

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.894 OF 2018

c/w

CRIMINAL APPEAL NO.866 OF 2018

In Crl.A. No.894/2018

BETWEEN:

G K NAGARAJ
S/O KRISHNAMURTHY
AGED ABOUT 32 YEARS
OCCUPATION : EX GOVT. SERVANT
(VILLAGE ACCOUNTANT),
RESIDING AT: KELLODU,
HOSADURGA TALUK,
CHITRADURGA DISTRICT.

...APPELLANT

(BY SRI. B. M. SIDDAPPA, ADV.)

AND:

THE STATE OF KARNATAKA
REPRESENTED BY POLICE INSPECTOR,
LOKAYUKTA POLICE STATION,
CHITRADURGA,
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA,
BENGALURU-560001.

...RESPONDENT

(BY SRI. B. S. PRASAD, STANDING COUNSEL.)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO
SET ASIDE THE JUDGMENT OF CONVICTION DATED
25.04.2018 AND SENTENCE DATED 26.04.2018 PASSED BY

THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
CHITRADURGA IN SPL.C(P.C.A)NO.8/2011 - CONVICTING THE
APPELLANT/ACCUSED NO.1 FOR THE OFFENCE P/U/S
7,13(1)(D) R/W 13(2) OF P.C ACT AND SEC.201 OF IPC.

In Crl.A. No.866/2018

BETWEEN:

1. HANUMANTHAPPA
S/O BHEEMAPPA
AGED ABOUT 57 YEARS,
RESIDENT OF KELLODU VILLAGE,
HOSADURGA TALUK,
CHITRADURGA DISTRICT.
2. D. BASAVARAJA
S/O DASAPPA
AGED ABOUT 38 YEARS,
RESIDENT OF KELLODU VILLAGE
HOSADURGA TALUK,
CHITRADURGA DISTRICT.

...APPELLANTS

(BY SRI. S. V. DESAI, ADV.)

AND:

THE STATE BY THE POLICE INSPECTOR
LOKAYUKTA POLICE STATION, CHITRADURGA,
CHITRADURGA.

...RESPONDENT

(BY SRI. B. S. PRASAD, STANDING COUNSEL.)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO
SET ASIDE THE IMPUGNED JUDGMENT DATED 25.04.2018 AND
SENTENCE DATED 26.04.2018 PASSED BY THE PRINCIPAL
DISTRICT AND SESSIONS JUDGE, CHITRADURGA IN
SPL.C.(PCA).8/2011 (ANNEXURE-E) - CONVICTING THE
APPELLANT/ACCUSED NO.2 AND 3 FOR THE OFFENCE P/U/S
201 R/W 34 OF IPC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 03.07.2026 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

The accused No.1/appellant has preferred Criminal Appeal No.894 of 2018 and accused 2 and 3 appellants have preferred Criminal Appeal No.866 of 2018 against the judgment of conviction and order on sentence dated 26th April, 2018 passed in Spl.C (PCA) No.8 of 2011 by the Principal District & Sessions Judge, Chitradurga (for short "the trial Court").

2. For the sake of convenience, the parties herein are referred to as per their rank and status before the trial Court.

FACTS OF THE CASE

3. The prosecution case, in brief, is that the complainant, Bokikere Parameshwarappa, a resident of Lingadahalli Village, Hosadurga Taluk, is an agriculturist. He intended to avail the benefit of the Ganga Kalyana Scheme for irrigation of his agricultural land. For the said purpose, a Small Farmer/Landholder Certificate was required to be issued by the competent Revenue Authorities.

4. It is the case of the prosecution that the complainant submitted an application before the Nemmadi Kendra, Hosadurga, about two months prior to the trap proceedings. The application was forwarded to Accused No.1, who was then working as the Village Accountant of Kellodu Village, for verification and for issuance of the requisite certificate.

5. According to the prosecution, despite repeated requests made by the complainant, Accused No.1 did not process the application. It is alleged that on 10th June, 2010, when the complainant met Accused No.1 and requested him to issue the certificate, Accused No.1 demanded illegal gratification of Rs.10,000/-, which, after negotiation, was allegedly reduced to Rs.4,000/-.

6. Being unwilling to pay the bribe, the complainant approached the Karnataka Lokayukta Police, Chitradurga, and lodged a written complaint. On receipt of the complaint, the Lokayukta Police conducted preliminary verification by providing a voice recorder to the complainant to ascertain the genuineness of the allegation regarding demand of illegal

gratification. According to the prosecution, the recorded conversation confirmed the demand made by Accused No.1.

7. Thereafter, on 11th June, 2010, a trap was organized by the Lokayukta Police. Independent official witnesses were secured as panch witnesses. The tainted currency notes amounting to Rs.4,000/- were treated with phenolphthalein powder, and the complainant and shadow witness were instructed regarding the trap proceedings. An entrustment mahazar was drawn in the presence of the panch witnesses.

8. The trap party, thereafter, proceeded to the rented residential house of Accused No.1 situated at Vinayaka Extension, Hosadurga. The complainant and the shadow witness entered the house, while the remaining members of the trap party waited nearby. It is the prosecution case that, pursuant to the earlier demand, the complainant handed over the tainted currency notes to Accused No.1. It is further alleged that immediately after receiving the tainted amount, Accused No.1 passed the same to Accused No.2, who in turn handed it over to Accused No.3, with an intention to cause disappearance of evidence relating to the offence.

