IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 1.2.2024

Delivered on : 15.4.2024

CORAM

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

Criminal Appeal No.274 of 2014

Karanjit Singh ... Appellant

vs.

Inspector of Police,
SPE/CBI/ACB/Chennai.
(RC No.MA 1/2009/A/0043) ... Respondent

Criminal Appeal filed under Section 374 Cr.P.C. Read with Section 27 of the Prevention of Corruption Act, 1988 against the judgment in C.C.No.42 of 2009 dated 22.4.2014 by the IX Additional Special Judge for CBI Cases, Chennai.

For Appellant : Mr.A.Ramesh, Senior Counsel for
M/s.R.Aswin

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor for CBI Cases
assisted by Ms.Vrundha Ramesh

JUDGMENT

Challenging the judgment of conviction and sentence rendered by the IX Additional Special Judge for CBI Cases, Chennai in C.C.No.42 of 2009, the accused has come up with the present Criminal Appeal.

2. The appellant/accused Karanjit Singh was serving as Appraiser, All Cargo Container Freight Station, Thiruvottiyur at the relevant time and as such, he was a Government Servant as contemplated under Section 2(c) of the Prevention of Corruption Act. He is alleged to have demanded and obtained illegal gratification from various Customs House Agents for the process of clearing cargo, by abusing his official position and thereby committed offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. He stands convicted and sentenced as under:-

Penal Provision	***Sentence***
Section 7 of the Prevention of Corruption Act, 1988	One year rigorous imprisonment and a fine of Rs.15,000/- in default to pay the fine, to undergo rigorous imprisonment for a further period of three months
Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988	One year rigorous imprisonment and a fine of Rs.15,000/- in default to pay the fine, to undergo rigorous imprisonment for a further period of three months
The sentences shall run concurrently.	

3. Facts relevant for deciding the appeal are as under:-

i) One Ravi, PW4, while he was serving as Inspector of Police, CBI/ACB/Chennai, was apprised of by the Superintendent of Police, ACB/Chennai on 12.8.2009 around 3 p.m. that a reliable information was received by him to the effect that huge amount of money was being received by the appellant-Shri.Karanjit Singh, Appraiser, All Cargo Container Freight Station, Thiruvottivur from various Customs House agents in the process of clearing cargo as illegal gratification by abusing his official position and instructed to form a team to conduct a surprise check in the said freight station.

ii) Accordingly, a team consisting of Shri.Sathyamurthy, Inspector of Police, Shri.Sivasankaran, Inspector of Police, Nandagopal, Sub Inspector of Police and Suryakumar, Sub Inspector of Police was formed. The presence of one independent witness Shri.K.Kadhar Hussain, Southern Railway, Senior TE, Flying Squad, PW3 was arranged through the Vigilance Department and accordingly, he reported at the CBI Office at about 4.00 p.m. The purpose of his presence was explained and the team had left for Air Cargo Container Freight Station and reached there at about 6.30 pm on 12.8.09.

iii) On reaching the spot, the team members had taken suitable position in and around the office premises without giving room for any suspicion and were observing the proceedings. Many people were found counting cash and went inside the room of the appellant and after few minutes came out. After observing the above happenings for about 30 minutes, the CBI team and the witness, led my PW4, went inside the cabin/room of of the appellant located at the ground floor of the building and introduced themselves to the appellant on identifying him and another person, who was standing facing the appellant was ascertained as Shri.Gowri Sankar, PW2 from M/s Kavikumar Shipping Company, Chennai.

iv) On entering into the room of the appellant, two files were found lying on the table of the appellant besides a bunch of currency notes. When asked about the currency notes, the appellant had started sweating and did not give any plausible reply. The bunch was found to contain Rs.14,000/- in the denomination of Rs.500/- When PW2 was asked about the currency notes, he stated that he came to clear two consignments on behalf of his company and a sum of Rs.14,000/- was demanded by the appellant for clearing the two consignments as bribe and the amount of Rs.14,000/- was paid by him as demanded by the appellant and the said amount was seized as

M.O.1 series. Apart from that a sum of Rs.10,000/- was found inside the table drawer of the appellant kept in a white envelope of J.P.Shipping Services Pvt. Ltd. Further a sum of Rs.1,000/- was found to be kept in a brown envelope inside the table drawer. A bundle of currency notes totalling Rs.39,400/- was found to be kept in the bunch with the rubber band and another bunch of currency notes totalling Rs.6,000/- was also found to be kept with the rubber band. The amount seized from the table drawer amounting to Rs.56,400/- is marked as M.O.2 series.

v) Cash Declaration Register maintained in the office was demanded from the appellant and a perusal of the same showed that the last entry was made on 30.4.2009 by one Shri.Kannan and subsequent to that no entry was found to have been made. The said register was also seized and marked as Ex.P9. The two files found lying on the table of the appellant pertaining to the Weighment Slips of M/s.Ora Steels and M/s.Arun Vyapar Udyog Limited were seized and marked as Exs.P7 and P8. The signature of PW3 was obtained on Exs P7 to P9. The surprise check proceedings, Ex.P3 was typed out duly signed by all and a copy of the same was given to the appellant under acknowledgment. Subsequently, the case records including the cash recovered were handed over by PW4 to the Inspector of Police, PW18 for investigation.

vi) PW18, M.Raja, the Inspector of Police, CBI/ACB/Chennai, on receipt of the case records and instructions from the Superintendent of Police, registered a case in RC.43(A)/2009 u/s. 7 & 12 of PC Act 1988 against the appellant and P.Gowrishankar, PW2 at about 21 hours under FIR Ex.P44 on the basis of the surprise check proceedings conducted by PW4. The appellant and PW2, Gowrishankar were arrested on the same day at about 21.30 hours.

