



Crl.A.No.777 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **24.11.2023**

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.777 of 2017

S.Deivasikamani

... Appellant

Vs.

State represented by,
The Inspector of Police,
Vigilance and Anti-Corruption,
Trichy.

... Respondent

PRAYER : Criminal Appeal filed under Section 372 of Criminal Procedure Code, pleaded to call for the records and set aside the judgment and sentence dated 05.12.2017 imposed in Spl.Case No.3 of 2013 on the file of the learned Chief Judicial Magistrate/Special Judge, Ariyalur.

For Appellant : Mr.N.R.Elango, Senior Counsel
for M/s. Aruna Elango
For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)



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JUDGMENT

This Criminal Appeal has been filed by the sole accused challenging the judgment of conviction and sentence imposed by the Chief Judicial Magistrate/Special Judge, Ariyalur, in Spl.Case No.03 of 2013, dated 05.12.2017.

2. The conviction and sentence imposed against the appellant is as follows:-

<i>Under Section</i>	<i>Sentence</i>
7 of Prevention of Corruption Act, 1988	Five years of simple imprisonment and a fine of Rs.5,000/-, in default, to undergo one year simple imprisonment.
13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	Seven years of simple imprisonment and a fine of Rs.5,000/-, in default, to undergo one year simple imprisonment.
The sentences shall run concurrently	

3. Prosecution's version :

3.1. The accused/petitioner herein, who was working as an Assistant/A1, Taluk Office, Udayarpalayam, is a Public Servant as defined



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under Section 2(c) of the Prevention of Corruption Act, 1988. On 08.08.2012, the *de facto* complainant/PW2 had applied for a legal heir certificate before the Taluk Office, Udayarpalayam and thereupon, on 24.09.2012, the appellant/accused demanded Rs.500/- from the *de facto* complainant Ramajayam for processing the application for legal heir certificate of his father, as illegal gratification, other than legal remuneration from him as a motive or reward. Since, the *de facto* complainant was not inclined to pay the amount as bribe, he lodged a complaint before the Inspector of Police/PW10, Vigilance and Anti-corruption, Trichy. On receipt of the complaint, a case came to be registered for the offence under Section 7 of Prevention of Corruption Act, 1988.

3.2. Based on the complaint, a trap was laid and furtherance of the earlier demand, on 25.09.2012 between 11.35 and 11.40 hours in Udayarpalayam Taluk Office, the appellant/accused being a Public Servant, reiterated the demand of the said gratification of Rs.500/- other than legal remuneration from the *de facto* complainant in the presence of an independent official witness Muruganandham as a motive or reward by corrupt and illegal means and by abusing his official position, had obtained a sum of Rs.500/- as pecuniary advantage from the *de facto* complainant for himself and thereby,



committed the offence of criminal misconduct punishable under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Thereby, the accused was arrested and on completion of the investigation, the respondent Police had filed the final report along with the relevant records before the learned Additional District Court cum Chief Judicial Magistrate, Ariyalur and the case was taken up in Spl. Case No.3 of 2013 against appellant/accused.

3.3. On appearance of the appellant/accused before the Additional District Court cum Chief Judicial Magistrate, free copies were furnished to him under Section 207 of Cr.P.C. After hearing both sides, charges were framed against the appellant/accused for the offence under Section 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988. When questioned in respect of the charges framed against the appellant/accused, he denied the charges and claimed to be tried.

3.4. After chief examination of PW1 and PW2 and marking of Ex.P1 to Ex.P8 and M.O.1, pending trial, in view of the constitution of the Chief Judicial Magistrate Court, Ariyalur, as the Court to try corruption cases, the case was transferred. The respondent, in order to prove the said charges, had examined 11 witnesses and marked Ex.P1 to Ex.P24 and marked M.O.1 to M.O.6.



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3.5. After completion of evidence on the prosecution side, when the appellant/accused was questioned under Section 313 Cr.P.C., he denied the charges and filed a written statement under Section 243(1) of Cr.P.C. Further, the appellant/accused had examined DW1 in defence.

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

4. The evidence of the prosecution as culled out from the records is as follows:-

4.1. The appellant/accused was working as Assistant/A1 Clerk at Udayarpalayam Taluk Office. The *de facto* complainant's (PW2) father passed away on 17.07.2012, leaving behind him his two wives. The 1st wife Valammal has got one son and PW2 is the last son of the 2nd wife Rajambal. PW2's father had left agricultural lands and deposit amounts in his bank accounts. In order to change patta and receive the deposits from the banks, on 08.08.2012, PW2 had applied to Taluk Office, Udayarpalayam for issuance of



legal heir certificate. His application was registered and he was advised to obtain reports from Village Administrative Officer of Devanur (PW8), and Revenue Inspector of Kuvagam (PW6).

4.2. On 17.08.2012, PW6 & PW8 have given their reports and thereafter, PW2 submitted the said reports to the appellant/accused at Taluk Office, Udayarpalayam. The appellant/accused perusing the same had asked him to come after two days and when PW2 met him after two days, the appellant/accused had asked him to come after a month. Again, on 24.09.2012, when PW2 had met the accused at 11.00 a.m., at his office and enquired about the status of the legal heir certificate, the appellant/accused had replied that he would not get the legal heir certificate, merely by handing over the application and that he had to prepare a note for that. PW2 replied that he already got reports from V.A.O. (PW8) and R.I.(PW6). The accused had replied that though the reports have been received by him, he would not get the said certificate and it would be granted only, if the accused prepared the note and had demanded Rs.500/- and when PW2 had enquired the appellant/accused whether it is a fee, for which, the accused had replied that it is not a fee and it is for himself. PW2 requested him to prepare the legal heir certificate without any



payment and the appellant/accused had replied that without money, nothing can be done.

4.3. Since, PW2 was not willing to give bribe money, he had gone to the office of the respondent on 24.09.2012 at 04.00 p.m., and met Prasanna Venkatesh (PW10), Inspector of Police, V&A.C, Trichy and given the complaint (Ex.P2) to him. PW10 had received the said Computer typed complaint from PW2 and registered a case in Crime No.15 of 2012 (Ex.P18- Printed F.I.R.) under Section 7 of the Prevention of Corruption Act, 1988, at 06.00 p.m. and obtained the signature of PW2 in Ex.P18 for having acknowledged the copy of F.I.R., which is marked as Ex.P3. PW10/Trap Laying Officer had recorded the statement of PW2 and since it was late, he was asked to stay in the police station. PW10 had then summoned the witness from the Regional Joint Director of Collegiate Education, Trichy and Joint Director of Agriculture, Trichy by way of requisition letters (Ex.P19 and Ex.P20 respectively).

