BAIL SLIP

The Appellants/Accused A1 and A2 namely Jaimanohar and Durai were directed to be released on bail by this Hon'ble Court MP(MD) No.1 of 2013 in Crl A(MD)221 and 231 of 2013 dated 22.7.2013 and 26.07.2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.03.2019

PRONOUNCED ON : 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRIMINAL APPEAL(MD)Nos.221, 231 and 381 of 2013

Jai Manohar .. Appellant/Accused No.1 in Crl.A.(MD)No.221/2013

Durai .. Appellant/ Accused No.2 in Crl.A.(MD)No.231/2013

Vs.

The State Rep. by the
Inspector of Police,
Vigilance and Anti-Corruption Wing,
Tiruchirappalli.
(Crime No.12 of 2002) .. Respondent in Crl.A.(MD) Nos.221 & 231/2013 & Appellant in Crl.A.(MD) No.381/2013/Complainant

A.Loordhu Jeralled Santharajan .. Respondent/Accused No.3 in Crl.A.(MD) No.381/2013

Criminal Appeal (MD)Nos.221 and 231 of 2013 are filed under Section 374 (2) of the Code of Criminal Procedure, against the Judgment of conviction and sentence, dated 08.07.2013, passed in Special Case No.44 of 2011, by the learned Special Judge for trial of cases under Prevention of Corruption Act, Tiruchirappalli.

Criminal Appeal (MD)No.381 of 2013 is filed under Section 378 of the Code of Criminal Procedure, against the Judgment of acquittal, dated 08.07.2013, passed in Special Case No.44 of 2011, by the learned Special Judge for trial of cases under Prevention of Corruption Act, Tiruchirappalli and convict the respondent/ Accused A3 for offence under section 12 of PC Act r/w 201 of Indian Penal Code.

For Appellant in Crl.A.(MD)No.221/2013 : Mr.V.Gopinath Senior Counsel for Mrs.Palani Velayutham

For Appellant in Crl.A.(MD)No.231/2013 : Mr.S.Ramakrishnan for M/s.J.Rajani Devi

For Appellant : Mr.K.K.Ramakrishnan
in Crl.A.(MD)No.381/2013 & Additional Public Prosecutor
For Respondent in Crl.A(MD)
Nos.221 and 231/2013

For Respondent
in Crl.A.(MD)No.381/2013 : Mr.T.Senthilkumar

COMMON JUDGMENT

Criminal Appeal (MD) Nos.221 and 231 of 2013 have been filed under Section 374(2) of the Code of Criminal Procedure, seeking to set aside the conviction and sentence imposed on the appellants/A1 and A2 by the learned Special Judge for Trial of Cases under the Prevention of Corruption Act, Tiruchirappalli, dated 08.07.2013, made in Special Case No.44 of 2011, directing A1 to undergo rigorous imprisonment for a period of one year and also to pay a fine amount of Rs.2,500/-, in default, to undergo simple imprisonment for a period of one month under Section 7 of the Prevention of Corruption Act [hereinafter referred to as ''the Act''] and also rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months under Section 13(2) r/w. 13(1)(d) of the Act; and directing A2 to undergo rigorous imprisonment for a period of 9 months and to pay a fine of Rs.2,500/-, in default, to undergo simple imprisonment for one month for the offence under Section 12 of the Act.

2. Though, originally, there are three accused in this case, the Trial Court convicted A1 and A2 as stated above, but acquitted A3, against which, the State has preferred Criminal Appeal (MD) No.381 of 2013 under Section 378 of the Code of Criminal Procedure.

3. Since all the appeals arise out of the judgment dated 08.07.2013, made in Special Case No.44 of 2011, they are heard together and disposed of by this common Judgment.

4. For the sake of brevity, the parties hereinafter are referred to as per their litigative status before the Trial Court.

5.1. The events leading to the filing of these appeals, briefly stated, are that, on 15.05.2002 when P.W.2 - de-facto complainant was proceeding from Trichy to Chennai, in his Maruti Omni Van, bearing Registration No.TN-07-L-4338, after worshipping the deities in Trichy, near T.V.S. Tollgate, a Lorry bearing Registration No.TMS-3429 came in the opposite direction and dashed against the said Maruti Omni Van. Due to the said impact, P.W.2 suffered an injury in his right hand and his children *viz.*, Mathivanan and Kalaiselvi also sustained injuries. Therefore, he lodged a complaint before the Traffic Wing, Cantonment Police Station, Trichy, which was registered as Crime No.163 of 2002 by

P.W.5 - Kanagasabai, Head Constable, attached with Cantonment Traffic South, Trichy, and the file pertaining to that case is Ex.P.13. Thereafter, P.W.5 sent a requisition letter under Ex.P.2 on the next day to inspect the vehicle to the Motor Vehicle Inspector Gr.II at Mannarpuram, Trichy, through P.W.2. P.W.2 went to the Regional Transport Office, Mannarpuram, and met the first accused between 03.30 p.m. and 04.00 p.m. P.W.2 also brought the driving licence, R.C. Book along with the said letter. At that time, the first accused inspected the Autos at the outside of the Regional Transport Office and after handing over Ex.P.2 with him by P.W.2, he opened the cover and perused the letter and demanded a sum of Rs.1,000/- to inspect the vehicle and to issue the Certificate.

