

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.09.2017

PRONOUNCED ON : 19.09.2017

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Criminal Appeal No.790 of 2008

N.Chandran

.. Appellant

Vs

The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Cuddalore,
Crime No.5 of 2002

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment dated 30.10.2008 in Special Case No.1 of 2003 on the file of the learned Special Judge cum Chief Judicial Magistrate, Cuddalore District, Cuddalore.

For Appellant

: Mr.S.Ashok kumar,
Senior Counsel, for
Mr.K.Govindan

For Respondent

: Mr.R.Ravichandran,
Government Advocate (Crl.side)

JUDGEMENT

This Criminal Appeal is filed against the judgment dated 30.10.2008 in Special Case No.1 of 2003 on the file of the learned Special Judge cum Chief Judicial Magistrate, Cuddalore, Cuddalore

District. The convict is a Village Administrative Officer for receiving Rs.500/- as bribe for issuance of Death Certificate.

2.The case of the prosecution, unfolds, as below:-

Mr.Anthonysamy, the husband of Mrs.Selinprema died on 04.11.2001. Mr.Anthonysamy had some immovable properties in his name. To change the name in the patta, Mr.Amalanathan, the father of Mrs.Selinprema, applied for Mr.Anthonysamy's Death Certificate and Legal Heir certificate on 21.03.2002. The Thasildar, Kattumannarkoil received the applications and put his initial on it and directed the applicant Mr.Amalanathan to meet the Village Administrative Officer, Kattumannarkoil.

3.Accordingly, on the next day (22.03.2002), Mr.Amalanathan met Mr.N.Chandran (the appellant herein) the Village Administrative Officer concerned, in his office at Vadakkupalyamkottai Village and handed over the applications for death certificate and legal heir certificate along with the letter of the Thasidar to process the applications. The appellant has returned the applications to Mr.Amalanathan demanding bribe of Rs.2000/- to issue legal heirship certificate and Rs.500/- to issue death certificate.

4. On 28.03.2002 at about 20.00 hrs, Mr. Amalanathan had went to the residence of the appellant at No.21, Keezhamada Veethi, Sirmushnam, Kattumannar koil Taluk along with the applications. At that time, the appellant has received the application for death certificate and Rs.250/- and returned the application for legal heirship certificate, with instruction to bring it back with the balance amount demanded earlier. Again on 02.04.2002, Mr. Amalanathan went to the appellant house and expressed his inability to pay the money demanded. For which, the appellant has asked Mr. Amalanathan to bring Rs.500/- and met him on the next day at 8.00 am, at his house.

5. Unwilling to pay bribe, Mr. Amalanathan has preferred a written complaint on 02.04.2002 at 20.00 hours to the Vigilance & Anti Corruption Department, Cuddalore, informing about the demand of illegal gratification for issuing death certificate. The respondent police has registered the complaint and had laid trap. As instructed, the defacto complainant along with shadow witness had gone to the appellant house on 03.04.2002 at about 9.30 hours. The appellant had demanded and obtained Rs.500/- from the defacto complainant as illegal gratification and was caught red handed by the Trap Laying Officer and his team.

6.The trial Court has framed two charges, one under section 7 of Prevention of corruption Act, for demand and acceptance of illegal gratification and the second under section 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, for criminal misconduct viz, obtaining pecuniary advantage by abusing his position as a 'public servant'.

7.The prosecution to prove the charges had examined 16 witnesses; marked 25 documents and 3 material objects through these witnesses. On behalf of the accused/appellant 4 exhibits were marked.

8.The trial Court after appreciation of the ocular and documentary evidences had held the accused guilty of both charges and sentenced him to undergo rigorous imprisonment for 6 months and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for 3 months for the offence under Section 7 of the Prevention of Corruption Act and rigorous imprisonment for 1 year and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for three months for the offence under section 13 (1)(d) r/w 13 (2) of the Prevention of Corruption Act.

9. The trial Court judgement is challenged on the ground that, the defacto complaint had turned hostile and in his evidence, has deposed that, the appellant did not issue death certificate and the legal heirship certificate and was delaying the process, so to wreak vengeance, he gave the complaint. The demand and acceptance of illegal gratification by the appellant not been proved by credible evidence. The prosecution version of obtaining pecuniary advantage by abusing the official position of the appellant as 'public servant' lacks corroboration. PW-2, during cross examination has admitted that he planted the tainted money in the shirt pocket of the appellant when the appellant was away. The evidence of Mr. Palraj (PW-3) is unreliable and unbelievable since, he did not accompany the defacto complainant - PW-2 into the house of the appellant. It is elucidated through cross examination of PW-2 that the accompanying witness PW-3 was standing away from the appellant house. So the probability or possibility of witnessing the transaction and conversation is highly remote to infer. The evidence of PW-3 has to be looked into with suspicion since, he had been tutored to support the prosecution.

