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CRL.A(MD)Nos.86 of 2017 and 111 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2023

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THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A.(MD)Nos.86 of 2017 and 111 of 2017

CRL.A(MD)No.86 of 2017:

R.Palani

.. Appellant/Accused No.1

Vs.

The State rep. by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Unit,
Sivagangai,
Additional charge at Ramanathapuram.
(Crime No.1 of 2004)

.. Respondent/Complainant

PRAYER: Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records relating to the judgment passed in Spl.C.C.No.4 of 2007 dated 28.02.2017 on the file of the learned Special Judge/Chief Judicial Magistrate, Ramanathapuram, and set aside the same and acquit the appellant/accused No.1 from all charges levelled against him.



CRL.A(MD)Nos.86 of 2017 and 111 of 2017

For Appellant : Mr.Gopalakrishna Lakshmana Raju
Senior Counsel
for Mr.R.Venkateswaran

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

CRL.A(MD)No.111 of 2017:

S.Rajendran

.. Appellant/Accused No.2

Vs.

The State rep. by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Unit,
Sivagangai,
Additional charge at Ramanathapuram.
(Crime No.1 of 2004)

.. Respondent/ Complainant

PRAYER: Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records from the lower Court and set aside the judgment and conviction dated 28.02.2017 passed by the learned Chief Judicial Magistrate, Special Court, Ramanathapuram, in Spl.C.C.No.4 of 2007 and acquit the appellant.



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CRL.A(MD)Nos.86 of 2017 and 111 of 2017

For Appellant : Mr.S.Deendhayalan

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON JUDGMENT

Since the appellants in both appeals are arrayed as accused No.1 and 2 in the same crime number, these two appeals are taken up together for hearing and disposed of by way of this common judgment.

2. The accused Nos.1 and 2 in Spl.C.C.No.4 of 2007 on the file of the Chief Judicial Magistrate, Special Court for Prevention of Corruption Act, Ramanathapuram, preferred Crl.A.Nos.86 of 2017 and 111 of 2017 challenging the conviction and sentence passed under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act by the impugned judgment dated 28.02.2017. Pending appeal, the appellant in Crl.A(MD)No.111 of 2017 died and his legal heirs are impleaded.



3. Case of the prosecution:

P.W3 is the resident of the Nambuthalai Village, Thiruvadanai Taluk, Ramanathapuram District. He has three sons. The Government introduced scheme for the welfare of the public to obtain the birth certificate. The same was published by issuing phamplets. As per scheme, parents, whoever had not obtained birth certificate for their children during the period from 1994 to 2003, can apply for birth certificate directly to Village Administrative Officer. According to the prosecution, as per the scheme, if any of the villagers made birth entry and did not receive birth certificate, they shall make an application for issuance of birth certificate and shall obtain the birth certificate from the Village Administrative Officer as a special measurement. On seeing that notice, P.W3 approached the Village Administrative Officer(A1) of the Nambuthali Village, prior to two months of the occurrence. Subsequently, four days prior to the date of occurrence, with the help of one Chellam Ambalam, PW.3 wrote the application under Ex.P8 and gave the same to A1 to furnish the birth certificate. A1 asked PW.3 to meet him after four or five days. Thereafter, on 19.02.2004, PW.3 met A1 and A1 replied that the scheme had already been expired and asked him to give fresh



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application. Then, PW.3 made another application under Ex.P9 with the help of his friend one Mr.Ganesan. On that day, it is the case of the prosecution that, A1, after receiving Ex.P9, directed to meet A2-(Talayari), Village Assistant of the said village. When PW.3 and Ganesan approached A2, A2 demanded Rs.800/- as bribe to furnish the birth certificate. At the request of PW.3, the same was reduced to Rs.600/-. PW.3 informed the said demand made by Thalayari to one Sahul Hameed. Thereafter, the said Sahul Hameed and PW.3 met Talayari, and Thalayari finally demanded Rs.600/- for the purpose of giving the birth certificate and Rs.50/- for the transport expenditure. Then he reiterated the said demand and asked to hand over the amount at Maniayakarar Tea shop. Due to persistent demand, on 25.02.2004, PW.3 gave complaint before the respondent police.