5.2. P.W.2 refused to pay the amount for which, A1 said, without any payment, no work could be done. Thereafter, P.W.2 said to A1 that he will think it over and come again. P.W.2 was not willing to pay any bribe and on 17.05.2002 approached the Office of the Inspector of Police, Vigilance and Anti Corruption Wing, Tiruchirappalli [P.W.10] and lodged a complaint [Ex.P.5], complaining the demand of bribe by A1. Based on the said complaint, the Inspector of Police, Vigilance and Anti Corruption Department, Tiruchirappalli [P.W.10] registered an F.I.R. [Ex.P.16].

5.3. After registering the F.I.R. [Ex.P.16], the Investigating Officer [P.W.10] prepared two trap witnesses, *viz.*, (i) P.Duraisamy [P.W.3], who was working as Junior Engineer, Office of the Assistant Executive Engineer, Cauvery Command Area Development Programme - I, Trichy, and (ii) Jagadeesan, who was working as Stamping Inspector of Labour Department, and introduced them to P.W.2. Both the trap witnesses were also permitted to read the complaint [Ex.P.5] and the F.I.R. [Ex.P.16] and also ascertained the correctness of the same with P.W.2. Thereafter, P.W.10 made preparations for trapping.

5.4. P.W.10 received Rs.1,000/- in Rupees Hundred denomination from P.W.2 and demonstrated the Phenolphthalein test by coating Phenolphthalein powder on those currency notes through one Srinivasan, Police Constable and explained the significance of the same and for that demonstration, an Entrustment Mahazar [Ex.P.7] was prepared and the numbers of the currency notes were entered in it. Thereafter, P.W.10 instructed P.W.2 to go and meet A1 at his Office and P.W.2 was required to hand over Ex.P.2 requisition letter with A1 and pay him if demanded and give pre-arranged signal to the trap squad immediately, for the said acceptance. Thereafter, P.W.2 and the trap witness P.W.3 went to the Office of A1 in the Maruti Car of P.W.2 and P.W.10 and the said Jagadeesan and the raiding party went in two Government vehicles. P.W.2 and P.W.3 stopped the vehicle before 500 feet from the R.T.O. Office and alighted from the vehicle. P.W.2 and P.W.3 went inside the Office room of A1 at 4.30 p.m. A1 was not available in his seat. On enquiry, they came to know that A1 was in the computer room. Therefore, they came out and waited for the arrival of A1 to his seat. They were enquired by P.W.10 about the happening and they informed the same. A1 came to his seat around 05.30 p.m. Immediately, P.W.2 and P.W.3 went nearer to him and at that time, four to five persons were available there.

5.5. After seeing P.W.2, A1 enquired with him as to why he was late. He also enquired about P.W.3 with P.W.2 for which, he said P.W.3 is his father and also said since the money has to be brought from Chennai, it was late. P.W.2 handed over Exs.P.2, P.3 and P.4 with A1; he opened and perused the same. Thereafter, he enquired with P.W.2 as to what happened to his demand for which, P.W.2 said that he brought the demanded sum of Rs.1,000/- and took out the same from his pocket. Thereafter, A1 came out and inspected the vehicle and taken notes [Ex.P.8] on the back side of Ex.P.2 and returned to his seat. Thereafter, he called a person, by name Durai/A2 and he came there and A1 instructed P.W.2 to hand over the money with A2 and in turn, P.W.2 handed over the Phenolphthalein coated currency notes of Rs.1,000/- with A2. The same was received by him and after counting the same, he asked P.W.2, how much money is available, for which, P.W.2 said Rs.1,000/-. A2 told that for the accident case, this much of amount will not be received normally. In the meantime, A1 was completing the writing of documents related to the vehicle of P.W.2. A2 after counting the money, kept the same in his pocket. When P.W.2 and P.W.3 were about to come out, A2 called a person, by name Santharaj/A3. A2 handed over a sum of Rs.300/- *i.e.*, three 100 Rupees currency notes and asked him to share the same with the officials working in the Office. A3 received the same. P.W.2 and P.W.3 came out from the Office and gave the pre-arranged signal.

