

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 03.04.2019****CORAM:****THE HONOURABLE MR.JUSTICE M.DHANDAPANI****CRL.A. (MD)No.74 of 2014**

State Represented by
The Inspector of Police,
Vigilance and Anti Corruption Wing,
Thanjavur.

(Crime No.20 of 2003)

... Appellant/Complainant

-Vs-

A.Sivakumar @ Irudayaraj

... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, praying to set aside the judgment of acquittal of the respondent / accused passed by the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli in Special Case No.151 of 2011, dated 31.10.2012 and convict the respondent / accused for the offences framed against the respondent / accused, pass sentence against the respondent / accused.

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

For Respondent : Mr.S.Venkatesan

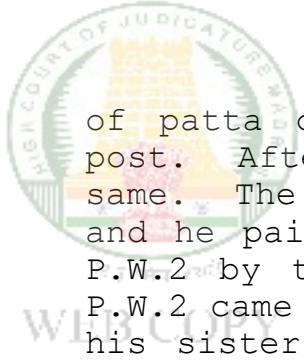
JUDGMENT

This Criminal Appeal preferred by the State is directed against the judgment of acquittal of the respondent herein / accused passed by the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli in Special Case No.151 of 2011, dated 31.10.2012.

2.For the sake of convenience, the parties are referred to as per the rank in the trial Court.

3.The brief facts, which are leading to this case are as follows:-

(i)The defacto complainant P.W.2, namely, Balasubramanian is a resident of Nadupadugai Village and he is the agricultural coolie under P.W.4 Natarajan and he has purchased lands to an extent of 0.64 1/3 cents from his sister Dhanam in the year 1987 for a sum of Rs.15,500/- (Rupees Fifteen Thousand and Five Hundred Only). After purchase, the defacto complainant sent an application for transfer



of patta on 13.06.2003 to the Thiruvaiyaru Taluk Office through post. After receipt of a reply, he enquired the accused about the same. The accused demanded a sum of Rs.200/- for issuing the patta and he paid the same. A copy of the patta (Ex.P.9) was given to P.W.2 by the accused on 23.06.2003. After perusal of the same, P.W.2 came to know that the said patta stands jointly in the name of his sister Dhanam and himself. Hence, he applied for a separate patta and patta passbook under Ex.P.4 through post on 22.08.2003 to Thiruvaiyaru Taluk Office. The receipt for the certified copy is marked as Ex.P.11. The same was received at the Taluk Office and was entered in Form 6-II Register Ex.P.7 by P.W.5 Saminathan, a clerk working at Thiruvaiyaru Taluk Office and the related entries are marked as Ex.P.8.

(ii) After one week from sending Ex.P.4, P.W.2 met the accused in his office and enquired about the same with him, for which the accused demanded a sum of Rs.500/- as illegal gratification. P.W.2 said that he has no such amount with him and then, the accused enquired him as to how much he was with him and he said that he was having Rs.50/- and the accused required him to pay the same. Accordingly, P.W.2 paid a sum of Rs.50/- with the accused. On 05.09.2003, P.W.2 along with his employer P.W.4 Natarajan saw the accused at Nadukkadai, while the accused was riding his motor cycle, he came to them, after stopping the same, instructed P.W.2 to pay the balance sum of Rs.450/- before the end of the day.

(iii) Since the defacto complainant is not willing to give bribe amount, he has written a complaint through P.W.4 and went to the Vigilance and Anti Corruption Wing, Thanjavur at 2.30 p.m., on 05.09.2003 and lodged the information under Ex.P.2 with P.W.9 Manickavasagam, the then Inspector of Police, Vigilance and Anticorruption, Thanjavur and the same was received by him and after making enquiry about the accused and also P.W.2, P.W.9 registered First Information Report under Ex.P.12. A copy of the same was issued to P.W.2 after obtaining his signature (Ex.P.13) in Ex.P.12.

