

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 15.02.2017

Judgment Pronounced On : 11.08.2017

CORAM

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

Crl.A.No.488 of 2010

Dhayanandhan @ Dhayalan (died)
D.Shanthi
W/o.late Dhayanandhan @ Dhayalan ... Appellant

vs.

State rep. by
The Inspector of Police,
Vigilance & Anti Corruption,
Chennai,
(F.I.R.No.09/AC/2004/CC-II) ... Respondent

Criminal Appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 04.08.2010 passed by the learned
Special Judge/VII Additional Sessions Judge, Chennai, in Calendar
Case No.18 of 2007.

For Appellant : M/s.Kumar Talreja

For Respondent : Mr.E.Raja
Additional Public Prosecutor

JUDGMENT

The accused Dhayanandhan @ Dhayalan stood charged for offence punishable under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The accused was found guilty by the trial court and he was convicted and sentenced to undergo imprisonment for one year with a fine of Rs.500/-, in default to undergo 2 months imprisonment under Section 7 of P.C.Act and to undergo sentence of imprisonment for one year under Section 13(2) read with 13(1)(d) of PC Act, with a fine of Rs.500/- in default to undergo 2 months imprisonment. Aggrieved by the said verdict of the trial court, the accused has come forward with this criminal appeal seeking to set aside the conviction and sentence imposed on him by the trial court. During the pendency of this Criminal Appeal, the accused/appellant Dhayanandhan @ Dhayalan died and his wife D.Shanthi, has been impleaded to continue the appeal, as per the order of this court dated 25.04.2012 vide M.P.No.2 of 2012 in CrI.A.No.488 of 2010.

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

The accused Dhayanandhan @ Dhayalan was working as Office Assistant in the Purasalwalkam-Perambur Taluk Office,

Perambur High Road, Chennai-11. The complainant M.Eakambaram is a resident of Periyar Nagar, Chennai-82. The brother of the complainant one Selvaraj was working as Line man in the Tamil Nadu Electricity Board, Chennai, and he died on 15.07.2004. In order to enable his wife Lakshmi to get the pensionary benefits of the deceased husband, viz., Selvaraj, she was in need of legal heir certificate. In that connection, the complainant P.W.2 Eakambaram gave a petition/Application for legal-heir certificate along with annexures, Ex.P.2 on behalf of his Sister-in-law Lakshmi in the office of Purasalwalkam-Perambur Taluk Office on 09.09.2004 and the same was received by the accused herein. At that time, the accused is alleged to have demanded Rs.800/- from the complainant so as to issue the legal heir certificate. The complainant again met the accused in his office on 10.09.2004 assuring him that he will arrange for payment of amount of Rs.800/- as demanded by the accused. On 10.09.2004 also, the accused is alleged to have demanded illegal gratification of Rs.800/- as a reward to facilitate the complainant to get the legal heir certificate without any delay. Since the complainant was not willing to pay the amount, he lodged a complaint Ex.P.4 on 13.09.2004 to P.W.6 the then Inspector of Police, Vigilance and Anti-corruption Wing, Chennai. The complainant also stated that when he met the accused on 09.09.2004, he was answered by the accused to come

with a sum of Rs.800/- on the next day viz., 10.09.2004 and he told the accused that he will not be able to come as the same happened to be the salary payment day; and on that the accused gave him an identity slip to send it with someone else and the same is Ex.P.3. The Inspector of Police who deposed as P.W.6 stated that on receipt of Ex.P.4 complaint, he registered a case in Crime No.09/AC/2004/CC-II and the said FIR is Ex.P.15. Thereafter, the Inspector of Police, P.W.6 secured the official witnesses P.W.3 Mohanraj and another person Rangaraj who were working in District Employment Office, Santhome, Chennai, to be present in his office as witnesses during the demonstration of trap proceedings. The complainant P.W.2 produced the alleged trap amount of Rs.800/- as directed by the Inspector of Police P.W.6. According to P.W.2, he handed over one denomination of Rs.500/- and three denomination of Rs.100/-, totalling Rs.800/-. Thereafter, P.W.6, the Inspector of Police conducted demonstration with sodium carbonate solution for the benefit of complainant and the two official witnesses for the trap proceedings. The said sum of Rs.800/- which is produced as M.O.1 was smeared with phenolphthalein powder and the witness Rangaraj was asked to count the notes and thereafter Mahazar was prepared wherein the numbers of the said currency notes was entered. Ex.P.6 is the Entrustment Mahazar. The witnesses P.W.3 Mohanraj and the other witness Rangaraj were apprised about the

contents of the complaint lodged by P.W.2 and also the procedure to be followed in the trap proceedings to be conducted on the same day in the office of the accused, who demanded the above said illegal gratification.

