IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

CORAM :

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.331 of 2016

C.Varadappan ... Appellant

Vs.

State, Represented by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Department,
Dharmapuri. Crime No.07/AC/2004 ... Respondent

Prayer: This Criminal Appeal has been filed under Section 374 of Criminal Procedure Code against the judgment of the learned Chief Judicial Magistrate, Dharmapuri in Spl.C.C.No.13/2008 dated 02.04.2016.

For Appellant	:	Mr.R.Rajarathinam Senior Advocate for Mr.V.Rajamohan
For Respondent	:	Mr.S.Udaya Kumar Government Advocate (Crl. Side)

JUDGMENT

Challenging the judgment of conviction and sentence dated 02.04.2016 in Spl.C.C.No.13 of 2008 by the Chief Judicial Magistrate, Special Court, Dharmapuri, the present criminal appeal has been filed.

2. The offences for which the appellant was convicted and the sentences imposed upon the appellant are as follows:-

Section of Law	*Sentence Imposed*
Section 7 of Pevention of Corruption Act, 1988	Rigorous Imprisonment for one year and a fine of Rs.2,000/-, in default, to undergo three months Simple Imprisonment.
Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	Rigorous Imprisonment for one year and a fine of Rs.2,000/-, in default, to undergo three months Simple Imprisonment.

The period of detention already undergone by the accused from 29.09.2004 to 07.10.2004 was ordered to be set off under section 428 Cr.P.C. and both the sentences were directed to run concurrently.

3. The case of the prosecution is that the accused was working as Village Administrative Officer of Gujjarahalli Village, Palacode Taluk, Krishnagiri District from 16.09.2004 to 28.09.2004 and hence, he is a public servant under Section 2(c) of the Prevention of Corruption Act, 1988. The Defacto complainant PW3 Raja is a resident of Upparahalli Village. He and his father had jointly owned 1.45 Acres of land. Since he wanted to get an electricity connection for the Pump Set to be laid in his agricultural well, he had approached the Tamil Nadu Electricity Board Office at Gujjarahalli Village, where he was advised to get the revenue documents namely Chitta, Adangal, Receipts and FMB Sketch and he was also asked to submit the application form. The defacto complainant PW3 in order to get those documents had approached the accused, who was the Village Administrative Officer of Gujjarahalli Village. The accused had replied that

he would be able to furnish those documents only after inspecting the land and the well pursuant to which, on 25.09.2004 at 10.00 am, the accused had visited the land and the well and noted down the features and he had advised the defacto complainant PW3 to bring the application form for the electricity connection. At that time, the accused had demanded Rs.1,600/- as illegal gratification for the issuance of the above said documents by him. The defacto complainant PW3 had requested to reduce the amount and thereby, the accused had agreed to receive a sum of R.1,500/-. On the same day at 11.00 a.m., the defacto complainant PW3 had gone to the office of the accused with the application form and the accused had received the application form and patta pass book from the defacto complainant PW3 and had asked him to bring his father PW5 also and reiterated his demand of Rs.1,500/- and asked the defacto complainant PW3 to come with the money. The defacto complainant PW3 was not inclined to give the bribe amount as demanded by the accused. Hence, he had gone to the office of the respondent on 28.09.2004 at 9.00 a.m. and had given a oral complaint Ex.P15, which was reduced into writing by the Inspector of Police PW11, who registered a case in crime No.07/AC/2004 for the offence under Section 7 of Prevention of Corruption Act, 1988 on the ground of demand of illegal gratification on the same day at 9.30 a.m. The FIR is Ex.P26.

4. After registering the case, PW11 conducted a discreet enquiry about the conduct of the accused as well as PW3. Thereafter, he summoned two official witnesses by sending a requisition letter. PW2 Mr.Kathirvel, Junior Assistant of Fisheries department and Mr.Kuppusamy (not examined) Librarian from Dharmapuri Central Library

appeared before PW11 in response of the requisition letter given by him. The defacto complainant PW3 was introduced to the witnesses by PW11. The copy of the FIR was handed over to the witnesses and they were asked to peruse the same and clarify the details. Thereafter, PW11 had asked PW3 whether he had brought Rs.1,500/- which was demanded by the accused. PW3 produced two notes of Rs.500/- denomination and five notes of Rs.100/- denomination. The currency notes are MO.1 series. The serial numbers of the currency notes were noted down. Then a mock phenolphthalein test was conducted by PW11 and the importance of the test was explained to the witnesses. Remaining phenolphthalein powder was packed in a cover (MO2) and the Sodium Carbonate powder was also collected in the cover and sealed (MO3). Then PW11 handed over the currency notes tainted with Phenolphthalein powder to PW3 and asked him to safely keep it in his shirt pocket. Both MO2 and MO3 were signed by the witnesses after they were sealed. PW3 was instructed to go and meet the accused and hand over the money only if the accused demanded the money. Then PW3 was instructed to show signal by combing his hair thrice if the accused had received the money. PW2 was also instructed to accompany PW3 as a shadow witness to watch the happenings during the Trap. PW11 verified and assured that PW3 was not having any other money in his pocket. The solution was poured down and destroyed. A Mahazar was drawn to the effect of above said happenings and entrustment and that is Ex.P2. PW2, PW3 and Kuppusamy signed in the Mahazar.

