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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Criminal Appeal No.666 of 2017

A. Perumal

.. Appellant

Versus

State by
The Inspector of Police,
Vigilance & Anti-Corruption,
Namakkal, Namakkal District,
Cr.No.1/AC/2004

.. Respondent

Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code to set aside the order passed in Spl. C.C. No. 13 of 2004 on the file of the Special Judge/Chief Judicial Magistrate, Namakkal, Namakkal District.

For Petitioner : Mr. C. Prakasam

For Respondent : Mr. C.E. Pratap,
Government Advocate (Crl.Side)

J U D G M E N T

The present Criminal Appeal has been filed by the sole accused in Spl. C.C. No. 13 of 2004, challenging the judgment of conviction and sentence dated 22.09.2017 rendered by the Special Judge cum Chief Judicial Magistrate, Namakkal.



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

Under Section	Sentence
7 of Prevention of Corruption Act	Two years of simple imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
13 (2) r/w. 13 (1) (d) of Prevention of Corruption Act	Two years of simple imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.

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

The appellant/accused viz., Perumal was working as a temporary fitter under NMR Scheme at Elachipalayam Panchayat Union, Tiruchengodu Taluk, Namakkal District between 01.06.1986 and 30.01.2004 and he is a public servant as per the Prevention of Corruption Act. The defacto complainant, Selvakumar, was in need of No Objection Certificate for getting electricity service connection to his bore-well. When he applied for NOC from the Panchayat Union, the accused demanded an illegal gratification of Rs.350/- to discharge his official duty. Since the defacto complainant was not willing to give the bribe amount, he lodged a complaint on 30.01.2004 at 8.45 a.m to the Inspector of Police (P.W.11), Vigilance and Anti-Corruption, Salem. On receipt of the complaint (Ex.P.1), PW11 registered a case in Crime No.1/AC/2004 against the accused under Section 7 of Prevention of



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Corruption Act.

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4. Based on the complaint, a trap was laid on the same day between 12.35 p.m and 12.45 p.m. during which the accused was caught red handed while receiving the bribe at Elachipalayam Panchayat Union Office. After completion of investigation, the respondent filed the final Report on 25.05.2004 against the accused under Sections 7, 13 (2) & 13 (1) (d) of the Prevention of Corruption Act and the same was taken on file as Spl.C.C.No.13 of 2004 by the learned Special Judge cum Chief Judicial Magistrate, Namakkal.

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

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



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7. The prosecution, in order to prove its case, examined P.W.1 to P.W.12 and marked Ex.P.1 to Ex.P.26 and marked M.O.1 to M.O.9 .

8. Based on the incriminating materials, when the accused was questioned under Section 313(1) Cr.P.C., he pleaded not guilty. However, he has not examined any defence witness or marked any document.

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

10. Mr. C. Prakasam, learned counsel appearing for the appellant/accused would submit that the appellant is an innocent person and he has been made a scape goat in this case. He was a temporary employee, employed as a Helper cum Hand Pump Operator on daily wages in the Elachipalayam Panchayat Union. One Periyasamy, who has been examined as P.W.5 in this case, was working as a Fitter in the Elachipalayam Panchayat Union during the



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relevant period and he is the person, who is authorized to issue the No Objection Certificate. Even as per the prosecution version, there is confusion with regard to the person, who has demanded the bribe amount from the defacto complainant (P.W.1). The evidence of PW1 is that, the Fitter is the person, who has demanded the bribe amount for issuing No Objection Certificate. Other than receiving the amount of Rs.50/- for flag day collection and issuing receipt, the appellant/accused has not committed any offence as alleged by the prosecution. The entire trap proceedings are stage managed and in order to save PW5, who is the fitter and a permanent employee, the appellant has been falsely implicated in this case. The material contradictions in the evidence of PW1 and PW2 and the discrepancies in the trap proceedings creates suspicion in the prosecution case. It is the admitted evidence of PW1 that No Objection Certificate was made ready on 27.01.2004 and he had also admitted to have received the No Objection Certificate on 27.01.2004 itself and thereby, the question of lodging the complaint on 30.01.2004 does not arise at all. When the alleged trap proceedings creates a suspicion, the appellant is entitled for acquittal by giving benefit of doubt. He would further submit that the appellant being a temporary employee, immediately after the incident, was removed from service. As there are different version given by the prosecution witnesses, with regard to the demand, the prosecution case



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remains doubtful.

