



Crl.A.No.141 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 05.09.2023

Pronounced on: 08.09.2023

CORAM

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

Crl.A.No.141 of 2018

N.Kannan, Male/Aged 58 years,
S/o.R.Nagarajan,
Formerly Commercial Inspector,
O/o the A.E(O&M), TNEB,
Sooramangalam Section,
Salem District.

... Appellant/Accused

/versus/

State Rep by.
Inspector of Police,
Vigilance and Anti-Corruption,
Salem.

... Respondent/Complainant

Prayer:- Criminal Appeal has been filed under Section 374 (2) of Cr.P.C.,
pleaded to set aside the judgment and order passed by the Learned Special
Judge, Special Court for trial of cases under Prevention of Corruption Act,
Salem, in Spl.C.C.No.62 of 2014, dated 20.02.2018 by allowing this appeal.

For Appellant : Mr.V.Balasubramaniam

For Respondent : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side)



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The appellant herein while serving as Commercial Inspector in Tamil Nadu Electricity Board, Suramangalam, Salem, on 04.09.2003 caught in the Trap laid by V&AC, Inspector with Rs.1000/- given by Mr.Maheswaran and therefore prosecuted. The trial Court held him guilty for demand and receipt of Rs.1000/- as illegal gratification from Mr.Maheswaran. The appellant was sentenced to undergo One Year R.I and to pay a fine of Rs.5000/- in default 3 months S.I for the offence under Section 7 of P.C Act and to undergo Two Years R.I and to pay a fine of Rs 10,000/- in default 6 months S.I for the offence under Section 13(2) r/w 13(1) (d) of P.C Act. The period of substantive sentence ordered to run concurrently.

2. The case of the prosecution as unfurled through its 11 witnesses and 38 documents is as under:-

Thiru.Maheswaran, a Police Constable sought for electricity service connection for his house which was under construction. He got temporary connection during the month of February 2002. He gave an application on 18/09/2002 for permanent service connection and applied for shifting the meter Board. Few days later, Maheswaran went to TNEB Office at



Suramanagalam and met the Assistant Engineer (hereinafter referred as A.E)

and enquired about his application. As directed by A.E, he met the accused, who was the Commercial Inspector of Suramanagalam. The accused/appellant demanded Rs.750/- and on receiving it gave a receipt for only Rs.250/- and told that he will give receipt for the balance Rs.500/- after inspecting the site. The accused then visited the site and after inspecting the building, he told that meter board can be shifted and permanent service can be given only after shifting the main LT line which is running close to the house. Therefore, on 21/07/2003 Mahaeswaran gave an application to A.E for shifting the LT line. When he met the accused again on 28/07/2003 at the TNEB Office, Suramanagalam the accused collected Rs.500/- and gave a receipt and informed Maheswaran (P.W.2) that, for shifting the line the estimated cost will come around Rs.8000/- however, if he give bribe of Rs.2000/-, the estimated cost can be reduced upto Rs.4000/-. After negotiation, the accused reduced his bribe money to Rs.1000/- and also warned Maheswaran that, if he inform anybody about his demand of bribe, he will increase the estimation costs.

3. On 18/08/2003 when Maheswaran (P.W.2) went again to the EB Office, Suramanagalam and enquired the accused about the status of his application, the accused told him that, the estimation is not made ready and he



will prepare the estimated shifting cost below Rs.4000/- and sent it, only if the bribe money is paid, the estimation cost will be received in the office.

Accordingly, on 02/09/2003, P.W.2 was served with the estimation demand notice for the estimation cost and was directed to pay the shifting cost of Rs.3480/- within 7 days from the receipt of the Demand notice. The notice was received by the wife of Maheswaran. On the same day i.e., 02/09/2003 at about 11.00 a.m Maheshwaran went to A.E Office with the money and met the accused. The accused refused to receive the money unless his demand of bribe Rs.1000/- is paid. Maheswaran not willing to give any money other than the estimated cost, went to Vigilance and Anti-Corruption Office at Salem and gave a written complaint in Tamil reporting about illegal demand of Rs.1000/- other than the legal remuneration, by the accused. This complaint was received at 4.30 p.m by the Inspector of Police, V&AC, Salem. FIR was registered under Section 7 of P.C Act and taken up for investigation in Crime No:11/AC/2003/SL. The copy of the printed FIR in English was despatched to the Judicial Magistrate at 20.00 hrs on 03/09/2003 and the same was received by the Judicial Magistrate on the next day (04/09/2003) at 10.30 am.

