IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2024

CORAM

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

Criminal Appeal No.316 of 2017

A.Manjamuthu .. Appellant/A1

Versus

1.The State
rep. by the Inspector of Police,
Vigilance & Anti Corruption,
Cuddalore.
(Crime No.9 of 2008) .. 1st Respondent/Complainant

2.K.Kolanjinathan(A2) Died
S/o Kaliyan (Private Individual)
No.69, Vazhishtapuram,
Titagudi Taluk,
Cuddalore District. .. 2nd Respondent/A2(deceased)

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment of conviction and sentence in Special Case No.2 of 2010 dated 31.05.2017 by the Special Judge-cum-Chief Judicial Magistrate, Cuddallore.

For Appellant : Mr. C. Prasanna Venkatesh

For Respondents : Mr. S. Santhosh
Government Advocate (Criminal Side)

JUDGMENT

The present Criminal Appeal has been filed by the first accused in Special Case No.2 of 2010, challenging the judgment of conviction and sentence dated 31.05.2017 rendered by the Special Judge-cum-Chief Judicial Magistrate, Cuddalore District.

2. The trial Court, having found the accused guilty of the offence punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, had convicted him and the sentence imposed upon the appellant/accused is as follows:-

Under Section	Sentence
7 of Prevention of Corruption Act, 1988	One year of rigorous imprisonment and a fine of Rs.1000/-, in default, to undergo two months 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 two months simple imprisonment.
The sentences shall run concurrently.	

3. Factual aspects of the prosecution case are as follows:-

3.1.The appellant/1st accused was working as Record Clerk in the office of the Tahsildar, Thittakudi Taluk, Cuddalore District, from 24.07.2007 to 19.12.2008 and he is a public servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988.

3.2.The defacto complainant, viz.,Senthamarai/P.W.2 has owned common properties in Survey Nos.179/2 and 379/3 measuring an extent of 64 cents of Nanja land and in Survey No.635/3 measuring an extent of 1½ cent land jointly with his brothers. P.W.2 had requested his elder brother viz., Manivelu to permit him to construct a house in 1½ cent of land. Since his brother had refused, P.W.2 had filed a suit in O.S. No.16 of 2008 on the file of Sub Court, Viruthachalam. For the said case, since P.W.2 required the Chitta, Adangal, 'A' Register and FMB sketch, he had gone to the Tahsildar office on 05.12.2008 and paid Rs.40/- in two challans (Exs.P3 and Ex.P4) in Indian Bank, Thittakudi Branch and given an application/Ex.P6 for obtaining the said documents to P.W.9, Subramanian, Office Assistant. After receiving the application from P.W.2, P.W.9 affixed the seal and handed it over to P.W.2 and advised him to hand over Ex.P6-application to P.W.4-Deputy Tahsildar. Thereafter, P.W.2 had handed over the said application to P.W.4-Deputy

Tahsildar, who affixed his initial and forwarded the same to B3-Clerk. P.W.5, the Despatch Clerk received the application and entered the same on page 517 under serial No.9248 of Ex.P13-Distribution Register and the said entry was marked as Ex.P16. Later, P.W.2 handed over the application to the first accused, who was working as a Record Clerk and he in turn instructed the defacto complainant to get the documents from the Village Administrative Officer and directed P.W2 to pay a separate fee of Rs.100/- and thereby, P.W.2 had paid Rs.100/- through Ex.P5 challan. After that on 12.12.2008, P.W.2 met P.W6-Village Administrative Officer, Chirupakkam Village, who had informed him that if he encloses the copy of the letter from the Officer at Thittakudi, he will issue the same. On 15.12.2008, P.W.2 again met A1 at 11.00a.m., at Thittakudi Office and A1 had also prepared a letter and obtained the signature of the higher authority and handed over the same to A2 and the said letter was marked as Ex.P15. Thereafter, A1 directed P.W.2 to hand over the letter to VAO and informed him that after receipt of the Adangal, it has to be given back to him and demanded Rs.1500/. When P.W.2 enquired about the amount, A1 replied that the amount was for them and not for the Government. When P.W.2 had expressed his inability to mobilise the demanded amount, A1 compelled and told him that if the demanded amount was paid, the work would be completed earlier. P.W.2 had come out and enquired about A1's name and on the next day, he met VAO and handed over the letter. VAO had informed him that the Adangal register would be sent to the Taluk Office through the Village Assistant and he had also sent the document to the Taluk Office on 19.12.2008.

