BAIL SLIP

The Appellant/Accused namely N.Ratinam, S/o.Late Narayanan, who was ordered to be released on Bail as per Order dated 18/04/2013 made in M.P.No.1 of 2013 made in Crl.A.No.299 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING ORDER	DATE OF PRONOUNCING ORDER
01.03.2022	19.04.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.A.NO.299 OF 2013

N.Ratinam ... Appellant/Accused

.Vs.

The State represented by
The Inspector of Police,
SPE/CBI/ACB,
Chennai. ... Respondent/Complainant

PRAYER:-

Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to allow this appeal by setting aside the judgment of the trial Court dated 22.03.2013 in C.C.No.22 of 2009 convicting and sentencing the appellant for three years rigorous imprisonment concurrently and a fine of Rs.5,000/- for each count under Section 7 of Prevention of Corruption Act and under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 on the file of the learned Additional Special Judge for CBI Cases, XIV Additional City Civil Court at Chennai.

For Appellant : Mr.P.Anand

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor
For CBI

J U D G M E N T

This appeal is preferred against the judgment of conviction and sentence passed in C.C.No.22 of 2009 by the XIV Additional Court for CBI Cases, City Civil Court, Chennai.

2. The respondent laid a final report against the appellant alleging that the appellant was working as Superintendent of Posts, Nagapattinam. On 09.03.2009, he demanded from complainant Smt.R.Bharathi and her husband Padma Suresh, an illegal gratification of Rs.5,000/- for him as a motive for processing the transfer application of Smt.Bharathi dated 06.09.2008 and 10.10.2008. During the course of the same transaction, on 11.03.2009 at about 18.10 hours, appellant demanded and accepted from Padma Suresh by abusing his official position, a sum of Rs.5,000/- for the purpose of processing and forwarding the transfer application of Smt.Barathi, to the Post master General, Trichy. Thus, the appellant committed the offences under Sections 7, 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.

3. On the basis of this final report, the trial Court framed charges under Sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. The appellant/accused denied the charges and demanded trial.

4. In order to prove the case of the prosecution, P.W.1 to P.W.8 were examined, Ex.P1 to Ex.P24 and MO.1 to MO.4 were produced. On the side of the defence, appellant has not examined any witness but produced Exs.D1 and D2.

4. The case putforth by the respondent through the evidence of prosecution witnesses, in brief, is, as follows:

4(i) P.W.1's wife Bharathi was working as Branch Post Master at Nadapur post office from 2005. P.W.1's wife applied for transfer, to the post office at Budamangalam Branch in September, October and December 2008, for the reason that she found it difficult to travel 40 kms everyday. On 09.03.2009, P.W.1 met the appellant at his office at about 4.00 pm and enquired about the status of the transfer application given by his wife. Appellant demanded bribe of Rs.5,000/- to recommend and forward the transfer application. P.W.1 discussed this demand with his wife and she was not willing to give bribe. After discussion, P.W.1 contacted the Superintendent, Central Bearu of Investigation through phone and complained about the demand. SP informed him that he would send a team under Inspector Kumaresan and asked him to give a complaint to him on 11.03.2009. Accordingly, P.W.1 met P.W.6 the Inspector at

V.P.N., Lodge and gave Ex.P3 complaint. After sometime, Inspector introduced two persons namely Ramachandran and Ganapathi Subramaniam. PW6 demonstrated Sodium Carbonate and Phenolphthalein test and explained its significance. Prepared Entrustment Mahazar. At about 16.15 hours P.W.1 and Police officials along with independent witnesses proceeded to appellant's office. At about 6.30 to 6.45 pm. P.W.1 and P.W.2 Ramachandran met the appellant. Appellant asked about his wife and the person accompanying him. He told him that witness PW2 Ramachandran is his uncle. Appellant told him that the transfer will be effected within three or four months and asked them to wait outside. After few minutes, appellant asked P.W.1 to meet him and then he asked whether he brought the money by gesture. P.W.1 replied that he brought the money and then appellant demanded the money by gesture. P.W.1 took the money from his pocket and handed over to the appellant. Appellant received the money with his right hand and kept it under the diary that was lying on the table. Then, P.W.1 left the office and signaled to PW6 with prearranged signal. PW6 approached him immediately and he recounted to PW6 about what had happened inside the office and then identified the appellant to him. P.W.6, the Inspector introduced himself and other team member to the appellant and ascertained his identity. He directed Balachandran to prepare Sodium Carbonate solution and asked the appellant to dip his right hand fingers in the solution. Similar exercise was done for the left hand fingers. Appellant was asked about the currency notes lying under his diary, appellant could not give satisfactory explanation. Rs.5,000/- found on his table tallied with the currency notes numbers entered in the Entrustment mahazar. Sodium Carbonate phenolphthalein test was done for the diary. Then PW6 prepared Ex.P6 recovery mahazar and Ex.P7 rough sketch. P.W.2 is a trap witness, who corroborated the evidence of P.W.1 with regard to visiting the appellant, along with PW1, on the day of trap, witnessing the transaction between PW1 and appellant, the trap proceedings, preparation of recovery mahazar etc. P.W.3 and P.W.4 have spoken about the transfer applications given by Bharathi. P.W.5 scientific officer from Forensic Department gave evidence with regard to analysis of MO.2, MO.3, MO.4 and detecting phenolphthalein and Sodium Carbonate in each of these three items. She has given Ex.P17 analysis report. P.W.7 had given sanction to prosecute the appellant. P.W.8 took up the investigation in this case and after completing the investigation, filed a final report against the appellant for the offences under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

