# IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on: 08.06.2023 | Pronounced on: 21 .06.2023 |
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Coram:

**THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN**

Crl.A.No.436 of 2018

P.M.Sivakumar, ... Appellant/Accused

**/versus/**

State Represented by
Deputy Superintendent of Police,
Vigilance & Anti Corruption,
Crime No.03/AC/2008/DP,
(DV & AC -Dharmapuri),
Dharmapuri District. ... Respondent/Complainant

**Prayer:** Criminal Appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, against the judgment of conviction by the Learned Special Judge and Chief Judicial Magistrate, Dharmapuri convicting the appellant for an offence under Section 7 of the Prevention of Corruption Act and sentencing him to 1 year R.I and imposed a fine of Rs.3,000/- with a default sentence of 3 months S.I and (2) for the offence under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act sentencing him to 1 year R.I and imposed a fine of Rs.3000/- with a default sentence of 3 months S.I by a judgment dated 28.06.2018 in Special C.C.No.05 of 2009.

For Appellant : Mr.Rajarathiram, Senior Counsel for Mr.R.Sathish Kumar.

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

**JUDGMENT**

The appellant P.M.Sivakumar is a public servant employed in T.N.E.B as Commercial Assistant in the office of A.E (O & M), T.N.E.B, Indur, Dhamapuri District. He had preferred the above Criminal Appeal against the judgment dated 28.06.2018 passed by the learned Special Judge and Chief Judicial Magistrate, Dharmapuri, in Special C.C.No.05 of 2009, sentencing him to undergo one year R.I and to pay fine of Rs.3000/- in default to undergo 3 months S.I for the each offences under Section 7 and 13(2) r/w 13(1)(d) of P.C Act, 1988. The period of sentences ordered to run concurrently, giving set off to the period already undergone.

**2.** The case of the prosecution is that, Tmt.Jayakodi wife of late.Tr.Thangavel resident of Somanahalli Village own 2.16 acres of agricultural land with one bore well in S.No.70/4 situated in Somenahalli Village. During the year 2004, the complainant under the self finance scheme applied for 3 HP service connection to the T.N.E.B and got her name registered at the office of the Assistant Engineer, T.N.E.B, Indur, on payment of application fees of Rs.50/- (Receipt No.034711). After one year, on receipt of demand notice, the complainant deposited Rs.500/- to T.N.E.B vide Receipt No.463742. On receiving the deposit, Tr.P.M.Sivakumar, (accused) along with one Tr.Chinnasamy visited her land and checked the borewell, they took measurement for preparing estimation. In the year 2007, one day, the accused Tr.P.M.Sivakumar met the complainant at her house and demanded Rs.5,000/- as illegal gratification for arranging to get the sanction order for electrical connection to the borewell in her agricultural land.

**3.** On 12.07.2008, the demand of illegal gratification was reiterated. On 15.07.2008, the accused agreed to receive the bribe money in instalments and demanded payment of Rs.1,000/- or Rs.2,000/- as first instalment within 3 days and to pay the balance after a week. Not interested in giving bribe, report regarding demand of illegal gratification was made to the Inspector of Police, DV&AC, Dharmapuri on 16.07.2008. Case was registered under Section 7 of P.C Act, 1988 and Inspector of Police, Mr.Krishna raj organized the trap proceedings. Tmt.Jayalakshmi, Superintendent in the District Elementary Educational Office and Tr.S.Deva Anbu, Junior Assistant of the same office were called to be witness for the trap. The pre-trap proceedings was conducted at the office of DV&AC at Dharmapuri by demonstrating the significance of Sodium carbonate and phenolphthalein test. The complainant Tmt.Jayakodi produced the bribe money of Rs.1,000/- in denomination of one currency note of Rs.500/- and five currency notes of Rs.100/- then it was smeared with phenolphthalein powder and entrusted to her with instruction to produce to produce the tainted money to the accused only if he demands.

