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Criminal Appeal Nos.152 and 164 of
2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.12.2023

PRONOUNCED ON: 05.03.2024

Coram

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

Criminal Appeal Nos.152 and 164 of 2020

Vanitha Prabha, aged 59 years.

W/o R.Sundararajan

16-A,Dhal Factory Street,

Kuniyamiuthur,

Coimbatore-08.

Appellant in CrI.A.No.152/2020

V.Rajeswari, F/67 years,

W/o Ramakrishnan,

Assistant Rationing Officer,

Officer(Civil Supplies),

Circle-II, Race Course, Coimbatore.

Residing at

Door No.81, West Main Road,

Thirumurugan Nagar, Vadavalli,

Coimbatore-641 041.

Appellant in CrI.A.No.164/ 2020

Vs.



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The State represented by
The Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore,
Crime No.21/2010/AC/CB

Respondent in both the cases

The Criminal Appeals are filed under Section 374(2) of Cr.P.C., against the judgment of conviction and sentence made in Special C.C.No.16 of 2012 dated 11.02.2020 on the file of Special Judge, Special Court for trial of Prevention of Corruption Act, Coimbatore.

For Appellant : Mr.R.Sivakumar
in Crl.A.No.152/2020

For Appellant : Mr.B.Kumarasamy
in Crl.A.No.164/2020

For Respondent : Mr
Mr.C.E.Pratap,
Govt. Advocate (Crl. Side)

COMMON JUDGMENT

Criminal Appeal No.152 of 2020 has been filed by A1 and Criminal Appeal No.164 of 2020 has been filed by A2 against the judgment of conviction and sentence rendered by the learned Special Judge, Special Court for trial of cases under the Prevention of Corruption Act, 1988,



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Coimbatore, in Special C.C.No.16 of 2012 dated 11.02.2020.

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2. The trial Court, finding the appellants/accused guilty for the offences under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, convicted the appellant/accused and the sentence imposed on them is as follows:-

Under Section	Sentence
7 of Prevention of Corruption Act, 1988	one year of rigorous imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
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.

3.1. The case of the prosecution as culled out from the evidence on record is that the first accused viz., N. Vanithaprabha was working as Junior Assistant and the second accused viz., V. Rajeswari was working as Assistant Rationing Officer in the office of the Assistant Rationing Office (Civil Supplies) Circle-II, Coimbatore, and both are Public Servants as defined under Section 2(c) of the Prevention of Corruption Act 1988.



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3.2. The de facto complainant, namely P. Kasalapandi, P.W.2, son of Paulraj and employed as a Goldsmith, had approached the State Bank of India, Karuppanna Gounder Street Branch, Coimbatore, to open a new account in his name. The bank officials had directed him to correct his name in his family card. Consequently, he had visited the office of Civil Supplies, Coimbatore South-II, where A1 was working as a Junior Assistant. P.W.2 inquired A1 about the procedure for correcting his name in the family card.

3.3. Following A1's advice, P.W.2 submitted an application on 26.10.2010 for correction of his name in the family card and the application was signed by his father. A1, on receipt the application, introduced P.W.2 to A2. A2 examined the application and handed it back to P.W.2, instructing him to approach A1. Subsequently, when P.W.2 requested A1 to proceed with the name correction, she demanded an illegal gratification of Rs.700/- for processing the application and returned the application to him.

3.4. When P.W.2 again approached A1 on 02.11.2010 and asked her to accept the application, she had inquired as to whether he had brought Rs.700/-. P.W.2 replied that he did not have the money, but A1 reiterated her demand, stating that she would accept the application only along with



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the sum of Rs.700/-. A1 had further informed P.W.2 that the Tahsildar was unavailable in the office as he had gone to attend a meeting and told her that if he brings the specified amount on the afternoon of 08.11.2010, she would make arrangements for carrying out the correction.

3.5. As P.W.2 was unwilling to pay the bribe amount, he filed Ex.P4 complaint with P.W.10, Inspector of Police at Vigilance and Anti-Corruption, Coimbatore, on 08.11.2010 at 12:30 hours.

