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CRL.A.(MD).No.93 of

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.06.2022

PRONOUNCED ON : 21.09.2022

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No.93 of 2017

State represented by
The Public Prosecutor,
High Court, Madras -600 104,
(Vigilance and Anticorruption,
Tirunelveli)
(Crime No.03/2002) .. Appellant/Complainant

Vs.

P.Murugesh .. Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378(1) Cr.P.C, against the judgment dated 22.04.2016, in Special Case No.04/2014, by the Special Court for trial of cases under Prevention of Corruption Act, Tirunelveli.

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

For Respondent : Mr.R.Anand



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JUDGMENT

The Criminal Appeal is directed against the judgment of the acquittal passed in Special Case No.04 of 2014, dated 22.04.2016, 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 Anti Corruption, Tirunelveli Detachment, is that the respondent/accused was working as A3 – Assistant in the Taluk office, Palayamkottai upto 24.04.2003 as a public servant, that on 22.04.2002 at about 11.00 hours, the accused demanded Rs.2,000/- from the defacto complainant Thiru.Sudhan Sundarapandian, who was doing money lending business in the name of “Aravind Finance”, as gratification other than the legal remuneration as a motive or reward to process the money lending licence renewal application of the defacto complainant, that in pursuance of the said demand, the accused reiterated the said demand on 24.04.2002 with the defacto complainant and he accepted and obtained the bribe money of Rs.2000/- in between 12.00hours and 12.15 hours from him, that since the accused received the said amount of Rs.2000/- as gratification other than the legal remuneration, as a motive or reward to process the money lending renewal application, he committed an offence punishable under Section 7 of the Prevention of



Corruption Act and that in the course of the same transaction, the accused being public servant, by corrupt or illegal means and abusing his position as public servant obtained the said amount of Rs.2000/- for himself as pecuniary advantage from the defacto complainant and he has also committed the offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

3. The Special Court for trial of cases under Prevention of Corruption Act, Tirunelveli, after receipt of the final report, has taken the case on file in Special Case No.4 of 2014 on its file and furnished the copies of records under Section 207 Cr.P.C., to the accused on free of costs. The learned Special Judge, 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 14 witnesses as Exs.P.1 to P.14, exhibited 20 documents as Exs.P.1 to P.20 and marked four material objects and M.O.1 to M.O.4.



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 doing money lending business in the name of “Aravind Finance” . The respondent was working as A.3 Clerk in Palayamkottai Taluk Office at the relevant point of time. P.W.2 had earlier obtained licence for doing money lending business from the Tahsildar for the period till 31.03.2022. In order to extend the licence, P.W.2 went to the Palayamkottai Taluk Office and approached the respondent on 02.04.2002. The respondent has directed P.W.2 to remit Rs.100/- towards licence and another sum of Rs.100/- towards penalty for late payment. P.W.2- thereafter met the accused on 05.04.2002 and produced the challans along with the renewal application. The accused, after receipt of the same, has directed P.W.2 to contact him again on 22.04.2002, as he was busy with some other works. As directed by the accused, P.W.2 went to the office of the accused on 22.04.2002 and the accused had taken him before P.W.4 – Tahsildar and obtained his initial in the application form. After recording the statement of P.W.2, the accused has demanded Rs.2000/- as gratification for processing the renewal application and to complete the same at the earliest. Not having any inclination to pay the said amount, P.W.2 approached the Inspector of Police, Vigilance and Anti-corruption – P.W.13 on 24.04.2002 and gave a complaint in writing under Ex.P.2 at about 09.00a.m.



