



BAIL SLIP

Appellant/Accused viz., namely K.Gurusamy, was released on bail as per order to this court dated 21.03.2016 and made in CrI.MP(MD) No.2434 of 2016 and made in CrI A(MD)No.205 of 2015.

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BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

RESERVED ON : 09.01.2020
PRONOUNCED ON : 05.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR
CRL. A. (MD) NO. 205 of 2015

K.Gurusamy .. Appellant / Sole Accused

- Vs -

State by Inspector of Police,
V & AC Virudhunagar District,
Virudhunagar.

.. Respondent / Complainant

Prayer : Appeal filed u/s 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed on 18.08.2015 in the Spl.C.C.No.1 of 2014, on the file of the Special Court and Chief Judicial Magistrate Court for V & AC Cases, Srivilliputhur, Virudhunagar District and acquit the appellant / accused from the charges levelled against him.

For Appellants : Mr.T.Senthil Kumar

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

JUDGMENT

The appellant worked as Stamping Inspector for weigh and measures in the Labour Department, Srivilliputhur, was convicted and sentenced for offence under Section 7 of the Prevention of Corruption Act, 1988, to undergo six months Rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo one month Simple Imprisonment and for the offences under Section 13 (2) r/w. 13 (1) d of the Prevention of Corruption Act, 1988, to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months Simple Imprisonment by the Special Court and Chief Judicial Magistrate Court for V & AC Cases, Srivilliputhur, Virudhunagar District, by judgment dated 18.08.2015. Against which, the present Appeal is filed.

<https://hcservices.ecourts.gov.in/hcservices/> **2. The facts of the case are briefly stated hereunder:-**



2.(1). The case of the prosecution is that the appellant, who worked as Stamping Inspector, Srivilliputhur, Virudhunagar District, during the period from 15.05.2003 to 21.09.2005 is a Public Servant, as defined under Section 2 (c) of the Prevention of Corruption Act. P.W.2 one Jeevanandham, who was having a welding workshop at Maharajapuram, Virudhunagar District and was also running a Chicken & mutton stall, for which, he was using weighing table-scale. On 19.09.2005, he went to the Milk Producers' Co-operative Society at Watrap, where the Stamping Inspector was camping and at about 11.00 a.m., approached the appellant for the purpose of stamping his weighing table-scale. At that time, the appellant demanded Rs.200/- as bribe. P.W.2 informed that he had not brought the amount and the appellant asked him to come by 05.00 p.m on 20.09.2005 to the same Society. Since P.W.2 was not inclined to give bribe, on 20.09.2005 at about 10.00 a.m., he had given a complaint against the appellant to the Additional Superintendent of Police, Vigilance and Anti Corruption Department, Virudhunagar District, which is marked as Ex.P.2.

2.(2). The complaint was forwarded to one Mr.A.G.Jacob, the Inspector of Police, Vigilance and Anti Corruption, Virudhunagar, who registered a case in Crime No.7 of 2005, for the offence under Section 7 of the Prevention of Corruption Act, 1988. On 20.09.2005, at about 10.00 a.m., P.W.2 went to the Vigilance Office. Thereafter, the Police had enlisted the service of P.W.3 and P.W.4- public servants to be witness at about 11.00 a.m. The phenolphthalein test was demonstrated and Entrustment Mahazar / Ex.P.5 was prepared. P.W.4 kept the powdered Two Hundred Rupees notes in the left side shirt pocket of P.W.2. Thereafter, on the very same day, at about 02.30 p.m., the trap team comprising P.W.2, P.W.3 and P.W.4 and the Police team left to Watrap in the two Government vehicles and at about 03.30 p.m., they reached the Milk Producers' Co-operative Society, Watrap. P.W.2 and the official witness viz., P.W.2 took the weighing table-scale and met the appellant. Due to heavy crowd, the appellant directed P.W.2 to come to his office at Srivilliputhur to get stamp on the next day. Thereafter, P.W.2 and P.W.3 along with the trap team reached the Vigilance Office, P.W.2 returned the trap amount and the trap amount was kept custody in the Vigilance Office, the proceedings were recorded. Thereafter, On 21.09.2005 at about 08.15 a.m., P.W.2 reached the Vigilance office followed by the two official witnesses viz., P.W.3 and P.W.4. The trap amount was handed over to P.W.2. Again the Entrustment Mahazar / Ex.P.6 was prepared. P.W.2 along with P.W.3, P.W.4 and trap team went to the appellant's office at about 10.15 a.m. P.W.2 handed over the application form along with weighing table-scale machine. The weighing table-scale was verified and charge of Rs.20/- was paid and the receipt was issued. After that, the appellant demanded the bribe amount of Rs.200/- which was handed over by P.W.2 and the appellant received the same and kept the bribe amount in his table drawer. Thereafter, P.W.2 and P.W.3



