BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.07.2022

PRONOUNCED ON : 13.10.2022

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No.350 of 2016

State represented by
The Public Prosecutor,
High Court, Madras-104,
(Crime No.03/2006
of V& A.C., Tirunelveli). .. Appellant/Complainant

Vs.

S.Jayasingh Rajan .. Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 Cr.P.C, against the judgment dated 12.03.2016, in Special Case No.27/2014, on the file of the Court of the Special Court for trial of Prevention of Corruption Act Cases, Tirunelveli.

For Appellant : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

For Respondent : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

JUDGMENT

The Criminal Appeal is directed against the judgment of the acquittal passed in Special Case No.27 of 2014, dated 12.03.2016, on the file of the Special Court for trial of cases under Prevention of Corruption Act, Tirunelveli.

2. The case of the prosecution as evident from the charge sheet filed by the Inspector of Police, Vigilance and Anticorruption, Tirunelveli Detachment is that the respondent/accused has been working as a full time Panchayat Assistant from 29.12.1988 in the Kalloorani Panchayat Keezhapavoor Panchayat Union, Tirunelveli District as a public servant, that on 02.06.2006 at about 11.30 hours, at Kalloorani Panchayat office, the accused demanded Rs.4,000/- from the complainant – Devaraj Muthiah, a contractor, as gratification other than legal remuneration as a motive or reward for the issuance of a payment cheque for the contract work done by the said Devaraj Muthiah, that the accused reduced the amount to Rs.1,500/- when Devaraj Muthiah told him that he was not able to pay such high mount, that in the course of the same transaction on 05.06.2006 at about 17.25hours at his office in Kalloorani, the accused in pursuance of the aforesaid demand, accepted a sum of Rs.1500/- as gratification other than the legal remuneration as a motive or reward from the said Devaraj Muthiah for issuing a payment cheque towards contract work done for the panchayat within the panchayat area and thereby committed an offence punishable under Section 7

of the Prevention of the Corruption Act, that in the course of the same transaction, the accused being a public servant by corrupt or illegal means and by abusing his official position as such public servant obtained for himself, the said amount of Rs.1500/- as pecuniary advantage from the said Devaraj Muthiah in the circumstances stated above and thereby committed an offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

3. The Court of Chief Judicial Magistrate, Tirunelveli, after the receipt of the charge sheet, has taken the case on file in C.C.No.9 of 2007 on its file and furnished the copies of records under Section 207 Cr.P.C., to the accused on free of costs. The learned Chief Judicial Magistrate, on hearing both sides and on perusal of the records, being satisfied that there existed *prima facie* case against the accused, framed charges under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and the same were read over and explained to the accused and on being questioned, he denied the charges and pleaded not guilty.

4. The prosecution, in order to prove its case, had examined 11 witnesses as Exs.P.W.1 to P.W.11, exhibited 32 documents as Exs.P.1 to P.32 and marked three material objects and M.O.1 to M.O.3.

5. The case of the prosecution emerging from the evidence adduced by the prosecution, in brief, is as follows:

(a) The defacto complainant-P.W.2 was a registered contractor in Keelapavoor Panchayat Union. During 2005-2006, P.W.2 took contract for laying cement roads in Chinnathambi Nadarpatti and Pavoorchathiram Nadutheru. After completion of the work, he submitted a bill for Rs.27,313/- on 24.11.2005 and received the cheque from the accused. At the time of issuing the said cheque, the accused demanded Rs.4,000/- as illegal gratification from the complainant. P.W.2 informed him that he would pay the amount at the time of receiving the next cheque. Thereafter, P.W.2 submitted a bill for laying the road in Chinnathambi Nadar Patti south street and demanded the accused on 02.06.2006 to issue the cheque. At that time, P.W.2 was accompanied by his friend P.W.4-Padmanathan. The accused directed P.W.2 to come on 05.06.2006 along with the receipt and Rs.4,000/-. When P.W.2 informed that he is not in a position to pay such high amount, the accused reduced the amount to Rs.1,500/-. Not having any inclination to pay the said amount, P.W.2 approached the Inspector of Police, Vigilance and Anti-corruption – P.W.9 on 05.06.2006 and gave a complaint in writing under Ex.P.6 at about 11.00a.m.

