

Bail Slip

The Appellant / Accused was directed to be released on bail by the order of this court dated 01.12.2008 and made in M.P.No.1 of 2008 in Crl.A.No.820 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.820 of 2008

Judgment reserved on: 23.02.2015

Judgment pronounced on: 02.03.2015

A.Periyasamy
S/o.Arunachalam

...Appellant/Accused

vs.

State by Inspector of Police,
Vigilance and Anti Corruption
Salem.

Cr.No.Ac.4 of 1994

...Respondent/Complainant

Prayer:Criminal Appeal filed under Section 374 Cr.P.C. against the judgment of conviction and sentence, dated 15.11.2008 made in C.C.No.4 of 2002 on the file of the learned Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.K.V.Sridharan
Mrs.Jayasri Baskar

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

J U D G M E N T

This Criminal Appeal arises out of the Judgment of conviction and sentence, dated 15.11.2008 made in C.C.No.4 of 2002 on the file of the learned Chief Judicial Magistrate, Namakkal, whereby the appellant/accused was convicted and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default in payment, to undergo three months rigorous imprisonment for the offence under Section 7 of Prevention of Corruption Act ; to undergo one year rigorous imprisonment and imposed a fine of Rs.2,000/- in default in payment, to undergo three months rigorous imprisonment for the offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act and to undergo three months rigorous imprisonment for the offence under Section 201 r/w. 511 IPC. The sentences are ordered to run concurrently.

2.The case of the prosecution is as follows:

(i)P.W.2/Solaimuthu, is a resident of Naraikinaru Village. His father, namely, Subburaya Udayar died on 23.12.1991 and his death was not registered. Thereafter, P.W.2/Solaimuthu and his younger brother shared the property equally which lies in his father's name and P.W.2 also took the share of his brother by paying Rs.8,000/-. Since the Patta stands in the name of his father, P.W.2 approached the Tahsildar, Rasipuram by filing an application. On perusing his application, the Clerk in the Tahsildar Office stated that the death of P.W.2's father has not been registered and for registering the same, P.W.2 filed a petition in the Court at Rasipuram, wherein a direction has been issued to the Tahsildar to register the death of P.W.2's father. On 13.09.1994, P.W.2 went to Tahsildar Office along with the copy of the order and on that basis, the P.W.11/Tahsildar directed the Village Administrative Officer to register the death of P.W.2's father. Then, P.W.2 went to the Village Administrative Officer/appellant/accused along with his friend Kandasamy/P.W.8 to register the death of P.W.2's father. For which, the appellant/accused demanded a sum of Rs.200/-. Aggrieved by that, P.W.2 lodged a complaint/Ex.P.21 to P.W.13/Periyasamy attached with Vigilance and Anti Corruption Department.

(ii)P.W.13, Inspector of Police, Vigilance and Anti Corruption Department received the complaint/Ex.P.21 and registered a case in Cr.No.4/AC/1994 under Section 7 of Prevention of Corruption Act and prepared the printed FIR/Ex.P.22. Thereafter, trap was organised by

P.W.13/Periyasamy on 23.09.1994. Two official witnesses, namely, P.W.3/Nagarajan, Assistant, Social Welfare Department and P.W.7/S.Palanisamy, Typist, Agriculture Department were introduced to the complainant, P.W.2/Solaimuthu by P.W.13. P.W.2 produced a sum of Rs.200/- in the denomination of three 50 rupees currency notes (M.O.4 series), one 20 rupees currency notes (M.O.5) and three 10 rupees currency notes (M.O.6 series) and the number of the notes were also noted down in the Mahazar. Thereafter, Phenolphthalein was smeared on the said currency notes by P.W.13 through the Head Constable, Narayanan and the witnesses were demonstrated with phenolphthalein test and explained its significance.

