BAIL SLIP

The Appellants/Accused No.1 and 2, Mr.M.Jeyasekar, S/o.late P.Muthukrishnan, Male, Mr.T.Jeyaraman, S/o.late Thandavan, Male, were directed to be released on bail, in the event of Arrest, as per order of this Court dated 10/01/2014 and 22/01/2014 made in MP(MD) No.1 of 2014 in Crl A(MD)No.19 of 2014 and MP(MD)No.1 of 2014 in Crl A(MD)No.22 of 2014, respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.04.2019

PRONOUNCED ON : 27.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRIMINAL APPEAL(MD)Nos.19 and 22 of 2014 and 34 of 2015

M.Jeyasekar .. Appellant in Crl.A.(MD)No.19/2014 & 1st Respondent in Crl.A.(MD)No.34/2015/ A1

Jeyaraman .. Appellant in Crl.A.(MD)No.22/2014 & 2nd Respondent in Crl.A.(MD)No.34/2015/A2

Vs.

The State Rep. by its
Inspector of Police,
CBI/ACE : Chennai,
(RC MA1 2010 A 0002) .. Respondent in Crl.A.(MD) Nos.19 & 22/2014 & Appellant in Crl.A.(MD) No.34/2015/Complainant

Criminal Appeal (MD)Nos.19 and 22 of 2014 are filed under Section 374 of the Code of Criminal Procedure, against the Judgment of conviction and sentence, dated 31.12.2013, passed in C.C.No.2 of 2013, by the learned II Additional District Judge for CBI cases, Madurai.

Criminal Appeal (MD)No.34 of 2015 is filed under Section 378 of the Code of Criminal Procedure, to set aside the Judgment dated 31.12.2013, passed in C.C.No.2 of 2010, by the learned II Additional District Judge for CBI cases, Madurai, insofar as Charge No.3, pertaining to the acquittal of the respondents/A1 and A2 for the offence under Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988.

For Appellant in Crl.A.(MD)No.19/2014 & For R1 in Crl.A.(MD)No.34/2015 : Mr.R.Shanmugasundaram Senior Counsel for Mr.T.Antony Arul Raj

For Appellant : Mr.C.Muthu Saravanan

in Crl.A.(MD)No.22/2014 &
For R2 in Crl.A.(MD)No.34/2015

For Appellant : Mr.N.Nagendran
in Crl.A.(MD)No.34/2015 & Special Public Prosecutor
For Respondent in Crl.A(MD) [CBI Cases]
Nos.19 and 22/2014

COMMON JUDGMENT

Criminal Appeal (MD) Nos.19 and 22 of 2014 have been filed under Section 374 of the Code of Criminal Procedure, seeking to set aside the conviction and sentence imposed on A1 and A2 by the learned II Additional District Judge for CBI cases, Madurai, dated 31.12.2013, made in C.C.No.2 of 2010, convicting them under Section 120-B IPC r/w. Sections 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 [hereinafter referred to as ''the Act''] and sentencing A1 and A2 to undergo rigorous imprisonment for a period of two years and also to pay a fine amount of Rs.10,000/- each, in default, to undergo rigorous imprisonment for a period of six months for the offence under Section 120-B IPC r/w. Sections 7 and 13(2) r/w. 13(1)(d) of the Act and also rigorous imprisonment for two years and to pay a fine of Rs.10,000/- each, in default, to undergo rigorous imprisonment for six months for the offence under Section 7 of the Act. Criminal Appeal (MD)No.34 of 2015 has been filed by the CBI challenging the acquittal of A1 and A2 in the abovesaid case, from the charge under Section 13(2) r/w. 13(1)(d) of the Act.

2.Since all the appeals arise out of the same judgment dated 31.12.2013, made in C.C.No.2 of 2010, they are heard together and disposed of by this common Judgment.

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

4.The case of the prosecution, briefly stated, are that:-

(i) A1 - M.Jeyasekar was working as Chief Law Assistant, Divisional Personnel Office, Southern Railway, Tiruchirappalli Division at Tiruchirappalli, and A2 - T.Jeyaraman was a Panel Advocate for Southern Railways, Tiruchirappalli Division. On 04.01.2010, A1 demanded an illegal gratification of Rs.15,000/- from one N.Dhanasekaran [P.W.2] as a motive or reward for processing the appointment file of P.W.2 - de-facto complainant in Southern Railways, Tiruchirappalli Division, on compassionate grounds. A1 gave a visiting card of A2 [Ex.P.7] and directed P.W.2 to meet A2, Panel Advocate and hand over the bribe amount of Rs.15,000/- on 06.01.2010 at 10.00 a.m. However, P.W.2 negotiated with A1 to reduce the bribe amount, for which, A1 replied that he has to share the bribe amount with A2 and therefore, directed P.W.2 to talk with

A2. Thereafter, P.W.2 went to the Office of A2 and introduced himself to A2. After negotiation, A2 agreed to reduce the bribe amount from Rs.15,000/- to Rs.13,000/- and directed P.W.2 to pay the said amount on 06.01.2010 at 10 a.m. in his Office.

(ii)Since P.W.2 was not willing to pay the bribe amount, on 05.01.2010 at 12.00 p.m., he contacted the Superintendent of Police, C.B.I., Chennai, over phone and explained about the demand made by the accused persons. The Superintendent of Police, C.B.I., Chennai, informed P.W.2 to meet one G.Kalaimani [P.W.12], Inspector of Police [C.B.I.]. Thereafter, as per the instructions of the Superintendent of Police, C.B.I., Chennai, on the next day, P.W.2 went to Sharadha Lodge, Trichy, and met P.W.12 - Kalaimani, Trap Laying Officer at Room No.220 and prepared a complaint - Ex.P.8, in his own handwriting, signed and gave it to the Inspector of Police.

(iii)On the same day, at 11.30 a.m., the Trap Laying Officer arranged two independent witnesses, *viz.*, Anbalagan and P.W.3 - Shanmugam [shadow witness]. They came to the lodge at 11.15 a.m. and P.W.2 - de-facto complainant handed over Rs.13,000/- [Rs.500 x 26] to the said Anbalagan and the serial numbers of the said currency notes were noted in the Entrustment Mahazar - Ex.P.9. Thereafter, P.W.12 Trap Laying Officer explained the significance of Sodium Carbonate and Phenolphthalein reaction by conducting demonstration with the help of one Balachandran Pillai, P.C., C.B.I., and Anbalagan, independent witness. Thereafter, on the instructions of P.W.12, P.Shanmugam, shadow witness, kept the tainted currency notes in the shirt pocket of P.W.2. P.W.3 - Shanmugam was directed to accompany with the de-facto complainant as his friend and observe the transaction between P.W.2 - de-facto complainant and the accused persons. P.W.2 was instructed to wipe his face with his handkerchief, once the bribe amount was given to the accused on demand.