5. Thereafter PW2, PW3, PW11 and Kuppusamy and other police constables

proceeded to the office of the accused at 11.45 a.m. They reached the office at 12.40 p.m. PW2 and PW3 were sent inside the office and the other official witness was asked to wait outside the office to watch the proceedings. At 12.50 p.m. PW3 came out and informed PW11 that he got the information from the Village Assistant Munirathinam (not examined) that the accused had gone to the Thasildar Office at Palacode. Then the trap team proceeded to Palacode and reached the Thasildar office at 1.25 p.m. PW2 and PW3 were sent inside the office to meet the accused. PW3 requested the accused to give the documents. The accused had demanded the amount and also asked PW3 to bring his father. PW3 had come out of the office and informed PW11. PW3 was instructed to bring his father and accordingly, PW3 brought his father to the Thasildar office at 3.40 p.m. PW2, PW3 and father of PW3 (PW5) met the accused who was standing near the gate at Thasildar office. On seeing them the accused demanded the money, PW3 handed over the tainted currency notes of Rs.1,500/- to the accused and the accused received it and kept it in his inner shirt pocket on the left side. The accused further told that he was having the documents in his bag inside the office and asked PW3 to follow him. PW2 & PW3 came out and shown the prearranged signal of combing his hair. Based on the signal, the trap team rushed to PW3 and asked him to identify the accused, who was standing near a table inside the office. PW11 asked PW3 to go home and come back to the Vigilance office on the next day. Then PW11 introduced himself and the other team members to the accused who got agitated over that. The accused was asked to sit in A2's chair, which was vacant. Thereafter, PW11 prepared Sodium Carbonate Solution in two glass tumblers and the accused was asked to dip his fingers of both his hands in the solutions. Both the solutions turned pink and they were collected and sealed. The solution in respect of right hand fingers is MO 4 and the solution in respect of left hand fingers is MO5. Then the accused was asked to produce the tainted notes which he received from PW3. The accused had produced the notes from his left side inner shirt pocket. Kuppusamy was asked to count the notes and also verify the serial numbers of the currency notes as entered in the Entrustment Mahazar Ex.P2. On verification, the serial numbers of the currency notes produced by the accused with the serial numbers of the currency notes entered in the entrustment mahazar, Ex.P12, they tallied. When the accused was questioned as to whether he was having any other money, he handed over Rs.450/- from the very same inner shirt pocket. The money was returned to the accused. Thereafter, a change over shirt was given to the accused and the shirt worn by the accused at the time of occurrence was taken for test. PW11 prepared another sodium carbonate solution and the inner pocket of the shirt owned by the accused, was dipped in that solution. The solution turned pink and it was collected and sealed under MO6. The shirt was marked as M.O.7. PW11 asked for the documents required to be furnished to P.W.3. The accused took them out from his green color rexin bag. PW11 found patta book No.144 (Ex.P10) and application form for getting electricity connection duly filled by the accused mentioning the date as 27.09.2004 with seal, which is marked as Ex.P3. Apart from that, Computer Patta Ex.P11, Adangal Ex.P9 and FMB Sketch Ex.P4 all signed by the accused were also there. In addition to that, certificate regarding the fact that PW3's land was not situated within 200 metres from PWD Canal Ex.P5, ownership of the well Ex.P6, land boundaries Ex.P7 and No Tax Due certificate Ex.P8 were found.

All the documents were seized and the accused was arrested at 5.40p.m. A Mahazar Ex.P12 was drawn for the seizure of the above said material objects and documents and Ex.P12 was signed by Kuppusamy and Manimegalai, the Thashildar PW4. The accused also signed in Ex P12 . Thereafter, PW11 prepared a rough sketch of the place of occurrence Ex.P13. Thereafter, the trap team went to search the accused house after getting prior permission from the Chief Judicial Magistrate Ex.P27. No incriminating material was found in the house of the accused and the said Search Mahazar is Ex.P14. Thereafter, PW11 had handed over the investigation to one Muthusamy and he had sent the seized articles to the Court through Form 95 Ex.P20 and he had given a requisition letter Ex.P21 to the Court to send the seized articles to the Forensic Science Department. Muthusamy had also given an application Ex.P23 to get back the remaining material objects and thereafter, on completing the investigation and after obtaining sanction for prosecution from PW1, Muthusamy had filed the final report on 12.10.2005 against the accused for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 before the Chief Judicial Magistrate, Dharmapuri and the same was taken on file in C.C.No.02 of 2006 on 13.03.2008. However, since Muthusamy passed away before the commencement of trial, he was not examined and his signature in the final report was marked through PW11.

