



Crl.A.No.211 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

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State represented by
The Public Prosecutor,
High court, Madras-600 104.
Vigilance and Anti Corruption,
Salem.
(Crime No.09/AC/2011)

... Appellant/Complainant

Vs.

R.Sasikumar

... Respondent/accused

PRAYER:The Criminal Appeal is filed under Section 378(1)(b) of Cr.P.C., to set aside the judgment of acquittal passed in Spl.C.C. No.70/2014, dated 24.10.2016 by the Special Judge, Special Court for trial of cases under Prevention of Corruption Act at Salem and convict the respondent/accused as charged in accordance with law.

For Appellant : Mr.S.Udayakumar
Government Advocate (Criminal side)

For Respondent : Mr.S.Karthikeyan



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JUDGMENT

This Criminal Appeal is filed by the State as against the judgment dated 24.10.2016 made in Special C.C.No70/2014, by the Special Judge, Special Court for trial of cases under Prevention of Corruption Act at Salem, acquitting the respondent/accused for the offences under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The respondent/accused viz., R.Sasikumar was employed as Commercial Assistant in the office of the Assistant Engineer (O&M) TANGEDCO, Thirumanur, Vazhapadi Taluk, from 06.07.2009 to 29.07.2011 and as such, the accused is a public servant as defined under Section 2 (c) of the Prevention of Corruption Act 1988.

3. The case of the prosecution as culled out from the testimonies of the prosecution witnesses is as under:

3.1 P.W.2-Manickam, the defacto complainant, who is a resident of Veppilaipatty Village, had presented Ex.P4-application on 18.05.2011 before the Assistant Engineer of Thirumanur TNEB Branch office for



securing electricity service connection to his thatched house. On the same day, P.W.2 remitted a sum of Rs.50/- towards application and registration fees and secured proper receipt for the same.

3.2. A week thereafter, the Commercial Assistant-Sasikumar(accused) and Foreman-Jayaraj employed in the Tirumanur TNEB office had visited the house of P.W.2 and measured the distance between the electric pole and the house of P.W.2. Subsequently, the accused came to the house of P.W.2 and informed him that a sum of Rs.1550/- has to be deposited in the EB office for installing meter. Accordingly on 10.06.2011, P.W.2 went to the Tirumanur EB office, remitted a sum of Rs.1550/- and secured two receipts for the same. Ex.P12 series are the receipts issued at the Tirumanaur EB office for the above referred remittances made by P.W.2.

3.3. A week thereafter the accused brought an electric post in a tractor and unloaded the same near the house of P.W.2. As soon as the electric post was unloaded, the accused demanded a sum of Rs.1500/- from P.W.2 stating that he will take necessary steps for effecting service connection by immediately erecting the electric pole. When P.W.2 expressed his inability to pay the money, the accused instructed P.W.2 that if he arranges the money, he will come on the next day.



3.4. Subsequently on 18.07.2011 at about 7.00 a.m., the accused had visited the house of P.W.2 and enquired as to whether P.W.2 has arranged the money. Though P.W.2 expressed his inability to raise the money, the accused told P.W.2 that the service connection would not be effected without payment of money. The accused also directed P.W.2 to arrange the money so that on the next day on his way to the office he would collect the same, but on the next day, the accused did not come to the house of the P.W.2.

3.5. Since P.W.2 was not willing to pay the bribe to the accused, on 28.07.2011 at about 4.00 p.m., P.W.2 went to the Salem Vigilance Office and made an oral complaint with P.W.13, the Inspector of Police, Salem Vigilance and Anti-Corruption Office. P.W.13 reduced the oral complaint to a written complaint Ex.P2 and conducted a discreet enquiry and thereafter, registered Ex. P24-First Information Report in crime No.9/AC/2011 for an offence under Section 7 of the Prevention of Corruption Act.

3.6. P.W.13 had directed him to meet at 4.00 a.m., on the next day morning, thereby, P.W.2 stated that it was very difficult for him to come from his residence at 4.00 a.m., and therefore, with the permission of P.W.13, he had stayed in the Salem Vigilance Office.