4.4. On 25.09.2012, at 07.00 hours, one Muruganandam (PW3- Official/Shadow witness), Assistant, at the office of the Regional Joint Director



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of Collegiate Education, Trichy and one Raghunath (not examined), Junior Assistant, at the office of the Joint Director of Agriculture, Trichy were also present. They were introduced to PW2 and vice versa by PW10. Then, they were asked to go through the complaint copy (Ex.P2) and the printed F.I.R.(Ex.P18) and were advised to verify the genuineness of the complaint (Ex.P2). PW3 and the said Raghunath had also verified with PW2 and perused Ex.P2 and Ex.P18. PW3 and the said Raghunath were apprised about the trap procedures and its significance.

4.5. PW10 then collected 5 x Rs.100/- currency notes intended to be given by PW2 to the appellant/accused as bribe money. PW10 noted the serial numbers of the currency notes (M.O.1). Phenolphthalein powder was applied on the currency notes collected from PW2. Sodium Carbonate mixture were prepared and the demonstration in respect of the Phenolphthalein test and the importance of the said test were explained to PW2, PW3 and the said Raghunath through Head Constables, Baskaran and Sasikumar.

4.6. The said tainted currency notes were kept in the left hand shirt pocket of PW2 through the Head Constable, Baskaran. PW2 and PW3 were



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asked by PW10 to meet the appellant/accused in his office and handover the tainted currency notes M.O.1 series to the accused, if demanded by him. PW10 further informed them that after handing over the bribe money, he has to make a signal by combing his hair with right hand. PW3 was asked to accompany PW2 and to watch the proceedings carefully. The solutions prepared at the office were destroyed and PW2, PW3, Raghunath and PW10 washed their hands thoroughly. Ex.P4 Mahazar in respect of the Entrustment was prepared between 07.15 to 08.00 hours in which PW2, PW3, Raghunath and PW10 affixed their signatures. The said Head Constables Baskaran and Sasikumar were left in the police station.

4.7. On the same day, at about 08.30 hours, PW10, PW2, PW3, Raghunath and other police personnel attached to the raiding party went to the office of the appellant/accused at Udayarpalayam Taluk Office from Trichy. At 11.25 hours, they have parked the vehicles near State Bank of India, Sannathi Street, Jayankondam. PW2 and PW3 were once again apprised by PW10 about the procedures. PW2 and PW3 had entered into the Taluk office. PW10, Raghunath and other police party had hidden themselves and watched the proceedings.



4.8. The appellant/accused was attending to his work sitting in his table. PW2 had greeted him. The appellant/accused had enquired PW2 whether he had brought money, asked by him the previous day. PW2 had replied that he had brought the money and the accused had enquired PW2 about the person accompanying him and he had replied that he was a person known to him. The accused had stated that why he had brought unnecessary person along with him and had demanded the amount by stretching his right hand. PW2 had placed the money (M.O.1) on the right hand of the accused and he had dropped the said money into the table drawer, on his right side and asked PW2 to come on the next day stating that the Tahsildhar was not available. PW2 had requested him to complete the process quickly. PW2 and PW3, the official witness had come outside the office at 11.40 hours and made the pre arranged signal as instructed by PW10. PW10 went near PW2 and PW3 and enquired about the demand and acceptance of bribe money.

4.9. Then, PW10, Raghunath and other police personnel, who accompanied PW10 approached the accused. PW2 and PW3 identified the accused as the person, who had received the tainted money, M.O.1 series from PW2. Thereafter, PW10 introduced himself to the accused as Inspector of



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Police, Vigilance and Anti-Corruption Department and advised PW2 to leave the office and PW2 went outside. The accused was very much perturbed and he was found sweating and shivering. PW10 advised the accused to sit in his chair. The accused was asked to dip his right hand fingers into the Sodium Carbonate Mixture prepared. The colour of the solution, in which right hand fingers were dipped, turned pink. PW10 sealed the Bottle (M.O.2), pasted a slip and assigned Accused S.Deivasikamani 'R' mark with crime number. Thereafter, the accused was asked to dip his left hand fingers into the Sodium Carbonate Mixture prepared and the colour of the solution turned pink. PW10 sealed the Bottle (M.O.3), pasted a slip and assigned Accused S.Deivasikamani 'L' mark with crime number.

4.10. The accused was then arrested at 12.15 p.m. for having received the bribe amount for processing the legal heir certificate of PW2's father. Thereafter, PW10 searched the accused and found Rs.330/- from his shirt pocket and the accused had told that it was his own money, thus, it was returned to him. PW10 also found Rs.500/- in his right hand side pant pocket and as the accused did not give any explanation for the same, PW10 seized the same (which is marked as M.O.4.) as it may also be bribe money. Thereafter,



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when PW10 enquired about the bribe money, the accused had taken the money from his right side table drawer and handed it over to PW10. The serial numbers in the currency notes (M.O.1) were compared with the serial numbers in Ex.P4 (Mahazar) and they were found to tally. Further, the brown cover on which the tainted money was placed was also recovered, which was marked as M.O.5. The phenolphthalein test was conducted on the said brown cover and the solution turned pink. PW10 collected the solution in a bottle, sealed the Bottle (M.O.6), pasted a slip and wrote the name of the Accused S.Deivasikamani and assigned "KC" mark with crime number.

4.11. Thereafter, PW10 seized Ex.P10 File and Ex.P11 to Ex.P13 Registers from the accused. After the trap was over, Recovery Mahazar (Ex.P9) was prepared between 11.35 and 13.30 hours, in which, signatures were obtained from all the witnesses PW2, PW3, Raghunath, PW4 Amudha (Head Quarters Deputy Tahsildhar) and PW10 (Trap Laying Officer) and accused. The signature of PW4 Amudha was also obtained in Mahazar (Ex.P9) in respect of the recovery and Arrest Memo (Ex.P16).



4.12. Thereafter, PW10 had inspected the place of occurrence and prepared Observation Mahazar (Ex.P14) and also prepared the Rough Sketch (Ex.P21). Then, PW10 had taken the accused to the house of the accused at Sendurai and conducted search from 15.45 to 16.15 hours in the presence of the witnesses, where no incriminating materials were found. The Search List is Ex.P15. Thereafter, PW10 along with the accused and properties had come to the police station at Trichy. Later, he sent the accused to Judicial Custody and submitted the case properties to the Court through Form 95 (Ex.P23). Subsequently, he placed the case diary before one Azhagumalai, Inspector (PW11) for further investigation.

