Bail Slip

S.Nagoor Hussain Mohaideen, Appellant/Accused No.1, S/o.Syed Abbas, aged about 62, was released on Bail as per of this Court order dated 28.10.2013 made in MP(MD).No.1 of 2013 in CRL A (MD).NO.318 of 2013.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.03.2019
PRONOUNCED ON : 04.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A.(MD)No.318 of 2013

S.Nagoor Hussain Mohaideen ... Appellant / Accused No.1

-Vs-

State represented by
The Inspector of Police,
Vigilance and Anticorruption,
Thoothukudi,
(Crime No.5/2006) ... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to admit this appeal on file and call for the records in Special Case No.8 of 2007 on the file of the learned Assistant Sessions Judge Cum Chief Judicial Magistrate cum Special Judge, Thoothukudi and set aside the judgment and conviction passed on 07.10.2013 and acquitting the appellant.

For Appellant : Mr.Mubarak Ahamad,
for M/s. S.Ahamad Associates.
For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

JUDGMENT

This appeal is directed against the judgment in Special Case No.8 of 2007 on the file of the learned Assistant Sessions Judge Cum Chief Judicial Magistrate cum Special Judge, Thoothukudi, dated 07.10.2013.

2.For the sake of convenience, the parties are referred to as per the rank in the trial Court.

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3.The brief facts of the prosecution case are as follows:

(i)the first accused was working as Junior Assistant in Thoothukudi Municipal Office during the period from 22.06.1994 to 21.09.2006. P.W.2 defacto complainant was working as an Office Assistant in Thoothukudi Municipality and had retired from service on 30.06.1997. The first accused, who was dealing with the work of payment of pension and other benefits to the retired employees of Thoothukudi Municipality, falsely informed the defacto complainant that he was still eligible to get retirement benefit arrears to the tune of Rs.10,311/- (Rupees Ten Thousand Three Hundred and Eleven Only). Thereafter, the defacto complainant often met the accused and requested him to make arrangement for payment of Rs.10,311/-. On 20.09.2006 at about 01.30 p.m., at Thoothukudi Municipal Office, the defacto complainant met the accused and enquired about his arrears to be paid to him. On the same day, the accused had demanded a sum of Rs.500/- from the defacto complainant as illegal gratification for disbursement of the pension arrears.

(ii)Since P.W.2 is not willing to give the bribe amount, he gave a oral complaint in Thoothukudi Vigilance and Anticorruption Office and his oral complaint was reduced into writing and a case was registered in Crime No.05 of 2006 for the offence under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred as 'the Act') by P.W.13, Inspector of Police, Vigilance and Anticorruption, Thoothukudi.

(iii)Thereafter, P.W.13 arranged for official witnesses and they were introduced to P.W.2 and they perused the First Information Report and verified the genuineness of the complaint with P.W.2. Then, P.W.2 produced the bribe amount of Rs.500/-, containing 5 hundred rupee currency notes M.O.1 series. Then, P.W.13 demonstrated the sodium carbonate solution and phenolphthalein test to the said witnesses and to P.W.2 and explained its significance. Then, the said money of Rs.500/- was handed over to P.W.2 through the Constable. Then P.W.13 instructed P.W.2 to go and meet the accused and if the accused demands, he was instructed to do at his whims and if the accused received the said amount, then he was instructed to give signal, when he came out of the office of the accused. Then, he instructed P.W.3 to accompany with him and to watch over the occurrence. For the said procedure, entrustment mahazar Ex.P.3 was prepared and the numbers of the said currency notes were entered thereon.

(iv)On 21.09.2006 at about 6.15 p.m., the defacto complainant met the accused along with official witness P.W.3 and the accused demanded and received a sum of Rs.500/- from the defacto complainant as illegal gratification for making arrangement for payment of retirement benefit arrears, knowing well that there was no such arrears pending to be paid to the defacto complainant. Thereafter, the defacto complainant came out

