



Crl.A.No.158 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

Coram

The Honourable Mr. Justice **A.D.JAGADISH CHANDIRA**

Criminal Appeal No.158 of 2018

C.Narayanan

.. Appellant/Accused

Versus

State of Tamil Nadu represented by
The Inspector of Police,
Vigilance and Anti Corruption,
Trichy
Respondent/Complainant

..

Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the judgment of conviction and sentence made in Spl.Case No.1 of 2012 dated 27.02.2018 on the file of Chief Judicial Magistrate/Special Judge at Ariyalur.

For Appellant : Mr.S.Shanmuga Velayudham, Senior Advocate
for Mr.A.V.Raja

For Respondent : Mr.S.Santhosh
Government Advocate (Criminal side)



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Crl.A.No.158 of 2018

JUDGMENT

The present Criminal Appeal has been filed by the sole accused in Spl.Case No.1 of 2012, challenging the judgment of conviction and sentence dated 27.02.2018 rendered by the Chief Judicial Magistrate/Special Judge at Ariyalur.

2. The sentence imposed upon the appellant is as under:-

Under Section	Sentence
7 of Prevention of Corruption Act, 1988	Five years of simple imprisonment and a fine of Rs.8,000/-, in default, to undergo further one year simple imprisonment.
13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	Seven years of simple imprisonment and a fine of Rs.8000/-, in default, to undergo further one year simple imprisonment.

3. Prosecution's version:

3.1.The appellant/accused viz.,C.Narayanan was working V.A.O., Reddipalayam, Ariyalur District. C.Paramasivam is the resident of



CrI.A.No.158 of 2018

Muniyankurichi Village. Sengamanglam, wife of Muniyappan and Durai

Raj's wife namely Lakshmi, made oral fight on 08.05.2004 at water pipe and subsequently there was an fisticuff between them. Consequently, Durairaj lodged complaint before Vikkramangalam Police Station in Cr.No.181 of 2004 against C.Paramasivam's friends Muniyappan, Sengamanglam, Murugesan, Ulaganathan and Muthusamy, in which Murugesan, Ulaganathan, Muniyappan and Muthusamy were arrested and sent to Judicial custody on 21.05.2004. Sengamanglam requested C.Paramasivam to get bail for them. In order to get solvency certificates for each accused arrested therein, C.Paramasivam went to the office of the accused/V.A.O at 12.00 noon on 21.05.2004. The accused had demanded Rs.100/- per certificate, in total Rs.800/-. In spite of his request in making payment, the accused strictly said that without the payment, he would not issue the certificates. Even though, he was not willing to pay the bribe, he agreed to pay. C.Paramasivam lodged a complaint to the respondent Police on 26.05.2004 and FIR was registered in Cr.No.3 of 2004.

3.2. Based on the complaint, a trap was laid and the accused was caught red handed while accepting the bribe, he was arrested and thereafter,



Crl.A.No.158 of 2018

after completion of the investigation, the respondent had filed the Final Report against the accused before the Chief Judicial Magistrate/Special Judge at Ariyalur.

3.3. On issuance of summons, the accused appeared before the Chief Judicial Magistrate/Special Judge and his counsel had filed memo of appearance. Copies were furnished to the accused, in due compliance of Section 207 Cr.P.C.

3.4. After hearing both sides, charges were framed against the accused for the offences under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The accused denied the charges and sought to be tried.

3.5. On the side of the prosecution, P.W.1 to P.W.22 were examined and Exs.P1 to P22 and M.O.1 to M.O.3 were marked.

3.6. Based on the incriminating materials, when the accused was questioned under Section 313 Cr.P.C., the accused pleaded not guilty.



Crl.A.No.158 of 2018

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3.8. The trial Court, after hearing the arguments of prosecution as well as the defence, found the accused guilty and sentenced him to undergo imprisonment and pay the fine as stated above. Challenging the judgment of conviction and sentence imposed by the trial Court, the present Criminal Appeal has been filed.

4.1. Assailing the impugned judgment of conviction rendered by the trial Court, Mr.S.Shanmuga Velayutham, learned Senior Counsel appearing for the appellant/accused, had raised following grounds:

- (i) The trial Court had erred in convicting the appellant by not properly considering and appreciating the evidence on record.
- (ii) The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is *sine qua non* for



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establishing the offence under Section 7 of the PC Act. In this case, the prosecution has miserably failed to prove the initial alleged demand, i.e., on 21.05.2004, the alleged demand on the date of trap, i.e., 26.05.2004, the recovery and the subsequent trap proceedings.

