IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal No.215 of 2017

V. Nallamuthu .. Appellant

Versus

The State rep. By its
Inspector of Police,
Vigilance and Anti-Corruption Cell,
Cuddalore (Crime No.8 of 2009) .. Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the sentence of imprisonment for one year and fine Rs.1000/-, in default, Rigorous Imprisonment for further three months for the offence u/s.7, 13(1)(d) r/w.13(2) of Prevention of Corruption Act-1988 passed by the learned Special Court-cum-Chief Judicial Magistrate at Cuddalore in Spl.Case No.10 of 2010 by its judgment, dated 15.03.2017 and set him at liberty.

For Appellant : Mr. M. Malaviya,
for Mr.M.Palanimuthu

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

JUDGEMENT

Challenging the judgment of conviction and sentence passed by the learned Special Judge cum Chief Judicial Magistrate, Cuddalore, in Spl. Case. No. 10 of 2010, dated 15.03.2017, the present Criminal Appeal has been filed before this Court.

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

Under Section	Sentence
7 of Prevention of Corruption Act,1988	One year Rigorous imprisonment and a fine of Rs.1,000/-, in default, to undergo 3 months simple imprisonment.
13(1)(d) r/w 13(2) of Prevention of Corruption Act	One year Rigorous imprisonment and a fine of Rs.1,000/-, in default, to undergo 3 months simple imprisonment.

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

The appellant/accused was employed as a Firka Surveyor at Marungoor, Panrutti Taluk at the relevant point of time and he is a Public Servant under Section 2(c) of Prevention of Corruption Act, 1988. On 09.09.2009, at 5.00 p.m., the de facto complainant, viz., Mr. K.Ponnusamy, had given an application to the appellant/accused seeking transfer of patta in the name of his wife. At that time, the appellant/accused had demanded a sum of Rs.7,500/-

as bribe for transferring the patta in the name of the de facto complainant's wife. Since the de facto complainant questioned the same, the accused had reduced the bribe amount to Rs.5000/- and asked him to give the said amount on 18.09.2009 before 9.00 a.m., at Room No.5, Rajendra Sweet Stall, which is situated opposite to the Neyveli Arch Gate. Since the de facto complainant was not inclined to pay the bribe amount to the appellant/accused, he had lodged the complaint (Ex.P.21) in this regard to the Inspector of Police (P.W.13), Vigilance and Anti-Corruption, Cuddalore, on 17.09.2009 at 3.30 p.m., and on receipt of the complaint, P.W.13 had registered a case in Crime No.8/2009 against the appellant/accused under Section 7 of the Prevention of Corruption Act, 1988.

4. Pursuant to the registration of the case, a trap was laid and the appellant/accused was caught red handed while receiving the bribe and he was arrested and remanded to judicial custody. After completion of the investigation, the respondent filed the Final Report against the appellant/accused before the Special Court/Chief Judicial Magistrate, Cuddalore, and the same was taken on file as Special Case No.10 of 2010.

5. On issuance of summons, the appellant/accused appeared before

the Trial Court and copies of relevant papers were furnished to him, in due compliance of Section 207 of Cr.P.C. After affording opportunities, when the appellant/accused was initially questioned, he denied the charges. After hearing both sides and perusing the records, the Trial Court found that there are prima facie materials to frame charges against the appellant/accused for the offences under Section 7, 13(2) r/w. 13(1)(d) of the Prevention Corruption Act, 1988. The accused denied the charges and sought to be tried. On such denial, trial commenced. During trial, on the side of the prosecution, P.W.1 to P.W.14 were examined and Ex.P.1 to Ex.P.25 and M.O.1 to M.O.5 were exhibited.

6. Based on the incriminating materials, when the accused was questioned under Section 313 of the Code of Criminal Procedure, he pleaded not guilty. On the side of the appellant/accused Ex.D.1 and Ex.D.2 were marked. However, he has not examined any defence witness.

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

8. The submissions of the learned counsel for the appellant are as under:-

(a) Assailing the impugned judgment of conviction, learned counsel appearing for the appellant would submit that the Trial Court failed to appreciate the evidence in proper manner. He would submit that in a case of illegal gratification for the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, the proof of demand is the gravamen of the charge and in the absence of evidence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors 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 there under. Admittedly, in this case, the de facto complainant passed away even prior to commencement of Trial. Therefore, to prove the demand, prosecution has relied on the evidence of P.W.2, the Official/Shadow witness and thereby in the absence of the evidence of the de facto complainant, when only the evidence of the shadow witness is available, the evidence of the shadow witness has to be scrutinized with great care and caution. The evidence of the sole witness to the trap is bristled with self contradictions and exaggerations thereby making the evidence of P.W.2 not credible,untrustworthy and thereby unreliable. The analysis of the evidence shows that the prosecution has fabricated several documents to project that there was demand, acceptance and recovery. The trap is alleged to be conducted in a lodging house where the accused was stated to be staying and thereby non examination of any independent witnesses despite their availability creates a grave doubt in the prosecution case.

(b) In a case of trap,the observation mahazar and rough sketch assumes significance and more particularly in this case the trap is said to have been done inside a room in a lodging house where the accused was stated to be staying. The observation Mahazar, Ex.P4 and Rough Sketch Ex.P5 are not clear as to the positions of the accused, the alleged bribe giver and the trap team thereby creating a doubt with regard to the entire trap proceedings. Though following of the rules under the DVAC Manual are directory in nature, the violation in respect of non compliance of the Rule 49 DVAC Manual goes to the root of the case, when especially the de facto complainant died and the evidence of the solitary witness to the trap PW2 is doubtful.

