IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 27.2.2024

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

Criminal Appeal No.170 of 2017

R.Murugan ... Appellant

vs.

State rep. by Inspector of Police,
Vigilance and Anti-Corruption,
Now at Namakkal,
Namakkal District.
Cr.No.6/AC/1999 ... Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. against judgment of conviction in Spl.C.C.No.13 of 2002 dated 3.3.2017 by the Special Judge, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.S.Ashokkumar, Senior Counsel
for Mr.P.Palaninathan

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

## JUDGMENT

Challenging the judgment of conviction and sentence rendered by the Special Judge Chief Judicial Magistrate Court, Namakkal in Spl.C.C.No.13 of 2002, the sole accused has come up with the present Criminal Appeal.

2. The appellant stands convicted and sentenced as under:-

| ***Legal provision*** | ***Sentence imposed*** |
|---|---|
| Section 7 of the Prevention of Corruption Act, 1988 | Two years simple imprisonment and a fine of Rs.1000/- in default to pay the fine, to undergo simple imprisonment for a period of one month. |
| Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 | Two years simple imprisonment and a fine of Rs.1000/- in default to pay the fine, to undergo simple imprisonment for a period of one month. |
| **The sentences shall run concurrently.** | |

3. At the relevant point of time viz., from 4.3.1996 to 22.6.1999, the appellant was working as Sanitary Inspector in Kumarapalayam Municipality, Namakkal District and thereby he was a Public Servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988.

4. The allegation levelled against the appellant is that he had demanded a sum of Rs.2000/- on 3.6.1999 and on 22.6.1999 as illegal gratification and obtained the same on 23.6.1999 from one Maadhu, Sanitary Worker, who was on consolidated pay, for regularising his

service and for giving him the 5th pay commission arrears and thereby, he had committed offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

5. Case of the prosecution in brief is as under:-

i) On the basis of an oral information furnished by PW5/de facto complainant, a complaint, Ex.P19 dated 22.6.1999 came to be lodged with the following contentions:-

The de facto complainant serves as Sanitary Worker at Komarapalayam Municipality from the year 1989 on a temporary basis (kept in reserve to be filled in leave vacancy then and there). In the year 1998, the de facto complainant and the similarly placed 37 employees had been appointed on temporary basis on a consolidated pay of Rs.2000/- with a clause that their services would be regularised on assessing their work after completion of one year. Whileso, some Sanitary Workers were given the arrears of pay on the basis of implementation of 5th pay commission on their representation. The de facto complainant and other similarly placed Sanitary Workers had been demanding for similar benefit contending that they had also been serving from the relevant period. Whileso, on 3.6.1999, when the de facto complainant was collecting his pay, the appellant/accused had demanded Rs.2000/- as illegal gratification for getting the pay commission arrears and regularising his service. When the de facto complainant had expressed his inability, the appellant/accused had insisted for payment of bribe. Hence, the de facto complainant and some of the Sanitary Workers had approached the Commissioner of Municipality on 16.6.1999 and made a written representation and they were directed to submit the same by dropping in the complaint box on an assurance that it would be taken care and accordingly, they had dropped the representation in the drop box, however, no action had been taken on the same. Further, on 22.6.1999, at about 7.00 am, when the de facto complainant was at duty in his division viz., Narayana Nagar, the appellant had called him to his office through one Subramani, Sanitary Worker, PW11 and enquired about the money he asked for and insisted for the same on the very next day. Since the de facto complainant is not inclined to give bribe to achieve his work, he had approached the office of the DVAC and lodged the complaint.

ii) On receipt of the said complaint, PW18, Thiru.Somasundaram, Inspector of Police, Vigilance and Anti Corruption, registered a case in

Crime No.6/AC/1999 for the offence punishable under Section 7 of the Prevention of Corruption Act at about 4.30 pm under FIR, Ex.P31. Then, PW18 had sent requisition letters to the Deputy Registrar, Co-operative Societies, Salem and the Executive Engineer, Public Works Department, Kumarasamypatti, Salem for deputing their staff to be official witness for the trap proceedings on the next day at 7.00 am and asked the de facto complainant to be present by then with the bribe money of Rs.2000/-.

