

BAIL SLIP

The Petitioner/Accused Viz., S.Dharmalingam was directed to be released on bail as per Order of this Court dated 23.07.2010 and in Crl.M.P.No.1 of 2010 in Crl.A.No.434 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2017

PRONOUNCED ON : 29.06.2017

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Crl.A.No.434 of 2010

S.Dharmalingam

... Appellant

Vs

State rep. By
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Chennai City - I Detachment,
Chennai - 28.
(Cr.No.12/AC/2005/CC I)

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the the judgment and conviction made in C.C.No.26 of 2006 dated 06.07.2010 on the file of the IV Additional Sessions Judge, Chennai.

For Appellant : Mr.S.Ashok Kumar,
Senior Counsel
for Mr.M.Muthappan

For Respondent : Mr.E.Raja
Additional Public Prosecutor

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JUDGEMENT

The sole accused, in C.C.No.26 of 2006 on the file of the learned IV Additional Sessions Judge, Chennai is the appellant herein. He stood charged for offences under Sections 7, 13(2) r/w.13(1)(d) of Prevention of Corruption Act,1988. By the judgment dated 06.07.2010, the trial court convicted the accused under Sections 7, 13(2) r/w.13(1)(d) of Prevention of Corruption Act,1988 and sentenced him to undergo rigorous imprisonment for

two years and to pay a fine of Rs.5000/- with defaulting sentence for three months under sections 7, 13(2) r/w.13(1)(d) of Prevention of Corruption Act,1988. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

2. Based on the materials filed by the prosecution, the trial Court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 9 witnesses were examined and 13 documents were exhibited.

3. The case of the prosecution, in brief, is as follows:-

P.W.2 Chandrasekar is working as a promotion executive in the company run by P.W.4 Vasudevan. P.W.4 is doing electrical contractor business and license for the above company required to be renewed every two years and the license issued to his company has expired in June 2005. For the purpose of renewal of the license, P.W.2, on 18.7.2005, took 6 electric meters to the accused office for inspection. Thereafter on 19.07.2005, he paid necessary fees and meters were examined in respect of which Ex.P.2 certificate was also signed. Thereafter, when he went to the accused, who being Electric Inspector, to get his signature, the accused demanded Rs.2000/- as bribe for signing in Ex.P.2. Immediately, P.W.2 informed the same to P.W.4. However, he had instructed P.W.2 to go to the office of the accused the next day and try to get the signature from the accused. Again, when P.W.2 went to the office of the accused on 20.07.2005, the accused again demanded Rs.2000/-. Then P.W.2 again informed P.W.4 and he has instructed P.W.2 to give a complaint. According to that, on 22.07.2005 at 11.30 a.m., P.W.2 has lodged the complaint Ex.P.3 with P.W.8, the Sub Inspector of Police.

4. After receipt of the complaint, P.W.8 registered the First Information Report Ex.P.11 and invited P.W.3 Chandramohan and one Rajendran to his office as shadow witnesses and explained the trap proceedings and prepared entrustment mahazar Ex.P.4. Thereafter, P.W.2 and P.W.3 went to the accused office at 3.15 p.m. and P.W.8 and the team waited outside the office of the accused. P.W.2 went to the accused office which is situated in the first floor and also introduced P.W.3 as the supervisor of his company and the accused had asked Rs.2000/-. Immediately, P.W.2 paid Rs.2000/- to the accused and he received it and kept it in his shirt pocket and thereafter signed in Ex.P.2 Test Report. Thereafter, he has called one Raghava Rao and paid Rs.1000/- to him. Immediately, P.W.2 came out and gave a signal to P.W.8. P.W.8 and the police team came inside and in the presence of P.W.3, phenolphthalein test has been conducted in the hands of the accused and it was found to be positive.