came out of the office at about 12.00 noon and gave the pre-arranged signal to the trap team, immediately, P.W.4 along with A.G.Jacob, the Trap Laying Officer and the trap team entered the office of the appellant, the appellant was sitting in a chair in the Office. The Inspector of Police introduced himself and the two official witnesses to the Stamping Inspector, the appellant got perplexed. Thereafter, phenolphthalein test was conducted on both hands of the appellant and the solution turned pink colour and the sodium carbonate solution was poured in the bottle, labelled and sealed and thereafter, the Inspector of Police, directed the appellant to produce the currency notes of Rs.200/-. The appellant took the notes from the table drawer and the numbers tallied with the numbers already recorded in the Entrustment Mahazar. The Recovery Mahazar was prepared and the appellant was arrested at about 01.15 p.m. Thereafter, the search was conducted at the residence of the appellant and on examination of witnesses and on receipt of analysing reports and after obtaining the sanction order, the charge sheet came to be filed against the appellant.

3. In order to prove the case, on the side of the prosecution as many as 14 witnesses were examined as PW.1 to PW.14 and 23 documents were marked as Ex.P.1 to Ex.P.23 and three material objects were marked as M.O.1 to M.O.3. On the side of the accused, no witness was examined nor any document was marked.

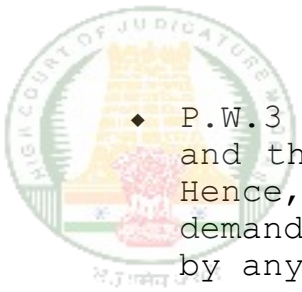
4. When the appellant was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same.

5. The learned trial Judge on completing the trial and considering the oral and documentary evidence and upon hearing both sides, convicted and sentenced the accused as aforesaid, resulting in filing of the present Appeal before this Court.

Submissions:-

6. The learned counsel appearing on behalf of the appellant made the following submissions:

- ♦ In the case of trap, vital aspects viz., demand, acceptance and recovery are *sin qua non* to prove the charge. In this case, demand and acceptance have not been proved. The bribe amount is shown to be recovered from the table drawer and not from the appellant. The appellant was later forced to hand over the bribe amount and hence, the phenolphthalein test turned positive.
- ♦ P.W.2 / the decoy had not supported the case of the prosecution and he was declared hostile.



- ♦ P.W.3 / accompanying witness, who was examined in chief in part and thereafter, he could not be examined, since he passed away. Hence, there is no evidence to show that the appellant made any demand and received the bribe amount and there is no evidence by any means for the actual trap.

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- ♦ The Lower Court on a wrong notion, placing heavy reliance on the evidence of P.W.4, who is the other witness, who had not accompanied P.W.2-the decoy, who was standing outside the office of the appellant, narrated the happenings, in the absence of P.W.3, as though P.W.3 had informed him. In view of P.W.3 could not be examined and had not deposed about the same, P.W.4's narration becomes a hearsay evidence and this part of evidence was recorded with objection. The trial Court had not given any reason for overruling the objection made.
- ♦ On 19.09.2005 and 20.09.2005, the appellant was camping at Milk Producers' Co-operative Society, Watrap, during that time, lot of traders and businessmen, were there for sealing of their tables-scales and weighing stones. Further, from the evidences of P.W.2 to P.W.4 and as per Ex.P.6 / Entrustment Mahazar, it could be seen that on 20.09.2005, when P.W.2 along with P.W.3 had gone for sealing the table-scale, the appellant sent them back, due to work load and crowd. Had the appellant demanded the bribe amount, he would have received the same on the same day and would not have sent back P.W.2. Thus, it is seen that there is no demand by the appellant. In order to substantiate his submissions, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Union of India through Inspector, CBI Vs. Purnandu Biswas** reported in **(2006) 1 SCC (Cri) 520**. The relevant portions of the judgment are extracted hereunder:-

