



CrI.A.No.141 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.141 of 2017

State represented by
The Public Prosecutor,
High court, Madras-600 104.
Vigilance and Anti Corruption,
Salem.
(Crime No.08/AC/2001)

... Appellant/Complainant

Vs.

T.M.Mani

... Respondent/A2

PRAYER:The Criminal Appeal is filed under Section 378(1)(b) of Cr.P.C., to set aside the judgment of acquittal passed in Spl.C.C. No.21/2014, dated 31.12.2015 by the Special Judge, Special Court for trial of cases under Prevention of Corruption Act at Salem and convict the respondent/accused as charged in accordance with law.

For Appellant : Mr.S.Santhosh
Government Advocate (Criminal side)

For Respondent : Ms.Jayasri Baskar,
for Mr.K.V.Sridharan



JUDGMENT

WEB COPY This Criminal Appeal is filed by the State as against the judgment dated 31.12.2015 made in Special C.C.No.21/2014, by the Special Judge, Special Court for trial of cases under Prevention of Corruption Act at Salem, acquitting the respondent/A2 for the offences under Sections 7, 12, and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

2. A1, viz., A.Thajudeen(died) and A2 viz., M.Mani were employed as Selection Grade Assistant and Field Assistant respectively in the Taluk Office, Edappadi, Salem and as such, both the accused are public servants as defined under Section 2 (c) of the Prevention of Corruption Act 1988.

3. A1, viz., A.Thajudeen died on 06.02.2009 and thereby, the charge against him was duly abated as per order dated 17.03.2009 and the trial has been conducted only with the surviving A2 viz., M.Mani. The trial Court, having found A2 not guilty of the offence punishable under Sections 7, 12 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, acquitted him under Section 248(1) of Code of Criminal Procedure. Challenging the acquittal, the present appeal has been filed by the State.



4.Factual aspects of the prosecution case are as under:-

WEB COPY

4.1.P.W.3-Palani, the defacto complainant, who is an Agriculturist and Weaver by avocation, was in need of the Death Certificate and Legal Heirship Certificate of his wife viz.,Komaravalli to claim a sum of Rs.2459/- which was lying in his wife's name in the Primary Agricultural Co-operative Bank, Sadayampalayam and thereby, on 16.11.2001 at about 10.30a.m., when P.W.3 had approached A1 at Edappadi Taluk Office for getting legal heirship certificate, A1 had demanded a sum of Rs.200/- as illegal gratification other than remuneration to make necessary arrangements to secure the Legal Heirship Certificate. Again on 23.11.2001, when P.W.3 had met A1 at his office and renewed his earlier request, A1 had not only reiterated his earlier demand for gratification but also directed P.W.3 to come with the demanded gratification amount on 26.11.2001 and get the legal heirship certificate. Since PW3 did not have enough money, he had returned home.

4.2.Since P.W.3 was not willing to pay the bribe to the accused, on 25.11.2001 at about 6.00p.m., he went to Salem Vigilance Office and lodged an oral complaint with PW14, the then Inspector of Police. PW14 reduced the oral complaint into writing and obtained the signature of PW3



in the same. Ex.P3 is the complaint. After complying with all the formalities, PW14 had registered Ex.P18-First Information Report as against A1 alone for an offence under Section 7 of the Prevention of Corruption Act and furnished a copy of the same to PW3 on proper acknowledgement. After conducting discreet enquiry with regard to the antecedents of PW3 and A1, PW14 recorded the statement of PW3 and had directed PW3 to come to the Vigilance Office the next day i.e., on 26.11.2001 for a trap. Thereafter, PW14 sent requisition letters to the office of the Executive Engineer, TWAD Board, Salem and District Forest Officer, Salem, to provide assistance in the investigation by sending witnesses in the cadre of Assistant.

4.3. On 26.11.2001 at about 9.30a.m., PW3 had appeared before PW14 at the Salem Vigilance Office. At about 10.00a.m., PW4, viz., Gunasekaran, the official witness, then employed as Junior Assistant in the office of the Executive Engineer, TWAD Board, Salem and one Devarajan, then employed as Junior Assistant in the office of the Forest Officer, Salem appeared before PW14 and got themselves introduced with PW14. After formal introduction of the official witnesses to PW3, PW4 and witness Devarajan were appraised of the case particulars by furnishing a copy of Ex.P3-complaint and Ex.P18-First Information Report. Thereafter, PW3



produced M.O.1 series of currency notes Rs.200/- (4 x Rs.50/-Rs.200/-) to PW14 to facilitate the trap. The serial numbers found in the currency notes were noted by PW14 with the help of the two official witnesses in Ex.P4-Entrustment Mahazar. Thereafter, PW14 had demonstrated the importance and significance of the phenolphthalein test to PW3, PW4 and witness Devarajan. Later, phenolphthalein powder was smeared on the currency notes and the same was handed over to the official witness-Devarajan for counting and again the chemical test was carried out on the hands of the official witness-Devarajan, who counted the currency notes smeared with phenolphthalein powder, turned pink. Thereafter, the Sodium Carbonate Solution was destroyed and the remaining contents of Sodium Carbonate Powder and Phenolphthalein powder were packed separately, sealed and labelled and also duly initialled by PW4 and witness Devarajan and they were marked as MO.2 and MO.3 respectively. Thereafter, P.W.14 had prepared a Mahazar noting the happenings from 11.00a.m., to 11.30a.m., and had obtained the signatures of P.W.3 and the official witnesses. P.W.14 had instructed PW4-official witness to accompany P.W.3-defacto complainant and to observe the happenings between A1, A2 and P.W.3.

