IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.01.2024**

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.86 of 2018

The state of Tamil Nadu represented by,
The Public Prosecutor,
High Court,
Chennai – 600 104.
(V & AC., Special Investigation Cell,
Chennai, V& AC Headquarters.
Crime No.7/AC/2008/HQ) ......Appellant

Vs.

1. G.Sadagopan
2. C.Murugan ... Respondents

PRAYER: Criminal Appeal filed under Section 378(1)(b) of the Criminal Procedure Code, pleased to allow this appeal, set aside the judgment of acquittal of the respondents/accused (A1&A2) passed by the Special Judge and Chief Judicial Magistrate, Thiruvallur in Spl. Case No.7 of 2010 dated 29.05.2017 and convict and sentence the respondents/accused (A1&A2) for the charges framed against them.

For Appellant	:	Mr.S.Santhosh Government Advocate (Crl. Side)
For Respondents	:	Mr.V.Krishnamoorthy for Mr.V.N.Krishnamurthy

JUDGMENT

This Criminal Appeal has been filed by the State, against the judgment of acquittal, dated 29.05.2017, made in Spl. Case No.7 of 2010, by the learned Special

Judge and Chief Judicial Magistrate, Thiruvallur, acquitting the respondents/accused for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution is as follows:-

2.1 The first respondent/A1 was working as a Village Administrative Officer at Kathivakkam Village, Ennore, Thiruvallur District and the second respondent/A2 was working as a Village Assistant, at Santhankadu Village, Thiruvallur District and both of them are Public Servants.

2.2. The *de facto* complainant/PW3, Nagarani, for want of Community Certificate, Income Certificate and Nativity Certificate to her grandson, R.Nagarajan, had applied for the same to the Village Administrative Officer/A1, G.Sadagopan of Kathivakkam Village, Ennore, Thiruvallur District. The first respondent/A1 had demanded a sum of Rs.400/- to issue the said certificates to PW3. Since the *de facto* complainant/PW3 was not willing to pay the bribe amount, she had complained about the demand of bribe before the Vigilance and Anti-Corruption Head Quarters, Chennai.

2.3. On receipt of the complaint, a case came to be registered in Crime No.7/AC/2008/HQ for the offence under Section 7 of the Prevention of Corruption Act, 1988, on 20.10.2008. Based on this, a trap was organized on the same day and at about 16.45 hours, at the office of the first respondent/A1, Kathivakkam Village, Ennore, Thiruvallur District and A1, in furtherance of the earlier demand, being a

Public Servant, by corrupt or illegal means and by abusing his official position, had reiterated the demand and accepted the amount of Rs.400/- from PW3 as illegal gratification other than legal remuneration for issuing certificates sought for by PW3, through the Village Assistant/A2, who was temporarily working as a Village Assistant under A1, in the presence of an official witness. Thereby, the first respondent/A1 had committed an offence of criminal misconduct punishable under Sections 7 & 13 (2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988 and the second respondent/A2 had committed the office punishable under Section 12 of the Prevention of Corruption Act, 1988.

2.4. After completion of the investigation, the final report was filed along with the relevant records before the learned Special Judge and Chief Judicial Magistrate, Thiruvallur in Special Case No.7 of 2010. On issuance of summons, the accused appeared before the Court and in compliance with Section 207 of Cr.P.C, copies were furnished to them and charges were framed to substantiate the charges levelled against the accused. The prosecution had examined PW1 to PW14, marked Exs.P1 to P16 and produced M.Os.1 to 5.

2.5. On completion of the prosecution witnesses, the accused were questioned under Section 313 Cr. P.C for which the accused denied the charges and gave the written submission stating that the de facto complainant/PW3 had borrowed an amount of Rs.1000/- as a hand loan from 1st respondent/A1 and since she had not repaid the amount, he had scolded her to return the said amount and had asked the

second respondent/A2 to receive the amount from PW3 and settle the rental amount, whereas, PW3, on the wrong advice and misguidance of third party, had preferred a false complaint against him to the Vigilance and Anti-Corruption Department.