5. On considering the oral and documentary evidence produced, the learned Special Judge found the appellant guilty for the offences under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act and sentenced the appellant to

undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to pay the fine to undergo rigorous imprisonment for three months under Section 7 of Prevention of Corruption Act, 1988; sentenced the appellant to undergo rigorous imprisonment for three years and pay the fine of Rs.5,000/- in default to pay the fine, to undergo rigorous imprisonment for three months under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act. The substantive sentences are ordered to run concurrently.

6. Challenging the conviction recorded and sentenced imposed, the appellant/accused filed this appeal.

7. Learned counsel for the appellant submitted that there is a contradiction about the date of alleged demand of illegal gratification in the FIR and the evidence of P.W.1 as to whether the demand was on 11.03.2009 or 09.03.2009. Even, according to the prosecution witnesses, there was no express demand of bribe by the appellant on 11.03.2009. The bribe amount was said to have been recovered under a diary kept on the table. When the bribe amount was not recovered from the person of the appellant, there is a great doubt as to whether there was a demand and acceptance of bribe as alleged by the prosecution. There is difference in ink on the signatures found on them. No solution is found in MO2. Therefore, possibility of fabrication of MO.2 to MO.4 cannot be ruled out. When P.W.5 deposed that it is not possible for the ordinary person to identify the change of colour, the evidence given by some of the witnesses that they had seen change in colour is nothing but a lie.

8. He further submitted that P.W.1 and P.W.2 had given contrary evidence with regard to the place where they seated and when they met the appellant. P.W.1 could have placed the money under the diary without the knowledge of the appellant. The alleged demand of bribe by the appellant was not satisfactorily proved by the prosecution. The amount which was recovered was kept by P.W.1 without consent/knowledge of the appellant. Mere recovery of money is not a ground for establishing the charge of demanding and accepting the bribe. Sanctioning authority has not applied her mind before giving sanction for prosecution. The prosecution has failed to establish the guilt against the appellant beyond reasonable doubt. Without considering the aforesaid contradictions, omissions and lapses, the learned trial Judge wrongly convicted and sentenced the appellant. Therefore, he prayed for setting aside the judgment of the trial Court and acquitting the appellant.

9. The learned counsel for the appellant relied on the judgments reported in (2009) 3 SCC 779 C.M.Girish Babu Vs. CBI, Cochin, High Court of Kerala, (2009) 15 SCC 200 State of

Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede, (2011) 6 SCC 450 State of Kerala Vs. C.P.Rao, (2016) 12 SCC 150 V.Sejappa Vs. State by Police Inspector Lokayukta, Chitradurga & (2017) 8 SCC 136 Mukhtiar Singh Vs. State of Punjab for the proposition that the mere recovery of money by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove the payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. The relevant portion of the judgment in (2009) 3 SCC 779 C.M.Girish Babu Vs. CBI, Cochin, High Court of Kerala is extracted hereunder:

> Mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show the accused voluntarily accepted the money knowing it to be bribe.
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> 18. In Suraj Mal Vs. State (Delhi Admn.) reported in [(1979) 4 SCC 725], this court took the view that mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show the accused voluntarily accepted the money knowing it to be bribe.

