BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 30.11.2021
CORAM:
THE HON'BLE MR JUSTICE G.ILANGOVAN
Crl.A(MD)No.108 of 2017

The State rep. by
The Public Prosecutor,
High Court, Madras.
(V & A.C Tirunelveli)
(Crime No.01/2002) : Appellant/Complainant

Vs.

Tr.S.Kumaraguru
Formerly Revenue Inspector,
Tirunelveli Firka,
Tirunelveli District. : Respondent/Accused

Prayer: Criminal Appeal filed under Section 378(1)(b) of the Criminal Procedure Code, to set aside the judgment of acquittal of the respondent/accused passed in Special Case No.03 of 2014, dated 20.09.2016 by the Special Court for trial of the cases under Prevention of Corruption Act, Tirunelveli and convict the respondent/accused for the offence under sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

For Appellant : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
For Respondent : Mr.Aayiram K.Selvakumar

J U D G M E N T

This criminal appeal has been preferred by the State seeking to set aside the judgment of acquittal of the respondent/accused passed in Special Case No.03 of 2014, dated 20.09.2016 by the Special Court for trial of the cases under the Prevention of Corruption Act, Tirunelveli and convict the respondent/accused for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2.**The case in brief**:-

PW2-S.Palanisamy is the resident of Kandiaperi, Village, Tirunelveli District and doing house site brokerage business. The accused was working as Revenue Inspector during the relevant period of time. PW2 was owning the house site at Poolankudiruppu in Kunathoor Village and for the purpose of put up a construction, he intended to obtain loan from the Central Co-operative Bank. As per the instructions of the Manager of the said Bank, he has to obtain income certificate from the concerned Revenue Department.

So on 21.01.2002, he went to the Taluk Office, Tirunelveli and submitted a petition before the Deputy Tashildhar. That petition was forwarded to the concerned Revenue Inspector. The concerned Revenue Inspector was not available in the seat at that time. So on the next day, I.e., on 22.01.2002, he again visited the office of the Revenue Inspector at about 10.00 am. At that time, he informed that he would make recommendation, if he pays Rs.1,000/-. Then he informed the Revenue Inspector that he will come on the next day with money. After that, he directly went to the Tirunelveli Vigilance & Anti Corruption Department and at about 8.00 pm, he informed the Inspector of Police, attached to Vigilance & Anti Corruption Department and it was reduced into writing. ExP5 is the complaint. He was directed to come on the next day. On the next day, at about 9.00 am, he again went to the Vigilance & Anti Corruption Department. At that time, two Government Officials were also present. The complaint given by him was read over to him and he was also admitted to be correct. He also handed over Rs.1,000/- to the Inspector and it was dipped into the glass and some powder was mixed in it. The sodium carbonate powder was smeared in the currency note, that was brought to PW2. One Kandasamy was also present in that place. He was also directed to put the currency note in his right pocket and he was also informed to hand over the same to the Revenue Inspector, when the same is demanded by him. A mahazar was prepared and he was also put his signature. The Inspector and two other witnesses have also signed in it. The mahazar was marked as Ex.P6. Then, he went to the Taluk office. At that time, they were informed that the Revenue Inspector was not available and he would come at 5.00 pm. Again they visited the Taluk office on the next day at 5.00 pm. At about 5.45 pm, the Revenue Inspector returned to the office and he made enquiry with regard to the income certificate. At that time, the witness Venkatachalam was also present. The Revenue Inspector asked whether he has brought Rs.1,000/-. It was handed over to the Revenue Inspector. After receiving the money, he put the same on the left pant pocket. At that time, PW2 made a signal as instructed by the Inspector of Police attached to V & AC Department and the police team came to the place and after identifying the Revenue Inspector, PW2 left the place. The money that was given as bribe is MO1. The petition given by PW2 seeking income certificate is Ex.P7.

