BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A(MD)Nos.80 and 83 of 2016

J.Pannerselvan : Appellant in Crl.A(MD)No.80 of 2016/A1

Noordeen : Appellant in Crl.A(MD)No.83 of 2016/A2

Vs.

State rep. by
The Inspector of Police,
Vigilance and Anti-Corruption Department,
Tirunelveli District.
(Crime No.19 of 2003) : Respondent/Complainant (Both Crl.A's)

Prayer: Criminal Appeals have filed under section 374(2) of the Criminal Procedure Code to call for the entire records pertaining to the judgment of conviction and sentence imposed by the Special Court for Trial of Cases under the Prevention of Corruption Act cases, Tirunelveli,in Spl.CaseNo.8 of 2014, dated 29.02.2016 and set aside the same.

For Appellant in Crl.A(MD)No.80 of 2016 : Mr.P.Ramasamy

For Appellant in Crl.A(MD)No.83 of 2016 : Mr.M.Selvendaran

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

COMMON JUDGMENT

These Criminal Appeals are preferred against the judgment of conviction passed by the Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli, in Special Case No.8 of 2014, respectively.

2.**The case of the prosecution in brief:**-

PW2 by name Kadaikaran Abubacker is a resident of Melapalayam, Tirunelveli. On 17/11/2003, the first accused was working as Village Administrative Officer and the second accused is also resident of the same village. The de-facto complainant purchased the property in Survey No.72/3 in his name on 24/05/1999 measuring about 2.78 cents. Similarly on 20/09/1999 in his wife name, he purchased 2.75 cents. For transfer of patta in respect of the above said lands to his name and his wife's name, he approached the first accused, on 14/11/2003. Since already he filed a petition before the Tashildhar, on 20/08/2003, he approached the first accused with a request to make a recommendation. At that time, he demanded Rs.900/- as bribe. So, on 17/11/2003 at about 9.30 am, he lodged a complaint with the Vigilance and Anti Corruption Department, namely the respondent herein under Ex.P2. Later, the respondent invited the witnesses for complying the formalities for preparation of trap. At his request, PW2 and one Jeyabalan were invited and they visited the office at about 11.00 am. In the office, they made a preparation for trap. He handed over Rs.900/- to the respondent and the further process of sodium bicarbonate solution was also undertaken for that purpose, as per prosecution. Further proceedings have been undertaken and he was advised to give the above said money, when it was demanded by A1 in his office and he was also directed to give signal, when that amount is received by A1. For that purpose, Mahazar has been prepared.

3.In pursuance of the above said trap arrangements, he along with PW3 Wahab, went to the office of A1 at 12.40 hours. At that time, A1 demanded bribe amount of Rs.900/-. The currency notes of Rs.900/- was handed by him to A1. He counted the money and in turn, handed over the same to A2. He also counted the money and put the same in his pocket. As per the instruction, he made a signal to the police team for arrival. He identified A1 and A2 and later, he was directed to go away.

4.MO1 series is the currency note, which was received by A1. When PW12 was working as Inspector in the Vigilance and Anti Corruption Department, on 17/11/2003 he received a complaint from PW2 and registered a case in Crime No.19 of 2003 under section 7 of the Prevention Corruption Act and prepared the FIR, which was sent to the concerned Magistrate Court. As stated by PW2, he informed PW3-another person to assist for trap process and actually, the trap as stated above, PW2, he undertaken the process of trap preparation as well as the trap. He also instructed PW2 to hand over the currency note, which was smeared with chemicals, when it was demanded by him. So on the next day, as stated by PW2, the police team along with PW2 and PW3 and other witnesses went to the office of A1 and the police team hiding nearby. As instructed by PW2, went to the office of A1 and he made a signal and after getting the above said signal, they went inside the office of A1 at about 01.05 pm.

