IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 13.02.2017

Judgment Pronounced On : 22.08.2017

CORAM

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

Crl.A.No.219 of 2012

V.T.Baskara Babu ... Appellant

vs.

State rep. by
The Inspector of Police,
Vigilance & Anti Corruption,
Chennai City - II Detachment,
Chennai.
(Crime No.11/AC/2006/CC-II) ... Respondent

Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 06.03.2012 passed by the learned Special Judge/Chief Judicial Magistrate, Thiruvallur in Special Case No.2 of 2008.

For Appellant : Mr.R.Singaravelan, Senior Counsel
for Mr.A.M.Rahamath Ali

For Respondent : Mr.E.Raja
Additional Public Prosecutor

JUDGMENT

The accused, V.T.Baskara Babu, 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, Thiruvallur, by its Judgment dated 06.03.2012, in Special Case No.2 of 2008, the accused was found guilty, convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo 3 months simple imprisonment for offence under Section 7 of Prevention of Corruption Act and also convicted and sentenced to undergo rigorous imprisonment for two years and also to pay a fine of Rs.2,000/-, indefault 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. Charges against the accused:-

The accused, who was working as Tahsildar in Taluk Office at Thiruttani, demanded a sum of Rs.15,000/- as illegal gratification other than legal remuneration from the complainant/P.W.1, namely, Hansraj, who is the power of attorney agent of P.W.10/Manicka

Chand Jain for renewing the licence for the pawn broker shop run by the said Manicka Chand Jain. In pursuance of the same, at the residence of the accused in Thiruttani, on 14.11.2006, between 20.30 hours and 21.15 hours, the accused reiterated his demand to P.W.1 and received a sum of Rs.15,000/- as bribe to renew the licence of pawn broker shop run by P.W.10/Manicka Chand Jain and by abusing his official position obtained unlawful gain for himself and thereby committed the offence punishable under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

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

3.1. The accused was employed as Tahsildar in Thiruttani Taluk Office, Thiruvallur District and he was approached by P.W.1, who is the power of attorney agent of P.W.10/Manicka Chand Jain, to renew the pawn broker shop licence for the year,2006. The said Manicka Chand Jain has given general power of attorney in favour of P.W.1 under Ex.P10 for renewing his pawn broker shop licence. The said Manicka Chand Jain submitted the signed application through P.W.8/Vijayaraj, who is the office bearer of the Pawn Broker Association of Thiruttani. Along with the said application, the original licence issued in the name of P.W.10/Manicka Chand Jain was filed and the same is marked as Ex.P12. It is stated that as an officer bearer of the pawn broker association, P.W.8/Vijayaraj, regularly filed renewal applications in Taluk Office, Thiruttani and secured licence renewals. Since the renewal application submitted by P.W.10 was not approved, services of P.W.1/Hansraj, who is the nephew of P.W.10 was utilized to look into the issue. Accordingly, P.W.1/Hansraj along with P.W.7/Sushil Kumar, who is the son of P.W.10/Manicka Chand Jain, went to the office of the accused on 10.11.2006 and met the accused and when they enquired the accused about the licence renewal, the accused demanded a sum of Rs.15,000/- for renewing the licence and as P.Ws.1 and 7 expressed their inability to pay such a huge amount, the accused asked them to pay Rs.10,000/-. Thereafter, the accused noting down his mobile phone number in a bit of paper which is produced as Ex.P11 handed over the same to P.W.1 and asked him to contact the said number. Accordingly, when P.W.1 contact the accused subsequently in the mobile number given in Ex.P11 and the accused asked him to go over to his house at 7.00 p.m., on 14.11.2006. Since the complainant/P.W.1 was not interested in giving bribe to the accused, he lodged Ex.P1 complaint to the respondent herein.

