BAIL SLIP

The Appellant/Sole Accused K.S.Krishnakumar (Age 57/15) S/o Sivanandham was enlarged on bail by this Hon'ble Court in M.P.No.10 of 2015 in Crl.A.No.742 of 2015 dated 30.11.2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 25.01.2017

Judgment Pronounced On : 02.11.2018

CORAM

THE HONOURABLE MR.JUSTICE S.BASKARAN

Crl.A.No.742 of 2015

K.S.Krishnakumar ... Appellant/Accused

vs.

State rep. by
The Deputy Superintendent of Police,
Vigilance & Anti corruption Section,
Tiruppur
(Crime No.1/12/AC/2012/ER) ... Respondent/Complainant

Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 27.08.2015 passed by the learned Chief Judicial Magistrate cum Special Court, Tiruppur in Special C.C.No.20 of 2014.

For Appellant : M/s.Ananthanarayanan
Senior Counsel for
Mr.Ma.P.Thangavel

For Respondent : Mr.E.Raja
Additional Public Prosecutor

JUDGMENT

The accused, K.S.Krishnakumar, who is the sole accused, stood charged for offence punishable under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The learned Chief Judicial Magistrate, Tiruppur, by its Judgment dated 27.08.2015, in Special C.C.No.20 of 2014, found the accused guilty, convicted and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment for offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act,1988. Aggrieved by the said verdict of the trial court, the accused has come forward with this criminal appeal challenging the judgment of conviction and sentence as stated above.

2.The case of the prosecution is as follows:-

2.1. P.W.1 Dhandapani, who is the husband of P.W.6 Jothimani, purchased the property in his wife name on 18.02.2005 from his brother Maruthachalam, Thereafter, there was a partition between P.W.1's father, P.W.1's brother Easwaramurthy and P.W.1's wife Jothimani, during 2000. As per the said partition, the property mentioned "C" schedule measuring 1 acre 08 cents of lands were allotted to P.W.6 Jothimani. Since no separate patta was issued, P.W.1 took steps to obtain separate patta in his wife name. Accordingly, he enquired in the Survey Department Office, Tiruppur on 15.10.2012. P.W.1 was informed to enquire with the accused Krishnakumar who was the Firka surveyor for the concerned Velampalayam Village. After discussing with the accused, P.W.1 submitted necessary application in the Taluk Office at Tiruppur on 16.10.2012 with relevant documents seeking separate patta for his wife P.W.6 Jothimani. The said copy application is Ex.P1 with enclosures and on submission of the application at North Taluk Office, Tiruppur, P.W.1 was given Token No.T/42 for the same.

2.2. Subsequently on 25.10.2012 between 12.00 noon and 12.30 p.m., the accused Krishnakumar, P.W.4 Annadurai, Village Administrative Officer and another official inspected and also measured the property. After sending away the other two officials, the accused demanded Rs.15,000/- as bribe from P.W.1 to send report to the Tahsildar. P.W.1 expressed is inability to give that amount. Thereafter, the accused went away and asking P.W.1 to come and meet him later.

2.3. P.W.1 further stated that on 03.11.2012, the accused contacted him in his Cell Phone No.9486475687 from the accused Cell Phone having No.9442551825. The accused asked P.W.1 as to whether Rs.15,000/- is available to which P.W.1 replied in negative. Thereafter, the accused informed him to ready the amount and meet him on 06.11.2012 with the said sum of Rs.15,000/-. P.W.1 further stated that on 06.11.2012, the accused contacted P.W.1 over Cell Phone at 10.30 a.m., and asked him to go over to Velampalayam Village Administrative Office with the said sum and also with P.W.1's wife. Accordingly, P.W.1 and his wife P.W.6 Jothimani reached the Village Administrative Office at 11.30 a.m., The accused was present in the Village Administrative Office. When P.W.1 enquire the accused as to whether he has prepared the report, the accused asked and obtain the signature of P.W.6 Jothimani. After obtaining the signature of P.W.6, the accused demanded a sum of Rs.15,000/- and P.W.1 replied that he is not having the amount. Thereafter, the accused informed P.W.1 that if the amount is not given, he will not forward the report. The accused also informed P.W.1 in that case he would not have obtained the signature of P.W.6 and also told unless the amount is paid, he will not complete the work. The accused also informed P.W.1 that the sum of Rs.15,000/- should be paid before 07.11.2012 after noon and if not paid he will not sent the report to Tahsildar. As P.W.1 was not willing to give bribe, he went to the Inspector of Police, Vigilance and Anti corruption, Tiruppur and lodged the complaint which is marked as Ex.P2. The signature of P.W.1 in the First Information Report is marked as Ex.P3.