4.13. PW11 had examined all the witnesses and recorded their statements and also sent the solutions collected for chemical analysis through court. After obtaining the Chemical Analysis Report (Ex.P17), he examined PW9, Kala, Scientific Assistant and recorded her statement, who confirmed the presence of Phenolphthalein in M.O.2, M.O.3 & M.O.6. He also obtained Sanction Order (Ex.P1) from PW1, District Revenue Officer, Ariyalur for prosecution against the accused and examined and recorded his statement. Thereafter, he filed the final report under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act 1988.



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4.14. In this case, when the accused was examined under Section 313(1)(b) of Cr.P.C. with regard to incriminating materials against him, he denied his complicity. The accused also filed a written statement under Sec.243(1) of Cr.P.C., in which, he had stated that the evidence of prosecution witnesses are false and he examined one Dhandayudhapani, Tahsildar, as DW1, who had deposed that when he was working as Tahsildhar, Udayarpalayam, the accused was serving as Assistant, and he was assigned the work to prepare note in respect of Natural Calamity and Legal heir certificate, and that during his tenure as Tahsildhar, he did not receive any complaint from the complainant Ramajayam (PW2) or from anybody against the accused for having demanded bribe and he has not given any warning to the accused. However, the trial Court, after hearing the arguments on both sides, based on the evidence, found the accused guilty and convicted and sentenced him as stated above.

5. Mr.N.R.Elango, learned Senior Counsel assisted by Mr.A.K.Sachindhar, appearing for the appellant/accused, while taking this Court through the evidence by pointing out various discrepancies and contradictions in the case, assailed the judgment in Spl.Case No.3 of 2017, on



the following grounds :-

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(i) The reasons assigned by the trial Court for convicting the appellant are totally unsustainable and unbelievable on facts. The trial Court has not properly appreciated the evidence. Further, the genesis of the case itself doubtful and the complaint and the First Information Report are also not reliable.

(ii) It is the admitted case of PW2 that he had a grudge against the appellant, since the appellant had refused to issue legal heir certificate stating that his mother being the second wife cannot be included as a legal heir when his father's first wife was alive and further, on persistent insistence by the *de facto* complainant, the appellant/accused got infuriated on the previous day and had called him fool. Under such circumstances, the PW2/*de facto* complainant, being aggrieved, had preferred a false complaint. Based on which, a predetermined and stage managed trap had been conducted.

(iii) When there was a quarrel on the previous day to an extent of PW2 admitting to having a grudge against the accused, it would not be a normal human conduct of the accused to receive the bribe amount from PW 2 on the next day.

(iv) The learned trial Judge had failed to take into account the



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grave material contradictions between the evidence of PW2 and PW3 with regard to the receipt of money and recovery of money and thereby, making the trap proceedings doubtful.

(v) The trial Court failed to note the fact of tampering and interpolations made in the application (Ex.P5) given by PW2 for legal heir certificate and the trial Court had also failed to take into consideration the evidence of PW6 and PW8 with regard to the same and thereby there is every reason for the appellant for refusing to issue his report for issuance legal heir certificate. Originally, the name of PW2's mother, whose name could not be included as a legal heir, was also found in the application as admitted by the Village Administrative Officer (PW8) and it was later smudged by applying whitener. Further, it is the admitted case of PW11 that no investigation has been done by him with regard to the said manipulation done in the application (Ex.P5) submitted by PW2.

(vi) If the learned trial Judge had properly analyzed the evidence, he would have found that the entire trap proceedings is a stage managed one. Even as per the prosecution, as per Ex.P21, the occurrence is stated to have happened inside the office with carpet area of 15 x 20 feet consisting of two portions in one room and apart from the appellant's table, there are also seats of



9 other staff including the Superior officers and further the Tahsildar's cabin is also very close to the table of the appellant and it would not be the natural conduct for a person to demand and receive the bribe in such a surrounding in the presence of his superiors and colleagues. If such an alleged incident had happened inside the office, it would have been known to the Tahsildar (DW1), who was on duty on the previous day of demand. Though it has been deposed by PW2 that he had given a complaint about the demand on the previous day, DW1 had denied the same.

(vii) Admittedly, as per PW4 the Deputy Tahsildar, who was there during the relevant time, the appellant was assigned with the work of taking inventory of free dhotis and sarees given by the Government to be distributed to the public for festival, which had come to the office by lorry and he was also taking inventory of the stock on the particular day.

(viii) PW3, though an independent witness, is a witness interested in the prosecution and his evidence has to be scrutinized with care and caution and the delay in submission of requisition letters (Ex.P19 & Ex.P20) and the major contradictions in the evidence of PW2 and PW3 with regard to alleged receipt of money by the appellant before the Court creates doubt with regard to the presence of PW3 at the time of trap.



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6. The learned Senior Counsel for the appellant further submitted that mere recovery of the amount is not sufficient to convict the appellant. PW2 is not only an interested witness in the prosecution and he has enmity/grudge with the appellant regarding the incident on the previous day and thereby, his evidence has to be carefully scrutinized and without there being a proper corroboration, the case of the prosecution could not be believed. As admitted by PW2, when there had been a refusal by the accused to give the certificate and a fight on the previous day and it could not have been a natural conduct for the accused to receive a bribe from a person, who fought with him. He further submitted that the prosecution has not proved the foundational facts by cogent evidence and in such case, the presumption under Section 20 of the Prevention of Corruption Act, 1988, cannot be raised against the accused. The burden on the appellant is only to prove his case by preponderance of probabilities. In this case, the appellant has rebutted the presumption contemplated under Section 20 of the Prevention of Corruption Act, 1988, by giving reasonable, proper and plausible explanation and by examining DW1 to prove that at the relevant time, he was not in the office and he was assigned with some other duty.



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7. He further submitted that admittedly, as per the prosecution, the tainted money was found to be kept inside the table drawer on the right side and that on enquiry; the appellant is alleged to have taken the same and handed over the same to the trap laying officer (PW10). It is the case of the defence that the appellant was not sitting on his chair at that time and that he was entrusted with the work of taking inventory of free dhotis and sarees and in his absence, the money was placed in his table drawer and he was later threatened to take the money from the table drawer and that he pointed out that the entire trap proceedings were stage managed one.

8. The learned Senior Counsel further submitted that taking into consideration the facts and circumstances in which the arrest and the recovery have been done at a public office, the non-compliance of Rule 47 and Rule 49 of the Manual of the Directorate of Vigilance and Anti-Corruption assumes significance in this case, thereby, creating a doubt with regard to the trap proceedings.

