

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 11.01.2017

Judgment Pronounced On : 30.08.2017

CORAM

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

Crl.A.No.580 of 2013

S.P.Tamilarasan

... Appellant

vs.

State rep. by
The Inspector of Police,
Vigilance & Anti Corruption,
Cuddalore.
(Crime No.4 of 2003)

... Respondent

Criminal Appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 20.08.2013 passed by the learned
Special Judge/Chief Judicial Magistrate, Cuddalore in Special Case
No.1 of 2004.

For Appellant : Mr.Sunder Mohan

For Respondent : Mr.E.Raja
Additional Public Prosecutor

JUDGMENT

The accused, S.P.Tamilarasan, 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, Cuddalore, by its Judgment dated 20.08.2013, in Special Case No.1 of 2004, found the accused guilty, convicted and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/-, in default to undergo one month simple imprisonment for offence under Section 7 of Prevention of Corruption Act, 1988 and also convicted and sentenced to undergo rigorous imprisonment for one year and also to pay a fine of Rs.1,000/-, in default 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. The case of the prosecution is as follows:-

2.1. The accused was working as Revenue Inspector, Marungur Firka, Panruti Taluk, Cuddalore District. The complainant/ P.W.2/Govindan belongs to Athi-Dravidar Community and he

married P.W.10/Rathna and she belongs to Vanniyer Community. On 09.12.1994, the said marriage taken place and the same was registered in the Office of the Joint Sub Registrar Office-II, Cuddalore and the marriage registration certificate is Ex.P2. P.W.2/Govindan submitted Ex.P3 application to the Taluk Office at Panruti seeking inter-caste marriage certificate so as to get employment on priority basis. The said application was submitted on 02.05.2003 and the same was received by P.W.4, the then Additional Head Quarters Deputy Tahsildar at Panruti. P.W.4 stated that on receipt of Ex.P3 application on 02.05.2003, he made necessary endorsement and forwarded the same to the Revenue Inspector and the endorsement made by him is Ex.P15. P.W.4 further stated that he handed over the said application to P.W.2/Govindan himself and asked him to handover the same for enquiry to Revenue Inspector who is the accused herein. Accordingly, P.W.2 met the accused who was present in his office on the same day and he was asked by the accused to come with his educational qualification certificate, ration card and other documents on 06.05.2003. Accordingly, P.W.2/Govindan met the accused in his office on 06.05.2003 and handed over the petition with necessary documents. After going through the same, the accused returned the application with direction to get necessary signatures from the VAO of P.W.2's village. Thereafter, P.W.2 again

resubmitted the application to the accused after obtaining the signature of the VAO of his place. The documents, namely, Marriage Registration Certificate, Family Card and School Transfer Certificate produced by the complainant are marked as Exs.P2, P8 and P9 respectively. P.W.2 further stated that the accused asked him to get another certificate from the VAO and he again met the accused in his office on 08.05.2003. The certificate obtained by him from the then VAO/P.W.5 Ragothama Rao is Ex.P4 and the same was also handed over to the accused in his office on 08.05.2003. Then, the accused informed P.W.2/Govindan that to obtain the inter-caste marriage certificate, he has to spend more money, to which P.W.2 replied that he is not having so much of money with him. Thereafter, the accused delayed issuance of certificate for several days and informed P.W.2 that only if Rs.500/- was paid, the certificate will be issued. The complainant/P.W.2 told the accused that he cannot give so much of money and returned back home. Thereafter, on 02.06.2003, P.W.2/the complainant lodged Ex.P5 typed complaint with the respondent police by 12.00 noon or 1.00 p.m., in the respondent office.

2.2. On receipt of the complaint, P.W.7/Venkatesan, the then Inspector of Police, registered a case in Crime No.04 of 2003 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.P18 and the same was forwarded to the Court concerned and also to the higher officials. Thereafter, P.W.7 summoned two official witnesses, namely, P.W.3 Ravichandran and one Malarvannan and they came to his office by 1.00 p.m., on the same day. They were introduced to the complainant/P.W.2 and the complainant was introduced to the said official witnesses. Thereafter, both the witnesses were asked to go through the complaint Ex.P.5 registered by P.W.7. Then, P.W.7 asked the complainant about the trap amount and P.W.2 produced a sum of Rs.500/- to be used as trap money. Thereafter, P.W.7 asked PC 186 to apply phenolphthalein powder on the said amount of Rs.500/- and asked him to prepare Sodium Carbonate solution. P.W.7 explained the importance of Phenolphthalein test to the complainant and two official witnesses. Thereafter, P.W.7 demonstrated the phenolphthalein test to the complainant as well as the official witnesses. P.W.2/complainant was instructed to give the amount to the accused only if he demanded bribe amount and he was also instructed to give the pre-arranged signal in the event of the accused demanding and accepting the bribe amount. P.W.3/Ravichandran, the official witness to the trap proceeding was asked to accompany the complainant/P.W.2 to watch the transaction taking place between P.W.2 and the accused. The said proceeding was recorded in the entrustment mahazar Ex.P6.