3.1. After receiving complaint, the respondent police registered FIR under Ex.P11. Thereafter, PW.8 called two official witnesses including PW.2-Nagendran and one Sahul Hameed. In their presence, they demonstrated the significance of the phenolphthalein test to PW3 and prepared the entrustment mahazar. After preparation of entrustment



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mahazar, PW.8 instructed PW.2 to give bribe amount, upon demand made by the accused. P.W.8 also instructed P.W.3 to watch over the conversation between P.W.2 and the accused person. Thereafter, PW.8-Muthuraman (Trap laying officer) and the team reached office of the Village Administrative Officer. When PW.2 and PW.3 approached the office of the Village administrative Officer, the same was locked since both A1 and A2 were away. After sometime A1 came in a TATA Sumo vehicle driven by PW.5. Thereafter, PW.3 as well as PW.2 entered into the office of the Village Administrative Officer. When PW.3 approached the Village Administrative Officer-A1, he directed to approach A2. P.W.3 informed A1 about the huge demand of bribe made by A2. But, A1 without hearing his request directed to meet A2. Thereafter, according to the prosecution, P.W. 3 met A2. A2 made demand of bribe amount. Upon receipt of the amount, A2 counted the money and handed over it to one Nazimuddin-PW.11. Thereafter, PW.3 and PW.2 came out of the office of the Village Administrative Officer and gave signal to the police PW.8. Upon receipt of the signal, the entire team entered into the office of the Village Administrative Officer and conducted the test in the hands of the Village Administrative Officer-A1. There was no change of colour in the



handwash of the Village Administrative Officer. Then, they conducted the test in the hands of A2. One of the hands of A2 turned pink. Then, they made enquiry about the handling of currency note. At the time, A2 stated that he did not receive any amount from PW.3. Hence, according to the trap laying officer's version, they enquired PW.2 and PW.3. At that time, PW.3 stated that the amount was handed over A2, who, in turn, transmitted the same to Nazimuddin. Immediately, the team apprehended Nazimuddin near the place of the VAO office and they conducted enquiry about tainted currency. On enquiry, he disclosed the fact that he handed over the money to Chandran-PW.12. So, both PW.11 and PW.12 were brought to the VAO office and the team conducted the phenolphthalein test in the hands of both PW.11 and PW.12. There was no change of colour in the hands of PW.11. Insofar as PW.12 is concerned, it turned to pink and according to the trap laying officer, PW.12 kept the money in his pocket. Further, the trap laying officer enquired about the receipt of money. Both A1 and A2 denied the receipt of money and the demand made to PW.3. Finally, the trap laying officer completed the recovery process and prepared the recovery mahazar and arrested the accused and produced them before the Court concerned. After that, the accused were produced



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before the jurisdictional Court. Thereafter, PW.13 received the entire records from PW.8 and conducted the investigation and finally filed final report before the Special Court and the same was taken on file in Special C.C.No.4 of 2007 on the file of the learned Chief Judicial Magistrate, Special Court, Ramanathapuram.

3.2. After the compliance of 207 Cr.P.C proceedings, the learned trial Judge framed necessary charges and questioned the accused under Section 241 Cr.P.C. The accused denied the charges and pleaded not guilty and stood for trial.

3.3. The trial Judge, after considering the prosecution evidence of PW.1 to PW.13, the documents marked under Ex.P1 to Ex.P31 and the material objects 1 to 10, convicted the accused for the offence as stated above.

4. Challenging the conviction and sentence passed in the impugned judgement, A1 filed the appeal in Crl.A.(MD)No.86 of 2017 and A2 filed the appeal in Crl.A.(MD)No.111 of 2017. During the pendency, the



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appellant in Crl.A.(MD)No.111 of 2017 died and the legal heir/son was impleaded by order dated 20.09.2022.

