BAIL SLIP

T.Senguttuvan, S/o.Thiruvarangamoorthy, aged 59/2013, Petitioner/Appellant/Accused was released on bail vide order of this Court dated 12.07.2013 made in MP(MD)No.1 of 2013 in Crl.A.(MD) No.211 of 2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRIMINAL APPEAL(MD)No.211 of 2013

T.Senguttuvan .. Appellant/Accused

Vs.

State Through
The Inspector of Police,
CBI - ACB, Chennai.
(RC - MAI 2009 A 0049) .. Respondent/Complainant

Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment dated 12.06.2013, passed in C.C.No.9 of 2009, by the learned II Additional District Judge for CBI cases, Madurai.

For Appellant : Mr.Gopalakrishna Lakshmana Raju
Senior Counsel
for Mr.R.Venkateswaran

For Respondent : Mr.R.Sudev Kumar
Special Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed by the appellant/accused under Section 374(2) of the Code of Criminal Procedure, seeking to set aside the conviction and sentence imposed on him, by the learned II Additional District Judge for CBI Cases, Madurai, dated 12.06.2013, made in C.C.No.9 of 2009, directing him to undergo rigorous imprisonment for a period of one year and also to pay a fine amount of Rs.1,000/-, in default, to undergo rigorous imprisonment for a period of six months under Section 7 of the Prevention of Corruption Act [hereinafter referred to as ''the Act''] and also rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months under Section 13(2) r/w. 13(1)(d) of the Act.

2.The sum and substance of the prosecution case is as follows:-

2.1.The appellant was working as Clerk-cum-Cashier, Indian Bank, Uthappanaickanur Branch, Madurai District. During June/July 2008, P.W.7 - Malar, W/o.Sivasamy [P.W.2] had applied subsidy/loan with the Office of the Assistant Director of Horticulture, Usilampatti, vide Registration No.AEBF-116-Sampangi Flower along with all necessary documents. After process of the said application by the Horticulture Department, the same was sent to Indian Bank, Uthappanaickanur Branch. Thereafter, the said Branch conducted Field Verification with the assistance of the Assistant Director of Horticulture, Usilampatti, and issued a Certificate to the Chairman/District Collector, District Horticulture Mission Committee, Madurai District, on 25.02.2009 that P.W.7 - Malar has completed the creation of asset and the estimated cost is Rs.90,000/-. The Bank has also recommended/requested to release the eligible subsidy amount of Rs.45,000/-. On 28.02.2009, the Chairman, Horticulture Mission and District Collector, Madurai, issued Order No.E/1474/08, for release of fund and accordingly, the Deputy Director of Horticulture, Madurai, had issued Letter No.E1/1474/08, dated 28.02.2009 along with Pay Order No.120672 for Rs.8,19,310/- with the list of beneficiaries. The said list of beneficiaries contains the name of P.W.7 - Malar and on that basis, an amount of Rs.45,000/- subsidy was released in the name of P.W.7 - Malar, to Indian Bank, Uthappanaickanur Branch.

2.2.On 02.09.2009, P.W.7 - Malar and P.W.2 - Sivasamy visited Indian Bank, Uthappanaickanur Branch and executed the documents for Rs.90,000/- towards subsidy of Rs.45,000/- and loan of Rs.45,000/-. The said documents are marked as Exs.P.10 to P.12. Thereafter, on 04.09.2009, P.W.2 approached the appellant - T.Senguttuvan, Clerk, who is dealing with the loan matters and enquired about the disbursement of loan and subsidy amount, for which, the appellant showed withdrawal slip No.959275 [Ex.P.4] for Rs.45,000/- and demanded Rs.3,000/- as bribe for release of the amount and directed P.W.2 to pay the bribe amount on 05.09.2009.