PW2 identified the accused persons. He prepared sodium bicarbonate solution. He also instructed A1 to dip his right hand finger into the mixture, which was prepared, sealed in a bottle. He was directed to dip the left hand finger. The sodium bicarbonate solution turned pink and that was also collected in a glass bottle and sealed. On enquiry, A1 has informed that the money, which was received by him from PW2 was handed over to A2. On further enquiry, A2 also handed over the currency note from his left pocket. The serial number of currency notes compared with the mahazar, which was prepared at the time of preparation of the trap process. Another mixture of sodium bicarbonate was prepared, in which A2 was directed to dip the finger and it also turned purple. That was also collected in a glass bottle and it was also sealed. The seized shirt was also dipped in the sodium bicarbonate mixture and that was also collected and it was also sealed. After completing the formalities and on further process, he recovered the documents from the office, for which also, recovery mahazar was also prepared. Further investigation was undertaken, on 18/11/2003. He recorded the statement of the witnesses and prepared the rough sketch and collected materials and documents from the forensic science lab, after obtaining proper sanction from the Revenue Divisional Officer and after completing the formalities, he filed the final report, on 23/06/2004.

5.PW1 was the sanctioning authority, who was working as Revenue Divisional Officer, Dindigul. The sanction order was marked as Ex.P1. PW3, as stated above, was working as Senior Draftsman in the Highways Department. He assisted the process of trap laying and actual trap process. PW11 was the Assistant Director, attached to Forensic and Scientific Laboratory, Chennai. The material objects, which were sent to her for chemicals examination was examined by her and submitted a report. So with the examination of PW14, the prosecution witnesses were over and the accused were subjected to 313 Cr.P.C proceedings and they denied the truth of the evidence and they also denied the evidence given by the prosecution witnesses. On their side, one witness was examined. After the examination of the witnesses were over and after hearing the learned Additional Public Prosecutor as well as the defence side, the trial court found that the charges against the accused persons were proved by the prosecution beyond all reasonable doubt. Accordingly, A1 was sentenced to undergo 3 years Rigorous Imprisonment and imposed a fine of Rs.5,000/- with default clause under section 7 of the Prevention of Corruption Act; 3 years Rigorous Imprisonment and imposed a fine of Rs.5,000/- with default clause under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. Similarly, A2 was also sentenced to undergo 3 years rigorous imprisonment with a fine of Rs.5,000/- for the offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act r/w 109 IPC. The remand period was ordered to be set off. The total fine amount was paid by the appellants.

6.Challenging the conviction and sentence, both the accused persons have preferred separate appeals.

7.Heard both sides.

8.From the preamble portion, the case of the prosecution in brief is that the first accused was working as Village Administrative Officer of Melapalayam during the relevant period. A2 is the friend of A1 and they were known to each other; A2 also involved in the bribery occurrence.

9.Before we go into the factual aspects, in the memorandum of additional grounds of appeal, some important issues touching the jurisdiction of the Special Court and framing of charge, procedural infirmity, while undertaking section 313 Cr.P.C. have been raised. These additional grounds goes to the very foundation of the case. So they must be addressed first.

10.Now the case of the appellants is that as per section 26 of the Prevention of Corruption Act, 1988, the Special Judge is appointed as per Criminal Law amendment, the pending cases should not be transferred to the Special Judge. From the records, it is seen that originally the case was tried by the Chief Judicial Magistrate, Tirunelveli and after that, it was transferred to the Special Court, on 22/12/2014 and taken as Special SC No.8 of 2014. According to the learned counsel appearing for the appellants, section 26 of the Act has been violated.

11.But the learned Additional Public Prosecutor would submit that originally, wherever the Special Court was not established, powers have been conferred upon the Judge to try the offence under the Prevention of Corruption Act. When section 3 of the Act empowers the Central or the State Government, as the case may be, to appoint Special Judge, when the Special Judges are appointed, then automatically the cases, which are dealt with by Judges upon whom powers have been conferred must automatically get transferred. So according to the learned Additional Public Prosecutor, after the constitution of the Special Court under the Prevention of Corruption Act, in Tirunelveli, the case, which was originally tried by the Chief Judicial Magistrate has been transferred.

12.Absolutely, there is no illegality. I find much force in the argument advanced by the learned Additional Public Prosecutor.

