

Bail Slip

The Appellant/Accused viz Shanmugaraj, was directed to be released on bail as per order of this Court dated 01.02.2016 and made in Crl.M.P. No 907/2016 in Crl.A. 65 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 03.03.2017	Date of pronouncing the Judgment : 28.07.2017
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CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.A.No.65 of 2016

S.Shanmugaraj ... Appellant/Accused

Vs

State

rep. By the Inspector of Police

Vigilance and Anticorruption

Kancheepuram -Detachment

(Cr.No.3/AC/2004/KPM)

... Respondent/Complainant

Appeal filed u/s.374 (2) Cr.P.C., against the conviction and sentence made in Judgment in Special Case No.22 of 2006 on the file of Special Judge and Chief Judicial Magistrate, Thiruvallur, dated 06.01.2016.

For Appellant : Mr.D.Veerasekaran

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

JUDGMENT

The appellant is the sole accused in Special Case No.22 of 2006 on the file of Special Judge and Chief Judicial Magistrate, Thiruvallur. The appellant stood charged for offence under Section 7 and 13(2) read with 13 (1)(d) of Prevention of Corruption Act, 1988 (hereinafter called as "Act"), and by judgment dated 06.01.2016, the trial court found the accused guilty and convicted him on both charges and sentenced him to undergo 1 year R.I., and to pay a fine of Rs.1,000/- in default to undergo 3 months

S.I., u/s.7 of the Act and also further convicted him to undergo 2 years R.I., and to pay fine of Rs.1000/- in default to undergo 3 months S.I., u/s.13(2) r/w.13(1)(d) of Act. Aggrieved over the same, the sole accused/appellant has come forward with this criminal appeal, challenging the said conviction and sentence.

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

2.1. P.W.2 P.Pandu @ Pandurangan is a native of Arumbakkam Village, Tiruttani Talunk. His maternal grand mother Lakshmi Ammal died on 06.09.1970 and she was having 1 acre 2 cents in her name. Subsequent to her demise, P.W.2's mother i.e., daughter of the said Lakshmi Ammal also passed away. P.W.2 is the only legal heir for his mother and he is entitled for the said property of 1 acre 2 cents. In respect of the said land, Civil Suit in O.S.No.97 of 2003 was pending between P.W.2 and one Sambasivam on the file of District Munsif Court, Tiruttani. In connection with the said suit, P.W.2 applied for death certificate of Lakshmi Ammal and legal heir certificate in the Taluk Office of Tiruttani on 20.04.2004. P.W.2 went to the said office at 11 am., on 23.06.2004 and met the accused/appellant herein working as Junior Assistant in the said office.

2.2. P.W.2 in his evidence has stated that the accused demanded Rs.100/- as illegal gratification from him for issuing death certificate and the accused asked P.W.2 to give him the amount at 4 p.m., in the office on 24.06.2004. Since P.W.2 was not inclined to pay the said amount, he went to the office of Vigilance and Anti corruption, Kancheepuram, and lodged Ex.P.2/complaint before the Inspector of Police viz., Malaichamy who deposed as P.W.7. The oral complaint given by P.W.2 was reduced into writing by P.W.7 and the same is marked as Ex.P.2.

2.3. P.W.7 Inspector of Police-Malaichamy stated in his evidence that while he was on duty in Vigilance and Anti Corruption case, Kancheepuram, on 24.06.2004 at 11.30 a.m., the complainant Pandu @ Pandurangan of Arumbakkam Village came to office and gave Ex.P.2/complaint and on receipt of the same, he registered FIR Ex.P.10 in Crime No.Cr.No.3/AC/2004/KPM under Section 7 and 13(2) r/w.13(1)(d) of the Act. Immediately he arranged for trap proceedings and secured trap witnesses P.W.3 Sarkkarai and another witness Gothandaraman. According to him, he introduced the complainant to the said two trap witnesses and explained to them the trap proceedings. The two fifty rupees notes given by the complainant was applied with phenolphthalein powder and he was instructed to handover

the same to the accused only if he demanded the same for issue of death certificate and the Mahazar prepared by him is Ex.P.3. P.W.7 further stated that after explaining to the complainant and the trap witnesses the details of Trap proceedings, all of them left for the Taluk Office, Tiruttani, and reached there by 4 p.m. The witness who accompanied the complainant to the Trap Proceedings, who deposed as P.W.3, corroborated the said statement of P.W.7.

