

IN THE HIGH COURT OF JUDICATURE AT MADRAS
ORDERS RESERVED
ON 26.09.2018
ORDERS PRONOUNCED
ON 05.10.2018

CORAM:
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.A.No.89 of 2011

G.Kothandan ... Appellant / Accused

/Vs/
State, Rep. by
The Inspector of Police
Vigilance and Anti Corruption
Chennai City Circle-II
(Crime No.2 of 2003). ... Respondent / Respondent

PRAYER: Criminal Appeal filed under sections 374 (1) of the Criminal Procedure Code, against the judgement dated 04.02.2011 passed by the VI Additional Judge, Sessions Court, Chennai in C.C.No.10 of 2005.

For Appellant : Mr.V.Krishnakumar

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 convicting him under Section 7 of Prevention of Corruption Act, 1988 and sentencing him to undergo two years Rigorous Imprisonment and to pay a fine amount of Rs.2,500/- in default to undergo three months Simple Imprisonment and also convicting him under Section 13 (2) and 13(1) (d) of prevention of Corruption Act, 1988 and sentencing him to undergo two years Rigorous Imprisonment and to pay a fine amount of Rs.2,500/- in default to undergo three months Simple Imprisonment. The trial Court ordered the entire sentence to run concurrently and the period already undergone by the accused was directed to be set off under Section 428 Cr.P.C.

The prosecution case is as follows:

2. The de-facto complainant is a Conservation worker of Chennai Corporation. The appellant/accused is the Conservation Inspector of Chennai Corporation. 41 scavengers are under the control of the appellant/accused and his duty is to allot work to each scavengers to clean a particular street under his control.

3. The de-facto complainant Anthonyammal, working as a Scavenger was allotted to clean a street namely, Thirupalli Street. Whiles, during November 2003, the appellant/accused had allotted the de-facto complainant to do work at Wall tax Road, instead of Thirupalli Street. Since, the de-facto complainant felt that the Wall Tax Road was having more debris and more work, she wanted to do work at Thirupalli Street itself. So, the de-facto complainant had approached the accused, who is empowered to re-allot the work, with the request to re-allot her the said Thirupalli Street. On 30.01.2003, the appellant/accused had demanded a sum of Rs.500/- as bribe to re-allot her work from Wall Tax Road to Thirupalli Street. So, the de-facto complainant had informed the fact to her husband and after consultation, they had decided to give a complaint to Vigilance and Anti Corruption Department and the de-facto complainant along with her husband and another known person went to the Vigilance office at Adyar and gave a written complaint to the Deputy Superintendent of Police, Vigilance Department. The D.S.P, Vigilance had directed the Inspector of Vigilance Department to register and investigate the case.

