

**Bail slip**

The Appellant/Accused namely Jeyaraman, S/o.Sathappan was released on bail by this Hon'ble Court made in MP(MD)No.1/2014 in CrI A(MD)No.134/2014 dated 16.04.2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 05.04.2019

JUDGMENT DELIVERED ON : 24.04.2019

CORAM:

THE HON'BLE Mr. JUSTICE M. DHANDAPANI

CrI.A.(MD)No.134 of 2014

Jeyaraman

... Appellant/Sole Accused

Vs.

The State through
The Inspector of Police,
Vigilance and Anti Corruption,
Pudukkottai.

... Respondent/Complainant

PRAYER: The Appeal filed under Section 374(2) Cr.P.C., against the judgment dated 24.03.2014 in Spl.C.C.No.3 of 2005 passed by the Chief Judicial Magistrate, Pudukkottai.

For Appellant : Mr.K.Baalasundharam

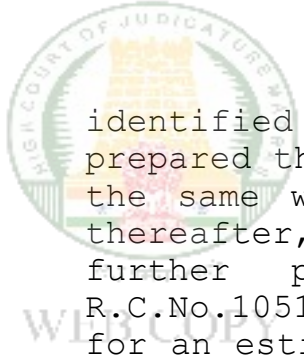
For Respondent : Mr.K.Suyambulinga Bharathi, G.A.(CrI.side)

JUDGMENT

This Criminal Appeal is filed against the judgment of conviction, dated 24.03.2014 in Spl.C.C.No.3 of 2005 passed by the Chief Judicial Magistrate, Pudukkottai. The appellant is the sole accused.

2.The case of the prosecution is as follows:

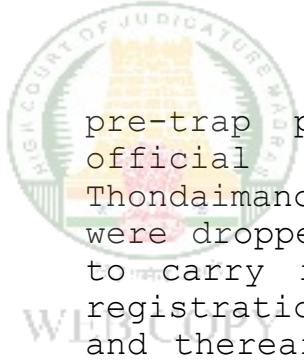
The appellant / accused was employed as a Salesman in Public Distribution System Shop at Thondaimanoorani, Pudukkottai Taluk from 01.01.1984 to 03.11.2003. One M.Karuthan (P.W.2), who is a resident of Rajabahadur Village in Pudukkottai District, made an application on 19.08.2003 before Rajalakshmi (P.W.10), Panchayat Union Commissioner, Pudukkottai, for forming a 'Farm Pond' in his land in Survey No.36/2A at Thondaimanoorani to harvest rain water under Sampoorna Gramin Rojgar Yojna Scheme. On receipt of such application, the Panchayat Union Commissioner, directed the Assistant Engineer, Pudukkottai Panchayat Union namely, Hameed Mustaffa (P.W.7) for preparing estimate to dig the said 'Farm Pond'. Accordingly, the said Hameed Mustaffa (P.W.7) along with Seetharaman (P.W.9), Union Overseer, Pudukkottai, inspected the said land and



identified the place for digging 'Farm Pond'. The overseer (P.W.9) prepared the estimate for forming the 'Farm Pond' at Rs.30,000/- and the same was also approved by the Assistant Engineer (P.W.7) and thereafter, the same was submitted to the Commissioner (P.W.10) for further proceedings. On 10.09.2003 vide proceedings in R.C.No.1051/2003/A3, the Commissioner (P.W.10) issued the work order for an estimated value of Rs.30,000/-. A copy of the same was also given to the said Karuthan (P.W.2), who in turn, commenced the digging work on 01.10.2003 by deputing labourers. After inspecting the formation of 'Farm Pond', P.W.7 informed the same to P.W.10. Thereafter, on 09.10.2003 vide proceedings in R.C.No.1051/2003/A3, P.W.10 issued a release order for the supply of subsidy rice along with rice coupon No.20718 for issuing subsidy rice of 3876 kgs.to Thondamanoorani Public Distribution System shop.

3.On receipt of such release order, on several occasions, P.W.2 approached the appellant / accused, who was working as the Salesman in P.D.S. shop, Thondaimanoorani and requested to supply subsidy rice of 3876 kgs. by showing the said release order and also rice coupon. Finally, on 01.11.2003 at 9.00 a.m., when P.W.2 met the appellant / accused at Athanakkottai Bazaar for supplying rice of 3876 kgs., the appellant / accused demanded a sum of Rs.1,000/- as gratification, other than legal remuneration and a sum of Rs.500/- towards the cost of gunny bags for supplying the rice. P.W.2 agreed to pay the cost towards gunny bags, however, he refused to pay Rs.1,000/- as illegal gratification. Thereafter, the appellant / accused strictly instructed that only on payment of the bribe amount of Rs.1,000/-, the rice would be supplied. Based on the further negotiation, the appellant / accused reduced the bribe amount from Rs.1000/- to Rs.500/- and thereafter, he instructed P.W.2 to pay a sum of Rs.500/- towards the cost of gunny bags and also a sum of Rs.500/- as gratification other than legal remuneration.