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3.7. Subsequently, P.W.13 sent separate requisition letters to the Chief Educational Officer, Salem and Superintending Engineer, National High Ways Department, Salem, seeking to render assistance by providing witnesses to carry out the intended trap. On 29.07.2011 at about 4.00a.m., P.W.3-Elangovan, Assistant then employee of the office of the Chief Educational Officer, Salem, and one Sathiyamurthy, Assistant, then employee of the office of the Superintending Engineer, National High Ways circle, Salem, appeared before P.W.13. After formal introduction with P.W.2, P.W.3 and witness Sathiyamurthy were appraised of the case details by furnishing the copy of complaint and the FIR. Thereafter, P.W.2, the complainant, had handed over a sum of Rs. 1500/- to P.W.13 in the denomination of two five hundred and five one hundred rupee currency notes. With the help of P.W.3 Elangovan and the witness-Sathiyamurthy, P.W.13 noted the serial numbers of the currency notes(M.O.3) in the Entrustment Mahazar -Ex.P3. Thereafter, P.W.13 with the assistance of Head-constable-Murugan, conducted model Phenolphthalein test on M.O.3 series currency notes and explained the significance of the test of all concerned. M.O.3 series, Phenolphthalein coated currency notes, were entrusted to P.W.2 by P.W.13 through witness Sathiyamurthy to be handed



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over to the accused on demand.

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3.8. After completing the other formalities, P.W.13 gave instructions to P.W.2 to wait in the house for the visit of the accused and tender the Phenolphthalein coated money of Rs.1500/- to the accused only on demand. P.W.13 further instructed P.W.2 that if the accused demands and receives the money, to display signal by combing his scalp hair backwards thrice with both hands. P.W.13 gave instructions to P.W.3 to accompany P.W.2 and observe all the events carefully. At about 5.30 a.m., P.W.13 along with P.W.2, P.W.3, witness Sathyamurthy and rest of the members of the raiding party left the Salem Vigilance office and proceeded towards Veppilaipatty Village in a police jeep. At about 6.30a.m., the police jeep was stopped at a floor bridge situated near Veppilaipatty and all the members of the raiding party got down from the jeep. After reminding the earlier instructions, P.W.13 sent P.W.2 and P.W.3 to the house of P.W.2 with instruction to wait for the accused. P.W.2 and P.W.3 by walk reached the house of P.W.2 at about 6.40a.m., P.W.13, witness Sathyamurthy and the rest of the members of the raiding party were stationed at a distance from the house of P.W.2.

3.9. At about 10.00 a.m., the accused came to the house of P.W.2 and on nearing P.W.2's house, the accused called P.W.2 by name. Immediately,



P.W.2 and P.W.3 moved towards the accused and after greeting the accused,

P.W.2 pleaded the accused to effect service connection immediately, since it is a rainy season. The accused had enquired P.W.2 that whether P.W.2 is having Rs.1500/- as demanded by him. The accused told P.W.2 that if money is paid, he will effect service connection on Monday. P.W.2 took the Phenolphthalein coated money of Rs.1500/- from his left side shirt pocket and handed over the same to the accused. The accused, who received the money with his right hand, counted the same with both hands and held the currency notes in his right hand in a folded form. Immediately, P.W.2 moved from there and displayed the pre-arranged signal to P.W.13 and witness Sathyamurthy. On noticing the signal, P.W.13 along with witness Sathyamurthy came there and on enquiry by P.W.13, P.W.2 and P.W.3 narrated the events to P.W.13 and P.W.2 identified the accused to P.W.13. P.W.13 along with P.W.3 and witness Sathyamurthy moved towards the accused and after self introduction, P.W.13 introduced P.W.3 and witness Sathyamurthy to the accused. The accused became nervous and immediately, he threw the currency notes on the floor and pleaded to save him. P.W.13 pacified the accused and got him seated in the cattle shed situated near the house of P.W.2. On the instructions of P.W.13, P.W.2 left



the place immediately and waited in his house.

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3.10. Thereafter P.W.13 conducted Phenolphthalein test on both the hands of the accused by preparing Sodium Carbonate solutions in two glass tumblers. Since the test turned positive by exhibiting colour change, P.W.13 collected the resultant solutions separately in two glass bottles duly capped, sealed and labelled with specific marks. P.W.3, P.W.13 and witness Sathyamurthy made initials on the said labels. M.O.1 and M.O.2 are the bottles containing the right and left hand wash of the accused respectively. Later, at about 10.15 a.m., P.W.13 caused the arrest of the accused. When P.W.13 enquired the accused about the money, the accused informed P.W.13 that he has thrown away the money. The currency notes found on the ground were collected and counted with the help of witness Sathyamurthy. A sum of Rs.1500/- in the denomination of two five hundred rupee and 5 one hundred rupee currency notes were compared with the serial number of the currency notes mentioned in the Entrustment Mahazar, which was found tallied. P.W.13 seized the bribe money of Rs. 1500/- and when enquired the accused with regard to the application given by P.W.2, the accused informed P.W.13 that the application was kept at the Thirumanur EB office.