9. Per contra, learned Government Advocate (Crl.Side) submitted that



there is no illegality or infirmity in the impugned judgment of conviction and sentence and the prosecution, by examining PW2 to PW11, had proved its case and the evidence of prosecution witnesses are clear and consistent. The contradictions or infirmities pointed out by the learned counsel for the appellant cannot be given due weight in considering the case of the prosecution, as it did not affect the core of the prosecution case. He further submitted that the demand and receipt of the illegal gratification has been proved and the phenolphthalein test conducted has also proved positive and the appellant has not rebutted the presumption under Section 20 of the Prevention of Corruption Act, 1988.

10. He further submitted that compliance of the Rules under the Vigilance Manual are only directory in nature and it is not mandatory and this Court had held in the case of *D.Chellaiya vs. State* reported in **CDJ 2019 MHC 2027** and non compliance of the Rules cannot be held as an inherent defect in the investigation. Thereby, he would seek for dismissal of the Criminal Appeal.

11. In reply, the learned Senior Counsel for the appellant ultimately



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contended that though it is settled law that compliance of Rules in the DVAC Manual are directory in nature, as far as the facts of this case is concerned, when the alleged receipt of bribe money and the consequent trap proceedings and recovery are stated to have taken place inside a public office premises, the carpet area of which is only 300 sq.ft, where apart from the appellant/accused, several other staff members were also sitting, the court has to carefully analyse the evidence with regard to the possibility of the same. He further reiterated that though it is directory in nature, the non-compliance of Rules 47 and 49 of the DVAC Manual assumes significance and creates grave doubts in the prosecution case. He also submitted that the Trap Laying Officer (PW10) had neither enquired the accused nor recorded his statement after the trap as required under Rule 47 of the DVAC Manual and he has also not shown the relative positions of the bribe giver, witnesses, IO and other members of the trap team in Ex.P21 (Rough Sketch), as required under Rule 49 of the DVAC Manual.

12. He further submitted that the Full Bench of the Hon'ble Apex Court in *Vijayakumar vs. State of Tamil Nadu* reported in (2021) 3 SCC 687, had held that non recording of the statement of the accused under Rule 47 of the



Vigilance Manual is a ground for acquitting the accused.

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13. Heard Mr.N.R.Elango, learned Senior 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.

14. This Court has given careful and anxious consideration to the rival contents put forward by either side and thoroughly scanned through the entire evidence available on record and perused the impugned judgment of conviction.

15. At the outset, the legal position in this issue is well settled. The demand of illegal gratification is *sine qua non* for constituting an offence under the Prevention of Corruption Act, 1988. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence produced by the prosecution in the case is not reliable, unless there is evidence to prove the demand and the payment of bribe or to show that the money was taken voluntarily as bribe. It is also noted that, mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to the demand and acceptance of the amount as illegal gratification, but the



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burden rests on the accused to displace the statutory presumption raised under Section 20 of the Prevention of Corruption Act 1988, 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 Prevention of Corruption Act, 1988.

16. It is also necessary to mention that while invoking the provisions of Section 20 of the Prevention of Corruption 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 as required by the prosecution. However, before the accused is called upon to explain as to how the amount in question was found in his possession, a bounden duty is cast on the prosecution to establish the foundational facts by letting in evidence beyond reasonable doubts. With this background in mind, this Court has to assess the evidence let in by the prosecution and the evidence in defence raised by the accused.

17. 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



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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 needs to be proved beyond all reasonable doubts.

18. It is the case of the prosecution that, PW2 had given his application for obtaining legal heir certificate on 08.08.2012 and the reports which were collected from PW6 & PW8 were handed over to the appellant/accused on 17.08.2012 and that the appellant/accused had asked him to come after two days and again after two days, had asked him to come after a month and thereby, PW2 had gone to meet him on 24.09.2012, on which day, the first demand is stated to have been made by the accused. Since, PW2 was not inclined to pay bribe, he had given a complaint on the same day evening to the respondent at Trichy. Thereafter, based on the complaint, Ex.P2 (which was a typed one), the case was registered by PW10 (Trap Laying Officer). Thereafter, the Official witness, PW3 and one Raghunath were called to the respondent's office to be shadow witnesses to assist PW10 in the trap. On the next day i.e., on 25.09.2012, the phenolphthalein test was demonstrated to PW2 and the shadow witnesses and Ex.P9/Entrustment Mahazar was prepared and



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thereafter, the respondent and his team proceeded from Trichy to Jayamkondam and they reached the office of the appellant/accused at 11.25 hours. PW2 and PW3 were instructed to go into the office, where, the reiteration of the demand was made by the appellant/accused and he had received the bribe amount and kept it in his office drawer. Thereafter, the trap was conducted and after the phenolphthalein test, the tainted money was stated to have been recovered from him.

19. The case of the prosecution mainly rests on the evidence of PW2 (*de facto* complainant and PW3, Official witness, who said to have witnessed the entrustment, demand, the trap proceedings and the evidence of PW10/TLO. PW2 in his evidence in chief, had deposed that his father has got two wives and he is the last son of the 2nd wife and that his father's first wife has one son. His father had passed away on 17.07.2012, leaving behind him 30 acres of land and some amount in the bank account. Since PW2 had to transfer the land and to withdraw the money in the bank account, he sought for legal heir certificate and thereby, he had given the application on 08.08.2012 for the same, along with the death certificate of his father in the Udayarpalayam Taluk Office. He had further deposed that he was advised to meet PW6 (Revenue Inspector) &



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PW8 (Village Administrative Officer) to get reports and on 17.08.2012, he had obtained reports and approached the appellant/accused who had asked him to come after two days and further, after two days, he had once again met the appellant/accused and asked about the legal heir certificate, whereas, the appellant/accused had asked him to come back after a month. Thereby, he had gone to the Taluk office once again on 24.09.2012 at about 11.00 a.m and when he had asked the appellant/accused as to whether the legal heir certificate is ready, the appellant/accused had replied that it would be given only if he pays a bribe of Rs.500/- and only then he would make arrangements.

20. It is the case of the appellant that the mother of PW2 is a second wife of his father and her name could not be included in the legal heir certificate and since he had refused to give legal heir certificate including the name of PW2's mother, PW2 was antagonized against him and nurtured grudge against him, which had resulted in him giving a false complaint, based on which, a predetermined and stage managed trap was conducted. It is the further case of the appellant that he was not available in his seat and thereby, the entire recovery proceedings were fabricated.



