WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16/03/2023	Pronounced on:31/03/2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.731 of 2015

1.Mr.K.Gopalan @ Gopal
2.Mr.R.Sathiyavel @ Sakthivel .. Appellants

/versus/

The State Rep by its
Inspector of Police,
Vigilance and Anti Corruption
Cuddalore,
Crime No.10/2002 ..Respondent

Prayer: Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code, to allow this appeal and to set aside the order of conviction and sentence of the Special Court, Prevention of Corruption Cases, Villupuram dated 30.10.2015 in Special Case No.40/2014 and acquit the appellants and direct the returned of the fine amount if any paid by them.

For Appellants :Mr.Mr.R.Srinivas, Senior Counsel
Assisted by Mr.K.Ethirajulu
Legal Aid Counsel for A2
A1-died
For Respondent :Mr.S.Udaya Kumar
Government Advocate, (Crl.Side)

JUDGMENT

WEB COPY

On 17/09/2002, Raju the resident of LIG No 26-B, New No: 35 A, Aanaikuppam, Annanagar, Cuddalore, District, lodged a written complaint to the Vigilance and Anti Corruption, Cuddalore Detachment, reporting about demand and acceptance of bribe by the Commercial Inspector K.Gopalan @ Gopal and the Commercial Assistant S.Sakthiyavelu @ Sathivel at the Office of the Assisstant Engineer (O&M), Tamil Nadu Electricity Board, V.Agaram at Vaniyampalayam, Villupuram, for providing Electricity service connection for his 5 shops on 13/09/2002. To provide connection to the remaining two shops, they demanded further bribe.

2. Based on the complaint, First Information Report No: 10/2002/AC/CL was registered against those two public servants under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and trap was laid on 17/09/2002 and as a result of the trap, they both were arrested by the trap laying officer for being handled the marked currencies and in physical and constructive possession of it.

3. On completion of investigation, final report was filed against

WEB COPY

them and they were tried for the charges under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The prosecution to substantiate the charges examined 13 witnesses, marked 56 documents as Exhibits and 6 material objects.

4. The trial Court concluded that the demand and acceptance of illegal gratification for providing service connection proved and sentenced the accused to undergo punishment as under:-

Name and rank of the accused	***Conviction under Section***	***Sentence imposed by the trial Court***
A-1 K.Gopalan @ Gopal	Section 7 of the Prevention of Corruption Act, 1988	To undergo 2 years RI and to pay a fine of Rs.2000/- in default to undergo 3 months SI
	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988	To undergo 1 year RI and to pay a fine of Rs.1000/- in default to undergo one month SI.
A-2 R.Sathiyavel @ Sakthivel	Section 7 of the Prevention of Corruption Act, 1988	To undergo 2 years RI and to pay a fine of Rs.2000/- in default to undergo 3 months SI
	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988	To undergo 1 year RI and to pay a fine of Rs.1000/- in default to undergo one month SI.

5. Being aggrieved by the judgment of conviction and sentence, the

WEB COPY

present Criminal Appeal is filed alleging extensively that the trial Court grossly erred in appreciating the evidence and the precedents laid by the Hon'ble Apex Court. Pending Appeal, the sentence was suspended and the appellants are on bail.

6. The case of the prosecution has unravelled through the witnesses, documents and material objects.

The gist of the complaint (Ex.P-8) and the testimony of Raju, the defacto complainant, examined as PW-2, is that, “the complainant Thiru.Raju, S/o Thangavel Chettiyar, residing at LIG No.26-B, New No.35-A, Aanaikuppam, Anna Nagar, Cuddalore District, New Town, had constructed 5 shops in addition to the existing 3 shops at his native village Panchamadevi in Villupuram District. As he had already one EB service connection, he wanted to apply for 7 new EB service connections. He went to the EB Office, V.Agaram at Vaniyampalayam on 11.09.2002 at about 09.30 hours and met Thiru.S.Sathiyavelu @ Sakthivel (A-2) Commercial Assistant and asked for details regarding the fees to be remitted for getting new EB service connections. The said accused informed him that, for getting commercial EB service connections, a fee of Rs.2,500/- per service connection is to be remitted and also demanded

