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Crl.A.Nos.843 & 829 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal Nos.843 and 829 of 2016

Thangavelu
S/o.Seerangan

..Appellant /A1 in
Crl.A.No. 843 of 2016

N.Tamilselvan
S/o.Narayanasamy

..Appellant /A2 in
Crl.A.No. 829 of 2016

Vs

State rep. by
Inspector of Police,
Vigilance and Anti-Corruption Department,
Salem at Namakkal.
Crime No.4/AC/2002

..Respondent in both
Criminal Appeals

Common Prayer: These Criminal Appeals are filed under Section 374 (2) Cr.P.C to set aside the common judgment of conviction dated 25.11.2016 passed in Spl.S.C.No. 57 of 2002 on the file of the Special Judge-cum-Principal Sessions Judge, Namakkal.

For Appellants : Mr.A.M. Rahamathi Ali –
for Mr.S.Ganesh Kumar For A1
Mr.C.D.Johnson - For A2

For Respondent : Mr.S.Santhosh, G.A., (Crl.side)



Crl.A.Nos.843 & 829 of 2016

(in both appeals)

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COMMON JUDGMENT

Aggrieved by the common judgment of conviction dated 25.11.2016 passed in Spl.S.C.No. 57 of 2002 by the file of the Special Judge-cum-Principal Sessions Judge, Namakkal, present appeals are filed by A1 and A2.

2. Since the facts and circumstances in both Criminal Appeals are common, they appeals are adjudicated together and disposed of by this common judgment.

3. Case of the prosecution in brief:

i) The 1st accused and the 2nd accused were serving as Head Quarters Deputy Tahsildar and Head Record Clerk respectively in the Paramathy Velur Taluk office at the relevant point of time and thereby they are public servant as defined under Section 2(c) of the Prevention of Corruption Act.

ii) Whiles, on 11.02.2002, PW3, the defacto Complainant had given an application to A1 for issuance of copies of chitta, adangal in respect of



his brother's property in S.No.148/2C and 149/1 in Paramathivelur, which was under litigation.

iii) Again, on 13.02.2002, he met A1 to follow up. By then, A1 had asked him to meet A2. Since A2 had gone for computer training, he met A2 only on 18.02.2002 and asked him for issuance of the above certificates. Though A2 had agreed to prepare the same, demanded an amount of Rs.1000/- towards expenses and since PW3 expressed his inability, A2 reduced the demand to Rs.900/- and had asked PW3 to meet him on 20.02.2002 (Wednesday).

iv) Pursuant to this, PW3 met A1 on 20.02.2002 at 10.00 am and informed him about the demand made by A2 for which, A1 had asked PW3 to adjust with A2 and receive the certificates. When PW3 had met A2 at 10.15 am, A2 had told him that he has to pay to A1 and had demanded Rs.750/- from PW3 as illegal gratification for issuance of the certificates and also asked him to pay the amount before 06.00 pm on the same day. PW3, having not inclined to pay bribe, had given the complaint-Ex.P5 at 13.30 hrs to PW11, Inspector of Police, Vigilance and Anti-Corruption Wing, Salem.

v) On receipt of the complaint, PW11 had registered the F.I.R-Ex.P23



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at the same time and organized a trap and A2 was arrested while receiving the bribe amount. PW12 filed the final report against A1 for the offence punishable under Sections 12 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 for having abused and misused his official position as public servant and abetted A2 and also against A2 for the offence punishable under Sections 7 and 13(2) r/w 13(1) (d) of P.C. Act, 1988 for criminal misconduct for having misused his official position as public servant and received bribe.

vi) The case was taken on file and on the appearance of the accused, the trial court framed charges against A1 for offences under Sections 12 and Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 and against A2 for offences under Sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.

vii) In order to prove its case, the prosecution has examined 12 witnesses as PW1 to PW12, marked 28 documents as Ex.P1 to P28 and produced 5 material objects as MO1 to MO5. However, no evidence was adduced and no document was marked on the side of the accused.

viii) The trial Court, after hearing both sides, found A1 and A2 guilty of the offence and convicted them as stated below:



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Accused	Under Section	<i>Sentence</i>
A1	12 of Prevention of Corruption Act, 1988	Two years simple imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
	13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988	Two years of simple imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
A2	7 of Prevention of Corruption Act, 1988	Two years simple imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.
	13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988	Two years of simple imprisonment and a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.

4. Assailing the judgment of conviction and sentence, A1 filed Crl.A.No.843 of 2016 and A2 filed Crl.A.No. 829 of 2016.

5. Mr.A.M.Rahmath Ali representing Mr.Ganesh Kumar learned counsel for the appellant/A1 in Crl.A.No.843 of 2016 submitted his arguments as under:-

i) The case of the prosecution is bristled with infirmities, material contradictions and inherent improbabilities creating doubt about the genuineness of the entire prosecution case.

ii) The trial Court had failed to take into consideration the grave material contradictions between the evidence of PW3/defacto complainant,



