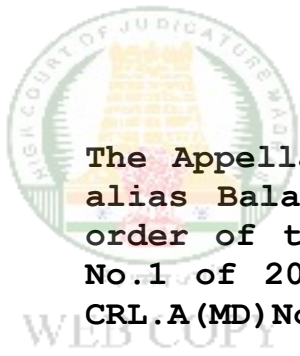




Bail Slip

The Appellants/Accused namely D.Kathirvel, S/o.Duraisamy and T.Balu alias Balakrishnan, S/o.Thangarasu, were released on bail as per order of this Court dated 12.03.2015 and 18.03.2015 made in MP(MD) No.1 of 2015 in Crl.A(MD)No.66 of 2015, and MP(MD)No.1 of 2015 in CRL.A(MD)No.71 of 2015, on the file of this Court, respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A. [MD]Nos.66 and 71 of 2015

and

M.P. (MD) No.1 of 2015

- | | |
|--------------------------|---|
| 1) D.Kathirvel | ... Appellant in Cr.A.(MD)
No.66 of 2015 / A-1 |
| 2) T.Balu @ Balakrishnan | ... Appellant in Cr.A.(MD)
No.71 of 2015 / A-2 |

Vs.,

State represented by
The Inspector of Police,
Vigilance and Anti Corruption,
Trichy
Crime No.3 of 2005

... Respondent/Complainant

COMMON PRAYER: Criminal Appeals filed u/s 374 of the Code of Criminal Procedure, praying to set aside the judgment and conviction passed by the Special Court for Trial of Cases Under the Prevention of Corruption Act, Trichy in Special Case No.56 of 2011 dated 24.02.2015 and acquit the appellants herein.

For Appellant in	: Mr.M.Ajmal Khan,
Crl.A.(MD) No.66/15	Senior Counsel for Mr.Pandiraj

For Appellant in	: Mr.T.Senthil Kumar
Crl.A.(MD) No.71/15	

For Respondent in	: Mr.K.K.Ramakrishnan, APP
both Appeals	

C O M M O N J U D G M E N T

The appellants herein, who are A-1 and A-2, were charged and tried before the learned Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Trichy, for various offences under the Prevention of Corruption Act (in short 'P.C.



Act') in Spl. Case No.56 of 2011, and on being found guilty, they were convicted and sentenced as under:

Appellant	Charges	Sentence Imposed
A-1	Section 7 of P.C. Act Section 13 (2) r/w 13 (1) (d) of P.C. Act	Convicted and Sentenced to undergo R.I. for one year & to pay fine of Rs.5,000/- in default to undergo S.I. for one month; Convicted and Sentenced to undergo 2 years imprisonment & to pay fine of Rs.5,000/- in default to undergo S.I. for one month.
A-2	Section 8 of P.C. Act Section 12 of P.C. Act	Convicted and Sentenced to undergo R.I. for one year & to pay fine of Rs.1,000/- in default to undergo S.I. for one month; Convicted and Sentenced to undergo 1 year R.I. & to pay fine of Rs.1,000/- in default to undergo S.I. for one month.

Challenging the said conviction and sentence recorded by the trial court, the appellants/A1 and A2 have preferred the present appeals. For the sake of convenience, the appellants will be referred to in the same order as they were arrayed before the trial court.

2. The brief facts of the case of prosecution, which are necessary for the disposal of these appeals, are culled out hereunder :-

2.1. A-1 and A-2 were working as Junior Engineer and NMR in Ariyamangalam Division, Trichy Corporation from 01.03.1991 to 23.05.2005 and 21.06.1991 to 23.05.2005 respectively. It is alleged that the de-facto complainant/P.W.2 had sought for plan approval from Trichy Local Planning Authority to construct a fertilizer godown at Tharanallur village, for which, sanction was accorded by the Commissioner of Town and Country Planning, Chennai and has forwarded the same to the Local Planning Authority, Trichy. In pursuant to the said correspondence, on 18.02.2005, at about 5:00 p.m. when the de facto complainant/P.W.2 approached A-1 and requested him to recommend his application for grant of building permission with the copy of the above said sanction, at that time, A-1 demanded a sum of Rs.10,000/- as illegal gratification for himself and a sum of Rs.10,000/- to the Assistant Commissioner/P.W.16, City Corporation, Trichy and Rs.10,000/- to the Assistant Executive Engineer/P.W.17, City Corporation, Trichy, for recommending sanction of building permission to P.W.2. Since the de facto complainant pleaded inability to comply with the said



