

BAIL SLIP

The Petitioners/Accused 1&2 Viz, 1.K.Pazhani & 2.M.Mayavan was released on bail as per the order of this Court Dated 14-09-2011 in CrI.M.P.No.1 of 2011 in CrI.A.No.567/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 567 OF 2011

1. K.Pazhani
2. M.Mayavan

.. Appellants

- Vs -

State, rep. By
Deputy Superintendent of Police
Dept. of V & AC
Vellore District.

... Respondent

Criminal Appeal filed u/s 374 (2) of the Code of Criminal Procedure, against the order dated 22.08.2011 passed by the learned Chief Judicial Magistrate-cum-Special Judge, Tiruvannamalai, in Special Case No.5 of 2004.

For Appellants : Mr. John Sathyan

For Respondent : Ms. Saradha Devi, GA (Crl. Side)

JUDGMENT

The appellants are the accused in Spl. Case No.5 of 2004 and they were charged and tried before the learned Chief Judicial Magistrate-cum-Special Judge, Tiruvannamalai, for various offences under the Prevention of Corruption Act (for short 'PC Act') and on being found guilty, they were convicted and sentenced as under :-

Accused	Section	Sentence
A-1	U/s 7 & 13 (2) r/w 13 (1) (d) of PC Act	Convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of one month.
	U/s 201 IPC	Convicted and sentenced to undergo simple imprisonment for a period of one month.
A-2	U/s 12 & 13 (2) r/w 13 (1) (d) of PC Act	Convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of one month.
	U/s 201 IPC	Convicted and sentenced to undergo simple imprisonment for a period of one month.

Though no charge was framed u/s 201 IPC, the appellants/accused have been convicted and sentenced u/s 201 IPC. Challenging the conviction and sentence recorded by the trial court, the appellants are before this Court by filing the present appeal. For the sake of convenience, the accused/appellants will be referred to as A-1 and A-2 respectively.

2. The brief facts necessary for the disposal of this appeal are culled out hereunder:-

A-1 is the Village Administrative Officer of Chennasamudram Village and A-2 is the Village Assistant. The defacto complainant is Subbarayan (since deceased). It is the case of the prosecution that the defacto complainant had submitted an application, Exs.P-7 & 9, for measuring his lands on 21.7.03 and he approached P.W.9, the surveyor, who asked him to meet A-1, as A-1 was in possession of the land documents. Therefore, the defacto complainant approached A-1 on two occasions, viz., on 21.7.03 and 6.9.03 for measuring his lands and on the first occasion, i.e., on 21.7.03, A-1 had demanded a sum of Rs.2,000/- as illegal gratification for performing his routine official functions and subsequently, the demand was reduced to Rs.1500/- on 6.9.03. Perturbed at the said demand of of illegal

gratification, the defacto complainant had approached the office of the Vigilance & Anti Corruption, where he met P.W.10, the Inspector/the Trap Laying Officer and narrated the incident and gave a complaint, Ex.P-13, based on which a case in crime No.5/2003 was registered by P.W.10, who prepared printed FIR, Ex.P-14. Investigation of the case was taken up by P.W.10, who prepared a trap for trapping A-1.

3. Accordingly, P.W.10 requisitioned the services of P.W.3, an assistant working in the office of the Assistant Director of Panchayat and one Ganeshraj, Junior Superintendent at the office of the Zonal Director of Kadhi & Village Industries, Vellore, for the purpose of laying a trap for catching A-1. Accordingly, on 9.9.03, at about 8.00 a.m., the trap was finalised in the office of P.W.10, where the defacto complainant, P.W.3 and Ganeshraj were present. After explaining the details of the trap operation to the persons gathered in the office of P.W.10 and allowing P.W.3 and Ganeshraj to interact with the defacto complainant and after P.W.3 and Ganeshraj read over the complaint submitted by the defacto complainant, P.W.10 proceeded to coat the currencies brought by the defacto complainant to the tune of Rs.1,500/- containing one Five Hundred Rupee Note and Ten Hundred Rupee Notes, with the chemical Phenolphthalein. After coating the currencies with Phenolphthalein and experimenting with its proper functioning, P.W.10, along with the defacto complainant, P.W.3, Ganeshraj and other members of his team, proceeded to Chennasamudram Village to the office of A-1. The vehicle carrying them was stopped 500 mtrs., before the office of A-1 and the defacto complainant and P.W.3 alighted from the vehicle and proceeded to the office of A-1.

4. On entering the office of A-1, the defacto complainant found A-1 and A-2 along with two other persons in the said office. At that time, the defacto complainant requested A-1 for measuring his lands to which A-1 asked him as to whether he has brought the money. The defacto complainant took the money from his pocket, which was coated with Phenolphthalein, and handed it over to A-1, who received the same and kept it in his draw. Thereafter, on enquiry by the defacto complainant as to when his lands will be measured, A-1 told him that it will be measured either on Thursday or Saturday subject to the availability of the surveyor. Thereafter, the defacto complainant and P.W.3 came out of the office and as per the prearranged signal, the defacto complainant rolled out his shirt sleeves, and seeing the signal, the trap laying party reached the office of A-1 and after ascertaining as to what happened inside the office of A-1, P.W.10, along with P.W.3 and the defacto complainant entered the office and on A-1, being identified by the defacto complainant, P.W.10 proceeded to enquire A-1. Thereafter, P.W.10 prepared a solution of Sodium Bi-Carbonate in two bottles and dipped both the hands of A-1 and on such act, the solution turned pink.

