BAIL SLIP

The Appellant/Accused namely P.V.Reddy, aged about 41 years, S/o.P.Venkata Reddy was directed to be released on bail as per order of this Court dated 30.12.2014 made in M.P.(MD)No.1 of 2014 in Crl A (MD)No.335 of 2014 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : **24.10.2019**

PRONOUNCED ON : 24**.01.2020**

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.335 of 2014

P.V.Reddy ... Appellant / Accused

Vs.

State rep. through
The Inspector of Police,
CBI/ACB, Chennai.
(Crime No.RC MA 1 2008 A 0056) ... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure to call for the entire records connected to the judgment in C.C.No.2 of 2009 on the file of the learned II Additional District Judge for CBI Cases, Madurai, dated 18.12.2014 and set aside the same.

For Appellant : Mr.S.Kanagarajan for
Mr.K.Ravi Anantha Padmanabhan

For Respondent : Mr.N.Nagendran
Special Public Prosecutor for CBI

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JUDGMENT

This appeal is filed as against the conviction and sentence imposed by the learned II Additional District Judge for CBI Cases, Madurai, in C.C.No.2 of 2009, dated 18.12.2014.

2. This appellant / accused was tried before the trial Court, namely, II Additional District Court for CBI Cases, Madurai, for the offence under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and the trial Court, in conclusion of the trial, found this appellant guilty, convicted and sentenced him as

follows:

Section of Law	Punishment
7 of PC Act	To undergo rigorous imprisonment for three years and to pay a fine of Rs.1,00,000/-, i/d to undergo rigorous imprisonment for six months.
13(2) r/w 13(1)(d) of PC Act	To undergo rigorous imprisonment for three years and to pay a fine of Rs.1,00,000/-, i/d to undergo rigorous imprisonment for six months.

The above sentences were ordered to run concurrently. Aggrieved over the conviction and sentence, the appellant has preferred the instant appeal.

3. The case of the prosecution, in brief, is as follows:

3.1. PW3, namely, Pandidurai, is a Civil Contractor doing railway contract works. He had taken a civil contract work for raising of platform, improvements to floor and circulating area, etc., in Srirangam Railway Station, Trichy, for a contract value of Rs.1,08,28,027/-, vide work order in L.O.A.No.148/North/51/2006, dated 30.05.2007 [Ex.P2]. While executing his contract works, the Senior Officers of the Southern Railway, who inspected the site, have suggested certain alterations on the work. In May, 2008, the Site Engineer prepared a rider proposal incorporating the excess work and it was shown as a excess value of 37.08% of the agreement value. Then, as per the directions of the superiors, the Site Engineer restricted the excess work within 25% of the agreement value and prepared another rider proposal for a sum of Rs.26,70,840/- and submitted the same to the accused officer.

3.2. The accused officer was working as Senior Divisional Engineer in the Office of the Divisional Railway Manager, Southern Railway, Trichy, during the relevant period, ie., from 02.05.2005 to 12.11.2008. The accused officer was the head of the Civil Engineering Section for Trichy Division and also authorised for tender calling. When the rider proposal was made to the accused officer, he contacted the complainant [PW3] over phone, on 30.10.2008 and asked for a bribe of Rs.3,00,000/-, as a reward for having recommended the approval of the excess work done by him. On 31.10.2008, PW3 went to the office of the accused to meet him, but, he could not meet the accused officer, as he took leave till 10.11.2008 and went to his native place. On 10.11.2008, the accused officer attended some official work at Chennai and therefore, the complainant [PW3] contacted him over phone and conveyed his inability for paying the bribe amount. The accused officer directed the complainant to meet him in his Chambers on the next day, ie., on 11.11.2008.

3.3.On 11.11.2008, when PW3 met the accused officer and expressed his inability to pay the bribe amount, the accused officer threatened him that he has to face the consequences and his all other works would be disturbed. But PW3 continuously pleaded and therefore, the accused officer reduced the bribe amount to Rs.1,00,000/- and gave him one day time to arrange the same. Since PW3 was not willing to pay the bribe amount, he contacted the office of the Superintendent of Police, Central Bureau of Investigation [CBI], Chennai, over phone. The Superintendent of Police, CBI, Chennai, directed him to meet the Deputy Superintendent of Police, CBI-ACB, Chennai [PW12], who was on other duty and staying at a Hotel in Trichy.

