

Bail Slip

The appellant herein /1st accused Viz; L.Mahilan S/o. Lakshmanan was directed to be released on bail as per order of this court dated 16.08.2016 made in Crl.MP.No.8617 of 2016 in Crl.A.No.625/2016

Bail Slip

The Appellant herein/2nd accused Viz; S.Krishnamoorthy S/o.Sadagopan was directed to be released on bail as per order of this court dated 23.08.2016, made in Crl.MP.No.8863 of 2016 in Crl.A.No.634 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.12.2017	Pronounced on: 19.01.2018
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Coram

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal Nos. 625 & 634 of 2016

1. L.Mahilan ... Appellant in Crl.A.No.625 of 2016/
1st accused
2. S.Krishnamoorthy ... Appellant in Crl.A.No.634 of 2016/
2nd accused

/versus/

State, rep. by Deputy Superintendent of Police,
Prevention of Corruption & Vigilance Wing,
Cuddalore

... Respondent
in both the appeals/
Complainant

PRAYER in Crl.A.Nos. 625 & 634 of 2016: Criminal Appeals are filed under Section 374(2) of Criminal Procedure Code, to set-aside the conviction and sentence passed against these appellants in Special Case No. 67 of 2014 dated 29.07.2016 on the file of Special Judge for Vigilance and Anti Corruption Cases, Villupuram.

For Appellant : Mr. N. Chandrasekaran
in Crl.A.No.625 of 2016 for Mr.V.Selvaraj

For Appellant : Selvi George
in Crl.A.No.634 of 2016

For Respondents : Mr. P.Govindarajan,
in both appeals Additional Public Prosecutor
(Criminal Side)

JUDGMENT

Thiru. L.Mahilan, the Regional Manager, TAFCORN Villupuram (Appellant in CA 625/16) and Thiru. S.Krishnamoorthy (Appellant in CA 634/16) the Forest Ranger, Panruti Range were charged and tried under prevention of corruption Act, 1988 for demand and receipt of Rs 15,000/- and Rs 10,000/- respectively, as illegal gratification from one R. Rajalingam on 2.3.2011 to refund his caution deposit of Rs. 52,800/- made by him while participating in the tender held on 10.05.2010.

2. The respondent registered the complaint dated 2.03.2011 given by R.Rajalingam alleging that he participated in the auction held on 10.05.2010 for removal of barren cashew trees in plot No. 75 and 79 within Panruti Forest Range and declared as the successful bidder. He paid the entire bid amount along with caution deposit of Rs. 52,800/- which is refundable after the completion of the contract. When he completed the contract as per schedule by July, 2010 and sought for the refund of the caution deposit, it was delayed. On 24.01.2011, when he went to the Panruti Forest Range office and sought for the refund of security deposit, Thiru.Krishnamoorthy (A-2) and one Manoharan who were present at the Panruti Forest Range office, told him to meet the Regional Manager at Villupuram.

3. Accordingly, on 28.01.2011 Rajalingam went to Villupuram and met Thiru. Mahilan, the Regional Manager (A-1) at his office and enquired about the refund of the security deposit he made, while participating in the tender on 10.05.2010 for plot No.75 and 79. To refund the deposited money Rs 52,800/- A-1 demanded illegal gratification of Rs 15,000/-. Rajalingam asked when should he bring the money, for that A-1 told him to come to Ulundurpet Forest Guest House on the next day (02.03.2011) and meet him at 1.00pm. When he came out from A-1 room, A-2 who was in A-1 room , came out along with him and demanded Rs. 10,000/- for him (A-2).

4. Based on the above said complaint, FIR was registered at 8.00 am and investigation was taken up. Two teachers from near by school were called upon to be witnesses for prosecution during the trap proceedings. The phenolphthalein test and entrustment mahazar were prepared in their presence and completed by 11.15 am . The defacto complainant (PW-2) along with the decoy witness Mr.Rajesh (PW-3) in one jeep and the trap team led by the Inspector of Police K.Palani (PW-12) in another jeep left Cuddalore at 12.30 hrs and reached Ulundurpet Forest Range office 13.50 hrs.

