

**BAIL SLIP**

M.Nagarajan, S/o.Mottaiyan, Inspector age about 55 years/2014 was released on bail of vide Court order dated 05.01.2015 made in MP (MD)No.1 of 2014 in CrI A(MD)No.311 of 2014.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 05.03.2020****CORAM****THE HONOURABLE MR. JUSTICE M.DHANDAPANI****CrI.A. (MD) .No.311 of 2014**

M.Nagarajan

...Appellant / sole accused

Vs.

State rep. By
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Ramanathapuram.
(Crime No.3 of 2002)

...Respondent / Complainant

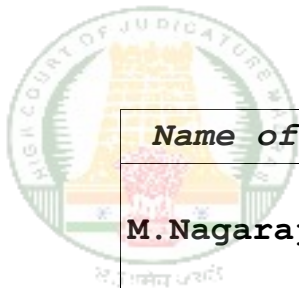
Prayer:- This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records of the learned Special Judge / Chief Judicial Magistrate, Ramanathapuram in Special C.C.No.02 of 2005 and set aside the Judgment and conviction dated 14.11.2014 and acquit the appellant.

For Appellant : Mr.M.Karunanithi

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor**JUDGMENT**

This appeal is directed against the judgment of the learned Special Judge / Chief Judicial Magistrate, Ramanathapuram in Special C.C.No.02 of 2005, dated 14.11.2014.

2.For the sake of convenience, the parties are referred to as per the rank mentioned in the trial Court. The gist of the charges framed against the appellant/Accused and findings/sentence of the trial Court are as noted below:

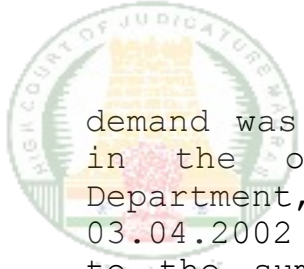


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Name of Accused	Charges	Finding	Sentence
M.Nagarajan	Secs.7 and 13(2) read with Section 13(1) (d) of Prevention of Corruption Act, 1988.	Found guilty under Secs.7 and 13(2) read with 13(1) (d) of Prevention of Corruption Act, 1988.	To undergo simple imprisonment for one year and to pay a fine of Rs.25,000/- and in default of payment of fine, the accused shall undergo simple imprisonment for two months, for the offence under Section 7 of the Act. To undergo simple imprisonment for one year and to pay a fine of Rs.25,000/- and in default of payment of fine, the accused shall undergo simple imprisonment for two months, for the offence under Section 13(2) read with 13(1) (d). The sentences will run concurrently.

3.Brief facts leading to this appeal are as follows:

(i).On 18.01.2002, the accused officer met P.W.2-defacto complainant in Kalanchiyam Temple and informed that there was a petition against him and hence, asked him to appear before the Inspector Office, Hindu Religious and Charitable Endowments Department, Ramanathapuram. Accordingly, he met the accused officer on 19.01.2002 in the office, where he demanded the bribe amount of Rs.10,000/- from the defacto complainant. Further, the initial



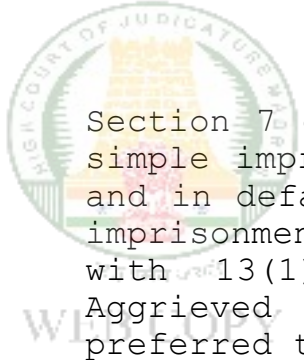
demand was made on 19.01.2002, where P.W.2 met the accused officer in the office of Hindu Religious and Charitable Endowments Department, Ramanathapuram and the said demand was reiterated on 03.04.2002 where P.W.2 appeared before the accused officer, pursuant to the summon issued by him. Again the accused officer demanded bribe amount on 08.04.2002. However, the defacto complainant has not interested in paying the bribe amount to the accused officer and had decided to file a complaint before P.W.12-Superintendent of Police, District Vigilance and Anti Corruption.