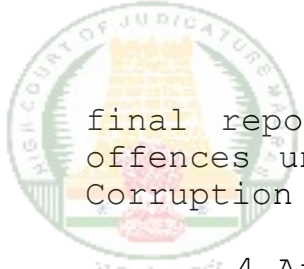
(iv) P.W.9 made a request to the Executive Engineer, T.N.E.B., Thanjavur and also Kaveri Delta Sub-Division to send 'C' group staff through telephone and accordingly, P.W.3 Sethumathavan and another official witness by name Selvaraj came to the said Police Station and they were introduced to P.W.2 and they perused the First Information Report and verified the genuineness of the complaint with P.W.2. Then, P.W.2 produced the bribe amount of Rs.450/-, containing four 100 rupee currency notes and one 50 rupee currency note M.O.3 series. Then, P.W.9 demonstrated the sodium carbonate and phenolphthalein test to the said witnesses and to P.W.2 and explained its significance and prepared entrustment mahazar under Ex.P.3 for the above said procedure and the numbers of the currency notes were entered therein. Then, the said money of Rs.450/- was handed over to P.W.2 through the Constable. Then P.W.9 instructed P.W.2 to go and meet the accused and instructed P.W.3

shadow witness to accompany with him and to watch over the occurrence and P.W.2 was also instructed to give pre-arranged signal, after acceptance of money by the accused.

(v) Thereafter, they left Thanjavur and reached Thiruvaiyaru around 7.45 p.m., on 05.09.2003 and the vehicle which they proceed was stopped and P.W.2 and P.W.3 were alighted from the vehicle and after that they went to the house of the accused and while entering into the house, the accused came out and after seeing him, he enquired as to whether he brought the amount and then, P.W.2 handed over the phenolphthalein coated amount of Rs.450/- and required him to count the same. The same was received by the accused and after counting, he kept the same with his left hand. Thereafter, P.W.2 came out and gave the pre-arranged signal. On receiving signal from P.W.2, P.W.9 rushed there and enquired about the happenings and the same was narrated by P.W.2 and was also confirmed by P.W.3 and after that they entered into the house of the accused. The accused was identified by P.W.2 to P.W.9. P.W.9 introduced himself and also introduced P.W.2 and P.W.3 with the accused. The accused was perplexed. Thereafter, P.W.2 was instructed to wait away and hence, he went out.

(vi) Then P.W.9 instructed to prepare sodium carbonate liquid in two separate glasses. As per the instruction of P.W.9, when the accused dipped his two hand fingers separately, the same was turned into pink. The two liquids contained the solution were collected under M.O.1 and M.O.2. When P.W.9 asked the accused about the tainted money, the accused stated that he did not demand any money from P.W.2, the defacto complainant gave money and he received the same. P.W.9 has recovered the tainted money and when it was compared with the entrustment mahazar, it was tallied. Thereafter, the Tahsildar of Thiruvaiyaru, came to the spot and handed over the application of P.W.2 (Ex.P.4) and the same was recovered by P.W.9 and for the said procedure, P.W.9 prepared recovery mahazar under Ex.P.5. He also prepared rough sketch under Ex.P.14.

(vii) Then P.W.10, another Inspector of Police, Vigilance and Anticorruption, Thanjavur took up the case for investigation and conducted search at the residence of the accused and prepared Ex.P.6 search list, after sending advance intimation under Ex.P.16. He also examined the witness P.W.4 Natarajan and P.W.5 Swaminathan a clerk at Thiruvaiyaru Taluk Office, recovered Ex.P.7, Form 6-II Register. He also examined P.W.6 Jayachandran, the Tahsildar, Thiruvaiyaru Taluk Office and recovered a copy of the joint patta (Ex.P.9). He also examined P.W.8 Gunasekaran, the then Post-Master, Thiruvaiyaru Post Office. He also sent M.O.1 and M.O.2 for chemical examination under his requisition Ex.P.15. The same was examined by the Scientific Assistant P.W.7 Kasthuribai, who issued her report under Ex.P.10. She also opined that the solution contained in M.O.1 and M.O.2 found phenolphthalein and sodium carbonate. He received the prosecution sanction Ex.P.1 from P.W.1 K.Munusamy, the then Revenue Divisional Officer, Thanjavur and after investigation, filed



final report before the trial Court against the accused for the offences under Sections 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 (hereinafter referred as 'the Act').

