

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.08.2017

PRONOUNCED ON : 28.08.2017

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Criminal Appeal No.493 of 2017

The State represented by:
The Public Prosecutor,
High Court, Madras – 6001 104.
(V & A.C Salem
Crime No.3/AC/2000)

.. Appellant

Vs

Sundaram

.. Respondent

Prayer:- Criminal Appeal filed under Section 374 against the judgment passed in Spl.C.C.No.6/2014, dated 15.10.2014 on the file of the learned Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act).

For Appellant : Mr.R.Ravichandran,
Government Advocate (Crl.side)

For Respondent : Mr.Alvin Manoj Raj

JUDGEMENT

The State has preferred this Criminal Appeal against the acquittal of charges under Sections 7 and 13(1)(d) read with Section

13 (2) of the Prevention of Corruption Act, 1988.

2.The case of the prosecution is that, based on the complaint dated 23.03.2000 given by one Mr.Govindaraju against Mr.Sundaram, Commercial Inspector, Tamil Nadu Electricity Board, Veeraganoor, Salem District, alleging demand of gratification for providing electricity service to his house, a trap was laid. After complying the pre-trap procedure, the defacto complainant along with the decoy witnesses went to the office of the accused on 24.03.2000. At his office, the accused demanded money from the defacto complainant and received a sum of Rs.300/-. After getting the pre-arranged signal, the Investigation Team went to the accused Office and seized the tainted money of Rs.300/- from the possession of the accused. The hand wash of the accused, answered positive to the phenapthalin test conducted on the spot. The accused being the public servant was prosecuted for demanding and accepting illegal gratification of Rs.300/-, after obtaining sanction from the competent authority.

3.Before the trial Court, the prosecution examined 13 witnesses; marked 16 exhibits and 5 material objects. On behalf of the accused, one witness was examined and one document was marked.

4.The trial Court, after considering both oral as well as documentary evidence held the accused not guilty of the offence and

acquitted the accused under section 248(1) of Cr.P.C.

5.The State, on Appeal, through the learned Government Advocate (crl.side), contended that, the trial Court had failed to consider the presumption under Section 20 of the Prevention of Corruption Act, in a proper and perspective manner and had erroneously held that the demand made by the accused to the defacto complainant during the 3rd week of February 2000, has not been proved by the prosecution. The trial Court ought not to have acquitted the accused, when the prosecution has proved the earlier demand of bribe by the accused to the defacto complainant (P.W-2) and his mother (PW-5) and his wife (PW-6) who were told by the defacto complainant (PW-2) that the accused is demanding money for processing the application for electricity supply and the subsequent demand and receipt had been proved through the defacto complainant (PW-2) and the decoy witness (PW-3).

6.Further, the receipt of the gratification money is not disputed by the accused. The feeble explanation for the receipt of the tainted money had swayed the mind of the learned trial Judge despite overwhelming positive evidence to prove the criminal misconduct of the accused obtaining pecuniary advantage by corrupt means, by abusing his position. While the threat posed by the accused that the application for electric service connection will be rejected if, his

demand not metted out, is spoken by the defacto complainant (PW-2) and same is unimpeached. Therefore, the trial Court ought not to have disbelieved the prosecution case. Since, the finding of the trial Court is erroneous and contrary to the principles laid down by the Hon'ble Apex court, the judgement of acquittal has to be interfered.

7. In support of his contention, the learned Government Advocate (crl.side) referred the following observations of the Courts in reference to presumption, gratification and proof for demand and acceptance.

1. In **T.Sankar Prasad -vs- State of AP reported in 2004 CrI.L.J 884 (1)** the hon'ble Supreme Court has held as follows:-

"13. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the Court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain

fact or facts the Court can draw an inference and that would remain until such inference is either disproved or dispelled.

For the purpose of reaching one conclusion the Court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted the Court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion.....”

2.In **Madhukar Bhaskarrao Joshi -vs- St. Of Maharashtra** reported in **2001 CrI.L.J 175**, the Hon'ble Supreme Court has held as follows:-

“12.The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted as motive or reward for doing or forbearing to do any official act. So the word gratification need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that

there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like gratification or any valuable thing. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word gratification must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

In *Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra* {1997(10) SCC 600} this Court has taken the same meaning for the word gratification appearing in [Section 4\(1\)](#) of the PC Act of 1947. We quote the following observations:

"The primary condition for acting on the legal presumption under [Section 4\(1\)](#) of the Act is that the prosecution should have proved that what the accused received was gratification. The word gratification is not defined in the Act. Hence it must be understood in its literal meaning. In the Oxford Advanced Learners Dictionary of Current English, the word gratification is shown to have the meaning to give pleasure or satisfaction to. The word gratification is used in [Section 4\(1\)](#) to denote acceptance of something to the pleasure or

satisfaction of the recipient.""

