**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED:10.01.2024

Coram

The Honourable Mr. Justice**A.D.JAGADISH CHANDIRA**

**Crl.A.Nos.184 and 201 of 2017**

**Crl.A.No.184 of 2017**

T.Gnanaprakasam ... Appellant/A1

Vs.

State, represented by the
Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Krishnagiri.
Crime No.3/AC/2010/KG V & AC, Krishnagiri. ... Respondent

**Crl.A.No.201 of 2017**

A.Panneer Selvam ... Appellant/A2

Vs.

State, represented by the
Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Krishnagiri.
Crime No.3/AC/2008/KG ... Respondent

Criminal Appeals filed under Section 374 of Cr.P.C., to set aside the judgment made in Special C.C.No.1 of 2010 dated 24.03.2017 by the learned Chief Judicial Magistrate, Krishnagiri.

For Appellant in Crl.A.No.184/2017 : Mr.R.John Sathyan, Senior Counsel for Mr K.S.Karthik Raja

For Appellant in Crl.A.No.201/2017 : Mr.Kabilan for for Mr.P.Ezhilnilavan

For Respondent in both appeals : Mr.S.Santhosh Government Advocate (Criminal side)

**COMMON JUDGMENT**

Challenging the judgment of conviction and sentence rendered by the learned Chief Judicial Magistrate, Krishnagiri, dated 24.03.2017 made in Special C.C.No.1 of 2010, the appellants/A1 and A2 have filed the present Criminal Appeals.

2.The appellant/A1 in Crl.A.No.184/2017, viz.,T.Gnanaprakasam, was working as Assistant 'C' Section in Revenue Divisional Office, Krishnagiri till 07.08.2008 and the appellant/A2 in Crl.A.No.201/2017 viz.,A.Panneerselvam, was working as Personal Assistant to the Revenue Divisional Officer in Revenue Divisional Office, Krishnagiri, till 07.08.2008 and they are public servants under Section 2(c) of the Prevention of Corruption Act, 1988.

3. The trial Court, having found A1 and A2 guilty of the offence punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, convicted them and the sentence imposed upon the appellants/A1 & A2 are as under:-

| 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. |
| The sentences shall run concurrently. | |

4.1 A complaint dated 07.08.2008, Ex.P3 came to be lodged by PW3-Ammasi, the defacto complainant, a resident of Soolamalai Village, Maruthepalli Post, Krishnagiri, contending as under:

4.2. P.W.3, the defacto complainant, who is residing at Soolamalai Village, Krishnagiri Taluk, was doing lorry business. On 26.07.2008, while he was transporting sand from Kuththarappalli village without any valid permit in a Mini tipper Lorry bearing Registration No.TN24 A 4069, was intercepted at about 12.00noon near Pinapalli by the

Village Administrative Officer and he enquired as to whether he had a valid permit for transporting the sand, to which, the complainant replied that he did not have valid permit. Immediately, the Village Administrative Officer informed the Tahsildar and the Tahsildar also came to the spot at about 12.30p.m., and enquired the complainant whether he had a valid permit to transport sand and the complainant replied no. Thereafter, as per the instruction of the Tahsildar, the lorry was taken from Pinapalli to Taluk's office at about 1.00p.m., and he stopped the vehicle there. In the Taluk Office, they obtained a statement and signature from the complainant. On 31.07.2008, the complainant went to the office of RDO and had approached A1-Gnanaprakasam, Clerk and A2-Panneerselvam, P.A. to RDO and submitted a petition expressing his willingness to compound the offence. A2 had instructed A1 to fill up the challan for remittance of the amount and A1 had filled up the treasury challan and after obtaining signature handed over it to the complainant instructing to remit Rs.26,050/- in the State Bank of India, Krishnagiri. Since he was unable to mobilise the fund on that day, on 06.08.2008, he changed the date in the challan and remitted the amount of Rs.26,050/- to the State Bank of India and produced the counterfoil of the challan along with his application and copy of RC Book of his vehicle to A2 as instructed by A1. Thereafter, A2 called A1 to his room and instructed him to arrange to release the lorry and informed him that A1 would arrange to release the lorry and had also instructed the complainant to follow the instructions of A1. At that time, A1 had demanded Rs.5,000/- as illegal gratification for RDO, A2 and himself and later, the bribe amount was reduced to Rs.2500/- i.e.,Rs.1000/- for RDO, Rs.1000/- for A2 and Rs.500/- for himself. Thereafter, A1 instructed the complainant to pay Rs.1500/- towards the bribe amount of RDO and his share and also instructed the complainant to pay Rs.1,000/- the bribe share of A2 to him directly. As the complainant was not willing to pay the bribe amount for releasing his lorry, he had given a complaint-Ex.P3 to P.W.16, Inspector of Police to take action against A1, who had insisted him to pay the bribe amount.

5.1. P.W.16-Sathish, Inspector of Police, V&AC, Krishnagiri, on receipt of Ex.P3-complaint from P.W.3-defacto complainant on 07.08.2008 at about 10.00a.m., had registered Ex.P21-First Information Report in Crime No.3/SC32008/KG under section 7 of Prevention of Corruption Act 1988.

