BAIL SLIP

The Appellant/Accused Namely, S.Jayavelu was directed to be released on bail by the order of this court dated 05.11.2013 and made in MP.No.1/2013 in Crl.A.No.721 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 09.03.2022	Orders pronounced on 29.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.A.No.721 of 2013

S.Jayavelu ... Appellant/Accused

Vs.

State represented by
Inspector of police
SPE/CBI/ACB, Chennai.
Crime No.RC.20(A)/2010 ... Respondent/Complainant

This Criminal Appeal is filed under Section 374(2) of Cr.P.C praying to call for the records in C.C.No.25 of 2010 from the file of the learned XIV Additional Special Judge for CBI Cases, Chennai, and set aside the conviction and sentence passed in C.C.No.25 of 2010 dated 10.10.2013 by the learned XIV Additional Special Judge for CBI Cases, Chennai.

For Appellant : Mr.A.V.Somasundaram
for
M/s.Lakshmipriya Associates

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

JUDGMENT

Challenging the judgment in C.C.No.25 of 2010 on the file of XIV Additional Special Judge for CBI Cases, City Civil Court, Chennai, convicting and sentencing the appellant for the offences under Sections 7, 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988, this appeal is filed.

2. The charge against the appellant is that while he was working as Section Supervisor in Group-28 Section, Employees Provident Fund Organisation, Regional Office, Royapettah, Chennai-14, he demanded illegal gratification of Rs.5,000/- on 07.05.2010 as a motive or reward for processing Employees Provident Fund final settlement claims in respect of 11 (eleven) ex-employees of M/s. S.S.Annalmalai Enterprises Group and reiterated the demand on 10.05.2010 and accepted a sum of Rs.5,000/- as bribe between 16.55 hours to 17.15 hours on 10.05.2010 at Employees Provident Fund Organisation, Regional Office, Royapettah, Chennai-14. Thus, being a public servant abused his position as public servant and obtained pecuniary advantage to the extent of Rs.5,000/- from G.Kanagasabai by corrupt and illegal means. Therefore, he is liable to be prosecuted for the offences under Sections 7, 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988. Appellant denied the charges framed against him under Sections 7, 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988 and demanded trial.

3. Prosecution examined PW.1 to PW.7 witnesses, produced Exs.P1 to P34 documents and MO.1 to MO.5 in support of its case. Appellant/accused produced Ex.D1.

4. The case of the prosecution, from the evidence of prosecution witnesses, in brief is as follows:-

(i) PW.2 was working as Accountant in M/s.S.S.Annalmalai Enterprises Group for the past 12 years. He was also taking care of depositing Provident Fund contribution from employees and employer in the State Bank of India. 12 (Twelve) employees have left the service of M/s.S.S.Annalmalai Enterprises Group. Only one of these 12 persons was paid Provident Fund and others have not been paid. Those persons approached them for claiming the Provident Fund and worried about the delay in settling the Provident Fund. They also asked them whether Provident Fund was remitted by the company and also expressed their intention to approach the Consumer Court. The files relating to payment of Provident Fund to (1) Mr.Sugumar, (2) Mr.R.Chandrabose, (3) Mr.Thangappan, (4) Mrs.L.Bhavani, (5) Mr.V.Govindasamy, (6) Mr.A.Natarajan, (7) Mrs.M.Vijayalakshmi, (8) Mr.V.Saravanan, (9) Mr.T.Kannappan, (10) Mr.J.Seenivasan and (11) Mr.S.Murali are Exs.P3 to P13 respectively.

(ii) On 01.10.2009, an application was submitted for claiming Provident Fund amount for three persons in the Provident Fund Office. Similar applications were submitted for claiming Provident Fund for other persons also. There was no response from the Provident Fund office for seven or eight months. As directed by partner Mr.Thirunavukkarasu, PW.2 visited Employees Provident Fund office, Royapettah, on 07.05.2010 and met appellant Jayavelu and enquired him about the Provident Fund claim settlements. He told him that if a sum of Rs.5,000/- is paid as bribe, he would make arrangement for settling the claims. PW.2 informed the partner Mr.Thirunavukkarasu. Mr.Thirunavukkarasu told him that they have not committed any offence or mistake and why should bribe be paid and decided to give a complaint to CBI.

(iii) On 10.05.2010, PW.2 and Mr.Thirunavukkarasu met the Superintendent of Police, CBI and informed about the demand made by the appellant. He asked them to give a complaint. PW.2 wrote the complaint and that is Ex.P14. After some time, PW.4-Inspector Mr.Raja enquired them. Since Partner Thirunavukkarasu has other work, he gave ten 500 Rupee currency notes to PW.2 and left the office after informing PW.4-Inspector Mr.Raja. At about 3.00 p.m, PW.4 introduced one Mr.Raja Singh Asir, Railway employee and Mr.Kumar Iyer, CPWD employee. He also introduced the police personnels. He read over the complaint given by PW.2 to them and received ten 500 Rupee notes from PW.2 and demonstrated sodium carbonate phenolphthalein test sequence and explained its significance. He instructed PW.2 to give the bribe money to appellant only if he demands and signal him with combing his hair after the appellant accepted the bribe amount. Ex.P15-Entrustment Mahazar was prepared.