3.2. On receipt of the said complaint at 12 noon on 14.11.2006 from P.W.1/Hansraj, the then Deputy Superintendent of Police of the respondent unit P.W.9/P.V.Thomas, registered a case in Crime No.11/AC/2006/CC-II 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 produced as Ex.P13. Thereafter, P.W.9/the Deputy Superintendent of Police of the respondent unit, arranged the trap proceedings on the same day and summoned two official witnesses, namely, P.W.2/Damodaran and another person by name Ganapathi, to his office and they were introduced to the complainant/P.W.1. The complainant also brought a sum of Rs.10,000/-(10 x 1000 = Rs.10,000/-) as decoy money and the same is produced as M.O.1 series. Thereafter, P.W.9 demonstrated the phenolphthalein test to P.W.1 and the two official witnesses summoned by him, namely, P.W.2/Damodaran and Ganapathi. Thereafter, P.W.9 gave back the said sum of Rs.10,000/- smeared with phenolphthalein powder to P.W.1 and instructed him to give the amount to the accused if only he demand it and also instructed him to give pre-arranged signal by exchanging his ring from one hand to another hand. Thereafter, P.W.9 prepared the Entrustment Mahazar by noting down the numbers of M.O.1 series currency notes and the said mahazar is marked as Ex.P2.

3.3. According to P.W.1/complainant, they left the office of the respondent by 4.30 p.m., on 14.11.2006 and reached Thiruttani by 7.00 p.m, there they reached the house of P.W.7 and P.W.1 contacted the accused over the phone, P.W.1 was asked by the accused to go over to his house at Radhakrishnan Salai. Thiruttani. Accordingly, P.W.1 along with P.W.7/Sushil Kumar, P.W.2/Damodaran went to the house of the accused by 8.45 p.m., there P.W.1 and two other witnesses, namely, P.Ws.2 and 7 met the accused and they were told by the accused that Rs.10,000/- is not sufficient and asked for a sum Rs.25,000/-, as the complainant has lodged a petition with the higher officials of the accused. Since the accused refused to receive Rs.10,000/-, P.W.1 immediately came out of the house of the accused and reached the house of P.W.7, which is nearby and arranged for additional sum of Rs.5,000/- and then went back to the accused house and handed over the said sum of Rs.15,000/- to the accused and the same was received by the accused and after counting the same, he placed the amount on the table. Immediately, P.W.1 came out of the house and gave pre-arranged signal to the trap party, who were waiting nearby.

3.4. According to P.W.1, after receiving a sum of Rs.15,000/-, the accused again note down his mobile phone number in a bit of paper which is marked as Ex.P14, handed over the same to P.W.1 asking him to pay the balance amount of Rs.10,000/- on the next day and to contact him over the phone. When the trap team came into the house of accused, P.W.1 identified the accused to them and they recovered the amount from the accused. The said amount of Rs.10,000/- and Rs.5,000/- is marked as M.Os.1 and 2 respectively. Thereafter, P.W.9 conducted phenolphthalein test and when the hands of the accused were dipped into the chemical solution, it turned into light pink colour. The samples of the said solution was collected in M.Os.5 and 6 bottles and the same was sealed and the signature of trap witnesses was obtained. The seizure mahazar prepared by P.W.9 in respect of M.Os.1,2,4 and 5 is produced as Ex.P3 mahazar.

3.5. Then P.W.9 prepared Ex.P6 observation mahazar showing the place of trap proceedings. The accused was arrested and released on bail on the same day. The simcard of the mobile phone used by the accused was seized and the same is marked as M.O.4. The said simcard was forwarded to the Court under Form-91 and the same is marked as Ex.P15. Thereafter, as per the direction of P.W.9, the house of the accused was searched by P.W.11, Inspector of Police.

3.6. According to P.W.11, the house of the accused was searched by him on 15.11.2006 at 16.30 hours in the presence of P.W.2 Damodaran and another person namely Ganapathi and the inventory mahazar prepared by him is marked as Ex.P16. P.W.11 further stated that he handed over the investigation to P.W.12/Sudhakar, the Inspector of Police on 22.11.2006. P.W.12 conducted further investigation and he received the chemical examination report from the Forensic Laboratory and the same is marked as Ex.P8. On completion of investigation, P.W.12 obtained sanction order Ex.P9 from P.W.6 to prosecute the accused and thereafter he laid charge sheet against the accused under Sections

7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 on 15.12.2006.

4. 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.12 and produced Exs.P1 to P16 and M.Os.1 to 6, 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 contrary to the facts and pleaded that he has been falsely implicated in the case. The accused did not examine any witness on his side. The trial Court, after considering all the materials placed before it, 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.

