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CRL.A.(MD).No.201 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.06.2023

PRONOUNCED ON : 27.07.2023

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**CRL.A(MD).No.201 of 2017**

M.Durairaj

.. Appellant/Accused

Vs.

State represented by  
The Inspector of Police,  
Vigilance and Anti-corruption,  
Pudukkottai,  
Crime No.2 of 2013,  
Pudukkottai District.

.. Respondent/Complainant

**PRAYER:** Criminal Appeal filed under Section 374(2) Cr.P.C, against the judgment passed in Spl.C.C.No.3 of 2014, dated 21.06.2017, on the file of the Chief Judicial Magistrate, Pudukkottai, Pudukkottai District.

For Appellant : Mr.V.Kathirvelu  
Senior Counsel  
for Mr.K.Prabhu

For Respondent : Mr.R.Meenakshi Sundaram  
Additional Public Prosecutor



## JUDGMENT

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It would be apt to begin the judgment with the observations of the Hon'ble Supreme Court in *Niranjan Hemchandra Sashital and another Vs. State of Maharashtra* reported in (2013)4 SCC 642:

*“It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered.”*

2. The Criminal Appeal is directed against the judgment of conviction and sentence passed in Spl.C.C.No.3 of 2014, dated 21.06.2017, on the file of the Special Court for trial of cases under Prevention of Corruption Act / Chief Judicial Magistrate, Pudukkottai.

3. The case of the prosecution as evident from the charge sheet filed by the Inspector of Police, Vigilance and Anticorruption is that the accused was working as Tahsildar, Ponnamaravathi Taluk, actuated by corrupt motive on



10.07.2013 at about 17.00 hours in his office, attempted to obtain gratification other than the legal remuneration of Rs.10,000/- for himself from the complainant Chinniah of Arasamalai, Ponnamaravathi Taluk, Pudukkottai District as a monthly mamool (bribe) to continue his sand quarrying and earth moving works from the Nerunjikudi river situated at Ponnamaravathi Taluk without any interference from the revenue side, that in the course of the continuation of transaction and in pursuance of the earlier demand reiterated his earlier demand and obtained Rs.10,000/- as bribe from the complainant between 11.50 hours and 12.00 hours on 12.07.2013 in his office and as such, the accused is liable to be prosecuted for the offence under Section 7 of the Prevention of Corruption Act, that in the course of the same transaction and in pursuance of the said demand, on 12.07.2013 between 11.50 hours and 12.00 hours and in Taluk office of Ponnamaravathi, the accused by abusing his official position, demanded and accepted Rs.10,000/- as bribe from the complainant for the above said purpose as pecuniary advantage for himself and thereby he has also committed an offence punishable under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

4. The Court of Chief Judicial Magistrate, Pudukkottai, after the receipt of the charge sheet, has taken the case on file in Spl.C.C.No.3 of 2014 on its file and furnished the copies of records under Section 207 Cr.P.C., to the accused on



free of costs. The learned Chief Judicial Magistrate, upon perusing the records and on hearing both sides, being satisfied that there existed prima facie case against the accused, framed charges under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and the same were read over and explained to the accused and on being questioned, he denied the charges and pleaded not guilty.

5. The prosecution, in order to prove its case, had examined 22 witnesses as P.W.1 to P.W.22, exhibited 36 documents as Exs.P.1 to P.36 and marked four material objects as M.O.1 to M.O.4.

6. The case of the prosecution emerging from the evidence adduced by the prosecution, in brief, is as follows:

(a) The defacto complainant – P.W.2 is an agriculturist, residing in Arasamali Village of Ponnamaravathi Taluk. His wife Alamelu is owning a Swaraj Model Tractor bearing registration No.TN-55-AE-6152. They have been using their tractor for their agricultural purposes. On 21.06.2013, when the complainant was taking sand from Nerunjikudi river for the purpose of constructing his own house, the accused who was the then Tahsildar of Ponnamaravat Taluk had stopped the vehicle and handed over the vehicle to



Karaiyur police. The complainant, after paying penalty of Rs.26,340/- has produced the receipt and got back his tractor from the Karaiyur police. On 10.07.2013 at about 05.00p.m., the complainant went to the Taluk office of Ponnamaravathi and on enquiry from the driver of the Tahsildar – Shanmugam – P.W.10, he came to know that the Tahsildar was very much available in the Taluk office. The complainant went to the chambers of Tahsildar and on seeing the complainant, the accused had directed the complainant to pay Rs.10,000/-per month and he can take the sand whatever he wanted. The complainant agreed for the said payment and at that time, the Tahsildar informed him that since he was having a meeting on the next day, directed to visit him thereafter. The complainant approached one Periyannan, who is running Ponnalagu Finance in Arasamalai (P.W.11) and obtained a loan of Rs.10,000/- from him. After preparing a complaint, he went to the office of the Vigilance and Anticorruption at about 07.00p.m.

