IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.03.2024

Coram

The Honourable Mr. Justice A.D.JAGADISH CHANDIRA

Crl.A.No.344 of 2013

J.Thiyagarajan ... Appellant/Accused

Vs.

State, represented by the
Inspector of Police,
Vigilance and Anti-Corruption,
Kancheepuram,
(Crime No.8/AC/2000/KM) ...
Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr. P.C, to set aside the conviction and sentence passed by the learned Chief Judicial Magistrate, Chengalpattu District, by judgment dated 17.04.2013 in Special Case No.9 of 2001.

For Appellant : Mr.K.Shanker

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

JUDGMENT

Challenging the judgment of conviction and sentence rendered by the learned Chief Judicial Magistrate, Chengalpattu District, on 17.04.2013 made in Special Case No.9 of 2001, the appellant has filed the present Criminal Appeal.

2. The appellant viz., Thiyagarajan, was working as the Revenue Inspector, Chengalpattu, in the office of the Tahsildar, Chengalpattu and he is a public servant under Section 2(c) of the Prevention of Corruption Act, 1988.

3. The trial Court, having found the accused guilty of the offence punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, had convicted him and the sentence imposed upon the appellant/accused is as under:-

Under Section	Sentence
13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	One year of rigorous imprisonment and a fine of Rs.1000/-, in default, to undergo one month simple imprisonment.
The sentences shall run concurrently.	

No separate punishment was imposed under Sec 7 of the P.C. Act as per the provisions of Sec 71 of I.P.C.

The facts of the case:

4.1. P.W.2-defacto complainant, and 29 families (total 30 families) have been residing for the past 12 years on the land measuring 1 Acre 20 Cents, comprised in Survey No.69 in Alapakkam Village, Chengalpattu Taluk, Kancheepuram District, known as Nethaji Subash Nagar, situated near the compound wall of Chengalpattu Government College and Hospital, under the impression that the land is Government Porampoke land. They had secured electricity supply and water connections to their residences. The office bearers of Nethaji Subash Nagar Residential Welfare Association, P.V.Kalathur Road, Chengalpattu District, had approached the office of the Tahsildar, Chengalpattu, on behalf of the residents seeking issuance of Patta for the Survey No.69 and at that time only they came to know that the said land was already allotted to the Government for construction of Chengalpattu Medical college and hospital about 20 years ago.

4.2. In such circumstance, the members of Nethaji Subash Nagar Residential Welfare Association had prepared Ex.P2-petition and had approached the Tahildar, Chengalpattu, on 24.07.2000 for issuance of patta in their favour. The Tahsildar had endorsed "for enquiry and report" and instructed P.W.2, viz., Venkatesan, defacto complainant to hand over the same to the appellant/accused for further action.

4.3. Pursuant to the same, on 05.08.2000, P.W.2 and five other residents handed over the petition to the appellant/accused, the Revenue Inspector, requesting him to process the petition. At that time, the appellant demanded an amount of Rs. 1,00,000/- as a bribe for initiating action on the petition. After 10 days, PW2, along with Jeyavel, Vedhachalam, Varadharajan and the other members of the Association, had met the appellant at his residence at Chenglapattu at about 8:00 hours and had also informed him that they were unable to pay Rs.1,00,000/- and during that time, the appellant had directed them to pay at least Rs.50,000/- for taking action on the petition. On 17.08.2000 at about 8.30 a.m, when P.W.2 along with Jeyavel, Vedhachalam, Varadharajan and others had met the appellant at his house and expressed their inability to pay the earlier demand of Rs.50,000/-, the accused had reduced his demand to Rs.25,000/- and asked them to pay the above said demanded amount in two installments, by paying Rs.12,000/- on 18.08.2000 at 7:30 hours at his house and the balance amount of Rs.13,000/- to be paid within a period of 10 days later.

4.4. As P.W.2 and other residents who were members of the association were not inclined to pay the bribe amount to the appellant/accused, they had on 17.08.2000 at about 5.30 p.m., preferred a written complaint-Ex.P3 to the Inspector of Police, Vigilance and Anti Corruption, Kancheepuram.

4.5. P.W.8, viz.,Thiru. Jeyabalan, Trap Laying Officer (TLO), on receipt of Ex.P3-complaint, had conducted an enquiry, based on which, he had registered Ex.P4-First Information Report in Crime No.8/AC/2000/KM under Section 7 of Prevention of Corruption Act, 1988.

4.6. Thereafter P.W.8-TLO had sent a requisition in writing to the Assistant Commissioner of Hindu Religious and Charitable Endowment Department, Kancheepuram and the District Social Welfare Department, Kancheepuram, separately seeking to send officers to assist him in conducting a trap.

4.7. As requested by P.W.8-TLO, Thiru.C.Thanthoni(P.W.3), Assistant, from District Social Welfare Office and Thiru.K. Dheenadayalan, Junior Assistant, from the Hindu Religious and Charitable Endowment Department, Kancheepuram, reported before P.W.8 at about 7.00p.m., P.W.8 had introduced himself to the witnesses and then he introduced P.W.2-defacto complainant to the said official witnesses. Thereafter, he handed over the Complaint and the First Information Report to the official witnesses for perusal to get acquainted with the facts and had asked P.W.2 about the bribe amount.

