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Crl.A.[MD]No.236 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A.[MD]No.236 of 2015

State represented by
The Public Prosecutor,
High Court, Madras - 104.
(Crime No.05/2007
of V & A.C. Madurai). : Appellant / Complainant

Vs.

V.Vairamani,
S/o. Vellaisamy,
Commercial Assistant,
Tamil Nadu Electricity Board,
Keelavasal Section,
Madurai Division. : Respondent / Accused

PRAYER: Criminal Appeal filed u/s 378 of the Code of Criminal Procedure, praying to allow the appeal and set aside the judgment of acquittal dated 15.04.2015 in Special Case No.59 of 2011 on the file of the Court of the Special Court for Trial of Prevention of Corruption Act cases, Madurai and convict the respondent / accused as charged.

For Appellant : Mr.K.K.Ramakrishnan
Additional Public Prosecutor
For Respondent : Mr.N.Vijayarajan
for Mr.M.Saravanan

JUDGMENT

The respondent is the accused in Spl. Case No.59 of 2011 and he was charged and tried before the learned Special Judge, Special Court for trial of Prevention of Corruption Act cases, Madurai, for various offences under the Prevention of Corruption Act (for short 'PC Act') and on being found guilty, he was acquitted of the charges levelled against him. Challenging the said acquittal recorded by the trial court, the State has



preferred the present appeal. For the sake of convenience, the respondent will be referred to as the accused.

2. The brief facts necessary for the disposal of this appeal are culled out hereunder :-

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2.1.The accused was a Commercial Assistant, TNEB, Keelavasal Section, Madurai from 25.04.2007 to 15.06.2007. The de-facto complainant Thirunavukkarasu @ Pandi was working as a Manager and looking after his master one Aiswanth Chand Banchal's building in Door No.198, East Veli Street, Madurai and construction work was going on in the said premises. For the above said construction, temporary electricity connection was obtained upto 12.06.2007. Since the said connection was not renewed, the TNEB has disconnected the service connection. When the de-facto complainant went to the office of the Assistant Engineer, TNEB, Arasamaram Section, Keelavasal, Madurai, on 13.06.2007, to renew the temporary service connection, the accused asked him to come on 14.06.2007.

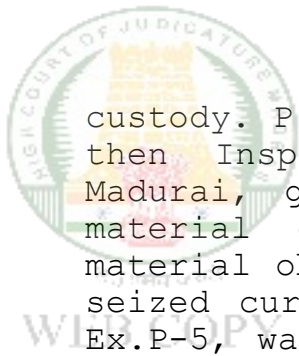
2.2.On 14.06.2007, the accused asked the de-facto complainant to pay a fee of Rs.7,700/- towards temporary service connection and demanded a sum of Rs.1,500/- as illegal gratification. Perturbed at the said demand of illegal gratification, the de-facto complainant's master Aiswanth Chand Banchal instructed him to approach the office of the Vigilance & Anti Corruption and accordingly, on 15.06.2007, the de-facto complainant met P.W.7, the Inspector/the Trap Laying Officer and narrated the incident and gave a complaint, Ex.P-2, based on which a case in Crime No.5/2007 was registered by P.W.7, who prepared printed FIR, Ex.P-7. Investigation of the case was taken up by P.W.7, who prepared a trap for trapping the accused.

2.3.Accordingly, P.W.7 requisitioned the services of one S.Saikdildhar, Thasildar and one A.Arumugam, Co-operative Sub-Registrar, Madurai, for the purpose of laying a trap for catching the accused. Accordingly, on 15.06.2007 at about 10.45 a.m., the trap was finalised in the office of P.W.7, where the de-facto complainant, and the two individual witnesses were present. After explaining the details of the trap operation to the persons gathered in the office of P.W.7 and allowing the individual witnesses to interact with the defacto complainant and after they read over the complaint submitted by the de-facto complainant, P.W.7 proceeded to coat the currencies brought by the de-facto complainant to the tune of Rs.1,500/- containing two Five Hundred Rupee Note and Five Hundred Rupee Notes, with the chemical Phenolphthalein. After coating the currencies with Phenolphthalein and experimenting with its proper functioning, P.W.7, along with the de-facto complainant, P.W.3, and other members of his team, proceeded to the office of the accused. The vehicle carrying them was stopped 500 mtrs., before the office of the accused and the de-facto complainant and P.W.3 alighted from the vehicle and proceeded to the office of the



