IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.09.2023	Pronounced on: 20.09.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.Nos.464 & 501 of 2011

Crl.A.No.464 of 2011

S.Kamalakannan, ... Appellant/Accused No.1

/versus/

State,
Rep. by Deputy Superintendent of Police,
CBI/ACB/Chennai.
(R.C.No.001(A) 2007). ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973, against the conviction and sentence imposed on him in C.C.No.13 of 2007 by the Learned Court IX Additional Special Judge for CBI Cases/IX Additional City Civil Court, Chennai – 600 104.

For Appellant : Mr.V.Karthick, Senior Counsel,
for Mr.M.Machavatharan

For Respondents : Mr.K.Srinivasan, Senior Counsel,
Special Public Prosecutor, (C.B.I.Cases)

Crl.A.No.501 2011

S.Kousalya, ... Appellant/Accused No.2

/versus/

State,
Rep. by Inspector of Police,
CBI/ACB/Chennai. ... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973, pleased to call for the entire records in connection with order dated 29/1/2008 passed in C.C.No.13/2007 on the file of the IX Additional Special Judge for CBI Cases/IX Additional City Civil Court, Chennai and set aside the conviction and sentence imposed under section 120b IPC r/w Sec.7 & 13(2) r/w 13(1) (d) of PC Act 1988 and sentenced to undergo rigorous imprisonment for 2 years each and also to pay a fine of Rs.7,500/- in default to undergo rigorous imprisonment for three months, U/s.7 of PC Act 1988 and sentenced to undergo rigorous imprisonment for 2 years and also to pay a fine of Rs.7,500/- in default to undergo rigorous imprisonment for three months each and U/s.13(2) r/w 13(1) (d) of PC Act and sentenced to undergo rigorous imprisonment for three months and pass such further or other orders.

For Appellant : Mr.R.John Sathyan, Senior Counsel,
for Mr.N.Anand

For Respondents : Mr.K.Srinivasan, Senior Counsel,
Special Public Prosecutor, (C.B.I.Cases)

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COMMON JUDGMENT

On the complaint dated 08/01/2007 given by R.Saravanakumar, Managing Director of M/s.DVR Freight Forwarders Pvt Ltd, alleging S.Kamalakannan, Examiner, Customs Department at SICAL Container Freight Station, Manali, demanded illegal gratification of Rs.20,000/- to release the cargo of computerised embroidery machine imported by M/s.Beacon Garments Technics Pvt Ltd, Chennai. FIR was registered by K.A.A.Salam Inspector of Police, SPE/CBI/ACB and trap was arranged. Currency smeared with phenolphthalein power was entrusted to Saravana kumar and he was asked to met Kamalakannan at Container Freight Station and give it, if Kamalakannan demands money. One Thangamohan was asked to accompany Saravanakumar and oversee the transaction.

2. Accordingly, Saravanakumar met Kamalakannan. After completing the examination of the cargo, A-1 Kamalakannan received the marked currency of Rs.20,000/- from Saravana Kumar. He retained Rs.10,000/- with him and gave Rs.10000/- to Tmt.Kousalya, the Appraiser. This was witnessed by the shadow witness Mr.Thangamohan. On receiving the pre-arranged signal from P.W-3, the Trap Laying Office Thiru.K.A.A.Salam and his team of Officers entered the room of the examiner. To ensure whether Kamalakannan had handled the marked currency, asked Kamalakannan to dip his hands in the sodium carbonate solution. The colour of the sodium carbonate solution turned pink. Kamalakannan then asked whether he received any money from Saravanakumar. Kamalakannan admitting the receipt of money, took out Rs.10,000/- from his table drawer. He further told that, he had given Rs.10,000/- to Kousalya/Appraiser. Thereafter, from Kousalya Rs.10,000/-, which was kept inside a red colour rexin bag on her table was recovered.

3. That apart, from the office table of Kamalakannan cash of Rs.39,700/- recovered. When the Trap Laying Officer sought for explanation from Kamalakannan regarding cash he had, Kamalakannan explained that he collected this money for the medical expenses of Shri.Rajini, who is taking treatment in Ramachandra Hospital. He got Rs.25,700/- from Shri Mohan of Galaxy Commercial, Chennai and the remaining amount from Clearing Agents and friends. The verification of Cash Declaration Register maintained in the Department, no entry made for the money. Search of the table drawer of Kousalya resulted in recovery of Rs.1,700/-.cash, an undated cheque for

Rs.5,00,000/- drawn by G.Deivasigamani and a stamp receipt with her signature. In the Cash Declaration Register maintained in the office Kousalya had not declared about the currency she had in her possession.