2.3 After completion of the proceedings in the office of P.W.7, the trap team including the complainant/P.W.2 and the official witnesses P.W.3 left the office of P.W.7 by 3.15 p.m., and reached the Taluk Office at Panruti.

2.4 P.W.2 stated that himself and P.W.3 Ravichandran went in side the office of the accused and at that time the accused was getting ready to go out. On seeing them, the accused asked P.W.2 as to whether he has brought the amount to which P.W.2 replied in the affirmative. At that time, the accused signed the file of P.W.2 and thereafter the sum of Rs.500/- was handed over to the accused. The said amount was received by the accused and the same was placed in the table drawer. Thereafter, P.W.2 came out and gave the pre-arranged signal to the trap team waiting out side the office of the accused.

2.5. P.W.7, on seeing the pre-arranged signal given by P.W.2 at 4.00 p.m., reached the scene of occurrence and the accused was identified to him by P.Ws.2 and 3 and they narrated the sequence. On seeing P.W.7, the accused got tense and tried to get up from his seat. He was asked to remain in his seat by P.W.7 and after enquiring the accused as well as P.W.2 and P.W.3, recovered the trap amount and conducted phenolphthalein test which proved positive. The said solution was put in two bottles and

the same was sealed.

2.6. The trap witness P.W.3 also corroborated the statement of P.W.7 and stated that the chemical solution which turned pink in colour was put in two bottles and sealed and himself and other official witness Malarvannan, the accused and P.W.7 signed in it. The said two bottles are M.Os.2 and 3. The said bribe amount of Rs.500/- was seized by P.W.7 and the same is M.O.1 series. The entrustment mahazar regarding the trap proceeding was prepared between 4.00 p.m. and 6.00 p.m., and the same is Ex.P11, wherein P.Ws.3 and 7 have signed. Thereafter, P.W.7 arrested the accused by 6.00 p.m., and also prepared Ex.P20 rough sketch on the occurrence spot. Thereafter, P.W.7 took the accused to his house and searched the house of the accused. The search list was prepared in the house of the accused is Ex.P12. Ex.P7 also secured the file relating to the application submitted by P.W.2 and the same is Ex.P13. The accused was sent to the Judicial custody on the same day evening and P.W.7 submitted the case to P.W.8 for further investigation.

2.7. P.W.8, the then Inspector of Police took up the case in Crime No.4 of 2003 for investigation and recorded the statement of witnesses. Thereafter, he gave the requisition letter to send the chemical solution for forensic analysis. He also obtained Ex.P21 statement from the Tahsildar at Panruti and subsequently handed

over the case for further Investigation to P.W.9. Thereafter, M.Os.1 and 2 was sent for chemical analysis and the same was subjected to testing by P.W.6 and the report given by her is produced is Ex.P.17. According to her, the solution contained phenolphthalein powder in sodium carbonate and the result was positive.

2.8. On the basis of the statement recorded already and after obtaining Ex.P17 the chemical analysis report, P.W.9, the Inspector of Police 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.

3. 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.10 and produced Exs.P1 to P21 and M.Os.1 to 3, to substantiate the charges, the incriminating evidence found in the prosecution side was put to the accused under Section 313 Cr.P.C., 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 nor produced any documents on his side. 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. Aggrieved over the said finding of the trial Court, the appellant/accused has preferred this appeal.

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

5. The point for consideration is whether the prosecution has established the charges framed against the accused beyond all the reasonable doubt.

6. The learned counsel appearing for the appellant/accused contends that the evidence let in by the prosecution has not established the demand of bribe by the accused and in such circumstances even if tainted money was recovered from the accused, he cannot be found guilty and in this case the factum of demand and acceptance of bribe amount by the accused is not established and the same was not taken into consideration by the trial Court. It is further contended that the complaint itself is belatedly given and the delay in lodging the complaint and non explanation of the delay is not considered by the trial Court properly. The fact that the entrustment mahazar Ex.P6 was not

prepared as claimed by the prosecution was also not considered. Further, as the prosecution has failed to establish the demand of bribe by the appellant and the inordinate delay in lodging the complaint and the same was not properly explained by the prosecution, the trial Court ought to have given benefit of doubt to the accused. Hence, the finding and conclusion arrived at by the trial Court is not proper and therefore, the appellant/accused seeks to entertain the appeal and to set aside the judgment of the trial Court.