13.Section 26 reads that every Special Judge appointed, under the Criminal Law Amendment Act, 1952, shall deem to be a Special Judge appointed under section 3 of the Act and every Judge may deal with the matters, which are pending before him. So, section 26 does speak about the constitution of the Special Court. Before constitution of the Special Court in a particular area, as mentioned earlier, a Special Judge was appointed. When the Special Court has been constituted in a particular area, then automatically, it will have jurisdiction to try the offences as per section 3 of the Act.

14.Section 4 of the Act is more explicit in its nature. Even as per the section 4, if there are more than one Special Judge for a particular area, then notification is necessary by the Government. So the contention on the part of the appellants that as per section 26 of the Act, the prosecution ought not to have been transferred to the Special Court is not acceptable. More-over, no prejudice was caused to the appellants, because of the transfer of the case at section 313 Cr.P.C stage.

15.The next ground is that no specific charge has been framed with regard to the specific offence. A common charge has been framed by the trial court, wherein it has been stated that the first accused is punishable under section 7 of the Prevention of Corruption Act. This is the first charge. The second charge is that he is punishable under section 13(2) r/w 13(1)(d) of the Act. Against the second accused, he has been charged under section 7 of the Act r/w 13(1)(d) r/w 109 IPC.

16.Now according to the appellants, section 13(1)(d) contains four sub clauses, each sub clause is with reference to the different misconduct, under which sub clause, the accused are charged are not clearly stated in the charge. But this sort of contention was not raised, either at the time of framing charges or during the course of trial or during the course of argument. This has been taken for the first time. No doubt, sub clause has not been specifically mentioned in the charge. But how it caused prejudice, we will discuss it at the appropriate time.

17.Section 464 Cr.P.C says mere error or omission of illegality, unless it has caused failure of justice will not vitiate the trial. Here, according to the appellants, they were seriously prejudiced.

18.The next ground is that section 313 Cr.P.C proceedings have not been properly invoked. The importance of 313 Cr.P.C proceedings has been more or less well settled and for that purpose, the learned counsel appearing for the appellants has relied upon the following judgments:-

1.Ranjit Mondal and Sajal Baruj Vs. State (1997 CRL.L.J 1586);

2.Abu Vs.State of Kerala (2010 CRL.LJ 2324);
3.State of U.P Vs. Mohd. Iqram and another (2011 Crl.LJ 3931); and
4.Suresh Kumar Singh Vs. State of Orissa (2020 CRL.L.J 982).

19.Relying upon these judgments, the learned counsel appearing for the appellants would submit that both the accused persons have been questioned in common under section 313 Cr.P.C and the questions were not put, which are relevant and specific to the individual.

20.No doubt that examination under section 313 Cr.P.C, is an important part of the trial. This is the direct communication between the court and the accused persons with regard to the incriminating evidence that have been let in by the prosecution. So, it has its own sanctity. But at the same time, as mentioned earlier, it is a direct communication. So, it is enough for the court to put in a concised and specific manner.

21.Reading of section 313 Cr.P.C proceedings shows that it does not satisfy the requirement. But the accused persons have been informed to the incriminating situation and they also answered the same. They have also filed the written statement of defence. One mistake has been pointed out that PW12 has not spoken about the arrest by the police. But in the question under section 313 Cr.P.C proceedings, that was also put to the accused. The minor mistakes should not be given importance. So the grounds, which have been raised in the additional grounds are not also sustainable in nature. So, with these preliminary discussion, we shall go to the main issue.

22.Since it is a case against conviction, the grounds of arguments can be summarized as follows:-

(1)Sanction by PW1 is not permissible under law; He has not applied his mind before passing the sanction order. Since on the date of the alleged demand and acceptance of the bribe, the file with regard to the transfer of patta was not in the hands of A1.

(2)The demand was also not properly proved, since there was no occasion for A1 to have demanded the bribe was not at all present; It was not clarified with PW6, PW7 and PW8. Whether A1 by concealing the patta transfer order, obtained bribe has not been established during the course of evidence; The finding of the trial court without any evidence on this point is not proper.

(3)PW2 has stated the dates differently with regard to the demand; regarding the trap preparation, one Jeyabalan, who assisted the preparation was not examined.

(4)The time of FIR and trap at 1.00 pm, on the next day are not probable. The driver of the jeep, in which the police team travelling was not examined.