4.4. Thereafter, PW14 had given instructions to PW3 to visit the



Edappadi Taluk Office along with PW4-Gunasekaran and to tender the Phenolphthalein coated MO.1 series of currency notes to A1 only on demand and comb his hair backwards thrice with both hands as a signal. After the culmination of pre-trap formalities PW14, the Trap Laying Officer along with PW3, PW4, witness Devarajan and other members of the trap team left the Salem Vigilance Office and proceeded to the office of the A1 in a Police Jeep. At about 12.30p.m., PW3 and PW4 were alighted from the police jeep and were instructed by PW14 to proceed to the office of A1. PW14 along with the official witness, viz.,Devarajan and the rest of the trap team stationed near the tea shop situated in front of the Edappadi Taluk Office.

4.5. Thereafter, PW3 and PW4 entered the Edappadi Taluk office and had met A1 in his room. A1, who showed his displeasure to PW3 in not obeying his earlier instruction, had directed PW3 to bring A2. PW3 and PW4 went upstairs and brought A2 to the seat of A1. At that time, A1 had directed A2 to receive the bribe money from PW3 and immediately, thereafter, PW3 gave the powder coated currency notes to A2. A2, who counted the currency notes with his both hands, kept the same in the upper pocket of his shirt. A2 by saying that if only a sum of Rs.100/- is paid to a



new officer, Legal Heirship Certificate can be secured and had demanded a sum of Rs.100/- from PW3. Then, PW3 and PW4 came out of the office around 12.45p.m., and gave a prearranged signal to PW14. On noticing the signal, PW14 along with official witness-Devarajan approached PW3 and PW4. PW3 narrated the events to PW14 and identified A2 to PW14. After introducing the two official witness and himself to A2, PW14 took A2 inside the Taluk office along with all the members of the raiding party.

4.6.After entering the Taluk office, PW3 identified A1 to PW14 and disclosed the demand and acceptance of bribe money of Rs.200/- by A1 through A2. Thereafter, PW14 prepared Sodium Carbonate Solutions in two glass tumblers and conducted Phenolphthalein test on both the hands of A2. Since the test proved positive, PW14 collected the colour changed solutions in MO4 and MO5 bottles duly caped, sealed and labelled with mark 'S1' and 'S2' respectively. PW4, PW14 and witness Devarajan made initials in the labels so affixed and thereafter, when PW14 had enquired A2 with regard to the money of Rs.200/- received by him from PW3, A2 had handed over the tainted currency notes to PW14. The serial numbers found in the currency notes produced by A2 was compared by PW14 with that of the serial numbers of the currency notes mentioned in Ex.P4-Entrustment



Mahazar and both the serial numbers were tallied. Thereafter, PW14 seized the currency notes and conducted Phenolphthalein test inside portion of the left outer pocket of the shirt by preparing Sodium Carbonate Solution in a separate tumbler. Since the test proved positive, PW14 collected the colour changed solution in MO6 bottle duly sealed and labelled with mark 'S3'. PW4, PW14 and witness Devarajan made initials on the label and P.W.14 had also seized MO6 bottle and MO7 shirt for the purpose of investigation.

4.7. Thereafter, PW14 enquired A1 and seized Ex.P5-Application file, Ex.P6-Distribution Register, Ex.P7-Personal Register, Ex.P8-Attendance Register and Ex.P9-Attendance Register through A1 for the purpose of investigation. Thereafter, at about 3.10 P.M., PW14 had arrested A1 and A2 disclosing the grounds of arrest and upon intimation to PW5, the then Zonal Deputy Thasildhar of Edappadi Taluk Office. Ex.P10-Seizure Mahazar prepared by PW14 in respect of the events that took place at Edappadi Taluk Office during the trap proceedings was duly attested by PW4, PW5 and witness Devarajan. A1 and A2 were furnished with a copy of Ex.P10 Seizure Mahazar on due acknowledgement. Thereafter, PW14 prepared Ex.P11-Rough Plan with regard to the place of occurrence and the same was duly attested by PW4 and witness Devarajan. Subsequently, after



sending Ex.P19-Advance intimation to the jurisdiction court, PW14 proceeded from Edappadi Taluk Office along with the accused 1 and 2 and all the members of the raiding party and conducted house search of A1 and A2 in the presence of the two official witnesses and the respective accused. No incriminating materials were seized during the said house search. Ex.P12 and Ex.P13-House Search Lists prepared by PW14 were duly attested by PW4 and the other witness Devarajan and respective copy of the House Search List was furnished to the respective accused on proper acknowledgement.

4.8. Thereafter, PW14 took steps to send both the accused to judicial custody. The case properties and documents seized and collected during the trap proceeding were sent to the jurisdiction court by PW14 on 27.11.2001 through Ex.P20-Form-91. Thereafter, as per the instruction of the Directorate of Vigilance and Anti-Corruption, Chennai, PW14 had entrusted the entire case records to the Inspector of Police for further investigation.

