



Crl.A(MD)No.522 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 20.12.2023

Pronounced On : 19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

CRL.A.(MD)No.522 of 2017

S.Tamilselvan

... Appellant

vs.

State through
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Sivagangai District.
(Cr.No.13 of 2005)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code to call for the records relating to the judgment in Spl.C.C.No.16 of 2014 dated 15.12.2017 on the file of the Special Court for Trial of Cases under Prevention of Corruption Act, Sivagangai and to set aside the same and allow this Criminal Appeal.

For Appellant :Mr.M.Subash Babu
Senior Counsel for Mr.C.Susi Kumar

For Respondent :Mr.T.Senthil Kumar
Additional Government Pleader



Crl.A(MD)No.522 of 2017

WEB COPY

JUDGMENT

This Criminal Appeal has been filed as against conviction and sentence imposed against the appellant in Spl.C.C.No.16 of 2014 dated 15.12.2017, by the Special Court for trial of cases under Prevention of Corruption Act, Sivagangai.

2.The accused in Special C.C.No.16 of 2014, on the file learned Judge, Special Court for Trial of Cases under Prevention of Corruption Act, Sivagangai District filed this Criminal Appeal challenging the following conviction and sentence imposed on him by the impugned judgment dated 15.12.2017 in Special case No.16 of 2014, by the learned Judge, Special Court for Trial of Cases under Prevention of Corruption Act, Sivagangai.

<i>Sl.No</i>	<i>Offence Punishable under Section</i>	<i>Sentence of Imprisonment and fine</i>
1	7 of PC Act	3 years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 6 months simple imprisonment.
2	13(2)r/w13(1)(d) of PC Act	3 years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 6 months simple imprisonment.



Crl.A(MD)No.522 of 2017

3. Facts of the prosecution case:-

The appellant was working as a Bill Collector Special Village Panchayat at Ilayangudi Village, Sivagangai District. PW-2 is the resident of the said village. He is the owner of a house and there was an enhancement in fixing the house tax. To reduce the same, he approached the appellant. The appellant demanded Rs.500/-. PW-2, not inclined to give the bribe amount, approached the respondent Vigilance department and gave the complaint to PW-7 (Trap Laying Officer).

4. PW-7 after receipt of the complaint, made secret enquiry and registered the case under Section 7 of the Prevention of Corruption Act in Cr.No.13 of 2005 under Ex-P21. The complaint is Ex-P2. Thereafter, PW-7 confirmed that PW-2 had brought the bribe amount and called PW-3 and one Sabapathy from two government departments to act as official witnesses. After their arrival, PW-3, Paneerselvam and Sabapathy, the official witnesses, read over the FIR to PW-2 and PW-2 affirmed the contents of the FIR and PW-2 also stated that he had brought the bribe amount. Thereafter, PW-7 demonstrated the phenolphthalein test to PW-2 and the official witnesses. After



Crl.A(MD)No.522 of 2017

WEB COPY

demonstration of the test, P.W.7 smeared the phenolphthalein powder on the 5 hundred rupee currency notes brought by PW-2. After smearing the phenolphthalein powder they put the amount in the pocket of the PW-2 and P.W.7 specifically instructed PW-2 to give the bribe amount, if the appellant demanded the same and he also directed him to give signal upon receipt of the amount. P.W.7 further instructed P.W.3 to go along with P.W.2 and listen in the conversation. The above proceeding was recorded in the form of entrustment mahazar with signature of P.W.2, P.W.3 etc.

5. Thereafter, PW-2, PW-3 and PW-7 along with the team visited near the vicinity of the appellant office. Thereafter, they asked PW-2 and PW-3 to go to the appellant's office and hand over the money, if the appellant made a demand. P.W.7 and his team were hiding at a distance and PW-2 and PW-3 entered the office of the appellant and the appellant asked PW-2 and PW-3 to wait in the bus stop. As per the direction, PW-2 and PW-3 waited at the bus stop and the appellant arrived at the bus stop and reiterated the demand of bribe amount from the PW-2. PW-2 immediately handed over the money and the same was received by the



appellant in the presence of P.W.3.

6. After receipt of the bribe amount, PW-2 gave signal to PW-7. After noticing the signal, P.W.7 went to the office of the appellant and P.W.7 introduced him and conducted the phenolphthalein test in the hands of the appellant and the hand wash turned pink in colour. Thereafter, PW-7 asked the appellant about the handling of the tainted currency notes. The appellant confirmed the receipt of same and he took a stand that he received the amount as arrears of tax. Thereafter, the amount was recovered and the appellant was arrested and PW-7 prepared the Recovery Mahazar in the presence of the PW-3 and another official witness and the appellant was released on bail.

7. Thereafter, PW-7 entrusted all the documents to PW-8. PW-8 conducted the investigation and filed the final report before the Special Court. The learned Special Judge took it on file in Spl.C.C.No.16 of 2014. Thereafter, the learned Trial Judge summoned the accused and furnished the copies under Section 207 Cr.P.C. After service of the copies, the learned Trial Judge framed the necessary charges and



Crl.A(MD)No.522 of 2017

explained to the appellant. The appellant denied the charges and pleaded not guilty and claimed to be tried. Hence, the learned Judge commenced the trial. The prosecution to prove the charges, examined PW-1 to PW-8 and exhibited Ex-P1 to 29 and produced material objects MO-1 to MO-6.