(iii) The trial Court failed to take into consideration the material contradiction in the evidences of P.W.2 (defacto complainant) and P.W.9, who is stated to have accompanied P.W.12 on 21.05.2004.

(iv) The trial Court also failed to take into consideration the material contradiction in the evidence of P.W.3 and P.W.22, official witnesses who are shown as a shadow witnesses to assist the prosecution in the trap proceedings. Though, their evidences cannot be treated as reliable, the Trial Court erred in believing the same.

(v) The trial Court failed to take into consideration the evidences of PW5, DW1, PW2 and PW9 who have spoken about the enmity and the defacto complainant's parties, who were were having grievances against the accused. Admittedly, there being



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enmity between the P.W.2's parties and the accused parties on account of the fact that accused alleged to have supported one Lakshmi, W/o.Durairaj, on whose complaint, the relatives of P.W.2 were arrested and to enlarge them on bail, the sureties were sought to be prepared by the accused. The PW2 was antagonized that the appellant/accused, who had assisted the said Lakshmi.

(vi) The learned Senior Counsel would further submit that it is well settled that for establishing the commission of an offence punishable under Section 7 of the PC Act, proof of demand and gratification and acceptance of gratification is a *sine qua non*. Moreover, the Constitution Bench in the case of *Neeraj Dutta versus State (Govt. of NCT of Delhi)* has reiterated that the presumption under Section 20 of the PC Act can be invoked only on proof of facts in issue, namely, the demand of gratification by the accused and the acceptance thereof. He would further submit that it is a case where appellant had prepared the certificates and it was made ready on the date of trap itself, which is a clear case where the accused had not



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demanded the amount, whereas, the defacto complainant himself had placed the money on the table and thereafter, the appellant had been trapped.

(vii) He would submit that there are several infirmities in the test conducted which would show that the entire case of the prosecution is a stage managed proceedings and the suspicious circumstances shake the very foundation of the case of the prosecution. Admittedly, in this case, even as per the prosecution, the appellant is stated to have handled the amount and the phenolphthalein test conducted immediately did not prove positive, however, as per the Ex.P16, the presence of Sodium Carbonate and Phenolphthalein in M.O.2 and M.O.3 (solution bottles) collected from the left and right hands respectively creates doubt with regard to the subsequent trap proceedings.

(viii) He would reiterate that in this case, the prosecution has miserably failed to prove the foundational facts and though there is a presumption under Section 20 of the Prevention of Corruption Act, the appellant by cross examination of PW5,



Crl.A.No.158 of 2018

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PW2 and PW9 and by examination of DW1 had proved about the earlier enmity and the case being foisted against him. PWs.2, 5, 8, 10, 11, 12, 13 and 17 have turned hostile.

(ix) Though the alleged first demand is said to have been made on 21.05.2004, the complaint has been made only after a delay of 5 days and no proper explanation whatsoever has been given by the prosecution for the delay in complaint. He would further submit that the registration of the case and the trap proceedings are shrouded with suspicions because the FIR is said to have been registered on 26.04.2004. It is admitted evidence of PW22 the other official witness that he was intimated by his superior to visit the office of the respondent on 25.04.2004 itself which coupled with the delay in giving the complaint creates suspicion about the registration of the complaint. P.W.2 is an inconsistent witness, the evidence cannot be given credence at all and it is wholly unreliable.

4.2. The learned senior counsel for the appellant/accused would ultimately contend that the prosecution has not proved its case by laying



Crl.A.No.158 of 2018

cogent and convincing evidence and taking into consideration the over all cumulative evidence of the witnesses and the attending circumstances, the impugned judgment of conviction and sentence is not sustainable and therefore, the appellant is entitled for acquittal.

5.1 Per contra, Mr.S.Santhosh, learned Government Advocate (Criminal side) appearing for the respondent, would submit that the respondent had proved its case beyond reasonable doubt by examining witnesses and marking documents and material objects and thereby, the trial Court finding that the appellant/accused had committed the offence, had found him guilty and rightly convicted him.

5.2. The learned Government Advocate would submit that the appellant C.Narayanan was working as V.O.A., Reddipalayam, Ariyalur District. P.W.2 had approached the accused on 21.05.2004 at 12.00 noon, for issuance of solvency certificates in respect of 8 persons for the purpose of obtaining bail for the four accused in Cr.No.181 of 2004. At that time, the accused had demanded an amount of Rs.100/- per certificate, in total Rs.800/-. The demand was made in the presence of P.W.9 and P.W.12.