(iii) Thereafter, P.W.2/Solaimuthu was given with the above said currency notes smeared with phenolphthalein powder with instruction that only on demand by the accused Periyasamy, the amount shall be given to him and also to indicate the said acceptance of said demanded amount by making a signal. Further, P.W.3/Nagarajan, the official witness was also instructed to accompany P.W.2 to observe the conversation between the P.W.2 and the accused and the happenings. All these were recorded in Entrustment Mahazar/Ex.P.11. Thereafter, a team comprising of P.W.13/Periyasamy, P.W.2/Solaimuthu, P.W.3/Nagarajan and P.W.7/S.Palanisamy and the Police Officers went to Naraikinaru Village at about Rs.11.30 a.m. The trap party stood at a distance while P.W.2 and P.W.3 went to the office of the accused situated at Naraikinaru Village. At the office of the accused, P.W.2 wished the accused while P.W.3 stood at a distance and seeing the happenings between them. P.W.2 asked the accused about the entering the death of his father in Death Register, for which the appellant/accused asked whether P.W.2 has brought the money and directed him to pay the money and obtain a receipt. P.W.2 gave Rs.200/- to the accused and went outside the office and then, P.W.2 gave the prearranged signal to the waiting trap party. P.W.13 and other police officials rushed towards them and identified their identity to the accused and introduced the official witness to him. On seeing the police party, the appellant/accused thrown the money under the table.

(iv) P.W.13/Periyasamy collected the currency notes which was thrown by the accused and the said notes were compared with the numbers noted in Entrustment Mahazar/Ex.P.11. Thereafter, phenolphthalein test was conducted. Thereafter, P.W.13 drew the rough sketch/Ex.P.13 of the appellant's office room. Further, P.W.13 seized the 1994 Death Register/Ex.P.23 under Seizure Mahazar/E.P.12 from the appellant/accused. On perusal of the same, it is seen that it was registered upto 01.09.1994 page No.9 and in the same page, a

copy of the order of the Tahsildar has been kept, wherein a direction was issued to the appellant to register the death of the father of P.W.2, but it has not been done. P.W.3, P.W.7 and P.W.13 signed in the Seizure Mahazar/Ex.P.12 and their signatures were marked as Ex.P.24. Then, P.W.13 arrested the appellant/accused. P.W.13 after sending advance intimation to the Court went to the house of the accused situated at Door No.1-61.C.19, Mangalapuram and made search. Thereafter, as per the direction of the Superior Officer, P.W.13 handed over the documents and material objects seized from the accused to P.W.14/Murugasamy for further investigation.

(v) P.W.14/Murugasamy, Inspector, Vigilance and Anti Corruption Department, Salem took up the case for further investigation and examined the witnesses, namely, P.W.3/Nagarajan and P.W.7/S.Palanisamy and recorded their statements. Thereafter, on 24.09.1994 he went to the place of occurrence and examined the witnesses, Solaimuthu, Kandasamy, Annamalai, Raja, Baskaran, Sathyanarayanan, Khader Hussain, Mohamed Ibrahim and recorded their statements. On 26.09.1994, P.W.13/Periyasamy sent the case documents to the Judicial Magistrate. On 28.09.1994, he submitted a requisition/Ex.P.18 to the Judicial Magistrate to send the material objects for chemical analysis. On 26.10.1994, P.W.14 received the chemical analysis report/Ex.P.20 through the Judicial Magistrate. P.W.13 completed the investigation and sent the final report to the Director, Vigilance and Anti Corruption Department on 30.10.1994 to accord sanction for prosecuting the accused. Since he got transferred, the successor of P.W.14 took the case for further investigation.

(vi) P.W.15/Girimurugan, Inspector, Vigilance and Anti Corruption Department obtained sanction order/Ex.P.1 from Revenue Divisional Officer, Namakkal on 10.07.1995 and the discrepancies in the sanction order/Ex.P.1 was rectified by P.W.1/Mr.Annamalai, IAS, the then Revenue Divisional Officer, Namakkal and on that basis, he filed the charge sheet under Section 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act and 201 r/w. 511 IPC.

3.The learned Chief Judicial Magistrate, Namakkal after following the procedure, framed necessary charges. Since the accused pleaded not guilty, the learned Chief Judicial Magistrate examined the witnesses P.W.1 to P.W.15 and marked the documents Exs.P1 to P26 and material objects M.O.1 to M.O.10 and placed the incriminating evidence before the Accused and the accused denied the same and considering the oral and documentary evidence, found the accused guilty of the offences under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act and 201 r/w. 511 IPC and sentenced as stated above.