4.Being not satisfied with the attitude of the appellant / accused, P.W.2 prepared a complaint (Ex.P.4) with the help of one R.Kannan (P.W.3), who is his cousin-brother and presented the same before one R.Govindarajan (P.W.16), Additional Superintendent of Police, Vigilance and Anticorruption Unit, Pudukkottai at 12.45 p.m and on receipt of the said complaint from P.W.2, he registered a case in Crime No.8 of 2003 under Section 7 of Prevention of Corruption Act, 1988, against the appellant / accused. Thereafter, with the help of two official witnesses viz., L.Peter (P.W.4), Assistant Chief Educational Officer, Pudukkottai and K.Ramanujam (P.W.17), Assistant Inspector of Audit, Pudukkottai, P.W.16 initiated trap proceedings. P.W.16, Additional Superintendent of Police demonstrated pre-trap arrangements and sodium carbonate powder test in the presence of the official witnesses and also the complainant. Thereafter, smearing the phenolphthalein powder over the complainant's (P.W.2) clothes, a sum of Rs.500/- was entrusted to the complainant (P.W.2) and another sum of Rs.500/- was entrusted to P.W.3 for being given to the appellant as per the direction. As per



pre-trap proceedings, P.W.16 along with P.W.2, P.W.3 and two official witnesses viz., P.W.4 and P.W.17 proceeded to Thondaimanoorani in a jeep and on their way P.W.2, P.W.3 and P.W.4 were dropped based on the request of P.W.2 for booking a mini lorry to carry rice bags. Accordingly, P.W.2 booked a lorry bearing registration No.TN-65/B-3537 from one A.Palanisamy at Athanakkottai and thereafter, proceeded along with P.W.3 and P.W.4. Thereafter, P.W.2 requested the appellant / accused for delivering 3876 kgs of rice by showing release order and on seeing the same, the appellant / accused asked P.W.2 to pay a sum of Rs.530/- towards the cost of 32 gunny bags. Accordingly, the said Kannan (P.W.3) paid Rs.530/- to the appellant / accused. On receiving the said sum, the appellant / accused demanded a sum of Rs.500/- as gratification other than legal remuneration and hence, P.W.2 handed over the tainted currency note of Rs.500/- to the appellant / accused. On receiving the said tainted amount, the appellant / accused, put the same in the drawer beneath a calculator cover. Immediately, P.W.2 and P.W.3 went out from the said Public Distribution System Shop, Thondaimanoorani at 4.15 pm., and gave prearranged signal. Immediately, the above said officials of the Vigilance and Anticorruption rushed to the said Public Distribution System Shop and prepared two glass tumblers sodium carbonate solution and asked the appellant / accused to immerse his both hand fingers and accordingly, he did the same. The right hand dipped solution turned into pink in colour, however the left hand dipped solution does not produce the change of colour and they were labelled and sealed. The amount of Rs.500/- was recovered from the table drawer as pointed out by the appellant / accused and the same were compared with the numbers noted in entrustment mahazar and the cover of the calculator was also subjected to phenolphthalein powder test and the same proved positive. After completion of the trap proceedings, P.W.16 recorded the statement of the appellant / accused. When P.W.16 interacted with the appellant / accused, he deposed that P.W.2 borrowed a sum of Rs.600 as handloan from him and to that effect, a sum of Rs.500/- was repaid by P.W.2. When the said fact was enquired with P.W.2, who was standing outside the said Public Distribution System Shop, he deposed that the appellant / accused deposed lie and he did not receive any amount from the appellant / accused. Thereafter, 3876 kgs of rice were supplied to P.W.2 with the assistance of a Clerk at MM 368 Athanakkottai Primary Agricultural Cooperative Bank. The bribe amount, solution bottles and also some records were seized and recovered under seizure Mahazar. The P.W.16 sent a requisition to the Court to send the sample solution bottles for Chemical analysis.

5.The Inspector of Police (P.W.18), Vigilance and Anti-corruption, Pudukkottai, who conducted investigation, after completing the same, laid a final report before the Trial Court and the same has been taken on file in Special Case No.134 of 2014 under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.



6.The trial Court, on the basis of the alleged culpability of the accused and other connected documents, framed charge against the accused and the same were read over and explained to him. The accused denied the charges.

7.To prove the charges, on the side of the prosecution, P.Ws.1 to 18 have been examined and Exs.P1 to P43 and MOs.1 to 4 have been marked.

8.When the accused was questioned under Section 313 of the Code of Criminal Procedure, in respect of the incriminating circumstances appearing in evidence against him, he denied his complicity in the crime. On the side of the accused, D.Ws.1 to 5 have been examined and Ex.D1 to D11 have been marked.

