

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :07.03.2018

Pronounced on :16.03.2018

Coram

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.344 of 2010

State represented by:

The Inspector of Police,
Vigilance and Anti-Corruption,
City-2, Detachment,
Chennai-20.

(Crime No.6/AC/2001/CC.1) ... Appellant /Complainant

/versus/

1.Raghunathan

2.R.Devadoss

.. Respondents /Accused

Criminal Appeal is filed under Section 378 Cr.P.C.,
praying to allow this appeal and set aside the judgment of
acquittal of the respondents/accused passed by the learned Chief
Judicial Magistrate cum Special Judge, Chengalpattu in
S.C.No.4/2003, dated 03.06.2008, convict the respondents/accused
for the offences framed against them, pass sentence against them
in accordance with law.

For Appellant :Mr.K.Prabakaran,
Additional Public Prosecutor

For Respondents :Mr.R.John Sathiyar for R1
Mr.R.Vijayakumar for R2

J U D G M E N T

This appeal is preferred by the State against the order
of acquittal rendered by the learned Chief Judicial Magistrate-
cum-Special Judge, Chengalpattu in Special Case No.4 of 2003,
dated 03.06.2008.

2. The case of the prosecution is that Mr.P.L.Muthappan
sought for transfer of patta in respect of his property at
Melakottaiyur Village. When his accountant Mr.Manimaran

approached the second respondent[R.Devadoss], who was Village Administrative Officer of the concerned village, 2nd respondent had told Mr.Manimaran to approach Zonal Deputy Tahsildar Mr.Raghunathan, who is the first respondent herein. Accordingly Mr.Manimaran met Raghunathan, who demanded bribe to effect patta transfer. Since the partition between brothers of Mr.P.L.Muthappan was not registered, to get over the same Mr.Raghunathan had demanded Rs.10,000/- as gratification to transfer the patta in the name of Mr.P.L.Muthappan. The demand of Rs.10,000/- was made when Mr.P.L.Muthappan and his wife Mrs.Chitradevi met Mr.Raghunathan at his house on 04.08.2001 and later, Mr.Raghunathan has reduced the bribe amount by Rs.2,000/-. On 22.08.2001 Mr.P.L.Muthappan contacted Mr.Raghunathan over phone and informed Mr.Raghunathan that consent affidavit from his brother is ready, and when to contract him Mr.Raghunathan has told Mr.P.L.Muthappan that he can send the affidavit along with bribe money of Rs.4,000/- through his accountant Mr.Manimaran. On transfer of patta, the balance amount of Rs.4,000/- should be paid. Since Mr.P.L.Muthappan was not inclined to give bribe for transfer of patta, he told his accountant Mr.Manimaran to lodge a complaint before DV and AC, Adyar.

3. Based on the complaint given by Manimaran (PW.3), First Information Report had been registered. In the presence of decoy witnesses, trap was laid. On 24.08.2001, the defacto complainant (Mr.Manimaran) along with the decoy witness Mr.Anantha Subramanian (PW-5) went to the Tahsildar office, Chenglepet. They were followed by the trap team led by Mr.Raja Srinivasan (PW-8). At around 05.30 p.m., Mr.Raghunathan has come to his office and asked Mr.Manimaran whether he had brought affidavit along with bribe money? When Mr.Manimaran responded in affirmative, Mr.Raghunathan asked Mr.Manimaran to hand over the affidavit to B2 Assistant Ms.Kousalya and the bribe money to Mr.R.Devadoss, (A2)Village Administrative Officer, who accepted it and kept in his left side pant pocket. Receiving the pre-arranged signal from Mr.Manimaran/defacto complainant, the trap team has entered into the office. After conducting test of his hands in sodium carbonate solution, the tainted money of Rs.4,000/- was recovered from Mr.Devadoss(A2) by the trap team. The hand wash of A2 collected and sent to laboratory, which was found positive to phenolphthalein. His left side pant pocket was also subjected to phenolphthalein test and the same proved postive.

