



Crl.A.No.115 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2023

PRONOUNCED ON : 16.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.115 of 2017

L.Sagayaraj

... Appellant/Sole Accused

Vs.

The State represented by
The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City-III, Nandanam,
Chennai-600 035.

... Respondent /Complainant

PRAYER : Criminal Appeal is filed under Section 374(2) of Cr.P.C., read with Section 27 of the Prevention of Corruption Act, 1988, against the judgment of conviction made in C.C.No.145 of 2011(Old C.C.No.03/2011) dated 09.02.2017 on the file of Special Court for the cases under Prevention of Corruption Act, Chennai.

For Appellant : Mr.G.Rajkumar

For Respondent : Mr.C.E.Pratap,
Government Advocate (Criminal Side)



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JUDGMENT

The present Criminal Appeal has been filed by the sole accused in C.C.No.145 of 2011, challenging the judgment of conviction and sentence dated 09.02.2017 rendered by the Special Judge for the cases under Prevention of Corruption Act , Chennai.

2. The appellant/accused stands convicted by the Trial Court for the offences under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, and imposed with sentence as under:-

Under Section	Sentence
7 of Prevention of Corruption Act, 1988	one year of rigorous imprisonment and a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment.
13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988	two years of rigorous imprisonment and a fine of Rs.1000/-, in default, to undergo three months simple imprisonment.



3. The crux of the case is as under:-

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i) The appellant/accused viz., L. Sagayaraj was working as Field Surveyor in the office of the Assistant Director of Survey and Land Records, Rajaji Salai, Chennai, from 22.10.2007 to 21.10.2008 and thereby he is a public servant under Section 2(c) of the Prevention of Corruption Act, 1988.

ii) Whiles, a complaint, Ex.P2 came to be lodged by the de facto complainant Natarajan, PW2 contending as under:-

The *de facto* complainant is a Builder by profession. He undertook construction of houses in the land purchased by his wife and some of their relatives. In this connection, he had applied for patta name transfer by approaching one Shriram, Chief Draughtsman in the office of the Assistant Director (Land Survey) on 8.9.2008, who, in turn, had introduced the de facto complainant to the accused stating that the accused would do the inspection and thereafter, he would proceed with the name transfer in the patta. The said surveyor viz., the appellant/accused had obtained the phone number of the *de facto* complainant. Thereafter, on 16.10.2008, the appellant/accused had called over phone and informed the *de facto* complainant that he was proceeding for site inspection. Accordingly, the appellant/accused had visited the site for



inspection and thereupon, he demanded a sum of Rs.1,20,000/- as illegal gratification for recommending the name transfer in the patta. On expression of inability by the de facto complainant, the appellant had reduced it to Rs.1,00,000/- and insisted for such amount or otherwise, patta name transfer could not be granted. Subsequently on 17.10.2008, the appellant had called the de facto complainant over phone and once again insisted for a sum of Rs.50,000/- as advance for which the de facto complainant had informed that he was proceeding on pilgrimage and he would return on 21.10.2008. The appellant/accused had asked the *de facto* complainant to inform him on his return. Accordingly, when the de facto complainant had contacted the appellant over phone on 21.10.2008 and at that time, the appellant had informed him that the file was ready and asked him to contact over phone in the afternoon and to come with money to the spot where he fixes. Since the de facto complainant is not inclined to give the bribe demanded by the appellant, he had approached the Vigilance and Anti Corruption office and lodged the complaint.

iii) The complaint was taken on file by the Deputy Superintendent of Police, Vigilance and Anti Corruption and it was assigned to the Inspector of Police, Vigilance and Anti Corruption, PW8 for investigation.



iv) PW8, who took up the case for investigation, had conducted preliminary investigation and registered a case in Crime No.5/AC/2008/CC-IV for the offence punishable under Section 7 of Prevention of Corruption Act, 1988 under the First Information Report, Ex.P13.

v) Thereafter, PW8 had arranged for two official witnesses and the official witnesses R.Saravanan(PW3), Cine Operator, O/o the Chief Engineer, and R.Anandan, Assistant, O/o.the Executive Engineer, Agricultural Engineering Department, Chennai, had reported before PW8 at 12.30 pm. PW8-Trap Laying Officer introduced the complainant to the official witnesses and vice versa and gave the complaint and FIR to the official witnesses for having acquainted with the facts of the case. The trap money of Rs.5000/- in the denominations of (1) 1000 x 1 (2) 500x 4 and (3) 100x20 was produced by PW2 and the serial numbers of the said currency notes were noted down by PW8 in Ex.P9-Entrustment Mahazar. PW8 had prepared Sodium Carbonate solution through Head Constable-Suga Jeevan and as per directions of PW8, the official witnesses PW3-R.Saravanan and Anandan counted the currency notes and chemical test on the normal hands of the official witnesses was demonstrated. The liquid did not change the colour. Later phenolphthalein powder was