9.The Trial Court, after perpending both the oral and documentary evidence has found the accused guilty under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 convicted him thereunder and for offence under Section 7 the appellant was sentenced to undergo six months R.I. with a fine of Rs.500/- in default to pay fine, to undergo two months R.I. and for the offence under Section 13(1)(d) r/w 13(2), one year R.I. with a fine of Rs.1,000/- in default of payment of fine to undergo 3 months R.I. Against the conviction and sentence imposed by the Trial Court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

10.The learned counsel appearing for the appellant / accused would submit that though the appellant / accused was working as a Salesman in the Public Distribution System Shop, Thondaimanoorani, the said shop is not coming under the purview of Section 2(c)(ix) of the Prevention of Corruption Act, 1988 and P.W.1 is not the competent person to accord sanction. He would further submit that the appellant / accused was not appointed by the Government and therefore, the appellant / accused is not a public servant as no appointment order was issued. Further, the appellant / accused was engaged as a Salesman in the said Public Distribution System Shop and in the absence of proving the fact that he is a public servant, implicating him under the provisions of the Prevention of Corruption Act, does not arise. The learned counsel appearing for the appellant / accused would also submit that though P.W.1 has accorded sanction prosecution against the appellant / accused on 17.06.2004, in her evidence, she has deposed that she did not call for the files before according sanction for prosecution, however, she went to DVAC office and perused the entire files and thereafter, she accorded sanction for prosecution. Though P.W.1 has denied the suggestion that as per the statement of DVAC Officials, she prepared the sanctioned order and filed the same, the fact remains that P.W.1 admitted that she went to DVAC office and perused the files and then granted sanction. She has also admitted in her



chief examination that she went to DVAC office on 17.06.2004 and on the same day, she accorded sanction and hence, such fact itself clearly indicates non application of mind on the part of P.W.1 to the related files before granting sanction for prosecution.

11. The learned counsel appearing for the appellant / accused would further submit that as per Section 19(c) of the Prevention of Corruption Act, the Sanctioning Authority has the power to remove the appellant / accused. In the present case, the appellant / accused was appointed only by the Elected Board and hence, in the absence of the Elected Board, a Special Officer namely, P.W.1 has no power to accord sanction against the appellant / accused and when the Government has specifically appointed such Special Officer in place of Elected Board, in the present case, no notification was produced before the Court authorizing P.W.1 to act in the absence of Elected Board and hence, P.W.1 is incompetent to accord sanction. The learned counsel for the appellant / accused would submit that as per Ex.D.10, which was marked through D.W.5, a draft final report was made ready on 06.02.2004 in which, it was clearly mentioned that the sanction order accorded by the competent authority was enclosed thereto. When this document clearly shows that the sanction order was obtained prior to the final report and the final report shows that the sanction order was obtained prior to 06.02.2004, P.W.1 in her evidence has deposed that she went to DVAC office on 17.06.2004 and accorded sanction on the same day, is unbelievable one. Hence, the Trial Court has failed to consider the said contradiction as it is incurable one.

12. Further in the present case, mere possessing a tainted currency note would not constitute an offence under the Prevention of Corruption Act, unless the prosecution establish the fact that there was a prior demand and in furtherance to such prior demand, the bribe was accepted by the appellant / accused. In the present case, there is no evidence available to establish the fact that there was a demand of bribe and also no motive was attributed against the appellant / accused in respect of receipt of illegal gratification. Hence, the finding of the Trial Court, convicting the appellant / accused is nonest in law and accordingly, he prayed for acquittal.

13. The learned counsel appearing for the appellant / accused, in support of his contention, relied on the decision of the Hon'ble Apex court reported in **2007(11) SCC 273 (State of Karnataka Vs. Ameerjan)**, wherein the Apex Court has held as follows:

"16. In *Parkash Singh Badal* the question which arose for consideration before this Court was as to whether an order of sanction is required to be passed in terms of Section 197 of the Code of Criminal Procedure in relation to an accused who has ceased to be a public servant. It was in that context a question arose before



this Court as to whether the act alleged to be performed under the colour of office is for the benefit of the officer or for his own pleasure. In the context of question as to whether the public servant concerned should receive continuous protection, it was opined: (SCC p. 25, para 29)

"29. The effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on 'failure of justice' and that too 'in the opinion of the court'. In ²⁸⁰sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the 'failure of justice' is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to the root of jurisdiction as observed in para 95 of *Narasimha Rao case*⁸. Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the old Act [Section 19(2) of the Act] question relates to doubt about authority to grant sanction and not whether sanction is necessary."

17. *Parkash Singh Badal*, therefore, is not an authority for the proposition that even when an order of sanction is held to be wholly invalid inter alia on the premise that the order is a nullity having been suffering from the vice of total non-application of mind. We, therefore, are of the opinion that the said decision cannot be said to have any application in the instant case.

