

Bail Slip

The Appellant/Accused Viz., J.P.Verma, in CrI.A 797/11 was directed to be released on bail as per order of this Court dated 13/12/11 and made in MP 1/2011 in CrI.A 797/11.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.09.2018

PRONOUNCED ON: 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.797 of 2011

J.P.Verma

... Appellant

Vs

State represented by the Inspector of Police
SPE/CBI/ACB/Chennai

... Respondent

Prayer:- This Criminal Appeal is filed under Section 27 of the Prevention of Corruption Act, 1988 read with Section 374 of Cr.PC, for the reliefs as stated therein.

For Appellant :Mr.Sivanandhan
for M/S. Sivanandh & Associates

For Respondent :Mr.K.Srinivasan, SPP-CBI

JUDGEMENT

This Criminal Appeal is filed by the Appellant, who is the accused in CC.No.3 of 2007, against the judgement of conviction and sentence, dated 23.11.2011, made by the Principal Special Court for CBI Cases and VIII Additional City Special Court, Chennai, seeking the following reliefs:-

- a)To call for the records of the case in CC.No.3 of 2007, on the file of the Principal Special Court for CBI Cases and VIII Additional City Special Court, Chennai.

- b) To examine the legality, propriety and correctness of the proceedings and the impugned judgement.
- c) To set aside the order of conviction and direct acquittal of the Appellant.
- d) To grant such other equitable reliefs

2. The Trial Court, in and by the impugned judgement, dated, 23.11.2011, had convicted and sentenced the Appellant, for the offences punishable under (a) Sections 120B of IPC, read with Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, to undergo Rigorous Imprisonment for one year and also to pay a fine of Rs.5,000/-, in default to undergo Rigorous Imprisonment for two months, (b) Section 7 of the Prevention of Corruption Act, 1988, to undergo Rigorous Imprisonment for one year and also to pay a fine of Rs.5,000/-, in default to undergo Rigorous Imprisonment for two months and (c) Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, to undergo Rigorous Imprisonment for two years and also to pay a fine of Rs.5,000/-, in default to undergo Rigorous Imprisonment for three months and ordered the sentences to run concurrently and set off the sentence, if any already undergone, by the Appellant.

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

a. The Appellant was working as the Senior Administrative Officer, looking after the administration of the National Institute of Epidemiology (NIE), Chennai, during the year 2000-2002 and he was entrusted with the responsibility of procuring computers and other equipments, on behalf of the Director of the said Institution. S.Kumaran/Approver (PW.8) is working as the Accounts Manager in a Private Limited Company, namely, M/s. ACCEL ICIM Front Line Systems & Services Limited and was working as the Sales Executive in the same Company, during the relevant period, i.e. 2000-2002. As per the Circular No.14/5/93-Welfare, dated 10.02.2000 of DP&T, Govt. of India, Government Departments are purchasing various items through Kendriya Bhandar through single quotation system. The decision of choosing the brand and the price range was entirely vested with the Government Departments.

b. The Appellant and the Approver had entered into a criminal conspiracy during the year 2000-2002 at Chennai to commit a criminal misconduct in the matter of procurement of 8 computers and 2 CD Writers for the said Institution. In pursuance of such conspiracy, the Appellant, by corrupt and

illegal means and also by abusing his Official position, as a Public Servant, had demanded an illegal gratification in the shape of commission to the tune of Rs.42,000/- from the Approver and placed an order for purchase of Computers and peripherals with M/s.ACCEL ICIM at exorbitant rates. Further, the Appellant had also received a computer system, valued about Rs.29,306/-, as an illegal gratification in lieu of commission from M/s ACCEL ICIM Systems and Services Limited, at his residence at Avadi for his personal use, without making any payment to the said Company as 'quid pro quo', for the Purchase Orders issued to the Company at exorbitant rates, which caused a wrongful loss to an extent of Rs.1.70 lakhs to the Institution and corresponding wrongful gain to the said Company.

c. The value of 8 computers supplied is Rs.7,02,520/- and the value of 2 CD Writers is Rs.39,900. The payments for the said products were made to Kendriya Bhandar, Chennai, which in turn made payment to M/s.ACCEL, after deducting their 5% commission. Likewise, similar transactions had taken place till 2004.

d. Since the above acts of the Appellant disclosed the commission of offences punishable under Sections 120B of IPC read with Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, after obtaining Sanction Order from the Competent Authority under Section 19 of the Prevention of Corruption Act, 1988, PW.25, the Inspector of Police, CBI, ACB, took up the case for investigation and he, after examining the witnesses, recording their statements, collecting documents and after completing investigation, had laid a final report, dated 21.12.2006, before the Trial Court on 31.12.2006, against the accused on 29.01.2007, for the offences punishable under Sections 120B of IPC read with Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

