



Bail Slip

The Appellant/Sole Accused, S/o.Perumal aged 53 years was released in bail as per order of this court dated 19/01/2012 made in CrI.Mp.No.1/2012 in CrI.A.No.37/2012 by this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON 25.09.2018	JUDGMENT PRONOUNCED ON 10 .10.2018
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CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.37 of 2012

Kasinathan ... Appellant /Single Accused
/Vs/
State represented by
The Inspector of Police,
CBI/ACB/Chennai. ... Respondent /Complainant

PRAYER: Criminal Appeal filed under section 374 (2) of the Criminal Procedure Code against this judgement of conviction passed by the learned XIII Additional Sessions Judge (Special Judge fro CBI Cases), City Civil Court, Chennai, in C.C.No.5 of 2009 dated 11.01.2012, the appellant is preferring this appeal to set aside the conviction and sentence.

For Appellant : Mr.C.R.Malarvanan

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI Cases

J U D G M E N T

Challenge has been made by the appellant/accused to the judgment of the learned XIII Additional Sessions Judge (Special Judge fro CBI Cases), City Civil Court, Chennai, in C.C.No.5 of 2009 dated 11.01.2012, in and by which, he was convicted for the offences u/s. 7 and 13[2] read with 13[1][d] of the Prevention of Corruption Act, 1988, and was sentenced to undergo 3 years rigorous imprisonment and to pay a fine of Rs.5000/- and in



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default, to undergo 3 months rigorous imprisonment for the offence u/s.7 of the Prevention of Corruption Act and was sentenced to undergo 4 years rigorous imprisonment and to pay a fine of Rs.5000/- and in default, to undergo 4 months rigorous imprisonment for the offence u/s.13[2] read with 13[1][d] of the said Act. The sentences were ordered to run concurrently.

2 The charges levelled against the appellant/accused are that, while the appellant/accused was working as a Part Time Sweeper in Punjab National Bank, Tiruvambattu Branch, Villupuram District, on two occasions, viz., 29.10.2008 and 30.10.2008, demanded illegal gratification of a sum of Rs.5000/- other than the legal remuneration, from the complainant [P.W.2] for obtaining the Educational Loan from the Bank and also accepted the same, by abusing his official position and misusing the office.

3 The case of the prosecution, in brief, is as follows:-

[a] P.W.2-Subramanian, was a lorry driver by profession. He had deposed that he approached the Manager, Punjab National Bank, Tiruvambattu Branch, for availing Educational Loan for his son who was studying in an Engineering College at the relevant time and also submitted an Application [Ex.P.3]. The Manager [P.W.4] asked P.W.2 to furnish the Community Certificate as well as the Xerox Copy of the Ration/Family Card. P.W.2 furnished the documents, viz., XII Standard Transfer Certificate [Ex.P.4] ; Provisional Allotment given by the Anna University [Ex.P.5] ; Conduct Certificate [Ex.P.6] ; Estimate Statement [Ex.P.7] ; 12th Standard Mark List [Ex.P.8] ; 10th Standard Mark Sheet [Ex.P.9] ; Ration Card pertaining to the year 2005-2006 [Ex.P.10] ; Community Certificate [Ex.P.11] ; Residential Certificate [Ex.P.12] ; and Voters' Identity Card [Ex.P.13] along with the Loan Application. After receipt of the application and the documents and the signature of P.W.2, P.W.4 asked P.W.2 to meet him after 15 days. When P.W.2 approached P.W.4 after 15 days, P.W.4 had informed that he had received any Sanction order from the Head Office and that he was again asked to approach P.W.4 after 15 days. Once again, when P.W.2 went to meet P.W.4, the appellant/accused asked him to wait since P.W.4 was attending to some work. After some time, the appellant/accused demanded a sum of Rs.5000/- from P.W.2 by stating that he would obtain the sanction order from the Head Office. On the same day night, at about 8.00 p.m., P.W.2 informed the CBI Officials over phone about the demand made by the appellant/accused. They enquired him as to his name and address and also the reason for demanding such amount. P.W.2 narrated the happenings. The officials had informed him that they would come and enquire about the same on the next day. On the next day, the officials came to the residence of P.W.2 and enquired him. P.W.2 furnished all the relevant documents to



