

BAIL SLIP

That the Appellant/Accused namely K.P.Kolanthai, S/o.Periyasami is directed to be released on bail as per order of this Court dated 17.09.2008 and made in M.P.1 of 2008 in CrI.A.No.693 of 2008 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2019

PRONOUNCED ON: 09.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.693 of 2008

K.P.Kolanthai
Appellant

...

Vs

State by Inspector of Police
Anti Corruption Wing, Dharmapuri

... Respondent

Prayer:-

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 29.08.2008, made in SC.No.103 of 2004, by the Chief Judicial Magistrate Court, Krishnagiri.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

- 1.This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 29.08.2008, made in SC.No.103 of 2004, by the Chief Judicial Magistrate Court, Krishnagiri, finding the Appellant guilty and convicting and sentencing him for the offence under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, to undergo one year Rigorous Imprisonment for each offence and to pay a fine of Rs.1,000/-, in default, to undergo three months Simple Imprisonment and ordering the sentences to run concurrently.

2.The case of the Prosecution is as follows:-

- a) During the period from 29.10.2003 to 22.1.2004, the Appellant/ accused was working as the Junior Assistant in the Thenkanikottai Town Panchayat Executive Office. When PW.2, Thimmaraj, complainant, had approached the Tamil Nadu Electricity Board, seeking electricity service connection for his newly constructed house, he was directed to get house tax receipt and No Objection Certificate from the Thenkanikottai Town Panchayat Office. Hence, PW.2 had made an application, Ex.P3, dated 8.1.2004 to the Town Panchayat Office and PW.4, Executive Officer, after endorsing the application of PW.2, had asked PW.2 to give it to the concerned Clerk, who is the Appellant/ accused herein and accordingly, PW.2 gave his application to the Appellant/ accused, who in turn directed, PW.7, Bill Collector, to verify the house of PW.2 and to file a report and accordingly, PW.7 had also given a report and PW.2 had given documents relating to his house.
- b) After perusing the documents given by PW.2, the Appellant/ accused had demanded a sum of Rs.4,000/- as bribe and on the request of PW.2, it was reduced to Rs.1500/-. On 14.01.2004, when PW.2 approached the Appellant/ accused to issue house tax receipt and No Objection Certificate, the Appellant/ accused had again demanded a sum of R.1,500/-. Since PW.2 expressed his inability to pay such a sum, the Appellant/ accused asked PW.2 to come after Pongal Festival.
- c) Since PW.2 was not willing to give bribe, on 22.1.2004, PW.2 had made the complaint, Ex.P4 to PW.12, Inspector of Police. On receipt of Ex.P4, PW.12, Inspector of Police, had registered a case in Cr.No.3/AC.2004 under Section 7 of the Prevention of Corruption Act, 1988 and prepared the First Information Report, Ex.P5 and arranged for trap proceedings. PW.12 had summoned two official witnesses, namely, PW.3, Ganesan, Junior Assistant, Agriculture Department and one Vijayaganesh, Staff of the Public Works Department, to witness the trap proceedings and they were introduced to PW.2.
- d) PW.12 had explained the trap proceedings in detail, including the significance of the phenolphthalein test to them and PW.2 brought Rs.1500/- of three currency notes of Rs.500 denomination (MO.1 Series) and the said proceedings were noted in the mahazar Ex.P6. PW.2 was asked to hand over the tainted amount to the accused, if he made a demand of the same and also told them that if the accused accepted the money, he should come out of the Office and give a pre-arranged signal, by combing his hair by his both hands.
- e) Thereafter, along with the trap party, PW.2 reached Thenkanikottai Bus Stand, at 14.30 hours and the trap

party were hiding at a distance of 20 ft. nearby the Office of the Appellant/ accused and PW.2 and PW.3 went inside the Office of the accused and PW.2 and PW.3 were instructed to go and meet the accused. At 14.50 hours, PW.2 and PW.3 came out of the office and gave the prearranged signal and at that time, the Appellant/ accused, after getting the tainted money and keeping the same in his left shirt pocket, was coming to the Office. On seeing the prearranged signal, PW.12 went inside the Office and enquired the Appellant/ accused. Thereafter, sodium carbonate solution in two glasses were prepared and the Appellant/ accused was asked to dip the fingers of his both hands separately and both the solutions turned pink. PW.12 seized the tainted notes MO.1 (Series) and then sealed the bottles after pouring the solution in those bottles, M.O.2 and M.O.3 under mahazar. On comparing the numbers of the seized tainted notes with that of the numbers mentioned in the mahazar, Ex.P6, it tallied. The shirt pocket, MO.4 of the Appellant/ accused was also subjected to sodium carbonate test, which also proved positive. Then, the relevant documents were seized under Ex.P7 mahazar. Thereafter, PW.12 arrested the Appellant/accused and obtained the signatures of the witnesses in the mahazar. A search was made in the house of the Appellant/ accused and Ex.P11 search mahazar was prepared.

