

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 05.01.2017

Judgment Pronounced On : 24.08.2017

CORAM

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

Crl.A.No.833 of 2012
and
Crl.A.No.525 of 2013

CRL.A.NO.833 OF 2012

D.Raghu

... Appellant

vs.

State rep. by
The Inspector of Police,
Vigilance & Anti Corruption,
Chennai City - II Detachment,
Chennai.
(Crime No.4/AC/2000/CC-II)

... Respondent

CRL. APPEAL NO.525 OF 2013

State rep. by
The Inspector of Police,
Vigilance & Anti Corruption,
Chennai City - II Detachment,
Chennai.
(Crime No.4/AC/2000/CC-II)

... Appellant

Vs.

D.Raghu

... Respondent

PRAYER IN CRL. APPEAL NO.833 OF 2012 Criminal Appeal

<http://www.judis.nic.in> preferred under Section 374(2) Cr.P.C., against the judgement

dated 30.10.2012 passed by the learned Special Judge/Chief Judicial Magistrate, Thiruvallur in Special Case No.8 of 2006.

PRAYER IN CRL. APPEAL NO.525 OF 2013 Criminal Appeal preferred under Section 377 Cr.P.C., to enhance the sentence imposed on the respondent/accused, passed in Special Case No.8 of 2006 dated 30.10.2012, by the learned Special Judge/Chief Judicial Magistrate, Thiruvallur in Special Case No.8 of 2006.

For Appellant : Mr.R.Vijayakumar
(Appellant in Crl.A.No.833 of 2012 &
Respondent in Crl.A.No.525 of 2013)

For Respondent : Mr.E.Raja
Additional Public Prosecutor
(Appellant in Crl.A.No.525 of 2013 &
Respondent in Crl.A.No.833 of 2012)

COMMON JUDGMENT

Criminal Appeal No.833 of 2012 is filed against the Judgment dated 30.10.2012 passed in S.C.No.8 of 2006 by the learned Special Judge/The Chief Judicial Magistrate, Thiruvallur, thereby, the accused stood charged for offence punishable under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The trial Court, by its Judgment dated 30.10.2012, in Special Case No.8 of 2006, the accused was found guilty and he was convicted and sentenced to undergo rigorous imprisonment for

six months and to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment for offence under Section 7 of Prevention of Corruption Act and also convicted and sentenced to undergo rigorous imprisonment for six months and also to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for one month 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.

Criminal Appeal No.525 of 2013 is preferred by the State prosecution agency in the above Judgment dated 30.10.2012 passed in S.C.No.8 of 2006 by the learned Special Judge/The Chief Judicial Magistrate, Thiruvallur, seeking to enhance the sentence and punishment imposed on the respondent/accused herein.

2. Since both the appeals arises out of the same judgment, by consent both the appeals are taken up together for disposal.

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

3.1. The complainant/P.W.2 Loganathan applied for plan approval to put up a construction in his plot to the Ambattur Municipality and the said application and related documents are Ex.P2 series. The same was submitted on 14.03.2000 and acknowledgement given by Ambattur Municipality is Ex.P3. In connection with this application, the complainant/P.W.2 Loganathan met the accused, who was working as Town Planning Inspector in Ambattur Municipality several times, but, no progress was made. Subsequently, as per Ex.P4 letter dated 04.04.2000, his application was returned stating that due to non production of layout copy and parent document for the land, his application was rejected. The said letter was received by him during the 2nd week of April,2000. Thereafter, he re-submitted the application in person on 17.04.2000 along with the documents sought for by the Municipality and the same is Ex.P5 series. The acknowledgement dated 17.04.2010 given by the Ambattur Municipality is Ex.P6. The complainant/P.W.2 Loganathan met the accused in his office on that day itself and he was asked by the accused to come after two days. When he went again, the accused was not present in the office. Therefore, again on 20.04.2000, P.W.2 went to the office of the accused and met him. Then the accused informed P.W.2 that he must pay Rs.10,000/- as bribe and then only his papers will be cleared. When