3. According to the prosecution, the complainant P.W.2 accompanied by P.W.3 Mohanraj and other witness Rangaraj reached the office of the accused around 5.25 p.m., and on demand by the accused, handed over Rs.800/- to him and the same was received by the accused herein. The amount was kept by the accused in the left side shirt pocket and the same was observed by P.W.3 shadow witness. Immediately thereafter, they came out of the office of the accused and gave prearranged signal to P.W.6, who was waiting outside and as he went along with other witness Rangaraj and other members of the trap team, the accused was identified to him by P.W.2 and on questioning the accused, the accused handed over the sum of Rs.800/- to the Investigation Officer P.W.6 Raja Srinivasan. Thereafter, P.W.6 conducted phenolphthalein liquid test in the presence of P.W.3 shadow witness and P.W.4 Bhuvaneswaran. According to P.W.6, the phenolphthalein test was positive and hence, he secured the accused after recovering the amount and also recorded his statement. The Mahazar prepared by him at the completion of trap

proceedings is Ex.P.6. Thereafter, the house of the accused was also searched and the search list prepared by P.W.6 is Ex.P.11. P.W.4 who was then working as Tahsildar, Thondiarpet Taluk Office, stated that the accused was placed in-charge of Despatch Division of the office, as per the Office Order No.16/2004 dated 19.07.2004 and produced the same as Ex.P.12. According to him, the same was handed over to the respondent on 09.12.2005 by him on their request.

4. After completion of trap proceedings, P.W.6 the Inspector of Police gave requisition letter to the Forensic Lab to give a report on the chemical contents of the chemical solution relating to both hands of the accused and also his shirt, which is produced as M.Os.1, 2 to M.O.4. Accordingly, P.W.5 the Scientific Officer of the Forensic Department who examined the above solutions gave her report which is marked as Ex.P.14 wherein it is stated that sodium bicarbonate and phenolphthalein powder was present in the said liquid. P.W.6 also stated that the file containing the applications given by the complainant to the Taluk Office was secured from the Table Drawer of the accused and the same is Ex.P.2. According to P.W.6, on his request, the person who was looking after the legal heir certificate issuance Branch of the Taluk office, handed over Exs.P.7 to 10 containing the Office Tapal

Register and Distribution Register relating to the assignment of work. He further stated that after completion of trap proceedings, he sent Ex.P.17 alteration report by including Sections 13(2), 13(1)(d) of Prevention of Corruption Act. P.W.6 stated that thereafter, he handed over the case file to P.W.7 for further investigation. P.W.7 Inspector of Police stated that he prepared Ex.P.18 Rough Sketch on the occurrence spot and also examined the witnesses and recorded their statements and on completion of investigation, he obtained sanction order to prosecute the accused from P.W.1 and the same is Ex.P.1. After obtaining necessary sanction order, P.W.7 laid the charge sheet against the accused under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

5. Based on the above materials, 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 chargers, he was put on trial. After prosecution examined P.W.1 to P.W.7 and produced Exs.P1 to P18, the incriminating evidence found in the prosecution side was put to the accused under Section 313 Cr.P.C., and he denied the same. The case of the accused is that he never demanded any amount as illegal gratification. The accused did not examine any witness on his side and no document was produced by

him. The trial Court, after considering all the materials placed before it, convicted the accused as narrated in the first paragraph of this judgment and imposed punishment. Aggrieved over the said judgment and conviction, the appellant has come forward with this appeal challenging the said finding of the trial Court.