4.9. During the course of investigation, Inspector Ramakrishnan(not examined) examined necessary witnesses and recorded their statements. Ex.P14 is the file relating to the Legal Heirship Certificate application preferred by PW3 and it was obtained by Inspector Ramakrishnan through



PW5. Further, Inspector Ramakrishnan had submitted Ex.P15 Requisition letter to the jurisdiction court to send the relevant case properties for analysis and report to the Forensic Science Laboratory Chennai. PW12, then employed as Superintendent in the Chief Judicial Magistrate Court, Salem, after obtaining necessary orders from the Court, sent the case properties mentioned in Ex.P15, Requisition letter to the Forensic Science Laboratory, Chennai along with Ex.P16- Requisition letter for analysis and report. PW13, then employed as Scientific Officer at Forensic Science Laboratory, Chennai, had conducted necessary test and issued Ex.P17- Chemical Report. Thereafter, Inspector Ramakrishnan, on receipt of copy of the Chemical Report prepared an investigation report and submitted the same to the Directorate of Vigilance and Anti-Corruption, Chennai. Thereafter, as per the orders of the Director, Directorate of Vigilance and Anti- Corruption, Chennai, Inspector Ramakrishnan met PW1 and PW2 at their office and appraised the case details by producing all the material case records.

4.10.PW1, then employed as District Revenue Officer, Salem, on perusal of records received from the Directorate of Vigilance and Anti-Corruption Chennai and on perusal of the documents submitted by Inspector



Ramakrishnan, passed Ex.P1-Sanction Order to prosecute A1. PW2, then employed as Assistant Director of Survey and Land Records, Salem, on perusal of records received from the Directorate of Vigilance and Anti-Corruption, Chennai, and the documents submitted by Inspector Ramakrishnan, had passed Ex.P2-Sanction Order to prosecute A2. Thereafter, Inspector Ramakrishnan examined PW1 and PW2 and recorded their statements, in respect of passing of Ex.P1 and Ex.P2 Sanction Orders. At this juncture, since Inspector Ramakrishnan went on medical leave, PW15, the then Deputy Superintendent of Police, V& AC, Salem, continued the investigation and submitted the final report in court implicating A1 and A2 for offences under Sections 7, 12 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

4.11.On appearance of the accused, copies of relevant papers were furnished to the respondents/A1 and A2 under Section 207 Cr.P.C. On behalf of the prosecution, 15 witnesses have been examined as P.Ws.1 to 15, while marking Exs.P1 to P20 and also M.Os.1 to 7.

4.12.After completion of the examination of witnesses on the side of the prosecution, the respondents/A1 & A2 were questioned on the incriminating materials under Section 313 Cr.P.C., and the accused had



Crl.A.No.141 of 2017

come out with the version of denial and stated that they had been falsely implicated in this case. However, no witness was examined on the side of the defence.

4.13. The trial Court, after hearing the arguments, found A2 not guilty for the offences punishable under Section 7, 12 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and acquitted him under Section 248(1) of Cr.P.C. Challenging the acquittal, the State has filed this Criminal Appeal.

5.1. Mr. S. Santhosh, learned Government Advocate (Criminal Side) appearing for the State, would submit that the respondent/A2 was charged and tried along with A1 for the offences under Sections 7, 12 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The prosecution by examining 15 witnesses and marking 20 documents and 7 Material Objects has proved its case. The trial Court, without taking into consideration the evidence on record, had erred in acquitting the respondent/A2. The trial Court had failed to see that A2 viz., M. Mani had accepted the bribe amount of Rs.200/- from P.W.3, viz., Palani, defacto complainant in the presence of P.W.4-Gunasekaran, official witness on the



direction of A1 viz., A.Thajudeen(since deceased). Having accepted the receipt of money, the burden is cast on A2 to rebut the presumption by adducing evidence that he had no knowledge what he received/accepted was illegal gratification other than legal remuneration and that A2 had no knowledge about the prior demand of illegal gratification by A1 from P.W.3 as a reward for issuing the Legal Heirship Certificate. The trial Court had failed to consider the clinching oral evidence of P.W.3 and P.W.4, who have no axe to grind against A2 and their evidence quite clearly speak about receiving of bribe by A2 on the direction of A1(since deceased) and further, the trial court has to take into consideration the further demand of Rs.100/- made by A2 from P.W.3.

5.2.Further, the trial Court had failed to take into consideration the following facts as revealed in the evidence of P.W.3 and P.W.4, which clearly prove the fact that A2 had accepted the bribe amount on the instructions of A1 knowing fully well that the amount received from P.W.3 is only illegal gratification other than legal remuneration as a reward for processing and issuing Legal Heirship Certificate. The very fact that during the trap, A2 had demanded additional amount of Rs.100/- from P.W.3 for paying the successor is also categorically deposed by P.W.3 and P.W.4 and



by the cogent evidence of P.W.3 and P.W.4, the prosecution has clearly proved the offence committed by A2 under Sections 7, 12 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, which points out the guilt of A2 beyond reasonable doubt. The trial Court, in the event of not finding material against the respondent/A2 for the offence under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, ought to have convicted the respondent/A2 for the offence under Section 12 of the Prevention of Corruption Act, for abetting the main accused viz., A1(since deceased). He would further submit that the finding of the trial Court in acquitting the respondent/A2 is perverse and seeks to allow the appeal.