2.4. P.W.2 the complainant stated that after observing the trap proceedings explained to himself and P.W.3 in the office of P.W.7, they left for Tiruttani Taluk Office around 2.45 pm., and on arrival himself with P.W.3 Sarkkarai went inside the Taluk Office. On seeing him, the accused asked whether he has brought Rs.100/- and demanded the same; immediately he handed over Rs.100/- and the accused received it and put it down on the right side table drawer and thereafter P.W.2 gave signal as arranged earlier and the trap team rushed and secured the accused and also recovered the M.O.1 amount. P.W.3 also stated likewise in his deposition.

2.5. P.W.7 the Inspector of Police stated after P.W.2 gave the pre- arranged signal, he rushed into the Taluk Office, Tiruttani, and enquired the accused and introduced himself and the other trap witnesses. He also requested Head Quarters Deputy Tahsildar P.W.4 Ramabiran to be present during the Trap proceedings. He enquired the accused and asked about Rs.100/- and the accused admitted receiving the same and handed over the same from the right side drawer of the table and recovered the amount which is M.O.1. P.W.7 also recovered the file containing the application given by P.W.1 seeking death certificate for Lakshmi Ammal under mahazar and the said Mahazar is Ex.P.4. The rough sketch of the place prepared by P.W.7 is Ex.A.13. Thereafter, he secured the accused, took him to his residence and the search list Ex.P.5 was prepared by him. Thereafter the case was handed over to P.W.8 for further enquiry by P.W.7 as per the direction of Higher Authority.

2.6. The trap witness P.W.3 also stated about the trap proceedings and recovery of amount and corroborated the version of P.W.7.

2.7. P.W.4 Ramabiran stated that on 20.04.2004, he was working as Head Quarters Deputy Tahsildar in Taluk Office, Tiruttani, and the accused was working as Junior Assistant in A-7 seat in the same office. According to him, the death of one Lakshmi Ammal the maternal grandmother of the complainant viz., Pandu @ Pandurangan of Arumbakkam Village was not recorded. Thereafter P.W.2 Pandu @ Pandurangan obtained necessary orders from Judicial Magistrate Court,

Tiruttani, about the death of Lakshmi Ammal and the same was forwarded to Revenue Inspector of Kanakamma Chathiram and on receipt of his report dated 21.04.2004, the Tahsildar gave directions on 17.06.2004 to the Village Administrative Officer, to make necessary entry in the concerned Register. Accordingly after making entry of death of Lakshmi Ammal in the Register, on 22.06.2004, the same was submitted by Village Administrative Officer. On 23.06.2004, the accused Shanmuga Raj obtained his signature in the death certificate. On 24.06.2004 around 4.30 pm., while P.W.4 was in office, the respondent police informed him about arrest of accused/Shanmugaraj and asked him to be present. P.W.4 deposed about the trap proceedings. He also stated that the file secured by P.W.7 containing the application of the complainant and other relevant papers is Ex.P.6.

2.8. The Chemical analyst who deposed as P.W.6 stated that the material objects relating to Vigilance and Anti corruption, Kancheepuram, in Crime No.Cr.No.3/AC/2004/KPM was received with requisition letter dated 28.06.2004 and after conducting chemical analysis, the report submitted by her is Ex.P.9. The request letter sent by Chief Judicial Magistrate, Chengelpet, is produced as Ex.P.8. According to P.W.6, in the solutions tested by her, phenolphthalein and sodium carbonate was found out.

2.9. P.W.8 the then Inspector of Police stated that on 25.06.2004, he took up the case in Crime No.Cr.No.3/AC/2004/KPM for further investigation and examined the witnesses on various dates and on completion of enquiry, laid the charge sheet against the accused under sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, after obtaining necessary sanction order from P.W.1 Venkatachalam. The said sanction order is Ex.P.1.