(b) When P.W.20 – Mathiyalagan, who was the then Inspector of Police, Vigilance and Anticorruption, Pudukkottai was in the office at about 19.00 hours on 11.07.2013, P.W.2 came to the station and gave a complaint under Ex.P.2. P.W.20 received the complaint and registered a case in Cr.No.2 of 2013 under Section 7 of the Prevention of Corruption Act and prepared the F.I.R., under Ex.P.27. In order to ascertain the genuineness of the complaint, he examined the



defacto complainant and recorded his statement under Section 161 Cr.P.C.

Since it was late night, the complainant was permitted to stay in the office of the Vigilance and Anticorruption. P.W.20 made a request to the Executive Engineer, Public Works Department and the Highways Sub-Divisional Officer, Alangudi under Exs.P.28 and P.29 respectively to depute the officials to accompany the defacto complainant as shadow witnesses. In pursuance of the said request, Thiru.R.Ravichandran – P.W.3 and Thiru.Karuppiah were deputed. P.W.20 introduced them to P.W.2 and gave a copy of F.I.R., for them to read. After reading the F.I.R., they enquired with P.W.2 about the veracity of the complaint. Thereafter P.W.2 produced 10 notes of Rs.1,000/- before P.W.20, who in turn directed the Head Constable Karuppiah to count those notes and directed the Head Constable – Muthukumar to prepare the Sodium Carbonate solution. Thereafter, he demonstrated Sodium Carbonate Phenolphthalein test procedures and prepared entrustment mahazar under Ex.P.3.

(c) P.W.20 has then instructed P.W.2 to meet the accused along with the witnesses and if the accused made any demand and accepted the bribe amount, P.W.2 was instructed to give pre-arranged signal. Thereafter, at about 09.30a.m., P.W.20 had taken P.W.2 and other witnesses and stopped the vehicle near Vairam Palaniappa Petrol bunk and directed P.W.2 to proceed with the witness Ravichandran – P.W.3 at about 10.45a.m. P.W.2 and witnesses had



returned within ten minutes and on enquiry, they have informed that the Tahsildar was not available and they were informed that he would come to the office by 12.00 noon. P.W.20 directed P.W.2 and the witness to wait in the office. At about 11.45 a.m., the Government vehicle entered into the Tahsildar office compound and the accused had entered into his office through northern entrance. P.W.2 and P.W.3 went to the chambers of the accused and on seeing the complainant, the accused had enquired as to whether he brought the demanded amount of Rs.10,000/- and also asked about the witness who accompanied P.W.2. P.W.2 replied that he was a known person and handed over Rs.10,000/- to the accused. He received the said amount in his right hand and kept it in the left side shirt pocket. The accused had then informed P.W.2 that he can take sand whatever he needed and he will not disturb him. Immediately, P.W.2 came out of office and as directed, he signalled P.W.20.

(d) Since the accused Tahsildar is a Group-B officer, P.W.20 immediately informed the incident to the Deputy Superintendent of Police, Vigilance and Anticorruption. P.W.20 and his team entered into the Taluk office and directed P.W.2 to identify the accused. Accordingly, P.W.2 identified the accused. P.W.20 introduced himself to the accused and also the witnesses. Since the accused was in tensed condition, P.W.20 directed him to sit in his chair and get relaxed. After preparing the Sodium Carbonate solution, he directed the accused



to dip his right hand fingers and the solution changed into light pink colour.

Thereafter, P.W.20 directed the accused to take out the bribe amount and accordingly, he had taken the bribe amount and handed over to P.W.20. P.W.20 has then directed the witness – Ravichandran to count the notes. After verification, the said witness informed that the notes got tallied. Thereafter, he directed the accused to remove his shirt and after getting another shirt, he removed his shirt and handed over to P.W.20. When the shirt pocket portion was dipped in the Sodium Carbonate solution, the same also changed into light pink colour. Thereafter, the case properties were recovered. The accused has then requested P.W.20, if possible, to save him.

