

Bail Slip

The Appellant/Accused viz V.Vijaya Raghavan was directed to be released on bail as per order of this Court dated 14/03/2012 in CRL.MP.No.1/2012 in CRL.A.No.185/2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 28.02.2017

Judgment Pronounced On : 18.01.2018

CORAM

THE HONOURABLE MR.JUSTICE S.BASKARAN

Cr1.A.No.185 of 2012

V.Vijaya Raghavan

... Appellant

vs.

State rep. by
The Inspector of Police,
CBI/ACB,
Chennai
(RC.No.28(A) 2010)

... Respondent

Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 06.03.2012 passed by the learned Additional Sessions Judge, Puducherry at Karaikal, in Special C.C.No.1 of 2010.

For Appellant : Mr.S.Ashok Kumar and
Mr.V.Johnson Yuvaraj

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

JUDGMENT

The accused, Vijaya Raghavan, who is the sole accused, in Spl.C.C.No.1 of 2010, stood charged for offence punishable under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The learned Additional Sessions Judge, Puducherry at Karaikal, by its Judgment dated 06.03.2012, in Spl.C.C.No.1 of 2010, found the accused guilty, convicted and sentenced him to undergo rigorous imprisonment for six months and to pay a fine

of Rs.1000/-, in default to undergo simple imprisonment for two months for offence under Section 7 of Prevention of Corruption Act, 1988 and also convicted and sentenced to undergo rigorous imprisonment for one year and also to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for two months for offence under Sections 7, 13(2) read with Section 13(1)(d) of Prevention of Corruption Act. 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. The accused, while working as Regional Transport Officer at Karaikal, was on checking duty near Karaikal Port on 08.07.2010. On that day, the accused seized seven Lorries including two lorries bearing Registration No.TN-59-AZ-3516 and TN-24-U-8174, which belongs to the complainant/Armstrong Fernando, for overloading operating without permit and for non-production of records. The seized vehicles were handed over to T.R. Pattinam Police Station and check slips were issued to the respective drivers of the vehicles. However, the inspection records for the vehicle bearing Registration No.TN-24-U-8174 was not handed over to the driver, namely, P.W.10 Prabu. Even though, his signature is obtained for the said purpose. The complainant/P.W.1 was operating several Lorries and functioning as contractor for supplying boulders and other materials to the Marg Port, Karaikal in the name and style of Maximus Blue Metal. The above said two lorries were engaged by P.W.1 for transporting the materials to the said Karaikal Port. After the vehicles were seized, one Joe Velan, stated to be a Manager of P.W.1's company informed P.W.1 about the seizure of the vehicles. Thereafter, on the instruction of P.W.1/Armstrong Fernando, his friend P.W.2/Jaibabu met the accused and enquired about the seizure of the vehicles belonging to P.W.1. In that meeting, the accused is alleged to have demanded Rs.35,000/- as illegal gratification from P.W.2/Jaibabu friend of the complainant/P.W.1 for releasing the seized vehicles. The said factum of demand of Rs.35,000/- as illegal gratification by the accused was communicated to P.W.1/Amstrong Fernando by his friend P.W.2 Jaibabu. Since P.W.1 was not willing to pay any bribe amount, contacted the Superintendent of Police, CBI, Chennai through phone. On 08.07.2010, as per the directions of the said Superintendent of Police, P.W.1/Armstrong contacted P.W.11/ Lawrance, the Trap Laying Officer at Karaikal. On 09.07.2010 at about 10.00 a.m., after meeting, around 10.30 p.m., P.W.1 lodged Ex.P1 written complaint with P.W.11, who in turn forwarded the same to SP, CBI, Chennai one Murugan. On receipt of the said complaint, the said SP CBI, instructed P.W.11, who lay the trap and arrest the accused.

