

BAIL SLIP

The appellant herein/Accused Viz. A.Selvaraj, S/O. Arunachalam, was directed to be released on bail as per order of this court dated 05.08.2016 made in CrI MP. No.8227 of 2016 in CrI A No.605 of 2016.

IN THE HIGH COURT JUDICATURE AT MADRAS

Reserved on :14.06.2018

Pronounced on :.19.06.2018

Coram:

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No. 605 of 2016

A.Selvaraj .. Appellant/Accused

/versus/

State rep.by
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Dharmapuri. .. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code praying to set aside the judgment dated 18.07.2016 in Spl.C.C.No.7 of 2008 on the file of the Special Court cum Chief Judicial Magistrate, Dharmapuri.

For Appellant :Mr.R.John Sathyan

For Respondent :Mr.K.Prabakaran, APP

J U D G M E N T

This criminal appeal under Section 374(2) of the Criminal Procedure Code is directed against the judgment dated 18/07/2016 passed in Spl.C.C.No.7 of 2008 on the file of the Special Court-cum-Chief Judicial Magistrate, Dharmapuri.

2.The accused is the appellant herein. Aggrieved by the judgment of conviction holding him guilty of offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, the present appeal is filed.

3.Prosecution case as projected through its witnesses:
The defacto complainant Thiru.K.Shanmugam, S/o Kuppan (PW-

2) a resident of Kokkarapatty Village is an agriculturist. To avail crop loan in the Primary Agricultural Co-operative Bank, Parayapattypudur, he approached its Secretary Thiru.Vediyappan (PW-7). Thiru.Vediyappan told Thiru. K.Shanmugam to get chitta for his land from the Village Administrative Officer. To get the chitta for his land, PW-2 Thiru. K.Shanmugam met the accused Thiru.A.Selvaraj the Village Administrative Officer of Kokkarapatty at his office located at Erumiyampatty on 13/12/2002 and requested him to issue chitta to get crop loan. The accused demanded Rs.500/- as illegal gratification from PW-2 [Thiru.K.Shanmugam] to give chitta. When PW-2 met the accused again on 23/12/2002, the accused reiterated his illegal demand and told PW-2 to give Rs.500/- on 24/12/2002 and get the chitta.

4. PW-2 is not inclined to give bribe to get chitta for his land, went to the office of the Deputy Superintendent of Police, V&AC, Special Unit Krishnagiri on 24/12/2002 and met PW-7 [Mr.K.Balan] the Deputy Superintendent Police, DV&AC and made oral complaint about the illegal demand of Rs.500/- by the accused to issue chitta. The oral complaint was reduced into writting. After recording the statement of Thiru. K.Shanmugam (PW-2), First Information Report (Ex.P-17) was registered against Thiru.Selvaraj, Village Administrative Officer. Two official witnesses Thiru.Shiek Dawood and Thiru.M.P.Indrajith (PW-3) were called to witness the trap. The significance of the phenopthalien test was demonstrated to the defacto complainant and the official witnesses. The currency numbers on the Five hundred rupees note were noted. The currencies were smeared with phenopthalien and entrusted to the defacto complainant PW-2. He was instructed to meet the accused and give the tainted money only if the accused demand it. Ex.P-3 entrustment mahazar was prepared recording the events and signed by the witnesses.

5.The defacto complainant Thiru.Shanmugam (PW-2) and the decoy witness Mr.Indrajith (PW-3) reached the Village Administrative Office, Kokkarapatti Village on 24/12/2002 at about 3.00 pm. The accused was not at his seat. They waited for the arrival of the accused. At about 5.00 p.m., the accused came to the office. On seeing PW-3 along with PW-2, the accused enquired with PW-2 about PW-3 and thereafter, asked whether PW-2 has brought the money. PW-2 answered in affirmative and gave the tainted money of Rs.500/- to the accused. The accused received it and kept it in his shirt pocket. PW-2 and PW-3 left the place and gave the pre-arranged signal to the trap team waiting outside. On receipt of the signal, the trap team led by PW-7, Thiru.Balan entered the office of the accused. Phenolphthalein test conducted both hands of accused proved positive. When he asked about the money received from PW-2, the accused took out Rs.500/- (five 100 rupees notes - M.O. 1 series) from his left side shirt pocket and produced it to PW-7. The numbers in the

