IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.11.2019
Pronounced on : 08.06.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.No.769 of 2011 and
Crl.M.P.No.1 of 2011

A.Jayabal ... Appellant/Accused

Vs.

State: The Inspector of Police,
SBE/CBI/ACB, Chennai.
(F.I.R.No.RC.MA1.2009.A.0019) ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the Judgment in C.C.No.7 of 2009 dated 11.11.2011 passed by the II Additional District & Sessions Judge (CBI Cases), Coimbatore.

For Appellant : Mr.S.Ashok Kumar

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for
CBI Cases

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JUDGMENT

This Criminal Appeal arises out of the conviction and sentence rendered by the learned II Additional District Judge (CBI Cases), Coimbatore in C.C.No.7 of 2009 dated 11.11.2011.

2.The appellant was charged for offence under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. On conclusion of trial, the trial Court convicted him under Section 7 of Prevention of Corruption Act and sentenced him to undergo one year rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment and for offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, the appellant was sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default three months rigorous imprisonment. The above sentences were ordered to run concurrently.

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

(i)PW3/the defacto complainant Gerald Pubalan, partner of M/s.LML & Sons, was engaged in the business of conversion of doubling yarns. His father, mother and his brother are other partners of the firm. They were doing business with M/s. Chandra Textiles. M/s. Chandra Textiles deducted income tax at source every month before making payments to PW3's firm, in turn, PW3's firm was to file the income tax returns and then claim refund of TDS. PW3's firm filed income tax returns for the assessment year 2005-2006 and 2006-2007 on 12.12.2006 and for 2007-2008 on 26.07.2007. Since PW3 did not receive the TDS refund amount for these assessment years, he approached Income Tax Office on 09.04.2009 and enquired PW9/Income Tax Officer G.Venkateswaran about TDS dues.

(ii)PW9 called A.Jayabal/appellant and asked him the files of PW3's firm. After going through the file, PW9 informed PW3 that the IT returns filed by him are not available and asked PW3 to submit copies of the same. On the same day, PW3 submitted the copies of IT returns to PW9. After receiving the same, PW9 asked PW3 to meet him after ten days. As instructed, PW3 met PW9 on 21.04.2009 and PW9 asked PW3 to meet the appellant, who was a Senior Tax Assistant in Ward-3(II), I.T Office, Coimbatore. When PW3 met the appellant, the appellant informed that PW9 had instructed him to collect Rs.10,000/- for despatching the TDS cheque. The appellant handed over a piece of paper/Ex.P7 to PW3 inscribing the details of TDS amount and also asked PW3 to pay the amount of Rs.10,000/- in the office on the next day i.e., on 22.04.2009 and assured him that TDS cheque for 2007-2008 will be despatched along with other cheques for the assessment year 2005-2006 and 2006-2007, if the above amount is paid by PW3.

(iii)PW3 not willing to give bribe amount contacted the Superintendent of Police, CBI, Chennai on 21.04.2009 at about 05.45 p.m., complained about PW9/Income Tax Officer and the appellant, Dealing Assistant, IT Office, Coimbatore demanding a bribe of Rs.10,000/- for issuing the TDS refund cheques. The Superintendent of Police asked PW3 to meet PW8 (TLO)/ R.Purushotham, CBI, Inspector at Hotel Cheran Palace, Coimbatore and to give a complaint to him. In the meantime, PW3 came to know from his father that the appellant had called his father on 21.04.2009 at about 06.00 p.m through his mobile and asked him to bring the money on 22.04.2009 without fail. On 22.04.2009 at about 09.45 a.m., on receiving phone call from PW8, PW3 met him at Room No.37, Hotel Cheran Palace, Coimbatore along with his father Lawrance and lodged a complaint [Ex.P6]. On the basis of the complaint, PW8 made a discrete verification and faxed the complaint/Ex.P6, piece of paper [Ex.P7] written by appellant along with his discrete report [Ex.P23] to the Superintendent of Police, CBI, Chennai. On receiving the same, the Superintendent of Police, Chennai directed PW12 to register a case in RC No. 19(A)/2009 [Ex.P31] and directed PW8 to proceed with the case.

(iv)PW8 arranged two independent witnesses from Canara Bank and Union Bank of India, Coimbatore. The two independent witnesses viz., PW6 Jayaraman, Officer from Canara Bank Circle, Coimbatore and G.Srihari, Assistant Managaer, Union Bank of India, Coimbatore along with PW3 assembled in Room No.37 Hotel Cheran Palace, Coimbatore. PW8 explained about the complaint [Ex.P6]. Both the independent witnesses signed in the last page of the complaint [Ex.P6]. Then, PW8 informed the team members about the significance of the trap. On the request of PW8, PW3 produced the bribe amount of Rs.10,000/- in denominations of Rs.1,000/- each and the serial number of each currency notes were noted. PW8, the trap laying officer explained the importance of trap, phenolphthalein test. Pre-trap proceedings were recorded in the Entrustment Mahazar [Ex.P8] and all of them signed in it.

