IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Criminal Appeal No.853 of 2016

N. Selvatharasu .. Appellant

Versus

State rep. By
Inspector of Police,
Vigilance and Anti Corruption,
City Spl. Unit-III,
Nandhanam, Chennai 35
Crime No.6/AC/2006) .. Respondent

Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the conviction and sentence imposed in judgment dated 20.12.2016 made in Special Case No.06 of 2007 on the file of the Special Judge and Chief Judicial Magistrate, Chengalpet.

For Appellant : Mr. A. Nagarajan,
for P.Ganesan
For Respondent : Mr. S. Udaya Kumar,
Gov. Adv. (Crl. Side)

JUDGEMENT

The present Criminal Appeal has been filed by the sole accused in Spl.C.C.No.6 of 2007, challenging the judgment of conviction and sentence dated 20.12.2016 rendered by the Special Judge cum Chief Judicial Magistrate, Special Court and Chief Judicial Magistrate Court, Chengelpet .

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

Under Section	Sentence
7 of Prevention of Corruption Act,1988	Three years simple imprisonment and a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.
13(2) r/w. 13(1)(d) of Prevention of Corruption Act	four years simple imprisonment and a fine of Rs.5,000/-, in default, to undergo four months simple imprisonment.

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

The appellant/accused was working as a Junior Engineer (O&M) at the office of the Assistant Engineer, Tamill Nadu Electricity Board, Thoraipakkam, from 27.02.2006 to 11.08.2006 and thus, he is a Public Servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988. On 10.08.2006, at 11.00 a.m., the defacto complainant viz., Kumar gave an application to the appellant/accused, who was working as Junior Engineer, Tamil Nadu Electricity Board, Thoraipakkam, requesting temporary commercial electricity connection for his friend Srinivasan's land bearing Plot Nos.7, 8 and 9, Rajiv Garden, Thoraipakkam. The defacto complainant also enquired with the appellant as to how much fees he has to pay for obtaining connection. The appellant/accused informed that he has to pay a sum of Rs.5000/-. When the defacto complainant questioned the same, he replied that Rs.1600/- is towards the Government fees and the balance amount of Rs.3400/- is to be paid as illegal gratification for himself and his office staff. Though the defacto complainant had requested the appellant/accused to reduce the amount, he had stated that this is the amount, which is being regularly collected from the applicants. Reluctantly, the defacto complainant had come out from the E.B office and informed the same to his friend, viz., Srinivasan over phone and in turn, he told him not to pay any extra amount and advised him to lodge a complaint against the accused before the Vigilance and Anti Corruption. Thereafter, the defacto complainant questioned the appellant/ accused when the amount should be paid and he told the defacto complainant to come on the next day (11.08.2006) between 9.00 a.m.,and 10.00 a.m. The defacto complainant was not willing to pay the amount as bribe, therefore, he lodged a complaint on 10.8.2006 at 2.15 p.m. before the District Superintendent of Police, Vigilance and Anti Corruption, City Special Unit III, Chennai, who in turn forwarded the same to Inspector of Police (P.W.8). Based on the complaint (Ex.P.2), P.W.8 registered a case in Crime No.6/AC/2006/CC-II (Ex.P.3) on 10.8.2006 at 2.30 p.m., under Section 7 of the Prevention of Corruption Act, 1988 against the appellant/accused.

4. Upon registration of the complaint, a trap was laid and the appellant/accused was caught red handed while receiving the bribe and he was arrested. After completion of the investigation, the respondent had filed the Final Report against the appellant/accused before the Special Judge cum Chief

Judicial Magistrate, Chengelpet for the offences under Sections 7, 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, 1988 and the same has been taken on file as Spl.C.No.06 of 2007.

5. On issuance of summon, the appellant/accused appeared before the Special Judge cum Chief Judicial Magistrate, Chengelpet and copies were furnished to him, in due compliance of Section 207 Cr.P.C.

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

7. During trial, on the side of the prosecution, P.W.1 to P.W.9 were examined and Ex.P1 to Ex.P.13 and M.O.1 to M.O.5 were projected.