4. The case was taken on file in CC.No.3 of 2007 by the Principal Special Court for CBI Cases and VIII Additional City Special Court, Chennai, and necessary charges were framed against the accused under Sections 120B read with Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

5. In order to bring home, substantiate and prove the charges framed against the accused, the Prosecution had examined, as many as, twenty five witnesses, as PW.1 to PW.25 and also marked Exs.P1 to P76. On completion of the evidence on the side of the Prosecution, the accused was questioned under Section 313 of Cr.PC as to the incriminating circumstances found in the evidence of the prosecution witnesses against him and the accused had come with the version of total denial and

stated that he had been falsely implicated in this case at the instigation of one political leader. On the side of the defence, DW.1 was examined and Ex.D1 to D3 were marked.

6. The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, including the oral and documentary evidence, had found the accused/appellant guilty and awarded punishments as stated above, by the impugned judgement of conviction and sentence, which is challenged in this Criminal Appeal by the accused.

7. This court heard the submissions of the learned counsel on either side.

8. The learned counsel for the Appellant has contended that the Trial Court has not at all appreciated the evidence in its proper perspective and that the Trial Court had committed a grave error in convicting the accused based on evidence, which are inadmissible in law. The learned counsel for the Appellant has assailed the impugned judgement of conviction and sentence, mainly on the grounds that (1) there was no proper or valid sanction for Prosecution from the Competent Authority, inasmuch as sanction ought to have been obtained under Section 197 of Cr.PC since the allegations were in respect of the acts said to have been committed by the Appellant, while discharging his Official Duty, instead, the Sanction had been obtained only under Section 19 of the Prevention of Corruption Act, 1988, which is per se illegal or even otherwise, the Sanction under Section 19 was accorded on the basis of external pressure and compulsion exerted by CBI and the Central Vigilance Commission on the Sanctioning Authority and despite the Sanctioning Authority earlier resiling to accord sanction to prosecute the accused, stating valid reasons and thus, the second sanction without any fresh material on the pressure and compulsion is illegal, (2) there is no cogent and reliable evidence to prove the demand and acceptance, (3) no legal evidence had been let in to prove that the computer and speakers were delivered at the house of the Appellant/ accused and there was no recover of the material objects, namely, computer and speakers, from the house of the Appellant or elsewhere, which thereby falsify the case of demand and acceptance as there is no legal evidence to prove the same and on the other hand, to falsify the case of the Prosecution regarding the so called delivery, the Appellant had examined DW.1 to show that on the relevant date, on which the computer and the speakers were said to have been delivered, the Appellant was not residing at the said address and the Appellant had also let in evidence to prove that the Prosecution to falsely prove the fact, had in a haste let in evidence, as if the computer and the speakers had been delivered at the address

on a particular date, whereas the Appellant had moved to that address only on 6.6.2004. The learned counsel for the Appellant has further contended, pointing out to the infirmities and serious discrepancies in this case, that the evidence produced by the Prosecution has neither quality nor credibility and as such when the prosecution has failed to prove the foundational facts regarding the demand and acceptance, , it would be unsafe to record conviction upon such evidence and consequently, prayed for acquittal of the Appellant, by allowing this Criminal Appeal, as prayed for. The learned counsel for the Appellant has also relied on a few decisions of the Honourable Supreme Court reported in 2016 2 SCC 143 (N.K.Ganguly Vs. CBI), 2015 10 SCC 152 (P.Satyanarayanamurthy Vs. State of AP), 2014 13 SCC 55 (B.Jayaraj Vs. State of AP), 2016 1 SCC 713 (N.Sunkanna Vs. State of AP) and (2016) 12 SCC 150 (V.Sejappa Vs. State by Police Inspector, Lokayukta, Chitradurga). The learned counsel for the Appellant would further submit that the invalidity of the Sanction had resulted in grave miscarriage of justice and that the illegality in the Sanction had been questioned right through the trial, whereas the Trial Court had not at all considered the non granting of Sanction earlier, which had resulted in miscarriage of justice.