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21. It is the further case of the appellant that the name of PW2's mother was also originally found in the Ex.P5/requisition application and later, the name was smudged by applying whitener over the same. It is also the case of the appellant that it is the admission of PW8 (VAO) that when the application was handed over to him for giving a report, the name of PW2's mother was also found in the application. It is the further contention made by the learned counsel for the appellant that a candid admission had been made by PW2 that when he had met the appellant on the previous day and told the appellant that the Revenue Inspector, PW6 had recommended for inclusion of his mother's name and that he is ready to pay money, the appellant got irritated with him and yelled at him saying "don't talk like a fool and the legal heir certificate cannot be issued by including the name of his mother" and even thereafter, PW2 had insisted for issuance of the certificate including the name of his mother, who is the second wife of his father.

22. In this regard, it is relevant to extract the portion of PW2's cross examination :-

“நான் ஆர்ஜி எல்லாம் என் அம்மாவை சேர்க்கும் படி எழுதி
கொடுத்துள்ளார்கள். அதனால் நீங்கள் எப்படியாவது என் அம்மாவையும் சேர்த்து



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வாரிசு சான்று வாங்கி கொடுங்கள் என்றும் அதற்கு நான் பணம் கொடுத்து விடுகிறேன் என்று கேட்டதற்கு எதிரி எரிச்சல் அடைந்து நீ படித்தவன் தானே முட்டாள் மாதிரி பேசுகிறாயே சட்டபடி முடியாததை எவ்வாறு செய்யமுடியும் என்று கேட்டார்.”

23. In this regard, the following suggestion has also been put to PW2 and for which, he has replied as under :-

“எதிரி என்னை திட்டி விட்டதாலும் அவர் இருந்தால் வேறு யாரும் பொய்யாக சாட்டிபிகேட் வாங்க முடியாது என்ற காரணத்தால் எதிரி மீது பொய்யாக புகார் கொடுத்தேன் என்றால் சரியல்ல.”

24. This Court carefully perused Ex.P5, the application, wherein, this Court could see that the name of PW2's mother Rajambal was written in the application and later it has been smudged by applying whitener over the same. It was also admitted by PW8, Village Administrative Officer that when the application was given to him for enquiry, the name of the *de facto* complainant's mother, who is the second wife of his father, was also found in the application and thereby, this Court is of the view that the ground raised by the learned Senior Counsel for the appellant has some significance in the case.



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25. Further, PW2 had stated that immediately after the appellant had made the demand, he had given a complaint to the Tahsildar, who was examined as DW1, whereas, it is the evidence of DW1 that no such complaint was made by PW2 to him with regard to any demand made by the appellant/accused and that DW1 has also stated that during his tenure, he had not received any complaint, as if the appellant had demanded money from any person.

26. Further, with regard to the complaint alleged to have been made by PW2 to Tahsildar, he had stated that,

“எதிரி என்னிடம் கிசிகிசுவென்று ரகசிய குரலில் சொல்லவில்லை. சாதாரணமாக தான் சொன்னார். அவர் கேட்டது அடுத்த சீட்டிற்கு கேட்கும்படி தான் இருந்தது. வட்டாச்சியர் அறையும் ஒரு 10 அடி தொலைவில் தான் இருந்தது. எதிரி பணம் கேட்டதை நான் தாசில்தாரிடம் சென்று புகார் சொன்னேன். தாசில்தார் என்னிடம் எதிரியை கண்டிக்கிறேன் என்று சொன்னார்.”

27. In this regard, the evidence of PW2 seems doubtful. As stated above, the entire carpet area in the office was only 300 sq.ft and PW2 had also admitted that the Tahsildhar (PW4) was sitting just 10 feet away. It would not have been the normal conduct for a person to ask for a bribe in a small area in the presence of his Superior Officer.



28. Admittedly, as stated above, the office area is having two portions in a room and the place where the accused and other staff were sitting is a 15x20 sq.feet room and apart from the table of the appellant, 8 to 9 Government staff are working there and their tables were also inside the same room. Further, the Chambers of the Tahsildar was also in the close proximity and in such circumstances, the evidence of PW2 seems to be dubious.

29. Now coming to the evidence relating to trap proceedings, admittedly, in this case, the tainted money is stated to have been found in the table drawer placed on the appellant's right side and the appellant is stated to have picked the same from the table drawer, on the direction from the Trap Laying Officer and handed over to him. In this regard, a perusal of the evidence of PW2, would disclose that he had stated that the appellant had received the money with his right hand and straightaway kept it in the right side drawer of the table, whereas, it is the evidence of the Trap Laying Officer (PW10) that he had gone there and questioned the appellant/accused and conducted the phenolphthalein test on his both hands, in which both the Sodium Carbonate solutions turned pink and thereafter, on enquiring about the money, he had taken the tainted money from the table drawer and handed it over to him.



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30. In this regard, PW3, who is the shadow witness, has stated that the appellant had received the money in his right hand, counted with his both hands and thereafter, kept the same inside the right hand side drawer of the table. It is the evidence of both PW2 and PW3 that the money was taken out by the appellant/accused from the right side drawer of the table. However, there are material contradictions in their evidence with regard to the handling of money by both hands.

31. PW5, who was working as Assistant in the Udayarpalayam Taluk Office, has stated that he came to know that the appellant had not forwarded the application to the Tahsildar after receiving Reports from PW6 & PW8 (R.I and VAO). PW5, in his cross examination, had deposed that the seat of the accused and his seat were close by and he could hear any normal conversation. PW6, Revenue Inspector, had stated that on the date of occurrence, the appellant was entrusted with the work of taking inventory of the free dhotis and sarees meant for public distribution and verifying the records for issuance of legal heir certificate. In his depositions, he had categorically submitted that when the first wife of the deceased was alive, the second wife cannot be



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admitted as a legal heir and he had also admitted that he had not told PW2 that his mother can be added in the legal heir certificate. Further, he had also admitted that there were number of corrections in the application and that, it was not sent to him for further enquiry.

32. PW7, who is the Office Assistant working in the same office, had deposed about the work allotted to the appellant and he had also stated that on the date of occurrence, the appellant was taking inventory of free dhotis and sarees in the godown. In his cross examination, he had deposed that on 25.09.2012, the appellant/accused was taking inventory of free dhotis and sarees at the godown and he had also admitted that there was a quarrel between the appellant/accused and PW2 at that time and later, he came to know that the quarrel was on account of the appellant refusing to issue legal heir certificate to PW2.

