

BAIL SLIP

The petitioner/Accused namely P.Ganesan S/o.N.Perumal, aged 57 years was directed to be released on bail as per the order of this court dated 25.11.2015 in CRL MP.1 of 2015 in CRL A.No.724 of 2015 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :08.06.2018

Pronounced on :18.06.2018

Coram:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.724 of 2015

P.Ganesan .. Appellant/Accused

/versus/

State represented by
Inspector of Police,
Vigilance and Anti-Corruption,
City Special Unit-III, Chennai.
(Cr.No.7/AC/2007/CC-II)

.. Respondent/Complainant

Criminal Appeal filed under Section 374(1) of Criminal Procedure Code r/w 27 of the Prevention of Corruption Act, 1988, praying to set aside the conviction and sentence passed by the learned Special Judge for the Cases under Prevention of Corruption Act, 1988, Chennai in C.C.No.132 of 2011 dated 26.10.2015 and to acquit the appellant from the above case.

For Appellant :Mr.T.R.Sivaram for
M/s G.Mohanakrishnan

For Respondent :Mr.K.Prabakar, APP(crl.side)

J U D G M E N T

This appeal is directed against the judgment of conviction rendered by the Special Court for the Cases under Prevention of Corruption Act at Chennai in C.C.No.132 of 2011 (old C.C.No.9 of 2008), dated 26.10.2015.

2. The appellant herein Thiru.P.Ganesan, who was tried for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988 was found guilty by the trial Court for demand and acceptance of Rs.1000/- as illegal gratification. The trial Court sentenced the appellant to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo 3 months Simple Imprisonment for the offence under Section 7 of Prevention of Corruption Act, 1988 and also sentenced him to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to

undergo 3 months Simple Imprisonment for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3. Brief facts leading to the prosecution:

Tmt.S.Ragini, W/o A.V.S.Manian entered into an agreement for purchase of a flat in her son's name and advanced Rs.15,000/- to the Builder during the month of June 2006. She purchased Stamp Paper for Rs.26,000/- for execution of the sale deed. Later, she decided to rescind the contract with the builder. For the refund of the Stamp Paper, which was purchased, she gave a requestion letter to the Tahsildar Egmore on 17.05.2007 (Ex.P4). Despite her frequent visit to the Taluk Office, she was not able to get the refund. On 08.10.2007 at about 05.30 p.m. when Tmt.S.Ragini(PW-2) went to the Taluk Office, the appellant/accused, who was working as Assistant in the said office introduced himself as Venkat and promised her to get the refund of Stamp Paper and demanded Rs.500/-. Since the defacto complainant had no other way to get the refund, gave to him Rs.500/-. After receiving Rs.500/- the accused/appellant had told her that, this money is to process the application and a further sum of Rs.1,500/- has to be paid to get the refund. After some bargaining, the accused/appellant had reduced his demand of illegal gratification to Rs.1,000/- from Rs.1,500/-. He wrote his phone number in the defacto complainant's(PW-2) telephone diary and asked her to come with bribe amount.

4. Smt.S.Ragini/defacto complainant working as Assistant Engineer in Public Works Department was not inclined to give any further bribe to the accused. Therefore, she has lodged a complaint at Vigilance and Anti-Corruption Special Unit at Chennai on 11.10.2007 narrating the above facts and to take action against Venkat, Assistant at Taluk Office Egmore. The complaint of Smt.S.Ragini/defacto complainant was received by the Deputy Superintendent of Police at 11.00 hours and he had endorsed the complaint to the Inspector of Police Thiru.Prabakaran to register a case and investigate the same.

5. Accordingly, Thiru.Prabakaran [PW-15] had taken up the complaint and after discreet enquiry, had arranged for trap. The pre-trap proceeding in the presence of two independent official witnesses demonstrating the significance of the phenolphthalein test has been conducted at 13.00 hours on 11.10.2007 and the proceedings has been reduced into writing as Entrustment Mahazar [Ex.P3]. Thereafter, the defacto complainant along with the decoy witness Tmt.Irudhaya Rani followed by the trap team had gone to Taluk Office at Spur Tank Road, Chetpet. Smt.S.Ragini [PW-2] and Smt.Irudhaya Rani[PW-3] met the accused/appellant at about 16.00 hours. The accused/appellant enquired whether PW-2[Smt.S.Ragini] had brought the money. When