(e) P.W.20 has directed the Deputy Tahsildar – Aramutha Devasena to produce the file sent to the Revenue Divisional Officer, Pudukkottai and also the attendance register and accordingly, the said records were recovered. P.W.20 has enquired the accused as to whether he was having any other amount, the accused informed that he was having his own money of Rs.2,970/- and the said amount was returned to the accused. On receiving the intimation, P.W.21- Rathinavel – the then Deputy Superintendent of Police, came to the Tahsildar office and after perusing the records and on examining P.W.20 and other witnesses, arrested the accused at 14.00 hours. P.W.20 has prepared observation mahazar and rough sketch in the presence of the witnesses. P.W.20 has taken



the accused to his house at Chellappa Nagar, Pudukkottai and made a search at about 16.15 hours, but nothing was recovered. Thereafter, they have returned to the office of the Vigilance and Anticorruption at about 17.00 hours.

(f) P.W.22 – Ramachandran had taken up the case for further investigation on 13.07.2023 and sent the Sodium Carbonate solution to the forensic lab through Court. P.W.22 has then collected the file proceedings relating to the sand quarries located at Ponnamaravathi; the log book of the vehicle bearing Registration No.TN-55-G-0412 and the audit particulars done by the accused – Durairaj during the period of June and July 2013 under Exs. 9 to 11 from P.W.5- Gurunathan – the then Tahsildar, Ponnamaravathi. He has also collected diary book and the file of Revenue Divisional Officer under Ex.P.15 from P.W.8 – the then Sub-Inspector of Police, Karaiyur. He collected the files about the accused and the Distribution Register of Revenue Divisional Officer from 17.06.2013 to 08.08.2013 from P.W.7 – Thirumalai, the then P.A., to R.D.O., Pudukkottai.

(g) He collected “A” register of tractor bearing Registration No.TN-55-AE-6152 and letter of the Regional Transport Office under Ex.P.24 from P.W.18 – Natarajan – the then Superintendent, R.T.O., office, Pudukkottai. P.W.22 has then collected Ex.P.16 register from P.W.9 – Chandran, the then Supervisor, TASMACH shop and the entries with regard to the inspection conducted by the



accused under Ex.P.18 from P.W.12 – Karuppiah, the then Co-operative Sub-Registrar, Ponnamaravathi and that the entries in the registers of Sadayapatti Government Boys Hostel showing the audit done by the accused under Ex.P.21 from P.W.14 – Sakayaraj, the then Special Tahsildar, Adi Dravidar Welfare, Pudukkottai. He collected entries in the registers of primary school with regard to the audit done by the accused on 10.07.2013 and the noon-meal registre of Higher Secondary School under Exs.P.22 and P.223 respectively from P.W.15 – Shanthi, the then B.D.O.,(Noon Meals) Panchayat Union, Ponnamaravathi. P.W. 22 has also received the service particulars of the accused from the District Collector, Pudukkottai, vide letter dated 11.09.2013 under Ex.P.32. P.W.22 has then examined the witnesses and recorded their statements under Section 161 Cr.P.C.

(h) After completing the investigation and after coming to a decision that the accused had committed the offences under the provisions of the Prevention of Corruption Act, sent a draft final report to the Director of Vigilance and Anticorruption, Chennai and thereafter, the same was sent to the District Collector, Pudukkottai for giving sanction. As per the direction of the Director of Vigilance and Anticorruption, P.W.22 has sent a letter to the District Collector – P.W.1 seeking permission to produce the case records. In pursuance of the permission granted, he produced the case records, statements of witnesses



and statement of accused and chemical report. P.W.1 had sought some particulars with regard to the documents and returned the same. Thereafter, the District Collector – P.W.1 has issued proceedings dated 07.06.2014 granting sanction under Ex.P.1. Thereafter, P.W.22 has laid the final report before the jurisdictional Court. With the examination of P.W.22, the prosecution has closed their side evidence.