4. The recovery of money from them not been denied either by A-1 or by A-2. They both had their own explanation which they disclosed in detail during the questioning under Section 313 of Cr.P.C. According to A-1, he was in need of money to meet out the medical expenses of his co-brother's son, who was admitted for heart surgery at Ramachandra Hosptial. Sripathy, the Partner of M/s.D.V.R. Freight Forwarders voluntarily offered to give Rs.20,000/- when he came to know about his financial need. A-1 agreed to receive it as loan and promised to return the money as soon as his co-brother repays it. Then, Sripathy through Saravanakumar sent the money, which he received. From out of Rs.20,000/-, he gave Rs.10,000/- to Kousalya from whom he had borrowed earlier. The medical records of Rajini Ex.D-4 to Ex.D-6 and the testimony of D.W-1 were relied by Accused -1 to probablise his defence.

5. According to A-2, few months back, she lent Rs.10,000/- to A-1. On 08/01/2007 she got relieved from SICAL CFS, Manali and was transferred to Customs House Chennai on promotion. Hence, A-1 retuned the loan money. For not declaring the cash in the Register, her explanation was, as per the circular of the year 2005, cash upto Rs.2000/- need not be declared in the Register. To show that, the defacto complainant and his brother have a notorious habit of lodging complainants against the Custom Officers to expedite the clearance of Bills without proper verification, Ex.D-1 to Ex.D-3 were relied.

6. To prove the case the prosecution, examined 17 witnesses (P.W.1 to P.W.17). On the side of the defence one witness (D.W.1) was examined. 37 Exhibits (Ex.P.1 to Ex.P.37) and 9 material objects (M.O.1 to M.O.9) marked on the side of the prosecution. For defence 6 documents (Ex.D.1 to Ex.D.6) were marked.

7. Against the accused persons, charge for the offence under Section 120B IPC r/w Section 7 and 13(2) r/w 13(1)(d) of P.C Act alone was framed. No charge for the substantive offences i). demand and acceptance of illegal gratification or ii). misconduct by abuse of official position to obtain pecuniary advantage been framed. The trial Court referring the decisions of

Supreme Court in ***Gurubachan Singh -vs- State of Punjab*** reported in ***AIR 1957 SC 623*** and ***Shamnashab M.Multtani -vs- State of Karnataka*** reported in ***(AIR 2001 SC 921***) had proceeded to scrutinise the evidence observing that, the omission to frame charges for substantive offences under Section 7 and 13(1)(d) of PC Act had no way prejudiced the accused. Taking note of the fact that, the accused have understood the offence for which they are tried and defended by letting defence witness and documents.

8. After scrutinising the evidence, the trial Court had held that, the prosecution has proved the possession of marked currency with A-1 and A-2. The explanations for possession of the tainted money not satisfactory to rebut the presumption under Section 20 of the P.C Act. The trial Court accepting the contention of the prosecution that the defence versions is a concocted story to escape the clutches of law and not been established even by preponderance of probability, held them guilty and sentenced as below:-

Rank of the Accused	Offences under Section	Conviction and Sentence passed by trial Court.
A-1 Kamalakannan	Section 120 B IPC r/w Section 7 and Section 13(2) r/w 13(1)(d) of P.C Act. Section 7 of PC Act.	To undergo 2 Years R.I and to pay fine of Rs.7,500/-, in default 3 months R.I. To undergo 2 Years RI and to pay fine of Rs.7,500/-, in default 3 months R.I.

	Section 13(2) r/w 13(1)(d) of PC Act.	To undergo 2 Years RI and to pay fine of Rs.7,500/- in default 3 months R.I.
A-2 Kousalya	Section 120 B IPC r/w Section 7 and Section 13(2) r/w 13(1)(d) of PC Act. Section 7 of PC Act. Section 13(2) r/w 13(1)(d) of PC Act.	To undergo 2 Years RI and to pay fine of Rs.7,500/-in default 3 months RI. To undergo 2 Years R.I and to pay fine of Rs.7,500/-in default 3 months RI. To undergo 2 Years RI and to pay fine of Rs.7,500/- in default 3 months R.I.