2.4. On entering the office of the accused, the de-facto complainant met the accused. At that time, the accused asked him as to whether he has brought the money. The de-facto complainant took the money from his pocket, which was coated with Phenolphthalein, and handed it over to the accused, who received the same and kept it in his shirt pocket. Thereafter, on enquiry by the de-facto complainant with regard to the receipt for payment of Rs.7700/- towards fee for temporary service connection, the accused asked him to wait for half an hour and when he was about to leave the place, the Inspector of Assessment also demanded a sum of Rs.50/- from the de-facto complainant and he has also given the said amount. Thereafter, the de-facto complainant and P.W.3 came out of the office and as per the prearranged signal, the de-facto complainant pulled the left side of his in-shirt out, and seeing the signal, the trap laying party reached the office of the accused and after ascertaining as to what happened inside the office of the accused, P.W.7, along with P.W.3 and the de-facto complainant entered the office and on the accused, being identified by the de-facto complainant, P.W.7 proceeded to enquire the accused. Thereafter, P.W.7 prepared a solution of Sodium Bi-Carbonate in a bottle and dipped the hands of the accused, the solution turned pink. Thereafter, the bottles were sealed and numbered, which are M.O.s 2 and 3. When P.W.7 enquired the accused as to whether he has received any money, the accused accepted the same and took the money out of his pocket and gave the money to P.W.7. P.W.7, prepared one more bottle of Sodium Bi-Carbonate solution and dipped the accused's shirt's left side pocket and on performing the said act, the solution turned pink. The said bottle was also sealed and numbered, which is M.O.4. The shirt was seized under seizure mahazar and marked as Ex.P-4.

2.5. P.W.7 enquired the accused about the money received by him from the de-facto complainant for which the accused replied yes and took the money from his shirt pocket and given to P.W.7. P.W.7 asked P.W.3 and Saikdildhar to check the currency numbers with the list already prepared and on checking the currency, the numbers tallied. When enquired with the accused, as to the purpose for which he had received the money from the de-facto complainant, the accused stated that only at the instance of one Thiruppathi, Assistant Junior Engineer, he had received the money from the de-facto complainant. The requisite mahazars were prepared in which the accused affixed his signature. Thereafter, P.W.7 took the accused to his residence and conducted a search. However, no materials were seized from his residence. A mahazar was prepared in this regard by P.W.7 in which witnesses affixed their signatures and the accused also signed the said mahazar and registers. Returning back to the office of the accused, P.W.7 seized the application given by the de-facto complainant and also seized the documents relating to the renewal of temporary service connection under the <https://hcservicesrecordsonline.hcservices/>. The accused was arrested and remanded to judicial



custody. P.W.7, recorded the statement of the witnesses. P.W.8, the then Inspector, Vigilance and Anti-Corruption Police Station, Madurai, gave requisition, Ex.P-6, to the Court for sending the material objects for chemical examination. Accordingly, the material objects, viz., the bottles containing the solution and the seized currencies were sent for chemical analysis and the report, Ex.P-5, was received. On completion of investigation, P.W.8 filed the final report against the accused charging him for the offences under Sections 7 and 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988 [hereinafter referred to as 'PC Act'].

2.6.The accused/respondent herein was furnished with the relied upon documents u/s 207 Cr.P.C. and the trial court framed the charge u/s 7 & 13(1)(d) r/w 13(2) of the PC Act. When questioned, the accused pleaded not guilty.

2.7.To prove the case, the prosecution examined P.W.s 1 to 9, marked Exs.P-1 to P-18 and M.O.s 1 to 5. On the defence side D.Ws.1 and 2 were examined and Exs.D.1 to 6 were marked. When the accused/respondent was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, he denied the same as false. The trial court, after hearing either side and after considering the materials, both oral and documentary, available on record, acquitted the accused from the charges levelled against him. Aggrieved by the said acquittal recorded by the trial court, the appellant/State has filed the present appeal.

3.Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor for the State would submit that it is settled law that the order of acquittal need not be interfered with in the mechanical manner unless the order of acquittal is perverse. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate Court can interfere with the order of acquittal. The stand taken by the accused that one Sasangan, Foreman has borrowed a sum from the accused and the amount possessed by the accused was the amount repaid by the said Sasangan is highly unbelievable. If that be so, there is no evidence to prove as to why the accused possessed the tainted money.

