

Bail Slip

The Appellant herein namely E.Vijaya Accused in Special CC.NO.46/07 on the file of the Chief Judicial Magistrate-cum-Special Judge, Krishnagiri was directed to be released on bail as per order of this court dated 01/11/16 in Crl.Mp.10986/16 in Crl.A.NO.735/16.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2018

PRONOUNCED ON : 27.06.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.333 of 2017 and 735 of 2016

Chandrasekar(died)

represented by his legal representatives

1.C.Saroja

2.C.Saranya

3.C.Shreeharee(minor)

R3 minor represented by his guardian and

mother C.Saroja

.. Appellants/Legal Representatives
of the 1st accused in
Crl.A.No.333/2017

E.Vijaya

.. Appellant/2nd Accused in
Crl.A.No.735 of 2016
/versus/

State through the Inspector of Police,
Directorate of Vigilance & Anti-Corruption,
Dharmapuri.Crime No.9/AC/2005

.. Respondent/Complainant in
both cases

Prayer in Crl.A.No.333 of 2017: Criminal Appeal is filed under Section 374(2) r/w Section 394 of the Criminal Procedure Code praying to set aside the judgment dated 27.09.2016 made in Spl.C.C.No.46 of 2007 on the file of the Chief Judicial Magistrate cum Special Judge, Krishnagiri convicting the deceased 1st accused Chandrasekar under Section 7 of the Prevention of Corruption Act, 1988 to undergo Rigorous Imprisonment for a period of 6 months and to pay a fine of Rs.1000/- and i/d to undergo Simple Imprisonment for a period of 1 months and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 to undergo Rigorous Imprisonment for a period of 1 year and to pay a fine of Rs.1,000/- and i/d to undergo Simple Imprisonment for a period of 1 months and acquit the deceased 1st accused Chandrasekar of all charges.

Prayer in Crl.A.No.735 of 2016: Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code praying to set aside the judgment made dated 27.09.2016 in Spl.C.C.No.46 of

2007 on the file of the Chief Judicial Magistrate cum Special Judge, Krishnagiri convicting the appellant under Section 7 of the Prevention of Corruption Act, 1988 to under Rigorous Imprisonment for a period of 6 months and to pay a fine of Rs.1,000/- and i/d to undergo Simple Imprisonment for a period of 1 month and under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 to undergo Rigorous Imprisonment for a period of 1 month and to pay a fine of Rs.1000/- and i/d to undergo Simple Imprisonment for a period of 1 month and acquit the appellant of all charges.

For Appellant :Mr.S.Ashok Kumar, SC for
Mr.K.S.Karthik Raja (both cases)

For Respondent :Mr.K.Prabakaran, APP for
(both cases)

COMMON JUDGMENT

These two appeals are directed against the judgment passed by the Chief Judicial Magistrate-cum-Special Judge, Krishnagiri in Spl.C.C.No.46 of 2007 holding both the accused K.Chandrasekar (A1) Senior Grade Inspector and E.Vijaya (A2) Assistant Commercial Tax Officer working at Hosur Commercial Tax Check Post guilty of the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The trial Court sentenced the accused to undergo six months Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month Simple Imprisonment for the offence under Section 7 of the Prevention Corruption Act, 1988 and to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month Simple Imprisonment for the offence under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. Aggrieved by the said conviction and sentence, the legal representatives of Chandrasekar (A1) had preferred CrI.A.No. 333 of 2017 and the second accused Vijaya had preferred CrI.A.No.735 of 2016.

2. The facts leading to these appeals are as follows:

M/s Aishwarya Handloom Private Limited a registered trader in hand loom textiles manufacturing at Erode sent 24 parcels of hand loom goods to its customers at Hyderabad and Bombay via, Bangalore through Patel & Co.Transport (Parcel) Service. While the lorry bearing Reg.No.KA-01-A-1287 was passing through the commercial tax check post at Hosur on 14.08.2005, the goods were detained along with the vehicle by Chandrasekar(A1), Senior Grade Inspector on the ground that the invoices does not carry the Registration Certificate(RC) and Tax Index Number (TIN) of the consignee. The lorry driver one Mr.Baba Fakruddin informed Patel & Co.Transport (Parcel) Service about this.

