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IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.Appeal No.320 of 2010

Elango .. Appellant/accused

Vs

State by Inspector of Police
Vigilance and Anti Corruption
Tiruchirappalli,

.. Respondent

Prayer:- Criminal Appeal filed under Section 374 of Cr.P.C.,
against the judgment of the Chief Judicial Magistrate, Perambalur
in Spl.Case.No.3 of 2001 dated 27.4.2010.

For Appellant : Mr. V.Gopinath, Senior Counsel
for Mr.G.Mohanakrishnan

For Respondents : Mr.E.Raja
Additional Public Prosecutor

J U D G M E N T

This appeal has been preferred against the Judgment in
Special Case No.3 of 2001 on the file of the Chief Judicial

Magistrate, Perambalur. The accused who has been charged for the offence under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, (hereinafter referred to as "the Act") is the appellant herein.

2. The facts leading to the filing of this appeal is as follows :

(i) P.W.2 is the resident of Perambalur District. By virtue of the decree obtained in O.S.No.458 of 1992, P.W.2's father became absolute owner of (4) acres of agricultural land. His father has given an application on 08.7.1988 to the Perambalur Taluk Office for change of patta, and the same was forwarded to the accused, Elango, who was the Revenue Inspector at the relevant time. Since no progress was made on the said application in spite of repeated visit made by P.W.2's father to the Taluk Office, at his request, P.W.2 went to the office of the accused on 17.9.1998 and enquired about the change of patta. Since, the accused informed that the land has to be inspected by him, again, P.W.2 went to the office of the accused on 18.9.1998. On that date, the accused asked P.W.2 to come to his office on 22.9.1998. On 22.9.1998, when P.W.2 met the accused in his office at 9.00 am, the accused came out of his room and asked

P.W.2 whether he has got any money. P.W.2 informed that he did not bring any money. The accused demanded Rs.1,000/- as a bribe for processing the application for change of patta. Despite P.W.2's request that he cannot pay such huge amount, the accused told P.W.2 that only if he paid Rs.1,000/- he would take further action, otherwise, he will not take any action in the matter. Further, the accused asked P.W.2 to bring the money on the next day i.e., 22.09.1998 at 6.00 p.m.

(ii) Therefore, P.W.2 lodged complaint on 23.9.1998, before the Superintendent of Police, Vigilance and Anti Corruption, Trichy (Ex.P2) and the same was forwarded to P.W.4, who registered the case in Crime No.7/98 for the offence under Sections 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988, (Ex.P8) and recorded the statement of P.W.2. He also organised trap and invited the witnesses, P.W.3 and One Saravanakumar, to the police station, where he has explained the procedure of trap and prepared Ex.P4 mahazar. Accordingly, P.W.2 and P.W.3 along with trap team went to the office of the accused but the accused was not there and they were informed that he went for lunch. P.W.2 and P.W.3 were

waiting in the office and the accused came to office at about 3.45 p.m. On seeing P.W.2, the accused called him and asked him to wait outside as there was a big crowd. P.W.2 and P.W.3 came outside and waited for him. The accused came out and at that time P.W.2 asked the accused to receive the money as he has to go early. The accused asked P.W.2 to give the money to one Aruldoss, writer, for which P.W.2 refused and asked the accused to receive the money. The accused asked P.W.2 to wait and when he returned after having a tea, he went inside the office and asked P.W.2 to come inside the office and enquired about the money. When P.W.2 gave Rs.1000/- to the accused, the accused received the same and kept in his shirt packet. Immediately, P.W.2 made signal to the trap team.

(iii) Pursuant to the signal made by P.W.2, P.W.4 and others came to the office and conducted Phenolphthalein test in the presence of P.W.3 and one Saravanakumar, which was found to be positive. P.W.4 recovered the money given by P.W.2 and also seized the shirt (M.O.2 and M.O3) worn by the accused and also prepared observation mahazar (Ex.P6). The accused also handed over the file relating to the change of patta and receipt