8. Based on the incriminating materials, when the accused was questioned under Section 313 Cr.P.C., he pleaded not guilty and he has also filed written statement under Section 313(5) of Cr.P.C explaining the circumstances under which he was fixed in this case.

9. The Trial Court, after hearing the arguments of prosecution as well as the defence, found the appellant/accused guilty and sentenced him to undergo imprisonment and pay the fine as stated above. Challenging the judgment of conviction and sentence imposed by the Trial Court, the present Criminal Appeal has been filed.

10. Assailing the impugned judgment of conviction, Mr.A.Nagarajan, learned counsel appearing for the appellant would submit that the Trial court erred in appreciating the evidence in the correct perspective, which led to the conviction of the appellant. The trial court failed to consider that the prosecution has miserably failed to prove its case by adducing clear and consistent evidence. The prosecution has failed to prove the basic ingredients of demand and acceptance and also failed to prove the seizure in a manner known to Law. The Trial Court, failed to take into consideration the material contradictions in the evidence of PW2, the defacto complainant and P.W.3 shadow witnesses, which would go to the root of the case projected by the prosecution. The evidence P.W.2 and P.W.3, would go to show that the entire pre-Trap proceedings and the Trap proceedings are stage managed by the prosecution. The trial Court also failed to take into consideration the *lacuna* in the prosecution case with regard to the genesis of the registration of the First Information Report, requesting the trap witnesses to be part of the trap team

and the manner, in which the recovery was effected and thereby making the registration, pre-trap proceedings and the trap proceedings doubtful. The Trial court failed to take into consideration the improvement and embellishment in the evidence of the prosecution. The Trial Court also failed to take into consideration the delay in sending the samples to the Court and the preparation of the Rough Sketch by the Investigation Officer, which also creates a doubt with regard to the entire trap proceedings. The facts of the case would go to prove that it is the case of thrusting/planting of money. In this case, non recording the statement of the accused after his arrest assumes significance in view of the various lacuna especially, P.W.4 Superior Officer has spoken about the appellant/accused having been examined by the Trap Laying Officer immediately after arrest but his statement has not been recorded. The learned counsel would further submit that the star witnesses P.Ws.2 and 3 have not supported the case of the prosecution and P.W.2 was treated as hostile, where as, P.W3 was not treated hostile. The evidence of P.W.3 in fact supported the case of the appellant/accused in all aspects. He would further submit that the non examination of the owner of the property Srinivasan creates a doubt in the prosecution case and the version of the defacto complainant is doubtful. Further, there is no categorical evidence by prosecution that the accused had demanded bribe on the particular day, i.e. on 11.08.2006. P.W.2 defacto complaint and the shadow witnesses P.W.3 are persons interested in the prosecution and their evidence requires a close scrutiny. In any event, the prosecution has not proved its case beyond reasonable doubt and thereby, he would seek to allow the appeal.

11. The learned counsel for the appellant would further submit that though the statutory presumption is available under the Act against the accused, before raising the presumption the bounden duty of the prosecution is to prove the facts beyond all reasonable doubt and only when the foundation facts are established by the prosecution, the burden shifts to the accused. In this case, during trap proceedings the accused had explained the circumstances under which the cash was found on his table and the statement given by the appellant/accused is also spoken to by P.W.4 the superior Officer of the accused to the effect that the Trap laying Officer failed to record the statement to the prejudice of the accused.

12. The learned counsel would also submit that the delay in the First Information Report reaching the Court would go to show that the entire proceedings have been stage managed. He would further submit that the Trial Court failed to take into consideration the corrections with regard to timing in the complaint and the delay in the First Information Report reaching the Court after 22 hours. More particularly, the complaint was stated to have been given

on 10.08.2006 at 2.15 p.m., and the case was registered on the same day at 2.30 p.m., where as the First Information Report reached the Court at 11.30 a.m. and therefore, the appellant is entitled for acquittal.