3. Based on the above material, the trial court framed charges against the accused as stated above and the same was denied by the accused. The prosecution in order to prove the guilt of the accused examined P.Ws.1 to 8 and produced Exs.P.1 to P.15 and M.Os.1 to 3. The accused examined D.W.1 on his side. He did not produce any documentary evidence.

4. The complainant who deposed as P.W.2 stated that on 23.06.2004, he went to the Taluk Office, Tiruttani, in connection with obtaining Death Certificate of his maternal grandmother Lakshmi Ammal, he met the accused who was working as Junior Assistant at 11 a.m., and the accused asked for Rs.100/- as illegal gratification for issuing

death certificate. P.W.1 stated that as he was not willing to pay the amount, he lodged Ex.P.2 complaint to the Police.

5. As stated earlier, P.W.7 Inspector of Police who registered the complaint has stated that he laid the trap proceedings and the accused was secured following the completion of trap proceedings. The official witness for the trap proceedings who deposed as P.W.3 stated that he was summoned to the office of P.W.7 on 24.06.2004, wherein, he was introduced to complainant P.W.2 Pandu @ Pandurangan and went through the complaint given by P.W.2. He also mentioned about P.W.7 Inspector of Police explaining them about trap proceedings. Likewise P.W.2 and other witnesses as well as P.W.7 Inspector of Police stated about the occurrence in the Office of accused, wherein, a sum of Rs.100/- was paid to the accused by the complainant P.W.2. P.W.4 Head Quarters Deputy Tahsildar also spoke about the occurrence dated 24.06.2004 in his evidence. P.W.5 the then Village Administrative Officer of Arcot Village stated that as per the orders passed by Judicial Magistrate, Tiruttani, he made necessary entries in the death register about the death of Lakshmi Ammal of Arumbakkam Village and produced the extract of death certificate as Ex.P.7. P.W.6, the Forensic Expert deposed about analysing the solutions sent by the respondent police and finding out the presence of chemical substance as stated in Ex.P.9-Chemical Analysis Report. P.W.7 who registered the case and conducted trap proceedings has deposed in detail about the trap as well as the arrest of the accused herein. P.W.8 the Inspector of Police who completed the enquiry, laid the charge sheet has deposed about obtaining necessary sanction from the authority concerned and laying of the charge sheet against the accused herein. P.W.1 deposed about according necessary sanction to prosecute the accused as evidenced by Ex.P.1 for the offences under Sections 7, 13(2) r/w.13(1)(d) of the Prevention of Corruption Act.

6. When the above incriminating materials were put to the accused during enquiry under Section 313 Cr.P.C., he denied the same as totally false. The accused examined one witness on his side and his defence was that he never demanded and received any sum as illegal gratification as alleged by the prosecution.

7. After considering both the documentary and oral evidence placed before it, the trial court found the accused guilty of the offence and convicted him as stated

in paragraph 1 of this judgment. Challenging the same, the appellant/accused is before this court with this criminal appeal.

8. The learned counsel for the appellant/accused contended that unless it is alleged and proved that the accused demanded and received illegal gratification, he cannot be held to be guilty of any offence and in the case on hand, there is no acceptable evidence to prove the fact of demand by the accused and the same has not been looked into by the trial court properly. It is further contended that the court below failed to appreciate the contradiction in the evidence of P.W.2 Pandu @ Pandurangan and the official witness of the trap proceedings P.W.3 Sarkkarai. When there was so many contradictions, the failure of the prosecution to examine the other official witness L.W.4 Gothandaraman will be fatal to the prosecution case. The fact that immediately after trap proceedings, statement of the accused was not recorded by the official concerned is also fatal and the same was not appreciated by the trial court. The report relating to enquiry about death of Lakshmi Ammal was submitted on 22.06.2004 by the concerned Revenue Inspector and the death certificate was ready on 23.06.2004 itself, even before the date of trap proceedings and as such the claim of the prosecution that the accused demanded and received illegal gratification on 24.06.2004 is unsustainable. The trial court also failed to appreciate the fact that P.W.3 Sarkkarai, the official witness to the trap proceedings has himself faced trial before the Special Court constituted under the Prevention of Corruption Act at Kancheepuram as per his evidence. The trial court failed to see the fact that Rs.100/- collected by P.W.2 Pandu @ Pandurangan was towards donation for the flag day and as the same is proved with evidence, the same will be fatal to the prosecution case. In such circumstances, the learned counsel for the appellant pleaded that the finding and conclusion arrived at by the trial court is not supported by acceptable evidence and guilt of the accused is not proved beyond reasonable doubt and for these reasons seeks to entertain the appeal and to set aside the conviction and sentence imposed by the trial court. Thus the prime contention of the learned counsel for the appellant is that there was no demand by the accused and in the absence of any proof of such demand of illegal gratification, the prosecution case has to fail.