4. In between, the Inspector of Police arranged for trap and requested two officials to be witnesses to the trap proceedings. They came to



the V&AC Office on 04.09.2003 at about 8.00 a.m. After explaining the significance of the phenolphthalein – sodium carbonate test to them, the bribe money smeared with phenolphthalein power was entrusted to the defacto complainant (Maheshwaran). Entrustment mahazar containing the numbers found in the tainted currency (denomination of 10 one Hundred Rupees notes) was prepared at 10.00 am. The defacto complainant Maheswaran along with the shadow witness Pandiyan were asked to meet the accused and the defacto complainant was instructed to give the tainted money, to the accused if he demands bribe and asked the shadow witness to be present along with the defacto complainant and observe the transaction and conversation. Then the Trap Team reached the AE office, Suramangalam. The accused was not in his seat when they reached A.E Office. Hence, waited for the accused arrival. At about 11.30 a.m., the accused came to the office and resumed work from his seat.

5. The defacto complainant went inside the accused's room and met the accused. The shadow witness followed him and stood near the door. The accused demanded the bribe amount and when the defacto complainant tendered it, the accused received it and kept it in the left side drawer of the table after counting the money. Thereafter, for shifting charge, the defacto



complainant tendered Rs.3500/- to the accused. The accused informed the A.E about the tendering of shifting charge and on the instruction of A.E, the accused requested Kanagaraj, Commercial Assistant to prepare receipt and make necessary entry in the Demand Register. Accordingly, by 11.50 a.m after making necessary entry in the Demand Register, receipt for Rs.3480/- was prepared and handed over to the defacto complainant along with the balance Rs.20/-. After receiving the receipt, the defacto complainant came out and gave the pre-arranged signal to the Inspector of Police and his team waiting near the Temple.

6. The Trap Team headed by Periyasamy, Inspector of Police along with the other official witness Iruthayakannan entered the A.E Office at 11.55 a.m. The defacto complainant identified the accused to the Inspector as the person who received the money from him to the Inspector. Thereafter, the accused was asked to dip his hands in sodium carbonate solution prepared by the Constable. The colourless solution turned into light red. The hand wash solutions were collected in two separate bottles and labelled. Then, the tainted money (Rs.100/- denomination notes, 10 in numbers) recovered from the left side table drawer and the numbers found in the currency were compared with the number recorded in the entrustment mahazar and found tallied. A.E who left



the Office just before the trap was called back to the office by the Inspector. In his presence, seizure mahazar was prepared. The documents relating to the application for shifting were recovered. The accused was then arrested. The trap proceedings and recovery were recorded in writing. The samples solutions drawn from the hand wash of the accused was sent for chemical analysis and the lab report disclosed presence of both phenolphthalein and sodium carbonate.

7. On 28.06.2005, the trial Court framed charges and read it over to the accused for offences under Section 7 and Section 13(2) r/w 13(1)(d) of P.C Act. The trial commenced and after examination of 9 witnesses for prosecution, the trial Court found that the substance of charge for offence under Section 7 of PC Act does not contain all the necessary particulars and it suffers want of details. Hence, redrafted the substance of charge with detailed narration of facts by reframing the first charge under Section 7 of P.C Act and read it over to the accused on 18/04/2017. Thereafter, P.W-10 the Inspector who registered the complaint and P.W-11 the Dy.Superintendent of Police, who investigated the case were examined. After questioning the accused under Section 313 Cr.P.C about the incriminating material, two defence witnesses were examined.



