BAIL SLIP

CRL.A.NO.831 OF 2012

The Appellant herein/Accused-1 namely M.G.Elumalai, aged 53 years, S/o.Late Gangan be and hereby is directed to be released on bail in (CC.No.21 of 2009) dated 30.11.2012, as per the order of this court made in M.P.No.1 of 2012 in CRL.A.No.831 of 2012.

CRL.A.NO.832 OF 2012

The Appellants herein/Accused-2 & 3 namely 1.R.Dhani, aged 42 years, S/o.Late Ramachandran, 2.G.Kumar, aged 50 years, S/o.G.Gurusamy be and hereby are directed to be released on bail in (CC.No.21 of 2009) dated 30.11.2012, as per the order of this court made in M.P.No.1 of 2012 in CRL.A.No.832 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2022

PRONOUNCED ON : 20.04.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.A.NOS.831 & 832 OF 2012

In Crl.A.No.831 of 2012:-

M.G.Elumalai

... Appellant/A-1

In Crl.A.No.832 of 2012:-

1.R.Dhani

2.G.Kumar

... Appellants/A-2 & 3

Vs.

In Both Crl.A.'s:-

The State Represented by,
Inspector of Police,

ACB / CBI / Chennai.
(RC16/A/2009/CBI/ACB/Chennai)

... Respondent/Complainant

Prayer In Both Crl.A.'s:- Criminal Appeals are filed under Section 374 (2) of Code of Criminal Procedure, to set aside judgment of conviction and sentence imposed against the appellants in C.C.No.21 of 2009 dated 22.10.2012 by the learned XII Additional Special Judge for CBI cases, Chennai.

In Crl.A.No.831 of 2012:-

For Appellant : M/s.K.Shanker

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI cases.

In Crl.A.No.832 of 2012:-

For Appellants : M/s.K.Shanker for
M/s.J.Srinivasan

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI cases.

COMMON JUDGMENT

Appellant M.G.Elumalai in Crl.A.No.831 of 2012 is the first accused and appellants R.Dhani and G.Kumar in Crl.A.No.832 of 2012 are the second and third accused in C.C.No.21 of 2009 on the file of the learned XII Additional Special Judge for CBI cases, Chennai. They filed these appeals challenging the judgment in C.C.No.21 of 2009, convicting and sentencing them for the offences under Section 120-B r/w. 420, 468, 471 I.P.C. and under Section 9 and Section 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988.

2.Prosecution filed a final report against the appellant M.G.Elumalai and co-accused R.Dhani, G.Kumar that appellant M.G.Elumalai is a public servant working as an operator in Chennai Central Electrical Division - III, Central Public Works Department (CPWD), Thirumangalam, Anna Nagar, Chennai and other two accused are private persons. One Kalaimani, the defacto complainant of Chinnalampatty, Dindugul District came into contact with appellant M.G.Elumalai during April, 2008 and requested him to secure a job for him. M.G.Elumalai assured him to get him a job in Central Bureau of Investigation (CBI) at Chennai, saying that he knew the Office Superintendent of CBI, using his personal influence with him, he will arrange for a driver job in CBI and for arranging fitness certificate and other papers he received a sum of Rs.30,000/- in April, 2008. Subsequently, M.G.Elumalar gave his bank account No.SB-30042207731 with State Bank of India, Avadi Branch and asked S.Kalaimani to remit various amounts in his bank account in the guise of payment towards medical examination etc. M.G.Elumalai received an amount of Rs.67,000/- between April 2008 and November 2008 through the deposits made in his savings bank account. On 29.03.2009, M.G.Elumalai contacted S.Kalaimani over phone and demanded a bribe of Rs.2000/- and asked him to pay the amount at Shastri Bhavan on 30.03.2009 and assured him to show the appointment order. S.Kalaimani, did not want to pay this amount, because he was fed up with the false hopes given by M.G.Elumalai and gave a complaint to the Central Bureau of Investigation, Anti-Corruption Branch, Chennai. Accordingly, case in RC MA1 2009 A 0016 was registered against M.G.Elumalai, R.Dhani and G.Kumar. They were caught red handed while demanding and accepting the bribe of Rs.2,000/- from S.Kalaimani on 30.03.2009. During the course of trap proceedings, a fake appointment letter showing S.Kalaimani being appointed as Constable-Driver was also seized. Investigation revealed that M.G.Elumalai had collected similar amounts from other persons in the guise of arranging employment for them and cheated them. Therefore, final report was filed against the accused under Section 120-B r/w. 420, 468, 471 I.P.C. and under Section 9 and Section 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988. On the basis of this final report, the trial Court framed the following charges,

i)under Sections 120-B r/w. 420, 468, 471 I.P.C. and under Section 9 and Section 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988 against accused 1 to 3.

ii)under Section 420 I.P.C. (5 counts) against accused A-1 M.G.Elumalai.

iii)under Section 468 r/w. against A-3 G.Kumar.

iv)under Section 468 r/w 471 I.P.C. against A-1 and A-3,

v)under Section 9 of PC Act 1988 against accused A-1 and A-3.

vi)under Section 13 (2) r/w. 13 (1) (d) of PC Act 1988, against accused A-1.

