

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON 12.09.2018	JUDGMENT PRONOUNCED ON 25.09.2018
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CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.A.No.608 of 2011

V.Ranganathan ... Appellant / Accused

/Vs/

The State, Reb by
Inspector of Police,
Vigilance and Anti Corruption,
Cuddalore.
(Crime No.4 of 2008)

... Respondent / Complainant

PRAYER: Criminal Appeal filed under sections 374 of the Criminal Procedure Code to set aside the judgement passed in Special Case No.1 of 2009 dated 15th day of September 2011 on the file of the Special Judge/Chief Judicial Magistrate, Cuddalore District, whereas the accused is convicted u/s 248 (2) Cr.P.C and sentenced to undergo R.I for six months and to pay a fine of Rs.1,000/- in default S.I for one month under Sections 7 of Prevention of Corruption Act 1988 and also convicted and sentenced to undergo R.I. For one year and to pay a fine of Rs.1,000/- in default S.I for one month under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988 and a sentences will run concurrently. Total fine Rs.2,000/-.

For Appellant : Mr.R.S.Anhamudhu
for Mr.K.Mohanamurali

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

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J U D G M E N T

This Criminal Appeal is filed by the appellant/accused against the judgement passed by the trial Court finding him guilty under Section 7 of Prevention of Corruption Act, 1988 and convicting and sentencing him to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.1,000/-, in default Simple Imprisonment for one month and also finding him guilty under Section 13 (2) r/w 13(1) (d) of prevention of Corruption Act, 1988 and convicting and sentencing him to undergo Rigorous Imprisonment for one year and to pay a fine

of Rs.1,000/- in default Simple Imprisonment for one month. The trial Court ordered the entire sentence to run concurrently and the period already undergone by the appellant/accused was directed to be set off under Section 428 Cr.P.C. The appeal has been filed challenging the order of conviction and sentence.

Brief Facts are as follows:-

2. The Inspector of Police, Vigilance and Anti-Corruption, Cuddalore laid a final report against the appellant/accused that he was working as the Village Administrative Officer, Venkarumbur Village and i/c of Sevrur Village, Thittakudi Taluk, Cuddalore and that he was a public servant as defined u/s 20 (c) of the Prevention of Corruption Act 1988 (here in after called in short as PC Act). The allegations against the appellant/accused is that on 18.06.2008 at about 10.00 hrs at Thittakudi Taluk Office, Cuddalore, the appellant/accused had demanded Rs.1,750/- from one Thiru.K.Ravi of Sevrur Village for himself as gratification other than legal remuneration as a motive for doing his official act for processing the application for obtaining compensation and issue cheque under Tamil Nadu Labourers-Farmers (Social Security Welfare) Scheme 2006. Pursuant to the demand, on 19.06.2008 between 12.45 and 12.50 hrs at his office, the appellant/accused had reiterated the said demand of gratification and had obtained Rs.1,750/- from him and hence, the appellant/accused appeared to have committed an offence under Section 7 of PC Act. As the appellant/accused being the public servant by corrupt or illegal means and by abusing his official position obtained the gratification and thereby appeared to have committed an offence under Section 13 (2) r/w 13(1) (d) of the PC Act.

3. The trial Court took cognizance and issued summons when the appellant/accused appeared before the trial Court copies were furnished to him under Section 207 of Cr.P.C.

4. After perusing the charge sheet, documents, statement of witnesses and the sanction order obtained thereto and after hearing the arguments of the Deputy Legal Advisor of the complainant and the counsel for the appellant/accused, charges under Sections 7 and 13(2) r/w 13(1) (d) of PC Act were framed against the appellant/accused and he had denied the charges and claimed to be tried.