33. PW8 (VAO) had admitted that there were corrections and interpolations in the application (Ex.P5) given by PW2 and that he was not aware as to when the corrections were made. He has also admitted that in Ex.P8, the name of PW2's mother was inserted in between Vallammal and



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Selvakumar and later smudged by whitener. Further, he has also stated that the name below the name of Mallika was also scored off by applying whitener and also admitted that he had not written the names of Mallika and Selvakumar and he was not aware as to who had inserted the names in the application and he has also admitted that he has not made the endorsement that “இரண்டு மனைவிகள் முதல் மனைவி வாளாம்மாள், 2வது மனைவியின் பெயர் ராஜாம்மாள் இருவருக்கும் குழந்தைகள் உள்ளன” in Ex.P8.

34. PW9, who is the Scientific Officer, had stated that with regard to the analysis of solutions in M.O2 & M.O.3, in which the fingers of both the hands were dipped, it proved the presence of phenolphthalein.

35. The Trap Laying Officer/PW10 had deposed that PW2 had met him on the previous day at 4.00 p.m., and gave a complaint, which was a computer typed, based on which, he had registered a case in Crime No.15 of 2012 on the same day at 6.00 pm and handed over a copy to PW2 and thereafter, he had sent the requisition letters (Ex.P19 & Ex.P20) to the Superior officers of PW3 and one Raghunath and thereby, PW3 and the said Raghunath appeared before him on the next day at 7.00 a.m. Thereafter, he had demonstrated them about



the phenolphthalein test and apprised them about the significance of the trap laying procedure and later, they have prepared the Entrustment Mahazar and then gone to the office of the appellant along with PW2, PW3, Raghunath and other police personnel at Jeyamkondan at 11.25 a.m., and parked their vehicle near SBI bank and later, he had sent PW2 and PW3 into the office and he had waited outside and later, after coming out, PW2 had given a pre-assigned signal and that PW2 and PW3 had informed that the appellant's having received the amount in his right hand and keeping it inside his right side table drawer and informing PW2 that the Tahsildar was not there and asking him to come on the next day.

36. Thereafter, the Trap Laying Officer/PW10 had immediately gone inside the office and found the appellant sitting on his chair facing north side and that PW2 had identified the appellant and he had instructed PW2 to go outside and he along with other police officers had introduced himself to the appellant and that the appellant was found perturbed and found shivering and later, he had asked all the staff inside the office to go out and enquired the appellant/accused. Thereafter, he had conducted phenolphthalein test on the fingers of the right hand as well as on the left hand fingers and the solutions



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turned pink and they were collected under M.O.2 and M.O.3. Thereafter, the TLO had arrested the appellant and conducted body search and found Rs.330/- from his shirt pocket and since the appellant had told him that it was his own money, it was returned to him and only thereafter, he had asked the appellant to take the tainted money from the drawer.

37. At this juncture, it is seen that the appellant had been asked to take the money from the drawer only after the phenolphthalein test was carried on in his both hands and he had also questioned the appellant/accused with regard to the money and that the accused had admitted to have received the money. Later, he collected the files relating to the legal heir certificate application and later taken the accused to his house for house search and thereafter, remanded him.

38. In his cross examination, PW10 had admitted that the distance between the appellant's table and the Tahsildar's table was only 10 feet and the distance between the appellant's table and the Deputy Tahsildar's table was only 4 feet. He has also admitted that in his discreet enquiry, he came to know that PW2 had not given any complaint to the Tahsildar. He had also admitted



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that since the seat of Tahsildar and the Deputy Tahsildar were very close by, a normal conversation can be overheard by both of them. And also he had enquired the Tahsildar and the Deputy Tahsildar with regard to the receipt of money by the accused. In his further depositions in cross, he had admitted that the name of PW2's mother, Rajammabal was found in the application and later it was smudged of by applying whitener over it and that he had not made any enquiry with regard to the corrections and interpolations made in the application.

39. It is the case of PW2 that immediately after the first demand, he had given a complaint to the Tahsildar, who was present in the adjacent room, whereas, the Tahsildar, who was examined as DW1, has denied the same.

40. PW11 is the Investigating Officer, who had completed the investigation and filed the final report. In his deposition in cross, he had admitted that during his enquiry, he came to know that PW2 had not made any complaint against the appellant/accused to the Tahsildar and that he had not enquired the Tahsildar with regard to the same. He also admitted that the office of the appellant/accused was 15x20 ft and that the same office was shared by



the Tahsildar, Deputy Tahsildar and six other staff and their tables were also there. It is also admitted that he had not conducted any enquiry with regard to the corrections, interpolations and striking off made in the application (Ex.P5 series).

41. In defence, the appellant/accused had examined the Tahsildar (DW1), who was on duty on the previous day and he had stated that while he was working there, he had not received any complaint against the appellant/accused and he had also deposed that he does not know PW2 and PW2 had not made any complaint to him and that till, he was working there in the office, no body has given any complaint against the appellant/accused.

42. From the cumulative analysis of evidence, it is seen that PW2 has approached the appellant/accused for obtaining legal heir certificate. It is the case of the appellant/accused that the father of PW2 had two wives and that the mother of PW2 is the second wife and since the 1st wife of PW2's father was alive, it was not legally possible to issue legal heir certificate to PW2's mother and thereby, he had refused to issue legal heir certificate and that PW2 had insisted the appellant/accused stating that PW6 and PW8 had agreed for



inclusion of the name of his mother and he should give the same. It is also the case of the appellant/accused that he had refused to give the same and he had also got irritated and shouted at PW2 saying that when it is not legally possible, was he a fool to insist for the same and the same had been admitted by PW2.

43. At the outset, it is the case of the prosecution that the appellant had demanded and received illegal gratification for issuance of legal heir certificate. However, it is the case of the appellant that PW2 had insisted to issue legal heir certificate including the name of his mother, who is the second wife of his father and since it was refused by the appellant/accused, PW2 had insisted him to receive money and issue certificate including his mother's name.

44. It is the further case of the appellant that PW2 had met him on the previous day and insisted to include his mother's name in the legal heir certificate after receiving money. Since PW2 was persistently insisting for inclusion of his mother's name, which was not legally possible, the appellant got irritated over him and shouted him saying that is he a fool, asking to do which cannot be legally done. It has also been admitted by PW2 in his evidence. The fact of quarrel between the appellant and PW2 has also been



spoken by PW7, who was present in the office on the previous day.

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45. From the above, it could be inferred that PW2 had insisted to issue certificate illegally, it was refused by the appellant and thereby, PW2 had nurtured enmity and he was antagonized with the appellant.

