BAIL SLIP

The Appellant/Accused namely 1.Allimuthu, S/o.Parasuraman was directed to be released on bail as per the order of this Court dated 21.7.2011 in MP.No.1/2011 in Crl.A.No.451/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.11.2019
Pronounced on : 09.06.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.No.451 of 2011

Allimuthu ... Appellant

Vs.

State By,
Inspector of Police,
Vigilance and Anti Corruption,
City Circle-II,
Adyar,
Chennai-2,
Crime No.2/AC/95/MC-II. ... Respondent

PRAYER: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment passed in Spl.Case No.2 of 1999 dated 01.07.2011 convicting the appellant by the learned Special Judge cum Chief Judicial Magistrate, Chengalpet and to set aside the same.

For Appellant : Mr.C.P.Palanichamy
For Respondent : Mrs.M.Prabhavathy
Additional Public Prosecutor

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JUDGMENT

This Criminal Appeal arises out of the conviction and sentence rendered by the learned Special Judge cum Chief Judicial Magistrate, Chengalpet in S.C.No.2 of 1999, dated 01.07.2011.

2.On conclusion of trial, the trial Court acquitted the 2nd accused and convicted the appellant/A1 for the offence under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo three months rigorous imprisonment and also convicted him under Section 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo three months rigorous imprisonment. All the sentenced were ordered to run concurrently, against which the present appeal.

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

(i)On 14.03.1995, PW2, Shobidha Kumar, who was running a silver oak wood business at Porur and Kodambakkam, sent a consignment of silver oak wood to Mangal Dyeing Printing Mills Limited, Singaperumal Koil, by Alwin Nizan Tempo bearing registration No.TN 59 A 8388, driven by one Sekar. The vehicle was detained at Commercial Tax Check Post for not having bill for goods and was with delivery note alone. PW2 was informed by driver that unless bill and fine amount of Rs.1,500/- is paid, the vehicle would not be released. Thereafter PW2 prepared the bill, sent fine amount of Rs.1,500/- through PW4, Accountant of PW2. PW4 went to Commercial Tax Check Post on 15.03.1995, paid the amount and got the release order [Ex.P13]. In the meanwhile, the patrol team of Tambaram Forest Range Office led by the appellant/Forester, Gunasekaran/Forest Guard, PW7/Forester, Soloman Sundarraj/Forest Guard and Vasudevan/Forest Guard found that the goods vehicle with silver oaks wood, a scheduled timber was being transported without pass of the Forest Department. Hence, the Appellant directed the driver Sekar, to bring the vehicle to the Tambaram Forest Range Office.

(ii)PW4 went to Tambaram Forest Range Office, enquired about the same where he was informed that Rs.1,500/- to be paid towards compounding fee, otherwise vehicle and timber would be detained. PW4 informed PW2 about the same. PW2 came to Tambaram Forest Range Office, where PW4 introduced the appellant and A2. This happened at 02.30 p.m on 15.03.1995. Annoyed over the same, PW2 approached the respondent, lodged a complaint [Ex.P4], to the Deputy Superintendent of Police, Vigilance and Anti Corruption, who forwarded Ex.P4 to PW9, who on verification, registered an FIR in Crime No.2/AC/95/MC2 [Ex.P16], enlisted service of PW3 and PW5, the Government officials to be witness for the trap, thereafter, between 05.15 p.m. and 06.00 p.m, the importance of phenolphthalein test and trap proceedings were demonstrated and entrustment mahazar [Ex.P6] was prepared. At about 07.00 p.m., the trap team and the decoy reached Tambaram Forest Range Office. PW2 and PW3 got out from the vehicle and proceeded to the office. The appellant and A2 were standing in the Varandha. PW2 handed over the trap amount [MO1] to the appellant and requested for release of vehicle and goods. The appellant informed that the Forest Ranger/PW6 had come and raised the demand to Rs.5,000/-. PW2 informed his inability to make the raised demand. The appellant received the money counted the same and kept in his left side pant pocket. PW2 came out, gave pre-arranged signal. PW9/TLO along with PW5, the other official witness and trap team entered the office, questioned the appellant. The appellant handed over the money to A2, who threw the same on the Varandha. PW2 identified the appellant and phenolphthalein test was conducted on both hands of the appellant as well as to his kerchief and the left side pant pocket. Likewise, phenolphthalein test was conducted on the hands of A2. The hand washes were taken in a bottle and sent for chemical analysis. PW10 further conducted the investigation, examined the witnesses, after obtaining sanction from PW1, filed the charge sheet.

4.During the trial, the prosecution examined 10 witnesses, collected 18 documents and 10 material objects. On the side of defence, no witness was examined,11 documents were marked.

5.On questioning under Section 313 Cr.P.C. the appellant denied the charges. On appreciation of evidence, oral and documentary, the trial Court under Judgment dated 01.07.2011, acquitted A2, but convicted the appellant.