2.2. Accordingly, P.W.11 organized the trap proceedings and

requested P.W.3 Elangovan and another witness Thirugnana Sambantham to be present as independent witness. The complainant/P.W.1, on request by P.W.11, handed over a sum of Rs.35,000/- and the numbers of the said currency notes were recorded in the presence mahazar witness. P.W.11 demonstrated the trap proceedings and explained the significance of the phenolphthalein test and prepared Entrustment Mahazar Ex.P2. P.W.11 also instructed P.W.2 Jaibabu and the independent witness P.W.3 to hand over the bribe money only after the accused demanded the same. Thereafter, the trap party, including P.W.2 and P.W.3 Elangovan went to the office of the Regional Transport Office at Karaikal, where the accused was working. While, P.W.2 Jaibabu went inside with P.W.3, P.W.11, Trap Laying Officer Lawrance and his team mates waited out side the office building. After entering the office of the accused, P.W.2 introduced P.W.3 Elangovan as the staff of P.W.1, when the accused demanded money, P.W.2 took out the same from his packet and handed over it to the accused and after receiving the amount, put it down in his table drawer. Immediately, P.W.2 along with P.W.3 went out of the room of the accused and gave pre-arranged signal by removing his wrist watch.

2.3. On seeing the pre-arranged signal given by P.W.2, the Trap Laying Officer P.W.11 Lawrance immediately entered the office room of the accused and seized the tainted money from the table drawer of the accused under Ex.P3 recovery mahazar. Thereafter, P.W.11 conducted phenolphthalein test, which proved positive. P.W.11 also recovered another sum of Rs.54,500/- from the accused, which kept in the bag carried by him. Thereafter, P.W.11 prepared rough sketch of the place marked as Ex.P4. Then, the accused was arrested as per Ex.P5 arrest memo. Subsequently, P.W.11 took the accused to his residence and recovered a sum of Rs.1,13,000/- from his house. After sending the accused to the judicial custody, the Trap Laying Officer P.W.11 handed over to the records to P.W.13 Manivannan, Inspector of CBI, for further investigation. Thereafter, P.W.13, as per the instructions of the Superintendent of Police, took up the case for further investigation and after recording the statement of witnesses and obtained Ex.P14 sanction order from P.W.12 to prosecute the accused, laid a charge sheet against the accused under Section 7, 13(2) read with Section 13(1)(d) of Prevention of Corruption Act.

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.13 and produced Exs.P1 to P19 and M.Os.1 to 11, the incriminating evidence found in the prosecution side was put to the accused under Section 313 Cr.P.C., and he denied the same as totally false. He examined one Albert as D.W.1 and marked Ex.D1 to

Ex.D19. After analysing the evidence on record, the Additional Sessions Judge, Puducherry at Karaikal, found the accused guilty and convicted and sentenced the accused as narrated in the first paragraph of this judgment and imposed punishment. Aggrieved over the same, the appellant has preferred this appeal challenging the said finding of the trial Court.

4. The point for consideration is that as to whether the prosecution has established the charges framed against the accused beyond reasonable doubt?

5. Heard the arguments advanced by the learned counsel appearing for the appellant and the learned Special Public Prosecutor for CBI Cases and I have also perused the records carefully.

6. The learned counsel for the appellant contended that unless and until the factum of demand of illegal gratification by the accused is established, the case of the prosecution cannot succeed. It is further contended that the factum of demand of bribe by the accused was not established beyond reasonable doubt and the evidence of P.W.2 and P.W.3 are not sufficient to substantiate the allegation against the accused. It is the further contention of the learned counsel for the appellant that the contents in Ex.P2 Entrustment Mahazar and Ex.P3 Recovery Mahazar has been contradicted by P.Ws.1 to 3 in their oral evidence. The learned counsel for the appellant further contended that lodging of Ex.P1 complaint itself is doubtful. The further contention of the learned counsel for the appellant that P.W.1/complainant has no direct knowledge of the occurrence and he has given a false complaint to take revenge against the accused who was a very strict officer in discharging of his duties. The further contention of the learned counsel for the appellant is that the sanction order is not obtained properly and the procedure to be followed under the CBI Guideline Manual was not followed by P.W.11 and P.W.13. Thus, the learned counsel for the appellant contended that the demand of bribe prior to the trap as well as at the time of trap has not been proved by the prosecution by reliable evidence. The further contention of the learned counsel for the appellant is that the trap witness P.W.3 Elangovan is not an independent witness and there is no material available to show that he was authorised by his higher officials to be present as a witness for the trap proceeding is credibility is under serious doubt. Thus, the learned counsel for the appellant contended that in the absence of any evidence to prove the demand of bribe by the accused, even though the tainted notes were proved to have been recovered from the accused, that itself is not sufficient to prove the fact of demand and acceptance of bribe by the accused. Thus the learned counsel for the appellant contended that the evidence produced by the prosecution has neither quality nor credibility and as such the conviction imposed on the accused by

the trial Court deserves to be set aside. Hence, he prays for allowing this appeal.

