

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 09.02.2017	Date of pronouncing the Judgment : 02.08.2017
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CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

CrI.A.No.700 of 2010

Chinnasamy

.. Appellant/Accused

Vs

State
rep. By the Inspector of Police
Vigilance and Anti corruption
Department, Cuddalore
(Crime No.3/AC/2000/CL)

.. Respondent/Complainant

Appeal filed u/s.374 (2) Cr.P.C., against the judgment dated
08.10.2010 made in Special Case No.1 of 2001 on the file of Special
Judge/Chief Judicial Magistrate, Villupuram.

For Appellant : Mr.S.Doraisami, Senior counsel
for Mr.Muthumani Doraisami.

For Respondent : Mr.E.Raja, Addl. Public Prosecutor

JUDGMENT

The appellant/accused has come forward with this criminal appeal,
challenging the conviction and sentence imposed by the Special Judge/Chief
Judicial Magistrate, Villupuram, by judgment dated 08.10.2010 made in
Special Case No.1 of 2001. The appellant stood convicted for offence under

Sections 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act (hereinafter called as " P.C.Act") and sentenced to undergo 6 months simple imprisonment and to pay a fine of Rs.2,500/- in default to undergo one month S.I., u/s.7 of the Act and sentenced to undergo 1 year S.I., and to pay a fine of Rs.2,500/- in default 1 month S.I., u/s.13(2) r/w. 13(1)(d) of the P.C.Act.

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

The accused Chinnasamy was working as Village Administrative Officer in Thottiyam and Thensettiyanthal Village and the complainant P.W.3 Ramachandran approached him for issue of Chitta copy so as to avail cattle loan from the Bank. When P.W.3 Ramachandran approached the accused herein on 07.02.2000 and thereafter on several occasions seeking issuance copy of "chitta", "adangal", 'A' Register, the accused demanded Rs.1000/- for issuing the same and asked him to pay the amount on 15.02.2000 by 5.00 p.m., at Elasi Tea stall and if he is not available there to come to Anandhi Teashop. As the complainant/P.W.3 was not willing to pay the amount, after consulting his father, he went to the office of Deputy Superintendent of Police, Vigilance and Anti corruption, Cuddalore, and lodged complaint Ex.P.11. The Inspector of Police, P.W.11 on receipt of the said complaint on 15.02.2000, summoned two Government witnesses P.W.2 Thirugnanasambandam, who was working as Assistant in the Agriculture

Department and Barnappa who was employed in Tamil Nadu Water Supply Board and asked them to report to Police Station on the next day morning. On receipt of the complaint Ex.P.11, the then Inspector of Police, who deposed as P.W.11, registered the case in Crime No. No.3/AC/2000/CL, u/s.7 and 13(2) r/w.13(1)(d) of the P.C.Act and the said FIR is Ex.P.26. Thereafter, P.W.11, the Inspector of Police recorded statement of P.W.3 Ramachandran and forwarded the FIR to the concerned court. P.W.11 decided to conduct trap proceedings and the same was accepted by the complainant P.W.3 and he was asked to come on the next day i.e., 16.02.2000 with the amount demanded by the accused and accordingly, the complainant went to Police Station and handed over 10 hundred rupees notes to P.W.11. Likewise, P.W.2 Thirugnanasambandam the trap witness stated that on 15.02.2000, while he was at his Office, by 3.30 p.m., he was instructed by his Superior Officer to report to the Vigilance and Anti corruption Department, Cuddalore, and accordingly he went there by 5.30 p.m., and there he was instructed by Inspector of Police P.W.11 to come to his office on the next day morning at 9.00 a.m., and accordingly when he reached there, the other Trap Witness Barnappa was present along with complainant P.W.3 Ramachandran, P.W.11 Inspector of Police as well as other Police Personnel. The complainant was introduced to P.W.2 and other witness Barnappa and Ex.P.11 complaint was handed over to P.W.2 and other witness and they were asked to go through it. Thereafter, the Inspector of

