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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2023

Coram

The Honourable Mr. Justice **A.D.JAGADISH CHANDIRA**

Crl.A.No.330 of 2017

M.Dhayalan ... Appellant/A1

Vs.

Inspector of Police,
Vigilance and Anti Corruption,
Chennai City - I Chennai. ... Respondent

Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the judgment made in C.C.No.81 of 2011(Old C.C.No.10/2011) dated 07.06.2017 by the learned Special Judge for the cases under Prevention of Corruption Act at Chennai.

For Appellant : Mr.V.Krishnamurthy, Senior Advocate
For Mr.V.N.Krishnamurthy

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

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JUDGMENT

Challenging the judgment of conviction and sentence rendered by the learned Special Judge for the cases under Prevention of Corruption Act at Chennai, dated 07.06.2017 made in C.C.No.81 of 2011 (Old C.C.No.10/2011), the appellant/first accused has filed the present Criminal Appeal.

2. The Appellant-Dhayalan, A1, was working as Sub Inspector of Survey-I from 14.11.2009 to 10.03.2010 and P.Selvaraj, A2, was working as Field Assistant from 12.12.2008 to 10.03.2010 at the Mambalam-Guindy Taluk Office and they are public servants under Section 2(c) of the Prevention of Corruption Act, 1988. They were charged and tried for the offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988,

3. The trial Court, having found A2 not guilty for the offences punishable under Section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, acquitted him under Section 248(1) Cr.P.C and found A1 guilty for the offence punishable under Sections 7 and 13(2) r/w

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13(1)(d) of the Prevention of Corruption Act, 1988, convicted him and the sentence imposed upon the appellant/A1 is as under:-

Under Section	Sentence
7 of Prevention of Corruption Act, 1988	one year of 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 Prevention of Corruption Act, 1988	two years of rigorous imprisonment and a fine of Rs.1000/-, in default, to undergo three months simple imprisonment.
The sentences shall run	**concurrently.**

4. **Factual aspects of the case are as under:-**

4.1. A complaint dated 08.03.2010; Ex.P12 came to be lodged by the defacto complainant, PW8, a resident of Door No.218, Plot No.15, Jeevanandham Salai, K.K.Nagar, Chennai-78, contending as under.

4.2. The defacto complainant, PW8, who had settled her property in favour of her son PW 7 viz., E.Hemanth Kumar vide settlement deed dated 02.11.2009 and registered as Document No.2344/09 in the office of the Sub Registrar, Ashok Nagar, had applied for transfer of patta to her son's name for the above mentioned property in the office of the Tahsildar,

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Mambalam-Guindy Taluk Office, Chennai, on 22.01.2010 and the application-Ex.P 4 was received vide Token No.TR/2867/09-10 and she was directed to approach the Survey Section after 15 days. After repeated requests of the defacto complainant, A1 had inspected the house of the defacto complainant on 27.02.2010 at 11.30 hours and at that time, A1 had demanded a sum of Rs.5,000/- as illegal gratification other than the remuneration to effect transfer of name in the patta. When the defacto complainant had accepted to pay the demanded amount, A1 had directed her to come to the office, pay the said amount on 08.03.2010 Monday evening and receive the patta. As PW2-defacto complainant was not willing to pay the bribe amount, she lodged a complaint Ex.P12 before PW.10, the Deputy Superintendent of Police, Vigilance and Anti Corruption, Chennai for taking suitable action against the appellant/A1.

4.3. On receipt of such complaint, PW.10-Deputy Superintendent of Police had registered a case in Crime No.4 of 2010 under Section 7 of the Prevention of Corruption Act, 1988, against A1 under Ex.P13-First Information Report and obtained signature of the defacto complainant and issued a copy of the same to her. He then sent requisition to the Directorate of Horticulture, Chennai and Directorate of Rural Development and

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Panchayatraj, Panagal Maligai, Saidapet, Chennai, for deputing their staff to be the witnesses for the trap proceedings.

