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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2019

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.A.(MD).No.120 of 2013

Eswaran ...Appellant

Vs.

State,
The Inspector of Police
Vigilance and Anti-Corruption Wing,
Sivagangai District.
(Crime No.2/2000) ...Respondent

Prayer:- This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to call for the records relating to the judgment in C.C.No.7 of 2002 dated 01.04.2013 Special Court for Prevention of Corruption Act and Chief Judicial Magistrate Sivagangai set aside the same.

For Appellant : Mr.M.Subash Babu
For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

JUDGMENT

This appeal is directed against the judgment of the learned Chief Judicial Magistrate / Special Court for Prevention of Corruption Act Cases, Sivagangai, in C.C.No. 7 of 2002, convicting the appellant under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred as "the Act') and sentencing him to undergo one year rigorous imprisonment with fine of Rs.1,000/-, in default to undergo three months simple imprisonment and also convicting him for the offence under Section 13(2) r/w 13(1)(d) of the Act and sentencing him to undergo two years rigorous imprisonment with fine Rs.2000/-, in default to undergo six months simple imprisonment. The sentences were ordered to run concurrently.

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

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Charge	***Gist of Charge***
Section 7 of Prevention of Corruption Act, 1988.	Public Servant taking gratification other than legal remuneration in respect of an official act.
Section and 13(1) & (d) read with 13(2) of Prevention of Corruption Act, 1988.	Accused receiving a sum of Rs.3000/- as bribe for setting the criminal case against the defacto complainant.

3. The case of the prosecution, in short, is as follows:-

(i)P.W.8 Arumugam is the resident of Ariyakudi village. On 17.01.2000 at 07.00 p.m. there was a wordy quarrel between P.W.8 and his relatives and there was a scuffle between them. Therefore, a case has been registered against P.W.8 and one Palaniyappan before the South Police Station, Karaikudi. In that case, they were released on bail with conditions. During the period between 09.03.2000 and 16.03.2000, when P.W.8 came to the police station for complying with the condition, the Accused, who was working as Special Sub Inspector in that station told that he will reduce the charge against him and he will also close the property dispure and for which, he asked P.W.8 how much bribe he will give. Pursuant to the same, on 16.03.2000 at about 10.00 a.m., the accused officer brought P.W.8 Arumugam bear the tea shop situated at the northern side of police station and asked a sum of Rs.5,000/- as bribe for doing the said work. However, P.W.8 replied that he will not able to give such amount and hence, the accused officer told to give a sum of Rs.3,000/- before 6.00 p.m., and after compliance of the bail condition, give the balance amount of Rs.2,000/-. However, since P.W.8 was not willing to give bribe amount, he had made a complaint/ Ex.P.16 before the Vigilance and Anti Corruption Department as to the demand of illegal gratification made by the appellant and a case was registered on 16.03.2000 at 06.30 hours against the appellant, who was working as SSI of Police, Karaikudi South Police Station, for alleged demand of illegal gratification of Rs.3000/-, for settling a criminal case lodged against him in Crime No.06 of 2000.

(ii) Immediately, after receipt of the complaint, P.W.15, the Trap Laying Officer, sent intimation to the office of the Agro Engineering Department and Forest Officer to send two witnesses for the purpose of conducting a trap. Accordingly, K.Sankaran from the office of the Depo and S.Velusamy, who was working as Junior Draughtsman came to the Vigilance and Anti-Corruption Office at Virudhunagar on the same day at 4.00 p.m. P.W.15 introduced both of them to other witness and explained about the complaint given by P.W.2 and thereafter demonstrated the phenolphthalein test. P.W.15 further instructed P.W.2 to give the bribe amount after the demand made by the accused and thereafter to come out and give the signal by firing his cigaratte. The said proceedings of the Vigilance and Anti-Corruption Office were recorded under the mahazar Ex.P2 duly signed by the defacto complainant/PW.8 and arranged the pre trap

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proceedings.

