IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 06.02.2024

Coram

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

Criminal Appeal No.236 of 2018

A.Ramanathan ... Appellant/Sole Accused

Vs.

State of Tamilnadu
represented by
The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City – III Detachment,
Chennai – 35.
[Crime No.3/AC/2010/CC-IV] ... Respondent/Complainant

Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the judgment of conviction made in C.C.No.147 of 2011 dated 04.04.2018 on the file of Special Court for the cases under Prevention of Corruption Act at Chennai – 104 and allow the criminal appeal and acquit the appellant/accused.

For Appellant : Mr.S.Karthikeyan

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

JUDGMENT

The present Criminal Appeal has been filed by the sole accused in C.C.No.147 of 2011, challenging the judgment of conviction and sentence dated 04.04.2018 rendered by the Special Judge for the cases under Prevention of Corruption Act at Chennai.

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

Under Section	Sentence
7 of Prevention of Corruption Act, 1988	one year of rigorous imprisonment and a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment.
13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	two years of rigorous imprisonment and a fine of Rs.1000/-, in default, to undergo three months simple imprisonment.
The sentence of imprisonment shall run concurrently.	

3. The appellant/accused, who was working as an Office Assistant in the Regional Manager Office, TASMAC at the relevant point of time and thereby he was a Government Servant as per Section 2(c) of the Prevention of Corruption Act, is alleged to have demanded a bribe of Rs.10,000/- and obtained Rs.3000/- towards a part of his demand from PW2, the de facto

complainant, a Supervisor in TASMAC shop No.4103, Chrompet, Chennai under the guise of initiating for cancellation of transfer order of the de facto complainant and thereby committed the offences under sections 7, 13[2] read with 13 [1] [d] of Prevention of Corruption Act 1988.

4. The case of the prosecution as culled out from the evidence of the prosecution witnesses is as under:-

4.1. The de facto complainant, Thiru.Pandurangan PW2 was working as a Supervisor in TASMAC Shop No.4103, at Chrompet, Chennai. On 28.01.2010, when PW2 had gone to the Regional Office regarding his office work, the accused, who worked as an Office Assistant in the Office of the Senior Regional Manager, PW5 had informed him that he saw a transfer order tranferring the de facto complainant from his present shop to the Senior Regional Manager's Office. Contending so, the accused had demanded Rs.10,000/- to make arrangement to cancel the transfer order. When the PW2 had expressed his inability to pay the amount, the accused had insisted the defacto complainant to pay Rs.3,000/- as advance on 01.02.2010 at 12 noon at his office and to pay the balance amount of Rs.7,000/- after cancellation of the transfer order. PW2 who was not interested in paying the bribe lodged a complaint Ex.P.2 with the Deputy Superintendent of Police, who, in turn, had forwarded the same to the Inspector of Police PW6/Trap Laying Officer for further action.

4.2. On receipt of the complaint, the Inspector of Police (PW6) registered an FIR, Ex.P8 in Cr.No.3/2010/AC/CC-IV against the accused under Section 7 of Prevention of Corruption Act, 1988. On the basis of his requisition letter, two official witnesses, Tr.Hariram PW3, Typist, Labour Department and Tr.Gowri Saravanan, Junior Engineer, TNEB (Not Examined), reported before PW6 (Trap Laying Officer) at 10.00 a.m. PW6 had introduced the complainant to the official witnesses and vice versa. He gave the complaint and FIR to the official witnesses who were also apprised of the facts of the case. Bribe money Rs.3000/=(M.O 1) (Rs100/= x 15 notes and Rs 500/= x 3 notes) was produced by PW2. The serial numbers of the said currency notes were noted down by PW6 (Trap Laying Officer) in the entrustment mahazar, Ex.P4.

4.3. Thereafter, having decided to lay a trap for the appellant/accused, a demonstration of trap proceedings was conducted by PW6 with the assistance of Head Constable Tr.Arulazhagan on the official witness Tr.Gowri Saravanan and thereby the witnesses were made to understand the significance of the phenolphthalein test.

