IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 15.12.2023.

CORAM

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

Criminal Appeal No.824 of 2016

Rajendra Prasad ... Appellant

vs.

State, rep. by
Inspector of Police,
Vigilance and Anti Corruption,
Ootacamund,
The Nilgiris. ... Respondent

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment dated 30.11.2016 in S.C.No.Spl.C.C.No.1 of 2015 passed by the Assistant Sessions Judge of Nilgiris at Ootacamund.

For Appellant : Mr.M.Mubarak Ahamed
M/s.Ahmed Associates

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

JUDGMENT

Challenging the judgment of conviction and sentence passed by the Assistant Sessions Judge of Nilgiris at Ootacamund in Special C.C.No.1 of 2015, the present Criminal Appeal has been filed by the accused.

2. The appellant/accused was serving as Junior Engineer at Tamilnadu Electricity Board, Coonoor Branch from 10.5.2002 till his removal from service and thereby a Public Servant, is alleged to have demanded bribe for giving electricity service connection to the residence of the de facto complainant and thereby committed an offence punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. He stands convicted and sentenced as under:-

Penal Provision	***Sentence***
Section 7 of the Prevention of Corruption Act, 1988	One year rigorous imprisonment and a fine of Rs.2500/- in default to pay the fine, to undergo simple imprisonment for a period of one month.
Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988	One year rigorous imprisonment and a fine of Rs.2500/- in default to pay the fine, to undergo simple imprisonment for a period of one month.
The sentences shall run concurrently.	

3. Factual aspects are as under:-

i) A complaint dated 26.8.2003, Ex.P3 came to be lodged by the de facto complainant, PW2, a resident of Coonoor and running an

Electrical Shop contending as under:-

For availing electricity service connection for another neighbouring house possessed by the de facto complainant, he had approached the appellant/accused in his office and submitted an Application on 22.8.2003, whereupon, the appellant/accused had asked the de facto complainant to come back on 25.8.2003. Accordingly, on 25.8.2003, when the de facto complainant had met him, the appellant/accused had demanded payment of Rs.1570/- towards security deposit and a sum of Rs.500/- for himself and another sum of Rs.500/- for another employee as illegal gratification for which, the de facto complainant had questioned as to whether he, being an approved electrical contractor, need to pay bribe for getting electricity service connection. The appellant/accused authoritatively contended that whoever may be the applicant, only on payment of bribe, the work could be done. When the de facto complainant refused to pay the bribe amount as demanded by the appellant/accused and expressed that he could pay only the legally payable amount of Rs.1570/-, the appellant/accused had returned the application submitted by the de facto complainant contending that if the bribe amount is not paid, the service connection could not be effected. He insisted that only on payment of bribe amount, he would receive the application for service connection. Hence, suitable action may be initiated against the appellant/accused.

ii) On receipt of such complaint, PW17, who was the Inspector of Police, Vigilance and Anti Corruption Wing, Ootacamanund, had registered a case in Crime No.4/2003 for offence under Section 7 of the Prevention of Corruption Act. The printed FIR is Ex.P4. Then he submitted requisition to the Collectorate, Ootacamund and Horticulture Department, Ootacamund for deputing staff to be witnesses for the trap proceedings.

iii) Thereupon, PW3 Ravichandran from Horticulture Department and PW4 Kumarasamypillai from Revenue Department reached the office of Vigilance and Anti Corruption at 7.10 am and 7.15 am respectively. They were introduced to the de facto complainant and other prosecution witnesses and vice versa and they were apprised of the case by giving a copy of the complaint.

iv) Thereafter, when the de facto complainant was asked, he produced the amount meant for trap viz., one 500/- rupee note and five 100/- rupee notes. The serial numbers of the said currency notes were entered in the entrustment mahazar, Ex.P5. A demonstration of trap was conducted at the office of the Vigilance and Anti Corruption with the proposed trap team with the assistance of one Head Constable by name Ganesan. Then, the de facto complainant was instructed to give the bribe amount to the appellant only if he demands and on acceptance of the same, he was asked to come out of the office of the appellant, give a signal by removing his specs, clean it with his shirt and wear it once again. PW3, shadow witness was also instructed to observe the proceedings without giving room for any suspicion.