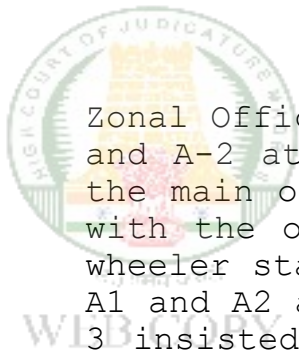
demand, A-1 refused to do accede to his request for sanctioning the planning permission.

2.2. While so, again on 21.02.2005, the de facto complainant/P.W.2 approached A-1 and requested him to recommend for sanction of building permission without seeking for money in return. However, A-1 scaled down his demand from Rs.30,000/- to Rs.10,000/- for himself, Rs.3,000/- to the Assistant Commissioner and Rs.3,000/- to the Assistant Executive Engineer as illegal gratification. At that time, A-2, who was standing along with A-1 advised P.W.2 to arrange for the bribe amount and to settle the matter amicably and further A-2 demanded a sum of Rs.1,500/- which consisted of illegal gratification in a sum of Rs.1,000/- for himself and Rs.500/- towards office expenses, from P.W.2 for the speedy process of building permission. A-1 and A-2 in all demanded a sum of Rs.17,500/- as illegal gratification and insisted P.W.2 to hand over the same within two days.

2.3. Though P.W.2 agreed reluctantly but he was not interested to give the bribe amount to the accused persons and therefore, lodged a complaint on 23.02.2005 at about 2:45 p.m. at the Vigilance and Anti Corruption Office to P.W.18, the Inspector/the Trap Laying Officer by narrating the incident by giving a complaint, Ex.P-4. P.W.18 registered a case in Crime No.3 of 2005 under Section 7 of the PC Act against A1 and A2, and prepared the printed F.I.R, Ex.P-22. Investigation of the case was taken up by P.W.18, who organised trap for apprehending the A-1 and A-2.

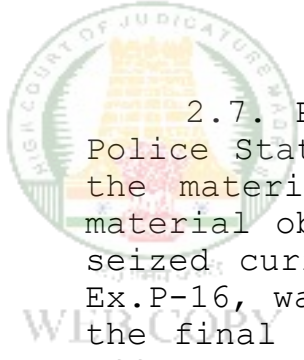
2.4. After getting permission from the higher authorities on 23.02.2005, P.W.18 requisitioned the services of one Mohammad Kamal, Junior Engineer, Public works Department and one Mani from the Silk Development Department for the purpose of laying a trap for catching A-1 and A-2. P.W.18 let the independent witnesses to interact with the defacto complainant and also gave the copy of the complaint given by P.W.2 for the witnesses to read over the same. Thereafter, at about 4.15p.m. on 23.02.2005 the trap was finalised in the office of P.W.18, where the de-facto complainant, and two individual witnesses were present and after explaining the details of the trap operation to the persons gathered in the office, P.W.18 proceeded to coat the currencies brought by the de-facto complainant to the tune of Rs.17,500/- with the chemical Phenolphthalein. After coating the currencies with Phenolphthalein and experimenting on its proper functioning, P.W.18, along with the de-facto complainant, P.W.3, and other members of his team, proceeded to the office of the accused.

2.5. On entering the office and upon enquiry, the de-facto complainant was informed that A-1 and A-2 have gone to the Head office i.e., City Corporation Office, Trichy for a meeting. Hence, as per the instructions of P.W.18, P.W.s 2 & 3 proceeded to the Services Branch, Corporation Office to meet A-1 and A-2. After reaching the