5.6. Immediately, P.W.2, P.W.3, P.W.10, the raiding party and the other official witness went inside the Office. A1 to A3 were identified by P.W.2 to P.W.10. Thereafter, P.W.10 introduced himself and also introduced the witnesses to A1 and A2. He prepared two separate Sodium Carbonate liquids and required A2 to dip his fingers separately. When he dipped his fingers separately, the same were turned into Pink colour and the solution in which the right hand fingers of A2 dipped was collected in a bottle M.O.2 and the solution in which the left hand fingers of A2 dipped was collected in a bottle M.O.3 and then, P.W.10 recovered M.O.1 series Rs.700/- *i.e.*, 7 Hundred Rupees currency notes from A2 and then, his Shirt [M.O.5] was recovered and the pocket portion was subjected to Phenolphthalein test in a separate Sodium Carbonate liquid and the same also turned into a Pink Colour and was collected in a bottle M.O.4.

5.7. Thereafter, P.W.10 prepared Seizure Mahazar under Ex.P.9 and recovered M.O.1 to M.O.5 and also recovered four Mobile Phones under M.O.6. P.W.10 also prepared Observation Mahazar [Ex.P.10] and Rough Sketch [Ex.P.17]. He also searched the residence of A1 and recovered a sum of Rs.23,000/- and prepared search list under Ex.P.11. P.W.10 recovered a total sum of Rs.61,460/- from various persons at the R.T.O. Office and also the money lying on the ground, including the amount of Rs.23,000/- recovered by him from the house of A1. He also searched the residence of A2 and prepared Ex.P.12. Thereafter, A1 and A2 were arrested.

5.8. Thereafter, P.W.11 - Govindasamy, the then Inspector of Police took up the case for further investigation. He examined the witnesses, P.W.1, P.W.2, Jagadeesan, Mathivanan, Kalaiselvi and P.W.4 - Kumaran, Motor Vehicle Inspector Gr.II, who was working along with A1 during the relevant point of time and also examined P.W.8 - Arockiyaraj, who was present at the R.T.O. Office during the trap proceedings and witnessed the receipt of Rs.700/- M.O.1 series by A2 from P.W.2 and Rs.300/- from A2 by A3. P.W.11 also sent M.O.2, M.O.3 and M.O.4, for chemical examination and the same were analyzed at the Forensic Science Laboratory at Chennai by P.W.9 - Smt.Vishalakshi, Scientific Assistant and they found Phenolphthalein and Sodium Carbonate in the said solutions and they issued Chemical Examination Report under Ex.P.15. The requisition for chemical analysis from P.W.11 is Ex.P.18. Thereafter, P.W.11 also examined P.W.5 - Kanagasabai, Head Constable, P.W.6 - Mohammed Shakir, Superintendent of R.T.O. Office, P.W.7 - A.A.Kadhar Mohideen, who hold the additional charge of the R.T.O. Office at Mannarpuram and received Ex.P.14 Diary maintained by A1, wherein the entries reveal that on 16.05.2002 between 03.30 p.m. and 05.30 p.m., A1 inspected the autos. P.W.11 examined A1, A2 and A3 and recorded their statements and also examined the other list of witnesses. Thereafter, he received sanction order Ex.P.1 to prosecute A1 and examined P.W.1 - Ramalingam, the then Commissioner, Transport Corporation and recorded his statement and after completion of the investigation, he laid the final report against the accused.

5.9. After perusing the records, the Trial Court framed the following charges against the accused:-

> ''Charge Nos.1 and 2 - [Against A1]
>
> You Jai Manohar [A1] while working as Motor Vehicle Inspector Gr.II, Mannarpuram, Trichy, demanded a sum of Rs.1,000/- as bribe from P.W.2 - de-facto complainant on 16.05.2002 at his Office as illegal gratification to inspect the Maruti Omni Van of P.W.2, which met with an accident, thereby, committed an offence punishable under Section 7 of the Act; and received the above said amount on 17.05.2002 at 17.45 hours at R.T.O. Office, Trichy, thereby, committed an offence punishable under Section 13(2) r/w. 13(1)(d) of the Act.
>
> Chare No.3 - [Against A2]
>
> You Durai [A2] while working as Tout [Broker] in the RTO Office had abetted the criminal misconduct of A1 and received the said bribe amount, thereby, committed an offence punishable under Section 12 of the Act.
>
> Charge No.4 - [Against A3]
>
> You A.Loordhu Jeralled Santharajan [A3] while

working as Tout [Broker] in the RTO Office, at the instigation of A1, ran away with Rs.300/-, a part of tainted amount and thrown away the same, thereby, you attempted to hide a part of crime committed by A1, thereby, committed an offence punishable under Section 12 of the Act r/w. Section 201 I.P.C.''

