Bail Slip:
The Petitioner/Accused viz, D.Rajasekar, S/o.R.Dorairaj, Male 43 years was directed to be released on bail as per order of this court dated 6.3.2014 made in MP.No.1/2014 in Crl.A.No.109/2014.

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 24.5.2017

CORAM

THE HON'BLE JUSTICE T. MATHIVANAN

Criminal Appeal No. 109/2014

D. Rajasekar
S/o. R. Dorairaj
No. 50, D4 Block,
Kendriya Vihar II, Paruthipattu,
Chennai 600 071. … Appellant

Vs.

The State Represented by
The Additional Superintendent of Police,
CBI / ACB/ Chennai. … Respondent

Prayer: This Criminal Appeal is filed to set aside the conviction and sentence dated 27.2.2014 recorded against the Appellant in C.C. No. 25/2011 on the file of the Ld. XII Additional Special Judge for CBI cases, Chennai.

For Appellant : Mr.V.Krishnamoorthy ,

For Respondent: Mr.K.Srinivasan, SPL.P.P. for CBI Cases.

JUDGEMENT

1. This Memorandum of Criminal Appeal has been directed against the conviction and sentence dt.27.2.2014 recorded against the Appellant in C.C. No. 25/ 2011 on the file of the Ld. XII Additional Special Judge for CBI cases, Chennai convicting him under Sections 7, 13(2) r/w. 13 (1) (d) of Prevention of Corruption Act and sentencing him to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs. 5000/- in default to suffer simple imprisonment for a further period of 3 months under section 7 and to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs. 5000/- in default to suffer simple imprisonment for a further period of three months under Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988. The

sentences were directed to run consecutively. The total fine amount of Rs. 10,000/- was paid on receipt.

2. The Appellant had been facing the charges under Sections 7 and 13(2) r/w. 13 (1) (d) of Prevention of Corruption Act, 1988, for which he was put on trial. The prosecution in order to substantiate their case had totally examined 11 witnesses on their part and during the course of their examination Exs. P1 to P24 and MO's 1 to 5 (series) were marked.

3. The Learned Trial Judge on appreciation of the evidences both oral and documentary had to found that the prosecuting agency had brought home the guilt of the Appellant beyond all reasonable doubts and therefore he had found the appellant guilty for the above said offences, convicted and sentenced as afore stated.

4. Challenging the legality of the conviction and sentence recorded against him the Appellant being the sole accused in the above said case stand before this court with this appeal.

5. Heard Mr. V. Krishnamurthy, Learned Counsel appearing for the Appellant and Mr. K. Srinivasan, Learned Special Public Prosecutor for CBI Cases.

6. The gravamen of the prosecution case is this:-

The Appellant, Mr. D. Rajasekar being a public servant, during the period from 17.6.2010 to 27.7.2010, was functioning as the Regional Officer of Central Board of Film Certification (CBFC), Government of India, Ministry of Information & Broadcasting at Chennai.

7. PW-2 Mr. P. Govindaraju was the Executive Producer in S-3 films Cinema Company at Saligramam for the film 'KADHAL SOLLA VANDHEN'. He had been working in this film company from 2009 onwards. After the completion of the film, it was prepared to be released at Gemini Colour Lab.

8. That on 24.7.2010 the producer of the said film had executed a Power of Attorney deed in his favour for the purpose of approaching and get the film sensored at Sensor Board Office located at 5th floor of Sastri Bhavan, Chennai.

9. That on 26.7.2010 at about 3 pm PW-2 Mr. P. Govindaraju had been to Sensor Board Office. He was accompanied by PW-8 Mr. S. Subbiah who was the script director of the said film. While so, PW-10 Mrs. Geetha was present in the reception. PW-2 had approached and asked her that he wanted to meet the Regional Officer to view their film for which PW-10 had replied that the Regional Officer would not come today and asked them to come tomorrow. Therefore the requisite application was filled up by PW-8 Subbiah and put

next day's date as 27.7.2010 and presented to PW-10 along with two cheques for the value of Rs. 10,000/- & Rs.12,000/- respectively.

10. On the next day i.e. 27.7.2010 at about 10.30 a.m, PW-2 & PW-8 came to the Sensor Board Office and enquired with PW-10 Geetha as to whether the Regional Officer was present or not for which she had replied that he would be coming within a short-while. When they were waiting in the reception, at about 10.50 a.m., the Appellant Mr. D. Rajasekar had made his entry to the office. PW-2 had presented a slip containing his name and other details (Ex. P2). PW-10 went inside with the slip and after a short while she came back and told PW-2 that he was called inside .

11. Thereafter PW-2 went inside the cabin of the Appellant and presented the application (Ex. P3) for sensoring the film. The annexures of the said Application were Application for payment of cess letter from Tamilnadu Producers Council, Film Publicity Clearance Certificate, Power of Attorney, Form-I (2 copies), Final No Objection Certificate from Animal Welfare Board of India dt. 29.4.2010,S—3, Film Particulars and Synopsys and Certificate from Gemini Colour Lab (Ex.P-4 series containing 20 sheets). The receipts (Ex. P5 series) were issued for having received the application and other papers. Since PW-2's name was omitted to be mentioned in Ex.P2, the Appellant himself had written his name as Govindaraju in English.

12. Subsequently the Appellant had enquired about the producer of the film. For which PW2 had replied that since he was engaged in post production work he was not able to come. In order to issue Film Certification quickly the Appellant had demanded a sum of Rs. 10,000/- The Appellant had also told him that even if the amount was paid on that day, the Film Certification would be given on the next day.