3.11. Thereafter, P.W.13 prepared Ex.P5-Seizure Mahazar in respect of the post-trap events that took place near the house of P.W.2 between 9.30a.m., and 11.30a.m., and the same was attested by P.W.3, P.W.13 and witness Sathyamurthy. A copy of seizure mahazar was furnished to the accused on due acknowledgement. Thereafter, P.W.13 prepared Ex. P6-Rough Sketch in respect of the topography of the place of occurrence and the same was attested by P.W.3 and witness Sathyamurthy, Then, P.W.13 along with the accused, P.W.3, witness Sathyamurthy and rest of the members of the raiding party left the place and proceeded to the Thirumanur EB office and P.W.13 enquired the accused in respect of the application of P.W.2. The accused took the application file from his table drawer and produced before P.W.13. On enquiry, PW9-Foreman Chakkaravarthy had produced the Application Register, Ex.P9-Demand Register, Ex.P12-series of receipts, Ex. P13-Work Order and Estimate Card and Ex.P14-Attendance Register before P.W.13 for perusal. Attested copy of Page Nos. 6 and 47 of the Application Register was marked as Ex.P7 and Ex. P8 respectively. Attested copy of pages 140 and 141 of Ex.P9-Demand Register containing relevant endorsements made on 18.05.2011 was Ex.P10. The attested copy of pages 148 and 149 of Ex.P9 Demand Register containing entries for the



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payment of Rs. 1300/- and Rs.250/-made by P.W.2 on 10.06.2011 was Ex.P11.

3.12. PW8, Padmapriya, the then Assistant Engineer of Thirumanur EB office, who appeared before P.W.13 upon intimation, narrated about the process done in respect of the application preferred by P.W.2 to him. P.W.13 seized Ex.P7 to Ex.P14 documents for the purpose of investigation. Thereafter, Ex.P15 post-trap mahazar prepared by P.W.13 in respect of the events that took place at the Thirumanur EB office between 12.30 noon and 2.30 p.m., was attested by P.W.3, P.W.13 and witnesses Sathyamurthy and a copy of Ex.P15 mahazar was furnished to the accused on due acknowledgement. Then, P.W.13 sent Ex.P25-Advance Intimation Letter to the Jurisdictional Court with regard to the proposed search at the house of the accused. At about 2.45p.m., P.W.13 took the accused, two official witnesses and rest of the members of the raiding party to the house of the accused situate at D.No.180/C4, Gopalapuram, Attur, and conducted search at the house of the accused between 3.00p.m., and 3.30p.m., but no incriminating materials were seized during the house search. Ex. P16-House Search List prepared by P.W.13 was attested by P.W.3 and witness Sathyamurthy. A copy of the House Search List was furnished to the



accused on due acknowledgement. Thereafter, P.W.13 proceeded from the house of the accused along with the accused, the two official witnesses and rest of the raiding party and reached the Salem Vigilance office by 4.30p.m., P.W.3 and witness Sathyamurthy were sent home by P.W.13 with instruction to appear before the Salem Vigilance Office on the next day.

3.13. Further, P.W.13 sent the accused to judicial custody and also forwarded the case properties and the documents seized during the trap proceedings to the jurisdictional court through Ex.P26 under Form-91. Ex.P27 was the letter received from the Chief Educational Officer Salem and Ex.P28 was the letter received from the Superintending Engineer, Highways Department, Salem. Thereafter, as per the instructions of the Superintendent of Police, West Zone, P.W.13 handed over the case records to P.W.14 Selvakumar, the then Inspector of Police, V & AC, Salem for further investigation.