(ii).The Superintendent of Police, received the complaint under Ex.P2 on 08.04.2002 at about 03.00 p.m. and thereafter, he registered First Information Report in Crime No.3 of 2002 under Ex.P3. After registering the FIR, P.W.12-Trap Laying Officer deputed two official witnesses viz., P.W.6-shadow witness and one Kukool Ameen. Thereafter, as per the instructions of P.W.12, P.W.2 produced Rs.9000/- consisting of eighteen 500 rupees notes-M.O.1 and Rs.1000/- consisting of ten 100 rupees notes - M.O.2 and the Head Constable demonstrated the phenolphthalein test by smearing the phenolphthalein powder on the said currency notes and after that, the said money was handed over to P.W.2 and P.W.6 was instructed to accompany with P.W.2 and watch over the occurrence. Thereafter, they went to the office of the accused officer and thereafter, P.W.2 informed with P.W.12 that the accused officer received the bribe amount in his right hand and kept in his left hand. Thereafter, P.W.12 recovered the tainted money and compared the same with the entrustment mahazar, which is found tallied. P.W.12 prepared a mahazar for the above said proceedings under Ex.P.4 and brought the accused along with M.Os. to the Vigilance office. On 09.04.2002, P.W.12 sent the accused officer for judicial custody and handed over the case records to P.W.13, the Deputy Superintendent of Police for further investigation.

(iii).P.W.13, the Deputy Superintendent of Police, Vigilance and Anti-Corruption took up further investigation in this case. He examined other witnesses and obtained sanction orders to prosecute the case as against the accused and after completion of investigation, he laid charge sheet as against the accused for the offence stated above.

4.To substantiate the charges against the accused in trial, on the side of the prosecution, P.Ws.1 to 13 were examined and Exs.P.1 to 31 were marked and M.Os.1 to 4 were produced. When the accused was questioned about the incriminating circumstances and evidence, he pleaded innocence. In order to disprove the case of prosecution, no witness was examined and no document was marked.

5.Upon consideration of the oral and documentary evidence, the learned Judge found guilty of the accused and sentenced him to undergo simple imprisonment for one year and to pay a fine of RS.25,000/- and in default of payment of fine, the accused shall undergo simple imprisonment for two months, for the offence under

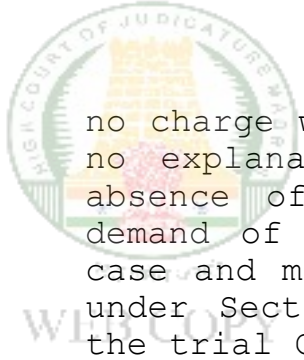


Section 7 of the Prevention of Corruption Act, 1988 and to undergo simple imprisonment for one year and to pay a fine of Rs.25,000/- and in default of payment of fine, the accused shall undergo simple imprisonment for two months for the offence under Section 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988. Aggrieved over the above said conviction, the appellant has preferred the present appeal.

6. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent.

7. Assailing the findings of the trial Court, Mr. M. Karunanithi, learned counsel for the appellant/accused would submit that the prosecution though examined as many as 13 witness, the crucial witnesses in the present case is P.W.2-defacto complainant and P.Ws.3, 5 and 6. It is alleged against the accused that on 18.01.2002, the accused officer met P.W.2-defacto complainant in Kalanchiyam Temple and informed that there was a petition against and hence, asked him to appear before the Inspector Office, Hindu Religious and Charitable Endowments Department, Ramanathapuram. Accordingly, he met the accused officer on 19.01.2002 in the office, where he demanded the bribe amount of Rs.10,000/- from the defacto complainant. However, no material evidence was placed before the trial Court in order to prove that there was a complaint prior to 18.01.2002 and based on the said complaint, the accused officer inspected his temple. Further, the initial demand is 19.01.2002, where P.W.2 met the accused officer in the office of Hindu Religious and Charitable Endowments Department, Ramanathapuram and the said demand was reiterated on 03.04.2002 where P.W.2 appeared before the accused officer, pursuant to the summon issued by him. Again the accused officer demanded bribe amount on 08.04.2002 and on the same day, he went to the office of the District Vigilance and Anti Corruption and lodged a complaint.

8. The learned counsel for the appellant would further submit that in the present case, for proving the above said allegation, no material evidence was placed before the trial Court. However, the trial Court convicted the accused which is unsustainable one. Further, the evidence of P.W.2 and other witnesses, who accompanied P.W.2 including the shadow witness, is contrary in nature. In fact, P.W.2 in his cross examination clearly deposed that he had taken the bribe money from his yellow bag and given to the accused officer whereas the independent witnesses, viz., P.Ws.5 and 6 clearly deposed that P.W.2 had taken the bribe money from his left shirt packet and given to the accused officer and the said officer received the same in his right hand and kept in his left hand. Hence, the contradictory evidence of P.Ws.2, 3 and 5 is sufficient to acquit the accused. Further, he would submit that no charge was framed against the accused officer with regard to initial demand. <https://hcservices.ecourts.gov.in/hcservices/> Though a charge was framed against the accused as if he demand bribe on 19.01.2002 and reiterated on 03.04.2002 and 08.04.2002, however,



no charge was framed in respect of initial demand on 19.01.2002 and no explanation was called for from the accused officer. In the absence of questioning under Section 313 Cr.P.C. in respect of demand of bribe on 19.01.2002, it vitiates the entire prosecution case and miserably the trial Court failed to frame the questioning under Section 313 Cr.P.C. against the accused officer. Therefore, the trial Court without considering the above aspects, convicted the accused, which is unsustainable and hence, he prayed for allowing of the appeal and acquittal of the appellant. In support of his contention, the learned counsel for the appellant/accused has relied upon the following Judgments:-