**4.** Tmt.Jayakodi was accompanied by Official witness Tmt.M.Jayalakshmi and they both met the accused in his office at about 11.10 a.m. The accused, on seeing Tmt.M.Jayalakshmi, came out from his seat and in the open space under Flag post asked the complainant whether she has made ready the money demanded. The complainant answered in affirmative and took out Rs.1,000/- from her purse and handed it over to the accused. After receiving the money, the accused kept it in his shirt pocket and promised the complainant that, he will complete the work and collect the balance bribe money.

**5.** Thereafter, the defacto complainant came out of his office and gave the pre-arranged signal to the trap team. The trap team thereafter entered into the office and introduced them to accused and conducted phenolphthalein–sodium carbonate test in the hands of the accused. They recovered the tainted money from the shirt pocket of the accused. The shirt portion was tested with sodium carbonate solution, the colour turned light read. The solutions samples were collected, sealed and labelled. The solutions sent for chemical analysis found that phenolphthalein-sodium carbonate are present in it. After getting sanction to prosecute the accused, final report filed and same was taken on file by the Special Judge and Chief Judicial Magistrate, Dharmapuri in Special C.C.No.05 of 2009.

**6.** Charge under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 was framed against the accused and he was tried for the above said offence.

**7.** To prove the charges, the prosecution examined 12 witnesses (P.W.1 to P.W.12), marked 34 Exhibits (Ex.P.1 to Ex.P.34) and 7 material objects (M.O.1 to M.O.7). To discharge the burden and to disprove the case of the prosecution, the accused examined two witnesses (D.W.1 & D.W.2) and marked 4

Exhibits (Ex.D.1 to Ex.D.4).

**8.** The trial Court, after appreciating the evidence held the accused guilty and sentenced him to undergo one year R.I and to pay fine of Rs.3000/- for each of the proven charges.

**9.** Aggrieved by that, the present Criminal Appeal is filed on the following grounds elaborated morefully by the Learned Counsel for the appellant are:-

**10.** The Learned Senior Counsel appearing for the appellant, placed his argument as below:-

(i). The sanction to prosecute the accused was granted mechanically without application of mind. Though several infirmities observed by the sanctioning authority in the case of the prosecution, he had accorded sanction. Hence, Ex.P-1 the sanction to prosecute the accused suffers incurable defect.

(ii) The contradictions between the testimony of defacto complainant

P.W.2 and the shadow witness P.W.3 goes to the root of the case and the material contradictions which ought to have been taken note by the trial Court were omitted to consider. The testimony of P.W.2 is contrary to her complaint marked as Ex.P.7. The embellishment and improvement in her testimony discredits her evidence. The trial Court ought to have rejected her testimony as wholly unreliable. Instead, the trial Court had overlooked the contradiction between her previous statement to the police which is the complaint Ex.P-7 and her oral evidence before the Court as P.W.2.

(iii). The defacto complainant initially sought for 3 HP load power supply under the self finance scheme. Her application dates back to the year 2004. When she felt that copious water is available in her well, she thought, she may require 5 HP load power. Therefore, on 01/10/2007 submitted a fresh application seeking 5 HP load power supply. In the month of June 2008, based on the first application and on payment of Rs.500/- to process the application, the accused had prepared estimation for 3 HP power supply. In view of the subsequent application for 5 HP load power supply, the estimation was required to be revised. Therefore, there was a delay in processing the application. The Court below had failed to take note of these facts which is proved through defence exhibits.

(iv) The estimation prepared by the accused based on the first application Ex.P-2 received by the EB office on 22/07/2004 was returned by Assistant Engineer for rectification mentioning three defects. Namely, a). the applicant has to confirm which one of her two applications, one for 3 HP load and another for 5 HP load to be considered for preparing estimation; b). the ownership of the land and well to be certified by VAO and c). the co-owners of the land should give consent. The defacto complainant re-submitted a fresh application dated 07/07/2008 confirming her first request to provide 3 HP load power supply annexing the other documents sought. Since the accused had already prepared the estimation for 3 HP Load power supply, there is no necessity to prepare fresh estimation. Hence, the very foundation of the prosecution fails.

