IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.12.2023**

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**

**Crl.A.No.406 of 2016**

State represented by,
The Public Prosecutor,
High Court,
Madras – 600 014.
(V & AC., Cuddalore,
Crime No.8 of 2004) ... Appellant

Vs.

M.P.Angappan ... Respondent

**PRAYER** : Criminal Appeal filed under Section 378 of Criminal Procedure Code, pleased to allow this appeal and set aside the judgment of acquittal of the respondent/accused passed by the Special Court for the Cases under Prevention of Corruption Act at Villupuram in Spl.Case No.29 of 2014 dated 30.06.2015, convict the respondent/accused for the charges framed against him, pass sentence against him in accordance with law.

For Appellant : Mr.Udaya Kumar
Government Advocate (Crl.Side)
For Respondent : Mr.R.Srinivas, Senior Counsel
for M/s. G.Bala & Daisy

**JUDGMENT**

This Criminal Appeal has been filed by the State, against the judgment of acquittal, dated 30.06.2015, made in Spl.Case No.29 of 2014, by the Special Court for the Cases under Prevention of Corruption Act, Villupuram, acquitting the respondent/accused for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution is as follows :-

2.1 The *de facto* complainant/PW2, Mr.Thomas, who is a native of Nallavur Village settled at Tindivanam, was working as P.G. Assistant in Higher Secondary School, Cuddalore. He had decided to purchase 9.68 acres of wetland at Nallavur Village worth of Rs.2,13,100/- for Rs.1,50,000/-, from one Sivasanmugam and Sivakumar on an oral agreement. On 07.11.2002, the said Thomas purchased stamp papers for Rs.25,600/- (Rs.5000/- denomination 5 notes, Rs.500/- denomination one note and Rs.100/- denomination one note) from the stamp vendor Gunasekaran through one Srinivasan, a Document Writer/PW4 of Tindivanam. The sale deed was prepared by the Document Writer on 07.11.2002. Whileso, the said Sivasanmugam and Sivakumar sold their land to another person name Kangeyan at higher price. Since the stamp papers were not used, the *de facto* complainant/PW2 wanted to have the stamp papers of Rs.25,600/- be refunded after deduction of 10 % as commission to the Government by surrendering them to the Taluk Office, Vanur.

2.2. Thereby, the *de facto* complainant/PW2 had given an application along with stamp papers worth about Rs.25,600/- to the Tahsildhar, Vanur on 08.01.2003 for refunding the amount and it was processed by one K.Murugesan/PW10, A-5 Assistant. Thereafter, one M.P.Angappan/respondent herein, joined as A-5 Assistant in the Vanur Taluk office and when the *de facto* complainant/PW2 enquired him about the refund, the respondent/accused replied that he was new to that seat and thereby, asked him to come after two months. On 27.1.2004, at about 17.30 hours, the *de facto* complainant/PW2 met the respondent/accused and enquired about the refund of the said amount, for which, the respondent/accused had demanded Rs.1,000/- as a bribe from him for making arrangements to refund the amount. The *de facto* complainant/PW2 told him that he had no such amount, but only Rs.100/-, thereafter, the respondent/accused demanded the amount of Rs.100/- for taking Xerox copies and received Rs.100/- from the *de facto* complainant/PW2 and directed him to come on the next day with the demanded money of Rs.1,000/-.

2.3. Since the *de facto* complainant/PW2 was not willing to pay the bribe amount, has lodged a complaint before the Vigilance and Anti-Corruption, Cuddalore on 28.01.2004, and on receipt of the complaint, a case came to be registered. Based on which, a trap was organized on the same day, however, since the respondent/accused was not present in the office, the trap failed and thereafter, the trap was organized on the next day.

2.4. Thereby, on 29.01.2004, between 11.45 hours and 12.00 noon, in furtherance of the earlier demand, the respondent/accused being a Public Servant by corrupt or illegal means and by abusing his official position, reiterated the demand in his office and accepted a sum of Rs.1,000/- as illegal gratification other than legal remuneration for making arrangements to refund the amount of Rs.23,040/- for the non executed stamp papers of Rs.25,600/- from the *de facto* complainant in the presence of an official witness Shaw Nawas and Thereby, the respondent/accused had committed an offense of criminal misconduct punishable under Sections 7 & 13 (2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988.

