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BAIL SLIP

B.Ravisankar, S/o.Baskaran, male, aged about 54/2014 years (Accused No.1) was released on bail vide court order dated 30.04.2014 made in M.P.(MD)NO.1 of 2014 in Crl.A(MD)No.148 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.04.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A.(MD)Nos.148 and 188 of 2014

Crl.A.(MD).No.148 of 2014

1.B.Ravisankar (died) .. 1st Appellant/A1

2.R.Seetha .. 2nd Appellant

(2nd appellant impleaded as per order, dated 23.04.2019, passed in Crl.M.P.(MD).No.1180 of 2019)

-Vs-

State through
The Inspector of Police,
Vigilance and Anticorruption Wing,
Tiruchirappalli,
in Crime No.4 of 2005. ... Respondent / Complainant

Crl.A.(MD).No.188 of 2014

State through
The Inspector of Police,
Vigilance and Anticorruption Wing,
Tiruchirappalli,
in Crime No.4 of 2005. ... Appellant / Complainant

/Vs./

M.Periyasamy ... Respondent / Accused No.2

PRAYER in Crl.A(MD).No.148 of 2014: Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code, praying to set aside the order passed by the learned Special Judge for Trial Cases under the Prevention of Corruption Act, Tiruchirappalli in Special Case No.119 of 2011 by the judgment dated 08.04.2014 convicting the Appellant/Accused No.1, under Section 7 and Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act 1988.

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PRAYER in Crl.A(MD).No.188 of 2014: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the Judgment of acquittal, dated 08.04.2014, passed in Special Case No.119 of 2011, by the learned Special Judge for trial of cases under Prevention of Corruption Act, Tiruchirappalli.

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Crl.A.(MD).No.148 of 2014

For Appellant : Mr.T.Antony Arul Raj

For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

Crl.A.(MD).No.188 of 2014

For Appellant : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

For Respondent: Mr.V.Kathirvelu, Senior Counsel for
Mr.P.Ganapathi Subramanian

COMMON JUDGMENT

Criminal Appeal (MD) No.148 of 2014 has been filed under Section 374(2) of the Code of Criminal Procedure, seeking to set aside the conviction and sentence imposed on the appellant/first accused by the learned Special Judge for Trial of Cases under the Prevention of Corruption Act, Tiruchirappalli, dated 08.04.2014, made in Special Case No.119 of 2011, directing first accused to undergo rigorous imprisonment for a period of one year and also to pay a fine amount of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one month under Section 7 of the Prevention of Corruption Act [hereinafter referred to as ''the Act''] and also rigorous imprisonment for a period of two years and six months and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months under Section 13(2) r/w. 13(1)(d) of the Act.

2. Though, originally, there are two accused in this case, the Trial Court convicted the first accused as stated above, but acquitted the second accused, against which, the State has preferred Criminal Appeal (MD)No.188 of 2014 under Section 378 of the Code of Criminal Procedure.

3. Since both the appeals arise out of the judgment dated 08.04.2014, made in Special Case No.199 of 2011, they are heard together and disposed of by this common Judgment.

4. For the sake of brevity, the parties hereinafter are referred to as per their litigative status before the Trial Court.

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5. During the pendency of the appeal, the appellant/Accused No.1 passed away and his wife has been impleaded herself by order of this Court, dated 23.04.2019, passed in Crl.M.P.(MD).No.1180 of 2019 for the purpose of securing the benefits, if the case is ended in acquittal.

6.The gist of the charge framed on the accused is as follows:

Charge	***Gist of Charge***
Section 7 of Prevention of Corruption Act, 1988.	Public Servant taking gratification other than legal remuneration in respect of an official act.
Section 13(2) r/w 13(1) & (d) of Prevention of Corruption Act, 1988.	Accused persons receiving a sum of Rs.5000/- and Rs.1,000 as bribe to close the criminal complaint against the defacto complainant.

