IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 5.1.2024

Delivered on : 20.3.2024

CORAM

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

Criminal Appeal No.3 of 2017

K.Vaithiyanathan ... Appellant

vs.

The State rep. by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Ariyalur. ... Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment in Spl.S.C.No.1 of 2013 dated 29.12.2016 by the Chief Judicial Magistrate/Special Judge for Vigilance and Anti Corruption Cases, Ariyalur.

For Appellant : Mr.N.R.Elango, Senior Counsel for M/s.R.Vivekananthan

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

JUDGMENT

Challenging the judgment of conviction and sentence rendered by the Chief Judicial Magistrate/Special Judge for Vigilance and Anti Corruption Cases, Ariyalur in Spl.S.C.No.1 of 2013, the accused has come up with the present Criminal Appeal.

2. The appellant/accused K.Vaithiyanathan was serving as Village Administrative Officer, Udayarpalayam Taluk at the relevant time and as such, he was a Government Servant as contemplated under Section 2(c) of the Prevention of Corruption Act. He is alleged to have demanded and obtained illegal gratification for effecting a patta name transfer and thereby committed offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. He stands convicted and sentenced as under:-

Penal Provison	***Sentence***
Section 7 of the Prevention of Corruption Act, 1988	Five years simple imprisonment and a fine of Rs.10,000/- in default to pay the fine, to undergo simple imprisonment for a further period of one year.
Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988	Seven years simple imprisonment and a fine of Rs.15,000/- in default to pay the fine, to undergo simple imprisonment for a further period of one year.
The sentences shall run concurrently.	

3. Facts relevant for deciding the appeal are as under:-

i) A typewritten complaint, Ex.P2 dated 23.8.2012 came to be lodged by PW2, de facto complainant Subash Chandra Bose contending as under:-

The de facto complainant had moved for patta name transfer in respect of four lands that were purchased by his father, Gunasekaran, who works at Kuwait, in the name of his mother Damayanthi as it was required for availing a loan from Indian Bank, Jayankondam for purchase of a Tractor by approaching the appellant/accused on 10.8.2012 at 12.00 pm. The appellant had insisted for getting signature of the mother of the de facto complainant in the application for name transfer in the patta and handed over three white papers asking to get the signature at the end of the papers. Immediately, the de facto complainant went to his home, obtained the signatures of his mother on such blank papers and returned to the appellant/accused. The appellant had asked the de facto complainant to meet him after ten days. Accordingly, he met the appellant in his office on 22.8.2012 at 2.00 pm and enquired about the name transfer in the patta and by that time, the appellant had demanded a sum of Rs.2500/- as illegal gratification for such submitting his report. When the de facto complainant had questioned the appellant on the demand made by him, he insisted for the bribe amount. The de facto complainant had expressed that he had no money with him at that time, for which, the appellant had asked him to come two days later viz., on Friday afternoon as he would be out of station on the next day. Though the de facto complainant was not inclined to give bribe, had expressed the appellant as if he is ready to pay the bribe money and returned home and had discussion with his mother about his intention to approach the Vigilance and Anti Corruption and on her advice, the de facto complainant had lodged the complaint, Ex.P2 on 23.8.2012 seeking the authorities to take action against the appellant/accused.

ii) On receipt of the complaint, Ex.P2, PW11-Pandithurai, the Inspector of Police, Vigilance and Anti Corruption, Trichy at 2.00 pm on 23.8.2012, having conducted secret enquiry on the same, registered the FIR, Ex.P18 in Crime No.14/2012 at 4.00 pm. After getting necessary permission from the superiors, he enquired the de facto complainant and sent requisition letters to the District Elementary Education Officer, Trichy and Executive Engineer, Public Works Department, Trichy, Exs.P19 and P20 for deputing staff to assist him in a trap he intended to conduct on 24.8.2012 at 10.00 am. He retained the de facto complainant in the office of the Vigilance and Anti Corruption itself.

