



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2015

CORAM:

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

Criminal Appeal Nos.147 and 148 of 2011

1. G.Jawahar
2. C.Viswanathan

... Appellants/Accused Nos.2 & 3
in CrI.A.No.147/2011

A.Irulandy

... Appellant/Accused No.1
in CrI.A.No.148/2011

Vs.

State represented by
the Deputy Superintendent of Police,
Vigilance and Anti corruption,
Virudhunagar,
Theni District in
Crime No.1 of 2007

... Respondent in both CrI.As./Complainant

Prayer: Criminal Appeals filed under Section 374 (2) of the Code of Criminal Procedure to call for the records relating to judgment dated 06.05.2011 in Special Case No.2 of 2008 on the file of Chief Judicial Magistrate, Theni and to set aside the conviction and sentence, allow the appeal by acquitting the appellants.

For Appellants : Mr.M.Venkataraman, Senior counsel
for s.Thirupathi, in crL.A.No.147/2011
For Appellants : Mr.M.Venkataraman, Senior counsel
for Mr.G.Murugesh Kumar in crL.A.No.148/2011
For Respondent : Mr.C.Ramesh
IN both the CrI.As Additional Public Prosecutor

C O M M O N J U D G M E N T

A2 and A3 are the appellants in CrI.A.(MD).No.147 of 2011 and A1 is the appellant in CrI.A.(MD).No.148 of 2011. Accused Nos.1 and 2 were charge sheeted for the commission of the offences under Sections 7 and 13 (2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 and A3, being the private individual, was charge sheeted for the commission of the offences under Sections 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 109 of I.P.C.

<https://hcservices.ecourts.gov.in/hcservices/>
2. The Special Court for Trial of Prevention of Corruption Act Cases - Cum - Chief Judicial Magistrate, Theni, vide impugned judgment dated 06.05.2011, has convicted A1 to A3 for the commission of the above said



offences and imposed the sentence, thus:

Accused	Conviction	Sentence
A1 & A2	U/s.7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988	To undergo 1 year rigorous imprisonment each and to pay a fine of Rs.500/- in default to undergo one month simple imprisonment.
A3	U/s. 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 109 of I.P.C.	To undergo 1 year rigorous Imprisonment and to pay a fine of Rs.500/- in default to undergo one month simple imprisonment.

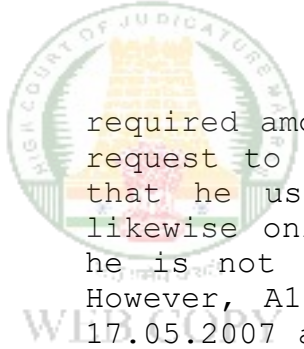
3. The trial Court ordered the sentence of imprisonment imposed on the appellants/A1 to A3 to run concurrently and also ordered set off under Section 428 of Cr.P.C.

4. All the accused, aggrieved by the conviction and sentence recorded by the trial Court, vide impugned judgment, have filed these appeals. The second appellant in CrI.A.(MD).No.147 of 2011 viz., A3 died on 09.12.2012 and the learned counsel appearing for him filed Death Certificate issued by Salem Corporation, bearing Registration No.2268 dated 14.12.2012. By means of a Memo vide USR No.320, the learned Additional Public Prosecutor, on instructions, would also submit that Accused No.3 is no more. In view of the same, the appeal preferred by him, is dismissed as abated.

5. The facts leading to the filing of these appeals, briefly narrated, are as follows:

5.1. Balakrishnan is the father of P.W.2 viz., Muthupandi and he is a resident of Door No.38/1, North Street, Surulipatti, Uthamapalayam Taluk, Theni District. A tin sheeted house belongs to his wife viz., Petchiammal, situated in survey No.288/5, Surulipatti, Kootar Road and to get an electricity service connection, he submitted an application dated 16.05.2007_ to the Tamil Nadu Electricity Board, Surulipatti and he has also paid a sum of Rs.1,600/- for that purpose. The receipt, application and other connected papers, were marked as Ex.P5 (series).