(iii)After arrangement, the complainant and other official witnesses along with P.W.5/DSP proceeded towards Karaikudi South Police Station, at about 07.15 p.m on the same day. PW.15, Trap Laying Officer left P.Ws.2 and 8 nearby police station and thereafter, PW.2/Shadow witness and PW8/ Defacto complainant proceeded towards south police station in order to give the bribe amount as demanded by the accused. On seeing PW.2 and PW.8, the appellant /accused took them to the nearby tea stall and thereafter, he fired a Cigarette and enquired why they came late and demanded money and PW8, in turn, replied that they were unable to arrange that money and hence, it took time. Thereafter, the appellant collected the bribe amount and put the same in the right side pant pocket. Thereafter, he went to the Police Station, again, he returned from the Police Station and put the bribe amount in the box of his two wheeler bearing Reg. No. TN 63Z 8222 and locked the box and taken the key. Thereafter, PW 8/Defacto complainant had given pre-arranged signal to PW 15/Trap Laying Officer by firing a Cigarette and PW 15 after getting signal from the defacto complaint/PW 8, rushed to the Police Station and they found that the appellant/ accused interacted with PW 7 /Inspector of Police. Thereafter, PW 15 introduced himself to the Inspector of Police as well as to the appellant and conducted phenolphthalein test by directing the appellant to dip his right and left hand in the sodium carbonate solution (M.O.1 and M.O.2) and observed that the solution turned into pink colour and prepared mahazar. When P.W.15 asked the appellant/accused about the bribe money, he told that he did not receive any money. After P.W.2 and P.W.8 entering into the Police Station, P.W.15 asked them to narrate the incident and they narrated the incident. Thereafter, P.W.15 asked the appellant/accused that the parked motorcycle belongs to whom and where is the key of it, for which, the appellant/accused replied that the motorcycle belongs to him and handed over the key to P.W.15. Thereafter, in the presence of P.W.2, P.W.7 – A.Kaalai Manickam, Inspector of Police and one Sankaran, P.W.15 opened the box by using the key, wherein, a Blue colour square shaped Handkerchief was found with currencies and P.W.15 directed P.W.2 to take that amount and put in the Police Station. As per the direction of P.W.15, P.W.2 counted the currency notes and found that 30 numbers of Hundred Rupees currencies and the numbers found in the said currency notes were tallied with the Mahazar dated 16.03.2000, prepared by the Vigilance Department. Thereafter, P.W.15 directed to subject the said Handkerchief into Phenolphthalein test. Accordingly, the test was conducted and it turned into positive and the said solution [M.O.3.] was collected in a separate bottle and labelled with the crime number, in which, P.W.15, the appellant/accused, P.W.2 and Sankaran put their signatures. Thereafter, P.W.15 directed the appellant/accused to produce his Pant by providing a Lungi and the right side Pant pocket was subjected to Phenolphthalein test and it turned into positive and the said solution [M.O.4] was also collected in a

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separate bottle, which was also taken as evidence along with the signature of the above said persons. The said Handkerchief and the Pant of the appellant/accused was marked as M.O.5 and the currency notes [Rs.3,000] were marked as M.O.6. The said sodium carbonate solution and phenolphthalein were sent for expert opinion. Thereafter, expert was examined as PW 13 and he deposed that since the chemical examination proved positive, he issued a report and the report is marked as Ex.P.19. Thereafter, the trap laying officer handed over the investigation to PW 16. PW 16 conducted investigation and handed over the investigation to PW17. PW 17 conducted further investigation and filed final report before the Special Court against the accused under Sections 7 and 13(2) r/w. 13(1)(d) of the Act.

4.The learned trial Judge after following the procedure, framed necessary charges against the accused for the offences under Sections 7 and 13(2) r/w.13(1)(d) of the Act. Since the accused pleaded not guilty, he was tried for the above said offences.

5. In order to prove the charges, the prosecution examined PW1. to PW.17 and marked Exs.P.1 to P.12 and M.O.1 to 6 were produced. After completion of prosecution side witnesses, the accused was questioned under Section 313 Cr.P.C and when incriminating circumstances found against him in the evidence of the prosecution were put forth to him, he denied the same as false and on behalf of the accused, no one was examined and no documents were marked.

6. The learned trial Judge after considering the oral and documentary evidence convicted the accused and sentenced the appellant as stated above. As against which, the appellant has preferred this present appeal.

7. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent.

8. The learned counsel for the appellant would submit that though PW 8 / defacto complainant in his chief examination initially has deposed that he made a complaint to PW15, in his chief and cross examination, he denied the above facts and stated that the entire complaint was prepared as dictated by PW 15, and as per the dictation of P.W.15 the complaint was written by him and therefore, he was treated as hostile and he also denied the initial demand and the bribe paid. He would further submit that though PW 8 implicated him in the above said offence, there was no prior demand. In the absence of witnesses to the initial demand, the bribe which was said to have been accepted by the appellant is to be held as not proved. Further, the learned counsel for the appellant referred to the evidence of PW7, Inspector of police, who is working in the very same station, where the appellant was

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working as SSI of Police and argued that the phenolphthalein test was conducted in respect of his hands after taking money from the two wheeler and thereafter, the kerchief and the right side pant pocket of the appellant was subjected to phenolphthalein test. According to the appellant, the trap procedure was not followed by PW 15 and at whims and fancies, the trap proceedings were conducted and therefore, the learned counsel prays for acquittal.

9.In support of his contentions, the learned counsel appearing for the appellant relied the following decisions, wherein it has been held as follows:

(i) ***Pananlal Damodar Rathi-Vs- State of Maharasthra***, reported in ***1979 (4) SCC 526,*** wherein at paragraphs 9 and 11, it has been held as follows:-

> *"9.It will be seen that the version of the complainant that the appellant asked the complainant whether he had brought the money and the complainant told him that he had and that the appellant asked him to pay the money to the second accused is not spoken to the Parch witness PW 3 According to Parch witness on the complainant asking the appellant whether his work will be achieved, the appellant answered in the affirmative and the appellant told the complainant what was to be given to the second accused, It is significant that PW 3 does not mention about the appellant asking the complainant whether he had brought the money and on the complainant replying in the affirmative asking the complainant to pay the money to the second accused. Omission by PW 3 to refer to any mention of money by the appellant would show that there is no corroboration of testimony of the complainant regarding the demand for the money by the appellant. On this crucial aspect, therefore, it has to be found that the version of the complainant is not corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied on.*
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> *11.We are conscious of the fact that both the trial court as well as the appellant court accepted the evidence of the complainant and P.W. 3 and found the appellant guilty. Though this Court normally will not interfere with the concurrent findings of the Courts below, we feel that on the material placed before us it will be hazardous to base a conviction. The marked notes were not recovered from the appellant. The prosecution case is that the money was paid to the second accused to be handed over to the appellant The complicity of the appellant is sought to be established by the conversation that took place between the complainant and the appellant in the presence of P W. 3 The version regarding the conversation as given by complainant and P.W. 3 is not consistent. In the circumstances, we are*

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constrained to give the benefit of doubt. In doing so we make it clear that we are not convinced about the innocence of the appellant. We feel on the material before us, though there is grave suspicion the guilt of the accused has not been established beyond reasonable doubt. In the circumstances, we are constrained to give the benefit of doubt to the appellant. In the result, we allow the appeal, set aside the conviction and sentence and acquit the appellant".

(ii) ***State of Kerala and Another -vs- C.P.Rao***, reported in ***(2011) 4 MLJ (Crl.)723 (SC)***, wherein at paragraphs 6, 10 and 11, it has been held as follows:-

"6.In the background of these facts, especially the non- examination of CW.1, was found very crucial by the High Court. The High Court has referred to the decision of this Court in Panalal Damodar Rathi Vs. State of Maharashtra AIR 1979 SC 1191 : (1980) SCC (Cr) 121 : LNIND 1979 SC 61 wherein a Three-Judge Bench of this Court held that when there was no corroboration of testimony of the complainant regarding the demand of bribe by the accused, it has to be accepted that the version of the complainant is not corroborated and, therefore, the evidence of the complainant cannot be relied on.