6. Heard the arguments advanced by the learned counsel appearing for both the appellant and State and I have also perused the records carefully.

7. The learned counsel appearing for the appellant contended primarily that the complainant who deposed as P.W.2 has been treated as hostile and he has given contradictory evidence, but the trial Court failed to appreciate the same properly. The trial Court found that the evidence of P.W.2 is truthful and on the basis of the said evidence has held that the accused is guilty and the same is not proper. The learned counsel appearing for the appellant further contended that the fact of demand and acceptance of illegal gratification is not proved and as such the accused cannot be held guilt of the offence as alleged by the prosecution and the trial Court failed to take note of the same properly. It is further contended that the accused is not in a position to do any favour to the complainant was not taken into consideration and the accused is not an authority

to issue legal heir certificate is also not considered. The allegation of the prosecution that the accused demanded illegal gratification to do a favour to the complainant is unsustainable. Thus, the learned counsel appearing for the appellant pleads that the conclusion arrived at by the trial Court and the reasons stated for the same is unsustainable and seeks to allow the appeal and set aside the conviction and sentence imposed on the appellant by the trial Court.

8. The case of the prosecution is that the accused Dhayalan, who was working as Office Assistant in Taluk Office at Purasawalkkam - Perambur, demanded a sum of Rs.800/- from the complainant Eakambaram, when he approached him seeking legal heir certificate for his deceased brother Selvaraj, who was employed in TamilNadu Electricity Board. Thus, a sum of Rs.800/- was demanded by the accused to issue legal heir certificate to one Lakshmi, wife of deceased Selvaraj, who is the brother of the complainant Eakambaram herein. Thus, the accused is alleged to have sought for illegal gratification in return to issue legal heir certificate. It is admitted by the prosecution that the accused was employed as Office Assistant in Tapal Section in Taluk Office at Purasawalkkam-Perambur. P.W.4, Bhuvaneswaran, the then Tahsildar in Taluk Office at Purasawalkkam - Perambur produced the office order issued about the work allotment at the relevant point of

time is as Ex.P12. According to him, the accused Dhayanantham was responsible for all the duties connected with despatch clerk work in the Taluk Office. The Inspector of Police, who deposed as P.W.7 stated in his cross examination that in the complaint it is stated that the accused Dhayanantham, Tapal Clerk, demanded money from the complainant. The sanctioning authority P.W.1 also stated categorically that the accused was not having any authority to issue death or legal heir certificate. It is therefore clear from the evidence of P.W.4 and P.W.7 that the accused was only put in charge of duties relating to despatch clerk and there is no evidence to show that the accused is the authority to issue death certificate or legal heir certificate. Pointing it out, the learned counsel appearing for the appellant contended that unless and until a person is in a position to do some favour to another person and in that connection received any amount that alone can be treated as illegal gratification and in the case on hand as there is no materials to prove that the accused is authorised person to issue legal heir certificate or death certificate, it cannot be considered that the accused demanded illegal gratification from P.W.2. In such circumstances, it is contended by the appellant that even if any amount was recovered from him that cannot be treated as illegal gratification. In support of the same, the learned counsel appearing for the appellant relied upon a ruling reported in **2012 (1) MWN**

(Cr.) 448 in R.VENKATRAJ Vs. STATE REP.BY INSPECTOR OF POLICE, VIGILANCE AND ANTI-CORRUPTION WING, VIRUDHUNAGAR DISTRICT, wherein it has held as follows:-

"14. The learned counsel for the appellant also says that only if the Accused has been in possession to do some favour to a person and for doing such favour, if he has received the amount, it would amount to remuneration and such a remuneration could be termed as "illegal gratification" as held in P.Meganathan v. State of Tamil Nadu, 2010(1) MWN (Cr.) 454(supra) and that in this case, it is for the Village Administrative Officer and Revenue Inspector concerned to give report to the Tahsildar for grant of Legal Heirship Certificate and the Appellant had not control over P.W.1 for grant of certificate and hence, the receipt of money, even if it is received by the Appellant from P.W.1 could not be termed to be a illegal gratification.