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of the office and gave pre-arranged signal. On receiving the signal from the defacto complainant, P.W.13 and his team members rushed there and P.W.2 identified the accused. Then, P.W.13 introduced himself with the accused and the accused got perplexed. Thereafter, P.W.13 instructed to prepare sodium carbonate solution in two separate glasses. As per the instruction of P.W.13, when the accused dipped his two hand fingers separately in it, the same was turned into pink. The two liquids contained the solution were collected under M.O.2 and M.O.3. When P.W.13 asked the accused about the tainted money, he told that he has thrown away the said amount. However, the trap laying officer P.W.13 searched the amount, but the amount was not deducted. Thereafter, he enquired one Hariramakrishnan and Ramasamy / second accused. However, they denied the whereabouts of the tainted money. Again, the trap laying officer instructed to prepare sodium carbonate solution and instructed Hariramakrishnan to dip his hands in it. However, the color was not changed and instructed Ramasamy / second accused to dip his hands in it. In the result, the color was changed into pink and the same was marked as M.O.4 and M.O.5. Thereafter, the trap laying officer enquired the whereabouts of the tainted money with the second accused / Ramasamy. The second accused identified the said amount in the Xerox Box and the trap laying officer directed P.W.3 to compare the currency notes numbers with the entrustment mahazar and the same was tallied. Thereafter, P.W.13 has recovered the pension bills and attendance register from the first accused herein and the same were marked as Exs.P.4 and P.5. Thereafter, they prepared mahazar in between 6.00 p.m., to 08.00 p.m., in which P.W.3 shadow witness, P.W.13 trap laying officer and one Murugan signed as witnesses. Thereafter, the said mahazar is marked as Ex.P.6. Further, P.W.13 searched the house of the accused, but no other incriminating material was found. Thereafter, the accused persons were duly arrested and remanded to judicial custody and they were suspended from service.

(v)Thereafter, P.W.15 took up the case for further investigation and after completing investigation, filed a final report before the trial Court against the first accused for the offences under Section 420 IPC, Sections 7 and 13(2) r/w 13(1)(d) of the Act and against the second accused for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Act r/w 201 IPC and 13(2) r/w 13(1)(d) of the Act r/w 109 IPC.

4.After receipt of the final report, the trial Court framed charges against the accused persons, which are as follows:-

(i)the first accused herein demanded a sum of Rs.500/- from the defacto complainant as illegal gratification, as a motive for making arrangement for payment of retirement benefit arrears, knowing well that there was no such arrears pending to be paid to the defacto complainant. Therefore, the first accused committed an offence under Section 420 IPC.

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(ii)The accused persons being public servants demanded and accepted a sum of Rs.500/- from P.W.2 as illegal gratification. Therefore, the first accused was committed offences under Sections 7 and 13(2) r/w 13(1)(d) of the Act and the second accused was committed offences under Sections 7 and 13(2) r/w 13(1)(d) of the Act r/w 201 IPC and 13(2) r/w 13(1)(d) of the Act r/w 109 IPC. Since the accused denied their charges and pleaded not guilty, they were tried for the offences as stated supra.

5.In order to buttress the prosecution case, the prosecution has examined 15 witnesses as P.W.1 to P.W.15 and marked Ex.P.1 to Ex.P.27 and also M.O.1 to M.O.5. In order to disprove the case of the prosecution, the accused did not examine any witness and mark any documents.

6.On consideration of both oral and documentary evidence, the trial Court held that the prosecution has proved the demand and acceptance made by the first accused by examining P.W.2 and P.W.3 and convicted the first accused for the offences under Section 420 IPC and Sections 7 and 13(2) r/w 13(1)(d) of the Act. He was sentenced to undergo two years rigorous imprisonment and imposed to pay a fine of Rs.2,000/- in default to undergo three months rigorous imprisonment for the offence under Section 420 IPC and sentenced to undergo two years rigorous imprisonment and imposed to pay a fine of Rs.2000/- in default to undergo three months rigorous imprisonment for the offence under Section 7 of the Act and sentenced to undergo two years rigorous imprisonment and imposed to pay a fine of Rs.2000/- in default to undergo three months rigorous imprisonment for the offence under Section 13(2) r/w 13(1)(d) of the Act. The trial Court ordered that the above sentences shall run concurrently. However, the trial Court acquitted the second accused on the ground that since the second accused had poor vision, without knowledge he may threw away the bribe amount in the box, which was thrown by the first accused.

7.Assailing the same, the present appeal came to be filed by the first accused. In respect of the order of acquittal of the second accused, no appeal was preferred by the State.

8.The learned counsel appearing for the appellant / first accused would submit that the complaint of P.W.2 is totally contrary to the evidence of P.W.2. P.W.2 in his complaint stated that on 20.09.2006 at about 01.30 p.m., the accused demanded a sum of Rs.500/- from P.W.2 in order to disbursement of his retirement benefits and since he is not willing to pay the bribe amount, he has lodged the complaint. However, he deposed in his chief examination that he got retired on 30.06.1997 from the service and he also admitted in his cross-examination that he has received all his pension arrears on 17.08.2006 itself and further, he admitted that there are no arrears amount due for him. Further, in his evidence, he stated that when he went to the office of the first

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accused, he was not in the seat and he came after 10 minutes. However, P.W.3 shadow witness in his evidence deposed that he accompanied with P.W.2 to the office of the first accused and when he came out in the seat, questioned P.W.2. P.W.2 replied that he came to see the first accused and thereafter, the accused requested P.W.2 to wait and he will come after taking tea. Thereafter, he came after twenty minutes and thereafter, P.W.2 and P.W.3 went inside the office. P.W.3 further, deposed that when the accused enquired about P.W.3, P.W.2 replied that he is the brother of his wife and the first accused informed P.W.2 that his files procedure has been completed and demanded a sum of Rs.500/-. Thereafter, P.W.2 has taken the bribe amount of Rs.500/- from the left side pocket and handed it over to the first accused and he received the same by the right hand and put it in his left hand. Thereafter, the defacto complainant came out and gave pre-arranged signal to the trap laying officer. Thereafter, the trap laying officer came there, conducted phenolphthalein test and prepared mahazar.