The period of sentence ordered to run concurrently and the period of sentence already undergone ordered to be set off. The judgment of the trial Court is challenged by A-1 in Crl.A.No.464/2011 and by A-2 in Crl.A.No.501/2011.

9. <u>Crl.A.No.464/2011</u>

The Learned Senior Counsel appearing for the appellant Kamalakannan (A-1) submitted that, PW-3 is not a reliable witness and his intention to release the cargo immediately without proper examination by the Custom Official is well found from his own evidence. The trial Court failed to see that, even in recovery mahazar (Ex.P-9) A-1 had given his explanation for the possession of the money found with him. In support of the explanation, D.W-1 was examined and Ex.D-4 to Ex.D-6 were marked. When questioned under section 313 Cr.P.C about the incriminating material, the accused had explained the source and reason for possession of the money. Further, in his written submission, A-1 had narrated that, the Bill of Entry No:367006 dated 29/12/2006 was produced by the Clearing Agent M/s.DVR Freight Forwarders on 06/01/2007. To examine the cargo, the container was opened on that day, but the physical examination of the cargo could not be completed on that day since the rear/tail end of the machine alone were opened and shown by the representative of the Clearing Agent Mr.Parthiban. To check the Model, Brand and Serial number, whether computerised or not and other details of the Embroidery machine, Parthiban was asked to come on 08/01/2007 (Monday) being the next working day. On 08/01/2007, Parthiban came to SICAL CFS and in his presence the head end of the container was opened and cargo was inspected. The inspection completed at around 3.30 p.m. Then he and A-2 went for inspection of another cargo. Meanwhile, Sripathi, the Partner of M/s.DVR Frights, who came to know about his financial requirement offered to give Rs.20,000/- and at about 08.40 p.m, Sripathy came to his room along with Parthiban and Saravanakumar, gave the money.

10. Contending that, the said Parthiban and Sripathy are vital witness for the occurrence and they were not examined by the prosecution. The explanation given by the accused as found in Ex.P-9 which is a contemporaneous document is plausible and sufficient to rebut the presumption under Section 20 of Prevention of Corruption Act. In spite of the explanation, the trial Court erred in not considering the testimony of P.W-3 (defacto complainant) and P.W-17 (Investigating Officer) in the light of D.W-1 evidence and Ex.D.4 to Ex.D.6 in proper perspective.

11. The Learned Senior Counsel appearing for the appellant submitted that, P.W-3 in the cross examination admitted that, only his partner Sripathi was dealing with this matter. Only his partner Sripathi and staff Parthiban went to SICAL CFS on 08/01/2007 for opening the container and to inspect the cargo. Only from Parthiban, he came to know about the demand by A-1, who over phone on 08/01/2007 informed about the demand of A-1. Believing the words of his partner Sripathi and worker Parthiban, he decided to take action. He went to CBI Office to give the complaint after discussing with Sripathi and Parthiban. Somebody told to Sripathi that, if they go to CBI, the matter will be cleared. So, he and Sripathi went to CBI office and gave the complaint Ex.P-6. Contrary to this admission, with entirely concocted story the complaint was filed and taken up for investigation without any preliminary enquiry.

12. In the complaint Ex.P-6, it is stated that, P.W-3 went to CFS on 08/01/2007. The examination of cargo was done in his presence. After completion of examination of the cargo at 2.30 pm, A-1 demanded bribe of Rs.20,000/- to clear the goods. The contradiction between his complaint and the testimony, expose that, the very fundamental fact that A-1 demanded Rs.20,000/- from Saravanakumar before the trap proceedings is proved to be false. P.W-3 a tainted witness been relied by the trial Court. The trial Court failed to take note of the contradiction which disprove the demand of illegal gratification from Saravanakumar on 08/01/2007 at 2.30 pm.