2.3.As P.W.2 was not willing to pay the bribe amount to the appellant/accused, decided to launch prosecution against him. Accordingly, he approached the Vigilance and Anti Corruption Wing, Madurai, and they informed him that they are not the competent authority and has given a phone number to him and directed P.W.2 to contact the Superintendent of Police, C.B.I., Chennai. Thereafter, P.W.2 contacted the Superintendent of Police, C.B.I., Chennai, who in turn, directed P.W.12 - Inspector of Police to receive the complaint and take appropriate action on the said complaint. On 05.09.2009 at 06.30 a.m., P.W.2 met the Inspector of Police at Room No.15 of Railway Retiring Room, Madurai, where he was camping, and complained about the demand of bribe of Rs.3,000/- by the appellant, for disbursing loan/subsidy of Rs.45,000/- and lodged Ex.P.3 Complaint and thereafter, the said complaint was forwarded to the Head Office and registered as RC.49(A)/2009, on 05.09.2009, which was marked as Ex.P.34.

2.4.After registering the F.I.R., P.W.12 - Trap laying Officer prepared two trap witnesses, namely, (i) Narayanan and (ii) V.Panneer Selvam - P.W.8 from New India Assurance Company Ltd., Madurai Branch, and introduced them to P.W.2. Both the trap witnesses were also permitted to read the complaint (Ex.P.3). Thereafter, P.W.12 made preparations for trapping. P.W.12 received Rs.3,000/- from P.W.2 *viz.*, Rupees Five Hundred Currency - 4 Nos. and Rupees Hundred Currency - 10 Nos. [M.O.9]. After completing trap laying procedures, P.W.12 handed over the Phenolphthalein coated currency notes to P.W.2. P.W.2 was also instructed to inform his wife - P.W.7 to join with him at Usilampatti Bus Stand and Ex.P.5 -Entrustment Mahazar was prepared and all the team members have signed in Ex.P.5. All the team members left from Madurai Railway Station by Tavera Car. P.W.2 - de-facto complainant and P.W.8 - shadow witness were dropped at Usilampatti Bus Stand, where P.W.7 - Malar was already present. P.Ws.2, 7 and 8 were directed to come by bus from Usilampatti Bus Stop to Uthappanaickanur. The remaining team members left by the same Tavera Car and all of them reached Uthappanaickanur in between 10.00 a.m. and 12 noon.

2.5.Thereafter, P.W.2, P.W.7 and P.W.8 met the appellant/accused in the Bank and the appellant enquired P.W.2 as to why he was late and demanded the bribe amount and thereafter, the appellant handed over a withdrawal slip [Ex.P.4] to P.W.7 and asked them to withdraw the amount. Thereafter, P.W.7 put her signature in the withdrawal slip and obtained the amount from the cash counter. After that, P.W.2 and P.W.7 informed about the withdrawal of the amount to the appellant/accused, who in turn, directed them to wait outside the Bank and enquired about P.W.8 with P.W.2, for which, P.W.2 replied that he is his relative and came from Kerala. Thereafter, P.W.2, P.W.7 and P.W.8 were waiting outside the Bank. After five minutes, the appellant came there and asked P.W.2 as to why he was late, fired a Cigarette and demanded the bribe money. Immediately, P.W.2 handed over the Phenolphthalein coated currency notes of Rs.3,000/- to the appellant and he received the same and kept it in his left side shirt pocket.

2.6.Thereafter, the appellant made another request to P.W.2 to purchase quarter brandy bottle from a nearby TASMAC Shop. On the way to the TASMAC Shop, P.W.2 gave a pre-arranged signal by calling Trap Laying Officer through mobile phone and went to the TASMAC Shop. Immediately, P.W.12 and other officials went to the Bank and enquired about the appellant with the Manager and the Manager informed that he has just gone outside and thereafter, P.W.12 asked P.W.13 - Baskaran, who was working as Sub-Staff, to come out of the Bank in order to identify the appellant. At that time, the appellant was coming from the opposite side of the road and he was identified by P.W.13.