Thereafter, P.W.8 has seized the tainted notes of Rs.1000/- from the accused and another Rs.1000/- from Raghava Rao and sample bottles of M.O.2, 3 and 4 were sealed in the presence of P.W.3 and one Rajendran. M.O.7 shirt of the accused was also seized under Mahazar Ex.P.5 and P.W.8 has drawn rough sketch in respect of the office of the accused. Thereafter, P.W.8 arrested the accused at 5.30 p.m. and forwarded the properties to the court and he handed over the case records to P.W.9, Inspector of Police.

5. P.W.9, took the case for further investigation on 23.07.2005 and examined the witnesses and recorded their statements. Thereafter, he obtained sanction from P.W.1 and recorded the statement of P.W.1 and laid final report as against the accused on 17.02.2006 under section 7 and 13(2)d) of Prevention of Corruption Act.

6. When P.W.5 was wire man in the office of the Electrical Inspector, on 19.07.2005, 6 meters were brought to the office and after receipt of the materials, he informed the same to one Raghava Rao, who is in-charge of the particular section and received a sum of Rs.950/-. P.W.6 has prepared bill Ex.P.7 for payment of the fees.

7. P.W.6 is the Forensic Scientific Assistant and he has examined the solution sent from the Court and on examination he found that phenolphthalein and sodium carbonate are present in it and in this regard, he gave Ex.P.4 report.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On the side of the defence, D.W.1 examined and Ex.D.1 to D.9 were marked.

9. On the basis of the above materials, the learned trial court has found the accused guilty and convicted the appellant/accused as stated in the first paragraph of this judgment and aggrieved over the same, the present appeal came to be filed.

10. It is the contention of the learned counsel for the appellant that P.W.2 evidence is highly unreliable and he has given the complaint only on the instructions of P.W.4 and in fact, he is running the company even without renewal of the license. It is the further contention of the learned counsel that P.W.2 evidence clearly show that the amount of Rs.2000/- was paid only towards flag day collection which is authorised by the Government. In fact, Ex.D.1 clearly show that a target has been fixed on the accused section to collect certain amount for flag day collection. P.W.7 evidence also proves the same. In

fact, P.W.2 in his evidence has categorically admitted that the amount of Rs.2000/- was paid only towards flag day collection. Further, it is the contention of the learned counsel for the petitioner that the alleged evidence of P.W.1 that the accused demanded Rs.2000/- only for the purpose of signing in Ex.P.2 is also falsified as on the date of alleged demand itself Ex.P.2 series has already been signed by the accused and handed over to the technical section. The investigating officer evidence also clearly show that on the date of trap, Ex.P.2 and other documents were seized from one Raghava Rao and those documents were signed on 19.07.2005 itself. Therefore, the accused demanding Rs.2000/- for signing those documents on 22.07.2005 is highly improbable and creates serious doubt. The cross examination of P.W.2 is totally against the prosecution version. Therefore, the alleged demand and acceptance is highly doubtful in this case. Hence, the presumption under section 20 cannot be applied mechanically and submitted that the accused is entitled to benefit of doubt in this case.

11. Whereas, the learned Additional Public Prosecutor vehemently submitted that P.W.2 and P.W.3 evidence not only prove the demand and acceptance of the bribe amount but also the phenolphthalein test is also proved to be positive and evidence of P.W.8, trap laying officer is also convincing and proves the guilt of the accused. Merely, P.W.2 has turned hostile during his cross examination, that itself cannot be a ground to discard the entire prosecution case. Hence, submitted that once demand and acceptance have been proved, presumption under section 20 of the Prevention of Corruption Act comes into operation and hence prayed for dismissal of the appeal.

12. In the light of the above submissions, now the point that arises for consideration is

Whether the prosecution has proved the guilt of the accused beyond all reasonable doubt?