iii) Accordingly, on the next day viz., on 23.6.1999, at about 7.00, the de facto complainant appeared before PW18 and by that time, the official witnesses viz., Thiru.Kandasamy, Senior Inspector, Co-operative Registration Department, Salem and PW2, Thiru.Palanisamy, Assistant, Public Works Department, office of the Executive Engineer, Salem also appeared before PW18. On their arrival, PW18 had introduced PW5, de facto complainant to the said witnesses and vice versa and apprised the witnesses about the complaint.

iv) Subsequently, PW18 asked PW5 as to whether he brought the bribe money as demanded by the appellant and thereupon, PW5 had produced twenty 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 Senthamarai, Head Constable and thereby the witnesses were apprised of the significance of the test and thereafter, the chemical content used for demonstration of trap was destroyed.

v) Then, PW18 had returned the tainted money to PW5 with an instruction to go to Kumarapalayam Municipality and meet the appellant/accused and give the money only if he demands for it and in the event of acceptance of the bribe money, PW5 was asked to come out and give a signal to the trap team by combing his hair with both of his hands. On receipt of the money, PW5 had kept the same in the left pocket of his inner trouser. PW18 had instructed PW2, Palanisamy to observe the entire happening between the appellant/accused and PW5. In this regard, PW18 had also prepared Ex.P2, entrustment mahazar, from 7.15 am to 8.30 am under Ex.P2, which was duly signed by the de facto complainant, PW5, the prosecution witnesses and PW18.

vi) Thereafter, at 9.00 am, the entire team containing the prosecution witnesses, viz., PW5-de facto complainant and the official witness, PW2 went in a Government vehicles went to the office of the appellant and reached there at about 10.30 am. Having dropped PW5 and PW2 near the office of the appellant, PW18 and his team members have hidden themselves near the office of the appellant.

vii) PW5 and PW2, who went into the office of the appellant at about 10.45 am, came out at about 12.00 noon and PW5 had shown the pre-arranged signal and thereupon, PW18, alongwith his trap team including the other official witness Kandasamy rushed into the office of the appellant/accused, where PW5 had identified the appellant/accused as the person, who received bribe from him and thereupon, PW5 was asked to wait outside the office of the appellant.

viii) After introducing himself and the trap team members to the appellant, PW18 had pacified him and conducted the phenolphthalein test by preparing Sodium Carbonate mixture in two clean glass tumblers and asking the appellant to dip the fingers of both of his hands separately and having found that the mixture turned pink, the wash was poured into separate glass bottles, sealed and labelled and signatures of the prosecution witnesses were obtained on the same, which were marked as M.Os.3 and 4.

ix) When enquired by PW18 about the bribe amount, the appellant/accused had produced the same from his table drawer and the finding the serial numbers of the same to be tallying with the ones entered in the entrustment mahazar, Ex.P2, PW18 had seized the same, which were marked as M.O.5. On further enquiry, the appellant/accused had produced another sum of Rs.1300/- (Rs.100x13) from his pocket, for possession of which, the appellant/accused could not afford any explanation and hence, such currency notes were also seized, which were marked as M.O.6. He had also produced another sum of Rs.77/- from his table drawer, which he claimed to be his personal money and hence, it was returned to him. When enquired about the file in respect of regularisation of the de facto complainant, the appellant/accused had informed that it was in the Head Office by then.