10. PW-1 – Mr. Nagarajan, the Revenue Divisional Officer who

has issued the sanction order - Ex P-1 to prosecute the appellant had turned hostile and during cross examination he has admitted that he is not the authority competent to remove the Village Administrative Officer/appellant. Further, the order sanctioning prosecution lacks application of mind and subjective satisfaction of the authority on objective assessment of materials relevant to accord sanction.

11.To buttress his submission, the learned counsel for the appellant relied upon the following dictum laid down by the Hon'ble Supreme Court in the judgment **Subash Parbat Sonvane -vs- State of Gujarat reported in (2002) 5 SCC 86)** wherein, the Hon'ble Apex court has held as follows:-

"6. In Sections 7 and 13(1)(a) and (b) of the Act, the legislature has specifically used the word "accepts" or "obtains". As against this, there is departure in the language used in sub-section (1)(d) of Section 13 and it has omitted the word "accepts" and has emphasized the word "obtains". Further, the ingredient of sub-clause (i) is that by corrupt or illegal means, a public servant obtains any valuable thing or pecuniary advantage; under sub-clause (ii), he obtains such thing by abusing his position as a public servant; and

sub-clause (iii) contemplates that while holding office as a public servant, he obtains for any person any valuable thing or pecuniary advantage without any public interest. Therefore, for convicting the person under Section 13(1)(d), there must be evidence on record that the accused "obtained" for himself or for any other person, any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest."

After settling the legal position as stated above, while deciding the case based on facts, has concluded as follows:-

"10. In the background of the aforesaid settled legal position, we would now refer to the relevant part of the evidence. Before the trial court, it was submitted by the learned APP that the complainant has not supported the prosecution case on the main ingredients of demand and acceptance and was treated hostile. In cross-examination also, he has not supported the prosecution version on demand or acceptance of the amount. The trial court has also observed that the complainant deliberately does not support the points of

demand and acceptance. However, the Court relied upon the evidence of panch Shailesh Devshankar Pandya (PW 2). We were taken through the evidence of PW 2 Pandya and from his evidence, it is difficult to find out any statement made by him that the accused demanded any amount from the complainant. The relevant part of the evidence of this witness suggests that when the prosecution party went to the police chowki, the accused asked the complainant as to why he had come there at that time. To that, the complainant replied that he was waiting since one o'clock and that he has brought one witness to be examined. The accused informed him to come in the evening as his writer was not present. When the accused started to go towards the toilet, the complainant followed him and he gave something from his pocket to the accused who took the same and put that in his pocket. From this evidence, it cannot be inferred that the accused demanded any amount from the complainant or that he had obtained the same. It is apparent that the trial court and the High Court misread the evidence of PW 2 and held that there was demand by the accused and the amount was paid to him by the complainant. It was unreasonable to hold that the accused demanded money from the complainant. The

complainant denied the said story and PW 2 had not stated so.”