8. The learned Trial Judge after completion of the examination of the prosecution witnesses questioned the appellant under Section 313 of Cr.P.C., by putting incriminating materials available against him in the prosecution evidence. The appellant denied them as false and gave written explanation stating that the amount was attempted to be thrust into the pocket of the appellant by PW-2 and the same fell on the ground in the bus stop and PW-7 forced him to pick the money and conducted the test and falsely arrested him. Further, he stated that he never made any demand from PW-2. He also stated that he is not the competent authority to fix the house tax. But, none was examined on the side of the defence and no document was produced to prove his case.



Crl.A(MD)No.522 of 2017

WEB COPY

9. The learned Trial Judge, even though PW-2 turned hostile, convicted the appellant on the basis of other available evidence as well as the portion of the evidence of PW-2 and sentenced him to undergo imprisonment stated supra by passing the impugned judgment. Challenging the impugned judgment, the appellant preferred the above appeal on the grounds stated in the memorandum of grounds of appeal.

10.Submission of the appellant's counsel :-

Mr.M.Subash Babu, learned Senior Counsel appearing for the appellant made the following submissions:

10.1. The learned Senior Counsel relied upon the judgment and submitted that demand is to be proved in accordance with law, In this case, PW-2 categorically deposed that the appellant never made a demand of bribe amount. He never made the payment as a bribe amount. In view of categorical statement of PW-2, the demand has not been proved and hence, the conviction and sentence passed by the learned Trial Judge without proving the demand under Sections 7, 13(2) and 13(1)(d) of Prevention of Corruption Act, is not legally maintainable as held by the Hon'ble Constitution of Bench of Honourable Supreme



Crl.A(MD)No.522 of 2017

Court in **2023 (1) MWN Crl. 323 in Neeraj Dutta vs State of Delhi.**

WEB COPY

Therefore, the appellant is entitled to acquittal.

10.2. The learned Senior Counsel further submitted that in this case, PW-2 in chief examination stated that he approached the Vigilance office only for the purpose of taking action against the officials for fixing more house tax. PW-2 clearly stated that the appellant never demanded any bribe and he never gave any amount as a bribe amount and only the Vigilance officers drafted a complaint, as if the appellant made a demand of bribe amount. Only on the basis of the dictation of PW-7, he wrote the complaint with the allegation that the appellant made a demand of bribe amount. In view of the above specific stand, the prosecution never proved the demand, ie., never proved the pre and post-trap demand. Hence, the learned Senior Counsel for the appellant submitted that without proving of demand, conviction under Section 13(1)(d) of the Act is not made out.

10.3. The leaned Senior Counsel further submitted that the evidence of PW-3 is untrustworthy and he is unable to furnish the particulars of the type of shirt worn by the accused on the date of occurrence. His answer that he is unable to remember whether he



Crl.A(MD)No.522 of 2017

appended his signature in the Recovery Mahazar and Observation Mahazar clearly shows that he was not present at the scene of occurrence.

10.4. The learned Senior Counsel further submitted that there are contradictions among the evidence of PW-2, PW-3 and PW-7. In view of the contradictions, the evidence of PW-7 and PW-3 is not trustworthy and the evidence has to be disbelieved. But the learned Trial Judge without considering the above aspects, convicted the appellant.

10.5. In sum and substance, the learned Senior Counsel stated that when the de-facto complainant turned hostile and he specifically stated that the appellant never demanded any bribe amount and he has not given any bribe amount to the appellant and also in view of the fact that the appellant has no jurisdiction to re-fix the house tax, the conviction and sentence posted by the learned Judge is liable to be set aside.

11. The learned Senior Counsel for the appellant relied on the following judgments:

(1). ***CDJ 2014 SC 255 (B.Jeyaraj vs State of Andhra Pradesh)***

(2). ***CDJ 2014 SC 922 (M.R.Purushotham vs State of Karnataka)***



Crl.A(MD)No.522 of 2017

WEB COPY

- (3). *CDJ 2015 SC 722 (P.Sathyanarayana Murthy vs The District Inspector of Police and another)*
- (4). *CDJ 2015 SC 815 (N.Sunknna vs State of Andhra Pradesh)*
- (5). *CDJ 2015 SC 1055 (Dashrath Singh Chauhan vs Central Bureau of Investigation)*
- (6). *CDJ 2019 MHC 3794 (K.P.Kolanthai vs State by Inspector of Police)*
- (7). *CDJ 2020 MHC 3794 (The State vs G.Kaleeswaran)*
- (8). *Criminal Appeal No.704 of 2018 (Jai Prakash Tiwari vs State of Madhya Pradesh)*

12. Submission of the learned Additional Public Prosecutor :-

The learned Additional Public Prosecutor per contra, submitted that the stand of PW-2 that he gave money as a house tax and the same was accepted by the appellant and before giving the remaining amount, the Vigilance officers arrested the accused, are not to be accepted. The same was not proved by the appellant. In 313 Cr.P.C., explanation, the accused stated that PW-2 is attempted to thrust the bribe amount in his pocket and at the time, the amount fell on the ground in the bus stop and



Crl.A(MD)No.522 of 2017

WEB COPY

PW-7 forced him to take the said money and conducted the phenolphthalein test. The said contradictory stand itself shows that PW-2 is won over. The occurrence took place in the year 2005. Examination of the witnesses took place in the year 2016. After 11 years, PW-2 turned hostile. From the evidence of PW-2, it is clear that he was won over for some other purpose. In the said circumstances, the other available materials and portion of the evidence of PW-2 is to be considered with other circumstances to prove the demand. PW-2 admitted the signature in the complaint under Ex-P2 and entrustment mahazar and admitted the signature in the FIR. When he admitted the preparation of above exhibits, his evidence contrary to the written contents is not admissible.

