



CrI.A.No.388 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal No.388 of 2016

V. Periyasamy

... Appellant

Versus

The State represented by
The Inspector of Police
Vigilance and Anti Corruption Department,
Salem,
Crime No.17/AC/2011

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed in judgment dated 17.05.2016 made in Special C.C.No.84 of 2014 on the file of the Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem.

For Appellant

: Mr.John Sathyan
for Mr.V.Anandhamurthy

For Respondent

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



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JUDGEMENT

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The present Criminal Appeal has been filed by the sole accused in Spl.C.C.No.84 of 2014, challenging the judgment of conviction and sentence dated 17.05.2016 rendered by the Special Judge, Special Court for trial of Cases under the Prevention of Corruption Act, Salem.

2. The sentence imposed upon the appellant is as under:-

Under Section	Sentence
7 of Prevention of Corruption Act,1988	One year rigorous imprisonment and a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment.
13(2) r/w. 13(1)(d) of Prevention of Corruption Act	Two years rigorous imprisonment and a fine of Rs.10,000/-, in default, to undergo one year simple imprisonment.

3. Prosecution's version:-

3.1. The appellant/accused, who was working as a Village Administrative Officer of Arasiramani Bit-II Village, Sankagiri Taluk, Salem District, is a Public Servant as defined u/s.2(c) of the Prevention of Corruption Act 1988. On 02.12.2011, when the defacto complainant, viz., Kandasamy, applied for transfer of patta in the name of his father, viz.,



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Munian, in respect of 14 cents of land situated in SF.No.739/9B, Arasiramani Village, the appellant/accused had instructed the defacto complainant to hand over the application to Valathi @ Radhakrishnan, Village Assistant and demanded a sum of Rs.1500/- as illegal gratification for processing the application. Subsequently, on 05.12.2011, at about 11.30 hrs, the defacto complainant met the appellant/accused and requested him to do the work without bribe amount and the accused reduced his demand to Rs.1000/- and instructed the defacto complainant to come with the bribe amount of Rs.1000/- within two days. Since, the defato complainant was not inclined to pay the bribe amount, he lodged a complaint with the respondent on 06.12.2011 at 17.00 hours and a case in Cr.No.17/AC/2011/SL has been registered against the appellant/accused for the offence under Section 7 of the Prevention of Corruption Act, 1988.

3.2. Based on the complaint, a trap was laid on 07.12.2011 and the appellant/accused was caught red handed while receiving the bribe and he was arrested and thereafter, on completion of the investigation, the respondent had filed the Final Report against the appellant/accused before the Special Judge, Special Court for Trial of Cases under the Prevention of



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Corruption Act, Salem on 10.12.2012.

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3.3 On issuance of summon, the appellant/accused appeared before the learned Special Judge and his counsel had filed memo of appearance . Copies of relevant papers were furnished to the appellant/accused, in due compliance of Section 207 Cr.P.C.

3.4. After hearing both sides, charges were framed against the appellant/accused for the offences under Sections 7, and 13(2) r/w.13(1)(d) of Prevention of Corruption Act. The accused denied the charges and sought to be tried.

3.5. On the side of the prosecution, P.W.1 to P.W.12 were examined and Ex.P1 to Ex.P.22 and M.O.1 to M.O.4 were marked.

3.6. Based on the incriminating materials, when the accused was questioned under Section 313 Cr.P.C., the accused pleaded not guilty. In order to prove his case, one Chinnagounder, was examined as D.W.1.



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3.7. The Trial Court, after hearing the arguments of 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.

4. Mr. John Sathyan, learned Senior Counsel appearing for the petitioner, while assailing the judgment of the Trial Court, would submit that the Trial court had erred in not appreciating the evidence in proper perspective. Careful scrutiny of the evidence of P.W.2 would go to show that he is a person of dubious character and the inconsistency in his evidence will prove that he had vengeance on the appellant/accused and had managed to lay a trap with the aid of the respondent. Further, the careful analysis of the evidence of P.W.2 and P.W.4 will go to show that the case against the accused has been concocted by fabricating the evidence due to vindictive attitude of P.W.2. He would further submit that the amount was collected for flag day. The rules/procedure under the DVAC manual has not been followed and thereby there is a doubt with regard to the prosecution case. The trial Court has failed to take into consideration the delay in giving the



complaint and the non explanation for the delay. He would further submit that non examination of the Village Assistant-Valathi @ Radhakrishnan, who was working in the office of the Village Administrative Officer creates doubt and grave suspicion in the prosecution case and the respondent has not proved the fundamental facts and the Trial Court, without looking into that aspect, had erred in convicting the accused and hence, the appellant/accused is entitled for acquittal. He would also submit that the appellant/accused, after the arrest, was suspended and thereafter, removed from the service. Now, the appellant is aged about 68 years and he is suffering with severe illness and poor eye sight. The mitigating circumstances may also be taken into consideration.