5. PW-2 went to the Guest House, but they could not meet A-1. So they went to the Forest Range office, where he met A-2, who instructed him to meet A-1 at guest house. Again PW-2 went to Guest house, waited for A-1 outside the guest house for some time. Since he could not meet him, he called A-1 over cellphone and asked why he is delaying to refund the caution deposit. A-1 enquired him whether he has brought the bribe money of Rs 15,000/- and on confirming the same, told PW-2 to meet A-2 and give the money to him. Accordingly, PW-2 went to Forest Range Office and informed A-2 about what A-1 told him over phone. To confirm, A-2 asked PW-2 to wait for some time, and went to Guest House and came back and received Rs 15,000/- on behalf of A-1 and Rs 10,000/- for himself.

6. The trap team thereafter held A-2 and conducted phenolphthalein test on both his hands and confirmed positive. Rs. 15,000/- recovered from his pant pocket. Based on the information given by A-2 remaining Rs.10,000/- recovered from the Rexin bag kept by K.Manoharan (PW-9). The notes recovered from A-2 and from the Rexin bag of K.Manoharan were compared with the serial numbers mentioned in the entrustment mahazar Ex P-4 and found tally. Therefore the currencies were recovered and mahazar Ex P-9 prepared. A-2 was brought to the scene of trap and interrogated.

7. On completion of the investigation, sanction to prosecute the accused persons were obtained and final report laid before the special court for Prevention of corruption Act. The trial court framed charges against A-1 for offences under section 7 and 13(1)(d) of PC Act and against A-2 for offences under section 7, 13(2) r/w 13(1)(d) and section 12 r/w 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

8. The trial court considering the evidence let in by the

prosecution through PW-1 to PW-14, Ex P-1 to Ex P-25, M.O's 1 to M.O's 9 and the documents marked on behalf of the accused Ex D-1 to Ex D-24 held A-1 and A-2 guilty of offences under section 7 and 13 (2) r/w 13(1) (d) of Prevention of corruption Act. Sentenced each of them to undergo one year RI and imposed fine of Rs 3000/- for offence under section 7 and Rs 2000/- for offence under section 13(2) r/w 13(1)(d) in default 3 months SI each. In addition, A-2 also found guilty of offence under section 12 of PC Act and sentenced to undergo RI for a period of one year and fine of Rs 1000/- in default 3 months RI. The period of sentence to run concurrently. Aggrieved by the judgment of conviction and sentence, the present appeal is preferred by the appellants after remitting the fine amount imposed on them.

9. The learned counsels representing the respective appellants has raised the following point for consideration in addition to the grounds mentioned in their appeals:

10. PW-2 participated in the auction conducted on 24.1.2011 for unit No. 37 and bid for Rs 50,000/- Initially his bid was accepted , but latter when one Balakrishnan offered 15% more, A-1 cancelled the auction and ordered re- auction. On 2.2.2011 re auction was conducted and PW-2 increased the bid amount and offered 67,500/- . This time, one Nehru came forward to offer 1,10,000/-. So A-1 again cancelled the auction held on 2.2.2011 and ordered reauction. In that auction held on 9.2.2011 Nehru was the successful bidder who offered Rs 1,10,000/-. Since A-1 prevented PW-2 from getting the tender for very less amount and by ordering re auction increased the revenue of the state, PW.2 got infuriated and lodged a false complaint containing bundle of falsehood. Though each of the fact alleged in the complaint Ex P-4 had been proved to be false through documentary evidence, the trial court has supplemented its own reasons to reject the evidences found in Ex D-1 to D-24 to arrive at a erroneous conclusion.

11. Even according to the prosecution the first accused was not present at the scene of trap and he did not receive the tainted money from PW.2. The evidence of PW.2 that, he met A1 on 28.02.2011 and called A1 over Cell phone on 02.03.2011 are not supported any independent evidence. In fact, the log book and registered maintained at Udumalaipet Guest House proves that the first accused was not present at this office on 28.02.2011 at 4.00PM, when the alleged demand of bribe made for the first time. Likewise, the registered maintained at the Guest house Udumalaipet also proves that A1 was not present at Udumalaipet Guest House before 2.00pm on 02.03.2011. The non production of call details to prove PW.2 called A1 over Cell phone clearly