2.7.P.W.12 enquired with the appellant about the demand and acceptance of bribe money, for which, the appellant denied the same and P.W.12 took him to the Bank. Thereafter, Phenolphthalein Test was conducted and the solutions, in which the appellant had dipped his right and left hand fingers were turned into Pink Colour and the same were marked as M.O.1 and M.O.2 respectively. P.W.12 directed the witness - Narayanan to conduct personal search of the appellant. In the personal search, the appellant was found in possession of Rs.36,450/- and both the independent witnesses were directed by P.W.12 to compare the serial numbers of those currency notes with the one recorded in the Entrustment Mahazar [Ex.P.5]. Both the independent witnesses have compared the serial numbers and found that the same does not match with the numbers mentioned in the Entrustment Mahazar.

2.8.Thereafter, on questioning, the appellant has disclosed that he handed over Rs.3,000/- to one Ochu @ Jeyapal – P.W.6, near the wine shop. The amount of Rs.36,450/- [M.O.10] was seized from the appellant for the purpose of further investigation. The appellant was directed to hand over his shirt and his left side shirt pocket was subjected to Phenolphthalein Test and it was observed that the solution turned into Pink Colour and the said solution was marked as M.O.3 and his shirt was marked as M.O.4.

2.9.Thereafter, P.W.12 directed Balachandran, Police Constable, to bring the said Ochu @ Jeyapal – P.W.6, who was near the wine shop and took him to the Bank. He was identified by P.W.2 and he admitted that he received Rs.3,000/- [M.O.9] from the appellant and took out the same from his left side shirt pocket and handed over the same to P.W.12. Thereafter, Phenolphthalein Test was conducted and the solutions, in which P.W.6 had dipped his right and left hand fingers were turned into Pink Colour and the said solutions were marked as M.O.5 and M.O.6 respectively. The independent witnesses were asked to compare the serial numbers of the currency notes produced by P.W.6 with the numbers available in the Entrustment Mahazar and they found that the same were mathcing with the Entrustment Mahazar. P.W.6 was directed to hand over his shirt and the shirt pocket was subjected to Phenolphthalein Test and it was observed that the solution turned into Pink Colour and the said solution was marked as M.O.7 and his shirt was marked as M.O.8.

2.10.Thereafter, P.W.12 – Trap laying Officer handed over further investigation to P.W.15. P.W.15 conducted further investigation and recorded the statement of other witnesses and obtained Ex.P.1 Sanction Order from the sanctioning authority and thereafter, filed a charge sheet against the appellant for the offences punishable under Sections 7 and 13(2) r/w. 13(1)(d) of the Act.

2.11. After perusing the records, the Trial Court framed the following charges against the appellant/accused:-

''<u>Charge No.1</u>

You T.Senguttuvan, S/o.Thiruvarangamoorthy, while working as Clerk-cum-Sheroff, Indian Bank, Uthappanaickanur Branch, Usilampatti Taluk, Madurai District, showed the Withdrawal Slip No.959275 for Rs.45,000/- by making it appear as if it was the amount to be credited/given to Smt.Malar, W/o.Sivasamy, and demanding illegal gratification of Rs.3,000/- on 04.09.2009 for release of the amount and directed Sivasamy, Complainant to pay him the bribe amount before 12.00 Noon on 05.09.2009. You, Senguttuvan accepted the illegal gratification and other than legal remuneration of Rs.3,000/- on 05.09.2009 from Sivasamy at Indian Bank, Uthappanaickanur. You, Senguttavan placed the tainted currency notes in the shirt pocket of Ochu @ Jayapal, who was a by-stander and the bribe amount was recovered from the said Ochu @ Jayapal, S/o.Periyakaruppa Thevar, thereby, you committed an offence punishable under Section 7 of the Act.

Charge No.2:-

You being a Public Servant, on or about the period as stated in the first charge by corrupt or illegal means or by otherwise abusing your official position as a Public Servant obtained for yourself pecuinary advantage to the extent of Rs.3,000/- on 05.09.2009 from Sivasamy for relase of the amount, thereby, you committed an offence punishable under Section 13(2) r/w. 13(1)(d) of the Act.''

