

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19.12.2016

JUDGMENT PRONOUNCED ON : 19.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.BASKARAN

CRL.A.NO.209 OF 2008

State by

The Inspector of Police,  
Vigilance & Anti Corruption,  
Erode Division, Erode.  
(Crime No.8/AC/2002)

... Appellant/Complainant

vs.

K.G.Ramasamy

... Respondent/Accused

Criminal Appeal preferred under Section 378 Cr.P.C., against the judgement dated 19.12.2007 passed by the learned Special Judge/Chief Judicial Magistrate, Erode, in C.C.No.40 of 2003.

For Appellant : Mr.E.Raja  
Additional Public Prosecutor  
For Respondent : Mr.V.Rajamohan

JUDGMENT

The accused, K.G.Ramasamy, who is the sole accused, 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/Chief Judicial Magistrate, Erode, by its Judgment dated 19.12.2007, in C.C.No.40 of 2003, found the accused not guilty and acquitted the accused from all the charges levelled against him. Aggrieved by the said Judgment of the trial court, the prosecution has come forward with this criminal appeal challenging the order of acquittal.

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

2.1. The complainant/P.W.2 Sivasubramaniam constructed a house in his property in Chithodu Village during 2001. He approached the then Executive Officer of Chithodu Town Panchayat, the accused herein, to assess and levy tax for the new building on 10.07.2002. When P.W.2 informed the accused Ramasamy about the new house constructed by him, the accused informed P.W.2 that only after inspecting the house property,

tax can be levied and told that he will inspect the house of P.W.2 on 12.07.2002. Accordingly, P.W.2 reached the office of the accused by 7.30 a.m., on 12.07.2002 and took the accused with him in the motor cycle to his house and after measuring the house, noting down the measurement, the accused informed P.W.2, the tax to be levied will be on higher side and told P.W.2 that unless Rs.1200/- is paid to him higher tax will be levied. When P.W.2 expressed his inability to pay Rs.1200/-, the accused demanded Rs.1000/- and insisted P.W.2 to pay the same in his office on the same day evening. P.W.2 agreed for the same and dropped the accused in his office in the same motor cycle. Thereafter, P.W.2 thought over it and as he was not interested in paying the bribe amount, he went to the Vigilance Office at Erode and lodged Ex.P2 complaint against the accused.

2.2. P.W.9, Subramaniam, the then Inspector of Police, stated that on receipt of the complaint, he registered a case in Crime No.8/AC/2002 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.P3. A copy of the same was given to the complainant/P.W.2 and thereafter discrete enquiry was conducted by P.W.9. After obtaining necessary permission from the Superintendent of Police, P.W.9 gave written requisition through the constable to the Zonal Deputy Director of Animal Husbandry Department to send two official witnesses to his office. Then, he examined the complainant/P.W.2 and recorded his statement. Thereafter, on enquiry P.W.2 informed P.W.9 about Rs.1000/- brought him to be used as trap money. Then, around 11.30 a.m., on 12.07.2002, the official witnesses P.W.3 Srinivasan and Balasubramaniam came before P.W.9. Both the witnesses were asked to go through the first information report and ascertain the fact from the complainant/P.W.2. The complainant and the official witness were introduced to each other and in the presence of P.W.3 and other witnesses, P.W.2 handed over Rs.1000/- ( 2 x 500 notes) to P.W.9 for using it as trap money. After noting down the numbers of the currency notes, P.W.9 asked the constable 1078 Chandrakumar to prepare Sodium Carbonate Solution. Then, P.W.9 asked the official witnesses to count the notes and then to dip their fingers in the solution and on doing so, there was no change in colour of the solution. Then, P.W.9 asked the same constable Chandrakumar to apply phenolphthalein power on both sides of the notes and handed over the same to the official witness Balasubramaniam and at the request of P.W.9, the witness Balasubramaniam counted the notes and thereafter dipped his fingers in the sodium carbonate solution and the same turned into pink colour. Then, P.W.9 explained the importance of the phenolphthalein test to the witnesses. Then, P.W.9 destroyed the solutions and asked the constable Chandrakumar to place the two numbers of phenolphthalein coated Rs.500/- notes in the left side shirt