6. On issuance of summons, the accused appeared before the Chief Judicial Magistrate, Dharmapuri and the copies were furnished to the accused in due compliance of Section 207 Cr.P.C. Thereafter, the case was made over to Special Court/Chief

Judicial Magistrate, Dharmapuri, which was taken on file in Spl.C.C.No.13 of 2008.

7. After hearing both sides, charges were framed against the accused on 12.07.2006 for the offences under Sections 7, 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. The accused denied the charges.

8. On the side of the prosecution, P.Ws.1 to P.W.11 were examined and Exs.P1 to P27 and M.Os.1 to M.O.7 were marked.

9. Based on the incriminating materials, when the accused was questioned under Section 313 Cr.P.C, the accused pleaded not guilty and on the side of the accused, DW1 Munisamy was examined and no documentary or material objects were marked.

10. The trial Court, after hearing the arguments of the prosecution as well as the defence, found the accused guilty and sentenced him to undergo imprisonment and pay the fine as stated above. Challenging the judgment of conviction and sentence imposed by the trial Court, the present criminal appeal has been filed.

11. Mr.Rajarathinam, the learned senior counsel appearing for the appellant, after taking this court through the evidence on record, assailed the impugned judgment of conviction on the following grounds:

(a) The trial Court, without proper appreciation of the evidence and without the prosecution proving the case beyond the reasonable doubt, had found the accused guilty.

(b) It is a settled position in law that for the offence under Sec 7 of the PC Act is concerned the demand of illegal gratification is a sine qua non to constitute the offence and mere recovery of currency cannot constitute the offence unless it is proved beyond all doubts that the accused voluntarily accepted the money knowing it to be bribe and thereby the presumption under Section 20 of the PC Act can be drawn against the accused only after the demand for and acceptance of illegal gratification is proved beyond all reasonable doubts.

(c) PW3/the defacto complainant cannot be believed to be a trustworthy and reliable person and his evidence does not inspire confidence. The trial court erred in not taking note of the false statements, factual suppressions and the exaggerations made by PW3 with regard to the alleged demand stated to be made by the Appellant on 25.09.2004 during inspection which is denied by DW1 who is none other than the cousin of PW3.

(d) Admittedly, the land, for which, the revenue documents were sought for, is not an independent property and it is a property jointly owned by the defacto complainant /PW3 and his father PW5 and thereby, the appellant had insisted for the presence of the joint patta holder and they have to necessarily sign in the application Ex.P3 in the presence of VAO. PW3 had insisted for issuance of certificate without producing his father and since the accused refused for the same PW3 was antagonized resulting in him giving a false complaint.

(e) As per the claim of PW3/defacto complainant, an inspection was stated to have been done by the appellant and one Munusamy, relation of the de facto complainant on 25.09.2004 at 10.00 AM and during that time and accused is said to have demanded Rs.1600/- as illegal gratification and that later it was reduced to Rs.1500/-. The said Munusamy was examined as DW1 and has not supported the claim of PW3 with regard to the demand said to have been made on 24.09.2004. The reason for the appellant not issuing the NOC is that he had insisted the presence of the PW3's father for issuing certificates. PW3 had suppressed the fact that he met the accused on 27.09.2004 and on the same day, the accused had obtained his signature in the application Ex.P3 and since his father was not present, the accused was unable to issue the certificate on the same day. The appellant had filled up all other particulars and the signature of the joint patta holder of the lands was only pending. PW3 had willfully suppressed to mention the same in his complaint. Further, PW3 had failed to bring his father on 27.09.2004 as well as on 28.09.2004 and the accused had in fact sent back PW3 to bring his father to sign in the application and thereby the predetermined trap fixed at 1.25 p.m got aborted.

(f) The entire trap proceedings were stage managed and the presence of PW2/official shadow witness in the vigilance office even before registering the FIR Ex.P26 also creates a doubt. Admittedly, PW3 is stated to have met the accused on 28.09.2004 at Tahshildar's Office at Palacode at 1.25 p.m. and the accused had sent back PW3 to bring his father and if it had been the intention of the appellant to take illegal gratification, he would have received the money during the first meeting itself at 1.25 p.m itself.