P.W.2 expressed his difficulty to pay the said amount, the accused asked him to pay Rs.5,000/- for the present and after sanction order is obtained to pay the balance amount of Rs.5,000/-. When P.W.2 was thinking over it, the accused asked him to come back by 4.00 p.m. on 24.04.2000 with money and if he fails to do so, the accused threatened that the papers will be rejected once again and higher tax will be levied. Thereafter, the complainant Loganathan once again went to the Ambattur Municipality Office at 4.30 p.m., on 24.04.2000 and met the accused. Again the accused asked him about the money, to which the complainant replied that being month end he was finding it difficult to pay the amount. However, P.W.2 assured the accused that he will come with the money on the next day. As P.W.2 was not willing to pay the amount, on the next day morning, i.e. on 25.04.2000, he drafted complaint in his house and went to the respondent office and lodged the complaint Ex.P7 to the Deputy Superintendent of Police, namely, Sethuraman. The complainant further stated that the application submitted by him on 15.03.2000 is Ex.P8 and the same forms part of Ex.P2 series. He further submitted that the complaint Ex.P7 was lodged by him at 11.00 a.m., and the Deputy Superintendent of Police after receiving the complaint handed over the same to the Inspector of Police P.W7/Ilango and asked him to take further action.

3.2. The Inspector of Police/P.W.7 stated that while he was on duty in the Vigilance and Anti-Corruption Cell on 25.04.2000 at 11.00 a.m., the Deputy Superintendent of Police handed over to him the complaint lodged by Loganathan and asked him to take further action. Accordingly, he registered a case in Crime No.4/AC/2000/CC II for the offence under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and the said first information report is Ex.P13. Thereafter, P.W.7 summoned two official witnesses, namely, P.W.4 Kalaiselvan and one Chinnathambi to his office. After they arrived in his office, P.W.7 introduced them to the complainant and read over the contents of Ex.P7 complaint to them. Then, he asked the complainant about the trap amount and P.W.2 handed over 10 numbers of Rs.500/- denomination notes totalling Rs.5,000/-. The same was handed over to the witness Chinnathambi by P.W.7 and he was asked to count it. Thereafter, P.W.7 demonstrated the phenolphthalein test and also explained the significance of the same to P.W.2/the complainant, the trap witnesses P.W.4 and Chinnathambi. Then, P.W.7 returned the bribe amount smeared with phenolphthalein powder to P.W.2 Loganathan and asked him to hand over the amount to the accused only if demand was made by the accused. Thereafter, P.W.7 along with the trap team left their office to Ambattur by 4.30 p.m., and P.Ws.2 and 3 were instructed about

handing over of the amount to the accused and P.W.2 was asked to give signal to P.W.7 and other trap team members after the amount was paid to the accused.

3.3. The complainant/P.W.2 stated that 10 numbers of Rs.500/- denomination notes given by him to P.W.7 is M.O.1 series. After himself and P.W.4 were explained about the procedures of the phenolphthalein test, Ex.P9 Entrustment Mahazar was prepared, wherein himself and other trap witnesses also signed in the office of P.W.7/Ilango. They left the respondent office by 3.45 p.m., and reached Ambattur by 4.30 p.m. P.W.2 along with P.W.4 went to the office of the accused and on seeing them, the accused enquired about P.W.4 Kalaiselvan. Then, P.W.4 informed the accused that he has come for clarification regarding plan approval for his land to which the accused asked him to come with the documents, so that he can find out as to what to be done. Then the accused asked P.W.2 as to whether he has brought the money demanded by him and P.W.2 replied to the same in the affirmative. Then the accused took P.W.2 to the Town Planning Officer room which is nearby and when P.W.4 tried to accompany them, the accused asked him to stay back. Hence, P.W.4 stayed near the table of the accused. While P.W.2 and the accused went to the Town Planning Officer room, where nobody else was present, the accused asked him to give Rs.5,000/- and accordingly P.W.2 gave M.O.1 series cash to the

accused who received it and kept the same in the left side packet of his shirt. After coming out of the room, the accused went to his seat and looked in to the complainant/P.W.2 file. Thereafter, the complainant/P.W.2 went out and gave pre-arranged signal to P.W.7, who was waiting out side with the trap team.