5.10. To bring home the guilt against the accused, the prosecution examined 11 witnesses as P.Ws.1 to 11 and marked 18 documents as Exs.P.1 to P.18 and also marked M.O.1 to M.O.6.

5.11. The incriminating circumstances against the accused from the evidence of the prosecution witnesses were brought to the notice of the accused as per Section 313(1)(b) Cr.P.C. and they denied the same as false.

5.12. In order to disprove the case of the prosecution, on the side of the accused, D.Ws.1 to 3 were examined and Exs.D.1 to D.4 were marked.

5.13. The learned Special Judge for trial of cases under the Prevention of Corruption Act, by judgment dated 08.07.2013, in Special Case No.44 of 2011, rejected the defence of A1 and A2 and convicted A1 for the offences punishable under Sections 7 and 13(2) r/w. 13(1)(d) of the Act and sentenced him with rigorous imprisonment for a period of one year with a fine amount of Rs.2,500/-, in default, to undergo simple imprisonment for a period of one month for the offence punishable under Section 7 of the Act, and with rigorous imprisonment for three years with a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months for the offence punishable under Section 13(2) r/w. 13(1)(d) of the Act, and both the sentences were ordered to run concurrently; and convicted A2 for the offence punishable under Section 12 of the Act and sentenced him with rigorous imprisonment for a period of 9 months with a fine of Rs.2,500/-, in default, to undergo simple imprisonment for one month; and acquitted A3 under Section 248(1) Cr.P.C.

6. Against the said conviction and sentence imposed on A1 and A2, they filed Crl.A.(MD)Nos.221 and 231 of 2013 respectively, and as against the acquittal of A3, the State has preferred Crl.A.(MD) No.381 of 2013.

7. Mr.V.Gopinath, learned Senior Counsel appearing for A1 submitted that the charges framed by the Trial Court are not clear and the Trial Court has not framed any specific charge against the accused persons. The Trial Court framed charges against A1 under Sections 7 and 13(2) r/w. 13(1)(d) of the Act and the prosecution did not establish initial demand of bribe amount by A1 from P.W.2. The accident was happened on 15.05.2002 and P.W.2 met A1 for the first time at the R.T.O. Office on 16.05.2002, while he was inspecting the vehicles outside the R.T.O. Office and the alleged demand was also at the same place and date, whereas, 161(3) Cr.P.C. Statement recorded by the Investigating Officer discloses that the

complainant had met A1 on 15.05.2002 and the alleged demand was also on 15.05.2002. According to the complaint and the statement before the Trap laying Officer, the complainant had met A1 only at the Office and not outside the Office, while he was inspecting the vehicles as deposed. Further, the basic requirement for preparation of Accident Report is R.C. Book. However, P.W.2 - de-facto complainant did not produce the relevant documents on the said date, thereby, A1 refused to issue the Certificate and directed him to meet with all relevant documents. Since P.W.2 is highly political personality, taking that advice as prestigious, decided to lodge a false complaint against A1 before P.W.10 - Trap laying Officer.

8. The learned Senior Counsel further submitted that in order to prove an offence under Section 7 of the Act, two essential ingredients are required to be established by the prosecution. The first is demand or gratification in consideration of doing some favour, and secondly, acceptance of gratification by the person, who demanded and unless the demand is properly explained by the prosecution, the accused will be entitled to benefit of doubt. Further, the evidence of P.W.2 - de-facto complainant, P.W.3 - shadow witness and P.W.10 - Trap laying Officer are not corroborated each other. P.W.2 - de-facto complainant, in his evidence, deposed that he and P.W.3 reached the R.T.O. Office on 17.05.2002 at 4.30 p.m., at that time, A1 was not available in the seat and he was in the computer room and therefore, they were waiting for about one hour and thereafter, at 05.30 p.m., A1 came to his seat and he did not demand any money from P.W.2. Immediately, on seeing P.W.2, A1 went outside the R.T.O. Office and inspected the vehicle. After completion of inspection, P.W.2 handed over the money to A1. However, A1 refused to receive the said money and directed him to hand over it to A2. The evidence of P.W.2 is not cogent and the live link with regard to demand and acceptance of bribe amount is missing and the evidence of P.W.5 is not corroborated with the evidence of P.W.2. Further, P.W.2 - de-facto complainant and P.W.3 - shadow witness clearly deposed that in the room, only four persons were present at the time of handing over the tainted money to A2 and no other persons were available. However, later on, they implicated A3 in the present case, when P.Ws.2 and 5 categorically deposed that only four persons were available in the room, including A1, A2, P.W.2 and P.W.3 and there is no proper explanation for the availability of fifth person/A3 at the scene of occurrence. Accordingly, the Trial Court rightly acquitted A3, which is bearing on A1 and A2 and the prosecution has not established their case beyond all reasonable doubts.