(5)By whom, the shirt of A2 was taken was not explained.

(6)These circumstances, according to the appellants, shows that it is only a pre-arranged plan with the motive.

(7)The prosecution was not clear in its case that by concealing the fact of transfer of patta, A1 demanded bribe; There is no specific charge that has been made in the charge; PW3 has not identified the accused in the court.

(8)Regarding the currency note, the denomination was not spoken by PW2, PW3 and PW4; In the mahazar, currency note numbers were not noted. The court staff, who received the property was not examined.

(9)Regarding the alteration of FIR, when it was altered is not clear on record; So the remand itself is not legal in nature, when there was no alternation in the FIR; The trial court has taken into account only the chief examination.

(10)The learned counsel appearing for the 2nd accused would further add that non examination of the staff, who assisted the preparation of the solution during the pre-trap arrangement, was not examined. So, the demonstration itself is not established.

(11)PW2 has stated that no bribe amount was demanded by A1 each and every time, when he approached him; He has stated that on 07/10/2013, he did not visit the office of the first accused and during the evidence, he has given contra facts; Trap was laid with the assistance of PWD staff, who was in the fear of raid by Vigilance Team.

(12)Proper procedures have not been followed; There is contradiction with regard to who accompanied PW2.

(13)No permission was obtained by PW3 to assist the trap; Time of trap is differently stated; PW8 has admitted that the order of termination of Village Menial Kumar was served only by A1, this is the motive.

(14)Statement of the accused, as per the instructions, 47 of the Manual has not been followed; The first accused is not related to the 2nd accused and there is no evidence on record to show that A2 intentionally aided A1 to receive the bribe amount.

23.For every points of argument, both the accused have filed a compilation of judgments, such as

1.Ranjit Mondal and Sajal Barui and vs. State (1997 C.L.J 1586);

2.Vasant Arjunrao Bhandak Vs. State of Karnataka (2002(4) CTC 636):

3.Abu Vs. State of Kerala (2010 CLJ 2324);

4.State of U.P Vs. Mohd. Iqram and another (2011 CLJ 3931);

5.Ramdoss Vs. State rep. by Deputy Superintendent of Police (2015)4 MLJ (Crl.) 345;

6.N.Sukanna Vs. State of A.P [2016(1)TNLR (Crl.) 51 (SC)];

7.A.Sivaprakash Vs. State of Kerala (2016)3 MLJ (Crl) 97(SC);

8.Suresh Kumar Singh Vs. State of Orissa (2020 C.L.J 982);

9.R.Sankara Karuppasamy Vs. State (2012)2 MLJ (Crl) 459;

10.Mohan Vs. State by Inspector of Police, No.3, Muthiyalpet Police Station, Chennai [2016(1) TNLJ 39 (Crl.)];

11.Rajkumar and 2 others Vs. State by Inspector of Police, Vigilance and Anti-Corruption, Cuddalore and another [2016(2)TNLJ 138 (Crl.)];

12.State of Maharashtra Vs. Mallinath Rajaram Harsure [2021 CLJ 476];

13.Unreported decision of this court in P.Sivakumar Vs. The State through the Deputy Superintendent of Police, Vigilance and Anti Corruption, Pudukkottai made in Crl.OP No.3303 of 2021, dated 09/04/2021;

14.Unreported decision of this court in the case of State by Inspector of Police, Vigilance and Anti

Corruption, Vellore Vs. M.L.Rajan, Assistant Educational Officer, Arcot Taluk made in Crl.A No.1090 of 2004, dated 10/11/2012;

15.S.Palanimuthu and another vs. State represented by Inspector of Police, Department of Vigilance & Anti Corruption, Salem) [CDJ 2017 MHC 8119].

16.Unreported Hon'ble Supreme court judgment in the case of K.Shanthamma Vs. The State of Telangana (Crl.A No.261 of 2022, Dated 21/02/2022);

17.Arulraj and another Vs. State represented by Inspector of Police, Vigilance & Anti Corruption, Trichy. (CDJ 2019 MHC 3223); and

18.D.Balasubramanian and another Vs. State by Inspector of Police SPE/CBI/ACB/Chennai. (CDJ 2011 MHC 5743).