3.14. On receipt of case records, P.W.14 examined all the relevant witnesses and recorded their statement under Section 161 of Cr.P.C. He had also collected attested copy of Ex.P17-Estimate Card, Ex. P18-Copy of estimate and recommendation of AEE, TNEB, Vazhapady, Ex. P19-true copy of Application Register of AE, Vazhapady and Ex. P20-letter of



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Assistant Engineer (O&M) Thirumanur. P.W.14 sent Ex. P21-Requisition letter to the jurisdiction Court to send the relevant case properties for chemical analysis to the Forensic Science Laboratory, Chennai.

3.15. P.W.11-Sambu, the Superintendent of the Chief Judicial Magistrate Court, Salem, on receipt of Ex.P21-requisition letter, vide orders of the Court, sent the relevant case properties to the Forensic Science Laboratory, Chennai, for analysis and report through Ex.P22-Requisition letter.

3.16. On receipt of Ex.P22-Requisition letter along with the relevant case properties, P.W.12, the Scientific Officer, Forensic Science Laboratory, Chennai, had conducted analysis on the case properties and issued Ex.P23-Chemical Analysis Report. Thereafter, P.W.14 recorded the statements of P.W.12, P.W.4 and further statement of P.W.2 under Section 161 of CrI.P.C., and had prepared an investigation report and submitted the same before the Director of the Directorate of Vigilance and Anti-Corruption, Chennai.

3.17. On 11.07.2012, P.W.14 met P.W.1, Additional Chief Engineer, TANGEDCO, Salem, at his office and produced copies of all relevant documents before P.W.1 and appraised the case details to P.W.1. P.W.1 on



receipt of the copy of investigation report and copies of connected documents, on consideration of the materials placed before him, had passed Ex.P1-Sanction Order dated 19.10.2012 according sanction to prosecute the accused for the offences under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and forwarded the same to the Directorate of Vigilance and Anti- Corruption, Chennai. P.W.14, on receipt of Ex.P1-sanction order, had examined P.W.1 and recorded the statement under Section 161 Cr.P.C. After completing the investigation, P.W.14 submitted the final report before court.

3.18. On appearance of the accused, copies of relevant papers were furnished to the respondent/accused under Section 207 Cr.P.C. On behalf of the prosecution, 14 witnesses have been examined as P.Ws.1 to 14, while marking Exs.P1 to P28 and also M.Os.1 to 3.

3.19. After completion of the examination of witnesses on the side of the prosecution, the respondent/accused was questioned on the incriminating materials under Section 313 Cr.P.C., and the accused has come out with the version of denial and stated that he had been falsely implicated in this case. However, no witness was examined on the side of the defence.



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3.20. The trial Court, after hearing the arguments, found the accused not guilty for the offences punishable under Section 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and acquitted him under Section 248(1) of Cr.P.C. Challenging the acquittal, the State has filed this Criminal Appeal.

4. Mr.S.Udayakumar, learned Government Advocate (Criminal Side) appearing for the State, would submit that the prosecution, by examining P.W.2-defacto complainant and P.W.3-official witness had proved the demand made by the accused and the recovery by P.W.13. He would further submit that the evidence of P.W.13-Trap Laying Officer is clear with regard to the recovery of the bribe amount, whereas the learned trial Judge, on erroneous consideration, had acquitted the accused. When the demand, acceptance and recovery are proved by the prosecution by examination of witnesses, the finding rendered by the trial Judge is erroneous. The prosecution has proved the foundational facts by examining P.Ws.2 to 4 and the evidence of P.W.2 is corroborated with the evidence of P.W.3, however, the trial Court, on erroneous appreciation of facts and also wrongly placing reliance on the minor contradictions in the evidence, had rejected the case of



the prosecution and acquitted the accused and thereby, committed a grave error. He would further submit that when the demand and acceptance made by the respondent/accused has been categorically proved by the evidence of P.W.2 and P.W.3 and the trial Court, on erroneous appreciation of evidence, had acquitted the respondent/accused. He would further submit that the impugned judgment of the trial Court in acquitting the respondent/accused in all probabilities is not sustainable and thereby, sought to set aside the same.

5.1. On the other hand, Mr.S.Karthikeyan, learned counsel for the respondent/accused, would submit that for proving charges under Section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, the prosecution is bound to prove beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe and in the absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such an offence. The prosecution has failed to prove its case beyond reasonable doubts. The trial Court, after threadbare analysis of the evidence, both oral and documentary, had come to the correct conclusion that the case has been foisted on the



respondent/accused and the trial Court, after observing the demeanour of the witnesses, finding that the charges have not been proved, had rightly acquitted the respondent/accused.