2.6. The trial Court, after hearing the arguments on both sides, holding that the prosecution had failed to prove the guilt of the accused beyond reasonable doubts and finding that the explanation given by the accused was plausible and acceptable, had acquitted the respondents/accused. Assailing the judgment of acquittal, the present Criminal Appeal has been filed by the State.

3. Mr.S.Santhosh learned Government Advocate (Criminal. Side) appearing for the appellant, after taking this court through the evidence on record, submitted that the judgment of the trial Court acquitting the respondents/accused is against the law of evidence and probabilities of the case. He further submitted that in this case, though the defacto complainant PW3 has turned volte face and not supported the case of the prosecution, her evidence cannot be fully ignored and the trial court ought to have drawn an inferential deduction of guilt of the accused based on the other evidence including circumstantial evidence adduced by the prosecution. PW4/the Official shadow witness had spoken about the demand made by the first respondent/A1, and the receipt of tainted money by the second respondent/A2 on behalf of A1 and the handling of the money by both the accused and despite the evidence of PW4 being cogent and the phenolphthalein test conducted on the hands of both the accused having proved positive, the trial Court took a perverse view and

acquitted the accused. He further submitted that the trial Court erred in not considering the evidence of the official shadow witness/PW4 and the other witnesses PW6, PW7, PW10 and PW11 in the right perspective, when particularly, PW11, the Junior Assistant had stated that the certificates were made ready as early as 08.10.2008 and that the first accused had received it from the Taluk Office stating that he would hand over the same to the defacto complainant/PW3, whereas, he had not handed over it to PW3 till the date of trap on 20.10.2008 thereby, indicating that the first accused was holding the certificates with an expectation of receiving bribe amount.

4. He further submitted that when the complainant has turned hostile and not supported the case of the prosecution, a duty is cast on the Trial Judge as a matter of prudence to consider the extent of evidence which is creditworthy to prove the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence and the evidence of the hostile witness, if finds corroboration from the facts of the case, may be taken into account while judging the guilt of the accused and in this case PW4 the shadow witness has deposed about the demand, acceptance and recovery and the material evidence had also supported the evidence of PW3 whereas the trial court, without proper appreciation of evidence, had rendered a perverse finding in acquitting the respondents.

5. Per contra, learned counsel appearing for the respondents/accused submitted that the Trial Court, after thoroughly analysing both oral and documentary evidence

on record, concluded that the prosecution had not proved its case beyond all reasonable doubts and that the explanation offered by A1 was plausible and had acquitted the respondents/accused.

He further submitted that

5.1. Admittedly, PW3 had not supported the case of the prosecution and she had stated that nobody had demanded any money from her and that the amount handed over to the accused was the return of part loan taken from A1. Though she had been treated hostile and cross-examined by the prosecution, nothing worthwhile had been elucidated from her during the cross-examination.

5.2. Further, the trial court doubted the presence of PW4 and further analysed the evidence of PW4 and found her to be an unreliable witness.

5.3. Though in the absence of the evidence of the complainant, it is permissible to draw an inferential deduction of the guilt of the accused, based on other evidence adduced by the prosecution, the Trial Court, finding that the evidence of PW4 was not only contradictory, but also self-contradictory, refused to believe the evidence of PW4 and acquitted the accused.

5.4. There is no concrete evidence to prove whether it is either A1 or A2, who had demanded the bribe before the demand at the time of trap proceedings.

5.5. Further, the trial court found that there was no evidence to show that A1 had handled the tainted money, whereas, strangely, the phenolphthalein test

conducted on the hands of the first respondent/A1 turned positive creating doubt about the test conducted and thereby, the Trial Court had rightly discredited the evidence about the trap proceedings, recovery and the phenolphthalein test conducted on the first respondent/accused.

5.6. Further, no averment has been made against the second respondent/A2 in the complaint that he had demanded the bribe and there is no evidence that he knew that the amount that was received on the direction of A1 was a bribe amount.

5.7. When the defacto complainant had turned hostile and denied having given such a complaint, Ex.P12, she was not contradicted by showing the complaint or the statements recorded from her. Further, the evidence of PW4 is not clear about the demand and handling of money by the accused.

