



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.3.2024

Delivered on : 25.6.2024

CORAM

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

Criminal Appeal No.147 of 2017

M.Mani

Appellant

vs.

Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Krishnagiri.

Cr.No.6/AC/2010 KG V&AC

Respondent

Criminal Appeal filed under Section 374 Cr.P.C. against judgment of conviction in Spl.C.C.No.4 of 2012 dated 4.3.2017 by the Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr. John Sathiyar, Senior Counsel
for Mr.D.Rameshkumar

For Respondent : Mr.S.Santhosh
Government Advocate (Crl.Side)

JUDGMENT

Challenging the judgment of conviction and sentence passed by the Chief Judicial Magistrate, Krishnagiri under the Prevention of Corruption Act, Chennai in Spl.C.C. No.4 of 2012, dated 04.03.2017 the present Criminal Appeal has been filed before this Court.



WEB COPY 2. The sentence imposed upon the appellant is as under:-

<i>Legal provision</i>	<i>Sentence imposed</i>
Section 7 of the Prevention of Corruption Act, 1988	Six months Rigorous imprisonment and a fine of Rs.200/-, in default, to undergo one month simple imprisonment.
Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988	One year Rigorous imprisonment and a fine of Rs.200/-, in default, to undergo one month simple imprisonment.
The sentences shall run concurrently.	

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

i) On 15.12.2010, at about 9.00 am, a complaint, Ex.P2, signed by PW2, Chinnasamy, an agriculturist came to be lodged with PW10, Thiru.Ramachandran, while he was serving as Deputy Superintendent of Police, Vigilance and Anti Corruption, Krishnagiri contending as under:-

The de facto complainant/PW2 possesses agricultural land to the extent of 10 cents in Survey No.512/8-A and for getting electricity service connection for the motor installed in the agricultural well in the land, he had approached the appellant/accused, Village Administrative Officer, Barur in his office on 10.12.2010 at about 12.00 noon, submitted an application



enclosing Chitta seeking for his signature on the application and issuance of patta, adangal, FMB sketch and other required revenue documents to enable him to get the free electricity service connection for his land, for which, the appellant/accused had demanded Rs.1000/- as illegal gratification and he asked him to bring the joint patta holders. Contending that he did not possess that much money, PW2 had returned. Thereafter, on 13.12.2010, PW2 once again approached the appellant/accused and asked for the revenue documents and this time also, the appellant/accused had demanded the bribe of Rs.1000/- and on the request of PW2, the appellant/accused had reduced his demand to Rs.800/- and asked PW2 to meet him on 15.12.2010 at about 11.30 am alongwith the joint patta holders with the bribe money of Rs.800/-. Since PW2 is not inclined to give bribe to the appellant/accused, he went to the office of the DVAC, Krishnagiri along with the money sought by the appellant/accused and lodged the complaint.

ii) On receipt of the complaint, Ex.P2, PW10 had registered the same under FIR, Ex.P15 and sent requisition to the Panchayat Union Office and the Joint Registrar of Co-operative Societies under Exs.P16 and P17 respectively. Accordingly, one Mugilan (PW3), Village Administrative Officer Grade I from Krishnagiri Panchayat Union and



one Mathiyalagan, Senior Inspector from the office of the Registrar of Co-operative Societies were deputed and they reported before PW10 on 15.12.2010 at 10.15 am. On their arrival, PW10 had introduced PW2, de facto complainant to the said witnesses and vice versa and apprised the witnesses about the complaint.

iii) Subsequently, PW10 had asked PW2 as to whether he brought the bribe money as demanded by the appellant and thereupon, PW2 had produced the same (eight currency notes of Rs.100/- each). Those notes were given to the witnesses for counting and noting down the serial numbers of the same and thereafter, a demonstration was made for conducting the trap with the assistance of one Sankar, Special Sub Inspector and thereby the witnesses were apprised of the significance of the test and thereafter, the chemical content used for demonstration of trap was destroyed. The samples of Sodium Carbonate powder and Phenolphthalein powder used for demonstration were collected under M.O.1 and M.O.2 respectively.

iv) Thereafter, PW10 had instructed PW2 to keep the money in the left pocket of his shirt and visit the office of the appellant alongwith PW3 and to give the bribe money to the appellant only if he demands it and in the event of his acceptance, PW2 was instructed to come out and give signal by combing his hair with both the hands.



