

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.678 of 2011

Judgment reserved on:17.02.2015
Judgment pronounced on:25.02.2015

State represented by
The Inspector of Police
Vigilance and Anti-Corruption
Chennai CC II.
(Crime No.12/AC/2005/CC-II)

.. Appellant/complainant

v.

V.R.Murali

.. Respondent/Accused

Prayer:Criminal Appeal filed under Section 378 Cr.P.C. against the judgment of acquittal dated 22.10.2008 in C.C.No.8/2006 on the file of the learned VI Additional Sessions Judge, Chennai.

For Appellant : Mr.V.Arul
Government Advocate (Crl.side)

For Respondent : ***Mr.P.Wilson**, senior counsel for
Mr.T.K.S.Gandhi

J U D G M E N T

This Criminal Appeal arises out of the judgment of acquittal dated 22.10.2008 in C.C.No.8/2006 on the file of the learned VI Additional Sessions Judge, Chennai.

2.The case of the prosecution is as follows:

(i) P.W.2/Sivakumar/Complainant went to the office of Tamil Nadu Electricity Board (hereinafter called as "T.N.E.B."), T.Nagar for changing single phase connection to three phase connection for the house bearing Old Door No.2/2, New No.5, Chakrapani Street, West Mambalam, which belongs to his wife Chitra. On 29.04.2005, P.W.2 approached the accused, who was working as an Assistant Executive Engineer and gave Ex.P2 application to him and the accused prepared Ex.P10 estimate and Ex.P3 advice slip for Rs.12,423/- and he was directed to pay the same within a week. Then P.W.2 asked the accused to finish the work early and the accused told that if he would pay the amount, the work will be done early. On 02.05.2005 at about 11.00 a.m., P.W.2 went to E.B. office to pay the bill at that time, a person who was there told that there is scarcity of materials in the E.B. and if his work should be done, he has to intimate the same before the Vigilance office. Therefore, P.W.2 went to Vigilance and Anti-corruption office on 04.05.2005 and preferred a complaint Ex.P4.

(ii) On enquiry, P.W.7/Valsaraj, Deputy Superintendent of Police directed P.W.8/Prabaharan, Inspector of Police to proceed the case and he made an endorsement in Ex.P4, which was marked as Ex.P13.

(iii) P.W.8/Prabaharan, Inspector of Police, registered a case in Crime No.12/AC/2005/CC-II for offence under Section 7 of the Prevention of Corruption Act and prepared Ex.P14 F.I.R. Then he made an arrangement for trap proceedings, for which, P.W.7 sent two witnesses from Government office namely, P.W.4/Lakshmana Kumar and one Rajendran and explained trap proceedings.

(iv) On 05.05.2005 in the presence of P.W.2, P.W.4 and Rajendran, P.W.8 prepared Ex.P8/entrustment mahazar. As per the instructions of P.W.8, P.W.2 as well as P.W.4 accompanied with police officials went to the office of T.N.E.B., T.Nagar. P.W.8 directed P.W.2 to give signal to the police, after demand and gave money. At 10.45 a.m., P.W.2 after giving money to the accused, came outside and made signal to the police. Immediately, they went to the accused office and followed the procedures and from the accused, P.W.8 seized M.O.5 series - Rupees five hundred eight in numbers (i.e.) Rs.4,000/- from the pocket of the accused and tallied with Ex.P8/mahazar.

(v) Then, P.W.5/Venkatamohan, Executive Engineer, T.N.E.B., was informed over phone and he came to the office and he is the attestor of seizure mahazar and also seized estimate which was marked as Ex.P10. Thereafter, accused was arrested by P.W.8 and remanded to custody. Through P.W.3 Devendran, Commercial Inspector, Exs.P5/demand register, P6/entry in page No.10 in Ex.P5 and P7/entry in page No.14 in Ex.P5 were marked. P.W.8 also prepared Ex.P15 sketch.

(vi) After that, P.W.8 obtained sanction from P.W.1/Nedunchezian, Chief Engineer and he accorded sanction for prosecuting the accused and gave Ex.P1 sanction order.