3.6. Upon receiving the complaint, P.W.10 promptly registered the First Information Report (Ex.P14) on 08.11.2010 in Crime No.21/2010/AC/CB under Section 7 of the Prevention of Corruption Act, 1988, at 13:00 hours and immediately sent letters of request to the Assistant Commissioner, Hindu Religious and Charitable Endowment, Coimbatore, and the Divisional Fire Officer, Fire and Rescue Service Department, Coimbatore, for deputing official witnesses to assist him in the trap and as per the request of P.W.10, One Ranganathan, Junior Assistant, Hindu Religious and Charitable Endowment, Coimbatore (P.W.3) and R.Ramakrishnan, Assistant, Divisional Fire Office, Fire and Rescue Service Department, Coimbatore, were deputed to assist him and they had reported



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before PW10-Trap Laying Officer at about 14.00 hrs on 08.11.2010.

Thereafter, P.W.10 had introduced PW2, to the official witnesses PW3-Ranganathan and R.Ramakrishnan and vice versa and handed over Ex.P4-copy of the Complaint and Ex.P14-copy of the First Information Report to the official witnesses to get acquainted with the facts of the case.

3.7. Thereafter, PW10 asked PW2 as to whether he had brought the money as demanded by A1 and thereupon, PW2 had handed over a sum of Rs.700/- (denomination 1xRs.500/- and 2x Rs.100/-)(M.O.1) to PW10. Thereafter a mock phenolphthalein test was conducted in the presence of the witnesses and they were instructed about the significance of the phenolphthalein test and the trap proceedings. The serial numbers of the currency notes were noted, and a Mahazar regarding the proceedings (Ex.P6) was prepared by P.W.10 between 14:15 and 15:15 hours. The official witnesses verified the Mahazar, and the signatures of P.W.2, P.W.3, and Mr. Ramakrishnan were obtained on Ex P 6. PW10, the Trap Laying Officer (TLO), directed PW2 to keep the phenolphthalein-tainted currencies in his left shirt pocket. He advised PW2 to go to the office of A1 along with PW3 and to hand over the tainted currency (M.O.1) to A1 only on demand



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and PW3 was instructed to closely follow PW2 and observe the proceedings.

Meanwhile, PW10 requested B4 Race Course Police to send two women constables to assist the Vigilance team in the trap. Women Head Constable (PW7) D. Dhanalakshmi and Grade-I Women Constable (PW9) Sarala, both attached to B4 Race Course Police Station, reported before PW10. In the event of receiving the bribe money, PW2 was directed to come out and give a signal by combing his hair.

3.8. Thereafter, PW2 and the the trap team including the official witnesses and proceeded to the office of the accused from the office of Vigilance and Anti-Corruption, Coimbatore, at 16:30 hrs. They stopped the vehicle about 50 feet away from the VAO office, Anupparpalayam, Coimbatore. PW2 and PW3 entered into the office of the accused at about 16:35 hrs and met A1. PW2 requested A1 to carry out the correction of his name in the family card for which, A1 informed her that it has been done and asked as to whether he had brought the amount demanded by him and thereupon PW2 had handed over the phenolphthalein-smear currencies of Rs.700/- (M.O.1) to A1. A1 received the money, counted the same and thereafter, took PW2 and PW3 to A2. A2 had enquired A1 as to whether



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she had received the bribe money for which, A1 had affirmed of having received the money and spared a sum of Rs.500/- to A2. The amount so received by A2 was kept in a small money purse and kept inside her blouse and thereafter, she had affixed her initials on the application (Ex.P3) and instructed A1 to carry out the work and thereafter, A1 had asked PW2 to collect the family card on the next day.

3.9. On coming out of the room of A2 after giving Rs.500/- to A2, A1 had returned a sum of Rs.100/- out of the remaining amount of Rs.200/- to PW2 as he did not have money for his expenses asking him to give it back on the next day while collecting the family card.

3.10. On coming out of the office of the appellants/accused, PW2 gave the pre-arranged signal to PW10 and the trap team and thereupon, PW10, the Trap Laying Officer rushed near them, enquired about the happenings, and entered into the office with PW2 and PW3. PW2 had identified A1 and A2, and thereafter PW10 had asked PW2 to wait outside. The accused being women, PW10 had requested for deputation of two women police from the nearby Race Course Police Station and accordingly, PW7-Dhanalakshmi and PW9-Saral were deputed. While PW10 had asked