(g) Strangely, in this case, the official shadow witness (LW3) was examined as

PW2 prior to the examination of the defacto complainant (LW2) who was examined as PW3. Admittedly, as per the evidence of PW3/defacto complainant, the FIR Ex.26 was registered between 10.30 a.m. and 11.30 a.m., whereas PW2 had deposed that he was called at 10.00 am to assist the trap team. PW11 the Inspector/Trap Laying Officer has stated that the oral complaint given by the defacto complainant was reduced into writing by him and thereafter, he himself had registered the FIR. The material contradictions with regard to the oral complaint being given and the case being registered thereafter would show that it is more probable that the FIR could have been registered only at 11.30 a.m. and thereby, the summoning of the official shadow witness even before the registration of the FIR creates a doubt. The material contradictions in the evidence of the witnesses would show that the entire trap proceeding is shrouded with mysteries and suspicion. The non examination of the Village Assistant Munirathinam creates a doubt with regard to the manner in which the trap proceedings were conducted. There are material contradictions in the evidence of PW2, PW3 and PW11 with regard to the presence of the accused in the Tahsildar office at 1.30 p.m. Further, the material contradictions in the evidence of PW2, PW3, PW5 and PW11 with regard to the presence of the accused in the Tahsildar's office at 3.40 p.m. is also doubtful and PW9, the official witness, has stated that the accused was present at the office at 3.00 p.m. and he was forced to sit in A2's chair by PW11.

(h) The prosecution is not clear as to the place, where the appellant is alleged to have received the bribe money. Though the appellant is stated to have received the money outside the gate of the Tahsildar’s office, there is no reference about any gate or compound wall in the rough sketch Ex.P13. Further, the evidence of PW9, the Zonal Deputy Tahsildar also creates a doubt with regard to the recovery proceedings. When such being so, the case as projected by the prosecution regarding the place of occurrence, more particularly the place of alleged acceptance of money and the recovery is doubtful. In such circumstances the non compliance of Rule 49 of the DVAC Manual in strict sense assumes significance and creates a dent in the prosecution with regard to demand and recovery.

(i) PW3, the defacto complainant is an interested witness in the prosecution case and his evidence has to be scrutinized carefully and unless his evidence is corroborated by other oral and material evidence, the case of the Prosecution should not be accepted.

(j) PW5 the father of the defacto complainant has no where deposed about the presence of PW2/ the official shadow witness in his entire evidence thereby creating a doubt about his presence at the time of trap and it is also unnatural that PW3 defacto complainant has not spoken about the reason for taking PW5 to the office.

(k) The learned senior counsel would further submit that it is the case of the appellant in defence that the money was planted in his shirt pocket, whereas it is the case of the prosecution that the appellant received the money and had kept the tainted money in the inside shirt pocket and on demand, he had taken the money and handed it over to the Trap Laying Officer PW11. As per the Trap Laying Officer, none of the witnesses have spoken about the manner in which the money, which was received from the de facto complainant, was handled by the accused and dealt by the accused. Further, it is the case of the Trap Laying Officer that from the very same inner pocket, Rs.450/- was taken by the accused and given to him. In such circumstances, the manner, in which, the phenolphthalein test was conducted is also doubtful. As per the prosecution the phenolphthalein test conducted on fingers of both hands, had proved positive and turned pink. Further, the manner, in which, the test was conducted in respect of the Shirt MO7 also creates a doubt. The case of the prosecution has not been proved beyond all reasonable doubts and the appellant, by examining DW1 and filing a written statement under Section 313, has explained the circumstances under which, the money was taken from him and thereby he had rebutted the presumption under Section 20 of the Prevention of Corruption Act.

(l) The learned counsel for the appellant would further insist that in a trap case, though compliance of the Rules under DVAC Manual is not mandatory, so far as the facts of the case are concerned, the discrepancies in the observation mahazar and rough sketch assume significance, create a doubt with regard to the prosecution case and in such circumstances, when the prosecution has failed to prove its case beyond all reasonable doubts, the appellant, by his explanation under Section 313 CrPC and examining DW1, has proved his defence by preponderance of probabilities.

(m) The learned counsel for the appellant ultimately contended that the impugned judgement of conviction and sentence is against law and that the prosecution has failed to prove its case beyond all reasonable doubts and hence, the appellant is entitled for acquittal and the court has to allow the appeal.

