IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal No.273 of 2013

State
The Inspector of Police,
Vigilance and Anti-Corruption
Chennai City-I Detachment,
Chennai-28.
(Crime No. 2/AC/2005/CC-I) ..Appellant

Vs.

E.Mohanarangan,
S/o.E.K.Ethirajulu ..Respondent

Prayer:Criminal Appeal is filed under Section 378 Cr. P.C. to set aside the judgment of acquittal passed in Special Case No.25/2006, dated 26.12.2012 by the Chief Judicial Magistrate, Tiruvallur and convict the respondent/accused for the charges framed against him.

For Appellant : Mr. S.Santhosh,
Government Advocate (Crl. Side)

For Respondent : Mr. Sankarasubbu,

JUDGMENT

Aggrieved against the judgment of acquittal of the respondent/accused in Special Case No.25/2006, dated 26.12.2012 rendered by the Chief Judicial Magistrate, Tiruvllur, the present Criminal Appeal has been filed by the State.

2. Case of the prosecution in brief:

2.1**.**The respondent/accused had been serving as a Junior Engineer in TNEB Sholavaram Section at the relvant point of time and thereby he is a public servant as per Section 2(c) of the Prevention of Corruption Act 1988.

2.2.The complainant S.Ravi was residing at Orakkadu Village, Sholavaram, Thiruvallur District. The wife of the complainant Dhanalakshmi gave an application at Sothuperumbedu Electricity Office on 29.12.2004, requesting for electricity connection for their newly purchased plot at NGO Colony in Sholavaram.

2.3. As a follow up, the complainant met the accused on 22.01.2005 at about 5.00 pm at Orakkadu Cross Road and enquired about the electricity service connection, for which the accused had demanded Rs.2000/- as illegal gratification other than the legal remuneration. In pursuance of that demand, on 24.01.2005 at about 4.00 pm, the accused reiterated his demand on the first floor in the office of the Executive Engineer, TNEB, Avadi and received Rs.2000/- by corrupt and illegal means, by abusing his official position, thereby the accused had committed the offences punishable under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

2.4. On completion of investigation, a final report was filed against the accused for the offence under Sections 7 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act.

2.5. On appearance of the accused and compliance with the procedure under Section 207 Cr.PC, charges were framed against the accused for the offences under Section 7 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act.

2.6. In order to prove the charges, the prosecution examined 8 witnesses as PW1 to PW8 and marked 12 documents as Ex.P1 to Ex.P.12, besides marking 4 Material Objects as M.O. 1 to M.O. 4. No witness was examined and no document was marked on the side of the accused.

3. Mr S.Santhosh, the learned Government Advocate (Criminal Side) appearing for the appellant would submit his arguments as under:-

i) The prosecution by the evidence of PW1/defacto complainant and PW3/Shadow witness, has categorically proved the demand, acceptance and recovery by the respondent/accused.

ii) Without there being any material evidence on record, the trial Court erroneously rendered a finding that PW1/ S. Ravi the defacto complainant had admitted that he had thrust the money into the shirt pocket of the appellant. Further, without there being any evidence of thrusting money into the pocket of the appellant, the trial court erred in relying on the vague statement of PW3, obtained during cross-examination, to acquit the accused.

iii) The trial court failed to consider the mandate of Section 20 of the Prevention of Corruption Act, especially when the accused did not rebut the presumption by providing a proper and valid legal defence during the questioning under Section 313 of the Cr. P.C.

iv) The trial court erred in disbelieving the prosecution's case based on suggestions that were completely denied by the witnesses. Furthermore, there is no material to doubt the testimony of the prosecution witnesses in this case and the trial court on mere assumptions and presumptions had arrived at a wrong and perverse finding in acquitting the accused. Thus, the appellant seeks to set aside the order of acquittal.

