WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Criminal Appeal No.817 of 2016

M. Sivakumar .. Appellant

Versus

State rep. by
Deputy Superintendent of Police
Vigilance and Anti Corruption
Dharmapuri
Crime No.11/AC/2009/KG) .. Respondent

Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the judgment dated 30.11.2016 passed in Spl.C.C.No.5 of 2011 on the file of the Chief Judicial Magistrate(Special) Court, Krishnagiri by allowing this appeal.

For Appellant : Mr. Chandrakumar,
for Mr.R.Ezhilarasan

For Respondent : Mr. C.E. Pratap,
Government Advocate(Crl.side)

https://www.mhc.tn.gov.in/judis

WEB COPY

JUDGEMENT

The present Criminal Appeal has been filed by the sole accused in Spl.C.C. No. 5 of 2011, challenging the judgment of conviction and sentence dated 30.11.2016 rendered by the Chief Judicial Magistrate(Special Judge), Krishnagiri.

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

Under Section	Sentence
7 of Prevention of Corruption Act,1988	Six months Rigorous imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
13(1)(d) r/w. 13(2) of Prevention of Corruption Act	One year Rigorous imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
Sentences to Run Concurrently	

3. **Prosecution's version:-**

The appellant/accused was employed as a Revenue Inspector at DhenkanikottaiTaluk, Krishnagiri District at the relevant point of time and he is a Public Servant as defined under Section 2 (c) of The Prevention of Corruption Act, 1988. On 11.12.2009, at 11.00 a.m., the defacto

https://www.mhc.tn.gov.in/judis

WEB COPY

complainant, viz., Mr. Appajiappa (PW2) approached the appellant/accused seeking to issue a Community Certificate and Nativity Certificate for his son Naveenkumar. When the defacto complainant approached the appellant/accused, he demanded a sum of Rs.2000/- as bribe. However, the defacto complainant/P.W.2 had requested the appellant/accused to reduce the bribe amount and accordingly, appellant/accused had reduced the bribe to Rs.1000/-. On 14.12.2009 at 1.00 p.m., the appellant/accused had received the application from the defacto complainant and told him that he would not affix his signature unless the bribe money is paid and asked to meet him at his office on 15.12.2009 with the bribe money. Since P.W.2 was not inclined to pay such a bribe amount to the appellant/accused, he lodged a complaint in this regard to the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Krishnagiri, on 15.12.2009 at 9.45 p.m. On receipt of the complaint, the Deputy Superintendent of Police (P.W.14) registered a case in Crime No.11/AC/2009 against the appellant/accused under Section 7 of the Prevention of Corruption Act.

4. On the basis of the said First Information Report, a trap was organized by P.W.14 immediately on 15.12.2009 itself and said trap was carried out by P.W.14 in the presence of the witnesses. During the trap, the appellant/accused was arrested for having received the tainted money and

https://www.mhc.tn.gov.in/judis

WEB COPY

the tainted money was recovered from his custody. Later, the case was handed over to P.W.15 for further investigation. After completion of the investigation, he had filed the final report against the appellant/accused for the offences under Sections 7, 13(2) r/w.13(1)(d) of the Prevention of Corruption Act before the Chief Judicial Magistrate(Special Court), Krishnagiri, and the same was taken on file as Spl.C.C.No.5 of 2011 by the learned Special Judge/Chief Judicial Magistrate, Krishnagiri. The trial court issued summons to the appellant/accused. On receipt of summon, the appellant/accused appeared before the Trial Court and copies were furnished to him in due compliance of Section 207 of Cr.P.C.

5. When the appellant/accused was initially questioned, he had denied the charges and thereafter, after hearing both sides and perusing the records, the trial Court finding that there were prima facie materials to frame charges against the appellant/accused for the offences under Section 7, 13(2) r/w.13(1)(d) of the Prevention Corruption Act, 1988, framed charges. The accused denied the charges and sought to be tried.

6. During trial, on the side of the prosecution, P.W.1 to P.W.16 were examined and Ex.P.1 to Ex.P.29 and M.O.1 to M.O.6 were marked. Based on the incriminating materials putforth by the prosecution, when the accused

https://www.mhc.tn.gov.in/judis

WEB COPY

was questioned under Section 313 Cr.P.C., he pleaded not guilty. The appellant/accused examined himself as DW1, however no document was marked.