2.5. Thereafter, the respondent/accused was arrested, and after completion of the investigation, the respondent Police filed the final report along with the relevant records before the Chief Judicial Magistrate Court, Villupuram on 15.10.2004, and the case was taken up for trial in Special Case No.6 of 2004. Subsequently, the above case was transferred to the Special Court for the Cases under the Prevention of Corruption Act at Villupuram on 10.01.2014 and the same was taken on file vide new Special Case No. 29 of 2014. The prosecution had examined 14 witnesses, marked Ex.P1 to Ex.P28 and M.O.1 to M.O.5. to prove the case.

2.6. After completion of evidence on the prosecution side, when the respondent/accused was questioned under Section 313(1)(b) Cr.P.C., he had denied the charges and further, on the side of his defence, his signature in the Attendance Register in respect of 28.01.2004 was marked as Ex.D1.

2.7. The trial Court, after hearing the arguments on both sides, holding that the prosecution had not proved the case beyond reasonable doubt, had acquitted the respondent/accused. Assailing the judgment of acquittal, the present Criminal Appeal has been filed by the State.

3. Mr.Udaya Kumar, learned Government Advocate (Criminal. Side) for the appellant submitted that the judgment of the trial Court in acquitting the respondent/accused is against the law of evidence and probabilities of the case. He further submitted that the prosecution, by categorical evidence, has proved

the demand and obtainment by the respondent/accused, and thereby, the legal presumption under Section 20 of the Prevention of Corruption Act is attracted, whereas, the trial Court, without there being any evidence of rebuttal had acquitted the accused. The trial Court has relied on stray statements of witnesses in disbelieving the case of the prosecution. He also submitted that the trial Court erred in not believing the evidence of the prosecution concerning the registration of the case and the trap proceedings. He further submitted that the Rules in the DVAC manual giving guidelines to the officials is only directory in nature and not mandatory and thereby, non following of the Rules in DVAC manual will not vitiate the prosecution case. Therefore, the findings of the trial Court in acquitting the accused are totally perverse and thereby, he would seek for setting aside the judgment of the trial Court.

4. In reply, Mr.R.Srinivas, learned Senior Counsel appearing for M/s. G.Bala & Daisy, counsel for the respondent/accused, would submit that the trial court, after thoroughly analysing the evidence on record both oral and documentary had acquitted the respondent/accused. He would further, while projecting his arguments on the principles of law regarding appeal against acquittal and taking this court through the evidence on record and the judgment

of the trial court, submitted as follows :-

4.1. The trial Court, after analyzing all the evidence both oral and documentary, had concluded that the case had been fabricated and the entire trap proceedings is a stage-managed one.

4.2. There are various discrepancies in the evidence and further, the material contradictions between the evidence of PW2 and PW3 had also raised the suspicion regarding the trap proceedings. While analysing the evidence of PW2, in his chief examination, PW2 has stated that, he had met the accused for the first time on 27.01.2004 and that he had joined the duty recently and the accused had informed him that the refund will take two months and he had also stated that the accused had demanded a sum of Rs.1,000/- as bribe and also Rs.100/- for Xerox expenses. PW2 had paid a sum of Rs.100/- and lodged the complaint/Ex.P3 against the accused/respondent on the next day on 28.01.2004. Whereas, in his cross examination, PW2 had stated that it is wrong to say that he had met the accused for the first time on 27.01.2004 and it is also wrong to state that the accused had told that he had come to the seat recently and asked him to come after two months and further stated that he had met the accused before that. Thereby, there is no possibility of such meeting on 27.01.2004 and no such demand was raised on that day.

4.3. The prosecution has not proved its case with regard to the trap and the demand made on 29.01.2004 and the trial Court took into consideration the material contradictions in the evidence of PW2 and PW3 to acquit the accused.