4. The prosecution to prove the case has examined 11 witnesses. PW-1 is the Collector of Kancheepuram who is the competent authority to dismiss A1(Mr.Raghunathan). Sanction order granted by him is marked as Ex.P1. PW-2[Mr.Santhakumar] Revenue Divisional Officer, Chengalpattu has accorded sanction

to prosecute A2 [Devadoss] Village Administrative Officer. His sanction order is marked as Ex.P2. The defacto complainant Mr.Manimaran is examined as PW-3. The decoy witness Mr.Anantha Subramanian, Superintendent, Registration Department has been examined as PW-5. Chitra Devi, W/o Mr.Muthappan is examined as PW-4 to speak about her presence when A1 demanded bribe on 04.08.2001, when she and her husband met A1 at his house. The trap laying officer, the investigating officer and the officers who had laid the charge sheet were also examined on behalf of the prosecution besides the chemical analyst Grade I Ms.Kasthuri Bai. 11 exhibits and 5 material objects are marked on the side of prosecution and on behalf of the accused, 3 witnesses and 16 exhibits are marked. The trial Court on appreciation of the evidence has held the accused are not guilty and acquitted both the accused.

5. Aggrieved by the same, the State has preferred this appeal on the ground that the trial Court has failed to properly appreciate the evidence. When the evidence of PW-3 and PW-4 establish the fact of demand of bribe by A1 and the evidence of PW-3 and PW-5 proves the demand and acceptance of bribe by A1 and A2 respectively, the trial Court has given its own reasoning and justification for disbelieving the case of the prosecution.

6. The judgment of the trial Court is based on surmises with improper appreciation of evidence, hence perverse. The opinion expressed by the trial Court in its judgment is baseless and purely imaginary. The trial Court has formulated hypothetical questions for itself and by way of answering those hypothetical questions, the trial Court has perversely found the accused not guilty, in spite of the fact that there is cogent evidence in respect of demand and acceptance of bribe and the recovery of tainted money from A2. In the absence of proper explanation, the presumption against A1 and A2 ought to have been drawn. Whereas, the trial Court has totally neglected the legal position and the facts before it, while considering the case.

7. The learned Additional Public Prosecutor appearing for the appellant would submit that the prosecution has established that Mr.P.L.Muthappan the land owner was not keeping good health. He was interacting with the accused 1 and 2 at Taluk Office through his accountant Mr.Manimaran. As told by the first accused Mr.P.L.Muthappan and his wife Chitra Devi went to the house of A1 and requested him to expedite the patta transfer process. At that time A1 demanded bribe of Rs.10,000/-. After negotiation he reduced it to Rs.8,000/-. The demand of bribe by A1 to transfer the patta in the name of Mr.P.L.Muthappan in respect of the land which was in the name of his brother Sethulakshmanan was made to P.L.Muthappan in the presence of

PW.5. A1 has told Mr.P.L.Muthappan that without registered partition deed, transfer of patta cannot be done and if it is to be done without registered partnership deed, he should be bribed. The negotiation and conversation between Mr.P.L.Muthappan and A1 has been witnessed by Chitra Devi[PW-4] and she has spoken in natural and cogent way. While so, the trial Court has doubted the very nature of complaint. Taking into consideration, certain facts which are irrelevant to the case, the learned Judge has gone to the extent of giving its own reasoning, explanation, theory and justification for perversely rejecting the prosecution case. The complete reading of the judgment exposes the perversity of the Judge, who has acquitted the accused relying upon the materials which are no way connected with the case.

8. It is further submitted by the learned Additional Public Prosecutor that admission of PW-4 [Mrs.Chitra Devi] that she and her husband Mr.P.L.Muthappan attended betrothal ceremony of A1's daughter has been pitted against the prosecution, as if the complaint is borne out of malice. The trial Court has invented its own reason that Mr.P.L.Muthappan who was disparate to sell the property was unable to do so because of the objection made by A1 for transferring patta in his name. Since a friend has turned into foe, he has been aggrieved and provoked to give the complaint. Quoting the proverb "blood is thicker than water but thin in foe". The trial Court declined to presume against the accused under Section 20 of the Prevention of Corruption Act, 1988 inspite of the fact that the tainted currency was received by A2 on the instruction of A1 and the money was offered by Manimaran on behalf of Mr.P.L.Muthappan.