smeared on the currency notes and after counting currency notes smeared with phenolphthalein powder by official witness Anandan and Chemical test on the hands of official witness Anandan dusted with phenolphthalein powder was demonstrated. The liquid turned pink. After the demonstration of the chemical test, the de facto complainant and the witnesses were explained about the importance of the trap proceedings and the tainted money of Rs.5000/- was entrusted to PW2 with an instruction to handover the same to the accused only on demand by him and after receipt of the same, to give signal by rubbing his head on acceptance of the tainted money by the accused. The official witness PW3-Saravanan was instructed to accompany PW2 and observe the conversations and happenings between PW2 and the accused. Entrustment Mahazar under Ex.P.9 was prepared in the presence of PW2 and PW3 and official witness R.Anandan. After the scheme of trap was finalized, PW8-Trap Laying Officer along with PW2, shadow witness PW3-R.Saravanan and R.Anandan and police party proceeded to the office of appellant/accused at Rajaji Salai, Chennai at 14.30 hours on 21.10.2008.

vi) On reaching near the office of the appellant, PW8 gave instructions to PW2 and as per instructions of the PW8-Trap Laying Officer,



PW2, the de facto complainant contacted the appellant/accused over phone and thereupon, the appellant had asked the de facto complainant to wait at the entrance of Collectorate stating that he would come there.

vii) Accordingly, PW2 and PW3 were waiting at the entrance of the Collectorate while PW8 and the trap team were hiding nearby and around 15.40 hours the accused had come to the entrance of the Collectorate.

viii) Subsequently, on receipt of the pre-arranged signal from PW2, PW8, the TLO rushed to the spot and enquired PW2 about the occurrence and on being identified by him, PW8 had introduced himself and his team to the appellant/accused and advised PW2 to leave the place.

ix) Since the place was not convenient, PW8, along with his team members, took the accused to the nearby office of the Stationary Department and conducted phenolphthalein test on both the hands of the appellant/accused. The phenolphthalein test conducted on both the hands turned positive and the wash of the right and left hands were collected in separate bottles which were marked as M.Os.1 and 2.

x) Thereafter, PW8 had enquired about the bribe amount and the accused had produced the bribe amount (M.O.1) from his right side pant pocket



and the serial numbers of the currency notes were compared with the serial numbers entered in the Entrustment Mahazaar-Ex.P.9 and it was found to be tallied and the same was recovered. The bottles were sealed and labelled and the signature of the accused was obtained. Subsequently, after giving alternate dress to the accused, the brown colour pant (M.O.5) worn by him was recovered and it was subjected to phenolphthalein test and the test proved positive and such liquid was collected in a separate bottle (M.O.4). When PW8 had enquired about the application of PW2, the accused had informed that it was with PW4, Draughtsman, whose place is in the seventh floor of the Survey Office and thereby, PW.8 along with the accused and the official witnesses and his team went to the seventh floor and enquired about patta name transfer application Ex.P.5 (xerox copy) and handed over the application containing four pages and PW8 had requested PW4 to take the xerox copy and attest it and after attestation, the original application was handed over to PW4 and thereafter, PW8 arrested the accused, prepared the Rough Sketch under Ex.P.16 and the Seizure Mahazar under Ex.P.10.

xi) After advance intimation to the court, a search was conducted at the house of the accused by PW8 in the presence of the official witnesses and the



wife of the accused and no incriminating material was recovered during such search and Ex.P11-Search Report was prepared.

xii) Thereafter, M.O.1 to M.O.5 were produced under Form 95 and on the next day, the accused was sent to remand. Later, PW8 had handed over the case records to the Deputy Superintendent of Police, (PW9) for further investigation.

xiii) PW9, who took up the case for further investigation, had recorded the statements of witnesses and accused and received the Chemical Analysis Report under Ex.P.12 through court and recorded the statement of Scientific Officer, viz., Karpagam Badragiri (PW7) and recorded the statement of PW8-Trap Laying Officer Arulselvam and the statement of the appellant/accused and thereafter, he had sent the report to the Directorate of Vigilance and Anti Corruption and later, since he was transferred, handed over the case records to the Inspector of Police (PW10).

xiv) On receipt of the case records, PW10 had obtained the Sanction Order under Ex.P.1 from the Directorate of Vigilance and Anti Corruption Act and recorded the statement of PW1, who had accorded the Sanction Order to proceed against the accused and had filed the charge sheet against the accused



under Section 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988

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xv) The final report was taken on file by the Principal Sessions Court on 25.01.2011 and the case was made over to the Trial Court.

xvi) On issuance of summons and after furnishing copies to the accused in compliance with Section 207 Cr.P.C., charges were framed against the appellant/accused for the offences under Section 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The appellant/accused denied the charges and pleaded not guilty.

xvii) In order to prove the case of the prosecution, P.Ws.1 to 10 were examined and Exs.P1 to P16 were marked and M.Os.1 to 5 were produced.

xviii) After conclusion of the prosecution evidence, when the accused was examined under Section 313 of Cr.P.C., pertaining to the incriminating materials against him, he denied the same as false. Though Ex.D.1 was marked on the side of the defence, no witnesses were examined.

