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Crl.A.(MD).No.302 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.02.2023

Delivered On: 03.07.2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.A.(MD).No.302 of 2017

Subramaniyan

... Appellant/Sole Accused

Vs.

State rep. by

The Deputy Superintendent of Police,

Vigilance and Anticorruption,

Virudhunagar District.

In Crime No.3 of 2010.

... Respondent/Complainant

Prayer: Criminal Appeal has been preferred under Section 374(2)

Cr.P.C., to call for the records relating to Judgment dated 12.07.2017 made in Spl.C.C.No.32 of 2014, dated 12.07.2017 in the file of the Special Court/Chief Judicial Magistrate (Prevention of Corruption Case), Srivilliputhur and set aside the same and acquit the appellant of the charge under Section 7 and 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988.

For Appellant : Mr.V.Kathirvelu, Senior Counsel for
Mr.J.Antony Arulraj

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor



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J U D G M E N T

This Criminal Appeal has been filed by the appellant against the judgment of conviction, dated 12.07.2017 made in Spl.C.C.No.32 of 2014, dated 12.07.2017 in the file of the Special Court/Chief Judicial Magistrate (Prevention of Corruption Case), Srivilliputhur and set aside the same and acquit the appellant of the charge under Section 7 and 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988.

2.The case of the prosecution:-

While the appellant was working as Forest Ranger in Srivilliputhur Forest Range Office, on 26.02.2010, when PW2 Radhakrishnan approached him, seeking permission to cut and transport the 9 teak wood trees grown in the land belongs to his father Thangavelu to some other place, he demanded Rs.4,000/- as bribe along with relevant revenue documents to do that work. He made the demand again on 02.03.2010 while they approaching him to give the revenue documents. Hence, the PW2 along with his father made the complaint before the Vigilance Department. On the basis of the complaint given by the PW2, pre-trap arrangement was made by the Department against the appellant. Then on 05.03.2010, before the arranged eye witnesses, he accepted the bribe amount. At that time, the appellant was caught hold by arranged trap



proceedings.

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3. On completion of investigation, final report was filed and after appearance of the accused the following charges were framed.

(i) While the appellant was working in Srivilliputhur Forest Range Office as Forest Ranger, PW2 approached him on 26.02.2010 at about 12.00 p.m., seeking permission to cut and transport the 9 teak wood trees, which were grown in the land belongs to his father namely Thangavelu in Padikathuvaithanpatti Village, S.No.232/9. At that time, the appellant, who is a Public Servant under Section 2(c) of the Prevention of Corruption Act, demanded a sum of Rs.4,000/- as bribe to do his duty, along with relevant revenue documents. Again on 02.03.2010, when the defacto complainant approached him to produce the revenue documents, he demanded the same. Thereby, the appellant committed offence under Section 7 of the Prevention of Corruption Act.

(ii) In continuation of the above said offence, on 05.03.2010, at about 13.20 hours, when the defacto complainant along with arranged eye witness one Sivanu approached the appellant, in his official residence, he demanded the amount and accepted the bribe amount of Rs.4,000/- to do his duty. Thereby, he committed offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.



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4.To prove the prosecution case, 14 witnesses have been examined on the side of the prosecution, 23 documents marked and 5 material objects were marked. On the side of the accused persons no witness was examined and no documents were marked.

5.At the conclusion of the trial, the trial Court found guilty the accused. The accused was convicted by the trial Court for the offence punishable under Sections 7 & 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. He was sentenced to undergo 3 years rigorous imprisonment and imposed fine of Rs.20,000/- in default to undergo six months simple imprisonment for the offence under Section 7 of the Prevention of Corruption Act and also sentenced to undergo 3 years rigorous imprisonment and imposed fine of Rs.20,000/- in default to undergo six months simple imprisonment for the offence under 13(1)(d) of the Prevention of Corruption Act. The sentences were ordered to run concurrently and set off under Section 428 Cr.P.C. was also ordered. The total fine amount is Rs.40,000/-.

6.Now against the conviction and sentence imposed upon the appellant/accused, he preferred this appeal.