x) Thereafter, at about 2.00 pm, PW18 had arrested the appellant/accused apprising him the reason for his arrest and prepared the recovery mahazar, Ex.P3 from 12.45 pm to 2.05 pm. Then, at the Head Office, the documents in respect of the de facto complainant were seized under another mahazar, Ex.P4 from 2.10 to 2.55 pm. Subsequently, after inspecting the scene of occurrence from 2.55 pm to 3.30 pm, PW18 had prepared the rough sketch, Ex.P10. After giving prior intimation to the court, PW18 had conducted a search at the house of the appellant/accused at Varnapuram and finding no incriminating material, prepared the search report, Ex.P11 from 4.20 pm to 5.00 pm. PW18 had also asked Thiru.Nachiappan, Inspector of Police, Dharmapuri to conduct a search at the house of the appellant/accused in Housing Board. Thereafter, from 3.35 pm to 4.00 pm, PW18 had seized three documents at the Municipality Office under mahazar, Ex.P12. In the evening at about 5.00 pm, the trap team reached the DVAC office and by then, the Inspector of Police, Naciappan had contacted PW18 over phone and informed that he had conducted search at the residence of the appellant/accused in the Housing Board and found no incriminating material. Then, PW18 arranged for production of the appellant/accused at 7.05 pm before the Special Judge/Chief Judicial Magistrate and for remanding the accused and sent the material objects to the court under Form 95. After completing his investigation, PW18 had submitted the case records to PW19, Thiru.Periyasamy, Inspector of Police for further investigation.

xi) PW19, who took up the further investigation of the case, made arrangements for sending the material objects to forensic sciences department for analysis by sending a request to the Principal Additional District Judge cum Chief Judicial Magistrate, Salem. Then, PW19 had enquired all the prosecution witnesses including the de facto complainant and official witnesses and the accused and recorded their individual statements. PW19 had received the chemical analysis report from the forensic sciences department, Ex.P30 and on completion of investigation, he filed the final report to the Director, DVAC.

xii) PW11, Thiru.Nachiappan, Inspector of Police, DVAC, Krishnagiri at the relevant point of time, who got instruction from the TLO, PW18 on 23.6.1999 at 4.00 pm, had conducted search at the house of the appellant/accused in the Housing Board in the presence of witnesses Thiru.Hameedulalah, Revenue Inspector, Krishnagiri and Thiru.P.Selvaraj, Village Administrative Officer, Bohanapalli from 4.55 to 5.30 pm and having found no incriminating material, had prepared the search report, Ex.P32 and sent the same along with his report to the DVAC, Salem. In the year 2001, PW20 was transferred to Salem Division of DVAC, however, since PW19-investigating officer in the case was promoted, PW20 was assigned to proceed with investigation of the case.

xiii) PW20, who continued the investigation of the case, recovered Ex.P33, the attendance register in respect of the general staff of Kumarapalayam Municipality and Ex.P34, attendance register of Kumarapalayam Sanitary Workers, Ex.P34. PW20 had received Ex.P1 sanction order from PW1 and enquired PW1, who had issued the sanction order and recorded his statement. On completion of investigation, PW20 had registered a case against the appellant/accused for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

6. The case was taken on file in Spl.C.C.No.13 of 2002 by the Special Judge, Chief Judicial Magistrate, Namakkal. On summoning, the Appellant/accused appeared. Copies of relevant papers were furnished to the Appellant/accused under Section 207 of Cr.P.C. and charges were framed. The accused had denied the charges and sought for trial. In order to prove the charges against the accused, the prosecution had examined P.Ws.1 to 20 and marked Exs.P1 to P34 and Mos.1 to 6. On the side of the defence, the appellant had marked Exs.D1 to D7.

7. On completion of the evidence, the appellant/accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had stated that he had been falsely implicated in the case and submitted a written statement of defence.

8. The submissions of Mr.S.Ashok Kumar, learned Senior Counsel appearing for the appellant are as under:-

i) The Trial Court failed to note that the prosecution had failed to establish its case beyond all reasonable doubts.