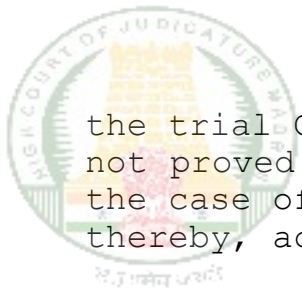
4. After receipt of the final report, the trial Court framed charges against the accused, which are as follows:-

(i) the accused being public servant demanded a sum of Rs.500/- from the defacto complainant as illegal gratification, as a motive for grant of patta and patta passbook in favour of the defacto complainant. Therefore, the accused committed an offence under Section 7 of the Act.

(ii) The accused has accepted a sum of Rs.450/- from P.W.2 as illegal gratification from the defacto complainant. Therefore, the accused was committed an offence under Section 13(1)(d) r/w 13(2) of the Act. Since the accused denied his charges and pleaded not guilty, he was tried for the offences as stated supra.

5. In order to prove the charges, the prosecution has examined 10 witnesses as P.W.1 to P.W.10 and marked 16 documents as Exs.P.1 to P.16 and also material objects M.O.1 to M.O.3. The accused has examined one Dhanapal as D.W.1 and marked M.O.1 and M.O.2-Photos. At the time of questioning the accused under Section 313 Cr.P.C., the accused stated that he never demanded any money from P.W.2 as bribe amount. In fact P.W.4 and the accused are close friends from their childhood days and both were selected for the post of Village Munsif. After completion of training, they were joined as Village Administrative Officer in the Revenue Department. However, P.W.4 was not attending his works, hence, he was dismissed from service from the post and in the year 2003, P.W.4 uprooted some trees, which are standing in the Government poromboke lands without showing any mercy, the accused filed a complaint before the Revenue Department, thereby, P.W.4 got enmity over the accused and the defacto complainant is the employee of P.W.4 and P.W.4 got several lands in the locality and during the occurrence, there was a kist due for a sum of Rs.3,000/- and the accused officer was in charge to collect the land revenue from the village people. Since there was a kist for a sum of Rs.3000/- due from P.W.4, repeatedly, the accused and his assistant requested P.W.4 to pay the said amount and even prior to the trap, he requested to pay atleast some amount to the land revenue. The defacto complainant came at 8.00 clock on 05.09.2003 and interacted with him whether P.W.4 gave money and the defacto complainant has handed over a sum of Rs.450/- to the accused and the same was received by him, believing that the amount was paid by P.W.4 and he did not have any power to grant separate patta on the alleged application made by P.W.2 and no application was received by him and he denied the receipt of the bribe amount from the defacto complainant. P.W.4 in order to wreck vengeance against the accused, set up the defacto complainant and foisted this corruption case against the accused.

6. On consideration of both oral and documentary evidence,



the trial Court has held that the demand of illegal gratification is not proved by the prosecution. Hence, the trial Court has rejected the case of the prosecution and accepted the case of the defence and thereby, acquitted the accused for the offences as stated supra.