she answered in affirmative, he told her to wait, he will confirm whether the cheque is ready. Then, he went to the first floor and came back to confirm the cheque is ready and demanded money. When PW-2[Smt.S.Ragini] took out the tainted money from her handbag and handed over it, the appellant/accused directed PW-2[Smt.S.Ragini] to keep the money on the table. Thereafter, he took the money and kept inside a receipt book found on the table. PW-3[Tmt.Irudhaya Rani] was witnessing the same, after handing over the money, both PW-2 and PW-3 came out of the Taluk Office. PW-2 gave the pre-arranged signal of removing her spectacle. On receiving the said signal, the trap team entered into the Taluk Office.

6. The accused/appellant was asked to dip his left and right hand separately in the colourless sodium carbonate solution. His left hand wash turned into pink colour. Whereas his right hand wash solution colour found unaltered. Thereafter, on interrogation by the Trap Laying Officer [PW-15], the tainted money kept in the Urban Land Tax Payment Receipt Book was recovered. The seizure of the tainted money, the collection of handwash solution and the Urban Land Tax Payment Receipt Book were recorded under Seizure Mahazer marked as Ex.P5. The cheque for refund of Rs.23,400/- was recovered from the possession of the accused person and handed over to the defacto complainant. The file pertaining to refund of stamp paper was seized by the Trap Laying Officer for further investigation.

7. On completion of investigation and on receipt of the Forensic Laboratory report, confirming the presence of phenolphthalein in the left hand and right hand wash of samples solution and in the sample solution collected from the wash of the Urban Land Tax Payment Receipt Serial No.0208112 duplicate back page and triplicate front page confirming the presence of phenolphthalein, sanction for prosecution was obtained from the competent authority PW-1 and final report has been laid.

8. On perusing the materials placed by the prosecution along with the final report, the Special Court for the cases under Prevention of Corruption Act, Chennai had framed charges under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against the accused/appellant and had tried him for the said charges.

9. To prove the case, the prosecution has examined 16 witnesses. 25 exhibits and 6 material objects were marked. In defence, the accused/appellant has examined 2 witnesses and had marked one document.

10. Prosecution witnesses are the authority, who issued order Ex.P1 according sanction to prosecute the accused, the

defacto complainant and the author of the complaint [Ex.P2], Government official, who was requested to accompany the defacto complainant during the trap and one of the witnesses to the entrustment mahazar [Ex.P3] and seizure mahasar [Ex.P5]. The record clerk [Nagarajan] and A2 Assistant Tmt.Kalavathy, Assistants Tmt.Rathina Mani, Thiru.N.Mohanan of Taluk Office Egmore, who were present during the phenolphthalein test conducted by the trap team were examined as PW-4 to PW-7 respectively.

11. During the trap, file [Ex.P4] relating to refund of stamp papers was seized. It was found that apart from the defacto complainant (PW-2), 5 others refund cheques were kept without disbursing to the respective claimants. Those claimants were examined as PW-8, PW-9, PW-10 and PW-12. These witnesses have deposed that they applied for refund of stamp and gave advance stamp receipts, they were told that they will get intimation about refund but they did not receive any intimation. Thereafter, during the month of October 2007, the cheques were delivered to them at their respective residence by a staff of Taluk Office and acquittance was received from them. Thiru. S.Rajagopalan, Tahsildar, Chemical Analyst Tmt.Karpagam Pathragiri were examined as PW-11 and PW-13 respectively. The trap laying officer [Thiru.M.Prabakaran], Investigating officer [Thiru.R.C.Raja Srinivas] were examined as PW-15 and PW-16 respectively. PW-15 [Thiru.M.Prabakaran] has deposed regarding receipt of the complaint [Ex.P2] forwarded by Deputy Superintendent of Police Thiru.R.Valsarajan [PW-14] and the registration of First Information Report, trap and seizure. PW-16 [Thiru.R.C.Raja Srinivas] has deposed about further investigation and laying of final report.

12. On behalf of the accused, the Head Quarters Deputy Tahsildar Thiru.D.Santha Rooban and the Junior Assistant Thiru.Jeya Sankar were examined as DW1 and DW2 respectively. Ex.D1 the affidavit of R.Viswanathan was marked during the cross examination of PW-12 [Thiru.Viswanathan].