7.The events leading to the filing of these appeals, briefly stated, are as follows:

(i)P.W.3 Murugesan/defacto complainant is the resident of Thumbivadi Village and he was running a Finance Company in the name and style of 'Ajay Finance' and he used to collect money from the depositors and after maturity, he used to return the same to the depositors. But, in the year 2004, many of the depositors had filed complaints before first accused/Inspector of Police, Economic Offices Wing - II, Karur, against the defacto complainant, as he had not repaid the deposit amount even after the date of maturity. The first accused without registering the First Information Report, had conducted a preliminary enquiry with the depositors and instructed P.W.3 to settle the deposit amount. Thereafter, P.W.3 settled a sum of Rs.4,85,000/- to some of the depositors through the first accused. Apart from that, he has to pay Rs.44,000/- to one Kandasamy and another Rs.44,000/- to P.W.6 Vadivel. The first accused instructed P.W.3 that after settling the above said amount to the above said persons, he should give him a sum of Rs.8,800/- (10% commission of the above said settlement amount) as bribe to close the complaint. Further, the first accused warned P.W.3 that if he fails to do so, he would register a case and send him to jail. Thereafter, P.W.3 informed the same to his friend P.W.5 Palanisamy and P.W.5 lent a sum of Rs.88,000/- and the same was settled directly to the said Kandasamy and P.W.6 Vadivel and also obtained letters under Ex.P9 and Ex.P10 from them. Again, on 06.04.2005, at about 1.00 p.m., P.W.3 and P.W.5 went to the office of the Economic Offences Wing - II, Karur and met the first accused and informed him about the above settlement and handed over the connected records. The first accused told them that he would receive the records and close the case only on payment of 10% of the above settlement as bribe. P.W.5 requested the first accused to close the enquiry without any payment. But after negotiation, the

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first accused reduced the amount from Rs.8,800/- to Rs.5,000/- and instructed to pay the same within a period of two days and further he stated that failing which, he would register the case against P.W.3. Thereafter, P.W.3 and P.W.5 left the place.

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(ii) Since P.W.3 was not willing to pay the bribe amount to the first accused, he along with P.W.5 went to the Vigilance and Anticorruption Wing, Tiruchirappalli and lodged a complaint before Mr.Akbar, Trap Laying Officer, Inspector of Police under Ex.P3. On the basis of the Ex.P3, he registered an F.I.R under Ex.P19 and issued a copy of the same to P.W.3 after obtaining his signature under Ex.P4. Thereafter, on the same day at 1.45 p.m. two official witnesses/shadow witnesses namely Mr.M.Rajesh, Assistant Engineer, NABARD and Village Roads, Highways Department, Office of the Superintending Engineer, Range Office, Trichy and P.W.4 Mr.Dhanaraj, Inspector, Audit Department, Office of the Assistant Director, Mannarpuram, Trichy, came to the Vigilance and Anticorruption Wing at Trichy and they perused Ex.P3 and Ex.P19 and ascertained the corroboration of the same with P.W.3. Then, when the Trap Laying Officer enquired about the bribe amount, P.W.3 produced the M.O.1 series consisting of ten 500 rupee currency notes. Thereafter, the Trap Laying Officer, demonstrated the phenolphthalein test through the Head Constable Mr.Ramaraj by smearing the phenolphthalein powder on those currency notes and prepared the Entrustment Mahazar Ex.P5.

(iii)Thereafter, P.W.3 defacto complainant, P.W.5 and official witness/one of the shadow witnesses Mr.Rajesh went to the Economic Offences Wing, Karur, in a Car bearing registration No.TN-02 C-8555, owned by P.W.5. They followed by the Trap Laying Officer and his raiding party and also other official witness P.W.4 Mr.Dhanaraj. After reaching the said office, when P.W.3 enquired with Ragunathan Police Constable, who informed that the District Superintendent of Police had visited the office and asked them to come after some time. The said information was forwarded to the Trap Laying Officer and they left the place and waiting for an hour at Vellianai Road, near District Collector Office. Thereafter, P.W.3 was instructed to meet the first accused along with the listed witnesses Rajesh and P.W.5. Therefore, all the three persons went to the office again at 7.30 p.m., and since they found the first accused talking with some persons, they waited for another half-an-hour and met the first accused at 8.00 p.m. at his room. As per the pre trap proceedings, the depositors Kandasamy and P.W.6 Vadivel were also come there. P.W.3 informed the first accused about the settlement to the depositors and produced the letters given by them Ex.P9 and Ex.P10. He perused the same and after confirming the settlement with the said depositors, he received signatures from them in the receipts handed over by them for acknowledging the settlement and then asked them to go away. Thereafter, the first accused insisted and received the signature from P.W.3 in four typed stamp papers and instructed the second accused to write something in the said receipts and directed P.W.3 to take xerox copies of six

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receipts. Thereafter, P.W.3 and P.W.5 along with the official witness Mr.Ramesh came out without any signal and took xerox copies of the same and again went to the office at 8.45 p.m.