2.12.To substantiate the charges levelled against the appellant, the prosecution examined P.Ws.1 to 15 marked 34 documents as Exs.P.1 to P.34 and produced M.Os.1 to 10.

2.13.In order to disprove the case of the prosecution, the appellant did not mark any oral or documentary evidence.

2.14.When the incriminating circumstances against the appellant/accused from the prosecution evidence were brought to his notice under Section 313(1)(b) Cr.P.C., the appellant/accused denied the same as false and he has nothing to do with the disbursement of fraudulent loan and when the same was questioned by the appellant, the bank staff, P.W.2, P.W.7 and P.W.6 and others foisted the case against him. He never demanded and received bribe amount or put any bribe money into the pocket of P.W.6 and he was not present in the Bank on the date of occurrence.

2.15.Upon consideration of the evidence, the learned II Additional District Judge for CBI Cases, Madurai, found that the demand of illegal bribe amount was proved by the evidence of P.W.2, P.W.7 and P.W.8 and acceptance was also proved by M.Os.1 to 10, and convicted the appellant and sentenced him to undergo rigorous imprisonment for a period of one year and also to pay a fine amount of Rs.1,000/-, in default, to undergo rigorous imprisonment for a period of six months under Section 7 of the Act and also rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months under Section 13(2) r/w. 13(1)(d) of the Act.

3.Aggrieved over the said conviction and sentence imposed on him, the appellant has come forward with this appeal.

4.Assailing the findings of the Trial Court, the learned Senior Counsel appearing for the appellant submitted that it is highly improbable that P.W.2 would have thrashed the money into the hands of the appellant for the purpose of disbursing the loan amount. The appellant is not a competent person to disburse the loan amount and P.W.9 - Manager is the competent person for disbursement of loan amount. Though the appellant prepared some papers on 02.09.2009, thereafter, on 03.09.2009, 04.09.2009 and 05.09.2009, he did not attend the Bank. A Photocopy of the Attendance Register, marked as Ex.P.28, is a fabricated one. Even on perusal of Ex.P.28 - Attendance Register clearly reveals that the appellant was in the habit of signing the Attendance Register and the presence was marked only by his Manager, which itself is sufficient to acquit the appellant in the present case. Further, the evidence of P.Ws.2, 6, 7 and 8 are not corroborated each other. The first demand was on 04.09.2009, which itself is impossible, since the appellant did not attend the Bank on the particular date, which is a National Holiday. Even, on 05.09.2009, he did not attend the Bank. However, P.Ws.2 and 7 with the help of P.W.8 and P.W.12 - Trap laying Officer implicated the appellant in the present case. Even P.W.6 - Ochu @ Jeyapal turned hostile. In his cross-examination, he did not implicate the appellant and denied the amount allegedly put by him in his shirt pocket.

5.The learned Senior Counsel appearing for the appellant further submitted that the procedure adopted for registering the case by P.W.12 - Trap laying Officer is illegal. P.W.12 indicate that the appellant came to his Camp Office on 05.09.2009 at 06.30 a.m., whereas P.W.8 - shadow witness, in his evidence, deposed that he and the witness - Narayanan met P.W.12 at 06.00 a.m. and therefore, they were arranged only for the purpose of implicating the appellant in the present false case and therefore, the learned Senior Counsel prays for acquittal of the appellant.