9. On receipt of the pre-arranged signal from the complainant, the Lokayukta Police entered the premises and apprehended the accused persons. Phenolphthalein test was conducted on the hands of Accused 1 to 3, which allegedly yielded positive results turning the sodium carbonate solution into pink colour. The tainted currency notes were recovered from the possession of Accused No.3, and the serial numbers of the recovered notes were found to tally with those noted in the entrustment mahazar.

10. The Investigating Officer conducted the trap mahazar, seized the tainted currency notes, voice recorder, sample solutions and other material objects, and subsequently registered the case. After completion of investigation and obtaining sanction for prosecution against Accused No.1, a charge sheet came to be filed alleging commission of offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, against Accused No.1, and under Section 201 read with Section 34 of the Indian Penal Code against Accused Nos.1 to 3.

11. The accused denied the allegations and claimed to be tried. Upon appreciation of the oral and documentary

evidence adduced by the prosecution, the Trial Court recorded findings of guilt against the accused and convicted them for the offences charged. Being aggrieved by the same, the appellants have challenged the impugned judgment on the following grounds.

ARGUMENTS ON BEHALF OF THE APPELLANT/ACCUSED
No.1

12. The learned counsel appearing for the Appellant/accused No.1, at the outset, submits that the impugned judgment of conviction and order of sentence passed by the learned Special Judge is contrary to law, facts and evidence available on record and is therefore liable to be set aside. The learned trial Judge has failed to appreciate the evidence in its proper perspective and has recorded findings which are not supported by legally admissible evidence. The conviction is based on assumptions and presumptions rather than proof beyond reasonable doubt, resulting in serious miscarriage of justice.

13. It is submitted that the prosecution has failed to establish a valid sanction for prosecution as contemplated under Section 19 of the Prevention of Corruption Act, 1988. It is well-settled that the sanctioning authority is required to

independently examine the police papers, statements of witnesses, relevant documents collected during investigation and thereafter arrive at an independent satisfaction that a prima facie case exists for prosecuting the public servant. The requirement of sanction is not an empty formality but a statutory safeguard intended to protect honest public servants against frivolous prosecution.

14. In the present case, a careful reading of the sanction order marked as Ex.P28 clearly demonstrates that there was no independent application of mind by the sanctioning authority. The evidence of PW6 further reveals that the sanction order had been prepared in the office of the Deputy Commissioner and was merely signed by the sanctioning authority without independently verifying the investigation records or examining the material forwarded by the Inspector General of Police, Karnataka Lokayukta. Neither the sanction order nor the oral evidence establishes that the sanctioning authority had independently considered the complaint, statements of witnesses, trap proceedings or other material before granting sanction. Thus, the sanction suffers from complete non-application of mind.

15. The learned trial Judge has committed a serious error in holding that the sanction is valid. The findings recorded in paragraphs 8, 9 and 10 of the impugned judgment are contrary to the evidence available on record. The learned Judge has failed to correctly appreciate the law laid down by this Court in the case of STATE BY POLICE INSPECTOR, KARNATAKA LOKAYUKTHA, BANGALORE v. M. NANJUNDA reported in 2001(3) KCCR 1905, wherein it has been categorically held that a sanction order must disclose due application of mind by the competent authority and that mechanical approval of a draft sanction would not satisfy the statutory requirement under Section 19 of the Prevention of Corruption Act. Therefore, the prosecution having failed to establish a valid sanction, the entire prosecution is vitiated and the conviction deserves to be set aside on this ground alone.

16. It is submitted that the trial Court has also failed to appreciate that the prosecution has relied upon an alleged voice recording said to have been made during the pre-trap verification. Admittedly, no certificate, as required under Section 65B of the Indian Evidence Act, has been produced. In the absence of mandatory compliance with Section 65B of the Evidence Act, the electronic record is inadmissible in evidence.

It is observed in the impugned judgment that the electronic evidence could not be relied upon for want of compliance with Section 65B of the said Act. Having arrived at such a conclusion, the learned Judge ought to have discarded the alleged conversation altogether. Without legally admissible electronic evidence, the prosecution has failed to establish the alleged demand of illegal gratification.

17. It is further submitted that the prosecution has utterly failed to prove the foundational fact of demand. It is now a settled principle of law that demand of illegal gratification is the sine qua non for constituting offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act. Unless demand is established beyond reasonable doubt, neither recovery nor presumption under Section 20 can sustain the conviction. In the present case, the complainant's version regarding the alleged demand of Rs.10,000/- and subsequent reduction to Rs.4,000/- is not corroborated by any independent admissible evidence. The alleged voice recording is admittedly unclear and contains disturbances, thereby rendering it wholly unreliable. The trial Court has therefore erred in holding that demand was proved.