WEB COPY

Rs.1,000/- as bribe money for each of the service connections. The complainant returned back and again went to the said EB office on 13.09.2002 at about 10.00 Hours and met both the accused officers and submitted 7 applications to Gopal(A1) and also paid Rs.17,500/- towards the fees. After verifying the amount, Gopal (A1) demanded the bribe amount of Rs.7,000/- from the complainant. The complainant informing them that he had no money to pay them and assuring to pay the said amount Rs.7,000/- to them, while the service connection were given, but the accused persons did not agree for the same and the accused Gopalan told him that he would remit Rs.12,500/- as fees towards 5 applications and retain Rs.5,000/- as bribe money for the 5 applications. He returned back two applications. The complainant requested him to return Rs.1,000/- as it was required for the payment of electrical charges for his old EB service connections. Accordingly, the said Gopal(A1) returned Rs.1,000/- to the complainant on condition that it should be repaid at the time of submitting the other two applications along with the bribe amount of Rs.2,000/- for those applications as bribe money. As such the accused persons had received Rs.4,000/- on that day, as illegal gratification other than legal remuneration as a motive or reward for doing the official act.

WEB COPY

The above 5 service connections were effected on the next day. The complainant again met both the accused persons on 16.09.2002 and enquired about the other two service connections and both the accused persons reiterated the demand of Rs.2,000/- as illegal gratification towards two applications and also demanded Rs.1,000/- returned to the complainant on 13.09.2002, apart from remitted the legal fees of Rs.5,000/- towards the two applications. The unwilling complainant perferred a complaint on 17.09.2002 at about 11.30 Hours before the Inspector of Police, Vigilance and Anti-Corruption, Cuddalore and on the above complaint, a case was registered in Cr.No.10/2002/AC/CL under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against both the accused persons.

7. PW-12 [Krishnasamy], the Inspector of Police at the Directorate of Vigilance and Anti-Corruption, Cuddalore Detachment, who registered the FIR (Ex.P-53), had organised trap on 17/09/2002. Two officials were arranged by him. In the presence of the official witnesses, the trap laying officer, Mr.Krishnasamy, Inspector of police, (PW-12) received 30 currency notes of hundred Rupees denomination (M.O.1 series) from the

WEB COPY

defacto complainant and smeared the notes with phenolphthalein powder before the witnesses. He demonstrated to them, the significance of a phenolphthalein - sodium carbonate test and thereafter, entrusted M.O.1 series to the defacto complainant and asked him to keep it separately. The application form for providing service connection and Rs.2,500/- towards the fees were kept separately. The entrustment mahazar (Ex.P-9) prepared by the trap laying officer (PW-12) and the defacto complainant (PW-2) along with Ramasamy (PW-5) and Ravichandran (not examined) signed in it. PW-2, the defacto complainant was instructed to give the tainted money only if the accused demands for it. Then, the trap team along with PW-2 and the shadow witness (PW-5) left to the office of the accused and reached at 16:15 hours. The accused persons were not in the office and therefore, the trap team returned. The events happened on that day was reduced into a mahazar (Ex.P-10) at about 19.00 hrs on 17/09/2002. Trap was again organised on the next day.

8. On 18/09/2002 at about 8.00 a.m., the trap team including the defecto complainant (PW-2) and the official witnesses met at the

WEB COPY

Directorate of Vigilance and Anti Corruption Office. The entrustment procedure was repeated and recorded. The second day entrustment mahazar is marked as Ex.P11. The trap team reached the accused office at about 10.25 hours, while the defecto complainant (PW-2) and the shadow witness Ramasamy (PW-5) went inside the office and the other members of the trap team took position outside the office and were waiting for the signal. PW-2 and PW-5 went inside the office and met the Commercial Inspector, Gopal (A-1). PW-2 handed over the applications for two connections with Rs.5,000/-. A-1 received the money and counted it. Then, gave it to Sakthivel (A-2). He after counting it, kept the money and applications on the table. Then, A-1 asked the defacto complainant about the balance Rs.1,000/- (which, according to PW-2, was the money he got back from A-1 on 13/09/2002 to pay his electricity charges) and Rs.2,000/- bribe for the two new connections. Then, PW-2 took out Rs.3,000/- kept separately in the shirt pocket and gave it to A-1. He received, counted and gave it to A-2. A-2, who received the tainted money from A-1, counted and kept it on the table. PW-2 requested to give connection on the same day, since it was an auspicious day and left the room along with PW-5 at about 10.45 am.

