BAIL SLIP

The Appellant/Accused viz., M.C.Ravindran was release on bail as per the order of this Court dated 10.01.2013 and made in CRL MP (MD) No. 1 of 2013 in CRL A(MD) No. 7 o 2013 (Accused not in Jail)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A.(MD)No.7 of 2013

M.C.Ravindran ... Appellant/Accused

-Vs-

State Represented by
The Inspector of Police,
Vigilance and Anticorruption,
Tirunelveli. ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to set aside the order passed by the learned Chief Judicial Magistrate and Special Judge, Tirunelveli in Special Case No.3 of 2006 by the judgment dated 19.12.2012 convicting the Appellant under Section 7 and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988.

For Appellant : Mr.A.Prabakara Reddy for
Mr.M.Shajahan

For Respondent: Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

JUDGMENT

The convicted accused is the appellant herein. He has filed this Criminal Appeal to set aside the judgment made in Special Case No.3 of 2006 by the learned Chief Judicial Magistrate and Special Judge, Tirunelveli, dated 19.12.2012, wherein the appellant was convicted under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988 (herein after referred to as "the Act") and sentenced to undergo one year Rigorous Imprisonment and imposed with a fine of Rs.500/- for each count (total Fine Rs.1,000/-) in default to under go one month simple imprisonment for each count and the sentences were ordered to run concurrently.

2.The brief facts leading to filing of this appeal are as follows:

The appellant viz., M.C.Ravindran, was working as Health Inspector/Birth and Death Registering Officer in Vadakku Valliyoor Special Village Panchayat. P.W.2, V.Mani, is a resident of Maravar Colony in the same Village Panchayat. On 14.07.2005, P.W.2 presented an application for issuance of birth certificate to his brother's daughter Pavithra at 2.45 p.m. to the Executive Officer, Vadakku Valliyoor Special Village Panchayat and the same was forwarded to the appellant/accused officer. Accordingly, P.W.2 approached the accused officer for issuance of certificate on 19.07.2005. On that day, he demanded Rs.100/- as illegal gratification and directed him to pay the amount on 20.07.2005. Since P.W.2 was not willing to pay the said bribe amount, he lodged a complaint before P.W.10 Trap Laying Officer through Ex.P.3 complaint. Thereafter, the Trap Laying Officer registered a case in Crime No.10 of 2005 for the offence punishable under Section 7 of Prevention of Corruption Act. Immediately, thereafter, P.W.10 arranged official witnesses and introduced them to P.W.2, narrated the things and conducted pre trap proceedings by dipping the hands of one official witnesses viz., Sivathanu in the Sodium Carbonate solution and explained the pre trap proceedings.

2.1.Accordingly, on the same day, they proceeded towards the appellant/accused office namely, Vadakku Valliyoor Special Village Panchayat office at 4.15 p.m. and by stopping their car before four furlong from the office. P.W.10 Trap Laying Officer directed P.W.2 defacto complainant and P.W.5 shadow witness to act as per the earlier pre trap proceedings. Accordingly, P.W.2 and P.W.5 went to the appellant/accused office and P.W.5 shadow witness stood keeping some distance behind P.W.2. Thereafter, when P.W.2 interacted with the appellant/accused the appellant/accused, immediately asked P.W.2 whether he brought the bribe amount of Rs.100/- for issuance of the Birth Certificate. After that the appellant prepared the application and directed him to pay a sum of Rs.25/- to P.W.7, Bill Collector through Challan. P.W.7 received Rs.25/- from P.W.2 defacto complainant. Thereafter, she made entries in the application form and informed that Executive Officer had not signed in the Challan and the appellant/accused would take care for getting signature from the Executive Officer and thereafter, she has given the receipt for the same along with the application to P.W.2 and directed him to hand over the same to the appellant/accused officer. The Challan is marked as Ex.P6. Thereafter, the appellant/accused officer received the bribe amount of RS.100/- by his left hand and put it in the table drawer and he filled up the application and certificate and after putting his signature, he handed over the Birth Certificate to P.W.2. Thereafter both P.W.2 and P.W.5 came from the appellant/accused office and given the pre arranged signal by wiping his face with the tip of his dhothi. Immediately, P.W.10 Trap Laying Officer went to the appellant/accused office along with shadow witness and P.W.2 identified the appellant/accused officer. Thereafter, the two fifty rupees currency notes were recovered from the appellant/accused officer's table drawer. Thereafter, they conducted Phenolphthalein test by dipping his hands in the Sodium Carbonate solution. The solution in which, the appellant had dipped his right hand was not changed into pink colour. The solution in which, the appellant had dipped his left hand was turned into pink colour. The two currency notes (Rs.50 x 2) were seized under M.O.1 and the solution in which, the appellant had dipped his right hand was collected in a bottle under M.O.2 and the solution in which, the appellant had dipped his left hand was collected in a bottle under M.O.3. Thereafter, P.W.10 prepared recovery mahazar and sketch. The sketch is marked as Ex.P17 and the recovery Mahazar is marked as Ex.P9. After the completion of preliminary enquiry, P.W.10 Trap Laying Officer, handed over the investigation to P.W.11 Inspector of Police, for further investigation.