13. Per contra, Mr.Udayakumar, learned Government Advocate (crl.side) appearing for the respondent would submit that the prosecution has proved its case beyond all reasonable doubt. The prosecution, by cogent and convincing evidence, has proved the alleged demand made by the appellant on 10.08.2006 and on the day of Trap on 11.08.2006. The entire trap proceedings have been proved in a manner required and the recovery and seizure had also been proved by the prosecution. He would further submit that the witnesses P.W.2 and P.W.3 have been examined in Chief on 08.04.2009 and 26.08.2010, where as P.W.2 was cross examined on 11.02.2016 and P.W.3 was cross examined on 24.02.2016 and thereby, there is a chance for them to depose inconsistently. In this context, the learned Government Advocate (crl.side) relied on the judgment of the Hon'ble Apex Court in the case of ***Vinod Kumar /vs/ State of Punjab*** reported in ***2015(3) SCC 220 and Rajesh Yadav & another /vs/ State of U.P.*** Reported in ***2022 LiveLaw (SC) 137.*** He would further submit the First Information Report had been sent to the Court even prior to the Trap procedure and it cannot be doubted. The prosecution by cogent evidence has proved the demand, acceptance and recovery and the Trial Court had rightly

convicted the appellant and pray for dismissal of the present appeal.

14. In reply, Mr. A. Nagarajan, learned counsel for the appellant would submit that the delay in cross examining the witnesses cannot be attributed against the accused. The accused had deferred cross examining the witnesses, till the examination of Trap Laying Officer. However, the Trap Laying Officer was examined as P.W.8 only on 03.04.2013 and immediately, after the examination of the Trap Laying Officer, on 03.04.2013, the accused had filed an application under Section 311 Cr.P.C to recall the witnesses and that was allowed within 5 days. However, the respondent took almost two years to produce the witnesses for cross examination and thereby, the accused cannot be held responsible for the delay in cross examination.

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

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

17. The case of the prosecution as culled out from the records would show that one Srinivasan, who is the friend of Kumar, defacto complainant (P.W.2) was owning three grounds of land in Rajiv Garden, Thoraipakkam and he intended to put up a construction. For this purpose, he had applied for a temporary electricity connection for the construction shed. In this context, the defato complainant (P.W.2) had gone to the office of the accused on 10.08.2006 and had given an application for temporary electricity connection. At that time, the appellant/accused demanded a sum of Rs.5,000/- and when it was questioned by the defacto complainant (P.W.2), the accused had informed him that Rs.1600/- was towards Government fees and balance amount of Rs.3400/- should be given as illegal gratification, which will be shared between himself and his staff in his office. Then, P.W.2 had come out of the office and contacted his friend Srinivasan, who in turn, he advised him to lodge a complaint against the accused and asked the defacto complainant to use R.5000/- from the Company cash. Again, the defacto complainant met the accused and asked when should the amount be paid, the accused informed him to come on 11.08.2006 between 9.00 a.m., and 10.00 a.m. Since the defacto complainant was not willing to pay the bribe amount, on the same day, at 2.15 p.m., he has lodged a complaint before the Deputy Superintendent of Police, Vigilance and Anti Corruption, City Special Unit-III, Chennai and gave the complaint (Ex.P.2).

18. On receipt of Ex.P.2-complaint, the Deputy Superintendent of Police, Vigilance and Anti Corruption, had forwarded the same to the Inspector of Police (P.W.8), who is the Trap Laying Officer. PW8 registered a case in Crime No.06/AC/2006 against the accused under Section 7 of the Prevention of Corruption Act, 1988. The printed First Information Report is Ex.P.3. Thereafter, P.W.8-Trap Laying Officer, arranged two official witnesses namely P.W.3 Surendar and K.R.Sethumathavan. On the next day of the complaint, i.e. on 11.08.2006, when the official witnesses had attended the office, P.W.8 had introduced P.W.2-defacto complainant to them and handed over the complaint and First Information Report to the official witnesses to make them get acquainted with the facts of the case. Thereafter, P.W.2 had handed over the bribe amount of Rs.5,000 (Rs.500 x 10) to the official witness Mr. Sethumathavan and asked him to count and note down the serial numbers of the said currency notes. Subsequently, Sodium Carbonate solution was prepared in two glass tumblers and the official witness Mr.Sethumathavan was directed to dip the fingers of both his hands in the Sodium Carbonate solution. The colour of the solution did not change. Thereafter, the currency notes were smeared with phenolphthalein powder and the official witness Mr.Sethumathavan was again asked to count the currency notes and to dip the fingers of both the hands in the glass tumblers. Now, the Sodium Carbonate

