



Crl.A.No.679 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 18.04.2023

Pronounced on : 19.05.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

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J. Kumar,
S/o.Jayaraman,
Formerly Foreman,
O/o. The Assistant Engineer,
TNEB, Asanur, Ulundurpet Taluk,
Villupuram District.

... Appellant/Accused

/versus/

State represented by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Villupuram.
Crime No.11 of 2009

... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., pleased to call for the records in Special Case No.25 of 2014 (on the file of the Court of Special Court for Prevention of Corruption Act Cases, Villupuram) hear the Counsel and allow the appeal and set aside the judgment.

For Appellant : Mr.V.R.Balasubramanian

For Respondent : Mr.S.Udaya Kumar
Government Advocate, (Crl.Side)



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J U D G M E N T

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The appellant herein was convicted by the Special Court for Prevention of Corruption Act Cases, Villupuram in Special Case No.25 of 2014 *vide* order dated 24.10.2018. The Trial Court sentenced the appellant to undergo four years R.I and pay a fine of Rs.1000/-, in default to undergo three months S.I for the offence under Section 7 of the Prevention of Corruption Act. Further, sentenced to undergo five years R.I and fine of Rs.5000/- in default, to undergo six months S.I for the offence under Section 13 (2) r/w 13(1) (d) of P.C Act.

2. The case of the prosecution:-

The defacto complainant Mr.G.Radhakrishnan (P.W-2) is a resident of Asanur Village, Ulundurpet Taluk. About 8 months prior to the date of trap, he made an application addressed to the Assistant Executive Engineer, Operation and Maintenance, Tamil Nadu Electricity Board, Ulundurpet to shift the Low Tension (LT) line running across his house. His application was kept pending for about 2 months without any action. When P.W-2 met the accused J.Kumar (accused) working as the Foreman in the Asanur EB Office, he directed P.W-2 to get endorsement from Assistant Divisional Engineer (ADE) in his application and



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submit it. Accordingly, P.W.2 submitted the application after obtaining the necessary endorsement from ADE. The accused told him to come after one month and by that time, he will prepare the estimation for shifting. Also informed him, on payment of the estimated cost, shifting of LT line will be done.

3. Due to pre-occupation, P.W.2 was not able to follow his application for some time. On 20/08/2009 he went to the EB office at Asanur and paid Rs.50/- for processing his application. He met the accused on 08/09/2009 to confirm whether the estimation is ready. On that day, the accused informed P.W-2 that the estimation is ready and has to pay Rs.9,430/- for shifting the LT line. If he pay Rs.5,000/ separately as bribe, the work will be carried immediately and asked the complainant to bring the money on 15/09/2009 and get the work done.

4. P.W-2 was not ready to give bribe for shifting the Low Tension line, therefore, on 15/09/2009 at about 11.00 a.m went to the Vigilance Office at Villupuram, gave a written complaint (Ex.P-2) reporting about the demand of illegal gratification by the accused. Kuppusamy (P.W-11) the Inspector of Police attached to Vigilance Cell, Villupuram took up the complaint and registered it in



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Crime No:11 of 2009. The Inspector of Police arranged for two official witnesses.

In their presence demonstrated the significance of phenolphthalein–sodium carbonate test. The numbers in the currencies (Rs.500/- x 10) meant for giving bribe brought by P.W-2 was noted. Those currencies were smeared with phenolphthalein and entrusted to P.W-2. Then, the entrustment mahazar (Ex.P-3) was prepared at the Vigilance Office. Thereafter, the trap team headed by PW-11 proceeded to the TNEB Office at Asanur.