5.2. Father of P.W.2 along with his son (P.W.2) went to the office of Assistant Engineer, Tamil Nadu Electricity Board (TNEB), Surulipatti at 10.00 a.m. on 16.05.2007 and met accused No.1, who was the Assistant Engineer at the relevant point of time and requested him to expedite the electricity service connection and accused No.1 has demanded a sum of Rs.250/- for the said purpose, by way of illegal gratification and also certain amount for accused No.2 / first appellant in CrI.A.(MD).No.147 of 2011, who was the Foreman and in that event, the electricity service connection which he provided as per seniority, expeditiously. Father of P.W.2 told that A1 has demanded the said amount as bribe/illegal gratification and told him that since he has already remitted the



required amount for getting the electricity service connection, he made a request to give it. Accused No.1, in response to the same, has told him that he used to receive money to meet out expenses from others and likewise only he is asking for money. The father of P.W.2 told him that he is not having that much amount and asking him to reduce the same. However, A1 told him to bring a sum of Rs.250/- by tomorrow morning on 17.05.2007 and paid to him in his office. Thereafter, father of P.W.2 met accused No.2 / Foreman and made a request to him to expedite the electricity service connection and he told him that he will do so as per seniority and demanded a sum of Rs.150/-. Father of P.W.2 told him that he has already remitted necessary charges and it was not responded by A2 by saying that apart from the said amount, the father of P.W.2 has to pay a sum of Rs.150/- to meet out the said expenses and it should be paid to him on the next day on 17.05.2007 at morning hours. Father of P.W.2 left with no other option except to agree to the demand made by A1 and A2. Father of P.W.2 after coming back to the house told that though he has remitted the necessary charges as per the requirement, the demand in the form of bribe made by A1 and A2, was totally unjustified, and, therefore, decided to lodge a complaint against A1 and A2 to the Department of Vigilance of Anti-Corruption and accordingly, lodged a complaint in the Office of Vigilance and Anti-Corruption at Theni on 16.05.2007. P.W.2 has also attested the said complaint which is marked as Ex.P.2.

5.3. P.W.6, on receipt of Ex.P2 / complaint, has registered a case in Crime No.1 of 2007 under Section 7 of Prevention of Corruption Act, 1988 (PC Act) at about 17.30 hours on 16.05.2007 and taken further steps to lay a trap. P.W.6, for the purpose of laying trap, has requested the services of independent witnesses viz., Govindarajan (P.W.3) and Jeyachandran and they were also present in the office of Department of Vigilance and Anti Corruption (DV & AC), Theni and they were introduced to the father of P.W.2 viz., Balakrishnan. P.W.6 handed over Ex.P.2 - complaint to the said witnesses and asked them to read it and they in-turn asked the father of P.W.2 about the truth and genuineness of Ex.P2 and he answered in affirmative. P.W.6 asked father of P.W.2 as to whether he brought the bribe amount of Rs.250/- demanded by A1 and a sum of Rs.150/- demanded by A2, aggregate a sum of Rs.400/- and he said that he has brought the amount and handed over the same to the above said witnesses. One of the witnesses viz., Jeyachandran has counted the currency notes and there are 8 currency notes of 50 rupees denomination and the numbers found in the currency notes were also noted. A Head constable, Sivagiri, as per the instructions of the Deputy Superintendent of Police, brought a glass tumbler and prepared a Sodium Carbonate Solution. One of the witnesses viz., Jeyachandran was asked to dip his fingers in both hands and there was no re-action. Subsequently, Head Constable has applied phenolphthalein powder on both sides of the currency notes produced by P.W.2 and asked the witness viz, Jeyachandran to count the currency notes. Thereafter, asked him to dip his fingers in the said Sodium Carbonate Solution and he did so and immediately, the solution turned pink in colour.

5.4. The Deputy Superintendent of Police, who was present has told the witnesses about the importance of the said test and asked Jeyachandran to hand over the said currency to father of P.W.2 viz., Balakrishnan and he was instructed to hand over a sum of Rs.250/- to A1 and a sum of Rs.150/- to A2. After putting it, he was asked to come out



of the Office and to give a pre-arranged signal. P.W.3 was also asked to accompany the father of P.W.2 while he makes a payment to A1 and A2. The above said events which took place at the office of the Department of Vigilance and Anti-Corruption, Theni, were reduced into writing and was marked as Ex.P3.

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5.5. Accordingly, the original complainant viz., Balakrishnan, father of P.W.2 died prior to the commencement of the trial. Therefore, he was not examined as a witness and his son viz., Muthupandi was examined as P.W.2 and he turned hostile.

