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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 2.1.2024.

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

Criminal Appeal Nos.131 and 144 of 2019

Mani ... Appellant in Crl.A.No.131/2019

Sankar @ Sivashankar ... Appellant in Crl.A.No.144/2019

vs.

State of Tamilnadu,
rep. by Inspector of Police,
Vigilance & Anti Corruption Wing,
Namakkal,
Crime No.01/AC/2011. ... Respondent in both the Appeals

Criminal Appeals filed under Section 374(2) of Cr.P.C. against the judgment of conviction and sentence in Spl.C.C.No.20 of 2012 dated 28.2.2019 by the Special Judge/Chief Judicial Magistrate, Namakkal.

For Appellant in
Crl.A.No.131/2019 : Mr.M.Devaraj

For Appellant in
Crl.A.No.144/2019 : Mr.N.Manokaran

For Respondent : Mr.S.Santhosh

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COMMON JUDGMENT

Challenging the judgment of conviction and sentence passed by the Special Judge/Chief Judicial Magistrate, Namakkal in Special C.C.No.20 of 2012, A1-Mani has filed Criminal Appeal No.131 of 2019 and A2-Sankar @ Sivashankar has filed Criminal Appeal No.144 of 2019.

2. A1-Mani was serving as Village Administrative Officer of Konnaiyar Village from 18.10.2010 till 24.6.2011 and A2-Sankar @ Sivashankar was the Assistant to A1 and thereby, they are Public Servants and A1 is alleged to have instigated to demand and obtain an illegal gratification of Rs.1000/- from one Chandran for effecting patta name transfer in respect of his land and A2, on the instruction and instigation of A1, had demanded and obtained the illegal gratification and thereby A1 had committed offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and A2 had committed offences punishable under Section 7 read with Section 12 and Section 13(2) read with Section 13(1)(d) read with Section 109 of the Prevention of Corruption Act, 1988.

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

Penal Provision	***Sentence***
Section 7 of the Prevention of Corruption Act, 1988	3 years simple imprisonment and a fine of Rs.2500/- in default to pay the fine, to undergo simple imprisonment for a period of one month.
Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988	3 years simple imprisonment and a fine of Rs.2500/- in default to pay the fine, to undergo simple imprisonment for a period of one month.
The sentences shall run concurrently.	

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

Penal Provision	***Sentence***
Section 7 read with Section 12 of the Prevention of Corruption Act, 1988	3 years simple imprisonment and a fine of Rs.2500/- in default to pay the fine, to undergo simple imprisonment for a period of one month.
Section 13(2) read with Section 13(1)(d) read with Section 109 of the Prevention of Corruption Act, 1988	3 years simple imprisonment and a fine of Rs.2500/- in default to pay the fine, to undergo simple imprisonment for a period of one month.
The sentences shall run concurrently.	

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

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i) A typewritten complaint dated 24.6.2011, Ex.P21 was lodged by the de facto complainant, PW2, a resident of Konnaiyar Village, Elachipalam, a coolie in power loom with the following contentions:-

Having purchased a land in Survey No.123/4 and built a house there about twelve years prior to the relevant date, the de facto complainant had applied for patta name transfer in Thiruchencode Taluk Office about six months prior to the date of complaint. Both the accused had conducted enquiry. Thereafter, the de facto complainant had reminded A1 on two or three occasions for which he had replied that after the patta is ready, he would intimate him. Whileso, on 22.6.2011, at about 12.30 pm, when the de facto complainant had met A1 at his office and enquired about the patta, he had shown him the patta and informed him that it was ready, however, it being a joint patta, the de facto complainant had questioned the same for which, A1 had informed him that initially, joint patta alone could be issued and later, separate patta could be obtained based on such joint patta and he demanded Rs.1000/- as illegal gratification and kept the patta inside the table. When the de facto complainant had requested him to reduce the amount, he did not accept and insisted for the same amount as a condition precedent for giving patta and hence, the de

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facto complainant had returned. Again on 23.6.2011, the de facto complainant had met A1 and requested for patta, he insisted for his demand of bribe and hence, the de facto complainant, who had no interest in offering bribe, had lodged the complaint with the Vigilance and Anti Corruption seeking initiation of action against A1-Mani.