6.The contentions of Mr.C.P.Palanichamy, learned counsel appearing for the appellant, are as follows:-

(i)PW2 is the decoy, PW3 and PW5 are the official witnesses. PW3 was treated hostile. Hence, the motivated and interested witness PW2's evidence alone is available. It is an admitted fact that the silver oak wood, a scheduled timber, transported by PW2, was detained in Commercial Tax Check Post on 14.03.1995 for want of proper bill. Thereafter PW2 prepared a bill and sent PW4 along with compounding fee of Rs.1,500/. The delivery note is Ex.P11, the receipt for payment of money is Ex.P12 and the release order of vehicle is Ex.P13. PW4 got the vehicle release order on 15.03.1995 on payment of compounding fee. The vehicle was driven by one Sekar, who was not examined in this case. Likewise along with Sekar, cleaner Murugesan, Mani, Samuthiram had travelled in the goods vehicle. None of these persons were examined as witnesses. Thus it is proved that PW2 transported silver oak wood, a scheduled timber, in violation of the Tamil Nadu Forest Act, 1882, which is confirmed by PW1, PW6 and PW7.

(ii)The appellant, A2 along with Gunasekaran/Forester, Vasudevan/Forest Guard, Soloman Sundarrajan/Forest Guard and PW7 were on patrol duty, found the vehicle of PW2 was carrying silver oak wood detained it in Tambaram Forest Range Office and instructed the driver Sekar to pay the compounding fee for transportation of scheduled timber, then only the vehicle and the timber would be released. PW4 was informed by the said Sekar. Thereafter, PW4 informed PW2 that the forest official has detained the goods vehicle. PW2 came to Forest Range Office, Tambaram, met the appellant, who asked him to make payment of Rs.1,500/-, for release of the vehicle. PW2 informed that for the past 20 years he has been transporting silver oak wood without any permission from forest department.

Further, a day before only i.e., on 14.03.1995, the Commercial Tax Department has detained his vehicle and he has paid the compounding fee. A1 informed that if case is registered and prosecuted, PW2 would incur heavy expenditure. If compounding fee of Rs.1,500/- is paid, the vehicle and the goods would be released. PW2 informed that he would bring the money and asked his accountant/PW4 and others to stay there, left the Range Office. Thereafter, at about 04.00 p.m., he lodged a complaint [Ex.P4] to the respondent.

(iii)It is to be seen that in the complaint [Ex.P4] there is no mention about the transportation of silver oak wood, a scheduled timber. The complaint [Ex.P4] was lodged at about 04.00 p.m., and FIR [Ex.P16] was registered immediately at about 04.05 p.m. By 04.30 p.m. the service of PW3 and PW5 was sought, they reached the office of the Vigilance and Anti Corruption at about 05.00 p.m. By 05.15 p.m., the entrustment proceedings commenced, Ex.P6/Entrustment Mahazar was concluded by 06.00 p.m. Thereafter, PW2 along with PW3 and PW5, the official witnesses and trap team members left the Vigilance and Anti Corruption office, reached Tambaram Forest Range Office by 07.00 p.m. Thus the sequence would show that PW9 had not conducted any enquiry with regard to verification of antecedents of the officer i.e. the appellant, genuineness of the complaint and the procedure followed by the Forest Department in dealing with scheduled timber.

(iv)It is to be seen that PW9 is not aware that silver oak wood is a scheduled timber and the procedure followed by the forest officials imposing compounding fee for releasing the vehicle and goods. There is no prior demand proved in this case. According to PW2, PW4 informed him about the demand of Rs.1,500/-, as bribe. PW4 has not stated anything with regard to demand of bribe by the appellant. In view of the same, the allegation of PW2 in Ex.P4 about a demand of bribe by forest officials is false.

(v)Further meeting of the appellant by PW2 is disproved by the production of the diary of the appellant which would show that the appellant was on duty in a quarry during the relevant point of time. The further allegation of PW2 is that the demand was raised from Rs.1,500/- to Rs.5,000/-, since the presence of Ranger is also false and had there been any such demand, the same would have been recorded in the recovery mahazar [Ex.P14]. There is no such recording in Ex.P14 and it is nothing but a improvement, a vital contradiction.

(vi)It is admitted by PW2 in the complaint [Ex.P4], the name of the appellant is not mentioned. Further during the trap, PW2 immediately handed over Rs.1,500/-, to the appellant for release of vehicle and there was no demand by the appellant, which was also confirmed by PW3. PW3, the accompanying witness, clearly stated that Rs.1,500/-, was handed over by PW2 towards compounding fee. Thus, the prosecution in this case has not proved the demand. PW2 suppressed the vital fact of transportation of scheduled timber in his complaint [Ex.P4] and got a case registered. PW2 and PW4 stated that they are not aware of silver oak wood is a scheduled timber for transporting the same, permission/pass from forest officials is needed. PW1, PW6 and PW7 stated about the procedure. PW10 confirms the same. PW2 being a violator of Forest Law, whose consignment and vehicle seized, used the respondent for releasing the same. The vehicle was returned along with timber as could be seen from Ex.P18. Thus by registering the above case, PW2 successfully avoided any prosecution under the Tamil Nadu Forest Act, 1881 and got return of vehicle along with goods. The return of vehicle and goods had been admitted by PW2. PW2 in the guise of paying compounding fee for return of vehicle, projected the same as demand of bribe and falsely implicated the appellant in this case.