9. It is also submitted by the learned Additional Public Prosecutor appearing for the appellant that the trial Court erred in relying upon voter list to suspect the existence of PW-3 Manimaran, despite Manimaran had deposed that his name is found in the voters list of his native village and he has come over to Chennai to eke livelihood and name is not enumerated elsewhere. While so, the trial Court has relied upon the voters list of Pallavaram constituency marked by the accused and the evidence of DW-2. For the above said reasons, the learned Additional Public Prosecutor sought for interference of this Court to set aside the order of acquittal. Hence, the reason given by the trial Court to doubt the very existence of Manimaran is perverse.

10. Per contra, the learned counsel appearing for the respondent would submit that there is no perversity in the order of the trial Court. When two views are possible, the view in favour of the accused has been relied by the trial Court.

Therefore, there is no necessity to interfere with the judgment of the trial Court which has discussed the evidence in detail and has given its reasoning why the prosecution has not proved the demand of illegal gratification by A1 or acceptance of the same by A2. Further, having accepted the defence theory of motive for the false complaint, there is every justification on the part of the trial Court for not invoking under Section 20 of the Prevention of Corruption Act, 1988.

11. The defacto complainant is mouth piece of Mr.P.L.Muthappan, who had not come forward to give the complaint in his name or in his wife name, so the very foundation of the prosecution case gets suspicious. It has been probablised by the defence through cross examination of the prosecution witnesses and through the witnesses for the defence that PW-3 who was a friend of Mr.P.L.Muthappan, Later, due to misunderstanding in negotiating the sale of Muthappan property to SPIC Company, turned into foe. In order to fix A1 who had not obliged Mr.P.L.Muthappan to transfer the patta in his name, Muthuappan along with his friend PW.9 had designed the complaint and under [PW.9] supervision, the trap was conducted. PW-8 [Mr.Raja Srinivasan] was not the real trap laying officer as found in the record. It was PW-9[Mr.Ponnusamy] who had fabricated the records and documents, as if A1 demanded bribe and received the same through A2 on 24.08.2001. The trial Court, after formulating several points for consideration had analysed each one of the points and has rejected the case of the prosecution, which needs no interference.

12. It is submission of the counsels for the respondent that in recovery of money from A2 who has received the same from PW-3 without knowing the purpose for which it was given to him will not fasten any criminal liability on A2 or A1. The respondents have proved beyond doubt that the prosecution case is fabricated and false. The cross examination of PW-3, PW-4, PW-9 as well as positive evidence let in through DW1 to DW3 and exhibits D1 to D11 proves the case was foisted on the respondents at the instigation of Mr.P.L.Muthappan and PW-9 to wreck vengeance against them. The trial Court has accepted the said defence. Hence, there is no necessity to interfere with the well considered judgment of the trial court.

13. Point for consideration:

Whether the trial Court had failed to appreciate the evidence properly in accordance with law and whether the judgment of the trial Court san reasons amounting to perversity?

14. From the evidence placed before the Court by either side, the facts which are admitted, proved or not proved are Mr.

P.L.Muthappan had given an application for transfer of patta on 10.07.2010 in respect of property in S.No.109/3 extend 0.84 acres, S.No.100/1 extend 1.36 acres and S.No.95/3 extend 0.35 acres at Melakottaiyur village. The said application along with the partition deed copy was given to the Thasildar, Chengalpet on 10.07.2001. The said application is marked as Ex.D-2 and the partition deed copy is marked as Ex.D-3.

15. In the complaint Ex.P-3 and in the deposition of the defacto complainant Manimaran[PW-3], it is stated that on 10.07.2001 he went to Taluk office, Chengalpet at about 4.00 p.m., got initial of the Thasildar and waited for an hour to meet the Zonal Deputy Thasildar Raghunathan to give the application. The appellant Raghunathan was not in his seat so as instructed by his Master Mr.Muthappan, he took a photocopy of the application and handed over the original application to the Clerk at Thasildar office. Whereas the perusal of Ex.D-2 application, we find on the back of it, the accused Raghunathan has "forwarded to VAO, Melakottaiyur for necessary action and report" with seal and date as 10.07.2001, which indicates on 10.07.2001 itself A1 had seen the application and issued direction to VAO as stated above.

