



Crl.A.No.178 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 09.03.2023

Pronounced on : 23.03.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.178 of 2016

G.Venkatapathy.

... Appellant/Accused No.2.

/versus/

State by Deputy Superintendent of Police,
Special Investigating Cell: VAC,
Chennai – 28.

... Respondent/Complainant.

Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., pleaded to call for the records relating to the case in C.C.No.78 of 2011 on the file of the Learned Special Judge for cases under Prevention of Corruption Act, 1988, Chennai and allow this appeal by setting aside the judgment and conviction dated 19.02.2016 passed in the said C.C.No.78 of 2011 on the file of the Learned Special Judge, for cases under Prevention of Corruption Act, 1988, Chennai.

For Appellant : Mr.J.Thilagaraj,

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



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J U D G M E N T

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The appellant herein being aggrieved by the judgment of the trial Court holding him guilty for the offence under Section 12 of Prevention of Corruption Act, 1988 and sentenced to undergo 6 months R.I and with fine of Rs.1000/- in default, one month S.I is before this Court by way of an appeal.

2. According to the prosecution, A.Senthilnathan son of Kanagavalli, for water connection to the house in the name of Kanagavalli arranged the appellant herein, a private individual carrying on profession as plumbing contractor. The appellant took him to Mr.Rajan, Assistant Engineer (hereinafter referred as appellant) at Chennai Metropolitan Water Supply Sewerage Board (hereinafter referred as 'Board'), K.K.Nagar, Chennai. After consulting with Tr.Rajan, Assistant Engineer, the appellant along with A.Senthilnathan went to the house of Kanagavalli got her signature in the application and received Rs.15,000/- for pay connection fees and Rs.200/- for the expenses. Accordingly, the appellant paid the fees of Rs.15,000/- at Board, on 30.06.2008. Thereafter, there was no progress in providing water service connection to the house. Therefore, Senthilnathan went to the Division Office on 10.07.2008 at about 1.30 p.m and met the Appellant. The



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appellant, after consulting with Rajan Assistant Engineer, informed Senthilnathan that Rajan, Assistant Engineer is demanding Rs.10,000/- as bribe and only if the bribe is given water service connection will be provided. Thereafter, A.Senthilnathan, immediately went to the Office of Rajan, Assistant Engineer and cross verified with him, whether he has to pay bribe of Rs.10,000/- even after paying the connection fees of Rs.15,000/-. Rajan, in response told to A.Senthilnathan that, if he pays the money as demanded by Venkatapathy/A2, he will get the connection immediately or he will not get the water service connection at all.

3. A.Senthilnathan, immediately gone to the District Superintendent of Police, Vigilance and Anti Corruption Office, at R.A.Puram, and given a written complaint. Mr.Ponnusamy, District Superintendent of Police, V&AC, on receipt of the complaint, directed Thiru.S.Ashokan, Inspector of Police, to register a case and taken up for investigation. Accordingly, case has been registered in Crime No.2/AC/08/HQ, under Sections 7 & 8 of Prevention of Corruption Act, 1988 and taken up for investigation by S.Ashokan, Inspector of Police.



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4. In the process of investigation, the Inspector of Police, has arranged for two Official witnesses by name Mr.Kumar, Deputy Block Development Officer and Manokaran, Block Development Officer. In their presence, he got the bribe money of Rs.10,000/- from A.Senthilnathan noted the currency number. Thereafter, prepared Sodium Carbonate solution and asked the Official witness Manokaran to dip his hands in the solution. The colourless solution remains unchanged. Thereafter, the bribe money was smeared with phenolphthalein power. Manokaran was asked to handle the currency by counting it using both his hands. Thereafter, Manokaran was asked to dip his left hand and right hand in the Sodium Carbonate solution kept in two different container. The Sodium Carbonate solution colour turned “light red”. Thus, after demonstrating the significances of phenolphthalein sodium carbonate test, entrustment mahazar was prepared. A.Senthilnathan was instructed to take out the tainted money only if Rajan, Assistant Engineer or the appellant Vengadapathy demands the bribe and if they received the money, he should come out from the Office and give signal by changing the watch from his left wrist to right wrist. On of the shadow witness, K.Kumar, was asked to accompany the defacto complainant Senthilnathan. The entrustment proceedings commenced at 8.15 hours and got completed by 9.15 hrs.