Crl.A.No.158 of 2018

Thereafter, the defacto complainant was not inclined to pay bribe and gave a complaint on 26.05.2004, based on which, the respondent had registered a case in Cr.No.3 of 2004. Thereafter he had summoned P.W.3 and P.W.22, official witnesses and after demonstrating the necessary tests, a trap was fixed and thereby, P.W.2 along with official witnesses and the trap team proceeded to the office of the accused on the same day at 2 pm and that accused had demanded the bribe amount and he has directed the defacto complainant to keep the money on the table and after the amount received by the accused, P.W.2 and P.W.3 had given the pre-arranged signals. Based on which, the trap officials went inside and took the money from the table. When questioned, he did properly explain and thereafter, he was arrested.

5.3. He would further submit that both the oral and documentary evidences cogently establishes the recovery of tainted money from the accused and thereby the prosecution has clearly proved the demand, acceptance and recovery of tainted money from the accused. When the demand and acceptance by the appellant has been proved, the burden of proof automatically shifts on the accused as per Section 20 of the Prevention of Corruption Act, however, the accused has not discharged the burden by



Crl.A.No.158 of 2018

letting in any evidence, in rebuttal, by way of defence to prove his case and thereby, he would seek for dismissal of the criminal appeal.

6. Heard Mr.S.Shanmuga Velayutham, learned senior counsel appearing for the appellant/accused and Mr.S.Santhosh, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

7. Admittedly, it is the case of the trap. The appellant has been charged for the offences under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. It is well settled that for establishing the commission of an offence punishable under Section 7 of the Prohibition of Corruption Act, proof of demand and gratification and acceptance of gratification is a *sine qua non*. Moreover, the Constitution Bench in the case of *Neeraj Dutta versus State (Govt. of NCT of Delhi)* has reiterated that the presumption under Section 20 of the PC Act can be invoked only on proof of facts in issue, namely, the demand of gratification by the accused and the acceptance thereof.



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8. Now coming to the case on hand what has to be seen is (i) whether the prosecution has proved its case beyond reasonable doubt and even in any such circumstances, this Court has to see if that is proved, it has to see whether the accused has rebutted the presumption under Section 20 of the PC Act, if any raised by the prosecution by proving the foundational facts.

9. The prosecution to prove its case has examined P.W.1 to P.W.22 and marked Exs.P1 to P22 and M.O.1 to M.O.3. The accused, in defence, on his behalf, had examined D.W.1 and D.W.2. The key witnesses, in this case, are P.Ws.3, 4, 5, 6, 7, 8, 11, 12 and 13, who were alleged to have been present in the proximity with the accused at the time of the trap. P.W.3 and P.W.22, the official shadow witnesses have been summoned by the prosecution to be witnesses to the preparation of Entrustment Mahazar-Ex.P4, watch the happenings after acceptance of bribe amount viz; phenolphthalein test, recovery of money and preparation of Ex P13 and other following seizures. P.W.2 was accompanied by P.W.3 to watch the demand and P.W.22 was engaged to speak about the trap proceedings and recovery of money from the accused. P.W.9 is the witness who is alleged to



Crl.A.No.158 of 2018

have accompanied P.W.2 at the time of the first demand.

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10. The evidence of the prosecution as culled out from the records would show that the accused was working as V.A.O., Reddipalayam, Ariyalur District and he being a public servant had demanded a bribe of Rs.800/- for issuance of 8 solvency certificates for furnishing sureties in court. P.W.2/C. Paramasivam is a resident of Muniyankurichi Village. Sengamanglam, wife of Muniyappan and Lakshmi, W/o.Durai Raj had an altercation on 08.05.2004 while fetching water in a common pipe and subsequently, there were fistcuffs between them. Consequently, Durairaj lodged a complaint before Vikkramangalam Police Station in Cr. No.181 of 2004 against C.Paramasivam's friends Muniyappan, Sengamanglam, Murugesan, Ulaganathan and Muthusamy, in which, Murugesan, Ulaganathan, Muniyappan and Muthusamy were arrested and sent to Judicial custody on 21.05.2004. Sengamanglam had requested C.Paramasivam to get them released on bail. As directed by the Advocate P.W.2 had approached the accused along with 8 sureties for obtaining solvency certificates for furnishing sureties in the court. There is no dispute about the above facts spoken by the witnesses. As stated above, P.W.2 is the defacto complainant. PW3 and PW22 are official witnesses to speak about