5.8. So far as Section 7 of the Prevention of Corruption Act, 1988 is concerned, it is settled law that the demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 of the Prevention of Corruption Act, unless it is proved beyond all reasonable doubts that the accused voluntarily accepted the money, knowing it to be a bribe and when the defacto complainant PW3 has not supported the case of the prosecution and when the evidence of the shadow witness PW4 is not clear as to the demand, the Trial Court had rightly acquitted the accused.

5.9. Before raising the presumption under Section 20 of the Prevention of Corruption Act against the respondents/accused, a mandate is cast on the prosecution to prove the foundational facts concerning the demand and acceptance by the respondent/accused and the Trial Court, rightly finding that the prosecution has not proved the foundational facts, had acquitted the respondents/accused.

5.10. The trial had observed the demeanour of the witnesses while acquitting the accused and the law is well established that the presumption of innocence which is attached to every accused person gets strengthened when such an accused is acquitted by the trial court and the High Court should not lightly interfere with the decision of the trial court, which has recorded the evidence and observed the demeanour of witnesses.

5.11. The order of acquittal is neither illegal nor perverse and the Trial Court acquitted the accused giving the benefit of the doubt and disbelieving the evidence of the prosecution and the findings and reasoning of the Trial Court are based on a probable and possible view.

5.12. The Trial Court, on an overall analysis of the evidence, has given the benefit of doubt and has found the respondents/accused not guilty. In such circumstances, the reversal of the acquittal is permissible only if the conclusion recorded by the Trial Court does not reflect any reasonable and possible view and he would seek for dismissal of the appeal.

6. This Court has given its careful and anxious consideration to the rival submissions put forward by either side, thoroughly scanned the evidence available on record and also perused the impugned judgment of acquittal.

7. At the outset, before delving into analysis and assessment of the entire

evidence available on record and appraising the reasons assigned by the Trial Court for acquitting the respondents/accused herein, it is relevant to refer to the following decisions of the Hon'ble Apex Court regarding the legal principle while deciding the appeal against acquittal.

(1) ***Chandrappa vs. State of Karnataka*** *(2007) 4 SCC 415*

(2) ***Mrinal Das v. State of Tripura*** *(***2011) 9 SCC 479**

(3) ***Sampat Babso Kale and another vs. State of Maharashtra*** **(***2019) 4 SCC 739*

(4) ***Jafarudheen vs. State of Kerala*** **(***2022) 8 SCC 440*

8. In ***Chandrappa v. State of Karnataka,*** (2007) 4 SCC 415, the Hon'ble Supreme Court held that the appellate Court should not ordinarily interfere with a judgment of acquittal in a case where two views are possible even though the trial Court's view may not appear 'more probable one' and further held as follows:

> *"42. From the above decisions, in our considered view, the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*
>
> *(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on the exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
>
> *(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are*

not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, ***must bear in mind*** *that in case of acquittal,* ***there is a double presumption in favour of the accused****. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proven guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

9. In *Mrinal Das v. State of Tripura,* **(2011) 9 SCC 479**, the Hon'ble Supreme Court has held that the appellate Court, being the final Court of facts, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision keeping in mind that the acquittal provides for a presumption in favour of the accused and also that if two reasonable views are possible on the basis of the evidence on record the appellate Court should not disturb the findings of the Trial Court. The appellate Court can also review the conclusions arrived at by the Trial Court on questions of both fact and law and it is the duty of the appellate Court to marshal the entire evidence on record, and only by giving cogent and adequate

reasons set aside the judgment of acquittal. Relevant portion of the judgment is quoted hereunder:

> *"8. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion* ***keeping in mind that acquittal provides for presumption in favour of the accused****. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or*

misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

10. In ***Sampat Babso Kale and another Vs. State of Maharashtra*** reported in (2019) 4 SCC 739, the Hon'ble Apex Court has held in paragraph 8 as under:-

"*8. With regard to the powers of an appellate court in an appeal against acquittal, the law is well established that* ***the presumption of innocence which is attached to every accused person gets strengthened when such an accused is acquitted by the trial court*** *and the High Court should not lightly interfere with the decision of the trial court which has recorded the evidence and observed the demeanor of witnesses."*