Police, P.W.11 demonstrated phenolphthalein test procedure to them. P.W.11 instructed the complainant P.W.3 to give the amount to the accused only in the event of demand made by him. After detailing the trap witness in respect of the Procedure to be followed, Mahazar was prepared by Inspector of Police, wherein, P.W.2 and P.W.3 and other witnesses signed and the said Mahazar is Ex.P.2. Thereafter, the Inspector of Police P.W.11 took P.W.2, P.W.3 and other witness Barnappa along with Police Personnel in the Zeep to Chinna Salem and P.W.2 was asked to go along with P.W.3 and in the event of the accused demanding and receiving the amount from P.W.3, he was instructed to give the prearranged signal by folding his shirt's right hand to the Police, who were waiting outside the Tea Stall. P.W.2 was instructed to accompany P.W.3 along with other witnesses Barnappa and to watch the transaction between complainant P.W.3 and the accused. Thereafter, P.W.2 and P.W.3 went to the Ilasu Tea Stall and as the accused was not present there, they went to another Tea Shop in the main road and P.W.11 followed them at the distance of 30 feet. P.Ws.2 and 3 reached Anandhi Tea shop and approached a person sitting inside the shop; P.W.3 Ramachandran told the said person, who is the accused that he has come there as told by the accused with money and asked him to give loan chitta form. P.W.2 stated that the said person who is the accused herein was identified to him by P.W.3. Further, P.W.2 also stated that the accused asked the complainant as to whether he has brought the amount, to which P.W.3 complainant replied in

affirmative and took the money from his shirt pocket and handed over the same to the accused who on receiving the same, counted and placed it in his pant pocket and informed the complainant P.W.3 to come to his office on the next day morning to collect the chitta form. Thereafter, P.W.3 came out from Anandhi Tea Shop along with P.W.2 and gave prearranged signal to P.W.11, who was waiting outside. On seeing the prearranged signal, P.W.11, who was waiting about 25 feet away from the Tea shop along with other witness Barnappa and Police Team rushed to the Tea Shop and P.W.11 enquired P.W.3 to which P.W.3 replied that he handed over the amount as demanded by the accused. P.W.1 also enquired P.W.2 as to what happened and he replied in detail about the occurrence. Thereafter P.W.11 went inside the Anandhi Tea shop along with trap team members. The accused who was sitting on the Bench was identified by the complainant P.W.3 to P.W.11 Inspector of Police. After introducing himself to the accused, P.W.11 asked him as to whether he received the amount from P.W.3 Ramachandran and the accused sitting in the same place admitted to receiving the amount from the complainant. Thereafter P.W.11 Inspector of Police conducted phenolphthalein test by dipping the hands of the accused in the sodium carbonate solution and the same turned positive. P.W.11 filled the solution in two bottles and sealed the same wherein P.W.2 as well as the other witness Barnappa signed it. The said bottles are M.Os.1 and 2. Thereafter P.W.11 asked about the amount and the accused handed over the same from his

pant pocket. Then P.W.11 conducted phenolphthalein test in the Polythene cover which contained the amount and it proved positive and the said solution was filled in the glass bottle and the same is M.O.3. Thereafter, the pant of the accused was put to phenolphthalein test and the result was positive. The said solution was sealed in a bottle and the same is M.O.4. The pant of the accused is M.O.5. The ten numbers hundred rupees Notes totalling Rs.1000/- recovered from the accused is M.O.6 series. Thereafter, the accused was arrested by P.W.11 and mahazar was prepared about the proceedings wherein P.W.2, the accused and other witnesses signed and the same is marked as Ex.P.3. The rough sketch of the tea shop where occurrence took place is marked as Ex.P.4. The accused was taken to his office at Thottiyam, wherein, file containing the papers relating to loan proceedings of P.W.3 was handed over by the accused to P.W.1 and the said file is Ex.P.5. A check list was prepared and the same is produced as Ex.P.6. P.W.11 also secured Ex.P.8 loan application and also the guideline book of the Tahsildar, Kallakurichi, which is marked as Ex.P.27. He also secured the chitta, adangal extract of one Mannangatti and the same is Ex.P.28. P.W.11 forwarded all the materials collected by him along with the accused to the court concerned on 17.02.2000 and submitted the case file for further investigation to P.W.12 Muralidaran, the successor Inspector of Police. The accused was sent to Judicial custody. P.W.12 took up further investigation, he examined and recorded the statement of the complainant as well as

complainant's father and other witnesses and gave requisition to forward the seized material for chemical analysis. He also verified the chitta, adangal, A Register, and the other documents secured from VAO office by the P.W.11. Thereafter, P.W.12 handed over the investigation to P.W.13, Inspector of Police, who took up further investigation and after receiving Ex.P.1 sanction order to prosecute the accused from P.W.1, filed the charge sheet against the accused for offence under Sections 7 and 13(2) r/w. 13(1)(d) of the P.C.Act.