ii) It is evident from the documents produced by the prosecution, the prosecution has failed to prove the motive. PW5/de facto complainant, Madhu, had been working as Sanitary worker on daily wages from the year 1989. Whileso, the Government had issued Ex.P21, G.O.Ms.No.101 dated 30.4.1997, appointing 38 persons including PW5 as Temporary Sanitary Workers at Kumarapalayam Municipality, Namakkal on a consolidated pay of Rs.1000/- per month and by Ex.P16, G.O.Ms.No.71 dated 5.5.1998, the Government had issued orders for the enhancement of their salary as Rs.2000/- per month. As per the said G.O., the services of those workers would be regularized if they work satisfactorily for a period of 12 months and they would be appointed on a timescale of pay. Accordingly, the salary was enhanced to Rs.2000/- on 12.6.1998 with effect from 22.5.1998 and on completion of one year of service of PW5 and others as per Ex.P23. The recommendation of the name of PW5 can be done only by the Sanitary Inspector, PW7, under whom PW5 was working even as per his admission in the cross examination.

iii) Since the de facto complainant works under PW7 and not under the appellant/accused as admitted by both PW5 and PW7, the demand alleged to have been made by the appellant/accused that for recommending the name of PW5 for regularisation of service by the appellant could not be true.

iv) The Trial Court also failed to consider the admission made by PW6, Sanitary Inspector in his evidence that PW7 had recommended the name of PW5 and others for regularisation of their services working in Division III and the appellant had nothing to do with such recommendation of PW5 and only on his instruction, the appellant/accused had consolidated the names submitted by the Sanitary Inspectors of Division 1 to 3 and his recommendation in respect of Division 4 and submitted the file on 26.5.1999 itself, as evidenced by Ex.P13.



v) PW5/de facto complainant and PW2/official witness are not specific in their evidence with regard to the manner of obtainment and keeping it in his custody. Whileso, merely on the basis of alleged recovery of tainted money and the phenolphthalein test becoming positive it may not be appropriate to convict the appellant by inferring demand and acceptance of bribe.

vi) There are material contradictions in the version of PW5/de facto complainant and the PW2/official witness with regard to the trap proceedings, however, the Trial Court, having lost sight of the same and the fact that the prosecution has failed to prove the motive, had erred in convicting the appellant/accused.

vii) The case of the prosecution being that the appellant had demanded bribe of Rs.2000/- on 3.6.1999, 22.6.1999 and on 23.6.1999, the court lost sight that PW5, de facto complainant did not lodge any complaint till 22.6.1999 especially, when it is his admission that he owes money to the appellant/accused, which was demanded by the appellant on 22.6.1999 in front of public and erred in convicting the appellant on the basis of mere possession of the tainted money in the table drawer of the appellant/accused.

viii) The Trial Court failed to note that when the de facto complainant and PW2 went to the office of the appellant/accused, he was not available and hence, they had to wait for his arrival and thereby, there was every possibility of planting of money by them in the table drawer of the appellant/accused.

ix) The appellant/accused has proved his case by preponderance of probability to the effect that the complaint had been lodged by PW5 only to wreak his vengeance against the appellant since he had insisted for repayment of hand loan availed by PW5, however, the Trial Court has erred in convicting the appellant/accused, especially, ignoring the documentary evidence viz., Exs.D1 to D7 produced by the appellant/accused and thereby the appellant is entitled to be acquitted of all the charges.

9. Per contra, Mr.S.Santhosh, learned Government Advocate (Criminal Side) would submit that the prosecution has proved its case of demand of illegal gratification by the appellant/accused on 3.6.2009, on 22.6.2009 and on the date of trap viz., on 23.6.2009 and also the acceptance of the same on 23.6.2009 with cogent evidence adduced by the prosecution witnesses beyond all reasonable doubts

and thereby raised presumption against him, which had not been rebutted by him warranting interference by this court and hence, the appellant is liable to be dismissed.

10. Heard the learned counsel appearing for the parties and perused the materials available on record.

11. The case of the prosecution is that the accused had demanded and received illegal gratification for recommending the name of the de facto complainant, PW5 for regularisation. As per the prosecution, the first demand was said to have been made on 3.6.1999 at the office of the accused and the second demand was said to have been made on 22.6.1999 through PW11 and the third demand was alleged to have been made on the date of trap on 23.6.1999. It is also the case of the prosecution that pursuant to the demand made, the appellant had received the illegal gratification on 23.6.1999 at 11.45 am.