13. The possession of money has been admitted and explanation for possession also given, same is recorded in Ex.P-9. For Rs.10,000/- given to A-2 it is explained that, the hand loan received earlier was repaid to A-2 on that day. A2 got relieved on that day and transferred to Custom House, Chennai on promotion. The explanation of A-1 and A-2 in this regard has not been recorded by the Trap Laying Officer in the seizure mahazar Ex.P-9. Except P.W-4 the shadow witness, no other witness say that, A-1 gave Rs.10,000/- to A-2 as her share in the bribe. Even in the recovery mahazar, it is not stated that, A-1 gave a part of the money he received from P.W-3 saying it is her share in the bribe. P.W-3 also had not said in his deposition that, A-1 gave a part of the money to A-2 saying, it is her share of bribe money. Therefore, the embellishment in the P.W-4 evidence contrary to the evidence found in the document and contrary to P.W-2 oral evidence is an afterthought conceived by P.W-4 to get over the explanation given by A-2. Further, the Learned Senior Counsel also detested the credibility of P.W-4 for he happened to be a witness for C.B.I in another trap case.

14. The Learned Senior Counsel for the Appellant (A-1) referring to the answers to the questions put to the accused under section 313 Cr.P.C and the evidence of D.W-1, Ex.D-4 and Ex.D-6, submitted the presumption under Section 20 PC Act, duly rebutted by the accused/appellant. The trial Court erred in ignoring these evidence, had erroneously drawn the presumption under Section 20 of the P.C Act to hold Kamalakannan guilty.

15. **Crl.A.No.501/2011**

The learned Senior counsel appearing for A-2, submitted that, A-2 is not a FIR named accused. The complaint of demand of illegal gratification was only against A-1. It is not the case of the prosecution that, A-2 made any demand of illegal gratification from PW-3 or from any other person to clear the subject cargo. The prosecution has not placed any evidence to show A-1 and A-2 had any meeting of mind or sharing of intention to commit any offence or actionable wrong. Except recovery of the tainted money of Rs.10,000/- from her possession, there is no other incriminating material evidence against her. Mere possession of tainted money is not a proof of demand or acceptance of illegal gratification. In this case, it is not the prosecution case that, A-2 demanded or accepted any money. Neither their case that, A-1 demanded and accepted Rs.20,000/- for himself and for A-2. Except a stray statement of P.W.4, who had deposed that, A-1 after receiving money from P.W-3, gave a part of the money to A-2 saying it is her share in the bribe. This uncorroborated statement which was not found in the recovery mahazar or in any other document is wholly unreliable. For the prosecution, to arrive at a reasonable ground to believe they both conspired, there must be some material. There is no reason for the trial Court to disbelieve the explanation given by A-2 when in the F.I.R, name of A2 is not found and when no material available to show A-1 and A-2 shared any common intention to take illegal gratification from PW-3. When there is no allegation of demand against A-2 and in spite of providing reasons and rebutting the presumption by suggesting to the prosecution witnesses in the cross examination, the trial Court erred in drawing presumption under Section 20 of P.C Act.

16. Through witnesses it has been elicited that, A-2 was promoted and transferred to Custom House, Chennai and 08/01/2007 was the last working day for her at SICAL CFS. She had lended money to A-1 during the month of June, 2006 and that loan was repaid by A-1 on 08/01/2007. Though it was explained to Trap Laying Officer same was not recorded. For the cheque and stamped receipt for Rs.5 lakhs, the signatory to the documents Ex.P-10 and Ex.P-11 examined as P.W-8 (Deivasigamani) and he had deposed that, he requested loan of Rs.5 lakhs from A-2, she promised to arrange and for that purpose as security, he gave the undated cheque and advance receipt on 03/01/2007. He had further deposed that, A-2 promised to arrange loan, but did not arrange loan. He did not receive any money from her.

17. The Learned Senior Counsel for the Appellant (A-2) submitted that, A-1 as Examiner and A-2 as Appraiser have independent duty and role to perform in clearing the Bills of imported goods. In the complaint Ex.P-6, presence of A-2 on 06/01/2007 not mentioned but while deposing before the Court P.W-3 had stated that, when he visited CFS, Manali for physical examination of goods, on 06/01/2007 he produced the documents to the Appraising Officer (A-2) Kousalya and she gave the open order to conduct physical examination. After opening the Container, A-2 and A-1 examined the Cargo. This is an embellishment introduced during trial to implicate A-2, but not found in the complaint.