2.4. On receiving the complaint, P.W.11, the Inspector of Police, registered Ex.P12 First Information Report, recorded the statement of complainant and took steps for trap proceedings. After making necessary arrangement, the trap team went to the office of the accused along with the witnesses. After reaching the office of the accused, P.W.1 along with P.W.3 shadow witness went inside the office to meet the accused. When P.W.1 enquired the accused about the sub-dividing the property. The accused asked about Rs.15,000/- to which P.W.1 replied that he has come with money. Immediately, the accused took P.W.1 to the Aavin Milk Booth near by and P.W.3 went along with them. The accused demanded and received the amount from P.W.1 and counted it and then placed it in the back side of the pant packet. Thereafter, the accused told P.W.1 that the report will be sent to the Tahsildar. Immediately, P.W.1 came out and give the pre-arranged signal to the trap team. On seeing that P.W.11, the Inspector of Police rushed in the scene of occurrence and seized the tainted money in the presence of official witnesses. Immediately, the accused was arrested and phenolphthalein test was conducted. The recovered amount is produced as M.O.1 under Ex.P8 seizure mahazar. Rough sketch of the occurrence spot prepared by P.W.11 is Ex.P13. The requisition given by P.W.11 for house search of the accused as Ex.P14. P.W.11 also stated that sodium carbonate solution, in which the hands of the accused was dipped, changed colour and the same was bagged. The same was marked as M.O.2(right hand), M.O.3(left hand). Likewise, the pant of the accused was seized and the same is marked as M.O.4. The sodium carbonate solution, in which the pant was dipped is M.O.5. Thereafter, P.W.11 sent the alteration report and the same is Ex.P15. P.W.11 handed over the case file to P.W.12, the Deputy Superintendent of Police for further investigation.

2.5. P.W.12 took up the case for further investigation and gave requisition for chemical analysis to the Forensic Lab. The said requisition letter is Ex.P16. After obtaining sanction order from P.W.2 Rajkumar, the Assistant Director, Revenue

Department, Tiruppur and after completing the investigation, filed the charge sheet against the accused under Section 7, 13 (2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

3. Based on the above materials, the trial Court framed charges under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. Since the accused denied the chargers, he was put on trial. After prosecution examined P.W.1 to P.W.11 and produced Exs.P1 to P16 and M.Os.1 to 5, to substantiate the charges. The incriminating evidence found in the prosecution side was put to the accused under Section 313 Cr.P.C., he denied the same as contrary to the facts and pleaded that he has been falsely implicated in the case. The accused examined D.W.1 and D.W.2 and produced Ex.D1 to Ex.D5. The trial Court, after considering all the materials placed before it, found the accused guilty, convicted and sentenced the accused to undergo punishment as narrated in the first paragraph of this judgment. Aggrieved over the said finding of the trial Court, the appellant/accused has preferred this appeal.

4. Heard the arguments advanced by the learned Senior counsel appearing for the appellant and the State and I have also perused the records carefully.

5. The point for consideration is whether the prosecution has established the charges framed against the accused beyond all the reasonable doubt.