6.1.In reply, Ms.Jayasri Baskar, learned counsel representing Mr.K.V.Sridharan, learned counsel for the respondents/A1 and A2, would submit that even as per prosecution, A1(since deceased) is the prime accused and A2 is only cited as the one who accompanied the main accused. Other than having received the amount of Rs.200/- from P.W.3 on the direction of A1, A2 had not committed any offence as alleged by the prosecution. There is absolutely no material to show that A2 had demanded any amount as illegal gratification either for himself or on behalf of A1 to



show any official favour. As per evidence of P.W.5, A2 is not at all concerned with the official work and it was entrusted to A1 alone and A2 was not aware of what had transpired between A1 and P.W.3-defacto complainant. Though the allegation of additional demand of Rs.100/- said to have been made by A2, but no charge was framed against A2 with regard to the said additional demand of Rs.100/-. No whisper is made with regard to the alleged additional demand of Rs.100/- said to have been made by A2 from P.W.3 during the trap proceeding held at the office of Tahsildhar, Edapadi. The trial Court, finding that no charge has been framed in respect of the alleged additional demand of Rs.100/- and also finding that no whisper has been made in Ex.P10-seizure mahazar about the alleged additional demand, had rightly acquitted A2. The trial Court, having found that when the prosecution has claimed Ex.P10-Seizure Mahazar as a contemporaneous document, it shall contain all the events that took place at the time of trap proceedings held at Edappadi Taluk Office and held that non-mentioning of an important event in Ex.P10-Seizure Mahazar would throw serious doubt over not only the prosecution case but also about the veracity of the evidence of P.W.3 and P.W.4 and had rightly acquitted A2.

6.2.Learned counsel for the respondent/A2 would reiterate that there



is absolutely no material either by way of oral or documentary evidence to prove that A2 had obtained Rs.200/- as bribe for himself or for A1 and further, there is no material to prove that A2 had received the money from P.W.3 as per the direction of A1 knowing fully well that it was a bribe money. The trial Court, which had seen the demeanour of witnesses, had found A2 not guilty and acquitted him. There is no perversity or illegality in the finding of the trial Court. The trial Court, after considering the entire materials on record, had acquitted A2 as there is presumption of innocence and further the trial Court's acquittal bolsters the presumption of the innocence and thereby, the learned counsel would seek to dismiss the appeal.

7.Heard Mr.S.Santhosh, learned Government Advocate (Criminal Side) appearing for the appellant/State and Ms.Jayasri Baskar learned counsel representing for Mr.K.V.Sridharan, learned counsel appearing for the respondent/A2 and perused the materials available on record.

8.What has to be seen is (i) whether the trial Court has properly



appreciated the evidence on record and is right in acquitting the accused/A2 for the charges levelled against him.

9. This Court has given its anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgment of acquittal.

10. At the outset, before venturing into analysis and assessment of the entire evidence available on record, so as to appraise the reasons assigned by the trial Court for acquitting the respondent/A2 herein, it is relevant to refer the following decisions in respect of power of the High Court to interfere with in an appeal filed against the judgment of acquittal.

11. In ***Sampat Babso Kale and another Vs. State of Maharashtra (2019 (4) Supreme Court Cases 739)***, the Hon'ble Apex Court has held as follows.

“8. With regard to the powers of an appellate court in an appeal against acquittal, the law is well established that the presumption of innocence which is attached to every accused person gets strengthened when such an accused is acquitted by the trial court and the High Court should not



lightly interfere with the decision of the trial court which has recorded the evidence and observed the demeanour of witnesses.”

12.In *Babu Vs. State of Kerala (2010 (9) SCC 189)* the Hon'ble Apex Court has held as under.

7.This court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the Trial Court.

The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court. (Vide *Balak Ram v. State of U.P.* AIR 1974 SC 2165; *Shambhoo Missir & Anr. v. State of Bihar* AIR 1991 SC 315; *Shailendra Pratap & Anr. v. State of U.P.* AIR 2003 SC 1104; *Narendra Singh v. State of M.P.* (2004)



10 SCC 699; [Budh Singh & Ors. v. State of U.P.](#) AIR 2006 SC 2500; [State of U.P. v. Ramveer Singh](#) AIR 2007 SC 3075; [S. Rama Krishna v. S. Rami Reddy \(D\)](#) by his Lrs. & Ors. AIR 2008 SC 2066; [Arulvelu & Anr. Vs. State](#) (2009) 10 SCC 206; [Perla Somasekhara Reddy & Ors. v. State of A.P.](#) (2009) 16 SCC 98; and [Ram Singh alias Chhaju v. State of Himachal Pradesh](#) (2010) 2 SCC 445).

8. In [Sheo Swarup and Ors. v. King Emperor](#) AIR 1934 PC 227, the Privy Council observed as under:

"...the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses...."