vii) PW18 had deputed Palaniappan, Inspector of Police, CBI, ACB, Chennai (not examined) for conducting search in the residential premises of the appellant. Accordingly, a search was conducted at the residential premises of the appellant between 22.00 hours and 23.55 hours on 12.8.2009 and an inventory list, Ex.P43 was prepared. On 13.8.2009, the appellant and PW2, Gowrishankar were produced before the Trial Judge at his residence and both were remanded to Judicial custody. On 14.8.2009 PW18 had produced all the seized documents/cash before the Court. On the same day, he had also deputed Palaniappan to conduct a search in the locker held by the appellant at UCO Bank, Anna Nagar, Chennai. On 17.8.2009, PW18 had received the seized documents and the locker inventories from Palaniappan. On 18.8.2009, PW18 had deposited the seized cash of Rs.3,80,000/- in Indian Bank, Velacherry branch as per the orders of the court. On 19.8.2009 he had deposited the original Fixed Deposit Receipt, Ex.P45 before the court. On 20.8.2009 he had filed a memo for amendment to the surprise check proceedings Ex.P.3 sent with the FIR Ex.P.44 pertaining to the cash seized from the office premises of A1 as it was wrongly mentioned in Ex.P3 as Rs.60,400/- instead of Rs.70,400/-. On 26.8.2009 PW18 had examined and recorded the statement of PW6 M.Anandarao and received Ex.P.12 & Ex.P.13 from him. On the same day, he had also examined PW7 and recorded his statement and also received Ex.P.16 from him. On the same day, he had examined PW8 and recorded his statement and received Ex.P.25 from him. On 27.8.2009, he had examined PW9 Ranganathan and recorded his statement. On 28.8.2009, he had examined PW5 Sureshkumar and recorded his statement and received Ex.P.26 from his. On the same day, he had examined LW8 Bhavani Arunothayam and received the Service Register extract of the appellant, Ex.P46 from him. The Service register extract of the appellant signed by Ajith Kumar, Joint Commissioner (P & V) and handed over to PW18 by LW8 is Ex.P47. On 29.8.2009, PW18 had further examined PW5 R.Sureshkumar and recorded his further statement. On 31.8.2009, PW18 had examined Ravi PW4 and recorded his statement. On 2.9.2009, he had examined Tamilvendan, PW10 and recorded his statement. On the same day, he had examined Khadhar Hussain, PW3 and recorded his statement. On 8.9.2009, he had examined PW11, Kumaraguru, S.Elango, PW12 and R.Kumar, PW13 and recorded their statements. On 15.9.2009, PW18 had filed a petition before the Chief Metropolitan Magistrate Court for recording 164 Cr.P.C statement of PW5 Sureshkumar and PW2, Gowrishankar. On 24.9.2009 XII Metropolitan Magistrate had examined PW2, Gowrishankar and on the next day viz., on 25.9.2009 his 164 Cr.P.C statement was recorded. On 29.9.2009, XIII Metropolitan Magistrate has recorded the 164 Cr.P.C statement of PW5, Sureshkumar. On the same day, PW18 had interrogated the appellant. On 8.10.2009, he had examined Anandakumar, PW14 and recorded his statement and he had also identified Exs.P29 to P31. On the same day, PW18 had examined Rajendran PW15 and received Ex.P.32 to Ex.P.40. On 28.10.2009, XI Metropolitan Magistrate had given Tender of pardon to Gowrishankar, PW2. After completion of investigation the investigation report along with all documents, statement of witnesses were sent to Vigilance, Customs Department , Chennai seeking sanction for the prosecution of the appellant through SPE/CBI/ACB/Chennai. On 20.11.2009, the sanction order for the prosecution of the appellant was received from PW1. On 3.12.2009, PW18 had filed the charge sheet along with all the documents and statement of witnesses against the appellant u/s 7 & 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act 1988.

viii) The case was taken on file in C.C.No.42 of 2009 by the IX Additional Special Judge for CBI Cases, Chennai. On summoning, the Appellant/accused appeared. Copies of relevant papers were furnished to the Appellant/accused under Section 207 of Cr.P.C. and charges were framed. The accused had denied the charges and sought for trial.

ix) The prosecution had examined P.Ws.1 to 18, marked Exs.P1 to P47 and produced Mos.1 and 2.

x) On completion of the evidence, the appellant/accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had denied the same and marked thirteen documents as D1 to D13 in support of his defence.

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

4. Submissions of the learned Senior Counsel Mr.A.Ramesh appearing for the appellant are as under:-

i) The judgment of the Trial Court is erroneous, against the materials and evidence and not in accordance with the procedure established by law.

ii) The reliable information received at the office of the Superintendent of Police, Chennai being the basis for the case of the prosecution, there are material contradictions among the version of PW3, independent witness, PW4, the officer, who led the team for the surprise check and PW18, the investigating officer, which creates a doubt and suspicion with regard to the genesis of the case. The evidence of PW2 (approver) does not inspire confidence for the reason that he had not disclosed the entire material facts, more particularly the incident on the previous days viz., 10.8.2009 and 11.8.2009.