WEB COPY

9. Coming out of the office, PW-2 signalled the trap team and on receiving the signal, the trap team entered the accused room. PW-2 told about the demand and receipt to PW-12 and identified both the accused to PW-12. They were found very perplexed and tensed. The trap laying officer pacified them and started interrogated with them. With the help of Selvakumar, Constable (not examined) prepared sodium carbonate solution, requested both the accused to dip each of their hand separately in the solution. The colour of the solution turned 'light red". The solution was collected in four different bottles and labelled with details and numbered as 1 to 4. The witnesses as well as the accused signed in the label along with trap laying officer.

10. Rs.3,000/- recovered from A-2 on the information given by A-1 was compared with the number noted in the entrustment mahazar (Ex.P11) and found tallied. Recovery of the currency from the possession of A-2, pursuant to the trap, was recorded by way of Mahazar marked as Ex.P36. Observation Mahazar prepared thereafter and the same is marked as Ex.P38. The files containing the applications of PW-2 for service

WEB COPY

connections and other documents were recovered under a separate mahazar and marked as Ex.P39. In all the mahazars, PW-12, who prepared it, the accused and the official witnesses have signed and deposed about its preparation. From the table drawer of A-1 and A2, few applications and 20 receipts and 33 receipts respectively were seized and the same is being spoken by the shadow witness PW-5 and identified. They are marked as Ex.P43 and Ex.P44.

11. The solution collected in four bottles at the time of trap were sent to the State Forensic Laboratory for chemical analysis. They were returned after analysis with the report that the solutions contain both phenolphthalein and sodium carbonate. The remnant solution bottles are marked as M.O.2 to M.O.5. The Scientific Officer examined as PW-10 and her report is marked as Ex.P-49. During the course of investigation, the houses of A-1 and A-2 were searched but nothing incriminating recovered. The search memo with Nil recovery are marked as Ex.P40 and Ex.P41.

12. Mr.S.Periyasamy (PW-3), Junior Engineer of Kovillur Tamil

WEB COPY

Nadu Electricity Board was the in-charge of the Junior Engineer of V.Agaram EB Office and he had deposed that on the date of occurrence, he was not at the office, but he was at the in-charge office. On receiving intimation that the Vigilance police are in the office, he came to the office at 4 o'clock in the evening. He was informed that A-1 and A-2 arrested for demand of money and receipt of bribe from PW-2. He conveyed this to his Superior Officer, has identified the new connection application register, entries in respect of the applications given by PW-2, the cash register entries reflecting the payment of cash by PW-2 and the receipt issued in the name of PW-2. The petty cash register was maintained in the office of the accused. In his testimony, Mr.Periyasamy, [PW-3] has stated that based on the seven applications given by the PW-2, seven commercial service connections were provided to his shops. The entries in the registers and the files maintained are identified by him as Ex.P-13 to Ex.P-27 and the trial test reports [Ex.P-35] are proof of it.

13. The trial Court satisfied that the above evidence for prosecution proves the guilt of A-1 and A-2. That is now under challenge in this

WEB COPY

appeal.

14. Submission by the learned counsel for the Appellant:-

Mr.R.Srinivas, the learned Senior Counsel appearing for the appellants submitted that, the case of the prosecution is based on a motivated complaint made by a disgruntled consumer, who tried to get electricity connection to his commercial establishment under domestic category. While the testimony of the prosecution witnesses PW-3, PW-4, PW-5 , PW-9 and PW-11 probabilies the defence theory, the trial Court failed to consider the admitted facts, which are in favour of the accused and erroneously convicted them.

15. At the outset, the Learned Senior Counsel for the appellants submitted that the complaint alleging receipt of bribe for five connections and demand of bribe for further two connections is lodged belatedly and no explanation on the side of the defacto complainant or the other prosecution witnesses placed before the Court to eliminate the malicious prosecution.