4. On the other hand, Mr.Sankarasubbu, learned counsel appearing for the respondent/accused, while opposing the aforementioned submissions made by the learned Government Advocate, would submit his arguments as under:-

i) As far as the offences under Section 7 and Section 13 (1) (d) of the PC Act 1988 are concerned, it is a settled law that demand of illegal gratification is *sine qua non* to constitute the said offences and mere recovery of currency notes cannot constitute the offence unless it is proved beyond reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe.

ii) In this case, the money alleged to have been received by the accused was not accepted as a bribe amount. The defacto complainant's(PW1) wife was a school teacher and the electricity connection was for the plot owned by her. The defacto complainant, who was working in the Coast Guard, had come on annual leave and he was desperate to get an electricity connection before his leave period. The location where the electricity connection was required is a little far away from the last post, and a few additional electric posts had to be erected to provide electricity lines on payment of additional charges by the consumer.

iii) The respondent/accused, who is a Junior Engineer in TNEB, was awaiting sanction orders from the Assistant Executive Engineer for erecting additional posts. The respondent/accused, by finding out that the wife of the defacto complainant is a teacher and the defacto complainant himself, who works in the Coast Guard, was on a short leave, intended to help him.

iv) On the day of trap, when he was attending an official meeting at the office of the Assistant Engineer, he was called out in the middle of the meeting and the money was thrust into his hands as if it was towards the charges for the additional posts. Since the accused was also in a hurry to attend the meeting, he innocently received the money believing it to be the charges for erecting additional electric poles not knowing the intention of the defacto complainant that the money was intended to be given as a bribe.

v) PW3/the official witness had spoken about the manner and circumstances under which the accused was called out in the middle of the meeting and he had also admitted as to what had transpired and that the accused had told PW1 that the money would be paid to the E.B office after receipt of the work order. However, the trial judge had erroneously rendered a finding as if the admission was made by PW1/the defacto complainant. The wrong finding will not affect the case since it is clear that the amount received by the accused was only towards charges of erecting additional posts and not towards bribe.

vi) Further, the trial Judge, who had seen the demeanour of the witnesses, taking into consideration the entire facts and the attending circumstances, found that the charges had not been proved and thereby acquitted the accused.

vii) The burden cast on the prosecution is to prove its case beyond all reasonable doubts, whereas the burden on the accused is to prove its case by way of defence either by preponderance of probabilities or by cross-examination of witnesses with regard to the materials against the prosecution. In this case, there are several discrepancies in the evidence of PW1 about demand and there are doubts about the chemical examination done on the accused.

viii) The evidence of PW3 is categoric that only after the respondent/accused was directed to take money out of the pocket, the phenolphthalein test was conducted. The pre-trap meetings as mentioned by PW1 are chance meetings and the trap was also conducted in the different offices where the respondent/accused was attending the meeting.

ix) The trial Court also held that the prosecution had failed to prove the foundational facts. In such circumstances, the presumption permissible under Section 20 of the Act cannot be raised against the accused.

x) The non-examination of the wife of PW1/defacto complainant in whose name the electricity connection was sought also raises an adverse inference and creates doubt in the prosecution case.

5. Heard Mr S.Santhosh, learned Government Advocate appearing for the appellant/State and Mr Sankarasubbu, learned counsel appearing for the respondent and perused the entire materials available on record.

6. As stated above, this is an Appeal filed by the State against the judgment of acquittal. Before delving into the analysis of the evidence

and judgment, this Court finds it necessary to refer to the following decisions of the Hon'ble Apex Court that discuss the principles regarding appeal against acquittal.

<u>I. Mallaappa Vs. State ofKarnatatain Crl.App.No. 1162 of 2011,dated... reported in [(2024) SCC online SC 130]</u>

> 24.We may firstly discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of theaccused,unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretized when the case ends in acquittal. It is so because once the Trial Court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal.
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> 25.No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to re-appreciate or re-visit the evidence on record. However, the power of the High Court to re-

appreciate the evidence is qualified, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the Trial Court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the Trial Court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the Trial Court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

26.It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The 'two-views theory' has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results in two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of the innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of the innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the Trial Court, in a case of acquittal, is plausible, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eyes of law.