13. To prove the defence version, DW-1 [Thiru.D.Santha Rooban], who was the Deputy Tahsildar, Taluk Office at Egmore during the relevant point of time under whom the appellant/accused was serving as C-3 Assistant had deposed that he was not present at the time of trap and when he came back to the office at about 06.30 p.m., the Tahsildar [Thiru.S.Rajagopalan] asked him to hand over the cheques and cheque register. Therefore, he opened the bureau and handed over the cheques and cheque register to the Tahsildar. Thereafter, the cheque was given to PW-2 [Tmt.S.Ragini].

14. DW-2 [Thiru.V.Jeya Sankar] Junior Assistant had deposed in his Chief examination that the accused working as C-3

Assistant was in-charge of stamp paper refund. PW-2 [Smt.S.Ragini] used to visit the office and meet the Tahsildar regarding the refund of stamp paper. In the absence of Tahsildar, she used to meet the accused/appellant. During the month of August 2007, the accused brought Smt.S.Ragini to him and enquired about her refund application for which he informed her that her request has been forwarded to the Pay and Accounts Office. As soon as he get the cheque, he will inform her through the accused. During the second week of September, when the accused was not in the office, PW-2 came and met him and enquired about the accused and the stage of her refund request.

15. These two witnesses have been examined by the defence to emphasis that the cheque pertaining to PW-2 was not in the possession of the accused during the trap and the same was given to the complainant (PW-2) after the arrival of DW-1. As far as DW-2 is concerned, he was examined by the defence to prove that PW-2 know the name of the accused as Ganesan and her complaint is only against Venkat and not against the accused. But the prosecution had wantonly fixed the appellant/accused Ganesan, while acting upon the complaint against Venkat.

16. The trial Court accepted the case of the prosecution and negatived the plea of the defence. It found the accused guilty and has convicted him as stated above.

17. Aggrieved by that conviction, the present appeal is filed on the ground that the learned Judge has erred in its conclusion since he has failed to appreciate the entire evidence on record in a proper perspective. While the prosecution evidence is not cogent, reliable or trustworthy and the case of the defence is being more probable, the trial Court ought not to have declined to accept the defence plea and convicted the accused.

18. It is contended by the appellant/accused that the evidence of PW-2/defacto complainant, PW-3/official witness, PW-7/Deputy Tahsildar, PW-15/Trap Laying Officer are improbable, contradictory and untrustworthy. It is also contended by the appellant/accused that according to the prosecution, on 11.10.2007 at about 04.30p.m., PW-2 along with PW-3 met the accused and gave a tainted money of Rs.1000/- to him. On receipt of the money, the accused handed over the cheque (Ex.P7). Whereas, PW-11 Tahsildar had deposed that the cheque was issued to the applicant Tmt.S.Ragini (PW-2) in his presence after the accused was arrested. DW-1 also in his evidence has said that on his arrival to the Taluk Office at 06.30 p.m, the Tahsildar asked him to hand over the key of the bureau where the cheque and cheque register were kept. Only thereafter the cheque was taken out from the bureau and handed over to the defacto complainant (PW-2). The complaint of PW-2 and the First

Information Report Ex.P21 are not against the appellant/accused Ganesan but it is about one Venkat. Whether there was any person serving in the Egmore Taluk Office by name Venkat were not properly investigated by the prosecution.

19. The trial Court ought to have taken note of DW-2 testimony, who has deposed that during the second week of September, 2007, when the accused was not in the office, PW-2 came to the office and enquired the accused by name "where is Ganesan". So she knew the name of the accused as Ganesan. Her complaint is against Venkat and not against Ganesan the appellant herein. Thus, the untrustworthiness of the witness is clearly exposed by the defence. However, despite probablising the falsehood which bristles in the prosecution case, the trial Court has erred in holding that the evidence of PW-2 is cogent and natural. The evidence of PW-3 [Tmt.Irudhaya Rani] does not corroborate the evidence of PW-2 [Tmt.S.Ragini]. The self contradictions in the evidence of PW-3 [Tmt.Irudhaya Rani] regarding her presence and place of her presence during the trap proceedings cause grave doubt about whether she really went to Taluk Office on the day of trap and witnessed any transaction between the accused/appellant and PW-2 [Smt.S.Ragini]. While PW-2[Smt.S.Ragini] had deposed that the accompanying witness was sitting on a bench in front of the accused seat, PW-3[Tmt.Irudhaya Rani] would say that she was standing in verandah and witnessing the transaction through window. The rough sketch marked by the prosecution neither indicate any Bench near SOC nor window.