- f) PW.13, the Deputy Superintendent of Police took up the case for further investigation and after completing investigation and after receiving chemical analysis report and after obtaining sanction, had laid the charge sheet against the Appellant/accused under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act on 7.10.2004.
- 3.The case was taken on file in SC.No.103 of 2004, by the Chief Judicial Magistrate Court, Krishnagiri. On summoning and on appearance of the Appellant/ accused, copies of the claimants were furnished to the Appellant/ accused under Section 207 of Cr.PC and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.13 and also marked Exs.P1 to P23 and Mos.1 to 7. Ex.C1 and Ex.C2 were marked.
- 4.On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused has come with the version of total denial and stated that he had been falsely implicated in this case.
- 5.The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellant guilty and awarded

punishments, as referred to above, which is challenged in this Criminal Appeal.

6. This court heard the submissions of the learned counsel on either side.

7. The learned counsel for the Appellant/ accused has assailed the impugned judgement of conviction and sentence, on the following grounds:-

- a) The reasons assigned by the Trial Court, for convicting the Appellant/a accused, are totally unsustainable in law and unbelievable on facts.
- b) The evidence of the witnesses of the Prosecution does not inspire confidence, particularly, PW.2 is not a trustworthy witness, since he had not produced any document, along with Ex.P3, relating to his house. Ex.P7 had been concocted to suit the case of the Prosecution. Like wise, Ex.P12, was also introduced for the purpose of the case, inasmuch as in Ex.P12, after striking some other name, the Appellant's name had been entered to suit the convenience of the Prosecution. The evidence of PW.4 also does not inspire confidence. PW.4 is a tainted witness, since he was suspended from 12.1.2004 and he had helped the Police to gain influence. The entire trap proceedings is false and it has not been conducted in the manner as projected by the Prosecution.
- c) Neither the Executive Officer nor the Staff, in whose presence the phenolphthalein test was conducted, had been examined, as witnesses. In view of the admission of the PW.8 that Ex.P7 was produced only on 9.1.2004, PW.2 could not have presented his petition on 08.01.2004.
- d) The documents relating to the property of PW.2 have not been produced before the Trial Court. The evidence of PW.7, Bill Collector, who is the neighbour of PW.2, is that even prior to 8.1.2004, she had submitted a report to the Executive Officer, without verifying any document of ownership only to facilitate the complainant.
- e) The Appellant/ accused had no authority to issue the certificate as claimed in the complaint, in view of the evidence of PW.6, the Head Clerk of the Office of the Appellant. Ex.P3 did not contain PW.5's (Executive Officer) initial, which would throw serious doubt about the truthfulness and genuineness of the document.
- f) The power to issue any certificate vests with the Executive Officer only and the Appellant/ accused as a clerk has only to prepare the notes and then recommend and hence, the case of the Prosecution is a concocted one. As per the evidence of PW.12, at the time of conducting phenolphthalein test, PW.5. Executive Officer was present, but he has not given any evidence in respect of such phenolphthalein test.
- g) Similarly, as per the evidence of PW.3, all the Officials

of the Office of the Appellant were present during the time of conducting the test, but however, none of them have been examined to speak about the said fact.

- h) As per the evidence of PW.2, the initial demand was said to have been made by the Appellant/ accused in the presence of PW.7, Rani, Bill Collector and that only PW.2 and PW.7 were aware of the initial demand. Whereas, strangely, PW.7 had stated that she was not aware of what transpired between PW.2 and the Appellant/ accused. PW.2 and PW.7 are neighbours and known to each other. Whereas PW.7, for the best reasons known to her, had deposed that she did not know PW.2 and she never saw PW.2.
- i) The complainant, PW.2, in the case of trap, is the interested witness on the side of the Prosecution and thereby, his evidence should be carefully scrutinised and unless his evidence is corroborated by cogent evidence, the case of the Prosecution should not be accepted. In this case, the evidence of PW.2 is not properly corroborated and as such, the evidence of PW.2 does not inspire confidence and the Prosecution has to prove the demand, acceptance and recovery of the tainted money, by cogent evidence. When there is suspicion with regard to the evidence and when there is no corroboration, the theory of demand and acceptance as projected by the Prosecution cannot be sustained.
- j) In a case of trap, the observation mahazar and the rough sketch assumes significance. The scene of occurrence has not been properly explained and proved by the Prosecution. As per PW.2, the signal had been given even prior to the handing over of the tainted money by PW.2 to the Appellant and the money was said to have been given at a place little away from the office of the Appellant and thereafter, the Appellant had come to the Office and the Appellant was stated to have been caught hold by PW.12, Trap Laying Officer, even before he returned to his seat.
- k) The evidence of PW.2 and PW.3 are not corroborative in nature. As per the evidence of PW.2, PW.7 is from the same area and is known to her and it is his categorical statement that he, PW.7 and the Appellant alone knows about the demand of bribe amount by the Appellant.
- l) The entire trap proceedings is concocted. The presence of the official witnesses, namely, PW.3 and yet another person, who has not been examined, is highly doubtful. As per the evidence of PW.3, he and another person came to the Police Station on the day of trap at 10.30 a.m. without any summons or memo to them, which would go to prove that they are tutored witnesses. The evidence of PW.3 that he had been called to join the trap Police Station at 9.30 a.m. creates a doubt, when especially, the First Information Report had been registered only at 10.00 a.m and thereby,

the presence of PW.3 at the time of trap is highly dubious and thereby, the evidence of PW.2 regarding the demand stands uncorroborated.