(v)On 22.04.2009, the trap team proceeded to the appellant's office/Income Tax Office. After reaching the spot at about 04.00 p.m., PW3, his father Lawrance and accompanying witness PW6 went to the 7th floor of the office where the office of Ward-3(II) situated. At that time, the appellant was not available and hence, they waited in the office. Later the appellant entered the room, the appellant asked them come to his room. The appellant informed PW3 that he traced two refund cheques and asked the bribe money. PW3 took out the money from his shirt pocket and handed over to the appellant. The appellant received the bribe amount in his right hand, counted the same with both his hands and kept the money in a computer paper. PW3 came out of the office room and gave pre-arranged signal. Immediately, the trap team led by PW8 entered into the room of the appellant. On seeing them, the appellant looked tensed and nervous. Thereafter, PW8 conducted phenolphthalein test on both hands, which turned pink in colour. Thereafter, PW8 recovered the bribe amount from the table drawer of the appellant and verified the serial number noted in the Entrustment Mahazar [Ex.P8]. Since the serial number tallied, PW8 seized the bribe money Rs.10,000/- [MO3] under the recovery mahazar [Ex.P4]. Thereafter, PW8 prepared a rough sketch [Ex.P5], obtained signatures from the officials. PW8 arrested the appellant and house search was conducted. Thereafter, PW8 handed over the investigation to PW12 who examined the witnesses, recorded their statements, collected the documents, sent some documents to Handwriting Expert and after collecting the reports and on completion of investigation, obtained sanction [Ex.P1] for prosecution from PW1 and filed charge sheet before the trial Court.

4.Before trial Court, prosecution examined 12 witnesses and marked 31 exhibits and seized 3 materials objects. On the side of the defence, no one were examined, two exhibits 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 11.11.2011, convicted the appellant.

6.The contention of the learned counsel for the appellant is that the evidence available in this case is against the charges framed against the appellant. The FIR/Ex.P31 came to be registered against the appellant and PW9/Income Tax Officer and for the reasons best known, PW9/Income Tax Oficer's name has been dropped from the case. The Investigating Officer/PW12 had summoned PW9 referring as accused. The name of PW9 has been mentioned in the complaint as well in the statement of PW3/decoy witness, but PW9's name was dropped from the case. The learned counsel further contended that PW7 and one Vidhya Rangadhurai who are the Senior Tax Assistants of Income Tax Department have clearly stated about the persistent demand of bribe made by PW9. For the reason best known, PW9's name has been deleted. On the other hand the entire case has been fabricated against the appellant. PW12/Investigating Officer as well as the trial Court admitted that there are various contradictions and admissions of the witnesses. There have been vital contradictions between PW3/decoy and PW6/accompanying witness. PW3 state that the appellant called him and verbally demanded the bribe amount. PW6, the accompanying witness has stated that the demand was non verbal by sign. Further PW3 and PW6 along with Lawrance/father of PW3 had met the appellant while handing over the trap amount. The said Lawrance was not examined as witness.

7.It is admitted by PW3 as well as PW6 that in the room where the appellant was sitting, two other Income Tax officials namely Krishnakumar and Prabhakaran were present. PW11/the Inpector of Police/CBI state that he examined and recorded the statements of Krishnakumar and Prabhakaran, but both of them were not examined as witness. PW6/the accompanying witness in his evidence admits that the trap amount was taken out by the appellant from table drawer and the appellant was made to handle the trap amount before the phenolphthalein test. Hence, the hand wash turned pink and answered positive, which is in conformity to the explanation of the appellant in his statement recorded under Section 161 of Cr.P.C which is a plausible one. Further around 04.00 p.m., on 22.04.2009 when PW3, PW6 and the said Lawrance had come to the office of the appellant, the appellant was not available in his seat. At that time PW3 enquired with the officials present in the room and he was informed that the appellant would return back in few minutes and they were waiting outside and later the appellant entered the room and thereafter, PW3, PW6 and Lawrance followed him. Thus the presence of Prabhakaran and Krishnakumar in the room of trap is proved.