4. The Inspector of Police-PW8, had received the written complaint at 5.30 p.m on 30.01.2003, on the instruction of Deputy Superintendent of Police and registered the same as Crime No.2/AC/03/CC2 u/s. 7 of Prevention of Corruption Act 1988. The D.S.P had sent a letter to the Superintending Engineer, P.W.D Department requesting him to send two witnesses to his office on 31.01.2003. On 31.01.2003, the de-facto complainant came to the office of PW8, together with 500 Rupees in five hundred rupees denomination. Around 7.15 a.m, the witnesses sent by the Superintending Engineer, P.W.D, came to the office of the Inspector of Police, Vigilance Department at Adayar. The Inspector of Police-PW8 had introduced the de-facto complainant to (PW3, Srinivasan and PW4, Mr.Gowthaman) the witnesses who had come from the Public Works Department. Thereafter, PW8 had asked PW3 and PW4 to read the complaint given by the PW2 and asked them to verify the facts with PW2. After verifying the fact, the money brought by PW2 was given to PW3 and 4 and they were required to note down the denomination and the serial number of the notes. After verifying the facts, PW3 and PW4 had informed that there are five notes of Rs.100/- denomination totalling to Rs.500/- and had given the money to PW8 and on that basis, a mahazar was prepared in the presence of same witnesses. The notes were marked as M.O.1 series. Thereafter, Phenolphthalein test was demonstrated to PW2, 3 and 4 by preparing Sodium Carbonate solution in two glass tumblers by PW8. Thereafter, the Sodium Carbonate solution was destroyed. After smearing the notes with phenolphthalein powder, money was given back to PW2. PW2 was instructed by PW8 to hand over the money only to the accused. On receipt of such money, PW2 was instructed to given an indication to PW8 by exchanging Bangles from right hand to left hand. Further, PW3 was also instructed to accompany PW2. These instructions and demonstrations were recorded under Mahazar and in that Mahazar, PW2, 3, 4 and 8 had attested. Thereafter, PW2, 3, 4 and 8 had washed their hands. PW2 had gone to the appellant/accused office at Wall Tax Road situate in front of the Corporation of Chennai, around 10 A.M. PW2 was required to give the money to the appellant/accused. PW3 was also required to accompany her. Around 10.40 a.m, PW2 had signalled to PW8 and on the basis, PW8 had introduced himself to the appellant/accused and when he enquired, he was informed that PW2 had handed over the money to the appellant/accused on his demand and in turn, the money was handed over by the appellant/accused to PW5, Venkatesan, as illegal gratification to re-allot her work. The witness Venkatesan was also summoned and when he was questioned, he had informed that he had requested to give a loan of sum of Rs.500/- and that amount was given by the accused. In that circumstances, PW8 had prepared Sodium Carbonate Solution in two Glass tumblers and the appellant/accused was required to immerse his hands in the solution and on immersing his fingers, the solution had turned into pink. The solutions with glass tumblers were sealed with a label and it was attested by PW8 and PW2 and 3. They were marked as M.O.2 and M.O.3 and thereafter, another two Sodium Carbonate Solutions were prepared in two glass tumblers and the witness Venkatesan was required to immerse his fingers and thereafter, the solution had turned into pink colour. Those two solutions with glass tumblers were sealed with label

containing crime number, name of the appellant/accused and the label was attested by PW3 and PW4 and those two labels were marked as M.O.4 and M.O.5. When the witness Venkatesan was questioned he had produced Five hundred rupees received by him from the appellant/accused and on his handing over of the notes, the witnesses were required to verify the numbers of the note with the numbers noted by them earlier and after confirming the same, the five hundred rupees notes were seized. Thereafter, another Sodium Carbonate solutions were prepared in a glass tumbler and the witness Venkatesan's shirt left side pocket was immersed which also had turned into pink colour. The solution was taken in a bottle. Thereafter, the shirt worn by the witness Venkatesan was seized under Mahazar and the shirt was marked as M.O.7. The Entrustment Mahazar was marked as Ex.P3. Seizure Mahazar was marked as Ex.P4. Printed F.I.R was marked as Ex.P5. Form-95 was marked as Ex.P6. Requisition letter dated 31.01.2003 was marked as Ex.P7. Letter dated 14.02.2003 was marked as Ex.P8 and Lab report was marked as Ex.P9.

5. Later, the Investigating Officer on the basis of the investigation, had arrested the appellant/accused at 12.30 noon and the entire proceedings conducted between 11.00 a.m and 12.45 p.m was recorded under a Mahazar in the presence of PW2 and 3. Thereafter, after getting signature from the accused, a copy of this report was given to the appellant/accused also. The material objects were submitted to the court under Form-95. The material objects were sent for chemical examination through the court and the requisition was marked as Ex.P7.