4.Challenging the conviction and sentence passed by the Trial Court against the appellant/accused, the learned counsel appearing for the appellant raised the following points:

(i)The case of the prosecution is that the appellant herein has demanded Rs.200/- for making entry in the Death Register in respect of the death of the father of P.W.2, namely, Subburaya Udayar, who died on 23.12.1991 by means of the order of the Tahsildar, Rasipuram. Since, P.W.2 is not willing to pay the bribe, he has given a complaint and trap proceeding has been initiated. The learned counsel appearing for the appellant would submit that P.W.2, who is the defacto complainant has not support the case of the prosecution and that factum was not considered by the Trial Court.

(ii)He would further submit that complaint has been given at the instigation of P.W.8, who is the friend of P.W.2 because of enmity between the appellant/accused, who is the Village Administrative Officer and P.W.8. Previously Village Administrative Office was situated in the house of P.W.8's father-in-law and since this appellant has taken steps and shifted the village Administrative Office, so there was enmity. P.W.2 is acting on the instigation of P.W.8 and false complaint has been given.

(iii)He would further submit that the appellant has received Rs.200/- as kist amount and that has been proved by way of marking document and that has also been spoken by D.W.1. The Trial Court has failed to consider the evidence of D.W.1 and Ex.D.1 to Ex.D.3.

(iv)Since the first demand and second demand has not been proved, recovery alone is not sufficient base for conviction and that factum was not considered by the Trial Court. So the ingredients of Section 7 of Prevention of Corruption Act has not been proved.

(v)He would further submit that no statement under Rule 47 has been recorded. P.W.7, in his evidence, has stated that the about has been received as kist amount and the explanation given by the appellant was not considered by the appellant. Hence, he prayed for setting aside the order of conviction and sentence passed by the Trial Court.

(vi)He would also relied upon the various decisions of the Hon'ble Apex Court, which are as follows:

- (i)2010 (1) LW (Crl.) 737 (P.Meganatha vs. State of Tamil Nadu rep. By Inspector of Police, Vigilance and Anti Corruption Department, Chennai).
- (ii)2009 (2) SCC (Cri) 1 (C.M.Girish Babu vs. CBI, Cochin, High Court of Kerala)
- (iii)2004 SCC (Cri.) 1130 (Punjabrao vs. State of Maharashtra)

- (iv)1997 (1) Crimes 186 (SC) (Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra)
(v)1981 CC (cri.) 627 (Banshi Lal Yadav vs. State of Bihar)
(vi)1976 (1) SCC 727 (Sat Paul vs. Delhi Administration)

5. Resisting the same, the learned Government Advocate (Crl. Side) would submit that the appellant/accused has demanded Rs.200/- for making entry in the Death Register regarding the death of the father of P.W.2, namely, Subburaya Udayar, who died on 23.12.1991. P.W.2 filed a petition before the learned Judicial Magistrate, Rasipuram and obtained an order and then on 12.09.1994, he filed an application before the Tahsildar, Rasipuram. On 16.09.1994, an order has been passed by the Tahsildar to make entry in the Death Register regarding the death of the father of P.W.2 and the Trial Court has considered the same in proper perspective and came to the correct conclusion. Hence, he prayed for dismissal of the appeal.

6. Considered the rival submissions made on both sides and perused the typed set of papers.

7. P.W.1 is the Sanctioning Authority. The appellant is a public servant. P.W.1 is the competent authority to accord sanction and he issued Sanction Order/Ex.P.1. There is no dispute in respect of competency of P.W.1 and issuance of Sanction Order. Hence, the sanction is valid.

8. Now, the point to be decided is that since P.W.2, who is the defacto complainant turned hostile, whether it can be a ground for setting the conviction? It is true that as per the dictum of the Hon'ble Apex Court, merely because P.W.2 turned hostile, his evidence cannot be eschewed or discarded and the hostile witness can be considered on the basis of the corroboration made by other available witness. At this juncture, it is appropriate to consider the decision relied upon by the learned counsel appearing for the appellant reported in 1976 (1) SCC 727, wherein it is held as follows:

"24. Well then, was such corroboration of the testimony of the interested witnesses forthcoming in the present case? In this connection, Mr. Mahajan referred to two circumstances: (i) the detention of Ramesh and (ii) the conduct of the appellant in keeping mum to the charge that he had received a bribe. Both these circumstances were not of a determinative tendency. Both were

compatible with the innocence of the appellant We have already discussed the first, and found that instead of advancing the case for the prosecution, it lends assurance to the explanation of the appellant that Ramesh had been brought for interrogation as he was roaming there in suspicious circumstances.