iii) PW3 says in his chief examination that he received a communication from his Vigilance Department on 12.8.2009 at 2.00

pm that he had to meet PW4 at CBI Office at 4.00 pm while his version in his cross examination is that his superior officer had asked him at 11.00 am itself by handing over a letter to meet Ravi, CBI Officer. It is the evidence of PW4, investigating officer, who led the team for surprise check that on 12.8.2009, at about 3.00 pm, SP/ACB/Chennai called him and informed that a reliable information was received and the Superintendent of Police asked him to form a team to conduct a surprise check in the freight station and only thereafter, PW3 was called to be a witness. It is still worse that PW18, the investigating officer had stated that the reliable information was received at 12.4.2009 at 4.15 pm and there is no mention in the FIR, Ex.P44 as to what time, the information was received and the Superintendent of Police concerned who is said to have received the information was not examined by the prosecution. Though an approver is a competent witness, his evidence may be corroborated with material particulars either by direct or circumstantial evidence. When the evidence of the approver does not disclose material particulars, it is unworthy of credence and reliance cannot be placed on him. The evidence of PW3 is wholly unreliable since he had willfully evaded to answer many questions during his cross-examination and thereby, the court cannot have any difficulty in coming to a conclusion as held in ***Vadivelu Thevar vs. State of Madras*** (1957 SCC OnLine SC 13).

iv) The distance between the CBI office and the court being one that could be travelled within one hour, the GD entry, Ex.D13 shows that they reached the office at 20.50 hours, registered the FIR at 21.00 hours and sent the same to court at 22.45 hours, however, the FIR had reached the court only on 13.8.2009 at 10.50 am without there being any explanation for the delay and the messenger, who took the FIR to the court has also not been examined by the prosecution.

v) PW2, having been arrested as a co-accused could not have been cited as an approver when his evidence is contrary in nature when compared to his earlier version in his bail application and in the statement under Section 164 Cr.P.C.

vi) The Trial Court has erred in relying on the surprise check proceedings, Ex.P3 considering it to be a genuine document when there is a discrepancy in the evidence of PW2 with regard to the signatures of himself and the appellant found in Ex.P3 and with regard to the total number of pages of the document, especially, when the document has not been serially numbered.

vii) The Trial Court failed to see that Ex.P3 mentions about the alleged seizure of Rs.14,000/- on the table and Rs.56,400/- from the drawer of the table, there is no charge framed with regard to the alleged seizure of M.O.2 viz., Rs.56,400/-. Once the alleged seizure of M.O.2 was not charged against the accused, he cannot be confronted with the alleged seizure of the same.

viii) When it is the case of the prosecution as per the evidence of PW3 and PW4 that when they were waiting outside the cabin of the appellant for about 30 minutes, they had witnessed several persons going inside the cabin of the appellant counting currency notes and coming back in a way to corroborate the allegations made in the reliable information alleged to have been received in the office of the Superintendent of Police, none of such persons was apprehended and no statement was recorded from any one of them and thus, their evidence is unnatural and unbelievable, especially, when PW4 had not even drawn any sketch showing the place where the witnesses were made to wait, thereby creating a doubt with regard to the position of the witnesses and the probability of the witnesses having come to know what transpired in the cabin of the appellant. The non-recovery and non marking of the electronic evidence (best evidence) despite their availability, create grave suspicion with regard to the manner of surprise check thereby creating adverse inference against the prosecution.

ix) The Trial Court failed to see that the statements recorded from PW2 by PW18 were not forwarded to the court and thereby grave prejudice has been caused to the appellant, especially when PW2 was treated as approver and the appellant was handicapped in confronting PW2 by showing his statement under Section 161 Cr.P.C and further when PW2 and PW3 in their cross examination have admitted that they had deposed only after perusing their earlier statement given during investigation which reveals that they had been tutored to depose for the prosecution and thereby their evidence is totally inadmissible as having been hit by Section 162 Cr.P.C., as held in ***Kanbi Vaghi Savji vs. State of Gujarat*** (1968 Cri. LJ 54).

x) The appellant, while cross-examining the prosecution witnesses, had marked as many as 13 documents, more particularly, Exs.D1 and D3 falsifying the case of the prosecution with regard to surprise check proceedings. The discrepancy in the timings as disclosed by those documents with the oral evidence would show that a stage managed surprise check proceedings had been conducted and the appellant had been fixed in this case. There are several unanswered questions and loose ends in the case creating various doubts in the prosecution case.

xi) The Trial Court has failed to appreciate that the plausible explanation offered by the appellant to PW4 and the statement given to PW18 were not produced before the court, which has gravely prejudiced the case of the appellant.

xii) The Trial Court erred in ignoring the fact that the prosecution has miserably failed to prove neither the demand nor the acceptance of any money by the appellant from PW2 and therefore, no presumption under Section 20 of the Prevention of Corruption Act arises.

xiii) The Trial Court has failed to take into consideration that the appellant had complained about planting of money and the same was recorded in the remand order, however, the Trial Court has erred in concluding that the prosecution has proved its case based on the evidence of PW2, PW4, PW5 and Ex.P3 and thus the Judgment of conviction and sentence passed by the Trial Court is liable to be set aside and the appellant is entitled to acquittal.

