Bail Slip.

The Appellant/Accused namely M. Kandavel, aged 48 years (at the time of filing Crl.A. 563/2010) S/o P.K. Deivasigamani, was directed to be released on bail as per order dated 20.09.2010 made in Crl.M.P. 1/2010 in Crl.A. 563/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2017

DELIVERED ON : 22.12.2017

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

Criminal Appeal No.563 of 2010

D. Kandavel,
M/Age:48 years
S/o. P.K. Deivasigamani
No.318/3, Ponni Colony
29th Street, H Block
Anna Nagar West
Chennai-40 … Appellant/Accused/Petitioner

Versus

State rep. by the Inspector of Police,
SPE/CBI/ACB/Chennai
(R.C.No.60A/2007) … Respondent/Complainant

For Appellant :: Mr.V. Gopinath Senior Counsel for Mr.L. Mahendran

For Respondent :: Mr.K.Srinivasan, Special Public Prosecutor

JUDGMENT

This Criminal Appeal is filed as against the judgment passed by the Additional Special Judge for CBI cases IX Additional City Civil Court, Chennai, dated 31-08-2010 in CC No.18/2008.

2.The Appellant is the accused in CC No.18/2008 before the Trial Court of the Additional Special Judge for CBI cases. The crux of the prosecution case is that during the last week October 2007, PW 10 who is working in the Office of PW2 received a phone call from a person by name Kandavel and the said Kandavel informed him that he is working as Income Tax Officer and asked about the owner of PW10 and the said Kandavel gave his mobile number 9884957805 to PW10 and asked him to inform the owner Annamalai who is PW2 to contact him. On that basis, PW2 contacted the said person Kandavel who is the Appellant/accused herein in his mobile number. The Appellant Kandavel informed PW2 that he is working as Income Tax Officer and the account submitted by PW2 not correct and asked PW2 to meet him. When PW2 informed that he has got proper accounts, the accused disconnected the telephone connection. Thereafter, also the accused contacted the PW2 through phone on several occasions and compelled him to meet him in the office. On 14-11-2007, PW2 went to the office of the accused and PW2 was told by the accused, that he has to rectify the mistakes in his Statement of Accounts otherwise fine can be imposed upto Rs.6.00 lakhs and if PW2 gives Rs.2.50 lakhs, the accused would set right the accounts. Though PW2 informed his inability to pay the amount demanded by the accused after negotiation it was reduced to Rs.1,50,000 and the accused instructed PW2 to pay initially a sum of Rs.50,000/- by way of cash and also a cheque for Rs.50,000/- and after 15 days he should pay the balance amount of Rs.50,000/-. Thereafter, as PW2 was not willing to pay the bribe, he lodged Ex.P4 complaint with PW4 and after registering a case PW4 arranged for trap procedure. On 05-12-2007, as per the instruction of the accused, the PW2 gave Rs.50,000/- in cash and M.O.3 series cheque to the Appellant at Koyambadu Bus Stand and at that time Trap Laying Officer PW4 rushed in with his team and caught hold of the Appellant and recovered the M.O.3 series cheque from the Appellant. Further investigation was conducted and after obtaining sanction for prosecution, final report was filed before the Trial Court.

3. The Trial Court framed charges under Sections 7 and 13 (2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988 and trial was proceeded and completed. The Trial Court after hearing the arguments of both sides and upon perusing the relevant evidence available on record found the Appellant guilty of the offences under Section 7 and 13(2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988, convicted and sentenced him to undergo RI for one year each and to pay a fine of Rs.10,000/- each in default to undergo further period of RI for 3 months each for the above said respective offences and the sentence of imprisonment are ordered to run concurrently and set off is also allowed.