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7.The case of the prosecution as narrated through the evidence:

7.1.PW4 the father of the defacto complainant was owning property measuring about 1.66 acres of punja land in Lakshmipuram Village, Srivilliputhur Taluk. He grown up 9 teak wood trees in the above said property. He wanted to cut and use the same for constructing house. For the purpose of getting permission for the same, on 26.02.2010, he gave a request to the accused, along with defacto complainant, his son Radhakrishnan, namely PW2. The above said petition was presented by them before him in person, which was marked as Ex.P6 on the side of the prosecution. At that time, the accused demanded Rs.4,000/- as bribe amount, stating that the above said money is required for office expenses. He also stated that other charges will be collected separately. They were informed by the accused that they must bring adangal, chitta, etc.,. After four or five days, they collected the relevant documents from the Village Administrative Officer and handed over the same to the accused at about 12.00 noon, on the particular day. The accused informed that he will collect the charges payable to the Government separately, at the time of granting permission. Again he demanded Rs.4,000/-. On that day also PW2 Radhakrishnan came along with his father. They promised the accused to arrange the money and give later. But, later they did not want to give the bribe amount to the accused. So two or three days after the above said



occurrence, PW2 gave a complaint to the Vigilance Department. He was informed that on the particular day the accused was also arrested.

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7.2. PW13 at that time, was working in the Vigilance Department as Inspector of Police, Virudhunagar, on 05.03.2010, at about 9.30 a.m. PW2 lodged a complaint in writing. In the complaint, he stated that his father owning property in S.No.232/9, wherein, 9 teak wood trees were grown. For the purpose of cutting and using the same for constructing house, they approached the accused on 26.02.2010. At that time he demanded Rs.4,000/- as bribe amount. Again, he approached him on 02.03.2010. At that time also he demanded the bribe amount of Rs.4,000/-. On the basis of the complaint given by PW2, he registered a case in Crime No.3 of 2010, for the offences punishable under Section 7 of Prevention of Corruption Act, 1988. He submitted the originals to the concerned Court and copies to the Higher Authorities as per Rules. He arranged the pre-trap proceedings. For that purpose, he requested the Government Departments to depute responsible Officers for assisting the team in pre-trap and trap arrangements.

7.3. At his request, on 05.03.2010 at about 10.15 a.m. one Sivanu, who was working as Superintendent in the Office of the Joint Director,



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Medical and Rural Health and Family Welfare Department, Virudhunagar, and one Shanmuga Sundaram, who was working as Superintendent in the District Elementary Education Department, appeared before him. Those two witnesses were introduced to the defacto complainant and he narrated the importance of the Sodium Carbonate Solution administration. PW2 handed over the bribe amount Rs.4,000/- to him. He prepared a Mahazar by mentioning the currency note numbers. He requested another Officer to prepare Sodium Carbonate solution in two separate tumblers. The Phenolphthalein powder was also applied to the currency notes. The above said money was counted by the witness Shanmuga Sundaram. He was requested to dip his hands in Sodium Carbonate solution. He complied the request and the solution turned pink colour. Then he instructed the official witnesses and PW2, to go to the Office of the accused and give the money, if he demands the bribe amount. Witnesses namely Sivanu was also instructed to accompany PW2 at that time and watch the happenings. He also instructed the PW2 to give signal, if money is received by the accused. After giving all these instructions, all the witnesses signed in the Mahazar, that was prepared during the pre-trap arrangement. Money was handed over to PW2, which was applied with Phenolphthalein powder. The above said arrangement was completed at about 11.15 a.m. on that day. They started their travel towards accused office and reached their destination at about



1.00 p.m. As usual, police team was hide themselves in nearby area. PW2 and Sivanu were requested to go to the office of the accused and follow the instructions as given earlier. They got down the jeep and went into the office of the accused.

7.4. Further event is spoken by PW3, Sivanu, who was accompanying PW2 to the office of the accused. When they went into the office of the accused, they saw the accused standing in front of his quarters. They were taken to his house, where they were requested to be seated. PW2 enquired about his request. At that time, the accused asked whether he has brought the money. He gave Rs.4,000/- to the accused. The accused received the same, counted and put it in his shirt pocket. They were told that a spot inspection will be made by him and recommendation will be made on the basis of the inspection report to the District Forest Officer and thereafter, only permission will be issued. Later, they returned to the front portion. As instructed, PW2 gave a signal to the police team. The time was at about 1.20 p.m. The police team arrived along with other witness namely Shanmuga Sundaram. The Inspector enquired PW2 about the occurrence and he narrated the entire occurrence. PW2 was instructed to go away after identifying the accused. On seeing the police team, the accused become upset and sweating. The Inspector asked one of the police team members to



prepare sodium carbonate solution.

