IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.12.2023

Delivered on : 16.02.2024

CORAM

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

Criminal Appeal No.149 of 2017

V.Sangam ... Appellant

Vs.

The State
rep. by the Inspector of Police,
Vigilance & Anti Corruption,
Chennai.
Crime No.15/AC/2009/HQ ... Respondent

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment of conviction and sentence in C.C.No.135 of 2011 (Old C.C.No.18 of 2010) dated 22.12.2017 by the Special Judge, Special Court for the cases under the Prevention of Corruption Act, Chennai.

For Appellant : Mr.R.Srinivas, Senior Counsel
for Mrs.Mythili Srinivas

For Respondent : Mr.S.Udayakumar,
Government Advocate (Criminal Side)

JUDGMENT

The present Criminal Appeal has been filed by the sole accused in C.C.No.135 of 2011, challenging the judgment of conviction and sentence dated 22.02.2017 rendered by the Special Judge for the cases under Prevention of Corruption Act at Chennai.

2. The trial Court, finding the accused guilty for the offences under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, convicted the appellant/accused and the sentence imposed on him is as follows:-

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

3. The brief facts of the prosecution case as culled out from the

prosecution witnesses are as under:-

i) The accused viz.,V.Sangan had worked as Assistant in the office of the Regional Joint Director, Department of Industries and Commerce, Guindy, Chennai-32 from 21.03.2008 to 26.03.2009 is a public servant under Section 2(c) of Prevention of Corruption Act, 1988.

ii) The defacto complainant, viz.,Yezhilovian, PW2 had approached the accused on 23.03.2009 at the office for Micro Small Medium Entrepreneur Certificate and submitted an application-Ex.P.2 to the accused for issuance of Micro Small Medium Entrepreneur Certificate(hereinafter referred to as the 'MSME Certificate') for Ezhil Industry run by him and on receipt of the application, the accused had demanded a sum of Rs.700/- for issuance of the said MSME certificate (EMII Acknowledgment).

iii) Again on 26.03.2009, when the defacto complainant-PW2 met the accused and requested for issuance of MSME Certificate, the accused had reiterated his demand of Rs.700/-. Thereby, PW2 has lodged a complaint under Ex.P.3 with the Deputy Superintendent of Police.

iv) On receipt of the same, P.W.7, the Deputy Superintendent of Police, had forwarded the complaint as per Ex.P.12 endorsement to P.W.8, Inspector of Police for further investigation.

v) On receipt of the same, P.W.8 had registered a case in Crime No.15/AC/2009/HQ against the accused under Section 7 of the Prevention of Corruption Act, 1988 in the First Information Report under Ex.P.13.

vi) In the meanwhile, on the requisition, Ex.P.18 issued by PW7, Deputy Superintendent of Police to the Commercial Tax Department, the official witnesses Tr.Selvakumar, Assistant and Tr.G.Jaganathan(PW3), Assistant, Office of the Assistant Commissioner, Commercial Taxes, Adyar Assessment Circle, Chennai-28, had reported before PW8 on 26.03.2009 at 15.50 hrs.

vii) PW8-Trap Laying Officer had introduced the complainant to the official witnesses and vice versa and had given the complaint and First Information Report to the official witnesses, for acquainting with the facts of the case. Bribe amount of Rs.700/- was produced by PW2 and the serial numbers of the said currency notes were noted down by PW8 in Ex.P.5-Entrustment Mahazar. Sodium Carbonate solution was prepared in two tumblers through constable Rajaguru and as per directions of PW8, the official witness Tr.R.Selvakumar had counted the currency notes and chemical test on the normal hands of the official witness Tr.Selvakumar was demonstrated. Phenolphthalein Powder was smeared on the currency notes by official witness Tr.R.Selvakkumar and Chemical test on the hands of official witness Tr.R.Selvakumar dusted with phenolphthalein powder was demonstrated.

viii) After the demonstration of the chemical test, the tainted money of Rs.700/- was entrusted to PW2 with an instruction to handover the same to the accused only on demand and with further instructions to give signal by removing and wearing his spectacles on acceptance of the tainted money by the accused. P.W.3-official witness was instructed to accompany PW2 and observe the conversations and happenings between PW2 and the accused.

ix) After the scheme of trap was finalized, PW8-Trap Laying Officer along with PW2, the official witnesses P.W.3-G.Jaganathan and Tr.R.Selvakumar and police party proceeded to the office of the accused and reached the Regional Joint Director Office, Guindy, Chennai, at about 17.30 hours.