(vii) On 06.05.2005, P.W.9/Raja Srinivasan, Inspector of Police, took up the case for further investigation and examined all the witnesses and recorded their statements. He seized Ex.P16 attendance register. Then material objects were sent to Forensic Science Department by Ex.P11/letter and obtained Ex.P12/chemical analysis report from P.W.6/Maria Selvi, Assistant in Forensic Science Department. P.W.9 after completing investigation, filed the charge sheet against the accused for offences under Sections 7 and 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988.

3.The learned trial Judge after following the procedure, framed necessary charges. The accused pleaded not guilty. The trial Court examined the witnesses P.W.1 to P.W.9 and marked the documents Exs.P1 to P16 and material objects M.O.1 to M.O.5 and placed the incriminating evidence before the accused and the accused denied the same in toto. The trial Court after considering the oral and documentary evidence, acquitted the accused from the charges levelled against him.

4.Challenging the judgment of acquittal passed by the trial Court, learned Government Advocate (Crl.side) has raised the following points for consideration:

(i) Even though P.W.1 is a competent authority to accord sanction for prosecuting the accused/respondent herein, while he was in witness box, no suggestion was posed to him that he is not a competent person. Further, the trial Court has committed an error in holding that on the basis of evidence of P.W.5/Venkatamohan, T.N.E.B. is a competent person and P.W.1 is not a competent person to accord sanction for prosecuting the accused.

(ii) Even though P.W.2/Sivakumar/complainant turned hostile, P.W.4 a shadow witness, who was cited as witness in the trap proceedings, deposed the demand, acceptance and recovery.

(iii) The trap laying officer P.W.8 is a competent person to conduct trap and investigate the case. The trial Court without considering all the above aspects, erroneously acquitted the respondent/accused and hence, he prayed for conviction of the respondent and allowing this appeal.

5. Resisting the same, **Mr. P. Wilson,*** learned senior counsel appearing on behalf of the respondent/accused has raised the following points for consideration:

(i) This Court cannot interfere with the judgment of acquittal passed by the trial Court unless it is perverse. If two views are possible, the view favouring the accused to be taken into consideration.

(ii) P.W.1 is not a competent person to accord sanction and that has been clearly spoken by P.W.5. The trial Court has rightly held that P.W.1 is not a competent person.

(iii) It is true, P.W.2 turned hostile. As per the dictum of the Apex Court, the testimony of hostile witnesses need not be ignored. The Court should scrutinize the testimony of hostile witnesses and accept the portion of the same which receive corroboration from other evidence on record.

(iv) P.W.8, who made arrest and recovery is not a competent person and Rule 47, Manual of the Directorate of Vigilance and Anti-Corruption, Tamil Nadu has not been followed.

(v) There is contradiction between the evidence of P.W.4 and P.W.8 in respect of phenolphthalein test. The trial Court has considered all the aspects in proper perspective manner and hence, the judgment of acquittal passed by the trial Court does not warrant any interference and therefore, he prayed for dismissal of this appeal.

6. Considered the rival submissions made on both sides and perused the materials available on record.

7. The case of the prosecution is that P.W.2/Sivakumar's wife is one Chitra, who is the owner of house in Old Door No.2/2, New No.5, Chakrapani Street, West Mambalam. She applied three phase service connection vide Ex.P2 application and when P.W.2/husband approached the T.N.E.B. Office, T.Nagar, the accused, who was working as an Assistant Executive Engineer advised to pay Rs.12,423/- as an expenses and issued advice slip Ex.P3 and estimate memo Ex.P10. It is alleged that the accused demanded Rs.4,000/- as illegal gratification for finishing the work early. The trial Court after considering the oral and documentary evidence of P.W.1 to P.W.9, Exs.P1 to P16 and M.O.1 to M.O.5 acquitted the respondent/accused.

8. Now this Court has to decide whether the judgment of acquittal passed by the trial Court is perverse and whether it has to be set aside? Before that, this Court has to decide whether P.W.1 is competent person to accord sanction?