5.2. The view taken by the trial Judge is a probable and possible one and in such circumstances, the trial Court had acquitted the respondent/accused, giving the benefit of doubt and disbelieving the evidence of prosecution witnesses. The reversal of acquittal is permissible only if the evidence recorded by the trial Court does not reflect any reasonable or plausible or justifiable view, whereas the trial Court, disbelieving the evidence of the prosecution, took a possible and reasonable view which could not be faulted. He would further submit that the right of appeal against acquittal vested with the State Government should be used sparingly and only when the finding of the trial Court is perverse this court can set aside the judgment.

5.3. He would also submit that though it is a consistent case of the prosecution that respondent/accused had made the first demand after unloading electric post near the house of P.W.2-defacto complainant i.e., one week after 10.06.2011, the same was negatived from the evidence of P.W.8, the Assistant Engineer that only after obtaining permission and signature



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from the Assistant Executive Engineer and Assistant Engineer for depositing the charges for installation of the meter, the necessary material can be obtained from the stores of TNEB and thereby, the version of P.W.2 in respect of first demand is unbelievable.

5.4. He would also submit that the prosecution had tried to strengthen the case by improving the evidence of P.W.8, the Assistant Engineer concerned whereas the trial court finding several material contradiction in the testimony of the crucial witnesses had found the respondent not guilty.

5.5. In this case, as per P.W.2-complaint in his evidence before the Court and the statement recorded under 161Cr.P.C., the accused is stated to have told him that he will receive the bribe amount on 28.07.2011 morning. While so, it has not been established as to how 29.07.2011 was fixed by the respondent for fixing the trap and when no date or time was fixed by the accused for the alleged receipt of bribe the case of the prosecution that the trap team waited for the accused on 29.07.2011 from 4.00a.m.,onwards cannot be believed to be true.

5.6. There are material contradictions in the evidence of prosecution witnesses viz., P.W.2, P.W.3 and P.W.13, Trap Laying Officer with regard to the recovery of M.O.3 series of currencies and thereby, the evidence of the



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prosecution witnesses cannot be believed. The trial Court, after properly appreciating the evidence, finding that the prosecution has not proved the case beyond reasonable doubts, had acquitted the accused and no grounds have been made out to interfere with the finding of the trial Court and thereby, the appeal is liable to be dismissed.

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

7. At the outset, before venturing into analysis and assessment of the entire evidence available on record, so as to appraise the reasons assigned by the trial Court for acquitting the respondent/accused herein, it is relevant to refer to few decisions of the Honourable Apex Court in respect of the principles regarding and the power of the appellate Court to interfere in an appeal filed against the judgment of acquittal.



8. In "*Chandrappa v. State of Karnataka*" MANU/SC/7108/2007 :

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

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the



nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

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

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

9. In "*Mrinal Das v. State of Tripura*" MANU/SC/1030/2011 :

(2011) 9 SCC 479, the Hon'ble Supreme Court has held that the appellate Court being the final Court of facts is fully competent to re-appreciate, reconsider and review the evidence and take its own decision keeping in mind that the acquittal provides for a presumption in favour of the accused



and also that if two reasonable views are possible on the basis of the evidence on record the appellate Court should not disturb the findings of the trial Court. The appellate Court can also review the conclusions arrived at by the trial Court both on questions of fact and law and it is the duty of the appellate Court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. Paragraph No. 8 of the aforesaid judgment is quoted hereunder for ready reference:

"8. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court



should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

10. In *Sudershan Kumar Vs. State of Himachal Pradesh* reported in *MANU/SC/1206/2014 : 2014:INSC:889 : (2014) 15 Supreme Court Cases* 666, while referring to Chandrappa's case (supra), the Hon'ble Apex Court at Paragraph 31 of its Judgment has held that it is the cardinal principle in



criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of acquittal. The Appellate Court, in such a case, would interfere only for very substantial and compelling reasons.

11. In *Jafarudheen and others Vs.State of Kerala*, reported in MANU/SC/0531/2022 : ((2022) 8 Supreme Court Cases 440), at Paragraph 25 of its judgment, the Hon'ble Apex Court was pleased to observe as below:

" 25. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C, the appellate Court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate Court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."