(b) P.W.9 – Rajkumar, the then Inspector of Police, Vigilance and Anticorruption detachment received the complaint from P.W.2 and registered a case in Cr.No.3 of 2006, dated 05.06.2006 under Section 7 of the Prevention of Corruption Act under Ex.P.28. P.W.9 made a request to the Deputy Director of Agricultural Department and the Officer of the District Industries Centre to depute the officers to accompany the defacto complainant as shadow witnesses. In pursuance of the said request, Thiru.Selvanarayanan and Thiru.Kamatchirajan were deputed. P.W.9 introduced them to P.W.2 and gave a copy of F.I.R., for them to read. After reading F.I.R., they enquired with P.W.2 about the veracity of the complaint. Thereafter, P.W.2 produced two notes of Rs.500/- and five notes of Rs.100/- for Rs.1,500/- before P.W.9, who in turn directed the witness Kamatchirajan to count those notes and he demonstrated Sodium Carbonate Phenolphthalein test procedures and he prepared the entrustment mahazar under Ex.P.8. P.W.9 has then instructed P.W.2 to meet the accused along with the witnesses and if the accused made any demand and accepted the bribe amount, P.W.2 was instructed to give the pre-arranged signal. Thereafter, at about 05.15p.m., P.W.9 had taken P.W.2 and other witnesses and stopped the vehicle at Kadayam road and directed P.W.2 to proceed with the witness Selvanarayanan and the witness Padmanathan. Accordingly, P.W.2 along with the witnesses Selvanarayanan and Padmanathan went to the panchayat office and after seeing them, the accused asked P.W.2 as to whether he had brought the amount. Immediately P.W.2 had taken out Rs.1,500/- from his pocket and gave it to the accused along with the receipt. The accused received the same and kept it at the right side of the table. After paying the amount, P.W.2 had requested the accused to give the cheque, the accused replied that he would give the cheque, but they have to wait. Immediately P.W.2 came out of the office and as directed,he removed the watch from left hand and changed to the right hand. Immediately P.W.9 and his team entered into the Panchayat office and directed P.W.2 to identify the accused. Accordingly P.W.2 identified the accused. P.W.9 introduced himself to the accused and asked him to take out the bribe amount of Rs.1,500/-. Accordingly, the accused had shown the amount, kept in the right side of the table. Thereafter, P.W.9 made arrangements for preparation of Sodium Carbonate solution and asked the accused to dip his left hand fingers in the solution. The respondent/accused dipped his right hand fingers and the solution changed into light pink colour. Thereafter, P.W.9 directed the witnesses to count the currency notes produced by the accused and to verify as to whether the same were tallied with the numbers noted in the mahazar prepared at the vigilance office. After verification, the said witnesses informed that the notes were tallied. Thereafter, P.W.9 asked the accused about the whereabouts of the cheque and the accused had taken out the cheque from his pocket and handed over the same under Ex.P.4. Thereafter, P.W.9 arrested the accused at 07.30p.m., and drew the rough sketch under Ex.P.29. P.W.9 has then taken the accused to his house at Selvavinayagarpuram and made a search at about 08.10p.m, but nothing was recovered. After returning from the Vigilance and

Anticorruption office at about 09.15p.m,., he had taken steps to send the properties to the Court and released the accused on bond. As per the directions of the higher officials, P.W.9 handed over the file to P.W.11 – Inspector of Police.

