



Crl.A.No.130 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	23.07.2024
Delivered on	07.08.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.A.No.130 of 2021

State represented by
The Inspector of Police,
Vigilance and Anti-Corruption,
Tiruppur.

... Petitioner

Vs.

A.Sivakumar

... Respondent

PRAYER: Criminal Appeal filed under Section 378 (1)(b) of Criminal Procedure Code, 1973 to set aside the judgment of acquittal of the respondent/accused in Spl.C.C.No.7 of 2014 dated 12.09.2019, passed by the learned Chief Judicial Magistrate, Tiruppur and Special Court for Trial of Cases under the Prevention of Corruption Act, 1988 and convict the respondent/accused for the charges framed against him.

For Appellant : Mr.S.Santhosh, GA

For Respondent : Mr.A.Ramesh, Sr. Counsel
for Mr.R.Ashwin



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Challenging the order passed by the learned Chief Judicial Magistrate, Tiruppur and Special Court for Trial of Cases under the Prevention of Corruption Act, 1988 in Spl.C.C.No.7 of 2014 dated 12.09.2019, the present appeal has been preferred by the petitioner.

2. The short facts of the case is as follows:

2.1. There was a dispute between Subramaniam/PW3/defacto complainant's brother-in-law and one Muthukrishnan over the sale of some property. Due to which, Subramaniam was assaulted by Muthukrishnan and his men. In regard to the same, Subramaniam gave a complaint in Avinashipalayam Police Station. To enquire about the status of the complaint given by Subramaniam, the defacto complainant met the respondent/accused, who instructed him that a case and counter case has been registered against each other in Avinashipalayam Police Station. The respondent accused instructed the defacto complainant that in order to prevent any action against Subramaniam, he demanded him to pay a sum of Rs.20,000/-.



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Being dissatisfied with the conduct of the respondent, the defacto complainant approached the trap laying officer and instructions thereby, he acted upon to the respondent. On 14.08.2008, the defacto complainant went to the respondent house along with PW2 and gave the tainted amount to the respondent, who received the same but on suspicion with the presence of PW2, he returned it to the defacto complainant. Thereafter, the case came to be registered against the accused/respondent for demand and acceptance of the bribe amount of Rs.20,000/- for the offences punishable under Section 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 [hereinafter referred to as "PC Act"].

2.2. During trial, on the side of the prosecution, 15 witnesses have been examined as PW1 to PW15, 23 documents as Exs.P1 to P23 along with 5 material objects as M.O.1 to M.O.5 were marked, whereas on the side of the defence, Sivakumar was examined as DW1 and Ex.D1 was marked. The trial Court after analysing the oral and documentary evidences, has found that the accused/respondent was not guilty as alleged by the prosecution and acquitted the respondent herein.



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3. Aggrieved over the same, the State has preferred the present Criminal Appeal.

4. Heard Mr.Santhosh, learned Government Advocate for the appellant and Mr.A.Ramesh, learned Senior counsel appearing on behalf of the respondent.

5. The learned Government Advocate appearing for the appellant submitted that the de-facto complainant/PW1 was doing real estate business. There was a dispute between Subramaniam/PW3, who is de-facto complainant's brother-in-law and one Muthukrishnan over the sale of some property. Due to which, the said Muthukrishnan and his men assaulted PW3 at his house on 08.08.2008. When de-facto complainant contacted PW3 over mobile phone, he told him that he was in Avinashipalayam Police Station. PW3 gave a complaint before the Inspector of Police, Avinashipalayam Police Station. In order to enquire the same, the de-facto complainant went to Avinashipalayam Police station and met the respondent/ Inspector of Police on 09.08.2008 at about



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10.00 hrs. The respondent/accused told the de-facto complainant, that as "Muthukrishnan is injured on account of PW3 assaulting him and is undergoing treatment in Tiruppur Government Hospital and he had also lodged a complaint and he had filed a case against both of them". The respondent/accused told that if the defacto complainant took care of him, he would render the case as null and void. The de-facto complainant went to Avinashipalayam Police Station on 11.08.2008 at 10.00 hrs and enquired, the respondent/accused was not available at that time and hence, left from police station and again he came to the police station at around 18.00 hrs but he could not able to meet the respondent as the station was very crowded. He further submitted that on 12.08.2008 at about 21.00 hrs, the de-facto complainant met the respondent/accused at the Police Station and reiterated his demand and later on 13.08.2008 at about 12.15 hrs., the respondent/accused contacted the de-facto complainant over his mobile and demanded Rs.20,000/- for not taking any action against his broter-in-law/PW3 and instructed him to pay the amount at the Police station. He submitted that the trail Court without appreciating the evidence in a proper perspective, had acquitted the respondent/accused.