5. On the side of the prosecution, P.W.1 to P.W.11 were examined and Ex.P1 to P39 were marked. On the side of the appellant/accused, one witness DW.1 was examined. No documents were marked. PW1 is the Revenue Divisional Officer, Vridhachalam, PW2 is Thiru.Ravi is the complainant, PW3 is the Assistant in Public Works Department, PW4 is the Tahsildar, PW5 is the Assistant in Taluk Office, PW6 is the House Tax Collector in Kurinjipady Town Panchayat, PW7 is the Deputy

Tahsildhar in Vridhachalam, PW8 is the Scientific Officer, PW9 is the Inspector, Vigilance and Anti-Corruption, P.W10 is the Inspector, Vigilance and Anti-Corruption and P.W.11 is Tmt.Anjalatchi (Co-sister of PW2).

6. The case of the prosecution as revealed from the evidence adduced by the prosecution witnesses.

7. The appellant/accused was the Village Administrative Officer, Venkarumbur Village and i/c of Sevur Village, Thittakudi Taluk, Cuddalore in the year 2008. The complainant (P.W.2) is an agriculturist at Sevur Village. On 09.11.2007, his brother-in-law (wife's brother) Mahendran died due to snake bite. The deceased Mahendran (husband of PW11) was a member in Tamil Nadu Labourers-Farmers (Social Security Welfare) Scheme 2006 as per Ex.P37 application and Ex.P38 Registration Certificate. In order to get the benefit and compensation under the said scheme, P.W.2 had given an application Ex.P30 on 12.11.2007 at Thittakudi Taluk Office. After putting the office seal, they entered the same in the register and asked him to hand it over to the Village Administrative Officer, Sevur. The appellant/accused was in charge of the Village Administrative Officer, Sevur Village. The appellant/accused had asked PW2 to furnish the death certificate of the deceased Mahendran and Post Mortem Certificate and thereafter, all the certificates and documents Ex.P31 to Ex.P36 were handed over to him in the month of February 2008. The appellant/accused thereafter, gave certain forms and asked to get signatures of the wife of the deceased and from the Panchayath president of that village and eight other villagers. PW2 had obtained Ex.P5, Ex.P28 and Ex.P29 and handed it over to the appellant/accused. The appellant/accused had informed P.W.2 that he would get Rs.1,00,000/- towards the claim and Rs.2,500/- towards cremation expenses. P.W.2 met the appellant/accused on 18.06.2008 at 10.00 a.m., at Thittakudi Taluk Office and at that time, the appellant/accused demanded Rs.2,000/- towards illegal gratification stating that the complainant would get Rs.1,02,500/-. Later, on negotiation, the demand was reduced to Rs.1,750/-. As P.W.2 did not want to give bribe, he had decided to prefer complaint and proceeded to the Vigilance and Anti-Corruption Office at Cuddalore. On the same day at 2.30 p.m., he had preferred a complaint Ex.P2 to P.W9/Inspector Sekar. The printed F.I.R. is Ex.P25. After registering a case, the Inspector asked him to come on the next day. As there was no bus to his village, he stayed in the office of the respondent and on the next day i.e., on 19.06.2008 at 9.15 p.m., P.W.3 Murugan, Assistant of Superintending Engineer Office, P.W.D. Cuddalore and J.Balasubramanian, Assistant of Executive Engineer Office, P.W.D. Cuddalore on intimation came to the office of the respondent and met the Inspector / P.W.9 and he introduced them to P.W.2 and also gave Ex.P2 report to them in order to go through it. P.W.9 asked P.W.2 as to whether he has brought the bribe amount demanded by the appellant/accused. P.W.2 gave

the bribe amount of Rs.1,750/- to P.W.9/Inspector. The currency notes were counted and P.W.9 Inspector Sekar demonstrated the Phenolphthalein test and also explained the significance of the test to P.W.2, P.W.3 and the other witness. He then returned the amount smeared with Phenolphthalein powder and asked P.W.2 to act according to his wishes, if the appellant/accused made a demand. P.W.9 also told them that if the appellant/accused accepted the money, he should give a signal by scratching his head. P.W.2 kept the bribe amount in his shirt pocket. P.W.9 prepared the entrustment mahazar Ex.P3 which was signed by the complainant and two witnesses. P.W.9 instructed P.W.3 to accompany P.W.3 and to watch the happenings.

