



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 06.09.2019

Pronounced on: 06.12.2019 and 06.01.2020

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.A(MD)No.4 of 2015

State rep. by
The Public Prosecutor,
High Court, Madras.
[V & AC, Trichy
Crime No.27/2008]

... Appellant/Complainant

Vs.

C.Dhanabalan

... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to call for the records in Special Case No.73 of 2011, dated 30.07.2014, on the file of the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli and set aside the same.

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

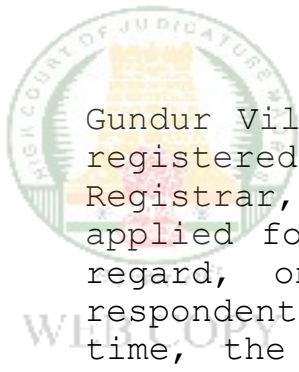
For Respondent : Mr.A.S.Mujibur Rahman

JUDGMENT

This Criminal Appeal is preferred by the State as against the order of acquittal passed by the trial Court, namely, the Special Court for trial of cases under Prevention of Corruption Act, Tiruchirappalli, in Special Case No.73 of 2011, dated 30.07.2014.

2.The brief facts of the case, as projected by the prosecution, are as follows:

2.1.The respondent / accused worked as Village Administrative Officer, Elanthapatti Village from 11.08.1982 to 20.10.2008 and also held the additional charge for Gundur Village, Tiruchirappalli District. One Baskar of Ariyalur Taluk / defacto complainant purchased a house plot in Renuga Nagar S.No.299/7A of

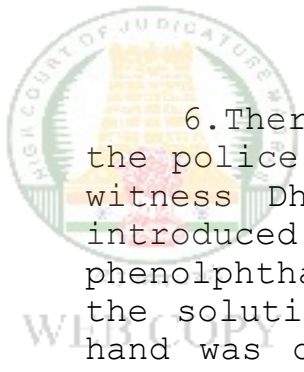


Gundur Village in the year 2006 from one Poovayee Ammal through a registered sale deed, bearing No.3291/2006, before the Sub Registrar, K.Sathanur. For transferring the revenue records, he applied for change of patta to the Tahsildar, Trichy and in that regard, on 17.10.2008, the defacto complainant [PW2] met the respondent / accused and enquired about his application. At that time, the respondent / accused informed the defacto complainant [PW2] that the said work has already been completed and demanded a sum of Rs.2000/- as illegal gratification. The defacto complainant [PW2], who was not willing to pay the amount, as demanded by the respondent / accused, lodged a complaint [Ex.P2] before the Inspector of Police [PW9], Vigilance and Anti Corruption, Trichy on 20.10.2008 at about 08.00 am.

3.The Inspector of Police [PW9], after ascertaining the truth from the complaint, registered the same in Crime No.27 of 2008 under Section 7 of Prevention of Corruption Act. The printed First Information Report is marked as Ex.P11. He also made a request to the Public Works Department and Directorate of Medical Education to debut officers to accompany the complainant as shadow witnesses. Accordingly, R.Dhanagopal, Junior Assistant in the Office of Superintendent Engineer, Public Works Department, Motor Division, Trichy and A.Natarajan [PW3], Assistant in the Office of Joint Director of Medical Education, Trichy, were deputed.

4.PW9 introduced the witnesses to the complainant and they also ascertained the nature of complaint by perusing the same. An entrustment mahazar was also prepared in their presence and the procedure for phenolphthalein test was also demonstrated to them. PW9, after smearing phenolphthalein powder on the currency notes [MO1 series - four 500 rupee notes], instructed the defacto complainant [PW2] to meet the accused at his office along with the witnesses and if the accused demanded and accepted the bribe amount, then he was instructed to give the pre-arranged signal. Thereafter, the defacto complainant [PW2] and other witnesses proceeded to the Office of Village Administrative Officer, Gundur, around 12.55 pm.

5.The accused officer invited PW2 and PW2 ascertained whether his patta and chitta are ready. The accused officer assured him that both are ready and reiterated his demand of Rs.2000/-. As arranged, PW2 gave the sum of Rs.2000/- to the accused officer, in the presence of the official witness Dhanagopal and the accused officer received, counted and kept the same in his shirt packet. Thereafter, the accused officer handed over the patta and chitta to PW2 and after receiving the same, PW2 came out and gave the pre-arranged signal.