4.4. After the demonstration of the chemical test, the tainted money Rs.3,000/- was entrusted back to PW2 with an instruction to give the same to the accused only on demand by him and with further instructions to give signal by rubbing his head on acceptance of the tainted money by the accused. The official witness Tr.Hariram, PW3 was instructed to accompany PW2 and to observe the conversations and happenings between PW2 and the accused. The chemical contents used for demonstration of trap were disposed. The entrustment mahazar, Ex.P4 was made ready recording the happenings from 10.00 am to 11.45 am.

4.5. After the scheme of trap was finalized, PW6 (Trap Laying Officer) along with PW2, shadow witness Tr.Hariram (PW3) and Tr.Gowri Saravanan and police party proceeded to the office of the appellant/accused at Senior Regional Manager TASMAC, Anna Salai, Chennai and reached there at 12.15 hours. Reminding the instructions, PW6 had sent PW2 and PW3 to meet the appellant/accused and was waiting at the ground floow.

4.6. As per the instructions of PW6 (Trap Laying Officer), PW2 and shadow witness (PW3) met the accused at the 4th Floor of the office of the Senior Regional Manager. When PW2 had enquired about his transfer, the accused reiterated his earlier demand and obtained the tainted money of Rs.3000/- (M.O1) from PW2 and kept it in his pant pocket and informed him that he would take care of cancelling the transfer order. PW2, along with PW3, came to the ground floor and gave the pre arranged signal.

4.7. On receipt of the signal from PW2, the Trap Laying Officer, PW2, along with police party and official witnesses, proceeded to the spot and upon identification of the accused by PW2, who also came to ground floor and informed about the happenings, the accused was taken to Senior Regional Manager Office at 4th floor wherein, chemical test was carried out on both the hands of the accused in the presence of the official witnesses and PW8, an Assistant at the Senior Regional Manager Office and the same proved positive. Thereupon, PW6 had arrested the accused at 1.30 pm.

4.8. When PW6 had enquired the accused about the bribe money, the accused produced the same from his right side pant pocket. The serial numbers of the currency notes tallied with the serial numbers noted in the Entrustment Mahazar Ex.P4. Then, PW6 had recovered M.O.1 cash and the pant of accused was obtained and chemical test was carried out on the right side pant pocket of the accused and the same proved positive and PW6 has recovered the solutions (MO2, MO3, MO4) and the pant (M.O.5) and prepared Seizure Mahazar, Ex.P5.

4.9. After advance intimation under Ex.P.10 to the court, a search was conducted in the house of the accused at No.15, Mohammed Abbas Street, Kosapettai, Chennai-12 by PW6 in the presence of the official witnesses, however, nothing was recovered during the same and a Search Report under Ex.P6 was prepared. PW6 had sent the accused to judicial custody along with alteration report under Ex.P.11 and has produced the properties to the court under Form 95 and gave a requisition letter for chemical analysis. Thereafter, he had handed over the case records to the Inspector of Police, PW7 for further investigation.

4.10. On receipt of the case records, PW7 has recorded the statements of witnesses and accused and received the Chemical Analysis Report under Ex.P7 through court and recorded the statement of Scientific Officer Tr.Kirubakaran, PW4. He had sent the report to the Directorate of Vigilance and Anti-Corruption and obtained the Sanction Order under Ex.P1 through the Directorate of Vigilance and Anti-Corruption and recorded the statement of PW1, who accorded sanction against the accused and filed the charge sheet against the accused u/s. 7,13(2) r/w. 13(1)(d) of

Prevention of Corruption Act, 1988.

5. On the conclusion of the prosecution evidence, the accused was examined under Section 313 of Cr.P.C. pertaining to the incriminating materials found against him and the accused denied the same as false. Ex.D.1 was marked to show that annual norms of investigation work were fixed by DVAC for officers in the cadre of Inspectors and Deputy Superintendent of Police and that a false case had been registered for the sake of norms. However, no witness was examined on the defence side. The Trial Court, after hearing the arguments, found the accused guilty and convicted and sentenced him as stated above. Challenging the judgment the appeal has been filed.

6. The submissions of Mr.S.Karthikeyan, learned counsel appearing for the appellant/accused are as under:-

6.1. During the relevant period, norms were fixed by the Directorate of Vigilance and Anti Corruption for registering cases and based on a false complaint, the case was registered and documents were fabricated and a stage managed trap was conducted. The accused by marking Ex.D1 had proved about the existence of norms during the relevant period for filing cases.