16. PW-7 [Kousalya], Assistant at Chengalpet Thasildar office had deposed that on 10.07.2001 the application of P.L.Muthappan was given to her by the Zonal Deputy Thasildar Ragunathan (A-1) with endorsement to VAO for enquiry and report. On receipt of the application from A-1, she forwarded the application to VAO, Devadoss (A-2). On 20.07.2001 she received report from Devadoss stating that the application may be rejected, since the partition deed is not registered. She received the report and kept it in the file. She did not communicate the same to the applicant. The report of the VAO recommending to reject the application for change of patta is marked as Ex.P-10.

17. In the said circumstances, it is alleged by the prosecution witness PW-3 that after a week from the date of application, he met Raghunathan (A-1) and enquired about the application, he was told by Raghunathan, that the partition deed is not registered, So P.L.Muthappan has to come and meet him. P.L.Muthappan was informed about this by Mr.Manimaran/Accountant. On the Next day, P.L.Muthappan had called Raghunathan over phone.

18. What transpired between Muthappan and Raghunathan

during the telephonic conversation on that day and later, meeting of Muthappan and his wife in person at the residence of Raghunathan is narrated in the complaint. The conversation between Muthappan and Raghunathan over phone and later meeting between them at the residence of Raghunathan as found in the complaint Ex.P-3 are hearsay in nature. Hence, cannot be given credence.

19. Muthappan is not the author of the complaint and he was not examined as witness by the prosecution since he died pending trial. However, his wife, Chitradevi had been examined as PW-4. She in her deposition has stated that on 4.08.2001 at about 9.00 pm she and her husband Muthappan went to the accused house at Chengalpet NGO Colony and enquired about the patta transfer. The accused assured to transfer the patta and chitta and to do the said act, demanded Rs.10,000/- as illegal gratification. When Muthappan asked him why inspite of being a friend, he is demanding so much money, the accused has told him it is because the partition deed is not registered. Further agreed to reduce the bribe money by Rs.1,000/- or Rs.2,000/- and also told to bring consent affidavit from his brother Mr.Sethulakshmana chettiar.

20. Thus, on cumulative appreciation of evidence, it could be seen that the application Ex.D-2 given on 10.07.2001 for patta transfer was enquired by A-2 at the direction of A-1 and a statement was given by A-2 (Ex.P-10) that the application has to be rejected, since the partition deed upon which the patta transfer request made is not registered. Though this report was given by A-2 on 20.07.2001, A-1 has not passed any order on it and the same was not communicated to the applicant. Even after the representative of the applicant (PW-3) met A-1, he has not said that the application for transfer of patta cannot be entertained, contrarily he has told PW-3, that the applicant has to meet him. When the applicant Muthappan and his wife Chitradevi (PW-4) met A-1 on 04.08.2001, it is alleged that he initially demanded bribe of Rs.10,000/- and reduced to Rs.8,000/- for accepting the unregistered partition deed to effect patta transfer.

21. It is an admitted fact by the first accused as well as the prosecution witnesses that, A-1 and Muthappan are known to each other even prior to the trap proceedings. PW-4[Chitra Devi] in her chief examination itself had stated that in the year 2001 during the month of February she and her husband Muthappan attended the daughter's wedding of A-1. Therefore the trial Court has inferred that Muthappan must have strong motive

to lodge complaint against A-1.

22. In this context, the explanation of A-1 is that, having come to know that his applications dated 20.04.2001 and 10.07.2001 were not considered favourably, the complaint has been emanated from Muthappan with falsehood and suppression of fact, through PW-3 [Manimaran] who has nothing to do with Muthappan but only a stooge in the hands of Muthappan and PW-9 [Ponnusamy].

23. For the said purpose, apart from Ex.D-2 (application dated 20.07.2001) and recommendation to reject the request (Ex.P-10), the defence had also relied upon Ex.D-6 which is the earlier application of Muthappan for transfer of patta in respect of the subject land.