currency produced by the accused were compared with the numbers noted in the entrustment mahazar and found tallied. The shirt (M.O.7) of the accused was recovered after giving an alternate shirt purchased at nearby shop. The pocket portion was subjected to the phenolphthalien test and the resultant solution was collected separately. Mahazar Ex.P-4 was drawn for the recovery of Rs.500/- (M.O. 1 series), the samples solutions of the hands wash and shirt wash (M.Os. 4 to 6) and the shirt of the accused marked as M.O.7. The rough sketch Ex.P-5 drawn at the time of trap indicating the SOC.

6. Apart from the complaint, First Information Report, Entrustment mahazar and recovery mahazar, to show that the defacto complainant PW-2 had agricultural property in his name and entitled for availing crop loan, the Secretary of the Primary Agricultural Co-operative Society Thiru. VEDIYAPPAN was examined. The 'A' Register of the Kokkarapatti Village Ex.P-7, the 'A' Register of the Erumiyampatty village Ex.P-8 and the photocopy of the certified copy of the title deed in the name of the defacto complainant Ex.P-10 were relied. To show the accused attended the office on the day of trap, the Attendance Register of Kokkarapatty Village Administration Office Ex.P-9 was relied. To prove the sample solutions collected from the hands wash and shirt wash of the accused found presence of phenolphthalien the chemical analyst report Ex.P-16 was marked through the Chemical Examiner Smt.Banumathi [PW-9]. Mr.K.B.Subramaniam, who accorded sanction (Ex.P-1) to prosecute the accused was examined as PW-1.

7. Charges and finding of the trial Court:

The trial Court framed charges under Sections 7 and 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988. The prosecution has examined 11 witnesses. 18 Exhibits and 7 Material Objects were marked. After affording opportunity to the accused to explain the evidence against him, found accused guilty of charges under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, sentenced the accused to undergo one year Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default to undergo 3 months Simple Imprisonment for each of the offences. Trial Court ordered the substantive sentence to run concurrently and the period of sentence already undergone to be set off.

8. Grounds of the appeal and the rival submissions of the Counsels:

The judgment is impugned on the ground that, the trial Court failed to see the order according sanction to prosecute is a defective and suffers non-application of mind. In Ex.P-1, it is mentioned that the Sanctioning Authority [PW-1] before according sanction carefully examined the materials such as, the copy of the First Information Report, Statement of witnesses and

Thiru.A.Selvaraj (accused). The statement of the accused mentioned in the sanction order Ex.P-1 has not been seen the light of the day. It is mandatory under Rule 47 of the Vigilance Manual to afford opportunity to the officer caught in the trap to explain about the tainted money he received. The explanation so made has to be recorded and placed before the Sanctioning Authority for him to apply his mind independently before according sanction. In this case, Ex.P-1 was prepared by the prosecution and PW-1 has signed on the dotted lines of the sanction order without applying his mind and without perusing documents. In alternate, it must be, the prosecution had burged the explanation offered by the accused from the scrutiny of the Court knowing that it will prejudice the case of the prosecution. Either way the case of the prosecution ought to fall.

9.PW-2 admits that he lodged the complaint against the accused at the instigation of the Village Assistant Thiru.Gopal [PW-4] and the money used for trap was given to him by one Thiru.Vajiram. Whereas, the case of the prosecution is that, the defacto complainant brought with him the trap money, when he came to the Deputy Superintendent of Police office to give the complaint. This material contradiction makes the defacto complainant as an unreliable witness. Admittedly, he is an accused in ganja case and the other IPC offences. He was frequently troubling the accused to issue certificates to get bail. The accused protested and refused to give certificate. Disgrndled by that he has lodged a false complaint as if the accused refused to give Chitta.