6. Thereafter, PW9 came to them, ascertained the happenings and the police party, along with PW2, witnesses PW3 and other official witness Dhanagopal entered into the office of the accused. PW9 introduced himself to the accused and also PW3 and conducted the phenolphthalein test on the hands of the accused and the colour of the solution changed into Pink. The solution, in which the right hand was dipped, collected under MO2 and the solution, in which the left hand fingers, was dipped, was collected under MO3. PW9 also recovered the currency notes [MO1 series] from the accused and also the shirt [MO5] worn by the accused. The pocket portion of the shirt [MO5] was dipped into the sodium carbonate solution separately prepared and the same turned into Pink colour. The solution was collected under MO4. The material objects were recovered under the cover of mahazar Ex.P5.

7. PW9 has also recovered a sum of Rs.8205/- from the accused officer and the order for patta [Ex.P12], chitta register [Ex.P13]. He also prepared an observation mahazar [Ex.P6] and a rough sketch [Ex.P14]. PW9 has also conducted a search in the house of the accused officer and recovered a sum of Rs.1,16,650/- from his residence.

8. Thereafter, the investigation was taken over by one Prasanna Venkatesh, Inspector of Police [PW10], Vigilance and Anti Corruption, Trichy and he examined all the other witnesses, collected the chemical analysis report and after completing the investigation filed the final report as against the respondent under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

9. During the trial, 10 witnesses were examined on the side of the prosecution and 18 documents were marked and 5 material objects were produced.

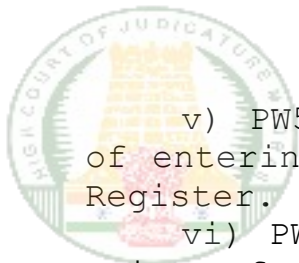
10. The available evidences from the prosecution witness are as follows:

i) PW1 is the then Revenue Divisional Officer, Tiruchy, who issued the sanction order [Ex.P1] for prosecuting the respondent / accused.

ii) PW2 is the defacto complainant, who lodged the complaint [Ex.P2] and he speaks about the demand made by the accused officer on 17.10.2008 and the demand reiterated by the accused on 20.10.2008 and the receipt of tainted money by the accused.

iii) PW3 is the then Assistant in the Office of the Joint Director of Medical Education, Trichy examined as shadow / official witness, who accompanied the Trap Laying Officer during the trap.

iv) PW4 is the then Zonal Deputy Tahsildar, who forwarded the application of PW2 for patta to the accused for his report.



v) PW5 is the then Assistant, who was looking after the work of entering the details of application for change of patta in the Register.

vi) PW6 is the then Village Assistant and during the relevant point of time, he was distributing Dhothies and Sarees to the public.

vii) PW7 is a private individual, assisting the public, coming to the VAO Office, for preparing the applications.

viii) PW8 is the then Scientific Officer, Forensic Science Laboratory, Chennai, who issued the chemical analysis report [Ex.P10].

ix) PW9 is the Trap Laying Officer, who laid the trap.

x) PW10 is the investigation officer, who conducted the investigation and filed the final report.

11. After the prosecution witness was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C. and the accused denied the same. Though he has stated that there are witnesses on his side, he has not examined any witness, but, has marked the application for change of patta as Ex.D1.

12. In conclusion of the trial, the trial Court has acquitted the respondent / accused that the prosecution has failed to prove the case beyond reasonable doubt. As against the same, the prosecution has preferred this appeal.

13. Heard Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the appellant / State and Mr.A.S.Mujibur Rahman, learned Counsel appearing for the respondent / accused.