Thereafter, the bottles were sealed and numbered, which are M.O.s 3 and 4. When P.W.10 enquired A-1 as to whether he has received any money, A-1 replied that he had given the money to A-2. Thereafter, P.W.10 asked A-2 whether the money received by A-1 was with him, to which A-2 replied that he has given it to P.W.4. The process of dipping the hands of A-2 in the Sodium Bi-Carbonate solution prepared in two bottles was carried out by P.W.10 and, upon repeating the procedure, the solution turned pink and the bottles were also sealed and numbered, which are M.O.s 5 and 6. P.W.10, thereafter, asked P.W.4, as to whether he has the money received by A-1 with him to which P.W.4 took the money out of his pocket and gave the money to P.W.10. P.W.10, prepared two more bottles of Sodium Bi-Carbonate solution and dipped the hands of P.W.4 and on performing the said act, the solution turned pink. The said bottles were also sealed and numbered, which are M.O.s 7 & 8. Thereafter, the shirt worn by P.W.4 was seized and dipped in another bottle of Sodium Bi-Carbonate solution and the solution turned pink. The bottle was sealed and numbered, which is marked as M.O.9. The shirt was seized under mahazar and marked as Ex.P-10. The Rs.500 currency note was seized and marked as Ex.P-11 and the Rs.100 currency notes, 10 in number, were seized and marked as Ex.P-12 series.

5. P.W.10 enquired A-1 about the money received by him from the defacto complainant for which A-1 replied that he had received and given that money to A-2. However, A-2 stated that he had, in turn, given the money to P.W.4, which money was taken out by P.W.4 and given to P.W.10. P.W.10 asked P.W.3 and Ganeshraj to check the currency numbers with the list already prepared and on checking the currency, the numbers tallied. When enquired with A-1 as to the purpose for which he had received the money from the defacto complainant, A-1 stated that for the purpose of granting patta, he had received the money from the defacto complainant. The requisite mahazars were prepared in which A-1 affixed his signature. Thereafter, P.W.10 took A-1 and A-2 to their respective residence and conducted a search. However, no materials were seized from their residence. A mahazar was prepared in this regard by P.W.10 in which witnesses affixed their signatures and A-1 also signed the said mahazar and registers. Returning back to the office of A-1, P.W.10 seized the application given by the defacto complainant and also seized the documents relating to the said lands under the cover of mahazar. The accused, viz., A-1 and A-2 were arrested and remanded to judicial custody. P.W.10, recorded the statement of the witnesses. P.W.10 gave requisition, Ex.P-15, to the Court for sending the material objects for chemical examination. Accordingly, vide Ex.P-12, the material objects, viz., the bottles containing the solution and the seized currencies were sent for chemical analysis and the report, Ex.P-11, was received. On completion of investigation, P.W.10 filed

the final report against the accused charging them for the offences as stated above.

6. The accused/respondents herein were furnished with the relied upon documents u/s 207 Cr.P.C. and the trial court framed the charge u/s 7 & 13 (2) r/w 13 (1) (d) of the PC Act against A-1 and u/s 12 and 13 (2) r/w 13 (1) (d) of the PC Act against A-2. When questioned, the accused pleaded not guilty.

7. To prove the case, the prosecution examined P.W.s 1 to 13, marked Exs.P-1 to P-15 and M.O.s 1 to 12. When the accused/appellants were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. Neither any oral nor any documentary evidence was marked on the side of the defence. The trial court, after hearing either side and after considering the materials, both oral and documentary, available on record, convicted and sentenced the appellants as above. Aggrieved by the said conviction and sentence recorded by the trial court, the appellants have filed the present appeal.

8. Mr. John Sathyan, learned counsel appearing for the appellants submitted that not only the prosecution case bristles with very many inconsistencies, but contradictions galore in the evidence of the witnesses, more especially P.W.s 3 and 4 as to the receipt of the money and, therefore, the basic necessity of 'Demand & Receipt' for an offence to be attracted under the PC Act gets demolished. It is the submission of the learned counsel for the appellants that though P.W.10 in his evidence deposed that no exchange of money took place while the raid was conducted in the office premises and only enquiry revealed that A-1 gave the tainted money to A-2, who in turn gave it to P.W.4, however, the deposition of P.W.4 is to the effect that on the raiding party entering the office, A-1 gave the money to A-2, who in turn gave it to P.W.4.