9. I Per contra, the learned Special Public Prosecutor for the Respondent has refuted all the above contentions of the learned counsel for the Appellant and supported the impugned judgement of conviction and sentence of the Trial Court. He would further submit that the acts committed by the accused, namely, demand and acceptance of a computer as an illegal gratification, cannot be said that they had been done in the discharge of his Official Duty and hence, sanction under Section 197 of Cr.PC is not required, but rightly, a proper and valid Sanction was obtained from the Competent Authority under Section 19 of the Prevention of Corruption Act, 1988. The learned Special Public Prosecutor has further submitted that PW.8 is an approver and that as per Section 133 of the Indian Evidence Act, though PW.8 is an accomplice, he is a competent witness and that his evidence is cogent, reliable and sufficient to prove the demand and acceptance and that the evidence of PW.9 coupled with the evidence of Ex.P12 and Ex.P14 shows that the computers were allotted by the Company in the name of the Appellant and they were tallied and after allotment, installation of the computer at the residences of the Appellant was also proved by cogent and reliable evidence. The learned Special Public Prosecutor would also submit that the Prosecution has let in evidence of PW.10 and PW.11, who were the Office Colleagues in the Office of the Appellant/ accused to prove the meeting between PW.8, the approver and PW.10 and PW.11.

10. This Court has given its careful and anxious consideration to the rival contentions put forward by the learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction and sentence, in a proper and perspective manner.

11. At the outset, before advertng to the discussions in detail, it is necessary to quote about the relevant evidence of the witnesses, both oral and documentary, for coming to a fair and reasonable conclusion, as under:-

(a) P.W.1, the Director General of Indian Council of Medical Research is the Sanctioning Authority. PW2, who is working as the Assistant Account Officer in the Institution, spoke about the procedure for placing orders for purchase of computers. PW3, who is the Deputy Director Vector Control Research Centre, ICMR, Pondicherry, spoke about for having made request for provisions of computers. PW4, who is the practicing Psychiatrist, was also a Member of the Purchase Committee. PW5, who is the Deputy Director in the Directorate of Supplies and Disposals (DGS & D) at Chennai, is a Supervisory Leveled Officer in charge of advising about the computer related quotations, which were accepted by DGS & D, Delhi Office.

(b) PW.6, who is the System Analyst, Central Bio Statistical Monitoring Unit, NIE, Chennai, is also a Member of the Purchase Committee. PW.7, who is the Senior Research Officer (Computer Programmer), NIE, Chennai, had verified about the computer configuration. PW8, who is the approver (representative of M/s.ACCEL ICIM Ltd), had placed orders for purchase of computers and also spoken about the demand made by the appellant/accused and handing over of the computer and speakers towards the demand made by the appellant/accused as an illegal gratification. PW9 is the delivery boy, who is said to have delivered the computers to the house of the appellant/accused. PW.10 is the Assistant in the Accounts Department in the Institution, who spoke about the meeting between PW.8 and the appellant/accused.

(c) PW.11 was examined to speak about working of the appellant/accused. PW.12 was examined to speak about handing over of speaker to the residence of the appellant/accused on 09.02.2002 at Sathyavani Muthu Street, Gandhi Nagar, Avadi. PW13, who is the Chief Finance Officer in M/s.ACCEL Front line Ltd. spoke about the computer sent in the name of the appellant from his Company and he had also spoken about a sum of Rs.7,25,000/- paid to Kendriya Bhandar after initiation of

enquiry by CBI. One Maqbool Hassan and P.W.22 M.Rameshan, who were the Vice Presidents of M/s.ACCEL Front Line Computer Company, spoke about the receipt of an amount of Rs.29,306/-. PW15 is the Service Engineer, who spoken about for having installed a computer at the residence of the appellant/accused.

(d) PW.16 is the Executive Vice President of M/s.ACCEL ICIM, Front Line Systems Ltd., Chennai, who spoken about the policies of the Company. PW.17 is the Magistrate, who recorded the statement of PW.8 under Section 164 Cr.PC and who spoke about for having sent to the Senior Divisional Manager in Kendriya Bhandar and about the process of the computer projects by the Government Companies. PW.19, who was a Staff in the Kendriya Bhandar, spoke about the procedure in purchase of computers for Government Agencies. PW.20, who is the Metropolitan Magistrate XI, Saidapet, Chennai, had issued summons to PW.8 in order to conduct tender pardon proceedings. PW.21 is the Clerk in Kendriya Bhandar, who spoke about the process of placing quotations before the Purchase Committee.