13. Since he was not willing to pay the bribe amount, he had decided to make a complaint before the CBI. Accordingly at about 11.30 a.m. on the same day he had lodged a complaint before the Superintendent of Police Mr. Eswara Moorthy. After receiving the complaint (Ex. P6) he had called PW-4 Mr. K. Madhusudhanan, Inspector of Police and entrusted the written complaint with him. PW-4 after going through the complaint had asked PW-2 as to whether he had brought the amount to be paid to the Appellant. For which PW-2 had replied that he would arrange the amount of Rs. 10,000/- in the evening. Accordingly he had telephoned to his film company and asked them to send the money through an office boy.

14. At about 1.30 p.m. their office boy had brought the amount. At about 1.45 p.m. he had been to CBI office and handed the amount over to PW-4 Inspector of Police in the denomination of Ten "1000" rupees notes. The serial number

of the currencies were noted down. PW-4 had therefore reported the same to SP / CBI / ACB/ Chennai and he in turn had directed him to lay a trap and asked him to take the assistance of other police inspectors. Subsequently he had dispatched the complaint (ex. P6) along with the FIR (Ex.P16) to the Learned Principal Special Court for CBI Cases, Chennai. He had arranged two independent witnesses viz. PW3 Mr. V.R. Venkateshwaran and another witness by name Mr. . Sugumaran through the Head Quarters ACB/ Chennai. They were apprised about the details of the complaint. PW-4 had also verified the complaint through his sources and found that the complaint was genuine and he had also ascertained that the Appellant Mr. D. Rajasekar was not enjoying good reputation. Then a case in RC. 30/2010 under section 7 of PC Act was registered at 1.15 p.m. against the Appellant Rajasekar and entrusted to PW-4 Mr. K. Madhusudhanan for investigation. The First Information Report was marked as Ex.P16.

15. He had introduced the Complainant (PW2) Mr. Govindaraju to the team members and informed them that PW2 had preferred a complainat against the appellant Rajasekar, Regional Officer CBFC, Sastri Bhavan, Chennai.

16. There after, he had demonstrated as to how the phenolphthalein test to be conducted at the time of trap. Then he had directed one Mr. R. Manoharan Head Constable to smear the phenolphthalein powder on the currency notes produced by PW2. Then as per the direction of P.W.4 he had placed the tainted currency notes in the left side shirt pocket of PW2.

17. He had also given direction to PW2 not to touch the tainted currency notes unless and until the same was demanded by the Appellant Mr. Rajasekar. He had also explained the team members about the significance of the sodium carbonate of the phenolphthalein test. PW4 had given instruction to PW2 Govindaraju to give signal by wiping his face with his hand kerchief once the demanded amount was accepted by the Appellant. Then a mediator report under Ex. P7 was prepared and signed by all the members of the trap team.

18. He had asked Mr. Sugumaran Independent Witness to be with him in the corridor of 5th floor where the CBFC office is located. PW4 had also given instruction to other witnesses like PW3 Mr. V.R. Venkateshwaran to take suitable position in front of the room of Regional officer.

19. At about 3.25 p.m. PW-2 Mr. P. Govindarajan and PW3 V.R. Venkateshwaran went inside the office of the CBFC, Sashtri Bhavan, Chennai while the other team members took suitable position outside the office of CBFC.

20. After gaining entry PW2 had approached PW10 Geetha and asked her as to whether the Regional Officer was present, for which PW2 had replied that he would arrive within half an hour and therefore asked them to wait.

21. At about 3.50 p.m. the Appellant had entered his chamber. While so, PW10 had given PW2 a slip in which PW2 had entered his name, mobile no, the name of the film, etc. and given back to her. That slip was marked as Ex. P8. However he did not sign in Ex. P8. Thereafter PW2 was called inside. He alone went inside while PW3 was not permitted to enter and therefore he was waiting in the reception. On seeing PW2 the Appellant had asked him as to whether he had brought the amount ? For which he had said yes. Immediately he had stretched his right hand and asked him to give the money. PW2 had also taken the amount of Rs. 10,000/- from his shirt pocket and placed it on the right hand of the Appellant. After receiving the amount the Appellant had immediately counted and placed it in his shirt pocket. Thereafter he had told PW 2 that the film could be viewed tomorrow. For which PW2 had replied that he would make arrangements to screen the film at Nadigar Sangam. The Appellant had also nodded his head. Then, after getting leave PW2 came out of the office along with PW3 and gave the pre-arranged signal by wiping his face with a hand kerchief confirming the demand and acceptance of the amount by the Appellant.

22. PW4 along with the team members had immediately entered the chamber of the Appellant. On entering the room PW4 had introduced himself to the Appellant and enquired about his identity. The Appellant had also introduced himself to PW4. However he was found shivering.

23. Then PW 4 had enquired him as to whether he had demanded and accepted the amount from PW2 Govindaraju, for which he had kept silent for a while and then informed that he did not demand anything from PW2.