4.The learned Additional Public Prosecutor further submitted that the trial Court having believed the version of the accused that he demanded Rs.1500/- for the purpose of issuance of receipt of Rs.7,700/- and towards office expenses and the same cannot be termed as a bribe amount is unsustainable. In the present case, there is an official relationship between the accused officer and P.W.2. The evidences of P.W.s 2, 3 and 7 are corroborative with each other and further, the phenolphthalein test was conducted before the independent witnesses and the witness was also examined as P.W.4. The expert also opined that the accused was in possession of the service records and invoices only. Hence, the demand and acceptance was clearly



established by the prosecution and the responsibility rests on the shoulder's of the accused to disprove the established fact of the prosecution. Hence, he prays that the trial Court's acquittal is highly perverse and liable to be interfered with.

5.The learned Additional Public Prosecutor, in support of his contentions relied on the following decisions:

i) AIR 1968 SC 1323 [Bhanuprasad Vs. State of Gujarat]. The relevant paragraph reads as under:

"8.It was next contended that eve if we accept the prosecution case in full, no offence can be said to have been made out under Section 161 of the Indian Penal Code. We are unable to accept that contention. To establish the offence under Section 161 of the Indian Penal Code all that prosecution had to establish was that the appellants were public servants and that they had obtained illegal gratification for showing or for bearing to show, in the exercise of their official functions, favour or disfavour to Ramanlal. The question whether there was any offence which the first appellant could have investigated or not is irrelevant for that purpose. **If he had used his official position to extract illegal gratification the requirement of the law is satisfied. This position is made clear by the decision of this Court in Mahesh Prasad Vs. State of U.P. (1955) 1 SCR 965 = (AIR 1955 SC 70) and Dhaneshwar Narain Saxena v. Delhi Administration, (1962) 3 SCR 259 = (AIR 1962 SC 195).**"

- Emphasis added

ii) CDJ 2014 SC 164 [Phula Singh Vs. State of Himachal Pradesh]. The relevant paragraph reads as under:

"8.The accused has a duty to furnish an explanation in his statement under Section 313 Cr.P.C., regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the Court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 Cr.P.C. is being recorded. However, in such an event, the Court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in



accordance with law. (Vide: Ramnaresh & Ors. v. State of Chhattisgarh, AIR 2012 SC 1357; Munish Mubar v. State of Haryana, AIR 2013 SC 912; and Raj Kumar Singh alias Raju @ Batya v. State of Rajasthan, AIR 2013 SC 3150).

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9. In the instant case, we fail to understand as under what circumstances the appellant could maintain complete silence particularly, in view of the fact that he did not deny his visit to the house of the complainant or that his shirt was found hanging on the peg in the wall and that his hands turned pink on being washed with sodium carbonate water. We do not find any force in the submission advanced by Shri D.K.Garg that it was not a fit case where the High Court ought to have reversed the well reasoned judgment of acquittal as it was based on evidence on record.

10. We are fully aware of limitations of the appellate Court to interfere with an order of acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate Court can interfere with the order of acquittal. The appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

iii) (2018) 9 SCC 242 [State of Gujarat Vs. Navinbhai Chandrakant Joshi and others]. The relevant paragraphs reads as under:

"10. The High Court acquitted the accused on the ground that there was no recovery from accused 1 J.D.Patel and that the demand by the accused persons has not been established by the prosecution. The High Court took the view that Accused 2 Navinbhai had no idea for what purpose the money was given to Accused 1 J.D.Patel by P.W.1 and therefore, it cannot be said that Accused 2 Navinbhai had accepted the bribe amount upon demand of P.W.1. The High Court was not right in brushing aside the evidence of P.W.1 who has clearly stated that Accused 1 J.D.Patel demanded bribe of Rs.1000 and the same was settled for Rs.500 for expediting the matter for



conversion of the plot for non-agricultural purpose. Recovery of the tainted currency notes from Accused 2 Navinbhai and the presence of anthracene powder in the right hand of Accused 1 J.D.Patel and the pocket of the shirt of Accused 2 Navinbhai clearly show that they acted in tandem in the demand and acceptance of the bribe amount. **When the demand and acceptance of illegal gratification has been proved by the evidence of P.Ws.1 and 3, the High Court was not right in holding that the demand and acceptance was not proved.** The findings of the trial Court did not suffer from any infirmity and the High Court was not justified in setting aside the conviction of the accused.

11. So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden on the accused for rebutting the presumption is one of preponderance of probabilities. In C.M.Girish Babu v. CBI, this Court held as under:

"21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence....

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt."

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."