3.PW3-Venkatachalam is the shadow witness. He also corroborated the evidence of PW2. On the material particulars, PW15, who was working as Inspector of Police in the Vigilance & Anti Corruption Department, registered the case, on the basis of the complaint given by the complainant, in Crime No.1 of 2015 under Section 7 of the Prevention of Corruption Act, 1988. Ex.P24 is the FIR. He requested the two witnesses from the Government Department and the original FIR was submitted to the jurisdictional Magistrate Court. He recorded the statement of PW2 and on 23.01.2002 at about 9.30 am, the Government officials from the Cooperative Bank and the Public Works Department namely Kandasamy and Venkatachalam came to the office. They informed PW2 and as stated by PW2 in the complaint given by him was read over to the above said witnesses. That was admitted by PW2 as correct. He also requested the above said witnesses to read the FIR. PW2 confirmed the correctness of the same. As detailed by PW2 in his evidence, routine procedural formalities have been complied. He instructed to visit the office of the Revenue Inspector, on 23.01.2002 before noon and gave the instruction that when the money is demanded by the Revenue Inspector, he may hand over the same and after handing over the same, he must make a signal. So, as he instructed by him, subsequent happening took place. For the above said proceedings, he prepared a mahazar at about 10.30 am, along with the police party, PW2 and the official witnesses one of the Tirunelveli Municipal Office. He asked PW2 and the witness Venkatachalam to follow the instructions given by him and that was happening themselves near the house and office. The witness Kandasamy was also present along with them. PW2 and Venkachalam went to the office and later, informed that the Revenue Inspector was not available in the office at about 5.00 pm. At about 5.55 pm, as instructed, PW2 came out of the office and made a signal and immediately, he along with the above said Kandasamy, police party entered the office and at that time, the witnesses Venkatachalam also accompanied them. The Revenue Inspector was identified by Venkatachalam. He introduced them to be the Revenue Inspector. He prepared a sodium carbonate mixture and directed the accused Kumaraguru, the Revenue Inspector to dip his finger in the mixture and it turned red and then it was put in a container and made a mark and signed in the label. Again, he prepared another sodium carbonate mixture to dip his left finger and on dipping, it turned red. They put a mixture in a sealed container and a label was also pasted and all the witnesses have been signed. On demand, the accused handed over the currency note by taking from the left side pant packet. After receiving the above said currency note, it was compared with the mahazar. The pant in which in the currency note kept was also handed over. The left side of the pant was dipped into sodium carbonate mixture and it turned red. So that mixture was collected in a separate container and it was labelled and the witnesses also signed. The consent petition was handed over by the accused and that was also recorded. Then, he continued the official formalities. Then, he inspected the occurrence place and for that purpose, he prepared a mahazar, on 24.01.2002 at about 9.30 am and he visited the house of the accused and made a search. Nothing was recovered or seized. The seizure mahazar is Ex.P10. The accused was arrested and remanded to judicial custody.

4.The investigation was undertaken by PW17-Ponnudurai and on 24.01.2002, he took up the investigation and recorded the statement of witnesses and gave a request to the Tashildar, Tirunelveli for supplying the documents. On 29.01.2002, he recorded the statement of witnesses Chokkalingam and Chellappa. On

01.02.2002, he recorded the statement of the above said Venkatachalam and on 05.07.2002, he recorded the statement of Subu, Arul Thambi, Subramanian and on 05.02.2002, he made a request to send the chemical analysis and after completing the formalities of investigation, he filed a final report, on 29.07.2002.

5.PW4 was working as Deputy Tashidhar in Tirunelveli Taluk Office. He received a petition from PW2 on 21.01.2002 and sent the same for further action to the Revenue Inspector. PW5 was working as Manager in the Tamil Nadu Central Cooperative Bank. He issued the loan Form to PW2 on deposit of challan. PW6 was working as Junior Assistant during the relevant point of time. He made enquiry with regard to the petition given by PW2. PW7 was working as Village Administrative Office during the relevant point of time and he made a recommendation to the Deputy Tasildhar to issue the income certificate to PW2. PW8 made an entry for despatching the petition given by PW2.

6.PW1 was working as District Collector, during the relevant point of time. He passed the sanction order for prosecuting the accused. After going through the records, satisfied himself with regard to the allegations. After completing the witnesses on the side of the prosecution, the accused was put on question under 313 Cr.P.C. He denied the averments of the prosecution stated 'as false' and chose to examine four witnesses on his side and one witness was examined on the side of the Court.

7.DW3 is the wife of PW2. She has stated in her evidence that six years prior to her examination, PW2 was married to her and no other marriage was performed by her husband. In Poolankudiruppu in Kunathoor Village, PW2 was not owning house site. A ration card was issued to her family in the address of Kunathoor. The copy of the ration card was marked as Ex.B2. CW1 was working as Village Administrative Officer in Tirunelveli Pettai No.1 area and on the basis of the request made by the Vigilance Department, he made an enquiry with regard to the resident of one Venkatalakshmi, W/o.Srinivasan in Door No.7, Sakkari Vinayakar Kovil Street, Pettai and on enquiry, he came to know that the above said Venkatalakshmi is residing aboard for about five years and in the above mentioning address, now she is not residing. The neighbours also informed her that they are not aware of the address of the above said person.

8.Now after recording process is over and after complying the other formalities and after hearing the prosecution as well as the defence, the trial court came to the conclusion that the charge under Section 7(1) of the Act, which was framed against this petitioner was not proved beyond all reasonable doubt and accordingly, acquitted the accused, by judgment, dated 20.09.2016 made in Special Case No.3 of 2014. Challenging the judgment of the acquittal, the prosecution has filed this appeal.

