IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 6.3.2024

Delivered on : 07.6.2024

CORAM

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

Criminal Appeal No.668 of 2017

S.Anitha (Deceased)
rep. by son
B.Bhoopathy Raja
(amended as per order dated
11.2.2021 in Crl.O.P.No.2528/2021) Appellant

vs.

State rep. by
Inspector of Police,
Special Investigation Cell,
Vigilance and Anti-Corruption,
Chennai. Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. against judgment of conviction in C.C.No.79 of 2011 (Old C.C.No.5/2010) dated 9.10.2017 by the Special Court for the cases under Prevention of Corruption Act, Chennai.

For Appellant : Mr.C.Sivakumar

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

JUDGMENT

Challenging the judgment of conviction and sentence rendered by the Special Judge/Chief Judicial Magistrate Court, Namakkal in Spl.C.C.No.22 of 2012, the accused has come up with the present Criminal Appeal and the same has been pursued by the son of the appellant by name B.Bhoopathy Raja on the death of his mother, by obtaining special leave from the court.

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

Legal provision	***Sentence imposed***
Section 7 of the Prevention of Corruption Act, 1988	6 months rigorous imprisonment and a fine of Rs.500/- in default to pay the fine, to undergo simple imprisonment for a period of one month
Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988	One year rigorous imprisonment and a fine of Rs.500/- in default to pay the fine, to undergo simple imprisonment for a period of one month
The sentences shall run concurrently.	

3. The accused Tmt.S.Anitha was working as Women Sub Inspector of Police, All Women Police Station, Mylapore, Chennai from

22.09.2006 to 23.12.2008 and thereby, she was a public servant u/s.2(c) of Prevention of Corruption Act, 1988.

4. The case of the prosecution, in brief, as narrated by the prosecution witnesses, is as under:-

i) The defacto complainant, PW2 got married to PW10 Sathish Kumar on 1.08.2005 at Vadapalani temple. Their marriage was a love marriage. The defacto complainant was living along with her husband (PW10) in her inlaws house at Rakkiyappa Street, Mylapore.

ii) Whileso, after some time, the defacto complainant went to Delhi to her parents house. On 11.12.2008, she came back from Delhi and came to know that her husband had lodged a complaint under Ex.P.15 against her to the accused, Sub Inspector of Police at Mylapore Police Station. On such complaint, PW2 was called to Police Station for enquiry and a counselling was arranged for both of them on 15.12.2008 and 17.12.2008 at Adayar Police Station. Since PW10 had refused to live with PW2 had lodged a complaint on 18.12.2008, under Ex.P.5 against her husband (PW10) with the Deputy Commissioner of Police (PW11). The said complaint was forwarded to the Assistant Commissioner of Police (PW12), who, in turn, forwarded the same to the accused Sub Inspector of Police, All women Police Station for necessary action.

iii) Alleging that the accused failed to initiate action against the complaint of PW2 and that when PW2 met the accused on 21.12.2008 at 14.30 hrs, to enquire about her complaint, the accused had demanded a sum of Rs.500/- as illegal gratification to take action against her complaint, PW2 had lodged a complaint, against the accused under Ex.P.3 with the Deputy Superintendent of Police, (PW13) Vigilance and Anti Corruption. On receipt of the same, he made an endorsement under Ex.P.20 and forwarded the same to PW15 Inspector of Police, for necessary action.

iv) On receipt of the same, PW15 had conducted a preliminary enquiry and registered a case in Cr.No.14/AC.2008/HQ. u/s. 7 of Prevention of Corruption Act, in FIR under Ex.P.22. Subsequently, PW15 gave requisition for official witnesses to Land Administrative Department, Urban Land Ceiling and Urban Land Tax Department.

v) Thereupon, the official witnesses, Tmt.M.G.Vijayalakshmi (PW3) and one Tr.Amaranathan had reported before PW15 at 11.50 pm. PW15, the Trap Laying Officer had introduced the complainant to the official witnesses and vice versa. He gave the complaint and FIR to the official witnesses for getting acquainted with the facts of the case.