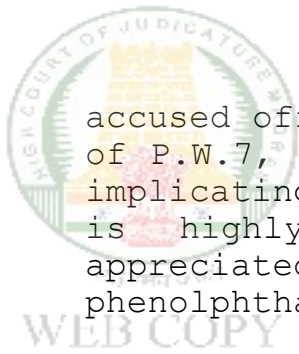
- Emphasis Added

6. Per contra, learned Counsel appearing for the accused would submit that the law is well settled that the order of acquittal need not be interfered with in the mechanical manner unless it is an exceptional case where there are compelling circumstances and the judgment is found to be perverse. Once an acquittal order is passed

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8. The learned Counsel further submitted that the evidence of P.W.3 is not corroborative with P.W.2. Though P.W.3 accompanied P.W.2 during the trap proceedings, he was not aware as to who was the accused officer and only from the person who waited in the queue, he came to know the accused officer. Further, the Trial Court, after elaborate trial, arrived at a conclusion that the accused officer is not the deciding officer with regard to the application made by P.W.2 and he is not a recommending authority. In the absence of any power, demanding bribe from P.W.2 is unacceptable and there was no demand either on 13.06.2007 or on 14.06.2007. Further, initially, the accused officer met the Foreman working in the said office on 13.06.2007 and the Foreman and other bill collector collected the money from P.W.2. Due to some money shortage, the Foreman and one Chandrasekar, collected Rs.1500 from the accused officer. The accused officer had kept the money for his wife's medical expenses and the same was handed over to the Foreman and the Assessor Chandrasekar. P.W.2 repaid the said amount on 14.06.2007 to the Foreman and that amount was again handed over to the accused officer and innocently, he received the amount. Hence, he prays for acquittal.

<https://hhs.servicereports.gov/whoservices>



accused officer also was not implicated in the present case. The act of P.W.7, trap laying officer, in leaving the other two persons and implicating the respondent alone as accused at his whims and fancies is highly unsustainable. His partial attitude cannot be appreciated. Further, P.W.5 has clearly deposed that there is no phenolphthalein material found in the M.Os.4 to 6.

10. In support of his contention, the learned Counsel for the respondent relied on the following paragraphs of the following decisions:

i) (2002) 10 SCC 461 [Bhim Singh Vs. State of Haryana]:

"9. Before concluding, we would like to point out that this Court in a number of cases has held that an appellate Court entertaining an appeal from the judgment of acquittal by the trial Court though entitled to reappreciate the evidence and come to an independent conclusion, it should not do so as a matter of routine. In other words, if from the same set of evidence two views are possible and if the trial Court has taken one view on the said evidence, unless the appellate Court comes to the conclusion that the view taken by the trial Court is either perverse or such that no reasonable person could come to that conclusion or that such a finding of the trial Court is not based on any material on record, it should not merely because another conclusion is possible reverse the finding of the trial Court. (See: Mohanlal Hargovind Dass v. Ram Narain, State of Punjab v. Balraj Singh, State of Maharashtra v. Wasudeo Ramchandra Kaidalwar and Ram Kumar Pandey v. State of M.P.) In the instant case also we find that the trial Court had taken a view which the High Court has not held to be either perverse, unreasonable or a finding which is not based on evidence, still on reappreciation of the evidence, the High Court came to a different conclusion which on facts of this Case and on the basis of the ratio of the law laid down by this Court in the abovesaid cases cannot be sustained."

ii) 1980 SCC (Cr1) 121 [Panalal Damodar Rathi Vs. State of Maharashtra]:

"8. There could be no doubt that the evidence of the complainant should be corroborated in material particulars After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an



accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon. It has to be borne in mind that the marked notes were recovered from the possession of the second accused and not the appellant; It is the case of the prosecution that the marked notes were paid to the second accused for the purpose of being handed over to the appellant. The evidence of the complainant regarding the conversation between him and the accused has been set out earlier. As the entire case of the prosecution depends upon the acceptance of the evidence relating to the conversation between the complainant and the appellant during which the appellant demanded the money and directed payment to the second accused which was accepted by the complainant, we will have to see whether this part of the evidence of the complainant has been corroborated. The prosecution relies on the testimony of PW 3, the Panch witness, as corroborating the evidence of the complainant on this aspect. It may be reiterated that according to the complainant when he asked the appellant to relieve him from the case and to see that he was given a lesser sentence, the appellant asked him if he had brought the money and the complainant told him that he had and the appellant asked the complainant to pay the money to Dalvi, the second accused, and asked the second accused to receive the money from the complainant. On this aspect the evidence of PW 3 is as follows:

They saw the appellant coming out of the court hall and the complainant informed them that he was the Police Prosecutor. Then there was a talk between the complainant and the appellant in the verandah. The witness was at a distance of 3 to 4 feet from them and was in a position to overhear the conversation. According to the witness he heard the appellant asking the complainant "Have you come", the complainant then said "Yes". The witness further heard the appellant saying that he would see that heavy punishment is not inflicted and the case as it is, was difficult. The complainant had then asked the appellant whether his work will be achieved. The appellant assured him in the affirmative. The appellant told the complainant to give that was to be given to the second accused.