- m) Yet another factor, which proves that the trap proceedings is concocted, is that the complaint, Ex.P4 had been given by PW.2 in Tamil, whereas, the printed First Information Report, Ex.P5 was prepared in English. No explanation has been given by the Prosecution that by whom and how the complaint in Tamil was translated to English and thereby, this non-explanation coupled with the fact that there had been delay in the complaint being given several days after the so called demand, creates a doubt in registration of the case and further proceedings. It is a classic case of stage managed trap proceedings and the above discrepancies and suspicious circumstances shake the very foundation of the case of the Prosecution, making it doubtful the presence of PW.3 at the time of trap.
 - n) Mere recovery of the amount is not sufficient to base conviction. PW.2, the defacto complainant is an interested witness in the Prosecution case and his evidence has to be scrutinized carefully and without there being proper corroboration, his solitary evidence cannot be believed to place conviction. The Prosecution has not proved the foundational facts. There are contradictions between the witnesses with regard to prearranged trap signal. It is the evidence of PW.3 that even before the Appellant/ accused entered into the office, PW.12, Trap Laying Officer, caught hold the hands of the Appellant/ accused, thereby suggesting smearing of phenolphthalein in the hands of the Appellant/ accused.
 - o) The Prosecution, before raising presumption under Section 20 of the Prevention of Corruption Act, 1988, has to prove the foundational facts, by cogent evidence whereas the burden on the Appellant/ accused is to prove his case by preponderance of probabilities. In this case, the Appellant/ accused has rebutted the presumption contemplated under Section 20 of the Prevention of Corruption Act, 1988 by offering reasonable and probable explanation by preponderance of probabilities. In this case, the Appellant had denied that PW.3 was present on that day and coupled with the fact that the admission of PW.3 that he was informed about the trap even prior to registration of the case prove that the entire trap proceedings is a fabricated one.
8. The learned counsel for the Appellants accused would ultimately contend that the impugned judgement of conviction and sentence is against law and that the prosecution has failed to prove its case beyond all reasonable doubts by cogent evidence and hence, the Appellant is entitled for acquittal. He would rely on various decisions reported in 1987 Supp SCC

266 (G.V.Nanjundiah Vs. State (Delhi Administration), 1987 SCC Cri 385 (Sarup Chand Vs. State of Punjab), 1994 MLJ Cri 333 (T.S.Ramasamy Vs. State of Tamil Nadu), 2013 14 SCC 153 (State Vs. Madan Mohanlal Verma), 2009 6 SCC 587 (A.Subair Vs. State of Kerala), 2011 6 SCC 450 (State of Kerala and another), 2016 1 SCC Cri 11 (P.Sathyanarayana Murthy Vs. State of AP), AIR 1976 SC 1489 (Hari Dev Sharma Vs. State (Delhi Administration), 1994 Crl.LJ 545 (T.S.Ramaswamy Vs. State of Tamil Nadu), 2013 14 SCC 153 (State of Punjab Vs. Madan Mohan Lal Verma), 2015 10 SCC 230 (Selvaraj Vs. State of Karnataka), 2015 10 SCC 152 (P.Sathyanarayana Murthy Vs. State of AP), 2009 2 MLJ Crl. 105 (S.P.Paulraj vs. State), Judgement dated 28.02.2019 of the Honourable Supreme Court, made in Crl.A.No.1669 of 2009, Judgement, dated 10.10.2018 of the Madras High Court, made in Crl.A.No.37 of 2012, 2017 SCC Online Mad 22823 (V.S.Sundararajan Vs. Inspector of Police, CBI:ACB, Chennai), in support of his contentions.

9. Per contra, the learned Additional Public Prosecutor has filed a counter filed, denying and refuting the contentions raised by the learned counsel for the Appellant/ accused, in all respects, as false. Relying on the provisions of the Prevention of Corruption Act, 1988, he would further submit that PW.1, Sanctioning Authority, after having been fully satisfied himself, had accorded sanction Ex.P1, which is self explanatory by itself and that there was no influence played by anybody on PW.1, while according sanction. He would further submit that all the documents relating to the property of PW.2 have been enclosed along with Ex.P3 and that it is false to state that the entries in the Distribution Register had been concocted to support the case of the Prosecution.
10. The learned Additional Public Prosecutor would finally submit that there is no illegality or infirmity in the impugned judgement of conviction and sentence and that the Prosecution had proved its case by adducing clear and consistent evidence through the Prosecution witnesses and the contradictions and infirmities pointed out by the learned counsel for the Appellant cannot be given due weight in considering the case of the Prosecution, as it did not affect the core of the Prosecution case. It is further contended that the Prosecution proved the demand and receipt of the illegal gratification as the phenolphthalein test conducted proved positive and the Appellant had not rebutted the presumption under Section 20 of the Prevention of Corruption Act, 1988.
11. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.
12. At the outset, the legal position, which emerges regarding appreciation of evidence in a trap, can be summarized as under:-

(i) To succeed in such a case, the Prosecution is obliged to prove the demand of bribe before and at the time of trap, its acceptance and the recovery of tainted money.

