

**BAIL SLIP**

Jose Dhanapal, Male, aged about 46, (Sole Accused), was released on Bail vide Court order dated 08/08/2016 made in Crl MP (MD)No.6495 of 2016 in Crl A(MD)No.281 of 2016.

WEB COPY

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATED : 08.12.2020

CORAM :

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

CRL A (MD) No.281 of 2016

Jose Dhanapal

... Appellant / Accused

Vs.

The State, rep.by the Inspector of Police,  
Vigilance & Anti Corruption Department,  
Nagercoil.

(Crime No.7 of 2008)

... Respondent / Complainant

Prayer : This Criminal Appeal filed under Section 374 of Criminal Procedure Code, to allow the appeal and acquit the appellant by setting aside the conviction and sentence imposed on him by the judgment dated 13.06.2016 made in Special Case No.2 of 2010 on the file of the Special Judge cum Chief Judicial Magistrate, Nagercoil and thus render justice.

For Appellant : Mr.Abdukumar Rajarathinam  
for Mr.F.Deepak

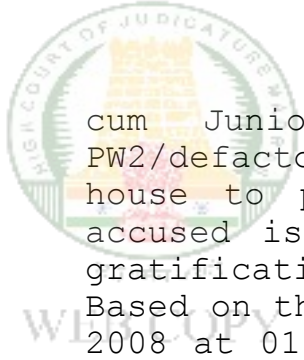
For Respondent : Mr.A.Robinson,  
Government Advocate (Crl.side)

**JUDGMENT**

This criminal appeal has been preferred against the judgment dated 13.06.2016 passed by the Special Judge/Chief Judicial Magistrate, Nagercoil in S.C No.2 of 2010 finding the accused guilty and sentencing him as follows :

| Offence                                                                     | Punishment                                                                                                       |
|-----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| Under Section 7 of the Prevention of Corruption Act, 1988                   | One year rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.  |
| Under Section 13(2) r/w.13(1) (d) of the Prevention of Corruption Act, 1988 | Two years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo three months simple imprisonment. |

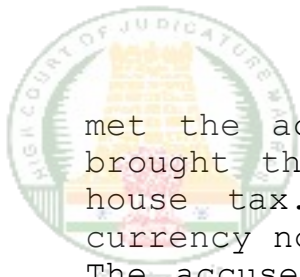
2.The case of the prosecution is that the defacto complainant Vincent (PW2) was a permanent resident of Azhikkal Village falling within the limits of Ganapthipuram Town Panchayat. The accused Thiru.Jose Dhanapal/appellant herein was working as Bill Collector



cum Junior Assistant in the said Town Panchayat Office. PW2/defacto complainant approached the accused for assessing his house to property tax. For doing the said official duty, the accused is said to have demanded a sum of Rs.2,500/- as illegal gratification. PW.2 lodged Ex.P2 complaint before the respondent. Based on the same, Ex.P17 FIR came to be registered as Crime No.7 of 2008 at 01.30 P.M on 22.10.2008 for the offence under Section 7 of the Prevention of Corruption Act, 1988. Trap was laid and was successful. Thereafter, final report was filed. The court below took cognizance of the offences under Sections 7 and 13(2) r/w.13(1) (d) of the Prevention of Corruption Act, 1988. Charges were framed against the accused for the offences mentioned above. To establish the same, the prosecution examined PW1 to PW11 and marked Exs.P1 to P21 and MO.1 to MO.4. The accused examined one Jonesraj as DW.1 And marked a copy of the bond indicating pledge as Ex.D1. The learned Trial Judge held that the prosecution established its case beyond reasonable doubt and convicted the accused and sentenced him as mentioned above. Questioning the same, this criminal appeal has been filed.

3.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds and in the written submissions and pleaded that the court below grievously erred in passing the impugned Judgment. The learned counsel for the accused wanted this Court to set aside the impugned judgment, allow the appeal and acquit the appellant in toto. Per contra, the learned Government Advocate (crl.side) submitted that the impugned judgement does not warrant any interference and pressed for dismissal of the appeal.