(iv)After receiving the above said xerox copies, the first accused enquired about the bribe amount. P.W.5 said that he brought the money and requested him to reduce the same. For that, first accused told them that usually he would collect Rs.30,000/-. But, only for them, he reduced the demand to Rs.5,000/- which was a meagre amount. Thereafter, P.W.5 handed over M.O.1 series currency notes to the first accused. On instructions of the first accused, second accused received the M.O.1 series currency notes and after counting the same, he informed first accused that Rs.5,000/- is available and then kept it in his shirt pocket. Then, first accused demanded another sum of Rs.1,000/- from P.W.5, by stating that he had spent more money on that day. At that time, second accused also stated that Rs.1,000/- is very meagre amount to close the matter. After negotiation, P.W.5 again gave two 500 rupees M.O.2 series to first accused. Again on instructions of A1, second accused received the same and put it in his shirt pocket. Thereafter, they came out from the office at 9.00 p.m. and gave the pre-arranged signal to the Trap Laying Officer.

(v)Thereafter, the said Inspector, Trap Laying Officer, along with his team, came there and enquired the happenings inside and thereafter they went inside. The accused officers were identified by P.W.3. The said Inspector introduced himself, his party and the official witness with the accused and the accused officers got nervous and thereafter P.W.3 came out from the said office as instructed by the Trap Laying Officer. The Trap Laying Officer recovered M.O.1 and M.O.2 from the second accused. Then, the Trap Laying Officer conducted the phenolphthalein test by immersing the hands of the second accused in the Sodium Carbonate solution and the result of the same was proved as positive. The solution in which the second accused immersed his right hand fingers was collected in a bottle under M.O.3 and the solution in which the second accused immersed his left hand fingers collected in a bottle under M.O.4. Thereafter, he recovered second accused's shirt M.O.6 and conducted the phenolphthalein test at the pocket portion of the shirt, which proved positive and recovered the solution in a bottle under M.O.5.

(vi)Thereafter, the Trap Laying Officer also recovered Ex.P6 series, the file relating to 'Ajay Finance' containing pages 1 to 502 in Cr.No.1 of 2005 of Economic Offences Wing, Karur, wherein the undertaking given by P.W.3, under Ex.P7 that he would settle the amount of Rs.88,000/- to the remaining investors on or before 10.00 a.m. on 30.03.2005 is enclosed and the undertaking letter of P.W.5, dated 06.04.2005 that he would produce P.W.3 before the Inspector of Police, Economic Offences Wing on the evening of 06.04.2005 is also enclosed. Ex.P11, affidavit of P.W.3 in four stamp papers are also available. Then the Trap Laying Officer prepared seizure mahazar Ex.P12 for the said procedure and recoveries. He also recovered

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Ex.P22 carbon copy of the daily duty of the 1st accused, Ex.P23 and Ex.P24 original deposit receipts issued by the 'Ajay Finance' to the depositors, Ex.P25 Pocket note book of the 1st accused, Ex.P26 petition receipts book (Carbon copies) for the year 2005 of Economic Offences Wing II, Karur, Ex.P27 petition register for the year 2005 of the said Police Wing and Ex.P28 General Diary of the said police station for the relevant period. He also prepared observation mahazar Ex.P13 and Rough Sketch Ex.P20. Thereafter, the Deputy Superintendent of Police, Mr.Sureshkumar, Vigilance and Anticorruption Wing, came to the said office and arrested the accused.