xix) During the examination of the accused under Section 313 Cr.P.C., he had stated that he had received the application on 11.09.2008 and had inspected the site on 20.09.2008 and had submitted his recommendation to PW4 on 04.10.2008 itself and that the accused had lodged a false complaint against



him and on the date of the trap, PW2 had thrust the money in his right side pant pocket and immediately thereafter, the trap team compelled him to take the money and the accused had also handed over the money to PW8 and thereafter, PW8 had conducted the chemical test and that even prior to the occurrence on 21.10.2008, the appellant/accused had completed his work on 04.10.2008 itself and the prosecution case is a foisted one.

xx) The trial Court, after hearing the arguments on both sides, found the accused guilty and convicted and sentenced him as stated above. Challenging the judgment of conviction and sentence imposed by the trial Court, the appellant/accused has filed the present Criminal Appeal.

3. Mr.G.Rajkumar, learned counsel appearing for the appellant/accused, while taking this Court through the evidence on record, has assailed the impugned judgment of conviction and sentence on the following grounds:-

- (i) The trial Court, without properly appreciating the evidence on record, had erroneously convicted the appellant/accused when especially PW2, the *de facto* complainant, PW4 the official witness, who is the superior to the



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appellant and PW6, the wife of the complainant have not supported the prosecution case and they have been treated as hostile;

- (ii) The trial court failed to take into consideration the fact that the work allotted to the accused is only to conduct inspection and send a report and in this case, the appellant had completed his part of work as early as on 04.10.2009 and the file was kept pending by PW4, who is the superior officer and hence, there was no scope for any demand made by the appellant/accused.
- (iii) It is well settled principle of law that for establishing the commission of offence punishable under Section 7 of the Prevention of Corruption Act, 1988, the proof of demand of illegal gratification and acceptance of the same is *sine qua non* and the trial Court without there being any proof of demand, had convicted the appellant/accused.
- (iv) The evidence of PW2 is inconsistent in several places and self contrary and thereby, he is an unreliable witness who cannot be trusted. There is absolutely no evidence to show that the accused had demanded money and it is the admitted evidence of PW2, that he had thrust the money in the pant pocket of the accused.



(v) The discrepancies found in Ex.P9-Entrustment Mahazar and Ex.D1-

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history of the case with regard to the timings coupled with the fact that non marking of the written request calling upon the official witnesses to assist the trap and non marking of the permission granted to the official witnesses to assist the trap creates doubt with regard to the entire trap proceedings.

(vi) Though PW3 is claimed to be an independent witness, he is the witness interested in the prosecution and when there are discrepancies in the timings noted in the Entrustment Mahazar, it creates doubt and suspicion with regard to his presence and the presence of the other official witness which would probablise the fact that they were already present in the office of the respondent to participate in the pre-determined trap after deliberations and the trap proceedings is stage managed.

(vii) The trial court had failed to take into consideration the inconsistencies between the evidence of P.W.2 and PW3-official witness and PW8 -Trap Laying Officer with regard to the alleged handling of tainted money. Neither PW2 nor PW3 had stated that the appellant had counted the money with both the hands, whereas the phenolphthalein test conducted on both



the hands had turned positive, which creates grave doubt with regard to the trap proceedings.

(viii) PW2 had not supported the case of the prosecution and there are several material contradictions in the evidence of PW3-shadow witness.

(ix) Admittedly, as per the prosecution, the appellant/accused was alleged to have been trapped on the platform outside his office and he was taken to the nearby Government Stationery Office. When the office of the appellant/accused was close by, there is no reason for the Trap Laying Officer/PW8 to take the appellant/accused to the Government Stationery Office and further, non-examination of the staff from the Government Stationery Office creates doubt with regard to the phenolphthalein test alleged to have been conducted on the appellant/accused at the Government Stationery Office.

(x) Mere recovery of the amount is not sufficient to base a conviction. PW2, the *de facto* complainant had not supported the case of the prosecution and in such circumstances, the evidence of other official witnesses have to be scrutinised carefully and without there being proper corroboration that evidence cannot be believed to place conviction.



(xi) It is the case of PW2 that the accused had contacted him over phone and made the first demand and subsequently, he had contacted him over phone on the day of trap and asked him to come to a particular place of occurrence and in such circumstances, the non recovery of Call Detail Record (CDR) and non marking of them creates dent in the prosecution case.

(xii) Though a presumption is cast against the accused under Section 20 of the Prevention of Corruption Act, 1988, the prosecution, before raising such a presumption, has to prove the foundational facts by cogent evidence, whereas the burden on the accused is to prove his case by preponderance of probabilities. In this case, the appellant, by cross examining the witnesses and marking Ex.D1 and giving a statement under Section 313 Cr.P.C., had given an explanation and rebutted the presumption contemplated under Section 20 of the Prevention of Corruption Act, 1988. The explanation offered by the appellant is reasonable and probable, thereby, he would seek to set aside the judgment of conviction. In support of his arguments, the learned counsel for the appellant had relied on the following judgments.