(iv)Thereafter, P.W.2 contacted A2 over phone and informed that he was having the bribe money of Rs.13,000/-, for which, A2 replied that he would receive the bribe amount near the S.B.I. A.T.M. Booth, situated opposite to Railway Divisional Personnel Office, Trichy. Thereafter, P.W.2 - N.Dhanasekaran, Anbalagan - independent witness, P.W.3 - P.Shanumugam, Shadow Witness, P.W.12 - G.Kalaimani, Trap Laying Officer and other witnesses reached the said place and were waiting in and around the trap spot. P.W.2 contacted A2 over his mobile phone and informed him about the bribe amount, for which, A2 replied that he will come and receive the said amount. Thereafter, P.W.2 contacted A1 over his mobile phone, for which, A1 replied that A2 was nearing to the said place and hand over the bribe amount to him and thereafter, he will receive it. After 10 minutes, A2 came to S.B.I. A.T.M. Booth and enquired with P.W.2 about P.W.3 and

P.W.2, in turn, informed him that he is his friend. Thereafter, A2 took P.W.2 and P.W.3 to the Divisional Personnel Office, Court Cell Section, where, P.W.2 gave the bribe money to A2. After receiving the bribe money, A2 counted the money and took Rs.5,000/- and thereafter, he met A1 with the balance amount of Rs.8,000/- and A1, in turn, directed A2 to keep the same on the table. Accordingly, A2 kept Rs.8,000/- on the table and thereafter, A1 kept a paperweight on the said money. Thereafter, P.W.2 gave pre-arranged signal by wiping his face with his handkerchief to the Trap Laying Officer and other members of the squad. On seeing the pre-arranged signal from P.W.2, P.W.12 - Trap Laying Officer, along with his team, entered into the spot and enquired about the happenings and thereafter, A1 and A2 were identified and caught red-handed and when enquired, they denied the receipt of bribe money from P.W.2.

(v)Thereafter, Sodium Carbonate solution was prepared and A1 was asked to immerse his hands in the said solution, but there was no change in the colour; poured the solution in two bottles; and marked the solution, in which, A1 immersed his right hand as ''A'' [M.O.1] and left hand as ''B'' [M.O.2] and kept the same under seal. Thereafter, A2 was directed to immerse his hands into another Sodium Carbonate solution and the solution turned into Pink Colour; poured the solution in two bottles; and marked the solution, in which, A2 immersed his right hand as ''C'' [M.O.3] and left hand as ''D'' [M.O.4] and kept the same under seal. Thereafter, P.W.12 enquired with A1 about the currencies found on the table, A1, with much nervousness, replied that it was the money received from P.W.2. Thereafter, P.W.12 asked P.W.3 to take the currencies found on the table and count the same. There were 16 numbers of currency notes, in the denomination of Rs.500/-, totalling Rs.8,000/- [M.O.8 series] and the serial numbers of the said currencies are tallied with the numbers mentioned in the Entrustment Mahazar. Thereafter, P.W.12 asked A1 about the remaining amount. A1 replied that it was with A2. Thereafter, P.W.12 asked A2 to produce the amount. A2 took the currency notes from his left side pant pocket and handed over to P.W.3. It was 10 numbers of currency notes of Rs.500/- denomination, totalling Rs.5,000/- [M.O.7 series] and the serial numbers of the said currencies are also tallied with the numbers mentioned in the Entrustment Mahazar. A2 was given one Lungi and the left side pant pocket was immersed in the solution and observed that it turned into Pink Colour; and the said solution was poured in a bottle and marked as ''E'' [M.O.5], the Pant which A2 was wearing was marked as M.O.6. Thereafter, P.W.12 arrested the accused persons and conducted further investigation. After examining the witnesses, scrutinizing the documents and seized material objects, final report was laid against the accused persons for the offences stated above.

(vi)After taking cognizance of the final report, the Trial Court framed charges against the accused persons. The sum and substance of the charges are as follows:-

''Charge No.1:-

A-1 Jeyasekar while working as Chief Law Assistant in the Office of Divisional Personnel Officer, Southern Railways, Tiruchirappalli Division at Tiruchirappalli and A2 – Jayaraman while working as Panel Advocate for Southern Railways, Tiruchirappalli Division at Tiruchirappalli, were entered into criminal conspiracy during the period from 22.09.1995 to 06.01.2010 and in pursuance of the said criminal conspiracy, A1 demanded from the de-facto complainant an illegal gratification of Rs.15,000/- on 04.01.2010 as a motive or reward for proceessing his appointment file in Southern Railways, Tiruchirappalli Division, on compassionate grounds. A1 further directed the de-facto complainant on the same day *i.e.*, on 04.01.2010 to meet A2 and hand over the bribe amount of Rs.15,000/- on 06.01.2010. Since the de-facto complainant requested to reduce the amount of bribe, the same was reduced to Rs.13,000/-. On 06.01.2010, A1 and A2 were caught red-handed while demanding and accepting the said illegal gratification of Rs.13,000/- from the de-facto complainant in the Court Cell Chamber O/o.Divisional Personnel Officer, Southern Railways, Tiruchirappalli Division at Tiruchirappalli, thereby, A1 and A2 committed an offence punishable under Section 120-B IPC r/w. Sections 7 and 13 (2) r/w.13(1)(d) of the Act.

Charge No.2:-

In pursuance of the said criminal conspiracy as stated in Charge No.1, on 06.01.2010 A1 and A2 were caught red-handed while demanding and accepting the said illegal gratification of Rs.13,000/- from the de-facto complainant in the Court Cell Chamber, O/o.Divisional Personnel Officer, Southern Railways, Tiruchirappalli Division at Tiruchirappalli, thereby, A1 and A2 committed an offence punishable under Section 7 of the Act.

Charge No.3:-

A1 and A2, were being Public Servants, on or about the period as stated in Charge No.1, by corrupt or illegal means or by otherwise abusing their official position as Public Servant, and on 06.01.2010 A1 and A2 were caught red-handed while demanding and accepting illegal gratification of Rs.13,000/- from the de-facto complainant in the Court Cell Chamber, O/o.Divisional Personnel Officer, Southern Railways, Tiruchirappalli Division at Tiruchirappalli, thereby, committed an offence punishable under Section 13(2) r/w.13(1)(d) of the Act.''

(vii)Since the accused denied the charges, they were tried for the said charges in C.C.No.2 of 2010 by the learned II Additional District Judge for CBI Cases, Madurai.

(viii)To bring home the guilt against the accused, the prosecution examined 13 witnesses as P.Ws.1 to 13 and 32 documents were marked as Exs.P1 to P32 and also 8 material objects were produced as M.Os.1 to 8.

(ix)On completion of the evidence by the prosecution witnesses, the accused were questioned with respect to the incriminating evidences against them under Section 313 Cr.P.C. Both the accused denied the incriminating evidence and stated that a false case had been foisted against them and A1 stated that, he has no authority to issue any appointment order on compassionate grounds. The case is foisted against him with an ulterior motive. A2 further stated that, since he opposed the contention of P.W.2 in the Civil Suit, P.W.2 has given the false complaint against him. However, to disprove the case of prosecution, no one was examined on their side, but Ex.D.1 - Xerox copy of the letter in C.No.II/397/2009-UIG, dated 05.01.2010, was marked.

(x).Apart from the above, Ex.C.1 - Court order in Crl.M.P.No.756 of 2010, dated 20.01.2010, was marked as Court Document.

(xi)Upon consideration of the evidence, the learned II Additional District Judge for CBI cases, Madurai, found that the demand of bribe amount is proved by the evidence of P.Ws.2, 3 and 12. The acceptance of bribe amount by the accused from P.W.2 is also proved by M.Os.1 to 8 as well as through chemical analysis report. On the above findings, the learned II Additional District Judge for CBI cases, Madurai, convicted both the accused and sentenced them as stated supra, but, acquitted the accused in respect of the third charge framed against them on the ground that the prosecution has not proved its case beyond reasonable doubt.