20. The learned counsel appearing for the appellant while canvassing the points raised in the memorandum of appeal also emphasised that the accused/appellant is an innocent person and very prompt in his duty. He never demanded or accepted any bribe amount from PW-2[Smt.S.Ragini] neither on 08.10.2007 nor on 11.10.2007. He never introduced himself as Venkat to PW-2 nor he wrote his cell number in the phone diary marked as Ex.P25.

21. In this regard, the learned counsel also pointed out that nowhere PW-2 in her deposition had whispered about the phone number written by the accused in the diary marked as Ex.P25. PW-2 a Government Official working in Public Works Department was frustrated by the delay in getting the refund for which the accused/appellant is not responsible. However, since she had an impression that the staff in charge of refund is causing delay had given a complaint against one Venkat, who might have demanded or received money, later, she has changed her mind to embarrass the accused/appellant, had planted the tainted money on his table and fixed him for the alleged demand of illegal gratification.

22. The refund request dated 17.05.2007 was actually submitted to the Tahsildar Thiru.S.Rajagopalan PW-11 and the same was forwarded to the accused with an endorsement of PW-11. As per the instruction of PW-11, the accused/appellant prepared a draft letter to the District Registrar for certificate of sale of stamp paper on 21.05.2007 and got approval of the Tahsildar on the same day. The letter addressed to the District Registrar was handed over to PW-2 for hand delivery. She had delivered the same to the District Registrar, Central, Chennai and from the District Registrar she has obtained the sale certificate in person and handed over to the Taluk Office on 03.08.2007.

23. As per the instruction of the Tahsildar, the accused/appellant has prepared the refund proceedings and forwarded to the Pay and Accounts Office the cheque for refund was received by the Taluk Office from the Pay and Accounts Office on 18.09.2007. After making necessary entries in the cheque register and the same was kept in the bureau. The claimant Smt.S.Ragini [PW-2] to receive the cheque, should furnish the documents such as family card or voter ID for the sake of identification. After receiving the identity proof, the Tahsildar has to disburse the cheque. While the procedure for disbursement of cheque is as above, PW-2 till 11.10.2007 did not come to Taluk Office to receive the cheque. She has given the complaint against one Venkat but identified the accused as a person, who demanded the money. She has stealthily kept the tainted money inside the urban land tax payment receipt book kept on his table. The prosecution without proper preliminary enquiry about the antecedents of the appellant/accused had falsely prosecuted him. The trial Court had erred in convicting the accused/appellant based on the sole evidence of PW-2 which does not inspire confidence of any truthfulness or trustworthiness on the face of the contradictions found in Exs.P2 and P4.

24. In support of his submission, the learned counsel for the appellant had relied upon the the following judgments:

(i) T.K.Ramesh Kumar v. State through Police Inspector, Bangalore reported in (2015) 15 SCC 629.

(ii) Mukhtiar Singh (since deceased) through His legal representative v. State of Punjab reported in (2017) 3 SCC (Cri) 607.

(iii) N.Sunkanna v. State of Andhra Pradesh reported in CDJ (2015) SC 815.

(iv) P. Satyanarayana Murthy v. District Inspector of Police State of Andhra Pradesh and another reported in (2015) 10 SCC 152

25. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that through PW-2 [Smt.S.Ragini], her complaint and testimony the prosecution has proved the demand and acceptance of Rs.500/- by the accused on 08.10.2007 and the further demand of Rs.1,000/- to be paid to get the refund amount. It is proved by the prosecution through the documents and evidence that the request for refund made in the month of May was processed by the Taluk Office and cheque was received from the Pay and Accounts Office on 18.09.2007. The appellant herein, who is in-charge of refund as C-3 Assistant, had not intimated to the claimant Smt.S.Ragini [PW-2] immediately after the receipt of the cheque, which he is supposed to do. There is no reason for withholding the cheque without intimating the claimant after the cheque made ready and available for disbursement. It is in expectation of bribe money, the appellant herein had kept the cheque undisbursed and when the claimant PW-2 met him on 08.10.2007 he had first extracted Rs.500/- from her thereafter told her to bring another Rs.1,500/- which was reduced to Rs.1,000/-. Only at this point of time, the claimant had got frustrated and had decided to give the complaint. It is the natural conduct of a common public, who waited for sufficient time to get the money back and having failed to get the refund which she is legally entitled, approached the law enforcing agency exposing her cause.