1. ***P.Sathyannarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another*** (2015 (1) Supreme Court Cases, 152);
2. ***B.Jayaraj Vs. State of Andhra Pradesh*** (2014 (13) Supreme Court Cases 55);
3. ***Som Prakash Vs. State of Punjab*** (1992 Supp. (1) Supreme Court Cases 428); and

4. In reply, Mr.C.E.Pratap, learned Government Advocate (Criminal Side) would submit that though PW2-de facto complainant has not supported the case of the prosecution, the prosecution has proved its case by the evidence of PW3, an independent official witness with regard to demand, acceptance and recovery. He would further submit that though PW2 has been declared as hostile, it does not result in an automatic rejection of evidence and if it finds corroboration from the facts of the case, it may be taken into account for judging the guilt of the accused and that there is no legal bar to render the conviction upon the testimony of the hostile witness if corroborated by other reliable evidence. He would submit that the prosecution has proved its case by cogent evidence and the trial court had rightly convicted the appellant and thereby, he would seek for dismissal of the appeal.



5. In reply, the learned counsel for the appellant would submit that PW2 is an inconsistent witness and that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances, no conviction can be based on the evidence of such witnesses. In support of his contention, he relied on the judgment of the Apex Court in *Suraj Mal Vs. State (Delhi Administration)* (1979 (4) Supreme Court Cases 725).

6. The learned counsel for the appellant would further submit that PW2 has been treated hostile and later though he had been subjected to a lengthy cross-examination by the prosecution, nothing worthwhile had been elicited from him. Further, the inconsistencies in the evidence of PW2 and PW3 create a dent in the case of the prosecution and PW2 cannot be treated as a reliable and trustworthy witness.

7. The learned counsel for the appellant/accused ultimately contended that the impugned judgement of conviction and sentence is against law and that the



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prosecution has failed to prove its case beyond all reasonable doubts by cogent evidence and the appellant/accused, having raised probable defence, is entitled for acquittal. He would submit that the entire trap and recovery proceedings were stage managed and fabricated to suit the prosecution. He would also submit that though a presumption is cast against the accused under Section 20 of the Prevention of Corruption Act, the prosecution, before raising the presumption, is bound to prove the foundational facts and in this case, by cross examination of the witnesses and by pointing out several infirmities in the case, the accused had proved that the entire case was staged managed and fabricated one.

8. Heard Mr.G.Rajkumar, learned counsel appearing for the appellant/accused and Mr.C.E.Pratap, learned Government Advocate (Criminal Side) appearing for the respondent and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction and the judgements relied on by the counsel for the appellant/accused.

9. At the outset, the settled position of law, which emerges regarding appreciation of evidence in a trap case, can be summarised as under:-



"(i) To succeed in such a case, the prosecution is obliged to prove the demand of bribe before and at the time of trap, its acceptance and the recovery of tainted money.

(ii) The demand can be proved by testimony of the complainant as well as from the complaint made by him and other witnesses if proved in accordance with law and if it is corroborated in material particulars.

(iii) A presumption as to the demand of bribe can also be drawn if the tainted money i.e. the money tendered as bribe money is recovered from the possession of the accused, which presumption, of course, is rebuttable under Section 20 of the Prevention of Corruption Act, 1988.

(iv) If the accused comes out with some defence, that can be scrutinized by the test of preponderance of probability, while the prosecution must prove its case beyond all reasonable doubts."

10. The genesis of the trap lies in the previous demand for a bribe made by the accused from the complainant, which becomes the basis of laying a trap by the investigating agency. Then, it is for the prosecution to, again, prove the demand at the time when the trap was laid and thereafter, the question of acceptance and recovery of bribe money also is required to be proved beyond all reasonable doubts.



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11. A perusal of the entire evidence would disclose that the case of the prosecution mainly rests on the evidence of PW2, *de facto* complainant, PW3, Official/shadow witness, who was said to have witnessed the entrustment and the trap proceedings, PW4, the Superior of the appellant/accused, PW6, Wife of PW2 and PW8, the Trap Laying Officer.

12. Strangely, in this case, the *de facto* complainant/PW2, who is alleged to have given the complaint, Ex.P2, had turned volte-face and not supported the case of the prosecution. PW2 had stated that he had gone to the office of the appellant/accused for name transfer in the patta and at that time, he had met one Balu, a broker who had informed him that he would complete the work through known persons in the office and that after 4 days, the said Balu had informed PW2 that the appellant/accused had inspected the property and that since there are some problems in the place, the appellant/accused had demanded the money and so the said Balu had demanded a sum of Rs.1,00,000/-. PW2 had asked Balu to reduce the amount and Balu had told him that he had contacted the appellant/accused and he had refused to reduce the amount. He further deposed



that he had informed Balu that he need not proceed and he would directly do the work. Further, he had deposed that on 21.10.2008, on the advice of his wife and his relatives, he had met the appellant/accused and offered to give Rs.5000/- and requested him to complete the work and that the appellant/accused had told him that he had not seen him before and he had refused to receive the money and that on the same day, he had thrust the money in his pant pocket and on the same day, on the advice of his wife and relatives, he had lodged the complaint, Ex.P2. He had specifically deposed that the TLO, PW8 had obtained his signature on several blank papers and he had identified and affirmed such signatures when shown to him.