(c) The facts of the prosecution case remains that the de facto complainant Ponnusamy's wife PW4 was the owner of the property in S.No637/1A in Koranapattu Village and the de facto complainant had presented the application in the name of his wife at Taluk Office, Panruti on 21.07.2009 seeking to measure the land in question and transfer the patta in the name of his wife. Since, no action was taken on the application, he had given another application dated 04.08.2009 to the Taluk Office, Panruti, where he was instructed to meet the accused. The de facto complainant had met the accused on 09.09.2009 near Taluk Office, Panruti and questioned about issuance of patta in the name of his wife. Since there was an order of stay by the District Munsif Court, Panruti in I.A.No 502/2009 in O.S.No 166/2009 regarding transfer of patta with regard to the land in question the appellant/accused had told the de facto complainant that the name transfer of patta could not be effected. The de facto complainant, being an Officer in NLC, was residing at Chennai and he was desperate to sell the property and thereby he had pressurized the accused to do the name transfer in the patta. The accused had expressed his inability and since the de facto complainant had pestered him, he had rebuked him stating that whether he being a General Manager in a Government Undertaking, does not know that patta could not be transferred when stay was in operation. Whileso, in order to take revenge on the accused the de facto complainant had given the complaint on 17.09.2009 after a delay of 9 days when the so called demand was alleged to have been made.

(d) After 9 days, the de facto complainant, had once again met the accused at the private rented room in a lodge and even at that time, the appellant/accused had explained about the Stay order and his inability to transfer the patta in the name of his wife and at that time, the de facto complainant had thrusted the tainted money inside the pant pocket of the appellant/accused and later a stage managed trap proceedings and recovery were conducted. The long delay in giving the complaint has not been properly explained by the prosecution. Further though the alleged incidental trap is stated to have been conducted in a lodging room, no independent witnesses have been examined by the prosecution, which creates a doubt in the prosecution case.. Despite the non- availability of the de facto complainant on account of his death, the prosecution has not examined the other official witnesses Ravi who is stated to have accompanied the trap team along with P.W.2, as an official shadow witness to assist in the trap. As stated above, when only the solitary evidence of the shadow witness is available and it is found to be riddled with several doubts on account of improvements, embellishment and self contradictions, the Trial Court ought not to have believed the evidence of P.W.2. Further, the accused, by giving a written submission under Section 313 of Cr.P.C. and by marking Ex.D1 and Ex.D2, had raised a probable defence, that the registration of the case, summoning of official witnesses and the trap proceedings are doubtful.

(e) The Sanctioning Authority PW1, Tahsildar PW3, wife of the de facto Complainant PW4, Deputy Tahsildar (H.Q) and PW6 have admitted about the Stay Order in operation and also admitted that when stay order was in operation, name transfer of patta could not be done and further PW1 Sanctioning Authority had admitted that he had not mentioned about having seen the crucial documents including Ex.P2 to Ex.P5 and Ex.P20 and thereby vitiating the order of Sanction on account of non application of mind.

(f) Though a presumption is cast against the accused under Section 20 of the Prevention of Corruption Act, it is rebuttable in nature. However, before the presumption under the Act could be invoked, the prosecution is bound to prove the foundational facts, whereas in this case, there are several suspicious circumstances, which would go to show that the prosecution has not proved the foundational facts beyond all reasonable doubts and in such circumstances, benefit of doubt has to be given to the accused, when particularly, a civil court stay order was operating against name transfer of patta, whereas the Trial Court, without proper analysis and appreciation of facts, had committed a grave error in convicting the accused and thereby, the Judgment of conviction and sentence rendered by the Trial Court is liable to be set aside.

9. Mr.C.E. Pratap, learned Government Advocate (Criminal Side) would submit that the accused was working as a Firka Surveyor. One Ponnusamy, who was an employee in NLC, had given an application for surveying the lands in the name of his wife and to issue patta in respect of the land belonging to his wife. Initially, an application was given on 21.07.2009 and thereafter, another application was given on 04.08.2009. As per the Distribution Register, the application was forwarded to the appellant/accused. Based on the application, the accused had surveyed and measured the property on 28.08.2009 and had asked the de facto complainant to come after 10 days. Thereafter, on 09.09.2009, the de facto complainant had gone to the Taluk Office, Panruti and he was advised to meet the accused. On that day, the accused was not present in the office and that he had later met the accused at 5.00 p.m., When

he had questioned about the transfer of the name of his wife in the patta, the accused demanded Rs.7500/- for sending the report. The accused also informed that it was for the expenses for other staff. After discussion, subsequently, the accused reduced the amount to Rs.5000/- and asked him to come on 18.09.2009 before 9.00 a.m. and meet him in Room Number 5, situated at Rajendra Sweet Stall building. Since the de facto complainant was not inclined to give the bribe amount, he had lodged the complaint on 17.09.2009 and the case was registered on the same day and trap was laid on the next day, i.e. on 18.09.2009. The accused had reiterated the demand in the presence of the de facto complainant and the shadow witness at 9.15 a.m on 18.09.2009 and accepted the illegal gratification. The tainted money was recovered from the right side pant pocket of the accused. The phenolphthalein test conducted on the accused also proved positive. As the de facto complainant died prior to the commencement of trial, he was not examined. However, his wife was examined as PW.4 in respect of the pre-trap demand and the shadow witness was examined with regard to the demand and the events that had unfolded during the trap proceedings, including recovery of tainted money from the accused. He would further submit that the prosecution, by cogent evidence, has proved its case of demand, acceptance and recovery against the appellant-accused, beyond all reasonable doubts and the Trial Court, after scrutinizing the evidence on record, found the accused guilty and rightly convicted the appellant and therefore, he prayed for dismissal of the appeal.

