



Crl.A.Nos.422 & 439 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on :21.06.2023

Pronounced on: 12.07.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos. 422 & 439 of 2015

Crl.A.No.422 of 2015

K.Adikesavan,
S/o.Krishnan,
No.17/21, Dhaskant Nagar,
III Cross Street,
Virudhachalam – 606 001.
Cuddalore District.

... Appellant/Accused No.1

/versus/

The State Rep by:
The Inspector of Police,
Vigilance and Anti-Corruption,
Cuddalore.
(Crime No.2 of 2009).

... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleaded to set aside the sentence and conviction imposed on the appellant in Special Case No.5 of 2010 dated 29.06.2015 passed by the Special Judge/Chief Judge, Judicial Magistrate, Cuddalore and acquit the appellant herein and pass order.

For Appellant : Mr.R.Natarajan,
for Mr.S.Kamadevan

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



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1. Balasubramanian, (deceased**)

S/o.Arumugam,
Accountant,
Sub-Treasury,
Vridhachalam,
Cuddalore District.

... 1st Appellant/Accused No.2

2. Anbarasi,
W/o.Balasubramanian.

3. Manikandan,
S/o.Balasubramanian.

4. Prasanth,
S/o.Balasubramanian.

... Appellants/Petitioners 2 to 4

All are residing at No.8, Thiruvallur 3rd Cross Street,
Poothamur, Vridhachalam Taluk,
Cuddalore District – 606 001.

**Appellants/Petitioners 2 to 4 are impleaded as Legal heirs of 1st petitioner/appellant as per order dated 14.06.2023 in Crl.M.P.No.8073 of 2023 in Crl.A.No.439 of 2015.

/versus/

State: Rep, by,
Inspector of Police,
Vigilance and Anti Corruption,
Cuddalore.
Crime No.2 of 2009.

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Prayer: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleaded to set aside the sentence and conviction imposed on the appellant in Special Case No.5 of 2010 dated 29.06.2015 passed by the Special Judge/Chief Judge, Judicial Magistrate, Cuddalore and acquit the appellant herein and pass order.



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For Appellant : Mr.S.Parthasarathy.

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

COMMON JUDGMENT

The appellant Adikesavan, is the first accused in the Special Case No: 5 of 2010 on the file of Special Judge and Chief Judicial Magistrate, Cuddalore. He along with one Balasubramanian were tried for offences under Section 7 and 13(2) r/w13(1)(d) of Prevention of Corruption Act, 1988. The Special Court held both of them guilty and sentenced them to undergo 6 months R.I and to pay fine of Rs.1000/-, in default 1 month R.I for the offence under Section 7 of P.C Act and sentenced to undergo one year R.I and to pay fine of Rs.2000/- in default 3 months R.I for the offence under Section 13(2) r/w 13(1)(d) of P.C Act, 1988.

2. Being aggrieved, the 1st accused/Adikesavan has preferred Criminal Appeal No.422 of 2015 and the 2nd accused/Balasubramanian filed Criminal Appeal No.439 of 2015. Pending appeal, on 12/01/2023 Balasubramanian-the appellant in C.A.No.439 of 2015 died. His wife Anbarasi filed a petition to get herself impleaded in the place of her deceased husband



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and pursue the appeal. Her application Crl.M.P.No.8073 of 2023 was allowed by this Court on 14/06/2023.

3. Brief facts of the case:-

Ramasamy a retired Secondary Grade Teacher in the Government School died on 04/10/2008. His wife Selvambal as widow of a Government pensioner was entitled to get family pension as well as other benefits. She sought the help of her brother Mr.Selvarayar, who during the month of December 2008 went to Sub Treasury Office at Virudhachalam and enquired about the procedures to get family pension of his sister. Adikesavan, the Accountant in the Sub-Registrar Office assisted him to fill the forms meant for family pension and directed him to get the attestation and reference in the application Form from the Assistant Primary Education Officer. He presented the form to the Sub-Treasury Officer on 02.01.2009, after getting the attestation. The Sub Treasury Officer, who received the application form put his initial in it and instructed to meet Adikesavan after a week. A week thereafter, when Selvarayar met Adikesavan, he instructed to open a bank account in the name of Selvambal and to produce a photocopy of the bank passbook. On 06/03/2009 he met Adikesavan and gave a copy of the Bank