6. Thereafter, the investigation was transferred to one Mr.Vedarathinam, Inspector of Police, and the Inspector of Police, PW10 had taken up the investigation on 01.02.2003 and after examining the witnesses and recording their statements and after visiting and inspecting the place of occurrence recovered the Attendance Register and thereafter received the Chemical Examination Report and on completion of the investigation on 05.05.2003, the papers were submitted for obtaining sanction to prosecute the accused and after obtaining sanction on 27.02.2004 and after examining the Sanctioning Authority and recording his statement and on completion of investigation final report was filed before the learned Principal Sessions Judge/Special Judge under the Prevention of Corruption Act against the appellant/accused, for the offences under Sections 7, 13(2) and 13(1)(d) of Prevention of Corruption Act 1988. The case was taken up as C.C.No.10 of 2005. The appellant/accused had appeared before the court on receipt of summons on 13.06.2005 and the case was made over to trial before the learned VI Additional Sessions Judge, City Civil Court, Chennai. Charges had been framed against the appellant/accused for offences u/s.7, 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988. The appellant/accused had denied the charges and pleaded not guilty. On the side of the prosecution, ten witnesses were examined as P.W.1 to P.W.10 and Ex.P1 to Ex.P9 and M.O.1 to M.O.7 were marked.

7. PW2 is the Sanctioning Authority, PW2 is the de-facto complainant, PW3 to PW5, PW7 are the witnesses for trap, PW6 is the husband of the de-facto complainant, Pw9 is the Scientific Officer, PW8 is the Inspector of Police who registered the case, took up investigation, initiated trap proceedings laid the trap and PW10 is the Investigating Officer who conducted further investigation and filed the final report.

8. On the conclusion of the prosecution witnesses, the appellant/accused was examined u/s.313 Cr.P.C pertaining to the incriminating evidence tendered against him by the prosecution witnesses. The appellant/accused denied the same as false and had examined three witnesses on the side of the defence as DW1 to DW3 and marked one document as Ex.D1. The trial Court after hearing both the prosecution and the counsel for the appellant/accused found that the the prosecution had proved the case beyond reasonable doubt and held the appellant/accused guilty for the offences as alleged and convicted him as stated supra.

9. Assailing the judgement passed by the Trial Court, the learned counsel appearing for the appellant/accused would submit that the trial Judge failed to appreciate the materials and evidence on record and thereby erred in convicting the accused when the prosecution has miserably failed to prove the case beyond reasonable doubt. The learned counsel for the appellant would submit that the law on the issue of demand and acceptance is well settled that, the demand of illegal gratification is sine qua non for constituting an offence under the Prevention of Corruption Act. He would further submit that mere recovery of tainted money from the accused is not sufficient to convict him when the substantive offence in the case in respect of demand is not reliable and unless there is clear evidence to prove the payment of bribe or to show that the money was voluntarily taken as a bribe, mere receipt of amount by the accused is not sufficient to passing the guilt on the accused in the absence of any legal evidence with regard to demand and acceptance of the amount as illegal gratification. He would further submit that when the recovery has been proved the burden to displace the statutory presumption under Section 20 of the Act rests on the accused to displace the presumption by bringing on record either by direct evidence or circumstantial evidence to establish with reasonable probability that the money accepted by him was for other than as a motive or reward as referred to in Section 7 of the Prevention of Corruption Act. He would further submit that while invoking the provisions of Section 20 of the Act, the trial Judge is required to consider the explanation offered by the accused only on the touch stone of the preponderance of probability and not on the touch stone to be proved beyond reasonable doubt. He would also submit that before the accused is called upon to explain how the amount was found in his possession the prosecution should see to that it establishes the foundational facts with regard to demand and acceptance of the amount towards illegal gratification. He would also submit that the complainant in a case of trap is an interested and partisan witness concerned with the success of the trap and thereby, his evidence must be tested in the same way as that of any interested witness and that before convicting the accused, the court has to look for independent corroboration. He would submit that in this case, PW2 is an interested witness and that she has got enmity against the appellant/accused with regard to a dispute regarding money as spoken by DW1 to DW3 and that she was having animosity and grudge against the appellant/accused for having allotted to a street where there was more work and thereby, there is every reason that she could be treated as an interested witness having animosity and grudge against the accused and that her evidence should not have been believed by the trial court for convicting the accused without proper corroboration by other reliable witness. He would further submit that PW3 admittedly is a stock witness and that when the evidence of PW3 cannot be believed to be trustworthy, the evidence of PW2 has to be brushed aside for non-corroboration when especially PW2 is an interested witness and enmical terms with the appellant/accused.