4.8. Thereafter P.W.2 had handed over the bribe amount, M.O.1 Currency notes Rs 12,000/- (24 notes of Rs 500/- denomination) to P.W.8. Immediately, P.W.8. instructed the Official witnesses to count the same and note down the denomination and serial number of the notes. P.W.8 conducted a mock phenolphthalein test in the presence of P.W.2 and the official witnesses and after smearing the notes with phenolphthalein, he had prepared Ex.P5-Entrustment Mahazar at 07.00pm and obtained the signatures of P.W 2 and the official witnesses in it and he explained the significance of the phenolphthalein test and the trap proceedings to them and instructed P.W3 to accompany P.W.2 to the house of the appellant and closely watch the proceedings and conversations between P.W.2 and the appellant and after handing over M.O.1 the bribe amount to P.W.2, he had instructed him to tender the same only on demand by the appellant and had instructed P.W.2 to give a pre-arranged signal upon receipt of the money. Since it was late in the evening, the trap was scheduled for the next day.

4.9. On 18.08.2000, at about 6.00 a.m., P.W.8 along with his team, official witnesses, and P.W.2, proceeded from Kancheepuram to the appellant's residence in Chengalpattu. They dropped P.W.2 and P.W.3 near the appellant's residence at 07:40 a.m. Both entered the appellant's house at about 7:50 a.m. After the appellant demanded and accepted the bribe amount, P.W.2 and P.W.3 came out of the house, signaled as instructed by P.W.8, and the other official witnesses, including Dheenadayalan, P.W.8-TLO, and the trap team, entered the appellant's residence. P.W.2 identified the accused, who admitted to receiving Rs. 12,000/- (24 x Rs. 500/-) as a bribe from P.W.2.

4.10.Thereafter, P.W.8 had instructed P.W.2 to exit the house of the accused and prepared Sodium Carbonate solution in two glass tumblers and instructed the appellant/accused to dip the fingers of both the hands into the solutions. The colour of the solutions kept in two glass tumblers turned into a light pink colour. When P.W.8 enquired the accused, he had admitted to having received the bribe amount and took him to a room situated on the western side of the Hall of his house and took the bribe money from a blue colour tray in the 3rd slab down in the Cement Slab without having door facing East Side and handed over the same to P.W.8. P.W 8 instructed the official witnesses to compare the serial numbers of the currency notes with those in the Entrustment Mahazar, and it tallied.

4.11. When PW.8 enquired the accused about the Petition Ex.P2 given by P.W.2 and the other residents of Nethaji Subash Nagar Residents Welfare Association on 5.8.2000 to the Thasildar, the accused took it from his blue-colored handbag and handed over the petition (two typed papers in Tamil). Then P.W.8 transferred the solutions into two clean glass bottles, sealed them, and affixed labels, which were marked as M.O.2 and M.O.3 and recovered them for investigation of this case. He also recovered (M.O.1) the amount of Rs.12,000/- which was handed over by the accused, (Ex P2) the petition given by the Members of the Nethaji Subash Nagar Residents Welfare Association and (M.O.4) the blue colour handbag for investigation in this case. On the same day, between 7:50 am and 8:50 a.m., P.W.8 had prepared Ex.P.6 Seizure Mahazar and had also prepared Ex.P11-Rough Sketch in the presence of the official witnesses and obtained their signatures and after sending prior intimation to the Chief Judicial Magistrate, Chengalpattu, he had conducted the house search of the appellant/accused, however, no incriminating material was recovered during the search. P.W.8 after enquiring the accused, produced him for remand before the Chief Judicial Magistrate on the same day and had also sent all the documents seized by him to the Court through Form-95. P.W.8, after completing his preliminary investigation, had handed over the file to P.W.9, viz., Thiru.R. Vedarathinam for the continuation of further investigation.

4.12. PW9-Thiru R.Vedarathinam, on receipt of file relating to Crime.No. 8/2000 had commenced further investigation on 18.08.2000, visited the scene of occurrence and examined witnesses P.W.2 to P.W.8 on various dates and recorded their statements individually.

4.13. P.W.9, after obtaining Ex.P1 sanction to prosecute the accused, on 06.10.2000, he had examined P.W.1, viz., K. Sankaran, the sanctioning authority, and recorded his statement. After completion of the investigation, P.W.9 filed the final report against the accused before the trial Court on 6.11.2001 for offences under Sections 7 and 13(2) read with 13(1) (d) of the Prevention of Corruption Act 1988.

5. To prove the above charges against the accused, the prosecution examined PW1 to PW9 and marked Ex.P.1 to Ex.P.12 and M.O.1 to M.O.4. Other than marking Ex. D1 and Ex.D2 no oral evidence was let in by way of defence on the side of the accused.

6. After completion of evidence on the side of the prosecution, when the accused was questioned about the incriminating materials under Section 313 (1)(b) of Cr.P.C., he denied the charges.

7. The trial Court, after hearing the arguments on both sides, found the appellant/accused guilty and convicted him for the offence punishable under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 alone and sentenced him to undergo imprisonment as stated above. Challenging the said conviction and sentence, the appellant had filed the present criminal appeal.

8.1.Mr.K.Shanker, learned counsel appearing for the appellant/accused, took this Court through the evidence on record in entirety and assailed the impugned judgment of conviction and sentence and made the following submissions:

(i)The appellant/accused was charged for the offence under Sections 7 and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, for having demanded and accepted illegal gratification from P.W.2-defacto complainant. The law on this issue is well settled that the demand for illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable unless there is evidence to prove payment of a bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence about demand and acceptance of the amount as illegal gratification.