(vii)Further, the non examination of driver Sekar is fatal to the prosecution who would be the right person to state about the real happenings in the check post and in the Forest Range Office Tambaram, where the vehicle was detained. PW2 admitted that only during the trap, the name of the accused in this case was known to him when PW9/TLO, examined them. PW3, the accompanying witness stated that he and PW2 went to Tambaram Forest Range Office, met the appellant and PW2 straight away handed over Rs.1,500/- to the appellant, which would go to show that the appellant did not make any demand. With regard to raising of demand as submitted earlier, the same does not find place in Recovery Mahazar [Ex.P14] and it is an improvement. Ex.P7 is the statement given by the driver of the vehicle, in which he admitted transportation of silver oak wood, a scheduled timber. PW3 further stated that there were two or three persons during the trap, but none were shown as witness in this case.

(viii)PW3 in certain terms stated that he is not aware whether the money given by PW2 to the appellant is compounding fee or bribe. From the evidence of PW3, it can be seen that there was no demand made by the appellant. PW5, the other official witness for pre and post trap proceedings has stated that he came in a car along with trap team members to the Forest Range Office. PW2 stated that he came in his car along with PW3. PW9/TLO has stated that he took PW2, PW3, PW5 and other trap team members in his official vehicle to the Forest Range Office immediately to meet the accused. PW2 handed over Rs.1,500/- to the appellant in the guise of paying compounding fee and immediately gave pre-arranged signal, PW9 along with trap team members entered into Tambaram Range Office, without any loss of time. The evidences of PW2, PW3 and PW5 are contrary to each other. PW5 has stated that during the pre-trap proceedings, PW3 participated in the demonstration. PW2, PW3 and PW9 stated that it was PW5 who participated in the demonstration. Thus, the pre and post-trap proceedings are clouded with mystery.

(ix)The learned counsel for the appellant further submitted that PW4, the accountant of PW2, stated that on 15.03.1995, PW2 called him and handed over a purchase bill, to be produced to the Commercial Tax Office and also Rs.1,500/-, for compounding fee. PW4 was informed by the driver Sekar that the vehicle could not be taken from the Commercial Tax Department Check Post, since the Forest officials found transport of scheduled timber and took one Murugesan to the Range Office. When PW4 met the appellant, he was informed about the compounding fee of Rs.1,500/- to be paid for release of the vehicle and goods. PW2 met the appellant at 02.30 p.m., during that time PW4 was not with PW2 and he was not aware of the conversation between them. PW4 has not stated about demand by the appellant to him or to PW2 in his presence.

(x)PW6 is the Ranger of Tambaram Forest Range Office, through him, the diary proceedings of the appellant and other members of the patrol team are marked. From the defence exhibits, it is clearly seen that the Forester are empowered to detain the vehicle carrying scheduled timber without permission/pass, impose compounding fee, register a case on failure to pay the compounding fee and within 24 hours to send report the Ranger. In this case, admittedly, the vehicle was detained around 12.30 p.m., on 15.03.1995 and by 04.00 p.m., the complaint [Ex.P4] was lodged by PW2, trap was laid by 07.00 p.m., within 7 hours even before completion of 24 hours. PW2 used the trap as a tool to escape from the prosecution for violating the Tamil Nadu Forest Act.

(xi)PW6 admitted that he was not available in the office on 15.03.1995, since he was held up in High Court, Madras upto 05.30 p.m., in connection with a case. PW7 in certain terms stated that PW2 did not obtain any permission for transportation of silver oak wood, a scheduled timber. PW7 a Forester, one of the patrol team members, found the goods vehicle of PW2, without permit and detained the vehicle. This witness/PW7 has categorically stated about the recording of statement from the driver Sekar and detaining the vehicle in the Range Office, informing the Ranger about the seizure of vehicle and goods. It is the Ranger, who has to register a case. In the absence of the Ranger, the Forester are permitted to receive the compounding fee. In this case, admittedly, PW6, the Ranger was not available in the office and hence, the receipt of Rs.1,500/- by the appellant towards compounding fee was proper.

(xii)PW7 in chief examination as well as in cross examination, reiterated that the seizure of the vehicle with scheduled timber was informed to the Ranger and on the instructions of Ranger, the compounding fee of Rs.1,500/-, was informed to PW4. PW7 stated about writing of diary by the officials of forest department and submission of the same once a week and such diary are verified by the superior officers. The seized vehicle was parked inside the Forest Range Office. It is seen that FIR [Ex.P16] was registered immediately within 5 minutes on receipt of complaint [Ex.P4]. PW9/TLO stated about the pre-trap and post-trap proceedings and admitted that the vehicle bearing registration No.TN 09 A 8388 with silver oak wood, a scheduled timber, was found detained in the Forest Range Office, documents were seized and Ex.P7 is the statement of the Drive Sekar.