14. The learned Additional Public Prosecutor appearing for the appellant / State, pointing out the infirmities in the judgment of the trial Court has made the following submissions:

a. Though the list of witness, namely, Dhanagopal, who accompanied the defacto complainant [PW2] while the demand was made, was not examined, it is not fatal to the case of the prosecution, as per the decision of the Hon'ble Supreme Court reported in **(2010) 15 SCC 1**, in **C.M.Sharma vs. State of Andhra Pradesh**.

b. The trial Court, while acquitting the accused, has held that the prosecution has not recovered and produced the patta and has produced only the computerized chitta [Ex.P12]. But, Ex.P12 is nothing but the computerized patta and the trial Court has wrongly mentioned the same as chitta.

c. The trial Court has failed to consider the evidence of PW3 / official witness, a Government Servant, who participated in the Trap proceedings along with PW9 and who has no grudge or animosity with the respondent / accused to make a false



d. In view of the presumption under Section 20 of the Vigilance and Anti Corruption Act, it is the duty of the accused to rebut or offer an explanation as to the recovery of the sum of Rs.2000/- [MO1 series] from his shirt packet, which he has failed to do so.

e. When the demand and recovery is proved, the trial Court ought not to have acquitted the respondent / accused and therefore, he prays for interference.

15.Per contra, the learned Counsel for the respondent / accused placed his submissions sailing with the order of the trial Court. According to the learned Counsel, the defacto complainant wanted the respondent / accused to recommend for a separate patta and since the respondent / accused has recommended only for a joint patta, for the reason that the plot is without any proper approval and layout, the defacto complainant developed grudge on him. Therefore, there exists a motive for the defacto complainant to trap the respondent / accused, as rightly held by the trial Court. Moreover, there are no witnesses, other than PW2 to corroborate the demand and mere recovery itself will not prove the guilt, especially when the demand is not proved. Therefore, in all probabilities, the trial Court is right in acquitting the respondent / accused and he prays for dismissal of this appeal.

16.This Court has paid it's anxious consideration to the rival submissions and also the documents placed on record.

17.Before dwelling into the merits of the case, since the appeals are 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

<https://hcservices.dome.gov.in/hcservices/> 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."

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

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

<https://hcservices.courts.gov.in/hcservices/> 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."

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19.Bearing in 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.

20.The defacto complainant, namely, Baskar purchased a house plot and for transferring the revenue records, he applied for change of patta to the Tahsildar, Trichy. In this regard, on 17.10.2008, he met the respondent / accused and at that time, it is alleged that the respondent / accused informed the defacto complainant [PW2] that the said work has already been completed and demanded a sum of Rs.2000/- as illegal gratification. The defacto complainant [PW2], thereafter, lodged a complaint [Ex.P2] before the Inspector of Police [PW9], Vigilance and Anti Corruption, Trichy on 20.10.2008, who, in turn, has registered the same in Crime No.27 of 2008 under Section 7 of Prevention of Corruption Act.

21.After ascertaining the complaint, PW9 registered the same and requested two official witnesses. Accordingly, one R.Dhanagopal, Junior Assistant in the Office of Superintendent Engineer, Public Works Department, Motor Division, Trichy and one A.Natarajan [PW3], Assistant in the Office of Joint Director of Medical Education, Trichy, were deputed as official witnesses. After explaining them the procedures, an entrustment mahazar was prepared.

22.Of the two official witnesses, R.Dhanagopal accompanied the complainant [PW2] while he met the accused on 20.10.2008, in whose presence, the accused reiterated the demand and collected the same. The another official witness, namely, A.Natarajan [PW3] accompanied the Inspector of Police [PW9] during the trap process. In the presence of the complainant and the official witnesses, the phenolphthalein test was conducted on both hands as well as shirt packet of the accused, which turned into pink and proved positive.

23.Perusal of record shows that one of the witnesses, namely, R.Dhanagopal, who accompanied PW2 as a shadow witness was not examined as he was not mentally sound during the trial.

24-1)Finding of the trial Court:

~~There is no demand from the accused with PW2, when PW2~~
<https://hcservices.ecourts.gov.in/hcservices/>



enquired with him about the procedure for preparing the application for change of patta and the demand as stated by the prosecution on 17.10.2008 and 20.10.2008 have no corroboration except the evidence of PW2.