5.2.Thereafter, P.W.16 sent requisition letters to the District Employment officer and Deputy Registrar of Co-operative Society vide

Ex.P22 and Ex.P23 requesting them to depute a staff from their respective departments to be a witness in the trap proceedings and under the said letter, at about 11.00a.m., the official witnesses viz., Anbarasu(not examined) and Gnanasekaran(P.W.4) appeared before P.W.16 and extended their willingness to the trap. P.W.16 demonstrated a mock phenolphthalein test to the witnesses and the Complainant had received the amount of Rs.2,500/- (5xRs.500/-)(MO.1) from P.W.3-defacto complainant and the serial numbers of the currency notes were entered in Ex.P5-Entrustment Mahazar with the help of official witness-Anbarasu. Later, phenolphthalein powder was smeared on the currency notes and the same was handed over to the official witness Anbarasu for counting again thereafter, the chemical test was carried out on the hands of the witness Anbarasu, who counted the currency notes smeared with phenolphthalein powder, which turned pink. The importance and significance of the test and the trap proceedings were explained by P.W.16-Trap Laying Officer to P.W.3 and the two official witnesses and instructed P.W.3 to handover the tainted amount only on demand by A1 and had also instructed to give a signal by combing his hair after acceptance of money by A1. Thereafter, the Sodium Carbonate Solution was destroyed and the remaining contents of Sodium Carbonate

Powder and Phenolphthalein powder were packed separately, sealed and labelled, which were marked as MO.2 and MO.3 respectively. PW4-official witness was instructed to accompany P.W.3-defacto complainant and to observe the happenings between A1 and P.W.3-defacto complainant. Thereafter, P.W.16 had prepared a mahazar noting the happenings from 11.00 a.m. to 11.30 a.m. and had obtained the signatures of P.W.3 and the official witnesses.

5.3. Thereafter, P.W.16 proceeded to the office of the Revenue Divisional Officer, Krishnagiri, along with P.W.3, P.W.4 and other official witnesses and the police team and dropped P.W.3-defacto complainant and P.W.4-official witness to meet A1. P.W.16, other official witnesses and the police party were stationed at a distance near the RDO's office. At about 12.40p.m., P.W.3 and P.W.4 came out of the office and went to Rountana, Krishnagiri and again came to the office of RDO at about 12.50p.m. Thereafter, at 13.00hours, they came out of the office and made a pre-arranged signal as instructed by P.W.16 and immediately, P.W.16-TLO along with other official witnesses entered into the office and enquired P.W.3 about the happenings and P.W.3 had explained that when he had enquired about the release order of the vehicle, A1 replied that RDO had gone to the office of the District Collector and after obtaining signature of RDO, he will get the release order and as there was no power supply, A1 asked him to take the xerox copy of the release order from outside. P.W.3 and P.W.4 while handing over the Xerox copy of the form, A1 demanded the amount from P.W.3 and P.W.3 had dropped Rs.1500/- in the left side table drawer of A1 in a small yellow colour Plastic box as instructed by A1 and had met A2, PA of RDO, and informed him that A1 had instructed to meet A2 in respect of release of the lorry and when he demanded the amount, P.W.3 handed over the amount of Rs.1000/- to A2 and after receiving the same A2 had kept the tainted money in his shirt inner pocket. On identification of A1 and A2 by the complainant, P.W.16 introduced himself and other witnesses to A1 and A2 and A1 was subjected to a phenolphthalein test. P.W.16 prepared a sodium Carbonate solution in two different glass tumblers and directed A1 to dip his fingers in the solution the same turned pink and the solutions were collected in separate containers MO.4 and MO.5, sealed and labelled as 'S1' and 'S2', respectively. Then the tainted money was taken from a small yellow colour plastic box and the said box was subjected to Sodium Carbonate test, which resulted positive and the Sodium Carbonate Solution being collected in M.O.6 was sealed and labelled as 'S3'. The contents of the plastic yellow colour box were seized and marked as M.O.7. Thereafter, from A1 Gnanaprakasam, the file pertaining to the complainant in serial No.3841/2008 was recovered and then, from P.W.9, Record Clerk viz.,Madhan, Disbursement Register-2008 was recovered and through that register only, the file of the complainant in serial No.3841/2008 was disbursed to 'C' section and the same was received by A1 and the file containing to 30 pages with the letter of P.W.6, viz.,Chokkan, the Tahsildar, Krishnagiri, in Na.Ka.No.14365/2008/A6 dated 30.07.2008, in which, the status Report of seizure of the vehicle bearing registration No.TN-24-A-4069 was also found.

5.4. Thereafter, P.W.16 had seized Ex.P10-fine register under the Mines and Mineral Act and Ex.P9-personal register of 'C' section and also Ex.P7-Disbursement register and Ex.P12-Attendance Register of RDO's office. The complainant's petition along with the counterfoil of challan was marked as Ex.P13. Thereafter, A2-Panneerselvam was subjected to undergo a phenolphthalein test and was directed to dip his fingers in Sodium Carbonate Solution prepared in two different glass tumblers and the solutions turned to pink colour. Then the contents of two glass tumblers were collected, separately in two containers, sealed and labelled as 'S4' and

'S5' respectively, which were marked as M.O.7 and M.O.8 respectively and the shirt of A2 was seized and the shirt pocket was also subjected to Chemical test, which turned pink. Thereafter, the resultant solution was collected in M.O.9, sealed and labelled as 'S6'. While A2 was questioned about his acceptance of bribe, he replied that the P.W.3-defacto complainant had kept the tainted money on his Table and left the spot while A2 was attending to a phone call and to avoid unnecessary problems he kept the amount in his pocket with an idea to return the same to P.W.3 while issuing the release order for the vehicle. Thereafter, P.W.16 recovered the tainted currencies from A1 and A2 and also received the Ex.P12-Attendance register from P.W.10-Sumathi, Junior Assistant, D section of RDO's office and the shirt of A2 viz.,M.O.10 was recovered. P.W.16, after completing the formalities and informing the senior staff of RDO's office, arrested A1 and A2 at 17.15 Hrs on 07.08.2008. Narrating the above incidents, Ex.P14-Mahazar was prepared and attested by two official witnesses, P.W.16 and both the accused. Then Ex.P11-rough sketch was prepared and after sending intimation Ex.P24 to the Chief Judicial Magistrate, Krishnagiri house search of Al and A2 were conducted. Ex.P15 and Ex.P16 are the house search reports. Thereafter, P.W.16 sent the seized material objects to the Court through Ex.P25-Form 95. P.W.16, thereafter handed over the investigation to P.W.17.