26. It is an admitted case of the accused that the Complainant had frequently visited the Taluk Office to get the refund. She met the Tahsildar got the communications between the Taluk Office and the District Registrar Office and delivered in person to expedite the process. While the Pay and Accounts Office has issued the cheque in her favour as early as 18.09.2007, the accused who was in charge of disbursing the cheque, has pretended as if the cheque has not been issued and the process is yet to be completed. He had cleverly misrepresented himself as Venkat so as to screen his identity. This will not render the prosecution case untenable or false since PW-2 as well as PW-3 have identified the accused as person who has received the tainted money.

27. It is also proved through the evidence of PW-3 [Tmt.Irudhaya Rani], PW-15 [Tr.M.Prabakaran] Trap Laying Officer and the seizure mahazar which is contemporaneous document coupled with the evidence of PW-4 to PW-7 establish beyond doubt that on 19.10.2007 at about 04.30 hours during the trap

proceedings the trap team had recovered the tainted money from the accused and the phenolphthalein test conducted in the hands of the accused and the receipt book where the bribe money was kept proved positive. The samples were collected in the presence of the witnesses. The bottles were sealed and labelled in their presence. The Analyst Report Ex.P18 and the deposition of PW-13 proves the fact that the accused has received the marked currency. Thus, the prosecution has proved beyond any reasonable doubt the demand, acceptance and recovery. The trial Court has considered the evidence and after due consideration had arrived at a right conclusion.

28. Point for consideration:

Whether the trial Court has erred in appreciating the evidence as alleged by the accused?

29. Sanction:

The learned counsel appearing for the appellant would rely upon the judgment rendered by the Hon'ble Supreme Court in T.K.Ramesh Kumar v. State through Police Inspector, Bangalore reported in (2015) 15 SCC 629, wherein para 17 reads as under:

"17. Further, it is noticed that PW-2, the employer of the appellant, who is a seniormost IAS Officer, while exercising his statutory power under Section 19 of the Act is required to apply his mind very carefully while granting sanction to prosecute the appellant herein under the Act. He has accorded sanction for the prosecution of the appellant on the charges of demand and acceptance of illegal gratification by the appellant from the complainant for issuance of a Katha Certificate of the property. In the evidence of PW2 before the Special Judge at para 5 of his examination-in-chief he has categorically stated that the sanction was accorded by him for the prosecution against the appellant under Sections 7, 13(1)(d) read with Section 13(2) of the Act. The demand made for payment of illegal gratification for change of Katha as well as issuance of Katha Extract, this would clearly go to show that there is non application of mind on the part of the sanctioning authority for according sanction to prosecute the appellant on the above charges. On this count also the appellant must succeed."

30. It is the contention of the learned counsel appearing for the appellant that in the chief examination PW-1, he had not mentioned for what offence he has accorded sanction for prosecution and also pointed out that in the cross examination, he had deposed that the sanction order was prepared by A4 clerk at his dictation. However, A4 clerk was not examined by the prosecution. Therefore, the sanction order is bad in law.

31. A perusal of the evidence of PW-1 indicates that he had perused all the documents relied on by the prosecution and after application of his mind, he has accorded sanction order marked as Ex.P1. Though he has mentioned about the sanction order and identified it as Ex.P1, in the chief examination, there is no reference about the provision of law under which he has accorded sanction or for which offence he has accorded sanction. However, the said facts has been elucidated during the cross examination wherein PW-1 has mentioned about the Sections for which he has accorded sanction as well as the Section under which he has accorded sanction. Therefore, there is no lacuna in the sanction order as contended by the learned counsel appearing for the appellant. Even otherwise what is required under Section 19(1) of the Prevention of Corruption Act, 1988 is a previous sanction by the authority competent to remove the accused person from his office and the said sanction order should be accorded after perusal of all the documents and on fair application of mind. In this case, the evidence of PW-1 as well as the sanction order marked as Ex.P1 clearly satisfied both the conditions stated above. So, the above judgment cited by the learned counsel appearing for the appellant does not have any bearing on this case.