4.4. PW2, in his evidence, had admitted that he had applied for assignment of land meant for people below the poverty line and land less labourers and that his application was rejected. Thereby, PW2 nurtured grievance against the officials of the Revenue Department for rejecting his request for allotment of land for the people below the poverty line. Further, a suggestion has also been putforth to PW2 that he was angry with the Revenue Department and that he also nurtured grievance against the accused since the respondent had asked him to wait for some time and not to hurry the process having already received the amount spent towards stamps from Thiru. Sivashanmugam.

4.5. As per the evidence of PW9, A-6 Assistant, who was sitting next to the respondent/accused in the office, he had stated that on 27.01.2004, the respondent/accused was not available in his seat and that he had gone without signing the movement register and on enquiring the next day, the accused had told PW9 that he had gone to the Collector office on 27.01.2004.

Thereby, the trial Court, concluded that there was no chance of PW2 meeting the accused on 27.01.2004 and there was no chance of the accused making the first demand for bribe on 27.01.2004 and the alleged claim of the prosecution that the failure of the trap on previous day i.e., on 28.01.2004 is also doubtful.

4.6. According to the prosecution, the trap team had proceeded to the office of the accused on 28.01.2004 at 2.30 p.m., and that on coming there, it was found that the respondent/accused had left his office and has gone to the District Collector's office. Therefore, the trap could not be completed. However, it is seen from the Attendance register, Ex.D1, that the respondent/accused had signed on 28.01.2004 and PW9, in his evidence, had stated that the accused was available in the office throughout the day. Though it is claimed by PW2 that he came to the office and specifically enquired PW9 about the absence of the respondent/accused on that day, it is the evidence of PW9 that no one had met him and enquired about the respondent/accused on 28.01.2004 and thereby, the claim of the prosecution that the accused was not in his seat on 28.01.2004 is also not proved.

4.7. The Respondent, by marking Ex.D1 has categorically proved the falsity of the *de facto* complainant about the alleged claim of the *de facto* complainant having seen the respondent/accused on 27.01.2004 at his office and for having not seen him on 28.01.2004 at his office. The evidence of PW9, A6 Clerk would prove that the respondent/accused was not available at the office on 27.01.2004 and he was very much available in the office on 28.01.2004. Though the prosecution had examined PW9, with regard to the presence on the particular day, it has not been shown in the rough sketch, thereby, creating grave suspicion in the case of the prosecution.

4.8. The *de facto* complainant/PW2 is a Teacher by profession and that even as per the evidence of PW4/Document Writer, the *de facto* complainant had received back the money spent towards purchase of stamps from the land owners even before the filing of the application for refund. It is the categorical evidence of PW4 that the respondent/accused has not committed any offence. Since the value of the stamp papers was already returned to the *de facto* complainant, an oral agreement was entered into between the parties that the amount refunded towards the stamp should be paid to the land owners and since there was a dispute, a false complaint has been given against the respondent.

4.9. Apart from the irregularities in the registration of the case, though the non-compliance of the DVAC Manual are directory in nature, the trial Court, taking into consideration the totality of the facts and circumstances found that the non-compliance of the Rules under the DVAC manual, more particularly Rule 47 and Rule 49 with regard to non questioning of the accused after arrest and the discrepancies in the Rough Sketch with regard to the place of occurrence, had found that the prosecution had not proved its case beyond all reasonable doubts.

4.10. The trial Court had also look into consideration the discrepancies with regard to the phenolphthalein test conducted on the fingers of both the hands of the respondent/accused and both proving positive, when especially there is no evidence with regard to the alleged manner in which the currency was dealt by the accused at the time of trap, thereby, it creates serious doubt with regard to the trap proceedings .

4.11. Further, the trial Court had also taken into consideration the discrepancies in the timing of the registration of the case, summoning of the official witnesses to the trap and preparation of Entrustment Mahazar even before the registration of the case.

4.12. Before rising the presumption under Section 20 of the Prevention of Corruption Act against the respondent/accused, a mandate is cast on the prosecution to prove the foundational facts with regard to the demand and acceptance by the respondent/accused and the trial Court, rightly finding that the prosecution has not proved the foundational facts, had rightly acquitted the respondent/accused.

4.13. The trial Court had acquitted the respondent/accused giving the benefit of the doubt and disbelieving the witnesses for the prosecution and findings of the trial Court are based on a reasonable and possible view.