In this regard, PW10 had also prepared Ex.P8 entrustment mahazar, which was prepared from 10.15 am to 10.45 am and duly signed by the de facto complainant, PW2, the prosecution witnesses and PW10.

v) At 11.00 am, the entire team containing the prosecution witnesses, police personnel and PW2 went in the Government vehicle to the office of the appellant and reached there at about 12.20 pm. Having dropped PW2 and PW3 near the office of the appellant, PW10 and his team members including the another official witness Mathiyalagan have hidden themselves near the office of the appellant.

vi) PW2 and PW3, who went inside the office of the appellant at about 12.30 pm, had come out at about 12.55 pm and PW2 had shown the pre-arranged signal to the team of PW10 and thereupon, the team had rushed near them and PW10 had enquired both PW2 and PW3 about the happenings inside the office of the appellant. On the narration made by PW2 about the demand and acceptance of bribe by the appellant and the same having been reiterated by PW3, the team of PW10 had entered into the office of the appellant, wherein, PW2 had identified the appellant to PW10.

vii) Thereupon, PW10 asked PW2 to wait outside and had introduced himself to the accused and commenced the phenolphthalein test. Sodium Carbonate mixture was made in two



clean glass tumblers wherein, the appellant was made to dip his hands separately and having found that the mixture turned into pink, it was poured into separate glass bottles, sealed and labelled, whereupon PW3, another witness Mathiyalagan, appellant and PW10 have affixed their signatures and the same were marked as M.O.3 and M.O.4.

viii) When PW10 had enquired the appellant/accused about the bribe money he obtained, the appellant/accused had produced the same from his shirt pocket and the serial numbers of the currency notes were verified with the ones entered in the entrustment mahazar, Ex.P8 and having found that they tally, the money was recovered as M.O.7. After giving alternate shirt to the appellant, the shirt of the appellant/accused was recovered and its pocket portion was also dipped into the similar mixture made and on the mixture having turned into pink, it was poured into another glass bottle, named and labelled and signature of the witnesses were affixed therein and the same was marked as M.O.5. The shirt of the appellant/accused was seized, which was marked as M.O.6.

ix) At this juncture, at about 2.30 pm, the Deputy Tahsildar, Munirathnam (PW6) had come to the office of the appellant/accused on receipt of information from PW10. By apprising him about the



demand made by the appellant/accused, PW10 had arrested the appellant/accused at about 2.35 pm. When his personal belongings were checked, a sum of Rs.3871/- was with him and when enquired about the same, he had explained that it his personal money and thereby, it was returned to him.

x) Thereafter, PW10 had called PW2 inside and when asked about the documents issued by the appellant/accused, PW2 had produced Ex.P5, Consent letter, Ex.P6 Kist no due certificate and Ex.P7 E.B. Application with the signature of the appellant/accused and the same were seized under Ex.P9, recovery mahazar. When enquired as to why the appellant/accused had obtained bribe, he had replied that he obtained it as usual. The entire proceedings was recorded in Ex.P9 recovery mahazar from 1.15 pm to 3.00 pm and a copy of the same was given to the appellant/accused. Thereafter, PW10 had drawn a rough sketch, Ex.P10 and prepared an observation mahazar, Ex.P18.

xi) Subsequently, PW10, after giving prior intimation to the court under Ex.P19, went alongwith prosecution witnesses to the house of the appellant and conducted a search from 3.40 pm to 4.10 pm and having found no suspicious materials, he prepared a statement, Ex.P11. Subsequently, PW10 had remanded the appellant



to the court and sent the seized material objects to the court under Form 95, marked as Ex.P20 and submitted the case file to PW11, Inspector of Police Thiru.Sathish for further investigation as per the instructions of the Superintendent of Police.