establishes the falsehood of PW.2. In his complainant PW.2 has not mentioned the respective phone numbers. Neither the prosecution during investigation collected the phone numbers and call details. The alleged demand over cell phone in the absence of basic evidence that PW.2 called A1 over cell phone is not believable. The trial Court ought not to have held A1 guilty of demanding and accepting bribe. The evidence of PW.7 who has categorically said that A2 gave Rs.10,000/- to him towards security deposit for the auction conducted on that day has totally been ignored by the Trial Court and the prosecution conveniently not placed the explanation given by A1 and A2 before the sanctioning authority or before the Trial Court. Biased investigation of the prosecution has led to miscarriage of justice and therefore liable to be set-aside.

12. It is specifically contended by the learned counsel appearing for the second accused that the sanction for prosecution A2 is not accorded by competent person and without application of mind. PW.1 who is Managing Director of Tamil Nadu Forest Plantation Corporation Limited (TAFCON) is not authorised to accord sanction by the Board. The memorandum of association and article of association governing the TAFCON has not produced before the Court to show PW.1 is the Managing Director of the Board competent to remove A2 who is a Forest Ranger in the Forest Department. Without the resolution of the board, the Managing Director on his own not empowered to grant sanction.

13. It is also submitted by the learned counsel for the 2nd accused that PW.1 has admitted in the cross examination that along with the request he received draft final report and he was compelled to give sanction to prosecute against the accused A1 since the prosecution has already decided to prosecute A1. It is further contended that PW.1 has not applied his mind while according sanction to prosecute A2. The reason for the factual error in the sanction order including the dates, from which the accused holding the post of Forester and Forest Ranger is the manifestation of non application of mind.

14. The learned counsel appearing for the A1 would contend that PW.14 sanction order to prosecute A1 issued by PW.4 is defective order issued by person not competent to accord sanction. Ex.P.14 issued by P4 without application of mind or assessing the material placed before him ought to be rejected.

To buttress the said submission, the learned counsel pointing out the sanction order marked as Ex.P.14 issue "by order of Governor", submitted that PW.4 who is the signatory of sanction order has only communicated the order of the Governor who has accorded the sanction order. There is no indication that he had perused the documents, applied his mind and got satisfied that

L.Magilan, Former Regional Manager, Tamil Nadu Forest Plantation Corporation Limited, shall be prosecuted for the offence under section 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

15. In the Chief examination, PW.4 has stated that he has applied his mind after perusal of the documents and thereafter, issued the order which is marked as Ex.P.14 in the name of the Governor. In the cross examination, he has stated that he has issued the sanction for prosecution against A1 in the capacity of Principal Secretary, Forest and Environmentally Department. During the alleged date of trap, A1 was sent on deputation to Tamil Nadu Forest Plantation Corporation Limited, Villupuram which is independent body governed by its own service regulation. After lending the service of A1 to an independent body, PW.4 is not the competent authority to remove A1 from service. Only the borrowing department namely Tamil Nadu Forest Plantation Corporation Limited is competent to remove the accused A1. Therefore, in the absence of proper sanction under Section 19(1) of Prevention of Corruption Act, 1988. Thus the entire criminal prosecution get vitiated.

16. The learned counsel for the appellant also submitted that the defacto complainant who had criminal cases against him for various offences is not the trustworthy witnesses to rely upon for convicting these persons. Despite the admission about the pendency of the Criminal Prosecution against him, the trial Court has failed to discredit his evidence, therefore sought for acquittal.

17. Per contra, the learned Additional Public Prosecutor had submitted the written arguments by way of objection on the grounds raised by the appellants in their appeal. The said objections are extracted below;

(i). The judgment of the lower court is in consonance with law, evidence and probabilities of the case.

(ii). The lower court appreciated the facts and evidence in a proper perspective and so there is no question of failure of justice.

(iii). It is true that the de-facto complainant, on the demand made by both accused, paid Rs.25,000/- out of which Rs.15,000/- is meant for this petitioner/A1 and the balance amount is for A2.