5. P.W-2 along with P.W-3 (Thirugnanam) the shadow witness went to the TNEB office at about 13.20 hours. The accused was not in his seat. On enquiry, they came to know that the accused had gone to ADE Office to attend a meeting. Therefore, the trap team came to Ulundurpet and P.W-2 on the instruction of PW-11 called the accused over phone at about 15.45 hrs and informed the accused that, he his waiting at Ulundurpet bus stand. The accused came at 15.50 hrs. The trap team waiting at Ulundurpet Bus stand, the arrival of the accused near the Police Booth, P.W-2 along with P.W-3 went and first gave the estimated costs of Rs.10,000/- to the accused. Then, on demand by the accused, P.W-2 gave the bribe amount of Rs.5,000/- smeared with phenolphthalein. The



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accused received it in his right hand and kept it in his left side shirt pocket. On receipt of the signal for P.W-2, the trap team headed by P.W-11 went to the spot and enquired P.W-2 and P.W-3. On getting confirmation from P.W-2 and P.W-3 that the tainted money was received by the accused, the team took the accused inside the police booth. Asked the police men in the booth on duty to stand guard outside, the team inside the booth, prepared sodium carbonate solution and tested the hands of the accused with sodium carbonate solution. The right hand of the accused when dipped into the solution turned light red. The solution was collected in a bottle and labelled. When P.W-11 enquired the accused about the money received by the accused from P.W-2, the accused took out Rs.5000/- from the shirt pocket and gave it the witness Suresh (not examined). The numbers found in the currency recovered and the numbers noted in the entrustment mahazar was compared. After being satisfied that the money recovered from the accused in the marked currency entrusted to P.W-2, the accused was arrested. After giving an alternate shirt, the accused was asked to remove his shirt and the shirt pocket portion was dipped in the sodium carbonate solution. The colour turned to light red. The shirt dipped solution was collected and labelled. Recording the recovery Ex.P-8 and observation mahazar Ex.P-9 was prepared in the presence of witnesses.



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The trap proceeding completed by 4.45 pm. Thereafter, the trap team left the spot at about 5.00 pm, took the accused to his EB office at Asanur.

6. At the Asanur EB office, the accused was asked to hand over the file related to the application of P.W-2. The file was given to Kannan (PW-6) Revenue Superintendent and he, on perusing the file informed P.W-11 that, for shifting the applicant has to pay Rs.9,430/-. Through Suresh the estimation cost was remitted in the counter. P.W.6, who collect the estimation cost gave the receipt Ex.P-7 for receiving Rs.9,430 /-. In the course of investigation, through the Trial Court, the hand wash solution and shirt wash solution were sent to chemical analysis. On receipt of the chemical analyst report (Ex.P-16) and on completion of investigation, final report filed. The prosecution case is spoken through the testimony of P.W.1 to P.W.12, documents Ex.P.1 to Ex.P.19 and Material objects M.O.1 to M.O.4.

7. Case of the defence:



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The defence case as spoken through D.W-1 to D.W-4 and Ex.D-1 to Ex.D-5 is that, the complaint given by P.W.2 is a motivated one to pressurise the Electricity Board to shift the line without following the procedure. On the day of trap, the accused went to ADE Office at Ulundurpet to attend a meeting. At around 13.00 hrs called P.W.6 and informed him that, he has prepared the estimation for shifting the LT line as requested by PW-2. If P.W.2 come to pay the estimation costs, he can receive the money. P.W-2, who went to the EB Office at Asanur on that day, was informed by P.W-6 to remit the money in the counter, but he declined. When P.W.2 called him over phone, he informed P.W-2 that he has already informed P.W.6 to receive the estimation cost, so he may deposit the cost in the office. After attending the meeting at ADE office Udumalpet, he went back to his home at Mangalampettai. P.W.2 came to Mangalampettai met him near a tea shop when he was about to go to Ulundurpet to take photocopies of certain documents. P.W.2 insisted to receive the estimation cost and remit it in the office on his behalf, since he will not be in town for next few days. Also requested the accused to drop him at Udumalaipettai Bus stand in his two wheeler. This was witnessed by the tea shop owner DW-1. He and P.W-2 went to the photo copier shop to take copies of document. The presence of the accused and P.W-2 at the



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xerox shop was witnessed by D.W.2 a priest in the local temple. As requested by P.W.2, he took him to the bus stand to drop, there he was taken by the trap team to his office and the case was foisted against him.