x) As per instructions of P.W.8, Trap Laying Officer, when P.W.2-

defacto complainant and P.W.3, shadow witness met the accused around 5.40 pm and at that time, the accused had reiterated his earlier demand and accepted the tainted money of Rs.700/- (M.O.1) from PW2 with his right hand and counted the same and kept it in his right side pant pocket.

xi) Subsequently, PW2 came out and gave the pre-arranged signal and PW8, along with police party and official witnesses, proceeded to the spot wherein PW2 had identified the accused and thereafter, PW8 had introduced themselves to the accused and phenolphthalein test was carried out on both the hands of the accused, which proved positive. When PW8 enquired the accused about the money, the accused produced the tainted money(M.O.1) from his right side pant pocket and the serial numbers of the said currency notes were compared with Ex.P5, Entrustment Mahazar and since they were found tallied, the same were recovered and thereafter, phenolphthalein test was carried out on the right side pant pocket of the accused and the same also proved positive.

xii) PW8 collected the solutions in separate bottles (M.O.2, M.O.3 and M.O.4) and the brown colour pant (M.O.5). Ex.P5-Entrustment Mahazar was prepared in the presence of PW2 and PW3 and the official witness Tr.R.Selvakumar. When PW8 enquired about the MSME certificate of PW2, the accused had produced the file under Ex.P.7 containing the application of PW2 and connected papers and the office copy of EM-II acknowledgment under Ex.P.8.

xiii) Thereafter, the accused was arrested and during personal search, it was found that the accused was in possession of cash in two bunches, one to the tune of Rs.2,260/- and another for Rs.7,000/- in his shirt pocket and when the accused was questioned about the same, he had answered that the cash of Rs.2,260/- was his personal amount and thereby, the same was returned to the accused. Since the accused had not explained properly with regard to the cash of Rs.7,000/- (M.O.6), the same was recovered.

xiv) Thereafter, PW8 had prepared Ex.P.6-Seziure Mahazar in the presence of PW3 and official witnesses Tr.Selvakumar and the Superintendent, Tr.Gurumoorthy. PW8 had also enquired PW2 about the MSME Certificate issued to him. He had produced the original MSME certificate and the same was recovered under Ex.P14. Since PW2 represented that he required the same, office copy of the MSME certificate was recovered and the original MSME certificate was handed over to PW2 under Mahazar-Ex.P.15. Thereafter, PW8 had prepared Rough Sketch under Ex.P16 in the presence of the accused and official witnesses and produced the case properties under Form-95 and sent the accused to judicial custody along with Ex.P.17, Alteration Report and had also handed over the case records to PW9 for further investigation.

xv) On receipt of the same, P.W.9 had recorded the statement of witnesses and obtained the Chemical Analysis Report under Ex.P.11 and recorded the statement of P.W.6 viz., A.Vislakshi (Scientific Assistant) and obtained the Sanction Order under Ex.P1 through Directorate and recorded the statement of PW1 and on completion of investigation laid the charge sheet against the accused under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act,1988, before the Principal Sessions Court and the same was taken on file on 25.06.2010 and later it was made over to IV Additional Special Court, Chennai.

xvi) On issuance of summons, the accused had appeared before the Court and his counsel had filed Memo of Appearance. The accused was furnished the copies of documents in compliance of Section 207 Cr.P.C., and later, the case was transferred to the file of the Trial Court and re-numbered as C.C.No.135 of 2011.

xvii) After initial questioning, charges were framed against the appellant/accused for the offence under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The accused denied the charges and pleaded not guilty.

xviii) On the side of the prosecution, PWs.1 to 9 were examined and Exs.P.1 to P.18 and M.O.1 to M.O.6 were marked.

xix) After completion of the evidence on the side of the prosecution, when the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating materials, he had denied the same as false case, however, no evidence was let in on his side by way of defence.

xx) The trial court, after hearing the arguments of both sides, found the accused guilty and convicted and sentenced him as stated above. Assailing the judgment of conviction and sentence, the present Criminal Appeal has been filed.

4. Mr.R.Srinivas, learned Senior 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 prosecution has miserably failed to prove its case by adducing consistent evidence.

(ii) The trial Court had not appreciated the evidence in a proper perspective.

(iii) The trial Court had failed to take into consideration the material contradiction in the evidence of the witnesses for the trap proceedings which would disprove the case of the prosecution regarding the demand.