iii) On 24.8.2012 at 10.00 am, PW3-Venkatesh and one

Sugumar had reported to PW11 and they had been introduced to each other and to PW2 and vice versa by PW1 and both the official had been apprised of the case by giving original of the complaint and the FIR. When enquired PW2 about the bribe money of Rs.2500/-, he produced five numbers of 500 rupee currency notes, serial numbers of which were entered in the entrustment mahazar, Ex.P12.

iv) Thereafter, PW11 arranged for a demonstration of trap proceedings with the assistance of Constable Sivakumar and Head Constable Sathiyamurthy and thereby apprised the official witnesses and the de facto complainant of the significance of the trap proceedings. Then, PW2 was asked to empty his shirt pocket by keeping the contents in the pant pocket and thereafter, on the instructions of PW11, the Constable Sivakumar had kept the phenolphthalein smeared bribe money in the left side pocket of PW2's shirt. Then, PW2 and PW3 were instructed to meet the appellant and in the event of the appellant accepting the bribe money, PW2 was asked to come out and give a signal to the trap team by scratching his head with his right hand and PW3 was instructed to accompany PW2 and observe the happening. Another official witness Sugumar was retained by PW11 alongwith him.

v) PW11 had prepared the entrustment mahazar from 10.30 am to 11.45 am, got it typed in computer, got signatures from the official witnesses apart from his signature and sent it alongwith the FIR and the complaint in original to court by 12.00 noon.

vi) At about 12.15, the trap team departed to the office of the appellant and having reached there at about 2.45 pm, parked their vehicle near a ration shop about 75 metres away from the office of the appellant and sent PW2 and PW3 to meet the appellant by reminding the instructions to be followed while the rest of the trap team were hiding themselves. PW2 and PW3 went into the office of the appellant at about 3.00 pm.

vii) At about 3.15 pm, PW2 and PW3 came out of the office of the appellant and gave the prearranged signal to the trap team and thereupon, the trap team had a meeting with PW2 and PW3. When enquired, PW2 had narrated that when they both met the appellant, the appellant had first questioned about PW3 and then asked for the bribe amount and when PW2 had produced the same, the appellant had received the same with his right hand, counted the same using his both hands, kept it on the table placing a lock with key on the currency notes and informed PW2 that on completion of name transfer work, he would convey him the message and it is suffice if PW2 meets him only on receipt of such information and thereupon, both PW2 and PW3 came out and the pre-arranged signal was made. When enquired, PW3 had affirmed of the above happenings.

viii) Thereupon, PW11 went into the office of the appellant alongwith the trap team and PW2 and on the identification made by PW2, PW11 had introduced himself and the trap team to the appellant and pacified the appellant, who got nervous and sent PW2 out of that room. Thereafter, PW11, as a part of trap procedure, arranged for sodium carbonate mixture and asked the appellant to dip both his hands separately and on finding that both the solutions turned pink, poured the same in two separate glass bottles, M.Os.2 and 3, named the same, made remarks with the case details, affixed his signature, got the signatures of the official witnesses and seized the same under seizure mahazar, Ex.P13.

ix) Subsequently, PW11 had enquired about the bribe money received from PW2, seized the same, M.O.1, which was kept on the table under a lock with key on being identified by the appellant after counting and verifying the same with the assistance of PW3 and having found that the serial numbers of the currency notes tally with those entered in the entrustment mahazar, Ex.P12. He also prepared sodium carbonate mixture in another glass tumbler and dipped the lock with the key kept on the currency notes and having found that the solution turned pink, poured the solution into a glass bottle, sealed, named and remarked with the case details, seized the same as M.O.4 and the lock with the key, M.O.5.