5.5. Thereafter, P.W.17-Ramachandiran, Deputy Superintendent of Police, V&AC conducted further investigation and recorded the statements of A1 and A2 and received the sanction orders Ex P1 in respect of A2 from the District Collector and Ex P2 in respect of A2 from the District Revenue Officer of Krishnagiri on 28.07.2009 and 26.07.2009 respectively and had also recorded the statements of witnesses viz., P.W.1 to P.W.17 and filed a final report against the accused for the offences under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

5.6. On issuance of summons, the accused appeared before the Court. In due compliance with Section 207 Cr.P.C., copies were furnished to the accused. Based on the materials, charges were framed against the accused for the offences under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and they denied the charges and sought to be tried.

5.7. On the side of the prosecution, P.W.1 to P.W.17 were examined and Exs.P1 to P25 and M.Os.1 to M.O.10 were marked.

5.8. After completion of evidence on the side of the prosecution, when the accused were questioned on the incriminating materials under Section 313 (1)(b) of Cr.P.C., they denied the charges. However, no witness was examined on the side of the defence and no document was marked.

5.9. The trial Court, after hearing the arguments on both sides, found the accused/A1 & A2 guilty and convicted them for the offences punishable under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced them to undergo imprisonment as stated above. Challenging the said conviction and sentence, the appellants/A1 and A2 had filed the present criminal appeals.

6.1. Mr.John Sathyan, learned Senior Counsel for Mr.K.S.Karthik Raja, learned counsel appearing for the appellant/A1 in Crl.A.No.184 of 2017, while assailing the impugned judgment of conviction and sentence, would contend as follows:

(i)The appellant-A1 along with A2 was charged for the offences under Sec 7 and Sec 13(1)(d) r/w 13 (2) of the Prevention of Corruption Act 1988 for having demanded and accepted illegal gratification from the complainant. The law on the issue is well settled that the demand for illegal gratification is sine qua non for constituting an offence under 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable unless there is evidence to prove payment of a bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence about demand and acceptance of the amount as illegal gratification.

(ii) The trial Court without properly analysing and appreciating the evidence on record, erroneously found the accused guilty and had wrongly convicted the appellants.

(iii)The reasons assigned by the trial Court for convicting the appellants are unsustainable in law and unbelievable on facts.

(iv)The trial Court had failed to take into consideration the infirmities and the material contradictions in the evidence of P.W.3-defacto complainant and P.W.4-accompanying official witness.

(v) Admittedly, P.W.3- defacto complainant is a habitual offender involved in the illegal transportation of river sand without valid permit and penalized by the authorities more than five times and thereby, he has having grudge against the officials of the Revenue Department and thereby, a false complaint has been given, based on which, pre-determined trap was arranged by the respondent-police. The trial Court had failed to take into consideration the embellishments and exaggeration in the evidence of P.W.3-defacto complainant, P.W.4-accompanying official witness and P.W.16-Trap Laying Officer.

(vi)Admittedly, P.W.3-defacto complainant being habitual offender is also an accused convicted in a murder case for 10 years. The contradictions in the evidence of P.W.3-defacto complainant would categorically make it clear that he is not a reliable witness. In this case, even as per the evidence of P.W.3, there was no demand on the date of the trap and the money has also been planted by P.W.3 in the table of the appellant/A1.

(vii)No evidence has been let in by the prosecution to substantiate that the appellant had exclusive control of the table drawer from which the currency notes were recovered and in such circumstances, it cannot be concretely held that the recovery was made from the table drawer of the appellant and the contradictions in the evidence of P.W.3 about the nature of the complaint whether it was handwritten or typewritten will create doubt on the genesis of the prosecution case.

(viii)As stated above, on the date of the trap, there was no demand and the claim of P.W.3 about the alleged demand of money on the previous day of the trap is also not corroborated and on the date of the trap, the appellant was not present at the scene of occurrence/office and thereby, making the case of the prosecution doubtful.

(ix) The discrepancies in the timing of the First Information Report reaching the office of the Chief Judicial Magistrate creates suspicion about the manner of registration of the case which exposes that a pre-determined and stage-managed trap was conducted, thus, falsifying the case of the prosecution.

(x)Though a burden rests on the accused to rebut the statutory presumption raised under Section 20 of the 1988 Act, that the money was accepted by him, other than as a motive or reward as referred to under Section 7 of 1988 Act, the court while invoking the provisions of Section 20 of the Act, is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. In this case, the prosecution has failed to prove the demand of illegal gratification, acceptance and recovery beyond all reasonable doubt. In this case, the appellants, by cross-examining the witnesses and giving an explanation, had rebutted the presumption contemplated under Section 20 of the Prevention of Corruption Act, 1988. In the case on hand, the prosecution has miserably failed to prove its case beyond reasonable doubt and there are several infirmities and discrepancies in the prosecution case and the explanation offered by the appellants is reasonable and probable, thereby, he would seek to set aside the judgment of conviction.