3.Prosecution examined PW1-PW7 witnesses, produced Ex.P1 to Ex.P36 and M.O.-1 to M.O.-5 in support of its case. Appellants examined DW1 and DW2 and produced Ex.D1 to D10 in support of their case.

4.The case of the prosecution projected in the prosecution witnesses, in brief, is as follows:

PW2 is a resident of Chinnalampaty, Dindigul District. He studied up to 10th standard. One Arumugam of Ambathurai village told him that M.G.Elumalai secured a job to his son in C.R.P.F. and he introduced M.G.Elumalai to him. M.G.Elumalai contacted him through cell phone and told him that he knew higher officials in Central Bureau of Investigation and that he would get him a job. He asked him to bring Rs.5000/- for application charges and meet him with this amount at Chennai. PW2 visited him at Avadi, Chennai on 07.04.2008 and paid Rs.5,500/-. After four days, M.G.Elumalai contacted him through his cell phone and told him that there is vacancy for driver post at C.B.I. and he has to spend Rs.1,25,000/- for this job. Next day, PW2 paid Rs.30,000/- to M.G.Elumalai. After a week, he asked PW2 to deposit Rs.10,000/- in his bank account. Accordingly, P.W2 deposited a sum of Rs.10,000/- in his bank account on 29.04.2008.

5.In May, M.G.Elumalai contacted PW.2 again through cell phone and asked him to deposit Rs.40,000/- in his bank account for obtaining fitness certificate. P.W.2 sent Rs.40,000/- on 27.05.2008 to his bank account. On 28.05.2008, P.W.2 met M.G.Elumalai at Shastri Bhavan, along with three others. They obtained his signature in a paper for medical certificate. M.G.Elumalai informed him that local police would conduct enquiry within next 60 days. Then, he asked P.W.2 to send Rs.5000/- for expediting the police verification. PW.2 sent Rs.5,000/- on 26.06.2008. Then again, he asked him to deposit Rs.2,000/- and that amount was deposited on 07.07.2008. Next month, after the deposit of Rs.2,000/-, M.G.Elumalai informed him that as per 6th Pay Commission report, the driver would get Rs.20,000/- per month, and asked him to arrange Rs.1,50,000/- and then reduced to Rs.1,25,000/-. As per his direction he gave him Rs.20,000/- at Avadi Bank. In December 2008, he informed him that his appointment order is in Delhi and he requires Rs.10,000/- for bringing the appointment order from Delhi. As per his direction, P.W.2 deposited Rs.10,000/- in his bank account on 12.11.2008.

6.Then, in February 2009, he told P.W.2 that he received appointment order and it is pending for the signature of Assistant Commissioner and asked him to bring Rs.2,000/- for giving copy of the appointment. He asked him to come to Shastri Bhavan on 29.03.2009. Since, PW2 did not want to give any more money, he gave Ex.P15 complaint to the C.B.I on 30.03.2009. The Inspector enquired him and then arranged for trap. He introduced witnesses Raghu, and Baskaran. P.W.2 received a call from

M.G.Elumalai at 2.30 p.m and he informed that he would reach Shastri Bhavan in another one hour. Inspector conducted a demonstration of Sodium Carbonate phenolphthalein test in his presence and in the presence of witnesses. He received Rs.2,000/- from P.W.2 and that was smeared with phenolphthalein powder, then the pre trap proceedings was recorded. Receipt of Rs.2000/- (500 X 4) was entered in the Ex.P16 entrustment mahazar.

7.At about 4.10. p.m, M.G.Elumalai asked him to come near electricity pump at Shastri Bhavan. He met M.G.Elumalai near electricity pump at Shastri Bhavan and he asked him about the money demanded by him. P.W.2 gave the money to him. At that time M.G.Elumalai was having tea and he directed P.W.2 to give the money to accused Dhani. As directed, P.W.2 gave the money to accused Dhani. Dhani received the money with his right hand and kept in his left pant pocket. There was an auto standing near the entrance. M.G.Elumalai informed P.W.2 that, clerk G.Kumar is sitting in the auto, he has a file and he would show the file. P.W.2 saw accused G.Kumar sitting in the auto. Accused Kumar had shown a file printed as Government of India. An order appointing S.Kalaimani as driver in C.B.I office was shown to him. The file with appointment order is Ex.P17 and order is Ex.P18.