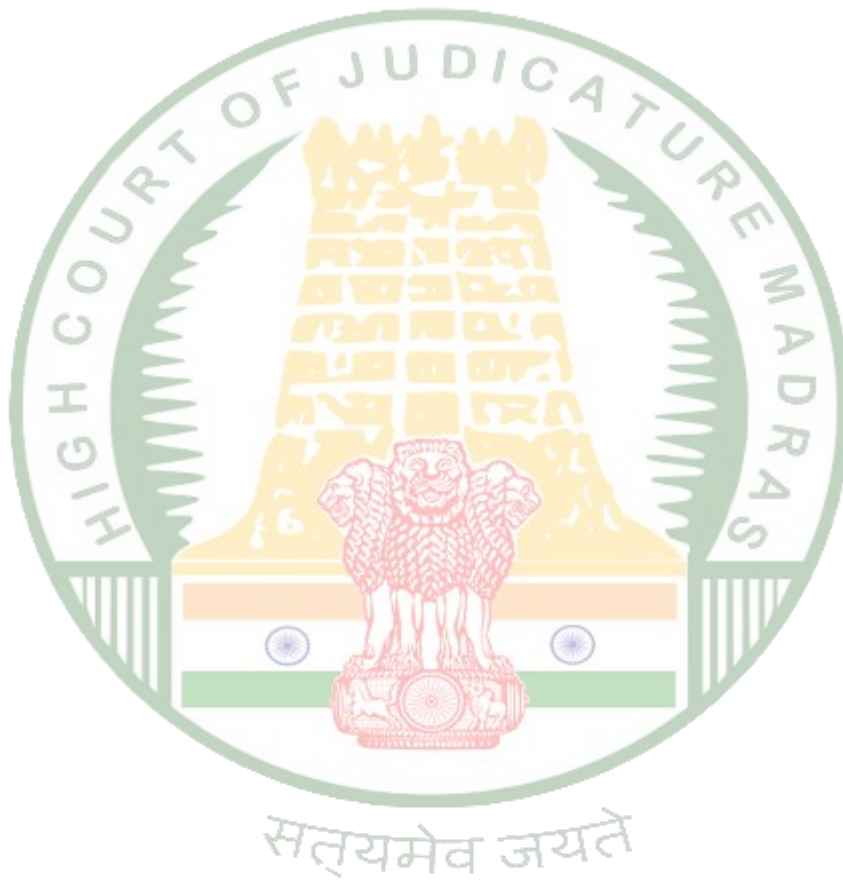
12.The learned Government Advocate (crl.side) appearing for the respondent submitted that, there is no error in the sanction order - Ex P-1. For the Village Administrative Officer, the Revenue Divisional Officer having jurisdiction over the concerned village is the appointing authority and he is the authority to remove the Village Administrative Officer from service. PW-1 - the then Revenue Divisional Officer, Chidambaram was the authority competent to appoint as well as remove the Village Administrative Officer of the Vadakkupalayam Village, Kattumannarkoil Taluk, Cuddalore District which falls within his jurisdiction. Therefore, the erroneous statement of PW-1 during cross examination that he is not a competent authority to remove the Village Administrative Officer/the appellant herein and for the said reason, treating him as hostile by the public prosecutor who conducted the trial, will not enure any advantage to the appellant. As per Annexure X of the The Tamilnadu Civil Services (Discipline and Appeal) Rules, since, the Revenue Divisional Officer is the appointing authority, he is competent to remove the Village Administrative Officer concerned and even as per Rule 12 (2) of the said Rules, it authorises the appointing authority

to impose major penalties specified under Rule 8 of the siad rules, which includes removal and dismissal from service. Any statement, contrary to the statute is to be ignored.

13.P.W.1-the sanctioning authority for the reasons best know to him, has deposed contrary to law and against his own order Ex P-1. Hence, he was treated hostile. He submitted that the statute governing the service law regarding sanction, appointment and removal should be taken judicial notice and the sanction order Ex P-1 has to be considered a valid sanction.

14.Further, regarding the evidence of PW-2, who lodged the complaint against the appellant and who supported the case of the prosecution during the chief examination, but turned hostile while cross examination done after a lapse of period of 4 months the learned Government Advocate (crl.side) submitted that P.W.2 has deposed that, he and the accompanying witnesses (P.W.3) went to the accused/appellant house on 03.04.2002 at about 9.15 am. The accused/appellant was in his house and enquired whether PW-2 brought the money, for which, PW-2 answered positively and handed over the tainted money. The accused/appellant received it and put it in his shirt pocket. The hand wash and the shirt pocket wash put to test in the sodium corbonate solution, turned light red and the

tainted currency numbers tallied with the numbers noted in the pre-trap proceedings. Therefore, in the absence of plausible explanation for the possession of the tainted money and recovered from the



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accused/appellant, the presumption under Section 20 of the Prevention of Corruption Act, has to be drawn against the accused/appellant.

15. In support of his submission, the learned Government Advocate (crl.side) relied upon the following judgments:-

(i) In **Periakutty @ Kutty -vs- Inspector of Police reported in 2005 (2) LW (Criminal) 924**, it has been held as follows:-

"It is a settled position in law, as on date, that if a witness turns hostile, the Court need not close its eyes to the entirety of the evidence of the hostile witness and the Court has a right to probe further and find out whether there is any legal material, which can be taken into account....."

.....The recent trend of decisions of the Supreme Court is that Court need not ignore the entire evidence of a witness, who turned hostile. The Court can always look into any portion of the evidence of the witness turning hostile to find out whether it can be relied on and whether it contains any material, either in favour of the State or in favour of the accused. In so doing, the Apex Court held that, the Court would not be committing any

error.....”

