IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **20.12.2023**

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.296 of 2017

A.Settu ... Appellant

Vs.

The State of Tamil Nadu,
Represented by,
The Inspector of Police,
Vigilance and Anti-Corruption,
City Special Unit – III,
Nandanam, Chennai – 35.

(Crime No.3/AC/2008/CC-II) ... Respondent

PRAYER : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code r/w Section 27 of the Prevention of Corruption Act, pleased to set aside the conviction and sentence passed in the judgment dated 29.05.2017 made in C.C.No.112 of 2011 on the file of the Special Court for the Cases under Prevention of Corruption Act, Chennai – 104 and allow this Criminal Appeal.

For Appellant : Mr.S.Karthikeyan

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

JUDGMENT

This Criminal Appeal has been filed against the judgment of conviction and sentence dated 29.05.2017, imposed by the learned Special Judge, Special Court for the Cases under the Prevention of Corruption Act, Chennai, in C.C.No.112 of 2011 (Old C.C.No.2/2009), for the offence under Sections 7 and 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988.

2. The appellant/accused viz., A.Settu, who was working as a Sub-Inspector of Police (Crime and Law & Order), V5 Thirumangalam Police Station, Chennai, is a Public Servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988. The appellant/accused is alleged to have demanded and accepted the bribe for closing the criminal case pending against the de facto complainant and thereby, committed an offence punishable under Sections 7 and 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988. The conviction and sentence imposed against the appellant is as follows:-

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 three months simple imprisonment.
13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988	Two years of rigorous imprisonment and a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment.

3. **Prosecution's version :**

3.1. A complaint dated 17.03.2008, Ex.P3 came to be lodged by the de facto complainant, PW2, before the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Chennai, in which he had stated that he was working as a Driver in Parveen Travels and was driving bus in a Hyundai Car company on contract basis. On 24.01.2008, at 6.20 pm, while he was driving the bus from Padikuppam to Anna Nagar West through Thirumangalam Signal, he entered into quarrel with one PW5/Muthumariappan, who was driving the Qualis Car and during such quarrel, they assaulted each other and left the place. After 10 days, one Basker, the Manager of the Parveen Travels had informed him that the appellant/accused had asked PW2 to meet him at Thirumangalam Police Station in respect of the quarrel that took place on 24.01.2008. Thereby, PW2 along with his family friend S.Ramalingam/PW3, who was the retired police, had gone to the Thirumangalam Police Station. When PW3 had enquired the appellant/accused, the accused had informed him about the registration of the case against PW2 for theft of gold jewels. Thereby, PW2 had obtained anticipatory bail on 25.02.2008 and surrendered before Thirumangalam Police Station on 07.03.2008 and he was released on bail. Later, as per the anticipatory bail order, PW2 was complying with the condition by signing at Thirumangalam Police Station from 08.03.2008 at 10.00 a.m. On 12.03.2008, when PW2 had gone to the Thirumangalam Police Station to comply with the condition, a policeman has asked him to meet the appellant/accused on the same day at 5.00 pm. Thereupon, PW2 met the appellant/accused at 5.00 p.m, during which, the appellant/accused had demanded a sum of Rs.10,000/- for closing the case pending against PW2. When PW2 had expressed his inability, the appellant/accused had directed PW2 to pay the amount in two instalments and asked him to pay Rs.5000/- on 17.03.2008 at his house and pay the balance within two days. Since the de facto complainant/PW2 was not willing to pay the bribe amount, he had preferred a complaint and prayed that suitable action may be taken against the appellant/accused.

3.2. On receipt of the complaint, the Deputy Superintendent of Police had forwarded the same to the Inspector of Police/Trap Laying Officer (PW8). Thereby, PW8 had enquired about the antecedents of the appellant/accused and registered the First Information Report (Ex.P9) in Crime No.3/AC/2008/CC-II for the offence under Section 7 of the Prevention of Corruption Act. Then, on receipt of the requisition letter sent by PW8 for deputing official witnesses, one Gopinath, PW4 and one Chidambaram (not examined), who were working in the office of Prohibition and Excise Department, reached the office of the Vigilance and Anti-Corruption at 12.00noon. Thereupon, the official witnesses were introduced to PW2 and viceversa. Thereafter, PW8 had handed over the copy of the complaint and FIR to the official witnesses and asked them to peruse the same and get acquainted with the facts of the case.