(iv). It is true that the demand of both accused resulted in lodging of the FIR. But at no point of time the prosecution case is that the PW.7 was present when the appellant/accused-1 made the demand. It is submitted that the de-facto complainant (PW.2) deposed that on 28.02.2011 at about 4 PM when he went to meet this appellant/A1, PW.7 asked him to wait for some time and later permitted to meet A1. It is not the prosecution case that PW.7 was present in the room of A1 when A1 made the demand.

Further it is submitted that PW.7 deposed that he did not see any one except A2 and hence he was treated as hostile and cross examined. Further during the cross examination by A1, he stated that he left the office by 2 pm but in his zeal to support the accused he has stated that A1 left office by 4 pm. When the court intervened and the defence also reminded his previous evidence that he left the office by 2.00pm, he corrected himself that he did not know the fact directly and obviously he deposed on the spoon-feeding by the defence. This goes to show that he is not at all a reliable witness. So it is neither the prosecution case nor the defence case that PW.7 was present in the room when A1 made the demand from the de-facto complainant. So the version of the appellant/accused that the demand is disproved is absolutely incorrect and not sustainable in law.

(v). It is further submitted that PW.2 contacted A1 through cell phone in the presence of the shadow witness (PW.3) and the shadow witness also confirmed about the same. Further when this fact was conveyed to A2, he also went to A1 and only after confirming the fact with A1, A2 demanded and obtained the illegal gratification both for himself and for A1. So the conduct of A2 also confirms the said fact. Further when an opportunity was offered by TLO, A1 affirmed the conversation by stating that he demanded only the EMD and it is also not the defence case that TLO recorded something which A1 did not stated to him. So all the aforesaid facts and circumstance goes to prove the cell phone conversation between PW.2 and A1. Further the previous demand is also proved beyond all shadow of doubt. Hence the appeals are not at all sustainable in law.

(vi). It is further submitted that the reasoning's contained in the judgment are completely in consonance with the law and absolutely there is nothing which makes the prosecution case improbable.

(vii). It is submitted that based upon strong direct and circumstantial evidence the demand, obtainment and the recovery made in this case are proved by the prosecution beyond all shadows of doubt.

18. Further by way of oral submissions, the learned Additional Public Prosecutor would submit that there is no error or illegality in the sanction order marked as Ex.P1 and Ex.P14. A1 being an Officer deputed to Tamil Nadu Forest Plantation Corporation Limited, had lien over the Parent department which is State Government. PW.4 being the Principal Secretary of Forest Department has accorded sanction after applying his mind and getting approval of the Governor as per the Office procedure. This fact has been spoken by PW.4 in his deposition

having accorded sanction, the Trial Court accepted the same and convicted the plea of irregularity or omission in the sanction order cannot be raised at the appellant stage in view of Section 19(1)(3)a and explanations given as under:

(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(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 or 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;

19. In so far as, the demand and acceptance of illegal gratification, the learned Additional Public Prosecutor would submit that the recovery of Rs.15,000/- from A2 and Rs.10,000/- from PW.9 Manokaran is admitted by both the accused. According to PW.2 and PW.3 money was demanded by A1 and A2. Pursuant to the said demand, money was given to A2 as per the instruction of A1. Therefore, it is the burden of the appellants to prove that money was received for legal remuneration and not as illegal gratification. The explanation whatsoever emanated from the appellants does not inspire any confidence. Both the investigation officer as well as the trial Court has rejected the explanation given by appellants for receipt of Rs.25,000/- from PW.2. Hence, the presumption under Section 20 of Prevention of Corruption Act, 1988 squarely falls against the appellant. Hence, there is no illegality in the order passed by the Trial Court. Hence, appeal to be dismissed.

20. Heard the learned counsel for the appellants and the respondent. Perused the records and grounds of appeal.

21. The sanction for prosecute A1 which is marked as Ex.P.14 has been spoken by its Author PW.4. When sanction accorded on 12.01.2001, A1 was not on deputation. He had been relieved and repatriated to the parent department namely Forest department, Government of Tamil Nadu. Therefore, PW.4 Principal Secretary of the said department had followed the administrative procedure, after circulating the file to the office of Governor through concerned department had accorded sanction.

22. The reading of the sanction order which is marked as Ex.P.14 and deposition of PW.4 which has been subjected to the cross examination by both the appellants clearly proves the fact that he is the person competent to remove A1 in the capacity of Secretary to the Government. Therefore, this Court finds no illegality or error in the sanction order which is marked as Ex.P.14.