4.I carefully considered the rival contentions and went through the entire evidence on record. PW.1 was the District Collector of Kanyakumari District and he was the authority competent to grant sanction for prosecuting the appellant. Ex.P1 is the sanction order and it was marked through him. The validity of the sanction order has not been questioned. PW.2 is the defacto complainant. He clearly deposed about the demand and lodging of Ex.P2 complaint. He is a resident of West Street in Azhikkal Village. He deposed that on 17.10.2008 at about 10.00 A.M, he met the accused in connection with payment of house tax. The accused is said to have demanded a sum of Rs.2,500/- as illegal gratification apart from fulfilling the usual formalities. When the defacto complainant met the accused again on 22.10.2008 with the relevant papers, the accused is said to have reiterated his demand. He made it clear that unless the illegal gratification is paid, he would not issue the receipt. Thereupon, PW.2 approached the respondent and lodged Ex.P2 complaint. At about 01.30 P.M on 22.10.2008, the FIR came to be registered. PW.2 clearly testifies regarding introduction of the shadow witnesses, namely, Kiruba and Stalin and pre trap the proceedings. The trap party reached the office of the Town Panchayat of Ganapathipuram at about 05.10 P.M on the same day. The accused was accompanied by Kiruba PW.3/shadow witness. They



met the accused. The accused asked PW.2 as to whether he had brought the bribe amount when PW.2 enquired about the payment of house tax. Thereupon, PW.2 took the phenolphthalein applied currency notes to the tune of Rs.2,500/- and gave it to the accused. The accused received the same in his hands and after counting the same, kept in his left hand side table drawer. After coming out from the office, PW.2 gave the pre-arranged signal. PW.2 said as to what happened. Immediately, the trap laying officer and others entered the office of the Town Panchayat. He was asked to leave. The money recovered from the accused was marked as MO.1 and it was duly identified by PW.2.

5.The testimony of PW.2 could not be shaken at all during the cross examination. The learned counsel for the appellant would contend that the brother in law of the defacto complainant/PW.2 was working in the very same office as Water Supply Attender and following the suspension of the accused, he was posted as Bill Collector. The submission of the learned counsel is that the entire case has been engineered in order to secure posting for the brother in law of the defacto complainant in the place of the accused. A suggestion was put to the defacto complainant in this regard. The defacto complainant/PW2 categorically denied the said suggestion. In fact, the defacto complainant had stated that he does not even talk to his brother in law. The said brother in law was also examined as PW.5. He also stated that he does not have any connection with PW.2. He denied the suggestion put to him that PW.2 was instigated to lodge Ex.P2 complaint. Except putting formal suggestions, nothing useful was elicited by cross examining these two witnesses namely, PW.2 and PW.5. It is true that PW.2 and PW.5 are related to each other. It is also true that following the suspension of the accused, PW.5 was asked to officiate as Bill Collector. But, from this, one cannot come to the inference that the case has been put up. I find no merit in this contention.

6.The learned counsel for the accused would strongly contend that the accused is not the competent authority to assess or fix the house tax. He was after all a Bill Collector. It was only the Executive Officer (PW.4) who is authorised to determine the assessment. When the accused does not have any control over the process, it is inconceivable that he could have made demand for payment of illegal gratification. On this ground, the learned counsel wanted this court to reject the prosecution case. In this regard, he placed reliance on the decision of the Madras High Court reported in 2010 (1) MWN (Crl) 454 (*Meganathan vs. State of Tamil Nadu*). Even though the decision relied on by the learned counsel for the appellant does contain observations in support of the proposition advanced by him, I am not able to accept the same. It has been held by the Hon'ble Supreme Court that the competency or otherwise of the accused to do the act in question is absolutely immaterial once the prosecution establishes demand and acceptance.

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7.The learned Government Advocate (crl.side) relied on the

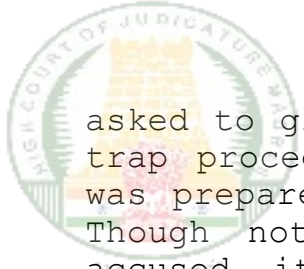


decision of the Hon'ble Supreme Court reported in (2007) 7 SCC 625 (*Girja Prasad (dead) by Lrs vs. State of Madhya Pradesh*). In the said case, it was held as follows :

"22.It was, therefore, of no consequence whether the accused had accepted the amount for and on behalf of Ramnarain Rajoria-PW 4. Once it is proved that he accepted the amount of Rs. 200/-, he cannot escape from criminal liability on a specious ground that he was made 'scapegoat' or was merely 'innocent carrier'. It was also immaterial whether the accused was or was not in a position to oblige the complainant by preventing or delaying his suspension. The case of the prosecution was that the complainant was asked to pay an amount of Rs. 500/- by the accused and the said amount had been accepted by him in two installments, Rs. 300/- at Dindori and Rs. 200/- at Jabalpur where trap was successful."

8. Therefore, the accused cannot take shelter behind the position that it is only the Executive Officer/PW.4 who has the authority and that he is not the authority to assess the property to house tax. The ratio laid down by the Hon'ble Supreme Court squarely supports the stand of the prosecution.