11. In ***Jafarudheen and others Vs.State of Kerala****, (2022) 8 SCC 440,* the Hon'ble Apex Court was pleased to observe as under:

" 25. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C, the appellate Court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate Court has to be

relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

12. Such being the settled law on the issue, coming to the present case, the charge against the respondents/accused are for having committed the offences punishable under Sections 7 and 13 (2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988. PW3, the defacto complaint had not supported the case of the prosecution and the other witness available to prove the demand was PW4 the official shadow witness, who is said to have accompanied PW3 to the office of the accused.

13. The Trial court had disbelieved the evidence of PW4 and finding her to be an unreliable witness, had come to the conclusion that the demand had not been proved and had acquitted the accused. Keeping in mind the principles laid down by the Hon'ble Supreme Court regarding interference or non-interference with the judgment of acquittal by this Appellate Court, it has to be seen whether the appreciation of evidence by the Trial Court is proper and whether the Trial Court had given clear, cogent, convincing and categorical reasons for acquitting the accused and

whether the Trial Court took a possible, reasonable and justifiable view in acquitting the accused. To arrive at a conclusion it is absolutely necessary to re-appreciate the evidence both oral and documentary on record and analyse and assess whether the reasons assigned by the Trial Court for acquitting the respondents/accused herein is proper.

14. In the instant case, the case of the prosecution as culled out from the evidence is that A1 was working as Village Administrative Officer of Kathivakkam Village from 12.03.1984 and A2 was working as Village Assistant from 01.06.1995. P.W8 in his evidence deposed that he is the grandson of the defacto complainant/P.W. 3 and as he was required to register his 10th standard at the Employment office, he required his Residential Certificate, Community Certificate and Income Certificate and hence, his mother P.W.9 filled application and asked P.W.3/defacto complainant to submit the same to VAO.

15. P.W.13, the Trap Laying Officer has deposed that on 20.10.2008 at about 11.00 hours, when he was on his duty as Deputy Superintendent of Police, Vigilance and Anti Corruption, Special Investigation Cell, P.W.3/defacto complainant came to the office and gave complaint/Ex.P.12 with her signature/Ex.P.3 in the complaint. Upon receipt of the complaint /Ex.P.12, he made a preliminary enquiry and registered the First Information Report/Ex.P.13 in Crime No.7/AC/2008/HQ. Immediately, he sent letters to the Director, Social Welfare Department, Co-operative Credit Society, Chepauk, Chennai and Food Cooperation of Indian Officers and Employer

Cooperative Credit Society, Teynampet, Chennai and accordingly, PW4 Tmt.Porselvi, CSR/Special Officer, Social Welfare Department, Staff Co-operative Credit Society, Chepauk, Chennai and another official witness Tmt.V.Kalavathi, CSR/Special Officer, Food Cooperation of Indian Officers and Employer Cooperative Credit Society, Teynampet, Chennai were sent to the Vigilance office on the same day at 1.45 p.m. After their arrival, P.W.13 introduced them to the defacto complainant and explained about the trap proceedings and thereafter enquired the defacto complainant as to whether she had brought the money for which, she had produced Rs.400/- in the denomination of 100/- rupee notes to P.W.13 and the same was given to the official witnesses and they noted down the serial number of the currency notes. Then P.W.13 demonstrated the phenolphthalein test and explained the same to the official witnesses. Thereafter P.W.13 gave the phenolphthalein tainted notes to the de facto complainant and instructed the defacto complainant to give the bribe amount to A1 only on demand and in the event of his acceptance of the same, the defacto complainant was asked to give the pre-arranged signal by removing the bangles from both her hands and then by wearing it again. P.W.4 was instructed to accompany P.W.3 to note down the conversation between the accused and P.W.3. Ex.P.5 entrustment mahazar was prepared and everyone had signed in it and the defacto complainant P.W.3 also had affixed her signature/Ex.P.4 in the entrustment mahazar.