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

6. Mr.R.Singaravelan, the learned Senior Counsel appearing for the appellant vehemently contended that the prosecution has miserably failed to prove its case beyond any reasonable doubt by adducing clear and consistent evidence. The learned Senior Counsel appearing for the appellant further contended that the trial Court holding the evidence of the complainant /P.W.1 and his cousin P.W.7 alone is sufficient to prove the guilt of the accused is in correct. The trial Court also failed to see the contradictions in the evidence of P.W.1 and P.W.7. It is also pointed out that the trap witness P.W.2 has not stated anything about the demand and acceptance of bribe by the accused in his evidence and the same was not taken in to consideration by the trial Court. The fact of appellant being not in a position to renew the licence in view of prohibitory orders imposed by the higher authority, the RDO, was also not taken into consideration. The learned Senior Counsel for the appellant also pointed out that after lodging the application for renewal on 21.03.2006, the complainant claims to have approached the appellant only on 10.11.2006 and the long period of delay itself is sufficient to show that the allegation against the accused is falsely made. The sanctioning authority also has not applied its mind properly and the finding of the trial Court is not based on proper appreciation of the materials placed before it and the sanction order Ex.P9 was issued without application of mind

by the sanctioning authority P.W.6. Hence, the learned Senior Counsel appearing for the appellant pleads that the finding of the trial Court is liable to be set aside by allowing this appeal.

7. On the other hand, the learned Additional Public Prosecutor, appearing for the State would contend that the claim of the appellant is baseless and the prosecution has proved its case by adducing clear and consistent evidence about the trap proceedings through P.Ws.1,2 and 7. According to him, the factum of demand and acceptance of bribe amount by the accused is clearly established by the prosecution. It is also pointed out that the accused demanded bribe amount from P.W.1 and the same is corroborated by the evidence of P.Ws.2 and 7. According to the learned Additional Public Prosecutor, the demand of bribe on the date of trap proceeding is clearly established and the factum of recovery of tainted amount from the accused is also clearly established and the same will go to prove the guilt of the accused beyond any reasonable doubt. The learned Additional Public Prosecutor also pointed out that the phenolphthalein test conducted after the trap proceedings proved positive and in such circumstances, the conclusion arrived at by the trial Court, is just and proper and the same needs no interference. Hence, the learned Additional Public Prosecutor seeks dismissal of the appeal.

8. In a case of this nature, where the accused is alleged to have demanded and received bribe amount to do a favour to the complainant, the first and foremost duty of the prosecution is to prove the factum of demand of illegal gratification by the accused. It is to be seen on the basis of available materials whether the prosecution has discharged its burden of proving the demand of illegal gratification made by the accused.

9. The complainant P.W.1/Hansraj stated that his uncle P.W.10 Manicka Chand Jain is running a pawn broker shop at Thiruttani and he has given him power of attorney to look after all matters relating to the said pawn broker shop. P.W.1 also stated that his uncle Manicka Chand Jain gave the application to renew his pawn broker shop licence for the year 2006 - 2007 through P.W.8 Vijayaraj. P.W.1 also stated that all the pawn broker shops of that area gave renewal application to the Taluk Office through P.W.8/Vijayaraj and all the applications have been sanctioned except that of his uncle P.W.10/Manicka Chand Jain. Since they did not receive the licence renewal order, he approached P.W.8 and enquired him about it and P.W.8 replied that the application submitted to the Taluk Office has been lost and not traceable in the office. When he again enquired on 02.11.2006, P.W.8 informed the complainant that the Taluk Office staff is demanding Rs.30,000/- to

renew the licence. In view of that P.W.1 stated that himself along with his brother P.W.7 Sushil Kumar went to the Taluk Office, Thiruttani, on 10.11.2006 and met the accused who was working as Tahsildar, Thiruttani at that point of time. When P.W.1 enquired the accused, he was asked to pay a sum of Rs.15,000/- to the accused, but, on P.W.1's request, the accused reduced the same to Rs.10,000/-. P.W.1 further stated that he contacted the accused on 13.11.2006 and the accused asked them to go over to his house on 14.11.2006 with money. However, as the complainant was not willing to give bribe amount, he lodged Ex.P1 complaint. Thus, according to P.W.1, he approached the accused on 10.11.2016 for renewal of licence and on that day the accused demanded Rs.15,000/- as bribe amount. P.W.1 further stated that himself and his brother P.W.7 Sushil Kumar went and met the accused on 10.11.2006.