9.From the narration and the sequence of events and facts above, according to the prosecution, the demand of Rs.1,000/-, acceptance of bribe has been proved by the prosecution beyond reasonable doubt and the trial court, by relying upon materials neglected the case and by doubting the genuineness of the PW2, erroneously acquitted the accused. According to the learned Additional Public Prosecutor, PW2 and PW3 have clearly narrated the sequence of events and nothing has been discredited or has been brought on record during the course of examination.

10.According to the learned Additional Public Prosecutor, recovery of the tainted amount has been proved by the prosecution beyond all reasonable doubt and only defence that has been made by the accused is that the money was received by the accused was for selling of flag day stamps, so when such a plea has been taken, in the absence of any proof regarding the collection of money towards selling of the above said flag day stamps, then automatically presumption under section 20 of the Act will come into operation.

11.Section 7 of Prevention of Corruption Act, 1988 (Before Amendment reads as follows:-

> "**7.** ***Public servant taking gratification other than legal remuneration in respect of an official act.***—*Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than 2[three years] but which may extend to 3[seven years] and shall also be liable to fine.*
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> *Explanations.—(a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may*

be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section

12.Section 7 of Prevention of Corruption Act, 1988 (After Amendment reads as follows:-

7. Offence relating to public servant being bribed.*—Any public servant who,—(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or.*

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or;

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in ancitipation of or in consequence of accepting an undue advantage from any person, shall be punishable, with imprisonment for a term which shall not be less than three years but which may

extend to seven years and shall also be liable to fine.

13.The prosecution relied upon the judgment of this court in the case of ***SP.Chidambaram Vs. The State represented by the Deputy Superintendent of Police, Vigilance and Anti Corruption, Trichy, (Criminal Appeal No.18 of 2018), dated 10.07.2018)***, wherein a similar plea has been raised. The following observation has been made in para 34, which is extracted hereunder:-

"34.The defence of the appellant in this case is that, on the day of trap there is no demand on his part and the money received by him was towards Flag Day donation. Though the submission appears to carry semblance of probability it vanishes immediately in the light of the overwhelming evidence of PW.2, PW.3 and PW.12. If, there was no demand at all by the appellant on the day of trap or on previous occasion i.e., on 17.09.2001 there is no necessity or need for PW.2 to go to the respondent police and lodged the complaint. There is no need for him to take out Rs.2,500/- and give it to the appellant. If there was no demand either on 17.09.2001 or 20.09.2001 then when PW.2 offered Rs.2,500/- to the appellant the appellant should have asked what for he is offering this money. Contrarily without posing any query, the appellant had received the money and kept in his pocket without even correcting it, or in alternate. If the appellant has received this money on a bonafide belief that PW.2 has offered this money towards Flag Day donation then there must be some material evidence to indicate altleast PW.2 had prior knowledge about the Flag day donation. In the absence of such material facts it is very hard to accept the explanation offered by the appellant.

39. Rebuttal of Statutory presumption:-
The explanation by producing the circular for fixing the target for Flag Day donation is no explanation at all. The Principal of preponderance of probability can be pressed into service if the fact propounded by the appellant probablises the explanation offered. Here the fact propounded by the appellant is the target of Rs.7,000/- fixed by the District Collector for collection of flag day. However, his action of receiving Rs.2,500/- from PW.2 who came for receiving application form and keeping the money in his pant pocket improbable the fact attempted to be propounded."

14.According to the learned Additional Public Prosecutor, the defence that has been taken by the accused has not been proved. Mere fact that the flag day stamps were available in the hands of the accused and as has been during the course of evidence will not amount to discharge of the presumption and probabilise the defence. So according to the learned Additional Public Prosecutor, in the absence of any material to show that the accused intention is to sell the fag day stamps to PW2, in the absence of any material to show that such a request was made to PW2 for purchasing the stamps, then the plea that has been taken by the defence that the money was received only for the purpose of selling flag day stamps is totally false in nature and should not be accepted.

15.To prove the case, simultaneously, he relied upon the judgment of the Hon'ble Supreme Court, which is a recent one in the case of ***N.Vijaya Kumar Vs. State of Tamil Nadu (Criminal Appeals No.s.100-101 of 2021, dated 03.02.2021.*** Now it is more or less well settled that mere recovery of the money will not prove the offence under Section 7(1) of the Act. So according to the learned counsel appearing for the accused, when a probable defence has been taken by the accused person, that must be accepted and he would further submit that as contested before the trial court, PW2 is not a genuine person and he himself being creator of forged document and a creator of a fictitious personality for the purpose of obtaining the loan from the Government Scheme, his evidence has been rightly discarded by the trial court. So according to him, when mere *mala fide* nature of PW2 and his character and conduct under cloud, the evidence has been rightly rejected by the trial court. Under the circumstances, the only probable conclusion that has been reached by the trial court without any proper reason, this court should not upset the finding of the trial court in the case of appeal against acquittal. It has been more or less well settled in a catena of the decisions, we need not reproduce all those things once again.