ii) On receipt of the complaint at about 7.30 am on 24.6.2011, PW11-K.Arangasamy, Inspector of Police, Vigilance and Anti Corruption, Namakkal, had registered a case in Crime No.1/AC/2011, under FIR, Ex.P22 for the offence punishable under Section 7 of the Prevention of Corruption Act after enquiring into the veracity of the complaint, conduct of the accused and after availing permission from the Superintendent of Police.

iii) Thereafter, PW11 had submitted requisitions for deputing a 'B' Grade Officer from the Office of the Assistant Elementary Education Officer, Namakkal and a 'C' Grade Officer from the office of the Assistant Director, Horticulture Department after intimating the same through phone. Accordingly, PW3-Pushpraj, Headmaster of Panchayat Union Primary School, Abbinayakkanpalayam, deputed under the proceedings, Ex.P28 and N.Ganesh, Assistant Agricultural Officer, deputed under the proceedings, Ex.P29 had reported to PW11 at

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about 9.00 am. PW11 had introduced the de facto complainant to the official witnesses and vice versa and apprised of the official witnesses, the case details by furnishing the complaint and the FIR to them.

iv) When enquired about the bribe money, PW2 had produced the same in the denomination of one 500 rupee note and five 100 rupee notes, whose serial numbers were entered in the entrustment mahazar, Ex.P2.

v) With the assistance of one Natarajan, Head Constable and the official witness Ganesh, a demonstration of trap and phenolphthalein test was conducted to enable the official witnesses and the de facto complainant to understand the significance of the test.

vi) Thereafter, PW11 had given instruction to PW2 to give the bribe money only when A1 demands it and in such event, to come out of the office of A1 and give a signal to the trap team by combing his hair backwards with his hand. PW3 was instructed to be a shadow witness and observe the happenings by accompanying PW2. After destroying the sodium carbonate mixture used for demonstration of trap and phenolphthalein test and the trap team having washed their hands with soap, PW11 had prepared the entrustment mahazar, Ex.P2 from 900 to 9.30 am, signed the same and obtained signatures of the

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official witnesses and the de facto complainant. Enclosing the entrustment mahazar and the complaint, the printed FIR was sent to the court at about 9.45 am and thereafter, PW11 had enquired the de facto complainant and recorded his statement.

vii) At about 10.00 am, PW11, alongwith the trap team, the de facto complainant and the official witnesses proceeded in the official Jeep accompanied by Constable Ambalatharasan in a bike an on reaching the Konnaiyaru Junction at Rasipuram-Tiruchengodu Road, PW2 and PW3 were sent to the office of A1 reminding them of the instructions already given.

viii) Having sent PW2 and PW3 to meet A1, PW11, alongwith his team reached Konnaiyaru village at about 11.25 am and was waiting under a neem tree near the Integrated Child Welfare Centre for the signal from the de facto complainant.

ix) At about 11.40 am, PW2, accompanied by PW3 came out of the office of A1 and in front of the Ration Shop at Konnaiyaru, gave the pre-arranged signal to the trap team indicating that bribe money was accepted by the appellant.

x) When PW11, accompanied by the official witness Ganesh approached the de facto complainant and enquired about the

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happenings, he had explained that when he, alongwith PW3, met the appellant-Mani and asked for patta, he had asked as to whether PW2 had brought the bribe money and when PW2 had informed that he brought the money, the appellant-Mani had instructed his assistant viz., the appellant-Shankar to receive the bribe money and accordingly, the appellant-Shankar had received the bribe money, counted the same with both hands and confirming that it is Rs.1000/-, kept the same in his left side pocket of his shirt and thereafter, the appellant-Mani had handed over patta to PW2. The version of PW2 was reiterated by PW3.

xi) Thereafter, PW11 and the trap team had entered into the office of the appellant. After PW2 had identified the appellants, PW11 asked PW2 to wait outside and introduced himself and the official witnesses to the appellant. Thereupon, appellant-Mani became nervous, got up from the seat and contended that he had not demanded, but, it was only PW2, who had offered the money. When enquired the appellant-Shankar, he also got nervous and admitted that only on the instruction of the appellant-Mani, he had received the money from PW2.

xii) After pacifying both the appellants and made them to sit,

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PW11 had arranged for sodium carbonate mixture in the presence of the official witnesses, asked the appellant-Shankar to dip his each hand into the solution separately and having found that the solution turned pink, poured them into two separate glass bottles, sealed, named them, signed on the labels, got signatures of the official witnesses and the appellants and seized them as M.O.1 and M.O.2 under recovery mahazar, Ex.P3.