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6. Moreover, the learned Government Advocate submitted that the trial Court failed to consider the material aspect that though PW1/ decoy witness turned hostile, he categorically deposed about the trap and the written complaint preferred by him on 13.08.2008 and also it is to be noted that PW1 has not turned hostile totally. He also submitted that the trial Court failed to assign the reasons to disbelieve the evidence of PW2/trap witness, since in his evidence, he has stated that he accompanied PW1/defacto complainant to the accused quarters and when PW1 knocked the door of the accused house, he came out and asked PW1 whether he has brought the demanded amount, for which PW1 took the tainted money from his shirt pocket and handed over to the accused. The accused received the tainted money with two fingers of his right hand and kept the same but on a while, the accused on suspecting the presence of PW2, returned the money back to PW1. Then PW1 came to PW14 and narrated the whole incident. Furthermore, it is contended that the trial Court failed to consider the ocular testimony of PW2 accompanying witness, who corroborated the



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complaint given by the complainant about the demand and acceptance of bribe amount by the accused which is also proved by the phenolphthalein test made on both hands of the accused.

7. It is also submitted that the trial Court failed to consider the evidence of PW2, who had stated that after the introduction by the TLO, he had gone through the complaint at V & AC office in the presence of PW1 and another official witness and he ascertained the facts narrated in the complaint through PW1. The evidence is an undisputed one since the accused has not challenged the same during cross his examination and also that the trial Court failed to place reliance on Ex.P1 even after the same was corroborated by PW2. The trial Court also failed to consider that on 13.08.2008 at about 12.15 hrs, the respondent/accused contacted the complainant over his mobile phone and demanded Rs.20,000/- for not effecting arrest of his brother-in-law in Cr.No.171/2008 by Avinashipalayam Police. To this, prosecution examined PW11, Shankara Narayanan, Divisional Manager, (Mobile Service operation), BSNL. Call details/Ex.P15 is one among the documentary evidence for prior demand.



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8. The trial Court failed to consider the evidence of PW1, who had clearly established the fact that PW2 accompanying witness was very well present at the time of demand and acceptance of bribe amount by the respondent/accused from the complainant. He also stated that trial court failed to consider the fact that "In the absence of any specific motive against the respondent/accused, no ill will could be attributed either to PW1 or investigating agency." He pointed out that the point for consideration in Para.18 of the judgment is not tenable in law as the same is contrary to the proposition of the Hon'ble Apex court in ***Subbusingh Vs State by Public Prosecutor in Criminal appeal no.402/2002***. It is relevant to refer that the trial Court quoted an overruled case law for non recording of statement of the respondent/accused. The judgment quoted by the trial Court in his judgment in Paragraph 19 was overruled by this Hon'ble Court in ***A.Selvaraj Vs. State represented by DSP, V & AC, Dharmapuri in Criminal Appeal 605/2016***. It is predominant to note that the trial Court failed to consider the "subsequent conduct of the accused" after the receipt of the bribe money of Rs.20,000/- and kept it and thereafter on



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suspecting the accompanying witness, asked the complainant to take away the money as if he did not accept the amount. The trial Court failed to consider the admission of the accused at the time of questioning under Section 313 Cr.Pc. pertaining to the registration of FIR, accordance of sanction and seizure of case file in Cr.No. 171/2008 of Avinashipalayam Police Station and also erred to consider the evidence of TLO/PW14 as to the conduct of preliminary enquiry. It is submitted that on 14.08.2008 at 00:15 hours, the defacto complainant accompanied by PW2, approached the respondent/accused, who reiterated his demand in the presence of official witness/PW2. This established the demand, after which the defacto complainant/PW1 took out the bribe amount and handed it to the respondent/accused. The accused received the money in his right hand and placed it on the raised platform of the verandah, thereby demonstrating acceptance. Meanwhile, the accused became suspicious of the accompanying official witness/S. Jagadeesan/PW2 and questioned the complainant about his identity. The respondent/accused then scrutinized the official witness for a moment, took the tainted currency and returned it to the complainant. TLO/PW14 subsequently interrogated the accused and conducted a phenolphthalein test on both of his hands. The test



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yielded positive results for the right hand, indicated by a change in color of the solution, while the left hand showed no change. This color change in the sodium carbonate solution confirms that the respondent/accused had handled the phenolphthalein-dusted bribe money. The bottles containing the resultant solutions from the accused's right hand/M.O.3 and left hand/M.O.4 along with the thousand-rupee currency notes/M.O.5 totalling Rs.20,000/- were seized. These facts which are the basis for the aforesaid offence have been established through relevant oral and documentary evidence, thereby creating a presumption under Section 20(2) of the PC Act.