10. In fact, the defacto complainant is not entitled to get chitta since he has no property either at Kokkarapatty village or at Erumiyampatti Village. In Exs.P-7 and P-8 'A' Registers of these two Villages nowhere mentioned the name of the defacto complainant as land owner. The photocopy of the certificate copy of the sale deed Ex.P-10 is not an admissible document. The prosecution has not proved from whom and how Ex.P-10 came on the file. To show that the defacto complainant PW-2 had agricultural property in his name and entitled for availing crop loan, the 'A' Register of the Kokkarapatti village Ex.P-7, the 'A' Register of the Erumiyampatty village Ex.P-8 and the certified copy of the title deed in the name of the defacto complainant Ex.P-10 are relied by the prosecution. PW-5 [Mr.R.Sathyamoorthy] VAO in charge of Kokkarapthy village had deposed that on 04.01.2003 in response to the summon received from the office of the Superintendent, Vigilance and Anti-Corruption, Dharmapuri he handed over the 'A' Registers Exs.P-7 and P-8. Whereas the Trap Laying Officer Thiru.Balan[PW-10] had deposed that he seized these documents on the day of trap itself. This material contradiction between the evidence of PW-

5 and PW-10 is sufficient enough to expose the falsehood of the prosecution case.

11. As far as the allegation of the prosecution that the accused demanded and received the tainted money and kept in his shirt pocket, is highly imaginary and baseless. The concoction in the allegation could be seen from the contradictions of the prosecution witnesses. Both the witnesses to the trap namely, PW-2 and PW-3 admit in their chief examination itself that the Trap Laying Officer [PW-10] immediately after entering the room held the hands of the accused and thereafter, phenolphthalein test was conducted and his hands wash was collected from the accused on the day of the trap. The alleged recovery of shirt M.O.7 and presence of phenolphthalein in the pocket portion is highly unbelievable and the concoction could be easily found from the evidence of PW-3 who did not say anything about the seizure of the shirt or the accused being provided with alternate shirt purchased from the village textile shop. Whereas PW-10 being the trap laying officer had spoken about the seizure of the shirt M.O.7 and had deposed that he gave an alternate shirt to the accused which was purchased from the Kokkarapatty village textile shop. He has not produced any bill for the purchase of a shirt. PW-3, who supposed to be the witness to the entire trap proceedings including seizure of the shirt M.O.7 and giving alternate shirt to the accused has not whispered about it. The seizure memo does not even mention about the colour of the shirt seized from the accused.

12. The Learned counsel for the appellant harping on the admission of the defacto complainant [PW-2] that he had been jailed several times for political reasons and for NDPS offence would submit that there was animosity between the appellant/accused and the complainant/PW-2 regarding issuing solvency certificate for surities to get bail. Further, PW-2 had no patta in his name. Hence, he is not entitled for chitta. Infuriated by the refusal to issue chitta, the complaint was lodged by PW-2. The Trap Laying Officer [PW-10] without ascertaining the truth, had foisted the case in support of PW-3, who is a pocket witness for the prosecution. The prosecution case bristles with lapses in the sanction order, falsehood in the complaint and malice of complainant. The improbability about the manner in which the tainted money alleged to have recovered, all put together renders the prosecution case unbelievable. Therefore, the trial Court judgement warrants reversal.

13. Per contra, the learned Additional Public Prosecutor would submit the fact that PW-2 an agriculturist and A class member of the Pariyapatty Agricultural Co-operative Society Bank, who used to avail crop loan every year to meet out the agricultural expenses and when he sought crop loan for the year

2002, he was advised to get chitta is spoken by PW-2 and corroborated by PW-7 the Secretary to the Pariyapatti Primary Agricultural Co-operative Society. The fact that PW-2 owns land at Kokkarapatti and Erumiyampatti, is proved through Ex.P-10 sale deed and 'A' Registers of the respective villages which are marked as Exs.P-7 and P-8. The accused, who was the Village Administrative Officer of the village initially refused to issue chitta to the complainant on the ground that he did not possess patta exclusively in his name without Sub Division. To give chitta he demanded bribe of Rs.500/- on 13/12/2002 and 23/12/2002. PW-2 in his oral complaint as well as in his deposition had mentioned about the earlier demand of bribe by the accused. Omissions of certain details which are not insignificant and does not go to the root of the charge, will not render the evidence of PW-2 unreliable. It is to be taken note that the witness is a rustic villager being examined in chief after 7 years (18/09/2009) and cross examined one and half years thereafter (20/04/2011), recalled again after five years to cross examine.