5.Aggrieved over the said conviction and sentence imposed on them, the accused have preferred Crl.A.(MD)Nos.19 and 22 of 2014 and against the acquittal by the Trial Court for the offence punishable under Section 13(2) r/w. 13(1)(d) of the Act, the State has preferred Crl.A.(MD)No.34 of 2015.

6.Mr.R.Shanmugasundaram, the learned Senior Counsel appearing for A1 submitted that A1 is not the competent person to receive or process the application relating to compassionate appointment in favour of P.W.2. In fact, the admitted case of the prosecution is that, P.W.2 made an application for appointment on compassionate ground due to the death of his younger brother Pakkirisamy, who died on 08.08.1993 while working as Commercial Courier in Southern Railways, due to his illness. Thereafter, in the year 1994, P.W.2 applied for job in Southern Railway on compassionate grounds. However, his application was rejected in the month of March 1994 by the Welfare Inspector. Again, on 15.12,1994, he got a recommendation letter from Mr.Vai.Kopalsamy, the Ex.Member of Parliament and submitted another application for appointment on compassionate grounds. Once again, the said application was rejected by the General Manager of Southern Railways. Thereafter, he made another application to the Chief Personnel Officer, Southern Railway and the same was also rejected. Thereafter, P.W.2 applied to the Divisional Personnel Officer, Trichy. The Divisional Personnel Officer, Trichy, also rejected the application of P.W.2 on the ground that the said Pakkirisamy's name was not found in the family card as 'Kartha' of the family. In fact, his another brother was in the Railway employment. After rejection of the application on compassionate ground, by four times, P.W.2 filed a suit in O.S.No.1684 of 1998 before the Principal District Munsif Court, Tiruchirappalli, to declare him as legal heir of his deceased brother Pakkirisamy, who was employed under the defendants therein and consequently, to direct them to consider his request and pass appropriate orders taking into consideration the eligibility and the family circumstances of P.W.2, as per the guidelines and instructions of the Government. The said suit was decreed on 23.02.2007. Thereafter, on 03.09.2007, P.W.2 applied for appointment on compassionate grounds to the Divisional Personnel Officer, Trichy, through Ex.P.3.

7.According to the prosecution, P.W.2 met A1 for processing the application on 04.01.2010 and A1, in turn, directed P.W.2 - de-facto complainant to meet A2, Panel Advocate and gave a visiting card of A2 [Ex.P.7] to him. Thereafter, P.W.2 entered a negotiation with A2 and A2, in turn, reduced the bribe amount from Rs.15,000/- to Rs.13,000/-. Thereafter, on 05.01.2010, P.W.2 informed about the demand of bribe to the Superintendent of Police, C.B.I., Chennai, over phone. However, the pre-trap proceedings were arranged only on 06.01.2010. But, on comparision of evidence of P.W.2 and Ex.P.8 - Complaint, it is seen that they are totally contradictory in nature and Ex.P.8 Complaint is an improved version. Even during the trap proceedings, P.W.2 made a call to the accused. However, those call details were not marked. The evidence of P.W.2 and P.W.3 are not corroborated each other. Hence, the very nature of bribe amount handed over to A2 and the same was placed on the table of A1 is suspicious one. P.W.2 is not an innocent and one of his brother is in Railway employment and he has categorically admitted that the accused are not competent persons to receive or process the application for appointment on compassionate grounds. When the person was incompetent to process the application for appointment on compassionate grounds, the demand and acceptance of bribe amount are suspicious one. Further, P.W.2, in his complaint, narrated as if he did not know the accused persons, but, the fact remains that A2 conducted a case against P.W.2 in the Principal District Munsif Court, Trichy, for 9 years and A2 and P.W.2 are already known to each other. The de-facto complainant - P.W.2, in his cross-examination, did not reveal about the demand made by A1, but revealed the files relating to appointment on compassionate ground. When A2 categorically admitted that A1 refused to reveal anything with regard to the files relating to compassionate appointment, the allegation of demanding bribe amount, creates serious doubt. Though there was an allegation that A2 received bribe amount of Rs.13000/- at the instructions of A1 and kept Rs.5,000/- in his pant pocket, in the evidence of P.W.3 and P.W.4, they categorically admitted that A1 did not receive the bribe amount and he directed A2 to receive the bribe amount, who received the same and put Rs.8000/- on the table of A1 and A1 did not receive the bribe amount either from P.W.2 or from A2.

8.The learned Senior Counsel further submitted that admittedly the complaint was given on 06.01.2010, however, the Superintendent of Police, C.B.I., Chennai, arranged the official witnesses on 05.01.2010 itself and the said arrangement is marked through Ex.D.1, in which, the present crime number was not mentioned and some other crime number was mentioned. When there is no complaint on 05.01.2010, arranging official witnesses to trap the accused in the present case, is unsustainable and imaginary one. Normally, the official witnesses will not be known to the de-facto complainant, but in the present case, P.W.2 and the official witnesses were known to each other. However, in the present case, P.W.2, in his cross-examination, deposed that he knew the official witnesses, namely, P.W.3 and Anbalagan. When such being the position, P.W.3 is not an independent witness and he is an interested witness, since they were friends even prior to the trap proceedings and therefore, the same is inadmissible one.

9.The learned Senior Counsel further submitted that though the prosecution case is that for getting appointment on compassionate ground, the accused received bribe amount from P.W.2, the charge was framed for processing the appointment file.

10.The learned Senior Counsel also submitted that mere recovery of the alleged bribe amount from A2 will not constitute any offence against A1. The initial burden lies upon the prosecution to prove their case in proper and perspective, then only, the presumption under Section 20 of the Act will arise. In the present case, the initial burden is not successfully discharged by the prosecution. Hence, the question of rebutting the presumption will not arise in this case and therefore, the learned Senior Counsel prayed for acquittal.

11.In support of his submissions, the learned Senior Counsel relied on the following decisions of the Hon'ble Apex Court:-

(i) **Banarsi Dass Vs. State of Haryana** reported in **2010 (4) SCC 450**, wherein at Paragraph 23, it has been held as follows:-

> ''23.To constitute an offence under Section 161 IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of Section 5(1)(d) of the Act, the demand and acceptance of the money for doing a favour in discharge of his official duties is sine qua non to the conviction of the accused.''

(ii) **B.Jayaraj Vs. State of Andhra Pradesh** reported in **2014 (3) SCC 55**, wherein at Paragraphs 7 to 9, it has been held as follows:-

> ''7.Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M.Sharma v. State of A.P. [2010 (15) SCC 1 : 2013 (2) SCC (Cri) 89] and C.M.Girish Babu v. CBI [2009 (3) SCC 779 : 2009 (2) SCC (Cri) 1].
>
> 8.In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by

the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext.P-11) before L.W.9, and there is no other evidence to prove that the accused had made any demand, the evidence of P.W.1 and the contents of Ext.P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9.Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.''