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PW4/the official shadow witness, PW11/Trap Laying Officer, who had registered the case and PW12/the Investigating Officer, which belies the case of the prosecution about the registration of the case and the subsequent proceedings. The allegation against the appellant/A1 is that he had abetted A2. The timings as spoken by PW3 and registration of the case would prove that there was no possibility of PW3 meeting appellant/A1 on 20.02.2002. It is the specific case of PW3 that he had met the appellant on 20.02.2002 between 12.30 pm and 1.00pm., whereas, PW12/Investigating Officer in his evidence has admitted that the appellant/A1 was not present in the office during the relevant point of time as claimed by PW3. Even as per the evidence of PW12, the Investigation Officer, the documents required by PW3 were prepared by A2 on the morning itself and A1 had signed the same and had left Paramathivelur Taluk Office for Tiuchengode RDO office, which belies the claim of PW3 having met A1 on the morning of 20.02.2002. Thereby the claim of PW3 that he had met A1 and informed about the demand made by A2 and that A1 asked him to adjust with the demand of A2 could not be true. Further the appellant/accused was not present at the time of trap and the discrepancies about how the appellant is stated to have been arrested also create grave doubt on the prosecution case



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and thereby the prosecution has failed to prove its case of demand or abetment beyond all reasonable doubts.

iii) The defacto complainant had earlier given an application Ex.P3 dated 05.02.2002 forging the signature of his father and subsequently he met A1 suppressing the fact of the earlier application and when the appellant had raised query about the same, PW3 got agitated and nurtured enmity with A1 and thereby, had falsely implicated A1. Subsequently, he filed another application dated 11.02.2002 marked as Ex.P4. The application dated 11.02.2002 which was dropped in the box was forwarded to the Village Administrative Officer for obtaining the report. There was no delay on the part of the appellant/accused and the applications, which were dropped in the box, were forwarded to VAO/PW8 and the report had also come to the office of the accused, based on which, the certificates Exs.P8 & P9 were made ready by A2 on 18.02.2002 and A1 had signed the same in the morning hours on 20.02.2002 before leaving for Thiruchengode Taluk Office. PW3 was bent upon getting the certificate at any cost and thereby, he had given a false complaint and being an interested witness, his evidence must be considered with great caution and it can be accepted only when it is corroborated by other material particulars.



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iv) PW3 had deposed that he met A1 between 12 noon and 1.00 pm and thereafter, he met A2 and proceeded from Paramathy Velur to Salem, which is about 75 km by road, and thereafter, an oral complaint was given to PW11, based on which, the present FIR /Ex.P23 was registered and thereafter, the official witnesses were summoned. The evidence of PW3 having met A1 between 12 noon and 1.00 pm could not be true and his evidence about the manner in which the case was registered and trap proceedings were conducted by PW11 would belie the case of the prosecution having not corroborated with other material particulars relied by the prosecution.

v) The appellant had been charged only for the offences under Sections 12 and 13(2) of Prevention of Corruption Act r/w 13(1) (d) of P.C. Act, 1988 and thereby, the presumption under Section 20 of the Prevention of Corruption Act cannot be raised against the accused. When the alleged demand has not been proved and when no recovery has been made from the appellant/A1, he is entitled to acquittal.

6. Mr.C.D.Johnson, the learned counsel for the appellant/A2 in



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Criminal Appeal No.829 of 2016, taking this Court through the entire evidence made the following submissions:-

i) The appellant has been charged for the offences under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. It is settled law that for establishing the commission of an offence punishable under Section 7 of the Prevention of Corruption Act, proof of demand of gratification and acceptance of gratification are *sine qua non*. It is also equally well settled that mere recovery of tainted money by itself cannot prove the charge unless it has been proved beyond reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe and in the absence of proof of demand for illegal gratification, mere possession or recovery of currency notes is not sufficient to constitute such offence. Before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts viz; demand and acceptance must be established by the prosecution beyond all reasonable doubts. Moreover, the presumption under Section 20 of the PC Act can be invoked only on proof of facts in issue, namely, the demand of gratification by the accused and the acceptance thereof.

ii) PW3's father was earlier having kerosene license and since he had



indulged in malpractices, the license was cancelled and during the relevant period, A2 was working as Record Clerk in Taluk Supply Office and thereby, PW3 has grudge against him. In order to wreak vengeance, he had preferred a false complaint, based on which, a stage managed trap was conducted and the bribe money was planted in the table drawer and thereafter, the accused was compelled to handle the money and subsequently, the test was conducted.

iii) The glaring contradictions in the evidence of the main witnesses and the timings and manner of preferring the complaint and registration of F.I.R, timings regarding summoning of witnesses and preparation of Entrustment Mahazar create suspicion about the genesis of the prosecution case, thus, collapsing the entire fabric of the prosecution case. Further, there are also glaring contradictions concerning the trap proceedings, recovery of cash and preparation of Seizure Mahazar and arrest of the accused, which creates doubt in the prosecution case.

iv) The evidence of PW3 about demand cannot be believed and the trial court, without proper analysis of the evidence on record and without the foundational facts having been proved by the prosecution, had erred in convicting the accused and thereby, the learned counsel would seek for



setting aside the order of the trial court.

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7. With regard to the above submissions, the learned counsel appearing for both the appellants/accused have relied on the following decisions:-

1. ***Jaswant Singh v. State of Punjab*** reported in ***AIR 1973 SC 707***;
2. ***State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede*** reported in ***(2009) 15 SCC 200***;
3. ***State of Punjab v. Madan Mohan Lal Verma*** reported in ***(2013) 14 SCC 153***;
4. ***P. Sathyanarayana Murthy v. District Inspector of Police, State AP and Another*** reported in ***(2015) 10 SCC 152***;
5. ***Selvaraj v. State of Karnataka*** reported in ***(2015) 10 SCC 230***,
6. ***V.Sejappa Vs.State by Police Inspector Lokayukta, Chitradurga*** reported in ***(2016) 12 SCC 150***; and
7. ***Mukhtiar Singh Vs. State of Punjab*** reported in ***(2017) 8 SCC 136***.