3.4. On noticing the signal, P.W.7 along with his trap team went inside the office of the accused and caught hold of him. The accused was identified by P.W.2 and on enquiry by P.W.7, the accused admitted receiving a sum of Rs.5,000/- from the complainant. P.W.7 then prepared sodium carbonate solution in two glasses and asked the accused to tip the fingers of both hands in the solution and both the solution changed pink in colour. The said solution was put in two bottles and the same was sealed by P.W.7. According to P.W.2, the said two bottles were seized under Mahazar by P.W.7. The said bottles are marked as M.Os.4 and 5. P.W.7 also recovered M.O.7 the shirt of the accused under Seizure Mahazar.

3.5. P.W.4 the trap witness stated that after the said proceedings, wherein, the bribe amount of Rs.5,000/- was recovered from the accused and phenolphthalein test was completed and Ex.P10 Mahazar was prepared, subsequently the accused was arrested and taken to his house by 8.30 p.m. Then during the search of the accused house, a sum of Rs.49,000/- and

some pro-notes were recovered and Ex.P14 is the search list for the same. The seizure mahazar for the bribe amount of Rs.5,000/- is Ex.P10 and the seizure mahazar for the said amount of Rs.49,000/- is Ex.P11.

3.6 P.W.7, the Inspector of Police stated that the accused was sent a Judicial custody on the next day and the rough sketch prepared by him on the occurrence spot is Ex.P15 and the attendance register of the Ambattur Municipality seized by him is Ex.P16. Thereafter, P.W.7 handed over the case for further enquiry to P.W.8 Ponnusamy.

3.7. P.W.8/the Inspector of Police, Ponnusamy stated that on 27.04.2000, he took up the investigation of the case in Crime No. 4/AC/2000/CC from P.W.7 Ilango. After securing sanction order Ex.P1 from the Sanction Authority who deposed as P.W.1 and after obtaining chemical analysis report Ex.P12 from Forensic Department and after examining P.W.6, Tamilselvan, the Scientific Officer, who analysed the solution and gave Ex.P12 report stating that both Phenolphthalein and Sodium Carbonate were detected in M.Os.4,5 and 6 and completion of investigation, he laid the charge sheet against the accused under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 on 03.12.2001.

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 charges, he was put on trial. After prosecution examined P.W.1 to P.W.8 and produced Exs.P1 to P16 and M.Os.1 to 7, to substantiate the charges, 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, but marked Exs.D1 and D2. The trial Court, after considering all the materials placed before it, found the accused guilty, convicted and sentenced the accused to undergo punishment as narrated in the first paragraph of this judgment.

5. Aggrieved over the same, the appellant/accused has preferred the appeal in CrI.A.No.833 of 2012 stating that the trial Court has failed to appreciate the prosecution evidence properly and wrongly found the accused guilty of the offence. The trial Court has arrived at a conclusion only on the basis of presumption and conjunctures. The fact that the evidence of P.W.1 who is the sanctioning authority itself falsified the case of the prosecution was not taken into consideration by the trial Court. The admission of P.W.1 about the collection target fixed for small saving collection

and the accused was given target for collecting Rs.30 lakhs was not taken into consideration by the trial Court. The admission of P.W.2/complainant about his application being returned for failure to enclose the lay out plan of the housing site and parent document was not considered by the trial Court. The admission of official trap witness P.W.4 that he was not present inside the room, where the bribe amount of Rs.5,000/- is alleged to have been paid by the accused was not taken into consideration. The trap witness Chinnathambi was not examined before the Court and there is no explanation by the prosecution for not examining the said Chinnathambi. The trap witness P.W.4 Kalaiselvan admitted about not seeing the payment of bribe amount to the accused by the complainant was not considered by the trial Court. The contradictions among the prosecution witness was not taken in to consideration by the trial Court. Hence, the appellant seeks to entertain the appeal and set aside the conviction and sentence imposed on him by the trial Court.