24. On further enquiry as to how much he had accepted from PW2, the Appellant had replied that he had received only Rs. 10,000/-. Then he had directed one constable Srinivasan to prepare the sodium carbonate solution using the glass tumbler and the bottle available in the chamber of Appellant. He did so. The solution was colourless. Then he had requested the Appellant to dip his right hand fingers in the said solution. When he did so the colourless solution had turned into light pink in colour. Then the solution was transferred to a clean glass bottle which was sealed, labeled and marked as ‘A’ and the same was marked as M.O-1. The lable was signed by PW4 and two other independent witnesses. Mr. Srinivasan, Head Constable as per the instruction of PW4 had prepared another sodium carbonate solution using the glass tumbler and water available in the office chamber of the Appellant. He did so. Then PW4 had requested the Appellant to dip his left fingers in the said colourless solution. When he did so, the colourless sodium carbonate solution turned into light pink in colour and subsequently transferred to a clean glass bottle, sealed, labeled and marked as ‘B’ and the same was marked as M.O-2. That label was signed by PW4 and other independent witnesses.

25. Thereafter PW4 had requested both the independent witnesses viz. PW3 Venkateshwaran and Sugumar to tally the amount with the s.nos. specified in the first mediator's report (Ex. P7). The serial nos. of the tainted currency notes were found tallied with the s.nos. noted in the first mediator's report. Then after providing a new shirt to Mr. Rajasekar PW4 had requested him to produce the shirt which was worn by him. He had also produced the shirt and PW4 had asked one Ravi Inspector of Police to prepare a fresh sodium carbonate solution using the glass and water available in the office chamber of Mr. Rajasekar (Appellant). He did so and the solution remained colourless. As per his direction the inspector Ravi had dipped the inside portion of the left side shirt pocket of Rajasekar in the colourless sodium carbonate solution. When he did so, the colourless solution had turned pink in colour. The said solution was also transferred to a clean glass bottle, sealed, labeled and marked as 'C' and the same was marked as M.O.4. The label was also signed by PW4 along with other two witnesses. The shirt was marked as M.O.3. The tainted currency notes seized from the Appellant were marked as M.O.5 series.

26. At about 4.45 p.m. PW 4 had arrested the Appellant and prepared a separate arrest cum personal search memo (Ex.P17). The search list was marked as Ex. P11. A rough sketch of the trap spot was drawn under Ex.P12 in the presence of the witnesses.

27. The trap proceedings that took place at the trap spot was drawn as second mediator's report and it was concluded at 6.45 p.m. The second mediator's report was marked as Ex. P10. As per the direction of PW 4 a search was conducted by one Mr. Lava Kumar at the residence of the Appellant at G2, Sri Hari Apartments, Karpagambal Nagar, Kottivakkam, Chennai 41 in the presence of two independent witnesses. Search list was marked as Ex. P18. The inventory proceedings was marked as Ex. P19.

28. That on 28.7.2010 i.e. on the next day the Appellant was produced before the Principal Special Judge for CBI Cases, Chennai and remanded to judicial custody. He had also produced the material objects along with relevant documents before the court. He had also deposited the trap amount in the malkhana of ACB / CBI Chennai.

29. On the direction of SP/ CBI/ ACB/ Chennai the investigation of the case was handed over to PW11 Premkumar, additional SP/CBI/ACB/Chennai. PW11 after taking the case for further investigation on 30.7.2010 had examined the witnesses and collected the documents ranging from Ex. D1 to D18. During the course of his investigation it was revealed that the Appellant Mr. D. Rajasekar had demanded and accepted the bribe amount of Rs. 10,000/- from PW2 P. Govindarajan on 27.7.2010.

30. He had also sent the material objects of this case to the Tamilnadu Forensic Sciences Lab through court for

chemical analysis and the result was proved to be positive in which it is stated that the solution was found contained with Phenolphthalein.

31. After the completion of his investigation PW11 had obtained the order of sanction from PW1 Mr. Rajani Ranjan Rashmi to launch prosecution as against the Appellant. Thereafter he had filed the final report against the Appellant on 21.3.2011 under section 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act 1988 before the Principal Special Judge for CBI Cases. With the evidence of PW11 the prosecution had closed their side.

32. When the incriminating circumstances arising out of the testimonials of this prosecution witnesses were explained and put to the Appellant, while denying their statements as false, he had replied that this case was foisted against him. He had also submitted a written statement and same was received and recorded. The Appellant had examined himself as DW1 and during the course of his examination, Exs. D1 to D5 were marked.

33. Mr. V. Krishnamurthy, Learned Counsel for the Appellant has mainly attacked the judgment of the court below in which the conviction and sentence as against the Appellant were recorded, mainly on two grounds:-

Ground No. 1:- The validity of the order of sanction dt. 8.3.2011 to launch prosecution against the Appellant.

Ground No. 2:- The credit worthiness of the evidence adduced by PW2.

Ground No, 1:-

a) PW1 Mr. Rajani Ranjan Rashmi was functioning as the Joint Secretary in the Ministry of Environment and Forest in Government of India at the time of issuing the order of sanction to launch prosecution as against the Appellant.

b) Admittedly the Appellant is an IFS Officer, Punjab Cader belonging to 1998 batch. At the time of alleged incident he was working in Chennai as Regional Officer, Central Board of Film Certification, Ministry of Information and Broadcasting, Government of India at Sashtri Bhavan, Chennai 6. It may also be relevant to note here that he was on deputation to the above said post from his parent cader.

c) PW1 says that the powers of appointing and dismissing the Appellant was vested with the concerned ministry of environment and forest under the rules of business of the Government of India and the rules governing and delegation of powers.