8. In reply, Mr.Santhosh, learned Government Advocate (Criminal Side), would submit his arguments as under:-



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i) It is a clear case of demand of illegal gratification and the prosecution had proved the acceptance and recovery of the same.

ii) The evidence of PW3, de facto complainant and PW4, the shadow witness is clear and cogent with regard to A1 abetting A2, the demand of illegal gratification by A2 on behalf of A1 and acceptance of the same while PW11, the Trap Laying Officer speaks cogently about the phenolphthalein test conducted and the outcome of the same.

iii) The prosecution has proved the case of demand, acceptance and recovery beyond all reasonable doubts. The trial Court, having rightly appreciated the same, had convicted the appellants which does not warrant any interference and thereby, he would seek for dismissal of the appeals.

9. Heard the learned counsels appearing for the Appellants/accused and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

10. This Court is tasked with addressing the following points :-

- i. Whether the prosecution has proved the case of demand, acceptance and recovery beyond reasonable doubt.



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- ii. If so, whether the prosecution is entitled to benefit under Section 20 of the PC Act for raising presumption against the accused.
- iii. Whether the accused have rebutted the presumption by raising a probable defence?

11. To arrive at a conclusion, this court has to analyse the evidence on record.

11.1. P.W.1 Rajendran, is the District Collector of Namakkal who had accorded sanction to prosecute A1. He had deposed that the 1st accused was working in the office of the Paramathivelur Taluk office as Zonal Deputy Tahsilshar. The second accused was working there as an Office Assistant and that he has got the authority to remove the first accused from service. On 30.09.2002, P.W.1 had received a letter from the Director of Vigilance and Anti Corruption seeking permission to prosecute the accused persons. On perusal of records and he being satisfied that there are prima facie materials available to prosecute the accused, had accorded Sanction under Ex.P.1 to prosecute the accused on 27.11.2002.

11.2. P.W.2, Maharapoosam is the Authority who had accorded sanction to prosecute A2. He had deposed that during the year 2002, he



worked as a District Revenue Officer and that A2 was working as an Office Assistant at Paramathivelur Taluk Office and that on 30.09.2002, he had received a letter from the Vigilance and Anti corruption Department of Salem seeking permission to prosecute A2 and after perusal of records, he being satisfied that there are prima facie materials available to prosecute the second accused, had accorded sanction/Ex.P.2 to register case against the second accused and that he has got powers to remove A2 from service.

11.3. P.W.3, Krishnasamy is the defacto complainant. He had deposed that he approached the first and second accused to get Chitta and Adangal for the land and gave an application/Ex.P.3 in the name of his father. Thereafter, again on 11.02.2002, he gave another application/Ex.P4 in the name of his father and on the same day, the second accused demanded a sum of Rs.1000/- as illegal gratification for giving the certificate and thereafter, reduced the same to Rs.750/- for giving the Chitta and Adangal. When the said demand was informed to the first accused by him, the first accused told him to adjust with A2. Hence, on 20.02.2002, at about 1.30pm, he had gone to the respondent's office and gave the complaint/Ex.P.5 and based on that complaint, the First Information Report Ex.P23 was registered and that official witness Vadivel (Not Examined) and PW4,



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Perumal were summoned and that he handed over Rs.750/- M.O1 (3 x Rs.100/- denomination and 9 x Rs.50/-denomination) to PW11/TLO and that PW11 gave the complaint to Vadivel and PW4/Perumal for perusal and thereafter, a mock phenolphthalein test was conducted and thereafter, the notes were smeared with phenolphthalein and the remaining phenolphthalein powder was collected in M.O2 cover marked “A” and the Sodium Carbonate was collected in M.O 3 Cover Marked “B”. The serial numbers of the notes were noted and the proceedings were entered in Entrustment Mahazar-Ex P6 and the notes were handed over to him and he was asked to hand over the same to the accused only on demand and thereafter, advised to come out and give a pre-arranged signal. PW4 was asked to accompany him and closely monitor the happenings. He had further deposed that he along with PW4 and PW11 and the police party went to Paramathivelur and reached Office of the accused at 05.00 pm and he and PW4 went to the room of A2 and asked the Chitta and Adangal and A2 demanded the money and received it and handed over the Chitta and Adangal that he along with PW4 came out of the office after 15 minutes and gave the signal and the police party came near them and he identified the accused and A2 got agitated and that PW11 asked him to stay outside and



that PW11 received the Chitta/Ex.P8 and Adangal/Ex.P9 under seizure Mahazar/Ex.P7.

11.4. P.W.4 Perumal is the official/shadow witness for the trap. He had deposed that he knew the accused and also he knew P.W.3. He had further deposed that on 20-02-2002 around 02.00 pm on the oral instructions of his superior to assist in the trap he had reached the office of PW11 and that PW11 introduced PW3 to him and handed over the Complaint for perusal. He had further deposed about the mock phenolphthalein test and the preparation of the entrustment Mahazar and the instructions given by PW11 and accompanying PW3 to the office of the accused. He had further deposed that after reaching office of A2, A2 had asked PW3 about the demand amount and PW3 had handed over the same to him and A2 had handed over the Chitta and Adangal and thereafter, A2 had counted the money and kept it in the table drawer and also received the acknowledgement Ex.P10 towards receipt of the same from PW3 and asked PW3 to get the seal on the next day and that he and PW3 came out and when PW3 gave the pre-arranged signal, the police party entered into the office and PW3 identified A2 and he got agitated and thereafter, the Tahsildar, viz., Loganathan was called and he had informed that A2 was