3. The prosecution to prove the guilt of the accused examined P.W.1 to 13 and produced Exs.P.1 to P.29 and M.Os.1 to 6. The trial court after recording the evidence, questioned the accused under Section 313 Cr.P.C., in respect of incriminating circumstances against him and the accused denied each and every circumstances put against him as totally false and denied the allegations in toto. The accused neither examined any witness nor produced any document on his side. The trial court on the basis of materials placed before it, found the accused guilty of the offence and sentenced him to undergo punishment as stated in 1st paragraph of this judgment. Aggrieved over the same, the accused has come forward with this appeal.

4. The learned Senior counsel for the appellant contended that the prosecution miserably failed to prove the allegation against the accused with clear and consistent evidence and the finding of the trial court is contrary to

the materials available on record. The learned Senior counsel for the appellant contended that the contradiction in the evidence of P.W.3, 5 and 6 was not taken into consideration by the trial court; likewise, the fact that no independent witness was examined to prove the occurrence was not looked into by the trial court. The claim of the accused that the amount recovered from him was the sum repaid by the complainant P.W.3 towards the loan advanced to him was not considered by the trial court properly and the evidence of P.W.6 and 7 to that effect was sufficient to acquit the appellant and the same was not considered properly. The fact of prior enmity between the accused and the complainant is established by the evidence of P.W.6 and 7 and the same is also not considered by the trial court. The contradiction about the time of lodging of complaint was also not taken into account by the trial court. In such circumstances, the learned counsel appearing for the appellant contends that the conclusion and finding of the trial court is not proper and seeks to set aside the same and acquit the accused.

5. On the other hand, opposing the same, the learned Additional Public Prosecutor contends that the prosecution has established the guilt of the accused by adducing clear and consistent evidence through P.W.2, 3, 4, 10 and 11. According to the prosecution, they have proved the demand as well as acceptance of illegal gratification by the accused herein. It is pointed out that P.W.3 the complainant has categorically stated about the demand of

Rs.1200/- by the accused on 07.02.2000 and thereafter demand of Rs.1000/- when he met the accused at Chinnasalem Vegetable Market and when the complainant P.W.3 met the accused on 15.02.2000. According to the prosecution, it has clearly established by the evidence of P.W.3 the demand and acceptance of bribe amount by the accused and the same is corroborated by the evidence of trap witness P.W.2. It is further stated by the prosecution that the deposition of P.W.11 the then Inspector of Police who conducted trap proceedings clearly established the recovery of tainted amount from the accused and the fact of phenolphthalein test being positive. Thus the prosecution contends that the case against the accused is clearly established and the finding of the trial court is well considered and needs no interference. Hence, the prosecution seeks dismissal of the appeal.

6. In the case of this nature where the accused is alleged to have received illegal gratification, the first and foremost burden of the prosecution is to prove the fact of demand of illegal gratification made by the accused and receipt of the amount pursuant to such demand so that the ingredients of Sections 7 and 13(2) r/w.13(1)(d) of the P.C. Act is attracted. In the case on hand, the complainant P.W.3 stated that himself and his father are doing agriculture and on 06.02.2000, and on 07.02.2000 he paid land tax for himself and his father and produced kist receipts respectively as Ex.P.7 and 8. According to P.W.3 on 07.02.2000, he applied for cattle loan in his name