6.The learned counsel for the appellant/accused contends that the trial Court failed to consider the evidence on record properly. The trial Court failed to appreciate the contradiction in the evidence of P.W.1 about the date on which the first demand was made. The trial Court also failed to consider the contradictions between the averments in the complaint and the evidence of P.W.1, the complainant. The trial Court also failed to appreciate the fact that there was no proof for the alleged demand made by the accused at any point of time. The trial Court erred in relying upon the evidence relating to cell phone entries as the same is inadmissible in evidence. The trial Court also failed to consider the fact that the accused/appellant has no role to ply in the sub-division of the property or issuing of patta. The rebuttal evidence let in by the defence was not looked into by the trial Court properly. The trial Court also failed to consider the fact that P.W.1 was having grudge against the accused in view of the earlier transaction. The trail Court also failed to consider the explanation given by the accused for the money recovered from him and also his explanation regarding the sodium carbonate solution turning pink in colour after his hand was dipped in it. The reason given by the trial Court for finding the accused guilty is un sustainable and the same is sought to be set aside by entertaining the appeal.

7.Per contra, the learned Additional Public Prosecutor, appearing for the state contended that the trial Court has properly appreciated the evidence on record and found the accused guilty as the prosecution has clearly proved the case against the accused with cogent and clear evidence. Thus, the learned Additional Public Prosecutor contends that there is no need to interfere with the conclusion of the trial Court and sought for dismissal of the appeal.

8.According to the prosecution, the accused was working as Firka Surveyor and on 15.10.2012, the complainant P.W.1 Dhandapani went to the Survey Department at Tiruppur in connection with the mutation of patta and he was asked to contact the accused in that regard. On his advise, P.W.1 filed necessary application form along with relevant documents and the same is produced as Ex.P1. It is contended that P.W.1 was asked to get his wife P.W.6 Jothimani signature on the application form, since the property was in her name. Accordingly, on 16.10.2012, the application was submitted on North Taluk Officer, Tiruppur and P.W.1 was given Token No.T/42 for the same. The case of the prosecution is that to forward the report in connection with mutation of patta, the accused sought for Rs.15,000/- as bribe from the complainant/P.W.1. Thus, the burden is on the prosecution to prove the same with proper evidence.

9.The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act, 1988. 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.

10.It is also clear that 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 Act,1988, 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,1988.

11.Further, it is worthy to mention 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. With this background of principles, now this Court has to examine the oral and documentary evidence adduced by the prosecution.

12.In the case on hand, the complainant P.W.1 has stated that on 25.10.2012, the accused along with P.W.4 Village Administrative Officer and his assistant came to the property of P.W.6 Jothimani and measured the property in the presence of P.W.1 and after sending away the Village Administrative Officer and his subordinate, the accused demanded Rs.15,000/- as bribe from P.W.1 to forward necessary report to Tahsildar. As P.W.2 expressed his inability to give any amount, the accused left the place informing P.W.1 to meet him later.

13. According to P.W.1, thereafter on 03.11.2012, he was contacted by the accused in the cell phone demanding Rs.15,000/- to which P.W.1 replied that he has not made arrangements for the said amount. Hearing the same, the accused is alleged to have told P.W.1 to arrange the amount and contact the accused on 06.11.2012. It is the further contention of P.W.1 that on 06.11.2012, again the accused called P.W.1 on his cell phone asking him to come along with his wife P.W.6 Jothimani for signing in the application and the accused asked P.W.1 to bring a sum of Rs.15,000/-. Accordingly, P.W.1 and his wife P.W.6 Jothimani went to No.15, Velampalayam Village, VAO Office, where the accused was present. After obtaining the signature of P.W.6 in the necessary forms, the accused again demanded bribe amount of Rs.15,000/-. As P.W.1 replied that he has not brought money, the accused replied that if no amount is paid, he will not forward his report. Thus, according to the prosecution evidence, prior to trap proceedings on 07.11.2012, the accused allegedly made demand for bribe amount on three different dates as stated above. The same is denied by the accused. As such, it is for the prosecution to prove the demand as stated by P.W.1 was made by the accused on 25.10.2012, 03.11.2012 and on 06.11.2012. The learned counsel for the appellant contended that failure to prove the demand of illegal gratification by the accused either prior to trap proceedings as well as at the time of trap proceedings will nullify the case of the prosecution. In support of his argument, the learned Senior Counsel for the appellant relied on the ruling reported in 2011 (1) MWN (Cr.) 602, M.RAJENDRAN Vs. STATE, REP. BY THE DEPUTY SUPERINTEDENT OF POLICE, VIGILANCE AND ANTI CORRUPTION, CUDDALORE, wherein it has held as follows:-