5.6. P.W.3, who is a shadow witness, accompanied with the father of P.W.2, has deposed about the pre-trap proceedings (Ex.P3) and he further stated that as per the instructions of P.W.6, they proceeded to the office of the accused and reached the Office at about 10.40 a.m. on 17.05.2007 and father of P.W.2 met A1 and asked about the electricity service connection and A1 told him that after the supply of meter, the connection will be given and asked him whether he brought the money demanded by him. Father of P.W.2 took the currency notes from his pocket, counted 5 currency notes of 50 rupees denomination and handed over the same to A1. Father of P.W.2 approached A2 and asked about the electricity service connection and A2 has also replied on same lines as that of A1 whether he brought the money as demanded by him. Immediately, father of P.W.2, who took three currency notes of 50 rupees, handed over to A2 and A2 in-turn asked to give it to A3 and A3 received it and put inside in his shirt pocket. Father of P.W.2 as well as P.W.3 came outside and he gave a pre-arranged signal and immediately, the police party lead by P.W.7 went inside the office. Thereafter, Phenolphthalein test was conducted on the hands of accused Nos.1 to 3 and seizure mahazar was also prepared under Ex.P4 signed by another witness by viz., Jeyachandran, P.W.3, and P.W.6. After trap was successful, section was altered by including Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 and P.W.7. After completion of investigation, P.W.7 has filed a final report to the jurisdictional Special Court and the said Court took it on file in Special Case No.2 of 2008 and issued summons to all the accused and on their appearance, furnished with the copies of documents under Section 207 of Cr.P.C., and when questioned, all the accused pleaded not guilty to the charges framed against them.

5.7 The prosecution in order to sustain their case, examined P.Ws.1 to 7 and marked Exs.P1 to P13 and also marked M.Os.1 to 12.

5.8. All the accused were questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against them in the evidence tendered by the prosecution and they denied it as false and they had also filed their written statement denying their complicity and also stated they were compelled to handle the currency notes and that is why, the phenolphthalein test conducted on them proved positively.

5.9. The accused did not examine any witnesses and mark any documents.

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5.10. The trial Court, on consideration of the oral and documentary evidence, has convicted and sentenced all the accused as stated above and hence, these appeals.

5.11. As already stated above, pendency of these appeals, the second appellant/A3 in C.C.No.147 of 2011 has died on 09.12.2012 and hence, the appeal as against him is dismissed as abated.

6. Mr.M.Venkataraman, learned Senior counsel appearing for the appellants made the following submissions:

6.1. Father of P.W.2 viz., Balakrishnan, to whom the initial demand was made on 16.05.2007, is no more and his son, who was examined as P.W.2, turned hostile and therefore, the prosecution has miserably failed to prove the demand and acceptance on the part of accused Nos.1 and 2.

6.2. Since P.W.2, the son of original complainant has turned hostile, except the testimony of P.W.3, coupled with Ex.P4 seizure mahazar, no materials have been produced by the prosecution to sustain the case of demand and acceptance on the part of the accused Nos.1 and 2.

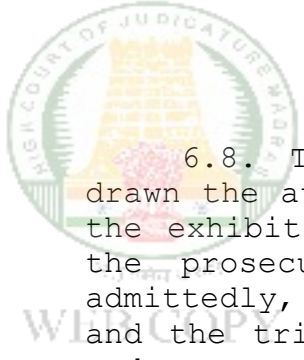
6.3. Even as per the version of the prosecution, no recovery of tainted money was effected / seized from A1 and it was recovered about 50 feet away from the seat of A1 on the public street below a dustbin and though the phenolphthalein test conducted on the hands of A1 turned positively, A-1 has given a probable explanation by stating that he was beaten and compelled to handle the money and this has also been specifically stated in his written statement filed by him while he was questioned with regard to the incriminating circumstances put to him under Section 313(1) (b) of Cr.P.C.

6.4. According to P.W.3, the distance between the seat of A1 and the recovery of bribe amount, was 30 feet and according to P.W.7, it was a distance of 50 feet and admittedly, the bribe amount was handed over at about 11.00 a.m. on 17.05.2007 and within 5 minutes, the trap party went inside and there is only one way in and one out, at the place where the tainted money was recovered. The prosecution has miserably failed to prove as to how the money which was handed over to A1 by the father of P.W.2 at about 11.00 a.m. on 17.05.2007, was found nearly 50 feet from the seat, that too in a public street below the dustbin.