5.1. Mr.S.Udaya Kumar, learned Government Advocate (Criminal Side) appearing for the respondent, in reply to the contention raised in respect of delay, would submit that P.W.2-defacto complainant and P.W.4-father of PW.2 had gone to the office of the accused on 02.12.2011 to present an application for transfer of patta in the name of P.W.4 and again on 05.12.2011 at 11.30 a.m., when P.W.2 met the accused, the accused had instructed P.W.2 to come with the money within two days. Since P.W.2 was



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not inclined to give the illegal gratification, he had given a complaint on 07.12.2011 and thereby, there is no delay in the complaint made by P.W.2.

5.2. Insofar as the contention raised with regard to the suspicion on account of the non examination of the Village Assistant-Valathi @ Radhakrishnan, who was working in the office of the Village Administrative Officer, the learned Government Advocate would submit that though the Village Assistant-Valathi @ Radhakrishnan had been cited as prosecution witness in the Final Report to speak about the visit made by P.W.2-defacto complainant and his father-P.W.4 to the office of the accused on 02.12.2011, he has not been examined since he passed away even before commencement of the trial and thereby, non examination of the Village Assistant-Valathi @ Radhakrishnan does not vitiate the prosecution case.

5.3. The learned Government Advocate would submit that by adducing the cogent evidence of P.W.2, P.W.4, P.W.11, the prosecution has proved the demand, acceptance and recovery and the Trial Court had rightly convicted the appellant. He would further submit that the trial Court, after carefully analysing the evidence and other materials available on record,



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had found the accused guilty and there is no infirmity in the judgment of the trial Court and would seek for dismissal of the present appeal.

6. Heard Mr. John Sathyan, learned counsel appearing for the appellant/accused and Mr.S.Udaya Kumar, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

7. What has to be seen is (i) whether the prosecution has proved its case beyond reasonable doubt and (ii) whether the Trial Court is right in appreciating the evidence on record and finding the accused guilty and convicting him.

8. The case of the prosecution as culled out from the records would show that P.W.1, viz., Sivarasu, formerly Revenue Divisional Officer, Sankagiri, having received a request on 19.06.2012 seeking for sanction to proceed against the accused, perused the documents received from Vigilance and Anti Corruption Department and on being satisfied that there is a criminal misconduct, had accorded sanction under Section 19(1)(c) of

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the Prevention of Corruption Act, 1988, to prosecute the case and the said
Sanction Order is Ex.P.1 dated 27.09.2012.

9. P.W.2 -Kandasamy, the defacto complainant is residing at Chettipatti and he had given an application(Ex.P.19) , dated 02.12.2011 for transferring the patta in the name of P.W.4, who is his father in respect of 14 cents of land situates in SF.No.739/9B, Arasiramani Village, to the appellant/accused, who was working as Village Administrative Officer of the said Village. After perusing the application, the VAO had instructed to hand over the application to his Assistant Valathi @ Radhakrishnan and also demanded Rs.1500/- to process the application. Further, on 05.12.2011, at about 11.30 a.m., P.W.2 met the accused at his office, and enquired about the transfer of patta and at that time, he reiterated his earlier demand. When PW2 had expressed his inability to pay the amount, he reduced the amount to Rs.1000/-. Since PW2 was not wiling to pay the bribe amount, he had lodged a complaint (Ex.P2) on 06.12.2011 at about 5.00 p.m., with PW11 Rangarajan, the Inspector of Police, Vigilance and Anti Corruption, Salem, who is the Trap Laying Officer.