passbook, further Adikesavan asked photo of the applicant and Selvarayar give his sisters photo which he had with him. Selvarayar asked Adikesavan that already two months have gone, when the application process will be completed. At that time, Adikesavan said that, if he give money for office expenses, the work will get done. When Selvarayar asked how much money has to be paid, Adikesavan replied Rs.1,500/-. When, Selvarayar sought clarification whether that money is for Government or for him, Adikesavan replied that, it is for him and other staff in the Office. Further, Adikesavan told to bring money on 12/03/2009 at 10.00 a.m. Selvarayar not interested to give bribe, so he went to Cuddalore and gave a complaint at Vigilance and Anti-Corruption office on 11.03.2009 at 3.30 pm. The Inspector of Police, who read the complaint after ascertaining whether the complaint is true, asked Selvarayar to come on the next day.

4. On 12/03/2009 Thiru.Selvarayar, went to the Vigilance office at 7:45A.M. The Inspector of Police, by the time had arranged for two official witnesses by name Thiru.Srinivasan and Thiru.Ramesh. After formal introduction to each other, the number found in the three Rs.500 currency were noted. Thereafter, in the presence of the witnesses phenolphthalein sodium



carbonate test was conducted. Pre-trap mahazar was prepared for the entrustment of three Rs.500/- notes which is smeared with phenolphthalein powder to Selvarayar. Thereafter at about 9:15 AM the team consisting of TLO, the complainant and shadow witnesses left the vigilance office Cuddalore. They reached Virudhachalam at 10.35 a.m. The complainant Selvarayar and shadow witness Thiru.Srinivasan were instructed by TLO to meet Adikesavan. The applicant Selvambal, also accompanied them. On seeing Thiru.Selvarayar, Thiru.Adikesavan enquired whether he has brought the money he asked. Selvarayar answered in affirmative. Then Thiru.Adikesavan took signatures from Selvambal and obtained initial from the nearby officer. He took the file to the Treasury officer for his signature. Thiru.Adikesavan returned after some time with the file and told Selvarayar, 'every thing is completed give the money'. Selvarayar took out the money and gave it to Thiru.Adikesavan, who received it in his right hand. After counting the money with both his hands, Thiru.Adikesavan kept the money in his shirt pocket. The man next to Thiru.Adikesavan asked his share. Thiru.Adikesavan took one Rs.500/- note and gave it to the person who claimed his share. That man (A-2) received Rs.500/- and kept it on the table. Then Thiru.Adikesavan told them to wait outside for 10 minutes to collect the money. They came out and



Selvarayar intimated the trap team by showing the prearranged signal of scratching his head by his right hand.

5. The trap team lead by Inspector after confirming with the complainant and the shadow witness that the accused received the money, called Thiru.Adikesavan and subjected his right hand fingers and left hand fingers to sodium carbonate solution dip. The colour of the solution turned light red, the samples were collected for chemical analysis. Then the Inspector enquired Thiru.Adikesavan, where he has kept the money received from Selvarayar. Thiru.Adikesavan took out two 500 rupees notes from his shirt pocket and gave it to the trap team member. On comparing the number found in the notes with the numbers recorded in the entrustment mahazar, they found it tallied. Thereafter, by giving an alternate shirt, Thiru.Adikesavan was asked to remove his shirt. The pocket portion of the shirt was dipped in Sodium carbonate solution. The colourless solution was turned into light red. The remaining Rs.500/- was recovered from the second accused. The shirt as well as the shirt dipped sodium carbonate solution were recovered from the second accused. The entire trap proceedings got completed by 2.00 p.m. The recovery mahazar was prepared and both the accused signed in it. The residence of



Thiru.Adikesavan (A-1) and Balasubramanian (A-2) was searched, but nothing incriminating was recovered in the said search. After getting the chemical analyst report confirming the presence of phenolphthalein and sodium carbonate in the solutions sent for analysis and on getting sanction to prosecute the accused persons, the final report was laid before the special court.