8. Thereafter, P.W.2 and 3, witness Balasubramanian, P.W.9 Inspector and his team proceeded in two vehicles to Venkarumbur Village. P.W.2 and PW.3 went into the Village Administrative Officer's office at 12.45 p.m., the appellant/accused was present in his seat. The appellant/accused had asked P.W.2 whether he had brought the amount as told by him and PW.2 took the amount of Rs.1,750/- and handed it over to the appellant/accused. The appellant/accused counted the amount using his both hands and kept it in a file and kept the file inside a bag. He informed P.W.2 that he would keep the cheque ready. P.W.2 came out of the office and gave the pre instructed signal.

9. On noticing the signal given by P.W.2, the inspector, P.W.3 along with P.W.2 and the police team went inside the office. P.W.2 identified the appellant/accused to the inspector. P.W.2 was sent out by the Inspector and thereafter, the Inspector revealed his identity to the appellant/accused and asked him to take a seat. P.W.9 prepared Sodium carbonate solution in two glasses and asked the appellant/accused to dip the right hand fingers and later left hand fingers which turned pink. Both the test solutions were collected and preserved in two different bottles M.O.2 and M.O.3 and sealed. The Inspector/PW.9 affixed labels on the bottles which was signed by P.W.3, appellant/accused and another witness.

10. Thereafter, P.W.9 asked the appellant/accused to produce the amount. The appellant/accused took the amount from the file which was inside a bag and the Inspector asked P.W.3 to compare the number found in the notes with Mahazar. M.O.1 series notes were found to be tallied / correct. The file Ex.P4 relating to the application made by P.W.2 containing 1 to 22 pages were seized. Recommendation made in Ex.P4 page 2 is Ex.P5. Other pages in Ex.P4 are Ex.P26 to 38. Register relating to this scheme is Ex.P6. Entry relating to deceased Mahendran is Ex.P7. The Inspector prepared a Mahazar Ex.P8 regarding the proceedings. It was signed by the Inspector, P.W.3, witness Balasubramanian and the appellant/accused. A copy was served to the appellant/accused. P.W.9/ Inspector prepared the observation mahazar Ex.P9, sketch Ex.P10 and the

signatures were obtained from the witnesses. The Inspector searched the house of the appellant/accused between 3.30 to 4.00 p.m and search list Ex.P11 was prepared. Nothing incriminating was recovered from his house. At about 4.00 p.m they proceeded from there to Cuddalore Vigilance and Anti-Corruption office and reached there by 5.45 p.m.

11. P.W10 Inspector Panneer selvam took up the investigation examined P.W4 Tahsildar and seized three Memos Ex.P12 to P14 issued to the Revenue Inspector to send the report regarding deceased Mahendran. He also seized Ex.P15 to P19 from the office and also examined the Assistant of the concerned Taluk office, P.W5 Annadurai and recovered a Memo Ex.P20 issued to the R.I. for sending the report regarding the file relating to Mahendran. He examined P.W6 Selvi and seized Ex.P21 and P22 the entries in despatch register Ex.P16. Thereafter, Investigating Officer examined P.W7, Assistant of Taluk office and seized Ex.P23 order passed by Tahsildar posting the appellant/accused in additional charge of Sevur village also he has also seized Ex.P39 diary of the Revenue Inspector Chandrahasan. The solutions M.O.2 and 3 were sent to chemical analysis, where P.W8 scientific officer analyzed and gave a report Ex.P24. He had examined the wife of the deceased P.W.11 Anjalatchi and all the other witnesses cited in the final report and recorded their statements. He prepared the final report and sent all the records to P.W1 and obtained sanction Ex.P1 to prosecute the appellant/accused for the offences mentioned in the final report.

12. After the evidence of the prosecution side were over, the appellant/accused was questioned under Section 313 (1) (b) of Cr.P.C, to explain the incriminating circumstances available on record. The appellant/accused denied the offences and had stated that it is a false case and also stated that he has witnesses to be examined.