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6. On the other hand, the other appeal in CrI.A.No.525 of 2013 is preferred by the State contending that the trial Court, after holding the accused guilty of the offence under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, has failed to impose proper punishment on the accused and the failure of the

trial Court to impose even the minimum sentence is contrary to the law and the same is unwarranted. Hence, the appellant/State seeks to enhance the punishment imposed on the accused by the trial Court.

7. The learned Additional Public Prosecutor appearing for the appellant/State in CrI.A.No.525 of 2013 supported the impugned judgment passed by the trial Court and contended that the recovery of tainted currency note marked as M.O.1 series. from the accused coupled with the evidence of the complainant/P.W.2 and the trap witness P.W.4 itself is sufficient to sustain conviction. The learned Additional Public Prosecutor further submitted that the accused has demanded and accepted the bribe amount of Rs.5,000/- from the complainant/P.W.2 to do a favour to him, namely, sanctioning of plan permit to put up construction in the complainant's house site. According to the learned Additional Public Prosecutor, while amount to receive illegal gratification to do a favour to the complainant and explanation of the defence, namely, the accused was given a target of Rs.30 lakhs of small saving collection and that the amount was received is unsustainable and highly improbable. Thus, the learned Additional Public Prosecutor while supporting the finding of the trial Court holding the accused guilty of the offence charged contends that the sentence imposed is

not in accordance with the provisions of law and hence he seeks to enhance the same.

8. However, the learned counsel appearing for the appellant/accused contended that mere recovery of amount from the accused itself cannot prove the charge of the prosecution against the accused in the absence of any independent evidence to show that the accused demanded and voluntarily accepted the money knowing it to be bribe amount. The learned counsel appearing for the appellant/accused also pointed out that there is no materials before the Court to show that the accused was in a position to approve or sanction the plan sought for by the complainant. Since the requirements to accord sanction was not fulfilled even on the date of trap proceedings. It is also pointed out that the amount said to have been recovered from the accused is not a bribe amount and in the absence of any evidence to prove the same as bribe amount, the trial Court finding that the accused is guilty of receiving illegal gratification is not correct. Thus, the appellant/accused seeks to set aside the conviction and sentence imposed on him by the trial Court.

9. It is true that the burden is on the prosecution to establish the factum of demand and acceptance of illegal

gratification by the accused. In the case on hand, it is to be seen whether the same is fulfilled with proper and acceptable evidence. In the case on hand, the complainant/P.W.2 Loganathan states that he is having a house site in Korratur and the same was purchased in 1987. P.W.2 further stated that he has put up a small house in the back side portion of the said plot and residing there. Subsequently, he decided to put up a construction in the vacant front portion of the plot and applied for necessary plan sanction as per Ex.P2 series to the Ambattur Municipality during the second week of March,2000. P.W.2 stated that the said application was returned for not enclosing layout plan and parent document of the land by the Ambattur Municipality as per Ex.P4 letter dated 04.04.2000 and the returned application was received by him during the second week of April,2000. Subsequently, P.W.2/Loganathan resubmitted his application for plan approval to the Ambattur Municipality on 17.04.2000 and the same is Ex.P5. Thus, the complainant has applied for sanction of building plan in his house site as stated above. Admittedly, the accused is a Town Planning Inspector of the said Municipality and he is stated to be the person authorised to initiate action on the application submitted by the complainant herein.