10. After receiving Ex.P.2-complaint, P.W.11, the Inspector of Police, Vigilance and Anti Corruption conducted a discreet enquiry and got himself satisfied with the genuineness of the complaint. After obtaining necessary permission from the Director of Vigilance and Anti-Corruption, Chennai to proceed further in the matter, P.W.11 registered a case in Crime No.17/AC/2011 on 07.12.2011 against the appellant/accused under Section 7 of the Prevention of Corruption Act. The First Information Report is Ex.P.18. Thereafter, P.W.11- Trap Laying Officer had given a requisition to the Chief Educational Officer, Salem and the Executive Engineer, TANGEDCO, Salem, for assistance to conduct the trap and they had arranged two official witnesses, namely, Sengottaiyan(PW3) and Sathiyanesan (not examined). When the official witnesses had attended the office, P.W.11 had introduced P.W.2-defacto complainant to them and handed over the complaint and First Information Report to the official witnesses to make them get acquainted with the facts of the case. Thereafter, upon enquiry by PW11, the defacto complainant PW2 Kandasamy produced Rs.1000/- in the denomination of ten Rs.100/- currency notes (MO1 series) to P.W.11. With the assistance of the two official witnesses, P.W.11 noted the serial numbers of the said currency



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notes. Subsequently, P.W.11 conducted model phenolphthalein test on M.O.1 series currency notes by preparing Sodium Carbonate solutions in two glass tumblers and explained the significance of the test to all concerned. Thereafter, the Phenolphthalein powder coated MO1 series currency notes were handed over to P.W.2 with an instruction to hand over the same to the appellant/accused only on demand. He was further instructed to come out of the office of the appellant/accused and comb his scalp hair backwards thrice with both hands as a signal once the phenolphthalein coated money was accepted by the appellant/accused. The official witnesses, viz., P.W.3 Sengottaiyan was asked to accompany P.W.2-defacto complainant and observe all the events carefully. Thereafter, Ex.P.3 Entrustment Mahazar was prepared by P.W.11 in respect of the pre-trap proceedings held at the Salem Vigilance Office between 10.45 a.m and 11.45 a.m., and the same was attested by P.W.2, P.W.3 and Sathiyanesan.

11. Subsequently, P.W.11-Trap Laying Officer alongwith P.W.2, P.W.3-Sengottaiyan, the official witness and another official witness Sathiyanesan and other police personnel proceeded towards Arasiramani Bit II VAO Office, Chettypatty at about 12 noon in a police jeep bearing



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registration No.TN 27 G 1299. At about 1.30 p.m., when P.W.2 and P.W.3 reached the VAO office, the Office Assistant Valathi @ Radhakrishnan was standing outside the VAO Office. After informing the Office Assistant about the purpose of visit, P.W.2 and P.W.3 entered the VAO Office, where the accused was found sitting in his chair. The appellant/accused enquired P.W.2 whether he had brought the money as demanded by him. Though PW2 requested the accused to do the needful without money, the appellant/accused told that he has demanded only Rs.1000/- for a work which would cost Rs.2000/-. P.W.2 handed over the phenolphthalein coated currency notes (M.O.1 series) to the appellant/accused. He received the same with his right hand and kept the amount in the left outer pocket of his shirt and told that P.W.2 would get the patta within 15 days. P.W.2 and P.W.3 came out of the office and gave the pre-arranged signal to P.W.11 at about 1.50 p.m. On noticing the same, P.W.11 alongwith the official witness Sathiyanesan and other members of the raiding party went to the spot and P.W.2 and P.W.3 narrated the events to P.W.11. Thereafter, P.W.11 and all others entered into the VAO office at about 2.00 p.m. P.W.2 identified the accused to P.W.11. Thereafter, P.W.11 introduced himself to the accused and also introduced P.W.3 and other official witness

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Sathiyanesan to him. P.W.11 conducted phenolphthalein test on the right hand of the accused by preparing Sodium Carbonate Solution in a glass tumbler. Since the test proved positive, he collected the resultant solution in M.O.2 bottle.