3.4.Accordingly, PW3 met PW12 on 12.11.2008 around 10.45 am at Hotel Anand, Trichy and also lodged his complaint [Ex.P9]. PW12, after verifying the complaint and the activities of the accused officer, received the complaint and suggested the complainant to arrange the bribe amount of Rs.1,00,000/-. PW12 made an endorsement on the complaint [Ex.P9] and forwarded the same to the Superintendent of Police, CBI, Chennai, through fax. Since there was some problem in sending the fax, he directed the Inspector of Police, Mr.Purusotham, to scan the complaint and send it by E-mail. The scanned copy of the complaint [Ex.P9] was received by the Superintendent of Police, CBI, Chennai, around 01.45 pm and it was immediately registered in the office of the Central Bureau of Investigation, Chennai, in Crime No.56(A) of 2008, as against this accused officer for the offence under Section 7 of the Prevention of Corruption Act, 1988.

3.5.PW12 made a request to the office of the New India Assurance Company and Central Excise Department, Trichy, to send witnesses for the trap proceedings. Accordingly, PW4, namely, Mr.Valentine Devakumar, Administrative Officer of New India Assurance Company, Trichy Division and one Mr.Kannan, Inspector of Central Excise Department, Trichy were deputed and they reached around 02.00 pm. By that time, PW3 had also arranged the bribe amount of Rs.1,00,000/-. PW12 introduced the complainant [PW3] to PW4 and Mr.Kannan and asked the complainant to narrate the contents of his complaint. He collected the sum of Rs.1,00,000/- from PW3 and asked the complainant to make a call to the accused officer to fix the time and venue for handing over the bribe amount. PW3 made a call to the accused officer's phone number 90038-64200 and put it on speaker mode. PW3 informed the accused officer that he arranged the money and asked for the venue and time. The accused officer directed him to meet in his Chambers. This was heard by the official witnesses as well as the officers of the Central Bureau of Investigation over the speaker phone.

3.6. The complainant was informed about the phenolphthalein test and sodium carbonate solution and on the directions of PW12, the Sub-Inspector of Police applied phenolphthalein powder on the currency notes and the same was kept in the left pant packet of the complainant. PW12 also suggested PW4 to accompany the complainant to the office of the accused. It was informed to give a signal by wiping the face with handkerchief, in case the accused receives the tainted currency. After complying with the formalities, they left the Hotel around 04.30 pm and went to the office of the accused around 04.45 pm.

3.7.The officers of the Central Bureau of Investigation closely followed the complainant [PW3] and PW4. PW3 and PW4 waited in front of the Chambers of the accused officer for nearly 20 minutes and thereafter, they got entry into the room. The accused officer asked them to sit and asked about the project. PW3 replied and referred PW4 as his partner and also financing for his projects. It went silently for two minutes and then, the accused officer made a signal to send PW4 out. Accordingly, the complainant made a gesture to PW4 to go out of the Chamber. Therefore, PW4 came out of the accused's Chamber and was waiting on the veranda. Thereafter, the accused officer was discussing with the complainant about the Srirangam work for nearly 30 minutes and then asked for the bribe amount. PW3 took the tainted money from his left pant packet and gave it to the accused officer. The accused received the same in his right hand and kept it in his table drawer. At that time, the accused officer received a phone call and PW3 took the permission and came out of his Chamber and made the signal.

3.8.PW12 and other officers, who were hiding themselves in distance, reached the complainant and asked him to narrate what happened inside the Chamber. They also confirmed the version of the complainant [PW3] from PW4. Then all of them entered into the Chamber of the accused officer. Even after their entry, the accused officer was continuing the call and therefore, they waited for few minutes and PW12 introduced himself and requested to disconnect the call. When the accused officer was questioned as to whether he received any bribe amount from anybody, the accused officer replied that a contractor came and met him and he might have placed some money when he went into the bathroom. PW12 verified the same with PW3, but PW3 denied it and reiterated that the accused officer received the tainted money and kept the same in his table drawer.

3.9.Two sodium carbonate solutions were prepared in two glass tumblers and the accused was requested to dip his right hand fingers and left hand fingers in the solution. The solution, in which the right hand fingers were dipped, turned into light pink colour and the solution, in which the left hand fingers were dipped, did not have any colour change. The solutions were preserved in separate glass tumblers and marked as MO2 and MO3. PW12 asked the official witness, Mr.Kannan, to search the drawer of the accused and the tainted currency notes were recovered from the table drawer. The retrieved currency notes from the table of the accused was verified with the entrustment mahazar [Ex.P10] and it tallied. A rough sketch [Ex.P12] was also prepared and the accused officer was arrested at about 09.35 pm. The arrest memo is marked as Ex.P35. The seizure memo is marked as Ex.P36. Thereafter, PW12 also conducted a search in the house of the accused between 11.00 pm on 12.11.2008 and 02.00 am on 13.11.2008 and seized eight documents and a sum of Rs.2,00,000/-. Exs.P15 & P16 are the search list.