pocket of P.W.2. Thereafter, P.W.9 instructed P.W.2 to meet the accused in his office and if only the accused demanded money to handover the same to him. P.W.9 asked the official witnesses to accompany P.W.2 and to witness the happenings. In the event of accused demanding and accepting the amount from P.W.2, the complainant was instructed to come out of the office of the accused and to give signal by combing his hair. The said proceedings in P.W.9's office took place between 11.45 a.m. and 12.30 p.m. and entrustment mahazar was prepared in that regard, wherein, P.Ws.2, 3, 9 and other witnesses signed. Thereafter, P.W.9 along with P.Ws.2, 3 and other members of the trap team left the office in his Jeep and reached the Chithodu Nar road [Four roads], by 1.10. p.m. and P.W.9 asked P.Ws.2 and 3 to get down and go over to the accused office. While P.W.9 along with other trap team members was waiting outside the office of the accused, around 2.05 p.m., P.Ws.2 and 3 came out of the accused office and gave the prearranged signal. Immediately, P.W.9 along with the trap team rushed into the Chithode Selection Grade Panchayat Office, where, the accused was identified by P.W.2. Then P.W.9 introduced himself and the other witnesses to the accused, and the accused became nervous. Thereafter, P.W.9 prepared sodium carbonate solution in two glasses and asked the accused to dip his right hand in that, no colour change occurred and when his left hand finger was dipped, the colour changed into pink colour. Both the solutions were collected in two separate bottles and the same was sealed with identity marks and the same are M.Os.2 and 3. Thereafter, the accused was questioned and he handed two Rs.500/- notes from the left side pocket of his shirt to P.W.9. The number of the said notes was compared with the number Ex.P4 mahazar prepared in the office of P.W.9. The said two numbers of Rs.500/- notes is M.O.1 series. Thereafter, P.W.9 collected the shirt of the accused and when the same was dipped in sodium carbonate solution, the colour changed into pink colour. The said solution was packed in M.O.4 glass bottle and sealed. The shirt recovered from the accused is M.O.5. The TLO P.W.9 also recovered a sum of Rs.3800/- from the back side pant pocket of the accused and another sum of Rs.4,000/- was recovered from the left side drawer of the table of the accused. Ex.P6 to Ex.P16 files were also recovered from the table of the accused. The sum of Rs.3,800/- and Rs.4,000/- recovered from the accused is produced as M.O.7 series. Thereafter, the accused was arrested by 4.30 p.m., and Ex.P5 Mahazar was prepared, wherein P.W.2, 3 and 9 signed in it. Thereafter, the accused was taken to the respondent office at 4.55 p.m., and after recording his statement sent to judicial custody. P.Ws.2 and 3, the complainant and the trap witness corroborated P.W.9 about the happenings during the trap proceedings.

2.3. P.W.10, the Inspector of Police took over the

investigation from P.W.9, the Trap Laying Officer, examined the witnesses and recorded the statement. After getting necessary sanction order from P.W.1, the Director of Panchayat to prosecute the accused. P.W.10 also took steps to forward the material objects to the Forensic Laboratory for chemical analysis. After obtain Ex.P20 chemical analysis report from P.W.11, sent a report to P.W.1 to accord sanction to prosecute the accused. Further, the house of the accused was searched on 12.07.2002 from 4.30 p.m. to 5.30 p.m., a sum of Rs.8000/- and six documents were recovered from the house of the accused. Ex.P23 is the search list for the same and on completing the investigation, P.W.10 laid the charge sheet against the accused for the offence under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 on 24.03.2003.

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, he was put on trial. After prosecution examined P.W.1 to P.W.11 and produced Exs.P1 to P23 and M.Os.1 to 9, the incriminating evidence found in the prosecution side was put to the accused under Section 313 Cr.P.C., and he denied the same as totally false. The accused did not examine any witness not marked any documents on his side. After analysing the evidence on record, the learned Special Judge/Chief Judicial Magistrate, Erode, found the accused not guilty and acquitted the accused. Aggrieved over the same, the prosecution has preferred this appeal challenging the said order of acquittal.

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 Additional Public Prosecutor appearing for the appellant/State and the learned counsel appearing for the accused/respondent and I have also perused the records carefully.