9.He would further submit that the simultaneous reading of the evidence of P.W.2 and P.W.3 is not corroborated each other. Further, P.W.2 categorically admitted that his pension arrears were paid on 17.08.2006 itself and he clearly deposed that there are no dues in favour of the defacto complainant from the Municipality and when there are no dues from the Municipality, demanding bribe amount by the first accused for disbursement of the pension amount is imaginary one. Without motive or reward demanding the bribe amount is unsustainable one. However, the entire prosecution witnesses are contrary in nature. Therefore, the prosecution did not establish the case in a cogent and reasonable manner and there are lot of discrepancies in between the evidence of the prosecution and the same lead to the interference of the order of conviction. Therefore, the first accused is entitled to benefit of doubt.

10.However, he would further submit that the procedure contemplated under Part VI, Paragraphs 47 and 49 of Directorate of Vigilance and Anti-Corruption (hereinafter referred as 'DVAC') Manual is not followed for recording the statement of the accused by P.W.13 and it vitiates the entire prosecution case. Even the crucial witness, namely, Murugan, who signed in the recovery mahazar, was not examined before the trial Court. All those discrepancies lead to suspicious with regard to the trap conducted by the trap laying officer. Accordingly, he prayed for acquittal.

11.He would further submit that the trial Court drawn inference on the disciplinary proceedings initiated by the Department against the first accused and convicted the accused, which is unsustainable one and this part needs interference by this Court and this Court may pass necessary appropriate orders.

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12.In support of his contention, he relied upon the decision reported in ***(1975) 4 SCC 761 (Trilok Chand Jain Vs. State of Delhi).*** The relevant portion of the said judgment reads as follows:-

> *10.From a reading of the above provision it is clear that its operation, in terms, is confined to a trial of an offence punishable under Section 161 or Section 165 Penal Code or under clause (a) or (b) of Section 5(1) read with sub-section (2) of that Section of the Act. If at such a trial, the prosecution proves that the accused has accepted or obtained gratification other than legal remuneration, the court has to presume the existence of the further fact in support of the prosecution case, viz., that the gratification was accepted or obtained by the accused as a motive or reward such as mentioned in Section 161, Penal Code. The presumption however, is not absolute. It is rebuttable. The accused can prove the contrary. The quantum and the nature of proof required to displace this presumption may vary according to the circumstances of each case. Such proof may partake the shape of defence evidence led by the accused, or it may consist of circumstances appearing in the prosecution evidence itself, as a result of cross-examination or otherwise. But the degree and the character of the burden of proof which Section 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which under Section 101, Evidence Act rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination under Section 342 Cr.P.C., may not be enough, the burden on him to negate the presumption may stand discharged, if the effect of the material brought on the record, in its totality, renders the existence of the fact presumed, improbable. In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour; it is not necessary for him to establish his case beyond a reasonable doubt."*

13.The relevant portion of the judgment reported in ***1990 (Supp) SCC 125 (Tej Bahadur Singh Vs. State of U.P.)*** reads as follows:-

> *"9.The third circumstance of significance is about the happening of the incident in the house of the complainant itself. Now, when the appellant had entered the house an hour earlier before his scheduled visit, it cannot be expected that the members of trap party which were said to be sitting in the adjoining back room had become instantly stone-still so as to conceal their*

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presence from the appellant. The dimensions of those two rooms 8 ft x 8 ft. and 8 ft x 12 ft. separated merely by a window and a door on which curtains were hanging are suggestive of the fact that if the happenings in one room could be known to the inmates of the other, the converse would also be true. Relatively, if the members of the trap party could see and hear what was happening in the drawing room through the curtains, the inmates of the drawing room could also see the presence of others in the connecting room, huddled as they were in that small space. The appellant in these circumstances could not be expected to throw caution to winds and either ignore or become indifferent of the presence of the inmates of the adjoining room especially when both rooms were lit by electric tubelights and there was just a curtain intervening. Additionally, in such a situation there awakens the sixth sense in every human being so as to detect the presence of another in such close surroundings. The appellant could not have been so foolhardy to accept bribe in circumstances which were obviously suspicious, and that too in the house of the complainant, running the risk of being entrapped.