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5. The learned Senior counsel appearing for the appellant in Crl.A.(MD)No.86 of 2017 submitted that the prosecution case is full of surmises and suspicion from the beginning itself ie., from the receipt of the complaint till the conclusion of trial. He further submitted that the prosecution case is bristled with infirmities which casts doubt upon the trap.

6. The learned Senior counsel for the appellant specifically submitted that the prosecution has never proved the demand as well as the acceptance, which is mandatory under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. The learned Senior counsel further submitted that even offer also not made on the date of demand and hence the case of the prosecution that the appellant reiterated the demand prior to the occurrence is also not proved. The learned Senior counsel further submitted that there is no circumstance to presume that the demand was made by A1 and A2. This is the case of recovery from PW.11 and PW.12.



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The prosecution mainly relied the proof of the demand on the basis of circumstantial evidence. So far as the circumstantial evidence is concerned, the prosecution has not proved the case beyond reasonable doubt and not proved the acceptance. PW.11 and PW.12 were treated as hostile and no useful answer was elicited in favour of the prosecution. Hence, the acceptance is not proved.

7. The learned Senior counsel further submitted that it is the specific case of the prosecution that the demand made in the presence of one Shahul Hameed. The said Shahul Hameed was not examined by the prosecution. Hence the initial demand is not proved on the part of A2. The learned Senior counsel further submitted that the recovery is not proved through the legal evidence for which he relied the evidence of PW.3, who contradicted with the evidence of PW.2 and more specifically, he stated that it is the case of the prosecution that A2, after receipt of the amount, handed it over to PW.11 and PW.12. After receiving the amount PW.11 inserted it in his pocket. It is the further case of the Nazimuddin that he handed over the money to PW.12. According to the prosecution, PW.12 also kept the money in his pocket. Hence, it is the duty of the trap laying



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officer to conduct the test in the pockets of the PW.11 and PW.12. But, the same was not done. Therefore, the amount recovered from PW.11 and PW.12 was not proved as per the requirement of law.

7.1.The learned Senior counsel further submitted that it is the case of PW.3 as well as PW.2 that A1 never handled the money. The trap laying officer conducted test in the hands of A1 and the same did not turn into pink. But surprisingly, the lab report came otherwise that the solution was positive for the presence of phenolphthalein. Hence, in all probability, there is a manipulation of records to suit the prosecution case. The learned Senior counsel further submitted that when the trap laying officer already had knowledge about the custody of the money with Nazimuddin-PW.11, as per the reply given by PW.3 and PW.2, there is no necessity to conduct phenolphthalein test in the hands of A1. Hence, it shows that the trap was not properly conducted. For this proposal, he laid the judgment of this Court reported in ***2019(1) MLJ Cri 176***.

7.2.The learned Senior counsel further submitted that even as per the recovery mahazar, no positive result came, when the phenolphthalein



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test conducted by PW.8-trap laying officer in A1's hand. Then, the colourless solution becomes coloured solution during the chemical examination, which has not been explained by the prosecution. Hence, the trap shrouded with the surmises. For this, he relied upon the judgement reported in **2015 (2) TNLR 268 (MAD)(MB)** It is the admitted case of the prosecution that whereabouts of the bribe amount was not disclosed by the accused and the same was recovered from PW.11 and PW.12 and the said recovery cannot treated as an incriminating material against the accused. For this purpose, he relied on the judgement of the Hon'ble Supreme Court in **2000 (7) Crl LW 754**. The learned senior counsel concluded his argument that the basic ingredients of the offer, demand and acceptance have not proved by the prosecution, which is mandatory according to Section 7 and 13 (1)(d) of the Prevention of Corruption Act and seeks acquittal.

