IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 09.01.2017

Judgment Pronounced On : 11.09.2017

CORAM

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

Crl.A.No.550 of 2010

Selvaraj ... Appellant

vs.

State by
The Inspector of Police,
Vigilance & Anti Corruption,
Kancheepuram.
(Crime No.5/AC/99/KM) ... Respondent

Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 08.09.2010 passed by the learned Special Judge/Chief Judicial Magistrate, Chengalpattu in Special Case No.1 of 2001.

For Appellant : Mr.R.Vijayakumar

For Respondent : Mr.E.Raja
Additional Public Prosecutor

JUDGMENT

The accused, Selvaraj, 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 Chief Judicial Magistrate, Chengalpattu, by its Judgment dated 08.09.2010, in Special Case No.1 of 2001, found the accused guilty, convicted and sentenced him to undergo simple imprisonment for one month and to pay a fine of Rs.150/-, in default to undergo one month simple imprisonment for offence under Section 7 of Prevention of Corruption Act and also convicted and sentenced to undergo simple imprisonment for one year and also to pay a fine of Rs.150/-, in default to undergo simple imprisonment for three months for offence under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. Aggrieved by the said verdict of the trial court, the accused has come forward with this criminal appeal challenging the judgment of conviction and sentence as stated above.

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

2.1 P.W.5 Thatchayani constructed a house in Thimmasamuthiram Village near Mamandur and on her behalf, her brother P.W.2 Jeevanantham submitted Ex.P2 application on 30.06.1999 to the Electricity Board Office in Railway Road, Kancheepuram for new electricity service connection to the said house. P.W.5, Thatchayani stated that she do not know anything further and her brother P.W.2 alone knew the details of the said application.

2.2. P.W.2/Jeevanantham stated that on behalf of his sister, he submitted Ex.P2 application on 30.06.1999 and he was accompanied by his sister P.W.5 Thatchayani to the Electricity Board Office on that day. Subsequently, after wiring work was completed, P.W.2 approached the Commercial Assistant in the said Electricity Board Office on 13.07.1999 and asked about the stage of his application for new electricity service connection to the house of P.W.5 Thatchayani. Then, the Commercial Assistant who is the accused herein informed P.W.2 that a sum of Rs.850/- is to be paid towards electricity service connection charges and another sum of Rs.650/- is to be paid for sharing by the officials and totally Rs.1500/- was sought for by Commercial Assistant/Accused from P.W.2. In reply, P.W.2 asked the Commercial Assistant/Accused as to why the higher amount is sought for, when the amount is to be paid for Rs.850/- only, he was informed by the accused that receipt will be issued for Rs.850/- and the balance amount is to be distributed among the officials. When P.W.2 expressed his inability to pay so much of amount, the accused offered to reduce it by Rs.200/- and asked P.W.2 to come with Rs.1300/- by 11.00 a.m., on 15.07.1999. P.W.2 identified the accused as the said Commercial Assistant. As P.W.2 was not willing to pay the bribe amount as demanded by the accused, he decided to lodge a complaint with vigilance police. Accordingly, he went to the respondent office at Kancheepuram on 15.07.1999 at about 9.15 a.m., and lodged Ex.P3 complaint against the Commercial Assistant who sought for payment of bribe.

2.3. On receipt of the said complaint, P.W.10, Jayabalan, the Inspector of Police, registered a case in Crime No.5/AC/99/KM 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.P13. Thereafter, P.W.10 sent the written requisition to the District Education Officer, Kancheepuram and the Assistant Director, Khadhi Grama Industries Office to send two officials to act as witnesses in the trap proceedings to be laid. Accordingly, P.W.2 Mani and P.W.4 Gururaj came to the Vigilance Office. They were introduced to P.W.2 and both of them were asked to go through Ex.P13 First Information Report and ascertain the nature of complaint with P.W.2. Thereafter, P.W.2 produced Rs.1300/- (Denomination of Rs.12 x 100 = Rs.1200/- and 2 x 50 = Rs.100/-) and the same was given to P.Ws.3 and 4 with request to count it. Accordingly, they counted the same. Then, P.W.10 prepared Sodium Carbonate solution in glass tumbler. Then, P.W.10 asked

P.W.3 and P.W.4 to dip their fingers in the solution in the said glass tumbler and no change in colour was found. Thereafter, P.W.10 applied phenolphthalein powder on both sides of said currency notes of Rs.1300/-. Thereafter, P.W.10 asked P.Ws.3 and 4 to count the currency notes and accordingly they did so. Then P.W.10 directed P.Ws.3 and 4 to dip their right hand fingers in the solution and on doing so, it turned into pink colour. P.W.10 explained the importance of phenolphthalein test to the witnesses.