7. On the other hand, the learned Additional Public Prosecutor appearing for the State contends that the evidence let in by the prosecution is co-gent and natural and there is no discrepancies in the evidence as contended by the appellant/accused. According to the prosecution, the conclusion arrived at by the trial Court is just and proper and needs no interference. Hence, the learned Additional Public prosecutor appearing for the State seeks dismissal of the appeal.

8. The fact that the accused was working as Revenue Inspector in Taluk Office, Panruti, Cuddalore District on the occurrence day is admitted. According to the appellant/accused, there is an inordinate delay in lodging the complaint and the delay is

not properly explained by the prosecution. P.W.2/the complainant in his evidence stated that on 02.05.2003 he submitted Ex.P3 application to the Taluk Office at Panruti and he met the accused on that day itself and as directed by him, after collecting some other documents, re-submitted the application On 06.05.2003. Again, the accused asked him to get the signature of VAO and he complied with the same and re-submitted the application once again. According to P.W.2, he met the accused again in his office on 08.05.2003 and he was informed by the accused that to get inter-caste marriage certificate he has to spend lot of money, to which P.W.2 replied that he is not having so much of amount. As the accused failed to issue certificate for several days and thereafter informed the complainant/P.W.2 that only if Rs.500/- was paid, certificate will be issued, P.W.2 informed the accused that he cannot give so much of amount and went away. Thus, as per the evidence of P.W.2 on 08.05.2003, the accused did not mention any quantum of amount except saying that lot of amount will have to be spent. Thereafter, P.W.2 has not stated as to on what date he met the accused again when the demand of Rs.500/- was made. Even though P.W.2 stated that he met the accused on several times nothing specific is stated about the dates on which he met the accused. Then, P.W.2 stated that on 02.06.2003 he went to the respondent office and lodged the complaint. It is clear from the

evidence of P.W.2, when the demand was made on 08.05.2003, there is nothing specific about the quantum of demand is stated. Thereafter, the complaint was lodged only on 02.06.2003 and no reason is stated by P.W.2 for not lodging the complaint immediately. It is only stated by the P.W.2 that the accused delayed issuing certificate and several days passed as he was waiting for the issuance of certificate. P.W.2 is not specific in stating as to when he met again the accused and demand of bribe amount of Rs.500/- was made. Pointing it out, the learned counsel appearing for the accused contended that there is inordinate delay in lodging the complaint and in the absence of any explanation for such delay, the same is fatal to the prosecution and in support of the same, he relied upon the ruling of this Court reported in **2012 (1) MWN (Cr.) 448 in R.VENKATRAJ Vs. STATE, REP BY INSPECTOR OF POLICE, VIGILANCE AND ANTI-CORRUPTION WING, VIRUDHUNAGAR DISTRICT**, wherein it has held as follows:-

"The learned counsel for the appellant Mr.S.Ramasamy, would place reliance upon a decision of this Court in P.Meganathan v. State of Tamil Nadu, 2010(1) MWN (Cr.) 454 ; 2010(3) MLJ(CrI) 182, which touches on this aspect, wherein S.Nagamuthu.J, has observed that when there is no explanation for delay in preferring

complaint, it would create doubt in the prosecution case. In the said case, though the complaint was said to have been prepared on 05.09.1995, it was only given to police on 12.09.1996. In the present case on hand, even though PW1 decided not to give the bribe, only after 6 days he laid the complaint. This delay creates doubt over the case of the prosecution."

9. Likewise, the learned counsel appearing for the appellant/accused relied upon the ruling of the Hon'ble Supreme Court reported in **1980(4) SCC 425 in MARUDANAL AUGUSTI Vs. STATE OF KERALA** to contend that the delay in registering the case is fatal to the prosecution. Following the above said rulings, it is clear that in the absence of any acceptable explanation by the complainant for the delay in lodging the complaint after the demand was made on 08.05.2003 itself, it creates the doubt over the complaint lodged and in that regard the contention of the appellant that delay in lodging complaint is fatal is to be accepted.