**11.** To buttress his argument, the Learned Senior Counsel for the appellant submitted that, the case of the prosecution is that the accused made his first demand of bribe in the year 2007 when he inspected the field after receipt of the deposit of Rs 500/-. The second demand on 12/07/2008 to Selvam the son of the defacto complainant. The third demand on 15/07/2008, when she met the accused at 11.00 a.m in his office and begged to process her application. For none of these demands there is proof. The alleged demand of Rs.5000/- in the year 2007, it is bald and bereft of details. If really there was a demand by the accused at that time when he inspected her field, and the defacto complainant was not interested in giving bribe, she might have filed the complaint at that time itself. Contrarily, she gave the second application seeking 5 HP load power supply, superseding her first application for 3 HP power supply. Before her second application, the accused had prepared the estimation for 3 HP. Suppressing her second application dated 07.07.2007, P.W.2 had given the complaint Ex.P-7, as if the accused was repeatedly demanding bribe from her for preparing the estimate. The records of the EB office will reveal that the accused had prepared the estimation long before the date of complaint and same was forwarded to the AE and returned back for rectification. The second demand alleged to have been made on 12/07/2008 to Mr.Selvam, the son of the defacto complainant. Curiously, Mr.Selvam not examined to prove that the accused met him on 12/07/2008 and demanded illegal gratification to prepare the estimation. What deposed by P.W-2 in connection with the alleged second demand on 12/07/2008 being hearsay, it is inadmissible in evidence. The third demand purported to have been made on 15/07/2008 at 11.00 a.m when P.W-2 met the accused in his office. This allegation is disproved by the accused by examining D.W-1 and D.W-2. His presence at the warehouse at Athiyamankottai on 15/07/2008 from 10.30 a.m to 5.30 p.m for collecting materials from the EB store is proved through Ex.D-3 and Ex.D-4. Therefore, the Learned Senior Counsel for the appellant, prayed to allow the appeal and set aside the judgment of the trial Court.

**12.** Per contra, the Learned Government Advocate (Crl.Side) representing the respondent State, submitted that the defacto complainant had reported about the demand of bribe on 3 occasions in her complaint Ex.P-7. The fourth demand was after the complaint when she met the accused on the day of trap. The prosecution case against the appellant is duly proved through the witnesses and exhibits. Even for the sake of argument, it is held that the earlier 3 demands found to be not sufficiently proved, but the prosecution had proved beyond doubt, the demand and acceptance of bribe of Rs.1000/- on 16/07/2008 through P.W-2, P.W-3 and P.W-11. Besides the scientific evidence spoken by P.W-10 and her report Ex.P-24. The failure to forward the file for further process and holding the file with expectation of bribe is well found from the prosecution evidence. Whereas, the accused had not given any plausible explanation why he received Rs.1000/- from P.W-2. He had not explained how the money smeared with phenolphthalein went to his shirt pocket or why his shirt pocket portion was found with the presence of phenolphthalein.

**13.** The Learned Government Advocate (Crl.Side) appearing for the respondent summed up his submission stating that, the prosecution has successfully proved the demand and acceptance of illegal gratification by the accused. Whereas, the accused failed to probabilise his defence that the money was planted on his table. Hence, the appeal has to be dismissed.