book for collection of the amount for the flag day. P.W.4 also conducted necessary search and arrested the accused. P.W.5, the inspector took further investigation and recorded statement and also gave requisition to the Court to send solutions to the forensic lab and also sent all the materials to the Head Office of the accused. The application given by P.W.2's father was marked as Exs.P.11 and P.12. P.W.6, Scientific Officer of the Forensic Department, who examined the solutions, gave information Ex.P10. Thereafter, P.W.7, after obtaining sanction order from P.W.1, laid the charge sheet.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he pleaded not guilty. It is the case of the accused that he never demanded bribe nor accepted bribe and since he was directed by the higher officials to collect certain amount for flag day, he collected some amount from the public and taking advantage of the same, P.W.2 has implicated him. According to the accused, D.W.1 one Aruldoss, was helping him in his office on 23.09.1998 on the day of trap. P.W.2 approached the accused and told him that he has brought the money for flag day collection. Despite direction to pay the

amount to D.W.1, he did not pay the same to the accused. According to the accused, when he had taken the book for preparing receipt, the trap team came to the spot and prevented him from writing the receipt. The accused produced Exs.D1 to D3 to prove the circular issued by the higher officials to collect flag day collections.

4. On the side of the prosecution P.Ws 1 to 11 were examined and Exs. P1 to P35 were exhibited. On the side of the accused, D.W.1 and D.W.2 were examined and Exs. D1 to D3 were marked.

5. On the basis of the above materials, the Trial court has found the accused guilty and convicted the appellant/accused for the offences under Section 7 and 13 (2) read with 13 (1) (d) of Prevention of Corruption Act and sentenced the accused to undergo one year Simple Imprisonment and to pay a fine of Rs.5000/- in default to undergo one month Simple Imprisonment for the offence under Section 7 of the said Act and also sentenced him to undergo one year simple imprisonment and to pay fine of Rs.5000/- in default to undergo one month simple imprisonment

for the offence under Section 13 (2) read with 13 (1) (d) of the said Act. Substantive sentences were directed to run concurrently. Set off as per law was allowed. Aggrieved over the same, the present appeal came to be filed.

6. The learned Senior counsel for the appellant/accused submitted that there was a circular issued by the higher officials of the accused to collect certain amount towards flag day collection and the prosecution witnesses would also prove the fact that at the relevant time, the accused had collected amount towards flag day collection. The learned Senior counsel for the appellant/accused further contended that the demand spoken by P.W.2 has not been corroborated by any other witnesses. According to the learned counsel, P.W.2, in his evidence, has stated that the first demand said to have been made on 22.9.1998, for which there is no corroborative evidence available on record. P.W.2 in his evidence has deposed that the accused has told him that without making any inspection over the property, he cannot process the application. Whereas P.W.2 insisted the process of application without any inspection. This fact would clearly probalilise the motive for false implication of

the accused in a trap case.

7. It is the further contention of the learned Senior counsel that the evidence of P.W.2 and P.W.3 are highly inconsistent with each other with regard to the demand and acceptance. The conduct of P.W.2 clearly proves that he made up his mind only to give tainted money to the accused despite the fact that the accused had insisted him to pay the amount to D.W.1. It is submitted that the conduct of the accused in refusing to pay the money to D.W.1 would clearly probabilise the fact that P.W.1 has no intention, whatsoever, to receive the amount as the bribe. Whereas P.W.2 waited till the accused came to his room, after having tea, and thereafter gave the money to him, which, in fact, was paid towards the flag day collections. Further, when the accused took the book to write receipt, the investigating officer and vigilance team entered into the spot and told the accused not to write in the receipt book. It is further submitted that the though the receipt book was seized by the prosecution, the same has not been exhibited. If the receipt book has been exhibited, the same would have clearly established the fact that the accused, in fact, had collected the said amount towards flag day collections at the relevant time. Hence, it is submitted by the

learned Senior counsel that merely because the Phenolphthalein test was found to be positive and recovered money is also smeared with Phenolphthalein, that itself cannot be a ground to presume that the accused had committed the offence. Therefore, the accused is entitled to a benefit of doubt and a consequent acquittal.

8. In support of his arguments, the learned Senior counsel has relied upon the judgments in **MOORTHY V. STATE REPRESENTED BY ADDITIONAL SUPERINTENDENT OF POLICE, A.C.B/C.B.I/Chennai** (2011) 2 MLJ (CrI) 224; **STATE REP.BY SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI CORRUPTION, CHENNAI v. SUBRAMANIAN AND OTHERS** (2006) 2 MLJ (CrI) 1001 and **MAHMOODKHAN MAHBOOBKHAN PATHAN V. STATE OF MAHARASHTRA** (1998 CRL.LJ. 3635).