Crl.A.No.158 of 2018

the entrustment, demand, trap, acceptance and recovery. P.W.19 to P.W.21 are Police officers. P.W.4-Karuppaiya, P.W.5- Govindasamy, P.W.6-Ariyamuthu, P.W.7-Mathiyazhagan, P.W.8- Muniyappan, P.W.9-Chinnasamy, P.W.12-Veeramuthu and P.W.13-Durai are the sureties who had gone to obtain solvency certificates and P.W.11 Pugazhendhi is Firka Surveyor. The above witnesses are said to be present at the office near the accused during trap proceedings and they are also the key witnesses. P.W.16- Visalatchi, the Scientific Assistant. The other witnesses namely P.W.10-Sengamangalam, P.W.14- Muniyappan, P.W.15-Ulaganathan, P.W.17-Rajendran and P.W.18-Rengasamy are not material witnesses.

11. The learned Senior Counsel for the appellant contended that there are major discrepancies in the evidence of P.W.2, P.W.9 and P.W.12 about the alleged first demand said to have been made on 21.05.2004 at 12.00 noon. Now, coming to the evidence of P.W.2. Though in Ex.P2-complaint dated 26.05.2004, P.W.2 is alleged to have stated that he had met the accused in person on 21.05.2004 and the accused had personally demanded a sum of Rs.800/-, however, before the Court he had contrarily deposed that P.W.9 and P.W.12 are the actual persons, who had met the accused on



Crl.A.No.158 of 2018

21.05.2004 and they had informed him that the accused had demanded money for issuance of solvency certificates. This evidence goes contrary to Ex.P2 Complaint wherein he had stated that the demand was personally made to him. In this regard, when P.W.9 was examined, he stated that the accused had not demanded money from him on 21.05.2004. P.W.12 is yet another witness who is said to have been present on the date of the alleged demand before the complaint and trap. He had deposed that he did not go to the office of the accused on 21.05.2004. Therefore, there is no evidence regarding the alleged first demand on 21.05.2004.

12. Now, coming to the aspect of the delay. Though as per the prosecution, the first demand is said to have been made on 21.05.2004 and the complaint is stated to have been made on 26.05.2004 at 06.00 am, there is no proper explanation whatsoever given either by the defacto complainant or by the prosecution about the delay of 5 days in preferring this complaint. More particularly, when none of the witnesses spoke about the demand on 21.05.2004. In this regard, the learned Senior Counsel for the appellant relied on the judgment of this Court in the case of *P.Meganthan Vs. State of Tamil Nadu, rep. by Inspector of Police* made in Crl.A.No.826 of 2003. He



Crl.A.No.158 of 2018

also raised a point stating that the case had been registered on 26.05.2004, whereas, it is the evidence of P.W.22 that the intimation was given to him by his superior officer on 25.05.2004 at 11.00 a.m., itself and that his superior officer had asked him to go to the office of the respondent on the next day to assist the respondent in the trap and this aspect also creates doubt about the registration of the case coupled with the long delay of 5 days.

13. Now, coming to the aspect of the trap proceedings on 26.05.2004, while analyzing the evidence of P.W.2, it is the evidence of P.W.2 that the accused had refused to accept money. Therefore, P.W.2 is said to have insisted that P.W.12 give money to the accused. In this aspect, the evidence of P.W.3, P.W.4, P.W.5, P.W.6, P.W.7 and P.W.12, who had gone along with PW2 and were in the office of the accused have also confirmed that the accused denied accepting the money which is also relevant. P.W.3 had deposed that the accused refused to accept the money, however, P.W.2 only insisted accused to receive the money and issue the solvency certificate. P.W.4 has stated that the accused did not demand any money from him. P.W.5 had deposed that when he was present, the accused did not demand any money. The evidence of P.W.6 in this regard is only a hearsay witness,



Crl.A.No.158 of 2018

he had deposed that P.W.2 informed P.W.6 that the accused demanded money from him and he was not told about how much amount was demanded by the accused. P.W.7 had deposed that the accused did not demand any money from him and they have not given anything to him, whereas, P.W.12 has stated that when he was present, the accused did not demand any money. It is pertinent to note that it is the case of the prosecution that all of them were present inside the office near the accused when the alleged second demand was made. The cumulative evidence of P.W.2 to P.W.7 and P.W.12 also creates doubt about the alleged demand said to have been made on 26.05.2004; the day of the trap.