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(b) Based on the said complaint, P.W.13 registered F.I.R. in Cr.No.3 of 2002 under Section 7 of Prevention of Corruption Act under Ex.P.16. P.W.13 made a request to the Superintending Engineer of Highways Department and to the office of Regulated Market to depute the officers to accompany the defacto complainant as shadow witnesses. In pursuance of the said request, Thiru.C.Ramasamy – Superintendent of Regulated Market, Srivaigundam, Manonmani Raj – Assistant Engineer, Highways Department were deputed. P.W.13 introduced them to P.W.2 and gave a copy of F.I.R., for them to read. After reading the F.I.R., they enquired with P.W.2 about the veracity of the complaint. Thereafter, P.W.2 produced twenty notes of Rs.100/- for Rs.2000/- before P.W.13, who in turn directed the said Manonmani Raj to count the notes and thereafter had demonstrated Sodium Carbonate Phenolphthalein test procedures and he prepared the entrustment mahazar under Ex.P.3. P.W.13 has then instructed P.W.2 to meet the accused at his office 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, P.W.13 had taken P.W.2 and other witnesses to Palayamkottai Taluk Office at about 11.45a.m., in his police vehicle viz., GYPSY No.TN-07-G-751 and stopped the vehicle near Kokkirakulam traffic point at about 12.00 noon and directed P.W.2 and the shadow witness Ramansamy (P.W.3) to proceed to the office of the



respondent/accused. When the accused came out of his office at about 12.15p.m., P.W.2 and P.W.3 met him and at that time, the accused had asked P.W.2 as to whether he brought the money. Immediately P.W.2 has handed over the said amount of Rs.2000/- - M.O.1 series. The accused received the same and kept it in his left pocket of his pant. P.W.2 has, by wiping out his face with kerchief, signalled the police. Immediately P.W.13 and his team approached P.W.2 and others and directed P.W.2 to identify the accused. P.W.13 introduced himself to the respondent/accused and asked him to take out the bribe amount of Rs.2000/- and accordingly, the respondent/accused had taken out the said money from his pant left pocket. Thereafter, P.W.13 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 left hand fingers and the solution changed into light pink colour. Thereafter, P.W.13 directed the witness Manonmani Raj 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 witness informed that the notes were tallied. P.W.13, by giving a dhoti, directed the accused to remove his pant and in pursuance of the same, the accused has produced his black colour pant and the left side pocket of the pant was dipped in the solution and the same was also changed into light pink colour. P.W.13 asked the accused to produce the renewal application of P.W.2 and related file. Accordingly, the



accused has produced the file relating to the defacto complainant. P.W.13 has then informed the above aspects to the Deputy Tahsildar who was available in the Taluk office, arrested the accused and recovered the solution bottles, file relating to P.W.2 and the black pant of the accused and bribe amount of Rs.2000/- and prepared the mahazar under Ex.P.9. Thereafter, P.W.13 has taken the accused to his house situated at Indra Nagar, Palayamkottai and made a search therein in the presence of the witnesses and prepared a search list and obtained the signature of the accused. Thereafter P.W.13 sent the accused to remand and the properties recovered to the concerned Court. As per the directions of his higher officials, P.W.13 handed over the file to P.W.14 – Inspector of Police.

(c) P.W.14 had taken up the case for further investigation on 25.04.2002 and visited the occurrence place. In the presence of the witnesses, he prepared rough sketch under Ex.P.19 and examined the witnesses and recorded their statements. He sent a requisition to the Court for sending the case properties for chemical examination. P.W.6 – Tmt.Kasthuri Rani, now working as Scientific Assistant Gr.I, attached to the Forensic Department, Chennai, while she was working in the Forensic Laboratory, Tirunelveli, received a request from the Court of the Chief Judicial Magistrate, Tirunelveli under Ex.P.11 for chemical examination of the properties sent along with the said requisition and



after examination, they have sent a report under Ex.P.12, dated 17.05.2002 stating that both phenolphthalein and Sodium Carbonate were detected in the two items received from the Court. P.W.14 has then examined P.W.6- Scientific Assistant and the Court staffs and recorded their statements. He examined P.W. 13 who conducted first investigation and also recorded his statement. Thereafter 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.14, the prosecution has closed their evidence.

(d) 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 the Tahsildar had directed P.W.2 to give Rs.2000/- towards flag day funds and as per the directions of the Tahsildar, P.W.2 gave Rs.2000/- to him and that he has not received any bribe or any other amount from anybody.