6.2. The proof of demand of illegal gratification by a public servant is a *sine qua non* in order to establish the guilt of the accused/public servant. The mere acceptance or the recovery of the tainted notes is not sufficient to bring home the guilt of the accused. The prosecution has to prove the demand of illegal gratification beyond all reasonable doubts. Thereafter, the subsequent acceptance and recovery of the notes would complete the chain of circumstances to bring home the guilt of the accused.

6.3. If the tainted currency notes are found in the possession of public servant in a trap case that can be a presumption under Section 20 of the Prevention of Corruption Act that he might have received it, but this presumption is a rebuttable one and the accused can rebut this presumption by offering his explanation for possession of the tainted notes. However, there can be no presumption for demand made by the public servant. In other words, demand as a matter of fact cannot be presumed unless such a presumption is to be raised and the foundational facts are proved and such foundational facts un-erringly point to the irresistible and the only conclusion of proof of demand. This would make it clear that mere recovery of tainted notes from the possession of the accused would not give a right to presumption of demand.

6.4. In the present case, the alleged demand and acceptance is doubtful and the Trial Court, without proper analysis of the evidence on record, had erred in finding the accused guilty.

6.5. The Trial Court failed to take into consideration the material contradictions in the evidence of P.W.2, the de facto complainant, P.W.3 Shadow witness and P.W.6 Trap Laying Officer with regard to registration of complaint, the alleged demand and recoveries. The evidence of P.W.2 with regard to preferring of the complaint and registration of the case creates a doubt with regard to the genesis of the case.

6.6. The manner and timings as spoken by P.W.3 with regard to the directions given to him by his superior to assist P.W.6, the Trap Laying Officer in the trap proceedings and the timings with regard to his presence during the trap proceedings and the preparation of Entrustment Mahazar, Ex.P.4 coupled with the non production of the written requisition seeking assistance of P.W.3 for the trap and more particularly, the evidence of PW2 that it was only official witness Saravanan (Not Examined) who had accompanied him at the time of trap and that PW3 was standing little far away from him creates a doubt with regard to the presence of P.W.3 during the trap.

6.7. Discrepancies in the documents with regard to the summoning of the shadow witnesses, timings in the preparation of Entrustment Mahazar Ex P4 and the material contradictions in the evidence of P.W.2, P.W.3 and P.W6 with regard to the place and the manner of trap proceedings creates doubt and suspicion in the prosecution case. As per the prosecution, when PW2 had met the accused and when the alleged demand was made, PW3 the official shadow witness was stated to be standing little far away and further the accused, after acceptance of the bribe money, was stated to be restrained by PW6 (TLO) and his Team at the ground floor and in such a situation, the preparation of Rough Sketch Ex.P9 without compliance of Rule 49 of the DVAC Manual assumes significance for doubting the trap proceedings.

6.8. Admittedly, as per the evidence of PW2 and PW8 (P.A to Senior Regional Manager. the transfer of the de facto complainant can be done by the Kanchipuram District Manager and further as per PW5 (Senior Regional Manager) and PW8, there was no necessity for PW2 to visit the Regional Office.

6.9. As per evidence of PW8, the police team had caught hold of both the hands of the accused even prior to the phenolphthalein test and the possibility of smearing phenolphthalein powder on the hands of the accused prior to the test cannot be ruled out.

6.10. The accused, during the questioning under 313 Cr.P.C., had given a probable explanation that the money was thrust into his pocket and a false case was registered. The Trial Court erred in framing a composite charge for both the distinct offences under sections 7 and u/s 13[2] read with 13 [1] [d] of Prevention of Corruption Act 1988 and further the presumption under Sec 20 of the Prevention of Corruption Act can be drawn against the accused only for the offence u/s 7 of the Prevention of Corruption Act and thereby joint charge caused serious prejudice to the accused. Further the charge does not specify the date of demand. The material contradictions and the inherent improbabilities in the case creates several doubts in the case of the prosecution and when the respondent has failed to prove the foundational facts the appellant is entitled for acquittal and thereby, seeks to allow the appeal. In support of his contentions, the learned counsel for the appellant relied on the following decisions:-