24.Regarding the role of A2, the specific allegation is that intentionally, he aided A1 to receive the bribe amount.

25.In this context, as mentioned earlier, it is the contention on the part of the second accused that he was neither related to A1 by blood nor by office. According to him, after completing the Engineering Graduation, he was looking for a job in abroad and at the time of occurrence, he came to the place by chance and except that, he was not involved in the above said occurrence.

26.Section 108 IPC reads as under:-

*"**Section 108 IPC-Abettor.**—A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor."*

27.Then, who is the abettor? wherein we find that even the helper will also come under the definition of 'abettor'. We could fit the conduct and the involvement of A2 in the above said definition. There is a clear evidence, according to prosecution, on record to show that he was present in the place of demand and acceptance of bribe amount and he counted the money received from PW2 for A1 and that was put in his pocket. So he will come under the category of abettor. Here again a mistake of charge. He ought to have been charged under section 12 of the Act. But the Indian Penal Code is invoked.

28.As noted, the contention on the part of the second accused is that he was neither related by blood, nor by office, so he cannot be fastened with criminal liability cannot be accepted. His role has been clearly stated. His presence in the place has also been admitted by both the accused.

29.During the course of argument, there was a specific argument to the effect that the trial court has not followed section 325(2) Cr.P.C. But in the concluding portion of the trial court judgment, the trial court has also considered the facts and circumstances before awarding the sentence. So, I find no substance in the above said argument.

30.It is not in dispute that the de-facto complainant, who has been examined as PW2, after purchasing the property in his name as well as his wife name, applied for transfer of patta. As per the usual procedure, for the purpose of the order, recommendation from the concerned Village Administrative Officer is required. So on that basis, it is the case of the de-facto complainant that he approached the first accused for making recommendation and towards discharge his official duty, he demanded bribe, also accepted and in pursuance of which, a criminal proceedings have been initiated.

31.It is a simple case of the accused that A2 is noway involved in the above said occurrence and even though, he is known A1, he is no-way involved in the discharge of the official duty of A1. Out of previous enmity, in order to victimize the A1, the complaint has been given by the de-facto complainant and he placed the money in the pad of A1 and rushed out of the office; A1 ran after the de-facto complainant to catch him; A2 came to that place by chance, by putting the money in his pocket, tried to catch the de-facto complainant, at that time only, the police team came and further proceeding has been taken.

32.This is the simple case and another defence is that there was no occasion for him to demand and accept the money, since on the date of the above alleged demand and acceptance and trap, already recommendation was made by him to issue transfer of patta in the name of the de-facto complainant and his wife and the order was passed by the concerned authority. Absolutely, there was no chance for him to make the above said demand and acceptance of illegal gratification. According to him, the things were stage managed by the de-facto complainant.

33.Since the recovery of the tainted money has been accepted, we can straightaway, see as whether the prosecution succeeded in establishing the bribe demand, acceptance and the trap, etc.

34.Section 7 of the Act reads as under;-

"7.***Public servant taking gratification other***

than legal remuneration in respect of an official act;- *Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favor or disfavor to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.*

Explanations.- *(a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.*

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

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

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

(e)Where a public servant induces a person erroneously to believe that his influence with the

Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

The main ingredient is that he must accepts,obtains or agrees to accept or obtain any gratification otherthan legal remunderation is covered under this section."

35.Section 13 reads as under;

"13.Criminal misconduct by a public servant.— *(1)A public servant is said to commit the offence of criminal misconduct,—*

(a)if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b)if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c)if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d)if he,—
(i)by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii)by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii)while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e)if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2)Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

By which manner they acted corruptively or illegaly has not been stated in the charge, had it been stated that by supressing the fact of order of transfer of patta A1 has demanded and accepted the money, then they would have been in a better position to defend, it has been refused, which omission has caused them dearly, is the point which this court obliged to answer. In the light of the above submission, we will go further.

36.The trial court went in detail about the facts and circumstances as well as the evidence adduced on the side either side and came to the conclusion that the ingredients were established by the prosecution. The trial court was conscious that for the purpose of proving the prosecution case, the following ingredients might have been proved.