18. The prosecution has equally failed to establish voluntary acceptance of illegal gratification by the Appellant. The evidence on record clearly discloses that the trap was conducted at the residential house of the Appellant/accused No.1 and not in his office. More importantly, the tainted currency notes were never recovered from the possession of the Appellant/accused No.1. The prosecution case itself is that after allegedly receiving the amount, the Appellant/accused No.1 handed over the same to Accused No.2, who in turn allegedly handed it over to Accused No.3. Ultimately, the tainted money was recovered only from Accused No.3. In the absence of recovery from the Appellant/accused No.1 and in the absence of any reliable evidence proving conscious acceptance, the prosecution has failed to establish one of the essential ingredients of the offence.

19. The trial Court has failed to appreciate that mere recovery of tainted money is not sufficient to sustain a conviction under the Prevention of Corruption Act. The Hon'ble Supreme Court in SURAJ MAL v. STATE (DELHI ADMINISTRATION) reported in (1979)4 SCC 725, C.M. GIRISH BABU v. CBI reported in (2009) 3 SCC 779, STATE OF KERALA v. C.P. RAO reported in (2011) 6 SCC 450, and in MUKUT

BIHARI v. STATE OF RAJASTHAN reported in (2012) 11 SCC 642, has consistently held that recovery by itself does not establish the offence unless the prosecution first proves demand and voluntary acceptance of illegal gratification. The presumption under Section 20 of the Prevention of Corruption Act arises only after these foundational facts are proved. Since the prosecution has failed to discharge its initial burden, no statutory presumption could have been drawn against the Appellant/accused No.1.

20. The evidence of PW2-the shadow witness, also does not support the prosecution in material particulars. During cross-examination, PW2 admitted that he did not remember the serial numbers of the currency notes mentioned in Ex.P21. The trial Court has failed to appreciate this important admission. Merely because PW2 admitted his signature on Ex.P21, the contents of the mahazar cannot automatically be treated as proved. The learned Trial Judge, has therefore, committed an error in placing reliance upon Ex.P-21 without proper appreciation of the evidence.

21. The prosecution evidence, as a whole, is riddled with material contradictions, omissions and improvements. The

witnesses have not consistently spoken about the alleged demand, acceptance, recovery and sequence of events during the trap proceedings. The trial Court has selectively relied upon portions favorable to the prosecution while ignoring material inconsistencies brought out during cross-examination. Such an approach is contrary to settled principles governing appreciation of evidence in criminal trials.

22. The findings recorded by the Trial Court are therefore contrary to the evidence on record and the settled principles of criminal jurisprudence. The prosecution has failed to establish a valid sanction, the admissibility of the electronic evidence, demand of illegal gratification, voluntary acceptance by the Appellant and also failed to establish recovery from the Appellant. Consequently, the prosecution has not proved the guilt of the Appellant/accused No.1 beyond reasonable doubt. The learned trial Judge has misdirected himself both on facts and in law while recording the order of conviction.

23. Learned counsel would submit that in these circumstances, the Appellant/accused No.1 is entitled to the benefit of doubt. The impugned judgment of conviction and order of sentence being contrary to law, evidence and the

settled principles governing prosecution under the Prevention of Corruption Act, is liable to be set aside. The appeal therefore deserves to be allowed by acquitting the Appellant/accused No.1 of all the charges levelled against him. Accordingly, it is sought to allow the appeal.

24. In support his submissions, the learned counsel placed reliance on the following decisions:

1. SURAJ MAL v. STATE (DELHI ADMINISTRATION) - 1979 4 SCC 725;
2. C.M. GIRISH BABU v. CBI COCHIN, HIGH COURT OF KERALA - 2009 3 SCC 779;
3. STATE OF KERALA AND ANOTHER v. C.P. RAO - 2011 6 SCC 450;
4. C. KRISHNANAIH v. STATE - 2020(3) AKR 767;
5. STATE OF KARNATAKA v. RAMESH - 2022(2) AKR 400;
6. JNANOBA S/O RAAMA SHINDE v. STATE OF KARNATAKA - 2023(4) AKR 163;
7. MIR MUSTAFA ASIF ALI v. STATE OF AP - AIR 2024 SC 3356;
8. M.S. SURESH BABU SINCE DEAD BY HIS LRS v. STATE BY LOKAYUKTA POLICE, MYSORE - 2024(4) AKR 444; and
9. STATE OF LOKAYUKTA POLICE v. C.B. NAGARAJ - 2024(4) AKR 215.

ARGUMENTS ON BEHALF OF THE APPELLANTS/ACCUSED NOS.2 AND 3:

25. The learned counsel appearing for the Appellants/Accused Nos.2 and 3 respectfully submits that the impugned judgment of conviction and order of sentence convicting the appellants/accused 2 and 3 for the offence punishable under Section 201 read with Section 34 of the Indian Penal Code, is wholly illegal, arbitrary, contrary to the evidence on record and settled principles of criminal law, and is therefore liable to be set aside.

26. The learned Trial Judge has failed to appreciate that the prosecution has neither alleged nor proved any overt act on the part of Accused 2 and 3 constituting the offence under Section 201 read with Section 34 of the IPC. The entire prosecution case, as disclosed in the complaint, the First Information Report and the charge-sheet, revolves around the alleged demand and acceptance of illegal gratification by Accused No.1. There is no allegation whatsoever that Accused Nos.2 and 3 had any prior knowledge of the alleged demand of bribe or had shared any common intention with Accused No.1 to cause disappearance of evidence. In the absence of proof of

the essential ingredients of Sections 201 and 34 IPC, the conviction recorded against the Appellants is unsustainable.