4. Aggrieved over the same the accused has preferred this appeal and contends, that the prosecution has miserably failed to prove the charge against the appellant/accused. The learned Counsel appearing for the Appellant submits that PW4 who received the complaint from PW2 on 05-12-2007 has not verified the veracity and fruitfulness of the complaint and without taking any reasonable time to ascertain the same has proceeded

mechanically in registering the complaint and the Investigating Officer PW16 also followed an unusual procedure and there is a discrepancy in the evidence of PW3 in respect of attesting the Entrustment magazar Ex.P5 and Recovery magazar Ex.P7 and preparation of the same. Further, the trap procedures has not been followed properly. It is also contended that the Trial Court ought to have held that the accused version is more probable that he received the amount as hand loan only from PW2. The learned Counsel further submits that PW2 categorically states that neither himself nor his wife are involved in finance business whereas PW14 the Auditor for PW2 states that PW2 is carrying on finance business and the same is reflected in the income of his wife and that contradiction will clearly prove that the Appellant version is more probable.

5. The learned Counsel for the appellant further submits that at the time of the alleged trap the Appellant stated immediately that the amount was received as a loan from PW2 for meeting his personal expenses and the same has been corroborated by PW4 and there is no case pending against PW2 in the Income Tax department and under these circumstances, the Appellant has no reason to demand bribe amount from PW2 and further as the Appellant received the amount of Rs.50,000/- by way of cheque would go to show that it is only a loan amount and in these circumstances, the Trial Court ought to have disbelieved the prosecution theory and acquitted the Appellant.

6. The learned Counsel further submits that as far as the presumption under Section 20 of PC Act is concerned, the Supreme Court has categorically held that the burden of proof placed upon the accused person is not akin to the burden placed on the prosecution to prove the case beyond reasonable doubt and it is enough if the Appellant proves his case by the test of preponderance of the probabilities and the amount was not taken by the accused as gratification and the Trial Court has committed an error by disbelieving the evidence of the DW1 which is supported by the evidence of PWS 2 to 4 and 16. Further it is submited that the factum of introducing the accused to PW2 for arranging loan amount has been suppressed by PW7 and so the evidence of PW7 is to be rejected and the appeal has to be allowed and the Appellant is to be acquitted.

7. In support of his contention the learned Counsel appearing for the Appellant relied on the ruling Thirulokchand Jain vs. State of Delhi in 1977 Cri. L. J. 254 (1) wherein, it is held as follows:

> “In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour; it is not necessary for him to establish his case beyond a reasonable doubt.”

In another ruling, T. Subramanian Vs. State of Tamilnadu reported in 2006 (1) MLJ Criminal (CRL) 63, it is held as follows :-

> "If the amount had been paid as lease rent arrears due to the temple or even if it was not so paid, bu the accused executive officer of the temple 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 accused had to be acquitted."

The appellant also relied upon the ruling, Punjabrao vs. State of Maharashtra reported in 2004 Supreme Court cases (CRI) 1130, wherein it is held as follows:-

> "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. It is undisputed that from 24th to 26th the Patwari was collecting loans in a collection campaign. It is, of course, true as observed by the High Court that when the investigating officer seized the amount from the accused Patwari, he did not offer the explanation that it was in relation to a collection of loan, but that by itself would not be sufficient to throw away the explanation offered by the accused in his statement under Section 313 when such explanation could be held to be reasonable under the facts and circumstances of the case, as indicated by the learned Special Judge while acquitting the accused."

And in another ruling, M.K. Shanmugasundaram vs. Inspector of Police reported in 2007-1 L.W.(Crl) 199, it is held as follows:-

> "Since the accused has discharged his burden by proving that the sum of Rs.1,000/- was collected only for the purpose of Small Savings, the conviction of the accused for offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act is not sustainable and therefore this appeal is allowed."

Thus the accused/appellant contends the plea of demand and acceptance of illegal gratification by the accused is not established by the prosecution and seeks to allow this appeal.

8. On the other hand, refuting the contentions of the appellant/accused, the learned Special Public Prosecutor appearing for the CBI supported the impugned judgment and the order of conviction passed by the Trial Court by submitting that the prosecution has proved the demand and acceptance of bribe amount by the accused/Appellant from PW2 and accused as the receipt of the amount from PW2 is admitted. It is the duty of the accused/Appellant to prove by his preponderance of probabilities of his theory, that the recovered amount was not received by him from PW2 is admitted as the defence has failed to prove the same but the prosecution has proved its case beyond reasonable doubt and the Trial Court has properly considered the materials on record and came to the correct conclusion and there is no ground to assail the judgment of the Trial Court and prays that the Appeal may be dismissed by confirming the finding, conviction and sentence passed by the Trial Court.

