BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.239 of 2015

The State Represented by
The Public Prosecutor,
High Court Madras,
600 104.
[V & AC Pudukottai
Crime No.5/2005] ...Appellant/Complainant

Vs.

A.L.Ramanathan ...Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to allow this appeal, set aside the judgment of acquittal, dated 09.02.2015 in Special Calendar Case No.7 of 2006 on the file of the Chief Judicial Magistrate Court, Pudukottai and convict the respondent / accused for the charges framed against him.

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

For Respondent : Mr.G.Thalaimutharasu

J U D G M E N T

The respondent / accused was tried before the learned Chief Judicial Magistrate, Pudukottai, for the the offence under Sections 7 and 13(1)(d) r/w 13(2)of the Prevention of Corruption Act, 1988 [herein after referred to as 'PC Act'] The trial Court has found that the prosecution has not proved its case beyond reasonable doubt and acquitted the respondent of the charges. Aggrieved against the judgment of the trial Court, the State has preferred the present appeal.

2.The case of the prosecution in brief is follows:

2.1.The respondent was working as a Firka Surveyor, Pudukottai Taluk, Pudukottai District from 25.07.2000 to 30.03.2005. In the year 1994, the *de facto* complainant R.Satheeswaran purchased three house sites in his name and one house site in his wife's name in S.F.Nos.33/77, 33/51, 33/104 and

33/146 in Pudukottai North Village. During July' 2004 the *de facto* complainant gave an application at Taluk Office requesting transfer of patta to his name and his wife's name.

2.2.During October' 2004, the respondent sent a postal card dated 16.10.2004 to the *de facto* complainant that he was going to measure the lands on 20.10.2004 and directed the *de facto* complainant to meet him at Room No.102, Rahuman Complex, Pudukottai. Accordingly, the *de facto* complainant met the respondent on 20.10.2004 at 8.00am at Room No.102, Rahuman Complex, Pudukottai with original documents, where, the respondent/accused demanded Rs.500/- per patta totalling to Rs.2,000/- for issuance of patta in favour of the *de facto* complainant.

2.3.While so, after a month at about 8.30am, the *de facto* complainant enquired the respondent about the measuring of his lands. Subsequently, they proceeded to measure the lands, where, after measuring one land, the respondent reiterated the earlier demand of Rs.2,000/-. Since the *de facto* complainant was not having money, the respondent left the place stating that there were thorny bushes and they should be removed for measuring the remaining lands.

2.4.Later on, the *de facto* complainant met the respondent at his office on several occasions with regard to the transfer of the pattas. However, no action was taken by the respondent. During February 2005, when the *de facto* complainant met the respondent at Taluk Office, Pudukottai,the respondent asked him to give fresh application, as the earlier application was rejected due to lapse of four months period and reiterated his earlier demand of Rs.2,000/- for issuing pattas immediately. On the request of the *de facto* complainant, the respondent has reduced the demand to Rs.1,500/-. Again the *de facto* complainant requested to reduce the amount to Rs.1,000/-. However, the respondent had strictly reiterated the demand of Rs.1,500/- and directed him to bring the amount and noted his mobile Number [98423 91086] in the diary.

2.5.Thereafter, during the first week of March' 2005, the respondent called the complainant to his mobile and asked to meet him at his room. Accordingly, the complainant had met the respondent in his room at 7.00pm on that day, where, the respondent had prepared a new application, obtained his signature and told him that he would get the documents from his earlier application and enclose them. He further stated that he would take steps for transfer of pattas within a week and asked him to arrange the money.

2.6.On 24.03.2005 evening, the complainant met the respondent at his room and enquired about the pattas, where, the respondent told him that pattas are ready at Taluk Office and would be issued only after paying the demanded money of Rs.1,500/-. But the complainant informed him that he had no money at all. However, the respondent asked the complainant to pay at least Rs.500/- as advance and to pay the balance amount after issuance of the pattas.