6. Based on the material collected during the investigation, the trial Court framed charge under Section 7 and 13(2) read with 13(1) (d) of P.C Act, 1988. To prove the charges framed, the prosecution examined 14 witnesses (P.W.1 to P.W.14), 26 exhibits (Ex.P.1 to Ex.P.26) and six material objects (M.O.1 to M.O.6) were filed on behalf of the prosecution the defence examined three witnesses (D.W.1 to D.W.3) and three exhibits (Ex.D.1 to Ex.D.3) were marked. The Trial Court found both the accused guilty of charges tried and convicted.

7. The trial Court judgement is challenged on the ground that the prosecution case is misconceived and not supported by reliable evidence. Selvarayar (PW-1) the defacto complainant admits that though he met the first appellant earlier on various occasions, the demand of bribe for the first time



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was only on 06/03/2009 and that to A-1 asked him to do something for the office. The Accused had given his explanation that the money received was in connection with flag day donation. To substantiate this explanation DW-1, D.W-2 and Ex.D.1 to Ex.D.3 were marked. The accused had rebutted the presumption by preponderance of probability. Whereas, the prosecution failed to prove beyond doubt that the tainted money recovered from the accused persons is illegal gratification received on demand. The explanation given by the accused was malafidely suppressed by the Investigating Officer for getting sanction to prosecute as well as conviction by the trial court. The trial court failed to appreciate the defendant side evidence which has exposed the nexus between the defacto complainant and the trap laying officer (P.W.1 and P.W.12). The sanction to prosecute accorded without considering the explanation suffers non application of mind. The failure to record the explanation offered by the accused soon after the trap, is violation of the Vigilance manual. The Inspector failed to conduct preliminary enquiry to verify the truthfulness of the complaint given by PW -1 before registering the complaint, this is yet another violation of the Vigilance manual.



8. Apart from procedural violation, the contradiction and embellishment of PW-1 evidence not been taken note by the trial Court. P.W.1 for the first time had spoken that the applicant Tmt.Selvambal also accompanied him to the accused office on the day of trap and the accused got her signature in the forms before receiving the bribe money. Neither the entrustment mahazar nor the recovery mahazar whispers about the presence of applicant Selvambal at the time of pre trap proceedings or at the time of trap. If she was present as deposed by PW1, she is the best witness to speak about the demand and acceptance. Failure to examine Selvambal/the applicant, shakes the very foundation of the prosecution case.

9. The learned counsel appearing for the second accused submitted that the case of the prosecution is not that he demanded bribe from P.W-1. The allegation is that he asked and got a share in the money received by A-1. There is no allegation or charge that second accused demanded bribe. The entire accusation is only against A-1. This accused received Rs.500 from the first accused as hand loan and that has been explained soon after the trap. It is settled principle of law that mere recovery of marked currency from a public servant is not a proof for demand or acceptance of illegal gratification. The



prosecution has to prove the foundational fact that the accused received it as illegal gratification. In this case, none of the witnesses had spoken about the demand and acceptance of bribe by the second appellant/ 2nd accused from P.W.1. The testimony of P.W.1 and P.W.2 that they heard the second accused asking his share does not mean he demanded bribe and received it as illegal gratification. The explanation given by the second accused for having in his possession of one Rs.500 which is smeared with phenolphthalein is sufficient to rebut the presumption. The second accused had no role in the processing of the application. Therefore the alleged demand and acceptance of bribe by A-1 for processing the application will not a proof for convicting A-2, merely for the reason he had in his possession one of the three Rs.500 currency which were smeared with phenolphthalein powder. A-2 been convicted not on evidence beyond doubt, but on surmises.

10. To emphasise upon their submissions, the Learned Counsels appearing for the appellants relied upon the following judgements:-

(i). ***Central Bureau of Investigation (CBI) and another -vs- Thommandru Hannah Vijayalakshmi @ T.H.Vijayalakshmi*** reported in ***2021 SCC Online SC 923***.



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(ii). *Mansukhlal Vithaldas Chauhan -vs- State of Gujarat* reported in (1997) 7 SCC 622.

(iii). *National Confederation of Officers Association of Central Public Sector Enterprises -vs- Union of India* reported in (2022) 4 SCC 764.