7. Aggrieved against the same, the State has preferred this Criminal Appeal.

8. Heard both sides and perused the materials available on record carefully.

9. The learned Additional Public Prosecutor appearing for the State would submit that normally, this Court would not entertain the appeal against acquittal, unless the order of trial Court is perverse and not looking into the legal parameters. Admittedly, P.W.2, P.W.4 and the accused belong to same village. Initially, on 22.08.2003, P.W.2 met the accused officer for grant of patta. At that time, the accused demanded a sum of Rs.500/- as illegal gratification from P.W.2. Thereafter, on 03.09.2003, when P.W.2 and P.W.4 met the accused, in the presence of P.W.4 the accused collected a sum of Rs.50/- as part payment from the said illegal amount of Rs.500/- and reiterated the balance demanded amount of Rs.450/-. Aggrieved by the continuous demands by the accused officer, P.W.2 made a complaint before the Vigilance and Anticorruption Office and accordingly, the trap proceeding was conducted. In the presence of P.W.3 shadow witness, the accused officer received the balance bribe amount of Rs.450/- from the defacto complainant. In the present case, the initial demand is established by the prosecution by examining P.W.4. Hence, the prosecution has established the necessary ingredients required under Section 7 of the Act and the evidence of P.W.2 and P.W.4 in respect of initial demand clearly corroborated each other. Further, the subsequent demand and acceptance of the bribe amount were established by the prosecution by examining P.W.2 and P.W.3. The evidence of P.W.2 and P.W.3 is well corroborated each other and the acceptance of the bribe amount is well established by conducting phenolphthalein test and scientific test also stands positive. He would further submit that though the evidence is sufficient to convict the accused, the trial Court has acquitted the accused, which is unsustainable one and liable to be interfered with. Hence, he prayed for conviction.

10. Per contra, the learned counsel appearing for the accused would submit that even on bare perusal of the chief examination of P.W.2 and P.W.3 is not corroborated each other and in the present case, there is an undisputed fact that P.W.2 is the employee of P.W.4. In the cross-examination, P.W.4 categorically admitted that the accused and P.W.4 are friends and the marriage photos were shown to P.W.4, for which he admitted as if he is standing nearby the accused and the said photos are marked defence material objects as M.O.1 and M.O.2 before the trial Court. Further, there was a proceeding against P.W.4, in which he had paid fine amount to the



Taluk Office at the instigation of the accused officer. Hence, the animosity of P.W.4 against the accused is established before the trial Court. It is also admitted that there was a due of Rs.3000/- towards kist for his land. The Village Administrative Officer / accused herein has power as per the Revenue Standing Order to collect the land revenue from the village peoples and believing that the amount was paid by the defacto complainant as land revenue of P.W.4 and innocently, he received the amount.

11.He would further submit that in the present case, the prosecution did not establish the necessary ingredients required for demand and acceptance and mere recovery of the amount will not prove the entire case and after considering the entire material and the evidence of P.Ws.2, 3, 4 and 9 trap laying officer, the trial Judge has acquitted the accused and the order of acquittal cannot be interfered with in routine and mechanical manner, unless the order of the trial Court is perverse and not within the legal parameters. Hence, he prayed for dismissal of this appeal.

12.In respect of his contentions, he relied upon the decision reported in **(2006) 1 SCC 401 (T.Subramanian Vs. State of T.N.)**. The relevant portion of the said judgment reads as follows:-

"12.Mere receipt of Rs.200/- by the appellant from P.W.1 on 10.07.1987 (admitted by the appellant) will not be sufficient to fasten guilt under Section 5(1)(a) or Section 5(1)(d) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification. If the amount had been paid as lease rent arrears due to the temple or even if it was not so paid, but het accused was made to believe that the payment was towards lease rent due to the temple, he cannot be said to have committed any offence. If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the appellant had to be acquitted, as rightly done by the Special Court. In Punjabrao Vs. State of Maharastra the accused, a patwari was on a campaign to collect loan amounts due to the Government. The complainant therein was admittedly a debtor to the Government. The accused explained that the amount in question was received towards loan. This Court accepted such explanation (though such explanation was not immediately offered as in this case, but was given only in the statement under Section 313) holding thus: (SCC p.372, para 3)

"It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence



by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability."

13. Upon careful re-assessment of the evidence, judgment of the trial Court, other materials and submissions of the learned counsel on both sides, the following points arise for consideration in this appeal:

(i) whether the trial Court was right in finding that the respondent / accused not guilty under Sections 7 and 13(1)(d) r/w 13 (2) of the Act?;

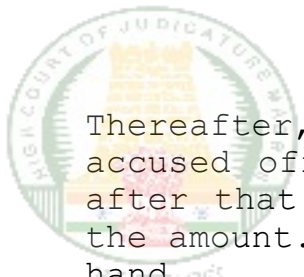
(ii) whether the order of acquittal passed by the trial Court warrants any interference by this Court?.