2.7.On 30.03.2005 at about 6.30 pm the respondent contacted the complainant and asked to meet him at his room. Accordingly, on the same day at about 7.00pm, when the complainant met the respondent, he shown the patta transfer order and reiterated his earlier demand of Rs.500/- and asked him to pay the balance amount on the next day, for forwarding the patta transfer order to the official concerned.

2.8.The complainant unwilling to pay bribe, made a complaint [Ex.P3] before the Inspector of Police, Vigilance and Anti Corruption, Pudukottai on 30.03.2005. Based on the complaint, a case was registered in Crime No.5 of 2005 [Ex.P26]. Subsequently, trap was planned by the Trap Laying Officer [herein after shall be referred to as 'TLO']. Two officials from Public Works Department have been requested to stand as witnesses and accordingly, Tr.Elangovan [PW.3], Junior Engineer, PWD, Tirumayam and Tr.K.Appadurai, Assistant Engineer, PWD, Tirumayam were present at the Office of the Vigilance and Anti Corruption, Pudukottai at 20.30 hours on the same day. The TLO explained about the complaint given by PW.2, to the independent witnesses and conducted a pre trap demonstration. PW.2 brought Rs.500/- (Rs.100 x 5) meant for giving to the respondent and the serial number of the currencies were noted down and entrustment mahazar (ExP.7) was prepared by TLO and later coated the currencies with phenolphthalein powder and gave them to PW.2. The TLO instructed PW.2 to meet the respondent and if the respondent had demanded the money, then only he should give the money to the respondent. PW.3 was also instructed to accompany PW.2 and to observe the happenings thereon and the TLO instructed them to give them signal, after the respondent received the money. Accordingly, on 30.03.2005 between 21.30 hrs and 21.45 hrs the complainant along with PW.3 went to the room of the respondent. On seeing PW.2, the respondent reiterated the earlier demand and obtained Rs.500/- and kept in his shirt pocket and handed over the copy of the patta transfer orders and insisted him to pay the balance amount of Rs.1,000/- on the next day morning.

2.9.Then PW.2 came out and showed the signal to the TLO. On getting the signal, the TLO along with one Abbas Ali, PW.2 and PW.3 went to the respondent's room, introduced himself to the respondent, wherein, the hands and shirt pocket of the respondent were subjected to phenolphthalein test and in the result the solutions turned into pink in colour. Then the TLO recovered the money from the respondent through recovery mahazar and obtained signatures from the respondent and independent witness. The serial number of the currencies tallied with numbers noted in the entrustment mahazar. Then the TLO placed the matter before the Deputy Superintendent of Police, Vigilance and Anti Corruption, Pudukottai [PW13]. PW.13/ the Investigating Officer after completing the investigation laid a final report against the respondent for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the PC Act, before the learned Chief Judicial Magistrate, Pudukottai.

3.On the side of the prosecution 13 witnesses were examined, 28 documents were marked and 4 material objects were produced.

4.The available prosecution evidence are as follows:

4.1.PW1 is the Assistant Director of Survey and Land Records, Pudukottai and he speaks about the sanction [ExP.1] accorded for prosecuting the respondent. He has also stated that only after going through the materials placed before him and only after being satisfied with the same, he has accorded sanction.

4.2.PW.2 is the *de facto* complainant and he speaks about the application dated 27.07.2004 submitted by him for transfer of patta and the receipt of postal card [ExP.2]. He also speaks about the demand of bribe amount of Rs.2,000/- by the respondent 20.10.2004 and the reiteration of the demand by the respondent on various occasions. He has further spoken about lodging of complaint [ExP.3], the trap proceedings and the receipt of the bribe amount by the respondent from the complainant.

4.3.PW.3 is the Junior Engineer, PWD, who stood as a shadow witness stated that as per the instructions of higher officer, he went to the office of Vigilance and Anti Corruption, Pudukottai. He speaks about the preparation of the entrustment mahazar and trap proceedings. He accompanied PW2 to Room No.102, Rahman Lodge and witnessed the demand made by the respondent and the receipt of the bribe amount by the respondent, the recovery of the tainted money from the respondent by the TLO.