14. The demand and receipt of bribe on the day of trap is proved beyond doubt through the depositions of PW-2 defacto complainant and PW-3 accompanying witness. The credence of these witnesses cannot be doubted just because PW-2 had been in jail for some other offences or because PW-3 stood as official witness to a trap proceedings held subsequent to this case. PW-2 and PW-3 evidence cannot be discredited for the reasons stated by the defence or for any other reason since the documentary evidences right from the complaint, entrustment mahazar, recovery mahazar, revenue records and chemical analyst test report coupled with the testimony of PW-7 and PW-10 without iota of doubt establishes the guilt of the appellant. Therefore, the trial Court judgment ought to be confirmed.

15. Point for consideration:

Whether the evidence for prosecution is clouded with doubt to render the trial Court judgment nought ?

16. Sanction:

The first attack on the impugned judgement is about the sanction order Ex.P-1 where the witness PW-1 refers about the statement of the accused, which is not before the Court. Whether there was any statement given by the accused at the time of trap at all is not clear. Though the Vigilance Manual Rule 47 say, in a trap proceedings the statement of the accused ought to be obtained. The said direction is only a procedural guidelines to the officer, who conduct the trap. It does not have a trappings of a legislation. It is only Directory in nature and not Mandatory. Failure of recording the statement or failure to

place the accused statement may cause doubt but not nugget the proceedings in entirety.

17. In this regard, this Court finds relevant to refer and rely the following observations made by the Hon'ble Ms. Justice R. Mala in G. Mohanasundaram Vs State and others reported in CDJ 2015 MHC 3278 which had laid at rest the issue of non-compliance of the DV&AC Manual.

"21. The learned Senior Counsel appearing for the petitioner would submit that the Investigating Officer has not recorded the 161 statement of the petitioner/A1, after the trap proceeding and the same is fatal. To substantiate his argument he relied upon the following decisions:

21.1. In the unreported decision of this Court made in Criminal Appeal (MD) No.189 of 2005, dated 25.04.2011, at paragraphs 34 and 35, it was held as follows:

"34. Though a Single Bench of this Court in the decision reported in 2004 CrL.L.J. Page 3754 after taking into consideration the earlier judgments of this Court reported in 2002 (1) Mad LW (Cri) 136 : (2001 Cri LJ 4139) G.A. Ethiraj v. State, has held that rules in Vigilance Manual are only administrative and non-observance of the same cannot be termed as mandatory violation, which would affect the validity of the prosecution, this Court is of the considered opinion that certain procedure safeguards had also been given to the accused to explain the circumstances immediately after he was kept in the trap for the alleged bribe money, the relevant provision in the DVAC Manual namely Rule No.47 should have been complied with by the Appellant/Investigating Officers in a letter and spirit. The Hon'ble Supreme Court of India in a decision reported in (2008) 3 page 484 after taking into consideration paragraphs 704 and 705 of Railway Vigilance Manual has held that if the safeguards are provided to avoid false implication of the Railway Employee, the procedures laid down therein, could not have been given a

complete go bye. The earlier decision reported in (2007) 1 SCC page 630, CBI Manual which is similar to that of DVAC Manual came up for consideration with regard to the preliminary enquiry and the Hon'ble Supreme Court after taking into consideration Vineet Narain's case reported in (1998) 1 SCC page 226 wherein it has been held that it is imperative that the CBI adheres scrupulously the provisions in the Manual in relating to its investigative functions like raids, seizure and arrests and any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the official concerned and thus approving the procedures contemplated under CBI Manual for preliminary enquiry before registration of a regular case.