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PW7 to stay with A2, PW10 accompanied by PW9 entered into the room of A1. Thereafter, PW10 had introduced himself and the official witnesses to A1. Following PW10's instructions, a Sodium Carbonate solution was prepared, and phenolphthalein test was conducted. A1 dipped her right-hand fingers, and the solution turned pink. The solution turned pink was collected in a bottle and labeled 'R1,' and signatures were obtained. The same process was repeated for the left hand and the solution turned pink, labeled 'L1.' Bottles 'R1' and 'L1' and (M.O.2) and (M.O.3). were recovered for investigation. PW10 then informed PW4, the District Supply Officer Srinivasan, about the trap over phone and asked him to come to the office. PW10 questioned A1 about the bribe amount and A1 had handed over a 100/- rupee note from her table's right-side drawer. The serial number tallied with the numbers in the Ex.P6-Entrustment Mahazar. On recovery of the money PW10 had enquired A1 and A1 had admitted the receipt of Rs.700/- as instructed by A2 for correcting PW2's name in the family card and about sparing of Rs.500/- to A2. Thereupon, PW10 had introduced himself and the official witnesses to A2. As directed by PW10, Sodium Carbonate solution was prepared in a glass tumbler, and phenolphthalein test was



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conducted. A2 dipped her right-hand fingers in the sodium carbonate solution, the solution turned pink and it was collected in a bottle sealed, and labeled 'R2,' and signatures were obtained. Again, Sodium Carbonate solution was prepared, and A2 was asked to dip her left-hand fingers, the solution turned pink. The hand wash was collected, sealed, and labeled 'L2,' with signatures obtained. 'R2' and 'L2' marked sealed and labeled bottles (M.O.4) and (M.O.5) were recovered for investigation by PW10. A2 was arrested, and when enquired about the bribe money, she took out a small money purse from inside her blouse. She took out a 500/- rupee note and the serial number in the said currency was verified by the official witnesses with the serial number in Ex.P6-Entrustment Mahazar and it tallied. PW10 asked A2 if she had any other amount, and A2 took out a sum of Rs.2,800/- from the money purse. On inquiry by PW10, A2 satisfactorily explained, and since her explanation was acceptable, PW10 returned the said sum of Rs.2,800/- to her. Then, PW10 enquired A2 about the reason for her receiving the illegal gratification of Rs.500/- from PW2. She admitted that it was received through A1 for making a correction in the name of PW2 in the Family Card. PW10 recovered M.O.1 series for investigation.



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3.11. In the meantime, PW4, the District Supply Officer Srinivasan, entered into the office of the accused. PW10 had introduced himself and the other official witnesses to PW4 and asked him to participate in the further proceedings for which he had consented. When PW10 had asked A2 about the application of PW2, A2 had produced the same from her table contending that it was kept for making entry. Since the original application and the family card of PW2 were required to be retained in the office of the accused, PW10 obtained a copy of Ex.P3 series and a copy of the attendance Registers Ex.P8 and Ex.P9 in respect of November 2010, attested by PW4, for the purpose of investigation.

3.12. Then PW2 was asked to come to the office of the accused, and when PW10 had enquired about the sum of Rs.100/- which was returned by A1, PW2 took the same from his left side shirt pocket handed it over to PW10. On verification, the serial number in the said currency tallied with the number entered in Ex.P6-Entrustment Mahazar and thereupon, it was recovered from PW2 for investigation.

3.13. The above sequence was recorded in Ex.P13 - Seizure Mahazar, and the same was signed by PW3, PW4, another official witness



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Ramakrishnan, PW2, PW10, A1, and A2 and a copy of Ex.P13 was furnished to both the accused.

3.14.PW10 had prepared a rough sketch Ex.P15, and the trap team started from the office of the accused along with both the accused for the house search of A1 and A2 at about 15.00 hrs. A search in the house of A1 was searched from 21:45 hrs to 21:30 hrs, and Ex.P10-house Search Memo was prepared. Signatures of PW10, PW3, another official witness Ramakrishnan, and A1 were obtained in Ex.P10 and a copy of the same was furnished to A1. No incriminating materials were seized from the house of A1.

3.15. A search in the house of A2 was searched from 23:00 hrs to 23:45 hrs, and Ex.P11-house Search Memo was prepared. Signatures of PW10, PW3, another official witness Ramakrishnan, and A2 were obtained in Ex.P11 and a copy of the same was furnished to A2. No incriminating materials were seized from the house of A2.

3.16. Subsequently, PW10 had submitted his report to the Trial Court altering the FIR into one for offences punishable under Section 7 read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act



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and remanded both the accused to judicial custody and also sent the Material Objects to the Trial Court. Thereafter, PW10 had submitted the case records to PW11 for further investigation.