(e) PW.22 is the Vice President of ACCEL, ICIM Front Line Ltd. PW.23 is the Deputy Director, Senior Grade in National Institute of Epidemiology, Chennai, who spoken about the constitution of the Purchase Committee and role of the persons in the said Committee to place orders for purchase of computers. PW.24, who was the Managing Director of ACCEL Ltd. Chennai, had spoken about the quotations, purchase and price for Computers. PW.25, who is the Investigating Officer and DW.1, who is the Senior Administrative Officer of National Institute of Epidemiology, had spoken about shifting of residents of the appellant/accused from No.6 Anbalagan Street, 2nd Cross, Gandhi Nagar, Avadi to No.4/6, Sathyavanimuthu Street, Gandhi Nagar, Avadi with effect from 06.06.2004.

(f) Ex.P1 is the Sanction Order, dated 27.12.2006. Ex.P4 is the journal voucher, dated 18.01.2002. Ex.P12 is the quotation given by Kendriya Bhandar, dated 25.9.2000. Ex.P14 is the letter sent to ICMR, dated 29.9.2000. Ex.P39 is the xerox copy of the order dated 27.12.2000 forwarding form given by PW.8. Ex.P40 is the xerox coy of the order forwarding form given by PW.8. Ex.P43 is the local conveyance voucher dated 16.2.2002 of ACCEL. Ex.P74 was marked by the prosecution while cross examining the defence witness DW1. Ex.D1 is the copy of the letter dated 9.1.2007 from Senior Administrative Officer (Vigilance), ICMR to DIG of Police, CBI, ACB, Chennai. Ex.D2 is the copy of the letter, dated 20.7.2006, issued by Sr.Dy.Director General (Admn) and CVO of ICMR to the Secretary, CVC, Satarkata Bhavan, New Delhi. Ex.D3 is the copy of the Office Memorandum of Government of India, Central Vigilance Commission, dated 17.10.2006.

12. Now coming to analysis of the case, in respect of Sanction under Section 197 of Cr.PC, at the outset, this Court is of the opinion that Sanction under Section 197 of Cr.PC is not required since PW.1 is the Competent Authority to remove the Appellant/ accused from his Office and as such, Sanction can only be accorded by PW.1 under Section 19 of the Prevention of Corruption Act.

13. In so far as the decision relied on by the learned counsel for the Appellant in 2016 2 SCC 143 (N.K.Ganguly Vs. CBI) is concerned, it is not applicable to the facts and circumstances of the case on hand, inasmuch as the facts and circumstances of the said decision are distinct and different from that of the present case on hand. In N.K.Ganguly's case, cited supra, no Sanction to prosecute was accorded and thereby, challenge was made whether Sanction under Section 197 was required or not? Further the Official status of the persons involved in those cases required so. Whereas, in the case on hand, PW.1 is the Authority competent to remove the Appellant/accused from the Office and thereby, this Court is confined to consider the question of sanctity and validity of the Sanction, granted under Section 19 of the Prevention of Corruption Act, 1988 alone.

14. Accordingly, this Court proceeds to consider the sanctity and validity of Ex.P1, Sanction Order, issued under Section 19 of the Prevention of Corruption Act, 1988. In this regard, on an analysis of evidence, both oral and documentary, it is seen that PW.1, who is the Director General of ICMR, is the authority, who had granted sanction. PW.1 is the appointing authority as well as the disciplinary authority, including removal from service of the Officers working in the cadre of Senior Administrative Officers in Class-A Service. PW.1 had signed Ex.P1, Sanction Order on 27.12.2006, whereas Ex.P1 had been produced before the Court only on 31.01.2007 after the filing of the final report on 31.12.2006.

15. Ex.D1 is the copy of the letter dated, 09.01.2007 to the DIG of Police, CBI by the Senior Administrative Officer (Vigilance), ICMR. In that letter, while referring to the letter of CBI dated 20.06.2006 the Senior Administrative Officer (Vigilance) had stated the sanction order has been signed in the format as received by letter dated 20.06.2006. Further, in the letter dated 09.01.2007 it had been stated that the letter was issued based on the decision of ICMR, wherein the Council had taken up the matter with CVC for reconsideration of the Prosecution of the accused Shri Verma. Further, it had been stated that there was no justification for prosecuting him and suggesting that the departmental action against him would be in

the fitness of things keeping in the overall position of the case wherein the other persons, involved in the matter whose culpability was more serious, have been totally exonerated. Further a copy of the letter was also enclosed. The letter is clear that it had been issued with the approval of the Director General, ICMR, who is the Sanctioning Authority. Reading of the letter shows that the sanction dated 27.12.2006 has not been accorded on proper application of mind.