them. On 30.10.2008 he had also given a written complaint to them. The said complaint is marked as Ex.P.14. When the officials asked P.W.2 as to whether he had got the amount as demanded by the appellant/accused, P.W.2 informed that he is having Rs.5000/- with him [Rs.500/- notes-7 Nos ; Rs.100/- notes-15 Nos]. The officials smeared phenolphthalein powder on the currency notes. The official by name Thiru Babu kept the money inside the shirt pocket of P.W.2 and asked P.W.2 not to take it out unless and until the appellant/accused demands the same. On the same day, at about 12.45 p.m., P.W.2 and one Kumar [trap witness] were made to alight the car and were asked to go to the Bank by walk. After reaching the Bank at about 1.15 p.m., P.W.2 enquired the appellant/accused about the loan, to which the appellant/accused had stated that the papers of P.W.2 are still with the Head Office and further asked as to whether P.W.2 had brought the amount as demanded by him. P.W.2 touched his shirt pocket and nodded in affirmation. Thereafter, the appellant/accused took P.W.2 and Kumar outside the Bank and enquired P.W.2 as to who is the said person accompanying him. P.W.2 informed the appellant/accused that Kumar is his relative and that he has come from Puducherry. The appellant/accused informed P.W.2 that he will meet P.W.2 during lunch time and asked them to wait. When the Bank Manager went for his lunch, the appellant/accused took P.W.2 and Kumar to a Street and asked Kumar to wait at some distance. Thereafter, the appellant/accused took P.W.2 to a secluded place and after enquiring about P.W.2's children, he asked P.W.2 to give the amount. The appellant/accused received the money and kept the same in his pant pocket. Thereafter, P.W.2, came to the Main Road and as taught by the CBI officials, took his handkerchief and wiped his face, signalling them. P.W.2 identified the appellant/accused to the officials. When the officials enquired the appellant/accused as to whether he had received any amount, he denied the same and due to subsequent threatening, the appellant/accused accepted the receipt of the amount. The officials then poured water on the hands of the appellant/accused and the same turned pink in colour, as already narrated by the officials to P.W.2 during pre-trap proceedings. Thereafter, the appellant/accused was taken to the Bank. P.W.4 was enquired. The currency notes [M.O.1 series] ; Bottle containing right hand wash solution [M.O.2] ; Bottle containing left hand wash solution [M.O.3] ; Pant of the accused [M.O.4] ; C-Bottle [M.O.5] ; Cover used for sending the currency notes [M.O.6] ; and Cover used for sending the pant of the appellant/accused [M.O.7] were prepared under a Mahazar [Ex.P.15] and obtained the signature of P.W.2 [Ex.P.16].

[b] P.W.3-Kumar, in his evidence would depose that he was working as the Branch Manager, United India Insurance Company, Greams Road. He would depose that he received a call from the Vigilance Department of his Head Office and he was asked to



proceed to Nadarmangalam forthwith and to meet P.W.9 - Kalaimani, Inspector of Police, CBI. P.W.3 immediately went to the Bus Stand, Nadarmangalam, where he met P.W.9 and other officials. The other officials, viz., Sundar Raman and Magesh Kumar, Inspectors of Police, were present along with one Balakrishnan, Constable. P.W.9 explained the complaint given by P.W.2-Subramani in extenso and asked P.W.3 to accompany P.W.2. The serial numbers of the currency notes were also noted in a Mahazar. Then trap proceedings, viz., the Phenolphthalein test, were explained in detail to P.W.3. As stated by P.W.2 in his evidence, P.W.3 also narrated the sequence of events that happened subsequently and also stated about the receipt of money by the appellant/accused and his seeing of the same from some distance. He had also deposed about the seizure of currency notes and the pant worn by the appellant/accused under Mahazars and his affixing of signatures on it.

[c] P.W.4-Sridhar, was working as the Branch Manager, Punjab National Bank, Tiruvambattu at the relevant time. He would state that the duty assigned to him as regards loan applications is to receive the same along with relevant documents from the loanees and to forward the same to the Chennai Processing Centre for processing of the same and the Head Office will sanction the loan to the concerned person through the concerned Branch Manager along with the Sanction Order. In case of any queries raised as regards loan, the same will be answered by him. He had deposed that on 29.10.2008, P.W.2 approached him for availing educational loan for his son who was studying in Shri Aravinda Engineering College and that the said application was sent to the Processing Centre during the month of October only, due to Bank Closing work at the end of September. P.W.4 would further depose that other than himself, no other staff in the Bank would involve in processing of the loan. He also stated that the appellant/accused was working as Part Time Sweeper in the Bank and that he had no role to play in dealing with the loan application and that the appellant/accused was enquired about the background of the persons who approach the Bank for availing loan since he was working in the said Bank for the past 17 years. He further states that the date of occurrence was on 30.10.2008 at about 3.15 p.m, when P.W.9-Inspector approached P.W.4 to come and identify the person who had accepted the bribe amount from P.W.2 and that he was caught red-handed. Accordingly, he went along with P.W.9 ; identified the appellant/accused and came back to the Bank and Recovery Mahazar [Ex.P.23] was prepared by P.W.9, in which P.W.4 signed. P.W.4 also furnished the Appointment Order [Ex.P.24] pertaining to the appellant/accused.

[d] P.W.5-Ellappan, working as the Assistant Manager, National Insurance Company, Puducherry Branch at the relevant time, had also deposed about his being the part of the trap



proceedings along with P.W.9 and also a witness for the seizures done by P.W.9.

[e] P.W.6-Ettiappan, was working as the Assistant Director, Chemistry Department, Forensic Science Department during the said period and had deposed about the receipt of the material objects from the Court for Chemical Analysis and his submission of the Chemical Report [Ex.P.31] to the Court.

[f] P.W.7-Karunakaran, working as an Officer in the Circle Centralized Processing Cell, at Anna Salai, Chennai and he had stated about the receipt of loan applications from different Branches and the process of dealing with the said applications. He had also stated about the receipt of the loan application submitted by the son of P.W.2 and the communication dated 25.10.2008 sent by the Head Office to the Branch Manager, Tiruvambattu Branch, marked as Ex.P.32, for certain compliances. He had further stated that due to non-compliance, the loan was not sanctioned.