13. PW2/the *de facto* complainant was treated hostile and he was subjected to a lengthy cross examination. In his cross examination, he had denied having met the appellant/accused and he had deposed about having met one Balu and that he had preferred complaint only against the said Balu and he had denied the contents of the complaint (Ex.P2) and had deposed that other than affixing his signatures on blank papers, he had not done anything. Further, he had denied meeting the official witnesses, preparation of Entrustment Mahazar and trap and



stated that on 21.10.2008 he had thrust the money in the pant pocket of the accused/appellant. PW2 was originally examined on 06.02.2014 and after 5 months, he was recalled by the prosecution and examined in chief again and even at that time, nothing useful was elicited from him. As a whole, the evidence of PW2, has not supported the case of the prosecution and he had deposed that the appellant/accused had refused to receive the money. The evidence of PW2/*de facto* complainant is full of inconsistencies.

14. In this regard, it will be useful to refer to the decision in ***Suraj Mal vs. State (Delhi Administration)*** reported in **1979 4 SCC 725**, wherein the Hon'ble Apex Court has held that :

"2.... It is well-settled that where witnesses make two inconsistent statements in their evidence either at one state or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses."

15. After carefully analysing the evidence of PW2, *defacto* complainant, who was treated hostile, this court is of the opinion that he is not a reliable



witness and thereby this Court is reminded of the legal principle that, the fact that a witness has been declared “hostile” does not result in an automatic rejection of his evidence and even the evidence of a 'hostile witness' if it finds corroboration from the facts of the case, may be taken into account while judging the guilt of the accused. Thus, in a trap case, there is no legal bar to render a conviction upon the testimony of a hostile witness if corroborated by other reliable evidence and thereby, in this case, this Court feels that it has to see whether the case of the prosecution is proved by other reliable evidence.

16. Before moving further, though the learned counsel had referred to several decisions, this Court feels that it would suffice to refer to the decision of the Constitution Bench in ***Neeraj Dutta vs. State (NCT of Delhi)*** reported in ***(2023) 4 SCC 731***. Accordingly, relevant portion of the said decision is extracted hereunder:-

"87. Therefore, this Court cautioned that even if a witness is treated as "hoste" and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the Judge as a matter of prudence to consider the extent of evidence which is creditworthy



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for the purpose of proof of the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence. Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a "hostile Witness" testimony if corroborated by other reliable evidence.

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

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. *In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public*



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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.

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

88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to



Sections 13(1)(d)(i) and (ii) of the Act.

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

89. In view of the aforesaid discussion and conclusions, we find that there is no conflict in the three-Judge Bench decisions of this Court in B. Jayaraj and P. Satyanarayana Murthy with the three-Judge Bench decision in M. Narsinga Lao, with regard to the nature and quality of proof necessary to sustain a conviction for the offences under Sections 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns "hostile" is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion, we hold that there is no conflict between the judgments in the aforesaid three cases."

17. Now that the evidence of PW2, de facto complainant, being held to be unreliable, this Court has to analyse whether the case of the prosecution is corroborated by other reliable evidence and whether the prosecution has proved the foundational facts to raise the presumption under Section 20 of the Prevention of Corruption Act against the accused.



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18. PW3 is an independent official witness, who had deposed about being called by PW8 to assist him in the trap proceedings and he had spoken about the preparation of the Entrustment Mahazar, Ex.P9, the demonstration of the phenolphthalein test at the office of PW8 and going along with PW2 and the trap team to the office of the accused and having witnessed the demand made by the appellant/accused and the acceptance of the tainted money and the subsequent test conducted by the respondent.

19. As per the evidence of PW3, at 12.00 noon, he was instructed by the Chief Engineer to go to the office of PW8 to assist him in a trap proceedings and only after reaching the office, the Entrustment Mahazar, Ex.P9 was prepared by the Trap Laying Officer. He further deposed that at 3.00 pm, after the trap team reached the office of the appellant/accused, the Trap Laying Officer (PW8) had asked the *de facto* complainant/PW2 to contact the appellant/accused over mobile phone and listen to the conversations and thereupon, PW2 had contacted the appellant/accused and in turn, he had instructed PW2 to wait near the Collectorate gate saying that he would come there and that after some time, the



appellant/accused came down and asked PW2 whether he had brought the money and that PW2 had handed over the money laced with phenolphthalein to the appellant/accused and the **accused received it in his right hand and kept it in his right side pant pocket** and that PW2 had made the pre arranged signal and immediately, PW8 and his team had come to the place and PW8 enquired the appellant/accused and the appellant/accused had given details and that he was taken to the nearby Government Stationery Office where the **phenolphthalein test was conducted in both hands and the wash of both hands turned pink** and after collecting the wash, the tainted money M.O.1 was recovered from the accused.