The relevant portion of the judgment in (2009) 15 SCC 200 State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede, is extracted hereunder:

> 16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance 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. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it

is trite, the standard of burden of proof on the accused vis-`-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

The relevant portion of the judgment in (2011) 6 SCC 450 in State of Kerala & Anr. Vs. C.P.Rao (Supreme Court) is extracted hereunder:

> 7. In the background of these facts, especially the non- examination of CW 1, was found very crucial by the High Court. The High Court has referred to the decision of this Court in Panalal Damodar Rathi Vs. State of Maharashtra 1979(4) SCC 526 wherein a Three-Judge Bench of this 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. In the aforesaid circumstances, the Three-Judge Bench in Pannalal Damodar Rathi case (supra) held that there is grave suspicion about the appellant's complicity and the case has not been proved beyond reasonable doubt.
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> 10. In C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala reported in 2009(3)SCC 779, this Court while dealing with the case under the Prevention of Corruption Act 1988, by referring to its previous decision in the case of Suraj Mal Vs. State (Delhi Admn.) reported in 1979(4) SCC 725 held that mere recovery of tainted money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused. In the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe conviction cannot be sustained.

The relevant portion of the judgment in (2016) 12 SCC 150 V.Sejappa Vs. State by Police Inspector Lokayukta, Chitradurga is extracted hereunder:

> 18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and a presumption would arise under Section 20 of the Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of the Act.

The relevant portion of the judgment in (2017) 8 SCC 136 Mukhtiar Singh Vs. State of Punjab is extracted hereunder:

> Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors proof of demand, ipso facto, would thus not be sufficient to bring home charge under aforesaid two sections.

He relied the judgment reported in (2014) 13 SCC 55 B.Jayaraj Vs. State of Andhra Pradesh for the proposition that the demand of illegal gratification is sine qua non to constitute the offence under Section 7 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 relevant portion of the judgment reported in (2014) 13 SCC 55 B.Jayaraj Vs. State of Andhra Pradesh is extracted hereunder:

> 7. In so far as the offence under Section 7 is concerned, it is a settled position in 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. And C.M. Girish Babu V.CBI.

He relied on the judgment reported in (2017) 15 SCC 560 State through Central Bureau of Investigation Vs. Dr.Anup Kumar Srivastava and (2019) 17 SCC 509Dashrath Singh Chauhan Vs. Central Bureau of Investigation for the proposition that what constitutes illegal gratification is question of law while whether on evidence that crime is committed is a question of fact. Where evidence regarding demand and acceptance of bribe leaves room for doubt and does not displace wholly presumption of innocence, charge cannot be said to have been established. The judgment reported in (2009) 6 SCC 587 A.Subair Vs. State of Kerala is relied upon for the proposition that the non examination of the complainant is a fatal to the case of the prosecution. The relevant portion in (2009) 6 SCC 587 A.Subair Vs. State of Kerala is extracted hereunder:

> 17. Pertinently, Manaf (complainant) has not been tendered in evidence by the prosecution. PW-12 (IO) in his entire deposition has not stated a word as to why Manaf was not examined or why it was not possible to tender him in evidence. In the absence of examination of the complainant, there is no substantive evidence to prove the factum of demand.
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> 18. The High Court held that since the Special Judge made attempts to secure the presence of the complainant and those attempts failed because he was not available in India, there was justification of non-examination of the complainant.
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> 19. We find it difficult to countenance the approach of the High Court. In the absence of semblance of explanation by the investigating officer for the non- examination of the complainant, it was not open to the courts below to find out their own reason for not tendering the complainant in evidence. It has, therefore, to be held that the best evidence to prove the demand was not made available before the Court.

10. Per contra, the learned Special Public Prosecutor appearing for CBI Cases submitted that Ex.P3-complaint was signed by P.W.1 and his wife. P.W.1 has clearly stated in Ex.P3-complaint and during the course of his evidence, the demand made by the appellant, prior to trap proceedings and on the day of trap proceedings, for processing the transfer application of his wife. On the date of trap, appellant cleverly sent P.W.2 out of his room. Even in the absence of evidence of P.W.2, evidence of

P.W.1 stands. Appellant cannot claim that the amount was kept on his table without his knowledge. The sodium carbonate phenolphthalein test, tested positive when tested appellant's right hand, left hand fingers and the diary. It clearly establishes that appellant received the money and kept it under the diary on his table. P.W.1 was taking the cause of his wife Barathi, and therefore, the non examination of Barathi would noway affect the case of the prosecution. The alleged contradictions pointed out by the learned counsel for the appellant are only minor contradictions arose during the course of evidence. Those contradictions would not affect the case of the prosecution. Therefore, the learned Special Public Prosecutor for CBI Cases submitted that the trial Court has rightly found the appellant guilty and imposed suitable punishment for the offences under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act. Thus, he prayed for confirming the judgment of the trial Court and dismissal of this appeal.