3.10.The further investigation was taken over by one Mr.Lawrence, Inspector of Police, Central Crime Branch, CBI [PW13]. He collected the complaint and other documents from PW12 and registered the case in R.C.No.56 of 2008. He recorded the statements from PW12 and send the samples recovered for chemical analysis. He also recorded the statements of other witnesses, collected the call details of the accused officer and the complainant [PW3] and recorded the statements of the concerned service providers. The call details are marked as Exs.P38 & P39. He also obtained sanction for prosecution from Mr.S.K.Agarwal, then Deputy Secretary, E(O)I, Railway Board [PW1]. In conclusion of his investigation, PW13 filed the final report as against the accused on 23.06.2009.

4.During the trial, on the side of the prosecution, 13 witnesses were examined and 39 documents were marked and 4 material objects were produced.

5. The available evidence from the prosecution side are as follows:

i)PW1, Mr.S.K.Agarwal, is the then Deputy Secretary, E(O)I, Railway Board, New Delhi, who gave the sanction against the accused officer in Ex.P1, on behalf of the Hon'ble President of India. According to him, the sanction was accorded after careful examination of the complaint, First Information Report, Pre and Post trap proceedings, copies of the statements of the witnesses recorded and other relevant documents and after satisfying that a *prima facie* case is made out against the accused.

ii) PW2, Mr.Venkateshwara Rao, is the then Senior Divisional Engineer in Trichy Division of Southern Railway and through him, the contract was awarded to PW3 in Ex.P2 and the proposal for variation of work [Ex.P3] and the minutes for negotiation with the contractor for the excess quantity of work executed [Ex.P6] were marked.

iii) PW3, Mr.Pandidurai is the contractor and the complainant, who obtained the work from Southern Railway for raising and for improving the platform in the Srirangam Railway Station. He speaks about the demand made by the accused officer on 30.10.2008 and the reiterated demand on 11.11.2008 and his complaint [Ex.P9] and the receipt of tainted money by the accused officer on 12.11.2008 and the trap proceedings organised by the Trap Laying Officer [PW12].

iv) PW4, Mr.Valentine Devakumar, is the then Administrative Officer, New India Assurance Company, Trichy Division and he was deputed on 12.11.2008 as a shadow witness. He accompanied PW3 to the accused's Chamber at the time of trap. But, at the time of receipt of money, PW3 asked him to wait outside. He was also a witness for the telephonic conversation of PW3 with the accused officer and the recovery of the tainted money from the accused's table drawer and for the trap proceedings.

v)PW5, Mr.S.Sunil is the Nodal Officer for Vodofone South Limited and the call details of the complainant [PW3] [Mobile No.97860-31701] was marked as Ex.P20.

vi)PW6, Mr.Ramasubbu is the then ADRM in Southern Railway, Trichy and he gave approval for the rider proposal [Ex.P22] and recommended for the rider proposal.

vii) PW7, Mr.Pon.Ettiappan, is the then Assistant Director, Forensic Science Laboratory, Chennai, who examined the specimen samples [MO2 & MO3] and the chemical analysis report is marked as Ex.P23.

viii) PW8, Mr.V.Raju, is the then Office Superintendent of Southern Railway and through him, the Movement Register [Ex.P25] the list of CUG mobile numbers [Ex.P26] and other official records were marked.

ix) PW9, Mr.Sekar is the then Trolley Man in the office of DRM and he speaks about the leave availed by the accused officer from 01.11.2008 to 10.11.2008 and the meeting of PW3 & PW4 on 12.11.2008.

x) PW10, Mr.V.Krishnamoorthy is the Front Office Manager of Hotel Anand, Tricy, where PW12 stayed.

xi) PW11, Mr.V.Suredran, is the then Site Engineer, who prepared the rider proposal [Ex.P32] and again prepared another rider proposal in Ex.P4.

xii) PW12, Mr.Shankar, is the then Deputy Superintendent of Police, CBI, ACB, Chennai, during the relevant period and he was on other duty staying at Trichy on 12.11.2008 and on the directions of the Superintendent of Police, CBI, Chennai, he met the complainant [PW3], received the complaint [Ex.P9], forwarded the same to the Superintendent of Police, arranged for the trap and recovered the tainted money from the accused officer. He speaks about the trap proceedings arranged by him on 12.11.2008.

xiii) PW13, Mr.Lawrence is the then Inspector of Police, CBI, Chennai, who registered the case in R.C.No.56 of 2008, as per the directions of the Superintendent of Police, on 12.11.2008. He also examined the witnesses, made request for chemical analysis and filed the final report in this case.