25.As regards the reticence of the appellant on the query made by the Inspector, we do not think it necessary to burden this judgment with a discussion of the question whether this conduct amounts to a statement made to a Police Officer in the course of investigation and as such is hit by Section 162 of the CrPC. Suffice it to say that even on the assumption that it was admissible as conduct and *Sat Paul vs Delhi Administration* on 30 September, 1975 not as a 'statement' under Section 8, Evidence Act, its probative value in the circumstances of this case would be almost nil. The appellant explained that he did not protest and resist out of fear, that the Inspector might make matters worse for him, even for getting bail. It would not be unusual even for an honest Officer to be frightened out of wits on being suddenly accused of bribe-taking by a superior Officer.

26.Thus, these two circumstances do not lend any assurance to the testimony of the trap witnesses. Nor could such assurance be sought from the evidence rendered by Inspector Parasnath. True, that it has not been shown that he had any hostile animus against the appellant though such an allegation was made. Nor has it been shown that he had long acquaintance or friendship with Dal Chand and party. But we cannot lose sight of the stark fact that he was an Inspector of the Anti-Corruption Staff of Police. He was the architect of the trap and the head of the raiding party. Although the power conferred on him under the order, dated 21-3-1968, by the Administrator of the Union Territory of Delhi, did not extend to the investigation of an offence under Section 161, Penal Code, yet, with zeal outrunning discretion, he went ahead with the execution of the trap and the investigation. Being deeply concerned with the success of the case, he was also an interested witness. Not being an independent witness, his evidence could not furnish the kind of corroboration requisite in the circumstances of the case.

52.It was in the context of such a case, where, as a result of the cross-examination by the Public Prosecutor,

the prosecution witness concerned stood discredited altogether, that this Court in Jagir Singh v. State , with the aforesaid rule of caution which is not to be treated as a rule of law in mind, said that the evidence of such a witness is to be rejected en bloc.

53. In the light of the above principles, it will be seen that, in law, the part of the evidence of the Panch witnesses who were thoroughly cross-examined and contradicted with their inconsistent police statements by the Public Prosecutor, could be used or availed of by the prosecution to support its case. But as a matter of prudence, on the facts of the case, it would be hazardous to allow the prosecution to do so. These witnesses contradicted substantially their previous statements and as a result of the cross-examination, their credit was substantially, if not wholly, shaken. It was therefore, not proper for the courts below to pick out a sentence or two from their evidence and use the same to support the evidence of the trap witnesses.

54. Nor was the High Court competent to use the statements of these witnesses recorded by the police during investigation, for seeking assurance for the prosecution story. Such use of the police statements is not permissible. Under the Proviso to Section 162, Cr. P.C. such statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated in Section 145, Evidence Act, and for no other purpose. They cannot be used for the purpose of seeking corroboration or assurance for the testimony of the witness in court.

55. Thus the evidence of these interested witnesses of the trap remains unconfirmed and uncorroborated by any independent evidence. In the peculiar circumstances of the case, we think that it would be highly unsafe to convict the appellant on the basis of their testimony, particularly when P.Ws. 1, 7 and 8 are persons of bad antecedents and had a possible motive to see the accused removed permanently from the way of their immoral activity.

56. It is pertinent to mention here that the evidence of defence witnesses particularly that of D.Ws. 3 and 5, was not successfully impeached in cross-examination. The High Court has not touched their evidence at all. If the defence evidence were to be believed, at the material time, the appellant was in police uniform patrolling the

Railway platform and he was not wearing the pants from the pocket of which the tainted currency notes are alleged to have been recovered. According to the appellant these pants were hanging on a peg in his room. Therefore, the possibility of the tainted notes having been implanted by Dal Chand, who appears to us a person with wit more and scruples less than the ordinary, cannot be ruled out."