13. It is settled principle that any written document can be contradicted only by another written document. Apart from that, the case of the appellant that the amount was thrust into his pocket goes against the evidence of PW-2, PW-3 and PW-5. PW-3 clearly stated that he reiterated demand on the date of occurrence P.W.2 also deposed that he received the bribe amount. The said evidence corroborated with material circumstances of the recovery of the incriminating materials. Apart from



Crl.A(MD)No.522 of 2017

that, according to the learned Additional Public Prosecutor, if there is no demand of bribe amount, there is no necessity to approach the vigilance department. He approached the vigilance department and handed over the amount of Rs.500/- and the entrustment mahazar was prepared and P.W.2 and other officials witnesses signed the mahazar and the amount was smeared with phenolphthalein powder and the same was handed over to PW-2, who in turn gave it to the appellant.

14. From the above sequence of events, namely, tell tale circumstances of the case clearly proved the demand on the part of the appellant. As held by the Hon'ble Constitution Bench Judgement to prove the demand, it is not necessary to prove the same only through direct evidence. The demand may be proved through the circumstantial evidence. In this case, apart from the circumstantial evidence, PW-3 clearly deposed that the appellant reiterated the demand on the date of the occurrence. In Ex-P2 and Ex-P21, it is stated that the appellant made a demand. In the said circumstances, the demand is proved through oral evidence. Apart from that, the defence of the appellant that he received the amount for the payment of the tax is not proved. Hence, the



Crl.A(MD)No.522 of 2017

relationship between the appellant and the de-facto complainant is admitted and the same was proved through the tax receipt, which has been prepared but not furnished to PW-2. Hence, the defence is false and also the case of the appellant that he never received the amount, as a bribe, is not accepted. Hence, the learned Additional Public Prosecutor seeks dismissal of the appeal.

15.Discussion on merits:-

This Court considered the rival submissions and also perused the impugned order and the precedents relied upon by them.

15.1. Whether the Court below is correct in convicting the appellant under Section 7 r/w 13(1)(d) of the Prevention of Corruption Act, without properly considering the hostility of P.W.2 ?

16.Brief discussion on facts:-

The appellant herein was working as a Bill Collector in Special Village Panchayat, Illayankudi. PW-2 is the owner of a house situated in Illayankudi Village. PW-2's father's name is Poochi. He died 12 years before the date of occurrence. His only brother executed the sale deed in



Crl.A(MD)No.522 of 2017

respect of his share in the year 2001. Thereafter, he paid tax for 2001 and 2002. In the year 2005, he approached the appellant and requested to furnish the tax receipt. He demanded Rs.56/- per year instead of Rs. 17.60/-. The same was questioned by PW-2. PW-2 stated that this enhancement from Rs.17.60/- to Rs.56/- is not legal and it is exorbitant.

17. Thereafter, he insisted to reduce the same. Hence, the appellant demanded Rs.500/- to reduce the same and not willing to give the bribe amount, he approached the Vigilance office and made the complaint under Ex-P2. After registration of the FIR, PW-7 ascertained from the PW-2 that whether he had brought the money. PW-2 confirmed this. Hence, he procured two official witnesses from Government office, PW-3 and another official witness, Sabapathy. PW-3 and Sabapathy read the contents of the FIR to PW-2. PW-2 affirmed the contents of the FIR. Thereafter, he demonstrated the significance of the phenolphthalein test through the Constable. After the demonstration, the amount of Rs.500/- brought by the PW-2 intended to be given to the accused was smeared with phenolphthalein powder by the Constable to demonstrate the phenolphthalein test. After smearing of the phenolphthalein powder, the



Crl.A(MD)No.522 of 2017

WEB COPY

currency was put in the pocket of PW-2 with specific instruction to approach the appellant and if he made the demand, he was directed to give the money and give signal to PW-7. The Entrustment Mahazar was prepared with the signature of the PW-2, PW-3 and PW-7 and Sabapathy. Thereafter, PW-7 instructed PW-2 and PW-3 to approach the appellant and instructed P.W.2 to give the amount, if the appellant reiterated demand.

18. PW-7 instructed PW-3 to listen in the entire process taking place between PW-2 and the appellant. Thereafter, PW-2 and PW-3 went to the appellant's office and the appellant asked them to wait in the bus stop. When PW-2 and PW-3 were waiting in the bus stop, the appellant reached the bus stop and demanded the money from PW-2. PW-2 immediately handed over the money to the appellant and the appellant received the amount and put it in his pocket. Thereafter, PW-2 gave signal. On seeing of the signal, PW-7 and his team approached the appellant and conducted the test in the hands of the appellant, and the hand wash turned pink in colour. On the basis of the positive result, PW-7 enquired about the receipt of the bribe amount. The appellant



Crl.A(MD)No.522 of 2017

WEB COPY

immediately disclosed that he received the amount as tax arrears of Rs. 224/-. Immediately, PW-7 enquired whether he received the tax amount prior to the date of occurrence. The appellant stated that he has not received the tax amount prior to the occurrence date. With the said particulars, the Recovery Mahazar was prepared under Ex-P7. Thereafter, the appellant was arrested and released on bail. On the same day, to ascertain the fact whether he received the amount as arrears of tax, P.W.7 recovered tax receipt books under Ex-P22 to 26. The said documents and the other documents did not corroborate the version of the accused.