16. On the same day at about 3.00 p.m., PW13 the Trap Laying Officer, along with PW3, the defacto complainant, official witnesses PW4 Tmt. Porselvi another

official witness Kalavathi along with the police party in two Government vehicles left the Vigilance Office and reached the office of the accused A1 near Kathivakkam Main Road, Ashok Leyland Main Gate and PW3 the defacto complainant and the official witness PW4 Tmt. Porselvi were directed to go to the Kathivakkam VAO Office to meet the accused A1 and to act accordingly, PW13, the other official witness Kalavathi, and the police party were waiting in that place hiding themselves.

17. PW4 Tmt.Porselvi the accompanying official witness in her evidence has deposed that when she and PW3 the defacto complainant went to the office of the accused A1 at 4.30 PM on 20.10.2008, and at that time, A1 Sadagopan was in his office situated at the first floor and when PW3 asked about the certificates, A1 Sadagopan asked PW3 the defacto complainant whether she had brought the amount as demanded. Then PW3 took the tainted amount of Rs.400/- and gave the same to the accused A1 Sadagopan, A1 directed PW3 the defacto complainant to give the amount to A2 Murugan, who was the Thalayari of the Village, who was standing nearby A1, when PW3 gave the tainted money to A2 C.Murugan, he received the same and kept on the table of A1. Thereafter, at about 4.30 p.m., PW3 the defacto complainant and PW4 came out of the office and gave pre-arranged signal by removing and again wearing her bangles on both hands.

18. PW13 the Trap Laying Officer in his evidence deposed that after getting the signal from PW3, the defacto complainant, he, along with another official witness,

and the police party of the trap team went to the office of the accused and there A1 Sadagopan was sitting in his seat and A2 Murugan was standing nearby A1 and when enquired, PW3 the defacto complainant explained that when herself and PW4 went to the office and when PW3 asked A1 about her certificates, A1 asked her what happened to the money he demanded and when PW3 gave the same to A1, A1 shown A2 and directed PW3 to give the amount to A2 and accordingly she gave the money to A2 Murugan and then A1 gave three certificates viz. Income, residential and community certificates. Apart from detailing the occurrence, PW3 had identified both A1 and A2 to PW13 the Trap Laying Officer. When PW4 was enquired about the occurrence, she also endorsed the version of PW3. PW3 the defacto complainant was asked to wait outside. PW3 kept the three certificates given by A1 on the table and went outside the room.

19. Subsequently, when PW13 introduced himself and other witnesses to A1 and A2, both appeared nervous. Then phenolphthalein test was conducted by P.W.13 upon both the hands of A1 Sadagopan and A2 Murugan separately and the test proved positive. He secured the tested solutions separately in four separate bottles. The bottles containing right and left-hand wash solutions of the accused A1 and A2 were taken under M.O.1 to M.O.4 respectively. When PW13 enquired A2, A2 Murugan said that as per the directions of the Kathivakkam Revenue Inspector, he is working under A1 and during the occurrence, when PW3 asked about the certificates, A1 directed him to get the money from PW3 and accordingly, he received the money

from PW3 and after PW3 left the place, he gave the amount to A1 Sadagopan and A1 received that amount and kept the same on the table.

20. When PW13 enquired A1 about the bribe amount, he took M.O.5 series amount of Rs.400/- containing 4 Nos. of 100/- rupee notes from the table in front of him, which was also seized by PW13, the Trap Laying Officer. When the numbers of the tainted amount were compared with the serial numbers noted in the Ex.P5 entrustment mahazar, they found to be tallying. Then, PW13 the Trap Laying Officer also seized Ex.P7 Income Certificate, Ex.P8 Residential certificate and Ex.P9 community certificates of R. Nagaraj. Thereafter, PW13 prepared Ex.P14 rough sketch about the place and prepared Ex.P6 Seizure Mahazar and seized the properties and documents between 5.50 p.m. to 7.10 p.m. Thereafter, PW13 arrested A1 and A2 at 7.00 p.m. and informed the same to the Revenue Inspector, PW7 Karthikeyan.