> ***Point for consideration in this appeal:-*** *Whether the prosecution evidence sufficient to hold that M.O.1 (one 500 rupees note and five 100 rupees notes) recovered from the possession of the accused was received by him as illegal gratification on demand to discharge his official duty ?*

**14.** As a follow up of the report given by one Jayakodi W/o.Late

Thangavelu, the respondent police had laid trap for the appellant and caught him with Rs.1000/- the marked currencies [5 x Rs.100 & 1 x Rs.500]. The report reduced into writing says that, the defacto complainant, after applying for service connection under self finance scheme in the year 2004 was expecting the service connection. In the year 2007, she was asked to deposit Rs.500/- which she duly made. The accused working as Commercial Assistant in Indur Electricity Board Office made demand of bribe Rs.5000/- on earlier occasions during the Tamil month of Iypasi 2007 (mid October to Mid November), Again on 12/07/2008 through her son and on 15/07/2008 at 11.00 am when she met the accused in his office. It is alleged that on that day the accused reiterated his demand for bribe of Rs.5000/- to sanction her application. At her request to process her application, accused agreed to receive the bribe money of Rs.5000/- in installments of Rs.1000/- or Rs.2000. Not willing to give bribe, she report the matter to Inspector to take action.

**15.** The defacto complainant had gone to the Vigilance Office on 16/07/2008. Her complaint is marked as Ex.P-7. The complaint received by Inspector of Police, G.V.Krishnarajan (PW-11) attached to Vigilance and Anti

Corruption Wing at Dharmapuri. In the complaint, it is stated that on Thursday prior to the date of complaint, a Helper from T.N.E.B came to her house and informed her that there are some defects in her application, so asked to rectify the defect and re-submit the application. Then, she re-submitted the application duly along with the documents mentioned. Following, on Saturday, the accused met complainant's son and enquired why he had not made ready the money he demanded and told that, if money is not given then the work will not be done. Therefore, she herself went to the EB office on 15/07/2008 at 11.00 a.m and met the accused and begged him to complete the work. At that time, the accused asked her what happened to Rs.5000/- which he demanded. When the defacto complainant said that she is unable to mobilise such a huge amount, the accused told her to mobilize atleast Rs.1000/- or Rs.2000/- within two days and she can give the balance later. Also, he reiterated that, only if she pays the money demanded, he will start his work or else he will not commence his work. As per the calendar of the year 2008, Thursday prior to the date of complaint is 10/07/2008. The Saturday prior to the date of complaint is 12/07/2008.

**16.** Pointing out the discrepancies found in the complaint and the testimony, the Learned Senior Counsel appearing for the appellant harp on the point that, proof of demand is *sine qua non* for proof of charge under Section 7 of P.C Act, 1988. As per the complaint, the accused demanded bribe on Thursday prior to the week the complaint filed. The accused, on 12/07/2008 met her son (not examined) on Saturday the week prior to the complaint. The day prior to the trap, when the defacto complainant went to the office of the accused and requested him to process her application and prepare estimation, the accused made the demanded again and agreed to receive it in installment of Rs.1000/- or Rs.2000/-. In the complaint, it is stated that on Thursday (10/07/2008) prior to the complaint, the accused demanded bribe when she met the accused in his Office. Whereas, before the Court, she had not said anything about the demand of bribe alleged to have made by the accused on 10/07/2008 prior to the trap.

**17.** In case of trap, demand of pecuniary advantage is a foundational fact and the complainant has to prove the first demand for the Court to the draw the presumption that the demand was for illegal gratification. The presumption of fact is not as to the 'demand' but as to the said demand was to gain pecuniary advantage for himself or for any person. In this case, as conceded by the Learned

Government Advocate for the respondent, there is no corroborative proof for the earlier demands. It is only an inferential fact based on the subsequent events. However, the demand on 16/07/2008 by the accused and its receipt is proved through several evidence. The recovery of the bribe money of Rs.1000/- smeared with phenolphthalein, which was entrusted to P.W-2 after noting the numbers in the currencies during the pre-trap proceedings conducted at Vigilance office, the earlier part of the day. Presence of phenolphthalein in both the hands of the accused. The presence of phenolphthalein in his shirt pocket portion where he kept the money after receiving it from P.W-2. The evidence of P.W-3, the eye witness for the demand and receipt beyond reasonable doubt proved the case of the prosecution regarding the demand and acceptance.