13. To prove the guilt of the accused, the prosecution has examined as many as 9 witnesses and marked 13 documents. The defence side also examined D.W.1 and marked Ex.D.1 to Ex.D.9. The law was set into motion on the basis of the first information laid by P.W.2. Based on the said report, First Information Report was registered by P.W.8 and he has also invited shadow witnesses P.W.3 and one Rajendran and trap was arranged and necessary procedures were also explained to the decoy witness and shadow witnesses and entrustment mahazar Ex.P.4 has also been prepared and notes M.O.1 series was smeared with phenolphthalein. On 22.07.2005, P.W.2 and P.W.3 went to the accused office who was working as an Electrical Inspector and the accused received the sum of Rs.2000/- from P.W.2 and the

tainted money is also recovered from the accused and as well as from one Raghava Rao. These facts are not in dispute.

14. It must be proved by the prosecution that the accused has demanded and accepted the bribe amount. When these elements are established by the prosecution, then Section 20 of the Prevention of Corruption Act comes into operation, which is a statutory presumption in favour of the prosecution.

15. In the light of the settled position of law, the evidence of P.W.2 when carefully seen, in his evidence, he has stated that on 18.07.2005 in order to get renewal of license for their Engineering company, he took 6 electric meters for examination and the electrical meters was examined on 19.07.2005. Thereafter, when he went to the accused, who being Electrical Inspector, to get the signature in the test report, he demanded Rs.2000/- as a bribe to sign in Ex.A.2 series. P.W.2 immediately informed the accused that he could not pay the amount. However, the accused insisted that unless Rs.2000/- is given, he will not sign in the test report. Immediately, P.W.2 informed the same to his owner P.W.4. However, P.W.4 informed P.W.2 to meet the accused once again on the next day and try to get the signature. Accordingly, P.W.2 gone to the office of the accused on 20.07.2005 and met the accused at 4 p.m. to get the signature in the test report, Ex.P.2. At that time also, the accused demanded Rs.2000/- and also stated that only on payment of Rs.2000/- he will sign the test report. Again P.W.2 went to P.W.4 and P.W.4 asked P.W.2 to lodge a complaint with the Vigilance and Anti Corruption Department. Accordingly, P.W.2 lodged the complaint Ex.P.3 on 22.07.2005 at 11.30 a.m. The evidence of P.W.2 in material particulars with regard to the payment of Rs.2000/- and P.W.2 informing P.W.4 and again P.W.2 meeting the accused on the next day and again P.W.2 informing P.W.4 and P.W.2 lodging the complaint is corroborated by P.W.4.

16. It is the case of the accused that as per Ex.D.1 series, a target was fixed to several sections of the office to collect certain amount towards flag day collections and he never demanded the amount as a bribe and the accused only requested P.W.2 to pay Rs.2000/- towards flag day collections. However, P.W.2, at the instructions of P.W.4 has implicated the accused in a trap case.

17. Though P.W.2 has supported the version of the prosecution with the regard to the demand of Rs.2000/- on 19.07.2005 and on 20.07.2005 and receiving of the bribe amount by the accused and the seizure of tainted money from the accused in his chief examination, in his cross examination, P.W.2 totally resiled from the prosecution version. In his cross examination, he has stated that when he went to the accused

office with 6 meters for renewal, the accused demanded Rs.1000/- to the inspection section and another Rs.1000/- for technical section towards flag day collections. Immediately, he has informed the same to P.W.4 and P.W.4 informed P.W.2 that he cannot pay that amount and instructed P.W.2 to give a complaint as if the accused demanded RS.2000/- as a bribe. In his cross examination, he has also asserted that on the day of trap also, he has told the accused that he has brought Rs.2000/- only towards flag day collection.

18. It is contention of the prosecution that the cross examination has not been done on the same day. Subsequently, after a gap of one month, the cross examination has been done and therefore, there is a possibility of winning over the witness cannot be ruled out. At any event, it is the contention of the learned Public Prosecutor that the chief examination of P.W.2 not only prove the demand and acceptance of the bribe amount but also with regard to the tainted money and also recovery by trap laying officer, P.W.8. These facts clearly proves the demand and acceptance of bribe amount. Therefore, Section 20 of the Act comes into operation.