8.The further contention of the learned counsel for the appellant is that when the appellant was not available in the seat, the trap amount must have been placed on the table or the trap amount must have been placed on the table drawer without the knowledge of the appellant. The admitted case is that within few seconds, PW3 came out of the room and gave pre-arranged signal and PW8/TLO along with trap team entered the room immediately. This happened within few seconds. Hence the appellant has not received the trap amount and later he was forced to handle the same and hence, the phenolphthalein test proved positive. By plausible explanation the appellant had rebutted the presumption under Section 20 of the Prevention of Corruption Act, 1988.

9.PW3, PW7 and PW9 admit that before the appellant joined as Senior Tax Assistant in Ward-3(II), I.T Office, Coimbatore, one Vidhya Rangadhurai was the Senior Tax Assistant who was dealing with the file of PW3 and informed PW3 about the refund cheque being made ready for the assessment year 2005-2006 and 2006-2007 even during 2007. Appellant had joined the concerned section only on 12.05.2008. PW3 admits that they used to submit income tax returns through their Chartered Accountant. Initially one Paramasivam was the Chartered Accountant for PW3's firm. The said Paramasivam informed them that PW9/G.Venkateswaran/Income Tax Officer demanded bribe for refund for each year and thereafter, PW3 had engaged one Mohamed Perveez another Auditor to get the refund who also informed that PW9 was insisting for the bribe amount. The said Mohamed Perveez saw the refund cheque in the file/Ex.P21. Thereafter PW3 on 22.01.2008 had gone to the Income Tax Department met PW9, handed over the letter to PW9 which is Ex.D1. PW3 admits at that time one Vidhya Rangadhurai was the Senior Tax Assistant. The copies of the returns were handed over to her and she took PW3 to PW9. Thereafter, PW9 informed that on the strength of Ex.D1 and Income Tax return copies, refund would be processed. 15 days later, PW3 contacted Vidhya Rangadhurai who informed about the demand of PW9, similar to the demand made to Chartered Account Paramasivam. It was made clear that unless the bribe amount is paid to PW9, the refund order would not be issued. This had taken place during February 2008. Subsequently, the Auditor Mohamed Perveez verified from the files and found that the refund cheques available and unless the bribe amount is paid to PW9, the cheques would not be despatched. Thereafter on 24.03.2009 and 09.04.2009, PW3 met PW9, handed over three letters namely Exs.P10, P12 & P13. PW9 informed that the refund orders are yet to be made ready and asked PW3 to come after ten days.

Thus it is clear from the year 2007 to 2009, PW3 was making enquiry with PW9/Income Tax Officer and more specifically on 22.01.2008, 24.03.2009, 09.04.2009 and 21.09.2009. The Income Tax Officer is the authority to issue the refund order. In this case it is PW9.

10.PW3 admitted that he informed PW8/Trap Laying Officer and PW12/Investigating Officer about his meetings with PW9 and his Auditor's Paramasivam and Mohamed Perveez, as well as Vidhya Rangadhurai, Senior Tax Assistant, informing the consistent demand of PW9 for issuance of refund cheque. The prosecution for the reasons best known had not proceeded against PW9, on the other hand made the appellant a scape goat in this case.

11.PW12, the Investigating Officer admits that on perusal of Ex.P21 he came to know that the Income Tax returns for the assessment year 2005-2006 and 2006-2007 were processed by the Senior Tax Assistant Vidhya Rangadhurai and the refund order cheques were made ready as early as on 17.12.2007 and kept in the file/Ex.P21. But surprisingly, in this case the Senior Assistant Tax Officer Vidhya Rangadhurai was not examined as witness. PW12 admitted that he had examined her during investigation but not recorded statement under Section 161 Cr.P.C.

12.PW7, Ramachandran, Senior Tax Assistant admitted that he processed the Income Tax Returns of PW3's firm for the assessment year 2007-2008 on 11.02.2009. PW7 further stated that the refund orders for the year 2007-2008 could not be generated since complete particulars of the bank were not available. The evidence of PW3 and PW7 reveal the appellant had not processed any of the Income Tax returns of PW3, the refund orders for the year 2005-2006 and 2006-2007 were made ready even before the appellant joined the concerned section. There are material contradictions between the evidence of PW3 and PW6/Accompany witness. Further, the presence of PW6 during the trap is highly doubtful for the reason that PW6 has stated that the appellant demanded bribe through sign. On contrary , the version of PW3 is that the demand was verbal.

13.Further PW3 states that the water for phenolphthalein test was drawn from the tap, outside the room of appellant. PW6 states that the water was taken from jar kept in the room. PW9 has stated that they had taken the water along with them. PW3 has stated that he introduced PW6 as his brother but PW6 has stated that it was Lawrance /father of PW3 who introduced him as his friend. PW3, PW6 and PW8 denied during the trap, presence of other officials in the room of the appellant. In Ex.P4/recovery mahazar it is mentioned PW3 enquiry with the persons present in the room. There are vital contradictions between the evidence of PW3 and PW6 right from the time they entered the room till they left. For recovery of money, PW6 states that the appellant took out the money from the table drawer and handled the same but PW8/TLO has stated that it was Sri Hari who took out the trap money. The said Sri Hari was not examined as a witness.