9. It is the further submission of the learned counsel for the appellants that it is the evidence of P.W.4 that A-1 refused to receive the money and that the defacto complainant had placed the money on the table of A-1. The above evidence of P.W.4 strikes at the root of the prosecution theory about the demand for money made by A-1. It is further submitted by the learned counsel for the appellants that the money was handled by A-1 with one hand, but while dipping the hands of A-1 and A-2, the police dipped both the hands. It is the further deposition of P.W.s 3 and 4 that before conducting the test, the vigilance officers were holding the hands of the accused. Therefore, it is submitted by the learned counsel for the appellants that the conduct of the police in holding both the hands of the accused and, thereafter, conducting the confirmatory test for phenolphthalein, in the light of the evidence of P.W.s 3 and 4

that the accused handled the money only with one hand strikes at the root of the prosecution case. It is the submission of the learned counsel for the appellants that the curious act of the vigilance officials in holding the hands of the accused prior to dipping their hands in the Sodium Bi-Carbonate solution clearly reveals that the vigilance officials are trying to involve the accused in the offence by foisting the case on them. It is the submission of the learned counsel for the appellants that the above deposition of P.W.4 gets corroboration from the deposition of P.W.3, the official trap witness, who has also deposed that prior to dipping the hands of the accused in the solution, the vigilance officials were holding the hands of the accused.

10. It is further contended by the learned counsel for the appellants that according to the evidence of P.W.4, P.W.3, viz., the official trap witness, was not inside the room where the defacto complainant handed over the money to A-1 and, therefore, it would have been impossible for P.W.3 to see the receipt of money by A-1 and, therefore, the evidence of P.W.3 cannot be relied upon to prove the receipt of money by A-1.

11. It is further contended by the learned counsel for the appellants that the application for survey, Exs.P-7 & P-9, given by the defacto complainant, on which reliance has been placed by the prosecution, reveals that there is correction with regard to the month, which is corrected as '7'. It is therefore submitted that the correction reveals that the application, as alleged to have been submitted, is a concocted one, which has been prepared to suit the prosecution version as if the application was submitted in the month of July, 2003.

12. It is the further submission of the learned counsel for the appellants that though a conviction has been recorded against the appellants u/s 201 IPC, however, curiously, no charge has been framed against the accused and in the absence of any charge, the conviction and sentence recorded against the appellants cannot be maintained.

13. It is the further submission of the learned counsel for the appellants that the evidence of P.W.s 3 and 4 contradicts each other on many material particulars rather than corroborating each other, which is fatal to the prosecution case and P.W.11, the other witness, who was said to have been present at the time of the occurrence, having turned hostile, the prosecution has not proved the case of 'Demand and Receipt' in the manner it should have been proved and, therefore, the conviction recorded by the court below deserves to be interfered with.

14. Per contra, Ms.Saradha Devi, learned Government Advocate (Crl. Side) appearing for the respondent submits that

it is true that there are a few contradictions in the evidence of P.W.s 3 and 4, however, their evidence on all material particulars corroborate each other. Once there is corroboration on material particulars, trivial inconsistencies and infirmities in the evidence do not affect the substratum of the prosecution case. It is the submission of the learned Government Advocate that the inconsistencies and infirmities, which are trivial in nature, have arisen due to efflux of time in recording the chief and cross examination and, therefore, the same cannot be put against the prosecution to throw out its case, when on all other counts, the prosecution has established its case.

15. It is the submission of the learned Government Advocate that though the money was recovered from P.W.4, who gave it to P.W.10, but the fact remains that P.W.4 in his evidence has deposed that the money was given to him by A-2, who in turn received the same from A-1. The fact that the receipt of money not being disputed and stands established through the evidence of P.W.4, the mere inconsistency as to when the money changed hands from A-1 to A-2 and thereafter to P.W.4 will not in any way demolish the case of the prosecution.

16. It is countered by the learned Government Advocate that the whole fabric of 'Demand and Receipt' of money lay centered on the application, Exs.P-7 & P-9, submitted by the defacto complainant for surveying the land, which necessitated the defacto complaint to meet A-1 on the directions of P.W.9. P.W.9 has spoken about the same corroborating the case of the prosecution and in this background alone the act of A-1 demanding money from the defacto complainant assumes significance. Exs.P-7 & P-9, the application along with the enclosed challan proves the fact that the defacto complainant had in fact taken steps to survey his lands and, therefore, the contention of the appellants that the case has been foisted on them pales into insignificance in the backdrop of the evidence of P.W.9.

17. It is the further submission of the learned Government Advocate that though the contention of the appellants that they have no imminent role to play in the process of resurvey, however, their role has been spoken to by P.W.9, who has stated that the documents related to the lands are with A-1 and, therefore, the role of A-1 in the process cannot be brushed aside.

18. It is the submission of the learned counsel appearing for the respondent that the contention of the appellants that though P.W.4 has spoken about receipt of the money by A-1, which he received with one hand and put it inside the draw and, thereafter gave it to A-2, the attack on the said evidence by

the appellants stating that both hands were dipped in the solution, which turned pink was only due to the reason that P.W.10 was holding the hands of A-1 could only be said to be a last straw, which the appellants want to clutch to get themselves acquitted and the same defies the simple logic that any person receiving money, the natural course that would follow is counting the money, which act has transferred the phenolphthalein to both the hands of A-1 and, therefore, the necessity for P.W.10 to test both hands is not only an investigative necessity and procedure, but also an act of prudence and, therefore, the said contention cannot stand the test of reasonableness.

