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Bail Slip

That the Appellant/Accused namely R.Sadhasiva, s/o Rangasamy was directed to be released on bail as per order of this Court dated 19.01.2012 and made in M.P.No.1/12 in Crl.A.No.38/12 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2021

CORAM
.
THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.A.No.38 of 2012

R.Sadhasivan ...Appellant/Accused

Vs.

The State represented by
The Inspector of Police,
Vigilance and Anti-Corruption Special Wing,
Erode.
(Crime No.11/AC/2003 ER) ...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 Cr.P.C., to set aside the judgment, dated 04.01.2012 passed by the Special Court for cases under Prevention of Corruption Act, Coimbatore in Special C.C.No.142/2011.

For Petitioner .. Mr.V.Gopinath,
Senior Counsel

For Respondent .. Mr.E.Raj Thilak,
Government Advocate (Criminal Side)

ORDER

This Appeal has been preferred by the accused in Spl.C.C.No.142 of 2011, which was pending on the file of the Special Court for cases under Prevention of Corruption Act, Coimbatore, aggrieved by the judgment, dated 04.01.2012 whereby the appellant had been convicted for offence under Section 7 of Prevention of Corruption Act, 1988 and also for offence under Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988 and had been sentenced to undergo two years rigorous

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imprisonment for offence under Section 7 of Prevention of Corruption Act, 1988 and also to pay a fine of Rs.1,000/-, in default, undergo one month rigorous imprisonment and for three years rigorous imprisonment for offence under Section 13(1)(d) of Prevention of Corruption Act, 1988 and to pay a fine of Rs.2,000/-, in default, undergo two months rigorous imprisonment.

2. The brief facts of the case are that the appellant was working as a Village Administrative Officer in Siruvallur Village in Erode District. It had been charged that he had demanded and accepted a bribe amount of Rs.2,000/- from the defacto complainant holding out that unless the bribe amount is paid, he would not facilitate the grant of revenue documents namely Adangal, Chitta and such other documents which the defacto complainant required in order to transfer the electricity connection to the name of his father from the name of his grand father.

3. It is to be mentioned that the defacto complainant or rather his father were entitled to undivided 1/8th share of agricultural property which was ancestral in nature. There was also a common well with electric motor pump set and in order to obtain the transfer of electricity connection to the name of his father, the defacto complainant had to undergo a few steps before such connection could be transferred by the electricity department. Among other steps to be taken by the defacto complainant, there was a necessity to obtain the Adangal and Chitta documents with respect to the land and more importantly, to also get a survey report of the land. These processes involved giving an application primarily to the jurisdictional Tahsildar who, in turn, should forward the necessary application along with the relevant documents to the Revenue Inspector who, thereafter, should forward the said application and the documents after verification to the Village Administrative Officer. The Village Administrative Officer was not the competent authority to issue either Adangal, Chitta or any other document sought by the defacto complainant. But he was an important link in the chain of events and his endorsement is also required to ultimately obtain the Adangal, Chitta or any other revenue document as required by the defacto complainant. Yet, another step to be taken was to survey the land and obtain a report and this had to be discharged by the Deputy Tahsildar along with the Village Administrative Officer.

4. It is brought to knowledge that the defacto complainant has undergone the said process on previous occasions and there were earlier survey reports which contradicted each other. Naturally, the defacto complainant had become quite frustrated with the entire manner in which he had been made to run from pillar to post to obtain necessary documents, to facilitate the

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transfer of electricity connection with respect to the motor pump set annexed to the well in the land, to which, admittedly, he and his father were entitled to undivided 1/8th share. There were, however, other claimants within the family and that factor also necessitated the defacto complainant to approach the concerned authorities again and again to obtain the necessary transfer of the electricity connection. Unless these revenue officials give their consent or no objection and also provide the revenue documents in the name of father of defacto complainant, it would not be possible for the Electricity Department officials to effect transfer of the electricity connection with respect to the motor pump set annexed to the well in the land.