1. ***N.Vijayakumar vs. State of Tamil Nadu*** (2021) 3 SCC 687
2. ***T.S.Ramasamy Vs State of Tamil Nadu*** 1994 (1) MLJ (Crl) 333

7. Learned Government Advocate [Criminal Side] would submit that the accused was working as an Office Assistant in the Office of the Senior Regional Manager, TASMAC from 18.05.2006 to 01.02.2010 and thereby he is a public servant. The de facto complainant was working as Supervisor in TASMAC shop. The accused, by abusing his position, had demanded the amount of Rs.10,000/- for cancelling the transfer order and that he had demanded an advance of Rs.3000/- to be paid on 01.02.2010 and agreed to receive the balance amount of Rs.7000/- after the cancellation of the transfer Order. Pursuant to the same, the de facto complainant had preferred a complaint on 01.02.2010 and based on that a case was registered and trap was laid and and on the day of trap, the accused had reiterated the demand in the presence of PW2/defacto complainant and PW3 the official shadow witness and accepted the bribe amount and after that phenolphthalein test was conducted which proved positive, The prosecution, by letting in cogent evidence, proved the demand, acceptance and recovery and the trial court, rightly disbelieving the explanation, had found the accused guilty and convicted him. With regard to the submission of framing defective charge, the learned Government Advocate would

submit that the accused had understood the charges and he had cross examined the witnesses and he had not shown that failure of justice had occasioned by the omission or error in the charge and thereby the trial has not vitiated. In support of the submission he relied on the judgment of the Apex Court in ***Soundarajan Vs State Rep.By the Inspector of Police V& AC Dindigul*** reported in 2023 SCC Online SC 424. He would submit that there is no infirmity in the judgment of the Trial Court and thereby he would insist for dismissal of the appeal.

8. Now what is to be seen is

(i) Whether the prosecution has proved its case of demand, acceptance and recovery by cogent evidence beyond all reasonable doubts and if so whether the accused has rebutted the presumption under Section 20 of the Prevention of Corruption Act?

(ii) Whether the Trial Court is right in finding the guilt of the accused and convicting him for the offences alleged?

9. In this case, PW1 is the Sanctioning Authority and through him Ex.P1 Sanction for Prosecution has been marked. PW2 is the defacto complainant and through him Ex.P2 Complaint dated 01-02-2010 and

Ex.P4, Entrustment Mahazar have been marked. Ex.P3 is the signature of PW2 in F.I.R. PW3 is the Government Official Shadow witness and through him Ex.P5 Seizure Mahazar and Ex.P6 Search List have been marked. PW4 is the Chemical Analyst and through him Ex.P7 the Chemical analyst Report has been marked. PW5 is the Senior Regional Manager TASMAC, under whom the accused was working. PW6 is the Officer, who had registered the F.I.R and laid the Trap and through him Ex.P8 F.I.R, Ex.P9 Rough Sketch, Ex.P10 Advance Intimation and Ex.P11 Alteration Report are marked. PW7 is the investigation officer, who had filed the final report and PW8 is the Assistant at the office of the Senior Regional Manager TASMAC.

10. It is the case of the prosecution that the appellant/accused had demanded a bribe of Rs.10,000/- from PW2 by contending that he would take steps for reversing his transfer order and the prosecution has proved its case by letting in cogent evidence whereas, it is the case of the appellant/accused that it is a false case foisted by the respondent by thrusting the tainted money into the pant pocket of the appellant to cover up their non-achievement of norms as evident from Ex.D1, especially, when

the prosecution has not proved its case of demand and acceptance on the part of the appellant and there are material contradictions in the evidence adduced by the key witnesses viz., PW2, PW3 and PW6 with regard to the timings spoken by them in respect of the entire episode viz., registration of complaint, entrustment mahazar and the trap procedure and thereby the prosecution has failed to prove its case and it is a fit case for acquittal.

11. In view of the submissions of either side, the foremost aspect to be decided is whether the prosecution has proved its case with foundational facts to point out the guilt on the part of the appellant with regard to demand and acceptance. In this regard, it would be appropriate to analyse the evidence of P.Ws.2, 3 and 6 in the light of the documentary evidence produced by the prosecution to arrive at a conclusion with regard to the genuineness of registration of complaint, entrustment mahazar and the trap procedure.