18. Response by the Spl. Public Prosecution for CBI/ the Respondent:-

The Learned Senior Counsel representing the CBI submitted that, the charge against the appellants/accused for conspiracy to demand and accept illegal gratification and abuse of official position for receiving pecuniary advantage dishonestly as reward or motive to clear the cargo of the defacto complainant well proved through the evidence of prosecution witnesses. According to the respondent counsel, Mr.M.Gnanasundaram (PW-5) the then

Deputy Commissioner of Customs had deposed about the procedure to be followed while examining and apprising the cargo. In this case, A-1 is the Examiner and A-2 is the Appraising Officer. The day-to-day and minute to minute movement of the bill pertaining to the case under consideration is clearly deposed by P.W-5. The computerised records maintained at CFS in respect of the Bill of Entry No.367006 taken from EDI system is Ex.P-14. Both the Examiner and the Appraising officer play crucial role in clearance of imported goods. Their role is not independent but interdependent. As per Ex.P-14, the Bill of Entry entered in EDI system on 29/12/2006 for clearance of 4 containers of Embroidery Machines imported by M/s.Beacon Garments, it was assessed and left the screen of Assistant Commissioner on 02/01/2007. It entered the examination system on 02/01/2007 at 6.08 p.m. Registered for examination on 06/01/2007 at 1.27 p.m. The examining Officer (Kamalakannan) after examination has given his report and the bill has gone out of his screen on 08/01/2007 at 09.19 pm. The Apprising Officer (Kousalya) had cleared the bill at 09.20 pm. Thus, after completing the examination at 3.30 pm, instead of clearing the bill, both A-1 and A-2 waited for P.W-3 to come and give illegal gratification of Rs.20,000/- as motive to clear the bill. Only after receiving the money which they shared equally among themselves, the bill was cleared. Soon thereafter, at about 9.30 pm, the trap team entered the room of A-1 and recovered the tainted money from A-1 and A-2.

19. Both A-1 and A-2 admit receipt of money from P.W-3 and recovery of it from their possession. It is an uncontroverted fact in this case that the money of Rs.39,700/- found in A1's table drawer was money collected from known persons to meet out the medical emergency expense of one Rajini, who is the son of his co-brother Mr.Govindan. Out of Rs.39,700/- A-1 could say Rs.25,700/- as money received from one Mohan of M/s.Galaxy Commercial, Chennai. However, prosecution has examined Subramanian the partner of M/s.Galaxy Commercial as P.W-9. This witness had deposed that, he did not give any money to A-1 at any point of time. Further, in Ex.P-13 the Cash Declaration Register maintained at CFS, neither A-1 nor A-2 had declared the money they had in their possession. Therefore, the trial Court has rightly declined to accept the concocted explanation.

20. As far as A-2 who admits that, she received Rs.10,000/- from A-1, says that, it was the loan money repaid to her. She had not placed evidence to show when she lend the money to A-1. She along with A-1 had examined the cargo and apprised it partly on 06/01/2007 and rest on 08/01/2007. The examination completed at about 2.30 pm on 08/01/2007. Thereafter, the bill should have been cleared if it was in order. But till 9.20 pm, the bill was not cleared and no satisfactory explanation given for the delay in clearing the bill after completion of examination. Only after the transaction of money, the bill has been cleared. This fact is well proved by the prosecution through Ex.P-14. Therefore, the presumption under Section 20 of P.C Act squarely applies to this case for both the accused. Therefore, the Learned Counsel for the Respondent/CBI prayed for the dismissal of the Appeals.

21. Heard the Learned Senior Counsels for the appellants and the Learned Special Public Prosecutor for the respondent/C.B.I. Records perused.

22. This is a clear case of demand and acceptance admitted by A-1 himself. He pleads that, it was not illegal gratification or reward for clearing the bill but it was received by him as loan from P.W-3, who gave it to him on behalf of Sripathi one of the partner of M/s.DVR Frights Forwarders. He received the money to meet out the urgent medical expenses of his relative by name Rajini, who was getting treatment in the Ramachandra Hosptial. Ex.D-4 and Ex.D-6 are relied by A-1 to prove, Rajini was taking treatment at Ramachandra Medical Hosptial, Porur. The father of Rajini examined as DW-1 also deposed that, for his son's medical expenses, he requested A-1 to lend Rs.40,000/-. A-1 promised to bring the money on 08/01/2007 but till late night, he did not turn up with money. Later he came to know that, A-1 was arrested.