19. In the above said background, the learned Trial Judge convicted the appellant and in spite of the fact that PW-2 was declared hostile, the learned Trial Judge relied upon the evidence of PW-3 and remaining circumstances to prove the demand made by the appellant. The learned Trial Judge not only considered the evidence of PW-3, who has deposed cogently about the demand and acceptance of bribe amount and also relied upon the tell tale circumstances of the case, namely, recovery of house tax receipts and the other documents relating to the



tax in the custody of the appellant.

20.Proof of the demand through the appreciation of PW2

evidence:

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 having turned 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)***, reported in **(2023) 4 SCC**

731 at page 777

88.6. (f) In the event the complainant turns “hostile”, or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate



Crl.A(MD)No.522 of 2017

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.

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



Crl.A(MD)No.522 of 2017

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 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



Crl.A(MD)No.522 of 2017

Judge should, as a matter of prudence, discard his evidence in toto.”

20.1. 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 evidence of 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.

(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



Crl.A(MD)No.522 of 2017

consonance with the other prosecution evidence.

WEB COPY

(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.

20.2. In this case, PW2 has approached the Vigilance office and gave complaint with averments that the appellant demanded Rs.500/- to re-fix the house tax with the consultation of the Executive Officer. But in his evidence before the court, he stated that he approached the Vigilance office only to take action against the imposition of the higher tax, but PW-7 insisted to give the complaint, as if the appellant demanded money to reduce the tax. PW2 never denied the factum of meeting of appellant in his office. PW2 further never denied he met PW7 (trap laying officer of the vigilance department). He also admitted the presence of PW3



Crl.A(MD)No.522 of 2017

independent official witness in the vigilance office. He further admitted that PW3 read over the contents of the FIR to him and he admitted his signature in the complaint and the FIR. He also admitted the preparation of the entrustment mahazar Ex.P6. He also accepted the signature in the entrustment mahazar Ex.P6. In the said circumstances, he only changed his version relating to the demand of Rs.500/- and he deposed that the amount was handed over to the appellant as tax arrears which was contrary to the version in the complaint and the said contrary versions is as follows :-

PW2 evidence before the court	PW2 statement in the complaint
வீட்டுவரிப் பணம் ரூ.224 செலுத்தவேண்டும் என்று கேட்டது அதிகமாக இருந்ததால் அதற்காகத் தான் லஞ்ச ஒழிப்பு துறையில் புகார் கொடுக்க முடிவு செய்தேன். லஞ்ச ஒழிப்பு அலுவலகத்திலும் எதிரி லஞ்சமாகக் கேட்டார் என்று சொல்லவில்லை. வீட்டு வரி பணம் கூடுதலாகக் கேட்கிறார் என்று தான் சொன்னேன் வழக்குப் போடமுடியாது என்றும் லஞ்சப் பணம் கேட்டதாகச் சொன்னால் தான் வழக்குப் போடமுடியும் என்று சொன்னார்கள். நான் கொடுத்தப் புகாரில் பில் கலெக்டர் பணம் ரூ.500 கொடுத்தால் தான் வி.ஓ விடம் சொல்லி வரியைக் குறைத்துப்போடமுடியும் என்று சொல்லி நாளை வெள்ளிக்கிழமை மாலை என்னை நேரில் பார்த்து ரூ.500 கொடுக்கவேண்டும் என்றும் அப்போது தான் ரசீது போட்டுத்தருவதாக சொல்லியுள்ளேன் என்றால் ஞாபகமில்லை. நான் கொடுத்த புகாரில்எனக்கு லஞ்சம் கொடுக்க விருப்பமில்லை என்று கூறியிருக்கிறேனோ என்று ஞாபகமில்லை. என்னிடம் காட்டப்படுவது என்னால் எதிரி தமிழ்செல்வனிடம் கொடுக்கப்பட்டதாகும். அது அ.சா.ஆ.3 ஆகும். அ.சா.ஆ.3 மனுவோடு என் தம்பியின் பங்கை எனக்கு எழுதிக் கொடுத்த கிரையப்பத்திரத்தின் புகைப்பட நகலை இணைத்துள்ளேன்.	அதற்கு பில் கலெக்டர் வரி குறைத்து ரூ.56 வீதம் போடுவதாக இருந்தால் தனக்கு ரூ 500 தர வேண்டும் என்றும் சொன்னார். பணம் ரூ.500 தரவில்லை என்றால் வரியை 115க்கு மேலாகவும் போடமுடியும் என்று சொன்னார்.

Therefore, in the said circumstances, as held by the Hon'ble Constitution Bench in *“Neeraj Dutta Case”* it is duty of this court to



Crl.A(MD)No.522 of 2017

consider whether the testimony of PW2 that the appellant never made a demand of bribe to reduce the house tax and he paid the amount as tax arrear is trustworthy or not?.

20.3. The version of PW2 that he paid the amount as tax arrear is false. The investigating agency collected relevant documents relating to the tax recovery from the appellant. There was no entry relating to the tax arrears. Further, there was no preparation of the receipt for the payment of the tax arrears. PW2 in order to help the appellant took the stand that he paid it as tax arrears. But the appellant took the stand that he never received the amount. Explanation of the appellant during the 313 of Cr.P.C questioning is that the amount was thrust into his pocket which is contrary to the stand taken at the time of recovery of mahazar. In view of the above discussion it is clear that the appellant changed his version in order to help the accused. In similar circumstance, the Hon'ble Three Member Bench of the Supreme Court in the case of ***Dahyabhai Chhaganbhai Thakkar v. State of Gujarat***, reported in ***AIR 1964 SC 1563*** 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 and the



Crl.A(MD)No.522 of 2017

relevant paragraph is extracted as follows :-

WEB COPY

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



WEB COPY



Crl.A(MD)No.522 of 2017

accused was under a 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



WEB COPY



Crl.A(MD)No.522 of 2017

obvious development to help the accused.