19. It is submitted by the learned Government Advocate that though the Act mandates minimum sentence of one year for offence under the provisions for which the appellants have been found guilty, yet the trial court erroneously has sentenced the appellants to a sentence much below the minimum sentence and, therefore, this Court, in the fitness of things and in the light of the inherent powers vested in it should enhance the sentence and sentence the accused to the minimum sentence as mandated under the statute.

20. In fine, it is the submission of the learned Government Advocate that the prosecution, through cogent and convincing evidence, both oral and documentary, has proved the culpability of the accused in the commission of the offence and the trial court, on proper appreciation has given the punishment, which is below the minimum mandated punishment and, therefore, this Court, while not interfering with the conviction, may enhance the sentence imposed on the accused/appellants to the minimum prescribed under the Act.

21. In reply, Mr. John Sathyan, learned counsel appearing for the appellants submitted that though the court below has awarded a sentence below what has been mandated under the Act, however, in the absence of any appeal by the State against that portion of the judgment, this Court would not enhance the sentence in an appeal filed by the appellants assailing their conviction and sentence.

22. This Court heard the learned counsel appearing on either side and perused the materials available on record to which the court's attention was drawn. The following issues arise for consideration before this Court in the present appeal :-

- i) Whether the trial court was right in finding the appellants/accused guilty for the offences charged against them;

ii) Whether the conviction and sentence of imprisonment imposed on the appellants warrant any interference;

iii) Whether the contradiction between the evidence of P.W.s 3 and 4, as contended, hits at the substratum of the prosecution case; and

iv) Whether the sentence of six months awarded by the trial court requires any interference.

23. The decoy, viz., the defacto complainant died pending trial and, therefore, the trial proceeded without the evidence of the decoy being recorded. It is the contention of the learned counsel for the appellants that the death of the decoy, viz., the defacto complainant has robbed the appellants of the valuable right to cross examination to bring out the falsity in the prosecution version and, therefore, the Court should be very circumspect in analysing the evidence of P.W.s 3, 4 and 10, on whose evidence, the whole prosecution web hinges.

24. This Court is conscious of the fact that the defacto complainant, the pivotal source pertaining to demand of money by A-1 being dead pending trial and not having been examined, this Court is burdened with the task of stifling through the evidence of P.W.s 3 and 4, who are material witnesses and who were present at the scene of occurrence, when acceptance of money is alleged to have taken place and further the evidence of P.W.s 3 and 10 relating to the demand of money as put forth by the defacto complainant in his complaint, Ex.P-13 to arrive at a finding as to the culpability of A-1 and A-2 in the commission of the crime.

25. P.W.s 1 and 2 are the sanctioning authorities relating to sanctioning of prosecution against A-1 and A-2 and Exs.P-1 and P-2 are the sanction orders for prosecuting A-1 and A-2, on which there is no dispute.

26. It is the evidence of P.W.3, who is the official trap witness, that he was working as Assistant in the Office of the Assistant Director of Panchayats, Vellore Division. In his evidence in chief, he has deposed that on the request of Department of Vigilance & Anti Corruption, P.W.3 was deputed to meet P.W.10 on 9.9.03 at 6.00 a.m. It is the deposition of P.W.3 that he met P.W.10 on 9.9.03 and at that time, one Ganeshraj, Junior Superintendent at Khadi & Village Industries Dept., was also present. P.W.3 has further deposed that P.W.10 introduced him and Ganeshraj to the defacto complainant and the complaint, Ex.P-13, given by the defacto complainant was given to Ganeshraj and P.W.3, who went through the same. P.W.3 has further deposed about the pre-trap formalities taken out by P.W.10 including coating the money with Phenolphthalein and testing it as to its proper working. P.W.3 has further deposed

that they reached Chennasamudram Village and P.W.3 along with the defacto complainant went to the office of A-1 where four persons were present. P.W.3 further deposed that the defacto complainant enquired A-1 as to when survey of his lands will be taken up for which A-1 asked the defacto complainant as to whether he has brought the money. It is the deposition of P.W.1 that the defacto complainant took the money from his shirt pocket and gave it to A-1 and, thereafter, they came out and the pre-arranged signal of rolling down the shirt sleeves was performed by the defacto complainant subsequent to which the Vigilance party came to the scene of occurrence and after hearing what happened inside the office, went inside the office where the defacto complainant identified A-1. P.W.3 has further deposed that subsequent to the identification of A-1, the defacto complainant was sent out, whereinafter, two bottles containing Sodium Bi-Carbonate solution were placed and A-1 was asked to dip his hands in the water. On A-1 dipping the hands in the solution, the solution turned pink. Thereafter, P.W.10 enquired A-1 as to whether he received money from the defacto complainant to which A-1 replied in the affirmative and stated that he has given the amount to A-2, who, on enquiry, stated that he had given the money to P.W.4. It is the further deposition of P.W.3 that the act of dipping the hands of A-2 and P.W.4 in the bottles containing Sodium Bi-Carbonate solution, were carried out and the result was the change in colour of the solution to pink. All the bottles containing the solutions were sealed and mahazar was prepared, which was attested by witnesses.