Thiru.Mothilal, Branch Manager of Patel Lorry Service at Coimbatore informed Thiru.Srinivasan @ Prakash about this and told him to contact A1 (Chandrasekar) over phone. When Thiru.Mothilal called A1 (Chandrasekar) and enquired the reason for detaining the consignment, A1(Chandrasekar) informed him that the invoices does not carry Registration Certificate and Tax Index Number and it is liable to be taxed three times the value of the goods and told him to come and meet him in person. When Srinivasan @ Prakash told him that the handloom goods are not taxable, expressed his difficulty to come and meet him in person. Even then, to release the vehicle A1(Chandrasekar) had demanded bribe. Since the driver of the lorry had no enough money with him, A1(Chandrasekar) had given the phone to A2 (Vijaya) Assistant Commercial Tax Officer, who had advised Srinivasan @ Prakash to give the money demanded by Chandrasekar (A1). Thereafter, Chandrasekar(A1) has demanded Rs.10,000/- for released of the lorry. After negotiation, he reduced it to Rs.7,000/-. When Srinivasan @ Prakash has expressed his inability to come and pay the money immediately, Chandrasekar (A1) has given time to give the bribe till 17.08.2005 and also took promise from Srinivasan in the name of god and his mother and thereafter released the goods and the vehicle.

3. On 17.08.2005 at about 01.37 p.m., Chandrasekar(A1) called the defacto complainant Srinivasan @ Prakash over phone and told him that believing his words, he has released his lorry, but he has not come to Hosur to pay the money. When Srinivasan @ Prakash said that he was not able to come to Hosur because of the demise of his relative, Chandrasekar(A1) told to call him back at 04'0 clock. Accordingly, at 04.10 p.m. the defacto complainant Srinivasan @ Prakash contacted the Hosur check post. A2 (Vijaya) answered the call and she enquired what happened to the money demanded and gave over the phone to Chandrasekar(A1). Chandrasekar(A1) told Srinivasan @ Prakash that he should come to the commercial tax check post, Hosur on the next day and should give Rs.7,000/- as bribe. Srinivasan @ Prakash was not inclined to give bribe of Rs.7,000/-. So, he went to Dharmapuri Vigilance and Anti-Corruption Office, after explaining the events, gave a written complaint to the Inspector on 18.08.2005 at 07.30 p.m.

4. On receiving the complaint, the Inspector of Vigilance and Anti Corruption Thiru.Somasundaram registered First Information Report against Chandrasekar(A1), Senior Grade Inspector, Hosur check post and Vijaya, Assistant Commercial Tax Officer, Hosur check post and arranged for trap. At about 10.00 p.m., witnesses Thiru.Natarajan, working as Assistant in Animal Husbandry Department and Thiru.Ravichandran, working as Revenue Inspector, were called to the Vigilance Office to be witnesses for the trap proceedings. After demonstrating the significance

of phenolphthalein test to the witnesses, the bribe money of Rs.7,000/- smeared with phenolphthalein was entrusted to Srinivasan @ Prakash. Entrustment Mahazar was prepared in the presence of the witnesses and their signatures were obtained.

5. On 19.08.2005 at 01.00 hours, the trap laying officer with his team along with the complainant Srinivasan @ Prakash and the shadow witnesses went to Hosur check post and reached near the check post at about 03.30 hours. The defacto complainant Srinivasan @ Prakash and the shadow witness Thiru.Natarajan(PW-4) went inside the check post, while others were waiting outside taking position. On seeing Srinivasan @ Prakash, Chandrasekar(A1) enquired about the decoy witness Thiru.Natarajan and thereafter, enquired about his business and asked whether he had brought the money, which he demanded. Srinivasan @ Prakash took out Rs.7,000/- from his pant pocket and handed it over to Chandrasekar(A1). On receiving the money, Chandrasekar(A1) counted it with his hands and gave it to Vijaya (A2), who received the same and kept it in the right side table drawer. On the direction of Vijaya (A2), Chandrasekar(A1) brought the invoice documents of Srinivasan @ Prakash from the records room and handed it over to Srinivasan @ Prakash. Thereafter, Srinivasan @ Prakash and Thiru.Natarajan came out of the room and gave the pre-arranged signal to the trap team.