9.It will be seen that the version of the complainant that the appellant asked the complainant whether he had brought the money and the complainant told him that he had and that the appellant asked him to pay the money to the second accused is not spoken to the Parch witness PW 3 According to Parch witness on the complainant asking the appellant whether his work will be achieved, the appellant answered in the affirmative and the appellant told the complainant what was to be given to the second accused, It is significant that PW 3 does not mention about the appellant asking the complainant whether he had brought the money and on the complainant replying in the affirmative asking the complainant to pay the money to the second accused. Omission by PW 3 to refer to any mention of money by the appellant would show that there is no corroboration of testimony of the complainant regarding the demand for the money by the appellant. On this crucial aspect, therefore, it has to be found that the version of the complainant is not corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied on."

iii) AIR 2007 SC 489 [V.Venkata Subbarao Vs. State of Andhra Pradesh]:

"12.If the casurina growth had already been cut and lifted by P.W.3, the question of any demand being persisted would not arise. The deliberate and planned manner in which the trap is said to have been made; the purported demand made by the MRO and the role played by the appellant, betrays all comprehensions. The prosecution did not explain as to why the complaint had been made after 15 days. No evidence has been led as to on what basis P.W.2 could assure P.W.3 that he had already talked to the Mandal Revenue Officer, and thus the latter could remove the casurina growth, which he did. The learned Trial Judge found the evidence of P.W.2 and P.W.3 wholly unreliable, inter alia, on the ground that they had made a lot of improvements in their testimonies. They failed to explain delay in lodging report and in the process prevaricated the case from stage to stage.

.....

22.It is a mystery as to why no offer was made to the M.R.O. directly or why the raiding party did not visit his house? The prosecution witnesses even did not know in which village the M.R.O., Surveyor and Revenue Inspector had their respective residences. A



short intervention made by the appellant was purported to be in relation to the quantum of amount. The offer, therefore, should have been made to the M.R.O. directly. He was named in the complaint, but along with him and the appellant, two others were also named. Why no action had been taken as against three other persons, is not known. Why M.R.O., who had made a demand, on whose behalf the appellant had accepted the amount, had escaped prosecution has not been explained."

iv) AIR 1954 S.C. 637 [Madan Mohan Singh Vs. State of Uttar Pradesh]:

"13. As regards demand of illegal gratification as a reward for recommending supplies of liquor and other drugs from the warehouse, the Magistrate points out that according to a Government circular (Ex. D-17) which is proved by Abdul Jabbar (D. W. 4) restrictions were imposed on the issue of excisable articles for the month of March 1948, by fixing a quota in accordance with the average monthly consumption for the last eleven months.

Consequently Ghammanlal was free to draw liquor up to that quota and it required no recommendation from the accused. This is why the trial Magistrate said that there appears to be no necessity for the offering of any bribe by the complainant.

The High Court brushes aside these discussions and findings of the trial Magistrate in a summary manner. The High Court says :

"The learned Magistrate has again gone wrong in holding that there was no occasion for Ghammanla's paying a bribe to the respondent. He relied upon the circular letter fixing quota for each licensee. Whether Ghammanlal could draw from the Warehouse liquor within the quotas without any recommendation from the respondent or not, the fact remains that the recommendation was made by the respondent."

Again as regards payment of 5 per cent of the contract money, the High Court observes :

"We do not see any substance in another argument of the learned Magistrate that the



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respondent could not demand any bribe from Ghammanlal whom he had wronged a fortnight previously by getting his bids for larger shops rejected.....When the respondent had no right to demand any bribe, there did not arise any question of his having wronged Ghammanlal previously."