8.Then P.W.2 signalled to the Inspector with the prearranged signal. Inspector along with police came there and apprehended accused 1 to 3. Then, Inspector took the accused and witnesses to C.B.I. office. He verified the currency note numbers seized from second accused with the currency note numbers in the entrustment magazar Ex.P16. Currency notes is M.O.5. As per the direction of P.W.4 Inspector, Sodium Carbonate solution was prepared and accused R.Dhani was asked to dip his right hand fingers in the solution. When he did, the solution changed into pink colour. The bottle containing solution was appropriately sealed with affixing the label containing the signatures of witnesses. Then, another Sodium Carbonate solution was prepared and accused R.Dhani was directed to dip his left hand fingers. When he did, the solution changed to pink colour. After following the procedure, the bottle was sealed. The bottle containing solutions are M.O.2, M.O.3. Another Sodium Carbonate solution was prepared and after giving a lungi to accused R.Dhani, his pant was subjected to the test. When his left side pant pocket was dipped in the Sodium Carbonate solution, it has changed to pink colour. The bottle containing solution is M.O.4. The pant is M.O.5. P.W.4 prepared Ex.P19 Mahazar. P.W.3 had corroborated the evidence of PW2 with regard to trap proceedings. P.W.4 the trap laying officer has spoken about registering the first information report in this case, arranging for trap witnesses, conducting demonstration of Sodium Carbonate test to P.W.2 and witnesses, trap proceedings, recovery of bribe money, etc.

9.P.W.5 the Scientific Officer, working in Forensic Science Department, Chennai gave evidence regarding the analysis of three sealed glass bottles containing i)180 ml of pale pink turbid liquid labelled "RC 16 (A) 2009 Right Hand Wash of R.Dhani" ii)containing 175 ml of colourless turbid liquid labelled RC 16 (A) 2009 Left Hand Wash of R.Dhani iii)containing 180 ml of pink turbid liquid labelled RC 16 (A) 2009 Pant pocket Wash of R.Dhani. On examination, it was found that the liquid tested positive for the presence of Phenolphthalein and Sodium Carbonate for item number 1, tested positive for the presence of Phenolphthalein and Sodium Carbonate for item number 2 and tested positive for the presence of Phenolphthalein and Sodium Carbonate for item number 3. P.W.5 report is Ex.P28. P.W.6 hand writing expert examined the questioned documents marked as Q-1 & Q-2 and the sample signatures of accused G.Kumar marked as S-1 to S-10 and found that the writer of specimen writings S-1 to S-10 in Ex.P29 attributed to G.Kumar being the person responsible for writing the question signature marked as Q-1 and Q-2 in Ex.P18. His report is Ex.P.30.

10.P.W.7 Investigating Officer examined witnesses, obtained sanction for prosecution from P.W.1 and filed final report.

11.On considering the oral and documentary evidence, the trial Court convicted accused 1 to 3 for the offences under Section 120-B r/w. 420, 468, 471 I.P.C. and under Section 9 and Section 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988, convicted A-1 under Section 420 I.P.C. (5 counts), A-3 under Section 468 I.P.C, A-1 and A-3 under Section 468 r/w 471 I.P.C. A-1 and A-3 under Section 9 of PC Act 1988 and A-1 under Section 13 (2) r/w. 13 (1) (d) of PC Act 1988.

12.A-1 to A-3 were sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.1000/- each for the offence under Sections 120-B r/w. 420, 468, 471 I.P.C. and under Section 9 and Section 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988; A-1 was sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.1000/- for the offence under Section 420 I.P.C. (5 counts), in default to undergo SI for one month; A-3 was sentenced to undergo RI for two years and to pay a fine of Rs.1000/- for the offence under Section 468 I.P.C., in default to undergo SI for one month; A-1 and A-3 were each sentenced to undergo RI for two years and to pay fine of Rs.1000/- each for the offence under Section 468 r/w.471 I.P.C, in default to undergo SI for one month; A-1 and A-3 were each sentenced to undergo RI for two years and to pay fine of Rs.1000/- each for the offence under Section 9 of PC Act, 1988, in default to undergo SI for one month; A1 was sentenced to undergo two years of Rigorous Imprisonment and to pay fine of Rs.1000/- for the offence under Section 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988, in default to undergo SI for one month. The substantive sentences are ordered to run concurrently. Challenging the conviction of sentence as aforesaid, the appellants have filed these appeals.