(vii). Thereafter, the said Inspector conducted the house search at the residence of the 1st and 2nd accused and prepared the search list under Ex.P14 and Ex.P15 respectively. He sent the recovered articles through Form - 95 Ex.P21. Thereafter, the case was taken for further investigation by P.W.12 Vijayakumar, the then Inspector of Police, Vigilance and Anticorruption, Trichy. He examined the P.W.3, P.W.4, P.W.5 and the list of witness Rajesh and also the Trap Laying Officer, Mr.Akbar and recorded their statements. He also examined the list of witness Ramasamy, Senbagam, P.W.7 Regunathan, police constable and the Jeep driver of the first accused. He also examined the another partner of the said Finance Company P.W.8 Malathi, P.W.10 Gandhimathi a depositor who also occasionally did typing work in the said office of the Economic Offences Wing and the P.W.11 Arul Advocate, who prepared Ex.P9 and Ex.P10 and recorded their statements. He also examined P.W.9 Tmt.Vishalakshi, the Scientific Officer who analyzed the solution in M.O.3,4 and 5 and issued her report under Ex.P18 on the requisition letter of the Court under Ex.P17. Thereafter P.W.13 Mr.Pandithurai, Inspector of Police, Vigilance and Anticorruption Wing, Trichy, took up the case for investigation. P.W.1 Mr.Ashokumar Doss, I.P.S., the then Deputy Inspector General of Police, Tiruchirappalli Range, accorded sanction for prosecution under Ex.P1 to prosecute the case against first accused. P.W.2 Mr.Shanmugavel the then Superintendent of Police, Tiruchirappalli, accorded sanction for prosecution under Ex.P2 to prosecute the case against second accused. P.W.13, Mr.Pandithurai, Inspector of Police, Vigilance and Anticorruption Wing, Tiruchirappalli, after completion of his investigation, laid a final report against the accused u/s.7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988.

(viii) After receipt of the final report, the trial Court has taken cognizance and framed the following charges.

> "On 06.04.2005, at about 1.00 p.m., when the defacto complainant Murugesan along with his friend Palanisamy met the 1st accused who was serving as Inspector of Police, Economic Offences Wing - II, at Karur and explained the settlement of the amount to the depositors Kandasamy and Vadivel directly, the 1st accused demanded a sum of Rs.8,800/- as gratification other than legal remuneration as a motive for himself from the defacto complainant to his

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official act of favourably disposing the petition against the defacto complainant and on 08.04.2005 between 8.45 p.m. and 9.00 p.m. at the above said office at Karur, the 1st accused reiterated the earlier demand and directed the 2nd accused who was serving as Head Constable to obtain Rs.6,000/- for the 1st accused as gratification other than legal remuneration from the defacto complainant's friend Palanisamy and accordingly the 2nd accused obtained the bribe money from the above said Palanisamy and thereby the 1st accused by corrupt and illegal means obtained Rs.6,000/- from the said Palanisamy through the 2nd accused and thereby both the 1st accused and 2nd accused are liable to be punishable under section 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988."

(ix)To bring home the guilt against the accused, the prosecution examined 14 witnesses as P.Ws.1 to 14 and marked 28 documents as Exs.P.1 to P.28 and also marked M.O.1 to M.O.6. The incriminating circumstances against the accused from the evidence of the prosecution witnesses were brought to the notice of the accused as per Section 313(1)(b) Cr.P.C. and first accused denied the same as false and stated that the said amount is due to the depositor Kandasamy and first accused directed second accused to hand over the same to him and second accused stated that as per the instruction of first accused, he received the amount from P.W.5 as if it was due to one Kandasamy. However, in order to disprove the case of the prosecution, on the side of the accused, Exs.D.1 to D.6 were marked through the cross examination of prosecution witnesses, but no witness has been examined.

(X). The learned Special Judge for trial of cases under the Prevention of Corruption Act, came to the conclusion on the basis of the evidence of P.W.3 that first accused demanded the bribe amount from P.W.3 and on behalf of first accused, second accused received the bribe amount as per the instruction of first accused and by judgment, dated 08.04.2014, in Special Case No.119 of 2011, rejected the defence of first accused, convicted and sentenced him to undergo rigorous imprisonment for a period of one year and also to pay a fine amount of Rs.5,000/-, in default, to undergo simple imprisonment for a period of one month under Section 7 of the Prevention of Corruption Act and also rigorous imprisonment for a period of two years and six months and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months under Section 13(2) r/w. 13(1)(d) of the Act. However, the trial Court not accepted the prosecution case in respect of second accused and arrived at a conclusion that there is no demand or acceptance by the second accused and accordingly acquitted him.