9. Whereas, the learned Additional Public Prosecutor vehemently contended that the evidence of P.W.2 clearly established the factum of demand made by the accused and hence, there need not be any corroboration for such evidence.

It is submitted that no one would demand bribe or receive the bribe amount in front of others. The evidence of P.W.3 would clearly show that the accused invited P.W.2 alone to come inside the office for collecting money. The conduct of the accused in not receiving the money at the first instance on the ground that there are huge crowd around him would clearly prove the fact he demanded the amount only towards the gratification. If really, he has collected the amount only for the purpose of flag day collections, he would have simply received the amount at the first instance itself but the accused refused to receive the amount at the first instance. He invited P.W.2 alone to come inside the office and received the money from him. This fact would clearly prove the factum of acceptance of the bribe. It is submitted that the Phenolphthalein test is also found to be positive. Hence, according to the learned Additional Public Prosecutor, the prosecution has clearly established the guilt of the accused beyond reasonable doubt. Therefore, presumption under Section 20 of the Act is squarely applied to this case and it is for the accused to rebut such presumption.

10. It is also submitted by the learned Additional Public

Prosecutor that nothing prevented the accused from summoning the receipt book or taking steps to mark the same to rebut the presumption. Therefore, it is submitted that non exhibit of the receipt book is not a ground to disprove the entire prosecution. There was no motive, whatsoever for P.W.2 to implicate the accused falsely. It is vehemently argued by the Additional Public Prosecutor that once the demand and acceptance have been proved, presumption under section 20 of the Act comes into operation. Hence, the learned Additional Public Prosecutor prayed for dismissal of the appeal.

11. In support of his contention, the learned Additional Public Prosecutor has placed reliance on the judgments in **STATE OF ANDHRAPRADESH V. C.UMA MAHESWARA RAO AND ANOTHER** 2004 SCC (Cri) 1276; **VINOD KUMAR V. STATE OF PUNJAB** (CDJ 2015 SC 115) **MADHUKAR BHASKARRAO JOSHI V. STATE OF MAHARASHTRA** (2001 CRL.L.J. 175) and **M.SELVARAJ V. STATE BY INSPECTOR OF POLICE, VIGILANCE AND ANTI-CORRUPTION, SALEM** (2008) 3 MLJ (CRL) 284.

12. In the light of the above submissions, now the point that arises for consideration is as to whether the prosecution has proved the guilt of the accused beyond reasonable doubt?

13. P.W.2, in his evidence, has categorically stated that, since the application given by his father for change of patta has not been processed despite his father's frequent visit and his father was aged about 80 years, he went to the office of the accused on 17.09.1998 to enquire him about the status of the same. On the said date, the accused asked him to come to the office on 18.9.1998 and when he went there on 18.9.1998, the accused asked him to come on 22.9.1998. Accordingly, P.W.2 went to the office of the accused on 22.09.1998 at about 9.00 a.m and met the accused. At that time, the accused came out from his office and demanded a sum of Rs.1000/- for processing the application given by his father. Even when P.W.2 expressed his inability to pay the amount, he was informed by the accused that unless the said amount is paid, he will not process the application. P.W.2, in his evidence has clearly spoken about his presence in the Taluk office and the demand of bribe by the accused. His presence and the demand made by the accused

has also been spoken by P.W.8, who is the Village Administrative Officer at the relevant point of time. P.W.8, in his evidence, has also stated that on 22.09.1998, the accused and P.W.2 were taking together. P.W.9, Village Assistant, in his evidence, has stated that on 22.9.1998, P.W.2 came to the office of the accused and they were were talking together. The theory of prosecution that P.W.2 going to the office of the accused on 22.9.1998 in the morning hours has been clearly established from the evidence of P.W.2, P.W.8 and P.W.9. P.W.2 in his evidence has also stated that the accused demanded a sum of Rs.1000/- as bribe.

14. It is to be noted that it is the specific evidence of P.W.2 that the accused came out from his office and demanded the amount. The evidence of P.W.8 also corroborated the fact that the accused and P.W.2 were talking together in his office. Therefore, the accused coming out from the office and demanding a sum of Rs.1000/- is clearly established from the evidence of P.W.2. Therefore, the contention of the learned counsel that P.W.2's evidence with regard to demand has not been corroborated cannot be sustained for the simple reason that the public servant, while doing some favour to anybody, will not

be in a position to demand the same in front of others. Therefore, there cannot be any corroborative evidence in that aspect.