(c) P.W.11 had taken up the case for further investigation on 13.12.2006 and examined the witnesses Selvanarayanan and Kamatchiraj on 19.12.2006. Thereafter on 20.12.2006, he examined Devaraj Muthiah and the witnesses Padmanathan, Thamilarasi, Venkatesh, Subburayan and Mohanraj on 21.12.2006 and the witnesses Arunothayam and the accused were examined on 27.12.2006 and that on 03.01.2007, examined the witnesses Vakitha Banu and the Inspector of Police Rajkumar and recorded their statements. After the receipt of the chemical report, P.W.11 examined the witness Shanmugam and he submitted the final report on 31.01.2007 before the Director of Vigilance and Anticorruption Act. Thereafter, he obtained sanction under Ex.P.1 from P.W.1 and after completing the investigation, laid the final report. With the examination of P.W.11, the prosecution has closed their side evidence.

(d) When the case was in part-heard stage, after formation of the Special court for trial of cases under Prevention of Corruption Act, the above case was transferred and the same ws taken on file as Spl.Case No.27 of 2014, on the file of the Special Court for trial of cases under Prevention of Corruption Act, Tirunelveli.

(e) When the accused was examined under Section 313(1) (b) Cr.P.C with regard to the incriminating aspects as against him in the evidence adduced by the prosecution, he denied the same as false and stated that a false case was foisted against him and that he is having defence evidence. The respondent/accused has also given a statement that Devaraj Muthiah was having property tax arrears and he came to the office and placed the arrears of property tax in his table and that when he was attempting to write the receipt, the officials had surrounded him and prevented him from issuing the receipt and had taken away the receipt book.

(f) The defence has then examined Thiru.Vaithiyalinga Raja, member of Kalloorani Village Panchayat. He would say that the complainant – Devaraj Muthiah has not paid the property tax and water charges and hence, Village Panchayat has sent notices to P.W.2 to pay the arrears amount, but he did not paid the amount and hence, with the help of Pavoorchathiram police, they have disconnected the water connection in the house of P.W.2.

(g) The learned Special Judge, upon considering the evidences adduced and on hearing the arguments of both sides, has passed the impugned judgment dated 12.03.2016 holding that the charges levelled against the accused under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act were not proved, acquitted the accused under Section 248(1) Cr.P.C. Aggrieved by the judgment of acquittal, the State has preferred the present Criminal Appeal.

6. Heard Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the appellant and Mr.V.Kathirvelu, learned Senior Counsel for Mr.K.Prabhu, learned Counsel appearing for the respondent/accused and perused the materials placed on record.

7. The learned Additional Public Prosecutor appearing for the appellant would submit that the witnesses P.W.2, P.W.3 and P.W.9 through their cogent, clear and acceptable evidences, have proved the entire case of the prosecution to attract the ingredients of the offence committed by the respondent, but the learned trial Judge has come to a wrong conclusion on the presumption that the accused received the amount for the arrears of tax paid by P.W.2, that the respondent has not even explained in the proceedings under Section 313 Cr.P.C., about the receipt of the money on his hands, that the result of the phenolphthalein test conducted to the respondent proved positive and that the trial Court, without considering those aspects, has recorded the findings for acquittal. He would further submit that the trial Court has also committed a

grave error in rejecting the evidence of P.W.3 stating that he is not an independence witness, that the trial Court has failed to consider that there is no motive or enmity between P.W.3 and the accused, that the trial Court has also failed to consider the evidence of P.W.4 – the independent witness, who deposed about the knowledge of the initial demand made by the accused and P.W.4 accompanying P.W.2 for making complaint against the accused to the Vigilance Office, that the trial Court has also failed to consider that the action of disconnection of water connection for the house of P.W.2 and 6 others, was initiated by the Panchayat President and not by the accused, who is after all a staff bound to implement the instruction of the Panchayat President, that the trial Court has given much importance to the findings that the accused is not empowered to issue cheque, but failed to consider the explanation given under Section 7 of the Prevention of Corruption Act, that it is immaterial whether the accused was the authority to do favour or not, suffice that the accused was a public servant while demanding or accepting bribe money, that the trial Court has also committed an error in stating that the trap laying officer has also not followed the procedure as per the Vigilance Manual, but the position of law is well settled, that the procedures contemplated in the Vigilance Manual are only directory and not mandatory, that the trial Court has given much weightage to the defence witness, that the trial Judge, without considering the above vital aspects, has recorded the judgment of acquittal and that therefore, the State was constrained to prefer the present Criminal Appeal for setting aside the said judgment of acquittal.

