IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 23.12.2016

Judgment Pronounced On : 14.09.2017

CORAM

THE HONOURABLE MR.JUSTICE **S.BASKARAN**

Crl.A.No.35 of 2010

1.R.Rajagopalan
2.P.Elumalai ... Appellants

vs.

State by
The Inspector of Police,
Vigilance & Anti Corruption,
Chennai.
(Crime No.21/AC/2005) ... Respondent

Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 11.01.2010 passed by the learned Special Judge/II Additional Judge, Chennai, in C.C. No.7 of 2007.

For Appellant : Mr.K.Selvakumaraswami

For Respondent : Mr.E.Raja
Additional Public Prosecutor

JUDGMENT

There are two accused in this case. They stood charged for offence punishable under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The learned Special Judge/II Additional Judge, Chennai, by its Judgment dated 11.01.2010, in C.C.No.7 of 2007, found both the accused guilty, convicted and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs.5000/-, in default to undergo six months rigorous imprisonment for offence under Section 7 of Prevention of Corruption Act and also convicted and sentenced them to undergo rigorous imprisonment for four years and also to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for one year for offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. Aggrieved by the said verdict of the trial court, the accused have come forward with this criminal appeal challenging the judgment of conviction and sentence as stated above.

2. The case of the prosecution is as follows:-

2.1. The complainant/P.W.1 Karuppasamy is retired Inspector of Police and he is residing in Thirunelveli. His son, by name, Ramesh is possessing lands in Palayankottai, wherein, P.W.1

planned to construct a Community Hall. In connection with that he submitted an application in the Town Planning Office, Palayankottai for plan approval and the said application is Ex.P1 and coming to know the said file has been forwarded to the Town and Country Planning Office, Chennai for approval, he came over to Chennai on 26.12.2005 and went to the said Office, where the first accused was working as Joint Director and the second accused was working as Supervisor. On arrival in the said Office, P.W.1 met P.W.5 Ravichandran, who introduced the second accused Ealumalai to him. When he enquired the second accused about the plan approval, P.W.2 was asked by the second accused to pay Rs.5000/- to himself and Rs.10,000/- to the first accused Rajagopalan, who was then working as Joint Director for approving the plan. Subsequently, as instructed by the second accused, the complainant/P.W.1 met the first accused in the same office on the same date itself. Then, in the presence of P.W.1, the first accused called P.W.8 to seek some clarification and asked him to bring the concerned file to his table. Thereafter, the first accused sought for clarification and also verified over the phone with the Town Planning Office, Palayankottai. Therefore, P.W.5 and P.W.8 were sent away and the first accused asked P.W.1 to act as per the instruction of the second accused who was standing at the entrance. Thereafter, the second accused told P.W.1 to pay Rs.15,000/- so that the work will be completed immediately. P.W.1 replied to the second accused that he is not having sufficient money and after arranging for the amount promised to come back on the next day. Subsequently, he contacted the second accused on the next day over phone and informed him that he will come on 28.12.2005. Since P.W.1 was not willing to give bribe amount, he left Palayankottai and reached Chennai on 28.12.2005 and immediately went to the Office of the respondent and lodged Ex.P2 complaint with the DSP who was present there. On receipt of the same, the case was registered by the respondent police.

2.2. The then Inspector of Police, Sudhakar who deposed as P.W.11 stated that while he was on duty in the respondent office on 28.12.2005, P.W.1 Karuppasamy came to the office and lodged complaint with the DSP Mohan and the same was made over to him with an endorsement by the DSP for necessary follow-up action. On receiving the same at 9.30 a.m., he registered a case in Crime No. 21/AC/2005 for the offence under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and the First Information Report is Ex.P15. A copy of the First Information Report was given to P.W.1. On the basis of requisition letter given by DSP Mohan, two official witnesses, namely, P.W.3 Samuvel and P.W.2 Sankaran from the Labour Welfare Department came over to the respondent office and they were introduced to P.W.1/complainant.

Both the witnesses were asked to go through the First Information Report and also to ascertain the facts with the complainant/P.W.1. Thereafter, P.W.1 produced Rs.15,000/- (30 x Rs.500/- = Rs.15,000/-) to the Inspector of police and the said amount was given to P.W.2 and P.W.3, the official witnesses with request to count them. Thereafter, P.W.11 explained the importance of sodium carbonate and phenolphthalein powder to the witnesses and prepared sodium carbonate solution. When he asked the witness Samuvel to dip his fingers in the solution, there was no colour change. Thereafter, P.W.10 applied the phenolphthalein powder on the trap amount and the witness Samuvel was asked to count the currency notes again. Then, P.W.3. Samuvel was asked to dip his fingers in the sodium carbonate solution and on doing so, the solution colour turned into pink. P.W.11 explained the importance of the phenolphthalein test to the witnesses.