15. P.W.2, in his evidence, has further stated that immediately on the next day, i.e. on 23.9.1998, he went to the police and gave a complaint to P.W.4, who laid a trap and also invited P.W.3 and one Saravanakumar, witnesses and explained about the Phenolphthalein test and as per the instruction, he and P.W.3 went to the office of the accused and at that time, the accused went out for lunch and hence, they waited till his return and thereafter, when the accused came back around 3.45 p.m, he shown the accused to P.W.3. P.W.2 would further depose that on seeing him, the accused asked P.W.2 and P.W.3 to come inside and when they went inside, the accused told him to wait outside as there was a crowd. Thereafter, after having tea, the accused came back and asked P.W.2 alone to come inside. When he went inside, the accused asked about the money and received the same from P.W.2 and counted it and kept in shirt packet. P.W.2 immediately came out and made signal to the trap team. P.W.4 and others went inside and conducted Phenolphthalein test

and the same found to be positive. Thereafter, the trap team seized the tainted money and arrested the accused. P.W.3, in his evidence, also supported the version of P.W.2.

16. On a perusal of the entire evidence of P.W.2 and P.W.3, it is clear that the prosecution has established the factum of acceptance of the tainted money of Rs.1000/- by the accused. The tainted money was also recovered from the accused. The statement of Investigating Officer as well as the expert of forensic science Department would clearly prove the Phenolphthalein found in the shirt and solutions. The evidence of P.W.2 and P.W.3 clinchingly proved the acceptance of bribe.

17. It is not the case of the accused that he never received the said sum of Rs.1000/-. It is the contention of the learned Senior counsel for the accused that at the relevant point of time, the accused had received the said money from P.W.2 towards flag day collections and before he took the receipt book and write the same, the trap team came inside and asked him not to write in the receipt book. Therefore, it is the contention of the learned Senior counsel for the accused that he never received the amount as bribe.

18. In this regard, it is to be noted that the conduct of the accused, as spoken by P.W.2 and P.W.3, is against the normal conduct of human being. If really the amount was collected by the accused towards flag day collections, the moment, when he seen P.W.2 and P.W.3, after returning from lunch, he would have collected the money from them. Whereas he has specifically told them to wait outside, since there was crowd around him, which would create suspicion. Further, when he came back from tea stall, he asked P.W.2 alone to come inside the office and received the money which would clearly probabalise the theory of prosecution rather than the theory of the accused that the amount was collected towards flag day collections. The conduct of the accused making P.W.2 to wait for some time, as there was a crowd around him, itself would prove the fact that he demanded bribe. Therefore, the contention of the learned Senior counsel for the accused that he has received the amount only towards the flag day collections is not sustainable. It is well settled that once the prosecution is able to establish the demand and acceptance and Phenolphthalein test also found to be positive, then the presumption available under Section 20 of the Act would come into play.

19. From the evidence of P.W.2 and P.W.3, P.W.4, P.W.6, Scientific Officer, Forensic Science Department, and P.W.8 investigating officer, the demand and acceptance of bribe as well as the phenolphthalein test has been proved. Therefore, the Court has no other option except to presume that the accused had committed the offence. It is true that the statutory presumption is rebuttable and the defence can be proved based on preponderance of probabilities. But in this case, the explanation offered by the accused that he received the amount only towards the flag day collection is falsified in view of his conduct in asking the P.W.2 to wait outside as there was a crowd around him. That apart, the accused has not taken any steps to establish the factum that at the relevant time, i.e on the day of the trap, he has collected amounts towards flag day collections. Though the receipt book has been seized, the accused has not taken any steps to exhibit the same before the Court. Since the accused taken the defence that he received the amount only towards flag day collection as per the instruction of the higher officials, he ought to have taken steps to exhibit the receipt book to show that there were entries made by him on the particular day with regard to the flag day collections. The failure to

establish the above factum also assumes significance. The said fact itself would clearly indicate that there were no such entries made on the said day to prove his explanation. Therefore, this Court is of the view that mere offering certain explanation stating that the said amount was collected towards flag day collection is not a ground to dislodge the legal presumption available under Section 20 of Act.

20. Exs.D1 to D3 were filed to show that there were circulars to collect the flag day collections from the public. It is to be noted that Ex.D1, circular dated 15.7.1998, would go to show that the Revenue Inspectors were asked to collect Rs.3,000/- each towards flag day collections.