8. The learned Senior Counsel appearing for the respondent would submit that the State has come forward with the present appeal on the ground that the judgment of the trial Court is perverse and also the view taken by the trial is not a possible view, that simply because the other view is possible to convict the accused, that cannot be done, that the accused has given a statement that P.W.2 came to the Panchayat Union Office and he placed the money on the table stating that the money is for tax arrears and at that time, he has been secured by the respondent police, that D.W.1 examined by the accused deposed that he was a member in the Village Panchayat from 1996 onwards and aware of the administration in the Village Panchayat, that since P.W.2 was having dues of house tax and water tax, the Village Panchayat has sent the notice to P.W.2 and 6 others, that the other persons except P.W.2 have cleared the dues and the consequently water connection to P.W.2 has been disconnected with the help of police and at that time, D.W.1 and the accused were present, that the initial demand on 24.11.2005, 02.06.2006 and 05.06.2006 were not proved, as P.W.4 had turned hostile and P.W.3 who is a trap witness is not an independent witness, that through the evidence of prosecution, the defence has proved that the entrustment mahazar and the subsequent mahazars were prepared only in the

Vigilance office, that the demand projected in the above case is highly doubtful, as there is no corroboration for the same, that the accused can raise only the preponderance of probability and that the prosecution has miserably failed to prove its case and that the learned trial Judge, after taking note of all the above aspects, has rightly acquitted the accused.

9. The points for consideration are as follows:

(i) Whether the prosecution has proved the demand and subsequent demand and the acceptance theory canvassed by them?;

(ii) Whether the trap proceedings allegedly conducted by the police are true, valid and believable?; and

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

10. Before entering into discussion with regard to the merits of the case, it is time to consider the legal position.

11. The Hon'ble Supreme Court in ***V.Sejappa Vs. State by Police Inspector, Lokayukta, Chitradurga*** reported in ***(2016)2 SCC 150***, after referring to various judgments of the Hon'ble Supreme Court, has reiterated the principles

that the appellate Court must bear in mind, while dealing with the appeals against acquittal and the same are extracted hereunder:

> *"(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;*
>
> *(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;*
>
> *(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and*
>
> *(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the*

interference by the appellate court in the judgment of the trial court."

12. No doubt, the Hon'ble Supreme Court in ***State represented by the Inspector of Police, Andhra Pradesh Vs. K.Narasimhachary*** reported in ***(2005)8 SCC 364*** and in other cases reiterated the well settled principle that if two views are possible, the appellate Court should not interfere with the acquittal by the trial Court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate Court.

13. To counter the said view, the learned Additional Public Prosecutor has relied on the judgment of the Hon'ble Supreme Court in ***Nayankumar Shivappa Waghmare Vs. State of Maharashtra*** reported in ***2015(11) SCC 213*** and argued that the legal position above referred with regard to the possibility of two views has no application, if no two views are possible and the relevant passages are extracted hereunder:

> *"The learned counsel for the appellant argued before us that since the trial court has acquitted the appellant giving him benefit of reasonable doubt, the High Court erred in law in convicting him as it is settled principle of law that where two views are possible, the finding of the trial court should not be disturbed.*

The above argument advanced on behalf of the appellant, in the present case, is misconceived for the reason that if the same is accepted, there cannot be any case where appeal against acquittal can be allowed, and the error committed by the trial court can be corrected.