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incharge of “B-1” seat and incharge of records and thereafter, the phenolphthalein test was conducted on the fingers of both hands and they turned positive and the solutions from right hand fingers were collected in M.O 4 bottle was Marked as “S1” and the solutions from left hand fingers were collected in M.O 5 bottle was marked as “S2” and PW11 had obtained initials in it. When PW11 had questioned about the demanded money, A2 had handed over the same and the serial numbers of the notes found tallied with the numbers in Ex P6. Thereafter, PW11 seized the file relating to Chitta and Adangal containing 11 pages Ex.P11, B1 Seat Register-Ex P12, Distribution Register for the year 2002-Ex P13, Attendance register for the year 2002-Ex P14 and thereafter, arrested A2 and the Mahazar Ex.P15 with regard to the seizure was prepared at 05.30 pm and thereafter, a Rough Sketch Ex.P16 was prepared and during that time the Tahsildar had come and he was informed about the arrest and later the house of A1 at Namakkal was searched between 08.30 and 08.45 under search memo-Ex.P17 and the house of A2 at Thiruchengode was searched between 09.30 and 09.45 pm under search memo-Ex P18 and no incriminating materials were recovered and thereafter, they all went to the office of PW11.

11.5. P.W.5, Backiyalakshmi has deposed that from 02.01.2001 to



08.11.2006, she worked as an Assistant in the District Munsif Cum Judicial Magistrate Court, Paramathi and while she was in duty, the officers of the Vigilance and Anti corruption Department enquired her showing Ex.P11 and the documents relating to I.A. No.101/2002 in O.S. No.13/2002 dated 08.02.2002. One Nallathambi has filed a petition to direct the Tahsildar to give Chitta and Adangal for the lands in S.No.148/2C and 149/1 for the Fazali 1409, 1410 and 1411 through Advocate N.A.Jeyapal (PW10) on 08.02.2002 and that order has been passed directing to give the same immediately. In that order instead of I.A 101 it has been wrongly noted as I.A 102 and that she gave the details to the police officials after perusing those documents.

11.6. P.W.6. G.Dhanapal has deposed that while he was working in the Chief Judicial Magistrate's Court, he had received a requisition from the Deputy Superintendent of Police, Vigilance and Anti Corruption on 25.02.2002 to send the properties involved in the case viz; Ex.P.1 to P.5 to the forensic laboratory for chemical analysis and letter is marked as Ex.P20. On 14.03.2002 he had received a report from the lab in D.No.1333/2002 Chemical-2002 dated 04.03.2002 and the report is marked as Ex.P21

11.7. P.W7/Nallathambi has deposed that P.W3 is his brother and that



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their father owned 4 acres and 25 cents of land, in which, his father retained 1 acre and 25 cents for himself and 1 Acre and 50 Cents was given to him and 1 Acre and 50 cents was given to his brother Krishnasamy through partition. Those lands were all in his father's name and records were also available in respect of S.No.148/2 and 149/1 and that he had given 1 Acre of land for lease to one Kaliannan and after three years he did not return the possession of the said land to him and he had filed a suit before the District Munsif Court, Paramathi to extend the lease again for three years and that the case was handed over to one Advocate viz.,Jeyapal and his brother Krishnasamy had told him about the case. For that case he needed Chitta and Adangal and hence, he had given an application before the Taluk office, in turn, the officials of Taluk office has asked to get orders from the Court, hence, his brother had gone to the Taluk office.

11.8. P.W.8/Subramanian has deposed that at present, he is working as Administrative officer in Kutlamparai Village and while he was working as Village Administrative officer in Konthalam from 13.09.2003 to 30.11.2006, on 05.02.2002, he had received a requisition from Krishnasamy/PW3 for getting Chitta and Adangal. In turn, he informed that since suit is pending before the Court, he had asked him to go to Taluk



office. Thereafter, the Tahsildhar asked him to give xerox copy of Chitta and Adangal to him. On 07.02.2002, he prepared Chitta and Adangal and through his assistant he sent the same. The copy of Chitta and Adangal is marked as Ex.P.11. Police also enquired him.

11.9. P.W.9/Karthikeyan had deposed that he was working in the Regional Forensic Laboratory, Chennai and on 26.02.2002, he had received a letter from the Chief Judicial Magistrate, Salem, through letter No.D.No.687/2002 dated 25.02.2002 (Ex.P.20) to examine the properties (Ex.P.2 to Ex.P.5 series) in connection with a case in Crime No. 4/AC/2002 through sealed cover through PC 696 Singaravel. On the same day, with the help of One Ramana Rangunath, he examined the properties and sent a report Ex.P.21 to the Court.

11.10. P.W.10/Jeyapal has deposed that he is a practicing Advocate in Paramathivelur Court. He appeared on behalf of one Nallathambi in a case in O.S.No.13/2005 before the District Munsif Court, Paramathi and that the case was filed by one Kaliannan against Nallathambi. To that case, as he need the Chitta and Adangal for the land in S. Konthalam village in S.No.148/2 D, 149/1, for which, Nallathambi/PW7 gave a petition before the Taluk office and that they asked an order from the Court, hence, he filed



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I.A. No.101/2002 before the Court and the court certificate is Ex.P22 and that the case was followed by Krishnasamy on behalf of Nallathambi.