solution has turned pink. The chemical test was demonstrated to the official witnesses and the defacto complainant and the importance of the above test and the scheme of the trap proceedings was explained to P.W.2, P.W.3 and other official witness. The tained money was handed over to P.W.2 with 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-Surender was asked to accompany P.W.2- the defacto complainant and observe the conversations between P.W.2-defacto complainant and the appellant/accused. Ex.P.4-Entrustment Mahazar was prepared by P.W.8 in the presence of P.W.2, P.W.3 and yet another official witness between 7.45 and 8.45 a.m.

19. P.W.8-Trap Laying Officer along with P.W.2-defacto complainant and P.W.3-Surender, official witness and the other official witness Sethumathavan (not examined) with the police party proceeded to Tamil Nadu Electricity Board, Thoraipakkam around 9.30 a.m., and reached the office around 10.00 a.m. P.W.2 -defacto complainant and P.W.3 official witness went inside the office and met the accused and as per his advice, they met P.W.5-Rajavelu, Commercial Inspector. P.W.2 and P.W.5 alone went to Rajiv Garden for visit and returned to office around 11.00 a.m. Thereafter, P.W.5-Commercial Inspector gave Ex.P7-Advice slip and the accused put his

signature on that slip. Thereafter, on demand, P.W.-2 gave Rs.5000/- to the accused. After counting the same, the accused kept the same on the right side pant pocket. Thereafter, P.W.2-defacto complainant came out of the office and gave the pre-arranged signal. P.W.8-Trap Laying Officer along with police party and official witnesses went to the spot and enquired P.W.2 about the happenings, P.W.2 - defacto complainant identified the accused. Thereafter, P.W.8-Trap Laying Officer introduced himself to the accused and after preparing the Sodium Carbonate Solution in M.O.2 and M.O.3, conducted phenolphthalein test on both the hands of the accused and the same proved positive. Thereafter, P.W.8 recovered the the tainted money from the appellant/accused, which was received from P.W.2-the defacto complainant,. P.W.8 verified the serial numbers of the currency notes recovered from the accused with the serial numbers in Ex.P.4 - Entrustment Mahazar and they were found to be tallied. Thereafter, P.W.8 enquired the accused and recovered the Advice slip,Ex.P.7. In the presence of official witnesses PW8 prepared Ex.P.5 Seizure Mahazar and arrested the accused .

20. Thereafter, P.W.8 proceeded to the house of the accused and search was made in the presence of official witnesses. He had prepared Ex.P.6-Search Report. As per Ex.P.6, nothing was recovered in the house search. Thereafter the accused was released on bail. P.W.8, later handed over the case records to P.W.9 for further investigation. On receipt of the same, on 31.08.2006, P.W.9

went to the place of occurrence and prepared Ex.P.12-Rough Sketch. P.W.9, after receiving Ex.P.10-Chemical Analysis Report confirming the handling of the money by the accused, had examined the witnesses and recored their statements. He also obtained Ex.P.1-Sanction order and had laid charge sheet against the accused under Sections 7, 13(1)(d) r/w.13(2) of Prevention of Corruption Act 1988.