23. In so far as, the sanction order issued by PW.1 which is marked as Ex.P1 to prosecute A2 is concerned, though prosecution has not placed any authorisation given to PW.1 or any other document governing the administration of Tamil Nadu Forest Plantation Corporation Limited, from reading of Ex.P1 dated 03.08.2011 and deposition of PW.1 who is the author of Ex.P1, this court finds no illegality in the order issued by PW.1 though prosecution has failed to place before the court any authorisation by Board, such an omission cannot be a ground to reject the sanction for prosecution. PW.1 being an I.F.S Officer holding post of Managing Director of Tamil Nadu Forest Plantation Corporation Limited had gone through the paper submitted by the prosecution and having applied his mind and satisfied that Mr.S.Krishnamoorthy A2 is liable to be prosecuted for offences under Section 7, 12 and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act had accorded sanction.

24. In the cross examination of PW.1, admits that he did not peruse the earlier two contracts entered by the de-facto complainant. The place Villupuram is not mentioned in his sanction order as the place to occurrence. He also admits that he has perused the draft final report of the investigation officer and therefore he was under the compulsion to accord sanction. Though this admission may sound that PW.1 not independently taken the decision to accord sanction for prosecution, the other portion of the deposition and the sanction order reflects the application of mind exercised by PW.1. Before issuing Ex.P1, may be, the draft final report enclosed along with the requisition to accord sanction might have carried its own weight to take decision whether to accord sanction or not, but that is not the only document which has been perused by PW.1 for issuing Ex.P.1. Therefore, this court finds no ground to suspect Ex.P1 as order issued without application of mind.

25. Regarding the motive attributed to PW.2 and his character as witness, this court finds force in the submission made by the appellants. PW.2 was the successful bidder for unit 75 and 79 in the auction held on 10.05.2010. He had completed the contract on 31.07.2010. From Ex.A7 and Ex.A8 one could see that the de-facto complainant has completed the contract by 31.07.2010 as per the schedule. He is entitled to get back the caution deposit made by him for those contracts. However, his

application for refund of caution deposit had not been accompanied with 'completion certificate'. This has disentitled him to get the money in time. In this regard, office note has been prepared and placed before the 1st appellant whether the forester shall be directed to inspect the unit 75 and 79 and submit the completion report in order to realise the caution deposit.

26. As pointed out by the learned counsel for the appellants without completion certificate, caution deposit cannot be refunded and admittedly in this case completion certificate was not furnished by the Forester till the date of trap. It is to be noted that the 2nd accused was not the Forester in charge of Ullundurpet, Panruti forest Range at the time of occurrence. It is admitted by PW.1 and also proved through transfer order Ex.P.24. A2 [Krishanmoorthy] was transferred and directed to take over charge of Andipatti Range at once as per Ex.P.24. This order is dated 29.03.2010. Therefore, after his transfer, A2 had no role in refunding the caution deposit made by de-facto complainant and PW.2 who is a regular Forest contractor is well aware of the said fact that A2 is no more attached to Panruti Forest Range.

27. The case of the prosecution is that Rs.10,000/- tainted money was recovered from PW.9 who had kept the money in the Rexin bag along with another Rs.16,500/-. The evidence of PW.9 has been treated hostile by the prosecution. His evidence reveals that he has received Rs.10,000/- from A2 Krishanmoorthy, who gave the money to him saying that it is EMD money. It is an admitted fact that on 02.03.2011, in the premises of Ullundurpet Forest Office auction was conducted of forest product and they were lot of bidders present. The register maintained for receipt of EMD perused by the trap laying Officer and he has found that Rs.23,000/- had been received from Manonmani on that day. PW.9 who have received the said EMD money had kept the money in the Rexin Bag along with that money he had also kept Rs.10,000/- given by Krishnamoorthy A2.