"36. In this case, demand of illegal gratification by the Respondent has not been proved. Furthermore, Section 20 of the Act is not attracted as the Respondent had been charged for commission of an offence under Section 13(1)(d) read with Section 13(2) of the Act.

37. M. Narsinga Rao vs. State of A.P. relied upon by Mr. Sharan, was rendered having regard to the contention raised therein that it was not enough that some currency notes were handed over to the public servant to make it as acceptance of gratification; prosecution has a further duty to prove that what was paid amounted to gratification. Such a question does not arise for consideration in this case."

- ♦ Ex.P.5 and Ex.P.6 are the Observation Mahazars dated 20.09.2005, for returning back the bribe amount, which was kept

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in the custody. As per Ex.P.7 / Entrustment Mahazar, dated



21.09.2005, P.W.2 handed over an amount of Rs.200/-, which was marked as M.O.1. If that being the case, on 21.09.2005, how can P.W.2 was in possession of Rs.20/- in addition to trap amount of Rs.200/-, made payment for verification of the table-scale as could be seen from Ex.P.3 and Ex.P.4. There is no explanation or clear evidence to show that this twenty Rupees was in possession of P.W.2 and was kept separately. This amount of Rs.20/-, whether was kept along with the trap amount or separately, ruling out the possibility of notes coming in contact with each other and the same would have been the reason for the appellant's hand washes turning pink in colour.

- ◆ From the Recovery Mahazar-Ex.P.12, it is seen that there is nothing on record to show that the appellant had demanded and accepted the bribe amount. P.W.4 had given an exaggerated version against the appellant and the lower Court had wrongly placed heavy reliance on his evidence, which is contrary to the documentary evidence and to the attendant circumstances. In order to substantiate his submissions, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Dashrath Singh Chauhan Vs. Central Bureau of Investigation** reported in **AIR 2018 SCC 4720**. The relevant portion of the judgment is extracted hereunder:-

"32.Since in order to attract the rigors of Sections 7, 13(2) read 13(1)(d) of PC Act, the prosecution was under a legal obligation to prove the twin requirements of "demand and acceptance of bribe money by the accused", the proving of one alone but not the other was not sufficient. The appellant is, therefore, entitled for acquittal from the charges framed against him under the PC Act too. "

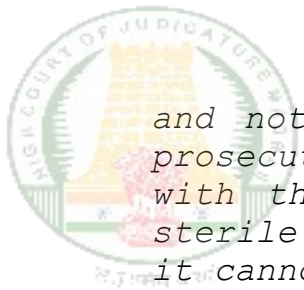
- ◆ The lower Court has failed to look into the fact that in the application / Ex.P.8 dated 21.09.2005, it is found that the weighing table-scale had been purchased from one Chinnasamy Nadar Hardwares, No.39, Nethaji Road, Srivilliputhur, through bill No.376, dated 21.09.2005. Thus, the weighing table was purchased only on 21.09.2005 and produced for inspection on the same day. In such circumstances, the demand on 19.09.2005 is proved to be false.
- ◆ P.W.2 in his evidence does not mention anything about he being accompanied with P.W.3. Further P.W.2's evidence is very categorical that on 21.09.2005, he along with the trap team had left the office after 02.00 p.m. According to the Recovery Mahazar, the trap had commenced at 12.00 noon and the recovery proceedings completed by 01.15 p.m on 21.09.2005. Further, he does not whisper anything with regard to any demand of bribe made by the appellant. Further, when the Trap laying Officer entered into the office, P.W.2 was asked to leave the place and



only on the next day, he produced Ex.P.2 to Ex.P.4 to the Trap Laying Officer.