21. On the next day, i.e. 21.10.2008, PW13 sent A1 and A2 to judicial remand. PW13 after including section 13(2) r/w 13(1)(d) and 12 of P.C. Act 1988 and preparing the Ex.P15 section alteration report, sent the case properties to the Court under Ex.P16 Form 91. PW14 Paramasamy, the Investigating Officer, after receiving the case records, enquired the witnesses and recorded their statements. PW13 also enquired PW12 Tmt.Karpagan Badragiri, Scientific Officer, Forensic Lab obtained Ex.P11 Forensic Science Lab Report. Further, he examined PW1 Thiru.G.Kumar, Revenue Divisional Officer, Ponneri who issued Ex.P1 sanction order for prosecuting

A1 Sadagopan and examined PW2 Thiru.Ramachandran, Tahsildar, Ambattur, who issued Ex.P2 sanction order for prosecuting A2 Murugan and recorded their statements. After completing the investigation, he laid the charge sheet against A1 and A2.

22. The allegation against the respondents/accused is that A1 while working as a Village Administrative Officer had demanded illegal gratification from the de facto complainant/ Nagarani the required certificates to her grandson. It is the case of the prosecution that the first accused had demanded a bribe of Rs.400/- from PW3 on 17.10.2008 at about 10.30 hours stating that the same has to be paid on Monday and then only he would issue the required certificates for her grandson. Since PW3 was not interested to give the bribe, she had lodged a complaint to PW13 /TLO and the same was registered on 20.10.2008 in Crime No.7/AC/2008/HQ and PW13 decided to lay a trap. Thereafter PW13 requested one Mrs.Kalavathi working in Co-Op Thrift Society at FCI Teynampet (Not Examined) and Mrs.Porchelvi PW4 working as Special Officer in the Co-Operative Thrift Society of Social Welfare Department Chepauk to assist him in the trap proceedings. Thereafter a trap was organised and the Entrustment Mahazar was prepared and the trap team along with PW3 and PW4 proceeded to the office of the accused and at about 16.45 hours at the office of A1 and A1 being the Village Administrative Officer reiterated the earlier demand to PW3 and directed her to hand over the amount to A2, Village Assistant, who was working

temporarily at the office of A1 and A2 had received the amount. Thereafter the phenolphthalein test conducted on both the accused had proved positive and PW13 had recovered the documents from the office of the accused.

23. In this case, the key witnesses for the trap are PW3/ the defacto complainant, PW4/the official shadow witness for the trap and PW13/ the Trap Laying Officer. However, strangely, in this case, PW3/defacto complainant had made a volte-face and did not support the case of the prosecution and she had been treated hostile and though she had been cross-examined at length by the prosecution, nothing worthwhile has been elucidated during her cross-examination. Further, she was not even confronted either with the aid of the written complaint Ex.P12 preferred by her or the statement recorded from her under Section 161 Cr.P.C.

24. Now, concerning the demand and acceptance, what remains is the evidence of PW4 the official /shadow witness. Now analysing her evidence, she had stated that she had accompanied PW3 to the office of A1 on the date of the trap and PW3 had asked A1 for the certificate, for which, A1 had asked whether she had brought the money and PW3 had replied that she had brought the money, thereby, A1 had directed PW3 to hand over the money to A2. A2 received the money and kept it on the table of A1. It is not the case of PW4 that after A2 had received the money he handed it over to A1 and A1 touched it. Her specific evidence is that PW3 immediately went out and made the pre-arranged signal to the Trap Laying Officer/PW13, then, PW13 came inside the office at once and conducted the

phenolphthalein test on both the hands of both the accused the wash of both hands of A1 and A2 turned pink and they were collected in four bottles and marked as MO1 to MO4. It is also PW3's case that A1 did not handle the money. Such being her version, the possibility of the phenolphthalein test conducted on A1 proving positive creates doubt about the prosecution case. PW4, in her cross-examination, had admitted that during the investigation, she had not told PW13 about the handling of money by A1. Further, when questioned about the location of the office of the accused, she was unable to tell whether it was in the 1st Floor or the ground floor and further, she had admitted that she was standing outside the office of the accused at the time of trap. If she had been standing outside the office, there could not have been the possibility of her knowing what had transpired inside the office. Analysing the evidence of PW4, the Trial Court found her evidence to be self-contradictory and thereby refused to believe her.