3.3 As P.W.2 was not willing to pay the bribe amount, on 19.12.2008 at 9.00a.m., he had gone to the Office of the Vigilance and Anti Corruption at Cuddalore and given Ex.P2-complaint to P.W.10-Inspector of Police/Trap Laying Officer. Based on such complaint, P.W.10 registered the case in Crime No.09/2008 under Section 7 of the Prevention of Corruption Act. The printed First Information Report was marked as Ex.P18. Immediately thereafter, P.W10 sent Exs.P20 and P21 requisition letters and summoned one Ganesh PW3-Junior Assistant from the Agricultural Engineering Department, Cuddalore, and Jayashankar, Junior Assistant, Government Higher Secondary School, Poongunam to witness the trap. On their arrival, P.W.10/TLO introduced P.W.3 and Jeyashankar, the official witnesses to P.W.2-defacto complainant and vice versa. Thereafter, he appraised them about the case and handed over Ex.P2-Complaint and Ex.P18-First Information Report to the official witnesses for their perusal and to get acquainted with the facts. P.W.10 had enquired whether P.W.2 had brought the demanded amount.

3.4.Immediately, P.W.2 had handed over the bribe amount of Rs.1,500/- (Rs.500/-x 3) (M.O 1 Series) to P.W.10 and he had noted down the serial numbers of the denomination in Ex.P7-Entrustment Mahazar. P.W.10 then prepared a solution of Sodium Carbonate powder in two glass tumblers with the help of Head Constable-Hyderbag and instructed the Head Constable-Rajamanickam to count the currency notes given by P.W.2 and dip his fingers of both hands in the solution, but there was no change in the colour. Subsequently, the Head Constable viz., Hyderbag smeared Phenolphthalein powder on both sides of the currency notes and gave the same to Head Constable-Rajamanickam and instructed him to count the same and dip his right-hand fingers in the solution, which turned pink colour. P.W.10 also appraised the significance of the test to P.W.2-defacto complainant and the witnesses and gave the phenolphthalein smeared currency notes viz., Rs.1500/- to P.W.2 and instructed him to keep the same in his shirt pocket and instructed P.W.2- defacto complainant and P.W.3-Ganesh, official witness to meet the appellant and enquire about the chitta and other documents and tender the bribe amount only upon demand by the appellant/ accused. P.W.10 had also instructed P.W.2 that immediately after receipt of the bribe amount by the appellant, to give a pre-arranged signal by scratching his head and had also instructed P.W.3-official witness to go to the office of the appellant/accused along with PW.2 and watch the proceeding. P.W.10 had also prepared Ex.P7-Entrustment Mahazar and obtained the signatures of P.W.2 and the official witness.

3.5. On 19.12.2008, at about 4.45p.m., P.W.10 along with his team, including official witnesses and P.W.2 proceeded to the office of the Tahsildar, Thittakudi and dropped P.W.2 and P.W.3-official witness at Thittakudi Bus Stand to meet the appellant. When P.W.2 and P.W.3 met the appellant at about 5.00 p.m., he reiterated his demand for payment of Rs.1500/- and immediately, P.W.2 handed over the bribe amount to the appellant/A1. After receipt of the bribe amount by the appellant at about 5.10p.m., P.W.2 and P.W.3 came out of the office and signalled, as instructed and immediately P.W.10-TLO, the trap team and the other official witness Jayashankar, entered into the office of the appellant/accused. When P.W.10 enquired about the happenings, P.W.2 replied that when he met the appellant, he had reiterated his demand and immediately, he gave the bribe amount of Rs.1,500/- (M.O.1 series) and the appellant also received the same in his right hand and handed it to another person viz., Kolanjinathan(A2), who was sitting near him and after counting, A2 kept the currency notes in his shirt pocket.

