.2, P.W.11 and P.W.15 deposed that after recovery of the amount from A2, he disclosed that he received the amount on behalf of A1. Therefore, now he cannot allow to show his volte face approach to say that the appellant never demanded bribe and he never handed over the currency as a bribe amount. In similar circumstances, the Hon'ble following Three Member Bench of the Supreme Court has held that if the witness made the statement to help the appellant by changing his version made before the investigation officer, the said contradictory version of the witness need not be accepted. In the case of ***Dahyabhai Chhaganbhai Thakkar v. State of Gujarat***, reported in ***AIR 1964 SC 1563***

13. Now we come to the evidence of what happened on the night of the incident. Nobody except the accused knows what happened in the bedroom. PWs 2 to 7 deposed that on the 10th April, 1959, corresponding to Chaitra Sudi 1, between 3 and 4 a.m. they heard shouts of the deceased Kalavati to the effect that she was being killed; that they all went to the room but found it locked from inside; that when the accused was asked to open the door, he said that he would open it only after the Mukhi (PW 1) was called; that after the Mukhi came there, the accused opened the door and came out of the room with a blood-stained knife in his hand; that the accused began talking irrelevantly and was speaking “why, you killed my mother?” “why, you burnt my father's house?”; that afterwards the accused sat down and threw dust and mud at the persons gathered there; and that he was also laughing without any cause. In short, all the witnesses in one voice suggested that the accused was under a



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*hallucination that the deceased had murdered his mother and burnt his father's house and, therefore, he killed her in that state of mind without knowing what he was doing. But none of these witnesses had described the condition of the accused immediately when he came out of the room, which they did so graphically in the sessions court, at the time when they made statements before the police. In effect they stated before the police that the accused came out of the room with a blood-stained knife in his hand and admitted that he had murdered his wife; but in the witness-box they said that when the accused came out of the room he was behaving like a mad man and giving imaginary reasons for killing his wife. **The statements made in the depositions are really inconsistent with the earlier statements made before the police and they are, therefore, contradictions within the meaning of Section 162 of the Code of Criminal Procedure. We cannot place any reliance on the evidence of these witnesses : it is an obvious development to help the accused.***

Emphasis supplied

19.6. Proof of demand through the testimony of trap witnesses

It is well settled principle, that conviction can be made on the basis of the evidence of trap witness. The Hon'ble Constitution Bench of the Supreme Court in *AIR 1958 SC 500* in the case of State of *Bihar Vs. Basavan Singh* has held that a court may convict the accused under Section 7 and 13(1)(d) of the Prevention of Corruption Act 1988, by interpreting the corresponding provision of the old Act that even on the basis of the evidence of the trap witness without any corroboration conviction can be made if the court is satisfied from the facts



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and circumstances of the case that the witness is a witness of truth. The same was subsequently followed by the three judge bench of the Hon'ble Supreme Court reported in ***AIR 1968 SC 1323*** and subsequent decision. The same is as follows:

State of Bihar v. Basawan Singh, reported in ***1958 SCC OnLine SC 64*** :

“10. It is wrong, however, to deduce from that decision any universal or inflexible Rule that the evidence of the witnesses of the raiding party must be discarded, unless independent corroboration is available.

Bhanuprasad Hariprasad Dave v. State of Gujarat,
AIR 1968 SC 1323 :

“7.... It cannot be said — and it was not said — that they were accomplices. Therefore, the law does not require that their evidence should be corroborated before being accepted as sufficient to found a conviction.

..... It is now well settled by a series of decisions of this Court that while in the case of evidence of an accomplice, no conviction can be based on his evidence unless it is corroborated in material particulars but as regards the evidence of a partisan witness it is open to a court to convict an accused person solely on the basis of that evidence, if it is satisfied that that evidence is reliable. But it may in appropriate case look for corroboration. In the instant case, the trial court and the High Court have fully accepted the evidence of Ramanlal, the DySP, Erulker and



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Santramji. That being so, it was open to them to convict the appellants solely on the basis of their evidence. That apart, their evidence is substantially corroborated by the evidence of Dahyabhai, Sanghvi and Sendhalal. In the case of partisan witnesses, the corroboration that may be looked for is corroboration in a general way and not material corroboration as in the case of the evidence of accomplices.”