xiii) Thereafter, PW11 had arrested the appellant-Shankar at about 1.00 pm assigning reason that he had, knowing fully well that the appellant-Mani had made a demand of bribe for issuing patta, he had been an accomplice to him and received the bribe money on his behalf.

xiv) When enquired, the appellant-Shankar had produced the bribe money from his left side pocket of the shirt. Having verified the serial numbers of the said currency notes with the serial numbers entered in the entrustment mahazar and found them tallied, seized the same as M.O.5. Subsequently, PW11 had arranged for another sodium carbonate mixture and dipped the shirt pocket of the appellant-Shankar after providing an alternate dress to him and having found that the solution turned pink, poured the solution into a

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separate glass bottle, named, sealed, signed on the label and got the signatures of the official witnesses and the appellants and recovered the same as M.O.3. PW11 had also recovered the shirt of A2 as M.O.4.

xv) At this juncture, PW4-Jayaprakasam, Revenue Inspector (in charge) of Elachipalayam had reached the spot having heard about the incident. When PW11 had enquired the appellant-Shankar as to whether he had any other amount, he had produced six 10 rupee notes contending that it is his personal money he possesses for his expenses and on such explanation, the same was returned to him. When enquired for any further amount, he had produced another sum of Rs.145/- from his table drawer and the same was also returned to him.

xvi) On enquiry, the appellant-Mani had informed PW11 that the de facto complainant had no dues of any tax to be paid to the Government and A1 is not entitled to collect any amount towards Small Savings, Flag Day collection, tax. Having vouched the revenue records regarding collection of any money and found that the records do not justify the possession of bribe money, PW11 had arrested the appellant-Mani at about 11.40 pm. A recovery mahazar, Ex.P3 was

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prepared by PW11 from 11.50 am to 1.45 pm, signed the same and obtained signatures of the official witnesses, PW4-Revenue Inspector, the scribe of such report viz., Sub Inspector Rayar and issued a copy of the same to the appellants after obtaining acknowledgment from them. Recording the events an observation mahazar, Ex.P5 was prepared, and rough sketch, Ex.P4 was drawn.

xvii) Thereafter, the patta issued by A1 to the de facto complainant was recovered under a mahazar, Ex.P6, signed by PW11, official witnesses and the de facto complainant. The patta so recovered was marked as Ex.P7.

xviii) Subsequently, PW11, after intimating the court under Ex.P24, made a search in the house of the accused in the presence of witnesses from 3.00 to 3.30 pm and having found no incriminating materials, made a report, Ex.P8, signed the same and obtained signatures of the appellant-Mani and the official witnesses and issued a copy of the same to the appellant-Mani.

xix) Thereafter, on reaching the Police Station at about 4.15 pm alongwith the appellants, PW11 had prepared arrest memos and after getting signatures of PW5 in the arrest memo of appellant-Shankar and that of PW4 in the arrest memo of appellant-Mani, issued copy of

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the same to the appellants.

xx) Subsequently, PW11 had altered the penal provision of the case from one under Section 7 to one under Sections 7, 13(2) read with Section 13(1)(d) and 12 of the prevention of Corruption Act and sent the alteration report, Ex.P25 to the court. Then, PW11 had sent the material objects under Form 91 marked as Ex.P26 and the documents seized with a requisition letter to the court. On completing his investigation, PW11 had sent the case file to PW12-K.Murugesan, Inspector of Police, Vigilance and Anti Corruption for further investigation.

xxi) PW12, who took up the case for further investigation on 27.6.2011, enquired P.Ws.2, 3 and one Ganesh and recorded their statements. He also enquired PW5 and recorded his statement. He issued requisition letter to the Tahsildar, Thiruchencode seeking for the documents relating to the case and sent requisition, Ex.P27 to the court for sending the material objects to Forensic Sciences Department. On 5.7.2011, he enquired PW6-Gunasekaran, PW7-Periyasamy PW8-Vijayaramesh and witness Vel Prakash and recorded their statements. On 1.8.2011, he enquired PW9-Chellamuthu, who furnished the documents relating to the case and recorded his