6. After the prosecution evidence was completed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. His wife and another were examined as defence witnesses and two documents [Ex.D1 & D2] were marked through them.

7. The trial Court, in conclusion of the trial, found the appellant / accused officer guilty for the offence under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and convicted and sentenced as stated supra.

8.Heard Mr.K.Ravi Anantha Padmanabhan for M/s.S.Kanagarajan, learned Counsel on record appearing for the appellant and Mr.N.Nagendran, learned Special Public Prosecutor appearing for CBI.

9.Apart from oral submissions, the learned Counsel for the appellant has also filed a volume of written submissions. The sum and substance of the grounds raised by the learned Counsel for the appellant are as follows:

(i)The sanction is a defective one and the sanctioning authority has not applied his mind in granting the sanction in this case. The sanctioning authority admits that he did not read the complaint which was in Tamil and the translated version of the complaint was not placed before him.

(ii)There is an inordinate delay in lodging the complaint. Though the demand was alleged to be made on 30.10.2008, the complaint was lodged only on 12.11.2008 and no explanation was offered for this delay. The complainant [PW3] is an M.Sc., M.B.A., graduate, having 17 years of experience in railway contract works. But even then there is an inordinate delay in preferring the complaint and no explanation has been offered.

(iii)There is no corroboration for the meeting of complainant and the appellant in the office of the appellant. The appellant is an high level officer, having his supporting staff, including a Stenographer, an Assistant and an Office Assistant in his office and without their permission or knowledge, nobody can enter into the appellant's room. Though the Office Assistant [PW9] of the appellant was examined, he did not support the case of the prosecution that the complainant [PW3] met the appellant / accused officer on 11.11.2008. The alleged second demand was made only on 11.11.2008 and when the meeting of the complainant itself was not substantiated, the second demand cannot be accepted based on the evidence of PW3 alone.

(iv)The case of the prosecution is that the appellant / accused officer demanded a sum of Rs.3,00,000/- and thereafter, reduced to Rs.1,00,000/-, as bribe, from PW3 for having recommended the rides proposal to PW6. Admittedly, the appellant recommended the proposal on 29.10.2008. When the appellant recommended the proposal on 29.10.2008 itself, it is highly improbable to make a demand on 30.10.2008, after recommending the proposal. It is the case of the complainant [PW3] that the appellant on earlier occasions has approved the rider proposal at Virudhachalam, Buthalur and for Trichy track maintenance and there is no allegation that on those occasions, the appellant demanded any bribe amount.

(v) The complainant [PW3] was having a motive as against this appellant Officer that his rider proposal for Thanjavur, Myladurai, Kumbakonam and Ariyalur were rejected by this appellant and in order to take revenge for these rejections, this false complaint is foisted as against this appellant under the impression that bribe amount was demanded for this rider proposal for Srirangam railway station platform work.

(vi)The demand in this case has not been established by the prosecution beyond any reasonable doubt and except the evidence of PW3, there is no corroboration for the demand. Similarly, there is no evidence for the acceptance also. Though the shadow witness [PW4] accompanied PW3 to the office of the appellant, he was not present at the time of alleged acceptance and according to PW4, on the directions of PW3, he was sent out of the room of the appellant and waited in the Veranda for nearly 40 minutes.

(vii) PW12, the Trap Laying Officer, in his evidence admitted that when the right hand of the appellant was dipped in the sodium carbonate solution, it turned into pink colour and when the left hand was dipped, there was no colour change. But the chemical examiner [PW7] stated in the report that the presence of phenolphthalein was found in both the samples and by referring this evidence, it is contended that PW12, who was camping in Trichy in connection with another trap case in Income Tax Department, has sent a difference sample for chemical analysis and that is why, when it was noted as colourless for the left hand solution during trap, PW7 has stated about the presence of phenolphthalein in both the samples.

(viii)No explanation was obtained from the appellant as soon as the recovery was made and the Trap Laying Officer [PW12] ought to have recorded the statement of the appellant.