Prakash Chand v. State (Delhi Admn.), (1979) 3 SCC 90 at page 93

“6. ... Where the circumstances justify it, a court may refuse to act upon the uncorroborated testimony of a trap witness. On the other hand a court may well be justified in acting upon the uncorroborated testimony of a trap witness, if the court is satisfied from the facts and circumstances of the case that the witness is a witness of truth.

19.7. Apart from P.W.2, trap witness's unimpeachable evidence to prove the demand, the recovery of documents from the custody of A1 under the recovery mahazar relating to the return of document of P.W.1 is additional material circumstance to infer the demand. A1's guilty mind can be seen when he asked to hand over the money to A2 which is a strong circumstance to infer the demand on his part when prosecution proved that A2 received the amount on behalf of A1 apart from Rs.200/- for his charge. From that it is clear that A1 with



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guilty mind directed to hand over the money to A2 and this is a strong circumstance to presume the demand. Therefore, as held by the Hon'ble Supreme Court, the tell-tale circumstances and the evidence of P.W.2, clearly proved the demand made by the accused, beyond reasonable doubt.

20. The Proof of the demand on the part of A2

20.1. The requirement of proof of demand to convict the appellant under Section 12 of the Prevention of Corruption Act, 1988 is not necessary. In the considerable opinion of this Court, the said requirement is meant for Sections 7 and 13(1)(d) r/w U/s.13(2) of Prevention of Corruption Act, 1988, which is not applicable to Section 12 of the Act. Section 12 of the Act is extracted hereunder:-

“12. Punishment for abetment of offences.—Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.”

It is well settled law, in interpreting the provision of the Prevention of Corruption Act, 1988, the interpretation which has advanced the object of the Act is to be considered. The Hon'ble Constitution Bench of Supreme Court in the case of ***R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183*** has held as follows:



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“18.Re. (a): The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the vent of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it.”

20.2. As per Section 12 of the Act, there is no legal mandate to prove the demand on the part of A2. It is well settled, unless, there is an express



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requirement to prove the demand on the part of A2, the Court has no jurisdiction to say that the demand has to be proved before convicting the appellant under Section 12 of the Prevention of Corruption Act, 1988. In this aspect, it is relevant to note the principle laid down by the Hon'ble Constitution Bench of the Supreme Court in the case of ***A.R. Antulay v. Ramdas Srinivas Nayak***, reported in ***(1984) 2 SCC 500***

18. It is a well-established canon of construction that the court should read the section as it is and cannot rewrite it to suit its convenience, nor does any canon of construction permit the court to read the section in such manner as to render it to some extent otiose.

Therefore, the argument of the learned Senior Counsel that before recording conviction under Section 12 of the Prevention of Corruption Act, 1988, the prosecution has to prove the demand is not acceptable. It amounts to rewriting the Section. The ingredients to prove the offence under Section 13(1)(d) r/w 13(2) of the Act and Section 7 of the Act is different from ingredients of Section 12 of the Act.

20.3.The Hon'ble Supreme Court in 2009 9 SCC 729 State through the CBI Vs. Parameswaran Subramani and another has held that offence under



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Section 12 is distinct offence and in clear and categorical terms, reads that who ever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term as provided thereunder. Further, the abetment under Section 12 of the Act is clearly made out against A2 on his failure to explain the colour change in his hand and the amount recovered from his paint pocket and without any explanation on the part of A2 in questioning under Section 313 Cr.P.C., as to why he took up the money from the defacto complainant on the direction of A1 is another material circumstance to convict A2 under Section 12 of the Act. The relevant portion of the judgment in this aspect is as follows:

Subbu Singh v. State, reported in (2009) 6 SCC 462

“20. So far as the stand that money was kept for the purpose of falsely implicating A-1, the same is without substance. The accused was a police officer who knew the consequences of the bribe. He had not explained as to why he took up the money in his examination under Section 313 of the Code. The accused stated that PW 2 took the money because the Inspector asked him to do so. The normal conduct would have been to take action against PW 2 for offering bribe. Additionally, if the matter was closed there was no need for going to the field.”