xii) PW11, Thiru.Sathish, Inspector of Police, who took up the further investigation, had sent the material objects with requisition to the court for sending the same for chemical analysis and receipt the report, Ex.P14. On 20.12.2010, he had enquired PW2 and recorded his statement. On 21.12.2010, he had enquired PW3-Mugilan and Mathiyalagan and recorded their statements. On 10.2.2011, he had enquired PW4-Veerabathiran, PW5-Madhaiyan and Kasiammal (not examined) and recorded their statements. On 15.3.2011, he had enquired PW7-Amudhan, PW8-Manoharan and recorded their statements. On 22.3.2011, he had enquired PW6-Munirathnam and recorded his statement. On 13.4.2011, he had enquired one Nagasubramani and recorded his statement. On 18.4.2011, he had enquired PW9-Visalatchi and recorded her statement. On 17.3.2011, he had enquired the accused and recorded his statement. On 25.1.2012, he had submitted the case file to PW1-Thiru.Satheesh, the sanctioning authority seeking for sanction order to proceed against the appellant/accused. Having receipt Ex.P1, sanction order,



PW11 had enquired PW1, sanctioning authority on 10.1.2012 and recorded his statement. Ultimately, on completing the investigation, he had filed the final report against the accused for the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

4. The case was taken on file in Special C.C.No.4 of 2012 by the Chief Judicial Magistrate, Krishnagiri. On issuance of summons, the appellant/accused appeared before the Trial Court and copies were furnished to him, in due compliance of Section 207 of Cr.P.C. After affording opportunities, when the appellant/accused was initially questioned, he denied the charges. After hearing both sides and perusing the records, the Trial Court found that there are prima facie materials to frame charges against the appellant/accused for the offences under Section 7, 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, 1988. The accused denied the charges and sought to be tried.

5. During trial, on the side of the prosecution, P.W.1 to P.W.11 were examined and Ex.P.1 to Ex.P.23 and M.O.1 to M.O.7 were exhibited. Based on the incriminating materials, when the accused was questioned under Section 313 of the Code of Criminal Procedure,



he pleaded not guilty, however, he had neither examined any witness nor marked any document.

6. The Trial Court, after hearing the arguments of prosecution as well as the defence, found the accused guilty and sentenced him to undergo imprisonment and pay the fine as stated above. Challenging the judgment of conviction and sentence imposed by the Trial Court, the present appeal has been filed.

7. Assailing the impugned judgment of conviction, learned Senior Counsel Mr. John Sathyan appearing for the appellant would submit his arguments as under:-

i) The Trial Court has failed to consider that the de facto complainant himself, while adducing evidence, has turned hostile and rather supported the case of the appellant and in such circumstances, the Trial Court has erred in not considering the deposition of PW2 in proper perspective and legal manner, but, proceeded to convict the appellant by merely relying on the evidence of PW3 on the assumption that he could be an independent witness, despite the fact that he is not a trustworthy witness.

ii) PW2/de facto complainant, the only person to speak about



the pre-trap demand and demand on the date of trap alleged by the prosecution, having turned hostile, it was incumbent on the prosecution to cross examine him in an effective manner to prove its case against the accused, however, it has not been done in this case.

iii) When the prosecution had failed to prove its case by effectively cross examining PW2/de facto complainant with regard to pre-trap demand and demand on the date of trap, PW3, being the only witness who could speak about the demand that too on the date of trap alone, his evidence needs to be analysed with due care and caution. The evidence of PW3 is filled with material contradictions and he is an untrustworthy witness to base reliance to render conviction.

iv) Even as per the case of the prosecution, the demand was made on 10.12.2010, however, the complaint has been lodged on 15.12.2010 with an unexplained delay of 5 days, which vitiates the case of the prosecution.

v) The court below had failed to consider that no preliminary enquiry was conducted by the Trap Laying Officer before ever registering the complaint.

vi) The Trial Court failed to consider that no presumption has been raised by the prosecution against the appellant since they have



miserably failed to prove the demand itself, however, the Trial Court has proceeded to convict the appellant/accused, which warrants indulgence of this court.