[g] P.W.9-Kalaimani, Inspector of Police, CBI deposed vividly about the receipt of complaint over phone from P.W.2 ; forming of a team of officials for laying the trap ; receipt of written complaint from P.W.2 on 30.10.2008 at his residence ; explanation of the pre-trap proceedings to the witnesses and the officials ; conducting the said trap ; catching of the appellant/accused red handed after getting the pre-arranged signal from P.W.2, conducting phenolphthalein test with the accused ; collection of material objects under Mahazars ; arrest of the accused etc. He also prepared the Recovery Mahazar narrating about the happenings, marked as Ex.P.36. He had also deposed about the handing over of the Case Diary, Material Objects filed, Mahazars, Arrest Memo, Bail Sureties, to P.W.10 for further investigation.

[h] P.W.10-Salam, was working as the Inspector of Police at ACP, CBI, Chennai. On receipt of the Case Diary ; other documents and material objects from P.W.9, he forwarded the material objects for chemical analysis through a requisition ; recorded the statements of the witnesses. On completion of investigation, he laid the charge sheet on 01.11.2008 against the appellant/accused for the offences u/s.7 and 13[2] read with 13[1][d] of the Prevention of Corruption Act, 1988.

[i] The prosecution examined P.Ws.1 to 10 and marked Exs.P.1 to 38 besides marking M.O.1 and M.O.7.

[j] The appellant/accused was questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the prosecution and they denied it as false. On the side of the defence, D.W.1 and D.W.2 were



examined and Exs.D1 to D3 were marked.

[k] D.W.1-Shankar, the successor of P.W.4 of the said Tiruvambattu Branch had deposed about the Tractor Loan availed by one Veeramani, father of D.W.2-Mohan along with his mother Mariammal and also the Crop Loan availed by the said Mariammal. He had also stated that if the loan amount exceeds Rs.1,00,000/-, land documents have to be pledged with the Bank and he does not know as to what extent she had availed the loan. It is his further submission that the said Mariammal and Veeramani, had pledged the land documents for the Tractor Loan and though the repayment of loan had been completed, the said document is with the Bank as the said Mariammal had passed away and that no Legal Heirship Certificate was produced to claim those documents.

[l] D.W.2-Mohan @ Krishnamoorthy, had deposed that he is a resident of Tiruvambattu and that his father and grandfather had availed Tractor Loan with the Punjab National Bank, Tiruvambattu branch, by pledging the documents and presently, though the said loan had been settled, the documents are still with the Bank and when he approached the Bank, he was informed of submitting a petition to the Head Office. He also deposed that he knew the appellant/accused and that he was working in the said Bank. He further stated that once when he went to Gingee to purchase fertilizers, he was short of funds and at that time, he met the appellant/accused and borrowed Rs.3000/-. He also deposed that P.W.2 had called him over phone and asked Rs.25,000/- to get admission for his son in the Engineering College and that he would repay the same on obtainment of the Educational Loan from the Bank. As sought for by P.W.2, D.W.2 gave him the amount. After one month, when P.W.2 contacted D.W.2 for repayment of the said amount, D.W.2 directed him to pay Rs.20,000/- to a Pawn Broker and out of the remaining amount, P.W.2 was directed to pay Rs.3000/- to the appellant/accused and to give Rs.2000/- to his wife. He also stated that he did not redeem the documents pledged with the Bank.

[m] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, had convicted and sentenced the appellant/accused as above stated and hence, this appeal.

4 Mr.C.Malarvannan, learned counsel appearing for the appellant / accused, assailing the impugned judgment, made the following submissions:-

- In a case of trap, the law is well settled that mere receipt of money will not be sufficient to fasten the guilt of the accused and in the absence of any evidence regarding demand and acceptance of the same as illegal gratification of the accused, the accused is entitled to acquittal.



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- It is also well settled proposition of law that before the accused is called upon to explain as to how the amount was found in possession, the prosecution should establish the foundational facts regarding demand and recovery, which are as follows:-

[1] that the appellant/accused is a public servant and that he has abused his official position to obtain illegal gratification from P.W.2 ;

[2] that the accused was in a position to do any official act or for showing any favour to P.W.2 in exercise of his official functions.

[3] that there was a demand of illegal gratification by the accused and pursuant to the demand, the accused received the illegal gratification from P.W.2.

It is only when the above said aspects are clearly proved by the prosecution, then the presumption u/s.20 of the Prevention of Corruption Act, can be raised against the accused and only thereupon, the appellant/accused can be called upon to explain the circumstances in which he had received the money,

- The standard of burden of proof on the appellant/accused is lesser than the standard of burden of proof by the prosecution. Though it is wanton upon the prosecution to prove the case beyond reasonable doubt, the appellant/accused can prove his case by mere preponderance of probabilities and that, he is not expected to prove his case as that is required by the prosecution.
- The next aspect to be considered is as to whether the appellant/accused has given any explanation for the receipt of the money and if so, whether the explanation rendered by him is acceptable and reasonable and the chances for which the explanation has been made, cannot be ruled out altogether.
- The yet another aspect to be seen is whether the appellant/accused has proved his defence by preponderance of probabilities through the answers culled out from the witnesses or by adducing evidence on his side.
- The complainant in a case of trap, is an interested witness on the side of the prosecution and thereby, his evidence should be carefully scrutinised and when there being any corroboration of the evidence of the complainant, the case of the prosecution should not be believed.
- There was no corroboration for the demand made by the appellant/accused on 29.10.2008, i.e., on the previous day of the actual trap, and except the evidence of P.W.2, there



is absolutely no corroboration for the alleged demand made on 30.10.2008.