(xiii)PW9 admitted that the explanation given by the appellant, was not recorded in the Recovery Mahazar [Ex.P14]. The appellant's explanation for receipt of Rs.1,500/- is only towards compounding fee and not for bribe, was not recorded. PW9 failed to record the same as it would affect the case. PW9 was not aware of the duties and procedures followed and adopted by the Forest officials in implementation of the Forest Act. Without verifying these facts PW9 laid a trap. The evidence of PW5 shows that PW9/TLO accompanied PW3 even before getting pre-arranged signal. PW2 to escape from the prosecution to be launched by forest officials had given a false complaint and without proper verification, PW9 laid a trap. Thus, PW9 without considering the attendant circumstances had laid a trap.

(xiv)PW10, the Investigating Officer, though examined the driver Sekar and other persons who travelled in vehicle, none of them were examined as witnesses in this case. The said driver would have been the right person to state about the actual happenings in the Commercial Tax Check Post as well as in the Forest Range Office. Though the other patrol team members have been cited as witnesses, they had not been examined in this case except PW7. The diaries of the patrol team members, namely Vasudevan, Soloman Sundarrajan, have been marked as Exs.D9 to D11, in which the detention of the vehicle with timber is recorded.

(xv)It was natural that the appellant leading the patrol team had received Rs.1,500/- as compounding fee. PW10 admitted that on receipt of compounding fee, the detained vehicle and goods will be released by the forest officials. Further, it was argued that the normal conduct is that if the detention of the vehicle and goods was for receipt of bribe, the vehicle with goods would not have been brought and detained in the Forest Range Office. In this case, it is admitted that the vehicle with goods were detained and kept in the Range Office. In Ex.P1, it is mentioned that the vehicle of PW2 transported silver oak wood, a scheduled timber and for which forest pass is necessary. In Ex.P1, Sanction Order, there is no mention about the conduct of pre-trap and post-trap proceedings in presence of PW3 and PW5 and about demand and acceptance of bribe of the appellant. Thus, PW1 issued Ex.P1 without application of mind and it is not a valid sanction. The learned counsel for the appellant further submitted that from the cross examination of witnesses and by marking defence exhibits, the appellant has clearly dislodged the statutory presumption. Further proved his case by preponderance of probability, by proper reason and explanation for receipt of Rs.1,500/-, which was received only towards compounding fee and further he had given a detailed explanation during questioning under Section 313 Cr.P.C. The trial Court had not considered the same.

(xvi)The trial Court did not take into consideration the defence exhibits marked through PW7 and PW8, the Ranger and Forester of the Forest Department. They have stated about silver oak wood, being a scheduled timber was transported by PW2 without any permit from the Forest Department. PW2 being an offender, to escape from the prosecution under the Tamil Nadu Forest Act and to deter the forest officials from verifying his antecedents and his dealings in scheduled timber, foisted a false case against the appellant. PW1 is a motivated and tainted witness.

(xvii)Further, the lower Court on a wrong premise came to conclusion that PW4 informed the demand of bribe by the appellant to PW2. It is seen that PW4 has not stated so, likewise the lower Court placed heavy reliance on the evidence of PW2 and PW3 about the appellant raising the demand from Rs.1,500/- to Rs.5000/- and a conscious demand for bribe was made by the appellant, failing to look into the fact that it is an improvement. Had there been any raise in demand, the same would have been recorded in Ex.P14/Recovery Mahazar. The other circumstances pointed by the lower Court is that there was no record to show that compounding fee was received, no bills were produced and also the appellant had not informed the Ranger. The lower Court failed to look into the fact that 24 hours time limit is there to report about the offence. Further, in this case within 7 hours of detaining the vehicle, trap had been laid. The compounding fee receipt would be prepared only after the violator is willing to accept to compound the offence with compounding fee, as could be seen from the evidence of PW7 and PW8. Likewise the evidence of PW5 had been glossed over. PW5 stated about PW9 entering the office along with PW3 and it was PW9, who had given the signal to other trap team members, to enter the office. Further PW7 stated that he was held up in the High Court, Madras for the whole day in connection with a case and he had returned back to the Office/residence only by 05.30 p.m. on 15.03.1995. On the contrary, the lower Court gave a finding that the appellant had not proved the absence/non availability of Ranger. PW3 has categorically stated that immediately after handing over the trap money, the trap team entered into the office, thereby giving no time for the appellant to prepare the requisite receipts and other documents. The appellant was not sure whether PW2 wanted to face the prosecution, contest the case or willing to admit and pay compounding fee.

(xviii) Further there was no sufficient time for preparation of necessary documents after receiving the compounding fee from PW2. These vital facts have not been considered by the trial Court. On the other hand, the trial Court had convicted the appellant. Thus, the trial Court has not analysed the evidences and materials both oral and documentary in proper manner and has not considered the defence exhibits and evidences which were in favour of appellant. Hence, the conviction and sentence of the trial Court has to be set-aside.