x) Thereafter, when enquired about the application submitted by PW2 in the name of his mother for patta name transfer, the appellant had produced Exs.P21 and P22 Patta Transfer Application Registers contending that the application was forwarded with the report to the Office of the Tahsildar, Udayarpalayam. He also produced Ex.P23-Kist Receipt Book on demanded by PW11. When enquired about the blank papers with the signature of the mother of PW2, the appellant had produced two of them, Exs.P4 and P5 contending that one of those three papers was used for preparing the application in the name of the mother of PW2. For having received bribe, the appellant was arrested by PW11 at about 4.55 pm. PW11 had prepared the seizure mahazar, Ex.P13 between 3.30 pm and 5.00 pm, affixed his signature and obtained signatures of the official witnesses on the same. PW11 also prepared observation mahazar, Ex.P14 and rough sketch, Ex.P25.

xi) Subsequently, PW11 had made a search at the house of the appellant from 6.00 pm to 6.45 pm, after sending prior intimation, Ex.P26 to the court and having found no incriminating material against the appellant, prepared the search report, Ex.P27, signed the same, obtained signatures of the appellant and the official witnesses on the same. After remanding the appellant, PW11 had sent the material objects to the court under Form 95 and handed over the case to PW12 for further investigation.

xii) Having taken up the case for further investigation, PW12-Soorakumaran, Inspector of Police, Vigilance and Anti Corruption enquired PW2 and the official witnesses viz., PW3 and Sugumar and recorded their statements. He made arrangements for sending the material objects to the Trial Court for being sent for chemical analysis. He also enquired all prosecution witnesses viz., PW4-Amutha, PW5-Bakkiyam Victoriya, PW6-Elisabeth Mary, PW7-Malathi, PW8-Annadurai, PW9-Elangovan, one Sathiyamurthy (not examined before court), PW10-Mallika, PW11-Pandithurai, Inspector of Police and recorded their statements.

xiii) From PW4-Amudha, the Deputy Tahsildar, Headquarters, Udayarpalayam, PW12 had recovered Ex.P16-D.K.Register, Ex.P22-

Patta Transfer Register of Sooriyamanal village, Ex.P24-Adangal Extract, Ex.P28-Chitta Register, Ex.P29- A Register of Sooriyamanal village. PW12 had recovered copy of four sale deeds, Ex.P6 to P9 standing in the name of the mother of PW2 from PW8-Annadurai, Junior Assistant, Office of the Sub-Registrar, Udayarpalayam. Thereafter, on receipt of chemical analysis report, Ex.P17, PW12 had enquired PW10-V.S.Malliga, Scientific Assistant and recorded her statement. On completion of investigation, PW12 had obtained sanction order, Ex.P1 from PW1, Revenue Divisional Officer, enquired PW1 and recorded her statement and ultimately filed the final report against the appellant/accused for offences punishable under Sections 7 and 13(2) read with section 13(1)(d) of the Prevention of Corruption Act.

xiv) The case was taken on file in Special S.C. No.1 of 2013 by the Chief Judicial Magistrate/Special Judge, Ariyalur. 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.

xv) The prosecution had examined P.Ws.1 to 12, marked Exs.P1 to P29 and produced Mos.1 to 5.

xvi) 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. He had examined two witnesses as DW1 and DW2 and marked five documents as D1 to D6 to contend that he is innocent.

xvii) The Trial Court, on considering the entire materials, found the appellant/accused guilty and imposed the punishments, as referred to above, which is under challenge in the present Criminal Appeal.

4. Submissions of the learned Senior Counsel Mr.N.R.Elango appearing for the appellant are as under:-

i) There are several material contradictions in the evidence of the prosecution witnesses to come to a conclusion that a frivolous trap was laid against the appellant to implicate him in the case and the prosecution has failed to prove the foundational facts to establish a demand and acceptance of bribe by the appellant, however, the Trial Court failed in convicting and sentencing the appellant ignoring such contradictions.

ii) The evidence of PW2, de facto complainant, in its entirety, does not inspire confidence and he is not a trustworthy witness and thus, the conviction relying on his evidence is liable to be set aside.

iii) Admittedly, on 21.8.2012 itself, the appellant had completed his part of the work by recommending the application to the Tahsildar for patta name transfer as evident from Ex.P10 and thereby, there was no occasion for the appellant to make any demand of bribe on 22.8.2012.