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7.5. Further events are spoken by PW13. PW13 asked the accused person to wash his hands in the sodium carbonate solution. It was repeated for both hands and they turned pink. Both the samples are collected in separate containers, labelled and sealed. On enquiry, the accused handed over Rs.4,000/- having 500 rupees denomination. He compared the currency note numbers with that of the note numbers mentioned in the mahazar. It was found tallied. Another sodium carbonate solution was prepared, wherein, his shirt was washed. The left hand pocket portion turned pink. It was also collected in another container, labelled and sealed. The shirt was also seized. On further enquiry, the accused handed over the permission request made by PW2 and his father. He recovered the connected records from the office. A relevant register was also recovered, which was marked as Ex.P8. At about 3.45 p.m., the Deputy Superintendent of Police, Vigilance Department, arrested the accused. A mahazar was prepared, wherein, all the witnesses signed. Later, the house of the accused was searched. At that time, Rs.3,11,690/- was found in a bag. On enquiry, the accused told that the above said fund was allotted by the Central Government under National Afforestation Programme. He also told that the above said money was withdrawn from Indian Overseas Bank,



Srivilliputhur. The money was handed over to one Raju. Later the private residence of the accused was also searched and nothing was found.

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7.6. Further investigation was undertaken by PW14, Deputy Superintendent of Police. She took up the investigation on 06.03.2010 and recorded the statement of witnesses. He made a request for issuing sanction order. The Chief Conservator of Forest issued the sanction order on 14.12.2010, to prosecute the accused. He recorded the statement of accused on 12.03.2010. Finding that the accused demanded and accepted Rs.4,000/- as bribe amount for discharge his official duty, he laid the charge sheet, charging the accused under Sections 7 and 13(2) r/w 13(1)(b) of Prevention of Corruption Act.

8. After examination of all the witnesses are over, the accused was subjected to Section 313 Cr.P.C proceedings. He denied the facts narrated by the prosecution witnesses. Even though he was granted time to examine defence witnesses, none was examined on his side and no document was also marked.

9. At the conclusion of the trial process, the trial Court found the accused guilty for the offence under Section 7 and 13(2) r/w 13(1)(b) of



Prevention of Corruption Act, convicted and sentenced him to undergo three years rigorous imprisonment for each section and imposed fine of Rs.20,000/- for each section. Total fine imposed was Rs.40,000/-. Against the judgment of conviction and sentence the accused is before this Court by way of this appeal.

10.Heard both sides.

11.The defacto complainant namely PW2 turned hostile. Prosecution relies upon the other ocular and direct evidences and his father namely PW4, to prove the demand of bribe. To prove the acceptance of the bribe amount, the prosecution relies upon the evidence of the official namely PW3 and the trap laying officer PW13. The whole case boils down to the very simple issue as to whether in the absence of direct evidence of the defacto complainant, the judgment of conviction and sentence passed by the trial Court are legally and factually sustainable.

12.In the above said background, let us go to the factual issues, which was the reason for initiation of this criminal prosecution. It is not in dispute that PW4 is the father of PW2 and he was owning the property in S.No.232/9, situated in Lakshmipuram Village, Srivilliputhur Taluk. In that



property, 9 teak wood trees were grown. PW4 wanted to cut and use the above said trees for constructing house for PW2 and another son. For that purpose, as usual and as per the procedure, the District Forest Officer has to issue necessary permission. The procedure for issuing such a sanction has been narrated by the official witnesses.

13. We will go to the evidence of PW11 to know as to whether PW4 was owning property in the above said survey number as mentioned by the prosecution. PW11 in his evidence has stated that on 06.02.2009, he was working as Village Administrative Officer in Padikavaithanpatti. From the records and from the inspection made by him, he issued a certificate under Ex.P13 that PW4 namely Thangavelu is owning property in S.No. 232/9, wherein, 9 teak wood trees were grown. It was a punja land. The adangal and chitta were also standing in his name. He was informed by PW4 that the above said records are required for handing over the same to the District Forest Officer for getting permission to cut and remove the teak wood trees. The above said certificate was issued by him on 09.02.2010, which was not disputed by the accused. So we can say that PW4 was owning land in the above said survey field and 9 teak wood trees were grown in that property and he was also in need of cutting the above said trees for the purpose of own use.