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11. He would further submit that P.W.2, is who stated to have accompanied the defacto complainant/P.W.1 has not supported the case of the prosecution and he has been treated hostile. Further, there are also discrepancies in the evidence of P.W.2 with regard to the trap proceedings and recovery of money and thereby, creating the doubt in the prosecution case. Admittedly, as per the evidence of P.W.1 and P.W2 the accused had received the money and kept it on the right side pant pocket on the back side and that the PW11/Trap Laying Officer along with party had immediately gone into the room and restrained him. When such being so, there is no requirement for PW11/Trap Laying Officer to subject the shirt/M.O.9 worn by the appellant/accused for phenolphthalein test. This aspect also creates doubt with regard to the trap proceedings.

12. In any event, the case of the prosecution was not proved beyond reasonable doubt and when the prosecution has failed to prove the foundational facts, the appellant is entitled to invoke the presumption under Section 20 of the Prevention of Corruption Act. Thereby, the accused is entitled for acquittal.



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13. Mr. C.E.Pratap, the learned Government Advocate(Crl.side) appearing for the respondent would submit that the appellant/accused was working as a temporary employee. He was paid by the Government from the contingent fund and he falls within the category of public servant. It is true that No Objection Certificate was made ready as early as on 27.01.2004, however, the appellant/accused demanded money from PW1 for handing over the No Objection Certificate to him. He would further submit that the discrepancies with regard to the trap proceedings are minor in nature and they will not any way vitiate the prosecution case in any manner. He further submitted that the trial Court, after carefully analyzing the record, had rightly found the appellant/accused guilty, thereby, he would seek to dismiss the appeal.

14. Heard Mr. C. Prakasam, learned counsel appearing for the appellant/ accused and Mr. C.E. Pratap, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

15. The evidence of the prosecution, as culled out from the records, is that P.W.1 Selvakumar, the de facto complainant had deposed that he had



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applied for E.B. Connection for his bore-well and he was advised to obtain a No Objection Certificate from the Panchayat and thereby, on 21.04.2004, he met Venkatachalam (P.W.3), Block Development Officer, Elachipalayam. On his advise, he met the Supervisor Periyasamy (P.W.5) and handed over the requisition form along with other documents. P.W.3 had initialed in the application and handed over it to P.W.5 and thereafter, P.W.5 had gone to his seat and had summoned the accused and asked him to visit the place, where the land in which the bore-well is sought to be erected, for issuing No Objection Certificate. The accused had asked P.W.1 to come to Manikampalayam at 8.30 am on the next day and accordingly, P.W.1/defacto complainant had taken the accused in his two wheeler to the land and later, at the request of the accused, he dropped him at the bus-stop. At that time, the accused insisted P.W.1 to pay Rs.400/- on the next day for getting NOC. When he expressed his inability to pay such sum, he reduced his demand to Rs.350/-. Further, on 23.01.2004, when P.W.1/defacto complainant had again met the appellant/accused, he had reiterated his earlier demand of Rs.350/- and asked him to give the same on 30.01.2004 since there are holidays in between. Since P.W.1 was not willing to pay the bribe amount, he had lodged a written complaint (Ex.P.1) on 30.01.2004 at 8.45 a.m. to P.W.11.Somasundaram, Inspector of Police, Vigilance and Anti Corruption ,



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16. On receipt of the complaint (Ex.P.1), The Inspector of Police (P.W.11), who is the Trap Laying Officer, had registered a case in Crime No.1/AC/2004 against the accused under Section 7 of the Prevention of Corruption Act, 1988. The printed First Information Report is Ex.P.23. Thereafter, P.W.11-Trap Laying Officer had arranged for two official witnesses, namely, Tr. Murugesan (P.W.2), Statistical Sub-Inspector and one Tr. Sakthivel. When the official witnesses had attended the office, P.W.11 had introduced P.W.1-defacto complainant to them and handed over the complaint and First Information Report to the official witnesses to make them get acquainted with the facts of the case. Thereafter, P.W.11 handed over the bribe money of Rs.350/- (M.O.1 series) $[(Rs.100 \times 1) = Rs.100 + (Rs.50 \times 5) = Rs.250]$ and asked the official witnesses to count the same. P.W.11 noted down the serial numbers of the said currency notes. Subsequently, Sodium Carbonate solution was prepared in a glass tumbler and the official Witness Sakthivel was directed to dip his fingers in the Sodium Carbonate solution. The solution did not change the colour. Thereafter, the currency notes were smeared with phenolphthalein power and the official witness Tr. Sakthivel was again asked to count the currency notes and the official witness Tr.Sakthivel was thereafter directed to dip the fingers in the glass tumbler and the Sodium