4.4.PW.4 is the Senior Draughtsman, Taluk Office, Pudukottai, he speaks about the receipt of the application submitted by the *de facto* complainant and registration of the same in PTR Register. He also speaks about the processing of the same and the receipt of the reply and preparation of the order.

4.5.PW.5 is the Zonal Deputy Tahsildar and he speaks about the signing of the patta transfer order.

4.6.PW.6 is the Sub Inspector of Police, District Survey Unit (mobile) and he speaks about the entries made in Patta transfer register [ExP.12] and the entries made in Sl.No.481 [ExP.13].

4.7.PW.7 is the Inspector of Survey at the Office of the Assistant Director of Survey and Land Records and he speaks about the procedures in dealing with the patta transfer.

4.8.PW.8 is the Village Administrative Officer of Adhanakkottai and he has stated that he has not received the application of the *de facto* complainant and has not conducted any enquiry in this connection.

4.9.PW.9 is the proprietor of the Rahuman Complex and he speaks about the respondent's stay at Room No.102 at Rahman Complex. He further stated that he learnt that the Police arrested the respondent.

4.10.PW.10 is the Taluk Document Draughtsman at Taluk Office, Pudukkottai and he has identified the handwriting of PW.6 and the endorsement made in the application [ExP.5]

4.11.PW.11 is the Scientific Officer at the Office of the Assistant Director, Forensic Science Laboratory Department, Mylapore, Chennai and she speaks about the receipt of the the sealed solution bottles and the examination of the solution and issuance of the report [ExP.25] and she has also spoken about the presence of the phenolphthalein and sodium carbonate in the solution.

4.12.PW.12 is the Inspector of Police, Office of the Deputy Superintendent of Police, Vigilance and Anti Corruption, Pudukkottai and he has spoken about the receipt of the complaint [ExP.3], registration of First Information Report [ExP.26], summoning the independent witnesses, conducting pre-trap demonstration, preparation of entrustment mahazar [ExP.7], execution of the trap, phenolphthalein test, recovery of tainted money and preparation of recovery mahazar [ExP.9].

4.13.PW.13 is the Deputy Superintendent of Police, Vigilance and Anti Corruption Division, Pudukottai and he has spoken about the further investigation conducted by him and recording the statements of the witnesses and filing of the final report.

5.After completion of the prosecution side witness, the incriminating circumstances culled out from the prosecution witnesses were put before the respondent and the same was denied as false. On the side of the respondent no witness was examined, but, a copy of marriage invitation was marked as Ex.D1.

6.In conclusion of the trial, the learned Chief Judicial Magistrate, Pudukottai held that the prosecution has not proved its case beyond reasonable doubt and therefore, the respondent was acquitted of the charges levelled against him and aggrieved over the order of acquittal, the State has preferred the present appeal.

7.Heard Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor, appearing for the State and Mr.G.Thalaimutharasu, learned Counsel appearing for the respondent.

8.This appeal is filed on the following grounds:

8.1.The *de facto* complainant has deposed in the trial about all the relevant particulars of the case and his evidence has been corroborated by the evidence of independent witness [PW.3]

8.2.The recovery of tainted money from the exclusive possession of the respondent is supported by the evidence of the independent witness [PW.3] and the evidence of the TLO [PW.12].

8.3.The suggestions made by the defence alone were considered by the trial Court for acquitting the accused though there are credible evidences in support of the prosecution case, the same were not considered.

8.4.The evidences of PW.2, PW.3 and PW.12 are clear, concrete and cogent to prove the case of the prosecution.

8.5.Ex.P2 is the post card sent by the respondent to the *de facto* complainant, directing him to meet the respondent. The respondent has not denied Ex.P2. The demands made by the respondent on various occasions prior to the trap are stated in by the evidence of PW.2. The reiteration of demand by the respondent at the time of the trap is also proved by the evidence of PW.2.

8.6.The acceptance of bribe amount by the respondent is also established from the evidence of PW.2 and PW.3. The accused has not denied the acceptance of the amount.