5. Mr.K.Srinivasan, learned Special Public Prosecutor for CBI Cases would submit his arguments as under:-

i) The prosecution, by examination of PW2 and PW3, had proved the case of demand.

ii) Recovery of two files of M/s.Arun Vyapar Udyog Limited and M/s.Ora Steels, a total sum of Rs.56,400/- from the table drawer of the appellant and a sum of Rs.14,000/- lying on his table, seized as per Ex.P3, which were unaccounted as evident from Ex.P9 Cash Register raises a presumption under Section 20 of the Prevention of Corruption Act.

iii) The evidence of PW5, Suresh Kumar, employer of PW2, corroborates the evidence of PW2 with regard to the demand of bribe by the appellant.

iv) PW3, an independent witness speaks in his evidence PW2 had spoken to him about the demand of Rs.14,000/- made by the appellant. Though there had been minor variations in the evidence of PW3, it cannot be rejected outright and it is the duty of the court to remove the chaff from the grain in its pursuit for truth and the principle governing '*falsus in uno, falsus omnibus*' has no application to the courts in India.

v) Illegality committed in the course of an investigation does not affect the prosecution case unless miscarriage of justice has been caused thereof.

vi) Sofar as the admissibility of the evidence adduced by the prosecution witnesses on their admission that their earlier statements were read over before they entered into the witness box, the legal position was clarified by a Full Bench in ***Nathu Manchu vs. The State of Gujarat*** (1977 SCC OnLine Guj. 63).

vii) Except some minor contradictions with regard to mentioning of time of some events, the prosecution has proved its case with cogent materials and the further recovery of unaccounted cash at the residence of the appellant also fortifies the case of the prosecution and thus, the well reasoned judgment of conviction rendered by the Trial Court need not be interfered and the appeal may be dismissed.

6. In reply, Mr.A.Ramesh, the learned Senior Counsel for the appellant would submit that no charge has been framed in respect of the alleged recovery from the residence of the appellant and no witness has been examined to prove the so called recovery and as such, reliance cannot be placed on the same. He would further submit that though it is a case of surprise check, the prosecution is bound to

prove its case beyond all reasonable doubts and only when the foundational facts are proved, the mandate of Section 20 of the Prevention of Corruption Act can be invoked against the appellant. In this case, the prosecution has miserably failed to prove its case and thereby the appellant is entitled to acquittal.

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

8. The case of the prosecution is that a reliable information was received at the office of the Superintendent of Police, CBI/ACB/Chennai with regard to bribing activities in the office of the appellant, an appraiser, All Cargo Container Freight Station, Thiruvottiyur and thereupon, a team was formed to conduct a surprise check and consequent to that, the appellant, alleged to have demanded and accepted bribe and one Gowrishankar, alleged to have offered bribe, were arrested and later, the said Gowrishankar turned to be an approver and deposed against the appellant as PW2 and thereupon, the appellant alone was tried and on being found guilty, he was convicted and sentenced as referred to above.

9. Such being the case, points to be determined in the Appeal are:-

i) whether the prosecution has proved the demand, acceptance and recovery? and

ii) whether the Trial Court is right in convicting the appellant on the basis of the materials available on record?

10. The foremost thing to be noted in the case is that without there being any individual to set the law into motion, an information, alleged to have been received at the office of the Superintendent of Police, CBI/ACB/Chennai, which is claimed to be a reliable one, is the genesis for the case of the prosecution. The nature of such information is claimed to be an oral one as spoken by the prosecution witnesses and as evidenced by the FIR, Ex.P44.

11. A perusal of the FIR, Ex.P44 would disclose that it was registered by PW18, the investigating officer at 9.00 pm on 12.8.2009 based on an oral information, without mentioning as to whether such information was received over phone or in person and there is also no specific mentioning of the time of receipt of such information. For the sake of clarity, the contents of FIR is reproduced hereunder:-

"A reliable information has been received by the office of the Superintendent of Police, CBI, ACB, Chennai on

12-08-2009 that Shri.Karanjit Singh, Appraiser, All Cargo Container Freight Station, Thiruvottriyur, Chennai of Customs, habitually demands and accepts illegal gratification for himself and others from the Customs House Agents for clearing their Cargo and it was also reliably learnt that he would be receiving bribe amounts at All-Cargo Container Freight Station, Thiruvottriyur, Chennai as illegal gratification from various custom house agents in the process of clearing the cargo today (12-08-2009) evening at 1830 hrs. Upon receipt of the above information, a surprise check was conducted by the CBI team in the premises of All Cargo Container Freight Station at Thiruvottriyur, Chennai today i.e., 12-08-2009 at 18.30 hrs in the presence of independent witness.

During the surprise check, it was found that Shri.Karanjit Singh had demanded and accepted a bribe money of Rs. 14,000/- from Shri P.Gowri Shankar, Clerk, M/s.Alwin Cargo Services, No.158, Angappan Naicken Street, Mannadi, Chennai-1 for clearing the bills of his company. It has also found that Shri P.Gowri Shankar, Clerk of M/s.Alwin Cargo Services abetted Shri Karanjit Singh, Appraiser, by paying a bribe of Rs.14,000/- for clearing their Cargo. Shri.Karanjit Singh was found in possession of bribe amount totaling Rs.60,400/- as illegal gratification from various Custom House Agents with whom he had the official transactions. During the surprise check, the unaccounted sum of Rs. 60,400/- was recovered from the possession of Shri.Karanjit Singh. On being questioned about the possession of such huge amount, Shri.Karanjit Singh could not explain satisfactorily. Further, during the surprise check, it has been ascertained that there is no official money transaction in the All-Cargo Container Freight Station, Thiruvottriyur, Chennai. The sum of Rs. 60,400/- found in the possession of Shri.Karanjit Singh was seized during the proceedings."