- ◆ P.W.4, the other official witness was examined only for the purpose of Entrustment proceedings and Mahazars viz., Ex.P.5 to Ex.P.7 and the Recovery Mahazar / Ex.P.12, after the trap was completed and admittedly, it is submitted that P.W.4 was not available inside the office of the appellant, when the trap amount was handed over. Further P.W.4 in his evidence states that there are two application forms handed over by P.W.2 and in this case, only one application form viz., Ex.P.8 had been produced.
- ◆ P.W.2 admits that he along with P.W.3 had taken weighing table-scale and weighing table-stones for verifying and sealing. But, in this case, no verification of weighing stones done and shown recovery.
- ◆ P.W.4 states that he had not seen any other weighing scale or weighing stones in the appellant's office, which is contrary to Ex.P.14 to Ex.P.17 viz., Register, Cash Bill and other documents. P.W.4 further states that he is not aware of what is the type of the table scale, model name and number.
- ◆ P.W.5 admits about the purchase of the weighing table-scale mentioned in Ex.P.8 on 21.09.2005.
- ◆ P.W.1 had not asked any explanation as to how the weighing table-scale, which has been purchased on 21.09.2005, could have been brought by P.W.2 on 19.09.2005 and non production of any application form dated 19.09.2005.
- ◆ In Ex.P.1 which is sanction for proceedings, the place of trap is Milk Producers' Co-Operative Society, on 21.09.2005, the trap has taken place inside the office of the appellant, which clearly shows non application of mind by P.W.1, when he issued Ex.P.1.
- ◆ In order to substantiate his submissions, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Trilok Chand Jain Vs. State of Delhi** reported in (1975) 4 SCC 761. The relevant portion of the judgment is extracted hereunder:-

"11. Another aspect of the matter which has to be borne in mind is that the sole purpose of the presumption under Section 4(1) is to relieve the prosecution of the burden of proving a fact which is an essential ingredient of the offences under Section 5 (1) (2) of the Prevention of Corruption Act and Section 161, Penal Code. The presumption therefore can be used in furtherance of the prosecution case



and not in derogation of it. If the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed, the presumption will be rendered sterile from its very inception, if out of judicial courtesy it cannot be rejected out of hand as still born. "

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- ◆ In order to substantiate his submissions, the learned counsel further relied upon the judgment of the Hon'ble Supreme Court in the case of **Gulam Mahmood A.Malik Vs. State of Gujarat** reported in **1981 SCC (Cri) 586**. The relevant portion of the judgment is extracted hereunder:-

"7. The High Court while agreeing with the trial Court that the evidence of Natvarlal is suspicious and that it cannot be acted upon without sufficient corroboration found that the testimony of the Panch witness was acceptable and afforded sufficient corroboration. The High Court based the conviction mainly on the ground that marked notes were recovered from the person of the accused and that Panch witness has spoken to the recovery of the money. In assessing the evidence of a witness the entire background of the prosecution story should be kept in mind. It is seen the complainant has no regard for truth and his preferring a false complaint about payment of bribe on July 7, 1972 and making the present complaint after tea days of the alleged demand cannot be ignored. In the circumstances, we do not think that it was safe for the High Court to base the conviction solely on the testimony of the panch witness. The trial Court has given convincing reasons as to why the evidence of the panch witness cannot be accepted. In reversing the order of acquittal the High Court must find sufficient grounds for holding that the appreciation of the evident by the trial Court is unsupportable. On going through the evidence in the case, We feel that the trial Court was right is not accepting testimony of the complainant and the panch witness and the High Court was not justified in interfering with the order of acquittal."

7. The learned Additional Public Prosecutor appearing for the respondent made the following submissions:-

- ◆ In this case, the case came to be registered on the complaint of P.W.2, who is the decoy and Ex.P.2 is the written complaint, in which, it is clearly mentioned that P.W.2 met the appellant on 19.09.2005, along with the weighing table-scale and at that time, the demand of bribe amount of Rs.200/- has been made by the appellant, further, unless the bribe amount is paid, the weighing table-scale would not be verified and sealed. Thereafter, he lodged a complaint on 20.09.2005. P.W.3 and P.W.4 were summoned through Ex.P.21 and Ex.P.22. They appeared