2.4. Then, P.W.10, Inspector of Police asked P.W.2 to take back the currency of Rs.1300/- and asked him to go to the Electricity Board Office to meet the accused and to hand over the said amount only if the accused demanded the money. Further, P.W.2 was instructed to come out of the office of the accused, after paying the amount, and to give signal by folding his full hand shirt. P.W.10 also asked P.Ws.3 and 4 to accompany P.W.2 and to watch the occurrence. He also destroyed the sodium carbonate solution found in two glass tumblers. All of them washed the hands and on completion of the proceedings, P.W.10 prepared Ex.P4 entrustment Mahazar, wherein P.Ws.2 to 4 and P.W.10 signed.

2.5.Thereafter, P.W.10 along with P.Ws.2 to 4 and other members of the trap team left the Vigilance Office at 10.45 a.m., and reached the Electricity Board Office in Railway Road, Kancheepurm, wherein the accused was working. On reaching the said office, P.Ws.2 and 3 proceeded to the office of the accused. P.W.10 and other members of the police party along with the other official witness P.W.4 Gururaj waited out side the office and watched from there.

2.6. P.W.2, the complainant went inside the office of the accused at 11.00 a.m., while the official witness P.W.3 Mani stayed out side the office. P.W.2 on entering the office found the seat of the accused vacant and on enquiry he was informed that the name of Commercial Assistant is Selvaraj and he has gone out. P.W.2 was also informed that the Commercial Assistant Selvaraj who is the accused herein will come back by 1.00 p.m., for taking lunch, since he has left behind his lunch box. Thereafter, P.W.2 and P.W.3 waited out side the office of the accused and at 1.00 p.m., P.W.2 went inside and found the accused in his seat. Then also P.W.3 stayed out side the office premises. When P.W.2 approached the accused and enquired about the electricity service connection to the house of his sister P.W.5 Thatchayani, the accused asked P.W.2 as to whether he has brought the money demanded by him. P.W.2 replied in affirmative and handed over a sum Rs.1300/- to the accused. Then, out of the said sum of Rs.1300/-, the accused handed over Rs.800/- to P.W.6 Natarajan who was then working as Assistant Inspector and asked him to issue receipt for new electricity service connection charges. When P.W.6 Natarajan asked about the amount to be paid, the accused looked into Ex.P2 application and coming to know that the application is in respect of house in patta land stated that only Rs.800/- is to be paid and accordingly P.W.6 issued Ex.P5 receipt dated 15.07.1999 for Rs.800/-. Thereafter, out of the said sum of Rs.1300/-, the accused returned Rs.200/- to P.W.2 and retained the balance amount of Rs.300/-, and placed the same was in the left hand side drawer of his table. The amount returned to P.W.2 is M.O.1 series and the family card copy returned by the accused is Ex.P6. Then, P.W.2 was informed by the accused that he will make necessary arrangement to give electricity service connection and thereafter P.W.2 came out of the office of the accused and gave the pre-arranged signal by folding his full hand shirt to the trap team. On seeing it, P.W.10 along with his team members came inside the office of the accused and P.W.2 identified the accused to the Inspector of Police P.W.10. Then, the official witnesses P.Ws.3 and 4 were introduced by P.W.10 to the accused and on seeing them, the accused became nervous. After enquiring P.W.2 as to what happened, therein, P.W.10 prepared sodium carbonate solution in two glass tumblers and asked the accused to dip his both hands in that. On doing so, the said solution turned into pink colour. Then, P.W.10 enquired the accused and he admitted the fact of receiving Rs.1300/- from P.W.2 and handed over Rs.300/- retained by him to

P.W.10. Then, the Electricity Assessor P.W.6 Natarjan handed over the sum of Rs.800/- (8 x 100 = Rs.800/-) to P.W.10 and the numbers of the said currency was noted down by P.W.10. The said sum of Rs.800/- was not seized. P.W.10, then collected the sample of solutions in a bottle and paste a label with particulars in which himself and official witnesses signed and on completion of trap proceedings, P.W.10 prepared Ex.P8 Mahazar, wherein the official witness and P.W.10 signed. The rough sketch of the occurrence spot was prepared by P.W.10 and the same is Ex.P4. Thereafter, the accused was taken to his house and on search nothing was recovered from the house. Ex.P9 is the search list prepared in the house of the accused. Thereafter, the accused was taken to the respondent office and after enquiring him he was sent to the judicial custody. Thereafter, P.W.10 handed over the investigation to P.W.11 the Inspector of Police.