and his father's name separately and the loan forms are Ex.P.5 and 6. They were informed by the said Bank Manager to obtain the signature of V.A.O., in page 11 of the loan form and also to secure chitta, adangal, A register extract from VAO. He produced the list given by the Manager as Ex.P.10. According to him, they went to the office of VAO of their village on the same day evening but they were asked by the accused who is the VAO for their village to come on the next day. Accordingly P.W.3 met the accused on 07.02.2000 and handed over the loan application to him. At that point of time, the accused sought for Rs.1200/- to do the job and P.W.3 asked him to reduce the amount. Since P.W.3 was not having sufficient amount, after selling cotton in the Athur Market, he went and met the accused two days later. Then again P.W.3 requested the accused to reduce the amount demanded by him and he was asked to pay Rs.1000/- in total for the two loan applications. The accused asked P.W.3 to come back on the next day i.e., 15.02.2000 at 5 p.m., with the amount. Since the complainant P.W.3 was not willing to pay the amount after discussing with his father, he went to the Vigilance and Anti Corruption Police, Cuddalore, and lodged Ex.P.11-complaint. Thus as per the evidence of P.W.3, in order to get chitta, adangal and 'A' extracts, to apply for cattle loan, the accused was approached by P.W.3 and the accused demanded a sum of Rs.1200/- as illegal gratification to issue the said certificates.

7. The Prosecution examined P.W.2, the official witness present during the trap proceedings to substantiate the claim of demand of illegal gratification made by the accused herein. P.W.2 in his evidence stated that he reached office of P.W.11, Inspector of Police at 9 a.m on 16.02.2000 and after getting details over the trap proceedings, he accompanied complainant P.W.3 and met the accused in the Tea stall at Chinna Salem, wherein the trap amount was handed over by P.W.3 to the accused. In his chief examination, P.W.3 stated that himself and P.W.3 met the accused inside the Anandhi Tea Shop and on seeing P.W.3, the accused asked him as to whether he brought the amount, to which the accused replied positively and handed over the amount to the accused. It is clear from the said evidence of P.W.3 that there is no sufficient material to draw the conclusion that the amount asked will amount to illegal gratification.

8. The prosecution examined P.W.6 Chinnasamy who was working as Village Assistant (Menial) in Thottiyam Village wherein the accused functioned as Village Administrative Officer and according to him, the complainant P.W.3 Ramachandran was close friend to accused herein and the accused was in the habit of giving hand loan to people of that area. P.W.6 stated that about a month before the trap proceedings, in connection with the death of the complainant's sister's husband, he took a loan of Rs.2000/- from the accused

and the accused was demanding return of the same. The complainant has informed him about repaying Rs.1000/- on 16.02.2000 but he is not aware as to whether the said amount was asked to be paid to the accused in the Tea Stall.

9. Likewise, the other witness examined by the prosecution P.W.7 who was working as Village Administrative Officer in Niraimadhi Village, stated that while he was working as Village Administrative Officer, in Paithandhurai Village the accused was working as Village Administrative Officer, Thensettiyendhal village, and he knew the accused personally. P.W.7 stated that himself and the accused and other persons used to meet in the evening time in the Tea stall run by Ilasu in Chinna Salem and he was informed by the accused a month before the trap proceedings that P.W.3 has availed a hand loan of Rs.2000/- from the accused in connection with P.W.3's sister's husband's death and the amount has not been repaid so far. P.W.7 also stated that he was informed by the accused that a sum of Rs.1000/- towards the said loan was promised to be repaid on 16.02.2000 by the complainant. Pointing it out, The learned Senior counsel for the appellant/accused contended that in view of the above said admission of prosecution witnesses, who have deposed in support of the defence and as they were not treated hostile by the prosecution, their evidence should be taken into consideration in favour of the accused and the benefit should go to the accused.

Admittedly P.Ws.6 and 7 were not treated as hostile. They have deposed as stated above stating about the complainant availing hand loan from the accused. In support of the said contention, the learned counsel for the accused relied on the Ruling of the Supreme Court in the case of ***Kunju Muthammed Alias Khumani and Another Vs. State of Kerala*** reported in ***(2004) 9 Supreme Court Cases 193***, wherein, it is held as follows :-

"We are at pains to appreciate this reasoning of the High Court. This witness has not been treated hostile by the prosecution, and even then his evidence helps the defence. We think the benefit of such evidence should go to the accused and not to the prosecution. Therefore, the High Court ought not to have placed any credence on the evidence of such unreliable witness. "

Further, The learned Senior counsel for the appellant/accused contended that apart from the interested evidence of P.W.3/complainant, no other independent witness was examined by the prosecution to prove the allegation of the demand of illegal gratification by the accused and the evidence of P.W.2 who was the member of the trap proceedings team, cannot be treated as independent witness and that itself is fatal to the prosecution case. Admittedly, P.W.2 Gnanasambandam was a member of the Trap Proceedings Team. It is pointed out that even though the prosecution listed several independent witnesses as L.W.11 to 18 to prove

the demand and acceptance of the bribe by the accused, has failed to examine any one of them. 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.2 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. "

The learned Senior counsel also relied upon the Ruling of this court in the

case of ***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."