10. P.W.5 Navaneethan, who was then worked as Senior Town Planning Officer of the Ambattur Municipality stated in detail about the procedure to grant approval for housing plans. According to him, on receipt of any application, the same will be registered by the concerned clerk in the Town Planning Register and the same will be forward to the Inspector of Town Planning, who after visiting the site wherein the building is proposed to be constructed will submit his recommendations. On the basis of the same, the Commissioner of the Municipality will sanction the plan approval. According to him, the defective applications will be returned and if the same are rectified and resubmitted, the sanction will be granted after verification. In the case on hand also the application submitted by P.W.2 was returned and on resubmission it was forwarded to the accused who was the then Town Planning Inspector for necessary action. According to P.W.5, normally it will take three days from the date of submission of application to forward the same to the Town Planning Inspector who is the accused herein. In the case on hand, the complainant has resubmitted his application Ex.P5 series on 17.04.2000 only. It is clear from the evidence of P.W.5 that it will take minimum three days to reach the table of the accused and in such circumstances, in the light of the evidence of P.W.2 that he met the accused on 20.04.2000 and demand for a sum of Rs.10,000/- was made to him on that day by the accused appears

to be doubtful. The learned counsel appearing for the appellant/accused further pointed out that the admission by the complainant that he is having a construction in his plot already without obtaining any plan approval. The learned counsel appearing for the appellant/accused pointed out that unless and until the unauthorised construction is removed it will not be possible for any Town Planning Authority to sanction fresh approval plan and as such the accused was not in a position to accord any sanction and only to coerce and threaten him this complaint was lodged falsely by P.W.2.

11. The complainant/P.W.2 admitted in his cross examination that he has not put any date below his signature in Ex.P2 application given to Ambattur Municipality and at the time of submitting Ex.P2 application and out house existed in that plot. P.W.2 also stated that the said out house was constructed by him without approval and the existence of the out house is not mentioned in Ex.P2 application. P.W.2 also stated that he has given undertaking to MMDA that he will remove the existing structure in the said land and the same is Ex.P7. It is further admitted by P.W.2 that after giving the said undertaking, he has not paid any charges for demolishing the same and the said out house still exist and he has not taken any steps to demolish it. P.W.2 also stated that after the accused was arrested, the Ambattur Municipality gave him Ex.D2 sanction plan and the same was given even though the

unauthorised building in the said land was not demolished. P.W.2 also admitted that he has put up new construction within six months from the date of plan approval and the old unapproved out house building still exist and the same was not demolished as undertaken by him. Thus, P.W.2 has earlier put up unauthorised construction in his house site and subsequently put up a new building without demolishing the old un approved building inspite of giving Ex.D1 undertaking to do so. Pointing it out, the learned counsel appearing for the appellant/accused contended that the application submitted by P.W.2 could not have been accorded sanction as an unauthorised building was already there and in such circumstances, the claim of the prosecution that the accused demanded illegal gratification and received the same is unsustainable.

12. As stated earlier, the application submitted by the complainant was returned and represented only on 17.04.2000, as evidenced by Ex.P6 acknowledgement. As stated above, normally, it takes minimum of 3 days for such application to reach the table of the accused. According to P.W.2, he met the accused on 20.04.2000, when demand for bribe of Rs,10,000/- was made by the accused. Further, it is stated by P.W.2 that the accused assured him to get the sanction order, when he met P.W.2 on 20.04.2000 and then also the accused is stated to have demanded

the bribe amount. Admittedly, on both the occasion, there was no other witness present. Subsequently, as the complainant/P.W.2 was not willing to pay the bribe amount, he lodged Ex.P7 complaint on 25.04.2000 and on that day, it is stated by the prosecution, the trap witness P.W.4 Kalaiselvan and another trap witness Chinnathambi accompanied the complainant/P.W.2 to the office of the accused and witnessed the demand and acceptance of the bribe amount by the accused. However, the trap witness P.W.4 Kalaiselvan stated that he did not go into the room, where the amount of Rs.5,000/- stated to have been received by the accused from P.W.2. In his cross examination, the trap witness P.W.4 stated that as follows:-

நானும், அ.சா.2-ம் எதிரியின் அலுவலகத்திற்கு
போனபோது அ.சா.2-ம் எதிரியும் அறைக்குள் சென்றுவிட்டார்கள்.
அறைக்கு வெளியே வந்து அ.சா.2 சமீபத்தைச் செய்தார்.
மற்றபடி என்ன நடந்தது என்று எனக்கு தெரியாது.