6. On seeing the signal, Thiru.Somasundaram, trap laying officer (PW-20) and his team went inside the check post. On being identified as Chandrasekar and Vijaya by Srinivasan @ Prakash, the trap team performed phenolphthalein test on the hands of the first accused Chandrasekar. The colourless sodium carbonate solution turned pink on dipping Chandrasekar figures into it. The samples were collected and thereafter, he was interrogated by the Inspector. Chandrasekar admitted the receipt of money from Srinivasan @ Prakash and further informed to the trap laying officer that he had handed over the money to Vijaya, Assistant Commercial Tax Officer. Thereafter, Vijaya was asked to dip her hands in the sodium carbonate solution. The right hand wash turned light pink, but no significant colour change could be seen when her left hand was dipped in the sodium carbonate solution. Thereafter, from A2(Vijaya) table drawer the tainted money of Rs.7,000/- was recovered. During the search, the trap laying officer was able to recovery a sum of Rs.2,350/- concealing in between the registers and Rs.1,750/- from the possession of the first accused for which no suitable explanation was given by Chandrasekar and Vijaya. The entire proceedings were reduced into writing by way of the recovery mahazar. For receipt of illegal gratification, Chandrasekar(A1) and Vijaya(A2) were arrested. After completion of investigation, final report was placed before the trial Court.

7. The trial Court on perusing the records had framed charges against Chandrasekar (A1) and Vijaya(A2) for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. To prove the charges, the prosecution has examined 21 witnesses. 53 exhibits and 9 Material objects were marked. No witness or document produced on behalf of the accused. The trial Court after appreciating the evidence placed before it held both the accused guilty of charges and sentenced them to undergo imprisonment and fine as stated earlier.

8. Aggrieved by the judgment of conviction, the legal representatives of the first accused and the second accused have preferred these appeals.

9. Grounds pleaded in the Memorandum of Appeals:

In the appeals preferred on behalf of the first accused (deceased Chandrasekar) and the second accused the validity of the trial Court judgment is challenged on the ground that the Court has failed to appreciate the oral and documentary evidences placed by the prosecution in its proper perspective. The material contradictions between the prosecution witnesses has not been properly considered by the trial Court and the trial Court failed to see the glaring contradictions in the deposition of the prosecution witnesses which hits the root of the matter. The trial Court has failed to see that the prosecution has not proved its case through unimpeachable and truthful evidence regarding demand and acceptance. The non-examination of driver of the lorry Thiru.Baba Fakruddin in which the goods of defacto complainant was transported is fatal to the prosecution. Since the defacto complainant and the accused had never met each other before 19.08.2005, the case of the prosecution that as soon as the defacto complainant entered the check post, the accused called him by name is highly improper and unbelievable. PW-8 [Tmt.Geetha] Junior Assistant of the transport check post had deposed that the lorry bearing No.KA-01-A-1287 was detained at the Transport Department Check Post for non-payment of Green tax. It is also evident from the records that the said vehicle passed through the Transport Department check post on 15th day at about 03.00 a.m. While so, the alleged detention of the lorry and demand of illegal gratification at Commercial Tax Department Check Post on 14th at 08.30 p.m., is improbabilised through the testimony of PW-8 [Tmt.Geetha]. The failure of trap laying officer to record the statements of the accused persons immediately after the trap is contrary to the Vigilance Manual. The alleged telephonic conversation relied on by the prosecution based on the call details which are marked as Ex.P44 and Ex.P45 is inadmissible in evidence for non-compliance of the mandate under 65B of the Indian Evidence Act, 1872.