vi) On production of the bribe money of Rs.500/-, viz., five numbers of 100/- rupee currency notes, the serial numbers of the said currency notes were noted down by PW15 in the Entrustment Mahazar, Ex.P4. Thereafter, a mock Phenolphthalein test was conducted by PW15 with his trap team members. Subsequently, PW2 was entrusted with the tainted money with the instruction to handover the same to the accused only on demand and further instructed to give signal by removing and wearing her hair clip on acceptance of the tainted money by the accused. The official witness Tmt.Vijayalakshmi (PW3) was instructed to accompany PW2 and observe the conversation and happenings between PW2 and the accused. Entrustment Mahazar under Ex.P.4 was prepared in the presence of PW2 and PW3 and official witness Tr.Amaranathan.

vii) After the scheme of trap was finalized, PW15 along with PW2, shadow witness Tmt.Vijayalakshmi, PW3 and Tr.Amaranathan and police party proceeded to the office of accused at W-22 All Women Police Station, Mylapore at about 1.15 pm and reached there at about 1.45 pm.

viii) PW15 had dropped PW2 and PW3 a little bit away from the office of the appellant reminding them the instructions already given to them and directed them to meet the appellant and had hidden themselves in a nearby place to wait for the signal from PW2.

ix) At about 2.15 pm, PW2 and PW3 came out of the police station and PW2 had given the pre-arranged signal to the trap team. Thereupon, the trap team had rushed towards them and on enquiry, it came to light that when the defacto complainant (PW2) and Tmt.Vijayalakshmi met the accused, the accused reiterated her earlier demand and accepted the tainted money of Rs.500/- from PW2 with her right hand and kept it in her uniform left side lower shirt pocket. Thereupon, PW15 along with police party and official witnesses proceeded to the spot and PW2 had identified the accused.

x) Subsequently, PW15 had introduced himself and his team to the accused after directing PW2 to be outside. When enquired, the appellant had confessed to have received the bribe. Thereupon, chemical test was carried out on both the hands of the accused and since the same proved positive, the wash was collected, in two separate glass bottles, sealed, labelled and signatures of the witnesses were affixed, which were marked as M.O.2 and M.O.3. When PW15 had enquired the accused about the money, the accused had produced the same (MO1) from her uniform left side lower shirt pocket and since the serial numbers of the said currency notes tallied with the ones entered in the the Entrustment Mahazar, Ex.P.4, the same were recovered. The chemical test was also carried out on the uniform left side lower shirt pocket of the accused and the same proved positive. PW15 had collected the said solution also in a separate bottle, MO4 and the uniform shirt, M.O.5 was also seized. When PW15 had enquired about the complaint of PW2, the accused had produced the complaint under Ex.P.5, CSR 169 in respect of Ex.P.15 Complaint lodged by PW10 against PW2, Opinion of Additional Public Prosecutor under Ex.P.21 and the same was recovered by PW15. PW15 had prepared Seizure Mahazar under Ex.P.6 and Rough Sketch under Ex.P.23.

xi) After prior intimation under Ex.P.24 to the court, a search at the house of the accused was conducted by PW15 in the presence of the official witnesses and the accused. Having found no incriminating materials in the said search, a Search Report under Ex.P.25 was prepared. Subsequently, PW15 had sent the accused to judicial custody along with the alteration report under Ex.P.26. The tainted money Rs.500/- (MO1) and solutions and the Uniform shirt of the accused (MO2, MO3, MO4 and MO5) were sent to court under form 95. Subsequently, PW15 had handed over the case records to the Inspector of Police, (PW16) for further investigation.