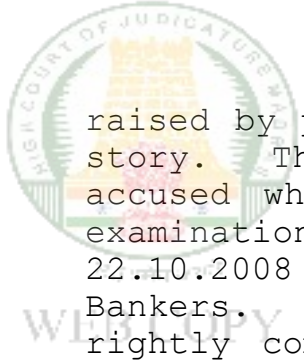
9. The question that arises for the consideration of this Court is whether the prosecution has succeeded in establishing the demand and acceptance by the accused. The demand has been clearly proved by the prosecution beyond reasonable doubt through the evidence of PW.2 and PW.3. PW.3 is the shadow witness. He has no axe to grind against the accused. PW.3 was employed in the office of the Deputy Director of Health Services. On 22.10.2008, the Head of the Department had directed him to go to the office of the respondent. Complying with the said direction, PW.3 reached the office of the respondent at about 03.25 PM. He also deposed that one Stalin from the Cooperative Department had also come. He clearly testified as regards the pre trap procedures explained by the trap laying officer. He deposed that PW.2 had brought five 500 rupee notes. Phenolphthalein power was applied on them. The details were reduced into writing vide Ex.P3 Mahazar. PW.3 accompanied PW.2 to the Town Panchayat Office. He deposed that the accused asked PW.2 as to whether he had brought the sum of Rs.2,500/- demanded by him. The testimony of PW.2 has been more than corroborated by PW.3. After the pre-arranged signal was given, the trap laying officer and others entered the office of the Town Panchayat and after PW.2 identified the accused, he was asked to leave. The trap laying officer (PW.10) introduced the shadow witness to the accused and subjected him to phenolphthalein test. The phenolphthalein test turned out to be positive. The sodium carbonate solutions in which the accused had dipped his hands were sealed in M.Os 2 and 3 bottles and in the said two bottles, label was affixed setting out the crime number. The sum of Rs.2,500/- recovered from the accused tallied with the details set out in Ex.P4 Mahazar. Ex.P6 document was also seized. When the accused was



asked to give explanation, he did not respond. The trap and post trap proceedings were duly reduced into writing and Ex.P7 Mahazar was prepared. Thereafter, the house of the accused was searched. Though nothing incriminating was seized from the house of the accused, it was relevant to note that Ex.P6 file pertaining to house tax assessment of PW.2 was recovered from the table of the accused. In the cross examination, PW.3 could not be shaken.

10.The learned counsel for the appellant would contend that the presence of the shadow witnesses even at the time of preparation of the FIR throws considerable doubt on the genuineness of the prosecution case. I am not able to agree. PW.3 is a government servant. He was an employee of the Health Department. He was asked to go to the office of the respondent only by the HOD namely, Deputy Director (Health Services). PW.3 clearly deposed that based on the direction of the superior, he came to the office of the Vigilance and Anti Corruption Department. Nothing stopped the accused from summoning the Deputy Director (Health Services) and questioning him as to whether he had given such an instruction to PW.3. No such step was taken by the accused. Therefore, I have to hold that PW.3 shadow witness is a genuine witness and he has not been set up by the prosecution. Taking the testimony of PW.2 and PW.3 together, I can come to the safe conclusion that the demand for payment of illegal gratification has been established beyond reasonable doubt. PW.3 has deposed that the accused specifically asked the defacto complainant if he had brought the sum of Rs.2,500/- asked by him. Thus, the case of the prosecution is not resting on the testimony of PW.2 alone. It is amply corroborated by the testimony of PW.3. Recovery of the file pertaining to PW.2 from the table of the accused also reinforces the prosecution case.

11.The learned counsel for the appellant would strongly contend that the prosecution exhibits were not prepared in the manner claimed by them but later in the office of PW.10 and that the trap proceedings did not happen in the manner as alleged by the prosecution and he relied on the deposition of PW.4. He deposed on 07.05.2015 that on 22.10.2008, the trap laying officer and the accused left the office at 06.00 P.M. Therefore, the alleged recovery and preparation mahazar is a doubtful one. PW.4 was examined on 31.01.2013. Later, after a period of three years he was recalled by the accused and the suggestions were made to him with regard to the evidence made in tribunal with regard to the departmental enquiry. The evidence of PW.4 can be eschewed for the reason that he was recalled after three years. These are mere suggestions without any material basis. As rightly contended by the learned Government Advocate (crl.side) the testimony of PW.10/trap laying officer nails the theory of innocence projected by the accused. What was recovered was not only the tainted money but also the unaccounted money of Rs.58,900/- from the accused. The appellant could not offer proper explanation for the same at the time of trial. Subsequently, during trial he examined DW.1 to substantiate his defence that the amount of Rs.58,900/- was a loan