13. He examined DW1 Megaraj, Village Assistant of Venkarumbur Village. The version of DW1 is that, on 18.06.2008, complainant Ravi /PW2 had come to Thittakudi Taluk office at 10.30 a.m. and had enquired about the appellant/accused. He had replied that he was in the meeting. Again PW2 had come to the Village Administrative Officer's office at Venkarumbur on 19.06.2008 and kept a khaki colour file in the bag of the appellant/accused, while the appellant/accused was not in his seat. When DW1 had enquired PW2, he did not reply anything and thereafter, the appellant/accused also came back to his seat and within 10 minutes five to six persons came into the office and asked him to show the amount received from PW2, for which the appellant/accused replied that he did not receive any amount and PW2/Ravi identified the bag where he had kept the amount and the same was seized after the appellant/accused was forced

to take the money out of the bag and thereafter, the police conducted test with water and took him away. Thereby, a defence theory was projected as if the tainted money was planted in the bag of the appellant/accused and that he was forced to take the money out of the bag.

14. The trial Court, after appreciating the evidence let in by both sides, had found the appellant/accused guilty of the offences and convicted and sentenced him as stated above.

15. The learned counsel appearing for the appellant/accused would at the outset submit that in a case of trap, the prosecution should prove the demand and would submit that mere acceptance of any amount without proof of demand would not be sufficient to hold the appellant/accused guilty. The learned counsel for the appellant/accused would submit that the prosecution had miserably failed to establish the demand of bribe as claimed by PW2 in this case. He would further submit that it had been categorically admitted by PW2 that he had met the appellant/accused on 12.11.2007, 13.11.2007, February 2008 and further during the month of June 2008 and that on none of the occasions, the appellant/accused had demanded the bribe. Hence, the claim of demand as stated by PW2 is not believable. Further, it is an admitted case of PW2 that on 18.06.2008, when the first demand is stated to have been made to the Tahsildar's Office at Thittakudi, twenty other Village Administrative Officers were present along, since there was a review meeting. He would also submit that further the demand stated to have been made on 18.06.2008 is not corroborated by any other witness and that there was no official act pending on 18.06.2008. The learned counsel for the appellant/accused would submit that if there had been any demand made by the appellant/accused to PW2, he would have informed to PW11 who is the actual beneficiary and that strangely, PW11 has not stated that PW2 informed her that the appellant/accused demanded bribe for processing the application.

16. The learned counsel for the appellant/accused would further submit that the alleged trap is on 19.06.2008, whereas as per Ex.P7, the application regarding the compensation has already been transferred from A-2 / Tahsildar as early as on 05.06.2008 and thereby, the allegation of the prosecution that the demand has been made for processing the application is totally not proved. He would also submit that there are corrections and manipulations in Ex.P7 and that no explanation given by the prosecution with regard to the same and the corrections have been made to fill up the gap in respect of the motivated complaint. He would also submit that Ex.P7 pertaining to the compensation has already been transferred from the appellant/accused as early as 05.06.2018 and thereby, there could not have been a demand as alleged by the

prosecution. He would further submit that the actual facts remains that the bribe money was planted inside the bag belonging to the appellant/accused by PW2 and that it has been proved by letting in evidence on the side of the defence who has been examined as DW1. Further, it is the case of the defence that the trap laying officer directed the appellant/accused to take the money out from the bag and thereafter, the Phenolphthalein test had been conducted and that the appellant/accused was arrested on the false complaint. He would also submit that when there is a categoric evidence of DW1 about planting of the tainted money in the file, the trial Court erred in disbelieving the evidence of DW1 and convicted the appellant/accused and would submit that when the demand and acceptance has not been proved by the prosecution by cogent evidence and beyond all reasonable doubt, the conviction cannot be sustained. He would rely on the judgment of the Hon'ble Apex Court reported in 2000 (5) SCC 21 (Meena Vs. State of Maharashtra) and would submit that mere recovery of the currency note and positive result of the Phenolphthalein test would not be enough to establish guilt on the appellant/accused on the preferentially nature of materials and prevaricating type of evidence. He would also rely on the judgment of the Hon'ble Apex Court reported in 2015 CrI.L.J. 72 (M.R.Purushothaman Vs. State of Karnataka) and would submit that mere possession and recovery of the currency notes from the appellant/accused without proof of demand would not attract of the offence under Section 13(1) (d) of the Prevention of Corruption Act. He would also rely on the judgment of the Hon'ble Apex Court reported in 2005 (6) SCC 211 (Ganga Kumar Srivastava Vs. State of Bihar) and would submit that the case of the prosecution has not been corroborated by proper witnesses. He would also rely on the judgment of the Hon'ble Apex Court reported in 2007 (1) L.W (CrI) 563 (Ramakrishnan Vs. State by the Inspector of Police, D and VAC, Chennai) and would submit in the absence of proof of demand and acceptance of money as illegal gratification, the conviction of the appellant/accused cannot be sustained, when especially PW11 has not supported the evidence of PW2 that money was demanded for processing the application and if at all, if the demand had been actually made to PW2, he would have informed PW11 who is the actual beneficiary and further, DW1 had spoken that the tainted money had been planted in the bag of the appellant/accused by PW2 and thereby, the appellant/accused had proved his case by preponderance of probability and when such being so, the trial Court erred in convicting the appellant/accused mere presumptions and assumptions. The learned counsel for the appellant/accused would submit that since there had been some delay in processing the application, PW2 entertained a grudge against the appellant/accused and thereby, a false complaint had been given against the appellant/accused.