(i) When the accused was examined under Section 313(1) (b) Cr.P.C with regard to the incriminating aspects as against him in the evidence adduced by the prosecution, he denied the same as false and stated that a false case was foisted against him and stated that he is not having any defence evidence. The accused has filed a statement under Section 233(2) Cr.P.C., wherein he has stated that he has never demanded any amount from P.W.2 and P.W.2 never paid any amount as bribe, that since he had seized the tractor with sand and handed over the same to Karaiyur police, P.W.2 has lodged a false complaint to take a revenge on him and that while he was taking steps to convene a peace committee meeting as requested by the Inspector of Police, Ponnamaravathi with regard to the Melamelanilai Village temple festival, the above false complaint was foisted against him. The defence has produced 6 documents and the same were exhibited during the cross-examination of P.W.2 (Ex.D.1), P.W.9 (Exs.D.2 to D.5) and P.W.21 (Ex.D.6).



(j) The learned Special Judge, upon considering the evidences adduced and on hearing the arguments of both sides, has passed the impugned judgment dated 21.06.2017 holding that the accused is guilty of the offences under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and sentenced him to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.2000/- in default to undergo 2 months Rigorous Imprisonment for the offence under Section 7 of the Prevention of Corruption Act and to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default to undergo 3 months Rigorous Imprisonment for the offence under Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act. Aggrieved by the judgment of conviction and sentence, the accused has preferred the present Criminal Appeal.

4. Heard Mr.V.Kathirvelu, learned Senior Counsel for Mr.K.Prabhu, learned counsel for the appellant and Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the State and perused the materials placed on record.

5. The learned Senior Counsel appearing for the appellant would submit that the sanction granted by P.W.1 under Ex.P.1 is a defective sanction, that the Sanctioning Authority has not considered all the materials related to the case on



hand, that the Sanctioning Authority has granted sanction as per the request given by the Vigilance and Anticorruption police, that the present case itself is a motivated case lodged by P.W.2, that the appellant/accused had seized the tractor of P.W.2 and handed over to the Karaiyur Police Station and on that basis, the case came to be registered and he was levied penalty and that P.W.2 in order to wreck vengeance, has lodged the false complaint and the respondent police, without conducting any preliminary enquiry and without taking note of the motive behind the complaint, has registered the case, that there was no demand on 10.07.2013 as alleged by the prosecution, that the appellant/accused had inspected various places on 10.07.2013 and returned to his office only by 06.30p.m., and as such, there was no chance or occasion for P.W.2 to meet the accused, that though the alleged demand was made on 10.07.2013, the complaint came to be lodged on 11.07.2013, that there was a peace committee meeting organised by the accused on 12.07.2013 and on that day, there were so many people in the office of the accused, that since the accused was busy with the meeting, there was no chance or occasion for P.W.2 to meet the accused and for the accused to reiterate his earlier demand, that the accused has not received any amount from P.W.2, but as per their pre-plan, P.W.2 had thrust the amount into the shirt pocket of the accused and without realising what he had done, the Vigilance Police entered into his room, that the phenolphthalein test was conducted with respect to his right hand, but not in the left hand, that the Trap



Laying Officer has not recorded the statement of the accused immediately after the alleged recovery, that the respondent has not followed the mandatory guidelines enumerated in the Vigilance Manual and that the first demand, the second demand and the acceptance of the amount and the consequent recovery were not proved by the prosecution and that therefore, the appellant/accused is certainly entitled to get acquittal, but on the other hand, the trial Court has committed a grave error in convicting the accused.

6. The learned Additional Public Prosecution appearing for the State would submit that when P.W.2 met the accused at 05.00p.m., on 10.07.2013, he demanded Rs.10,000/- every month for taking sand without interference of the revenue, that since P.W.2 was not willing to pay the bribe amount, after getting of loan of Rs.10,000/- from one Periyannan, went to the respondent office and lodged the complaint, that the Inspector made an enquiry about the accused and thereafter registered the case and decided to conduct a trap proceeding, that when P.W.2 along with P.W.3 had visited the chambers of the accused, he reiterated his earlier demand and received Rs.10,000/-, that the phenolphthalein test conducted on the right hand of the accused was proved positive, that the tainted money of Rs.10,000/- was recovered from the accused, that the Sanctioning Authority having considered all the material records and the statement of witnesses, has duly recorded his satisfaction and granted the



sanctioning order, which is perfectly legal, that the Vigilance Manual is only guidelines and the same cannot be considered as law, that the prosecution through ample evidence, has proved the initial demand, subsequent demand and the acceptance of the bribe amount and the consequent recovery, that the accused has miserably failed to rebut the presumption raised under Section 20 of the Prevention of the Corruption Act and that therefore, the learned trial Judge has rightly convicted the accused.