8. On being aggrieved by the finding of the trial Court, its decision

is challenged by the appellant on the ground that, there is delay in reporting the alleged demand of illegal gratification and said delay has not been explained. The Complaint Ex.P-5 (in Tamil written and signed by the defacto complainant P.W-2) was received on 03/09/2003 at 4.30 p.m by P.W-10. In violation of the Manual, the complaint was immediately registered without making any preliminary enquiry about the complaint. The complaint Ex.P.5 is in Tamil, whereas the printed F.I.R Ex.P-36 is in English and nothing on record to show who translated the Tamil version of the complaint in English. The official witnesses claims that, they were present at V&AC office on 04.09.2003 at 8.00 a.m. Prosecution has failed to produce documents to show when the alleged request letter to the Superior Officers of the official witnesses Pandiyan (P.W-3) and Iruthayakannan (not examined) sent and when the witnesses were informed to be present at V&AC Office. The printed FIR copy though shown despatched to the Judicial Magistrate at 20.00 hrs on 03/09/2003, it has reached the Judicial Magistrate only on the next day at 04/09/2003 the delay not explained. Further, the trial Court, after substantial alteration of the first charge, after examination of 9 out of 11 prosecution witnesses, ought to have recalled the witnesses on its own for their further examination. Failure to recall the witnesses after alteration of charge has caused irreparable hardship to the



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9. It is also canvassed by the learned counsel appearing for accused that, according to the defacto complainant, the first demand of illegal gratification was allegedly made on 28/07/2003 and the subsequent demands on 18/08/2003, 02/09/2003 and 04/09/2003. The defacto complainant has failed to explain why he did not gave complaint soon after the first demand. The unreasonable delay in lodging the complaint is fatal for prosecution. The prosecution case is that the accused demanded bribe of Rs.1000/- for the second time for preparation of estimation. But, much before 18.08.2003, the process of preparing the estimation started at the A.E Office. This fact though found in the Registers maintained at A.E Office and marked as prosecution Exhibits been totally ignored by the trial Court. The estimation demand notice Ex.P-10 signed by the A.E on 23/08/2003 and was served on the wife of the defacto complainant on 02/09/2003. Mallika P.W-7 the wife of the defacto complainant (PW-2). According to P.W-7, she received the demand notice Ex.P-10 on 02/09/2003 at about 10.00 am. She informed her husband P.W-2 about the notice on his return to home in the evening. Therefore, there is no possibility of PW-2 meeting the accused on 02/09/2003 and the accused demanding the defacto complainant for the third time to give bribe for receiving the estimation



cost of Rs.3480/-.

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10. The initial allegation was for preparing less estimation cost for shifting the LT line the accused demanded bribe. The allegation is the accused told the defacto complainant unless the demand of bribe money of Rs.1000/- is paid, he will not process the application. The said demand was again reiterated on 18/08/2003. However, the defacto complainant did not give complaint at the earliest point of time soon after the alleged demand of Rs.1000/- made on 28/07/2003. Knowing that, the estimation prepared, subsequently the allegation against the accused charged as if he refused to receive the estimation cost without illegal gratification of Rs.1000/-.

11. The prosecution documents itself would show contrary to their case that, there was no delay in processing the application or irregularity in estimating the cost of shifting. Ex.P-4 dated 21/07/2003 is the application for shifting given by the P.W-2 Maheshwaran. It is addressed to A.E, Suramangalam. The requisite fees of Rs.500/- remitted by the defacto complainant on 28/07/2003 and thereafter, the A.E, who received the application has endorsed the application to the accused for preparing the estimation. In the sanction register Ex.P-29, for insertion of pole (shifting)