v) After the entire above aspects were entered in the entrustment mahazar between 7.15 am and 8.15 am on 26.8.2003, the trap team had proceeded to the office of the appellant and on reaching the spot, while PW2, the de facto complainant and the shadow witness, PW3 had entered into the office of the appellant at 9.40 am, the rest of the team had been waiting outside, in a distance to be in the vicinity of the de facto complainant.

vi) Subsequently, when the de facto complainant came out of the office of the appellant and gave the pre-arranged signal, the trap team consisting of PW17, PW4 and other police personnel, having understood that the appellant had accepted the bribe amount, entered into the office of the appellant. The appellant/accused was identified by the de facto complainant and thereupon, PW17 had sent the de facto complainant outside the room and thereafter, he had introduced himself and other prosecution witnesses to the appellant/accused. The appellant/accused was found nervous and shivering.

vii) Thereafter, sodium carbonate solution was made ready with plain water from that office in two glass tumblers and having found that there was no chemical reaction, the appellant/accused was asked to dip his right hand. Though initially, he refused to do, when subsequently, he dipped his right hand, the solution turned pink and the same had happened when he dipped his left hand too. Having inferred from the above that the appellant had obtained the bribe money from the de facto complainant, the appellant was asked to produce the bribe money for which, he initially hesitated, however, later, he produced the same from the left side pocket of his shirt. When compared with the serial numbers entered in the entrustment mahazar, they tallied with the serial numbers of the currency notes produced by the appellant. When the appellant was further enquired, he had produced a Nokia 5110 mobile phone, a telephone index, a visiting card, four stamp size photos, a cheque drawn at Canara Bank for Rs.2991/- from his right side pocket of the shirt.

viii) Subsequently, after giving an alternate dress, the shirt wore by the appellant was seized and the inner cloth of the left side pocket of the shirt was dipped into another glass tumbler containing sodium carbonate and thereupon, the solution had turned pink. When he was further enquired about possession of any other money, he had produced a sum of Rs.2640/- from the left pocket of his pant claiming it to be his personal money and hence, it was returned to him. Further, the appellant had produced some coins from the right side pocket of his pant and it was nine rupees in total and the same were also returned to him. A search was made at the office room of the appellant and no other money or document in connection with the case was found. The currency notes seized were marked as M.O.1 series. Sodium Carbonate power was marked as M.O.2 series. Phenolphthalein power was marked as M.O.3. The bottles containing right hand dipped and left hand dipped sodium carbonate solution were marked as M.O.4 and M.O.5 respectively. The bottle containing shirt pocket dipped sodium carbonate solution was marked as M.O.6. The material objects were recovered under recovery mahazar, Ex.P8.

Under Ex.P8, recovery mahazar, PW17 had also recovered the application form submitted by the de facto complaint, Ex.P2, Demand Register, Ex.P7 containing pages 1 to 101 for the period from 16.6.2003 to 26.8.2003 and the attendance register of the office of the Assistant Engineer for the period from September 2002 to August 2003, Ex.P6. Thereafter PW17 had submitted the case records to the Deputy Superintendent of Police Vigilance and Anti Corruption, PW18.

ix) PW18, Deputy Superintendent of Police Vigilance and Anti Corruption, who took up the further investigation of the case on 26.8.2003, had arrested the appellant/accused, made a search in the house of the appellant/accused and seized 11 documents and remanded the appellant/accused. On the same day, PW18 had enquired P.Ws.2 to 4 and recorded their statements. On 27.5.2003, he arranged for sending the material objects to the court. On the same day, he had enquired PW5, Balasubramaniam, PW14, Shiva Shankar and recorded their statements. On 29.8.2003, he arranged for sending the disputed articles to the laboratory through the Police Constable Ganesh and on the same day, he had enquired PW7, Perumal and recorded his statement. PW18 had enquired the prosecution witnesses viz., PW10, Alphonse, PW12, Gandhimadhinadhan on 30.8.2003, Muhammad Sharif and Nanjan on 6.9.2003, Walter Jayakumar, Sathish, Chandran and Subramanian on 19.9.2003 Bhanumathi on 24.9.2003, Kanagaraj, Inspector of Police, PW17 on 1.10.2003, Krishnaswamy on 910.2003, Nataraj on 14.7.2004 appellant/accused on 22.10.2003 and recorded their statements and ultimately on completion of the investigation filed the charge sheet against the appellant/accused for the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