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Manokaran and Kumar, the Official witnesses along with the defacto complainant

Senthilnathan signed in the entrustment mahazar prepared by Ashokan, the Inspector of Police. Thereafter, the trap team went to the Division Office at K.K.Nagar, Chennai.

5. As instructed by the Trap Laying Officer, Inspector of Police Ashokan, A.Senthilnathan, and the shadow witness Kumar went to the office at about 10.20 hours. Senthilnathan met Rajan, Assistant Engineer and told him that, he has already paid Rs.15,000/- towards the connection fees and demand of Rs.10,000/- bribe is too high. Therefore, requested Tr.Rajan, Assistant Engineer to reduce the bribe money. For that, Rajan, Assistant Engineer, told Senthilnathan to wait outside and he will send word through Venkatapathy (the appellant). Venkatapathy came out and negotiated with Senthilnathan over the bribe amount and settled for Rs.8,000/-. So, A.Senthilnathan retained 2 thousand rupees notes from out of 10 notes, smeared with phenolphthalein powder and gave Rs.8000/- to Venkatapathy/appellant, who received it, counted it and kept in his left pant pocket. Thereafter, A.Senthilnathan came out from the Office and gave the pre-arrange signal. On receiving the signal, trap team led by Inspector of Police,



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Ashokan entered the Office. A.Senthilnathan and the shadow witness K.Kumar identified Venkatapathy/appellant. Then they all entered the Office of Rajan, Assistant Engineer. Rajan Assistant Engineer, was identified by A.Senthilnathan. The Trap Laying Officer after knowing that only Rs.8,000/- was received by the appellant got back the remaining two thousand rupees note from A.Senthilnathan and asked him to wait outside the room. Rs.8,000/- kept in the pocket of Venkatapathy was recovered and the serial numbers found in the recovered money was compared with the number noted in the entrustment mahazar and found tallied. The two remaining thousand rupees notes retained by A.Senthilnathan was also taken for comparison with the entrustment mahazar and found tallied. Thereafter, Trap Laying Officer, arranged for two tumblers of sodium carbonate solutions and asked Venkatapathy/appellant to dip his left and right hands separately in each of the tumbler containing with solution. The colour of the solution turned “light red”. The samples were collected in the bottle and sealed with label. Venkatapathy was given an alternate pant and the pant which he was wearing was taken for phenolphthalein test. The sodium carbonate solution turned light red, when the pocket portion of the pant dipped in the solution. Therefore, that solution sample was also taken up for analysis in a separate bottle and sealed



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with label. Venkatapathy had in his possession document in respect of an application given by one Kalaiselvi, when the Trap laying Officer enquired Venkatapathy about that, he told the Trap Laying Officer that, he being very close to Rajan, Assistant Engineer, he used to collect applications from the residences within the said Division and arrange for water service connection. The documents pertaining to Kalaiselvi is one such application, for that purpose, the fees to be paid is Rs.7,500/- and along with the fees he has collected the service charge of Rs.1,500/- totally Rs.9,000/- and handed over the money from his pocket. From the drawer of Rajan, Assistant Engineer, a total sum of Rs.64,830/- was collected, which was kept in five bundles. Rajan, Assistant Engineer, told the Trap Laying Officer that said money is a loan he received from his friends and relatives since, he was proposed to go to foreign that month end. Being satisfied, the said money was returned back to Rajan, Assistant Engineer. When enquiry about the application of Kanagavalli given by her son Senthilnathan, Rajan admitted that, the said application is under process. With these information, Rajan, Assistant Engineer and Venkatapathy, Recovery mahazar for the tainted currency and the pant of Venkatapathy was prepared and completed by 13.10 hrs.