21. It is the case of P.W.2 that he had gone to the office of the accused on 10.08.2006 and met the accused at 10.30 hours during which the accused had asked for illegal gratification. Since he was not inclined to give the money he had given the complaint on the same day at 2.15 p.m., and FIR was registered at 2.30 p.m. The defacto complainant was asked to come on the next day at 7.30 am and that an entrustment mahazar Ex.P.4 was prepared between 7.45 and 8.45 in the presence of P.W.3 and yet another witness Sethumathavan. In this case, when the evidence of P.W.2 is analysed with the evidence of P.W.3, P.W.3 has deposed that on 10.08.2006, at 10.30 am., when he was available in his office, the Trap Laying Officer had visited his office and informed about the case. It shows that P.W.3 was informed by the Trap Laying Officer, even prior to the registration of the case. It is the further evidence of P.W.3 that as summoned by the Trap Laying Officer-P.W.8, he had gone to the office of the Trap Laying Officer on the next day, i.e. on 11.08.2006 at 10.30 a.m. and only after he reached the office, he was introduced to P.W.2 and one

Sethumathavan and in his presence the procedures relating to the Trap were demonstrated and Entrustment mahazar was drawn after his arrival after 10.30 a.m., where as the evidence of P.W.2 is that he had gone to the office of Trap Laying Officer on 11.08.2006 at 7.30 a.m., and that Entrustment Mahazar was prepared between 7.45 a.m. and 8.45 a.m. Further, P.W.3 had also subscribed his signature in the Entrustment Mahazar., thereby creating doubt with regard to the Trap Laying Procecdures by the prosecution.

22. Further it is the evidence of P.W.2 that after the pre-Trap proceedings, he along with the witness and the police team proceeded to the place of occurrence and reached the office of the accused at 11.00 a.m. According to prosecution, the accused was not available at the office at that time and he came to the office after some time. It is further case of P.W.2 that on seeing him and the shadow witness, the accused had asked him to contact P.W5, the Commercial Inspector and had asked the Commercial Inspector to visit the spot and come with the Inspection Report before payment of amount. It is the case of P.W.2 that he along with P.W.5 Commercial Inspector had gone to the site for inspection and it is his specific case that the shadow witness P.W.3 did not accompany them to the spot, whereas it is the categorical evidence of PW.3 that he went along with P.W.2 and the Commercial Inspector, P.W.5 to the spot for Inspection and they came back to the office

from the place, where electricity was to be given. The material contradiction in the evidence of P.W.2 and P.W.3 with regard to the time of the First Information Report, visitation by Trap Laying Officer to the office of P.W.3 and timing of Entrustment Mahazar creates a doubt in the prosecution case. The sequences narrated by the prosecution and the manner in which the Trap Proceedings has been conducted shows that it is a stage managed trap. The material contradictions with regard to P.W.2 and P.W.3 accompanying the Commercial Inspector, P.W.5 creates a serious doubt with regard to the pre-Trap proceedings.

23. Now, when coming to the question of demand, it is the case of P.W.2 that when he met the accused, he asked him whether he had brought the money and that he had taken out 10 notes of Rs.500/- denomination and handed over the same to the accused. On receipt of the same, he asked the accused to count the same and that the accused had counted the same and kept it in the right pocket. It is his specific case that when these things happened Surender- P.W.3 was along with him and thereafter, they came out of the office and gave the pre-arranged signal. Whereas P.W.3 has stated that they had gone to the office of the accused at 10.30 a.m., and the accused was not available at the office and he had come to the office after half an hour and only thereafter, P.W.2 had requested for connection. He had also stated that the accused had