3.17. P.W.11 had proceeded with further investigation and examined P.Ws.1 to P.W.10 and obtained a sanction from PW1 to prosecute against A1 and A2 and on being transferred, handed over the files to PW12 for further investigation.

3.18. P.W.12, after collating the documents and Ex.P12-Chemical Analysis Report from P.W.8, filed the Final Report against the accused for the offence punishable under Sections 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988.

3.19. On issuance of summons, the accused had appeared before the trial Court and the memo of appearance was filed through their counsel. In due compliance of Section 207 Cr.P.C., copies were furnished to the accused.

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



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sought to be tried.

3.21. On the side of the prosecution, P.W.1 to P.W.12 were examined and Exs.P1 to P15 and M.O.1 and M.O.5 were marked.

3.22. After completion of the evidence on the side of the prosecution, when the accused were questioned under Section 313 of Cr.P.C in respect of incriminating materials against them, they denied the same as false and written submissions were filed by them. However, no evidence had been let in on their side, and no documents were marked.

3.23. The trial Court, after hearing the arguments of the learned counsel on either side, found the accused guilty and convicted and sentenced them as stated above. Assailing the judgment and conviction and sentence, Criminal Appeal No.152 of 2020 has been filed by A1-Vanithaprabha and Criminal Appeal No.164 of 2020 has been filed by A2-Rajeswari.

4. Mr.R.Sivakumar, learned counsel appearing for the appellant/A1 in CrI.A.No.152 of 2020 and Mr.B.Kumarasamy, learned counsel appearing for A2 in CrI.A.No.164 of 2020, after extensively taking this court through the evidence and other materials on record and the judgment of the trial



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court, would submit their arguments as under:

4.1. Submissions of Mr.R.Sivakumar:

(i) The trial Court without properly analyzing the materials on record had convicted the accused.

(ii) The non examination of Paulraj, the father of P.W.2 in whose name the application was filed for correction of the name of PW 2 in the family Card creates suspicion in the prosecution's case.

(iii) The trial Court had failed to take into consideration the discrepancies in the address of P.W.2 in various documents.

(iv) The non examination of the Bank Manager on whose instance the application was filed also creates a doubt.

(v) The allegation that P.W.2 had met the accused on 26.10.2010 and 02.11.2010 is absolutely false and in the application dated 25.10.2010 there is no endorsement of A2 thereby making the prosecution case doubtful.

(vi) The trial Court had failed to take into consideration the delay of 13 days in preferring the complaint when especially the first demand is stated to have been made on 26.10.2010.



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(vii) The trial Court had failed to take into consideration the evidence of P.W.1-Sanctioning Authority regarding the procedure involved in alteration of name in the family card. A perusal of Ex.P1 sanction order issued by P.W.1 reflects total non-application of mind and the trial Court had erred in convicting the accused based on the defective sanction order.

(viii) The source of bringing the water for conducting phenolphthalein test has not been proved creating a doubt with regard to the tests conducted.

(ix) The prosecution has failed to prove the demand and acceptance and failed to establish the essential ingredients under Section 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and the trial Court, without proper evidence, has erred in convicting the appellant.

(x) Failure on the part of P.W.10 in following the procedure under the DVAC Manual viz; Non conducting of preliminary enquiry and non-recording of the statement of the accused at the time of trap, non mentioning the position of the bribe giver and the acceptor and the witnesses also creates doubt in the prosecution case and thereby, he would seek for allowing the appeal.



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4.2. Submissions of Mr.B.Kumarasamy:

(i) The trial Court has failed to take into consideration that there is no allegation of demand as against the appellant prior to the registration of the First Information Report and that the complainant had only asked for taking action against A1 alone.

(ii) Even as per the prosecution, P.W.2 was introduced by A1 to the appellant/A2 on 26.10.2010 and the appellant/A2 had asked P.W.2 to deal with A1 about the application and that the appellant/A2 had neither demanded bribe from P.W.2 nor directed P.W.2 to give bribe to A1. When that being so, A1 allegedly insisted bribe without naming the appellant/A2 as sharer in the alleged bribe and non-informing of P.W.2 about the conduct of A1 with the appellant/A2 regarding demand of bribe is suspicious, thereby it can be presumed that P.W.2 had not met the appellant on 26.10.2010.

(iii) The non conducting of preliminary enquiry by the Trap Laying Officer before registration of the case as required under DVAC Manual vitiates the prosecution case.

(iv) The presence of the official witnesses prior to the trap proceedings



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or at the time of trap is doubtful.