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14.Now, let us go to the procedure, even though the procedure is not much relevant. But, such argument has been advanced by the appellant as to the date of demand and request made by the PW2 for cutting the trees. PW6 stated that the request in the form of application must be submitted either to the District Forest Ranger or the District Conservator of Forest. Along with the above said application, revenue records such as adangal, chitta, patta, must be enclosed. If the petition is given to the District Forest Ranger, it will send to the Forest Officer. If it is given to the Conservator of Forest, through the Ranger it will sent to Forest Officer. The Forest Officer must make a spot inspection. It will be submitted to Conservator of Forest. After getting the permission Rs.200/- must be paid as charges by the applicant. Form -16 will be given as receipt. Totally the applicant must pay Rs.250/- as charges. So this is the official procedure. It is also not disputed by the accused. There is no doubt with regard to the procedure to be undertaken. The same procedure also spoken by PW7, one Raja Gopal, who was working as Forest Ranger. PW8, who was working in the above said Department during the relevant period has stated that no request was made by PW2 and no petition was also pending at that time. PW9, Additional Conservator of Forest, stated that during the relevant period the accused was working as Forest Ranger in Srivilliputhur. He has not spoken about



the official procedure. PW10, has spoken elaborately about the procedure.

He would say that if the request for cutting the teak wood trees is made to him, he would forward the same to the Ranger. The Ranger will in turn make spot visit and after making the spot visit Rs.200/- must be paid by the applicant to the Ranger. The Ranger will issue receipt in Form CF 61. After the inspection, the Ranger must submit a report to him. After getting the report from the Ranger, he will issue necessary permit. If any issue arises in his mind, he will make a spot visit. He would further say that Ex.P12, the Tapal Register was not properly maintained. The request made by PW2 was not entered in the relevant Register. He would also admit that every request seeking permission must be entered into the proper Register, which is maintained for that purpose. It is seen that the request that was made by PW2 was not properly entered in the relevant Register. The argument that was advanced by the appellant at this point will be taken up for discussion in the later portion of the Judgment.

15. With this, let us go back to the prosecution case. As mentioned in the opening paragraph of the discussion, PW2, the defacto complainant turned hostile. He denies everything. He would say that on 05.03.2010, at the request made by the Vigilance Department, he went to the office and he was asked to sign in several blank papers. After that he



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went to his house and is not aware of anything, thereafter. The question which arises for consideration is whether his evidence can be relied for any purpose. He was working as Foreman in Tamil Nadu Electricity Board and retired from service on 31.07.2009. So he is a retired person, who was working as a responsible officer in the Department of Tamil Nadu Government undertaking. In spite of that he saying that he was signed in several blank papers given by the Vigilance Department Inspector and went to home, nothing was informed to him and nothing was heard by him. This is his evidence. Totally, his evidence is unreliable for any purpose. Such unreliable person can neither be taken as a genuine or a person of responsibility. So this is the classic case. Similar led to the reference to the answer by the Constitutional Bench of the Honourable Supreme Court in the case of *Neeraj Dutta Vs. State (Govt. of N.C.T. Of Delhi)* reported in **2022 SCC Online SC 1724**, which follows Judgment on this point. So such being the position of the criminal cases, wherein, the melody of defacto complainant's turning hostile has been taken note and the Honourable Supreme Court reiterated the position to the effect that even if the defacto complainant turned hostile, the trial Court may rely upon circumstantial evidence to find out whether there was any demand or not. So, for the time being, we will ignore the evidence of PW2, as it is not referred to be considered at all, neither affects the prosecution case nor support the



defence side. So we can simply discard his evidence.

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16.As mentioned above, the prosecution relies upon the other oral evidence of PW4 the father of PW2. As narrated in the preamble portion, he has spoken about the demand at length. He would say that on 26.02.2010, he along with PW2 approached the accused with a request and at that time, he made demand of Rs.4,000/-. The above said demand was repeated by him after four or five days. He has not given any specific date. After two or three days, PW2 gave a complaint to the Vigilance Department and so informed that the accused was arrested on the very same day on the basis of the complaint given by PW2. He would also fairly admit that he is partially deaf. Defence wants to rely this for the purpose of arguments that such a person who is not capable of hearing in full should not be relied upon. Of course, there is some contradictions in his evidence. He would say that when request was made by him, PW2 was accompanied him and he only told him that the accused demanded Rs.4,000/- as bribe amount. He was also ascertaining that on the first day, when they approached the accused, he demanded Rs.4,000/- in his presence. This cannot be taken as a material contradictions. It is clear that along with PW2, he went to the office of the accused and made a request. At that time, Rs.4,000/- was demanded by the accused. Simply, because he was half deaf, his evidence should not be