(ii)The entire prosecution case is a foisted one based on a false complaint a staged trap had been conducted. Admittedly, P.W.2 and the Members of the Association are encroachers of the Government Land, which had already been acquired for the construction of Government Medical

College and Hospital in the year 1966 itself. When such being the position, there is no possibility of granting patta to the said land and since the appellant/accused was against the grant of patta to them, P.W.2 and the Members of the Association had admittedly nurtured enmity with him and thereby, to displace him from the seat had given a false complaint.

(iii)The alleged pre-trap demands and the demand on the day of the trap have not been proved by the prosecution beyond reasonable doubt. The first demand was stated to be made on 05.08.2000, and the complaint was preferred only on 17.08.2000 after 12 days and no explanation has been offered either by P.W.2 or the prosecution for delay in giving the complaint. Though it is alleged by P.W.2 that there were three earlier demands by the accused in the presence of office bearers and 10 other members of the Association, the non-examination of the said members of the Association belies the evidence of P.W.2 regarding pre-trap demands and the material contradictions in the evidence of PW2 and PW3 about the demand of money on the day of trap and handling of the same by the accused creates doubt about the demands as claimed by the prosecution. P.W.5, who is also examined to prove the demand, has admitted that he does not know about the demand directly and he is only a hearsay witness.

(iv)The application for grant of patta Ex.P2 is said to have been preferred by the Netaji Subash Nagar Kudiyiruppu Nala Sangam and the alleged bribe money of Rs.12,000/- is said to have been given from the common fund of the Association and in such situation, the non-examination of the office bearers of the association creates doubt in the prosecution case.

(v)Material contradictions in the evidence of PW2, PW3, and PW8 regarding the preparation of the Entrustment Mahazar (Ex.P5) on 17.08.2000, the handling of M.O.1 (tainted money) by PW2, and the subsequent events including the staying of PW2, PW3, and other official witnesses at the DVAC office in Kanchipuram overnight, as well as the occurrences leading up to the alleged trap on 18.08.2000 create significant doubt about the entire prosecution case concerning the trap.

(vi) It is the admitted case of PW3, the official shadow witness, that immediately upon a pre-arranged signal made by PW2, the TLO-PW8 had entered the accused's house, seized both of the accused's hands, and restrained him from moving. There are doubts regarding the manner and location from which the tainted money was recovered, as well as the subsequent phenolphthalein test. Additionally, the possibility that PW8 might have smeared phenolphthalein on the accused's hands cannot be ruled out.

(vii)The trap is said to have been conducted at the accused's residence, and thereby, the non-examination of either the neighbours or the persons in the locality also creates doubt in the prosecution case.

(viii) Non-compliance of Rule 49 of the DVAC Manual and the discrepancies in Ex.P11-Rough Sketch regarding the place from which the recovery of tainted money is made and the delay in sending Ex P11 to court coupled with the other circumstances create grave doubt in the entire prosecution case and also creates doubt about the presence of PW2 during the trap.

(ix)The Trial Court had failed to take into consideration the evidence of P.W.5, where he had spoken about previous enmity between the accused and the members of the Association, and he had also admitted that the accused had scolded them saying that the Members of the Association will not get patta and this aspect would go to show that there was enmity between the appellant/accused and P.W.2 and other Members of the Association, which was the motive and basis for giving a false complaint.

(x) Ex.P1-sanction accorded by P.W.2 is without application of mind and thereby is invalid.

(xi) Though a burden rests on the accused to rebut the statutory presumption raised under Section 20 of the 1988 Act, the money was accepted by him, other than as a motive or reward as referred to under Section 7 of 1988 Act, the prosecution is bound to prove the foundational facts and the court while invoking the provisions of Section 20 of the Act, is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubts and in this case, the accused by marking Ex.D1 and Ex.D2, had proved that the lands for which patta was sought for were acquired by the government and thereby, patta could not be issued for the same and the explanation offered by the appellant is reasonable and probable. In the case on hand, the prosecution has miserably failed to prove its case beyond reasonable doubt and there are several infirmities, material contradictions and discrepancies in the prosecution case making the substantial evidence doubtful and unreliable and the trial Court without properly analysing and appreciating the evidence on record, erroneously found the accused guilty and had wrongly convicted the appellant. He would thereby seeks to set aside the judgment of conviction and sentence.

8.2.In support of his submissions, the learned counsel has relied on the following decisions.

(i)C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, ((2009) 3 SCC 779);

(ii)B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., ((2014) 13 SCC 55);

(iii)P. Sathyanarayana Murthy Vs State of A.P reported in ((2015)10 SCC 152);

(iv)K.Shanthamma Vs. State of Telengana ((2022) 4 SCC 574);

(v)Neeraj Dutta Vs State(NCT of Delhi) in ((2023)4 SCC);

(vi)M.Rajendran Vs. State ((2011(1) MWN (Crl) 602);

(vii)N.Thangarajuly and another Vs. State (2001 (1) MLJ (Crl) 1050);

(viii)A.V.Vijayarangan and others Vs. State (2010 (1) MLJ 541);

(ix)(D.Dass, Inspector of Police, Cuddalore Vs. State (2010 (2) MLJ(Crl) 225);

(x)State of Kerala and another Vs. C.P. Rao (2011 (6) SCC 450);

(xi)G.V.Nanjundiah Vs. State (Delhi Administration) ((1987) Supp SCC 266).