7. Per contra, the learned Special Public prosecutor for CBI Cases contended that the prosecution has proved its case by adducing clear and cogent evidence. It is the contention of the prosecution that P.W.3, an independent witness has categorically spoken about the demand and acceptance of bribe amount by the accused at the time of trap and demand made by the accused prior to trap proceeding is clearly spoken to by P.W.2 Jaibabu. It is the further contention of the learned Special Public prosecutor for CBI Cases that the result of phenolphthalein test is positive and that itself is sufficient to corroborate the evidence of P.W.2 and P.W.3 to prove the factum of demand and acceptance the bribe amount by the accused. The contention of the accused about the complainant is being motivated to give a false complaint in view of the strict action taken by the accused is unacceptable. According to the prosecution, the trial Court analyse the entire evidence available on record properly and correctly recorded the conviction of the appellant. Thus, the prosecution prays for dismissal of the appeal.

8. This Court gave its careful and anxious consideration to the rival contentions and thoroughly scanned the entire evidence available on record and also perused the impugned judgment under challenge.

9. The case of the prosecution rest upon the evidence of P.W.1/complainant, his friend P.W.2/Jaibabu and the independent witness P.W.3/Elangovan to prove the fact of demand and acceptance of the bribe by the accused. It is an admitted fact that P.W.1/Armstrong Fernando/Complainant has no personal knowledge about the demand and acceptance of bribe by the accused. P.W.1 Armstrong Fernando in his evidence stated that he was operating about 30 to 40 lorries for his business of supplying materials to Karaikal Port and his company affairs is looked after by him, Superintendent Joyvelan who is based at Karaikal. According to P.W.1, his Superintendent Joyvelan (who is not examined before the trial Court) contacted him over phone on 08.07.2010 and informed about the seizure of two lorries by Regional Transport Officer, Karaikal at about 8.00 a.m, to 8.30 a.m. Immediately, P.W.1, who was in Chennai at that time, contacted his friend P.W.2/Jaibabu at Karaikal and asked him to go to Regional Transport Office, Karaikal to find out the reason for seizure of the lorries. Thereafter, P.W.2 after going over to TRO Office, Karaikal, informed P.W.1 about the demand of Rs.35,000/- by the accused as bribe amount to release the seized vehicle. Subsequently, P.W.1 reached Karaikal on 08.07.2010 around 6.00 p.m., and after enquiring P.W.2/Jaibabu in person, P.W.1 was reluctant to pay any bribe amount, contacted CBI

Officer at Chennai over phone and informed him about the same. Thereafter, P.W.1 was instructed to meet P.W.11/Trap Laying Officer[TLO] on the next day morning. Accordingly, on 09.07.2010 at about 10.30 a.m., P.Ws.1 and 2 went to the Tourist Bungalow near Karaikal bus stand to meet P.W.11 Lawrance who was the TLO, who was present there. After P.W.1 explained to him about the demand made by the accused, P.W.11 sought for a written complaint. Accordingly, Ex.P1 written complaint was lodged by P.W.1/Armstrong Fernando. Thus, the complainant/P.W.1, who has not met the accused has lodged Ex.P1 complaint as stated above. Pointing it out, the learned counsel for the appellant/accused contended that lodging of the complaint itself is in doubt in view of the contradictions about the same in the evidence of P.W.2 and P.W.11 about the time and manner of lodging the complaint.