11. Considered the rival submissions and perused the records.

12. Points for consideration:

i) Whether the prosecution has not proved the demand of bribe, its acceptance and recovery from the appellant ?

ii) Whether non examination of one of the complainant Bharathi is fatal to the case of the prosecution?

iii) Whether the appellant is entitled for the reversal of the judgment of the trial Court and for acquittal in the light of the grounds aforestated?

13. Answer to Point Nos.i to iii

The appellant was working as Superintendent of Posts, Nagapattinam. The defacto complainant's wife Bharathi was working as Branch Post Master, at Nadapur Branch office. The marriage between the defacto complainant and Bharathi was celebrated on 10.09.2008. Prior to her marriage, Bharathi submitted Ex.P1 application, dated 06.09.2008, to the Principal Chief Post Master General, Chennai, seeking transfer to Budamangalam ED Sub Office. The reason for applying the transfer was that she was to get married on 10.09.2008. She also sent Ex.P2 application, dated 10.10.2008 with the same request for transfer stating that she got married on 10.09.2008, her husband is an Advocate and he is practicing at Mannargudi, she finds it very difficult to travel 40 KM in bus. Therefore, she reiterated her request for transfer to Budamangalam ED Sub Office. PW1 also claimed that there was another application given on 27.12.2008 for transfer.

14. PW3 was working as an office assistant in Nagapattinam Post office in the year 2008-09. It is seen from her evidence that when application for transfer is received, after getting endorsement from Assistant Superintendent of Post, file will be placed before the appellant. Ex.P1 application of Bharathi was received in the office on 18.09.2008 and placed before the appellant. Appellant made a query as to whether Bharathi got married. Ex.P2 application was received in the office on 13.10.2008. Appellant made an endorsement in the application on 14.10.2008 seeking certain details. It is seen from her evidence that unless the appellant recommends the transfer, the transfer application would not be considered favourably. Thus, it is clear from the evidence of PW3 and the aforesaid documents, namely, Ex.P1 and P2 that Bharathi had submitted Ex.P1 and P2 applications for transfer and the transfer application would not be considered favourably unless the appellant recommends for transfer. This facts are not seriously disputed by the appellant.

15. Finding that the transfer applications dated 06.09.2008 and 10.10.2008 had not been considered favourably, PW1 claims that his wife submitted another application, dated 27.12.2008, to the Post Master General at Trichy. He met the appellant on 09.03.2009 at about 4 p.m. and enquired about his wife's transfer. It is the evidence of PW1 that when he enquired about his wife's transfer, appellant demanded a bribe of Rs.5,000/- to recommend and forward the transfer application. Since 10.03.2009 happened to be a Government holiday, appellant asked PW1 to bring money on 11.03.2009. PW1 and his wife did not want to give bribe, therefore, they gave complaint. On 11.03.2009, PW1 stated that, appellant reiterated his demand by gesture and he gave him the bribe money. Appellant received the bribe amount with his right hand and kept it under a diary kept on the table. After coming out of the office, PW1 signaled to PW6 and then followed the recovery of bribe money, conduct of the Sodium Carbonate – Phenolphthalein test, arrest of the accused etc.,

16. As already submitted by the learned counsel for the appellant, even as per the evidence of PW1 that there was no oral demand of bribe amount on 11.03.2009. It is also true that when the alleged demand of bribe was made by the appellant and received on 11.03.2009, PW3 was not present at the trap spot. Thus, we are left with the evidence of PW1 with regard to the demand made on 09.03.2009 and 11.03.2009. It is also not in dispute that the bribe money was not recovered from the person of the appellant, but was recovered under a diary kept on the

table, as pointed out by the appellant. Whether the evidence of PW1 in the absence of corroboration with regard to the demand of bribe on 09.03.2009 and 11.03.2009 can be believed and whether the prosecution is able to prove the demand of bribe and its acceptance by the appellant beyond any reasonable doubt are the points that require the consideration of this Court, especially, in the light of the contradictions, lapses pointed out by the learned counsel for the appellant.