12. Thereafter, P.W.11, at about 2.30 pm, arrested the accused and recovered M.O.1 series money received by him from P.W.2. P.W.11 with the assistance of P.W.3 and Sathiyanesan compared the serial numbers of currency notes recovered from the accused with that of the serial numbers of currency notes noted in Ex.P.3 Entrustment Mahazar and both the serial numbers were found to be tallied . Thereafter, P.W.11 secured shirt (M.O.4) worn by the accused and conducted phenolphthalein test in respect of the inside portion of the left outer pocket by preparing Sodium Carbonate solution in a glass tumbler and the same also proved positive. P.W.11 collected the solution in another glass bottle(M.O.3). Thereafter, P.W.11 recovered Ex.P.5 File containing the application of P.W.2, Express Patta Transfer Register(Ex.P.6), Attendance Register(Ex.P.7) ad Flag Day Collection Receipt Book(Ex.P.8) from the VAO office. Thereafter, on receipt of information over phone, P.W.5 Balakrishnan, the then Thevur



Firka Revenue Inspector appeared before P.W.11 at the VAO office and he was asked to be in charge of the Arasiramanipatty VAO office by P.W.11.

P.W.11 prepared Post-trap mahazar(Ex.P.9) in respect of the events took place between 2.15 p.m and 4.15 p.m. and the same was attested by P.W.3, witness Sathiyanesan and P.W5 Balakrishnan.

13. Thereafter, P.W.11 prepared Ex.P.10 Rough Sketch, which was attested by P.W.3 and witness Sathiyanesan. After sending Ex.P.20 Advance Intimation Letter to the Jurisdiction Court, P.W.11 along with the official witnesses, accused and other members of the raiding party conducted search at the house of the accused, which situates at Kottaiyur, between 5.15 p.m., and 5.45 p.m. and no incriminating materials were seized and he had prepared Ex.P.11 House Search List. After examining the accused and recorded his statement, at about 7.45 p.m., the accused was remanded to judicial custody. Thereafter, PW11 had produced the case properties and documents in Court through Ex.P.21-Form 91 and handed over the entire case records to P.W.12, Selvakumar, Inspector of Police, V & AC, Salem, for further investigation.



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14. P.W.12, the Inspector of Police, continued the investigation, examined all the necessary witnesses and recorded their statements u/s.161 of Cr.P.C. P.W.12 sent Ex.P.15 Requisition letter seeking permission to send the relevant case properties for chemical analysis to the Forensic Science Laboratory, Chennai. As per the order of the Court, P.W.9 Sambu, who was working as Superintendent in the Chief Judicial Magistrate Court, Salem, sent the case properties through Ex.P.16 Requisition Letter for chemical analysis. P.W.10 Vishalakshi, Scientific Officer, conducted chemical analysis and issued Ex.P.17 chemical report with an opinion that the solutions found in M.O.2 and M.O.3 bottles contains Phenolphthalein and Sodium Carbonate. P.W.12, after receiving the Chemical report confirming the handling of the money by the accused, had examined the witnesses and recorded their statements and after obtaining Ex.P.1 Sanction Order dated 27.09.2012 from P.W.1, had laid charge sheet against the accused under Section 7, 13(2) r/w.13(1)(d) of the Prevention of Corruption Act 1988.

15. This Court gave its careful and anxious consideration to the rival contentions putforth by either side and thoroughly scanned through the



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entire evidence available on record and also perused the impugned judgment of conviction including the relevant provisions of law.

16. On the side of the defence one Chinna Gounder was examined as D.W.1. The accused through the defence witness had attempted to project a case that prior to four years, this defence witness had gone to the office of the Village Administrative Officer to secure a certificate from the accused for obtaining a loan from the Bank and at that time, P.W.2-defacto complainant came there and enquired with the accused about patta transfer and the accused replied him that patta transfer order is yet to be received from Sankagiri Tahsildar office and he further told P.W.2 that the higher officials have enquired him in respect of assistance rendered by P.W.2 for illegal sand mining and that P.W.2 had intimidated the accused stating that he will take care of him and that during that time, four persons had entered into the office and he was asked to go out of the office and thereafter, the four persons had taken the accused along with them. As stated above, based on the evidence, the trial Court had found the accused guilty for the offences under Sections Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, and convicted him.