(xix) In order to substantiate his arguments, the learned counsel for the appellant relied upon the following citations:-

1.V.Sejappa Versus State reported in MANU/SC/0494/2016.

2.C.M.Girish Babu Versus CBI - Cochin reported in MANU/SC/0274/2009.

3.T.Subramanian Versus the State of Tamil Nadu reported in MANU/SC/8010/2016.

4.State of Tamil Nadu Versus S.Krishnamoorthy reported in MANU/SC/0266/2002.

5.A.Venkatachalam Versus State reported in MANU/TN/0124/2015.

6.S.Dharmalingam Versus the State reported in MANU/TN/1918/2017.

7.M.Patties Versus the State reported in MANU/TN/1934/2015.

8.P.V.Sarguru Versus the State reported in MANU/TN/0626/2015

9.S.Vijayalakshmi Versus the State by Inspector of Police, Vigilance and Anti-Corruption reported in MANU/TN/0481/2014.

10.B.Jayaraj Versus the State of A.P. reported in MANU/SC/0245/2014.

11.K.Kamaraj Versus State by the Deputy Superintendent of Police V & AC reported in MANU/TN/0790/2013.

12.D.Dass Versus State reported in MANU/TN/4451/2010.

13.A.V.Vijayarangan Versus State rep. By Inspector of Police, V & AC reported in (2010) 1 MLJ Crl.541.

14.S.P.Paulraj Versus State rep. by the Deputy Superintendent of Police, V & AC reported in MANU/TN/1731/2008.

15.Ramakrishnan Versus State by the Inspector of Police, D & VAC, Chennai reported in MANU/TN/6099/2006.

16.G.Gopalakrishnan Versus the State reported in MANU/TN/5261/2018.

17.C.B.I. Versus Ashok Kumar Aggarwal reported in MANU/SC/1220/2013.

(xx)In this case, no demand was made by the appellant. In the absence of demand, the recovery of tainted money is unsustainable. The evidence of PW2 is a tainted one, which cannot be relied upon.

7.The contentions of the learned Additional Public Prosecutor appearing for the respondent is as follows:-

(i)PW2 is the decoy witness, PW3 and PW5 are the official witnesses and PW9 is the Trap Laying Officer. PW2 lodged a complaint [Ex.P4] to the Deputy Superintendent of Police, who forwarded the same to PW9. PW9 on receipt of the same registered an FIR [Ex.P16], summoned PW3 and PW5, to be witnesses for trap. Thereafter, between 05.15 p.m and 06.00 p.m on 15.03.1995, pre-trap proceedings was demonstrated and entrustment mahazar [Ex.P6] prepared. The trap team along with PW2 and official witnesses/PW3 and PW5, reached the Tambaram Forest Office. PW2 and PW3 entered the office of the appellant. PW5, PW9 and other trap team members kept a watch from outside. At about 07.15 p.m., PW2 and PW3 came to the appellant's office. The appellant and A2 were standing in the Varandha, which was visible from the light in the building as well as the street lights. Thereafter, PW2 gave pre-arranged signal, PW9/TLO, PW5 and other trap team members entered the office, PW2 identified the appellant to whom he handed over the money. When the appellant was questioned, he got perplexed. The appellant handed over the money to A2, who threw the same on the Varandha. Thereafter, the hands of the appellant, his kerchief and left side pant pocket were subjected to wash and the washes were taken in a bottle and sent to chemical analysis. The tainted money found in the Varandha, was compared with entrustment mahazar [Ex.P6], which tallied. From the detained vehicle of PW2, some documents were seized. Thereafter, from the table of the appellant, the statement of the driver Sekar [Ex.P7] and a plain paper [Ex.P8] were also seized and also Exs.P11, P12, P13, were recovered. PW2 was asked to leave. Thereafter, PW6 was called and in his presence, the recovery proceedings were prepared.

(ii)PW6 informed that he was not available on the day, since he was held up in High Court, Madras and came back only in the evening hours. PW6 was not informed about the detention of the vehicle with goods in the Forest Range Office. It is the Ranger who has to decide whether a case has to be registered or permit the violator to admit the offence and compound the offence.

(iii)PW7, one of the patrol team member has stated about bringing the vehicle to the Tambaram Forest Range Office. PW2 was informed by PW4 about the detention of the vehicle in Tambaram Forest Range Office and demand of bribe. The chief examination of PW3 is in conformity to the evidence of PW2. In the cross examination, PW3 has stated that he was not aware whether the amount handed over was towards compounding fee or bribe. Hence, he was treated hostile. PW5 due to the passage of time, was unable to recollect the happenings and there were minor discrepancies. The evidences of PW2, PW3 and PW4 are in conformity to each other. PW9/TLO clearly narrated the sequential events. PW10 conducted further investigation, recorded the statement of forensic experts, received forensic report which confirms the presence of phenolphthalein powder in the washes of the appellant and A2. The sanction order Ex.P1 was issued by PW1 and his evidence is in conformity to the prosecution case.