3.3. Thereafter, PW2 had handed over the amount of Rs.5000/-, M.O.1. (Rs.500/- denomination 5 notes, and Rs.100/- denomination 25 notes), the amount meant for trap. The serial numbers of the currency notes were entered in the Entrustment Mahazar, Ex.P4. Thereafter, on the instruction of PW8, Sodium Carbonate solution was prepared by the Police Constable one Ganesh Babu and Mr.Aziz, Sub-Inspector, had counted the currency notes and thereafter, chemical test was conducted on his normal hands and there was no change of colour. Later, phenolphthalein powder was smeared on the currency notes and was subjected to count by the S.I and after handling the same, the chemical test was conducted on his hands and the solution turned pink. After the demonstration of trap, PW8 explained the importance of the test and handed over the tainted money to PW2. Then, PW8 had instructed the de facto complainant to give the bribe amount to the appellant/accused only if he demands and if the accused received the same, PW2 was asked to give a signal to the trap team by combing his hair. Further, PW8 had instructed PW4/Shadow witness to accompany PW2 and observe the happenings between PW2 and the appellant/accused. During which, the Entrustment Mahazar/Ex.P4 was prepared between 12.00 and 12.45 hours in the presence of PW2 and official witnesses.

3.4. Later, the trap team proceeded to the residence of the appellant/accused and enroute, while they were crossing Kotturpuram, PW2 had contacted the appellant/accused over mobile phone and the accused is stated to have directed PW2 to come near Sun Plaza bus stop at GN Chetty road and thereby, the trap team stopped the vehicle near Sun Plaza bus stop. Then, PW2 and PW3 went to meet the accused at around 13.30 hours and the trap team stood at a distance and watched what was happening. The accused had come there in a motorcycle bearing registration No.TN 01 G 3231 at about 13.40 hours and asked for the money, thereby, PW2 had handed over the money and gave the pre-arranged signal. Meanwhile, the accused had counted the money and kept in his right side pocket.

3.5. Thereby, the Trap Laying Officer (PW8) proceed to the spot along with other official witness and police party and enquired PW2 about the happenings. PW2 had informed that the accused reiterated the demand and accepted tainted money and identified the appellant/accused. Thereafter, PW8 introduced himself and other prosecution witnesses to the appellant/accused. The appellant/accused was found nervous and shivering.

3.6. Thereafter, the trap team proceeded to the nearby Assistant Commissioner Office, Teynampet along with the appellant/accused and at the office of ACP, sodium carbonate solution was made ready and conducted the phenolphthalein test on the both hands of the appellant/accused, in which, the sodium carbonate solutions turned pink and they were collected under M.O.2 and M.O.3. Then, the tainted money/MO1 was also recovered from the right side pant pocket of the accused and it was found to tally with the serial numbers found in the Entrustment Mahazar (Ex.P4). The pant worn by the accused was subjected to phenolphthalein test and the same also turned positive and the said solution was collected under MO4 and the pant worn by the accused was marked as M.O.5.

3.7. Later, the appellant/accused was arrested and released on bail. Thereafter, PW8 had prepared Seizure Mahazar (Ex.P5) in the presence of official witnesses and obtained their signatures. Thereafter, PW8 proceeded to the house of the accused and during the house search, nothing incriminating materials was recovered. Later, PW8 after completing the formalities handed over the case for further investigation to PW9/Investigation Officer.

3.8. On receipt of the same, PW9 has recorded the statement of PW2, Gopinath/official witness (PW4), Chidambaram (not examined), Ramalingam/PW3, Advocate Venkatramana (not examined), Muthumariappan/PW5, Ramakrishnan (PW6), the Trap Laying Officer/PW8 and Ponnusamy/PW10. Further, he has obtained the Chemical Analysis Report/Ex.P8 and recorded the statement of Mr.Baskar, Scientific Officer/PW7. Later, he had forwarded the report to the Directorate of Vigilance and Anti-Corruption and obtained the Sanction order (Ex.P1) from the Sanctioning Authority/PW1, who accorded sanction against the appellant/accused. Thereafter, PW9/Investigation Officer had filed the final report against the appellant/accused for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, and the same was taken up on the file of II Additional City Civil Court, Chennai in C.C.No.2 of 2009.