In the case on hand, as stated above, except the member of the trap team, who deposed as P.W.2, no other independent witness is examined to prove the fact of demand being made by the accused herein. Further it is contended that there was previous enmity between the accused and the complainant. P.W.5 who was working as Revenue Inspector in Chinna Salem Sub District at the occurrence time, stated that he knew the accused herein then working as Village Administrative Officer of Thencettiyendal village. He also stated that he used to go to the office of the accused regularly as he was working under him and in the same office, 4 or 5 days prior to the occurrence alleged in this case, there was a dispute in the accused office between the accused and another person regarding the amount due to the accused and he asked them not to quarrel in front of him. He further stated after the

accused was arrested, he was informed by the menial staff that the person who quarreled with the accused is the complainant in this case. Pointing it out, the learned Senior counsel for the appellant/accused contended that there was money transaction between the accused and the complainant and due to that only, a false complaint has been lodged against him. Further, P.W.2 who is the member of the trap proceedings Team has not stated specifically about any demand being made by the accused as illegal gratification. Further in his cross examination, P.W.2 stated that as the accused was not present in the Tea stall of Ilasi, himself and the complainant went to Anandhi Tea stall and after enquiring the tea stall owner about the accused, P.W.3 went inside the Tea stall beyond the small wall which was in the middle of the tea shop and met the accused who was sitting behind that wall. P.W.2 stated that complainant P.W.3 went inside and returned after talking to the accused and thereafter, he gave prearranged signal to the police who was standing about 10 feet away. When P.W.2 was reexamined, he further stated that he was standing behind the complainant P.W.3. Thus, the evidence of P.W.2 will not inspire confidence as to whether really he was present when the accused allegedly received the amount from the complainant P.W.3. Thus in the light of the above said discussion, there is no clear cut evidence to prove the demand of illegal gratification by the accused from complainant P.W.3.

10. On the other hand, the learned Additional Public Prosecutor

contended that a sum of Rs.1000/- has been recovered from the accused in the trap proceedings and the same is produced as M.O.6 series; phenolphthalein test was conducted and the chemical solutions collected in M.O.1 to 4 bottles and also the part of the accused in which M.O.6 series amount was kept were sent for chemical analysis and as per the report, Ex.P.25 the phenolphthalein test is confirmed. That apart, the recovery of tainted money collected from the accused in front of the trap witnesses itself is sufficient to prove the factum of demand of illegal gratification by the accused and the trial court is justified in holding the accused guilty of the alleged offences. The prosecution also relied upon the evidence of P.W.10 Forensic Expert who deposed that after examining the materials received in his office in respect of Crime No.3/AC/2000/CL of Vigilance and Anti corruption case, Cuddalore, presence of phenolphthalein and sodium carbonate was confirmed and the report sent by him was Ex.P.25 and the materials subjected to the chemical analysis was contained in M.O.1 to 4 bottles. Thus the prosecution contends that sufficient evidence was placed before the court to prove the recovery of tainted amount from the accused, which will establish the guilt of the accused.

11. Refuting the same, the learned Senior counsel for the appellant/ accused contended that even assuming tainted money was recovered from the accused, in the absence of substantive evidence to prove the factum of

demand and acceptance of illegal gratification, it cannot be presumed that the accused received the amount only as illegal gratification voluntarily. In support of the said contention, the learned senior counsel for the appellant/accused relied upon the decision of the Supreme Court in the case of **C.M.Girish Babu Vs. CBI, Cochin, High Court of Kerala**, reported in **(2009) 3 Supreme Court Cases 779**, wherein, it is held as follows :-

"18, In *Suraj Mal Vs. State (Delhi Admn)*, this Court took the view that (at SCC p.727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. "

The learned Senior counsel also relied upon the Ruling of this Court in the case of **S.P.Paulraj Vs. State rep. By the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Ramanathapuram**, reported in **2009(1) MWN (CrI) 324**, wherein it is 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 Prakash Vs. State of Punjab*, 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."