told him that without seeing the place, the advice slip cannot be raised and thereafter, he along with P.W.2 and P.W.5 Commercial Inspector had gone to the land to which electricity service was sought for. Later, they returned to the office and the Assistant had issued a slip. Thereafter, he along with P.W.2 had gone to the room of the accused and at that time, accused is alleged to have asked whether the amount is correct. He had also deposed that P.W.2 had handed over the amount of Rs.5000/- to the accused and that he had received it and kept it in his pant pocket. It is his version that thereafter, he along with P,W.2 had come out of the accused and given the pre-arranged signal and based on the signal, P.W.8-Trap Laying Officer had forayed into the office and had enquired the accused, whether he had received the money and that the accused had immediately taken out the money from his pocket and shown it. P.W.8-Trap Laying Officer had received it and it is specifically brought out during trial. It is the specific case of P.W.3 that immediately, Trap Laying Officer had enquired as to who is the superior officer of the appellant and thereafter, he had sent intimation to the Superior Officer and only after the arrival of the Superior Officer to the office, he had conducted the phenolphthalein test on the accused. Thereafter, the money was shown to be recovered and Ex.P5 Seizure Mahazar was prepared and later the accused was taken to his house and house search was conducted. It is also to be noted that it is specific case of P.W.3 that Trap Laying Officer had visited him at his office on the previous day, i.e. on 10.08.2006 at 10.30 a.m. and informed him about the case, whereas the fact remains that the complaint was given only at 2.15 p.m. on 10.08.2020 and the case was registered 2.30 pm., on the same day. Therefore, the alleged demand stated to have been made by the accused on 10.08.2016 at 11.00 a.m is not established by the prosecution and the fact that the Trap Laying Officer-P.W.8 visiting P.W.2 in the morning hours at 10.00 a.m. also creates a doubt. Strangely P.W.2, the defacto complainant, during cross examination, has totally not supported the case of the prosecution. In his cross examination, P.W.2 has stated that he along with the Assistant had been shunting to the office of the accused for about a month for getting connecting and that he had not seen the accused during such time. He also stated that on 10.08.2006, he only sent his assistant and that he had not met the accused personally. This version of the PW2 is strange and it is not supporting the case of the prosecution with regard to the demand on 10.08.2006. PW2 also stated that after entering the office he had handed over the money without being demanded by the accused. He had also admitted that the accused had refused to receive the money and directed the Commercial Inspector, Mr.Rajavelu, (P.W.5) to visit the place and only thereafter he could pay the money. PW2 also deposed that he had put the money in a cover and had requested the accused to receive it stating that he is going out of town on the next day. P.W.2 had been treated hostile and he had been cross examined by the prosecution, however, nothing worthwhile have been elicited in his cross examination.

24. P.W.3 in his cross examination has deposed that when he along with P.W.2 had gone to the office of the accused and given the money, the accused refused to receive the money and advised them to visit the spot and told that only thereafter, he can issue a slip. It is his version in cross examination that he, P.W.2 and P.W.5-Commercial Inspector have gone to the land for which electricity connection was sought and after coming back when P.W.2 had given the money to the accused, the accused had refused to receive the money stating that amount should be paid to the Revenue supervisor. At the time P.W.2 had gone to meet the Revenue Supervisor and he had come back to the room of the accused along with Revenue Supervisor and that the accused had asked him to enter some details regarding the Advice Slip in the computer and had asked P.W.2 to come on the next day and at that time P.W.2 had handed over the money and asked him to receive the fees and pay it on the next day but since the accused had refused to receive the amount, he had placed the amount on the table and thereafter, P.W.2 had given the pre-arranged signal to the Trap Laying Officer. Strangely, P.W.3 has not been treated hostile and he has not been cross examined by the prosecution. The evidence of P.W.3 in this regard had been left un-controverted by the prosecution and thereby the demand on

11.08.20066 has not been proved.

25. It is a settled proposition of law that even if any witness is treated as hostile, the material portion of the evidence, which supports the prosecution case can be accepted and the same can be held against the accused to prove the prosecution version. Now, analysing the evidence of PW2 and 3, the case is alleged to have been set in motion on the complaint given by P.W.2 on 10.08.2006 under Ex.P.2. The Trap Laying Officcer-P.W.8 has received the complaint with an endorsement and registered a case in Crime No06/AC/2006 under Section 7 of the Prevention of Corruption Act on the same day at 2.30 p.m. But, strangely, it is the evidence of P.W.3 - shadow witness that the Trap Laying Officer/PW8, had met him on 10.08.2006 itself at 10.30 a.m. at his office and had spoken about the case. It shows that the process had been started even before the complaint was registered on 10.08.2006 at 2.15 p.m., Further, it is also the case of P.W.2 that he was asked to come on the next day at 7.30 a.m., along with money and that he had gone there at 7.30 a.m. and the entrustment proceedings were done on the same day between 7.45 a.m. and 8.45 a.m., where as it is the case of P.W.3 that he had come to the office of the Trap Laying Officer/P.W.8 only at 10.30 a.m., and thereby creating a doubt with regard to the preparation of entrustment mahazar in the presence of P.W.3 as claimed by the prosecution. The explanation of the Trap Laying