28. The conduct of PW.9 keeping the EMD money in the Rexin bag appears to be the conduct in the normal course. From the Rexin bag the Trap Laying Officer has recovered Rs.16,500/- which was given by Manonmanian and Rs.10,000/- which was given by Krishnanmoorthy saying that it is EMD. No doubt, when the deposit of Rs.23,300/- by Manonmanian is written in the register, Rs.10,000/- given by PW.2 is not recorded. One should not fail to note that the transaction of Rs.10,000/- and Rs.15,000/- from PW.2 to A2 had taken place soon before Trap Laying Office had confronted A2 and PW.9. There was little time to record the transaction in the register.

29. The Trial Court heavily rely upon the non entry of Rs.10,000/- in the EMD register. It had presume that this money is illegal gratification received by A2. Mere receipt of tainted money is not sufficient to presume it was received as illegal gratification, the receipt of money coupled with explanation given by accused person and other witnesses has to be looked into dispassionately before such presumption. In this case, right from the beginning, the accused as well as independent witnesses had explained about the reason for possession of tainted money. Ex.P9 recovery mahazar prepared contemporaneously at the scene of trap reveals that A1 had explained that the money received by A2 is towards EMD for the auction which took place on 02.03.2011. In the light of the explanation given by the accused for receipt of money from PW.2 which is plausible since on that day there were other Forest contractors who were present and made cash deposits towards EMD and PW.9 had in his possession money other than the tainted by given by A2. PW.9 has deposed that A2 gave that money to him saying it is for EMD.

30. PW.7 was treated as hostile witness by the prosecution. He is the Superintendent of Tamil Nadu Forest Plantation Corporation Limited at Villupuram. He has explained about the tender given to PW.2 and the caution deposit made by him. Permit issued to him for removing cashew nut trees. According to this witness, caution deposit made by PW.2 could not be refunded for want of completion certificate. The Forest Ranger of Panurtti had been warned vide letter dated 03.12.2010 for the delay in forwarding completion certificate. He had been directed to sent the completion certificate immediately only on 08.03.2011 the completion certificate was received. However, the money has been returned to PW.2 on 07.03.2011 at the instruction Inspector Vigilance and Anti corruption. The endorsement found in Ex.P.7 indicates that Deputy Superintendent of Police, Vigilance and Anti corruption has spoken to PW.7 to realise the security deposits.

31. The prosecution has declared PW.7 as hostile witness though he has spoken what is found on the record and nothing contrary. Just because PW.7 and PW.9 has spoken the truth and corroborated what is found in the record, but does not support the prosecution case. The prosecution has declared PW.7 and PW.9 as hostile. This attitude perse shows the vindictiveness and biased investigation conducted by the prosecution in this case. The receipt of the complaint as contented by the prosecution itself is doubtful because in the complaint dated 02.03.2011 PW.2 had stated that he met A2 and A1 on 28.02.2011 at 4.00pm in the office of Regional Manager, Villupuram. In the Office, both A1 and A2 were present and at that time they demanded bribe to refund the caution deposit. When he enquired where to give the money, A1 told him to come at Udumalaipet Forest Guest House on the next day (02.03.2011) at 1.00pm. According to the complaint

marked as Ex.P.2 dated 02.03.2011, the next day to 28.02.2011 should be 01.03.2011 and not 02.03.2011. The specific case of the defence is that on 28.02.2011 there was a farewell for a retired staff at Ullundurpet, therefore A1 has left Villupuram Regional Office at 3.30pm itself and the evidence of PW.2 that he met A1 and A2 at Villupuram on 28.03.2011 at 4.00pm is falsified by the register maintained at Udumalaipet Guest House. Further, the defence has also proved that [Krishnamoorthy] had gone to treasury on 28.02.2012 and he was on other duty for whole day on that particular date, dispersing salary to the staff at Ullundurpet Forest Office. When there is material to show that both A1 and A2 were not at Villupuram but elsewhere, the trial court has given its own reasoning and justification in support of the prosecution, saying that the entries in Register of Forest Guest House, Ullundurpet found to be interpolated and no mentioning about rent collected from A1 for his stay in the Guest House and therefore it must be an manipulated entry.