10. On the other hand, the brother of the complainant who deposed as P.W.7/Sushilkumar stated that his father P.W.10/Manicka Chand Jain is running a pawn broker shop at Thiruttani and they are living as a joint family and he is also assisting his father in the said business. P.W.7 also stated that his father P.W.10 executed a registered general power of attorney deed on 20.12.2005 in favour of P.W.1 Hansraj and the same is marked

as Ex.P10. According to P.W.7 to renew the pawn broker shop licence for 2006 - 2007, they gave an application to P.W.8 Vijayaraj, who is the president of the Pawn Broker Shop Association. P.W.7 also stated that the application given by the other shop owners were approved, but the application of P.W.10 was not approved. When P.W.7 asked about the same with P.W.8, he told him to go and met the accused, who was the Tahsildar, Thiruttani at that time. P.W.7 further stated that thereafter on his behalf P.W.1 Hansraj visited the Taluk Office several times and met the Tahsildar, who is the accused herein, but, no proper reply was given by the accused. Thereafter, P.W.1 informed his brother P.W.7 about the demand of Rs.10,000/- by the accused to issue the renewal certificate. Since P.W.7 was not willing to give bribe amount, a complaint was lodged with the police on 14.11.2006 by P.W.1. Thus, P.W.7 has stated that it was only P.W.1 who has met the accused and he did not go along with him prior to the lodging of complaint. P.W.7 has categorically admitted in his cross examination that he never met the accused prior to the trap proceedings on 14.11.2006. He further stated that he knew about the happenings which took place prior to 14.11.2006 only through P.W.1. Thus, the claim of P.W.1 that himself and P.W.7 Sushilkumar met the accused on 10.11.2006 and at that time the accused demanded a sum of Rs.15,000/- as bribe is disproved by the evidence of P.W.7.

11. Admittedly, the application for renewal of licence relates to the pawn broker shop run by P.W.10 Manicka Chand Jain. In his evidence, P.W.10 stated that he is carrying on pawn broker business at Thiruttani for the past 15 years and he gave the application for renewing his pawn broker shop licence to their association president P.W.8/Vijayaraj. As his application for renewal was not sanctioned, he enquired the reason for the same with P.W.8 and he was informed that the Tahsildar is delaying in issue of renewal of licence. P.W.10 further stated that he was told by P.W.8 Vijayaraj that the Tahsildar, Thiruttani wants to met him(P.W.10). Accordingly, himself(P.W.10), his son P.W.7 Sushilkumar and P.W.1 met the accused, the then Tahsildar in the night by 10.00 p.m., and the accused informed him that only if Rs.25,000/- was paid, he will renew the licence. Thereafter, as P.W.10 expressed his in ability to pay Rs.25,000/- and offered to pay a sum of Rs.15,000/- and paid the same to the accused, thereafter the police came and secured the accused. P.W.10 also produced the licence given to his shop as Ex.P12. Thus, the evidence of P.W.10 is totally contrary to that of P.Ws.1 and 7 about the amount claimed by the accused as bribe amount. Further, P.Ws.1 and 7 have not stated anything about the meeting the Tahsildar/the accused herein in the presence of P.W.10. Further, P.W.10 himself during his cross examination contradicted his version in the chief examination by stating that he

has never met the accused prior to meeting him in the Court. P.W.10 also stated in his cross examination that he never knew personally about the accused demanding and receiving the bribe amount. He further stated that he knew about the same only from his son P.W.7. Thus, P.W.10's evidence lacks credibility and in the light of his admission in cross examination, it is apparent that he is unaware of demand and acceptance of bribe amount by the accused.

12. Further, as stated earlier while P.W.1 stated that himself and P.W.7 went together to meet the accused on 10.11.2006, when the demand was made by the accused. P.W.7 has denied the same. As pointed out above, P.W.7 has categorically stated that prior to 14.11.2006, he has never met the accused and whatever happened before that date, he knew the same only from P.W.1. Thus, P.W.7 evidence is also of no use to the prosecution to prove the alleged demand of bribe by the accused prior to the trap proceedings. Thus, only the evidence of P.W.1 is there to prove the alleged demand of bribe by the accused made prior to trap proceedings and it is to be seen whether the same is sufficient and acceptable to prove the case of the prosecution.