13.Learned counsel for the appellants submitted that there was absolutely no demand of bribe by appellant M.G.Elumalai from P.W.2. He borrowed money from P.W.2 and the monies were deposited in his account on account of the borrowals made. In order to get the money back, P.W.2 has given this false complaint. D.W.1-D.W.5 had given evidence regarding the borrowals and repayment by M.G.Elumalai. It is seen from the evidence of P.W.2, P.W.3 and P.W.4 that a sum of Rs.1,17,000/- is not a trap money. When that be the case, the claim of the prosecution that Rs.2000/- was paid as bribe for securing a job of driver in C.B.I. office cannot be believed. There is no independent witness with regard to the alleged demand of bribe to corroborate the evidence of P.W.2. P.W.3 did not accompany P.W.2 at the time of alleged demand and acceptance of bribe money. Ex.P18 did not have the signature of Assistant Commissioner. It is created for the purpose of this case. Nobody, with an intention to cheat a person would give his personal bank account number to deposit the bribe amount. There are discrepancies in Ex.P.19 and P.27 with regard to obtaining signature of the witnesses and it is doubtful whether these documents are genuine documents. The presumption under Section 20 cannot be invoked for the offence under Section 9 of the Prevention of Corruption Act. Therefore, the learned counsel for the appellants submitted that appellants were wrongly convicted and sentenced by the trial Court and that has to be set aside and the appellants have to be acquitted.

14.Per contra, learned Special Public Prosecutor for C.B.I cases submitted that P.W.2 had given clear and cogent evidence with regard to first accused's role in demanding money from him on the pretext of securing him the driver job at C.B.I. office, Chennai and also the role of other accused in this case. The alleged loan transaction claimed by the appellants is not true. The monies were deposited by P.W.2 in the account of first accused M.G.Elumalai and he contacted him only for the purpose of securing the job. The evidence has to be read as a whole to understand and appreciate the evidence. Individual sentences cannot be read out of context. The contradiction, if any, in the evidence of P.W3 and P.W.4 with regard to the bribe money would have to be appreciated in the light of evidence of P.W.2 and other evidence available. P.W.2 is a rustic person and a driver. There may be some contradictions, omissions in his evidence, but he sufficiently gave evidence in proof of the allegations against the accused. The charges against the accused/appellant had been proved through scientific evidence of P.W.5 and P.W.6 and the reports given by them. P.W.4 prepared two identical magazars and omitted to obtain the signature of P.W.2 in Ex.P7. This omission would no way affect the prosecution case. Even an attempt is sufficient to constitute an offence under Sections 8 and 9 of the Prevention of Corruption Act, 1988. The charge under Section 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988 will remain even in the absence of charge under Section 9. The defence witnesses are tutored to give evidence in support of accused/appellants finding that the prosecution had proved the case against the appellants. The trail Court rightly convicted and sentenced the appellants. Thence, the learned Special Public Prosecutor for C.B.I. cases prayed for confirming the judgment of the Trial Court and for dismissal of these appeals.

15.Considered the rival submissions and perused the records.

16.Points for consideration:

1.Whether the loan transactions between PW2 and the first accused are used to give false complaint against the first accused by PW2 to claim the loan amount?

2.Whether the prosecution has failed to establish the demand of illegal gratification and its acceptance?

3.Whether the judgment of the trial Court is liable to be setaside and the appellants have to be acquitted on the basis of the grounds raised in this appeal?

17.As narrated above, the charges against the accused/appellants are that the first accused M.G. Elumalai on the promise of getting driver job in Central Bureau of Investigation, Chennai had dishonestly induced PW2 S.Kalaimani to part with a sum of Rs.1,17,000/- in installments on various dates and failed to secure him the job. Annoyed over not getting the job, PW2 gave a complaint against the first accused M.G.Elumalai and trap was laid. On the date of the trap proceedings, on 30.03.2009, A1 to A3 were caught red handed while accepting the bribe amount of Rs.2,000/- from PW2.