relied, cannot be accepted at all. That is why in the earlier portion of discussion, I have given the background details, wherein, the Village Administrative Officer has given a clear evidence to the effect that Thangavel approached him for issuing the revenue records. The circumstances clearly points out that PW4 also accompanied PW2 at the time of making request. For some unknown reason, PW2 turned hostile. So the argument that PW4 should not be believed, cannot be accepted at all.

17. We will see as to whether any corroborations available for believing the words of PW4. At the time of trap, the request letter that was made by the PW4 was recovered only from the accused, which is marked as Ex.P6. There is no denial on the part of the accused that the above said document was not recovered from the accused office. The above said request was made on 26.02.2010, along with the certificate from V.A.O, which is dated 09.02.2010, patta, FMB, adangal. As mentioned above, in the relevant Register, it was not entered, which was attached to the accused only. So this shows that on 26.02.2010, the above said request was made by PW4. Of course there is no direct corroboration with regard to the above said hearings on two dates namely on 26.02.2010, when they handed over the request and on 02.03.2010 the subsequent date. But I find absolutely, no reason to discard the evidence of PW4. He is an old man, illiterate, has



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spoken about the events in a co-gent manner. I find no reason to discard the evidence. No motive was suggested to implicate this accused in the above said evidence. Of course, some argument has been advanced by the accused to the effect that there is no evidence to show that Ex.P6 was given to the accused on that date. Because, there was no signature of any officials and also the seal of the office. He would rely upon the evidence of VAO for the purpose of argument that documents are given on that date mentioned in the petition. As mentioned above, VAO was given evidence as PW11 and he has stated that on 09.02.2010, he issued the certificate. As mentioned above, the documents are dated as 09.02.2010. But, request is dated 26.02.2010. Only after obtaining necessary certificates from the VAO, it is seen that the request was made. I find nothing unbelievable in the above said. So the lapse on the part of the officials in not entering the request in the Register cannot be taken advantage by the appellant. Because the appellant Officer was responsible for making entry in the relevant Register. When they themselves failed they cannot take advantage on their own drawn, this argument also cannot be accepted and rejected.

18.Now let us go to the other aspect. With regard to the pre-trap arrangement, the evidence PW3 alone is available. As usual, the official witness supports the prosecution case and story, with regard to the pre-trap



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arrangement. He would say that PW2 was also present on 05.03.2010. He also singed in the Mahazar that was prepared. PW2 only handed over the money to the Investigating Officer at the time of pre-trap arrangement. So I find no reason to doubt his evidence. With regard to the trap date serious doubt has been raised by the appellant. He would rely upon the evidence of PW4 on this aspect. PW4 during the cross examination would say that the police requests them to come to the Vigilance Department on 05.03.2010 at about 08.00 a.m. on the previous day. Before lodging the complaint only PW2 went to the Vigilance Department. But he never accompanied him after that. But PW13, who registered the FIR would say that only on 05.03.2010 at about 9.30 a.m. PW2 came and gave the complaint. PW2 has turned hostile and not supported the case of the prosecution. The above said PW4 stated that on the previous day itself, they were informed to come on the next day namely 05.03.2010. Even the acceptance itself correct, since the PW2 has turned hostile, the information furnished by PW4 on this aspect cannot be taken into account. Even if he say that on the previous day itself, they were asked to come on the next day. Complaint has been given on 05.03.2010 and not on the previous day. It is not the case of accused that the correct date of complaint is doubtful. So this head not given any significance at all. It is for the public for making enquiry with regard to the procedure for give a complaint. So it cannot be taken that the date of



complaint is not correct.

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19.No doubt that there is some delay on the part of PW4 or PW2 in making the complaint immediately after the demand made by the accused. For two days they have met the accused and as I mentioned earlier on these two days also the accused demanded Rs.4,000/- as bribe. So the delay on the part of the complaint party in approaching the vigilance department need not be given any undue importance at all. Here the delay does not affect the prosecution case.