10.The totality of the aforesaid circumstances thus makes us to come to the conclusion that it would not be safe to sustain the conviction of the appellant on the charges framed. We may, however, hasten to add that we should not be taken to have accepted the defence of the appellant about his being present at the railway station on the evening of the day of the incident wherefrom he claims to have arrested by Shri Srivastava, Deputy Superintendent of Police. The dust of doubt thus raised must inevitably fall on the prosecution leading to the acquittal of the appellant, and this is done by acceptance of the appeal. Fine, if paid, need be refunded to him. Ordered accordingly."

14.The relevant portion of the judgment reported in ***(2008) 3 SCC 484 (Moni Shankar Vs. Union of India and another)*** reads as follows:-

"26.The High Court has only noticed Para 704 of the Manual and not Para 705 thereof. Para 705 was very relevant and in any event both the provisions were required to be read together. The High Court, thus, committed a serious error in not taking into consideration Para 705 of the Manual. The approach of the High Court, in our opinion, was not entirely correct. If the safeguards are provided to avoid false implication of a railway employee, the procedures laid down therein could not have been given a complete go-by.

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27.It is the High Court who posed unto itself a *wrong question. The onus was not upon the appellant to prove any bias against RPF, but it was for the department to establish the charges levelled against the appellant.*

28.The High Court also committed a serious error in opining that sub-rule (21) of Rule 9 of the Rules was not imperative. The purpose for which the sub-rule has been framed is clear and unambiguous. The railway servant must get an opportunity to explain the circumstances appearing against him. In this case he has been denied the said opportunity.

29.The cumulative effect of the illegalities / irregularities was required to be taken into consideration to judge as to whether the departmental proceeding stood vitiated or not.

30.For the aforementioned purpose, the manner in which the enquiry proceeding was conducted was required to be taken into consideration by the High Court. The trap was not conducted in terms of the Manual; the enquiry officer acted as a prosecutor and not as an independent quasi-judicial authority; he did not comply with Rule 9(21) of the Rules, evidently, therefore, it was not a case where the order of the Tribunal warranted interference at the hands of the High Court."

15.The relevant portion of the judgment reported in ***(2009) 6 SCC 587 (A.Subair Vs. State of Kerala)*** reads as follows:-

"29.The High Court drew presumption under Section 20 of the Act for charge under Section 7. Based on that, if was held that the prosecution has proved the offence punishable under Section 7 of the Act. Section 20 of the Act, 1988 reads thus:

"20.Presumption where public servant accepts gratification other than legal remuneration.-(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of Sub-Section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be without consideration of for a consideration which he knows to be inadequate.

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(2)Where in any trial of an offence punishable under Section 12 or under clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3)Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

Sub-section (3) is a "non obstante clause." It provides that where the gratification is trivial and the court is of the opinion that no interference of corruption may fairly be drawn, it may decline to draw the presumption as referred to in sub-sections (1) and (2). In other words, the court is not bound to draw a presumption under Section 20 where the alleged gratification is too trivial."

16.The relevant portion of the judgment reported in ***(2009) 15 SCC 200 (State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede)*** reads as follows:-

"16.Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of

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Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt."

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17.The relevant portion of the judgment reported in ***(2016) 3 SCC 108 (Krishnan Chander Vs. State of Delhi)*** reads as follows:-

"35.It is well settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in the case of B. Jayaraj (supra), A. Subair and P. Satyanarayana Murthy (supra) upon which reliance is rightly placed by the learned senior counsel on behalf of the appellant.

36.The relevant paragraph 7 from B. Jayaraj case (supra) reads thus: (SCC p.58)

"7.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 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 judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P. and C.M. Girish Babu v. CBI."

37.In P. Satyanarayana Murthy (supra), it was held by this Court as under: (SCC p.159, paras 21-23)

"21.In State of Kerala and another vs. C.P. Rao, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

22.In a recent enunciation by this Court to discern the imperative pre- requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that 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

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any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d) (i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23.The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1) (d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."

38.Further, in Satvir Singh v. State of Delhi[8], this Court has held thus: (SCC pp.157-58, paras 34-35)

"34.This Court, in K.S. Panduranga case has held that the demand and acceptance of the amount of illegal gratification by the accused is a condition precedent to constitute an offence, the relevant paragraph in this regard from the abovesaid decision is extracted hereunder: (SCC pp. 740-41, para 39)

39.Keeping in view that the demand and acceptance of the amount as illegal gratification is a condition precedent for constituting an offence under the Act, it is to be noted that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than for the motive or the reward as stipulated under Section 7 of the Act. When some explanation is offered, the court is obliged to

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consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability. It is not to be proven beyond all reasonable doubt. In the case at hand, we are disposed to think that the explanation offered by the accused does not deserve any acceptance and, accordingly, we find that the finding recorded on that score by the learned trial Judge and the stamp of approval given to the same by the High Court cannot be faulted."