2.3. P.W.11, then handed over the amount to P.W.1 and instructed him to hand over the same to the accused only if they demanded it. After handing over the same to the accused, P.W.1 was instructed to come out of the office and to give signal by opening the zip of the bag in his hand and closing it after looking into it, P.W.2 Sankaran was asked to accompany P.W.1 to the accused office. The entire proceedings in the office of P.W.11 took place between 10.15 a.m. to 11.15 a.m. and P.W.11 prepared

Ex.P3 Entrustment Mahazar, wherein P.W.1, P.W.2, P.W.3 and himself signed.

2.4. The complainant/P.W.1 stated that after the proceeding, in the office of P.W.11, was over, himself, P.Ws.2 and 3 accompanied P.W.11 left in the Government vehicle to the office of the accused and he met the first accused by 1.00 p.m. on that day along with his wife and P.W.2 Sankaran, which P.W.11 and other members of the trap team waited outside. On arrival in the office of the accused, P.W.1 wrote down his wife name in a paper and sent it to the first accused. The said paper slip is produced as Ex.P4. On seeing it, the first accused summoned P.W.1 and other two persons to his room and asked P.W.1 whether he has brought the amount to which he replied in positive and handed over Rs.10,000/- to the first accused, who asked the said amount to be placed on the table. Thereafter, as P.W.1 was coming out, the second accused was standing at the entrance and he also asked about the money and P.W.1 handed over Rs.5000/- to the second accused and receiving the same, A-2 placed it in his right side pant pocket. Thereafter, P.W.1 came out of the office of the accused and gave pre-arranged signal to P.W.11 who was waited out side. Immediately, P.W.11, P.W.3 and other trap team members rushed into the office of the accused and an enquiry P.Ws.1 and 2 explained the occurrence inside the office and also identified both the accused to P.W.11.

2.5. The official witness during the trap team proceeding P.W.2 is treated as hostile witness. However, he stated that himself along with P.W.1's wife went to the office of the accused and there P.W.1 wrote down his name as well as his wife and P.W.2's name in a slip of paper and sent the same to the first accused. Then, immediately, they were summoned by the first accused and as they went inside, the first accused called the second accused and asked him to bring the relevant file. Then, the first accused contacted Town Planning Officer, Thirunelveli over phone to gather some information. Then, P.W.1 handed over Rs.10,000/- to the first accused and placed the amount on the table. Subsequently, the first accused took the amount with his hands. Thereafter, P.W.1 met the second accused and gave Rs.5,000/- to him. Thereafter, P.W.1 came out of the accused office and to gave prearranged signal to the trap team, which was waiting out side. Immediately, the trap team entered into the office of the accused.

2.6. The other trap witness P.W.3 Samuvel stated that he was waiting out side the office of the accused along with P.W.11. On seeing the signal given by P.W.1, he entered the office of the accused with P.W.11 and they were informed about the events inside the office by P.W.1. Thereafter, they went inside the room of the first accused and seized the amount handed over by the first accused from his left side pant pocket. Then, P.W.11 the Trap

Laying Officer prepared sodium carbonate solution and asked the first accused to dip his both hands fingers in it, on doing so, the solution turned to pink colour. The sample was collected in M.Os.3 and 4 bottles and the same was sealed, wherein P.Ws.2,3 and 11 signed. Thereafter, the first accused pant was also dipped into the solution and the colour changed into pink colour. The said solution was collected and the same is M.O.5. The pant worn by the first accused is M.O.6. Likewise, the second accused took the amount from his right side pant pocket and handed over it to P.W.11. When his hands was dipped in sodium carbonate solution, it also changed into pink colour. The bottles with said solutions are marked as M.Os.7 and 8. The pant worn by the second accused is M.O.10 and the solution which turned into pink colour when the said pant was dipped in it is contained in M.O.9. The accused was arrested and released on the same day. The Entrustment Mahazar prepared at the conclusion of the trap proceedings is Ex.P16. Thereafter, the seized articles were forwarded to the Court on 30.12.2005 and P.W.10 gave requisition to forward the material objects for chemical analysis. Subsequently, P.W.11 handed over the investigation to P.W.14.

2.7. The Scientific analysis P.W.10, Devarajan stated that on receipt of the material objects relating to Crime No. 21/AC/2005, Chennai, he conducted chemical analysis test and found the presence of phenolphthalein and sodium carbonate in all the material objects. The report given by him is Ex.P14.

2.8. The Sanctioning Authority, who deposed as P.W.12 stated that after going through the entire file, he gave sanction order to prosecute A-1 and the same is Ex.P18. Similarly, P.W.13 stated that after going through materials placed before him, he issue gave sanction order Ex.P19 to prosecute the second accused herein. P.W.14, then DSP at the respondent office stated that on 28.12.2005 on receipt of the complaint from P.W.1, he made over the same to P.W.11 for further investigation and accordingly he proceeded with the trap proceedings. On 28.12.2005 at about 4.00 p.m., P.W.11 informed P.W.14 about the trap proceedings and thereafter he went to the office of the accused at 4.30 p.m., enquired the accused and arrested them at 5.00 p.m., Subsequently, on completion of investigation, P.W.14 laid the charge sheet against the accused on 13.02.2007.