18.The main contentions of the learned counsel for the appellants is that the first accused had never received money from PW2 as illegal gratification on the promise of securing him a driver Job at Central Bureau of Investigation office, Chennai. Rather, he borrowed money from several persons including PW2. PW2, in turn, borrowed money from persons known to him and gave it to M.G.Elumalai for interest along with the commission to PW2. In support of the appellants' case, the appellants examined DWs 1 to 5. The appellants' version is that there was a loan transaction between M.G.Elumalai and PW2. It is even admitted by PW2, PW3 and PW4. All of them have stated that Rs.1,17,000/- is not a bribe money. Only a sum of Rs.2,000/- was said to have been received on 30.03.2009 as bribe money. Nobody would demand Rs.2,000/- for securing the job of a driver in Central Bureau of Investigation office and nobody would pay Rs.2,000/- for getting a job of driver at Central Bureau of Investigation Office. It is seen from the evidence of DWs 1 to 4 that the amount borrowed by M.G.Elumalai was repaid. Thus, it probabilises the case of the appellants that M.G.Elumalai had not received Rs.1,17,000/- as bribe.

19.It is seen from Ex.P15 complaint and PW2's evidence that he claimed to have given a total sum of Rs.1,17,000/- to M.G.Elumalai out of Rs. 1,25,000/- claimed by him for securing PW2 the job of driver at Central Bureau of Investigation office at Chennai. More precisely, during the course of his examination, has stated that he paid a sum of Rs.5,500/- on 07.04.2008 and then he paid Rs.30,000/-. As per M.G.Elumalai's instructions, he deposited in his bank account the following amounts. Rs.10,000/- on 29.4.2008, Rs.40,000/- on 27.05.2008, Rs.5,000/- on 26.06.2008 Rs.2,000/- on 07.07.2008. Then he gave Rs.20,000/- in cash , deposited Rs.10,000/- in his bank account on 12.11.2008. Thus, totally he paid a sum of Rs.1,17,000/- to M.G.Elumalai. However, it is seen from his evidence during the course of cross examination that he admitted that a sum of Rs.5,500/- paid on 07.04.2008, Rs.30,000/- paid in April, Rs.10,000/-, Rs.40,000/-, Rs,5,000/-, Rs.2,000/- and Rs.10,000/- deposited in M.G.Elumalai's account on 29.4.2008, 27.05.2008, 26.06.2008, 07.07.2008, 12.11.2008 respectively are not bribe amounts. It is also his admission that he informed the Vigilance police during the enquiry that Rs.1,17,000/- was not paid towards bribe for securing the job to him. PW3 had also stated in his evidence that he came to know that Rs.1,17,000/- paid by PW2 was not bribe amount. The trap laying officer PW4 had also stated in his evidence that the amount of Rs.1,17,000/-, which PW2 gave to A1 or any public servant is not a bribe amount. On the basis of this admissions of PWs 2, 3 and 4, the learned counsel for the appellants submitted that a sum of Rs.1,17,000/- alleged to have been paid by PW2 to

M.G.Elumalai is not a bribe amount and therefore, the allegations that he demanded Rs.1,25,000/- for securing driver's job at Central Bureau of Investigation office at Chennai and towards that demand, he received the money are not true.

20.On the face of the aforesaid admissions of PWs 2, 3 and 4, it appears that a sum of Rs.1,17,000/- said to have been paid by PW2 to M.G.Elumalai is not a bribe amount. Then arises the question why PW2 had to pay this amount, deposit the amounts in the bank account of M.G.Elumalai. It is claimed by the learned counsel for the appellants that M.G.Elumalai secured a sum of Rs.67,000/- as loan, he repaid the amount with interest. In support of his case, he examined DWs 1 to 5. DW1 is one Kamaraj, working as a Senior Clerk in postal department. It is claimed by the appellants M.G.Elumalai secured a loan of Rs.67,000/- from PW2 with speed interest. In 2008, PW2 said to have threatened M.G.Elumalai to pay the Principal amount with interest. Therefore, DW1 along with three other persons, approached Kalaimani at Chinnalampatti and requested six months time for payment. PW2 took them to his guru Ayyapan @ Prabakaran. After discussions, Ayyapan @ Prabakaran agreed to give three months time with a demand that the Principal amount of Rs.67,000/- with speed interest of 63,000/- totally Rs.1,30,000/- should be paid in three months' time. As promised, the money could not be returned within three months. Then he came to know that M.G.Elumalai was arrested on the basis of the complaint by PW2. Then PW2 and Ayyapan @ Prabakaran threatened him to get Rs.1,30,000/- from M.G.Elumalai and pay, else, he would also face consequences like the one M.G.Elumalai is facing. M.G.Elumalai paid Rs.40,000/- and that was paid to PW2 in September 2010. Again a sum of Rs.40,000/- was paid to PW2 on 12.10.2010. On both occasions PW2 had not given any receipt. Again they threatened him to pay the amount, therefore, he deposited a sum of Rs.25,000/- in the account of Satheswari W/o Ayyapan @ Prabakaran on 27.01.2011, and another sum of Rs.25,000/- on the same date. Thus, the entire sum of Rs.1,30,000/- was paid. DW2 and 3 Bank Managers had been examined to prove the deposit of 50,000/- as Rs.25,000/- each on two occasions in the account of Satheswari. DW4 Satheswari had also admitted in her evidence that a sum of Rs.50,000/- was deposited in her account.