9. He also relied upon a ruling reported in **2010(1) MWN (Cr.) 454 in P.MEGANATHAN Vs. STATE OF TAMIL NADU, REP. BY INSPECTOR OF POLICE, VIGILANCE AND ANTI-CORRUPTION DEPARTMENT, CHENNAI,** where in it has held as

follows:-

"12. At this juncture, I have to further state that the term "remuneration" as defined under the Act would mean that something done in consideration. If only the accused had been in a position to do some favour to P.W.2 and for doing such favour, if the accused had received the amount, it will amount to remuneration and such a remuneration might have to be termed as "illegal gratification". But here, as I have already stated, the accused had already been transferred to Pulianthope and thus he had no control at all over P.W.2. Therefore, he would not have been in a position to do any favour to P.W.2 at all. Therefore, the question of remuneration from P.W.2 towards the accused is out of place.

10. In the case on hand as stated above the prosecution has not produced any materials to show that the accused is the authorised person to issue legal heir certificate as sought for by the complainant herein. In such circumstances, following the above said rulings even if the prosecution claim of Rs.800/- was recovered from the accused herein is accepted, the same cannot be termed as "illegal gratification amount". Thus, it is to be seen that whether the prosecution has proved the actual demand and receipt of the sum by the accused herein to do a favour to the complainant as

alleged in the complaint.

11. The only witness for the said demand and acceptance apart from the official trap witness, who is examined as P.W.3, the complainant, who deposed as P.W.2 and he has been treated as hostile witness. While P.W.2 stated in his chief examination that his brother Selvaraj was employed as Line man in Tamil Nadu Electricity Board and he died on 15.07.2004 and in order to enable his wife Lakshmi to get the pension benefits, he applied for legal heir certificate on behalf of said Lakshmi and submitted the application in the Tapal Section of Taluk Office at Purasawalkkam - Perambur on 09.09.2004 at 12.00 noon. The said application is produced as Ex.P2. According to the complainant, he submitted the application to the accused who was working in Tapal section and demanded him to issue legal heir certificate. On that the accused asked for Rs.800/- to issue the legal heir certificate and refused to issue the same if the amount was not paid. According to P.W.2, he was asked by the accused to come with the amount on the next day on 10.09.2004. Since P.W.2 informed the accused that he cannot come on the next day as it was salary day, the accused gave Ex.P3 slip as identification to be produced by any one sent by the complainant. However, P.W.2 stated that on 10.09.2004, he himself went to the office of the accused and informed him that he is not in a position to give Rs.800/- as sought for. To which the

accused replied that the certificate can be collected only after the said sum of Rs.800/- was arranged. Thereafter, P.W.2 went away promising to come with money. Thus, as per the evidence of P.W.2, he went to the office of the accused on 09.09.2004 and also on 10.09.2004 and he was asked on both days by the accused to pay Rs.800/- and then only the legal heir certificate will be issued. As stated above, while P.W.2 has initially stated that he informed the accused about his inability to come on 10.09.2004, but, subsequently, he himself met the accused on that day. However, when P.W.2 was cross examined, he turned hostile and totally denied the version given by him in the chief examination. He stated that he met the accused for the first time only on 13.09.2004, when the trap proceeding was held and stated that he did not go inside the office of the accused, but gave the amount through window. He also stated that nobody came with him. The same was contrary to the claim of P.W.3 the official trap witness and P.W.6, the Inspector of Police. Thereafter, when P.W.2 was cross examined by the prosecution, he again turned around and supported the version stated by him in his chief examination. Thus, P.W.2 has given contradictory evidence about the demand and acceptance of illegal gratification by the accused.