(iii) **V.Sejappa Vs. State, By Police Inspector, Lokayukta, Chitradurga**, reported in **2017 (3) SCC (Cri) 699 : 2016 (12) SCC 150**, wherein at Paragraph 18, it has been held as follows:-

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

12.The learned counsel appearing for A2 submitted that A2 was not a Public Servant and working as Panel Advocate. Even as per the appointment, there was a fixed tenure, even prior to the fixed tenure, there must be a notice for termination of his employment. It is a case of prosecution that A2 was the public servant, then, non-obtaining of sanction from the competent authority vitiates the entire prosecution case. The learned counsel further submitted that Ex.P.3 application for appointment on compassionate ground, has to be disbelived for the reasons that, Ex.P.3 was not seized from the Office of DPO/Railways, but it is a copy produced by P.W.2 - de-facto complainant and attested by the Divisional Personnel Officer. Ex.P.3 is not a part of Ex.P.12 file recovered from the table drawer of A1 and marked through P.W.3. The authenticity of Ex.P.3 is not proved by any other witness except the deposition of P.W.2.

13.The learned counsel appearing for A2 further submitted that the Complaint [Ex.P.8] shows that the demand was made in order to process the file with regard to appointment on compassionate ground, but P.W.2 deposed that the demand was made for getting an appointment on compassionate grounds. Though P.W.2 stated in Ex.P.8 - Complaint that the demand was made for processing the file, he deposed that the demand was made for his appointment, which is contrary in nature. The learned counsel further submitted that P.W.2 admitted in his cross-examination that his earlier applications had been rejected on several occasions and the 1st application was during the year 1994, the 2nd application was during the year 1995 and the 3rd application was during the year 1996. P.W.2 admitted in his cross-examination that the compassionate appointments will be made by the General Manager, Railways and that he came to know about the fact by the first rejection letter itself. Further, P.W.2 admitted that he came to know that he could not get any job in the Railways after two rejection orders from the General Manager and more particularly, he knows the fact that he could not be given with a Clerk Post in Railways.

14.He further submitted that it is proved from the evidence of prosecution that the accused are not capable of appointing P.W.2 for any post in Railways. The suit in O.S.No.1684 of 1998 was decreed in favour of P.W.2 and hence, the accused cannot have any role in implementing the judgment passed by the Court of Law. Further, P.W.2 already knew A2, Panel Advocate, who contested the case against him, but, in the complaint, he stated that the visiting card of A2 (Ex.P.7) was given to him by A1. P.W.2 also admitted that he got frustrated on 04.01.2010, since A1 refused to give the file number.

15.The learned counsel appearing for A2 also submitted that the procedure for conducting the Phenolphthalein test is not followed in the present case. Normally, the hands of the accused will be dipped in the Sodium Carbonate solution and thereafter, the bribe money will be recovered. In the present case, A2 was forced to take the amount from his pant pocket and thereafter, the test was conducted. When there is no proper explanation under Section 313 Cr.P.C., it is the duty cast upon the prosecution to prove that the bribe amount was in possession of the accused. In the present case, the prosecution failed to establish that P.W.2 and A2 are not known to each other. P.W.2, in his cross-examination, has clearly deposed that already he knew A2 and A2 conducted a case for 9 years against P.W.2. However, P.W.2 did not reveal anything about the same either in the complaint or in the chief-examination. When that being so, obtaining visiting card of A2 by P.W.2 from A1 and met A2 for paying the bribe amount as a motive to process the application is not established before the Court and accordingly, the learned counsel prayed for acquittal.

16.The learned Special Public Prosecutor appearing for CBI Cases submitted that in the present case, P.W.2 is bribe-giver and the accused are briber-takers. On 04.01.2010, P.W.2 met A1 in his Office for processing the application for appointment on compassionate ground, which was submitted by P.W.2 to the Divisional Personnel Officer on 03.09.2007. Though the suit was decreed in favour of P.W.2, the application was forwarded to the Office after two years. Hence, for processing the application, A1 demanded illegal gratification of Rs.15,000/- from P.W.2 and directed him to meet A2, Panel Advocate and thereafter, P.W.2 negotiated with A2, who, in turn, reduced the same to Rs.13,000/- and thereafter, P.W.2 handed over Rs.13,000/- to him and A2 accepted the bribe amount from P.W.2 in the presence of P.W.3. Once the accused accepted the bribe amount, it is for them to disprove the prosecution case. Immediately, after the acceptance of the bribe amount, the presumption under Section 20 of the Act will operate, which is legal presumption and it is for the accused to give proper explanation that the amount received by him is not illegal gratification with convincing reasons. In the present case, no proper explanation was offered by A2. Though there was a discrepancy in the charge, the same cannot vitiate the entire prosecution case. The evidence of P.W.2 and P.W.3 are clearly corroborated each other and the Phenolphthalein test also confirmed the receipt of bribe amount from P.W.2 and the Expert was also opined that the Phenolphthalein test was positive. So, in view of the conclusive proof and the prosecution established its case beyond reasonable doubt, the learned Special Public Prosecutor prayed for dismissal of the appeals filed by the accused and prayed for allowing the appeal preferred by the CBI.

17.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 arise for consideration in these appeals:-

(a) Whether A1 and A2 entered into criminal conspiracy during 1995 to 2010 and the prosecution established the said conspiracy before the trial Court by adducing proper evidence?

(b) Whether the demand and acceptance was proved by the prosecution before the trial Court?

(c) Whether A1 and A2 are competent persons to get appointment in favour of the defacto complainant?

(d) Whether the Trial Court was right in finding the accused guilty for the offences under Sections 120-B IPC r/w. Sections 7 and 13(2) r/w. 13(1)(d) of the Act?

(e) Whether the order of acquittal of A1 and A2 by the Trial Court from the charge under Section 13(2) r/w. 13(1)(d) of the Act warrants any interference?

18.The prosecution examined 13 witnesses, of whom P.W.1 is the sanctioning authority under Section 19 of the Act, who gave sanction for prosecuting A1; P.W.2 is the aggrieved party, who initially lodged the complaint before the Superintendent of Police, CBI, Chennai, on 05.01.2010 and subsequently, before the Trap Laying Officer on 06.01.2010 at 07.30 a.m.; P.W.3 is the trap witness; P.W.4 was working as Technician, Ponmalai Railway Junction, Trichy, who deposed that he already knew A1 and A2 and he met them about his sister's appointment on compassionate ground; P.W.5, who was working as Junior Stenographer under A1, spoke about the arrival of A2 on 06.01.2010 in the room of A1 and also about the arrival of P.W.4 and his sister in the room of A1; P.W.6, who was working as Senior Divisional Welfare Officer, spoke about his duties and responsibilities and A1 was working under him. He has deposed that on 06.01.2010 between 1.30 p.m. and 1.45 p.m., the CBI Inspector came to his room and told about the arrest of A1 and A2 and then, he went to the room of Divisional Manager along with CBI Inspector and explained about the happenings. He has also deposed that he sent the documents to CBI as per letter Ex.P.20, which was received from CBI; P.W.7, who was working as Administrative Officer, New India Insurance Divisional Office, Trichy, deposed that on 06.01.2010, at 2.30 p.m. he and one Chandrasekaran went to Trichy Railway Junction to meet Nageswaran, CBI Officer, as per the directions of the