12. The complaint being the genesis of the case of the prosecution, it would be appropriate to analyse the evidence of PW2, the de facto complainant and PW6, the TLO with regard to the same. It is the case of the prosecution, as deposed by PW2, the de facto complainant in his chief

examination that the initial demand was made on 28.01.2010 and the de facto complainant, having decided to avoid giving bribe, had went to the V&AC office at Anna Salai on 1.2.2010 at about 9.00 am and preferred the complaint Ex.P2 to PW6, the Inspector of Police, however, he had not adduced any reason for such a delay in lodging the complaint. The complaint, Ex.P2 and Ex.P8 FIR also corroborates the date and time of lodging of the complaint and a perusal of Ex.P.8 shows that the complaint was received at 9.00 a.m. and the entries in the General Diary was made at 9.00 a.m., however, it is seen that the complaint, Ex.P2 has been addressed to the Deputy Superintendent of Police, V&AC and not the Inspector of Police.

13. PW6, the TLO, while corroborating the above aspect with regard to date of lodgment of complaint, is silent about the time of lodgment of the same. However, peculiarly and safely, he speaks in his evidence that the complaint was forwarded to him by the Deputy Superintendent of Police, V&AC with necessary endorsement for initiating action and based on that he had registered the case. An endorsement evidencing such forwarding/assignment by the Deputy Superintendent of Police is found

near the signature of the complainant at the last/third page of the complaint, Ex.P2. Contrary to that, during the cross examination, PW2, when confronted with certain questions in depth with regard to lodging of the complaint, had not only blabbered, but gave contradictory answers as if he had lodged the complaint on 28.1.2010 itself viz., on the date of demand of bribe by the accused. He specifically admits that it took half an hour for him to write the complaint and accordingly, he had completed the same by 9.30 am and gave it to PW6 and thereafter, PW6, TLO took one hour for registering the case viz., till 10.30 am and till such time, PW6 was in his vicinity alone, which falsifies the version of PW6 that the complaint that was lodged with the Deputy Superintendent of Police was forwarded to him for investigation. If the version of the author of the complaint viz., PW2 is accepted as true, then the version of PW6 is to be disbelieved and it has to be concluded that it is a cooked up story of the prosecution. If the version of the prosecution is accepted as bona fide, then PW2 has to be treated as an untrustworthy witness and the case of the prosecution itself structured on his evidence would fall to the ground.

14. While both the hypothesis with regard to lodging of complaint are

against the case of the prosecution, it is still worse that an endorsement is made in the complaint, Ex.P2 to the effect that the case was registered at 9.00 am on 1.2.2010 itself leaving an inference that no preliminary enquiry could have been conducted before registering the case. The above drastic material contradictions with regard to lodging of complaint, recipient of the complaint, date and time of lodging of the same goes to the root of the case. To patch up everything, PW6, in his cross-examination, introduces a new version that the complaint was received on 1.2.2010 at 8.15 am and the case was registered at 9.00 am and in the interregnum period of 45 minutes, he had conducted a preliminary enquiry secretly, however, he admits that he does not know at what time, the complaint was lodged with the Deputy Superintendent of Police, leaving room for more doubts.

15. Such being the genesis of the case of the prosecution, all is not well with the further proceedings based on such a complaint. PW2 speaks in his chief examination that after registering the case, PW6 had summoned the official witness at about 10.00 am, who had appeared before PW6 for assisting in the trap proceedings within five minutes. Corroborating the same, PW3, one of the official witnesses, deposed that he received

instructions from his superior at about 10.00 am on 1.2.2010 to assist PW6 and accordingly, within ten minutes, he had reported before PW6. However, in the cross examination, PW2 has been specific to contend that only after registering the case at 10.30 am on 1.2.2010, the official witnesses were summoned, whereas, it is the version of PW6, TLO that at 9.30 am itself, he had issued requisition summoning the official witnesses and thereupon, the witnesses arrived at the office of V&AC at about 10.00 am. His further evidence is that the entrustment mahazar was prepared from 10.15 to 11.45 am, whereas, the entrustment mahazar, Ex.P4 reveals that it was prepared from 10.00 to 11.45 am. When the official witnesses had reported only after 10.00 am, it is highly improbable that preparation of the entrustment mahazar could have been commenced at 10.00 am itself as revealed in Ex.P4 entrustment mahazar itself.