12. P.W.2 further stated that as he was not inclined to pay

the amount demanded by the accused, he lodged Ex.P4 complaint with the respondent on 13.09.2004 and thereafter trap proceeding was arranged by the Inspector of Police, who deposed as P.W.6. According to him, after the official witness P.W.3 Mohan Raj and another person Rangaraj were summoned to the Office of the respondent and after they were explained about the trap proceedings, the complainant/P.W.2 along with P.W.3 Mohan Raj and P.W.6, Inspector of Police went to the Office of the accused at 5.00 p.m., and then the complainant/P.W.2 along with P.W.3 went inside and met the accused, who was in Tapal Section. When he asked the accused as to whether the legal heir certificate is ready, he asked him about the money. Immediately, P.W.2 stated that he has come with money and handed over Rs.800/- which is marked as M.O.1 series. The accused received the same and after counting it, put it in the left side pocket of his shirt and told the complainant to come and collect the legal heir certificate after two days. However, P.W.2 in his cross examination stated that the amount was given by him through window and he did not go into the section where the accused was working. P.W.2 in his further cross examination stated that he left the amount in the window and nobody accompanied him and the trial Court considered the same and concluded that it is a minor discrepancy and as the accused was cross examined after the gap of 20 days of his chief examination, the said discrepancy can be

ignored. The learned counsel appearing for the appellant contended that it is not a minor discrepancy and as P.W.2 has given different versions, his evidence should not be believed as genuine one and the benefit of doubt should go to the accused.

13. In such circumstances, the evidence of P.Ws.3 and 6 is to be taken into consideration as to whether really there was a demand and acceptance of Rs.800/- by the accused as claimed by the prosecution. According to P.W.2/complainant, he went to the office of the respondent at Adyar at about 10.30 a.m., on 13.09.2004 and lodged Ex.P4 complaint and on receipt of the same, P.W.6 Inspector of Police registered the first information report marked as Ex.P15 and gave the copy of it to the complainant. His signature in the said first information report is marked as Ex.P5. According to him, thereafter two employees from Employment Exchange Office were summoned and they were introduced to him by P.W.6 and he explained to them and the complainant, the trap proceedings and also conducted phenolphthalein test and the mahazar prepared in respect of the said proceedings is produced as Ex.P6. Thus, according to P.W.2, after he gave the complaint at about 10.30 a.m., the first information report was registered and thereafter P.W.3 and other witnesses were summoned to the office of the respondent. P.W.3 stated in his evidence that he was

employed as Assistant in the District Employment Office, Santhome during 2004 and as directed by his higher officials he went to the office of the respondent by 12.00 noon, then he was introduced to the complainant and also explained about the contents of the complaint and trap proceeding. Another witness, namely, Rangarajan was also present and the mahazar was prepared after they were explained about the phenolphthalein test procedure. According to him, the said proceedings was completed around 1.30 p.m. Pointing it out, the learned counsel appearing for the appellant contended that it is highly improbable that after the complaint was lodged at 10.30 a.m, P.W.6, the Inspector of Police recorded the first information report and secured the witnesses by 12.00 noon itself. P.W.6, the Inspector of Police stated that on 11.09.2004, the DSP of his Branch handed over the complaint given by one Eakambaram around 10.30 a.m., asked him to take further action. On the basis of the same, he registered Ex.P15 first information report and thereafter summoned P.W.3 Mohan Raj and another witness Rangaraj and on their arrival to his office he introduced the complainant and also explained them the trap proceedings. According to him, the said proceedings took place between 12.30 p.m., and 13.30 hours. The Entrustment mahazar prepared by him is marked as Ex.P6.

14. As stated above, P.W.2/complainant has given different version about giving sum of Rs.800/- to the accused. Whereas P.W.2 stated in his chief examination that he went inside the office of the accused and handed over the same, in his cross examination, he changed it and deposed that he give the amount through window to the accused. Improving upon it, P.W.2 stated that he left behind the amount in the window and the accused called him to take back the amount. The official witness who accompanied the trap proceedings deposed as P.W.3 stated in his cross examination that there is a compound wall and inside the same office building is situated and before entering the building there are two counters. According to him, the complainant paid the amount through the counter only. Thus, the place where the amount was paid to the accused is stated in different manner by P.W.2 and P.W.3 as stated above. Further, as stated earlier, the accused is not the authorised person to issue legal heir certificate. In such circumstances, the claim of the prosecution that the amount was received by the accused in return to issue legal heir certificate to the complainant cannot be accepted. As the complainant/P.W.2 has taken contrary stand and apart from P.W.3 there is no other independent witness, it is not safe to conclude that there was actual demand and receipt of illegal gratification by the accused as claimed by the prosecution.