x) The case was taken on file in Special C.C.No.1 of 2015 by the Assistant Sessions Judge of Nilgirs at Ootacamund. On summoning, the Appellant/accused appeared. Copies of relevant papers were furnished to the Appellant/accused under Section 207 of Cr.P.C. and charges were framed. The accused had denied the charges and sought for trial.

xi) In order to bring home the charges against the accused, the prosecution had examined P.Ws.1 to 18 and marked Exs.P1 to P13 and produced Mos.1 to 6.

xii) On completion of the evidence, the appellant/accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had stated that he had been falsely implicated in the case and submitted a written statement of defence. The appellant had, apart from examining himself as DW1, had marked six documents as Exs.D1 to D6 while cross-examining PW2.

xiii) The Trial Court, on considering the entire materials, found the appellant/accused guilty and imposed the punishments, as referred to above, which is under challenge in the present Criminal Appeal.

4. Assailing the judgment of conviction and sentence, learned counsel Mr.Mubarak Ahamed appearing for the appellant would submit his arguments as under:-

i) The trial court without properly appreciating the evidence on record and without considering the defence of the appellant, had erred in convicting the appellant.

ii) The trial court failed to take into consideration the material contradictions and embellishments made by the victims in this case PW2 decoy witness and PW3 trap witness are interested witnesses in the prosecution and thereby their evidence have to be scrutinized with due care and caution. Without analysing the evidence of PWs.2 and 3 in the light of the evidence of PWs.6, 7 and 10, the official witnesses and the complaint, Ex.P2 and demand register, Ex.P7, credence cannot be given to the evidence of P.Ws.2 and 3. P.Ws.2 and 3 are not only unreliable but also they are untrustworthy.

iii) The accused admitted the receipt of the amount as a demand for providing electricity service connection under one day scheme. It is the settled principle of law that mere recovery and obtainment of money is not sufficient to record conviction and unless the demand and acceptance of money as illegal gratification is proved, recovery alone would not be a ground to convict the accused.

iv) It is the settled law that initial burden of proof lies on the prosecution to prove that the accused had accepted or obtained the amount towards other than legal remuneration and it is only when the initial burden of demand and acceptance of illegal gratification is discharged by the prosecution, then the burden of proof shifts upon the accused and presumption would arise under section 20 of the Prevention and Corruption Act.

v) In this case, the evidence of PWs 2 and 3 is unreliable and the prosecution has failed to prove the demand. Though a burden is cast upon the accused to disprove the case of the prosecution by preponderance of probabilities, in this case, the accused, by letting in cogent evidence by way of defence and marking Exhibits D1 to D6, has proved that the money received by him was only towards payment of fees for giving electricity connection and the de facto complainant was having grievance and grudges against him due to a previous incident where, he could not succeed in his attempt to remove an electric pole in front of his house at the cost of the Electricity Board.

vi) In this case, admittedly after PWs.2 and 3 had come to the office of the accused, he received the application Ex.P2 from PW2 and thereafter handed over the same to PW7 for processing and thereafter, a demand was raised by PW7 and entries were made in Ex.P7 Register by PW7 and thereafter initials were affixed by the accused in Ex.P7. The accused had completed all the processes, however, P.Ws.2 and 3, in their evidence, have suppressed about the same and thereby their evidence is unreliable.

vii) The accused had proved that the amount viz., Rs.1000/- which was received by him was only towards part payment of fees the de facto complaint is supposed to pay along with the application and this aspect is also proved by the evidence of PW6 Assistant Executive Engineer, who has spoken about the incident which had happened prior to the trap.