14. Now, coming to the aspect of acceptance of money, it is the case of the accused that the money was kept on the table by PW2 without his knowledge and that he did not touch it and that is the reason why the phenolphthalein test done on him proved negative(did not turn pink). Since the evidence of P.W.2 was contradictory he was treated to be hostile, and when he was cross-examined by the prosecution, he had deposed that he along with other witnesses for whom the solvency certificates had to be issued had gone inside the office and at that time, the accused had prepared



Crl.A.No.158 of 2018

all the 8 solvency certificates and thereafter he had handed over the tainted money (MO1) and the accused was afraid and refused to receive the money.

Hence, he handed over the money to P.W.12 and insisted him to give the money to the accused and P.W.12 told him that he had kept the money on the table. Further, when he was cross-examined by the defence he admitted that he was not aware whether the accused had demanded the bribe from PW12 Veeramuthu. He also admitted that the complainant in Cr. No.181/2004 viz; wife of Durairaj is a close relative of the accused and that he was not aware of the fact that the accused had agreed to issue solvency certificates only after perusing the original patta passbooks. This shows that there was a motive. The evidence of PW2 being self-contradictory is unbelievable.

15. P.W.3 had stated that when he along with P.W.2 had entered into the office, the accused had refused to receive the money. Thereafter, P.W.2 sought for issuance of solvency certificates to all and insisted on receiving the money, at that time, the accused without refusing had asked him to place it on the table and thereby P.W.2 had kept the money on the table. The evidence of P.W.3 is contrary to the evidence of P.W.2, who has stated that



P.W.12 has kept the money on the table. It is further evidence of P.W.3 that at that time, one Pugazhendhi, Firka Surveyor examined as P.W.11 was also present in the office. In this regard, P.W.11 had deposed at that time, P.W.2 and the accused were conversing for some time and he was not aware of the conversation and that after some time, P.W.2 had kept the amount of Rs. 800/- on the table and he was not aware why the amount was kept there and what transpired between them. P.W.11 had been treated hostile, however, in his cross-examination by the prosecution, he had deposed during the enquiry that he had told the inspector that since the accused refused to receive the money PW2 had left it on the table and that thereafter they had received the certificates and gone. He had further deposed that when the phenolphthalein test was conducted on the accused it did not turn pink and that he was not aware of the collection of wash from both hands at M.O.2 and M.O.3. He has further deposed that when the inspector had enquired about the money the accused had pointed it on the table and that he did not remember whether it tallied with the numbers in the Entrustment Mahazar. He had also admitted to the recovery of certificates from the accused, the preparation of the Seizure Mahazar by the respondent and the arrest of the accused.

16. P.W.4 had stated that the accused did not demand money from



Crl.A.No.158 of 2018

him. P.W.5 had deposed that when he was present, the accused did not demand any money. P.W.6 had deposed that P.W.2 had informed him that the accused demanded money and that he was not told about how much amount was demanded from him. P.W.7 had deposed that the accused did not demand money from him and they have not given anything to the accused. P.W.12 had deposed that when he was present, the accused did not demand any money. It has to be noted that all the witnesses were said to be present near PW2 and PW3 and the accused during such time in the office of the accused.

17. Now, coming to the evidence of P.W.18 and P.W.19, who were stated to be present during that time, the P.W.18 had deposed that P.W.12 insisted the accused to receive the money and the same was received by the accused. P.W.19, the trapping officer deposed that when he had enquired the accused about the money, the accused had informed him that he had refused to receive the money, however, P.W.2 had kept the money on the table and left and that the accused had not touched or handled the tainted money. P.W.20 to P.W.21, who are the subsequent investigating officers had also deposed that during their investigation, they came to know that the



Crl.A.No.158 of 2018

accused did not touch the money. P.W.22 had deposed that when the Inspector entered the office and questioned the accused about the money, the accused had replied that he did not demand money and P.W.2 himself had kept the money on the table. D.W.2, who was said to be present at the time of the trap had deposed that the persons who had come to get the certificates had offered money to the accused, whereas, the accused refused to accept the money and thereby they had placed it on the table and after some time, two persons came and apprehended him. This aspect is also been reflected in Ex.P.13, Mahazaar, wherein, P.W.19 had recorded that when he had questioned the accused about the money, the accused had replied that he did not demand money and P.W.2 himself had kept the money on the table. On perusal of the evidence of P.Ws.2, 3, 18, 19, 20, 21 and 22 and on analyzing Ex.P13, as a whole, it would show that there seems to be a major material contradiction in the evidence of the witnesses about the so-called demand and acceptance of the money.