10.As stated above, P.W.1 has stated that he met P.W.11/Trap Laying Officer at about 10.30 a.m., in the Tourist Bungalow at Karaikal. In his cross examination, P.W.1 stated that on 09.07.2010 between 9.30 a.m., and 10.00 a.m. P.W.11 contacted him and thereafter he went to the Tourist Bungalow, Karaikal between 10.00 a.m. and 10.30 a.m. and meet P.W.11, who is the TLO. After explaining to P.W.11 about the demand of the accused, P.W.1/complainant prepared a written complaint there itself, which took him about one hour to write down the complaint. Thus, only after meeting P.W.11 at around 10.30 a.m., Ex.P1 complaint was prepared in the Karaikal Tourist Bungalow itself by the complainant/P.W.1 and the same took about one hour. P.W.1 further stated that when they went there, P.W.3 Elangovan and other independent witness Thirugnana Sambantham were not present and both of them arrived only by 12.00 noon to 12.15 p.m. On the other hand, P.W.2, who accompanied P.W.1 to the Tourist Bungalow at Karaikal stated in his cross examination that on 09.07.2010, he went along with P.W.1 to the Tourist Bungalow at Karaikal by 10.00 a.m., and within 10 minutes P.W.3 Elangovan and other witness Thirugnanasambanthm arrived there. P.W.11 also stated that he did not remember as to whether P.W.1 written down the complaint in the Tourist Bungalow or arrived there with the written complaint.

11.In contrary to the above said evidence of P.W.1, the Trap Laying Officer P.W.11 Lawrance stated that around 10.30 a.m., on 09.07.2010, P.Ws.1 and 2 met him in Room No.203 of Government Tourist Bungalow at Karaikal and lodged Ex.P1 complaint. In his cross examination P.W.11 stated that the complainant P.W.1 came with prepared written complaint and lodged the complaint immediately after meeting him. P.W.11 further stated that after receiving Ex.P1 complaint, he enquired P.W.1 for about one hour. However, the same is contradicted by P.W.1, who stated in his cross examination that after lodging complaint, he was not

examined by P.W.11. Thus, as pointed out by the learned counsel for the accused while P.W.1 stated that the written complaint was prepared by him after arriving in the Tourist Bungalow at Karaikal, which took him about one hour to do so. P.W.11/the Trap Laying Officer has given a different version that P.W.1 arrived with a prepared written complaint and lodged it immediately on arrival. Thus, the above said contradiction in the evidence of P.W.1, P.W.2 and P.W.,11 creates doubt about the credibility of the prosecution evidence as well as about lodging of complaint.

12.While, P.W.1 stated that they met the Trap Laying Officer around 10.30 a.m., and thereafter he took one hour to prepare Ex.P1 complaint and the independent witness P.W.3 and another witness arrived there only at 12.15 p.m., the same is not corroborated by P.W.2. P.W.11 further deposed in his cross examination that he completed his enquiry with P.W.1 by 11.30 a.m., and thereafter took another one hour to enquire about the accused. P.W.11 further stated that he did not register first information report on the basis of Ex.P1, but the Superintendent of Police alone registered the first information report Ex.P15 on the basis of Ex.P1 written complaint. P.W.11 further stated that after receiving the complaint, he went out to enquire about P.W.1 and accused. He further stated that he forwarded Ex.P1 complaint and his report to his higher officials through fax. However, P.W.11 admitted that there was no fax machine in Room No.203 of the Tourist Bungalow at Karaikal. P.W.1 also stated that he did not visit the T.R.Pattinam Police Station and did not examine either the owners or drivers of the seized lorry. Thus, the contradiction on the prosecution side evidence as stated above, create a doubt about the time of registering of the complaint as well as the manner in which it was registered.

13.The learned counsel for the accused further contended that even assuming the tainted money was recovered from the accused unless and until, the factum of demand is proved, the case of the prosecution cannot succeed. The learned counsel for the accused further submitted that in the case on hand there is total contradictions about the demand made by the accused in the statement recorded by P.W.13, Inspector of Police and the oral evidence of P.Ws.1,2 and 3 in that record. In such circumstances, the learned counsel for the appellant relying upon the ruling of the Apex Court reported in C.M.GIRISH BABU VS. CBI, COCHIN, HIGH COURT OF KERALA reported in (2009) 3 SCC 779, contended that even the recovery of tainted money and the result of positive phenolphthalein test is not sufficient to prove the charge against the accused unless the initial demand made by the accused is established. In the said rulings, it is held as follows:-

"18. In Suraj Mal Vs. State (Delhi Admn.)

reported in [(1979) 4 SCC 725], this court took the view that mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show the accused voluntarily accepted the money knowing it to be bribe.

24. It was argued by Shri U. U. Lalit, Senior counsel, that the circumstances found by the High Court in their totality do not establish that the appellant accepted the amount of Rs.1500/- as gratification. Having examined the findings of both the Courts, we are satisfied that the appellant has proved his case by the test of preponderance of probability and we accordingly reach the conclusion that the amount was not taken by the appellant as gratification. He was made to believe that amount paid to him was towards the repayment of loan taken by PW2 from Accused 1."