13. Admittedly, the application for renewal of licence given to the accused relates to the pawn broker shop of P.W.10. The application was given through P.W.8 Vijayaraj who was the president of the pawn broker shop association at Thiruttani at that point of time. P.W.8 Vijayaraj stated in his evidence that he knew the accused who functioned as Tahsildar at Thirttani and he usually helped the other persons in renewing pawn broker shop licence. P.W.8 further stated that he collected Ex.P12 original licence from P.W.10 Manicka Chand Jain for renewal of licence and submitted the renewal application to A-4 Clerk of Taluk Office. All the licences given by him has been renewed except Ex.P12 and on enquiry by him on various occasions as to why Ex.P12 licence was not renewed, he was informed that as there was a dispute between the landlord and tenant in respect of the premises where the pawn broker shop of P.W.10 Manicka Chand Jain is functioning, his licence could not be renewed. P.W.8 further stated that he informed the same to P.W.10 Manicka Chand Jain also. Further, P.W.8 stated that when the application for renewal was submitted, the accused was not working as Tahsildar and another person was there and he only informed that the licence cannot be renewed. Thus, the claim of P.W.1 that he was informed by P.W.8 Vijayaraj about the accused asking illegal gratification to renew the licence is contradicted by the version of P.W.8 himself. It is clear from the version of P.W.8 that

the licence renewal application was rejected by some other person who was functioning as Tahsildar at that point of time and not by the accused herein. Further, it is also clear from his evidence that the reason for non renewing of licence was only the dispute between the landlord and tenant and nothing else. The said fact of dispute of landlord and tenant between P.W.10 Manicka Chand Jain and his landlord is not denied by the prosecution witnesses. P.W.10 himself admitted in his cross examination that the dispute arose between himself and his landlord about vacating the premises, where he is running a pawn broker shop and RDO enquiry was conducted in that regard. P.W.7/Sushilkumar, who is the son of P.W.10 Manicka chand Jain stated that he is a member of the joint family and was carrying on pawn broker business with P.W.10. He further admitted in his cross examination that they are having three pawn broker shops and the shop in the Thiruttani bazaar is looked after by himself and his younger brother Ranjitkumar and this case relates to renewal of licence of that shop only. He further stated that a civil dispute is pending in respect of the premise where they are running the shop and they have filed the suit seeking orders not to evict them except by due process of law as they are tenants therein. He further admitted that the landlord has filed a suit in 2004 to evict them from the shop. P.W.7 also admitted that the dispute arose between himself and the landlord and a criminal case was registered in that regard against them. P.W.7 also admitted that proceedings under Section 107. Cr.P.C. before the RDO was conducted in connection with their dispute with landlord and they executed a bond for a sum of Rs.50,000/- to maintain good conduct to the RDO. Both P.Ws.7 and 10 admitted that they were still carrying on business even though the licence was not renewed. P.W.7 also admitted that the licence was given in favour of P.W.10 and the same cannot be transferred. Thus, it is clear from the evidence of P.W.7 that the dispute existed between P.W.10 and his landlord in respect of the shop where the pawn broker business is being carried on.

14. Likewise, P.W.1/the complainant also admitted in his cross examination that whether seeking renewal of licence, rental agreement should be produced and if no agreement is produced, licence will not be renewed. P.W.1 also admitted that all the applications for renewal submitted during that point of time was renewed except that of P.W.10. P.W.1 stated that he is unaware about any petition dated 12.04.2006 given by the landlord seeking the authority not to renew the licence of P.W.10/Manicka Chand Jain. P.W.1 also admitted that there was criminal proceedings under Section 107 Cr.P.C. against himself, P.W.10 and his son and they have given bond for a sum of Rs.50,000/- to the RDO for good

conduct. P.W.1 also stated that he wrote a letter to RDO on 06.11.2006 about the said order passed by him preventing renewal of licence to P.W.10. Thus, P.Ws.1, 7 and 10 have admitted the fact of dispute between the landlord and tenant in respect of shop where P.W.10 is carrying on business of pawn broker in respect of which renewal of licence was sought for.