> "Once the prosecution failed to prove the first and foremost ingredient, viz., demand of illegal gratification said to have been made by the accused, the entire prosecution case

would collapse. It is well settled that the mere recovery of the tainted money itself is not sufficient in the absence of proof of demand for establishing the offences alleged against the accused."

14.The learned counsel for the appellant/accused has also relied on a ruling reported in 2013 (3) MWN Criminal 455 in S.KARUPPASAMY Vs. STATE, REP. BY THE INSPECTOR OF POLICE, VIGILANCE AND ANTI CORRUPTION, NAGERCOIL, KANNIYAKUMRI DISTRICT, wherein it is held as follows:-

"As stated earlier, it is well settled by a catena of decisions of the Hon'ble Supreme Court and by this Court that the first and foremost duty of the prosecution is to prove that there was a demand and mere proof of receipt of money will not be sufficient to establish the guilt of the accused in corruption cases and even the presumption stands rebutted if the accused offers a reasonable and probable explanation."

15.In the case on hand, according to the prosecution, P.W.1 gave request for sub-division and issuance of separate patta in favour of his wife P.W.6 Jothimani and accordingly on 25.10.2012, the accused who was the Firka Surveyor for the concerned village came along with P.W.4 Annathurai, the Village Administrative Officer and his subordinate at 12.00 noon to the property of P.W.6 and after measuring the land, sent away the other officials and demanded Rs.15,000/- to send necessary report. However, in Ex.P12 complaint given by P.W.1, it is stated that the accused came to measure the property on 27.10.2012 only. P.W.11, the Inspector of Police also admitted that in the complaint it is stated that the accused came to measure the land only on 27.10.2012. The complainant/P.W.1 was also admitted in his cross examination that only during his deposition, he has stated that the land was measured on 25.10.2012. Pointing it out, the learned counsel for the appellant contended that the prosecution has changed the date on which the accused came to measure the land of P.W.6 from 27.10.2012 to 25.10.2012, since the day 27.10.2012 happened to be a Government holiday due to Bakrid celebration, and no Government servant will normally come to do the official work on a holiday. In the absence of any explanation, by the prosecution for the contradiction in the date of measurement, as stated above the contention of the appellant appears to be acceptable.

16.Further, the complainant while deposing as P.W.1 stated in his evidence that on 25.10.2012, after measuring the land, the accused sent away P.W.4 VAO and other officials and then demanded Rs.15,000/- from P.W.1. This according to the learned counsel for the appellant is in contrast to what is stated in Ex.P12 complaint. In the said complaint it is stated as follows:-

> "27.10.2012 ம் தேதி மதியம் சுமார் 12.30 மணியளவில் எங்கள் தோட்டத்திற்கு சர்வையர் கிருஸ்ணகுமாரும் மற்றவர்களும் வந்து அளந்து விட்டு, அளந்து முடிந்தவுடன் சர்வையர் மேற்கொண்டு நிலத்தை சப்டிவிசன் செய்ய அறிக்கை தயார் செய்து சிபாரிசு செய்ய தனக்கு தனியாக ரூபாய் 15 ஆயிரம் வேண்டும் என்று கேட்டார்.

It is clear from the averments in Ex.P12 complaint that the demand was made by the accused on 27.10.2012 in the presence of other officials after measuring the land. In contrary to the same, while giving evidence before the trial Court, P.W.1 has stated that on 25.10.2012 after measuring the land, the accused asked the other officials to go away and then made the demand for Rs.15,000/- as bribe amount. This, according to the learned counsel for the appellant/accused will clearly falsify the contention of the prosecution about the demand being made by the accused.