24. The above mentioned documents speak about the facts that Muthappan has earlier made an attempt to get the patta transfer in his name for the properties which were purchased by his brother Tr.Sethulakshmana Chettiar and given to him in the family arrangement dated 27/08/1989. The memorandum of family arrangement has been reduced into writing. The said deed was not registered and in his letter dated 20.04.2001 marked as Ex.D-6 Muthappan has mentioned that under Hindu Law oral partition is permissible and the same has been reduced into writing by way of a memorandum of family arrangement and notarised. His contention that registration of the memorandum of family arrangement is not mandatory, has not been considered.

25. In this connection, the evidence of PW-7 is very relevant because she has dealt with the applications received from Muthappan for transfer of patta. Ex.D6 dated 20.04.2001 was sent by Muthappan by registered post to the Tahsildar (Revenue). The same has been received by the Tahsildar on 24.04.2001 and he has marked the letter to B2 Clerk who is PW-7. She has placed the paper before A1 and she has transferred the file to A5 seat. A5 is the record Section and before it could be proceeded further, Muthappan has given another application dated 30.04.2001. The file has been transferred to A5 Section on 08.06.2001 as per the order of Deputy Tahsildar. Whereas Ex.D2 application dated 20.07.2001 has been given to the Tahsildar directly. Since it was not sent through tapal, the receipt of this application has not been entered or kept along with the earlier file after assigning the earlier file number. Independently, without any reference to the earlier application, A1 has directed VAO to enquire and submit report on the application of Muthappan received by him on 10.07.2001. Accordingly, A2 has enquired and submitted his report dated

20.07.2001 (Ex.P10) in a form of statement.

26. PW-7 has categorically stated that VAO has to give his report in a prescribed format and his statement which is marked as Ex.P.10 is not in the said format. For ascertaining the same, it is necessary to refer Exs.D8 and D10. Ex.D-8 is the subsequent application made by Muthappan on 19.09.2001. This application was enquired by VAO and report has been submitted in the prescribed format which is marked as Ex.D10.

27. Looking at Ex.D2 and Ex.P10 and Ex.D8 and Ex.D10 in the light of PW.7 evidence this Court comes to an irresistible conclusion that the accused persons have deliberately created document as if the request of Muthappan cannot be acceded since the partition deed is an unregistered document and under the said pretext, they have pressurised Muthappan to gratify them illegally. That is the reason why when the representative of Muthappan namely, Manimaran (PW-3) met A2 at Tahsildar Office a week after the application dated 10.07.2001 he has directed Manimaran(PW-3) to meet A1 and A1 in turn had told PW-3 that there is some difficulty in transferring patta based on unregistered partition deed and therefore, Muthappan has to meet him. PW-5 in her evidence, has deposed about the meeting of Muthappan with A1 at his residence on 04.08.2001. Her evidence is very natural and there is no reason for her to say anything false against A1 since admittedly, they were known to each other even earlier. Thus, this Court holds that the demand of bribe by A1 on 04.08.2001 is spoken by PW-5 and there is no reason to doubt her evidence.

28. It is contended by the learned counsel appearing for the appellants relying upon the following judgments that mere recovery of tainted money is not a proof that the money is illegal gratification received by the person and when there are two views are possible the view taken by the trial Court in favour of the appellant shall not be disturbed unless there is perversity in the finding.

1. In Virendranath vs State of Maharashtra reported in [1996] 11 SCC 688.

2. In G.Ashok Kumar and Another versus State rep.by Insepector of Police DV & AC, Chennai City Special Unit III, Chennai reported in 2008 (3) MLJ CrI 64.

3. In A.Govindarajan & Another versus

The State of Inspector of Police, Vigilance and Anti Corruption Department, Salem reported in 2001 (1) MLJ(Cr1) 1057 .