Sanction:

(i) P.W.1/Chief Engineer, issued Ex.P1 sanction order for prosecuting the accused. When he was examined before the trial Court, he has not filed any document to show that he was the competent person to accord sanction. It is true, P.W.1 in his chief-examination, stated that he is a Chief Engineer and hence, he is a competent person to appoint and dismiss Assistant Executive Engineer. It is true, no cross-examination was done on the part of his competency. But whereas P.W.5/Venkatamohan, Executive Engineer, in his cross-examination deposed that for the post of Assistant Engineers and Assistant Executive Engineers, promotion was granted only on the basis of the list prepared by the State. The respondent/accused was appointed by the Tamil Nadu Electricity Board.

(ii) It is true, it is the duty of P.W.1 to file the document to show that he is a competent person for appointing and dismissing the Assistant Executive Engineer. But when P.W.1 was in witness box, no suggestion was posed to him that he is not a competent person to accord sanction. As per Rule 93 of Tamil Nadu Electricity Board Service Regulations, only Chief Engineer is the competent authority to accord sanction. In such circumstances, the trial Court without considering the above aspect, erroneously held that P.W.1 is not a competent person to accord sanction. Hence, the findings of the trial Court that P.W.1 is not a competent person to accord sanction is hereby set aside.

Competency of trap laying officer:

9.It is pertinent to note that there is no statement has been recorded by the trap laying officer under Rule 47 of Manual of the Directorate of Vigilance and Anti-Corruption, Tamil Nadu. They have not followed the procedure laid down in Rule 41(3) of the Manual. So competency of trap laying officer has been questioned. Admittedly, P.W.7/D.S.P. directed P.W.8/Prabaharan, Inspector of Police to proceed and investigate the case and he made an endorsement in Ex.P4 complaint, which was marked as Ex.P13. So the D.S.P. delegates the powers. In such circumstances, I am of the considered opinion that P.W.8 is a competent person to register the case and investigate the matter. The trial Court in para-15 of its order held that P.W.7/D.S.P and P.W.8/trap laying officer have not followed the procedure as per administrative guide lines, even though the trial Court has considered the decision of the Apex Court reported in 2007 (1) SCC 630. But the said decision is not applicable to the facts of the present case.

10.As per the Rule 41(3) of the Manual, Deputy Superintendent of Police is a competent person and he has delegate powers and as per his instructions, P.W.8 registered the case and investigated the matter. So the findings of the trial Court that

P.W.8 is not a competent person to register the case and investigate the matter is unsustainable.

11.Hostile witness:

Admittedly, P.W.2/Sivakumar, who is the complainant, turned hostile. As per the dictum of the Apex Court, the testimony of hostile witnesses need not be ignored. The Court should scrutinize the testimony of hostile witnesses and accept the portion of the same which receive corroboration from other evidence on record.

12.At this juncture, it is appropriate to consider the decision relied upon by the learned senior counsel for the respondent/accused reported in (2001) 2 SCC 205 (Guru singh v. State of Rajasthan), in para-11, it is held as follows:

"11. There appears to be a misconception regarding the effect on the testimony of a witness declared hostile. It is a misconceived notion that merely because a witness is declared hostile his entire evidence should be excluded or rendered unworthy of consideration. This Court in Bhagwan Singh v. State of Haryana [AIR 1976 SC 202] held that merely because the Court gave permission to the Public Prosecutor to cross-examine his own witness describing him as hostile witness does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base conviction upon the testimony of such witness. In Rabindra Kumar Dey v. State of Orissa [AIR 1977 SC 170] it was observed that by giving permission to cross-examine nothing adverse to the credit of the witness is decided and the witness does not become unreliable only by his declaration as hostile. Merely on this ground his whole testimony cannot be excluded from consideration. In a criminal trial where a prosecution witness is cross-examined and contradicted with the leave of the Court by the party calling him for evidence cannot, as a matter of general rule, be treated as washed off the record altogether. It is for the court of fact to consider in each case whether as a result of such cross-examination and contradiction the witness stands discredited or can still be believed in regard to any part of his testimony. In appropriate cases the court can rely upon the part of testimony of such witness if that part of the deposition is found to be credit worthy."

Considering the aforesaid decision, it is misconceived notion that merely because a witness is declared hostile witness should be

excluded or rendered unworthy of consideration. It is also well settled law that the evidence of hostile witness can be relied upon provided it must be corroborated by some other witness and document. In the case on hand, since P.W.2/Sivakumar, who is the complainant himself turned as hostile, this Court can very well rely upon the evidence which was corroborated by other witness either in favour of prosecution or respondent/accused.