3.9. On issuance of summons, the accused appeared before the Court and in compliance of Section 207 of Cr.P.C., copies were furnished to him. During initial questioning, the accused had denied the charges and sought for trial. Later, the case was made over to the Special Court for the Cases under the Prevention of Corruption Act, Chennai and taken up for trial in C.C.No.112 of 2011. On the side of the prosecution, PW1 to PW10 were examined, Exs.P1 to P14 were marked and Mos.1 to 5 were produced.

3.10. On completion of the prosecution witnesses, the accused was questioned under Section 313 Cr.P.C pertaining to the incriminating evidence tendered against him by the prosecution witness. The accused denied the charges levelled against him and marked Ex.D1 and Ex.D2 on the defence side.

3.11. The trial Court, after hearing the arguments on both sides and on considering the entire materials, found the appellant/accused guilty and convicted him for the offences charged and sentenced him as stated above. Against the order of conviction and sentence, the present Criminal Appeal has been filed.

4. Mr.S. Karthikeyan learned counsel appearing for the appellant taking this court through the evidence on record assailed the judgment of conviction and sentence passed by the trial court and submitted his arguments as follows :-

4.1. It is a settled position in law that for the offence under Sec 7 of the PC Act is concerned the demand of illegal gratification is a sine qua non to constitute the offence and mere recovery of currency cannot constitute the offence unless it is proved beyond all doubts that the accused voluntarily accepted the money knowing it to be bribe and thereby the presumption under Section 20 of the PC Act can be drawn against the accused only after the demand for and acceptance of illegal gratification is proved beyond all reasonable doubts.

4.2. The reasons assigned by the trial Court for convicting the appellant/accused are totally unsustainable in law and un believable on facts. The trial Court had not appreciated the evidences on record and erred in finding the appellant guilty. The evidence of the prosecution witnesses does not inspire confidence, particularly PW2, who was having motive and grudge against the appellant/accused, is not a trustworthy witness and thereby his evidence has to be disbelieved.

4.3. The entire trap proceedings is shrouded with mysteries and the trial Court, failed to take into consideration the serious infirmities and lacuna in the prosecution with regard to the registration of the case, requesting Government official witnesses to accompany the de facto complainant, the place of occurrence and the place of alleged recovery.

4.4. It is the case of the de facto complainant/PW2 that the appellant/accused had asked him to hand over the bribe amount at his residence and it is also the admitted case of the prosecution that while the trap team was on the way to the the residence of the appellant/accused, the defacto complainant himself had called the appellant/accused over mobile phone and during the telephonic conversation the appellant/accused, is stated to have changed the place of meeting and asked him to come to a different place. In such circumstances, the mobile call records could have been the best possible evidence for the prosecution to prove the case, whereas the prosecution has deliberately suppressed the best evidence and failed to recover the mobile phones and the CDR details which could have proved the exact place of trap. Failure to collect the same creates a grave suspicion in the prosecution case.

4.5. In this case, as per the prosecution the demand and the receipt of the tainted money by the appellant/accused is alleged to have been taken place near the Sun Plaza Bus Stop, G.N.Chetty Road and it is the further case of the prosecution that immediately, thereafter, the accused was taken to the nearby Teynampet Police Station where the phenolphthalein test and recovery proceedings were conducted. The non preparation of the Rough Sketch relating to the alleged place of acceptance of tainted money near Sun Plaza and place of recovery and Phenopthalein test at the Teynampet Police Station, creates doubt in the prosecution case, more particularly when neither the SHO nor any policeman from Teynampet Police Station has been examined as a witness by the prosecution.

4.6. The timing with regard to the registration of the case and the request made for sending the official witness/PW4 creates doubt. Particularly, in this case, the requisition sent by the TLO or the permission granted by the Department Head of the official witness have not been marked in this case. Thereby, creating doubt in the prosecution case.

4.7. Further, the demand is stated to have been made by the accused on 12.03.2008 and strangely, the complaint has been preferred to the respondent on 17.03.2008 after a delay of 5 days, and the same has not been properly explained by the respondent Police. It is the specific case of the *de facto* complainant/PW2 that when he had gone to the Police Station on

12.03.2008, he was advised by one Constable to meet the appellant/accused at 5 p.m. The constable who is stated to have been advised PW2 has not been examined.

4.8. Though it is the case of the prosecution that the shadow witness was asked to accompany PW2, PW2 has not spoken about the presence of PW4 near him at the time of demand, thereby, creating a doubt with regard to the presence of PW4 at the time of trap.