9. The aforesaid principle of law has consistently been followed by this Court. (See: [Tulsiram Kanu v. The State](#) AIR 1954 SC 1; [Balbir Singh v. State of Punjab](#) AIR 1957 SC 216; [M.G. Agarwal v. State of Maharashtra](#) AIR 1963 SC 200; [Khedu Mohton & Ors. v. State of Bihar](#) AIR 1970 SC 66;



Sambasivan and Ors. v. State of Kerala (1998) 5 SCC 412;
Bhagwan Singh and Ors. v. State of M.P. (2002) 4 SCC 85;
and State of Goa v. Sanjay Thakran and Anr. (2007) 3 SCC
755).

13. In "*Chandrappa v. State of Karnataka*" *MANU/SC/7108/2007* :
((2007) 4 SCC 415), the Hon'ble Supreme Court held that the appellate
Court should not ordinarily interfere with a judgment of acquittal in a case
where two views are possible even though the trial Court's view may not
appear 'more probable one' and further held as follows:

"42. From the above decisions, in our considered view, the
following general principles regarding powers of the appellate
court while dealing with an appeal against an order of acquittal
emerge:

- (1) An appellate court has full power to review,
reappreciate and reconsider the evidence upon which the
order of acquittal is founded.
- (2) The Code of Criminal Procedure, 1973 puts no
limitation, restriction or condition on exercise of such
power and an appellate court on the evidence before it may
reach its own conclusion, both on questions of fact and of
law.
- (3) Various expressions, such as, "substantial and



compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

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

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

14. In *"Mrinal Das v. State of Tripura"* MANU/SC/1030/2011 :

(2011) 9 SCC 479, the Hon'ble Supreme Court has held that the appellate



Court being the final Court of facts is fully competent to re-appreciate, reconsider and review the evidence and take its own decision keeping in mind that the acquittal provides for a presumption in favour of the accused and also that if two reasonable views are possible on the basis of the evidence on record the appellate Court should not disturb the findings of the trial Court. The appellate Court can also review the conclusions arrived at by the trial Court both on questions of fact and law and it is the duty of the appellate Court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. Paragraph No. 8 of the aforesaid judgment is quoted hereunder for ready reference:

"8. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in



criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

15. In *Sudershan Kumar Vs. State of Himachal Pradesh* reported in

MANU/SC/1206/2014 : 2014:INSC:889 : (2014) 15 Supreme Court Cases



666, while referring to Chandrappa's case (supra), the Hon'ble Apex Court at

Paragraph 31 of its Judgment has held that it is the cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of acquittal. The Appellate Court, in such a case, would interfere only for very substantial and compelling reasons.

16.In *Jafarudheen and others Vs.State of Kerala*, reported in *MANU/SC/0531/2022 : ((2022) 8 Supreme Court Cases 440)*, at Paragraph 25 of its judgment, the Hon'ble Apex Court was pleased to observe as below:

" 25. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C, the appellate Court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate Court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."



WEB COPY

17. The aforesaid view of the Hon'ble Supreme Court has been reiterated in numerous later decisions of the Hon'ble Supreme Court including in "*Vijayakumar Vs. State of Tamil Nadu*, (2021) 3 SCC 687; *Ravi Sharma v. State (NCT of Delhi)*" MANU/SC/0856/2022: 2022:INSC:699 : (2022) 8 SCC 536 and also in *Roopwanti Vs. State of Haryana and others*, reported in MANU/SC/0162/2023 : 2023:INSC:157 : AIR 2023 SC 1199.

18. Now coming to the case on hand, keeping in mind the abovesaid principles laid down by the Honourable Apex Court, regarding interference or non-interference with the judgment of the acquittal by this Appellate Court, it is to be seen that as to whether the trial Court had given clear, cogent, convincing and categorical reasons for acquitting the respondent/A2 and whether the trial Court took a plausible, reasonable and justifiable view, for which, it is absolutely necessary to analyse and assess the reasons assigned by the trial Court for acquitting the respondent/accused herein, coupled with the entire evidence, both oral and documentary, on record.



WEB COPY

19.While coming to the case on hand, P.W.3 is a resident of Konasamudiram Village, Edappadi Taluk and a sum of Rs.4300/- was lying in the deposit in the name of P.W.3's deceased wife viz.,Komaravalli, with the primary Agricultural Co-operative Bank, Sadayapalayam. On the said deposit a sum of Rs.3000/- was secured as loan and P.W.3 had intended to withdraw the balance sum of Rs.2445/- which was lying in the deposit of his wife after her death on 26.10.2000. When P.W.3 had approached the bank authorities, he was instructed to produce the death certificate and legal heirship certificate of Komaravalli for disbursing the amount. P.W.3 had submitted an application before P.W.5-Amirthalingam, formerly Zonal Deputy Tahsildhar, Edappadi, on 23.10.2001 for issuance of legal heirship certificate of his wife Komaravalli. Based on his application, P.W.7 viz.,K.Asokarathinam, the then Revenue Inspector of Konganapuram, had conducted necessary enquiry and sent Ex.P5-report to the Edappadi Taluk Office. Consequent to that, on 12.11.2001 when PW3 had met PW11, K.Mani, the then Tahsildhar, Edappadi Taluk Office and enquired about the legal heirship certificate of his wife Komaravalli, PW11 had directed PW3 to meet A1(since deceased) in this regard. When PW3 had met A1, he had