2.7. On taking over the investigation, P.W.11 examined the witnesses, recorded their statements and after obtaining sanction order Ex.P1 to prosecute the accused from the then Superintending Engineer, P.W.1 Himalaya, he completed the investigation and laid the charge sheet against the accused.

3. 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.11 and produced Exs.P1 to P14 and M.Os.1 to 4, 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. He also filed a statement during question under Section 313 Cr.P.C. wherein he has stated that he was not in the office on 13.07.1999 and 15.07.1999 when the alleged demand was said to have been made by him and stated that he never demanded any amount as illegal gratification from P.W.2. The accused examined two witnesses as D.W.1 and D.W.2, but, did not produce any documents on his side. After analysing the evidence on record, the learned Special Judge/the Chief Judicial Magistrate, Chegnalpattu, found the accused guilty and convicted and sentenced the accused as narrated in the first paragraph of this judgment and imposed punishment. Aggrieved over the same, the appellant has preferred this appeal challenging the said finding of the trial Court.

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

5. Heard the arguments advanced by the learned counsel

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

6. The learned counsel appearing for the appellant/accused contended that the evidence of prosecution witnesses has not established the factum of demand for illegal gratification by the accused/appellant and even if the tainted money is recovered from the accused as per the settled position of law, the accused cannot be held guilty, unless the fact of demand of bribe by the accused is established. It is further stated that the accused has categorically established the fact of being away from his office on the alleged occurrence day, but the same was not taken into consideration by the trial Court. It is also contended that the evidence let in on the side of the accused was not considered properly and the Court below has failed to appreciate the defence version in proper perspective and that the prosecution has miserably failed to prove the charges. Hence, he seeks for allowing the appeal and set aside the finding of the trial Court.

7. On the other hand, the learned Additional Public prosecutor appearing for the State contended that the prosecution has let in cogent and natural evidence and there is no

discrepancies among the evidence let in by them and the investigation has proceeded in a right angle and the trial Court on proper appreciation of the material placed before it has correctly found that the charges framed against the accused has been proved beyond reasonable doubt. Hence, he seeks dismissal of the appeal and confirming the finding of the trial Court.

8. The complainant/P.W.2 deposed before the Court that on 30.06.1999, he submitted Ex.P2 application seeking new electricity service connection for the house constructed by his sister P.W.5 Thatchayani. After completing the wiring work in the house, P.W.2 went to the office of the accused on 13.07.1999 and enquired the accused about the stage of electricity service connection application submitted by him. The accused was then working as Commercial Assistant in the Electricity Board Office, Railway Road, Kancheepuram and he demanded a sum of Rs.1500/- from the complainant/P.W.2, stating receipt will be issued for Rs.850/- which is to be paid towards electricity service connection charges and the remaining amount to be shared by the accused and other officials. P.W.2 also deposed that as he expressed his inability to pay that much of amount, the accused offered to reduce it by Rs.200/- and asked P.W.2 to come back with Rs.1300/- by 11.00 a.m., on 15.07.1999 and stated that then only

necessary sanction will be granted. P.W.2 categorically stated that the accused was the Commercial Assistant and he only demanded the money. However, in his cross examination, P.W.2 stated that he met the accused in his office at 11.00 a.m., on 13.07.1999 and then only the demand was made to him. P.W.2 further stated that he did not know the name of the person who demanded money from him on 13.07.1999. He further stated that even after deciding to lodge complaint, he did not try to find out the name of the person who demanded money from him. Admittedly, in Ex.P3 complaint, the person who demanded money from P.W.2 is only mentioned as Commercial Assistant and the name of the individual is not specifically mentioned. On the other hand, denying the same, it is stated by the accused that he was not present in the Office at that time, since he has gone out with the Electricity Board Lorry bearing Registration No.TNH 9213 in connection with fitness certificate work of the vehicle and returned back only by 1.45. p.m. Thus, according to the defence version on 13.07.1999, when the accused alleged to have demanded illegal gratification from the complainant/P.W.2, he was not in the office as he was away attending to fitness certificate work of the office vehicle as mentioned above. In such circumstances, it is to be seen whether the prosecution has let in sufficient evidence to establish the fact of accused being present in his seat at that point of time and made demand for illegal gratification. P.W.10, the Inspector of Police in his evidence stated that on receipt of Ex.P3 complaint at about 9.45 a.m., on 15.07.1999, he enquired over the phone about the Commercial Assistant and other details. However, he stated that he did not enquire about the movement register and as to whether the accused was away in RTO office at Kancheepuram in connection with fitness certificate work of Electricity Board vehicle. The Inspector of Police of the case, who deposed as P.W.11 in his cross examination categorically admitted that he verified the movement register of the accused office and found entry showing the accused was away from 10.00 a.m. to 1.30 p.m., for Office work on 13.07.1999. He has stated as follows:-