20. In this regard, it is relevant to note that in the cross examination, PW3 had deposed that the **trap team had rushed near the appellant/accused immediately after the receipt of the amount** by the appellant. He had also deposed that PW8 had not called anybody from the Government Stationery Office to witness the proceedings. He further deposed that since the appellant/accused had received the tainted money in his right hand, the phenolphthalein test was not conducted on his left hand fingers. It is to be noted



that as per PW8, the phenolphthalein test had been conducted on both hands of the accused and they are stated to have turned pink. He had denied the suggestion that, since the seizure mahazar (Ex.P10) was prepared at the office of the TLO/PW8, PW4 had not signed in it.

21. PW4 is the Chief Draughtsman in the Survey Department at the office of the District Collectorate, Chennai. He had deposed that the appellant/accused was a Surveyor and that whenever any person applies for name transfer in the patta, the application would be given to the Assistant Director/ PA to the collector (Survey) and from there, the application would be forwarded to him and he would assign a number to it and hand it over to the surveyor, the accused herein for survey and inspection and that one month time would be given to the surveyor to prepare the report and if everything is proper, it would be forwarded to his superior officer and if there is any problem, he would reject it stating the reasons. He had stated that the application for name transfer of patta, Ex.P5 was preferred by PW6, Nachiammal and that the report dated 03.10.2008 was prepared by the accused and the report alongwith the enquiry report was received by him on 04.10.2008. He further deposed that PW8 had asked him to attest



certain documents and that since he did not possess powers, he had not attested the same and that the respondent did not examine him with regard to the case. He was treated hostile and cross-examined by the prosecution. He had denied the suggestion put up by the prosecution that he had introduced PW2 to the accused and apart from that nothing worthwhile was elicited from him.

22. PW5 is yet another Surveyor. He speaks in his evidence that he was informed that the accused was arrested on 21.10.2018 and that a copy of the patta transfer application dealt with by the accused with his endorsement, Ex.P5 was handed over by PW4 to the Inspector of Police, wherein PW5 claims to have attested as true copies. In his cross examination, he admits that the appellant/accused had inspected the place and finding that the documents were proper, had forwarded the report to the higher officials on 06.10.2008 itself while admitting that in Ex.P5, he had signed only on 21.10.2008.

23. PW 6 is the wife of PW2 and she had not supported the case of the prosecution and she was treated hostile.



24. PW7 is the Chemical Analyst. She had deposed that she had received

M.O.2 to M.O.5, which are the washes collected in respect of right hand fingers, left hand fingers and the pant pocket of the accused. She had deposed that the liquid in M.O.2 to M.O.5 were found to be pink in colour and separate analysis of them show the presence of phenolphthalein and sodium carbonate inside M.O.2 to M.O.5.

25. PW8 is the Trap Laying Officer. He had stated that PW2 had given a complaint to the Deputy Superintendent of Police on 21.10.2008 and it was forwarded to him on the same day and that after conducting enquiry, he had registered the case/Ex.P13 (5 sheets) on the same day and sent a requisition to the Chief Engineer, Agricultural Engineering Department to depute two persons to assist him. He further deposed that PW3 and yet another witness had appeared before him at 12.30 hours and PW2 and the other witnesses were introduced each other and thereafter, the phenolphthalein test was demonstrated and the significance of the trap was appraised to the witnesses and the Entrustment Mahazar (Ex.P9) was prepared from 12.45 hours to 14.00 hours and that the witnesses and the *de facto* complainant/PW2 affixed their signature in the same



and that he, along with the *de facto* complainant and the trap team, started from his office at 2.30 pm and reached the Chennai Collectorate/Office of the accused and after giving instructions to PW2 and PW3, he waited near the outer gate closeby and the appellant/accused had come down and had received the tainted money from PW2 in his right hand and counted and kept in his pant pocket and thereafter, he had gone near the appellant/accused and introduced himself and his team and taken him to the nearby Government Stationery Office and conducted phenolphthalein test and that the wash of fingers of both hands turned pink and thereafter, he had recovered the money and found the serial numbers to tally with the serial numbers in the Entrustment Mahazar, Ex.P9. He further deposed that thereafter, he had recovered the pants of the appellant/accused, conducted the phenolphthalein test and later took the accused along with PW3 and the trap team to the 7th floor of the accused and met PW4 and received the application Ex.P5 from him and took the xerox copies and got the attestation in the same and returned the original to PW4 and thereafter, he had arrested the appellant/accused and prepared seizure mahazar (Ex.P.10) from 15.45 hours to 17.00 hours and after intimating the court in advance, he had taken the accused to his house and conducted a search, where nothing incriminating was recovered



and later, prepared observation mahazar and rough sketch (Ex.P.16) and remanded the accused on the next day along with the Material Objects under Form 95.