18. We may notice that in *Sankaran Moitra v. Sadhna Das* the majority, albeit in the context of Section 197 of the Code of Criminal Procedure, opined: (SCC pp. 600-01, para 22)

"22. Learned counsel for the complainant argued that want of sanction under Section 197(1) of the Code did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. We are not in a position to accept this submission. Section 197(1), its opening words and the object sought to be achieved by it, and the decisions of this Court earlier cited, clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage. We cannot therefore



accede to the request to postpone a decision on this question."

19. In this case, the High Court called for the original records. It had gone thereinto. It was found that except the report, no other record was made available before the sanctioning authority. The order of sanction also stated so. PW 8 also did not have the occasion to consider the records except the purported report.

20. We are, therefore, of the opinion that the impugned judgment does not suffer from any legal infirmity although some observations made by the High Court, as noticed hereinbefore, do not lay down the correct legal position. The appeal is dismissed."

14. He also relied on a decision of the Hon'ble Apex Court reported in **2017 (3) SCC (Cri.) 699 (V.Sejappa Vs. State by Police Inspector Lokayukta, Chitradurga)**, wherein the Apex Court has held as follows:

"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 Bihari v. State of Rajasthan, wherein it was held as under:

"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 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 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 and in a proper case the court may look for independent corroboration before convicting the accused person."

15. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent / State would submit that admittedly, the appellant / accused was working as a Salesman in the Public Distribution System Shop, Thondaimanoorani and the said Public Distribution System shop was attached with Primary Co-operative Bank, Adhanakkottai and the said Public Distribution System shop is meant for general public and hence, the said Bank as well as the Public Distribution System shop are owned and controlled by the State Government. As to the issue whether a Salesman in a Public Distribution System shop is a public servant or not, the learned Government Advocate (Crl.side) would submit that when such issue was raised before the Hon'ble Apex Court in decision reported in **2016 (12) SCC 360 (Central Bureau of Investigation Vs. P.G.Jain)**, wherein it has been held as follows:

"7. Notwithstanding the above, we have noticed a different dimension to the issue before us. The question whether the respondent-accused is a public servant has to be further considered in the context of the definition of "public servant" appearing in Section 2(c) of the PC Act, 1988. Sub-clauses (iii) and (ix) of Section 2(c) of the PC Act, 1988 would be relevant and are, therefore, extracted below:

"2. (c) "public servant" means—

(i)-(ii) ---

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(iv)-(viii) ---

(ix) any person who is the President, Secretary or other office-bearer of a registered cooperative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in



Section 617 of the Companies Act, 1956 (1 of 1956);"

8. Insofar as Section 2(c)(ix) is concerned, though it deals with cooperative societies the reference therein is in respect of the President, Secretary or other office-bearers of a cooperative society whereas in the present case the respondent-accused is an employee of the cooperative society. The question, therefore, that has to be considered is: whether the respondent-accused would come within the ambit of the definition contained in Section 2(c)(iii) of the PC Act, 1988?

9. In this regard, we may notice a decision of this Court in *State of A.P. v. P. Venku Reddy* wherein a view has been taken that though an employee of a cooperative society may not come within the ambit of the definition of "public servant" under Section 2(c)(ix) of the PC Act, 1988 yet such a person may be a "public servant" within the meaning of Section 2(c)(iii) of the PC Act, 1988 provided the cooperative society is owned, controlled or aided by the Government. In this context in *State of A.P. v. P. Venku Reddy*, this Court has also observed the necessity to consider a purposive interpretation of the definition of "public servant" having regard to the changes brought in by the PC Act, 1988 in contradistinction to the definition of "public servant" under the Prevention of Corruption Act, 1947. It is the aforesaid aspect of the matter that the attention of the Court will now have to turn to."

16. He also relied on yet another judgment reported in **2016(3) SCC 788 (Central Bureau of Investigation Vs. Ramesh Gelli and others)**, the Apex Court has categorically held as follows:

"30. Therefore, having considered the submissions made before us, and after going through the papers on record, and further keeping in mind the Statement of Objects and Reasons of the Bill relating to the Prevention of Corruption Act, 1988 read with Section 46-A of the Banking Regulation Act, 1949, we are of the opinion that the courts below have erred in law in holding that accused Ramesh Gelli and Sridhar Subasri, who were Chairman/Managing Director and Executive Director of GTB respectively, were not public servants for the purposes of the Prevention of Corruption Act, 1988. As such, the orders impugned are liable to be set aside. Accordingly, without expressing any opinion on final merits of the cases before the trial courts in Mumbai and Delhi, Criminal Appeals Nos. 1077-81 of 2013 filed by CBI, are allowed and Writ Petition (Crl.) No. 167 of 2015 stands dismissed.