3.6.Thereafter, P.W.2 had identified the appellant and another person, who had received the bribe amount from the appellant, viz., Kolanjinathan(A2). P.W.10 had instructed P.W.2 to stay out of the office and introduced himself as the Trap Laying Officer and when he enquired the appellant, he informed about his work and A2-Kolanjinathan, who was assisting him in his office and getting Rs.50/- per day as coolie. Thereafter, PW10 instructed Head Constable Ravi to prepare Sodium Carbonate solution in a glass tumbler and instructed the appellant/ A1 to dip his right hand in the solution, which turned pink and he collected the resultant solution in a bottle and sealed it. Later, P.W.10 instructed the Constable-Babu to prepare Sodium Carbonate solution in a glass tumbler and instructed A2-Kolanjinathan to dip his right hand in the solution, which also turned pink. Again P.W.10 had prepared Sodium Carbonate solution in a glass tumbler and instructed A2-Kolanjinathan to dip his left hand in the solution, which also turned pink. P.W.10 collected the solutions in two separate bottles and all the collected bottles (four in number) were marked as M.O.2 series. When he had enquired about the bribe amount, the accused had also admitted and had produced the bribe amount of Rs.1,500/-(M.O.1 series) to P.W.10 and he had compared the numbers mentioned in the currency notes with that of the numbers found in Ex.P7-Entrustment Mahazar and it corroborated with each other. When the shirt pocket of Kolanjinathan/A2 was subjected to phenolphthalein test, it had also turned pink and the said solution was collected separately, and the said shirt was marked as M.O.3. P.W.10 enquired about the application received from P.W.2 and the appellant had handed over the same to P.W.10, which was marked as Ex.P6. Thereafter, P.W.10 prepared Ex.P12-Observation Mahazar and Ex.P10-rough sketch and arrested both the accused. Later, he conducted the house search after giving Ex.P19-advance intimation. Ex.P11 is the search mahazar. Later, both the accused were sent to remand and handed over the investigation to P.W.11-Sekar, the Inspector of Police.

3.7.P.W.11, Inspector of Police, had taken up the investigation of the case in Crime No.9/2008. On 20.12.008, he examined P.W.2, P.W.3 and Jayashankar, the other official witness and recorded their statements. He then sent the M.O.2 series to the Forensic Science Laboratory for analysis through Court vide Ex.P16-requisition letter. On 26.12.2008, P.W.8, the Scientific Officer, conducted a test and gave a Report Ex.P17 finding that there was presence of phenolphthalein. On 18.02.2009, he had examined P.W.5-Selvi, Despatch Clerk and recorded her statement. On 18.02.2009, he examined P.W.4-Deputy Tahsildar, Thittakudi and recorded her statement. On 20.02.2009, he examined PW.6-Village Administrative Officer, Chirupakkam and recorded his statement. On 11.03.2009, he examined P.W.7-Clerk, P.W.8-Scientific Officer of Forensic Science Department, Chennai, P.W.9-Office Assistant and one Bathragiri and recorded their statements. On 13.03.2009, he examined P.W.10-Trap Laying Officer and recorded his statement. Thereafter, he visited the Taluk Office and seized Ex.P22-copy of the distribution register for the period from 18.11.2008 to 19.12.2008, Ex.P23-Personal register and Ex.P24-daily diary of the Tahsildar viz.,Kaliyaperumal. On 05.12.2008 he seized Ex.P25-"A" Diary and ExP26-Office note and Ex.P27-Patta granted in favour of one Kuzhanthaipillai. Later, P.W.11 was transferred and the investigation was handed over to one Palani, Inspector of Police.

3.8.The Investigating Officer-Palani took up further investigation of the case and examined P.W.1-Ramu, Personal Assistant to the District Collector, who issued the sanction order and filed the Final Report against A1 and A2 in Crime No.9/2008 for the offences under Sections 7, 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988.

3.9. On issuance of summons, the accused appeared before the trial Court and in due compliance with Section 207 Cr.P.C., copies of relevant papers were furnished to the accused.

3.10. After hearing both sides, charges were framed against the first accused for the offences punishable under Sections 7, 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988, and against the second accused for the offences punishable under Sections 12 read with 7 of the Prevention of Corruption Act, 1988. After examination of nine witnesses A2 expired on 21.03.2014 and the charges against him were abated. Since the documents relating to the framing of charges, the plea of the accused and some other documents were missing in the case bundle, the documents were reconstructed by the proceedings of the Chief Judicial Magistrate, Cuddalore in A1/141/2014 on 10.08.2016.

3.11. On the side of the prosecution, P.W.1 to P.W.11 were examined and Exs.P1 to P27 were marked and M.Os.1 to 3 were projected. However, no witness was examined on the side of the defence and no document was marked.

3.12. Based on the incriminating evidence against the appellant/A1, when A1 was questioned under Section 313 Cr.P.C., the accused pleaded not guilty and gave an explanation stating that while he was working as Record Clerk, P.W.2 had met B-3 Clerk viz., Thirunavukarasu and he is the person, who had demanded money from him and that P.W.2 had enquired somebody and they had given the name of B3-Clerk as Manjamuthu and he had been falsely implicated in this case. He had further contended that while P.W.10 had enquired during the trap, the other officer had dropped the money and ran away but the investigating officer took the accused out of the Taluk office. A2 had also filed a written statement in support of his submission.