15. In support of his contention, the learned counsel appearing for the appellant relied upon a ruling reported in **2009-L-W (CrI.) 1044 in R.KRISHNAMURTHY Vs. STATE OF TAMILNADU, REP. BY D.S.P., VIGILANCE AND ANTI-CORRUPTION, CITY SPECIAL UNIT-III, CHENNAI-600 020**, wherein it has held as follows:-

"6.The fact remains that the P.W.2 has turned hostile with respect to the demand of bribe made by the first accused for giving direct connection and restoration of electricity. It is his categorical version that only for the purpose of purchasing a new meter box, a sum of Rs.3,000/- was paid during the course of trap. Therefore, the foundation made by the prosecution that there was a demand of bribe for the purpose of giving direct connection and restoration of electricity is found shaking. Further, P.W.2 has also given a go-by to the case of the prosecution found in the complaint lodged by him that the money was demanded only for direct connection and restoration of electricity.

16. The learned counsel also relied upon a ruling reported in **2009(1)MWN(CrI.)324 in S.P.PAULRAJ Vs. STATE REP. BY THE DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE AND**

ANTI CORRUPTION, RAMANATHAPURAM, to contend that the witnesses forming part of the trap proceeding cannot be treated as an independent witness and in the absence of any other independent witness being examined and in the light of P.W.2 being treated as hostile witness, the evidence of P.W.3 alone is not sufficient to prove the fact of demand and acceptance of illegal gratification by the accused. In the said ruling it has held as follows:-

"17. Demand of illegal gratification said to have been made by the accused at the time of trap not proved :

As P.W.2 has turned hostile, the prosecution version in respect of the alleged demand of illegal gratification said to have been made by the accused at the time of trap is left with the sole and solitary testimony of P.W.3, trap witness. Before proceeding to consider the evidence of P.W.3, it is to be borne in mind that the Hon'ble Apex Court in [Som Parkash V. State of Punjab](#) reported in AIR 1992 SC 665 has held that witnesses forming part of the raiding party are not independent witnesses. Therefore, their evidence has to be considered like any other witnesses in the light of the other materials and the cumulative circumstances available on record.

17. The learned counsel appearing for the appellant also relied upon a ruling reported in **2015 (10) SUPREME COURT CASES 152, in P.SATYANARAYANA MURTHY Vs. DISTRICT INSPECTOR OF POLICE, STATE OF ANDHRA PRADESH AND ANOTHER**, to contend that even assuming the sum of Rs.800/- allegedly recovered from the accused was accepted by him, in the absence of evidence to prove that the sum was demanded by him, the charge against the accused cannot be held to be proved. The said ruling it has held as follows:-

"The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fall. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors 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 Section 7 or 13 of the Act would not entail his conviction thereunder.

18. Likewise, the learned counsel for the appellant contended that the recovery of tainted money alone is not sufficient to prove the guilt of the accused in the absence of reliable substantive evidence. In support of the same, he relied upon the ruling reported in **2013 (14) SUPREME COURT CASES 153 in STATE OF PUNJAB Vs. MADAN MOHAN LAL VERMA**, wherein it has held as follows:-

7. 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.

19. On the other hand, the learned Additional Public Prosecutor appearing for the State contended that the sum of Rs.800/- marked as M.O.1 series was recovered from the accused and the evidence of P.W.6, the Inspector of Police who conducted trap proceedings and the evidence of P.W.3, who was present during trap proceedings, will clearly establish the recovery of tainted sum of Rs.800/- from the accused and that itself is sufficient to prove the guilt of the accused. The learned Additional Public Prosecutor also pointed out that during the trap proceedings, phenolphthalein test was conducted and the chemical liquid collected and marked as

M.O.2 to M.O.4 was subjected to chemical analysis and P.W.5, who conducted the chemical analysis produced her report as Ex.P.14 and categorically stated that phenolphthalein and sodium carbonate was found in the said M.O.2 to M.O.4 articles. This according to the prosecution will clearly establish that the tainted money of Rs.800/- was received by the accused from the complainant and in view of the recovery of the same from the accused is established by the evidence of P.Ws.2 and 3 is sufficient to draw the presumption that the accused accepted illegal gratification from the complainant and on that ground, the conclusion arrived at by the trial court is correct and needs no interference.