estimated amount Rs.3480/- is mentioned and AEE (O & M) Suramangalam

had affixed his signature and dated as 12/08/2003 under the seal

‘sanctioned’ and the work order also issued on the same day. Therefore, on

payment of the estimated amount Rs.3480/-, the work for shifting would have

commenced. The cash counter in the Suramangalam A.E Office is in front of

the office and based on the demand notice Ex.P-10 the defacto complainant

could have paid the money in the counter. The defacto complainant need not

have waited 45 minutes for the accused to come. Under the pretext of giving

the estimation charge of Rs.3480/- to the accused, the defacto complainant, who

had already handled the phenolphthalein smeared currency, had made sure that,

the accused contacts his hands so that, the accused hand wash in sodium

carbonate solution will prove positive for phenolphthalein. The trial Court

totally ignored the defence evidence that there was previous enmity between

P.W.2 and the accused. The complaint lodged with ulterior motive. The trial

Court also failed to appreciate that, the accused had satisfactorily discharged

the burden of alleged demand and acceptance of illegal gratification. The vital

contradiction regarding the dates of demand and violation of manual not at all

taken note by the trial Court.



12. The learned Government Advocate appearing for the respondent submitted that, the defacto complainant, who got temporary service connection approached for permanent connection and for shifting meter board. The accused who inspected the site along with E.B Staff informed the defacto complainant unless the LT line running close to the building is shifted, permanent connection cannot be given and meter board cannot be shifted. For preparing the cost estimation for shifting the LT line. He demanded bribe of Rs.2000/- and later reduced to Rs.1000/- and received it on 04.09.2003. According to the complainant, there was totally 4 demands commencing from 28/07/2003. Being *prima facie* satisfied about the complaint, F.I.R was registered. Though the details of preliminary enquiry not found in the documents relied by the prosecution, P.W-10 had deposed that, he made preliminary enquiry about the veracity of the complaint. On 04/09/2003 trap laid and Rs.1,000/- was recovered from the accused table drawer (the marked currency). The accused hands were tested positive for phenolphthalein. There is no denial of recovery or the test report. The defence taken by the accused is that, the money was planted when he left the seat to remit the money given by P.W.2 for shifting charge and his hands contacted the hands of P.W-2 when the money of Rs.3500/-, which P.W-2 gave to him. These explanation is not adequate to discharge the onus of proof. The presumption that, Rs.1,000/- was



obtained as illegal gratification not been discharged by the accused any probability. Therefore, the trial Court is right in convicting the accused.

13. Heard the Learned Counsel for the appellant and the Learned Government Advocate for the respondent/State. Records perused.

14. On perusal of the evidence for prosecution in the light of the arguments made by the Learned Counsels on either side, this Court, finds loose ends in the investigation and improbability in their case. Firstly, the charge which was framed on 28/06/2005 confines only to the incident happened on 04/09/2003 at about 11.40 a.m in the AE Office, Suramangalam, Salem, which is in respect of the demand and acceptance of Rs.1000/- as illegal gratification other than legal remuneration, which is punishable under Section 7 of P.C Act, 1988. Whereas, the modified charge dated 18/04/2017 narrates incidences commencing from the application for temporary connection, shifting the meter and other subsequent events. Though the charge under Section 7 of P.C Act is not altered, the substance of the charge has materially improvised by this exercise taken by the trial Court. Under Section 216 of the Code, the trial Court is empowered to alter the charges at any time before judgment provided the accused is given opportunity to recall the witnesses. In this case, there is no



request emanated from the accused to recall the witnesses after altering the substance of charge No.1 for offence under Section 7 of the PC Act.

Nonetheless, the untold prejudice could be apparently seen from the prosecution exhibits and witnesses.