14. Similarly, the learned counsel appearing for the accused also relied upon the rulings of the Apex Court in C.SUKUMARAN VS. STATE OF KERALA reported in (2015) 11 SCC 314, where in it has held as follows:-

"13. With reference to the above mentioned rival legal contentions urged on behalf of the parties and the evidence on record, we have examined the concurrent finding of fact on the charge made against the appellant. It has been continuously held by this Court in a catena of cases after interpretation of the provisions of Sections 7 and 13(1)(d) of the Act that the demand of illegal gratification by the accused is the sine qua non for constituting an offence under the provisions of the Act. Thus, the burden to prove the accusation against the appellant for the offence punishable under Section 13(1)(d) of the Act with regard to the acceptance of illegal gratification from the complainant PW2, lies on the prosecution.

14. In the present case, as has been rightly held by the High Court, there is no demand for the illegal gratification on the part of the appellant under Section 7 of the

Act. Therefore, in our view, the question of acceptance of illegal gratification from the complainant under the provision of Section 13 (1)(d) of the Act also does not arise. The learned Special Judge has come to the erroneous conclusion that the appellant had received the money and therefore he had recorded the finding that there was demand and acceptance of the bribe money on the part of the appellant and convicted and sentenced the appellant. However, the High Court on re-appreciation of evidence on record has held that the demand alleged to have been made by the appellant from the complainant PW2, was not proved and that part of the conviction and sentence was rightly set aside in the impugned judgment. However, the High Court has erroneously affirmed the conviction for the alleged offence under Section 13(1)(d) read with Section 13(2) of the Act, although as per law, demand by the appellant under Section 7 of the Act, should have been proved to sustain the charge under Section 13(1)(d) of the Act."

15. In the light of the above said rulings relied upon by the learned counsel for the appellant, it is to be seen whether sufficient evidence is placed before this Court to prove the fact of demand and acceptance of the bribe by the accused. As stated earlier, P.W.1/complainant has not met the accused before lodging his complaint. P.W.1 stated in his evidence that after trap proceeding was explained to him and other official witness, Ex.P2 Entrustment Mahazar was prepared and he went along with P.W.11/Trap Laying Officer in his Jeep, where as P.W.2 and other witnesses went to the office of the accused. P.W.1 further stated that around 3.00 p.m., while P.Ws.2 and 3 went inside the office of the accused, himself and P.W.11 Trap Laying Officer waited out side the accused room. Thus, P.W.1 has no personal knowledge about the pre-trap demand or demand made by the accused during the trap proceedings.

16. The only other evidence for the demand made by the accused during the trap proceeding is the independent witness P.W.3, who was working as General Manager, Central Bank of India, at that point of time. P.W.3 stated that he was summoned by the CBI on 09.07.2010 and accordingly he met P.W.11 at about 1.00 p.m., at Tourist Bungalow Karaikal. After P.W.11 explained to him about that trap proceedings, he went along with P.W.2 to the office of the accused at about 2.30 p.m. As he went inside the

office of the accused along with P.W.2 they were asked to sit down by the accused. Thereafter, the accused enquired P.W.2 about him (P.W.3) to which P.W.2 replied that P.W.3 is the Accountant under P.W.1 and he has come with money. Then the accused questioned P.W.3 for sending lorry load as per their wish and thereafter asked him to stay out side. P.W.3 stated that he pretended to go out but stayed in side the room itself and watched the happenings. According to P.W.3, the accused enquired P.W.2 as to whether he brought the money to which P.W.2 answered in positive and took out the amount from his pocket and handed over the same to the accused. The said amount was received by the accused and he placed it in his drawer and promised to complete the work. Thereafter, himself and P.W.2 came out of the office of the accused and pre-arranged signal was given by P.W.2. Thus, P.W.3 states that he was asked by the accused to go out, but, he stayed back and watched the occurrence in the accused room. However, the learned counsel for the accused pointing out the same, contended that the oral version of P.W.3 is an improvement over the statement given by him to the Investigating Officer of the case. In that regard, the learned counsel for the appellant pointed out that the admission of P.W.13, Investigating Officer of the case that nothing is stated by P.W.3 in his 161 Cr.P.C. stated about himself remaining inside the room of the accused itself, even after he was asked to go out by the accused. P.W.13 also admitted that nothing was stated in the statement given to him about the accused asking P.W.2 as to whether he has brought money and after receiving the same, promising to finish the work as told by him. Thus, the claim of P.W.3 about remaining inside the room of the accused and observing the demand and acceptance of bribe by the accused is in doubt, since what he has stated before the Court in his evidence is not reflected in the statement given to P.W.13. As such the evidence of P.W.3 is not sufficient to prove the factum of demand of bribe by the accused.