18. Regarding doubts regarding the recovery, it is the consistent case of the prosecution that the tainted money was not recovered from the accused and it was recovered from the table. It is also the evidence of the



Crl.A.No.158 of 2018

trap-laying officer that the accused had not touched or handled the tainted money (M.O.1). The phenolphthalein test was conducted on the fingers of both hands of the accused and admittedly there was no change of colour and the test proved negative. The wash of the left hand was collected in M.O.2 and the wash of the right hand was collected in M.O.3 and they were sent to the chemical analysis. The chemical analysis was done by the P.W.16 and she had issued Ex.P16, Chemical Analysis Report. But strangely perusal of Ex.P16 indicates that the colour and appearance of the liquid were pink tints and when a chemical test was conducted for phenolphthalein, it showed shown presence of phenolphthalein in M.O.2 and M.O.3. Test for Sodium Carbonate in the liquid also proved positive. When the accused had not at all handled the tainted money and when the phenolphthalein test conducted on the accused at the time of trap had also failed, the presence of phenolphthalein in the test report of the solutions in M.O.2 and M.O.3 also creates a grave doubt that a pre-determined trap had been conducted by the prosecution to fix the accused and that the solutions had been pre-mixed with phenolphthalein to succeed in the trap by hook or crook.

19. Yet another submission made by the learned Senior Counsel for



Crl.A.No.158 of 2018

the appellant is that there are doubts about the presence of P.W.3 and P.W.22 at the time of trap proceedings. The learned counsel had pointed about the material contradiction between the evidence of the P.W.22 and P.W.3 at the time of the trap. P.W.3 had deposed that only based on the oral instructions, he proceeded to the office of the TLO to assist the trap proceedings on 26.05.2004. In this regard, P.W.19, the Trap Laying Officer had admitted that no written request was sent seeking assistance from P.W.3 and P.W.22. It is also admitted by the Investigating Officer/P.W.20 that he did not find or obtain any requisition letter sent to the higher officials to depute the official witnesses. It is the evidence of P.W.22, that he had also not submitted any permission/authorisation letter to the police. In this regard, P.W.22 has stated that he was informed by his superior officer on 25.05.2004 at 11 am to assist the Trap Laying Officer in the trap proceedings and that he had gone to the office of the P.W.19, the next day which also created doubt regarding the summoning of P.W.3 and P.W.22. This assumes significance given the earlier doubt that there has been a considerable delay of 5 days in giving the complaint when especially no valid reasons or explanations have been given by the P.W.19 for the delay in registering the case.



Crl.A.No.158 of 2018

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20. Further, there is also a major contradiction between the evidence of P.W.3 and P.W.22 with regard to the happenings at the time of the trap. It is the evidence of P.W.3 that the accused had asked him to keep the money on the table after the completion of the preparation of the certificates. It is his evidence that the accused had refused to receive the money and P.W.2 had told him that he could issue the certificates after receipt of the money. The accused then had asked P.W.2 to keep the money on the table and P.W.2 had kept Rs.800/- on the table of the accused. When the accused had prepared the certificates, the persons, who had accompanied them received the certificates from him and thereafter they all came out of the office. Then P.W.2 had given pre-arranged signals by tying the towel as a turban and thereafter, the trap team entered the office of the accused, whereas, in this regard, the evidence of P.W.22 is contrary, he had deposed that he had accompanied P.W.2, P.W.3 and the trap team and that as per the advise of P.W.19, P.W.2 and P.W.3 had come out and P.W.2 have given pre-arranged signals. Thereafter, P.W.19 and his team took P.W.2 and P.W.3 to a secured place and P.W.2 had told him that the accused had asked him to bring the other applications for issuance of certificates.



Crl.A.No.158 of 2018

Thereafter, all of them entered into office and once again, after some time, P.W.2 and P.W.3 came out of the office and once again gave pre-arranged signals and then the trap team went to the office and apprehended the accused and conducted other formalities. In the cross-examination, he spoke about the two pre-arranged signals and he also confirmed that before the second entry of the P.W.2 and P.W.3, all the certificates were issued. The material contradictions between P.W.3 and P.W.22 create doubt about their presence.