12. In order to substantiate the grounds raised the learned counsel for the appellant relied on the following decisions:-

1. N. Vijayakumar Vs. State of Tamil Nadu reported in (2021) 3 SCC 687

2. ***Panalal Damodar Rathi Vs. State of Maharashtra, AIR-1979-SC-1191***

3. ***Jaswant Singh Vs. State of Punjab (AIR-1973-SC-707),***

4.***Selvaraj Vs. State of Karnataka, 2015 10 SCC 230***

5. T.S.Ramasamy Vs. State of Tamil Nadu 1994 Crl.LJ 545

6. State of Punjab Vs. Madan Mohan Lal Verma, 2013 14 SCC 153

7. ***P.Sathyanarayana Murthy Vs. District Inspector of Police, State AP and another, 2015 10 SCC 152***

8. ***State of Maharashtra Vs. Dhyaneshwar Laxman Rao Wankhede (2009) 15 SCC 200***

9. V.Sejappa Vs.State by Police Inspector Lokayukta, Chitradurga (2016) 12 SCC 150

13. Learned Government Advocate (Criminal Side) for the state, in reply, would submit that the appellant, who is a Village Administrative Officer, had demanded and received illegal gratification for issuance of the revenue records and NOC for obtaining electricity connection. The appellant had made the demand on four occasions and the prosecution, by letting in cogent evidence, has proved the demand. Based upon the demand, a trap proceeding was initiated and the appellant was arrested red handed while receiving the bribe amount. The bribe amount was recovered from his inner shirt pocket and that the phenolphthalein test conducted on his hands has also proved positive. Further, the documents were also recovered from the custody of the appellant. The minor discrepancies in the evidence of witnesses cannot be given much importance. The prosecution has proved its case beyond all reasonable doubt and the trial Court finding

that the tainted money was recovered from the possession of the accused person and holding that the explanation offered by the accused is not satisfactory, had drawn the presumption against the accused had convicted him since the prevention of Corruption Act being social welfare legislation, a liberal view in favour of the accused cannot be drawn and in such circumstances would seek for the dismissal of the appeal.

14. Heard the learned counsel appearing for the parties and perused the materials available on record.

15. This court has given its careful and anxious consideration to the rival contentions put forward by either side and had perused the entire documents available on record and also perused the impugned judgment of conviction. In this case, the prosecution has examined 11 witnesses, marked 27 documents and 7 material objects and the defence has examined one witness on its side.

16. The case came to be registered based on the complaint given by the defacto complainant PW3 on 28.09.2004. It is the case of the defacto complainant PW3 that the accused had first made a demand on 25.09.2004 at 10.00 a.m. and the second demand on the same day at 11.00 a.m. and the third demand was made on the day of trap on 28.09.2004 at 1.30 p.m. and the fourth demand at 3.40 p.m on the same day. It is the further case of the prosecution that the accused received the bribe amount at 3.40 p.m. on 28.09.2004 and kept in his shirt pocket and thereafter, he was caught red handed and

the amount was recovered from the accused. It is for the prosecution to prove the initial demand, demand and acceptance at the time of trap and thereafter to prove the recovery of bribe money beyond all reasonable doubts. The defence of the accused is that the father of PW3 (PW5) is the joint patta holder of the land, for which NOC for electricity connection was required by PW3 and thereby he had insisted the father of PW3 also to sign in the application form. PW3 who was reluctant to do that got antagonised by the insistence and thereby he has given a false complaint, based on which, a stage managed trap was organised and during such time, he was threatened by the police and the money was planted into his pocket and was compelled to take it out and that the Phenolphthalein test was also flawed.

17. The case of the prosecution mainly rests on the evidence of PW3 the defacto complainant, PW2 the official / shadow witness, who is stated to have witnessed the trap proceedings, PW5 the father of the defacto complainant, who is stated to have accompanied PW3 at the time of trap proceedings, PW9 the Zonal Deputy Tahsildar, who was present in the office on the relevant day and DW1, a close relative of PW3, who has been examined on the defence side to falsify the evidence of PW3 with regard to the alleged demand on 24 -09-2009. Admittedly, the land is jointly owned by PW3 and his father and as per the rules, it requires the consent of the joint patta holder i.e. the father of PW3 who has to necessarily attest in the application Ex.P3 in the presence of the Village Administrative Officer/the accused.