11.11. P.W.11/K.Nachiappan is the Trap laying Officer and he has deposed that at present, he was working in the office of the Superintendent of police at Thiruchengode and on 20.02.2002, when he was working in the office of the Vigilance and Anti Corruption, Salem, at about 1.30 p.m., he had received a written complaint from Krishnasamy S/o. Veeramalai Chettiyar. He had registered a First Information Report/Ex.P.23 in Crime No.4/AC/2002 under Section 7 of Prevention of Corruption Act and gave a copy of the First Information Report to the complainant and asked the defacto complainant whether he can proceed with the complaint, for which the defacto complainant told that he can proceed with the same. Thereafter, he has sent a requisition to the District Education Officer of Salem District to send to “B” or “C” grade officers. At about 2.15pm, one Perumal, Junior Assistant/PW4 and Superintendent C.Vadivel came to his office and introduced themselves to him. He also introduced the defacto complainant to them. Thereafter, he had asked the defacto complainant whether he had brought the money as demanded by the accused, and he affirmed and handed over three hundred rupees notes and nine fifty rupees notes from his



left side of his shirt pocket and gave the same to him. Thereafter, he noted down the serial numbers of the notes which were marked as M.O.1 series.

He demonstrated and appraised them about the phenolphthalein test. The sealed cover containing the phenolphthalein powder was marked as M.O.2. Sealed cover containing sodium carbonate solution was marked as M.O.3. He gave the tainted money to the defacto complainant and asked him to hand over the money to A2-Tamilselvan only on demand and after he received the same, he had asked him to show the pre-arranged signal to him and he also sent Perumal/PW4 along with the defacto complainant to closely watch the proceedings. He also prepared Mahazhar/Ex.P.6 and on the same day, at about 3.20 pm., he along with his team, PW3 and PW4 went in the police jeep to the Paramathi Velur Taluk office and they stopped the jeep before 200 meters. The defacto complainant along with Perumal went inside the office of the accused at about 5.00 pm., and gave the tainted money to the accused and after the accused receiving the money he gave the pre-arranged signal to them and thereafter, they entered into the office and the defacto complainant identified the accused to the police. On seeing them the accused started shivering and got up from his seat thereafter the police officials called the Tahsildhar viz., Loganathan and asked him about



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Thangavel, for which he replied that he had gone to the Tiruchengode RDO Office to get some records. Thereafter phenolphthalein test was conducted on A2 which proved positive. The bottle in which the solution of left hand wash is marked as M.O.4 and the bottle in which the solution of right hand wash is marked as M.O.5 and the tainted money was marked as M.O.1 series. On enquiry with A2 he handed over the current file and note file. The current file for Chitta, Adangal recovered was marked as Ex.P11 series. The signature of Krishnasamy found in page 1 in the current file was marked as Ex.P10. The personal register of B.1 clerk containing pages 1 to 361 in which there was mention about the application of PW3's father at page 21 was marked as Ex.P12. The distribution register volume I was marked as Ex.P13. The attendance registers of 2002 was marked as Ex.P.14. Thereafter he prepared mahazhar/Ex.P15 and after informing the reasons arrested the accused A2 and thereafter, arrested A1, who had come from Tiruchengode Office and he affixed his signature in the mahazhar. Chitta and Adangal were marked as Ex.P8 and Ex.P9 and mahazar prepared for seizure of chitta and adangal was marked as Ex.P7 and he also attested the same. Rough sketch was marked as Ex.P.16. Thereafter, he sent a requisition/Ex.P.24 to the learned Chief Judicial Magistrate to search the house of the accused and



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he prepared search warrant-Ex.P17 and searched the house of the accused/Thangavel at No.4/102, Alagu Nagar, Tamil Nadu Housing Board, and no incriminating material was recovered. Search warrant was marked as Ex.P.17. Thereafter, he had also made house search in the house of the accused/Tamilselvan at Door No.9, 3rd street, CSB Colony, Thiruchengode and the search warrant was marked as Ex.P.18 and no incriminating material was recovered. Thereafter he took the accused to the office and send them for remand. He thereafter, handed over the case to the Deputy Superintendent of police/P.W.12 for further investigation.

11.12. P.W12, Girimurugan is the Investigation Officer and he deposed that while he was working as Deputy Superintendent of Police in Vigilance and Anti Corruption Department, had retired on 28.02.2009. While he was working in the department from 12.07.2001 to 12.07.2004, he took up the further investigation of the case in Crime No.4/AC/2002, Salem V&C conducted by P.W11 and after verifying all the records sent the samples to the court and also gave a requisition letter to the Magistrate to send the samples for chemical analysis. He also recorded the statement of the accused in the presence of Perumal/PW4 and C.Vadivel. He also recorded statements of PW3-Krishnasamy, PW7-Nallathami and his father



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Veeramalai. On 01.03.2002, he also verified the movement register-Ex.P27 in the Paramathivelur Taluk office and the Attendance Register/Ex.P28. He also recorded the statements of Loganathan, Chitra, Balakrishnan, Subramanian and Rajagopal in the taluk office. He also recorded the statement of Village Administrative Officer of S. Konthalam and the Assistant, Backiyalakshmi of District Munsif Court, Paramathi. He also recorded the statement of witness Krishnasamy, Advocate Jeyapal. On 07.03.2002, he recorded the statement of Nachiappan. After completing the investigation, he sent the case records to the District Collector, Namakkal and after getting permission, he filed final report against the accused under Section 7 and 13(2) of Prevention of Corruption Act.

11.13. After completion of evidence on the side of the prosecution when the accused had been questioned under Section 313 of Cr.P.C with regard to the incriminating materials A1 had denied the charges and stated that it is a false case and A2 had stated that he is an innocent and due to previous enmity, a false case had been foisted against him and that the money was planted in his table drawer and that he was threatened to take the money out and thereafter, the phenolphthalein test was conducted.