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12. The aforesaid view of the Hon'ble Supreme Court has been reiterated in numerous later decisions of the Hon'ble Supreme Court including in "*Vijayakumar Vs. State of Tamil Nadu*, (2021) 3 SCC 687; *Ravi Sharma v. State (NCT of Delhi)*" MANU/SC/0856/2022: 2022:INSC:699 : (2022) 8 SCC 536 and also in *Roopwanti Vs. State of Haryana and others*, reported in MANU/SC/0162/2023 : 2023:INSC:157 : AIR 2023 SC 1199.

13. Now coming to the case on hand, keeping in mind the abovesaid principles laid down by the Honourable Apex Court, regarding interference or non-interference with the judgment of the acquittal by this Appellate Court, it is to be seen as to whether the trial Court had given clear, cogent, convincing and categorical reasons for acquitting the respondent/accused and whether the trial Court took a plausible, reasonable and justifiable view, for which, it is absolutely necessary to analyse and assess the reasons assigned by the trial Court for acquitting the respondent/accused herein, coupled with the entire evidence, both oral and documentary, on record.



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14. In this case, the charges against the respondent/accused are that he had committed the offences punishable under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The allegation against the respondent/accused is that on 18.05.2011, P.W.2, the defacto complainant, a resident of Veppilaipatty Village, had applied for electricity service connection for his thatched house on payment of registration fees of Rs.50/- and a week thereafter, the accused along with wireman visited the house of the complainant and took necessary measurements for effecting service connection and on instructions of the accused, on 10.06.2011 P.W.2 had remitted a sum of Rs.1550/- towards electricity service charges at Thirumanur EB office. A week thereafter, the accused, who had placed an electric post near the house of P.W.2, had demanded a sum of Rs.1500/- as illegal gratification other than legal remuneration from P.W.2. and thereby, had committed the offence.

15. The first and foremost contention raised by the learned Government Advocate(Criminal side) is that when the prosecution had proved the demand, acceptance and recovery by examining witnesses through oral and documentary evidence, the trial Court, on erroneous



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consideration had acquitted the accused. In this regard, it is relevant to analyse whether the demand of Rs.1500/-, alleged to have been made by the respondent/accused, has been proved by the prosecution beyond reasonable doubts. It is the consistent case of the prosecution that the respondent/accused had made the first demand after unloading electric post near the house of P.W.2-defacto complainant i.e.,one week after 10.06.2011. The said fact was negatived from the evidence of P.W.8, the Assistant Engineer that only after obtaining permission and signature from the Assistant Executive Engineer and Assistant Engineer for depositing the charges for the meter installation, the necessary material can be obtained from the stores of TNEB. P.W.8 had further deposed that though an order was passed by the Assistant Executive Engineer on 24.06.2011 vide Ex.P13, the said proceeding dated 02.08.2011 was sent to the Thirumanur EB office and on the receipt of the same, the electric pole was procured from TNEB stores on 03.08.2011 and the service connection was effected to the house of P.W.2 by P.W.9-Chakravarthy, Foreman and P.W.10-Jeyaraj, Wireman by erecting 8' new electric post only on 04.08.2011. The said fact was corroborated with the evidence of P.W.9 and P.W.10. The electric post erected was not shown in the rough sketch by P.W.13-Investigating Officer. Therefore, the



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evidence of P.W.2 cannot be given any weightage, that too, without any independent corroboration and thereby, first demand said to have been made by the accused is unbelievable.

16. The next contention raised by the prosecution in respect of second and third demands alleged to have been made by the accused on 18.07.2011 and 27.07.2011 respectively are concerned, excepting the evidence of P.W.2, the prosecution has not examined any other witness to support its case with regard to the same. Though P.W.4-Jayachitra, the wife of P.W.2 has been examined by the prosecution, her evidence does not support the evidence of P.W.2 either in respect of placing of the electric post near the house of P.W.2 a week after on 10.06.2011 or the demand of illegal gratification alleged to have been made by the accused with P.W.2 on 18.07.2011 and 27.07.2011 respectively. The evidence of P.W.2 cannot be given any weightage, that too, without any independent corroboration in respect of first demand made by the accused and the alleged second and third demand stated to have been made by the accused to P.W.2 on 18.07.2011 and 27.07.2011 respectively also remain not proved.