17. As stated above, P.W.1/complainant was not present inside the accused room during the trap proceedings. The independent witness P.W.3 evidence is disputed in the light of the above said circumstances. The learned counsel for the accused further contended that there is no materials available on record to prove that P.W.3 was authorised by his superiors to be present as trap witness. Further, it is contended by the learned counsel for the accused relying upon the ruling of the Apex Court reported in SOM PARKASH Vs. STATE OF PUNJAB in AIR 1992 SC 665, that witness forming part of the riding party cannot be considered as independent witness.

18. In the case on hand, the evidence of P.W.3, lacks of credibility in view of the improvement made in his evidence over the statement given by him to P.W.13, Inspector of Police. The other witness P.W.2/Jaibabu, is a close friend of the complainant/ P.W.1. According to him, they left the Tourist Bungalow by 2.35 p.m., and reached the office of the accused by 2.45 p.m. and he introduced P.W.3 as the accountant of P.W.1 and immediately, the accused asked P.W.3 to go out. Accordingly, P.W.3 went out of the room and watched the proceedings by standing near the door. The accused received Rs.35,000/- from P.W.2 as bribe amount and kept it in his table drawer. Immediately, P.W.2 came out of the room and gave pre-arranged signal to P.W.11 and thereafter P.W.11 rushed inside the office and secured the accused. Thus, about the demand and promise made by the accused, there is total contradiction between the evidence of P.W.2 and P.W.3. Further, P.W.2 has not stated any thing about any demand being made by the accused before he hand over Rs.35,000/-. Similarly nothing is stated by P.W.2 about the accused promising to finish the work on receipt of the amount. On the other hand, P.W.2 in his cross examination admitted that he has not stated in his statement given to the police about any conversation with the accused before introducing P.W.3 to the accused. P.W.2 further stated that immediately after entering the accused room, himself and P.W.2 sat down and the accused shouted P.W.2 for violating the rules. P.W.3 also admitted that after shouting at P.W.3 he was asked to go out of the room by the accused. P.W.2 further admitted in his cross examination that on 09.07.2010 after himself and P.W.3 went inside the office of the accused, P.W.3 was asked to go out by the accused. Thus, as to whether P.W.3 was present inside the room of the accused when the amount was already handed over to him itself is doubtful. In such circumstances, as rightly contended by the learned counsel for the accused, the evidence of P.Ws.2 and 3 does not inspire confidence of this Court and the same is not sufficient to prove the alleged demand of bribe by the accused during the trap proceeding. As such, the prosecution has not proved that any demand was made by the accused.

19. Further, the learned counsel for the accused contended that the averments in Ex.P2 Entrustment Mahazar and Ex.P3 recovery mahazar is falsified and contradicted by the evidence of P.Ws.1 to 3 and that itself was go to show that false case has been foisted on the accused. The complainant/P.W.1 in his evidence has categorically stated that he travelled with P.W.11 Trap Laying Officer in his Jeep and stayed with him out side the office of the accused when P.W.2 and P.W.3 went inside the accused office. Likewise, P.W.2 and P.W.3 also stated in their evidence that both of them only went to the office of the accused and P.W.1 did not accompany them. However, in Ex.P3 recovery