8. Against the said conviction and sentence imposed on first accused, he filed Crl.A.(MD)No.148 of 2014, and as against the acquittal of second accused, the State has preferred Crl.A.(MD) No.188 of 2014.

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9. Assailing the conviction against first accused, Mr.T.Antony Arul Raj, learned Counsel appearing for first accused submitted that the complaint of P.W.3 itself is a suspicious one. Admittedly, P.W.3 defacto complainant is a defaulter for non payment of the amount to the depositors, for which, first accused received complaints from the depositors and all the amounts were settled through first accused to the depositors and there is no allegation in respect of the earlier settlement in favour of the depositors. The allegation that the first accused made a demand of commission amount from P.W.3 is imaginary one and for the purpose of implicating the accused in the case, they produced two letters viz., Ex.P9 and P10 which were obtained from Kandasamy and Vadivel on 17.03.2005. However, the fact remains that on 28.03.2005, P.W.3 submitted undertaking Ex.P7 that he would settle the amount on or before 30.03.2005, which is contrary to the letters Ex.P9 and P10 which is prior to the undertaking of P.W.3, dated 28.03.2005. It shows that Ex.P7 is an after thought proceedings. Taking advantage of non-payment of Rs.5,000/- to Kandasamy, P.W.3 made the prosecution to believe as if he paid the bribe amount. In fact, it is belonged to Kandasamy and the said fact was immediately reiterated before the Trap Laying Officer at the time of trap proceedings and thereafter, at the time of Section 313 Cr.P.C. proceedings. In the absence of any demand and when the fact remains that P.W.5 accompanied with P.W.3 on 06.04.2005, the prosecution has to prove the demand made by the first accused, when they met on 06.04.2005. However, P.W.5 turned hostile and no witness is available to corroborate the evidence of P.W.3. In the absence of corroboration, conviction of the first accused is un-sustainable one. Further, P.W.6 Vadivel, received the amount only prior to one day of the trap proceedings i.e., on 07.04.2005. However, the trap was conducted on 08.04.2005 and that itself sufficient to prove there is no motive or demand of illegal gratification from the accused. The evidence of P.W.3 also lack of non corroboration.

10.He would further submit that Exhibits P9 and P10 were not prepared on 17.03.2005 and it is prepared only on 07.04.2005. P.W.6 admitted that Ex.P9 was prepared one day prior to the arrest of the accused officers. Further, the facts remains that the said letters were prepared by one Advocate Arul and there is no proper explanation for including P.W.11 in the list of witness and P.W.11 was examined by the prosecution only for the purpose of implicating the first accused and the first accused did not demand any amount from the defacto complainant. Since the defacto complainant had taken earnest steps to settle the amount to the depositors, in which P.W.3 got annoyed and filed the false complaint against the first accused before the Trap Laying Officer.

11. Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor would submit that admittedly, first accused received the complaint from the depositors, in which, without registering the FIR, he conducted a preliminary investigation by

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summoning P.W.3. Thereafter, P.W.3 settled the amount to some of the depositors to the tune of Rs.4,85,000/- and the Ledger Book and other relevant documents were marked as Ex.P6 series. Further, he would submit that till then, there is no dispute between the first accused and P.W.3, since all the amounts were settled only through the first accused officer, except Kandasamy and P.W.6 Vadivel. Thereafter, P.W.3 settled the deposit amount Rs.88,000/- directly to the Kandasamy and P.W.6 Vadivel on his own with the help of P.W.5. Therefore, the first accused demanded 10% of the above said amount as illegal gratification and after negotiation, he reduced the same to Rs.5,000/-. In the mean while, Shadow witness Rajesh and the Trap Laying Officer died during the pendency of the trial. However, the evidence of P.W.3 and P.W.5 are corroborated with regard to the initial demand, subsequent demand and acceptance on behalf of the first accused by second accused. In view of the clear and corroborated evidence, the prosecution clearly established the case against the accused.