d) PW1 Mr. Rajani Ranjan Rashmi has stated that in so far as this case is concerned, the President of India had accorded sanction to prosecute the Appellant and also for taking cognizance of the offences against him. However, he had signed the sanction order against the Appellant on 8.3.2011 in the name of the President of India. As afore stated the order of sanction has been marked as Ex. P1.

e) On perusal of paragraph no. 4 of Ex. P1 (Order of sanction) it is stated that:

> "the President of India being the authority competent to remove Sri D. Rajasekar, IFS (PB:1998) from office, after fully and carefully examining the relevant documents and materials such as copy of First Information Report, First Mediator's Report, and Second Mediator's Report, Chemical analysis report of Forensic Science department, document seized and collected during the investigation and statement of witnesses and other connected records placed before the Competent authority in regard to the said allegation and circumstances of the case, having applied his mind, has come to a conclusion that there exists prima-facie, a case against Shri. D. Rajasekar IFS (PB:1998), the then Regional Officer, Central Board of Film Certification, Chennai and that he should be prosecuted in a court of law for the commission of offences punishable under section 7 and 13 (2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 by a court of competent jurisdiction."

f) Paragraph No. 5 of Ex. P1 also assume importance which is extracted as under:-

> '5. Now, therefore, the President of India hereby accords sanction under section 19(1) of Prevention of Corruption Act, 1988 (Act 48 of 1988) for the prosecution of the said, Shri. D. Rajasekar, IFS (PB:1998), the then Regional Officer, Central Board of Film Certification, Chennai, for the said offences and any other offences punishable under other provisions of law in respect of the above said facts, if any, for taking of cognizance of the said offences by a court of competent jurisdiction'.

g) Ex. P1 further reveals that PW1 had signed beneath the order after saying 'by order and in the name of the President of India'.

h) On a cursory perusal of the chief examination of PW1, he has stated that 'we complied those documents and put up to the concerned minister. After obtaining order from the minister we issued prosecution for sanction and taking cognizance of the case against the accused under Rule 70 of the CCS (Central Civil Services) Appeal and Disciplinary Rules'

i) From the chief examination of PW1 this court understands that he has given two different kinds of statements.

- a) In this case it is stated that the President of India had accorded sanction to prosecute the accused and also for taking cognizance of the offences against him. I signed the sanction order against the accused dt. 8.3.2011 in the name of the President of India.

- b) We complied those documents and put up to the concerned minister. After obtaining order from the minister, we issued sanction for prosecution and taking cognizance of the case against the accused under rule 70 of the CCS (Central Civil Services) appeal and disciplinary rules.

j) The evidence in chief of PW1 seems to be self contradictory. In the first portion he has stated that the President of India had accorded sanction for the prosecution. In the second portion he has stated that the order of sanction was obtained from the concerned minister.

k) Section 3 of Indian Evidence Act 1872 deals with Interpretation Clause. Under this Section the term 'Fact means and includes –

- 1.Anything, state of things, or relation of things, capable of being perceived by the senses;

- 2. Any mental condition of which any person is conscious.'

l) Section 3 further defines the term 'Facts in issue':- The expression 'Facts in issue' means and includes –

any fact from which, either by itself or in connection with other facts, existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation:-

Whenever, under the provisions of law for the time being in force relating to civil procedure, any court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

m) The fundamental rules of English Law of Evidence are :-

- 1) Evidence must be confined to the matters in issue.

- 2) Hearsay evidence is not to be admitted.
- 3) In all cases the best evidence must be given.

n) Coming to the evidence in chief of PW1, as indicated above, there are glaring contradictions in his testimony and therefore this court feels that much credence could not be attached , as it detracts the principle of order of sanction. This court also finds that the evidence given by PW1 makes this court to suspect the probabilities of the prosecution case.

o) On the material time the Appellant was working in the Ministry of Information and Broadcasting, Government of India and thereafter he was repatriated to Punjab Cadre at the time of order of sanction. These authorities were neither consulted nor their approval was received with reference to launching of prosecution.

p) The prosecuting agency had neither produced any proof to show that the Hon'ble Minister for Environment & Forests had accorded sanction nor is available any reference to show that the President of India had accorded sanction to prosecute the Appellant. Above all the prosecuting agency had abruptly failed to substantiate the fact that PW1 was duly authorized to sign in the order of sanction (Ex.P1) on behalf of the President of India.

q) The evidence in chief of PW1 seems to be ambiguous in nature. On perusal of his evidence a crucial question is arisen as to virtually "who had accorded sanction to launch prosecution".

r) The prosecution has also failed to produce any proof to show that the Hon'ble Minister for Environment & Forest had accorded sanction in this case, nor any evidence is forthcoming to the effect that the order of sanction so accorded by Hon'ble Minister for Environment & Forest was duly approved by the President of India who is the appointing authority of the appellant as provided by All India Services under Article 312 of the Constitution of India.

34. In this connection Mr. V. Krishnamurthy, Learned Counsel appearing for the Appellant has submitted that as per the allocation of business rules and transaction of business rules of Government of India, once a power was delegated, it could not be further sub-delegated to a junior officer in the Ministry who was not competent to remove the Appellant from his post. PW1 Mr. Rajani Ranjan Rashmi was functioning as Joint Secretary in the Ministry for Environment & Forest, Government of India at the time of granting sanction to launch prosecution. It is obvious to note here that Joint Secretary is not the appointing authority for an IFS Officer. As submitted by Mr. V. Krishnamurthy, the prosecution has not

evinced any interest to produce even a single scrap of paper to show that PW1 being the Joint Secretary in the Minister for Environment & Forest was duly authorized to sign on behalf of the president of India in Ex. P1 Order of Sanction.