6. The learned Additional Public Prosecutor appearing for the appellant/state contended that the prosecution has examined P.Ws.2,3 and 9 to prove the demand and acceptance and recovery of bribe amount of Rs.1000/- from the accused, but the same is not properly considered by the trial Court. The trial Court failed to consider the fact of phenolphthalein test being positive. The cogent, convincing and acceptable evidence of prosecution witness was ignored by the trial Court. The defence claim of the complainant/P.W.2 forcibly pressing the amount in the hands of the accused is not correct and it is the after thought. The trial Court failed to appreciate the prosecution evidence in proper perspective and the conviction act of the

accused, according to the prosecution is not correct and therefore the state seeks to entertain the appeal and hold the accused guilty of the offence alleged against him and convict him for the same.

7. On the other hand, the learned counsel appearing for the respondent/accused contended that the prosecution has miserably failed to prove the fact of demand and acceptance by the accused and the trial Court has correctly appreciated the discrepancies in the evidence let in by the prosecution and found the charge against the accused as not proved. Hence, the learned counsel appearing for the accused/respondent seeks to dismiss the appeal.

8. The prosecution claims that the accused who was working as Executive Officer of Chithodu Town Panchayat demanded Rs.1000/- as bribe amount from the complainant/P.W.2 Sivasubramaniam to levy lesser amount of house tax for the newly constructed building of the complainant/P.W.2. According to P.W.2, he met the accused on 10.07.2002 in his office and requested him to assess and levy tax for his newly constructed house. However, nothing is stated specifically by P.W.2 about any demand for bribe being made by the accused on that day i.e., 10.07.2002. It is only stated by P.W.2 that the accused told him that the assessment can be made only after doing physical inspection of the property and asked him to come over on 12.07.2002. Accordingly, P.W.2 reached the office of the accused by 7.30 p.m., on 12.07.2002 in a bike belonging to his friend P.W.6 Marasamy. Then, P.W.2 took the accused in that motor cycle to his new house by 8.00 a.m. and thereafter measuring and noting down the extent of the house, the accused demanded Rs.1200/- as bribe money and after negotiation demanded a sum of Rs.1000/- from P.W.2 as bribe amount for levying lesser amount as tax. The same was sought to be paid on the same day evening by the accused. However, nothing is stated by P.W.2 as to whether any other person was present at that point of time. Admittedly, the accused has measured the property and noted down the measurement on that day, but P.W.2 has not stated anything about the measurement being done by the accused himself or with the assistance of somebody else. Thus, apart from the interested evidence of complainant/P.W.2, there is no other evidence available to prove the fact of demand of bribe by the accused on the morning of 12.07.2002 at the house of P.W.2.

9. After the said happening in the house of P.W.2, the accused was taken back to his office and dropped by P.W.2 in the motor cycle belongs to P.W.6. In his chief examination, P.W.6 Marisamy stated that as requested by P.W.2 on 11.07.2002 he gave his motor cycle to him and the same was returned by P.W.2 on 13.07.2002. However, P.W.6 stated that he do not remember the time when he handed over the motor cycle to P.W.2 and the time

when the same was returned to him. Thus, for the occurrence at the house of P.W.2, there is no independent witness. In such circumstances, it is contended by the accused that the interested evidence of P.W.2 alone is not sufficient to prove the accused demand of bribe by P.W.2 at the house of P.W.6.

10. Then, it is to be seen whether the alleged demand and acceptance of bribe amount by the accused during the trap proceedings is established by the prosecution. P.W.2 stated that on 12.07.2002, he lodged a complaint after dropping the accused in his office. According to P.W.9, the complaint was received by him by 10.30 a.m., in his office and then First Information Report was registered. Thereafter, he sent a requisition letter through the constable to the Education Department and Animal Husbandry Department to send official witnesses. The official trap witness P.W.3 stated that he was asked by the higher authority to go to respondent office by 11.30 a.m., accordingly, he reached the respondent office immediately. Thereafter, P.W.9 explained to the complainant/P.W.2 and the official witness, the compliance of the phenolphthalein test and the procedure for trap and then reached the office of the accused by 1.10 p.m. Pointing it out, the learned counsel appearing for the accused/respondent contended that it is impossible for the complainant/P.W.2 to lodge the complaint by 10.30 a.m., after the morning visit of the accused to P.W.2 for the inspection and that even assuming the complaint was lodged by 10.30 a.m., after registering the case and also conducting discrete enquiry, it is improbable for P.W.9 to arrange the witnesses and to explain the trap proceedings to them by 12.30 p.m. This, according to the learned counsel appearing for the accused/respondent will create doubt over the genuineness of the claim of the prosecution. Further, it is pointed out that the happenings in the trap proceedings itself is not clear cut and that also should cause doubt over the prosecution case.