15. Ex.P-2 file contains the application of the defacto complainant for LT energy for commercial purpose under Tariff-V. This application is dated 06/02/2002. A.E Suramangalam has processed this application and sanctioned it on the same day. The seal and signature of the AE is found in the document marked as Ex.P-2. On the same day the defacto complainant had paid the requisite charge for installation. Thereafter, meter installed and the check report dated 06/02/2002 which form part of the record indicates the Service Connection No:737 under Tariff-V installed. Thereafter, the defacto complainant had made an application for shifting the meter board reporting that, he had completed the house construction therefore, the meter may be fixed inside his house. The defacto complainant had paid Rs.170/- on 19/09/2003 as shifting fees and same is reflected in the register marked as Ex.P-11. Then, he had sought for shifting the main line running across his newly constructed house. This application marked as Ex.P-4 is dated 21/07/2003. This request received by the A.E Office on 21/07/2003 and the initials made on the left hand



side of the application and the endorsement made on the back of the application

indicates that, the application is taken up for processing immediately. The shifting of line involves shifting of pole therefore, cost estimation prepared and same is sanctioned by A.E. In the Sanction Register Ex.P-29, for insertion of pole Rs.3480/- is mentioned as estimation amount and AEE (O & M) Suramangalam had affixed his signature with date as 12/08/2003 under the seal 'sanctioned'. The work order also issued on the same day.

16. Thus, this Court finds the defacto complainant been interacting with the A.E Office for more than a year and on earlier two occasions when he sought for Temporary Connection and shifting of Meter Board, he had no grievance of demand of bribe. For the first time, he in his complaint Ex.P-5 had alleged the accused demanded money for preparing estimation with less costs. The first demand according to the complaint was on 28/07/2003. However, the endorsements found in Ex.P-4 application indicates that, the defacto complainant after making request for shifting, has paid Rs.500/- the fees for shifting only on 28/07/2003. Till 29/07/2003 his application for shifting was with A.E and only thereafter, A.E had made endorsement on the back of Ex.P-4 with date as 29/07/2003 that, the fees of Rs.500/- paid on 28/07/2002. The payment of Fees Rs.500/- on 28/07/2003 is also mentioned in



Ex.P.28 the DCW-Application Registration Register. However, the amended charge framed by the Trial Court says, when P.W-2 met the accused on 28/07/2002, the accused told that, the application has reached him, the estimation cost for shifting line will come around Rs.8000/- and if he give bribe of Rs.2000/-, he can reduce the estimation cost upto Rs.4000/-.

17. In the complaint Ex.P-5, the date of first demand is mentioned as 29/07/2003 10.00 am. In the deposition, P.W-2 has stated that the first demand was on 28/07/2003. There is material contradiction in the complaint and oral evidence of P.W-2 regarding the date of demand. This is also reflected in the charge. The documentary evidence Ex.P-4 clearly indicates that, till 29/07/2003, the application of the defacto complainant never reached the hands of the accused and it was with the A.E atleast till 29/07/2003. Thus, the very foundation of the prosecution case regarding first demand found to be false. Further, as pointed out by the Learned Counsel for the appellant, if the accused had really made a demand of bribe on 28/07/2003 or 29/07/2003 which ever the date, no satisfactory reason given on the side of the prosecution for the delay in giving complaint about the demand.



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18. The next two dates of alleged demands also equally suspicious and doubtful. According to P.W-2 when he met the accused on 18/08/2003, at 10.00 a.m in his Office, the accused told that, the estimation is not yet ready, he will prepare the estimation for Rs.4000/-. However, P.W.2 can pay the estimation cost only on payment of bribe money. The improbability of the prosecution version could be seen from the entries made in the Application Register, Proposal Register and Sanction Register which are marked as Ex.P.28 and Ex.P.29. The entries reveals that, after receiving the application dated 21/07/2003 for shifting, the requisite fees of Rs.500/- is paid only on 28/09/2003. Thereafter, the application is registered. Under the proposal No.34, dated 09/08/2003, the cost estimation is arrived at Rs.3480/-. The proposal accepted and sanctioned by A.E on 12/08/2003. The demand notice Ex.P.10 prepared and signed on 23/08/2003 by the A.E and same served on P.W-7 on 02/09/2003. Therefore, the cost estimation of Rs.3480/- was already arrived and recorded. A.E had sanctioned the estimation much prior to the alleged second demand for preparing estimation. When the record shows that the estimation already prepared for Rs.3480/- and same has been sanctioned by his Superior Officer A.E.E, the assertion of P.W-2 that, on 18/08/2003, the accused told him that, the estimation not made ready is factually not a correct statement and contrary to record maintained at A.E Office. That makes the



allegation of the second demand on 18/08/2003 improbable.