(iii) The demand can be proved by testimony of the complainant as well as from the complaint made by him and other witnesses if proved in accordance with law and if it is corroborated in material particulars.

(v) A presumption as to the demand of bribe can also be drawn if the tainted money i.e. the money tendered as bribe money is recovered from the possession of the accused, which presumption, of course, is rebuttable under Section 20 of the Prevention of Corruption Act, 1988.

(vii) If the accused gives some defence, that can be scrutinized by the test of preponderance of probability, while the Prosecution must prove its case beyond all reasonable doubt."

13. The genesis of a trap lies in the previous demand of bribe made by the accused from the complainant, which becomes the basis of laying a trap by the investigating agency. Then, it is for the Prosecution to, again, prove the demand at the time when the trap was laid and thereafter, the question of acceptance and recovery of bribe money also is required to be proved beyond all reasonable doubts.

14. In this case, according to the Prosecution, the Appellant was working as a Public Servant, during the period from 29.10.2003 to 22.1.2004. On 08.01.2004, the initial demand of Rs.4,000/- was stated to have been made by the Appellant/accused, which became the basis for the Prosecution to lay the trap. On the request of PW.2, the demand was reduced to Rs.1,500/-. It was alleged that on 14.1.2004, when PW.2 approached the Appellant/accused, the second demand of Rs.1,500/- was made by the Appellant/accused. As per the first charge, on 22.1.2004, between 2.35 p.m. to 3.00 p.m., at the Post Office, opposite to the Office of the Appellant, the Appellant had made the final demand of Rs.1,500/- as bribe and received the same.

15. The case of the Prosecution mainly rests on the evidence of PW.2, defacto complainant and PW.3, Official witness, who was said to have witnessed the trap proceedings.

16. PW.2 had deposed in his evidence, in chief that on 22.1.2004 at 9.30 a.m., he had made the complaint Ex.P4, to PW.12 and Ex.P5 is the First Information Report and that the

- official witnesses, PW.3, Junior Assistant, PWD, Dharmapuri, and another Vijayaganesh, Junior Assistant, came at 10.30 a.m. and PW.12 introduced them to the accused. He had further deposed that the pre-trap proceedings were completed at 11.30 a.m. and noted under the mahazar Ex.P6 and that the trap team reached the Denkanikottai Bus Stand, at 2.30 p.m. and that when PW.2 and PW.3 went inside the Office of the accused, the accused was sitting in his chair and the accused told them to wait for ten minutes outside and at that time, there were several persons in the office of the accused and that at 2.45 p.m. the accused came out from the Office and brought PW.2 and PW.3 to the main road, in front of the Post Office, opposite to his Office and demanded the money and that PW.2 gave three currency notes of Rs.500 denomination to him and that the accused kept the money in his left inner pocket of his shirt, MO.4 (light sandal colour shirt) and thereafter, the accused proceeded towards his Office and at that time, PW.2 had given the prearranged signal, by combing his hair by his both hands and on seeing the prearranged signal, PW.12, PW.3 and another official witness, Vijayaganesh, came to the place, where PW.2 was standing and that PW.12, Trap Laying Officer had told PW.2 to go to his house and PW.2 had left the place of occurrence and that on 23.01.2004, PW.13 had called PW.2 and enquired him.
17. PW.2, in his cross examination, had deposed that he and PW.7, Bill Collector are residing in the same area and that on the date of trap, at 12.30 p.m. the Executive Officer, PW.4, was not there and he did not see PW.4, He had further deposed that the Executive Officer is the authority, who can alone issue No Objection Certificate and issue the house tax receipt and that the accused has no such authority. He had further deposed that the bribe demand made by the accused was known only to him and PW.7, Bill Collector and nobody knew such demand and that about 7 to 8 persons came to the Office of the Appellant on the day of trap and that the accused was caught red handed in the main entrance gate of the Office and that he did not know PW.7.
18. PW.3, is the Official witness, who had deposed about the trap proceedings in general and that when he along with the trap party went inside the office of the accused, except PW.4, Executive Officer, there were other officials present and PW.12 introduced himself to them and explained the purpose for which they came there and that 1 or 2 officials were present near the table of the accused and other officials were sitting in their chairs.
19. PW.4, Executive Officer, had deposed in his evidence that on 8.1.2004, PW.2 gave only the application, Ex.P3, without enclosing any documents relating to the newly constructed house of PW.2 and that since he was suspended on 12.01.2004, he did not know about the proceedings conducted after that date.
20. PW.5, Executive Officer had deposed that from 14.1.2004, he was working and before him, PW.4 was the Executive Officer and