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Carbonate solution, after the wash, has turned pink. Thereafter, PW11 took the samples of phenolphthalein power and Sodium Carbonate Power in two covers (M.O.2 and M.O.3 respectively) and sealed it and stick label mentioning as A and B and obtained signature from the witnesses in the label. The chemical test was demonstrated to the official witness and the defacto complainant, the importance of the above test and the scheme of the trap proceedings was explained to P.W.1, P.W.2 and other official witness. The tainted money was handed over to P.W.1-defacto complainant with an instruction to hand over the same to the accused only on demand. He was also instructed to come out and give a pre-arranged signal once the tainted money was accepted by the accused. The official witness, viz, Murugesan, was asked to accompany the defacto complainant (P.W.1) and observe the conversations between the defacto Complainant (P.W.1) and the appellant/accused. Entrustment Mahazar (Ex.P2) was prepared by P.W.11 in the presence of P.W.1, P.W.2 and yet another official witness, viz., Murugesan.

17. After finalization of the scheme for trap, P.W.11-Trap Laying Officer along with P.W.1-defacto complainant, P.W.2-Murugesan and other official witness (not examined) along with police party proceeded to Block Development Office, Elachipalayam around 11.40 a.m. and reached the said



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office around 12.30 p.m. When P.W.1-defacto complainant and Murugesan, official witness (not examined) met the accused at 12.35 p.m., at his office, he enquired whether he had brought the money demanded by him and then, P.W.1 handed over the tainted amount of Rs.350/- (M.O.1 series) to the appellant/accused. The appellant/accused had accepted the same and kept the amount in his pant pocket. Thereafter, he had handed over the No Objection Certificate (Ex.P.3) and a Flag Day Receipt (Ex.P.4) to P.W.1-defacto complainant. Murugesan-(not examined) shadow witness also witnessed the happenings. Thereafter, P.W.1 along with the shadow witness had come out of the office and gave the pre-arranged signal. Immediately, P.W.11-Trap Laying Officer along with police party and official witnesses went to the spot and enquired the defacto complainant about the happenings. P.W.1 defacto complainant identified the accused. Thereafter, P.W.11-Trap Laying Officer introduced himself to the accused and since the accused was shivering, he was made to sit in the chair. P.W.11 seized the No Objection Certificate (Ex.P.3) and Flag Day Receipt (Ex.P.4) under the Mahazar. (Ex.P.5). P.W.11 asked one Chinnasamy, Noon Meal Organizer to be present at the time of enquiry and after preparing the Sodium Carbonate Solution in M.O.4 and M.O.5, conducted phenolphthalein test on both the hands of the accused and the same proved positive. Thereafter, the appellant/accused produced the tainted money



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of Rs.250 from the back side pant pocket and Rs.100/- from the left side shirt pocket and the same were recovered. P.W.11-Trap Laying Officer verified the serial numbers of the currency notes recovered from the accused with serial numbers in Ex.P2 -Entrustment Mahazar and they were found to be tallied. P.W.11 had recovered the Flag Day receipt and No Objection Certificate under the Mahazar Ex.P.5. When P.W.11 enquired the accused, he told that Fitter Periyasamy had asked him to receive Rs.350/- from P.W1-defacto complainant and had also asked him to receive additional amount of Rs.50/- for Flag Day fund, and to issue receipt thereof separately. When P.W.11 enquired the accused, he handed over Rs.110/- and told that it was his private money and the same was returned back to him.

18. Thereafter, Sodium Carbonate Solution was prepared in two other glass tumblers in which the left side front pocket of the accused was dipped in one glass tumbler as also the backside pant pocket, which were worn by the accused in another glass tumbler and they turned pink and the same were marked as MO.6 and M.O.7. The cement colour pant worn by the accused was marked as MO8 and the sandal colour shirt wore by the accused was marked as MO9. The file relating to No Objection Certificate containing 14 pages was marked as Ex.P.6. The Flag Day Receipt book containing the



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acknowledgment bearing Nos.279188 to 279900 was marked as Ex.P.7.