17.In the case on hand, assuming the averments in Ex.P12 complaint is correct, then P.W.4, the Village Administrative Officer who accompanied the accused to measure the land of P.W.6 Jothimani would have mentioned about the demand of bribe made by the accused, but, he has not stated anything about the same in his evidence. As such, in view of the contradiction as to the date on which the measurement was made and the first demand for bribe was made by the accused and also as there was no corroboration either by P.W.4 or any other persons to the alleged demand made by the accused after measuring the land of P.W.6, it is apparent that the prosecution has failed to prove the alleged first demand of bribe made against the accused.

18.According to P.W.1, the accused contacted him over cell phone on 03.11.2012 and made demand of Rs.15,000/-. According to P.W.1, his cell phone number was 9486475687 while the accused cell phone number was 9442551825. The prosecution to establish the said fact of phone calls made by the accused to P.W.1, produced Ex.P10 call details obtained from the concerned telephone authority. The Inspector of police, who deposed as P.W.8 stated that on 17.04.2013, as per the direction of the Deputy Superintendent of Police, Vigilance and Anti Corruption, Tirupuur, he contacted the BSNL Office and sought for call details of cell phone number bearing 9442551825 for the period from 01.11.2012 to 15.11.2012. As per the details furnished from BSNL, the said cell phone was in the name of accused Krishnakumar and on 03.11.2012 at about 11.29 am., he has received a call from cell phone number 9486475687. Thereafter, on 06.11.2012, again the accused Krishnakumar has made a call to the said number 9486475687. Thereafter, on 07.11.2012 at about 11.11 a.m., the accused Krishnakumar has received phone call from the above said number 9486475687. P.W.8 stated that the details collected by him from BSNL office is Ex.P10. In his cross examination, P.W.8 stated that he did not ascertain about the person who owned the cell phone number 948647568, since the Deputy Superintendent of Police did not ask for the same. He also stated that on three occasions stated by him the accused was contacted from the cell number 9486475687. Thus, the prosecution relied upon the details furnished in Ex.P10 call details given by BSNL to prove the fact of demand being made by the accused to P.W.1.

19.On the other hand, the learned counsel for the accused/appellant contended that Ex.P10 is inadmissible in evidence, since no certificate as specified in Section 65-B(4) of Evidence Act,1972, from the Nodal Officer has been obtained and further the prosecution has not examined any Nodal Officer from BSNL to prove the said Ex.P10 document. In support of the same, the learned counsel for the appellant/accused relied on a ruling reported in 2014 (10) SCC 473 in ANVAR P.V. Vs. P.K.BASHEER AND OTHERS, wherein it has held as follows:-

> "15.Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following condition are satisfied:
>
> (a)There must be a certificate which identifies the electronic record containing the statement;
>
> (b)The certificate must describe the manner in which the electronic record was produced.
>
> (c)The certificate must furnish the particulars of the advice involved in the production of that record.
>
> (d)The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and
>
> (e)The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant advice.

Following the above said ruling, it is clear that in the absence of necessary certificate attached with Ex.P10 and as no Nodal Officer examined, the contention of the defence that Ex.P10 is inadmissible in evidence is to be accepted.

20.Further, it is pointed out that the contention of P.W.1 that on 03.11.2012, the accused called him and again on 06.11.2012 at 10.30 a.m., the accused called him and demanded money is not supported by the entries in Ex.P10. It is pointed out that as per the entry in Ex.P10 that on 03.11.2012 at 11.29 a.m., it is only recorded the incoming call to the cell phone of the accused bearing number 9442551825 from the mobile number 9486475687. Similarly, it is pointed that as per the entries in Ex.P10 that on 06.11.2012 also there is only incoming calls to the accused number at 9.25 a.m., from the above said cell number. As such, it is evident from Ex.P10 that it was only incoming calls from the alleged cell phone number of P.W.1 to that of the accused.