16. When there is strong doubt about the time of commencement of entrustment mahazar, Ex.P4, the completion of the same by 11.45 as revealed in the document is also highly doubtful as PW2 specifically admits in his cross examination that the trap team and himself had reached the office of the appellant at 11.10 am be departing at 11.00 am and thereafter,

he went to house itself at 11.40 am itself, which is highly impracticable in the event of accepting the case of the prosecution substantiated by their documents or if the version of the de facto complainant is to be accepted as genuine one, then the documents provided by the prosecution to substantiate their case must be a created ones.

17. So far as the trap procedure is concerned, the de facto complainant and the official witness, who accompanied the de facto complainant, alone can speak about the happenings in the spot viz., demand and acceptance of bribe by the accused. In this case, PW2, the de facto complainant had deposed in his chief examination itself that PW3 viz., Hariram, one of the official witnesses was standing away from him during the trap proceedings while the other official witness by name Gowri Saravanan and himself were dropped near the office of the appellant, whereas it is the version of PW3 Hariram that he was dropped alongwith PW2 at the office of the appellant by PW6 with instructions to observe the happenings inside the office of the appellant, however, during his cross-examination, he admitted that he was standing about 8 feet away from the appellant, which could disable him from hearing the talks between the

appellant and the de facto complainant if they talk in a low voice. From such admission, we could infer that the case of the prosecution is surrounded by cloud of suspicion and the prosecution witnesses do not depose in a natural way.

18. It is further seen that PW2 in his chief examination contends that after preparing the entrustment mahazar, Ex.P4 at 11.45 am and after observing the formalities, they departed for the office of the appellant/accused within five minutes, however, during the cross examination, he had changed his version to contend that by 11.00 am, they had started for the office of the appellant and they reached there by 11.00 am itself, which is highly improbable when Ex.P4 entrustment mahazar reveals that it was made ready from 10.00 am to 11.45 am. Again either one of such evidence could be a wrong and misleading one. If the document is to be accepted to be true one, then, PW2 once again loses his creditworthiness. If his credence is accepted, it creates doubts about the entrustment mahazar and consequently, the trap proceedings itself is to be suspected as a stage managed one.

19. Further, PW2 has stated in his cross examination that the office of the accused is at the fourth floor of the building, however, he had specifically admitted that he met the accused in the ground floor whereas, it is the version of PW3, who claims to have accompanied PW2 during the trap proceedings, but, alleged to have been eight feet away from PW2 and the appellant as claimed by PW2, that after demanding and obtaining the bribe money, the appellant and PW2 were getting down to the ground floor from the fourth floor while conversing between themselves with regard to the next course of action and he had also accompanied them the prosecution. Such being the contradiction between the prosecution witnesses as to the place where the bribe money was demanded and accepted by the appellant, the preparation of Rough Sketch Ex.P9 without compliance of Rule 49 of the DVAC Manual assumes significance for doubting the trap proceedings.

20. In ***T.S.Ramasamy Vs. State of Tamil Nadu*** reported in 1994 Crl.LJ 545, it has been held as under:-

"This Hon'ble court while dealing with evidence regarding the place of occurrence, has held that in all trap cases like this, it is necessary for the Prosecution to file a sketch also showing the

office or the place where the accused was trapped. Otherwise, it would be difficult and unsafe to accept the mere oral evidence of the official trap witnesses when they give evidence that they witnessed the payment of bribe. It was further held that it is sufficient if the accused showed preponderance of probabilities of his defence and it need not be proved beyond all reasonable doubts as in the case of the Prosecution."

21. To elaborate, in this case, a rough sketch Ex.P9 has been filed, however, it is not prepared in accordance with Rule 49 of DVAC Manual. Though following of Rule 49 of DVAC Manual is discretionary in nature, in this case, since the place of alleged demand and acceptance of bribe money, the place of restraining the accused and the place of phenolphthalein test are different, it assumes significance. Further, the position of PW3 is also not shown. In this regard, it is relevant to refer Rule 49 of DVAC Manual, which reads as under:-

*"49. **Prepartion of the Site Plan***

A site plan of the scene of occurrence should invariably be prepared showing the relative positions of the Accused Officer, bribe giver, Witnesses, investigating Officer and other members of the raiding party, besides the place of recovery of the tainted money. The site plan should be got attested by members of the trap party, and should form part of the record of investigation."