(ix) The learned Counsel for the appellant has also relied upon the following citations in support of their case:

1.B.Jayaraj Vs State of Andhra Pradesh reported in (2014) 13 SCC 55.

2.State of Pubjab Vs Madan Mohan Lal Verma, reported in (2013) 14 SCC 153.

3.Parasurami Reddy Vs State of Andhra Pradesh, reported in (2011) 12 SCC 294.

4.Prabhat Kumar Gupta Vs State of Jharkhand and another, reported in (2014) 14 SCC 516.

5.Selvaraj Vs State of Karnataka, reported in (2015) 10 SCC

230.

6.M.K.Harshan Vs State of Kerala, reported in (1996) 11 SCC 720.

7. Krishnan Chander Vs State of By Vigilance and Anticorruption, reported in (2016) Vol I MWN (Crl) 255 SC.

8.T.K.Ramesh Kumar Vs. State through Inspector, Bangalore.

9.R.Sankara Karuppasamy Vs State by Vigilance and Anti-Corruption, reported in (2012) 2 MLJ (Crl) 459 (MD) HC.

10.K.Srinivasan Vs State, reported in (2007) 1 MLJ (Crl) 269.

11. Mukthtiar Singh Vs State of Punjab, reported in (2017) 8 SCC 136.

12.V.Pechi Vs State, reported in 2018 (2) MLJ (Crl) 6713.

10.Per contra, the learned Special Public Prosecutor appearing for CBI has made his submissions in the following lines:

(i) PW1 is the competent authority to accord sanction for prosecution and PW1 has clearly stated that he accorded sanction after satisfying with the materials placed before him. Therefore, there is no defect on the sanction for prosecution.

(ii) There is no delay in this case in reporting the incident by PW3. The first demand was made by the appellant on 30.10.2008 through phone and from 31.10.2008, the accused Officer went on leave and though he joined on 10.11.2008, he was in the office at Chennai on 10.11.2008 and returned to Trichy only on 11.11.2008 and on 11.11.2008, PW3 met the accused Officer in his Chamber and there was a second demand on 11.11.2008. The complainant was also intimidated by the accused Officer and therefore, the complaint was lodged on 12.11.2008 and the trap was also arranged on the same day, as such, there is no delay in reporting the incident. Moreover, it is very difficult for a contractor to lodge a complaint as against a high level officer.

(iii) The accused Officer is the authority to recommend the rider proposal and the same was established through the Assistant Divisional Engineer (North) [PW2] and the ADRM [PW6] and the Office Superintendent of Southern Railway, Trichy [PW8].

(iv) The accused Officer contacted the contractor [PW3] on 30.10.2008 and the call details during the relevant period were marked by the prosecution through PW5, the Nodal Officer of Vodofone Ltd, in Ex.P20 & 21. PW8, the Office Superintendent of Southern Railway, Trichy, has furnished the CUG list [Ex.P26], where the mobile number 90038-64200 was given to the accused Officer during the relevant period.

(v)The evidence of PW3 cannot be rejected with regard to the demand that it was not corroborated, because, even according to the appellant, the complainant is an M.Sc., M.B.A., graduate, a responsible person doing contract work in the Southern Railway over a period of 17 years, without any remark. PW3 is a valuable and credible trustworthy witness and therefore, no corroboration is required.

(vi)The conversation between the appellant and the complainant [PW3] on 12.11.2008 over phone was witnessed / heard through speaker mode by the authorities and the official witnesses, Mr.Kannan and PW4, who accompanied PW3 to the Chambers of the accused Officer and was made to wait outside at the instance of the appellant.

(vii)It is the contention of the appellant that even before the first demand on 30.10.2008, he recommended the rider proposal on 29.10.2008 and therefore, it is improbable for claiming the bribe demand after recommending the proposal. The accused Officer is an higher official in the Southern Railway and the complainant [PW3], a railway contractor, has to depend upon the appellant Officer for all his works. It is the evidence of PW3 that he was intimidated by the appellant that his other works would be disturbed. In this case, the bribe amount was demanded as a reward and even accepting the reward is also an offence and liable to be punished under the Prevention of Corruption Act.

(viii) Though in the mahazar, it is mentioned that there was no colour change in the solution pertaining to the left hand, there is a difference between the testimonies of PW12 and PW7. PW7 is the competent authority to say the presence of phenolphthalein in the solutions subjected for analysis. There is no scope for substituting a solution, when the solutions collected from the accused were signed, closed and sealed in the presence of independent official witnesses, PW4 and another and also forwarded for analysis through the concerned Court on 12.11.2008. Therefore, there is no possibility of any change of solution as projected by the defence.