(e) The defence has then examined the Deputy Tahsildar – Thiru.M.Jeyaraman and the Personal Assistant (Small Savings) to District Collector, Tirunelveli- Thiru.N.Nagarajan as D.W.1 and D.W.2 respectively and



exhibited a copy of the G.O.Ms.No.180, Finance (Small Savings) Department, dated 20.05.2002, relating to fixation of target for the Districts. D.W.1- Thiru.M.Jeyaraman is a retired Deputy Tahsildar and he deposed about the collection of small savings from the applicant, who are approaching their office, as per the instruction of the Tahsildar. D.W.2 deposed about the allotment of collection of small savings and the fixation of limit and target fixed for the Tirunelveli District.

(f) The learned Special Judge, upon considering the evidences adduced and on hearing the arguments of both sides, has passed the impugned judgment dated 22.04.2016, 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.R.Anand, 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, P.W.13 and P.W.14 are genuine



witnesses and the trial Court has committed a grave error in not accepting their evidences, that the trial Court, without considering the evidence of the said witnesses in proper perspective, has wrongly recorded the finding that the initial demand, subsequent demand and acceptance and the consequent recovery of the bribe money were not proved, that the reasons given by the trial Court as to the seizure of the application and other enclosures submitted by P.W.2 are filmy and unreasonable, that the accused has not at all produced any materials in support of his defence theory that he received the said amount of Rs.2000/- as Small Savings amount, but the trial Court has given much importance to the evidence of D.W.1 and D.W.2, that the trial Court, in the absence of any such material, has given importance to the oral evidence given by the defence witnesses, that the credible and cogent evidence of the prosecution witnesses have not been taken into consideration by the trial Court on mere surmises and conjectures, that though Section 20 of the Prevention of Corruption Act cast an obligation on Court to operate, it is rebutted by proof, but the learned trial Judge rejected the stand of prosecution stating that it is not necessary to shift the burden when the charges of demand and acceptance was not proved by the prosecution, that the learned 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 appeal for setting aside the said judgment.



8. The learned Counsel for the respondent/accused would submit that the sanction accorded under Ex.P.1, which was given by taking note of extraneous and non-existence documents, is not valid and vitiated, that the prosecution has miserably failed to prove the demand and the subsequent demand theory canvassed by them, that the trial Court has rightly disbelieved the trap proceedings taking note of the material contradictions in the evidence of main witnesses, that the prosecution has neither examined the material witness – A. Rani – staff working in Taluk Office, Palayamkottai at that time and whose name finds place in the challans produced by P.W.2, nor explanation for non-examining her, that the prosecution has also not examined the other staff, who were very much available at the time of trap proceedings, that the trap laying officer has not followed Clause 47 of the Vigilance Manual and he has not offered any reason or explanation for its non-compliance, that the prosecution is not at all sure about the place of occurrence, as there existed material contradictions in the evidence of the witnesses with regard to the place of occurrence 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 sanction accorded for prosecuting the respondent/accused is valid and legal?;



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

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

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

10. Now let us first take the plea with regard to sanction. No doubt, the learned Special Judge has recorded a finding in favour of the prosecution that the sanction under Ex.P.1 accorded by P.W.1 is valid. But the learned Counsel for the respondent/accused would strongly contend that P.W.1- Sanctioning Authority has taken note of extraneous and non-existence documents and as such, Ex.P.1 sanction is vitiated. Admittedly, the present Criminal Appeal is preferred by the State challenging the judgment of acquittal and the accused while sustaining the judgment of acquittal, has taken a stand that the finding of the trial Court with regard to sanction is not correct.

11. Section 386 Cr.P.C., while dealing with the power of Appellate Court contemplates that the Court can reverse the finding and sentence and acquit or discharge the accused in the appeal filed for enhancement of sentence or that the



Court can reverse the finding and sentence and acquit or discharge the accused in the appeal filed against the judgment of conviction or that the Court can pass sentence in the appeal filed against the order or judgment of acquittal.