4.14. The trial Court, on the overall analysis of the evidence has given the benefit of doubt and has found the respondent/accused not guilty. In such circumstances, the reversal of the acquittal can be permissible only if the conclusion recorded by the trial Court does not reflect any reasonable and possible view and he would seek for dismissal of the appeal.

5. Heard Mr.Udaya Kumar, learned Government Advocate (Criminal Side) appearing for the appellant and Mr.R.Srinivas, learned Senior Counsel, appearing for the respondent/accused and perused the materials available on record.

6. This Court has given its careful and anxious consideration to the rival submissions put forward by either side and thoroughly scanned the evidence available on record and also perused the impugned judgment of acquittal.

7. At the outset, before getting into analysis and assessment of the entire evidence available on record and appraising the reasons assigned by the trial Court for acquitting the respondent/accused herein, it is relevant to refer few decisions of the Hon'ble Apex Court with regard to the powers of the appellate Court in case of appeal against acquittal.

8. In ***Chandrappa v. State of Karnataka, (*****2007) 4 SCC 415**, the Hon'ble Supreme Court held that the appellate Court should not ordinarily interfere with a judgment of acquittal in a case where two views are possible even though the trial Court's view may not appear 'more probable one' and further held as follows:

> *"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*
>
> > *(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
> >
> > *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such*

*power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

*(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

*(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

*(5)If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not*

> *disturb the finding of acquittal recorded by the trial court."*

9. In ***Mrinal Das v. State of Tripura,*** **(2011) 9 SCC 479**, the Hon'ble Supreme Court has held that the appellate Court, being the final Court of facts, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision keeping in mind that the acquittal provides for a presumption in favour of the accused and also that if two reasonable views are possible on the basis of the evidence on record the appellate Court should not disturb the findings of the trial Court. The appellate Court can also review the conclusions arrived at by the trial Court on questions of both fact and law and it is the duty of the appellate Court to marshal the entire evidence on record, and only by giving cogent and adequate reasons set aside the judgment of acquittal. Relevant portion of the judgment is quoted hereunder for ready reference:

> *"8. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words,*

*law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the* *appellate court is competent to reverse the decision of the trial Court depending on the materials placed."*

10. In ***Sudershan Kumar Vs. State of Himachal Pradesh*** *reported in* **(2014) 15 Supreme Court Cases 666**, while referring to Chandrappa's case (supra), the Hon'ble Apex Court at Paragraph 31 of its Judgment was pleased to hold that, it is the cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of acquittal. The Appellate Court, in such a case, would interfere only for very substantial and compelling reasons.

11. In ***Jafarudheen and others Vs.State of Kerala, reported in (2022) 8 Supreme Court Cases 440,*** at Paragraph 25 of its judgment, the Hon'ble Apex Court was pleased to observe as below:

> *" 25. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C, the appellate Court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the*

*accused. Thus, the appellate Court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."*

12**.** The aforesaid views of the Hon'ble Supreme Court has been reiterated in numerous judgments passed by the Hon'ble Supreme Court including in ***Vijayakumar Vs. State of Tamil Nadu,*** **(2021) 3 SCC 687*; Ravi Sharma v. State (NCT of Delhi),*** **(2022) 8 SCC 536** and also in ***Roopwanti Vs. State of Haryana and others,*** *reported in* **AIR 2023 SC 1199**.

13. Now, coming to the present case, keeping in mind the above said principles laid down by the Hon'ble Supreme Court, regarding interference or non-interference, with the judgement of acquittal, by the Appellate Court, it is to be seen as to whether the Trial Court had properly analysed the evidence on record and whether the trial court had given clear, cogent, convincing and categorical reasons for acquitting the accused and whether the Trial Court took

a possible, reasonable and justifiable view for acquitting the accused for which, it is absolutely necessary to re appreciate and analyse the evidence and assess the reasons assigned by the Trial Court for acquitting the respondent/accused herein.

