IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 5.1.2024.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal Nos.265 and 266 of 2015

Karunakaran @ Karuna — Appellant in Crl.A.No.265/2015

A.Aroulmani @ Arun — Appellant in Crl.A.No.266/2015

vs.

State by
The Sub Inspector of Police,
C.B.I., ACB, Chennai.
Through Public Prosecutor for CBI
(R.C.M.A.1/2009 A 0001) — Respondent in both the Appeals

Criminal Appeals filed under Section 374(2) of Cr.P.C. against the judgment of conviction and sentence in Spl.C.C.No.1 of 2009 dated 24.4.2015 by the Special Judge, Puducherry.

For Appellant in Crl.A.No.265/2015 : Mr.S.Ashok Kumar, Senior Counsel for Mr.P.R.Gowthaman

For Appellant in Crl.A.No.266/2015 : Mr.V.Gopinath, Senior Counsel for Mr.C.Sundaresan

For Respondent : Mr.K.Srinivasan, Special Public Prosecutor for CBI

COMMON JUDGMENT

Challenging the judgment of conviction and sentence passed by the Special Judge, Puducherry in Special C.C.No.1 of 2009, A2-Karunakaran @ Karuna has filed Criminal Appeal No.265 of 2015 and A1-A.Aroulmani @ Arun has filed Criminal Appeal No.266 of 2015.

2. A1-Aroulmani was serving as Lower Division Clerk in the office of the Joint Director General of Foreign Trade, Pondicherry at the relevant time and thereby, he is Public Servant. He is alleged to have entered into a criminal conspiracy with A2-G.Karunakaran @ Karuna and demanded and obtained a sum of Rs.3000/- from the de facto complainant K.Arokianathan towards illegal gratification other than legal remuneration for the issue of I.E. Code to M/s.Ravi Agency, owned by him and thereby he had obtained pecuniary advantage by abusing his official position by illegal means and thereby both the accused rendered themselves liable to be punished u/s 120-B IPC r/w Section 7 and u/s 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The conviction and sentence imposed by the Trial Court in respect of A1 is as under:-

Penal Provision	***Sentence***
Section 120-B IPC, Section 7 and Section 13(2) of the Prevention of Corruption Act, 1988	5 years rigorous imprisonment under each count and a fine of Rs.10,000/- under each count in default to pay the fine, to undergo rigorous imprisonment for a period of three months under each count.
The sentences shall run concurrently.	

4. The conviction and sentence imposed by the Trial Court in respect of A2 is as under:-

Penal Provision	***Sentence***
Section 120-B IPC	4 years rigorous imprisonment and a fine of Rs.5000/- in default to pay the fine, to undergo rigorous imprisonment for a period of two months.

5. Brief facts of the case are as under:-

i) One N.Lavakumar, PW9, while he was serving as Inspector of Police, Central Bureau of Investigation (Anti Corruption Bureau) Chennai from 2006 to 2011, had received instructions from the Superintendent of Police on 22.1.2009 at about 4.45 pm to enquire one Arokianathan of Puducherry, who had reported to the

Superintendent of Police over phone that one Arun, A1 working in the office of the Joint Director General of Foreign Trade had made a demand of illegal gratification of Rs.3000/- for processing the application seeking I.E. Code submitted for the firm called Ravi Agency being in the name of his wife, had formed a team consisting of the Inspector of Police Prabakaran, Subramanian and Police Constables Balachandrapillai and Balasubramani and rushed to Puducherry on 23.1.2009 at 4.00 am.

ii) On reaching Puducherry, at about 8.30 am, the said Arokianathan, PW3 was called by the team over phone to meet them at the Railway Guest House, where the team was staying. At about 9.30 am, PW3, alongwith his wife Thaiyalnayagi, reached that place and submitted a complaint, Ex.P6 in writing to the following effect:-