35. This Court keeping in mind the above cited two decisions of the Hon'ble Supreme Court of India and after careful analysis of the testimonies of P.Ws.12, 13 and 14 is of the view that the non-following of the DVAC Manual especially Rule No.47 with regard to the non-recording of the statement of the Accused immediately after the trap was laid is fatal to the case."

21.2. In the decision of this Court reported in CDJ 2011 MHC 6618, Thulasiram v. State through the Inspector of Police, it was held at paragraph 12 as follows:

"12. The learned counsel for the appellant places strong reliance upon a recent decision of this Court rendered by M.Sathyannarayanan.J. in CrI.Appeal (MD) No.189 of 2005 [State rep.by Inspector of Police, Vigilance and Anti-Corruption, Dindigul v. P.Paraman] on 25.04.2011 in which the learned Judge has referred and followed a decision of the Supreme Court as regards observing the settled procedures contained in the manual which is earmarked for the Departmental officials in the

matter of investigation in the trap cases. It is contended that as per Rule of 47 of the Directorate of Vigilance and Anti Corruption Manual, immediate version of the accused after trap assumes great importance and non-recording of the statement of the accused immediately after trap, under Rule 47 of the DVAC Manual is fatal to the case of the prosecution. Rule 47 of the DVAC Manual reads as follows:

"47. Questioning of Accused Officer

(1) Questioning of the Accused Officer and recovery of the bribe money should be after the phenolphthalein test. If the test proves positive, arrest of the Accused Officer may be made and recovery of notes effected on the basis of Accused Officer's statement, if any. In this event, the provisions of Section 27 of the Indian Evidence Act would be available to the prosecution.

(2) Immediately after recovery and seizure of the bribe money or article, the Accused Officer must be further interrogated and his detailed statement separately recorded in the case diary under section 162 of the Code of Criminal Procedure, 1973. If there is any need to examine him still further in the light of any fresh evidence that might come up later during the investigation of the case, the same can be done at a later stage and further statement of the Accused Officer recorded. [DVAC Circular Memo No.33979/VAC-4/76, dated 10th December, 1976]"

21.3. On the other hand, the learned Public Prosecutor appearing for the first respondent relied upon the decision reported in 2013 (1) CWC 136, Duraimurugan v. State, rep by Deputy Superintendent of Police, Vigilance and Anti-Corruption, Vellore, wherein it was held that though the Investigating Agency did not comply with the procedure contemplated in the DVAC Manual, the accused cannot take advantage of non-

following of procedure contemplated under the Manual and it is for the concerned department to take action against concerned officer for alleged deviation. It is appropriate to incorporate paragraphs 38 and 39 of the said decision:

"38. A careful reading of the above cited decision would disclose that the accused cannot make any complaint with regard to the non-following of the procedures contemplated under the Vigilance Manual and as per the decision rendered in Vineet Narain's case, cited supra, any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.

39. Assuming for the sake of argument that the respondent has failed to follow Rule 76 of the DVAC Manual in letter and spirit, it is for the concerned department to take action against the concerned official and it is not open to the writ petitioner/appellant to take advantage of the same. Moreover, the respondent in the counter-affidavit in the earlier writ petition in W.P.No.8931 of 2012 as well as the present writ petition in W.P.No.13788 of 2012 took a specific stand that they had followed the Vigilance Manual and accordingly, issued the Final Opportunity Notice as per Proforma 28 of the said Manual. In the light of the stand taken by the respondent in the counter-affidavit in the above said writ petitions, it cannot be said that the respondent/investigating officer has not followed the provisions of the DVAC Manual."

18. Thus, the non-recording of the statement from the accused after the trap proceeding is not fatal to the case of the prosecution and only the disciplinary proceeding alone can be taken against the officer concerned. So, this Court is of the view that the non-recording of the statement of the accused cannot be a ground to quash the First Information Report.