Emphasis supplied

20.4. Therefore, the contrary deposition made by the appellant relating to the handing over the money as tax arrears and not a bribe amount is against the records and hence the said portion of the evidence of PW2 is unacceptable. Except that portion of the evidence, remaining evidence corroborate with the prosecution case and therefore now he cannot be allowed 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.

20.5. The said contrary version is also not acceptable on the score that PW-2 was won over during the passage of time ie., the occurrence took place in the year 2005 and his examination was conducted in the year 2010. In the year 2010, he should have been won over by the appellant. The said version is contrary to Ex.P.6.

20.6.Demand of proof through the tell-tale circumstances :-

Apart from that the Hon'ble Supreme Court in the case of ***Kishan Chand Mangal v. State of Rajasthan, (1982) 3 SCC 466 at page 471***



Crl.A(MD)No.522 of 2017

WEB COPY

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



WEB COPY



Crl.A(MD)No.522 of 2017

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 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



WEB COPY



Crl.A(MD)No.522 of 2017

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 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.

20.7. In this case also PW2 approached the vigilance office and gave the complaint Ex.P2 with specific allegation against the appellant that he demanded bribe amount to reduce the tax after consultation with the executive officer. The same was received by PW7 and reduced into FIR. Thereafter PW3 and other official witnesses were called to organise



Crl.A(MD)No.522 of 2017

trap. PW3 specifically deposed that the contents of the said FIR was read over to PW2 and PW2 also not denied the said fact. The PW2 also handed over the bribe amount to entrap the appellant. PW2 and PW3 also went to the office of the appellant and he also admitted the handing over the amount. He also admitted that after receipt of the amount by the appellant, he gave signal to PW7 and informed about the receipt of the amount by the appellant. PW7 also recovered material documents from the appellant. Both the contemporaneous documents namely entrustment mahazar and recovery mahazar contain the fact of demand of bribe amount. The same was proved through the evidence of PW3. It is not the case of PW-2 that he never approached the Vigilance officer and he did not give any complaint to the Vigilance officer. It is the admitted case of the PW-2 that he approached the Vigilance office to make a complaint. He admitted the signature in entrustment mahazar Ex.P6. 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. Therefore the prosecution clearly established the demand through the above tell – tale circumstances as held in a similar case before the supreme court in the ***“Kishan Chand Mangal case”*** .



Crl.A(MD)No.522 of 2017

21. Proof of demand through the testimony of trap witnesses:-

The learned Senior Counsel submitted that once PW-2 stated that he never gave money as a bribe amount and the appellant never made a demand, the case of the prosecution should not have been accepted by the trial Court. ie., According to the learned Senior Counsel, when PW-2 turned hostile, the case should fall to the ground. The said proposition by the learned Senior Counsel is a strange one. In the judgment of Honourable Constitution Bench reported in 2023 4 SCC 739, it is observed that the prosecution can establish the demand by other evidence also. The prosecution case does not stand on the helping testimony of PW-2, ie., the de-facto complainant. In this case, P.W.3, independent official witness without any motive towards the appellant deposed about the demand of the bribe amount in a cogent manner viz., தமிழ்செல்வன் நான் கேட்டபணம் 500 கொண்டு வந்து இருக்கிறாயா என்று கேட்டார் and he was subjected to detailed cross examination but no circumstances were elicited to disbelieve his evidence.

21.1. It is settled principle that conviction can be passed on the basis of the evidence of official witness. The Hon'ble Constitution Bench of the Supreme Court in *AIR 1958 SC 500* in the case of State of *Bihar*



Crl.A(MD)No.522 of 2017

Vs. Basavan Singh has held that 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 and further held that even on the basis of the evidence of the official witness without any corroboration conviction can be made if the court is satisfied from the facts 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 relevant portion of the judgments are 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.



Crl.A(MD)No.522 of 2017

..... *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 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



Crl.A(MD)No.522 of 2017

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.

21.2. Therefore, the demand was proved through the evidence of PW3, apart from the tell-tale circumstances as discussed above. Therefore, the prosecution clearly proved the demand as required under law.

22. Discussion on the proof of acceptance :-

This Court appreciated the evidence let in by the prosecution and given the finding that the demand was proved as stated in the earlier paragraphs. For proving the acceptance, the evidence of PW-2 is corroborated by PW-3. It is the categorical evidence of PW-2 that amount was received by the appellant. The same was corroborated by PW-3. The appellant has stated immediately that he has accepted the receipt of money as a tax liability in the Recovery Mahazar Ex.P7. The appellant and his Counsel never questioned the preparation and contents of the Recovery Mahazar prepared by PW-7 and in the said circumstances, the acceptance is proved through oral evidence, namely,



Crl.A(MD)No.522 of 2017

of PW-2, PW-3 and documentary evidence Ex-P7 and also through the positive result of the phenolphthalein test.

22.1. As per the following contents of the Rule 46 of manual of the Directorate of Vigilance and Anti-Corruption, Tamil Nadu, when the colour changes in the hands of the appellant and shirt pocket of the appellant, the same would be a corroborative piece of evidence to establish the acceptance of the tainted currency by the accused officer:-

“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.