In ***Selvaraj v. State of Karnataka (2015) 10 SCC 230***

"13. Considering the reasons given by the trial court and onappraisalof the evidence, in our considered view, the view taken by the trial court was a possible one. Thus, the High Court should not have interfered with the judgment of acquittal."

7. This Court in ***Jagan M. Seshadriv.State of T.N.[(2002) 9 SCC 639]*** has laid down that as the appreciation of evidence made by the trial court while recording the acquittal is a reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been dealt with by this Court, thus:

"9. …We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been based and to dispel those grounds. It has not done so. Salutary principles while dealing withappealagainst acquittal have been overlooked by the High Court. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the order of acquittal could not have been set aside. The view taken by the learned trial court wasa reasonable viewand even if by any stretch ofimagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of acquittal.””

....

36.So far as the question of independent appreciation of evidence by the High Court is concerned, be it noted that the High Court was fully empowered to do so, but in doing so, it ought to have appreciated the evidencein a thorough manner. In the present case, the High Court has not done so. Even the aspects discussed by the Trial Court have not been fully addressed and the High Court merely relied on a limited set of facts to arrive at a finding. The factors which raised reasonable doubts in the case of the prosecution were ignored by the High Court. For instance, the contradictionspertaining totime, which were carefully analyzed by the Trial Court, were not examined by the High Court at all. Similarly, the contradictionsquathe nature of injuries were also not discussed. In an appeal, as much as in a trial, appreciation of evidence essentially requires a holistic view and not a myopic view. Appreciation of evidence requires sifting and weighing of material facts against each other and a conclusion of guilt could be arrived at only when the entire set of facts, lined together, points towards the only conclusion of guilt. Appreciation of partial evidence is no appreciation at all,and is bound to lead to absurd results. A word of caution in this regard was sounded by this Court in Sanwat Singh v. State of Rajasthan, wherein it was observed thus:

“9. The foregoing discussion yields the following results : (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup case[(1933-34) 61 IA] afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3)the different phraseology used in the judgments of this Court, such as, (i)“substantial and compelling reasons”, (ii)“good and sufficiently cogent reasons”, and (iii)“strong reasons”, are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.”

II. Neeraj Dutta Vs. State of NCLT Delhi, reported in [(2023) SCC online 280].

“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* and in *B. Jayaraj* v. *State of A.P.*[*B. Jayaraj* v. *State of A.P.*, 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.Absenceof proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute suchoffence. 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. It is also fairly well settled that initial presumption of innocence inthe criminal jurisprudence gets doubled by acquittal recorded by the trial court.

27. The relevant paras 7, 8 and 9 of the judgment in *B.Jayaraj* v. *State of A.P.*, (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] read as under: (SCC pp. 58-59)

“7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration, reference may be made to the decision in*C.M. Sharma*v.*State of A.P.*[*C.M. Sharma*v.*State of A.P.*, (2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and*C.M. Girish Babu*v.*CBI*[*C.M. Girish Babu*v.*CBI*, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] .

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same waspursuant toany demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon tocome to the conclusionthat the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused.Infactsuch possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7 of the Prevention of Corruption Act. The above also will be conclusive insofar as the offence under Sections 13(1)(*d*)(*i*) and (*ii*) is concerned as 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 established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(*d*)(*i*) and (*ii*) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary factson the basis ofwhich the legal presumption under Section 20 can be drawn are wholly absent. The abovesaid view taken by this Court fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cell phone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a “possible view” as such the judgment of the High Court is fit to be set aside. Before recording a conviction under the provisions of the Prevention of Corruption Act, the courts have to take utmost care in scanning the evidence. Once a conviction is recorded under the provisions of the Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time, it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record.

8. From the principles of law enunciated in the above decisions, this Court is bound to analyse, re-appreciate and re-visit the evidence and judgment to find out whether the trial Court, while arriving at the decision, had thoroughly appreciated the evidence and given its due consideration to all material pieces of evidence and whether the view taken by the trial court in acquitting the accused is a probable and possible one.