(i) In **VIKRAMJIT SINGH ALIAS VICKY**, reported in **2006 (12) SCC 306**, wherein the Hon'ble Apex Court, at paragraph No.23, has held as under:-

"It is now a well-settled principle of law that the circumstances which according to the prosecution lead to proof of the guilt against the accused must be put to him in his examination under Section 313 of the Code of Criminal Procedure. It was not done."

(ii). In **V.VENKATA SUBBARAO v. STATE**, reported in **2007 (3) SCC (Cri) 175**, wherein the Hon'ble Supreme Court, at paragraph No.24, has observed as follows:-

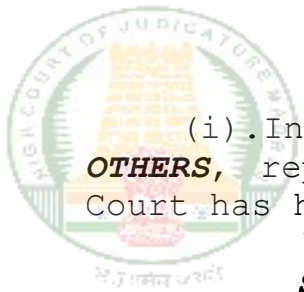
"Submission of the learned counsel for the State that presumption has rightly been raised against the appellant, cannot be accepted as, inter alia, the demand itself had not been proved. In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988, provides for raising of a presumption only if a demand is proved. It reads as under:

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



9. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that admittedly, the appellant / accused officer is working as Inspector of Hindu Religious and Charitable Endowments Department, Ramanathapuram. P.W.2 is a Poosari in Kalanchi Temple, where the forefathers of P.W.2 were buried and P.W.2 is doing daily pooja in the said Temple and initially, there was a complaint registered against P.W.2 before the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai on 02.01.2002 and the said information was forwarded to the accused / Inspect of Hindu Religious and Charitable Endowments Department, Ramanathapuram. Based on the instruction, the accused officer inspected the P.W.2's temple on 18.01.2002 and instructed P.W.2 to appear before him on 19.01.2002 and as per the instruction, P.W.2 met the accused officer on 19.01.2002 at his officer at 5.30 p.m., wherein the accused demanded bribe amount of Rs.10,000/- from him and thereafter, he issued summons for the appearance of P.W.2 on 09.03.2002 and 20.03.2002 and directed P.W.2 to appear on 16.03.2002 and 26.03.2002 respectively. Thereafter, since P.W.2 afraid that any action would be taken against him, he appeared only on 03.04.2002, on which date, the accused officer reiterated the earlier demand and again on 08.04.2002. Thereafter, the complaint was registered. Hence, the prosecution clearly established the initial demand on 19.01.2002 and subsequent demand on 03.04.2002 and 08.04.2002.

10. The learned Additional Public Prosecutor would further submit that though the charge was framed against accused officer as if initial demand was made on 19.01.2002 and subsequently on 03.04.2002 and 08.04.2002, however, no charge was framed in respect of the demand made on 19.01.2002, that will not vitiate the entire prosecution case. He would further submit that even assuming that there was no demand on 19.01.2002, for the subsequent demand made on 03.04.2002 and 08.04.2002, there was charge and questions are framed under Section 313 Cr.P.C. and that there is no proper explanation for subsequent demand on 03.04.2002 and 08.04.2002 and that the technicality will not vitiate the entire prosecution case. Further, he would submit that as per Section 7 of the Act, any one of the ingredients, either demand or acceptance is sufficient to convict a person. In the present case, the initial demand and the subsequent demand and further acceptance were clearly established. When the demand and acceptance is established, it is for the accused officer to disprove the prosecution case under Section 20 of the Prevention of Corruption Act. In the present case, there is no plausible explanation for the possession of the tainted money by the accused officer and considering the case in entirety, the trial Court has rightly convicted the accused, which is legally sustainable one. Therefore, the prosecution clearly established the case through P.Ws.2, 3, 5 and 10 and hence, the learned Additional Public Prosecutor prayed for dismissal of the appeal. In support of his contentions, the learned Additional Public Prosecutor has relied on



(i). In **STATE OF GUJARAJ v. NAVINBHAI CHANDRAKANIT JOSHI AND OTHERS**, reported in **CDJ 2018 SC 738**, wherein the Hon'ble Supreme Court has held as follows:-

"....