21. As per the prosecution, when P.W.2 and P.W.3 met the accused, the accused is stated to have told them that they had given a complaint to the Vigilance Department. Now, coming to the conduct of the witnesses, it is the evidence of the P.W.2, in chief, that he along with other applicants had gone to the office with the original patta passbook and when he had asked the accused to issue solvency certificates, the accused had told him that he was afraid of receiving the amount and he had also enquired whether they have given a complaint to vigilance department and thereafter he had prepared the certificates and handed over to him. This aspect also creates doubt. This Court is of the view that when a public servant had suspected and known



CrI.A.No.158 of 2018

that a complaint had been given against him to the vigilance department it would not have been a natural human conduct of him to sit leisurely and issue certificates, and this aspect also creates a major dent in the prosecution.

22. . Now, coming to the question of enmity, as suggested by the defence, the P.W.2 had admitted in his evidence that the complainant in Cr. No.181 of 2004 is the close relative of the accused, which is also corroborated by the evidence of P.W.5, who had deposed before the Court that it is true that they were having a grievance against the accused since, he has supported Pichumuthu's family(Pichumuthu is the father of the said Lakshmi). P.W.9 had also deposed that the opposite parties are close relatives of the accused. D.W.1, the husband of Lakshmi has been examined by the defence to establish that there was an existing enmity between the family of the said Lakshmi and the defacto complainant parties. He also confirmed that only on the phone call made by the accused, the Vikramangalam Police Station has registered a case in Cr.No.181 of 2004, against the persons who were involved in the street fight.



Crl.A.No.158 of 2018

23. . Taking into consideration the cumulative oral and documentary evidence let in by the prosecution and the defence witnesses, this Court finds that there are several loose ends in the prosecution case, more particularly, in the evidence of the witnesses of the P.W.s 3, 4, 5, 6, 7, 8, 11, 12, 13, who were present in the office. PWs.2, 5, 8, 10, 11, 12, 13 and 17 have turned hostile and nothing much has been elicited in their cross-examination to prove the presence of P.W.11. This Court is of the view that the prosecution has failed to prove that the alleged first demand, the demand on the day of trap and the recovery thereafter. Though there is a presumption under Section 20 of the Prevention and Corruption Act, the presumption can be raised only if the prosecution is able to prove the foundational facts in its case. For better appreciation, it is useful to refer to the judgement of the Hon'ble Supreme Court in the case of *Soundarajan v. State rep by the Inspector of Police, Vigilance Anti Corruption, Dindigul* reported in (2023) *CRI.L.J.2123* which are as follows :

“...9. We have considered the submissions. It is well settled that for establishing the commission of an offence punishable under Section 7 of the PC Act, proof of demand and gratification and acceptance of gratification is a sine qua non. Moreover, the Constitution Bench in the case of Neeraj Dutta versus State (Govt. of NCT of Delhi) has reiterated that the presumption under Section 20 of the PC Act can be invoked only on proof of facts in issue, namely, the demand of



Crl.A.No.158 of 2018

gratification by the accused and the acceptance thereof. ”

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24. About delay in lodging the complaint and registering the First Information Report, this Court feels apt to refer to the Judgment of this Court in the case of *P.Meganathan vs. State of Tamil Nadu* made in Crl.A.No.826 of 2003, wherein, paragraph 10 runs as follows :

*“... 10. The learned counsel for the appellant would further submit tat according to P.W.2, he prepared the complaint on 05.09.1995. but it was given to the police on 12.09.1995. In this regard, the learned counsel would submit that there is no explanation from P.W.2 as to why the complaint was not preferred to the police even on 05.09.1995 itself though it was prepared on the same date. In this regard, the learned counsel would rely on the judgment of this Court in *R.Rajendran vs. D.S.P., Vigilance & Anti Corruption, Madras (1996-2 LW (Crl.) 668)* and another judgment of the Hon'ble Supreme Court in *V.Venkata Subbarao Vs. State rep. by Inspector of Police, A.P., (2007 AIR SCW 9)*, wherein the Courts have held that in the absence of any explanation for the delay in preferring the complaint, the case of the prosecution needs to be doubted. In my considered opinion, in this case, for the delay of about 7 days, absolutely there is no explanation. It is not on the ground of this delay alone that I am inclined to interfere with the findings of the trial Court. This is yet another grounds which creates some more doubt in the case of the prosecution. Thus, in my considered opinion, it is also vital. The non-explanation of the delay again creates lot of doubt in the case of the prosecution. As I have already stated since the evidence of P.W.2 cannot be safely relied on to hold that the accused demanded illegal gratification, the unexplained delay which I have narrated above again strengthens the said conclusion arrived at by me.”*