(ii) In the judgment of the Hon'ble Supreme Court in **Khujji @ Surendra Tiwari vs. State of Madhya Pradesh** (1991(3) SCC 627), an occasion had arisen to decide as to whether once a witness is treated as hostile and cross examined by the State, should the evidence of such witness be completely exonerated from consideration ? Following the earlier judgments of Hon'ble Apex Court reported in (1976) 1 SCC Pg. 389 (**Bhagwan Singh vs. State of Haryana**); (1976) 4 SCC Pg.233 (**Rabindra Kumar Dey v. State of Orissa**) and (1980) 1 SCC pg.30 (**Syad Akbar vs. State of Karnataka**), the Supreme Court went on to lay down the law as hereunder:

“The evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.....”

(iii) **In State of A.P -vs- P.Venkateshwarlu reported in 2015**

(3) MLJ (Crl) 225 (SC), the hon'ble Supreme Court has held as follows:-

"10. We are aware of the position in law, as laid down in cases involving the relevant provisions under the [Prevention of Corruption Act](#), that mere recovery of the tainted amount is not a sine qua non for holding a person guilty under [Sections 7, 11 and 13](#) of the Act. This Court has observed in *Narendra Champaklal Trivedi Vs. State of Gujarat*, (2012) 7 SCC 80, that there has to be evidence adduced by the prosecution that bribe was demanded or paid voluntarily as bribe. The demand and acceptance of the amount as illegal gratification is a sine qua non for constituting an offence under the [Prevention of Corruption Act](#). The prosecution is duty bound to establish that there was illegal offer of bribe and acceptance thereof and it has to be founded on facts. The same point of law has been reiterated by this Court in *State of Punjab Vs. Madan Mohan Lal Verma*, (2013) 14 SCC 153. In the present case the factum of demand and acceptance has been proved by the recovery of the tainted amount and the factum of there being

a demand has also been stated. The essential ingredient of demand and acceptance has been proved by the prosecution based on the factum of the case. It has been witnessed by the key eye witnesses and their testimonies have also been corroborated by other material witnesses. The offence under [Section 7](#) of P.C. Act has been confirmed by the unchallenged recovery of the tainted amount. Thus, it is our obligation to raise the presumption mandated by [Section 20](#) of P.C. Act. It is for the accused respondent to rebut the presumption, by adducing direct or circumstantial evidence, that the money recovered was not a reward or motive as mentioned under [Section 7](#) of the P.C. Act."

16.The contention of the learned counsel appearing for the appellant is of two folds. The first one is the sanction order is defective and the second, the tainted money was planted in appellant shirt pocket by the defacto complainant when he was away from his house. Since PW-1 - sanctioning authority and PW-2 - defacto complainant had turned hostile, the prosecution has failed to prove the charges and hence, the appellant has to be acquitted.

17.In so far as the sanction order - Ex P-1 is concerned, it has

been issued by PW-1 who is admittedly the Revenue Divisional Officer of the concerned jurisdiction during the relevant point of time. The statute, namely, the Tamilnadu Civil Services (Discipline and Appeal) Rules empowers the Revenue Divisional Officer to appoint and remove the Village Administrative Officer concerned. It is not disputed that the appellant was the then Village Administrative Officer of Vadakkupalyamkottai Village and PW-1 was the Revenue Divisional Officer at the time of trap. Therefore, anything said during examination under oath contrary to the statute, only the statute will prevail and not the incorrect statement made under oath. PW-1 after considering the materials placed before him has accorded sanction under Ex P-1 wherein, he has stated specifically that he is the competent authority to accord sanction. Therefore, his deposition in the cross examination that he is not the competent authority to accord sanction to to prosecute the accused is bound to be ignored.

18.As far as the hostility of PW-2 it is to be pointed out that, the chief examination was recorded on 09.10.2003 and after lapse of 4 months, the accused/appellant was cross examined by the accused counsel on 19.02.2004. A perusal of deposition of P.W.2 would go to show that, in his chief examination, he had deposed that he and PW-3 went to the house of the appellant. The appellant was present in the house. He enquired whether he has brought the money and on

his demand, he gave the tainted money to him. The accused received it and kept in his shirt pocket. He gave the pre-arranged signal to the police and they came to the house of the appellant and recovered the tainted money from the accused. Contrarily, in the cross examination recorded after 4 months, he had deposed that, the appellant was not in his house so he and the accompanying witness – P.W.3 waited for some time. The appellant's wife told him that the appellant has gone to market and it will take time for him to come. She told P.W.3 to keep the money in the shirt pocket of the appellant which was hanging on a chair. Accordingly, the defacto complainant - P.W.2 kept the money in the shirt pocket of the accused/appellant which was lying there and left the appellant house. This fanciful story has come from the defacto complainant - P.W.2 after a period of 4 months from the chief examination. This itself an indication that after chief examination, the witness has been won over by the appellant/accused.