18. It is pertinent to note that it is the case of the accused that he had prepared all the documents on 27.09.2004 itself and he had obtained the signature of PW3 on the same day and he had insisted PW3 to bring his father to attest in the application. It is also the case of the accused that he had prepared all the revenue documents i.e, Exs.P4 to P9 and that he had signed and made all the documents ready on 27.09.2004 itself and it is also the case of the accused that PW3 had met him on 27.09.2004 itself and signed in the application however, he had suppressed the same at the time of giving the complaint on 28.09.2004. A perusal of Ex.P3 shows that the defacto complaint had affixed his signature on 27.09.2004 itself and perusal of Exs.P4 to P9 also shows that they were made ready as early as on 27.09.2004. Further perusal of Ex.P3 shows that without the signature of the joint patta holder, the application for electricity connection will not be accepted. It is also the further evidence of PW3 that when he had met the accused for the first time on 24.09.2004, the accused had told him the presence of his father and his signature were necessary in Ex.P3. Further, in Ex.P15 in the complaint itself, PW3 had stated that when he met the accused on 25.09.2004, the accused had asked him to bring his father, whereas PW3 had not taken his father. It is also seen that in Ex.P15, it is mentioned that after 25.09.2004 when the accused had demanded Rs.1,600/- and reduced it to Rs.1500/- on his request, he went to his residence and came to the Vigilance Office on 28.09.2004 at about 9.00 a.m and gave the oral complaint, whereas the document mentioned above shows that the defacto complaint had signed all the documents on 27.09.2004 itself. In such circumstances, the defence of the accused that since he had insisted the presence of his father for issuing the certificate, the defacto complainant got

antagonised has got some force.

19. The next submission put forth by the learned senior counsel for the appellant is that the presence of PW2 in the Vigilance Office even before registration of the FIR creates a doubt in the genesis of the case. As per the prosecution, the FIR was stated to be registered on 28.09.2004 at 9.30 a.m. and sent to the Court at 10.00 a.m. and it had reached the Court on the same day at 3.45 p.m. As per the evidence of PW2/the official shadow witness, it is seen that he had stated that his superior officer had received a requisition from the police at 10.00 a.m. and as per his oral instructions, he had gone to the vigilance office between 10 and 11 a.m. in the morning. PW2 in his cross examination has also stated that he had gone to the Vigilance Office at 10.15 a.m. whereas it is the evidence of PW3 that he had come to the vigilance office at 9.00 a.m. and an oral complaint was given to the Inspector of Police PW11 and he had recorded the complaint after which FIR was registered and he further stated that when he was waiting there, two persons namely PW2 and another person **Munirathinam** (not examined) had come there, whereas in his cross examination, PW3 has deposed that the Inspector had completed writing the complaint at 10.14 a.m. and the FIR was registered between 10.30 a.m. and 11.30 a.m. and if that be so, the FIR had been registered only after the arrival of the shadow witness PW2 and it shows that the requisition had been given to the Government witness even before the registration of the FIR. It is also seen that the prosecution has not got any clarification from PW3 with regard to this aspect. A perusal of the complaint Ex.P15 and the FIR Ex.P16 would show that handwriting in

both the documents are different suggesting that they were prepared by two different persons whereas it is the case of PW11 that oral complaint given by PW3 was reduced into writing by him and thereafter, he got the FIR ready thereby, the evidence of PW3 in his cross examination that the complaint was completed at 10.14 a.m. and the FIR was registered from 10.30 a.m. to 11.30 a.m. is more probable and acceptable.

20. Yet another contention raised by the learned senior counsel is that the entire trap proceeding is shrouded with mysteries. In this regard, as per the evidence of the witnesses, the trap team is alleged to have gone to VAO's office at 12.45p.m and at that time, the accused was not available and one Munirathinam Village Assistant had informed PW3 and PW2 that the accused had gone to the Tahsildar's office at Palacode. The said Munirathinam had not been examined. Further, it is the evidence of PW2 and PW3 that they went to the Tahsildhar office at Palacode at 1.25 p.m. and met the accused and the accused had asked PW3 to bring his father and at that time, the accused is said to have asked for money but PW3 had not attempted to hand over the money to the accused at that time. PW3 at that time had not told the accused that he would go and bring his father on the same day itself, whereas, it is the evidence of PW3 that his father was sick and he was unable to come. Further, there are material contradictions in the evidence of PW2, PW3 and PW11 with regard to the presence of the accused at the Tahsildar office around 1.30 p.m. PW2 in his chief examination had deposed that when he along with the complainant had gone to the Tahsildar office at 1.30 p.m., the accused was available inside the office, whereas in his cross examination, he had deposed that when he went

along with PW3,the accused was standing in between the main gate and the entrance of the Tahsildar’s office, whereas PW3 in his chief examination has stated that at 1.30 p.m. they had seen the accused inside the Tahsildar's office, whereas, in his cross examination, he had stated that they had seen the accused between the outer gate of the Tahsildar's office and the entrance of the Tahsildar’s office and that the accused was standing 20 feet away from the building, whereas, PW11's evidence in this regard is that at 1.30 p.m. he had sent PW3 & PW5 along with PW2, inside the Tahsildar's office as they were informed that the accused was present inside the Tahsildar's office. In this regard it could be also inferred that if the accused had the intention to receive the bribe, it would have been the natural conduct to demand and receive the bribe money at the first meeting itself and not have asked PW3 to bring his father.