2.2. Thereafter, P.W.11 taken up the further investigation and he had examined the witnesses. Ex.P1 sanction order was obtained from P.W.1 District Collector. On completion of investigation, charge sheet was filed against the appellant/accused under section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

2.3. The charges framed against the appellant/accused as follows:

"On 14.07.2005, while the appellant was working as Health Inspector/Birth and Death Registering Officer in Vadakku Valliyoor Special Village Panchayat, P.W.2 made an application for issuance of Birth Certificate for his brother's daughter. On 19.07.2005, about 2.45 p.m., when P.W.2 met the appellant/accused to know the process of the Birth Certificate, he demanded Rs.100/- as illegal gratification other than the legal remuneration and directed him to pay the same on 20.07.2005. Accordingly, the accused committed an offence under Section 7 of the Act. Thereafter, on 20.07.2005, about 4.15 p.m. P.W.2 paid Rs.100/- to the appellant and the same was accepted by him and thereby as a public servant the appellant has committed the offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988."

2.4. To substantiate the charges against the appellant/accused before the trial Court, on the side of prosecution P.W.1 to P.W.11 were examined and Ex.P1 to Ex.P17 were marked and M.O.1 to M.O.3 were produced.

2.5. When the incriminating circumstances against the appellant/accused from the prosecution evidence were brought to his notice under Section 313(1)(b) Cr.P.C., the appellant/accused denied the same as false and he stated that he had previous enmity with P.W.2's brother, who was examined as P.W.3 Mupidathi. P.W.3 was a Councilor of 14th ward and he along with one Nagaraj, who was also a Councilor, had ransacked the appellant's office and damaged the food sample bottles and also threatened the appellant and therefore, the appellant lodged a complaint against P.W3. Hence, in order to wreck vengeance, P.W.3 through P.W.2 foisted the present false case against him. However, no witness has been examined on his side, but marked the acknowledgement card received from the District Collector for receipt of the complaint sent by the appellant against P.W.3 as Ex.D1.

2.6. Upon considering the evidences, the learned Chief Judicial Magistrate found that the demand and acceptance of illegal bribe is proved by the evidences of P.W.2, P.W.5, P.W.6 and P.W.10 and M.O.1 to M.O.3 and convicted the appellant and sentenced him to undergo one year Rigorous Imprisonment concurrently and imposed a fine of Rs.1,000/-, failing which to under go one month Simple Imprisonment for each count.

3.Aggrieved over the said conviction and sentence, the appellant/ accused come forward with this appeal.