Officer/PW8 that the procedure of the trap was explained to the defacto complainant and other witnesses at the relevant point of time is also highly doubtful. It is clear that P.W.3 could not have seen the entrustment of cash to PW2 or preparation of entrustment mahazar and proceedings relating to the pre-trap procedures could not have been made known to PW3.

26. Now, coming to the events at the time of trap, it is the specific case of P.W.2 and P.W.3 that when they had gone to the office, the accused was not available and that they have waited for half an hour and the accused had come latter and when P.W.2 had handed over the money to him, the accused had refused to receive the money and directed P.W.2 to go to the spot along with P.W.5-Commercial Inspector, who is to inspect the land, to which electricity service connection was sought for. After such inspection, they came back to the office. It is the specific case of the P.W.2 that he alone along with the Commercial Inspector (P.W.5) Rajavelu, had gone to the place and had returned back to the office after half an hour. Where as it is the case of P.W.3 that he along with P.W.2 and P.W.5 had gone to the spot and later came back to the office. This is a material contradiction with regard to the pre-trap proceedings. Further on a careful reading of the evidence of P.W.2 and P.W.3 with regard to the demand, both of them have not specifically spoken about any demand being made by the accused. Further, it is also the case of P.W.3 that

the accused had refused to receive the amount and P.W.2 had requested him to receive the money and despite the objection by the accused, he had kept the cash on the table and thereafter, made the pre-arranged signal. At the cost of repetition, it is to be noted that P.W.2 has been treated hostile and nothing worthwhile has been elucidated from his cross-examination and strangely in this case, P.W.3 has not been treated hostile and his evidence in chief examination has been left uncontroverted by the prosecution. Further coming to the trap proceedings, it is the specific case of P.W3 that even before phenolphthalein test was conducted the Trap Laying Officer/P.W.8 had asked the accused for money and he had taken the money out of his pocket and handed over it to P.W.8 and only thereafter, his superior officer was called and only after the arrival of the superior office phenolphthalein test was conducted at the office of the accused. It was also confirmed by the evidence of P.W.4, the Superior officer,who had come from his office, which is 10 k.m. away. The timing and the manner, in which, the Trap proceedings were conducted also creates a doubt in the prosecution case.

27. It is also submitted that M.Os.1 to 4, namely, the wash collected after phenolphthalein test from the hands of the right and left hand of the accused and the wash collected from the pant of the accused though stated to be collected on the same day, i.e., on 11.08.2006, have been sent to the Court by

the prosecution on 18.08.2006 after delay of 7 days. Thereafter, requisition has been sent to the Forensic Department on 22.08.2006. The delay also creates a doubt with regard to the trap proceedings.

28. In this case, a written statement has been filed by the accused under Section 313(5) Cr.P.C., wherein he had explained the circumstances under which the amount was thrusted and the circumstances under which he was arrested. He has also spoken about the enquiry being done by the Trap Laying Officer, P.W.8, after the arrest and his explanation regarding the same. This was also confirmed by his Superior Officer-P.W.4, who was present at the time of trap. However, though the accused was enquired, his statement has not been recorded.