20.So with regard to the pre-trap arrangement, no doubt can be raised. It has been submitted by the appellant that PW3 is not corroborated by any other evidence. So the Mahazar that was prepared on the pre-trap arrangement corroborated the presence of PW3 during the pre-trap and post events namely trap event also took place. The above said participation and witness also cannot be doubted.

21.Let us go to the second part of the trap event. As mentioned above, only PW3 evidence is available before this Court, even for this purpose, he would say that along with PW2 and other team of officers belonged to Vigilance Department, as instructed by PW13, they went to the



office of the accused. At that time, he was found standing in front of his official residence. Later, they were taken to his house namely the official residence, enquired PW2 as to whether he has brought the money. He replied in the affirmative, gave the money, which was treated with phenolphthalein powder, accused received the same, counted, again counted and put the same in his left side shirt pocket. PW2 made an enquiry with regard to the issue of the permit. At that time, he was told that after getting orders from Conservator of Forest, he will make arrangement. Later, signal was made by PW2 and police team arrived. As mentioned in the preamble portion sodium carbonate solution was prepared and accused was instructed to wash his hands left and right separately and both the hands turned pink. On further enquiry, the accused handed over the Rs.4,000/- which was received by him from PW2 to PW13. A mahazar was prepared and the currency note numbers found tallied with the currency note numbers noted at the time of pre-trap arrangement. When accused was further enquired by PW13, the accused alleged to have stated that towards charges for issuing the permit and for office expenses, he received the money from PW2.

22.This is the evidence which was given by PW3. Cogent evidence has been given by PW3. The learned counsel for the petitioner would rely upon the judgments of Honourable Supreme Court reported in



V.Jeyaraj Vs. State of Andhra Pradesh reported in **2014 (2) MLJ Crl. 358**

SC and Krishnand Chandar Vs. State of Delhi in **Crl.A.No.14 of 2016** and

Judgment of this Court in the case of ***P.Mani Vs. State of Tamil Nadu*** made in **Crl.A.(MD).Nos.269 & 272 of 2014** for the purpose of argument that uncorroborated evidence of official witnesses should not be taken into account and even if we take that money was recovered from the accused, it will not prima facie shows the demand of bribe and acceptance. As mentioned above, in *Neeraj Dattu's case*, the Honourable Supreme Court after going through the earlier judgments on this aspect has concluded that both demand and acceptance can be established by the prosecution through circumstantial evidence also. So in the absence of the evidence of PW2, the defacto complainant, corroboration is required to believe the evidence of PW3.

23. When we look for the corroboration we can find it in the form of evidence of PW4 the father of defacto complainant. As mentioned above he has stated that on the date of complaint itself the accused was arrested, which fact was informed to him by his son namely PW2. PW6 another witness, who was working in the Department at that time. He would say that on that date he was working as Forest Officer in Srivilliputhur Range. On that time, the accused was working as Forest Ranger. On 05.03.2010 when



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he was doing his duty at about 11.30 a.m., PW2 Radha Krishnan and another person came and made an enquiry about the accused. Later, he was informed that the accused was taken from his house to the Range office. It is further seen that the range office is situated in the very same campus or premises. The sodium carbonate solution test was undertaken in his presence. The subsequent event spoken by PW6 also shows that subsequent to the acceptance of money in the house of the accused later he was taken to the office. This fact is corroborated by PW3, who would say that after the above said acceptance of money accused was taken to the office. There was no enmity between PW6 and the accused. His evidence on this aspect also cannot be doubted, even though he was involved in a criminal case. Evidence of PW6 fully corroborated the evidence of PW3 over the subsequent event. From the subsequent event, we can also draw inference that the event that took place in the house of the accused as spoken by PW3 was also true. So with regard to the trap also, I find absolutely no reason to doubt the prosecution case.

24. With regard to the acceptance of the money, from the evidence of PW3, it is seen that PW2 gave the money to the accused. Since the currency note numbers mentioned in the recovery mahazar tallied with that of the numbers mentioned in the pre-trap mahazar, it would show that the



money was accepted by the accused from PW2. The enquiry that was made by the accused with PW2 before accepting the above said money will indicate his mental state. From the sodium carbonate solution test, it was established that the accused accepted the money and put the same in his shirt pocket. The shirt was also subjected to the chemical test and also found to be positive. So all these connected events will indicate the fact that the accused accepted the money as bribe from PW2, even though PW2 turned hostile for unknown reasons as stated above. The circumstantial evidence clearly indicates the demand and acceptance. So on this ground, I find that the argument that was advanced by the appellant deserves to be rejected.