A Firm called 'Ravi Agency' dealing with Toys in wholesale and retail was commenced in the name of A.Thaiyalnayagi, wife of PW3 about four months prior to the complaint by obtaining business licence from Villianur Commune Panchayat. An application was submitted in the office of the Joint Director General of Foreign Trade, Puducherry on 1.12.2008 seeking I.E. Code for import and export of goods. Pointing out some defects in the application, a letter was received from the said office on 13.12.2008 and rectifying the same, it was resubmitted on 29.12.2008 and by that time, A1 had informed PW3 that the registration certificate would be sent by post. Since there was no communication as assured by A1, PW3 had went to the said office and enquired with A1 on 21.1.2009 for which A1 had not given proper reply. Expressing the grievance, PW3 insisted for issuance of I.E. code, A1 had asked to meet him on the next day and thereby PW3 had approached A1 on 22.1.2009 in his office and insisted for issuance of I.E. Code at the earliest. Thereupon, A1 had demanded Rs.3000/- as illegal gratification emphasising that in the event of non payment of illegal gratification, I.E. Code could not be issued. A1 had also asked PW3 to meet him with the illegal gratification and bring his wife alongwith him. Having discussed with the wife and come to a decision not to give bribe, PW3 had contacted the Superintendent of Police, CBI, Chennai over phone and reported the demand of bribe by A1 and had lodged the complaint to the Inspector of Police deputed by the Superintendent of Police, CBI.

iii) On receipt of the complaint, Ex.P6, PW9, having conducted a preliminary enquiry to find out the veracity of the complaint and found the allegation in the complaint to be true, had sent the complaint alongwith his enquiry report, Ex.P37 to the Superintendent of Police through Fax at 12.30 pm with the assistance of the Police Constable Balachandrapillai.

iv) Subsequently, on receipt of instructions from the Superintendent of Police over phone to further investigate the case on the complaint lodged by the de facto complainant Arokiyanathan, as a case has been registered against A1-A.Aroulmani @ Arun, Junior Assistant in the office of the Joint Director General of Foreign Trade under Section 7 of the Prevention of Corruption Act by the Inspector of Police, Lawrence under FIR, Ex.P42, PW9 had proceeded with the investigation.

v) One Rajagopalan from Indian Overseas Bank, Puducherry and PW4-Sundaramurthy, Manager from Bank of India, Puducherry were deputed to be official witnesses and they reported before the team at the Railway Guest House between 11.45 and 11.50 am. PW9 gave the complaint to the official witnesses and made them to understand the case and thereafter, conducted a demonstration of trap was conducted with the currency notes brought by the de facto complainant viz., six numbers of 500 rupee notes to make the team members to understand the significance of the trap proceedings.

vi) After entering the serial numbers of the currency notes in the entrustment mahazar, Ex.P7, those currency notes, M.O.7 were kept in the left side pocket of the de facto complainant's shirt giving instructions to him to give the bribe money only if A1 demands it. Subsequently, after clearing the materials used for demonstration of trap, PW9 instructed the de facto complainant to go the office of A1 accompanied by the official witness PW4, giving instruction to PW4 to observe the happenings and conversation between A1 and the de facto complainant. The rest of the trap team members were instructed to wait around the trap spot. The entire proceedings were recorded in the entrustment mahazar, Ex.P7 by PW9 in his laptop between 12.45 and 1.45 pm. Since no printing facility was available in and around the Railway Guest House, it was printed at about 2.00 pm in the Regional Office of Indian Overseas Bank, got it signed by the witnesses.

vii) Thereafter, PW9 had proceeded with his team in a Toyota Car to the office of the Joint Director General of Foreign Trade while the de facto complainant and his wife were sent in their two-wheeler and reached the spot at about 3.15 pm and sent the de facto complainant and PW4 to meet A1. The rest of the team members were waiting around the spot. PW3, the de facto complainant was instructed to give a signal to trap team by wiping off his face with his hand thrice in the event of A1 accepting the bribe money. Then, PW3, his wife and PW4 went inside the office of A1 at about 3.30 pm and at about 3.45 pm, they came out, however, PW3, the de facto complainant had not shown any signal. After about five minutes, PW3 alone went inside the office and came out about 4.00 pm and showed the pre-arranged signal.