8. To substantiate his case, the accused had examined D.W.1 Mani, the tea shop owner at Mangalampettai with whom the P.W.2 enquired about the residence of the accused. D.W.2 Nirmal Kumar, priest of the local Temple, who saw the accused and another person in the xerox shop at that point of time. D.W.3 the Nodal Officer of the service provider Vodafone to mark the call details of the complainant phone number 9786165633 to show that, on the day of trap, P.W.2 called the accused during midday, in turn, the accused called P.W.6 and instructed him to collect the estimated charge for shifting. D.W.4, the Additional Divisional Engineer of Virudhachalam to mark Ex.D.4 and Ex.D.5 to show that mobile phone number 9442378770 is the SIM card given to the accused by the department in the year 2006. The call details is Ex.D.5.

9. Grounds of appeal and the submission made on behalf of the



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appellant/accused:

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The Learned Counsel, appearing for the appellant submitted that there is an inherent defects in the charge, which has caused prejudice to the accused and same not been taken into consideration by the Court below. The time, place of demand and acceptance of bribe are essential facts required to frame charge under Section 7 and Section 13(2) r/w 13 1(d) of PC Act. The charges framed and tried reads as if 15/09/2009 at 11.00 AM, the accused demanded Rs.5,000/-bribe and accepted the same. Not only the place of demand and acceptance not mentioned in the charge, the date and time of demand and acceptance as 15/09/2007 11.00 a.m also is contrary to the evidence adduced by the prosecution.

10. During the time and date mentioned in the charge, the accused was not at Asanur EB Office, but was at ADE Office at Ulundurpet to attend a meeting. While the complaint Ex.P-2, as well as the testimony of P.W.2, who is the defacto complainant indicates that, the first demand was on 08/09/2009 at 11.00 a.m at Asanur EB office and the second demand was on 15/09/2009 at about 5.00 p.m after lodging the complaint Ex.P-2 and during the trap at the



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corner of Ulundurpet Bus Stand, the substance of charge for section 7 as well as

13(1)(d) is entirely different. No witness had spoken about the presence of the accused or demand and acceptance of bribe money by the accused on the date and time which is mentioned in the charge. The evidence regarding the time of demand and the acceptance as spoken by P.W.2, P.W.3 or P.W.11 is totally contrary to the time and date mentioned in the charge.

11. The testimony of these three witnesses also not in consonance with the exhibits. While the charge and the prosecution evidence both oral and documentary evidence are contrary and had caused grave prejudice to the accused, the Trial Court judgement is epitome of failure of justice and liable to be set aside for the defective charge which is illegal and not a irregularity.

12. The learned Counsel for the appellant further submitted that the complaint Ex.P.2 indicates that the defacto complainant came to the EB Office eight months prior to the incident and gave an application for shifting the low tension line. According to the defacto complainant, that application was not acted upon by the Asanur Electricity Board Office. He, thereafter about five months prior



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to the complaint met the accused. As per his direction, he got the initial of a ADE on his application and submitted it to the accused at Asanur EB office. The accused received the application and instructed the defacto complainant to come after a month. Assured by the time, he will prepare the estimation and keep it ready. When he met the accused after one and half months, the accused instructed him to pay Rs.50/- for processing the application. Receiving Rs.50/- he gave the receipt to the accused. Then, the accused told him to come after one month. Accordingly, on 08/09/2009, when he met the accused, the accused told him that he had prepared the estimation and the estimation for shifting the LT line cost Rs.9430/- For shifting the low tension line and to process the application, he has to pay Rs.5000/- as bribe.