Zonal Office at about 7:00 p.m., they awaited for the arrival of A-1 and A-2 at the portico. At about 7:30 p.m., A1 and A2 came out of the main office and they met the complainant who was standing along with the official witnesses and they all proceeded towards the two wheeler stand. It is the further case of the prosecution that though A1 and A2 asked P.W.s 2 and 3 to accompany them however, P.W.s 2 and 3 insisted that they would come on their own and not accompanying them and, thereafter, P.W.s 2 and 3 reached the motor cycle stand where A1 reiterated the earlier demand. The de-facto complainant took the money from his pocket, which was coated with Phenolphthalein, and handed over Rs.16,000/- to the first accused, who received the same using his right hand and kept it in his left side pant pocket. Likewise, A2 also received Rs.1,500/- as demanded by him and the same was handed over by P.W.2, which was received by A2 using his right hand and kept the same in the left side shirt pocket. Thereafter, as per the prearranged signal, the de-facto complainant, P.W.2 removed the watch from his left hand and tied it in his right hand. Immediately, on seeing the signal, P.W.18, along with the trap laying party rushed to the place where A-1 and A-2 were standing. On seeing the Trap Laying party, A-1 and A-2 tried to escape, but they were caught by the trap laying party and after ascertaining as to the happenings, P.W.18 proceeded to enquire A-1 and A-2. A-1 and A-2 were, thereafter, taken to the Information Centre inside the Corporation Office, where P.W.18 prepared a solution of Sodium Bi-Carbonate in four bottles and dipped the hands of A-1 and A-2 in the solution, which turned pink. Thereafter, the bottles were sealed and numbered, which are M.O.s 2, 3, 5 and 6. When P.W.18 enquired the A-1 and A-2 as to whether they have received any money, A-1 and A-2 voluntarily took out the money from their pocket and handed over the money to P.W.18. P.W.18, prepared two more bottles of Sodium Bi-Carbonate solution in which the left side pant pocket of A-1 and the right side shirt pocket of A-2 were dipped and on such act, the solution turned pink. The said bottles were also sealed and numbered as M.O.s 4 and 7. The clothes worn by A-1 and A-2 were seized under seizure mahazar, Ex.P-8.

2.6. When P.W.18 enquired A-1 and A-2 about the money, the accused stated that the said money was received by them from the defacto complainant. P.W.18 asked P.W.3 to cross verify the numbers on the currency with the list already prepared and on verification, the numbers on the currency tallied with the numbers already noted by the trap laying team. The requisite mahazars were prepared in which A-1 & A-2 affixed their signatures. Thereafter, P.W.18 took the A-1 and A-2 to their residences and conducted a search. However, no material was seized from their residences. Returning back to the office of A-1, P.W.18 seized the application given by the de-facto complainant and also seized the documents relating to seeking plan approval under the cover of mahazar. The accused were arrested and remanded to judicial custody. P.W.18, recorded the statement of the witnesses.



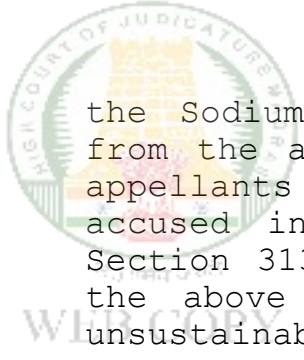
2.7. P.W.20, the then Inspector, Vigilance and Anti-Corruption Police Station, Madurai, gave requisition, to the Court for sending the material objects for chemical examination. Accordingly, the material objects, viz., the bottles containing the solution and the seized currencies were sent for chemical analysis and the report, Ex.P-16, was received. On completion of investigation, P.W.20 filed the final report against the accused persons charging them for the offences under Sections 7, 13(1)(d) r/w 13(2) and 12 of the Prevention of Corruption Act, 1988 [hereinafter referred to as 'PC Act'].

2.8. A1 and A2 were furnished with the relied upon documents u/s 207 Cr.P.C. and the trial court framed charges u/s 7, 13(1)(d) r/w 13(2) & 12 of the PC Act. When questioned, the accused pleaded not guilty.

3. To prove the case, the prosecution examined P.W.s 1 to 20, marked Exs.P-1 to P-29 and M.O.s 1 to 9. When the accused/appellants were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. While no witness was examined on the side of the defence, however, Exs. D-1 to D-8 were marked. The trial court, after hearing either side and after considering the materials, both oral and documentary, available on record, convicted A1 and A2 as detailed above. Aggrieved by the said conviction and sentence recorded by the trial court, the appellants/A1 and A2 have filed the present appeals.