8. Per contra, Mr.S.Santhosh, learned Government Advocate (Criminal Side) would submit that though the de facto complainant himself had turned hostile for the reason best known to him, the prosecution has proved its case against the appellant/accused with regard to the demand on the date of trap with the cogent evidence of PW3, an independent witness and recovery of bribe money with the evidence of the Trap Laying Officer, PW10 and chemical analysis report and thereby raised a presumption against the appellant/accused and the Trial Court has rightly convicted the appellant/accused, which does not warrant any interference by this court and the Appeal is liable to be dismissed.

9. Heard the learned counsel appearing for the appellant and learned Government Advocate(Criminal Side) appearing for the respondent and perused the materials available on record.

10. The appellant/accused being the Village Administrative



Officer, Barur at the relevant point of time, is a public servant as defined under Section 2(c) of the Prevention of Corruption Act. The allegation against him is that he had demanded and obtained Rs.800/- as illegal gratification for issuing revenue documents and affixing his signature in the application of the de facto complainant to avail free electricity service connection for his agricultural land. While it is the case of the prosecution that the appellant/accused was caught red handed, the case of the appellant/accused is that the amount so received by him from the de facto complainant is only towards repayment of loan availed by the de facto complainant and the delay of about one month occurred in issuing the revenue documents to him was only because of the delay on the part of the de facto complainant in bringing the joint patta holders and furnishing of their no objection.

11. It being a trap case, the evidence of the de facto complainant, the official witness and the Trap Laying Officer assumes more significance. However, in the present case, the evidence of PW2, the de facto complainant is totally a different one and contradictory when compared to the allegation in the complaint. He denies to have lodged such a complaint. He has been treated as



hostile witness.

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12. PW2's evidence in chief is to the effect that, he had approached the appellant/accused seeking the revenue documents for which, the appellant/accused had asked him to bring the joint patta holders and also repay the amount, viz., Rs.1000/-, which was liable to be paid by PW2 in respect of a hand loan availed from the appellant/accused for his medical expenses in the year 2009 as he had repaid only a sum of Rs.3000/-. His further evidence is that he insisted for the furnishing of revenue records on an oral undertaking that he would settle the hand loan and since even after one month, the appellant/accused had not issued the revenue documents claimed by him and insisted for repayment of loan amount and to bring the joint patta holders, he had reported at the DVAC office and thereupon, a complaint was written by the officials therein and he had signed the same, of course, after reading the same.

13. The evidence of PW2 being so with regard to the complaint, Ex.P2, he does not speak anything about the demonstration of trap alleged to have been conducted as per the case of the prosecution. Thereafter, he speaks about himself proceeding alongwith the trap



team to the office of the accused and the events that had taken place in the office of the accused with regard to issuance of revenue documents after obtaining no objection from the joint patta holders. Sofar as the payment of the alleged bribe money is concerned, he had deposed that he had kept the money on the table of the accused and come out and gave the prearranged signal to the trap team. His specific evidence in chief examination itself is that the police had obtained his signature and he does not know as to why it was obtained by them. Therefore, virtually, the de facto complainant/PW2 has not implicated the appellant/accused by deposing anything against him to the effect that the appellant/accused had demanded any illegal gratification nor obtained it for issuing the revenue documents and in fact, he had deposed that he had paid the money towards repayment of a loan, which he had availed from the appellant/accused towards his medical expenses.

14. It is a settled principle that even when the de facto complainant turns hostile, the prosecution can establish its case by examining other witnesses and circumstances evidence. It is also the bounden duty of the prosecution, in case the de facto complainant



himself turns hostile, to cross examine him effectively to show that he is lying and merely marking contradictions is not sufficient.