6.5. It is not the case of the prosecution that A1 and A2 by demanding and accepting the illegal gratification made a promise that the electricity connection will be given out of turn and even as per Ex.P2 - complaint coupled with testimonies of P.W.3, the fact remains that the electricity connection will be given in seriatim and expeditiously and also drawn the attention of this Court to Ex.P5 series, wherein the application itself was given on 17.05.2007 and on the same date, A1 has registered it and hence, there is no necessity or occasion for A1 and A2 to demand illegal gratification.

6.6. There are very many infirmities and inconsistencies in the oral testimony of P.W.3 and the evidence of P.W.6, Trap Laying Officer was also disclosed that he has not conducted the investigation in a fair and proper manner and his only aim was to implicate A1 and A2.

6.7. The order insofar as the sanction under Ex.P1 is concerned, P.W.1, the sanctioning authority has not duly applied his mind with the materials placed before him and in a routine and mechanical manner has accorded sanction and it has also vitiated the case of the prosecution.



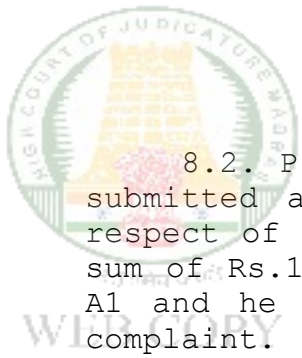
6.8. The learned Senior counsel appearing for the appellant has drawn the attention of this Court to the testimonies of the witnesses and the exhibits marked on behalf of the prosecution and would contend that the prosecution has miserably failed to probablise their case and admittedly, A1 has duly followed the procedure and formalities prescribed and the trial Court has overlooked the same and erroneously convicted and sentenced the accused and hence, seeks for setting aside the conviction recorded by the trial Court and for their acquittal.

7. Per contra, Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the State would vehemently contend that though the son of the original complainant P.W.2 turned hostile, the demand and acceptance has been amply proved. P.W.3 - shadow witness and the phenolphthalein test conducted on all the accused had turned positive and therefore, the presumption has been cast upon them to explain under what circumstances they came in the possession of the tainted money and they have miserably failed to offer any probablise explanation and thereby failed to dislodge the burden cast upon them.

7.1. It is the further submission of the learned Additional Public Prosecutor that no doubt even as per Ex.P2, A1 promised that the electricity connection will be given in seriatim and to process the application expeditiously only, both the accused made the demand and accepted the bribe amount and thus, the prosecution has amply proved the ingredients of Sections 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 and the trial Court on an exhaustive consideration of oral and documentary evidence, has rightly recorded conviction and sentence of the accused and hence, prayed for dismissal of this appeal.

8. This Court carefully considered the submissions made by the learned Senior counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the oral and documentary evidences and the original record.

8.1. A perusal of Ex.P2 - complaint given by father of P.W.2 viz., Thiru Balakrishnan (died) would disclose that on 15.05.2007, he submitted an application to get electricity service connection in respect of tin sheeted house owned by his wife and also obtained a receipt as evidenced under Ex.P5 (series). According to him, he along with his son P.W.2 went to meet A1 and A2 in their office at about 10.00 a.m. on 16.05.2007, wherein they made the demand for expediting the electricity connection as per seniority and though he insisted them to reduce the bribe amount, they were not inclined to do so having felt that the demand of illegal gratification is totally unjustified, has decided to lodge a complaint. Accordingly, lodged a complainant under Ex.P2 to the Office of Vigilance and Anti-Corruption at Theni and P.W.6 on receipt of the same, has registered the F.I.R. marked as Ex.P12 under Section 7 of the Prevention of Corruption Act and proceeded with the investigation and laid the trap and P.W.7 on completion of investigation has filed final report which was taken on file and after trial, all the accused came to be convicted. Father of the original complainant viz., Balakrishnan before commencement of the trial has died and hence, his son was examined as P.W.2.