DEMAND AND ACCEPTANCE

9.It is true that the father of P.W.2 died on 23.12.1991 and he approached the appellant for making entry in 1994 Death Register. Since it was time barred, he was directed to move before the Magistrate and so, he filed an application and obtained an order. On that basis, P.W.11 has passed an order/Ex.P.14 directing the Village Administrative Officer to include the death of Subburaya Udayar in the Death Register of the year 1994. A copy has been received by him on 16.09.1994. The case of the accused is that he himself received both the copies marked to Village Administrative Officer and hand over to him. It is also appropriate to consider the evidence of P.W.6/Baskaran, Assistant and he has stated that he prepared three copies and he hand over the same to P.W.2 and for which, departmental proceeding has been initiated and that has not been disputed. But according to the learned counsel appearing for the appellant, the demand has not been proved.

10.It is also appropriate to consider the evidence of P.W.2, who was turned hostile. In his chief itself, he has stated that he has not paid the kist for three years and the appellant has demanded the kist amount. The appellant has given a receipt but he has not paid that amount. So, whenever P.W.2 went to the office of the appellant, he demanded that kist amount and that has been questioned by P.W.8. So, there was a quarrel between P.W.8 and the appellant and on that day, P.W.8 came out of the office of the appellant and gone to the Vigilance office and gave the complaint. So the evidence of P.W.2 shows that P.W.8 has instigated P.W.2 to give a complaint. Here, P.W.8, in his evidence, has fairly conceded that he was not aware whether Rs.200/- has been demanded that kist amount and whether he handed over the kist receipt. In his cross, he has stated that they placed the order dated 16.09.1994 on the Register and since the appellant has made a shouting, they got ashamed and then gone to the Vigilance office and given a complaint. So, in respect of first demand is concerned, there is no evidence. Even though P.W.8 has stated that the appellant/accused has demanded Rs.200/-, but, whereas in cross examination, he has stated that he was not aware that for

which, the appellant has demanded the amount. But, he fairly deposed that P.W.2 has told him that the Village Administrative Officer has demanded the kist amount. So, there is no evidence to show that the appellant has demanded bribe for making entry in the Death Register in respect of the death of the father of P.W.2.

11. In respect of the second demand concerned, P.W.2, in his evidence, he has stated that he has given three 50 rupees currency notes and that has been tears of. He further submits that the appellant asked him to receive the receipt but without receiving the receipt, P.W.2 left the place. In his cross examination, he fairly conceded that amount has been given only for three years kist amount due and at that time, Karuppanna Gounder, Naraikinaru and Rajendran, Village Administrative Officer was there. He further stated that P.W.8 alone instigated him to give a complaint. So, there is no evidence for the second demand. P.W.3 is a shadow witness. It is the well settled dictum of the Hon'ble Apex Court that shadow witness, who is a party to the trial proceeding is not an independent witness and their evidence needs corroboration. Even though P.W.3 has stated about the second demand, but whereas his evidence has not been corroborated. So, there is no evidence and the prosecution has not proved the second demand. The learned counsel appearing for the appellant would submit that mere acceptance is not sufficient and there must be evidence to show that the appellant must know that it is an illegal gratification. He would rely upon the decision reported in 1981 SCC (Cri.) 627, wherein it was held that acceptance of illegal gratification must be proved by the prosecution for raising the presumption. It is appropriate to incorporate paragraph No.5, which reads as follows:

"5. Before presumption can be raised, the burden is on the prosecution to prove that the accused has accepted or obtained, or has agreed to accept or attempted to obtain, for himself any gratification other than legal remuneration etc. If the accused when examined under Section 313 of the CrPC with reference to the circumstances appearing against him in evidence, only stated that currency notes were thrust in his pocket, that statement by itself without, anything more is not sufficient to satisfy the necessary ingredients of Section 4(1) that accused accepted or obtained or has agreed to accept or attempted to obtain, any gratification other than legal remuneration so as to be able to raise the presumption. Acceptance or obtaining, or agreeing, to accept or attempting to obtain is a voluntary act. In the statement of the accused, this

element of voluntary acceptance is missing. Therefore, the statement of the accused by itself in the facts and circumstances of this case and especially the language used cannot provide the necessary factual basis or fact situation which must exist before presumption can be raised. In fact accused denied having accepted bribe and stated that he was the victim of male violent act of Naushad in thrusting marked currency notes in his pocket. This statement will not show acceptance of illegal gratification and the High Court was in error in raising the presumption under Section 4."