22. When the de facto complainant himself contradicts his own version in the chief examination while being confronted during cross examination and the other witnesses do not corroborate with him, rather could not corroborate with them, especially, when it is not clear as to who had accompanied PW2 as a shadow witness, the prosecution has not proved its case of demand and acceptance of bribe by the appellant. When P.Ws.2, 3 and 6 speak about various instances throughout the entire trap proceedings, they contradict among themselves on each and every aspect and thereby raising doubt about the veracity of the trap proceedings. In other words, the prosecution has not proved its case of demand and acceptance of bribe by the appellant with foundational facts. Without proving demand and acceptance, which are *sine qua non* to establish the guilt of the accused/public servant, by mere recovery, we cannot safely conclude that the prosecution has proved its case beyond reasonable doubts.

23. In this regard, it would be apt to refer to the relevant portion of the decision in ***N.Vijayakumar vs. State of Tamil Nadu*** (2021) 3 SCC 687

as under:-

"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved.

24. In ***P.Sathyanarayana Murthy Vs. District Inspector of Police, State***

AP and another, 2015 10 SCC 152, the 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 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.

....

*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** **[(2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677]** has 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 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 appellant under Sections 13(1)(d)(i) and (ii) read with Section 13(2) of the Act as well.

25. In ***Neeraj Dutta vs. State (Government of N.C.T. of Delhi)*** *(*2023) 4 SCC 731 (Constitution Bench), it has been held as under:-

*"**88.1.** (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.*

***88.2.** (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of* *illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*

88.3. *(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*

88.4.*(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the

case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

***88.5.** (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been* *proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.*"

26. In the case on hand, as stated above, this court is able to see that there are several discrepancies right from the registration of the case, summoning of official witnesses, preparation of entrustment mahazar and the trap proceedings. There are several material contradictions in the evidence of PW2, de facto complainant and PW3, the official trap witness. The prosecution is not sure as to whether PW3 had accompanied PW2 or the other official witness Gowri Saravanan had accompanied PW2 at the time of trap. In view of the above discrepancies, this court is of the opinion that the prosecution has failed to prove the foundation facts of the case. While the prosecution could not prove its case against the appellant, the appellant has come out with a probable defence of thrusting the tainted money to achieve the norms fixed for the respondent by producing Ex.D1. In this regard, it is relevant to note that PW8, who was serving as Selection Grade Assistant at

the office of Senior Zonal Manager, TASMAC at the relevant time, had deposed that the police team had caught hold of both the hands of the accused and brought before him contending that he was caught while getting bribe from PW2. On such deposition, PW8 was treated as hostile, however, the prosecution could not prove anything against the appellant by cross-examining him. A perusal of the evidence of PW6, TLO would disclose that the appellant was caught at the ground floor and taken to his office at the fourth floor, where alone, phenolphthalein test was conducted on his hands. This would make it clear that even prior to the phenolphthalein test the trap team had caught hold of the hands of the appellant and thus, there was every possibility of smearing phenolphthalein powder on the hands of the accused prior to the test and thus, the theory of thrusting the tainted money for the purpose of achieving the norms fixed for the respondent cannot be ruled out. Thus, when the prosecution has not raised any presumption against the appellant, the appellant has succeeded in raising doubt about the prosecution case by preponderance of probabilities and thereby he is entitled to acquittal.

27. In the result, the Criminal Appeal is allowed. The impugned judgment of conviction and sentence imposed by the trial Court is hereby

set aside. The Appellant/Accused is acquitted from the charges levelled against him. The bail bond, if any executed by the Appellant/Accused, shall stand cancelled and the fine amount paid, if any by him, shall be refunded to him.

06.02.2024.

A.D.JAGADISH CHANDIRA,J.

vrc/ssk.

Index:Yes/No
vrc/ssk.

To

1.The Special Judge for the cases under
Prevention of Corruption Act, Chennai.

2. The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City – III Detachment,Chennai – 35.

3.The Additional Public Prosecutor,
High Court, Chennai.

Crl. Appeal No.236 of 2018

06.02.2024