10. The learned counsel appearing for the appellant further contended that in the case on hand, it is not only the delay in lodging the complaint, but the first complaint lodged is suppressed and Ex.P5 is prepared for the purpose of this case and

on that ground also the case of the prosecution is unsustainable. In his chief examination P.W.2 stated that on 02.06.2003 he went to the respondent office with typed statement by 12.00 noon or 1.00 p.m., and lodged a complaint Ex.P5. However, in his cross examination P.W.2 stated that he went to the respondent office for the first time on 02.06.2003 by 2.00 p.m., He further stated that he gave written complaint to the respondent and the same was prepared in 15 minutes. During his further evidence, P.W.2 stated that he brought written complaint Ex.P5 with him to the respondent office. Admittedly, it is a typed complaint statement. While P.W.2 has stated in his chief examination that he reached the respondent office by 12.00 noon or 1.00 p.m. with typed statement, in his cross examination, he has stated that after coming to the respondent office, he wrote down the complaint in 15 minutes and lodged it by 2.00 p.m. Thus, P.W.2/complainant contradicts himself not only in respect of the time he reached the respondent office but also about the complaint version lodged by him. The said contradiction of P.W.2 is further corroborated by other materials available on record. P.W.2 in his evidence stated that he reached the office of the respondent by 12.00 noon or 1.00 p.m. and at that time the official witnesses P.W.3 Ravichandran and Malarvannan were present and they were introduced to him. The official trap witness P.W.3 in his chief examination stated that he is working in the Statics

Department in Cuddalore and on 02.06.2003, the Deputy Director asked him to go to the respondent office and accordingly he reached the respondent office by 1.30 p.m. P.W.3 in his cross examination stated that on 02.06.2003, he was asked by his Deputy Director at 12.00 noon to go over to the respondent office and accordingly he reached the respondent office by 1.00 p.m. Thus, while P.W.2 himself has reached the office of the respondent by 12.00 noon or 1.00 p.m. only and then lodged the complaint, it is suppressing that P.W.3 was asked by his superior by 12.00 noon itself to go over to the respondent office. Further, P.W.3 stated that after he reached the respondent office, phenolphthalein test proceeding was explained to them and Ex.P6 entrustment mahazar was prepared, wherein he has signed. P.W.3 admitted that in the said mahazar it is mentioned that it was prepared on 02.06.2003 at 11.00 a.m. Likewise in Ex.P18, the first information report it is stated that the information was received on 02.06.2003 at 11.00 hours. Thus as per the evidence of P.W.2 himself, it is clear that he reached the respondent office by 12.00 noon or 1.00 p.m. only how in Ex.P18 first information report it is stated that the information about the occurrence was received at 11.00 hours itself and the same creates doubt over it. In such circumstances, considering the contradiction in the evidence of P.W.2 himself and the above said discrepancies doubt arises as to when the complaint was really

lodged and whether Ex.P6 was in deed the first complaint received by the respondent. In view of the above said discussion, the contention of the appellant that Ex.P5 complaint was not a genuine complaint and it has been created for the purpose of the case appears to be just and acceptable.

11. The learned counsel appearing for the appellant further contended that there is absolutely no evidence to establish the fact of demand of illegal gratification by the accused and the evidence of P.W.2/complainant is totally untrustworthy and there is no corroborate evidence to substantiate the claim of P.W.2 and as such the prosecution has not let in sufficient evidence to prove the alleged demand of bribe by the accused. It is pointed out that the evidence of P.W.2 is in contrast to the averments in Ex.P.5 complaint lodged by him. It is pointed out that in Ex.P.5 complaint, it is stated that on 08.05.2003, when the complainant went to the office of the accused at 12.00 noon and handed over the application to him, the same was received by the accused and after going through it, he recorded the statement of P.W.2 and obtained P.W.2's signature in it. Then the accused who was working as the Revenue Inspector in the said office asked P.W.2 whether he is having Rs.500/- to which P.W.2 replied that he is not having that much of means. Then the accused told P.W.2 that unless Rs.500/-

is paid no certificate can be issued and returned the file to P.W.2. After collecting the file, P.W.2 went away without stating anything to his house. Thereafter, on 30.05.2003 at 11.00 a.m., P.W.2 again went to the office of the accused, met him with request to issue him certificate. Again it is stated that the accused demanded Rs.500/- and assured to finish the work immediately. P.W.2 again replied the accused that he is not having money at present and if the work is completed, then he will arrange and pay the amount to the accused. Then the accused asked P.W.2 to come back on Monday with Rs.500/- and promised to issue certificate by then. The accused also retained the file with him. It is further stated that as P.W.2 was not willing to pay the bribe amount, he lodged the complaint. Thus, it is stated in Ex.P.5 complaint that the accused demanded Rs.500/- to complete the work of the complainant/P.W.2. In contrast to the complaint averments, while deposing before the court, P.W.2/complainant stated that on 08.05.2003, he met the accused in his office, he told P.W.2 that to issue certificate, lot of money will have to be spent. P.W.2 replied to the accused that he is not having that much of amount. Thus, P.W.2 did not mention specifically in his evidence, the quantum of amount demanded by the accused on 08.05.2003. Likewise in his evidence P.W.2 has not stated anything specifically about the alleged demand of money made on 30.05.2003 by the accused. It is pointed out that in his oral