Crl.A.No.158 of 2018

25. Taking into consideration the facts and the circumstances this court can see grave material contradictions in the evidence of witnesses to the demand and acceptance and the phenolphthalein test followed by recovery and arrest coupled with the delay in preferring the complaint also makes the case of the prosecution highly doubtful. The accused had also let in evidence to prove the enmity and motive for the complainant's side to give a false complaint of demand. The prosecution having failed to prove its foundational facts, the accused is not required to prove its defence. When the prosecution is not able to prove its case by proving the foundational facts, it cannot take advantage that the appellant/accused has not come out with a probable explanation in defence. However, the accused has raised probable defence by letting in evidence by way of cross-examination of the witnesses and the evidence of D.W.1 that there was an enmity between the defacto complainant party and family members of one Lakshmi who are related to the accused.

26. The appellant/A1 though charged for commission of offence under Section 7 of the Prevention of Corruption Act and bound to rebut the statutory presumption under Section 20 of the Prevention of Corruption Act,



Crl.A.No.158 of 2018

is entitled to displace the statutory presumption by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money which was accepted by him or any other person on his behalf is not illegal gratification 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 how the amount in question was found in his possession, a bounden duty is cast on the prosecution to prove the foundational facts beyond reasonable doubt and the accused is entitled to disprove the case of the prosecution based on the evidence on record. As discussed above analysis of the cumulative evidence exposes several loose ends in the prosecution case creating several doubts and shaking the very foundation of the prosecution case and the accused had raised a probable defence of enmity and false complaint and implication. Further, the manner of the phenolphthalein test also creates suspicion on the prosecution.



27. In ***P. Sathyanarayana Murthy vs. District Inspector of Police,***

State AP reported in (2015) 10 SCC 152), the Hon'ble Apex Court has held as under:-

“23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in the absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction there under.

.....
26. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in Sujit Biswas v. State of Assam [MANU/SC/0564/2013 : (2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of the doubt must be given to the accused.

27. The materials on record when judged on the touchstone of the legal principles adumbrated herein above, leave no manner of doubt that the prosecution, in the instant case, has failed to prove unequivocally, the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly unsafe to sustain the conviction of the



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Crl.A.No.158 of 2018

appellant under Sections 13(1)(d) (i) and (ii) read with Section 13(2) of the Act as well. In the result, the appeal succeeds."

28. In view of the above discussions, the entire circumstances, under which the alleged demand made prior to the registration of the case, the delay in registering the case, the trap witnesses being summoned even prior to the registration of the case, the bribe amount not being touched by the accused and the phenolphthalein test conducted on the accused turned negative, whereas, Ex.P16, (Chemical Report) disclosing the presence of phenolphthalein and sodium carbonate in the solutions collected in M.O 2 and M.O 3 are highly suspicious and the entire case is shrouded with suspicions. Based on such dubious evidence and circumstances, it is difficult to sustain the conviction.

29. In view of the above infirmities and inherent improbabilities, the prosecution before raising presumption under Section 20 of the Prevention of Corruption Act, 1988, has miserably failed to prove the foundational facts regarding the guilt of the accused by cogent evidences, whereas the appellant though not required has rebutted such presumption by raising a probable defence of enmity and false implication and thereby, it would be wholly



Crl.A.No.158 of 2018

unsafe to sustain the conviction of the appellant on the above said evidence and thereby, he is entitled to be acquitted.

30. In the result, this appeal is allowed. The impugned judgment of conviction and sentence is hereby set aside. The appellant is acquitted of the charges levelled against him. The bail bond, if any executed by the appellant, shall stand cancelled and the fine amount, if any paid by him, shall be refunded to him

05.02.2024

Index : Yes/No
Internet : Yes/No
dhk

Note to Office :

- 1. Registry is directed to return the original documents, if any, to the trial Court.**
- 2. Registry is directed to issue Judgment copy forthwith.**



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Crl.A.No.158 of 2018

To

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



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Crl.A.No.158 of 2018

A.D.JAGADISH CHANDIRA, J.

dhk

Criminal Appeal No.158 of 2018



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Crl.A.No.158 of 2018

05.02.2024