16. According to the learned Senior Counsel for the Appellants, the case of the defacto complainant is that on 13/09/2002, he tendered

WEB COPY

Rs.17,500/- towards fees for 7 connections. But A-1 and A-2 accepted only 5 applications and appropriated Rs.5,000/- towards bribe and Rs.12,500/- towards fees for 5 Applications. He thereafter requested them to give him back Rs.1000/- to pay the consumption charge. With that money he paid Rs.823/- at the EB office and got the receipt Ex.P7.

17. It is a fact admitted by all the witnesses that, subsequent to the trap, the remaining two connections were provided, after receiving the fees of Rs.2,500/- for each connection prescribed by the Board. In the cross examination, the witnesses stated that the application for new connection should be given to the Assistant Engineer and in his absence, it can be submitted to some other officers person, who receives the application should placed it before the Junior Engineer, who will ensure it and thereafter, fees will be collected and on receipt, the service connection will be provided.

18. If so, the complaint lodged not on the date of demand and receipt of bribe of Rs.7,000/- for five connections on 13.09.2002, but on

WEB COPY

17.09.2002. In this connection, from the mouth of the prosecution witnesses, it has been established that the fees will be collected, only after the Junior Engineer permits to receive the fees, after perusing the application. In this case, on 13.09.2002, PW-2 submitted five applications and for the five applications, Rs.2,500/- for each has been collected and receipts issued, which form part of the documents. On that day, there was only five meters available in stock and therefore, those five applications were processed and on the next day, i.e. on 14.09.2002, connection was given for the five shops. On the next day, PW-2 has given a complaint as if for the balance two services, when he went and enquired A1 and A2, they reiterated the demand of Rs.1,000/- per connection. In fact, the defacto complainant, who had three shops used for commercial purpose, had only one connection for all the three shops and he used the said service connection for constructing additional five shops and the same was found during the inspection and PW-2 was asked to apply for separate connection for each shop. Instead of getting service connection under commercial category, PW-2 wanted connection under domestic category, so that the tariff will be less but, A1 and A2 refused his request. This facts had been elucidated during the cross examination of PW-9, who is tenant

WEB COPY

under PW-2 and one of the occupant of the 7 shops.

19. When he submitted two applications on 16.09.2002 to give domestic service, for his two shops it was refused by the accused. Infuriated on the next day, after lodging the complaint with DV and AC he came to the office and requested to receive the application and money. Since the application can be received only after the order of the Junior Engineer, the accused refused to receive it. But, PW-2 forcibly kept the application and the money on the table of the accused and left the room of the first accused pretend as if he feel giddy and want to take tea. PW-9 who is the tenant under the defacto complainant had narrated about this facts. The learned counsel, apart from the evidence of PW-9, in this regard also referred one of the bills issued by TNEB, where the tariff was secured V but the tariff was written as IA He relied upon the two judgments wherein the delay in filing the complaint has been suspected and the culminated acquittal of the accused.

(i)In the judgment in ***N.Vijayakumar v. State of Tamil Nadu reported in [(2021) 3 SCC 687]***, the relevant portion reads as below:-

> ***26.*** *It is equally well settled that mere recovery by itself*

WEB COPY

cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.

27.*The relevant paras 7, 8 and 9 of the judgment in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] read as under: (SCC pp. 58-59)*

"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration, reference may be made to the decision in C.M. Sharma v. State of A.P. [C.M. Sharma v. State of A.P., (2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] .

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand

WEB COPY

alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

The abovesaid view taken by this Court fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cellphone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a "possible view" as such the judgment [State of T.N. v. N. Vijayakumar, 2020 SCC OnLine Mad 7098] of the High Court is fit to be set aside. Before recording conviction under the provisions of the Prevention of Corruption Act, the courts have to take utmost care in scanning the evidence. Once conviction is recorded under the provisions of the Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record.