before the respondent at about 11.30 a.m. Both of them were introduced to P.W.2. They made some queries with P.W.2 and got satisfied about the complaint. They were made aware of the significance of trap and the methodology was explained to them, the proceedings were recorded by way of Entrustment Mahazar / Ex.P.5. P.W.2, P.W.3 and P.W.4 and the Trap Laying Officer and other team members left for the trap at about 02.00 p.m. Since the appellant had expressed his inconvenience on 20.09.2005, P.W.2 and P.W.3 came back around 05.00 p.m. for the reason it was too crowded and the appellant had asked P.W.2 to come on 21.09.2005. Hence, the trap team returned back to the Vigilance Office and the trap amount was kept under safe custody and the proceedings were recorded as Ex.P.6. Thereafter, on the very next day, in the morning at about 08.30 a.m., P.W.2 along with accompanying witnesses and the trap team assembled in the office of Vigilance and prepared the entrustment mahazar which is Ex.P.7 and proceeded to the appellant's office. P.W.2 and P.W.3 alighted from the vehicle and went into the office of the appellant. P.W.4 and the Trap Laying Officer and other trap team members had taken position around the office of the appellant. P.W.2 and P.W.3 presented the weighing table-scale and fee of Rs.20 was given and the application for certificate of verification which was marked as Ex.P.4. P.W.9-Stamping Smith had affixed the same. Thereafter, the appellant had demanded the bribe amount of Rs.200/- which was handed over by P.W.2. When the appellant received, counted the same and kept in the table drawer, P.W.2 came out from the Office, gave the pre-arranged signal, immediately, after receiving the same, P.W.4 / the other official witness along with the trap team entered into the room, the appellant became nervous and perplexed, both hands were subjected to phenolphthalein test. Thereafter, the trap amount was recovered from his drawer and the same was seized and the entire proceedings were recovered and the trap amount marked as M.O.1, by way of Recovery Mahazar / Ex.P.12. The proceedings commenced at 12.00 noon and concluded at 01.15 p.m. After that, the house of the appellant was searched in the presence of P.W.3, P.W.4 and the wife of the appellant viz., Amala. The appellant was brought to the office of the Vigilance and enquired and later released on bail.

- ♦ P.W.5 is the Assistant Inspector of Labour at Aruppukottai, who took charge after the appellant was arrested and he had given additional charge on the suspension of P.W.1. P.W.6 is the Junior Assistant in the Labour Department, worked along with the appellant. P.W.7 is the Deputy Inspector of Labour. P.W.8 is the Watchman in the appellant's office. P.W.9 is the Stamping Smith. P.W.10 is the Assistant in the Labour Department. P.W.11 is the Junior Assistant in the Chief Judicial Magistrate Court, who forwarded the properties viz., M.O.3 for chemical analysis. P.W.12 is the



Investigating Officer, who took up the investigation on 20.10.2005, on the sudden demise of Trap Laying Officer Mr.A.G.Jacob, P.W.14 is the Investigating Officer, who completed investigation and obtained sanction and filed the charge sheet in this case.

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- ◆ On the prosecution side, P.W.1 to P.W.14 were examined and 23 documents were marked as Ex.P.1 to Ex.P.23 and three Material objects were marked as M.O.1 to M.O.3.
 - ◆ The seized articles M.O.1 to M.O.3 along with the documents were produced before the Court. Thereafter, along with the other documents through Ex.P.18, M.O.1 to M.O.3, were sent for chemical analysis. Ex.P.19 is the Chemical analysis report. Ex.P.9, Ex.P.10, Ex.P.11, Ex.P.14 to Ex.P.17 were the documents seized from the appellant's office.
 - ◆ P.W.1 is the sanctioning Authority, who issued the sanction order / Ex.P.1 and this was issued without an application of mind.
 - ◆ Though P.W.2 turned hostile, through the material aspects, the appellant is implicated. P.W.3 could not be produced, since he died. P.W.4 is the another official witness, who clearly narrated the happenings during the trap as stated to him by P.W.3.
 - ◆ P.W.5, P.W.6 P.W.7 and P.W.9 are the official witnesses from the Labour Department have clearly spoken about the procedures. Further, from their evidence, it is seen that the appellant was not authorised to receive any amount, without proper application, receipts or entries in the records. There is no receipt or entries in the Register for receiving the bribe amount Rs.200/-.
 - ◆ P.W.8 is the Watchman and P.W.10 is the Assistant in Labour Department. Their evidences are in the nature of hearsay witness.
 - ◆ P.W.11 had clearly spoken about forwarding the material objects for chemical analysis and P.W.12 is the Scientific Officer, who gave a report about the presence of phenolphthalein and sodium carbonate in M.O.2 and M.O.3, the handwash of the appellant. P.W.13 is the Investigating Officer, who took up the subsequent investigation, after the death of the Trap Laying Officer, collected the documents, examined the witnesses and almost completed the investigation, later, he was transferred. On his transfer, P.W.14 had taken up the investigation and completed the investigation on 18.04.2006 and filed charge sheet.
 - ◆ In order to substantiate his submissions, the learned