35.The learned Senior Counsel for the appellant has also placed reliance upon the case of Banarsi Dass referred to supra wherein it was held that: (SCC pp. 456-57, para 24)

24.In M.K. Harshan v. State of Kerala this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under: (SCC pp. 723-24, para 8)

"8. It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification.""".

18.The relevant portion of the judgment reported in ***(2017) 8 SCC 136 (Mukhtlar Singh (Since deceased) through his legal representative Vs. State of Punjab)*** reads as follows:-

"14.In P.Satyanarayana Murthy, this Court took note of its verdict in B.Jayaraj V. State of A.P., underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or

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illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in P.Satyanarayana Murthy on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder: (SCC p.159, para 23)

> *"23.The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."*

19.Per contra, the learned Additional Public Prosecutor appearing for the respondent State would submit that with regard to the demand and acceptance, P.W.2 in his evidence clearly indicated that though there was no pension arrears from the Municipality, in order to cheat the defacto complainant he induced the defacto complainant P.W.2 himself as if there was arrear due to him, he will disburse the same, in which, he demanded a sum of Rs.500/- as illegal gratification. Accordingly, the defacto complainant made a complaint, thereafter, the DVAC registered the case not only under Prevention of Corruption Act but also Section 420 IPC. Though P.W.2 is not corroborative with regard to the demand and acceptance, however, the fact remains that his evidence is clearly indicated that he handed over the tainted currency notes in the hands of the first accused and the first accused received the same by the right hand and put it on the left hand. P.W.3 is also more corroborative that what happened at the time of trap and prior to the trap. The conversation in between P.W.2 and the first accused elaborately indicated in the evidence of P.W.3. The testimony of the evidence of P.W.3 is very cogent with regard to the demand and acceptance. There is no substantial evidence available to disprove the evidence of P.W.2 and P.W.3. Hence, the demand and acceptance is well established by the prosecution before the trial Court.

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20.He would further submit that mere not following the DVAC Manual will not vitiate the entire prosecution case and the procedure contemplated in DVAC Manual is not mandatory and it is only directory. Further, in this case, mere discrepancy in the evidence will not affect the prosecution case and the evidence of P.W.2, 3 and 13 is very cogent and there was a livelink with regard to the demand and acceptance of the bribe amount. Further, the Municipality Officer also examined as P.W.5. P.Ws.4 to 8, 12, and 14 are the Municipality staffs. Particularly, P.Ws.4, 5 and 14 are present at the time of preparing sodium carbonate solution and in their presence, phenolphthalein test was conducted. The prosecution established the case through the prosecution witnesses. Accordingly, he prayed for conviction.

21.He would further submit that though knowing very well, the defacto complainant is not entitled to pension arrears from the Municipality, while interacting P.W.2, the first accused informed that his files were ready for disbursement, in order to receive the bribe amount. Accordingly, the Law Enforcing Agency has registered the case in Crime No.05 of 2006 and after completing investigation, found that the first accused cheated the defacto complainant and received the bribe amount, in which Section 420 IPC was implicated in the final report and all necessary ingredients required under Section 420 IPC and Sections 7 and 13(2) r/w 13(1)(d) of the Act were established before the trial Court. Therefore, the well considered judgment passed by the trial Court need not be interfered with.

22.In respect of his contention, he placed reliance on the decisions reported in ***AIR (39) 1952 Orissa 73 (The State Vs. Sadhu Charan Panigrahi).*** The relevant portion of the said judgment reads as follows:-

> "5.*We are inclined to agree with the contention of the learned Advocate General that the cases in A.I. R. (8) 1921 Gal. 344 and A. I. R. (16) 1929 Mad. T56, do not lay down the correct law. We are of opinion that the fact that the public servant is functus officio would not by itself and as a matter of law, be sufficient to negative the offence under Section 161 which is in the following terms:*
>
> *"Whoever, being or expecting to be a public servant, accept a or obtains or agrees to accept, or attempt to obtain from any parson, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any*

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Provincial Government or Legislature or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to five years, or with She, or with both."
The content of this offence, broadly stated, is that a public servant accepts extra-legal gratification as a motive or reward for (1) doing or forbearing to do any official acts; (2) showing in the exercise of his official function favour or disfavour to any person ; (3) rendering service or disservice to any person with any public servant as such, (omitting other details for simplification of discussion). In all the three categories, the act; intended to be procured by the offerer of the bribe is something connected with the official work of the bribe-taker himself or of some other public servant. It is this connection between the bribe and the act sought to be procured by the bribe that has inclined the learned Judges in the two cases cited above to shink that where the act sought to be brought about was in fact outside the scope of the official function of the bribe-taker or of the public servant, at the time, no offence under Section 161 is committed. It appears to us, however, with great re-pect that this is unduly narrowing the purport of the section. The gist of the offence clearly is not that there was at the time, an official act to be procured capable of being performed by the taker of the bribe or by another public servant with whom he is intended to exercise his influence, but that the extra-legal gratification is obtained as a motive or reward for doing official acts, that is for doing what may be or is believed or held out to be official conduct. The stress in the section is not so much on the performance of the official act itself, or on its being capable of performance but on the nature of the act as being official. This is meant to exclude from its purview acts which were totally unconnected with any official conduct and which may be attributable puraly to the private capacity of the bribe taker or of the other public servant. The emphasis is on the gratification offered being a motive or
reward for official con duct (inclusive of that which is believed or held out to be so). This, to some extent, is amplified in the section itself, wherein the phrase "motive or reward" for doing is explained as follows : A person who receives gratification as a motive for doing what he does not intend to do or as a reward for doing what he has not done comes within these words. Further illustration "C" to Section 161 says :