4.4. As per requisition, two official witnesses viz.,Ravichandran, Audit Assistant, Directorate of Horticulture, Chennai(Not Examined) and PW2, Tmt.Usha, Block Development Officer, Directorate of Rural Development and Panchayatraj, Panagal Maligai, Saidapet, Chennai, had vide proceedings Exs.P14 and Ex.P15 respectively, reached the office of the Vigilance and Anti Corruption and reported before PW.10. P.W.8-defacto complainant and the official witnesses were introduced to each other and they were apprised of the case by giving a copy of the complaint and FIR.

4.5. Thereafter, when P.W.10 had asked P.W.8 whether she had brought the demanded amount of Rs.5,000/-, she had handed over 5xRs.1000/- denomination currency notes(M.O 1). After receipt of the said amount, PW10 had given the same to Ravichandran, official witness, for counting and informing the serial numbers of currency notes and thereafter, P.W.10 had noted down the serial numbers and carried out the Chemical Test on the normal hands of the official witness Ravichandran and there was no change in colour. Later, phenolphthalein powder was smeared on the currency notes produced by PW8 through Head Constable. The currency

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notes smeared with Phenolphthalein powder were handed over to the official witness Ravichandran for counting and to keep the same in the middle zipped portion of P.W.8's handbag after ascertaining that there was no other things kept it in the middle portion and again the chemical test was carried out on the hands of the witness Ravichandran, who counted the currency notes smeared with phenolphthalein powder, which turned pink. The importance of the test and the trap proceedings was explained by P.W.10-Trap Laying Officer to P.W.8 and the two official witnesses and instructed P.W.8 to handover the tainted amount only on demand by A1 and had also instructed to give signal by removing her spectacles and wearing it back after wiping the same with her handkerchief. PW2-official witness was instructed to accompany P.W.8-defacto complainant and to observe the happenings between A1 and the defacto complainant. Thereafter, PW10-Trap Laying Officer had prepared Ex.P2-Entrustment Mahazar in the presence of said witnesses and obtained the signatures of P.W.8 and the official witnesses. Thereafter, P.W.10, P.W.8, official witnesses and police party had proceeded to Mambalam-Guindy Taluk Office located at Bharathidasan Road and stopped the vehicles before the said office at 4.30p.m., and sent P.W.8 and P.W.2 to meet A1.

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4.6. While P.W.10 along with witness Ravichandran and police party were waiting opposite to the Taluk office, P.W.8 came out of the office at about 5.15p.m., and gave a pre-arranged signal as instructed by P.W.10 by removing her spectacles and wearing it back after wiping the same with her handkerchief. Immediately, P.W.10 and police party along with witness Ravichandran went inside the office and enquired about the happenings and that P.W.8-defacto complainant had informed that when she enquired A1 about transfer of patta in her son's name, he had directed her to wait for some time and thereafter, he called her and reiterated his earlier demand of Rs.5,000/- and directed her to handover the amount to A2, Field Assistant, who stood near A1 and immediately she had taken out the phenolphthalein smeared currency of Rs.5000/- from her bag and given to A2 and that A2 had accepted the same on behalf of A1 in his right hand and counted the same using both the hands and had kept the tainted amount inside a marriage invitation cover (M.O2) and kept the same in the Steel Bureau in the office. Further, A1 had informed P.W.8 that the patta will be made ready within two or three days and had also instructed to collect the same thereafter. P.W.10 enquired P.W.2-Usha, the official witness, about the happenings and she had also reiterated the narration of P.W.8. Thereafter,

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P.W.10 went along with P.W.8 inside the office and that P.W.8 identified both the accused to P.W.10. P.W.10 introduced himself and the official witnesses to the accused 1 and 2. At that time, while A1 had informed that he had not received the amount, A2 rubbed both his hands in his pant with tension. P.W.10 asked them to be cool and conducted phenolphthalein test on both the hands of A2 and the same proved positive. The right hand and left hand solutions were collected and sealed by PW10 and they are M.O.3 and M.O.4 respectively. When P.W.10 enquired about the amount received from PW8, A2 produced the tainted amount of Rs.5000/- kept inside the marriage invitation cover (M.O 2) from the Steel Bureau. The serial numbers of the tainted amount produced by P.W.8 was verified with the serial numbers in the Ex.P2-Entrustment Mahazar and was found tallied and PW10 had recovered the tainted money M.O.1 and marriage invitation cover M.O.2. He had prepared Ex.P3-Seizure Mahazar in the presence of official witnesses and arrested the accused 1 and 2 and recovered the file relating to name transfer of patta of PW8, Ex.P.4 from the table of the 1st accused. P.W.10 for making house search of the accused 1 and 2, sent an advance intimation to the Court under Ex.P.16. Inspector, V&AC, Vellore, viz., Nandakumar had conducted house search of A1 at Vellore and the Inspector