5. It is the case of the prosecution that the appellant/accused, as Village Administrative Officer, had an important role to play in ensuring that the defacto complainant obtained the revenue documents and also in conducting the survey of the lands. It is stated that, in this regard, the appellant/accused had demanded a bribe amount of Rs.2,000/- to facilitate such documents being provided to the defacto complainant. It is also stated that there were two separate dates, on which the bribe was demanded. It is stated that after the demand on the second date, the defacto complainant had given a complaint to the prosecution agency, who in turn, set about laying a trap. The trap was successful. A final report had been filed after investigation before the jurisdictional Court at Coimbatore, which had taken cognizance of the same as Special C.C.No.142 of 2011. Trial had been conducted and on conclusion of the trial and on appreciation of the oral and documentary evidence of the accused, the learned Special Court for cases under Prevention of Corruption at Coimbatore had convicted the present appellant as aforesaid for offences under Section 7 and also Section 13(1)(d) of the Prevention of Corruption Act, 1988 and had sentenced him for both the offences. This judgment convicting the appellant had necessitated filing of the present Criminal Appeal.

6. Heard arguments advanced by Mr.V.Gopinath, learned Senior Counsel for Mr.Swami Subramanyam, learned Counsel for the appellant and Mr.E.Raj Thilak, learned Government Advocate (Criminal Side).

7. Let me now delve into the case in more detail.

8. The defacto complainant, Nandakumar and his father were entitled to 1/6th and 1/8th share in the land at Survey Nos.29/2 and 4 totally measuring Ac.2.46 cents. There was a electricity connection with a five H.P. motor annexed to the well in the land. The electricity connection was in the name of Chinna

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Gounder, the grand father of the defacto complainant. He had died. To transfer the electricity connection from the name of Chinna Gounder to the name of the father of the defacto complainant, the defacto complainant required Chitta, Adangal and a resurvey of the land and a certificate in that regard. In this connection, he had given an application to the Tahsildar, Gobichettipalayam on 23.06.2003. The Tahsildar, after about two days, had directed the defacto complainant, Nandakumar, to meet the Revenue Inspector and then the Village Administrative Officer.

9. It is the case of the prosecution that the defacto complainant met the Village Administrative Officer on 26.06.2003. It must be kept in mind that the Village Administrative Officer, at that particular point of time, was not the accused herein. Thereafter, the defacto complainant met the accused, who had then joined duty as Village Administrative Officer on 21.08.2003. It is stated that the accused asked the defacto complainant to give a fresh application before the Tahsildar and accordingly, Venkatachalam, the father of the defacto complainant, had given a fresh application, dated 22.08.2003 requesting Chitta, Adangal and RSR certificate to the Tahsildar. This application was received by the Deputy Tahsildar, Balasubramanyam, who, thereafter, gave back the application to the defacto complainant and directed him to handover the said application to the Revenue Inspector, Arumugam at Siruvallur. The defacto complainant, accordingly, gave those documents to the Revenue Inspector, Arumugam, who after receiving the same, had directed that it should be given to the Village Administrative Officer. The defacto complainant then gave all the documents along with the application to the Village Administrative Officer/appellant/accused/Sadhasivan.

10. It is the specific case of the prosecution that the appellant/Village Administrative Officer demanded a sum of Rs.2,000/- for processing the application. Thereafter, on 12.09.2003, in the evening around 5.00 P.M, when the appellant/accused had come to the lands to survey the well and the motor pump set, a further demand was made. The defacto complainant had requested to reduce the amount. But, it is claimed that the appellant/accused refused to reduce the demand. He had also stated that the amount should be paid before 5.00 P.M. on 16.09.2003.