- Nowhere in the evidence of P.W.2, he had mentioned the time of his visiting to the Bank and that neither in the FIR nor in his evidence, P.W.2 had given the time. When this particular aspect was put to P.W.2 in his cross-examination, he had deposed that he is a lorry driver by profession and he used to drive between Chennai and Puducherry and that he has got the permit to drive the vehicle. It is his further deposition that on 29.10.2008, he had driven the lorry from Chennai to Puducherry ; but does not remember the time of departure and arrival. Under such circumstances, it is for P.W.2 to explain at what time he had travelled from Chennai to Puducherry and at what time, he went to the Bank.
- It is also pertinent to point out at this juncture, that the duty time of the appellant/accused is only three and half hours per day and this aspect has been amply proved through the evidence of P.W.4-Bank Manager, who had stated that the working hours of the appellant/accused, who is a part-time sweeper in the said Branch, is only for three and half hours in the morning.
- Even according to the evidence of P.W.2, he had gone to the Bank on several occasions for the purpose of obtaining Educational Loan for his son and on those occasions, no demand had been made by the appellant/accused. It is also the specific deposition of P.W.2 that prior to applying for Educational Loan, he had availed two other loans, viz., Housing loan and loan in respect of his shop, from the said Bank and that there was no problem for him on those occasions.
- As regards the official position of the appellant/accused, it is seen that he was working as a Part-time Sweeper in the Bank and the same is evidenced from the evidence of P.W.2 [complainant], P.W.4 [Bank Manager] and P.W.7 [Officer, Circle Centralized Processing Cell]. It is the evidence of P.W.2 that the appellant/accused had told him that his papers relating to the loan are with the Head office and that he had asked him whether P.W.2 had brought the amount as demanded or not and that it is the further deposition of the P.W.2/complainant that P.W.4 had already informed him that the loans of this kind are to be sanctioned only by the Head Office and that the appellant/accused had no role to play in sanctioning of the loan. It is the evidence of P.W.7 that the appellant/accused being the part-time sweeper of the Bank, does not have any influence with the Circle Centralized Processing Cell as regards sanction of the educational loan.



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- The Hon'ble Apex Court, in number of cases, had held that the word "by otherwise abusing his official position" read along with the words "in the discharge of his duty" appearing in section 5[1][a](old Act), makes it clear that an offence under that section, requires that a public servant should have misconducted himself in the discharge of his duty.
- Had really been the appellant/accused was in a position to do some favour to P.W.2 and for doing such favour, if the appellant/accused had demanded and received the amount, then it will amount to remuneration and such a remuneration can be termed as illegal gratification. But, in the case on hand, the appellant/accused being a part-time sweeper, did not have any authority to sanction the loan.
- The further facts of the prosecution case would prove that the entire trap proceedings was a false one. According to P.W.2, the appellant/accused asked him to come to the Bank on 30.10.2008 at about 11.30 a.m. At this juncture, the evidence of P.W.4 assumes significance since as per his evidence, P.W.2 came to the Bank on 30.10.2008 at 11.00 a.m., the day on which the CBI officials came to the Bank and enquired about the educational loan availed by him and on that day, the appellant/accused was on leave.
- The fact of P.W.2 visiting the Bank on 30.10.2008 at 11.00 a.m., has been deliberately suppressed and the said fact has been brought out only during the cross-examination of P.W.2.
- It is the version of the prosecution that the appellant/accused was physically present in the Branch on 30.10.2008 and that he was moving to and fro from the Bank and whereas it is the evidence of P.W.4 that he had met the appellant/accused for the first time on that day after the trap and during his cross, he had stated that he met the appellant/accused in the evening when the CBI officials asked him to identify.
- It is the further submission that P.W.4-Bank Manager was working in the said Branch all along and as per the evidence of P.Ws.2 and 3, they have met the appellant/accused inside the Branch whereas the evidence of P.W.4 is totally in contradiction to their evidence.
- Further, the prosecution had failed to prove the demand made by the appellant/accused for the third time. To prove the same, the prosecution has relied upon the evidence of P.W.3. But, it is clear from the evidence of P.W.3 that he was standing at a distance and he could not make out as to



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what was the conversation that took place between the appellant/accused and P.W.2. It is his categorical evidence that the appellant/accused had demanded money. It is also his evidence that the appellant/accused had received the money from P.W.2 and kept the same in his right side pocket of the pant. The evidence of P.W.2 is quite contra to the same as P.W.2, in his statement recorded u/s.161 Cr.P.C., had stated that P.W.3 came to the spot after the appellant/accused had received the amount. Hence, it is crystal clear that P.W.3 could not have been a witness to the receipt of the money.