19. In this case, except a reference in the sanction order Ex.P-1, there is no other evidence to show that the trap laying officer recorded the statement of the accused and forwarded it to the sanctioning authority. This omission may, as pointed out in the Vineet Narain's case at the most attract departmental proceedings against the trap laying officer and will not definitely be a reason to reject the prosecution case. It will not also give any room to infer the sanction order is bad for non application of mind, when the materials placed before the sanctioning authority are sufficient to arrive at a reasonable satisfaction that there are prima facie ground to prosecute.

20. Section 19 of the Prevention of Corruption Act, 1988 which mandates prior sanction from the authority competent to remove the public servant runs as under:-

"19. Previous sanction necessary for prosecution. (1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

(a) In the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) In the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) In the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973-

(a) No finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission, irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned thereby;

(b) No court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) No court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation: For the purposes of this Section, -

(a) Error includes competency of the authority to grant sanction;

(b) A sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

21. In *Mansukhlal Vithaldas Chauhan vs. State of Gujarat*, reported in AIR 1997 SC 3400, the Hon'ble Supreme Court has held as follows :

"Since the validity of Sanction depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent

mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority not to sanction was taken away and it was compelled to act mechanically to sanction the prosecution."

22. In Mohd. Iqbal Ahmed vs. State of A.P, reported in AIR 1979 SC 677, the Hon'ble Apex Court has held that

"...The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned."

23. The reading of the Section Subsection (3) (a) of Section 19, and the interpretations of the Honble Supreme Court cited above, it is clear that the grant of sanction is not an empty formality but a solemn and sacrosanct act which should be done with due application of mind independently and should not result in failure of justice.

24. The authority to remove the accused is PW-1 and his order granting sanction to prosecute is Ex.P-1. This exhibit and the deposition nowhere indicates that the authority has not applied his mind or not acted independently. The reference to the alleged statement of the accused is an uncorroborated, unsupported isolated error. However, certainly this error will no way cause failure of justice. At appellate stage, unless error in the sanction order leads to failure of justice, the trial Court judgment cannot be altered or reversed. It is to be noted that the socalled statement of the accused referred in Ex.P-1 is not spoken by any other witnesses. Neither the accused

had brought it to the notice of the Court during the trial. Even when opportunity to explain the evidence against him was afforded under Section 313 of the Code of Criminal Procedure, the accused has not placed any explanation before the trial Court, except filing written argument. Therefore, the contention of the learned counsel for the appellant that the trial Court judgment needs reversal in view of defect in sanction order is not sustainable both on law and facts.

25. Demand and acceptance:

The learned counsel for the appellant content that PW-2 had not specifically stated in his chief examination that the accused made his first demand of bribe of Rs.500/- on 13/12/2002. He erred in mentioning the date of trap as 12/02/2003 in the cross examination. This witness is wholly unreliable because he was a jail bird and he had animosity with the accused/appellant. These submissions are not points relevant to shake the root of the prosecution case. Neither these contradictions or facts taken in isolation or cummulatively are sufficient to dislodge the strong foundation of the prosecution case laid through the documentary and ocular evidence.

26. In fact, when PW-2 was cross examined on 18/02/2016, the witness has answered in affirmative that he had been jailed 5 or 6 times for being a member of a political party and his sureties used to get certificate from the accused for availing bail. On the same day, during the cross, he had first deposed that the bribe money of Rs.500/- was given to him by Thiru.Vajjiram, Police constable of Vigilance team, however, immediately he has clarified that it was his money. The learned counsel for the appellant would submit that for the above said reasons, the evidence of PW-2 should be disbelieved.

27. Contrarily, a perusal of the records shows that PW-2 was examined in chief on 18/09/2009 to depose about the event which took place during the month of December 2002. The cross examination of PW-2 was done after one and half years on 20/04/2011 in part and completed on 05/06/2013. Again, this witness was recalled on petition and subjected to cross exam on 18/02/2016. The entrustment mahazar Ex.P-3 reveals that the bribe money Rs.500/- was smeared with phenolphthalein and handed over to PW-2 by Thiru.Vajjiram, Police Constable. Therefore, there is no reason to doubt the evidence of PW-2. Minor discrepancies are due to long delay in examining the witness and nothing else worth in favour of the defence. Whatever contradictions pointed out by the counsel is only the ill product of protracted trial. Some stray and disjoint answers elicited during the examination of the witness, who had been cross examined after a long interval, are not to be held material.