10. The learned counsel for the appellant would submit that when such being the case, the prosecution has failed to establish the foundational facts with regard to demand and acceptance of money by the appellant/accused. He would further submit that the appellant by letting in defence evidence and also by marking the documents proved that there was already a money dispute existing between the appellant and the de-facto complainant and that the amount handed over by the complainant was a return of part of the loan amount which the complainant had taken from the appellant for her father's funeral expenses. Further, it is an admitted case of the complainant/PW2 that she did not like to work in the particular street and that she was antagonized with the appellant since he had posted her in a place where she did not want to work. He would further submit that eschewing the evidence of PW3, the evidence of the other witnesses do not corroborate the evidence of the complainant/PW2 regarding the demand. The learned counsel for the appellant would further submit that a suggestion had been put to the complainant/PW2 with regard to an amount of Rs.1000/- borrowed from him on 29.11.2002 on the date of the death of her father and that she had repaid only the amount of Rs.500/- and that there was a dispute and enmity with regard to the non-repayment of Rs.500/-. The learned counsel for the appellant would also submit that the evidence of PW2 is not clear with regard to the accompanying of PW3 and PW4 along with her at the time of

laying the trap, thereby creating doubt and suspicion regarding the trap proceedings. He would further submit that as per the evidence of PW2, she had stated that two police men had accompanied her to the office of the accused and when such being so, the presence of PW3 and PW4 cannot be believed. Further, admittedly when PW3 being a stock witness, reliance cannot be placed on his evidence and that PW4 has not spoken anything about the demand stated to have been made by the appellant/accused. PW4 had only spoken about the events which followed the trap proceedings. The learned counsel would further submit that in respect of the second demand stated to have been made on 31.01.2003 after laying the trap proceedings, PW2/complainant has only stated that the appellant had questioned her why she had come late and whether she had brought the money asked by him. He would also submit that the evidence of PW2 is not clear whether the money is for bribe or return of the amount borrowed by her. Further, PW2 had stated that the appellant/accused had received the money in his right hand and handed it over to a boy named Venkatesh (PW5) who was standing near him and that the said Venkatesh left downstairs immediately. Whereas, it is the evidence of PW5 that he had asked for a loan from the appellant/accused and that he had after receiving the amount from the appellant/accused had immediately left to a hotel along with his friend. Further, he had stated thereafter he was called by a police man and that when he had gone up, the police men had enquired him why he had taken money from the appellant/accused for which he had replied that he had asked for a loan and taken it, and thereafter, the tainted money was recovered from PW5 and phenolphthalein test was conducted on him. The learned counsel for the appellant would submit that if the explanation of PW5 was not accepted, the respondent would have implicated him as an accused for abetting or assisting the appellant/accused. Further, though PW2 has stated that the appellant/accused had received the amount from her in his right hand and handed it over to PW5 immediately nothing had been elicited from PW5 about the presence of PW2 and the other witnesses for the trap. The learned counsel for the appellant/accused would further submit the glaring contradictions in the evidence of PW2, PW3, PW4 and PW5 would create a grave suspicion with regard to the alleged demand and the trap proceedings and thereby, falsifying the case as projected by the prosecution. He would submit that as per the evidence of PW2, she had gone to the office of the appellant/accused along with two policemen and that the appellant/accused had received the tainted money by his right hand and had immediately handed it over to PW5 and thereafter, she had given the prearranged signal, further she had not spoken about the presence of others in the office of the appellant/accused, whereas strangely PW3 had stated that when he had gone to the office of the appellant/accused with PW2 there was a crowd and the conservancy workers were signing there and that PW2 and himself were standing little away in the office and that the appellant/accused questioned PW2 why she had come late and asked whether she had brought the money and the further evidence is that thereafter, PW2 took the money from her purse and handed over to the appellant/accused and the appellant/accused counted the notes and handed it over to a Conservancy Worker standing nearby and thereafter, the appellant/accused had told PW2 that she will be posted at the place of her choice. PW3 had further stated that after the prearranged signal by PW3, the Trap Laying Officer went inside and enquired the appellant/accused and he had informed that he had given the tainted money to PW5. Thereafter, the Trap Laying Officer had called PW5 and enquired him and PW5 had told him that he had asked for a loan from the appellant/accused and that was the amount given by him and further, PW2 had also told the same thing.