viii) Immediately, thereafter, the trap team entered into the office of A1 alongwith PW3, where, PW3 had identified A1 and thereupon, the trap team members had introduced themselves to A1 and enquired about the bribe money obtained by A1 from PW3 for which, A1 had denied having received the bribe money. Thereupon, chemical solution was made ready by the trap team members and the hands of A1 were dipped into such solution separately and having found that the solution turned pink, such solution was poured into separate glass bottles, sealed, named and signatures of the official witnesses including PW9 and A1 were obtained on them and the same were recovered as M.Os.1 and 2 under recovery mahazar, Ex.P8.

ix) Subsequently, A1 was arrested, recording the same in the Arrest cum personal search memo, E.P11 and the factum of his arrest was intimated to his superior at Hyderabad. When enquired about the bribe money, A1 informed that he does not have the money and that he had handed over the same to his friend, A2, who came there by then and A2 had gone to the Sony Service Centre at Bharathy Street, Puducherry to collect the mobile phone given for service. When he was asked to identify the location, he had acceded and thereupon, he was taken to the spot by trap team member Prabakaran and two official witnesses at about 4.25 pm.

x) At about 4.50 pm, A1 accompanied by the team members, reached the spot and identified A2-Karunakaran and when A1 asked him about the money, A2 had produced the same by taking from his right side pant pocket. After having counted and confirmed the same, the trap team members returned to the office of A1 alongwith both the accused.

xi) On such return, the serial numbers of the currency notes produced by A2 were verified with the ones entered in the entrustment mahazar, Ex.P7.

xii) When A2 was enquired, he contended that he knows A1 for about 12 years and when he came to the office of A1 seeking for a sum of Rs.1000/- for servicing his mobile phone, A1 had asked him to wait for five minutes and thereafter, he gave Rs.3000/- to him asking him to leave the office immediately. A2 had also affirmed that by that time, he had seen the de facto complainant alongwith A1.

xiii) Thereupon, A2 was also subjected to phenolphthalein test and the chemical solution, having turned pink, was collected in two separate glass bottles, labelled, named, sealed and seized under M.O.3 and M.O.4 after them being signed by the witnesses and PW9. After giving an alternate dress, the pant wore by A2 was also subjected to phenolphthalein test and the same was also recovered under M.O.5 as the solution had turned pink and the pant was recovered under M.O.6. Then A2 was arrested at 5.30 pm and recording the same in the Arrest cum Personal search memo, Ex.P12 and the factum of his arrest was intimated to his brother over mobile phone.

xiv) Thereafter, a search was conducted at the scene of crime and no incriminating material was found. Rough sketch, Ex.P10 was prepared in respect of the scene of crime. The specimen impression of the seal used to seal the material objects was made ready as Ex.P9. The above proceedings with regard to recovery were recorded in the entrustment mahazar, Ex.P8 upto 9.00 pm and the same was signed by all the witnesses and a copy of the same was furnished to the accused.

xv) Thereafter, Exs.P14 to P30, the documents relating to the case were recovered from PW5-Parthasarathy, Foreign Trade Development Officer. A search was conducted at the house of A1 and a mahazar, Ex.P38 was prepared with regard to the same and no incriminating materials were found in that search. While A2 was released on bail on his own bond, A1 was remanded.

xvi) Subsequently, on completion of investigation, PW9 had handed over the file to the Inspector of Police Lawrence on 27.1.2009. PW9 had also filed a memo, Ex.P39 for change of name of A1 and Ex.P39 and Ex.P40 with regard to alteration of legal provision in the FIR.

xvii) PW11-R.Krishnamoorthy, Inspector of Police, who took the case for further investigation from the Inspector of Police Lawrence on 9.2.2009, had enquired PW5-Parthasarathy at the office of the Joint Director General of Foreign Trade and recorded his statement. He also enquired PW10-Nagarajan, Junior Assistant, PW6-Gowrishankar and Gnanaprakasam of the same office on the same day and recorded their statements. On the same day, he went to Ravi Agency and enquired the de facto complainant and his wife Thaiyalnayagi and recorded their statements. On 11.2.2009, PW11 had enquired one of the the official witnesses Rajagopal (not examined) and recorded his statement. One the same day, PW11 had enquired PW7-Krishnasamy from Accel Frontline, recorded his statement and recovered three documents. He also enquired PW8-Chithradevi from the same office and recorded her statement. On 12.2.2009, PW11 had enquired PW4-Sundaramoorthy and recorded his statement. On 24.2.2009, PW11 had enquired PW9-Lavakumar, Inspector of Police and recorded his statement. On 25.2.2009, PW11 had enquired the Inspectors of Police Subramaniam and Prabakar and recorded their statements. He enquired the Police Constables Balachandrapillai and Balasubramanian on 26.2.2009 and recorded their statements. On 1.3.2009, he enquired the Inspector of Police Lawrence and recorded his statement. On 1.5.2009, he received the Forensic Lab Report, Ex.P3 on 1.5.2009. On receipt of sanction order on 29.5.2009, he filed the final report before the Trial Court.