14. In the present case, P.W.1 is the sanctioning authority, who sanctioned the prosecution against the accused person, P.W.2 is the defacto complainant, P.W.3 is the shadow witness, P.W.4 is the employer of the defacto complainant, who was examined in order to establish the initial demand made by the accused. P.W.5 is the Assistant of the Taluk Office, who was examined in order to prove that the patta application received through post under Ex.P.4. P.W.6 is the Zonal Deputy Tahsildar, who was examined for the purpose of proving that the joint patta (Ex.P.9) was issued by him on 26.03.2003. P.W.7 is the Forensic Expert, who opined about the phenolphthalein test conducted by P.W.9 and to that extent her certificate is marked as Ex.P.10. P.W.8 is the Postman, who was examined for the purpose of proving that P.W.2 sent application on 22.08.2003 for issuance of separate patta. P.W.9 is the trap laying officer and P.W.10 is the Investigating Officer.

15. Though all those evidences are not necessary, the crucial evidence in this case is P.Ws.2, 3, 4 and 9.

16. P.W.2 in his evidence stated that he along with P.W.3 went inside the house of the accused. At the same time, the accused also came out. After seeing P.W.2, the accused enquired as to whether P.W.2 brought money. Immediately, P.W.2 took the money and handed over to the accused and said that Rs.450/- is available and required him to verify. The accused received the same through his right hand and counted the same by his both hands and kept the same on his left hand. Immediately, P.W.2 came out and as instructed by P.W.9, he lighted the beedi as signal.

17. P.W.3 in his evidence stated that he and P.W.2 went to the house of the Village Administrative Officer / accused at 08.00 p.m., on 05.09.2003 and at that time, he came to his portico and at that time, P.W.2 enquired with him about the patta passbook, for which the accused said to P.W.2 to bring a photo and he said he can make the patta passbook ready by Monday. Thereafter, the accused enquired with P.W.2 as to whether he brought the money and thereafter, he enquired about the property details with P.W.2.



Thereafter, P.W.2 handed over the tainted currency notes to the accused officer. The accused received through his right hand and after that P.W.2 required the accused to verify the correctness of the amount. He counted the same with both hands and kept it in left hand.

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18. On perusal of the above evidence of P.W.2 and P.W.3, it indicates that P.W.2 in his evidence did not indicate the conversation in between him and the accused officer. Further, in the chief examination, there was a contradiction in the evidence of P.W.2 and P.W.3. In cross-examination, P.W.2 stated that the accused officer was sitting in front of his house, whereas P.W.3 stated that the accused officer was standing in portico. P.W.2 in his evidence indicated that they interacted nearly 30 minutes. However, P.W.3 shadow witness in his evidence stated that they were talking nearly 10 minutes. Further, P.W.3 in his cross-examination stated that he hid 15 feet away himself from that place to watch the entire proceedings and there is no proper explanation with regard to the material contradiction.

19. Further, P.W.4 admitted in his cross-examination that P.W.2 is the employee of P.W.4 and there was a previous enmity in between the accused officer and P.W.4. P.W.4 in his evidence indicated that before the abolition of hereditary "Karnam" i.e., Village Administrative Officer, P.W.4 worked as Village Munsif and after abolition of the same, he was selected for the post of Village Munsif along with the accused. The accused and P.W.4 went for training at Thanjavur and after their appointment as Village Administrative Officer, P.W.4 was not attending his works, hence, he was dismissed from service. He further admitted in his cross-examination that before appointment of Village Administrative Officer, he had acquaintance with the accused and the accused was his close friend and he also admitted that he removed some trees during the year 2003, thereby, the accused sent a report to the Tahsildar, Thiruvaiyaru against him and he paid a sum of Rs.1500/- as fine as per the order of the then Tahsildar. He also admitted that on an other occasion, he removed some trees, thereby, again the accused sent a report to the Tahsildar, Thiruvaiyaru against him and he paid a sum of Rs.150/- as fine as per the order of the then Tahsildar. He also admitted that he owned nearly 14 acres of cultivable lands at Thiruvaiyaru.