15. P.W.3, Vedhavalli who was working as Deputy Tahsildar in Thiruttani Taluk Office at the relevant point of time stated that the application submitted by P.W.1 Hansraj was received in their office on 21.03.2006 and endorsement was made by A-4 Clerk on 27.03.2006. The Tahsildar has signed on 16.05.2006 and on that day the accused was not working as Tahsildar. According to her, as per the endorsement dated 16.05.2006 it is stated that the licence can be renewed, but subsequently as objection was received about the renewal of licence for the place where the pawn broker shop was running, further endorsement was made on 07.06.2006 stating that the licence should not be renewed. P.W.3 stated that she has signed in the said endorsement. She further stated that the landlord has given application on 12.04.2006 opposing renewal of licence and on that basis the endorsement dated 07.06.2006 was made. She further stated that on the basis of the same, the RDO passed stay order on 06.10.2006 restraining the P.W.10 from carrying on pawn broker business and opposing the said order,

P.W.1 Hansraj has given letter dated 06.11.2006 to the RDO. She further stated that the copies of the stay order and also the objection given by P.W.1 is available in the file. She further stated that the RDO has passed an order restraining the persons from interfering the shop after conducting 107 Cr.P.C. proceedings. Thus, it is clear from the evidence of P.W.3 that in view of tenancy dispute, the RDO has passed an order staying renewal of licence of P.W.10 Manicka Chand Jain and there is nothing on record to show that the order of stay granted by the RDO was subsequently vacated. In such circumstances, as rightly pointed out by the learned counsel appearing for the appellant that the accused who is subordinate to the RDO was not in a position to either renew or refuse the renewal of licence of P.W.10. When the accused is not in a position to do a favour to the complainant, it is pointed out that there cannot be a demand of illegal gratification and even if any amount was recovered from the accused that cannot be treated as bribe amount.

16. The learned counsel appearing for the appellant contended that in the case on hand there is variation and contradictions among the evidence of P.Ws.1, 7, 8 and 10 about the nature of demand and acceptance of money by the accused and in such circumstances, even assuming that there was any recovery of

amount from the accused that will not be sufficient to prove the requirements of Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act,1988 and in the absence of proof of demand by the accused, the prosecution has to fail. In support of the same, he relied upon the ruling reported in **2015 CRL. L.J. 4670, P.SATYANARAYANA MURTHY v. DISTRICT INSPECTOR OF POLICE AND ANOTHER,** wherein it has held as follows:-

> "21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1) (d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification of recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.
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> 22. As a corollary,failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."

17. Likewise, the learned counsel appearing for the accused contended that even if the recovery of the amount from the accused is proved unless and until, the prosecution establishes the fact of demand and acceptance of bribe by the accused, the prosecution cannot succeed and contradiction in the evidence of prosecution witness 1,7,8 and 10 extracted during their cross

examination is sufficient to prove the claim of the defence. In support of the same, he relied upon a ruling reported in **2013 (14) SCC 153 in STATE OF PUNJAB v. MADAN MOHAN LAL VERMA,** wherein it has held as follows:-

"11. 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."

18. Following the above said rulings and in the light of the above discussions, wherein P.Ws.1, 2, 7 and 10 has given contradictory evidence about the demand of bribe by the accused, it is clear that the prosecution has failed to prove the factum of demand of illegal gratification by the accused. Further as is evident from the admission of P.W.3 that due to stay order passed by the RDO, the accused who was his subordinate officer was not in a position to pass any orders on the licence renewal application of P.W.10 and as such the claim of prosecution that a demand of bribe was made by the accused is unsustainable. Further, the prosecution witness has given contradictory evidence about the reasons for non renewal of licence. In such circumstances, it is clear that the prosecution has not established the fact of demand of illegal gratification by the accused prior to the trap proceedings.

19. According to P.W.1, after he lodged the complaint on 14.11.2006, the trap proceeding was arranged on the same day and himself along with P.W.2 went to the house of the accused and handed over the tainted amount to the accused. P.W.1 stated that

when he met the accused on 14.11.2006 with Rs.10,000/-, the accused demanded him to pay Rs.25,000/- and refused to receive Rs.10,000/- given by P.W.1. Immediately, P.W.1 went to the house of P.W.7, arranged for further sum of Rs.5,000/- and handed over Rs.15,000/- to the accused. P.W.1 stated that himself along with P.W.7 and P.W.2 went to the house of the accused. However, P.W.2, the official trap witness stated that he went along with P.W.1 and P.W.7 to the house of the accused at 8.30 p.m., on 14.11.2006, but, he stayed out side and only P.W.1 and his brother P.W.7 went inside the house of the accused. P.W.2 further stated in his cross examination that he waited out side the house of the accused and went inside only when the chemical solution was prepared to conduct phenolphthalein test. Thus, except the interested evidence of P.W.1 complainant and his brother P.W.7, there is no other evidence to prove the alleged demand made by the accused on the occasion of the trap proceedings.