15. A Full Bench The Hon'ble Apex Court, in a recent decision in ***Anees vs. State Government of NCT*** (2024) SCC Online SC 757, while noting down lack of thorough cross-examination by Public Prosecutors in Criminal Appeals, has heavily come down on the issue by holding that the prosecutors often only confront them with their police statement, aiming to highlight the contradictions but not fully explore the witnesses' testimony. The relevant portion of the decision is extracted hereunder for ready reference:-

"67. In the case at hand, not only proper contradictions were not brought on record in the oral evidence of the hostile witnesses, but even those few that were brought on record, were not proved through the evidence of the Investigating Officer. Does the State expect Section 106 of the Evidence Act to come to its aid in every criminal prosecution. At times, such procedural lapses may lead to a very serious crime going unpunished. Any crime committed against an individual is a crime against the entire society. In such



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circumstances, neither the public prosecutor nor the presiding officer of the trial court can afford to remain remiss or lackadaisical in any manner. Time and again, this Court has, through its judgments, said that there should not be any element of political consideration in the matters like appointment to the post of public prosecutor, etc. The only consideration for the Government should be the merit of the person. The person should be not only competent, but he should also be a man of impeccable character and integrity. He should be a person who should be able to work independently without any reservations, dictates or other constraints. The relations between the Public Prosecution Service and the judiciary are the very cornerstone of the criminal justice system. The public prosecutors who are responsible for conducting prosecutions and may appeal against the court decisions, are one of judges' natural counterparts in the trial proceedings and also in the broader context of management of the system of criminal law.



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68.*A criminal case is built upon the edifice of evidence (whether it is direct evidence or circumstantial evidence) that is admissible in law. Free and fair trial is the very foundation of the criminal jurisprudence. There is a reasonable apprehension in the mind of the public at large that the criminal trial is neither free nor fair with the Prosecutor appointed by the State Government conducting the trial in a manner where frequently the prosecution witnesses turn hostile.*

69.*Over a period of time, we have noticed, while hearing criminal appeals, that there is practically no effective and meaningful cross-examination by the Public Prosecutor of a hostile witness. All that the Public Prosecutor would do is to confront the hostile witness with his/her police statement recorded under Section 161 of the Cr. P.C. and contradict him/her with the same. The only thing that the Public Prosecutor would do is to bring the contradictions on record and thereafter prove such contradictions through the evidence of the Investigating Officer. This*



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is not sufficient. The object of the cross-examination is to impeach the accuracy, credibility and general value of the evidence given in-chief; to sift the facts already stated by the witness; to detect and expose the discrepancy or to elicit the suppressed facts which will support the case of the cross-examining party. What we are trying to convey is that it is the duty of the Public Prosecutor to cross-examine a hostile witness in detail and try to elucidate the truth & also establish that the witness is speaking lie and has deliberately resiled from his police statement recorded under Section 161 of the Cr.P.C. A good, seasoned and experienced Public Prosecutor will not only bring the contradictions on record, but will also cross-examine the hostile witness at length to establish that he or she had actually witnessed the incident as narrated in his/her police statement."

16. In the present case, it is seen that the de facto complainant/PW2 having been treated hostile, the entire cross examination made by the prosecution is nothing but, a very lengthy



suggestion on the chain of events recorded in the police statement and a simple denial of the same in its entirety by PW2. Further, the facts spoken by him in his chief examination like submission of application to the appellant/accused seeking for revenue documents, the direction of the appellant to bring the joint patta holders, PW2's approaching the DVAC officials, his approach of the accused alongwith PW3 and the joint patta holders also have been clubbed in the series of suggestions by the prosecution and a total denial was recorded. The evidence adduced by PW2 in chief examination is not only hostile to the case of the prosecution and vitiates it, but also, it is in support of the case of the appellant/accused. Further, in the cross examination made by the appellant/accused, PW2 has admitted that the complaint was written by a person at the office of the DVAC and he had merely signed in the complaint and the statements written in the complaint have not been made by him. Further, his specific admission is that on the date of complaint also, there was no demand of any money and the money paid by him was only in respect of the amount, which he was liable to pay to the appellant/accused towards repayment of hand loan availed by him for his medical expenses.



17. Such being the situation, the Trial Court, despite observing that the de facto complainant himself had turned hostile and the appellant/accused had also taken such a stand in his written statement, has proceeded to convict the appellant/accused by relying on the evidence of other witnesses, exclusively, the evidence of PW3.