(iv) At about 4.45 p.m, PW.2 and PW.3 reached the office of appellant. When they reached his office, appellant was not there and they were asked to wait by a colleague sitting near the seat of the appellant. After 10 minutes, appellant came to his seat. He enquired about PW.3 and PW.2 told him that PW.3 is his co-employee. Then PW.2 asked him about the Provident Fund settlement. Appellant responded by saying whether PW.2 brought the amount demanded by him and if he pays the amount, his work will be finished smoothly. PW.2 took phenolphthalein smeared ten 500 Rupee notes from his left side shirt pocket and gave them to appellant. Appellant received the currency notes by his right hand and counted the currency notes using both the hands and kept it in right side pant pocket. Then, he signed in the files and told PW.2 that he would send the files and asked him not to inform any other co-employee about the payment of bribe. PW.2 and PW.3 came out of the room and PW.2 signalled to PW.4 with pre-arranged signal by combing his hair.

(v) Immediately, PW.4 approached them and asked PW.2 to identify the appellant. PW.2 identified the appellant. On seeing PW.4 and others, appellant was shivering and he was not able to speak. PW.4 directed the police constable to prepare sodium carbonate solution and asked the appellant to dip his right hand finger. On dipping, the sodium carbonate solution changed to pink colour. The solution was sealed and it is MO.1.

Another sodium carbonate solution was prepared and appellant was directed to dip his left hand fingers. When dipped, the solution turned into light pink colour. It was sealed and it is MO.2. PW.4 informed appellant that he was under arrest and directed him to hand over the bribe money. Appellant took the money from his pocket and produced to Kumar. Kumar verified the numbers in the currency notes with the Entrustment Mahazar and they tallied. The currency notes are MO.3 series. Appellant was also given a change dress and his right side pant pocket was dipped in another sodium carbonate solution. It had also changed to light pink colour. The solution was sealed and it is MO.4. Appellant's pant is MO.5. PW.4 seized Ex.P3 to Ex.P13 files, prepared Ex.P16-rough sketch and Ex.P18-seizer mahazar.

(vi) PW.3, trap witness corroborated the evidence of PW.2 and PW.7 with regard to pre-trap proceedings, the demand made by the appellant on 10.05.2010, his acceptance and the trap proceedings. PW.6 was a Chief Manager, Federal Bank, Vadapalani. Locker proceedings was conducted in respect of locker held by appellant and his wife Kirubamani bearing locker No.52 at about 3.00p.m on 15.06.2010.

(vii) PW.5-Assistant Director, Tamil Nadu Forensic Science Department (Chemistry Division Department) examined items 1 to 3 sealed glass bottles with right hand fingers washes of Sri.S.Jayavelu and left hand fingers washes of Sri.S.Jayavelu and right hand side pant pocket washes of Sri.S.Jayavelu. The sealed glass bottles contained 160 ml turbid liquid with pink colour, 160 ml turbid liquid with pink colour and 180 ml turbid liquid with pink colour respectively. On examination, it was found that items 1 to 3 tested positive for the presence of phenolphthalein and sodium carbonate.

(viii) PW.7 took over the investigation of this case from Mr.S.Subramaniam, Inspector of Police, examined the witnesses and recorded their statements. After completing the investigation, filed final report.

5. On considering the oral and documentary evidence produced in this case, learned trial Judge found the appellant guilty under Sections 7, 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988, convicted and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.2,500/-, in default to pay the fine amount, to undergo two months rigorous imprisonment under Section 7 of Prevention of Corruption Act, 1988 and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,500/-, in default to pay the fine amount, to undergo two months rigorous imprisonment, under Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988. The substantive sentences are ordered to run

concurrently. Against this judgment, appellant filed this appeal.

6. Learned counsel for the appellant submitted that the judgment of the trial Court is infested with many flaws, which materially affected the determination of this case. Those flaws show that the trial Judge has not applied his mind at all. He has given findings contrary to evidence. He recorded in his judgment what was not stated by the witnesses and incorrect details.

6(1) Contradictions in the trial Court judgment:

(i) para-3 of the judgment starts with 'Following the complaint given by the complainant Thiru.S.Jayavelu against the accused........'. However, in this case, Jayavelu is the accused.

(ii) In page-6, it was mentioned as PW.2 Kanagasabai was working as 'Assistant', instead of stating as 'Accountant'.

(iii) In page-8, in second para, it was mentioned as 'Chief Accountant was not in his seat then', instead of "Section Supervisor was not in his seat then".

(iv) In page-9 of the judgment, it was mentioned as "Jayavelu was provided with another pant to change". But, it was 'dhoti', not pant.

(v) In page-9 of the judgment, it was mentioned as 'shirt wash' instead of 'pant wash'.

(vi) Competency of PW.1, sanctioning authority was not disputed by the appellant. But in the judgment in para-10, it was discussed as if the defence counsel questioned the competency of PW.1. It was challenged only about the non-application of mind of the sanctioning authority and not the competency of the sanctioning authority.

(vii) In page-11, para-2 of the judgment, it is recorded that PW.3 further deposed he was asked to signal by wiping his hair with comb. But PW.3 never deposed like that in his evidence.

(viii) In para-22 of page 34, it is recorded that PW.2 in his evidence in chief examination has deposed that pre-arranged signal was given by PW.3. But during cross examination, he stated that he had given the pre-arranged signal. PW.3 deposed that it was he, who gave pre-arranged signal. Both PW.2 and PW.3 never deposed anywhere in their evidence as discussed by the trial Judge.

(ix) As per Ex.P15 - Entrustment Mahazar, it was PW.2, who was asked to give signal.

(x) Further, discussing in para-22, "As per the documents and the evidence of PW.4, either PW.2 or PW.3 was instructed to give the pre-arranged signal taking into account of the situation prevailing there" is contrary to Ex.P15.

(xi) In para-23 of the judgment, the trial Judge discussed PW.4 had clearly deposed about the receipt of pre-arranged signal from PW.3. But PW.4 never deposed as such.