> "vjphp mYtyfj;jpy; gzp bra;a[k; gzp Ml;fs; gzp neuj;jpy; btspna bry;y nehpl;lhy; mjw;fhf guhkhpf;fg;gLk; K:t;bkz;l; g[j;jfj;jpid ehd; ghh;j;njd;/ nkw;go gjpntl;oy; vjphp 13/07/99 fhiy 10/00 kzp Kjy; gfy; 1/30 kzp tiuapy; nkw;go ntiyf;fhf mth; ,Uf;ifapy; ,y;yhky; ,Ue;jhh; vd;W gjpthfpa[s;sij ehd; ghh;j;njd;/

Thus, it is clear that the accused was away from the office as per the entry in the movement register of his office, at the time when he was alleged to have made demand of Rs.1300/- as illegal gratification from the complainant/P.W.2.

9. Further, in view of the said admission of P.W.11 and in the absence of any other independent witness to prove the present of accused in his seat at that point of time doubt arises as to whether the accused was present in his seat on 13.07.1999 and made a demand for bribe as alleged by the prosecution. Further P.W.2 in his evidence stated as follows:-

> kpd; ,izg;g[fl;lzk; U:/850-? MFk; vd;Wk;. nkYk; vdf;Fk; mYtyf mjpfhhpfSf;Fkhf nrh;j;J bkhj;jkhf U:/850-?k; nrh;j;J U:/1500-? vd;dplk; nfl;lhh;/ ehd; kpd; ,izg;g[fl;lzkhf U:/850-? jhnd fl;lQqk;/ Vd; mjpfkhf nfl;fpwPh;fs; vd;W nfl;nld;/ mjw;F mth; ehd; fl;Lk; gzj;jpy; U:.850-?f;F urPJ bfhLj;JtpLtjhft[k;. kPjKs;s gzk; mtUf;Fk;. mjpfhhpfSf;Fk; bfhLf;f ntz;Lk; vd;W Twpdhh;/

Thus, P.W.2 has stated that the accused demanded for a sum of Rs.850/- towards electricity service connection charges and another sum of Rs.800/- for sharing the among the officials. Admittedly, Ex.P2 application was submitted by the complainant seeking new electricity service connection to the house of his sister P.W.5. It is the contention of the defence that in respect of any building in poromboke land, the charge for new service connection is Rs.1000/- and for the building constructed in patta land it is Rs.800/- and therefore the claim of P.W.2 that he was asked to pay a sum of Rs.850/- as electricity service connection itself is wrong and the same will falsify the prosecution claim. The defence examined the then Assistant Executive Engineer of the Electricity Board Kancheepuram as D.W.2 and he stated that he has endorsed in Ex.P2 application that the house is in poromboke land and as per rules they used to collect Rs.200/- more for connection to be given to the building in poromboke land, then for the construction in the patta land. P.W.7, the Chief Engineer of the Electricity Board in his evidence stated that the then Assistant Executive Engineer D.W.2 Poonkali forwarded Ex.P2 application to him and he entered the same in the office register and forwarded the same to the accused who was then working as Commercial Assistant for inspection. Subsequently, the accused informed him orally that the wiring work is completed and everything is found in order. Then, the owner of the house P.W.5 Thatchayani was issued with demand notice for payment. P.W.7 also admitted in his cross examination that the Assistant Executive Engineer has returned Ex.P2 application stating that the land is poramboke land and therefore for the building put up in it a sum of Rs.1000/- is to be paid for giving electricity connection. P.W.7 stated that on 15.07.1999 he was away from the office on official work and at that time the accused called him over phone and informed that P.W.2 Jeevanantham insisting for payment of Rs.800/- only instead of

Rs.1000/- to which he replied to receive Rs.800/- and issue receipt for the same and balance amount can be collected at the time of giving connection. D.W.2 also corroborated the evidence of P.W.7 about directing the accused to receive Rs.800/- and issue receipt for the same instead Rs.1000/- towards new electricity service connection charges. Similarly, P.W.6, the Electricity Assessor also stated that on 15.07.1999, he was asked by the accused to receive Rs.800/- towards electricity service connection charges and to issue receipt for the same. According to him, one Jeevanantham gave him Rs.800/- in Rs.50/- denomination and after receiving the same he issued receipt for the same to the said person. Thus, it is clear that from the evidence let in by the prosecution as well as the defence that for any new electricity service connection for any building in poromboke land, a sum of Rs.1000/- is to be paid and for any building in patta land Rs.800/- is to be collected. In such circumstances, the claim of P.W.2 that the accused informed him that Rs.850/- is to be paid as electricity service connection charges and the balance sum of Rs.650/- is by sharing for the officials creates doubt over the alleged demand made by the accused on 13.07.1999. Thus, the evidence let in by the prosecution is not categorical and sufficient to prove the pre-trap demand allegedly made by the accused on 13.07.1999.