- As regards acceptance of money, it is the evidence of P.W.2 that the appellant/accused received the amount and kept in his pocket without counting the same thus making it clear that it had been done as it was already spoken to between the appellant/accused, P.W.2 and D.W.2. It was the bona fide belief of the appellant/accused that the said amount was given by D.W.2 - Mohan, through P.W.2 as D.W.2 had owed the same to the appellant/accused. The appellant/accused has let in the evidence of D.W.2-Mohan as his defence witness to prove that there was a motive between the complainant and D.W.2, who are known to the appellant/accused for several years and that D.W.2 had asked the appellant/accused to take out certain documents from the Bank and since there was some delay, D.W.2 was antagonized with him. The loan had been obtained by one Mariammal, grandmother of D.W.2 and since she had passed away, the documents pledged by her, were not returned and the said Mohan had requested the appellant/accused to take out those documents and since, the appellant/accused was unable to return the documents, due to legal formalities, D.W.2 was antagonized with the appellant/accused. In respect of the procedure for return of documents, the appellant/accused had examined one Shankar-Manager of the concerned Branch, as D.W.1. Learned counsel would submit that the complainant, D.W.2 and the appellant/accused are known to each other, being persons from the very same village and that though the pocket telephone directories were recovered from the appellant/accused as well as from P.W.2, the prosecution had conveniently suppressed the same by not producing the same before the Court. The evidence of D.W.2 would explain under what circumstances the amount was handed over to the appellant/accused and nothing had been elicited by the prosecution to defy the evidence of D.W.2. Further, he had been re-called by the prosecution on 02.12.2011 and 13.12.2011 and nothing worthwhile had been extracted from him.
- In a criminal case, 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



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September 2008, marked as Ex.P.25.

- The alleged demand and acceptance of illegal gratification by the appellant/accused is also clearly proved through the evidence of P.W.2 and he has been caught red-handed by the officials of CBI.
- The appellant/accused had taken two different stands and therefore, the explanation offered by him as his defence, cannot be relied upon.
- Though there are certain minor discrepancies in the prosecution evidence, the entire prosecution case cannot be brushed aside on account of the same and hence, prays for dismissal of the appeal.

10 At this juncture, the learned counsel for the appellant/accused submitted that the appellant had by letting in evidence by way of defence had explained the situation under which the money was handed over to him by the complainant and would submit that it is well settled position of law that the prosecution must stand or fall on its own legs and it cannot derive any strength or weakness of the defence. He relied upon the judgment of the Hon'ble Supreme Court reported in [Dhal Singh Dewangan Vs State of Chhattisgarh reported in 2016 [16] SCC 701]. He would further submit that when the foundational facts have not been proved by the prosecution, there is no necessity for the appellant/accused to let in evidence regarding the explanation/defence however in the instant case, the appellant/accused had let in evidence, explaining the circumstances under which the amount was handed over by P.W.2 to him and the Trial Court ought to have taken into consideration the non-proving of the foundational facts and the explanation offered by the appellant/accused in the light of preponderance of probability and acquitted him. But the Trial Court had erred in not taking into consideration the above said facts and convicting the appellant/accused.

11 This Court has carefully and consciously considered the rival submissions and also perused the materials placed before it including the impugned judgment.

12 The following issues arises for consideration, viz.,

[a] Whether the prosecution has proved its case beyond all reasonable doubt?

[b] Whether the explanation offered by the appellant/accused as his defence, is sufficient to rebut the presumption u/s.20 of the Prevention of Corruption Act, 1988?

13 At this juncture it would be useful to refer to the Judgments relied on by the learned counsel for the appellant with regard to the principles laid regarding the burden of the prosecution to prove the foundational facts namely demand and



acceptance and the burden cast on the accused to prove his case. Though several decisions have been relied upon by the learned counsel for the appellant/accused with regard to the proof of demand and acceptance, the legal aspects have been culled out in the following decisions over the years and it would suffice to refer to them on this aspect, State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede reported in (2009) 15 SCC 200, State of Punjab Vs. Madan Mohanlal Verma reported in (2013) 14 SCC 153, V.Sejappa Vs. State by Police Inspector Lokayukta, Chitradurga reported in (2016) 12 SCC 150 and Mukhtiar Singh Vs. State of Punjab reported in (2017) 8 SCC 136 .

Earlier in the case of State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede reported in (2009) 15 SCC 200 (25). The Hon'ble Apex Court has held as follows in para 16, 21 and 22 is extracted here:

16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz. demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would differ. Before, however, 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. Even 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.

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.....

21. Even in a case where the burden is on the accused, it is well known, the prosecution must prove the foundational facts. (See Noor Aga V. State of Punjab and Jayendra Vishnu Thakur V. State of Maharashtra.)

22. It is also a well-settled principle of law that where it is possible to have both the views, one in favour of the prosecution and the other in favour



of the accused, the latter should prevail. (See Dilip V. State of M.P. and Gagan Kanojia V. State of Punjab.)

Later in State of Punjab Vs. Madan Mohanlal Verma reported in (2013) 14 SCC 153 ,para 24 is extracted below:

"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when 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 a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification.