14.PW7 admits that the appellant was not familiar in usage of computer system and hence PW7 handled the file of PW3's firm for the assessment year 2007-2008. Further, it was Vidhya Rangadhurai who handled the file for the year 2005-2006, 2006-2007. It is proved that the appellant had not handled the files of PW3. Only on 09.04.2009 he was called by PW9, who handed over the letters Exs.P10, P12 and P13. Thereafter, the appellant was making search for the files and on 21.04.2009 the appellant was called by PW9, at that time the appellant informed PW9 and PW3 that the refund cheques for the year 2005-2006, 2006-2007 are available and the file pertaining to 2007-2008 would be traced shortly. On 22.04.2009, the trap money was kept in the table of the appellant without his knowledge. Ex.P7 is hand written, small piece of paper with particulars of refund amount for the year 2005-2006 and 2006-2007 and handed over by the appellant is projected as an important link by the prosecution.

15.PW10 the Hand writing expert in his report Ex.P30 confirms the same. The report/Ex.P30 of Handwriting Expert is not a conclusive proof. The trial Court placing heavy reliance on inconclusive materials had convicted the appellant. Thus on the overall available evidence and materials, the prosecution failed to prove the case beyond all reasonable doubt against the appellant. On the other hand the appellant by preponderance of probability, by cross examination of witnesses and by marking Exs.D1 and D2 and by his explanation, had probablized his defence. Hence, he prayed for acquittal from the charges levelled against him.

16.The learned counsel for the appellant in support of his contention relied upon the following citations:-

(i)State by Inspector of Police Vigilance and Anti Corruption, Thiruchirapalli Versus Magalingam reported in 2009 (3) MWN (Cr.) 356, in which it is held that a Government servant not supposed to associate himself with raiding party unless he gets proper permission from his superior.

(ii)P.Meganathan Versus State of Tamil Nadu reported in 2010 (1) MWN (Crl.) 454, in which it is held that when the very purpose for the demand is said to have been made is no more available with the accused would have demanded illegal gratification from decoy cannot be believed.

(iii)State of Punjab Versus Madan Mohan Lal Verma reported in (2013) 14 Supreme Court Cases 153, in which it is held that the demand of illegal gratification is sin quo non and mere recovery of tainted money is not sufficient to convict the accused when 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. Further before the accused is called upon to explain how the amount in question was found in his possession, the foundations facts must be established by the prosecution.

(iv) Dashrath Singh Chauhan Versus Central Bureau of Investigation reported in 2018 SCC Online SC 1841.

17.Per contra, the learned Special Public Prosecutor appearing for the respondent submitted that in this case PW1 to PW12 were examined, Exs.P1 to P31 were marked, MO1 to MO3 were recovered. On the side of the defence no witnesses were examined, but Ex.D1 and D2 were marked. In this case, PW3 is the decoy, PW6 is the accompanying witness and PW8 is the TLO. The prosecution proved the demand, acceptance of illegal gratification in this case. He further submitted that PW3 has categorically stated that the demand of bribe amount was made by the appellant along with PW9 Venkateshwaran. In his complaint Ex.P6, PW3 has clearly stated the demand made by the above two persons. The FIR/Ex.P31 came to be registered against both the accused and one of the charges is that of conspiracy under Section 120-B IPC. On 22.04.2008, PW3 along with PW6 and Lawrance/ father of PW3 had reached the office of the appellant at about 04.15 p.m. At that time the appellant demanded the bribe amount of Rs.10,000/- by sign for issuance of refund cheque. PW3 handed over the trap amount of Rs.10,000/- to the appellant in presence of PW6 and the trap amount was recovered by PW8/Trap Laying Officer.

18.On 21.04.2009 PW3 approached PW9 enquired about the refund cheque for the assessment year 2005-2006, 2006-2007 and 2007-2008. Earlier to it he had made several visits to the Income Tax Department and met PW9/the Income Tax Officer and one Vidhya Rangadhurai. Each time PW9 gave one reason or other. On 09.04.2009, PW3 handed over copies of Income Tax returns Exs.P10, P12 and P13 to PW9, who called the appellant, directed him to take immediate action and directed PW3 to come ten days later. When PW3 again met PW9, PW3 was asked to meet the appellant. On 21.04.2009, PW3 met the appellant who informed about the refund cheque for the year 2005-2006, 2006-2007 were ready and for the year 2007-2008 the files are to be traced, further informed PW3 that PW9 demanded Rs.10,000/- for bribe and the same to be paid on 22.04.2009 by 04.00 p.m. PW3 not willing to pay bribe amount contacted the Superintendent of Police/CBI, Chennai and made a complaint. The Superintendent of Police/CBI, Chennai informed PW3 to meet PW8/Inspector of Police CBI on 22.04.2009.