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19. The third demand on 02/09/2003 again a doubtful allegation.

According to the wife of the accused examined as P.W-7, the demand notice Ex.P-10 received by her on 02/09/2003 at 10.00 am when her husband (PW-2) was not in the house probably he being a Police Constable might have gone to duty. When her husband came back home in the evening, she informed about the demand notice Ex.P-10. Whereas, P.W-2 has alleged in his complaint as well as in his evidence that, on 02/09/2003 the Lineman from E.B office served the demand notice on his wife. On receipt of the demand notice, he met the accused on 02/09/2003 at about 11.00 a.m to pay Rs.3480/- the money mentioned in Ex.P.10, however, the accused refused to receive the estimated cost of Rs.3480/- without the bribe money of Rs.1000/-. When his own wife, who received the demand notice Ex.P.10 say that, her husband P.W-2 came to know about the estimation notice Ex.P.10 and the amount only in the evening of 02/09/2003 when he returned to home after the days work. Contrary to P.W-7 evidence, P.W.2 alleges that, on 02/09/2003 at 11.00 a.m there was demand of bribe for the third time. Nothing from prosecution evidence indicates, when and how P.W.2 came to know about the demand notice prior to 11.00 a.m on 04.09.2003. If this allegation is true, then the complaint must have been given



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atleast then, but the complaint is only on the next day i.e., 03/09/2003 at 4.30

p.m.

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20. It is also pertinent at this juncture to refer the evidence of P.W.5 Kanagaraj, who was also part of dealing the file and was present on the day of trap in the A.E Office sitting next to the accused table. His evidence clearly narrates the process of the application, the dates and the events. The Registers of E.B Office and the entries made there at are spoken by this witness. His presence at the Office in the seat next to the accused is admitted by P.W-2, P.W-3, P.W-4 and P.W-10. His testimony clearly proves that, the defacto complainant had constructed his house very close to the Low Tension Line. When his request to shift the meter board after the construction, he (P.W.5), the accused, Govindaraj (Agent) and Allimuthu (Lineman) inspected the building and intimated the defacto complainant that, unless the LT line is shifted, the shifting of meter board is not possible. Thereafter, on 21/07/2003, the request for shifting of LT line made by P.W-2. The estimation is prepared by P.W-5. Based on 2002-2003 year Cost Rate, he estimated the cost for shifting as Rs.2890/- and gave it to the accused on 05/08/2003. The accused, in turn forwarded it to A.E for verification. On considering the cost, the file was forwarded to the AEE, who is the Competent Officer to grant sanction for cost



estimation below Rs.10,000/-. On 05/08/2003 itself, the accused has forwarded the file to AEE Suramangalam. AEE who received the file has revised the estimation as Rs.3480/- based on 2003-2004 year Cost Rate and returned the file back on 12/08/2003. As per the revised estimation Ex.P-10 the demand notice for Rs.3480/- was prepared on 23/08/2003 and on the same day handed over it to Allimuthu (P.W-6) for service on P.W-2. On 02/09/2003, the notice Ex.P-10 was received by P.W-7, the wife of P.W-2, since P.W-2 was not in his house.

21. On the day of trap, at about 9.30 a.m as per the instruction of AE, P.W-5 and the accused had gone to Ammapalayam, Rasi Nagar for measuring the street for fixing street lights. After completing the work, he and the accused returned to office at 11.30 am. At that time, P.W-2 Maheshwaran was standing outside the Office. P.W-5 and the accused resumed their work from their respective seats. The accused informed A.E that, PW-2 has come to pay the estimation cost. A.E after instructing the accused to receive the money and give receipt, left the office for field inspection at Sona College. Thereafter, the accused collected Rs.3500/- from P.W-2 and gave it to P.W-5 to prepare the receipt and to make entries in the respective register. Accordingly, P.W-5 had prepared the receipt for Rs.3480/-, gave back the balance Rs.20/- along with



receipt and also made necessary entries in the registers which is marked as

Ex.P-32.