11.This Court has paid it's anxious consideration to the rival submissions and also to the available records.

12.With regard to the sanction, the sanctioning authority has stated that he has applied his mind to the materials placed on record and has also satisfied that a *prima facie* case is made out and then accorded the sanction. In the sanction order [Ex.P1] itself, the sanctioning authority [PW1] has recorded about the subjective satisfaction for according the sanction. What is required for a sanctioning authority is a *prima facie* subjective satisfaction that an offence has been committed and he is not expected to conduct a detailed examination as to whether the offence is made out or not.

13.There is no delay in this case as projected by the appellant. The first demand was made on 30.10.2008. From 31.10.2008, the appellant was on leave. He joined duty only on 10.11.2008 and on that day also, he attended the Headquarters at Chennai and returned to Trichy only on 11.11.2008. The call details [Ex.P20 & 21] would disclose that the appellant had contacted the complainant on 11.11.2008 and on his directions, the complainant also met the appellant on that day. The second demand was made in the chambers of the appellant on 11.11.2008. The appellant has, in fact, intimidated the complainant by referring his powers that the other contract works would be disturbed if he fails to make the payment.

14.With regard to the corroboration as claimed by the appellant, the evidence was recorded after six years after the occurrence. The Office Assistant of the appellant was examined as PW9. But he did not refer whether PW3 met the complainant on the previous day of the trap, ie., on 11.11.2008. PW9 admits that PW3 along with PW4 went into the Chambers of the appellant and after sometime, PW4 returned and was waiting in the veranda and the subsequent entry by the CBI Officers. The incident of trap is an important thing which can be remembered by PW9 and he also stated in his evidence about the meeting of PW3 and PW4 on 12.11.2008. But, in an ordinary working day, which is just like every other day, several people will be meeting the higher officials and it will be difficult to expect the Office Assistant to remember all the visitors, who have met the appellant on the previous day on 11.11.2008. In this case, the prosecution has established through the call details [Ex.P20 & 21] that the appellant has contacted the complainant on 11.11.2008. The evidence of PW3 in this regard has not been shattered by the defence that there is no possibility for PW3 to meet the appellant Officer on 11.11.2008. The evidence of PW3 in this regard is very cogent and immediate to the meeting on 11.11.2008, PW3 also lodged the complaint to PW12 and he contacted the appellant Officer in the presence of the official witnesses over phone and through Speaker mode, all of them have witnessed the conversation took place on 12.11.2008 between the complainant and the accused Officer. Therefore, mere because the Office Assistant [PW9] did not support the case of the prosecution about the meeting of PW3 with the appellant on 11.11.2008 and the Stenographer and the Assistant were not examined to establish the same, the prosecution case is not shattered.

15.It is true that apart from the evidence of PW3, there is no other witness to corroborate the demand made by the accused Officer and the acceptance. We cannot expect the Officers who are indulging in corrupt practice to demand and accept bribe in the presence of others. Moreover, in this case, it is the specific stand of the prosecution that the shadow witness [PW4] was sent out of the Chambers of the appellant by the complainant [PW3] on the directions of the appellant. The Hon'ble Supreme Court, in Mukut Bihari and another Vs State of Rajasthan reported in (2012) 11 SCC 642 has held as follows:

> *9. The case of the appellants has no merit as the case is squarely covered by the judgment of this Court in C.M. Sharma v. State of A.P. TH. I.P., AIR 2011 SC 608,*

wherein a similar issue had been raised that the complainant alongwith the shadow witness went to the office of the accused but the accused asked the shadow witness to go out of the chamber. Shadow witness left the chamber. However, the complainant brought the shadow witness in the chamber and explained to the accused that he was his financer. Despite that the accused again asked the shadow witness to leave the chamber and thus, he went out. The accused demanded the money and the complainant paid over the tainted money to him, which he received from his right hand and kept in right side pocket of the trouser. A signal was given, whereupon he was trapped by the team which apprehended the accused and conducted sodium carbonate test on the fingers of the right hand and right trouser pocket of the accused, which turned pink. The tainted notes were lying on the floor of the office, which were recorded.