8.Per contra, the learned counsel for the respondent/accused contented that the defacto complainant, being Tailor by profession, had a contractual obligation with the accused. He lost the cloth given to him for stitching. Hence, he agreed to pay Rs.500/- towards the cost of the lost cloth. The alleged money which he received is a part payment. This fact, has been spoken by DW-1. The prosecution witnesses except the defacto complainant (PW-2) accept that there was dispute between the defacto complainant and the accused over the cloth given by the accused to the defacto complainant for stitching. While, the accused has explained and proved the reason for accepting the money, the presumption under Section 20 of the Prevention of Corruption Act, cannot be drawn against him. The trial Court has rightly appreciated the evidence and acquitted the accused. When two views are possible, the Appellate Court, should not interfere with the order of acquittal passed by the trial Court. In support to his submission, the learned counsel for the respondent relies upon the following judgments:-

1.In **T.Subramaniam -vs- State of Tamil Nadu, reported in 2006 (1) MWN (cr) 187 SC**, the Hon'ble Supreme Court has held as follows:-

"Mere receipt of Rs.200/- by the

appellant from PW-1 on 10.7.1987 (admitted by the appellant) will not be sufficient to fasten guilt under [Section 5\(1\)\(a\)](#) or [Section 5\(1\)\(d\)](#) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification. If the amount had been paid as lease rent arrears due to the temple or even if it was not so paid, but the accused was made to believe that the payment was towards lease rent due to the temple, he cannot be said to have committed any offence. If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the appellant had to be acquitted, as rightly done by the Special Court.

[In Punjabrao v. State of Maharashtra](#) [2002 (10) SCC 371], the accused, a patwari, was on a campaign to collect loan amounts due to Government. The complainant therein was admittedly a debtor to the Government. The accused explained that the amount in question was received towards loan. This Court accepted such explanation (though such explanation was not immediately offered as in this case, but was given only in the statement under [Section 313](#)) holding thus :-

"It is too well settled that in a case where the accused offers an explanation for receipt of

the alleged 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."

In Chaturdas Bhagwandas Patel v. The State of Gujarat (AIR 1976 SC 1497), this Court held that the burden that rests on an accused to displace the statutory presumption that is raised under Section 4(1) of the Act, is not onerous as that cast on the prosecution to prove its case. But such burden has to be discharged, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as is referred to in Section 161 IPC. In State through Inspector of Police, Andhra Pradesh v. K. Narasimhachary [2005 (8) SCALE 266], we have reiterated the well recognized principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court; and that only where the material- on-record leads to a sole and inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate

court.

9.From the evidence let in by the prosecution, what is proved is that, P.W.5, the mother of the defacto complainant gave application - Ex.P-6 on 19.01.2000, for service connection. During the end of January 2000, the accused and a Lineman - Mr.Subramaniam (PW-9) have gone to the house of PW-5 to inspect whether the accused has wired her house and to measure and assess the material requirement to provide electric service. Based on the assessment, an estimation for Rs.1,840/- has been prepared and seized during investigation. The unsigned estimation prepared by the accused is spoken by PW-7 who is the Assistant Executive Engineer and the officer superior to the accused. After scrutinising the application, the Assistant Executive Engineer of the Department has addressed a letter to the applicant in the month of February 2000, seeking certain documents to proceed with the application. The said letter has been served on PW-6 who is the wife of the defacto complainant and daughter in law of the applicant - PW-5.

10.The case of the defacto complainant, as found in the complaint - Ex.P2 dated 23.03.2000, is that, 20 days after the visit of the accused and the Lineman, during the end of January 2000, he went to the EB office to enquire about the application. The accused

told him new line from the street post has to be drawn and demanded Rs.1,000/-. When he offered Rs.100/-, the accused agreed for Rs.300/-. So, he returned back home. Later, he received letter from the Department requesting to produce title deed of the property and patta, failing which, the application will be rejected. On 20.03.2000 (Monday), he again went to the EB office along with his friend Raja (PW-3), met the accused and requested him to arrange for service connection. He firmly said if money is not paid by Friday, the application will be rejected.

11.The defence theory is that, the defacto complainant is a Tailor by profession. The accused gave cloth to stitch one pant and two shirts for the ensuring pongal festival. The defacto complainant lost the cloth. When the accused demanded the cloth, or, cost of it, the defacto complainant refused to give money. There was altercation between the defacto complainant and the accused, which was witnessed by DW-1. Ultimately, the defacto complainant agreed to pay Rs.500/-. The money received by the accused on 24.03.2000 was towards the compensation of the cloth lost by the accused.

12.Though, the defacto complainant - PW-2 denies such incident, his mother and wife who were examined as PWs-5 and 6 admit in the cross examination, that there was dispute between the defacto

complainant and the accused regarding the cloth given to PW-2 by the accused for stitching. PW-9 the Lineman also admits in the cross examination that there was dispute between the accused and the defacto complainant regarding the cloth given to the defacto complainant for stitching during pongal festival. P.W-7, the Assistant Engineer has deposed that, the defacto complainant met him and enquired about the status of the application and asked whether his dispute with the accused is the cause for delay. It is further deposed by PW-7 that he answered in negative and informed the defacto complainant that if all the required documents are produced by him, the service connection will be given immediately.