11. The learned counsel would further reiterate that PW3 is a stock witness who had admitted that he was a witness in other Vigilance case also and that there is a glaring contradiction with regard to the so called receipt of the tainted money and counting it with both hands and thereby, making the prosecution case regarding the trap a farce. The learned counsel would further submit that the manner in which the things had happened would categorically suggest that appellant/accused had not demanded bribe and that he had actually received the amount assuming it to be the return of loan amount and that PW2 who was holding a grudge and animosity against the appellant/accused

due to various reasons submitted above had based on a false complaint attempted to fix the appellant/accused while returning the balance loan amount of Rs.500/- out of Rs.1000/- taken as loan by her from the appellant/accused for her father's funeral expenses. The learned counsel for the appellant would further submit that PW2 had attempted to give a wrong date of her father's death to avoid accepting that she had borrowed an amount of Rs.1000/- from the appellant/accused for her father's funeral expenses and that she had repaid only Rs.500/- and there was a quarrel between her and the appellant/accused regarding non-payment of the balance amount of Rs.500/- and later when confronted with the death certificate of her father Ex.D1, PW2 had stated that her father's name is Vengaiah and that he died on 29.11.2002.

12. The learned counsel for the appellant/accused would further submit that the evidence of PW4 would make the entire trap proceedings doubtful since even as per the evidence of PW2, the tainted money was stated to have been received by the appellant/accused in his right hand and had been handed over to PW5 immediately even without counting it, whereas strangely PW4 had stated that both the hands of the appellant/accused turned pink during the phenolphthalein test. Further, the contradictions in the evidences of PW3 and PW4 would prove that both of them have not accompanied PW2 during the trap proceedings. PW3 had stated that there was a crowd of conservancy workers who were signing at the office of the appellant/accused whereas PW4 had stated that the appellant/accused was sitting alone at his office and thereby making their testimony and their so called presence at the place of occurrence highly doubtful. The learned counsel for the appellant/accused would further submit that PW6 is the husband of PW2 and though nothing had been elicited by PW2 about her husband meeting the appellant/accused, PW6 had falsely deposed as if he met the appellant/accused and that the appellant/accused demanded money from him. Further, PW7 had deposed that the appellant/accused had transferred PW2 to Waltax Road since there was complaint against her. The learned counsel would submit that though demand and recovery had not been proved by convincing evidence, the appellant/accused had by letting in defence evidence had proved about the loan given by the appellant/accused to PW2, the enmity due to non-payment of the loan amount and also the grudge PW2 developed against him for transferring her to a place where she did not want to work. The learned counsel would further submit that the appellant/accused had also given a proper explanation under Section 313 of Cr.P.C. The learned counsel would also submit that disciplinary proceedings were initiated and a departmental enquiry was conducted by an enquiry officer and that the enquiry officer had also given a finding absolving the appellant/accused. The documents relating to the order passed in departmental proceedings dated 21.02.2005 have been marked as Ex.C1 before this Court. He would submit that though the standard of proof relating to a departmental proceedings and the criminal proceedings are different, in respect of the very same facts a departmental enquiry was initiated and that the appellant/accused has been absolved of the charges. He would further submit that the liability cast on the prosecution to prove a charge is to prove a case beyond reasonable doubt, whereas the accused can prove his case by preponderance of probability and that the appellant/accused has proved his case by letting in evidence in defence and has also marked Ex.D1 and during the appeal produced and marked Ex.C1. Sifting the evidence in full the learned counsel would submit that the demand and having not proved beyond reasonable doubt the appellant/accused is entitled to acquittal. To sum up his arguments, the learned counsel for the appellant/accused would submit that PW2 is an interested witness and her evidence could not be believed without corroboration and that the demand had not been proved and though the appellant/accused need not come out with an explanation when the legal evidence regarding demand is lacking, the appellant/accused had proved his defence by rendering an explanation and by letting in cogent evidence and thereby, the trial Court ought to have extended benefit of doubt and acquitted the appellant/accused.