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20.4. P.W.1 deposed that he handed over the bribe amount to A2. P.W.2 clearly deposed that A2 received a sum of Rs.1,000/- as bribe amount and also additional amount of Rs.200/-. Immediately P.W.1 gave a signal to P.W.15/Trap Laying Officer (TLO) and P.W.15 conducted Phenolphthalein test in the hands of A2 and the same turned positive.

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

“46. Phenolphthalein Test

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

(2) ...

20.6. As per the procedure contemplated under the manual of the vigilance department, after the receipt of the signal from the defacto complainant, the Trap



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Laying Officer is to ascertain the passing of the bribe amount from the defacto complainant to the accused officer, and he is duty bound to conduct phenolphthalein test. The object of the test is to know whether the accused accepted the tainted money. Subsequently, the Trap Laying Officer is to prepare the sodium carbonate solution and dip the hands of the accused officer and find the change of colour. If there was colour change, prima facie as per Rule 46 of the manual, the accused not only handled the tainted currency and also it is corroborative piece of evidence that the accused accepted the bribe amount. A2 has not denied the receipt of the amount and there was no explanation for the change of colour and also recovery of the tainted currency. When the evidence of P.W.1, P.W.2, P.W.11 are cogent and trustworthy, this Court has no other option except to hold that A2 accepted the amount with guilty knowledge that amount was bribe amount. In this aspect, it is relevant to note that the Hon'ble Supreme Court in 2004 11 SCC 576 in the case of *A.S.Krishnan and others Vs. State of Kerala*, has held that the knowledge is an awareness on the part of the person concerned indicating his state of mind.

20.7. At this juncture, it is relevant to note the (Hon'ble Three Judges Bench) judgment reported in **2009 (6) SCC 462** in the case of **Subbu Singh v.**



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State, where it is held that in similar circumstances, without any explanation on the part of A2 in questioning under Section 313 Cr.P.C., as to why he took up the money from the defacto complainant on the direction of A1 is another material circumstance to convict A2 under Section 12 of the Act. The relevant portion of the judgment is as follows:

Subbu Singh v. State, reported in (2009) 6 SCC 462

“20. So far as the stand that money was kept for the purpose of falsely implicating A-1, the same is without substance. The accused was a police officer who knew the consequences of the bribe. He had not explained as to why he took up the money in his examination under Section 313 of the Code. The accused stated that PW 2 took the money because the Inspector asked him to do so. The normal conduct would have been to take action against PW 2 for offering bribe. Additionally, if the matter was closed there was no need for going to the field.”

20.8.It is the specific case of P.W.2 that, A1 asked to hand over the bribe amount to A2. Even as per the admitted complaint version, A1 and A2 made inspection on the previous day of the trap. Therefore, in this case, this Court can easily presume that there is a constructive demand and acceptance on the part of



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A1 and A2. Without any explanation from A2 regarding the possession of 10 numbers of 100 Rupees note after his role of documentation, this Court can presume that he received the amount as per the direction of A1. In this aspect, it is relevant to note the following judgement of the Hon'ble Supreme Court in the case of ***D. Velayutham v. State, (2015) 12 SCC 348***at page 357

*“15. Though this Court has stressed the need and significance of phenolphthalein as a trap device in corruption cases, so as to allay doubts about the actual receiving of bribes by accused persons, there may be cases where there are multiple demanders in a common or conjoint bribe demand, and for whatsoever reason, only one receives the sum on their behalf, and is entrapped in consequence. Depending on strength of the remainder of evidence, in these cases, constructive receipt by co-accused persons is open to establishment by the prosecution, in order that those who intermediately obtain bribes be latched with equal culpability as their co-accused and entrapped receivers. This will, of course, discount those cases where the trap is successful only against one and not the other official, the latter having refused to accept the bribe tendered. In this case, the trap would have clearly failed against such an official, and there could be no question of the application of constructive receipt. **If the receipt and***



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handling of bribe money by Accused 2 so convincingly and inexorably points towards his custodianship of part of the same bribe amount on behalf of his superior officer, namely Accused 1, then Accused 1 cannot rely on mere non-handling/non-receipt of the bribe money, as his path to exculpation. This Court's construal of anti-corruption cases is sensitive even to these byzantine methods of bribe-taking, and where an evader escapes a trap, constructive receipt has to be an alternate means of fastening criminal culpability.