12. The learned Additional Public Prosecutor would further submit that the second accused accompanied with first accused from the beginning and particularly on the date of occurrence, he was with first accused. In fact, he brought the file related to the defacto complainant P.W.3 and as per the instructions of first accused, he obtained the signature from P.W.3 and other witness namely P.W.6 and Kandasamy. Thereafter, on behalf of the first accused he received the tainted money of Rs.5,000/- from P.W.5, knowing fully well that it is illegal gratification for the first accused to close the file in favour of P.W.3. Apart from that, he again received Rs.1,000/-, on instructions of the first accused. Hence, the prosecution established that there was a motive for illegal gratification. Accordingly, second accused accepted the bribe amount from P.W.5 on behalf of the first accused. Hence, necessary ingredients required under Section 7, 13 (2) r/w 13(1(d) of the Act were well established before the trial Court. However, the trial Court has rightly convicted first accused, acquitted the second accused, which is un-sustainable one and liable to be interfered with.

13.Repudiating the submissions made by the learned Additional Public Prosecutor, Mr.V.Kathirvelu, learned Senior counsel appearing for the respondent/second accused in Crl.A.(MD).No.188 of 2014 would submit that admittedly, no records were produced to implicate the second accused along with the first accused. In respect of the enquiry conducted by first accused against P.W.3, second accused was available only on 08.04.2005. Even a bare perusal of Ex.P3 complaint would indicate the initial demand made by A1 and that no allegation was made against second accused. P.W.3 in his evidence has stated that when P.W.5 gave the tainted money to the first accused, he called the second accused and directed him to receive the same. The second accused received the same, counted and stated that Rs.5,000/- is available and put it in his shirt pocket. Except the above evidence, no other materials are available to implicate

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the second accused. The learned Senior counsel further submits that mere possession of the amount will not prove the offence. The prosecution ought to have established that second accused demanded money on behalf of the first accused and received the same. In the present case, except P.W.3, no other witness is available to implicate the second accused. Considering the over all circumstances, it is made clear that since the second accused is a Junior Grade Officer, he received the amount as per the direction of the first accused without knowing that the amount is illegal gratification demanded by him. The trial Court considering the above aspects, acquitted the accused, which is perfectly valid one.

14. The learned senior counsel further submit that the order of acquittal cannot be interfered with in a routine manner unless that order is not within the legal parameters and the respondent enjoying the double presumption. If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. Accordingly, he prayed for confirming the acquittal.

15.In support of his contention, the learned Senior counsel relied upon the following judgment of the Honourable Allahabad High Court in ***Sheo Swarup and Others Vs. King Emperor*** reported in ***AIR 1934 Privy Council 227 (2)***, where in it has been held as follows:

> *"There is in their opinion no foundation for the view, apparently supported by the judgments of some Courts in India, that the High Court has no power of jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower Court has "obstinately blundered," or has "through incompetence stupidity or perversity" reached such "distorted conclusions as to produce a positive miscarriage of justice," or has in some other way so conducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result."*

Further he would also relied upon the judgment of our Honourable Supreme Court in ***Murugesan Vs. State*** reported in ***(2012) 10 Supreme Court Cases 383***, wherein it has been held as follows:

> "14. An early but exhaustive consideration of the law in this regard is to be found in the decision of Sheo Swarup v. King Emperor[1] wherein it was held that the power of the High Court extends to a review of the entire evidence on the basis of which the order of acquittal had been passed by the trial court and thereafter to reach the necessary conclusion as to whether order of acquittal is required to be maintained or not. In the opinion of the Privy Council no limitation on the exercise of power of the High Court in this regard has been imposed by the Code though certain principles are required to be kept in mind by the High Court while exercising jurisdiction in an appeal against

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an order of acquittal. The following two passages from the report in Sheo Swarup (supra) adequately sum up the situation:

> "There is in their opinion no foundation for the view, apparently supported by the judgments of some Courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower Court has "obstinately blundered," or has "through incompetence, stupidity or perversity" reached such "distorted conclusions as to produce a positive miscarriage of justice," or has in some other way so conducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.
>
> Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should, 'be placed, upon that power, unless, it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice." (AIR page 229 -230of the report) ....