19.On 22.04.2009 PW8 contacted PW3 who along with his father Lawrance met PW8 with the written complaint/Ex.P6, handed over the complaint/Ex.P6 and Ex.P7/noting sheet. On basis of the complaint/Ex.P6, PW8 conducted discrete enquiry and forwarded the complaint Ex.P6, noting sheet/Ex.P7 along with discrete report/Ex.P23 to the Superintendent of Police/CBI, Chennai who directed PW12 to register a case and Ex.P31/FIR was registered. In the meanwhile two independent witnesses namely PW6 Jayaraman and one Shri Hari were summoned through their offices by 02.00 p.m. PW6 reached the Hotel Cheran Palace, Coimbatore where PW8 was camping. PW3 and his father Lawrance were introduced to PW6 and Shri Hari , the importance of Phenolphthalein test was demonstrated and explained. Thereafter, at about 04.00 p.m., PW3, PW6 and PW3's father Lawrance proceeded in the car followed by PW8 and his trap team and reached the Income Tax office.

20.PW3, PW6 and Lawrance had gone to the office room of the appellant. Since the appellant was not there, they enquired appellant's whereabouts, they were informed to wait. The appellant, later, entered his room, gestured them to come to his room. The appellant again made a demand of Rs.10,000/-, informed them that the refund cheques for the year 2005-2006, 2006-2007 are ready and would be despatched by post. PW3 handed over the bribe amount to the appellant, who received in his right hand, counted with both hands and kept in a computer paper. PW3 came out and gave pre-arranged signal. PW8 along with trap team entered into the room enquired about the happenings, found the appellant in a state of perplex and shock, conducted phenolphthalein test on appellant's hands which turned positive, the appellant was arrested, bribe amount of Rs.10,000/- was recovered from the office table drawer. The file pertaining to PW3’s firm was found on the table and it was also seized. Thereafter the appellant was produced before the Court for remand.

21.PW8 handed over the investigation to PW12 who received the articles, forwarded the same for Chemical analysis, examined the witnesses, recorded the statements and after obtaining the forensic report, hand writing expert opinion and sanction for prosecution from PW1, filed the charge sheet against the appellant alone. Since there were no materials against PW9/Venkateshwaran, though a named accused in FIR/Ex.P3, he was not sent for trial.

22.The learned Special Public Prosecutor further submitted that the contention of the appellant that the trap money was forced to be handled by the appellant cannot be countenanced for the reason that if the appellant was asked to take out the money from his table drawer, only right hand would be tainted, not both his hands. Further, the non examination of official witness Shri Hari, Lawrance, father of PW3, Auditors Paramasivan and Mohamad Parveez and other officials of the Income Tax Department particularly Vidhya Rangadhurai will not affect the case in any manner. The explanation given by the appellant is doubtful and it is an afterthought. Hence, the trial Court on analysis of the evidence and materials produced, had rightly convicted the appellant, which need not to be interfered with.

23.This Court considered the rival submissions and perused the materials available on record.

(i) PW3/defacto complainant lodged a written complaint/Ex.P3 to PW8 on 22.04.2009. The written complaint/Ex.P3 was against the appellant and PW9/Venkateswaran, the Income Tax Officer. PW3/the defacto complainant has clearly stated that on 09.04.2009 he approached PW9, made request for issuance of refund cheques, submitted Exs.P10, P12 & P13. PW9 called the appellant, handed over Exs.P10, P12 and P13 and directed to take immediate action and made endorsement "office please attend". PW7/Senior Tax Assistant and PW9/the Income Tax officer have admitted that one Vidhya Rangadhurai, Senior Tax Assistant was dealing the Income Tax returns of PW3's firm prior to the appellant. PW3 categorically states that it was Vidhya Rangadhurai who informed him that the Income Tax return for the year 2005-2006, 2006-2007 was already processed on 27.07.2007 and refund order was generated on 17.12.2007, which is seen from Ex.P21. Further on earlier occasion the said Vidhya Rangadhurai informed and took PW3 to PW9 during January 2008 at that time PW3 handed over Ex.D1 to PW9 on 28.01.2008. PW9 called Vidhya Rangadhurai made endorsement in Ex.D1 "office please attend the same on priority" and signed the same. Based on the endorsement to attend on priority basis it was Vidhya Rangadhurai who put up a note on the same day i.e., on 28.01.2008 "please see letter requesting for refund but since both RO is not readily traceable file put up for order", which is Ex.D2. PW3 confirmed that during January 2008 he met PW9 and handed over letter/Ex.D1 and made request for issuance of refund cheques. In this case Vidhya Rangadhurai was not examined as witness.