viii) The evidence of PW10 is also clear and cogent to the effect that he was on permission for one hour on the date of trap and that the accused was entitled to receive the fee to be paid for effecting electricity connection as per the version of PW6, Assistant Executive Engineer, who is superior to the accused.

ix) The Trial Court has failed to take into consideration the grave discrepancies with regard to registration of the complaint.

x) Though PW2 has deposed that he had gone to the office of the accused on 25.8.2003 alongwith PW5 and at that time, a demand was made, PW5 has not supported the case and he has been treated hostile by the prosecution, however, nothing was elicited by the prosecution by cross-examining him.

xi) The judgment of conviction and sentence rendered by the Trial Court without considering the above discrepancies is liable to be set aside.

5. Mr.Udayakumar learned Government Advocate (Criminal Side)

would submit that the appellant, who was the Junior Engineer in Tamil Nadu Electricity Board, had demanded illegal gratification of Rs.1500/-, out of which Rs.500/- for himself and Rs.500/- for giving electricity connection under one day scheme and based on the complaint, a case was registered, a trap was laid on 20.6.2003 and the accused was arrested red handedly while receiving the bribe. He would further submit that with the cogent evidence of PW3, shadow witness, the prosecution has proved the demand and acceptance of bribe money by the appellant/accused and the Trial Court, taking into consideration the cogent evidence, has found the accused guilty. He would further submit that in this case, though a defence had been raised, the Trial Court had rightly rejected the defence and found the accused guilty and thereby he would seek for dismissal of the Appeal.

6. Heard the learning counsel appearing for the parties and perused the materials available on record.

7. Now what has to be seen is

i) Whether the Trial Court is right in appreciating the evidence?

ii) Whether the evidence of PWs. 2 and 3 are reliable?

iii) Whether the prosecution has proved the demand, acceptance and recovery? and

iv) Whether the Trial Court is right in finding the accused guilty for the offence alleged against him and convicting and him thereunder?

8. The appellant is alleged to have demanded illegal gratification from the de facto complainant for giving electricity service connection under one day scheme whereas, the case of the appellant/accused is that the demand of deposit amount has been twisted by the de facto complainant as if an illegal gratification only to wreak vengeance as he had developed grudges against him on account of a previous incident. It is the case of the appellant that on a previous occasion, the de facto complainant had sought for removal of an electric post near his house and erect the same away from his house for which, the appellant had insisted the de facto complainant to bear the cost of such work, which was legally liable to be borne by the de facto complainant, however, the de facto complainant had withdrawn his application expressing inability to bear the cost and the present complaint is probably, the outcome of his adverse experience with the appellant.

9. In the bribe cases, the demand and obtainment of bribe money being the main ingredient to be established by the prosecution, the evidence of the de facto complainant, PW2 plays a major role. It is the evidence of PW2 that by profession, he is an Electrical Contractor attached to Tamil Nadu Electricity Board and that on 22.8.2003, he met the accused at his office and requested him to give an electricity connection for his new building by submitting the application, Ex.P2. It is the further evidence of the PW2 that on receipt of the application, he was asked by the appellant to come back on 25.8.2003.

10. It is the specific evidence of PW2 that he had gone to the office of the appellant again on 25.8.2003 along with PW5 and at that time, the appellant had demanded a sum of Rs.1000/- towards illegal gratification out of which, Rs.500/- for himself and Rs.500/- for other staff apart from the fees of Rs.1570 for effecting the service connection and when he refused to pay the bribe amount, the appellant had returned the application and thereby on the next day viz., on 26.8.2003, at 5.30 am, he proceeded to the office of the Vigilance and Anti Corruption, Uthagamandalam and lodged the

complaint, Ex.P2.

11. In this regard, it is relevant to note that PW5, another Electrical Contractor, who is claimed to have accompanied with PW2 on 25.8.2003, denies that he accompanied PW2 to the office of the appellant and he was treated hostile, however, nothing was elicited by the prosecution by cross examining him, which is a flaw in the case of the prosecution.