12. In the case on hand, as already pointed out, the accused in the appeal filed against the judgment of acquittal has reiterated their defence that the sanction is not valid and taking note of the above provision of law, this Court is duty bound to consider the said plea with regard to sanction. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***V.Venkata Subbarao Vs. State represented by the Inspector of Police, Andhra Pradesh*** reported in ***(2006) 13 SCC 305***, wherein the Hon'ble Apex Court held as follows:

“Prevention of Corruption Act, 1988 – S.19 -Sanction for prosecution – validity of – Non-application of mind to entire materials on record – Effect – Out of 4 persons against whom complaint made, only appellant prosecuted – Documents showing involvement of person who actually made demand of bribe, not produced before sanctioning authority – Thus, the sanctioning authority did not have any occasion to apply its mind to the entire materials on record – Hence held, sanction granted to prosecute appellant was vitiated in law – Prevention of Corruption Act, 1947, S.6)

23. *It is also accepted that before the Sanctioning Authority, the vital documents showing involvement of the*



M.R.O. had not been produced. The Sanctioning Authority, therefore, did not have any occasion to apply their mind to the entire materials on record and in that view of the matter, the sanction is, therefore, vitiated in law. Conduct of the officers of the respondent who had taken recourse to suppressio veri deserves serious condemnation.”

13. The learned trial Judge has also referred a judgment of the Hon'ble Apex Court in the case of ***State of Karnataka Vs. Ameer Jan*** reported in ***2008(1) MLJ (Crl) 542 (SC)*** and the relevant passage is extracted hereunder:

“The Apex Court agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.”

“For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayuktha. Even the said report has not been brought on



record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police Karnataka Lokayuktha had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced.”

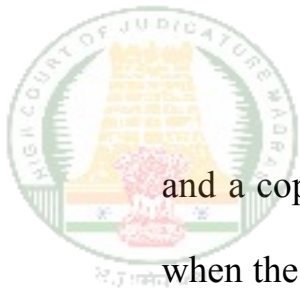
14. Considering the above, the position of law is well settled that the sanctioning authority is duty bound to consider all the relevant particulars and materials collected or gathered by the Investigating Officer against the proposed accused and his main duty is to decide as to whether the proposed accused is entitled to get protection under the Prevention of Corruption Act or that the information gathered from the particulars and the materials produced by the Investigating Officer is of such nature, that warrants the prosecution of the proposed accused.

15. In the case on hand, P.W.1 – Sanctioning Authority in his Ex.P.1 proceedings, has specifically stated that he carefully examined the materials such



as F.I.R in Cr.No.3 of 2002 of Tirunelveli Detachment of Vigilance and Anticorruption, statement of witnesses and Thiru.P.Murugesh, additional renewal file of Thiru.Sudhan Sundarapandian, mahazar, chemical analysis report, report of Director, Vigilance and Anticorruption, Chennai and other connected records placed before him and got satisfied that it is necessary to prosecute Thiru.P.Murugesh in the interest of justice. Even according to the prosecution, admittedly the statement alleged to have been recorded from the accused has not been produced anywhere. But as rightly pointed out by the learned Counsel for the respondent, the learned trial Judge, in paragraph 46 of the judgment, has observed that in Ex.P.1, there was no reference as if the Sanctioning Authority has considered the statement of the accused. But in the evidence before the Court, P.W.1 has deposed that he considered the statement of the accused.

16. As already pointed out, in the penultimate paragraph of the proceedings of P.W.1, he has specifically referred about the statement of the accused and careful examination of the same along with other documents referred therein. As rightly pointed out by the learned Counsel for the respondent, in Ex.P.1 proceedings, P.W.1 has stated that the alleged bribe amount of Rs.2000/- was recovered from the accused, after conducting of phenolphthalein test under a cover of mahazar attested by the official witnesses



and a copy of which was furnished to the accused under acknowledgment. But when the same was put to P.W.1, during cross-examination, as to whether he had seen that mahazar, P.W.1 would say that he does not remember. When a specific question was put to him, that though several mahazars were prepared after phenolphthalein test, only one mahazar was submitted to him, P.W.1 would say that he was not in a position to answer the same. P.W.1 would specifically admit in his cross-examination that though he has stated in Ex.P.1 proceedings that along with documents referred, he has also carefully examined the other connected records placed before him, but he has not listed out those documents.