7.3.Mr.S.Deenadhayalan the learned counsel for the appellant in Crl.A(MD)No.111 of 2017 reiterated the submissions made by the learned Senior counsel. He further elaborated his arguments. According to learned counsel, in Ex.P8 and Ex.P9, there was a manipulation of the date which



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shows that the application was not available. The learned counsel for the appellant further submitted that the prosecution case is that there was birth entry in the register, whereas the trap laying officer-PW.8 in his cross-examination specifically stated that no such document was available in the office of the Village Administrative Officer. In the said circumstances, it is the case of the appellant that without making prior entry to the scheme, they are not entitled to get the certificate. Further, he submitted that the non-examination of Chellam Ambalam and one Ganesan, authors of Ex.P8 and Ex.P9 and also the non-examination of Shahul Hameed, in the presence of whom the demand was made, casts serious doubt over the prosecution case.

7.4. According to the learned counsel for the appellant, the material witnesses did not support to prove the case of the prosecution that PW.3 approached A1 and A2, and therefore meeting of P.W3 and P.W.2 with A1 and A2 on the date of trap is highly doubtful, coupled with the circumstances that there is a manipulation in Ex.P8 and Ex.P9. The learned counsel further submitted that the complainant went to the respondent police department and gave oral complaint and the said oral



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complaint was typed by the officer attached to the respondent department and the said officer was not examined. For typing this complaint, it could have consumed time. Therefore, the said delay of three hours to type the complaint itself vitiates the case of prosecution. Further, there are some manipulation in the documents, as stated earlier, namely, Ex.P8 and Ex.P9. Hence, the trap laying officer, without following any of the procedure, laid the trap, he contended.

7.5. He further stated that the sweeping statement of demand made on behalf of A2 could not be taken into consideration as a demand to constitute the offence under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. In support of this argument, he relied upon the judgment of the Hon'ble Supreme Court reported in **2017 8 SCC 136**. As per the said judgement, mere sweeping statement made by the complainant, without any circumstances as well as the corroborated evidence, cannot be taken into consideration to constitute the offence under Prevention of Corruption Act. He further submitted that in view of PW.11 and PW.12 turned hostile, the acceptance was not proved and hence



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demand and acceptance are not proved and hence, he seeks the indulgence of this Court to allow the appeal.

8. The learned Additional Public Prosecutor submitted that it is the specific case of the prosecution that earlier application was misplaced. Hence, new application under Ex.P8 and Ex.P9 was obtained and the demand and acceptance were proved from the circumstances as laid down by the latest Hon'ble Constitution Bench judgement of the Supreme Court reported in ***2023 4 SCC 731***. The learned Additional Public Prosecutor submitted that reading of Ex.P8 and Ex.P9 clearly shows that there is some official contact existed in between A1, A2 and PW3. The learned Additional Public Prosecutor further submitted that even though PW.11 and PW.12 turned hostile, they admitted the signature in the recovery mahazar. From the recovery mahazar, it is clear that the amount was recovered from PW.11 and PW.12. Hence, in so far as the acceptance as pleaded by the learned counsel for the appellants is concerned, there is no necessity to prove it independently through evidence of PW.11 and PW.12



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8.1. The learned Additional Public Prosecutor further submitted that it is the case of the prosecution that A1 directed A2 to accept the money.

As per the direction of A1, A2 demanded money from PW.3 for issuing the birth certificate. In the said circumstances, even though no recovery was made from A1 and A2, the prosecution established sufficient circumstances to presume that PW.11 received the amount from A2. Hence, the acceptance was proved from the circumstances. The learned Additional Public Prosecutor further submitted that some contradiction happened due to the delay in examination of the witnesses and the same has no effect upon the merit of the prosecution case when the materials are clearly established, as found by the learned trial judge, to prove the charges framed against the appellant.

9. This Court has considered the rival submissions made by both the parties and perused the records and the precedents relied upon by both parties.



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10. Now, the question arise in these appeals is that whether the prosecution proved its case of demand and acceptance of bribe amount from P.W.3 by the appellants beyond reasonable doubt?

10.1. Whether the conviction and sentence of imprisonment imposed by the learned trial Judge against the appellants under section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, is sustainable?