4. In N.Sunkanna versus State of Andhra Pradesh reported in 2015 CRI.L.J.4927.

29. The evidence of prosecution regarding acceptance of tainted money is concerned, we see PW-3[Manimaran] in his deposition has stated that on 24.08.2001 at about 5.15 p.m., A-1 came to his office, he and the decoy witness PW-5[Anand Subramaniam] went to his seat and informed Muthappan has sent them. A-1 enquired whether he has brought the consent affidavit and bribe money. When PW-3 [Manimaran] answered in affirmative, he asked, how much money he has brought. When he told Rs.4,000/-., A-1 received the consent letter from him and given it to B-2 Clerk (PW-7) and told PW-3 to give the money to A-2, who was standing near him. So, he gave the consent letter to B-2 Clerk and offered the tainted money of Rs.4,000/- to A-2, who came out from A-1 room and received it. A-2 counted the money and kept it in his pant pocket. While portion of PW.3 evidence is corroborated by PW-5 in the chief examination, however in the cross examination PW-5 admits that he did not go inside A-1 room. He was standing near the door and only Manimaran (PW-3) went inside A-1's room. This witnesses has specifically corroborate the evidence of PW.3 that A2 came out from A1 room and received the money from PW.3, counted it and kept in his pant pocket. The spot test for phenolphthalein and lab test proves the handling of tainted currency by A-2.

30. A1 in his written statement filed under Section 243 and 313 Cr.P.C., has specifically denied demand of any gratification from Manimaran or Muthappan. He has narrated the reason for animosity between him and Muthappan and has alleged the investigating officer [Ponnusamy] was biased against him. He has denied the allegation that he told Manimaran to pay the bribe money to VAO and go.

31. Contrarily, A2 in his written statement has stated that on 24.08.2001, after completing the work of patta passbook scheme, he returned to Chengalpet Taluk Office at 05.45 p.m. The first accused called him and told that there was some confusion regarding the jurisdiction of Ponmar village and instructed him to look into the matter and send the report to the District Collector immediately. At that time, somebody from his back urged Raghunathan that he is waiting for a long time and it appears soon there will be rain, so take up his issue and send him immediately. Raghunathan told that person if it is

so urgent, give it to VAO and go. Raghunathan also told him (A2) to collect and come. Since it was the direction of his superior, when PW-3 gave a bunch of money he received and placed it on the table of A1. He was not aware how much it is and why it was given to him.

32. PW-3 also in his cross examination admits the above said conversion. In the cross examination, PW-3[Manimaran] has said that he and A1 were talking to each other for nearly 15 minutes and at that time, A2 came to A1's seat. PW-3 admits that he urged A1 to send him soon since he is waiting for a long time and told that, he wants to go soon since he expect rain. At that time, A1 told him if there is any urgency given it to A2 and go.

33. As far as A1 is concerned, PW-3 and PW-5 had spoken about demand of illegal gratification by A1. The pertinent point to be considered here is the reason for making illegal gratification. It was for transfer of patta in the name of Muthappan. The records show that Muthappan had made earlier application to the Thasildar by post on 20.04.2001 and his application was not considered. So, he has given the second application directly to A1 and A1 had initiated the process by directing A2 to inspect and report.

34. Regarding recovery of bribe money, A2 in his statement given under Section 243 and 313Cr.P.C., admits that A1 told PW-3 to give money to him. Since it was a direction from his superior, he received the same and placed it on the table of A1. Immediately, the trap team came and recovered it. The phenolphthalein test conducted in the hands of A2 and left side pant pocket proves the presence of phenolphthalein. Thus, there can be no doubt regarding the recovery of tainted money from the possession of A2 while gets strengthened by the admission of A2 that he received the money as per the instruction of A1.

35. It is clear from the evidence that taking advantage of the fact that, the memorandum of family agreement is not registered, A1 and A2 had tried to obtain pecuniary advantage by entertaining fresh application from Muthappan on 10.07.2001 and without passing order, they were negotiating with Muthappan and his representation Manimaran. When demand and acceptance is proved, it is the burden of the accused persons to rebut the presumption under Section 20 of the Prevention of Corruption Act.

36. For the purpose of rebuttal, the respondents have relied upon certain documents which goes to show that A1 and Muthappan are known to each other, when there was some dispute between Muthappan and the management of SPIC Company. A1 participated and negotiated between them in the revenue proceedings. These exhibits and evidence only indicate that A1 has shown undue interest in the property affairs of Muthappan and had tried to exploit his urgency.