22.2. Therefore, this court holds that the prosecution clearly



Crl.A(MD)No.522 of 2017

proved the acceptance of the bribe amount.

WEB COPY

22.3. The presumption under section 20 of the prevention of corruption Act:-

20.Presumption where public servant accepts gratification other than legal remuneration:-

- Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of Sub Section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, without consideration or for a consideration which he knows to be inadequate.



Crl.A(MD)No.522 of 2017

WEB COPY

23. From the above discussion and the evidence of PW3, it is clear that the appellant accepted the illegal gratification. Once it is proved that the appellant received the amount as illegal gratification, then the presumption under Section 20 of the Act will come into play. The Honourable constitution bench of the judgments of the supreme court reported in *AIR 1960 SC 548* and *AIR 1964 SC 575* and Hon'ble three member bench Judgment of the Supreme Court in *1974 4 SCC 560* and the number of the Hon'ble two member Benches of the Honourable Supreme Court from *1982 3 SC 466* etc., have held that once the prosecution proved that appellant received the illegal gratification, it is the duty of the appellant to dispel the same through legal evidence. In this case, the basic contention of the appellant is that he never received the amount, but the PW-2 categorically stated that he handed over the amount to the appellant and the same was corroborated by PW3 independent official witness who has no motive against the appellant. The appellant at the time of Recovery Mahazar and immediately after recovery of bribe amount stated that he received the amount as tax arrears. The investigating officer collected the material from the department and found that there was no such records. Further,



Crl.A(MD)No.522 of 2017

he has not given any explanation regarding the preparation and contents of the recovery mahazar/Ex.P7. He took the contrary stand that he never demanded money and the same fell on the ground in the bus stop and P.W.7 forced him to pick up. The said stand of the appellant is not only false and also against the records. In the said circumstances, the demand and acceptance is clearly proved against the appellant.

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 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 or in Prevention of Corruption Act.



Crl.A(MD)No.522 of 2017

WEB COPY

Dictionary	Meaning
<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>



Crl.A(MD)No.522 of 2017

WEB COPY

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 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



Crl.A(MD)No.522 of 2017

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



Crl.A(MD)No.522 of 2017

be a hypertechnical approach to test its validity.”

25. In this case, P.W.1 has accorded sanction for the prosecution of appellant. Ex.P.1 is the sanctioning order and the operative portion of the sanction order is as follows:

“ Page No.92 and 92) Whereas, I Thiru M.A.Siddiquee, I.A.S. District Collector of Sivaganga District, being the authority to remove Thiru.S.Tamilselvan, formerly Bill Collector of Erstwhile Special VillagePanchayat (Now Town Panchayat), Ilayangudi, after fully and carefully examining the materials placed before me such as the copy of F.I.R in V & AC Unit, Sivaganga in Cr.No.13 of 2005, mahazer, Statement of witness, statement of Thiru.S.Tamilselvan, rough sketch of place of occurrence house search list the analysis report and the documents recovered during the investigation of the above said case in Cr.No.13 of 2005 etc., and after duly considering the facts and circumstance of this case on application of my mind, I am satisfied that Thiru.S.Tamilselvan should be prosecuted before the Court of law for the earlier said grave offences in the interest of Justice.

Now, therefore, I do hereby accord sanction as required under Section 19(1)(c) of the Prevention of



Crl.A(MD)No.522 of 2017

Corruption Act, 1988 for prosecuting Thiru.S.Tamilselvan, formerly Bill Collector of Erstwhile Special Village Panchayat (Now Town Panchayat), Ilayangudi, so as to enable the Court competent jurisdiction to take cognizance of the offence punishable under Section 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 against the said Thiru.S.T.Tamilselvan and to proceed with the trial in accordance with the relevant provision of law.

25.1.A bare perusal of Ex.P1, would show that P.W.1 has applied his mind regarding the demand of Rs.500/- by the appellant and acceptance of the same. P.W.1 sanctioning authority deposed before the Court, that he granted sanction after applying his mind and the material portion of the evidence is as follows:

...அனைத்து ஆவணங்களையும் பரிசீலனை செய்தேன்...

நான் வழக்கின் சம்மந்தப்பட்ட பார்வை மகஜர் வரைபடம் தடயஅறிவியல் ஆய்வு கூடத்தில் வரப்பெற்ற அறிக்கை மற்றும் உள்ள ஆவணங்களை பரிசீலனை செய்து தமிழ்செல்வன் மீது வழக்கு தொடர முகாந்திரம் உள்ளது என்பதால் என்னுடைய நேர்முக உதவியாளர் (வளர்ச்சி) அவர்களை வரவழைத்து என்னுடைய கோப்பில்



Crl.A(MD)No.522 of 2017

உள்ள விவரங்களை எடுத்து சொல்லி டிராப்ட் ஆர்டர் போடச்சொல்லி சொன்னேன். பி.ராஜவேலு என்ற நபரிடம் இருந்துசட்டவிரோதமாக 500 வீட்டு வரி குறைப்பதாக பெற்றுள்ளார் என்று குற்றச்சாட்டுக்கு போதிய முகாந்திரங்கள் இருந்தது. லஞ்ச ஒழிப்பு தடுப்பு சட்டம் பிரிவு 1 19 1 சி ன் கீழ் என்னுடைய முன் அனுமதி அளித்தேன். தேவைப்படுவதால் அனுமதி அளித்தேன். எதிரி மீது ச பி 7 13 1 உ இ 13 2 ன்படி மாவட்ட ஆட்சியர் நடவடிக்கை எண்.டி2 4095 2005 தேதி 11.12.2006 ன்படி உத்தரவு பிறப்பித்தேன்.