4.9. The prosecution has failed to prove the foundational facts, when especially, there are several contradictions relating to the registration of the case and summoning of the witnesses. The prosecution before raising presumption against under Section 20 of the Prevention of Corruption Act, has to prove the foundational facts with cogent evidence, whereas, the burden on the appellant/accused is to prove his case by preponderance of probabilities. It is the defence of the appellant/accused and reply to questioning u/s 313 Cr.P.C that based on a foisted complaint a stage managed trap was organised and that he was over powered by two Inspectors, more particularly, one Raja Srinivasan, who was also a part of the trap team and the amount was thrusted in his pocket and he was taken to Teynampet Police Station under threat made to take out the money and a sham test was conducted. Though, the Trap Laying Officer/PW8, had admitted the presence of the said Inspector Raja Srinivasan in the trap team, strangely PW2 has denied the presence of the said Raja Srinivasan which aspect shows that PW2 is not a trustworthy and reliable witness, more particularly, when he being the accused in a case of theft registered by Tirumangalam Police Station on the complaint given by PW5. In this case, the appellant has rebutted the presumption contemplated under Section 20 of the Prevention of Corruption Act, 1988, by offering reasonable, proper and plausible explanation, not only by preponderance of probabilities, but also by marking Exs.D1(Visitors Pass at COP office) and D2(Complaint given by PW5 to COP) through PW5 and the evidence of PW5 has not been confronted by the prosecution. It is the case of the appellant/accused that PW2 had agreed to compromise with PW5 and pay Rs 20000/- as compensation for settling the complaint Ex.P6 pending enquiry on the file of Thirumangalam and later to wriggle out of the same had falsely implicated the appellant/accused.

4.10. The prosecution has failed to prove its case beyond all reasonable doubts by cogent evidence and thereby, the impugned judgment of conviction and sentence is against law and is liable to be set aside. Hence, the appellant/accused is entitled for acquittal.

4.11. In support of his contention, he relied on the judgment of this Court in *T.S.Ramaswamy vs. State of Tamil Nadu* (*CDJ 1992 MHC 008)*

5. Per contra, the learned Government Advocate (Criminal Side) vehemently contended that the prosecution has proved its case, beyond all reasonable doubts, by examining the witnesses. He further submitted that the accused is stated to have directed PW2 to pay the bribe money on 17.03.2008 and thereby, the complaint was given on 17.03.2008 and there is no delay in the complaint and there is no discrepancy in the registration of the complaint and the summoning of the witnesses. The complaint was preferred on 17.03.2008 at 10.30 hours, and the case was registered at 11.00 hours., the official witnesses arrived at 11.45 hours and the Entrustment mahazar was prepared between 12.00 and 12.45 hours and trap party proceeded to the spot at 1.00 pm and on the call made by PW2 enroute the accused had changed the spot and there by PW2 and the trap team went Near Sun Plaza Teynampet at 1.20 p.m and the accused who had come there demanded and accepted the bribe money from PW2 in the presence of PW4 and thereafter the phenolphtalein test conducted proved positive and the bribe money was recovered from the appellant/accused. The non filing of CDR details will not

affect the case of the prosecution. He further submitted that the Rough Sketch in a case is not a substantive piece of evidence and the non preparation of Rough Sketch will not affect the case of the prosecution. He also submitted that the contradictions in the time are not material in nature and they being minor contradictions would not vitiate the case of the prosecution.

6. He further submitted that the prosecution, by adducing cogent and consistent evidence through the witnesses have proved the case beyond reasonable doubts. The trial Court, after considering the evidence on record and the documents produced by the prosecution has found the accused guilty. He further submitted that there is no illegality or infirmity in the impugned judgment of conviction and sentence. Thereby, he sought for dismissal of the appeal.

7. In reply, the learned counsel for the appellant submitted that it is the case of the prosecution that the place of acceptance was shifted based on a mobile conversation between PW2 and the appellant/accused and acceptance was alleged to made by the appellant/accused in front of Sun plaza bus stop in G.N.Chetty Road and the recovery is stated to have been effected from him at

Teynampet Police Station which is about 150 meters away from the place of occurrence. Non recovery of mobile phones, non marking of Call Detail Records (CDR) and non examination of police personnel from Teynampet P.S and non preparation of Rough sketch goes the root of the case, which creates grave doubt in the prosecution case and in such circumstances, benefit of doubt should tilt in the favour of the appellant and would seek for acquittal.