20. On perusal of the evidence of P.W.2 and P.W.4, it is seen that there was an enmity in between P.W.4 and the accused officer and P.W.2 is the employee of P.W.4 and further, there was due of Rs.3000/- towards kist to the Revenue Department and the accused has power to collect the land revenue from the village peoples. Hence, the trial Court suspected the complaint and the manner in which, they paid the amount to the accused officer.

21. The evidence of P.W.2 and P.W.3 is very clear and cogent with regard to the acceptance of the bribe amount. However, in the

present case, P.W.2 did not reveal with regard to the joint patta and demand of the bribe amount. However, P.W.3 shadow witness deposed in his chief examination as well as cross-examination, that more than 10 minutes, P.W.2 interacted with the accused officer and P.W.3 heard some words regarding the kist, patta passbook and photos.

22.A perusal of the evidence of P.W.3 would not show that there was a demand for bribe amount from the defacto complainant and during the conversation, the accused did not demand bribe amount from the defacto complainant and in order to establish Section 7 of the Act, the prosecution has to prove initial demand only through P.W.4. Since the enmity between the accused and P.W.4 is established before the trial Court by adducing proper evidence, the evidence of P.W.4 is inadmissible one. Hence, the initial demand is not also established by the prosecution by adducing proper evidence before the trial Court.

23.In this background, it is necessary to consider whether the acceptance or recovery of the tainted money is sufficient to establish the prosecution case. This Court is of the considered view that mere recovery of the tainted money will not be sufficient to constitute an offence under the Prevention of Corruption Act, 1988. In the present case, the initial demand and subsequent demand were not established by the prosecution through proper evidence and the prosecution has not established that the recovery of the amount is tainted money and the accused officer has willingly accepted the bribe amount that was paid as illegal gratification for motive.

24.A similar issue raised before the Hon'ble Apex Court was dealt with in its judgment reported in **(2006) 1 SCC 401 (T.Subramanian Vs. State of T.N.)**, wherein it is clearly held that:-

"12.Mere receipt of Rs.200/- by the appellant from P.W.1 on 10.07.1987 (admitted by the appellant) will not be sufficient to fasten guilt under Section 5(1)(a) or Section 5(1)(d) of the Act, in the absence of any evidence of demand and acceptance of the amount as illegal gratification. If the amount had been paid as lease rent arrears due to the temple or even if it was not so paid, but the accused was made to believe that the payment was towards lease rent due to the temple, he cannot be said to have committed any offence. If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the appellant had to be acquitted, as rightly done by the Special Court."

25.In the present case, when the accused questioned under Section 313 Cr.P.C., he explained that the amount in question was received towards land revenue and even immediately after the trap, he reiterated that he did not demand any amount from P.W.2 and P.W.2 paid the amount voluntarily as land revenue due from P.W.4 landlord and P.W.2 is the employee of P.W.4 and he received the same



as land revenue of P.W.4. Hence, the decision as stated above is squarely applicable to the present case on hand.

26.As per the decision of the Hon'ble Supreme Court in **(2017) 3 SCC (Cri) 699 (V.Sejappa Vs. State by Police Inspector Lokayukta, Chitradurga)**, if the evaluation of the evidence and the findings recorded by the trial Court do not suffer from any illegality or perversity and the grounds on which the trial Court has based its conclusion are reasonable and plausible, the Appellate Court should not disturb the order of acquittal, if another view is possible. Merely because the Appellate Court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified, if the view taken by the trial Court is a possible view.

27.In view of the above discussions and the decisions as stated supra, the order of acquittal cannot be interfered with. Hence, the order of acquittal dated 31.10.2012, passed by the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli in Special Case No.151 of 2011 is confirmed.

28.Accordingly, this Criminal Appeal is dismissed to the extent as indicated above.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Special Judge,
Special Court for Trial of cases under
Prevention of corruption Act,
(Vigilance and Anticorruption Court)
Trichirapalli.

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

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

CRL.A. (MD) No.74 of 2014
03.04.2019