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

11. What has to be seen is

(i) whether the prosecution has proved

(a) the demand prior to Trap?

(b) demand at the time of Trap ?

(c) acceptance and recovery at the time of Trap ?

And if so,

(ii) whether the accused has rebutted the presumption raised against him under Section 20 of the Act ?.

12. The case of the prosecution as culled out from the records would show that P.W.1 viz., Jeyaseelan was the Assistant Director, Survey Department, Cuddalore. On 11.03.2010 he received the documents from the Vigilance and Anti Corruption Department and after perusing the same, being satisfied that there is a criminal misconduct, had accorded sanction under

Section 19(1)(c) of Prevention of Corruption Act, 1988 to prosecute the case and the said sanction order dated 05.05.2010 was marked as Ex.A.1 during the trial in this case.

13. During the investigation, the complainant Ponnusamy passed away. Hence, his wife Mrs. Valarmathi was examined as P.W.4. PW4, in her evidence, has deposed that her husband, the deceased Ponnusamy, has purchased 3 acres of land from one Subramani in her name and it was registered on 09.12.2004. Later, to change the patta in respect of the said land, her husband had given an application Ex.P7 on 21.07.2009 duly signed by her and it was given to the office of the Tahsildar. Subsequently, her husband had given another application Ex.P8 on 04.08.2009 duly signed by her. PW4 also deposed that for the purpose of surveying the land, a demand was made and later, her husband told her that the land was surveyed and patta was also issued in her name. In the meantime, the husband of PW4 died on 29.10.2009 due to cardiac arrest.

14. As per the evidence of PW13 /the Inspector of Police, Vigilance and Anti Corruption the Trap Laying Officer, on 17.09.2009, de facto complainant Ponnusamy had lodged a complaint (Ex.P.21) alleging that the appellant/accused, who was working as a Firka Surveyor had demanded a sum of Rs.5,000/- as illegal gratification for surveying the land belonging to his

wife/P.W.4 and on receipt of the complaint, he had conducted a discreet enquiry and came to know that the contents of the complaint to be true. Immediately, he had obtained the orders from his higher officials at 4.30 p.m and had registered the First Information Report(Ex.P.22) in Crime No.8/2009. Thereafter, he had sent requisition letters (Ex.P23) to the Joint Director of Agriculture, Cuddalore and (Ex.P24) to the Zonal Joint Director, Veterinary Department Cuddalore for deputing their staff to assist in the vigilance work and based on the same, Mr.Dhanasekaran,(PW2) Superintendent, at the Office of Joint Director of Agriculture, Cuddalore and one Mr.Ravi,(Not Examined) Junior Assistant, Zonal Joint Director, Veterinary Department Cuddalore had appeared before him. On their appearance, he asked them to come on the next day i.e., 18.09.2009 at about 6.00 a.m. Thereafter, he had recorded the statement of the de facto complainant. As requested by the de facto complainant, he was permitted to stay in the office of PW13 itself. On the next day morning, the shadow witnesses appeared before him and he had introduced them to the de facto complainant and apprised them of the significance of the trap procedure and the phenolphthalein test. They were also advised to clarify the doubts from the de facto complainant. Thereafter, the de facto complainant had handed over the 10 currency notes of 500/= rupee denomination, PW13 prepared a mahazar Ex P2 (Entrustment Mahazar) in which, the serial numbers of the currency notes were noted. Thereafter, on completing the formalities, the trap team proceeded to the place of the accused and PW13 had instructed the de facto complainant and PW2 the official shadow witness to ensure that the amount is to be paid only if it is demanded by the accused. The de facto complainant was further instructed to give signal by scratching his hair once the tainted money was accepted by the accused.

15. Thereafter, PW13-Trap Laying Officer along with the de facto complainant and Dhanasekaran (P.W.2) and Ravi, the other official witnesses started at 07.05 am from his office and reached Neyveli Arch Gate by 9.00am and parked the vehicles 100 feet before Rajendra Sweet Stall building where, in Room No.5 the accused was staying. PW13 had directed the de facto complainant and PW2 to meet the accused in the room and he, along with his other team members, followed them and stood outside watching. Around 09.15 am the de facto complainant and PW2 had come out and the de facto complainant gave the pre arranged signal. He took them to a secluded place and enquired them, where the de facto complainant had told him that when he, along with the shadow witness PW2, had met the accused, he had enquired as to whether he had brought the money and that on such demand, he had given the tainted bribe money of Rs.5000/-(M.O.1 series) to the appellant/accused

and that the accused had received the money in his right hand and counted the same using both hands and kept it in his right side pant pocket and that after receipt of the money, the accused had informed him that he will receive the Patta in another two days. PW2 also confirmed the same and immediately, PW13, along with the Trap team, de facto complainant and P.W.2 entered into the room where the accused was residing and the de facto complainant identified the accused, who was sitting in the cot as the person who had received the bribe. Thereafter, PW13 had asked the de facto complainant to stay outside and PW13 introduced himself to the accused and the accused got perturbed and attempted to stand and PW13 pacified him and when he enquired the accused, he had told him that he did not demand the money and that the de facto complainant had voluntarily given it. PW13 had asked the accused to sit in the cot and thereafter prepared Sodium Carbonate Solution in two glass bottles, and the appellant/accused was asked to dip his right hand fingers, which turned pink. Thereafter, the solution collected in the bottle was closed and labelled and named as “1” and marked as M.O.2. Thereafter, the appellant/accused was asked to dip the fingers of his left hand and it turned pink and the solution collected in the bottle was sealed and labelled and named as “2” and that was marked as M.O.3. When P.W13, Trap Laying Officer enquired about the bribe amount, the appellant/accused had taken it from his right side pant pocket and handed over it to P.W.13. The serial numbers of the notes(M.O.1) was compared with the serial numbers in the Entrustment Mahazar and it tallied The pant M.O5 worn by the accused was collected and the pocket was subjected to phenolphthalein test and it turned pink and the solution was collected in bottle M.O 4 and sealed. M.O.4 and M.O5 were recovered. Thereafter, P.W.13 enquired the accused about the application of the de facto complainant and he had produced the relevant records, Ex.P.7 and Ex.P.8 and he had prepared Ex.P.3 Seizure Mahazar in the presence of the official witnesses and issued a copy to the accused after getting his signature.