(1)Initial Demand;
(2)Demand during trap proceedings;
(3)Acceptance of the illegal gratification by the accused;
(4)Recovery of tainted money; and
(5)Positivity test.

37.So it is seen that the trial court was in the right path, while taking the issue. With regard the first ingredient, whether there was any demand has been made by the accused.

38.The prosecution relied upon the evidence of the de-facto complainant namely PW2 and before that, one important aspect that has been taken by the first accused during the course of argument is that PW1, who was working as Revenue Divisional Officer at the relevant time, is not the competent person to sanction the prosecution and for that purpose, the counsel appearing for A1 would submit that he is not removable from his office by the Revenue Divisional Officer and if at all termination order can be issued only by the District Collector.

39.According to the learned counsel appearing for the first accused, as per the Rule of the Tamil Nadu Removal of the Village Administrative Officer Standing Order, PW1 is not a competent person. He would further submit that the Revenue Divisional Officer is empowered to suspend the Village Administrative Officer and no termination order can be passed by him.

40.When this argument was advanced, the learned Additional Public Prosecutor has relied upon the judgment reported in the case of ***Baskaran Vs. State through the Inspector of Police, Vigilance and Anti Corruption, Madurai [2015-2-LW (Cri.) 768].*** He would further submit that as per section 19(1) of the Act, the Revenue Divisional Officer is the competent person. He would rely upon section 4(1) of the Tamil Nadu Abolition of Posts of Part Time Village Officers Act (3 of 1981), which runs like thus:-

> *"Section 4(1) of the Act 3 of 1981 speaks of appointment of Village Administrative Officer, which reads as follows:-*
>
> *"Subject to the provisions of sub-section (2) and the rules made under Section 6, the competent authority may appoint a person as Village Administrative Officer for one or more revenue villages."*
>
> *41.Sub Section (2) of Section 4 reads as follows:-*
>
> *"no person shall be eligible for appointment to the post of Village Administrative Officer unless he possesses the minimum general educational qualification referred to in rule 12(a)(i) of Part I of the Tamil Nadu State and Subordinate Services Rules and prescribed in Schedule 1 to the said Part (II)."*

41.So according to the learned Additional Public Prosecutor, the Revenue Divisional Officer is the competent person to remove A1 from his office and he is empowered to issue sanction order. When this position has been stated by this court in ***Baskaran Vs. State through the Inspector of Police, Vigilance and Anti Corruption, Madurai [2015-2-LW (Cri.) 768]***, unless there is a contra judgment by this court or the judgment by the Hon'ble Supreme Court, the position that has been laid down will prevail and continue to prevail also. So the contention on the part of the first accused that PW1 is not the competent person to issue such an sanction order is not well placed and it is rejected.

42.The next argument apart this legality of the sanction is that PW1 has not taken the facts and circumstances of this case. For that purpose, they would rely upon the following circumstances.

43.As per the evidence of PW1 on the date of the alleged demand and acceptance, the file with regard to the issue of transfer of patta was in the hands of the Deputy Tashildar. PW2 also accepted during the course of evidence that on the next day of the above said trap proceedings, he received the patta transfer order from the concerned authority. So according to the learned counsel appearing for A1, absolutely, there is no cause and necessity for such a demand and acceptance on the particular date as alleged by the prosecution.

44.According to the learned counsel appearing for A1, absolutely this important aspect escaped the notice of the learned trial court. This is the important factor and it got to be thoroughly addressed.

45.PW7 was working as Senior Draftsman during the relevant point of time. The patta transfer file was bearing No.1566/2003, dated 17/10/2003. The Headquarters Deputy Tasildhar issued the order on 17/10/2003 in respect of the patta proceedings in respect of PW2. The file was bearing No.1567/2003. In that file, on 22/10/2005, the above said Headquarters Deputy Tashildhar, passed an order. On 30/10/2003, the above said two orders were transferred to the Computer Wing and later, despatched to the concerned Village Administrative Officer. The despatch register also bears the date as 30/10/2003. So this evidence is strongly relied upon by the accused.