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10.In C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala AIR 2009 SC 2022 : (2009) 3 SCC 779 : LNIND 2009 SC 435 : (2009) 3 MLJ (Crl) 341, this Court while dealing with the case under the Prevention of Corruption Act 1988, by referring to its previous decision in the case of Suraj Mal Vs. State (Delhi Admn.) AIR 1979 SC 1408 : (1980) SCC (Cr) 159 : (1979) 4 SCC 725 : LNIND 1979 SC 116 : (1980) 1 MLJ (Crl) 73 held that mere recovery of tainted money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused. In the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe conviction cannot be sustained. (See para 18)

11.In a subsequent decision of this Court also under the Prevention of Corruption Act, in the case of A. Subair Vs. State of Kerala 2009(6) SCC 587 : LNIND 2009 SC 1346 : (2010) 1 MLJ (Crl) 995, this Court made certain pertinent observations about the necessity of the presence of the complainant in a bribery case. The relevant observations have been made in paragraph 18

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and 19 which are quoted below at p.998 of MLJ (Crl):

18. The High Court held that since the Special Judge made attempts to secure the presence of the complainant and those attempts failed because he was not available in India, there was justification for non-examination of the complainant. '

19. We find it difficult to countenance the approach of the High Court. In the absence of semblance of explanation by the investigating officer for the non-examination of the complainant, it was not open to the courts below to find out their own reason for not tendering the complainant in evidence. It has, therefore, to be held that the best evidence to prove the demand was not made available before the court.

Those observations quoted above are clearly applicable in this case. In the context of those observations, this Court in paragraph 28 of A. Subair V. State of Kerala (supra) made it clear that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is proved to the contrary by proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case".

(iii) ***B.Jayaraj -vs- State of Andhra Pradesh***, reported in ***(2014)2 MLJ (Crl.358 (SC)***, wherein at paragraphs 8 and 9, it has been held as follows:-

"8.In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused

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without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13 (1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

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

(iv) ***M.P.Purushotham -Vs- State of Karnataka***, reported in ***(2015)3 Supreme Court Cases 247***, wherein at paragraph 6, it has been held as follows:-

"6.PW.1 Ramesh, the complainant did not support the prosecution case. He disowned making the complaint in Exh.P1 and stated in his examination-in- chief that the accused had not demanded anything from him and he did not know what is written in Exh.P1 and the police have not recorded his statement in respect to this case. He was, therefore, declared hostile. However, PW3 Kumaraswamy, panch witness has testified that after being summoned by PW4 Inspector Santosh Kumar on 18.2.2000, the contents of Exh.P1 were explained to him in the presence of the complainant and he accompanied the complainant to the house of the accused, wherein, the complainant gave the sum of Rs.500/- to the accused as illegal gratification. It is on the aforesaid basis that the liability of appellant/accused for commission of the offences alleged was held to be proved, notwithstanding the fact that in his evidence the complainant PW1 Ramesh had not supported the prosecution case"

10. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that though PW8 turned hostile, in his chief- examination, he has clearly admitted his signature in Ex.P.16 complaint. It is also admitted case of both

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sides that PW 8 is facing criminal case in the very same Police Station, where the appellant is working, in which, he obtained anticipatory bail and complying the condition regularly and in order to settle the criminal case in favour of PW 8, the appellant initially demanded Rs.5000/- and after negotiation, he reduced to Rs.3000/-, however, he is not interested to pay the bribe amount and he discussed with the family members and hence, he decided to lodge a complaint against the appellant, for which, on 16.03.2000, he filed a complaint against the appellant and on the very same day, the complaint was registered and police team proceeded to Karaikudi Town Police Station, in which, PW 8 accompanied with PW2. Though PW 8 turned hostile, Shadow witness had clearly deposed about each and every happenings of the trap from the beginning i.e., from 7.15 p.m. to 10.30 p.m. He has also clearly deposed about the manner in which he invited PW2 and PW8 and both went along with him to the tea stall and where, he demanded money from PW8/defacto complainant and thereafter, he took the amount from his shirt pocket and immediately, the appellant received and put it in his right side pant pocket, thereafter, he went to the Police Station. After signal, the trap laying officer conducted phenolphthalein test and thereafter, currency notes were recovered. Even though PW 8 complainant turned hostile, the evidence of shadow witness, expert evidence and phenolphthalein test are sufficient to prove the prosecution case.