17. Per contra, the learned Additional Public Prosecutor would submit that the prosecution has proved the case beyond all reasonable doubt. He would also submit that though the petition of PW11/Anjalatchi seeking relief under the Tamil Nadu Agricultural Labour Farmers (Social Security and Welfare Scheme 2006) along with connected forms had been given to the Tahsildhar Office on 12.11.2017 and the seal of the Tahsildhar Office was obtained on the same day and it was handed over to the appellant/accused on the same day, whereas, the appellant/accused had delayed and dragged the process. Though it is the duty of the appellant/accused to help PW2 and PW10 to process the application, he had in one way or other delayed it for various reasons and ultimately, after much delay after processing the application and keeping it ready for payment, had demanded the illegal gratification on 18.06.2008 stating that PW2 will get an amount of Rs.1,02,500/- and had demanded an amount of Rs.2,000/- and thereafter, on the request of PW2 agreed to reduce the demand by Rs.250/- and demanded an amount of Rs.1,750/-. The learned Additional Public Prosecutor would also submit that the amount had been demanded not only for processing the application, but had been demanded for releasing the amount also. When it is the specific case of PW2 that the demand was made on 18.06.2008 and the complaint was made on the same day, PW11 could not have known about the demand when it is the specific case of PW2 that since there was no bus facility to come back to his village, PW2 had stayed at the office of the Vigilance and Anti-Corruption Department on the night hours on 18.06.2008 and thereafter, on the next day, he had along with the trap party come straight to the office of the appellant/accused. The learned Additional Public Prosecutor would further submit that the trial Court had rightly disbelieved the evidence of Ex.DW1. It is highly unbelievable that DW1 who was present in the office had not objected to a third person planting something inside the bag of his superior officer and it is also strange that he kept quiet without informing the appellant/accused or anybody or attempted to prevent PW2 from planting something inside his senior officer's bag. The learned Additional Public prosecutor would also submit that the evidence of PW3, the independent witness is cogent and clear that the appellant/accused had on seeing PW2, had asked whether he brought the money demanded by him and that PW2 had handed over the tainted money to the appellant/accused and after receiving the money, the appellant/accused had counted the money with both his hands and thereafter, kept the money inside in a khaki colour file and kept the file inside the Rexin bag and closed it and thereafter, he had asked PW2 to go saying that he will take steps to get the claimed amount soon. It is the specific case of PW3 that a demand had been made and money had been received by the appellant/accused and immediately after the receipt of pre-arranged signal, the trap laying officer had entered the office along with PW3 and the other witness for the trap. The appellant/accused was sitting in his office chair and after PW2 and PW3 identified the appellant/accused, PW2 was asked to