35. Ground No. 2:- The credit worthiness of the evidence adduced by PW2:-

- a) Generally speaking, oral testimony may be classified into three categories, namely,

  - Wholly reliable (2) Wholly unreliable & (3) neither wholly reliable nor wholly unreliable.

- b) In the first category of proof the court should have no difficulty in coming to its conclusion either way- it may convict or may acquit on the testimony of its single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony direct or circumstantial.

- c) On coming to the present case on hand the evidence of PW1 comes under the third category. Therefore it has become imperative on the part of this court to be more circumspect and to look for corroboration in material by reliable testimony either direct or circumstantial. But nothing is available to support the evidence of PW2 and therefore according to this court the evidence of PW2 has lost its credit worthiness and therefore it is deserved to be discarded.

36. Further PW1 himself has admitted that he had not dealt with the matter and therefore he did not know about the procedure for appointing Regional Officer. PW1, When he was asked, in the cross examination, as to whether any document was there to show that the President of India had signed the sanction order?, he has answered that order in the name of President were signed by the authorized officials and in this case he had signed the order in the name of President. However no such document is available to substantiate his evidence in cross. He has also fairly admitted in his cross examination that the approval made by the Minister of Environment & Forest was not handed over to CBI because he had already conveyed the order in the name of President to the CBI.

37. Section 19 of Prevention of Corruption Act 1988 deals with previous sanction necessary for prosecution.

38. Sub section 1 envisages that 'no court shall take cognizance of an offence punishable under section 7,10,11,13 &

15 alleged to have been committed by a public servant except with the previous sanction,:-

- a) In the case of a person who is employed in the connection with the affairs of the union and is not removable from his office save by or with the sanction of the Central Government, of that Government ;

- b) …..

- c) ….'

39. In so far as the case on hand is concerned, since the Appellant is a Central Government employee proper sanction to launch prosecution as contemplated under Section 19.1 is a must. Since Ex.P1 is not granted by a competent person the trial court ought not to have taken cognizance of the offences as against the Appellant.

40. As observed in GC Garg Vs. State of Bihar (1994) 1 Patna LJR 47 the sanction of Central Government is necessary only when a person accused of an offence at the time of commission of an offence was employed.

41. Since the validity of Ex.P1 Order of Sanction is questioned and suspected it cannot be construed as a valid one.

42. In this case, the testimonies of PW2, PW4 & PW10 are very much important. PW3 V.R. Venkatesan is a shadow witness. In Meena (Smt) W/o. Balwant Hemke Vs. State of Maharastra (2000) Supreme Court Cases (Cri) 878 the Apex Court has held that

> 'like any other criminal offence the prosecution has to prove the charge beyond reasonable doubt and the accused should be considered innocent, till it is established otherwise by proof of acceptance of the illegal gratification, the vital ingredient, necessary to be established to procure a conviction for the offences under consideration'.

43. PW3 Mr. V. R. Venkateswaran is the shadow witness. According to him that on 27.10.2010 at about 12 noon while he was on duty his Chief Officer, Indian Overseas Bank, Regional office, No. 2, Chennai had instructed him to go to CBI Office at Sashtri Bhavan and to meet Mr. K. Madhusudhanan Inspector, CBI. He has also admitted in his evidence in chief that as instructed PW2, who is the Complainant, went to the cabin of Appellant and he was waiting outside the cabin. Therefore it is implied that he might not be having any chance of witnessing the conversation as well as the alleged demand and acceptance of money by the Appellant from PW2 inside the cabin of the Appellant. PW4 has also deposed that since PW2 Complainant Govindaraj alone was asked to come inside the

Independent Witness (PW3) stayed back outside the room of Appellant Mr. Rajasekar. PW4 in his cross examination has admitted that as he being an inspector of CBI he had to follow the CBI manual. He has admitted that as per the CBI manual Rule 14.16 in a trap proceedings the entire proceedings shall have to be photographed or video graphed. In this case he had neither photographed nor videographed the trap proceedings.

44. Mr. V. Krishnamurthy has submitted that PW2 is not a trust worthy witness as he had concocted a false compliant in connivance with the power and mighty of the state in order to remove the Appellant from the post of RO who remained sincere, honest and straight forward in fixing screenings and followed seniority of date and time, receipt of application as evident from the statement of PW6 Sugumaran ARO. He has also argued that PW2 was not authorized by the producer of the film to lodge a complaint as against the Appellant. He was only a production manager and was authorized to get film certification for the film 'Kadhal solla vandhen'. Even without the knowledge and consent of the Principal Jayakumar who was the producer of the film, PW2 had on his own volition lodged the complaint. PW8 Subbiah has stated that the application was filled in CBFC office on 26th morning and signed and submitted in the evening. In this Connection Mr. Krishnamurthy would submit that his presence or his signature were not corroborated by anyone.

45. Mr. Krishnamurthy has also adverted to that if the producer Mr. Jayakumar was not available in town on 26th & 27th July 2010 then the question as to who had forged his signature in the forms would arise.

46. P.W.2 says that Mr.C.Jayakumar had executed a General Power of Attorney in his favour on 24.7.2010 so as to enable him to get the Film Certification. According to him, at about 3.00 p.m. on 26.7.2010, he had been to Censor Board Office along with P.W.8 Subbiah. Obviously, the application was filled in by P.W.8 by putting the next days' date as 27.7.2010 as P.W.2 was informed by P.W.10 that the Regional Officer would not come on that day.