9. As stated above, even assuming that the findings of the trial court lack supporting material, it does not prevent this Court from re-evaluating the evidence on record. This Court has to determine whether the prosecution has established the elements of demand and acceptance of bribe beyond all reasonable doubts, as well as to assess the correctness of the trial court's findings on other aspects, such as the possible and probable views of the case. This court is also reminded that the initial presumption of innocence in criminal jurisprudence gets doubled by the acquittal recorded by the trial court.

10. In this case, while admitting the receipt of the money, it is the defence of the accused that the amount was received believing it to be the

charges towards fixing of additional posts for providing service connection and not as a bribe and that it was also admitted by PW3 the official witness that the money was received only towards charges to be paid by the defacto complainant.

11. Now, again coming to the evidence on record, the evidence of the PW1/S.Ravi the defacto complainant is that he is an employee in the Indian Coast Guard, who purchased a house site in N.G.O. Colony, Sholavaram, in his wife's name. His wife, a teacher at Sholavaram Government Girls Higher Secondary School, applied for an electricity service connection on 29.12.2004. The complainant had come on leave for 26 days and on 17.01.2005 and when he was going along with his wife in a two-wheeler near Karanodai, he had a chance meeting with the accused near a tea shop adjoining Sholavaram Bus Standand and during that time, he had requested the accused to give service connection and he had asked the complainant to pay Rs.600-/ with the office of the TNEB, Sholavaram Section for obtaining a new service connection and then to approach the Assistant Engineer for the relief. Again on 21.1.2005, PW1 had seen the accused Assistant Engineer near Orakkadu Road junction, and he had enquired about the service connection and the accused had

asked the complainant to bring Rs. 3,000/ (Rs.2,000/- for him and Rs.1,000/- for charges for the erecting the electric poles). Being aggrieved at the said attitude of the accused, the complainant had preferred the complaint with the Inspector of Police, Vigilance and Anti-corruption. The said complaint was marked as Ex. P-1. Based on the complaint, PW.7 Tr. Rama Subramanian, the Inspector of Police, Vigilance and Anti-Corruption had registered a case under Ex. P11 First Information Report. For conducting trap proceedings he summoned witnesses PW3 Manzur Hussain and one Kannan from the office of the Director of Rural Development to remain as trap witness. Those two witnesses were introduced to the complainant and the complainant was introduced to those trap witnesses. PW.-7 asked the complainant PW.1 whether he had brought the bribe amount for which the complainant had answered in the affirmative and handed over Rs.2,000/(Rs. 500/x 4) to PW7 the Inspector of Police, Vigilance and Anti-corruption. Thereafter, a mock phenolphthalein test was demonstrated in the presence of the witnesses and after demonstration, the contents were destroyed immediately. The significance and importance of the trap were explained by PW7 to the witnesses. Thereafter the bribe amount with serial numbers of the currency notes were recorded in Ex. P-2 Entrustment

Mahazar in the presence of the trap witnesses and the same was handed over to PW.1 the complainant with instruction to hand over the bribe money only when the accused demands the same. PW3 The trap witness Tr. Manzur Hussain was asked to accompany PW.1 the complainant to the office of the accused Assistant Engineer, Sholavaram Section and watch the transaction from close quarters. | Accordingly PW1 the complainant, PW3, the trap witness Manzur Hussain went along with PW7 the Inspector of Police, Vigilance and Anti-Corruption in their vehicle by afternoon by 2.00 pm and reached the office of the Assistant Executive Engineer, Military Road, T.N.E.B. PW.1/the complainant and PW3/ the trap witness Tr. Manzur Hussain alone went to the office of the accused and others waited outside. The accused was engaged in an official meeting. PW4, who was the wireman/ office assistant went inside the meeting hall and brought the accused. On seeing PW.1/ the complainant, the accused had sought whether he had brought the money with him. PW.1 the complainant informed the accused that he had brought the amount and handed over Rs.2000/- to him and he accepted the same. Thereafter, the accused went inside the room where the meeting was taking place. Immediately, the complainant came out of the office and gave the signal to the waiting vigilance party. Again PW.4 the women O.A. was asked to bring the accused Assistant Engineer, This time, when the accused came out of the meeting hall, PW.1 the complainant identified the accused to PW.7 the Inspector of Police and told him that he had paid him Rs.2,000/-. Later he was asked to stay outside.