(xii) In para-25 of the judgment, it is recorded that 'When his fingers were subjected to sodium carbonate test during the trap proceedings, the hand wash solution and the shirt in which the tainted currency notes were kept were turned into pink colour'. Again in para-28, it was discussed that 'The demand and acceptance of the bribe amount by the accused from the complainant, which fact has been subsequently corroborated by sodium carbonate phenolphthalein test conducted with the shirt and hands of the accused'. The material object in this case is 'right side pant pocket' and not 'shirt'.

(xiii) In para-26, it is recorded that 'From the evidence of PW.2 to PW.4 and PW.7, the prosecution has amply established that the accused had demanded the bribe amount of Rs.5,000/- from the complainant for rectifying the fault of complainant's telephone'.

(xiv) In para-28, it is recorded that 'It is, therefore, evident that the accused had demanded and accepted the bribe amount of Rs.5,000/- as illegal gratification as a motive or reward in order to rectify the fault of the complainant's telephone, for abusing or misusing his official position'.

(xv) In para-40, it is recorded that 'PW.3-shadow witness has stated in his evidence that when he entered in the chamber, accused was asked by the Inspector as to whether he had received any amount from the complainant, he denied and then removed the currency notes from his pant pocket and threw the same'. Though PW.3 never deposed as above, it was discussed by the trial Judge, as if it was deposed by PW.3.

(xvi) In page-64, at para-88, it is recorded that 'one another objection, which has been raised by the learned counsel is that the occurrence place was fourth floor of EPF Office, whereas the Entrustment Mahazar was prepared in the first floor and so, it creates suspicion over the prosecution case. With regard to this objection, PW.4-Investigating Officer during the cross examination has given sufficient explanation in such a way, he stated that in order to avoid any commotion or unhealthy atmosphere in EPF Office, where more than 60 employees employed, the Mahazar was drafted in the first floor. PW.4-Trap Laying Officer never deposed as such. In fact PW.4 would not offer any explanation during the cross examination. The above explanation was given only by the trial Judge and not by PW.4.

All the above story narrated by learned trial Judge are nothing but invented one and no such evidence was given by the said witnesses. It clearly reflects the non-application of mind of the trial Judge and it is evident that the trial Judge misconstrued the evidence of this case and confused himself with the facts in some other case. It cannot be taken as typographical error.

6(2) Contradictions in the evidence

(i) PW.2 contradicts in his evidence with regard to number of claims pending as to whether it is 12 (twelve) or 11 (eleven). In the complaint, it is claimed, files of 12 employees, whereas in his evidence, he stated 11 employees. Exhibits marked only for 11 employees.

(ii) PW.2 deposed that Jayavelu received the currency notes by his right hand, whereas PW.3 deposed that Jayavelu received the currency notes by his both hands.

(iii) PW.4 stated that Recovery Mahazar was prepared at Chambers of Assistant Commissioner, Administration and Vigilance. Recovery Mahazar also refers about Mr.Annavu Chamber. But Mr.Annavu stated in his 161 Statement that Recovery Mahazar was prepared at Mr.Shantharam's Chamber. PW.2 deposed in his cross examination that I don't know where Recovery Mahazar was prepared?. PW.3 stated that Recovery Mahazar was prepared at Mr.Jayavelu's office. But in his cross examination, he deposed that it was prepared at Mr.Annavu's Chamber.

(iv) PW.14-Complaint contains the words 'Inspector K.Raja lay a trap as Trap Laying Officer (TLO) and Inspector Mr.Subramanian will investigate the case. It does not appear in Ex.P21-copy of the complaint. These contradictions clearly established that the prosecution has not proved its case beyond all reasonable doubt.

(v) In para-64 of the judgment, it is observed that 'as per Recovery Mahazar, the accused's explanation is "Jayavelu pleaded for leniency, stating that this was the first time he demanded and accepted the bribe and he will not repeat this mistake in the future". Therefore, by invoking Section 20 of Prevention of Corruption Act, this Court shall presume that accused demanded and accepted illegal gratification of Rs.5,000/-.' But the prosecution alleged that the above statements was given by the accused, when TLO Raja asked accused and the same was mentioned in Ex.P18. This confession to police officer is not admissible and it cannot be proved as per Section 25 of Indian Evidence Act, but it was relied by the prosecution to prove the demand and acceptance.

(vi) Adverse inference has to be drawn against the prosecution under Section 114(g) of Indian Evidence Act for the non-examination of witnesses Mr.Annavu, Mr.Shantharam, Mr.Kannan, Mr.Thirunavukkarasu, Mr.C.Eswara Moorthy and Mr.S.Subramanian.

(vii) Copy of the order granting permission for investigating the case by Sub-Inspector of Police under Section 17 of Prevention of Corruption Act, 1988 was not furnished to the accused. It is violation of Section 207 Cr.P.C and Article 21 of Constitution of India. Ex.P28-permission is not valid in the eye of law and it prejudices the accused. None of the independent witnesses in Group-28 Section of Employees Provident

Fund Organisation, Royapettah, Chennai was examined. Statement of accused recorded by the Investigating Officer is not produced before the Court. Investigation done by the Sub-Inspector of Police is unfortunate and resulted in miscarriage of justice.