16. It is also clear that by the said letter, Ex.D1, dated, 09.01.2007, the Sanctioning Authority had recommended to reconsider the decision to prosecute Shri Verma. It has also come to light that when confronted with Ex.D1, dated 09.01.2007, which is a letter to the DIG of Police, CBI by the Senior Administrative Officer (Vigilance), ICMR, PW.1 had stated that he came to know about Ex.D1, after he accorded sanction for Prosecution of the Appellant.

17. Ex.D2, dated 20.7.2006 is the letter sent to the Central Vigilance Commission which was also marked through PW.1, the Sanctioning Authority. It is useful to refer to the observations made in Ex.D2 as under:-

"The detailed comments of the Council on the Report of the Special Police Establishment are closed. In the light of these comments the Council finds that there is no much substance in the allegations against Shri Verma and if any procedural lapses have occurred in the purchase of eight computers and two CD writers, they can be looked into departmentally. The Council is, therefore, of the opinion that there is no adequate justification for issuing a sanction for Prosecution of Shri J.P.Verma, which will only result in unnecessary harassment of a public servant. The work and conduct of Shri Verma and the overall administrative interests of the Council also do not warrant issue of the sanction sought for.

This issues with the approval of the Competent Authority."

18. By Ex.D2, dated, 20.7.2006, the Indian Council of Medical Research, after receiving the report from the CBI, had opined that there is no much substance in the allegations against the accused and if any procedural lapses have occurred in the purchase of 8 computers and two CD writers, they can be looked into departmentally. Further, the ICMR had also stated in Ex.D2 that the Council had held that there is no adequate justification for issuing Sanction for Prosecution of Shri J.P.Verma, which would only result in unnecessary harassment of

a public servant and that the work and conduct of Shri Verma and the overall administrative interests of the Council also do not warrant issue of the Sanction sought for. It is also stated in Ex.D2 that it had been issued with the approval of the Competent Authority. When the Competent Authority had formed an opinion not to accord sanction, on 20.07.2006, the subsequent impugned Sanction Order, Ex.P1 without any fresh materials, had been issued only on extraordinary pressure of the Central Vigilance Commission on the recommendation of CBI and thereby, Ex.P1, Sanction Order is vitiated, on the ground of non application of mind and mired with being influenced by extraneous pressure.

19. Again when confronted with Ex.D3, dated 17.10.2006, PW.1 had accepted that Sanction had been granted after perusing Ex.D3 and in accordance with the recommendation of CBI. Again, it is crystal clear that the Sanctioning Authority had not applied his independent mind before issuing of Ex.P1, Sanction Order.

20. Ex.D3 is the letter, dated 17.10.2006, sent by the Central Vigilance Commission and in the said letter, it had been categorically stated that the Commission in agreement with the recommendations of the CBI would advise for sanction for Prosecution as well as initiation of major penalty proceedings against Shri J.P.Verma and only based on that letter, the subsequent sanction, namely, Ex.P1 had been issued for Prosecution the Appellant/ accused. Thus, the opinion and discretion, by virtue of letter dated 20.07.2006, Ex.D2, not to accord sanction, have been taken away and the Sanctioning Authority was left with no option except to accord sanction by the pressure exerted by the Superior Body, the CVC by its letter dated 17.10.2006 marked as Ex.D3. Nothing has been elicited in the Sanction Order as if any fresh material had been brought in by the Prosecution for grant of Sanction. Further, it had been admitted in Ex.D1 that the Sanction had been signed in the format given by the Respondent and thereby, the Sanction suffers for non application of mind and that the Sanction, which had been accorded based on the pressure exerted by the CBI and the Central Vigilance Commission, is improper on the ground of non application of mind.

21. Further, it is the categoric evidence of PW.1 that neither himself nor the Appellant/ accused can decide about the specification of the computers required for a Scientist and that the Institute will not allow purchase of computers, CD Writers and issue of cheques on the basis of the recommendation of the Appellant/ accused or the Director himself. Further, PW.1 had stated that the opinion of the Purchase Committee is not the opinion of a single person and that the Sanctioning Authority,

as the Director of the Institution, has got every power to alter or cancel the recommendation of the Purchase Committee, including acceptance or rejection. This being the case, the entire responsibility would not have been fixed on the Appellant/ accused alone.

22. In this regard, it is relevant to refer to the decision of the Honourable Supreme Court reported in 1997 7 SCC 622 (Mansukhlal Vithaldas Chauhan Vs. State of Gujarat), wherein it was held in paragraph 19 as under:-

"19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows, that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

23. The very same view had been reiterated and upheld by the Honourable Supreme Court in its decision reported 2015 15 SCC 629 (T.K.Ramesh Kumar Vs. State through Police Inspector, Bangalore).