23. As far as A-2, she also admits receipt of Rs.10,000/- from A-1 and recovery of it from her bag. It it her defence that, she had given explanation for the possession of money. According to her, she explained to the Trap Laying Officer that, she received Rs.10,000/- from A-1, who owe her that money, which she gave to A-1 few months back. This explanation has not been recorded by the Trap Laying Officer. This Court find no such explanation found in the seizure mahazar or in any other records prepared contemporaneously. Only in the written argument and during the questioning under Section 313 Cr.P.C, the above explanation is put forth by A-2 and same is concurred by the co-accused A-1.

24. From the evidence of Subramaniam, Partner of M/s.Galaxy Commercial (PW-9) who is also called as Mohan, prosecution has disproved the explanation given by A-1 at the time of trap regarding Rs.27,500/- which he claimed to have received from Mohan of M/s.Galaxy Commercial. This witness has categorically deposed that, he never met A-1 earlier and he did not pay Rs.25,700/- to him at any point of time. Therefore, the explanation given by A-1 for Rs.25,700/- at the time of trap proved to be false. P.W-9 not even cross examined by the accused. Therefore, the testimony of PW-9 stands unassailed. For the remaining money, even A-1 could not give details about which clearing agent or friend gave him that money.

25. As an Examiner in the Customs Department, accepting pecuniary favour from the Clearing Agents and justifying the receipt of money that it was given voluntarily, an explanation to be rejected outright. The trial Court has rightly rejected the said explanation. Even assuming that, the money was offered voluntarily, the Official relationship between the accused and defacto complainant makes such money dealing prohibitive and term it as a reward or motive to do favour and not a legal remuneration. It is the speed money given to motivate A-1 to clear the bill expeditiously without further delay. It is an illegal gratification a *quid pro quo* to favour the giver. The money received by A-1 in abuse of his official position, is a misconduct by a public servant. The explanation of the accused itself sufficient to hold him guilty of offence under section 13(1)(d) of PC Act, since it satisfies the ingredient of section 13 (1)(d) of the Prevention of Corruption Act.

26. Regarding the demand of illegal gratification to attract Section 7 of PC Act, PW-3 speaks about the demand of illegal gratification by A-1 on 08/01/2007 at 2.30 pm and subsequent demand and acceptance at the time of trap. As far as the first demand alleged to have made at 2.30 pm, P.W-3 in the cross examination had deposed that, he came to know about the demand by A-1 only through Parthiban. He did not go to CFS on that day. Only his partner Sripathi and employee Parthiban went to CFS and collected the Open chit. This creates doubt about the alleged first demand. However, for the second demand and acceptance there is no doubt. The testimony of PW-3 regarding the second demand is corroborated by PW-4. The prosecution had declared PW-3 as hostile witness since, he after supporting the case of the prosecution in the examination in chief which completed on 24/02/2010, turned turtle during the cross examination done on 01/02/2011, almost one year thereafter.

27. PW-4, had admitted in the cross examination that, he was a witness for CBI in another trap case. So, claiming PW-3 is an unreliable witness and PW-4 a stock witness to CBI, the attempt made by the defence to brand these two witnesses are tainted witnesses. Likewise, Ex.D-1 to Ex.D-3 which are documents in respect of a similar trap case against one Custom Officer by name Venugopal on the complaint of Murugesan the brother of PW-3 which was also incidentally registered by the same Trap Laying Officer of his case, relied by the defence to impeach the investigation.

28. In view of this Court, these are all not relevant fact for deciding the case in hand. In this case, the accused had admitted the receipt of the money from PW-3. They have given explanation for the receipt of the money. Hence, it is sufficient to test the explanation. The explanation ought to be assessed and evaluated independently. Even the hostility of PW-3 pales to insignificance in view of the admission of receipt of the money. His hostility cannot render his evidence unreliable in *toto*, since his evidence about the second demand and acceptance is intact and not dented and fully corroborated with eye witness P.W-4 and the chemical analysis report.

29. A-2 is the Appraiser, who had appraised the Bill. As per Ex.P-14, she had passed the bill at 9.20 pm on 08/01/2007. Thereafter, the tainted money had transferred from P.W-3 to A-1 and part of it to A-2 from A-1. Her name do not figure in the F.I.R. The prosecution case is also not that, she demanded any illegal gratification from P.W-3 or she received the money from P.W-3. The case of the prosecution is that, she shared Rs.10,000/- from out of Rs.20,000/- demanded and received by A-1.