(ii)In the judgment in ***P.Meganathan v. State of Tamil Nadu rep.by Inspector of Police, Vigilance and Anti-Corruption Department,***

WEB COPY

Chennai in reported in [2010(1) MWN (cr.) 454], the relevant portion reads as below:-

> *In this regard, the learned counsel would rely on the judgment of this Court in R. Rajendran v. D.S.P., Vigilance & Anti-Corruption, Madras, 1996 (2) LW (Crl.) 668 and another judgment of the Hon'ble Supreme Court in V. Venkata Subbarao v. State rep. by Inspector of Police, A.P., 2007 AIR SCW 9, wherein the Courts have held that in the absence of any explanation for the delay in preferring the Complaint, the case of the prosecution needs to be doubted. In my considered opinion, in this case, for the delay of about 7 days, absolutely there is no explanation. It is not on the ground of this delay alone that I am inclined to interfere with the findings of the Trial Court. This is yet another ground which creates some more doubt in the case of the prosecution. Thus, in my considered opinion, it is also vital. The non-explanation of the delay again creates lot of doubt in the case of the prosecution. As I have already stated since the evidence of P.W.2 cannot be safely relied on to hold that the accused demanded illegal gratification, the unexplained delay which I have narrated above again strengthens the said conclusion arrived at by me.*

20. The learned counsel referring the testimony of decoy witness [PW-5] who has not been consistent in his evidence and in his admission during the cross examination, he has stated that along with application, PW-2 left a total sum of Rs.8000/- on the table of A1 and came out to have a tea and thereafter, the Inspector of Vigilance Wing entered into the office. At that time, he was sitting inside the accused room. Subsequently, he has retracted the statement. Due to inconsistent evidence, the

WEB COPY

prosecution has requested to treat him as 'hostile' and he was treated as 'hostile' and cross examined. The trial Court has recorded the demur of the witness regarding the inconsistent in the contrary evidence.

21. Referring the portion of PW-5's testimony that the application and Rs.8,000/- together left on the table of the accused, the learned counsel referred the testimony of PW-11[Mr.Kathiresan], who was working as Revenue Manager (TNEB) at the relevant point of time, was in-charge of receiving the money, since Mr.Kaliamoorthy (PW-7), Receiving Inspector was on leave has deposed that, PW-2 on 18.09.2002 came to the office and was discussing with A1. Thereafter, A1 came and enquired with him whether the application can be received, without the advice of the Junior Engineer, since the Junior Engineer was not in the office at that time. As per the procedure, the application has been received only after the advice of the Junior Engineer and therefore, he told A1 that the procedure cannot be violated. Thereafter, when PW-2 tried to give the application and the money to A1, the A1 refused to receive it, he left the place leaving the money and the application on A1's table on the pretext that he felt giddy and wants to have a tea. Soon after, the Vigilance team

https://www.mhc.tn.gov.in/judis

WEB COPY

came and asked everybody to sit in their respective seats and not to move. Thus, when the defence of the accused has been probabilised that there was no demand of illegal gratification, but PW-2, being aggrieved by not acceded to his request to give electricity connection and tariff 1A instead of V, has given this complaint and kept tainted money on the table of the accused, though they refused to receive the application, without the advice of the Junior Engineer.

22. The learned Senior Counsel appearing for the appellants referring the testimony of PW-3 [Mr.Periyasamy], who was in-charge of the Junior Engineer, at that point of time, when he has admitted that he was not in the office at the relevant point of time and came to the office at 4.00 clock and thereafter, two applications of PW-2 were given to him for processing, he processed the application and permitted to receive it and thereafter, Rs.2500/- for each of the applications was received and the receipt was given, submitted that the foundational fact of demand and gratification and the receipt of it have not been proved by the prosecution, since PW-9 and PW-11 turned hostile. PW-2 as a disgruntled person, for not accommodating his request to give the domestic connection for the

WEB COPY

shops cannot be a reliable witness.

23. Submission by the learned Government Advocate:-

Mr.S.Udayakumar, the learned Government Advocate (crl.side) appearing for the State submitted that the demand and acceptance of bribe of Rs.5000/- on 13.09.2002 for effecting five service connections has been proved by the testimony of PW-5. The application was received on 13.09.2002 and further action has been taken by the department to provide service connections. It is an admitted fact that on 13.09.2002 the five applications have been given for providing service connection for five shops owned by PW-2. It has also been proved during the evidence of PW-2, PW-9 and the other documentary evidence that, PW-2 had three shops for which he had only one service connection. After putting up an additional construction of five shops, he applied for providing service connection for all these remaining seven shops, apart from fee of Rs.2500/- per connection, A1 and A2 demanded Rs.1000/- per connection as bribe. Therefore, PW-2 the prosecution has proved that on 13.09.2002, when PW-2 tendered Rs.17,500/- as fees for seven service connections, A1 and A2 received only 5 applications and apportioned Rs.5000/-