24. In respect of the contention of the learned counsel for the appellant that the second Sanction accorded, without any fresh material, and based on the same materials, is illegal, it is relevant to refer to the decision of the Honourable Supreme Court, reported in 2010 14 SCC 527 (State of HP Vs. Nishant Sareen) wherein, it was held as under:-

"12. It is true that the Government in the matter of grant or refusal to grant sanction exercises

statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course. 13. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent order dated March 15, 2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible.

13. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of

fact, from the perusal of the subsequent order dated March 15, 2008 it is clear that on the same materials, sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible."

25. In the light of the above said decisions of the Honourable Supreme Court and on the basis of the evidence discussed above, particularly, the Sanctioning Authority was unable to apply its independent mind and was constrained to grant the Sanction, which was affected by extraneous consideration, it is crystal clear in the case on hand that Ex.P1, Sanction Order accorded by PW.1 was given, without proper application of mind and hence, Ex.P1 is vitiated and consequently, it has resulted in failure of justice which had occasioned in the instant case where the sanction had been accorded based on the pressure exerted by CVC. On this ground, in view of the reasons and discussions as stated above, the case of the Prosecution fails.

26. Further, coming to the next ground raised by the learned counsel for the Appellant in respect of demand and acceptance, it is to be seen whether the foundational facts regarding demand has been proved by cogent and reliable evidence. In this regard, the Prosecution had examined PW.8, Ex.P10 and Ex.P11. PW.8, approver, is a person, who had spoken about the demand said to have been made by the Appellant. PW.10 and PW.11, who were working as Assistants in the Accounts Department of the Institution, had been examined for corroborating the demand. PW.10 and PW.11 have not spoken anything about the demand said to have been made by the Appellant/ accused. Apart from that, there is only evidence of PW.8, who is the accomplice/ approver. It is also to be seen that the Appellant/ accused is only a Member of the Purchase Committee. He is not the authority to decide on the purchase of computers. The recommendation has to be forwarded to Kendriya Bhandar and the approvals are made by the Kendriya Bhandar. There is no cogent evidence to prove that the Appellant made the demand.

27. Though PW.10 had stated that he had seen PW.8 at his Office one or two times, his evidence is not in categorical terms in respect of the demand and the dates, on which the demand is stated to have been made. Further, the evidence of PW.11 is also not supporting the evidence of PW.8, regarding the demand made by Appellant/ accused. From the evidence of both the witnesses, PW.10 and PW.11, nothing has been elicited to support and corroborate the evidence of PW.8 regarding the demand made by the Appellant/ accused.

28. Further, in order to prove the demand, Ex.P39 and Ex.P40 had been marked by the Prosecution. It is pertinent to note that these documents being xerox copies had been marked subject to objection by the accused. In Ex.P39, PW.8 is alleged to have made a note, stating that "The order value is inclusive of 5% Kendriya Bhandar commission and sales commission Rs.41,000/- towards sales promotion and commission to Mr.Varma", in his handwriting. These documents are only xerox copies and within the knowledge of PW.8 and that the proposal also said to have been issued by PW.22, the Vice President of PW.8's Company consequent to an order placed, vide Ex.P2, dated 31.12.2001 and forwarded by an email, Ex.P44. Whereas Ex.P44 has not been certified as per the IT Act, making its reliance doubtful.

29. Further, coming to the evidence of PW.8, he had stated that it is the intention of PW.8 to give one computer instead of Rs.41,000/- as demanded by him. Further evidence of PW.8 is that pursuant to the demand of supply of the computer, the computer was installed by PW.15 and in order to prove the same, local conveyance voucher in respect of conveyance charges was marked as Ex.P43. Thereafter, to prove the delivery at the house of the Appellant, a journal voucher was marked as Ex.P4 to show that PW.8's Company had written off a sum of Rs.29,306/-. The evidence of the Senior Officials of M/s.ACCEL is not reliable without cogent evidence since they had been originally cited as accused and later, deleted in the charge sheet.

30. In respect of the point relating to the burden of proving of foundational facts regarding demand and acceptance, the Prosecution has to let in evidence to prove beyond reasonable doubt, whereas the burden on the accused is to prove his case by preponderance of probabilities. In (2016) 12 SCC 150 (V.Sejappa Vs. State by Police Inspector Lokayukta, Chitradurga, it was held as under:-

"18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and presumption would arise under Section 20 of Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of Act.