8. This Court had anxiously considered 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 conviction.

9. At the outset, the settled position of law, which emerges regarding appreciation of evidence in a trap case, can be summarised as under:-

The demand of illegal gratification is a sine qua non to constitute the offence under Section 7 of the P.C.Act and mere recovery of currency cannot constitute the offence unless it is proved beyond all doubts that the accused voluntarily accepted the money knowing it to be illegal gratification and thereby the presumption under Section 20 of the PC Act can be drawn against the accused only after the demand for and acceptance of illegal gratification is proved beyond all reasonable doubts.

> (i) To succeed in such a case, the prosecution is obliged to prove the demand of bribe before and at the time of trap, its acceptance and the recovery of tainted money.
> (ii) The demand can be proved by testimony of the complainant as well as from other corroborative evidence if it is proved in accordance with law in material particulars.
> (iii) A presumption as to the demand of bribe can also be drawn if the tainted money i.e. the money tendered as bribe money is recovered from the possession of the accused, which presumption, of course, is rebuttable under Section 20 of the Prevention of Corruption Act, 1988.However Section 20 of the PC Act can be drawn against the accused only after the demand for and acceptance of illegal gratification is proved beyond all reasonable doubts; ie the foundational facts have to be proved.
> (iv) If the accused comes out with some defence, that can be scrutinized by the test of preponderance of probability, while the burden on the prosecution is to prove its case beyond all reasonable doubts."

10. The genesis of a trap lies in the previous demand of bribe made by the accused from the complainant, which becomes the basis of registering a

case and laying a trap by the investigating agency. Then, it is for the prosecution to, again, prove the demand at the time when the trap was laid and thereafter, the question of acceptance and recovery of bribe money also required to be proved beyond all reasonable doubts.

11. In this case, admittedly, PW2/de *facto* complainant is a person accused for having stolen the jewels of PW5 and the case was registered against him and the enquiry was pending against him in the Thirumangalam Police Station. It is the evidence of PW5 that since the Thirumangalam Police did not take proper action, he had approached the City Commissioner of Police and given a representation and there was pressure on PW2 and there was a private compromise between him and PW2 and that PW2 had agreed to pay the amount of Rs.20,000/- by way of cash to settle the issue. It is the further case of PW5 that since he had rushed to his native place, he had instructed PW2 to hand over the money to the appellant/accused, who was enquiring his complaint. This fact has been deposed by PW5 in his evidence in chief and through him Ex.D1 and Ex.D2 had been marked. As per Ex.D2, PW5 has given the complaint to the Commissioner of Police against PW2 and PW2 was enquired and he had agreed to settle the issue by paying a sum of Rs.20,000/-

and he had also advised PW2 to hand over the money to the appellant/accused who was enquiring the issue. This aspect has not been confronted or controverted by the prosecution by further examination of PW5.

12. While it being so, now coming to the registration of the case. It is the case of the prosecution that alleging that the appellant/accused had demanded bribe on 12.03.2008, PW2 had preferred a complaint on 17.03.2008 at 10.30 am., and based on which, the case was registered at 11.00 a.m on the same day. It is the case of the Trap Laying Officer (PW8) that after registration of the case, he has sent requisition to the Department Head of the official witnesses, whereas, it is the case of PW4 that he had gone to his office on 17.03.2008 at 9.30 a.m, where, he was instructed by his Departmental head at 10.30 a.m. to proceed to the office of the respondent to assist the TLO in a trap.When the complaint itself is stated to be registered at 11.00 a.m summoning of the official witness at 10.30 a.m creates a doubt, particularly in this case neither the requisition by the TLO and nor the intimation by the Departmental Head with regard to the summoning of the official witness. had been produced before the court.

13. Admittedly, the FIR is stated to have been registered at 11.00 hours and as per the prosecution, the official witnesses are stated to have reached the office at 11.45 hours and the preparation of the Entrustment Mahazar started at 12 noon and ended at 12.45 hours. It is the further case of the prosecution, as per the directions of the accused to meet PW2 at his residence the trap team had started in their vehicles and while they were enroute via Kotturpuram, the de facto complainant/PW2 himself had called the appellant/accused in his mobile and during the conversation the accused is said to have changed the place of meeting and had informed him that he would receive the alleged bribe money at Sun Plaza Bus Stop on GN Chetty Road. Strangely, the CDR details in respect of the alleged mobile conversations between the de facto complainant and the accused were not recovered by the respondent. A specific question has been put to the TLO in this regard and he had denied recovering the same. If the mobile phones had been recovered and the CDR(Call Detail Records) had been produced before the Court it would have been the best possible evidence to prove the case as projected by the prosecution regarding the claim of change of location and the tower locations of PW2 and the appellant/accused. Non production of the CDR (Call Detail Records) creates suspicion.