Mr. Chinnasamy, Extension Officer, had furnished the details regarding the employment details of the accused, which were marked as Ex.P.8 and the daily wages register was marked as Ex.P.9. The mahazar with regard to the Trap Proceedings was marked as Ex.P.10. Thereafter, PW11 had prepared Rough Sketch under Ex.P.11 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 wife of the accused and prepared Ex.P.12 Search Report. They have also intimated the wife of the accused about his arrest. As per Ex.P.12, nothing was recovered in the house search. After completion of investigation, he had sent the seized material objections to Court through Form-95 (Ex.P.25) and thereafter, handed over the case records to P.W.12 for further investigation. On receipt of the same, P.W.12-Nachiyappan, examined the witnesses and recorded their statements and sent the material objects for chemical analysis. After obtaining permission from the Director of Vigilance and Anti-Corruption, Chennai, he filed the charge sheet against the accused under Sections 7, 13(2) r/w.13(1)(d) of the Prevention of Corruption Act 1988.

19. P.W.3 is the Manager in the BDO office, during the period 2003-2004 and he has spoken about the employment details of the accused.



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P.W.4 is the cashier working in the BDO's office. PW4 has spoken about the allotment of work to the accused and also deposed about the defacto complainant applying for NOC. PW4 also stated that soon after the defacto complainant applied for NOC on 20.01.2004 the fitter Periyasamy visited the land of the defacto complainant and placed a report before the BDO on 23.01.2004 and it was placed before the BDO on 27.01.2004. The Block Development Officer has thereafter granted NOC on 27.01.2004 itself. He had further deposed that it was the duty of the fitter or his assistant to hand over NOC to the applicant. Further, he deposed that he instructed to hand over the NOC to the defacto complainant and he along with the BDO had gone to Trichengode Treasury.

20. P.W.5 is the fitter working in Elachipalayam panchayat union and that the accused was working as an Assistant under him. PW5 stated that the accused was working in a temporary post under Non Muster Roll (NMR) category in the Panchayat Union office. He further deposed that the accused was paid from the contingent fund and monthly expenses sheet for the month of December 2003 was marked as Ex.P.18. He further deposed that the Salem District Collector had passed an order to inspect and grant NOC for installing borewell if only there were no borewells within 100 meters vicinity of the



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proposed borewell. The order of Collector was marked as Ex.P.13. He had further stated that PW1 had applied for NOC and that he had handed over the application for registering to Muthusamy, who was incharge of A3 seat and had directed the accused, who was his assistance to inspect the case. At that time, the defacto complainant/PW2 and the accused were present and the accused told the defacto complainant/PW2 that he will inspect his place on the next day and on the next day, he had gone for some other work. The accused after conducting inspection on 23.01.2004, after complying his work at Namakkal had come back to his office and prepared report regarding the inspection and the same was handed over to BDO. Since it was a holiday between 24.01.2004 and 26.01.2004, he had made an endorsement regarding the inspection in the PW2's application. The inspection report is Ex.P.14. Further, he had instructed the Cashier Muthusamy to receive the flag day fund. He has also stated that a target of Rs.1000/- was fixed for him in respect of flag day collection and the order is Ex.P.15. The receipt book containing receipts bearing serial Nos.279881 to 279900 was handed over to him, which was also marked as Ex.P.7. He had also handed over the amounts to Preetha/PW6, who was incharge of A3 seat. He had also instructed Preetha to issue receipt no.279895 to Selvakumar after receiving Rs.50/- from him . He further deposed that he had not instructed the accused to receive any amount



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from the defacto complainant/PW1. P.W.6, S. Preetha, Junior Assistant, corroborates the evidence of PW5 with regard to the issuance of the flag day receipts.

21. P.W.7 is the Extension Officer of Small Savings Scheme in Elachipalayam Panchayam Union. P.W.7 corroborates the evidence of P.W.5 and P.W.6 with regard to the issuance of the Flag day receipts. The proceedings of the District Collector with regard to the Flag Day collections was marked as Ex.P.17

22. P.W.8 is a resident of Moliapalli who has deposed about his application for NOC along with the documents containing 16 pages, which were marked as Ex.P.18 series. He had further deposed that he had applied on 21.01.2004 and that within two days, NOC was issued and that no one had demanded any bribe from him.