xviii) The case was taken on file in Special C.C.No.1 of 2009 by the Special Judge, Puducherry. On summoning, the Appellants/accused appeared. Copies of relevant papers were furnished to the Appellant/accused under Section 207 of Cr.P.C. and charges were framed. The accused had denied the charges and sought to be tried.

xix) In support of their case, the prosecution had examined P.Ws.1 to 11 and marked Exs.P1 to P45 and produced Mos.1 to 7.

xx) On completion of the evidence, the appellant/accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused pleaded mercy. On his side of the appellants, one Sree Ganesh was examined as DW1 and two documents were filed as Exs.D1 and D2 and another document was marked as Ex.X1 while cross examining the prosecution witnesses.

xxi) The Trial Court, on considering the entire materials, found the appellant/accused guilty and imposed the punishments, as referred to above, which is under challenge in the present Criminal Appeals.

6. The submissions of Mr.V.Gopinath, learned Senior Counsel appearing for A1/appellant in Criminal Appeal No.266 of 2019 are as under:-

i) The entire case of the prosecution is bristled with several infirmities and grave defects, which go to the root of the prosecution case.

ii) The genesis of the case as projected by the prosecution is highly suspicious and the manner in which the case is alleged to have been registered and the trap has been conducted is also doubtful and suspicious.

iii) It is the case of the appellant that the de facto complainant had applied for I.E. Code for his wife and his brother one Krishnamoorthy is known to the appellant and there was an existing dispute with regard to a property between PW3, the de facto complainant and his brother Krishnamoorthy. PW3 had applied for I.E. Code for his wife in respect the same property showing the property address and an objection had been given by Krishnamoorthy and since PW3 was having a grudge with the appellant, he had given a false complaint, based on which, a pre-planned trap was arranged and stage managed proceedings were initiated by the respondent.

iv) It is the admitted case of the prosecution that the de facto complainant, PW3 had given a telephonic complaint to the Superintendent of Police at Chennai on 22.1.2009 and the Superintendent of Police, CBI had informed him that he would send an Officer to meet him on the next day at Pondicherry and the further case is that on the next day, PW9, the Trap Laying Officer, alongwith the team, had went to Pondicherry and stayed at Railway Guest House and had summoned the de facto complainant, PW3 and PW3 is said to have given a written complaint, Ex.P6 on 23.1.2009 at the Railway Guest House, Pondicherry and it was sent to the office of CBI, Chennai through Fax on the same day at 12.30 hours and the FIR, Ex.P42 was said to have been registered on the same day at 12.42 hours. Subsequently, a trap was arranged, entrustment mahazar, Ex.P7 was said to have been prepared between 12.45 hours and 14.00 hours and that the trap team had gone to the office of the accused on the same day at 3.15 pm. It is the case of the prosecution that the tainted money was recovered and the recovery mahazar, Ex.P8 was prepared from 17.00 hours to 21.00 hours and thereafter, the accused was arrested and he was produced for remand before the Special Court on the same day at 10.30 pm. The appellant was shown to have been arrested under Ex.P11 at 16.20 hours and he was produced for remand before the Special Court at 10.30 pm on the same day. At the time of arrest, the respondent, has alongwith the remand report, enclosed the Fax copy of the FIR received from the Chennai office of CBI. Strangely, on the top portion of the fax copy of the FIR received from CBI, Chennai, the time is shown as 6.41 am on 23.1.2009 as evident from Ex.D2 thereby creating a doubt with regard to registration of the case and the subsequent proceedings which would go to the root of the prosecution case.