12. The main point for attack by the learned counsel for the accused is with regard to the registration of the case and the manner in which pre-trap proceedings were conducted. It was also pointed out that the case could not have been registered in the manner as projected by the prosecution and the trap could not have been conducted in the manner as projected by the prosecution. It is the further case of A1 that PW3 had not met him on 20.02.2002 and thereby, the claim of PW3 that he abetted A2 is totally false and that PW3 had given an application with forged signature of his father and since he had questioned the same, he had been falsely roped him in the case. It is the case of A2 that he was attending Computer Training at the computer center between 11.02.2002 and 18.02.2002 and hence he was not available in the office and thereby, the claim of PW3 that he had met him during that period at his office is also false and that he had not made any demand and that based on a false complaint, a stage managed trap was laid and that the tainted money was planted in his table drawer and he was forced to take the same and that only thereafter, the test was conducted.

13. The learned counsel for the accused in order to show that the prosecution has not proved its foundational facts, pointed out the material



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contradictions and discrepancies in the evidence of PW3/ defacto complainant, PW4/Official shadow witness, PW11/Trap Laying Officer and PW12/Investigation Officer. According to the learned counsel for the appellant, the genesis of the case itself is suspicious and doubtful and that the demand and the recovery cannot be believed.

14. Now coming to the evidence, PW3, in his evidence in chief, deposed that for the first time he went to the office of the accused on 05.02.2002 and gave the application/Ex.P3 in the name of his father and that A1 directed him to give the application to A2 and that A2 had told him that since the property was under litigation he had asked him to get orders from court and that after obtaining court order, he had given another application/Ex.P4 with his father's signature and that it was on 13.02.2002 and on that day, A2 was on leave and that he again went to the office after two days and that A2 had told him that the Chitta and Adangal were ready and that he had demanded a bribe of Rs.1000/-and that he told him that it was difficult and that only after payment, he will handover the documents. He had again gone after two days and that A2 had told him that money has to be given to everyone in his office and that he had reduced the demand to



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Rs.750/- and that he had met A1 on the same day and informed him and that A1 had asked him to adjust with A2.

15. It is the specific case of PW3 that the above things happened between 12 and 1.00 pm and thereafter, he had proceeded to the office of PW11 at Salem and wrote a complaint and gave it to PW11 and thereupon, PW11 had summoned the official witnesses and a mock phenolphthalein test was conducted and the Entrustment Mahazar was prepared around 03.00 pm and that he along with PW4 and the trap team, reached the office of the accused at 5.00 pm.

16. In his cross examination, PW3 had admitted that his father's kerosene license had been cancelled. He had further admitted that two applications Ex.P4 and Ex.P5 for Chitta and Adangal were given in his father's name and that his father did not come in person to give the application and that he had not given power of attorney to anyone for obtaining Chitta and Adangal. He had further admitted that on the date of giving application, A1 was not available in the office and that the application was dropped in the drop box. He had further admitted that A1 was arrested at the Tiruchengode RDO Office. It is his further evidence that



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since the partition document was undervalued, it was retained in the Registrar's Office and thereby, the patta was not transferred. He had further deposed that he started to Salem at 01.30 pm and reached Salem Bus Stand by 03.00 pm and reached the office of PW11 after 15 minutes. If the evidence of PW3 is taken to be true, the possibility of the case having been registered by PW11 at 1.30. pm could not be true.

17. Further, the presence of official trap witnesses at the office is also doubtful when especially, the request for summoning the official trap witnesses has not been produced before the Court. There are also material discrepancies between the evidence of PW3 and PW11 with regard to manner in which the complaint was preferred and the FIR being registered. It is also the case of PW3 that he orally gave the complaint and it was reduced into writing by PW11, whereas PW11 had deposed that PW3 came along with a written complaint. Further, in this regard, it is the case of PW11 that after receipt of the complaint/Ex.P5, he had registered FIR/Ex.P23. A perusal of Ex.P23/FIR shows that it has been registered in English language. The averment at column 12 of the FIR is in English language. Further though said three pages complaint stated to have been



given by PW3 is in Tamil, the FIR is a translated version in English and there is no explanation whether it is a oral complaint or a written complaint and how and by whom it was translated. This aspect also creates doubts with regard to the genesis of the complaint and the registration of FIR, which shakes the foundation of the prosecution case.

18. Further, it is the case of A1 that he went to Tiruchengode Taluk Office in the morning and he was not present in his office and the claim of PW3 that he had met him at his office is false and that his name had been falsely roped, as if, he had abetted A2. This fact is also admitted by PW12 the IO. who had deposed that during investigation, he came to know that A1 had left for Tiruchengode in the morning and he was not available at Paramathivelur during the noon time. If that is so, the claim of PW3 to have met A1 around 12 noon at his office could also not be possible.

19. PW4, the official shadow witness for the trap had deposed that he was given oral instructions by his higher officials at 2.00 pm to assist PW11 in the trap and that he had proceeded to the office of PW11 and reached there at 2.15pm. If the evidence of PW3 is taken to be true that he reached



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the office of PW11 at 03.15 pm, the fact of registering the case at 01.30 pm and summoning of the official witnesses by 2.00 pm are doubtful and in such a situation, the claim of PW4 of being summoned even before the complaint and even before the registration of the case also creates doubt.