11. Per contra Mr.S.Udayakumar, the Learned Government Advocate (Criminal Side) appearing for the state submitted that the prosecution has proved their case beyond reasonable doubt through its witnesses and documents. The appellants admits that they were in possession of the tainted money. They allege, the possession was explained but not recorded. The said defence taken by the accused is an afterthought and been proved as false by their own documents and evidence. The contention of the first accused that there was target fixed to collect Flag Day donation and the money recovered from him is the Flag Day donation failed to carry any merit for the simple reason that the communications from the district collector for collecting donation for Flag Day was during the month of November 2008 i.e., 4 months prior to the date of trap. Further, if the money is for Flag Day collection, the accused ought to have given receipt for the money he received or must have been in possession with the Flag Day Donation Receipt. Nothing produced or



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found in his possession during the search conducted during the trap.

Admittedly, out of three Rs.500 notes, two were recovered from A-1 and one note from the second accused. If the money is for Flag Day collection, then the accused is bound to explain how come the flag day collection be shared between them.

12. Further, the Learned Government Advocate (Crl.Side) for the respondent submitted that, the alleged violation of manual does not shake the foundational facts of the prosecution which has been proved beyond doubt. The manual is guidelines for the Officers, non compliance of the guidelines found in the manual *per se* will not vitiate the prosecution unless it prejudice the accused. In this case, the explanation what the appellants claimed to have not recorded been placed before the trial Court during the trial and the trial Court had considered the explanation and found that they do not probabalise by any preponderance.

13. The Hon'ble Supreme Court in ***P.Sirajuddin -vs- State of Madras*** reported in (1970) 1 SCC 595 and in subsequent judgements like ***K.Veerasami case*** as well as in ***Lalitha Kumari case*** had considered and



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emphasised the need of preliminary enquiry before proceeding against a public servant under PC Act, but had clarified succinctly in ***National Confederation of Officers Association of Central Public Sector Enterprises -vs- Union of India*** reported in **(2022) 4 SCC 764** that, the scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. Therefore, what type of case require preliminary enquiry depends on facts and circumstances of each case. At the time of trap no plausible explanation was given by the accused. Whatever said by the accused were recorded and the explanation were not satisfactory to believe their innocence.

14. The Learned Government Advocate (Crl.Side) for the respondent, read out the evidence and submitted that, there was three demand made by the first accused. The first demand was on 06/03/2009 after collecting a photocopy of the passbook and photos of the applicant Selvambal from P.W.1. The second demand was on 11/03/2009 at about 10:40 a.m at the office of the first accused when the defacto complainant and the shadow witness met him at his office. On seeing the defacto complainant accused confirmed with him whether he has brought the money demanded. On getting satisfied that



P.W-1 had brought the money he demanded, the accused started completing the process by getting the signature of the applicant, the other Accountant and thereafter, took the file to the Sub-Treasury Officer table and got his signature. Then, he came back to his table and made the 3rd demand and received the bribe money. The presence of phenolphthalein in the hands and dress portion are tell-tale evidence that the accused had handled tainted currency. When there is no plausible explanation been placed before the court to rebut the presumption, the trial court had rightly convicted them. The attempt of the first accused by examining D.W-2 to show that the money was voluntarily given by the defacto complainant being satisfied about her sister application for family pension in fact tantamounts to admission of receipt of money other than lawfully entitle.

15. Heard the Learned Counsel for the appellants and the Learned Government Advocate (Crl.Side) for the respondent. Records perused.

16. The Learned Counsel appearing for the appellants harp on the procedural violation during the trap and non-application of mind by the Sanctioning Authority. P.W.10 Visalatchi, Treasury Officer, who had granted sanction to prosecute the appellants. Ex.P.24 is the sanction order. In the Chief



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examination as well as in Ex.P.24, she has mentioned that, after perusing the record and due consideration of the record and on application of mind, sanction to prosecute is accorded. In the cross examination, it had been suggested to her that the prosecuting Agency had not forwarded all the documents relevant and relied for them for her consideration. Further, it is suggested to her that Ex.P.12, proceedings dated 05.03.2009 Selvambal was requested to appear before the Assistant Treasury Officer on any working day between 10.00 a.m to 12.00 noon for the payment of L.T.A and pension and therefore, the appellants had no role in processing the family pension for Selvambal. It was also suggested to her that the statement of the appellants were not properly considered by her. However, the perusal of the proceedings in Ex.P.12 and the evidence of P.W.1 the defacto complainant, this Court finds that, the proceedings dated 05.03.2009 is the copy of which is marked as Ex.P.12 is addressed to Selvambal.