27. The learned trial Judge has further erred in overlooking the categorical evidence of PW1-the complainant, who has consistently stated that he paid the tainted amount only to Accused No.1. PW1 has nowhere stated that Accused Nos.2 and 3 demanded any money, received any gratification from him or participated in the alleged transaction. The prosecution case itself is that the complainant handed over the tainted currency notes only to Accused No.1. Therefore, the evidence of the star witness completely excludes the involvement of Accused Nos.2 and 3 in the alleged demand and acceptance of illegal gratification. In spite of such clear evidence, the learned Trial Judge has erroneously inferred the involvement of Accused Nos.2 and 3 without any legal basis.

28. It is further submitted that the prosecution has failed to establish that Accused Nos.2 and 3 had the requisite knowledge or intention contemplated under Section 201 of the IPC. To attract the provisions of Section 201 IPC, the prosecution is required to establish that the accused had knowledge or reason to believe that an offence had been

committed and, with such knowledge, intentionally caused the disappearance of evidence or gave false information with the intention of screening the offender from legal punishment. In the present case, there is absolutely no evidence to show that either of the Appellants had knowledge of any alleged offence committed by Accused No.1 or that they intentionally assisted him in causing the disappearance of evidence. Mere possession or handling of the currency notes, even if assumed for the sake of argument, cannot by itself, constitute an offence under Section 201 Indian Penal Code in the absence of proof of the requisite mens rea.

29. The trial Court has also failed to appreciate the status and role of the Appellants/accused 2 and 3. The evidence on record discloses that Accused No.2 was working as a Grama Sahayaka and was not the competent authority concerned with the issuance of the certificate sought by the complainant. Accused No.3 is admittedly a private individual and an agriculturist having no connection whatsoever with the official work relating to the complainant. Neither of them had any authority to process the complainant's application or to receive any amount on behalf of Accused No.1. In the absence of any evidence establishing their participation in the alleged

conspiracy or common intention, their conviction under Section 201 read with Section 34 Indian Penal Code, is wholly unjustified.

30. He would further submit that the learned trial Judge has failed to appreciate that the prosecution itself cited Accused Nos.2 and 3 as charge-sheet witnesses during the course of investigation but ultimately chose not to examine them. The prosecution has also withheld other material witnesses without offering any explanation. The withholding of such material evidence has caused serious prejudice to the defence and gives rise to draw an adverse inference against the prosecution. The trial Court has completely ignored this material lapse while recording the conviction.

31. It is further submitted that the prosecution has failed to produce any independent evidence to establish that the Appellants/Accused 2 and 3 acted in furtherance of a common intention with Accused No.1. Section 34 IPC can be invoked only when there is clear evidence of a prior meeting of minds and participation in the commission of the offence. The prosecution has failed to place any evidence, either oral or documentary, to establish that Accused 2 and 3 shared any

common intention with Accused No.1. Mere allegation that the tainted currency notes were passed from one person to another does not, by itself, establish common intention or criminal liability under Section 34 Indian Penal Code.

32. The reasoning assigned by the trial Court is based entirely on conjectures and presumptions rather than legally admissible evidence. The prosecution has not proved any overt act attributable to the Appellants, nor has it established the essential ingredients of the offence under Section 201 Indian Penal Code beyond reasonable doubt. The conviction has therefore been recorded without any legal evidence connecting the Appellants with the alleged offence.

33. It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot take the place of legal proof. Every accused is entitled to the benefit of reasonable doubt, and the burden always lies upon the prosecution to establish guilt beyond all reasonable doubt. In the present case, the prosecution has failed to discharge that burden insofar as Accused 2 and 3 are concerned. The findings recorded by the trial Court are therefore perverse, contrary to the evidence on record and unsustainable in law.

34. The scope of Section 201 IPC, is that the prosecution must prove: (i) commission of the principal offence, (ii) knowledge of that offence by the accused, and (iii) an intentional act to screen the offender. Mere receipt or movement of an article, without proof of knowledge and intention, is insufficient to attract Section 201 Indian Penal Code.

35. In the above circumstances, it is respectfully submitted that the conviction and sentence imposed upon Appellants/Accused 2 and 3 for the offence punishable under Section 201 read with Section 34 of the IPC are liable to be set aside, and the Appellants deserve to be acquitted by extending to them the benefit of doubt. On all these grounds, it is sought to allow the appeal.

SUBMISSION ON BEHALF OF THE RESPONDENT:

36. On the other hand, the learned counsel appearing for the respondent-Lokayukta would support the impugned judgment of conviction and order on sentence and would submit that the trial Court has properly appreciated the entire evidence, both oral and documentary, in accordance with law and has arrived at the correct finding and passed the judgment

convicting the accused and the same cannot be faulted and hence, sought for dismissal of appeals.

POINTS FOR CONSIDERATION

37. Having heard the learned counsel appearing for the appellants and the learned Special Public Prosecutor for the respondent-Lokayukta and on perusal of the records, the following points arise for consideration:

- i) Whether the appellants have made out sufficient grounds to interfere with the judgment of conviction dated 25.04.2018 and order of sentence dated 26.04.2018, passed by the learned Principal District and Sessions Judge & Special Judge, Chitradurga, in Spl. Case (P.C.A.) No.8/2011?
- ii) What order?