8.7.Recovery of the tainted money is proved by the evidence of PW.3 and by the the evidence of PW.12 [TLO], the entrustment mahazar [ExP.7] and seizure mahazar [ExP.9]

8.8.Therefore, according to him the prosecution has proved its case beyond reasonable doubt and the trial Court has erred in acquitting the respondent/accused.

9.In reply to the grounds raised by the learned Additional Public Prosecutor, the learned Counsel for the respondent submitted that the sanction [ExP.1] accorded by PW.1 is invalid and PW.1 is not the competent authority to accord sanction for prosecuting the respondent. The respondent has no powers to grant patta and the power to grant patta is vested with the Senior Draughts Man [PW4]. PW.2 in his complaint has stated that he made an application on 27.07.2004 for transfer of patta to his name and to his wife's name Amulu. But, as per ExD.1 the marriage invitation, his wife's name is Maheswari and the marriage was solemnised only on 26.05.2005.

10.The learned Counsel further submitted that the signature found in ExP.2 is not the signature of the respondent and there is no scientific evidence to prove the signature found in ExP.2 is that of the respondent. The Deputy Tahsildar [PW5], who passed the patta transfer order, has stated that there is no direct connection between himself and the respondent in connection with the work. The evidence of PW.3 decoy witness cannot be relied upon and no permission from his higher officials has been obtained.

11.It is the further submission of the learned Counsel for the respondent that the trap is alleged to have been laid at Room No.102 of Rahmuman complex, but, no independent witness was examined to prove the same. The chemical examination with regard to the phenolphthalein test was conducted on 08.04.2005 and it was intimated to the Court only on 09.05.2005 and the delay has not been explained by the prosecution. There are contradictions with regard to the evidence of PW.1 and PW.13. The explanation offered by the respondent is more probable and he categorically stated that he has no powers to issue patta and he never demanded money from PW.2. On the date of occurrence at about 12.00 am, while he was sleeping, the Police came there and instructed the respondent to check his shirt pocket and hence he checked his shirt pocket with his right hand and found money.

12.According to the learned Counsel for the respondent, PW.2 and PW.3 stated that the respondent received the money through his hand, but, they had not stated through which hand he had received the money. The learned Counsel for the respondent submitted that the prosecution has not established its case and therefore, the trial Court has rightly acquitted the respondent and prayed for dismissal of this appeal.

13.This Court has paid its anxious consideration to the rival submissions and also the documents placed on record.

14.Before dwelling on the merits of the case, since the appeal is filed as against an order of acquittal, it is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in ***V.Sejappa v. State [(2016) 12 SCC 150],*** wherein the Hon'ble Supreme Court has followed its own decision in ***Muralidhar v. State of Karnataka [(2014) 5 SCC 730].*** The guidelines issued in the said decision are extracted hereunder:

"23. ...

... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation 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. The evenly balanced views of the evidence must not result in the interference

by the appellate court in the judgment of the trial court."

15.In yet another decision in the case of ***Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]***, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

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

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

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

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

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

16.Bearing in mind the principles laid down by the Hon'ble Supreme court in deciding an appeal against acquittal, this Court carefully analysed the available evidence and records.

17.The trial Court has acquitted the respondent/accused on the following grounds:

(i) The sanctioning authority has not produced any document for having powers to accord sanction for prosecuting the respondent.

(ii) The application was made for issuance of patta in favour of his name and his wife name Amulu, on 27.07.2004, but, the marriage of the *de facto* complainant was solmenised on 26.05.2005 as per ExD.1 and his wife name is Maheswari, not Amulu. Therefore, the case of the complainant is highly doubtful.

(iii) PW.3's presence in the place of occurrence is doubtful, since there is no material to show that he obtained permission from his higher official to take part in the trap proceedings.

(iv) The prosecution has not clearly established with which hand, the respondent had received the money.

(v) The respondent is not having the authority to issue patta transfer order and therefore, he cannot be convicted, when he is not having authority in issuing patta transfer order.