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 appeal has been filed.

8. The learned counsel for the Appellant while taking this court through the evidence and the entire material on record assailed the impugned judgment of conviction on the following grounds:

(i) The Trial Court failed to take into consideration the material contradictions in the evidence of P.W.2-defacto complainant, P.W.3, shadow witness and P.W.14 Trap Laying Officer. The material contradictions in the evidence of P.W.2, P.W.3 and P.W.14 with regard to the registration of the case, the pre-trap proceedings, the trap proceedings and the recovery, clearly expose that there is no corroborative evidence for demand of bribe and that the entire case of the prosecution is doubtful and shrouded with lots

https://www.mhc.tn.gov.in/judis

WEB COPY

of suspicion. The de-facto complainant had motive against the accused since the appellant/accused refused to accept the application stating that there were defects with regard to the name of the applicant and the name of the village in the ration card and thereby, the appellant/accused had returned the application stating that he should correct the same and bring it back. It is in this context, the complainant developed a grudge against the appellant/accused and to settle his personal score, the instant complaint has been filed, projecting as if the appellant/accused demanded illegal gratification as a condition precedent for processing his application, however, this aspect was not taken note of by the trial court.

(ii) He would further submit that the defacto-complainant (P.W.2) had voluntarily placed the money on the table and the Appellant/Accused was threatened and forced to take the money from the table and only thereafter the phenolphthalein test was conducted as confirmed by PW3. The suppression of the statements recorded from the appellant/accused during the trap as required under Rule 47 of the DVAC Manual and the non production and the non marking of the alleged telephonic conversation recorded in the mobile phone in the presence of the Trap Laying Officer, as admitted by PW2 also create a doubt in the prosecution case with regard to

https://www.mhc.tn.gov.in/judis

WEB COPY

demand.

(iii) Admittedly it is the case of PW2 that he had given several complaints against the appellant/accused to the Tahsildar and the District Collector and that he had referred about the same in his complaint Ex.P2 given to the TLO. The absence of reference to previous complaints creates a grave doubt that Ex P2 is not the actual complaint given by PW2, which doubts the very genesis of the case.

(iv) The summoning of the Official Trap/Shadow witnesses even prior to the registration of the F.I.R and the discrepancies regarding the alleged recovery of the tainted money, phenolphthalein test conducted, result of the phenolphthalein test and the Chemical Report also create a doubt with regard to the pre trap, trap and post trap proceedings thereby creating a doubt in the entire prosecution case.

(v) Though in a trap case the prosecution is entitled to the benefit of statutory presumption u/s 20 of the P.C.Act, before such presumption is raised, the prosecution is bound to prove the foundational facts and despite the prosecution having not proved the case beyond reasonable doubts, the Appellant/Accused, by examining himself as a defence witness, has proved the manner

https://www.mhc.tn.gov.in/judis

WEB COPY

which the tainted money was placed on the table and the circumstances under which the Appellant/Accused was forced to take money and the phenolphthalein test being conducted thereafter and thereby he would pray for acquittal of the appellant/accused.

9. Per contra, Mr.C.E.Pratap, learned Government Advocate (crl.side) appearing for the respondent would submit that it is a case where the appellant/accused, who was working as a Revenue Inspector, had demanded the amount of Rs.2000/- for issuance of Community and Nativity Certificate for the son of P.W.2 and later reduced to Rs.1000/- when PW2 expressed his inability to pay such amount. The initial demand was made on 11.12.2009 at 11.00 a.m, later, it was reiterated on 14.12.2009 at 1.00 p.m. P.W.2 was not willing to pay the bribe and preferred the complaint on 15.12.2009 at 9.45 a.m., based on which, a case was registered. P.W.18, the Trap Laying Officer had summoned P.W.3, the official witness/shadow witness and that a trap was conducted at the office of the appellant/accused and he was caught red handed while receiving the bribe amount. Though there are some discrepancies regarding the colour change in the wash collected from the left hand of the appellant/accused, the presence of phenolphthalein in the Chemical Report of the receipt of amount in the right hand has been proved by the chemical analysis report. He would further submit that the

https://www.mhc.tn.gov.in/judis

WEB COPY

prosecution, by cogent evidence, has proved its case of demand, acceptance and recovery, beyond all reasonable doubt and the trial Court has rightly found the appellant/accused guilty of the offences and convicted him and therefore, the learned Government Advocate prays for dismissal of the appeal.