(v) When no documents have been marked from the office of the official witnesses regarding their presence at the time of trap, they cannot be termed as independent witnesses.

(vi) The evidence of official witnesses regarding the pre-trap proceedings is doubtful and thereby it creates dent in the prosecution case.

(vii) The trial Court had failed to take into consideration that there was no demand or acceptance by the appellant/A2 during the trap proceedings at her office.

(viii) The discrepancies regarding the phenolphthalein test conducted at the office of the appellants viz., non subjecting the money purse of the appellant/A2 to phenolphthalein test and not subjecting the 100/- rupee note, which was returned by A1 to P.W.2-complainant to phenolphthalein test create doubt.

(ix) Non obtaining of signatures of P.Ws.7 and 9-Women police constables in recovery mahazar Ex P 13 creates doubt regarding their presence at the time of trap.

(x) The reasons assigned by the trial Court for convicting the accused



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are totally unsustainable in law and unbelievable in facts.

(xi) When the prosecution has failed to prove their case regarding the demand, acceptance and recovery, the trial Court had erred in convicting the accused and thereby, he would seek to set aside the judgment of the trial Court.

5. In support of their contention, the learned counsel for the appellants relied on the following decisions.

- (i) P.Sirajuddin & Others Vs. State of Madras & others (1970 CDJ SC 475);
- (ii) G.Kothandan V. State, rep., by the Inspector of Police, V&AC., ((2019) 1 MLJ Criminal 357);
- (iii) K.P.Kolanthai V. State by Inspector of Police, Anti Corruption Wing, Dharmapuri ((2019) 3 Mad. LJ (Cri.) 713);
- (iv) R.Damodaran V. State, rep., by Inspector of Police, V&AC., Erode ((2011) 1 MLJ (Criminal) 173);
- (v) M.Rajendran V. State, rep., by Deputy Superintendent of Police, V&AC., (2011 (2) MLJ (Criminal) 459);
- (vi) R.Gunalan Vs. State, rep., by Deputy Superintendent of Police, V&AC., Erode (2012 (1) LW (Criminal) 303);
- (vii) Abdul Kathar V. State, rep., by Inspector of Police, V&AC., Nagercoil (2019 (1) MLJ (Criminal) 122);



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6. In reply Mr.C.E.Pratap, the learned Government Advocate (Criminal Side) appearing for the respondent would submit his arguments as under:

i) Admittedly, the accused are Junior Assistant and Assistant Rationing Officer working in the Assistant Rationing Office (Civil Supplies) Circle 2, and they are Public Servants. The charge against them is that they have demanded Rs 700/- for correction of name of PW2 in the family Card, as stated in the complaint Ex P4. Based on the complaint given by PW2, a case was registered, and a trap was laid. During the trap, both the accused have reiterated the demand of illegal gratification in the presence of PW3 and A1 had received Rs.700/-, handed over Rs 500/- to A2 and retained Rs 100/- for her and had returned Rs 100/- to PW2. The phenolphthalein test conducted on the accused proved positive and the tainted money was recovered from the accused. The demand and acceptance of bribe had been proved by the prosecution beyond reasonable doubts and the accused had not rebutted the presumption as required under section 20 of the Prevention of Corruption Act.

ii) The sequence of events stated by PW2 would prove that there was



no delay in filing the complaint. The non-examination of the father of PW2 or the Bank Manager and the changes in the addresses of PW2 also do not cast doubt on the prosecution case.

iii) There is no error or omission in the sanction accorded by PW1. Although the accused had contended that certain procedures must be followed for the name change in the family card, it is a case of demand and acceptance of illegal gratification by the accused and the complainant PW2 is not aware of such procedures.

iv) Though in the penultimate portion of the complaint, PW2 had requested to take action against A1 alone he had described the manner in which the demand was made by both the accused in the middle portion of the complaint.

v) It is a case of a demand of illegal gratification and when a complaint has been made in respect of a cognizable offence, there is no mandate to conduct a preliminary enquiry and thereby, the non-conducting of a preliminary enquiry will not affect the prosecution's case.

vi) Considering the facts and circumstances, the non-compliance of Rules under the DVAC Manual does not vitiate the prosecution. In



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Duraimurugan vs. State reported in (2013 SCC Online Madras 20) and
CBI v. Thommandru Hannah Vijayalakshmi, (2021 SCC OnLine SC 923)

it has been held that non compliance of the rules under the Vigilance Manual will not vitiate the prosecution case.