Finding of this Court:

- In fact the case of the prosecution is that when the complainant PW2 approached the respondent/accused officer in the month of September 2008, there was no demand by the accused officer. However, there was a demand as on 17.10.2008 and the demand was also reiterated on the date of occurrence on 20.10.2008. PW2 in his complaint lodged before the respondent Police on 20.10.2008 at about 8.00am specifically mentioned that there was a demand of Rs.2,000/- by the accused officer to hand over the patta and therefore, he lodged the complaint. This complaint after verification was registered by the Inspector of Police [PW9] in ExP11 and the printed FIR has also reached the concerned Judicial Magistrate, Tiruchirappalli on 20.10.2008 at 12.45 noon. The entire trap proceedings was arranged by the TLO [PW9], pursuant to the complaint ExP2 and the official witness PW3, who participated in the trap proceedings has also stated that after the trap the accused officer admitted before the TLO that unknowingly he received the amount and requested to pardon him. In this case other official witness one Danagopal, who accompanied PW2 to meet the accused officer was not examined by the prosecution for the reason that he was mentally unsound during the trial and he was unable to be produced before the Court, for which, a medical certificate of the official witness Danagopal was also produced before the Court.

- In these circumstances, the prosecution is relying on the evidence of PW2 alone. PW2 categorically stated the demand made by the prosecution officer on 17.10.2008 as well as on 20.10.2008. The defence raised a plea that PW2 was having a grudge as against the accused officer that he insisted for individual patta, but the accused officer has stated that joint patta alone is possible. On account of which, a complaint was foisted. This defence theory cannot be accepted that even if it is a individual patta or joint patta, it will not make any difference and it would not cause any prejudice to the complainant. Not even a suggestion has been made in this regard as if PW2 had grudge as against the accused officer. However, during the cross examination, a suggestion was made some influential enemies have arranged a trap through PW2. No doubt, the demand is established through the evidence of PW2.

- The Hon'ble Supreme Court in the ***State of Uttar Pradesh Vs Dr.G.K.Gosh, (1984) 1 SCC 252*** has held that citing unconnected stale motive is universal in the case of corruption by fibre thread of prolonged cross examination that too after number of years from the date of occurrence.



- The Hon'ble Supreme Court reported in **(2010) 15 SCC 1**, in **C.M.Sharma vs. State of Andhra Pradesh**, has held as follows:

"18. Further corroboration of evidence of a witness is required when his evidence is not wholly reliable. On appreciation of evidence, witnesses can be broadly categorized in three categories viz., unreliable, partly reliable and wholly reliable. In case of a partly reliable witness, the court seeks corroboration in material particulars from other evidence. However in a case in which a witness is wholly reliable, no corroboration is necessary. Seeking corroboration in all circumstance of the evidence of a witness forced to give bribe may lead to absurd result. Bribe is not taken in public view and, therefore, there may not be any person who could see the giving and taking of bribe. As in the present case, a shadow witness did accompany the contractor but the appellant did not allow him to be present in the chamber. Acceptance of this submission in abstract will encourage the bribe taker to receive illegal gratification in privacy and then insist for corroboration in case of prosecution. Law can not countenance such situation.

19. In our opinion it is not necessary that the evidence of a reliable witness is necessarily to be corroborated by another witness. Not only this corroboration of the evidence of a witness can be found from the other materials on record."

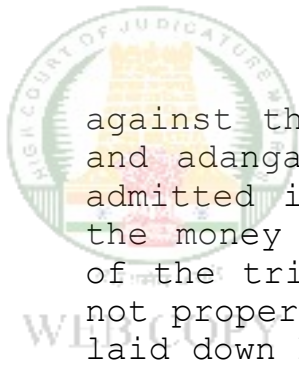
On the ratio laid down by the Hon'ble Supreme Court the solitary evidence itself is enough to establish the case of the prosecution that there was a demand in this case. The defence has failed to shatter the evidence of PW2 by attributing any motive and therefore, the finding of the trial Court is not proper.

24-2) Finding of the trial Court:

There is a possibility of enmity or grudge for PW2 against the accused, since the accused has not recommended for a separate patta in favour of PW2. Since PW2 has come with different version on different occasion with regard to the complaint [Ex.P2] and application for patta [Ex.D1] and when we consider the same along with the possible grudge against the accused for him, accepting his evidence of the prosecution case (ie., demand) only on his evidence that too without any corroboration is unsafe.

Finding of this Court:

As discussed above the defence has not established any grudge or motive between PW2 and the accused officer and the trap proceedings are corroborated by the other official witnesses. The tainted money was recovered from the accused officer in the presence of PW3 and the phenolphthalein test proved positive as



against the accused officer and the documents Exp8 patta, chitta and adangal have been recovered and the accused officer has also admitted in the presence of PW3 that he has unknowingly received the money and requested the TLO[PW9] to pardon him. The findings of the trial Court without appreciating the available evidence is not proper and that cannot be sustained in view of the proposition laid down by the Hon'ble Supreme Court.