(viii) The delay in lodging the complaint is not explained. Due to computer migration programme effected in the office of Employees Provident Fund, Royapettah, Chennai, the claim files of PW.1 to PW.12 is pending with LW.8 Kannan till 06.05.2010. Therefore, the motive alleged is shattered into pieces. No preliminary enquiry was done by TLO before laying the trap. There is no evidence to show that at what time, the accused demanded the bribe amount on 07.05.2010. Other independent witnesses were not examined. The trial Judge has not at all understood the case, but misconstrued the case with some other case and came to a hasty, defective and unsustainable judgment, which caused failure of justice to the appellant. Therefore, learned counsel for the appellant prayed for setting aside the judgment of the trial Court and for acquitting the appellant.

7. Per contra, learned Additional Public Prosecutor submitted that admissibly there are some error in the judgment of the trial Court. However, this Court, as a Court of first appeal, has to independently assess the evidence and on reappreciation of evidence should take a decision. The evidence produced by the prosecution, especially the evidence of PW.2 clearly proved the demand and illegal gratification by the appellant for clearing the pending Employees Provident Fund claims on 07.05.2010, followed by reiteration of demand on 10.05.2010. PW.3 corroborated the evidence of PW.2 with regard to the demand made on 10.05.2010 and both have given evidence in unison with regard to acceptance of bribe of Rs.5,000/- by the appellant and its recovery. PW.4 - Trap laying officer (TLO) is very forthright in his evidence with regard to pre-trap proceedings and trap proceedings. The trap proceedings was successful. The combined reading of evidence of PW.2 to PW.4 clearly proved the demand of bribe by the appellant, its acceptance and recovery. With regard to investigation by Sub-Inspector of police, proper permission was obtained from the Court through Ex.P28 order. This order was not challenged by the appellant. When it is not challenged, it is not open to the appellant to challenge the investigation conducted by the Sub-Inspector. There is no evidence produced as to what was the prejudice caused to the appellant by the investigation conducted by Sub-Inspector. Appellant has not offered any proper explanation with regard to recovery of bribe amount from him. The explanation offered through cross examination of the witnesses that PW.2 thrust the money in the pant pocket of the appellant cannot be believed for the reason that if the money was forcibly thrust into the pant pocket of the appellant, there

is no possibility for his fingers in both the hands testing positive, when tested for phenolphthalein. Analysis of the evidence produced by the prosecution shows that the charges against the appellant have been clearly proved. Though there were some misappreciation of evidence by the trial Court, by referring to the facts of some other case, the learned trial Judge has ultimately found the appellant guilty for the offences under Section 7, 13(2) r/w.13(1)(d) of Prevention of Corruption Act. Thus, the finding requires no interference and he prayed for confirming the judgment of the trial Court and for dismissal of the appeal.

8. Considered the rival submissions and perused the records.

9. Points for consideration are:-

(1) Whether the prosecution has proved the charges against the accused beyond reasonable doubt ?

(2) Whether the judgment of the trial Court is liable to be set aside for the reasons aforesaid on behalf of the appellant and by establishing the discrepancies in the judgment of the trial Court?

(3) Whether this appeal can be allowed ?

10. As set out above, appellant was charged for demanding illegal gratification of Rs.5,000/- as a motive or reward for processing Employees Provident Fund final settlement claims in respect of 11 ex-employees of M/s.S.S.Annalmalai Enterprises Group from PW.2-Kanagasabai on 07.05.2010, repeated the demand on 10.05.2010 and was caught redhanded after accepting the bribe amount. In the course of investigation, PW.4 seized Exs.P3 to P13 files relating to 11 former employees of M/s.S.S.Annalmalai Enterprises Group under Ex.P18 Recovery Mahazar, in the table of appellant. All these files relate to Provident Fund claims of 11 ex-employees.

11. It is a specific evidence of PW.2 that 12% from the salary of an employee and 12% from the employer would be paid through bank to the Provident Fund Account. 12 employees stopped working for M/s.S.S.Annalmalai Enterprises Group. Though Provident Fund claim applications were submitted, only one employee was settled with his Provident Fund. The claim of 11 employees were not settled and they repeatedly enquired with PW.2's office about the settlement of their claims. The employees are:- (1) Mr.Sugumar, (2) Mr.R.Chandrabose, (3) Mr.Thangappan, (4) Mrs.L.Bhavani, (5) Mr.V.Govindasamy, (6) Mr.A.Natarajan, (7) Mrs.M.Vijayalakshmi, (8) Mr.V.Saravanan, (9) Mr.T.Kannappan, (10) Mr.J.Seenivasan and (11) Mr.S.Murali. The files relating to their Provident Fund claims are Exs.P3 to P13

respectively.

12. Ex.P31-Manual of Accounting Procedure deals with the functions of Section Supervisor. Some of the important functions are:

(1) to receive all claims through computerised inward register and maintain the computerised sheets daily indicating the position of claims settled, rejected, returned and pending etc.,

(2) to make sure by equitable distribution of work among the staff that all the applications for advances/transfers and claims for final settlement are dealt with methodically, speedily and disposed of within 30 days time limit prescribed. Wherever more number of applications are received, proper distribution among the staff should be resorted to ensure the timely settlement of accounts.

(3) To ensure proper scrutiny, processing and finalisation of all claims strictly in accordance with the date of receipt, including transfer applications, within the prescribed time limit and in the process giving priority to the claims received from the beneficiary of the deceased members.

13. It is the evidence of PW.2 that the claim forms were submitted for three persons on 01.10.2009 and then for other persons separately till November 2009. There was no response from the appellant's office for seven or eight months necessitating PW.2 to visit Employees Provident Fund office at Royapettah on 07.05.2010, in connection with pending Employees Provident Fund claim settlement bills. Appellant said to have demanded Rs.5,000/- for taking action for clearing the files. It was the first demand of illegal gratification, according to the prosecution, by the appellant for performing his duty as a public servant. PW.2 informed this demand to his Partner Mr.Thirunavukkarasu. He was not willing to give the bribe amount and therefore, he decided to give a complaint and the complaint was given on 10.05.2010.