9. I have heard the rival submissions and perused the materials available on record.

10.1. The admitted facts are that PW2 was having several businesses in the names of Sri Kumar Enterprises, Sri Kumar Blue Metals, Muthukumar Suppliers and Kumar Suppliers and out of the said concern Sri Kumar Enterprises & Kumar Suppliers were run in the name of PW2, where Sri Kumar Blue Metals and Muthukumar Metal Suppliers are owned and run by his wife and son respectively. PW2 was having his Income Tax accounts at Tambaram Income Tax Office in Ward No.I(1) and the accused was the Income Tax Officer in that office and he was working as ITO, Tambaram from 2003 and he was transferred during the year 2007 to the Chennai Income Tax Office at Nungambakkam. However it is contended, during that period the Appellant never dealt with the income tax returns of PW2 at any point of time.

10.2. In respect of the businesses in the name of PW2 and in the names of his wife and son, he was filing Income tax returns in the Income Tax Office, Tambaram Ward No. I(1). PW2 further deposed that on 29-10-2007 when he reached his office, PW10 his office boy informed him that one Kandavel accused herein wanted to contact himover phone since PW2 was not available in the office at that time, the above caller gave his telephone number to PW10. Thereafter PW2 contacted the above said mobile number on the same day and the Appellant informed PW2 that his income tax account is not proper and he wanted to meet PW2. However denying the same PW2 informed the accused that he is having proper account and requested the Appellant to contact his Auditor PW14 and gave the phone number of his auditor. However, the Appellant frequently contact the PW2 himself and on 14-11-2007, PW2 met the Appellant in his office and the Appellant informed him that as the I.T account is not correct fine is to be imposed upto Rs.6.00 Lakhs. Subsequently, the amount was reduced to Rs.1.50 lakhs on 03-12-2007 by negotiation. PW13 was the friend of one Nalini who is wife of the Appellant and the Appellant's wife Cell Phone No. is 9884957805, which was given as a gift to the above said Nalini by PW13. The above fact has not been disputed by the Appellant. From the above said mobile phone the Appellant contacted Land line phone No.044 22643236 at 12.17 Hrs. on 29-10-2007. He also contacted PW2's mobile number 93821 26529. The phone calls made by the Appellant over the above phone nos. with PW2 is proved by Exh.P22, the call particulars pertaining to the mobile number 98849 57805 and Exh.26 & P27, the call particulars of PW2's mobile No.93821 26529. The fact that Appellant contacted PW2 on several occasions is proved by the details available in Exh.P22, 26 & 27 and the same is corroborated by the evidence of PW2 and if the PW2 wants to avoid it, he shown pay the appellant herein Rs.2.50 lakhs so that he was set right the account.

11. PW2 further deposed that the Appellant asked PW2 on 03-12-2007, to give Rs.50,000/- as Cash and cheque for Rs.50,000/- and after fifteen days PW2 could give Rs.50,000/- in cash. PW2 thought that since he is having proper account, he need not give bribe amount to the Appellant and hence he went to the CBI Office on 05-12-2007 and gave the complaint Exh.P4. PW4, the Inspector, CBI Office, after verifying the genuineness of the complaint, called PW3 and one Rajaram as independent witness and laid the trap after following the regular procedure. This aspect was spoken to by PW2 and PW4. After preparation of the same, PW2 to 4 & trap team members proceeded to Koyambedu bus stand and then PW2 contacted the Appellant through mobile phone asking him to go over to Koyambedu. Accordingly, the Appellant came to Koyambedu Omni Bus stand around 6.05 PM and as per the demand of the Appellant, PW2 gave Rs.50,000/- as cash and a cheque for Rs.50,000/-, which is marked as M.O.3 series and Exh.P6 respectively. After the appellant received the same, PW2 gave the pre-arranged signal to PW4 who was waiting nearly and immediately the trap team rushed in and recovered M.O.3 series and Exh.P6 from the Appellant and phenolphthalein test was conducted giving positive result. The said occurance is corroborated by the evidence of PW3 and PW4. The above fact of the receipt of M.O.3 series and Exh.P6 is admitted by the Appellant and also proved by the evidence of PW2 to 4, the Appellant cannot challenge the verocity of registering a complaint by PW4 and the trap team formed and the procedure adopted by the PW4. Further, at the time of registration of complaint, the F.I.R. registering authority need not go elaborately above the genuineness of the complaint that too in the case our hand, the Appellant has admitted the receipt of the