21.It is pointed out that as per the entries in Ex.P10, the accused has called the cell number 9486475687 at 10.43 a.m., on 06.11.2012 and this according to the accused was made by him to get consent letter from one Maruthachalam, the brother of P.W.1 to effect sub-division of land. Thus, in view of the above said discussion, it is apparent that the prosecution cannot rely upon Ex.P10 as the same is inadmissible and even assuming that the same is looked into, it will not support the case of the prosecution for the reasons stated above. Thus, the alleged demand made by the accused on 03.11.0212 and 06.11.2012 is not established by the prosecution.

22.It is contended by the learned counsel for the appellant/accused that if really the accused has demanded bribe amount, he would have informed the place and time were the money should be paid to him by P.W.1, but in the case on hand, the complainant is unaware about the said details till the trap proceedings was initiated. It is pointed out that on 07.11.2012 at about 11.30 a.m., only as directed by P.W.11 Inspector of Police, the complainant P.W.1 called the accused and got the information about the place and time of paying the bribe amount. It is clear from the evidence of P.W.1 that he was informed to come to the office of Survey Department, Tiruppur North Taluk, on 07.11.2012 and the same was told by the accused at about 11.30 a.m. Pointing it out, the learned counsel for the accused contended that the time and place of paying the bribe amount was known to the complainant only at 11.30 a.m., but in Ex.P12, First Information Report, which was prepared at 9.00 a.m. itself on 07.11.2012. The place of occurrence is mentioned as Firka Survey Office. Thus, the defence counsel contends that how the details in Column No.5 of Ex.P12 First Information Report was written much prior to even P.W.1 was informed by the accused about the time and place of payment of bribe will clearly go to show that the prosecution has fabricated the evidence. As such, the contention of the defence that the demand made prior to trap proceedings is not established is to be accepted.

23.According to P.W.1, on 07.11.2012 after the official witness P.W.3 Kanakaraj and Kaliappan came to the Office of P.W.11, Inspector of Police, the pre-trap proceeding was demonstrated and Ex.P4 Mahazar was prepared and they left the Vigilance Office at 11.40 a.m, and reached the Taluk Office, Tiruppur around 12.00 noon. P.W.11, the Inspector of Police, asked P.W.1 and P.W.3 Kanagaraj to meet the accused and enquire about the sub-division of the property. Accordingly, P.W.1 and 3 met the accused in the Land Surveyor Office, Tiruppur and enquired about the sub-division. Then the accused asked P.W.1 as to whether he has brought Rs.15,000/- to which P.W.1 replied positively. Immediately, the accused took P.W.1 to near by Aavin Booth. P.W.3 also accompanied them. There, the accused informed P.W.1 that he has prepared the report and the same is available at home and if the complainant made payment he will forward the same immediately. Then, P.W.1 handed over the bribe amount to the accused, who counted it with both his hands and kept it on the right back side pocket of his pant. Thus, according to P.W.1, the demand and acceptance of money by the accused was witnessed by himself and P.W.3 Kanagaraj.

24.However, in his cross examination, P.W.1 stated that after entering the Taluk Office, they reached the land survey department, which is on the inside where the accused was found sitting in the bench. On seeing him, the accused asked P.W.1 to sit near him. P.W.1 stated that he did not notice whether P.W.3 Kanagaraj came inside that room. P.W.1 also stated that there was another person in the room and he do not know about him. P.W.1 also stated that when he went inside the office, three women were working there. P.W.1 also stated that the accused asked him as to whether he has brought the amount. According to P.W.1, the demand made by the accused was known to him. It is further stated by P.W.1 that he do not know as to whether the accused knew about the arrival of P.W.3 Kanakaraj. P.W.1 also stated that near Aavin Milk Booth, there was no body else except them and the staff of the Tea shop. Thus, the contradiction between the deposition of P.W.1's Chief examination and the cross examination creates doubt as to whether really P.W.3 witnessed the demand and acceptance of the bribe amount by the accused.