9. The learned Senior Counsel further submitted that the initial burden lies upon the prosecution to establish the prosecution case and it is the duty of the accused to rebut the said presumption thereafter. Unless the prosecution has not established their case, the rebuttable presumption does not arise. In the present case, the prosecution did not establish the initial demand and in the absence of demand of bribe amount, there is no acceptance of bribe of amount by A2.

10. The learned Senior Counsel further submitted that the Trial Court convicted the accused apart from the evidence of P.Ws.2 and 3, the evidence of P.W.8 also. However, at the time of trap proceedings, the presence of P.W.8 in the R.T.O. Office, was not revealed by anybody and he could not have witnessed the incident and the prosecution has to establish how they examined P.W.8 and in the present case, in order to implicate A1, the prosecution produced P.W.8 to fill up the *lacuna* in the evidence of P.Ws.2 and 5.

11. The learned Senior Counsel also submitted that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and a presumption would arise under Section 20 of the Act. In the present case, all that is established by the proseuction was the recovery of money from A2 and mere recovery of money was not enough to draw the presumption under Section 20 of the Act. Therefore, the learned Senior Counsel prayed for setting aside the conviction and sentence imposed by the Trial Court on A1.

12. To buttress his submissions, the learned Senior Counsel has relied upon the following decisions rendered by Hon'ble Apex Court.

(i) **Panalal Damodar Rathi Vs. State of Maharashtra** reported in **1979 Cri.L.J. 936 : AIR 1979 SCC 1191**, wherein at Paragraph 11, it has been held as follows:-

> ''11.We are conscious of the fact that both the trial court as well as the appellate 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 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 (2) SCC (Cri) 1010 : 2011 (6) SCC 450**, wherein at Paragraphs 8 to 12, it has been held as follows:-

''8.This Court finds that the appreciation of the ratio in *Panalal Damodar Rathi case [1979 (4) SCC 526 : 1980 SCC (Cri) 121]* by the High Court was correctly made in the facts and circumstances of the case.

9.Apart from that, Mr.P.P.Rao, learned counsel for the respondent has drawn attention of this Court to some other pronouncements of this Court on the relevant question.

10. In *C.M. Girish Babu Vs. CBI [2009 (3) SCC 779 : 2009 (2) SCC (Cri) 1]*, this Court while dealing with the case under the Prevention of Corruption Act 1988, by referring to its previous decision in *Suraj Mal Vs. State (Delhi Admn.) [1979 (4) SCC 725 : 1980 SCC (Cri) 159]* 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 SCC para 18)

11.In a subsequent decision of this Court also under the Prevention of Corruption Act, in *A.Subair Vs. State of Kerala [2009 (6) SCC 587 : 2009 (3) SCC (Cri) 85]*, 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 and 19 which are quoted below:-

> ''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.''

12.Those observations quoted above are clearly applicable in this case. In the context of those observations, this Court in SCC paragraph 28 of A. Subair (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. In view of the aforesaid settled principles of law, we find it difficult to take a view different from the one taken by the High Court.''

(iii) **V.Sejappa Vs. State, By Police Inspector, Lokayukta, Chitradurga**, reported in **2017 (3) SCC (Cri) 699 : 2016 (12) SCC 150**, wherein at Paragraph 18, it has been held as follows:-

''18.It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and a presumption would arise under Section 20 of the Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of the Act.''

13. The learned counsel appearing for A2 submitted that A2 did not receive any amount from P.W.2 - de-facto complainant and the said amount has fallen on the floor from the shirt pocket of P.W.2 and A2 collected the said money and handed over the same to P.W.2. Thereafter, P.W.2 left the R.T.O. Office and implicated him in the trap proceedings. In the present case, there is no demand by A2 and the demand and acceptance are not proved. A2 never demanded and accepted any money from P.W.2 and simply, he came to the R.T.O. Office for obtaining a fancy number for his two-wheeler and the Law Enforcing Agency falsely implicated him in the present case. After elaborate trial, the Trial Court has rightly acquitted the similarly placed person *viz.*, A3 and A2 is also similarly placed person, like that of A3 and therefore, the acquittal of A3 will have bearing on

A2. He further submitted that mere recovery of money from A2 is not sufficient to prove that A2 accepted the bribe amount on behalf of A1. Hence, implicating A2 under Section 12 of the Act, in the present case, is not legally sustainable and accordingly, he prayed for acquittal of A2.