3. Based on the materials placed before it, the trial Court framed charges under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. Since the accused denied the charges, they were put on trial. After prosecution examined P.W.1 to P.W.14 and produced Exs.P1 to P19 and M.Os.1 to 10, the incriminating evidence found in the prosecution side was put to the

accused under Section 313 Cr.P.C., and they denied the same as totally false. The accused examined one witness as D.W.1 and marked Ex.D1 to Ex.D5, but, they did not produce any materials objects on their side. After analysing the evidence on record, the learned Special Judge/II Additional Judge, Chennai, found both the accused guilty, convicted and sentenced the accused and imposed punishment as narrated in the first paragraph of this judgment. Aggrieved over the same, the appellants have preferred this appeal challenging the said finding of the trial Court.

4. The point for consideration is that as to whether the prosecution has established the charges framed against the accused beyond reasonable doubt?

5. Heard the arguments advanced by the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and I have also perused the records carefully.

6. The learned counsel appearing for the appellants/ accused contended that the evidence let in by the prosecution has not established the factum of demand on the part of the appellants and in such circumstances, even if the tainted money is recovered

from the appellants/accused as per the settled principle law they cannot be held guilty. He further pointed out that in the case on hand the date of such occurrence is corrected in the complaint and also the first information report and the same has not been properly considered by the trial Court. The learned counsel appearing for the appellants/accused also pointed out that in first information report, the second appellant is named as first accused and the first appellant is named as second accused, but, in the charge sheet, the ranks was reversed and no explanation is given by the prosecution for the same. The learned counsel appearing for the appellants further contended that the alleged demand was made on 26.12.2005 and the complaint was lodged by P.W.1 belatedly only on 28.12.2005 and no reason is stated for such delay. It is further contended by the learned counsel appearing for the appellants that apart from P.W.1 there is no other independent witness to prove the factum of demand by the accused, as the official trap witness P.W.2 has turned hostile. The same was also not considered by the trial Court properly. Thus, the learned counsel appearing for the appellants contends that the trial Court failed to appreciate the defence version in proper perspective and that the prosecution has failed to prove the charges against the accused beyond reasonable doubt. Hence, he seeks to entertain the appeal and set aside the finding of the trial Court.

7. On the other hand, the learned Additional Public Prosecutor appearing for the State contended that the evidence of prosecution witnesses are cogent and natural and there is no discrepancies in their evidence that the investigation proceeded in the right angle and the material placed before the trial Court has clearly established the guilt of the accused beyond reasonable doubt. Thus, the learned Additional Public Prosecutor appearing for the State contends that the conclusion arrived at by the trial Court is just and proper and needs no interference by this Court. Hence, he seeks dismissal of this appeal and to confirm the finding of the trial Court.

8. The case of the prosecution is that the complainant/ P.W.1 Karuppasamy, who is a retired Inspector of Police wanted to build a Community Hall at Palayankottai in the land belonging to his son Ramesh and in connection with that he submitted Ex.P1 application with relevant documents to the Town Planning Officer at Palayankottai and the same was forwarded to the Town and Country Planning Office, Chennai during November,2005. On coming to know about the same, P.W.1 came over to Chennai on 26.12.2005 and went to the concerned office and met the first accused who was then working as Joint Director and the second accused who was working as Supervisor in the said Town and Country Planning Office,

Chennai. As per the evidence of P.W.1, he knew P.W.5 Ravichandran, who was then working in the same office as Assistant and met him on 26.12.2005. Thereafter, P.W.1 was introduced to the second accused Ealumalai by P.W.5 and on coming to know about the plan approval, the second accused told P.W.1 to pay Rs.5,000/- to himself and Rs.10,000/- to the first accused Rajagopalan, the then Deputy Director in the said office, for the plan to be approved. Subsequently, P.W.1 stated that he informed the accused about making payment on 28.12.2005, to which he was asked to come before 12.30 p.m., on that day by the second accused Ealumalai. Since P.W.1 was not willing to pay the bribe amount as sought for by the accused, he went to the respondent office on 28.12.2005 morning and lodged Ex.P2 complaint. On the basis of the said complaint, P.W.11, the Inspector of Police registered the first information report produced as Ex.P15. Thus, P.W.1 claims the complaint was lodged on 28.12.2005 before the respondent police.

9. On the other hand, the learned counsel appearing for the appellants/accused pointed out that the complainant/P.W.1 came over to Chennai on 20.12.2005 itself and visited the office of the accused on the same day and subsequently met P.W.5 Ravichandran on 21.12.2005 and thereafter came over to the office

of the accused on 22.12.2005 along with P.W.3 Samuvel. The learned counsel for the appellants contended that suppressing all those facts, Ex.P2 complaint was subsequently lodged with malafide intention and that is the reason for correction of dates mentioned in Ex.P2 from 24.12.2005 to 26.12.2005 and the same will creates doubt over the claim of the prosecution. It is further pointed out that the dates are altered not only in Ex.P2 complaint, but also in Ex.P15 first information report and the same is admitted by both the complainant/P.W.1 and P.W.11 the Inspector of Police in their evidence. In his evidence P.W.1 has stated as follows:-

> "நான் கொடுத்த புகார் அ.சா.ஆ.2ல் தவறுதலாக 24 என்று எழுதி அதை 26 என்று திருத்தி சுருக்கொப்பம் செய்துள்ளேன். நான் அசல் அச்சு படிவ முதல் தகவல் அறிக்கையின் நகல் பெற்றுக்கொண்டதற்காக கையொப்பம் செய்துள்ளேன்.