14. As narrated above, after giving the complaint, PW.4 organised the trap proceedings, he explained the importance and sequence of sodium carbonate phenolphthalein test to PW.2 and the witnesses, prepared Entrustment Mahazar on 10.05.2010. PW.2 and PW.3 visited appellant office. Appellant reiterated his demand of bribe amount. PW.2 handed over the bribe amount, then came out and signalled to PW.4 with pre-arranged signal. On seeing the signal from PW.2, PW.4 along with his team entered the scene, conducted sodium carbonate phenolphthalein test for the right and left hand fingers of appellant and his right side pant pocket. The test showed positive result for the presence of phenolphthalein in the right and left hand fingers and right side pant pocket of the appellant.

15. PW.2 gave evidence with regard to the demand of bribe amount made on 07.05.2010 and 10.05.2010, acceptance of bribe amount by the appellant on 10.05.2010 and its recovery by PW.4. PW.3 corroborated the evidence of PW.2 with regard to the demand of bribe amount made by the appellant on 10.05.2010, its acceptance by the appellant and recovery by PW.4. PW.4 gave evidence with regard to organising the trap proceedings, recovery of bribe amount and other aspects. These witnesses have fairly given consistent evidence in conformity with the evidence of each other, of course with the aforesaid contradictions pointed out by the learned counsel for the appellant. Whether the discrepancies and flaws pointed out by the learned counsel for the appellant in the judgment of the trial Court and other contradictions, irregularities have dented the case of the prosecution entitling the appellant for an order of acquittal is to be considered now.

16. Reading of the judgment of the trial Court shows that the flaws pointed out by the learned counsel for the appellant are very much there in the judgment. Some of the flaws are out of context and the facts of the case. For instance, the case of the prosecution is that the appellant demanded bribe amount of Rs.5,000/- for processing Employees Provident Fund claims. But it was observed in the judgment of trial Court in paragraphs-26 and 28 that the appellant demanded and accepted the bribe amount of Rs.5,000/- from the complainant for rectifying the fault of complainant's telephone by abusing or misusing his official position. It is nobody's case that the appellant demanded and accepted Rs.5,000/- for rectifying the fault of complainant's telephone, especially, it is not the case of the prosecution. This observation made by the learned trial Judge shows that he had not applied his mind while writing the judgment. As rightly pointed out by the learned counsel for the appellant that the trial Judge misconstrued the evidence and confused himself with the evidence in some other case.

17. Apart from this flaw, there is a flaw that in paragraphs-25 and 28 of the judgment, it was observed that, 'The shirt in which the tainted currency notes were kept had turned into pink colour. Hands and shirt of the accused were subjected to sodium carbonate phenolphthalein test.' The reality is that the prosecution case and the prosecution witnesses evidence is that the appellant after receiving the bribe amount kept the bribe money in his right side pant pocket. Along with his right and left hand fingers, his right side pant pocket was also subjected to sodium carbonate phenolphthalein test. However, the learned trial Judge wrongly observed that the shirt, in which tainted currency notes were kept, was subjected to sodium carbonate phenolphthalein test and it turned into pink colour.

There are also other flaws in the judgment of the trial Court as narrated above. Despite all these mistakes and flaws, the trial Court ultimately concluded that the charges against the appellant were proved and thus, convicted and sentenced the appellant. This Court, as a first Court of Appeal, must independently appreciate the evidence, apply its own mind and record its own finding on the basis of its own assessment of evidence. It was so observed in In 2004 (11) SCC 291 - in Sakatar Singh and others ..vs.. State of Haryana. All the facts are open to the High Court and the High Court is expected to go deep in to the evidence more particularly, the records as also the proved documents. It was, thus, observed in the judgment reported in (2010) 1 SCC 108 (Arunkumar Sharma ..vs.. State of Bihar). Therefore, irrespective of the aforesaid flaws and mistakes found in the judgment of the trial Court, this Court is ordained to independently appreciate the evidence and record its own conclusion.

18. One of the important submissions made by the learned counsel for the appellant is that the trap proceedings was conducted by PW.4, a police officer in the rank of Inspector. However, investigation was conducted by PW.7, who was holding the post of Sub-Inspector at the time of inspection. The investigation conducted by the Sub-Inspector of police is illegal and therefore, appellant could not have been convicted, on the basis of the investigation conducted by an incompetent police officer.

19. This submission of the learned counsel for the appellant was retorted by the learned Special Public Prosecutor by submitting that appropriate order was obtained from the Special Court getting permission to conduct investigation by PW.7. He drew the attention of this Court to Ex.P28- petition filed by the respondent before the learned Principal Special Judge for CBI Cases (VIII Additional City Civil Court) Chennai, under Section 17 of the Prevention of Corruption Act, 1988, with the prayer seeking permission to conduct investigation by PW.7. On the basis of this petition, he submitted that, an order was passed in this petition on 19.05.2010 permitting PW.7 to continue the investigation. Thus, the learned Special Public Prosecutor, CBI Cases, submitted that PW.7 had conducted investigation in this case only after obtaining necessary permission from the Court. The order passed in Crl.M.P. No.3112 of 2010 permitting PW.7 to continue the investigation was not challenged by the appellant. Appellant has also not brought out any prejudice caused to him on account of the investigation conducted by PW.7. Therefore, he submitted that it is not open to the appellant to raise the issue of competency of PW.7 to conduct investigation in this case, now.