12. What has to be seen in the present Appeal is whether the prosecution has succeeded in proving its case of demand and

acceptance of bribe by the appellant/accused and recovery of the same beyond all reasonable doubts and in the manner known to law or the appellant/accused has proved his defence by preponderance of probabilities.

13. While the prosecution claims to have proved its case beyond all reasonable doubts with clear and cogent evidence adduced by the prosecution witnesses, it is the predominant case of the appellant/accused that the admission made by the prosecution witnesses in their cross examination itself proves that there was no scope for demand of illegal gratification by the appellant/accused.

14. A perusal of the evidence adduced by PW5, the de facto complainant would make it clear that his evidence is not very cogent rather it is not in line with the case projected by the prosecution with the evidence of the official witness, PW2, who had accompanied with PW5 to the office of the appellant/accused. When it is the version of PW2 that when himself and PW5 went to the office of the appellant/accused at about 10.45 am, the appellant/accused was not available in the office and he came to his seat only at about 11.45 am

and till then, they had to wait outside and on arrival of the appellant/accused, they met him and on demand made by the appellant/accused, PW5 took the money from his trouser pocket had gave it to him which, the appellant/accused had received, kept in his table drawer and locked it whereas, it is the specific case of PW5, de facto complainant that when himself and PW2 went to the office of the appellant/accused at about 10.30 am, he was not there and hence, they had waited there till 11.30 am and returned and by then, the appellant/accused, having stopped his two wheeler, enquired PW5 as to whether he brought the money as demanded by him and then he called both of them inside his office and on receipt of the money, he kept it in his table drawer and thereby contradicted with the evidence of PW2 on the aspect of alleged demand on the date of trap and acceptance of illegal gratification.

15. On the discrepancies in the evidence adduced by PW5, he was treated as hostile witness at the instance of the prosecution. When such material contradictions are found in the evidence of PW5, de facto complainant and PW2, the official/shadow witness, the evidence adduced by the star witness on the side of the prosecution to

speak about the recovery viz., PW18, the Trap Laying Officer assumes much significance. A bare reading of the evidence adduced by PW18 would show that he had messed up the entire case of the prosecution with his perplexed statements without even properly referring to the events of his investigation and thereby, the evidence adduced by him is not very much useful to find corroboration with the evidence adduced by either the de facto complainant/PW5 or the official witness/PW2.

16. The prosecution case being so, as rightly pointed out by the appellant/accused, the admission made by other prosecution witnesses during their cross examination is in support of the case of appellant/accused that there was no scope for the appellant/accused to demand any illegal gratification from PW5, de facto complainant.

17. PW3, Kannabiran, Junior Assistant admits that it was informed to the sanitary workers on the date of appointment itself that their names will be recommended after completion of one year based on the service records. PW4, Ramanathan, Sanitary Inspector had deposed that he is in charge of II Division and recommended the

names of workers under him as evident from Ex.P13 file. PW6, Radhakrishnan, Sanitary Officer specifically admits that PW5 works only under PW7 Balakumarraja in III Division and his name could be recommended only by PW7 and not by the appellant and the appellant had no right to change or alter such recommendation as he had no role to play in the same. PW7, Sanitary Inspector for III Division also admits about PW5 coming under him in III Division and the recommendation of the name of PW5 done by him as evident from Ex.P13 on 26.5.1999 itself and the information about the same having been passed on to the workers concerned. At this stretch, it is relevant to note that PW5 also admits during his cross examination that the sanitary workers including himself were apprised of such recommendation and based on the same, he had submitted a representation, Ex.D2 to the Commissioner of Municipality, Kumarapalayam. PW8, Jothimani, another Sanitary Inspector in charge of Division I also deposed that he had recommended the names of the sanitary workers coming under him as evident from E.P13. PW15 the Commissioner of Kumarapalayam Municipality deposed to the effect that the sanitary workers had been informed as on 22.5.1998 itself that their services would be regularized on completion of one year and he had also affirmed that the appellant/accused had no role to play in the matter of arrears payable to PW5.