11. P.W.2/complainant stated that they reached the office of the accused on 12.07.2002 by 1.15 p.m., and met the accused. P.W.3 accompanied by him and on seeing them, the accused asked P.W.2 to come after half an hour as there was large crowd in the office. P.Ws.2 and 3 then came out of the office of the accused and waited in Sathi Road and again at 1.45. p.m., P.Ws.2 and 3 went inside the office of the accused and discussed with the accused for some time. The accused asked P.W.2 as to whether he has brought the amount sought for in the morning to which P.W.2 replied in positive. Then, at about 2.00 p.m., the accused sought for the amount and P.W.2 took a sum of Rs.1000/- (2 x 500 notes) from his shirt pocket and handed over the same to the accused and the amount was received by the accused with his left hand and placed in his shirt pocket. Thereafter, P.W.2 came out and gave the prearranged signal to P.W.9. The official

trap witness P.W.3 also corroborated P.W.2 about going inside the office of the accused at 1.15 p.m., and again at 1.45 p.m., after waiting out side the office of the accused for half an hour as requested by the accused. However, P.W.3 in his evidence stated that on seeing them at 1.45 p.m., the accused asked both of them to sit and asked P.W.2 what happen to the matter told in the morning, to which P.W.2 replied that it is ready and handed over two notes of 2 x Rs.500 notes to the accused and the same was received by the accused in his left hand and after ascertaining whether two notes are there, folded the notes and placed it in his shirt pocket. The time was about 1.45 p.m., Thereafter, P.W.2 was told by the accused to come on Monday to pay the tax. Then, they came out of the office. Thus, P.W.2 stated that above having discussion with them the accused received the money and simply put it inside his pocket. On the other hand, P.W.3 stated that on getting seated, the accused asked P.W.2 about the amount, and the same was handed over immediately. P.W.3 did not say anything about the alleged discussion between P.W.2 and the accused before money was given. P.W.3 further stated that the accused folded the notes and placed it in the pocket. In contradict to the version of P.W.2, who only stated that the accused received the amount with his left hand and put it in his pocket. Further, P.W.2 and P.W.3 stated that when they met the accused at 1.15 p.m., the accused asked them to come after half an hour and accordingly they came out of the office of the accused and waited out side and went back by 1.40 p.m., However, in contradict, P.W.9, the Trap Laying Officer, in his chief examination stated that they reached the Chithodu four road by 1.10 p.m., and thereafter P.Ws.2 and 3 went inside the office of the accused, while he waited out side and at 2.05 p.m., P.W.2 and P.W.3 came out of the Chithodu Panchayat Office and gave the pre-arranged signal. Thus, P.W.9 has not stated anything about P.Ws.2 and 3 coming out of the office of the accused earlier and waited out side the office for half an hour before going in by 1.45 p.m., While so, P.W.2 stated that when he was asked by the accused to go back and come after half an hour, he came out of of the office and meet the police party and informed them about the accused asking them to come after half an hour. Thus, the evidence of P.W.2 and P.W.9 contradicted each other about the happenings during the trap proceedings as stated above.

12. It is stated by P.W.2 that on receiving two numbers of Rs.500/- notes, the accused received and placed the notes with his left hand in his shirt pocket. Nothing is stated by P.W.2 about the accused folding it and placing the notes in his pocket. However, P.W.3 stated that the accused received the amount with his left hand and placed it in his shirt pocket after verifying as to whether two notes are there with his left hand finger and also only after folding it. Thus, there is nothing in the evidence of P.Ws.2 and 3 about the accused using