iv) When the independent defence witnesses viz., DW1 and DW2 speak about their presence in the office of the appellant at the relevant time and witnessing the appellant dropping the money on the table of the appellant without his consent has not been shaken by the prosecution, the prosecution has miserably failed to prove the acceptance of bribe by the appellant.

v) The sanction order, Ex.P1 for prosecuting the appellant has been granted by PW1-Kasthuri, Revenue Divisional Officer without even summoning and perusing the documents related to the patta name transfer from the Department concerned and thereby there is non application of mind on the part of PW1 in granting such a sanction order, which is fatal to the case of the prosecution.

vi) When the prosecution has failed to prove the demand or its scope and acceptance of bribe money, especially, when the defence has proved its case by preponderance of probability, conviction cannot be on mere recovery and the self-supporting prosecution witnesses and thus, the judgment rendered by the Trial Court without considering these aspects, may be set aside.

5. Mr.S.Santhosh, learned Government Advocate (Criminal Side) would submit that but for some minor material contradictions, the defence could point out, the prosecution has proved its case with cogent materials and it is a clear case where the appellant was caught red handedly and thus, the well reasoned judgment of conviction rendered by the Trial Court need not be interfered and the appeal may be dismissed.

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

7. The allegation against the appellant is that he had demanded illegal gratification from the de facto complainant for effecting patta

name transfer whereas, the case of the defence is that he had not demanded any illegal gratification at all, however, the de facto complainant, having developed some grudges against the appellant on his expressing the non-feasibility of rectification of extent of land in the documents at his end, had lodged the complaint with the Vigilance and Anti Corruption with mala fide intention. It is the further case of the appellant that the prosecution had not not only failed in proving the demand of bribe alleged to have been made by the appellant, but also, failed to prove the recovery aspect as the money was, admittedly, recovered only from the table of the accused.

8. In the above background of the case, what has to be seen is

i) Whether the Trial Court is right in appreciating the evidence?

ii) Whether there is corroboration of prosecution evidence?

iii) Whether the prosecution has proved the demand, acceptance and recovery? and

iv) Whether the Trial Court is right in finding the accused guilty for the offence alleged against him and convicting and him thereunder?

9. The predominant aspect to be considered in trap cases being demand and acceptance of bribe, the evidence of PW2, de facto complainant, who set the law in motion, needs to be analysed with due caution. According to the appellant, PW2 is not a trustworthy person and he had lodged the complaint with the Vigilance and Anti Corruption having developed grudges with the appellant as he scolded the de facto complainant for his repetitive approach for issuance of separate patta for the properties standing in the name of his mother, even when he was apprised of that it was not within the realm of the appellant. To strengthen his stand, he points out Ex.P10 Patta Transfer Application and Recommendation and contends that he had completed the task upto his level by recommending the application and even thereafter, the appellant had teased him to complete the work and thereby, he had to scold the de facto complainant, which has also been spoken by the defence witnesses, DW1 and DW2.

10. As rightly contended by the appellant, Ex.P10 would go to show that the appellant had completed his part of the work on 21.8.2012 itself, but, the case of the prosecution even as spoken by PW2 is that the appellant had demanded the illegal gratification only

on 22.8.2012. Similarly, we could see that the evidence of PW2 is filled with many contradictions. When the typewritten complaint, Ex.P2 submitted by PW2 clearly narrates that when he approached the appellant on 10.8.2012 for patta name transfer in respect of the lands registered in the name of his mother, the appellant had insisted that the application has to be submitted by the mother of the de facto complainant alone and hence, he had issued three blank papers asking the de facto complainant to get signatures of his mother on such papers and accordingly, the de facto complainant had immediately went to his house, obtained signatures of his mother on those papers and returned the same to the appellant, whereas, when he entered into the witness box and gave evidence as PW2, his version was a totally a different one. He deposed that when he approached the appellant on 10.8.2012, he was asked to come back after ten days. He became silent about the blank papers, obtaining of signatures by him from his mother on such papers and returning of the same to the appellant. Skipping all those information, he jumps to 22.8.2012 claiming that on that day, the appellant had demanded illegal gratification, which is very strange to note that when the appellant had completed his task of recommending for patta name transfer on