18. The admission made by the prosecution witnesses makes it clear that the recommendation of PW7 in respect of PW5 was forwarded to PW15, much prior to the alleged demand on 3.6.1999. Further, when it is the claim of PW5 that the first demand was said to have been made on 3.6.1999 by the accused at his office, the attendance register marked as Ex.P15/D1 makes it clear that the appellant/accused was on Casual Leave on 2.6.1999 and 3.6.1999 falsifying the case of the prosecution with regard to the first demand.

19. The admission of the prosecution witnesses and the documentary evidence being so, especially, when PW5 himself admits that he was aware of his name being recommended by PW7 on 26.5.1999 itself, it is far fetched to imagine that the de facto complainant could have approached the appellant/accused or the appellant/accused might have demanded for illegal gratification for such a regularization, which had already been performed by another Sanitary Inspector.

20. In such circumstances, the defence theory to the effect that PW5 was liable to refund the hand loan availed by him to the appellant/accused and since the appellant had insisted for refund of the same in front of public, the complaint had been lodged by PW5 only to wreak his vengeance against the appellant, becomes more probable.

21. In respect of the second demand on 22.6.1999, it is the case of PW5 that the appellant/accused had demanded the bribe amount through PW11, Subramani, another Sanitary Worker, whereas PW11 has given a totally contradictory statement that he was directed by the accused to call PW5 and in their presence, the demand was made by the appellant/accused. Such a material contradiction between the version of PW5 and PW11 also falsifies the claim of the prosecution with regard to the alleged demand on 22.6.1999.

22. It is relevant to note that there are material contradiction between the version of PW5/de facto complainant and PW2/official witness with regard to the trap proceedings. PW5 says categorically

that when himself and PW2 reached the office of the accused, he was not available in the office and they had waited till 11.30 am and when they came out, they met the appellant/accused, who only called them inside the office once again and demanded the money giving an inference that PW5 and PW2 had waited for an hour in the office of the accused in his absence. Whereas PW2/official witness, who had deposed elaborately about the trap proceedings, comes out with a different version as if when they reached the office of the accused at about 10.45 am, he was not in his seat and hence, they waited outside and at about 11.45 am, the appellant/accused came to his seat and then they approached him, thereby suggesting an inference that PW2 and PW5 went into the office of the accused at about 11.45 am on their own volition.

23. Another important aspect relevant to be noted is that neither PW5/de facto complainant nor PW2/official witness had spoken about the manner of obtainment of illegal gratification. They simply say that the appellant/accused had received the money and kept in the left drawer of his table. They have not even deposed as to whether the appellant/accused had counted the money he received and in which

hand he had collected the money. In fact, when PW2 says that on receipt of money, the appellant/accused kept it in the left drawer and locked it, PW5 simply says that he kept it in the left drawer without any clarification as to whether the appellant had locked the drawer. When the trap proceedings has not been properly explained by the key witnesses viz., PW5/de facto complainant and PW2/official witnesses, the recovery pleaded by the prosecution through PW18, Trap Laying Officer with many messy statements will be of no use for the prosecution to succeed in their case.

24. Further, the fact remains that PW5 and PW11 belong to a particular political party as admitted by PW5 and PW11 in their cross examination. Whileso, when confronted with a suggestion that there was enmity between PW11 and the appellant/accused, it was specifically denied by PW11 while it was admitted by PW5. When the second demand not a direct one and it is the specific case of the prosecution as spoken by PW5 that the second demand was alleged to have been made by the appellant on 22.6.1999 through PW11, the contradictory version of PW5 and PW11 viz., admission made by PW5 with regard to enmity between PW11 and the appellant and the denial

of the same by PW11 constrains this court to draw an adverse inference against the case of the prosecution with regard to the alleged second demand.