6.2. In support of his arguments, the learned Senior counsel for the appellant had relied on the following judgments.

1. P.Sathyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another (2015 (1) Supreme Court Cases, 152);
2. K.P.Kolanthai Vs. State, Inspector of Police, Anti Corruption Wing, Dharmapuri (2019 MLJ Criminal 3 713).

7. Mr.Kabilan, learned counsel representing Mr.P.Ezhilnilavan, learned counsel for the appellant/A2 in Crl.A.No.201 of 2017, would submit the following contentions.

(i) The trial Court had failed to take into consideration the material contradictions in the evidence of P.W.3 and P.W.4 which creates grave doubt about the trap proceedings. Admittedly, no mention has been made in the complaint, as if, the Appellant/A2 had demanded a bribe from P.W.3-defacto complainant**.** P.W.3-defacto complainant is not sure as to whether the complaint given by him is either a handwritten one or a typewritten one which goes to the root of the registration of the case.

(ii) The discrepancies in the timings with regard to preferring the complaint, registration of case and receipt of the complaint by the Chief Judicial Magistrate Court create doubt about the prosecution case and thereby, it was a pre-determined trap and the documents were prepared according to the whims of the Trap Laying Officer. It is an admitted case of P.W.16- Trap Laying Officer that while he was in his office on 07.08.2008 PW3-defacto complainant had come to his office and preferred the complaint-Ex.P3 at 10.00am., based on which, the F.I.R Ex.P21 was registered at 10.00am., on the same day. However an endorsement has been made by the Chief Judicial Magistrate to the effect that Ex.P3-complaint was received by him on 07.08.2008 at 7.00 am.,and no reason has been assigned by P.W.16 to clarify the said discrepancy. Further, Ex.P3 is a handwritten complaint and Ex.P21 is a typewritten F.I.R. and thereby, the possibility of receiving a handwritten complaint and preparing a typewritten F.I.R at the same time is not possible.

(iii) It is the specific case of P.W.3-defacto complainant that he saw A2 at his office at 10.00a.m., on 07.08.2008 and that being so, the complaint could not have been made at 10.00a.m., to the respondent and Ex.P21-First Information Report could not have been registered at 10.00a.m., and as stated by the respondent the the enclosure with Ex.P21-First Information Report is the typewritten complaint.

(iv)The manner in which the phenolphthalein test is alleged to have been conducted and the recovery of the money also creates doubt in the trap proceedings. As per evidence of P.W.4-Gnanasekaran, the official shadow witness, who was working as Senior Inspector in the office of Deputy Registrar, Krishnagiri, he has not gone inside the room of A2 along with P.W.3 and thereby, he could not speak about the alleged demand and what transpired inside the room between P.W.3-defacto complainant and A2. Further, it is an admitted case of P.W.4 that the tainted money was recovered from the accused and only thereafter, phenolphthalein test was conducted. The trial Court has failed to take into consideration the spontaneous explanation given by the accused at the time of trap proceedings with regard to the recovery of money from him and it is also recorded in Ex.P14-seizure mahazar, which would make it clear that A2 has given proper explanation how the money was placed on the table by P.W.3 and the subsequent conduct in possessing money. The explanation offered by A2 is also admitted by P.W.4 and P.W.16-Trap Laying Officer. The entire case of the prosecution right from the registration of the case till the trap and alleged recovery are doubtful and when there are several infirmities and doubts in the prosecution case and thereby, he would week to set aside the judgment of conviction.

8.1.Per contra, Mr.S.Santhosh, the learned Government Advocate(Criminal Side) appearing for the State, would submit that the prosecution, by examining P.W.3 and P.W.4 had proved the demand, acceptance and recovery by P.W.16. The evidence of P.W.16-Trap Laying Officer has clearly proved the entire case of the prosecution viz., demand, acceptance and recovery of the bribe amount from the accused and the trial Court is right in convicting the accused and no interference is required.

8.2.Admittedly, A1 was working as Clerk in the Revenue Divisional Office and A2 was working as Personal Assistant to the Revenue Divisional Officer, Krishnagiri. The P.W.3-defacto complainant is the owner-cum-lorry driver of Tipper Lorry, bearing Registration No. TN-24-A-4069 and on 26.07.2008, P.W.5, viz.,Meerjiyaullah, Village Administrative Officer, had intercepted the lorry owned by P.W.3 while he was illegally transporting river sand without valid permit and intimated the same to P.W.6-Sokkan, then Tahsildar, and both of them seized the lorry with its contents and handed over the same to P.W.7-Sambasivam, Revenue Divisional Officer on 30.07.2008 for further proceedings. Thereafter, on 30.07.2008 P.W.3 met A2 and submitted a petition expressing his willingness to compound the offence and the same was forwarded to RDO, Krishnagiri on the same day. Further, A2 had instructed A1 to fill up the challan for remittance of the amount in State Bank of India. Accordingly, Al filled up the challan and handed over it to P.W.3 and instructed him to remit Rs.26,050/- in the State Bank of India, Krishnagiri. P.W.3 had remitted amount of Rs.26,050/- in the State Bank of India on 06.08.2008 and produced the counterfoil of the challan along with his application and copy of RC Book of his vehicle to A2 and it was signed by P.W.7 on the same day. Then A2 called A1 to his room and instructed him to make arrangement to release the lorry in the presence of P.W.3 and told him that A1 would arrange to release the lorry and instructed P.W.3 to follow the instructions of A1 and at that time A1 had demanded Rs.5,000/- for himself, A2 and to P.W.7-RDO and later, the bribe amount was reduced to Rs.2500/- (Rs.500/- for himself A1, Rs.1000/- for P.W.7-RDO and Rs.1000/- for R2). As P.W.3 was not willing to pay the bribe amount, had given Ex.P3-complaint to the Inspector of Police V and AC and on receipt of the same, P.W.16-TLO had registered Ex.P21-First Information Report in Crime No.3/SC32008/KG under section 7 of P.C. Act 1988. On 07.08.2008, when P.W.3 had approached A1, he had demanded the bribe amount and as per A1's instruction P.W.3 had dropped Rs.1500/- in the left side table drawer of A1 in a small yellow colour plastic box and had handed over Rs.1000/- to A2 and the tainted amount was recovered from both the accused and phenolphthalein test conducted on the hands of the accused turned positive, thereby, the prosecution had proved the demand, acceptance and recovery beyond reasonable doubts and the appellants had not rebutted the presumption required under Section 20 of the Prevention of Corruption Act.