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

4.1. Mr C. Prasanna Venkatesh, learned counsel for the appellant, after taking this Court through entire evidence on record, would submit that the accused is an innocent person and he has been falsely implicated on account of mistaken identity. He would further submit that even as per Ex.P2-complaint, B3 Clerk is the person, who is said to have demanded bribe from P.W.2-defacto complainant and as PW2 was not aware of the name of B3 Clerk, he had enquired somebody and they only informed him wrongly that the name of B3 clerk is Manjamuthu. Though the alleged demand is stated to be made on 15.12.2008 by B3-clerk at 1100a.m., the evidence of P.W.4, P.W.9, P.W.10 and P.W.11 would clearly point out that the person whom P.W.2 met was B3 Clerk-Thirunavukarasu and not the accused. At the time of trap on seeing the police team, the said B3- clerk and others dropped the cash and ran away from the office and the Investigating Officer took the accused, who was in his seat in the Taluk Office to a guest house. The accused was working as the Record Clerk and not as B3 clerk and he has no access to the public and the B3 Clerk is the person, authorised to take action regarding revenue documents. As per procedure, the application will be received by P.W.4-Deputy Tahsildar and she has to endorse and forward the same to B3 Clerk and only thereafter, the application will be sent to the appellant/A1 for taking copies.

4.2 The learned counsel for the appellant would further submit that a reading of Ex.P2-complaint would show that on 05.12.2008 P.W.2 had met P.W.4-Deputy Tahsildar in the morning and she had directed the defacto complainant to meet B3 Clerk. Even as per Ex.P2-complaint, P.W.2 had stated that only after enquiry he had come to know the name of the clerk as Manjamuthu, which itself proved that the appellant/A1's name was identified wrongly. Though the prosecution case is that A1 received the money, the charge framed against A2 would show that A2 alone received the money and the said fact is proved through the evidence of P.W.10-the Trap Laying Officer, who deposed that while enquiry, P.W.2 and P.W.3 had identified the appellant/A1 as Manjamuthu and the person, who was near him was the person who received the bribe amount. He would further submit that the entire trap proceeding was stage-managed. In the guise of the enquiry, the appellant/A1 was taken to a guest house in Cuddalore and the stage-managed trap was conducted at the guest house and not conducted in the office of the Tahsildar, Thittakudi as alleged by the prosecution and the appellant was fixed in this case.

4.3 He would further submit that it is the specific case of P.W.10-Investigating Officer that B3 Clerk-Thirunavukarasu was not examined and on seeing the police, he and other officers dropped the cash and ran away from the scene of occurrence. The non-examination of B3-Clerk and non-obtaining signatures of the officials, who were present during the trap in Ex.P10-rough sketch, would show that the trap proceedings were not done in the Taluk Office, which can be inferred from the evidence of P.W.3, the official witness, who had deposed that immediately after entering into the office, Accused 1 and 2 were taken to the guest house and P.W.4, Deputy Tahsildar, Thittakudi, has also not spoken about the test being conducted inside the office.

4.4 It is a well-settled principle of law that the proof of demand and acceptance of the same is *a sine qua non* for constituting the offence under Section 7 of the Prevention of Corruption Act, 1988. To sustain the conviction under the Act, demand, recovery and acceptance must be proved beyond all reasonable doubts. The prosecution has to establish through evidence that the bribe was demanded or that the accused voluntarily accepted the amount knowing it to be a bribe and in the absence of proof of demand, the offence under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, cannot be held to be proved.

4.5 He would further submit that the trial Court without there being any proof of demand and recovery had erroneously found the accused guilty. The accused by cross-examining the witnesses and by the statement under Section 313 Cr.P.C., had raised a probable defence that he was not the person, who had demanded the amount and he was implicated on mistaken identity. Further, the entire phenolphthalein test and recovery of money was not conducted in the office of the accused and it was a sham trap proceeding conducted at a guest house which shatters the foundation of the prosecution case and thereby, he would seek for setting aside the order of conviction.