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17. As per the contents of Ex.P2-complaint and Ex.P8-First Information Report, the first demand for illegal gratification other than remuneration is alleged to have been made by the accused with P.W.2-defacto complainant and his father P.W.4-Muniyan on 02.12.2011 at about 10.00 a.m., in the office of the accused situated at Chettipatti, Sandaipettai. The prosecution had relied upon the evidence of P.Ws.2 and P.W.4 for the same. P.W.2-Kandasamy had deposed that on 02.12.2011 at about 10.00 a.m., he and his father had gone to the office of the Village Administrative Officer at Chettipatti and handed over the patta transfer application to the accused and in turn, after perusing the application, he had directed them to hand over the same to his Assistant viz., Valathi @ Radhakrishnan and based on the instructions of the accused, P.W.2 and P.W.4 had handed over the Application to the Assistant of the accused and returned home. The evidence of P.W.2 with regard to the visit of the office of the accused on 02.12.2011 at about 10.00 a.m. to present Ex.P5-copy of patta transfer application - meeting of the accused by P.W.2-defacto complainant and P.W.4-father of the defacto complainant - demand of Rs.1,500/- by the accused towards expenses to procure patta transfer order - presence of the



Village Administrative Officer - direction to hand over the application to his assistant Valathi @ Radhakrishnan - accused left the office after directing P.Ws.2 and P.W.4 to hand over the application to his Assistant and returned home is corroborated by the evidence of P.W.4, the father of P.W.2 in all material aspects. Despite, a lengthy cross examination, nothing tangible could be elicited from the evidence of P.W.2 or his father P.W.4 to discard their evidence whereas the evidence of P.W.2 and P.W.4 corroborate with each other, thereby the contention raised by the learned Senior Counsel that the evidence of P.W.2 and P.W.4 are fabricated is unsustainable.

18. Perusal of records would show that the Village Assistant-Valathi @ Radhakrishnan had been cited as prosecution witness in the Final Report to speak about the visit made by P.W.2-defacto complainant and his father-P.W.4 to the office of the accused on 02.12.2011 to present the application for patta transfer. However, he could not be examined since he passed away even before commencement of the trial and thereby, non examination of the Village Assistant-Valathi @ Radhakrishnan does not create a dent in the prosecution case.



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19. In respect of the second demand on 05.12.2011, excepting the testimony of P.W.2, nothing is available. However, P.W.2 had deposed about his visit to the office of the accused on 05.12.2011 at about 11.30 a.m., and when he met the accused and enquired about the patta transfer, the accused asked PW.2 as to whether the money has been made ready. P.W.2 had expressed his inability and in response, the accused had told him that even though it would cost Rs.2,000/-, he had demanded only Rs.1500/- and further, reduced his demand by Rs.500/- and fixed the demand amount at Rs.1000/-, since P.W.2 is a student. The accused further told that nothing can be done without payment of not less than Rs.1000/- and directed P.W.2 to pay the amount in two days. The final demand of illegal gratification is made by the accused from P.W.2 during the trap proceedings held at the office of the accused on 07.12.2011. The crux of the testimony of P.W.2 in this aspect is that about 1.30 p.m., when P.W.2 and PW.3-shadow witness reached the office of the accused, the Village Assistant was standing outside the office and informed him that they have come to meet the accused. On seeing P.W.2-defacto complainant, the accused had immediately asked P.W.2 as to whether he had come ready



with the money and further enquired the accused as to whether it is possible to have things done without payment of money. In reply, the accused had stated that he had demanded only Rs.1,000/- for the work that would cost Rs.2,000/- and had demanded P.W.2 to give the money. P.W.2 had taken out the bribe amount viz., the currency notes smeared with phenolphthalein powder from the left side outer pocket of the shirt and gave it to the accused. The accused, after receiving the money with his right hand, placed the money in the left outer pocket of his shirt. Thereafter, he told P.W.2 that he would be getting patta in two days. Then P.W.2 and PW.3 came out of the office of the accused. The evidence of P.W.2 in respect of the demand made on the date of trap is sought to be corroborated by the prosecution. The scrutiny of the evidence of P.W.3-shadow witness discloses that his evidence corroborates with the evidence of P.W.2 in respect of final demand made by the accused with P.W.2 in the noon hours on 07.02.2011 in all material aspects. Nothing worthwhile has been elicited during the cross examination to discredit the evidence of P.W.3, the official shadow witness.