25. With regard to the investigation process some argument was advanced on the side of the appellant to the effect that no observation mahazar was prepared and no rough sketch was also drawn to show the location of residence of the accused. With regard to the power of this appellant to issue the permit, appellant would submit that only the District Forest Officer, who was examined as PW6 empowered to issue the permit and so there was no occasion for him to demand the money. He would further submit that he recorded the statement of the accused for getting explanation for the possession of money. With regard to the Court



proceedings the appellant would submit that the charges could not be properly framed and are defective in nature. Even though it is in evidence to show that the statement of accused was recorded, it was not sent to the Court. Even the sanction authority namely PW1 did not make any mention with regard to the availability of statement of accused.

26. With regard to the last point over the Court proceedings we will go to the charges. The charge reads that the accused demanded Rs.4,000/- as illegal gratification, when the defacto complainant gave a request to get order from the Conservator of Forest. The second charge is that in pursuance of the above said demand, on 05.03.2010, he accepted the money. We find there is no error in the charge. As mentioned above, the procedure for granting permission has been elaborately spoken by the official witnesses and this appellant, who was a Ranger as per procedure has to submit the recommendation to the Conservator of Forest. But there is no evidence to show that application can be received either by the Conservator or by District Forest Officer or by Ranger. But here, District Forest Officer was the competent person to issue the permit. But it has been mistakenly stated that money was demanded by this accused to get permission or to arrange permission from Conservator of Forest. But this defect or error did not cause any prejudice to the accused. No such plea was also taken at the



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time of framing the charge even subsequently also. So any defect or error in the charge will not vitiate the proceedings unless it causes serious prejudice to the accused. Here, absolutely, there is no serious prejudice. The accused participated in the trial process and cross examined the witnesses at length. For the first time, this plea has been raised. It is not sustainable.

27. Now coming to the investigating aspect. It is not necessary in all cases, the observation mahazars, rough sketch must be prepared. So, that it will not affect the prosecution case. There is no issue with regard to the place of the residence of the accused and the Range office. This argument is also not available. With regard to the statement of the accused subsequent to the trap, no doubt that there are some contradictions. PW13 would say that no statement was recorded from the accused. But PW14 would say that they made enquiry, but no statement was recorded. But PW14 has spoken about the statement recorded during the course of investigation, which is dated 12.03.2010. Now the grievance of the appellant is that the above said statement did not sent to the Court. No doubt that there is some sort of contradictions, but, it is seen, evidence to show that when PW13 enquired about the money recovered from him. He alleged to have stated that the money was received by him for issuing permit and for official expenses. But this also could not affected the prosecution case and also considering the



fact that it is not sufficient enough to reject the entire prosecution story. So

I find that the argument that was advanced by the appellant are not sufficient enough to accept the finding recorded by the trial Court. Reading of the trial Court judgment has not indicated the error, any mis-appreciation or non-appreciation or misreading of evidence. I find that the appellant has not made out any case to interfere.

28. Accordingly, the conviction rendered under Sections 7 and 13(2)r/w 13(1)(b) of the Prevention of Corruption Act requires no interference. So far sentence are concerned since the occurrence said to have been taken place in the year 2010, 13 years lapsed, the appellant is aged about 59 years on 06.06.2011 and now he is running 72 years, it was reduced to one year rigorous imprisonment for both counts. Fine amount is concerned it is confirmed.

29. In the result, the judgment of conviction, dated 12.07.2017 made in Spl.C.C.No.32 of 2014, dated 12.07.2017, rendered by the learned Chief Judicial Magistrate, (Special Court for Prevention of Corruption Case), Srivilliputhur, is confirmed in respect of the charges under Section 7 and 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988. The sentence imposed upon the appellant/accused is reduced to one year



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rigorous imprisonment for each offence. The sentence in respect of the fine amount of Rs.40,000/-, it is confirmed. With the above modification of sentence, this criminal appeal is **partly allowed**.

03.07.2023

Index: Yes/No
Internet: Yes/No
TM

To

- 1.The Chief Judicial Magistrate, (Special Court for Prevention of Corruption Case), Srivilliputhur.
- 2.The Deputy Superintendent of Police,
Vigilance and Anticorruption,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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