46. Now coming to the genesis of the complaint, it is the case of PW2 and PW10 (Trap Laying Officer) that the complaint was a computer typed complaint (Ex.P12) and based on which, the printed First Information Report (Ex.P18) was registered. It is the case of PW3, shadow witness that he was called to the office of the TLO and he was introduced to PW2 and thereafter, he was shown a written complaint and not a computer typed complaint and thereby, creating doubt whether the complaint given by PW2 was a written complaint or a computer typed complaint and it creates suspicion with regard to the genesis of the case.

47. So far as the trap is concerned, it is the case of PW2, that the



appellant had received the money on his right hand and kept it inside the drawer on the right side of the table, whereas, it is the evidence of PW3 that the appellant had received the tainted money in his right hand, counted with his both hands and later kept inside the table drawer.

48. In this regard, the evidence of Trap Laying Officer is that immediately after PW2 and PW3 came out and gave a signal, he had enquired PW2 and PW2 had told him that the accused had received the amount in his right hand and kept the same in the table drawer, whereas, after entry of PW10 inside the office, he had enquired the appellant and later conducted phenolphthalein test on his fingers in both hands. According to PW10, the solutions in which the fingers of both hands were dipped, turned pink. This aspect creates doubt when especially the money is stated to have been taken and handed over by the appellant from the table drawer. It is the defence of the appellant that he was entrusted with the work of taking inventory of the free dhotis and sarees, which were given by the Government, at the godown which was little away from the office and the tainted money was dropped inside the table drawer by PW2 during his absence and later, the appellant/accused was forced by the Trap Laying Officer to take the money from the drawer and hand



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it over to him.

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49. The appellant had filed a statement under Section 243 (1) of Cr.P.C, in which, he had categorically stated that on 25.09.2012, in the morning hours, on the instructions from his superiors in office, he was taking inventory of free dhotis and sarees meant for public distribution and that the other staff members were also in his office and that on the same day, around 11 to 12 noon, PW2 had come to him and insisted him to include his mother's name in the legal heir certificate stating that he want to withdraw the deposits in the name of his father from the bank and that he had also insisted that he is ready to give money and that the appellant refused to do so saying that on the previous day, he had told that it is not possible and he being an educated man should understand the same and he should not disturb his work and that, PW2 had threatened him that he would give complaint against him. Thereafter, the appellant continued his work in the godown and later, PW2 along with some other persons have come to his office, threatened him and forced to open his table drawer and thereupon, he had taken the money from the table drawer and handed it over to the TLO.

50. In this case, admittedly, the total carpet area of the office, even as per



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Ex.P21 (Rough Sketch) is only 300 sq.ft, wherein 9 staff were working and 9 tables were also available there. This aspect has been elicited from the cross examination of PW7, who had stated that on 25.09.2012, the appellant was present in the godown and was taking inventory and he had also spoken about having seen the quarrel between PW2 and the appellant and that he had also deposed that on enquiry, he came to know that since the appellant had refused to include the name of PW2's mother in the legal heir certificate, there was a quarrel between them. He also deposed that during the relevant time, he was inside the office and the police have not enquired him and have not taken his signature in any of the documents.

51. Further, it is the case of the learned counsel for the appellant that PW3 could not have been a witness to the trap and recovery proceedings and Ex.P19 & Ex.P20 have been later prepared for the purpose of this case. In this regard, the learned Senior Counsel for the appellant submitted that though all the other documents are stated to have been produced before the Court concerned on the same day of trap, the requisition letters (Ex.P19 & Ex.P20), though stated to have been dated 24.09.2012, have not been produced before the Court at all, thereby creating a doubt with regard to the requisitions. As



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stated above, yet another glaring factor in this case is that it is the categoric case of PW2 and PW10 that the complaint is a computer typed complaint, whereas it is the evidence of PW3 that the complaint shown to him was a hand written complaint and he had perused the same. Further, the glaring contradiction between the evidence of PW2 and PW3 with regard to the receipt of money and handling of the same by the appellant also stares at the prosecution.

52. Another contention raised by the appellant is regarding the non-compliance of Rules 47 and 49 of the DVAC Manual. In this regard, it is relevant to refer Rules 47 and 49 of DVAC Manual, which read as under :-

"Rule 47 (2) - Questioning of Accused Officer.

(2) Immediately after recovery and seizure of the bribe money or article, the Accused Officer must be further interrogated and his detailed evidence separately recorded in the case diary under section 162 of the Code of Criminal Procedure, 1973. If there is any need to examine him still further in the light of any fresh evidence that might come up later during the investigation of the case, the same can be done at a later stage and further evidence of the Accused Officer recorded.

Rule 49 :- Preparation of the Site Plan.



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A site plan of the scene of occurrence should invariably be prepared showing the relative positions of the Accused Officer, bribe giver, Witnesses, Investigating Officer and other members of the raiding party, besides the place of recovery of the tainted money. The site plan should be got attested by members of the trap party, and should form part of the record of investigation.

53. Rule 49, as stated above, speaks about the preparation of site plan. In the case on hand, the trap is alleged to have been conducted inside the office which is only 300 sq.ft., wherein 9 staff were working there. It is a public office. A perusal of Ex.P21, would disclose that though in the site plan, the chair and the table of the appellant/accused are shown, the positions of the bribe giver (*de facto* complainant), official witness (shadow witness), investigating officer and other members of the raiding party are not shown in the plan and thereby, it is clear that Rule 49 of the DVAC Manual has not been scrupulously complied with.

54. It is further seen that the TLO/PW10 had not interrogated the appellant and not recorded his statement after the trap as required under Rule 47 of the DVAC Manual after the recovery. In this regard, it is relevant to refer



to a Full Bench judgment of the Hon'ble Supreme Court in *N.Vijayakumar vs the State of Tamil Nadu* reported in (2021) 8 SCC 687, where a passing reference has been made with regard to non following of Rule 47 of the Vigilance Manual while acquitting the accused.

55. This Court is aware that, in the case of *Duraimurugan vs State, Deputy Superintendent of Police, VAC, Vellore* reported in (2013) 1 CWC 136 (*W.P.No.1238 of 2012*), the Hon'ble Division Bench of this Court has held that the compliance of Rules in the DVAC Manual are not mandatory and are only directory in nature. However, taking into consideration the facts in the present case, the non-compliance of the Rules in the DVAC Manual assume significance.

56. Normally, in any other crime case, the Investigating Officer goes to the spot after the offence is committed and he, thereafter, prepares the Rough Sketch. However, in the case demand of bribe followed by trap proceedings, the TLO goes along with the complainant/bribe giver, shadow witness and immediately after the bribe amount is accepted, he takes position and thereby, he gets first-hand information with regard to the happenings at the place of



occurrence, and thereafter, he has to prepare the Rough Sketch for the purpose of investigation. Taking into consideration the facts in the present case, in Ex.P21, Rough Sketch, other than showing the seat of the accused and the table drawer, in which the cash was stated to be kept, no other particulars have been shown. The relative positions of the Accused Officer, bribe giver, Witnesses, Investigating Officer and other members of the raiding party, besides the place of recovery of the tainted money, are not shown. This aspect also creates suspicion with regard to the prosecution case.