9.1.Per contra, Mr.S.Santhosh, the learned Government Advocate(Criminal Side) appearing for the State, would submit that on 18.08.2000, the appellant/accused, in the presence of P.W.2 and P.W.3, demanded and accepted the bribe amount. The phenolphthalein test conducted on the fingers of both the hands of the accused also turned positive. Additionally, the evidence of P.W.2 and P.W.3 would prove the demand and the evidence of P.W.3 and P.W.4 would prove the receipt of money. He would further submit that P.W.7-Scientific Analyst had proved that the solutions in M.O.2 and M.O.3 contained phenolphthalein and Sodium Carbonate, establishing the recovery of tainted money. He would further submit that as far as the question of delay is concerned the first demand made by the appellant was on 05.08.2000 and subsequently, the amount was reduced after 10 days from Rs.1,00,000/- to Rs.50,000/- and subsequently, it was reduced to Rs.25,000/- which the accused agreed to pay in two instalments and thereby there was a delay in preferring the complaint which has been explained. He would further submit though the accused does not have any authority to issue patta, as per Section 7 of the Prevention of Corruption Act, 1988, the delivery of results is irrelevant to the offence being established and mere 'obtaining', 'accepting' or 'attempting to obtain any undue advantage with the intention to act or forbear from acting in a certain way is sufficient to complete the offence and the act for which the bribe is given does not need to be performed.

9.2.As per explanation (d) of Section 7 of the Prevention of

Corruption Act, a person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression. He would reiterate that it is sufficient to prove that the accused had demanded and accepted the illegal gratification, regardless of whether he had the authority to perform the act for which the bribe was received.

9.3. He would further submit that the prosecution, by examining P.W.2 and P.W.3, had proved the demand, acceptance and recovery by P.W.8. The evidence of P.W.8-Trap Laying Officer has proved the entire case of the prosecution and the trial Court is right in convicting the accused under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, and no interference is required.

9.4. In support of his contention, the learned Government Advocate (Criminal Side) had relied on the Constitutional Bench judgment of the Apex Court in ***Sita Soren Vs. Union of India (2024 INSC 161)(Criminal Appeal No.451 of 2019 dated 04.03.2024)*** and ***Syed Ahmed Vs. The state of Karnataka reported in (2012 (2) Supreme Court Cases 527)***.

10.In reply, Mr.K.Shanker, learned counsel for the appellant/

accused would submit that it is the case of the accused in defence that he was totally against the grant of patta in favour of P.W.2 and the Members of the Association, who were encroachers on a Government land and fearing that they may not be able to get patta if the appellant remained in office, had attempted to remove him by foisting a false complaint and the accused by filing his statement in defence and marking Ex.D1 and Ex.D2 proved that the land was acquired by the government and that the complainant parties were encroachers in the land. He would further submit that the cumulative analysis of the entire evidence on record would prove the same whereas the trial Court without properly analyzing the case on record, has found the accused guilty and erroneously convicted him. He would also submit that as the entire case of the prosecution is shrouded with suspicion, the accused should be given the benefit of the doubt.

11.Heard Mr.K.Shanker, learned counsel appearing for the appellant and Mr.S.Santhosh, learned Government Advocate(Criminal Side) appearing for the respondent and perused the materials available on record.

12.Now what has to be seen is (i) whether the prosecution has proved its case of demand, acceptance and recovery beyond reasonable doubt and if so, (ii)whether the accused had rebutted the presumption under Section 20 of the Prevention of Corruption Act, 1988 and (iii) whether the trial court has properly analysed the evidence on record.

13. At the outset, it is the defence of the appellant/accused that he does not have the authority to issue patta and that P.W.2 and the Members of the Association, who are encroachers on the Government land, harbored enmity towards him since he was against granting them patta and thereby, they had given a false complaint.

14. Before delving into the factual aspects, this Court has to analyse the legal aspect whether the offence under Section 7 of the Prevention of Corruption Act, 1988, would apply if the petitioner is unable to do an official act or not. The Hon'ble Apex Court in Sita Soren Vs. Union of India (2024 INSC 161)(Criminal Appeal No.451 of 2019 dated 04.03.2024) has answered the same and it is relevant to extract paragraphs 117 to 122 which reads thus:

> *"117. Under Section 7 of the PC Act, the mere "obtaining", "accepting" or "attempting" to obtain an undue advantage*

with the intention to act or forbear from acting in a certain way is sufficient to complete the offence. It is not necessary that the act for which the bribe is given be actually performed. The first explanation to the provision further strengthens such an interpretation when it expressly states that the "obtaining, accepting, or attempting" to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by a public servant has not been improper. Therefore, the offence of a public servant being bribed is pegged to receiving or agreeing to receive the undue advantage and not the actual performance of the act for which the undue advantage is obtained.