9. At this juncture, the learned Government Advocate relied upon the decision of the Hon'ble Supreme Court in the case of **Neeraj Dutta V. State (Govt. of N.C.T. of Delhi)** reported in **2023 (4) SCC 731** held that in the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness and the relevant portions has been extracted below for ready reference:

"88.6. In the event the complainant turns "hostile", or



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

10. Further, this position contradicts the observations made by the Hon'ble Supreme Court in *Neeraj Dutta's case* as stated supra, where even if the complainant turns hostile, neither the trial does come to an end nor does it lead to an acquittal of the accused/public servant. Thus, he prayed to allow the present appeal against acquittal in Spl.C.C.No.07 of 2014 on the file of the learned Chief Judicial Magistrate cum Special judge, Tiruppur.

11. Contrary to the submissions made by the learned Government Advocate, the learned Senior counsel for the respondent submitted that the complainant / PW1's brother-in-law examined as PW3, is said to have suffered injuries at the instance of PW3's rival. Case and counter case was registered to take action against the rival of PW3 and PW3. PW1 is said to have visited the police station in which the respondent/accused was a Station House



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Officer. PW1's attempt to meet the respondent/accused failed, even after a couple of attempts. Presuming that the lack of availability of the accused was due to the fact that he may desire an illegal gratification. Hence on the advice of PW4 and PW5, PW1 is said to have approached the Vigilance and Anti-Corruption and given a report/Ex.P1. After calling PW2 and one more person as a shadow witness, a trap was laid by PW14, but the bait money was recovered from the complainant/PW1 as the accused did not take it though claimed to have touched. On the basis of the trap findings, the respondent/accused was arrested. The trial Court after much deliberation came to the conclusion that with PW1, PW3, PW5 and PW6 turned hostile, besides various contradictions found from the evidence, the accused had to be relieved accordingly relieved from the charges. Aggrieved over the same, the State has preferred the appeal in question challenging the acquittal.

12. The learned Senior counsel submitted his arguments on five fold grounds viz., a)scope of appeal against acquittal b)phenolphthalein powder taken to the scene of trap c)bait money recovered from the complainant d)trap and seizure memo were at two different places without assigning any reasons; e)sanction by



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PW4 vide Ex.P11-model form supplied; and f) non compliance of Rule 47 of the Directorate of vigilance and anti-corruption manual and presented the said grounds in detail for dismissing the present appeal.

13. The learned Senior counsel submitted that the acquittal of the respondent cannot be interfered without any valid ground. In support of his contention, he relied upon the following decisions of the Hon'ble Apex Court:-

13.1) H.D. Sundara and Ors. Vs. State of Karnataka
reported in **2023 (9) SCC 581:-**

"7. In this appeal, we are called upon to consider the legality and validity of the impugned judgement rendered by the High Court while deciding an appeal against acquittal Under Section 378 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal Under Section 378 of Code of Criminal Procedure can be summarized as follows:

(a) The acquittal of the Accused further



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strengthens the presumption of innocence;

(b) The Appellate Court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence;

(c) The Appellate Court, while deciding an appeal against acquittal, after re- appreciating the evidence, is required to consider whether the view taken by the Trial Court is a possible view which could have been taken on the basis of the evidence on record;

(d) If the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible; and

*(e) The Appellate Court can interfere with the order of acquittal **only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the Accused was proved beyond a reasonable doubt and no other conclusion was possible.***

8. Normally, when an Appellate Court exercises appellate jurisdiction, the duty of the Appellate Court is to find out whether the verdict which is under challenge is correct or incorrect in law and on facts. The Appellate Court normally ascertains whether the decision under challenge



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is legal or illegal. But while dealing with an appeal against acquittal, the Appellate Court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After re-appreciating the oral and documentary evidence, the Appellate Court must first decide whether the Trial Court's view was a possible view. The Appellate Court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the Accused was established beyond a reasonable doubt. Only by recording such a conclusion an order of acquittal cannot be reversed unless the Appellate Court also concludes that it was the only possible conclusion. Thus, the Appellate Court must see whether the view taken by the Trial Court while acquitting an Accused can be reasonably taken on the basis of the evidence on record. If the view taken by the Trial Court is a possible view, the Appellate Court cannot interfere with the order of acquittal on the ground that another view could have been taken."