20. Now, it is to be seen whether P.W.1 and P.W.7 evidence are reliable one and the same is sufficient to prove the guilt of the accused. As discussed earlier, P.Ws.1 and 7 have stated differently about when they met the accused for the first time and also about the sum demanded by the accused. Further, according to P.W.1, on 14.11.2006, he has reached the house of the accused

around 8.45 p.m., and went inside with P.Ws.2 and 7 and offered Rs.10,000/- to the accused. Immediately, the accused stating that complaint has been given to the higher officials, demanded Rs.25,000/- as bribe and refused to receive Rs.10,000/- given by him. Hence, P.W.1 went to the house of P.W.7 and collected further sum of Rs.5,000/- and returned to the house of the accused and handover Rs.15,000/- to him. Thereafter, the accused noting down his mobile phone number in a bit of paper, gave it to P.W.1 asking him to pay the balance amount of Rs.10,000/- on the next day. P.Ws.2 and 7 also stated likewise. Thus, according to P.Ws.1 and 7, on the day of trap proceedings, when they offered Rs.10,000/- to the accused, he demanded Rs.25,000/- and as they were not having the amount, P.W.1 went to the house of P.W.7 and collected further sum of Rs.5,000/- and handed over Rs.15,000/- to the accused.

21. Admittedly, P.Ws.1 and 2 were instructed by P.W.9 Inspector of Police about the trap proceedings and the police team was waiting out side the house of accused, when P.W.1 went inside the house of the accused to pay the amount. According to P.W.1, when he came out of the house of accused to go to the house of P.W.7 to collect further sum, he did not inform the police party waiting out side as to what happened inside and he simply went

away to the house of P.W.7. He further admitted that the police party also did not ask him as to what happened. On the other hand, P.W.9, the Inspector of Police stated that while they were waiting out side the house of the accused around 20.30 hours, P.W.1 came out of the house with P.W.7 and as no signal was given by P.W.1, he enquired him as to what happened and P.W.1 replied that the accused is demanding Rs.25,000/- and he has informed the accused about arranging the balance amount from the house of P.W.7. According to P.W.9, thereafter P.Ws.1 and 7 went to the house of P.W.7 and collected Rs.5,000/- returned and met the accused again. P.W.9 further stated that he was informed by P.W.1 that the accused asked him to pay the balance amount of Rs.10,000/- through P.W.7 on the next day evening by 4.00 p.m. Thus, while P.W.1 stated that he did not give any signal to the police party and they also did not enquire him about any thing when he went out to collect Rs.5,000/-, the evidence of P.W.9 is totally contradictory to the same and that also create suspicion as to what really happened on the date when trap proceeding was held. According to P.W.1, when he met the accused on 10.11.2006, he note down his mobile phone number in a bit of paper and give it to him. Again on 14.11.2006, when the trap proceedings was held, the accused again noted down his mobile phone number in a bit of paper and handed over to P.W.1 to contact him. The said two bits of papers are produced as Exs.P11 and P14. If really the accused has given his phone number on the earlier occasion as pointed out by the learned counsel appearing for the accused, it may not be necessary for him to note down the number for second time and to give to P.W.1. Further, the prosecution has not placed any materials before the Court to prove that the hand writing in Exs.P11 and P14 are that of the accused. The Inspector of Police who deposed as P.W.12 stated in his cross examination that no expert opinion from handwriting expert was obtained in respect of Exs.P11 and P.14. It is further admitted by P.W.12 that he did not take down any writing of the accused to compare it with Exs.P11 and P14. It is also admitted by him that no call details of the M.O.4 simcard secured from the accused was obtained by him. In such circumstances, doubt arises as to whether really the above said Exs.P11 and P14 chits containing phone number was given by the accused to P.W.1. In such circumstances, doubt arises as to whether really any demand was made by the accused to P.W.1 as claimed by the prosecution. In the light of the above said discussion, it is clear that the factum of demand of illegal gratification by the accused is not established by the prosecution beyond reasonable doubt.