13. In support of his case, the learned counsel for the appellant/accused relying on the judgements of the Hon'ble Supreme Court reported in (2016) 12 SCC 150 in the case of V.Sejappa Vs. State by

Police Inspector, Lokayukta, Chitradurga and reported in (2017) 8 SCC 136 in the case of Mukhtiar Singh Vs. State of Punjab.

14. Per contra, the learned Additional Public Prosecutor would submit that the trial Court, after carefully scrutinizing the evidence of the witnesses and appreciating the evidence in the right perspective has rightly convicted the appellant/accused. He would further submit that since because PW4 had admitted that he stood as a witness in other cases registered by the respondents, his evidence cannot be brushed aside as unbelievable. He would further submit that though the appellant/accused has been absolved in the departmental proceedings, it would not be a ground for acquitting the appellant/accused in the criminal proceedings. He would further submit that the demand and acceptance had been proved by the evidence of PW2, PW3 and PW4 and when that being so the trial Court had rightly rejected the explanation of the appellant/accused and thereby, had rightly convicted the appellant/accused and would pray for dismissal of the appeal.

15. This Court has considered the rival submissions and also perused the materials placed before it.

16. In respect of a trap cases under the Prevention of Corruption Act, the law is well settled by plethora of decisions of the Apex Court that demand of illegal gratification is a sine qua non for constituting an offence. Mere recovery of tainted money is not sufficient to convict the appellant/accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove the 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 and in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification the appellant/accused cannot be convicted. If the acceptance is proved then the burden rests on the appellant/accused to displace the statutory presumption raised under Section 20 of the Prevention of Corruption 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 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 appellant/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. Further, when the complainant is an interested in partisan witness concerned to the success of the trap his evidence must be tested in the same way as that of any other interested witness and in the proper case the court may look for independent corroboration before convicting the appellant/accused person.

17. In the case of V.Sejappa Vs.State by Police Inspector Lokayukta, Chitradurga reported in (2016) 12 SCC 150, the Hon'ble Apex Court while referring to several earlier judgments has held as follows:-

"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 9Delhi 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".

18. In the case of *Mukhtiar Singh Vs. State of Punjab* reported in (2017) 8 SCC 136, the Hon'ble Apex Court while referring to several earlier judgments has held as follows:-

"13. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In *A. Subair vs. State of Kerala*, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was expounded in *State of Kerala vs. C.P. Rao* that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

15. In *P. Satyanarayana Murthy*, this Court took note of its verdict in *B. Jayaraj vs. State of A.P.* underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing

or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in P. Satyanarayana Murthy on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder: (SCC P.159, Para 23)

□23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 and 13 of the Act would not entail his conviction thereunder.□ (emphasis supplied)

19. Now, while analysing and appreciating the evidence on record in the context of elucidation of law placing reliance on the above judgment, what is to be seen is whether the prosecution has proved the case in respect of demand and acceptance of illegal gratification by the appellant/accused beyond all reasonable doubt and whether the explanation offered by the appellant/accused is probable and plausible rebuts the presumption under Section 20 of the Prevention of Corruption Act.