12. PW2 is the officer, who had accorded the sanction to prosecute the Accused. He had deposed that while he was serving as the Superintendent Engineer, he had perused the F.I.R. and statement of witnesses and being satisfied that the prima facie of corruption was made out against the accused, he had granted sanction to prosecute the accused under Ex. P3 sanction order.

13. PW3/Manzur Hussain, is the official witness for the trap .He had deposed that he was directed by his superior to report to the Vigilance and Anti-corruption office in Chennai City-1 detachment on 24.1.2005. Alongside witness Kannan, they were introduced to PW.7, the Inspector of Police, who read the complaint and FIR to them. He had deposed about the mock phenolphthalein test and that the complainant S.Ravi was asked to hand over the money to the appellant only on his

demand and he was asked to accompany PW1 and observe the transaction from close quarters. They had left the Vigilance and Anti-corruption, Chennai City-I Detachment office by 2.00 pm and reached the office of the Assistant Executive Engineer, Military Road, Avadi by around 4.00 pm. He had further deposed that there was a meeting taking place in the office of the Assistant Executive Engineer at Avadi and thereby PW.4 Office Assistant was asked to bring the accused outside. On seeing PW.1, the accused asked him whether PW.1 complainant had brought the money. PW.1 answered in affirmative and handed over Rs. 2,000/- to the accused. The accused obtained it by his right hand and kept it in the left side pocket of his shirt and at that time, the accused had informed the complainant that if the work order was passed, he would pay the amount towards the payment of the work order. PW1, who came out from the office gave the signal to the waiting party. Thereupon, PW7 entered into the office of the accused. PW1 identified the accused and thereafter, PW1 was asked to wait outside. Then, PW7 introduced him and his team to the accused and after asking the accused to sit, prepared sodium carbonate solution and asked the accused to dip his hand and the solution turned pink. The accused was asked about the bribe amount and he admitted the same. The shirt of the accused was also tested for phenolphthalein. The bottle containing sodium carbonate solution which was used to identify the phenolphthalein was sealed separately (M.O.2 to M.O.4). The M.O.1 bribe money was seized from the pocket of the accused and Ex. P-4 seizure mahazar was prepared. In the said mahazar, he and another official witness and PW.1 the complainant S.Ravi had affixed their signatures. The amount of Rs.2,000/- (Rs. 500/- x 4) marked as M.O.1 series entrusted under Ex P2 entrustment mahazar to PW1 the complainant coated with phenolphthalein powder at the office of the vigilance and anti-corruption was recovered after the trap from the accused in the presence of him and one Kannan and PW7 also prepared rough sketch under Ex. P-12.

14. PW.4, Tmt.Mary had deposed that she was working as a Wireman at Avadi TNEB Office and the accused Mohanarangam was serving as Assistant Engineer. On 24.1.2005 when a meeting was proceeding, a boy came and asked for the accused and PW4 Mary brought out the accused. The accused came out and went to the meeting and again the complainant came back and wanted the appellant to come out. This time, when PW4 Mary brought the accused outside the meeting hall, PW1 complainant came along with PW7, who had arrested the accused.