21.DW5 Ayappan was examined in respect of this payment of Rs.50,000/-. He though admitted the deposit of Rs.50,000/- in his wife Satheswari's bank account, turned hostile and gave evidence that after the registration of the case, DW1 and another persons came to his house and requested him to help M.G.Elumalai in getting rid of the case. To compromise/winover PW2, DW1 said to have deposited a sum of Rs.50,000/- in his wife's account. He also claimed that out of Rs.50,000/- he repaid Rs.40,000/- to DW1 Kamaraj.

22.A combined reading of the evidence of DWs 1 to 5 shows that though the appellants claim that in a loan transaction, Rs.67,000/- was obtained by M.G.Elumalai from PW2 at a speed interest, the Principal with interest amounting to Rs.1,30,000/- was repaid to PW2, except the evidence of some Managers to show the payment of Rs.50,000/- in the account of Saktheswari, there is no other evidence produced in support of the loan transaction and payment of Rs.50,000/- towards the alleged loan transaction. This amount of Rs.50,000/-, according to DW5 was meant to be paid to PW2 to save M.G.Elumalai from this case. The way in which PW2 gave evidence lends support to this evidence of DW5.

23.The specific case of PW2 is that M.G.Elumalai demanded Rs.1,25,000/- for getting the job of a driver in Central Bureau of Investigation office, Chennai and he paid Rs.1,17,000/- towards that demand. Now he says that Rs.1,17,000/- was not a bribe amount paid towards getting the job. This is certainly a contradictory evidence from the case of the prosecution. However, how far this contradiction affects the case of the prosecution is the matter to be decided on the basis of the other evidence available. Though PW2 claims that Rs.1,17,000/- is not a bribe amount, he denies the suggestion put to him regarding the loan transaction and payment of Rs.1,30,000/-. Rs.80,000/- in cash and Rs.50,000/- in the bank account of Saktheswari. One thing which strikes in the mind of this Court is that why M.G.Elumalai should approach PW2 for a loan of Rs.67,000/-. PW2 is not a relative or friend to him, but a stranger. He secured Rs.67000/- as a loan with speed interest. Apart from speed interest, he is liable to pay commission for PW2 for the loan amount. He is liable to pay the principal, speed interest and the commission amount. He could have raised this loan from some one in Chennai itself for speed interest even without commission. The alleged loan transaction projected by the appellants is not only denied by PW2 but also by DW5, examined on the side of the appellants. PW2 is not an educated person. He is only an auto driver. He could have answered that a sum of Rs.1,17,000/- is not a bribe amount without understanding the question or with an intention to help the accused. It is pathetic that PW3, the trap witness and PW4, the Trap laying Officer had also given evidence without understanding the case of the prosecution. Since trap proceedings involved only a sum of Rs.2,000/- probably they appeared to have thought that Rs.2,000/- is the only bribe amount.

24.In the case before hand, on the date of trap proceedings, Ex.P18 along with Ex.P17 were recovered from the third accused. Ex.P18 is the offer of appointment for the post of Car Driver. This appointment order was said to have been issued by CBI in - March 2009. It is the evidence of PW2 that on the date of trap proceedings, after paying Rs.2,000/- to the second accused on the instructions of the first accused and as instructed by the first accused M.G.Elumalai, he saw one Kumar in an auto parked in front of the trap spot. The accused Kumar was sitting inside the auto and showed him Ex.P17 file and Ex.P18 appointment order. Accused Kumar told him that the Assistant Commissioner had not signed the order and therefore, the order would be sent to him after getting the signature of the Assistant Commissioner.

25.The learned counsel for the appellants submitted that Ex.P18 bears the signature of the Commissioner of CBI and therefore, the claim of PW2 that accused Kumar informed him that the order would be sent after getting the signature of the Assistant Commissioner could not have been correct. Ex.P18 appointment order has the signature of the Commissioner of CBI and not the signature of the Assistant Commissioner. It is claimed by PW2 that the accused Kumar informed him that the Assistant Commissioner has to sign in the appointment order. As already stated, PW2 is only an auto driver and a rustic person. He may not know the difference of who is the Assistant Commissioner and who is the Commissioner and who should sign in the appointment order etc., but the fact remains that Ex.P18 appointment order was recovered from the accused Kumar in the presence of PW2 and PW3 by PW4. PW2 met the accused Kumar inside the auto only on the instruction of M.G.Elumalai. The sequence of evidence confirms that PW2 paid the amount of Rs.1,17,000/- prior to trap proceedings and Rs.2,000/- on the date of the trap i.e., 30.03.2009 as illegal gratification on the promise of securing driver's job at CBI office, Chennai.