It is difficult to appreciate the logic behind these observations of the learned Judges. No doubt a public officer has no right to demand any bribe; but when he is hauled up before a criminal court to answer a charge of having taken illegal gratification, the question whether any motive for payment or acceptance of bribe at all existed is certainly a relevant and a material fact for consideration."

v) (2010) 3 MLJ (crl) 132 (SC) [Banarsi Dass Vs. State of Haryana]:

"11.To constitute an offence under Section 161 of the IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of Section 5 (1) (d) of the Act, the demand and acceptance of the money for doing a favour in discharge of its official duties is sine qua non to the conviction of the accused. In the case of M.K. Harshan v. State of Kerala [1996 (11) SCC 720], this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under :

".....It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal



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gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW-1. Since PW-1's evidence suffers from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence of PW-1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to hold that the accused tacitly accepted the illegal gratification or obtained the same within the meaning of Section 5(1)(d) of the Act, particularly when the version of the accused appears to be probable".

vi) (2003) SCC (Cri) 264 [Dwarka Dass and others Vs. State of Haryana]:

"3.Two earlier decisions of this Court ought also to be noticed in this context, namely, Ramesh Babulal Doshi v. State of Gujarat, wherein in para 7 of the Report this Court observed:

"7.Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above-quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of



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acquittal is not to be disturbed. Conversely, if the appellate Court holds, for the reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not.""

11. Heard the learned Additional Public Prosecutor appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record to which this Court's attention was drawn.

12. In dealing with matters, where the acquittal rendered by the court below is put to test, it is trite that unless the order of the court below suffers from the vice of perversity, the High Court ought not to interfere with the said order. In **Shailendra Pratap & Anr. - Vs - State of U.P. (2003 (1) SCC 761)**, the Supreme Court has categorically held that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. The relevant portion of the order is extracted hereunder for better clarity :-

"8. Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

13. Yet again, in **Ram Kumar - Vs - State of Haryana (1995 Supp. (1) SCC 248)**, the Hon'ble Supreme Court has once again highlighted the need for the High Court to give proper weight and consideration to the view of the court below and has further held that if the view taken by the court below is reasonable and plausible, order of acquittal should not be disturbed. In the above context, the Supreme Court held as under :-

"15. Learned counsel for the appellant contended that the trial court had recorded the order of acquittal of all the accused persons including the



disbelieving the prosecution case and, therefore, the High Court should not have interfered with the order of acquittal merely because another view on an appraisal of the evidence on record was possible. In this connection it may be pointed out that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 (sic 378) CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

14. The Hon'ble Apex Court, in **V. Sejappa - Vs - State by Police Inspector, Lokayukta, Chitradurga (2016 (12) SCC 150)** reiterating the principles to be followed in an appeal against acquittal, as has been laid down in a catena of judgments, held as under :-

"22. If the evaluation of the evidence and the findings recorded by the trial court do not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible. Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. In *State v. K. Narasimhachary* [State v. K. Narasimhachary, (2005) 8 SCC 364 : (2006) 1 SCC (Cri) 41], this Court reiterated the well-settled principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court.



The same view was reiterated in *T. Subramanian v. State of T.N.* [*T. Subramanian v. State of T.N.*, (2006) 1 SCC 401 : (2006) 1 SCC (Cri) 401]

23. In *Muralidhar v. State of Karnataka* [*Muralidhar v. State of Karnataka*, (2014) 5 SCC 730 : (2014) 2 SCC (Cri) 690], this Court noted the principles which are required to be followed by the appellate court in case of appeal against order of acquittal and in para 12 held as under: (SCC pp. 735-36)

"12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu* [*Tulsiram Kanu v. State*, AIR 1954 SC 1 : 1954 Cri LJ 225], *Madan Mohan Singh* [*Madan Mohan Singh v. State of U.P.*, AIR 1954 SC 637 : 1954 Cri LJ 1656], *Atley* [*Atley v. State of U.P.*, AIR 1955 SC 807 : 1955 Cri LJ 1653], *Aher Raja Khima* [*Aher Raja Khima v. State of Saurashtra*, AIR 1956 SC 217 : 1956 Cri LJ 426], *Balbir Singh* [*Balbir Singh v. State of Punjab*, AIR 1957 SC 216 : 1957 Cri LJ 481], *M.G. Agarwal* [*M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 : (1963) 1 Cri LJ 235], *Noor Khan* [*Noor Khan v. State of Rajasthan*, AIR 1964 SC 286 : (1964) 1 Cri LJ 167], *Khedu Mohton* [*Khedu Mohton v. State of Bihar*, (1970) 2 SCC 450 : 1970 SCC (Cri) 479], *Shivaji Sahabrao Bobade* [*Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033], *Lekha Yadav* [*Lekha Yadav v. State of Bihar*, (1973) 2 SCC 424 : 1973 SCC (Cri) 820], *Khem Karan* [*Khem Karan v. State of U.P.*, (1974) 4 SCC 603 : 1974 SCC (Cri) 639], *Bishan Singh* [*Bishan Singh v. State of Punjab*, (1974) 3 SCC 288 : 1973 SCC (Cri) 914], *Umedbhai Jadavbhai* [*Umedbhai Jadavbhai v. State of Gujarat*, (1978) 1 SCC 228 : 1978 SCC (Cri) 108], *K. Gopal Reddy* [*K. Gopal Reddy v. State of A.P.*, (1979) 1 SCC 355 : 1979 SCC (Cri) 305], *Tota Singh* [*Tota Singh v. State of Punjab*, (1987) 2 SCC 529 : 1987 SCC (Cri) 381], *Ram Kumar* [*Ram Kumar v. State of Haryana*, 1995 Supp (1) SCC 248 : 1995 SCC (Cri) 355], *Madan Lal* [*Madan Lal v. State of J&K*, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151], *Sambasivan* [*Sambasivan v. State of Kerala*, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320], *Bhagwan Singh* [*Bhagwan Singh v. State of M.P.*, (2002) 4 SCC 85 : 2002 SCC (Cri) 736], *Harijana Thirupala* [*Harijana Thirupala v. Public Prosecutor*, (2002) 6 SCC 470 : 2002 SCC (Cri) 1370], *C. Antony* [*C. Antony v. K.G. Raghavan Nair*,