WEB COPY

towards bribe. On 16.09.2002, five connections were given to PW-2. For the remaining two shops, when he tendered the applications without bribe money, he was sent back to bring the bribe money and a sum of Rs.1000/- he borrowed from A1 and A2 on 13.09.2002. The demand and acceptance of the money by A1 has been proved through the evidence of PW-2 and PW-5. The recovery of tainted money from the possession of the accused persons and the presence of phenolphthalein in their hands proved the fact that, they are handled the marked currency, which was entrusted to PW-2. Since no explanation has been given by the accused persons for the presence of phenolphthalein in their hands and the recovery of tainted money on the table of A1, it is sufficient to presume that the money was received by A1 and A2 as bribe.

24. Heard the learned Senior Counsel appearing for the appellants and the learned Government Advocate (Crl.Side) appearing for the State and perused the records.

25. <u>Discussion:-</u>

It is now well settled that, the recovery of tainted currency is not a

WEB COPY

presumption for receipt of bribe money. The fundamental fact is that the money so recovered was demanded as illegal gratification and received as illegal gratification. In this case, the demand of illegal gratification is spoken only by PW-2 and he cannot be a reliable witness, since PW-9 tenant under him had deposed about the attempt of the defacto complainant (PW-2) to get service connection under lesser tariff as domestic user. Though this witness was treated as hostile by prosecution, his evidence cannot be brushed aside, since out of seven applications forms given by PW-2, many of the application forms it has written as tariff IA and then, corrected as tariff V, it means that an attempt made by him to get the domestic service, later found that the service meant for shops and so tariff V was fixed and collected.

26. Regarding recovery of tainted money, the mahazar Ex.P36 states that after conducting phenolphthalein-sodium carbonate test on the hands of the accused, PW-12 has asked, where the bribe money kept then, A1 has shown the money on the his table. The trap laying officer has recovered it and found the electricity service connection application fee Rs.5000/- separately and next to it, Rs.3,000/- separately. PW-2 in his

WEB COPY

testimony has said that A1 demanded money and received it along with the application, he counted the money and gave it to A2. A2 counted the money and kept the money and the application on the table. The shadow witness (PW-5) in the chief examination has corroborated the version of PW-2. When he was cross examined on 20.08.2015, after nearly four years of the chief examination, he had deposed that when PW-2 gave the application, A1 refused to receive it without advice of the Junior Engineer. Thereafter, PW-2 compelled to receive it and gave connection on the same day saying that it was an auspicious day. However, since Mr.Karthiresan (PW-11) pointed out the procedure that without the advice of the Junior Engineer, the application cannot be received. A1 refused to receive the application. However, PW-2 left the application along with the money of Rs.8000/- together on the table and came out. This witness was treated as 'hostile' for the purpose of not corroborating the prosecution case. PW-12, trap laying officer also states that the tainted currency was recovered from the table of A1 identifying it as the money received from PW-2. Therefore, the case of the prosecution consistently is that the tainted money was recovered from the table of A1 and it was recovered after conducting phenolphthalein test on the hands of the accused persons,

WEB COPY

the money was laying on the table openly but not concealed. In this context, it is relevant to read the testimony of PW-11, who had been in the office at the relevant point of time, saw PW-2 insisting A1 to receive his application and refusal of A1 to receive it, without advice of the Junior Engineer. PW-11 has deposed that thereafter, PW-2 left the application and money on the table and went away on the pretest of having tea outside. Thus, there is sufficient evidence to infer that the application form and the tainted money were kept together and handled by PW-2 as well as the accused A1 and A2. The money was not found in the possession of A1 or A2 but on the table.