29. It was argued by the learned Government Advocate (crl.side) by relying on the judgment of this Hon'ble Apex Court in Vinod Kumar /vs/ State of Punjab reported in 2015 (3) SCC 220 and Rajesh Yadav /vs/ State of U.P. in 2022 Livelaw (SC) 137 that the witnesses have been cross examined after two years and that the accused cannot take advantage of the contradictions in the evidence of the witnesses during cross examination as it was done after a long time. In this regard, it is to be seen that P.W.2 was examined in chief on 08.04.2009 and P.W.3 had been examined in chief on 26.08.2010 and P.W.8

Trap Laying Officer had been examined in chief on 03.04.2013. On that day, cross examination of P.W.8 was deferred and immediately on the same day, the accused had filed an application under Section 311 Cr.P.C., seeking to recall P.Ws. 2, 3, 4 and 5 and it was allowed within 5 days, i.e. on 15.05.2015, whereas the prosecution has produced P.W.2 before the Court on 11.02.2016 and P.W.3 on 24.02.2016 and on the same day of their appearance, they have been cross examined by the accused without any delay. In such circumstances, when the witnesses have been produced after about 9 months by the prosecution, the accused cannot be faulted for the delayed cross-examination. Hence, Vinod Kumar's case referred by the prosecution cannot be made applicable to the facts of the present case. From the cumulative analysis of the evidence on record, this Court is able to see that there are doubts with regard to the registration of the case, pre-trap proceedings, demand at the time of trap and the post trap proceedings. Further the evidence of P.Ws.2 and P.W.3 are not clear and cogent relating to the alleged demand made by the accused.

30. It is a case of trap registered for the offences under Sections 7, 13(2) r/w.13(1)(d) of the Prevention of Corruption Act. Now, coming to the aspect of presumption under Section 20 of the Prevention of Corruption Act, it is settled law that presumption under Section 20 of the Act can be drawn only on the proof of acceptance of illegal gratification and that such gratification was received for doing or forbearing to do any official act. Further proof of

acceptance of illegal gratification can follow only if there is proof of demand.

31. As discussed above, there are several inherent infirmities in the prosecution case and the material contradictions in the evidence of P.W.2 and P.W.3 regarding the demand said to have been made by the accused, registration of the case, summoning of the official witnesses, events during the trap proceedings, namely, acceptance of the money by the accused, recovery of money and the phenolphthalein test, also creates a serious doubt. The prosecution has failed to prove its case beyond all reasonable doubts, i.e.,foundational facts have not been proved. The accused by examining the witnesses has rebutted the presumption by cross examining the witnesses and also filing the statement under Section 313 of Cr.P.C.

32. In this regard, it would be useful to refer to the following paragraphs in ***N.Vijayakumar /vs/ State of Tamilnadu*** reported in ***2021(3) SCC 687:-***

> " *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/vs/ CBI and in B.Jayaraj v.state of A.P. In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of*

Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the Trial Court.

27. The relevant paras 7, 8 and 9 of the judgment in B.Jayaraj read as under: (SCC pp.58-59)

"7. In sofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration, reference may be made to the decision in C.M.Sharma v. State of A.P. And CM.Girish Babu v. CBI.

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly *handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint(Ext.P-11) before LW9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW1 and the contents of Ext.P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned Trial Court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.*

9. Insofar as the presumption permissible tobe drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification *that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."*

33. Analyzing the facts of the case in consonance with the above decision, this Court is of the opinion that the prosecution has failed to prove its case beyond reasonable doubt and the accused had rebutted the presumption against him and thereby the accused is entitled to benefit of doubt. The Trial Court, without properly analyzing the evidence, has found the accused guilty and thereby, the judgment of the Trial Court is liable to be set aside.

34. In the result, the Criminal Appeal is allowed. The judgment of conviction and sentence passed by the learned Special Judge and Chief Judicial Magistrate, Chengalpet, Spl.C.C.No.6 of 2007 is hereby set aside and the appellant/accused is acquitted from all the charges. Fine amount, if any, paid by the accused shall be refunded. The bail bond, if any executed by the accused stand discharged.

18.12.2023

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

To

1. The Special Court/ Chief Judicial Magistrate Court,
   Chengelpet

2. The Inspector of Police
   Vigilance and Anti Corruption,
   City Special Uniot-III, Chennai.

A.D.JAGADISH CHANDIRA, J.

mrp

Crl.A.No.853 of 2016

18.12.2023