xii) On receipt of the case records, PW16, Inspector of Police gave a letter to send the material objects for chemical analysis. He has recorded the statements of Aparna (PW2), official witnesses Tmt.Vijayalakshmi (PW3) Tr.Amaranathan Tr.Ramachandrasekaran (PW14), the Trap Laying Officer Tr.Vijay Anand (PW15), Tr.Subramaniyan (PW6) and he has received the Note book of the accused, xerox copy of CSR under Ex.P.8 of All Women Police Station, Mylapore, xerox copy of General Diary under Ex.P.11 and certified copy of Current Sheet and the xerox copy of order of deputing Tr.Subramaniyan as Inspector to All Women Police station. He has recorded the statement of Head Constable Tr.Srinivasan (PW8). On 24.03.2009, PW16 had recorded the statement of Tr.Sathiskumar (PW10), received the chemical analysis report and recorded the statement of Scientific Assistant Tmt.Devaki (PW7) and recorded the statement of Tr.Mouriya (PW11) Deputy Commissioner of Police Tr.Issac Paulraj (PW12) Assistant Commissioner of Police and Sub

Inspector of Police Tr.Pushparaj (PW9) and Mary Florance. He had received the certified copy of Page No.250 and 251 of Current Register from the office of the Deputy Commissioner of Police and certified copy of Page No.201 and 202 of Current Register from the office of the Assistant Commissioner of Police. He had recorded the statement of Accused. He had sent the report to the Directorate of Vigilance and Anti Corruption and obtained the Sanction Order under Ex.P.1 through Directorate of Vigilance and Anti Corruption and recorded the statement of PW1, who accorded Sanction against the accused and filed the charge sheet against the accused u/s. 7, 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988.

5. The case was taken on file on 04.03.2010 and made over to IV Additional Special Court. On issuance of summons the accused appeared before the court and filed memo of appearance. After furnishing copies to the accused in compliance with Section 207 Cr.P.C, charges framed u/s.7, 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988. The accused denied the charges and pleaded not guilty. Prosecution witnesses PW1 to PW16 were examined and Ex.P.1 to Ex.P.19 and M.O.1 to M.O.5 were marked.

6. On the conclusion of the prosecution evidence, the accused was examined u/s.313 of Cr.P.C. pertaining to the incriminating evidence tendered against her by the prosecution witnesses and the accused denied the same as false case. Exs.D1 to D3 were marked and DW1 was examined on the defence side.

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

8. The submissions of the learned counsel Mr.C.Sivakumar, appearing for the appellant are as under:-

i) The Trial Court had erred in wrongly appreciating the evidence to hold against the appellant.

ii) The allegation levelled against the appellant being one for not having taken effective steps and demand of bribe for taking action on the complaint, Ex.P5 dated 17.12.2008 lodged by the de facto complainant against her husband, PW10 seeking restoration of her conjugal rights, the Trial Court has erred in convicting the appellant without properly appreciating the fact that the appellant could not proceed against PW10 in view of the interim order, Ex.D1 dated 22.12.2008 passed by the Principal Sessions Judge, Chennai in the Application filed by PW10, the husband of the de facto complainant seeking anticipatory bail.

iii) While the evidence of DW1 would prove that without expecting any illegal gratification, the appelalnt had discharged her official duty on Ex.P5 complaint by sending DW1 to search PW10 and the in laws of the de facto complainant, the Trial Court has erred in not properly appreciating the evidence of DW1 before convicting the appellant.

iv) When the demand is alleged to have been made by the appellant on 21.12.2008, the complaint, Ex.P3 has been lodged on 23.12.2008 after a delay of two days without proper explanation for the same, however, the Trial Court has ignored such delay in lodging the complaint without considering the same in favour of the appellant.

v) The de facto complainant, being a Schizophrenia patient as admitted by her husband, PW10 during his cross examination and as evident from Ex.D2, medical prescription, the Trial Court has ignored the probability of the de facto complainant developing a grudge against the appellant for not proceeding against her husband and motive to lodge a false complaint against the appellant, especially, when the father of the de facto complainant is a Private Secretary in Central Secretariat and an influenced person.

vi) When there being such material contradictions, PW1, sanctioning authority has accorded sanction, Ex.P1 without applying his mind and considering the relevant documents and hence, the same is an illegal one.

vii) Without considering the above aspects, especially, the rebuttal of presumption made by the appellant by preponderance of probability, the Trial Court has erred in convicting the appellant and thereby, the judgment of conviction is liable to be set aside and the appellant is entitled to be acquitted of the charges.