"A a public servant induces Z erroneously to believe that A's influence with the Government has obtained a

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title for Z and thus induces Z to five A money as a reward for this service. 'A' has committed the offence defined in this section."

This illustration clearly shows that the inducing of the belief by the taker of the bribe would be quite enough to bring the case within the purview of Section 161 so long as the achievement contemplated
is an act of official character if the bribe is a motive or reward for the same. Similarly the belief in the giver of the bribe would be enough to bring the case under Section 161/116."

23.The relevant portion of the judgment reported in ***AIR 1976 SCC 1497 (Chaturdas Bhagwandas Patel Vs. The State of Gujarat)***, reads as follows:-

21.The proof of the foregoing facts was sufficient to establish the charge under Section 161, Penal Code. The mere fact that no case of abduction or of any other offence had been registered against Ghanshamsinh in the Police Station or that no complaint had been made against him to the police by any person in respect of the commission of an offence could not take the act of the appellant in demanding and accepting the gratification from Ghanshamsinh, out of the mischief of Section 161, Penal Code. The Section does not require that the public servant must, in fact, in a position to do the official act, favour or service at the time of the demand or receipt of the gratification. To constitute an offence under this Section, it is enough if the public servant who accepts the gratification, takes it by inducing a belief or by holding out that he would render assistance to the giver "with any other public servant" and the giver gives the gratification under that belief. It is further immaterial if the public servant receiving the gratification does not intend to do the official act, favour or forbearance which he holds himself out as capable of doing. This is clear from the last Explanation appended to Section 161, according to which, a person who receives a gratification as a motive for doing what he does not intend to do, as a reward for doing what he has not done, comes within the purview of the words " a motive or reward for doing". The point is further clarified by Illustration © under this section,. Thus, even if it is assumed that the representation made byt eh appellant regarding the charge of abduction of Bai Sati against Ghanshamsingh was, in fact, false, this will not enable him to get out of the tentacles of Section 161, although the same act of the appellant may amount to the offence of cheating, also."

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24.The relevant portion of the judgment reported in ***(2016) 13 SCC 258 (S.C.Goel Vs. State Through Central Bureau of Investigation)*** reads as follows:-

" 3.It is contended before us on behalf of the appellant that in the present case the prosecution has failed to prove both the demand and acceptance of the alleged bribe money. So far as the alleged demand is concerned, it is urged that P.W.5, the complainant, who is the sole witness in this regard had turned hostile. It is also pointed out by referring to the evidence of P.W.6 and P.W.7 that there were no outstanding bills payable to the contractor which fact would cause a serious dent in the case of the prosecution with regard to the alleged demand.

4.Insofar as recovery is concerned, it is urged that the sample of sodium bicarbonate solution in which the fingers of the accused were washed was not taken in his presence. The phenolphthalein test, therefore, cannot be relied upon to convict the appellant – accused.

5.We have read and considered the evidence of P.W.5 in its entirety. So far as demand made by the accused is concerned, P.w.5 is clear and categorical in stating that the demand of Rs.10,000/- was made. Merely because P.W.5 was declared hostile with regard to certain other aspects of the evidence tendered by him, the entire evidence cannot be discarded. The evidence tendered by the said witness with regard to the demand in question can be accepted if the same is otherwise worthy of trust. We are of the view that the evidence of P.W.5 insofar as demand of bribe is concerned passes the aforesaid test and commends to us for acceptance."

25.The relevant portion of the judgment reported in ***2004 Crl.L.J. 3754 (K.Selvaraj and others Vs. The State)*** reads as follows:-

"45.The guidelines given as per the Vigilance Manual are only directory and administrative directions. Any omission on the part of Investigating Officers to strictly comply with those administrative guidelines would not in any way vitiate the trap. In 2002 (1) Mad. L.W. (Crl.) 136 : (2001 Crl.L.J. 4139), Justice M.Karpagavinayam while dismissing the Criminal Original Petition filed for quashing the proceedings, has also observed that Rules under Vigilance Manual are only administrative and on non-observance of the same there

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is no mandatory violation, which would affect the3 validity of the prosecution."