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statement. On 5.8.2011, he collected a certified copy of chemical analysis report, Ex.P20, enquired PW10-S.Kala, Deputy Director, Forensic Sciences Department and recorded her statement. On 10.8.2011, he enquired the witness Saraswathi and the appellants individually and recorded their statements. On 11.8.2011, he enquired PW11, Inspector of Police and recorded his statement. Thereafter, PW12 had sent his investigation report to the Directorate seeking permission to proceed further. On the basis of his final report, he received permission from the Directorate on 8.12.2011 and thereupon, he submitted the case documents to PW1-Kavitha, Revenue Divisional Officer on 19.3.2012 and on receipt of sanction granted by PW1 to proceed against the appellant-Mani, he enquired her on 28.6.2012 and recorded her statement. On completion of his investigation, PW12 had filed the final report in the court on 4.7.2012.

xxii) The case was taken on file in Special C.C.No.20 of 2012 by the Special Judge/Chief Judicial Magistrate, Namakkal. On summoning, the Appellants/accused appeared. Copies of relevant papers were furnished to the Appellant/accused under Section 207 of Cr.P.C. and charges were framed. The accused had denied the charges and sought for trial.

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xxiii) In support of their case, the prosecution had examined P.Ws.1 to 12 and marked Exs.P1 to P30 and produced Mos.1 to 5.

xxiv) On completion of the evidence, the appellant/accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had stated that they had been falsely implicated in the case, however, no witness was examined nor any document was marked on their side.

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

6. The submissions of Mr.M.Devarj the learned counsel appearing for the appellant in Criminal Appeal No.131 of 2019 are as under:-

i) The judgment of conviction rendered by the Trial Court is against law, weightage of evidence and probabilities of the facts and circumstances of the case.

ii) In this case, PW2, the author of the complaint himself had turned hostile and not supported by the case of the prosecution.

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Though he admitted to have signed in blank paper at the instance of his wife, he had specifically denied the signature in the complaint, Ex.P21, the signature in Column 14 of Ex.P22 FIR and the signature in Ex.P2 entrustment mahazar, however, nothing worthwhile has been elicited by the prosecution by way of cross examination.

iii) Though PW2 has turned hostile, the prosecution can prove its case by letting in evidence by any other witnesses, who can either let in evidence either orally or by documentary evidence or the prosecution can prove its case by circumstantial evidence. However, in this case, the prosecution has miserably failed to prove its case either orally or by documentary evidence or by circumstantial evidence.

iv) The solitary evidence of PW3, shadow witness is bristled with embellishments, exaggerations and material contradictions, thereby making the case of the prosecution doubtful and thereby, his evidence has to be scrutinized with due care and caution to rely the same for rendering the judgment of conviction, However, the Trial Court has erred in convicting the appellants/accused based on his evidence, with regard to demand and the evidence of PW11, Trap Laying Officer with regard to recovery.

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v) The complaint is said to have been lodged at 7.30 am and the case was registered at 7.30 am itself, whereas, it is the evidence of PW3 that he received the intimation at 7.00 am itself to assist the respondent in the trap proceedings. There is nothing on record to show how PW3 was intimated even prior to receipt of the complaint and such a discrepancy creates doubt as to whether he was really intimated about the trap proceedings, more particularly, when there are contradictions in the evidence of PW3 when compared with the evidence of PW11 Trap Laying Officer, which would go to show that everything has been stage managed.

vi) The presence of PW3, shadow witness is doubtful and the discrepancies found in the documents relied on by the prosecution would go to show that the entire registration of the case, preparation of entrustment mahazar, Ex.P2, preparation of recovery mahazar, Ex.P3 are done at the office of the respondent to create a stage managed trap.

vii) As per the charge sheet, the demand was said to be made 1-1/2 months prior to 22.6.2011 and the long delay in preferring the complaint has not been properly explained by the prosecution.

viii) The entire prosecution case with regard to registration of

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FIR, pre-trap proceedings, trap proceedings is suspicious and the Trial Court has failed to see that the prosecution had not proved the case beyond all reasonable doubts.

ix) In this case, even as per the prosecution, recovery is said to have been made from A2, who is a private individual, without any connection whatsoever with A1 and no legal evidence has been let in by the prosecution to prove that A2 was engaged by A1 in this case and that he was connected with the official matters of A1 and thereby, the prosecution has failed to prove its case beyond all reasonable doubts and the Trial Court has erred in convicting A1 based on the evidence of PW3 which lacks credence and thereby, he would seek for acquittal of the appellant.