12.The learned counsel appearing for the appellant also relied upon the decision reported in 1997 (1) Crimes 186 (SC), wherein it was held that unless the prosecution proved that money paid was not towards any lawful collection or legal remuneration, the Court cannot take recourse to presumption of law contemplated in Section 4(1) of the Prevention of Corruption Act. It is also appropriate to incorporate the relevant paragraph, which reads as follows:

"7.....In other words unless the prosecution proves that the money paid was not towards any lawful collection or legal remuneration the court cannot take recourse to the presumption of law contemplated in Section 4(1) of the Act, though the court is not precluded from drawing appropriate presumption of fact as envisaged in Section 114 of the Evidence Act at may stage."

13.For the same proposition, he relied upon the decision reported in 2010 (1) LW (Crl.) 737, wherein it was stated that since there is evidence to show that the accused made illegal gratification, it is not sufficient to pass conviction. It is appropriate to incorporate the relevant paragraph, which reads as follows:

"11.It is the admitted case that the accused received Rs.2,000/- from P.W.2 and kept it in his pocket. Under section 106 of the Indian Evidence Act, the burden is upon the accused to explain to the Court to its satisfaction, as to when, where and how the money was received by him from P.W.2. He has offered the explanation by way of statement, wherein he has stated that Rs.2,000/- was due to him as loan amount from P.W.2. This kind of explanation was not offered by him during the trap proceedings to the investigating officer/P.W.10. Therefore, it may even be argued that

the explanation now offered only during trial of the case is an after thought. But in this case, I do not think so. The reason is the evidence of P.W.3. Admittedly, P.W.3 was closely moving with P.W.2 at the time of the trap proceedings. It is in the evidence of P.W.2 that P.W.2 and the accused were sitting side by side and just in front of them, P.W.3 was sitting. P.W.3 was admittedly closely watching even the conversation between P.W.2 and the accused. In the chief examination, P.W.3 would say that the accused enquired P.W.2 as to whether he had brought money. Thus, in the chief examination of P.W.3, there is no indication that the accused made any demand for illegal gratification. Even in the evidence of P.W.2 also, in chief examination, he has stated that the accused asked him whether he had brought the "amount ". There also, there is no indication that the accused meant the illegal gratification. Now comes the vital part of the evidence of P.W.3. In cross-examination, to a specific question regarding the conversation between the accused and P.W.2, he has tacitly stated that the accused enquired him as to whether he had brought the loan amount which was due from P.W.2. The words "loan amount" need to be under scored. This destroys the entire case of the prosecution. But for the evidence of P.W.3, the mere explanation offered by the accused that it was the loan amount could have been even simply rejected stating that it is an afterthought. But here the explanation offered by the accused that whatever given by P.W.2 to him was the loan amount has been established by the evidence of P.W.3. Therefore, the prosecution's stand that what was received was an illegal gratification stands completely rebutted by the evidence of P.W.3. Curiously, P.W.3 has not been cross-examined with the permission of the Court by the prosecutor by treating him as hostile. This part of the evidence of P.W.3 wherein he has stated that the accused asked P.W.2 as to whether he had brought the loan amount has not been challenged by the prosecution. Thus the undisputed evidence of P.W.3 in this regard goes to clearly establish the defence of the accused and it completely rebuts the presumption against the accused. Thus the prosecution has failed to prove that the amount demanded by the accused and received by him at the time of trap proceedings is illegal gratification."

Considering the above citation and the evidence of P.W.2 and P.W.8, there is no evidence to show that the appellant/accused has received Rs.200/- as illegal gratification. So, the respondent is not entitled to invoke presumption under Section 20 of Prevention of Corruption Act.

RECOVERY AND EXPLANATION

14.The learned counsel appearing for the appellant would submit that recovery is not sufficient for conviction. To substantiate his argument, he relied upon the decision reported in 2009 (2) SCC (Cri.) 1, wherein it was held that recovery of tainted money itself is not enough, in absence of evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. It is appropriate to incorporate Paragraph No.18, which reads as follows:

"16.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."