16. Thereafter, P.W.13 had prepared the Observation Mahazar, Ex.P.4 and Rough sketch under Ex.P.5 and proceeded to the house of the accused after advance intimation to the Court and search was made in the presence of official witnesses and had prepared Ex.P.6 Search Report. As per Ex.P.6, nothing was recovered in the house search. After completing the other formalities, PW13 remanded the accused to judicial custody. The properties recovered from the accused was sent to Court through Form -95 and thereafter the case was handed over to P.W.14 for further investigation.

17. On receipt of the same, PW14, conducted further investigation,

inspected the scene of occurrence and recorded the statement of de facto complainant as well as the two shadow witnesses separately. He has also recorded the statement of Mrs. Krishnaveni, PW9 on 29.10.2009 and other witnesses. He had also recovered the Original Issue Register Distribution Register and other records from the office of PW9. After completing the investigation and after obtaining the order of sanction Ex P1 from PW1 for prosecution, PW14 had filed the final report against the accused for the offences punishable under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act. In his cross examination he had admitted to have knowledge about the pendency of the civil suit and the order of stay granted from the statements of PW3 Tahsildar and PW4 ,wife of the de facto complainant. He had admitted that PW13 had not handed over the statement recorded from the accused at the time of trap.

18. Now this court has to carefully analyze the evidence on record to see whether the prosecution has proved its case beyond reasonable doubt and whether the explanation offered by the appellant/accused by way of defence can be accepted as the one to rebut the presumption.

19. Admittedly, in this case, the de facto complainant, who had given the complaint on 17.09.2009, passed away on 29.10.2009, prior to the commencement of Trial. In order to prove the submission of applications on 21.07.2009 and 04.08.2009, the prosecution has examined P.W.4, the wife of the de facto complainant. She had stated that her husband told her that they were demanding money for surveying the property. Subsequently, her husband told her that transfer of patta in her name was done. Whileso, on 29.10.2009 due to cardiac arrest he died. In her cross examination, she had told that she was enquired by the Deputy Superintendent of Police on 07.10.2009 and a statement was recorded from her and at that time she had not stated about the alleged demand made by the accused. During cross-examination, to the question as to whether her husband had disclosed the person who had demanded illegal gratification, P.W.4 has not made any specific reference about the name of the accused or anybody else, who had demanded illegal gratification. She had only made a general averment. Further she had admitted to the pendency of the case and the stay order against name transfer. In the absence of evidence of the de facto complainant, his wife PW4 was examined to speak about the alleged demand made to her husband by the appellant-accused, prior to the trap however, her evidence does not help the prosecution to establish the case against the appellant in any manner.

20. PW2 is the official/shadow witness, who is stated to have gone along with the de facto complainant at the time of trap. He is the only witness available to speak about the demand on the day of trap. As per the evidence of P.W.2, he was working as a Superintendent in the Joint Director of Agriculture, Cuddalore and on 17.09.2009, he was deputed on the instructions of his superior to go to the office of the Trap Laying Officer on the same day at 5.45 pm., to assist in a trap proceedings and accordingly, he had gone to the office. He had deposed that one Ravi, who was a Junior Assistant in the office of the Joint Director of the veterinary office, Cuddalore had also come to the office of PW13 the Trap Laying Officer and that they were instructed by PW13 to come on the next day at 6.00 a.m. Pursuant to the same, both of them had gone to the office of PW13 and they were introduced to Ponnusamy/de facto complainant, who was present there and the copy of the complaint given by Ponnusamy and the First Information Registered based on such complaint, Ex.P.22 were handed over to them for perusal and enquiry. They have also enquired the de facto complainant with regard to the same and the de facto complainant had handed over the bribe money(M.O 1), based on which, the Entrustment Mahazar (Ex.P.2) was prepared. The de facto complainant and other official witness were also given a demonstration about the