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 the appellant 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



Crl.A(MD)No.522 of 2017

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:

<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.

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



Crl.A(MD)No.522 of 2017

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

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...



Crl.A(MD)No.522 of 2017

WEB COPY

27.3.Two foundational facts namely demand and acceptance of bribe amount are found in the sanctioning order/Ex.P1 and in P.W.1's deposition to prosecute the appellant under Section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act 1988. 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 of non-application of mind on the part of the sanctioning authority while granting sanction cannot be accepted.

28. Discussion on the explanation of the accused :-

In this case, the learned Senior Counsel for the appellant heavily relied on the evidence of PW-2. According to the evidence of PW-2, he handed over the money as tax arrears. But the appellant took a topsy turvy stand during the 313 questioning that the amount was thrust. The said contradictory version itself shows that the appellant made false



Crl.A(MD)No.522 of 2017

explanation as if PW-2 never handed over the money to him. Therefore, the said submission of the learned senior counsel that he received the amount as a tax arrears is not acceptable. More over there was no evidence adduced to prove the same. As discussed earlier the investigating agency collected material to show that there was no arrears of tax. Therefore, the explanation of the appellant during the 313 questioning is false and the said false explanation is the additional material circumstance to hold that the appellant made a demand and accepted the bribe amount.

29. Discussion on the submission that the appellant has no authority to reduce and fix the house tax :-

To consider the contention of the appellant that he has no authority to reduce and refix the house tax, it is relevant to extract 7(e) of the Prevention of Corruption Act 1988:

(a) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this



Crl.A(MD)No.522 of 2017

service, the public servant has committed as offence under this Section.

30. From the reading of above Section, it is not necessary, to constitute the offence under Section 7 and 13(2) of the Prevention of Corruption Act, the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage and the same is fortified by the following judgments of the Hon'ble Supreme Court:

30.1. *Bhanuprasad Hariprasad Dave v. State of Gujarat*,
reported in AIR 1968 SC 1323:

“8.... To establish the offence under Section 161 of the Indian Penal Code all that prosecution had to establish was that the appellants were public servants and that they had obtained illegal gratification for showing or forbearing to show, in the exercise of their official functions, favour or disfavour to Ramanlal. The question whether there was any offence which the first appellant could have investigated or not is irrelevant for that purpose. If he had used his official position to extract illegal gratification the requirements of the law is satisfied.



Crl.A(MD)No.522 of 2017

WEB COPY

30.2. The Constitution Bench of the Hon'ble Supreme Court in

Dhaneshwar Narain Saxena v. Delhi Admn., reported in AIR 1962 SC

195 has held as follows:

“4. It will be observed that the heading of Section 5 is Criminal misconduct in the discharge of official duty. That is a new offence which was created by the Act, apart from and in addition to offences under the Indian Penal Code, like, those under Section 161, etc. The legislature advisedly widened the scope of the crime by giving a very wide definition in Section 5 with a view to punish those who, holding public office and taking advantage of their official position, obtain any valuable thing or pecuniary advantage. The necessary ingredient of an offence under Section 161 of the Indian Penal Code, is the clause “as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant”, but it need not be there in order to bring an offence under Section 5 of the Act home to the accused. The offence under this section is, thus, wider and not narrower, than the offence



Crl.A(MD)No.522 of 2017

of bribery as defined in Section 161 of the IPC. The words “in the discharge of his duty” do not constitute an essential ingredient of the offence. The mistake in the judgment of this Court in the aforesaid ruling in State of Ajmer v. Shivji Lal [(1959) Supp. (2) SCR 739] has arisen from reading those words, which are part merely of the nomenclature of the offence created by the Statute, whose ingredients are set out in sub-clauses (a) to (d) that follow, as descriptive of an essential and additional ingredient of each of the types of offence in the four sub-clauses. That that is the source of the mistake is apparent from the erroneous way in which the section has been quoted at p. 744 of the Supreme Court Report, in the paragraph preceding the paragraph quoted above. The ingredients of the particular offence in clause (d) of Section 5(1) of the Act are; (1) that he should be a public servant; (2) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant; (3) that he should have thereby obtained a valuable thing or pecuniary advantage; and (4) for himself or for any other person. In order to bring the charge home to an accused person under clause (d) aforesaid of the section, it is not necessary, that the public servant in question, while misconducting himself, should have done so in the discharge of his duty. It would



Crl.A(MD)No.522 of 2017

be anomalous to say that a public servant has misconducted himself in the discharge of his duty. “Duty” and “misconduct” go ill together. If a person has misconducted himself as a public servant, it would not ordinarily be in the discharge of his duty, but the reverse of it. That “misconduct”, which has been made criminal by Section 5 of the Act, does not contain the element of discharge of his duty, by public servant, is also made clear by reference to the provisions of clause (c) of Section 5(1). It is well settled that if a public servant dishonestly or fraudulently misappropriates property entrusted to him, he cannot be said to have been doing so in the discharge of his official duty (vide the case of Hori Ram Singh v. Crown [(1939) FCR 159] . An application for special leave to appeal from that decision was refused by the Privy Council in Hori Ram Singh v. King-Emperor [(1940) FCR 15] . This Court, therefore, misread the section when it observed that the offence consists in criminal misconduct in the discharge of official duty. The error lies in importing the description of the offence into the definition portion of it. It is not necessary to constitute the offence under clause (d) of the section that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is equally



Crl.A(MD)No.522 of 2017

wrong to say that if a public servant were to take money from a third person, by corrupt illegal means or otherwise abusing his official position, in order to corrupt some other public servant, without there being any question of his misconducting himself in the discharge of his own duty, he has not committed an offence under Section 5(1)(d). It is also erroneous to hold that the essence of an offence under Section 5(2), read with Section 5(1)(d), is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage.”