Demand and Acceptance:

13.As per Section 7 of the P.C. Act, the prosecution has to prove the demand, acceptance, recovery and phenolphthalein test. The demand includes first and second demand. Admittedly, P.W.2 has turned hostile and there is no evidence to prove that there was a first demand made by the accused on 02.05.2005. P.W.2 in his evidence stated that when he had gone to T.N.E.B. office on 02.05.2005, at that time, one person has stated that there is scarcity of materials in the E.B. and if his work should be done, he has to give a complaint before the Vigilance office. So P.W.2 does not speak about that the accused has demanded money on 02.05.2005. Since there is no evidence to show that the respondent/accused has demanded illegal gratification on 02.05.2005, the first demand has not been proved by the prosecution.

14.Now this Court has to decide whether the second demand has been proved by the prosecution? On perusal of evidence of P.W.2, it reveals that he has not stated that the respondent demanded money on 05.05.2005, but he stated that he thrust the amount of Rs.4,000/- into the pocket of the accused. The shadow witness P.W.4 was examined to depose about the second demand. But except the ipse dixit of P.W.4, no other independent witness was examined to corroborate the same.

Independent Witness:

15.Learned senior counsel for the respondent/accused submits that trap witness cannot be considered to be an independent witness as he forms part of the raiding party. As per the dictum of the Apex Court, shadow witness is not an independent witness, it needs corroboration. To substantiate the same, the learned senior counsel for the respondent/accused has relied upon the following decisions:

(i) In 1974(3) SCC 595 (Darshan Lal v. The Delhi Administration), in para-5(portion marked) and 6, it is held as follows:

"5. The only other witness is Satish Chandra. He does not speak about the first offer at all. There is thus no independent reliable corroboration of the statements of Niranjana Lal and Anand Behari Lal as regards the first offer. Lastly, in this background, it was proper to look for unimpeachable evidence as to the passing of the

currency note from Niranjana Lal to the appellant. We have already indicated certain important circumstances which cast doubt on that story.

6. Having regard to all these circumstances, we think it is a fit case where the courts below should have required independent and trustworthy corroboration of the evidence of Niranjana Lal and Satish Chandra who had laid the trap. In Ram Prakash Arora v. The State of Punjab this Court, speaking about the evidence of trap witnesses, observed;

"(They) were interested and partisan witnesses. They were concerned in the success of the trap and their evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person."

As there is no such corroboration, the appellant should be given the benefit of doubt. So the appeal is allowed. The conviction and sentence of the appellant are set aside. Bail bonds are discharged. "

(ii) In 2011 (2) MWN (Cr) 90 (T.M. Shanmughavelu v. State rep. By Inspector of Police, V and AC), in para-10.6, it is held as follows:

"10.6. The prosecution also cannot place reliance on the evidence of PW.3, the trap witness, who cannot be considered to be an independent witness as he forms part of the raiding party, to corroborate the version of PW.2 as held by the Hon'ble Apex Court in Som Parkash Vs. State of Punjab (AIR 1992 SC 665) to the effect that "the witnesses who formed part of the raiding party were not independent".

(iii) In 1994 Cri.L.J.1710 (Gurucharan Singh v. State of Haryana), in para-14, 18 to 20, it is held as follows:

"14. To prove the allegations of demand and acceptance of bribe by an accused person, the evidence of the complainant or trap witness cannot be safely acted upon in the absence of some independent corroborative evidence. In such a situation, bribe giver is normally treated as no better than an accomplice and so his evidence needs corroboration from an independent source. The same value is to be attached to the evidence of the shadow witness especially when lie is not proved to be an independent witness. Independent corroboration to the evidence of such witnesses is generally required by the Court, if not as a rule of law, then at least as a rule of caution and prudence.

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18.The discrepancies in the evidence of the prosecution witnesses as highlighted above are definitely of material character and to create doubt about the truthfulness of the prosecution case.

19.Where the material witnesses to the trap make inconsistent statements in their evidence on material particulars the evidence of such witnesses becomes unreliable and unworthy of credence, thus making the prosecution case highly doubtful.