25.The official witness who deposed as P.W.3 stated in his cross examination that on 07.11.2012 at about 12.05 p.m., he went to the Taluk Office and saw the accused sitting in the Land Survey Department. P.W.1 asked about the application given by him for sub-division, to which the accused replied as to whether Rs.15,000/- was brought by P.W.1 to which P.W.1 replied that he has come with the money and immediately the accused took P.W.1 out side the office. He accompanied them. The accused took P.W.1 and P.W.3 near Aavin Milk Booth, out side the Taluk Office and there the accused asked for the bribe amount. Thereafter, P.W.1 handed over Rs.15,000/- to the accused, who received it and counted it with both hands and kept it in the back side pocket of his pant. However, when P.W.3 was cross examined he stated that he do not know on what basis Ex.P4 Mahazar was prepared by the Inspector of Police. P.W.3 further stated that he do not know personally about the accused demanding P.W.1 Dhandapani to handover the bribe amount. P.W.3 also stated that as they entered the land survey department office, the accused was sitting in the long bench and himself and P.W.1 entered the room together. P.W.3 also stated that the accused did not enquire about him either with P.W.1 or himself. Thus, the evidence of P.W.3 that the accused did not inquire anything about him and he did not remember as to whether the accused and P.W.1 were talking sitting together in the bench creates doubt as to whether really he was present there. Further, the conduct of the accused in not inquiring about the stranger is quite un natural. Normally, the accused will not demand and accept the bribe money in the presence of stranger. Further, it is stated earlier that the place and time of receiving bribe amount was not communicated to the complainant unless and until the trap proceeding was initiated. It is also pointed out that P.W.1 and P.W.3 have mutually contradicted each other about the occurrence during the trap proceedings in the office of the accused. As such, doubt arises whether really the demand was made either prior to the trap proceedings or during the trap proceedings. In such circumstances, in the absence of any demand of bribe made by the accused being proved mere recovery of amount alone is not sufficient to prove the allegations against the accused.

26.Further, P.W.4, the Village Administrative Officer has not produced any materials to show that he accompanied the accused for measuring the land on 25.10.2012. The other witness P.W.6 Jothimani is the wife of P.W.1 Dhandapani and she is not only interested witness but she personally do not know any thing about the demand made by the accused. As such, it is apparent that there is no corroborate evidence to that of P.W.1 to prove the alleged demand made by the accused.

27.According to P.W.7, who was working as Draft Officer in the Land Survey Department, Tiruppur, on 19.10.2012 she received a petition from one Jothimani for sub-division of land and forward the same to the accused Krishnakumar for necessary action. P.W.7 stated that till 06.11.2012, she did not receive any report from the accused and normally 30 days time was available to give report in that regard. Thus, the accused was having time to file his report as sought for by P.W.1.

28.Likewise, P.W.9 Sathiyamoorthy who was also working in the Survey Department, Tiruppur at the relevant point of time stated that the Senior Draft Officer will forward the application for sub-division to concerned Firka surveyor and after preparing the report, Firka surveyor will forward it to the Tahsildar. P.W.9 also stated that on 25.10.2012, the accused has mentioned in his daily report that he has gone to Neruperichal Village on duty. Thus, it is clear from the same, on 25.10.2012, the accused has gone to some other place and not to the village of P.W.1. As such, it is apparent that the prosecution has not proved the factum of demand by the accused. Therefore, even if any amount recovered from the accused in the absence of demand being proved, the case of the prosecution has to fail.

29.The learned counsel for the accused contended that in respect of the application submitted by P.W.1 Dhandapani for patta transfer, requisition was given to RDO for clarification and further action, but, no reply was received till then. Only due to that no action was initiated on the application and patta was not transferred. It is also pointed out that D.W.1, the Tahsildar of Tiruppur has admitted the same in his evidence. As such, it is contended that the accused cannot be held liable for the delay or that he demanded bribe to submit a report.