21. If really the accused were directed to collect amounts towards the flag day collections as per Ex.D1, circular dated 15.07.1998, he would have collected some amount and issued receipts to the person concerned but there is no such receipts found. This fact would also clearly falsify the case of the accused. At the risk of repetition, this Court points out that the accused ought to have taken some steps to exhibit the receipt book to

dislodge the presumption available under Section 20 of the Act.

22. In this regard, it is useful to refer the judgment in **MADHUKAR BHASKARRAO JOSHI V. STATE OF MAHARASHTRA** (2001 CRL. L.J 175), wherein it is stated 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.

13..

14. We, therefore, repel the contention of the learned counsel that prosecution has a further duty to prove beyond the fact that PW-1 had paid the demanded money to the appellant for enabling it to lay the hand on the legal presumption employed in the *Prevention of Corruption Act*. We may point out that the defence did not even attempt to prove that the amount received by the appellant was not accepted as a reward or motive for the official act done by him, except the ipse dixit of the appellant, that too made at the fag end of the trial when he put in a written statement of his defence. Hence no exception can be taken to the conviction passed by the trial court which was concurred by the High Court in respect of the offence under *Section 5(2)* of the Act of 1947.

23. Similarly, **M.SELVARAJ V. STATE BY INSPECTOR OF POLICE, VIGILANCE AND ANTI-CORRUPTION, SALEM** [2008

(3) MLJ (Crl) 284], this Court has held as follows:

“18. It is seen that P.Ws.2 and 3 went to the house of the accused at 5.30 p.m. and at that time A-1 was not present and only A-2 was present and she informed them that A-1 was expected at 7.00 p.m. Again P.Ws.2 and 3 went to the house of A-1 after 7.00 p.m. and A-1 was very much present at that time inside the house and demanded P.W.2 about the bribe amount of Rs.250/- which was received by A-1 and immediately P.Ws.2 and 3 came out of the house of A-1 and gave the pre-arranged signal. Thereafter, the raiding party headed by P.W.12 rushed inside the house of A-1 and P.W.12 after introducing himself asked A-1 about the bribe amount and A-1 informed that the amount was received by his wife, A-2 and subsequently handed over to his and thereafter, P.W.12 conducted phenolphthalein test and the same proved positive in respect of the fingers of A-1. P.W.12 also conducted

phenolphthalein test for A-2 and that test also proved positive. Thereafter, P.W.12 recovered the bribe amount of Rs.250/- marked as M.O.4 series. This Court is consigned to state that there is no explanation much less any reasonable or probable explanation given by A-1 in respect of this clinching circumstance of the recovery of the amount from him. Though the defence made a vain attempt by giving explanation to the effect that the money was handed over to A-2 during the absence of A-1 and A-2 also innocently received that amount, the fact remains that there is absolutely no explanation from A-1 as to how his fingers tainted with phenolphthalein power as the test proved positive. Therefore, it is crystal clear that the bribe amount was received only by A-1 and once the prosecution succeeded in proving the receipt of the bribe amount the presumption contemplated under Section 20 of the Prevention of Corruption Act is to be raised and of-course such presumption is a rebuttable one. It is well settled that the accused is entitled to rebut the presumption by giving reasonable and probable explanation

and also placing reliance on the preponderance of probabilities. But as already pointed out A-1 has not given any explanation for positive proof of phenolphthalein test.”

24. In state of **ANDHRA PRADESH v. C.UMA MAHESWARA RAO AND ANOTHER** (2004 SCC(CRI) 1276), the Hon`ble Supreme Court has held as follows:

“.. . . . 16. 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.

17. 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. This Court has indicated so in *Suresh Budharmal Kalani v. State of Maharashtra* (1998 (7) SCC 337)

"A presumption can be drawn only from facts and not from other presumptions by a process of probable and logical reasoning".

18. Illustration (a) to Section 114 of the Evidence Act says that the Court may presume that "a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession". That illustration can profitably be used in the present context as well when prosecution brought reliable materials that there was recovery of money from the accused. In fact the receipt and recovery is accepted.

The other factor is the acceptability of the plea of loan, which the High Court itself has not held cogent or credible.....“

The above judgments are squarely applicable to the present case as in this case also, even though accused had taken a stand that he collected the alleged amount towards flag day collections and he never made any demand and accept the bribe, he has not taken any steps to disallow the presumption available under Section 20 of the Act.