26.The evidence of PWs 2, 3 and 4 shows that about 4.10 p.m., on 30.03.2009, as instructed by M.G.Elumalai, he met him at Electric Pumpset in Shastri Bhavan. On seeing him, M.G.Elumalai asked whether he brought the money demanded by him. He took the Phenolphthalein smeared currency notes and give it to M.G.Elumalai. Since M.G.Elumalai was having tea, he instructed him to give the money to the second accused R.Dhani. Accordingly, he gave the money to R.Dhani. As directed by M.G.Elumalai, he saw the appointment order copy shown by accused Kumar in the auto. Then followed the Sodium Carbonate Phenolphthalein test on the right and left hand fingers of R.Dhani and his pant pocket. His right and left hand fingers, pant tested positive for the presence of Sodium Carbonate

Phenolphthalein Test. PW2's evidence is corroborated by the evidence of PWs 3 and 4 with regard to the conduct of Sodium Carbonate Phenolphthalein test, recovery of Rs.2000/- from the accused Dhani, preparation of recovery mahazar etc.,

27.It is seriously contested by the learned counsel for the appellants that there is serious discrepancies in Ex.P19, Ex.P27, Ex.D1 and Ex.D2 documents. It is claimed by him that Ex.P19 Recovery Mahazar has no signature of the accused, whereas Ex.P27 has the signature of the accused for receiving copies of Ex.P27. However, there is no signature of PW2 in Ex.P27. Ex.D1 and Ex.D2 are the copies of Ex.P27. PW4 claims that he prepared two Recovery Mahazar and failed to obtain signature of PW2 in Ex.P27. Thus it is submitted by the learned counsel for the appellants that both the Mahazars had been created to suit the prosecution case.

28.The learned Special Public Prosecutor submitted that there was an omission to obtain signature of PW2 in Ex.P27. Ex.P27 ought to have been sent to the Court, instead Ex.P19 was sent to the Court.

29.Much is said about the preparation of two Recovery Mahazar, absence of signature of the accused in Ex.P19, and the absence of signature of PW2 in Ex.P27. As explained by PW4 and learned Special Public Prosecutor, it appears that signature of PW2 was omitted to be obtained in Ex.P27 Recovery Mahazar. His signature is found in Ex.P19 but signatures of accused are not there. Before the advent of computers, Mahazars would be prepared with the help of carbon. Now multiple copies of documents could be generated from computers. That was what had been done in this case. However, in the process of getting signatures of the witnesses and accused, PW4 omitted to get the signatures from the accused in Ex.P19 and the signature of PW2 in Ex.P27. In view of the fact that both Mahazars are before this Court and there is no serious doubt created to challenge the genuineness of the Mahazar, this Court has no hesitation to conclude that Exs.P19 and 27 Mahazars are genuine Mahazars. This Mahazar has the record of the course of events that had taken place during the trap proceedings and recovery of material objects including Rs.2,000/-.

30.Though the questions relating to bribe money, especially, Rs.1,17,000/- were posted to PW2, 3 and 4, strangely, not even a suggestion was made to PW7 Investigation officer with regard to payment of Rs.1,17,000/-. PW7 Investigation officer is the right person to explain about the payment of Rs.1,17,000/-. The contradictions stands proved only if the investigation officer's knowledge is brought to the contradictions and he was questioned on the contradictions. That was not done in this case. In this case, when there are discrepancies in the preparation of the Recovery Mahazar, not even a suggestion was made to PW7, with regard to the preparation of Recovery Mahazar. The careful analysis of the oral and documentary evidence produced in this case clearly proved that the accused M.G.Elumalai received a sum of Rs.1,17,000/- in cash and through bank deposits from PW2 as illegal gratification on the promise of getting him a driver's job at CBI office in Chennai prior to trap proceedings and received a sum of Rs.2,000/- from PW2 through accused Dhani and showed forged appointment order as genuine for the purpose of cheating on the date of trap proceedings.