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Gajendiravardhan had conducted house search of A2 at Guduvancheri and prepared Ex.P5-Search Report and Ex.P6-Inventory Mahazar. Nothing was recovered during house search. P.W.10 sent the accused 1 and 2 to judicial custody along with Ex.P17-alteration report. Thereafter, the recovered currencies(M.O1) from the accused, phenolphthalein solution bottles and Invitation cover(M.O2), in which, cash has been kept were sent to the Court through Form-95 and had also given a requisition letter for sending the solution to the Forensic Science Department and had handed over the case records to P.W.12-Kumarakurubaran, for further investigation.

4.7. P.W.12, on 08.03.2010, had inspected the scene of occurrence and had prepared Ex.P18-Rough Sketch. On 12.03.2010, he had examined P.W.10-Deputy Superintendent of Police and had also recorded his statement. On 23.03.2010, he had recorded the statements of P.W.8-defacto complainant, P.W.2-Usha and P.W.9, the husband of P.W.8. On 23.03.2010 he had examined and recorded the statement of Ravichandran, the official witness. On 16.04.2010, he had examined P.W.3-Jeyachandran, the Deputy Inspector of Land Surveyor, P.W.4-B.K.M.Santha, the Deputy Tahsildar, and P.W.5-Albert Lino, A1 clerk and recorded their statements and recovered Ex.P7-TR Register and Ex.P9-Personal Register (Thani

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Pathivedu). On 24.06.2010, he had examined and recorded the statement of P.W.11-Rani and one Sathish. After receiving Chemical Analysis Report, on 25.06.2010, he had examined PW.6 and P.W.7 and recorded their statements. After completing the investigation, P.W.12 had obtained Ex.P1-sanction order against A1 and A2 through the Director of V&AC from PW1 and on 18.01.2011, he had recorded the statement of PW.1, who accorded sanction against A1 and A2 and filed a final report against them under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and the same was taken on file on 30.03.2011 and made over to IV Additional Special Court, Chennai.

4.8. On issuance of summons, the accused appeared before the Court and the memo of appearance was filed through his counsel. In due compliance of Section 207 Cr.P.C, copies were furnished to the accused and based on the materials, charges were framed against the accused for the offences under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and they had denied the charges and sought to be tried.

4.9. On the side of the prosecution, P.W.1 to P.W.12 were

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examined and Exs.P1 to P18 and M.Os.1 to M.O.4 were marked.

4.10. After completion of evidence on the side of the prosecution, when the accused were questioned on the incriminating materials under Section 313 (1)(b) of Cr.P.C, they had denied the charges. However, no witness was examined on the side of the defence and no document was marked.

4.11. The trial Court, after hearing the arguments of both sides, while acquitting A2 giving benefit of doubt, found A1 guilty for the offences punishable under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced him to undergo imprisonment as stated above. Challenging the said conviction and sentence, the appellant/A1 had filed the present criminal appeal.

5. Mr.V.Krishnamurthy, learned Senior Counsel for Mr.V.N.Krishnamurthy, learned counsel appearing for the appellant/A1 taking this Court through the entire materials available on record assailed the impugned judgment of conviction and sentence, and contended as follows:

(i) The trial Court, without properly analysing the evidence on

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record, had wrongly convicted the appellant. The reasons assigned by the trial Court for convicting the appellant are totally unsustainable in law and unbelievable on facts.