19. The explanation of the defence that the delay in issuance of death certificate on the part of the appellant/accused has infuriated the defacto complaint – P.W.2, leading to foist a false complaint against the appellant/accused and planting of tainted money in his shirt pocket, is not plausible for multiple reasons. Firstly, there was no undue delay in processing the application. The applicatin for

death certificate made to the Tahsildar on 21.03.2002, the accused has demanded bribe, the very next day. Secondly, 'What is the necessity for the Village Administrative Officer / the appellant herein to entertain the defacto complainant – P.W.2 to his house ?' and 'Why should the appellant wife tell defacto complaint – P.W.2 to keep the money in her husband's shirt pocket hanging on a chair ?' Is it possible for a man to put money on another man's shirt pocket without his knowledge ?. When the recovery of tainted money is from the shirt pocket of the appellant/accused, it has to be presumed that the appellant had consciously possessing it, unless, contrary is proved. If the money was placed in his pocket as instructed by his wife, then, the appellant could have examined his wife to say how the money went into his shirt pocket.

20.In this case, the prosecution has proved beyond reasonable doubt the receipt of money as illegal gratification by the accused/appellant and therefore, the statutory presumption has to be drawn against the appellant. On the failure to place before the Court any plausible explanation by the appellant/accused for the presence of tainted money in his possession, the trial court judgment is bound to be confirmed and the Criminal Appeal is liable to be dismissed.

21.In the result, the Criminal Appeal is dismissed and the

judgment of the trial court is confirmed. Bail bond if any shall be cancelled. The appellant to be secured and remanded to custody to undergo the remaining period of sentence.

19.09.2017

jbm

Index: Yes

Speaking Order/non speaking order



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To

1.The Special Judge cum
Chief Judicial Magistrate,
Cuddalore District, Cuddalore.

2.The Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Cuddalore.

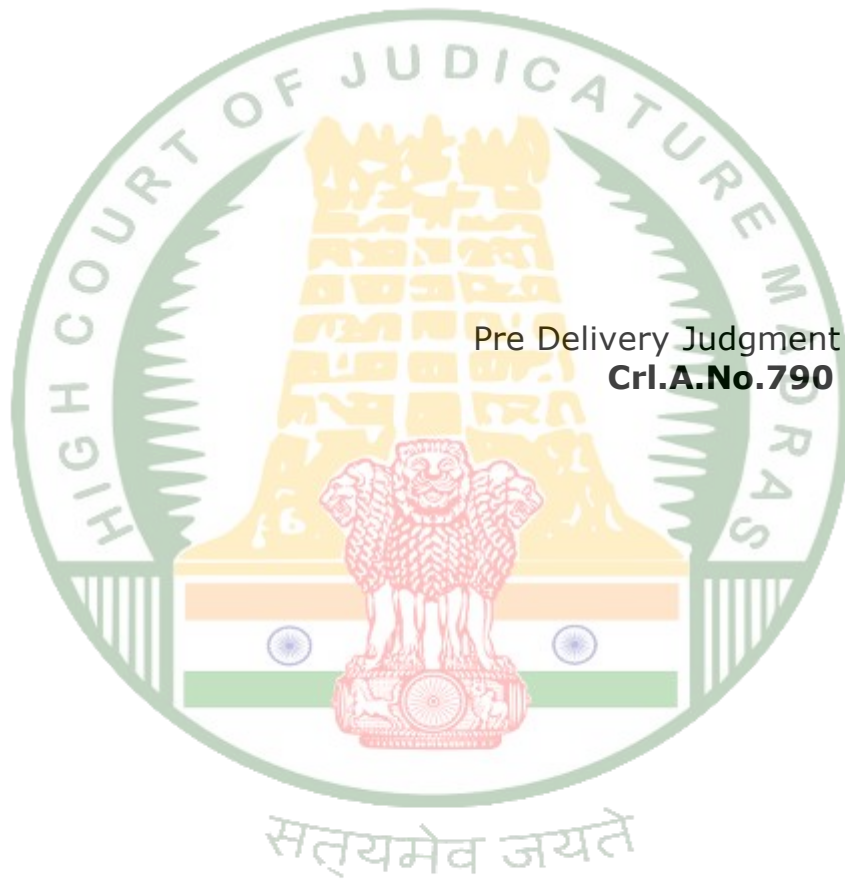
3.The Public Prosecutor,
High Court, Madras.



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G.JAYACHANDRAN.J.,

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Pre Delivery Judgment made in
Crl.A.No.790 of 2008

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