13.2)Nikhil Chandra Mondal vs State Of West Bengal
reported in **2023 (6) SCC 605:-**

"19. The scope of interference in an appeal



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against acquittal is very well crystalised. Unless such **a finding is found to be perverse or illegal/impossible**, it is not permissible for the appellate Court to interfere with the same.

20. Recently, a three-Judges Bench of this Court in the case of **Rajesh Prasad v. State of Bihar** and another has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law, Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, rearmed and strengthened by the court. It has been further held that 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."

**13.3)Mallappa vs State Of Karnataka reported in 2024
(3) SCC 544:-**

"24. We may firstly discuss the position of



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law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretized when the case ends in acquittal. It is so because once the Trial Court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal.

25. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to re-appreciate or re-visit the evidence on record. However, the power of the High Court to re-appreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the Trial Court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is



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whether the finding of the Trial Court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the Trial Court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

The aforementioned judgments emphasizes the fact that the judgment of the lower Court must be illegal or perverse to justify interfering in an appeal against acquittal. The trial Court, after carefully appreciating the evidence on record has reached an unassailable conclusion that the prosecution failed to bring home the charge through acceptable legal evidence. Consequently, the charges framed failed and the accused was acquitted. Thus, the view of the trial Court does not exhibit either perversity or illegality warranting interference.

14. In this case, a doubt has been raised as to why the chemical was taken to the trap scene, whether to victimize the respondent/accused or with any other ulterior motive? According to the evidence of PW2, the accused had received the bribe amount from PW1 with two fingers of his right hand and kept the same on



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the veranda, not handling the money with his left hand. Through the evidence of PW2, the prosecution's case has further established that the sodium carbonate solution LI(M.0.4) remained colourless when the phenolphthalein test was conducted, while the sample R1 (M.0.3) changed colour. This fact is in direct contradiction with the chemical analysis report/PW13 through Ex.P17 that reveals that both the solutions showed the presence of phenolphthalein, thereby leading to a discrepancy between the ocular evidence of PW2 and the scientific evidence/Ex.P17 presented. In this regard, taking the chemical by the trap team to the trap scene arises the suspicion that the chemical might have been used in the solution cannot be ruled out.

15. The pivotal point to be noted in this case is the report filed by PW1 against the respondent herein to Inspector Selvaraj (PW14), Vigilance and Anti-Corruption, Coimbatore. Thereafter, PW1 turned hostile stating that there was never a demand of illegal gratification by the respondent/accused. The demand of gratification was his own inference as he could not meet the accused even after several attempts, that the inspector might be expecting some gratification. This evidence is not an isolated aspect to disbelieve



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PW1 although he turned hostile. The root cause i.e., PW1 had gone to the police station for PW3, who also did not support the case of the prosecution, his friends PW5 and PW6 also turned hostile and moreover, the trap money was recovered from the possession of PW1, which is fatal to the prosecution case.

16. The aspect regarding the recovery of the trap money from the complainant has also been spoken by the only shadow witness i.e, PW2. Hence, the prosecution's case is not only quiverty but also proves that there is no acceptance of money by the accused which is one of the twin conditions required to establish the charge under Section 7 of PC Act.

17. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case **of B. Jayaraj Vs. State of Andhra Pradesh** reported in **2014 (13) SCC 55**, wherein the Hon'ble Apex Court has held as under:

"6. PW2, the complainant, did not support the prosecution case. He disowned making the complaint (Exbt.P-11) and had stated in his deposition that the amount of Rs.250/- was paid by him to the accused with a request that the



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same may be deposited with the bank as fee for the renewal of his licence. He was, therefore, declared hostile. However, PW-1 (panch witness) had testified that after being summoned by LW-9, K. Narsinga Rao, on 13.11.1995, the contents of Exhibit P11 (complaint) filed by the complainant PW2 were explained to him in the presence of the complainant who acknowledged the fact that the accused appellant had demanded a sum of Rs.250/-as illegal gratification for release of the PDS items. It is on the aforesaid basis that the liability of the accused-appellant for commission of the offences alleged was held to be proved, notwithstanding the fact that in his evidence the complainant PW-2 had not supported the prosecution case. In doing so, the learned trial court as well as the High Court also relied on the provisions of Section 20 of the Act to draw a legal presumption as regards the motive or reward for doing or forbearing to do any official act after finding acceptance of illegal gratification by the accused-appellant.