20. This submission was replied by the learned counsel for the appellant stating that the permission was granted by Principal Special Judge for CBI Cases (VIII Additional City Civil Court, Chennai). On the other hand, Section 17 of Prevention of Corruption Act, 1988 requires that only a Metropolitan Magistrate or a Magistrate of I Class is empowered to order investigation by a police officer below the rank of

(a) Inspector of Police, in case of Delhi Police Establishment;

(b) Assistant Commissioner of Police in Metropolitan Magistrate areas of Bombay, Calcutta, Madras, Ahmedabad;

(c) elsewhere by a Deputy Superintendent of Police or a police officer with equal rank.

Though it is claimed that the Inspector of Police is authorised by the Government to investigate the case, that is not the case with the Sub-Inspector of Police. Sub-Inspector of Police is not authorised by the Government to investigate the cases under Prevention of Corruption Act. Therefore, he submitted that the order permitting investigation by PW.7 by the Special Judge is not in accordance with law.

21. Reading of Section 17 makes it clear that in the Metropolitan Magistrate area of Chennai, a police officer below the rank of Assistant Commissioner of Police can investigate the case, only if he obtains an order from the Metropolitan Magistrate. In the case before hand, the order was obtained from the learned Special Judge, who is superior in the cadre of judicial service, to the Metropolitan Magistrate. A Metropolitan Magistrate is a senior Civil Judge/Assistant Sessions Judge. The Special Judge, who granted permission to PW.7 to investigate this case, is District and Sessions Judge. As per section 5 of the Prevention of Corruption Act, 1988, a Special Judge can take cognizance of the offence, without the accused being committed by him for trial, he is empowered to tender pardon to an accused. Special Court is deemed to be a Court of Sessions. For the purpose of Sections 326 and 475 of Cr.P.C, a Special Judge shall be deemed to be a Magistrate.

22. Perusal of Ex.P28-petition shows that this case was originally investigated by Mr.S.Subramanian, Inspector of police, CBI. Since he was having other important cases under investigation, it may not be possible for him to exclusively attend the investigation in this case and other investigating officials are also pre-occupied with investigating of the cases entrusted to them, it was proposed to entrust the investigation to PW.7, after getting permission from the Court. Learned Special Judge also, considering the genuineness in the request, allowed the petition and accorded permission to PW.7 to continue the investigation. It is a well known fact that CBI is

understaffed, but at the same time, the cases registered/referred to CBI are on the increase. Taking into consideration the situation of understaffing and that the Investigating Officer Mr.S.Subramanian was involved in investigation of other cases and other Investigating Officers were also busy with other cases, PW.7 was permitted to continue the investigation. Therefore, this Court finds no irregularity or illegality in permitting PW.7 to investigate this case by the learned Special Judge. Thus, the objection raised by the learned counsel for the appellant in this regard cannot be entertained.

23. It is brought to the notice by the learned counsel for the appellant that there is discrepancies/contradictions in the evidence of prosecution witnesses as to the place where Ex.P18-Recovery Mahazar was prepared. It is observed in the judgment in para-88 that "PW.4 during the cross examination has given sufficient explanation in such a way he stated that in order to avoid any commotion or unhealthy atmosphere in EPF office, where more than 60 employees employed, the Mahazar was drafted in the first floor." However, it is claimed that PW.4 had never deposed like this and in fact, he did not offer any explanation. Perusal of evidence of PW.4 shows that he has not given any explanation as observed in para-88 of the judgment. PW.4's evidence shows that post trap proceedings was prepared in the chamber of Assistant Commissioner, Vigilance of CBI office. In the mean time, he took the appellant Jayavelu to Assistant Commissioner's (Accounts) chamber and asked him to sit and take rest. He explained the demand of bribe and acceptance of Rs.5,000/- to the Assistant Commissioner (Accounts). It is also his evidence that he obtained signatures of two independent witnesses, two Assistant Commissioners of Employees Provident Fund office in Ex.P18, served copy to the appellant and obtained his signature in Ex.P18. Recovery Mahazar reads that it was prepared at the office of Assistant Commissioner of EPF, Vigilance Department, Royapettah, Chennai. Therefore, the evidence recorded in the deposition of PW.4 that post trap proceedings was prepared at the chambers of Assistant Commissioner, Vigilance of CBI Office, may be a typing mistake for the reason that in the next sentence PW.4 stated that 'in the mean time, he took appellant to Assistant Commissioner (Accounts) Chamber and asked him to sit and take rest. The witnesses and two Assistant Commissioners of EPF office had signed, at the place where Recovery Mahazar was prepared. It is specifically recorded in Ex.P18 - Recovery Mahazar that for preparing further proceedings, appellant was taken to the office room of Sri.Shantharam, Assistant Commissioner (Accounts), who is the controlling officer of appellant and subsequently, Sri.Annavu, Assistant Commissioner (Administration and Vigilance) had also came to the room of Sri.Shantharam and then,

PW.4 explained to both Assistant Commissioners. It is also the evidence of PW.4 that Recovery Mahazar was not prepared at the trap spot.