21.8.2012 itself. However, the action of PW2 in returning such papers with the signatures was elicited by the defence through his cross-examination, where he admits clearly that on 10.8.2012, itself, he had obtained the signatures from his mother on the blank papers and returned the same.

11. In the further cross examination of PW2, he admits that when he asked for separate patta, the appellant had pointed out the mistake with regard to extent of land in the documents and application had to be submitted for rectification of the same, however, in the latter part of his cross-examination, he goes back to the original stand as if only on 22.8.2012, the appellant asked him to get signatures of his mother on the blank papers. Thereafter, peculiarly, PW2-Subhash Chandra Bose admits that "மனுவில் கு.தமயந்தி என்று குறிப்பிடப்பட்டுள்ள கையெழுத்து என்னுடையதுதான்." The de facto complainant claims in the complaint, Ex.P2 to have studied upto Diploma in Electrical and Electronics and thereby he is not a layman to claim ignorance, especially, when he appears to be an ingenious person and has taken a decision to approach the Vigilance and Anti Corruption. However, he has taken such contradictory stands to infer that he is an untrustworthy witness to come to a conclusion with regard to the

demand of bribe by the appellant alleged by the prosecution.

12. Sofar as the acceptance of bribe money by the appellant is concerned, the case of the prosecution witnesses is that the appellant had extended his right hand and obtained the bribe money when it was given by PW2 and after counting the same, he kept it on his table and also kept a lock with key on the currency notes.

13. A careful analysis of the evidence adduced by the prosecution witnesses viz., P.Ws.2, 3 and 11 would reveal certain things. On the relevant date viz., on 24.8.2012, when PW2 and PW3 had entered into the office of the appellant/accused, the appellant had questioned them about the bribe money and on such demand, PW2 had handed over the phenolphthalein smeared currency notes, which were received by the appellant with his right hand, counted the same with both of his hands and thereafter, he kept them on the table and he kept a lock with key on the currency notes. Such an attitude viz., keeping the bribe money, if at all demanded by the appellant, on the table exposing them to everyone, sought to be attributed by the prosecution is totally unreliable, especially, when it is not the case of

the Trap Laying Officer, PW11 that immediately on receipt of pre-arranged signal, he had rushed to the office of the appellant, but, it is his specific case that after PW2 and PW3 came out of the office of the appellant/accused, the trap team had a meeting with PW2 and PW3 and discussed about the happenings inside the office of the appellant and only thereafter, the trap team had entered into the office of the appellant, which would have consumed a reasonable time and thereby, this court feels that it may not be safe to conclude that there was acceptance of bribe money by the appellant on the basis of the prosecution witnesses, rather, it could be inferred that the trap could, if at all, be a stage managed one.

14. Further, the only independent witness for the demand on the date of trap, acceptance and recovery being PW3, his evidence also needs a careful analysis to find out whether his version corroborates with other materials the prosecution projects against the appellant/accused.

15. PW3, during his cross examination, at one point of time, deposed that apart from the appellant, no other officials were there

when they entered into the office of the appellant/accused, however, at a later stage, he admits that at the relevant time, one Muthukumaran belonging to Katchiperumal Village Panchayat, one Kaliyaperumal, DW1 and 5 or 6 persons were available in the office of the appellant. Such contradictory statement of PW3 and the admission made later on being cross examined adds strength to the defence about the presence of DW1 in the office of the appellant at the relevant time witnessing the occurrence.