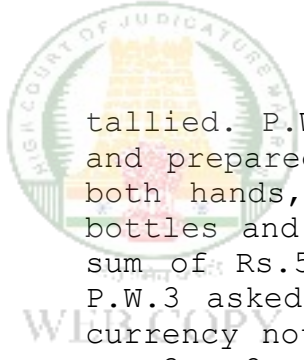
8.2. P.W.2, in the chief examination, has stated that his father has submitted an application for getting electricity service connection in respect of the tin sheeted house owned by his mother and has deposited a sum of Rs.1600/- and on the next day on 17.05.2007 told him that he met A1 and he would like to lodge a complaint and asking him to lodge a complaint. It is further stated by P.W.2 that his father also told him that A1 demanded a sum of Rs.250/- and A2 demanded a sum of Rs.150/- and a complaint was already prepared and once again he has written the same and he has also signed it as a witness and his father also signed it and it was marked as Ex.P2. At this juncture, the prosecution requested the trial Court to treat him as hostile witness and accordingly, the trial Court has declared him as hostile witness and the prosecution has permitted to cross examine P.W.2. In the cross examination, P.W.2 denied that during the course of his investigation, he did not state that all the accused demanded money and deposing falsely.

8.3. In the cross examination, P.W.2 has deposed that the complaint was written by his father in his house and his father has already prepared the complaint and asking him to write the same and accordingly, he has written the complaint and admitted his signature.

8.4. The oral testimony of P.W.2 would reveal that his father told him that A1 and A2 has demanded a sum of Rs.250/- and Rs.150/- and in the considered opinion of the Court that it can be treated only as a hearsay evidence and moreover, P.W.2 did not support the case of the prosecution and he was treated as hostile and he has specifically denied the suggestion that during the investigation by the police, he has told that all the accused demanded money.

8.5. P.W.3 is the shadow witness and in his chief examination, he has spoken about the pre-trap proceedings under Ex.P3 mahazar. He would further depose that as per the instructions given by P.W.7, he accompanied the father of P.W.2 and entered the office and met A1 and father of P.W.2 asking about the service connection and he told him that after supply of meter, the connection will be given and asking whether he brought the bribe amount and accordingly, P.W.1 took 5 currency notes of 50 rupees and handed over the same to A1. Subsequently, father of P.W.2 approached A2 and asked about the electricity service connection and A2 has also replied on same lines as that of A1 whether he brought the money as demanded by him. Immediately, father of P.W.2, who took 3 currency notes of 50 rupees and handed over to A2 and A2 in-turn asked to give it to A3 and A3 received it and after paying them, both of them came out and father of P.W.2 gave a pre-arranged signal and immediately, the police party led by P.W.6 went inside the office. P.W.6 introduced himself to A1, A1 become restless and P.W.6 has also introduced P.W.3.

8.6. Thereafter, the Sodium Carbonate Solution was prepared and he was asked to dip and both hands turned positive and the solutions were kept in two bottles and sealed. Thereafter, P.W.6 asked about the bribe amount paid by P.W.2 to him and he took them to a nearby house and took the bribe amount, which was kept below the wooden basket (dustbin) and handed over the same and the said question was objected to by the learned counsel for the accused before the trial Court. The numbers in the currency notes were verified under Ex.P3 pre-trap_mahazar and it found



tallied. P.W.6 along with police party and P.W.3, went to the room of A2 and prepared sodium Carbonate solution and asked A2 and A3 to dip their both hands, which also turned positive and the solutions were kept in bottles and sealed and A2 was asked about the bribe amount and A2 took a sum of Rs.50/- kept inside the shirt pocket and handed over the same. P.W.3 asked A2 about the bribe amount and he handed over two 50 rupees currency notes and serial numbers in the currency notes are tallied with Ex.P3. A2 and A3 were also subjected to phenolphthalein test and turned positive and it was reduced into writing in the form of mahazar Ex.P4.

8.7. In the cross-examination, P.W.3 would admit that in Ex.P2 - complaint itself it has been stated the electricity connection will be given as per seniority and in spite of that he has not developed any doubt.

8.8. P.W.3 further deposed about the topography of the office of A1 and A2 and would state that from the seat of A1, one has to reach the main entrance, by crossing many seats of the officials and from his seat the main entrance cannot be seen and also from the seat of A2.

8.9. It is also deposed by P.W.3 that P.W.6 did not examine the house owner, wherein the currency note was recovered below the wooden basket and the said house is situated at 30 feet away from the seat of A1 and to go there, one has to cross the main entrance and enter the room and he would further state that in Ex.P4 - seizure mahazar, it has been specifically stated that a sum of Rs.250/- paid for bribe to A1 and that A1 was in a disturbed state of mind.