27. P.W.3, in his deposition in cross, has deposed that the defacto complainant gave the tainted money to A-1, which was received by A-1 and was kept in his table draw. P.W.3 has denied the suggestion that A-1 did not ask the defacto complainant whether he has brought the money. In cross examination, P.W.3 has deposed that when P.W.10 enquired A-1 as to whether he received any money, A-1 replied in the negative. P.W.3 has further deposed in cross that all the other persons in the office of A-1, viz., A-2, P.W.4 and P.W.11, on enquiry by P.W.10, stated that they are not in possession of any money.

28. P.W.4, the person, who was in the office of A-1 when the trap was in progress and who had come for a totally different purpose, has almost spoken on the same lines as spoken to by P.W.3. Certain discrepancies and contradictions are highlighted between the evidence of P.W.3 and P.W.4, which will be dealt with in the subsequent part of the judgment.

29. It is the vehement submission of the learned counsel for the appellants that P.W.3 has categorically deposed in cross examination, which has been corroborated by P.W.4 in his examination in cross that P.W.10 was holding the hands of A-1

while enquiring him and much before the test of dipping the hands of A-1 into the solution of Sodium Bi-Carbonate and, therefore, P.W.10, being the person, who had initially coated the currencies with Phenolphthalein, the probabilities are that he could very well have passed on Phenolphthalein to the hands of A-1, thereby, the test conducted thereafter resulted in the solution turning pink on A-1 dipping his hands in the said solution and, therefore, it is quite evident that the prosecution is trying to foist a case on the appellants.

30. Though the above submission of the learned counsel for the appellant, at first sight, looks attractive and impressive, yet a crucial admission in chief by P.W.3 negates the said contention of the appellants. P.W.3, in chief examination, has categorically deposed that after coating the currencies with Phenolphthalein and testing its result with the aid of Ganeshraj, all the persons associated with the act of coating phenolphthalein in the currencies notes washed their hands. Though such an answer has been elicited by the prosecution in chief, yet the defence has not taken the witness on cross on this particular aspect. This uncontroverted deposition of P.W.3 outrightly demolishes the case of the appellants that the act of P.W.10 in holding the hands of A-1 was wholly and purely for the purpose of passing on phenolphthalein to the hands of A-1.

31. One other thing to be remembered here is that the test proved positive not only for A-1, but also for A-2 and P.W.4, who are alleged to have handled the money coated with Phenolphthalein. However, there is no elicitation of evidence in cross by the defence that P.W.10 or other vigilance officials were holding the hands of A-2 and P.W.4. Passing references in the deposition of the witnesses that the persons, who were inside the office, were restrained cannot be put against the prosecution to disprove the case and the defence has to break the deposition rather than relying on passing references, which are prone to happen while evidence is being recorded, as human mind is prone to vagaries at times.

32. It is the vehement contention of the learned counsel for the appellants that the deposition of P.W.s 3 and 4 is to the effect that on receiving the money, A-1 kept it on the table and, thereafter, it was passed on to A-2 and then by A-2 to P.W.4. It is their further deposition that A-1 handled the money only with one hand and that none of the witnesses have spoken about A-1 using both the hands to receive the money. That being the case, it is submitted by the learned counsel for the appellants that phenolphthalein being found in both the hands of A-1 when the test was conducted only amplifies the stand of A-1 that catching hold of the hands of A-1 by P.W.10 facilitated in passing the chemical from the hands of P.W.10 to

the hands of A-1, which aspect has been spoken to by P.W.s 3 and 4.

33. The above contention, at first blush, though appears attractive, but prudence prevails over penchant to accept the said contention. It is true that the deposition of P.W.s 3 and 4 reveals that on receiving the tainted money, A-1 kept the same in the top draw of the table. It is further evident from the deposition of P.W.s 3 and 4 that after giving the money, the defacto complainant questioned A-1 as to when the survey would be made to which A-1 replied that it would be done either on Thursday or Saturday subject to the availability of the surveyor. On getting the said answer, both the defacto complainant and P.W.3 left the office of A-1 and went outside to give the prearranged signal to the vigilance authorities.

34. In this regard, a crucial admission has been elicited in cross examination of P.W.3 to the effect that when the vigilance party went inside the office of A-1, the money was not in the table draw. The evidence of P.W.3 in chief that A-1 had told P.W.10 that he had given the money to A-2 stands fortified by the fact that the money, alleged to have been received from the defacto complainant was not in the table draw when a search was made by P.W.10, but the deposition of P.W.4 further reveals that A-1 had given the money to A-2, which was in turn given to P.W.4 by A-2 on the arrival of the vigilance officials. In the above scenario, the normal act of a person, who receives money, should be borne in mind. Any normal person, who receives money, is bound to count the same, for which use of both hands is necessary. In the present case, the money received by A-1 is a demand made for discharging a particular official duty. In such a backdrop, the necessary inference that could be drawn is that once the defacto complainant and P.W.3 left the office, A-1 would have necessarily counted the money, which would necessitate the use of both his hands, and, thereafter, handed over the same to A-2, which was in turn handed over to P.W.4. The same analogy would be applicable to A-2 as well. This alone could have been the reason that the chemical was found in the hands of A-1, A-2 and P.W.4. Curiously, there has been neither any chief examination nor any cross examination in this line. In the above backdrop, the considered opinion of this Court is that A-1 being an average and normal person, would have counted the money and handed it over to A-2, which left the traces of phenolphthalein in both the hands of A-1, which got itself exhibited on being brought in contact with the Sodium Bi-Carbonate solution. Further, as discussed above, P.W.3 has categorically stated in chief examination that the persons, who handled the chemical, phenolphthalein, washed their hands off completely before embarking on the operation and there is no elicitation in cross examination that the chemical was handled once again by P.W.10 before entering the office of A-1.