A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup (supra) is to be found in para 42 of the report in Chandrappa & Ors. v. State of Karnataka[9]. The same may, therefore, be usefully noticed below:

> "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

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(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

16.Upon careful re-assessment of the evidence and the judgment of the Trial Court and other materials on record and submissions made by the learned counsel appearing for the parties, the following points have been arisen for consideration in these Criminal Appeals:

i) Whether the demand of bribe by the first accused to close the case in favour of P.W.3 and acceptance of the same through the second accused are proved by the prosecution?

ii) Whether the acceptance of bribe amount by the second accused on behalf of the first accused by knowing very well he received the bribe amount as illegal gratification, is established by the prosecution?

iii) Whether the receipt of bribe amount by second accused is proved as it was received by him for himself and on behalf of first accused?

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iv) Whether conviction of first accused under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and the sentence warrants any interference?
v) Whether any material is available to interfere with the order of acquittal?

17. This case arises out of the peculiar facts and circumstances. Admittedly, P.W.3 running a Finance company in the name and style of 'Ajay Finance' and there were complaints against P.W.3 before the first accused for default of payment to the depositors. After conducting initial enquiry with the depositors and P.W.3, first accused received the due amount from P.W.3 and settled the same in favour of some depositors to the tune of Rs.4,85,000/- and the above said facts were proved through Ex P6 and P7 series. It is also admitted by the prosecution as well as by the first accused that since without the knowledge of the first accused, P.W.3 directly settled the amount to one Kandasamy and P.W.6 Vadivel, there was a dispute arose between P.W.3 and the first accused. On 28.03.2005, P.W.3 submitted an undertaking letter Ex.P7 to the first accused agreeing to settle the entire amount in favour of Kandasamy and Vadivel on or before 30.03.2005. Thereafter, it appears that first accused called upon P.W.3 to settle the amount, in which P.W.5/friend of P.W.3 through letter dated 06.04.2005, Ex.P8, agreed to appear before the first accused on evening. When P.W.3 along with P.W.5 met the first accused on 06.04.2005 at 5.00 p.m., he demanded 10% of the payment of settlement in favour of Kandasamy and Vadivel as illegal gratification from P.W.3 in the presence of P.W.5 to close the case against P.W.3. However, P.W.3 refused to pay the amount. Moreover, the first accused warned P.W.3 in the presence of P.W.5 stating that if he fails to pay the 10% commission of the settlement amount, he will register a case against P.W.3 and send him to jail and he will not close the case. Thereafter, P.W.3 entered a negotiation with the first accused. After negotiation, the first accused reduced the amount from Rs.8,800/- to Rs.5,000/- and P.W.5 also assured to pay the amount on behalf of the P.W.3 defacto complainant within two days.

18. Later, since P.W.3 and P.W.5 were not willing to pay the bribe amount to first accused, they decided to lodge a complaint before the Department of Vigilance and Anticorruption. Accordingly, they lodged a complaint Ex.P3 on 08.04.2005 at 11.45 a.m. before the Inspector of Police, Vigilance and Anticorruption Wing, Trichy. Immediately, the official witnesses were arranged and pre-trap proceedings were commenced.

19. The entire case revolves around P.W.3 and P.W.5. Though P.W.5 turned hostile, this court perused the evidence of P.W.3 to ascertain whether any useful information is available in the evidence of P.W.3. The evidence of P.W.3 indicates that P.W.3 accompanied the deceased shadow witness Rajesh and P.W.5 to meet the accused in his office and stated that in presence of P.W.3, P.W.5

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handed over the Phenolphthalein coated money to the first accused. Usually, in all cases, the Trap Laying Officer will give the tainted money in the hands of the defacto complainant. However, in this case, since, the first accused directed P.W.5 to bring the bribe amount, the trap laying officer handed over the phenolphthalein coated currency to P.W.5 and the same was entered in the entrustment mahazer also. When P.W.3 and P.W.5 met first accused on 06.04.2005, P.W.5 agreed to pay the bribe amount on behalf of the P.W.3 and hence, first accused directed P.W.5 to bring the bribe amount. Accordingly, the Trap Laying Officer handed over the money to P.W.5 instead of P.W.3 on the trap day i.e., 08.04.2005 and during the trap proceedings, P.W.5 handed over the phenolphthalein coated money to first accused and first accused directed the second accused to receive the same. Accordingly, the second accused received the amount and after counting the same, put it in his pocket. The said events were narrated by P.W.3. Though, P.W.5 turned hostile, in his cross examination he specifically admitted that they used his own car bearing Registration No.TN-02 C-8555 to reach first accused office and he also admitted that the amount has been given to him and he made a signature in the Entrustment Mahazar and further he also admitted that he is available at 7.30 p.m. in the Economic Offences Wing, Karur, accompanied with the deceased shadow witness Rajesh and P.W.3. Further he admitted that P.W.6 Vadivel and Kandasamy received the amount. Hence, the evidences of P.W.3 and P.W.5 are well corroborated.