18. Coming to the evidence adduced by PW3, though his version almost tallies with the case of the prosecution, when PW2, the de facto complainant himself had turned hostile, this court is of the view that the evidence of PW3 needs to be analyzed with due caution. He speaks in his chief examination that when he was on duty on 15.12.2010, at about 10.00 am, he had received an oral direction from the Block Development Officer, Krishnagiri to report before the DVAC at 10.15 am and report before PW10 and accordingly, he had reported.

19. However, when PW3 was cross examined on the aspect of oral direction flowed from his officer, he had stumbled very much. His clear admission in the cross examination is that he had reached his office at 9.45 am and by that time, watchman and office staff were there, but, the Block Development Officer by name Cushioned



Theresa was not available in the office and he does not know as to what time, the Block Development Officer came to the office.

Thereafter, he had tried to patch up by deposing that his office was functioning by that time in a temporary building and hence he was not able to say at what time, the Block Development Officer came to the office. His specific admission is that when he went to his office, he did not meet his officer viz., the Block Development Officer. He goes one step ahead to admit that **he does not know whether his officer was available there at that time.** However, he contends that his officer gave only oral direction to him to report at the DVAC and report before PW10 at 10.15 am. It is not his version that he was called over any phone and directed to report before PW10. He also clarified by saying that his officer called him in person and gave the oral direction and asked him to get the written order in the evening. Therefore, it is clear that PW3 contradicts his own statements and admissions. When he himself admits that he had not seen his officer on that day when he reached the office, that he does not know at what time the officer came to the office and that he does not even know whether his officer was available there by that time, his receipt of oral direction from the officer to report before PW10 is suspicious and consequently, his presence before the Trap Laying



Officer, PW10 at the relevant point of time itself is surrounded by more suspicion.

20. When the de facto complainant/PW2 himself had turned hostile and the prosecution has not much bothered to cross examine him effectively to establish its case with regard to demand of bribe, the only witness to speak about the demand and acceptance of bribe being viz., PW3 also appears to be untrustworthy inasmuch as his presence during the trap proceedings itself is suspicious, the prosecution has utterly failed to prove its case of demand and acceptance of illegal gratification by the appellant/accused.

21. Such being the case with regard to demand and acceptance, mere recovery spoken by the Trap Laying Officer, PW10 assumes no significance in view of the settled position of law. In this regard, it would be relevant to refer to the following decisions.

i) In *Possessiveness Marathi Vas. District Inspector of Police, State AP and another*, 2015 10 SCC 152, the Apex Court has held as under:-

"23. The proof of demand of illegal gratification, thus,



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

....

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 [(2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677]*** has 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



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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.

*ii) In **V.Sejappa Vas. .State by Police Inspector Lokayukta, Chitradurga** reported in (2016) 12 SCC 150, the Honourable Supreme Court, while referring to several earlier judgments, has held as follows:-*

"18. It is well settled that the initial burden of proving that the accused accepted or obtained



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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 presumption would arise under [Section 20](#) of Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under [Section 20](#) of Act.

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

"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 :



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(2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved."

22. In view of the above discussions and in the light of the decisions cited supra, this court is of the view that the prosecution has miserably failed to prove its case against the appellant/accused beyond all reasonable doubts and there is no valid presumption at all, however, the appellant/accused has proved his case by preponderance of probabilities and thereby, the judgment of conviction rendered by the Trial Court is liable to be set aside as



erroneous one and accordingly, it is set aside.

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23. In the result, the Criminal Appeal is allowed. The Judgment of conviction and sentence dated 4.3.2017 rendered by the Chief Judicial Magistrate, Krishnagiri in Spl.C.C.No.4 of 2012 is set aside. The appellant is acquitted of all the charges and is set at liberty. The bail bond if any, executed by the appellant shall stand cancelled. Fine amount if any, paid by him shall be refunded to him.

25.6.2024.

Index: Yes/No.

Internet: Yes/No.

To

1. Chief Judicial Magistrate,
Krishnagiri.
2. Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Krishnagiri.
3. Public Prosecutor,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. JUDGMENT IN
Criminal Appeal No.147 of 2017

Delivered on
25.6.2024.