17. It is pertinent to note that when some material questions were put to P.W.1 in cross-examination, he would say that he does not remember those aspects. On considering the evidence of P.W.1 along with Ex.P.1 proceedings, this Court has no hesitation to say that P.W.1, without considering the material documents and without seeking for production of material documents, has casually, mechanically and without application of mind, has passed the impugned proceedings in granting sanction. Hence, this Court concludes that the sanction under Ex.P.1 accorded by P.W.1 is not legally valid and hence, the finding of the trial Court with regard to the sanction is liable to be set aside.



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

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19. 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



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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.”

20. 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.

21. 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.

22. As rightly contended by the learned 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 case on hand, admittedly, a sum of Rs.2000/- was recovered from the accused during the trap proceedings. Even according to the defence, the accused has admitted the factum of recovery of Rs.2000/- from him. But according to him, the same was received not towards illegal gratification, but for Small Savings Scheme formulated by the Government of Tamil Nadu.

23. The learned 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 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:

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*“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*



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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.”

24. The learned 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.”

25. 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:-



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"...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."

26. As rightly pointed out by the learned Counsel for the respondent, in the present case, the defence was that the accused received the said amount towards flag day fund collection and the facts of both the cases are different.



27. 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.

28. As rightly contended by the learned Counsel for the respondent, once the prosecution proves their case of demand, acceptance and recovery prima facie, then the presumption under Section 20 the Prevention of Corruption Act comes into play and the burden of proof gets shifted to the accused and that the accused has to prove that the amount received was not towards any illegal gratification, but for some other purposes. In the present case, according to the respondent/accused, the prosecution has miserably failed to prove the demand theory projected by them. The defacto complainant-P.W.2, in his complaint as well as in his evidence would say that he met the accused on 02.04.2002 for the purpose of renewing his money lending licence, that the accused asked him to pay a sum of Rs.100/- towards licence fee and Rs.100/- towards penalty for the delay, that P.W.2 has submitted his renewal application along with two challans evidencing payment of Rs.100/- each with the accused on 05.04.2002 and that



the accused asked P.W.2 to come after two weeks, as he was busy with some other works. But in cross-examination, as rightly pointed out by the learned Counsel for the respondent, P.W.2 would say that he has approached the accused on 06.04.2002 and handed over the application and challans and thereby he disowned his earlier version that he met the accused on 05.04.2002 and handed over the application with challans.

29. Admittedly, 06.04.2002 was a Saturday and was holiday for the Taluk office. It is not the case of the prosecution nor the case of P.W.2 that the accused came to the Taluk office on 06.04.2002 and on that day, P.W.2 had handed over his renewal application along with the challans. P.W.2, in his cross-examination would say that he does not remember as to whether the accused came to his office on 06.04.2002 or not. More importantly, it is pertinent to note that P.W.4- Maruthanayagam – the then Tahsildar of Palayamkottai Taluk would say in his chief examination itself that Ex.P.4- renewal application was submitted to him by P.W.2 on 08.04.2002 directly and that he had subscribed his initial in the said application. In the cross-examination, P.W.4 would admit that except Ex.P.4 application, no other application was received from P.W.2 for renewal of licence. The prosecution has cited and examined seven staffs working in Palayamkottai Taluk office at that time, including P.W.4- Tahsildar and P.W.9 – Additional Deputy Tahsildar.



P.W.4 and other officials working at the said office, in their evidence, would specifically narrate about the procedures to be followed in receiving the applications from the general public. P.W.4 would say that whenever an application is given to him, after initialling the same, the same would be sent to tapal section and after assigning a specific number to such application, the same would be entered in distribution register and depending upon the cause upon which, the application has been presented and the same would be forwarded to the concerned clerk, who in turn, on receipt of the same, would enter the said number in his personal register and thereafter he would act upon the request sought for in such application. The officials in their evidence would further state that usually the Tahsildar would receive the applications and in his absence, the Deputy Tahsildar would receive the same or otherwise the same would be received in tapal section and after getting initials of the Tahsildar, the same would be forwarded as per the procedure above referred.