Since it is established that the accused was possessing the bribe money, it was for them to explain that how the bribe money has been received by them and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe.

12. In the case in hand, the accused have not offered any explanation to rebut the presumption under Section 20 of the Act. On the other hand, from the evidence of P.W.1 that accused No.1 demanded the bribe appears to be natural. The application for approval of revised plan was earlier rejected. When the complainant and his advocate met TDO and on whose direction P.W.1 has paid the requisite fine amount, the file has to necessarily move. It was at that point of time accused No.1 demanded bribe amount from P.W.1. While appreciating the evidence, the High Court should have given proper weight to the views of the trial Court as to the credibility of all evidence of PWs 1 and 3. When the findings recorded by the trial Court is based upon appreciation of evidence, the High Court was not right in reversing the judgment of the trial Court."

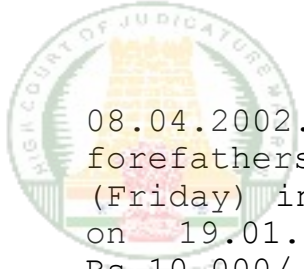
11. Upon careful re-assessment of the evidence and the judgment of the Trial Court and other materials on record and submissions made by the learned counsel appearing for the parties, the following points arise for consideration in this Criminal Appeal:

(i). Whether the prosecution proved the case beyond all reasonable doubts with regard to the demand and acceptance?

(ii). Whether the accused rebut the presumption under Section 20 of the Prevention of Corruption Act and if there is any explanation for the possession of Rs.10,000/- in his hand?

(iii). Whether the trial Court failed to frame questions under Section 313 of Cr.P.C for initial demand on 19.01.2002 and it will be fatal to the prosecution?

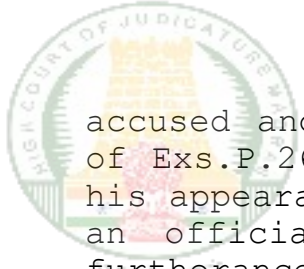
12. On perusal of the evidence of P.W.1, it is seen that at the relevant point of time, he sanctioned the prosecution against the accused. His sanction of the prosecution is marked as Ex.P1. P.W.2 is the defacto complainant, who made Ex.P2 complaint before the Law Enforcing Agency and P.W.3 is supported version of P.W.2 where he accompanied along with P.W.2 on 03.04.2002. P.W.5 is friend of P.W.2, who went to Vigilance Office along with P.W.2 to give complaint. He also present at the time of trap proceedings viz.,



08.04.2002. P.W.2 in his evidence states that he is worshipping his forefathers samathi and initially the accused met him on 18.01.2002 (Friday) in Samathi Temple and he was directed to appear before him on 19.01.2002. On 19.01.2002, the accused officer demanded Rs.10,000/- as bribe for clearing the complaints received against him and thereafter, the accused sent two summons on 09.03.2002 and 20.03.2002 and the said summons are marked as Exs.P.26 and P.27. Pursuant to the said summons, he appeared on 03.04.2002, which is not a hearing date and again the accused officer reiterated the demand and thereafter, P.W.2 again met the accused on 08.04.2002, on which date also, the accused reiterated the earlier demand. Therefore, P.W.2 filed a compliant before the Law Enforcing Officer. However, in his cross examination, a question was posed to P.W.2 with regard to the money taken from his possession. P.W.2 in his cross examination deposed that money was taken from yellow pocket and handed over to the accused and the accused received the said amount in his right hand and put into his left hand. Thereafter, he came out of the office and gave the pre-arranged signal by folding his dhothi. Immediately, the Trap Laying Officer-P.W.12 went inside the office of the accused and identified the accused. Thereafter, P.W.12 recovered the tainted money and compared the same with the entrustment mahazar, which is found tallied.

13. In order to ascertain the trustworthiness of the evidence of P.W.2, this Court perused the evidence of P.Ws.3, 5 and 6. On perusal of P.W.3, it is seen that at the time of demand made on 03.04.2002, he accompanied with P.W.2 and went to the office of the accused and at 6.30 p.m. in his presence, the accused demanded Rs.10,000/-, in which, the evidence of P.Ws.2 and 3 are clearly corroborated with each other, with regard to the demand made on 03.04.2002. Further, on perusal of the evidence of P.W.5, it is seen that he accompanied the accused on 03.04.2002 on the trap day that is on 08.04.2002. In his evidence, he has clearly deposed that P.Ws.2 and 3 along with P.W.5 went to the office of the accused at 6.00 p.m. and as the accused was not available in the office, they enquired with one Nagarajan and he made a phone call to the accused and the accused also interacted P.W.2 and requested to wait till 7.00 p.m. and he will come and see. Thereafter, in the presence of P.Ws.5 and 6, trap proceedings was conducted and amount was recovered.