10. This Court, after considering various judgments of this Court including Panalal Damodar Rathi (supra) and Smt. Meena Balwant Hemke (supra) held that acceptance of the submission of the accused that the complainants version required corroboration in all circumstances, in abstract would encourage the bribe taker to receive illegal gratification in privacy and then insist for corroboration in case of the prosecution. Law cannot countenance such situation. Thus, it is not necessary that the evidence of a reliable witness is necessary to be corroborated by another witness, as such evidence stands corroborated from the other material on record. The court further distinguished the case of Panalal Damodar Rathi (supra) on the ground that in that case the Panch witness had not supported the prosecution case and therefore, the benefit of doubt was given to the accused. In Smt. Meena Balwant Hemke (supra) as the evidence was contradictory, the corroboration was found necessary.

Therefore, when the complainant has clearly stated about the demand, no corroboration is required.

16.The corroboration is required only when the evidence of witness is doubtful. The Hon'ble Supreme Court in ***C.M.Sharma Vs State of Andhra Pradesh***, reported in ***(2010) 15 SCC 1***, has held as follows:

"18.Further corroboration of evidence of a witness is required when his evidence is not wholly reliable. On appreciation of evidence, witnesses can be broadly categorized in three categories viz., unreliable, partly

reliable and wholly reliable. In case of a partly reliable witness, the court seeks corroboration in material particulars from other evidence. However in a case in which a witness is wholly reliable, no corroboration is necessary. Seeking corroboration in all circumstance of the evidence of a witness forced to give bribe may lead to absurd result. Bribe is not taken in public view and, therefore, there may not be any person who could see the giving and taking of bribe. As in the present case, a shadow witness did accompany the contractor but the appellant did not allow him to be present in the chamber. Acceptance of this submission in abstract will encourage the bribe taker to receive illegal gratification in privacy and then insist for corroboration in case of prosecution. Law can not countenance such situation.

19.In our opinion it is not necessary that the evidence of a reliable witness is necessarily to be corroborated by another witness. Not only this corroboration of the evidence of a witness can be found from the other materials on record."

The evidence of PW3 with regard to the demand is trustworthy and was not shattered by the defence.

17.No doubt the appellant had recommended the Rider proposal on 29.10.2008 prior to the date of first demand on 30.10.2008. The bribe can be even as reward. There was a rider proposal and this appellant / accused Officer was the authority to recommend the rider proposal and it is an admitted case that on 29.10.2008, ie., one day prior to the first demand, the appellant has recommended this rider proposal. The rider proposal was for Rs.25 Lakh. As rightly pointed out by the prosecution, it need not be an demand for doing a work, but be a reward for having done a work and in this case, the complainant is a contractor in the railway doing so many works in the railways for the past 17 years and even at the relevant point of time, he was doing works at various places apart from the Srirangam platform work and therefore, the contractor [PW3] has to depend upon the appellant authority in approving his contract works and payment of bills, etc. Therefore, mere because the recommendation was made on 29.10.2008 even before the first demand on 30.10.2008, it could not affect the case of the prosecution as in this case the demand was made as reward.

18.The Hon'ble Supreme Court in the decision reported in 1970 Crl.LJ (vol.76, C.No.196), has held that the reward or illegal gratification accepted either before are after doing the act would be covered by Section 161 IPC. A payment of a sum to a public servant, whether paid before or after the doing the official act, would constitute bribe within Section 161, IPC.

19.The tainted money which was recovered from the table drawer of the accused Officer tallied with the one recorded in the entrustment mahazar. The recovery of tainted money has been established by the prosecution. An explanation was offered by the appellant belatedly when he was questioned under Section 313 Cr.P.C that when he went to bathroom to attend the nature call, the complainant has put the tainted money in the table drawer without his knowledge. But, this version of the accused has been disproved by the prosecution that he received the money in this right hand and kept the same in the table drawer. The phenolphthalein test was also conducted and it turned positive and samples were also collected. Though PW12, the trap laying officer has stated that the solution collected from the right hand alone showed colour change, PW7, the analyst, has mentioned about the presence of Sodium Carbonate in both the samples collected from the accused. The phenolphthalein test was conducted by the trap laying officer [PW12] in the presence of the official witnesses PW4 and another. The samples collected were also sealed in their presence. PW4, in his evidence, has stated about the procedures followed during the phenolphthalein test in the chambers of the appellant. The samples, which were collected, were sent to the Court and thereafter, was referred for chemical analysis through the Court. PW7, the analyst, examined the samples received from the Magistrate Court and on examining the samples, he gave the report in Ex.P23 that in both the samples, there is a presence of Sodium Carbonate. Therefore, it is hard to disbelieve the same. The change of colour depends upon the quantum of phenolphthalein powder and in this case, according to PW12, during the trap proceedings, the right hand solution alone showed colour change and the left hand solution did not show any colour change. But then, in the laboratory, when it was analysed, in chemical examination, the presence of Sodium Carbonate in both the samples could be found out. Therefore, this Court is of the view that the prosecution has established the acceptance of the tainted money from the complainant.