11. It is the case of the prosecution that the defacto complainant then preferred a complaint before the respondent and F.I.R in Crime No.11/AC/2003 ER was registered. On 16.09.2003, a trap had been laid and successfully executed by recovering the amount which had been accepted by the appellant herein. Pursuant to further investigation, a final report had been laid

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in the said Special Court for Cases under Prevention of Corruption Act, 1988, Coimbatore. Charges had been framed by the learned Special Court and on denial of such charges, the prosecution has been invited to adduce evidence to substantiate the charges. It must be pointed out that the appellant had been charged with commission of offence under Section 7 of Prevention of Corruption Act, 1988, for demand of Rs.2,000/- as bribe amount and also under Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988 for the very same demand of Rs.2,000/-. As stated, the appellant/accused denied the charges.

12. The prosecution, in order to substantiate the charges, had examined PW.1 to PW.15. PW.1 was the sanctioning authority. PW.2, Nandakumar was the defacto complainant. PW.3, Markandon was an independent witness, who, the prosecution claimed witnessed the demand and acceptance of the trap money and was also present during the recovery of the trap money. PW.4, Arumugam, was the Revenue Inspector of Siruvallur. PW.14 was the Trap Laying Officer and PW.15 was the Investigating Officer. The prosecution had also produced Exs.P1 to P34. They also produced MOs.1 to 4. Among the documents filed, sanction to prosecute the appellant/accused has been marked as Ex.P1. The application given by the defacto complainant had been marked as Ex.P2. The complaint given by the defacto complainant had been marked as Ex.P4. The application dated 23.06.2003 given by the defacto complainant to the Tahsildar had been marked as Ex.P7. The Entrustment Magazar had been marked as Ex.P6 and the Recovery Magazar had been marked as Ex.P9. The documents with respect to conducting phenolphthalein test after recovery from the accused and the results of the forensic laboratory has been marked as Exs.P21 and P22. The First Information Report which had been registered on receipt of complaint for demand of bribe from the defacto complainant had been marked as Ex.P23. An alteration report in the same had been marked as Ex.P25. The material objects which were subjected to forensic test had been produced as Ex.P22.

13. During the course of arguments in the appeal, the issue of sanction had not been seriously challenged by the appellant/accused. PW.1 was the sanctioning authority and he had marked Ex.P1, the order granting sanction. His competency had not been questioned. It is evident that only on application of mind and on subjective satisfaction, necessary sanction had been granted for prosecution. However, it had been pointed out that he had not seen the relevant files with respect to the grant of Chitta, Adangal or other revenue documents. He had admitted during cross-examination that the defacto complainant had given the application on 22.08.2003 and that the appellant/accused had given his report on 25.08.2003.

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14. Mr.V.Gopinath, learned Senior Counsel on behalf of the appellant, very strongly challenged the evidence put forth by the prosecution to establish demand of bribe. It is the contention of the learned Senior Counsel that if demand is not properly established by the prosecution, then the entire case of the prosecution would necessarily have to fail. The learned Senior Counsel pointed out that it is the case of the prosecution that there were demands on two separate dates. The first demand was said to have been on 22.08.2003, when, according to the prosecution, the appellant/accused had demanded a sum of Rs.2,000/-. The second demand and more importantly, giving an outer date for payment of the bribe amount of Rs.2,000/-, was on 12.09.2003. On that occasion, the accused had very specifically stated that if the demand amount is not paid by 5.00 P.M on 16.09.2003, then the defacto complainant would have to suffer the consequences thereof. This naturally implied that the defacto complainant could not get Chitta, Adangal or any other revenue document and in turn, could not obtain necessary transfer of electricity connection to the name of his father.

15. In this background, the admission of PW.1, the sanctioning authority, should be now examined namely that the appellant/accused had given his report on 25.08.2003 itself with respect to the application submitted by the defacto complainant/father requiring the aforesaid documents. It is contended by Mr.V.Gopinath, learned Senior Counsel that when the accused had given his report on 25.08.2003 itself, there was no possibility of raising a demand on 12.09.2003, directing the defacto complainant to pay the amount on or before 16.09.2003. It had been urged by the learned Senior Counsel that the requisite files had already been processed and compliance of the application had become a fait accompli. It was therefore pointed out that on 12.09.2003, even if the demand had been made, it could not be related to the actual reason which had been put forth by the defacto complainant. It could not have been demand for illegal gratification.