20. Accordingly, the initial demand of illegal gratification on 06.04.2005 by the first accused is well established and the further demand by himself on 08.04.2005 and the acceptance of the phenolphthalein coated currency through second accused is also well established by the prosecution. Hence I do not find any error in the conviction passed by the learned trial judge against first accused.

21. With regard to the appeal against acquittal, it is well settled law mere recovery of tainted money is not sufficient to convict the accused and there has to be corroboration of the testimony of the complainant regarding the demand of bribe and mere possession of the amount will not constitute the offence under sections 7, 13(2) r/w 13(1)(d) of the prevention of corruption act, unless the prosecution proved that second accused knowing very well this is illegal gratification for the purpose of closing the case received on behalf of first accused. The initial burden lies upon the prosecution to prove the case. 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

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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. In the present case, the entire evidence is against the first accused. Moreover, the participation of the second accused along with the first accused prior to the pre-trap proceedings i.e., on 06.04.2005, is not established either through documentary evidence nor through prosecution witness. Perusal of P.W.3 shows that the second accused was simply standing along with first accused and when P.W.5 handed over the Phenolphthalein coated money to the first accused, the first accused directed the second accused to receive the same and accordingly he received the money. Thereafter, the first accused demanded further amount of Rs.1,000/- from P.W.5, in which, the second accused participated along with the first accused and stated that for the purpose of closing the case, Rs.1,000/- is a meagre amount. Accordingly, he received another Rs.1,000/- which was not the phenolphthalein coated currency. Even if it is so, according to the evidence of P.W.3, the second accused not demanded the bribe amount for himself. He supported the version of first accused. Though there was a some force in the argument of the Additional Public Prosecutor that accepting the illegal gratification on behalf of the other person is also an offence under section 7, 13(2) r/w 13(1)(d) of the Act, in the present case except P.W.3 no other evidence is available to corroborate the same. P.W.3 himself has stated that the second accused supported the version of the first accused. In the present case, the first accused demanded further Rs.1,000/- and not by the second accused. So, in the absence of any material to show that second accused participated in the initial demand and since he accepted the money only on behalf of first accused, this Court cannot interfere with the order of acquittal.

22.Further, an appellate court must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. Since, the Trial Court was perfectly right in coming to the conclusion that the charge under Section 13(2) r/w. 13 (1)(d) of the Act has not been proved against A2, such a finding is not perverse, the same is required to be upheld. Accordingly, it is upheld.

23.In the result, Crl.A.(MD).No.148 of 2014 filed by the first accused is dismissed and the Judgment passed by the learned Special Judge for Trial Cases under the Prevention of Corruption Act, Tiruchirappalli in Special Case No.119 of 2011, dated

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08.04.2014, convicting the Appellant/Accused No.1, under Section 7 and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988, is confirmed. However, since the first accused is died during the pendency of the appeal, nothing survives with regard to the sentence.

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24.Crl.A.(MD).No.188 of 2014 is dismissed and the Judgment of acquittal, dated 08.04.2014, passed in Special Case No.119 of 2011, by the learned Special Judge for trial of cases under Prevention of Corruption Act, Tiruchirappalli is confirmed.

Sd/-

Assistant Registrar (AE)

/ True Copy /

Sub Assistant Registrar(CS-)

TM
To
1.The Special Judge for trial of cases
under the Prevention of Corruption Act,
Tiruchirappalli.

2.The Special Judge for trial of cases
under the Prevention of Corruption Act,
Madurai.

3.The Inspector of Police,
Vigilance and Anticorruption,
Tiruchirappalli.

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

5.The Section Officer, Criminal Records,
Madurai Bench of Madras High Court, Madurai.**(2 copies)**

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate
(SR-62119[F] dated 24/04/2019)

CRL.A.(MD)Nos.148 and 188 of 2014
23.04.2019

ES/14.06.2019/16P/8C

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