9. In the light of the said submission of the learned counsel for the appellant/accused, it is to be seen whether

there is enough evidence on record to prove that the appellant/accused really demanded any amount as illegal gratification from the complainant/P.W.2 and accepted the same from P.W.2.

10. According to P.W.2, his maternal grandmother Lakshmi Ammal died on 06.09.1970 leaving behind landed property of 1.2 cents. Subsequently, the mother of P.W.2 viz., Rajammal also died and as such P.W.2 is the only legal heir for the property left behind by Lakshmi Ammal. In respect of the said property, civil suit was pending on the file of District Munsif Court, Tiruttani between one Sambasivam and P.W.2 Pandu @ Pandurangan, the complainant herein. In that regard, P.W.2 Pandu @ Pandurangan, in order to get death certificate and Legal Heir Certificate of Lakshmi Ammal submitted an application to the Taluk Office, Tiruttani, on 20.04.2004. In connection with that, he went to the Taluk Office on 23.06.2004 and approached the accused herein who was working as Junior Assistant in the said office and he demanded Rs.100/- as illegal gratification for issuing the death certificate. Thus the said claim of P.W.2 is to be analysed and ascertained as to whether it is true and corroborated by other evidence.

11. In Ex.P.2 complaint lodged by P.W.2 Pandu @ Pandurangan, it is stated that on 23.06.2004, at 11 a.m., he went to Taluk Office, Tiruttani, and met the accused Shanmugaraj in his seat; the accused demanded Rs.100/- as illegal gratification for discharging his duties relating to issue of death certificate and to place the file before Tahsildar and sought for payment of such amount in his office after 3 pm., on 24.06.2004. Thus in the complaint Ex.P.2 it is stated that the accused demanded Rs.100/- from P.W.2 for submitting the papers to Tahsildar, who is the Issuing authority for death certificate. P.W.2 in his chief examination has stated that on 23.06.2004, when he met the accused in his office at 11 a.m., he demanded Rs.100/- for issuing death certificate. However, the official witness to the trap proceedings P.W.3 Sarkkarai has stated in his chief examination that he accompanied P.W.2 to Taluk Office at 4 pm., and when they met the accused he asked P.W.2 Pandu @ Pandurangan as to why he came so late and immediately Pandurangan admitting that he is late handed over the amount of Rs.100/- to the accused. The same was received by the accused and he kept it in the right side drawer of the Table. According to P.W.3, the accused only asked why P.W.2 came late and P.W.2 without any other question, handed over the amount to the accused. In the