In this case, apart from the above legal aspect, the specific case of the prosecution is as follows:

நீர் ரூ.500 கொடுத்தால் தான் இ.ஒ.விடம் சொல்லி
வரியை குறைத்து போட முடியும்

Apart from that, the Trap Laying Officer/P.w.7 recovered the application of P.W.2 from his custody immediately after the trap on the basis of the disclosure by the appellant. Therefore, in all aspects the contention of the appellant that the offence under Section 7 and 13(1)(e) of the P.C. Act, is not made out against him on the ground that he is not competent to reduce the tax cannot be accepted. Hence, the contention



Crl.A(MD)No.522 of 2017

of the senior counsel that the appellant is entitled to acquittal on the ground that he has no authority to reduce and fix the house tax does not stand.

31.Conclusion :-

In this case, P.W.3 clearly deposed about the demand and acceptance of the bribe amount by the appellant. P.W.3 also deposed about the preparation of the recovery mahazar under Ex.P7. In the recovery mahazar, entire process of demand, acceptance all have been recorded by P.W.7. Ex.P7, was never disputed by the appellant. P.W.7 also deposed about the preparation of the recovery mahazar. The recovery mahazar also was served upon the appellant on the same day itself. The same was also not disputed by the appellant. The appellant took a diametrically opposite stand from the recovery mahazar during the 313 Cr.P.C., explanation. Even P.W.2 clearly deposed that the appellant received the amount. But the appellant stated that he never received the amount and the same was attempted to be thrust into his pocket. P.W.3's evidence is cogent for both demand and acceptance. Adding to that, his evidence also corroborated P.W.2's evidence of



Crl.A(MD)No.522 of 2017

WEB COPY

receipt of amount. In ***Vinod Kumar Garg v. State (NCT of Delhi)***, (2020) 2 SCC 88 at page 97 the Hon'ble Supreme Court has held that the demand and acceptance can be proved through the circumstantial evidence, which reads as follows:

14. It would be sound to be cognitive of the time gap between the date of occurrence, 3-8-1994, and the dates when the testimony of Nand Lal (PW 2) was recorded, 9-7-1999 and 14-9-1999, and that Hemant Kumar's (PW 3) testimony was recorded on 18-12-2000 and 30-1-2001. Given the time gap of five to six years, minor contradictions on some details are bound to occur and are natural. The witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time. Picayune variations do not in any way negate and contradict the main and core incriminatory evidence of the demand of bribe, reason why the bribe was demanded and the actual taking of the bribe that was paid, which are the ingredients of the offence under Sections 7 and 13 of the Act, that as noticed above and hereinafter, have been proved and established beyond reasonable



WEB COPY



Crl.A(MD)No.522 of 2017

doubt. Documents prepared contemporaneously noticed above affirm the primary and ocular evidence. We, therefore, find no good ground and reason to upset and set aside the findings recorded by the trial court that have been upheld by the High Court. Relevant in this context would be to refer to the judgment of this Court in State of U.P. v. G.K. Ghosh [State of U.P. v. G.K. Ghosh, (1984) 1 SCC 254 : 1984 SCC (Cri) 46] wherein it was held that in a case involving an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, it may be safe to accept the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and inconsistent with his innocence, there should be no difficulty in upholding the conviction.

32. Therefore, the conviction passed against the appellant under Section 7 and 13(1)(e) of the P.C Act deserves to be accepted.



Crl.A(MD)No.522 of 2017

Discussion on topics	Relevant paragraph
Facts of the prosecution case:-	3
Submission of the appellant's counsel	10
Submission of the learned Additional Public Prosecutor	12
Discussion on merits	15
Brief discussion on facts	16
<u>Proof of the demand through the appreciation of PW2 evidence:</u>	20
Demand of proof through the tell-tale circumstances :-	20.6 to 20.7
Proof of demand through the testimony of trap witnesses	21
Discussion on the proof of acceptance :-	22
The presumption under section 20 of the prevention of corruption Act:-	22.3
Sanction	24
Discussion on the explanation of the accused	28
Discussion on the submission that the appellant has no authority to reduce and fix the house tax :-	29
Conclusion	31

33. In the said circumstances, this Court confirms the conviction passed against the appellant and sentence imposed by the learned Trial Judge and dismiss the appeal.



Crl.A(MD)No.522 of 2017

WEB COPY

34. Accordingly, this Criminal Appeal stands dismissed and the conviction and sentence of imprisonment imposed by the learned Judge, Special Court for Trial of Cases under Prevention of Corruption Act, Sivagangai in Spl.C.C.No.16 of 2014, dated 15.12.2017, is hereby confirmed. The bail bond granted shall be cancelled and the trial Court is directed to secure the accused and confine him in prison to undergo remaining period of imprisonment.

19.03.2024

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



Crl.A(MD)No.522 of 2017

WEB COPY

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



WEB COPY



Crl.A(MD)No.522 of 2017

K.K.RAMAKRISHNAN, J.

cmr/sbn

CRL.A.(MD)No.522 of 2017

19.03.2024