evidence before the court, P.W.2 has not mentioned specifically on which date, the accused demanded Rs.500/- as bribe from P.W.2. While in Ex.P5 complaint nothing is mentioned about P.W.2 visiting the office of the accused and meeting him on several occasions in between 08.05.2003 and 30.05.2003 in Ex.P.5, it is only stated that on 08.05.2003, the complainant/P.W.2 left the office of the accused without saying anything in reply to the demand made by the accused and then on 30.05.2003 at 11.00 a.m., P.W.2 again met the accused in his office. On the other hand, while giving evidence before the court, P.W.2 in his chief examination stated that after 08.05.2003, as the accused was delaying process of issuing certificate, he met the accused in that regard for several times, but, in his cross examination P.W.2 stated that after he submitted the application on 02.05.2003 after going through the same, the accused returned the application stating that unless the community certificate and VAO certificate is produced, nothing can be done and after obtaining necessary certificate, the complainant represented the application to the accused. Thereafter, the accused informed P.W.2 that only if P.W.2's wife's community certificate is produced, inter caste marriage certificate could be issued and the accused returned the files. In spite of meeting the accused 4 or 5 times prior to the date of trap proceedings, P.W.2 was informed by the accused that only if community certificate of P.W.2's wife is produced, inter-

caste marriage certificate could be issued by him. Even though, P.W.2 stated in his cross examination that he met the accused 4 or 5 times, after submitting the application, he has not stated specifically the dates on which he met the accused. Similarly, P.W.2 failed to mention the date on which the specific demand of Rs.500/- was made by the accused. Thus, the averments in Ex.P5 complaint and the oral evidence of P.W.2 are in variance about the demand of bribe made by the accused on 08.05.2003 and 30.05.2003. Further it is admitted by P.W.2 in his cross examination that the application submitted by him was returned by the accused on the ground that unless community certificate of P.W.2's wife is produced, nothing can be done. Thus, the reason for delay in issuing inter-caste marriage certificate appears to be non production of necessary certificates by P.W.2. As stated earlier, there is no clear cut evidence to prove the alleged demand of bribe by the accused herein.

12. Apart from the complainant, P.W.2's evidence, the prosecution examined the trap witness P.W.3 Ravichandran to corroborate the evidence of P.W.2. The learned counsel appearing for the appellant/accused contended that the evidence of P.W.3 cannot be considered as independent witness since he forms part of the trap team. In support of the said contention, he relied upon the

ruling of this Court reported in **2011(2) MWN(Cr.) 90 in T.M.SHANMUGHAVELU AND ANOTHER Vs. STATE, REP. BY INSPECTOR OF POLICE, VIGILANCE AND ANTI CORRUPTION, COIMBATORE**, wherein it has held as follows:-

" 10.6. The prosecution also cannot place reliance on the evidence of P.W.3, the trap witness, who cannot be considered to be an independent witness as he forms part of the raiding party, to corroborated the version of P.W.2 as held by the Hon'ble Apex Court in *Som Prakash v. State of Punjab*, AIR 1992 SC 665 to the effect that "the witness who formed part of the raiding party were not independent"

13. Likewise, he relied upon the ruling of this Court reported in **2009(1) MWN(Cr.) 324 in S.P.PAULRAJ Vs. STATE REP. BY THE DEPUTY SUPERINTEDENT OF POLICE, VIGILANCE AND ANTI-CORRUPTION, RAMANATHAPURAM**, wherein it has held as follows:-

"17. Demand of illegal gratification said to have been made by the accused at the time of trap not proved.

As P.W.2 has turned hostile, the prosecution version in respect of the alleged demand of illegal gratification said to have been made by the accused at the time of trap is left with the

sole and solitary testimony of P.W.3, Trap witness. Before proceeding to consider the evidence of P.W.3, it is to be borne in mind that the Hon'ble Apex Court in *Som Prakash v. State of Punjab*, AIR 1992 SC 665 has held that the witnesses forming part of the raiding party are not independent witnesses. Therefore, their evidence has to be considered like any other witnesses in the light of the other materials and the cumulative circumstances available on record."