Exh.P6 and M.O.3 series, all submissions in respect of registration of complaint, recovery of M.O.3 series and Exh.P6 cannot be challenged by the Appellant. So, from the above circumstances, it is clear that the Appellant received Exh.P6 and M.O.3 series for a total sum of Rs.1.00 lakh.

12. Now, Section 20 of Prevention of Corruption Act come into play and the Appellant is to prove his innocence by way of preponderance of probability of his case as settled by the Hon'ble Supreme Court and our High Court in the above cited rulings. [1977 Crl.L.J.254 (1); 2006 (1) MLJ Crl.63; 2004 SCC (CRl)1130 and 2007-1 LW (Crl)199]

13. The case of the defence is that the Appellant was in need of money of Rs.2.00 lakhs and when he asked the amount from PW7, he informed him that he would introduce a financier and gave his phone number and he could get the money from him and accordingly, PW7 gave PW2's phone number and introduced PW2 also and on several occasions the Appellant contacted PW2 for getting loan. The loan amount was reduced to Rs.1.00 lakh and so, the Appellant arranged Rs.1.00 lakh by way of pledging his jewels in co-operative banks and obtained a sum of Rs.1.00 lakh from PW2 as a loan at Koyambedu and at the time of receiving the loan from PW2, the Appellant was having a Pro Note and also Cheque book in order to hand over the relevant documents for receipt of loan amount. PW7 is none other than the person employed as Inspector, Income Tax Office at Chennai and he deposed that he do not know Annamalai (PW2) and he had not given the address and phone number of PW2 to the accused. So, the introduction of PW2 to the Appellant is not supported by the evidence of PW7. Further, the Appellant examined himself as DW1, has not produced any receipt of co-operative bank in which he is said to have been obtained loan of Rs.1.00 lakh by pledging his jewels, but it is stated by the Appellant that the receipt was taken away by PW4. It is pertinent to note that the Appellant has not stated anything about the name of the co-operative bank in which he pledged his jewels and further if really he has pledged his jewels as stated by him and the CBI Officer had taken away, he could very well have summoned the authority of concerned co-operative bank to produce the relevant document for having pledged the said loan during the relevant point of time. However, no such material has been produced or any attempt was taken to produce. In the absence of the same, the above theory of pledging the jewels to avail loan from the bank cannot be accepted and probably it is invented for the purpose of this case.