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6. After receipt of the chemical analysis report, the Investigating Officer has laid final report. Based on the final report, Special Court for Prevention of Corruption case, framed charge under Section 7 and 13 (2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988, against A1 and Rajan, Assistant Engineer. Against Venkatapathy (A2) charge under Section 12 of Prevention of Corruption Act, for abetting a public servant to demand and receive bribe was framed.

7. Pending trial, Rajan, Assistant Engineer., 1st accused died, hence, the charges against him got abated. To prove the charge against A2/Venkatapathy, the prosecution examined 11 witnesses and marked 24 Exhibits and 5 material objects.

8. P.W.1, Shiv Das Meena, is the Officer who accorded sanction to prosecute A1/Rajan, Assistant Engineer, His sanction to prosecute is marked as Ex.P.1. Pending trial, since the accused Rajan died, the document has no relevance for the Appeal.

8.1. P.W.2, Senthilnathan is the defacto complainant and his complaint dated 10.07.2008 marked as Ex.P.2. He is son of Kanagavalli P.W.5, who is the owner of the house for which application for water connection made under Ex.P.5.



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The printed application form for water connection in the name of Kanagavalli is marked as Ex.P.5, dated 26.06.2008. In the file we find the indemnity Bond marked as Ex.P.4, dated 16.04.2008 executed by her mentioning she has applied for water and sewage connection on 07.06.2018. Also, another application from Kanagavalli in the form of letter dated 05.06.2008 is marked as Ex.P.9. The challan for payment of Rs.15,000/- in the name of Kanagavalli is dated 05.06.2008 and same is marked as Ex.P.10. From these documents, it could be seen that Kanagavalli was in need of water connection and therefore, through Venkatapathy(A2) her son A.Senthilnathan has applied at Water Board, K.K.Nagar Division. P.W.2, the defacto complainant, in his deposition as spoken about the application made on behalf of his mother and payment of Rs.15,000/- as fees. The demand of Rs.10,000/- by the 2nd accused Venkatapathy and same confirmed by the deceased 1st accused/Rajan. Subsequently, his complaint, entrustment proceedings and the negotiation held between him and Venkatapathy to reduce the bribe amount. Thereafter, visit to Assistant Engineer Office, the receipt of Rs.8,000/- by Venkatapathy. The shadow witness Kumar examined as P.W.3 has substantially corroborated the evidence of P.W.2.



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8.2. P.W.4, Sasidharan Assistant Registrar, K.K.Nagar Division in the Board has deposed about the receipt of the application of Kanagavalli. He handled it over to the Deputy Area Engineer-Sivashanmugam. He has deposed about the procedure for processing the applications received for water service. He has specifically stated that in the said process, private persons have no role in processing application and granting water supply connection. Service will be provided within 30 days on receipt of the application, if it is in order. In case, if the application is not in order, it has to be returned assigning reasons. The system of submitting application through plumbers for water service connection was abolished 10 years ago. In case, the house which requires water supply is far from the main line, the concern Engineer will engage labourers and out source the work to provide connection. The expenses will be meet out by the Board.

8.3. P.W.5, Kanagavalli, the owner of the house on whose behalf the application for water supply connection was paid, had deposed that, she know A2/Venkatapathy, he got her signatures in four papers for water service connection and received Rs.15,000/- as fees and Rs.200 for expenses. P.W.5 has identified her signatures in Ex.P.4 & Ex.P.9. After one week, A2/Venkatapathy



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gave the challan for payment of Rs.15,000/- marked as Ex.P.10.

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8.4. P.W.6, Sivashanmugam, Engineer, in-charge of the said division had deposed about the application and payment of fees in the name of Kanagavalli. The application was scrutinised by him on 28.06.2008 and forwarded to the accused Rajan, Assistant Engineer., for further action. The application was sent back to him on 30.06.2008 recommending permission to give connection. The Division Engineer has issued check slips on the same day and in turn, the papers were sent back to Rajan Assistant Engineer for further orders. The spot inspection conducted on 08.07.2008 and positive report been sent, in which, the witness Sivashanmugam has endorsed as “correct”. Three days thereafter, on 11.07.2008, he heard Rajan Assistant Engineer, was arrested. He, through Junior Engineer Sundararajan, provided the water supply connection to Kanagavalli. He has also reiterated that, for providing water connection, there is no role for outsiders or third parties.