Divisional Manager and at the time of searching the residence of A1, he accompanied with the CBI Officer; P.W.8, who was working as Assistant Director, Forensic Science Laboratory, Chennai, deposed that he received a parcel relating to this case from the Court and analysed the same and found 5 things were containing Phenolphthalein and Sodium Carbonate and sumbitted a Chemical Report [Ex.P.25] before the Court; P.W.9, who was working as Assistant Personnel Officer, Trichy, deposed that he has not seen Ex.P.12 File and the same was not containing the signature of DPO or his signature; P.W.10, who was working as Staff Welfare Inspector, Southern Railway, Trichy, deposed that during the year 1992 to 2004 and from 2008, he worked in the Court Cell under A1 and knew about A2. A judgment was pronounced on 23.02.2007 in O.S.No.1684 of 1998, filed by the de-facto complainant [P.W.2], and a copy was received on 13.06.2007 and A2 gave opinion after two years. He further deposed that there is no Office seal or the signature of DPO in Ex.P.12 and Exs.P.3 and P.6 contain the Office seal; P.W.11, who was working as Senior Legal Officer, Southern Railway, deposed that A1 was working under him. As per the request of CBI, he handed over 3 doucments under the receipt memo Ex.P.26; P.W.12, who is the Trap laying Officer in this case, spoke about the trap proceedings; and P.W.13, who was working as Sub-Inspector of Police, spoke about the further investigation and examination of witnesses in this case. After receipt of sanction order from P.W.1, he filed charge sheet before the Court.

19.The entire case revolves around the witnesses P.W.2, defacto complainant, P.W.3 shadow witness, P.W.6, Senior Divisional Welfare Officer and P.W.12, Trap Laying Officer. P.W.2 in his evidence stated that his elder brother Palanivelu is working as Gr-1 Technician in Ponmalai Workshop, Trichy, Southern Railways. His younger brother was working as Commercial Courier in Southern Railways and he died on 08.08.1993 due to ill health. After the death of his younger brother Pakkirisamy, he applied for compassionate appointment. Since the department refused to give appointment, on 15.12.1994, he got recommendation letter from Ex-M.P. Mr.Vai.Gopalsamy. Even then, the department refused to give appointment stating that his name is not mentioned in the family ration card as 'Kartha'. Thereafter, he obtained an order by filing O.S.No.1684 of 1998 on the file of the Principal District Munsif, Trichirappalli, directing the defendants therein to consider the request of the plaintiff/P.W.2 herein and to pass suitable orders taking into consideration of the eligibility and the family circumstances of the plaintiff as per the guidelines and instructions of the Government. Accordingly, again, he approached the department for getting employment along with his mother's letter. When he met A1 on 29.01.2008, he replied that P.W.2 would get appointment order during June 2008. After one month, when he again met A1, he told that his file has been forwarded to Chennai, for process. However, he replied the same on several occasions. At last, on 04.01.2010, when he asked A1 to furnish the file number, he replied that since it was confidential, it could not be furnished. On the same day, at 2.30 p.m., again, he met A1. At that time, A1 replied that if he pays Rs.15,000/- as bribe amount, he will get appointment for P.W.2. He again told that to pay the bribe amount to A2, Panel Advocate Jeyaraman and gave his visiting card. When he met A2, he asked P.W.2 to meet him on the next day along with the bribe amount. However, since P.W.2 did not want to give the bribe amount, he lodged a complaint before P.W.12, Trap Laying Officer on 06.01.2010 at 07.30 a.m. Thereafter, P.W.12 arranged shadow witness to conduct the trap. Accordingly, P.W.2 contacted A2 through his mobile phone that he brought the money, for which A2 told, he will come near the ATM booth of State Bank of India, situated opposite to Divisional Personnel Officer, Trichy. Thereafter, P.W.2 contacted A1 and told that he broughthe money, for which, A1 told that your firend Jeyaraman was near to there and gave it to him and he would receive the same later. After 10 minutes, A2 came there and after introducing P.W.3, he brought them to the office of A1, where, P.W.2 gave the amount to A2, who in turn took Rs.5,000/- and gave the balance of Rs.8,000/- to A1, for which, A1 told to keep the amount in the table and at that time, P.W.12 caught A1 and A2 redhanded.

20.It is the case of the prosecution that the accused were entered into a criminal conspiracy during the year 1995 - 2010 and in pursuance of the said conspiracy, A1 demanded an illegal gratification of Rs.15,000/- from the de-facto complainant on 04.01.2010, as a motive or reward for processing his appointment file in Southern Railways, Tiruchirappalli, and subsequently, the said amount was reduced to Rs.13,000/- and handed over to A2 on 06.01.2010. It is relevant to note that though the Trial Court framed a charge against the accused persons that they were entered into a criminal conspiracy in the year 1995, the fact remains that initially the de-facto complainant made an application for appointment on compassionate ground in the year 1994 and thereafter, made several applications and all those applications were rejected and thereafter, in the year 1998, the de-facto complainant instituted a suit against the Railways, in which, A1 was a Legal Advisor and A2 was a Panel Advocate, who conducted a case, which was ended in the year 2007. It is also admitted case of prosecution that the de-facto complainant/P.W.2 did not make any allegation with regard to the manner in conducting the case by A1 and A2 prior to 2007. Even, the de-facto complainant made allegations only subsequent to 2007 that he met A1 on several times and he made the first demand on 04.01.2010. Till 04.01.2010, P.W.2 did not make any allegation against A2. However, the Trial Court framed a charge as if from 1995 onwards A1 entered into a criminal conspiracy, for which, there is no acceptable evidence available to convict the accused under Section 120-B IPC and further, there is no charge in respect of Section 420 IPC against the accused.

21.In resepct of conspiracy for the offence under Section 120 B of I.P.C., each one of the circumstances should be proved beyond reasonable doubt. It is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy, but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In the present case, though charges were framed against the accused persons under Section 120-B of I.P.C., right from 1995 onwards till 2010, A1 entered into a criminal conspiracy and in furtherence to the criminal criminal conspiracy, A1 demanded bribe amount on 04.01.2010 only. However, no records were produced before the Court to prove the fact that pursuant to the said criminal conspiracy, A1 demanded illegal gratification. P.W.2 himself disclosed the commission of offence only on 04.01.2010 and he did not disclose even in his complaint that A1 and A2 entered criminal conspiracy to cheat P.W.2 from 1995 onwards. In fact, the civil case has been initiated by the defacto complainant in the year 1998 and the said case was disposed of on 23.02.2007.

22.Even on a perusal of Ex.P12, the judgment of Civil Court in O.S.No.1684 of 1998 would reveal that A2 has rightly argued the case before the Civil Court stating that as already, the request of P.W.2 was rejected by the competent authority, the decision taken by the competent authority cannot be interferred by the civil Court and the said argument was observed in para 8 by the Civil Court. Further, P.W.2 has also not made any allegation against A1 and A2, regarding the manner, in which, they conducted the case. In this aspect, it is relevant to refer the decision of the Hon'ble Apex Court in **State of Madhya Pradesh Vs. Sheetla Sahai and others** [SLP.(Crl)No.4130 of 2006, decided on 04.08.2009], wherein it has been held as follows:-

> ''52.While saying so, we are not oblivious of the fact that often conspiracy is hatched in secrecy and for proving the said offence substantial direct evidence may not be possible to be obtained. An offence of criminal conspiracy can also be proved by circumstantial evidence.
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> In Kehar Singh and Ors. Vs. State (Delhi Administration), [1988 (3) SCC 609 at 731], this Court has quoted the following passage from Russell on Crimes (12th Edn. Vol 1):
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> ''The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the

forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough''

In State (NCT) of Delhi V. Navjot Sandhu @ Asfan Guru [(2005) 11 SCC 600], this Court stated the law, thus:

''101.One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution.''