go out of the office. The trap laying officer had asked the appellant/accused to sit in a chair and even before he was asked to take the money from the bag, phenolphthalein test was conducted on him on both his hands and the solution had turned pink. It is the categoric evidence of PW3 that only after the Phenolphthalein test and collection of hand wash in the bottles, the trap laying officer had questioned the appellant/accused about the bribe money and only thereafter, the appellant/accused had taken the money from the bag. PW3 had categorically stated that the appellant/accused had accepted having received the bribe of Rs.1,750/- and the application along with the other forms which were kept along with the tainted money were recovered from the bag. The learned Additional Public Prosecutor would further submit that though a detailed cross examination had been done on PW3, nothing had been elicited about the presence of DW1 in the office at that time and not even a suggestion has been made about the presence of DW1. The learned Additional Public Prosecutor would submit that no reliance can be placed on the evidence of DW1 since it is only an after thought he has been examined to show as if the amount was planted in the bag of appellant/accused. DW1 being a subordinate to the appellant/accused has obliged him by standing as a defence witness deposing an unbelievable evidence. The learned Additional Public Prosecutor would submit that by cogent and clear evidence, the first demand on 18.06.2008 and the reiteration 19.06.2009 and acceptance on 19.06.2008 had been proved by the evidence of PW2 and it had been corroborated by the evidence of PW3 and would submit that the trial Court has rightly convicted the appellant/accused after the prosecution has proved the demand and acceptance.

18. Now, what is to be seen is whether the demand and acceptance of illegal gratification by the appellant/accused has been proved by the prosecution beyond all reasonable doubt and whether the trial Court is right in convicting the appellant/accused.

19. No doubt, it is a settled law that in a case of illegal gratification and trap, it is an essential element that to establish the guilt of the accused, it is not sufficient that mere recovery of the amount alone is proved. The prosecution should prove the case against the appellant/accused by concrete evidence that a demand of illegal gratification has been made and the appellant/accused accepted the illegal gratification and recovery has been made from him thereafter. The learned counsel for the appellant/accused in support of his submissions that to bring home the guilt of the appellant/accused that mere recovery of tainted amount is not sufficient, but demand should be proved relied on the following judgements:- 2000 (5) SCC 21 (Meena Vs. State of Maharashtra), 2015 (3) SCC 247 (M.R.Purushothaman Vs. State of Karnataka), 2015 (6) SCC 211 (Ganga Kumar Vs. State of Bihar) and 2007 (1) LW CrI. 563

(Ramakrishnan Vs. State by the Inspector of Police, D and VAC, Chennai). The above point of law regarding demand and recovery had been reiterated by the Hon'ble Apex Court in the following decisions also:- 2009 (3) SCC 229 (C.M.Girish Babu Vs. CBI), 2013 (14) SCC 153 (State of Pujnab Vs. Madan Mohan Lal Verma), 2015 (3) SCC 247 (M.R.Purusothaman Vs. State of karnataka), 2015 (10) SCC 152 (P.Satyanarayana Murthy Vs. District Inspector of Police, Andhra Pradesh) and 2015 (15) SCC 629 (T.K.Ramesh Kumar Vs. State). In all the above decisions, it has been held that to bring home the guilt of the appellant/accused in a case of corruption and trap, the prosecution should prove the demand and that proof of mere recovery alone is not sufficient to commit the appellant/accused. Now, coming to the facts of the case on hand with overall appreciation of evidence on record in the context of elucidation of law regarding proof of ingredients of Sections 7 and 13 of the Prevention of Corruption Act 1988, it is the case of the prosecution that the application claiming compensation under the scheme had been made by PW2 to the Tahsildar on 12.11.2007 and made over to the appellant/accused on the same day. After carrying out various formalities, the first demand had been made by the appellant/accused to PW2 on 18.06.2008 and PW2 who did not want to give the illegal gratification had gone to the office of the respondent and given the complaint on the same day on 18.06.2008 and that PW3 and yet another witness who were working in Government Departments were called on proper requisition and they were instructed to come to the office of the respondent on the next day. PW2 had stayed in the office of the respondent on 18.06.2008 since he did not have bus to return to his village and on the next day morning, he was introduced to the witnesses for trap. Thereafter, PW2 and the witnesses for the trap have been instructed about the trap proceedings and the witnesses were also explained about the phenolphthalein test and PW2 had also been instructed to give pre arranged signal after handing over the money to the appellant/accused. Thereafter, PW2 along with the other trap laying party members had reached the office of the appellant/accused at Venkarumbur Village at 12.20 p.m., PW2 and PW3 had entered into the office of the appellant/accused where, the appellant/accused had reiterated the demand. It is the evidence of PW2 that on entering the office, PW2 had wished the appellant/accused and the appellant/accused called him inside and asked him whether he had brought the money and that PW2 had handed over to the amount of Rs.1,750/- to the appellant/accused and thereafter, the appellant/accused had counted the tainted notes and taken a bag, opened it and had taken out a khaki colour file and kept the tainted money inside the file and again kept the file inside the bag and closed it. Though a suggestion has been put to PW2 that the appellant/accused was not in the seat and that his assistant was there in the office, it has been denied by PW2. Further, the evidence of PW3 corroborates the evidence of PW2 regarding the second demand and acceptance of the tainted money on