- that at the time of occurrence, PW.6, Head Clerk was present and he is the authority competent to consider the application, Ex.P3 of PW.2 and that it is not the duty of the accused and his duty is only to write notes and to recommend. PW.6, Head Clerk, had deposed that the accused has no authority to consider the application, Ex.P3 of PW.2.
- 21.PW.7, Bill Collector, had deposed that her house was situated adjacent to the house of the accused and that she did not know the accused and she never saw him.
- 22.PW.12 had also deposed that the accused has no authority to consider the application, Ex.P3 of PW.2 and that on the day of trap at 14.50 p.m. PW.2 and PW.3, official witness, came out from the Office of the accused and gave the prearranged trap signal and thereafter, the PW.2 came to main road and the accused received the tainted amount from him.
- 23.From the entire analysis of the evidence, it is seen that though the required documents are to be enclosed along with Ex.P3, only the application, Ex.P3 alone had been made, without enclosing any such documents to get property tax receipt and No Objection Certificate, for the newly constructed house of PW.2 and that there is no material produced by PW.2 to show that he had constructed a new house as deposed by him and hence, the accused cannot be found fault for having kept the application Ex.P3, pending without processing the application and recommended for issuance of No Objection Certificate and property tax. Particularly, from the evidence of PW.4, PW.5, PW.6 and PW.12, it is evident that the role of the accused was only to collect the relevant documents and verify and put up in order to recommend for issuance of No Objection Certificate and property tax receipt, to the Executive Officer and without relevant documents, the accused could not recommend to PW.5.
- 24.As per the evidence of PW.7, Bill Collector, in her cross examination had deposed that her house was situated adjacent to the house of PW.2 and even before 08.01.2004, she had sent a report that PW.2 had constructed a house. But, strangely and contrarily, she had deposed that she did not know PW.2 and did not see him ever. In view of the fact that PW.7 had sent the report even before 08.01.2004, the statements that on 08.01.2004 PW.2 had given Ex.P3, application to PW.4 and that on Ex.P3, PW.4 had made a note on 8.1.2004 and that the accused asked PW.7 to go and verify the house of PW.2 and that PW.7 immediately went and verified the house and orally informed it to the accused and that the accused demanded money, ceates suspicion and thereby cannot be believed.
- 25.According to PW.2, he gave the tainted money to the accused, in the main road, in front of the Post Office, opposite to the Office of the accused and thereafter, the accused proceeded towards his Office and at that time, PW.2 had given the prearranged signal by combing his hair by his both hands. But, the evidence of PW.12, Trap Laying Officer runs contrary to

the evidence of PW.2, inasmuch as, according to PW.12, the prearranged signal as advised was given by PW.2 even prior to receipt of money, i.e. he gave the prearranged signal immediately after coming out from the office of the accused. If that is so, PW.12, would have rushed immediately and conducted the further trap proceedings.

26. Further, though as per the evidence of PW.2 and PW.3, the alleged bribe amount was received in front of the Post Office, PW.12, nowhere in his evidence had mentioned about the Post Office. Though in Ex.P9, mahazar, the name of the Post Office was mentioned as the place of receipt of money by the accused, neither in Ex.P19, requisition letter to perform chemical analysis nor in Ex.P22, prior intimation to the Court concerned, the name of Post Office was mentioned as the place of acceptance of bribe by the accused. But, in Ex.P19, it was mentioned that the place of acceptance of the bribe money was at the Office of the Town Panchayat, Denkanikottai, on 22.01.2004 between 14.35 and 15.00 hours. Even in Ex.P10, sketch, prepared by PW.12, Trap Laying Officer, the place of occurrence was not mentioned. Thus, this Court finds that the place of alleged acceptance of money on 22.1.2004 is not proved by the Prosecution. Further, it is the evidence of PW.3 that on identification of the Appellant/ accused by PW.2, the Trap Laying Officer, PW.12, caught hold of the Appellant/ accused by his hands and led him to his chair and the conduct of the Appellant/ accused was normal and he was not perturbed. The conduct of the Appellant/ accused at the time and after the trap is also to be taken into consideration, viz. as per the evidence, he was keeping quiet without being perturbed. These material contradictions would show that the trap was dubious in nature and that the trap was not conducted as alleged by the Prosecution. Further, the requisition to send the witness to the higher official had not been marked. Though non marking of the requisition letter to the Superior Officer may not be a relevant ground for doubting the case of the Prosecution, in the case on hand, the evidence of PW.3 that he was intimated about the trap at 9.30 a.m. creates a doubt. As stated above, the delay in giving the complaint also assumes significance in this case.

27. Further, PW.2, in his examination in chief and cross, had never deposed that the Appellant/ accused agreed to recommend to the Executive Officer for issuance of No Objection Certificate and property tax receipt, despite the application being defective. Admittedly, the accused can only recommend for issuance of such documents if the supporting documents are enclosed. It is the Executive Officer, who has to issue such documents and therefore, the alleged demand of bribe by the accused for issuance of No Objection Certificate and property tax receipt is the concocted story by PW.2 and the Prosecution as well.