Hon'ble Supreme Court in the case of **Narnedra Champaklal Trivedi and another Vs. State of Gujarat** reported in **2013 (1) MPLJ (Cri) 17**. The relevant portion of the judgment is extracted hereunder:-

"17. In the case at hand, the money was recovered from the pockets of the accused-appellants. A presumption under Section 20 of the Act becomes obligatory. It is a presumption of law and casts an obligation on the court to apply it in every case brought under Section 7 of the Act. The said presumption is a rebuttable one. In the present case, the explanation offered by the accused-appellants has not been accepted and rightly so. There is no evidence on the base of which it can be said that the presumption has been rebutted."

- ◆ In order to substantiate his submissions, the learned Additional Public Prosecutor further relied on the judgment of the Hon'ble Supreme Court in the case of **Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh** reported in **AIR 1979 SC 677**. The relevant portion of the judgment is extracted hereunder:-

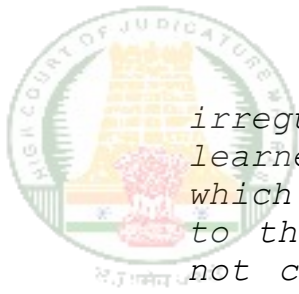
"The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity. The contention of the appellant, therefore, fails and is rejected."

- ◆ The learned Additional Public Prosecutor further relied on the judgment of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh Vs. G.K. Ghosh** reported in **1984 1 SCC 254**. The relevant portion of the judgment is extracted hereunder:-

"In case of an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, the Court may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the police officers even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the conviction."

- ◆ The learned Additional Public Prosecutor further relied on the judgment of the Hon'ble Supreme Court in the case of **State of Madhya Pradesh Vs. Jiyalal** reported in **(2009) 15 SCC 72**. The relevant portion of the judgment is extracted hereunder:-

"7. In the case before us, even if it were to be accepted that there has been an "error, omission or



irregularity' in the passing of the sanction order, the learned single judge of the High Court has not made a finding which shows that a serious failure of justice had been caused to the respondent. In the absence of such a finding it was not correct for the High Court to set aside the conviction and sentence given by the Special Judge."

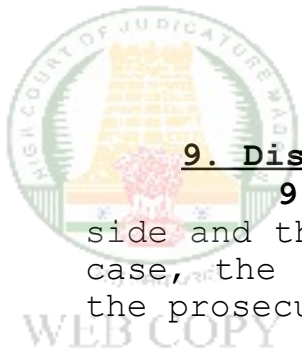
- ◆ The learned Additional Public Prosecutor further relied upon the judgment of the Hon'ble Kerala High Court in the case of **Cyril Joseph Vs. State of Kerala** in **Crl.A.No.34 of 2012**. The relevant portion of the judgment is extracted hereunder:-