12. In order to find out whether the prosecution has proved the demand of bribe on 26.8.2003, we need to analyse the evidence of P.Ws.2 to 4, and 17, who speak about the demand. P.Ws.2 and 3, have spoken in their evidence that on the date of trap, they had gone to the office of the appellant/accused on 26.8.2003 at 9.05 a.m. and at that time, the accused was not present in the office and hence, they had waited outside the office and the Trap Laying Officer and other witnesses were waiting a little far away and after 5 minutes, the accused had come to the office, sat in front of his table and enquired PW2 as to whether he brought the bribe money and thereafter they have handed over the money and the same was received and kept on the left shirt pocket.

13. In this regard, it is pertinent to note that the case of the accused in defence is that that he received the money assuming it to be the deposit amount for the electricity connection since the de facto complaint was known to him and on finding that there was shortage of money towards the deposit amount, he had asked the de facto complainant about the shortage for which, the de facto complainant had stated that he would go to bank and bring the money, however, after P.Ws.2 and 3 left the office, the TLO and his team had entered into the room, conducted the phenolphthalein test and recovered the money given by PW2. It is the further case of the appellant that when enquired by the TLO, he had explained the reason for receipt of such money, however, the same was not recorded by the TLO.

14. On analysis of the evidence, it is seen that when the complaint Ex P2 is registered at 6.00 am on 26.8.2003 and peculiarly the FIR Ex.P3 is also alleged to have been made ready at the same time, strangely or by slip of tongue, PW2, the de facto complainant specifically deposes, rather admits in the chief examination itself that when he went to the office of Vigilance and Anti Corruption at 5.30 am

on that day, there was only a Police Constable and PW17, Inspector of Police came there only at 8.30 am on receipt of information, however, later during the cross examination, he tries to mish mash the same.

15. When PW2 the author of the complaint himself is not clear about the time of registration of the complaint, the alleged recipient of the complaint namely, PW17 the TLO, who needs to speak about the time of registration of the complaint, as an attempt to overcome the situation and also in order to have a safe play, appears to have omitted to depose in the chief examination about the time he received the complaint though he deposes about the time of arrival of PW3 and PW4, however, without producing the requisitions in that regard. Though P.Ws.3 and 4 specifically mention the time of their reaching the office, their evidence loses significance due to the non production of requisition letters by PW17.

16. The place of trap being a hill station, the theory sought to be projected by the prosecution that PW2 reached the office at 5.30 am itself on that day with a hand written complaint made ready at his residence itself, PW17 reached the office immediately at 6.00 am on

receipt of information, on his requisition PWs 3 and 4 had reached there at 7.00 and 7.15 am itself, PW17 the Trap Laying Officer had conducted a pre-trap investigation in the case as contemplated under the DVAC Manual beforeever planning a trap and proceeding to the office of the appellant along with his team, appears to be a cooked up story and the trap itself appears to be a stage managed one.

17. When such discrepancy with regard to time of registration of the complaint exists, the defence taken by the appellant appears to be more probable. The appellant, by marking the documents Exs.D1 to D6, has elicited the demeanor of the defacto complaint in the habit of lodging complaints against the officials and the possibility of developing grudges against the appellant on account of a previous incident. It is moreso, when the prosecution has not proved that the legally payable fees amount was paid by the de facto complainant towards the electricity service connection. The evidence of PW2 is that he was ready to pay the fees alone and not the bribe amount. While the practice prevalent at the relevant time was to make payment of fees in cash, it is the duty of the prosecution to establish that the legally payable fees was already paid by PW2 and the amount paid on

the relevant date was only an illegal gratification. It is a settled principle of law that mere recovery of money is not sufficient to record a conviction, unless there is evidence that bribe had been demanded or money was paid as a bribe.