The perusal of the impugned judgment shows that after discussing the evidence on record, the High Court has come to a definite conclusion that the trial court has erred in law in coming to the conclusion that the charge in respect of offence punishable under Sections 7 and 13(1)(d)read with Section 13(2) of the Prevention of Corruption Act, 1988 is established. The High Court has clearly held that the trial court erred in law in giving benefit of reasonable doubt to the accused in the present case. After going through the evidence on record we are also of the opinion that it is not a case where two views are possible. As such, we do not find any illegality in the impugned order reversing the order of acquittal recorded by the trial court. Here also in this case no two views are possible."

There is absolutely no dispute with respect to the position of law laid down by the Hon'ble Supreme Court in ***Sejappa's case*** and ***Nayankumar Shivappa Waghmare's case,*** cited by the learned Additional Public Prosecutor.

14. As rightly contended by the learned Senior Counsel for the respondent, the prosecution, in order to prove the charges, is duty bound to prove the prima

facie case that there was a demand and acceptance of illegal gratification. In the present case, admittedly, a sum of Rs.1,500/- was recovered from the table of the accused during the trap proceedings. No doubt, the defence has admitted the factum of recovery of Rs.1,500/- from his table, but according to him, the same was received not towards illegal gratification, but towards the payment of tax arrears due by P.W.2 to Panchayat Union.

15. The learned Senior Counsel for the respondent would submit that mere recovery of tainted money is not sufficient to convict the accused and the prosecution has to prove through acceptable and sufficient evidence with regard to demand and acceptance of the amount as illegal gratification. The learned Senior Counsel for the respondent has relied on a judgment of the Hon'ble Apex Court in ***T.K.Ramesh Kumar Vs. State through Police Inspector, Bangalore*** reported in ***(2015)15 SCC 629***, wherein the Hon'ble Apex Court has referred another judgment of the Hon'ble Supreme Court in ***Mukut Bihari Vs. Rajasthan*** reported in ***(2012)11 SCC 642*** and the same is extracted hereunder:

> *"In this regard it would be appropriate for this Court to refer to the decision of this Court in the case of Mukut Bihari & Anr. vs. State of Rajasthan, (2012) 11 SCC 642, which reads thus:*
> *"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is*

not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. 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. However, before 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. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person."

16. The learned Senior Counsel has also relied on ***Sejappa's case*** referred supra, for the position that mere recovery of tainted money is not sufficient and that the corroboration of the testimony of the complainant regarding the demand of bribe is necessary and the relevant passages are 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.

19. After referring to Surajmal v. State (Delhi Administration) (1979) 4 SCC 725, in C.M. Girish Babu v. CBI, Cochin, High Court of *Kerala (2009) 3 SCC 779, it was held as under:-*

"18. In Suraj Mal v. State (Delhi Admn.) (1979) 4 SCC 725, this Court took the view that (at SCC p. 727, para 2) 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."

20. In State of Kerala and Anr. v. C.P. Rao (2011) 6 SCC 450, it was held that mere recovery of tainted money is not sufficient to convict the accused and there has to be *corroboration of the testimony of the complainant regarding the demand of bribe."*

17. The learned Additional Public Prosecutor has relied on the judgment of the Hon'ble Supreme Court in ***Vinod Kumar Vs. State of Punjab*** reported in ***(2015)3 SCC 220*** and argued that it is not necessary that passing of money should be proved by direct evidence and it may be proved by circumstantial evidence and the relevant passages are extracted hereunder:

"35. .... A contention was raised that in the absence of any direct evidence to show that the police constable demanded or accepted bribery no presumption under Section 4 of the Act, 1947 could be drawn merely on the strength of recovery of the marked currency notes from the said police constable.

36.Chinnappa Reddy, J. speaking for the two- Judge Bench observed as follows:-

"...It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW 3. Under Section 114 of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and

public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW 3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW 3, the presumption under Section 4(1) of the Prevention of Corruption Act is immediately attracted."

18. In the case on hand, as rightly contended by the learned Senior Counsel for the respondent, the defence taken by them was that P.W.2 had handed over Rs.1,500/- towards payment of tax arrears and as such, the factual aspects of both the cases are different.