v) When the Trap Laying Officer, PW9 had been cross examined with regard to Ex.D2 Fax copy of the FIR and the discrepancy with regard to time found on the top portion of the same viz., 6.41 am on 23.1.2009, he had clearly admitted that it is a copy of the FIR he received from the Inspector of Police Lawrence from Chennai through Fax and the Fax cum telephone number found at the top of that document is the Fax number of the office of the Superintendent of Police, CBI, Chennai, however, he reiterated that on receipt of the written complaint at 9.30 am from PW3, had sent to CBI, Chennai only by 12.30 pm, creating a strong suspicion about the genesis of the case of the prosecution. In such circumstances, non examination of one Lawrence, Inspector of Police, who is said to have registered the case at CBI, Chennai and forwarded the FIR by Fax to the trap team at Puducherry, goes to the root of the case.

vi) Admittedly, as per the prosecution, PW3 is said to have gone to the office of the accused along with his wife Thaiyalnayagi for whom, the application for IE code was issued, non-examination of Thaiyalnayagi, who was present at the office of the accused, also creates a doubt.

vii) A perusal of Ex.D1 would shatter the case of the prosecution when especially no explanation has been given by the prosecution with regard to the time found in Ex.D2 with regard to sending of fax message from the CBI office, Chennai.

viii) The Trial Court failed to take into consideration the fact that the petitioner is not the officer authorised to issue I.E. Code and the Trial Court also failed to take into consideration the defects in the application filed by the wife of PW3 and the objection raised by Krishnamurthy, which has been spoken by the defence witness DW1.

ix) The entire trap and recovery is doubtful and it is admitted by PW3 and PW4 that immediately on arrival, the Trap Laying Officer had conducted a search in the pant pocket of A1 and caught hold of the hands of the accused prior to phenolphthalein test and thereby there is every probability of phenolphthalein powder being smeared on the hands of the appellant.

x) In this case, there is no recovery of money from A1 at the time of trap and the admitted case of the prosecution is that the amount has been recovered from A2 at a far away place from the office of A1 and the phenolphthalein test was not conducted at once.

xi) The entire case of the prosecution is bristled with serious infirmities and the Trial Court, without considering the evidence in proper perspective, found the accused guilty and thereby, the appellant is entitled to acquittal.

7. The submissions of Mr.S.Ashokkumar, learned Senior Counsel appearing for A2/appellant in Criminal Appeal No.265 of 2019 are as under:-

i) As per the prosecution, A2 is known to A1, however, no legal evidence has been let in by the prosecution to prove that there is any connection between A1 and A2. Even as per the prosecution, there is no allegation that the appellant had knowledge about the demand made by A1 and that he had received the money on the instructions of A1, knowing fully well that the amount was a bribe amount.

ii) The evidence of PW3 and PW4 is not specific with regard to the presence of the appellant at the time of alleged trap or receipt of money by A2 and without there being any legal evidence against the appellant, he was arrested by the respondent and the final report has been filed. None of the witnesses before the court has spoken about the demand of money by the appellant.

iii) The entire case is bristled with several material contradictions. Even assuming that there is recovery from the appellant without there being evidence for demand, A2 cannot be convicted on mere recovery of tainted money alone.

iv) Further, as per the prosecution, the amount is said to have been recovered in the presence of one Prabhakaran and Subramanian, Inspectors of Police and one individual witness Rajagopal, who was said to have been the members of the trap team and the prosecution has not proved the recovery from the appellant by legal evidence.

v) There is absolutely no evidence that the appellant had conspired with the main accused and he received the amount from the first accused knowing fully well that it is a bribe amount demanded and received by the main accused.

vi) The alleged recovery is also not proved by legal evidence. Even as per the prosecution, phenolphthalein test was conducted after the alleged recovery which would vitiate the entire recovery proceedings.