27. Accordingly to PW-12, trap laying officer, he saw the currency on the table in two lots, one lot of Rs.5000/- and another lot of Rs.3000/-, after only A1 identified it. It is not the case of the prosecution that these monies were concealed somewhere but kept openly on the table. It is highly impossible for the trap laying officer to miss the money laying on the table, when he entered into the office of the accused. In this regard, the contradictory version given by the shadow witness. The consistent evidence given by PW-11, who was present at the time of trap, supposed,

WEB COPY

the probability projected by the accused persons, they were treated hostile by the prosecution, the only incriminating evidence now against the appellants is the presence of phenolphthalein in their hands, which has been proved through the scientific evidence. Since this is the case where the money of Rs.3000/- smeared with phenolphthalein, Rs.5000/- without phenolphthalein and the application were handled together by PW-2 and all were found together on the table of A1. The possibility of conducting phenolphthalein powder while pursuing the application is probable and mere presence of phenolphthalein in their hands of the accused persons *per se* will not lead to infer the presumption that the money alleged to have been laying on the table was the money obtained by the accused persons on demand as bribe. The ingredient of Section 7 as well as Section 13(1)(d) of PC Act, regarding the demand and acceptable requires proof satisfying the fundamental fact. Presumption under Section 20 can be drawn, only if the fundamental facts are presumed.

28. Here is the case where PW-2, defacto complainant had applied for service connection and got connection for five shops and for the remaining two shops, his applications along with Rs.5000/- and Rs.3000/-

WEB COPY

kept separately were found on the table of A1 and A2. According to the prosecution, Rs.3000/- was smeared with phenolphthalein during the entrustment procedure and it was the bribe money demanded by the accused. Rs.5000/- was meant for the application fees. The prosecution has proved that the two applications and Rs.8000/- were found on the table of A1.

29. Whether the additional Rs.3000/- which was smeared with phenolphthalein was the money demanded by A1 as bribe and received by A1 and A2 is the point for consideration.

30. As far as the evidence available, except PW-2 no other witness corroborated the demand and acceptance. What PW-5 was said in the chief examination has been contradictory in the cross examination. Further, in the cross examination, he had turned 'hostile'. Hence, the prosecution has found him as an unreliable and declared him as hostile. The remaining witness regarding the money found on the table is PW-11 who was spoken about the version between PW-2 and the accused (A1). While the accused case is that they refused to receive the application and

WEB COPY

the money without the advice of the Junior Engineer, the said contention appears to be more probable, in view of the evidence given by PW-3. The Junior Engineer, who in charge of the V.Agaram office and came to the office at 4.00 p.m. After being informed about the raid by the DV and AC and the two applications of the PW-2 was received by him thereafter.

31. On the looking in to the sequence of the events and the entries made in the register indicates that, if the applications were received along with the fee of R.5000/- and bribe of Rs.3000/-, A1 or A2 might have not kept the money and the application on the table for the trap laying team to come and recover it. If the Rs.3000/- was meant as bribe and offered by PW-2 on demand by A1 and A2, that money would have gone to the pocket of A1 or A2 or shared by both. The application would have gone to the officer, who has to process it. The fee of Rs.5000/- ought to have been remitted with the cashier PW-11.

32. In this case, none of the three consequences, after PW-2 left the room has happened, which indicates that this application and the money should have been planted by PW-2 and before A1 and A2 could react

WEB COPY

upon it, the trap team has entered the office and has suspected A1 and A2 for demand and receipt of illegal gratification. The only evidence incriminating that is the presence of phenolphthalein in their hands and there could be several reasons for the presence of phenolphthalein in their hands.

33. In view of the above facts and circumstances of the case, this Court finds that the presumption under Section 20 cannot be drawn against the appellants, since the foundational fact has not been proved by the prosecution, since the shadow witness PW-5 and the chance witness (PW-11) have turned hostile to the prosecution and probabilies the defence theory that PW-2 planted the tainted money on the table of A1.

34. Conclusion:-

For the above said reasons, this Criminal Appeal is allowed. The judgment of conviction and sentence passed by the Special Court, Prevention of Corruption Cases, Villupuram, dated 30.10.2015 in S.C.No.40/2014 is hereby set aside. Fine amount, if any, paid by the accused shall be refunded to them. Bail bond, if any, executed by them

WEB COPY

shall stands cancelled. The appellants are directed to be released forthwith, if their presence is required in connection any other case.

31.03.2023

Index:yes/no
Speaking order/non speaking order
ari

To:
1.The Special Court, Prevention of Corruption Cases, Villupuram.

2.The Inspector of Police, Vigilance and Anti Corruption
Cuddalore,

3.The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN, J.

ari

WEB COPY

delivery judgment made in
Crl.R.C.No.731 of 2015

31.03.2023