(ii) Admittedly in this case, the alleged tainted money was recovered from A2 and not from the appellant/A1 and the trial Court, having acquitted A2 giving benefit of doubt, on the same set of evidence erred in convicting A1 from whom there is no recovery at all.

(iii) There are several material contradictions in the evidence of PW.2 and P.W.8-defacto complainant with regard to demand, recovery of the tainted money and the subsequent recovery of Ex.P4 thereby, creating doubt in the entire prosecution case.

(iv) As per PW8 the complaint Ex P12 had been drafted by PW10 and PW8 had signed in the complaint. Though the prosecution has projected the case that A1 had demanded a sum of Rs.5,000/- from the defacto complainant, the evidence of P.W.8-defacto complainant is not cogent and clear as to who is the person who had demanded the amount and the entire trap proceedings is a stage managed one and the material contradictions in the evidence

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of P.W.2 would categorically prove the same.

(v) Evidence of PWs 3, 4 and 5 falsifies the evidence of the prosecution regarding the recovery of Ex.P4, viz., application for name transfer of patta at the time of trap from the table of A1. Further, the material contradictions in the evidence of P.W.2-official witness and P.W.8-defacto complainant with regard to the denominations of M.O.1 also creates a doubt and thereby, the presence of PW2 at the place of trap becomes doubtful.

(vi) P.W.8 was unable to identify the person to whom she had given the bribe amount and who had received the same and it is the case of prosecution that when P.W.8 had given the bribe money to A2, he had received the same and kept it inside the wedding cover(M.O2) and kept the same in the bureau, but not subjecting the wedding invitation cover (M.O.2) to phenolphthalein test and absence of the bureau and table in Ex.P18-Rough Sketch/Site Plan creates doubt with regard to recovery of the tainted money (M.O1) and the application Ex P4. Further, as per admission of P.W.10-Trap Laying Officer, he has not questioned the accused immediately after the arrest and

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alleged recovery and thereby, there had been violation of Rule 47 and 49 of the DVAC Manual vitiating the prosecution case.

(xii) The evidence of P.Ws.8 and P.W.10 with regard to the complaint and registration of the First Information Report creates doubt in the prosecution case, which goes to the root of the case, when especially long delay between the date of demand and the date of complaint has not been properly explained by the prosecution and the date of pre-trap demand has not been categorically spoken by PW.8, her son and husband viz., PW7 and PW9 and in such circumstances, the entire prosecution case is doubtful and thereby, the learned counsel for the appellant seeks to allow the appeal.

6. Per contra, Mr.S.Udayakumar, learned Government Advocate (Criminal Side), would submit that the appellant/A1 though had completed his work as early as on 24.02.2010, in order to obtain illegal gratification, has made a false statement that the application was pending. The appellant/A1, who is the Surveyor, in order to get illegal gratification other than remuneration by false representation had gone to the house of the

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defacto complainant on 27.02.2010 at 11.30a.m., for inspection and had demanded a sum of Rs.5,000/- for issuance of transfer of patta. The demand made by the appellant/A1 on 27.02.2010 has been corroborated by the evidence of P.W.7 and P.W.9, who are the son and husband of P.W.8-defacto complainant respectively. The accused had informed the defacto complainant to pay the demanded amount after a week and received the patta transfer and since A1 had informed the defacto complainant to come to his office on 08.03.2010, she had preferred the complaint to the respondent on 08.03.2010 and there is no delay in lodging a complaint. Though there is a discrepancy with regard to the denomination of the currency notes-M.O.1, the denominations as entered in Ex.P2-Entrustment Mahazar has been tallied with the recovered amount. P.W.2-official witness has spoken about the recovery of tainted money of 5 x 1000 notes. He would further submit that the trap was laid and recovery made from the office room of the accused viz., (i)the bribe amount received by A2 on the instruction of A1, which was kept inside the office bureau and (ii)Ex.P4-application along with documents, which were pending with A1, would prove the case of the prosecution. He would further submit that the failure to question the accused at the time of arrest does not vitiate the prosecution case when

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especially the rules under the DVAC Manual are only directory in nature and not mandatory. Though the amount was recovered from A2, the benefit of doubt was given him since his name was not found in the First Information Report and there is no evidence in respect of demand by A2 and trial Court had rightly acquitted A2 and the conviction made on A1 is proved by the prosecution beyond reasonable doubt. Therefore, he would pray for dismissal of the appeal.