Likewise, P.W.1 in his cross examination stated as follows:-

> "கருப்பசாமி கொடுத்த புகாரில் 24.12.2005 என்று எழுதப்பட்டதில் 24 என்பதை அடித்து 26 என்று அவரே திருத்தம் செய்து கொடுத்துள்ளார். முதல் தகவல் அறிக்கையிலும் 24.12.2005 என்று எழுதப்பட்டு பிறகு 24 என்பதை அடித்து விட்டு 26 என்று திருத்தம் செய்யப்பட்டுள்ளது. முதல் தகவல் அறிக்கையில் குறிப்பிட்டுளள தேதிகளிலும் 24 என்று எழுதப்பட்டு அடித்து 26 என்று எழுதப்பட்டுள்ளது, ஆ.சா.ஆ.15 முதல் தகவல் அறிக்கை எங்கள் அலுவலகத்தில் தயார் செய்யப்பட்ட ஆவணம் ஆகும்.

Thus, it is clear that in the complaint and the first information report the dates has been corrected from 24.12.2005 to 26.12.2005.

10. The learned counsel appearing for the appellants contended that as per the calender in the month of December,2005 it is clear that on 24.12.2012 and 25.12.2012 being Saturday and Sunday are holidays and therefore the date was altered to 26.12.2005 which being Monday is a working day, so as to allege that the demand of bribe was made by the accused on that day. A copy of the calender for the month of December,2005 was produced before the Court by the learned counsel for the accused from which it is clear that 24.12.2005 and 25.12.2015 were Saturday and Sunday and as such holidays for the office where the accused working. Pointing it out, the learned counsel appearing for the appellants/accused contended that the complaint[Ex.P2] as well as the first information report[Ex.P15] were prepared subsequently to suit the prosecution case with malafide intention necessitating correction of dates from 24.12.2005 to 26.12.2005 and that itself were cast shadow over the entire case of the prosecution.

11. The complainant/P.W.1 in his cross examination stated that he met the first accused on 26.12.2005 in his office at about 10 – 10.30 a.m. P.W.1 also admitted in his evidence that in his

complaint Ex.P2 it is stated that the amount was asked to be paid by 11.00 a.m., on 26.12.2005 itself, so then the file will be cleared. Pointing it out, the learned counsel appearing for the appellants/accused contended that the said claim will clearly go to show that the accused was met by the complainant earlier to 26.12.2005 and that is why the date 24.12.2005 was mentioned in the complaint and subsequently, the same has been corrected. He also pointed out that it is impossible for P.W.1 to be told to pay the amount by 11.00 a.m., on 26.12.2005, if he had met the first accused only by 10.30 a.m., on that day. It is also pointed out that as per P.W.1's evidence he met the first accused Ealumalai by 10.30 a.m., and subsequently he met the second accused Rajagopalan and thereafter only he came out of the office. In such circumstances, as rightly pointed by the learned counsel appearing for the appellants/accused that the first accused would not have made demand to P.W.1 to make the payment by 11.00 a.m., on the same day itself. Thus, in the absence of any explanation on the side of the prosecution as to why the date 24.12.2005 has been corrected on 26.12.2005 both in the Ex.P2 complaint as well as the in Ex.P15 First Information Report, the contention of the learned counsel appearing for the appellant that the complaint has been manipulated subsequently to suit the prosecution claim appears to be probable and acceptable.

12. Admittedly, in Ex.P15 the first information report, Ealumalai is shown as the first accused and Rajagopalan as the second accused, which was subsequently reversed in the charge sheet. The prosecution has not stated any reason for the same. In such circumstances, it is to be seen as to whether really the accused made demand for bribe amount and if so, which accused sought for illegal gratification. P.W.1 in the complaint as well as in his evidence before the Court stated that on arrival in the office of the accused, he met the second accused herein Ealumalai and he demanded Rs.5,000/- for himself and Rs.10,000/- for the first accused as illegal gratification for approving the plan submitted by P.W.1. Further in his evidence P.W.1 stated that he was asked to meet the first accused by the second accused and accordingly he met him. Thereafter, the first accused asked two other staff members to bring the relevant file and after seeking some clarification, he sent out the other staff members and told P.W.1 to act as per the instruction of second accused. P.W.1 also stated that the second accused was standing near the entrance at that time and he informed P.W.1 to make payment of Rs.15,000/-, so that the work can be completed. Thus, as per the evidence of P.W.1, the second accused Ealumalai demanded bribe amount when he met him in his office. However, P.W.2 has not stated specifically anything about any demand being made by the first accused for

bribe amount, but only stated that he was asked by the first accused to act as per the instruction of the second accused. Pointing it out, the learned counsel appearing for the accused contended that the above said evidence of P.W.1 is not sufficient to prove the factum of Pre-trap demand by the first accused. The learned counsel appearing for the appellants further contended that as P.W.2 is treated as hostile witness there is no independent witness apart from the complainant/P.W.1 and in the absence of any corroborative evidence, P.W.1 evidence alone is not sufficient to prove the factum of demand in view of the contradictions in his evidence.