**18.** The plea of *alibi* raised by the accused that, he was not in the Office on 15/07/2008 and he did not meet her at 11.00 a.m on that day. In fact, he was at Athiyamankottai for collecting materials from the EB stores. To prove his defence, the Attendance Register which is marked as Ex.P.12 and Ex.D.1 to Ex.D.4, and the testimony of D.W.1 and D.W.2 are relied. However, what is proved to these defence Exhibits and document is that on 15/07/2008, the accused went to Athiyamankottai EB warehouse to collect materials and he was in the Athiyamankottai warehouse between 10.30 a.m till 5.30 p.m. D.W-2, the Assistant Engineer in charge of the stores had deposed that accused came to the stores at about between 10.30 to 11.00 a.m to receive 15 items of materials and he was in the stores till 5.30 p.m.

**19.** This Court, on weighing the oral evidence of P.W-2 and D.W-2. The documents relied by the accused does not indicate the time he reached the warehouse at Athiyamankottai or the time he left the warehouse. The evidence of P.W-2 is that, she saw the accused in the EB office on 15/07/2008 at about 11.00 am. Whereas, D.W-2, has deposed that, he saw the accused in the warehouse at 10.30 a.m. P.W.2 is the aggrieved victim witness. D.W-2 is the colleague of the accused and a witness interested in accused. The statement on oath against another statement of oath, the testimony of P.W-2 will prevail since she has no axe to grind against the accused. It is not the case of the accused that, he had animosity with PW-2 or his family.

**20.** The defacto complainant P.W-2 and the shadow witnesses P.W-3 had in unison deposed that, on 16/07/2008 they went to the EB office at about 11.20 a.m. The accused on seeing P.W-2 wished her and pointing P.W-3, enquired who is the person accompanying her. P.W-2 informed him that, P.W-3 is her sister. Then, the accused told them to come outside his office and took them near the flag post in front of the EB office. There, the accused enquired whether PW-2 had brought the money demanded. Immediately, P.W.2 took out Rs.1000/- entrusted to him during the pre trap proceedings at Vigilance office and gave it to the accused. The accused received the money and kept it in his shirt pocket. Thereafter, the accused was trapped by the Vigilance Police along with the bribe money kept in his pocket.

**21.** The evidence of P.W-2 and P.W-3 corroborates each other. Minor contradictions which is natural and does not go to the root of the matter has to be ignored. Her Superior Officer had asked her to met the Inspector at Vigilance Office to assist the trap. Therefore, she went to the Vigilance Office at 9.15 a.m and met Trap Laying Officer on his instruction, she participated in the pre trap proceedings as well as the trap proceedings.

**22.** The Learned Senior Counsel for the appellant submitted that the service connection under the Self Finance scheme given only on the seniority basis. As per her seniority, the complainant got the service connection only in the year 2011, i.e., three years after the trap proceedings. The very same estimation prepared by the accused prior to the trap used for giving connection to the defacto complainant's field. Unfortunately, the defacto complainant got infuriated on the delay in processing her application and had given the false complaint.

**23.** The theory of motive canvassed by the accused does not have any roots. As rightly pointed out by the Learned Government Advocate (Crl.Side) for the State, if the complainant had any motive to fix the accused, she would have given the complaint in the year 2007 soon after the accused demanded bribe, is no answer for the demand and acceptance of bribe from P.W-2 on 16/07/2008. The found hope of P.W-2 that the EB Department will act transparently and fairly by processing her application in accordance with rules after her re-submission of the application with necessary documents and clarifying her need to provide 3 HP load power supply was not processed and the file was unnecessarily withheld by the accused. The admission of AEE and AE was that, there is no time frame to forward the file with estimation is no excuse for the delay. The reason for withholding the file with estimation which was already prepared is a strong circumstantial evidence to infer that the accused holding the file expecting bribe.