28. Further, the Appellant/ accused at the time questioning under Section 313 of Cr.PC with regard to the presence of PW.3, he denied the presence of PW.3 and stated that no such trap had been conducted.
29. All the alleged prior demands took place in the Office of the accused only. PW.2 did not tell the accused that he would bring the bribe amount on 22.01.2004. As per the Prosecution, PW.3 is an unknown person and on the date of occurrence, when PW.2 and PW.3 had entered into the office of the accused, the accused did not enquire about PW.3 and in the presence of a third person, the accused received money is unacceptable.
30. Admittedly, though there were other officials at the time of trap proceedings, in the office of the accused, none of them had been summoned and examined as a witness to corroborate the evidence of PW.2, who is the defacto complainant and interested witness. The evidence of PW.7 does not corroborate the evidence of PW.2.
31. Apart from there being no independent witness to support the case of the Prosecution, the presence of PW.3, shadow and official witness, is highly doubtful. As per Ex.P5, First Information Report, it was registered on 22.01.2004 at 10.00 a.m. According to the deposition of PW.12, Trap Laying Officer, after registration of the First Information Report, Ex.P5, PW.12 had sent a requisition letter to the Joint Director of Agriculture Department, Dharmapuri, to send official/shadow witnesses, namely, PW.3 and another Official, who was not examined. But, as per the evidence of PW.3, PW.3 was informed at 9.45 a.m. itself to be present at the Office of the Respondent at 10.30 a.m. If the First Information Report was registered at 10.00 a.m. the shadow witness, PW.3 would have been informed after 10.00 a.m. only. This piece of contradictory evidence creates doubt and suspicions with regard to the case of the Prosecution regarding summoning of the official witnesses, but on the other hand, probabilise the fact that PW.3 and another Official were tutored witnesses and they were present already in the Office of the Respondent to participate in the already decided trap, after deliberations. Further, though PW.2 had deposed that PW.7 Rani and himself know about the earlier demand, it has been denied by PW.7 Rani. PW.2 has stated that he knows PW.7 whereas strangely she had stated that she does not know PW.2.
32. Yet another glaring factor, which proves that the trap proceedings is concocted, is that though the complaint, Ex.P4 given by PW.2 was written in Tamil, the printed First Information Report, Ex.P5 was prepared in English. No explanation has been given by the Prosecution that by whom and how the complaint in Tamil was translated to English and thereby, this non-explanation coupled with the fact that there had been delay in the complaint being given several days after the so called demand, creates a doubt in the very registration

of the case and further proceedings.

33. In order to substantiate the grounds raised by the learned counsel for the Appellant/ accused, It is apposite to refer to the following decisions of various Courts.
34. In AIR-1979-SC-1191 (Panalal Damodar Rathi Vs. State of Maharashtra), the Honourable Supreme Court had held that in the absence of corroboration of the evidence of the complainant, regarding the demand for money, his evidence alone cannot be accepted and that it is unsafe to base the conviction on the sole testimony of the panch witness.
35. In Jaswant Singh Vs. State of Punjab (AIR-1973-SC-707), the question was whether, in a bribery case, evidence of the complainant should be accepted. The Honourable Supreme Court held that he was an interested witness and the evidence must be considered with great caution and can be accepted only when it is corroborated in material particulars.
36. In 2011-1-MWN-Crl-602 (M.Rajendran Vs. State), 2001-1-MLJ-Crl-1050 (N.Thangarajulu and another Vs. State), 2010-1-MLJ-541 (A.V.Vijayarangan and others Vs. State) and 2010-2-MLJ-Crl-225 (D.Dass, Inspector of Police, Cuddalore Vs. State), this court reiterated the legal position that the demand of illegal gratification is sine qua non for the offence and mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused where the substantial evidence of Prosecution is not reliable.
37. In 2011 6 SCC 450 (State of Kerala and another Vs. C.P.Rao) the above said view that mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused was reiterated.
38. In 2015 10 SCC 230 (Selvaraj Vs. State of Karnataka), which was a case where even before registration of the First Information Report, the trap witnesses were called for, the Honourable Supreme Court had held that the acceptance of the bribe has not been established by adducing cogent evidence.
39. 1987 Supp SCC 266 (G.V.Nanjundiah Vs. State), it was laid down that the allegation of bribe taking should be considered along with other material circumstances. Demand has to be proved by adducing clinching evidence. When the fact indicating that the complainant was aware of the amount, was not withheld by the accused, the Court disbelieved the allegation of the complainant meeting the accused and the presence of strangers at the time of giving bribe was held to be unnatural.
40. In 1994 Crl.LJ 545 (T.S.Ramasamy Vs. State of Tamil Nadu), while dealing with evidence regarding the place of occurrence, it was held that in all trap cases like this, it is necessary for the Prosecution to file a sketch also showing the office or the place where the accused was trapped. Otherwise, it would be difficult and unsafe to accept the mere oral evidence of the official trap witnesses when they give evidence that they

witnessed the payment of bribe. It was further held that it is sufficient if the accused showed preponderance of probabilities of his defence and it need not be proved beyond all reasonable doubts as in the case of the Prosecution.

41. In 2013 14 SCC 153 (State of Punjab Vs. Madan Mohan Lal Verma), it was held thus:-

"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person."

42. As per Section 20 of the Prevention of Corruption Act, 1988, only if it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

43. It is well settled law that if the Prosecution is successful

in proving the recovery of tainted money from the possession of the accused, then a legal presumption arises that the accused had accepted or obtained the illegal gratification. Of course, this presumption is rebuttable. It is however not necessary that the required presumption is to be rebutted by the accused with the same standard of proof, as is expected of the Prosecution for recording a finding of conviction against him. The accused can validly rebut the above presumption by preponderance of probabilities and other circumstances appearing in the Prosecution evidence itself.