9. Per contra, Mr.S.Santhosh, learned Government Advocate (Criminal Side) would submit that the prosecution has proved its case with the cogent evidence of the prosecution witnesses with regard to demand and acceptance of bribe by the appellant from the de facto complainant and the recovery thereof, except some minor

contradictions which are no so vital to affect the case of the prosecution and thereby seeks for dismissal of the Criminal Appeal.

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

11. The core allegation levelled against the appellant vide the complaint, Ex.P3 dated 23.12.2008 is that she, being Sub Inspector of Police, All Women Police Station, Mylapore, Chennai had demanded Rs.500/- from the de facto complainant-PW2 as illegal gratification for taking action on her complaint, Ex.P5 dated 17.12.2008 lodged against her husband.

12. On a traverse for the genesis of the case of the prosecution, it is seen that some matrimonial disputes exist between the de facto complainant, PW2 and her husband PW10 despite the fact that it was a love marriage as spoken by both PW2 and PW10. The marriage between PW2 and PW10 having taken place on 1.8.2005, it appears that PW2 had to be away from her matrimonial home and stay with her parents at Delhi for some time due to the matrimonial disputes

and she came back to her matrimonial home on 11.12.2008. On the same day, a complaint, Ex.P15 had been lodged by her husband, PW10 with the Commissioner of Police Mylapore alleging that his wife viz., PW2 threatens him on one side to lodge a false complaint of dowry harassment against himself and his family members or in the alternative, would commit suicide by leaving a suicide note pointing out them as the cause for her death and the said complaint has also been dealt with only by the appellant.

13. Considering the nature of dispute between them, PW2 and PW10 were sent for counselling at Adyar Police Station on 15.12.2008 and 17.12.2008. It appears that even during the counselling, PW10 had refused to live with PW2. Whileso, PW2 had chosen to lodge a complaint dated 17.12.2008, Ex.P5 with the Deputy Commissioner of Police, Mylapore on 18.12.2008 seeking indulgence of the police in restoring her conjugal rights, which was also referred to the appellant for initiating action.

14. The background of the case being so, it is the specific case of PW2 that thereafter, PW2 had met the appellant on four occasion and

ultimately on 21.12.2008 at 2.30 pm, when she met the appellant, the appellant had demanded Rs.500/- as illegal gratification for initiating action on her complaint, Ex.P5 and thereupon, PW2 was constrained to lodge the complaint, Ex.P3 dated 23.12.2008 with the Vigilance and Anti Corruption.

15. Such being the case of the prosecution, the defence of the appellant is that the appellant had already taken effective steps to settle the matrimonial dispute between PW2 and PW10 by sending them for counselling on two occasion viz., on 15.12.2008 and 17.12.2008 on receipt of the complaint, Ex.P15 dated 11.12.2008 lodged by PW10-husband of PW2 and also initiated action for securing PW10 on receipt of the complaint, Ex.P5 on 18.12.2008 as spoken by DW1.

16. A perusal of the evidence adduced by DW1 shows that at the relevant point of time, she was serving as Grade I Constable at All Women Police Station Mylapore and she had categorically spoken in her evidence that on the basis of f the complaint dated 18.12.2008 lodged by the de fact complainant Aparna, she went alongwith her in

search of one Satheeshkumar, husband of the said Aparna at his house and having not found him there, she went alongwith her to the office of the said Satheeshkumar and since he was not available there also, on the same, day, she went alongwith Aparna to his father's house and even there, they could not find Satheeshkumar. DW1 has been very specific that she went in search of Satheeshkumar only on the instructions of the appellant and since she was not aware of the exact location, only Aparna had taken her to all such places. It is her further evidence that she had been in the Principal Sessions Court, Chennai on 22.12.2008, when the said court had referred the matter for mediation directing the de facto complainant and PW10-Satheeshkumar to appear before the Mediation Centre on 30.12.2008 and she had conveyed such information to the appellant. Ex.D1 copy of the order dated 22.12.2008 passed by the Principal Sessions Judge, Chennai adds strength to the version of DW1. The cogent evidence of DW1 has not been shattered by the prosecution during her cross examiantion except a vague suggestion that she, being a subordinate to the appellant, speaks in her support.