cross examination also, P.W.3 repeated the same and stated that apart from asking P.W.2 as to why he has come late, the accused did not ask anything else and there was no discussion amongst them. Thus the evidence of official witness to trap proceedings viz., P.W.3 does not mention anything about the demand of illegal gratification by the accused on the occurrence day. It is further contended by the learned counsel for the accused that the claim of the prosecution that on 23.06.2004, the complainant P.W.2 went to the office of the accused and met him, itself was false and in support of that he relied upon the evidence of P.W.2 himself. In his evidence, P.W.2 stated that he did not go to Taluk Office on 22.06.2004 but went there on 23.06.2004 around 11 a.m., and met the accused. However, during his cross examination, P.W.2 stated that he left his home at 9.30 a.m., on 23.06.2004 and reached the Taluk Office at 11 a.m. According to him, there is only bus service from his village in the morning at 7.30 a.m., and thereafter the next bus service is at 5 pm., only. He also stated that he do not know by which bus he came to Tiruttani Taluk Office on 23.06.2004. Further P.W.2 also stated that on the next day morning, he left home in cycle by 7.00 a.m., and went to Arcot kuppam and after leaving the bicycle in the usual place, left for Kancheepuram by bus from there. However, P.W.2 stated that he cannot disclose as to in whose place, he left the bicycle. Thus P.W.2 statement is categorical that he left his cycle only at 9.30 a.m., and reached Tiruttani by 11.30 a.m and admittedly only one bus service is available in the morning time from his village i.e., at 7.30 a.m. Hence, doubt arises as to whether really he could have gone to the office of the accused on 23.06.2004 at 11 a.m., as claimed by him. In such circumstances, doubt arises as to whether really any demand for illegal gratification was made by the accused on that day as alleged in Ex.P.2 complaint.

12. Further, the learned counsel for the appellant pointed out that the contents in Ex.P.2 complaint was not written by P.W.2 complainant and the admission of P.W.2 in his cross examination about the same has to be taken into consideration. P.W.2 in his chief examination has stated on 24.06.2004, he went to the office of Vigilance and Anti corruption, Kancheepuram, and orally informed P.W.7 Inspector about the accused demanding Rs.100/- and the complaint was reduced into writing by P.W.7 himself wherein, he has signed. The said complaint is Ex.P.2. On the otherhand, P.W.2 in his cross examination has stated that he has studied upto 6th standard and he will only sign

and he do not know the meaning of O.S., and V.A.O., stated in English. P.W.2 has also stated that he has filed civil suit in respect of his property and informed the police about filing of the said civil suit but as he does not remember the suit number, he did not furnish the details of the suit to the Police. He also stated that another civil case was filed by Sambasivam and he is unaware of the said suit number and he did not inform the police about the same. P.W.2 also stated that he does not know Tamil and English and as such he cannot read the contents in Ex.P.2 complaint. Thus pointing it out, the learned counsel for the appellant/accused contended that in Ex.P.2, the contents regarding suit number and other particulars are mentioned and since P.W.2 has categorically admitted that he is unaware of numbers of Civil Suit filed by him and Sambasivam, and has not informed the police about it, it is clear that the contents in Ex.P.2 complaint were not written on the basis of P.W.2's oral statement but otherwise and the same itself will go to show that Ex.P.2 complaint is not a genuine and true one. In the light of the above said categorical admission of P.W.2 and Ex.P.2 complaint consists of O.S.Number, survey number and other details of the suit property in O.S.No.97 of 2003, the contention of the learned counsel for the appellant appears to be just and acceptable.

13. Further the genuineness of the evidence of P.W.3 is also questioned by the learned counsel for the appellant. P.W.3 in his cross examination has stated that he was employed in Khadhi Grama Industrial Board and now suspended on the basis of complaint lodged by one Ram of Malleswaram Village and a case was registered against him on the ground that he demanded a sum of Rs.1000/- as illegal gratification to finish the work of said person, and the same is pending before Chief Judicial Magistrate, Kancheepuram. P.W.3 also admitted that he was arrested in the said case. Thus the learned counsel for the appellant contended that since P.W.3 is an accused in an other case filed by the Respondent herein, the Vigilance and Anti-corruption, Kancheepuram, the evidence of P.W.3 cannot be relied upon as an independent dependable evidence and the said contention has to be accepted. Pointing out the contradiction in the evidence between P.W.2 and 3 about the accused asking for illegal gratification, the learned counsel for the appellant contended that in the absence of any evidence to prove the factum of demand by the appellant, even if any amount was recovered from him, he cannot be found guilty under Section 7 and 13 of the

Prevention of Corruption Act and in support of the same, he relied upon the Ruling of the Supreme Court in the case of P.Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another reported in (2015) 10 Supreme Court Cases 152, wherein, it is held as follows:-

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

In the case on hand also, as stated above, the official witness for trap proceedings P.W.3 has not stated anything about any demand being made by the accused for illegal gratification. Further in the light of the admission by P.W.2 about he being unaware of the contents in Ex.P.2 as stated above, doubt arises as to whether really the complaint was written down as instructed by P.W.2. In such circumstances, it is clear that the prosecution has not let in acceptable substantial evidence to establish the fact of demand of illegal gratification by the accused from P.W.2.