15. PW5 Tr.Seenu, the then Commercial Assistant of Sholavaram TNEB, in his evidence, had deposed that on 29.12.2004, one Dhanalakshmi gave an application to the accused seeking service connection and the accused initialed the application and directed PW5 to collect the registration charge of Rs.50/- and he collected the same. The application of the said Dhanalakshmi was registered in a register and an endorsement was made on her application. Then PW5 prepared the rough sketch and estimate for the service connection and sent the same to the accused on 7.1.2005 for necessary sanction. Then the accused re-sent the same to the Assistant Divisional Engineer. On 12.1.2005 a sanction extension time was given. An advice slip for Rs.600/- was enclosed with the application of the said Dhanalakshmi. She had accordingly paid the same. After payment of Rs.600/- PW5, prepared the estimation card and issued the same after obtaining a signature from the Assistant Executive Engineer. The usual procedures followed by the T.N.E.B. Officials were clarified from PW5 by the Inspector of Police, Vigilance and Anti-Corruption. The application given by Mrs. Dhanalakshmi was marked as Ex.P5. The Chalan for Rs.50/- is marked as Ex. P6. The scheme report, rough sketch, estimation card etc., are marked as Ex. P-7. Advice slip for

Rs.600/- with receipt was marked as Ex. P-8. The application for work order and other connected papers are marked as Ex. P-9 series.

16. PW6 Tmt.Maria Selvi Rosy, Scientific Assistant, Forensic Science Laboratory, Chennai had in her evidence deposed regarding the test conducted in the forensic science laboratory. She stated that she had analyzed the sodium carbonate solutions in M.O.2 to M.O.4 seized in the trap proceedings sent from the Chief Judicial Magistrate Court, Chengalpattu wherein it was mentioned that the solutions obtained from the shirt pocket of the accused and the hand wash of the left and right hands separately. All the three bottles under M.O.2 to M.O.4 were tested for phenolphthalein and phenolphthalein was found in the said solutions. The chemical report from the Forensic Science Laboratory was marked as Ex. P-10.

17. PW7 is the Trap Laying Officer. He had deposed about the complaint given by PW1, registration of F.I.R, conducting of trap proceedings, arrest of the accused, seizure of bribe money, M.O 4 series and other material objects M.O 1 to M.O 3. He had deposed about arresting the accused, conducting the house search of the accused,

remanding the accused to judicial custody and handing over the file to PW8 for investigation.

18. PW8 the Inspector of Police, Vigilance and Anti-corruption examined the witnesses and applied for necessary sanctions with PW2 Thiru.Santhanakrishnan the then Superintending Engineer, Thirumangalam, Chennai. Thereafter PW8 examined the witnesses recorded their statements and laid the charge sheet.

19. Analysis of evidence:

19.1. Admittedly, PW1 had purchased a house in his wife's name and applied for an electricity connection on 29.12.2004. He returned from work on holiday for 26 days commencing from 10.01.2005. It is the case of PW1 that on 17.01.2005, while he was going along with his wife in his two-wheeler, he had a chance of meeting the accused and the accused was identified by his wife and that PW1 had inquired about the pending electricity connection and the accused advised him to pay Rs.600/- based on an advice slip. On 22.01.2005, at 5.00 pm, PW1 again met the accused, who allegedly demanded Rs.2000/- as illegal gratification. According to PW1's complaint (Ex.P1), he alleged that the accused demanded Rs.2000/- as bribe to process his electricity connection application for his house in Sholavaram Village. In cross-examination, PW1 admitted to have met the accused twice during office hours outside the office premises. PW1 has stated that the work had not commenced and the accused had indicated that it would start only after receiving payment. Additionally, PW1 acknowledged depositing a further Rs.600/- based on the instructions of the accused.

19.2. The defence of the accused is that the house of the complainant is far from the last electric post, requiring new posts for electricity connection for which the consumer has to pay additional charges and that the money was accepted under the belief it was for the cost of erecting the posts and that it was not received as a bribe. It is also the case of the accused that PW1 called him when he was attending an official meeting and when he came out of the meeting, the complainant had thrust money into his hands and he, believing that it was payment for the electric posts, had received the same and assured the complainant that it would be paid to E.B office once the work order was issued and saying so he had gone back to the meeting and once again he was called out of the meeting and he was enquired by the police about the money and he had handed over the money and subsequently, a phenolphthalein test was conducted.