30. As rightly pointed out by the learned Counsel for the respondent, it is pertinent to note that Ex.P.4- renewal application now in dispute, does not bear the official seal of the Palaymkottai Taluk office. Except the initial of P.W.4- Tahsildar, there was no other endorsement. The officials of Taluk office examined before the trial Court would admit categorically that Ex.P.4 – renewal



application was neither entered in the distribution register nor in the personal register of the accused or any other clerk of that office.

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31. The learned Additional Public Prosecutor would contend that the trial Court without analysing much about the demand of bribe by the respondent on 22.04.2002, mainly discussed about the dispute with regard to the date on which the application along with the challans given to the respondent either on 05.04.2002 or 06.04.2002 and that since 06.04.2002 falls on Saturday, he came to the conclusion that the evidence of P.W.2 is unbelievable. The learned Additional Public Prosecutor would further submit that the trial Judge has also observed that the evidence of P.W.2 is not corroborated by the evidence of P.W.4 regarding the demand made on 22.04.2002, but failed to consider the specific evidence of P.W.2 that the respondent obtained a statement from him and got his signature in the application by affixing stamps and thereafter got signature from P.W.4- Tahsildar.

32. The learned Counsel for the respondent would submit that Ex.P.4- application has not gone out from the hands of P.W.4-Tahsildar, that P.W.4 has specifically admitted the receipt of the application from P.W.2 directly, but no number from the distribution register was found to have been assigned to the said application and that the prosecution has failed to produce any evidence to



show that the application received by P.W.4, as per the procedure followed in that office was forwarded to the concerned sections and then to the accused and that the accused has received the application. P.W.9 – Additional Deputy Tahsildar would admit that except the initial of P.W.4, the office seal is not found in the said application and that the absence of distribution number would be a strong factor that Ex.P.4 has not been taken to the table of the accused.

33. As rightly pointed out by the learned Counsel for the respondent, P.W.7 would also say that if Ex.P.4 had been entrusted to the custody of the accused, the same would have contained the distribution number and if in case, P.W.4 himself retained the same, such number would not have been there in the application form. P.W.5 – A.3 clerk in the Tahsildar office would say that Ex.P.4 application was not entered in the distribution register and also not in the personal register of the staff concerned.

34. It is pertinent to note that even according to the prosecution, the money lending licence obtained by P.W.2 got expired on 31.03.2002 itself and no doubt, he has filed an application to renew the licence. P.W.4 – Tahsildar who is the competent authority for issuing the licence would say in his chief examination itself, that since the renewal application was not filed within one month prior to the expiry of the licence, licence cannot be renewed and that new



licence has to be issued. But, here even according to the prosecution, P.W.2 has only submitted renewal application along with two challans and except that application, he has not submitted any other application. If that be so, as rightly contended by the learned Counsel for the respondent, this Court is also at lost to understand as to how the prosecution has taken a stand that Ex.P.4 application was processed by the accused or by the Palayamkottai Taluk office. Considering the above, as rightly contended by the learned Counsel for the respondent, the above aspects have certainly created a strong suspicion or doubt over the basic case put forth by the prosecution.

35. Now turning to the trap proceedings, according to the prosecution, as per the instructions of P.W.13, trap laying officer; P.W.2 along with P.W.3 went to the office of the accused. As rightly pointed out by the learned Counsel for the respondent, there existed a material contradiction between the evidence of P.W.2 and P.W.3 regarding the place, where both of them met the accused for the first time on 24.04.2002. P.W.2 – in his evidence would say that at about 12.15p.m., they met the accused, when he was coming out from his office and at that time, the accused enquired as to whether he brought the amount and in pursuance of the same, P.W.2 handed over Rs.2000/- to the accused, who in turn received the same and kept in his pant left pocket. But P.W.3 who was allegedly very much available with P.W.2 at that time, would say that himself and P.W.2