8.5. P.W.7, Bhoopalan, Division Engineer had deposed that the application for water service is distributed at free of cost. To get water connection, required



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fees should be paid and necessary arrangement for rainwater harvest must be made in the building, the interior water supply provisions ought to have been made by the owner/applicant and there must not be any dues to the Board. The applicant should submit the building plan approval and sketch. This application must be accompanied with required document and fees and once such application is received, number will be assigned and thereafter, within two days, it will be despatched to concern Division Engineer by post from Head Office and he, in turn, will process it with the help of his Subordinates. The entire details and timelines required for processing been spoken by this witness.

8.6. In respect of the application received from Kanagavallai, Perumbakkam. P.W.7 has said that the application dated 25.06.2008 was received by Head Office, the applicant has paid the requisite fees of Rs.15,000/- on 26.06.2008. He received the application along with fees receipt on 26.07.2008 and on the back of the receipt, he has made an endorsement that the matter to be looked by the Division Engineer Sivashanmugam and forward it to him. On 30.06.2008, under Ex.P.12 check slip, he ordered work shall commence. Sivashanmugam, Division Engineer and Rajan, Assistant Engineer., had



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conducted the field inspection and endorsed particulars as 'correct' and that endorsed is marked as Ex.P.13. After the trap and arrest of Rajan, Assistant Engineer, Water connection to the house of Kanagavalli was provided on 16.07.2008 through Sundararajan.

8.7. P.W.8 Kalaiselvi, is one of the applicant for water connection and her application and other documents along with her money Rs.9,000/- were found in possession of A2/Venkatapathy at the time of trap and that was recovered from Venkatapathy. Venkatapathy informed to the Trap Laying Officer that, the application and money belongs to Kalaiselvi. The said Kalaiselvi (P.W.8), in her deposition admits that, for water service connection to her house, she gave the application (Ex.P.14) to Venkatapathy, who used to help the residents of that area for getting water connection. She admits that, she applied through Venkatapathy and for water connection, she gave Rs.7,500/-, for which, Venkatapathy has given the receipt. For helping her, she has given some money to Venkatapathy.

8.8. P.W.9, the Scientific Officer attached to Tamil Nadu State Forensic Laboratory, Chennai, had received three bottles of solution labelled as right hand



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wash, left hand wash and pant wash recovered in Crime No.2 of 2008 and on analysis found that, in all the three solutions both phenolphthalein and sodium carbonate were present. The report is of the Chemical Analyst is marked as Ex.P.16.

8.9. P.W.10, Ashokan, the Trap Laying Officer has deposed about the action taken by him after the receipt of the complaint. His testimony is in corroboration of the evidence of P.W.2 & P.W.3. The Deputy Superintendent of Police, Mr.Ponnusamy, who received the complaint and forwarded it for investigation has laid the final report. He has been examined as P.W.11.

9. The trial Court being satisfied with the evidence placed by the prosecution as narrated above, convicted Venkatapathy/A2, for the offence under Section 12 of Prevention of Corruption Act, 1988, sentenced him to undergo 6 months R.I and pay fine of Rs.1,000/-, in default, one month S.I.

10. In the appeal, it is contended that, the triple ingredients to make out an offence under the Prevention of Corruption Act, 1988, namely demand, acceptance



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and recovery is absent in this case. Mere recovery of tainted money from the appellant is not a proof that the public servant namely Rajan Assistant Engineer, Board received bribe and for which the appellant assisted. Through evidence, it is established that, the appellant is a private individual, carrying on civil engineering work contracts. The applicant Kanagavalli had specifically admitted that, she has engaged the appellant for getting water supply connection. From the evidence of P.W.7, Bhoopalan, it is clearly established that, for getting water connection fees of Rs.15,000/- to be paid by the applicant. The applicant should make ready his house with required water pipeline and internal arrangements. The appellant, being a Civil Contractor, had received the money from A.Senthilnathan, for the said purpose. This explanation given immediately after recovery of the money not been produced by the Trap Laying Officer before the Court for proper appreciation of evidence.