19. It is to be noted that merely because the witness was treated as hostile in his cross examination, his entire evidence cannot be discarded. The prosecution can very well rely on any part of the evidence of such hostile witness. There is no doubt at all with regard to this aspect. Now, the question remains to be decided is that when the person tested before the Court of law, gives two different versions, one in favour of the prosecution and another in favour of the accused, his evidence has to be scrutinized properly, whether his evidence is reliable or suffer from any infirmities has to be assessed by this Court. Reliability of the evidence is based on the entire scrutiny of the evidence. Therefore, even though, the prosecution can rely upon the evidence of P.W.1, whether such evidence is reliable and P.W.1 has spoken truth before the court, can be ascertained only after careful scrutiny of the entire evidence.

20. On a careful perusal of the entire evidence of P.W.2, in the chief examination he has stated that after inspection of the meters in the accused office, when he went to the accused to get the signature in the test report on 19.07.2005 at about 4 p.m. The accused demanded Rs.2000/- for signing in Ex.A.2. However, P.W.2 informed the accused that he is not willing to pay the amount. Immediately P.W.2 informed the same to P.W.4. However, again as per the instructions of P.W.4, P.W.2 again met the accused on 20.07.2005 for getting signature of the accused in Ex.A.2 and at that time also, the accused has told P.W.2 that unless Rs.2000/- is paid, he will not sign Ex.P.2. Therefore he has made a complaint.

21. Thereafter, P.W.3 and another shadow witness was asked to come to the vigilance office and P.W.8 gave necessary instruction to them and entrustment mahazar was also prepared. After that on 22.07.2005, P.W.2 and P.W.3 went to the accused office situated in the first floor, where the accused is seated. It is the specific evidence of P.W.2 that at the time of handing over the tainted money, he and P.W.3 went to the first floor at 3.30 p.m. and P.W.2 introduced P.W.3 as his company's supervisor and immediately, P.W.3 told the accused that on behalf of the company, he cannot pay any amount. However, the accused again demanded Rs.2000/- to sign in Ex.P.2. Thereafter, the accused again asked P.W.2 whether he has brought the amount or not. Immediately, P.W.2 paid Rs.2000/- and the accused received it and kept it in his pocket and thereafter, he has signed in the test report, namely, Ex.P.2. It is the further evidence of P.W.2 that thereafter, the accused called one Raghava Rao, who is working in the same office and gave Rs.1000/- to him.

22. Immediately, P.W.2 came out and gave signal to the trap team, who were waiting outside the office. Thereafter, P.W.8 and other team came and recovered the tainted money from the accused. When the specific evidence of P.W.2 in the chief examination show that as if when P.W.2 and P.W.3 went to accused office to pay the bribe amount, he introduced P.W.3 and P.W.3 also told the accused that they are not prepared to pay the amount, despite the same, the accused demanded the amount and P.W.2 immediately paid the amount and thereafter, the accused has signed Ex.P.2, test report. After that, the accused called one Raghava Rao and paid Rs.1000/- to him.

23. In this regard, the evidence of P.W.2 is totally contradictory with the evidence of P.W.3, the shadow witness. P.W.3 in his evidence has stated that when they went to the accused office, the accused immediately asked P.W.2 whether he has brought the money. Immediately, P.W.2 handed over the money to the accused and the accused received the same and kept it in his pocket. Thereafter, P.W.2 came out and gave signal to police party. Thereafter, phenolphthalein test was conducted and it is also found to be positive and the tainted money was also seized from the accused and another Rs.1000/- was seized from one Raghava Rao, foreman.