20. However, as stated earlier, in the absence of any independent witness, apart from P.W.3, who is being part of trap proceeding team cannot be treated as an independent witness and the fact that P.W.2/the complainant being treated as hostile witness and giving contradictory evidence and also the admission of P.Ws.4 and 7 that the accused was only attending the despatch clerk work and in the absence of any material to show that the accused has allegedly to issue legal heir certificate and in the absence of any independence evidence to prove the demand of illegal gratification by the accused, it is clear that no presumption can be drawn against the accused merely on the ground of recovery of Rs.800/- from him

as claimed by the prosecution.

21. In such circumstances, the learned counsel for the accused contended that the conclusion arrived at by the trial court that there was demand of illegal gratification by the accused on the basis of P.W.3 evidence alone is unsustainable and in support of the same, relied upon the Ruling of this Court in the case of **P.Palraj Vs. State rep. By Inspector of Police, Vigilance and Anti Corruption Wing, Thoothukudi**, reported in **2012 (3) MWN (Cr) 380**, wherein, it is held as follows:-

"9. It is also argued by the learned Senior counsel for the appellant that P.W.3 being a party to the trap team, he could not be an independent witness and his evidence has not served any purpose as per the law, laid down by the Apex Court.

10(c) In T.M.Shanmughavelu and another Vs. State, 2011 (2) MWN (Cr.) 90:2011 (3) MLJ (CrI) 481, this Court while re-stating the above said proposition, also observed that the witnesses who formed part of the raiding party were not independent, following a decision of the Honourable Supreme Court in *Som Prakash Vs. State of Punjab*, AIR 1992 SC 665. In the present case P.W.3 was trained by P.W.7 and he also formed part of the raiding party and it is to be observed that his evidence is not supportive to the oral testimony of P.W.2 in the matter of receiving bribe. "

T.M.Shamughaelu Vs. State, rep. By Inspector of Police, Vigilance and Anti Corruption, Coimbatore, reported in **2011 (2) MWN (Cr.) 90**, wherein, it is held as follows:-

"10.6. The prosecution also cannot place reliance on the evidence of P.W.3, the Trap Witness, who cannot be considered to be an independent witness as he forms part of the raiding party, to corroborate the version of P.W.2 as held by the Hon'ble Apex Court in *Som Prakash Vs. State of Punjab*, AIR 1992 SC 665 to the effect that "the witness who formed part of the raiding party were not independent."

It is therefore clear from the above said discussions, that mere recovery of Rs.800/- from the accused is not sufficient to prove the fact of demand and acceptance as illegal gratification by the accused. Hence, the finding of the trial Court in that regard is unsustainable and the same is liable to be set aside.

22. The learned counsel for the appellant also pointed out that even though the complaint was lodged on 13.09.2004, sanction to prosecute the accused was obtained only on 08.12.2006 nearly two years and three months later. The sanctioning authority, who deposed as P.W.1, admitted the said fact in his cross examination and stated that he received the requisition letter to accord sanction only on 23.08.2006. Likewise, the Inspector of Police/P.W.7 who

secured sanction to prosecute the accused admitted the same, but he has not stated any reason for obtaining sanction belatedly. Further, it is pointed out that the complaint was lodged on 13.09.2004 and trap proceeding was conducted on that day itself, but, P.W.6 the Inspector of Police in his chief examination has stated that the complaint was received on 11.09.2004 at 10.30 a.m. However, in his cross examination, P.W.6 clearly stated that the complaint was received on 13.09.2004 only and the trial court has accepted the same. However, as pointed out by the learned counsel appearing for the appellant that after receiving the complaint on 13.09.2004 and conducting trap proceedings on the same day, P.W.7 stated that he visited the occurrence spot on 14.09.2004 and examined the witnesses and recorded their statements. However, P.W.7 stated that the statement of witnesses was forwarded to the Court on 20.06.2007 only. Likewise, P.W.7 stated that the rough sketch prepared by him is Ex.P18 and its dated 19.10.2004. Pointing it out, the learned counsel for the appellant contended that if the statements of witnesses have been recorded on the next day of the trap proceedings itself nothing prevented P.W.7 from forwarding the same to the court immediately, but it took him nearly three years to send the same to the Court concerned and it will only go to show that the statement was not recorded as claimed by him. In the absence of any explanation for the delay in obtaining

sanction from the authority concerned to prosecute the accused and also for the delay in forwarding the statement to the Court concerned, doubt arises as to whether really the claim of the prosecution in that regard is just and correct. On that ground also the contention of the appellant appears to be proper and acceptable and the claim of prosecution appears to be doubtful.