entered into the office and met the respondent and that after seeing P.W.2, the accused informed them that he would meet them outside the office and as such all the three came out. Moreover, P.W.2 in his evidence would say that after receiving of the amount by the accused, he signalled the police and the police who were hiding themselves came to that place and that the police have taken P.W.2 to the office inside and directed him to identify the accused and accordingly, he identified the accused. But P.W.3 would submit that that after signal given by P.W.2, the police came out of their hiding place and caught hold of the accused and P.W.2 had identified the accused and that thereafter, the police directed the accused to move to his seat. P.W.13- trap laying officer in his evidence would say that after signal given by P.W.2, he along with his party and witness Manonmani Raj rushed to the office of the accused, that P.W.2 was found standing outside the office along with P.W.3 and the accused, that P.W.2 came to him and informed that the accused informed him to come out of the office and accordingly, they came out of the office and he gave Rs.2000/- to the accused, who in turn had received the same. Considering the above, as rightly pointed out by the learned Counsel for the respondent, there were contradictions regarding the place in which, P.W.13 and police party met P.W.2 and P.W.2 identified the accused to the police.



36. The learned Additional Public Prosecutor would submit that the trial Court has discussed about the place in which recovery was made from the respondent, but the recovery mahazar under Ex.P.9 was prepared in the presence of P.W.3 and another independent witness and that since the defence has not disputed the above aspects, the learned trial Judge has committed a grave error in not accepting the recovery by alleging that there is no evidence to show from where the files Exs.P.4 to P.7 were taken by the respondent at that time and that there is no proof that the respondent was holding the files continuously.

37. As rightly pointed out by the learned Counsel for the respondent, as already pointed out, there arose a serious doubt as to whether Ex.P.4 application was forwarded to the accused and the same was in his custody. Though the prosecution has alleged that after the recovery of the tainted money from the accused, P.W.13 directed the accused to produce the file relating to P.W.2 and accordingly, the accused produced the file which includes Ex.P.4 – application. But as rightly contended by the learned Counsel for the respondent and as rightly observed by the trial Court, P.W.13 has not taken any statement from the accused after the alleged recovery of tainted money and the file relating to P.W.2. Moreover, P.W.4-Tahsildar is the head of that office and P.W.13, who conducted the trap proceedings should have informed P.W.4 and should have received the file relating to P.W.2 through P.W.4 – Tahsildar. Even assuming



for arguments sake, that the said file was in the custody of the accused, P.W.13 should have received through P.W.4-Tahsildar, after recording the statement from the accused to the effect that P.W.2's file which was in the custody of the accused was seized. More importantly, except the evidence of P.W.2, there is no other evidence to show that the accused has received the renewal application from P.W.2 and the said application was dealt with by him.

38. It is not in dispute that two challans produced by P.W.2 along with renewal application contained the signature of one A.Rani. P.W.2 in his cross-examination would say that he knew the writer Rani working in the Taluk office, but he denied that the said Rani alone had filled up the challans. During subsequent cross-examination, P.W.2 would admit that one A.Rani had subscribed her signature as a person remitting the amount in Exs.P.5 and P.6 challans and that the said Rani was working in his office. He would deny the suggestion that the said Rani was not working in his office, but a staff working in Taluk office.

39. As already pointed out, licence fee and penalty of Rs.100/- each were remitted on 05.04.2002 and according to P.W.2, the renewal application was submitted to the accused along with challans on 06.04.2002. As rightly contended by the learned Counsel for the respondent, the prosecution has not



clarified about the said Rani. Since the date of presenting the renewal application was not clear, the Investigating Officer should have taken steps to find out the person who had subscribed her signatures in the challans. Even according to the prosecution, at the time of trap proceedings and subsequent recovery, the other employees of Taluk office were very much available at that place. As rightly contended by the learned Counsel for the respondent, the prosecution for the reasons best known to them, have not chosen to examine the other staffs of Taluk office, who were witnessing the trap and recovery proceedings and also the said Rani, who had subscribed the signatures in the challans and they have also not offered any explanation for non-examining them.