14. The learned Additional Public Prosecutor appearing for the State submitted that in the present case, the initial burden lies upon the prosecution and they established that there was a demand by A1 from P.W.2 - de-facto complainant, for inspecting his damaged vehicle. Admittedly, on 16.05.2002, P.W.2 met A1 in his Office, for inspection of his vehicle and he brought all the relevant records including the R.C. Book, Diriving licence and Insurance Policy. However, A1 demanded Rs.1,000/- from the de-facto complainant. Thereafter, P.W.2 lodged a complaint against A1 before P.W.10. P.W.10 after completion of trap laying procedures, gave the Phenolphthalein dusted currency of Rs.1,000/- to P.W.2 with a direction to give it to A1 on demand of bribe. Accordingly, P.W.2 and the other witnesses went to the Office of A1 and when P.W.2 tried to hand over the tainted currency notes to A1, A1 directed him to hand over the money to A2, and thereafter, P.W.2 handed over the said money to A2 and A2, in turn, handed over Rs.300/- to A3 and A3 received the said amount and thrown away the same in order to hide the part of the crime committed by A1 and thereafter, the accused were caught red-handed and A2 was subjected to Phenolphthalein Test, which turned into positive, which itself is sufficient to discharge the initial burden lies upon the proseuction. Further, the evidene of P.Ws.2, 5 and 10 are corroborrated each other in respect of receiving the bribe amount by A2 on behalf of A1.

15. Insofar as the contention of the learned Senior Counsel with regard to examination of P.W.8 is concerned, the learned Additional Public Prosecutor submitted that even in the absence of P.W.8, the evidence of P.W.2 - de-facto complainant and P.W.3 - shadow wintess are clearly corroborrated each other and at the instigation of A1, A2 received the bribe amount and the same was proved by Phenolphthalein Test. After considering the elaborate arguments advanced by learned counsel for the parties, the Trial Court convicted A1 and A2, which need not be interfered with.

16. Insofar as A3 is concerned, the learned Additional Public Prosecutor appearing for the State submitted that there is no circumstance to disbelieve the evidence of P.Ws.2, 3 and 10. The contradiction between the evidence of P.W.2 and the other witnesses about the presence of A3 after arrival of P.W.10 Trap laying Officer in the Office of A1, did not affect the prosecution case, for the reason that, P.Ws.2 and 3 in their evidence, clearly stated about the presence of A3 in the scene of occurrence and in the cross-examination, nothing has been elicited to disbelieve and discard the evidence of P.Ws.2 and 3 in respect of the presence of A3 and apart from that, A2 has clearly stated that in Ex.P.9 - Mahazar, the

remaining amount of Rs.300/- was handed over to A3 and the same was admissible under Sections 8 and 27 of the Indian Evidence Act. On the basis of the said admissible portion, the prosecution has taken steps to secure the accused and A3 himself surrendered before the Special Court. In the said circumstances, framing of charge against A3 under Section 12 of the Act r/w. 201 IPC is legally sustainable and the Trial Court without considering the above aspects and by considering the irrelevant contradiction and discrepancy between the evidence of P.W.8 and P.W.10, erroneously acquitted A3. Further, the evidence of P.W.8 cannot be doubted, because of non-disclosure of his availability in the Office of A1. Perusal of cross-examination of P.W.8 reveals that he had frequent contacts with the Office of A1 and therefore, his evidence gives credence and there was abundant material to convict A3 under Section 12 of the Act. The prosecution has clearly proved their case beyond reasonable doubt and therefore, he prayed for conviction.

17. The learned Additional Public Prosecutor also submitted that since A2 received the bribe amount from P.W.2 as directed by A1 and A3 who was available on the scene of occurrence, caused disappearance of the evidence of offence, for which, he was implicated in the present case. The commission of offence in respect of A3 is clearly established by the prosecution.

18. In support of his submissions, the learned Additional Public Prosecutor relied on the judgment of the Hon'ble Supreme Court reported in **1975 (2) SCC 570 [Kodali Purnachandra Rao and another Vs. Public Prosecutor, Andra Pradesh]**, wherein at Paragraph 16, it has been held as follows:-

> ''16.In order to bring home an offence under Section 201, Penal Code the prosecution has to prove:
>
> (1) that an offence has been committed;
>
> (2) that the accused knew or had reason to believe the commission of such offence;
>
> (3) that with such knowledge or belief he
>
> (a) caused any evidence of the commission of that offence to disappear, or
>
> (b) gave any information respecting that offence which he then knew or believed to be false;
>
> (4) that he did so as aforesaid, with the intention of screening the offender from legal punishment;
>
> (5) if the charge be of an aggravated form, as in the present case, it must be proved further that the offence in respect of which the accused did as in (3) and (4), was punishable with death, or with

imprisonment for life or imprisonment extending to ten years.''