11.In support of his contentions, the learned Additional Public Prosecutor relied on the following decisions:

(i) ***Hazarilal -vs- State (Delhi Administration)*** reported in ***(1980)2 Supreme Court Cases 390,*** wherein at paragraph 3, it has been held as follows:-

> "3.The scooter rickshaw belonging to Sri Ram (P.W.3) and driven by his driver Ram Lubhaya (P.W. 6) was involved in an accident on July 12, 1969. The scooter rickshaw and a tonga which were involved in the accident were taken to the Police Station, Kashmere Gate by the accused, a Police constable attached to that station. P.W. 3 obtained orders from the Magistrate for the release of his vehicle and went to the Police Station to obtain delivery of the vehicle. The accused, who was present took him outside and told him that the vehicle would be given to him only if he paid a bribe of Rs. 60. P.W. 3 then went away. He went to the Anti Corruption Department and made statement to Inspector Paras Nath, P.W. 8. After recording the statement of P.W. 3, P.W. 8 sent for two persons Davinder Kumar (P.W. 4) and Kewal Krishan. The statement of P.W. 3 was read out to P.W. 3 in the presence of the two Panch witnesses Davinder Kumar and Kewal Krishan. P.W. 3 then produced six currency notes of the value of Rs. 10 each. The numbers of the notes were noted and they were treated with phenol phthelene powder. After the usual instructions were given to

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P.W. 3 and the panch witnesses, the raiding party proceeded towards Kashmere Gate. P.W. 3, P.W. 6 and Kewal Krishan went into the Police Station, while P.W. 8 and others stayed outside. The money was handed over to the accused who took it and put it inside the right hand pocket of his trousers. P.W. 6 and Kewal Krishan then came out and signalled to P.W. 8 whereupon P.W. 8 and the Panch witnesses went inside the Police Station. The accused was present inside. As soon as he saw the party led by P.W. 8 he took out the currency notes from the right side pocket of his trousers and threw them across the wall into the adjoining room. P.W. 8 instructed some of the police officers accompanying him to rush to the adjoining room and to keep a watch over the notes which must have fallen there. He then introduced himself to the accused and took him to the adjoining room. Some of the notes were lying on the table of the Duty Officer in that room while others had fallen on the ground near the chair of the Duty officer. The six notes were collected in the presence of the witnesses and their numbers were compared with the numbers noted before they proceeded on the raid. The numbers tallied. The accused was questioned by the Inspector and he denied that he had demanded any bribe and kept silent about the acceptance of the bribe. Both the hands of the accused were dipped in sodium carbonate solution and the solution which was previously colourless turned pink. The same test was repeated 1057 with the handkerchief which was taken out of the right hand side pocket of the accused and also with the trousers of the accused. Each test resulted in the bicarbonate solution turning pink. After completion of the investigation a charge-sheet was laid against the accused being for offences under s. 5(2) read with s. 5(1) (d) of the Prevention of Corruption Act and s. 161 of the Indian Penal Code.''

(ii) ***Vinod Kumar -vs- State of Punjab***, reported in ***(2015)3 SCC 220*** , wherein at paragraphs 43 to 45, it has been held as follows:-

> ''*43.In this regard Mr. Jain has placed reliance on the authority B. Jayaraj (supra). In the said case the complainant did not support the prosecution version and had stated in his deposition that the amount that was paid by him to the accused was with a request that it may be deposited in the bank as fee for renewal of his licence for the fair price shop. The court referred to Section 7 of the Act and observed as follows:-*
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> *"Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes*

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cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgment of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P.[37] and C.M. Girish Babu v. C.B.I.[15]"

44.After so observing, the court proceeded to state thus:-"In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself has disowned what he had stated in the initial complaint (Ex.P-11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and contents of Ex.P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the Ld. Trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact, such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing of pecuniary advantage cannot be held to be established."