7. In reply, Mr.V.Krishnamurthy, learned Senior Counsel for Mr.V.N.Krishnamurthy, learned counsel appearing for the appellant/A1 would submit that though it is the categorical evidence of P.W.8 that both the accused had demanded bribe,,she was unable to identify whether they are in Court. Her son PW 7 had deposed that her mother informed him that the officials in the Taluk Office had demanded bribe. In such circumstance, the trial Court ought to have extended the benefit of doubt to the appellant also when especially there is absolutely no recovery from the appellant/A1 and when the alleged demand by A1 itself doubtful. He would further submit that though the rules under DVAC Manual are directory in nature, taking into consideration the cumulative evidence that there are several loose

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ends in the prosecution case and the non compliance of the rules/guidelines under the DVAC Manual, more particularly, Rule 49 creates grave doubt in the case and thereby, the prosecution has failed to prove the case beyond reasonable doubt and the appeal has to be allowed.

8. Heard Mr.V.Krishnamurthy, learned Senior Counsel for Mr.V.N.Krishnamurthy, learned counsel appearing for the appellant/A1 and Mr.S.Udayakumar, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

9. What has to be seen is (i) Whether the prosecution has proved its case against the appellant/accused in respect of demand, acceptance and recovery beyond reasonable doubts and if so, (ii) the trial court, having extended the benefit of doubt to A2 from whom the recovery had been made and acquitted him, is right in convicting the appellant/A1based on the same set of evidence?

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10. At the outset, the first and foremost contention raised by the learned counsel for the appellant/A1 is that admittedly the alleged tainted money is stated to have been recovered from A2 and though the prosecution has projected the case as if A1 had demanded a sum of Rs.5,000/- from PW8-defacto complainant, the evidence of P.W.8 is not clear as to the person who had demanded the amount and further she being not able to identify the person in court, the trial Court having extended benefit of doubt to A2 from whom the recovery was made, ought not to have convicted the appellant/A1 alone. PW.8 had given the complaint to P.W.10 and set the law into motion. Now while analyzing her evidence with that of PW2 the official shadow witness, though PW8 had named the appellant/accused in the complaint as the person who has demanded the bribe amount, in her evidence before the court she had deposed that both the accused had demanded money. But she was not able to identify whether they are in court. She had further deposed that one person had demanded and received the bribe money from her and that she is not able to confirm whether the said person is either Dayalan (A1-the appellant herein) or Selvaraj @ Selvakumar (A2–who was acquitted by the trial court). This part of the evidence of PW8 is in total contradiction to the evidence of PW2 with regard to demand and

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recovery. PW2 had deposed that A1 had enquired PW8 that whether she had brought the bribe money and when PW8 had affirmed, A1 had directed her to hand it over to A2 and that A2 had received it and counted the money and kept it inside a wedding invitation cover (M.O.2) in the top rack of a steel bureau. Further, with regard to the denomination of the tainted money (M.O.1) PW8 had deposed that she had handed over 10xRs.500/- denomination notes whereas PW 2 had deposed that it was 5x Rs 1000/- denomination notes. Further P.W.8 in her cross-examination deposed that Ex.P12-complaint was prepared by police, which also throws serious doubt on the prosecution case with regard to the actual person who has made the demand of Rs 5000/- and PW8 being unable to exactly fix the name or identity of the person there could have been the possibility of giving the name by mistake in the complaint.

11. The next contention is that the entire trap proceedings is a stage managed one and the presence of P.W.2, the official witness is doubtful, since the evidence of the official witnesses working in the Taluk Office viz;PW3, PW4 and PW5 and the evidence of PW2 with regard to the recovery of EX.P4, the Application from the Table Drawer of the

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appellant/accused belies the prosecution case.