14. Further 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 proved. 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. 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. The learned counsel appearing for the appellant also relied upon the ruling of this Court reported in **2012(3) MWN(Cr.) 380 in P.PALRAJ Vs. STATE, REP. BY INSPECTOR OF POLICE, VIGILANCE AND ANTI-CORRUPTION WING, THOOTHUKUDI**, wherein it has held as follows:-

"9. It is also argued by the learned Senior Counsel for the appellant that P.W.3 being a party to the trap team, he could not be an independent witness and his evidence has not served any purpose as per the law, laid down by the Apex Court.

10.C. In T.M.Shanmughavelu and another v. State, 2011(2)MWN(Cr.) 90 : 2011(3)MLJ (Cr.)481, this Court while re-stating the above said proposition, also observed that the witnesses who formed part of the raiding party were not independent, following a decision

of the Honourable Supreme Court in *Som Prakash v. State of Punjab*, AIR 1992 SC 665. In the present case P.W.3 was trained by P.W.7 and he also formed part of the raiding party and it is to be observed that his evidence is not supportive to the oral testimony of P.W.2 in the matter of receiving bribe."

16. Now, in the light of the above said finding, it is clear that P.W.3, who formed part of the trap team cannot be considered as an independent witness. Further, it is also pointed out that there is contradictions in the evidence of P.W.3 and as such his deposition is of no use to prove the prosecution claim. P.W.3 has stated that he was instructed to go over to the respondent office on 02.06.2003 and when he went there, he was introduced to the complainant and other official witness by P.W.7 and thereafter phenolphthalein test proceeding was demonstrated to them by P.W.7. He stated that Ex.P6 entrustment mahazar was prepared after demonstration of phenolphthalein test proceedings, wherein, himself, the complainant other official witness Malavannan and P.W.7 Inspector of Police signed. However, P.W.3 in his cross examination stated that he do not know the contents of Ex.P6 Entrustment Mahazar and it is stated in Ex.P6 that the same was prepared by 11.00 a.m. itself. Similarly, the complainant/P.W.2 in his cross examination stated that in Ex.P6 Entrustment Mahazar he has signed, but he is

unaware as to what is written in it and how many pages were in it. P.W.2 also stated that only after he signed in Ex.P6, the two official witnesses came there and both of them have not signed in Ex.P6 as long as he was there. Thus, while P.W.3 stated that he signed in Ex.P6 without knowing the contents along with P.W.2 and other witnesses, P.W.2 contradict the claim of P.W.3 about signing in Ex.P6 Entrustment Mahazar. Thus, the presence of P.W.3 and his signing in Ex.P6 Entrustment Mahazar itself is in doubt and admittedly he is not aware about the contents of the said Ex.P6 Entrustment Mahazar.

17. Further, P.W.3 deposed before the Court that he accompanied P.W.2 to the office of the accused and there the accused asked the complainant as to whether he has brought the amount sought for and immediately the complainant took out Rs.500/-(5 x 100 =500/-) notes from his pocket and handed over the same to the accused. However, in his cross examination P.W.3 admitted that in the statement given to the police he has not stated about P.W.2 asking the accused as to whether he has brought Rs.500/- as sought for by him. Pointing it out, the learned counsel appearing for the appellant/accused contended that it is an improvement and as such the evidence of P.W.3 is unreliable. As stated earlier, P.W.3 being a member of the trap team, his evidence

cannot be looked into. Further, there is so much of contractions in the evidence given before the Court. In such circumstances, the evidence of P.W.3 is of no use to corroborate the evidence of P.W.2/complainant. Further as stated earlier, P.W.2 himself has given different version about the alleged occurrence and contradicts himself. Further, it is pointed out that while P.W.2 stated about the demand by the accused and handing over of Rs.500/- from the cover, in his cross examination he has only stated about giving Rs.500/- from his pocket. In such circumstances, it appears doubtful as to whether really the demand was made by the accused for illegal gratification, and then the prosecution has not established the factum of demand of illegal gratification. In that background as rightly contended by the learned counsel appearing for the appellant the prosecution case has to fail.