46.In this context, the evidence of PW2 is to be looked into. According to him, the patta transfer petition was filed, on 20.08.2003. On 14/11/2003, he approached the first accused and at that time, he demanded Rs.900/- as bribe for making a recommendation. So, on 17/11/2003, he lodged a complaint. So as stated earlier, a simple case of A1 is that absolutely, there was no occasion for him to demand the bribe amount on 14/11/2003 and accepted the same on 17/11/2003 as per the story of the prosecution.

When the file was transferred to the Computer Wing on 30/10/2003, how PW2 was not in a position to obtain the patta transfer order is not clear on record.

47.But however, the learned Additional Public Prosecutor would submit that the first accused having known that the order has also been passed by the competent person until he demanded the bribe amount on 14/11/2003 concealing it. When this argument was advanced by the learned Additional Public Prosecutor, the learned counsel appearing for A1 would submit that absolutely, in the charge, no such particulars have been given.

48.Now coming to the charge, we see that originally on 14/11/2003 at about 11.00 am, and subsequently on 17/11/2003 at about 1.00 pm, A1 demanded Rs.900/- as bribe from PW2. No doubt that this important aspect was not also considered by the sanctioning authority namely PW1. The entire files with regard to the transfer of patta proceedings were placed before him.

49.Now the question, which arises for consideration is whether belated bald explanation by the prosecution that by suppressing the above said order, the first accused has demanded bribe amount can be accepted. Now we will go to the evidence of PW2 on this aspect. He would say that he was not aware of the above said transfer orders. PW2 during the course of evidence has went a step further and stated that on 07/10/2003 itself, he approached A1 and at that time also, he demanded the bribe amount. But in the complaint, it is not specifically stated that on 07/10/2003, A1 has made a demand and immediately, there was action by him to make a complaint to the Tasildhar about the illegal demand. But how the improvement has been made by PW2 during the course of evidence shows that the prosecution tried to cover up the defence theory that on 14/11/2003 there was no occasion for the accused persons to demand the bribe amount. Such an attempt on the part of the prosecution *per se* is not proper. Noting that it is an improvement on the prosecution case. So, I hold that the case of previous demand is not reliable and to be rejected.

50.But the other factors must also be taken into account. No doubt that there is no specific charge to the effect that by suppressing the fact of transfer of patta, the first accused has demanded the money and received the same.

51.In this backdrop, we will go to the evidence of PW2. As stated above, on 14/11/2003, the first accused demanded Rs.900/- as bribe and over which, he lodged a complaint on 17/11/2003 and trap was laid and on that particular date, he along with PW3 went to the office of the first accused at about 12.40 pm. At that time, A1 told him that if he pays the bribe amount, which was demanded by him, he will make a recommendation. In pursuance of the above said demand, he paid the bribe amount, which was accepted by A1 and it was in turn handed over to A2 and A2 put the amount in his packet. So this specific evidence of PW2 has been corroborated by PW3, who accompanied the trap team. He would say that he followed PW2 as per the trap arrangement and PW2 enquired about the patta transfer order, for which A1 has stated that if he is ready with the amount, which was demanded by him, he will make a recommendation. So in pursuance of the above said demand, he handed over the amount, which was counted by A1, in turn was handed over to A2 and A2 also counted the money and put in his pocket. The evidence of PW2 is corroborated by PW3.

52.As mentioned earlier, it is not denied that the amount was recovered from A2 by the Vigilance Team. What has been stated is that as mentioned above, due to previous enmity only, PW2 put the money in the table and rushed out and A1 followed him and thrusted the money in the pocket of the 2nd accused. But occasionally by chance, he came to the place and soon after, they were arrested by the vigilance team. So the contention on the part of the appellants that there was some improvement. No doubt, PW1 sanctioning authority has not taken note of any of the place of the transfer file and status. But I am of the considered view that this must not vitiate the proceedings.

53.The contention on the part of the accused that PW3 belongs to nearby the office and several complaints have been pending against him departmentally and they obliged the instructions of the Vigilance team is without any basis and evidence. The contention is that no log book of the concerned vehicle, in which the vigilance team travelled was not recovered can not be given any importance. These factors are only supporting in nature, which may not have any impact upon the core issue.