17. P.W.1 had deposed that, on 06.03.2009, he met the 1st accused Adikesavan and gave photocopy of the bank passbook and photo of his sister. It is a case of the accused that, since Selvambal did not come in person, P.W.1 was asked to bring Selvambal.



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18. D.W.1 Deenabandu, claims to be a chance witness present on

09.03.2009 at Treasury Office to enquire about his pension. He had deposed that he met the 1st accused and while they both having tea in the tea shop, P.W.1 came and had conversation with the A1. At that time, A1 informed P.W.1 that the pension papers are ready if the pensioner come, she can sign and get the money and when he enquired why he has not brought his sister, P.W.1 said that due to Masi Magam festival his sister has not come and said he is very excited hearing that the pension paper is made ready and offered himself to do something for the office. At that time, A1 told P.W.1 that there is an instruction to collect flag day contribution for which, if he want he can contribute. In the cross examination by Learned Public Prosecutor, this witness admits that, the flag Day collection will be made through hundi or it will be collected issuing receipts of Rs.5/- or Rs.10/-. This witness is one of the office bearers of the retired Government Servant Association. A1 is looking after the section dealing with the Civil Family Pension. This witness admits that, only on request of A1, he had come to depose.

19. Similarly, D.W.2 Rajagopal, Former Secretary of Retired Government Staff Association had deposed that, he came to know from P.W.1



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that one Sugumar relative of Selvarayar is serving as Inspector in the Vigilance Department. He came to know that, during the month of April 2009, P.W.1 had trapped A1 in a Vigilance case. After some time, when he met P.W.1, he enquired about the case and P.W.1 told him that since A1 was unnecessarily delaying the issuance of Family pension to his sister, he made use of the situation and fixed the accused. In the re-examination, he had corrected himself that the name of the P.W.1 relative serving in Vigilance Department is not 'Sugumar' but 'Thirumal.'

20. The Learned Government Advocate (Crl.Side) referring the testimony of D.W.1 and D.W.2 and in the light of Ex.D.1 to Ex.D.3 which are communications from District Collector, Cuddalore, to commence flag day collection from 07.12.2008 and hundi collection will be inaugurated by the District Collector, had requested home Guards, NCC cadres, NSS students and other students to receive donation from public in hundis and copy is marked to RDO, Virudhachalam, Tahsildar/Sub Treasury Officer in the District. Following the communication and office note dated 21.11.2008 been prepared seeking the staff of treasury to coordinate and collect flag Day donation. In the said circular, both the accused have also signed as a proof of noting the content.



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From these defence exhibits and documents, it is clear that, there was no receipts send by the Collectorate for collecting flag Day donation. The donations are supposed to be collected in hundi. Even if the testimony of D.W.1 is to be accepted, there was no receipts book with the A1 or A2 at that time of receiving the money from P.W.1. Selvambal is the wife of deceased Ramasamy and after the demise of Ramasamy, she has given an application for grant of family pension. Her application in writing dated 16.11.2008 is marked as Ex.D.3. He had enclosed the death certificate Ex.P.5 along with this application. Later, in the printed format Form-14 (Ex.P.4) under Section 72(4), 74(3) and 76(2) of the Tamil Nadu Government Servant Pension Rules was also submitted. The application has been given by Selvambal with a photo and attestation by Additional Assistant Elementary Educational Officer. The signature of AEEO with date 19.12.2008 and the signature of the applicant in it go to show that the application of Selvambal been pending since November–2008. The proceedings Ex.P.12 Family Pension sanction order been emanated from Assistant Treasury Office/Sub Treasury, Virudhachalam only on 05.03.2009.