10. Now, it is to be seen whether the demand of bribe was made by the accused on 15.07.1999, when the trap proceedings was conducted. At the out set, it is to be seen as to what is the nature of complaint lodged and when the trap proceedings was conducted. The complainant/P.W.2 stated in his evidence that on 15.07.1999 at about 9.15 a.m., he lodged Ex.P3 complaint with P.W.10 Inspector of Police. The said Inspector of Police P.W.10 in his evidence stated that on 15.07.1999, on receipt of the complaint from P.W.2 Jevanantham at 9.45 a.m., he registered Ex.P13 First Information Report and thereafter sent requisition in writing by way of letters to District Education Officer, Kancheepuram and the Assistant Director Kadhi Village Industries Board to send two officials to be present as trap witnesses. Thus, P.W.2 claims to have lodged a complaint at 9.15 a.m.. but, P.W.10, the Inspector of Police sated that he received the complaint at 9.45 a.m. and then only P.W.10 could have registered First Information Report. According to P.W.10, he has sent a requisition in writing to the above said Department to send the official witness. P.W.10 has not stated anything about making request over the phone for the official witnesses to be present. While so, P.W.3, who was employed as Assistant in Kadhi Graft Department in Kancheepuram stated that on 15.07.1999, while he was in his office at about 10.15 a.m., he was informed by his

Assistant Director to go over to the Vigilance Office to act as witnesses. P.W.3 stated that Ex.P7 letter was issued to him by his higher officials in that regard and thereafter he left in 10 minutes and reached the Vigilance Office by 10.45 p.m., P.W.3 also stated that like him another witness from Education Depart, P.W.4 Guru Raj was also present in the Vigilance Office at that time. Thereafter, he was introduced to the complainant and P.W.10 handed over the complaint copy to him with request to go through the same. Similarly, P.W.4 Gururaj stated that he was working in the District Education Office, Kancheepuram as Assistant. On 15.07.1999 at about 9.45 a.m., he was asked by his higher official to report before P.W.10 and accordingly he went there. On reaching Vigilance Office he was introduced to complainant P.W.2 and the contents of Ex.P13 first information report was read over to him. Thus, according to P.W.10, he received the complaint at 9.45 a.m. on 15.07.1999, but, P.W.4 Guru Raj states that he was informed at 9.45 a.m., by higher officials to go over to Vigilance Office. Pointing it out, the learned counsel appearing for the accused contended that on receipt of the complaint at 9.45 a.m., after going through it only the first information report could have been registered and it is highly improbable if not impossible for P.W.10 to have informed the office of P.Ws.3 and 4 as stated above with request to send for witnesses. Thus, according to the defence counsel the same should create doubt over the fact as to when the complaint was really lodged.

11. P.W.10, the Inspector of Police stated that on 15.07.1999 after registering Ex.P13 first information report when the official witnesses P.Ws.3 and 4 came to his office at 10.00 a.m., he introduced them to P.W.2 complainant and thereafter explained to them the importance of phenolphthalein test and also demonstrated the same to him. According to him, the entire proceedings in that regard was completed by 10.45 a.m., in his office and he prepared Ex.P4 Entrustment Mahazar, wherein P.W.2, P.W.3 and P.W.4 signed. As per the evidence of P.W.10, he along with the trap team left his office at 10.45 a.m., and reached the office of the accused by 11.00 a.m. Thus, on receipt of the complaint Ex.P3, at about 9.45 a.m., P.W.10 has proceeded to inform the official witnesses P.Ws.3 and 4 and also completed the entire demonstration of phenolphthalein test and prepared Mahazar for the same by 10.45 a.m., and reached the office of the accused by 11.00 a.m. According to the defence version the same is highly improbable and that itself should create doubt over the claim of the prosecution about the trap proceedings. In the light of the above discussion, it is doubtful as to whether really P.W.10 could have completed the above said proceedings within the time mentioned

by him.