mahazar, it is stated in the beginning itself that P.Ws.1, 2 and 3 went inside the Regional Transport Officer chamber, while the Trap Laying Officer and other team members took up the position outside the Regional Transport Office. In Ex.P3 it is also found that P.W.11 asked P.W.2 as to what transpired between himself and the accused, once he(P.W.2) along with independent witness and the complainant Armstrong entered the cabin of the accused. It is also recorded in Ex.P3 that P.Ws.2 and 3 informed P.W.11 that after entering the cabin of the accused, P.W.1 Armstrong was introduced to the accused by P.W.2 and both of them requested the accused to release the lorries detained by him. In Ex.P3 it is also found that the complainant was asked as to what transpire when he went inside the Regional Transport Officer Chambers along with P.W.2 and independent witness and P.W.1 confirmed the version given by P.W.2 and P.W.3. Thus, in Ex.P3 recovery mahazar in different paragraphs, it is very clearly recorded that P.W.1 Armstrong who went inside the office of the accused along with P.W.2 and P.W.3 and participated in the trap proceedings. However, the same has been denied and given a go by P.Ws.1 to 3, while they were in the box. P.W.1 in his evidence categorically stated that himself and P.W.11 Trap Laying Officer waited outside the office of the accused, while P.Ws.2 and 3 went inside the said office. P.W.1 also stated that only P.Ws.2 and 3 went inside the room of the accused and he never accompanied them. P.W.1 also stated that he never demanded the accused to release the vehicle seized by him. Likewise, P.W.2 stated in evidence that on 09.07.2010, P.W.1 did not go inside the chambers of the accused and he was not introduced to the accused by him. P.W.2 also stated that no discussion took place between the accused and himself. The independent witness P.W.3 also stated that from the Tourist Bungalow, P.W.1 did not accompany him and P.W.1 never came inside the chambers of the accused. P.W.3 also stated that it is incorrect to say that P.W.1 came with them to the accused chamber and he was introduced to the accused. P.W.11, the Trap Laying Officer in his evidence admitted that P.Ws.2 and 3 alone went to the chambers of the accused, while he waited outside along with his team members. P.W.11, the TLO further stated in his evidence that it is correct to state that P.W.1 did not meet the accused on 08.07.2010. P.W.11 also admitted that it is incorrect to say that P.Ws.2 and 3 went together to the accused chamber. P.W.11 further admitted that in Ex.P3 it is stated as if, P.Ws.1 to 3 went to the chambers of the accused together and conversation took place between the accused and P.W.1. The Investigating Officer of the case who deposed as P.W.13 admitted that the averments about P.W.1 accompanying P.Ws.2 and 3 to the office of the accused and meeting him in person as stated in Ex.P3 is not correct. Thus, the contents of Ex.P3 recovery mahazar is totally contradicted by prosecution witness which is in the box. Thus, as the averment in Ex.P3 is given a go-by by P.Ws.1 to 3, doubt arises as to whether

really the evidence available on record is bonafide and the same can be acted upon.

20. As stated above, the presence of P.W.3 inside the chamber of the accused appears to be doubtful. It is the evidence of P.Ws.2 and 3 that the accused asked P.W.3 to go out of his chamber. Thereafter, from which position P.W.3 witnessed the negotiation between P.W.2 and the accused is not clear. P.W.2 has not stated anything about the accused demanding bribe amount during trap proceedings. P.W.11, the Trap Laying Officer stated that Ex.P4 sketch was prepared by him. According to him, the accused room was covered with glass door, but, he does not remember whether it was a full glass door or half door. It is further admitted by him that in Ex.P4 sketch nothing is mentioned about the presence of name plate of the accused inside the room. P.W.11 also stated that he does not verify as to whether the accused room door was provided with self locking door or not. In such circumstances, in view of the contradictions in the evidence of P.Ws.2 and 3, it is doubtful whether P.W.3 could have witnessed anything which accused inside the accused chamber after he was asked to go out. Further, there is nothing in the evidence of P.Ws.2 and 3 to prove that any demand was made by the accused during the trap proceedings. P.W.13, the Inspector of Police admitted in his evidence that in the statement recorded by him nothing is mentioned by P.W.3 about the demand made by the accused and the reply given by P.W.2. In such circumstances, as rightly contended by the learned counsel for the accused the factum of demand of bribe amount by the accused during trap proceedings is not substantiated by the prosecution. In such circumstances, following the above said rulings relied upon by the defence it is clear that as the factum of demand is not proved, mere recovery of tainted money alone is not sufficient to prove the guilt of the accused.