14. In this case, the charge against the respondent/accused is that he had committed the offences punishable under Sections 7 and 13 (2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988. The allegation is that the respondent/accused had demanded the illegal gratification for processing the file for refund and obtaining the refund cheque, to the *de facto* complainant/PW2. It is the case of the prosecution that a pre-trap demand was made by the respondent/accused on 27.01.2004 in the evening hours, and the *de facto* complainant, who was not willing to pay the bribe, had given a complaint on 28.01.2004, based on which, a case was registered and a trap was organised on the same day. When the trap party had gone to the office of the respondent/accused, he was not available in the office and the trap got aborted on that day. Thereby, the trap was arranged on the next day i.e., on 29.01.2004 and that the respondent/accused was caught red handed while receiving the bribe.

15. It is the case of the respondent/accused that he was not available at the office on 27.01.2004 and he was available throughout in the office on 28.01.2004 and that the trap was stage managed. It is the further case of the respondent/accused that the official witnesses were called even before the registration of the First Information Report and further, when none of the witnesses had spoken about the manner in which the money was handled by the respondent/accused, the result of the phenolphthalein test conducted on the fingers of both hands of the respondent/accused, creates suspicion and doubt in the prosecution case.

16. In this case, PW1 is the Sanction Authority, PW2 is the *de facto* complainant, who has given the complaint, PW3 is the official witness/decoy witness, PW4 is the Document Writer, PW5 is the Tahsildhar, who was previously working in the Vanur Taluk office, PW6 is the Tahsildhar working during the relevant period of trap, PW7 is the stamp vendor, PW8 is Deputy Tahsildar, PW9 is the A-6 clerk, PW10 is the Assistant Clerk, who was previously worked as A-5 Clerk before the accused and processed the *de facto* complainant's application, PW11 is the A-4 Clerk, PW12 is the Scientific Officer, PW13 is the Inspector of Police, Vigilance and Anti-Corruption, who

registered the FIR and conducted the trap proceedings and PW14 is the Investigating Officer.

17. Likewise, Ex.P1 is the Sanctioning order dated 07.09.2004, Ex.P2 is the application dated 08.01.2003 given by the *de facto* complainant/PW2 for refund, Ex.P3 is the complaint dated 28.01.2004, Ex.P4 is the first Entrustment Mahazar dated 28.01.2004, Ex.P5 is the Mahazar dated 28.01.2004 after failure of the first trap, Ex.P6 is the Entrustment Mahazar dated 29.1.2004, Ex.P7 is the Seizure Mahazar date 29.01.2004, Ex.P8 is the Observation Mahazar dated 29.01.2004, Ex.P9 is the Search Memo dated 29.01.2004, Ex.P10 is the unused sale deed (13 sheets) dated 07.11.2002, Ex.P11 is the Office Notes dated 27.01.2004, Ex.P12 is the proceedings of Tahsildar dated 17.09.2003, Ex.P13 is the request for refund dated 28.01.2003, Ex.P14 is the proof of sale of stamp dated 10.02.2003, Ex.P15 is the Office notes continuation dated 11.12.2003, Ex.P16 is the Attendance Register dated 29.01.2004, Ex.P17 is the Signature of the accused in Attendance Register dated 29.01.2004, Ex.P18 is the proof of PW2 having purchased stamps, Ex.P19 is the proceedings dated 08.01.2003, Ex.P20 is the Statement of Sivakumar, Ex.P21 is the Statement of Thomas (PW2), Ex.P22 is the Statement

of Sivashanmugam, Ex.P23 is the office note dated 19.04.2003, Ex.P24 is the Inspection Report dated 06.02.2004, Ex.P25 is the First Information Report dated 28.01.2004, Ex.P26 is the Stamp refund bill register dated 01.01.2000, Ex.P27 is the Rough Sketch dated 29.01.2004 and Ex.P28 is dated intimation regarding prior permission 29.01.2003.

18. M.O.1 is the Series of 10 Hundred Rupee notes, M.O.2 is the bottle containing the solution in which the right hand fingers of the accused were dipped, M.O.3 is the bottle containing the solution in which the left hand fingers of the accused were dipped, M.O.4 is the bottle containing the solution in which the pant pocket of the accused were dipped, M.O.5 is the pant of the accused from where the tainted money was recovered. Ex.D1 is the signature of the accused in the Attendance Register dated 28.01.2004.