13.The learned Government Advocate (crl.side) contented that even if there was any private dispute between the defacto complainant and the accused, they form part of different transaction and in the absence of proof that the defacto complainant agreed to pay any money, the present receipt of money by the accused is not for the said purpose. Minor contradiction in the ocular evidence is natural and the same cannot be a fatal for the prosecution.

14.The said contention of the learned Government Advocate(crl.side) does not carry any merit for two reasons. Firstly, the defacto complainant, totally denies about the dispute between

him and the accused regarding the cloth given by the accused to the defacto complainant for stitching during Pongal festival. The suppression of fact by the defacto complainant is exposed by his own mother - PW-5 and his wife PW-6. Both these witnesses admit that there was dispute between the accused and the defacto complainant (PW-2) in respect of the cloth given by the accused during pongal festival. Besides the deposition of DW-1 and PW-7 also probablise the defence theory. Secondly, according to the complaint - Ex P-2 and the evidence of PW-2, it is specifically stated that, the accused finally agreed for Rs.300/- as illegal gratification to give service connection to the house of the defacto complainant. Then, there is no necessity for the accused to ask the defacto complainant, "Why he has not brought Rs. 500/-?", when the defacto complainant along with the decoy witness went to the accused office on 24.03.2000 and tendered Rs.300/-.

15.In **State of Punjab -vs- Madan Mohan Lal Verma reported in 2013(14) SCC 153**, the Hon'ble Apex court has laid down the following principle regarding presumption and its rebuttal in case of Prevention of corruption act:-

"The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not

sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under [Section 20](#) of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in [Section 7](#) of the Act 1988. While invoking the provisions of [Section 20](#) of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look

for independent corroboration before convicting the accused person.”

16. In the light of the above discussion, this Court holds that the defence theory accepted by the trial Court is probable for the reasons stated and the said view does not suffer any perversity or illegality. Hence, the need to interfere the judgment of the trial Court does not arise. Accordingly, the Criminal Appeal is dismissed thereby confirming the judgment of the trial Court.

28.08.2017

jbm

Index: Yes
Speaking Order/non speaking order

To

1. The Special Judge

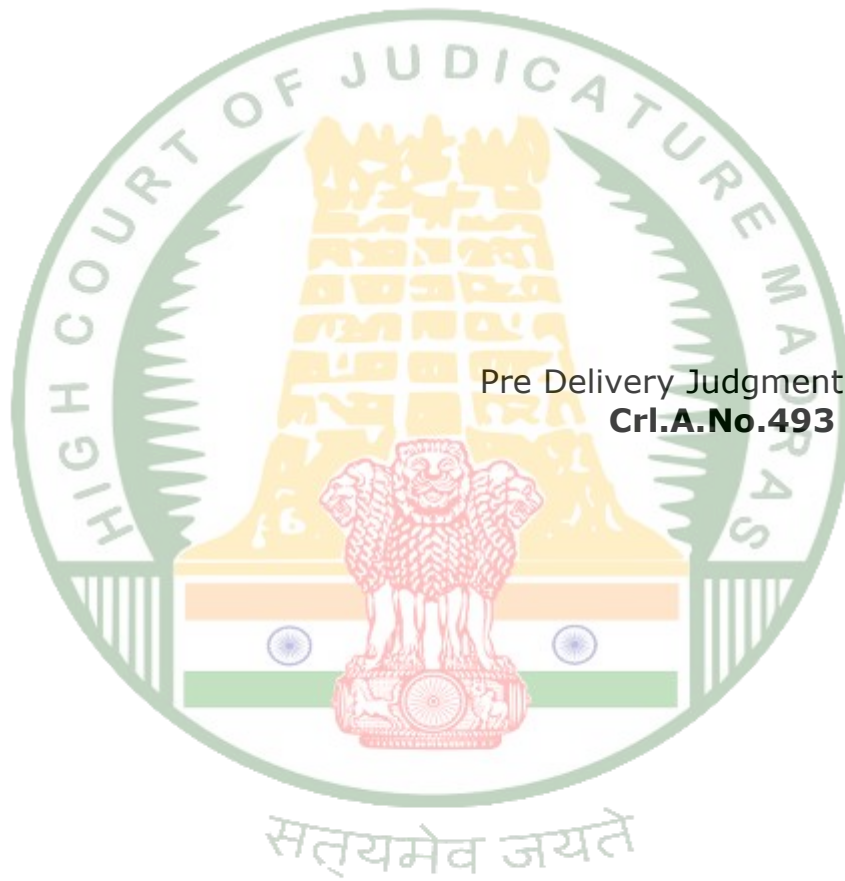
(Special Court for Trial of Cases under
the Prevention of Corruption Act),
Salem.

2. The Public Prosecutor,
High Court, Madras.

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G.JAYACHANDRAN.J.,

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Pre Delivery Judgment made in
Crl.A.No.493 of 2017

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