57. Taking into consideration the cumulative analysis of evidence on record, this Court finds some glaring discrepancies in the prosecution case with regard to the registering the case and the trap proceedings.

58. As per Section 20 of the Prevention of Corruption Act, 1988, only if it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that



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valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

59. It is trite law that if the prosecution is successful in proving the foundational facts with regard to the demand and recovery of money, then a legal presumption arises against the accused that he had accepted or obtained the illegal gratification. Of course, this presumption is rebuttable. It is however not necessary that the required presumption is to be rebutted by the accused with the same standard of proof, as is expected of the Prosecution for recording a finding of conviction against him. The accused can validly rebut the above presumption by preponderance of probabilities and other circumstances appearing in the prosecution evidence itself.

60. At this juncture, it is relevant to refer to the decision of the Hon'ble Supreme Court in the case of **C.M.Girish Babu Vs. CBI (2009-3- SCC-779)**, it has been held that the accused can rebut charge either through cross examination of the Prosecution witnesses or by adducing reliable evidence. Further, it has been held that the burden of proof on accused under Section 20



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of the Act is not the same as the burden placed on the Prosecution to prove case beyond reasonable doubt. It had held that mere recovery of tainted money divorced from the circumstances, under which it is paid, is not sufficient to convict the accused, when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the Prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

61. In *V.Venkata Subbarao Vs. State (AIR-2004-SC-1728)*, wherein it has been held that the presumption of demand and acceptance under Section 20 of the Prevention of Corruption Act cannot be raised, when the demand by the accused has not been proved.

62. In *2015 10 SCC 152 (P.Sathyanarayana Murthy Vs. District Inspector of Police, State AP and another)*,

“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 [(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. The impugned judgement and order *[P. Satyanarayana v. State of A.P., Criminal Appeal No. 262 of 2002, order dated 25-4-2008 (AP)]* of the High Court is hereby set aside. The appellant is on bail. His bail bond stands discharged. Original record be sent back immediately. ”

63. Before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts, namely, demand and acceptance, must be established by the Prosecution. In this regard, it is relevant to refer to the decisions rendered in **V.Sejappa Vs. State by Police Inspector Lokayukta, Chitradurga reported in (2016) 12 SCC 150 and Mukhtiar Singh Vs. State of Punjab reported in (2017) 8 SCC 136 .**



64. In the case of *V.Sejappa Vs.State by Police Inspector Lokayukta, Chitradurga reported in (2016) 12 SCC 150*, the Honourable Supreme Court, while referring to several earlier judgments, has held as follows:-

"18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and presumption would arise under Section 20 of Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of Act.

19. After referring to **Suraj Mal Vs. State Delhi Admn)**, in **C.M.Girish Babu V. CBI**, it was held as under: (SCC P.784, paragraph)

"18. In **Suraj Mal Vs. State Delhi Admn)**, this Court took the view that (at SCC P.727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe."

20. In *State of Kerala V.C.P.Rao*, it was held that mere recovery of tainted money is not sufficient to convict the accused and there has to be corroboration of the testimony of the complainant regarding the demand of bribe.

21. While dealing with the contention that it is not enough that some currency notes were handed over to the



public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to the following observation in **Mukut Biharai V. State of Rajasthan**, where it was held as under: (SCC PP. 645-46, para 11).

"11. The law on the issue is well settled that demand of illegal gratification is since qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the 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 bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but 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 as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complaint 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 and in a proper case the court may look for independent corroboration before convicting the accused person"



65. In the case of **Mukhtiar Singh Vs. State of Punjab reported in (2017) 8 SCC 136**, the Hon'ble Supreme Court, while referring to several earlier judgments, had held as follows:-

“13. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In **A. Subair vs. State of Kerala**, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was expounded in **State of Kerala vs. C.P. Rao** that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

15. In **P. Satyanarayana Murthy**, this Court took note of its verdict in **B. Jayaraj vs. State of A.P.** underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on



such proof of demand. This Court thus in P. Satyanarayana Murthy on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder: (SCC P.159, Para 23)

“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 therefor, 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 Sections 7 and 13 of the Act would not entail his conviction thereunder.” (emphasis supplied)”.

66. In the case on hand, the foundation of the prosecution case in respect of the demand made by the appellant/accused for issuing legal heir certificate to PW2 has been shaken to a greater extent by the corrections, interpolations and the entries made in Ex.P5 series. It is the case of the appellant in defence that he had refused to include the name of PW2's mother in the legal heir certificate, she being the second wife, since the first wife was alive and that PW2/*de facto* complainant had nurtured grudge against the appellant due to his refusal to include the name in the legal heir certificate and that the appellant/accused had yelled at him on the previous day calling him a fool. Further, PW2 had admitted



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the dispute between himself and the appellant/accused and PW7 had also spoken about the same. The contradictions of PW2 and PW3 with regard to registration of the case and handing over of the tainted money is also suspicious and makes the case of the prosecution doubtful. Serious doubts arise in this case with regard to the first demand alleged to have been made on 24.09.2012, the registration of the case and the trap proceedings alleged to have been done in the office of the appellant. Therefore, in the opinion of this Court, the prosecution has miserably failed to prove the foundational facts namely demand, acceptance and recovery of money as illegal gratification beyond all reasonable doubts. Further, the appellant, by examining the witnesses and producing the documents, had come out with a probable defence that during the relevant time, he was entrusted with some other work and taking advantage of his absence, the tainted money was dropped/planted in his table and thereafter, the appellant was threatened and forced to take the money from the table and the test was conducted.

67. This Court is of the opinion that the prosecution is not able to prove the guilt of the appellant/accused beyond all reasonable doubts. In view of the infirmity and inherent improbabilities, this Court has to necessarily come to a



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conclusion that entire case of the prosecution more particularly, the trap proceedings are bristled with suspicious circumstances and doubts and thereby, the appellant is entitled to be acquitted.

68. 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.

24.11.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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A.D.JAGADISH CHANDIRA,J.

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To

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1. The Chief Judicial Magistrate/Special Judge,
Ariyalur.
2. The Inspector of Police,
Vigilance and Anti-Corruption,
Trichy.
3. The Public Prosecutor,
High Court of Madras.

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