(iv) The trial Court had failed to see that P.W.2/de-facto complainant is not a reliable witness. Though P.W.2 says that the appellant had demanded the bribe amount for the second time on the morning of 26.03.2009, non-mentioning about the same in the complaint given on 26.03.2009 creates doubt with regard to the prosecution case.

(v)The money was collected towards flag day collection and not as bribe. The evidence of the official witnesses P.W.1, P.W.4 and P.W.5

with regard to prevalence of the practice of collection of money towards flag day would prove the same.

(vi) The trial Court had failed to take into consideration the non compliance of the rules under the Vigilance Manual regarding preliminary enquiry and questioning and recording of the statement of the accused after recovery of money which had vitiated the trial.

(vii) Ex.P8, acknowledgment, for which, the money was alleged to have been demanded by the appellant on 23.03.2009 and 26.03.2009, had been made ready on 23.03.2009 itself as spoken by PW5 and PW8 and thereby, there was no necessity for the appellant to demand the money.

(viii) The appellant had rebutted the presumption by the evidence of P.W.4 and P.W.5 and that the money was received towards Flag Day Contribution and the degree of proof to rebut the statutory presumption is only by preponderance of probabilities and the appellant, unlike the prosecution, is not required to prove the same beyond reasonable doubt.

5. In support of his contentions, the learned Senior Counsel has relied on the following decisions:-

(i) ***State of Tamil Nadu Vs. S.Krishnamurthy*** ((2002) 9 Supreme Court Cases 530);

(ii)***State, Rep., by Superintendent of Police, Vigilance & Anti Corruption, Chennai Vs. Subramanian and others*** ((2006) 2 MLJ(Criminal) 1001); and

(iii)***Rathinasami Vs. The Deputy Superintendent of Police, V&AC., Erode*** (Crl.A.No.1916 of 2003 dated 11.06.2014).

6. Mr.S.Udayakumar, learned Government Advocate (Criminal Side) appearing for the respondent would submit that it is the case where the appellant is a public servant working as Assistant in the office of the Regional Department of Commerce and Industries, Guindy, Chennai, and that P.W.2-defacto complainant had approached the accused on 23.03.2009 at his office for Micro Small Medium Entrepreneur Certificate for his industry, for which, the accused had demanded Rs.700/- as illegal gratification other than legal remuneration and that on 26.03.2009, when the defacto complainant had gone to the office of the accused for obtaining the MSME Certificate, the accused had reiterated his demand of Rs.700/-

and obtained the same from the defacto complainant at about 17.40 hrs. The accused had admitted the receipt of the bribe amount, however, he had claimed that it was collected towards office contingency expenses. He would further submit that the judgment of the Trial Court is fortified with proper appreciation of evidence and law and thereby, no interference is required. He would also submit that other than suggestion put to P.Ws.4 and 5 with regard to prevalence of practice of collecting money towards Flag Day, no legal evidence, by way of any of proceedings regarding the Flag Day Contribution has been let in. He would submit that when there is a statutory presumption under Section 20 of the Act, the accused is bound to rebut the same by letting in evidence and that at the time of trap, he had only stated that the amount of Rs.700/- was obtained by him towards office expenses. He would further submit that though Ex.P8 was stated to be made ready on 23.03.2009, there is absolutely no evidence to show that either P.W.2 had knowledge that it was made ready and there is no evidence to show that it was intimated to P.W.2. He would further submit that admittedly, the accused was questioned by P.W.8, Trap Laying Officer at the time of trap and thereby non compliance of the rules/guidelines under the DVAC Manual will not be reasonable to throw the entire prosecution.

7. Relying on the decision in ***S.P.Chidambaram Vs. The State*** *(Criminal Appeal No.181 of 2016 dated 10.07.2018)*, the learned Government Advocate would submit that the practice prevalent in the Government Office for collecting Flag Day Fund and Teacher's Day Fund cannot be a shield or excuse for a corrupt Officer to get immune from prosecution under Prevention of Corruption Act and without any material particulars in support of the explanation offered by the accused person, mere contention that that some target has been fixed by the higher authority for collection of Flag day donation will not give any immunity or protection to the erring Government servant making pecuniary advantage by abusing his official position.

8. Heard Mr.R.Srinivas, learned Senior Counsel appearing for the appellant/accused and Mr.S.Udayakumar, learned Government Advocate (Criminal Side) appearing for the respondent.

9. This Court gave its careful and anxious consideration to the rival contentions putforth by either side and thoroughly scanned through the

entire evidence available on record and also perused the impugned judgment of conviction including the relevant provisions of law.