13. The learned counsel for the appellant referring this portion of the complaint challenge the trial court judgment suffers illegality and infirmity. The falsehood in the complaint could be easily found out from the application of the complainant for shifting. The application recovered from the file kept in the office and the evidence of P.W.4 and P.W.6 who had spoken about the procedure for considering application to shift the LT line and the application given by the



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defective complainant for shifting the line, contended that Ex.P.11, Ex.P.12, Ex.P.13, Ex.P.14 and Ex.P.15 which of the documents related to the application shifting the line. The application was not given eight months prior to the incident as alleged by P.W.2. The letter of the P.W.2 dated 16/07/2009 clearly show that he did not make the application till that date though he was permitted to make application for shifting the line. This letter though found in the file the prosecution wantonly did not marked it. The accused marked it as Ex.D.1. This letter is written and signed by the defacto complainant which forms part of the file. It would clearly show that the P.W.2 had requested to condone the delay in making the application along with requisite fees since he had no money and also was preoccupied in preparing for his examination. Much after this letter, P.W.2 submitted his application along with Rs.50/- challan for processing the application. This was only on 20/08/2009, just 25 days prior to the trap. Ex P-13, proves that the application duly processed by the Assistant Executive Engineer, Ulundurpet on 25/08/2009. In this memo Ex.P.13, detailed estimation for shifting is arrived as Rs.12,840/- the gross estimation at Rs.9510/-. Also technical sanction is accorded. He has ordered to collect Rs.9,430/- from the applicant (P.W.2) before applying for the work order. While the fact being so, the allegation of the complainant that, on



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08/09/2009 at about 11.00 a.m, when he met the accused at EB Office, he asked him to come with estimation cost along with bribe money of Rs.5000/- is highly improbable. Even according to the complainant, when he met the accused on earlier two occasions, there was no demand of illegal gratification. The demand of bribe on 08/09/2009 and the instruction to come on 15/09/2009 is unfound and imaginary. If really the accused had any intention to obtain bribe, why should he fix 15/09/2009, when the estimation was ready as early as 25/08/2009 itself? Therefore, the relevant portion in the complaint, regarding the alleged meeting with the accused five months earlier to the incident is marked as Ex.D.2 to highlight the falsity in the prosecution case.

14. It is the contention of the appellant counsel that when the application itself was made only on 20/08/ 2009 along with the requisite fee of Rs.50/- and the estimation was prepared soon thereafter. The AEE has passed proceedings on 25/08/2009. There is no necessity for the complainant to come on 08/09/2009, but go back without remitting the money and give a complaint on 15/09/2009 as if, a sum of Rs.5000/- demanded by the accused in addition to the estimation cost. The presence of the de facto complainant (PW-2) at the EB office,



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Asanur on 15/09/2009 at about 1.00 PM is spoken by P.W.6, the Revenue Superintendent. When P.W.2 enquired about the accused, P.W-6 has conveyed to P.W-2 that the accused has gone to attend a meeting at Ulundurpet, he had informed him to collect the estimation cost. P.W-2, if really a genuine person he should have paid the money. But, he refused to pay the estimation cost and said that he want to meet the accused and will remit the money only to him.

15. In this connection, the Learned counsel submitted that Foreman is not competent to collect the charges and it is the Revenue Superintendent is the competent person and authorised to collect charges from the customers. While P.W.6 was ready to receive the charge as per the estimation, P.W.2 for no valid reason refused to remit the money in the Office at 1.00 PM on 15/09/ 2009 and had told P.W.6 that, he will know the reason for refusing to remit the money, by evening of the day.

16. D.W.1 the Tea shop owner speaks about the 4 or 5 strangers came to his tea shop at Mangalampettai and enquired him about the residence of the accused. When he offered them to call the accused, they said they have his phone



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number and they will call him. One among them called the accused and told that he had come to pay the estimated cost. The accused came to the tea shop and told him that he has already informed Kannan P.W.6 to collect the estimation cost, so he can go and remit it in the office. That person insisted the accused to receive the money since he is urgently going to Chennai. The accused told that, he is also engaged with lot of work and he is proceeding to the xerox shop to take photo copy of certain documents. The stranger asked the accused to give lift to Ulundurpet, since he is also going to Ulundurpet. Then the stranger went along with the accused while the others followed them. Next day in the paper he read that accused was arrested for receiving bribe.