सत्यमेव जयते

13. Thus, P.W.4/the trap witness categorically stated that he did not know as to what happened inside the room where the accused is stated to have received the bribe amount of Rs.5,000/- from the complainant. P.W.4 stated in his cross examination that he went along with P.W.2 to the office of the accused by 4.30 p.m. and on seeing them the accused asked P.W.2 about the money and also enquired about the P.W.4 to which P.W.2 replied that he has

brought the money as sought for. Thereafter, the accused took P.W.2 to the Town Planning Officer room and as P.W.4 tried to go with them he was asked to stay back. Hence, he sat down near the seat of the accused and after some time, P.W.2 and accused came back. Thus, the trap witness P.W.4 is not personally aware about the happenings inside the Town Planning Officer room, where the bribe amount is stated to have been given to the accused.

14. Pointing it out, the learned counsel appearing for the appellant/accused contended that unless and until the demand of bribe amount by the accused is established by the prosecution, it cannot be held that the charges alleged against the accused is established. 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, de hors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

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."

15. Similarly, the learned counsel appearing for the appellant/accused contended that even if the prosecution establish the factum of recovery of tainted money from the accused and the same is not sufficient to prove the guilt of the accused, unless demand of bribe by the accused is sustainable. In support of the same, he relied upon the ruling reported in **2013 (14) SCC 153 in STATE OF PUNJAB v. MADAN MOHAN LAL VERMA**, to contend that there is no sufficient materials before the Court to establish the factum of demand of bribe amount by the accused and in such circumstances, mere recovery of tainted money alone is not sufficient to prove the guilt of the accused. In the said ruling it is 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."

16. In the case on hand, as already stated, the trap witness P.W.4 has not seen in person the accused demanding and accepting bribe money from P.W.2. His evidence is therefore of no use to prove the factum of demand and acceptance of bribe by the accused. The other official trap witness Chinnathambi is not examined by the prosecution. Therefore, the only witness available

<http://www.judis.nic.in> to prove the said factum of demand and acceptance of bribe amount

by the accused is the complainant/P.W.2 himself and he being the interested party in the absence of any corroborative evidence to support his claim, it is to be seen whether the evidence of P.W.2 alone is sufficient to prove the guilt of the accused. As stated above, P.W.2 has applied for building plan approval in respect of his site, where already unapproved building was in existence. Further, the complainant has not initially filed necessary document along with his application Ex.P2. Further, P.W.2 also admitted in his cross examination that Sivasakthi Nagar layout was not approved one and at the time of filing the application, no document was produced regarding plan approval. P.W.2 also admitted that he constructed a building for 400 sq.ft. even while Sivasakthi Nagar layout was unapproved one. Further P.W.2 also admitted that he is not aware as to when Sivasakthi Nagar layout was approved.

17. Further as stated earlier, within three days of resubmitting the application, the complainant claims that the accused made a demand of illegal gratification to him. In such circumstances, it is to be seen whether really the claim of the complainant, which is not supported by any other independent witness can be accepted. P.W.2 stated that when he went along with P.W.4 to give bribe amount to the accused on 25.04.2000, the accused enquired about P.W.4 to which he replied stating that

P.W.4 Kalaiselvan has entered into an agreement to purchase the land in the Teachers Colony and he is in need to get plan for it and just to find out as to in whose name it should be obtained he has come there to which the accused replied by asking the trap witness P.W.4 to bring the necessary document and also looking it he will do the needful. It is further stated by P.W.2 that thereafter he enquired about his plan approval, the accused asked him as to whether the amount sought for by him was brought to which P.W.2 replied positively. On the other hand the trap witness P.W.4 Kalaiselvan stated that he along with P.W.2 reached the office of the accused at about 4.30 p.m., and on seeing him the accused enquired about his identity to which he replied that he has come there in connection with land registration. Thereafter, the accused asked P.W.2 as to whether he has brought the amount sought for by him. Thus, nothing is stated to P.W.4 about approval of plan or about accused asking him(P.W.4) to get back with necessary document regarding his land. Further, P.W.2 and 4 only stated that the accused asked P.W.2 as to whether the amount asked for by him has been brought by P.W.2 to which he replied in the affirmative. Pointing it out, the learned counsel appearing for the appellant/accused contended that the accused being asked to collect Rs.30 lakhs towards small saving fund collection has sought for contribution and only that amount was asked for and there is nothing in the evidence of P.Ws.2 and 4

about the accused seeking bribe amount to approve the plan of P.W.2.