"15. The next point to be considered is whether the evidence referred to in the foregoing is sufficient to hold that the prosecution has succeeded in establishing the offence charged against the accused. On the other hand, the question is whether the presumption under Section 20 of the Prevention of Corruption Act, 1988, is available for the prosecution. Counsel for the accused argued that PW.1/ de facto complainant turned hostile and stated that the accused never demanded any bribe, that there is no evidence of demand of the bribe by the accused and that therefore the presumption under Section 20 of the Prevention of Corruption Act cannot be raised in this case. I am unable to agree. In *M.Narasinga Rao v. State of Andhra Pradesh* (AIR 2001 SC 318) the Apex Court has held that once the prosecution has established that the gratification is paid and the accused has accepted the same, the presumption under sec.20 of the Prevention of Corruption Act can be raised. In *Narasinga Rao's* case, the de facto complainant and an independent witness turned hostile and did not support the prosecution. Even then the Apex Court has raised a presumption under sec.20 of the Prevention of Corruption Act, 1988 and observed that the condition for drawing a legal presumption under sec.20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. In the present case I have found that the prosecution has succeeded in proving that the accused has accepted the bribe. That being so, the contention of the accused that as PW.1, the de facto complainant did not support the prosecution, the presumption under sec.20 of the Prevention of Corruption Act cannot be raised, has only to be rejected. "

- ◆ The trial Court on appreciation of the evidence had rightly convicted the accused in this case, which not to be interfered with.

8. This Court has carefully considered the submissions made on either side and the entire oral and documentary evidence.

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9. Discussions:-

9.(1). Considering the rival submissions made on either side and the materials available on record, it is seen that, in this case, the decoy witness namely P.W.2 had not supported the case of the prosecution.

9.(2). The accompanying witness viz., P.W.3, who was examined in chief, in part and thereafter, he could not be examined, since he passed away. Hence, his evidence is not complete and it cannot be acted upon.

9.(3). P.W.2 in his evidence had not mentioned anything about the demand of bribe. On 20.09.2005 and he had gone to the Vigilance office, lodged a complaint at about 10.00 a.m.

9.(4). It is seen from Ex.P.13, that the First Information Report had been registered immediately at the same time and no discreet enquiry had been made to find out the antecedents of the appellant on the allegations made by P.W.2. Further, P.W.2 states that, when he reached the spot at about 11.00 a.m., two official witnesses were present in the Vigilance office, which is contrary to Ex.P.21 and Ex.P.22. The request was made for appearance of P.W.3 and P.W.4 only at about 11.30 hours.

9.(5). P.W.2 does not elaborate anything with regard to the entrustment proceedings and verification by P.W.3 and P.W.4. Further in his evidence, P.W.2 has categorically stated that it was P.W.4 viz., Veerasamy, who accompanied him, when he proceeded to the office of the appellant on 20.09.2005. According to the records and the evidence of other witnesses, it is P.W.3 / Pitchai, who accompanied him and not P.W.4.

9.(6). Further P.W.2 states that on 21.09.2005, at about 02.00 p.m., they left the office of the Vigilance and reached the office of the appellant. But as per Ex.P.12 / Recovery Mahazar, the handing over of the trap amount was at 12.00 noon. By that time, the trap team had entered into the office of the appellant and phenolphthalein test was conducted and the Police recovered the bribe amount and the recovery proceedings have been recorded through Ex.P.12 / Recovery Mahazar and the proceedings had commenced at 12.00 noon and completed by 1.15 a.m. Further P.W.2 admits that he had taken weighing table-scale and weighing stones along with him and Ex.P.3, Ex.P.4 and Ex.P.8 only mentions about the weighing table-scale and there is no document to show the weighing stones.

9.(7). P.W.2 in his evidence admits that he had taken the weighing stones. But the weighing stones were not verified.



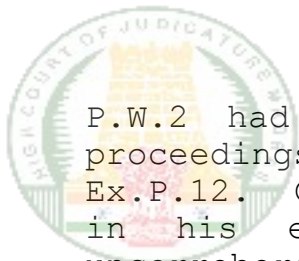
9.(8). Further, as could be seen from Ex.P.8, the weighing table-scale has been purchased by P.W.2 from A.Chinnasamy Nadar Hardwares, No.39, Nethaji Road, Srivilliputhur, through bill No.376 dated 21.09.2005. When the weighing table-scale itself had been purchased only on 21.09.2005, there could be no necessity for demand to be made on 19.09.2005 and subsequent to it on 20.09.2005. Further P.W.2's certain case is that on 19.09.2005, when he met the appellant, he had taken the weighing table-scale and weighing stones for stamping becomes highly doubtful.