7. The points for consideration are as follows:

- (i) Whether the sanction accorded for prosecuting the appellant/accused is valid and legal?;
- (ii) Whether the prosecution has proved the demand, subsequent demand and the acceptance theory canvassed by them?;
- (iii) Whether the trap proceedings allegedly conducted by the police are true, valid and believable?; and
- (iv) Whether the prosecution has proved the charges framed against the accused beyond reasonable doubt?

8. Now let us first consider the plea with regard to sanction. As already pointed out, the accused has taken a stand that the sanction accorded by P.W.1 under Ex.P.1 is not valid and legal. It is settled law that the Sanctioning



Authority is duty bound to consider all the relevant particulars and materials collected or gathered by the Investigating Officer against the proposed accused and his main duty is to decide as to whether the proposed accused is entitled to get protection under the Prevention of Corruption Act or that the information gathered from the particulars and the materials produced by the Investigating Officer is of such nature, that warrants the prosecution of the proposed accused.

9. In the present case, P.W.1 – Sanctioning Authority in his Ex.P.1 proceedings, has specifically observed that he carefully examined the materials such as investigating report, connected documents and scrutinized statements of the witnesses and taking into consideration all the circumstances along with the copy of the chemical analysis report, got satisfied that the accused is required to be prosecuted under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

10. The learned Senior Counsel for the appellant would submit that P.W.1 in his Ex.P.1 proceedings has nowhere whispered about the trap proceedings and has not considered the motivated complaint given by P.W.2 and that the sanction has been granted as per the request given by the Vigilance and Anticorruption police. P.W.1, in his cross-examination, would admit that he had perused the records relating to the seizure of the complainant's tractor and the production of



the same before the concerned police by the accused and that the complainant had paid the penalty of Rs.26,340/- and got back his vehicle. P.W.1 would further say that though he has not referred about the trap proceedings in the sanction order, he came to know about the trap proceedings from the records submitted before him.

11. Considering the evidence of P.W.1 and the proceedings under Ex.P.1 and the other connected records, the Sanctioning Authority, after analysing all the materials placed before him, has accorded sanction. Just because, the proceedings of the Sanctioning Authority does not refer some action that was taken during the investigation, ie., trap proceedings in the case on hand, that by itself is not a ground to impugn the sanction accorded. The appellant has not shown that P.W.1 has no power or jurisdiction to grant sanction or that the sanction granted has violated any of the legal principles or procedures in granting sanction and as such, the sanction itself is illegal.

12. No doubt, the prosecution in order to prove the charges is duty bound to prove a prima facie case, that there was a demand and the acceptance of illegal gratification. Mere recovery of tainted money is not sufficient to prove the charges. Before proceeding further, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***T.K.Ramesh Kumar Vs. State through Police***



**Inspector, Bangalore** reported in **(2015)15 SCC 629**, wherein the Hon'ble Apex Court has referred its earlier judgment of the Hon'ble Supreme Court in **Mukut Bihari Vs. Rajasthan** reported in **(2012)11 SCC 642** and the same is extracted hereunder:

*“In this regard it would be appropriate for this Court to refer to the decision of this Court in the case of **Mukut Bihari & Anr. vs. State of Rajasthan**, (2012) 11 SCC 642, which reads thus:*

*“11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when 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 complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person.”*

13. The Hon'ble Supreme Court in ***V.Sejappa Vs. State by Police Inspector, Lokayukta, Chitradurga*** reported in ***(2016)2 SCC 150***, has specifically held that mere recovery of tainted money is not sufficient and that the corroboration of the testimony of the complainant regarding the demand of bribe is necessary and the relevant passages are extracted hereunder:

*“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 a presumption would arise under [Section 20](#) of the 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 the Act.*

19. After referring to *Surajmal v. State (Delhi Administration)* (1979) 4 SCC 725, in [C.M. Girish Babu v. CBI](#),



Cochin, High Court of Kerala (2009) 3 SCC 779, it was held as under:-

“18. *In Suraj Mal v. State (Delhi Admn.)* (1979) 4 SCC 725, 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 and Anr. v. C.P. Rao* (2011) 6 SCC 450, 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.”