19. After referring to Suraj Mal Vs. State, (Delhi Admn), in C.M.Girish Babu V. CBI, it was held as under: (SCC P.784, para 18)

"18. In Suraj Mal Vs. State Delhi Admn), this Court took the view that (at SCC P.727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe."

20. In State of Kerala V.C.P.Rao, it was held that mere recovery of tainted money is not sufficient to convict the accused and there has to be corroboration of the testimony of the complainant regarding the demand of bribe.

21. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to the following observation in Mukut Biharai V. State of Rajasthan, where it was held as under: (SCC PP. 645-46, para 11).

"11. The law on the issue is well settled that demand of illegal gratification is since qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is

required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complaint is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person".

31. Further, as per Ex.P73, the First Information Report the respondent had implicated five accused persons including the appellant/accused and no valid reasons had been stated by the Investigating Officer for deleting the other accused and prosecuting the appellant/accused alone. In view of the above, this Court comes to the conclusion that neither the demand has been proved by legally acceptable evidence nor acceptance has been proved by cogent evidence relating to delivery. In other words, there is no legally acceptable and reliable evidence to prove such demand and acceptance by the accused. Considering the evidence of PW.8, PW.10 and PW.11, this Court of the considered opinion that the Prosecution has failed in establishing the guilt of the accused beyond a reasonable doubt that there was a demand of such illegal gratification as alleged by the Prosecution. Though in view of the non proving of the foundational facts, there is no need for the appellant/accused to rebut the presumption by offering explanation, the Appellant/accused had given a plausible and acceptable explanation, by letting in valid evidence as discussed above. Consequently, on this ground also, the case of the Prosecution fails.

32. Now, coming to another ground raised by the learned counsel for the Appellant, with regard to delivery of computer and speakers, the evidence of PW.9, PW.12 and PW.15 and Ex.P43 is crucial.

33. PW.9 was the delivery boy, who is alleged to have delivered the computer and he was examined to speak about the delivery of the computer at the house of the Appellant/ accused. On this aspect, his evidence is not specific as to the place where the computer was delivered and the person who had received the computer. No document has been marked to show that the computer was installed at the house of the Appellant/ accused. PW.9 had deposed that during February 2002, a computer

and a monitor were delivered at the house at Gandhi Nagar, Avadi. PW.12 had been examined in respect of delivery of the speakers. PW.12 had stated that he had delivered speakers on 9.2.2002 at the house at Sathyavanimuthu Street, Gandhi Nagar and that it had been handed over to an old lady. Whereas, by letting in evidence in defence and by Ex.P74 marked through DW.1, in the cross examination by the Respondent, it had been stated that the Appellant had shifted to the address at Sathyavanimuthu Street, Gandhi Nagar, Avadi only during the month of June 2004. Therefore, there is a doubt in respect of the delivery having been made at a house at Sathayavanimuthu Street, Gandhi Nagar, Avadi, during February 2002. It if it is true that the delivery had been made during February 2002, as spoken by the Prosecution witness, it could not have been at Sathyavanimuthu Street and thereby the claim of the Appellant that in a haste to prove the delivery, the documents have been fabricated as if they were delivered at the present address has some force and thereby it creates doubts and suspicions in the Prosecution's case.

34. When a question was put to PW.9 as to whether the computer can be taken from his office without a gate pass, he had stated that the computer cannot be taken from his Office without a gate pass being issued. However, he had stated that no gate pass was marked or produced to the Investigating Officer. That being so, the doubts raised by the Appellant, regarding the release of a computer from the Office of PW.8 and the alleged delivery of the computer at the house of the Appellant/ accused are reasonable and thereby creates a dent in the Prosecution's case.

35. Further coming to the evidence of PW.13, who is said to be the delivery boy for the speakers, he had deposed that he was working as a delivery boy in M/s/ACCEL and that on 9.2.2002, his Manager, Sunil handed over him a sound speaker to be delivered at the house of J.P.Verma at Avadi and that the address was at Sathyavanimuthu Street, Gandhi Nagar and that he had gone in an Auto and delivered the speaker to an old lady and that the auto fare was given to him by PW.8 and with regard to payment of Rs.100/- Ex.P43 was marked and in Ex.P43, it had been stated that "to Verma's resident to deliver speaker." The conveyance voucher Ex.P43 is dated 16.2.2002. Whereas it is the evidence of PW.12 that the delivery was made on 9.2.2002. The Appellant had let in evidence through the defence witness, DW.1, Balakrishnan to show that during the year 2002, the Appellant was earlier residing at Anbalagan Street, Avadi and that as per the letter dated, 7.6.2004, the Appellant had shifted his residence from Anbalagan Street to Sathyavanimuthu Street with effect from 6.6.2004 and thereby, the evidence of PW.12 that the speaker was delivered on 9.2.2002 at the house of

the appellant/accused at Sathyavanimuthu Street becomes unreliable and doubtful. The letter dated 07.06.2004 is marked as Ex.P74 when the prosecution cross examined DW1.