118. It is trite law that illustrations appended to a section are of value and relevance in construing the text of a statutory provision and they should not be readily rejected as repugnant to the section.58 The illustration to the first explanation aids us in construing the provision to mean that the offence of bribery crystallizes on the exchange of the bribe and does not require the actual performance of the act. It provides a situation where "A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section." It is clear that regardless of whether S actually processes the ration card application on time, the offence of bribery is made out. Similarly, in the formulation of a legislator accepting a bribe, *it does not matter whether she votes in the agreed direction or votes at all. At the point in time when she accepts the bribe, the offence of bribery is complete.*

119. Even prior to the amendment to the PC Act in 2017, Section 7 expressly delinked the offence of bribery from the actual performance of the act for which the undue advantage is received. The provision read as follows:

> ***"7. Public servant taking gratification other than legal remuneration in respect of an official act.***—
> *Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to seven years*

and shall also be liable to fine.

Explanations. —

…

(d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression. …"

(emphasis supplied)

120. The unamended text of Section 7 of the PC Act also indicates that the act of "accepting", "obtaining", "agreeing to accept" or "agreeing to obtain" illegal gratification is a sufficient condition. The act for which the bribe is given does not need to be actually performed. This was further clarified by Explanation (d) to the provision. In explaining the phrase 'a motive or reward for doing', it was made clear that the person receiving the gratification does not need to intend to or be in a position to do or not do the act or omission for which the motive/reward is received.

121. In ***Chaturdas Bhagwandas Patel v. State of Gujarat*** *a two-judge Bench of this Court reiterated that to constitute the offence of bribery, a public servant using his official position to extract illegal gratification is a sufficient condition. It is not necessary in such a case for the Court to consider whether the public servant intended to actually perform any official act of favour or disfavour. In the facts of the case, the* *public servant induced the complainant to give a bribe to get rid of a charge of abduction. It was later revealed that no complaint had even been registered against the complainant for the alleged abduction. However, the Court held that the mere demand and acceptance of the illegal gratification was sufficient, regardless of whether the recipient of the bribe performed the act for which the bribe was received.*

122. Recently, in Neeraj Dutta v. State (NCT of Delhi)60 a Constitution Bench listed out the constituent elements of the offence of bribery under Section 7 of the PC Act (as it stood before the amendment in 2017). Justice BV Nagarathna formulated the elements to constitute the offence:

> *"5. The following are the ingredients of Section 7 of the Act:*
>
> *(i) the accused must be a public servant or expecting to be a public servant;*
>
> *(ii) he should accept or obtain or agrees to accept or attempts to obtain from any person;*
>
> *(iii) for himself or for any other person;*
>
> *(iv) any gratification other than legal remuneration; and*
>
> *(v) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour."*

Consequently, the actual "doing or forbearing to do" the official act is not a constituent part of the offence. All that is required is that the illegal gratification should be obtained as a "motive or reward" for such an action or omission –

whether it is actually carried out or not is irrelevant.

15.The legal issue is settled irrespective of whether the accused has the authority or not to issue patta, if he demands illegal gratification, it is an offence under Section 7 of the P.C. Act. However, now coming to the facts of the case, this Court has to see whether the prosecution has proved its case of demand, acceptance and recovery beyond reasonable doubt and whether the foundational facts have been proved to shift the burden on the accused to rebut the presumption under Section 20 of the P.C. Act.

16.Now coming to factual aspects of the case regarding the demand of bribe, the evidence of P.W.2, P.W.3, P.W.5 and P.W.8 assumes significance. It is the case of P.W.2 /the defacto complainant that he is a Member of Nethaji Subash Nagar Residents Welfare Association. Admittedly, the members, who were 30 in number, had encroached and put up illegal constructions in the land acquired by the Government to construct the Government Medical college and hospital in Chengalpattu. P.W.2, who is one of the Members of the Association along with the General Secretary, viz., Vincent and Treasurer viz., Varadharajan, were said to have met P.W.4, the Tahsildar on 04.08.2000 with an application-Ex.P2. It is the further case that P.W.4-Tahsildar had made an endorsement in Ex.P2-application and instructed him to contact the accused, who was not in the office on that day. Therefore, P.W.2 had met the accused on 05.08.2000 along with Treasurer Varadharajan. P.W.2 claims that during this meeting, the accused demanded Rs. 1,00,000 for issuing the patta and told them that further steps could be taken only upon payment. They returned, and after 10 days, P.W.2, along with Jayavel, Vedhachalam, Varadharajan, and others totaling 10 persons, met the accused at his residence in Chengalpattu. At that time, the accused demanded Rs. 50,000 for processing their application, Ex.P2, but they expressed their inability due to their poverty and left. Thereafter, once again on 17.08.2000, PW.2 along with Jayavel, Vedhachalam and Varadharajan met the accused at his residence and at that time, he had agreed to receive Rs 25,000/- in two instalments. Strangely, the persons who were stated to have accompanied PW2 to meet the accused have not been examined to prove the demand made on 05.08.2000, 15.08.2000 and 17.08.2000. Whereas P.W.5-Mohanraj, a resident of Netaji Nagar, who was examined in respect of the earlier demand, had deposed that all the 30 families residing in that area had decided to give Rs.12,000/- to the accused. Other than stating that the families had decided to pay the amount, he had not stated that the said amount was demanded by the accused. The non-examination of the office bearers of the Netaji Nagar Residents Association raises doubts about the demands said to have been made prior to trap.