As stated above, except the evidence of P.W.2, who cannot be treated as an independent witness and the complainant P.W.3, there is no other acceptable substantive witness to prove the demand of illegal gratification by the accused herein. Further there is discrepancy in the evidence let in by the prosecution as to when the complaint was lodged.

12. In the case on hand, the complainant who deposed as P.W.3 stated in his chief examination, that himself and his father went to the Vigilance and Anticorruption office, Cuddalore on 16.02.2000 and lodged Ex.P.11 complaint. He further stated that two hours after lodging the complaint, P.W.2 Thirugnanasambandam and other witnesses Barnappa was summoned by the police and they were introduced by P.W.11 Inspector of Police. P.W.2 also stated that he produced ten hundred rupees notes to P.W.11 and after counting the same he gave the amount to the Police constable and proceeded with demonstration of Phenolphthalein Test. However, in his cross examination, P.W.3 stated that himself and his father

left Kallakurichi by 2 p.m., on 15.02.2000 to the Vigilance and Anti corruption Office, Cuddalore, and he himself wrote down the complaint between 5 pm., and 6 p.m., on 15.02.2000 itself. According to P.W.3, the complaint was written in Tea stall near the Vigilance and Anti corruption office and he handed over the same to P.W.11 Inspector of Police viz., Mani and he was asked to go back and come on the next day morning viz., 16.02.2000 and accordingly himself and his father returned back to their village. P.W.3 further stated that he left his village in the next day morning, reached the Vigilance and Anti corruption Police office in Cuddalore by 9 a.m., where P.W.11, Inspector of Police, Mani was present. After the arrival of Deputy Superintendent of Police, V & AC, two witnesses were summoned and they came within half-an-hour and thereafter, Mahazar proceedings took place. He stated that he was not aware about those witnesses and they also do not about him. Thus the complainant P.W.3 has contradicted himself about when the complaint was lodged by him while he has categorically stated in his chief examination that he went to the office of the accused in Cuddalore on 16.02.2000 morning and then lodged the complaint. In the cross examination, he has stated differently and stated that the complaint was lodged on 15.02.2000 itself. While P.W.3 has stated in his cross examination, he reached office of the respondent police at about 4.30 and 5 pm., written the complaint between 5.00 and 6 pm., on 15.02.2000, the evidence of P.W.2 the official witness during the trap proceedings contradicts

the same. According to P.W.2 while he was in his office at 3.30 pm., on 15.02.2000 he was directed by the superiors to go to the office of the respondent police and accordingly reached the office of the respondent police by 5.30 p.m. At that time, the Inspector of Police was present and he asked P.W.2 to come back on the next day morning by 9.00 a.m. Accordingly, he went there and met the other witnesses Barnappa and the complainant herein, the Inspector of Police and other Policemen. Thus while there is contradiction in the evidence of P.W.3 about the date on which the complaint was lodged by him, the evidence of P.W.2 further creates doubt as to when really the complaint was given by P.W.3. When P.W.3 has stated that he wrote down the complaint between 5 and 6 p.m., on 15.02.2000 and then lodged it, how P.W.2 was informed by his higher-ups by 3.30 pm., itself to go to respondent office is not explained properly. Hence, it creates doubt as to whether the complaint was written down by P.W.3 and lodged by him as alleged by the prosecution. Pointing it out the learned counsel for the accused contended that the complaint itself is fabricated one and hence all the other further proceedings initiated by the respondent was motivated and the same should not be relied upon. In the light of the above said contradiction, doubt arises as to whether really the occurrence took place as alleged by the prosecution.