10. What has to be seen is

(i) whether the impugned judgment of conviction and sentence imposed on the appellant/accused is in accordance with law and

(ii) whether it is based on proper appreciation of evidence regarding demand, obtainment and recovery and whether the appellant/accused had rebutted the presumption under Section 20 of the Prevention of Corruption Act by raising a probable defence and whether the trial Court is right in appreciating the judgment and convicting the accused.

11. It is a case of demand and acceptance of illegal gratification by the appellant/accused for issuance of MSME Certificate for the industry run by the de facto complainant, PW2, whereas the core defence taken by the appellant/accused is that the demand and acceptance of the amount is not an illegal gratification, but, towards Flag Day Contribution. Pointing out that

there are certain contradictions in the version of the prosecution witnesses, the appellant seeks to contend that the prosecution has not proved its case beyond reasonable doubts whereas the appellant has rebutted the statutory presumption by preponderance of probabilities and seeks for acquittal.

12. In respect of recovery is concerned, though the learned counsel for the appellant has submitted that there is a material contradiction in the evidence of the witnesses for the trap proceedings, which would disprove the case of the prosecution, it is seen that the accused himself had admitted the receipt of Rs.700/- from P.W.2-defacto complainant, however taking a stand that it was towards Flag Day Contribution and this Court had already come to the conclusion that the prosecution has proved the demand and acceptance without any doubt.

13. It is also relevant to note that at the time of trap, it was contended by the appellant/accused that the tainted money was obtained by him towards office expenses, whereas, by putting suggestions to the prosecution witnesses, he seeks to contend that the money was collected towards Flag

Day Contribution and thereby, it is clear that the appellant has not come out with any clear version with regard to the money possessed by him at the time of trap as to whether it was received by him either for Flag Day Contribution or towards office expenses. The appellant, having admitted the receipt of amount from P.W.2, has not rebutted the presumption under Section 20 of the Prevention of Corruption Act, 1988 by bringing out a probable defence.

14. At the time of trap, when PW8 enquired the accused about the money, the accused produced the tainted money (MO1) from his right side pant pocket and the serial numbers of the said currency notes were compared with Ex.P5-Entrustment Mahazar and since it was found tallied, the same was recovered and the chemical test was carried out on the right side pant pocket of the accused and the same proved positive.

15. On analysis of the evidence of P.Ws., defacto complainant, P.W.3, the official witness and P.W.8-Trap Laying Officer, they have spoken clearly about in respect of recovery of money, M.O.1 from the appellant and

corroborated with each other. In view of the above, this Court finds that the prosecution has proved the recovery through evidence beyond reasonable doubt.

16. The learned counsel for the appellant has raised yet another contention that the trial Court had failed to appreciate that as per Rule 47(2) of the Vigilance Manual, the accused must have been questioned after the recovery and seizure of bribe money and his detailed statement should have been recorded and non-compliance of the same would vitiate the prosecution case.

17. Of course, if there is any deviation from the established procedure, it should be viewed seriously and severe disciplinary action has to be taken against the officials concerned. But, in the circumstances of the present case, the accused cannot make any complaint with regard to non following of the procedures contemplated under the Vigilance Manual. It is seen that the prosecution has clearly established the demand and Ex.P8, MSME certificate was pending with the accused though it was made ready

on 23.03.2009 and it was not issued to PW2 on that day. Further on the day of trap, the demand made by the accused was established and further acceptance is not disputed. In view of the above, the contention of the accused that non recording of statement under Rule 47(2) of the Vigilance Manual vitiates the prosecution case cannot be accepted and that alone cannot be the reason to throw the entire prosecution case.

18. In respect of prevalence of practice of collecting money towards Flag Day, though the learned counsel for the appellant has relied on the evidence of P.Ws.1, 4 and 5, a careful analysis of evidence of PWs.1, 4 and 5, would disclose that other than the suggestions made to them with regard to prevalence of such practice, there is no other valid evidence by way of any proceedings issued by any superior officer or production of any receipts by the accused to prove the same. P.W.4, the superior officer of the accused, though, in his cross-examination, deposed about the prevalence of practice of collecting money towards Flag Day, when a question was put to him as to whether the amount of Rs.700/- had been collected on 26.03.2009 for the said purpose, he replied that he does not know. If P.W.2 had offered