20. Coming to the case on hand the evidence of PW2, PW3 PW4, PW5, PW7 and the evidence of DW1 to DW3 are relevant for deciding the appeal. The facts of the case remain that the appellant/accused is working as a Conservation Inspector in the Chennai Corporation. 41 scavengers are under the control of the appellant/accused and his duty is to allot work to each scavenger to clean a particular street under his control. As per the evidence of PW2, she was working as scavenger in the 44th the division at Thirupalli Street and she was transferred to Wall Tax Road and since the appellant/accused being her officer she had met him and questioned him why he had transferred her to Wall Tax Road. Her further evidence is that on 30.01.2003, the appellant/accused had demanded Rs.500/- as illegal gratification for transferring her back to Thirupalli Street and since she did not want to give the bribe, she had given the complaint to the respondent. The further evidence is that she was asked to come to the office of the respondent in the next day and that she had given Five Number Hundred Rupees notes to the respondent and thereafter, she was explained about the trap proceedings and the notes given by her were smeared with phenolphthalein and two Policemen were sent along with her and she was also intimated about the prearranged signal to be given by her after the tainted money was received by the appellant/accused. She had further deposed that she went along with two policemen and when she had met the appellant/accused, he had asked whether she had brought the money and that he had received the money on his right hand and immediately given it to one boy named Venkatesh. Thereafter, she had come out and given the prearranged signal and when the trap laying officer had examined her, she had told him that she had handed over the money to the appellant/accused and thereafter, she was asked to wait outside. During cross examination, she had deposed that Thirupalli Street and Wall Tax Road are nearby streets and she had told that since she is accustomed with Thirupalli Street and that since Wall Tax Road was very dirty she had asked for a transfer and that she did not like to work in Wall Tax Road. She had deposed that her father died on 28.11.2003. Thereafter, when confronted with the death certificate of her father she had accepted that her father's name is Venkaiah and that he died on 29.11.2002. The death certificate of PW's father was marked as Ex. D1. Thereafter, suggestions had been put to PW2 that she had taken a loan of Rs.1,000/- from the appellant/accused for the funeral expenses of her father and that there was a quarrel with regard to non-repayment of part of the loan amount. Further,

through the evidence of PW7, the reason for transfer of PW2 due to complaints against her had been elicited. The enmity in respect of the quarrel regarding non-payment of loan and the enmity and the grudge due to transferring her to a street where she did not want to work being the motive for giving the complaint has been elicited by DW1, DW2 and DW3. Further, DW1 had also stated that she had informed the respondent about the enmity between the appellant/accused and PW2 on the next day itself.

21. Further, coming to the evidence regarding trap proceedings, PW2 had stated that she was accompanied by two policemen and that when she had gone there, the appellant accused had questioned her whether she had brought the money and received it on his right hand and gave it to one Venkatesh at once and that the said Venkatesh went down immediately and thereafter, she came out and gave the prearranged signal. She had not stated about the presence of any other persons in the office of the appellant/accused other than the said Venkatesh who was examined as PW5. Whereas, the witness for the trap, PW3 has deposed that when he had gone to the office of the appellant/accused there was a crowd and the sanitary workers were signing there and that he and PW2 were standing at a distance. Further, he had stated that he was standing a little away in the office and that when the appellant/accused had seen PW2, he had questioned her why she had come late and whether she had brought the money and that PW2 had told him that she had brought the money and thereafter taken it from a purse and gave it in the hands of the appellant/accused and the appellant/accused had counted the notes and handed it over to a sanitary worker who was near him. There is a contradiction between the evidence of PW2 and PW3. As per the evidence of PW2, the tainted money had been received by the appellant/accused on the right hand and had been immediately handed over to one conservatory worker Venkatesh who was examined as PW5. Whereas, the evidence of PW3 says that the amount was counted by using both hands and thereafter, handed over to PW5 and thereby, creating a suspicion with regard to demand and the subsequent trap. Admittedly, PW3 is a stock witness. Further, the evidence of PW4, the shadow witness is also in contradiction with PW2 and PW3. Though PW3 had stated that there are several persons in the office of the appellant/accused, PW4 had stated that the appellant/accused was sitting alone in his office and the evidence of PW3 and PW4 in consonance with the evidence of PW2 that two policemen accompanied her creates a doubt with regard to the presence of PW3 and 4 during the trap proceedings thereby casting suspicion on the trap proceedings. The above contradictions in the evidence of PW2, PW3, and PW4 creates a serious dent in the foundational facts regarding the trap proceedings and regarding the demand stated to have been made by the appellant/accused and thereby creating grave suspicion and doubt in the prosecution case. When the foundational facts of the case goes, the necessity of the appellant/accused to give explanation does not arise at all. However, in this case, the appellant/accused had examined three witnesses as defence witnesses and has also marked document as Ex.D1 during the trial proceedings. The appellant/accused had elicited about the borrowal of money by PW2 for the funeral expenses of her father and the enmity due to non-payment of part amount and further, admittedly PW2 also had grudge against the appellant/accused for having transferred her to a street which she did not want to work and that will be a ground for enmity. Further, the appellant/accused has also been exonerated in the departmental proceedings and that the enquiry report had been marked as Ex.C1 during this appeal. The burden cast on the prosecution is to prove the case beyond reasonable doubt, whereas the burden on the accused is by letting in evidence and proving his defence by preponderance of probabilities. PW2 is not only an interested witness in the trap she also has previous enmity and motive against the appellant/accused. In such circumstances her evidence regarding demand and acceptance cannot be believed without corroboration. The evidence of PW3 and PW4 are in total contradiction to the evidence of PW2 regarding demand and acceptance. Further, PW3 is a stock witness and the contradictions in the evidence of PW3 and PW4 makes their presence doubtful when PW2 had stated that two policemen accompanied her during the trap. Further, PW5 has stated that he had earlier asked for loan from the appellant/accused and borrowed the amount as loan from the appellant/accused. Nothing had been elicited as if PW5 abetted the appellant/accused to conceal the