his right hand during the said proceedings. P.W.9 the Trap Laying Officer stated that after signal was given by P.W.2, he went inside the office of the accused and recovered M.O.1 trap money (two numbers of Rs.500/- notes) from the accused and conducted phenolphthalein test. P.W.9 further stated that when the right hand fingers of the accused was dipped in the sodium carbonate solution, no colour change took place and only when the left hand fingers of the accused was dipped, the solution changed into pink colour. The samples of said solutions was collected and marked M.Os.2 and 3. Thus, as per the evidence of P.W.9, the right hand fingers of the accused did not cause any colour change in the solution prepared by him. As stated above, the said material objects 2 and 3 have been forwarded to Forensic Laboratory for chemical analysis. P.W.11, the Scientific Analyst attached to the Forensic Laboratory, Chennai stated in her evidence that the property relating to the Vigilance case in Crime No. 8/AC/2002, was received in their office on 17.07.2002 and the material objects was tested for the presence of sodium carbonate and phenolphthalein. In all the material object, which are marked as M.Os.1 to 4 before the Court, the presence of phenolphthalein sodium carbonate was found and the report submitted by her is Ex.P20. No explanation is forth coming on the side of the prosecution as to how in all the material objects including the one relating to right hand fingers of the accused, the chemical substance was found. Pointing it out, the learned counsel for the accused/respondent contended that the material objects forwarded to the Forensic Department are not genuine and in view of the clear cut admission of P.Ws.2, 3 and 9 that no colour change occurred in respect of right hand solution of the accused, the Chemical Analysis report Ex.P20 is contrary to the same and it should create doubt over the entire process of the trap proceedings conducted by P.W.9. The said contention of the accused has to be accepted in the absence of any acceptable explanation by the prosecution for the above said contradiction.

13. It is contended by the defence counsel that the accused never demanded bribe amount and on the morning of 12.07.2002, he only stated that Rs.200/- is to be levied as tax and in the afternoon when the amount was handed over to him he received the same thinking it as two Rs.100/- notes given towards tax amount, without looking in it, and placed it in his pocket and as such no demand was made by him for bribe. P.W.2 in his cross examination admitted that on 12.07.2002 morning, the new building was inspected by the accused and the accused informed P.W.2 that per year about Rs.200/- will be levied as tax. P.W.2 also admitted that on 12.07.2002 when he met the accused in the office, he only asked whether the amount told in the morning has been brought. Pointing it out, the learned counsel appearing for the respondent/accused contended that it is clear from the

admission by P.W.2 that the accused only asked about the tax amount of Rs.200/- told by him in the morning and there was no demand for the bribe amount. In view of the contradiction about the happening after P.Ws.2 and 3 met the accused at 1.15 p.m., as stated earlier and the attendant circumstances, the above said contention of the accused appears to be probable.

14. It is further contended by the learned counsel appearing for the respondent/accused that the complainant belongs to one political party and the president of the Chithodu Town Panchayat at the relevant point of time belongs to another party and there was enmity between the complainant and the then president of the Panchayat and due to that a false complaint has been lodged by P.W.2 against the accused who was then working as Executive Officer of the said Panchayat Union. P.W.2 in his evidence stated that one Chandrasekar was the Panchayat President and the accused was Executive Officer. It is also admitted by P.W.2 that the Panchayat President Chandrasekaran was running chemical industries in his village and in respect of the same, himself (P.W.2) has submitted complaint to the Pollution Control Board and RDO Erode and there was misunderstanding between himself and the Panchayat President Chadnrasekaran in that regard. Pointing it out, the learned counsel appearing for the respondent/accused contended that preserving that the accused was helping the President, this false complaint has been lodged by P.W.2 against the accused. Further, P.W.2 admitted in his evidence that the accused has retired from service and till now his (P.W.2) property has not been assessed and tax has not been levied. In the light of the above said discussion, the contention of the defence that false complaint has been lodged against the accused because of the misunderstanding between the then panchayat president and the complainant appears to be probable.

15. It is further pointed that the accused as Executive Officer can levy the tax only as per the guideline issued by the Government and there is no scope for deviation. The sanctioning authority who deposed as P.W.1 stated that it is part of the accused job to inspect and prepare reports about the new buildings for tax purpose and the Director of Panchayat has issued guideline to levy tax and on that basis alone the tax can be levied. Further, P.W.2 stated that during the relevant point of time, there was a women bill collected in the office of the accused and she only used to levy the tax and collect the same. According to P.W.2, the said lady staff was not present in her seat through out the period of trap proceedings. Pointing it out, the learned counsel appearing for the respondent/accused contended that even if the assessment is made by the accused, the file has to be prepared only by the said staff and as such the accused can not be stated to be the final authority to fix the quantum of tax to be levied for the said property. The

trial Court discussed the above said issue and also about the receipt of two denomination of Rs.500/- notes by the accused and placing it in his pocket in its judgment and the reason and conclusion arrived at by the trial Court for disbelieving the prosecution version of the trap proceedings is just and proper and needs no interference.