18. In the case on hand, the complainant did not support the prosecution case insofar as the demand by the respondent/accused is concerned. The prosecution has not examined any other witness,



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present at the time when the money was allegedly handed over to the respondent/accused by the complainant, to prove that the same was pursuant to any demand made by the respondent/accused. When the complainant himself had disowned what he had stated in the initial complaint/Ex.P11 before LW9 and there is no other evidence to prove that the respondent/accused had made any demand, the evidence of PW1 and the contents of Ex.P11 cannot be relied upon to come to the conclusion that the above material furnishes proof of demand allegedly made by the respondent/accused. We therefore inclined to hold that the learned trial Court, as well as the High Court was not correct in holding the demand alleged to be made by the respondent/accused as proved. In the absence of reliable evidence, the case of the prosecution has to fall to the ground.

19. Likewise, the contradictions that arise from the statements of PW1 and PW2 creates a sense of ambiguity regarding the acceptance and handling of the bribe amount. PW1 in his evidence had stated that the accused never handled the money and asked him to take back the money from the verandha where PW1 kept it and that he would take care of the case. The said evidence



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contradicts the evidence of PW2, who had stated that the accused had handled the money with two fingers of his right hand and subsequently placed it on the veranda. This creates a strong suspicion about both the demand and acceptance of the illegal gratification on the part of the respondent/accused.

20. In the case of **Meena w/o. Balwant Hemke V. State of Maharashtra** reported in **AIR 2000 SC 3377**, the Hon'ble Supreme Court has held as under:

"11.The learned Judge in the High Court seems to have mechanically affixed his approval to the findings recorded by the trial Judge by profusely extracting such findings. Mere recovery of the currency note of Rs 20 denomination, and that too lying on the pad on the table, by itself cannot be held to be proper or sufficient proof of the acceptance of the bribe, in the peculiar circumstances of this case which lend also credence to the case of the appellant that it fell on the table in the process of the appellant pushing it away with her hands when attempted to be thrust into her hands by PW 1. The results of phenolphthalein test, viewed in the context that the appellant could have also come into contact with the currency note when she pushed



it away with her hands cannot by itself be considered to be of any relevance to prove that the appellant really accepted the bribe amount."

21. The learned Senior counsel drew the attention of this Court by pointing out the fact that the bait money has been recovered from the complainant but not from the respondent/accused, which proves that the case of the prosecution does not substantiate the demand and acceptance of the money by the respondent.

22. At this juncture, it has been pointed out by the learned Senior counsel that the delay in the preparation of the seizure mahazar has to be taken into consideration while considering this case. Since on completion of trap proceedings, the seizure mahazar was not prepared immediately at the scene of occurrence, i.e, the residence of the respondent/accused, rather it was prepared at the police station and no proper reason was assigned for the said discrepancy. At the instant case, the seizure mahazar, which is an important piece of corroborative evidence has been prepared belatedly which shows that the established procedure was not followed by PW14. In this regard, the Inspector had also not



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conducted any preliminary investigation but filed the FIR immediately, after dictating the complaint that was written by PW1, which is evident from Ex.P18.

23. As per Section 19, a proper previous sanction is mandatory for the Court to take cognizance of an offence under the PC Act. In the case on hand, PW4 / Mr.Sivanandi has accorded sanction to prosecute the respondent/accused under PC Act as the witness being the superior and capable of removing the accused from the office. This sanction order/Ex.P11 is invalid on the ground that PW4 has stated in his chief- examination, the sanction was given based on the model copy of the sanction order which was received along with the documents for his perusal which obviously shows that the authority had no requisite knowledge to accord sanction and further exposes no independent application of mind by the sanction authority.

24. Rule 47 of the Directorate of Vigilance and Anti-Corruption Manual reads as under:

47. Questioning of Accused Officer

(1)Questioning of the Accused Officer and



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recovery of the bribe money should be after the phenolphthalein test. If the test proves positive, arrest of the Accused Officer may be made and recovery of notes effected on the basis of Accused Officer's statement, if any. In this event, the provisions of Section 27 of the Indian Evidence Act would be available to the prosecution.