16. It is further pointed out by Mr.V.Gopinath, learned Senior Counsel that on 12.09.2003, a survey was conducted on the land with respect to the well, and the motor pump set annexed to the well. This survey was conducted not only by the appellant/accused, but, more importantly, by PW.8, the Deputy Tahsildar. It was the Deputy Tahsildar who was competent to conduct such a survey. The role of a Village Administrative Officer is only to identify the particular area or land which has to be surveyed. He has no further role. PW.8, Deputy Tahsildar was Stephen Jayapal. He had tendered evidence and he was a material witness to speak about the demand on 12.09.2003.

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17. It would, therefore, be instructive to examine his evidence as recorded by the Trial Court. During his chief examination, after speaking about the procedure for grant of revenue documents like Chitta, Adangal and other such documents, he stated that he had received a communication from the Tahsildar to forward a report with respect to the application made by the defacto complainant. A survey of the land was required. He stated during his chief examination that there were four earlier reports which were contradictory to each other and therefore, a correct and true report was required by the Tahsildar and he/PW.8 had been deputed to conduct such a survey. He stated that he had sent his report to the Tahsildar, Gobichettipalayam on 12.09.2003.

18. He further stated that on 12.09.2003, he had gone over to Siruvallur village to Survey Nos.29/2 and 29/4 and surveyed the well, which was there along with the Village Administrative Officer of Siruvallur village/the appellant/accused. He stated that at that particular point of time, one Palanisamy was also present, who also claimed a right over the said well. It must now be noted that the said Palanisamy had not been examined as a prosecution witness. PW.8 further stated that he obtained a statement from said Palanisamy at the same place. He further stated that he came to know, from the said statement given by Palanisamy, that with respect to the rights over the well, a suit in O.S.No.33 of 1993 had been filed before the District Munsif Court at Gobichettipalayam and that from the judgment, it would be evident as to who could claim the rights over the said well.

19. PW.8 further stated that he also examined the defacto complainant, Nandakumar/PW.2. He also read the judgment in O.S.No.33 of 1993 and thereafter, prepared a report to be forwarded to the Tahsildar, Gobichettipalayam. That report had been marked as Ex.P15.

20. It must be kept in mind that it is the specific case of the prosecution that the second demand was made on the very same day on 12.09.2003 at the very same place by the appellant/accused. The only other witness, who could have been there, when the said demand was made, was PW.8. During his chief-examination, he had not spoken about such demand. During his cross-examination, he stated that he had received the relevant files on 28.08.2003. On that date, he very specifically stated that the duties entrusted or to be performed by the appellant/accused, Sadhasivan, had already been performed. He also stated during the cross-examination that he went to the particular land on 04.09.2003, but, could not conduct any enquiry. He again went on 12.09.2003. Along with him, the appellant/accused had also gone. He went to the land

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at 3.30 P.M in the evening. He came back to his office round about 6.00 P.M. Till that time, namely from 3.30 P.M in the evening till 6.00 P.M in the evening, the appellant/accused was with him right through.

21. During his further cross-examination, he also stated that during the survey on 12.09.2003, he and the Village Administrative Officer had inspected the particular well. He again repeated that during the survey and till he came back, the appellant/accused was always with him. During that entire period, and it can be reasonably fixed between 3.30 P.M and 6.00 P.M, the witness very specifically stated, that neither him nor the appellant/accused demand any bribe from anyone. The witness was thereafter not examined. During his re-examination, he stated that on 12.09.2003, during the survey, along with him, only the appellant/accused and Palanisamy who had not been examined by the prosecution and the defacto complainant/PW.2/Nandakumar were present. PW.8 very specifically stated during re-examination or practically during chief examination, conducted again with the permission of Court that, at that time, the appellant/accused did not meet anyone.