We may also notice that in Ram Narayan Popli Vs. CBI [(2003) 3 SCC 641], it was held:

''.... Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment .... ''

In Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra [(2008) 6 SCALE 469], this Court opined:

''23.Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement.''

Ex facie, there is no material to show that a conspiracy had been hatched by the respondents.''

Considering the above said decison along with the present case, this Court hold that there is no material to show that a conspiracy had been hatched by the respondents and hence, this Court has no hesitation to arrive at a conclusion that there is no criminal conspiracy between A1 and A2 for cheating the defacto complainant.

23.Furthermore, the Trial Court taking into account the evidence of P.W.9 - Mohan, under whom, A1 was working, has come to the conclusion that there was a delay on the part of A1 in sending the file for scrutiny. On the ground of delay, the Trial Court has come to a wrong conclusion that there was a conspiracy between A1 and A2 to extract money from P.W.2 for processing the file relating to compassionate appointment of P.W.2. The trial Court wrongly believed that Ex.P12 is appointment file of P.W.2. In fact, Ex.P12 is not the appointment file and it is only the judgment and decree of the civil suit and no appointment file was produced before the trial Court.

24.With regard to the demand and acceptance, the prosecution had examined P.W.3, Shanmugam, shadow witness, who, in his evidence deposed that he was working as Inspector of Customs at Tuticorin and on 06.01.2010, he was called for by P.W.l2 to play as a shadow witness in a trap proceedings. On the same day, at 01.00 p.m., they gone to Trichy Railway Station. P.W.2 contacted A1 over mobile phone and told that he brought the money, for which, A1 asked him to give the amount to A2, who will come near the ATM centre, opposite to Trichy Railway station. Accordingly, they gone to ATM Centre, where, A2 was there. P.W.2 introduced P.W.3 as his friend to A2. Thereafter, they gone to office of A1. However, he did not depose about the call particulars between P.W.2 and A1 in the ATM booth. P.W.2 asked A1 when he will get appointment, for which, he replied that it was under process. Then, he asked P.W.2 how much amount he brought, for which, he replied that he brought Rs.13,000/-. A1 told to give the amount to A2. P.W.2 gave the amount to A2, in turn, A2 counted the same and took Rs.5,000/- and put the balance amount in a cover on the table of A1 and A1 put the paper weight on it. Thereafter, P.W.12 entered into the office and caught A1 and A2 red-handed.

25.On a cumulative reading of the above evidence of P.W.2 and P.W.3 reveals that on 04.01.2010, P.W.2 approached A1 with regard to his compassionate appointment, for which, A1 demanded Rs.15,000/- and he was directed to meet A2, Panel Advocate. Accordingly, P.W.2 met A2 on the same day and A2 reduced the amount of Rs.15,000/- to Rs.13,000/-. Thereafter, on 05.01.2010, P.W.2 condacted the

Superintendent of Police, CBI, Chennai, and explained the demand made by A1, which was reiterated by A2, for which, the Superintendent of Police, CBI, directed him to lodge a complaint before P.W.12. Accordingly, on 06.01.2010 at about 7.30 a.m., he lodged a complaint before P.W.12. Thereafter, P.W.12 arranged independent witnesses viz., P.W.2 Shanmugam and one Anbalagan. As per the direction of P.W.12, P.W.2 contacted A2 and informed him that he brought the bribe money, and A2 replied that he will receive the amount near ATM centre, opposite to Railway Station, Trichy. Therefore, they reached the ATM centre. After 10 minutes, A2 came there and along with A2, P.W.2, P.W.3 gone to the office of A1, where, A2 took Rs.5,000/- and gave the balance amount of Rs.8,000/- to A1, for which, A1 told to keep the amount on the table. Accordingly, A2 kept Rs.8,000/- on the table of A1 and thereafter, A2 introduced P.W.3 to A1. However, scrutiny of evidence of both P.W.2 and P.W.3, shows that their evidence have not corroborated each other and the evidence of P.W.3 is an improved version.

26.Perusal of the evidence of P.W.6, Regional Employees Development Officer, would show that he is discharging his duties with regard to salary, transfer, promotion, seniority, family welfare of the employees, allotment of duty time, appointments on compassionate ground and also looking after the court cases. P.W.2 was the panel advocate, who appeared on behalf of their Region. In his cross-examination, he has deposed that once, the application submitted for appointment on compassionate ground was rejected by the General Manager, Southern Railway, and if again he applied for the same purpose, the Regional Personnel Officer, Regional Manager or any other Regional Manager have no power to pass any order on that application.

27.Though P.W.2 in the chief examination as well as in the complaint disclosed that he completed M.A., Degree and he has two brothers and his brother was working in the Southern Railways as Gr-I Technician and the elder brother, who died, was working as Commercial Courier and in 1994, he applied for compassionate appointment and in the year 1998, he instituted a suit in O.S.No.1684 of 1998 and the said suit was ended in favour of P.W.2 on 23.02.2007 and thereafter, he presented the application on 06.09.2007 to the DRM Office. The department officials instructed P.W.2 to meet A1. Accordingly, on 04.01.2010, P.W.2 met A1 and at that time, it was alleged that A1 demanded Rs.15,000/- as bribe amount, for processing his application for compassionate appointment. In his cross examination, he categorically admitted that he knew A2, since 1998 and he appeared on behalf of the Railway department, in a case filed by P.W.2 regarding appointment on compassionate ground. However, in his cross examination, he has deposed that initially he made application for compassionate appointment on compassionate ground to one Gopalakrishnan, the Divisional Personnel Officer, who directed him to meet the Welfare Inspector -Raman and handed over the entire documents. In the year

1994, the Welfare Inspector sent a letter stating that compassionate appointment cannot be given to him. Again, on 15.12.1994, P.W.2 obtained a recommendation letter from Mr.Vai.Gopalsamy, Ex-M.P, who recommended the General Manager of Southern Railways and P.W.2 sent the said letter along with his application to the General Manager, Southern Railways, Chennai, who reiterated that P.W.2 is not entitled for any appointment on compassionate ground. Thereafter, again, he approached the Divisional Personnel Officer, Trichy, who rejected the application stating that since his name has not been mentioned as Kartha in the family ration card and his elder brother's name was shown as Kartha, then the name of deceased Pakkirisamy, deceased grand mother Valliammal, mother Jegathambal and at last, his name appears. Hence, he approached the Tahsildar for obtaining legal heir certificate and the revenue officials have also refused to grant certificate stating that the application was made after two years of the death of deceased Pakkirisamy and he was directed to approach the civil Court for obtaining legal heir certificate. Thereafter, the above suit has been filed, which was disposed of by the learned District Munsif concerned, directing the defendants therein to consider the request of the plainitff therein with regard to the appointment on compassionate ground. Further, in his chief examination, he has revealed that his elder brother viz., Palanivelu is also working as Gr-1 Technician in Ponmalai Workshop, Trichy.

28.Therefore, it is clear that since the Kartha of the family is working as an employee in the Southern Railways itself, P.W.2 would not get any appointment on compassionate ground in Southern Railways. Further, in the year 1999, marriage of P.W.2 was performed with one Geetha and thereafter, they blessed with one male child and after the birth of the male child, his wife Geetha passed away, for which the father-in-law of P.W.2 made a complaint as if P.W.2 murdered his wife. His son is residing with his father-in-law and he is studying 12th standard. Therafter, he performed another marriage with one Bhuvaneswari.