10. Rival submission of the respondent/State:

Per contra, the learned Additional Public Prosecutor has filed written submission defending the case of the prosecution as well as the judgment of the trial Court. It is contended that PW-3 [Thiru.Srinivasan @ Prakash] had clearly deposed that he got information from Thiru.Mothilal [PW-9] that the goods has been detained along with the vehicle at commercial tax check post, Hosur for want of particulars in the invoices and consignment notes. In turn, PW-3 [Thiru.Srinivasan @ Prakash] conducted A1 and got the information why his goods were detained and after knowing that A1 is expecting bribe, he agreed to give bribe and later requested A1 to release the goods and vehicle immediately. The call transaction between Thiru.Mothilal [PW-9] and PW-3[Thiru.Srinivasan @ Prakash] and the accused during the relevant point of time on 14.08.2005 night established through the evidence of the service providers and the call details. PW-7 [Thiru.Arokiyasamy] staff of BSNL and PW-10 [Thiru.Chandramouleswaran] Assistant Manager Legal Air Cell Limited, Coimbatore, who are the persons in custody of the electronic data had come before the Court and spoken about the call details between the land line at Hosur check post and the cellphone of the defacto complainant. The movement of the lorry bearing Reg.No.KA-01-A-1287 is found in the register marked as Ex.P30 maintained by the Commercial Tax Department. On the day before the complaint i.e on 17.08.2005 again there was telephonic conversation between A1(Chandrasekar) and the defacto complainant(Srinivasan @ Prakash). The defacto complainant [PW-3] had deposed that on that day he was called by A1 over phone at 1.37 hours and reiterated the demand of Rs.7000/- and scolded him why he did not keep his promise. This portion of the prosecution case cannot be doubted since the call details as well as PW-3 evidence fortifies the case of the prosecution.

11. On the day of trap, the demand of bribe and receipt of money by A1(Chandrasekar) and later passing the money to A2 (Vijaya) is spoken by both PW-3(Srinivasan @ Prakash) and the shadow witness Thiru.Natarajan [PW-4]. Apart from the tainted currency, sum of Rs.2,350/- which was kept concealing in the ledger on the instruction of A2(Vijaya) was recovered. In the said circumstances, the finding of the trial Court regarding demand and acceptance as well as the recovery is well found. The trial Court judgment is based on evidence. The defence had not given any plausible explanation for receipt of the money or recovery of the same from their possession. The minor discrepancies in the evidence of PW-3 (Srinivasan @ Prakash) and PW-20 (Thiru.Somasundaram) trap laying officer cannot be a ground for disbelieving the case of the prosecution leading to acquittal of the accused. Therefore, the learned Additional Public Prosecutor would submit that the trial Court judgment is well based on facts and law. Hence, it has to be confirmed.

12. Point for consideration:

Whether the trial Court judgment suffers improper appreciation of evidence?

13. PW-3[Srinivasan @ Prakash], who is the defacto complainant had spoken about the transport of his handloom goods through Patel & Co.Transport (Parcel) Service and the goods being detained at Hosur Commercial Tax Check Post, the night between 14th and 15th day of August 2005. To substantiate this fact, the prosecution has examined PW-9 [Thiru.Mothilal] who is the Branch Manager of Patel & Co., Coimbatore. While affirming the case of the prosecution that on 13.08.2005, 24 parcels of handloom goods were booked by M/s Aishwarya Handloom Private Limited to be delivered at Hyderabad and Mumbai via, Bangalore and the goods were transported in the lorry bearing Reg.No.KA-01-A 1287 on 14.08.2005. PW-9 had identified the consignment receipt book marked as Ex.P37 and the trip sheet Ex.P38. He has deposed that immediately after the detention of the vehicle and goods at Hosur check post, the lorry driver called him over phone and informed about that and has requested to contact the people in the Check Post. PW-9 contacted A1(Chandrasekar) from his phone number 0422-2382851. After knowing the reason for detaining the lorry from A1(Chandrasekar), he passed on the information to PW-3 (Srinivasan @ Prakash), who in turn had contacted A1(Chandrasekar). These chain of events are spoken by the witnesses namely PW-3(Srinivasan @ Prakash) and PW-9 (Thiru.Mothilal) as well as supported by the call details furnished by the service providers.

14. It is contended by the learned Senior Counsel appearing for the appellant that the call details is not supported by certificate which is mandatory under Section 65B(4) of Indian Evidence Act, 1872 and therefore, it should not be looked into it. In this regard, it is essential to point out the latest judicial pronouncement of the the Hon'ble Supreme Court regarding interpretation of Section 65B(4) of the Indian Evidence Act, 1872. The Hon'ble Supreme Court in Shafhi Mohammad v. The State of Himachal Pradesh reported in 2018-1 L.W. (Cr1.) 959, after considering earlier judgments rendered in (1)Ram Singh and others v. Col.Ram Singh reported in (1985)1 LW (Cr1.) 25SN; (2)Tukaram S.Dighole v. Manikrao Shivaji Kokate, reported in (2010)4 SCC 329; (3)Tomaso Bruno and Anr. v. Stae of Uttar Pradesh reported in (2015) 7 SCC 178; (4)Mohd.Ajmal Amir Kasab v. State of Maharashtra, reported in (2012) 9 SCC 1; (5)State (NCT of Delhi) v. Navjot Sandhu reported in (2005) 11 SCC 600; and (6) Anvar P.V. v. P.K.Basheer and others reported in (2014) 10 SCC 473 has held that:

"(8)Sections 65A and 65B of the Evidence Act, 1872 cannot be held to be a complete code on the subject. In Anvar P.V. (supra), this Court in para 24 clarified that primary

evidence of electronic record was not covered under Sections 65A and 65B of the Evidence Act. Primary evidence is the document produced before Court and the expression "document" is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

(9). The term "electronic record" is defined in Section 2(t) of the Information Technology Act, 2000 as follows:

"Electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche."

(10). Expression "data" is defined in Section 2(o) of the Information Technology Act as follows.

"Data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer."

(11) The applicability of procedural requirement under Section 65B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is

produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65B (h) is not always mandatory.

(12) Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies."

15. The Hon'ble Apex Court has clarified the requirement of certificate being procedural, It can be relaxed by the Court whenever interest of justice so justifies. In the present case, the telephone call details are obtained by the Investigating Officer in the course of his investigation. After being satisfied that the statement of the defacto complainant (PW-3) that A1 called over phone being prima facie established, he has laid the final report. To prove the authenticity of the call details, the service providers namely BSNL and Aircel were called to identify the Call Detail Records (CDR). The officials from the concern service providers have mounted the witness box and on the identified the Call Detail Records (CDR). The safeguard intended under Section 65B(4) of the Indian Evidence Act, 1872 had been substantially satisfied by examining the person, who is in charge of the electronic device. As pointed out by the Hon'ble Apex Court, it will be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved.

16. In this case, it is not the accuracy under doubt, it is the absence of certificate as mentioned under Section 65B(4) of the Indian Evidence Act, 1872 is taken as defence. The writings

on the back of the invoices Ex.P6, the call details are the tell-tale evidence to establish the accused and the defacto complainant were conversing with each other prior to the trap. After the clarification by the Hon'ble Supreme Court in the above cited case, even if the certificate contemplated under Section 65 B(4) of the Indian Evidence Act, 1872 is not available, being a procedural safeguard the courts may relax the requirement if the interest of justice so justifies.

17. In the light of the evidence, this Court is of the view that de hors of the call details even otherwise the evidence of PW-3 and PW-9 is adequate to inspire the confidence of this Court. Therefore, non examination of the driver of the lorry Thiru.Baba Frukthin or the absence of certificate under Section 65B(4) of the Indian Evidence Act, 1872 does not make any dent to the prosecution case.

18. On the day of trap i.e on 19.08.2005, PW-3 (Thiru.Srinivasan @ Prakash) and PW-4(Thiru.Natarajan) had met A1(Chandrasekar) at about 4.00 a.m. On seeing PW-3, A1 has called him by name and offered seat and also started conversing with him. This has been spoken by the defacto complainant[PW-3] as well as the shadow witness [PW-4]. The testimony of these two witnesses are natural and also indicates that though PW-3 [Srinivasan @ Prakash) and A1(Chandrasekar) had not met earlier, they are known to each other through telephonic conversation. It is the case of the prosecution through PW-3(Srinivasan @ Prakash) that A1(Chandrasekar) called him over phone on 17.08.2005 and instructed him to come on 19.08.2005 at 05.00 a.m., with money. It is natural that on 19.08.2005 at 05.00 a.m., when a stranger entered the check post, A1(Chandrasekar) who was expecting PW-2 to confirm, whether he is the person whom he is expecting, would have called his name. This does not create any suspicion or doubt about the case of prosecution, but only strengthens it. The demand and receipt of tainted money by A1(Chandrasekar), who had passed the money to A2(Vijaya), is spoken by PW-3(Srinivasan @ Prakash) and PW-4(Natarajan) without any ambiguity. While so, the defence question the meeting of A1 at the check post. Some contradictions in the occlar evidence does not provide any ground to doubt the case of prosecution. The trap event at the check post, Hosur on 19.08.2005 is spoken not only by PW-3 and PW-4 but also the staff, who were present and on duty in the check post on the day of trap. While PW-3 had spoken about the demand of bribe by A1 on 14.08.2005 and on 17.08.2005, his evidence of demand and receipt of the illegal gratification on 19.08.2005, is corroborated by the evidence of PW-4. He had witnessed the demand and acceptance of illegal gratification by A1 and in turn handing it over to A2. In sofar as the previous demand dated 14.08.2005 and 17.08.2005 are concerned, no doubt there is no other witness, who has heard or seen the demand except the call details. Even the call details