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17. Yet another contention in respect of final demand for gratification alleged to have been made by the accused with P.W.2-defacto complainant on 29.07.2011 between 9.10 hours and 9.20 hours in front of the house of the accused in the presence of P.W.3-official witness is concerned the case of P.W.2 as per the complaint, the evidence before the Court and the statement recorded under Section 161 Cr.P.C., is that the accused told P.W.2 that he will receive the bribe amount on 28.07.2011 morning. While so, the prosecution was unable to establish on what basis 29.07.2011 was fixed for trap expecting that the accused would receive come and receive the bribe on that day. The demand alleged to have been made is highly suspicious. The recovery is also improbable and highly suspicious and shrouded with doubts. The trial Court had also disbelieved the evidence in respect of recovery of bribe money and had acquitted the accused.

18. The next contention raised is that though P.W.8, the Assistant Engineer, in her chief examination had deposed that electricity connection was effected to the P.W.2's house by P.W.9-Foreman and P.W.10-Wireman on 04.08.2011 by removing the existing pole, P.W.9 did not speak about the same in his evidence and there is no iota of evidence to show that prior to



03.08.2011 an electric post was procured from the TNEB stores for effecting new electricity service connection requested by P.W.2. The trial Court had taken note of the material contradictions in the testimony of the crucial witness with regard to the same and had disbelieved their evidence while acquitting the accused.

19. While analysing the evidence of prosecution witnesses viz., P.W.2 and P.W.3 and P.W.13 in respect of recovery of M.O.3 series of currencies is concerned, P.W.2 had deposed that the accused, after receiving the bribe amount from P.W.2, when he was enquired by P.W.13, he became nervous and threw the notes on the floor whereas P.W.3 had stated that when the accused tried to throw the notes, he was prevented by P.W.13-Trap Laying Officer and P.W.13 had stated that the accused threw the notes on the floor and the same was collected through the help of witness Sathiyamoorthy and thereby, there is no corroboration in the evidence of the prosecution witnesses with regard to the happenings at the time of trap and this aspect also creates suspicion and doubt in the prosecution case regarding the trap and alleged recovery.



20. The Hon'ble Apex Court in ***Bannareddy Vs. State of Karnataka***

reported in ((2018) 5 Supreme Court Cases 790) has held as under:

“10.Before we proceed further to peruse the finding of the High Court, it is relevant to discuss the power and jurisdiction of the High Court while interfering in an appeal against acquittal. It is well-settled principle of law that the High Court should not interfere in the well-reasoned order of the trial court which has been arrived at after proper appreciation of the evidence. The High Court should give due regard to the findings and the conclusions reached by the trial court unless strong and compelling reasons exist in the evidence itself which can dislodge the findings itself.”

21. The trial Court had distinct advantage of observing the demeanor of the witnesses directly. Unless the conclusions and findings reached by the trial court are found to be palpably wrong or based on erroneous view of the law and evidence or if such conclusions are perverse and if allowed to stand, they are likely to result in grave injustice, this appellate Court would be fully justified in interfering with such conclusions. Thus, the law on this issue can be summarised to the effect that in exceptional cases where there



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are compelling circumstances and the judgment under appeal is found to be perverse, the Appellate Court can interfere with the judgement of acquittal.

The appellate Court should bear in mind the presumption of innocence of the accused and further the analysis of evidence by the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner, where the other view is possible, should be avoided, unless there are valid reasons for interference.

22. In this case, as analysed above, in the opinion of this court the prosecution had not even proved the foundational facts, such as, demand, acceptance and recovery of money by independent witness beyond all reasonable doubts and this Court finds no justifiable reason to interfere with the impugned judgment of acquittal. The trial Court, in the opinion of this Court, has not committed any error or illegality or misread the evidence available on record warranting interference of this Court with the impugned judgment of acquittal.

23. In the result, this Criminal Appeal stands dismissed confirming the impugned judgment of acquittal made in Spl.C.C.No.70/2014 dated



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20.10.2016 by the Special Judge, Special Court for trial of cases under the

Prevention of Corruption Act, Salem.

29.11.2023

raa

To

1.The Special Judge,
Special Court for trial of cases under
the Prevention of Corruption Act,
Salem.

2. The Inspector of Police,
Vigilance and Anti Corruption,
Salem.

3.The Public Prosecutor,
High Court, Madras.



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A.D.JAGADISH CHANDIRA,J.

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29.11.2023