14. In this regard, in **Tamaso Bruno & Another Vs State of U.P (2015) 7 SCC 178,** the Hon'ble Apex Court has held that the non production or witholding of electronic evidence cannot be said to be a mere instance of faulty investigation but amounting to withholding of best evidence making the prosecution case unreliable.

15. Now coming to the evidence of the witnesses regarding the occurrence at the Sun Plaza Bus stop at GN Chetty road. It is the case of PW2 that he along with the trap team reached the spot at around 1.30 pm on 17.03.2008 and except him and PW4, the Trap Laying Officer/PW8 and the trap team stood at a distance and were watching what was happening. It is the further case that the accused had come around 1.40 pm in his two wheeler and asked where the money was and immediately, PW2 had taken Rs.5000/- and handed it over to him and that he had also told that the balance would be given within two days and he had made the pre arranged signal as directed by the Trap Laying Officer/PW8 and subsequently, the accused had counted the money and kept in his right side pocket. Thereafter, PW8/ Trap Laying Officer along with his team had gone there and PW2 had informed that the accused had

received the money and that PW4 had also affirmed the same and PW2 was asked to go away from that place. Later PW2 was examined by PW9 on 29.03.2008. However, in the cross examination, PW2 had admitted to have gone to the Teynampet Police Station along with the police party/trap team and had witnessed the further proceedings. He had also deposed about having signed certain hand written notes prepared by PW8/Trap Laying Officer . When he was confronted about the presence of yet another Inspector of Police named Raja Srinivasan, he had stated that he was not aware of the same. In this regard, while analysing the evidence of PW8/Trap Laying Officer, he had admitted that one Thiru. Raja Srinivasan, Inspector of Police was also a member of the trap team. Whereas, the said Raja Srinivasan was neither cited as a witness nor examined as witness before the Court. The non examination of the said Raja Srinivasan creates a doubt with regard to the trap proceedings.

16. It is the defence of the accused that PW8/ Trap Laying Officer and his team threatened him and had thrusted the amount of Rs.5000/- into his pocket and he was taken to the Police Station, where he was asked to take the money from the pocket and only thereafter, phenolphthalein test was conducted. Further, as stated above, in this case, the acceptance is stated to have been done

at bus stop near Sun Plaza and that the phenolphthalein test was stated to have been conducted at the office of ACP, Teynampet Police Station which is about 200 metres away. Further in this case, no one from the Teynampet Police station has been shows as a witness to the recovery under the Mahazar and also in respect of phenolphthalein test and the recovery of MO1 in Ex.P5. In such circumstances the non preparation of the Rough Sketch/Site Plan and non marking of the same before court assumes significance creating doubt with regard to the demand, acceptance and recovery of the tainted money. Normally in a criminal case the investigating officer goes to the place of occurrence after the commission of crime and prepares a site plan, but in a trap case, PW8/ Trap Laying Officer is a witness to the incidents immedietly after the demand and acceptance and he is a person who conducts the phenolphtalein and recovery. Preparation of site plan/rough sketch is an essential part of investigation in a trap case and it shows the place of demand, acceptance and recovery. In this case the site plan/rough sketch had not been prepared. Though the following of the Rules under the DVAC Manual may not be mandatory, in the facts of the presnt case, giving a total go bye to the preparation of a rough sketch/site plan either as per Rule 49 of the DVAC or a bare minimum rough sketch/site plan to show the place of demand and acceptance and the place of phenolphtalein test and recovery makes it difficult and unsafe to accept the mere oral evidence of the trap witnesses and PW8/Trap Laying Officer thereby making the prosecution case doubtful.