20. Based on the requisition given by P.W.11-Trap Laying Officer, the then Executive engineer (O&M) TANGEDCO, Salem, had addressed a

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letter-Ex.P4 dated 07.12.2011 to P.W.3. The recitals in Ex.P4 discloses that P.W.3 was directed by the Executive Engineer to appear before the Inspector of Police at the office of V&AC at Salem at about 10.00 a.m., on 07.12.2011. Ex.P22 is the proceedings of the Chief Educational Officer, Salem, dated 07.12.2011 directing the Headmaster of Government Girls Higher Secondary School, Salem to relieve Music Teacher-Sathyanesan from duty immediately with a direction to appear before before the Inspector of Police, V&AC at Salem at about 10.00 a.m., on 07.11.2011.

21. Now, coming to the evidence of P.W.3-official witness, he had deposed that in the morning on 07.12.2011, his superior had issued Ex.P4-proceedings and as per the order, he appeared before P.W.11, the Inspector of Police at about 10.30 a.m., at Salem V&AC Office and at that time, one Sathyanesan, who is employed as Music Teacher in the Government Girls School has also appeared before P.W.11 and both of them were introduced to P.W.2-defacto complainant (Kandasamy), who was already present in the Vigilance Office. P.W.3 and the official witness-Sathyanesan were apprised of the case details and that they were asked to go through a copy of Ex.P2-complaint and Ex.P18- First information Report. P.W.3-shadow witness



and the other official witness-Sathyanesan were asked to clarify their doubts with P.W.2-defacto complainant. Thereafter, on enquiry by P.W.11-Trap Laying Officer, P.W.2 had produced Rs.1000/- in the denomination of Rs.10x100/- currency notes and P.W.11 had conducted model phenolphthalein test on the currency notes by preparing sodium carbonate solution and the importance of the test was explained by P.W.11 to one and all. Thereafter, the currency notes coated with phenolphthalein powder were entrusted to P.W.2 with an instruction to meet the accused at the office of the Village Administrative Officer situated at Chettypatty and had also instructed him to hand over the said currency notes if only demand is made by the accused and he was also instructed to give a signal by combing his hair thrice backward with both hands after a demand and acceptance of the money. P.W.11 had instructed P.W.3-shadow witness to accompany P.W.2-defacto complainant and closely watch all the events carefully. P.Ws.2, 3 and other witness Sathyanesan subscribed their signatures in Ex.P3-Entrustment Mahazar prepared by P.W.11 in respect of the pre-trap proceeding held at the office of P.W.11. The evidence of P.W.3 in respect of pre-trap proceeding is corroborated by the evidence of P.W.2-defacto complainant and that of P.W.11-Trap Laying Officer in all material aspects.



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22. Though a suggestion has been put to P.W.3-shadow witness that he had not subscribed his signature in Ex.P3-Entrustment Mahazar, it was denied by P.W.3, thereby through the ocular evidence of P.W.2, P.W.3 and P.W.11 and Ex.P4-Proceedings, the participation of P.W.3 in the trap proceedings held on 07.12.2011 in respect of the case registered through Ex.P18-first Information Report based on Ex.P2-complaint by P.W.2 stands proved.

23. Now with regard to recovery of the tainted money at the instance of the accused during the trap proceedings held at the office of the accused on 07.12.2011, the evidence of P.W.3 assumes significance. P.W.3 had deposed that P.W.2, after identifying the accused to P.W.11-Trap Laying Officer, had left the room immediately on the instructions of P.W.11. P.W.11, after introducing himself to the accused and also introduced P.W.3 and other official witness Sathiyanesan, had conducted phenolphthalein test on the right hand fingers of the accused by preparing Sodium Carbonate Solution in a glass tumbler. Since the test proved positive by change of colour of the solution, he had collected the resultant solution in M.O.2 bottle

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and duly closed, sealed and labelled. P.W.3 and P.W.11 subscribed their initials on the label affixed over the bottle and seized the bottle for the purpose of investigation. Thereafter, P.W.11 effected arrest of the accused at about 2.30 p.m., and enquired about the money received by him from P.W.2. The accused had taken 10 x 100/- currency notes from the left upper outer pocket of his shirt and produced the same to P.W.11. P.W.11 had then verified the serial numbers and found that the serial numbers in the currency notes produced by the accused tallied with the serial numbers of the currency notes noted in Ex.P3-Entrustment Mahazar. P.W.11 seized the currency notes (M.O.1 series) for the purpose of investigation. P.W.3 had deposed that after providing alternate shirt to the accused, P.W.11-Trap Laying Officer had secured the shirt worn by the accused at the time of trap and conducted phenolphthalein test with regard to the inner portion of the left outer pocket of the shirt. The test proved positive by exhibiting colour change and P.W.11 collected the resultant solution in M.O.3 bottle duly closed, sealed and labelled. P.Ws.3 and P.W.11 subscribed their initials on the label affixed over the bottle and seized the bottle (M.O.3) and M.O.4-Shirt for the purpose of investigation. Thereupon, he enquired the accused and seized Ex.P5-patta transfer application filed, Ex.P6-Express patta