36. Further, though the computer and the speakers were said to have been delivered at the house of the Appellant/accused, despite searches conducted at the house of the Appellant/accused and also at the hostel room of the daughter of the Appellant/accused, the Respondent was not able to recover the computer and therefore, the evidence regarding delivery of the computer and speakers at the house of the Appellant/accused becomes doubtful since it is not supported by valid and legally acceptable evidence. Further, no evidence had been let in to identify the person to whom the computer and speakers were handed over. In view of such discrepancies and infirmities in the evidence, again on this ground also, the case of the Prosecution has to fall on ground. As a whole, in this case, this Court is of the opinion that demand, acceptance and recovery have not been proved by the Prosecution by letting in evidence beyond doubt to warrant conviction. In such circumstances, the rule of prudence reminds that it is unsafe to place reliance on the uncorroborated testimony of PW.8 in view of illustration (b) of Section 114 of the Indian Evidence Act when especially a doubt has been raised regarding the tender of pardon proceedings and deleting the Senior Officials of PW.8's Company, who were originally arrayed as accused in the First Information Report.

37. Further, the Trial Court had also not properly considered the evidence relating to the procedure adopted for purchase of computers for ICMR. As a whole, the Trial Court had convicted the Appellant without any cogent and legal evidence on record. This Court is of the opinion that the Trial Court had convicted the Appellant/accused based on inferences. In 2010 4 SCC 450 (Banarsidas Vs. State of Haryana), the Honourable Supreme Court had held that it is a settled canon of criminal jurisprudence that the conviction cannot be founded on inferences and such conviction based on inferences is improper.

38. Principles and Rules of criminal jurisprudence have been reiterated in several judgements that suspicion however grave cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be true" but has to upgrade its case to "must be true" in order to prove its case beyond all suspicion which would result in conviction.

39. Before concluding, this Court deems it apposite to refer to the decision of the Honourable Supreme Court rendered by a Three Judges Bench in P.Satyanarayana Murthy Vs. District Inspector of Police reported in (2015) 10 SCC 152, wherein in paragraphs 26 and 27, it was held as under:-hereunder:-

26. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in Sujit Biswas Vs. State of Assam had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.

27. The materials on record when judged on the touchstone of the legal principles adumbrated herein above, leave no manner of doubt that the prosecution, in the instant case, has failed to prove unequivocally, the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly unsafe to sustain the conviction of the Appellant under Section 13(1)(d)(i) & (ii) read with Section 13(2) of the Act as well. In the result, the appeal succeeds. The impugned judgment and order of the High Court is hereby set-aside. The appellant is on bail. His bail bond stands discharged. Original record be sent back immediately."

40. In the light of the decisions, which are applicable to the case on hand, as stated above and in view of the discussions and reasons and on an overall analysis of the evidence placed on record, having regard to the probabilities of the case, this Court is of the considered view that the reasons assigned by the Trial Court and the conclusions drawn by it in convicting the accused Appellant are not tenable and that the Prosecution has failed to prove the guilt of the accused beyond a reasonable doubt. Therefore, the conviction and sentence recorded against the Appellant/accused are liable to be set aside and consequently, the Appellant is entitled for acquittal.

41. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is hereby set aside. The Appellant is acquitted from all the charges levelled against him. The bail bond, if any executed by the Appellant, shall stand cancelled and the fine amount, if any paid by him, shall be refunded to him.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- 1.The Principal Special Court for CBI Cases,
Chennai.
- 2.The VIII Additional City Special Court,
Chennai.
- 3.The Inspector of Police,
SPE/CBI/ACB/Chennai.
- 4.The Special Public Prosecutor for CBI Cases,
Chennai.

+2cc to M/S.Sivananda & Association, Advocate sr.73146

+1cc to Mr.K.Srinivasan, Advocate Sr.72927

Cr1.A.No.797 of 2011

vd[co]
srg 16/11/2018