20.Taking the unsatisfactory character of the prosecution evidence with regard to the conversation, if any having taken place between Ripudaman PW-8 and the appellant preceding the passing of the tainted currency notes, coupled with the inconsistencies appearing in the evidence of Ripudaman PW-8, Nazir Singh PW-9, Dr.Om Prakash PW-10 and Vigilance Inspector Amrik Singh PW-11 on material particulars as highlighted above, I have no option but to hold that the prosecution has failed to establish its case beyond reasonable doubt and the appellant is entitled to this benefit, entitling him to earn acquittal on the basis of benefit of doubt. "

(iv) In AIR 1992 SC 665 (Som Parkash v. State of Punjab), in para-2, it is held as follows:

"2. The High Court found that the witnesses who were associated in the conduct of the raid for recovery of tainted money from the appellant could not be termed as independent who could be associated with such raids. The High Court further expressed doubt about veracity of the witness who claimed that money was actually handed over in his presence. The High Court, however, drew an adverse inference against the appellant from the circumstance that the, bill which was delayed for unreasonable period had suddenly been passed by the appellant On an overall assessment the High Court entertained some suspicion about the credibility of the prosecution witnesses but at the same time did not find the suspicion to be strong enough to raise doubt about the guilt of the appellant. We agree with the learned Counsel for the appellant

that in the face of the finding that the witnesses who formed part of the raiding party were not independent and the evidence regarding handing over money to the appellant being unbelievable, the conviction of the appellant cannot be sustained. The guilt of the appellant has not been proved beyond reasonable doubt and as such the benefit must go to him."

Considering the above decisions, in the case of absence of independent and reliable corroborative evidence, other evidence not conclusive and found contradictory, benefit of doubt can be given to the accused. In such circumstances, I am of the view, there is no evidence to show that the respondent/accused has demanded illegal gratification, since P.W.2 has given total go by to the complaint. The trial Court has rightly held that the demand has not been proved by the prosecution beyond reasonable doubt.

Recovery:

16.It is true, the learned senior counsel for the respondent/accused submitted that merely because recovery of tainted money itself cannot prove the charge against the accused by the prosecution. It is the duty of the prosecution that the respondent/accused has received the money as if it is illegal gratification to do some act. But here, no such evidence is available, because P.W.2 stated that he himself thrust the money into the pocket of the accused for purchasing the materials to give three phase connection to his house.

17.Now it is appropriate to consider the following decisions relied upon by the learned senior counsel for the respondent/accused.

(i) In 2011 (1) MWN (cr.) 602 (M.Rajendran v. State rep. by the Deputy Superintendent of Police), in para-14 to 15.4, it is held as follows:

"14.Once the prosecution failed to prove the first and foremost ingredient viz., demand of illegal gratification said to have been made by the Accused, the entire prosecution case would collapse. It is well-settled that the mere recovery of the tainted money itself is not sufficient in the absence of proof of demand for establishing the offences alleged against the Accused.

15.1. The Hon'ble Apex Court in T.Subramanian v. State of Tamil Nadu, 2006 (1) MWN (cr.) 187 (SC) : 2006 (1) SCC (cri.) 401 has held as hereunder:

"The evidence in this case no doubt proves that a sum of Rs.200/- was paid by P.W.1 to the Appellant. But the crucial question is whether the Appellant had demanded the said amount as illegal gratification to show any

official favour to P.W.1 and whether the said amount was paid by P.W.1 and received by the Appellant as consideration for showing, such official favour. Mere receipt of Rs.200/- by the Appellant (admitted by the Appellant) will not be sufficient to fasten guilt under Section 5(1)(a) or Section 5(1)(d) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification."

15.2. The Hon'ble Apex Court in Venkatesubba Rao v. State, 2007 (3) SCC (Cri.) 175, has held as follows:

"24. .. In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved. It reads as under:

"20. Presumption where public servant accepts gratification other than legal remuneration. (1) where, in any trial of an offence punishable under (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, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

25. Furthermore, even in such a case, the burden on an Accused does not to meet the same standard of proof, as is required to be made by the prosecution.

26. In M.S. Narayana Menon v. State of Kerala, 2006 (3) SCC (cri.) 30, this Court, held-

"Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with a Defendant in a Civil Proceeding."