29.P.W.2 also admitted that when the higher authorities rejected his application for compassionate appointment, he did not prefer any appeal as against the rejection order passed by the respective authorities. Further, P.W.2 admitted that already he knew A2, as the suit filed by him was contested by A2 on behalf of Railway Department, as Panel Advcate, in which A1 assisted for the department. Hence, it is clear that earlier P.W.2 known A1 and A2 each other right from the institution of the suit. It is also relevant to note that P.W.2 did not meet again A1 and A2 in respect of cases contested against them. He made allegations only on 04.01.2010 and it is the admitted fact that P.W.2, A1 and A2 known each other from the institution of the suit. Therefore, there is no necessity for A1 to give the visiting card of A2 to meet him. This will create a suspicious.

30.Further, there is no record to show that the application for compassionate appointment submitted by P.W.2 has been forwarded by A1 for processing the file to Chennai. It is the admitted case of prosecution that A1 and A2 were not competent persons to process the file for getting appointment in favour of the defacto complainant. When the persons are not competent to get appointment order, there is no question of forwarding the file for processing. Even there would be no allegation either for A1 or deputing A2 with regard to the manner in which they conducted the case before the civil Court. Though the defacto complainant approached A1 right from 1994 onwards, all of a sudden, he made allegation against A1 that he demanded bribe amount for processing the application submitted by P.W.2, for compassionate appointment. Hence, the allegation of demand creats a doubt in the conduct of P.W.2. The initial demand has been made on 04.01.2010. Except the evidence of P.W.2, no other evidence is available to corroborate the evidence with regard to initial demand. On 06.01.2010 also, P.W.2 made a call initially to A2 and told that he brought the money, for which, A2 replied that he will come within 10 minutes and again, he called A1 and told that he brought money, for which, A1 directed to hand over the amount to A2 and stated that he will receive the same letter.

31.It is also curious to note that the defacto complainant did not disclose that both A1 and A2 known each other even from the initiation of the civil suit. It is also relevant to mention that though P.W.2 orally contacted the Superintendent of Police, CBI, Chennai, on 05.01.2010, he made a complaint before P.W.12, Trap Laying Officer only on 06.01.2010 at 7.30 a.m. But, the Superintendent of Police, CBI, had arranged the shadow witnesses on 05.01.2010 itself, which is clearly established by the accused through Ex.D1, letter from the Office of the Commissioner of Central Excise, sent to the Superintendent of Police, CBI, Chennai. A close perusal of Ex.D1 would show that the said letter has been prepared on 05.01.2010 even prior to the complaint given by the defacto complainant, to arrange accommodation for the shadow witnesses as per the fax message letter No.36(A) 2009 - CBI - ACB - Chennai dated 05.01.2010, received from the Superintendent of Police, CBI, Chennai. Further, perusal of the said letter would show that the said letter has been sent to accommodate the witnesses for the case registered in 2009. But, here, the case has been registered only on 06.01.2010 and the case number is RC MA 1 2010 A 002 and there is no proper explanation as to how the shadow witnesses have been arranged for a different case number that too registered in the year 2009. There is no proper explanation under what circumstances, the official witnesses who were arranged for different crime number, were used in the present crime number. Therefore, this Court is of the view that the prosecution has not disclosed the genesis of the prosecution case beyond reasonable doubt in this aspect.

32.Coming to the another charge under Section 7 of the Act that, pursuant to the demand made, A1 and A2 accepted a sum of Rs.13,000/- as bribe for processing the application of P.W.2 for compassionate appointment. When it is the categorical evidence of P.W.2 that the accused persons are not competent to process his application for compassionate appointment, it is hard to believe that P.W.2 would have approached A1 for processing his application, who in turn, directed him to meet A2 and A2 demanded the bribe amount for the same. This evidence of P.W.2 is not accepted. When it is the case of the prosecution that when P.W.2 approached A1, he demanded a sum of Rs.15,000/- as illegal gratification for processing his file and when P.W.2 requested him to reduce the bribe amount, he directed P.W.2 to meet A2 by giving a Visiting Card of A2 [Ex.P.7] and thereafter, P.W.2 contacted A2 over phone and spoke about the bribe amount, it is the duty of the prosecution to prove the charge of demand by A1 and A2 with acceptable evidence, but the prosecution has failed to prove the charge of demand alleged to have been made by A1 and P.W.2 negotiated with A2 and reduced the demand to Rs.13,000/- by producing the telephonic call details and marking the same through the authorities concerned. This failure on the part of the prosecution goes to the root of the case and vitiates the charge of demand. When there is no demand as alleged by the prosecution and the same has not been proved, the mere recovery of alleged bribe amount from A2, is not enough to hold that the prosecution has proved the charge of demand and acceptance.

33.In this regard, it is relevant to re-produce the judgment of the Hon'ble Apex Court in the case of **B.Jayaraj Vs. State of Andhra Pradesh** reported in **2014 (3) SCC 55**, wherein at Paragraph No.7, it has been held as follows:-

> ''7.Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M.Sharma v. State of A.P. [2010 (15) SCC 1 : 2013 (2) SCC (Cri) 89] and C.M.Girish Babu v. CBI [2009 (3) SCC 779 : 2009 (2) SCC (Cri) 1].''

34.Further, P.W.2's brother is already in railway employment. Though P.W.2 claimed that he is an innocent, in his evidence, he has stated that he knew that the accused persons were not competent to secure the job from the Railway Department and therefore, he is not an innocent. P.W.2's applications were already rejected by the Welfare Inspector - Raman in March 1994 and by the General Manager, Southern Railway and also by the Chief Personnel Officer and thereafter, by the Divisional Personnel Officer. P.W.2, in his cross-examination, deposed that the appeal remedy is available and he is also entitled to file an appeal before the Tribunal. However, without invoking the remedy available, he filed a civil suit, in which, A2, Panel Advocate, contested the same, for 9 years. P.W.2 did not disclose the said fact either in the complaint or in his chief-examination. P.W.2 also admitted that he got frustrated on 04.01.2010, since A1 refused to give the file number. In order to wreak vengeance, P.W.2 made the complaint against the accused and implicated them in the present case and therefore, the Phenolphthalein coated currencies found on the table of A1, which was allegedly put by A2, is not sufficient to prove that A1 had accepted the bribe amount from P.W.2.

35.Further, normally, in trap cases, the Trap Laying Officer will arrange shadow witnesses, who may not be known to the de-facto complainant. However, in the present case, P.W.3 - Shadow witness and P.W.2 - de-facto complainant have already known to each other. P.W.2, in his cross-examination, admitted that he already met P.W.3 on two or three ocassions. Therefore, P.W.2 - de-facto complainant and the Shadow Witness - P.W.3 are known to each other prior to the trap proceedings, which itself vitiates the entire prosecution case.

36.The first charge framed against the accused persons was that for processing the appointment file, they demanded and accepted the bribe amount. Though there was some discrepancy in the prosecution case as well as the charges framed against the accused, the appointment file allegedly mentioned in the complaint as well as in the charge sheet was not marked as exhibit before the Court, and except Ex.P.3 - Application, dated 03.09.2007, sent by P.W.2 to the Divisional Personnel Officer, Trichy, there is no evidence available that the Divisional Personnel Officer forwarded the said application to A1 for processing the same.