21. Ex.P.14 is the family pensioners bill prepared in the name of Selvambal. This document been admittedly prepared by A1 on 09.03.2009 and the Assistant Treasury Officer has affixed his seal, signature and date as 09.03.2009. In this document, on 12.03.2009 Selvambal had signed on the prestamp receipt for Rs.20,673/-. This is an advance receipt for the disbursement of pension starting from 05.03.2009.

22. P.W.4 Ravichandran, Additional Treasury Officer who had signed Ex.P.12, had deposed that, on 05.01.2009 the file relating to Selvambal pension was placed before him and the said application Ex.P.3 was sent to work distribution Registrar Ex.P.17 and he allotted it to the accused A1 for processing. Again papers came to him on 05.03.2009, he signed after personally intervening Selvambal. According to P.W.4 the application of Selvambal reached his table only on 05.01.2009 and soon thereafter, he had distributed it to A1 for processing.

23. It is emphasised by the Learned Counsel for the 1st appellant that from Ex.P.12 and by the testimony of P.W.4 the Additional Treasury Officer, the work of A1 got completed on 09.03.2009 itself after submitting the



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pensioners bill Ex.P.12 and the connected papers to the Additional Treasury Officer and thereafter, officially nothing was pending with A1 regarding pension file of Selvambal.

24. P.W.3 Veerapandian is the person who signed as witness to the application submitted by Selvambal. He had identified his signature in the application form and he has said that he has affixed his signature on 16.12.2008. He even assuming that the applications were submitted to the Treasury Office only on 05.01.2009, Selvambal got her pension due only after the trap proceedings. From the records, it reveals that, pension dues was disbursed to her on 18.03.2009.

25. P.W.1 and P.W.2 are the direct witnesses for receipt of money Rs.1500/- by A1 and he shared Rs.500/- with A2. P.W.1 the defacto complainant as well as P.W.2 the decoy witness had deposed consistently corroborating each other and there is no contradiction. It is contended that the presence of Selvambal been introduced later by the prosecution and her presence not been recorded in the recovery mahazar. The signature of Selvambal found in Ex.P.12 and the dates found under the signature of



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Assistant Sub-Treasury Officer indicates that, Selvambal was present in STO at the time of trap. For the reason best known, the Investigating Officer has not examined her as a witness. However, from the evidence of P.W.10, the Sanctioning Authority, it appears that previous statement of Selvambal been recorded during the investigation. Undoubtedly, the omission to examine Selvambal who is the best evidence creates dent in the prosecution case. However, the other evidence are overwhelming and strong enough to hold that, A1 had received money from P.W.1 on 12.03.2009 in connection with processing the pension application of the widow Selvambal.

26. As far as A2 is concerned, it is the testimony of P.W.1 and P.W.2 that, he got Rs.500/- from A1 as his share. While A1 admits that, receipt of the money but claims that, it was for flag day donation but not substantiated except by the interested witness. The explanation given by A2 that, he asked Rs.500/- from A1 to met out his medical expenses is sufficient to probabalise the defence to rebut the presumption. Unlike, the case of A1, who is not able to substantiate his probable defence of flag day collection, except the letter of the District Collector which was issued four months prior to the trap.



27. The Learned Counsel appearing for the first accused rely upon the manual issued by the Directorate of Vigilance and Anti Corruption, wherein, it is stated that before registering a trap case against the Public Servants belonging to Groups C and D, prior concurrence of the Superintendent of Police is required and for Groups A and B Officers, prior concurrence of the Director of Vigilance and Anti Corruption is required and before giving concurrence, Supervisor Officers should take due note of the result of confidential check. This is a desirable instruction found in the manual. In case of any violation, the prosecution of a public servant has to be viewed with suspicion. However, when evidence is strong enough to prove the guilt beyond doubt such a violation or omission cannot be taken advantage by a bribe taker.

28. In *Central Bureau of Investigation (CBI) and another -vs- Thommandru Hannah Vijayalakshmi @ T.H.Vijayalakshmi* reported in **2021 SCC Online SC 923**, the Hon'ble Supreme Court, after considering the necessity of preliminary enquiry before registering the case has held that, the preliminary inquiry warranted in *Lalita Kumari* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this



Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient.”