8.3.He would further submit that the evidence adduced by P.W.3, P.W.4, P.W.16 and P.W.18 are cogent and corroborative in nature and there is no infirmity in the analysis of evidence and the minor discrepancies in their evidence would not affect the case of the prosecution. The trial court, finding that the prosecution has proved the foundational facts by cogent evidence and that the statutory presumption as mandated under Section 20 of the Prevention of Corruption Act had not been rebutted by the accused either by way of direct or indirect evidence, has found the appellants/A1 and A2 guilty, and thereby, he seeks to dismiss the Appeal.

9.Mr.R.John Sathyan, learned Senior Counsel, in reply, would contend that the presence of P.W4 at the time of trap and during preparation of Ex.P5-Entrustment Mahazar is doubtful. Though the prosecution has relied on Exs.P22 and Ex.P23-requisition letters to show that the official witnesses were summoned to assist for trap proceedings, there is absolutely no evidence to show that the said requisition letters were sent to the concerned departments on the same day and there are various infirmities and contradictions in the evidence of P.W.3 and P.W.4, which creates a doubt with regard to the presence of P.W.4 and other official witness at the time of pre-trap and trap and the trial court has not properly appreciated the material contradictions in the evidence key witnesses and the entire case of the prosecution is a stage managed one.

10.Heard Mr.R.John Sathyan, learned Senior Counsel for Mr.K.S.Karthik Raja, learned counsel appearing for the appellant/A1 in Crl.A.No.184 of 2017 and Mr.Kabilan, learned counsel for Mr.P.Ezhilnilavan, learned counsel for the appellant/A2 in Crl.A.No.201 of 2017 and Mr.S.Santhosh, learned Government Advocate(Criminal Side) appearing for the respondent and perused the materials available on record.

11.Now what has to be seen is (i) whether the prosecution has proved its case in respect of demand, acceptance and recovery beyond reasonable doubt and (ii)whether the accused had rebutted the presumption under Section 20 of the Prevention of Corruption Act, 1988.

12.In this case, the allegation against appellants/A1 and A2 is that while A1 was working as a Clerk in the Revenue Divisional Office and A2 was working as the PA to RDO, they had demanded and obtained illegal gratification of Rs.2500/- on 07.08.2008 from P.W.3-defacto complainant for releasing P.W.3's lorry which was used for illegally transporting river sand without valid permit. The trial court, based on the evidence on record, documents and material objects, has found the accused guilty for the grave offences.

13.On a careful analysis of evidence on record, this Court finds that P.W.3, P.W.4 and P.W.16 are the key witnesses in this case and the documents viz.,Ex.P3-a hand written complaint dated 07.08.2008 is alleged to have given at 10.00a.m, and Ex.P21-a type written First Information Report alleged to have been prepared and registered at 10.00a.m., on the same day and PW.4 and the other official witnesses had been summoned and Ex.P5-Entrustment Mahazar was said to have been prepared between 11.00 and 11.30a.m., and Ex.P14-Seizure Mahazar alleged to have been prepared between 2.00p.m., to 5.00p.m., which are crucial documents in this case. The admitted fact in this case is that PW.3 is a habitual offender involved in illegal transportation of sand without valid permit, for which, he had been penalised more than five times by the revenue authorities and he had also been convicted in number of cases. It is the case of the appellants that P.W.3 was having a grudge against the revenue authorities and thereby, he had given a false complaint to fix the accused and thereby, he cannot be believed to be as reliable witness of credence. Further, it is the case of the appellants that there were several infirmities, embellishment and exaggeration in the evidence of P.W.3 with regard to pre-trap, complaint and the trap proceedings and that there were material contradictions in the evidence of P.W.3 and P.W.4. Admittedly, in this case, no recovery has been effected from the hands of the A1. It is also the case of the prosecution that as per the instruction of A1 the bribe amount was dropped in the table drawer and it was recovered from the table drawer of A1. It is to be seen that in the complaint Ex.P3 the alleged demand is stated to have been made by A1 on 06.08.2008 and in the complaint, PW3 had requested the respondent to take action only against appellant/A1, but on the contrary, he had deposed that on the date of occurrence, A1 was not in the seat and the recovery was made from the table drawer of A1, which create dent in the prosecution case.