11. According to the appellant, he has been convicted for the offence under Section 12 of Prevention of Corruption Act, 1988, for abetting a public servant. Unless the charge against the public servant is proved, the charge of abetting the public servant by a private individual will not sustain. In this case, the prosecution



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has not proved that the public servant has committed an offence under Sections 7 or 13 (1)(d) of Prevention of Corruption Act, 1988. While so, the appellant being a private individual cannot be convicted for abetment under Section 12 of Prevention of Corruption Act, 1988.

12. Further, the Learned Counsel appearing for the appellant would submit that testimony of official witnesses cannot be relied upon since no document produced by the prosecution that they were present on the request of the Trap Laying Officer and with the permission of their Head of the department.

13. The trial Court failed to consider the fact that, when 10 notes of thousand rupees notes denomination smeared with phenolphthalein, only eight notes were recovered from the accused and the balance two notes removed by A.Senthilnathan and same was later recovered from Senthilnathan. The defacto complainant/A.Senthilnathan having contacted the phenolphthalein smeared currency and retained two of the currency with him, contrary to the instruction of the Trap Laying Officer and the recovery of Rs.8,000/- alone from the appellant not been properly appreciated by the trial Court. The prosecution has proved that



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a sum of Rs.9,000/- was in possession of A2/ Venkatapathy and that money was in respect of the application given by one Kalaiselvi. The Trap Laying Officer, in his testimony has not spoken from where that Rs.9,000/- was kept by the appellant and from where it was recovered. While, P.W.5 Kanagavalli, the applicant had not stated anything about the demand of illegal gratification by the appellant for him or on behalf of the public servant, the version of A.Senthilnathan (P.W.2) remains uncorroborated. In the said circumstances, the trial Court ought to have considered the probability of fixing the appellant by P.W.2 (A.Senthilnathan) due to personal animosity arose in the execution of plumbing work by the appellant in the house of Kanagavalli.

14. The Learned Government Advocate (Crl.Side) for the respondent submitted that the demand and receipt of money of Rs.8,000/- from P.W.2 by the appellant in the Office of the deceased Rajan/A1, itself requires proper explanation by the appellant. Appellant is a private person. His presence in the Board and receiving money from P.W.2 and also holding the application of Kalaiselvi and money for payment of fees all indicates that the appellant was acting as tout to Rajan (A1). In the course of such illegal act, he has demanded



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Rs.10,000/- from P.W.2 for providing water service connection. The application has been processed as spoken by the other official witnesses particularly P.W.6 & P.W.7. After spot visit recommended for water connection. But the accused and the appellant waiting for the bribe money and did not provide water connection by issuing work order after spot inspection.

15. Heard the Learned counsel for the appellant and the Learned Government Advocate (Crl.Side) for the respondent.

16. The appellant herein is a Professional Civil Contractor and from the evidence of P.W.5 Kanagavalli and P.W.8 Kalaiselvi, it is proved that, he used to do plumbing work for the resident in that area and arrange for water service connection for them by collecting application, connection fees and service charge for his plumbing work. As far as in this case is concerned, from the evidence of P.W.5 Kanagavalli, the appellant has received from her only Rs.15,000/- towards fees and Rs.200/- for expenses. He has remitted the fees at the Office of Board and given the receipt of Kanagavalli.



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17. The case against the appellant is, he demanded from P.W.2 Rs.10,000/- for getting orders from Board using his proximity with Rajan, Assistant Engineer (deceased). Further, the case of the prosecution is that, he received the bribe of Rs.8,000/- from P.W.2, after consulting with Rajan Assistant Engineer, money was obtained by him at the outside of Rajan's Office on 11.07.2008. Since the public servant against whom charge under Sections 7 and 13(2) r/w 13(1) of Prevention of Corruption Act, 1988, died and got abated, the burden of the prosecution to prove the charge under Section 12 of Prevention of Corruption Act against the appellant is absolute and beyond doubt. The presumption under Section 20 of Prevention of Corruption Act, 1988, as the against public servant regarding demand and acceptance cannot be extended to a private person, who is charged for the offence under Section 12 of Prevention of Corruption Act.