24. A suggestion was made to PW.4 that Ex.P18 was prepared in Assistant Commissioner office in the first floor in order to brain wash the two officers instead of preparing it in the fourth floor, meaning thereby, the Recovery Mahazar was prepared in the first floor. PW.3 had also stated in his evidence that after the trap proceedings, appellant was taken to his superior officer - Sri.Shantharam's room, where another officer Sri.Annavu joined them. PW.3 had stated in his cross examination that Ex.P18 was prepared in the ground floor. The fact remains that Ex.P18 was prepared in the office room of Assistant Commissioner of EPF, Vigilance Department. Whether his room situates in ground floor or first floor does not matter. Though the learned trial Judge has offered an explanation for preparing Ex.P18 Mahazar in first floor, which was not stated by PW.4, the evidence available clearly indicate that Ex.P18-Recovery Mahazar was prepared in the office room of Vigilance Department of EPF and Sri.Shantharam and another superior officer Sri.Annavu have attested the preparation of Ex.P18-Recovery Mahazar. Copy was also served to the appellant. The contradictions projected by the learned counsel for the appellant are only immaterial contradictions and it would no way affect the case of the prosecution.

25. It was pointed out by the learned counsel for the appellant that the names of complainant, other police officers and witnesses had been typed in the Recovery Mahazar, but names of Shantharam and Annavu were not typed, but handwritten. It creates suspicion with regard to the preparation of Recovery Mahazar. It may be a omission that the names of Sri.Shantharam and Sri.Annavu had not been typed in the Recovery Mahazar. We cannot read much into the omission to type their names in the Recovery Mahazar.

26. The contradictions like referring appellant Jayavelu as complainant in para-3 of the judgment, referring PW.2 as an 'Assistant' instead of 'Accountant', referring appellant as 'Chief Accountant' instead of 'Section Supervisor', referring appellant was provided with another 'pant' to change instead of stating 'dhoti', mentioning 'shirt wash' instead of 'pant wash', clearly show that the learned trial Judge has not properly dealt the evidence. Similarly, observation in the judgment that PW.3 deposed that he signalled by wiping his hair with comb; PW.2 deposed that the pre-arranged signal was given by PW.3; as per documents and evidence of PW.4, either PW.2 or PW.3 was instructed to give pre-arranged signal taking into account of the situation prevailing there; PW.4 had clearly deposed about

the receipt of pre-arranged signal from PW.3 - all these observations certainly are contrary to the evidence given by the witnesses. Case of the prosecution and consistent evidence of PW.2 to PW.4 is that PW.4 instructed PW.2 to signal him by combing his hair, if the appellant demands and accepts the bribe amount. Accordingly, PW.2 had alone indicated PW.4 with pre-arranged signal by combing his hair. Thus, the aforesaid observation made by the learned trial Judge in his judgment is totally contrary to the evidence and it exhibits the lack of proper understanding the evidence and extraction of the evidence, while discussing in the judgment.

27. Learned counsel for the appellant drew the attention of the Court with regard to the contradictions in the evidence of PW.2 and PW.3 about the use of hands while receiving the bribe amount. It is submitted that PW.2 stated in his evidence that the appellant received the currency notes by his right hand, whereas PW.3 deposed that the appellant received the currency notes by both his hands. Reading of evidence of PW.2 and PW.3 shows that PW.2 stated that appellant received the bribe amount with his right hand and counted with his both hands and then kept in his right side pant pocket. PW.3 stated that appellant received the amount, counted with both the hands and kept it in his right side pant pocket. He has not specifically stated as to whether appellant used right hand or left hand to receive the bribe amount. He just stated that appellant received the amount and counted it with both the hands. Therefore, this Court finds that there is no material contradiction in the evidence of PW.2 and PW.3 with regard to the hand used for the acceptance of bribe amount.

28. It is the submission of the learned counsel for the appellant that non-examination of witnesses, viz., Mr.Annavu, Assistant Commissioner (Administration and Vigilance) - Employees Provident Fund Office, Mr.Shantharam, Assistant Commissioner (Accounts) - Employees Provident Fund Office, Mr.Kannan - co-employee of appellant, Mr.Thirunavukkarasu - Partner of M/s.S.S.Annalmalai Enterprises Group, Mr.Eswara Moorthy, Superintendent of Police, M.Subramanian, Inspector of police are fatal to the case of prosecution for the reason that the appellant was denied the opportunity of having their evidence and cross-examining them to prove his innocence. It is also submitted that none of the independent witnesses available at Employees Provident Fund Office, Royapettah, was examined.

29. It is the prerogative of the prosecution, to record the statement of witnesses, cite them as witnesses in support of the case of the prosecution. Equally, it is the prerogative of the Public Prosecutor to examine the witnesses, he finds appropriate

to prove the charges against the accused. Mr.Thirunavukkarasu, partner of M/s.S.S.Annalmalai Enterprises Group has only endorsed the complaint given by PW.2. PW.2 had clearly given evidence as to what had happened. Therefore, non-examination of Mr.Thirunavukkarasu would no way affect the case of the prosecution. Mr.Eswara Moorthy, Superintendent of Police registered the First Information Report in this case. However, he was not examined. Learned counsel also submitted that many of the columns are left blank in the First Information Report. First Information Report is in English, while the complaint is in Tamil and that the appellant lost the opportunity of cross-examining the Superintendent of Police Mr.Eswara Moorthy with regard to registration of First Information Report. Perusal of Ex.P23-First Information Report shows that necessary columns had been filled up. The substance of the complaint of PW.2 was recorded in English by Superintendent of Police Sri.Eswara Moorthy. Though his examination is desirable, appellant has not brought out the prejudice caused to him on account of non-examination of Sri.Eswara Moorthy, Superintendent of Police. First Information Report was registered on 10.05.2010 and sent to the Special Court on the same date. Therefore, we cannot entertain doubt with regard to the genuineness of First Information Report. The submission that the signature of the complainant is not obtained in the First Information Report is only a lapse on the part of the respondent, when PW.2/defacto complainant had not denied giving the complaint, the omission to obtain his signature in the First Information Report would not affect the case of the prosecution. Thus, the non-examination of Sri.Eswara Moorthy, Superintendent of Police, in the considered view of this Court, would not affect the case of the prosecution. So, is the case with Mr.S.Subramanian, Inspector of police. It appears that he has not conducted any serious investigation in this case. Though his name was suggested in the complaint as Investigating Officer, immediately after the registration of the case on 10.05.2010, respondent filed Ex.P28-Petition before the Special Court and obtained order on 19.05.2010. In the said circumstances, non-examination of Mr.S.Subramanian, Inspector of police, would no way dent the case of the prosecution. When PW.2 and PW.3 had given evidence with regard to preparation of Recovery Mahazar, non-examination of Mr.Annavu and Mr.Shantharam would not affect the case of the prosecution.