9.(9). It is to be seen that in the entrustment mahazars / Ex.P5 and Ex.P.7, there is only mention of Rs.200/- being placed in the shirt pocket of P.W.2 and there is no other money. But, it is strange to know that P.W.2 had made payment of Rs.20/- and obtained cash receipt / Ex.P.3 for verification and stamping fee for the weighing table-scale. Where P.W.2 had kept this Twenty Rupees note, the possibility of mix up with the phenolphthalein smeared notes very much there and could be the reason for hand wash of the appellant answering positive.

9.(10). P.W.2 admits that the penalty charge for late verification of weighing stones would be around at Rs.200/-. The collection of penalty charge is also admitted by P.W.1, the sanctioning authority and the other witnesses from the Labour Department.

9.(11). P.W.6 used to collect the fee amount from the appellant, deposit it in the Bank, he admits that on the date of occurrence, as per the records, the total amount collected is Rs.338/-. But, there was only Rs.228/- available. Had the appellant was in the habit of collecting extra money, then there could have been excess amount than Rs.338/-. But in this case, it is admitted that the amount recovered from the drawer of the appellant is the stamping fee, which he was entitled to collect. Apart from this, there is no other implication of the appellant in this case.

9.(12). The only witness implicates the appellant is P.W.4. This witness was examined for the purpose of pre-trap and post-trap proceedings and he was standing along with the Trap Laying Officer outside the office during the trap on 21.09.2005. It is admitted case that he had entered into the office after getting signal along with the Trap Laying Officer and he was not privy to the conversation between P.W.2 and the appellant in the presence of P.W.3. P.W.2 had not supported the case of the prosecution. P.W.3 could not be examined. The Trap Laying Officer also dead. There is no evidence available to show the happenings during the trap. An attempt has been made through P.W.4 to improve his evidence as though informed by P.W.3 about the happenings inside the room. In the absence of P.W.3 could not be examined. The evidence of P.W.4 with regard to in this aspect is only hearsay. As already stated,



P.W.2 had not mentioned about any demand and the entire trap proceedings has been recorded by way of Recovery Mahazar / Ex.P.12. On perusal of Ex.P.12, nothing is found as stated by P.W.4 in his evidence and hence, the evidence of P.W.4 becomes uncorroborated both by oral and material evidence and does not inspire confidence.

9.(13). On perusal of Ex.P.12, it is seen that there is no mention about any demand and thereafter, the receipt of bribe amount by the appellant. As stated earlier, based on phenolphthalein test turning positive alone a person cannot be convicted. Further, in the absence of demand and acceptance being proved in this case, it cannot be said the appellant received any bribe amount.

9.(14). P.W.2 admits that he had taken the weighing stones for verification and sealing. But, no such stones have been seized. Further P.W.4 states that P.W.2 had submitted two applications one for the weighing table-scale and another for the weighing stones. In this case, only one application for weighing scale had been produced. P.W.4 states that other than the weighing scale of P.W.2, he had not seen any other weighing scale or weighing stones which is contrary to the evidence of other witnesses.

9.(15). It is also to be seen that no incriminating materials were found on the search of the house on the residence of the appellant. Thus, from the above, it is clear that *sin qua non* of demand, has not been proved in this case as well as the acceptance. The evidence of P.W.4 is with embellishment and exaggeration and does not inspire confidence. The lower Court had placed heavy reliance on the evidence of P.W.4, while convicting the appellant, which is not sustainable.

10. Considering the rival submissions as discussed above and the other materials available on record, this Court is inclined to interfere with the findings of the Trial Court.

Conclusion:-

11. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant in Spl.C.C.No.1 of 2014, on the file of the Special Court and Chief Judicial Magistrate Court for V & AC Cases, Srivilliputhur, Virudhunagar District, dated 18.08.2015, is set aside and the appellant is acquitted of the charges framed against him. The bail bonds, if any, executed by the appellant shall stand cancelled. The fine amounts, if any, paid by the appellants shall be refunded to him.

Sd/-

Assistant Registrar ()

// True Copy //

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Sub Assistant Registrar(CS)



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