32. Proof of demand and acceptance:

The learned counsel appearing for the appellant has relied upon the other three judgments cited above to emphasis that mere recovery of tainted money from the possession of the accused person will not bring home guilty of the accused, unless the prosecution has proved beyond reasonable doubt the demand of illegal gratification and acceptance of the same by the accused and in this case, the prosecution has not proved the demand and acceptance and therefore, the recovery of tainted money from the table of the accused will not give any presumption of guilt of the accused/appellant.

33. To buttress this point, one of the judgments relied on by the accused/appellant is N.Sunkanna v. State of Andhra Pradesh reported in CDJ (2015) SC 815. In the said cited case, PW-3, PW-4 and PW-6, who are supposed to support the case of the prosecution regarding demand turned hostile and did not support

the case of the prosecution. Under such circumstances, the Hon'ble Supreme Court had rightly held that when the demand and acceptance is not proved beyond reasonable doubt, the presumption under Section 20 of the Prevention of Corruption Act, 1988 cannot be drawn. Whereas the facts of the present case is entirely different. PW-2 and PW-3 have supported the case of the prosecution regarding demand and acceptance of bribe money by the appellant.

34. The criminal law in this case has been set into motion through the complaint of PW-2, who has disclosed the receipt of bribe by the accused on 08.10.2007 and further demand of Rs.1,000/-. The said fact has also been reiterated in her deposition and the said testimony is unbreached by the defence except to say that there is no corroboration for this fact. The subsequent demand and acceptance on the day of trap has been spoken by PW-2 and corroborated by PW-3.

35. PW-2 made a request for refund of stamp paper on 17.05.2007. Based on her request, the Tahsildar had issued proceedings on 03.08.2007 to refund of Rs.23,400/- after defraying 10% towards State Cost. The accused/appellant had obtained the statement as well as the advance stamp receipt from the defacto complainant on 18.09.2007, but did not issue the cheque, though it was made ready as early as 18.09.2007. Expecting illegal gratification the accused/appellant had made the defacto complainant (PW-2) to visit the Taluk Office frequently and made her to run pillar to post. At last, on 08.10.2007 he demanded and received a sum of Rs.500/- promising her to get the refund. PW-2 gave the money since she had no other go. After receiving that money the accused demanded a further sum of Rs.1500/- to get the refund. PW-2 has told him that she is a Government Servant and she cannot afford to pay Rs.1500/-. The accused has told her that this money is not for him but for the other officials, who are dealing the file and had reduced the demand from Rs.1500/- to Rs.1000/-.

36. Being frustrating by the conduct of the accused/appellant, PW-2 [Smt.S.Ragini] has given the complaint. Based on the complaint Ex.P-2 dated 11.10.2007, the trap was successfully laid and the accused was caught red-handed immediately after he received the tainted money from PW-2 [Smt.S.Ragini].

37. PW-3 [Tmt.Irudhaya Rani] the decoy witness, who was sent to witness the transaction, accompanied PW-2 during the trap. She had deposed corroborating the version of PW-2[Smt.S.Ragini] regarding demand and acceptance. The phenolphthalein test report Ex.P18 has proved positive the presence of phenolphthalein in the both hands wash of the accused and the

receipt in which the accused kept the tainted money. Thus, the prosecution through witnesses and documents had proved the demand and acceptance of illegal gratification and also the recovery of the same from the possession of the accused.

38. In the course of investigation, the prosecution has found that the accused is in the habit of withholding the refund cheques of the claimants without any reason. Ex.P4 file pertaining to refund of stamp paper had brought to light that claimants similar to the defacto complainant inspite of submitting all relevant documents including advance stamp receipts, the cheques were not disbursed to them. Only after the trap, the Taluk Office had delivered the refund cheques through messengers. The above fact has been spoken by PW-8 [Thiru.V.M.Kannappan], who had given his signed stamped receipt [Ex.P6] on 18.09.2007 and got the cheque [Ex.P7] dated 18.09.2007 during the month of October 2007.