CrI.A.No.141 of 2017

directed PW3 to meet him on 16.11.2001 at his office. Thereby, on 16.11.2001 at about 10.30a.m., when P.W.3 had approached A1 at Edappadi Taluk Office for getting legal heirship certificate, A1 had demanded a sum of Rs.200/- as illegal gratification other than remuneration to make necessary arrangements to secure the Legal Heirship Certificate. Again on 26.11.2001, P.W.3 had gone to the office of A1. At that time, A1 had reiterated his demand of Rs.200/- and told P.W.3 that the work could not be done without the payment of money and directed A2 to receive the money from P.W.3 and on his instruction, A2 had received the bribe money from P.W.3. In this case, the charges against the respondent/A2 are that he had committed the offences punishable under Sections 7, 12 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

20.It is to be seen that during pendency of Special C.C.No.43 of 2002 on the file of Special Judge cum Chief Judicial Magistrate, Salem, A1 died on 06.02.2009 and thereby, the charge against A1 got abated and trial has been continued in respect of A2 alone.

21.By way of defence, though A2 had admitted the receipt of Rs.200/-



CrI.A.No.141 of 2017

from P.W.3, it is his case that as per direction of A1 he had received that amount and he was not aware that prior to the trap proceedings i.e., before 26.11.2001 what had transpired between P.W.3 and A1 and that he had no knowledge that the amount he had received on the direction of A2 was the bribe amount and he had nothing to do with the official duty and the work was assigned only to A1 and P.W.3 had also accepted the fact that only as per direction of A1, A2 had received the amount. P.W.3 had not made any complaint as against A2 and in Ex.P3-complaint also there is no mention of his name. In such circumstances, the evidence of P.W.3 and P.W.4 assumes significance. The trial Court finding that the evidence of P.W.3 and P.W.4 do not speak about the knowledge of A2 with regard to the amount received by him on the instructions of A1 and also finding that no evidence was let in with regard to abetment by A2 and further, A2 had not indulged in corrupt or illegal means, had acquitted A2.

22.This Court, on a careful analysis of evidence of P.W.3 and P.W.4, has to see whether the finding of the trial Court is correct or not. Coming to the evidence on record, admittedly, as per Ex.P3, there is absolutely no allegation as against A2 that P.W.3 had met A2 prior to the trap or that A2



had knowledge about the demand made by A1 or that A2 was responsible for issuance of the Legal Heirship Certificate. Though P.W.3 had stated that A1 had made demand on 16.11.2001 and 23.11.2001, he had given a complaint only on 25.11.2001. P.W.3-defacto complainant and P.W.4-official witness did not depose that A2 had demanded gratification either for himself or on behalf of A1 to show any official favour and it is not the case of the prosecution that A2 had demanded the bribe amount from P.W.3 prior to the trap and during the trap. A complaint was made by P.W.3 only against A1. In the case on hand, when there is no demand of illegal gratification by A2, the primary requisite for the offence under Section 13(1)(d) of the Prevention of Corruption Act is conspicuously absent and the prosecution has failed to prove the case of demand.

23.The evidence regarding involvement of A2 on the date of trap is concerned, the evidence of P.W.3 is that on the date of trap, he along with P.W.4 had met A1 at 12.30p.m., and requested for Legal Heirship Certificate. A1 shown his displeasure and had instructed P.W.3 to go upstairs and bring A2 to the office room of A1 and thereby, P.W.3 and P.W.4 had gone upstairs and brought A2 to the office room of A1 and A1



had instructed A2 to receive Rs.200/- from P.W.3 and thereby, A2 had received the bribe amount from P.W.3 and kept it in his shirt pocket. In this regard, it is useful to extract the relevant portion of the evidence of P.W.3 and P.W.4 respectively, which reads thus.

P.W.3's evidence

“உடனே போய் நாங்கள் 2வது எதிரியை அழைத்துவந்து 1வது எதிரியிடம் கொண்டு வந்துவிட்டோம். 1வது எதிரி தாஜூதின், 2வது எதிரி மணியை பார்த்து, நான் கேட்ட பணம் (வாதியிடம்) இருக்கிறது. நீங்கள் வாங்கிக்கொள் என 2வது எதிரியிடம் 1வது எதிரி சொன்னார். நான் வைத்திருந்த பணத்தை சட்டையின் உள்பாக்கெட்டில் இருந்து 2வதுஎதிரியிடம் நான் கொடுத்தேன். அதை 2வது எதிரி வாங்கி எண்ணிப்பார்த்துவிட்டு அவருடைய சட்டையின் மேல்பாக்கெட்டில் வைத்துக்கொண்டார்.”