18. In the case on hand, it is evident from the version of P.W.2 that he sought for issuance of inter-caste marriage certificate to get preference in employment and his application was returned by the accused on the ground that unless and until the community certificate of P.W.2's wife, namely, P.W.10 is produced, nothing can be done. The wife of the complainant who deposed as P.W.10 admitted in her cross examination that at the time of inter-caste marriage, the community certificate of both spouses should be

given, but she did not give her community certificate. She also admitted that only if the community certificate is given, inter-caste marriage certificate will be issued. P.W.2 himself has stated that his application was returned by the accused on the ground that P.W.2's wife community certificate is not produced. Further, P.W.4, the head quarters Deputy Tahsildar stated in his evidence that the person seeking inter-caste marriage certificate must furnish the community certificate of both the spouses, but, in the present case, community certificate of the wife was not furnished. In such circumstances, the claim of P.W.2 that the accused demanded Rs.500/- as bribe and only due to failure to make payment of the same, the inter-caste certificate was not issued appears doubtful.

19. Further, the learned counsel appearing for the appellant/accused contended that immediately after the trap proceedings, the statement of the accused is to be recorded and failure to do so is fatal to the prosecution case. In the case on hand, it is pointed out that the prosecution has not recorded the statement of the accused herein and as such it is fatal to the prosecution claim. In support of the same, he relied upon the ruling of this Court reported in **2012 (1) MWN (Cr.) 448 in R.VENKATRAJ Vs. STATE, REP BY INSPECTOR OF POLICE, VIGILANCE AND ANTI-CORRUPTION WING,**

VIRUDHUNAGAR DISTRICT, wherein it has held as follows:-

"12. As far as the explanation given by the appellant for the possession of tainted currency notes at the time of arrest is concerned, he has stated before P.W.9 that P.W.1 voluntarily gave the amount to him. it was accordingly mentioned by P.W.9 is the Mahazar Ex.P9. P.W.1 also stated this in his evidence. It is incumbent upon Trap Laying Officer to record the statement from the accused at the time of arrest under Rule 47 of DVAC Manual....."

20. Likewise, he relied upon the ruling of this Court reported in **2012(3) MWN(Cr.) 380 in P.PALRAJ Vs. STATE, REP. BY INSPECTOR OF POLICE, VIGILANCE AND ANTI-CORRUPTION WING, THOOTHUKUDI**, wherein it has held as follows:-

"13. It is the bounden duty of the trap laying officer to examine the accused immediately after the arrest at the place of trap and failure in following the Rule would vitiate the procedures. P.W.7, the trap laying officer did not examine the appellant after the arrest as to his explanation for the possession of money. The tainted money was not recovered from the possession of the appellant, but from P.W.5. In

this context, it is advantageous to extract the provisions available under Rule 47 of DAVC Manual....”

21. In the case on hand, following the above said Rulings, it is contended by the learned counsel for the appellant that the failure on the part of the Trap Laying Officer to record the statement of the accused immediately after arresting him is fatal to the case of the prosecution. However, refuting the same, the learned Additional Public Prosecutor contended that it is not mandatory to record such statement and Inspector of Police is not expected to record any statement which is not admissible in evidence. In Para 10 (a) of the counter filed by the respondent, it is stated that the Trap Laying Officer cannot be expected to record any statement (statement of accused) which is not admissible in evidence and the Vigilance manual is only directory in nature for the observation by the personnel of the department and has no sanctity of law and cannot be enforced. However, following the above said Rulings relied upon by the appellant it is clear that if the TLO fails to record the statement of accused, immediately after the arrest, the same will be fatal to the prosecution case.

22. It is therefore clear that the foundation of the prosecution case, namely, demand made by the appellant for bribe has been shaken to a great extent. In any event the contradictions

in the evidence let in by the prosecution causes great doubt as to whether the alleged event took place in the manner claimed by the prosecution. Further, the unexplained delay in lodging the complaint creates suspicion over the prosecution case. In such circumstances, it is clear that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Hence, the appellant is entitled for acquittal and the appeal has to be entertained.

23. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Special Judge/Chief Judicial Magistrate, Cuddalore, in Special Case No.1 of 2004 dated 20.08.2013 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.

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30.08.2017

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To

1.The Chief Judicial Magistrate, Cuddalore.