26.The relevant portion of the judgment reported in ***(2018) 9 SCC 242 (The State of Gujarat Vs. Navinbhai Chandrakant Joshi and others)*** reads as follows:-

> *"8.It is well settled that to establish the offence under Section 7 and 13(1)(d) of the Act, particularly those relating to the trap cases, the prosecution has to establish the existence of demand as well as acceptance by the public servant. In B.Jayaraj Vs. State of A.P., MANU/SC/0245/2014 : (2014) 13 SCC 55, it was held as under:*
>
> > *"7.Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine quo non to constitute the said offence and mere recovery of currency notes 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 judgments of this Court. By way of illustration reference may be made to the decision in C.M.Sharma V. State of A.P. MANU/SC/0981/2010: (2010) 15 SCC 1 and C.M.Girish Babu Vs. CBI MANU/SC/0274/2009:(2009) 3 SCC 779."*

27.Heard both sides and perused the records carefully.

28.In the light of the above submissions, now it has to be analyzed that:-

(i)Whether the demand and acceptance of the bribe amount by the first accused is proved by the prosecution?;

(ii)Whether the non-compliance of Part VI, Paragraphs 47 and 49 of the DVAC Manual would vitiate the prosecution case, as contended by the learned counsel for the appellant / accused?;

(iii)Whether the conviction of the appellant under Section 420 IPC and Sections 7 and 13(2) r/w 13(1)(d) of the act is warranting any interference by this Court?.

29.In the present case, P.W.1 is the sanction authority, P.W.2 is the defacto complainant, P.W.3 is the shadow witness and P.W.13 is the trap laying officer. P.Ws.4 to 8, 12 and 14 are the officials, who employed along with the accused in the Thoothukudi Municipality. Their evidence is much relevant to the effect that in their presence, the trap laying officer has conducted phenolphthalein test and some of the official witnesses were signed in the recovery mahazar.

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30.P.W.9, who is the Branch Manager, was examined in order to prove that P.W.2 defacto complainant has account in his bank. He deposed in his evidence that Rs.900/- (Rupees Nine Hundred Only) has been withdrawn from the account of the defacto complainant on 21.09.1996 and the statement is marked as Ex.P.19. P.W.10, who is the Forensic Expert, was also examined in order to prove the phenolphthalein test conducted by P.W.13 and his opinion is also marked as Ex.P.20. P.W.11, who is Court Staff, has sent the materials for chemical analysis through Court for expert opinion. P.W.12 was working as Manager in Thoothukudi Municipality at the relevant point of time, where the accused officer was working as Junior Assistant and he deposed that the accused officer was in charge of disbursement of the pensionary benefits at the relevant point of time.

31.P.W2 in his evidence deposed that on 21.09.2006, the first accused officer demanded bribe for disbursement of the arrears amount and P.W.3 also clearly corroborated that the first accused demanded the bribe amount and informed that his files are ready for disbursement. The evidence of P.W.3 is categorically proved that the accused officer interacted the defacto complainant, knowing very well that the entire arrears paid in favour of the defacto complainant on 17.08.2006 itself and without disclosing the fact that no amount was due in favour of the defacto complainant, the accused received the bribe amount for disbursement. In view of the above, the first charge under Section 420 IPC is clearly established by the prosecution.

32.Further, the prosecution has also proved the demand and acceptance of Rs.500/- as illegal gratification. Though the money was not recovered from the first accused, however on examination of the second accused, the money was recovered from the Xerox Box and the same was compared with the entrustment mahazar and to that effect P.W.3 clearly deposed that the comparison of the currency notes numbers were tallied with the entrustment mahazar. Moreover, since the first accused is being the public servant, P.W.3, who is an independent witness, has no motive to implicate the first accused in the corruption case and the sodium carbonate solution turned into pink, when the first accused dipped his both hands in it. The evidence of P.W.2 and 3 coupled with turning of color of sodium carbonate solution is the strong evidence especially in respect of acceptance of the bribe amount by the first accused.

33.The main contention raised by the learned counsel for the appellant / first accused is that there was a confusion with regard to the preparation of sodium carbonate solution in respect of left hand M.O.3 and creates serious doubt with regard to the manner in which the trap laying officer conducted phenolphthalein test and there was a confusion with regard to the evidence of P.W.4 and P.W.5 and the trap laying officer. However, on perusal

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of the records, it is clearly deposed that the phenolphthalein test was conducted in the presence of the officials of Thoothukudi Municipality and there may be some discrepancies with regard to M.O.3. The trial Court marked M.O.1 to M.O.5 as material objects and expert also opined that chemical analysis test with regard to the left hand and right hand of the first accused came positive. In view of the above, there is no subsistence material to disprove the case of the prosecution and mere discrepancies will not hold that the entire prosecution is invalid. On perusal of the evidence of P.W.2 and P.W.3, in the presence of P.W.3, the accused informed as if his files are ready for disbursement and dishonestly induced P.W.2 deceived that loan amount is ready for disbursement. In fact, no arrears amounts are due. Hence, the necessary ingredients required under Section 420 IPC is established. In view of the above, the first charge under Section 420 IPC is clearly proved by the prosecution.