18. In that regard, the learned counsel for the appellant/accused pointed out the admission of sanction authority/P.W.1 in his evidence that during the relevant point of time he was functioning as Commissioner of Ambattur Municipality and during 2000 - 2001, the Government of TamilNadu has fixed the target of Rs.500 lakhs as small saving collections for the Ambattur Municipality. Accordingly, he has fixed different targets for each of the officials working under him and the accused who was working as then Town Planning Inspector was directed to collect a sum of Rs.30 lakhs for the small saving scheme. Thus, it is clear from the evidence of P.W.1 that the accused was given target of Rs.30 lakhs to be collected towards small saving scheme. It is contended by the appellant/accused that only in regard to that he has asked for contribution from the persons coming to the office and he never demanded any bribe amount from the complainant herein. In the light of the above said contention and in the absence of any independent witness on the side of prosecution to prove the fact of demand of bribe by the accused, the claim of the appellant/accused that he never made any demand of bribe amount is to be accepted. The explanation put forward by the accused as

stated above appears to be probable and acceptable. In the said circumstances, the finding of the trial Court that recovery of tainted money from the accused itself is alone sufficient to prove the guilt of the accused is unsustainable and the conclusion arrived at by the trial Court on that basis is not proper.

19. In view of the discussion made above, I am of the considered opinion that the defence version cannot be stated to be wholly improbable and unacceptable and all the circumstances put together would only lead to an irresistible conclusion that those circumstances are compatible with the innocence of the appellant. Therefore, the impugned judgment under of the trial Court calls for interference by this Court and the appeal preferred by the appellant in Crl.A.No.833 of 2012 is to be allowed. Since the finding of the trial Court holding that the accused is guilty is set aside, the appeal in Crl.A.No.525 of 2013 filed by the State seeking enhancement of punishment imposed on the accused is unsustainable and the same is liable to be dismissed.

20. In the result, this Criminal Appeal in **Crl.A.No.833 of 2012** is allowed. The conviction and sentence imposed by the learned Special Judge/Chief Judicial Magistrate, Thiruvallur, in Special Case No.8 of 2006 dated 30.10.2012 is set aside. The

appellant/accused is acquitted of all charges levelled against him. The 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. Consequently, the appeal in **Crl.A.No.525 of 2013** filed by the State is dismissed.