23. P.W.9 is the VAO of Lathuvadi and he has also spoken about the issuance of chitta (Ex.P.19) and Adangal (Ex.P.20) to the defacto complainant. P.W.10 is the Scientific officer, who has also spoken about the chemical analysis test on the material objects.



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24. P.W.11 is the Trap Laying Officer and he had spoken about the complaint given by PW1 on 30.01.2004 and having registered the case in Crimd No.1 of 2004. He has stated that upon registration of the case, he has called the official witnesses/shadow witnesses and introduced them to P.W2 complainant. He also explained that he demonstrated about trap laying procedure and the principle regarding the phenolphthalein test to the defacto complainant as well as official witnesses. He further deposed about having gone to the office of the Elampalayam along with the PW1 and 2 and reached the office at 11.30. He also deposed that PW1 and PW.2 have entered into the office of the accused at 12.50 p.m., and he along with police party were waiting outside the office. When the pre-arrange signal was received, he along with his team had entered into the office at 12.50 p.m. PW1 identified the accused by stating that he received Rs.350 as illegal gratification for issuing the NOC. He had instructed PW1 to wait outside the office and he introduced himself to the other officials. Thereafter, he proceeded to conduct Phenolphthalein test on the accused in the presence of one Chinnasamy He had also recovered the bottles containing sodium carbonate and marked them as S1, S2, S3 and S.4 (MOS 4 to 7). The file containing NOC was recovered and it was marked as Ex.P.3. The flag day receipt Ex.P.4 was also recovered under



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Mahazar Ex.A5. The pant and shirt M.O.8 and M.O.9 were recovered under mahazar. He further collected all the documents relating to the NOC and also collected the employment particulars of the accused. He prepared a sketch (Ex.P.11) and a letter seeking the prior intimation to conduct a search at the house of the accused. He also deposed about the remand of the accused to judicial custody. Subsequently, PW11 had handed over the investigation to P.W.12.

25. P.W.12 who had taken up the investigation from PW11 had deposed that he had sent the material objects for chemical analysis. He also stated that he had examined the witnesses and the scientific officer and after completion of the investigation, filed the final report against the accused for the offences under Sections 7 r/w/13(2) & 13(1)(d) of the P.C. Act.

26. Based on the above evidences, the Trial Court had found the accused guilty. Therefore, this Court has to see as to whether the prosecution has proved the case against the accused beyond reasonable doubt and whether the Trial Court is right in appreciating the evidence in proper perspective.

27. Admittedly, the appellant/accused was working in the temporary



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post under the Nominal Muster Role (NMR) category in the Panchayat Union office and he was paid from the contingent fund and thereby, he falls within the category of public servant. However, he is not the Fitter working in the Panchayat office and it is PW5/Periyasamy who was working as a Fitter in the Panchayat office. As per the evidence of PW3, the Manager in the BDO officer, PW5, K.A.Periyasamy is the person who is authorized to issue the No Objection Certificate (NOC) after visiting and inspecting the land of the *de facto* complainant/PW1.

28. It is the further case of PW4 that the *de facto* complainant/PW1 had applied for a No Objection Certificate on 20.01.2004, PW5 had visited the land and placed the report on 23.01.2004 and that BDO had granted NOC on 27.01.2004. He had further deposed that it was the duty of the Fitter/PW5 or his Assistant to hand over the NOC to the *de facto* complainant/PW1.

29. Perusal of evidence of PW1 shows that he is not clear as to who is the person who had demanded the money from him. He stated that on 23.01.2004, when he had gone to the BDO's office, the Fitter, PW5 had asked him to pay the money, and at one point of time, he said that the



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appellant/accused in the person who had asked him to pay the money. Further, he had stated that after registration of the case on 30.01.2004, he along with PW2 had gone to the office of the appellant/accused and the accused had asked whether he had brought the money and thereby, he handed over the same to the accused. Further, in his cross examination, he had admitted that Ex.P3, No Objection Certificate was made ready on 27.01.2004 itself and he had received it on the same day.

30. When the basis for registration of the case on 30.01.2004 is the demand of bribe for issuance of No Objection Certificate, the categorical admission by PW1 that the NOC was made ready and handed over to him on 27.01.2004 itself, creates doubt with regard to the complaint given on 30.01.2004 alleging that NOC was not handed over to him.