(2003) 1 SCC 1 : 2003 SCC (Cri) 161], K. Gopalakrishna [State of Karnataka v. K. Gopalakrishna, (2005) 9 SCC 291 : 2005 SCC (Cri) 1237], Sanjay Thakran [State of Goav. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] and Chandrappa [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

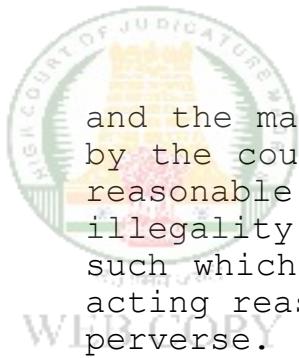
(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappraisal and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

15. Keeping the above principles of law laid down by the Apex Court in mind, this Court will now proceed to examine the evidence
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and the materials on record to see whether the conclusions recorded by the court below for acquitting the accused/respondent herein are reasonable and plausible or the same stands vitiated by manifest illegality or the conclusions recorded by the appellate court are such which could not have been possibly be arrived at by any court acting reasonably and judiciously, which could in turn be said to be perverse.

16.The issues arising for consideration are as follows:

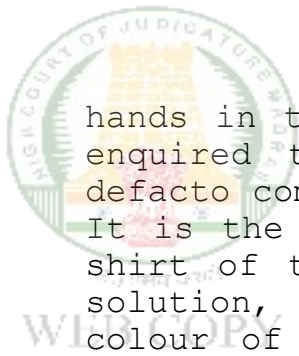
"i)Whether the prosecution has proved the guilt as against the accused under Section 7, 13(1)(d) & 13(2) of the PC Act?

ii)Whether the demand and acceptance of bribe was established before the Trial Court?

iii)Whether the order of the trial Court suffers perversity?"

17.P.W. 1 is the sanctioning authority relating to sanctioning of prosecution against the accused and Ex.P-1 is the sanction order for prosecuting the accused, on which there is no dispute.

18.It is the evidence of P.W.3, who is the official trap witness, that he was working as Co-operative Sub Registrar in the office of the Joint Registrar / General Manager integrated Co-operative Development Scheme. In his evidence in chief, he has deposed that on the request of Department of Vigilance & Anti Corruption, P.W.3 was deputed to meet P.W.7 on 15.06.2007 at 09.30 a.m. It is the deposition of P.W.3 that he met P.W.7 on 15.06.2007 and at that time, one Saikdildhar, Tahsildar was also present. P.W.3 has further deposed that P.W.7 introduced him and Saikdildhar to the defacto complainant and the complaint, Ex.P-2, given by the defacto complainant was given to them, who went through the same. P.W.3 has further deposed about the pre-trap formalities taken out by P.W.7 including coating the money with Phenolphthalein and testing it as to its proper working. P.W.3 has further deposed that he reached the office of the accused along with the defacto complainant. P.W.3 further deposed that the defacto complainant enquired the accused as to the issuance of receipt for payment of fees for renewal of temporary electricity connection for which the accused asked the defacto complainant as to whether he has brought the money. It is the deposition of P.W.3 that the defacto complainant took the money from his shirt pocket and gave it to the accused and, thereafter, they came out and the pre-arranged signal was performed by the defacto complainant subsequent to which the Vigilance party came to the scene of occurrence and after hearing what happened inside the office, went inside the office where the defacto complainant identified the accused. P.W.3 has further deposed that subsequent to the identification of the accused, the defacto complainant was sent out, whereinafter, two bottles containing Sodium Bi-Carbonate solution were placed and the accused was asked to dip his hands in the water. On the accused dipping the