12. Before proceeding further, it is relevant to note that the FIR, Ex.P44, having been made ready on 12.8.2009 at 9.00 pm itself consequent to the surprise check conducted at the evening hours of 12.8.2009, had reached the residence of the Presiding Officer, which is at a distance that could be reached by travelling for an hour, only on 13.8.2009 at 10.50 am, however, the prosecution has not come out with any plausible explanation for the delay and none has been examined on the aspect of delay when it is the case of the prosecution that it has been sent to court only through a messenger.

13. In support of their case, the prosecution has examined 18 witnesses as P.Ws.1 to 18 and 47 documents have been marked as Exs.P1 to P47 while the defence had also marked 13 documents as Exs.D1 to D13. PW1 is the sanctioning authority. PW2 was originally implicated as A2 in the case, however, later on tender of pardon, had turned to be an approver. PW3 is the official witness for the surprise check conducted by a team headed by PW4, Inspector of Police. PW5 is the employer of PW2. PW6 is a Scientist in National Metallurgical Laboratory, CSIR, Chennai examined to speak about the inspection of goods involved in the case. PW7 is a Senior Executive at All Cargo

Global Container Freight Station. PW8 is the Account Manager of M/s.Arun Vyapar Udyog Pvt. Ltd. PW9 is the Business Development Executive. PW10 is the Assistant Commissioner in charge of Assessment Group. PW11 and PW12 are the Preventive Officers at All Cargo Global Container Freight Station. PW13 is the Examiner at All Cargo Global Container Freight Station. PW14 is the Appraiser, Special Evaluation Cell, Customs. PW15 is the Branch Manager, Lakshmi Vilas Bank. PW16 is a Government witness to speak about the search conducted at the residence of the appellant. PW17 is a Partner in M/s.Kavikumar Shipping Company and PW18 is the investigating officer.

14. Though voluminous documents have been marked, this court feels that it would be appropriate to analyse the documents that would be relevant for deciding the Appeal without getting perplexed with the heap of documents.

15. The information received at the office of the Superintendent of Police being the basis for the case of the prosecution, its veracity needs to be probed into at the inception itself. In this regard, it would

be relevant to analyse the evidence of P.Ws.3, the official witness and PW4, the head of the special team formed to conduct a surprise check at the office of the appellant.

16. It is the evidence of PW4, Inspector of Police that on 12.8.2009, **around 3.00 pm**, the Superintendent of Police called him and informed about the reliable information about the bribing activities at the office of the appellant and directed him to form a team to conduct a surprise check in the freight station. His further evidence is that the presence of one independent witness Shri.K.Kadhar Hussain, Southern Railway, Senior TE, Flying Squad, PW3 was arranged through the Vigilance Department on the request of PW4 and accordingly, PW3 had reported at the CBI Office at about 4.00 p.m, whereas, in contrary to that, it is the evidence of PW3, the official witness in his chief examination that on 12.8.2009, **at about 2.00 pm**, he received a call from his Vigilance Department and he was advised to meet PW4 at Shastri Bhavan at about 4.00 pm, however, during his cross examination, peculiarly, he had taken a stand as if he received a written order from his superior at about 11.00 am itself to report before PW4 by 4.00 pm and he had affirmed the same by contending

once again that it was only at 11.00 am and not at 2.00 pm. Be that as it may, when PW4, the Inspector of Police himself takes a stand as if he had received instructions only at 3.00 pm from the Superintendent of Police to proceed with a team, it is highly impossible that the official witness could have received a call from his Vigilance Department by 11.00 am itself or even at 2.00 pm on the particular day. Such a controversy not only creates doubt about the credence of PW3, but, also becomes more significant when there is no specific mentioning in the FIR with regard to the time of receipt of the information at the office of the Superintendent of Police and it is still worse to note that the written order of the superior official spoken by PW3, the official witness has not been marked, thereby raising suspicion about the genesis of the prosecution case itself. Further, though the prosecution claims PW3 as an independent official witness for the surprise check proceedings to corroborate PW2, when he was cross examined, he was unable to speak about the proceedings with any clarity. He has spoken that he does not remember even the denomination of the amount seized, however, he says that he could recollect the same only to some extent. He was not able to speak about the places where the surprise checks were conducted and whatever had been recovered by the team. He further admitted in his cross examination that the proceedings recorded at the time of surprise check was a three page document, however, he was unable to speak as to how it turned to be a four paged document and he does not remember whether he had later signed in the four paged document. Therefore, the evidence of PW3, instead of supporting the case of the prosecution, goes against the same.

17. De hors the alleged receipt of information about the bribing activity spoken by PW4, the prosecution is left with the witnesses of P.Ws.2 and 5 speak about the demand alleged to have been made by the appellant. PW2, having been treated as a co-accused at the relevant point of time for offering bribe to the appellant for clearing the cargo, had turned to be an approver and deposed against the appellant and thereby the probability of giving evidence against the appellant as the price for getting pardon cannot be simply ignored. Therefore, his evidence needs to be subjected to acid test before relying on the same. The same principle applies to the evidence of PW5, he being the employer of PW2. The evidence of PW5, employer of PW2 with regard to withdrawal of monies from the Bank will also not help the

prosecution since PW2 had, at the first instance itself viz., in the bail application, had taken a stand that the office money possessed by him had been recovered from his custody and thereby the withdrawal of monies from the Bank, spoken by PW5, cannot, now, be related to be one for bribing. Further, it is relevant to note that in the order dated 19.8.2009, passed in the bail petition filed by PW2 marked as Ex.D7, it has been observed by the Principal Special Judge for CBI Cases as under:-

> *"Accordingly A2 went to the office of A1 to give the report from the National Metalogical Laboratory. At that time CBI officials raided office of A1 and taken Rs.17000/- amount kept in the pocket to meet the expenses of transportation."*

Apart from such interested witnesses, the prosecution has not come forward with any legal evidence to establish its case with regard to demand.