17. While Ex.D1 the order dated 22.12.2008 passed the Principal Sessions Court shows that the said court had also shown some indulgence in the matter by referring the matter to Mediation Centre and directing the parties to appear before the Mediation Centre on 30.12.2008, a perusal of the records shows that on the same day viz., on 22.12.2008, the appellant had obtained opinion, Ex.P21 from PW14, the Additional Public Prosecutor as to whether she had to proceed on the counter complaint, Ex.P5 dated 17.12.2008 lodged by PW2. However, PW2, had foisted a false case against the appellant by lodging a complaint, Ex.P3 on 23.12.2008 alleging that the appellant had demanded a bribe for initiating action on her complaint, Ex.P5.

18. Though the extreme allegations made in the complaint, Ex.P5 lodged by PW2 against her husband PW10 and her inlaws being one attracting the offence under Section 498A, ultimately, the relief sought for in such a complaint seeking assistance of the police for reuniting them appears to be a totally contradictory one and it reflects the unstable mind of the appellant in loitering for a decision. Whileso, the move of the appellant in obtaining opinion from the Additional Public Prosecutor itself speaks more about the ruckus that could have

taken place at the instance of PW2 and the deliberation on the part of the appellant. It is also the case of the appellant that PW2 appears to be with unsound mind and suffering from Schizophrenia as evident from Ex.D2, medical prescription and having got irritated and misunderstood the situation, had lodged a false complaint hastily against the appellant.

19. Therefore, what is to be seen in the present appeal is whether the prosecution has proved its case against the appellant beyond all reasonable doubts by raising a presumption against him under Section 20 of the Prevention of Corruption Act or the appellant has rebutted the presumption by preponderance of probability.

20. An analysis of the facts and circumstances of the case would disclose the following peculiarities.

i) The root cause for the present complaint against the appellant happens to be a demand alleged to have been made by the appellant for taking action on a complaint lodged by the de facto complainant against her husband.

ii) The matrimonial dispute between the de fact complainant and her husband had already been addressed by the appellant by sending them for counselling immediately on receipt of the complaint from the husband on 11.12.2008 contending that he had been threatened by his wife to commit suicide.

iii) While the husband of the de facto complainant was interested in separation from her, the de facto complainant claimed assistance of police for restoration of her conjugal rights despite alleging cruelty on the part of her husband and her inlaws.

iv) Strangely, the husband of the de facto complainant has been examined as a prosecution witness viz., as PW10, through whose cross examination, the appellant had sought to establish the malice on the part of the de facto complainant due to her unsound mind and illness viz., Schizophrenia.

21. Since the appellant has attributed malice on the part of the de facto complainant, this court feels that it is incumbent on the part of this Court to consider the overall circumstances leading to the initiation or registration of the case itself to rule out the allegation of the appellant.

22. It is a settled law that the demand is *sine qua non* to constitute an offence u/s. 7 of Prevention of Corruption Act and it is for the prosecution to establish, the three main ingredients viz., demand, acceptance and recovery. With regard to demand of bribe by the appellant, especially, the pre-trap demand, the evidence adduced by PW2 assumes significance.

23. Of course, a perusal of the evidence adduced by PW2 would disclose that she had clearly spoken to the effect that on 21.12.2008, at about 2.30 pm, when she met the appellant, the first demand of bribe was made by the appellant. However, such time has not been mentioned by PW2 in her complaint, Ex.P3 though the said complaint was lodged only on 23.12.2008 after an unexplained delay of two days. Of course, complaint or FIR is not an encyclopedia. However, it is peculiar to note that two years later from such occurrence viz., in the year 2010, when she was examined in court, she remembers and adds the time when she met the appellant when the first demand was made, which throws some light on the suspicion surrounding the version of PW2 with regard to the pre-trap demand, especially, when

there appears to be no mentioning of such time even in a single document produced by the prosecution. An analysis of the evidence of PW1 would establish that PW1 is not only an interested witness but also, an unreliable one. The more clarity with regard to the time of first demand in the evidence of PW2 without there being any other evidence, raises more doubt as to whether it is a later development by the prosecution to suit their convenience.