13. Now, it is to be seen whether P.W.1 evidence is inspiring and sufficient to prove the factum of demand by the accused. P.W.1 in his complaint stated that after meeting both the accused, he was asked by the first accused Ealumalai to come with Rs.15,000/- by 11.00 a.m. on 26.12.2005. It is further stated in Ex.P2 complaint that the complainant met the second accused Ealumalai on 26.12.2005 and informed him that the amount is not ready and P.W.1 will arrange for the same from his friend at St.Thomas Mount and make payment on the next day. As the amount was not ready on the next day also, P.W.1 spoke to the first accused over phone and he was asked to come with Rs.15,000/- by

12.00 noon on 28.12.2005. In the complaint, it is stated as follows:-

> "பின்னர் திரு.ஏழுமலை என்னிடம் பணம் ரூ.15,000/-த்துடன் 26.12.2005ந் தேதி காலை 11.00 மணிக்கு கொண்டு வந்து கொடுக்குமாறு கூறினார். நான் அவரை 26ந் தேதி பார்த்து பணம் ரெடியாகவில்லை என்றும் செந்தாமஸ் மவுண்டில் உள்ள என் நண்பரிடம் வாங்கி நாளை வந்து கொடுக்கிறேன் என்று சொன்னேன். நேற்று பணம் ரெடியாகவில்லை ஆதலால் போன் மூலம் அவரிடம் பேசினேன். அவரும் இன்று 28.12.2005 காலை 12.00 மணிக்குள் ரூ.15,000/- கொண்டு வந்து கொடுக்குமாறு கூறியுள்ளார்.

14. It is apparent that if the accused has demanded money from P.W.1 on 26.12.2005 at 10.30 a.m., then he would not have asked P.W.1 to come on 26.12.2005 by 11.00 a.m., that itself will go to probablize the claim of the defence that actually the complainant met the accused even prior to 26.12.2005 and that is why after writing the date in the complaint as 24.12.2005, it was corrected and that itself is sufficient to falsify the claim of P.W.1, that the demand was made by the accused on 26.12.2005. Further, in Ex.P2 complaint, it is stated that P.W.1 met the first accused on 26.12.2005 and instructed him that the amount is not ready and as such he will come on the next day with the amount after arranged it from his friend at St. Thomas Mount. In the said complaint, it is stated as follows:-

நான் அவரை 26ந் தேதி பார்த்து பணம் ரெடியாகவில்லை என்றும் செந்தாமஸ் மவுண்டில் உள்ள என் நண்பரிடம் வாங்கி நாளை வந்து கொடுக்கிறேன் என்று சொன்னேன்.

Thus, it will falsify the claim of the prosecution that the accused was met by P.W.1 only on 26.12.2005 for the first time. In that event, P.W.1 would not have stated in his complaint as stated above. In Ex.P2 complaint, it reads as follows:-

நேற்று பணம் ரெடியாகவில்லை ஆதலால் போன் மூலம் அவரிடம் பேசினேன். அவரும் இன்று 28.12.2005 காலை 12.00 மணிக்குள் ரூ.15.000/- கொண்டு வந்து கொடுக்குமாறு கூறியுள்ளார்.

15. Thus, as per the averment in Ex.P2, the complainant spoke to the first accused Ealumalai over phone he was asked to come with money on 28.12.2005 by 12.00 noon. However, contrary to the same while deposing before the Court P.W.1 stated that on 26.12.2005 after meeting the accused he told the first accused Ealumalai that he will come back on the next day with the money sought for by him and on the next day contacted the second accused(Rajagopalan) over phone and informed him that as the amount is not ready, he will come on 28.12.2005 to which he replied to come before 12.30 p.m., P.W.1 further stated that himself and his wife came over to Chennai from Palayankottai and

as they were not prepared to give bribe amount, they went to the respondent office on 28.12.2005 morning and lodged a complaint. Thus, in Ex.P2 complaint is stated that he met the accused on 26.12.2005 and informed that the amount is not ready and will come back on the next day with the amount. But, in the evidence of P.W.1 it is stated that he contacted the second accused over phone on the next day after meeting them in person on 26.12.2005 and promised to come with money on 28.12.2005. Thus, it is clear cut contradiction as to when the complainant met the accused after the demand of bribe was made to him and also as to when he came over Madras after 26.12.2005.