22. P.W-5 evidence is fully corroborated by documentary and oral evidence of other witnesses including P.W-2 and P.W-3, who are the defacto complainant and the shadow witnesses respectively. P.W-5 had not seen the accused receiving any money from P.W-2. The procedure for estimation as narrated by P.W-5 clearly proves that, for shifting line at the request of customers, the cost has to be paid by the customer. If the cost is less than Rs.10,000/-, AEE is competent to approve the estimation prepared by the Commercial Inspectors. In this case, AEE had revised the estimation forwarded to him on 05/08/2003. P.W-5 evidence clarifies that, there was no unnecessary delay on the part of the accused in preparing the estimation or forwarding it to the A.E.E. In fact, the estimation itself was prepared only by P.W-5 and the accused after verification had forwarded it to AEE through A.E.

23. The evidence of PW-5 and the respective entries in the register also reveals that, the initial estimation of Rs.2890/- based on 2002-2003 year Cost Rate been revised by AEE as Rs.3480/- as per the cost rate prevailing for the year 2003-2004.



24. Thus, it leads to one and only conclusion that, the estimation is not done by the accused but by P.W-5. Any cost estimation prepared is subject to the approval of the Superior Officer. Cost estimation is not based on the whims and fancy of the Commercial Inspector, but based on the cost rates prescribed by the Department revised every accounting year. The revised charge framed against the accused regarding the date of first demand is wrong. The prosecution witness P.W-2 and P.W-11 had given inconsistent reason for the alleged demand of pecuniary advantage. The alleged demands on 18/08/2003 and on 02/09/2003 not only lack corroboration but also contrary to the documents which improbably the allegation.

25. Apart from the foundational factual error in the revised charge under Section 7 of PC Act, the trial Court also erred in not taking into consideration the testimony of D.W-1 and D.W-2, who had spoken about the motive for lodging the false complaint. The said defence though not proved beyond doubt, it had substantially probablised from the fact that, the defacto complainant a police constable had constructed his house close to the live LT line. He had expected that, the line will be shifted immediately. Since, the procedure involved has caused some delay which is explained through P.W-5, the complaint is given with allegation of accepting illegal gratification on



earlier occasion and demand of illegal gratification few month earlier.

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26. It is also surprise to note, the complaint given at 4.30 p.m on 03/09/2003 registered immediately and no material placed before court to show that the preliminary enquiry about the Public Servant and the complainant were made. Further, no document placed before the Court to prove that the official witnesses were present on the written request of P.W-10 or any other Police Officer of V & AC, Salem. The absence of evidence in this regard gains significance, because the F.I.R registered on the complaint received at 4.30 p.m. The official witnesses were present on the next day at V&AC Office at 8.00 a.m. So, between the closing of Office hours and before the commencement of Office hours, these two official witnesses ought to have been informed to be present at V&AC Office to assist the Police by being witnesses. Whether the permission of their Senior Official which is required under the Vigilance Manual obtained is doubtful. Further, the shadow witness admits that, he was standing near the door and not with P.W-2 when the transaction between the accused and P.W-2 took place on 04/09/2003. This causes doubt whether the P.W-3, who was asked to accompany P.W-2 and oversee the transaction had served the purpose. This leaves the evidence of P.W-2 in respect of demand and acceptance on 04/09/2003 without corroboration.



27. As pointed out in the earlier part of this judgment, out of four

demands alleged, the first three demands disproved by overwhelming evidence.

As far as the fourth demand, except the recovery of currency notes from the table drawer of the accused and the positive result of phenolphthalein test conducted on the hands of the accused, the evidence of P.W-2 alone stands without any direct or indirect corroboration.