4.The learned counsel for the appellant/accused *inter-alia* contended that the appellant/accused was working as Health Inspector in the Vadakku Valliyoor Special Village Panchayat. P.W.2-Mani, P.W.3-Muppidathi and P.W.4 Vanumamalai are brothers. An application was filed on behalf of P.W.4-Vanumamalai, for issuance of birth certificate to his daughter Pavithra. There was a contradiction with regard to the application made by P.W.2. In his complaint, he had stated that the application was presented before the appellant/accused officer. However, in the chief-examination, he had stated that the said application was presented before the Executive Officer. Thereafter, it was reached to the appellant and in consequence, on 19.07.2005, P.W.2 met the appellant in his office for issuance of Birth Certificate. However, the said meeting itself was denied and there was no meeting in between the appellant and P.W.2 the procedure contemplated under Law was not followed by P.W.10 and there are lot of discrepancies. P.W.10 Trap Laying Officer in his evidence had stated that he received Rs.100/- from the shirt pocket of the defacto complainant/P.W.2. However, P.W.2, in cross examination, had stated that he brought Rs.325/- in his belt purse. Apart from the above discrepancy, the evidence of P.W.5 also is not corroborated with evidence of P.W.2 and P.W.10.

5.The learned counsel for the appellant/accused further submitted that mere recovery of the amount is not sufficient for the acceptance of the bribe amount by the appellant/accused from P.W.2 and there must be a demand and the demand has to be proved by the prosecution through cogent evidence. In the present case, with regard to the demand of bribe amount by the appellant, the available witness is only P.W.2. Except P.W.2, no other witnesses are available to prove the demand by the appellant on 19.07.2005.

6.The learned counsel for the appellant/accused further submitted that the sanctioning authority P.W.1 had not applied his mind before sanctioning the prosecution against the appellant. In fact, in his evidence, he had clearly deposed that Ex.P1 sanction order was prepared at his office and placed before him for signature. Accordingly, he signed in the sanction letter on 08.02.2006. Hence, it is clear that there is no application of mind before sanctioning the prosecution against the appellant. The District Collector also admitted that there was a complaint against P.W3, received from the appellant and the acknowledgement card is marked as Ex.D1. The learned counsel also referred to Ex.P7, signature of P.W.2 in the Register. It is sufficient to disprove the prosecution case. Further, there is no possibility for P.W.5 to watch the entire proceedings in the appellant office and there is a separate room. Apart from the appellant, two other officers were occupied in the said room and the said officers were not examined by the prosecution.

7.The learned counsel appearing for the appellant/accused further submitted that the evidences of P.W.2 defacto complainant, P.W.3 defacto complainant's brother, P.W.5 shadow witness, P.W.6 Executive Officer and P.W.7 Bill Collector are not corroborated each other and their evidences are independent in nature. Hence, he prayed for acquittal.

8.In support of his contention, the learned counsel for the appellant/accused relied upon the decision of the Honourable Supreme Court in the case of ***C.M.Sharma Vs. State of Andhra Pradesh*** reported in ***(2010) 15 SCC 1*** and in the case of ***C.M.Girish Babu Vs. CBI, Cochin, High Court of Kerala*** reported in ***(2009) 3 SCC 779***, wherein it has been held as follows:

> "21.It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that the accused received the amount towards gratification.
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> 22.It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt."

9.Per contra, the learned Additional Public Prosecutor submitted that the sanctioning officer considered the prosecution case and accorded sanction. It is not the duty of the sanctioning officer to consider the previous complaint made by the appellant against P.W.3 and no material was placed before the sanctioning officer, for consideration. In fact, the acknowledgement card Ex.D1 is a forged one and xerox copy was prepared only for the purpose of disprove the prosecution case. After perusing Ex.D1, this Court has to consider as to whether before passing the sanction order, P.W.1 has applied his mind or not. No other extra material is available to show that there was no application of mind by P.W.1 while according sanction.