vii) Furthermore, the accused being women, PW7 and PW9, women constables, were called only to assist the trap team. The non-obtaining of their signatures in Ex.P13 and non-marking of the intimations in respect of summoning them will, in no way, affect the case of the prosecution, as the trap proceeding, and recovery have been proved by the evidence of PW2 to PW6.

viii) Minor discrepancies and technicalities would not affect the case of the prosecution. The trial court, finding that the prosecution has proved the foundational facts by cogent evidence and that the statutory presumption as mandated under Section 20 of the Prevention of Corruption Act had not been rebutted by the accused either by way of direct or indirect evidence, has found the accused guilty, and therefore, the Appeal is liable to be dismissed.



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7. Heard Mr.R.Sivakumar, learned counsel appearing for the appellant/A1, Mr.B.Kumarasamy, learned counsel appearing for the appellant/A2, and Mr.C.E.Pratap, learned Government Advocate (Criminal Side) appearing for the respondent.

8. This Court gave its careful and anxious consideration to the rival contentions put forth by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgment of conviction including the relevant provisions of law.

9. What has to be seen is

(i) Whether the impugned judgment of conviction and sentence imposed on the appellants/accused is based on proper appreciation of evidence regarding demand, acceptance and recovery; and

(ii) Whether the appellants/accused have rebutted the presumption under Section 20 of the Prevention of Corruption Act by raising a probable defence.



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10. Admittedly, A1 was working as a Junior Assistant in the office of the Assistant Rationing Officer (Civil Supplies Circle to Coimbatore) and A2 was working as an Additional Rationing Officer in the said office. There is no doubt with regard to the same. The counsel for the appellants submitted that the sanctioning authority/PW1 had mechanically passed the order of sanction. In support of the same, the counsel relied on the judgment of ***R.Gunalan vs State***, (2011 SCC OnLine Mad 1842), where this court has held that the order of conviction can be reversed on the ground of irregularity of sanction, if it is found that it had resulted in failure of justice to the accused.

11. Now coming to the evidence of PW1 Sanctioning Authority, he, being the District Collector, is the competent authority to proceed against A1 and A2. This Court, having perused the evidence of PW1 and the sanction order/Ex.P1 and Ex.P2, is satisfied that the sanction by PW1 is a legally valid one. Though the appellants, by cross examination of PW1, had tried to elucidate certain procedures for name change in the family card, they are not applicable to the facts of the present case where the allegation against the



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accused are that they have demanded money as illegal gratification for effecting correction of name in the family card. Apart from that the appellants have not established and irregularity in the sanction order passed by PW1 resulting in failure of justice.

12. Another point urged by the learned counsel for the appellants/accused is that though the initial demand has been made on 26.10.2010, the complaint has been lodged on 08.11.2010 and the delay of 13 days had not been properly explained. In this regard, a perusal of the complaint/Ex.P4 would show that PW2 had gone to the office of the appellants/accused on the day prior to 26.10.2010 and after enquiring A1, had, once again, gone to the office of the accused on 26.10.2010 at 3.00 pm and handed over the application to A1. She had, after perusing the same, taken her to A2 and A2, after perusing the application, had directed PW2 to approach A1. At that time, A1 had demanded Rs.700/- and stated that she would see to that the name in the Family card would be corrected. Since PW2 did not provide the money, the accused returned the application, stating that they would accept it only along with the amount of Rs.700/-.



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Once again on 02.11.2010, PW2 had gone to the office and met A1 and she had reiterated the demand and told her that only after receipt of money the application would be accepted and had also told that A2 had gone for a meeting and that he can come again after Deepavali on 08.11.2010. Since PW2 was not willing to pay the bribe, he had preferred the complaint on 08.11.2010. This Court finds that the reason for having waited till 8.11.2010 to lodge the complaint and the consequent delay occurred had been properly explained in the complaint itself.

13. It is the specific case of A2 that there is no mention of any demand made by her in the First Information Report. It is a well settled principle that a complaint cannot be expected to be an encyclopedia. Of course, there is no specific mentioning of any demand made by A2 except a mentioning that the defacto complainant was taken by A1 to A2 and in turn, A2, after enquiring the defacto complainant, had asked him to approach and follow up the matter with A1 and thereafter, on coming out of the room of A2, A1 had demanded the illegal gratification of Rs.700/- and at the



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penultimate para of the complaint, action was sought to be taken only against A1 by specifically mentioning her name.