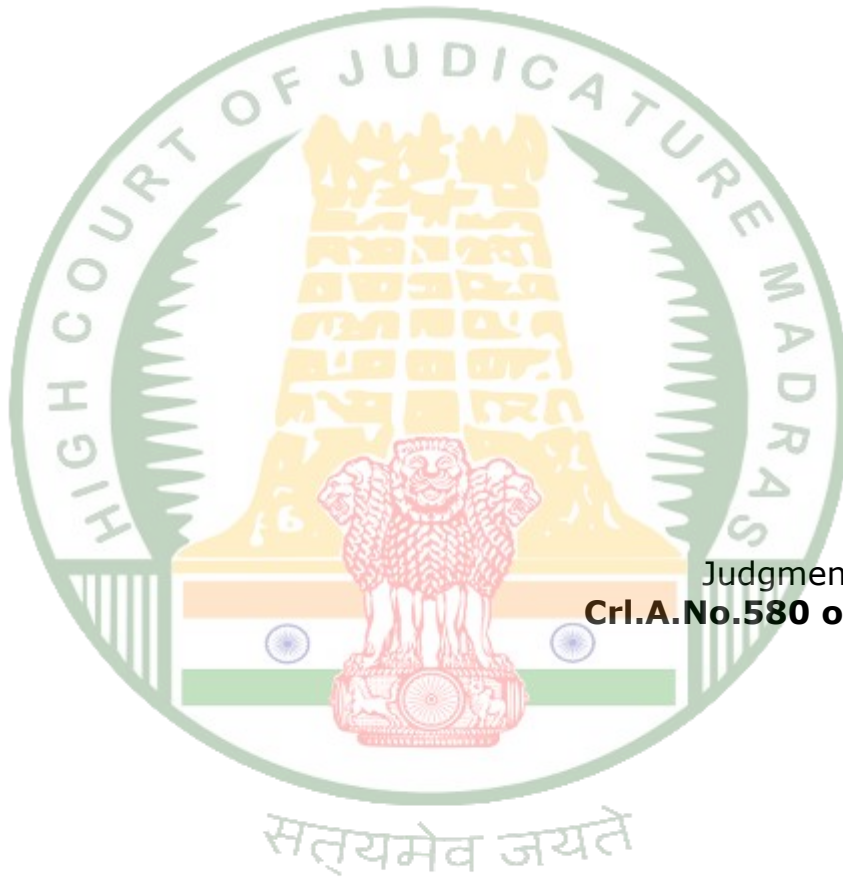
2.The Inspector of Police,
Vigilance & Anti Corruption,
Cuddalore.

3.The Public Prosecutor,

High Court, Madras.

S.BASKARAN.J.,

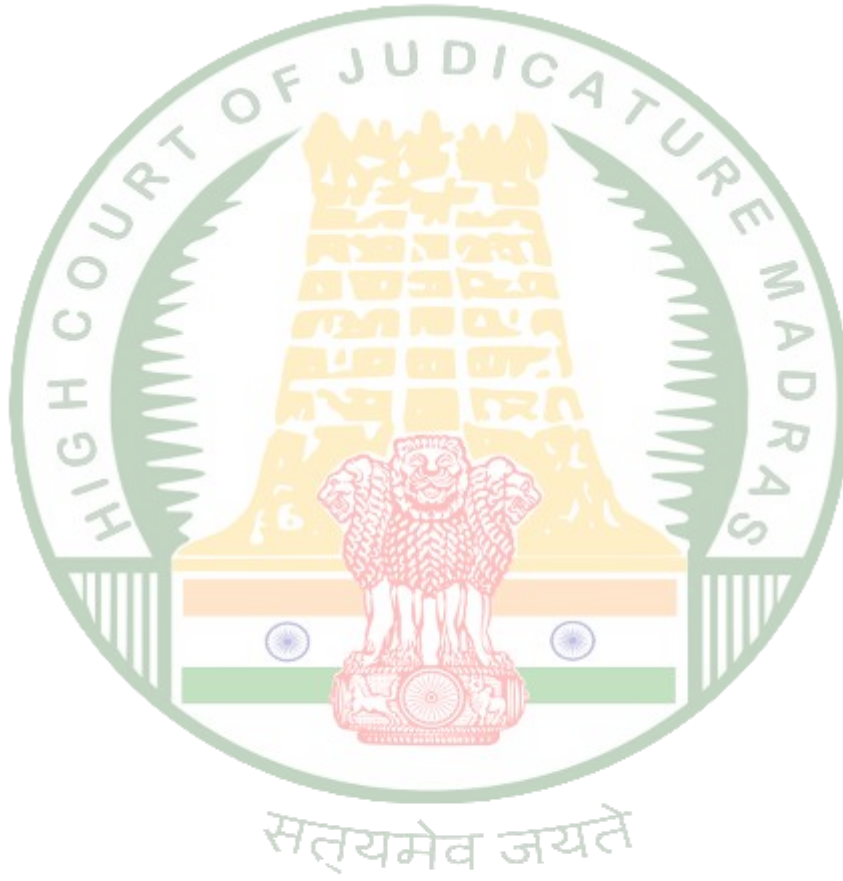
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Judgment in
Crl.A.No.580 of 2013

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