19. Now coming to the evidence of witnesses with regard to the doubt in the First Information Report and the trap procedures. As per the prosecution, PW2 has stated that he had lodged the complaint Ex.P3 on 28.01.2004 at 8a.m., and it is evident from Ex.P3, written complaint given by PW2 and Ex.P25, First Information Report registered by PW13. However, while coming to the

evidence of PW2, he had deposed that the formalities of registration of FIR was completed at 1p.m and that PW3 and other official witness were summoned even before the registration of the First Information Report. Further, the demonstration regarding the phenolphthalein test and the preparation of the Entrustment Mahazar, Ex.P4 were done even before the registration of the First Information Report.

20. As per Ex.P4, Entrustment Mahazar, it is seen that the preparation of Ex.P4 started at 11.00 am and ended at 12.00 noon. Added to the same, the evidence of PW13, who had registered the First Information Report, is that he had completed the registration of FIR process at 10.00 a.m., whereas, the time shown in Ex.P3 and Ex.P25 is 8 a.m. Thereby, the evidence on record shows that even before the registration of the First Information Report, the investigation had started and the official witnesses were summoned to the office, which creates suspicion and doubt with regard to the genesis of the case. Further, even as per the evidence of PW9, the respondent/accused was available in the office on 28.01.2004 and thereby, the claim of the prosecution that the respondent/accused was not present on 28.01.2004 and also the claim that the trap not culminating on 28.01.2004 also appears to be dubious.

21. Now while analysing the evidence of PW2 and PW3 with regard to the trap and demand on 29.01.2004, the case of the prosecution as per PW2 is that on 29.1.2004, he along with PW3 had met the respondent/accused in his office at 11.45 hours and the respondent/accused had asked him whether he had brought Rs.1000/- as demanded by his superiors and thereby, PW2 handed over the money to the respondent/accused, whereas, PW3/decoy witness, in his chief examination, had stated that respondent/accused told PW2 that the Tahsildar was not available and PW2 had informed that he had brought the amount of Rs.1000/- as demanded by the Tahsildar and that the respondent/accused had told him that the Tahsildar was in meeting and that PW2 had given the amount to the respondent/accused and thereafter, made a signal to the police by removing his watch from one hand and put on the other.

22. This evidence of PW3 shows that no demand for a bribe for illegal gratification was made by the respondent/accused on 29.01.2004. Based on this statement of PW3, he was treated as hostile and later, he was cross-examined by the prosecution and he had answered all the questions put forth by the prosecution in affirmative. Thereafter, PW3 was cross examined by defence on the same day. During such time, he had admitted that he is a person interested

in the prosecution case and he had spent 15 hours with the police and it is correct that he had given false evidence as instructed by the Police. PW3 has swindled like a pendulum and he had deposed in both ways. His evidence does not corroborate with the evidence of PW2. The depositions of PW3 were in affirmative that he was interested in the prosecution case and this aspect was not confronted by the prosecution. The evidence of PW3 cannot be taken to be a credible. The evidence of PW3 is not wholly reliable.

23. With regard to the character of PW2/de facto complainant, he is working as a PG Assistant in a Government Aided School, against whom, a prohibition case was pending for transporting liquor from Pondicherry and he had admitted for having not intimated about the pending case to the school authorities. PW2 is also a person doing real estate and his character appears to be shady.

24. From the evidence of PW4, it is seen that the sale agreement between the PW2 and Sivashanmugam did not get through since PW2 did not have money to buy the property and thereafter, Sivashanmugam returned the amount spent by PW2 on stamp papers to him and it was agreed by PW2 and

Sivashanmugam that the amount of refund of stamps after cancellation would have to be paid to Sivashanmugam. Accordingly, PW4 had applied for a refund on behalf of PW2. PW4 has also stated in his cross examination that PW2 went to the Tahsildar office and demanded to refund of the money and later, after PW2 had given a complaint, PW4 had advised him that the respondent/accused was in no way responsible for the delay, for which, PW2 had asked PW4 to mind his own business.