14.Now coming to the evidence of PW.3-defacto complainant, in the chief examination he had deposed that he along with the trap team had gone to the office of RDO, and he had gone inside the office along with PW4 and at that time, A1 had asked him whether he had brought the demanded money and when he affirmed it, A1 had asked him to drop Rs

1500/- in his table drawer and informed him to hand over Rs.1000/- to A2-P.A to RDO and thereby, he had dropped Rs.1500/- in the table drawer of A1 as instructed by him and handed over Rs.1000/- to A2 and that A2 had kept the amount in his shirt pocket on the left side and thereafter, he came out and gave the pre-arranged signal. However, in the cross examination, he had deposed that when he had gone to the office of the accused 10 staffs were on duty and several public were present and that A1 was not present at his seat and thereby, he had dropped the money in the table drawer of A1 and came out. He has not deposed about the demand being made by A1 on the date of trap. He was neither treated hostile and his evidence was not contradicted by the prosecution. It is the further case of the prosecution that P.W.4 was advised to closely follow P.W.3 and monitor the happenings in the office at the time of trap. Now analysing the evidence while cross examination of PW3 by the counsel for A2, PW3 had deposed that when he had entered into the office of A2, PW4 did not come inside and he stood at the entrance itself. However, he had denied the suggestion that without any demand by A2 he had dropped the money on the table. Now analysing the evidence of P.W.4, the official shadow witness for the trap, he had deposed that while he had accompanied P.W.3, A1 was present at his seat and that

P.W.3 and PW.4 conversed with him for a long time and later, P.W.4 had gone along with P.W.3 to meet A1 and had enquired about the release order, for which, A1 had informed him that RDO had gone to the Collector's Office and after returning from the Collector's office, he will obtain his signature and as there was no electricity in the office A1 had asked him to take a xerox copy of the release order and thereby, P.W.3 and P.W.4 had come out of the office and after taking the xerox copies, they had gone back to the RDO's office to hand over it to A1. It is the further evidence of P.W.4 that at that time, A1 had asked him whether P.W.3 had brought the money and P.W.3 had also affirmed the same and that A1 had informed him to drop Rs.1500/- in his drawer in a plastic box, which contained pins and tags and he had informed P.W.3 to hand over the balance amount of Rs.1000/- to A2 and that based on his instructions, P.W3 had done that. There are grave material contradictions in the evidence of P.W.3 and P.W.4 with regard to the happenings at the time of trap. It is the specific case of P.W.3 defacto complainant that A1 was not present at his seat when he had gone there along with P.W.4. Further, P.W.3 in his chief examination not even murmured about such a conversation between him and A1 during relevant time of trap. Normally in a trap cases, the shadow witnesses are sent to corroborate the evidence of the defacto complainant or the bribe giver whereas in this case, on the contrary, P.W.4 come up with his own version with regard to the alleged happenings inside the office of A1. The evidence of P.W.3 and P.W.4 are totally inconsistent in several aspects, which creates grave doubt with regard to the trap proceedings. In this regard, it will be useful to refer to the decision in **Suraj Mal vs. State (Delhi Administration) (1979 4 SCC 725)**, wherein the Hon'ble Apex Court has held that :

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

15.Now, coming to the discrepancies in the timings of registration of case, the evidence of P.W.3 is self contradictory in nature. In his chief examination, P.W.3 had deposed that he met A2 on 07.08.2008 at 10.00a.m., and as per instruction of A2 he had met A1, and A1 had demanded Rs.2500/- for himself, RDO and P.A. to RDO(A2) and for A1 and since he was not willing to pay the bribe amount, he made the complaint at 11.00 a.m., and Ex.P3 is the complaint given to P.W.16-TLO. P.W.16, in his evidence, had deposed that while he was in the station, he had received a complaint at 10.00 a.m. In Ex.P3 complaint also, PW.16 had made an endorsement that he had received the complaint at 10.00a.m. When PW3 had deposed that he met A2 at 10.00am., there is no possibility of giving complaint(Ex.P3) to P.W.16 at the same time. It is the case of P.W.3 that the complaint was given at 11.00a.m., to P.W.16 whereas the endorsement in Ex.P3-complaint shows that it had been received by the Chief Judicial Magistrate Court at "7.00a.m., on 07.08.2008". In such circumstances, Ex.P21-First Information Report could not have been registered at 10.00a.m., as stated by P.W.16-TLO. In this regard, a specific question has been put to P.W.16-TLO that as to whether the endorsement with regard to time in Ex.P3 was correct and it was though affirmed by P.W.16, no explanation has been given in respect of time mentioned in Ex.P3-complaint. A perusal of Ex.P21-FIR shows that it has been received by the Chief Judicial Magistrate at 11.00a.m., on 07.08.2008. The discrepancies as in the timings with regard to receipt of the complaint-Ex.P3 at 7.00a.m., and

Ex.P21-FIR, at 11.00 am which goes to the root of the registration of case and creates grave doubt in the genesis of the case.

16.Further while analysing the evidence of P.W.4, during his cross-examination, had deposed that he had gone along with P.W.3 into the office of A1, and at that time, A1 was present in his seat and that he stood five feet behind PW3 whereas P.W.3 had stated that A1 was not available at that time and this part of the evidence is also contrary to the evidence of PW3. He had further deposed that when PW3 had gone into the room of A2 he had stood outside and PW3 had come out and told him that he had handed over Rs.1000/- to A2. His evidence was not corroborated with the evidence of P.W.3 during the trap. Further, PW4 had deposed that he went to assist the trap only on oral instructions. In his cross examination by counsel for A2, PW4 had deposed that at the time of trap proceedings, when P.W.16 had questioned A2 as to how he was in possession of the money, A2 had given a detailed explanation stating that when he was in a telephonic conversation, PW3 had entered into his room and placed the money on the table stating it was towards release of the lorry and that when A2 had questioned him and asked him to take back the money PW3 had left the room without responding and feeling that if seen by anyone it would give a bad impression he had picked it with the intention of returning it to PW3 when he comes back for release of the lorry. This aspect finds a place in Ex.P14-Seizure Mahazar and this aspect is also affirmed by PW.16. Thereby, it is relevant to extract the relevant explanation given by A2 at the time of seizure.