10.The learned Additional Public Prosecutor further contended that admittedly an application for issuance of Birth Certificate to P.W.2's brother's daughter is filed before the Executive Officer. The Executive Officer forwarded the same to the appellant, since the appellant was Health Inspector-cum-Birth and Death Certificate issuing Officer and he was the competent person to issue certificate. Admittedly, the application was filed before the Executive Officer and the said application was assigned with No.191 of 2005 and thereafter, at the time of trap, P.W.7 prepared a Challan and thereafter, P.W.6 Executive Officer signed in the Challan. Apart from that, the appellant, on his own handwriting, prepared the certificate and issued the same in favour of P.W.2's brother's daughter Pavithra, after receiving the bribe amount. The signature of the appellant in the certificates are not denied and issuance date and the Challan date are also not denied. The Challan is marked as Ex.P6, the original birth certificate is marked as Ex.P8 and the signature of the P.W.2 for receipt of the Birth Certificate in the Birth and Death Register is marked as Ex.P7. All the three documents, clearly proved the issuance of birth certificate in favour of P.W.2 and even assuming that if there was a dispute between P.W.3 and the appellant, the appellant may be refused to issue the certificate. However, there are series of correspondence between P.W.2 and the appellant on the same day in the presence of P.W.5. He enquired about the bribe amount from P.W.2 and directed him to pay Rs.25/- to P.W.7, for preparation of certificate. Thereafter, after receipt of the Challan, he prepared the certificate and handed over the same to P.W.2. The Challan itself also proved the prosecution case. Further, the learned Additional Public Prosecutor, submitted that the Expert was also examined as P.W.9 who opined that the test of Phenolphthalein was positive. Accordingly, the learned Additional Public Prosecutor prayed for dismissal of the appeal.

11.In support of his contention, the learned Additional Public Prosecutor relied on the following decisions of the Honourable Supreme court

(i) ***Rao Shiv Bahadur Singh and another Vs. State of Vindh.Pra*** reported in ***AIR 1954 SCC 322,*** wherein it has been held as follows:

> “No such reaction was registered on his face. On the contrary if the evidence of the two witnesses Gadkari and Perulakar is to be believed and we see no reason why it should not be believed, the Appellant NO.1 claimed this sum of Rs.25,000 as his own being the balance out of the money which he had brought from his home when, he came to Delhi. This is sufficient to establish that these moneys which earlier had been handed over by the police authorities to Nagindas found

their way into the top drawer of the dressing table in the bedroom of the Appellant No.1 and were the primary evidence of the offence under Section 161 having been committed by the Appellant No.1.

The further circumstance that on the numbers of these notes being tallied and his explanation in that behalf being asked for by the police authorities the Appellant No.1 was confused and could furnish no explanation in regard thereto also support this conclusion and there is no doubt left in our minds that the Appellant No.1 was guilty of the offence under Section 161 of the Indian Penal Code with which he was charged."

(ii)***Prakash Chand Vs. State (Delhi Administration)*** reported in ***1979 Supreme Court Cases (Cri) 656,*** wherein it has been held as follows:

"7.Corroboration to the evidence of P.W. 6, if considered necessary, may be found in the following circumstances: First, his evidence is corroborated by the report Exh. PW. 1/A which he gave to P.W.9 that day. Second, his evidence is corroborated by the conduct of the accused when he was questioned by P.W. 9. P.W. 6 stated that when P.W. 9 entered the room and questioned the accused whether he had accepted Rs. 30/- from him, the accused was stunned and did not reply. P.W.. 9 also stated that the accused kept mum when challenged. P.W. 2 stated that the accused did not reply and kept mum but added that the accused was perplexed. Though P.W. 1 first stated in his chief examination that the accused, when questioned denied having received any bribe, later he reluctantly admitted ill cross-examination that the accused kept silent for some time as he was perplexed and then denied that he had received any bribe. The immediate reaction of the accused on being questioned by P.W. 9 is a circumstance which corroborates the testimony of P.W. 6. another a circumstance which corroborates the testimony of P.W. 6 is that the accused was ready with the file and handed it over to P.W. 6 as soon as he asked for it, indicating thereby that the statement of P.W. 6 that the accused had asked him to come on the afternoon of 14th July, 1969, was true. Yet another important circumstance which corroborates the evidence of P.W. 6 is that after P.W. 6 handed over the file to the accused he kept it under the table.

8.It was contended by the learned Counsel for the appellant that the evidence relating to the conduct of the accused when challenged by the Inspector was inadmissible as it was hit by Section 162 Criminal Procedure Code. He relied on a decision of the Andhra Pradesh High Court in D.V.Narasimhan v. State. We do not agree with the submissions of Shri Anthony. There is a clear distinction between The conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police officer in the course of an investigating which is hit by Section 162 Criminal Procedure Code. What is excluded by Section 162 Criminal Procedure Code is the statement made to a Police officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act [vide Himachal Pradesh Administration v. Om Prakash].