17. In ***T.S.Ramaswamy vs. State of Tamil Nadu*** reported in ***CDJ 1992 MHC 008***, this court has held :-

"14. The evidence of P.W. 1 is that he was standing near a window and that P.W. 2 was standing near the other window. In this case, the prosecution has also not filed any sketch showing the places where P.Ws. 1 and 2 were standing in order to find whether it would be possible for P.W. 2 to watch the conversation between P.W. 1 and the accused. We do not know the distance between the two windows and the places where P.Ws. 1 and 2 were standing. In the absence of sketch also, it is difficult to appreciate the evidence of P.Ws. 1 and 2 and to find out whether P.W. 2 could have witnessed the alleged payment of bribe by P.W. 1 to the accused. In all trap cases like this, it is necessary for the prosecution to file a sketch also showing the office or the place where the accused was trapped. Otherwise, it would be difficult, and unsafe to accept the mere oral evidence of Official trap witnesses when they give evidence that they witnessed the payment of bribe especially in this case when P.W. 2 went along with P.W. 1 to the office of the accused. The rough sketch would

also help the court to find out whether official trap witness could actually hear the conversation and see the payment of bribe of P.W. 1 to the accused. Therefore, in cases of this nature, it is necessary for the prosecution to file a sketch also showing the places where P.W. 1, the official trap witness and the accused were found at the time of alleged trap and payment of bribe amount.

18. The evidence of PW4 regarding summoning him even prior to the registration of the case coupled with the fact of non marking of either the requisition letter by PW8/Trap Laying Officer or the permission letter of the Departmental Head creates a doubt with regard to the presence of PW4 at the time of trap.

19. In ***State of Punjab vs. Madan Mohanlal Verma*** reported in ***(2013) 14 SCC 153,*** the Hon'ble Apex Court had held as under :-

"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe

or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward 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 doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person.# (vide Ram Prakash Arora v. State of Punjab MANU/SC/0213/1972 : (1972) 3 SCC 652, T. Subramaniam v. State of Tamil Nadu MANU/SC/8010/2006 : (2006) 1 SCC 401, State of Kerala v. C.P. Rao MANU/SC/0678/2011 : (2011) 6

SCC 450 and Mukut Bihari v. State of Rajasthan MANU/SC/0480/2012 : (2012) 11 SCC 642."

20. In this case, after carefully analysing the evidence on record, this Court is able to see that the de facto complainant/PW2 had a motive against the appellant/accused. PW5, the complainant in the case against PW2 had given a petition to the Chennai City Commissioner of Police Ex D2 in respect of the delayed enquiry conducted by Thirumangalam Police against PW2 and that PW2 had offered to compromise the issue through his Advocate by compensating PW5 by making payment of RS 20000/- and that since he was leaving to native his place Tenkasi PW2 had told him that if the amount was with him he would spend it and had agreed to hand it over to the accused. The accused is entitled to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money which was accepted by him 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 doubt. However, before the accused is called upon

to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. As discussed above there are several loose ends in the prosecution case shaking the very foundation.

21. In ***Sathyanarayana Murthy vs. District Inspector of Police, State AP*** reported in ***2015 10 SCC 152***, the Hon'ble Apex Court held as 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.*
>
> *27. 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."

22. As already discussed above,the entire circumstances under which the case is stated to have been registered ,the trap witnesses being summoned even before the registration of the case,the change of location of trap,the alleged demand and acceptance of bribe and the subsequent recovery are highly suspicious and shrouded with doubts. The accused had come out with probable defence by marking Ex.D1 and Ex.D2 in as much as the evidence of PW5 has also not been disputed or denied by the prosecution. In view of the above infirmities and inherent improbabilities,this Court has to necessarily come to a conclusion that entire case of the prosecution more particularly, the trap proceedings and recovery are bristled with suspicious circumstances and doubts. Before calling upon the accused to rebut the presumption under Sec 20 of the PC Act a bounden duty is cast on the prosecutions to prove the foundational facts and in the case on hand the prosecution has failed to prove the foundational facts and thereby, the appellant is entitled to be acquitted.

23. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is hereby set aside. The Appellant is acquitted from the charges leveled against him. The bail bond, if any executed by the Appellant, shall stand canceled and the fine amount, if any paid by him, shall be refunded to him.

20.12.2023

To

1. The Special Court for Cases under PC Act,
   Chennai.

2. The Inspector of Police,
   Vigilance and Anti-Corruption,
   City Special Unit – III,
   Nandanam, Chennai – 35.

3.The Public Prosecutor,
   High Court of Madras.

A.D.JAGADISH CHANDIRA,J.

ham

Crl.A.No.296 of 2017

20.12.2023