10. This Court considered the matter in the light of the submissions made by the learned counsel on either side and perused the materials available on record.

11. What has to be seen is

(i) whether the prosecution has proved its case of demand, acceptance and recovery beyond all reasonable doubts;

(ii) whether the Trial Court is right in appreciating the evidence on record and finding the appellant/accused guilty and convicting him; and

(iii) whether the explanation given by the appellant/accused by way of defence is acceptable as a probable one or not?

https://www.mhc.tn.gov.in/judis 12. The case of the prosecution as culled out from the records would show that P.W.1, viz., C. Prakasam, District Revenue Officer, Krishnagiri, On 01.04.2011, after perusing the documents received from Vigilance and Anti Corruption Department, being satisfied that there is a criminal misconduct, had accorded sanction under Section 19 (1) (C) of The Prevention of Corruption Act, 1988, to prosecute the case and the said sanction order dated 01.06.2012 is marked as Ex.A.1.

13. P.W.2-Appajiappa, the defacto complainant is residing at Hosahalli village within Anumanthapurampanchayat limits and running a petty shop. On 11.12.2009, he had given an application to the appellant/accused, who was the Revenue Inspector, for getting Community Certificate and Nativity Certificate for his son Naveenkumar, after getting necessary endorsement in the application from the Village Administrative Officer, Anumanthapuram. At that time, the appellant/accused is alleged to have demanded a sum of Rs.2000/- towards bribe. When, P.W.2 expressed his inability to pay such sum, the appellant/accused reduced the demand to Rs.1000/- and asked him to pay the amount and receive the certificate. Again on 14.12.2009, P.W.2 had met the appellant/accused at his office and told him that he was unable to raise the amount. At that time, the appellant/accused had reiterated his earlier demand of Rs.1000/-to sign the document. Since the defacto complainant/P.W.2 was not inclined to pay the

WEB COPY
https://www.mhc.tn.gov.in/judis

WEB COPY

amount, he had lodged the complaint (Ex.P.2) to the Deputy Superintendent of Police, Vigilance and Anti Corruption-P.W.14 -Trap Laying Officer.

14. P.W.14, the Trap Laying Officer, after enquiring P.W.2 and getting his explanation, at 9.45 a.m., had registered the First Information Report in Crime No.11/AC/2009/KG under Section 7 of the Prevention of Corruption Act,1988 (Ex.P.27). Thereafter, he sent request to the District Educational Officer, Krishnagiri District. The District Educational Officer, Krishnagiri, by memo-Ex.P.18 had arranged two official witnesses namely (P.W.3)/Nagarajan, and Thangaraj. When the official witnesses had attended the office, P.W.14 Trap Laying Officer had introduced P.W.2-defacto complainant to them and handed over the complaint as well as the First Information Report to the Official Witnesses to make them get acquainted with the facts of the case. After that, P.W.2 was asked to hand over the amount of Rs.1000/- to Mr.Thangaraj and asked him to count the same. P.W.2 had handed over Rs.500/- denomination x 1 note (M.O.1) and Rs.100/- denomination x 5 notes (M.O.2). Subsequently, a mock phenolphthalein test was conducted/demonstrated and they were informed about the significant of the phenolphthalein test. The scheme of the trap proceedings was also explained to P.W.2, P.W.3 and other official witness and the tainted money was handed over to P.W.2-defacto complainant with

https://www.mhc.tn.gov.in/judis

WEB COPY

an instruction to hand over the same to the accused only on demand. He was further instructed to give signal by combing his hair once tainted money was accepted by the accused. The Official Witness, viz., P.W.3 -Thangaraj was asked to accompany the defacto complainant and observe the conversations between P.W.2-defacto complainant and the appellant/accused. Ex.P.3-Entrustment Mahazar was prepared by P.W.14 in the presence of P.W.2, P.W.3 and yet another official witness. Thereafter, the liquids prepared for the demonstration were destroyed and the witnesses were asked to clean their hands. Sample of the Sodium Carbonate Solution was taken in a cover and sealed and marked as "SC" and the sample of the phenolphthalein was taken in a cover and sealed and marked as "P" and witnesses were made to sign the same and the said samples were marked as M.O.3 and M.O.4.