8. The submissions of Mr.K.Srinivasan, learned Special Public Prosecutor for CBI are as under:-

i) The appellant was working as Lower Division Clerk in the office of the Joint Director of Foreign Trade at Pondicherry and he is a public servant. He had entered into a conspiracy with A2, demanded and obtained a sum of Rs.3000/- from the de facto complaint/PW3 towards illegal gratification other than legal remuneration at his Chambers in the office for issuance of I.E. Code claimed by the de facto complainant on behalf of his wife on 1.12.2008.

ii) The prosecution has proved its case with cogent evidence adduced by the prosecution witnesses with regard to demand, acceptance and recovery of the bribe money.

iii) The demand and acceptance of bribe by A1 is clear from the evidence of PW3, the de facto complainant and the results of the phenolphthalein test conducted on him and it can be inferred from the the long delay on the part of A1 in processing the file for issuance of I.E. Code claimed by PW3.

iv) Though the recovery of tainted money was only from A2, to whom A1 had given the bribe money and sent out of his office, the recovery made from A2, the serial numbers of the currency notes seized got tallied with those entered in the entrustment mahazar and the results of phenolphthalein tests conducted on both the accused would speak about the connection between A1 and A2 and the role played by A2 in the demand acceptance of bribe by A1.

v) The prosecution has proved its case in a very natural way beyond any reasonable doubts and slight material contradictions on the part of the prosecution witnesses may not be fatal to the prosecution case and the Trial Court has rightly found the accused guilty and thereby the Criminal Appeals are liable to be dismissed.

9. Heard the learned counsel appearing for the parties and perused the materials available on record.

10. In this case, the prosecution theory is that A1 had demanded bribe from the de facto complainant for issuance of I.E. Code required for the business run in the name of his wife Thaiyalnayagi, obtained the bribe money and handed over the same to A2, who is known to him for several years and asked him to get out of the office with the bribe money and on such information provided by him, certain team members were sent in search of A2 to a nearby mobile service centre

and seized the bribe money from him and on the statement given by A2, the connection between A1 and A2 was inferred and both the accused were implicated in the case, whereas, it is the defence that the prosecution has not at all proved the three ingredients for a trap case viz., demand, acceptance and recovery with any legal evidence and when recovery is alleged to have been made and no evidence is produced to establish the connection between A1 and A2, the prosecution has miserably failed to prove its case against both the accused.

11. In the factual background of the present case, the evidence of PW3-de facto complainant, PW4, official witness and PW9, Trap Laying Officer are relevant. Sofar as the demand and acceptance of bribe by A1 is concerned, the prosecution had relied only on the evidence of PW3, the de facto complainant and except such evidence, the prosecution could not bring any independent evidence to prove the same.

12. Though it is the case of the prosecution that PW3 alongwith his wife and PW4, one of the official witnesses had gone to the office of

A1 on the particular day, it is seen from the evidence of PW3 that at the first instance, A1 had enquired about the persons accompanied PW3 and asked him to come alone, after leaving his wife and PW4 and accordingly, he went to meet A1 after leaving both of them outside the office of A1 by then only, A1 had demanded and accepted the bribe and thereby, except the sole evidence of PW3, there is no other independent evidence to prove the demand and acceptance of bribe alleged to have been made by A1 and the probability of the alleged demand and acceptance of bribe being a cooked up story of PW3 cannot be brushed aside, especially, when the defence has taken a plea to the effect that A1 is not fully authorised to issue the I.E. Code, the application submitted by PW3 was with defects and thus, the delay had occurred in processing the same and further, PW3, the de facto complainant had been in enmity with his brother Krishnamoorthy from the year 2001 as admitted by himself and the said Krishnamoorthy had acquaintance with the appellants and thereupon, PW3 had developed grudges against the appellants and implicated them in the present case.

13. Further, PW3, the de facto complainant and PW4, one of the

official witnesses had clearly admitted during their cross examination that the police officials had checked the shirt and pant pockets of A1 and even prior to that, they caught hold of the hands of A1 while enquiring him as to whether he obtained bribe for which, he denied. When there is such a specific admission by PW3 and PW4, the probability suggested by the defence that the hands of A1 could have come into contact with phenolphthalein powder at the instance of the police officials cannot be ignored.