phenolphthalein test and they were also apprised of the Trap proceedings. Thereafter, in their presence, one Head Constable Babu, had prepared the Entrustment Mahazar (Ex.P.2) and the official witness Ravi and the de facto complainant Ponnusamy affixed their signature thereof. Thereafter, they have started at 7.05 p.m., to the building near Nevyli Arch Gate, where the accused was staying in Room No.5. Around 8.15 a.m., they had break fast in a tiffin centre, which was 100 meters near the Rajendra Sweet Stall. P.W.13/Trap Laying Officer had reminded the de facto complainant and other official witnesses about the trap proceedings once again and had also directed the de facto complainant to meet the accused and hand over the bribe amount only on demand. The de facto complainant was also advised to come out and scratch his head as a signal to indicate the acceptance of the amount by the accused. PW2 had further deposed that at 9.05 a.m., he and the de facto complainant met the accused in his room and that the Trap team was hiding in the opposite room of the accused. Thereafter, he and the de facto complainant had gone inside the room and saw the accused sitting in the cot. On seeing the de facto complainant, the accused told that the file was ready and it has to be sent to the Tashildar, Panruti. He also asked whether he had brought the amount of Rs.5000/- as instructed by him. The de facto complainant had asked him to count and verify. Thereafter, the accused had received the amount in his right hand, counted it with both hands and kept it in the right pocket of the Grey colour pant worn by him. Immediately, he and the de facto complainant came out and gave the pre-arranged signal. On such signal, PW13, the Trap Laying Officer along with the witness Ravi and other police team came near them enquired them about what happened in the room and thereafter entered the room. The de facto complainant identified the accused to him and that the PW13, Trap Laying Officer had asked the de facto complainant to go out of the room. Thereafter, in his presence and in the presence of the other Official Witness Ravi, the Sodium Carbonate solution was prepared in two tumblers and the accused was made to dip the right hand fingers into the solution. When the accused dipped his fingers, it turned pink and the accused was directed to dip the left hand fingers in another tumbler and the solution also turned dark red. Thereafter, he had collected the wash of the right hand fingers in a separate bottle and the wash of the left hand fingers in a separate bottle which are projected as Material Objects in this case. They were closed and the seal was affixed on that by P.W.13. The official witness Ravi and the de facto complainant signed on the same. When P.W.13 questioned the accused as to why he had demanded the money from the de facto complainant, the accused had replied that he did not demand and that the de facto complainant had voluntarily given it. Thereafter, the accused was arrested at 10.00 a.m., and in the memo, the official witness Ravi, PW13 and the Village Menial Elumalai, P.W.8 signed. Thereafter, the accused had taken the amount of Rs.5000/- from his right side pant pocket and handed it over to P.W.13/TLO. On verification, the serial numbers in the notes tallied with the serial numbers in the Entrustment Mahazar already prepared. Later, change of clothes were given to the accused and the portion of the right side pant pocket of his grey colour pant was subjected to phenolphthalein test and the solution turned pink and the wash wash collected in a bottle M.O4 and the Grey Colour Pant M.O 5 was recovered. Thereafter a file containing 29 pages were recovered. The proceedings were entered in seizure mahazar Ex P3. Thereafter, PW13 has prepared the Observation Mahazar (Ex.P.4) and the Rough Sketch (Ex.P.5). PW2 had further deposed that later a search was conducted in the house of the accused at Kozhiyur and nothing incriminating was recovered and a search list M.O 6 was handed over to him. In his further evidence, in chief, he has also stated that M.O.2 the wash collected in respect of the right hand fingers did not show any change of colour and that he had attested for recovery of two files and the file containing 13 pages, Ex.P7 and file containing 16 pages, Ex.P8 were recovered in his presence.

21. However, PW2, in his deposition during cross examination, had

stated that he was orally instructed by his superior to attend the office of PW13 to assist in a Trap on 17.09.2009 at 17.45 hours. He had specifically stated that no written instruction was given and he was advised to go on oral instructions. When the counsel for the accused had confronted him with the letter of request of PW13/TLO to the Joint Director of Agriculture, he had accepted that on the basis of the same, he had appeared before PW13. Ex.D1 is a request sent by PW13 to the Joint Director of Agriculture on 17.09.2009. It is a type written letter sent by P.W.13. The endorsement made by the Joint Director of Agriculture on 17.09.2009 is as follows:-

> *" Received the letter on 17.09.2009 at 16.00 hours, and instructed the Thiru B.Dhanasekaran, Superintendent of this Office to report at Vigilance and Anti Corruption office at 17.45 hours"*

The above said endorsement indicates that a request letter was received at 4.00p.m., on the same day. It is pertinent to note that the complaint was preferred by the de facto complainant on 17.09.2009 at 15.30 hours . The FIR was registered on the same day at 15.30 hours and the type written requisition has been sent to the the Joint Director of Agriculture, Cuddalore at 16.00 hours itself. As per the request and the direction, the Official witness (P.W.2) shadow witness has been directed to appear at the office of the PW13 on the same day 17.45 hours. It could, therefore, be inferred that a trap was proposed to be conducted on the same day of registration of the case itself. However, no evidence has been let in as to whether permission was given to PW2 by his Superior Officer/the Joint Director to accompany the de facto complainant on the same day or the next day. Further, in the cross, P.W.2 had stated that the de facto complainant is a farmer and the Entrustment Mahazar (Ex.P2) was typed in a computer and one Head Constable Babu had, on his own, recorded the proceedings in the computer. He had also admitted about the presence of the Village Menial, PW8, Ezhumalai in the room at the time of trap and after that he had deposed that PW8 came later.

22. Further, PW2 had admitted that the de facto complainant, on entering the room of the accused, had asked him as to when he will measure his land whereas he had denied the suggestion that the accused informed the de facto complainant about the pendency of civil suit between his wife and one Sivakumar and Sivasankar, sons of Subramani in which, an interim injunction was granted and it was in force. PW2 had also denied the suggestion that he did not have knowledge about the stay order and the public notice given in the news paper about the stay. However, during the further cross examination,

PW2 had peculiarly and in contravention to the earlier version, admitted that the accused had told the de facto complainant that there was a stay order and during the pendency of the stay order, if the property is measured, it would amount to contempt of Court and that at that time, P.W.2 had told him that he had settled at Chennai and that he was taking steps to sell the disputed land and that the de facto complainant had desperately asked the accused to measure the land. In respect of the further suggestion that the accused had told the de facto complainant that he was a senior officer and that does he not know about the stay order and that he cannot measure the property, PW2 had deposed that since he was standing at a distance, he was unable to hear the conversation between them. When he was further questioned as to whether the de facto complainant had pressurized the accused for measuring the land by offering bribe, PW2 had stated that he does not know about the same as he was standing at a distance. He had further deposed that after receipt of the money when PW13 enquired the accused, the accused had told him that he did not receive the money and that the money was thrusted by the de facto complainant. In this regard, on scrutinizing the evidence of PW2, the solitary witness examined in respect of the trap proceedings, he has given self contradictory statements. When confronted with regard to the conversations alleged to have taken place between the accused and the de facto complainant, P.W.2 had stated that he was standing at a distance and he was unable to listen as to what was the conversation between the accused and the de facto complainant. The evidence of PW2 is not only evasive but it is also self contradictory, thereby creating a doubt with regard to his credibility.