9.The decision of the Andhra Pradesh High Court on which Shri Anthony placed reliance does not support his contention. 'where the learned Judges were not prepared to go into the question whether the evidence relating to the conduct of the accused was admissible as that question did not directly arise for consideration. On the other hand in Zwinglee Ariel v. State of Madhya Pradesh, this Court appeared to be inclined to hold that evidence to the effect that the accused started trembling and showed signs of being frightened on being;, questioned by the Police officer, if proved, was admissible, and, in Rao Shiv Bahadur Singh and Anr. v. State of Vindhya Pradesh, and State of Madras v. A. Vaidyanatha Iyer, this Court actually relied on evidence relating to the conduct on the accused on being confronted by the Police officer with the allegation that he had received a bribe. In Rao Shiv Bahadur Singh's case the evidence relating to conduct on which reliance was placed was to the effect that the accused was confused and could furnish no explanation when questioned by the Police officer. In Vaidyanatha Iyer's case also evidence to the effect that the accused was seen trembling and that he silently produced the notes from the folds of his dhoti was acted upon. We, therefore, do not see any reason to rule out the evidence relating to the conduct of the accused, which lends circumstantial assurance to the testimony of P.W. 6."

(iii)***State of Andhra Pradesh Vs. P.Venkateshwarlu*** reported in ***(2015) 7 Supreme Court Cases 283,*** wherein it has been held as follows:

"10. Coming to the testimonies of P.W.7 and P.W.8, their testimonies fully corroborate the testimony of P.W.1. The testimonies of the material witnesses have been fully corroborated and we find them to be trustworthy. The Phenolphthalein test goes further to prove that there was demand and acceptance of the tainted money. The recovery of the tainted money has gone unchallenged by the accused respondent. Thus, we find that the High Court has wrongly disbelieved the testimony of P.W.1.

11. We are aware of the position in law, as laid down in cases involving the relevant provisions under the Prevention of Corruption Act, that mere recovery of the tainted amount is not a sine qua non for holding a person guilty under Sections 7, 11 and 13 of the Act. This Court has observed in Narendra Champaklal Trivedi Vs. State of Gujarat, (2012) 7 SCC 80, that there has to be evidence adduced by the prosecution that bribe was demanded or paid voluntarily as bribe. The demand and acceptance of the amount as illegal gratification is a sine qua non for constituting an offence under the Prevention of Corruption Act. The prosecution is duty bound to establish that there was illegal offer of bribe and acceptance thereof and it has to be founded on facts. The same point of law has been reiterated by this Court in State of Punjab Vs. Madan Mohan Lal Verma, (2013) 14 SCC 153. In the present case the factum of demand and acceptance has been proved by the recovery of the tainted amount and the factum of there being a demand has also been stated. The essential ingredient of demand and acceptance has been proved by the prosecution based on the factum of the case. It has been witnessed by the key eye witnesses and their testimonies have also been corroborated by other material witnesses. The offence under Section 7 of P.C. Act has been confirmed by the unchallenged recovery of the tainted amount. Thus, it is our obligation to raise the presumption mandated by Section 20 of P.C. Act. It is for the accused respondent to rebut the presumption, by adducing direct or circumstantial evidence, that the money recovered was not a reward or motive as mentioned under Section 7 of the P.C. Act."

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

i) Whether the trial Court was right in finding that the appellant was guilty under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act?

ii) Whether the prosecution has proved their case beyond reasonable doubt?

iii) Whether the conviction and sentence of imprisonment warrant any interference?

iv) Whether P.W.1 applied his mind while according sanction Ex.P1 against the appellant?