7. The submissions of Mr.N.Manokaran, learned counsel for the appellant in Criminal Appeal No.144 of 2019 are as under:-

i) The appellant in this case is not at all connected with A1. Other than the alleged recovery of tainted money from A2, there is absolutely no evidence to show that A2 had demanded any money from the de facto complainant.

ii) The prosecution has not let in any evidence to show that A2

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was either personally employed by A1 or he was attached to the office of A1.

iii) PW5, Village Assistant, who was working under A1 and PW4, Revenue Inspector have stated that they had not received any application nor any complaint in respect of A2 working under A1.

iv) Proof of demand of illegal gratification is gravamen to the offence under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and in the absence of evidence regarding a demand, the case of the prosecution would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors the proof of demand, ipso facto, would not attract the offence alleged by the prosecution and thereby he would seek to allow the appeal.

8. Per contra, Mr.S.Santhosh, learned Government Advocate (Criminal Side) appearing for the respondent would submit his arguments as under:-

In the case on hand, though the de facto complainant has not supported the case of the prosecution and he was treated hostile, his evidence cannot be written off altogether, but, it must be considered

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with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon and merely a witness has been declared “hostile” it does not result in an automatic rejection of his evidence and the court can find corroboration from the other witnesses, if it is found to be reliable and when the case of the prosecution is corroborated by other witnesses, the Trial Court can convict the accused. In the event of the complainant turning hostile during trial, the prosecution can prove the demand of illegal gratification by letting in evidence of any other witnesses, who can let in evidence, either orally or by documentary evidence and the prosecution can also prove the case by circumstantial evidence. The prosecution has proved the demand on the date of trap by the evidence of PW3, shadow witness, who has categorically spoken about the demand made by A1 and the instructions given by him to the de facto complainant to hand over the money to A2, receipt of the bribe money by A2 and keeping of the same in his pocket. He has also spoken about the phenolphthalein test conducted and the test having become positive, the explanation given by A2 when enquired about the money in his possession, recovery of the tainted money from the possession of A2, tallying of serial numbers of the currency notes with

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the serial numbers entered in the entrustment mahazar, Ex.P2. A2 was not able to explain the possession and recovery of the tainted money from him and though the de facto complainant has not supported the case of the prosecution, the prosecution has proved its case with the evidence of PW3, the shadow witness and other materials and raised the presumption against the appellant/accused and based on such evidence, the Trial Court has found the accused guilty and there is no infirmity or illegality in the judgment rendered by the Trial Court and thereby, he would seek for dismissal of the appeals.

9. In reply by Mr.Manokaran, learned counsel for the appellant in Criminal Appeal No.131 of 2019 would submit that though the presumption under Section 20 is available for the prosecution, before raising the statutory presumption, a bounden duty is cast upon the prosecution to prove the foundational facts and in this case, the presumption has failed to prove the case beyond all reasonable doubts.

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

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11. The allegation against the appellants is demand of illegal gratification for patta name transfer. The case of the prosecution is that A1, who was working as Village Administrative Officer at Konnaiyar Village had unofficially engaged A2, a private individual for his assistance and A2 had received bribe money on behalf of A1 from the de facto complainant on 24.6.2011 and based on the complaint, Ex.P21, a trap was laid by PW11 and A2 was caught red handedly and when enquired, he had pointed out A1 contending that only on the instruction of A1 and on his behalf, he had received the bribe money.

12. While it is case of A1 that the entire trap is a stage managed one and he has been falsely implicated in the case based on a statement alleged to have been given by A2, who is not at all connected with A1, it is the case of A2 that other than the alleged recovery of tainted money, absolutely, there is no evidence to show that A2 had demanded any money from the de facto complainant.

13. Needless to say that proof of demand and acceptance by public servant is sine qua non for establishing the offence under

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Section 7 of the Prevention of Corruption Act and by merely proving recovery of money without proving demand and acceptance, the prosecution cannot succeed. To arrive at a conclusion with regard to demand and acceptance, we need to analyse the complaint lodged by the de fact complainant and the evidence adduced by the de facto complainant, official/shadow witness and the Trap Laying Officer.