18. Now, coming to the credibility of the evidence adduced by PW2, though he speaks about the demand alleged to have been made by the appellant, he clearly admits in his cross-examination that he had taken a stand at the time of his arrest that he is innocent and he

had been falsely implicated in the case and he had questioned about his arrest, however, recording his statement, he was remanded to judicial custody and later, he came out on bail by filing necessary bail application, Ex.C1 taking a stand that he is innocent. The stand taken by PW2 in his bail application, Ex.C1 is that on 12.8.2009, at about 6.00 pm, his office had asked him to submit the NML report before the appraising officer (appellant herein) to get clearance for their client's goods and at about 7 pm, he went to the office of the appellant, when he was waiting before the cabin of the appellant to submit the said report, the CBI officers conducted the raid and seized the office files and his **office money.** His specific case in the bail petition is that when he went to the office of the appellant to give the report from the National Metallurgical Laboratory, the CBI officials raided the office of the appellant and had taken **Rs.17,000/- kept in the pocket to meet the expenses of transportation**. In this regard, it would be apposite to note that at the time of arrest, PW2 had questioned the arrest contending that he is not an accused and he had been falsely implicated in the case, however, after recording such a statement, he had been arrested and remanded to judicial custody. It appears that such a statement has not been placed before the Trial Court and in fact, PW4, Inspector of Police, during his cross examination, had taken a specific stand as if no separate statement was recorded from the accused during the course of surprise check proceedings. PW2, during his cross examination, has specifically contended that a proceedings was made ready consequent to the surprise check made by the CBI team, wherein signatures of himself and the appellant were obtained in each pages and it was a three page-document and he was unaware of the contents of the document as the same was in English. However, it is peculiar to note that Ex.P3 the surprise check proceedings has got four pages and the signature of the appellant is found only at the last page, raising much doubt about the veracity of the surprise check and the consequent proceedings produced by the prosecution when especially, PW2's status at the relevant time was an accused on par with the status of the appellant. Further, with regard to Ex.P3, surprise check proceedings, though PW2 was an accused at the time of conclusion of the surprise check, his name alone being typed in the last page of the surprise check proceedings creates doubt with regard to the veracity of Ex.P3.

19. When PW2 had taken such contradictory stands, it is seen that the statement given by PW2 (when he was treated as co-accused) to the investigating officer, PW18 was not forwarded to the Trial Court. Sofar as the subsequent 161 statement of PW2 is concerned, it is the evidence of PW18, investigating officer that PW2 knows both Tamil and English and though he gave the statement in Tamil, it was recorded in English for the convenience of the court. Similarly, it is seen that the explanation offered by the appellant to PW4 and the statement given by him to PW18 were not produced before the Trial Court.

20. When the credibility of PW2 is in question, the evidence of PW3, relied by the prosecution as an independent witness in support of its case, remains consideration. An analysis of the evidence of PW3 reveals that it is more doubtful. At the outset, there is a lot of confusion even as per his evidence with regard to the time when he received instruction to report before PW4 to assist for the surprise check. When it is the evidence of PW4 that he got instructions from the Superintendent of Police at 3.00 pm alone, the evidence of PW3, a witness arranged by PW4 speaks in his chief examination as if he received instruction from his superior at 2.00 pm itself. When that

itself is impossible, he goes a step ahead in contending in his cross-examination as if he received instructions at 11.00 am, which goes to the root of the case creating suspicion about his presence itself during the surprise check.

21. Of course, it is true that falsity of material particular in the evidence of a witness would not ruin it from the beginning to end and the maxim *"falsus in uno falsus in omnibus"* has no application in India as it has not received general acceptance nor has this maxim come to occupy the status of rule of law and it is merely a rule of caution. On such a principle, the witness cannot be branded as a liar and his testimony, if at all, may be disregarded, and not that it must be disregarded.

22. However, it is seen that apart from the falsity of material particular with regard to the time of receipt of instruction, the evasive answers given by PW3 during his cross examination for many questions strengthens the suspicion about his presence during the surprise check. To be precise, PW3 is very specific in his answers which would go in support of the case of the prosecution while, he has

given either evasive answers for the questions raised by the appellant to prove his defence or has taken a stand of inaudibility contending that he was standing away from the appellant. Such an irrational theory sought to be projected by the prosecution through the evidence of PW3 constrains this court to doubt about the veracity of PW3.

23. When PW3 takes a stand of inaudibility on the ground of his being away from the appellant, the requirement of rough sketch assumes much significance. It is to be noted that no rough sketch had been drawn by PW4 in support of their case and to point out the places where the team members were made to wait. The prosecution has also failed to examine the team members other than PW4, who went to the office of the appellant for the surprise check. PW4 specifically admits in his cross-examination that though they have electronic gadgets like video cameras, tape recorders, etc., he had not made use of anything in the surprise check. He also admits that as per Rule 5.9 of the CBI Crime Manual 2005, wherever adequate and credible information exists about some corruption racket, it would be better idea to verify such information and register a regular case than resorting to surprise check, however, before proceeding with the

surprise check in the case on hand, he did not have any suspicion over the credibility of the information passed on to him by the Superintendent of Police and there is no record to show that the Superintendent of Police had instructed him to proceed with the surprise check without registering a case.