21. Next, coming to the trap proceedings at 3.40 p.m. this Court is able to see that there are material contradictions in the evidence of PW2, PW3, PW5 and PW11 with regard to the presence of the accused in the Tahsildhar's office at 3.40 p.m. also. PW2 in his examination in chief had stated that he along with PW3 and his father PW5 went to the Thashildar's office at 3.40 p.m. and at that time, the accused was standing near the main gate of the Tahsildar's office. It is the further evidence of PW2 that when all the three went to the accused again, he was standing outside the main gate of Tahsildhar's office 15 feet away from the edge of the road on the northern side of the main gate. PW11 Trap Laying Officer has stated that he had seen all the incidents from the place, where he was standing, whereas PW3 in his examination in chief has deposed that they

met the accused at 3.40 p.m. outside the Tahshildar's office gate and that in his cross examination, he has deposed that the accused was standing near the outer gate of the Taluk office 5 feet away from the gate and he was standing on the eastern side of the road on the right hand side of the gate, whereas PW5, who had accompanied PW2 and PW3, had deposed that he met the accused near his office gate and that in his cross examination, he had stated that when he and his son PW3 were standing near Tahsildhar's Office gate, the accused had met them, whereas it is the evidence of PW11 that he had sent PW3 & PW5 along with PW2, at 3.40 p.m. to meet the accused and again at 3.50 p.m. PW2 and PW3 came outside the Tahsildhar's office at Palacode, Dharmapuri Main road and PW3 has shown the signal and that, he was able to see everything from where he was standing at the entrance of the Thasildhar's office, whereas, the entire evidence of PW2, PW3, PW5 & PW11 is belied by the evidence of PW9 Malliga, Zonal Deputy Tahsildhar, who had deposed in her chief examination that when she was in the office, some persons claiming to be from the Vigilance Department had come to the office at 03.00p.m and introduced themselves and forced the accused to sit in A2 Clerk’s seat during that time.. As per the prosecution, the occurrence viz; demand, acceptance and recovery is stated to have taken place around 3.45 p.m. on 28.09.2004 outside the Tahshildar's office, whereas it is the categorical evidence of PW9 that the accused was detained inside her office at 03.00 p.m by some persons claiming to be from Vigilance and that they had forced him to sit in the A2 Clerk’s seat. Apart from that, while analysing the evidence of PW5, he has not deposed about the presence of PW2/the official shadow witness throughout the entire proceedings and further, it is the evidence of PW5 that his son had not informed anything about the accused asking him to come and sign in the application and he had not spoken anything about having given a complaint and the trap proceedings and this aspect also creates suspicion in the prosecution case.

22. It is the case of the prosecution that PW3 had gone back to his village on the direction of the accused to bring his father PW5 and they travelled back in a two wheeler and it is quite unnatural and unbelievable that during the journey PW3 had not conversed with his father about the complaint and the trap team waiting for them outside the office of the accused. Further, it is also the evidence of PW11 that the entire trap team was waiting outside the office for two hours for PW3 to bring PW5 which is also quite unbelievable.

23. Now coming to the phenolphthalein test, it is the evidence of witnesses that the accused received the money and he had kept it in the inside shirt pocket on the left side, whereas, it is the case of the prosecution that when the phenolphthalein test was conducted on the fingers of both hands of the accused, sodium carbonate solution kept in both containers turned pink. It is the evidence of PW11 Trap Laying Officer that none of the witnesses have spoken about the accused dealing or handling the money with both hands and in such circumstances, the Phenolphthalein test conducted on both hands turning positive also creates a doubt. Further, it was submitted by the learned counsel that apart from the tainted money, Rs.450/- was also taken from the very same inner

pocket and the non conducting of test on Rs.450/- also creates a doubt in the prosecution case.

24. Further to disprove the case of the prosecution, the accused at the time of questioning under Section 313 of Cr.P.C had filed written statement submitting his defence regarding requirement of signature of PW 5 (PW3's father) in the application, the entry of Vigilance Officer into the office by 3.00 p.m. and about the thrusting of money in his pocket on 28.09.2004 at 3.00 p.m. by PW2 and thereafter conducting phenolphthalein test. Further, the accused had also examined one Munusamy, DW1 close relative of PW3 (cousin of the defacto complainant in defence) to falsify the alleged demand on 24.09.2009 and about the accused insisting the defacto complainant PW3 to get the signature of his father PW5 in the application. However, nothing worthwhile has been elucidated by the prosecution by way of cross examining the defence witness.