14. The learned Senior Counsel appearing for the appellant has relied on the following decisions:

(i) (2006)1 SCC 401 (*T.Subramanian Vs State of Tamil Nadu*):

“If the reason for receiving the amount is explained and the explanation is probable and reasonable, then the appellant had to be acquitted, as rightly done by the Special Court. In Punjabrao v. State of Maharashtra [2002 (10) SCC 371], the accused, a patwari, was on a campaign to collect loan amounts due to Government. The complainant therein was admittedly a debtor to the Government. The accused explained that the



amount in question was received towards loan. This Court accepted such explanation (though such explanation was not immediately offered as in this case, but was given only in the statement under [Section 313](#)) holding thus :-

*"It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability."*

*In Chaturdas Bhagwandas Patel v. The State of Gujarat (AIR 1976 SC 1497), this Court held that the burden that rests on an accused to displace the statutory presumption that is raised under [Section 4\(1\)](#) of the Act, is not onerous as that cast on the prosecution to prove its case. But such burden has to be discharged, 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 is referred to in [Section 161](#) IPC.*

**(ii) (2015)10 SCC 152 (P.Satyanarayana Murthy Vs. District Inspector of Police and another):**

*"20. In a recent enunciation by this Court to discern the imperative pre-requisites of [Sections 7](#) and [13](#) of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused*



without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded 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. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(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.

22. 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



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*under Sections 7 or 13 of the Act would not entail his conviction thereunder.”*

15. The learned Additional Public Prosecutor has relied on the following decisions:

**(i) (2019)8 SCC 396 ( Guruviah Vs. State represented by the Inspector of Police):**

*“..... It was noted that such a stand was not taken at the first available opportunity and the defence was not genuine. In State of U.P. v. Dr G.K. Ghosh it was observed that in case of an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, the court may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the conviction.”*

**(ii) (1980)2 SCC 390 (Hazari Lal Vs. State (Delhi Administration)):**

*“It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from*



*P.W.3. Under s.114 of the [Evidence Act](#) the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to s.114 of the [Evidence Act](#) is that the Court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the Court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from P.W.3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from P.W.3, the presumption under s. 4(1) of the [Prevention of Corruption Act](#) is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the Courts below.”*

16. It is settled law that once the prosecution proves their case of demand, acceptance and recovery prima facie, then the presumption under Section 20 of the Prevention of Corruption Act comes into play and the burden of proof gets shifted to the accused and at that juncture, the accused has to prove that the amount received was not towards any illegal gratification, but for some other purposes.



17. In the case on hand, it is the specific case of the prosecution that on 10.07.2013 at about 05.00p.m., the accused had demanded Rs.10,000/- per month as mamool for taking sand without any interference from the revenue and that on 12.07.2013 when P.W.2 along with P.W.3 had visited the chambers of the accused, he reiterated his earlier demand and received Rs.10,000/-. It is the further case of the prosecution that during the trap proceedings, the tainted amount of Rs.10,000/- was recovered from the accused and that the phenolphthalein test conducted was proved positive. Regarding the initial demand, ie., on 10.07.2013, the accused has taken a defence of alibi and in order to prove the plea of alibi, he has exhibited Exs.D.2 to D.5 and according to him, he had visited various offices under his jurisdiction and he returned to his office by 06.30p.m., and as such, there was no chance or occasion for P.W.2 to meet him on that day.

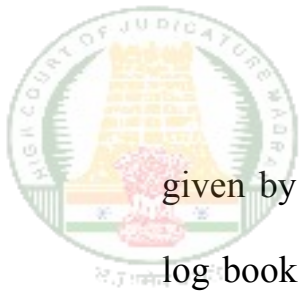
18. It is evident from the records that the accused had inspected the ration shops at Nallur and Oliamangalam at 11.50a.m., and 04.00 p.m; inspected the Child Welfare Office at 12.30 hours; inspected Sadayampatti Adhi Dravidar Government Hostel at 01.30 p.m., and inspected the Karaiyur Government High School at 12.45p.m., and that the relevant records were recovered from the said offices to show the inspection made by the accused. But it is pertinent to note that the accused himself had taken a stand that after visiting the said offices, he



returned to his office by 06.30p.m. P.W.10 – driver of the accused at the relevant point of time, in his evidence would say that when he was in the tea shop at about 06.30p.m., on 10.07.2013, P.W.2 came and enquired about the accused and that he had informed the complainant that the accused was in the office.