22. To have a better appreciation, the relevant portion of the deposition of PW2 is extracted hereunder:-

*"நானும் வாதி பொன்னுசாமியும் எதிரியை பார்த்தபோது எதிரி வாதியிடம் அவர் நிலம் சம்மந்தமாக அவர் மனைவிக்கும் மற்றும் அந்த ஊரை சேர்ந்த சுப்பிரமணியன் மகன்கள் சிவகுமார், சிவசங்கர் ஆகியோருக்கும் பண்ருட்டி மாவட்ட உரிமையியல் நீதிமன்றத்தில **ஒரு வழக்கு நிலுவையில் உள்ளதாகவும் அதில் தடை உத்தரவு இருப்பதாகவும் எனவே தன்னால் அதனை அளக்க இயலாது என்று சொன்னால் எனக்கு தெரியாது. ஏனென்றால் வழக்கு சம்மந்தமாக பேசவில்லை.*** ....*

......

வழக்கில் தடை உத்தரவு உள்ளது என்றும் எனவே அந்த இடத்தை அளந்தால் நீதிமன்ற அவமதிப்பு வழக்கு வரும் என்று சொன்னார் என்றால் சரிதான். *அப்போது வாதி பொன்னுசாமி தான் சென்னையில் செட்டிலாகிவட்டதாகவும் எனவே வேகாகொல்லையில்*

*உள்ள வழக்கில் சம்மந்தப்பட்ட நிலத்தை விற்க முயற்சிப்பதாகவும் அதனால் **எப்படியாவது அளந்து கொடுத்துவிடுங்கள் என்று எதிரியிடம் கேட்டார் என்றால் சரிதான்.** அப்போது எதிரி வாதியிடம் நீங்கள் ஒரு பெரிய அதிகாரியாக இருக்கின்றீர்கள். அதனால் நீதிமன்ற தடை உத்தரவு இருக்கும்போது அளக்க முடியாது என்பது தங்களுக்கு தெரியாதா அதனால் **அளக்க முடியாது என்று எதிரி வாதியிடம் சொன்னது எனக்கு தெரியாது. எனவே நான் சற்று தள்ளி நின்றிருந்தேன்**. எதிரியிடம் வாதி பொன்னுசாமி **நான் பணமாவது கொடுத்துவிடுகின்றேன். எப்படியாவது அளந்து கொடுங்கள் என்று சொன்னதும் எனக்கு தெரியாது. ஏனென்றால் நான் சற்று தள்ளி நின்றிருந்தேன்**."*

23. With regard to the reliability of the evidence of PW2, it will be apposite to refer to the following observations of the Apex Court in its celebrated judgment in the case of Vadivelu Thevar reported in (1957)SCR 981:-

".....Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the

quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely: (1) Wholly reliable. (2) Wholly unreliable. (3) Neither wholly reliable nor wholly unreliable. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."

13. It could thus be seen that this Court has found that witnesses are of three types, viz., (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable. When the witness is "wholly reliable", the Court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the Court finds that the witness is "wholly unreliable", there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness.

It is only in the third category of witnesses that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."

24. In the case on hand, though the evidence of PW2 can be rejected as wholly unreliable, since it is a case under the Prevention of Corruption Act, this court deems it necessary to look into the other evidence also. Now, coming to the evidence of PW3, who was working as Tahsildar at Panruti during the relevant time, he had deposed that general public used to give petitions to the head quarters/ Deputy Tashildar and Tashildar and they used to forward the petitions to the Sections concerned. He had further deposed that the patta transfer application would be sent to the Survey Section and after perusing the petitions, they will be entered into the RTR register and then, it will be sent to the Surveyor. Ex.P7, the petition given by PW4 Valarmathi, dated 24.07.2009 was forwarded to the Headquarters, Deputy Tahsildar and it was received by the Headquarters/Deputy Tahsildalr, viz., Mangalam(PW5) and the same applicant had preferred another petition (Ex.P8) on 04.08.2009 and it was received by the Headquarters, Deputy Tahsildar Vijaya (P.W6) and sent to the Village Administrative Officer, in charge of Koranampet village. In respect of both the petitions, enquiry was conducted by the Village Administrative

Officer, Koranampet Village and a Report was received. As per the Report, there was a civil dispute pending before the District Munsif, Panruti in O.S. No.166 of 2009 in respect of the property in Koranampet Village bearing Survey No.637/1A, for which the patta transferred was sought for. Further, in I.A. No. 502 of 2009, an interim order was granted and it was in force. He had further deposed that PW4, Valarmathy was enquired with regard to the same and she had informed that she had purchased the property from one Subramanian, PW3 had further deposed that in respect of issuance of patta, an opinion was sought for from the Government Pleader and only after receipt of opinion from the Government Pleader any further action could be taken. During the cross examination, she had also confirmed that due to the pendency of the Civil Suit and the stay order, no further action could be taken in respect of issuance of patta. The same has also been admitted by PW4 wife of the de facto complainant in her cross examination.