the money towards Flag Day donation, there must be some materials to indicate that P.W.2 had prior knowledge about the said collection of donation. In the absence of any such materials, it is far-fetched to believe the explanation offered by the appellant. Generally, the Flag Day collections are made by issuance of stamps or receipts, however, nothing has been produced by the appellant/accused in this case to prove that the amount possessed by him was collected towards Flag Day Contribution. When there is a statutory presumption under Section 20 of the Prevention of Corruption Act, the accused is bound to rebut the same by letting in evidence and that at the time of trap, he had stated that the amount of Rs.700/- was received towards office expenses. Further, when the accused was questioned under Section 313 Cr.P.C., he had not offered any explanation for the amount received by him. The evidence of P.W.2 with regard to the demand is cogent and it is clearly corroborated with the evidence of P.W.3, the official witness and P.W.8 and from the above, it is clear that the prosecution has proved the demand without any doubt.

19. On the aspect of prevalence of practice of collecting money for

Flag Day Contribution, the learned Senior Counsel has relied on the decision of the Apex Court in ***State of Tamil Nadu Vs. S.Krishnamurthy*** ((2002) 9 Supreme Court Cases 530) and the decision in ***State, Rep., by Superintendent of Police, Vigilance & Anti Corruption, Chennai Vs. Subramanian and others*** ((2006) 2 MLJ(Criminal) 1001).

20. Of course, in the decision in ***State of Tamil Nadu Vs. S.Krishnamurthy*** ((2002) 9 Supreme Court Cases 530), the defacto complainant was a frequent visitor to the Taluk Office and during one of his earlier visits, he had, on demand, paid a sum of Rs.100/- towards the donation for Teachers' Day to P.W.4 from whom he did not receive any receipt and therefore, P.W.1 was in the know of the practice in the said office as to the collection of donations for the Flag Day as well as Teachers Day Fund and in that case, the Apex Court has further held that if the existence of such practice is established and the defence taken by the accused is in conformity with such practice, the mere fact that the respondent received a sum of Rs.300/- would not ipso facto lead to the conclusion that the money in question was received by him as bribe for

showing an official favour.

21. In the decision in ***State, Rep., by Superintendent of Police, Vigilance & Anti Corruption, Chennai Vs. Subramanian and others*** ((2006) 2 MLJ(Criminal) 1001) it has been held by this court that when money demanded has been clearly proved as towards Flag Day Collection, no statutory presumption can be drawn under Section 20 and the prosecution has failed to establish the charge against the accused.

22. Whereas in the case on hand, unlike in the above decisions, the de facto complainant/P.W.2 had no prior knowledge about the Flag Day Collection and in the absence of such material facts, it is far-fetched to believe the explanation offered by the appellant/accused especially, when the appellant/accused takes two different stands on two occasion viz., on one occasion, he attempts to establish that it was towards Flag Day Collection by putting suggestion to the prosecution witnesses and on another occasion viz., at the time of trap, he takes a stand as if it was received by him towards contingency office expenses and thereby, the

decisions relied on by the learned counsel for the appellant is not applicable to the case on hand. The practice of prevalence in the Government Office collecting money towards Flag Day Contribution cannot be a shield to protect a corrupt officer to get immune from prosecution under the Prevention of Corruption Act, 1988. When the amount received from P.W.2 is not denied and the explanation offered by the appellant/accused is not satisfactory, this Court is of the view that the acceptance of Rs.700/- towards illegal gratification is proved.

23. Yet another contention raised by the learned counsel for the appellant/accused is that as Ex.P8, EM-II Acknowledgment was made ready on 23.03.2009, there is no necessity for the accused to demand any amount from P.W.2.

24. Though as per the evidence of P.W.5, Joint Director, Ex.P8, EM-II Acknowledgment was signed by him on 23.03.2009, admittedly it was not issued to P.W.2 on that day itself and there is absolutely no evidence to show that either P.W.2, defacto complainant had knowledge that it was

made ready on that day itself or it was intimated to him. If there is no demand by the accused, when Ex.P8, EM-II Acknowledgment was made ready on 23.03.2009, it could have been issued to P.W.2 on the same day itself. Admittedly the same was issued only on 26.03.2009. P.W.2 had clearly deposed that on 23.03.2009, when he had submitted the application under Ex.P2, the accused had demanded Rs.700/- as bribe for issuance of MSME certificate. Even during the cross examination, P.W.2 had deposed about the demand made by the accused. Though Ex.P8 was made ready on 23.03.2009, the non-issuance of the same on the same day and the evidence of P.W.2, dafacto complainant and P.W.3, official witness that on 26.03.2009, the accused had reiterated the demand and accepted the amount would also prove the demand made by the accused. In such circumstances, the submission made by the learned counsel for the appellant/accused that Ex.P8, EM-II Acknowledgment was made ready on 23.03.2009 and thereby, there is no need for him to demand for bribe cannot be countenanced.