14.However, on the above aspect, it is relevant to note that though no demand of bribe by A2 has been alleged in the complaint, the defacto complainant having been taken by A1 and introduced to A2 and the enquiry made by A2 with the defacto complainant has been specifically mentioned in the complaint. In furtherance thereof, the specific evidence of PW2, the defacto complainant is that even on the date of trap, on receiving the bribe amount of Rs.700/-, A1 had taken PW2 to the room of A2, where, A2 had enquired with A1 as to whether she had obtained the bribe amount as already instructed and in turn, A1 had affirmed of having received the bribe amount and gave Rs.500/- to A2, which was received by A2 and kept in a small money purse and hide the same into her blouse. This aspect has been spoken by the official witness, PW3 also and it has been strengthened by the evidence of PW10-Trap Laying Officer about recovery of such amount from A2.



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15. The evidence of PW2 and PW3 on the aspect of receipt of a part of the bribe money by A2 from A1 on the date of trap, coupled with the evidence of PW10-Trap Laying Officer on the aspect of recovery of tainted money from A2 and the specific mentioning in the complaint with regard to A2 having directed the defacto complainant to approach A1 for carrying out the work clearly prove the demand and obtainment on the part of A2.

16. So far as the contention with regard to the non-examination of the father of PW2 and the non-examination of Manager of State Bank, this court is of the view that in the case on hand, though Ex.P3 had been signed by the father of PW2/defacto complainant, the name change sought was only in respect of PW2 and he is the beneficiary and thereby this Court finds that there is nothing wrong in the non-examination of father of PW2 and it is also not fatal to the case of the prosecution. In the same manner the non examination of the Manager of State Bank of India also does not have much significance.



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17. It was also urged by the learned counsel for the appellants/accused that the non-marking of the letters of requisition sent to the office of PW3 and yet another official witness also creates a doubt with regard to their presence. However, from the records, it is seen that the prosecution has produced the letters before the trial Court, and the trial court had also taken note of them during the course of trial.

18. Now coming to the submission regarding the absence of endorsement/counter sign of A2 in Ex.P3, although it is not clear whether the endorsement was available, the evidence of PW3, PW5, PW6 and PW10 is clear that Ex.P3 was found on the table of A2 and she alone had handed over the same to PW10 during the trap proceedings and recovery of the same has also been mentioned in Ex.P13-Mahazar. It is also the evidence of PW4, the Superior Officer that A2 is the officer in charge and having powers to order for carrying out any correction in the family card. Further, as per Ex.P9, A2 being the Assistant Rationing Officer, Circle II, she is the competent authority to order for correction of the name of PW2 in the family card.



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19. The learned counsel for A2 had contended that the non conducting of preliminary enquiry before the registration of the case and the non mentioning of the presence of the witnesses in the Rough Sketch also creates a doubt in the prosecution case. Admittedly, it is a trap case and with regard to non conducting of preliminary enquiry, a Division Bench of this Court in *Duraimurugan vs. State represented by the Deputy Superintendent of Police, V & AC, Vellore, referred supra*, has held that non compliance of Rules under the Manual will not vitiate the trap proceedings. Furthermore, in the case of *CBI v. Thommandru Hannah Vijayalakshmi*, (2021 SCC OnLine SC 923), a Full Bench of the Apex Court has held that conducting a preliminary enquiry is not mandatory in cases involving allegation of corruption. Referring to the decision in **Lalita Kumari v. Government of Uttar Pradesh**, ((2014) 2 SCC 1), the Full Bench of the Apex Court, has held that conducting a preliminary enquiry would not take away from the ultimate goal of prosecuting accused persons in a timely manner and if the respondent chooses not to hold a preliminary enquiry, the accused cannot demand it as a matter of right. If the information



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received discloses the commission of a cognizable offence at the outset, no preliminary enquiry would be required. In the case on hand, the allegation was in respect of demand of illegal gratification. There is no illegality found and the case of the prosecution does not get vitiated by non conducting of a preliminary inquiry.

20. Further, in respect of the submission regarding the discrepancy in not mentioning the position of the witnesses as required under Rule 49 of the DVAC Manual, no doubt, this court in K.P.Kolanthai vs. State (2019) 3 Mad. LJ (Cri.) 713, this court, taking into consideration various discrepancies and based on the doubts regarding the place of trap and place of recover, found that non-compliance of Rule 49 as one of the grounds for acquitting the accused, however, in the case on hand, the evidence of PW10, which has been corroborated by the evidence of PW2 to PW7 and PW9, is cogent and clear with regard to the trap proceedings on 08.11.2010 and therefore, this court is of the view that it does not vitiate the case of the prosecution.