Therefore, the contention of the defence, that the chemical being found in both the hands of A-1 is only due to P.W.10 catching hold of the hands of A-1 and, thereby, transferring the chemical from his person to the hands of A-1, though on the face of it seems attractive, but falls short of acceptance in view of the discussion made above.

35. It is the submission of the learned counsel for the appellants that though the application for resurvey has been initially dated as 21.8.03, however, the same has been corrected as 21.7.03, which is only to suit the convenience of the prosecution case and, therefore, the submission of application for survey itself is doubtful, which casts a grave doubt in the prosecution case.

36. True it is that there is a correction in the month in Ex.P-7, the application form submitted by the defacto complainant for surveying his lands. But is that correction so very fatal that it knocks of the prosecution case out the window? Definitely not, as the other materials on record clearly prove that it is a mere correction, which happens in the normal course of events. No doubt, in Exs.P-7 & P-9, the application submitted by the defacto complainant for surveying his lands, at the bottom portion, where date is mentioned, it is seen that the date is initially written as 21.8.2003 and, thereafter, '7' is written over '8'. However, the seal affixed on the challan in which a payment of Rs.100/- has been made as fees clearly reveal the date as 21.7.2003. Therefore, it is unambiguously clear that for all purposes, the defacto complainant had made the application on 21.7.03 and remitted the payment of fees through the challan on 21.7.03 and the error in the month in the application could only be held to be an inadvertent error, which occurs to all humans in the course of their daily chores. Therefore, the submission of the learned counsel for the appellants that the correction in the date in the application for survey casts a serious doubt in the veracity of the prosecution version is liable to be rejected.

37. The last of the contention placed before this Court by the learned counsel appearing for the appellants is that the corroboration in the deposition of P.W.s 3 and 4 not only falls short, but the deposition of P.W.4 in cross that A-1 did not receive money from the defacto complainant and that the defacto complainant had placed the money on the table runs counter to his deposition in chief and, therefore, reliance cannot be placed on the said evidence to bring home the guilt of the appellants and, therefore, the infirmities in the evidence of the prosecution witnesses should enure to the benefit of the appellants.

38. Time and again it has been held by the Supreme Court that minor discrepancies in the evidence are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. In this regard, useful reference can be had to the judgment of the Apex Court in Yogesh Singh - Vs - Mahabeer Singh (2017 (11) SCC 195), wherein it has been held as under :-

"29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See Rammi v. State of M.P. [Rammi v. State of M.P., (1999) 8 SCC 649 : 2000 SCC (Cri) 26], Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222], Bihari Nath Goswami v. Shiv Kumar Singh [Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC 186 : 2004 SCC (Cri) 1435], Vijay v. State of M.P. [Vijay v. State of M.P., (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639], Sampath Kumar v. Inspector of Police [Sampath Kumar v. Inspector of Police, (2012) 4 SCC 124 : (2012) 2 SCC (Cri) 42], Shyamal Ghosh v. State of W.B. [Shyamal Ghosh v. State of W.B., (2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685] and Mritunjoy Biswas v. Pranab [Mritunjoy Biswas v. Pranab, (2013) 12 SCC 796 : (2014) 4 SCC (Cri) 564] .)"

(Emphasis supplied)

39. It is true that discrepancies are pointed out in the evidence of P.W.s 3 and 4. But are those discrepancies so very vital and fatal that they demolish the prosecution case. The crux of the deposition of P.W.3 in chief is almost identical to his evidence in cross, but for certain minor contradictions,

like recovering the money from A-1. P.W.3 states that the money was recovered and, thereafter, the hands of A-1 were dipped in the solution and immediately amends it by saying that the hands were dipped in the solution whereinafter money was recovered from P.W.4. P.W.3 has categorically denied the suggestion that defacto complainant did not give any money to A-1 and A-1 did not receive money from the defacto complainant and did not place the money in the table draw. Similarly, P.W.4 in his examination in cross has stated that A-1, on receiving the money from the defacto complainant, counted the money and then handed over the same to A-2. But has once again amended his statement and said that A-1 did not receive the money and the defacto complainant placed it on the table of A-1.