20. An analysis of the evidence of PW3, PW4 and PW11 in conjunction with Ex.P5 and Ex.P23, leads to grave doubt with regard to the registration of the case.

21. As per the prosecution, the pre-trap demand was said to have been made by A2 to PW3 on 18.02.2002 at 11.00 am and the demand on the day of trap was said to have been made by A2 to PW3 on 20.02.2002 at 10.00am and that when it was reported by PW3 to A1 at 10.15 am on the same day, he had abetted by advising him to adjust with A2, whereas the evidence of PW3 before the Court is follows :-

“..... 20.02.2002ம் தேதி இந்த சம்பவம் நடந்தது. அவர் சொல்லியபடி தமிழ்செல்வனை பார்த்தேன். அன்று 6 மணி வரை தான் காத்து இருப்பதாகவும், பணத்தை கொண்டு வந்து கொடுத்துவிட்டு வாங்கிசெல்லுமாறு 2ம் எதிரி சொன்னார். இது நடந்தது 12., 1.00 மணி இருக்கும். நான் வீட்டிற்கு செல்வதாக சொல்லிவிட்டு, நேராக சேலம் லஞ்ச ஒழிப்பு அலுவலகத்தில்



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புகார் எழுதிக்கொடுத்தேன். நான் எழுத்து மூலமாக லஞ்ச ஒழிப்பு அலுவலகத்திற்கு கொடுத்த புகார் அ.சா.ஆ.5. அந்த புகாரை பதிந்து கொண்டு எனக்கு முதல் தகவல் அறிக்கை நகலை கொடுத்தார். அதன்பிறகு கல்வி இலாக்கா அலுவலகத்தில் இருந்து ஒருவரையும், வன இலாக்கா அலுவலகத்தில் இருந்து ஒருவரையும் ஆய்வாளர் வரவழைத்தார்.”

22. If the evidence of PW3 is believed to be true, then he could have left Paramathivelur only after meeting the accused between 12 noon and 1.00 pm and he had traveled by bus to Salem which is about 70 kms away from Paramathivelur. As stated above, it is the categoric evidence of PW12 that during his investigation he got information that A1 had come to the office on 10.00 am and after completing the formalities he had left for RDO Office of Tiruchengode in the morning itself and he was not available throughout the day at Paramathivelur Taluk office. If the evidence of PW12 I.O is taken into consideration, the evidence of PW3 meeting A1 between 12 noon and 1.00 pm and A1 asking him to adjust with A2 could also not be true. The discrepancies, material contradictions and the inherent improbabilities in the case stares at the prosecution making its case highly doubtful.



23. Now coming to the preparation of Entrustment Mahazar for trap proceedings and preparation of seizure mahazar, even looking into the timings in Entrustment mahazar/Ex.P6, the commencement time is stated as 2.30 pm and it has ended at 3.15 pm., whereas it is the evidence of PW3 that it took two hours for demonstration of the mock phenolphthalein test. This aspect also creates doubt. It is the case of the prosecution that after completion of the Entrustment Mahazar, at 03.15 pm, they went to Paramathivelur in two vehicles. It is the further case that they reached the office of the accused at 5.05 pm. Taking into consideration the distance between Paramathivelur and Salem which is about 70 kms and the possible time taken for travel is also doubtful. In this regard, the evidence of PW3 and PW4 is that the trap, recovery and seizure proceedings at the Taluk office was completed at 07.30 pm and as per Ex.P15-Seizure Mahazar PW11 is said to have directed A1 to come from the Tiruchengode RDO Office and he was stated to have been arrested at Paramathivelur, whereas it is the evidence of PW3 that after preparation of Mahazar, he had signed in 4, 5 sheets and that PW4 also affixed 5 signatures and that the proceedings took place till 07.00 pm and that he was not aware as to who had prepared the mahazar and what was written in the mahazar. He had further deposed



that thereafter, he, along with the trap team, proceeded to RDO office at Tiruchengode and PW12- Girimurugan went inside the office and brought A1 outside and that even before A1 had come out, the mahazar was almost completed and that after A1 had come, the Inspector obtained his signature in the mahazar and he had left to home from there. Though PW4 had deposed that A1 had come to Paramathivelur Taluk Office during the preparation of Ex.P15 and that he was arrested there, in his cross examination, he had deposed that he had not gone to Tiruchengode and that he had not seen A1 on that day. Whiles, Ex P15 Seizure Mahazar shows that it was prepared at the Taluk Office Paramathivelur between 05.30 pm and 07.15 pm and it reads that A1 was instructed to come to Paramathivelur Taluk office and he was arrested there. However the signature of PW4 is found in all the pages of Ex P15. This aspect also creates a doubt regarding preparation of Ex.P15-seizure Mahazar. Further, PW3 has also spoken about the presence of PW12, Deputy Superintendent of Police, Girimurugan the investigation officer during the trap proceedings.

24. These above mentioned material contradictions in the evidence of the witnesses and discrepancies in the timings with regard to PW3 meeting



the accused and proceeding to Salem from Paramathi Velur, reaching the office and the presence of PW4/Official shadow witness at the office of PW11 also goes to the root of the case, which affects the foundation of the case. Apart from the above, there are glaring contradictions with regard to the complaint viz., whether it is a oral complaint or a written complaint by PW3 and further when the complaint is given in Tamil, it has been translated in English and there is no explanation as to who had translated same also creates doubts in the prosecution case. As stated above, if the evidence of PW3 is taken to be true, the timings mentioned in the complaint, timing with regard to the registration of the F.I.R, summoning of the official shadow witness and preparation of Ex.P6-Entrustment Mahazar cannot be believed and vice versa if the timings mentioned in the complaint, timing with regard to the registration of the F.I.R, summoning of the official shadow witness and preparation of Ex.P6-Entrustment Mahazar are taken to be true, the claim of the defacto complainant/PW3 to have met A1 and A2 between 12.00 noon and 01.00 pm at Paramathivelur could not be true and thereby the alleged demand itself is doubtful.