19. In the judgment cited by the learned Additional Public Prosecutor in ***the State represented by the Inspector of Police, CBI, ACB, Madurai Vs. C.A.A.Ashokkumar*** reported in ***CDJ 2020 MHC 3454***, a learned Judge of this Court has held that as per the statutory presumption under Section 20 of the Prevention of Corruption Act, once the demand, acceptance and recovery are

proved, it is for the respondent/accused to rebut the presumption in the manner known to law.

20. It is settled law that once the prosecution proves their case of demand, acceptance and recovery prima facie, then the presumption under Section 20 of the Prevention of Corruption Act comes into play and the burden of proof gets shifted to the accused and at that juncture, the accused has to prove that the amount received was not towards any illegal gratification, but for some other purposes.. In the case on hand, according to the accused, the prosecution has miserably failed to prove the demand theory projected by them. The defaco complainant – P.W.2 in his complaint as well as in his evidence would say that he met the accused in the Panchayat Office on 24.11.2005 and received the cheque for Rs.27,313/- towards payment for laying road, that at the time of issuing the said cheque, the accused demanded Rs.4,000/- towards illegal gratification and that P.W.2 informed the accused that he would pay the amount while receiving the next cheque. As rightly contended by the learned Senior Counsel for the respondent, except the interested testimony of P.W.2, there is no other evidence available to prove the alleged demand or to corroborate the evidence of P.W.2.

21. According to the prosecution, P.W.2 along with his friend P.W.4 – Padmanathan went to the Panchayat Office on 02.06.2006 for receiving the bill amount of Rs.13,013/- and the accused directed P.W.2 to come on 05.06.2006 along with the receipt and Rs.4,000/-, reiterating his earlier demand. It is the further case of the prosecution that when P.W.2 had informed the accused that he was not in a position to pay such high amount, the accused directed P.W.2 to bring atleast Rs.1,500/-. As already pointed out, according to the complainant, he was accompanied by his friend Padmanathan, who is examined as P.W.4. But P.W.4, while giving evidence before this Court, would depose that as if he was informed about the said incident occurred at the panchayat office and he had accompanied P.W.2 only to the Vigilance office. Though P.W.4 was cross-examined by the prosecution, after he was treated as hostile, nothing was elicited by the prosecution in their favour. As rightly pointed out by the learned Senior Counsel for the respondent, P.W.4 has not stated that he had accompanied P.W.2 to the Panchayat office and witnessed that incident. Even for the demand alleged to have been made on 02.06.2006, there is absolutely no evidence to corroborate the interested testimony of P.W.2.

22. Even according to the prosecution, P.W.4 – Padmanathan had also accompanied P.W.2 to the office of the Vigilance and Anticorruption and he was very much available till the proceedings were over. But as already pointed out,

though P.W.4 in his chief examination had alleged that he had accompanied P.W.2 to the Vigilance office, he has not elaborated anything further. He has not stated anything as to what had happened in the Vigilance office and as to whether the complaint was lodged and registered. It is the specific case of the prosecution that as per the instructions of P.W.9 – Trap Laying Officer, P.W.2 along with P.W.3 and P.W.4 had visited the panchayath office on the evening of 05.06.2006. P.W.3 and P.W.9 in their evidence would say that as per the instructions of P.W.9, all the three had entered into the office of the accused. But P.W.2, in chief examination would say that himself and P.W.3 – Selvanarayanan had entered into Kalloorani Panchayat office, but in cross-examination, would say that all the three had entered into the accused room. Whatever it is, according to the prosecution, all the three had entered into the office of the accused at that time. But as already pointed out, P.W.4 while deposing before the trial Court has not whispered anything about his accompanying P.W.2 and P.W.3 to the panchayat office. It is pertinent to note that P.W.4 is not a third person or stranger, but admittedly he is a friend of P.W.2 and he is a retired teacher.