8.10. P.W.4 also deposed that the statement given by A1 was not reduced into writing and even in Ex.P4, it has not been stated that when he taken out to secure the money concealed by him and that the wooden basket (dustbin) has not been recovered and in Ex.P.4 it has not been recorded, that accused have given their statement and in Exs.P2 to P9, the signatures of the accused have not been found. P.W.3 denied the suggestion that only on the compulsion extracted by the police, A1 took them to the house of Mahendran and beneath the wooden basket took the money and hand over the same.

8.11. In the cross examination done on behalf of the accused No.2, P.W.3 would depose that he along with the father of P.W.2 went inside the office and it was watched by the police party led by P.W.6 and made a crucial admission that A1 without being watched by the police party led by P.W.6, cannot go outside. In the cross examination done on behalf of A3, P.W.3 would admit that A3 received a sum of Rs.150/- towards the wiring done in the house of the wife of the complainant.

8.12. P.W.4 Commercial Inspector has spoken about the procedure, in the cross examination, would depose that the distance between the seat of A1 and main entrance is about 25 feet and 11 persons are employed in that and he would further depose that the electricity connection can be only depends upon the stock available and 30 applications were pending at the relevant point of time and as on date i.e. 15.05.2007 only 9 connections were given and 21 connections yet to be given and out of turn connection cannot be given.

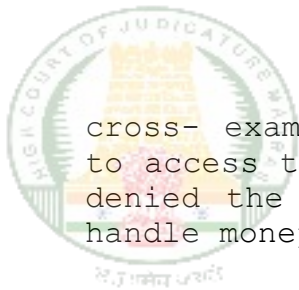


8.13. P.W.4 further deposed that on 15.05.2007, the father of P.W.2 submitted an application and he immediately demanded the service connection and also had wordy altercation and A1 and A2 told that only on the supply of meter, the electricity connection shall be given and father of P.W.2 has also threatened to do something against them. P.W.4 further deposed that A3 told him that father of P.W.2 asked him to come to the office of A1 and A2 for payment of Rs.150/- due and payable to him for wiring the premises.

8.14. P.W.6 who is the Trap Laying Officer has spoken about the pre-trap proceedings. In the chief examination, he would depose that after preparing Ex.P3 pre-trap proceedings advice was given to P.W.2 to pay the bribe amount and along with him, P.W.3 also accompanied and accordingly, they went to the office of A1 and reached the office at about 10.40 a.m. and halted their vehicle in front of Meena tea stall and they are waiting for the signal to be given by father of P.W.2 and father of P.W.2 as well as P.W.3 went inside the office at about 10.50 a.m. on 17.05.2007 and at around 11.00 a.m. came out and father of P.W.2 has given a pre-arranged signal and immediately police party led by P.W.6 along with another witness viz., Jeyachandran went inside and reached the seat of A1 at 11.05 a.m. and he was identified by the father of P.W.2 as well as by P.W.3. Thereafter, he prepared the Sodium Carbonate Solution and asked A1 to dip his fingers in both hands and the test turned positive and asked him about the money received by him and he told him that if he taken out, he would hand over the money and accordingly, they went out and reached the Paravu Kaval Street and in front of the office, the wooden basket/dustbin was kept and below it, he took the tainted currency notes and it was checked by P.W.3 under Ex.P3 mahazar and currency notes found tallied. Subsequently, the police party proceeded to the seat of A2 and both A2 and A3 were identified and once again phenolphthalein test was conducted and turn positive. P.W.6 questioned A3 about the bribe amount, he took Rs.50/- from his shirt pocket and A2 also did the same.

8.15. In the cross-examination, P.W.4 would depose that as per Ex.P2 - complaint, the electricity connection would be given as per seniority and both the accused had told father of P.W.2 that electricity connection would be given only as per seniority. P.W.6 would further depose in the cross-examination that on seeing Ex.P2, he developed suspicion insofar as the distance between the seat of A1 and the place in which the tainted money was recovered. P.W.3 would depose that it was about 50 feet and only one access to the said place from the office of A1. Later on, he would say that the distance is about 30 feet from the office of A1 to the house wherein the wooden basket was found. One Maheswaran is the owner of that house and nearby shop owned by Balaji is also situated and he did not examine Balaji as well as Maheswaran. P.W.6 would admit that before the police party entering the office of A1, he did not verify whether A1 has come out and he also did not verify the pendency of the application relating to the service connection to be given and also became aware on account of non-supply of electric meters, there was a delay in giving electricity connection and that the place in which the money was recovered is not within the office premises of A1.