17. Now, coming to the aspect of the demand on the day of the trap, P.W.2 testified that he, along with P.W.3, the official shadow witness, entered the house of the accused. The accused inquired whether P.W.2 had brought Rs. 12,000, took the money from him, and kept it with him, assuring that the work would be completed in 10 days after payment of the balance amount of Rs. 13,000. P.W.3 was standing close by and was carefully watching the entire proceedings. He then went outside and made the pre-arranged signal, after which P.W.8 and the other official witnesses entered the house. P.W.2 identified the accused to P.W.8 and was asked to stand outside. In contrast, P.W.3 testified that upon entering the house, the accused inquired whether P.W.2 had brought the money, which P.W.2 handed over. After receiving the bribe

money, the accused placed it on a nearby rack, and P.W.2 went outside to give the pre-arranged signal. P.W.8, the other official witnesses, and the trap team immediately entered the house, and upon P.W.2's identification of the accused, P.W.8 held both of the accused's hands and prevented him from moving. P.W.2 stated that after receiving the money, the accused kept it in his hands, whereas P.W.3 stated that the accused placed it on a rack. Furthermore, P.W.3 testified that as soon as P.W.8 entered the house, he held both of the accused's hands and then asked him to retrieve the money allegedly kept on the rack. Immediately thereafter, P.W.8 conducted a phenolphthalein test on the fingers of both hands of the accused, which turned positive. Apart from the contradiction in the evidence of P.W.2 and P.W.3 regarding the demand, the evidence of P.W.3 about P.W.8 holding the accused's hands immediately upon entry creates serious doubt about the trap proceedings.

18.Regarding the discrepancies concerning the pre-trap proceedings, preparation of Ex P5 Entrustment Mahazar, and the contradiction in the evidence of P.W.2, P.W.3 and P.W.8, it is the evidence of P.W.8-TLO that on 17.08.2000 at 7.00p.m., P.W.3-official witness and another official witness, viz., Dheenadayalan, reported to him and he had introduced P.W.2-defacto complainant to the official witnesses and after completion of the entrustment mahazar proceedings, the entire team decided to stay overnight at the DVAC office in Kancheepuram and the relevant portion of the evidence of PW.8 reads thus.

> "இந்த வழக்கில் மறுநாள் 18.08.2000 அன்று இரவு நானும் அரசு சாட்சிகளும் வாதியும் மற்றும் ஊழல் தடுப்பு அலுவலக சக ஊழியர்களும் அன்று இரவு ஊழல் தடுப்பு அலுவலகத்திலேயே தங்கி விடுவது என்று முடிவை எடுத்தேன்."

In the penultimate portion of Ex.P5-Entrustment Mahazar, it has been stated as under:

> "இன்று இரவு காஞ்சிபுரம் அலுவலகத்திலேயே தங்க வேண்டும் என அறிவுறுத்தியதின் பேரில் இங்கேயே தங்கிவிடுவது என முடிவெடுக்கப்பட்டது."

On the contrary, the evidence of the defacto complainant-P.W.2 is that, on the morning of 18.08.2000 at 6:00 a.m., he went to the DVAC office at Kancheepuram. This indicates that P.W.2 did not stay at the DVAC office on the night of 17.08.2000. P.W.3, the official witness, does not mention any plan for the trap team to stay overnight at the DVAC office on 17.08.2000 after the completion of the entrustment mahazar proceedings. These discrepancies in the evidence creates doubt with regard to the pre-trap proceedings.

19.Yet another argument put forth by the learned counsel for the appellant is with regard to the custody and handling of M.O1 tainted currency before the trap by PW2 and PW8 and the evidence of PW3 suggesting the possibility of smearing of phenolphthalein in the hands of the accused prior to the trap. In this regard though it is recorded in Ex.P5 prepared at 09:00 pm that M.O.1 the notes smeared with phenolphtalein were kept in the left side upper shirt pocket of PW2 and that he was instructed to hand it over the same to the accused only on demand by him on the next day at Chengalpet, it is the evidence of PW2 that the money was retained by PW8 with him in the night and it was handed over to him only in the morning. In such circumstances, the possibility of the hands of PW8 getting tainted with phenolphthalein cannot be discarded. In this case, the tainted money had not been recovered from the body or dress of the accused. It is stated to have been recovered from a tray kept in an open cement shelf on the wall and thereafter the phenolphthalein test conducted was said to have turned positive. In this regard at the cost of repetition, the evidence of PW2 about PW8 retaining M.O 1 the tainted notes in the night and handing it back to him in the morning before the trap and the evidence of PW3 about PW8 catching hold of both hands of the accused immediately on entry assumes significance and creates serious doubt in the trap proceedings and the subsequent phenolphthalein test. As suggested by the learned counsel for the appellant/accused the possibility of PW8 transferring phenolphthalein in the hands of the accused while getting hold of his both hands prior to phenolphthalein test can also not be ruled out. Further, the discrepancies and material contradictions in the evidence of key witnesses viz., P.W.2-defacto complainant, P.W.3-official witness and P.W.8-TLO stare at the prosecution making its case highly doubtful. Further, it is the evidence of PW2 that after starting from the DVAC office they straight away reached the house of the accused whereas it is the evidence of PW3 that after starting from the DVAC office from Kancheepuram the trap team went to Nethaji Subash Nagar and thereafter, went to the house of the accused. This aspect also creates a dent in the prosecution case.