15. Thereafter, P.W.14-Trap Laying Officer along with defacto complainant (P.W.2), Nagarajan (P.W.3), the official witness and the other official witness (not examined) left the office at 11.15 a.m., in the Government vehicle and proceeded to the Taluk Office, Denkanikottai at 1.00 p.m and parked the vehicle 100 meters before the office of the appellant/accused. Then, P.W.2 and P.W.3 were directed to go to the office of the appellant/accused and P.W.3 was advised to watch the proceedings carefully. P.W.2 and P.W.3 had entered into the office of the

https://www.mhc.tn.gov.in/judis

WEB COPY

appellant/accused at 1.10 p.m., at that time, the appellant/accused had asked P.W.2 whether he had brought the money demanded by him. P.W.2 had handed over the bribe money of Rs.1000/- (M.O.1) to the appellant/accused. He had received the money in his right hand and verified it with the left hand and thereafter, kept it on the table and took the application behind the rack and put his signature on it. Immediately, thereafter, P.W.2 came out of the office and combed his hair with both hands as instructed by P.W.14 Trap Laying Officer. Thereafter, P.W.14 along with the Trap team and P.W.2 and P.W.3 entered into the office. P.W.2 identified the appellant/accused to P.W.14 and thereafter, P.W.2 was asked to leave the office. P.W.14 had introduced himself to the appellant/accused and the appellant/accused got palpitated. P.W.14 Trap Laying Officer had immediately prepared Sodium Carbonate Solution in two glass bottles and the appellant/accused was asked to dip his right hand fingers and solution in the bottled turned pink. Thereafter, the solution collected in the bottle was closed and labelled and named as “L” and marked as M.O.5. Thereafter, the appellant/accused was asked to dip the fingers of his left hand and there was no change of colour and the solution collected in the bottle was sealed and labelled and named as “R” and that was marked as M.O.6. When P.W.14, Trap Laying Officer enquired about the bribe amount, the appellant/accused had taken it from under the writing pad on the table and handed over it to P.W.14. The serial

https://www.mhc.tn.gov.in/judis

WEB COPY

numbers of the notes (M.O.1 & M.O.2) were compared with the serial numbers in the Entrustment Mahazar and M.Os.5 & 6 were collected. The charge against the appellant/accused was explained and the appellant/accused was arrested at 3.00 p.m. On a search, a sum of Rs.160/- was found with him and the appellant/accused told that it was his personal money, and the same was returned to him. When P.W.14 inquired the appellant/accused about the bribe money, he told him that he did not demand any bribe and that P.W.2 himself had voluntarily given that amount. Thereafter, house search of the appellant/accused was conducted and nothing incriminating was found. The appellant/accused had handed over the Community Certificate application containing 15 pages (Ex.P.21).

16. On intimation, P.W.4, the Deputy Tahsildar, appeared and she was enquired with regard to issuance of Community Certificate and Nativity Certificate. When the appellant/accused was enquired with regard to the non mentioning of the date, the appellant/accused had informed that the Village Administrative Officer had mentioned the date as 19.09.2009 and that if she had mentioned the date, she would be held responsible for the delay, and thereby, he had not mentioned the date. Thereafter, in the presence of the witnesses, the Observation Mahazar, Ex.P.15 and Rough Sketch Ex.P.16 were prepared. Thereafter, giving an advance intimation Ex.P.28, P.W.14

https://www.mhc.tn.gov.in/judis

WEB COPY

proceeded to the house of the accused and search was made in the presence of the official witnesses. Thereafter, the appellant/accused was sent to remand and the recovered materials were sent to the Court under Form-95. When the investigation was in progress, P.W.14 was transferred and he had handed over the case to P.W.15, the Deputy Superintendent of Police for further investigation. PW15 after perusing the complaint, First Information Report and others materials, had examined the other witnesses and forwarded the letter of request seeking sanction to prosecute the appellant/accused. After obtaining Sanction Order-Ex.P.1 from P.W.1, he filed the final report against the appellant/accused under Sections 7, 13(2) r/w. 13(1)(d) of Prevention of Corruption Act 1988.