P.W.4's evidence

“உடனே தியாஜூதின், மணி அங்கு இருப்பார் அவரை அழைத்து வருமாறு சொன்னார். நானும், வாதி பழனியும் மேலே சென்று மணியை அழைத்து வந்தோம். தியாஜூதின் அழைப்பதாக சொன்னதன்பேரில் மணி எங்களுடன் வந்தார். எங்களுடன் வந்த மணி 2வது எதிரி ஆவார். தியாஜூதின்(முதல் எதிரி), 2வது எதிரி மணியை பார்த்து வாதி பழனி பணம் கொண்டு வந்திருக்கிறார். நீங்கள் வாங்கிக்கொள்ளுங்கள் என்று சொன்னார். உடனே பழனி தன்னுடைய சட்டையின்



CrI.A.No.141 of 2017

இடது பக்க உள்பாக்கெட்டிலிருந்து சா.பொ.1 வரிசையை
எடுத்து ஆஜர் 2வது எதிரியிடம் கொடுத்தார்.”

It is clear from the above evidence that A2 had received the money from P.W.3 only on the instruction of his superior A1. The trial Court had observed that A2 had received the bribe amount of Rs.200/- from P.W.3 only on the instruction of his superior viz.,A1 and the prosecution has miserably failed to establish that A2 had received the bribe amount from P.W.3 with full knowledge that it was bribe money. It is clear that there is no demand on his part. Though A2 had accepted the receipt of Rs.200/-, it is clear from the evidence of P.W.3 and P.W.4 that only on the instruction of A1 alone he had received the said amount and thereby, this Court is of the view that the prosecution has failed to prove their case of demand and acceptance of money by A2.

24.Though the prosecution has raised the further contention that after receipt of Rs.200/- from P.W.3, A2 had demanded an additional amount of Rs.100/- stating that it has to be paid to his successor, who comes on the next day and that P.W.3 had also agreed to pay the said sum by drawing from bank, A2 had not given the Legal Heirship Certificate, there is no



mention about the said event in Ex.P10-Seizure Mahazar. Seizure Mahazar is a contemporaneous document and it should contain all the events that took place at the time of trap proceedings. The trial court, finding that no mention was made about the additional amount of Rs.100/- in Ex.P10-Seizure Mahazar, had rightly disbelieved the evidence of P.W.3 and P.W.4 with regard to the demand of additional amount of Rs.100/-. The vital omission of an important event in Ex.P10-seizure mahazar would create not only a doubt but also the veracity of the evidence of P.W.3 and P.W.4 and thereby, the entire case of the prosecution is shrouded with suspicion.

25.Further, the contention raised by the prosecution in respect of knowledge of receiving the bribe amount by A2 is concerned, a careful scrutiny of evidence of P.W.3 and P.W.4 would show that nowhere in their evidence they had stated that A2 had received the money knowing fully well that it was bribe money. To the contrary, P.W.3 and P.W.4 had deposed that only on the instruction of A1 they had brought A2 to the room of A1. P.W.3 had not made any complaint against A2 and in Ex.P3-complaint there is no mention about A2. The trial Court observed that A2 had received the bribe amount of Rs.200/- from P.W.3 only on the instruction of his superior



CrI.A.No.141 of 2017

viz., A1 and the prosecution has miserably failed to establish that A2 had received Rs.200/- from P.W.3 with full knowledge that it was bribe money and with an intention to aid the commission of offence by A1. Further, the trial Court having held that when the knowledge and motive on the part of A2 have not been established by the prosecution, acquitted A2 for the charge under Section 12 of the Prevention of Corruption Act also. On the whole, taking into consideration the cumulative evidence of witnesses and documents on record, the trial Court had found that the prosecution has failed to prove the charge against A2 for the alleged offence under Sections 7, 12, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, and had rightly acquitted A2 under Section 248(1) of Cr.P.C.

26. Though further investigation had been carried on by one Ramakrishnan, Inspector of Police V&AC and he had examined the witnesses and recorded their statements, he has not been examined by the prosecution which also creates dent in the prosecution case.

27. Though A2 had charged for commission of offence under Section 7 of the Prevention of Corruption Act and bound to rebut the statutory



presumption under Section 20 of the Prevention of Corruption Act, is entitled to displace the statutory presumption by bringing on record the evidence, either direct or circumstantial, to establish with reasonable probability, that the money which was accepted by him or any other person on his behalf is not illegal gratification as referred to in Section 7 of the Prevention of Corruption Act, 1988. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the respondent/A2 is called upon to explain how the amount in question was found in his possession, a bounden duty is cast on the prosecution to prove the foundational facts beyond reasonable doubts and A2 is entitled to disprove the case of the prosecution based on the evidence on record. As discussed above, the cumulative

analysis of the evidence exposes several loose ends in the prosecution case creating several doubts shaking the very foundation of the prosecution case.

In the instant case as stated above, as admitted by PW.14-TLO, though the recovery of money from A2 has been made, there is absolutely no evidence



Crl.A.No.141 of 2017

that A2 had received Rs.200/- from P.W.3 with full knowledge that it was bribe money and with an intention to aid the commission of offence by A1.