(ii) PW12/the Investigating Officer admits that he enquired Vidhya Rangadhurai, but not cited her as a witness. It is to be noted that in Exs.P10, P12, P13, the endorsement made by PW9 "office please attend" are questionnaire Q2, Q3, Q4 as well as endorsement made by PW9 in Ex.D1 is Q5. These documents were sent for forensic study, on receipt, forensic number assigned was "CFSL/SAU-2009/D43". No report from forensic department pertaining to "CFSL/SAU-2009/D43" was produced in this case and no reason is given for the same. PW10 the Hand Writing Expert produced Ex.P30/report which pertains only to "CFSL/SAU-2009/D42". This report pertains to Q1 in document Ex.P7. This questioned document was compared and studied along with admitted documents A1/Ex.P21 and A2/Ex.P27 and the specimen signatures of the appellant S1 to S10/Ex.P21.

(iii)PW9 in his evidence has denied that he met PW3 during January 2008. PW9 has stated that PW3 met him only on 09.04.2009. PW9 is silent about directing Vidhya Rangadhurai to process the file of PW3's firm and Vidhya Rangadhurai informing the generation of refund order for the assessment year 2005-2006, 2006-2007 and the same available in the concerned file. PW3 confirms that on 22.12.2008 he had met Vidhya Rangadhurai, made request for refund and handed over the letter/Ex.D1 to PW9 who signed the same and handed over to Vidhya Rangadhurai. The said Vidhya Rangadhurai informed that the files were already been processed and PW9 was insisting for the bribe amount. PW3 was informed about the demand of PW9 by his Chartered Accountants Paramasivam and Mohamed Parveez. Both Chartered Accountants have stated to PW3 that it was PW9 who is demanding bribe amount and without payment of bribe amount the refund cheques would not be signed and processed by PW9. It is seen that the refund orders have been generated during December 2007. Thus these important facts were suppressed by PW9 as well PW8/Trap Laying Officer and PW12/Investigating Officer. PW3/the decoy witness categorically states that he informed all these facts to both of the investigating officers. It is further seen that during this period the appellant was not working in Ward-III (2) and he was posted elsewhere. Hence, all these happenings had taken place before appellant joining in that ward. PW9 was the Income Tax Officer during the period from 07.06.2007 on wards. Thus the consistent demand of bribe was made by PW9 is proved.

(iv)PW3 was informed by Mohamed Parveez/Auditor that the cheque was made ready and he saw the same in the file/Ex.P21. Hence it is certain that PW9/the Income Tax Officer has not signed the cheques, allowed it to be despatched, the demand of bribe by PW9 had been consistent which stands proved. PW3 had informed about the same to PW8/TLO as well as PW12/the Investigating Officer, for the reason best known they have not proceeded on these aspects. It is seen from Ex.P21 at page Nos.224 & 226 in the typed set, the counterfoil of income tax refund order and cheque for refund order for a sum of Rs.19,720/- for the assessment year 2005-2006, likewise in page Nos.232 & 234, the counterfoil of income tax refund order and cheque for refund order for a sum of Rs.24,770/- for the assessment year 2006-2007 are available. It is apparent from the documents, the signature of the assessment officer/PW9, the signing authority is not available. It is only after signing the refund order and the refund cheque, the question of despatch would arise. Thus PW9 had not signed the refund order and the refund cheque. Hence no prosecution could be launched for not despatching such refund cheques. The trial Court had miserably failed to consider these factual and vital aspects, which is the charge against the appellant.

(v) Further PW9 has admitted that after Vidhya Rangadhurai, the appellant succeeded as Senior Tax Officer from 12.05.2008, the other Tax Assistant under him was PW7. The work of the Tax Assistant was to process the returns and put up the same for orders to the Income Tax Officer. The PAN number with single digit was assigned to PW7 and the double digit was assigned to the appellant. Ex.P16 is the job description for the Senior Tax Assistant, for convenience, PAN numbers are allotted to the Senior Tax Assistants to process the file.

(vi) PW9 has admitted that he was enquired by PW10/Inspector of Police, CBI on the day of the trap. PW8, the Trap Laying Officer has stated that after trap, he enquired PW9, but he had not proceeded further, despite points leading to PW9. In Ex.P4/recovery mahazar it is mentioned that PW9 when enquired, he replied that he had never demanded any bribe from PW3 and the appellant might have used his name to extract money, which is contrary to the evidence of PW3, PW7, Vidhya Rangadhurai, Paramasivam and Mohamed Perveez.