6.The learned Special Public Prosecutor appearing for CBI Cases submitted that the evidence of P.Ws.2, 7 and 8 are cogent and small discrepancy may crept in the evidence. However, depends upon the skill and observation, the witnesses narrated the incident. In the present case, Exs.P.10 to P.12 were prepared by the appellant on 02.09.2009 and thereafter, he only informed P.W.2 with regard to sanction of loan in respect of his wife - P.W.7 and shown Ex.P.4 withdrawal slip, dated 03.09.2009 and demanded Rs.3,000/- from P.W.2 - de-facto complainant. After completing pre-trap procedures, P.W.12 - Trap laying Officer requested P.W.2 and P.W.7 and other witnesses to proceed to the Bank for the purpose of trapping the appellant and thereafter, the appellant was caught red-handed. Further, P.W.14 - Jewel Appraiser, in his evidence, deposed that in Ex.P.4 - Withdrawal Slip, dated 03.09.2009, he has written the account number initially in the space provided in it. However, the appellant/accused striked out the same and re-write another account number in the Withdrawal Slip. The evidence of P.W.14 clearly indicate that Ex.P.4 - Withdrawal Slip was prepared by the appellant/accused and thereafter, it was shown to P.W.2.

7.The learned Special Public Prosecutor further submitted that the evidence of P.Ws.2, 7 and 8 are corroborated each other and the appellant alleges that he has been falsely implicated in this case and he was not present on that day and Ex.P.28 - Photocopy of the Attendance Register was prepared for the purpose of implicating him, which is unsustainable one. It is for the appellant/accused to disprove the prosecution case by producing documentary evidence, such as, Leave Letter or any Medical Certificate to prove that he did not attend the Bank on the particular day. Hence, the evidence of P.W.9 and Ex.P.28 are sufficient to prove that the appellant/accused was present on the said day. Further, P.W.11 - Scientific Expert also gave Ex.P.32 - Chemical Analysis Report stating that M.Os.1 to 3 and 5 to 7 contain Phenolphthalein and Sodium Carbonate, which itself proved that the appellant has received the bribe amount from P.W.2. Further, the reasoning for the conviction are well balanced and warranting no interference by this Court.

8.In support of his submissions, the learned Special Public Prosecutor relied on the decision of the Hon'ble Supreme Court in **State of M.P. and others Vs. Ram Singh** reported in **2000 (5) SCC 88,** wherein at Paragraphs 10 and 11, it has been held as follows:-

> ''10. The Act was intended to make effective provisions for the prevention of bribery and corruption rampant amongst the public servants. It is a social legislation defined to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object. Dealing with the object underlying the Act this Court in **R.S. Nayak vs. A.R. Antulay [1984 (2) SCC 183]** held:
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> > ''18. The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the Court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The court is entitled to ascertain the intention of the Legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the Court to adopt that construction which would advance the object underlying the Act, namely, to make effective provision for the

prevention of bribery and corruption and at any rate not defeat it.''

11. Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and deciding cases under it.''

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

(a) Whether the Trial Court was right in finding the appellant/accused guilty under Sections 7 and 13(2) r/w. 13(1)(d) of the Act and the conviction and sentence of imprisonment warrants any interference?

(b) Whether the appellant/accused was absent on the particular day and any material to show that he was absent on that day?

(c) Whether P.W.1 - Sanctioning Authority is the competent person to accord sanction for prosecution and has applied his mind while according sanction to launch the prosecution against the appellant?

10. The case of the prosecution revolves around the trap witnesses, *viz.*, P.Ws.2, 7 and 8. It is well settled that the evidence of trap witnesses must be tested in the same way as that of any other independent witnesses. The Court has to look into the corroboration before convicting the accused. It is true that the evidence of bribe recovery has to be scrutinized very carefully and it is for the Court to consider and appreciate the evidence in proper manner and decide the question whether the conviction is based upon in those given circumstances. Therefore, the Rule of Law cannot be laid down based on the evidence of the complainant in a bribery case and it should be corrborrated in all material particulars and otherwise, it cannot be acted upon. Whether the corroborration is necessary and if so, to what extent and what should be its nature depends upon the facts and circumstances of the each case.

11.In the light of the above facts and circumstances, the short point to be considered in this case is, whether the appellant has accepted the bribe amount from P.W.2 - de-facto complainant or not.