31.It is seen from the evidence of PW2 that after paying Rs.2,000/- to the accused R.Dhani, on the instructions of accused M.G.Elumalai, M.G.Elumalai told him that the Clerk Kumar is sitting inside the Auto which is parked in front of the entrance, he has a file and PW2 can see the file. PW2 saw accused Kumar sitting inside the Auto and he had shown a file with a print of Government of India. Accused Kumar also showed him the appointment order in his name for appointing him as driver in CBI office. He also informed him that the order contains instructions. Order would be sent to him after getting signature from the Assistant Commissioner. Since Assistant Commissioner has not signed in the order, copy could not be given. The file and appointment order are Ex.P17 and Ex.P18. After seeing the file and appointment order, PW3 and PW4 witnessed this transaction from a distance. After PW2 signaled to PW4, PW4 along with his team apprehended all the three accused. The evidence of PWs 2 , 3 and 4 clearly proved that the accused G.Kumar had consciously forged Ex.P18 appointment order to show it as genuine to PW2.

32.The evidence of PW6 handwriting expert and Ex.P13 report clearly prove that the questioned signatures Q1and Q2 in Ex.P18 when compared with the admitted signature of accused G.Kumar S1 to S10 tallied and it was found that the accused G.Kumar was the person responsible for writing the questioned signatures Q1 and Q2 in Ex.P18. This unimpeachable evidence clearly proves that the accused G.Kumar in conspiracy with the accused M.G.Elumalai created forged appointment order for using it as genuine document for the purpose of cheating PW2. Therefore, this Court is of the considered view that the charges against the accused M.G.Elumalai for offences under Sections 120B r/w 420, 468, 471 IPC and Section 9 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988; 468 r/w 471 IPC and under Section 9, 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 stand proved. The trial Court has rightly convicted and sentenced the accused M.G.Elumalai for the offences under Sections 120B r/w 420, 468, 471 IPC and Section 9 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 and under Section 468 r/w 471 IPC and under section 9, 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. Since accused M.G.Elumalai is convicted under Sections 9 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988, it is not necessary to convict him under Section 420 (5 counts) IPC and sentence him. Therefore, conviction recorded against him under Section 420 (5 counts) IPC and sentence imposed are set aside. This Court also finds that charges against the accused G.Kumar for the offences under Section 120B r/w 420, 468, 471 IPC and Section 9 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988, Sections 468 r/w 471 IPC and under section 9 of Prevention of Corruption Act, 1988 were clearly proved and he was rightly convicted and sentenced for the aforesaid offences. This Court finds no reason to interfere with the judgment passed against the accused M.G.Elumalai and G.Kumar.

33.So far as the second accused is concerned, evidence shows that he received a sum of Rs.2,000/- from PW2 at the instance of the first accused M.G.Elumalai. There is no evidence produced to show that he had any previous knowledge that the first accused M.G.Elumalai demanded illegal gratification from PW2 and PW2 paid Rs.2,000/- towards illegal gratification demanded by the first accused M.G.Elumalai. There is also no evidence to show the conspiracy with other accused. In the absence of any knowledge that he received the bribe amount, on the instructions of M.G.Elumalai, in the considered view of the Court, the second accused R.Dhani cannot be convicted for the offences under Sections 120B r/w 420, 468, 471 IPC and Section 9 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. Therefore, the conviction recorded against the second accused R.Dhani under Sections 120B r/w 420, 468, 471 IPC and Section 9 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 and imposing of sentence thereon are not correct and in accordance with law and liable to be set aside and accordingly set aside. He is acquitted of the charges against him. The fine amount, if any paid by him, is ordered to be refunded to him.

34.In the result the Crl.A.No.831 of 2012 is dismissed with a modification in the judgment of the trial Court by setting aside the conviction recorded and sentence imposed under Section 420 (5 counts) IPC against the appellant M.G.Elumalai. Crl.A.No.832 of 2012 is allowed in respect of the appellant R.Dhani and dismissed as against the appellant G.Kumar. The trial Court is directed to take steps to secure the accused/appellants M.G.Elumalai and G.Kumar to undergo the remaining sentence. Consequently, connected miscellaneous petitions, if any, is also closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

sli

To

1. The XII Additional Special Judge for CBI cases,
   Chennai.

2. -do- through The Principal Special Judge for CBI Cases,
   Chennai.

3. The State Represented by,
   Inspector of Police,
   ACB / CBI / Chennai.
   (RC16/A/2009/CBI/ACB/Chennai)

4. The Special Public Prosecutor for CBI Cases,
   Chennai.

Copy To

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

+2ccs to M/s.K.Shanker, Advocate, S.R.No.27108

+1cc to Mr.K.Srinivasan, Advocate, S.R.No.26827

CRL.A.Nos.831 & 832 of 2012

BS(CO)
RLP(06/05/2022)