31. Now coming to the evidence of PW2, he had deposed that PW11, after the trap, had enquired the appellant/accused, and he had told him that PW5/Periyasamy had informed him that the de facto complainant/PW1 would give Rs.350/- and as instructed by PW5, the accused had received money from the de facto complainant/PW1 and as per the directions of PW5, he had also collected Rs.50/- towards the Flag day contribution. PW2 had also



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spoken about the recovery of Ex.P6, the files containing 1 to 14 pages in respect of the No Objection Certificate and he had also deposed about the phenolphthalein test conducted on both hands of the appellant/accused and also on the shirt and the pant worn by the appellant/accused and both of them turned positive.

32. Now, while analyzing the evidence of PW2 with that of PW1, it could be inferred that the demand has been made by PW5/Periyasamy, who was a Fitter working in the Panchayat Office and PW1 had handed over the money as directed by PW5. Further, at the time of trap, other than the recovery of the files Ex.P6, Ex.P3/No Objection Certificate was not recovered, thereby, proving the fact that Ex.P3/NOC had been received by the de facto complainant/PW1 on 27.01.2004 itself and thereby, creating a doubt with regard to the requirement of the complaint being made on 30.01.2004. PW2, in his cross examination, had also stated that PW1 stated that he had brought the money on the instruction of the Fitter, PW5/Periyasamy and he had handed over the money to the appellant/accused and that the accused had not demanded the money.

33. Now coming to the doubt regarding the phenolphthalein test,



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it is the categoric evidence of PW1 and PW2 that the appellant/accused had received the money and kept it on the right side back pant pocket and immediately, PW11/Trap Laying Officer along with his team entered the office and restrained the appellant/accused and thereafter, conducted the phenolphthalein test. When such being so, the need to recover the shirt for the phenolphthalein test and the wash of the shirt turning positive also creates doubt with regard to the prosecution case.

34. The material contradictions in the evidence of PW1 and PW2 and the acceptance of PW1 with regard to having received the NOC as early as 27.01.2004 create grave doubt and suspicion in the entire prosecution case.

35. Though the presumption is cast on the accused under Section 20 of the Prevention of Corruption Act, before raising the presumption under Section 20 of the Prevention of Corruption Act, the prosecution is bound to prove its case beyond reasonable doubts, i.e., the prosecution has to prove the foundational facts. In this case, as stated above, there are several material contradictions with regard to the basis for registration of the case and the demand alleged to be made by the accused.



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37. Further, the non-recovery of Ex.P3, No Objection Certificate

on the date of trap on 30.01.2004 also fortifies the claim of the accused that

Ex.P3 was received by the de facto complainant/PW1 on 27.01.2004 itself. Further, the version of PW1 and PW2, suggest that PW5/Periyasamy, Fitter, who is the authorized person, is the one who had demanded the money. This aspect is also confirmed by the evidence of the shadow witness that PW1 had handed over the money to the accused stating that as directed by PW5, the money was handed over to him, when such being so, demand alleged to be made by the appellant/accused is also doubtful.

38. Insofar as the offence under Section 7 of the Prevention of Corruption Act is concerned, it is a settled position in law that demand of illegal gratification is *sine qua non* to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 of the Prevention of Corruption Act unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has also been laid down in several judgments of the Hon'ble Apex Court.



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39. Further, Regarding the presumption permissible under Section 20 of the Prevention of Corruption Act, such presumption can only be drawn on proof of the acceptance of illegal gratification, which can follow only if there is proof of demand. It is also a settled position, as stated in the case of N. *Vijayakumar Vs. State of Tamil Nadu*, reported in (2021) 3 SCC 687, that in the absence of proof of demand for illegal gratification, mere possession or recovery of currency notes is not sufficient to constitute an offense under Sections 7 and 13 of the Prevention of Corruption Act. The presumption under Section 20 of the Act can be drawn only after the demand and acceptance of illegal gratification are proved. Applying the said position to the case at hand, the foundational facts have not been proved, thereby the legal presumption under Section 20 of the Prevention of Corruption Act cannot be drawn.

40. In view of the above, this Court is of the opinion that the prosecution has failed to prove its case beyond all reasonable doubts. In the result, this Criminal Appeal stands allowed. The impugned judgment of conviction and sentence passed by the trial Court is hereby set aside. The Appellant is acquitted from all 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.



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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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To

1. The Special Judge/Chief Judicial Magistrate,
Namakkal, Namakkal District.
2. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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