40. It is to be pointed out here that the above discrepancies as evident in the deposition of P.W.s 3 and 4 cannot be said to be fatal to the case of the prosecution when the evidence is looked in in-toto with the overall evidence of P.W.s 3 and 4 and the dates on which the chief and cross examination of P.W.s 3 and 4 had taken place with reference to the date of occurrence. It is to be pointed out that the chief examination of P.W.3 was on 2.12.05 and the cross examination had taken place on 10.3.06, which is after three months from the date of chief examination. Similarly, the chief examination of P.W.4 was on 6.1.06 and the cross examination had taken place on 27.11.06, which is eleven months from the date of chief examination. The occurrence itself had taken place on 6.9.03. It is therefore to be pointed out that the examination of P.W.3 with reference to the date of occurrence had taken place almost two years and three months later and, the cross examination was further three months down; the chief examination of P.W.4 was almost 2 ½ years from the date of occurrence and the cross examination was 11 months further down. The delay in their initial deposition and also the efflux of time from the date of their deposition in chief to the date of deposition in cross, definitely creates probabilities for certain infirmities and discrepancies appearing in their evidence. Therefore, discrepancies in the evidence of P.W.s 3 and 4, unless it is not so very fatal and crucial, are prone to occur in their evidence and all the more there should be discrepancies in their evidence, if not, it would only appear to be a tutored one rather than a spontaneous one. The evidence of P.W.s 3 and 4, with the discrepancies pointed out above, coupled with the gap in their examination vis-a-vis the date of occurrence, only inspire the confidence of this Court to accept their evidence as natural and not a tutored one. Therefore, as held by the Supreme Court in Yogesh Singh's case (supra), minor contradictions, inconsistencies or insignificant embellishments in the evidence of P.W.s 3 and 4 do not affect the substratum and core of the prosecution case and, therefore, they cannot be

taken as a ground to reject their evidence and, in turn, the prosecution case.

41. Therefore, this Court is of the considered view that the prosecution has proved the case against the appellants beyond reasonable doubt and the court below, on the materials available before it, on proper consideration and reasoning, has convicted the appellants and, this Court does not find any reason to interfere with the conviction imposed on the appellants.

42. It is seen from the order passed by the court below that while sentencing the appellants, the court below has awarded a sentence of six months imprisonment together with fine. However, the minimum sentence mandated u/s 13 (2) r/w 13 (1) (d) of the PC Act is one year. For better clarity, Section 13 (1) (d) and 13 (2) of the PC Act, are quoted hereinbelow :-

"13. Criminal misconduct by a public servant -

* * * * *

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

* * * * *

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

43. It is the contention of the learned counsel for the appellants that though the minimum sentence for the offence u/s 13 (2) r/w 13 (1) (d) of the PC Act is one year as noted above, however, the trial court has awarded a sentence of only six months along with fine. The respondents not having preferred any appeal seeking enhancement of sentence, the sentence recorded by the court below does not require interference.

44. However, it is controverted by the learned Government Advocate for the respondent contending that the sentence as mandated under the statute has to be given and the trial court is not clothed with any special powers to reduce the sentence, but for special and adequate reasons to be adduced and, there

being no special or adequate reasons adduced, the sentence recorded suffers from the vice of perversity and illegality and, therefore, the necessity of appeal for enhancement of sentence is not warranted and, this Court, in exercise of its inherent powers, could set right the wrong committed by the trial court in awarding a wrongful sentence.

45. It is clear from the statute that the minimum prescribed sentence for an offence u/s 13 (2) r/w 13 (1) (d) of the PC Act is one year. Curiously, the trial court has awarded a sentence of six months only, which is below the sentence prescribed by the statute. Though it is the contention of the learned counsel for the appellants that since the court below has awarded a sentence and there being no appeal by the respondents, enhancement of sentence in the absence of appeal is impermissible, useful reference could be had to the ratio laid down by the Supreme Court in *State of M.P. - Vs - Babbu Barkare* (2005 (5) SCC 413), wherein the Supreme Court has held as under :-

"21. In order to exercise the discretion of reducing the sentence the statutory requirement is that the court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no straitjacket formula can be indicated. What is applicable to trial courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court is that the accused belonged to rural areas. The same can by no stretch of imagination be considered either adequate or special. The requirement in law is cumulative."

46. The Hon'ble Supreme Court, in a case relating to an offence u/s 302 IPC, in the case of *Bharatkumar Rameshchandra Barot - Vs - State of Gujarat* (2018 (18) SCC 388) has held as under :-

"20. Once the Sessions Judge found the appellant guilty for commission of the offence of the murder punishable under Section 302 IPC, the only punishment that can be awarded in law is either the "death penalty" or "imprisonment for life" and the "fine". Section 302 IPC, in clear terms, provides that "whoever commits murder shall be punished with "death" or "imprisonment for life" and shall also be liable to "fine".

Any punishment less than the life imprisonment, as prescribed under Section 302 IPC, if awarded by any court is per se illegal and without authority of law. Indeed, there is no such discretion left with the court in awarding the punishment except to award the punishment which is prescribed under Section 302 IPC as mentioned above."