5.Mr.S.Santhosh, learned Government Advocate(Criminal Side), would submit that the appellant/A1 was working as a record Clerk. On 15.12.2008, P.W.2 had approached the Tahsildar to obtain copies of revenue documents and the Tahsildar had directed him to approach B3 clerk. At that time, A1 had demanded illegal gratification for issuance of the certificate and later, on enquiry, he came to know the name of the person, who demanded bribe was Manjamuthu. Since he was not willing to give a bribe, he preferred an oral complaint on 19.12.2008 at about 9.00a.m., and the same was recorded on a computer, based on which, a case was registered and the official witnesses were summoned and subsequently, a trap was laid. During the trap, the accused received the bribe money from P.W.2-defacto complainant. The phenolphthalein test conducted also proved positive and the trial Court, finding that the prosecution had proved the case beyond all reasonable doubts, had rightly convicted the accused and thereby, he would seek for dismissal of the appeal.

6.Mr.C.Prasanna Venkatesh, learned counsel for the appellant/A1, in reply, would submit that though there is a statutory presumption under Section 20 of the Prevention of Corruption Act, 1988 against the accused, before such presumption is raised against the appellant/A1, the prosecution is bound to prove its case(foundational facts) beyond all reasonable doubts. In this case, admittedly the appellant/A1 is a Record Clerk in the office and as per Ex.P2-complaint given by PW2, B3-clerk is the person, who demanded money from him on 15.12.2008, and thereby there is grave doubt about the identity of the person. Further the non obtaining of signatures of the superior officials, who were present at the time of the trap, in Ex.P9-recovery mahazar and the discrepancy in Ex.P10-rough sketch would go to show that the trap proceeding was not conducted at the premises of the Taluk Office as projected by P.W.10-TLO. Though following of Rule 49 of the DVAC Manual may not be mandatory in nature, taking into consideration the cumulative evidence, which creates serious doubts in the prosecution case and in such circumstances, the accused should be acquitted by giving benefit of the doubt.

7.Heard Mr C. Prasanna Venkatesh, learned counsel appearing for the appellant/A1 and Mr S. Santhosh, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

8.This Court gave its careful and anxious consideration to the rival contentions put forth by either side, scanned the entire evidence available on record and also perused the impugned judgment of conviction of the trial court, including the relevant provisions of law.

9.What has to be seen is

(i) Whether the impugned judgment of conviction and sentence imposed on the appellant/accused is based on proper appreciation of evidence regarding demand, acceptance and recovery; and

(ii)Whether the appellant/accused has rebutted the presumption under Section 20 of the Prevention of Corruption Act by raising a probable defence.

10. A perusal of entire evidence would disclose that the case of the prosecution mainly rests on evidence of PW.2-defacto complainant, P.W.3-official shadow witness, P.W.4-Deputy Zonal Tahsildar, P.W.5-Selvi, Despatch clerk, P.W.9-Office Assistant, P.W.10-Trap Laying Officer, who is said to have conducted Trap proceedings and prepared Ex.P7-Entrustment Mahazar and P.W.11-Investigating Officer.

11. Now coming to the evidence of witnesses it is the evidence of P.W.2 -defacto complainant that he is an uneducated person and that he had gone to the office of the Vigilance and Anti Corruption, Cuddalore, on 19.12.2008 and given an oral complaint, based on which, a case in Crime No.9/2008 has been registered. Now coming to the contents of Ex.P2-complaint, it is the case of PW.2 that as he required revenue documents for producing it in a court proceeding, he had gone to the office of the Tahsildar, Thittakudi, on 15.12.008 and had enquired the person. He was directed to apply and as per his instruction, he approached the officer and the officer, after making an endorsement on

the application, directed him to meet a clerk and he handed over the application to the clerk. It is his further case that the said clerk asked him to meet the Village Administrative Officer and get a copy of the Adangal and informed him that he could proceed further only after that and directed him to pay Rs.100/- and receive a copy of 'A' Register and Chitta in the computer section and P.W.2 also did so. PW2 had then approached the Village Administrative Officer at Chirupakkam and in turn, the VAO instructed him that if he gets a letter from the Tahsildar office, he would be able to issue Adangal and thereby, once again on 15.12.2008, P.W.2 met the very same clerk and asked the letter and the said Clerk also handed over the letter to him after obtaining signatures from his superior officers and also directed P.W.2 to hand it over to VAO and directed him to pay Rs.1500/- towards bribe after receipt of the Adangal. In Ex.P2-complaint, he had further contended that when he had enquired the particular Clerk in respect of the payment, the said Clerk told him that the said amount was only for their expenses and if the amount of Rs.1500/- be paid by him, his work will be completed soon. As P.W.2 was not aware of the name of the said clerk, he had enquired someone about his name and later on enquiry, he came to know that the name of the person was Manjamuthu. Since he was not inclined to pay the bribe, he had given a complaint requesting PW10 to take action against the said Manjamuthu/A1.