16. Further, during the cross examination, PW3 was confronted with the questions as to whether the de facto complainant had enquired the appellant as to the status of his application, reply given by the appellant as to the order passed by the Tahsildar on 22.8.2012 itself, the tea break availed by the appellant when PW2 and PW3 were in the office of the appellant at the relevant time and dropping of the bribe money on the table of the appellant by the de facto complainant by PW2 during such time. For such questions, PW3 was either stumbling or giving contradictory statements giving an inference that he is not a trustworthy witness to rely upon for convicting the appellant.

17. It is the stand taken by the defence that on 21.8.2012 itself, the appellant had completed his part of the work and the Tahsildar had passed order for patta name transfer and thereby, there was no occasion for the appellant to make any demand of bribe on 22.8.2012 as alleged by the prosecution. In this regard, it is relevant to note that PW4, who was serving as Deputy Tahsildar (Headquarters) at the relevant point of time, admits in his cross examination that the file relating to the application concerned in the case was placed by the appellant on 21.8.2012 and the same was approved by the Tahsildar on the same day itself. PW6, the Tahsildar, who approved the file had also deposed to that effect and the same has been affirmed by the evidence of PW7, the Computer Operator, who had registered the application in the Computer.

18. Such being the position as revealed by the records, when PW11-Trap Laying Officer was cross-examined on the above aspect, though he admits that the complaint was filed only for the demand of bribe by the appellant for recommending patta name transfer and not for the recommendation already done by him, his evasive reply was

that his enquiry did not reveal the truth that the appellant had already recommended for patta name transfer. Further, when PW11 had faced with a question with regard to the discrepancy that was existing with regard to extent of land in the documents and the consequent difficulty in issuance of separate patta, his reply was that his enquiry did not reveal such things. Even for non-recording of written statement from the appellant/accused, he replied that though he knows such procedure, he had not recorded the same and he had gone a step further to contend that he does not remember that Rule 49 of DVAC Manual contemplates such procedure. Thus, it is clear that without complying with the procedures contemplated in the DVAC Manual and without conducting any preliminary enquiry, PW11-Trap Laying Officer had acted according to his whims and fancies in laying a trap against the appellant/accused.

19. Whileso, PW12, the investigating officer also proceeds to give an evasive reply that he does not know whether recommendation for patta name transfer was made on 21.8.2012 itself, when Ex.P10 proves such fact. He specifically admits that he knows the procedure being followed in the office of the appellant as stipulated by

Government Order to the effect that patta name transfer needs to be applied only on Mondays and it would be considered and recommended by the Village Administrative Officer to the Tahsildar on Fridays, however, he denies that the application was submitted on 13.8.2012 (Monday). He also denies knowledge about the subsequent developments with regard to such application and the recommendation made on such application on 21.8.2012 itself, however, later, he admits that his enquiry revealed that it was made on 21.8.2012. His further admission is that he did not find any statement recorded from the appellant at the time of his arrest and PW11-Trap Laying Officer also did not inform him that he had recorded any such statement.

20. Coming to the genuineness of the trap conducted and strict compliance of procedure, it is seen that when it is the case of the prosecution that the trap team was hiding a little bit away from the office of the appellant after sending PW2 and PW3 inside the office, there is no mention of such hiding place in the rough sketch, Ex.P25 to substantiate such a version. When cross examined on the issue, PW11-Trap Laying Officer, who claims to be an experienced officer, is not specific about mentioning of the same in the rough sketch. PW12,

the investigating officer specifically admits that there is no mentioning of the hiding place in either observation mahazar, Ex.P14 or rough sketch, Ex.P25.

21. All the above aspects would point out that the prosecution has miserably failed to prove both demand and acceptance of bribe by the appellant, which are sine qua non for a trap case and thereby failed to raise a presumption against the appellant.

22. In this regard, it is relevant to note that in the case of ***P.Satyanarana Murthy vs. District Inspector of Police, State of Andhra Pradesh*** (2015) 10 SCC 152, the Apex Court has held as under:-

> *"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, 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 Section 7 or 13 of the Act would not entail his conviction thereunder."