12. In this regard, it is absolutely necessary to analyze the evidence of PW3 to PW5.

12.1. P.W.3, who was working as the Deputy Inspector of Survey, had deposed that P.W.8-defacto complainant had given an application on 21.01.2010 and it was assigned TR.No.2867/2009 and 2010 and that A1 had already completed the survey and made the recommendations and handed over the same to P.W.5, Albert Lino. In his cross examination, he had stated that A1 is not authorized to issue patta or patta transfer and that even prior to the date of occurrence, the accused on 24.02.2010 had sent the recommendation under Ex.P4 and forwarded the same to P.W.4-Shantha, working as Deputy Tahsildar in the office of Mambalam-Guindy Tahsildhar, Chennai, and he had also stated that A2 does not have any separate seat in the office.

12.2. P.W.4, Deputy Tahsildar had deposed that Ex.P4-application of PW8 was received on 22.01.2010 and had assigned TR.No.2867/2009 and handed over to A1 for conducting survey on that day itself and that A1 had completed the survey and had submitted his report on

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24.02.2010, and she has not passed any orders for transferring patta. She had further deposed that if she recommends for issuance of name transfer of patta, the Tahsildar will issue patta. It is her further evidence that once the file has been received by her there was no requirement of the file being sent back to A1 again.

12.3. P.W.5 is the B1-Assistant in the office of the accused and he had deposed that after receiving Ex.P4-Application from P.W.8, he had obtained the recommendation from P.W.4 on 22.01.2010 and forwarded the same to A1 and A1 had also inspected and submitted his Report on 24.02.2010 itself vide entry in page 31 of his personal diary-Ex.P9 and he had received it vide endorsement Ex P10 and thereafter, after verifying the same on 05.03.2010, he had placed the file to P.W.4. PW4 in his cross examination had admitted that the file, which had been forwarded to PW4, had not been sent back to A1 again.

12.4. When the evidence of officials of the office of the Tahsildar, Mambalam-Guindy Taluk Office, Chennai viz; PW4 and PW5 clearly established that A1 had completed his work of inspection and submitted his Inspection Report on 24.02.2010 along with Ex.P4 file containing 36 pages and it had been forwarded to PW4 for further action on 05.03.2010 itself

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and the file will not be sent back to A1 again, the case of the prosecution that the said file was recovered from the table drawer of A1is also doubtful.

13. Now coming to the averment of demand by A1, it is the case of PW8 that she had preferred the complaint Ex.P12 and she had deposed that it was typewritten in the Vigilance office and she signed it. In Ex P12 complaint it is stated as if A1 conducted inspection on 27.02.2010 at 11.30a.m., and at that time, he had demanded Rs 5000/- as bribe. The prosecution has examined P.W.7 and P.W.9, son and husband of P.W.8, to substantiate the demand made by A1 to PW8. P.W.7, had deposed that he was working at Faridabad and his mother had informed him that the officials of the Taluk office had demanded money for effecting name transfer in the patta, thus, inferring several persons had demanded. P.W.9, husband of P.W.8, had also deposed that his wife had met the accused and they have demanded Rs 5000/- for name transfer of patta and that he came to know that on 08.03.2010 the police arrested the accused. Both PW7 and PW9 have not deposed about the date and the name of the person or persons working in the Taluk office, who have demanded bribe money and their evidences are hearsay in nature and they were also not available in their

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residence while A1 was said to have inspected the premises of P.W.8 on 27.02.2010 at 11.30a.m. Further, in this regard the evidence of PW4 and PW5 is that the appellant/A1 had completed the inspection and submitted his report on 24.02.2010 itself. Such being so, when there is no corroborative evidence with regard to the alleged inspection, the demand said to have been made on 27.02.2010 at 11.30a.m., is also doubtful. From overall analysis of the above, it is clear that the demand said to have been made by A1 on 27.02.2010 at the time of inspection of P.W.8's house is not proved by the prosecution.