(iv)Further the production of diary of the appellant [Ex.D7] would reveal that on 15.03.1995, the appellant attended quarry at about 08.30 a.m to 10.00 a.m. and 04.00 p.m. to 05.45 p.m. Hence, meeting of the appellant by PW2 at about 02.30 p.m at his office and demand of bribe amount by the appellant is proved. Exs.D5, D6, D7 did not support the defence version. Ex.D8 and D10 are the diaries of Vasudevan and Soloman Sundarrajan, which have been created to disprove the case of the prosecution.

(v)The demand of bribe amount has been proved through PW2 and PW4, the receipt of bribe amount has been proved through PW2, PW3 and PW9. The appellant had not brought any evidence to dislodge the facts proved by the prosecution. The trial Court on analysis of the evidence both oral and documentary, found sufficient materials against the appellant and convicted him. Since there was no sufficient materials against A2, the trial Court acquitted him. Thus, the trial Court by a well reasoned judgment has rightly convicted the appellant.

8.This Court considered the rival submissions and perused the material available on record.

(i)It is admitted that PW2 transported silver oak wood, a scheduled timber on 14.03.1995 from his shop to Mangal Dyeing and Printing Mills Limited, Singaperumal Koil by Alwin Nizan Tempo bearing No.TN 59 A 8388. The vehicle was stopped and documents were checked by the Commercial Tax Check Post. Finding the transportation of timber only with delivery challan and not with proper bill, the vehicle was detained.

The driver of the vehicle Sekar informed the same to PW2. PW2 on 15.03.1995, prepared a bill sent Rs.1,500/-, through PW4 his accountant, to pay the fine amount to the Commercial Tax Officers. It is also not in dispute that on 15.03.1995, the appellant led a patrol team along with A2, PW7, one Vasudevan and Soloman Sundarrajan, forest personnels. PW6, the Ranger admitted that he authorized the patrol team on special task. PW7 along with patrol team members found the vehicle of PW2 with scheduled timber silver oak wood and directed the driver Sekar to bring the vehicle to Forest Range Office for transporting scheduled timber, without forest pass.

(ii) PW4 enquired the appellant, who informed him to pay Rs.1,500/-, to release the vehicle, failing which prosecution would be launched. PW4 informed PW2, his owner, about the same. PW2 came to the Forest Range Office, where he was informed about the payment of compounding fee. PW2 left the Forest Range Office and lodged a complaint [Ex.P4] with the respondent. In Ex.P4, there is no mention of the name of the appellant or other accused, it only mentions the officials of forest department demanded bribe to release the vehicle and the goods. Further, on perusal of Ex.P4, it is seen that there is no mention about transportation of scheduled timber silver oak woods. PW2 assumed Rs.1,500/-, which he was directed to bring for compounding fee as bribe. The evidence of PW1, PW6 and PW7 would confirm the Foresters are empowered to detain the vehicle violating forest law, take action and to receive the compounding fee and the appellant being a Forester on previous occasion, had initiated such proceedings and received compounding fee, released vehicle as could be seen from Exs.P3, P8 & P9.

(iii) PW6 and PW7 confirm that the appellant used to receive the compounding fee. It is not to be lost sight that the vehicle with scheduled timber was detained in the Forest Range Office, which is admitted by PW2, PW4, PW6, PW7 and PW9. From the evidence of PW2 it is seen that after the trap, PW2 immediately asked for release of his vehicle, which was not permitted by PW9 and thereafter PW2 got return of property through Court, as could be seen from Ex.P18. In the typed set, at page No.140, it is seen that the vehicle has been produced in the Vigilance Case and no prosecution was initiated against PW2 for violation of forest offence, despite PW6 and PW7 has categorically stated about PW2 transporting scheduled timber without permit/pass in violation of Forest Act. PW2 admitted that for the past 20 years he was dealing with silver oak woods business and further probe under forest act would be determental. PW2’s suppression of the transportation of silver oak woods in Ex.P4 cannot be lost sight of. Further, PW3 and PW5, the accompanying official witnesses are not aware of PW2’s involvement in the transportation of scheduled timber, silver oak wood.

(iv) PW9/TLO is not aware of procedure and prosecution followed by the forest officials for transporting the scheduled timber without permit/pass. Thus, PW2 had not approached the respondent with clean hands and his complaint [Ex.P4] is to be looked with suspicion. PW2 claims that he was informed by PW4 that the officials in Forest Range Office Tambaram, demanded bribe of Rs.1,500/-, for release of the vehicle. PW4 in his evidence, does not state so, hence the demand projected by PW2, is false. Likewise, at about 02.30 p.m. on 15.03.1995, when PW2 met the appellant in the Forest Range Office, PW4 moved away from there and he was not privy to the conversation. From the evidence of PW4, it is clear that the appellant did not demand any bribe and Rs.1,500/-, was for compounding fee. Thereafter PW2, lodged a complaint [Ex.P4], PW2 stated that he along with PW3 came in his car, followed by PW5, PW9 and other trap team members. PW5 in his evidence has stated he had come in his car, on the other hand PW9 stated PW2, PW3, PW5, PW9 and other trap team members came in the official vehicle. There are contradictions in the manner they reached the Forest Range Office.