17. PW2 is the defacto complainant. P.W.3 is the Official/Shadow witness. P.Ws. 4, 5, 6, and 8 are the Officials in the Revenue Department, who have been examined to speak about the proceedings relating to issuance of the community and nativity certificate. At this point, it is relevant to note that though the application is stated to have been given by P.W.2-defacto complainant to the appellant/accused on 19.09.2009, there were some defects in the application with regard to the name of the candidate and the name of the village in the ration card. Therefore, the application was returned by the appellant/accused to P.W.2 to carry out necessary

https://www.mhc.tn.gov.in/judis

WEB COPY

corrections in the ration card. PW4-Umayammai, who was the superior of the appellant at the relevant point of time, also admits in her cross examination that she found variation in the name of the applicant and the name of the village in the ration card and that in such event, the application could not be considered. It is further seen that the corrections were done in the ration card only on 11.12.2009, which was also admitted by P.W.14-Trap Laying Officer.

18. It is seen from the records that after completion of the evidence on the side of the prosecution, when the appellant/accused had been questioned with regard to the incriminating materials, he had denied the same and he had examined himself as defence witness (DW1). In his evidence, he has deposed that on 19.09.2009, when he was in his office, he received the application from P.W.2 with the recommendation of Village Administrative Officer. On perusal, he found that the name of the son of P.W.2 was mentioned wrongly and his Education Certificates and the community certificate of other persons in the family were not enclosed. He also noticed that the name of the village was also not correctly mentioned and hence, he had returned the application to P.W.2. Later, after a period of three months, P.W.2 re-submitted the application along with the rectified documents. Thereafter, the appellant/accused had endorsed his recommendation and

https://www.mhc.tn.gov.in/judis

WEB COPY

handed it over to him. At that time, two or three persons were present in his office. One person had come into the Office and introduced himself as Deputy Superintendent of Police (P.W.14), Krishnagiri and told that the Tahsildar had received complaints about the appellant/accused. When the appellant/accused had questioned as to who had given the complaint, P.W.14 had called P.W.2, who was standing outside, to come into the office. On seeing PW2, the appellant/accused had explained the reason for returning the application earlier. At that time, P.W.14 had informed him that he had recorded the conversations between him and the appellant/accused in his mobile phone and asked the appellant/accused to take the money from the table. When he refused to take the money, P.W.14/TLO threatened him to take the money, which was placed on the table without his knowledge. He then picked it and gave it to P.W.14. Thereafter, phenolphthalein test was conducted, and three persons entered the office, and he was arrested. Other than the suggestion that he has given false evidence, nothing worthwhile has been elucidated in cross examination of DW1 by the prosecution. The Trial Court after closure of evidence and hearing both sides found that appellant/accused guilty and convicted and sentenced him as stated above.

19. Now, this Court has to analyse the evidence and has to see whether the prosecution has proved its case beyond all reasonable doubts

https://www.mhc.tn.gov.in/judis

WEB COPY

and whether the explanation offered by the appellant/accused by way of defence can be accepted to rebut the presumption.

20. The learned Senior Counsel appearing for the appellant/accused, while taking through the entire evidence, assailed the judgment and the case of the prosecution with regard to the pre-trap proceedings, trap proceedings and the recovery proceedings. According to the learned Senior Counsel, the trap was conducted with a pre-determination to ensure that the appellant/accused was trapped and arrested. According to him, the entire proceeding was a stage managed one and certain important documents and materials were suppressed by the prosecution, creating significant and serious doubts in the prosecution's case. It is also the submission of the learned Senior Counsel that though P.W.3 is stated to be an independent witness, he is a person interested in the case of the prosecution and his evidence has to be scrutinized with utmost care to rule out the possibility of false information.

21. Now coming to the doubts regarding the genesis of the case, it is the case of the prosecution that the first demand was made on 11.12.2009 and it was reiterated on 14.12.2009, based on which, the complaint was preferred to P.W.14-Trap Laying Officer on 15.12.2009 at 9.45 p.m. It is an