As far as recovery of money from A2 is concerned, admittedly as per Ex.P14-Seizure Mahazar also, A2 had received the bribe amount of Rs.200/- from P.W.3 only on the instruction of his superior A1-Thajudeen(since deceased). P.W14-Trap Laying Officer has also in his evidence deposed that P.W.3 had stated that on the instruction of A1, A2 had received Rs.200/- from him and also it is seen that A2 had come out with the spontaneous reply under what circumstances he was holding the money in his hands. The reasoning given by A2 is probable and plausible, more particularly, when there is no specific evidence of P.W.3 and P.W.4 that at the time of trap proceedings, A2 had demanded illegal gratification. Further, as stated above, there is no specific mention with regard to the demand by A2 in the complaint also. From the above discussions, it is clear that the prosecution has failed to prove the demand, acceptance and recovery. Mere recovery by itself cannot prove the charge of the prosecution and to substantiate the same, it is useful to refer the following decisions.

28.In ***M.Rajendran Vs. State(2011(1) MWN (Crl) 602);***



N.Thangarajuly and another Vs. State(2001 (1) MLJ (Crl) 1050);

A.V.Vijayarangan and others Vs. State (2010 (1) MLJ 541)and(D.Dass,

Inspector of Police, Cuddalore Vs. State (2010 (2) MLJ(Crl) 225), this

Court had reiterated the legal position that the demand of illegal gratification is sine qua non for the offence and mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused where the substantial evidence of prosecution is not reliable.

29.In ***State of Kerala and another Vs. C.P.Rao(2011 (6) SCC 450)***, the abovesaid view that mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused was reiterated.

30.In ***G.V.Nanjundiah Vs. State(Delhi Administration) (1987 Supp SCC 266)***, it was laid down that the allegation of bribe taking should be considered along with other material circumstances and demand has to be proved by adducing clinching evidence.

31.In ***P. Sathyanarayana Murthy v. State of AP ((2016) 1 SCC***



(Crl.) 11), the Honble Apex Court took note of its earlier verdict in

B.Jayaraj vs. State of A.P. underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as under Sections 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for offences under Sections 7 and 13 of the Act but also it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. The Apex Court, in *P. Satyanarayana Murthy* on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof thus summed up its conclusions as hereunder: (SCC P.159, Para 23)

“23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof,



dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 and 13 of the Act would not entail his conviction thereunder.”

(emphasis supplied)”

"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 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."

32.The respondent/A2 though charged for commission of offence under Section 7 of the Prevention of Corruption Act and bound to rebut the statutory presumption under Section 20 of the Prevention of Corruption Act, is entitled to displace the statutory presumption by bringing on record the evidence, either direct or circumstantial, to establish with reasonable probability, that the money which was accepted by him or any other person on his behalf is not illegal gratification as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, a



WEB CONTENT

bounden duty is cast on the prosecution to prove the foundational facts beyond reasonable doubts and the accused is entitled to disprove the case of the prosecution based on the evidence on record. Now coming to the prosecution case with regard to the recovery of currency from A2, it is an admitted case of the prosecution that A2 had received the amount of Rs.200/- from P.W.3 only on the instruction of his superior A1- Thajudeen(since deceased) and the said fact had also been recorded in Ex.P14-seizure Mahazar also. P.W.3-defacto complainant and P.W.4-accompanying official witness did not depose that A2 had demanded any gratification either for himself or on behalf of A1 to show any official favour and there is no whisper in this regard in Ex.P3-complaint also and A2's name does not find place in Ex.P3-complaint. As discussed above, the prosecution has miserably failed to establish the foundational facts regarding the guilt of the respondent/A2 whereas there is presumption of innocence and the trial Court's acquittal of A2 bolsters the presumption of innocence and thereby, A2 is entitled to be acquitted.

33.The trial Court had distinct advantage of observing the demeanor of the witnesses directly. Unless the conclusions and findings reached by the



trial court are found to be palpably wrong or based on erroneous view of the law and evidence or if such conclusions are perverse and if allowed to stand, they are likely to result in grave injustice, this appellate Court would be fully justified in interfering with such conclusions. Thus, the law on this issue can be summarised to the effect that in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the Appellate Court can interfere with the judgement of acquittal. The appellate Court should bear in mind the presumption of innocence of the accused and further the analysis of evidence by the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner, where the other view is possible, should be avoided, unless there are valid reasons for interference.

34. In this case, as analysed above, in the opinion of this court the prosecution had not even proved the foundational facts, such as, demand, acceptance and recovery of money by independent witness beyond all reasonable doubts and this Court finds no justifiable reason to interfere with the impugned judgment of acquittal. The trial Court, in the opinion of this Court, has not committed any error or illegality or misread the evidence



CrI.A.No.141 of 2017

available on record warranting interference of this Court with the impugned judgment of acquittal.

35. In the result, this Criminal Appeal stands dismissed confirming the impugned judgment of acquittal made in Spl.C.C.No.21/2014 dated 31.12.2015 by the Special Judge, Special Court for trial of cases under the Prevention of Corruption Act, Salem.

29.01.2024

raa

To

1.The Special Judge,
Special Court for trial of cases under
the Prevention of Corruption Act, Salem.

2. The Inspector of Police,
Vigilance and Anti Corruption, Salem.

3.The Public Prosecutor,
High Court, Madras.



WEB COPY



CrI.A.No.141 of 2017

A.D.JAGADISH CHANDIRA,J.

raa



WEB COPY



Crl.A.No.141 of 2017

Crl.A.No.141 of 2017

29.01.2024