24. Apart from the above, the appellant, while cross-examining PW1, sanctioning authority, had brought to light the discrepancies in the prosecution with regard to the timings by marking Ex.D1 and D3. Exs.D1 and D3 are log in and log out details of the computer in the custody of the appellant. As admitted by Ex.PW1, other than the appellant, nobody else can operate the appellant's computer. As per Ex.D1, the computer was logged in at 19.44 pm and it was logged out at 20.20 pm. Be that as it may, PW3 says that he was called at 11.00 am from the office and he reached the CBI office at 4.00 pm and he, alongwith the CBI team reached the office of the appellant at 6.15 pm, entered into the room of the appellant at 6.30 pm and recovered the files from the table of the appellant. If the prosecution case is true, there could not have been a possibility of the appellant logging into his computer at 7.44 pm and closing it at 20.20 pm. This aspect also

creates doubt in the case of the prosecution.

25. The above discussion would reveal that the prosecution is left with no other option, but to rely on the evidence of PW2, who had turned to be an approver for the sake of his liberty. Therefore, it has to be seen as to whether the procedures contemplated by the law for considering the accomplice or approver's evidence have been complied with and whether his evidence corroborates with the materials to point out the guilt of the accused without any iota of doubt.

26. At this juncture, it would be relevant to note that the learned Senior Counsel for the appellant, relying on the decision in ***Kanbi Vaghi Savji vs. State of Gujarat*** (1968 Cri. LJ 54), would strenuously argue that PW2, during his cross examination admits that he read over his 164 statement before entering into the witness box and PW3 admits that he read over his 161 statement given by him to the police before entering into the witness box and thereby, their evidence in the court is inadmissible and conviction cannot be based on their evidence on account of them being tutored.

27. Of course, it has been held in ***Kanbi Vaghi Savji vs. State of Gujarat*** (1968 Cri. LJ 54) as under:-

"Even if it is held that the evidence of a witness whose police statement has been read out to him a short time before he steps into the witness box, does not become inadmissible, the value to be attached to such a witness would be very little, because when the witness deposes to the particular incident from the witness box he or she would not be deposing from the recollection of that incident but from what has been read out from the police statement a short time before the deposition started.

....

The evidence of such a witness may be shaken, as the witness is likely to depose to the particular incident on the basis of what he had just read his statement made before the police, and not so much on the basis of what he actually recollected about what he had said in respect of that incident before the police. Even then the consideration of evidence of such a witness would *depend upon the circumstances of the case. We, therefore, hold that the evidence of Jivanlal suffers from that infirmity on that basis as well, and in view of other circumstances in the case, we do not attach importance to his evidence in this case."*

28. However, on this aspect, it was brought to the notice of this court by the learned Special Public Prosecutor that the legal position is otherwise and the view of the Division Bench having been found in conflict with the view of another Division Bench the matter was referred to a Full Bench in ***Nathu Manchhu vs. The State of Gujarat*** (1977 SCC OnLine Guj. 63) wherein, the Full Bench, answering the questions referred, held as under:-

> *"**36.** It must, however, be emphasised that the practice of reading over police statements to witnesses before they enter the box is not healthy practice. In cases where such practice is resorted to, the Magistrates and Judges should carefully consider the evidence given by the witness and decide upon the probative value of such evidence in view of the facts and circumstances of each*

case.

37. *Answers to the questions referred to this Full Bench are as under:*

(1) The evidence of such witness does not become inadmissible; its probative value has to be judged in the circumstances of each case. No hard and fast rule can be laid down that in all such cases the evidence of such witness will be of no value whatsoever.

(2) Reading over of the police statement to the witness before he enters the box does not amount to contravention of the prohibition contained in S. 162(1). But the fact of reading over of the statement may affect the probative value of the evidence of the witness.

(3) Reading over of such a statement to the witness before he enters the box does not amount to use of such statement contrary to S. 162(1)."

29. Such being the legal position, this court feels that it would have been fair enough on the part of the learned Senior Counsel for the appellant if he had brought the same to the notice of this court

conceding that it is not in favour of the appellant. This Court is not able to appreciate the conduct of the learned designated Senior Counsel, who is expected to assist the court to pursue the matter with proper legal perspective, in not initiating any steps to bring the update of the legal position to the notice of this court.

30. However, the fact remains that in the recent judgment of the Hon'ble Apex Court in ***Manikandan vs. State by the Inspector of Police*** (Criminal Appeal No.1609 of 2011 dated 5.4.2024), a Division Bench of the Hon'ble Apex Court has deprecated the practice of tutoring the prosecution witnesses before trial, while allowing the appeal and acquitting the accused.

31. Coming back to the reliability of the prosecution witness PW2, Section 306 Cr.P.C. deals with Tender of Pardon to accomplice. Sub-Section (1) of Section 306 Cr.P.C. reads as under:-

> "*(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any*

stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person ***on condition*** *of his making* ***full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned****, whether as principal or abettor, in the commission thereof.*"

32. A Division Bench of the Apex Court in ***Niranjan Singh vs. State of Punjab*** (1996) 9 SCC 98 has held as under:-

"It is well settled that the approver's evidence must pass the double test of reliability and corroboration in material particulars. It is said that the approver is a most unworthy friend and he having bargained for his immunity must prove his worthiness for credibility in court. Firstly, we will have to scrutinize the evidence of Gurjant Singh (PW 3), approver carefully to find out as to whether his evidence can be accepted as trustworthy. Secondly, once that hurdle is crossed

the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. Ordinarily, combined effect of Sections 133 and 114 of the Evidence Act, 1872 is that conviction can be based on uncorroborated testimony of an approver but as a rule of prudence it is unsafe to place reliance on the uncorroborated testimony of an approver. Section 114 Illustration (b) incorporates a rule of caution to which the courts should have regard."