12.Further, on perusing the evidence of P.W.4-Zonal Deputy Tahsildar P.W.5-Despatch Clerk, and P.W.9-Office Assistant, P.W.4 had stated that on 05.12.2008 when she was in her office, P.W.2 had handed over the application to her and she had made an endorsement and forwarded it to B3-Clerk. B-3 Clerk had received the application and he only made an endorsement in Ex.P13-Distribution Register. Thereafter, B3-Clerk had handed over it to the appellant/Record Clerk, who was in charge of taking copies and the accounts relating to birth and death. The accused was working as the Record Clerk at that time and Ex.P6-application was sent to his seat. P.W.5-Selvi, Despatch Clerk had also deposed that on 05.12.2008, she had received the application of P.W.2 seeking chitta and adangal and made an endorsement in Ex.P13-Distribution Register and entered the register number viz.,9248 at page 517 with date in the application and that page was marked as Ex.P16. Later, she handed over the application to B3-Clerk and she had further deposed that the appellant was working as Record Clerk.

13.Coming to the evidence of P.W.9, who was the office Assistant, he deposed that on 05.12.2008, he had received the petition given by P.W.2 and after affixing seal, he directed him to meet P.W.4. Ex.P6 is the petition which was handed over by P.W.2 to P.W.4. In the cross-examination, P.W.9 had deposed that after endorsement made by P.W.4, P.W.2 had personally handed over the said petition(Ex.P6) to B3 section.

14. To appreciate the contention raised in respect of mistaken identity, this Court cumulatively took into consideration the evidence of P.W.4, P.W.5, P.W.9 and P.W 10 and also the fact that P.W.2 was not aware of the name of the person, who had received the application. It is clear that on 19.12.2008 P.W.2 had met B3 Clerk-Thirunavukarasu, who received the application. A careful analysis of Ex.P.2-complaint discloses that P.W.2 had met the B3-clerk and not any other person and that he was also not aware of the name of B3 Clerk. P.W.2 had deposed that upon enquiry only he was informed that the name of the B3-Clerk was Manjamuthu. The evidence on record would clearly show that P.W.2 had met B3-Clerk and on account of the wrong identity, the name of the accused Manjamuthu has been falsely implicated. It is also the evidence of P.W.10/TLO that on seeing the police party, the B3-Clerk and some

other officers dropped the money and ran away from the office. From the conjoint reading of the evidence of the witnesses on record, it can be inferred that B3 Clerk Thirunavukarasu is the person, who had demanded bribe, and on seeing the police party, he had dropped the money and ran away from the office and based on the wrong information in respect of the name the Accused Manjamuthu, who is the record clerk, had been presumed to be B3 clerk. The alleged demand said to have been made by the appellant/accused on 09.12.2008 itself is therefore doubtful and there is no corroborative evidence to prove the demand.

15. It is well settled that for establishing the commission of an offence punishable under Section 7 of the Prevention of Corruption Act, proof of demand of illegal gratification and acceptance of the same is *sine qua non*. It is also equally well settled that mere recovery by itself cannot *ipso facto* prove the charge unless it has been proved beyond all reasonable doubts that the accused voluntarily accepted the money knowing it to be a bribe. The absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is therefore not enough to constitute such an offence.

16.In this regard reference can be made to the judgments of the Honble Apex 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]***.

17. In the aforesaid judgments of the Apex Court, while considering the case under Sections 7, 13 (1) (d) (i) and (ii) of the Prevention of Corruption Act, 1988 it was reiterated that to substantiate the charge, it has to be proved beyond all reasonable doubts that the accused voluntarily accepted money knowing it to be bribe. The 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 was also held that even the presumption under Section 20 of the Act can be drawn only after demand and acceptance of illegal gratification are proved.

18.The relevant paras of the judgment in ***B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543]*** read as under: *(SCC pp. 58-59)*.

"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration, reference may be made to the decision in C.M. Sharma v.State of A.P.[C.M. Sharma v. State of A.P., (2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babuv.CBI[C.M. Girish Babu v.CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] .