23. It is therefore clear from the discussion stated above that the prosecution has failed to prove the fact of demand and acceptance of Rs.800/- by the accused herein as illegal gratification and in such circumstances, the conclusion arrived at by the trial court and the reasoning stated by it for such a conclusion is not correct and the same is liable to be set aside and accordingly it is set aside. The point is answered accordingly.

24. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Special Judge/VII Additional Sessions Judge, Chennai, in Calendar Case No.18 of 2007 dated 04.08.2010 is set aside and the appellant/accused is acquitted and bail bond, if any executed by him shall stand cancelled and the fine amounts, if any, paid by him is ordered to be refunded forthwith.

11.08.2017

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To

- 1.The VII Additional Sessions Judge,
City Civil Court,
Chennai.
- 2.The Inspector of Police,
Vigilance & Anti Corruption,
Chennai,
- 3.The Public Prosecutor,
High Court, Madras.



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S.BASKARAN. J.,

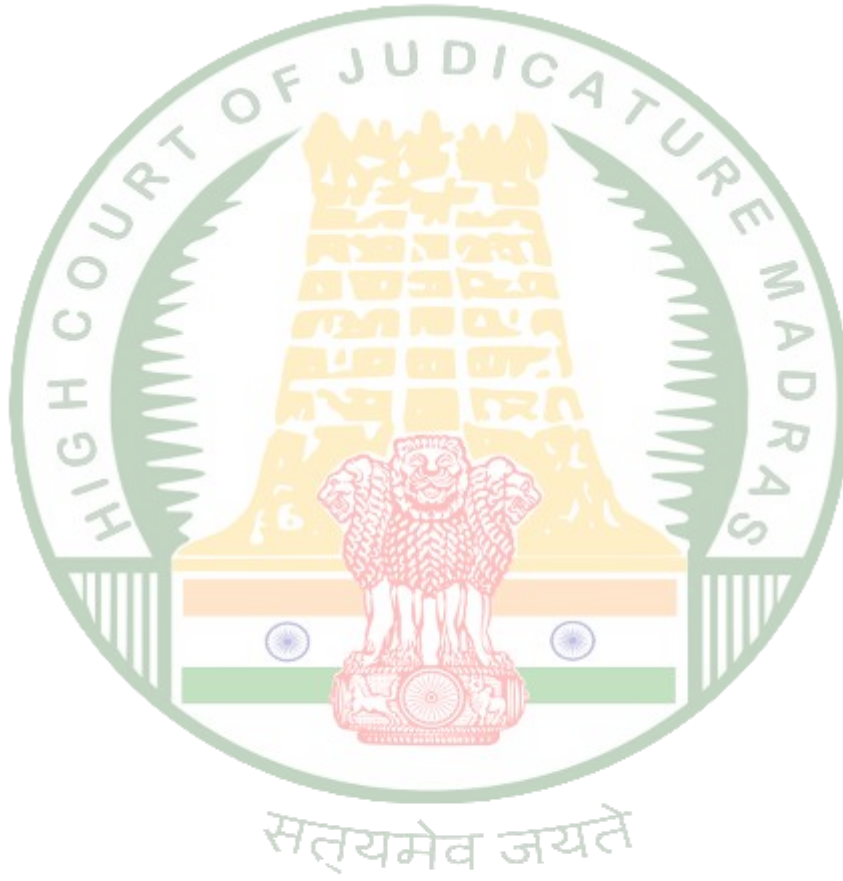
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Pre-Delivery Judgment in
Crl.A.No.488 of 2010

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