15.P.W.2, who is the defacto complainant, himself has stated that the appellant/accused received and asked him to get the receipt for the same, which shows that the amount has been paid for kist. It is appropriate to consider Section 313 Cr.P.C. questioning, wherein he has stated that the amount has been paid by him for kist. To substantiate the same, they examined D.W.1 and Ex.D.1 to Ex.D.3. Ex.D.1 is the Fasali 1403 Thandal Account, Ex.D.2 is the receipt in the name of P.W.2 and Ex.D.3 is the 14C Register, which shows that the amount has been paid for kist. It is also appropriate to consider the explanation submitted by the appellant at the time of Section 313 Cr.p.C. questioning and he has given a written complaint and in that, he specifically stated so. But the Trial Court has not considered the explanation submitted by him. At this juncture, it is appropriate to consider the decision relied upon by the learned counsel appearing for the appellant reported in 2004 SCC (cri.) 1130, wherein it was held that if the explanation offered by him under Section 313 Cr.p.C. is found to be reasonable then it cannot be thrown away merely on the ground that he did not offer the said

explanation at the time when the amount was seized. It is appropriate to incorporate the relevant paragraph, which reads as follows:

"3.....It is too well settled that in a case where the accused offers an explanation for receipt of the alleged Punjabrao vs State Of Maharashtra on 14 February, 2001 amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability. It is undisputed that from 24th to 26th the Patwari was collecting loans in a collection campaign. It is, of course, true as observed by the High Court that when the Investigating Officer seized the amount from the Patwari-accused, he did not offer the explanation that it was in relation to a collection of loan, but that by itself would not be sufficient to throw away the explanation offered by the accused in his statement under Section 313 when such explanation could be held to be reasonable under the facts and circumstances of the case, as indicated by the learned Special Judge while acquitting the accused."

16.Considering the above said decisions along with the facts and circumstances of the case, I am of the view that the Trial Court ought to have consider the written statement filed along with Section 313 Cr.P.C. questioning and also the documents filed by him and the evidence of D.W.1, but the Trial Court has not considered the same. Therefore, the appellant herein has proved that the amount received by him is only for the kist land revenue. So, a plausible explanation has been given by the appellant and those aspect has not been considered by the Trial Court. As stated supra, there is no evidence for demanding of first demand and also second demand. The de-facto complainant has not support the case of the prosecution about the second demand and acceptance, except P.W.3, who is a trap witness and not an independent witness and it needs corroboration. But, there is no corroboration for P.W.3 evidence. Hence, the second demand and acceptance also has not been proved by the prosecution. Further, as per the decision of the Hon'ble Apex Court mere recovery is not sufficient base for conviction. Plausible explanation submitted by the appellant/accused has not been considered by the Trial Court. Considering all the above, I am of the view that the prosecution has miserably failed to prove that the accused is guilty

under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act. Hence, I am of the view that the conviction and sentence imposed under Section 7 of Prevention of Corruption Act fails and consequently, the conviction and sentence under Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act and 201 r/w. 511 IPC also fails. Therefore, the conviction and sentence imposed by the Trial Court against the appellant is hereby set aside.

17. In fine,

(a) The Criminal Appeal is allowed.

(b) The Judgment of conviction and sentence, dated 15.11.2008 made in C.C.No.4 of 2002 on the file of the learned Chief Judicial Magistrate, Namakkal is hereby set aside.

(c) The appellant is acquitted from the charges levelled against him under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act and 201 r/w. 511 IPC.

(d) The fine amount paid by the appellant shall be refunded to him.

(e) Bail bond, if any executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

cse

To

1. Inspector of Police,
Vigilance and Anti Corruption
Salem.
2. The Chief Judicial Magistrate,
Namakkal.
3. The Public Prosecutor
High Court, Madras.

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

1 CC to Mr.K.V.Sridharan, Advocate SR.No. 11342

1 CC to the Government Pleader, SR.No. 11687

Crl.A.No.820 of 2008

CNR (CO)
PSI (07.04.2015)



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