24-3) Finding of the trial Court:

Since PW3 himself admitted that there is no written order for his participating as a trap witness for the trap proceeding and there is no record available in his office for the said purpose, his presence during the trap proceedings is itself suspicious.

Finding of this Court:

PW3 is the official witness. He was examined on 12.09.2013 and cross examined on 27.03.2014 after six months. It was during the cross examination, it was questioned that there was no written communication from the Department deputing him for the trap. 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 ensure 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 [Exp4], recovery mahazar [Exp5] and observation mahazar [EP7]. 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.

24-4) Finding of the trial Court:

Even when the recovery is taken as established, mere recovery will not prove the guilt of the accused especially when the demand is not proved and in this case, the prosecution has not established the demand beyond reasonable doubts.

Finding of this Court:

In this case the demand as well as the acceptance has been established by the prosecution as discussed above.

25. 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.

26.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.

27.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 on 12 December, 2014 reported in (2015) 2 SCC 359, justified 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."

28.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."

29.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."

30. 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.

31. In view of the aforesaid reasonings, this criminal appeal is allowed, the order of acquittal passed by the learned Special Judge for trial of cases under Prevention of Corruption Act, Tiruchirappalli, in Special Case No.73 of 2011, dated 30.07.2014, warrants interference and the same is accordingly, set aside. The respondent / accused is convicted for the offence under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and he is directed to be present before this Court on **20.12.2019**, for the purpose of questioning him on sentence.

Call on **20.12.2019**.

sd/-

06.12.2019

As directed, when the matter was listed on 20.12.2019, the learned Counsel for the respondent / accused submitted that due to medical reasons, the respondent could not appear before the Court and sought time for appearance till 03.01.2020. He also produced a medical certificate of the respondent that he is suffering with NIDDM, Chronic Kidney Disease - Grade III, epileptic disorder and neurological disorder involving his both lower limbs. Therefore, this Court permitted the respondent / accused to appear before the Court on 03.01.2020.

2. Accordingly, the respondent / accused has appeared before this Court on 03.01.2020. But, neither the respondent / accused nor the Counsel representing him produced any medical records / sheets in support of their contention. Therefore, the matter was adjourned to 06.01.2020.

3. Today, the learned Counsel for the respondent produced the medical records and submitted that the respondent is a chronic patient and he is surviving with one kidney and in view of that, he is having fluctuations on his blood glucose level also. Perusal of the medical record reveals that even in the year 2015, the Doctor, who have examined the respondent, has observed that his right kidney is not functioning and a similar such report is also available in the report of the year 2017. The lab report of the year 2019 also indicates that he is having high blood glucose level upto 702.0 mg/dl.



4.The respondent / accused is also present before this Court and his appearance also exposes that he is a chronic patient. He has expressed his difficulties and also pleaded that he had not committed any mistake and prayed to show sympathy.

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5.The learned Counsel for the respondent / accused has also filed an affidavit of the respondent dated 06.01.2020 that they are about to file an appeal before the Hon'ble Supreme Court and by relying upon Section 389(3) Cr.P.C., requested some time for surrender.

6.Considering the nature of offence and the condition of the respondent / accused, this Court imposes the sentence as follows:

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 and (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. 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.

7.However, considering the condition of the respondent / accused and the affidavit filed by him that he is filing an appeal before the Hon'ble Supreme Court, this Court grants time till 17.02.2020 to the respondent / accused to surrender before the trial Court. Upon expiry of the above said term, if no appeal is filed by the respondent and/or if no order was passed staying the order of conviction and sentence passed by this Court, the trial Court shall take necessary steps to secure the respondent / accused to undergo the punishment imposed upon him.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)



To

1. The Judge,
Special Court for trial of Cases
under Prevention of Corruption Act,
Tiruchirappalli.
2. The Public Prosecutor,
High Court, Madras.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer, Criminal Section, (Records)
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-478[F] dated 07/01/2020)

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**Judgment made in
Crl.A(MD)No.4 of 2015
06.12.2019
and
06.01.2020**

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AE/ (10.01.2020) 15P 7C