45.The said principle has been followed in M.R. Purushotham v. State of Karnataka[38]. On an attentive and cautious reading of the aforesaid decisions it is noticeable that the court disbelieved the story of the prosecution as no other evidence was brought on record. In N. Narsinga Rao case the accused was charged for the offences punishable under Sections 7 read with Section 13(1)(d) & (2) of the Act. The court, as we have stated earlier, had referred to section 20(1) of the Act and opined that from the proven facts the court can legitimately draw a presumption that the delinquent officer had received

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and accepted money. As we notice, the authorities in B. Jayaraj (supra) and M.R. Purushotam (supra) do not lay down as a proposition of law that when the complainant turns hostile and does not support the case of the prosecution, the prosecution cannot prove its case otherwise and the court cannot legitimately draw the presumption under Section 20 of the Act. Therefore the proposition, though industriously, presented by Mr. Jain that when Baj Singh, PW5, the complainant, had turned hostile the whole case of the prosecution would collapse is not acceptable and accordingly hereby rejected".

12. Upon careful re-assessment of the evidence and the judgment of the Trial Court and other materials on record and consideration of the submissions made by the learned counsel appearing for the parties, the following points arise for consideration in this Criminal Appeal:

(1) whether the prosecution has discharged the initial burden that there was a demand and acceptance by the appellant?

(2) whether the trial court was right in finding the appellant/accused guilty for the offence under Section 13(2) r/w 13 (1)(d) of P.C.Act, 1988?

(3)Whether the conviction and sentence imposed against the appellant/accused warranted any interference or not?

13.Admittedly, in this case, PW 8/Defacto complainant turned hostile and the entire prosecution case revolves on the evidence of PW2/shadow witness and P.W.15, the Trap Laying Officer. On perusal of the evidence of hostile witness/ defacto complaint, it is seen that, in his chief examination, he admitted that he was enlarged on anticipatory bail and he regularly appeared before the appellant, for complying the conditions and he also admitted the same in the complaint Ex.P.16 and he also identified the accused during trial proceedings. Hence, PW 8 not denied the initial complaint before PW.15 and his complaint is marked as Ex.P16. It is also the admitted case of the appellant as well as the prosecution that the initial entrustment mahazar prepared by the Trap laying officer was duly signed by PW 8. However, PW 8 denied that the trap proceedings that was conducted in Karaikudi Police Station, in which he turned hostile. Now, PW2/ Shadow witness clearly indicated that he was requested to accompany with PW8/ complainant during trap proceedings. PW 15 trap laying officer instructed him to interact with the complainant and proceeded towards Karaikudi Police Station and he has clearly narrated the incident happened on that day and the appellant on seeing PW 8 /defacto complainant and PW.9 interacted and asked why he came late and he demanded Rs.3000/- from the defacto complainant. Thereafter, PW8 had taken the phenolphthalein coated bribe money from his pocket and handed over the same to the appellant, who in turn put it in his right side pant pocket. Thereafter, all the three were proceeded to the Karaikudi Police Station and when they were nearing Police Station,

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the appellant went inside the Police Station and returned from the station and put some articles in his two wheeler. Again, he went to the Police Station, thereafter, PW 8 gave pre-arranged signal and thereafter, the appellant was caught red- handed and his hands and kerchief were subjected to phenolphthalein test and the same turned into pink colour and the currency notes and trouser pocket were also subjected for phenolphthalein test and the same also turned in to pink colour and thereafter, recovered the phenolphthalein coated currency notes and sent them for expert opinion. However, the learned counsel appearing for the appellant urged this Court, referring the evidence of PW7/ Inspector of Police/ superior officer, who were working in the same Station that, in his evidence, he has deposed that the trap laying officer introduced him and the amount was recovered from the two wheeler and thereafter, sodium carbonate test was conducted.

14. The prosecution case is that the appellant received the amount from PW 8 /defacto complainant and put it in his pant pocket and thereafter, he put the same in the two wheeler. Even before taking the money from the two wheeler, through PW2 /shadow witness, phenolphthalein test was conducted in respect of the appellant's hand and thereafter, after taking the money from the two wheeler phenolphthalein test was conducted in respect of his trouser, which proved positive. Hence, this Court could draw the presumption that the said money was handed over to the appellant by PW.8, who also identified the accused during court proceedings. However, the appellant tries to disprove the prosecution case that there was no acceptance of illegal gratification, when the prosecution has proved its case as to the acceptance of illegal gratification from P.W.8.