11. Before proceeding the case, as per the Constitution Bench judgement of the Hon'ble Supreme Court, the following ingredients are to be proved by the prosecution to render conviction under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

1. the prosecution must prove the demand of bribe either through the direct evidence or circumstantial evidence or both.
2. the prosecution must prove the acceptance of bribe amount.



Acceptance and recovery of bribe amount:

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12. So far as this case is concerned, it is the specific case of the prosecution that PW.3 already registered the birth of the children. On the basis of the entry only, he made a request to A1 to furnish the certificate by submitting application of Ex.P8 and Ex.P9. A1 instructed PW.3 to approach A2. Thereafter, A2 demanded the bribe amount on three occasions. According to the prosecution, on the instruction of A1, A2 received the money and counted the money and handed over the said money to Nazimuddin- PW.11 and the said Nazimuddin further handed over the money to PW.12. From PW.12, the amount was recovered. The prosecution has not added PW.11 and PW.12 as abettors of the crime.

13. When PW.11 and PW.12 turned hostile, there was no useful answer elicited during the cross-examination to prove the factum of acceptance of bribe amount, as per the instruction of A2, as per Section 154 of the Indian Evidence Act. Therefore, this Court firmly comes to a conclusion that the acceptance is not proved in accordance with law. The strong reliance placed by the learned Additional Public Prosecutor that recovery was proved through recovery mahazar cannot be accepted for the



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reason that the preparation of recovery itself was not proved. For the proof of the recovery mahazar, there is no reliable evidence adduced on the side of the prosecution. PW.11 and PW.12 specifically stated that the money was kept in their pocket. To prove the same, the trap laying officer ought to have conducted test in the pocket of PW.11 and PW.12 and the same was not done. To prove the said material circumstances, more particularly, in the present case, the Trap Laying Officer is duty bound to conduct test in the pocket of P.W.11 and P.W.12 as per the Manual Rules. Usually the same is immaterial. In this case, bribe amount was transmitted to the person, who had not communicated with P.W.3 for the requirement of issuance of the birth certificate. In the said circumstances, the prosecution miserably failed to prove the recovery of the bribe amount from P.W.11, P.W.12 beyond reasonable doubt.

Proof of Demand:

14.As per the law laid down by the Hon'ble Supreme Court, demand of illegal gratification is *sine qua non* to constitute the offence under Section 7 and 13(1)(d) of the Prevention of Corruption Act. Therefore, it is the duty of the prosecution to prove the demand beyond reasonable doubt.



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The demand can be proved either by oral evidence or documentary evidence and in the absence, through the circumstantial evidence.

15. According to the prosecution, P.W.3 approached A1 to get the birth certificate for his son Nina Mohamed, as per the special scheme. A1 asked to meet A2. A2 demanded a sum of Rs.800/- as bribe amount and the request of P.W.3 to reduce the amount has not been accepted by A2. He informed the same to said Shahul Hameed. Thereafter, on 19.02.2004 both P.W.3 and Shahul Hameed approached A2, and A2 reiterated the said demand in the presence of Shahul Hameed. The said Sahul Hameed requested A2 to reduce the same and subsequently A2 reduced the bribe amount to Rs.600/-. Further, A2 incidentally, met P.W.3 and reiterated the said demand. P.W.2 and P.W.3 never deposed about the demand made on the date of the trap either by A1 or A2. In almost all the cases, the recovery is usually proved from the recovery of the tainted currency note from the accused officers and it is usually makes prima facie proof of acceptance of the bribe amount. In this case, this Court finds no evidence to prove acceptance either on the part of A1 or A2. Further, this Court already held that the recovery of bribe amount has not been proved. In addition to that,



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it is the specific case of the prosecution, as per the special scheme, P.W.3 registered the date of birth of his son and failed to obtain the birth certificate. But, no such document was either recovered or proved to exist. Therefore, from the cumulative circumstances, this Court inclines to accept the argument of the appellants' counsel, that the demand has not been proved, as held by the Hon'ble Supreme Court in the case of **Mukhtiar Singh v. State of Punjab**, reported in (2017) 8 SCC 136, and the relevant portion reads as follows:

24.It would thus be patent from the materials on record that the evidence with regard to the demand of illegal gratification either of Rs 3000 which had been paid or of Rs 2000 as made on the day of trap operation is wholly inadequate to comply with the prerequisites to constitute the ingredients of the offence with which the original accused had been charged. Not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather omnibus, vague and sweeping, even the person in whose presence Rs 3000 at the first instance is alleged to have been paid i.e. Santosh Singh Lambardar, has neither been produced in the investigation nor at



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the trial. In other words, the bald allegation of the complainant with regard to the demand and payment of Rs 3000 as well as the demand of Rs 2000 has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. Viewed in this perspective, the statement of the complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act.

16.Therefore, in this special circumstances of the case, namely neither tainted currency was recovered from the accused nor the material documents were recovered from A2, mere sweeping statement of P.W.3



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that A2 made the demand without examination of the said Shahul Hameed has not met the requirement of proof of demand.

17. In the specific circumstances of the case, when there was no disclosure statement made by the accused officer for the recovery of bribe amount, from the testimony of hostile witnesses, PW.11 and PW.12, this Court finds no circumstances to presume the recovery and the demand. So far as the document recovered under Ex.P8 and Ex.P9 is concerned, there is apparent manipulation in the date. Therefore, from the said document, this court has no reason to presume acceptance and the demand made by the appellants. Hence, in all aspects, prosecution failed to prove the charges framed against the appellants.

18. It is specific case of the prosecution that as per the scheme, there must be prior Registration of the birth entry. On the basis of entry only, as per scheme, birth certificate could be granted. As per evidence of the Trap Laying Officer, no such entry was made. No document was seized to prove the entry details made by P.W.3. Hence, substratum of prosecution case itself goes.



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19. To prove the existence Ex.P.8 and Ex.P.9, the prosecution could have examined Chellam Ambalam and Ganesan. P.W.3 went to VAO Office and approached A1 to give birth certificate by resubmitting earlier applications Ex.P.8 and Ex.P.9, which according to prosecution was written by said Ganesan and Chellam Ambalam and handed over to A1. Therefore, the non-examination of said witnesses in the special circumstances of the case is fatal to the prosecution.

20. In this case, even according to the prosecution evidence, namely P.W.2 and P.W.9, the phenolphthalein test was conducted in the hands of A1 and there was no color change. The bottles were received in the lab with pink colour solutions. This Court is unable to see any explanation from the prosecution as to how the colourless solution became coloured solution and sent to the lab. The report of analyst also cannot be accepted. More particularly, even according to the evidence of P.W.2 and P.W.3, A1 has not received any amount. In such situation, without any explanation on the side of the prosecution as to how the colourless solution become coloured solution at the time of receipt by the forensic lab, the report of



analyst cannot be accepted. In this case, the accused immediately took a stand that they never received bribe amount from P.W.3. They never disclosed the whereabouts of the bribe amount. But, the amount was recovered from P.W.12. There is no material to connect the same ie., the amount recovered from the possession of P.W.12 was transmitted to him on the instruction of either of the accused. Therefore, this Court concurred with the submission of the learned counsel for the appellant that there was a suspicion about the recovery of the currency.

21. The accused at the time of occurrence itself took a specific stand that they have never received bribe from P.W.3. According to P.W.3 and P.W.2, A1 directed P.W.3 to approach A2 on the date of the occurrence. A2 received the bribe amount from P.W.3. Thereafter, P.W.3 gave signal to P.W.8. On receipt of the signal, P.W.8 and his team entered into A1's office and conducted test in the hands of A2. The same turned into pink colour. Therefore, P.W.8 enquired about the receipt of money. *"A2 stated that he never received the amount"*. P.W.8 conducted test in the hands of A1. There was no change of colour. P.W.8 also enquired A2 about the receipt of the amount. A2 also stated that he never received the bribe amount.