8.16. P.W.6 denied the suggestion that A1 was compelled to handle the money and that is why, the phenolphthalein test was proved. In the



cross-examination done on behalf of A2 and A3, P.W.6 would depose that to access the seats of A1 and A2 only one way is available and once again denied the suggestion that both A2 and A3 were beaten and compelled to handle money.

8.17. It was also submitted by P.W.3 that if sufficient number of meters are available, electricity service connection can be given.

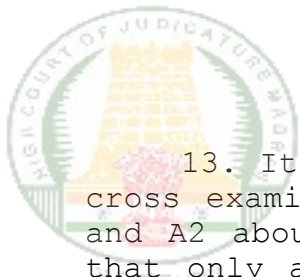
8.18. P.W.7, the Investigating Officer, in the chief examination, would state that according to P.W.2, his father viz., Balakrishnan was an illiterate and he knows only to put the signature. In the cross-examination, P.W.7 would admit that he became aware that the money was not recovered from the person of A1 and also inside his office and it was recovered near the house and the said house belongs to one Maheswaran and he did not examine for the reason because the money was not recovered inside his house. He would further admit that he did not examine the nearby shop owners for the reasons that they pleaded ignorance.

9. All the accused had filed their individual written statement under Section 313(1)(b) of Cr.P.C. wherein that took a stand that it has been made clear that the electricity service connection only subject to the availability of stock and all of them were compelled to handle the money and they were also put to physical harassment.

10. The testimonies of above said witnesses coupled with the exhibits marked on behalf of the prosecution, in the considered opinion of the Court, failed to prove the initial demand on the part of A1 and A2 and unfortunately, for the prosecution, the original complainant viz., Balakrishnan is no more as he died prior to the commencement of the trial and his son, who said to have prepared Ex.P2 complaint has also turned hostile and P.W.2, though in the chief examination, would state that he has re-presented the same thing which was found in the complaint handed over to him by his father, in the cross examination, he did not state anything in that regard to the police. Even in the cross examination, nothing useful was elicited in favour of the prosecution.

11. It is the submission of the learned Additional Public Prosecutor that the father of P.W.2 along with P.W.3 met A1 and A2 on 17.05.2007 in the morning hours, the demand was once again reiterated and accordingly, the bribe amount was paid.

12. It is pertinent point out at this juncture that the alleged demand and acceptance of bribe money by A1 and A2, even as per the version of the prosecution was not on account of the fact that the electricity service connection will be given out of turn. The testimonies of P.Ws.3 and 6 coupled with Ex.P2 would disclose the fact that what was promised was expeditious service connection as per seniority subject to the availability of meters. P.W.4 - the Commercial Assistant, who was spoken about the procedure, the cross examination has categorically deposed that it depends upon the stock availability in respect of meters alone, electricity connection will be given and at the relevant point of time, 30 applications were pending and on 15.05.2007, the date on which, the father of P.W.2 submitted his application, 21 applications are pending for effecting electricity service connection and out of turn the electricity connection cannot be given.



13. It is very pertinent to point out at this juncture that P.W.4 in cross examination has specifically stated that father of P.W.2 asked A1 and A2 about the electricity service connection and A1 and A2 told him that only after supply of meter, it can be given and infuriated by the same, the father of P.W.2 has also threatened them that he will do some thing against them and he has also admitted that for paying necessary charge for wiring only the father of P.W.2 come to the office of A1.

14. In this regard, the defence version projected by A1 and A2 is also probable for the reason that even as per the version of the prosecution, A1 and A2 did not promise anything (i.e.,) out of turn or promise to do some thing against law and P.W.6, the trap laying officer has also admitted in his cross-examination that on seeing the complaint under Ex.P2, he has also developed suspicion as to how the demand of bribe was made. Unfortunately, P.W.6 did not take any further steps to verify the same and proceeded further to lay the trap.

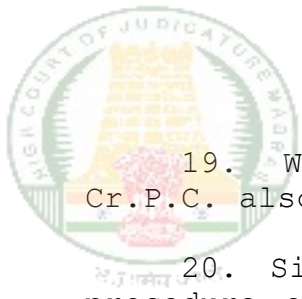
15. It is the vehement submission of the learned Additional Public Prosecutor, the trap laid on 17.05.2007 in the morning hours also proved successful and the phenolphthalein test proved positive as evidenced from the testimony of P.W.3 coupled with Ex.P.4 seizure mahazar.