Emphasis supplied

*20.9.Further in the case of **Billa Nagul Sharief v. State of A.P.**, (2010) 11 SCC 575*

19. The contention that grievance can be remedied by the superior officer in the hierarchy of the system of the department concerned, if accepted, perhaps there shall be no case in which the demand for bribe can be made. The feeling of a common man that when the work is enshrined to different persons bribe is demanded by one of them, when all are invariably in collusion, cannot be lost sight of. If senior officers ensure that the works of the citizens are done without payment of bribe, junior officers and employees may abandon the demand and this country would not have prominently figured as one of the most corrupt nations of the world, as it is widely accepted that the corruption flows from



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the top. Here the de facto complainant was entitled to have the composite licence but he was not willing to pay the bribe demanded, accordingly he had approached the Anti-Corruption Bureau and we do not find anything unnatural in the conduct of the de facto complainant.

21.Further, it is the request of the learned Senior Counsel to read the line “காவலர் தஞ்சாவூர் அலுவலகத்தில் இரு டம்ளர்களில் கரைசல்கள் கரைத்தார்.” There should be a holistic reading and a segmented/selective reading cannot be accepted. The same has been underscored by the Hon'ble Supreme Court in appreciating the evidence in the following judgments:

<i>Mustak Alias Kanio Ahmed Shaikh Vs. State of Gujarat</i> reported in <i>(2020) 7 SCC 237</i>	<i>Rakesh and another Vs.State of Uttar Pradesh and another</i> reported in <i>(2021) 7 SCC 188</i>
34. With the greatest of respect, the evidence of the witnesses have to be read as a whole. Words and sentences cannot be truncated and read in isolation	14. One is required to consider the entire evidence as a whole with the other evidence on record. Mere on sentence here or there and that too to the question asked by the defence in the cross examination cannot be considered stand alone.

On reading the entire sequence of events from the entry into the office of A2 till the conclusion of the recovery proceedings, the recovery was done in the office itself. The same was corroborated by P.W2, P.W11 and P.W15. All the official witnesses have no motive against the appellants and hence their evidence is



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reliable. They are trustworthy witnesses and there is no reason to disbelieve their version. The said version is further strengthened by the recovery of money on the disclosure of A2 and the documents obtained from the office of A2. The recovery of 10 numbers of 100 Rupees note tallied with the numbers mentioned in the entrustment mahazar.

22. When the hand wash of the appellant/A2 turned into pink colour during the course of phenolphthalein test the presumption is that A2 accepted the tainted currency and he is duty-bound to explain the same. The learned Senior counsel submitted that he received further Rs.200/-. Hence, there is a chance for the transfer of the phenolphthalein powder in the said Rs.200/- and hence the colour change was properly explained. The said contention of the learned Senior Counsel is against the version of A2 in the 313 Cr.P.C statement and also the cross-examination of the relevant witnesses. A2 took diametrically opposite stand from A1 that he never received the bribe money. P.W1 planted money and P.W2 was never present in the scene of occurrence. All these contradictory versions justify the prosecution case that A2 was unable to explain the colour change in his hand and hence the appellant /A2 made such false statement. Therefore, the prosecution proved the acceptance of the money by A2.



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23. From the above discussion, the offence under Section 12 of the Prevention of Corruption Act against A2 is clearly proved beyond reasonable doubt.

24. Sanction

24.1. 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.

24.2. Before elaborating further on the 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 Dictionary</i>	<i>Third</i>	<i>New</i>	<i>Internal</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 Dictionary</i>	<i>Lexicon</i>	<i>Webster's</i>		<i>Explicit permission given by some one in authority.</i>



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<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>

24.3. 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.

24.4. Therefore, in the considerable opinion of this Court, sanction is the independent act of sanctioning authority with due application of mind over the



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material forwarded by the investigating agency to prosecute the accused before the Court of law under the penal provision constituting the offence.

24.5.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.



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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 hypertechnical approach to test its validity.”