26. PW8, in the cross examination, had deposed that the complaint (Ex.P2) was given at 11.30 hours and the first information report (Ex.P13) was registered at the same time. He had deposed that though he had conducted a discreet enquiry, he had not mentioned it in FIR, Ex.P13. He had further deposed that the written request was sent to the office of PW3 and the other official witness. He had also admitted that the starting time mentioned in Ex.P9 was 11.30 hours. He further deposed that he had prepared the history of the case (which was marked as Ex.D1) and that as per Ex.D1, the time of preparation of the Entrustment Mahazar was from 11.30 hours to 14.30 hours and he had also admitted that in Ex.D1, the history of the case, the arrival of the official witnesses was mentioned as 14.30 hours. He denied the suggestion that the documents were prepared at his office. In his further cross examination, he admitted that PW2 and PW3 had informed him that the appellant/accused had received the money in his right hand and kept it in his right pocket and he had not counted the money. He



further deposed that only after the phenolphthalein test and recovery of the money at the Government Stationery Office, he had taken the appellant/accused to the 7th floor of the accused's office and met PW4 and PW5 and till such time, he had not completed the seizure mazar (Ex.P10) and that was the reason for not obtaining the signatures of PW4 and PW5 in Ex.P10. He admitted that the appellant/accused did not hand over any documents and it was PW4, who had handed over the documents relating to the patta. He further deposed that as per Ex.P5, the appellant/accused had completed his work on 03.10.2008 and 06.10.2008 and sent the recommendation to the Assistant Director. Though he had enquired the appellant/accused and mentioned it in the seizure mahazar (Ex.P10), he had not recorded the statement from the appellant/accused.

27. From the entire analysis of the evidence, it is seen that though the complaint was given on 21.10.2008, the appellant/accused had completed his work as early as 06.10.2008 and forwarded the same to his Superior Officer/PW4 and the files were pending with PW4. As per the evidence of PW4, the duty assigned to the appellant/accused is only to conduct the spot inspection and give his report along with the recommendation or rejection.



28. As stated above, PW2/*de facto* complainant had not supported the case of the prosecution and he was treated hostile and cross examined by the prosecution and later, he was summoned again and examined in chief. The evidence of PW2 is full of inconsistencies and his evidence seems to be doubtful and he is not worthy of credence. Other than saying that one Balu, a broker had demanded the money on behalf of the appellant/accused and that since he did not get that patta, he intended to lodge a complaint against the said Balu and thereby, he had signed in blank papers and he has not preferred any complaint against the appellant/accused.

29. In the case on hand, as per the prosecution, the appellant/accused is stated to have made the second demand on 17.10.2008 through phone and the complainant is stated to have contacted the accused immediately prior to the trap proceedings by mobile phone. The non-recovery and non-marking of the CDR details create doubt in the prosecution case. In this case, PW8 has stated that he had made the written requisition to the superior officer of the official witnesses requesting to send the official witnesses office to assist him, however, in this case, such a request letter had not been produced before the court or marked in



evidence. Though, it may not be a serious lacuna in the investigation, when taking this into consideration with the discrepancy with regard to the timings spoken by PW3 and entries regarding timing in Ex.P9 Entrustment Mahazar, it creates serious doubt about the presence of PW3, at the time of preparation of the Entrustment Mahazar.

30. PW3, the official witness had deposed that he was informed at 12.00 hours to be at the office of PW8 and thereafter, he had proceeded to the office. However, in Ex.P9 entrustment mahazar, the starting time is shown 11.30 am and in the end portion it has been stated that the entrustment procedure commenced at 12.45 hours and ended by 14.00 hours. In the history of the case submitted by PW8 which has been marked as Ex.D1, it has been stated that PW2 and other official witnesses reached the office of PW 8 at 14.30 hours. The discrepancies in the timings create doubt about the presence of PW3 and other official witnesses in the alleged participation in the trap proceedings.

31. In this case, the appellant/accused, after being restrained and enquired by PW8, after the receipt of tainted money on the platform outside the



Collectorate, instead of being taken to his office on 7th floor in the Collectorate Building, had been taken to the nearby Government Stationery Office nearby.

The non-examination of any staff from the Government Stationery Office also creates doubt with regard to the phenolphthalein test.

32. In Ex.P16, Rough Sketch, other than showing the platform outside the Collectorate as the scene of occurrence, no other details have been shown. In a trap case, the Trap Laying Officer is a person, who gets first-hand information with regard to the receipt of money by the accused and he would be aware of the place where the accused was restrained, where subsequently, phenolphthalein test was conducted, where the money was recovered, and where the further recoveries are made. It is relevant to refer to Rule 49 of the DVAC manual.

Rule 49 :- Preparation of the Site Plan

A site plan of the scene of occurrence should invariably be prepared showing the relative positions of the Accused Officer, bribe giver, Witnesses, Investigating Officer and other members of the raiding party, besides the place of recovery of the tainted money. The site plan should be got attested by members of the trap party, and should form part of the record of investigation.