25. The most relevant thing to be noted is that the first demand itself was alleged to have been made on 3.6.1999, the second demand on 22.6.1999 and ultimately, the third trap was on 23.6.1999. Whileso, such a long delay on the part of PW5 in lodging the complaint, Ex.P19 dated 22.9.1999 has not been properly explained by the prosecution which assumes more significance in the circumstances of the case viz., admittedly, PW5 owes money to the appellant for refund of hand loan availed and PW5 was working in Division II for which, PW7 alone was the in charge and the appellant has no role to play in the same.

26. Even with regard to recovery, there are material discrepancies in the evidence of PW2, shadow witness and PW5, de facto complainant. When both had reached the office of the appellant at about 10.30/10.45 am, the appellant was not available and he could be seen there only after an hour. It is not their case that when they

reached the office of the appellant, they met him at once. They had to wait for an hour. There are discrepancies in between their version with regard to their activity during such time as to whether they had waited inside the office of the appellant or outside. In the absence of any clarity on such issue, the probability of planting of money in the table drawer of the appellant and conduct of a stage managed trap proceedings cannot be brushed aside.

27. The above aspects would reveal that the prosecution has not proved its case against the appellant/accused with cogent evidence beyond all reasonable doubts with regard to demand, acceptance of illegal gratification by the appellant/accused and recovery of the same in the manner known to law and thereby, they have failed to raise any presumption against him. However, the appellant/accused has proved his case by preponderance of probabilities by not only eliciting admission from the prosecution witnesses by cross examining them, but also by producing Exs.D1 to D7 to prove that even on 3.6.1999, on which date, the socalled first demand alleged to have been made by him, he was on casual leave and that there was no scope for the appellant/accused to demand any illegal gratification from PW5 under

the guise of regularisation of his service or getting the pay commission arrears as the relief was already considered and recommended by the officer in charge of PW5 and the appellant had no role in the same and on such consideration, PW5/de facto complainant had also approached the Commissioner of Municipality by way of representation for speeding up the action.

28. Insofar as the offence under Section 7 is concerned, it is the settled position of law that demand of illegal gratification is *sine qua non* and mere recovery of tainted money is not sufficient to attract the offence under Section 7 unless it is proved beyond all reasonable doubts that the accused had received the tainted money knowing that it is a bribe.

29. It is relevant to note that in ***N. Sunkanna v. State of A.P.*, (2016) 1 SCC 713**, it has been held as under:-

> *"It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine qua non*

*to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) is concerned as 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 established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow."*

30. 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 : (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."*

31. The Constitution Bench of the Apex Court in ***Neeraj Dutta vs. State Government, NCT of Delhi*** **(2023) 4 SCC 731,** has held as under:-

***"88.1.****(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by* *the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.*

***88.2.*** *(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*

***88.3.*** *(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*

***88.4.*** *(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*

*(i) if there is an offer to pay by the bribe-giver*

*without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.*

*(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.*

*(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence*

*under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.*

***88.5.*** *(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been* *proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands."*

32. In this case, the demand and acceptance having not been proved and rather surrounded by suspicion, recovery is also suspicious and doubtful and the prosecution has not proved its case beyond all reasonable doubts and thereby the appellant/accused is entitled to such benefit of doubt and as a consequence, he is entitled to be acquitted of all the charges.

33. In the result, the Criminal Appeal is allowed and the judgment of conviction dated 3.3.2017 rendered by the Special Judge, Chief Judicial Magistrate, Namakkal in Spl.C.C.No.13 of 2002 is set aside. The appellant is acquitted of all the charges and he is set at liberty forthwith. Bail bond, if any, executed by the appellant shall stand cancelled. Fine amount paid, if any, shall be refunded to the appellant.

27.2.2024.

Index: Yes/No.

Internet: Yes/No.
ssk.

To

1. Special Judge,
   Chief Judicial Magistrate,
   Namakkal.

2. Inspector of Police,
   Vigilance and Anti-Corruption,
   Now at Namakkal,
   Namakkal District.

3. Public Prosecutor,
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

ssk.

Criminal Appeal No.170 of 2017

27.2.2024.