24. It is to be noted that P.W.3 in his evidence has never stated at the time when they went to the office of the accused, P.W.2 introduced him to the accused and P.W.3 also told the accused that they are not prepared to pay the amount. Further, P.W.3's evidence is totally silent about the accused calling one Raghava Rao, who is said to be a foreman and handing over Rs.1000/- to him. Further, P.W.3, the shadow witness is totally

silent about the alleged signing of the paper by the accused immediately after the receipt of the bribe amount. This aspect is also totally contradictory with each other. This doubt is further fortified by the fact that Ex.P.2 series is not seized from the accused by the investigating officer at the time of trap. In fact, the entire file, including Ex.P.2 were seized from the said Raghava Rao, whose office is in the ground floor. As per the evidence of P.W.8, the said Raghava Rao, foreman was sitting in the ground floor. The accused was sitting in the first floor as per the investigating officer's evidence. The entire file relating to Ex.P.2 was seized from the said Raghava Rao and not from the accused. This fact has been clearly admitted by the trap laying officer in his cross examination. P.W.8 has admitted that Ex.P.2 series were seized from the said Raghava Rao.

25. On a careful perusal of Ex.P.2 series, test reports, were in fact signed on 19.07.2005 itself. The Investigating Officer also admitted that 19.07.2005 itself, the test reports have already been signed by the accused and the files were with the foreman, who was sitting in the ground floor. This aspect is also corroborated by P.W.7, Senior Electrical Inspector who has also clearly spoken about the processing of applications and issuance of certificates. His cross examination clearly show that on 19.07.2005 itself, the accused has already signed Ex.P.2 series. When the accused has already signed the test report on 19.07.2005 itself, the question of demanding amount of Rs.2000/- for signing Ex.P.2 on 20.07.2005 is highly improbable and create some doubt about the evidence of P.W.2.

26. It is further to be noted that it is the specific case of P.W.2 that after the receipt of the bribe amount of Rs.2000/- only, the accused has signed in the test report, Ex.P.2 series. This evidence is totally falsified by the evidence of Investigating Officer. In fact, the Investigating Officer has immediately on the same day has seized Ex.P.2 series file from the said Raghava Rao, who was originally arrayed as an accused. However, in the charge sheet, he has not been arrayed as an accused. His office is in the ground floor. Therefore, the evidence of P.W.2 that immediately after the receipt of the bribe amount, the accused signed Ex.P.2 series also creates serious doubt about the entire version of the alleged demand for signing Ex.P.2. On 19.07.2005 itself, the accused has signed Ex.P.2, which was seized from Raghava Rao in the ground floor. This aspect also create some serious doubt about the evidence of P.W.2.

27. Further, P.W.3 evidence is that at the time of handing over the money, the accused did not ask him anything. His evidence is also contradictory to the evidence of P.W.2.

Whereas, P.W.2 asserted that he introduced PW.3 to the accused and P.W.3 also told him that they are not prepared to pay the amount. Even then the accused demanded the bribe amount. This aspect is not even spoken by P.W.3. Further, P.W.3 has never spoken about the accused handing over Rs.1000/- to the said Raghava Rao immediately after the receipt of the bribe amount. Whereas, P.W.2 in his evidence has stated that immediately he called the said Raghava Rao and paid Rs.1000/- out of the bribe amount to him. The aspect also create serious doubt about the version of the prosecution.

28. In the cross examination, P.W.2, in fact, has totally resiled from his chief examination. He has stated in his cross examination that infact the said Rs.2000/- was demanded towards flag day collection and Rs.1000/- was for the Inspection Section and other Rs.1000/- was for the technical section. It is also stated that immediately the same has been informed to P.W.4 and P.W.4 insisted him to give a complaint. In his cross examination, he has also stated that he has given the complaint as instructed by P.W.4. P.W.4 evidence, when carefully seen, his previous license has expired on 25.06.2005 itself. The evidence of P.W.2 and P.W.4 further show that P.W.2 alone went to the office to get the renewal of the license. In fact, this aspect is also falsified by the records. On a careful perusal of the Ex.P.2 series, test report was already signed on 19.07.2005 itself and infact it has been admittedly seized only from the Foreman, who is in the ground floor. Therefore, when the accused has already signed the test report as early as on 19.07.2005, demand of Rs.2000/- for signing the report on 20.07.2005 is highly improbable. Even though, the alleged demands were made on two days, despite instruction from P.W.4, complaint was not given immediately and in fact, the complaint was given on 22.07.2005. This aspect also creates serious doubt about the version of P.W.2.