14.As far as receipt of M.O.3 series and Exh.P6 by the Appellant from PW2 is concerned, it is submitted by the learned Counsel for Appellant that PW2 deposed that he was not running finance business, whereas PW14 deposed PW2 was running finance business for which accounts is also available and in the circumstances, the Appellant obtained loan only and not as a bribe and further would contend that when the Appellant has not dealt with the income tax returns of the PW2, there was no necessity for the Appellant to demand bribe from PW2 and in the above circumstances would clearly reveal that the Appellant has received M.O.3 series and Exh.P6, only a loan transaction and it is enough if it is proved preponderance of probabilities of Appellant's case and the Appellant has proved his case well. This aspect is concerned, when the Appellant had not dealt with the Income tax returns of the PW2, and no personal contacts between the Appellant and the PW2 on earlier occasions and there was no enmity between the Appellant and the PW2 is suggested, there was no necessity at all for PW2 too to file a false complaint against the Appellant. According to PW2, he was having proper Statement of Accounts and the same was filed in the Income Tax Department through his Auditor PW14 and in the circumstances, PW2 has no necessity to lodge false complaint against the Appellant. Therefore, the contention of the Appellant that the occurrence is a loan transaction and false complaint has been lodged against him cannot be sustained. The Appellant has not proved his claim that he obtained jewel loan from co-operative bank and Exh.P6 and M.O.3 series were obtained from PW2. No doubt, mere preponderance of probabilities in the case of the accused proved sufficient in view of the cited rulings cited. Now, it is to be seen the rulings cited by the Appellant, the 1st cited case is concerned, the money was demanded by Gupta and was received by the Appellant on his behalf pursuant to the instructions of Gupta given to the Complainant earlier and the prosecution has failed to prove that the money had not been paid to the Appellant. Pursuant to any demand of bribe made by Gupta, the Court cannot make out a new case for the prosecution to hold that the amount had been received by the Appellant on his own or for some person other than Gupta. The fact of the case is entirely different from the case in our hand. The 2nd cited case is in respect of the explanation that the money was given by the accused by one of the Lessees on behalf of another Lessee who was an arrears of rent and that the Lessee wanted to take the payment the next day. Third cited case is in respect of collecting loans. The above cited cases are the preponderance of probabilities of the case of the accused was apparent as it relates to collection of arrears of rent, collection of loan amount and it relates to demand said to have been made by one person and the amount was collected by the Appellant, but the prosecution shifted the Appellant that received the amount for himself and he collected the amount on the demand made by a person originally said to have been demanded. In the 4th cited case is it is held that the demand is not proved, but in the present case, it is very well established that the demand was made by the Appellant from PW2 to give Rs.2.50 lakhs, alleging that there is a mistake in the Statement of Accounts of PW2 and the same is to be rectified and after negotiation it was reduced to Rs.1.50 lakhs and initial payment of Rs.1.00 lakh was paid on 05-12-2007. Thus, the demand and acceptance of Rs.1.00 lakhs under Exh.P6 and M.O.3 series are proved beyond reasonable doubt.

15. Thus, in the case on hand, the prosecution has proved beyond reasonable doubt the receipt of money as illegal gratification by the accused/appellant and therefore the statutory presumption has to be drawn against the appellant. In the light of failure to place before Court any plausible explanation by the appellant/accused for being in possession of tainted money/cheque the conviction imposed upon the accused by the Trial Court, does not warrant any interference and the Criminal Appeal is liable to be dismissed.

16. Further, it is pointed out that the Honourable Supreme Court, in V.Sejappa V. State by Police Inspector Lokayukta, Chitradurga 2016 Cr.LJ 2589: AIR 2016 SC 2045: (2016) 12 scc 150: LNIND 2016 SC 178 has held that if the evolution of the evidence and the findings recorded by the trial Court does not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal even if another view is possible. In view of the above said discussion, this court finds no merit in the appeal and no ground is made out to interfere with the Trial court conclusion. The Point is answered accordingly.

17.In the result, the Criminal Appeal is dismissed. The conviction and sentence imposed upon the appellant vide order dated 31.08.2010 in C.C.No.18/2008 on the file of IX Additional City Civil Court, Chennai, are hereby confirmed. The Trial Court is directed to secure the accused to undergo the remaining period of sentence if not already undergone.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vs/nvsri

To
1.The Inspector of Police,
SPE/CBI/ACB/Chennai.

2.The Additional Special Judge for CBI Cases
The IX Additional City Civil Court, Chennai.

3.The Section Officer, V.R.Section, High Court, Madras.

4. The Director General of Police
Mylapore, Chennai 4.

5. The Commissioner of Police
Egmore, Chennai 8.

6. The District Collector, Madras.

Copy to
The Section officer
Criminal Section
High Court, Madras 104.

Crl.A.No.563 of 2010

VGI(CO)
SP(07/12/2018)