17. With regard to the alleged contradictions as to the date of demand, PW1 has clearly stated that first demand was made on 09.03.2009 followed by the demand on 11.03.2009. Therefore, this Court finds that there is no contradiction in the evidence of PW1 with regard to the date of alleged demand of bribe. Ex.P3 complaint was signed by the defacto complainant and his wife Bharathi. Bharathi has not been examined as witness. The learned counsel for the appellant drew the attention of this Court, the difference in signature of Bharathi in transfer applications and in the entrustment mahazar. It is true that there is a subtle difference in the signature of Bharathi in her transfer applications and in the entrustment mahazar. It appears that she is not used to sign in identical manner and there are difference in her signature. The defacto complainant is her husband. He is also one of the signatory to Ex.P3 complaint. When he was examined, he vouched the signature of his wife Bharathi. This Court finds that we cannot read much into the difference in signature of Bharathi in her transfer applications. In the judgment relied by the learned counsel for the appellant with regard to the non examination of the defacto complainant and its effect, in that case, the defacto complainant was not examined at all. The facts in this case is different. Here, one of the defacto complainants was examined as PW1. Therefore, the judgment relied by the learned counsel for the appellant reported in (2009) 6 SCC 587 A.Subair Vs. State of Kerala, in the considered view of this Court is not applicable to the facts and circumstances of this case.

18. There are certain other submissions have been made by the learned counsel for the appellant with regard to the conduct of the Sodium Carbonate - Phenolphthalein test and its creditability. He drew the attention of this Court from the evidence of PW2 and PW6 that there is change of colour in the ink in the signature on the paper affixed on the bottles used for collection of of samples. It is also claimed that there is no liquid available in MO2 bottle. It is true that it seen from the evidence of PW2 and PW6 that the signature in label is different in ink in MO4 than in MO2 and MO3. It was also elicited that there is no solution in MO2. PW2 and PW3 were examined after the scientific analysis was done by PW5 scientific officer. It is seen from her evidence that samples

were received in the forensic department through S.Aravamudan, Police Constable, CBI, Chennai under unbroken seals. She also claimed that when the bottles were received there was no leakage and bottles were received in good condition. After analysis, unexpended portion of the samples were returned to the Court. Due to the lapse of time, from the time of completion of the scientific analysis and the date of examination of witnesses, there might have been leakage in the bottle leading to emptying it. What we are concerned is that when the bottles with solutions were sent to chemical analysis, bottles were received with seal intact. Therefore, we cannot doubt the veracity and genuineness of the scientific analysis conducted and the report given by PW5. With regard to the change of colour for phenolphthalein test, it is seen that the bottle A contained 170 ml of very pale pink turbid liquid, bottle B contained 170 ml of turbid liquid with pink tint, bottle C contained 175 ml of very pale pink turbid liquid. It can be gathered from this that Pink colour was mildly visible. PW1 and PW2 had given evidence with regard to change of colour when the appellant's right and left hand fingers and diary were subjected for Sodium Carbonate Phenolphthalein test. Their evidence confirms to the finding of PW5 given in Ex.P17 report.

19. The sequence of events on the date of trap i.e., on 11.03.2009 shows that PW1, his wife and PW2 visited the appellant's office between 6 to 6.45 p.m. Appellant asked about PW2 and PW1 responded saying that PW2 is his wife's uncle. Appellant asked about his wife's delivery time, then he asked them to wait outside. It is the evidence of PW1 that after some time, appellant asked him to meet him. When he met him, appellant asked PW1 by gesture, whether he brought the money. PW1 responded positively and then the appellant demanded the bribe money by gesture. PW1 took the money from his pocket and handed it over to the appellant. Appellant received the money with his right hand and kept it under a diary kept on the table. It is evident that after visiting the appellant's office, all the three sat in front of him. Appellant asked, showing PW2 as to who he is with PW1 and PW1 informed him that PW2 is his wife's uncle. Then there was conversation regarding transfer of Bharathi followed by general conversation. Appellant assured that transfer would be given and sent them. PW1 came with him till the entry point and went inside. He came out only after some time and then, he informed the Inspector with a pre-arranged signal. From the evidence of PW1 and PW2, it is made clear that PW2 had not seen the actual demand made by the appellant on 11.03.2009 and the acceptance of the bribe amount. However, PW1 is very specific and categorical that the appellant demanded the bribe amount on 09.03.2009 and 11.03.2009 and accepted the amount on 11.03.2009.