13.The case of the prosecution revolves around the trap witnesses, *viz.*, P.W.2 Mani, P.W.5 shadow witness and P.W.6 Executive Officer, who were present at the time of trap. It is well settled that the evidence of trap witness must be decided in the same way as that of any other interested witness. The Court has to look into the corroboration between the evidences before convicting an accused person. Therefore, as a rule of law, it cannot be said that the evidence of every complainant should be corroborated by material particulars, otherwise, it cannot be acted upon. Whether the corroboration is necessary and if so to what extent depends upon the facts of each case. In the light of the facts and circumstances whether the evidence of P.W.2 the brother of P.W.3, could be accepted is to be considered in the present case.

14.P.W.2 defacto complainant made an application before the Executive Officer, Vadakku Valliyoor Special Village Panchayat for issuance of Birth Certificate to his brother's daughter namely, Pavithra. Admittedly, the application is numbered as Sl.No.191/2005 and in the present case, there is no doubt that the appellant is the certificate issuing authority. The certificate, Challan and ledger book were produced before the trial court by the prosecution in order to substantiate the prosecution case. Even on bare perusal of the same, the learned counsel for appellant did not dispute the signature of the appellant in the Birth Certificate and the column filled in the application and the said certificate was issued on 20.07.2005.

15.Further, P.W.2 in his complaint Ex.P3 stated that on 14.07.2005, he had given an application seeking birth certificate to the accused officer and as directed by him, he again went to the office on 19.07.2005, however, in chief-examination he deposed that on 14.07.2005, he made an application to the Executive Officer and in continuation of the same, he met the appellant/accused officer on 19.07.2005. There was some discrepancy in P.W.2's complaint and chief examination with regard to the application made by P.W.2 to the Executive Officer. In the present case, as per the complaint as well as the chief-examination, the application was made on 14.07.2005. However, the alleged demand was only made on 19.07.2005. As per the prosecution, P.W.2 approached the appellant/accused on 19.07.2005 for issuance of Birth Certificate. On that day, the accused agreed to issue the Birth Certificate in favour of Pavithra. However, he demanded Rs.100/- from the defacto complainant. At the time of making demand, no other person was available except P.W.2 and the appellant. Thereafter, P.W.2 was not willing to pay the bribe amount. Hence, he decided to lodge a complaint before P.W.10 Trap Laying Officer. On 20.07.2005, at 11.00 a.m. the Trap Laying Officer received the complaint Ex.P3 from P.W.2 and arranged the official witnesses. The official witnesses were introduced by P.W.10 to P.W.2.

16.There was also some discrepancy with regard to the possession of Rs.100/- which was allegedly used at the time of trap. P.W.10 stated in his evidence that P.W.2 had taken Rs.100/- from his left side shirt pocket and had given the same during the pre-trap proceedings. However, P.W.2 in his cross-examination had stated that while he was going to lodge the complaint, he was in possession of Rs.325/- in his belt purse. Hence, there was a discrepancy as to whether P.W.2 having the money in his shirt pocket or belt purse and from where, he had taken the amount of Rs.100/- and given during the pre-trap proceedings. In this regard, P.W.10's evidence is clear that he had given Rs.100/- from his left side white colour shirt pocket. However, P.W.2 in general, stated that he brought total money of Rs.325/- in his belt purse. So, these minor discrepancies will not render the prosecution case totally invalid.

17.This Court is aware of the position in law, as laid down in cases arising under the provisions of the Prevention of Corruption Act that mere recovery of the tainted amount is not a *sine qua non* for holding a person guilty under Sections 7 of the Act and the same has to be established by the prosecution that bribe was demanded or paid voluntarily as bribe. The demand and acceptance of the amount as illegal gratification is a *sine qua non* for constituting an offence under the Prevention of Corruption Act. The onus is on the prosecution to establish that there was illegal offer of bribe and acceptance thereof and the same has to be founded on facts.