19.06.2008. Nothing had been elicited from PW3 regarding the so called presence of DW1. Though it had been contended by the appellant/accused that as per Ex.P4 the process of claim had been completed and the recommendation had been made and that there was no reason on the part of the appellant/accused to make a demand, it is the clear case of PW2 that the appellant/accused had told him that he would be getting an amount of Rs.1,02,500/- and why not he part with Rs.2,000/-. It is not only the case of demand for processing the application but also demand had been made for disbursement of the claim.

20. The prosecution by categoric evidence of PW2 and PW3 had proved the demand and acceptance of illegal gratification by the appellant/accused. Further, the Phenolphthalein test conducted on the appellant/accused had turned positive. As rightly pointed out by the learned Additional Public Prosecutor, the Phenolphthalein test had been conducted on the appellant/accused even before he was asked to take out the tainted money from his bag and thereby, the defence projected by the appellant/accused that the tainted money was planted in the bag by PW2 and later, the appellant/accused was asked to take out the money from the bag is also falsified. Further, the evidence of DW1 cannot be believed for the fact that if his version is true, he would not have kept quiet seeing PW2 plant the tainted money inside his senior officer's bag and his statement that no complaint was made by him to anybody seems unbelievable and thereby, unreliable. Further, he has not even informed the appellant/accused about the planting of the tainted money in his bag.

21. From the above, it is clear that the prosecution has proved the case of demand and acceptance and recovery beyond all reasonable doubts on the facts on hand and the trial Court has rightly convicted the appellant/accused. The facts of the case in the above judgments relied on by the appellant/accused will not be applicable to the present case, since facts of the cases in the decision relied on by the appellant/accused are different from the present facts on hand. In those cases, the facts remain that the demand has not been proved, whereas, in this case the demand of illegal gratification and acceptance had been proved beyond doubt and strengthened by recovery made from the appellant/accused by cogent evidence. The defence theory as projected by the appellant/accused through DW1 is an afterthought and does not hold water. In opinion of this Court, the trial Court has rightly held that the demand, acceptance and recovery had been proved and thereby, had convicted the appellant/accused.

22. In view of the above, there is no ground for interference and the Criminal Appeal is dismissed. The judgment and sentence passed by the learned Special

Case No.1 of 2009 dated 15.09.2011 is confirmed. The learned Special Judge/Chief Judicial Magistrate, Cuddalore District is directed to issue warrant and commit the appellant/accused person to suffer the remaining period of sentence.

Sd/-
Assistant Registrar(CS ix)

//True Copy//

Sub Assistant Registrar

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To:-

1. The Special Judge/Chief Judicial Magistrate, Cuddalore District.
2. The Inspector of Police,
Vigilance and Anti Corruption,
Cuddalore.
3. The Public Prosecutor,
High Court of Madras.
4. The Section Officer,
criminal Section, High Court of Madras.

+1cc to Mr.K.Mohanamurali , Advocate SR.No. 66137

Crl.A.No.608 of 2011

ASK(15/10/2018)

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