20. Apart from the minor niggles with regard to the change of ink in the signature on the labels affixed on the bottles and the absence of solution in MO2 after the analysis, the trap proceedings on 11.03.2009, immediately after the acceptance of bribe money was successful. PW2 and PW6 had clearly spoken about the trap proceedings. PW6, on being informed by PW1 about giving the bribe amount to the appellant, entered into the office of the appellant, introduced himself and his team members to the appellant, instructed the officials to prepare the Sodium Carbonate Phenolphthalein solution and asked the appellant to dip his right hand and then his left hand fingers in the solution. The diary was also subjected to the Sodium Carbonate Phenolphthalein test. Ex.P17 report and the evidence of PW5 shows that MO2, MO3 and MO4 tested positive for the presence of Sodium Carbonate Phenolphthalein test. The appellant has not given any acceptable explanation as to why his right and left hand fingers tested positive for Sodium Carbonate Phenolphthalein test.

21. It is submitted by the learned counsel for the appellant that PW1 had stealthily and without the knowledge of the appellant had placed currency notes smeared with Phenolphthalein powder under the diary kept on his table. He was not aware of the money kept in the table. Therefore, the possibility of false implication cannot be ruled out. The fact that PW1, PW2 and PW6 are giving contradictory evidence with regard to the place where PW1, PW2 and Bharathi were sitting when they met the appellant shows that the false implication is true. Merely because there is contradiction in the evidence of these witnesses with regard to the place where PW1, PW2 and Bharathi were sitting when they met the appellant, we cannot jump to the conclusion that the appellant is falsely implicated in this case. There is no reason for PW2 to give false evidence. There is also no reason for PW1 to falsely implicate the appellant. He gave complaint against the appellant only after the appellant demanded bribe of Rs.5,000/- for processing the transfer application of his wife. It is proved from the evidence of PW3 that the appellant is one who has the powers to process the application and recommend the transfer of Bharathi. It is also seen from the evidence of PW3 that appellant has made an endorsement as to whether Bharathi was married and another endorsement about her performance. The transfer applications were kept pending for unusually long time.

22. PW1 has clearly given evidence that appellant received the bribe amount in his right hand and kept it under the diary. Not only his right hand fingers and diary tested positive, but the appellant's left hand fingers had also tested positive for the Sodium Carbonate Phenolphthalein test. Though there is no evidence by PW1 as to whether he had seen the appellant using his left hand for touching the Phenolphthalein smeared bribe

amount, the fact that his left hand fingers also tested positive for the Sodium Carbonate Phenolphthalein test proves that the appellant had also used his left hand for handling the bribe amount. Though there is no corroborative evidence for the demand of bribe amount to the evidence of PW1, PW1 is very cogent and convincing in his evidence with regard to the demand of bribe and its acceptance by the appellant. PW3 and PW6 had clearly given evidence with regard to recovery of bribe amount from the appellant. PW5's evidence and Ex.P17 analysis report further strengthens the case of the prosecution that the appellant received the bribe amount with his hands and kept under the diary kept on his table. Thus, this Court finds that the trial Court properly appreciated the evidence and rightly convicted and sentenced the appellant.

23. For the reasons aforestated, this Court finds that non examination of Bharathi is not a fatal for the case of the prosecution, that the prosecution has proved the charges of demand of illegal gratification and its acceptance against the appellant beyond any reasonable doubt and the appellant is not entitled for the reversal of the judgment of the trial Court. In this view of the matter, this Court finds that the judgments relied by the learned counsel for the appellant are not applicable to the facts and circumstances of this case. Thus the points are answered against the appellant.

24. In fine, this Court confirms the judgment of the learned XIV Additional Judge for CBI Cases, City Civil Court, Chennai, in C.C.No.22 of 2009, in convicting the appellant and sentencing him under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Accordingly, the Criminal Appeal is dismissed. Consequently, connected miscellaneous petitions, if any, is also closed. The trial Court is directed to take steps to secure the appellant to undergo the remaining part of sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sli/AT

To

1. The XIV Additional Judge for CBI Cases,
XIV Additional Court for CBI cases,
City Civil Court, Chennai.

2. The Inspector of Police,
SPE/CBI/ACB,
Chennai.

3. The Public Prosecutor for CBI,
High Court, Madras.

+1cc to Mr.L.Rajendran, Advocate, S.R.No.26895

CRL.A.NO.299 OF 2013

AD(CO)
PBS/05/05/2022