18. The Learned Counsel for the appellant submitted that the charge against the non-public servant was tried along with the public servant under Prevention of Corruption Act, 1988, is liable to be quashed, once the charge against public servant gets abated due to his death. In support of his submission, he has relied upon the judgment of the Hon'ble Andhra Pradesh High Court rendered in *Amara*



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Krishna Mohan Rao & others -vs- State of Andhra Pradesh reported in **2012**

CrL.L.J 969, wherein, the Learned Single Judge of Andhra Pradesh High Court has observed as under:-

“12. In fact, the question of prosecuting a non-public servant for any offence covered by the P.C. Act arises if there is any possibility of ascertaining basing upon the evidence to be recorded as to whether the public servant involved in connivance with the non-public servants being the concerned Commercial Tax Officer in committing the alleged offences along with the non-public servants. It all depends upon whether the prosecution can be allowed to record evidence against him with reference to the charge under the P.C. Act. 'Abatement' means an extinguishment of the very right of action itself or to cease, terminate or come to an end prematurely and consequently the right of the prosecution to prosecute a deceased accused in a criminal case is effectually wiped out. Unless the public servant is held to be guilty of the charge punishable under the P.C. Act on the basis of the evidence which can be recorded, there will not be any possibility to uphold the same charge against the non-public servants. Therefore, when in view of the abatement of the charge against the public servant the question of reopening it against him does not arise at all, the question of considering that charge against the non-public servants also does not arise at all.”



19. This Court, with great respect to the Learned Judge, defers the view expressed by the Single Judge of neighbouring High Court.

19.1. Section 12 of Prevention of Corruption Act, 1988, reads as below:-

“12. Punishment for abetment of offences.—Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years, but which may extend to seven years and shall also be liable to fine.”

20. It is an independent offence and whether the offences committed in consequence of the abetment or not, it attracts punishment. In the case in hand, as per P.W.2 A.Senthilnathan, when he went to K.K.Nagar Board on 24.06.2008 morning, he saw the appellant on the way and he enquired, what for he has come to the Board. When he told Venkatapathy that he need water supply connection to his house. A1/Rajan after gathering information from him, went to the office and came out after some time and took P.W.2 to his house. He prepared sketch and obtained signature in twenty rupees stamp paper and in unfilled printed forms from his mother. After measuring the house informed that, Rs.15,000/- to be



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deposited and collected Rs.15,000/- and also assured that, he will pay the fees and for that, as an expense got Rs.200/- from his mother. This part of P.W.2 testimony is corroborated by his mother P.W.5.

21. Further, P.W.2 deposed that, on 10.07.2008, at about 1.30 p.m, he again went to the Office and met A2 and enquired him, why after paying fees, there was delay in providing connection. At that time, Venkatapathy demanded Rs.10,000/- for Rajan, Assistant Engineer. The appellant to verify whether the demand of Rs.10,000/- is for Rajan Assistant Engineer, went to the room of Rajan Assistant Engineer enquired whether Rs.10,000/- demanded by the appellant is for him or for Rajan Assistant Engineer. According to P.W.2, for his enquiry, the deceased Rajan told him that, do as the appellant instructs or else will not get water supply connection. According to him, it was on 10.07.2008 at about 10.30 p.m and immediately, he has gone to the Vigilance Office at R.A.Puram and given the complaint.