21. The learned counsel for the accused further contended that in respect of two vehicles bearing Registration No.TN-24-U-8174 and TN-59-AZ-3516, a total sum of Rs.34,950/- was levied as fine and the same was collected as evidenced by Ex.D7 and Ex.D8. Pointing it out, the defence contended that P.W.2 handed over Rs.35,000/- to the accused only towards fine amount and P.W.2 was told by the accused to pay the said amount directly to the cashier, but, P.W.2 deliberately left behind the said amount with an intention to falsely implicate the accused in this case. In that regard, the learned counsel for the accused relying upon the contents of Ex.P3 recovery mahazar pointed out that the accused has informed P.W.11 that the sum of Rs.35,000/- left behind by P.W.2 was only penalty amount levied for the lorries detained by him. Thus it is contended by the defence that the above said explanation of the accused was not considered by the trial Court properly.

22.It is further contended by the learned counsel for the accused that as numbers of vehicles belonging to P.W.1 was seized, he was angry with the department and deliberately lodged this false complaint. Further, pointing out the admission of P.W.1/complainant in his evidence that seizure of vehicles will affect his profession and if the vehicles are detained for 4 to 5 days, heavy loss will occur to him, it is contended by the learned counsel for the accused that as the accused has seized number of vehicles owned by the complainant, to take revenge for the same, P.W.1 has falsely implicated the accused in this case. It is also pointed out by the learned counsel for the accused that being a duty conscious and strict officer, false complaint has been lodged against him. In support of their contention, the defence relied upon Ex.D15 to show that only during the period when the accused was working as Regional Transport Officer, Karaikal, huge fine amount was collected from illegally operated vehicles. Similarly, the admission of P.W.3 that on introduction, the accused shouted P.W.2 for committing violation and the admission of P.W.5 that during the tenure, the accused took severe action against the rule violators is also relied upon by the defence to contend that a fake case has been foisted on the accused. Likewise, P.W.7 stated that on 06.07.2010, 07.07.2010 and 08.07.2010, number of vehicles were seized by the accused and the same was published both in print and official media. Likewise, the driver of the vehicle owned by P.W.1, who deposed as D.W.10 stated that while seizing his vehicle in the Harbour, the accused shouted at him for overloading and immediately sent his vehicle to the T.R.Pattinam Police Station. Thus, it is evident from the admission of P.Ws.2, 3, 5, 7 to 10 that the accused took strict action against the offending vehicles during the relevant period of time. Pointing it out, the learned counsel for the accused contended that as number of vehicles belonging to P.W.1 was seized resulting in loss to him as admitted by P.W.1 himself, there is motive to take revenge against the accused and the same resulted in lodging the Ex.P1 false complaint against the accused without any basis. Thus, the learned counsel for the accused contended that in the absence of any evidence to prove the demand and acceptance of bribe by the accused, the case of the prosecution has to fail. Taking into account the above said facts, the contention of the accused it to be accepted.

23.In the present case, the prosecution has failed to prove the factum of demand and acceptance of bribe by the accused with acceptable evidence. The only other materials available is recovery of tainted currency notes from the possession of the accused. However, the accused clearly explained that the calculated penalty amount for the seized vehicle was Rs.35,000/-

and P.W.2 has left before the said amount in his table, instead of remitting the same with cashier. Further, as stated above, in the light of contradictions between the statement recorded by the Inspector of Police and the oral evidence of the witnesses before the Court, the foundation of the prosecution case has been shaken to great extent. In such circumstances, grave doubt arises about the veracity the case and the subsequent events as projected by the prosecution, in my considered opinion is not sufficient to prove the guilt of the accused/appellant beyond all reasonable doubts. Hence, the appellant is entitled for benefit of doubt and the appeal is to be entertained. The Point is answered accordingly.

24. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned Additional Sessions Judge, Puducherry at Karaikal, in Special C.C.No.1 of 2010 dated 06.03.2012, is set aside and the appellant/accused is acquitted from all the charges levelled against him. 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(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional Sessions Judge,
Puducherry at Karaikal.
- 2.The Inspector of Police,
CBI, ACB, Chennai.
- 3.The Special Public Prosecutor for CBI Cases,
High Court, Madras.
- 4.The Section Officer,
Criminal Section,
High Court, Madras-104

+1cc to Mr.S.Ashok Kumar, Advocate, S.R.No.3944

+1cc to Mr.K.Srinivasan, Advocate, S.R.No.4467

Cr1.A.No.185 of 2012

MP(CO)
GSP(25/09/2018)