17. In corroboration of D.W-1 evidence, D.W.2 had deposed that, at Abirami xerox shop, on that evening, he met the accused with another person. When he was at Abirami Xerox shop for taking photo copy of some documents, the accused along with another person came in his TVS 50. He and the accused exchanged pleasantries. The accused went to the shop for taking photo copies, the person who accompanied the accused was standing outside the shop and talking to someone over his phone. After the accused came out of the xerox shop, the other



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person asked the accused to drop him at bus stand and both left the xerox shop.

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18. According to the counsel for the appellant , the evidence for defence through D.W.1, D.W.2 as well as the call details of the accused phone number as well as the defacto complainant phone number, which has been marked through D.W.3 and D.W.4 prove that there was no demand or acceptance of bribe money from P.W.2 on 08/09/2009 or on 15/09/2009 as spoken by the prosecution witnesses.

19. The Trap Laying officer examined as P.W.11, had deposed that, at the time of trap the accused handed over 10 thousand rupees notes and he recovered it under the mahazar along with the bribe money of Rs.5,000/-. Thereafter, at about 17.00 hrs the team took the accused to Asanur EB office. At EB office, Asanur, he gave the Rs.10,000/- to Suresh and asked him to remit it to P.W.6. Whereas , the defacto complainant had deposed that, from the police booth at about 5.00 PM they left to Asanur EB office. The Trap Laying Officer asked the accused to handover the file related to the application of P.W.2, he handed over the file. P.W.6 on perusing the file told P.W-2 has to pay Rs.9,430/-. Then P.W-11



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asked the other shadow witness Suresh (not examined) to collect Rs.10,000/- piece from the accused and remitted it to P.W.6. Accordingly, money was remitted and receipt Ex.P-7 for payment of Rs.9,430/- was generated in the printer. Thus, the major contradiction about the fact when and where Rs.10,000/- recovered cause doubt about the prosecution case. Therefore, the trial court judgement need to be set aside.

20. Per contra, the learned Government Advocate representing the state submitted that the error pointed out in the charges are only irregularity and not illegality to vitiate the trial. The accused/appellant had fully understood the charge and has defended the charges by letting in oral and documentary evidence. Therefore, under section 464 of Cr.P.C, defect in the charge will not get the trial vitiated.

21. Regarding the defence evidence, the learned Government Advocate submitted that the trial Court has rightly disbelieved the evidence of D.W.1 to D.W.5. Particularly, D.W.1 not able to answer the Court question why a person who possess the phone number of the accused should enquire him about



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the residence of the accused. Similarly, the testimony of D.W.2 been rightly rejected by the trial Court, since the said witness was not able to recollect the colour of the two wheeler in which the accused and the defacto complainant left the Abirami xerox shop and proceeded to Ulundurpet Bus stand. Therefore, he contended that the accused has failed to rebut the presumption. The receipt of tainted money by the accused is proved through oral and scientific evidence. Therefore, prayed that the trial Court judgment has to be confirmed.

22. Heard the Learned Counsels and records perused.

23. Point for consideration:- Whether the prosecution as proved the fundamental facts regarding demand of illegal gratification and obtainment of the same, despite error in the charge framed against the accused.

24. The trial Court framed two charges against the accused. First Charge is in respect of Section 7 of P.C and Second Charge is in respect of 13(2) r/w 13(1)(d) of P.C Act.

25. The substance of charge as framed by the Court below reads as



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below:- “(i). Jayakumar working as foreman in the Office of Assistant Engineer, TNEB, Asanur, Villupuram District, being a public servant demanded illegal gratification of Rs.5,000/- from Radhakrishnan on 15.09.2009 at about 11.00 a.m, near police booth at Ulundurpet Bus stand for shifting the High Tension wire running acrossing the residence of Radhakrishnan, thereby, committed offence under Section 7 of P.C Act, triable by this Court.