(vi) The prosecution has not established the payment, acceptance and recovery in this case.

(i)Finding of the trial Court:

The sanctioning authority has not produced any document for having powers to accord sanction for prosecuting the respondent.

Finding of this Court:

The respondent is a Firka Surveyor and the sanctioning authority [PW1] is the Assistant Director of Survey and Land Records, Pudukottai. He has competence to remove the Firka Surveyor from service and he has specifically denied the suggestion that he has no power to accord sanction for prosecuting the respondent. This evidence of the sanctioning authority is not shattered by the respondent by producing any document that PW1 has no authority to accord sanction.

Obtaining sanction for prosecution is a protection to public servant from any wrongful prosecution or false allegations. In this case, sanction was obtained from the competent authority, Assistant Director of Survey and Land Records and he has also deposed that he has powers to accord sanction for prosecution. The respondent has not produced any materials to discredit the evidence of PW1. It is not in dispute that during the relevant point of time, PW1 was working as Assistant Director of Survey and Land Records, Pudukottai. Therefore, the trial Court ought not to have acquitted the respondent that PW1 has not produced any document to substantiate that he is the authority to accord sanction.

(ii)Finding of the trial Court:

The application was made for issuance of patta in favour of his name and his wife name Amulu, on 27.07.2004, but, the marriage of the *de facto* complainant was solmenised on 26.05.2005 as per ExD.1 and his wife name is Maheswari, not Amulu. Therefore, the case of the complainant is highly doubtful.

The complainant had admitted that his marriage was soleminised on 26.05.2005 and Ex.D1 was marked with objection. The complainant has also deposed that his wife name is Amulu alias Maheswari and he has also stated that in the marriage invitation the nick name Amulu was not mentioned and he further deposed that he applied for issuance of patta on behalf of his wife also. Further, he has also explained for having given application so, since before the marriage itself, they exchanged garlands and lived as husband and wife. Therefore, only because the marriage was solmnised after the date of application made for issuance patta, the entire prosecution case cannot be brushed aside.

(iii) Finding of the trial Court:

PW.3's presence in the place of occurrence is doubtful, since there is no material to show that he obtained permission from his higher official to take part in the trap proceedings.

Finding of this Court:

PW3 is the official witness. He was examined on 09.12.2009 and cross examined on 21.05.2014 nearly after five years. It was during the cross examination, it was questioned that no written communication from the Department deputing him for the trap was produced. The trap proceedings are made in a secret manner. The official witness are summoned to participate in the trap proceedings to avoid any influence which may be exerted by the accused on the witness. The Vigilance Manual requires the presence of the official witness in order to avoid any false implication. But it does not emphasize that the official witness can be deputed only on written communication. The defence has not established any motive or grudge as against the official witness PW3. PW3 is a responsible Government official and he was also examined as an official witness, who participated in the trap proceedings. PW3 along with other official witness signed in the entrustment mahazar [ExP7], recovery mahazar [ExP9] and observation mahazar [ExP10]. In the absence of any specific guideline that the official witness can be deputed for the purpose of trap, only on written communication, the finding of the trial Court to disbelieve the evidence of PW3 the official witness on this ground is not proper.

(iv) Finding of the trial Court

The prosecution has not clearly established with which hand, the respondent had received the money.

Finding of this Court

PW2 complainant has deposed that on the date of occurrence the respondent demanded the money and accordingly, he had given Rs.200/- to the respondent and the respondent received, counted and put the same in his shirt pocket, which is also strengthened by the evidence of PW3 independent witness. Therefore, it is established that the respondent has received the money. Further, chemical analysis report also proved the presence of phenolphthalein in the solutions. When the evidence is very clear that the respondent received the money, the trial Court's finding that the hand by which the respondent received the money is not proved, is unacceptable.

(v) Finding of the trial Court

The respondent is not having the authority to issue patta transfer. Therefore, he cannot be convicted, when he is not having authority in issuing patta transfer order.