bribe amount. Further, the appellant/accused had in his statement under Section 313 Cr.P.C had explained that PW2's father passed away on 29.11.2002 and that PW2 had asked for a loan of Rs.1,000/- assuring it to return within a month and that she had returned Rs.500/- only and that the appellant/accused had asked her to return the amount in full, whereas she had informed him that she will see to it she returns it. Further, he had also stated that she had refused to work in the street allotted to her and in respect of which there were complaints are that he had transferred her to Walltax Road from Thirupalli street and she had informed him that she would work only if she is transferred to Thirupalli Street and when he had refused she had wrecked vengeance on him. Thereby, the circumstances under which the money had been received has been explained by him. By letting in evidence of DW1 to DW3 in defence and marking Ex.D1 and Ex.C1 the appellant/accused has proved that the amount handed over by PW2 was only the balance loan amount and further in respect of the same set of facts the appellant/accused had been exonerated in the departmental enquiry.

22. On the cumulative analysis and consideration of evidence on record this Court is of the opinion the prosecution has failed to prove the case beyond all reasonable doubt. Whereas, the reason given by the appellant/accused for receipt of the amount is probable and plausible is her especially the evidence of PW2 lacks corroboration and thereby, benefit of doubt has to extended to the appellant/accused.

23. This Court is of the opinion that the trial Court ought to have acquitted the appellant/accused extending benefit of doubt. In view of the above the Criminal Appeal stands allowed and the judgment of conviction and sentence passed by the learned VI Additional Sessions Judge, Sessions Court, Chennai in C.C.No.10 of 2005 dated 04.02.2011 is here by set aside and the appellant/accused is acquitted. The bail bonds executed by and on behalf of the appellant/accused shall stand cancelled and the fine amount, if any, paid shall be refunded to the appellant/accused.

05.10.2018

kv

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

To

1. The VI Additional Judge, Sessions Court, Chennai

2. The Inspector of Police
Vigilance and Anti Corruption
Chennai City Circle-II.

3. The Public Prosecutor,
High Court of Madras.

4. Section Officer,
V.R. Section, High Court of Madras.

A.D.JAGADISH CHANDIRA.,J.
kv

Pre-Delivery Judgment in
Crl.A.No.89 of 2011

05.10.2018