**24.** The Learned Counsel for the appellant contended that the trap money of Rs.1000/- was left on his table by P.W-2 without his knowledge and later, asked by Trap Laying Officer to pick it up, count and to handover it to the member of the trap team. Thereafter, his hands were subjected to test with sodium carbonate solution. The said explanation by the accused for the presence of phenolphthalein in his hands and shirt pocket portion is not believable. Since, it is evident that, he left his table on seeing P.W-2 accompanied by P.W-3 and had conversation with them under the flag post. Then, he came back to his table soon before the trap team entered the office. The chemical test report proves the tainted was kept in the shirt pocket. The testimony of the prosecution witnesses proves the said money was taken out by the accused from his shirt pocket. The silence of the accused to the question how the money went to his shirt pocket discredits the plea of implanting the money on his table without his knowledge.

**25.** The fact that the accused did not forward the estimation for process to grant sanction for 3 HP load service connection expecting bribe is also established through the entries found in the file related to the defacto complainant application. The documents found in the file marked as Ex.P-10 and Ex.P-30, reveals the application of P.W.2. Was entrusted to the accused to prepare the estimation under Rs.25,000/- Self Finance Scheme. The said application of the defacto complainant was taken for preparing estimation and on 02/06/2008 the accused has prepared the cost of materials and layout charges as Rs.11,912/- and Rs.3,865/- respectively. The Assistant Engineer,(Operation and Maintenance) had attested the estimation prepared. From Ex.P.30, we find that, the estimation was returned back by the Assistant Executive Engineer on the same day, that is 02/06/2008 for rectification of the defects mentioned. The defence witness D.W.1 admits that the application of Tmt.Jayakodi (P.W.2) which was returned to rectify the defects was represented after correcting her requirement from 5 HP to 3 HP load along with the consent letter of the co-owners. D.W-1 is not aware of the date on which she submitted the rectified application or when she got the service connection Ex.D-1 is one of the documents relied by the defence. This document form part of the file. This document dated 20.10.2011 is subsequent to the trap. It reveals that based on the estimation given by the accused in the year 2008, the service connection for 3HP given to the defacto complainant. This document only enhance the case of the prosecution regarding withholding the estimation with expectation of bribe. Why the accused did not forwarded his estimation to AE soon after the rectification sought by the department carried out by the defacto complainant.

**26.** Therefore, even though there is no evidence to corroborate PW-2 regarding the three demands earlier to the complaint, the unexplained delay in holding of the estimation without forwarding it to the higher officials after the defacto complainant re-submitted the application coupled with the fact that on the day of trap, when P.W.2 and P.W.3 met the accused, he came out of his seat and collected the bribe money from P.W.2 is well proved through the evidence of P.W.2 and P.W.3. The recovery of the tainted money from the accused kept in his shirt pocket, the chemical examination report of the hand wash solution and the shirt pocket portion, all clearly proves the case of the prosecution and disprove the defence taken by the accused that the money was secretly placed on his table and the Trap Laying Officer forced him to take the money, count and handover to him.

**27.** The summary of the evidence against the accused:-

The first application of P.W.2 seeking 3 HP power supply for her well is dated 12/07/2004. It was submitted along with receipt for payment of Rs.50/-. The seal found in Ex.P.2 application to indicates that Executive Engineer office has received the application on 22/07/2004 and assigned serial number 076/2004. EB had three different categories for providing service connection on the self finance. The application of P.W-2 fall under Rs.25,000/- category. The service connection has to be provided as per seniority under each category. Ex.P.4 is the proceedings of the Executive Engineer dated 20/09/2007. This proceedings reads that the application of Jayakodi (the defacto complainant) under the self finance scheme of Rs.25,000 for 3 HP service line been taken up for consideration. After inspecting the field, the costs estimation will be prepared. If the estimation is below Rs.50,000/-, then the applicant has to pay Rs.25,000. If the estimation is above Rs.50,000/- she has to pay the entire estimated costs. The applicant also has to pay electricity charge at the rate of Rs.250/- per HP per year. If she is interested to get service connection, she has to deposit Rs.500/- on or before 06/10/2007 and submit the documents mentioned on or before 12/10/2007.