23. In ***V.Sejappa vs. State by Police, Inspector Lokayukta, Chitradurga*** (2016) 12 SCC 150, it has been held by the Apex Court as under:-

"18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and a presumption would arise under Section 20 of the Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of

money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of the Act."

24. 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."

25. In the case on hand, though the prosecution has failed to prove the demand, acceptance and recovery of bribe money, the appellant to the best of his level, has produced two independent witnesses, who claimed that they were very much available at the office of the appellant at the relevant time and produced five documents in support of such claim. Of course, their evidence and the documents do not straightaway point out the innocence on the part of the appellant, however, their version with regard to their presence at the office of the appellant at the relevant time, witnessing the happenings and their specific evidence about presence of some more persons in that place cannot be simply brushed aside especially, when the same have not been shattered by the prosecution. It is moreso,

when the prosecution has not proved the demand and acceptance and the recovery of bribe money was also only from the table of the appellant.

26. Further, as rightly pointed out by the learned Senior Counsel for the appellant, apart from the above contradictions in the case of the prosecution, PW1, the sanctioning authority herself had admitted in her cross examination that she had not summoned for any document relating to the transaction involved in the case on hand viz., patta name transfer beforeever giving the sanction order, Ex.P1.

27. A Division Bench of the Apex Court in ***CBI vs. Ashok Kumar Aggarwal*** (2014) 14 SCC 295), while considering the validity of the sanction granted by the sanctioning authority, having observed that it is not an acrimonious exercise, but a solemn and sacrosanct act, which affords not only protection to the Government servant against frivolous prosecution, but also acts as a weapon to discourage vexatious prosecution and is a safeguard for the innocent, has summarised the legal propositions as under:-

" 16.1. The prosecution must send the entire

relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. ***<u>The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction</u>****.*

16.2. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

16.3. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

16.4. The order of sanction should make it evident that the authority had been aware of all relevant *facts/materials and had applied its mind to all the relevant material.*

*16.5. In every individual case, **<u>the prosecution has to establish and satisfy the court</u>** by leading evidence that the **<u>entire relevant facts had been placed before the sanctioning authority</u>** and the authority had applied its mind on the same and that the sanction had been granted in accordance with law."*

28. In the case on hand, the clear admission of PW1, sanctioning authority is that she had accorded sanction, Ex.P1 on 23.4.2013 on considering the documents, which were submitted to her on 8.4.2013, however, she admits that she had not mentioned in Ex.P1 the she had perused before according sanction. It is her further admission that she is empowered to refuse to accord sanction in the absence of sufficient cause for the same, however, she had not summoned any any document from the officials concerned in the Revenue Department to find out the veracity of the application for patta name transfer. Such a clear admission of PW1 would prove that relevant documents were neither placed by the prosecution before the sanctioning authority, nor summoned and perused by the sanctioning

authority to infer that she had applied her mind beforeever according the sanction. Such failure on the part of the prosecution as well as the sanctioning authority goes to the root of the case.

29. All the above aspects cumulatively point out that the prosecution has not proved its case beyond all doubts, while the appellant/accused, by plausible explanation, has proved his defence by preponderance of probabilities, however, the Trial Court, without properly appreciating the evidence had proceeded to convict the appellant and thereby, this court is of the view that judgment of conviction and sentence rendered by the Trial Court, is liable to be set aside. Accordingly, it is set aside.

30. In the result, the Criminal Appeal stands allowed. The impugned judgment of conviction and sentence is hereby set aside. The appellant is acquitted from the charges levelled against him. The bail bond, if any executed by the Appellant, shall stand cancelled and the fine amount paid, if any, shall be refunded to him.

20.3.2024.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. Chief Judicial Magistrate/
   Special Judge for
   Vigilance and Anti Corruption Cases,
   Ariyalur.

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

3. Public Prosecutor,
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. JUDGMENT IN
Criminal Appeal No.3 of 2017

Delivered on
20.3.2024.