does not provide what really transpired between the caller and the called person, however, that piece of evidence is sufficient to prove that there was contact between the defacto complainant and the persons, who were in the Hosur check post between 14.08.2005 at 08.30 p.m., and 18.08.2005 at 04.00 p.m.

19. In Ex.P30 Register entry 414 would go to show that on 14th/15th.08.2005 night at 20.34 hours, the vehicle bearing No.KA-01-A-1287 has passed through the check post. This Court finds some overwriting in the numbers. It has been struck off and some attempt has been made to write it some other number. This register was in the custody of the officials of Hosur check post, till it was seized by the Investigating officer. This correction or manipulation should have been done only by the person, who knows that this entry will go against A1. This Court wants to emphasis and rely upon this entry in Ex.P30 because taking advantage of the evidence of PW-8 [Tmt.Geetha], Junior Assistant at Regional Transport Office, who had deposed that the vehicle bearing Reg.No.KA-01-A1287 while passing through the Hosur Transport check post between 14th/15th.08.2005 was detained for non payment of green tax. After paying the green tax, the lorry driver took the lorry at 03.00 a.m., in early morning. The vehicle movement register is marked as Ex.P35 and the entry regarding this vehicle is marked as Ex.P36. While in Ex.P30, entry No.414 indicates that the concerned vehicle has crossed commercial tax department check post at 20.35 hours thereafter, the same vehicle has been detained by the transport department at his check post for non-payment of green tax and after payment of green tax, the vehicle has been released at 03.00 p.m. Therefore, the argument of the learned Senior Counsel appearing for the appellant that the vehicle might not have passed through the commercial tax check post at Hosur at 20.34 hours on 14.08.2005 is not only baseless, but also proved to be in correct in view of the entries in Exs.P30 and P36.

20. The contention of the learned Senior Counsel appearing for the appellant that the entire episode narrated by the prosecution regarding the trap held at Hosur check post on 19.08.2005 is unbelievable. Contrary to his contention, apart from the evidence of PW-3, PW-4 and PW-20-trap laying officer, there are other evidences both documentary as well as ocular which lends support to the case of the prosecution that on 19.08.2005 at 04.00 a.m., there was a raid by the Vigilance and Anti Corruption team at Hosur check post. To support this, PW-5 [Thiru.Balan] would say that on 19.08.2005 earlier morning at 04.30 a.m., the trap team came to the check post, one of them identified A1 and A2. Thereafter, the trap laying officer apprehended A1 and A2 and after interrogating them, they also checked other staff members to find out whether they have unaccounted money in their possession. PW-5 [Thiru.Balan] would say that he had Rs.700/- in his possession and explained that he

has having that money for purchase of ready-made cloths for his children. Satisfied by his explanation, the trap laying officer has returned back that money to PW-5. He has mentioned the name of other staff who were present at the time of trap operation. The money which they have possessed and the explanation given by them. This witness has identified the hand writing of A1 (Chandrasekar) in the register marked as Exs.P30 and P31.

21. PW-5 and PW-6 were staff present in the check post during trap. They were on duty between 08.00 p.m. to 08.00 a.m. of 18th/19th.08.2005. These two witnesses who were natural and chance witnesses for the search and recovery of the tainted money cannot be disbelieved. The prosecution has strongly proved the demand and acceptance of bribe money by A1 and A2 through PW-3 and PW-4, supported by the phenolphthalein test conducted at the hands of A1 and A2 both by physical examination done on the spot as well as the chemical examination on the laboratory, which is reflected in the chemical analysis report Ex.P43.