28. In this regard, it is also profitable to take the view of the Hon'ble Supreme Court reiterated in catena of its judgments holding that, the demand of illegal gratification is *sine qua non* to constitute offence under Section 7 of the P.C Act. Mere recovery of currency notes cannot constitute offence under Section 7 of P.C Act, 1988, unless it is proved beyond all reasonable doubt that, the accused voluntarily accepted the money knowing it to be a bribe. (reference: *C.M.Girish Babu -vs- C.B.I*; *C.M.Sharma -vs- State of A.P*; *B.Jayaraj -vs- State of A.P* and *N.Vijayakumar -vs- State of Tamil Nadu*).

29. The Learned Counsel for the appellant contends that, the positive result of phenolphthalein test may be due to P.W-2 handling of tainted currency smeared with phenolphthalein and the untainted currency held by him



simultaneously and due to physical contact of the hands of the accused and PW-2 while receiving the demand notice and estimation money for shifting the line. To substantiate his submission, he refers the entrustment mahazar marked as Ex.P.7. It is the case of the prosecution that, Mageshwaran PW-2 after giving the complaint Ex.P-5 on 03/09/2003 came on the next day with Rs.3500/- for the payment of shifting cost and Rs.1000/- the bribe amount demanded by the accused. As pointed out by the Learned Counsel for the appellant/accused, M.O.1 series smeared with phenolphthalein and the money Rs.3500/- meant for payment of estimation cost were with P.W-2 in the front side shirt pocket and the left side pant pocket respectively.

30. In the entrustment mahazar marked as Ex.P-7, it is mentioned that, first on instruction by P.W-10 the Inspector of Police, P.W-2 took out seven Five Hundred Rupees currency meant for payment of estimation cost and the demand notice Ex.P-10. The Inspector of Police, after perusing the notice Ex.P-10 asked P.W-2 to keep this money in the pant pocket. Thereafter, prepared sodium carbonate solution and demonstrated the significance of sodium carbonate – phenolphthalein test. Then, P.W-2 was asked to take Rs.1000/- (10 x 100 rupees) and it was smeared with phenolphthalein and entrusted to P.W-2 through Police Constable Singaravel. P.W-2 received it and



kept it in his shirt left side front pocket. Thereafter, they left for the trap site.

There is no evidence to show that the hands of P.W-2 was washed after he handled the currency smeared with phenolphthalein or he was instructed by the Inspector not to contact the currency kept in the shirt pocket or kept in the pant pocket till there is demand from the accused. Therefore, the chance and probability of P.W-2 contacting the phenolphthalein smeared currency kept in his shirt pocket and contacting the hands of the accused while handing over the demand notice along with the estimation money of Rs.3480/- cannot be ruled out. More so, when the tainted money recovered from the table drawer and the explanation of the accused that, the tainted money was planted in his table drawer by P.W-2 when he left his table to remit the estimation cost and get receipt for it also appears to be a plausible explanation.

31. In view of the above discussion, this Court holds that the prosecution case is short of proof beyond doubt. Whereas, the accused had probablised his defence by preponderance of probability. Bundle of contradictions and lack of corroboration in respect of foundational facts creates doubt about the prosecution case, therefore the benefit of doubt has to go to the accused.



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32. As a result, this *Criminal Appeal No.141 of 2018 is Allowed.*

The conviction and sentence passed by Special Judge, Special Court for trial of cases under Prevention of Corruption Act, Salem, in Special.C.C.No.62/2014, dated 20/02/2018 is hereby set-aside. Fine amount paid if any, shall be refunded to the accused/appellant. Bail bond executed by the appellant shall stands cancelled.

08.09.2023

Index : Yes.
Internet : Yes.
Speaking Order/Non Speaking Order
bsm

Copy to:-

1. The Special Judge, Special Court for trial of cases under Prevention of Corruption Act, Salem
2. The Inspector of Police, Vigilance and Anti-Corruption, Salem.
3. The Public Prosecutor, High Court, Madras.



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Crl.A.No.141 of 2018

Dr.G.JAYACHANDRAN, J.

bsm

Pre-delivery judgment made in
Crl.A.No.141 of 2018

08.09.2023