(v) PW2 and PW3 admitted on reaching Forest Range Office, met the appellant, immediately PW2 gave Rs.1,500/- and asked for release of vehicle with goods. Though PW2 and PW3 stated that the appellant raised the demand from Rs.1,500/- to Rs.5,000/-, strangely in the Recovery Mahazar [Ex.P14], there is no such recording. Further, Pw9/TLO admitted that the explanation of the appellant was not recorded. Hence, the contention of the appellant that it is an improvement gains credence. The appellant was made to believe that Rs.1,500/-, was handed over by PW2 towards compounding fee. Immediately thereafter the trap team members PW5, PW9 rushed to the Range office, conducted phenolphthalein test and recovered the trap amount. PW3, the accompanying witness clearly stated that he was not aware whether the amount of Rs.1,500/-, is towards bribe or compounding fee. Hence, it is clear that there was no demand of any bribe by the appellant. PW3 had been treated hostile.

(vi) PW2 stated that he introduced PW3 as his neighbour shopkeeper. PW3 does not mention anything in this regard. PW2 stated that the trap money was kept by him in his bag. PW3 has stated that PW2 had kept the trap money in his shirt pocket. PW9/TLO stated PW2 kept the trap money in his pant pocket before handing over to the appellant. Thus there are contradictions in the placement of trap money. PW3 has clearly stated that PW2 handed over the money voluntarily and there was no demand made by the appellant. From the evidence of PW2 as well as PW3, it could be seen that PW2 voluntarily handed over the money on his own accord and asked for releasing of vehicle and goods. Nowhere it was mentioned that the appellant demanded the bribe. The evidence of PW5, who is the other official witness for pre-trap and post-trap proceedings, is contrary to the evidences of PW2, PW3 and PW9. The presence of PW5 in Vigilance office as well as in the scene of occurrence are highly doubtful. PW5 stated that during the pre-trap proceedings demonstration, the trap money was handled by PW3, on the other hand it is seen from the evidences of PW2, PW3 and PW9, it is seen that PW5 handled the same. PW5 is very categorical that he came in his car followed by the official jeep of the respondent. PW2 stated he and PW3 came in his car to the Forest Range Office. PW5 would state that PW9 along with PW3 entered the Forest Range Office and thereafter, PW9 came out, gave pre-arranged signal, on seeing it the other trap team members along with PW5 entered the Range Office. Thus the vital contradiction in the happenings in the Vigilance Office as well as in the Forest Ranger office/scene of occurrence are contradictory, the evidence of PW5 is unreliable without credence.

(vii)PW9/TLO admitted Ex.P7 is the statement of Sekar, the driver of the vehicle, who admitted the transportation of scheduled timber. PW9 admitted that the Deputy Superintendent of Police received the complaint [Ex.P4] at 04.00 p.m., and it was immediately forwarded to him and at about 04.05 p.m., immediately, FIR [Ex.P16] was registered. In case of such nature it is imperative to find out the motive and credibility of the complaint, as well further antecedents of the appellant to be verified, thereafter only FIR to be registered. In this case, from the records, it is seen that there is no such verification done. On registration of FIR, PW9 summoned PW3 and PW5 at 04.30 p.m., both reached the Vigilance Office by 05.00 p.m, the entrustment proceedings commenced at 05.15 p.m. and went upto 06.00 p.m., as could be seen from Ex.P6. Thereafter, the trap team proceeded to Forest Range Office Tambaram reached around 07.00 p.m., from 07.15 p.m., to 11.00 pm, the recovery proceedings were recorded as could be seen from Ex.P14.

(viii)PW9 admitted that the appellant gave some explanation but he did not record the same. PW9/TLO ought to have recorded the explanation of the appellant whatever may be his explanation. The explanation given by the appellant that he received Rs.1,500/-, towards compounding fee and he never demanded bribe, gains credence which he also reiterates while questioning him under Section 313 CrPC. It is found in Ex.P14, there is no mention about raise of demand of bribe from Rs.1,500/- to Rs.5,000/-. PW6 confirms that 24 hours time is permitted for the Forester to report about the offence. In this case, admittedly, the entire trap had been initiated and completed within 7 hours of the seizure of the vehicle.

(ix)PW4 the accountant of PW2 has not stated anything that the appellant demanded bribe and Rs.1,500/- was towards compounding fee for release of the vehicle. PW6, the Forest Ranger, in his evidence admitted as per Ex.D5, he directed the appellant to conduct patrol on 15.03.1995 and the patrolling team consisted of appellant, A2, PW7, Vasudevan and Solomen Sundarrajan. Further, PW6 stated as per Ex.D6, the appellant during the day time was in quarry No.13 and the relevant recording is Ex.D7. The diary is to be submitted once in 15 days to the superior officers. The Foresters are empowered to register a case, receive the compounding fee as per Forest Act and Manual. PW6 further stated in Ex.D8/the diary of Vasudevan, at page 25, Vasudevan one of the patrolling team, it is recorded on 15.03.1995, a vehicle was found with silver oak woods and the vehicle was brought to the Tambaram Range Office, the relevant pages are 25 and 27 and the recording is Exs.D9 and D10. The diary of Soloman Sundarrajan, recording is Ex.P11, both Vasudevan and Soloman Sundarrajan had clearly recorded detaining the vehicle of PW2 in the Range office.