20.A motive was attributed as against this complainant PW3 that his rider proposal for Tanjore, Mayiladuthurai, Kumbakonam and Ariyalur were rejected by this appellant and in order to take revenge for those rejections, this false complaint has been foisted as against this appellant. The appellant is a high level officer in the Railway Department, who is in charge of sanctioning and approving the contracts. The complainant is a Graduate and also doing contract work in Souther Railway for more than 17 years. Admittedly, apart from this contract work, the complainant is also doing several other works in the Southern Railway. The contractor has to depend on the officials not only for the award of contract, but also for payment of their bills.

21.Bribe givers only ventilate their grievance, approach the vigilance officer after their prolonged suffering at the instance of the accused officer, which has been painfully observed by the Hon'ble Supreme Court in State of U.P.Vs.Dr.G.K.Ghosh [1984] 1 SCC 254 as follows:

> *"by and large a citizen is somewhat reluctant, rather than anxious, to complaint to the Vigilance Department and to have a trap arranged even if illegal gratification is demanded by a Government Servant. There are numerous reasons for the reluctance. In the first place, he has to make a number of visits to the office of the Vigilance Department and to wait on a number of officers. He has to provide his own currency notes for arranging a trap. He has to comply with several formalities and sign several statements. He has to accompany the officers and participants of the raiding party and avocation. He has to sacrifice his time and effort whilst doing so. Thereafter, he has to attend the court at the time of trial from day to day. He has to withstand the searching cross-examination by the defence counsel as if he himself is guilty of some fault. In the result, a citizen who has been harassed by a Government Officer, has to face all these hazards. And if the explanation offered by the accused is accepted by the Court, he has to face he humiliation of being considered as a person who tried to falsely implicate a Government Servant, not to speak of facing the wrath of the Government servants of the department concerned, in his future dealings with the department. No one would therefore be too keen or too anxious to face such an ordeal. Ordinarily, it is only when a citizen feels oppressed by a feeling of being wronged and finds the situation to be beyond endurance, that he adopts the course of approaching the Vigilance Department for laying a trap. His evidence cannot therefore be easily or lightly brushed aside. Of course, it cannot be gainsaid that it does not mean that the court should be oblivious of the need for caution and circumspection bearing in mind that one can conceive of cases where an honest or strict Government official may be falsely implicated by a vindictive person to whose demand, for showing favours, or for according a special treatment by giving a go-by to the rules, the official refuses to yield".*

22.So citing unconnected stale motive is universal in the case of corruption by fiber thread of prolonged cross examination that too after number of years from the date of occurrence. What is required for an offence under the Prevention of Corruption Act is that the demand, acceptance and recovery. In this case, the demand and acceptance were sufficiently proved by the prosecution and the tainted money as recorded in the entrustment mahazar [ExP10] was also recovered from the accused officer. The phenolphthalein test conducted on the both hands of the appellant/accused officer has also proved positive.

23.The corruption has ruined the system. Despite implementation of the Prevention of Corruption Act, corruption has not been eradicated and it has become a common affair. Nobody is having the sense of fear to the prevailing Act. The higher officials must act as an example to their subordinates in discharge of their duties. If the higher officials themselves commit mistakes, then they loose their morale to question their subordinates. Ultimately, the system fails. The Hon'ble Apex Court in *Niranjan Hemchandra Sashittal* v. *State of Maharashtra* reported in (2013) 4 SCC 642, painfully discussed the gravity of the corruption in the following terms:

> *"26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered."*

24.Since the prosecution has established their case, this Court is not inclined to interfere with the order of the trial Court. Accordingly, the criminal appeal is dismissed. The conviction and sentence imposed on the appellant in C.C.No.2 of 2009 by the learned II Additional District Judge for CBI Cases, Madurai is confirmed. The bail bonds if any shall stand cancelled. The trial Court is directed to secure the appellant and confine him to prison, to undergo the remaining period of sentence.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Gk/dsk

To

1) The II Additional District Judge for CBI Cases,
Madurai.

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

3)The Special Public Prosecutor for CBI Cases,
Madurai Bench of Madras High Court,
Madurai.

4)The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

Crl.A.(MD)No.335 of 2014
24.01.2020

KK/SAR/12.02.2020/17P-6C/