Hence, 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 how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant 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. In a proper case, the court may look for independent corroboration before convicting the accused person."(vide Ram Prakash Arora Vs. State of Punjab 91972) 3 SCC 652, T.Subramaniam Vs. State of TamilNadu (2006) 1 SCC 401, State of Kerala Vs. C.P.Rao (2011) 6 SCC 450 and Mukut Bihari Vs. State of Rajasthan (2012) 11 SCC 642.

Thereafter 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



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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



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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"

And recently 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.



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15. In P. Satyanarayana Murthy, this Court took note of its verdict in B. Jayaraj vs. State of A.P.6 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)

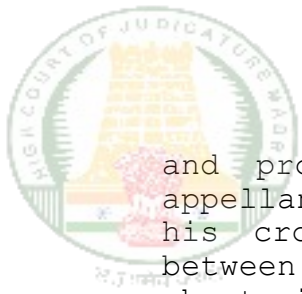
"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, 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)

DISCUSSIONS

FOUNDATIONAL FACTS:-

14 Alleged Demand and Acceptance:-

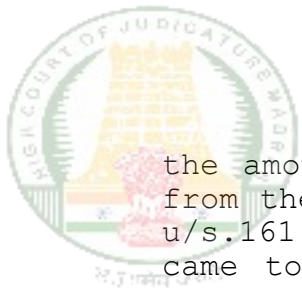
A) On a careful scrutiny of the evidence of P.W.2, it is seen that the appellant/accused met him in the Bank and demanded Rs.5000/- in order to get the sanction order for the Educational Loan availed by the son of P.W.2. But, nowhere in his evidence nor in the FIR, P.W.2 had mentioned about the date and time of his meeting the appellant/accused prior to the date of occurrence, i.e., on 30.10.2008. Hence, there is no sufficient



and proper evidence as to the first demand made by the appellant/accused on 29.10.2008. It is the version of P.W.2 in his cross-examination that his profession is to drive lorry between Chennai and Puducherry with a valid permit and that trip sheet is also available to that extent. It is his further submission that on 29.10.2008 he drove the lorry from Chennai to Puducherry and that it took about nearly 5 to 6 hours and that he could not remember the exact time of leaving Chennai and arriving at Puducherry. Hence, from the above evidence of P.W.2, it is crystal clear that the prosecution has not proved the first demand made by the appellant/accused on 29.10.2008. There is also no corroborative evidence on the side of the prosecution for the said demand except the sole evidence of P.W.2.

B) As regards, the second demand made by the appellant/accused, the prosecution has also failed to prove the same. According to the prosecution, the second demand was made on 30.10.2008 at about 1.15 p.m., in front of the Bank and that too, before P.W.3. It is the version of P.W.2, in the cross-examination that on 30.10.2008 at about 7.15 a.m., he called the appellant/accused over phone and reminded about the sanction of loan. But, it is the categorical version of P.W.2 that on 30.10.2008 at about 11.00 a.m., he had met P.W.4-Manager and enquired about the Loan and P.W.4 had informed him that the loan can be sanctioned only by the Central Processing Cell. P.W.2 had suppressed the factum of his speaking with the appellant/accused over phone on the occurrence day in the morning hours. He has neither mentioned about the same in his complaint nor in his 161 statement. When that being so, the question of the appellant/accused demanding illegal gratification for sanctioning of the loan, would not arise at all. In other words, the demand of the appellant/accused for sanctioning of loan, as alleged by the prosecution cannot be believed at all.

C) Insofar as the third demand is concerned, it is alleged by the prosecution that the appellant/accused took P.W.2 and P.W.3 into a street and asked P.W.3 to wait at some distance and thereafter, took the bribe amount from P.W.2. The prosecution heavily placed reliance upon the evidence of P.W.3 for proving the third demand. But, a careful perusal of the evidence of P.W.3 would clearly show that the appellant/accused took him and P.W.2 into a street and the appellant/accused told P.W.3 not to come nearby and to wait at some distance. Further, it is the categorical version of P.W.3 that P.W.2 and the appellant/accused were conversing with each other and some time thereafter, P.W.2 handed over the money to the appellant/accused and the appellant/accused had kept the same in his pant pocket. But, P.W.3 had stated that he could not state as to what had transpired between the accused and P.W.2 before the receipt of



the amount by the appellant/accused, since he was standing away from them. A curious reading of the statement of P.W.2 recorded u/s.161 Cr.P.C., would reveal that P.W.2 has stated that P.W.3 came to the spot only after the appellant/accused received the money and that P.W.3 had not witnessed the receipt of money by the appellant/accused. Further, P.W.4-Bank Manager had deposed in his evidence that the appellant/accused was on leave on 30.10.2008. If that being the position, then the meeting of P.W.2 with the appellant/accused on 30.10.2008 inside the Bank cast a doubt upon the evidence of P.W.2. Further, P.W.2 had stated in his evidence that the appellant/accused was present in the Bank on the said date and was moving in and around the Bank. On the contrary, P.W.4, in his evidence had stated that he had seen the appellant/accused for the first time on 30.10.2008 only at 3.15 p.m. Had really the appellant/accused was present for duty on that day, there is no need for P.W.4, an independent witness to state so.