29. The Learned Counsel appearing for the A1 impeaching the validity of sanction to prosecute has relied upon the judgment of the Hon'ble Supreme Court in ***Mansukhlal Vithaldas Chauhan -vs- State of Gujarat*** reported in (1997) 7 SCC 622, the following observation of the Court in the said judgment relied by the Learned Counsel as below:-

“17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. (See Mohd. Iqbal Ahmed v. State of A.P. [(1979) 4 SCC 172 : 1979 SCC (Cri) 926 : AIR 1979 SC 677]) Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty.



18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also Jaswant Singh v. State of Punjab [AIR 1958 SC 124 : 1958 SCR 762] and State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : 1991 Cri LJ 1438] .)

19. Since the validity of “sanction” depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion



should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority “not to sanction” was taken away and it was compelled to act mechanically to sanction the prosecution.”

30. No doubt, the sanction to prosecute is not an empty formality, it should be accorded only after proper application of mind and scrutiny of all the documents collected during the investigation. In this case, Ex.P.24 is the Sanction Order. In the reference, the RC.No.118/09/Treasuries and Accounts/CL of DVAC alone is mentioned and therefore, the Learned Counsel for the appellant contended that, no documents were sent to Sanctioning Authority to take an independent opinion based on the record. Since, there is no detail of connected records placed before her is mentioned in the sanction order, the application of mind and satisfaction of the sanctioning authority is doubted. The sanction order which runs to four pages contains the detail necessary to arrive at a subjective satisfaction. The details found in the sanction order should have emanated from the records placed before the



authority. In the cross examination, P.W.10 Visalatchi admits that, she has not mentioned about the chemical analysis report in her sanction order. She has specifically said about the Ex.P.12, Ex.P.14 and Ex.P.15 which relates to application for pension and pensioners Bill. To the question that, the accused had explained the reason for receiving the money, the prosecution witness P.W.10 deposed that, she does not remember seeing such statement. When a similar question was put forth to the Trap Laying Officer Thiru.V.V.Thirumal P.W.12, he had denied the suggestions that the accused explained the possession of tainted money as donation he collected for flag day. P.W.12 has also stated that, what the accused said about the money been recorded in the recovery mahazar.

31. The perusal of the recovery mahazar which is marked as Ex.P.6, in which both the accused have signed, we find that, when the Inspector of Police enquired the accused about the money he received from P.W.1, A1 has said that, he did not demand the money but P.W.1 himself voluntarily gave the money and from out of it, A2 had a role in preparing the pension paper he gave Rs.500/- to A2. The explanation of the accused for receipt of the money is found in the mahazar Ex.P.6 in which the accused have signed. Therefore, the



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contention of the Learned Counsel for the appellants that the statement of the accused not recorded is incorrect. Furthermore, opportunity been given to the accused to rebut the presumption by preponderance of probability. D.W.1 and D.W.2 were examined. Ex.D.1 to Ex.D.3 were marked on behalf of the accused. However, the testimony of D.W.1 and D.W.2 and the documents does not probabilise the case of the accused. The accused cannot take umbrage of four months old communication sent by the District Collector to collect flag day contribution. The collection of flag day contribution is not a perennial affair in a Government Office. It cannot be a shield for bribe takers.

32. For the above said reason, this Court confirms the judgment of the trial Court passed in Special Case No.5 of 2010 as against A1/K.Adikesavan. Accordingly, the ***Criminal Appeal No.422 of 2015 is dismissed.*** The trial Court is directed to secure the appellant/A1 and commit him to the prison to undergo the remaining period of sentence. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.



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33. Accordingly, the Criminal Appeal No.439 of 2015 filed by the

A2/Balasubramanian and his legal heirs is allowed. The judgment of the trial Court passed in Special Case No.5 of 2010 as against A2/Balasubramanian is hereby set aside. Fine amount paid if any by the accused, shall be refunded to his LRs who are now on record.

12.07.2023

Index :Yes.

Internet :Yes/No.

Speaking order/non speaking order

bsm

To:-

- 1.The Special Judge/Chief Judge, Judicial Magistrate, Cuddalore.
- 2.The Inspector of Police, Vigilance and Anti-Corruption, Cuddalore.
- 3.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

bsm

**Delivery common judgment made in
Criminal Appeal Nos. 422 & 439 of 2015**

12.07.2023