25. With regard to non compliance of Rule 49 of the DVAC Manual it is to be stated that though the compliance of rules under the DAVC Manual is not mandatory, they assume significance in the attendant circumstances and the facts of this case. In this case, as per the evidence of PW2 and PW3, the accused is stated to have received the bribe amount at about 3.40 pm outside the Tahshildar's office within the compound, where several other persons were also standing. However, the sketch does not reflect whether there was a gate or compound wall and the position of the accused officer, bribe giver, trap team or the place where they were stated to have seen the accused receiving the

bribe. This coupled with evidence of PW9, the Zonal Deputy Tahsildar that she had seen some persons claiming to be Vigilance Officials holding the accused in A2 Clerk's seat inside the office at 3.00 pm also creates a doubt with regard to the alleged place of demand, acceptance, trap and recovery.

26. Though the learned counsel for the appellant had relied on several judgments regarding the legal aspects in a trap case, this court deems it suffice and appropriate to refer to the following judgments:-

i) In ***T.S.Ramasamy Vs. State of Tamil Nadu*** *reported in 1994 Crl.LJ 545:*

> *"This Hon'ble court while dealing with evidence regarding the place of occurrence, has held that in all trap cases like this, it is necessary for the Prosecution to file a sketch also showing the office or the place where the accused was trapped. Otherwise, it would be difficult and unsafe to accept the mere oral evidence of the official trap witnesses when they give evidence that they witnessed the payment of bribe. It was further held that it is sufficient if the accused showed preponderance of probabilities of his defence and it need not be proved beyond all reasonable doubts as in the case of the Prosecution."*

ii) In ***P.Sathyanarayana Murthy Vs. District Inspector of Police, State AP and another,*** 2015 10 SCC 152, the Apex Court has held as under:-

> *"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in*

absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.

....

26. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in ***Sujit Biswas v. State of Assam [(2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677]*** *has held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.*

27. The materials on record when judged on the touchstone of the legal principles adumbrated herein above, leave no manner of doubt that the *prosecution, in the instant case, has failed to prove unequivocally, the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly unsafe to sustain the conviction of the appellant under Sections 13(1)(d)(i) and (ii) read with Section 13(2) of the Act as well.*

iii) In ***V.Sejappa Vs .State by Police Inspector Lokayukta, Chitradurga*** reported in (2016) 12 SCC 150, the Honourable Supreme Court, while referring to several earlier judgments, has held as follows:-

"18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and presumption would arise under Section 20 of Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of Act.

iv) In ***N.Vijayakumar vs. State of Tamil Nadu*** (2021) 3 SCC 687, wherein the Hon'ble Apex Court has held as under:-

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

27. To conclude, while analyzing the evidence on record in the instant case in consonance with the judgments referred above, the foundation of the prosecution case, as observed already, has been shaken to a great extent. The version of the de facto complainant as to the demand and receipt of the bribe money is suspicious and it also does not inspire any confidence. The summoning of PW2/the official shadow witness prior to the registration of the F.I.R. and further, the conduct of PW3 and PW5 prior to the trap and PW5 not mentioning about the presence of PW2/the shadow witness also casts a doubt with regard to the trap proceedings. Further, the evidence of PW9, the official witness namely, the Zonal Deputy Tahshildar, Palacode, who was present inside the office where

the tainted money is alleged to have been recovered from the accused, also assumes significance. The evidences are contradictory creating grave doubts in the prosecution case with regard to the place of demanding and accepting money by the accused and place of trap proceedings and alleged time of recovery as claimed by the prosecution, which are highly suspicious and shrouded with doubts and thereby making it difficult to believe the case of the prosecution on the basis of such dubious evidence. The prosecution has miserably failed to prove the foundational facts, namely, the demand, acceptance and recovery of the amount of illegal gratification, beyond all reasonable doubts.

28. In view of the above infirmities and inherent improbabilities, this Court has to necessarily come to the conclusion that the entire trap proceedings are bristled with suspicious circumstances and doubts, and the prosecution, has miserably failed to establish the foundational facts regarding the guilt of the accused by cogent evidence whereas the accused has rebutted such presumption by preponderance of probabilities and thereby, the accused is entitled to benefit of doubt and entitled to be acquitted.

29. In the result, the criminal appeal is allowed. The impugned judgment of conviction and sentence imposed by the trial Court is hereby set aside. The Appellant/Accused is acquitted from the charges levelled against him. The bail bond, if any executed by the Appellant/Accused, shall stand cancelled and the fine amount paid, if any by him, shall be refunded to him.

06.12.2023

Index : Yes/No
Internet : Yes/No
sms

To

1. The Chief Judicial Magistrate,
   Dharmapuri.

2. The Deputy Superintendent of Police,
   Vigilance and Anti Corruption Department,
   Dharmapuri.

3. The Public Prosecutor,
   High Court, Madras.

A.D.JAGADISH CHANDIRA,J.

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Crl.A.No.331 of 2016

06.12.2023