15 Acceptance and the defence plea raised (Explanation):-

Coming to the aspect of acceptance and the defence plea raised, the appellant/accused gave an explanation through the defence witness, viz., D.W.2-Mohan. It is the evidence of D.W.2 that he knew the appellant/accused and P.W.2 since they hail from the same village and that, once he had borrowed a sum of Rs.3000/- from the appellant/accused on account of shortage of funds to buy fertilizers. It is also his further evidence that P.W.2 asked for Rs.25000/- from D.W.2 for getting admission of his son in the College and that he would repay the same after getting the Educational Loan. When P.W.2 contacted D.W.2 as to the repayment of the same, D.W.2 directed P.W.2 to pay Rs.20000/- to Pawn Broker ; Rs.3000/- to the appellant/accused and the remaining amount to his family. Since the appellant/accused was under the bona fide impression that the amount given by P.W.2 was the amount which D.W.2 owe to him, he received the money from P.W.2 and without counting it, he kept the same inside the pant pocket. Further, P.W.2 admits in his evidence that the said amount was given by D.W.2. P.W.2 further admits that he is not aware of the trap procedure prior to the explanation of the same by P.W.9. Further the accused has spoken about P.W.2, calling him over phone in the morning whereas, P.W.2 had conveniently suppressed the fact of calling the accused over phone in the morning. It is also seen from the evidence of the Investigating Officer that none of the officials had asked P.W.2 to bring Rs.5000/-. When that being so, it is not known as to why P.W.2 had brought the said amount without any prior instructions from the CBI officials. The reason offered by the appellant/accused is probable and plausible. The prosecution has miserably failed to prove the acceptance aspect also, whereas the explanation offered is probable. Hence, this Court has no hesitation to hold that the evidence of P.W.2 is bristled with infirmities and inconsistencies and the same cannot be believed at all and that the Trial Court has miserably



failed to appreciate the probable defence plea raised by the appellant/accused. In this regard reliance is placed on T.Subramaniam Vs. State of Tamil Nadu reported in (2006) 1 SCC 401,

which held as follows:-

"12.If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the appellant had to be acquitted, as rightly done by the Special Court. In Punjabrao v. State of Maharashtra [2002 (10) SCC 371], the accused, a patwari, was on a campaign to collect loan amounts due to Government. The complainant therein was admittedly a debtor to the Government. The accused explained that the amount in question was received towards loan. This Court accepted such explanation (though such explanation was not immediately offered as in this case, but was given only in the statement under Section 313) holding thus :-

"It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability."

In Chaturdas Bhagwandas Patel v. The State of Gujarat (AIR 1976 SC 1497), this Court held that the burden that rests on an accused to displace the statutory presumption that is raised under Section 4 (1) of the Act, is not onerous as that cast on the prosecution to prove its case. But such burden has to be discharged, 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 is referred to in Section 161 IPC.

16 Capacity of the accused to do official work:-

The next contention raised by the learned counsel for the appellant/accused is that the appellant/accused had been convicted u/s.13[2] read with 13[1][d] of the Act, viz., he had favoured P.W.2 by abusing his official capacity. It is to be seen at this juncture that the appellant/accused is only a part-time sweeper of the said Bank for years long and the said fact is clearly culled out from the evidence of P.W.4-Bank Manager coupled with the documentary evidence, viz., Exs.P.24 and P.25-



Appointment Order and Salary Certificate for the month of September 2008, pertaining to the appellant/accused. It is also the further evidence of P.W.4 that the appellant/accused was only a menial part time employee, who has no role to play in sanctioning of the loan and that he was approached by P.W.4 only to ascertain the background of the persons who approach the Bank for availing loan, since he was working in the said Bank for 17 years. P.W.7-Officer from the Circle Centralized Processing Cell, also corroborated the evidence of P.W.4 to the effect that the Part Time Sweeper of the Branch does not have any influence with the Centralized Processing Cell with regard to the sanction of loan. As rightly held by the Apex Court in State of Ajmer V. Shivji Lal reported in AIR 1959 SC 847, a public servant should misconduct himself in the discharge of his own duty ; whereas in the case on hand, the appellant/accused is just a part time sweeper and he is not in a position and not eligible to sanction loan inasmuch as even the Manager of the Bank has no role in sanctioning of the loan and that, the sanction has to be accorded / done only by the Centralized Processing Cell. It is pertinent to point out that even as per the evidence of P.W.2, when he approached P.W.4-Manager inside the Bank, he had enquired P.W.4 about the status of the loan application, for which P.W.4 had stated that the application is pending process with the Central Office. When that is so the claim of P.W.2, that the accused demanded Rs.5,000/- and he has handed over the amount is unbelievable. The Hon'ble Apex Court in Matajob Dobey Vs. H.C.Bhari reported in AIR 1956 SC 44, has held that "there must be a reasonable connection between the act and the discharge of official duty and the act must bear such relation to the duty that the accused could lay a reasonable but not a pretended and fanciful claim, that he did it in the course of performance of his duty." In "M.P.Meganathan Vs. State of Tamil Nadu reported in (2010) 1 Law Weekly Criminal 737 " para 12 is extracted here under:

"At this juncture , I have to further state that the term "remuneration" as defined under the Act would mean that something done in consideration. If only the accused had been in a position to do some favour to P.W.2 and for doing such favour, if the accused had received the amount, it will amount to remuneration and such a remuneration might have to be termed as "illegal gratification". But here, as I have already stated, the accused had already been transferred to Pulianthope and thus he had no control at all over P.W.2. Therefore, he would not have been in a position to do any favour to P.W.2 at all. Therefore, the question of remuneration from P.W.2 towards the accused is out of place.