25. In this case, P.W.3 has accorded sanction for the prosecution of accused No.1. Ex.P.10 is the sanctioning order and the operative portion of the sanction order is as follows:

“Whereas, I Dharmendra Pratap Yadav, Inspector General of Registration, Chennai-28 (under rule 14(2) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955) being the authority competent to remove the said Tr.V.Ramanathan, Assitant, In-charge Sub-Registrar, Sub-Registrar Office, Thiruvidadaimaruthur, Thanjavur District and Kumbakonam



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Registration District from service, after fully and carefully considering the materials, such as Entrustment Mahazar, Seizure Mahazar, Copy of FIR, Statements of witnesses and the said Tr.V.Ramanathan, Assistant, In-charge Sub-Registrar, and other connected records including the copy of Chemical Analysis Report placed before me in this regard and other circumstances of the case, having applied my mind. Am satisfied myself fully, that the said Tr.V.Ramanathan, Assistant, In-charge Sub-Registrar should be prosecuted for the said offences punishable under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988."

25.1.Perusal of Ex.P10, it is clear that P.W.3 has applied his mind into the demand of Rs.1,000/- by A1 and he directed to hand over the said bribe amount to A2. A2 accepted the same. P.W.3 sanctioning authority deposed before the Court, that he granted sanction after applying his mind and the material portion of the evidence is as follows:

நான் தற்போது கமிஷனர், அரசு டேட்டா செண்டர், ஆக பணிபுரிகிறேன். இதற்கு முன்பாக தலைவர், பத்திரவுப் பதிவுத்துறை, தமிழ்நாடு ஆக பணியாற்றியபோது லஞ்சம் மற்றும் விழிப்புணர்வு இயக்குநகரத்திலிருந்து ஒரு கடிதம் வந்தது. 10.10.2011 அன்று அந்த கடிதம் வந்தது. அந்த கடிதத்துடன் முதல் தகவல் அறிக்கையின் நகல், காட்சிகளின் வாக்குமூலங்கள், ஒப்படைப்பு மகசூர், கைப்பற்றுதல் மகசூர் மற்றும் ரசாயன பகுப்பாய்வு அறிக்கை ஆகியவைகள் வந்தன. மற்ற ஆவணங்களும் வந்தன. நான் ஆவணங்களை



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பரிசீலித்தேன். உதவி ஆய்வாளர் வந்தார். அவரிடம் விவரங்களை விசாரணை செய்தேன். அதனடிப்படையில் குற்ற அலுவலர் ராமநாதன், உதவி பொறுப்பு சார்பதிவாளர் அவர்கள் மீது குற்ற வழக்கு தொடர முதல் நிலையில் முகாந்திரம் இருந்தது. எனவே நான் மேற்படி எதிரியின் மீது குற்ற வழக்கு தொடர முன் அனுமதி உத்தரவு வழங்கினேன்.

26.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 accused No.1 made a demand and accepted illegal gratification.

27. 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 hereunder:



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Section 19 of the Prevention of Corruption act 1988	Under Section 465 of Cr.P.C.
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.

27.1.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.

27.2.***In State of M.P. v. Virender Kumar Tripathi, (2009) 15 SCC 533 at page 536***



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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...

27.3.These two foundational facts to prosecute the appellant under Section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act 1988 are found in the sanctioning order/Ex.P10 and P.W.3's deposition. When the sanctioning authority accorded sanction, the presumption under Section 114(e) of the Indian Evidence Act comes into play that the sanctioning authority properly discharged his duty. The accused is duty bound to establish failure of justice. In this case, the accused never established the failure of justice. Therefore, the argument of the learned Senior Counsel that conviction is liable to be set aside on the ground



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of non-application of mind on the part of the sanctioning authority while granting sanction cannot be accepted.

28. Hence, considering the overall circumstances of the case of prosecution, the prosecution clearly proved the case against the appellants and hence this Court finds no reason to interfere with the conviction and sentence passed by the Court below.

29. Therefore, the questions framed as earlier are answered against the appellants.

30. In the result, these criminal appeals are dismissed. Consequently, connected miscellaneous petition is closed.

19.03.2024

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



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1. The Special Judge cum Chief Judicial Magistrate,
Thanjavur at Kumbakonam,
Thanjavur District.
2. The Inspector of Police,
Vigilance & Anti Corruption,
Thanjavur.
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.

PJL/sbn

**Predelivery Judgment made in
Crl.A.(MD)Nos.489 and 492 of 2017**

19.03.2024