(2)Immediately after recovery and seizure of the bribe money or article, the Accused Officer must be further interrogated and his detailed statement separately recorded in the case diary under Section 162 of the Code of Criminal Procedure, 1973. If there is any need to examine him still further in the light of any fresh evidence that might come up later during the investigation of the case, the same can be done at a later stage and further statement of the Accused Officer recorded.



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25. The above mentioned rule has been violated in toto by not recording the statement of the respondent/accused immediately after the alleged trap which has been categorically deposed by the accused in the witness box as DW1. Though non compliance of this rule is held to be directory, as well as mandatory, depending upon the facts by various pronouncements of the High Court, the trial Court not only relied upon this ground alone with the judgment of this Court in ***Thulasiram V. State through The Inspector Of Police in Crl.A. No.77 of 2007 dated 09.11.2011*** but also other facts such as no presumption in case of non-proof of demand relying on the judgment of the Hon'ble Supreme Court in ***Venkata Subbarao Vs. State [2006 (13) SCC 305]*** together along with non-compliance, for acquittal of the respondent/accused. Hence, it cannot be said to be perverse and it is a possible view

26. Although the respondent/accused had not raised the plea of admissibility of electronic evidence pointing out its defects for non-compliance of 65-B of the Indian Evidence Act, 1872, the admissibility of which is impermissible in view of the law laid down



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by the Hon'ble Apex Court. In addition to the aforementioned points raised above, Ex.P3, Ex.P4, Ex.P5, Ex.P15 i.e., the Entrustment Mahazar, the Seizure Mahazar, the Proceedings Mahazar and the call details were all computer generated which were relied upon by the prosecution. The Hon'ble Supreme Court in many precedents such as **Anvar P.V Vs. P.K.Basheer [AIR 2015 SUPREME COURT 180]**; **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal [AIR 2020 SUPREME COURT 4908]** have reiterated that any electronic evidence should accompany Section 65-B certificate for it to become admissible as evidence in the eyes of law. In a recent judgment of the Hon'ble Supreme Court in **Gaurav Maini Vs. State of Haryana [2024 INSC 488]**, the Court refused to rely upon the call details due to its non compliance with Section 65-B of the Indian Evidence Act. In the case on hand, none of the exhibits that are computer generated including the call details was accompanied with 65-B Certificate, questioning the very admissibility of the evidence. In view of the aforementioned loopholes in the prosecution case and the hard hearted method of investigation undertaken, warrants no interference in this appeal against acquittal. Thus, he pleaded before this Court to dismiss the appeal.



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27. Considered the rival submissions made by the respective counsels and also perused the materials available on record.

28. It is brought to the notice of this Court that the trial Court had appreciated the evidences in a right perspective manner and found the respondent/accused not guilty of the offence levelled against him. There are several discrepancies in the investigation as focused by the learned Senior Counsel such as phenolphthalein test, seizure mahazar, report preparation, FIR etc. Since without conducting any preliminary enquiry, FIR has been filed and the investigating authority had prepared the mahazar at the police station instead of the residence of the accused where the occurrence has took place and the bait money was also recovered from PW1 and not from the respondent/accused creates more sceptical. Rule 47 of Vigilance Manual has not been followed by the prosecution. Sanction accorded also unacceptable as the same has been sanctioned by way of a model copy without application of mind. None of the exhibits that are computer generated including the call details were accompanied with 65-B Certificate as per the



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Indian Evidence Act, questioning the very admissibility of the evidence has held in *Gaurav Maini's case* as stated supra. For the reasons stated above, this Court is of the view that the appeal filed by the State is liable to be dismissed.

29. In view of the detailed discussions and in the light of the decisions of the Hon'ble Apex Court as stated supra, the judgment passed by the Court below in Spl.C.C.No.7 of 2014 dated 12.09.2019 is upheld by this Court. Consequently, the Criminal Appeal stands dismissed. Connected Miscellaneous Petition is closed.

07.08.2024

Index: Yes/No
NCC : Yes/No
Order: Speaking/Non Speaking

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To

- 1.The Chief Judicial Magistrate,
Special Court for Trial of Cases under PC Act,
Tiruppur.
- 2.The Inspector of Police,
Vigilance & Anti-Corruption,
Tiruppur.
- 3.The Public Prosecutor,
Madras High Court, Chennai.



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Crl.A.No.130 of 2021

VIVEK KUMAR SINGH, J.

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Crl.A.No.130 of 2021

07.08.2024