38. My answer to the above points are:

Point No.1: in the Affirmative;

Point No.2: As per the final order for the following:

REASONS

Regarding Point No.1:

39. I have given my anxious consideration to the rival submissions made by the learned counsel appearing for the

appellants and the learned Special Public Prosecutor appearing for the respondent-Lokayukta. I have also carefully perused the entire original records, the oral and documentary evidence adduced before the trial Court and the impugned judgment of conviction and order of sentence.

RE-APPRECIATION OF EVIDENCE REGARDING SANCTION ORDER EX.P28:

40. The sanctioning authority must apply its mind to the facts constituting the offence, rather than merely acting on the existence of a police report. However, the learned Trial Judge has answered Point No.1 in the affirmative solely on the basis of the evidence of PW.6 - Sri. Vipul Bansal, the then Deputy Commissioner, and Ex.P28-Sanction Order.

41. PW.6 has merely deposed that he received the FIR-Ex.P2, the complaint-Ex.P1, trap mahazar-Ex.P20 and other records through the ADGP, Lokayukta, verified the records and thereafter accorded sanction under Ex.P28. However, neither his oral evidence nor Ex.P28 discloses what specific records were independently examined by him, whether he considered the statements of witnesses, whether he examined the admissibility of the electronic evidence or whether he independently assessed whether a prima facie case existed. It

is not sufficient that the sanctioning authority states before the Court that he had perused the records. What is required is, demonstrable application of mind to the relevant material. The recital in Ex.P28 and the subsequent statement of PW6 have to be tested against the contents of the sanction order itself. The sanction order cannot be strengthened by subsequent oral assertions if the material placed before the authority and the manner of its consideration are not demonstrated.

42. A valid sanction under Section 19 of the Prevention of Corruption Act must disclose conscious and independent application of mind by the competent authority and cannot be inferred merely because the authority states that the records were verified.

43. Significantly, PW6 has admitted in cross-examination that the tainted currency notes were not recovered from the possession of Accused No.1 but from Accused No.3. This admission itself demonstrates that the sanctioning authority was dealing with a case involving unusual factual features. Despite this, neither Ex.P28 nor the evidence of PW6 indicates any consideration of the legal implications arising from the absence of recovery from Accused No.1.

44. The Hon'ble Supreme Court, in MOHD. IQBAL AHMED v. STATE OF ANDHRA PRADESH reported in (1979)4 SCC 172, while acquitting the accused, emphasised on two significant aspects of sanction for prosecution. Firstly, any case instituted without proper sanction must fail as the entire proceedings are rendered void ab initio, and therefore, the prosecution must prove that valid sanction has been granted by the sanctioning authority. Secondly, the sanctioning authority must be satisfied that a case for sanction has been made out constituting the offence.

45. The validity of Ex.P28 is being tested on the evidence recorded during trial, particularly the evidence of PW.6, the sanctioning authority. It is true that the prosecution has produced Ex.P28-sanction order and has examined PW6 - Sri. Vipul Bansal, the sanctioning authority. Therefore, this is not a case of absence of sanction. However, the mere existence of a sanction order does not conclude the issue. The validity of the sanction, particularly the question whether the sanctioning authority had applied its independent mind to the relevant material, is required to be examined on the evidence adduced during trial. The Hon'ble Supreme Court in CENTRAL BUREAU OF INVESTIGATION v. PRAMILA VIRENDRA KUMAR

AGARWAL & ANR. reported in 2019 SCC ONLINE SC 1265, has clearly distinguished between absence of sanction and an objection regarding invalidity of an existing sanction on account of non-application of mind, holding that the latter is a matter to be considered during trial.

46. In the present case, PW6 has stated that he received the FIR, complaint, trap mahazar and other relevant papers and, after verification, issued Ex.P28 - Sanction Order. However, his evidence does not satisfactorily disclose what material was actually placed before him and independently considered by him. In particular, there is no clear evidence demonstrating that the material relating to the Ganga Kalyana Scheme applicable during the relevant period, the eligibility of PW1 for the small farmer certificate, his landholding of 2 acres 20 guntas, the relevant revenue records, and the precise role of Accused No.1 in relation to issuance of the certificate, were independently examined by him. These were not irrelevant or collateral matters; they constitute the very background of the alleged official favour for which the prosecution alleges that the demand was made.

47. The aforesaid evidence has to be appreciated in the light of the principle laid down by the Hon'ble Supreme Court in CBI v. ASHOK KUMAR AGGARWAL, reported in (2014)14 SCC 295, that consideration of the material necessarily implies application of mind. It has been termed "*not an acrimonious exercise but a solemn and sacrosanct act*" in the context of the PC Act. The prosecution is required to send the entire relevant record to the sanctioning authority including the first information report (FIR), disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and other relevant material and it should further also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction. This principle made it fair for a possibly bias investigation to not cloud the judgment of the sanctioning authority.