12.P.W.2 and P.W.7 are the husband and wife. P.W.7 owning certain lands in Pechiamman Kovilpatti. P.W.7 made an application [Ex.P.7] for disbursing loan/subsidy for the purpose of growing Sampangi flower and her loan application was processed by the Assistant Director of Horticulture, Usilampatti. Thereafter, the said application was sent to Indian Bank, Uthappanaickanur Branch and they conducted Field Verification with the assistance of the

Assistant Director of Horticulture, Usilampatti, and issued a certificate to the Chairman/District Collector, District Horticulture Mission Committee, Madurai District on 25.02.2009 and recommended/requested to release the eligible subsidy amount of Rs.45,000/-. Thereafter, on 28.02.2009, the Chairman Horticulture Mission and the District Collector, Madurai, had issued a letter along with pay order for Rs.8,19,310/- with the list of beneficiaries, including P.W.7. In order to prove sanction of loan, P.Ws.3 and 4 were examined as witnesses. In their evidence, P.Ws.3 and 4 deposed that the amount was sanctioned in favour of P.W.7 and it was ready for disbursement. P.W.2 - Sivasamy, in his evidence, deposed that after sanctioning loan, the appellant/accused prepared documents on 02.09.2009 and the same were marked as Exs.P.10 to P.11. The appellant has shown Ex.P.4 - Withdrawal Slip to P.W.2 for sanction of the said subsidy amount and demanded bribe amount of Rs.3,000/- on 04.09.2009. Accordingly, he informed to the CBI, thereby, the CBI deputed P.W.12 - Trap Laying Officer for conducting trap. P.W.12 conducted trap proceedings at the behest of P.W.2. On 05.09.2009 the trap was conducted in the presence of P.W.7, wife of P.W.2 and P.W.8 - shadow witness. The evidence of P.W.2 is clearly corroborated with the evidence of P.W.8, who was present at the scene of occurrence on 05.09.2009.

13.Initially, P.W.2 handed over the bribe amount outside the Bank to the appellant/accused and the appellant received the said amount by his hands and put the same in his shirt pocket. Thereafter, P.W.2, P.W.7 and P.W.8 went to the TASMAC Shop as per the request of the appellant. Though there was no clear live link with regard to the amount transferred to P.W.6 - Ochu @ Jeyapal, the Trap laying Officer conducted Phenolphthalein and Sodium Carbonate Test, which turned into positive as against the appellant/accused. Further, P.W.6 - Ochu @ Jeyapal was also secured immediately and Phenolphthalein and Sodium Carbonate Test was conducted, which also turned into positive and the bribe amount was recovered from P.W.6.

14.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:-
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> > ''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.''

15.On perusal of the above decision, it is settled law that the presumption raised under Section 20 of the Act is rebuttable presumption and that the burden placed on the accused for rebutting the presumption is one of preponderance of probailities. The Hon'ble Apex Court has clearly held that if the accused was possessing the bribe money, it is for him to explain as to how the bribe money has been received by him and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe. In the present case, the evidence on record shows that the appellant has prepared the loan documents *viz.,* Exs.P.10 to P.12 in favour of P.W.7 and the prepartion of Ex.P.4 - Withdrawal Slip was also confirmed by P.W.14 - Jewel Appraiser and the bribe amount was also recovered from P.W.6 and the Phenolphthalein and Sodium Carbonate Test proves that the appellant has received the bribe money and thereafter, he handed over the same to P.W.6 - Ochu @ Jeyapal, who is accompanying with the appellant/accused in the TASMAC Shop and it is for the appellant to disprove the case of the prosecution.

16.In the present case, P.Ws.2, 7 and 8 clearly established that there was a demand on 05.09.2009 at the outside of the Bank and the said amount was also paid to the appellant/accused in the presence of P.W.8 shadow witness. But, the appellant/accused has not offered any explanation to rebut the presumption required under Section 20 of the Act. On the other hand, from the evidence of P.W.2, P.W.7 and P.W.8, it is seen that the demand of bribe amount appears to be natural.