29. Ex.D.1 Circular issued from the head office of the accused dated 18.01.2005 and same shows that each section of the department was fixed certain target. For the accused section, the target was fixed at Rs.20,000/- and for the technical section also some target was fixed. Ex.D.1 series, when carefully seen shows that one Ramesh from P.W.4's office has already been nominated to submit application to get the renewal and challan was also issued for payment of necessary fees on 18.07.2005 for a sum of Rs.950/-. Therefore, the evidence of P.W.4 and P.W.2 that for the first time, P.W.2 went to the office of the accused also creates serious doubt about his version. The seizure of tainted money of Rs.1000/- from the accused and another Rs.1000/- from the foreman in fact probabilize the defence theory that each section was assigned the work of collecting some amount for flag day collections.

Therefore, merely because the tainted money has been recovered under the trap proceedings and phenolphthalein test is also found to be positive and it is also established on record, that itself is not sufficient to draw the presumption under section 20 of the Act.

30. The specific case of PW.2 in his chief examination is that the accused demanded Rs.2000/- only for signing the test report on 19.07.2005 and also on 20.07.2005. Whereas, the documents filed by the prosecution Ex.P.2 series and the evidence of the trap laying officer P.W.8 and P.W.7, Senior Inspector clearly show that on 19.07.2005 itself, the accused has signed the test report. Therefore, it cannot be stated that the accused has demanded certain amount for doing or accepted the gratification as a motive for doing any official act. Whereas, in this case, the accused has already done his official act on 19.07.2005 as established by records. Therefore, the demanding such amount for doing an official act, i.e., signing of the test report is highly improbable and create serious doubt about the prosecution case with regard to the demand for doing an official act. Only when the prosecution has proved the demand or acceptance of any gratification, presumption under section 20 will come into operation. Then the accused has to dislodge the statutory presumption. The burden on the accused does not have to meet the standard of proof as is required to be met by the prosecution.

31. Ex.D.1 and the evidence of P.W.8, the investigating officer clearly show that Ex.P.2 series were in fact seized only from the ground floor and not from the accused. This also clearly establish the fact that on 19.07.2005 itself the accused has signed the test report. Therefore, the demand for signing the above papers is highly improbable and doubtful. Further, the seizure of the tainted money from two different persons from different office, one in the first floor and other in the ground floor also probabilise the defence theory that Rs.1000/- each was given to two different sections towards flag day collection. That is also more probable, particularly when the accused has been assigned such work.

32. In this regard, the judgment reported in 2003 Supreme Court Cases (Criminal) 1236 - State of Tamilnadu Vs. S.Krishnamurthy, it has been held as follows :

"In this appeal, we have heard learned counsel for the parties and perused the evidence. We are unable to come to the conclusion that the finding given by the High Court is either perverse or based on no evidence. The prevalence of the practice in the office in question of collecting the Flag Day fund and the Teacher's

Day fund seems to have been an authorised practice, though we do not approve of such practice. While considering a criminal appeal, if the existence of such practice is established and the defence taken by the accused is in conformity with such practice, we are in agreement with the High Court that the mere fact that the respondent received a sum of Rs.300/- would not ipso facto lead to the conclusion that the money in question was received by him as a bribe for showing an official favour."

33. In 1998 Criminal Law Journal 3635 - Mahmoodkhan Mahboobkhan Pathan Vs. State of Maharashtra, the Honourable Supreme Court has 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 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."

34. In the judgment reported in 2004 Supreme Court Cases (Criminal) (1276) - State of A.P. Vs. C.Uma MaheswaraRao and another, the Honourable Supreme Court has held as follows :

"When the sub-section deals with legal presumption, it is to be understood as in terrorem i.e., in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act, etc. if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that

the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act."

35. Similarly, in the judgment reported in 2008 (3) Madras Law Journal (Criminal) 284 - M.Selvaraj Vs. State by Inspector of Police, Vigilance and Anti-Corruption, Salem this Court has held as follows :

"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 A01 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, A02 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."