28. At this juncture, it is pertinent to place on record the observation of the Hon'ble Supreme Court made in Vinothkumar -vs- State of Punjab reported in CDJ 2015 SC 115:

"Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable...." सत्यमेव जयते

29. Yet another contention of the defence that the defacto complainant does not own land and he is not entitled for any chitta to avail loan is disproved through the deposition of PW-7 and the Exs.P7,P8 and P10. The other contention that PW-2 is a jail bird, so his evidence cannot be relied upon, is contrary to law of evidence. The bad antecedent even if any, cannot prohibit PW-2 from setting law into motion regarding demand of illegal gratification by a public servant. PW-3 a public servant, accepting to be a witness for a trap proceedings subsequent to this trap is not a disqualification. If PW-3 had stood witness to a trap proceedings subsequent to the trap of this case, it is legally permissible and there is no illegality

in it.

30. The contention of the learned counsel that by participating the subsequent trap proceedings as witness, PW-3 has become a pocket witness to the prosecution is a baseless allegation. When there is no bar under law or restriction as to number of cases, a person can stand as witness, it is not the number of times, a person has mounted witness box to give evidence for prosecution but the trustworthiness of his evidence matters. PW-3 Mr.Indrajith while working as Chief Assistant at the office of Deputy Registrar of Co-operatives at Dharmapuri was called by the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Dharmapuri to be a witness to the trap proceedings held on 24/12/2002. The trial has prolonged for nearly 14 years. This does not mean that the witness for all these years barred from giving evidence for prosecution in any other case or if he happened to be a witness for prosecution in the subsequent case, his testimony is to be doubted in the earlier case.

31. Recovery:

Relying upon the portion of PW-2 and PW-3 deposition which say, the accused was found preplexed on seeing the trap team, the trap laying officer held the hands of the accused and put him in the seat, the defence try to explain the presence of phenolphthalien in the hands of the accused and plead Court should doubt the recovery. Even if this explanation may sound probable at first blush, it could at the most be restricted to the presence of phenolphthalein in the hands of the accused alone. This explanation does not hold good for the presence of the tainted currency in the shirt pocket of the accused or the presence of phenolphthalien in the shirt pocket portion, which was seized and marked as M.O 7.

32. The recovery of the tainted money from the possession of the accused is established by the prosecution through the testimony of PW-3 who is one of the eye witness for receipt and recovery of tainted money from the accused. Though his evidence is singularly enough to prove this fact, further evidence like the testimony of the trap laying officer [PW-10], the mahazar [Ex.P-4] drawn contemporaneously soon after recovery corroborates the recovery. Except bald denial, no material evidence is placed to disprove the recovery. Therefore, from the material facts placed by the prosecution, this Court without any doubt hold that the demand and acceptance of money by the accused is proved. The accused has not come out with any explanation to rebut the presumption that the money he received from PW-2 is legal remuneration and not illegal gratification. Therefore, the presumption under Section 20 of the Act works against him. While discussing recovery of tainted money and

presumption, the Hon'ble Supreme court in M. Narsinga Rao Versus State of Andhra Pradesh reported in CDJ 2000 SC 630 would say that:

"In Raghubir Singh v. State of Haryana, 1974(4) SCC 560, V.R. Krishna Iyer, J. speaking for a three-Judge Bench, observed that the very fact of an Assistant Station Master being in possession of the marked currency notes against an allegation that he demanded and received that amount is "res ipsa loquitur." In this context the decision of a two-Judge Bench of this Court (R.S. Sarkaria and O. Chinnappa Reddy, J.) in Hazari Lal v. Delhi (Delhi Administration), 1980(2) SCC 390 can usefully be referred to. A police constable was convicted under Section 5(2) of the Prevention of Corruption Act, 1947, on the allegation that he demanded and received Rs. 60/- from one Sriram who was examined as PW-3 in that case. In the trial court PW-3 resiled from his previous statement and was declared hostile by the prosecution. The official witnesses including PW-8 have spoken to the prosecution version. The court found that phenolphthalein smeared currency notes were recovered from the pocket of the police constable. A contention was raised in the said case that in absence of direct evidence to show that the police constable demanded or accepted bribery no presumption under Section 4 of the Act of 1947 could be drawn merely on the strength of recovery of the marked currency notes from the said police constable. Dealing with the said contention Chinnappa Reddy, J. (who spoke for the two-Judge Bench) observed as follows :

"It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW3. Under Section 114 of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and private business, in their relation to facts of the particular case. One

of the illustrations to Section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the Thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW3, the presumption under Section 4(1) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the Courts below."

33. In *Mukhatiar Singh* [since deceased] through his legal representative vs. State of Punjab reported in [2017 8 SCC 136], the Hon'ble Supreme Court has capsulised the law relating to demand of illegal gratification and the test to prove it. The relevant paragraphs necessary are extracted below to understand the legal position.

"14. 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:

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 and 13 of the Act would not entail his conviction thereunder." (emphasis supplied)"

34. In State of Andhra Pradesh v P.Venkateshwarlu (2015 (3) MLJ (crl.) 225 (SC)), the Hon'ble Supreme Court, on appreciating the evidence, at paragraph No.10 has held as follows:-

"10. We are aware of the position in law, as laid down in cases involving the relevant provisions under the Prevention of Corruption Act, that mere recovery of the tainted amount is not a sine qua non for holding a person guilty under Sections 7, 11 and 13 of the Act. This Court has observed in Narendra Champaklal Trivedi Vs. State of Gujarat, (2012) 7 SCC 80, that there has to be evidence adduced by the prosecution that bribe was demanded or paid voluntarily as bribe. The demand and acceptance of the amount as illegal gratification is a sine qua non for constituting an offence under the Prevention of Corruption Act. The prosecution is duty bound to establish that there was illegal offer of bribe and acceptance thereof and it has to be founded on facts. The same point of law has been reiterated by this Court in State of Punjab Vs. Madan Mohan Lal Verma, (2013) 14 SCC 153. In the present case the factum of the demand and acceptance has been proved by the recovery of the tainted amount and the factum of there being a demand has also been stated. The essential ingredient of demand and acceptance has been proved by the prosecution based on the factum of the case. It has been witnessed by the key eye witnesses and their testimonies have also been corroborated by other material witnesses. The offence under Section 7 of P.C. Act has been confirmed by the unchallenged recovery of the tainted amount. Thus, it is our obligation to raise the presumption mandated by Section 20 of P.C. Act. It is for the accused respondent to rebut the presumption, by adducing direct or circumstantial evidence, that the money recovered was not a reward or motive as mentioned under Section 7 of the P.C. Act."

35. In the light of the above discussion, this Court holds that the prosecution has proved the charges against the accused through valid and reliable evidence. The trial Court has considered all the issues raised by the defence and had arrived at a conclusion which in the view of this court is correct and needs no reconsideration.

36. The prosecution through its witnesses had not only proved mere recovery of tainted money but had also proved that the money so recovered was received by the accused on demand to provide chitta to the defacto complainant. Therefore there is no infirmity in the judgment of the trial Court to interfere.

37. In the result, the Criminal Appeal is dismissed. The judgment of conviction dated 18.07.2016 passed in Spl.C.C.No.7 of 2008 on the file of the Special Court-cum-Chief Judicial Magistrate, Dharmapuri is herein confirmed. The trial Court is directed to secure the accused to serve the remaining period of sentence imposed by the trial Court.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Court-cum-Chief Magistrate,
Dharmapuri

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

3. The Public Prosecutor,
High Court, Madras.

Copy to

The Section Officer,

Criminal Section, High Court, Madras.

Judgment made in
Crl.A.No.605 of 2016

mr (CO)
TR(26/06/2018)

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