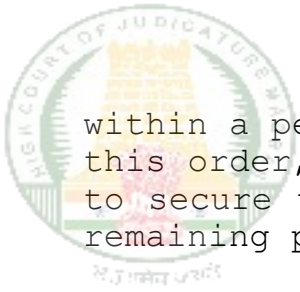
14. It is relevant to note that P.W.6 in his evidence clearly deposed that when they came out of the office without recovering tainted money he requested the Trap Laying Officer to conduct the search and investigation with the accused officer. Thereafter, again the Trap Laying Officer went to the office and found the money in between the files on the table of the accused officer. Thereafter, the bribe amount was recovered from the accused. Hence, the prosecution has clearly established the prosecution case. However, in the present case, there is no proper explanation either in the 313 questioning or through evidence how the accused officer possess the tainted money. Further, the official relationship in between the



accused and P.W.2 was clearly established by marking the documents of Exs.P.26 and P.27 where the accused issued summons to P.W.2 for his appearance. Hence, this Court drawn the inference that there was an official relationship in between the accused and P.W.2. In furtherance to the summons, P.W.2 appeared before the accused officer and that the demand and acceptance was clearly established. Further, it is also relevant to note that some of the files of the accused officer were marked as Ex.P9. On perusal of Ex.P9, it shows that the investigation dates were clearly mentioned in item No.2, wherein it is found that the accused inspected Ramanathapuram temples on 18.01.2002. Though the name of the temple of P.W.2 is not specifically mentioned in the inspection note, P.W.2 deposed that on 18.01.2002, the accused officer came to his temple and interacted with him and subsequent summons had also clearly established that on 18.01.2002 there was a meeting in between them and after that meeting, on 19.01.2002, P.W.2 appeared before the accused officer. Further, it is also relevant to note that on 19.01.2002 happens to be a Saturday day, which was a holiday, however, P.W.2 categorically mentioned that he met the accused officer on 19.01.2002 along with P.W.3.

15.Admittedly, the village people sent a complaint officially on 02.01.2002 to Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai and the official communication was enumerated only on 31.01.2002 and the same was despatched on 05.02.2002. Thereafter, the accused person issued summons on 16.03.2002 and 20.03.2002. Even there is no question under Section 313 with regard to the demand on 19.01.2002, however, the subsequent demand on 03.04.2002 and 08.04.2002 were clearly established and the acceptance and bribe amount also clearly proved by examining the evidence of P.Ws.5 and 6. Further, it is also relevant to note that evidence of P.W.10 is also very important where P.W.10 was working as Junior Assistant under the accused officer and through him Exs.P26 and 27 were marked, wherein the accused officer issued summons on 9.03.2002 and 20.03.2002. Hence, all those evidence clearly established that the prosecution has placed materials proving that the appellant had demanded and accepted the bribe money from the defacto complainant. Therefore, the trial Court has rightly held that the prosecution has established the case beyond all reasonable doubts as against the accused and the trial Court has also rightly found the accused guilty and convicted him. Having gone through the Judgments and careful assessment of the findings and other relevant materials, this Court finds that it is very difficult to come to a different conclusion and that the finding of the trial Court is ought to be maintained.

16. In the result, the Criminal Appeal is dismissed confirming the Judgment and decree dated 14.11.2014 passed in Special C.C.No.02 of 2005 by the learned Special Judge / Chief Judicial Magistrate, Ramanathapuram. It is reported that the appellant is on bail. The bail bond executed by the appellant shall stand cancelled and the appellant / accused is directed to surrender before the trial Court



within a period of eight weeks from the date of receipt of a copy of this order, failing which, the trial Court is directed to take steps to secure the appellant/accused and send him to jail to undergo the remaining period of sentence as per this Judgment.

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Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Ramanathapuram.
2. The Special Judge / Chief Judicial Magistrate,
Ramanathapuram.
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.
4. The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.KARUNANITHI, Advocate (SR-10386[F] dated 06/03/2020)

Cr1.A. (MD) .No.311 of 2014

05.03.2020

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