25. In **STATE REP.BY SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI CORRUPTION, CHENNA III V. SUBRAMANIAN AND OTHERS** [(2006) 2 MLJ (CRL) 1001], wherein this Court has held as follows:

“... .. 23. Thus on an analysis of the oral and documentary evidence and instantaneous explanation, it is clear that the amount was intended only for flag day collection and presumption under Section 20 can be raised only if the prosecution had initially shown

that the amount was towards illegal gratification. In the present case, the prosecution has neither considered the explanation of the accused nor that of the Head of the Office. It is settled law that where the accused gives a spontaneous explanation right at the moment the crime is committed the explanation becomes *res gestae* within the meaning of Section 6 of the Evidence Act. Even if such statement is of doubtful admissibility in a case of corruption because the investigation could be set to have started before the statement was made, it should be admissible especially when it is exculpatory statement as the conduct of the accused under Section 8 of the Evidence Act. P.W.5 has expressly admitted that A.1 and A.2 immediately explained MO.1 and MO.2 as having been received for flag day. This spontaneous reaction has been corroborated by the Head of the Office in his questioning under Section 313 Cr.P.C., But the prosecution has insidiously scuttled the evidence of the same by posthumously casting him as the third accused. This afterthought is clearly attested

by the fact that A.3 had signed as witness and stood as surety for A.1 and A.2.”

26. No doubt in the above judgment, the Court, after considering the explanation offered by the accused and also taking into consideration the other evidence available on record, held that the presumption under Section 20 can be raised only if the prosecution had initially shown that the amount was towards illegal gratification. In the case on hand, the prosecution has not only prove the demand but also acceptance of the bribe by the accused by adducing cogent and convincing evidence. Therefore, the above judgment is not applicable to the facts of the present case.

27. Similarly, in **MAHMOODKHAN MAHBOOBKHAN PATHAN v. STATE OF MAHARASHTRA** (1998 CrL LJ 3635); it has been held as follows:

“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 Learner's 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. If the money paid is not for personal satisfaction or pleasure of the recipient it is not gratification in the sense it is used in the section. In other words unless the prosecution proves that the money paid was not towards any lawful collection or legal remuneration the court cannot take recourse to the presumption of law contemplated in [Section 4\(1\)](#) of the Act, though the court is not precluded from drawing appropriate presumption of fact as envisaged in [Section 114](#) of the Evidence Act at any stage."

28. Similarly, the learned Senior counsel for the accused also relied on the judgment of this Court in **MOORTHY V. STATE REPRESENTED BY ADDITIONAL SUPERINTENDENT OF**

POLICE, ACB/C.B.I/CHENNAI [(2011) 2 MLJ (Cri) 224] to the effect that failure on the part of the prosecution to prove the story of the prosecution beyond reasonable doubt would show that the case is foisted one.

29. There is no dispute with regard to the above propositions laid down by the this Court in the above cases. But in this case, the evidence available on record would not only establish the demand but the same also established the acceptance of bribe by the accused and that the tainted money was also recovered immediately by P.W.4 and phenolphthalein test conducted was also found to be positive. Therefore, the defence taken by the accused that he has received the amount only towards flag day collection has not been proved.

30. Therefore, once the prosecution is able to establish the demand and acceptance, mere explanation offered by the accused, in the absence of any other supporting materials, itself is not sufficient to dislodge the legal presumption under Section 20 of the Act.

31. Hence, this Court does not find any infirmity in the

judgment of the Trial Court in finding the accused guilty under Section 7 and 13 (2) read with 13 (1) (d) of the Act. Accordingly, conviction and sentence imposed by the Trial Court against the appellant/accused are upheld. The period of sentence already undergone by the appellant accused, if any, is ordered to be set off. The trial Court is directed to take steps to secure the accused to undergo the remaining period of sentence, if any.

20.07.2017

Index: Yes/No
Internet: Yes/No
Speaking order/non speaking order

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To

1. Chief Judicial Magistrate, Perambalur
2. The Additional Public Prosecutor, High Court of Madras
3. Record Keeper, Criminal Section, High Court of Madras.

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N.SATHISH KUMAR, J.

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**Pre delivery judgment in
Crl.Appeal No.320 of 2010**

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