transfer register of Arasiramani, Sangagiri Taluk, Ex.P7-Attendance Register

of office of VAO, Ex.P8-Flag Day receipt book from the office of the

accused. Thereafter, P.W.5- Balakrishnan, then Revenue Inspector, Thevur

Firka, was directed to appear before P.W.11 and he was placed in-charge of

the post of Arasiramani Bit-II Village, VAO post. Ex.P9-post trap mahazar

was prepared by P.W.11 in respect of events that took place in the office of

the accused between 2.15 pm., and 4.15 pm., and it was duly attested by

P.W.3-official witness Sathyanesan and P.W.5-Balakrishnan and a copy of

Ex.P9-Mahazar was produced by P.W.11 on proper acknowledgment.

Further, the evidence of P.W.3 with regard to post trap events mentioned in

Ex.P9-mahazar is corroborated by the evidence of P.W.11-Trap Laying

Officer in all material aspects. Nothing tangible can be elicited from the

evidence of either P.W.3 or P.W.11 to doubt the veracity of their evidence.

Though P.W.2 and P.W.3 are not independent witnesses, a close scrutiny of

their evidence raises no doubt or suspicion with regard to the evidence as it

is seen that P.W.11 is not associated with P.W.2-defacto complainant in any

way before the registration of the case under Ex.P18-First Information

Report. Further, there was no animosity between P.W.11 or the accused.

The testimony of P.W.3 and P.W.11 with regard to the seizure of Exs.P5 to



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Ex.P8 documents at the office of the accused - P.W.5 being placed in charge of the post of Village Administrative Officer, Arasiramani Bit-II village - preparation of Ex.P9-mahazar at the VAO office, attestation of signature in Ex.P9-mahazar by P.W.11, witness Sathyanesan and P.W.5-Balakrishnan, the accused subscribing his signature in Ex.P9-Mahazar as a token of acknowledgment for having received a copy of the same and though relevant facts corroborated by the testimony of P.W.5, the then firka Revenue Inspector of Thevur village, he has no motive to depose against the interest of the accused.

24. The evidence relating to phenolphthalein test conducted on the right hand and left outside pocket of the shirt worn by the accused at the time of trap at his office on 07.02.2011 is confirmed and corroborated by the evidence of P.W.3 and P.W.11. Strangely, the accused has not cross examined P.W.3-Sengottaiyan (official witness) and P.W.11-Trap Laying Officer on this specific point. The testimony of P.W10-then Scientific Officer, who had conducted chemical analysis on the solutions contained in M.Os.2 and 3 bottles and the opinion offered by her in Ex.P17-chemical analysis report established the presence of sodium carbonate and



phenolphthalein molecules in the hand and shirt washes of the accused. The positive phenolphthalein test established the handling of the tainted money by the accused. In this case, the demands made by the accused have been consistently and cogently proved by the evidence of P.Ws.2 to P.W. 4 and P.W.11. The final demand of gratification and acceptance by the accused on 07.12.2011 at his office stands amply proved inferring that such demand and acceptance is the outcome of the earlier demands including the demand made on 05.12.2011 by the accused with P.W.2. The prosecution, by cogent evidence, had proved the demand, acceptance and recovery of the tainted money from the accused. When the demand, acceptance and recovery has been proved, it is construed that a statutory presumption has been raised against the accused under Section 20 of the Prevention of Corruption Act and under Section 114(a) of the Evidence Act. Though there is a statutory presumption available, it is rebuttable. In this case, a perusal of evidence shows that the accused has not taken any specific stand as to how he came into the possession of the tainted money during the trap proceedings held on 07.12.2022 at his office at noon hours. During the questioning under Section 313 (1)(b) of Cr.P.C., the accused had simply stated that a false case has been foisted against him by P.W.2 out of enmity.