25. Now coming to the evidence regarding the trap. None of the witnesses have spoken about the manner of handling of money by the respondent/accused, after the alleged receipt of the same from PW2. It is also admitted by PW13, TLO that none of the witnesses have spoken about the manner in which the money was handled by the respondent/accused. In such circumstances, the phenolphthalein test conducted on the fingers of both the hands which turned pink, also creates doubt in the prosecution case.

26. Further, the prosecution has examined PW9, who is the A6 Clerk sitting next to the respondent/accused seat. While analysing the evidence of PW9, he had stated that the respondent/accused was not available in the office

on 27.01.2004 and he was available in the office on 28.01.2004. However, he has stated that he was not aware with regard to what happened on 28.01.2004 and on 29.01.2004. Whereas, PW2 had stated that on the failed trap on 28.01.2004, he had gone to the office and met PW9 and enquired him about the respondent accused, whereas, PW9 has stated that the respondent/accused was available at the office on 28.01.2004 and no one had come and enquired about the respondent/accused on 28.01.2004. Thus, falsifying the evidence of PW2 and also creating doubt with regard to the failed trap on 28.01.2004.

27. It is admitted by PW3 that he did not question the respondent/accused after the phenolphthalein test, whereas, strangely, the Sanction Authority, PW1 has stated that the statement of the accused was available in the files and this aspect also creates a doubt. Further, as per the prosecution, PW9 (A6 Clerk) is stated to be a person sitting next to the respondent/accused's table in the office, however, in the rough sketch, Ex.P27, though there is mentioning about the presence of Clerks A4, A5, A8 and the seat of the Assistant Tahsildar/ PW8, there is no mention about the presence of PW9 (A6 Clerk). Thereby, creating doubt with regard to preparation of the rough sketch.

28. Now coming to the point, whether following of the rules under DVAC manual is directory or mandatory. The Hon'ble Division Bench of this Court in the case of ***Duraimurugan vs State (W.P.No.1238 of 2012)*** following Vineet Narain's case has held that the following of Rules in DVAC manual are directory in nature, however, later, in a Full Bench judgement, the Hon'ble Apex Court in ***N.Vijayakumar vs. State of Tamil Nadu*** [***(2021) 3 SCC 687],*** while making a passing reference to the non recording of the statement of the accused as required under Rule 47 of the Vigilance Manual had finally acquitted the accused. Though the compliance of the Rules under the DVAC Manual may not be mandatory, taking into consideration the attended facts and circumstances of the present case, it assumes significance.

29. Perusal of the impugned judgment shows that the trial Court had carefully analysed the evidence. Further, the trial Court had also the distinct advantage of seeing the demeanour of the witnesses directly. In the Appeal against acquittal, unless the conclusions reached by the trial Court are palpably wrong or based on an erroneous view of the law and evidence or if such conclusions are allowed to stand, they are likely to result in grave injustice, this

Court would be fully justified in interfering with such conclusions. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, this appellate Court can interfere with the order of acquittal. This Court is also aware that by the acquittal there is a presumption of innocence of the accused and the trial Court's order bolsters the presumption of innocence of the accused. In such circumstances, interference in a routine manner where the other view is possible cannot be accepted.

30. As stated above, the trial Court, by pointing out the several infirmities and carefully analysing the evidence, and by assigning valid and cogent reasons to discard the evidence adduced by the prosecution, has found that the prosecution has failed to prove the case of demand and acceptance beyond the reasonable doubts. The trial Court had also found that the prosecution, having failed to prove the foundations facts, is not entitled to the benefit of the presumption under Section 20 of the Prevention of Corruption Act and had acquitted the respondent/accused. This view is also fortified by the judgment of the Apex court in N.Vijayakumar's case referred supra.

31. This Court finds no justifiable reason to interfere with the impugned judgment of acquittal.

32. In the result, this Criminal Appeal is dismissed, confirming the impugned judgment of acquittal.

**01.12.2023**

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To

1. The Special Court for the Cases under Prevention of Corruption Act,
   Villupuram.

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

3.The Public Prosecutor,
   High Court of Madras.

**A.D.JAGADISH CHANDIRA,J.**

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**Crl.A.No.406 of 2016**

**01.12.2023**