<https://hcservices.ecourts.gov.in/hcservices/> **RANJAN GOGOI, J. (concurring)**— I have had the privilege of going through the judgment of my learned Brother Prafulla C. Pant, J. Though I am in full agreement



with the conclusions reached by my learned Brother, I would like to give my own reasons for the same.

36. While there can be no manner of doubt that in the Objects and Reasons stated for enactment of the Prevention of Corruption Act, 1988 it has been made more than clear that the Act, inter alia, envisages widening of the scope of the definition of "public servant", nevertheless, the mere performance of public duties by the holder of any office cannot bring the incumbent within the meaning of the expression "public servant" as contained in Section 2 (c) of the PC Act. The broad definition of "public duty" contained in Section 2(b) would be capable of encompassing any duty attached to any office inasmuch as in the contemporary scenario there is hardly any office whose duties cannot, in the last resort, be traced to having a bearing on public interest or the interest of the community at large. Such a wide understanding of the definition of "public servant" may have the effect of obliterating all distinctions between the holder of a private office or a public office which, in my considered view, ought to be maintained. Therefore, according to me, it would be more reasonable to understand the expression "public servant" by reference to the office and the duties performed in connection therewith to be of a public character.

37. Coming to the next limb of the case, namely, the applicability of the provisions of Section 46-A of the Banking Regulation Act, 1949 (hereinafter referred to as "the BR Act") what is to be found is that a Chairman appointed on a whole-time basis, Managing Director, Director, auditor, liquidator, manager and any other employee of a banking company is deemed to be a public servant for the purposes of Chapter IX of the Penal Code. Section 46-A, was amended by Act 20 of 1994 to bring within its fold a larger category of functionaries of a banking company. Earlier, only the Chairman, Director and auditor had come within the purview of the aforesaid Section 46-A.

38. Sections 161 to 165-A contained in Chapter IX of the Penal Code have been repealed by Section 31 of the Prevention of Corruption Act, 1947 and the said offences have been engrafted in Sections 7, 8, 9, 10, 11 and 12 of the Prevention of Corruption Act, 1988. Section 166 (as originally enacted), Section 167 (with amendment), Sections 168, 169, 170 and 171 (as originally enacted) continue to remain in Chapter IX of the Penal Code even after enactment of the Prevention of Corruption Act, 1988.

39. By virtue of Section 46-A of the BR Act, office-bearers/employees of a banking company (including a private banking company) were "public servants" for the



purposes of Chapter IX IPC. With the enactment of the PC Act the offences under Sections 161 to 165-A included in Chapter IX of the Penal Code came to be deleted from the said Chapter IX and engrafted under Sections 7 to 12 of the PC Act. With the deletion of the aforesaid provisions from Chapter IX IPC and inclusion of the same in the PC Act there ought to have been a corresponding insertion in Section 46-A of the BR Act with regard to the deeming provision therein being continued in respect of officials of a banking company insofar as the offences under Sections 7 to 12 of the PC Act are concerned. However, the same was not done. The Court need not speculate the reasons therefor, though, perhaps one possible reason could be the wide expanse of the definition of "public servant" as made by Section 2(c) of the PC Act. Be that as it may, in a situation where the legislative intent behind the enactment of the PC Act was, inter alia, to expand the definition of "public servant", the omission to incorporate the relevant provisions of the PC Act in Section 46-A of the BR Act after deletion of Sections 161 to 165-A IPC from Chapter IX can be construed to be a wholly unintended legislative omission which the court can fill up by a process of interpretation.

40. Though the rule of casus omissus i.e. "what has not been provided for in the statute cannot be supplied by the courts" is a strict rule of interpretation, there are certain well-known exceptions thereto. The following opinion of Lord Denning in *Seaford Court Estates Ltd. v. Asher*¹³ noticed and approved by this Court may be taken note of: (KB p. 499 : All ER p. 164 E-H)

"... The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. ... He [The Judge] must set to work in the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. ... A Judge should ask himself the question, how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

41. In *Magor & St. Mellons Rural Distt. Council v. Newport Corpn.* the learned Judge restated the above principles in a somewhat different form to the following



effect: (All ER p. 1236 A)

"... We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

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42. Though the above observations of Lord Denning in *Seaford Court Estates case*¹³ had invited sharp criticism in his own country we find reference to the same and implicit approval thereof in the judicial quest to define the expression "industry" in *Bangalore Water Supply & Sewerage Board v. A. Rajappa*. Paras 147 and 148 of the opinion of M.H. Beg, C.J. in *Bangalore Water Supply & Sewerage Board*, which are quoted below, would clearly indicate the acceptance of this Court referred to earlier: (SCC p. 285)

"147. My learned Brother has relied on what was considered in England a somewhat unorthodox method of construction in *Seaford Court Estates Ltd. v. Asher*, where Lord Denning, L.J., said: (KB p. 499 : All ER p. 164 G-H) when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ... and then he must supplement the written words so as to give 'force and life' to the intention of legislature. ... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.'