22. With this statement as the background, the complaint given by PW.2/Nandakumar will have to be examined. This complaint had been marked as Ex.P4. In the said complaint, with respect to the events that took place on 12.09.2003, it had been stated that on that date, in the evening at 5.00 P.M, the appellant/accused had come over to the land to survey or inspect the well and he asked whether the bribe amount had been made ready. This was at 5.00 P.M. It is the further case of PW.2 that he started bargaining and tried to reduce the bribe amount. But, the appellant/accused refused any negotiation over the bribe amount of Rs.2,000/-. It had been further stated that the appellant/accused put a condition that the bribe must be paid by 16.09.2003 and more particularly before 5.00 P.M in his office. This naturally meant that at that particular place, while inspecting the well, when PW.8 was also present, there was a flow of conversation between PW.2/defacto complainant and the appellant/accused. It must also be kept in mind that another individual by name Palanisamy was also present. He had not been examined in Court.

23. PW.8 very specifically stated that during that period between 3.30 P.M to 6.00 P.M, the appellant/accused did not speak to anyone and did not demand bribe from anyone. He also stated that Palanisamy and the defacto complainant/Nandakumar were standing together near the well. Therefore, if there had been a demand, the prosecution, to establish the demand, and more importantly beyond all demand, should have taken steps to ensure that the witness who was present at that particular point

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of time spoke about the demand or even if it is to be presumed that PW.8, being in service as Deputy Tahsildar, would not voluntarily come forward to speak about the demand the prosecution should have examined the other independent person, Palanisamy to speak about the demand. They have failed to do so. This tells upon the case of the prosecution and weakens it at its very heart.

24. On the basis of the complaint which had been marked as Ex.P4, PW.14, Inspector of Police, Vigilance and Anti-Corruption, Erode, C.Raja had registered the case in Crime No.11/AC/2003/ER under Section 7 of Prevention of Corruption Act, 1988 and took up investigation. Having registered the First Information Report, he also, during the course of investigation, acted as the Trap Laying officer. The First Information Report which had been registered by him had been marked as Ex.P23. He had received information on 16.09.2003 at 11.30 A.M. During the course of investigation, PW.14, sought the assistance of PW.3, Markandan and one more State Government Official to act as witnesses during the trap proceedings.

25. PW.3, Markandan spoke about the pre trap proceedings. This would necessitate the trial or demonstration of the reaction of Phenolphthalein powder to Sodium Carbonate and details surrounding the same. He was instructed to give a signal, if at all the demand was made on 16.09.2003 by pulling down and buttoning down the sleeves of his shirt. During his chief examination, he stated that in the office of the accused, the appellant/accused asked the defacto complainant/PW.2 whether he had brought the bribe amount of Rs.2,000/- and the defacto complainant replied that he had brought the bribe amount and thereafter, he was asked to give the bribe amount and the appellant/accused received it and kept the bribe amount in a rexin bag, which was on the table. It was stated that this happened around 4.10 P.M to 4.15 P.M on 16.09.2003.

26. Thereafter, the witness also stated that the appellant/accused told the defacto complainant/PW.2 to come forward to get the necessary certificates. This statement of PW.4 will have to be re-examined, on the basis of an actual event, which had taken place namely that a report had also been given on 22.08.2003 itself and on 12.09.2003 what was done was only a survey of the land. The manner in which the application has to be processed has also been stated by the prosecution. The application will have to be given only to the Tahsildar, who will then forward the same to the Revenue Inspector, who will then have to forward the same to the Village Administrative Officer who after verification, re-forward the same to the Revenue Inspector and who, in turn, after further verification, will have to forward it back to the Tahsildar, who alone is the

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competent authority to issue the necessary certificates. The Village Administrative Officer is only the last link in the chain.