In the instant case, as stated above, there is no connection between the act and discharge of duty on the part of the appellant/accused since he is only a sweeper, that too, a part



time worker and his working hours is only three and half hours per day in the morning and he has no connection with the affairs of the Bank, that too, sanctioning of loans.

17 Further it is the contention of the learned counsel for the appellant/accused that the prosecution cannot take the advantage of the weakness of the defence. It is the settled position of law that the prosecution must stand on its own legs and in this regard he would rely on the decision of the Hon'ble Apex Court in Sharad Birdichand Sarda Vs. State of Maharashtra reported in 1984 [4] SCC 116, and would submit that the absence of explanation and/or false explanation or a false plea has to be considered in the context of appreciation of the evidence on entirety and when the prosecution has failed to prove its case, it cannot shift its case saying that the explanation is not probable. In the above referred Judgment, the Hon'ble Apex Court has held as follows:-

"150. The High Court has referred to some decisions of this Court and tried to apply the ratio of those cases to the present case which, as we shall show, are clearly distinguishable. The High Court was greatly impressed by the view taken by some courts, including this Court, that a false defence or a false plea taken by an accused would be an additional link in the various chain of circumstantial evidence and seems to suggest that since the appellant had taken a false plea that would be conclusive, taken along with other circumstances, to prove the case. We might, however, mention at the outset that this is not what this Court has said. We shall elaborate this aspect of the matter a little later.

151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.



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161. This Court, therefore, has in no way departed from the five conditions laid down in Hanumant case[7]. Unfortunately, however, the High Court also seems to have misconstrued this decision and used the so-called false defence put up by the appellant as one of the additional circumstances connected with the chain. There is a vital difference between an incomplete chain of circumstances and a circumstance which, after the chain is complete, is added to it merely to reinforce the conclusion of the court. Where the prosecution is unable to prove any of the essential principles laid down in Hanumant case, the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea. We are, therefore, unable to accept the argument of the Additional Solicitor-General."

As rightly pointed by the counsel for the appellant, when the prosecution has not proved its case by proving the foundational facts, it cannot take advantage, that the accused has come out with an improbable explanation in defence.

18 Before concluding, this Court deems it apposite to refer the following decisions rendered by two full Benches of the Hon'ble Apex Court in P.Satyanarayana Mutty Vs. District Inspector of Police reported in (2015) 10 SCC 152, para 26 and 27 extracted 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 un-safe to sustain the



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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."

and in the case of Vasanth Rao Guhe Vs. State of Madhya Pradesh reported in (2017) 14 SCC 442, whereas the Hon'ble Apex Court has held that a person cannot be subjected to a criminal prosecution either for a charge which is amorphous and transitory and on evidence that is conjectural or hypothetical.

"22..... The prosecution to succeed in a criminal trial has to pitch its case beyond all reasonable doubt and lodge it in the realm of "must be true" category and not rest contented by leaving it in the domain of "may be true". We are thus left unpersuaded by the charge laid by the prosecution and the adjudications undertaken by the courts below. The conviction and sentence, thus is set aside. The appeal is allowed."

19 In view of the ratio laid down by the Hon'ble Apex Court in the above cited decisions and also in the light of the infirmities and inconsistencies in the evidence of P.W.2, and taking the evidences of the other witnesses and other materials in entirety, this Court is of the considered view that the [1] prosecution has not proved its case beyond reasonable doubt, in particular, [2] the trial court has failed to consider the explanation offered in defence by the appellant/accused in its entirety. [3] the trial Court has failed to take into consideration the facts regarding the official capacity of the accused and the alleged receiving of illegal gratification by abusing his official capacity and thereby the trial Court has erred in convicting and sentencing the appellant/accused based on the only evidence of P.W.2 without any corroboration. Hence, the benefit of doubt has to be extended to the appellant/accused.

20 In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused in the impugned judgment dated 11.01.2012 made in CC.No.5/2009 on the file of the learned XIII Additional City Civil and Sessions Judge, Chennai, are set aside. He is acquitted of all charges leveled against him. Fine amounts, if any paid, shall be refunded to him.



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21 It is reported that the appellant/accused is on bail. Accordingly, bail bonds executed by him shall stand discharged.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Principal Judge,
Special Court for CBI Cases, Chennai.
- 2.XIII Additional City Civil & Sessions Judge
City Civil Court, Chennai.
- 3.The Inspector of Police,
CBI/ACB/Chennai.
- 4.The Special Public Prosecutor [CBI cases]
High Court, Madras.
- 5.The Superintendent
Central Prison,
Puzhal, Chennai.

+1cc to Mr.K.Srinivasan, Advocate sr.no.70515(20/11/2018)
+1cc to Mr.C.R.Malarvanan, Advocate sr.no.70696(20/11/2018)

Cr1.A.No.37/2012

nr 29/10/2018