23. It is pertinent to note that though P.W.4 was cross-examined by the prosecution, nothing was asked as to whether he had accompanied P.W.2 to the Vigilance office and whether he had accompanied P.W.2 and P.W.3 to the

panchayat office at the time of trap proceedings. P.W.2, in his evidence would say that when they entered into the office of the accused, the accused asked him as to whether he brought money, that P.W.2 by informing that he had brought the money, taken from his shirt pocket and gave it to the accused along with stamped acknowledgment and that the accused had received the same and placed it on the right side of his table. P.W.2 would further say that after handing over the amount, he had asked about the cheque and the accused directed him to wait and he would issue the same. P.W.3, in his chief examination would reiterate the version of P.W.2, but in cross-examination, P.W.3 would say that all the three had entered into the office at the same time, that P.W.2 had demanded the cheque from the accused and the accused asked him as to whether he brought the amount and that after receiving the amount from P.W.2, the accused directed him to wait for some time.

24. As rightly pointed out by the learned Senior Counsel for the respondent, P.W.2, in his chief examination, would say that he had handed over Rs.1,500/- and also gave the stamped acknowledgment. But in cross-examination, P.W.2 would say that he got it typed at Thenkasi, that he had affixed the stamp at the Vigilance office, but in subsequent cross-examination, he would say that he had shown stamped receipt before the Vigilance Department and that at that time, he had subscribed his signature therein. But

P.W.3, in his cross-examination would say that while giving instructions, directed P.W.2 to affix his signature in the stamped receipt in the panchayat office and handed over the same to the accused.

25. The accused has taken a defence that he has neither demanded any amount nor received any amount towards illegal gratification and that P.W.2 has handed over the amount towards panchayat tax arrears along with the receipt therefor. It is the further case of the accused that when P.W.5 was the President of the panchayat, they have received many complaints that the house owners were taking water through motors, that the panchayat has passed a resolution directing the house owners to have flow control valve, that all the house owners have consented and subscribed their signatures, that P.W.2's son Devaraj had also subscribed his signature on behalf of his father, that since 7 house owners have not fixed the flow control valve, the panchayat had passed a resolution to disconnect the water supply to the house of those house owners, who have not fitted the said valve, that 6 house owners out of 7 have fixed the said valve, that since P.W.2 alone had not chosen to affix the control valve, his water service connection has been disconnected with the help of the police, that the above actions were taken at the instance of the accused and that therefore, there existed enmity between P.W.2 and the accused and that is the reason for implicating the accused in the above case. P.W.5, who was the President of Kalloorani

Panchayat from 2002 to 2006 and D.W.1- Vaithiyalinga Raja, who was the member of Kalloorani Village panchayat from 1996 to 2014 in their evidence would reiterate the version of the complainant and the consequent enmity between P.W.2 and the accused.

26. It is pertinent to note that P.W.2 in his cross-examination would admit that his son had subscribed signature for affixing the valves, that since valve was not fitted in his house, water connection was disconnected with the help of police and that the accused came to that place to identify P.W.2. No doubt, as rightly pointed out by the learned Additional Public Prosecutor that the action of disconnection of water connection for the house of P.W.2 was done by the Panchayat President and not by the accused and that the accused being the staff of the Panchayat is duty bound to implement the instructions of the Panchayat President. Admittedly, the duty of the accused as panchayat clerk is to maintain the accounts in the panchayat and has to collect the tax from the persons who are having arrears to the panchayat. As rightly contended by the learned Counsel for the respondent, when the water service connection of P.W.2 was disconnected, the accused was very much available in that place. Considering the above, as rightly contended by the learned Senior Counsel for the respondent, there existed strained relationship between P.W.2 and the accused.