27. During his cross-examination, PW.3, who, viewed from any angle, was a star witness of the prosecution and who was a government official and whose assistance was sought for the First Information Report was registered to witness the trap proceedings, was working as Junior Assistant at Erode. He stated that in front of the chair of the accused in his office, there was a table and on that table, there was a bag. That bag was open. In that open bag, the appellant/accused kept the amount which he received. He further stated that when the trap team entered, on receiving necessary signal, the office of the appellant/accused, the Inspector of Police/Trap Laying Officer/PW.14 was informed by PW.2/defacto complainant that the amount was kept in the bag. He stated that PW.14 took the bag. The witness then corrected himself and stated that PW.14 did not touch the bag. He then stated that till the bag was taken, nothing was written, in the sense that Magazar was not prepared. He then stated that when the recovery Magazar was started to be prepared, the accused took the cash out of the bag and kept it on the table.

28. The witness/PW.3 was thereafter recalled and re-examined. During his re-examination, a leading question was put on behalf of the prosecution whether the accused had received the bribe amount from PW.2 and had put it in the bag. The only answer was that the amount of Rs.2,000/- was received and put in the bag. He was further cross-examined with permission. At that time, he denied the suggestion that he did not give proper evidence in the first instance. The issues whether, the amount, after being received, was kept in an open bag and the manner of handling the said open bag, puts further spokes in the case of the prosecution.

29. The Trap Laying Officer was examined as PW.14. During his cross-examination, he stated that the defacto complainant/PW.2 told him that the accused received the money and kept it in the bag. He stated that even after that he did not know whether the money was in the bag. He further stated that he did not directly know who kept the money in the bag. Once again, the entire raises more questions than answers. It must be kept in mind that PW.14 is actually not only the officer who led the trap operations, but also the officer, who registered the First Information Report.

30. PW.15 was the investigating officer, Balashanmugam. During his cross-examination, he stated that the accused had forwarded the necessary records to the Revenue Inspector on

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03.09.2003. He also stated that the Revenue Inspector should have immediately forwarded the requisite papers to the Tahsildar. The Revenue Inspector, Arumugam, had been examined as PW.4. The investigating officer also stated that since the Revenue Inspector did not immediately forward the papers to the Tahsildar, there was also a departmental enquiry initiated against PW.4/Revenue Inspector. He then stated that the entire case came about only because PW.2 did not obtain the documents which he sought.

31. It is a stated fact that the documents can be sought or obtained or finally given only by the Tahsildar and not by the present appellant/accused. At any rate, even the investigating officer deposed that by 03.09.2003, the role of the present appellant/accused had ended by forwarding the file to Revenue Inspector. Thereafter, the further role occurred owing to the fact that a survey was requisitioned by the Tahsildar and in this connection, PW.8 conducted such survey and his evidence had been examined above, where he had stated that to his direct knowledge, the appellant/accused had not spoken to anyone, much less to PW.2/defacto complainant, during the survey or rather, more specifically between 3.30 PM and 6.00 P.M. There is thus a surrounding improbability in the case of the prosecution that there was a demand at around 5.00 P.M on 12.09.2003. PW.15 had also stated that the work of the Village Administrative Officer would end by forwarding the files to the Revenue Inspector.

32. An analysis of the above discussion would reveal that the appellant/accused was working as Village Administrative Officer at Siruvallur in Gobichettipalayam in Erode District. PW.2/Nandakumar/defacto complainant wanted to transfer the name of the electricity connection, with respect to a motor pump set annexed to the well, in his ancestral land, to the name of his father from the name of his grand father, Chinna Gounder. He and his father were entitled to an undivided 1/8th share alone. Therefore, there were disputes with respect to the rights over the land and the rights over the well. In this connection, a suit in O.S.No.33 of 1993 had also been filed before the District Munsif Court at Gobichettipalayam, in which a judgment had also been given. It is seen that the defacto complainant had also given necessary application only to the office of Tahsildar, Gobichettipalayam, who forwarded the same to the Revenue Inspector, through PW.2. The Revenue Inspector, after verifying, forwarded the application to the appellant/accused, who was Village Administrative Officer who had re-forwarded the same on 03.09.2003, back to the office of the Revenue Inspector. With that, the job of the appellant/accused had ended.