30. The trial Court had believed the version of prosecution that A-2 shared the money with A-1 knowing that A-1 received that money as illegal gratification, because PW-4 had deposed that A-1 gave a part of the money he received from PW-3 saying that it is her share. This court on scrutiny of evidence, find no corroboration for this version. The question whether the money A-2 received from A-1 was her share in the bribe or it was the loan money she got back from A-1, is solely based on PW-4 oral evidence. This portion of PW-4 evidence stand in isolation without any corroboration by any other oral or documentary evidence prepared during the trap proceedings. Under that circumstances, it is not safe to hold that the money given by A-1 to A-2 was share in the bribe. Her explanation, though belated and not proved beyond doubt, the probability in the given circumstances cannot be ruled out. In the absence of proof for the charge of conspiracy along with A-1, the presumption under Section 20 of PC Act for the offence u/s 7 of PC Act cannot be drawn against A-2 since she did not demand any bribe from PW-3 nor she received any money from PW-3. Her presence on 06/01/2007 or on 08/01/2007 do not find place in the complaint Ex P-6, which is a pre trap document. So, her presence on 08/01/2007 at 9.30 pm along with A-1, when A-1 received money from PW-3 though may give a reasonable belief that she had common intention along with A-1 to receive bribe, this reasonable belief had not turned into proof beyond doubt to legally sustain a conviction. Therefore, A-2 has to be acquitted by extending the benefit of doubt.

31. In the result, this Criminal Appeal No.501/2011 is allowed. The conviction and sentence passed by the trial Court in C.C.No.13 of 2007 on A-2/ Kousalya is hereby set aside. The fine amount paid by A-2 shall be refunded. Bail bond stands cancelled.

32. A-1 who admit the receipt of demand and acceptance of Rs.20,000/- and failed to explain the reason for the acceptance, is guilty of offence under Section 7 of PC Act. The illegal gratification received by abusing his position to do favour, hence guilty of offence under Section 13(2) r/w 13(1)(d) of PC Act. The charge of conspiracy with A-2 not made out. Hence, the sentence and conviction for the substantive offences under Section 7 and Section 13(2) r/w 13(1)(d) of PC Act, imposed by the trial Court is confirmed. The conviction and sentence for the offence under Section 120 B of I.P.C r/w Section 7 and Section 13(2) r/w 13(1)(d) of P.C Act is hereby set aside.

33. The sentence shall be as under:-

Accused	***Offence under Section***	***Conviction and Sentenced***
A1 S.Kamalakannan	Section 7 of P.C Act	To undergo two years R.I and to pay fine of Rs.7,500/-, in default three months R.I
	Section 13(2) r/w 13(1)(d) of P.C Act	To undergo two years R.I and to pay fine of Rs.7,500/-, in default three months R.I

In fine,

(i). The ***Criminal Appeal No.464 of 2011 is partly allowed.*** The judgment of conviction passed by the trial Court in C.C. No.13 of 2007 on the file of the IX Additional Special Judge for CBI, Chennai dated 19.07.2011 is partly set aside. The trial Court is directed to secure the accused/A1 and commit him to the prison to undergo the remaining period of sentence. The period of substantive sentence shall run concurrently. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.

(ii). The ***Criminal Appeal No.501 of 2011 is allowed.*** The judgment of conviction passed by the trial Court in C.C. No.13 of 2007 on the file of the IX Additional Special Judge for CBI, Chennai dated 19.07.2011 is hereby set aside. The fine amount paid by A-2 shall be refunded to the appellant/A-2 Kousalya . Bail bond stands cancelled.

20.09.2023

Index :Yes.
Internet :Yes.
Speaking order/Non-speaking order

bsm

Copy to:-
1. The IX Additional Special Judge for CBI Cases/IX Additional City Civil Court, Chennai – 600 104.
2. The Deputy Superintendent of Police, CBI/ACB/Chennai.
3. The Inspector of Police, CBI/ACB/Chennai.
4. The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

bsm

Pre-Delivery common judgment made in
Crl.A.Nos.464 & 501 of 2011

20.09.2023