16. Further the averments in Ex.P2 complaint will clearly contradict the claim of prosecution and the correction in the dates as rightly pointed out by the learned counsel appearing for the appellants will falsify the claim of the prosecution. The prosecution examined P.W.2 to substantiate the allegation of demand and acceptance of bribe amount by the accused herein. However, P.W.2 turned hostile and he has failed to support the prosecution case. The other official trap witness P.W.3 admittedly did not go along with P.W.1 initially when the demand and acceptance of the amount took place during the trap proceedings. P.W.3 Samuvel stayed along with Trap Laying Officer P.W.11 and went inside the office of

the accused only with P.W.11. In such circumstances, P.W.3's evidence will be of no use to prove the factum of demand and acceptance of bribe amount by the accused herein. P.W.2 Sankaran, who turned hostile, stated in his evidence that on 28.12.2005 himself and his colleagues P.W.3 Samuvel were asked to go over to the Vigilance Office by his higher authority and accordingly he went there. He further deposed that he accompanied P.W.1 and his wife went to the office of the accused Rajagopalan to meet him. P.W.1 wrote down his name along with his wife and P.W.2's name and gave the slip Ex.P4 to the first accused office and on seeing that all the three persons were called inside by the first accused Rajagopalan and thereafter the first accused asked the second accused to bring the file. After the file was placed before him, the first accused contacted the Deputy Director of Town and Country Planning Office, Thirunelveli over phone and enquired about some facts, when P.W.1 Karuppasamy gave Rs.10,000/- to the first accused, he asked P.W.1 to place the amount on the table. Subsequently, the first accused took that amount in his hand. Thereafter, P.W.1 met the second accused Ealumalai and handed over Rs.5,000/- to him. Then, P.W.1 came out and gave the pre-arranged signal to the trap party waiting out side the office of the accused. Thus, P.W.2 has not stated anything specifically about the accused demanding bribe from P.W.1. Even though P.W.2 admitted his signature in entrustment mahazar prepared after the trap proceedings as Ex.P5, P.W.2 has not stated any thing specifically about the demand being made by the accused herein. He further stated in his evidence that he do not know as to who wrote Ex.P4 slip and he is not aware about the contents of Ex.P2 complaint. P.W.2 also stated that he does not remember the contents of Ex.P3 Entrustment Mahazar. The other official trap witness P.W.3 as stated above was not present inside the office of the accused, when the amount was allegedly demanded and accepted by the accused. He has only deposed about the proceedings after the trap team including P.W.11, the Trap Laying Officer went inside the accused office. P.W.3 stated in his cross examination that the first accused did not demand and accept any amount in his presence. P.W.3 also deposed that he has not stated anything about the second accused receiving Rs.5000/- from P.W.1 in his statement to the police. It is therefore clear that P.W.3 evidence is improved version over the statement given to the police. Likewise, P.W.3 stated that he is not aware about Ex.P4 slip and do not know as to who wrote it. Thus, P.Ws.2 and 3 has not stated anything specifically about the accused making demand for the bribe amount and accepting the same. Further, it is also pointed out that P.W.1 admitted about the writing the contents in Ex.P4 visitors slip and also Ex.P2 complaint. However, it is pointed out that the hand writing in both the documents are totally distinct and different and that itself will falsify the claim of the prosecution and will raise doubt.

17. Further, it is the contention of the defence that P.W.3 Samuvel accompanied P.W.1 to the office of the accused on earlier occasion and he is a interested witness. Even though P.W.1, P.W.3 as well as P.W.11 denied the same, the defence examined D.W.1 to prove that on 22.12.2005 and 23.12.2005, P.W.3 availed casual leave and he was away from the office and during those days he accompanied P.W.1 to the office of the accused. The person who deposed as D.W.1 stated that he is working as Deputy Director/ Information Officer in the Deputy Commissioner of Labour, Chennai and received Ex.D1 letter from Advocate Thiru.Gunalan seeking details of the attendance register of Samuvel for the month of December,2005. They replied to the same as per Ex.D2 asking him to apply by proper fee. The report given relating to the attendance register is produced as Ex.D3 and Xerox copy of the attendance register of Samuvel is produced as Ex.D4. It is evident from the same that on 22.12.2005 and 23.12.20015, the said Samuval was on casual leave and his leave application is produced as Ex.D5. It is therefore clear from the said evidence of D.W.1 that P.W.3 was leave on those two days. According to the defence, P.W.3 accompanied P.W.1 to the office of the accused while on leave and

met the accused and as such he is not an independent witness. Further, in the statement filed before the trial Court during questioning under Section 313 Cr.P.C. the first accused has categorically stated that on 22.12.2005 P.W.1 Karuppasamy, his wife and P.W.3 Samuvel came to his office by 4.00 p.m., and met him. Again all of them came over to the office of the accused on 23.12.2005 and on that occasion, the second accused Ealumalai and P.W.8 Dhanapal were summoned to the first accused room and Ex.P1 file was perused in their presence. In such circumstances, the contention of the defence that P.W.3 accompanied P.W.1 and met the first accused appears to be probable. In such circumstances, as the evidence of P.Ws.2 and 3 is of no use in proving the factum of demand and acceptance of bribe amount by the accused herein, the prosecution case has to fail.

18. In such circumstances, the prosecution is left with the evidence of complainant/P.W.1 alone to prove the fact of demand of bribe by the accused as stated above. The averments in Ex.P2 complaint and the correction in the date in it creates doubt over the genuineness of the allegation in it. P.W.1 in his evidence stated that when he went into the room of the first accused, he summoned P.W.8 Dhanapal and second accused Ealumalai to come along with the file and then asked them some clarifications.