(ii). In continuation of the above offence, on 15.09.2009 at 11.00 am received Rs.5000/- as illegal gratification from Radhakrishnan for shifting the HT wire running above the residence of Radhakrishnan and thereby, being a public servant having obtained illegal gratification committed offence triable by this Court for offence under Section 13(2) r/w 13(1)(d) of P.C Act”.

26. The factual errors in both the charges are as below:-

- a). The application was not for shifting HT wire but for LT wire.
- b). As per the complaint Ex.P.2 the demand for illegal gratification of Rs.5,000/- from Radhakrishnan was at TNEB Office, Asanur was on 08.09.2009 at about 11.00 a.m.



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c). The obtainment of illegal gratification as per the prosecution witnesses and documents was on 15.09.2009 between 16.05 hrs and 16.30 hrs in the police booth near Ulundurpet Bus stand.

Section 212 of Cr.P.C., read as below:-

Section 212 of Cr.P.C, mandates the charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Section 464 of Cr.P.C., which deals with Effect of omission to frame, or absence of, or error in, charge. No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned.

27. In Soundarajan -vs- State represented by Inspector of Police,



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Vigilance and Anti Corruption, Dindigul, the Hon'ble Supreme Court considering the argument that while the charge is about the alleged demand made on 12.07.2004 and failure to frame charge regarding the demand made on 06.08.2004 and 13.08.2004, the material omission to frame a proper charge had caused great prejudice to the accused, the Hon'ble Supreme Court has declined to accept the plea stating that:

15. Under Section 464 of CrPC, omission to frame a charge or any error in charge is never fatal unless, in the opinion of the Court, a failure of justice has in fact been occasioned thereby. In this case, from the perusal of the cross-examination of PW-3 and other prosecution witnesses made by the Advocate for the appellant, it is apparent that the appellant had clearly understood the prosecution case about the first alleged demand made on 6 August 2004 and the subsequent alleged demand and acceptance on 13 August 2004. There is no doubt that this is a case of omission to frame a proper charge, and whatever charge has been framed is, per se defective. However, by reason of the said omission or defect, the accused was not prejudiced insofar as his right to defend is concerned. Therefore, in this case, the omission to frame charge and/or error in framing charge is not fatal.



16. We find that, in this case, the charge has been framed very casually. The Trial Courts ought to be very meticulous when it comes to the framing of charges. In a given case, any such error or omission may lead to acquittal and/or a long delay in trial due to an order of remand which can be passed under sub-section (2) of Section 464 of CrPC. Apart from the duty of the Trial Court, even the public prosecutor has a duty to be vigilant, and if a proper charge is not framed, it is his duty to apply to the Court to frame an appropriate charge.

28. The dictum squarely applies to the case in hand. No doubt, there is a defect in the charge regarding time, date and place of demand as well as place of acceptance. However, the accused has understood the charge against him and cross examined extensively the prosecution witnesses and also marshalled their witnesses on his behalf and marked defence documents. Therefore, having effectively defended the case against him and understood for what offence he is prosecuted, the judgment of the Court below cannot be invalidated on this ground.

29. The case of the prosecution as spoken by P.W.2 and his complaint Ex.P.2 is that, he made application for shifting the Low Tension line, eight months