22. In the said circumstances, presumption under Section 20 of the Prevention of Corruption Act, 1988 has to be necessarily drawn against the accused persons, without rebuttal by the accused through acceptable evidence. The said rebuttal evidence or explanation need not be proved beyond reasonable doubt, but there must be preponderance of probabilities in the explanation.

23. As far as the case in hand, the accused mainly harp on the contradictions between the prosecution witnesses, which is quite natural, when the witnesses are genuine. Non-examination of the driver of the lorry Thiru.Baba Fakruddin by no stretch of imagination could be fatal to the case of the prosecution. When the fact that the lorry bearing Reg.No.KA-01-A-1287 has passed through the check post on the said date, is proved through the documentary evidence and the photocopy of the invoice Ex.P6, which contains phone number of Thiru.Baba Fakruddin on its back. The money recovered on the day of trap from the possession of the accused are the tell-tale evidence while strengthen the case of the prosecution. For the deposition of PW-3 after receipt of bribe, A1(Chandrasekar) handed over it A2 and thereafter gave him the invoice copies Exs.P6, P7 and P8 and the consignment note Ex.P9. No explanation either by way of suggestion or through defence witness or through documents or during Section 313 Cr.P.C. questioning had been put forth to the accused persons regarding these incidents happened during the trap and about the recovery of tainted money from them.

24. In C.M.Girish Babu v. CBI, Cochin, High Court of Kerala reported in (2009)3 SCC 779, after relying upon the earlier judgment of the Hon'ble Supreme Court like M.Narsinga Rao v. State of Andhra Pradesh reported in (2001)1 SCC 691, the Hon'ble Supreme Court has held paragraphs 20 and 21 reads as under:-

"20. A three-Judge Bench in M. Narsinga Rao Vs. State of A.P. (2001) 1 SCC 691 while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed:(SCC p.700, para 24)

"24.....we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide Madhukar Bhaskarrao Joshi v. State of Maharashtra.) The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: (SCC p.577, para 12)

"12.The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that

the prosecution has proved that the accused received the amount towards gratification."

25. On going through the facts of the case, this Court finds that it is not mere recovery of some currency notes in the premises of Hosur check post where A1 and A2 working as Senior Grade Inspector and Assistant Commercial Tax Officer respectively. It is the clear case of allegation of demand of illegal gratification from Srinivasan @ Prakash [PW-3] and threat to abuse their official position as Senior Grade Inspector and Assistant Commercial Tax Officer and prevent free movement of his goods. Therefore, when the demand, acceptance as well as recovery is proved coupled with the fact that the said demand and acceptance does not have any trapping of legal remuneration as defined under the Act and in the absence of any contra material to infer that the said money is not illegal gratification, then, the presumption under Section 20 of the Prevention of Corruption Act, 1988 has to be drawn against the appellants. The trial Court, after considering the facts as well as the law laid down by the Courts, had arrived at a right conclusion holding the accused guilty.

26. On the over all appreciation of the evidence on records, there is no doubt in the minds of this Court that the prosecution had proved the appellants had demanded illegal gratification from PW-3 and the same was accepted on 19.08.2005 at 04.30 a.m., and later, recovered by PW-20 trap laying officer. This Court, on re-appreciation of evidence, in the light of the arguments placed by the accused and the points raised in the memorandum of appeals, is of the considered view that, the prosecution has proved the guilty of the accused beyond any reasonable doubt. Hence, these appeals are liable to be dismissed.

27. In the result, the Criminal Appeals are dismissed. The judgment of conviction made dated 27.09.2016 in Spl.C.C.No.46 of 2007 on the file of the Chief Judicial Magistrate cum Special Judge, Krishnagiri is hereby confirmed. In view of the demise of the first accused(Chandrasekar), no further order requires. As far as the second accused (Vijaya) who is the appellant in CrI.A.No.735 of 2016 is concerned, the trial Court is directed to secure the accused/appellant to serve the remaining period of sentence imposed by the trial Court.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To:

1.The Chief Judicial Magistrate cum Special Judge, Krishnagiri.

2.The Inspector of Police,
Directorate of Vigilance & Anti-Corruption,
Dharmapuri.

3. The Public Prosecutor, High Court, Madras.

+lcc to Mr.K.S.Karthik Raja, Advocate sr.no.41105

Crl.A.Nos.333 of 2017 and 735 of 2016

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