19. The learned counsel appearing for the respondent in Crl.A.(MD)No.381 of 2013 / A3 submitted that the evidence of P.W.2 - de-facto complainant is not cogent and the evidence of P.W.5 is not corroborated with the evidence of P.W.2. Further, P.W.2 - de-facto complainant and P.W.3 - shadow witness clearly deposed that in the room, only four persons were present at the time of handing over the tainted money to A2 and no other persons were available. However, later on, they implicated A3 in the present case, when P.Ws.2 and 5 categorically deposed that only four persons were available in the room, including A1, A2, P.W.2 and P.W.3 and there is no proper explanation for the availability of fifth person/A3 at the scene of occurrence. Accordingly, the Trial Court rightly acquitted A3, which does not warrant interference by this Court and therefore, the learned counsel prayed for dismissal of the Criminal Appeal.

20. In the light of the above said submissions, now, it has to be analyzed that whether the prosecution has proved their case beyond reasonable doubt?; and whether the order of acquittal acquitting A3, is perverse and liable to be interfered with?

21. In the present cases, the crucial evidence for deciding the appeals are P.Ws.2, 3, 5, 8 and 10. P.W.2 - Shanmughaanantham, in his evidence has deposed that on 15.05.2002, he met with an accident and lodged a complaint before the Traffic Wing, Cantonment Police Station, Trichy, which was registered as Crime No.163 of 2002 by P.W.5. Thereafter, P.W.5 sent a requisition letter under Ex.P.2 on the next day to inspect the vehicle to the Motor Vehicle Inspector Gr.II at Mannarpuram, Trichy, through P.W.2. P.W.2 went to the Regional Transport Office, Mannarpuram, and met A1 and handed over Ex.P.2 to A1, who opened the cover and perused the letter and demanded bribe amount of Rs.1,000/- to inspect the vehicle and to issue the Certificate. When P.W.2 refused for payment of bribe, A1 would state that without bribe amount, no work could be done. As P.W.2 was not willing to pay any bribe amount to A1, he lodged a complaint [Ex.P.5] before P.W.10, against A1, based on which, P.W.10 registered an F.I.R. [Ex.P.16].

22. After completion of trap laying procedures, P.W.10 gave the Phenolphthalein coated currency of Rs.1,000/- to P.W.2 to give it to the same to A1 on demand of bribe. Thereafter, P.W.2 and P.W.3 went to the Office room of A1 at 4.30 p.m and A1 was not available in his seat and he was in the computer room. Therefore, they were waiting for the arrival of A1 to his seat and he came back to the seat around 05.30 p.m. P.W.2 and P.W.3 approached A1, who enquired him as to why he was late and also enquired about P.W.3, for which, PW2 replied that PW3 is his father and since the money has to be brought from Chennai, it was late. P.W.2 handed over Exs.P.2, P.3 and P.4 with A1, who opened and perused the same. Thereafter, on the demand of A1, PW2 gave the alleged Phenolphthalein currency notes of Rs.1,000/- to A1, who instructed P.W.2 to hand over the money to A2

and accordingly, PW2 handed over money to A2, who received the same and after counting, he kept the same in his shirt pocket and said that for the accident case, this much of amount will not be received normally. In the meantime, A1 was completing the writing of documents related to the vehicle of P.W.2. Thereafter, A2 called A3 and handed over Rs.300/- *i.e.,* three 100 Rupees Phenolphthalein currency notes and asked him to share the same with the officials working in the Office and thereafter, A2 was caught red-handed and he was subjected to Phenolphthalein Test, which turned into positive. Thereafter, P.W.10 recovered a sum of Rs.61,460/- from various persons and also the money lying on the ground, including the amount of Rs.23,000/- recoverd from the residence of A1 and further investigation was proceeded with. After examining the evidence, scrutinizing the documents and seized material objects, final report was laid against the accused for the offences stated above.

23. Now, it is necessary to compare the evidence of P.W.2 with the evidence of P.W.3 - shadow witness. On perusal of the evidence of P.Ws.2 and 3, it is seen that the same are corroborated each other, line by line, and there is no variation in between them. It is a settled law that demand of illegal gratification is *sine qua non* for consideration of offence under the provisions of the Act, for arriving at a conclusion as to whether all ingredients of an offence, *viz.,* demand, acceptance and recovery of illegal gratification have been satisfied or not. The Court must take into consideration the facts and circumstances brought on record in entirety. Equally, it is also settled law that presumption laid down in Section 20 of the Act has also to be taken into consideration and the prosecution has to establish all the ingredients as stated above and it is for the accused to rebut the presumption and disprove the prosecution case.

24. Keeping the above view in mind, this Court has to consider the argument of the learned Senior Counsel appearing for A1 with regard to the evidence of P.Ws.2 and 3. The said evidence are corroborated each other, line by line. Hence, it is the duty of the accused to disprove the prosecution case. In order to disprove the prosecution case, the learned Senior Counsel appearing for A1 referred to two evidences, *viz.,* P.W.8 and D.W.1.