However, in Ex.P2 complaint it is stated that when P.W.1 went to the room of the first accused, the file was on the table of the first accused and he looked into it immediately. Further, P.W.1 in his chief examination and also in the complaint has not stated specifically that any demand of bribe was made to him by the first accused Rajagopalan. He only stated that he was asked by the first accused to act according to the instruction of the second accused Ealumalai. In such circumstances, it is clear that there is no acceptable evidence to show that the bribe was demanded by the first accused from the complainant. As far as the second accused is concerned, it is only stated by P.W.1 that he was asked by the second accused to give Rs.5,000/- for himself and Rs.10,000/- for the first accused. The same is not corroborated by P.Ws.2 and 3. P.W.1 further stated that on 26.12.2005, he met P.W.5 Ravichandran in his office and he introduced him to the second accused who was then working as Superintendent in the same office. P.W.5 Ravichandran stated that on 26.12.2005, P.W.1 and his wife came to his office and met him stating that the plan approval application has been sent to their office from Thiruneveli by post. However P.W.5 did not say anything about the accused Ealumalai making demand for bribe from P.W.1. Further, P.W.5 in his cross examination stated that the people coming to their office in connection with plan approval will normally be sent directly to meet the Director and as per rules, the Director alone is to look into the plan approval. In that event, doubt arises as to why P.W.1 was taken by P.W.5 to meet the second accused Ealumalai, when the person is to be contacted was only the Director. Further, P.W.5 who is previously known to P.W.1 has not stated anything about the happenings after he introduced P.W.1 to the second accused in his office. On the other hand, the defence contended that P.W.5 was inimically deposed against them and he only instigated P.W.1 to give a false complaint against them. In the statement filed during questioning under Section 313 Cr.P.C., the first accused stated that he recommended for transfer of P.W.5 from the Master Plan Section to Account Section and P.W.5 was upset over the same. Similarly, the second accused in his statement stated that P.W.5 was upset with him as he refused to entertain his request for plan approval of certain applications placed before him and there was previous enmity between them. It is also pointed out by the learned counsel appearing for the appellants that P.W.1 and P.W.5 were known to each other earlier and the same is admitted by P.W.5 in his statement given under Section 161 Cr.P.C., but P.W.5 in his cross examination denied the same. Likewise, P.W.1 also admitted in his complaint that he knew P.W.5 earlier and in his evidence before the trial Court has stated that P.W.5 was introduced to him by one Nagarajan working in the Town and Country Planning Office at

Palayankottai. It is therefore clear that P.W.1 and P.W.5 were known to each other earlier to the alleged occurrence date and in such circumstances, the claim of the defence that P.W.5 only instigated P.W.1 to lodge the complaint appears to be probable in view of the above said discussion. In such circumstances, as doubt is created over the evidence of P.W.5, it is clear that the evidence of P.W.5 is of no use to prove the claim of the prosecution.

19. Thus, the prosecution has not let in acceptable evidence to prove the fact of demand of bribe by the accused and in such circumstances, even if P.Ws.1,3 and 11 stated about the recovery of tainted amount from the accused, which is marked as M.Os.1 and 2 series the same is not sufficient to prove the guilt of the accused as the factum of demand is not established. The learned counsel appearing for the appellants contended that unless and until the demand of bribe amount by the accused is established even if any amount is recovered from them, the same is not sufficient to prove the guilt of the accused under Section 7 and 13 of Prevention of Corruption Act, 1988. In support of the same, the learned counsel appearing for the appellants/accused relied upon the ruling of the Hon'able Apex Court reported in **2015 (10) SCC 152 in P.SATYANARAYANA MURTHY Vs. DISTRICT INSPECTOR OF POLICE, STATE OF ANDHRA PRADESH AND**

ANOTHER, wherein it has held as follows:-

"22. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of

illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."

20. Likewise, he relied upon the ruling of the Hon'ble Apex Court reported in **2013 (14) SCC 153 in STATE OF PUNJAB Vs. MADAN MOHAN LAL VERMA,** wherein it has held as follows:

"11. 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."

21. Following the above said rulings, it is clear that unless and until the factum of demand is established, recovery of any money from the accused will not be sufficient to prove the guilt of the accused. In the case on hand, admittedly, M.Os.1 and 2 series tainted money was recovered from the accused herein and the same was forwarded for chemical analysis test. P.W.10, the Deputy Director, Forensic Department, Chennai stated that he received the case property relates to the Crime No.21/AC/2005 and conducted test over the same and found the presence of phenolphthalein and sodium carbonate in all the six substance received by him. His report is marked as Ex.P14. It is clear from the evidence of P.W.10 that the material objectives placed before this Court including the tainted amount M.O.1 and 2 series which was recovered from the

accused as per the evidence of P.Ws.1, 2 and 3 contain the chemical substances. However, as P.Ws.1,2 and 3 evidence is not sufficient to prove the demand of bribe by the accused as discussed earlier, this Court is of the view that the prosecution has failed to prove that the accused demanded and accepted illegal gratification from P.W.1. In such circumstances, the claim of the prosecution that the ingredients under Section 7 and 13 of Prevention of Corruption Act, 1988 is made out cannot be accepted.