14. Strangely, in this case, the de facto complainant had turned hostile and he had not supported the case of the prosecution. During his examination in chief, the de facto complaint, PW2 had denied to have given a complaint to PW11. Other than signing in bank papers at the instance of his wife with a view to obtain patta, he has abruptly denied his signatures in Ex.P21-complaint, column 14 of P22-FIR and Ex.P2-entrustment mahazar. Though he was subjected to a detailed cross examination by the prosecution, nothing worthwhile has been elicited by the prosecution. No steps have also been taken by the prosecution to prove that PW2 has signed in Ex.P21, P22 and P2 entrustment mahazar. This court also compared the signatures obtained from PW2 in the deposition before the court and found that it did not tally with the signatures found in Exs.P21, P22 and Ex.P22.

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15. Before proceeding further, it is also relevant to note that the defence had taken a stand that the charge framed by the Trial Court discloses that a demand was made by A1 1-1/2 months prior to 22.6.2011, however, the complaint, Ex.P21 was lodged on 24.6.2011 and there is no explanation by the prosecution for such a long delay.

16. In this regard, a perusal of the complaint, Ex.P21, alleged to have been lodged by the de facto complainant itself, would disclose that the patta name transfer application was given at the Taluk Office, Thiruchencode six months prior to the complaint and the first demand of bribe alleged in the complaint happens to be on 22.6.2011, peculiarly, the charge framed by the Trial Court is to the effect that 1-1/2 months prior to the complaint, a demand of bribe was made by A1. Even during the cross examination by the prosecution, the same theory was suggested to PW2, the de facto complainant on his turning hostile. Such an ambiguity on the part of prosecution goes to the root of the case.

17. Remaining piece of evidence available with regard to the demand on the date of trap and the recovery is tainted money is the

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evidence of PW3, official/shadow witness and PW11, Trap Laying Officer. Though the official/shadow witness is claimed to be an independent witness, the probability that he could be witness interested in the prosecution case cannot be brushed aside, especially, when the de facto complainant has turned hostile and thereby the evidence of PW3, official witness has to be scrutinized with due care and caution and only if the court comes to the opinion that the evidence of the official/shadow witness is credible, it can come to a conclusion to convict the accused.

18. When such care and caution is exercised, this court could find that the entire case of the prosecution with regard to registration of the complaint and the trap proceedings is shrouded with suspicion. So far as the evidence of PW3 is concerned, he had deposed that he is working as Headmaster in a School and his specific evidence is that he had reported before PW11 at 9.00 am on 24.6.2011. When he was cross examined, he contended very strangely that he received the intimation at 7.00 am itself on 24.6.2011 to assist PW11 in the trap proceedings and directly from his residence, he went to the office of the Vigilance and Anti Corruption and reported before PW11. PW3 is

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not specific as to whether it was a written information or an oral one. Further, he also admitted that he has not made any entry in the visitors book maintained in the office of the respondent with regard to his attendance before the respondent.

19. Such being the version of PW3, the evidence of PW11 does not corroborate with the evidence of PW3. PW11 had specifically deposed that PW2 had came to his office and lodged a written complaint at 7.30 am on 24.6.2011 and after conducting a preliminary enquiry, he had registered a case in Crime No.1/AC/2011 on the same day at 7.30 am itself. Further, the acknowledgment in Ex.P21-complaint discloses that it was received only at 7.30 am and Ex.P22, printed FIR also discloses the same time. When receipt of complaint by PW11 itself was at 7.30 am, it is highly improbable that an instruction to PW3 to assist PW11, even an oral instruction, could have been issued by his higher official at 7.00 am itself giving room to suspect his credibility.

20. In this regard, though the prosecution has marked Ex.P28 and P29, letters of permission issued by the superior officers of PW3

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and yet another official witness, those documents have not been sent to the court immediately and they had been sent to the court only at the time of filing the final report. In this case, though PW11 had deposed that he had made a request through telephone and later, sent a written request to the superior officials, no such written request had been produced before the court or marked by the prosecution. All these aspects create a strong doubt with regard to the attendance of PW3 at the office of PW11 and the assistance alleged to have been rendered by him to PW11 in the trap proceedings.

21. Now, coming to the entrustment mahazar, Ex.P2, PW2 has denied having signed the same. Sofar as Ex.P3, recovery mahazar is concerned, the signature of PW3 has been affixed in some pages with date and in some pages, it is without any date and more particularly, at page 6, after affixing his signature in respect of trap proceedings on 24.6.2011, PW3 has affixed his signature with the date "**26.6.2011".** Further, in this case, PW11, the Trap Laying Officer, though admitted to have sent written requests to the superior officer of PW3 and other official witness, they have not been marked during evidence nor produced before the court for perusal. All the above discrepancies

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found in the above documents and the delay in sending the letters of permission issued to the official witnesses in Exs.P28 and P29 to the court cumulatively create a doubt about the case of the prosecution with regard to request trap proceedings.