22. From the records seized, after the trap proceedings and from the evidence of the witnesses like P.W.4 Sasidharan, Assistant Registrar in Board,



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P.W.6 Sivashanmugam, Division Engineer, P.W.7 Bhoopalan Division Engineer,

who are all working along with A1/Rajan had dealt the file and spoken that, file had been in progress since 25.06.2008, the date on which the application was made. The spot inspection was conducted by the 1st accused on 08.07.2008 and the check slip Ex.P.13 prepared by 1st accused. P.W.6 Sivashanmugam has made an endorsement as “correct”. The entire facts which has happened from 25.06.2008, the date on which application was submitted, till 08.07.2008 when the Officials of the Board visited the house of Kanagavalli to measure the house and prepared the check slip been totally suppressed by P.W.2. Contrarily in his complaint as well as before Court has deposed that, after the application, no action was taken by the Board Officials for 10 days. Therefore, he went to the Office, on 10.07.2008 at about 1.30 hours. Even according to the prosecution, on that day, the money was not received by the public servant namely the Rajan (1st accused) but the tainted money was received only by a private person that private person (A2) had been engaged by the mother of the defacto complainant, for doing the plumbing work to get water connection. From the evidence of P.W.7, it is clear that the internal pipeline work to be done by the appellant at their own cost and therefore, the probable and plausible explanation put forth by the appellant during the cross



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examination of witnesses that the money was given by P.W.2 towards his work contract.

23. In this case, it is also to be noted that the appellant has stated that, he has given an explanation for the money he had in his possession both for Rs.8,000/- which was received from P.W.2 and Rs.9,000/- which was received from P.W.8. The explanations ought to have been recorded separately. However, in this case, part of his explanation in respect of the money collected from Kalaiselvi alone is found in the recovery mahazar.

24. Further, in this case, it is also to be noted that the demand of illegal gratification by the public servant not been witnessed by P.W.3, who is the shadow witness. He has seen only the receipt of the money by P.W.2 and that too, after P.W.2 retained two thousand rupees with him. When P.W.8, Kalaiselvi has deposed that, the resident of that locality use to engage the service of the appellant for plumbing work for getting water connection, it is more probable that, P.W.2 and his mother P.W.5, who were expecting water connection had paid the appellant a sum of Rs.8,000/- for plumbing work since their application before the



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Board is at advance stage. For receiving Rs.8,000/- from P.W.2 with whom, he had some service contract, he cannot be charged under Section 12 of Prevention of Corruption Act, without proving the demand of illegal gratification by the public servant and for getting the money demanded or expected A1 aided or assisted.

25. In *M.Abbas -vs- State of Kerala* reported in *(2001) 10 SCC 103*, the Hon'ble Supreme Court consists of three Learned Judges, in an identical case has held that, “where an accused sets up a defence or offers an explanation, it is well settled that he is not required to prove his defence beyond a reasonable doubt but only by preponderance of probabilities. Maybe, the allegation that the appellant accepted the money as bribe for herself and the public servant sitting inside to process the application is true but Court cannot convict the appellant only on such probability or suspicion however strong it may be, between may be true or must be true, there must a be long distance to travel”.

26. The advantage of presumption under Section 20 of Prevention of Corruption is not available for the prosecution in case of charge under Section 12 of Prevention of Corruption Act, 1988, against non-public servant. The



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prosecution case ought to be proved beyond reasonable doubt. In the instant case, since the appellant a non-public servant has come out with a very probable explanation for the receipt of Rs.8,000/- from P.W.2, convicting him under Section 12 of Prevention of Corruption Act, 1988, without the public servant found guilty of offence under Section 7 or 13(1)(d) of Prevention of Corruption Act, 1988, is unfair and contrary to law.

27. Hence, this ***Criminal Appeal is Allowed.*** The judgment of the trial Court is set aside. The appellant is set at liberty. Fine amount paid if any by the accused, shall be refunded to him. Bail Bond if any executed by the accused shall stands discharged.

23.03.2023

Index :Yes.

Neutral Citation :Yes/No.

Speaking order/Non-speaking order

bsm

To,

1. The Learned Special Judge, (Prevention of Corruption Cases),
Chennai.

2. The Deputy Superintendent of Police, Special Investigating Cell: VAC,
Chennai – 28.

3. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.
bsm

Pre-Delivery judgment made in
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