14. Admittedly, the appellant herein was working as Junior Assistant and the issuing authority for death certificate and Legal Heir Certificate is only the Tahsildar and not the accused herein. The complainant who deposed as P.W.2 has stated that he submitted the application for death certificate on 20.04.2004 and thereafter frequently visited the office for two months. According to him, when he first submitted application, the accused was not in that seat, but one Manivel was in charge of the said seat. Further P.W.2 stated that on 10.06.2004, when he went to the Taluk Office, the accused was not looking after the said seat, but someone else was there in the said seat. Again on 17.06.2004, when he went there, the accused was present in the seat. Thus, after the application for death certificate was submitted, i.e., on 20.04.2004 and from that date till 17.06.2004, the

appellant was not looking after the particular seat. The Deputy Thasildar, Head Quarters, Tiruttani, who deposed as P.W.4 stated that the death of Lakshmi Ammal on 06.09.1970 was not registered and therefore subsequently as per the direction of Judicial Magistrate, Tiruttani, an application was submitted to register the death and the same was forwarded to Revenue Inspector of Kanakamma Chathiram and his report was received on 21.04.2004 and on the basis of the same, the Tahsildar concerned directed the Village Administrative Officer to make necessary entry in the concerned register by order dated 17.06.2004 and accordingly, the V.A.O., made necessary entries in the death register on 22.06.2004 and on that basis, the accused herein obtained necessary certificate from P.W.4, the Head Quarters Deputy Tahsildar on 23.06.2004. Pointing it out, the learned counsel for the appellant contended that even prior to the alleged trap proceedings on 24.06.2004, the death certificate has been made ready on 23.06.2004 itself and in such circumstances, the claim of the prosecution that the accused demanded and received Rs.100/- as illegal gratification from P.W.2 on 24.06.2004 is unbelievable and unacceptable. Pointing it out, the learned counsel for the appellant further contended that only if the accused is in the position to do some favour and for doing so, if he has demanded and received some amount, it would amount to illegal gratification and in the case on hand, the accused has no power to issue death certificate or legal heir certificate as demanded by P.W.2 and further as the same has been made ready even prior to 24.06.2004, the question of receiving illegal gratification will not arise and in support of the same, the learned counsel for the appellant relied upon the Ruling of this court in the case of R.Venkatraj Vs. State rep. By the Inspector of Police, Vigilance and Anti corruption Wing, Virudhunagar district reported in 2012(1) MWN (Cr.) 448., wherein, it is held as follows:-

"14. The learned counsel for the appellant also says that only if the Accused has been in possession to do some favour to a person and for doing such favour, if he has received the amount, it would amount to remuneration and such a remuneration could be termed as "illegal gratification" as held in P.Meganathan Vs. State of Tamil Nadu, 2010 (1) MWN (Cr.,) 454 (supra) and that in this case, it is for the Village Administrative Officer and Revenue Inspector concerned to give report to the Tahsildar for grant of Legal Heirship Certificate and the

appellant had no control over P.W.1 for grant of certificate and hence, the receipt of money, even if it is received by the appellant from P.W.1 could not be termed to be a illegal gratification."

Following the said Ruling, in the case on hand also, as the accused is not in a position to do any favour to the complainant herein, the case of the prosecution, that the accused demanded and received illegal gratification from P.W.2 cannot be acceptable and the same has to fail.