48. The next step is for the authority to do a complete and conscious scrutiny of the whole record by independently applying its mind and taking into consideration all the relevant facts while discharging its duty to give or withhold the sanction, keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. When

perusing a sanctioning order, it should reveal that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material. This onus is on the prosecution at the time of the trial to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law. The prosecution has failed to establish that the sanction accorded under Section 19 of the Prevention of Corruption Act was preceded by due and independent application of mind by the competent authority. The question, therefore, is not merely whether Ex.P28 contains a recital that the records were examined, but whether the evidence of PW6 establishes that the relevant material was in fact before him and was independently considered before according sanction. The evidence of the sanctioning authority, coupled with the contents of ExP28, do not inspire confidence that the relevant materials were independently scrutinized before according sanction. The sanction appears to have been granted mechanically, thereby vitiating the prosecution. The trial Court has accepted Ex.P28 without examining whether the statutory safeguard contemplated under Section 19 stood

substantially complied with. Such appreciation of evidence is erroneous. However, it is not sufficient that the sanctioning authority states before the Court that he had perused the records. What is required is demonstrable application of mind to the relevant material. The recital in Ex.P.28 and the subsequent statement of PW.6 have to be tested against the contents of the sanction order itself. The sanction order cannot be strengthened by subsequent oral assertions if the material placed before the authority and the manner of its consideration are not demonstrated.

REGARDING PROVING DEMAND AND ACCEPTANCE :

49. The impugned judgment is written mainly by placing reliance on the oral evidence of PW1-complainant, PW2-shadow witness, PW4-independent pancha, PW5-Tahasildar, Ex.P1-Complaint, Ex.P3-Entrustment Mahazar, Ex.P20-Trip Mahazar, Ex.P21-Currency Note particulars, Ex.P22 to Ex.P24-Explanation Statements and Ex.P13-revenue records.

Evidence of PW.1

50. The Trial Court has placed substantial reliance upon the evidence of complainant PW1-Parameshwarappa and the principal witness for the prosecution. According to him, he had

submitted his application for issuance of the certificate and thereafter approached Accused No.1 several times. He states that Accused No.1 initially demanded Rs.10,000/- and on PW1 expressing his inability to pay such amount, the demand was reduced to Rs.4,000/-.

51. PW.1 further states that, being unwilling to pay the amount, he approached the Lokayukta Police. He was provided with a voice recorder and was asked to meet Accused No.1 again. According to him, he recorded the conversation and thereafter, lodged the complaint as per Ex.P1. This part of the evidence requires to be examined with some care. The alleged conversation preceding the complaint assumes importance because it is projected as the material circumstance corroborating the alleged demand. According to PW1, the accused initially demanded Rs.10,000/- and thereafter, reduced the demand to Rs.4,000/-. The Trial Court accepted this version solely on the basis of his oral testimony and by referring to the alleged voice recording. However, admittedly, the prosecution has not produced a certificate under Section 65B of the Indian Evidence Act in respect of the electronic record. Once the electronic evidence becomes inadmissible, the alleged prior demand remains uncorroborated. The learned

trial Judge failed to appreciate that the prosecution cannot indirectly rely upon an inadmissible electronic record to corroborate the complainant. The Trial Court has further observed that the omission of PW1's face in Ex.P14 to Ex.P19 photographs is insignificant, because the photographs were intended only to capture the trap proceedings. This reasoning does not answer the real issue. The photographs neither depict the alleged demand nor the alleged acceptance. They merely show subsequent trap proceedings. Therefore, Ex.P14 to Ex.P19 do not advance the prosecution case on the foundational requirement of demand.

52. Coming to the trap itself, PW1 states that after reaching the place where Accused No.1 was residing, he met Accused No.1 and informed him that he had brought Rs.4,000/-. According to PW.1, Accused No.1 did not retain the money with himself but directed him to hand it over to Accused No.2. This aspect of the evidence is of considerable significance. The prosecution case itself is that the money was thereafter passed on from Accused No.2 to Accused No.3 and that the tainted currency was ultimately recovered from Accused No.3. Thus, the prosecution does not have the benefit of a direct recovery of the tainted currency from Accused No.1. This circumstance,

by itself, may not be sufficient to discard the prosecution case, but it certainly requires the Court to scrutinise the evidence regarding demand and acceptance with greater care.

53. The essential question is whether the evidence of PW1, standing by itself and in the light of the other evidence on record, inspires such confidence as to establish beyond reasonable doubt that Accused No.1 had accepted the amount as illegal gratification.

Evidence of PW.2:

54. PW2-Kiran Babu is stated to have accompanied PW1 as the shadow witness. His evidence is relied upon as corroborating the complainant with regard to the events which took place at the spot. PW2 states that he followed PW1 and remained near the place where Accused No.1 was residing. He has spoken about the movement of PW1, Accused No.2 and Accused No.3 and the passing of the currency from one person to another.

55. However, the evidence of PW2 has to be appreciated within the limits of what he actually perceived. The earlier demand of Rs.10,000/- and the subsequent reduction to

Rs.4,000/- had already been disclosed in the complaint and in the course of the pre-trap proceedings. Therefore, PW2 cannot be said to be an independent witness to the initial demand. His evidence assumes relevance only to the events which occurred at the time of the trap. Neither Ex.P27-sketch prepared by PW3, nor any other evidence establishes the distance, position of the window, or the surrounding circumstances enabling PW2 to hear every conversation. Even with regard to those events, his physical position and his opportunity to observe and hear the conversation are relevant circumstances. The mere fact that a witness was designated as a shadow witness does not make his testimony conclusive. His evidence must inspire confidence on its own.