34.Further, on perusal of the decisions of the Hon'ble Apex Court makes it clear insofar as under Section 7 of the Act is concerned, particularly, the trap cases that the demand of illegal gratification is *sine qua non* to constitute the offence and mere recovery of the currency notes cannot constitute the offence under Section 7 of the Act, unless the prosecution has proved beyond all reasonable doubts that the accused voluntarily accepts the money knowing it to be a bribe. There is no quarrel over the aforesaid decisions and mere recovery by itself would not prove the charge against the accused, unless the prosecution has established the demand and acceptance.

35.On appreciation of the evidence of P.W.2 and P.W.3, it is seen that the demand of bribe amount by the accused appears to be natural. Hence, the decision referred by the learned counsel for the appellant is not applicable to the present case on hand.

36.The learned counsel for the appellant further urged before this Court that the prosecution did not establish that the appellant had motive for accepting the gratification from the defacto complainant. It is relevant to reiterate the evidence of P.W.2 and P.W.3, who in their evidence clearly stated that the accused induced and deceived the defacto complainant, as if his files are ready and he is entitled to disbursement of arrears amount.

37.In this aspect, it is necessary to refer the decision rendered in the case of ***Chaturdas Bhagwandas Patel Vs. The State of Gujarat*** reported in ***AIR 1976 SCC 1497***, wherein it has been held that a person, who receives a gratification as a motive for doing what he does not intend to do, as a reward for doing what he has not done, comes within the purview of the words "a motive or

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reward for doing". Therefore, the submissions of the learned counsel for the appellant, who contended that the appellant did not have any motive for accepting the gratification from the defacto complainant, does not merit acceptance.

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38.It is the further contention of the learned counsel for the appellant that the trap laying officer has not preferred site plan in proper manner and the guidelines given under Part VI, Paragraphs 47 and 49 of DVAC Manual are not followed by the trap laying officer P.W.13 and non-compliance of the guidelines would vitiate the prosecution case. However, the said contention already decided by this Court in the case of ***K.Selvaraj and others Vs. The State*** reported in ***2004 Crl.L.J. 3754,*** wherein this Court clearly held that the guidelines given as per the DVAC Manual are only directory and administrative directions. Any omission on the part of Investigating Officers to comply with those administrative guidelines would not in any way vitiate the prosecution. Further, non-recording of the statement from the accused after the trap proceedings is not fatal to the case of the prosecution and only the disciplinary proceeding can alone be taken against the officer concerned.

39.It is in this background necessary to refer the decision of the Hon'ble Apex Court in the case of ***State of M.P., and others Vs. Ram Singh and others*** reported in ***(2000) 5 SCC 88.*** The relevant portion of the said judgment reads as follows:-

> *"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 intercepting various provisions of the Act and deciding cases under it."*

40.However, the trial Court, while convicting the accused officer, erred in observing and drawing inference with regard to the disciplinary proceedings initiated against the accused officer by the Government is unwarranted and the matter can only be decided based on the evidence and materials available on record.

41.On perusal of the entire evidence available on record, I do not find any error in the judgment passed by the trial Court. Therefore, this Court is inclined to confirm the judgment passed by the learned Assistant Sessions Judge Cum Chief Judicial Magistrate Cum Special Judge, Thoothukudi, in Special Case No.8 of 2007, dated 07.10.2013. However, considering the age of the appellant, this Court while confirming the conviction, reduces the sentence imposed on the appellant from two years to minimum sentence of one year for the offence under Section 7 of the Act and from two years to minimum sentence of one year for the offence

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under Section 13(2) r/w 13(1)d) of the Act. Both the sentences are ordered to run concurrently. The period of incarceration already undergone by the appellant / accused shall be given set off under Section 428 Cr.P.C. The appellant is directed to surrender before the trial Court, within a period of four weeks from the date of receipt of a copy of this judgment. The bail bond, if any, executed by the appellant / accused stands cancelled.

42.In the result, this Criminal Appeal is partly allowed to the extent as indicated above.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

To

1. The Assistant Sessions Judge Cum
   Chief Judicial Magistrate Cum
   Special Judge, Thoothukudi.

2. The Inspector of Police,
   Vigilance and Anticorruption,
   Thoothukudi.

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

+1 CC to M/s.AHMED ASSOCIATES, Advocate (SR-58964[F] dated 04/04/2019)

Judgement made in
CRL.A.(MD)No.318 of 2013
04.04.2019

Myr
TK/ (16.05.2019) 22P 5C

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