16.Now the simple question arises for consideration is whether in the factual circumstances, the offence under section 7(1) of the Act has been attracted or not. After hearing, the argument on both sides, this court put a specific question to the learned Additional Public Prosecutor. The reason being that PW2 was not owning a house site in the above said village called as 'Poolankudiruppu' in Kunathoor Village and he was not having the second wife in that village. When that being so, how a recommendation has been made by the Village Administrative Officer to issue the income certificate. This facts is also not explained. Because on the face of it, the request that has been made by PW2 for sanctioning loan under the Government Scheme itself is totally a false one. So in all probabilities, not only the Village

Administrative Officer, who recommended, but the accused himself would have been rejected. Demanding and accepting of the money for this particular purpose will come under Section 7 of the Act. Because the basic ingredients under Section 7 of the Act is that the acceptance of the illegal gratification for performing the public duty. So non-granting of income certificate to an ineligible person will come under in-performance of public duty. But it appears that the Investigation Officer has not concentrated on this point or in a particular way and whether he was eligible to claim such benefit under a particular Government Scheme or not. Probably that was not projected during trial. Whatever it may be, the ration card has been created with a bogus personality mentioning as the second wife. It has been totally denied by the wife of PW2 that no second wife is available to PW2. So, the evidence of PW2 has been rejected by the trial court, finding that it is unbelievable and he is not a genuine person. Even though the defence that has been taken, it has not been probablized, the genuineness of the prosecution in the offence of such a nature, play a vital role. The fraudulent person cannot be believed to sustain a conviction of a public servant. The above said evidence of PW2 has been rightly rejected by the trial. When the evidence of PW2 is rejected, naturally the demand also fails. When the demand fails, mere acceptance of money and recovery of the same from the accused are not enough to sustain a conviction as held by the Hon'ble Supreme Court in the judgment as mentioned above.

17.Let we reproduce the judgment of the Hon'ble Supreme Court for better appreciation of this case. The Hon'ble Supreme Court in the case of ***B.Jayaraj Vs. State of Andhra Pradesh (2014)13 SCC 55*** has discussed in detail about the position:-

> "7.*Inso far as the offence under section 7 is concerned, it is a settled position of law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M.Sharma V. State of A.P [(2010)15 SCC 1 : (2013)2 SCC (Cri) 89) and C.M.Girish Babu V. CBI [(2009)3 SCC 779 : (2009)2 SCC (Cri) 1].*
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> *8.In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the*

same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext.P-11) before PW9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW1 and the contents of Ext.P-11 cannot be relied upon to come to the conclusion that the above material furnished poof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Section 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable things on pecuniary advantage cannot be held to be established.

9.Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offence under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent. "

18.So the another point that is brought to be noticed is that as mentioned earlier, PW2 is not only created a forged document, but also fixed the personality showing her as the 2nd wife. So the Investigating Officer ought to have investigated those matters also and ought to have booked PW2 for fabrication of false records etc. But it appears that the Investigating Officer has not taken that course. They did not even verified the genuineness of the petition given by PW2 for claiming Government Scheme. So if at all, PW2 must also be considered as an accomplice. This evidence is a weak piece of evidence, which should not be taken as a graceful truth. That is the reason also, I am unable to accept the evidence of PW2 regarding the demand that has been allegedly made by the 2nd respondent herein.

19.The last point is that whether it was the probable view in the facts and circumstances or not. The Hon'ble Supreme Court is on the point that simply because a view is erroneous in nature, unless it is found to be not a probable view, the High Court cannot interfere. Here, not only the view that has been expressed by the trial court is a probable view, but also considering the character and conduct of PW2, the view that has been taken by the trial court, in the considered view of this court is also a correct one. So the judgment of the trial court requires no interference by this court.

20.In fine, this criminal appeal fails and the same is **dismissed**, confirming the impugned judgment passed by the trial court.

Sd/-

Assistant Registrar (CS I)

// True Copy //

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

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

2.The Special Judge cum Ist Additional Sessions Judge,
Tirunelveli.

3.The Principal District Judge, Tirunelveli.

4.The Chief Judicial Magistrate, Tirunelveli.

5.The Inspector of Police,
Vigilance and Anti-curruption,
Tirunelveli.

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

Copy to

The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai.

Crl.A(MD)No.108 of 2017
30.11.2021

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