4. Mr.Ajmal Khan, learned senior counsel appearing for A1 submitted that admittedly, the file pertaining to the planning permission for the defacto complainant/P.W.2 was received by A-1 from the Town and Country Planning Authority on 13.01.2005 and thereafter, the file was processed. On 15.02.2005, A1 visited the property and stated that P.W.2 has to pay the vacant site tax and further instructed him to pay the deposit for Rain Water Harvesting Scheme. Thereafter, the file was sent back to the higher officials for appropriate approval and therefore, the file itself is not with A1. Hence, there is no question of demand raised in the case. When there is no demand, there is no acceptance at all.

5. Learned Senior counsel would further submit that, admittedly, the trap place was a dark place and there was no light in that place. Therefore, taking advantage of the darkness, P.W.2 placed the phenolphthalein coated money in the scooter box of A1 as well in the TVS Scooty box of A2 and that amount was seized by P.W.18, which was shown as the money recovered from A1 and A2. Further, before placing the money in the scooter box, P.W.2 caught hold of the hands of A1 and A2. Since P.W.2 already handled the phenolphthalein coated money with his hands and then again caught hold of the hands of A1 and A2, it resulted in returning an



the Sodium Bi-Carbonate solution. Further the clothes recovered from the accused by the Trap Laying Officer do not belong to the appellants and all the above details are clearly spoken to by the accused in their answers to the questions posed to them under Section 313 Cr.P.C. However, the trial Court without considering the above said facts, convicted the appellants which is wholly unsustainable.

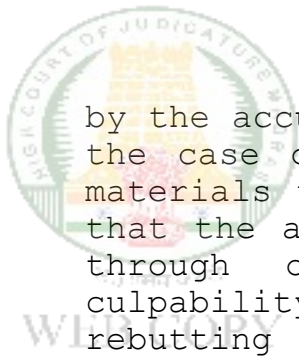
6. It is the submission of the learned senior counsel that the trial court has not taken into consideration the answers given by the accused while questioned u/s 313 Cr.P.C., which is a valuable right conferred on the accused. The trial court was bound to consider the answers given by the accused and non-consideration of the explanation in proper perspective by the trial court renders the conviction recorded wholly unsustainable. Therefore, the learned senior counsel prays that the appeals be allowed by setting aside the conviction and sentence.

7. In support of his contentions, learned senior counsel placed reliance upon the following decisions :-

- i) **Reena Hazarika vs., State of Assam;** and
- ii) **V.Sejappa Vs., State by Police Inspector, Lokayukta, Chitradurga** reported in (2016) 12 SCC 150.

8. Learned counsel appearing for A-2, in sum and substance adopted the arguments advanced by the learned senior counsel for A-1 and further reiterated that the prosecution has not proved the factum of demand of bribe amount and the acceptance of bribe amount, in the circumstances projected by the prosecution, bristles with very many inconsistencies and creates a great doubt as to whether the occurrence proper had taken place in the manner projected by the prosecution. In the above backdrop, learned counsel for A-2 pleads for setting aside the conviction and sentence recorded by the trial court and for acquittal of A-2.

9. Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the State submits that the evidence of the witnesses, viz., P.W.2 de facto complainant, P.W.3 shadow witness, P.W.5-Clerk, P.W.9-Assistant Executive Engineer, City Corporation, Trichy and P.W.18-Trap Laying Officer are not only cogent and convincing, but they dovetail in all material aspects. The defence, inspite of lengthy cross examination, has not elicited any evidence, which would enure to the benefit of the accused. Further, the accused were caught red handed and they were subjected to phenolphthalein test, which returned a positive result. The accused have not only admitted their guilt before P.W.18, but equally, they have not placed any materials to rebut the presumption that they are innocent and, therefore, the answers given by them in their questioning u/s 313 Cr.P.C., cannot in any way act as a shield to enable them to escape from the clutches of law. The answers given



by the accused u/s 313 Cr.P.C. Could be taken in aid to substantiate the case of the prosecution and mere statements not supported by materials would in no way be taken in aid to rebut the presumption that the accused have not committed the offence. The prosecution, through oral and documentary evidence has established the culpability of the accused and in the absence of the accused rebutting the presumption, the conviction and sentence recorded by the trial court does not warrant interference.