22. In the case on hand, P.W.1 stated that he came over the office of the accused on 26.12.2005 in connection with getting plan approval for community hall to be constructed by him. It is stated by P.W.4 Sangeetha that she is working in the same office where the accused also worked and she was looking after the Thapal Section. P.W.4 stated that on receipt of Thapal, after entering the same in the register she will forward the same to her higher official second accused Ealumalai. On 07.12.2005, she received the plan approval for community hall from Thirunelveli and the same is Ex.P6 series. After entering the same in the personal register, she placed it before the second accused Ealumalai on 08.12.2005. The personal register is produced as Ex.P7. The personal register of the second accused Ealumalai is produced as Ex.P9 and as per the entry in Page No.65 of the said register, after

making necessary entries on 26.12.2005, the second accused has forwarded the file relating to the complainant/P.W.1 to the higher officials on 27.12.2005. The entry for the same is made by the second accused as Ex.P10. According to P.W.4, the second accused Ealumalai made an endorsement on 19.12.2005 and the Deputy Director has put his signature on 26.12.2005. The said file was sent to P.W.8 Dhanapal and he has endorsed his remarks on 28.12.2005. She further stated that the Supervisor Dhanapal made an endorsement in advance and left for Coimbatore one day before itself, even though, he put the date as 28.12.2005, it was done on 26.12.2005 itself.

23. P.W.8 Dhanapal stated that he was working as Supervisor in the Town Planning Office in Anna Salai, Chennai at the relevant point of time and the first and second accused were working as Deputy Director and Supervisor in the same Office. On 26.12.2005, he received the file No.28412 of 2005 in connection with building of community hall in Raghmath Nagar Extension in Thirunelveli. He made an endorsement in it and P.W.8 further stated that as he was having some inspection work in Coimbatore Corporation on 28.12.2005, he put the date as 28.12.2005 instead of 26.12.2005 below his signature and handed over the file to the first accused. P.W.8 further stated that he left for Coimbatore on

27.12.2005 itself. P.W.8 also stated that for putting the date as 28.12.2005 instead of 26.12.2005, Departmental action was initiated against him. Therefore, it is clear from the evidence of P.Ws.4 and 8 that the endorsement were made by the second accused much prior to the alleged date of demand and the first accused also has forwarded the same prior to 28.12.2005. It is the evidence P.W.8 that the final authority to give sanction for plan approval is Director and not Deputy Director, who is the first accused herein. The prosecution examined P.W.9, the Deputy Director attached to Town Planning Office at Thirunelveli and he spoke about the application submitted by P.W.1's wife on 02.08.2005 and follow-up action taken on it. Pointing it out, the learned counsel appearing for the appellants/accused contended that even prior to 26.12.2005, the second accused had made an endorsement and the file was forward regularly to the concerned authorities. In such circumstances, it is contended that the allegation namely accused demanded bribe amount from P.W.1 on 26.12.2005 cannot be true as the work relating to the P.W.1 file is already completed and further final sanction authority being the Director only, there is no scope for the accused to do any favour for P.W.1. In such circumstances, it is contended that the claim of the prosecution of the accused demanding bribe from P.W.1 is un acceptable and there is no material to show that the accused were in a position to do any favour to the complainant/P.W.1 on the alleged date of demand. In view of the above said discussion, the contention of the learned counsel appearing for the appellants appears to be probable and the same is to be accepted.

24. In the light of the above discussion, it is clear that the prosecution has failed to prove the factum of demand and acceptance of bribe by the accused beyond reasonable doubt. The contention of the defence that P.W.1 and 5 were known to each other earlier and has previous enmity existed between P.W.5 and the accused herein and due that a false complaint has been given against them appears to be probable and acceptable. Further, it is pointed out that the application for plan approval was given by P.W.1's wife and even though she accompanied P.W.1 to the accused office as well as the respondent police, the complaint is not lodged by her. In such circumstances, grave doubt arises as to whether really the bribe amount was demanded and given to the accused by P.W.1. In my considered opinion, the prosecution has not been able to prove the guilt of the appellants/accused beyond reasonable doubt. Hence, the reasoning and conclusion arrived at by the trial Court is unsustainable and the same is liable to be set aside. The point is answered accordingly.

25. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Special Judge/Additional Judge, Chennai, in C.C.No.7 of 2007 dated 11.01.2010 is set aside and the appellants/accused are acquitted and bail bond, if any executed by them shall stand cancelled and the fine amounts, if any, paid by them are ordered to be refunded forthwith.

14.09.2017

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To

1.The Special Judge/II Additional Judge,
Chennai.

2.The Inspector of Police,
Vigilance & Anti Corruption,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

S.BASKARAN.J.,

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Judgment in
Crl.A.No.35 of 2010

14.09.2017