56. The evidence of PW.2, therefore, requires to be considered along with the evidence of PW1 and the other circumstances, rather than treating it as independent proof of the entire prosecution case.

Evidence of PW.4 and the trap proceedings:

57. PW.4 is a panch witness to the trap proceedings. His evidence supports the prosecution with regard to the preparation of the trap, production of the currency notes,

application of phenolphthalein powder, demonstration of the sodium carbonate test and subsequent seizure proceedings.

58. Ex.P3 is the entrustment mahazar and Ex.P20 is the trap mahazar. Ex.P21 contains the particulars of the currency notes. The Trial Court has further relied upon Ex.P3-Entrustment Mahazar and Ex.P4 to P12 relating to the pre-trap proceedings. These documents merely establish that the Lokayukta Police had prepared for the trap and that the currency notes produced by PW1 were treated with phenolphthalein powder. They also establish the subsequent seizure proceedings. But these documents do not, by themselves, establish the demand made by Accused No.1. The distinction is important. The entrustment mahazar Ex.P3 is a document prepared before the alleged acceptance and the trap mahazar records the events after the signal was given. Neither document can substitute proof of the actual demand made by the accused.

59. Similarly, the presence of phenolphthalein on the currency notes or the positive sodium carbonate test may establish handling of the treated currency. It does not, without

more, establish that the accused handled the currency knowing it to be illegal gratification.

Recovery from Accused No.3:

60. One circumstance which cannot be lost sight of is that the tainted currency of Rs.4,000/- was recovered from Accused No.3. The prosecution case is that PW.1 handed over the money to Accused No.1; Accused No.1 handed it over to Accused No.2; and Accused No.2 thereafter, handed it over to Accused No.3. Thus, there are several links in the prosecution version which require satisfactory proof. The recovery from Accused No.3 undoubtedly establishes that the currency notes reached his possession. But the question before the Court is whether such recovery establishes the guilt of Accused No.1 for having demanded and accepted illegal gratification. In the absence of convincing evidence establishing the demand and voluntary acceptance by Accused No.1, recovery from another accused cannot, by itself, be made the basis for drawing the statutory presumption against Accused No.1.

Ex.P22 to Ex.P24:

61. The prosecution has also relied upon Ex.P22 to Ex.P24, said to be the explanation statements of Accused 1 to

3. These documents cannot be treated as substantive evidence of the guilt of the accused. The prosecution must establish its case through legally admissible evidence and cannot fill a deficiency in its substantive evidence by relying upon statements recorded during the course of investigation. Even otherwise, the contents of such statements have to be examined in detail.

Evidence regarding the official work:

62. On an independent re-appreciation of the evidence, the very background in which the alleged demand is stated to have been made, requires closer scrutiny. PW1 states that he owned land bearing Sy.No.16/24 measuring 2 acres 20 guntas and that he required a small farmer certificate for availing the benefit under the Ganga Kalyana Scheme. The evidence of PW5-Tahasildar and Ex.P13 establish the existence of the application and the official process relating to the same. However, the prosecution has not placed before the Court the Government Order or the scheme guidelines applicable to PW1 in the year 2010 so as to establish the precise eligibility conditions governing the grant of the benefit. The official material presently available confirms that the Ganga Kalyana

Scheme is intended for small and marginal farmers and that a small farmer certificate is one of the documents relevant to the scheme; however, the eligibility conditions have varied according to the implementing Corporation and the particular version of the scheme. The significance of this circumstance is not that PW.1's holding of 2 acre 20 guntas, necessarily makes him eligible or ineligible. The significance is that the prosecution was required to establish the factual foundation of the alleged official favour. If the case of the prosecution is that Accused No.1 demanded money for issuing a certificate which was necessary for obtaining the benefit under Ganga Kalyana Scheme, the prosecution ought to have established what exactly was the certificate required, under which Government Order, what were the eligibility conditions applicable in 2010, whether PW.1 satisfied those conditions and, most importantly, what was the precise statutory or official role of Accused No.1 in issuing or processing that certificate. These foundational circumstances cannot be left to inference. The evidence of PW5 does not, by itself, establish that Accused No.1 had the final authority to grant the benefit under the Ganga Kalyana Scheme. At the highest, it establishes the official movement and processing of the application. Ex.P13 establishes the

existence of the file; it does not establish the demand. Similarly, the fact that the application remained pending for some time, may give rise to suspicion regarding the manner in which the file was dealt with, but delay in official processing, without proof of a demand, cannot be converted into proof of illegal gratification. This aspect assumes still greater importance while considering the evidence of PW6 - Sri. Vipul Bansal, Deputy Commissioner, and Ex.P28-sanction order. The sanctioning authority was not merely required to mechanically endorse the police case. As held by this Court in the case of M. NANJUNDA (supra), the sanctioning authority is required to independently peruse the investigation material and arrive at its own satisfaction as to whether there is sufficient material to sustain the prosecution. In the present case, PW6 states that he received the FIR, complaint, trap mahazar and other papers through the Lokayukta authorities and, after verification, accorded sanction as per Ex.P28. However, his evidence does not disclose that he independently examined the Government Order applicable to the Ganga Kalyana Scheme in 2010, the eligibility criteria applicable to PW1, the revenue material relating to the landholding of PW1, or the precise official competence of Accused No.1 to issue the alleged certificate. In