22. As stated earlier, during the trap proceedings, the trap witness P.W.2 has categorically stated that he was standing out

side the house of the accused, when the complainant went inside. Thus, he is unaware as to what happened inside the house. Therefore, P.W.2's evidence has no use to prove the alleged demand made by the accused. Admittedly, the application was submitted through P.W.8/Vijayaraj only. P.W.1 claims that he is the power agent of the shop owner P.W.10 and produced general power of attorney given to him as Ex.P10. However, P.W.1 admitted in his cross examination that as per the said power deed, he is authorised to conduct the civil suits in O.S.No.164 of 2006 and O.S.No.4 of 2005 pending in the Court at Thiruttani and no authority was given to him to initiate action to renew the licence for the pawn broker shop. He also admitted that P.W.10 Manicka Chand Jain alone signed in the application and challan relating to renewal of licence. Likewise, P.W.7 also admitted in his cross examination that in Ex.P10 general power of attorney deed, his father has mentioned two civil suits and gave power to P.W.1 to conduct those cases. It is also admitted by P.W.7 that nothing is mentioned in Ex.P10 about giving power to P.W.1 to deal with the renewal of licence. Further, P.W.7 stated that his father alone signed in the renewal application as well as the challan and paid the amount. It is the admission of P.W.7 that his brother P.W.1 has not signed in any papers relating to renewal of licence as power agent of his father. Thus, it is evident that P.W.1 was not authorised to act on behalf of P.W.10 in respect of renewal of licence and in such circumstances his claim that he approached the accused for renewal of licence and at that time bribe amount was demanded by the accused appears to be doubtful and his evidence is no use to prove the prosecution case.

23. It is the contention of the learned counsel appearing for the appellant that as the order of stay passed by the RDO was communicated to P.W.10 by the accused and he refused to renew the licence inspite of repeated request by P.W.10, a false complaint has been lodged against him. It is also pointed out that P.W.1 has nothing to do with the pawn broker business at Thiruttani and he is a resident of Chennai and only to harass the accused, P.W.1 was summoned by his relative P.W.10 and a false complaint has been lodged through him. P.W.1 has admitted in his cross examination that he is residing in Chennai and nothing is stated by him about carrying on any business in Thiruttani. P.W.7 stated that P.W.1 is carrying on pawn broker business in Chennai and there is no shop for him at Thiruttani. P.W.7 further stated that there is no other business for P.W.1 at Thiruttani. It is also pointed out that P.W.1 was having bad antecedents and his evidence is not reliable one.

24. Taking into consideration the discrepancies in the prosecution side evidence on discussed above and the fact that

P.W.1 is no way connected with the business of P.W.10 and he is not authorised under Ex.P10 general power of attorney deed to do anything in connection with the pawn broker business of P.W.10 and the fact that the renewal application was given through P.W.8 only and he has not stated anything about the accused making any demand of bribe and his admission that the licence was not renewed only because of the fact that the renewal application was misplaced and also the evidence before the Court that there was a dispute between P.W.10 and his landlord regarding the tenancy of the premises where, the pawn broker shop business was carried on and due to that dispute, the licence was not renewed, the claim of the prosecution that the accused demanded and accepted the illegal gratification amount of Rs.15,000/- is not established beyond doubt by the prosecution.

25. It is therefore clear from the discussion stated above that the prosecution has failed to prove the fact of demand and acceptance of Rs.15,000/- 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.

26. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Special Judge/Chief Judicial Magistrate, Thiruvallur, in Special Case No.2 of 2008 dated 06.03.2012 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.

22.08.2017

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To

1.The Chief Judicial Magistrate,
Thiruvallur.

2.The Inspector of Police,
Vigilance & Anti Corruption,
Head Quarters, R.A. Puram,
Chennai-600 028.

3.The Public Prosecutor,
High Court, Madras.

S.BASKARAN.J.,

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Pre-Delivery Judgment in
Crl.A.No.219 of 2012

22.08.2017

Pre-Delivery Judgment in

Crl.A.No.219 of 2012

Hon'ble Mr.Justice S.BASKARAN

Most respectfully submitted

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P.A.