10. Learned Addl. Public Prosecutor, to buttress his argument, relied on the decision of the Hon'ble Apex Court in ***Kh.Fida Ali and others vs. State of Jammu and Kashmir (AIR 1974 SC 1522)***.

11. Heard the learned senior counsel appearing for the appellants and the learned Addl. Public Prosecutor appearing for the respondent and perused the materials available on record and also the decisions relied on by the learned counsel for the parties.

12. The following issues arise for consideration in these appeals :-

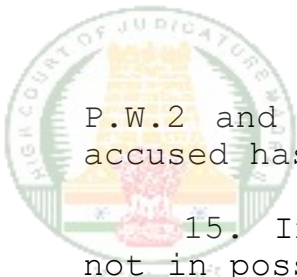
i) *Whether the prosecution has proved the guilt as against the accused persons under Sections 7, 8, 12 & 13(2) r/w 13(1)(d) of the PC Act?*

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

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

13. Since the issues are interrelated, all the issues are taken up together for arriving at a subjective finding as to the culpability or otherwise of the appellants.

14. A careful perusal of the evidence of P.W.s 2 and 3 categorically reveals that they have spoken in unison about the acts of A-1 and A-2 on the day of the trap. The act of A-1 and A-2 receiving the illegal gratification has been spoken to by P.W.3 in clear and cogent terms. In spite of detailed cross examination, the defence was not able to breach their evidence or elicit any worthwhile contradiction in their evidence, which would enure in favour of the accused. Further, it is to be pointed out that P.W.3 is an independent witness and he has no axe to grind against the accused in order to give evidence which is detrimental to the accused. P.W.3, an independent witness, has spoken in clear and cogent terms the acts of the accused, which is in full corroboration with the evidence of P.W.s 2 and 18. A cumulative reading of the evidence of P.W.s 2, 3 and 18 coupled with the evidence of P.W.s 5 and 19 establishes beyond a pale of doubt the culpability of the accused in the offence. It is to be pointed out at this juncture that the evidence of P.W.3 clearly reveals about the demand of illegal gratification, which is in consonance with the evidence of



P.W.2 and the acceptance of the said illegal gratification by the accused has also been spoken to in unison by P.W.s 2 and 3.

15. Insofar as the contention of the appellants that A-1 was not in possession of the file of P.W.2, the said stand of A-1 stands wholly demolished by the evidence of P.W.s 5 and 19, who have spoken about the fact that the file was returned to A-1. Therefore, the evidence placed on record by the prosecution clearly points a finger on the accused.

16. However, under the Prevention of Corruption Act, the accused is provided with an opportunity to rebut the presumption put forth by the prosecution. In this regard, learned senior counsel had relied very much on the answers tendered by the accused in their questioning u/s 313 Cr.P.C. In support of his stand, the aid of the decision of the Hon'ble Supreme Court in *Reena Hazarika's case* (*supra*) has been pressed into service, the relevant portion of which is quoted hereunder :-

"16. Section 313, Cr.P.C. cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2), Cr.P.C. The importance of this right has been considered time and again by this court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) Cr.P.C. the Court is duty bound under Section 313(4) Cr.P.C. to consider the same. The mere use of the word 'may' cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 Cr.P.C., in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing."



17. In the above decision, the Hon'ble Supreme Court has analysed the evidentiary value of the answers given by the accused u/s 313 Cr.P.C. and the weightage that needs to be attached to the said answers. It has been held in the above decision that the acceptability of the defence and its compatibility or incompatibility has to be taken into consideration by the court while appreciating the material evidence placed before it and on satisfying itself, it is open to the court to record a conviction. However, non-satisfaction of the evidence placed by the prosecution would definitely enure to the benefit of the accused.