47. On the next day, i.e. on 27.7.2010 at about 10.30 a.m. P.W.2 along with P.W.8 had been to CBFC Office. When enquired with P.W.10, P.W.2 was informed that he would be coming within a short while. P.W.2 and P.W.8 have stated that the appellant had come to Chamber at about 10.50 a.m. But, what P.W.10 Mrs. V.Geetha, who was an Upper Division Clerk in the Office of CBFC would say in her cross-examination is that at about 11.00 am. On 27.7.2010, the appellant had left his chamber for viewing the film 'Vande Madaram.' In this connection, Mr. V.Krishnamurthy has indicated that when the appellant had left the office at 11.00 a.m. on 27.7.2010, P.W.2 would not have had an opportunity to meet him in his Chambers. Equally, there might not be of any chance or occasion for the appellant to demand, for the first instance,

to pay a sum of Rs.10,000/- for viewing the film, 'Kadhal solla vandhen'.

48. The appellant had examined himself as D.W.1. He has stated in his evidence that on 27.7.2010, he came to his office at 9.30 a.m. and started his routine work of fixing the committees for that day. He had seen two movie files viz., "Kai Pesi Enn" and 'Kadhal solla vandhen' on his table. On arrival of ARO in the office at 10.00 a.m. he had requested him and made an endorsement as ARO to view the film "Kai Pesi Enn" on the same day i.e. on 27.7.2010 and the film 'Kadhal solla vandhen' to be viewed by him (ARO) on 28.7.2010 at 3.00 p.m. in Film Chamber Pre view Theatre which is found in Ex.P.15.

49. After that he (the appellant) and ARO (P.W.6) were discussing on the days work and ARO (P.W.6) had left his cabin and at about 10.30 a.m. he had also left his cabin for viewing the movie 'Vande Madaram' which was scheduled at 11.00 am. at Four Frames Pre View Theatre and then he had reached the pre view theatre at about 10.50 a.m.

50. Ex. P.15 is the application for granting film certification for the film 'Kadhal Solla Vandhen' (tamil) dated 27.7.2010. On perusal of this application, this Court is able to find that an Office note seems to have been put up on the same day i.e. on 27.7.2010 by PW10 as follows:-

"O.N."

Application with the requisite accompaniments have been received.

This film is claimed to be a straight feature film. NOC from AWBI is placed in the file.

Submitted for fixing for ECPI."

Beneath the office note it is stated as R/O. One signature R is found with date as 27/7 along with an endorsement of ARO 3 p.m. film chamber on 28/7. On the right side of the office note P.W.6 Mr.V.Sugumaran, who was the Assistant Regional Officer, Central Board of Film Certification had made an endorsement as follows:

"The original application along with the required materials for viewing the movie are taken possession by me for the processing and viewing the movie from the applicant the required fees was received in the form of DDs. This is the photo copy of the application. P.W. 6 V. Sugumaran had signed below this endorsement with date as 27.7.2010. This has been accepted by P.W.6 in his evidence in chief".

51. It is also to be noted that P.W.6 has also stated that there after with the permission of Board Member Mr.L.Suresh, the Chair Person and the P.S. to the Chair person

an examining committee consisting of Tmt. Lakshmi Rajaram Tmt.Shella Charles Mohan Dr.Nalli Kuppusaamy, Mr.Rajath and himself was constituted, and the film 'Kadhal solla vandhen' was viewed, examined at nadigar sangam on 28.7.2010.

52. In his cross-examination P.W.6 has deposed that Mr.D.Rajasekar, who is the appellant herein was very strict with non producers and brokers, and he would not speak much to others.

53. With reference to the office note find a place in Ex.P15 application, P.W.6 has stated that this noting was made by P.W.10 Tmt. V.Geetha. He has also stated that this note was marked to Regional Officer and the Regional Officer had initialed by striking the marking' RO ' and below his initial he had put the date 27/7. Then he had marked it through ARO. P.W.6 has also stated that he (appellant) had made an endorsement as '3.00 p.m.' 'film chamber on 28/7'. He would further state that the file was usually routed to Assistant Regional Officer. However, in his cross examination, he has proceeded further to depose that the endorsement '3.00 pm.' 'film chamber on 28/7' could not be construed as an endorsement made to him. It is to be noted that his answer is not discernible. Because in his chief examination, he has stated that on 28.7.2010 he had viewed and examined the film 'Kadhal solla vandhen' at Nadigar Sangam along with the committee members. A censor certificate No.CIL /1/57/10 dated 29.7.2010 was issued to the said film on 29.7.2010.

54. In this case, the film producer one Mr.Jayakumar was not examined.

55. Ex.P.4 contains Power of Attorney, dated 24.7.2010 which is said to have been executed in favour of P.W.2, Mr.P.Govindaraju, by the producer of the film Mr. C. Jayakumar. Virtually on perusal of the Xerox copy of the Power of Attorney dated 24.7.2010, no such reference is available to show that Mr. C. Jayakumar who was the producer of the film had signed and authorized P.W.2 for getting the film certification. The signature of the film producer Mr. C. Jayakumar is disputed. When a suspicion is arisen with regard to the authorization in favour of P.W.2 it is for the prosecution to dispel the doubt and substantiate the case with acceptable legal evidence. In this connection Mr.V.Krishnamurthy has contended that the power of attorney deed was not in proper format and the same was not registered as required by Power of Attorney Act. Moreover, it is pertinent to note here that Mr.C.Jayakumar was not at all examined by the Investigating Officer. When P.W.2 was asked as to who had signed the letter, dated 2.3.2010, he had replied that he did not know as to who had signed in this letter, but it was not the signature of the proprietor of S.3. films.