The respondent was working as a Firka Surveyor of Pudukottai Taluk during the relevant point of time. No doubt the patta can be issued by Tahsildar. But he can issue patta only after the report of the Firka Surveyor. The de facto complainant [PW2] has applied for transfer of patta and this respondent has sent a postal card dated 16.10.2004 [ExP2] to the de facto complainant that he is intending to measure the land pursuant to his application and directed him to meet him at Room No.102 Rahuman Complex, Pudukottai. Accordingly, the de facto complainant met him in the said place, where the accused has demanded. As per Section 20 of the PC Act, when an accused person accepted or obtained or agreed to accept or attempted to obtain for himself, or for any other person, any gratification, other than legal remuneration, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification. The respondent/ accused officer has not rebutted the presumption in this case. The findings of the trial Court is not acceptable when the demand, acceptance and recovery are established by the prosecution in this case.

(vi) Finding of the trial Court

The prosecution has not established the payment, acceptance and recovery in this case has not been proved by the prosecution.

Finding of this Court

The evidence of PW1 is very clear that the respondent had earlier demanded Rs.2,000/-, then reduced the same to Rs.1,500/- and agreed to have Rs.500/- as advance and to receive the balance amount after issuance of patta. The demand and reiterated demand is proved by the evidence of PW1 and it is also corroborated by the evidence of PW3 independent witness. Further ExP2 the postal card proves the role played by respondent in this case.

The respondent in the presence of PW2 and PW3 only reiterated the demand and accepted the bribe money and put the same in his shirt pocket. PW3 is an independent official witness, has corroborated the evidence of PW2 and his evidence has not been shattered by the defence to disbelieve his presence. Moreover, there is no reason for PW3 to depose against the respondent. Therefore, the acceptance of money is also proved.

The tainted money was recovered from the respondent by the TLO in the presence of PW3 official witness and the serial numbers of the currency were also tallied with numbers noted down in the entrustment mahazar [ExP7] and recovery mahazar [ExP9], wherein the respondent, TLO and PW.3 have also attested. Therefore, the prosecution has proved the demand, acceptance and recovery in this case beyond any reasonable doubt.

18.What is required for the offence under the Prevention of Corruption Act is that the demand, acceptance and recovery. The demand, acceptance and recovery have been sufficiently established by the prosecution in this case, but the trial Court failed to appreciate the available evidence and therefore, the findings of the trial Court cannot be sustained and it warrants interference.

19.The learned Counsel for the respondent by relying upon several judgments submitted that the trial Court has already passed an order of acquittal and therefore, this Court cannot apply the same ratio in appreciating the evidence and pass an order of conviction. When there are two views available, the view, which is in favour of the accused alone has to be considered.

20.As discussed above, there are no two views available in this case when the prosecution has established this case beyond any reasonable doubt and moreover, the Full Bench of the Hon'ble Apex Court in ***S.Dinesh Kumar vs State Tr.Inspector & Anr*** reported in ***(2015) 2 SCC 359***, confirmed the order of reversal passed by the High Court in an appeal against acquittal and the relevant portion of the same is extracted hereunder :

"5. The High Court after analyzing the evidence on record found that in the explanation given by the appellant (Exhibit P-9) immediately after the trap, nothing was suggested that the amount in question was received towards arrears of taxes. On the other hand the explanation offered was that the amount was forcibly thrust by the complainant. After going through the entirety of the matter, the High Court found the approach adopted by the Special Judge to be perverse and that the acquittal had resulted in miscarriage of justice. The High Court, therefore, convicted the appellant for the offence (a) under Section 7 of the Prevention of Corruption Act, 1988 sentencing him to undergo simple imprisonment for six months and to pay fine of Rs. 5,000/-, in default whereof to undergo further simple imprisonment for one month (b) and under Section 13(1)d read with Section 13(2) of the Prevention of Corruption Act, 1988 sentencing him to undergo imprisonment for one year to pay fine of Rs.15,000/- and in default whereof to undergo simple imprisonment for 3 months. The acquittal of accused No.2 was affirmed.