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext.P-11) before LW.9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW.1 and the contents of Ext.P-11 cannot be relied upon tocome to the conclusion that the above material furnishes proof of the demand *allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused.Infactsuch possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7 of the Prevention of Corruption Act. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) 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.*

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, 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. Proof of acceptance of illegal *gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary factson the basis ofwhich the legal presumption under Section 20 can be drawn are wholly absent."*

19. Subsequently in ***P. Sathyanarayana Murthy Vs State of A.P reported in [(2015)10 SCC 152],*** the Apex Court Court took note of its 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 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. Further, on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof, 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)".

20. The decision in the case of ***P.Sathyanarayana Murthy*** *referred supra was followed in* ***N.Sunkanna Vs State of A.P [(2016) 1 SCC 713] and K.Shanthamma Vs. State of Telengana [(2022) 4 SCC 574].***

21. The view in *P. Sathyanarayana Murthy was later doubted and referred to a larger Bench and finally it has been clarified and affirmed in* ***Neeraj Dutta Vs State(NCT of Delhi) in ((2023) 4 SCC 731),*** *wherein the law has been summarised as under:*

88.*What emerges from the aforesaid discussion is* *summarized 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.*

22. The next contention raised by the learned counsel for the appellant is that the entire trap proceeding was a sham and not conducted in the manner as projected by the prosecution in as much as that the accused was immediately taken to a Guest house in Cuddalore and the case of the prosecution, that the phenolphthalein test and preparation of Ex P10-recovery mahazar were at the office of the accused between 5.15 to 7.15p.m is false.

23.Concerning the doubts regarding the preparation of Ex.P9-Recovery Mahazar, while analysing the evidence of P.W.4-Zonal Deputy Tahsildar, P.W.3 the official witness and P.W 5 the Despatch Clerk, P.W4 had deposed that on 19.12.2008 at about 4.30p.m., while she was working in the office, there was a crowd and that the Tahsildar had instructed her to sit in the seat of the Headquarters Deputy Tahsildar and while she was in the office at about 5.00p.m., several persons had come to the office and on enquiry she came to know that they were vigilance officials and that immediately they took Manjamuthu(A1) and Kolanjinathan(A2) from the office. She has not spoken about the trap proceedings being conducted at the office. In this regard, the evidence of P.W.3, the official witness, assumes significance. P.W.3 in his cross-examination had deposed that when the trap team had gone to the Taluk Office, there was a crowd and immediately P.W.10 had taken Manjamuthu(A1) and Kolanjinathan(A2) to a guest house nearby. He had also deposed about the presence of a woman officer in the office. The presence of P.W.4 is spoken by P.W.3 and he had also admitted that they had gone to the guest house in the jeep and he does not know about the distance between the Taluk office and the guest house. P.W.5-Despatch Clerk had deposed that at about 5.00 p.m., on 19.12.2008, the Vigilance Team came to the office and caught hold of Manjamuthu(A1) and Kolanjinathan(A2) and within half-an-hour they left the office. This falsifies the timing shown in Ex.P9-Recovery Mahazar that the proceedings were done between 5.15 p.m. and 7.5p.m. As pointed out by the learned counsel for the appellant, Ex.P9-Seizure Mahazar and Ex.P10-Rough Sketch does not contain the attestation or signature of either the Tahsildar or the Deputy Tahsildar-PW4, who were said to be present at the time of preparation of Ex.P9-Seizure Mahazar as well as during the trap which fortifies the claim of the accused that the alleged phenolphthalein test and recovery were not done at the office of the accused. If the trap and further proceedings were conducted at the office of the Tahsildar, nothing would have prevented the vigilance Team from obtaining the signatures either from the Tahsildar or the Deputy Tahsildar-P.W.4, who were stated to be present in the office during that time. Apart from the above, though it is the case of the prosecution that the trap was conducted at the office of the appellant, Ex.P10-rough sketch does not disclose the positions of the accused officers, bribe giver and other members of the trap team and thereby, creating doubt about the place of the trap. Though compliance with Rule 49 of the DVAC Manual is not mandatory in nature, taking into consideration several infirmities and doubts in the prosecution case, non-compliance with Rule 49 assumes significance. It is necessary to refer to Rule 49 of the DVAC Manual, which reads as under:

> "*A site plan of the scene of occurrence should invariably be prepared showing the relative positions of the Accused Officer, bribe giver, Witnesses, Investigating Officer and other members of the raiding party, besides the place of recovery of the tainted*

money. The site plan should be got attested by members of the trap party, and should form part of the record of investigation."