36. There is no dispute with regard to the settled position of law laid down in the above judgments. On analysing the entire evidence of P.W.2 and P.W.3, the prosecution version of alleged demand and acceptance of money is highly doubtful. Only if the demand, acceptance has been proved beyond all reasonable doubt by the prosecution, then presumption under section 20 of the Prevention of Corruption Act will apply. When the demand and acceptance of the money itself is doubtful, in view of the evidence of P.W.2, who has turned hostile and P.W.3 evidence is also highly contradictory with P.W.2, this Court is of the view that the defence explanation is more probable than the case of the prosecution. Hence, this Court is of the view that the accused is certainly entitled to the benefit of doubt and the judgment of the trial court is liable to be set aside.

37. Accordingly, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant in C.C.No.26 of 2006 dated 06.07.2010 by the IV Additional Sessions Judge, Chennai are set aside and the accused is acquitted of the charges under Sections 7, 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988. Fine amount paid shall be refunded. Bail bond, if any, executed by the accused, shall stand cancelled.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The IV Additional Sessions Judge,
Chennai.

2. Do Through the Principal Sessions Judge,
Chennai.

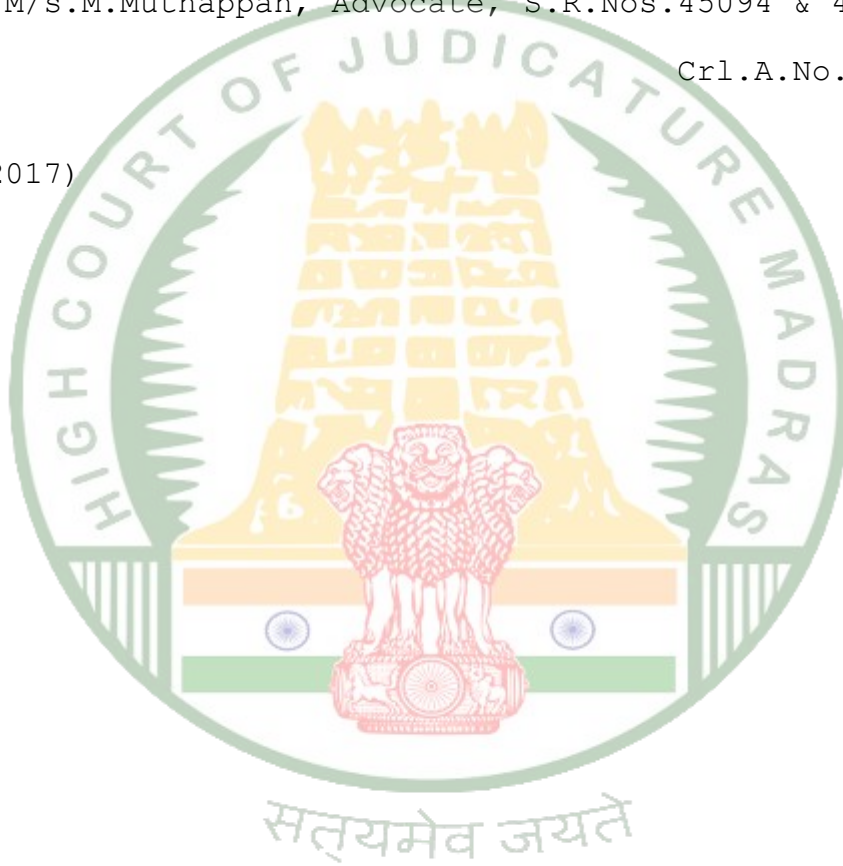
3. The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Chennai City - I Detachment,
Chennai - 28.

4. The Public Prosecutor,
High Court, Madras.

+3cc's to M/s.M.Muthappan, Advocate, S.R.Nos.45094 & 46059

Cr1.A.No.434 of 2010

MP (CO)
CA(20.07.2017)



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