14.The learned counsel for the appellant has raised another contention that though the tainted money was stated to be recovered from a wedding invitation Cover(M.O.2) kept inside the upper rack of a Steel Bureau and that no evidence has been let in by the prosecution to prove that the Steel Bureau was in exclusive possession of either A1 or A2 and Ex.P18-Rough sketch/Site Plan also does not disclose the availability of Steel Bureau and the table in the office from which MO1, MO2 and Ex.P4 are said to be recovered. A2 was alleged to have taken out the cover from the Steel Bureau and only after money was taken from the Steel Bureau, phenolphthalein test

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was conducted by P.W.10-Trap Laying Officer. P.W.10, in his cross examination had admitted that the marriage cover (M.O.2), in which, tainted money was kept was not subjected to Chemical Analysis and he had also admitted that A1 had completed his survey as early as on 24.02.2010 and had forwarded the Inspection Report to P.W.5-Deputy Tahsildar with the recommendations. Further, the positions of the accused, the bribe giver-PW8 and the members of the Trap Team were also not mentioned in Ex.P18 Rough Sketch/Site Plan, thus, creating a doubt with regard to the evidence of PW2 and thereby, making the entire trap doubtful.

15. As stated above the evidence of PW8/defacto complainant is not cogent and clear with regard to the person or persons who are alleged to have demanded the money and the evidence with regard to the date prior to trap is also doubtful and not clear. She was also not able to identify the person, who has demanded bribe from her and who has received the bribe amount. When such being so, the evidence of PW2 the official shadow witness has to be scrutinized carefully and this Court is able to see that there are grave material contradictions in the evidences of P.W.2, P.W.8 and P.W.10 with regard to demand, recovery of MO1and MO2 and recovery of

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Ex.P4-application making the evidence of PW 2 doubtful. Though the non adherence to the rules under the DVAC Manual will not affect the case of the prosecution in all trap cases, taking into consideration the grave material contradictions in the evidence of PW8 and PW2 and the doubts regarding recovery of PW4 from the possession of A1, the non compliance of Rule 49 of the DVAC Manual assumes significance. In this case, Ex.P18 does not show the position of the Accused Officers, the bribe giver and the trap team and it also does not show the presence of steel bureau and the table where from MO1, MO2 and Ex. P 4 are stated to have been recovered. Admittedly in this case the tainted money is not recovered from the Appellant/A1 and he has not been subjected to Phenolphthalein test whereas the tainted money had been recovered from A2 and the test conducted on him as per the prosecution also has proved positive, but A2 has been given benefit of doubt and he had been acquitted by the trial Court. When the case of the prosecution is bristled with several infirmities, more particularly when no recovery is said to have been effected from A1, the very same benefit of doubt ought to have been extended to the appellant/A1 also.

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16. The appellant/A1 though 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, is entitled to displace the statutory presumption by bringing on record the 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 Prevention of Corruption Act, 1988. 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, 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 the above analysis of the cumulative evidence exposes several loose ends in the prosecution case creating several doubts shaking the very foundation of the prosecution case.

17. In ***P. Sathyanarayana Murthy vs. District Inspector of***

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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, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction 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*

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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."

18. Thus, this Court, having carefully analysed the oral and documentary evidence, is satisfied that the prosecution has not proved the foundational facts, such as, demand, acceptance and recovery of money by independent witness beyond all reasonable doubts and the trial Court, without properly appreciating the evidence adduced, had erred in convicting the appellant/A1 for offence under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, while extending benefit of doubt and acquitting A2 on the same evidence despite recovery of bribe amount from him. In view of the above discussions, the judgment of conviction and sentence made by the trial Court against the appellant/A1 has to be set aside.

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19. In the result, the conviction and sentence imposed on the appellant/A1 in C.C.No.81 of 2011 dated 07.06.2017 by the Special Judge for the cases under Prevention of Corruption Act at Chennai, is set aside and the Criminal Appeal stands allowed. The appellant is acquitted from the charges levelled against him. The bail bond, if any, executed by him during trial, shall stand cancelled and the fine amount, if any, paid by the accused, shall be refunded to him.

08.12.2023.

Index:Yes/No

Internet:Yes/No

raa

To

1. The Special Judge for the cases under
Prevention of Corruption Act,
Chennai.

2. The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City-1, Chennai.

3. The Additional Public Prosecutor,
High Court, Chennai.

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A.D.JAGADISH CHANDIRA, J.

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