When this case went up to the House of Lords it appears that the Law Lords disapproved of the bold effort of Lord Denning to make ambiguous legislation more comprehensible. Lord Simonds found it to be 'a naked usurpation of the legislative function under the thin disguise of interpretation'. Lord Morton (with whom Lord Goddard entirely agreed) observed: 'These heroics are out of place' and Lord Tucker said 'Your Lordships would be acting in a legislative rather than a judicial capacity if the view put forward by Denning, L.J., were to prevail.'

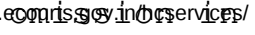
148. Perhaps, with the passage of time, what may be described as the extension of a method resembling the 'arm-chair rule' in the construction of wills. Judges can more frankly step into the shoes of the legislature where an enactment leaves its own intentions in much too nebulous or uncertain a state. In *M. Pentiah v. Muddala Veeramallappa*, Sarkar, J., approved of the reasoning, set out above, adopted by Lord Denning. And, I must say that, in a case where the definition of 'industry' is left in the state in which we find it, the situation perhaps calls for some judicial heroics to cope with the difficulties

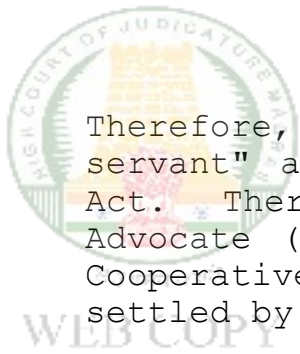


raised." (emphasis supplied)

43. There are other judicial precedents for the view that I have preferred to take and reach the same eventual conclusion that my learned Brother Prafulla C. Pant, J. has reached. I would like to refer to only one of them specifically, namely, the decision of a Constitution Bench of this Court in *Dadi Jagannadham v. Jammulu Ramulu*.

44. Order 21 Rule 89 read with Rule 92(2) CPC provided for filing of an application to set aside a sale. Such an application was required to be made after deposit of the amounts specified within 30 days from the date of the sale. While the said provision did not undergo any amendment, Article 127 of the Limitation Act, 1963 providing a time-limit of 30 days for filing of the application to set aside the sale was amended and the time was extended from 30 days to 60 days. Taking note of the objects and reasons for the amendment of the Limitation Act, namely, that the period needed to be enlarged from 30 to 60 days as the period of 30 days was considered to be too short, a Constitution Bench of this Court in *Dadi Jagannadham* harmonised the  situation by understanding Order 21 Rule 89 to be casting an obligation on the Court to set aside the sale if the application for setting aside along with deposit is made within 30 days. However, if such an application along with the deposit is made after 30 days but before the period of 60 days as contemplated by Article 127 of the Limitation Act, 1963, (as amended) the Court would still have the discretion to set aside the same. The period of 30 days in Order 21 Rules 89/92(2) CPC referred to hereinabove was subsequently (by Act 22 of 2002) amended to 60 days also.

45. Turning to the case in hand there can be no dispute that before the enactment of the PC Act, Section 46-A of the BR Act had the effect of treating the employees/office-bearers concerned of a banking company as public servants for the purposes of Chapter IX IPC by virtue of the deeming provision contained therein. The enactment of the PC Act with the clear intent to widen the definition of "public servant" cannot be allowed to have the opposite effect by expressing judicial helplessness to rectify or fill up what is a clear omission in Section 46-A of the BR Act. The omission to continue to extend the deeming provisions in Section 46-A of the BR Act to the offences under Sections 7 to 12 of the PC Act must be understood to be clearly unintended and hence capable of admitting a judicial exercise to fill up the same. The unequivocal legislative intent to widen the definition of "public servant" by enacting the PC Act cannot be allowed to be defeated by interpreting and understanding the  Section 46-A of the BR Act to be incapable of being filled up by the court.



Therefore, an employee of a Cooperative Society is a "public servant" as per Section 2(c)(iii) of the Prevention of Corruption Act. Therefore, it is the submission of the learned Government Advocate (Crl.side) that the issue as to whether a Salesman in a Cooperative Society is the public servant or not has already been settled by the Hon'ble Apex Court.

17. With regard to sanction for prosecution prior to 06.02.2004 the learned Government Advocate (Crl.side) would submit that it is only a draft final report prepared by the Deputy Legal Advisor of DVAC Department and it is not a final one. He would further submit that Ex.D.10 is a draft final statement prepared by the Deputy Legal Advisor of DVAC Department and as per the evidence of D.W.5, initially, for sanctioning prosecution, DVAC sent a letter (Ex.D.9) on 06.05.2004 to P.W.4 and accordingly, sanctioning order (Ex.P.1) was issued on 17.06.2004 and after obtaining the sanction order, the final report was filed on 10.05.2005 under Section 173 of Cr.P.C. The competent person to file final report is only Investigating Officer and hence, any draft final report prepared by DVAC or any other officer. Accordingly, the prosecuting agency filed the final report only on 10.05.2005 which is admissible in evidence one and therefore, Ex.D.10 is inadmissible in evidence. Therefore, there is no violation or contradiction in the prosecution evidence.