18.However, in the present case the evidence of P.W.2 is clear with regard to the demand of bribe amount by the appellant and the same is also corroborated by P.W.5 shadow witness. On deep analysis of the evidences of both P.W.2 and P.W.5 with regard to the demand of bribe amount and payment of the same, it reveals that it is very cogent and clearly corroborated each other and further in presence of P.W.5, P.W.7 Bill Collector had a conversation with P.W.2 and requested P.W.2 to inform the accused officer to get counter signature in the Challan from the Executive Officer. To that effect, the evidences of P.W.7, P.W.2 and P.W.5 are corroborated each other. There are three copies of Challan one is office copy, second one is treasury copy and another one is customer copy. However, P.W.6 Executive Officer in his evidence had stated that after the bill collector made entries in the Challan, he put his signature only in the office copy of the Challan. The evidence of P.W.6 is also very clear and cogent and there is no contra evidence to disprove the evidence of P.W.6 and P.W.7.

19.Though the Trap Laying Officer conducted two Phenolphthalein test in respect of right hand as well as left hand, admittedly, since the accused received the bribe amount by the left hand and put it in the table drawer, the sodium carbonate solution, in which the appellant, immersed his left hand, only turned into pink colour and the solution was collected in the bottle under M.O.3 and the same was labelled as 'B Left Hand' and the solution in which, the appellant immersed his right hand was not turned into pink colour and the said solution was collected in the bottle under M.O.2 and the same was labelled as 'A Left Hand'. Therefore, in the present case, it is proved that he received the money by using his left hand and he did not receive or collect the money by using the right hand.

20.It is well settled that the presumption to be drawn under Section 20 of the Act is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. In the present case, except some discrepancies in the evidence of P.W.2 and P.W.3, there is no major discrepancy available to disprove the prosecution case and the appellant also has not taken effective steps to rebut the prosecution case. Mere filing of acknowledgement card Ex.D1 is not sufficient to disprove the prosecution case and the prosecution had discharged its burden beyond reasonable doubt.

21.The learned counsel appearing for the appellant raised a doubt with regard to the test conducted by the Trap Laying Officer as, in one test, the colour was changed into Pink and in another test, no colour was changed. But, the Trap Laying Officer clearly deposed that the left hand colour was changed, however, there was no change in the solutionm in which the appellant immersed his right hand. However, the Expert opines that both the tests were positive. Accordingly, he suspects the manner in which the Phenolphthalein test was conducted and doubt the very test result itself. In this regard, P.W.9, Expert, in his evidence clearly deposed that the Phenolphthalein is a highly sensitive chemical and even it spreads in the air, it can be identified through Chemical Analysis. However, during the test, it can be detected whether the Phenolphthalein added in the solution or not. Therefore, in view of the Expert opinion, I do not find any infirmity in the Phenolphthalein test conducted by the Trap Laying Officer and the certificate issued by the Expert. In the instant case, the prosecution has placed sufficient materials to prove that the appellant accused demanded money from P.W.2 and the trap was laid and the investigating officer had also established the demand of bribe for issuance of birth certificate in favour of P.W.2's brother's daughter.

22.The last issue with regard to sanction of prosecution to prosecute the appellant is an important matter and it constitutes a condition precedent to the institution of the prosecution. It is for the discretion of the sanctioning authority to grant or withhold the sanction. In the present case, the sanctioning authority accorded sanction on 08.02.2006, which is marked as Ex.P1. Perusal of the sanction order Ex.P1 shows that the sanctioning authority after perusing entire materials placed before him, accorded sanction. This Court is fully satisfied with the action of the sanctioning authority according sanction and hence, there is no interference called for.

23.Therefore, the trial court has rightly held that the prosecution has proved the case beyond all reasonable doubts and the accused was found guilty. Having gone through the judgment and the evidence of P.W.2, P.W.5, P.W.6, P.W.7 and P.W.10 and other relevant materials, this Court finds it difficult to come to a different conclusion. Accordingly, the sentence of imprisonment and fine amount imposed by the trial Court in Spl. Case No.3 of 2006 by judgment dated 19.12.2012 are confirmed.

24.Accordingly, this criminal appeal is dismissed with a direction to the appellant/accused to surrender before the trial Court within a period of four weeks from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar()

/True Copy/

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate and Special Judge,
Tirunelveli

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

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

Copy To:- The Section Officer, Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M. SHAJAHAN, Advocate (SR-3026[D] dated 06/03/2019)

CRL.A.(MD)No.7 of 2013
04.03.2019

MSI-10.04.2019/13P-7C