19.3. It is clear from the evidence of PW1, that he had come to his village on holidays for 26 days, commencing from 10.01.2005. He met the accused for the first time on 17.01.2005 at a tea shop near Sholavaram Bus Stop. He met the accused for the second time near Orakadu Junction. On both occasions, he had met the accused outside the office. It is an admitted case that the complainant had to pay Rs.1000/- for the work order. It is also the case of PW1 that the accused had demanded Rs.2000/-. However, according to the prosecution, PW1 had handed over only Rs.2000/- to the accused on 24.01.2005, i.e., on the day of the trap at the office of the Assistant Executive Engineer at Avadi and not at the office of the accused. The claim that he met the accused at two different places, the tea shop, and Orakadu Junction are only chance meetings and they also seem to be doubtful. Additionally, it is the admitted case of PW1 that he had come on a short holiday, and thereby, the case of the defence that he was desperate to get an electricity connection at any cost before his leave period also cannot be brushed aside. The trial court, after observing his demeanour and how he had deposed, found him to be an unreliable witness.

19.4. Now moving on to the evidence of PW3, the official trap witness, he corroborated the evidence of PW1 regarding the preparation of the entrustment mahazar and the handing over of the phenolphthalein-coated cash of Rs.2000/- to PW1 for handing over the same to the accused. In his cross-examination, he had stated that the accused, upon seeing PW1, asked if he had brought the money and, after seeing the money, he told PW1 that once the work order was received, he would pay the amount at the Electricity Board Office. However, during the chief examination, he did not state that the accused had demanded money as a bribe. PW3 had also admitted that the accused was attending the meeting at the office and he, on being called, came out of the meeting. He also admitted that when the accused came out of the meeting, PW1 had thrusted the money into the hands of the accused and directed him to pay the amount after the receipt of the sanction order. The relevant portion is extracted hereunder;

In chief examination,

> **"அ.சா.2டம் எதிரி ஒர்க் ஆர்டர் வந்ததும், ஈ.பி.ஆபிஸ் செலுத்த வேண்டிய பணத்தை செலுத்தி விடுவதாக சொன்னார்."**

In cross examination,

அ.சா.2 எதிரியிடம் பணத்தை திணித்து விட்டு செங்உடின் ஆர்டர் வந்த உடன் நீங்களே கட்டிவிடுங்கள் என்று தான் கொடுத்தார்"

19.5. Further, it is also clear from the evidence that when the trap-laying officer asked for money, the accused/respondent took out the money from his pocket and handed it over to the trap-laying officer, after which the phenolphthalein test was conducted. It is the case of PW7 that on enquiry the accused had handed over the money to him.

19.6. Now, turning to the evidence of PW4, who works as a wireman in the EB office. She had stated that on 24.01.2005 at 2:00 pm, during a meeting of Assistant Engineers, a boy came to the office and asked her to call the accused. She informed the accused, who came out of the meeting and spoke with the boy before returning to the meeting. Later, the boy again requested to speak with the accused, and she informed him again. When the accused came out of the meeting for the second time, the police had arrested him. She later came to know that the accused was arrested by the police in a corruption case. In cross-examination, she reiterated the same.

20. After a careful analysis of the evidence of PW1, PW3, and PW4, there are lot of suspicion regarding the demand and acceptance of bribe money by the accused. The categorical evidence of PW3 that when the accused came out of the office, PW1 had thrust the money into his hands, and at that time, the accused/respondent had accepted the money stating that the amount would be paid as soon as the work order is received from the EB Office.

21. According to PW4's evidence, the accused only came out of the meeting and spoke with the defacto complainant due to compulsion, as he was in a hurry to return to the meeting. PW5's evidence also proves that PW1 had to pay for the installation of electric posts to give an electricity connection to the defacto complainant's house.