24.Taking into consideration the cumulative evidence there are several doubts in the prosecution case concerning the identity of the B-3 Clerk, who is said to have demanded the bribe on 15.12.2008 at 11.00a.m., the recovery of tainted money, place of conducting phenolphthalein test, non-examination of the superior officers present in the office, non obtaining their signatures in Ex.P9-Seizure Mahazar and Ex.P10-Rough Sketch create serious doubts in the case of the prosecution. Further, the evidence of P.W.10-TLO is that on seeing the trap team, B3 Clerk-Thirunavukarasu and other officials present in the office ran away after dropping the money and in such circumstances, the non-examination of the actual B3-Clerk Thirunavukkarasu after the incident also creates doubt in the prosecution case. In such circumstances, in the opinion of this Court, there is every possibility that the accused would have been falsely implicated on mistaken identity and later fixed in this case based on a staged managed sham trap proceedings conducted at a guest house thereafter and thereby, the prosecution has failed the prove the foundational facts beyond all reasonable doubts.

25. Further, in respect of the submission regarding the discrepancy in not mentioning the position of the witnesses as required under Rule 49 of the DVAC Manual, no doubt, this court in ***K.P. Kolanthai vs. State ((2019) 3 Mad. LJ (Cri.) 713)***, taking into consideration various discrepancies and based on the doubts regarding the place of trap and place of recovery, found that non-compliance of Rule 49 raised as one of the grounds for acquitting the accused is acceptable and it vitiates the case of the prosecution.

26. As per Section 20 of the Prevention of Corruption Act, 1988, only if it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as the one mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to

be inadequate.

27. It is a well settled law that if the prosecution is successful in proving the recovery of tainted money from the possession of the accused, then a legal presumption arises that the accused had accepted or obtained the illegal gratification. But, this presumption is rebuttable. It is, however, not necessary that the required presumption is to be rebutted by the accused with the same standard of proof as is expected from the Prosecution for recording a finding of conviction against him. The accused can validly rebut the above presumption by preponderance of probabilities and other circumstances appearing in the Prosecution evidence itself.

28. In ***C.M.Girish Babu Vs. CBI (2009 (3) Supreme Court Cases 779)***, the Apex Court has held that the accused can rebut the presumption either through cross examination of the Prosecution witnesses or by adducing reliable evidence. Further, it has been held that the burden of proof on the accused under Section 20 of the Act is not the same as the burden placed on the Prosecution to prove the case beyond reasonable doubt. It has been held that mere recovery of tainted money diversed

from the circumstances, under which it is paid, is not sufficient to convict the accused, when the substantive evidence in the case is not reliable. The mere recovery, by itself, cannot prove the charge of the Prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

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

> "*18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and presumption would arise under Section 20 of Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under*

Section 20 of Act.

19. After referring to Suraj Mal Vs. State (Delhi Admn.), in C.M.Girish Babu V. CBI, it was held as under: (SCC P.784, paragraph)

> *"18. In Suraj Mal Vs. State Delhi Admn), this Court took the view that (at SCC P.727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe."*

30. As already discussed above, the entire circumstances with regard to demand, acceptance and the alleged recovery are highly doubtful and shrouded with suspicion. Based on such dubious evidence and circumstances, it will not be appropriate to sustain the conviction rendered by the trial Court.

31.Given the above infirmities and inherent probabilities, the prosecution, while attempting to raise a presumption under Section 20 of the Prevention of Corruption Act, 1988, has miserably failed to prove the foundational facts regarding the guilt of the accused with cogent evidence, whereas the appellant, though not required, has rebutted such presumption by raising a probable defence of false implication and mistaken identity and thereby, it would be wholly unsafe to sustain the conviction of the appellant on the above said evidence and thereby, he is entitled to be acquitted.

32. In the result, the impugned judgment of conviction and sentence made in Special Case No.2 of 2010 dated 31.05.2017 is hereby set aside and the criminal appeal is allowed. The appellant/A1 is acquitted of the charges levelled against him. The bail bond, if any executed by the appellant/A1, shall stand cancelled and the fine amount, if any paid by him, shall be refunded to him.

19.03.2024.

Index: Yes/No.
Internet: Yes/No.
raa

To

1. The Special Judge-cum-Chief Judicial Magistrate,
   Cuddalore.

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

3. Public Prosecutor,
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

raa

Crl. Appeal No.316 of 2017