**28.** On the receipt of Ex.P-4, P.W.2 had deposited Rs.500/- at Indur

EB Office on 27/09/2007. The receipt for the said payment is marked as Ex.P.5. From the documents which form part of the file of Jayakodi (P.W.2) we also find another application by Jayakodi dated 07/07/2008, but there is no indication when this application was received by the EB office. This application is for 5 HP power supply. In the defence document, Ex.D.1 file, we find a proceedings of the Assistant Engineer addressing the defacto complainant informing that her application for service connection under self finance scheme Rs.25,000 is returned since the first application, she has sought for 3 HP connection and later given another application seeking 5 HP connection. She has to clarify whether she need 3 HP load or 5 HP load. Further, she has to enclose the consent letter of co-owners and certificate from VAO regarding ownership. On receiving the above proceedings from the EB office, P.W-2 had resubmitted her application by duly rectifying the defects. His proceedings, the Assistant Executive Engineer had directed to prepare estimation and submit. On pursing the applications, AEE had returned the file along with estimation on 26/06/2008 stating the reasons mentioned above. The estimate dated 02/06/2008 which form part of Ex.P.10 reveals, it contain estimation for both 3 HP load as well as 5 HP load. The signature of the Assistant Engineer, Indur is seen in the document. As per this estimation report, if this load is 3 HP, Rs.24,010/- will be rough costs. If the proposed load is 5 HP, the proposed costs is estimated as Rs.39,945/-. In the very same file marked as Ex.P.10, there is also an application of P.W.2 which is dated 01/10/2007 wherein, she had mentioned the previous application number 076/2004 and sought for 5 HP load power supply, in view of this subsequent application, the accused had prepared estimation for 3 HP as well as 5 HP load on 02/06/2008 itself and forwarded to Assistant Engineer.

**29.** So, as soon as P.W-2 resubmitted her application along with the documents i.e., on 10/07/2008, there is no reason to withhold the estimation which already prepared by the accused and also seen by the the AE on 18/08/2008 and affixed his sanctioned seal. Assistant Engineer who is affixed the seal and signature in this document been examined as D.W.1.

**30.** Thus, it is clearly proved by the prosecution that, the accused along with his helper inspected the field of P.W-2 on 02/06/2008 only after the second application of P.W-2 received on 07/07/2008. He also submitted estimation for both 3 HP load and 5 HP load. Based on his report and perusal of the two applications, Assistant Engineer had sought clarification whether the applicant needs 3 HP load or 5 HP load. After P.W-2 resubmitting the application on 10/07/2008 ascertaining her need is 3 HP load, the accused had not forwarded the file to Assistant Engineer till 16/07/2008.

**31.** The materials available in the file exhibited as documents, enough proof to draw inference that the application of the defacto complainant being withheld unduly, even after preparation of estimation for both 3 HP load and 5 HP load. The accused demanded bribe and obtained it on 16/07/2008 and kept the money in his shirt pocket. Therefore, even in the absence of proof for the earlier 3 demands, the fourth demand of bribe been proved through prosecution witnesses is suffice to confirm the judgment of the trial Court holding the accused guilty of charges under section 7 and 13(2) r/w 13(1)(d) of P.C Act, 1988.

**32.** As a result, this ***Criminal Appeal No.436 of 2018 is dismissed.*** The judgment of the trial Court passed in Special C.C.No.05 of 2009 by the Special Judge-cum-Chief Judicial Magistrate, Dharmapuri is confirmed. The trial Court is directed to secure the appellant/accused 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.

21.06.2023

Index :Yes/No.
Internet :Yes/No.
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
bsm

Copy to:-
1. The Special Judge and Chief Judicial Magistrate-Dharmapuri.
2. The Deputy Superintendent of Police, Vigilance & Anti Corruption, Dharmapuri District.
3. The Public Prosecutor, High Court, Madras.

**Dr.G.JAYACHANDRAN,J.**
bsm

Pre-delivery judgment made in
Crl.A.No.436 of 2018

21.06.2023