(x)PW7, the Forester, one of the patrol team confirm that on 15.03.1995 at about 07.00 a.m., the vehicle with silver oak wood was found near the Commercial Tax Check Post without forest pass/permit for transportation of scheduled timber. Thereafter, the vehicle was detained in Range Office. From the evidence of PW7 it is seen that the detention of the vehicle was informed to the Ranger. The Ranger authorized him to collect the compounding fee. PW7 confirms that the diary of the Forester and Forest Guard would be submitted to the Ranger once in 15 days. PW10 admitted that PW7 during investigation has stated about the appellant leading the patrol team along with four others and the seizure of vehicle with silver oak wood and the vehicle brought to the Range Office. PW10 admitted 24 hours time is given to report about the detention. Admittedly, this case was registered within 7 hours of detention of the vehicle.

(xi)Thus, PW2 suppressed the fact of transporting the scheduled timber without forest permit/pass in his complaint [Ex.P4]. In Ex.P4, he has not named the appellant. PW3, PW5 and PW9 are not aware of the Forest Law, the procedures followed in proceeding against the violators, the procedure of receiving the compounding fee, release of detained vehicle. Thus the entire case has proceeded on a wrong premise. There are vital contradictions in the evidence of PW2, PW3, PW5 and PW9. The sin quo non of demand has not been proved in this case.

(xii)The demand is sin quo non, in the absence of demand, recovery of trap money is of no consequence. The trap amount projected as compounding fee was handed over to the appellant. The detention of vehicle in the Range office would show that the appellant was contemplating to proceed against PW2. Since the appellant was not sure whether PW2 was to face prosecution or to admit and compound the offence, the receipts were not prepared.

(xiii)From Exs.D9, D10 & D11, it is seen that the detention of the vehicle are recorded in the diary of the patrol team members and submitted to the higher officials. Further, the trap had taken place within seven hours from the detention of the vehicle and the trap team had rushed into the office and no time was given for the appellant to prepare documents and receipts. PW2 taking advantage of the above case, successfully stalled further probe and prosecution against him under forest law. The complaint of PW2 is motivated. From the evidence of witnesses it is seen that there is no demand made by the appellant. Further from the Tamil Nadu Forest Manual and Act, it is seen that the appellant/Forester are empowered to receive the compounding fee which is admitted by PW1, PW6 and PW7, officials of forest department. The defence documents produced by the appellant merits consideration. The appellant by way of cross examination and producing the defence exhibits had dislodged the statutory presumption pointed against him.

(xiv)The Hon'ble Apex Court as well as the High Court's reiterates the principle, the demand of illegal gratification is sine qua non for constituting an offence under the Prevention of Corruption Act, 1988, mere recovery of tainted money is not sufficient to convict the accused. The Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability. In the case of "Mukut Hihari and another Versus the State of Rajasthan reported in (2012) 11 SCC 642" the Hon'ble Apex Court in paragraph No.11 as follows:-

> "11.The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of 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. However, before 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. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person.”

(xv) In this case the appellant has adduced sufficient evidence to prove the preponderance of probability. The evidence adduced is enough to create a reasonable suspicion in the theory of prosecution. Apart from that, there are number of discrepancies and contradictions in the evidence adduced on the side of the prosecution which is enumerated in the foregoing paragraphs, coupled with the fact that PW2 is not a trustworthy and reliable witness which is enough to arrive at a conclusion that the prosecution failed to prove its case beyond reasonable doubt.

(xvi) Hence, the Court below failed to consider the evidence in proper perspective and came into an erroneous conclusion that the charges were proved against the appellant beyond reasonable doubt. This Court for the reasons stated above comes to a conclusion that the finding of the trial Court holding the appellant guilty of offence punishable under Sections 7 and 13(2) r/w 13(i)(d) of the Prevention of Corruption Act, 1988, is erroneous and unsustainable in law and is liable to be set-aside.

9. In the result, the appeal is allowed. The conviction and sentence of the trial Court are set-aside. The appellant is acquitted of the offence with which he stood charged. The fine amount, if any, paid by him shall be refunded. The bail bond, if any, stands cancelled.

-s/d-
Assistant Registrar(CS-)

True Copy

Sub-Assistant Registrar

To

1. The Special Judge cum Chief Judicial Magistrate,
Chengalpet.

2. The Inspector of Police,
Vigilance and Anti Corruption,
City Circle-II,
Adyar,
Chennai-2.

3.The Public Prosecutor,
High Court, Madras.

4.The Section Officer,
Criminal Record Section,
High Court, Madras.

Br(co)
krd 24/8

Crl.A.No.451 of 2011