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P.W.8 has not recovered any bribe amount either from A1 or A2.

Subsequently, P.W.3 was called by P.W.8 and at that time, P.W.3 disclosed that A2 received the amount and handed over to P.W.11. Thereafter, P.W.11 was found out and he disclosed that he handed over the same to P.W.12. It is the case of the prosecution that P.W.11 and P.W.12 received the bribe amount and kept in their pocket. P.W.8 has not conducted any test in their pockets. Since they are not connected with the issuance of certificate and in the absence of evidence to prove the fact that A2 handed over the bribe amount to P.W.11, who in turn, transmitted the same to P.W.12, P.W.8 should have conducted test in the pockets of P.W.11 and P.W.12. The vigilance manual prescribed the said requirement in Rule 46, which reads as follows:

46.Phenolphthalein Test:

(1) Before recovering the tainted' money or other articles in the course of trap proceedings, what is known as "Phenolphthalein Test" should invariably be conducted the fingers of both hands of the Accused Officer and on other items such as his pant/shirt pocket, dhoti, etc., with which the notes/articles are known to have come into contact. It will be a corroborative piece of



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evidence to establish the acceptance of tainted money by the Accused Officer.

22. Normally, the conviction cannot be set aside only on the ground of not following the procedure stated in the vigilance manual. In this case, P.W.8 (Trap Laying Officer), has failed to prove the recovery from P.W.11 and P.W.12 to meet out the corroboration theory of prosecution witnesses namely P.Ws.2 and 3, and also failed to conduct the test in the pocket of P.W.11 and P.W.12, which is essential one. Therefore, the hostility of witnesses P.Ws.11 and 12 and the failure to conduct test in the pockets of P.Ws.11 and 12, significantly cast doubt over the prosecution case of recovery.

23. The learned Trial Judge, only on the basis of Section 20, came to the conclusion that the case of prosecution has been proved. As held by the Constitution Bench of the Hon'ble Supreme Court, in the case of ***Neeraj Dutta v. State (NCT of Delhi)***, reported in ***(2023) 4 SCC 731***, before invoking presumption, the prosecution has to prove the foundational facts, namely, the demand and acceptance of bribe by the accused. As discussed



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above, the prosecution miserably failed to prove the demand and acceptance of bribe by the accused and hence the presumption under Section 20 of the Act never arise.

Conclusion:

24. Considering the inconsistency and contradiction in the case of the prosecution in respect of demand, acceptance and recovery, the appellants/accused are entitled for the benefit of doubt. The learned trial Judge has failed to consider the above aspect in proper prospective and only on the basis of presumption, without any proof of foundational facts, namely, the demand and acceptance of bribe on the part of the appellants, it has convicted the appellants without any legal materials and hence, this Court finds that the finding of the learned trial Judge that the appellants committed offence under Section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, is not in accordance with law. Therefore, these Criminal Appeals are liable to be allowed.

25. In the result, these Criminal Appeals are allowed. The Judgment of conviction and sentence dated 28.02.2017 passed by the learned Chief



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Judicial Magistrate, Special Court, Ramanathapuram, in Spl.C.C.No.4 of 2007 are set aside. The appellants/accused are acquitted from the charges under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1985 and they shall be released forthwith, if their presence is not necessary in any other cases. Bail bond if any executed by them, shall stand cancelled. Fine amount already paid by them shall be refunded forthwith.

20.07.2023

Index: Yes/No
Internet: Yes/No
NCC : Yes/No
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To

1. The Chief Judicial Magistrate,
Special Court, Ramanathapuram.

2. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Unit,
Sivagangai,
Additional charge at Ramanathapuram.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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CRL.A(MD)Nos.86 of 2017 and 111 of 2017

K.K.RAMAKRISHNAN, J.

PJL/*sbn*

**CRL.A.(MD)Nos.86 of 2017
and 111 of 2017**

20.07.2023