12. According to P.W.2, on 15.07.1999 after leaving the office of the respondent, himself and P.W.3 Mani went to the office of the accused, while P.W.10 along with other members of the trap team including P.W.4 stayed 100 feet away from the office. P.W.2 stated that he alone went inside the office of the accused while P.W.3 Mani stayed out side the office itself. P.W.2 stated that when he went inside the office, the accused was not in his seat and on enquiry, he was informed by the other staff in the office that the accused will come by 1.00 p.m. for lunch and his name is S.Selvaraj. Thereafter, P.Ws.2 and 3 remained out side the office of the accused and at 1.00 p.m., both went inside the Electricity Board Office and saw the Commercial Assistant in his seat. P.W.2 again stated that P.W.3 Mani stayed at the office entrance and he alone wait inside. P.W.2 was asked by the accused as to whether he has brought money to which he replied in positive and handed over Rs.1300/- to the accused. He also further stated that P.W.3 the other official trap witness was standing at the office entrance. Thus, it is clear that P.W.3 did not go inside the office of the accused with P.W.2 when the alleged demand was made on 15.07.1999. Further, it is stated by P.W.2 that on seeing the accused person was not in his seat, P.Ws.2 and 3 came out of the

office of the accused and stayed there. On the other hand, the official witness P.W.3, who is treated as hostile witness by the prosecution, in his evidence stated that himself and P.W.2 went to the Electricity Board Office in Kancheepuram at 11.00 a.m. on 15.07.1999 and on enquiry by P.W.2 he was informed by the persons in Electricity Board office that Commercial Assistant has gone out and he will come after taking lunch. P.W.3 further stated that on seeing the accused not available in his office at 11.00 a.m., they returned back to the Vigilance Office, which was two kilometers away from the Electricity Office and by 12.00 noon, they left the Vigilance Office again to the Electricity Board Office. According to him, when he came to the Electricity Board Office at 1.00 p.m., they found the Commercial Assistant who is the accused herein in his seat and then the accused asked P.W.2 Jevanantham as to whether he has brought the money to which P.W.2 replied in positive and handed over Rs.1300/- to the accused. Thus, while P.W.2 stated that as the accused was not present in the office, himself and P.W.3 stayed out side the office from 11.00 a.m., to 1.00 p.m., the same is contradicted by P.W.3 by stating that as the accused was not present in his seat, they went away to the Vigilance Office and returned back only by 1.00 p.m., to the Electricity Board Office. P.W.10, in his evidence stated that on 15.07.1999, P.Ws.2 and 3 went inside the office of the accused by 11.05 a.m., but, P.W.2 came out of the office at 1.15 p.m. only and gave pre-arranged signal to him. Then himself and P.W.4 along with the trap team members entered the Electricity Board Office. P.W.10 was categorical in his admission during the cross examination that P.W.2 and P.W.3 were inside the office of the accused from 11.00 am., to 1.15 p.m., and only at 1.15 p.m., P.W.2 came out of the office and gave the pre-arranged signal. He also admitted that as the complainant/P.W.2 remained inside the office of the accused till 1.15 p.m., he was unaware of the name of the accused till then. Thus, P.Ws.2, 3 and 10 have given different versions about the presence of P.W.2 and 3 between 11.00 a.m., and 1.00 p.m., on that day. In view of the above said contradiction as to where all of them were present during that time doubt arises as to whether the claim of the prosecution about the trap proceedings is true and correct.

13. It is also admitted by P.W.2 that P.W.3 was witnessing the proceedings only from the entrance of the Electricity Board Office. In such circumstances, it is doubtful as to whether really P.W.3 could have heard about the conversation between P.W.2 and the accused. Further, it is also stated by P.W.2 as well as P.W.3 that the accused on seeing P.W.2 asked him as to whether he has brought the amount. Admittedly, P.W.2 has been directed earlier