54.Similarly, the argument that PW3 is not permitted by the superior officer to assist the vigilance team cannot also have any impact. There is no requirement that written permission should have been obtained before assisting the police team. When the vigilance team required the assistance of the Government Official for trap proceedings, they are bound to oblige. That cannot be found fault. The argument that there was a contradiction with regard to seat, in which, PW2 and PW3 were sitting also does not improve the case of the defence.

55.From the evidence of PW2 and PW3 as well as the trap laying officer, more satisfactorily, it has been proved by the prosecution that there was demand and acceptance for discharging the official duty of A1. The contention that there is no proper evidence to show how the dress of the A2 has been brought to the place, when the shirt which was wearing by him, was recovered is of no much significance.

56.Similarly, the argument that there is no proper documentary evidence to show that the case, which was registered under section 7 of the Prevention of Corruption Act and section 13(1)(d)(ii) of the Act has been challenged into. But no specific explanation has been sought for from the Investigating Officer on this aspect. So without any proper basic evidence, the argument that has been advanced by the appellants cannot be accepted.

57.Similarly, the argument that the person, who prepared Exs.P4 and P5 Mahazars and the staff, who received the currency note, comparing the same with Form 95 are not available on record and of no much importance. This is only subsequent happening, which have no impact on the core issue.

58.Similarly the argument of A2 that he is noway involved in the above said occurrence and he was also not known to PW2 on the earlier occasion cannot have any impact, since there is a specific evidence to the effect that he was also present in the place of occurrence, when demand was made by the first accused and he received the money from A1, which was handed over by PW2 and who in turn put in his pocket and from him only, the tainted money has been recovered or seized. The involvement of A2 has also been clearly established. So the first contention that he is noway involved in the occurrence and falsely implicated is also without any basis.

59.Now the defence would suggest that due to previous enmity that existed between A1 and one Kannan, PW2 was used by the above Kannan to foist a false case is without any basis at all. The contention that serving officer has been targeted leaving his officer, who passed the order of suspension, is far from acceptance.

60.Now we will go back to the charges that have been framed, as mentioned above, no where in the charge it has been stated that by supressing the order of transfer, by corrupt of illegal means A1 has demanded the money. Even the sanctioning officer was not conscious of this fact, so also the Investigation officer. It appears that the case was not properly put to the court. So under the circumstances, the alleged criminal misconduct, the absence of particulars in the final report and in the charge framed under section 13(1)(d) of the Act has prejudicially affected the defence. Since the alleged have denied the right to defend, then for the other charge under section 13(1)(d) of the Act. In the light of the above discussion, I am compelled to hold that the criminal misconduct alleged is not proved. So the receipt of illegal gratification under under section 7 of the Act stands confirmed and A2 convition is also confirmed.

61.So I find that these appeals requires to be modified. But however, considering the fact that A1 is aged about 59 years in 2014 and now, he may be running 67 years. Similarly, the A2 is also an Engineering Graduate and because of his involvement in this matter, his future has also been affected. He is 44 years at the time of occurrence. Now he would have been age about 52 years. Considering their age and the manner in which, the offence said to have taken place, in my considered view that the imprisonment of three years, which imposed upon the appellants/A1 and A2 is reduced to **six months of rigorous imprisonment under section 7 of the Prevention of Corruption Act.** The period of incarceration during the investigation as ordered by the trial court is also set off, the fine amount is taken as fine imposed under section 7 of the Act and sustained.

62.With the above modification, these criminal appeals are **partly allowed.**

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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

To,

1.The Special Judge,
Special Court for Trial of cases
under the Prevention of Corruption Act cases, ,
Tirunelveli.

2.The Inspector of Police,
Vigilance and Anti-Corruption Department,
Tirunelveli District.

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

COPY TO:
The Record Keeper, Criminal Section,
Madurai Bench Of Madras High Court, Madurai. (2 COPIES)

Crl.A(MD)Nos.80 and 83 of 2016
16.03.2022

RD(02.06.2022) 19P 6C