14. Such being the case insofar as the demand and acceptance of bribe alleged against A1, the recovery of bribe is alleged to have been made from A2 at a far away place from the office of A1 and it was not made from A1. Strictly speaking, the prosecution has not come out with any legal evidence to connect A1 with A2 and even as per the prosecution, A2 is said to be a water can supplier and the prosecution has relied upon his statements to link him with A1. Apart from such statement obtained from A2, no independent witness has spoken about A2 or his acquaintance with A1. Particularly, the police officials, who had been sent to secure A2 by PW9, Trap Laying Officer have not been examined by the prosecution. Thereby, this court has

to conclude that the prosecution has failed to prove the conspiracy of A1 and A2 rather any connection between them by them by letting any legal evidence.

15. In this regard, it will be useful to refer to the decision in ***P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another*** (2015) 10 SCC 152), wherein, a Full Bench of the Apex Court has held as under:-

> *"**20.** This Court in A. Subair v. State of Kerala [(2009) 6 SCC 587 : (2009) 3 SCC (Cri) 85] , while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(d) of the Act ruled that (at SCC p. 593, para 28) the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction.*

21. *In State of Kerala v. C.P. Rao [(2011) 6 SCC 450 : (2011) 2 SCC (Cri) 1010 : (2011) 2 SCC (L&S) 714] , this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.*

22. *In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any* *proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.*

> ***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 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 thereunder."*

16. In the case on hand, the prosecution has miserably failed to prove the demand and acceptance of bribe by A1 by letting any independent witness apart from the interested witness viz., the de facto complainant. The prosecution has not bothered to examine the wife of PW3 viz., Thaiyalnayagi, on whose behalf the I.E. Code was

applied by PW3.

17. Coming to the question of registration of case, the prosecution has not cleared the cloud of suspicion surrounding the same. The specific case of the prosecution is that on receipt of the written complaint from the de facto complainant at the Railway Guest House, PW9, the Trap Laying Officer had forwarded the same alongwith his enquiry report, Ex.P37 to the Superintendent of Police through Fax at 12.30 pm with the assistance of the Police Constable Balachandrapillai and subsequently, he received instructions from the Superintendent of Police over phone to further investigate the case on the complaint lodged by the de facto complainant Arokiyanathan, as a case has been registered against A1-Arun, Junior Assistant in the office of the Joint Director General of Foreign Trade under Section 7 of the Prevention of Corruption Act by the Inspector of Police, Lawrence under FIR, Ex.P42 and accordingly, PW9 had proceeded with the investigation. However, strangely, the said Lawrence had not been examined on the side of the prosecution. Such a lapse on the part of the prosecution assumes much significance when Ex.D2 is perused. When the time of registration of the complaint itself is shown as 12.42

pm in the FIR, the fax remarks found at the top of Ex.D2, copy of the FIR produced by the defence would disclose that it had been sent from CBI, Chennai on 23.1.2009 at 6.41 am itself, which falsifies the version of PW9, Trap Laying Officer that he had received the written complaint from PW3 at 9.30 am on 23.1.2009, forwarded the same alongwith his enquiry report, Ex.P37 to the Superintendent of Police through Fax at 12.30 pm with the assistance of the Police Constable Balachandrapillai and thereafter, he proceeded with the investigation on further instructions from the Superintendent of Police. Further it is seen that the endorsement showing the time when the FIR was sent to court appears to be 10.30 pm on 23.1.2009. This goes to the root of the case and the entire case of the prosecution falls like a pack of cards by such discrepancy. Further, the non-examination of the members of the trap team who are alleged to have apprehended A2 and said to have recovered the tainted money also creates a doubt with regard to the case of the prosecution on the aspect of recovery of tainted money.

18. All the above aspects point out that the prosecution has failed to prove its case beyond all reasonable doubts and in such circumstances, the prosecution cannot be allowed to enure the benefit

of statutory presumption under Section 20 of the Prevention of Corruption Act and thereby, the appellants are entitled to acquittal.

19. In the result, the Criminal Appeals stand allowed. The impugned judgment of conviction and sentence is hereby set aside. The appellants are acquitted from the charges levelled against them. The bail bond, if any executed by the Appellants, shall stand cancelled and the fine amount paid, if any, shall be refunded to them.

5.1.2024.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. Special Judge,
   Puducherry.

2. The Sub Inspector of Police,
   C.B.I., ACB, Chennai.

3. The Special Public Prosecutor for CBI,
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

ssk.

Crl. Appeal Nos.265 & 266 of 2015

5.1.2024.