(Emphasis supplied)

47. In view of the ratio laid down by the Supreme Court in Bharatkumar Rameshchandra Barot's case and Babbu Barkare's case (supra), this Court has no hesitation to hold that the sentence awarded by the court below is unsustainable. The court below ought to have awarded the minimum sentence prescribed under the statute and, if it proposes to impose a reduced sentence than the one prescribed under the statute, special reasons should have been adduced, which is wholly lacking in the present case. No adequate and special reason, much less reason, has been given by the court below to award a lesser sentence than the one prescribed under the statute. In such circumstances, this Court is of the considered view that the trial court having committed an error while awarding sentence, it is within the domain of this Court to correct the same for which no appeal is required to be filed by the respondents seeking enhancement. An appeal is required to be filed only in case where the respondents seek for a higher sentence over and above the minimum sentence mandated under the statute and not for the purpose of awarding the minimum sentence mandated under the statute once conviction is recorded. In the case on hand, conviction having been recorded, the minimum sentence prescribed by the statute for the said offence, having not been awarded, this Court is fully empowered to correct the same by awarding the sentence as is prescribed under the statute.

48. Insofar as the contention of the learned counsel for the appellants that no charge having been framed against the appellants u/s 201 IPC, the trial court has gravely committed an error in sentencing the appellants u/s 201 IPC. A perusal of the materials available on record clearly reveals that no charge has been framed against the appellants u/s 201 IPC. In such circumstances, it was wholly incorrect for the trial court to convict the appellants u/s 201 IPC for which no charge has been framed. Therefore, this Court has no hesitation to hold that the sentence awarded u/s 201 IPC is not sustainable and the same is liable to be set aside.

49. For the reasons aforesaid, the criminal appeal is dismissed. The conviction imposed on A-1 u/s 7 & 13 (2) r/w 13 (1) (d) of the PC Act and the conviction imposed on A-2 u/s 12 & 13 (2) r/w 13 (1) (d) of the PC Act are confirmed. However, the

sentence imposed on the appellants by the trial court is modified and the appellants are hereby sentenced to undergo rigorous imprisonment for a period of one year. Fine amount imposed by the trial court stands confirmed. However, the conviction and sentence imposed on the appellants u/s 201 IPC is set aside. It is reported that the appellants are on bail. The trial court is directed to take steps to secure the presence of the appellants and commit them to prison to serve the balance portion of the sentence as imposed by this Court above.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

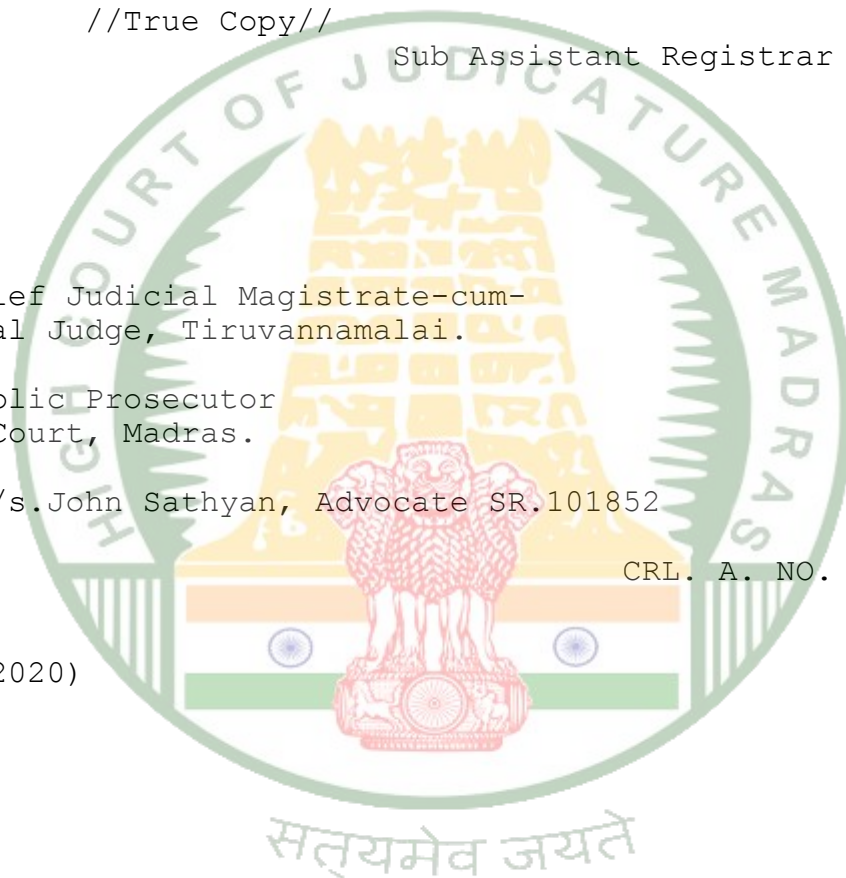
1. The Chief Judicial Magistrate-cum-Special Judge, Tiruvannamalai.

2. The Public Prosecutor
High Court, Madras.

+1cc to M/s. John Sathyan, Advocate SR.101852

CRL. A. NO. 567 OF 2011

RSK (CO)
CB(21/01/2020)



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