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21. Yet another submission raised by the learned counsel for the appellants/accused is that non subjecting of the money purse and the 100/- rupee note recovered from PW2 vitiates the trap proceedings. In this regard, this Court is of the opinion that it can only be corroborative evidence and when the evidence regarding the demand, acceptance and recovery has been proved by cogent evidence of PW2 and PW3, the non subjecting the money purse and the 100/- rupee note recovered from PW2 also does not create any dent in the case of the prosecution, especially, when the evidence regarding the recovery of tainted currency and the phenolphthalein test is cogent.

22. Further, with regard to the non-marking of letters regarding PW7 and PW9 and their non attesting in the Recovery Mahazar/Ex.P13, it is the case of the prosecution that they have been called only to assist the trap team since the accused were women and when PW3 and the other witnesses have attested Ex.P13 and further, when the trap and recovery is proved by the prosecution by other witnesses, the non-marking of the letters regarding the presence of PW7 and PW8, to assist the trap, has no significance.



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23. As stated above, though the name of A2 is not stated in the penultimate portion of the complaint, the instruction given by A2 is stated in the complaint. Further, the evidence of PW2 and PW3 regarding the demand made by A1 and A2 on the date of trap is cogent and clear. The authority given to A2 for making corrections in the family card is spoken by PW4. The evidence of PW2 and PW3 regarding acceptance of bribe money is also cogent. The conducting of phenolphthalein test is also proved by the evidence of PW3, PW5, PW6 and PW10. Though a suggestion was put regarding the place from where the water was brought for conducting the phenolphthalein test, no further suggestion had been put that the water brought from outside was tampered. Further, there is nothing to suggest that the phenolphthalein test was not conducted in the office of the accused.

24. Now, having concluded that the demand, acceptance and recovery have been proved, this Court has to see whether the accused have rebutted the presumption as mandated under Section 20 of the Prevention of Corruption Act. In this context, the Hon'ble Supreme Court in ***Neeraj Dutta v. State (NCT of Delhi)***, ((2023) 4 SCC 731), has categorically held that



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upon proving the foundational facts and facts in issue, the presumption would arise in favour of the prosecution under Section 20 of the P.C. Act.

25. Of course, the burden on the accused to disprove the case is not as heavy as that of the prosecution and it could also be by way of preponderance of probabilities. In this context, it is relevant to extract para 11 from the decision in the case of ***State of Gujarat v. Navinbhai Chandrakant Joshi***, ((2018) 9 SCC 242), which reads as under:-

"11. So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden placed on the accused for rebutting the presumption is one of preponderance of probabilities. In C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] , this Court held as under: (SCC p. 786, paras 21-22)

"21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him



or by adducing reliable evidence. ...

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt."

Since it is established that the accused was possessing the bribe money, it was for them to explain that how the bribe money has been received by them and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe."

26. Coming to the case on hand, except the bare denial during the questioning under Section 313(b) Cr.P.C. and a written statement denying the charges, the accused had not taken any effort to rebut the presumption even by way of preponderance of probability. Nothing has been elucidated by the defence by way of cross examination to make this Court to disbelieve the case of the prosecution. As the prosecution has proved the foundational facts, viz. demand, acceptance and recovery of the amount of illegal gratification beyond all reasonable doubts, this court is of the view that the prosecution has raised the presumption under Section 20 of the Prevention



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of Corruption Act.

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27. The other decisions relied on by the learned counsel for the appellants/accused are not relevant to the facts of the case. The Trial Court, after careful analysis of the evidence on record, rightly found the accused guilty. No grounds have been made out by the appellants/accused to interfere with the judgment of conviction and sentence rendered by the Trial Court.

28. In the result, the Criminal Appeals stand dismissed. The conviction and sentence stands confirmed. The Trial Court is directed to secure the appellants/accused to enable them to serve the remaining period of sentence.

05.3.2024.

raa

Index: Yes/No.

Internet: Yes/No.

To

1. Special Judge,

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Special Court for trial of
Prevention of Corruption Act,
Coimbatore.

2. The Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore,
3. The Public Prosecutor,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.

raa.

P.D. JUDGMENT in
Crl. Appeal Nos.152 & 164 of 2020



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2020

Delivered on
05.03.2024.