18. The Supreme Court had an occasion to consider the evidentiary value of the statement of the accused under Section 313 Cr.P.C. in the case of **Edmund S. Lyngdoh v. State of Meghalaya, (2016 (15) SCC 572)** and in the said judgment, held thus :-

*"21. Where the accused gives evasive answers in his cross-examination under Section 313 CrPC, an adverse inference can be drawn against him. But such inference cannot be a substitute for the evidence which the prosecution must adduce to bring home the offence of the accused. The statement under Section 313 CrPC is not evidence. In **Bishnu Prasad Sinha v. State of Assam [Bishnu Prasad Sinha v. State of Assam, (2007) 11 SCC 467 : (2008) 1 SCC (Cri) 766]**, this Court held that conviction of the accused cannot be based merely on his statement recorded under Section 313 CrPC which cannot be regarded as evidence. It is only the stand or version of the accused by way of explanation explaining the incriminating evidence/circumstances appearing against him. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to other evidence led by the prosecution. The statements made under Section 313 CrPC must be considered not in isolation but in conjunction with the other prosecution evidence."*

(Emphasis supplied)

19. From the above proposition of law, it is amply clear that the statement made by the accused under Section 313 Cr.P.C. can certainly be taken aid of to lend credence to other evidence led by the prosecution. The statements made under Section 313 Cr.P.C. must be considered not in isolation but in conjunction with the other prosecution evidence. Equally so, the answers given by the accused to the questions u/s 313 Cr.P.C. should not be considered in isolation, but only in conjunction with the evidence available on record. If mere answers given by the accused u/s 313 Cr.P.C. is



taken aid of by the defence to portray the innocence of the accused, then, needless to say that all cases would necessarily have to end in acquittal. Definitely, the intent of the law makers is not so and so also the interpretation of law by the highest court of the land, lest the whole intent and purpose of enacting very many legal enactments would be an exercise in futility. As laid down by the Hon'ble Apex Court, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and in conjunction with the other evidence available on record, it is for the court to either accept or reject the same for reasons specified in writing.

20. In the case on hand, the answers given by the accused, though goes in a different tangent, but definitely, it in no way synchronises with the evidence available on record for the court to render a verdict in favour of the accused. In the cases under the Prevention of Corruption Act, a duty is cast on the accused to rebut the presumption on the evidence tendered by the prosecution, though it is not necessary for the accused to prove beyond doubt their innocence. But, definitely, mere answers to the questions u/s 313 Cr.P.C., without there being any material to substantiate the same would fall short of rebutting the presumption provided under the Prevention of Corruption Act.

21. In the case on hand, except for merely giving answers in their favour, the accused have not rebutted the presumption through any other materials, which is a necessary concomitant to rebuttal and in the absence of the same, the said answers of the accused cannot be considered in isolation to defeat the case of the prosecution.

22. The judgment relied on by the prosecution in the case of **Raghubir Singh - Vs - State of Haryana (AIR 1974 SCC page 1516)** definitely comes to its aid, wherein the Hon'ble Apex Court held as under :-

"11.The last submission turns on the presumption under. Section 4 of the Act. The contention of counsel for the appellant that the presumption available under S. 4 of the Act cannot be raised in the present case since the charge is under s. 5 (1) (d), read with s. 5 (2), is apparently attractive. But we may notice that even if the statutory presumption is unavailable, courts may presume what may in the ordinary course be the most probable inference. That an Assistant Station Master like, the accused has in his hand a marked currency note made over to him by a passenger whose bedding has been detained by him for which no credible explanation is forthcoming, and he is caught red-handed with the note, is a case of res ipsa loquitur. The very thing

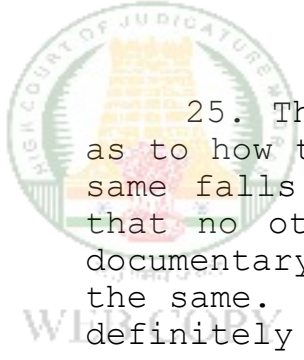


speaks for itself in the circumstances. We need not, therefore, scrutinize the substance of the argument based on the inapplicability of Section 4. We also feel that there may be some force in the argument of counsel that the jawan, P.W.3, might have duped the railway by using a pass for one passenger and carrying a family of wife and, child together. Of course, we cannot finally pronounce on this matter for want of sufficient documents. All that we need say is that even assuming that the passenger so tried to dupe the railway, that is no alibi for the Assistant Station Master to help himself to illicit gratification. Nor is the non-examination of the Deputy Superintendent of Police of any consequence in the case."