16. Insofar as A1 is concerned, admittedly, the money was not recovered from him and it was recovered below a wooden basket (dustbin) out side the office of A1 near the house of one Maheswaran.

17. As already pointed out in the earlier paragraph, that the distance between the seat of A1 and the place in which the tainted money was recovered is 30 to 50 feet as per the testimonies of P.Ws.3 and 5 and admittedly, there was only one access to the place and it is also admitted that as and when A1 comes out of the office without being notice by a trap party led by P.W.6 he cannot do anything.

18. It is to be noted at this juncture that the money said to have been paid at 11.00 a.m. on 17.05.2007 and within 5 minutes trap party reached the place in which A1 was seated and it is not made known how within a span of 5 minutes, A1 received the money to come out of his office and crossed the street and put the money below the wooden basket, which ultimately came to be recovered. The prosecution has miserably failed for any plausible, tenable and acceptable reason as to the said fact. Insofar as the recovery of money from A2 and A3 is concerned, P.W.4, the EB Official has deposed that father of P.W.2 viz., Balakrishnan asked him to come to the office of A2 to pay a sum of Rs.150/- for the work being done by them. It is not in serious dispute that the wiring in respect of the house of wife of the complainant and mother of P.W.2 was done by A3 and he has also subsequently followed the application for getting the electricity service connection and therefore, the payment of Rs.150/- has probablise the defence insofar as A2 is concerned. It is also the version of the prosecution that the electricity service connection will be expedited, subject to the availability of the meter and it is also in consonance _with that of the defence projected by

A1



19. Written statement filed by A2 and A3 under Section 313 1(b) of Cr.P.C. also read that they were compelled to handle the money.

20. Since A1 and A2 have performed duty in accordance with the procedure established, it is the burden is on the prosecution to prove that they had demanded and accepted illegal gratification for doing some thing against law and procedure and in the considered opinion of the Court the prosecution was failed to prove the same.

21. It is a well settled position of law as laid down and followed in a catena of decisions rendered by the Honourable Supreme Court as well as by this Court that

"Mere recovery of tainted money without there being any demand and acceptance, does not prove the guilty of the appellant."

22. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any and presumption can be drawn only at the instance of preponderance of probabilities and not on the probabilities of preponderance and beyond all reasonable doubt. However, before the accused is called upon, the instant case must be established by the prosecution as to how the amount is found.

23. In the considered opinion of the Court, the prosecution has failed to establish the demand on the part of the appellants/A1 and A2. In the decision reported in **B.Jayaraj v. State of A.P.** reported in **2014 (2) MWN (Cr.) 376 (SC)**, the facts of the case would disclose that when the complainant disowned what he has stated in the complaint and his statement before the Investigating officer, the Honourable Supreme Court found that in the absence of any demand, mere acceptance of the tainted money cannot establish the case of the prosecution and thereby acquitted the accused. In the considered opinion of the Court, the said decision is squarely applicable to the facts of this case.

24. In the light of the above said infirmities pointed out above, this Court is of the view that the prosecution has failed to probablise its case and not proved the case beyond any reasonable doubt. The case projected by it, bristles with many infirmities and is also improbable.

25. In the result, these Criminal Appeals are allowed and the conviction and sentence imposed against the appellant/A1 and A2 vide impugned judgment dated 06.05.2011 in Special case No.2 of 2008 on the file of Chief Judicial Magistrate, Theni is set aside and the appellants are acquitted of the charges.

26. The bail bonds stand terminated. Fine amount if any paid by the appellants/accused 1 and 2, shall be refunded to them.

Sd/-

Assistant Registrar(AE)

/True copy/



1. The Assistant Sessions Judge Cum Chief Judicial Magistrate, Theni.

2. The Deputy Superintendent of Police,
Vigilance and Anti corruption,
Virudhunagar,
Theni District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Section Officer,
Criminal Section, Madurai Bench of Madras High Court, Madurai.

+1cc to MR.S.THIRUPATHI, ADVOCATE IN SR NO. 11026

+1cc to MR.G.MURUGASHKUMAR, ADVOCATE IN SR NO. 11025

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05.03.2015

RG.23.03.2015 13P.7C./