18. The learned Government Advocate (Crl.side) appearing for the respondent / State would submit that P.W.2, P.W.3 and P.W.4 were present at the scene of occurrence. P.W.2 is the de facto complainant, P.W.3 is a relative of P.W.2. Initially they made a complaint on 03.11.2003 and the evidence of P.W.2 and P.W.3 is clear and cogent regarding the initial demand of bribe of Rs.500/- and further at the time of trap proceedings, P.W.4 independent officer accompanied with P.W.2 and P.W.3 and the evidence of P.W.4 clearly corroborated the evidence of P.Ws.2, 3 as to the manner in which the appellant / accused accepted the bribe amount from P.W.2. Immediately, after executing the trap proceedings the Trap Laying Officer recorded the statement of the appellant / accused as required under Paragraph No.47 of DVAC Manual. As per the statement of the appellant / accused, P.W.2 borrowed loan amount of Rs.500/- from him earlier and hence, the same was repaid by P.W.2. However, such statement of accused was clarified immediately after completion of the trap proceedings, by enquiring P.W.2 as to whether the said amount of Rs.500/- was borrowed by him or not, and P.W.2 has denied the same. As the evidence of P.W.2, P.W.3 and P.W.4 are cogent, the prosecution established the demand as well as acceptance beyond reasonable doubt. Therefore, he prayed for dismissal of this Criminal Appeal by confirming the Judgment of the Trial Court.

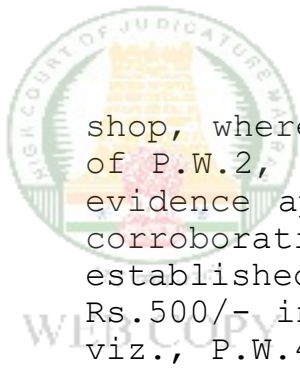
19. Heard the learned counsel appearing for the appellant / <https://hccases.mca.gov.in/hccases> Government Advocate (Crl.side) appearing for the respondent / State and perused the entire materials on record carefully.

20. Upon considering submissions of the learned counsel on either side, the following points are required to be analyzed in this Criminal Appeal:

- a) Whether the demand and acceptance were proved beyond reasonable doubt?
- b) Whether the appellant / accused is a public servant as defined under Section 2(c)(iii) of the Prevention of Corruption Act?
- c) Whether the materials collected during investigation, should be available before the order of sanction is passed?
- d) Whether conviction and sentence imposed by the Trial Court is justified or not?

21. A perusal of the entire records reveal the fact that P.W.1 is the Sanctioning Authority. P.W.2 is the de facto complainant. P.W.3 is a relative of P.W.2. P.W.3 and P.W.4 shadow witness, who were available at the time of trap proceedings. P.W.5 is the brother's son of P.W.2, who accompanied P.W.2 for making application for formation of 'Farm Pond'. P.W.6 is the Deputy Block Development Officer. P.W.7 is Assistant Executive Engineer. P.W.8 is the Deputy Block Development Officer. P.W.9 is the Senior Draftsman. P.W.10 is the Joint Director, who is the sanctioning authority for releasing the subsidy rice and also for formation of 'Farm Pond'. P.W.11 is the Clerk employed in MM 368 Athanakkottai Primary Agricultural Cooperative Bank and he was examined for the purpose of verifying the order dated 09.10.2003 for releasing 3876 kgs of PDS rice in favour of P.W.2 and after the Trap Laying Officer's inspection, he measured the PDS rice and handed over the same to P.W.2. P.W.12 is a Salesman at Alangudi Cooperative Shop at the relevant point of time and he deposed that his job is to receive rice meant for public distribution system from the Tamil Nadu Civil Supplies Corporation and collect the rice from Pudukkottai Corporation Godown to Public Distribution System Shop No.3876 at Thondaimanoorani. P.W.13 is the Secretary at Cooperative Thrift Society Athanakkottai and he has also deposed that he assisted the DVAC Officials at the time of trap proceedings. P.W.14 is Forensic Expert, as he spoke about the result of Chemical Analysis. P.W.15 Superintendent in the Tamil Nadu Civil Supplies Corporation, Pudukkottai, has deposed that he received letter from the Planning Officer, District Rural Development, for formation of 'Farm Pond'. P.W.16 is the Additional Superintendent of Police, District Vigilance and Anticorruption, Pudukkottai. P.W.17 is the Sub Inspector, Audit Department, Mahazor witness. P.W.18 is the Investigating Officer.