(vii) It is admitted by PW9 and PW7 that the appellant was not conversant in operation of the computer system and hence, PW7 processed the Income Tax Returns of the assessee, irrespective of PAN numbers whether single digit or double digit. In this case PW7 admitted that Ex.P15/the Income Tax Returns for 2007-2008 of PW3's firm was processed by him and the refund order could not be generated since the bank particulars provided by PW3/assessee was incomplete. PW7 has admitted that on the direction of PW9 he processed the Income Tax Returns of even numbers also.

(viii) Thus it is clear that Ex.P15/the Income Tax returns of 2007-2008 was processed by PW7 and the earlier Income Tax returns for the previous 2005-2006 and 2006-2007 was processed by Vidhya Rangadhurai. At no point of time, the appellant processed any of the Income Tax Returns of PW3. The demand of bribe had been consistent by PW9 as stated earlier. PW9 to escape from his culpability has stated that the appellant had not generated refund voucher till May 2009. The documents available in Ex.P21 are contrary. The refund orders and refund cheques for the year 2005-2006 and 2006-2007 are available and PW9 has not signed the same. As regards Income Tax returns of the year 2007-2008, the evidence of PW7 is categorical that he processed Ex.P15.

(ix)PW9 denying his meeting with PW3 during January 2009 is proved to be false by Ex.D1 and D2. Further PW9 has admitted that one Ravi, Inspector of Police/CBI enquired him on the same day of the trap. The explanation of PW9 is that only on 19.08.2009 when he was examined by PW12/Investigating Officer, he came to know about Exs.D1, D2 and P21 is obviously false. In Ex.P4/recovery mahazar, PW8/Trap Laying Officer recorded that PW9 was enquired. Further no reason is given why report CFSL/SAU-2009/D43 pertaining to PW9 was not produced in this case.

(x)PW3 has clearly stated that he handed over Exs.P10, P12 and P13 to PW9 even during March 2009 and thereafter, again on 09.04.2009 though PW3 was aware it was PW9 who demanded the bribe amount, for obvious reasons he had not questioned the same with PW9, but in his complaint/Ex.P6 he mentions the demand made by PW9. Neither any reason is given by PW8 for not taking any action against PW9 on the day of trap nor PW12 for deleting the name of PW9 from the case.

(xi)The evidence of PW3 has to be looked with suspicion, since he is an interested witness. Further PW3 was certain that it was PW9 who demanded the bribe. PW9 being the head of the concerned ward and empowered to sign the cheque, was withholding the same for quite some time. PW3 came to know through Vidhya Rangadhurai that the refund cheque was already processed and generated on 17.12.2007. The cheque was made ready and available and the same was informed by Mohamed Parveez/Auditor to PW3. In view of the same, the appellant's demand and receipt of money for despatching the refund cheque does not arise.

(xii)On going through Ex.P21/file of appellant, it is seen that the refund cheque is yet to be signed by PW9. After PW9 signing the same, the cheque has to be despatched. In view of the same, the appellant is neither an authority nor an obstacle for signing and issuance of the refund cheques. The evidence of PW3 is highly doubtful and motivated, which needs corroboration. The evidence of PW3 and PW6 are contradictory to each other. PW3 and PW6 have stated that the appellant was not in the seat and they did not enquire any one. In the recovery mahazar/Ex.P4, it is recorded that PW3 had enquired with the two persons inside the room. PW7 has admitted that one Krishna Kumar and Prabhakaran shared the room with the appellant. The said Prabhakaran and Krishna Kumar were not examined as witnesses.

(xiii)PW11 the Inspector of Police/CBI had recorded the statements of these two witnesses. In view of non examination of Prabhakaran and Krishna Kumar as witnesses, these statements are of no evidentiary value. No reason was given as to why they have not been examined as witnesses.

(xiv) PW3 and PW6 has stated that the appellant on receipt of the money, kept it in computer paper and thereafter seeing the trap team he dropped it in the table drawer. In this case the said computer paper had not been recovered to show that the appellant had consciously handled the trap money and concealed in the computer paper. It is a fact that the phenolphthalein powder is easily transferable once it comes in contact with other articles. In this case, the computer paper was not subjected to phenolphthalein test to find out the true happenings. In this case if the appellant had kept the bribe amount in computer paper, definitely some particles of phenolphthalein powder would have got transferred to it. To prove conscious receipt of the trap money, PW8/TLO should have seized the computer paper, sent it to forensic study. In this case it has not been done.