56. Mr.Krishnamurthy, with regard to motive for foisting the case as against the appellant has contended that since the

appellant was not agreeable to view the film Red Giant Movies Madrasapattinam and issue film certification immediately, this case was foisted against him with the assistance of CBI Police.

57. In so far as this case is concerned, this court would like to place it on record that P.W.10 Tmt. Geetha, who was working as Upper Division clerk in the Office of CBFC has not spoken about P.W.8 Subbiah. P.W.3 Mr. Venkateswaran is a shadow witness and admittedly, he did not go to the Chamber of the appellant along with P.W.2 Govindaraj. Therefore, neither P.W.3 nor P.W.10 or P.W.8 was having an opportunity to view and hear the conversations which were actually transpired between the appellant and P.W.2 inside the chamber of the appellant.

58. As admitted by P .W. 3, he and another witness by name one Mr.Sugumaran had given evidence in other CBI cases also. Therefore, Mr. V.Krishnamurthy, learned counsel for the appellant has urged to discard their testimonies who are said to be the stock witnesses of CBI. P.W.4 trap laying officer himself has admitted that he did not call any independent witness apart from central Government employees to witness the trap proceedings.

59. As discussed in the opening paragraph of the Judgment, P.W.1 Mr.Rajani Ranjan Rashmi was not competent to issue sanction order under Ex.P1. In T.C.Loganathan Vs State Rep. by CBI/ACB Chennai in Crl.Appeal No.843 of 1998 which was decided on 25.4.2006, P.W.1 who had accorded sanction to launch prosecution against the appellant therein had stated that the power to appoint the accused was vested with the General Manager and the same was delegated to Vigilance Officer. P.w.1 further stated that it was relevant to note that the prosecution had not chosen to produce the document, dated 14.12.1966, through the said documents viz. bipartite settlement dated 14.12.1966, the power was delegated to P.W.1 Further, P.W.1 had categorically admitted in his cross examination that there was no mention about his power to accord sanction in exhibits P1 to P.3. Under this circumstances, a learned Judge of this Court has held that there was absolutely no need for the defence to make any suggestion to the effect that P.W.1 was not competent to accord sanction.

60. With reference to recovery of tainted money the Apex Court in Meena (Smt.) Wife of Balwant Hemke. Vs State of Maharasthara (2000 Supreme Court Cases (Crl.) 878) has observed that mere recovery of the currency notes and positive result of the phenolphthalein test not enough in the peculiar circumstances of the case to establish the guilt of the appellant on the basis of perfunctory nature of materials and prevaricating type of evidence. The charge must be proved beyond reasonable doubt.

61. As brought to the notice of this Court by Mr. V.Krishnamurthy no opportunity was given to the appellant to offer his explanation about the alleged receipt of trapped amount at the time of his arrest. In this connection, this Court finds it better to make reference to the case of T.Danial Manika Raj Vs State Rep. by Inspector of Police vigilance & Anti corruption, Tirunelveli (2008 I ML J (Crl.) 774) In this case, the ratio decidendi applied is:

> "when the accused was not offered any opportunity to offer his explanation for the receipt of trapped amount at the time of his arrest, the probability that he collected the amount for flag day as explained by the accused at the trial ought to be accepted. Consequently, no statutory presumption could be drawn under Section 20 of the Prevention of Corruption Act, 1988".

62. Ex.P21 is the handing/taking over memo. It was also marked as D8 on the part of the appellant. It contains Ex.D9 check list for pre-shoot of films (permission). The letter addressed to the Secretary, Animal Welfare Board of India, dated 2.3.1010 signed by one Mr.C.Jayakumar, who is described to be the proprietor of S3 films is also enclosed along with Ex.P.21. In this letter dated 2.3.2010. Mr. C. Jayakumar had sought permission to use performing animals in the above film shooting. His signature is found place in the letter. Similarly, in the application for use of performing animals in films also his signature is available. PW 7 has also spoken to that in the letter head of S3 films, dated 12.4.2010, and in another letter of the same company dated 23.4.2010 the signature of the proprietor of the film is available. During the said period, the appellant Mr. D.Rajasekar was functioning as the Secretary to Animal Welfare Board of India. The application for permission to use animals for the shooting of the film 'Kadhal solla vandhen' was dealt with by him. What he would state in his report is that 'after completion of the shooting, a copy of the post-shoot film clipping (2 copies of CD in MPEG /DVD format) depicting/involving scenes where animals are used along with fitness certificate (Part B) available in the web site www.awbi.org. should be sent to the Board to enable us to issue the final NOC. Please send a CD mailer addressed to respective Censor Board with Rs. 25/- stamped along with self-addressed additional cover (with Rs. 25/- stamped) while submitting CD for No Objection Certificate.