https://www.mhc.tn.gov.in/judis

WEB COPY

admitted case of P.W.2 that prior to the registration of the case, he had spoken to the appellant/accused and during such conversation, the appellant/accused had demanded money and that the said conversation was also recorded in his mobile phone, which he had shown to P.W.14-Trap Laying Officer. Further, it is also the admitted case of P.W.2 that prior to the complaint to P.W.14-Trap Laying Officer, he had preferred complaints against the appellant/accused to the Tahsildar as well as the Collector and he had also mentioned about the earlier complaints in the complaint,Ex.P.2 given to the Trap Laying Officer on 15.12.2009. Whereas, a perusal of Ex. P.2 complaint reveals that the alleged complaints made to the Collector and Tahsildar against the appellant/accused had not been mentioned in Ex.P.2. Further in Ex.P.2, nothing has been mentioned about the alleged conversation between P.W.2 and the appellant/accused, as stated by P.W.2. In this aspect, it is to be seen that P.W.14-Trap Laying Officer, in his evidence, has admitted that the alleged conversation between P.W.2 and appellant/accused was recorded. However, he has stated that since the phone was an old phone, he was unable to recover the recordings. Strangely, in this case, neither the phone nor the recording has been recovered by the prosecution. Further regarding authenticity of the content written in the complaint, the de facto complainant, in Ex P2, has stated that he knows to read and write Tamil, however, during the chief and cross-examination, he

https://www.mhc.tn.gov.in/judis

WEB COPY

contradicts himself by claiming that he only knows to read Tamil and that he sought assistance from a person near Krishnagiri bypass road for writing the Complaint Ex.P2. Furthermore, in his deposition in Cross examination PW2 had admitted that he is unaware of the details of the person who wrote the complaint. Additionally, PW-14, the TLO has also not conducted any inquiry into the matter to determine the person who transcribed the complaint. This raises suspicion about the accuracy and authenticity of the content written in the complaint Ex P2.

22. Further coming to the question of summoning the official witnesses and the registration of the case, it is the specific case of P.W.2 that he had given the complaint at 9.30 a.m and the case was registered at 9.45 a.m. as per the timing in the FIR. However, as per the evidence of P.W.14-Trap Laying Officer, the FIR was prepared within 30 minutes from 9:45 am to 10:15 am. Upon examining the deposition given by P.W.3, the Shadow/Official witness, it is stated that he routinely as usual arrived at his office by 10:00 a.m and that he was informed by his Superior Officer about the Trap Laying Officer's request, and subsequently, he was issued a Memo-Ex.P.18 at around 10:15 a.m., instructing him to go to the office of P.W.14, the Trap Laying Officer, at 10:30 a.m. to assist in the Trap proceedings. PW3 further deposes that written intimation was prepared even before he

https://www.mhc.tn.gov.in/judis

WEB COPY

reached the office i.e., before 10:00am. The discrepancy arises as the deposition of TLO regarding the registration of the case suggests a timing of 10:15 a.m and the mentioning of the Crime Number in the reference column of Ex.P.18-Memo also received at 10:15 am by PW3 creates a doubt regarding the registration of the case and summoning of the Official Witnesses as well.

23. Now, coming to the Trap proceedings, it is the evidence of P.W.2 that he and P.W.3-Shadow witness went to the office of the appellant/accused at 1.10 p.m., and when he asked for the certificate, the appellant/accused is stated to have asked him whether he has brought the money. On such alleged demand, P.W.2 had handed over the bribe money of Rs.1000/- and the appellant/accused received it on his right hand, verified it with the left hand and kept it on the table near him. In his cross-examination, he had stated about the incident on 11.12.2009 with regard to the telephonic conversation between him and appellant/accused and the recording made by P.W.14 at 1.00 p.m., on the previous day. He had also admitted that earlier, he had given complaints against the appellant/accused to the District Collector and Tahsildar, and he has also mentioned about the same in the actual complaint and also during the enquiry. He had further deposed that immediately after the trap proceedings, when PW14/the Trap Laying Officer had enquired the appellant/accused about the amount on the

https://www.mhc.tn.gov.in/judis

table, he had explained him that he does not know about the same and thereafter, the Trap Laying Officer had asked him to count the notes and based on the directions of the Trap Laying Officer, the appellant/accused had counted the notes and only thereafter, phenolphthalein test was conducted. In this regard, coming to the evidence of P.W.3 in chief, he had deposed that he, along with P.W.2, had entered into the office and the appellant/accused had asked P.W.2 whether he had brought the money and that P.W.2 had taken the money from the left side pocket of his shirt and handed it over to the appellant/accused and he received the same in his right hand and verified it with his left hand and thereafter, kept it on the table. Thereafter, he took the application behind the rack and put his signature on it. Immediately, thereafter, P.W.2 came out of the office and combed his hair with both hands as instructed by P.W.14 Trap Laying Officer. P.W.3 had also deposed that the Trap team had come inside the office and the complainant-P.W.2 was asked to go out and thereafter, phenolphthalein test was conducted on the appellant/accused and that the wash taken from the right hand fingers of the appellant/accused turned pink but the wash taken from the left hand fingers did not change colour.