27. During the trap proceedings, according to the prosecution, after seizing the tainted money, when P.W.9- Investigating Officer had asked the accused about the cheque, immediately the accused had taken out the cheque from his shirt pocket and handed over the same to him. But, P.W.2, in his cross-examination would say that the cheque was in the office bureau, but, P.W.3 in his evidence would say that the cheque was recovered from the shirt pocket of the accused. P.W.5 and D.W.1 in their evidence would depose about the practice that has been prevailing in the Panchayat office regarding the issuance of the cheque. According to the said witnesses, the cheque has to be signed by both the President as well as the Vice President and that usually the cheques are issued by the President. In the case on hand, admittedly the then President – P.W.5 had already subscribed her signature in Ex.A.4-cheque and the Vice President has not subscribed his signature on the ground that P.W.2 has not cleared the tax arrears. P.W.5 in her evidence would categorically state that the Vice President has refused to subscribe the signature in the cheque, as P.W.2 was having tax arrears and that the accused has no power to issue the cheque. Even according to the prosecution, at the time of trap proceedings and the subsequent recovery, the other employees of the Panchayat Office were very much available at that place.

28. As rightly contended by the learned Senior Counsel, the prosecution, for the reasons best known to them, have not chosen to examine the other staffs of the panchayat, who were witnessing the trap and recovery proceedings. The learned Senior Counsel would submit that Clause 47 of the Vigilance Manual contemplates that as soon as the accused is apprehended with the tainted money, a statement has to be recorded with a view of offer him a chance for giving explanation as to the reasons for possessing the amount. In the case on hand, the prosecution has not produced any such statement allegedly recorded from the accused. Though the sanctioning authority – P.W.1 in his evidence would say about the statement of the accused, he has not mentioned about the same in the sanction order. As rightly pointed out by the learned Counsel for the respondent, it is also not known as to whether the prosecution after producing the same before Sanctioning Authority, has suppressed the same before the trial Court. Whatever it is, the purpose for taking such a statement from the accused is not only for giving an opportunity to the accused to explain for possessing the said amount, but also to the Investigating Officer giving him a chance to proceed his investigation from that angle also P.W.3 in his cross-examination would say that the Investigating Officer had not enquired about the amount from the accused. It is not the case of the prosecution that the Investigating Officer has taken a statement from the accused after the alleged recovery. Moreover, as rightly contended by the learned Senior Counsel, it is not the case of the prosecution

that the accused, after the receipt of the said amount had kept the same in his pocket or in the table drawer. But on the other hand, he has kept the amount along with the receipt on the right side of his table. Admittedly the amount and the receipt were available at the same place till the trap proceedings.

29. As already pointed out, though the prosecution has alleged that P.W.4 is the witness for the demand alleged to have made on 02.06.2006, lodging of the complaint before the Vigilance office and the subsequent trap proceedings held on 05.06.2006, but P.W.4 has not deposed about anything with regard to the above events. Considering the evidence of P.W.4, as rightly contended by the learned Senior Counsel for the respondent, the case put forth by P.W.2 and the version put forth by P.W.3 appears to be doubtful. As already pointed out, the prosecution has failed to prove the demands allegedly made by the accused. Hence, this Court has no hesitation to hold that the prosecution has miserably failed to discharge the initial burden of proof regarding the demand and acceptance of illegal gratification and as such, the question of shifting the burden to the accused does not arise at all.

30. The prosecution has proved the recovery of money from the possession of the accused. But as per the settled position of law, mere recovery of amount is not sufficient to attract the presumption under Section 20 of the Prevention of

Corruption Act. It is settled law that the demand of illegal gratification is *sine qua non* for constituting an offence under the Prevention of Corruption Act.

31. Considering the above, this Court is of the clear view that evaluation of the evidence made by the trial Court while recording the judgment of acquittal does not suffer from any infirmity or illegality and the grounds on which, the judgment of acquittal is based cannot said to be unreasonable. Hence, this Court concludes that the Criminal Appeal is devoid of merits and the same is liable to be dismissed.

32. In the result, the Criminal Appeal is dismissed.

13.10.2022

Index : Yes/No
Internet : Yes/No
SSL

To

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

2. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

K.MURALI SHANKAR, J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

CRL.A(MD).No.350 of 2016

13.10.2022