25. Now coming to the judgments relied on by the counsel for the



appellants,

WEB COPY In *Jaswant Singh v. State of Punjab* reported in *AIR 1973 SC*

707, the question was whether, in a bribery case, evidence of the complainant should be accepted. The Honourable Supreme Court held that he was an interested witness and the evidence must be considered with great caution and can be accepted only when it is corroborated in material particulars.

In *State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede* reported in *(2009) 15 SCC 200*, it was held as under:-

“16. Indisputably, the demand of illegal gratification is a *sine qua non* for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz. demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court 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 doubt.

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In State of Punjab Vs. Madan Mohanlal Verma reported in (2013) 14 SCC 153 it has been held

"11. The law on the issue is well settled that demand of 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 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 guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification.

Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court 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 doubt.

However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. # (vide Ram Prakash Arora Vs. State of Punjab



91972) 3 SCC 652, *T.Subramaniam Vs. State of TamilNadu* (2006) 1 SCC 401, *State of Kerala Vs. C.P.Rao* (2011) 6 SCC 450 and *Mukut Bihari Vs. State of Rajasthan* (2012) 11 SCC 642.

In V.Sejappa Vs.State by Police Inspector Lokayukta, Chitradurga reported in (2016) 12 SCC 150, the Hon'ble Supreme Court, while referring to several earlier judgments, has held as follows:-

“18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and presumption would arise under Section 20 of Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of Act.

19. After referring to *Suraj Mal Vs. State 9Delhi Admn*), in *C.M.Girish Babu V. CBI*, it was held as under: (SCC P.784, paragraph)

“18. In *Suraj Mal Vs. State Delhi Admn*), this Court took the view that (at SCC P.727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.”



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20. *In State of Kerala V.C.P.Rao*, it was held that mere recovery of tainted money is not sufficient to convict the accused and there has to be corroboration of the testimony of the complainant regarding the demand of bribe.

21. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to the following observation in *Mukut Biharai V. State of Rajasthan*, where it was held as under: (SCC PP. 645-46, para 11).

"11. The law on the issue is well settled that demand of illegal gratification is since qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court 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 doubt. However, before the accused is called upon to explain as to how the amount in question was found in his



possession, the foundational facts must be established by the prosecution. The complaint is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the

court may look for independent corroboration before convicting the accused person"

In Mukhtiar Singh Vs. State of Punjab reported in (2017) 8 SCC 136, the Hon'ble Supreme Court, while referring to several earlier judgments had held as follows:-

"13. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In A. Subair vs. State of Kerala, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was expounded in State of Kerala vs. C.P. Rao that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

In P. Satyanarayana Murthy Vs State of A.P reported in (2015)10 SCC 152 the Apex Court took note of its 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



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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)”.

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 and finally it has been clarified and affirmed in Neeraj Dutta Vs State(NCT of



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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



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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.

Conclusion:



26. On analysing the facts of the present case in the light of the principles enunciated from the above decisions, this court is able to see that there are several material contradictions and inherent improbabilities in the case of the prosecution. In respect of A1, there is no charge against him for offence under Sec 7 of the P.C Act and there is no recovery from him. The evidence of the defacto complainant that A1 abetted A2 cannot be believed. Further, there are also doubts with regard to the arrest of A1. So far as the allegations against A2 is concerned, taking into consideration the contradictions and the inherent improbabilities in the case, this court is of the firm view that the prosecution case is doubtful and the foundational facts have not been proved beyond reasonable doubts.

27. In view of the law laid down in the above decisions, it is clear that while invoking the provisions of Section 20 of the Prevention of Corruption Act, the Court 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. Further, recovery of tainted currency is not sufficient to hold a person guilty. Demand has to be unequivocally proved. Further it is also a settled law that



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mere possession and recovery of currency notes without proof of demand will not bring home the offence under Section 7 of the Prevention of

Corruption Act, since the demand of illegal gratification is *sine qua non* to constitute the offence.

28. Though it is stated by the prosecution that recovery has been effected from A2 and presumption arises under Section 20 of PC Act, when the prosecution is not able to prove the case by proving the foundational facts, it cannot take advantage that the accused/A2 has not come out with probable explanation and defense and thereby, this court is of the view that the prosecution has not succeeded in proving the guilt of the appellants/accused beyond all reasonable doubts and it would be wholly unsafe to sustain the conviction of the appellants on the abovesaid evidence and thereby, the appellants are entitled to be acquitted.

29. In the result, these Criminal Appeals are allowed. Conviction and sentence imposed on the appellants/accused 1 & 2 vide Judgement in Spl.S.C.No. 57 of 2002 on the file of the Special Judge-cum-Principal



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Sessions Judge, Namakkal, dated 25.11.2016 is 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, if any,

paid by them, shall be refunded to them.

26.02.2024

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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To

1. Special Judge-cum-
Principal Sessions Judge,
Namakkal.
2. The Inspector of Police,
Vigilance and Anti-Corruption Department,
Salem at Namakkal.
3. The Public Prosecutor,
High Court,
Madras.



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A.D.JAGADISH CHANDIRA, J.

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