30. It is the submission of the learned counsel for the appellant and it is clarified through the evidence of P.Ws.1,2 and 7 that since Computerised Migration Programme was in the process in the office of Employees Provident Fund Organisation at Royapettah Office, the files relating to M/s.S.S.Annalmalai Enterprises Group was with LW.8-Kannan till 06.05.2010 and this contributed to the delay in processing the files. Therefore,

appellant was not responsible for the delay in processing the Provident Fund claims, which implies that appellant could not have demanded the bribe amount.

31. It is true that PW.1 had stated in his evidence that due to implementation of new software for Computer Data Migration in the office of Employees Provident Fund Organisation, Royapettah, the processing of final statement of EPF dues of members of all the establishments were stagnated. Due to change in the software, the processing of claims pertaining to the above 11 employees of M/s.S.S.Annalmalai Enterprises Group were also pending with PRO Section of Employees Provident Fund Organisation and then with Sri.R.Kannan, Sr.SSA / Dealing Clerk in Accounts Group-28. Admitting the evidence of PW.1 as true that due to implementation of new software for Computer Data Migration Programme, there was a delay in processing the Employees Provident Fund claims, what we are concerned here is the demand of illegal gratification from PW.2 by appellant for clearing the Employees Provident Fund claims.

32. It is the case of the prosecution that the appellant demanded Rs.5,000/- to take action and clear the Employees Provident Fund claims of ex-employees of M/s.S.SAnnalmalai Enterprises Group. The first demand on 07.05.2010 was proved through the evidence of PW.2. Second demand on 10.05.2010 and its acceptance were proved by the evidence of PW.2 and PW.3. Recovery of the bribe amount of Rs.5,000/- from the appellant was also proved from the evidence of PW.2, PW.3 and PW.4. Sodium carbonate phenolphthalein test for the right and left hand fingers of the appellant and his right side pant pocket tested positive for the presence of sodium carbonate phenolphthalein test, as seen from the evidence of PW.5 and Ex.P26. Explanation was offered on the side of the appellant during the course of cross examination of PW.2 that PW.2 had forcibly gave Rs.5,000/- to the appellant. When appellant refused to receive the amount, he thrust the cash to appellant's right side pant pocket. This explanation, in the considered view of this Court, cannot be accepted. If one person is forcibly trying to give bribe to a person, the immediate reaction would be to take some repulsive action against the person, who tried to offer bribe forcibly. That was not there in this case. Independent re-appreciation of oral and documentary evidence available in this case clearly established that the prosecution had succeeded in proving the demand of bribe amount of Rs.5,000/- on 07.05.2010 and 10.05.2010 and acceptance of bribe amount by the appellant on 10.05.2010 and its recovery from him, beyond any reasonable doubt.

33. It is submitted that PW.1, the sanctioning authority, though stated good things about the appellant, had given sanction to prosecute the appellant. It shows his non-application of mind. Appellant had never challenged the competency of PW.1 to give sanction, but only challenged his non-application of mind before giving sanction. However, it was wrongly observed in the judgment of the trial Court that the appellant challenged the competency of PW.1 to give sanction. It is true that such an observation was made by the learned trial Judge. Appellant may have been awarded prizes for performing better. That does not exonerate him of the present charge, where evidence had proved the charges against him. We may not know when a good person turn to a bad person and a bad person turn to a good person. Therefore, merely because the appellant was commended by his superior officials for his performance, we cannot come to the conclusion that he has not committed the offence charged against him, especially when the charges are proved.

34. Though this Court does not approve all the flaws that had crept into in the judgment of the trial Court by non-application of mind, pointed out by the learned counsel for the appellant and it clearly exposes that learned trial Judge had not properly read the evidence, misconstrued the evidence, confused himself with the evidence in other case while extracting the evidence, but finally concluded that the charges against the appellant are proved. This Court, as indicated above, on its own independent appreciation of oral and documentary evidence found that the charges against the appellant under Sections 7, 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988 are proved beyond reasonable doubt and this Court finds no reasons to interfere with the judgment of the trial Court, sans the flaws. In this view of the matter, the judgment of the trial Court/ XIV Additional Special Judge for CBI Cases, Chennai, in C.C.No.25 of 2010 dated 10.10.2013 in convicting and sentencing the appellant is confirmed and this Criminal Appeal is dismissed. The trial Court is directed to take steps to secure the appellant to undergo the remaining period of sentence.

mra

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The XIV Additional Special Judge for CBI Cases,
Chennai.

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

3.The Public Prosecutor,
Madras High Court,
Chennai.

+1 cc to M/s.Lakshmipriya Associates, Advocate Sr.NO. 30101

Crl.A.No.721 of 2013

mg(CO)
A.SK(25/05/2022)