other words, the evidence of PW6 establishes receipt and consideration of the police papers, but does not satisfactorily demonstrate the nature and extent of the independent application of mind to the foundational facts upon which the alleged demand itself rests. However, the pendency of an official file or delay in processing the application cannot, in the absence of cogent evidence, be treated as proof of a demand for illegal gratification. The prosecution has to establish the criminal allegation independently. The fact that the work remained pending for some time may create suspicion regarding the manner in which the file was dealt with, but suspicion, however strong, cannot take the place of proof.

Demand and acceptance – foundational facts :

63. On an overall consideration of the evidence, this Court finds that the prosecution has established the circumstances preceding the trap and the subsequent recovery of the currency. What remains insufficiently established is the crucial link between those circumstances and the offence charged against Accused No.1.

64. The evidence regarding the alleged demand rests substantially upon PW1. The alleged electronic corroboration

has not been satisfactorily established in accordance with law. PW2 is not an independent witness to the earlier demand and his evidence regarding the trap has to be considered having regard to his prior knowledge of the prosecution allegation. PW4 establishes the trap proceedings but not the prior demand. PW5 establishes the official procedure but not the demand. When these circumstances are considered cumulatively, the prosecution evidence does not attain the degree of certainty required for sustaining a conviction. Presumption would arise under Section 20 of the Prevention of Corruption Act, only after the prosecution establishes the foundational facts of acceptance of gratification.

65. In the present case, the recovery is admittedly from Accused No.3 and not from Accused No.1. The prosecution is therefore required to establish through independent and convincing evidence that Accused No.1 had demanded and accepted the amount. A presumption cannot be utilised to supply the missing link in the prosecution case. The burden upon the accused does not arise in the abstract; it arises only after the prosecution has first established the foundational facts. In the facts and circumstances of the present case, this Court is of the considered view that the prosecution has not

discharged that initial burden to the standard required in a criminal trial.

66. The allegation of the prosecution allegation under Section 201 read with Section 34 IPC is that Accused No.1 handed over the money to Accused No.2 and Accused No.2, in turn, handed it over to Accused No.3 with an intention to cause disappearance of the evidence of the offence. However, for attracting Section 201 IPC, mere movement of the currency from one person to another is not sufficient. The prosecution must establish the requisite knowledge and intention contemplated by the provision.

67. The evidence on record, when viewed in its entirety, does not satisfactorily establish that Accused 1 to 3 had shared a common intention to cause disappearance of evidence of an offence already committed or to screen the offender from legal punishment. The subsequent recovery of the currency from Accused No.3 certainly constitutes a circumstance requiring consideration. But it cannot, without proof of the requisite mens rea, automatically constitute an offence under Section 201 IPC. Criminal jurisprudence requires the prosecution to establish its case beyond reasonable doubt. The Court may

draw reasonable inferences from proved circumstances, but it cannot replace proof by suspicion or conjecture.

68. In the present case, the trap was undoubtedly conducted and the tainted currency was recovered. Nevertheless, the fact that a trap was successful in terms of recovery is not synonymous with proof of demand and acceptance of illegal gratification by the public servant. On an independent re-appreciation of the evidence of PW1, PW2, PW4 and PW5, read with Exhibits P1, P3, P13, P20, P21 and P22 to P24, this Court finds that the prosecution evidence leaves a reasonable doubt as to the essential ingredients of the offences alleged against the appellants. The benefit of such doubt necessarily goes to the accused.

69. For the foregoing reasons, this Court is of the considered view that the prosecution has failed to establish the foundational facts necessary to sustain the conviction. The evidence of recovery, in the facts of the present case, cannot be treated as a substitute for proof of demand and voluntary acceptance. The prosecution having failed to establish the essential ingredients of the offences beyond reasonable doubt, the appellants are entitled to the benefit of doubt. The

impugned judgment of conviction and order of sentence, therefore, cannot be sustained. According, I answer Point No.1 in the Affirmative.

70. For the foregoing reasons and discussions, I proceed to pass the following:

ORDER

- i. The Criminal Appeals are allowed;
- ii. The judgment of conviction dated 25.04.2018 and the order on sentence dated 26.04.2018 passed by the Principal District & Sessions Judge, Chitradurga, in Spl.C. (PCA.) No.8 of 2011, are hereby set aside;
- iii. The appellants/Accused Nos.1 to 3 are hereby acquitted of the offences for which they have been convicted by the trial Court;
- iv. The bail bonds, if any executed by the appellants, shall stand cancelled;
- v. The fine amount, if any deposited by the appellants pursuant to the impugned judgment,

shall be refunded to them, in accordance with law.

- vi. Registry shall transmit the records to the jurisdictional Court forthwith along with a copy of this judgment.

Sd/-
(G BASAVARAJA)
JUDGE