25. Therefore, the prosecution is left with the evidence of PW13, TLO. He deposed that he had sent requests through Inspector Ashokan to the Director of CO-Operatives to depute two staff to be witnesses to the trap whereas it is the evidence of PW4 that she was not at Chepauk and she and the other staff Kalavathy (Not Examined) were at their Head Office at Parry's Corner and that they had gone to the office of PW13 on oral instructions. This aspect also creates doubt about the presence of PW4 itself at the time of the trap. As per the prosecution's case, immediately after

identifying the accused, PW4 is stated to have gone out of the place of occurrence and thereafter, she was not available at the place of occurrence, whereas as per Recovery Mahazar/Ex.P6, the Trap Laying Officer/PW13 had recorded the Recovery Mahazar as if the information was given by PW4, which also creates doubt about the preparation of Ex.P6 thereby, creating doubt about the prosecution case.

26. The evidence, in its entirety, improbabilises and falsifies the case of the prosecution with regard to the trap proceedings, the phenolphthalein test conducted on both the accused and the recovery of tainted money. Thereby the case of the prosecution about demand, acceptance and recovery on the date of the trap has become doubtful. Further A1 has also given his explanation about the recovery of the documents from his office. There is also no evidence of demand or abetment as against A2.

27. It is settled law that to prove the charge of illegal gratification, it has to be 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 and mere possession or recovery of currency is not sufficient to constitute such offence. Even presumption can be raised under Section 20 of the Prevention of Corruption Act only when demand and acceptance of illegal gratification is proved.

28. In ***Neeraj Dutta vs. State (Government of N.C.T. of Delhi)*** (2023) 4 SCC

731 (Constitution Bench), it has been held as under:-

*"**88.1.** (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.*

***88.2.** (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*

***88.3.** (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*

***88.4.**(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

88.5. *(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.*"

29. In the case on hand, this court had already observed that the prosecution has not proved the foundational facts of demand, acceptance and recovery beyond all reasonable doubts. In such circumstances, the presumption under Section 20 of the Prevention of Corruption Act also cannot be invoked against the accused. The

reasoning given by the accused about the recovery of files from their office cannot be brushed aside in view of its probability. When demand has not been proved and a proper reasoning has been given by the accused the other evidence of holding the documents/certificates becomes immaterial and irrelevant.

30. A perusal of the judgment rendered of the Trial Court shows that the Trial Court had carefully analyzed the evidence to arrive at a finding that the case of the prosecution has not been proved. Further, the Trial Court also had the distinct advantage of seeing the demeanour of the witnesses directly. In the Appeal against acquittal, unless the conclusions reached by the Trial Court are palpably wrong or based on an erroneous view of law and evidence or if such conclusions are allowed to stand, they are likely to result in grave injustice, this Court would be fully justified in interfering with such conclusions. Thus, the law on the issue is to the effect that in exceptional cases, where there are compelling circumstances and the judgment under appeal is being found to be perverse, this appellate Court can interfere with the order of acquittal. This Court is also aware that by the acquittal, there is a presumption of innocence of the accused and the Trial Court's order bolsters the presumption of innocence of the accused. In such circumstances, interference in a routine manner, where the other view is possible cannot be accepted.

31. As stated above, the Trial Court, after carefully analysing the evidence and

by pointing out several infirmities and by assigning valid and cogent reasons, had discarded the evidence adduced by the prosecution and had found that the prosecution has failed to prove the case of demand and acceptance beyond the reasonable doubts. Given the discussions above, this Court also finds no justifiable reason to interfere with the impugned judgment of acquittal.

32. In the result, this Criminal Appeal is dismissed, confirming the impugned judgment of acquittal.

09.01.2024

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To

1. The Special Judge and Chief Judicial Magistrate,
Thiruvallur.

2. The Special Investigation Cell,
Vigilance and Anti-Corruption Headquarters,
Chennai.

3.The Public Prosecutor,
High Court of Madras.

A.D.JAGADISH CHANDIRA,J.

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Crl.A.No.86 of 2018

09.01.2024