24. As stated above, it is the admitted evidence of P.W.2 and P.W.3 that that the Appellant/Accused counted the tainted money with both hands

WEB COPY
https://www.mhc.tn.gov.in/judis

and thereafter placed it on the table. It is also the admitted evidence of PW3 and PW14 TLO that the test done on the left hand fingers of the Appellant/Accused was not positive and the wash of the left hand fingers did not turn pink and that it was collected under M.O.6. Strangely, in this case, the Scientific Expert in her evidence has deposed that while analyzing the contents of M.O.6, phenolphthalein and sodium carbonate were found in the liquid wash M.O.6. It creates a doubt with regard to the Trap proceedings when, especially P.W.3, shadow witness and P.W.14, the Trap Laying Officers have stated that the left hand wash did not turn pink from which, it could be inferred that the tainted notes have not been handled by the Appellant/Accused in the left hand as alleged by the witnesses and the case of the Appellant/accused that the money was placed on the table by PW2 and he was forced to take the money and he had taken the money on his right hand and handed it over to PW14/TLO could be probable. When such being the case, the presence of phenolphthalein in the contents of M.O.6 (Wash taken from the left hand fingers) as per Ex.P26 Chemical Report and the evidence of PW13 Scientific Expert also creates suspicion in the prosecution case. This aspect also creates a doubt with regard to the possibility of the documents and the objects created according to the whims and fancies of the prosecution. P.W.3 has also deposed about the enquiry by P.W.14-Trap Laying Officer with the appellant/accused about the money

WEB COPY
https://www.mhc.tn.gov.in/judis

WEB COPY

and that the appellant/accused had told that he had not received any money and that P.W.2 had voluntarily kept the money beneath the writing pad and gone away. In this regard, it is to be seen that when P.W.14 Trap Laying Officer, had been questioned with regard to obtaining statement from the appellant/accused after the trap and he had specifically denied about having obtained any statement whereas P.W.2 and P.W.3 have categorically deposed that P.W.14 had recorded the statement of the appellant/accused during the time of trap. P.W.14, Trap Laying Officer, had deliberately denied the same. P.W.15, the Investigation officer, has admitted to have recorded a statement from the appellant/accused during the investigation on 25.08.2010. Though a reference is also made regarding such a statement by the sanctioning authority in Ex.P1, the statement recorded from the appellant/accused at the time of Trap proceedings, was neither placed nor marked as document before the Court. This aspect also creates a doubt with regard to the prosecution case.

25. It is a well settled law that if the prosecution is successful in proving the demand, acceptance and recovery of the tainted money from the possession of the appellant/accused, then a legal presumption arises under Section 20 of the PC Act. Of course, the presumption is rebuttable. The burden on the prosecution to prove its case beyond reasonable doubts is

https://www.mhc.tn.gov.in/judis

WEB COPY

heavy. It is, however, not necessary that the required presumption to be rebutted by the appellant/accused with the same standard of proof as is expected by the prosecution for recording the finding of conviction against him. The appellant/accused can validly rebut the presumption by preponderance of probabilities or other circumstances appearing in the prosecution evidence itself. Further, it is trite law that the appellant/accused can rebut the charge either through cross examining the prosecution witnesses or by adducing reliable evidence. The burden of proof on the appellant/ accused under Section 20 of the Act is not the same or as heavy as the burden placed on the prosecution to prove the case beyond reasonable doubt. In this context, it relevant to extract para 11 from the case of ***State of Gujarat v. NavinbhaiChandrakant Joshi***, (2018) 9 SCC 242

> *11. So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden placed on the accused for rebutting the presumption is one of preponderance of probabilities. In C.M. GirishBabu v. CBI [C.M. GirishBabu v.CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] , this Court held as under: (SCC p. 786, paras 21-22)*
>
> > "*21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence.*
> >
> > *22. It is equally well settled that the burden of*

https://www.mhc.tn.gov.in/judis

WEB COPY

proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt."