22. On a careful analysis, this court finds that there are several discrepancies and infirmities in the prosecution case with regard to registration of the case and the trap proceedings. As stated above, admittedly, the de facto complainant had not only turned hostile, but also, he he has denied the signatures in various documents, however, the prosecution has not taken any steps to compare the signatures with the signatures found in the contemporaneous documents in the manner known to law.

23. In this case, the recovery is said to have been made from A2. However, no legal evidence has been let in by the prosecution to prove that A2 was personally employed by A1 and there was any connection between them and there is no specific allegation of demand of money as against A2. The Constitution Bench of the Apex Court in ***Neeraj Dutta vs. State Government, NCT of Delhi*** has held as

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under:-

"***87.*** *Therefore, this Court cautioned that even if a witness is treated as "hostile" and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the Judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence. Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence.*

88. *What emerges from the aforesaid discussion is summarised as under:*

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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*

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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

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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*

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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.

88.6. *(f) In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.*

88.7. *(g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section.*

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The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

88.8. *(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.*

89. *In view of the aforesaid discussion and conclusions, we find that there is no conflict in the three-Judge Bench decisions of this Court in B.Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] and P. Satyanarayana Murthy [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] with the three-Judge Bench decision in M. Narsinga Rao [M. Narsinga Rao v. State of A.P., (2001) 1 SCC 691 :*

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2001 SCC (Cri) 258] , with regard to the nature and quality of proof necessary to sustain a conviction for the offences under Sections 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns "hostile" is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion, we hold that there is no conflict between the judgments in the aforesaid three cases.

***90.** Accordingly, the question referred for consideration of this Constitution Bench is answered as under:*

In the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section

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7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution."

24. In the case on hand, PW2/de facto complainant has turned hostile. Though he speaks in his chief examination about his applying for name transfer in the patta and approaching the accused in furtherance, he denies having given the complaint with the Vigilance and Anti Corruption. PW2 claims to be a Weaver by profession. His specific evidence is that an unknown person had approached him and got his signature on a blank paper as if it was required for getting patta and he had not at all lodged any complaint as claimed by the prosecution. He specifically denies the signature in the complaint. However, the prosecution has not taken any effort for comparing of the signature in the complaint with the admitted signatures of PW2 in the contemporaneous documents. The version of PW2, in chief examination, being a total denial of the case of the prosecution, a reading of the cross examination of PW2 reveals that the prosecution has not taken any effort to cross examine him properly to bring out the truth. The entire cross examination is nothing but a mere

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reproduction of the prosecution version running several pages tagging all the factual aspects as claimed by the prosecution and ultimate recording of a vague denial of all the contentions alleged to have been made by the de facto complainant in just a single sentence including his statements about his approaching for patta name transfer, which discloses the mechanical manner in which the cross examination was conducted.

25. In such circumstances, the court has to look into the evidence of PW3, official/shadow witness and PW4, Trap Laying Officer. This court had already pointed out the discrepancies with regard to registration of the case, preparation of entrustment mahazar and recovery mahazar. In this case, A2 is a private individual. The tainted money is said to have been recovered from A2. In such circumstances, mere acceptance of allegedly illegal gratification, recovery thereof, de hors proof of demand, would not be sufficient to bring home the charges under Sections 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

26. In this regard, it will be useful to refer to the decision in ***P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another*** (2015) 10 SCC 152), wherein, a

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Full Bench of the Apex Court has held as under:-

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

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

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that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

22. *In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of*

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the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. *The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso*

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facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

27. On a cumulative analysis of evidence on record, this court finds that the prosecution has failed to prove its case beyond all reasonable doubts and thereby the appellants/accused are entitled to benefit of doubt and the judgment of conviction rendered by the Trial Court is liable to be set aside.

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

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2.1.2024.

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

To

1. Special Judge/Chief Judicial Magistrate,
   Namakkal.

2. Inspector of Police,
   Vigilance & Anti Corruption Wing,
   Namakkal.

3. The Public Prosecutor,
   High Court, Madras.

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A.D.JAGADISH CHANDIRA, J.

ssk.

Crl. Appeal Nos.131 and 144 of 2019

2.1.2024.

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