25. PW6, Vijaya, who was the Headquarters Deputy Tahsildar, Panruti, deposed about having received and attested the petition of PW4, Valarmathy and handing over of the same with files Ex.P8 to PW9, Krishnaveni. In her cross examination, she had deposed that the accused cannot issue patta under any circumstance and she also confirmed about the stay order in force during

the relevant point of time and that due to the stay order, the name transfer or mutation of the records could not be done. The same fact has also been confirmed by yet another official witness, PW7, Head surveyor, who had confirmed that on account of the stay order, no proceedings in respect of change of name in the patta or mutation of record could be done.

26. PW8 is the Village Assistant/Menial working under the accused. He had deposed that on 18.09.2009, while he was standing near the Neyveli Arch, the accused had come there at 9.00 a.m., and he asked him to bring tea and water. He further stated that he had followed the accused to his room and the accused was walking in front of him. When he was in the room, 10 persons had come there and they told that they were vigilance police. They enquired the accused and later arrested him and asked him to sign in the arrest memo. However, he has not deposed anything about the trap, the demand and the recovery proceedings.

27. PW5, PW9, PW10 and PW11 are official witnesses in the Taluk Office, who have spoken about the official procedures regarding receipt of application and grant of patta. PW12 is the Scientific Officer, who had issued Ex.P20, after analysing the solutions M.O.2 to M.O.3 collected at the time of

trap.

28. PW13 is the Trap Laying Officer, who has deposed about the de facto complainant preferring a complaint on 17.09.2009 at 3.30 p.m. He has also stated about the registration of the case in Crime No.8 of 2009 at 4.30 p.m. and he had given a copy to the de facto complainant and obtained his signature. Thereafter, he had sent the request for official witness to be present at 5.45 p.m., on the same day. Accordingly, the official witnesses have appeared before him on the same day and he had instructed them to come on the next day at 6.00 a.m. He had also recorded the statement of the de facto complainant, who stayed in the office in the night. On the next day morning, the official witnesses have appeared before him. The request letter calling for the official witnesses, has been marked as Ex.P23 and also marked as Ex.D1 by the defence, which shows that the Joint director had made an endorsement in the requisition letter that he had received the letter from the Inspector of Police on 17.09.2009 at 16.00 hours (4.00 p.m.,). When it is the case of PW13/Trap Laying Officer that the case was registered only at 4.30 p.m., the question of receipt of the letter at 4.00 p.m., by the Joint Director of Agriculture, creates a doubt. If the request letter had been received at 16.00 hours itself, then such letter, which is typed one, would have been prepared

even prior to the giving of the complaint at 3.30 p.m., and the registration of the case at 4.30 p.m., Further the accused had also confronted PW13/Trap Laying Officer with regard to the endorsement made in Ex.P21, which was later marked as Ex.D2, in which the Inspector has made an endorsement that the complaint was received at 15.30 hours and the case was registered immediately at 15.30 hours itself to suggest and establish that the complaint was registered without even conducting a preliminary enquiry as contemplated under the DVAC Manual.

29. As rightly sought to be established by the appellant, there is a grave doubt with regard to the time of registration of the case and the further proceedings initiated by the Trap Laying Officer, PW13. There is no doubt that the complaint, Ex.P21 is said to have been received at 3.30 pm on 17.9.2009. If a preliminary enquiry was conducted as claimed by PW13 as contemplated by DVAC Manual, the complaint could not have been registered at 3.30 pm itself. Assuming that PW13 is right in contending that the case was registered only at 4.30 pm as spoken by him in his chief examination and that the mentioning of 3.30 pm in the FIR as the time of registration of the case is a minor defect, the typewritten request for official witnesses could not have been received by the Departments concerned at 4.00 pm itself as evident from

Exs.P23 and P24. Such an hypothetical situation speaks much about the genesis of the case of the prosecution.

30. It is also to be noted that there had been a grave delay in preferring the complaint. The alleged pre-trap demand is stated to have been made on 09.09.2009 at 5.00 p.m., and particularly the complaint had been preferred at 17.09.2009 at 3.30 p.m The First Information Report was registered at 3.30 p.m., on the same day. However in the Court PW13 had deposed that the case was registered at 04.30 pm. If the TLO/PW13 had planned for the trap on the next day morning, there is no requirement of summoning the official witnesses on the previous day on 17.09.2009 at 5.45 p.m., itself and it also creates a doubt. Though it is admitted by P.W.13/TLO that the accused was enquired immediately after arrest and an explanation was asked for and it was recorded, the same was not sent to the Court.

31. It is the case of the accused in defence and under the reply under Section 313 of Cr.P.C that the amount was thrusted into his pocket and that when the TLO/PW13 had questioned him with regard to the money, he had explained the circumstances, under which the money was thrusted into his pocket and he has also explained the reason that there was a stay order

operating against the land for which name transfer in patta was sought for. According to the accused, it was also a reason for him for not able to transfer the name of the de facto complainant's wife in the patta.