> "பிறகு ஆய்வாளர் P.A.திரு.பன்னீர்செல்வம் அவர்களிடம் வாதி அம்மாசியிடம் இருந்து எதற்காக பணம் பெற்றுக்கொண்டீர்கள் என்று கேட்க, தான் தொலைபேசியில் பேசிக் கொண்டிருந்த சமயம் வாதி அம்மாசி தனது அறைக்குள் நுழைந்து தனது லாரியை ரிலீஸ் செய்வதற்காக இந்தாங்க சார் பணம் என்று சொல்லி 500 ரூபாய் நோட்டுக்களை தனது மேஜைமீது வைத்ததாகவும், தான் அவரிடம் இந்த பணம் எதற்காக கொடுக்கிறீர்கள் எடுத்துச்செல்லுங்கள் என்று சொல்லியும் அவர் கேட்காமல் பணத்தை வைத்துவிட்டு சென்றுவிட்டதாகவும், அலுவலகத்திற்கு வருபவர்கள் மேஜையின் மீது பணம் இருப்பதை பார்த்தால் தவறாக எடுத்துக்கொள்ளகூடும் என்பதாலும், வாதி அம்மாசியின் வண்டியின் ரிலீஸ் ஆர்டரை கொடுக்கும்போது அவரிடம் திருப்பிக் கொடுத்து விடலாம் என நினைத்து அந்த பணத்தை எடுத்து தனது சட்டையின் உள்பாக்கெட்டில் வைத்துகொண்டதாகவும், அவருடைய லாரியை ரிலீஸ் செய்வதற்கான வேலைகள் எங்கள் அலுவலகத்தில் நிலுவையில் இருப்பது பற்றி தனக்கு தெரியும் என்றும் கூறினார்."

17.In this regard, the explanation given by A1 at the time of seizure is hereunder.

"எதிரி ஞானபிரகாஷிடம் மேற்படி பணம் ரூபாய் 1500/-யை பற்றி கேட்க, வாதி அம்மாசியிடம் இருந்து தான் பணம் ஏதும் கேட்கவில்லை என்றும் டிராயருக்குள் பணம் எப்படி வந்தது என்று தனக்கு தெரியாது என்றும் கூறினார்."

18. In this regard, P.W.3 had admitted that A2 had not made any demand from him and even on the date of trap, P.W.3 has not spoken anything, as if, A1 had demanded any money from him. A perusal of the complaint and the evidence of P.W.3 is not clear as to whether any specific demand having been made by A2 other than the averment that A2 called A1 to prepare documents for releasing the lorry and other than informing P.W.3 that he had given direction to A1 for release of his lorry and instructed P.W.3 to follow the instructions of A1,,there is no specific allegation of demand against A2 by P.W.3. Further, in the concluding line of the complaint, P.W.3 had asked the respondent to take action against A1 alone. As evidenced by P.W.3, though there is no allegation of demand by A2, P.W.4 deposed that P.W.3 had handed over the balance amount of Rs.1000/- to A2 based on the instruction of A1. Further, PW.4-official witness was sent along with P.W.3 only to monitor the happenings in the office of Tahsildar, but P.W.4 deposed that when the bribe amount was given to A2,

he had not gone to the seat of A2 along with P.W.3-defacto complainant and except the evidence of P.W.3, there is no proof or evidence that A2 had demanded and received the bribe amount from P.W.3. P.W.3 also in his cross examination admits the said fact that he alone entered into A2's room. The evidence of PW4 is full of exaggerations and not worth of credence and thereby, it cannot be relied at all. When such being so, the trial Court had convicted the appellants on the sole testimony of P.W.3, which is not reliable and trustworthy.

19.The appellants/A1 and A2 though charged for commission of offence under Section 7 of the Prevention of Corruption Act and bound to rebut the statutory presumption under Section 20 of the Prevention of Corruption Act, are entitled to displace the statutory presumption by bringing on record the evidence, either direct or circumstantial, to establish with reasonable probability, that the money which was accepted by them or any other person on their behalf is not illegal gratification as referred to in Section 7 of the Prevention of Corruption Act, 1988. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the appellants are called upon to explain how the amount in question was found in their possession, a bounden duty is cast on the prosecution to prove the foundational facts beyond reasonable doubts and the accused are entitled to disprove the case of the prosecution based on the evidence on record. As discussed the above, the cumulative analysis of the evidence exposes several loose ends in the prosecution case creating several doubts shaking the very foundation of the prosecution case.

20.Though P.W.3 had alleged that A1 had demanded the bribe amount for himself, RDO and PA to RDO A2, as per his evidence A1 was not present in his seat on the date of trap and that without there being any demand by A1 on that day and in his absence, he had dropped the bribe amount in his table drawer. Therefore, the recovery said to have been made from A1's table drawer is on account of PW3 dropping the money without there being any demand by A1 and thereby, the prosecution has failed to prove the demand made by A1.