(xv) PW3 has stated that the water for preparing sodium carbonate solution was fetched by the trap team from outside room of the appellant. PW6 has stated that the water was available in the jar kept in the room. PW8/TLO has stated that he had taken the water along with him. Further PW3 has stated that the money was taken from the drawer and handed over by the appellant. PW6 has stated that it was taken out by one Shri Hari, who was not examined as witness in this case. The demand is sin quo non which has to be established. In this case PW3 has stated that the demand was both verbal and by sign. PW6 has stated that the demand was by sign. Further, there is no evidence to show what was the sign and gesture shown by the appellant to come to inference that the appellant made any demand for bribe.

(xvi) The contention of the appellant that without knowledge of the appellant, the trap money was planted on his table and within few seconds, the trap team entered into the room, forced the appellant to handle the trap money and it is the reason for phenolphthalein test turning positive. Further it is an admitted fact that the appellant was not available in his room when PW3, PW6 and Lawarance came there. PW3 who was aware that the demand of bribe money had been consistent by PW9, planted the trap money on the table of the appellant. Further the evidence of PW3 and PW6 are contrary to each other. The presence of PW6 along with PW3 is highly doubtful. The non examination of the said Lawrance is another factor to be seen. The other factor propounded by the prosecution is that Ex.P7/noting was written by the appellant taking support of Ex.P30/report submitted by PW10. The writings in Ex.P7 have been marked as Q1. The admitted writings are A1 and A2 available in Exs.P21 and P27. Thus the writings found in Exs.P21 and P27 are taken as admitted writings of the appellant on the basis of tainted evidence of PW9. S1 to S10 are the specimen writings of the appellant which is Ex.P29.

The specimen writings were taken in the presence of one P.Antopaul, Manager of Central Bank of India and he was not examined as witness in this case.

(xvii)It is an admitted fact that the witness for the specimen writing P.Antopaul, Manager of Central Bank of India, Zonal Office Egmore was not examined as witness. PW12/the investigating officer has stated that he had not shown the said Antopaul as a listed witness in this case. PW10 has admitted that in his evidence, he had not given a finding with regard to dissimilarities in the writings. It is a settled proposition that the evidence of hand writing expert is a secondary one. In this case the fundamental procedure in taking the specimen signature, forwarding the same for analysing the specimen writing with admitted writing, arriving at standard writings, thereafter comparing standard writings with the disputed writings was not followed. The report is not complete and conclusive. Hence Ex.P30 cannot be relied upon. In view of the same the finding given with regard to Ex.P7 cannot be accepted.

24.The citations relied upon by the learned counsel for the appellant propounds his submission. Further the case of the prosecution is that the appellant had conspired with Venkateswaran/PW9 in demand and acceptance of illegal gratification from PW3. The prosecution finding no conspiracy had dropped PW9 from the case. In this case, the refund order and refund cheques have not been signed by the assessing officer/PW9. Hence, the question of despatch of cheques does not arise. Further, it is evident that the prosecution has not disclosed the genesis of the case correctly. Thus the very foundation of the case has no legs to stand, shaky and unbelievable.

25.The Hon'ble Apex Court in the case of Banarsi Dass Versus State of Haryana reported in AIR 2010 SC 1589, has held that "mere proof of recovery of bribe money from the accused is not sufficient to prove the offence". In this case, the appellant had no role in processing of Income Tax return, generation of refund particulars, signing the refund the cheques. Only after refund cheques are signed the cause of despatch will arise. The signing of refund cheques are within the exclusive domain of Income Tax Officer/PW9.

26.In this case the foundational facts have not been proved by the prosecution. From the evidence of witnesses it is evident that the prosecution has not disclosed the genesis of the case correctly. Thus on consideration of the entire materials available on record, this Court is of the view that the prosecution has failed to prove the case beyond reasonable doubt against the accused. The trial Court has failed to consider all the above aspects in their proper perspectives.

Therefore, the Judgement of the trial Court needs interference at the hands of this Court.

27.In the result, the appeal is allowed, the conviction and sentence imposed on the appellant/accused is set aside and he is acquitted from the charges levelled against him. Fine amount, if any paid, shall be refunded to the appellant and the bail bond shall stand cancelled. The trial Court is directed to release the appellant if he is in custody. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

vv2

To

1.The II Additional District & Sessions Judge (CBI Cases),
Coimbatore.

2.The Inspector of Police,
SBE/CBI/ACB, Chennai.

3.The Special Public Prosecutor,
For CBI Cases,
High Court, Madras.

Crl.A.No.769 of 2011

NR(CO)
CB(23/09/2020)