15. Admittedly, the appellant is the investigating officer in the case where PW 8/defacto complainant was accused and currency notes are entered in the entrustment mahazar and the same were tallied in the recovery mahazar /Ex.P.3. Hence, there is nothing otherwise to contend that the amount was not recovered from the appellant. Currency notes handed over to the defacto complainant / PW8, for the purpose of trap alone were recovered from the appellant. It is well settled that mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence is not reliable and there has to be corroboration of the testimony of the complainant regarding the demand of bribe. In the present case, the accused officer, voluntarily knowing it to be a bribe amount, received the tainted money and he went to his motor cycle and hide the amount and thereafter, he put the money in the side box of the two wheeler and the same has been corroborated by the evidence of P.W.8 defacto complainant and the shadow witness. In view of the above, this Court can legitimately draw presumption under Section 20 of the Prevention of Corruption Act .

16. It is the case of the prosecution that the appellant had demanded and accepted the money from PW 8/ Defacto complainant. Now, it is necessary to consider the decision relied upon by the

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learned counsel for the appellant in the case of ***Pananlal Damodar Rathi-Vs- State of Maharasthra***, reported in ***1979 (4) SCC 526,*** wherein, it has been held that the prosecution has not established the conversation with regard to the demand of bribe amount between the complainant and the appellant therein and there is no corroboration of testimony of the complainant evidence regarding demand of money by the appellant. The other case referred to by the learned counsel for the appellant relates to the initial demand and that demand was not established before the Court. In this context, it is relevant to refer to the decision of the Hon'ble Supreme Court in **State of Gujarat Vs. Navinbhai Chandrakant Joshi and others** reported in **2018 (3) SCC (Cri) 730 : 2018 (9) SCC 242,** wherein at Paragraph 11, it has been held as follows:-

> ''11. So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden placed on the accused for rebutting the presumption is one of preponderance of probabilities. In **C.M.Girish Babu v. C.B.I. [(2009) 3 SCC 779]**, this Court held as under:-
>
> > ''21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. … ….
> >
> > 22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt''
>
> *Since it is established that the accused was possessing the bribe money, it was for them to explain that how the bribe money has been received by them and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe.''*

17.A Perusal of the above decisions makes it clear that initially, the prosecution has to discharge the burden and if the prosecution successfully discharged the initially burden with regard the demand and acceptance, the Court can legitimately draw the presumption that the delinquent officer has received and accepted the money. Thereafter, it is for the accused to rebut the presumption rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. However, in the present case, neither direct nor circumstantial evidence to rebut the presumption. In the present case, the appellant is the investigating officer in Crime No.6 of

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2000, which was launched against PW 8 and he received Rs. 3,000/- in the presence of PW 2 /Shadow witness. PW2 has clearly deposed before the trial court that the said amount was received by the appellant and the demand was clearly established by the prosecution through PW.2, Ex.P.2 Entrustment Mahazar and by PW.15/trap laying officer. The prosecution through its witnesses and documents had established the guilt of the accused beyond reasonable doubt and the trial Court has rightly appreciated the evidence and had convicted the appellant/ accused.

18.In the result, this Court finds no merit in the appeal and hence, Criminal Appeal is dismissed and the conviction and sentence, dated 01.04.2013, passed in C.C No. 7 of 2002 by the Special Court for Prevention of Corruption Act and Chief Judicial Magistrate, Sivagangai, is confirmed. The Trial Court is directed to secure the appellant and commit him to prison to serve the remaining period of sentence imposed on him. The period of sentence already undergone shall be given set off under Section 428 Cr.P.C. The bail bond, if any, executed by the appellant/accused shall stand cancelled.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

aav

To

1. The Chief Judicial Magistrate
   Special Court for Prevention of Corruption Act
   Sivagangai

2. The Inspector of Police
   Vigilance and Anti-Corruption Wing,
   Sivagangai District

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

4. The Record Keeper, Criminal Section,
   Madurai Bench of Madras High Court,
   Madurai.(2 copies)

+1CC TO MR.SUBASH BABU, Advocate Sr. No. 49836

Crl.A.(MD).No.120 of 2013
22.02.2019

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