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ago and when he met the accused on 08.09.2009, he informed him that, the cost to shift the line is estimated at Rs.9,430/- apart from the estimated cost, he has to give Rs.5,000/- to complete the work. Whereas, Ex.P.5 which form part of the file marked as Ex.P.13 indicates that, P.W.2 Radhakrishnan son of Ganesan requested the A.E.E, TNEB, Ulundurpet to shift the Low Tension line only on 01.04.2009 not eight months prior to date of trap (i.e., 15.09.2009). In this letter Ex.P.9, Assistant Engineer, TNEB has made an endorsement, on 03.04.2009 to collect the application. Thereafter, on 20.08.2009, an endorsement is made indicating that, to collect Rs.50/- for deviation application. Ex.P.15 is the proceedings of the A.E.E dated 25.08.2009. In this proceedings, the estimated costs of Rs.9,430/- was ordered to be collected from the applicant before applying for the work order. The accused has marked documents (Ex.D.2). Ex.P.4 is a letter of Assistant Engineer dated 22.12.2004 which form part of the file marked as Ex.P.13. This letter reveals that, Assistant Engineer has warned P.W.2 Radhakrishnan for constructing a house below Low Tension line which may cause accident. Therefore, instructed him to make arrangement to shift the Low tension line, failing which he will be responsible for the consequence. So, it is clear that, this letter of Assistant Engineer dated 22.12.2008 has prompted Radhakrishnan to apply for shifting Low Tension



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line running above his house. Ex.D.1 is the letter of P.W.2 dated 16.07.2009. In

WEB this letter P.W.2 has requested Assistant Executive Engineer to condone the delay in not arranging for shifting the Low Tension line and sought for some time to make the necessary arrangement and thereafter, he has paid Rs.50/- on 20.08.2009. According to P.W.2, he was informed that, he has to pay Rs.9,430/- towards the costs for shifting the Low Tension line and also he alleges that the accused demanded additional sum of Rs.5,000/- for immediate action. The record indicates that, it was not the voluntary action of P.W.2 to make the request for shifting Low Tension line. It was at the instance of the Electricity Board which has been persuading him since December 2008, to stop construction or to apply for shifting the line. He was forced to make arrangement for shifting the line. He was asked to pay Rs.9,430/- towards shifting cost. He admits that, he know about the estimated cost when he visited the Electricity Board Office on 08.09.2009. He went to Electricity Board Office on 15.09.2009 with that money but he has not remitted the money in the Office. In this connection, the evidence of P.W.6 is relevant. He had deposed that, on 15.09.2009, P.W.2 came to the Electricity Board Office and enquired about the accused and he told that, he want to remit the estimation costs, by that time, the accused has contacted P.W.6 and instructed him



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to receive the costs. Even though, P.W.6 was ready to receive the cost, P.W.2 has not tendered it for the reason best known. It appears as if to fix the accused in the trap, he had been chasing the accused who did not attend the Office on that day, due to other duty namely meeting at Assistant Divisional Engineer Office, Ulundurpet.

30. There is a cloud in the narration of the trap by the witnesses regarding the obtainment of Rs.5,000/- by the accused near police booth Ulundurpet bus stand. The rough sketch marked as Ex.P.9 shows the SOC on the western corner of Kandasamy Padiyachi Street junction. The police booth where the alleged phenolphthalein test conducted is on the Trichy-Villupuram Highway just opposite to bus stand. The spot which is shown as the place where the accused received the bribe money is not the place where the witnesses speak about the receipt of the money. Furthermore, P.W.2 and P.W.3 states that, first the accused received Rs.10,000/- which is meant for estimation cost and thereafter, demanded for the illegal gratification and received Rs.5,000/-. While both these witnesses speak about where he kept Rs.5,000/-, they are silent about the fact where he kept Rs.10,000/-. P.W.11, who is the Trap Laying Officer, in his



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evidence stated that, soon after he received the signal from P.W.2 indicating that the accused received bribe money, he went to the spot and took the accused to the nearby police booth asked Police Constable Thiru.Abdul Saleem to wait outside the booth and went inside the police booth, prepared sodium carbonate solution asked the accused to dip his right hand in the solution. The solution colour turned light red. He collected the solution in the bottle and labelled it. Then, he asked where the accused has kept the bribe money received from P.W.2. The accused handed over five hundred rupees notes from his shirt pocket. PW-11 received it and gave it to Suresh to count it. At the same time, the accused also gave 10 x 1000/- Rs.10,000/- to him which is the estimated cost. From where he took Rs.10,000/- and gave it to P.W.11 is not spoken by witnesses. Having handed over Rs.10,000/- to P.W.11 in the police booth near Ulundurpet Bus stand, the prosecution had not explained how once again he took this money and gave it to Thiru. Suresh at the EB office at Asanur.