33. Another Division Bench of the Apex Court in ***Ramprasad vs. State of Maharashtra*** (1999) 5 SCC 30 has held that an approver's evidence must pass the test of reliability and secure adequate corroboration before the same can be acted upon.

34. A perusal of the evidence of PW2, who turned to be an approver, does not inspire confidence. His evidence is so crisp and he has not come out with the entire material facts and circumstances of

the case as contemplated under Section 306 Cr.P.C. A bare reading of his evidence speaks much about the embarrassment and anxiety faced by him constraining him to be at the instance of the prosecution to escape from victimization. The admissions, he was constrained to make during his cross examination in an innocent way about his visits to the office of the appellant on the previous day of the occurrence, variation in number of pages of the surprise check proceedings, his affixing signatures in each page along with the appellant and his stand taken in the bail petition filed by him and non disclosure of the same in his statement at the time of grant of pardon, fortifies the view that he might have been bargained for his liberation to speak for the prosecution, thereby doubting his credibility.

35. In ***Rampal Pithwa Rahidas and others vs. State of Maharashtra*** (1994 Supp (2) SCC 73), it has been held that while considering the credibility of the approver and the weight to be attached to his statement, the statement made in the bail application (which is part of the judicial record) can be looked into by the courts.

36. In the case on hand, PW2 had taken a stand in the bail

petition as if he is innocent and the same has also been admitted by him in his cross examination. Whileso, the evidence of PW2, a totally contrary one to the stand taken by him in the bail petition raises much suspicion about his credibility. PW2 is the only person, who could speak about demand and acceptance of bribe by the appellant. Once, his evidence loses credence, the recovery alleged to have been made by the team formed for surprise check also loses credence.

37. Apart from the non production of the Rough Sketch, in this case, the surprise check had been conducted at a Container Freight Station and it is admitted by the witnesses that there were CCTV cameras. In such circumstances, the non production of the electronic evidence, which is the best available evidence, raises adverse inference and also creates a doubt in the prosecution case. Emphasizing the requirement and impact of electronic evidence during trial, a Full Bench of the Apex Court has observed in ***Tomaso Bruno and another vs. State of Uttar Pradesh*** (2015) 7 SCC 178 as under:-

> *"**24.**With the advancement of information technology, scientific temper in the individual and at the*

institutional level is to pervade the methods of investigation. With the increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has become relevant to establish the guilt of the accused or the liability of the defendant. Electronic documents stricto sensu are admitted as material evidence. With the amendment to the Evidence Act in 2000, Sections 65-A and 65-B were introduced into Chapter V relating to documentary evidence. Section 65-A provides that contents of electronic records may be admitted as evidence if the criteria provided in Section 65-B is complied with. The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65-B of the Evidence Act. Sub-section (1) of Section 65-B makes admissible as a document, paper printout of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfillment of the conditions specified in sub-section (2) of Section 65-B."

38. In ***V.Sejappa vs. State by Police, Inspector Lokayukta, Chitradurga*** (2016) 12 SCC 150, it has been held by the Apex Court as under:-

> *"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 a presumption would arise under Section 20 of the 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 the Act."*

39. In ***N.Vijayakumar vs. State of Tamil Nadu*** (2021) 3 SCC 687, wherein the Hon'ble Apex Court has held as under:-

"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal

gratification is proved."

40. In ***P.Satyanarana Murthy vs. District Inspector of Police, State of Andhra Pradesh*** (2015) 10 SCC 152, the Apex Court has held as under:-

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

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

22. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been *held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.*

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the *proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."*

41. The view of the Apex Court in ***P.Satyanarayana Murthy*** referred supra has been followed in ***N.Sunkanna vs. State of Andhra Pradesh*** (2016) 1 SCC 713 and ***K.Shanthamma vs. State of Telangana*** (2022) 4 SCC 574 and later clarified and affirmed in ***Neeraj Dutta vs. State of NCT*** (2023) 4 SCC 731.

42. 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.*"

43. Based on the evidence on record, the fact of demand has not

been proved, further the evidence regarding acceptance and recovery attempted to be let in by way of circumstantial evidence is also not clinching enough in order to bring home the guilt of the accused. In the case on hand, as discussed above, virtually, there is no proper evidence to establish demand and acceptance of bribe by the appellant and the prosecution has miserably failed to prove the demand acceptance and recovery of bribe money with the legal evidence and thereby this court is of the view that with the materials available on record, it would be unsafe to conclude that the prosecution has made out a case for invoking presumption under Section 20 of the Prevention of Corruption Act, however, the Trial Court, without properly appreciating the evidence, had proceeded to convict the appellant and thereby, this court is of the view that judgment of conviction and sentence rendered by the Trial Court is liable to be set aside. Accordingly, it is set aside.

44. In the result, the Criminal Appeal stands allowed. The impugned judgment of conviction and sentence is hereby set aside. The appellant is acquitted from the charges levelled against him. The bail bond, if any, executed by the Appellant, shall stand cancelled and

the fine amount paid, if any, shall be refunded to him.

15.4.2024.

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

To

1. IX Additional Special Judge for CBI Cases,
   Chennai.

2. Inspector of Police,
   SPE/CBI/ACB/Chennai.

3. Special Public Prosecutor for CBI cases
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. JUDGMENT IN
Criminal Appeal No.274 of 2014

Delivered on
15.4.2024.