18. In this regard, it is relevant to note that in the case of ***P.Satyanarana Murthy vs. District Inspector of Police, State of Andhra Pradesh*** (2015) 10 SCC 152, the Apex Court has held as under:-

> *"**23.** The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the*

offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

19. V.Sejappa vs. State by Police, Inspector Lokayukta, Chitradurga (2016) 12 SCC 150, it has been held by the Apex Court as under:-

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

20. In ***Krishnan Chander vs. State of Delhi*** (2016) 3 SCC 108), the Hon'ble Supreme Court has held as under:-

> *"**35.** It is well-settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] , A. Subair [A. Subair v. State of Kerala, (2009) 6 SCC 587 : (2009) 3 SCC (Cri) 85] and P. Satyanarayana Murthy [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] upon which reliance is rightly placed by the learned Senior Counsel on behalf of the appellant."*

21. In the case on hand, the appellant/accused, while cross examining PW2, had marked Exs.D1 to D6 and thereby, the case of the appellant/accused is that the de facto complainant was in the habit of sending petitions against the officials of the Electricity Board and

that on an earlier occasion, the de facto complainant had requested the Board for shifting of an electric pole, which was erected in front of his house and being an hindrance for him to take his car inside his house, without accepting to bear the charges thereof and on insistence of payment of charges by the appellant/accused, he withdrew his application, however, nurtured grudge against the appellant/accused. In order to prove his case, the accused had, not only filed a written statement of defence, but also examined himself, to explain the manner in which, the money came to his possession.

22. The defence raised by the accused has been strengthened by the evidence of PWs.6, 7 and 10. PW6, who is the superior officer of the accused, had come to the office during the relevant point of time. He has spoken about the presence of the accused and P.Ws. 2 and 3 and since PW2 was known to him, he had enquired PW2 about his presence in the office for which, PW2 told him that for getting a new electricity service connection for his house, he happened to be there and thereafter, PW6 had asked the accused to expedite the work and asked to go to Barliar for another work for which, the appellant/accused had replied that there is shortage of funds and after sorting out the same, he would depart.

23. PW7 speaks in his evidence about the endorsement made and the initial affixed by the appellant in Ex.P2 application, the demand raised by PW7 and the entries made in the demand register, Ex.P7. PW10 speaks in his evidence that he was one, who was supposed to collect the amount and on the relevant day, viz., on 26.8.2003, he had availed one hour permission. His evidence makes it clear that only in his absence, the appellant had to collect the money on the application, Ex.P2 submitted by the de facto complainant.

24. The above aspects spoken by P.Ws.6, 7 and 10 have been totally burked by P.Ws.2 to 4 in their evidence creating a doubt with regard to the demand alleged to have been made by the appellant. From these aspects, this court is able to see that the prosecution has failed to prove the demand alleged to have been made by the appellant on 25.8.2003 and subsequently on 26.8.2003 viz., on the date of trap. Further, this court finds that the explanation given by the accused is not only plausible and probable, but also this court is of the view that the amount received by the accused was towards fees in respect of application and that the accused had not obtained any pecuniary advantage for him and this Court is of the view that the

prosecution has failed to prove its case of demand of illegal gratification beyond reasonable doubts.

25. In this regard, it would be apposite to refer to the decision in ***N.Vijayakumar vs. State of Tamil Nadu*** (2021) 3 SCC 687, wherein the Hon'ble Apex Court has held as under:-

> *"**26.** It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, <u>it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe</u>. Absence of proof of demand for illegal gratification and*

mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved."

26. As already observed above, when there is a defence raised by the appellant by way of plausible and probable explanation, the Trial Court, without appreciating the evidence properly and without considering the discrepancies in the case of the prosecution, has found the accused guilty and thereby the judgment of the Trial Court is liable to be set aside.

27. In the result, the Criminal Appeal stands allowed. The impugned judgment of conviction and sentence is hereby set aside. The appellant is acquitted from the charges levelled against him. The bail bond, if any executed by the Appellant, shall stand cancelled and the fine amount paid, if any, shall be refunded to him.

15.12.2023.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. Assistant Sessions Judge
   of Nilgiris at
   Ootacamund.

2. Inspector of Police,
   Vigilance and Anti Corruption,
   Ootacamund,
   The Nilgiris.

3. The Public Prosecutor,
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

ssk.

Criminal Appeal No.824 of 2016

15.12.2023.