33. Independently, a survey was conducted over the lands on 12.09.2003 by PW.8 along with the appellant/accused. This was

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necessitated because of conflicting earlier survey reports. During the course of survey, it is the case of the prosecution that a second demand was made for bribe. But, that was not spoken to by PW.8. Therefore, there is a cloud of suspicion over the very demand of the bribe amount. With respect to the actual demand and handing over of the money, again, there are conflicting versions about the receipt of money and putting it in an open bag, which was lying on the table of the appellant/accused. There is a version of PW.14 that the accused told him that he put the money in the open bag. PW.3, on the other hand, stated that the appellant/accused demanded the money, received the money and put it in the open bag. The recovery of the money from the bag was done since PW.2/defacto complainant informed PW.14 about the presence of the money in the bag. All these differing versions lead to a strong suspicion over the case of the prosecution.

34. However, Mr.E.Raj Thilak, learned Government Advocate (Criminal Side) urged that this Court should not take into consideration minor discrepancies and inability of either the complainant or the witnesses to remember exact details. Learned Counsel stated that even if there are contradictions in the testimonies of the complainant and the witnesses regarding the total amount demanded or whether the complainant paid some amount, those contradictions are immaterial.

35. In this connection, learned Government Advocate (Criminal Side) relied on 2020(2) SCC Page 88, Vinod Kumar Garg Vs. State (Government of National Capital Territory of Delhi).

36. The Hon'ble Supreme Court had examined the facts of that particular case to determine whether the reason for the demand and the payment of the bribe had been established. There was a long gap of about five to six years between the date on occurrence and the date on which the examination of the witnesses were conducted and evidence was recorded. The Hon'ble Supreme Court held that it was only natural that minor contradictions would occur and also pointed out that witnesses are not required to recollect and narrate the entire version with photographic memory. It was also stated that insignificant variations would not, in any way, negate or contradict the main and core incriminatory evidence of demand of bribe, reason why the bribe was demanded and the actual taking of bribe that was paid, which alone are the ingredients for commission of offences under Sections 7 and 13 of Prevention of Corruption Act, 1988 which, in that particular case, had been proved and established beyond reasonable doubt.

37. Prosecution must therefore first establish demand beyond reasonable doubt. Prosecution must also establish the reason

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for demand beyond any reasonable doubt. This would also naturally mean that the prosecution should also prove that the person should actually demanded the money was in any position to either comply with the requirement of the defacto complainant or facilitate such compliance. In the instant case, it has to be therefore examined whether demand had been established beyond reasonable doubt.

38. In the complaint, it had been stated that the first demand was on 22.08.2003. On 22.08.2003, an application was given by the defacto complainant/PW.2 and his father to the Tahsildar which was circulated among the various officers. It moved from the office of the Tahsildar to the office of the Revenue Inspector and then to the office of the appellant/accused. There is no direct evidence, apart from the statement of PW.2, for such demand.

39. The second demand was on 12.09.2003. That was when an inspection was conducted in the land by PW.8, the Deputy Tahsildar. At that time, it is the case of the prosecution that the appellant/accused asked very specifically whether the defacto complainant had brought the amount of Rs.2,000/- and when the defacto complainant expressed that he did not bring it, he was told to pay the amount by 5.00 P.M on 16.09.2003. There were also negotiations over possibility of reducing the bribe amount. During that particular incident, when survey was conducted, PW.8 was physically present and another individual, who also claimed right over the well and the pump set, one Palanisamy was also present.

40. PW.8, however stated that to his direct knowledge, the appellant/accused did not speak to anyone much less to PW.2, the defacto complaint. Therefore, the demand itself on 12.09.2003 is again shrouded with a cloud of suspicion. It had not been established beyond reasonable doubt.