30.Further, the accused, who examined himself as D.W.2 stated that During, May,2012 Jamabanthi was conducted, wherein P.W.1 Dhandapani wanted to change the name in the patta in respect of land given as gift to a school in Sirupooluvapatti Union as per Ex.D3 gift deed and the patta was transferred in the name of Town Panchayat Commissioner and the same is marked as Ex.D4. Subsequently, P.W.1 Dhandapani cancelled the Gift Deed as per the deed of cancellation marked as Ex.D5. Thereafter, on 18.05.2012, Dhandapani Made an application to cancel the Ex.D4 patta already issued and to re-transfer it in his name. The said application came for scrutiny to the accused and he has entered it in record as per Ex.P6. After enquiry, the accused informed P.W.1 Dhandapani that the cancellation has been done without making the Town Panchayat Commissioner as a party and thereafter patta cannot be transferred and report was sent to that effect by the accused on 31.12.2012. In 2005, P.W.1 purchased the land in favour of his wife P.W.6 and asked for patta transfer as per Ex.P1. D.W.2 informed clearly to P.W.1 that consent letter of the vendor is necessary for sub-division and issuance of patta. Subsequently, on 03.11.2012, P.W.1 contacted the accused and told him that he could not get the consent letter. Again on 06.11.2012, P.W.1 contacted the accused and requested him to take action on his application with the available records. Thereafter, D.W.2 asked P.W.1 to come with his wife to sign in the necessary records. On 07.11.2012, P.W.1 contacted the accused through cell phone and informed him that consent letter is ready and wanted to give it to him. He also enquired as to when and where he can come and meet the accused. Accordingly, P.W.1 was asked by the accused to come and meet him in his office and on arrival P.W.1 told the accused that the consent letter is ready and handed over the cover stating the letter is inside it. After handing over the cover, P.W.1 went away and the accused was waiting near the Aavin Milk Booth, at that time, he was caught hold of and then only he came to know of the money kept in the cover. Thus, D.W.2 stated that due to previous enmity, the accused has deliberately implicated him in this case. Pointing it out, the defence counsel contended that the explanation offered by the accused is probable and accepted, in view of failure of the prosecution to prove the alleged demand made by the accused. The said contention is just and proper.

31.Pointing it out, the learned counsel for the appellant/ accused contended that the I.O. of the case has admitted in his evidence that the dress materials(M.O.1) of the accused was not forward to the Chemical Analysis and the same will clearly go to show that the prosecution has not come out with true facts. It is also pointed out that in M.O.5 bottle containing the sodium carbonate solution nothing is mentioned as which side of the pant packet was inserted in the solution that has been collected for chemical analysis. As such explanation offered by the accused for his hands answering positive for the phenolphthalein test seems to be reasonable and probable. As such, the prosecution has not clearly established the fact of demand and acceptance of money and the explanation offered by the accused/appellant is reasonable and probable regarding recovery of money and the positive phenolphthalein test.

32.As such, D.W.1 Tahsildar, Tiruppur North Taluk has stated that on 25.10.2012, the accused was present in some other place and by examining himself, D.W.2 has denied the allegations of the prosecution and also rebutted the presumption against him. Considering the above said materials and the fact that the prosecution has failed to prove the demand of bribe amount by the accused, the case of the prosecution has to fail.

33.As stated earlier, it is well settled by a catena of decisions of the Hon'ble Supreme Court and by this Court that the first and foremost duty of the prosecution is to prove that there was a demand and mere proof of receipt of money will not be sufficient to establish the guilt of the accused in corruption cases and even the presumption stands rebutted if the accused offer a reasonable and probable explanation.

34.Therefore, for the above said reasons the said principle of law laid down by the Apex Court is squarely applicable to the facts of this instant case. Therefore, I am of the considered view that the prosecution has failed to prove its case. The point is answered accordingly.

35.In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Special Judge/Chief Judicial Magistrate Court, Tiruppur, in Special C.C. No.20 of 2014 dated 27.08.2015 is set aside and the appellant/accused is acquitted and bail bond, if any executed by him shall stand cancelled and the fine amounts, if any, paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

rrg

To

1.The Chief Judicial Magistrate Cum Special Court,
Tiruppur.

2.The Deputy Superintendent of Police,
Vigilance & Anti Corruption, Tiruppur.

3.The Public Prosecutor,
High Court, Madras.

4. The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.76263

Crl.A.No.742 of 2015

SVN(CO)
GMY(06/12/2018)