24.08.2017

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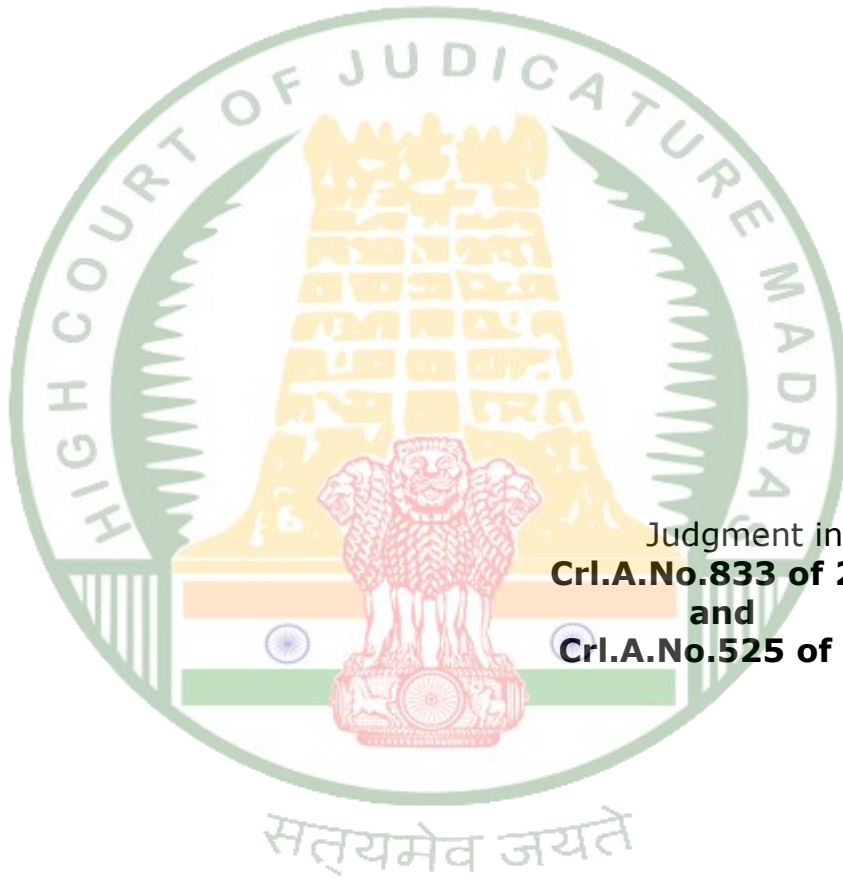
To

- 1.The Special Judge/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.

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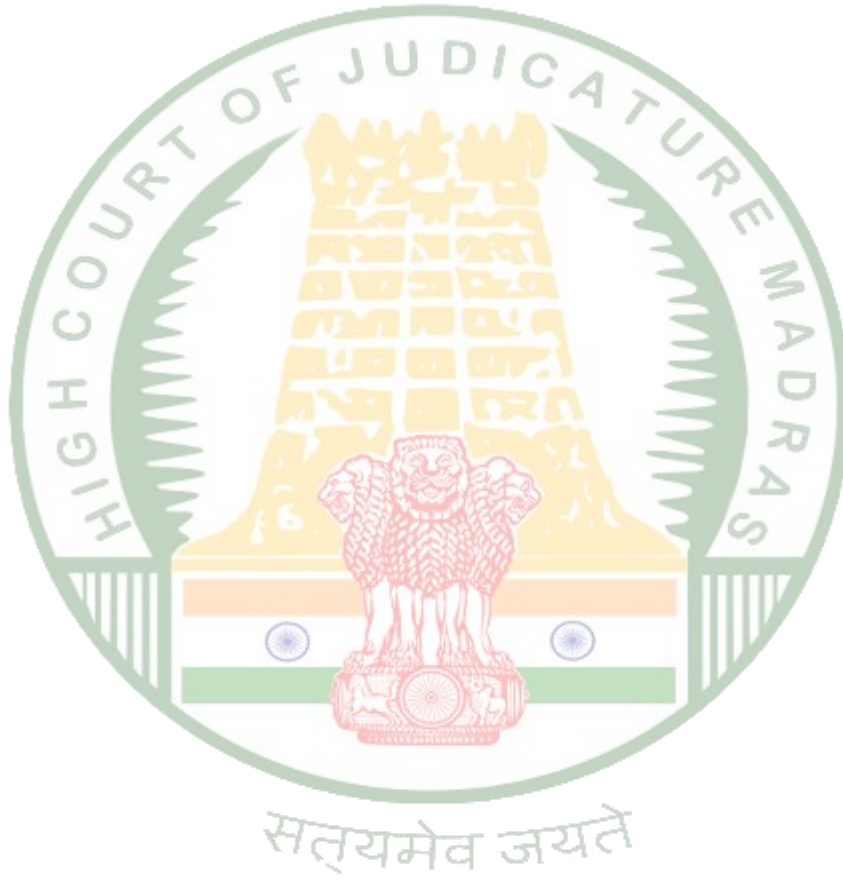
S.BASKARAN. J.,

rrg



Judgment in
Crl.A.No.833 of 2012
and
Crl.A.No.525 of 2013

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