15.3. The Hon'ble Apex Court in State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede, 2010 (2) SCC (cri.) 385 has held as under:

"16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the

conclusion as to whether all the ingredients of an offence viz. demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the Court must take into consideration the facts and circumstances brought on the record in their entirety. "

15.4. The principles laid down by the Hon'ble Apex Court in the decisions cited supra are squarely applicable to the facts of the instant case as in this case also the prosecution has miserably failed to prove the alleged demand of bribe said to have been made by the Accused, as pointed out earlier."

(ii) In 2010 (4) SCC 450 (Banarasi Dass v. State of Haryana), in para-10 and 11, it is held as follows:

"10. It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard. So far as it satisfies the essentials of a complete chain duly supported by appropriate evidence. Applying these tests to the facts of the present case, P-10 and P-11 were neither the eye-witnesses to the demand nor to the acceptance of money by the accused from Smt. Sat Pal Kaur (PW-2). It is unfortunate but true that both PW-2 and PW-4 made statements before the Court which were quite different from the one made by them before the police during the investigation under Section 161 of the IPC. Gurmej Singh (PW-4) completely denied the incident and refused to acknowledge that the sum of Rs. 900/- only was demanded by the accused from PW-2 in his presence and that the money was accepted in the Patwar-khana by the accused. PW-2 obviously has not stated the complete truth before the Court. Though after being declared hostile in her cross-examination she has supported some part of the prosecution case, but she has virtually denied the essential ingredients to bring home the guilt of the accused either under Section 5 (2) of the Act or under Section 161 of the IPC. She seems to have forgiven the accused for making such a demand and made such a statement before the Court that the Court should also ignore the offence. We are not and should not even be taken to have suggested that PW-10 and PW-11 have not made correct statement before the

Court or that the Court has disbelieved any part of their statement. But, fact of the matter remains that their statement with regard to demand and acceptance is based on hearsay i.e. what was told to them together by PW-2 and even by PW-4 at that stage. The money was certainly recovered from the pocket of the accused vide memo Ex. P-D. We, therefore, do not accept the contention on behalf of the accused that the amount was not recovered and the recovery is improper in law. Ex. P-D has duly been attested by witnesses. Thus, it cannot be said that the recovery from the pocket of the accused is unsustainable in law and is of no consequence.

11. To constitute an offence under Section 161 of the IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of Section 5 (1) (d) of the Act, the demand and acceptance of the money for doing a favour in discharge of its official duties is sine qua non to the conviction of the accused. In the case of M.K. Harshan v. State of Kerala [1996 (11) SCC 720], this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under :

".....It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW-1. Since PW-1's evidence suffers from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence of PW-1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is

difficult to hold that the accused tacitly accepted the illegal gratification or obtained the same within the meaning of Section 5(1)(d) of the Act, particularly when the version of the accused appears to be probable".

(iii) In AIR 2014 SC 3798 (Satvir Singh v. State of Delhi through CBI), in para-33, it is held as follows:

"33.The learned senior counsel for the appellant has also placed reliance upon the case of Banarasi Das referred to supra wherein it was held that

24.In the case of M.K.Harshan v. State of Kerala [1996 (11) SCC 720], this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under :

"8.....It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification.

The above-said paragraph from the above mentioned case would go to show that the divergent findings recorded by the High Court on the factum of demand and acceptance of illegal gratification by the Appellant is not proved in this case. In the said case this Court in unequivocal terms has held that mere demand by itself is not sufficient to establish the offence under the Act. The other aspect, namely acceptance is also very important. There must be clinching evidence with the tacit approval of the accused that money was put by PW-2 on the steel cot as stated by him in his evidence as illegal gratification. In the case in hand, as per the evidence of PW-2 and PW-3, the illegal gratification was in a black rexine bag with a broken zip which was put on a steel cot. As the contents of the bag were not within the knowledge of the accused, therefore, the

relevant aspect of the case that the Appellant has accepted the illegal gratification as required under Section 7 of the Act is not proved by the prosecution by adducing cogent evidence in this regard. "

(iv) In 2014(4) AKR 599 (M.R.Purushotham v. State of Karnataka), in para-6, it was held as follows:

"6. In such type of cases the prosecution has to prove that there was a demand and there was acceptance of illegal gratification by the accused. As already seen the complainant PW1 Ramesh did not support the prosecution case insofar as demand by the accused is concerned. No other evidence was adduced by the prosecution to prove the demand made by the accused with the complainant. In this context the recent decision of a three Judge bench of this Court in B. Jayaraj vs. State of Andhra Pradesh reported in 2014(4) Scale 81 is relevant and it is held as follows :

8. In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

The above decision is squarely applicable to the facts of the present case. When PW1 Ramesh himself had disowned what he has stated in his initial complaint in Ex.P1 before PW4 Inspector Santosh Kumar and there is no other evidence to prove that the accused had made any demand, the evidence of PW3 Kumaraswamy and the contents of Exh.P1 complaint cannot be relied upon to conclude that the said material furnishes proof of demand allegedly made by the accused. The High Court was not correct in holding the demand alleged to be made by the accused as proved. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 13(1)(d) of the Act and the conviction and sentence imposed on the appellant are liable to be set aside."

Considering the above decisions along with the facts of the case, as already discussed above that the first demand has not been proved and the evidence of P.W.4 is not an independent witness and without corroborating the same, the evidence of P.W.4 cannot be relied upon. But mere recovery is not the ground for conviction and that factum was rightly considered by the trial Court.

18. According to the learned senior counsel for the respondent/accused, the prosecution has to prove proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case. But in the case on hand, demand and acceptance have not been proved by the prosecution beyond reasonable doubt. Now it is appropriate to consider the following decisions relied upon by the learned senior counsel for the respondent/accused.

(i) In 2011 (6) SCC 450 (State of Kerala and another v. C.P.Rao), para-7, 10 and 12 are extracted hereunder:

"7. In the background of these facts, especially the non-examination of CW 1, was found very crucial by the High Court. The High Court has referred to the decision of this Court in Panalal Damodar Rathi Vs. State of Maharashtra 1979(4) SCC 526 wherein a Three-Judge Bench of this Court held that when there was no corroboration of testimony of the complainant regarding the demand of bribe by the accused, it has to be accepted that the version of the complainant is not corroborated and, therefore, the evidence of the complainant cannot be relied on. In the aforesaid circumstances, the Three-Judge Bench in Pannalal Damodar Rathi case (supra) held that there is grave suspicion about the appellant's complicity and the case has not been proved beyond reasonable doubt.

10. In C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala reported in 2009(3) SCC 779, this Court while dealing with the case under the Prevention of Corruption Act 1988, by referring to its previous decision in the case of Suraj Mal Vs. State (Delhi Admn.) reported in 1979(4) SCC 725 held that mere recovery of tainted money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused. In the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe conviction cannot be sustained.

12. Those observations quoted above are clearly applicable in this case. In the context of those observations, this Court in SCC paragraph 28 of A. Subair (2009) 6 SCC 587 made it clear that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is proved to the contrary by proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case. In view of the aforesaid settled principles of law, we find it difficult to take a view different from the one taken by the High Court."

(ii) In (2009) 3 SCC 779 (C.M. Girish Babu v. CBI Cochin, High Court of Kerala), in para-18, 20 and 23, it is held as follows:

"18. In Suraj Mal Vs. State (Delhi Admn.) reported in [(1979) 4 SCC 725], this court took the view that mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show the accused voluntarily accepted the money knowing it to be bribe.

20. A three-Judge Bench in M. Narsinga Rao Vs. State of A.P. (2001) 1 SCC 691 while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a

further duty to prove that what was paid amounted to gratification, observed:

"24.....we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide Madhukar Bhaskarrao Joshi v. State of Maharashtra.) The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: (SCC p.577, para 12)

12.The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

23. It is against this background of principles we have examined the contention of the appellant that the charges under Section 7 of the Act have not been proved against him. "

(iii) In Manu/KE/0331/2007 (Solomon v. State of Kerala), in para-11, it read as follows:

"11.In the light of the principles laid down by the Apex Court in the decisions referred to above, this Court is of the view that mere recovery of the marked currency notes from the appellants will not prove that the appellants committed offence punishable under Section 7 of the P.C.Act. Accordingly, the conviction entered and the sentence awarded by the trial Court against the appellants are set aside. . . . "