23. It would not be out of context for this Court to refer to the decision of the Hon'ble Apex Court in the case of **State of Gujarat vs. Navinbhai Chandrakant Joshi & Ors. (2018 (9) SCC 242)**, wherein, it has been held as under :-

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

24. A conjoint reading of the law laid down by the Hon'ble Supreme Court along with a careful perusal of the evidence available on record, both oral and documentary, paints a picture beyond a pale of doubt that while the prosecution has discharged its initial burden of proving the act of the accused in the demand and acceptance of illegal gratification, inspite of opportunity to rebut the presumption raised by the prosecution, except for giving certain answers to the questions posed u/s 313 Cr.P.C., the accused have miserably failed to rebut the presumption.

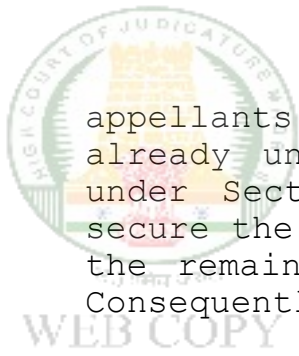


25. Though the learned senior counsel has painted some picture as to how the money has landed on the person of the accused, but the same falls short of acceptance by this court for the simple reason that no other connecting material, either in the form of oral or documentary evidence has been placed by the defence to substantiate the same. Though the defence is not required to prove its case, but definitely it is duty bound to explain as to how the chemical coated money came to their possession and merely stating that P.W.2 had thrust the money on A-1 and A-2, that too in the presence of P.W.3, is too big an ask for this Court to accede. It is not even the case of the defence that P.W.3 was no where in the picture. However, P.W.3, in unequivocal terms has spoken not only about his presence, but equally the happenings that took place, which is in consonance with the deposition of P.W.s 2 and 18. Therefore, this Court is of the considered view that the answers given by the accused in no way furthers their case and dislodge the case of the prosecution, thereby passing on the benefit of doubt to the accused. All the ingredients required for proving a case under the Prevention of Corruption Act having properly been made out by the prosecution, including the demand and acceptance of bribe, which is the pivotal part in the whole scheme, in the considered view of this court, the trial court has considered all the materials, including the answers tendered by the accused u/s 313 Cr.P.C. in proper perspective and has rightly convicted and sentenced the appellants, which by no stretch of imagination could be stated to have been done in a mechanical manner. Therefore, this court is of the considered opinion that no interference is called for with the well considered findings recorded by the trial court for convicting the appellants.

26. At this juncture, learned senior counsel for the appellants submitted that A-1 is aged about 74 years and equally A-2 is also in the same age bracket and that both the appellants are suffering from age related ailments and, further pointed out that the offence was committed almost a decade and a half before when the minimum sentence for the offence was six months and this court, cumulatively considering all the above, may consider reduction of sentence to the minimum period prescribed under the statute.

27. Considering the request as made by the learned senior counsel for the appellants and also keeping in mind the gravity of the offence, but equally also taking into consideration the passage of time, this court is of the considered opinion that the sentence imposed on the appellants could be modified.

28. For the reasons aforesaid, the criminal appeals are dismissed confirming the conviction recorded by the trial court against the appellants, but however, the sentence imposed on A-1 u/s 7 and 13 (2)r/w 13 (1) (d) and on A-2 u/s 8 and 12 of the Act is modified and instead the appellants are sentenced to undergo simple imprisonment for a period of one year for each of the offence above, ~~and the sentences shall run concurrently.~~ Fine amount imposed on the



appellants stands confirmed. The period of sentence, if any, already undergone by the accused persons shall be given set off under Section 428 Cr.P.C. The trial Court shall take steps to secure the appellants/A-1 and A-2 and commit them to prison to serve the remaining period of sentence as ordered by this Court above. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sts

- 1)The Special Judge,
Special Court for Trial of
Prevention of Corruption Act cases, Trichy.
- 2) The Inspector of Police,
Vigilance and Anti Corruption,
Trichy.
- 3) The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4)The Section Officer,-2 copies
Criminal Record,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.P.ANDIRAJ, Advocate (SR-11489[F] dated 13/03/2020)

+1 cc to Mr.T.Senthilkumar , Advocate SR.No.11490

Common Judgment made in
CRL.A.[MD]Nos.66 and 71 of 2015

Dated:
12.03.2020

KM (10.07.2020) 13P 8C