22. Upon considering the entire evidence, the case of the prosecution is not clear regarding whether the money handed over to the accused was for illegal gratification or for the cost of installing additional electric posts for the defacto complainant's house. Additionally, PW3's evidence regarding the recovery of money and the phenolphthalein test conducted on the accused is also unclear. As per PW3's testimony, the

accused was asked to take out the money from his pocket before the phenolphthalein test was conducted. As stated above, the conduct and manner in which the accused handed over the money to the Inspector of Police immediately on enquiry also does not raise suspicion. If the money had been received as illegal gratification, the accused would have behaved nervously, frightened or perplexed, but no such behavior was reported by the witnesses. The accused, when questioned by the Inspector of Police, is said to have handed over the money without any hesitation. There are material contradictions in the evidence of PW1 and PW3, as evident from PW3's evidence indicating that the accused received the money from PW1 believing that it was for installing electric posts.

23. Although there is no clarity in the trial court's findings on the admission regarding thrusting of the amount into the hands of the accused whether it was by PW1 or PW3, the fact remains that the accused had come out of the office and he had received the same believing it to be towards charges for additional posts. this court finds that the demand has not been proven by the prosecution beyond a reasonable doubt. To establish charges under Sections 7 and 13(1)(d) of

the Prevention of Corruption Act, it is a well-established legal principle that the demand for illegal gratification is essential. Mere recovery of currency notes is insufficient to constitute an offence under Section 7 unless it is proven beyond all reasonable doubts that the accused had accepted the money voluntarily, knowing it to be a bribe. Furthermore, the presumption under Section 20 of the Prevention of Corruption Act can only be invoked after the demand and acceptance of illegal gratification have been proved. Despite the trial court's incorrect findings leading to the acquittal of the accused, this court finds that the prosecution has failed to prove its case beyond a reasonable doubt. It is also a well-settled principle in criminal jurisprudence that the initial presumption of innocence is strengthened by an acquittal recorded by the trial court.

24. Upon perusal of records and submissions made by the learned counsel appearing for the parties concerned and considering the cumulative analysis by this Court in the preceding paragraphs, this Court concludes as follows.

25. Conclusion:

There are material inconsistencies in the testimonies of key witnesses, particularly PW1 and PW3, regarding the circumstances of the alleged bribery. PW1's statement of the meetings with the accused and the handing over of money contradicts PW3's version, which proves that the accused received the money innocently believing it to be towards charges for additional posts. Further, the prosecution has failed to conclusively prove that the money handed over to the accused was intended as a bribe. There is uncertainty as to whether the amount was meant for illegal gratification or towards legitimate expenses related to the erection of additional electric posts. The absence of clear evidence of a demand for a bribe further weakens the case against the accused.

26. In criminal cases, the presumption of innocence prevails unless guilt is proven beyond a reasonable doubt. Given the doubts and inconsistencies in the evidence presented by the prosecution, this Court finds that the charges under Section 7 and 13(1)(d) of the Prevention of Corruption Act have not been conclusively proved by the prosecution against the appellant. This court acknowledges that there is an error in the trial court's findings with regard to the admission of thrusting of

money by PW1, however, as stated above, the admission is only by PW3. Other than that, the view taken by the trial court is a possible and probable view. Further, the trial court which had seen the demeanour of the witnesses and found that both the pre-trap meetings were chance meetings and had not believed the complainant. As stated above, the demand has not been proved and there is no evidence to show that the accused had accepted/received the money knowing it to be bribe. This court does not find any illegality or perversity in the findings or the judgment of the trial court.

Result

27. In view ofthe above discussions, this court does not find any merit in the Criminal Appeal and thereby it fails. Accordingly, the Criminal Appeal filed by the State is dismissed.

12.03.2024

Internet: Yes/No
Index :Yes/No
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To

1. Chief Judicial Magistrate,
   Tiruvallur.

2. The Inspector of Police,
   Vigilance and Anti-Corruption
   Chennai City-I Detachment,
   Chennai-28.

3. The Public Prosecutor,
   High Court,
   Madras.

A.D.JAGADISH CHANDIRA, J.

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Criminal Appeal No.273 of 2013

12.03.2024