(iv) In CDJ 2002 MHC 661 (State by V and AC v. K.M.Ravi), in para-15, it is held as follows:

"15. The learned counsel relied a few rulings to the effect that mere recovery of money and positive result of Phenolphthalein Test are not sufficient to convict him. The full bench of the Supreme Court in the case of Meena (Smt) W/o. Balwant Hemke vs. State of Maharashtra has been pleased to hold as follows:

"Mere recovery of the currency notes and positive result of the phenolphthalein test is not enough to establish the guilt of the appellant on the basis of perfunctory nature of materials and prevaricating type of evidence.

Of course, each case has to be decided on facts, but this ruling applies to the facts of the present case also, because the evidence of P.W.3 is not inspiring. In the case cited supra, the currency notes in question were not recovered from the person or from the table drawer, but by the trap party arrived, the amount was found only on the pad on the table and seized from that table only. Explanation offered in that case was when the amount was about to be thrust, he refused to receive and the same fell on the pad of the table. Here also, the respondent has come out with a defence that the amount was found only over the teapoy and that had been placed by P.W.2. without his knowledge and he came to know about the same only when the raiding party came to his residence. This evidence could not be disputed especially because of the failure on the part of the investigating officer in recovering the pillow cover or the bed sheet to confirm the recovery from that particular place i.e. in between the pillow and bed. Insofar as the evidence of P.W.3 is concerned, the learned counsel submits that his evidence should not be believed and rather relied upon for the purpose of conviction on the sole ground that he formed part of a raiding party and that he is not an independent witness. Of course, the witness associated himself with the raiding part being an official witness is asked to accompany as decoy witness only to see the demand and acceptance of bribe by the accused concern, but subsequently, when nothing is about to be recovered from the accused, naturally as in all cases independent witnesses are required."

(v) In 2014 (2) MLJ (Cr1) 358 (B.Jayaraj v. State of A.P.), in para-8, it is held as follows:

"8. In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial Court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established."

Considering the above decisions, I am of the view, mere recovery of the tainted money itself is not sufficient in the absence of proof of demand for establishing the offences alleged against the Accused. The trial Court has also correctly held that mere recovery is not sufficient to convict the accused for offence under Section 7 of the P.C. Act.

19. Considering the aforesaid circumstances of the case along with the above decisions, I am of the view, the findings of the trial Court that P.W.1 is not a competent person to accord sanction and the sanction order is illegal and unsustainable, is hereby set aside. But however, the prosecution has failed to prove that the first demand on 02.05.2005 and also the second demand on 05.05.2005, since P.W.2 has turned hostile. Further, P.W.4 shadow witness is not an independent witness and his evidence needs corroboration, but no other independent witness was available to corroborate the same. Hence, I am of the view, the prosecution has miserably failed to

prove the ingredients of offence under Section 7 of the P.C. Act in respect of demand and acceptance beyond all reasonable doubt. Therefore, the judgment of acquittal passed by the trial Court is hereby confirmed and this appeal deserves to be dismissed and it is hereby dismissed.

20. In the result, this Criminal Appeal is dismissed by confirming the judgment of acquittal dated 22.10.2008 in C.C.No.8/2006 on the file of the learned VI Additional Sessions Judge, Chennai.

kj

-s/d-

Assistant Registrar (CS-II)

Dt:26/2/2015

Correct as per order of
this court dt. 4.03.15 in
Crl.A.678/11

True Copy

-s/d-

Assistant Registrar (CS-II)

dt. 12.03.15

Sub-Assistant Registrar

To

1.The VI Additional Sessions Judge,
Chennai.

2.The Inspector of Police
Vigilance and Anti-Corruption
Chennai CC II.

To be substituted the order
already depatched on 3.3.2015

3.The Public Prosecutor
High Court, Chennai.

4.The Record Keeper
Criminal Section,
High Court, Chennai.

+ 5 ccs to Mr.TKS.Gandhi, Advocate SR 10264

+ 1 cc to the Public Prosecutor, High Court, Madras SR 10321

Crl.A.No.678 of 2011

EV(CO)

EU 12.03.15