22. The prosecution examined the officials from Civil Supplies Corporation, Block Development Office and Cooperative Society for the purpose of proving the fact of formation of 'Farm Pond', which was sanctioned in favour of P.W.2, stating that he is entitled for receiving the rice as subsidy from the Public Distribution System



shop, where the appellant was working as Salesman. As the evidence of P.W.2, P.W.3 and P.W.4 clearly corroborated each other and their evidence appear to be a cogent and natural, I do not find any non corroboration in their evidence and the prosecution has clearly established the case of demand and acceptance of the bribe amount of Rs.500/- in the presence of P.W.2, P.W.3 and two official witnesses viz., P.W.4 and P.W.17.

23.As per the evidence of P.W.1, employees of Civil Supplies Corporation and the employees of Cooperative Society, the appellant / accused was engaged as a Salesman in the Public Distribution System Shop, Thondaimanoorani and it was attached with the Primary Co-operative Bank, Adhanakkottai. Further, her evidence makes it clear that the said shop is meant for distributing subsidy rice as well as essential commodities to the general public as the same were supplied by the State Government through Tamil Nadu Civil Supplies Corporation and hence, it is made clear that the appellant / accused is a public servant.

24.Perusal of Section 2(c) (iii) would show that any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956. Now, in the present case, it is required to examine as to whether the appellant / accused holds an office and performs public duty so as to attract the definition of "public servant" under Section 2(b) of the Prevention of Corruption Act, 1988. A duty in the discharge of which the State, the public or the Community at large has an interest. The public duty meant due to discharge on behalf of the State. The appellant / accused was receiving salary from the Adhanakkottai Cooperative Society and his primary duty was to distribute the essential commodities to the general public. The Co-operative Society is running as per the direction of the Government and the fund was allotted by the Principal Society. Definition 2(26) of Tamil Nadu Co-operative Societies Act, 1983 shows that in respect of receiving assistance from the Government, there is a specific Society available viz., self reliant Society means a registered Society which does not receive assistance in any form from the Government under Chapter VI or from any registered Society receiving such assistance from the Government.

25.In view of the above provisions, the appellant / accused undoubtedly comes within the definition of "public servant". Further, the very same issue was elaborately discussed by the Hon'ble Apex Court in the case reported in **2016(3) SCC 788 (Central Bureau of Investigation, Bank Securities and Fraud Cell Vs. Ramesh Gelli and others)** (cited supra). In view of the above decision, I have no hesitation to come to the conclusion that the appellant / accused is a public servant.



26.The argument of the learned counsel appearing for the appellant / accused with regard to the fact that P.W.1 sanctioning authority went to DVAC office on 17.06.2004 and sanctioned the prosecution against the appellant on the same day and further, Ex.D.10 the draft final report prepared by the Deputy Legal Advisor of DVAC Department, in which, it was stated that on 06.02.2004 he prepared the final report stating that the sanction was accorded. However, on perusal of Ex.D.10, it is seen that the Deputy Legal Advisor prepared the draft final report on 06.02.2004 containing 8 documents. However, the details of the 8 documents were not mentioned. Though it has been stated that sanction was accorded by the competent authority, no date was mentioned and the sanction order was not found. The DVAC Department sent a requisition letter dated 06.05.2004 (Ex.D9) for sanction of the prosecution and thereafter, the sanction order was accorded against the appellant on 17.06.2004.

27.The above said documents clearly indicate that the DVAC requested for sanction of the prosecution only on 06.05.2004 and thereafter, the sanction has been accorded on 17.06.2004. P.W.1 went to DVAC Department and perused the entire file before sanctioning and that itself shows that she perused the entire file before sanctioning the prosecution and hence, the act of P.W.1 is not illegal. It is the discretion of the sanctioning authority either to call for the entire files or visiting DVAC office in person before sanction. A perusal of the sanction order would reveal that the sanctioning authority has applied her mind in entirety before sanctioning the prosecution. Hence, I do not find any irregularity or illegality. Accordingly, this argument is rejected.

28.In the result, the evidences adduced by the prosecution are clearly corroborated with each other and hence, I do not find any illegality or irregularity in the judgment passed by the Chief Judicial Magistrate, Pudukkottai in Spl.C.C.No.3 of 2005 dated 24.03.2014 by imposing minimum sentence of one year. Accordingly, the Criminal Appeal is dismissed.

sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Pudukkottai.



2. The Judicial Magistrate,
Pudukottai

3. The Inspector of Police,
Vigilance and Anti Corruption,
Pudukkottai.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.BAALASUNDHARAM, Advocate (SR-62225[F] dated
24/04/2019)

**Judgment made in
Crl.A. (MD) No.134 of 2014
24.04.2019**

nbj

MK (12.06.2019) 18P 6C