15. The learned counsel for the appellant also pointed out that at the relevant point of time, the Revenue Officers were making collection from the public coming to their office towards Flag Day collection and the accused was also directed by the higher officials to do so and in such circumstances, the claim of the prosecution that he demanded and accepted Rs.100/- as illegal gratification is totally false. It is also pointed out that the accused was seated near Head Quarters Deputy Tahsildar and number of other officials were also seated around him and it is unbelievable that he could have received the same in such a place. The complainant P.W.2 in his cross examination stated that in Tiruttani Taluk Office, number of staff members were seated around the seat of the accused and the Head Quarters Deputy Tahsildar was also sitting near the accused only. Further P.W.1 Venkatachalam, the Authority who gave sanction for prosecuting the accused has stated that normally the Government of Tamil Nadu will fix the amount to be collected by the District Collector for Flag Day, who in turn, will direct the officials working under him to collect the amount proportionately. Likewise, P.W.4 Head Quarters Deputy Tahsildar of Tiruttani also stated in his cross examination that in all Taluk Offices, Flag day collection was used to be made. He also stated after his signature was obtained by the accused in the Death Certificate dated 23.06.2004 there was no delay on the part of the accused regarding the issuance of said certificate. Thus, in the light of the above said evidence, the claim of the accused/appellant that the amount recovered from him is only the amount collected towards Flag Day collection and there is no demand of illegal gratification by him towards issue of Death certificate to P.W.2 is just and acceptable. Considering the above said factors, the contention of the learned counsel for the appellant appears to be just and appropriate and it is clear that the prosecution has failed to establish the fact of demand of illegal gratification by the accused.

16. Further it is pointed out that in the course of the trap proceedings, the Trap laying Officer has failed to record the statement from the accused at the time of his arrest under Rule 47 of DVAC Manual and the same is fatal to the prosecution. P.W.7 the Trap Laying Officer has not stated anything specifically in his evidence about the recording of statement of the accused at the time of arrest of the accused. The learned counsel for the appellant, in support of the said contention, relied on judgment of this court rendered in the case of R.Venkatraj Vs. State rep. By Inspector of Police, Vigilance and Anti corruption Wing, Virudhunagar District, reported in 2012(1) MWN (Cr.)448 and contended that the failure to record the statement of accused at the time of arrest is fatal to the case. The same will apply squarely to the facts of the case on hand and on that ground also the case of the prosecution is unsustainable.

17. In the light of the above said discussion, the demand for bribe by the accused has not been properly established by the prosecution particularly under the circumstances stated by P.W.2 about his meeting of the accused/appellant on the first occasion. Further the accused is not the authority to issue death certificate and in such circumstances, even if any remuneration was received by him, the same could not be termed as illegal gratification. Further, there is no material on record to show that the statement of the accused was recorded immediately after the arrest and such irregularity is fatal to the prosecution case. Further as discussed earlier, in view of admission of P.W.2 about furnishing particulars to the Police and his admission in cross examination that he was examined by the Police that too for 1 ½ hours and the complaint was written by P.W.7 Malaichamy and the admission of P.W.2 that he is unaware of Suit Numbers which are mentioned in the complaint as well as about not knowing Tamil and English language, doubt arises about the genuineness of the contents of Ex.P.2 complaint itself. In such circumstances, this court is of the view that the charges framed against the accused has not been proved beyond reasonable doubt and as such, the charge against the appellant/accused cannot be accepted as proved and the reasons stated by the trial court for arriving at the conclusion that the accused is guilty of the offence alleged by the prosecution is unsustainable and the same is liable to be set aside.

18. In the result, the criminal appeal is allowed. The conviction and sentence passed in Sessions Case No.22 of 2006 passed by Special Judge cum Chief Judicial Magistrate, Thiruvallur, dated 06.01.2016 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.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

nvsri

To

1. The Special Judge cum Chief Judicial Magistrate, Thiruvallur.
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police Vigilance and Anti Corruption Kancheepuram Detachment.
4. The Section officer, V.R.Section, High Court, Madras.

+1 CC to Ms. D. Veerasekaran, advocate s 53895

सत्यमेव जयते

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Cr1.A.No.65 of 2016

MP (CO)
sp(24/08/2017)