by the accused to bring money for electricity service connection. Further, P.Ws.2 and 3 stated that on the alleged date of trap proceeding, as P.W.2 gave Rs.1300/-, out of the same, the accused handed over Rs.800/- to P.W.6 Natarajan to issue bill for electricity service connection and returned Rs.200/- to P.W.2. The remaining sum of Rs.300/- was retained by him, by placing it in the left side drawer of his table. The said amount was produced as M.O.2 series. It is the version of the prosecution that the complainant/P.W.2 handed over denomination of 12 x 100 = Rs.1200/- and 2 x 50 = Rs.100/- notes to P.W.10 for using it as trap money. It is stated by P.Ws.2 and 3 that out of Rs.1300/- given to the accused, he handed over Rs.800/-[8 x 100 = 800] currency notes to P.W.6 Natarajan asking him to issue receipt to P.W.2. Admittedly, the said sum of Rs.800/- was also covered by Phenolphthalein powder. The said amount has not been recovered. P.W.6 Natarajan stated that he was given 16 numbers of Rs.50/- denomination currency notes totalling Rs.800/- and he issued receipt for the same. In such circumstances, doubt arises, as to whether really what denomination notes were given to the accused or to P.W.6 Natarajan who issued receipt. It is further surprising that accused who is alleged to have demanded illegal gratification could have returned Rs.200/- back to the complainant and retained only Rs.300/- with him. No explanation is forthcoming on the side of the prosecution for such unnatural act on the part of the accused, who originally demanded Rs.1500/- as illegal gratification for returning Rs.200/- after giving Rs.800/- to P.W.6 who issued receipt. On the other hand, the version of the defence is that in Ex.P2 application endorsement was made by the higher officials that is a poromboke land and as such sum of Rs.1000/- was to be paid as electricity service connection charges. However, on coming to know that the building is in patta land as evidenced by Ex.P11 certificate issued by P.W.8, the V.A.O. of the concerned village, the accused asked for payment of Rs.800/- for electricity service connection charges and the remaining amount of Rs.200/- was returned to the complainant P.W.2. In such circumstances, the contention of the prosecution that the demand of Rs.1300/- was made by the accused on 15.07.1999 appears to be doubtful.

14. In support of the same, the defence has examined one Durairaj who was then working as Junior Engineer in the Electricity Board Office at Kanchepuram, who deposing as D.W.1 stated that on 15.07.1999 while on duty himself and the accused, who was then working as Commercial Assistant left for Chembarambakkam by 9.00 a.m. and returned back only by 1.30 p.m. D.W.1 further stated that the duration between his seat and the accused seat in the office is only 6 feet. After their return,

P.W.2 came to meet the accused in connection with new electricity service connection. Then the accused told P.W.2 to pay Rs.1000/- towards electricity service connection charges as the building is in poromboke land. P.W.2 insisted that he will pay only Rs.800/-. Then the accused contacted the Joint Engineer and on his instruction asked P.W.2 to pay Rs.800/- towards electricity service connection charges. According to him, as P.W.6 Natarajan arrived by then the accused returned the money received from P.W.2 to Jeevanantham himself and he only paid the amount to P.W.6 Natarajan. Thus, D.W.1 categorically stated that himself and the accused were away from the office on 15.07.1999 from 9.00 a.m. to 1.30 p.m. The prosecution has not cross examined D.W.1. Pointing it out, the learned counsel for the defence contended that the evidence of D.W.1 is to be accepted in toto as the same is not contradicted and in such circumstances the claim of the prosecution that the accused received the bribe amount by 1.00 p.m. on that day from P.W.2 cannot be true and the same is fatal to the prosecution case.

15. It is further pointed out by the defence counsel that in view of D.W.1 evidence that they returned at 1.30 p.m. the claim of the prosecution that P.Ws 2 and 3 came out of the office of the accused and gave the prearranged signal by 1.15 p.m. cannot be

true and the fact mentioned in Ex.P8 mahazar is false and the same has to be disbelieved. It is also pointed out by the defence that while a sum of Rs.300/- was allegedly recovered from the accused and another sum of Rs.200/- was recovered from P.W.2 and handed over to P.W.10, in Ex.P8 recovery mahazar the signature of P.W.2 was not obtained in the place of occurrence and the same creates doubt as to whether really Rs.200/- was recovered from P.W.2 as claimed by the prosecution. It is also pointed out that two officers of TamilNadu Electricity Board, sited as witness in recovery mahazar were not examined and the sum of Rs.800/-, which is also tainted currency was not recovered and the same is fatal to the prosecution case.

16. It is also pointed out that P.W.2 has admitted that he was unaware of the name of the accused till he entered the office of the accused around 11.00 a.m. on 15.07.1999 and P.W.10 was unaware of the name of the accused till he entered the Electricity Board Office at 1.15 p.m. on the day of trap laid by him. In Ex.P3 complaint also the name of the accused is not mentioned. However, the official witness to the trap proceedings P.W.4 stated that the complaint was lodged specifically mentioning the accused name and he further stated that P.W.2 came out of the accused office within half an hour's time and gave prearranged signal. Thus,

the evidence of P.W.4 is in contrast to the version of P.Ws.2 and 3 about the duration they were present in the Electricity Office on the trap proceeding day. Further, P.W.4 remained with P.W.10 outside the Electricity Board Office and as such his evidence is of no use to prove the factum of demand of bribe by the accused herein. In such circumstances, it is clear that the prosecution has not let in sufficient and acceptable evidence to prove the fact of demand of illegal gratification by the accused on the date of trap proceedings.