19. It is not in dispute that the accused had used the vehicle bearing Registration No.TN-55-G-0412 and the same was driven by P.W.10 at the relevant point of time. The defence has attempted to take advantage of the entries found in Ex.P.10 – Log book of the vehicle bearing Registration No.TN-55-G-0412. But the fact remains that Ex.P.10 – Log book, admittedly has not been updated either on 10.07.2013 or on 12.07.2013. P.W.10 would admit that P.W.6 – Ulaganathan was the earlier driver for the said vehicle and since he had not completed the log book for his period, he could not update the entries.

20. It is pertinent to mention that Ex.P.10 – Log book has not been updated for six months prior to the alleged occurrence. According to P.W.10, he has given the daily diary of the accused to P.W.6 to complete the log book and accordingly P.W.6 had made entries. As rightly observed by the learned trial Judge, since the log book was updated only on the basis of the daily diary entries



given by the accused and that too subsequent to the trap proceedings, the said log book cannot be relied on. It is not the specific case of the defence that the accused has not at all visited his office on 10.07.2013. Considering the evidence of P.W.2 and P.W.10 and also taking note of the contention of the defence that the accused had returned to his office by 06.30 p.m., on 10.07.2013, this Court has no hesitation to hold that the prosecution has proved the first demand made by the accused.

21. Now turning to the second or subsequent demand, P.W.2 – complainant in his evidence, would specifically depose that as per the instructions of the Trap Laying Officer, he went to the office of the accused along with P.W.3, on 12.07.2013 at 10.45 a.m., that since the accused was not available, they waited in the said office, that the accused had entered into his office premises at 11.45 a.m., and immediately P.W.2 and P.W.3 visited his chambers, that the accused invited him and enquired as to whether he had brought the amount demanded, that the complainant answered positively and handed over the bribe amount of Rs.10,000/- and that the accused had received the same through his right hand and kept the same in his left side outer pocket of his shirt.



22. P.W.3, who is working as Assistant Engineer, P.W.D., Arimalam Section, Pudukkottai Division, who accompanied P.W.2 as shadow witness in his evidence would reiterate the version of P.W.2 as to what had happened in the chambers of the accused. P.W.17 – Thangarasu – office assistant, attached to the office of the accused, in his evidence would say that on 12.07.2013, when the accused was in his chamber, two persons had entered into his chamber and left after five minutes and that subsequently, 4 to 5 persons had entered into the accused chamber and the chamber door was locked.

23. P.W.3 and the Investigating Officer – P.W.20, in their evidence would narrate about the trap proceedings. It is evident from the records that during the trap proceedings, phenolphthalein test was conducted and when the right hand of the accused was dipped in Sodium Carbonate solution, the same turned into light pink colour and that thereafter, the left side shirt pocket of the accused was dipped in the Sodium Carbonate solution and the same also turned into pink colour.

24. The learned Senior Counsel appearing for the appellant would contend that though phenolphthalein test has been conducted in the right hand, for the reasons best known to the Trap Laying Officer has not chosen to conduct the said test in the left hand of the accused and that since P.W.20 – Trap Laying



Officer has decided and fully believed the version of P.W.2, he has not made any attempt to conduct the test to the left hand of the accused.

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25. It is pertinent to mention that the prosecution case itself was that the accused had received the amount in his right hand and kept the same in his left outside pocket of his shirt. It is not the case of the prosecution that the accused had touched the tainted amount in his left hand. If that be so, the question of conducting phenolphthalein test to the left hand of the accused does not arise at all. The defence has made a feeble attempt to show that the accused had not received any amount from P.W.2, but on the other hand, the money was thrust into his pocket by P.W.2.