7. Having heard the learned counsel and after having perused the entire material on record, we affirm the view taken by the High Court. We are conscious of the fact that in an appeal against acquittal, if two views are possible and the court below has acquitted the accused, the appellate court would not be justified in setting aside the acquittal merely because the other view is also possible. In the present case, the recovery of bribe amount from the person or possession of the accused having being firmly established, the immediate explanation offered by the appellant (namely Exhibit P-9) is absolutely crucial. Secondly, it is unimaginable that as against 50% of the arrears of taxes which the complainant was supposed to deposit, Rs. 1000/- only would be paid and accepted. The aspects of demand and acceptance having been established, in our assessment no two views are possible in the matter and the approach adopted by the Special Judge was perverse, justifying interference by the High Court."

21.The Hon'ble Supreme Court, in yet another case in ***Nayankumar Shivappa Waghmare vs State of Maharashtra***, reported in ***2015 (11) SCC 213*** has held as follows:

*" **14.** The learned counsel for the appellant argued before us that since the trial court has acquitted the appellant giving him benefit of reasonable doubt, the High Court erred in law in convicting him as it is settled principle of law that where two views are possible, the finding of the trial court should not be disturbed.*

15. The above argument advanced on behalf of the appellant, in the present case, is misconceived for the reason that if the same is accepted, there cannot be any case where appeal against acquittal can be allowed, and the error committed by the trial court can be corrected. The perusal of the impugned judgment shows that after discussing the evidence on record, the High Court has come to a definite conclusion that the trial court has erred in law in coming to the conclusion that the charge in respect of the offence punishable under Sections 7 and 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 is not established. The High Court has clearly held that the trial court erred in law in giving benefit of reasonable doubt to the accused in the present case. After going through the evidence on record we are also of the opinion that it is not a case where two views are possible. As such, we do not find any illegality in the impugned order reversing the order of acquittal recorded by the trial court."

22.In ***Niranjan Hemchandra Sashittal v. State of Maharashtra***, reported in ***(2013) 4 SCC 642***, this Court has discussed the gravity of the corruption cases in the following words:

> ***"26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered."***

23.Considering the above ratio laid down by the Hon'ble Supreme Court and on analysing the evidence on record, this Court found that the demand and acceptance in this case has been established before the trial Court and it is not a case where two views are possible, but, the trial Court has erred in law in extending the benefit of doubt to the accused in this case.

24.In view of the aforesaid reasonings, this criminal appeal is allowed, the order of acquittal passed by the learned Chief Judicial Magistrate Court, Pudukottai in Special Case No.07 of 2006, dated 09.02.2015, warrants interference and the same is accordingly, set aside. The respondent / accused is found guilty and convicted for the offence under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

25.Considering the nature of offence this Court imposes the sentence as follows:

26.The respondent is sentenced to undergo

(i) one year rigorous imprisonment and to pay a fine of Rs.5,000/-(Rupees five thousand) and in default of payment of fine amount, to undergo simple imprisonment for a period of two months for the offence under Section 7 of the Prevention of Corruption Act;

(ii) one year rigorous imprisonment and to pay a fine of Rs.5,000/-(Rupees five thousand) and in default of payment of fine amount, to undergo simple imprisonment for a period of two months for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act;

(iii) The sentences are ordered to run concurrently and the period of imprisonment already undergone, if any, shall be set off under Section 428 Cr.P.C.

27. Since this Court imposed with the minimum sentence prescribed under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and ordered that the sentences to run concurrently, this Court is of the view that calling for the accused for questioning on sentence will only be an empty formality.

28.The trial Court is directed to secure the respondent and confine him to prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

To

1.The Chief Judicial Magistrate Court,
Pudukottai.

2. The Public Prosecutor, High Court, Madras 104.

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

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Madurai Bench of Madras High Court,
Madurai.

Crl.A(MD)No.239 of 2015
18.10.2019

ns(CO)
TR(07.05.2021) 17P 6C