32. Likewise, disbelieving the evidence let in by the defence to prove that A2 went to treasury on 28.02.2011 collected the cash and went to Ullundurpet for disbursement of salary, the trial court has stated that the pay drawing officer will not go to treasury and will not oversee the disbursement of salary to the staff. This reasoning to disbelieve the evidence let by the defence are based on surmises and conjunction but not material placed by the prosecution. While the documentary evidence and oral evidence indicates contrary fact, court cannot brush aside those facts and substitute its own reasoning which has no basis. Precisely in this case, the trial court has totally neglected the evidence let in by the defence to disprove the case of the prosecution. More particularly the alleged meeting of PW.2 at the Regional Office, Villupuram on 28.02.2011 and receipt of Rs.25,000/- as illegal gratification on 02.03.2011 by A2 are not proved. It is pertinent to note that there is no evidence to show PW.2 called A1 over phone on 02.03.2011. The log book of the vehicle used by A1 indicates that he reached Udumalaipet Guest House only after 2.30pm. In the absence of any evidence except the oral evidence of PW.2, it is unsafe to hold that on 02.03.2011 PW.2 called A1 over phone at around 2.30pm, A1 who was in the Udumalaipet Forest Guest House demanded money from PW.2 over phone.

33. It is admitted case of the prosecution that A1 was called to the scene of Trap after the completion of trap proceedings. He is not a signatory to seizure mahazar. His presence at Villupuram Regional Office on 28.02.2011 when the alleged demand of bribe made for first time is clouded with doubt in the light of entries found in register maintained by Udumalaipet Forest Guest House. Above all, the defence has made out a strong case of motive for lodging the complaint on PW.2. It is borne by record and also admitted by PW.2 that he

attempted to knock away the bid of Unit 37 for paltry sum of Rs.50,000/- but due to intervention of A1 the auction got cancelled twice and the same unit 37 fetched Rs.1,10,000/- in the third auction. This auction concluded on 09.02.2011, thereafter PW.2 had thought of lodging the complaint against A1 and A2 alleging that they demanded bribe of Rs.15,000/- and Rs.10,000/- respectively on 28.02.2011.

34. In P. Satyanaranamurthy vs District Inspector of Police, State of Andhra Pradesh and another reported in (2015) 10 SCC 152 , the Hon'ble Supreme Court has observed that

"24. In our estimate, to hold on the basis of the evidence on record that the culpability of the appellant under Sections 7 and 13(1)(d)(i)&(ii) has been proved, would be an inferential deduction which is impermissible in law. Noticeably, the High Court had acquitted the appellant of the charge under Section 7 of the Act and the State had accepted the verdict and has not preferred any appeal against the same. The analysis undertaken as hereinabove qua Sections 7 and 13(1)(d)(i)&(ii) of the Act, thus, had been to underscore the indispensability of the proof of demand of illegal gratification.

25. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in Sujit Biswas vs. State of Assam (2013)12 SCC 406 had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused."

35. The facts of the case in the above judgment is akin to the facts in the case in hand. This court finds the Trial court had indulged in inferential deduction without any indispensable proof of demand of illegal gratification. Mere recovery of tainted money from the accused person is not sufficient to presume their guilt. The money recovery from them should proved to be received as illegal gratification by corrupt means. In

this case, a plausible explanation had been given by the accused persons. The tainted money in this case had been recovered from two persons Rs.10,000/- from PW.9 and Rs.15,000/- from PW.2. Both the money is said to be received by A2 towards security deposit. PW.9 fortifies the said explanation; the other money recovered from Rexin Bag kept by PW.9 is accepted to be EMD offered by Manonamani. If so, why the tainted currency of Rs.10,000/- should not be EMD offered by PW.2 for participating held on that day. When there is plausible explanation given by the defence and documentary evidence relied by them substantially support the explanation, the finding of the Trial Court supplementing to its own reasoning and justification is unsustainable.

36. In the result, the Criminal Appeals are allowed. The judgment conviction and sentence passed by Learned Special Judge for Vigilance and Anti Corruption Cases, Villupuram in Special Case No. 67 of 2014 is hereby set aside. The bail bond executed if any by the appellants shall stand cancelled. Fine amount paid if any shall be refunded to the appellants.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bsm
To

1. The Deputy Superintendent of Police,
Prevention of Corruption & Vigilance Wing,
Cuddalore.
2. The Additional Public Prosecutor, (Criminal Side)
High Court, Madras.

copy to
The Special Judge,
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