41. The prosecution has also not examined the said Palanisamy. It must be kept in mind that Palanisamy had contended that a suit in O.S.No.33 of 1993 had been filed before the District Munsif Court at Gobichettipalayam and PW.8 stated that he had examined the said judgment. There is no corroboration for the demand. It is true that demand is often made in secret and it cannot be expected that there should be evidence for such demand. But, when it is alleged that it was made in an open place and when it further claimed there was negotiation about reduction of the bribe amount and when the other official witness, at that particular place, PW.8 disclaims such knowledge and even stated that the appellant/accused did not even engage in any conversation with PW.2/defacto complainant at that particular point of time, certainly, the

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demand cannot be stated to have been established beyond reasonable doubt.

42. It is only when demand is established beyond reasonable doubt, can the Court give some leverage to the contradictions in the evidence of the witnesses who spoke about acceptance and recovery and the immediate demand prior to acceptance. The initial demand itself had not been established in this particular case. Therefore, the facts of Vinod Kumar Garg Vs. State (Government of National Capital Territory of Delhi), 2020 (2) SCC Page 88 are distinguishable, owing to the fact that the Hon'ble Supreme Court was contending with a case where the demand had been established and the reason for demand had been established beyond reasonable doubt.

43. The prosecution, in the present case, had not established and crossed the first threshold itself.

44. In AIR 2006 SC 628, State Vs. K.Narasimhachary, the Hon'ble Supreme Court examined a prosecution with respect to demand of illegal gratification and the authority of the accused to issue property valuation certificate, which was the reason for such demand. On the facts of the said case, the Hon'ble Supreme Court had observed that__

> "14. ..... the accused therein was neither the issuing authority nor was the outward clerk. He figured somewhere in between".

45. Even in the instant case, the appellant/accused was not the authority to issue Chitta or Adangal or any other revenue document. He was also not the authority to conduct survey of the land. He can only assist PW.8, the Deputy Tahsildar, who is the authority, who can conduct survey. He can only forward remarks to the Revenue Inspector/PW.4. It is on record that departmental proceedings had been initiated against PW.4 for delaying in re-forwarding the file to the Tahsildar. In the instant case, the appellant/accused was not just "somewhere in between", but, he was actually the last link in the chain, he was actually a nobody. In the said case, the Hon'ble Supreme Court had, on that particular ground, held that the case of the prosecution had to suffer and had acquitted the accused.

46. In 2010(2) SCC (Cri.) 385, State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede, the Hon'ble Supreme Court had held in para No.16 as follows__

> "20. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act.

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For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptant and recovery of the amount of illegal gratification have been satisfied or not, the Court must take into consideration the facts and circumstances brought on the record in their entirety."

The principles are that the demand is a sine qua non for constitution of an offence under the provisions of the act. If that is not established, then the case of the prosecution will necessarily have to fail. In the instant case, that demand had not been established beyond reasonable doubt.

47. In Panalal Damodar Rathi Vs. State of Maharashtra, (1979) 4 SCC 526, a three-judge bench of the Hon'ble Supreme Court held that when there was no corroboration of testimony of the complainant regarding the demand of bribe by the accused, it has to be accepted that the version of the complainant is not corroborated and, therefore, the evidence of the complainant cannot be relied on.

48. In Bhagwan Singh and others Vs. State of Madhya Pradesh, (2002) 4 SCC 85, the Hon'ble Supreme Court held that__

> "the gold thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is farable to the accused should be adopted."

49. In the result, the appeal is allowed and the conviction and the sentence of the appellant is set aside. The appellant is acquitted of all charges levelled against him. The fine amount, if any paid, is directed to be refunded. The bail bonds executed, if any, shall stand terminated.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

grs/kbs

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To

1. The Special Court for cases under
   Prevention of Corruption Act,
   Coimbatore.

2. The Inspector of Police,
   Vigilance and Anti-Corruption
   Special Wing,
   Erode,
   (Crime No.11/AC/2003 ER)

3. The Public Prosecutor,
   High Court, Madras.

Copy to

The Section Officer,
Crl Section,
High Court, Madras.

+1cc to Mr.Ramkumar, Advocate, Sr.46769

Crl.A.No.38 of 2012

MG[co]
NSK 20/10/2021