17. Pointing it out, the learned counsel appearing for the accused contended that as the prosecution has failed to prove the factum of demand of bribe by the accused with clinching evidence and further the recovery of the entire tainted money also has not been done and only part of the alleged tainted money is recovered, the ingredients to make out an offence under Section 7 and 13(1)(d) of the Act is not made out. In support of the same, he relied upon a ruling reported in **2015 (11) SCC in C.SUKUMARAN Vs. STATE OF KERALA,** wherein it has held as follows:-

> "With reference to the above mentioned rival legal contentions urged on behalf of the parties and the evidence on record, we have examined the concurrent finding of fact on the charge made against the appellant. It has been continuously held by this Court in a catena of cases after interpretation of the provisions of Sections 7 and 13(1)(d) of the Act that the

demand of illegal gratification by the accused is the sine qua non for constituting an offence under the provisions of the Act. Thus, the burden to prove the accusation against the appellant for the offence punishable under Section 13(1)(d) of the Act with regard to the acceptance of illegal gratification from the complainant PW2, lies on the prosecution."

Relying on the same ruling, the learned counsel for the accused further contended that the claim of P.W.2 about the accused returning Rs.200/- out of the amount given to him as bribe and the fact that after asking him to be present by 11.00 a.m. on 15.07.1999, the accused has gone away without waiting for him were create doubt over the claim of the prosecution and the prosecution case has to be disbelieved on that ground itself. In the same ruling, it is read as follows:-

"Further, the fact that out of Rs.1500/- that was allegedly demanded as bribe money from the complainant, an amount of only Rs.250/- was paid by him, out of which the appellant allegedly managed to return Rs.50/- to the complainant, since he had no money left, makes us pause and ponder over the facts and circumstances of the case and casts a serious shadow of doubt on the sequence of events as narrated by the prosecution."

18. The defence counsel also relied upon the ruling

reported in **2013 (14) SCC 153 in STATE OF PUNJAB Vs. MADAN MOHAN LAL VERMA,** to contend that in the absence of the evidence to prove the demand mere recovery is not sufficient to prove the guilt of the accused. In the said ruling, it has held as follows:-

> 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. Following the above said ruling, it is clear from the materials available before this Court that the prosecution has not proved beyond about the demand of illegal gratification by the accused and as such the finding of the trial Court that the accused has demanded and accepted the bribe money cannot be sustained and on that ground, the appellant is to succeed.

20. Further as stated above, the alleged act of the accused returning Rs.200/- out of the alleged bribe amount given to P.W.2 creates serious doubt over the claim of the prosecution. It is also pointed out that the alleged recovery of Rs.300/- from the accused is also unbelievable, since the official witness P.W.4 Gururaj has stated in his evidence that the sum of Rs.300/- was handed over by the accused from the right side drawer of his table to TLO whereas P.W.10, the Trap Laying Officer in his evidence stated that the amount of Rs.300/- was handed over by the accused from the left side drawer of his table. In the light of the above said contradiction, in the evidence of Trap Laying Officer/P.W.10 and the official witness P.W.4, as rightly contended

by the defence counsel doubt arises as to whether really Rs.300/- was recovered from the accused. It is further pointed out that in Ex.P4 Entrustment Mahazar and Ex.P8 Seizure Mahazar, the crime number is not mentioned, but, in the search list prepared by P.W.10, the crime number is mentioned and in such circumstances, it is contended that the documents were not prepared at the time and place as claimed by the prosecution. The learned counsel appearing for the accused also pointed out that in Ex.P3 complaint, it is only mentioned as Commercial Assistant has demanded bribe amount and the name of the accused is not specifically mentioned in it, but, the official witness P.W.4 in his evidence stated that the complaint was lodged by mentioning as the accused name Selvaraj specifically in it. In such circumstances, doubt arises as to whether P.W.4 went through the complaint and he was explained about the contents of the first information report as claimed by the prosecution. Thus, the contradiction in the evidence let in by the prosecution as stated above creates doubt about the genuineness of the claim made by the prosecution.

21. It is therefore clear from the discussion stated above that the prosecution has failed to prove the fact of demand and acceptance by the accused herein any sum as illegal gratification and in such circumstances, the conclusion arrived at by the trial

court to the contrary 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.

22. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Special Judge/Chief Judicial Magistrate, Chengalpattu, in Special Case No.1 of 2001 dated 08.09.2010 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.

11.09.20

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Index: Yes/No
Internet: yes/no

To

1.The Chief Judicial Magistrate,
Chengalpattu.

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

3.The Public Prosecutor,
High Court, Madras.

S.BASKARAN.J.,

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Judgment in **Crl.A.No.550 of 2010**

11.09.2017