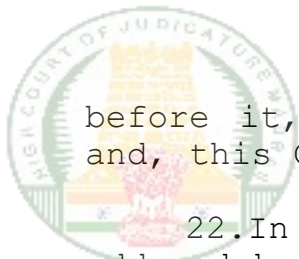


hands in the solution, the solution turned pink. Thereafter, P.W.7 enquired the accused as to whether he received money from the defacto complainant to which the accused replied in the affirmative. It is the further deposition of P.W.3 that the act of dipping the shirt of the accused in the bottle containing Sodium Bi-Carbonate solution, was also carried out and the result was the change in colour of the solution to pink. All the bottles containing the solutions were sealed and mahazar was prepared, which was attested by witnesses.

19. In the presence of P.W.3, the tainted amount was handed over to the accused officer and the accused officer received the same and kept in his shirt pocket. Thereafter, the same was recovered by the Trap laying team. This Court is unable to find any discrepancy. Hence, the demand and acceptance of bribe is clearly established by the prosecution. Further the evidences of P.W.7, the trap laying officer and P.W.5, the expert who conducted the phenolphthalein test of the material objects seized from the accused and the currency notes are clearly corroborated. The order of acquittal is based on the fact that there is no official relationship between the accused and de-facto complainant, since the accused has no authority to deal with the application of the de-facto complainant.

20. Further, it is the admitted case of the prosecution that the accused officer is a Commercial Assistant and the Foreman and the Assistant Executive Engineer instructed P.W.2 to meet the Commercial Assistant. Accordingly, he met the Commercial Assistant and the amount was paid on 14.06.2007 itself. Admittedly, the accused officer is not a sanctioning authority or renewing authority. The renewing authority is the Assistant Executive Engineer and he counter signed the application and instructed P.W.2 to meet the accused officer for further process. As per his direction, the amount was given to the assessor. However, that receipt was not issued on the same day. Further, though the electricity connection was restored on the same day, there may be a threat for disconnection of the electricity at the instigation of the accused officer. Thereby, presuming disconnection, P.W.2 informed the demand of Rs.1500/- and non-issuance of receipt to the employer. Thereafter, the employer instructed the P.W.2 to lodge a complaint. Hence, I do not find any infirmity in the evidence of P.W.2. Further, if the prosecution had to establish that the respondent was a public servant and they had obtained illegal gratification for exercising their official function, in the present case, admittedly, in the present case, the accused officer is a Commercial Assistant and he has some role to play in respect of the renewal of application.

21. Therefore, this Court is of the considered view that the prosecution has proved the case against the accused beyond reasonable doubt and the court below, on the materials available



before it, on improper consideration, has acquitted the appellant and, this Court finds that the same has to be interfered with.

22. In order to disprove the prosecution, no evidence was adduced by the accused. Rather two witnesses were examined, namely, D.Ws.1 and 2. The evidence of D.W.1 is useless to disprove the case of the prosecution since he was not available at the time of trial proceedings. Further D.W.2, who is the wife of the accused officer has deposed that the alleged bribe amount is the amount given by her to her husband for her medical expenses.

23. This Court finds that the evidences of D.Ws.1 and 2 are not cogent and trustworthy. Hence, the order of acquittal is clearly perverse and suffers with infirmity.

24. For the reasons aforesaid, the criminal appeal is allowed in the following terms:

i) the judgment of acquittal of the trial Court is hereby set aside.

ii) the accused is convicted for the offence under Section 7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988 and he is sentenced to undergo simple imprisonment for one [1] year and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for four [4] weeks.

iii) the trial Court shall take steps to secure the accused within a period of eight [8] weeks, to commit him to prison to serve the sentence as ordered by this Court.

iv) the period of sentence, if any, already undergone by the accused shall be given set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MR

To

1. The Special Judge,
Special Court for Trial of
Prevention of Corruption Act cases,
Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The Section Officer,Record Clerk,
Criminal Section Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.SARAVANAN, Advocate (SR-9957[F] dated 04/03/2020)

CRL.A.[MD]No.236 of 2015

03.03.2020

SMA/07/05/2020/22P/5C