13. Thus in the absence of any independent evidence to prove the fact

of demand of illegal gratification by the accused and also the doubtful circumstances, as to when the complaint was lodged, the contention of the accused that the complaint was falsely foisted against him and there is no material to substantiate the allegation against him, has to be accepted. It is further contended by the learned Senior counsel for the appellant/accused that the evidence of P.Ws.5, 6 and 7 will clearly go to show that the accused was known to the complainant P.W.3 and there was money transaction between them and as the accused demanded the refund of loan amount advanced by him to P.W.3, dispute arose between them and false complaint was lodged. In such circumstances, relying upon the Ruling reported in the case of ***T.Subramaniam Vs. State of Tamil Nadu*** reported in **2006(1) SCC(Crl.) 401**, it is contended that the receipt of the amount and the explanation for the receipt of the same as stated by the accused being reasonable, the same is to be accepted and the benefit of the same should go to the accused. In the light of the above said discussion and for the reasons stated above, this court is of the view that the prosecution has failed to prove the charges against the appellant/accused beyond reasonable doubt. As such, the conviction and sentence imposed by the trial court and the reasons stated by the trial court for arriving at the conclusion that the accused is guilty of the offence alleged by the complainant is unsustainable and the same is liable to be set aside and thus appeal is to be allowed.

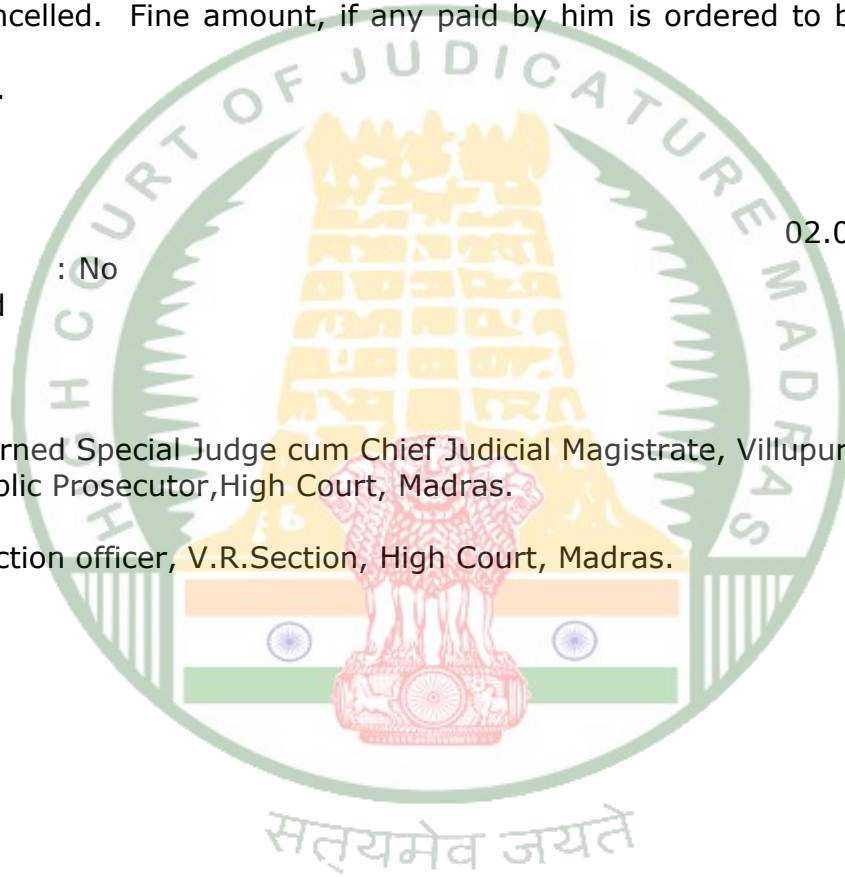
14. **In the result, the criminal appeal is allowed.** The conviction and sentence passed in Special case No.1 of 2001 passed by Special Judge cum Chief Judicial Magistrate, Villupuram, dated 08.10.2010 are set aside. The appellant/accused is acquitted. Bail bond, if any executed by him shall stand cancelled. Fine amount, if any paid by him is ordered to be refunded forthwith.

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To

- 1.The learned Special Judge cum Chief Judicial Magistrate, Villupuram.
- 2.The Public Prosecutor, High Court, Madras.
- 3.The Section officer, V.R.Section, High Court, Madras.



WEB COPY

S.BASKARAN, J.

nvsri



Judgment in

CrI.A.No.700 of 2010

02.08.2017

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