24. When the prosecution fails to prove the pre-trap demand alleged by PW2, a strong doubt arises as to whether PW2 is a trustworthy witness and whether reliance can be placed on her evidence with regard to the demand of bribe by the appellant even on the date of trap. A perusal of the materials would disclose that the complaint, Ex.P15 filed by PW10, husband of PW2 being the first one in time viz., on 11.12.2008, the appellant had already arranged for counselling for both of them and accordingly, they attended the counselling at Adyar Police Station on two occasion viz., on 15.12.2008 and 17.12.2008. Whileso, PW2 had ventured to prepare a counter complaint on the very same day viz., 17.12.2008 and lodged the same on the next day with a lot of allegations against her husband and her

in-laws, however, ultimately seeking assistance of the police for her reunion with PW10.

25. A perusal of the complaint, Ex.P5 lodged by PW2 would disclose that she had chosen to lodge a very lengthy complaint with many redundant information and throwing allegations against her husband and her in- laws that she had been humiliated by them. In fact, she had narrated the tussle that developed between herself and her co-tenant when she was living away from the matrimonial home. At para 4 of such complaint, she had expressed that she had tried to convey her feelings to her husband, but, all efforts fell on deaf ears and thereby out of anger, she even tried to commit suicide. Such a confession made by her in the complaint lodged by herself coincides and correlates with the cause for the complaint lodged by PW10, her husband to the effect that she had threatened him to commit suicide leaving a suicide note implicating him and her in-laws. These aspects would divulge the persona of PW2, especially coupled with the medical evidence, viz., Ex.D2 medical prescription marked by the appellant while cross-examining PW10-husband of PW2 to the effect that PW2 was suffering from Schizophrenia even at the age of 16 and due to her

disorder, she used to get anger when her wishes are not fulfilled and she was in the habit of taking revenge. Therefore, it may not be appropriate to rely on the evidence of PW2 to come to a conclusion that the appellant had demanded bribe.

26. The other witness available to speak about the demand viz., demand at the time of trap is PW3, one of the official witnesses. A perusal of the evidence adduced by PW3 would show that though she had spoken in her chief examination about all the aspects, she has spoken the same only in general without specifically mentioning even the time of her visit at the office of the Vigilance and Anti Corruption. Though she claims to have gone to the said office only on a written direction from her office, she had not produced the same in court in order to verify the veracity of her claim to have been present with the trap team. Though she had been specific in mentioning the time of every event after the trap, viz.s, the time of arrest of the appellant, time of preparation of rough sketch, time of search conducted in the house of the appellant, she had been very cautious in not mentioning the time when she was directed by her employer, the time when she reported before the Vigilance and Anti Corruption office during her

chief examination. She had been silent about the time of preparation of observation mahazar and the time when the trap team, inclusive of herself, departed for laying the trap. She has just spoken every aspect only in general. Only during her cross examination, the appellant could elicit from her that she was directed by her employer at about 11.00 am to go to the Vigilance and Anti Corruption office. Though she had revealed that a letter was issued in that regard, she had not produced the same in the court. When she speaks about the post-trap proceedings by specifically mentioning the time, which is very much available in the prosecution documents, she appears to be very cautious in suppressing the time in respect of pre-trap proceedings, especially relating to herself, which creates strong suspicion about her presence with the trap team itself and to suspect as to whether she could be a stock witness for the prosecution and thereby, no reliance can be placed on her evidence with regard to the demand and acceptance of bribe by the appellant.

27. An analysis of the evidence adduced by P.Ws.2 and 3, who could speak about the pre-trap demand, demand on the date of trap and the trap proceedings, they appear to be unreliable witnesses.