40. No doubt, the accused has taken a stand while cross-examining the prosecution witnesses, that P.W.4-Tahsildar had directed P.W.2 to give Rs. 2000/- towards Small Savings Fund and in pursuance of the same, P.W.2 had handed over Rs.2000/- to the accused. In order to prove the said defence, as already pointed out, the accused has examined the retired Deputy Tahsildar, P.W.1 and P.A. (Small Savings) to District Collector, Tirunelveli as P.W.2. But as rightly contended by the learned Additional Public Prosecutor, the accused in the proceedings under Section 313 Cr.P.C., has taken a stand that P.W.4-Tahsildar had demanded P.W.2 to give Rs.2000/- towards Flag Day fund and that since P.W.4-Tahsildar was not in office on 24.04.2002, P.W.2 handed over



Rs.2000/- to him, which is contradictory to the earlier stand, that P.W.2 had handed over Rs.2000/- towards Small Savings fund. The Flag Day gives us an opportunity to contribute to the Armed Forces Flag Day fund and concerted effort is made to raise collections from public. Small Savings Schemes are a set of savings instruments managed by the Government with an aim to encourage the citizens to save regularly irrespective of their age. Hence, Flag Day fund is entirely different from Small Savings Fund or schemes and as rightly contended by the learned Additional Public Prosecutor, the defence has taken a contradictory stand with regard to the amount received by him from P.W.2.

41. No doubt, as rightly pointed out by the learned Counsel for the respondent, 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. But in the case on hand, as already pointed out, the prosecution has not produced any such statement recorded from the accused. Though the Sanctioning Authority – P.W.1 in his proceedings has referred about the statement of the accused, the prosecution has to clarify as to whether the statement was taken from the accused or not. As rightly contended 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. No doubt, as rightly contended by the learned Additional Public Prosecutor, non-following the procedure laid down in the Vigilance Manual is not mandatory and the same cannot be considered as fatal. But in the case on hand, as already pointed out, the accused himself has taken contradictory stand and thereby canvassed the unbelievable story.

42. But at the same time, as rightly contended by the learned Counsel for the respondent, just because the accused has not offered any explanation for the amount received by him or that, he has taken a contradictory stand and as such, the same is unbelievable, taking note of the circumstances referred in the earlier paragraphs, the accused cannot be mulcted with the charge of receiving the amount towards illegal gratification, but at the same time, subject to the placing of prima facie proof for demand.

43. According to the prosecution, the first demand was made on 22.04.2002, when P.W.2 met the accused and that the subsequent and second demand and acceptance was happened on 24.04.2002. As rightly pointed out by



the learned Counsel for the respondent, except the interested testimony of P.W.2, there is absolute no evidence to show *prima facie* that the accused had made the first demand for bribe on 22.04.2002. P.W.2, in her cross-examination, would categorically admit that after the said demand by the accused, he has not preferred any complaint before the Tahsildar and that he has also not disclosed about the said demand to any other person till lodging of complaint on 24.04.2002. Regarding the second demand on 24.04.2002, as already pointed out, there were contradictions between the evidence of P.W.2 and P.W.3 as to when and where they met the accused and when and where the second demand was made by the accused. As already pointed out, the prosecution has not produced any evidence to show that the file relating to P.W.2, which includes Ex.P.4 application was received by the accused and the same was processed by the accused.

44. Considering the above, this Court has no hesitation to hold that the prosecution has miserably failed to discharge the initial burden of proof regarding demand and acceptance of illegal gratification and hence the question of burden shifting to the accused does not arise at all. No doubt, the prosecution has proved the recovery of money from the accused, but as per the settled position of law, mere recovery of money is not enough to draw the presumption under Section 20 of the Prevention of Corruption Act. The Hon'ble Supreme



Court in the judgments cited supra and in various judgments, has reiterated the legal position that the demand of illegal gratification is *sine qua non* for constituting an offence under the Prevention of Corruption Act.

45. Considering the above, this Court is of the view that except the finding with regard to sanction, 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.

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

21.09.2022

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.



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CRL.A.(MD).No.93 of

K.MURALI SHANKAR, J.

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CRL.A(MD).No.93 of 2017

21.09.2022