25. The core argument of the learned Senior Counsel appearing for A1 is, the presence of P.W.8 at the time of trap proceedings, not revealed either by P.W.2 or by P.W.3 or by P.W.10 - Trap laying Officer. However, the Investigating Officer cited P.W.8 as one of the witnesses, which is not acceptable and the Trial Court arrived at a conclusion, mainly based on the evidence of P.W.8, who in his evidence indicates that he was running Travels in Karumandapam, Trichy and very often, he used to visit Mannarpuram R.T.O. Office and he found that A2 and A3, who were working in the Office as

Touts, received bribe amount. In order to identify A2 and A3, the prosecution examined P.W.8. However, the evidence of P.W.8 may be useful for implicating A3 in this case.

26. The demand and acceptance are clearly established by the prosecution through the evidence of P.Ws.2 and 3. However, in respect of A3, his name was not found either in the Entrustment Mahazar or in the initial complaint.

27. In **Kodali Purnachandra Rao's** case [supra], the Hon'ble Apex Court has clearly held that it is the duty of the prosecution to establish that the accused intensively screen the offence committed by them. P.W.2, in his cross-examination, clearly deposed that during the trap proceedings, only four persons were available, including P.W.3 - shadow witness, A1 and A2. Similarly, P.W.3, in his cross-examination, categorically deposed that at the time of entering into the room of A1, A3 was not available and he was not identified to the Trap laying Officer. Further, he categorically deposed that A3 was not available at the time of trapping A1 and no evidence was available that A2 informed A3 to distribute Rs.300/- to others working in the Office. Equally, P.W.10, Trap laying Officer, in his evidence has clearly deposed that he did not mention the name of A3 in the enquiry and he did not find A3 at the time of trapping A1 and A2. So, all the three evidences clearly corroborated each other in respect of non-presence of A3 in the scene of occurrence. Further, it is relevant to mention here that the order of acquittal need not be interfered with in a mechanical manner, unless the order is perverse and when there are compelling reasons for such interference. Hence, this Court is not inclined to interfere with the judgment of acquittal passed in respect of A3.

28. The learned Senior Counsel appearing for A1 submitted that A1 refused to give the certificate on the ground that P.W.2 did not produce relevant documents for preparing Inspection Report. On the contrary, the prosecution established that the R.C. Book and the relevant documents were produced by P.W.2 when he met A1 on 16.05.2002. Further, perusal of the record shows that P.W.2 produced all the relevant documents before A1. Hence, the argument of the learned Senior Counsel does not hold good. Even on perusal of Ex.P.17 Rough Sketch, it is seen that there are four Motor Vehicle Inspector's tables available opposite to computer room and nearby, there is a Hall. Therefore, it is possible that P.W.3 - shadow witness can accompany with P.W.10 without any hindrance. Hence, the suspicion as claimed by the learned Senior Counsel, is not correct and the prosecution has established their case in respect of A1 and A2 beyond all reasonable doubts.

29. Insofar as the demand and acceptance are concerned, the demand and acceptance of bribe amount are proved by the evidence of P.Ws.2 and 3. Further, the acceptance is also proved through Chemical Analysis Report. During the chemical analysis, Phenolphthalein and Sodium Carbonate were detected in the solution.

Recovery of the amount coupled with evidence of P.Ws.2 and 3 is a formidable incriminating evidence against A1 and A2 and the prosecution has proved their case against them beyond all reasonable doubts.

30. In the result, these Criminal Appeals are dismissed, confirming the judgment passed by the learned Special Judge for Trial of Cases under the Prevention of Corruption Act, Tiruchirappalli, dated 08.07.2013, in Special Case No.44 of 2011. Since the appellants in Crl.A.(MD)Nos.221 and 231 of 2013 / A1 and A2 are on bail pending appeals, the Trial Court as well as the Investigating Officer shall take necessary and expeditious steps to secure the custody of the appellants/A1 and A2 to undergo the remaining period of sentence. The bail bond, if any, executed by them stands cancelled.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Special Judge for trial of cases
under Prevention of Corruption Act,
Tiruchirappalli.

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

3.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

4.The Inspector of Police,
Vigilance and Anti Corruption wing,
Tiruchirappalli.

+1cc to Mr.T.SENTHIL KUMAR, Advocate, SR.No.53826
+1cc to Mr.S.PALANI VELAYUTHAM, Advocate, SR.No. 54127

CRIMINAL APPEAL(MD)Nos.221, 231 and 381 of 2013
14.03.2019

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RK/SAR-/22.03.2019/16P-8C