26. During the cross-examination of P.W.2 and P.W.3, it was suggested by the defence that P.W.2 had thrust the tainted amount into the pocket of the accused and when the accused had attempted to take that money, the Vigilance police had entered into his chamber and that the said suggestions were denied specifically by the said witnesses. As rightly contended by the learned Additional Public Prosecutor, the accused is not a layman and he is the Tahsildar having full control over the taluk office. Hence, the very contention of the defence that the money was thrust into his pocket by P.W.2 is very hard to believe. P.W.2 and P.W.3 have given cogent and concrete evidence with regard



to the demand and acceptance of bribe by the accused from P.W.2. P.W.3 and P.W.20 – Trap Laying Officer have given specific evidence with regard to the trap proceedings, recovery of tainted money from the accused and the conducting of phenolphthalein test and its positive results. Though P.W.2, P.W.3 and P.W.20 were subjected to lengthy cross-examination, their evidence with regard to the above aspects, was not at all shaken. Hence, this Court has no hesitation to hold that the prosecution has proved the demand, acceptance and the recovery theory projected by them. Though the accused has produced 6 documents as Exs.D.1 to D.6, he has miserably failed to rebut the presumption that had arisen under Section 20 of the Prevention of Corruption Act.

27. Considering the above, the decision of the trial Court in convicting for the offences under Section 7 and 13(2) and 13(1)(d) of the Prevention of Vigilance and Anticorruption Act cannot be found fault with and this Court is in its entire agreement with the same.

28. Now turning to the sentence imposed, as already pointed out, the accused was sentenced to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.2000/- in default to undergo 2 months Rigorous Imprisonment for the offence under Section 7 of the Prevention of Corruption Act and to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default to



undergo 3 months Rigorous Imprisonment for the offence under Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act.

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29. Generally even if illegal gratification is demanded by a Government servant, except a few, all others are reluctant to lodge a complaint with the Vigilance department and the Hon'ble Apex Court has listed out the reasons for the same in the judgment reported in **(1980)2 SCC 397 (Bachan Singh and others Vs. State of Punjab and Others )** and the same are reproduced hereunder:

*“ By and large a citizen is somewhat reluctant, rather than anxious, to complain to the vigilance Department and to have a trap arranged even if illegal gratification is demanded by a Government servant. There are numerous reasons for the reluctance. In the first place, he has to make a number of visits to the office of Vigilance Department and to wait on a number of officers. He has to provide his own currency notes for arranging a trap. He has to comply with several formalities. He has to accompany the officers and participants of the raiding party. All the while he has to remain away from his job, work, or avocation. He has to sacrifice his time and effort whilst doing so. Thereafter, he has to attend the court at the time of the trial from day to day. He has to withstand the searching cross-examination by the defence counsel as if he himself is guilty of some fault. In the result, a citizen who has been harassed by a Government Officer, has to face the humiliation of being considered as a person who tried to falsely implicate a Government servant, not to speak of facing the*



*wrath of the Government servants of the department concerned in his future dealings with the department. No one would therefore be too keen or too anxious to face such an ordeal. Ordinarily, it is only when a citizen feels oppressed by a feeling of being wronged and finds the situation to be beyond endurance, that he adopts the course of approaching the Vigilance Department for laying a trap. His evidence cannot therefore be easily or lightly brushed aside.”*

30. The Hon'ble Supreme Court in ***Niranjan Hemchandra Sashital and another Vs. State of Maharashtra*** reported in **(2013)4 SCC 642**, has observed that the gravity of the offence under the Prevention of Corruption Act is not to be adjudged on the bedrock of the quantum of bribe and that an attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenet of democracy, for it erodes the faith of the people in the system.

31. The Hon'ble Apex Court in ***Asian Resurfacing of Road Agency Pvt., Ltd., and another Vs. Central Burueau of Investigation*** reported in **(2018)16 SCC 299** has observed that the cancer of corruption has, as we all know, eaten into the vital organs of the State and cancer is a dreaded disease which, if not nipped in the bud in time, causes death.



32. Considering the gravity and the seriousness of the offence proved, the question of showing leniency in punishment, does not arise at all. Moreover, the punishment imposed by the trial Court cannot said to be excessive. Hence, this Court is not inclined to interfere with the judgment of conviction and sentence. Consequently, this Court concludes that the Criminal Appeal is devoid of merits and the same is liable to be dismissed.

33. In the result, the Criminal Appeal is dismissed. The trial Court is directed to take steps to secure the appellant/accused to undergo the remaining period of sentence, if any.

**27.07.2023**

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

SSL

To

1. The Chief Judicial Magistrate Court,  
Pudukkottai, Pudukkottai District.
2. The Section Officer,  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.



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CRL.A.(MD).No.201 of

**K.MURALI SHANKAR, J.**

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PRE-DELIVERY JUDGMENT MADE IN

CRL.A(MD).No.201 of 2017

27.07.2023