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33. However, in this case, other than showing the scene of occurrence, the relative positions of the Accused Officer, bribe giver, Witnesses, Investigating Officer and other members of the raiding party, besides the place of recovery of the tainted money have not been shown. To make it clear, though compliance with Rules under the DVAC Manual is not mandatory, as far as the facts of this case are concerned, when essentially, the phenolphthalein test is stated to have been conducted in a different office, the non-compliance of Rule 49 of the DVAC Manual assumes significance and creates a doubt in the prosecution case. This aspect cannot be construed to be a mere lapse on the part of the investigation agency.

34. Further, PW2 had stated that he had thrust the money into the pant pocket of the accused and PW3 had stated that the accused had received the amount in his right hand and kept it in his right pocket. It is also admitted by PW8/TLO that PW2 and PW3 had not stated that the accused had counted the money with both hands. In such circumstances, the phenolphthalein test conducted on the fingers of both hands and the wash from both hands turning



pink also creates doubt in the prosecution case.

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35. Apart from several infirmities in the theory propounded by the prosecution, yet another glaring infirmity is the timing of the registration of the First Information Report. PW2 is stated to have given the complaint, Ex.P2 at 11.30 AM to the Deputy Superintendent of Police and that he had forwarded the same to the PW8/TLO for registration of the case. Ex.P2 is a handwritten complaint dated 21.10.2008 containing 3 pages which had been received at 11.30 a.m by PW8 and thereafter, PW8/TLO had registered the First Information Report (Ex.P13), which is typed in an electronic computer containing 2 pages. The time of registration of Ex.P13 is also shown as 11.30 am.

36. It is the evidence of PW8 that after receiving Ex.P2 at 11.30 am, he enquired PW2 and thereafter, registered the First Information Report. Column 3(b)&(c) of Ex.P13 shows that the information was received at 11.30 hours and entry was made at 11.30 hours and at column 13, it is stated that the first information report was registered at the same time at 11.30 hours. This aspect creates suspicion with regard to the genesis of the First Information Report



(Ex.P13).

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37. Further, it is the case of the prosecution that the first demand was made on 16.10.2008 at the time of the survey conducted by the accused and the last pre trap demand was stated to have been made on 17.10.2008, whereas, it is the evidence of PW4 that the accused had completed his survey and had completed other works and handed over the report to the office as early as 4.10.2008 and in such circumstances, there could not have been a possibility of the accused conducting a land survey once again on 16.10.2008 and PW2 meeting him on 16.08.2008.

38. There are several doubts in the prosecution case with regard to the registration of the case, preparation of Entrustment Mahazar (Ex.P9), alleged demand, recovery of the tainted money, the non recovery of the CDR details and conducting the phenolphthalein test at a different place namely the Government Stationery Office and the non examination of staff from the Government Stationery Office with regard to the phenolphthalein test conducted and the case of the prosecution that wash of both hands turned pink when especially the PW3 having not spoken about the handling the money with both hands creates serious



doubts in the prosecution case. The circumstances have not been proved beyond reasonable doubts. Therefore, in the opinion of this Court, the prosecution has failed to prove the foundational facts.

39. In ***P. Sathyanarayana Murthy v. State of AP*** reported in **(2016) 1 SCC Cri 11**, the Hon'ble Apex Court has held as under:-

"26. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in Sujit Biswas v. State of Assam [MANU/SC/0564/2013 : (2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.

27 . The materials on record when judged on the touchstone of the legal principles adumbrated herein above, leave no manner of doubt that the prosecution, in the instant



case, has failed to prove unequivocally, the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly unsafe to sustain the conviction of the appellant under Sections 13(1)(d) (i) and (ii) read with Section 13(2) of the Act as well. In the result, the appeal succeeds. The impugned judgment and order [P. Satyanarayana v. State of A.P.Criminal Appeal No. 262 of 2002, order dated 25-4-2008 (AP)] of the High Court is hereby set aside. The appellant is on bail. His bail bond stands discharged. Original record be sent back immediately."

40. The entire case of the prosecution is bristled with several infirmities creating doubt. The prosecution, before raising presumption against the accused under Section 20 of the Prevention of Corruption Act, has to establish the foundational facts regarding the guilt of the accused by cogent evidence.

41. In ***V. Sejappa v. State by Police*** reported in ***(2016) 12 SCC 150*** the Hon'ble Supreme Court has held that initial burden of proving 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 the presumption would arise under Section 2 of the prevention of Corruption Act.



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42. Taking into consideration the cumulative evidence on record, this Court comes to a conclusive finding that the prosecution has failed to prove the foundational facts and the accused had rebutted the presumption by preponderance of probabilities and thereby, the appellant is entitled to acquittal.

43. 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.

16.02.2024

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
raa/ham/ssk



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To
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1. The Special Court for the cases under Prevention of Corruption Act, Chennai.
2. The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City-III, Nandanam,
Chennai-600 035.
3. The Public Prosecutor,
High Court of Madras.



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Crl.A.No.115 of 2017

A.D.JAGADISH CHANDIRA, J.

raa/ham

***Pre-Delivery Judgment in
Crl.A.No.115 of 2017***

***Delivered on
16.02.2024***