44. At this juncture, it is relevant to refer to the decision of the Honourable Supreme Court rendered in the case of C.M. Girish Babu Vs. CBI (2009-3-SCC-779), wherein, it has been held that the accused can rebut charge either through cross examination of the Prosecution witnesses or by adducing reliable evidence. Further, it has been held that the burden of proof on accused under Section 20 of the Act is not the same as the burden placed on the Prosecution to prove case beyond reasonable doubt. It had held 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 that the accused voluntarily accepted the money knowing it to be bribe.

45. In V. Venkata Subbarao Vs. State (AIR-2004-SC-1728), wherein it has been held that the presumption of demand and acceptance under Section 20 of the Prevention of Corruption Act cannot be raised, when the demand by the accused has not been proved.

46. In 2015 10 SCC 152 (P. Sathyanarayana Murthy Vs. District Inspector of Police, State AP and another),

"26. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in Sujit Biswas v. State of Assam [(2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] 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.

27. The materials on record when judged on the touchstone of the legal principles adumbrated herein above, leave no manner of doubt that the prosecution, in the instant case, has failed to prove unequivocally,

the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly unsafe to sustain the conviction of the appellant under Sections 13(1)(d)(i) and (ii) read with Section 13(2) of the Act as well. In the result, the appeal succeeds. The impugned judgement and order [P. Satyanarayana v. State of A.P., Criminal Appeal No. 262 of 2002, order dated 25-4-2008 (AP)] of the High Court is hereby set aside. The appellant is on bail. His bail bond stands discharged. Original record be sent back immediately. "

47. The Honourable Supreme Court, in the case of Matajob Dobey Vs. H.C. Bhari reported in AIR 1956 SC 44, had held that there must be a reasonable connection between the act and the discharge of official duty and the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended and fanciful claim, that he did it in the course of performance of his duty. In the case on hand, the power to issue any certificate vests with the Executive Officer only and the Appellant/ accused as a clerk has only to prepare the notes and then recommend and hence, the case of the Prosecution is a concocted one, as the Prosecution has failed to prove the connection between the act and the discharge of official duty of the Appellant/ accused.

48. Before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts, namely, demand and acceptance, must be established by the Prosecution. In this regard, it is relevant to refer to the decisions rendered in the cases of State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede reported in (2009) 15 SCC 200, State of Punjab Vs. Madan Mohanlal Verma reported in (2013) 14 SCC 153, V. Sejappa Vs. State by Police Inspector Lokayukta, Chitradurga reported in (2016) 12 SCC 150 and Mukhtiar Singh Vs. State of Punjab reported in (2017) 8 SCC 136 .

49. In the case of State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede reported in (2009) 15 SCC 200, it was held as under:-

"16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz. demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden

of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

.....
.....

21. Even in a case where the burden is on the accused, it is well known, the prosecution must prove the foundational facts. (See Noor Aga V. State of Punjab and Jayendra Vishnu Thakur V. State of Maharashtra.)

22. It is also a well-settled principle of law that where it is possible to have both the views, one in favour of the prosecution and the other in favour of the accused, the latter should prevail. (See Dilip V. State of M.P. and Gagan Kanojia V. State of Punjab.)

Later in State of Punjab Vs. Madan Mohanlal Verma reported in (2013) 14 SCC 153 ,para 24 is extracted below:

"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification.

Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (vide Ram Prakash Arora Vs. State of Punjab 91972) 3 SCC 652, T.Subramaniam Vs. State of TamilNadu (2006) 1 SCC 401, State of Kerala Vs. C.P.Rao (2011) 6 SCC 450 and Mukut Bihari Vs. State of Rajasthan (2012) 11 SCC 642.

50. In the case of V.Sejappa Vs.State by Police Inspector Lokayukta, Chitradurga reported in (2016) 12 SCC 150, the Honourable Supreme Court, while referring to several earlier judgments, has held as follows:-

"18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and presumption would arise under Section 20 of Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of Act.

19. After referring to Suraj Mal Vs. State 9Delhi Admn), in C.M.Girish Babu V. CBI, it was held as under: (SCC P.784, paragraph)

"18. In Suraj Mal Vs. State Delhi Admn), this Court took the view that (at SCC P.727, para 2) 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 that the accused voluntarily accepted the money knowing it to be bribe."

20. In State of Kerala V.C.P.Rao, it was held that mere

recovery of tainted money is not sufficient to convict the accused and there has to be corroboration of the testimony of the complainant regarding the demand of bribe.

21. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to the following observation in *Mukut Biharai V. State of Rajasthan*, where it was held as under: (SCC PP. 645-46, para 11).

"11. The law on the issue is well settled that demand of illegal gratification is since qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complaint is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person"

51. In the case of *Mukhtiar Singh Vs. State of Punjab* reported in (2017) 8 SCC 136, the Honourable Supreme Court, while referring to several earlier judgments had held as follows:-

"13. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In A. Subair vs. State of Kerala, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was exposted 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.