20.The next contention raised by the learned counsel for the appellant is that though the first demand was stated to be made on

05.08.2000, a complaint has been preferred only on 17.08.2000 and no explanation has been offered either by P.W.2 or the prosecution for delay of about 12 days in giving Ex.P3-complaint. The learned Government Advocate(Criminal side) appearing for the respondent would submit that the first demand made by the appellant was on 05.08.2000 and subsequently after 10 days, the amount was reduced from Rs.1,00,000/- to Rs.50,000/- and thereafter, it was reduced to Rs.25,000/- to which P.W.2 and the Members of the Association had agreed to pay in two instalments and thereby, there had been delay. In this regard while going through Ex.P3-complaint, in which, it was mentioned that P.W.2 and the Members of the Association had met the appellant in his residence, whereas the complaint has been lodged only by P.W.2 and none of the other office bearers had either attested the complaint or accompanied the complainant and this aspect also creates doubt with regard to its veracity.

21. The learned counsel for the appellant had also pointed out the evidence of P.W.5, a resident of Nethaji Nagar, Chengalpattu, to prove the fact that the accused was against the grant of patta in favour of the Members of the Association and P.W.2 and thereby harbouring

enmity and grudge against the accused. It is an admitted case of P.W.2 and P.W.5 that the land encroached by the residents and Members of Nethaji Subhash Residential Welfare Association was Government land and it is the categoric admission of P.W.5 in his cross-examination that when the Members of the Association had met the accused, they were informed that it would not be possible for grant of patta to their residents and he had also shouted them and the relevant portion of the evidence of P.W.5 reads thus.

> "சங்கத்து உறுப்பினர் அனைவரும் எதிரியை சந்தித்தோம் என்றால் சரிதான். எதிரி எங்களை பார்த்து பட்டா யாருக்கும் கொடுக்க முடியாது என்று கடுமையாக திட்டினார் என்றால் சரிதான்."

P.W.5 has also a Member of the Association. He had deposed that he does not directly know about the demand of the money by the accused and that he was informed by the President of the Association about the demand. Strangely in this case, the President, Secretary and the Treasurer, who were alleged to have accompanied P.W.2 on two occasions to the residence of the appellant/accused, have not been examined and the President, who had informed to P.W.5 about the demand had also not examined, which would create grave doubt with regard to the prosecution case.

22. Now coming to the discrepancy in Ex.P11-Rough Sketch dated 18.08.2000, it would be useful to refer to the Rule 49 of the DVAC Manual:

> "Rule 49 :- Preparation 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."

Admittedly, the place of trap is the house of the accused at No.4, Duraisamykulam Street, Periyar Nagar, Chengalpattu. A perusal of Ex.P11- rough sketch though describes house of the appellant and the nearby and opposite houses of the appellant, the positions of the accused officer, bribe giver, witnesses, Investigating officer and other members of the raiding party are not shown and the place of recovery of the tainted money is also not shown. In this regard as stated above, though the following of the Rules under DVAC Manual are not mandatory in nature, taking into consideration the attendant circumstances and facts of the case, when the substantial evidence is doubtful, the defect/discrepancy in Ex.P11-Rough Sketch creates serious doubt in the prosecution case when especially there are contradictions in the evidence of PW2 and PW3 with regard to the receipt and handling of tainted money by the accused and the evidence of PW3 with regard to PW8 catching hold of both hands immediately on entering the room and the non examination of independent witnesses; viz the neighbours and persons in the locality. Further the perusal of Ex.P11 shows that it had reached the Court only on 29.10.2001.

23. The learned counsel also submitted that Ex.P1-sanction accorded by P.W.1 was not a valid one. P.W.1-Tahsildar, who had accorded sanction to prosecute the accused, had admitted in his cross-examination as follows:

> "பட்டா கோரப்பட்ட நிலம் தமிழக அரசால் கையகபடுத்தப்பட்டு அது தமிழக சுகாதார துறைக்கு மருத்துவ கல்லூரி கட்டுவதற்காக ஒப்படைக்கப்பட்டுள்ளது என்று கண்டுள்ளது என்றால் சரிதான். அரசு கையகபடுத்திய நிலத்தை
>
> தனிநபர்களுக்கு பட்டா மாற்றிக்கொடுக்க வருவாய்துறை அலுவலர்கள் யாருக்கும்

உரிமையில்லை என்பது எனக்குத் தெரியும். சம்பவ காலத்தில் எதிரி வருவாய் ஆய்வாளராக தான் பணியில் இருந்தார். எதிரியால் கூட வழக்கு சம்மந்தப்பட்ட நிலத்திற்கு எவ்வகையிலும் பட்டா பெற்று கொடுக்கமுடியாது என்பது எனக்குத் தெரியும்."

Further in his cross-examination, he has also admitted that he has not perused the 161 statement of the complainant and the said portion reads thus:

> ".........புகார்தாரரின் 161 வாக்குமூலத்தில் லைஞ சங்கதி கண்டுள்ளது என்பதை நான் பார்க்கவில்லை."

From the above evidence, it is clear that admittedly the appellant/accused did not have any power to issue patta to the lands of P.W.2 and the other Members of the Association. Further, the statements recorded under Section 161 Cr.P.C were not perused at the time of according sanction by P.W.1 and thereby, this Court is of the view that Ex.P1-sanction order itself is without application of mind.