63. In this connection Mr. V.Krishnamurthy has submitted that since the appellant D.Rajasekar, when he was functioning as the Secretary to Animal Welfare Board of India (Ministry of Environment & Forest Government of India) had given negative reply to the request made by the Proprietor of S3 films, this case had been foisted against him, with the connivance of CBI officials. P.W.11 who is the Investigating Officer has

also admitted in his cross examination that at pages 2,11,17 in Ex.P 21 three letters were available. In all these three letters, the signature of Mr.C.Jayakumar was found. All his signatures were in English In Ex.P6 complaint the signature of Mr. Sugumaran and Venkateswaran i.e. P.W.3 and another witness were not available. In this regard, Mr. V.Krishnamurthy, has contended that since the signatures of P.W.3 and another witness Sugumaran were not available in Ex.P6 complaint, their presence at the time of trap proceedings was suspected.

64. P.W.9 is Mrs P.Kalarani who was the Deputy Director Forensic Lab Chennai She would state in her cross examination that she had never been working as a Scientific officer in the Chemistry Division. Based on this answer, Mr. Krishnamurthy has submitted that the evidence given by P.W.9 could not be taken into consideration as she was not competent to speak about the chemical analysis report.

65. On the other hand, Mr. K.Srinivasan, learned Special Public Prosecutor for the respondent-police has submitted that the order of sanction accorded by P.W.1 under Ex.P1 was proper and valid and that there was no illegality in Ex.P1. He has also argued that P.W.2 had clearly stated about the first demand made by the appellant in the morning at about 10.50 a.m. on 27.7.2010 and he had also spoken to about the reiteration of earlier demand made by the appellant at 3.50 . pm. on 27.7.2010 as well as about the acceptance of the bribe amount. He would further submit that P.W.2,3 and 4 had spoken to about the recovery of the tainted money from the pocket of the appellant and since the complaint under Ex.P6 was satisfactorily supported by P.W.2 and P.W.10 which was further fortified by the evidence of P.W.4 trap Laying Officer, the prosecution had brought home the guilt of the appellant beyond all reasonable doubts, and hence a presumption could be drawn from the testimonies of the prosecution witnesses under Section 20 of the Prevention of Corruption Act, to establish the probability of the prosecution case.

66. His arguments is not able to be countenanced. The learned trial Judge has not properly appreciated and scrutinized the evidence both oral and documentary. As observed by this Court in R.M.Rajamanickam and others Vs State by Superintendent of Police SPE/CBI/ACB/Chennai, (2008 2 MLJ (Crl) 292) the onus on accused is not like the onus on prosecution. Except the trap team no independent witness has been examined and therefore, the prosecution has not proved guilt, much less beyond reasonable doubt. Therefore, the conviction recorded in that case was set aside. In CM.Girishbabu vs CBI Cochin, High Court of Kerala (2009 3 MLJ (Crl.) 341 (SC) the following ratio has been applied.

"I. Mere recovery of tainted money 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.

II. Presumption to be drawn under Section 20 of the Prevention of Corruption Act, 1988 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption, the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification.

III. The onus of proof lying upon accused person is to prove his case by preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts. i.e. that of establishing on the whole case, the guilt of the accused beyond reasonable doubt."

67. As contemplated under Rule 47 of the Directorate of Vigilance and Anti Corruption Manual, immediate version of the accused after trap assumes greater importance and non recording of the statements, the appellant immediately after trap under Rule 47 of the DVAC Manual is fatal to the case of prosecution.

68. In so far as this case is concerned Chapter 8 & 9 of CBI Manual have not been followed. The concept of preliminary enquiry in crime pertaining to CBI cases is to be followed necessarily. In Lalithakumari Vs Government of UP and others (2014 I LW (Crl) 1), it is held that a preliminary inquiry in order to test the veracity of such information before registering the case is a must. It is further held by the Apex Court that in terms of the language used in Section 154 of the Code, the Police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the Officer in charge of the Police Station otherwise suspects the Commission of such an offence. The legislative intent is therefore quite clear i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR where information is given about the commission of a cognizable offence. Every cogniziable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an FIR so as to initiate an offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigation machinery into action.

69. In the given case on hand, since Ex,P1 order of sanction for prosecution is concluded as invalid as P.W.1 does not have competency to issue this order of sanction, the very route of the prosecution is corroded. Even in the corruption cases, the Court may look for independent corroboration before convicting the accused. Evidence of a trap witness must be tested like the evidence of any other interested witnesses. This principle is laid down by the apex Court in Ram Baksh Arora V State of Punjab , (1972 3 SCC 652: 1972 SCC (Crl) 696).

70. Viewing from any angle, this Court is of considered view that no inherent probabilities have been made out by the prosecution. Hence, presumption as against the appellant, as contemplated under Section 20 of PC Act cannot be drawn. No adequate proof is available to substantiate the charges under Section 7, 13 (2) read with 13(1)(d) of PC Act, 1988.

71. In the result, the appeal is allowed. The conviction and sentence dated 27.2.2014 recorded against the appellant in CC No.25 of 2011 are set aside and the appellant is acquitted of the charges under Section 7, 13(2) read with 13 (1)(d) of PC Act, 1988. The fine amount paid, if any, is ordered to be refunded to the appellant. The bail bonds executed by and on behalf of the Appellant are cancelled and the sureties who stood on behalf of the appellant are discharged.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To:
1. The XII Additional Special Judge for CBI Cases,
Chennai.

2.The Additional Superintendent of Police,
CBI/ACB/Chennai.

3.The Special Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Krishnamoorthy, Advocate sr.38057

+1cc to Mr.K.Srinivasan,Special P.P. sr,38052

Criminal Appeal No. 109/2014

mp(co)
ss(22/8/2017)