16. Thus, it is clear from the above said discussion that the prosecution has not established the fact of demand and acceptance of the bribe amount by the accused beyond reasonable doubt. In such circumstances, the learned counsel appearing for the respondent/accused also contended that even if tainted money was recovered from the accused unless the demand of bribe is proved, the accused cannot be held guilty and in support of the same, 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."

In the case on hand also, as discussed earlier, there is no acceptable evidence to prove the demand and acceptance of bribe by the accused herein.

17. Further, the learned counsel appearing for the respondent/accused contended that the trial Court has appreciated the evidence in proper perspective and in such circumstances even if two view are possible unless and until the view taken by the trial Court is perverse or suffers from any illegality, the appellate Court shall not interfere in the same and in support of the same, he relied upon the ruling reported in AIR 2016 Supreme Court 2045, in V.SEJAPPA Vs. STATE BY POLICE INSPECTOR LOKAYUKTA, CHITRADURGA, wherein it has held as follows:-

"21. If the evaluation 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 if another view is possible. Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. In State through Inspector of Police, A.P. v. K.Narasimhachary (2005) 8 SCC 364:(AIR 2006 SC 628), this Court reiterated the well-settled principle that if two view are possible, the appellate Court should not interfere with the acquittal by the lower court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate Court. The same view was reiterated

in T.Subramanian v. State of T.N.(2006) 1 SCC 401  
: (AIR 2006 SC 836).

18. Likewise, the learned counsel appearing for the accused/respondent relied upon the ruling of the Hon'ble Apex Court reported in 2006(1) Law Weekly(Crl) 253, KALLU 2 MASIH AND OTHERS Vs. STATE OF MADHYA PRADESH, where it has been held as follows:-

"7. The circumstances in which an appellate court will interfere with the finding of acquittal recorded by a Trial Court are reiterated in BHIM SINGH v. STATE OF HARYANA, thus:-

"Before concluding, we would like to point out that this Court in a number of cases has held that an appellate Court entertaining an appeal from the judgment of acquittal by the trial Court though entitled to re-appreciate the evidence and come to an independent conclusion, it should not do so as a matter of routine. In other words, if from the same set of evidence two views are possible and if the trial Court has taken one view on the said evidence, unless the appellate Court comes to the conclusion that the view taken by the trial Court is either perverse or such that no reasonable person could come to that conclusion or that such a finding of the trial Court is not based on any material on record, it should not merely because another conclusion is possible reverse the finding of the trial Court.

"8. While deciding an appeal against acquittal, the power of the appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate Court when the judgment of the trial Court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial Court merely because a different view is possible. The appellate Court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further, if it decides to interfere, it should assign reasons for differing with the decision of the trial Court.

19. Further, the learned counsel appearing for the

respondent/accused contended that P.W.3 who formed part of the trap proceeding team cannot be considered as an independent witness and in the absence of any other acceptable evidence and the contradiction caused by the chemical analysis report, the case of the prosecution about the trap proceeding has to fail. Therefore, it is clear from the above said discussions that the prosecution has not established the factum of demand and acceptance of bribe amount by the accused beyond reasonable doubt and the finding of the trial Court to that effect is just and proper and needs no interference. Similarly, the prosecution has to be failed to establish that the finding of the trial Court is perverse and not based on facts. Hence, this Court finds no ground to reverse the conclusion of the trial Court. Hence, the appeal cannot be entertained.

20. In the result, this Criminal Appeal is dismissed. The order of acquittal passed by the learned Special Judge/Chief Judicial Magistrate, Erode, in C.C.No.40 of 2003 dated 19.12.2007 is confirmed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rrg

To

1. The Special Judge/Chief Judicial Magistrate, Erode.
2. The Inspector of Police, Vigilance & Anti Corruption, Erode.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Ch-104

+1cc to Mr.N.Mohideen Basha, Advocate, S.R.No.68514

CrI.A.No.209 of 2008

PVS (CO)  
CS/06/12/17