24. It is well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. In ***C.M. Girish Babu***

v. CBI ((2009) 3 SCC 779) and in B. Jayaraj v. State of A.P. ((2014) 13 SCC 55), the Apex Court while considering the case under Sections 7 of the Prevention of Corruption Act, 1988, has reiterated that mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubts that the accused voluntarily accepted the money knowing it to be a bribe. In the absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such an offence. In the said judgments it has also been held that even the presumption under Section 20 of the Act can be drawn only after demand and acceptance of illegal gratification are proved.

25. Subsequently in ***P. Sathyanarayana Murthy Vs State of A.P reported in [(2015)10 SCC 152]***, the Apex Court Court took note of its earlier verdict in B. Jayaraj vs. State of A.P. underlining 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 was recounted as well 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. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. Further, on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof, summed up its conclusions as hereunder: (SCC P.159, Para 23)

> *"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 Sections 7 and 13 of the Act would not entail his conviction thereunder." (emphasis supplied)".*

26. P.Sathyanarayana Murthy referred supra was followed in ***N.Sunkanna Vs State of A.P [(2016) 1 SCC 713]*** and ***K.Shanthamma Vs. State of Telengana [(2022) 4 SCC 574]***.

> *"The view in P.Sathyanarayana Murthy was later doubted and referred to a larger Bench and finally it has been clarified and affirmed in* ***Neeraj Dutta Vs State(NCT of Delhi) in (2023)4 SCC 731*** *wherein the law has been summarised as under:*
>
> ***88.****What emerges from the aforesaid discussion is summarized 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."*

27.Mere recovery by itself cannot prove the charge of the prosecution and to substantiate the same it is useful to refer the following decisions in *M.Rajendran Vs. State(2011(1) MWN (Crl) 602); N.Thangarajuly and another Vs. State(2001 (1) MLJ (Crl) 1050); A.V.Vijayarangan and others Vs. State (2010 (1) MLJ 541) and (D.Dass, Inspector of Police, Cuddalore Vs. State (2010 (2) MLJ(Crl) 225)*, wherein this Court had reiterated the legal position that the demand of illegal gratification is sine qua non for the offence and mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused where the substantial evidence of prosecution is not reliable.

28. In State of Kerala and another Vs. C.P. Rao(2011 (6) SCC 450), the abovesaid view that mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused was reiterated.

29. In G.V.Nanjundiah Vs. State(Delhi Administration) (1987 Supp SCC 266), it was laid down that the allegation of bribe taking should be considered along with other material circumstances and demand has to be proved by adducing clinching evidence.

30. Keeping in mind the law laid down in the above decisions and the facts of the present case concerning the acceptance of the bribe amount and the recovery, mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused where the substantial evidence of prosecution is not reliable.

31. At the cost of repetition, it is a case of demand of bribe for issuance of patta to the Members of the Nethaji Subhash Nagar Residential Welfare Association and P.W.2 and it is also admitted case

that the members had harboured enmity against the appellant/accused, thereby, a false complaint has been given, based on which, stage managed trap was organised and the accused was arrested. The accused by filing a statement under Section 243(1) of Cr.P.C., and by marking Exs.D1 and D2 had proved that the land for which patta was sought was a Government land which was already acquired from individual patta holders and handed over to the Government Medical college and hospital at Chengalpattu and the defacto complainant and other Members of the Association were encroachers of the said property and that the appellant/accused being the Revenue Inspector of that area for grant of patta to them, though it claimed by P.W.2 that the earlier demand was made before the Members of its Association, none of the members have been examined by the prosecution to prove the case of demand. Further, P.W.1-Tahsildar, had deposed that the Revenue Officials do not have any power to obtain patta to the lands acquired by the Government for construction of Government Medical college and hospital. The anomalies in the entrustment mahazar and discrepancy about custody of tainted money on the previous night of the trap i.e.,on 17.08.2000 and the evidence of P.W.3 that immediately after entering into the house of appellant P.W.8 / TLO caught hold of the hands of the accused raises the probability of P.W.8 smearing phenolphthalein in the hands of the appellant before the test and further the contradictions and discrepancies found in the evidence of P.W.2, P.W3 and P.W.8 would prove that the entire case of the prosecution is a stage-managed one. In this case the substantial evidence creates various doubts making the prosecution case unreliable. In its entirety, this Court finds that the prosecution has miserably failed to prove the foundational facts and thereby, the accused is entitled to benefit of doubt. Accordingly, this Court is of view that the trial Court, without properly appreciating the evidence adduced, had erred in convicting the appellant/accused for the offences under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, and accordingly, the judgment of conviction and sentence rendered by the trial Court against the appellant/accused has to be set aside.

32. In the result, the conviction and sentence imposed on the appellant/accused in Special Case No.9 of 2001 dated 17.04.2013 on the file of Chief Judicial Magistrate, Chengalpattu, for the offence under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act,1988, is set aside and the Criminal Appeals stands allowed. The

appellant/accused is acquitted from the charges levelled against him. The bail bonds, if any, executed by him during the trial, shall stand cancelled and the fine amount, if any, paid by the accused, shall be refunded to him.

13.03.2024

Index:Yes/No
Internet:Yes/No
raa

To

1.The Chief Judicial Magistrate,
Chengalpattu District.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Kancheepuram.

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

A.D.JAGADISH CHANDIRA,J.

raa

Criminal Appeal No.344 of 2013

13.03.2024