39. PW-9 [Thiru.S.Balachandran] has deposed that on behalf of his father Thiru.Sivaraman, he met the accused regarding refund of stamp paper. The accused after obtaining the stamped receipt Ex.P8, after few weeks he got the refund cheque Ex.P9 dated 05.10.2007. PW-10 [Thiru.Anil Bafna] had deposed about the refund of stamp paper in the name of his mother Kamala Bai Bafna. He gave the request for refund given during the month of May. The OA at Taluk Office obtained advance stamp receipt Ex.P10 on 16.07.2007. Though the cheque Ex.P11 was made ready on the same day, he got the cheque after few weeks through staff of the Taluk Office. PW-11 [Thiru.Ragagopal] Tahsildar at the relevant period had specifically spoken about the procedure for refund of stamp paper. According to PW-11, once the cheque for refund is ready, the claimant should be informed and when the claimant come, then identity should be verified and cheque should be given to him after obtaining stamped receipt. None of the above claimants, who were examined as PW-8, PW-9 and PW-10 were informed about the cheque. Thus, the prosecution has proved by examining these witnesses and the documents viz., stamp refund file Ex.P4 and Ex.P6 to Ex.P17 that the appellant with oblique motive withhold refund cheques.

40. The contentions raised by the learned counsel for the appellant pointing out minor discrepancies the prosecution case does not over weigh the clinching evidence let in by the prosecution. There is no material to discredit the evidence of PW-2 or the accompanying witness PW-3. Their depositions are quit natural and inspires the confidence of the Court. The appellant who is responsible for disbursing the refund cheque immediately on receipt of it, from the Pay and Accounts Office, had not disbursed it for no good reason. It is not only for the defacto complainant PW-2, there were 5 other claimants for whom

the appellant has failed to issue the cheques till the date of trap(11.10.2007) though those cheques were ready for issue during the month of Mid September 2007. At least, he should have intimated them to come and receive it, which he had not done. The defence theory that the money was planted is thrown to ground in view of the depositions of the witness who say the colour change while the hands of the accused dipped in colourless sodium carbonate solution and the chemical analyst report Ex.P18. The defence evidence, DW1 and DW2 also is of no help to the accused/appellant, because it is an admitted fact that the cheque Ex.P17 dated 18.09.2007 was not issued to the claimant Ragini till the trap held on 11.10.2007. While the prosecution witness say the cheque was delivered to PW-2 by the accused, after receiving the bribe money of Rs.1000/- (MO1 series).

41. DW-1 had deposed that he came to Taluk Office at about 06.30 p.m., on 11.10.2007 and handed over the cheques and refund file to PW-11Tahsildar at the request of the trap laying officer.

42. On perusal of the advance stamp receipt which form part of Ex.P4 stamp refund file, we find that PW-2 has received the cheque at 16.30 hours on 11.10.2007 and affixed her signature with time and date. There is overwriting on the time, it only indicate that the signatory had first attempted to mention the time in 12.00 hours format but later changed her mind and written it in 24.00 hours format. Further, in the very same document, there is an endorsement by the Tahsildar that the cheque was issued without his knowledge. Therefore, nothing much to lend the prosecution case could be found in the case of the defence.

43. DW3 evidence which is relied by the accused to show PW-2 knew the name of the accused is Ganesan and the complaint against one Venkat cannot be turned against Ganesan is to be negatived, because PW-2 and PW-3 has identified the accused as the person, who received the tainted money.

44. In the case of Mukhtiar Singh (since deceased) through His legal representative v. State of Punjab reported in (2017) 3 SCC (Cri)607, the Hon'ble Supreme Court quoting extensively the judgment of P.Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another cited supra has held that:

"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.

14. In *P. Satyanarayana Murthy (supra)*, this Court took note of its verdict in *B. Jayaraj vs. State of A.P.* underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Section 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 (supra)* 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 6 (2014) 13 SCC 55 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)

24. It would thus be patent from the materials on record that the evidence with regard to the demand of illegal gratification either of Rs.3,000/- which had been paid or of Rs.2,000/- as made on the day of trap operation is wholly inadequate to comply with the pre-requisites to constitute the ingredients of the offence with which the original accused had been charged. Not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather omnibus, vague and sweeping, even the person in whose presence Rs.3,000/- at the first instance is alleged to have been paid i.e. Santosh Singh Lamberdar, has neither been produced in the investigation nor at the trial. In other words, the bald allegation of the complainant with regard to the demand and payment of Rs.3,000/- as well as the demand of Rs.2,000/- has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. Viewed in this perspective, the statement of complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in

absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act."