15. In P. Satyanarayana Murthy, this Court took note of its verdict in B. Jayaraj vs. State of A.P.6 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 Sections 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 on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder: (SCC P.159, Para 23)

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13 (1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these 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)".

52. In the instant case, the foundation of the Prosecution case of the demand made by the Appellant for bribe has, as observed already, been shaken to a great extent. In any event, it casts a grave doubt on the events that were alleged to have taken place in the matter of pre-trap proceedings, giving bribe to the Appellant and recovery of bribe money from the Appellant. The version of the Prosecution, as to demand and receipt of the bribe money, as narrated by the Prosecution witnesses, is suspicious and does not inspire any confidence. Serious doubts arise as to the manner in which bribe was stated to be demanded, offered and received, as also to the place where the offer and receipt took place. The Prosecution has miserably failed to prove the foundational facts, viz. demand, acceptance and recovery of the amount of illegal gratification, beyond all reasonable doubts. When the Prosecution is not able to prove its case by proving the foundational facts, it cannot take advantage that the Appellant/accused has not come out with a probable explanation in defence. Therefore, this Court is of the opinion that the Prosecution has not been able to prove the guilt of the Appellant beyond all reasonable doubts.

53. As already discussed above, the entire circumstances, under which the case was stated to be registered, the trap witnesses being summoned even prior to the registration of the case, the bribe is alleged to be accepted by the accused, are highly suspicious and shrouded with doubts and as such, it is difficult to sustain the conviction on the basis of such dubious evidence.

54. In view of the above infirmities and inherent improbabilities, this Court has to necessarily come to the conclusion that the entire trap proceedings was bristled with suspicious circumstances and doubts, as the Prosecution, before raising presumption under Section 20 of the Prevention of Corruption Act, 1988, has miserably failed to establish the foundational facts regarding guilt of the accused by cogent evidence, whereas the Appellant has rebutted such presumption by preponderance of probabilities and thereby, the Appellant is entitled to be acquitted.

55. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is hereby set

aside. The Appellant is acquitted from the charges levelled against him. The bail bond, if any executed by the Appellant, shall stand cancelled and the fine amount paid, if any paid by him, shall be refunded to him.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Srcm

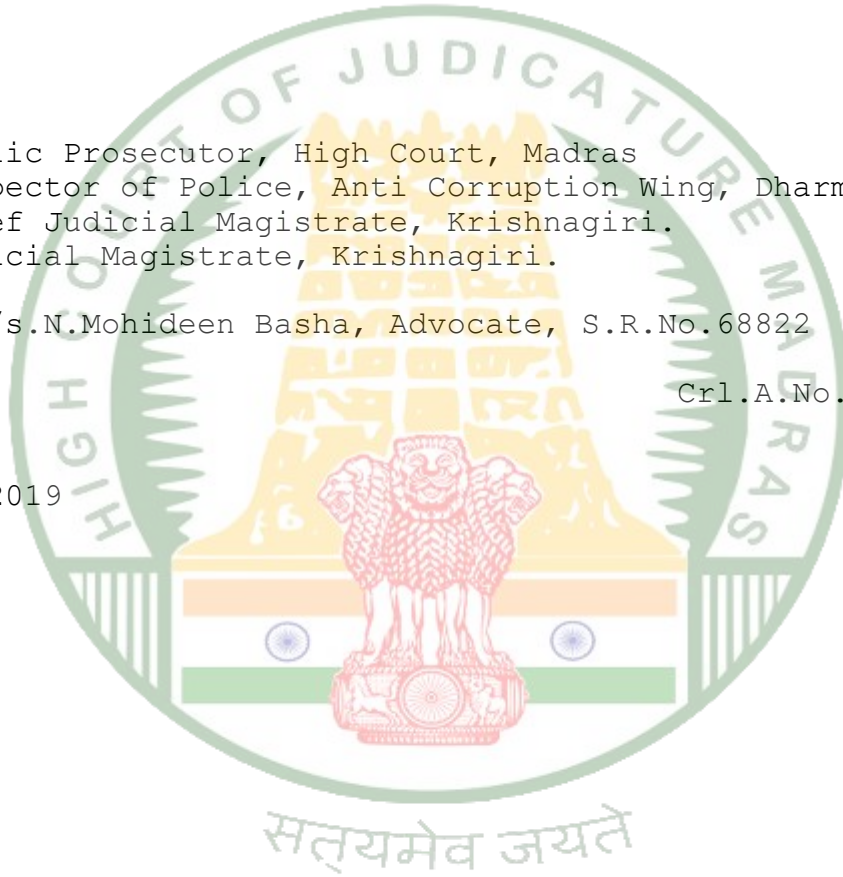
To:

- 1.The Public Prosecutor, High Court, Madras
- 2.The Inspector of Police, Anti Corruption Wing, Dharmapuri.
- 3.The Chief Judicial Magistrate, Krishnagiri.
- 4.The Judicial Magistrate, Krishnagiri.

+1cc to M/s.N.Mohideen Basha, Advocate, S.R.No.68822

Crl.A.No.693 of 2008

JP(CO)
CS/30/09/2019



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