32. A perusal of the rough sketch also does not show the positions of the accused, de facto complainant and the decoy witnesses. Further, the trap was conducted at a lodging house, where, admittedly, several persons were stated to be present at the relevant time. However, no independent witness has been examined by the prosecution. Though in a trap case, it may not be necessary to do so, taking into consideration the facts of the case that the trap is said to have been conducted in a lodge, non examination of the independent witnesses creates a doubt. As stated above, though the Rules under DVAC Manual are not mandatory in nature, taking into consideration the facts and circumstances of this case, non following of the Rule 49 of the DVAC Manual assumes significance. As stated above, the trap is stated to have been conducted in a lodging house, where the accused was stated to be staying on monthly rent. It is the case of the prosecution that the de facto complainant and PW2 entered into the room of the accused and the trap team were hiding inside the opposite room. Ex.P5 (Rough Sketch) does not disclose the positions of the accused, the bribe giver /de facto complainant, PW2, official shadow witness and the trap

team. Further in the absence of the evidence of the de facto complainant, the only available evidence is P.W.2, who is the shadow witnesses. On a close scrutiny of the evidence of PW2, it is seen that he had admitted about hearing the conversation between the de facto complainant and the accused for some questions in cross examination and conveniently avoided some questions stating that he did not hear the conversation between the de facto complainant and the accused stating that he was standing little away from the place. The Rough Sketch Ex.P5 is not clear as to the positions of the accused, the de facto complainant, shadow witness and the other members of the trap team and thereby this aspect also creates a doubt in the prosecution case.

33. The proof of demand by public servant alleged by the prosecution is a *sine qua non* in order to establish the guilt of the accused/public servant. The mere acceptance of the recovery of the tainted notes is not sufficient to bring home the guilt of the accused. The prosecution has to prove the demand of illegal gratification beyond all reasonable doubts. Only thereafter, the subsequent acceptance and recovery of the notes would complete the chain of circumstances to bring home the guilt of the accused. If the tainted currency notes are found in the possession of public servant in a trap case, there can be a presumption under Section 20 of the Prevention of Corruption Act that he

might have received it, but this presumption is a rebuttable presumption and the accused can rebut this presumption by offering his explanation for possession of the tainted notes. The said presumption is a presumption on fact. However, there can be no presumption for demand made by the public servant. In other words, demand as a matter of fact cannot be presumed unless such a presumption is to be raised by proving the foundational facts and such foundational facts unerringly point to the irresistible and the only conclusion of proof of demand by the accused. This would make it clear that mere recovery of tainted notes from the possession of the accused would not give a right to presumption of demand.

34. In this case, in the absence of the de facto complainant, the evidence of official witness/shadow witness, being the solitary one in support of the prosecution, has to be carefully scrutinized. On scrutiny of the evidence of the shadow witness PW2 with regard to demand, this court is of the view that it does not inspire confidence of this Court. Further, in this case, the other official witness Thiru.Ravi who had accompanied the trap team had not been examined to corroborate the evidence of PW2 for recovery and no explanation had been offered by the prosecution for non examination of Thiru.Ravi. It is the case of the accused that he has given an explanation and a statement was

recorded by PW13. However, such statement was not produced before the Trial Court.

35. The accused had come out with the explanation stating that there was a civil dispute pending between the wife of the de facto complainant and some others in respect of the land in question, for which, patta transfer was sought for and there was a stay operating and thereby he was unable to mutate the name of the wife of the de facto complainant in the revenue records. He had also stated that if he does so, it would result in contempt of court. Despite that, the de facto complainant had desperately insisted for name transfer of patta and when it was refused by the appellant, a false complaint has been given and a trap was laid and the money was thrusted and before he could react, the police had overpowered him.

36. Though the accused is charged for commission of offence under Section 7 of the Prevention of Corruption Act and bound to rebut the statutory presumption under Section 20 of the Prevention of Corruption Act, he is entitled to displace the statutory presumption by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money, which was accepted by him or any other person on his behalf is not

illegal gratification as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubts. However, before the accused is called upon to explain how the amount in question was found in his possession, a bounden duty is cast on the prosecution to prove the foundational facts beyond reasonable doubts and the accused is entitled to disprove the case of the prosecution based on the evidence on record. As discussed above, an analysis of the cumulative evidence exposes several loose ends in the prosecution case creating several doubts with regard to pre-trap demand, registration of the case, trap proceedings, demand at the time of trap and recovery thereby shaking the very foundation of the prosecution case.

37. In ***P. Sathyanarayana Murthy vs. District Inspector of Police, State AP*** reported in (***(2015) 10 SCC 152)***, the Hon'ble 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*

there for, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors 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 there under.

……… ……… ………

"26. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in Sujit Biswas v. State of Assam [MANU/SC/0564/2013 : (2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the court must ensure that

miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.

The materials on record when judged on the touchstone of the legal principles adumbrated herein above, leave no manner of doubt that the prosecution, in the instant case, has failed to prove unequivocally, the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly unsafe to sustain the conviction of the appellant under Sections 13(1)(d) (i) and (ii) read with Section 13(2) of the Act as well. In the result, the appeal succeeds."

38. Further, in the case on hand, the evidence of PW1 Sanctioning Authority is to the effect that he not made a mention about having seen the entire documents relating to the case thereby creating a doubt with regard the validity of the sanction on account of non application of mind and thus vitiating the sanction order.

39. In a case of this nature, the burden to prove his case by rebuttal is not as strong as required from the prosecution, where the prosecution is bound

to prove the case beyond all reasonable doubt. However, the accused can rebut his case by letting in evidence by preponderance of probabilities. Viewed from this angle, this Court finds that the prosecution has not proved its case beyond reasonable doubts and the accused had come out with the probable defence.

40. In the result, the Criminal Appeal is allowed. The judgment of conviction and sentence dated 15.03.2017 passed in Spl.C.No.10 of 2010 on the file of the Special Court/Chief Judicial Magistrate Court, Cuddalore, is set aside and the appellant/accused is acquitted from all the charges. The fine amount, if any paid, shall be refunded to the appellant/accused. The bail bond, if any executed by the appellant/accused, shall stand cancelled.

22.12.2023

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

mrp

To

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

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

3. The Public Prosecutor,
High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

mrp

Crl.A.No.215 of 2017

22.12.2023