26. It is also to be stated that mere recovery of tainted money divorced from the circumstances, under which it is paid, is not sufficient to convict the appellant/accused when the substantiative evidence in the prosecution case are not reliable and the mere recovery of tainted money, by itself, cannot prove the charge of the prosecution against the appellant/accused in the absence of clarity in the prosecution case and the suspicion raised thereunder. In this context, the Hon'ble Apex Court in the case of ***N. Vijayakumar Vs. State of Tamil Nadu***, reported in (2021) 3 SCC 687 held that, in the absence of proof of demand for illegal gratification, mere possession of recovery of currency notes is not sufficient to constitute such offence under Sections 7 and 13 of P.C. Act and presumption under Section 20 of the Act can be drawn only after the demand and acceptance of illegal gratification is proved. The Hon'ble Apex Court in paragraph No. 19 of the Order has held as under:

"19. Further PW 4 and PW 11 both have stated in their evidence that, only when TLO had asked for the bribe amount and cellphone, the accused produced the same by taking out from the left side

https://www.mhc.tn.gov.in/judis

WEB COPY

drawer of his table. It is fairly well settled that mere recovery of tainted money, divorced from the circumstances under which such money and article is found is not sufficient to convict the accused when the substantive evidence in the case is not reliable. In view of the material contradictions as noticed above in the deposition of key witnesses, the benefit of doubt has to go to theappellant-accused."

27. It is also apposite to refer to the Apex Court, in the case of ***K.ShanthammaHanthamma v. State of Telangana***, (2022) 4 SCC 574 has held as follows:

"10. We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine qua non for establishing the offence under Section 7 of the PC Act.

11. In P. Satyanarayana Murthy v. State of A.P. [P. Satyanarayana Murthy v. State of A.P., MANU/SC/1012/2015 : 2015:INSC:658 : (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11], this Court has summarised the well-settled law on the subject in para 23 *which reads thus : (SCC p. 159)*

"*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*

https://www.mhc.tn.gov.in/judis

WEB COPY

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."

28. As stated above, before the appellant/accused is called upon to explain as to how the amount was found in his possession, the foundational facts, viz., the demand and acceptance by the accused must be established by the prosecution beyond all reasonable doubts. The prosecution should prove the foundational facts in accordance with legal evidence and of course, this court also has to see whether the explanation given by the appellant/accused is probable and reasonable. It is a well settled principle of law that where it is possible to arrive at two views, one in favour of the prosecution and other in favour of the appellant/accused, the latter will be relevant. In this case, the evidence regarding the recovery, phenolphthalein test and the chemical report is also dicey. Having carefully analyzed the evidence on record, this Court is of the opinion that the prosecution has utterly failed to prove its case beyond all reasonable doubts. The explanation given by the appellant/accused seems to be a probable and reasonable one. Such explanation, coupled with the discrepancy/contradiction in the evidence adduced by the prosecution with regard to the handing of the amount, the

https://www.mhc.tn.gov.in/judis

WEB COPY

colour not having changed in M.O.6, whileso the report of PW13, Ex P26 showing that the colour of contents in M.O.6 to be pink and the presence of phenolphthalein when especially PW3 and PW 14 having not spoken about the colour change in the wash of the left hand fingers, cumulatively creates a doubt in the case projected by the prosecution and the benefit should be given to the accused.

29. In such circumstances, this Court is of the opinion that the prosecution has failed to prove the ingredients regarding demand, acceptance and recovery of the tainted money beyond reasonable doubts, thus, failing to prove the foundational facts and though the appellant /accused is not required to rebut the presumption in such circumstances, he had come out with the defence, which, in the opinion of this court, is probable. The trial court, without properly analysing the evidence, had found the appellant/accused guilty and thereby the appellant/accused is entitled to benefit of doubt.

30. In the result, the Criminal Appeal is allowed. The judgment of conviction and sentence passed by the Trial Court in Spl. C. No. 6 of 2007 is set aside and the appellant/appellant/accused is acquitted from all the charges. Fine amount, paid, if any, by the accused/appellant, is directed to be

https://www.mhc.tn.gov.in/judis

WEB COPY

refunded to him. The bail bond, if any, executed by the accused shall stand discharged.

21.12.2023

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

1. The Chief Judicial Magistrate(Special) Court,
   Krishnagiri.

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

https://www.mhc.tn.gov.in/judis

WEB COPY

A.D.JAGADISH CHANDIRA, J.

mrp

Crl.A.No.817 of 2016

21.12.2023

https://www.mhc.tn.gov.in/judis