17.The next issue with regard to the presence of the accused on 03.09.2009 to 05.09.2009 in the Bank is concerned, P.W.9 - Manager, Indian Bank, Uthappanaicknaur Branch, in his evidence, has clearly deposed that the appellant was present on the said dates and he marked his presence in the Attendance Register [Ex.P.28]. Perusal of the Photocopy of the Attendance Register [Ex.P.28] shows that the appellant had signed on 01.09.2009 and 02.09.2009. However, P.W.9 - Manager marked the presence of the appellant on 03.09.2009 to 05.09.2009 in the Attendance Register. The said discrepancy was also explained by P.W.9 and he only marked his presence in the above said Attendance Register. Maintaining the Attendance Register is self-code and it has no regulations. When the Attendance Register is certified by P.W.9, it is for the appellant to explain about his absence on the particular dates by producing relevant leave letter or medical certificate. Further, the learned Senior Counsel appearing for the appellant claims that on 04.09.2009 was a national holiday. However, on perusal of the evidence of P.W.9 shows that on 04.09.2009, the then Andra Pradesh Chief Minister passed away and initially, no declaration was made on the said date as holiday and the Bank officials came to the Bank on the said date and signed in the Attendance Register and after declaration of holiday only, they left the Bank. Hence, the argument of the learned Senior Counsel appearing for the appellant is not hold good.

18.The last point to be decided in this appeal is, P.W.1 - Assistant General Manager is the competent person to sanction prosecution against the appellant/accused. In his cross-examination, P.W.1 himself admitted that he has power to accord sanction for prosecution against the appellant. In his sanction order [Ex.P.1], P.W.1 clearly indicates that he is the competent authority to remove the appellant from service and accorded sanction under Section 19(1)(c) of the Act. In support of the sanction order, P.W.1 referred to Ex.P.2 Modification in nomination of Disciplinary Authority, wherein as per Annexure - IV, Column - I, the Assistant General Manager is the competent person for taking disciplinary action and passing punishment in respect of Staffs. It is not disputed that the appellant, who was working as Clerk-cum-Cashier was a Staff. The said modification came into force with effect from 01.04.2009 and the sanction was accorded on 30.11.2009 after the modification came into force. Hence, in view of the above modification, the Assistant General Manager is the competent authority for taking disciplinary action for Staffs. On perusal of Ex.P.1 - Sanction Order shows that P.W.1 has applied his mind while passing the sanction order and sufficient materials have been produced against the appellant.

19.In the present case, the prosecution has placed sufficient materials proving that the appellant demanded bribe amount from P.W.2 - de-facto complainant and the trap was laid and the same was completed successfully and the prosecution has established that the appellant has demanded and accepted the bribe amount for disbursing the subsidy amount. Further, P.W.12 - Trap laying Officer questioned the appellant with regard to the bribe money in the presence of P.W.8, P.W.13 and he clearly deposed that he handed over the bribe amount to P.W.6 and the same was also recovered from P.W.6 and the Phenolphthalein and Sodium Carbonate Test turned into positive. Therefore, the Trial Court has rightly held that the prosecution has proved their case beyond reasonable doubt and the appellant/accused was guilty of the offences stated above. Having gone through the evidence and careful assessment of the evidence of P.Ws.2, 7, 8 and other materials, this Court finds it difficult to come to a different conclusion and the Trial Court has shown extreme leniency to the appellant and imposed minimum punishment and the same does not call for any interference by this Court. Accordingly, the same is confirmed.

20.In the result, this Criminal Appeal is dismissed. The Trial Court is directed to take immediate steps to secure the custody of the appellant/accused to undergo the remaining period of sentence.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS)

To

1.The II Additional District Judge for CBI cases,
Madurai.

2.The Special Public Prosecutor for CBI Cases,
Madurai Bench of Madras High Court,
Madurai.

3.The Inspector of Police,
CBI - ACB, Chennai.
(RC - MAI 2009 A 0049)

4.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai **(2 copies)**.

Judgment made in
Crl.A.(MD)No.211 of 2013
11.03.2019

SMN2

ES/DS/23.04.2019/12P/6C