25. The learned counsel for the appellant has raised a contention that

though P.W.2, defacto complainant had stated that the appellant had demanded the bribe amount for the second time on the morning of 26.03.2009, non mentioning about the same in the complaint given on the same day creates doubt with regard to the prosecution case and that P.W.2, defacto complainant is not a reliable witness and that the trial Court has erred in convicting the appellant.

26. On this aspect, the learned Government Advocate would submit that in the chief examination, P.W.2 had clearly deposed that on 26.03.2009 at 10.15 a.m., when he met the accused in his office, he had demanded the bribe amount of Rs.700/- for issuing MSME Certificate and in the cross-examination, he had admitted that he had not mentioned in Ex.P3-complaint about the demand made by the accused on 26.03.2009 and such minor contradictions do not affect the case of the prosecution as a whole. In support of his contention, he would rely on the decision in ***Vinod Kumar Garg Vs. State (Government of National Capital Territory of Delhi)*** ((2020) 2 Supreme Court Cases 88).

27. When the prosecution has proved its case beyond reasonable

doubts, the minor discrepancies in the version of prosecution witnesses do not have much impact. As rightly pointed out by the learned Government Advocate, the Apex Court has held in ***Vinod Kumar Garg Vs. State (Government of National Capital Territory of Delhi)*** ((2020) 2 Supreme Court Cases 88) that minor discrepancy and inability of complainant and panch witness to remember exact details would not justify the acquittal of the accused and contradictions in testimonies of complainant is immaterial and inconsequential, as demand and acceptance of bribe by the accused has been indisputably established. It has been further held therein that the witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time. In the light of the above decision, this court is of the view that non mentioning of the second demand in the complaint has no significance when the prosecution has clearly established its case.

28. Relying on the decision in ***Rathinasami Vs. The Deputy Superintendent of Police, V&AC., Erode*** (Crl.A.No.1916 of 2003 dated 11.06.2014), the learned counsel has raised a contention that the appellant

had rebutted the presumption by the evidence of P.Ws.4 and P.W.5 that the money was received towards Flag Day Contribution and the degree of proof to rebut the statutory presumption is only by preponderance of probabilities and the appellant, unlike the prosecution, is not required to prove the same beyond reasonable doubts.

29. Per contra, the learned Government Advocate has submitted that even at the time of arrest, the accused, while admitting the receipt of money, had stated that it was received towards office expenses and neither any evidence has been let in to prove that the amount was collected towards Flag Day Contribution nor any proceedings or receipt for such collection was produced and not even an explanation has been given at the time of questioning under Section 313 Cr.P.C.

30. In this regard, it is seen that though P.Ws.4 and P.W.5 are the superior officers of the appellant/accused, they have not spoken about the source of such amount and in fact, only a suggestion was made during their cross-examination as if proceedings were used to be issued by Head of Department for collecting the amount towards Flag Day Contribution and

a mere suggestion thrown to the prosecution witnesses does not constitute any evidence unless it is proved by material evidence and thereby, this court is of the view that the appellant had not rebutted the statutory presumption under Section 20 of the Prevention of Corruption Act.

31. Considering the above facts and circumstances in the light of the decisions relied on, this Court is of the view that the contention raised by the learned counsel for the appellant cannot be accepted. When there is a voluntary acceptance of money, there is presumption under Section 20 of Prevention of Corruption Act, 1988. In the present case, the prosecution has established that the accused had demanded the amount for issuance of certificate and accepted the same. The explanation offered by the appellant/accused is only an afterthought and when it is not supported by any valid materials, it cannot be accepted. The prosecution has proved the guilt of the accused beyond reasonable doubt. The Trial Court has rightly found the accused guilty and this Court does not find any merit in this Criminal Appeal.

32. In the result, the Criminal Appeal is dismissed. The judgment of

conviction rendered by the Trial court is confirmed. The Trial Court is directed to secure the appellant/accused to enable him to serve the remaining period of sentence.

16.02.2024.

Index: Yes/No.
Internet: Yes/No.
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To

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

2. Inspector of Police,
   Vigilance & Anti Corruption,
   Chennai.

3. Public Prosecutor,
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

raa

P.D. JUDGMENT in
Crl. Appeal No.149 of 2017

Delivered on
16.02.2024.