37.In the present case, the role of A1 is not processing the application and A2 has nothing to do with the appointment on compassionate ground. Though there may be a justification for rejection of request for appointment on compassionate, there is no clarification under what circumstances, P.W.2 filed the application again before the Divisional Personnel Officer for appointment on compassionate ground. Further, the prosecution held that immediately after the trap proceedings, the service of A2 was terminated and on the date of taking cognizance, he was not a Panel

Advocate. The said argument is rejected on the ground that no termination notice was received by A2. Hence, without issuing a notice, filing of charge sheet against A2 is unsustainable. Further, P.W.11 - Senior Law Officer deposed that A2 was a Panel Advocate and admitted that he would be paid on completion of a case. So, the Panel Lawyer cannot be termed as a public servant and come under any of the definition of Section 21 IPC. Ex.P.15 Attendance Register for the period of January 2010 does not contain the name of A2. Ex.P.18 is the Attendance Register of A1 for period from January 2009 to January 2010, in which, the name of A2 was not mentioned. If it is a definite case of the prosecution that A2 is the public servant, then, the non-obtainment of sanction, vitiates the entire trial and in the absence of any document, A2 was terminated from service. Since A2 was not a public servant, Section 7 of the Act cannot be invoked against him and equally, the presumption under Section 20 of the Act will not come into operation against A2. However, the finding of the Trial Court that A2 was caught red-handed in the presence of A1 and A1 being the public servant along with A2, who was not a public servant jointly demanded and accepted the bribe amount from P.W.2, for processing the application for appointment on compassionate grounds, is not based on any acceptable evidence.

38.It is the case of the prosecution that initially on 06.01.2010, P.W.2 contacted A1 through cell phone and thereafter, after reaching ATM centre, he contacted him over cell phone. However, no call details have been produced by the prosecution, to substantiate the evidence, which also creates a suspicious over the contact of P.W.2. The evidence of P.W.2 made it evident that the prosecution has not disclosed the genesis of the case correctly.

39.In the present case, the allegation as against the 2nd accused is that he received bribe amount and after counting the same put it in his pant pocket. Howerver, there is procedural irregularities in recovering the bribe amount from A1 and A2. It is the evidence of P.W.3 - Shadow Witness that A2 took bribe amount of Rs.13,000/- given by P.W.2 and out of which, he took a sum of Rs.5,000/- and kept it in his left side pant pocket and the balance amount of Rs.8,000/- was kept on the table of A1, on which, A1 placed a paperweight. The evidence of P.W.12 - Trap Laying Officer is that on getting pre-arranged signal from P.W.2, they went to the Office of A1 and at that time, A2 was also present and when enquired, A2 took a sum of Rs.5,000/- from his left side pant pocket and when Phenolphthalein Test was conducted, it proved positive. It is the contention of the learned counsel for A2 that the procedure adopted by the Trap Laying Officer is not correct, as before recovering the bribe amount from A2, the Trap Laying Officer ought to have asked A2 to dip his hands in Sodium Carbonate solution and only thereafter, he should have recovered the amount from A2. But, this test was conducted only after recovering the amount from A2, which would naturally prove positive. This procedural lapse also makes this Court to disbelieve the manner in which, the trap laying process was conducted by P.W.12. It is the further case of the prosecution that though A1 demanded the bribe amount, he did not receive the amount and he directed A1 to place the amount on the table. Though the phenolphthalein test turned positive, the fact remains that A1 did not receive any bribe amount. Though this Court well aware that the technical flaw will not vitiate the prosecution case, the above discrepancy will lead suspicious over the complaint given by P.W.2.

40.In this case, the probative value of the materials on record has not been gone into. The materials brought on record have been accepted as true at the stage of framing of charges. It is true that at the stage of framing of charges, even a defence of an accused cannot be considered. The question as to whether the Court should proceed on the basis as to whether the materials brought on record even if given face value and taken to be correct in their entirety disclose commission of an offence or not must be determined having regard to the entirety of materials brought on record by the prosecution and not on a part of it. The prosecution, having regard to the right of an accused to have a fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of the Constitution of India, cannot at any stage be deprived of taking advantage of the materials, which the prosecution itself has placed on record. Therefore, A1 and A2 are entitled to acquittal from the charge framed against them under Section 120-B IPC r/w. Sections 7 and 13(2) r/w. 13(1)(d) of the Act.

41.Now, coming to the appeal preferred by the CBI against the acquittal of A1 and A2 from the charge under Section 13(2) r/w. 13 (1)(d) of the Act, the finding of the Trial Court on this charge is that the said charge against A1 and A2 have not been proved by the prosecution beyond reasonable doubt and therefore, the benefit of doubt should go to the accused persons. When there is procedural lapse on the part of the prosecution in proving their case of demand and acceptance and prosecution has also failed to prove the alleged criminal conspiracy for committing the offence under Sections 7 and 13(2) r/w. 13(1)(d) of the Act, this Court is of the opinion that the Trial Court was right in holding that there is no material on the side of the prosecution and the prosecution has failed to prove the charge under Section 13(2) r/w. 13(1)(d) of the Act. Further, as held earlier, the entire proceeding of trap against the accused has not been proved by the prosecution. From the evidence of P.W.2 and P.W.3 and P.W.12, the trap laying procedures indicated that A1 - M.Jeyasekar did not receive any amount during the proceedings and there is no incriminating materials against A1 during the trap proceedings and therefore, the offence under Section 13(2) r/w. Section 13(1)(d) of the Act will not attract. Likewise, A2 - T.Jeyaraman, a Panel Advocate, is not a public servant as held by the Trial Court. Further, the charge against A2 under Section 13(2) r/w. 13(1)(d) of the Act has not been proved against him also.

42.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 is not framed against A1 and A2 and such a finding is not perverse, the same is required to be upheld. Accordingly, it is upheld. The appeal preferred by the CBI challenging the acquittal of A1 and A2 under Section 13(2) r/w. 13(1)(d) of the Act is liable to be dismissed.

43.In the result, the judgment of the Trial Court, dated 31.12.2013, in C.C.No.2 of 2013, convicting the appellants in Crl.A.(MD)Nos.19 and 22 of 2014 is set aside and these Criminal Appeals are allowed and the appellants in both the appeals are acquitted from the charges levelled against them. Consequently, the appeal viz., Crl.A.(MD)No.34 of 2015 preferred by the CBI is dismissed. The bail bonds, if any, executed by the appellants, shall stand cancelled. The fine amount, if any, paid by them shall be refunded to the appellants.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
1.The Prinicpal Special Judge for CBI Cases, Madurai.

2.The II Additional District Judge for CBI cases,
Madurai.
3.The Special Public Prosecutor [CBI Cases],
Madurai Bench of Madras High Court,
Madurai.

4.The District Collector, Madurai.

5.The Superintendent of Police, Madurai District.

6.The Inspector of Police,
CBI/ACE,Chennai.

Copy to:
The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1cc to Mr.C.MUTHU SARAVANAN, Advocate, SR.No. 63957

CRIMINAL APPEAL(MD)Nos.19 and 22 of 2014 and 34 of 2015
27.04.2019

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KK/SAR/06.06.2019/27P-10C