37. As discussed above, the demand of bribe by A1 is proved through PW.3 and PW.4. The acceptance of bribe by A2 as per direction of A1 is proved through PW.3 and PW.5 as well as by the admission of A2. Recovery of tainted money from A2 is admitted by A2 and also proved through phenolphthalein test and eye witnesses. In the said circumstances, the burden on A1 and A2 to rebut the legal presumption under Section 20 of Prevention of Corruption Act. In fact, to rebut the presumption only strengthens the case of demand and acceptance of money from PW-3.

38. In M.Narasinga Rao versus State of Andhra Pradesh reported in 2001 CRI.L.J.515 wherein as under;

14. When the sub-section deals with legal presumption it is to be understood as in terrorum i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act.

15. The word proof need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering

the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word proved in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in *Hawkins vs. Powells Tillery Steam Coal Company, Ltd.* [1911 (1) K.B. 988] observed like this:

Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion".

39. In *Madhukar Bhaskarrao Joshi v. State of Maharashtra* reported in 2000 AIR SCW 4018;

The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted as motive or reward for doing or forbearing to do any official act. So the word gratification need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like gratification or any valuable thing. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word gratification must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

40. The Trial Court in the impugned judgment had gone astray while appreciating the evidence. For the sake of disbelieving the prosecution the trial Court has doubted the very existence of PW.3. The illness and subsequent death of Muthappan is also not been perceived properly by the Trial Court. The recovery of tainted money from A2 and his written explanation under Section 243 and 313 of Cr.P.C not taken into consideration which a prudent person could consider. Hence, this Court holds that the Trial Court Judgment is perverse and unsustainable, hence deserve to be set-aside.

41. From the evidence let in by the prosecution, this Court holds that A1 is guilty of offence under Section 7 of Prevention of Corruption Act, 1988 for demanding gratification other than legal remuneration as motive to show favour to Muthappan in exercising his official act of patta transfer and accepting the same through A2 and under Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 for obtaining pecuniary advantage by corrupt means.

42. Similarly, A2 by corrupt means for obtaining illegal gratification to do a favour by abusing his official position is guilty of misconduct. Hence, liable for offences under Sections 7 and 13(1)(d) punishable under Section 13 (2) of Prevention of Corruption Act, 1988.

43. In the result, this Criminal Appeal is allowed. The order of acquittal passed by the learned Chief Judicial Magistrate cum Special Judge, Chengalpattu in S.C.No.4/2003, dated 03.06.2008 is set aside.

44. This Court considering the long delay in disposing the appeal, impose the minimum sentence, prescribed under the Act. So, the accused are not questioned on the sentence to be imposed.

45. In the result, A1-Raghunathan held guilty of offence under Section 7 of Prevention of Corruption Act, sentenced to undergo 6 months Simple Imprisonment and imposed to pay a fine of Rs.1,000/- in default, to undergo one month Simple Imprisonment and; for the offence under Section 13(1)(d) r/w 13 (2) of Prevention of Corruption Act, 1988 and sentenced to undergo 1 year Simple Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month Simple Imprisonment. A2-Devadoss held guilty of offences under Section 7 of

Prevention of Corruption Act, 1988 and sentenced to undergo 6 months Simple Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo one month Simple Imprisonment and for the offence under Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and sentenced to undergo 1 year Simple Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month Simple Imprisonment. The period of substantive sentence shall run concurrently. Total fine amount for A1 is Rs.2000/- and for A2 is Rs.2000/-. The period of imprisonment already undergone shall be set off. 60 days from today to surrender before the trial Court is granted to the respondents/accused, failing the trial Court is directed to issue warrant to the accused/respondents and remand them to prison to serve the period of sentence imposed by this Court.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

- 1.The Chief Judicial Magistrate cum Special Judge, Chengalpattu.
(requesting to serve copy of Order on the accused)
- 2.The Inspector of Police,
Vigilance and Anti-Corruption, City-2, Detachment, Chennai-20.
- 3.The Public Prosecutor, High Court, Madras.

+1cc to MR.John Sathyan, Advocate SR.No.20043

सत्यमेव जयते

CrI.A.No.344 of 2010

KS (CO)

GN(16/03/2018)

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