21.In the instant case as stated above, as admitted by PW.16-TLO, though the recovery of money in respect of A1 has been made from the table drawer, there is absolutely no evidence that A1 was having exclusive possession over the drawer and that too, when A1 was not in the seat at the time of trap. As far as recovery of money from A2 is concerned, admittedly as per Ex.P14-Seizure Mahazar and the evidence of P.W16, it is seen that A2 had come out with the spontaneous reply under what circumstances he was holding the money in his hands. The reasoning given by A2 is also probable and plausible, more particularly, when there is no specific evidence of P.W.3 and P.W.4 at the time of trap proceedings A2 had demanded illegal gratification and to the contrary P.W.4 had deposed that when the bribe amount was given to A2, he had not gone into the room of A2 along with P.W.3-defacto complainant. Further, as stated above, there is no specific mention in respect of A2 with regard to the demand in the complaint also. From the above discussions, it is clear that the prosecution has failed to prove the demand, acceptance and recovery and the entire trap is a stage managed one. Mere recovery by itself cannot prove the charge of the prosecution and to substantiate the same, it is useful to refer the following decisions.

22.In ***M.Rajendran Vs. State(2011(1) MWN (Crl) 602); N.Thangarajuly and another Vs. State(2001 (1) MLJ (Crl) 1050); A.V.Vijayarangan and others Vs. State (2010 (1) MLJ 541)****and* ***(D.Dass, Inspector of Police, Cuddalore Vs. State (2010 (2) MLJ(Crl) 225)***, this Court had reiterated the legal position that the demand of illegal gratification is sine qua non for the offence and mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused where the substantial evidence of Prosecution is not reliable.

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

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

25.Apart from the above discrepancies, this Court is also able to see that there are some blanks Ex.P21-FIR with regard to the date and time in column 3(a) and they have not been filled up by PW.16. Though this may not be a major infirmity, however, coupled with the fact of timing of the receipt of the complaint-Ex.P3 by the learned Chief Judicial Magistrate at 7.00a.m., and the registration of F.I.R-Ex.P21 at 10.00am whereas the evidence of the defacto complainant stated to have met the accused at his office at 10.00am and reaching the office of the PW16 at 11.00am for giving complaint assumes significance in this case and creating grave doubt. Further, PW3 is also not able to tell whether the complaint given by him was a hand written one or a typed one and therefore, in the opinion of this Court, the entire case of the prosecution is shrouded with shadow of suspicion.

26.From the cumulative analysis of the evidence, it is seen that there are several glaring contradictions in the evidence of P.W.3 and P.W.4 which belies the evidence of P.W.4 and also makes the presence of P.W.4 at the place of trap doubtful and thereby, the evidence of PW3 and PW4 do not seem to be reliable and thereby, this Court is of the view that the prosecution has failed to prove the demand by A1 and A2 on the date of trap beyond reasonable doubt.

27.In **P. Sathyanarayana Murthy v. State of AP ((2016) 1 SCC (Crl.) 11)**, the Honble Apex Court took note of its earlier verdict in *B.Jayaraj vs. State of A.P.* underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as under Sections 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. The Apex Court, in *P. Satyanarayana Murthy* on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof thus summed up its conclusions as hereunder: (SCC P.159, Para 23)

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

(emphasis supplied)”

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

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

28.The appellant/A1 though charged for commission of offence under Section 7 of the Prevention of Corruption Act and bound to rebut the statutory presumption under Section 20 of the Prevention of Corruption Act, is entitled to displace the statutory presumption by bringing on record the evidence, either direct or circumstantial, to establish with reasonable probability, that the money which was accepted by him or any other person on his behalf is not illegal gratification as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, a bounden duty is cast on the prosecution to prove the foundational facts beyond reasonable doubts and the accused is entitled to disprove the case of the prosecution based on the evidence on record. Now coming to the prosecution case with regard to the recovery of currency from A2, it is an admitted case of the prosecution that immediately on questioned by PW16 the TLO, A2 had come out with a spontaneous reply as to how the tainted money had come into his possession and it had also been recorded in Ex.P14-seizure Mahazar. The spontaneous explanation offered by A2 seems to be probable and possible one. As discussed above, the analysis of the cumulative evidence exposes several loose ends in the prosecution case creating several doubts shaking the very foundation of the prosecution case.

29.In view of the above infirmities and inherent improbabilities, this Court has to necessarily come to the conclusion that PW3 and PW4 are not reliable witnesses and the entire trap proceedings was bristled with suspicious circumstances and doubts and the prosecution has miserably failed to establish the foundational facts regarding the guilt of the appellants/accused by cogent evidence, whereas the appellants had rebutted such presumption by preponderance of probabilities by pointing out the contradictions in the evidence of PW3 and PW4 and giving a probable explanation and thereby, the appellants are entitled to be acquitted. Accordingly, this Court is of view that the trial Court, without properly appreciating the evidence adduced, had erred in convicting the appellants/A1 and A2 for the offences under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, and accordingly, the judgment of conviction and sentence made by the trial Court against the appellants/A1 and A2 has to be set aside.

30.In the result, the conviction and sentence imposed on the appellants/A1 and A2 in Special C.C.No.1 of 2010 dated 024.03.2017 on the file of Chief Judicial Magistrate, Krishnagiri, for the offences under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act,1988, is set aside and the Criminal Appeals stand allowed. The appellants/A1 and A2 are acquitted from the charges levelled against them. The bail bonds, if any, executed by them during trial, shall stand cancelled and the fine amount, if any, paid by the accused, shall be refunded to them.

**10.01.2024**

Index:Yes/No
Internet:Yes/No
raa

To

1.The Chief Judicial Magistrate,
Krishnagiri.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Krishnagiri.

3.The Additional Public Prosecutor,
High Court, Chennai.

**A.D.JAGADISH CHANDIRA,J.**

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**Criminal Appeal Nos.184 & 201 of 2017**

**10.01.2024**