31. According to the accused, P.W.2 tendered money towards shifting of Low Tension line, the accused received it, counted and found it is more than the



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estimation cost and therefore, enquired P.W.2 why he has given excess money, even before he could answer, the police came and caught him.

32. The statutory presumption against the accused been substantially rebutted through the evidence of D.W.1, D.W.2 and P.W.6. On 15.09.2009, when P.W.2 and P.W.3 along with the Trap team went to EB Office at Asanur EB Office at about 1.00 o' clock, the accused was not in the office. He had gone to Ulundurpet to attend the Office meeting. According to the accused, after the meeting, he has gone to his native Mangalampettai. The accused was seen at Mangalampettai around 4.00 p.m by D.W.1 a tea shop owner and at Ulundurpet Abirami xerox shop by D.W.2 a local priest. Both D.W.1 and D.W.2 had seen the accused with the stranger. The stranger is suppose to be P.W.2.

33. P.W.6 had deposed that Radhakrishnan the applicant came to the office on 15.09.2009 though he was ready to receive the estimated cost, P.W.2 refused to tender it. From the material evidence, the defence has proved that the application dated 01.04.2009 without requisite fees was not taken up for consideration till 20.08.2009, the day on which the applicant paid Rs.50/- for



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receipt of the application. The defacto complainant himself has expressed his inability to pay the money in time and sought for extension vide letter dated 16.07.2009. It is also proved by the accused that soon after payment of application fees on 20.08.2009, Assistant Executive Engineer directed to prepare the estimation and the estimation was prepared within 5 days. Therefore, the allegation that, on 08.09.2009 when P.W.2 met the accused, he demanded Rs.5,000/- and asked P.W.2 to come on 15.09.2009 to pay the money is improbable when the estimation already been prepared and P.W.6 was ready to receive the estimated costs on 15.09.2009 at 11.00 a.m when P.W.2 came to Electricity Board Office, Asanur.

34. In this connection, the evidence of D.W.1 and D.W.2 ought to have been considered by the trial Court unfortunately for flimsy reason, the trial Court has disbelieved the evidence of these two witnesses.

35. The state of mind of a Tea shop owner (D.W.1) been tested by the standard of highly educated person. Likewise D.W.2 has been put to memory test



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regarding the colour of two wheeler which the accused came on the day of occurrence. Since D.W.1 was not able to answer the Court question why a person who have a phone number need any help of third party to know the residence of the accused. The silence of the witness been taken adverse notice by the Court. In fact the state of mind of the person who enquired him cannot be explained by the tea shop owner (D.W.1). That is the reason the witness was not able to answer the Court question. Therefore, his silence is natural, adverse notice taken by the trial Court is unnatural. Likewise, D.W.2 was examined on 04.10.2016. He was suppose to speak about an incident occurred 7 years ago. He was unable to recollect the colour of the two wheeler in which the accused came to the Abirami xerox shop on that day. For that reason, his testimony been rejected as unreliable. Both the reasons given by the Court for not considering the evidence of D.W.1 and D.W.2 in this case appears to be very flimsy.

36. For the reason stated above, this Court finds that the trial Court from the inception of framing the charge, till the appreciation of evidence has not applied the mind properly and had committed error. The error taken in cumulation had prejudice the accused. Therefore, the judgment of the trial Court has reversed.



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The conviction and sentence passed by the trial Court is set aside. Accordingly, the ***Criminal Appeal No.679 of 2018 is allowed.*** The accused is acquitted from all charges. Fine amount paid if any shall be refunded.

19.05.2023

Index :Yes.
Internet :Yes/No.
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
bsm

To,
1. The Special Court for Prevention of Corruption Act Cases, Villupuram.
2. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Villupuram.
3. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.
bsm

Pre-Delivery judgment made in
Crl.A.No. 679 of 2016

19.05.2023