45. In the above said judgment and all other judgments cited by the learned counsel appearing for the appellant, the Hon'ble Supreme Court has made it clear that mere possession and recovery of tainted money without proof of demand will not bring home guilty of the accused. As pointed out earlier, in this case it is not mere proof of recovery of tainted money, but the prosecution has proved to the core the demand of illegal gratification as well as acceptance. Insofar as the case of this nature is concerned, the core facts to be proved beyond doubt is whether there was demand of illegal gratification, acceptance and recovery of money besides the demand was for any illegal gratification other than legal remuneration. In this case as discussed above, the prosecution has proved beyond doubt through its witnesses all the ingredients namely, illegal demand, acceptance, recovery of money and the same not for any legal remuneration, but as illegal gratification to issue the refund cheque to PW-2. Therefore, this Court finds no error in the judgment of the trial Court to reverse the judgment.

46. In the result, this Criminal Appeal is dismissed. The judgment of conviction made in C.C.No.132 of 2011 dated 26.10.2015 on the file of the Special Judge for the Cases under Prevention of Corruption Act, 1988, Chennai is hereby confirmed. The period of imprisonment already undergone by the appellant is set off. The trial Court is directed to secure the accused/appellant to serve the remaining period of sentence.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The Special Judge for the Cases under Prevention of Corruption Act, 1988, Chennai.
2. The Inspector of Police,
Vigilance and Anti-Corruption,
City Special Unit-III, Chennai.

3. The Public Prosecutor, High Court, Madras.

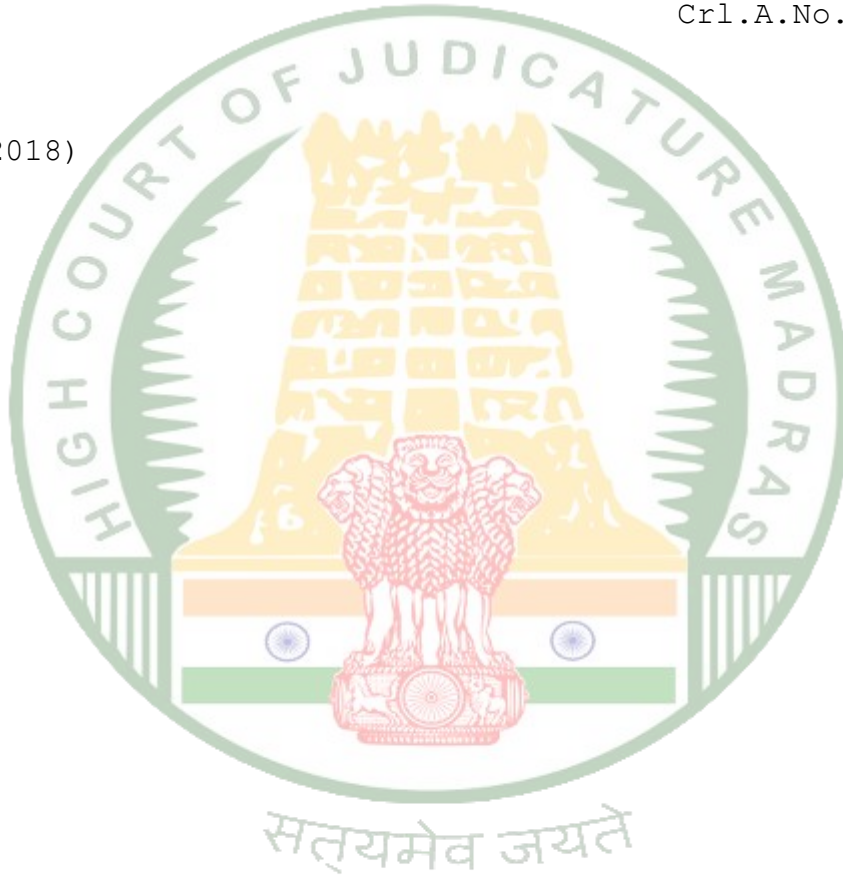
COPY TO

The Section Officer,
Criminal Section, High Court, Madras.(2 copies)

+1cc to Mr.G.MOHANKRISHNAN, Advocate, S.R.No. 37810

Judgment made in
Crl.A.No.724 of 2015

NMI (CO)
TR(03/07/2018)



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