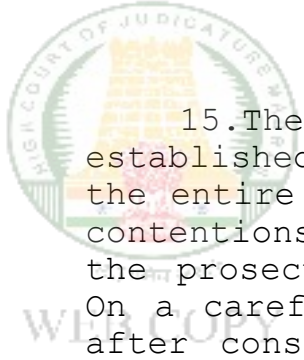


raised by pledging jewels. The court below disbelieved the said story. The fact remains that the amount was recovered from the accused when he was in the office doing official duty. During examination under Section 313 of Cr.Pc, the accused claimed that on 22.10.2008 at about 09.00 A.M, he pledged his jewels with SPM Bankers. That is how the said amount was in his possession. As rightly commented by the learned Trial Judge if that be so, the accused could have given such an explanation at the time of trap itself and in such an event, the trap laying officer would have returned the money to the accused himself at that time. Since no explanation was forthcoming from the accused, the said amount was seized vide Ex.P4 and handed over to the court. DW.1 was examined by the accused to substantiate this defence. Through DW.1, Ex.D1 was also marked and it mentions that on 13.01.2009, the accused had redeemed the jewels.

12.The learned Trial Judge had noted that DW.1 had not marked the pledge receipt. It was also noted that on 13.04.2009, the accused had filed CrI.MP No.354 of 2009 for return of the said amount as he was struggling for survival. But vide Ex.D1, the accused had claimed that on 13.01.2009 he had redeemed the pledged jewels. The said CrI MP No.354 of 2009 was actually prepared on 26.11.2008 and signed. The court below had remarked that when the stand of the accused on 26.11.2008 was that he did not have any resources for survival and that is why he was asking for the sum of Rs.58,900/-, then within a period of two months, he could not have redeemed the jewelry. For running a pawn broking shop prior license must have been obtained. The relevant records must be certified by the jurisdictional Tahsildar. DW.1 could not convince the court below that he was carrying on the regular business of pawn broking.

13.In these circumstances, the court below had come to the conclusion that Ex.D1 and also the photo copy of the pledge receipt had been prepared subsequently as an afterthought. Nothing stopped the accused from producing the receipt at the time of trap itself and claiming that the sum of Rs.58,900/- is his legitimate money. Thus, all these circumstances have clinchingly established the case of the prosecution against the appellant.

14.Since the demand was established and acceptance of the tainted money was also proved, presumption under Section 20 of the Prevention of Corruption Act, 1988 got triggered. The court below was therefore obliged to presume unless the the contrary is proved that the accused accepted the sum of Rs.2,500/- as illegal gratification. The said presumption could not be rebutted at all. In view of the decision of the decision of the Hon'ble Supreme Court reported in (2018) 9 SCC 242 (*The State of Gujarat -Vs- Navinbhai Chandrakant Joshi*), the accused is obliged to explain as to how the bribe money was received by him and since he has failed to offer any satisfactory explanation, the court below was justified in presuming that the accused accepted the amount as bribe.



15.The factum of demand and acceptance has been convincingly established in this case. The court below had elaborately analyzed the entire evidence on record, dealt with each and every one of the contentions advanced by the accused and came to the conclusion that the prosecution had established its case beyond reasonable doubt. On a careful re-appreciation of the entire evidence on record and after considering the contentions of the learned counsel for the accused/appellant, I am not able to take a different view. I sustain the contentions of the learned Government Counsel appearing for the prosecution. I find no merit in this appeal.

16.The conviction and fine imposed on the appellant stands confirmed. However, taking note of the other mitigating circumstances pleaded by accused, the sentence of imprisonment imposed on the appellant under Section 13 (2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 alone is reduced from two years to one year rigorous imprisonment. The sentence of imprisonment imposed on the appellant under Section 7 of the Act is confirmed. The sentences of imprisonment for both the charges shall run concurrently. With this modification in the matter of sentence by confirming the conviction and fine imposed on the appellant, this appeal is partly allowed. The learned Special Judge shall take steps to enforce this judgment. The sentence of imprisonment already undergone by the appellant if any shall be set of under Section 428 of Cr.PC.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Skm

To

1.The Special Judge-cum-Chief Judicial Magistrate, Nagercoil.

2.The Inspector of Police,  
Vigilance & Anti Corruption Department,  
Nagercoil.

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

Copy to: The Record Keeper, Criminal Section,  
Madurai Bench of Madras High Court, Madurai.(2 Copies)  
+1 CC to M/s.F.DEEPAK, Advocate ( SR-24769[F] dated 10/12/2020 )

CRL A (MD) No.281 of 2016  
08.12.2020