The accused had also examined one Chinnagounder as D.W.1. According to the accused, P.W.2 used to recommend welfare schemes implemented by the State and since the accused had not recommended the ineligible applications recommended by P.W.2, in order to wreck vengeance, he had lodged a false compliant without the knowledge of his father PW.4-Muniyan.

25. As far as the averment of delay in the complaint is concerned, P.W.2-defacto complainant is stated to have met the accused on 05.12.2011 at 11.30 a.m. and that the accused had told P.W.2 that he should come with the money within two days. P.W.2-defacto complainant, who was not inclined to give the illegal gratification, had given a complaint on 07.12.2011. This Court does not find any delay in the complaint since the accused has instructed P.W.2 to come after two days, this could be natural that the complaint had been given on 07.12.2011.

26. Yet another defence propounded by the accused is that one Subramani and Perumal used to lift sand illegally with the aid of P.W.2 and one Ananthakumar and since the accused contemplated stringent action against all of them, the accused had developed enmity over the accused which resulted in P.W.2 lodging a false complaint against him. Now coming



to the evidence of D.W.1, he had deposed that he used to visit the office of the accused to secure necessary certificates from the accused for obtaining a bank loan and that four years ago, he had visited the office of the accused to enquire about patta transfer and during that time, P.W.2 had also come there and enquired with the accused about the transfer of patta. He had further deposed that the accused had told P.W.2 that the patta transfer order is yet to be received from Sankagiri Tahsildar Office and during such time, there was a quarrel between P.W.2 and the accused regarding illegal sand quarrying and during that time police came to the office of the Village Administrative Officer and with the instructions of the police, he left the VAO office and waited outside the office till 11.30 am, and that after half an hour, the police escorted the accused from the VAO Office. The evidence of D.W.1 cannot be given much credence and D.W.1 has confirmed about the Trap.

27. After careful analysis of evidence on record, it is seen that the prosecution has proved the demand, acceptance and recovery by oral and documentary evidence. In such circumstances, a statutory presumption is raised against the accused under Section 20 of the Prevention of Corruption Act and though a faint attempt had been made, the accused had failed to



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rebut the presumption under Section 20 of the Prevention of Corruption Act.

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28. From the analysis of evidence available on record and the discussions made, this Court is of the opinion that the prosecution has proved its case beyond reasonable doubts and the learned trial Judge, after carefully analysing the evidence on record, had rightly found the appellant/accused guilty of offences under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act. This Court does not find any valid ground to interfere with the judgment of conviction. However, taking into consideration that the appellant was removed from service as an impact of the criminal proceedings and he is aged about 68 years now and struggling with various ailments including poor eye sight and considering the mitigating circumstances and also the applicability of the provision of the Prevention of Corruption Act, 1988 prior to its amendment in the year 2014 considering the fact that the offence was committed in the year 2011, this Court is inclined to modify and reduce the sentence of imprisonment alone, imposed by the trial Court in respect of the offences under Section 7 of the Prevention of Corruption Act and under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act while confirming the conviction rendered

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and the sentence of fine amount imposed for both offences.

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29. In the result, this criminal appeal is allowed in part to the limited extent of modifying and reducing the sentence alone imposed by the trial Court and thereby, while confirming the conviction made by the trial Court against the appellant/accused for the offences under Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, the sentence of rigorous imprisonment for one year imposed on the appellant/accused for the offence under Section 7 of Prevention of Corruption Act, 1988 is modified to one year simple imprisonment and the sentence of rigorous imprisonment of two years imposed on the appellant/accused for the offence under Section 13(2) read with 13(1)(d) is modified and reduced to a period of one year simple imprisonment. The sentence of fine imposed by the trial Court, with the default sentence thereon, is maintained. The sentences shall run concurrently. The period of imprisonment suffered so far, if any, shall be set off under Section 428 of Cr.P.C. The trial Court shall take necessary steps to secure the appellant/accused to undergo the remaining period of sentence.

30. With the above modification. the Criminal Appeal is allowed in part.



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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mrp/raa

To

1. The Special Court for Trial of cases
under the Prevention of Corruption Act,
Salem.
2. The Inspector of Police
Vigilance and Anti Corruption Department,
Salem.
3. The Public Prosecutor,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.

mrp/raa

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