When the de facto complainant appears to be interested/motivated and PW3, the official witness appears to be a stock witness, recovery of money alleged by the prosecution assumes no significance as there is a probability of a stage managed trap.

28. The appellant has proved her case by examining DW1, her subordinate, to establish that she had taken some steps to secure PW10, husband of PW2 on the complaint, Ex.P5 lodged by PW2. Further, it is relevant to note that the complaint, Ex.P5 dated 17.12.2008, lodged on 18.12.2008 was just in between two events, one being the counselling arranged for them by the appellant on 15.12.2008 and 17.12.2008 and the other being the order, Ex.D1 dated 22.12.2008 passed by the Principal Sessions Judge, Madras referring the matter for mediation and directing both PW2 and PW10 to appear before the Mediation Centre on 30.12.2008. It is also relevant note that the parties had attended the counselling at Adyar Police Station on both the dates and PW10, husband of PW2 had given a letter, Ex.P18 to the Assistant Commissioner of Police, Mylapore undertaking to report before him after some deliberation and express his idea of living with PW2 after a period of three months. Such being

the position between the parties viz., PW2 and PW10, the complaint, Ex.P5 dated 17.12.2008 lodged by PW2 appears to be a hasty move on the part of PW2 and the subsequent complaint, Ex.P3 dated 23.12.2008 lodged against the appellant, the investigating officer of her complaint may probably be due to the the outcome of her anger, unsound state of mind and frustration on failure to achieve her goal at once in order to take revenge against the appellant.

29. When the complaint, Ex.P5 dated 17.12.2008 had lodged by PW2 after attending the mediation talks on 15.12.2008 and 17.12.2008, it had been confronted by PW10, husband of PW2 by filing an application seeking anticipatory bail expecting harassment at her instance and the Principal Sessions Court, Chennai having considered the issue between the parties and referred the matter for mediation, the remedy for PW2 lies somewhere else and not by way of pressurizing for any criminal proceedings on the police complaint lodged by her against her husband. Still, strangely, PW2 had pursued the matter on the basis of the said police complaint and ventured to lodge a complaint, Ex.P3 against the appellant, the inviestigating officer herself on 23.12.2008 alleging that the appellant had

demanded a bribe of Rs.500/- on 21.12.2008 itself for taking action on such a frozen complaint, which is beyond imagination and normal prudence, when especially, she had claimed in her complaint, Ex.P5 itself that her father happens to be a well-placed Officer in Central Secretariat, rather, the act of PW2, the de facto complainant in preferring such a false complaint against the investigating officer viz., the appellant appears to be an attempt to make a fuss. Further, admittedly, the father of PW2/de facto complainant being an influenced person, the contention of the appellant with regard to exertion of pressure by the de facto complainant for registering a redundant counter complaint cannot be simply brushed aside.

30. Further, though the prosecution is entitled to the benefit of presumption under Section 20 of the Prevention of Corruption Act, before invoking the same, the prosecution is bound to prove the foundational facts. In this case, the prosecution has failed to prove the demand by the appellant beyond all reasonable doubts. The Apex Court, in plethora of judgments, had held that proof of demand is a sine qua non for offenes under Section 7 and 13 of the Prevention of Corruption Act.

31. 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."*

32. 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."

33. 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."

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

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

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

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

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

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

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

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

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

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

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

35. Of course, it is well settled law that if the prosecution is successful in proving the recovery of tainted money from the prosecution of the accused, then a legal presumption arises that the accused had accepted or obtained the illegal gratification. But, this presumptioin 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 of 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.

36. The settled principles with regard to proving of offence under Sections 7 and 13 of the Prevention of Corruption Act being so, it is seen that the appellant has proved her case by examining DW1 to the effect that she had genuinely taken some steps on the complaint, Ex.P5 lodged by the de facto complainant against her husband on a

matrimonial dispute and that the subject matter was seized of by the Principal Sessions Court, Chennai by passing an interim direction referring the matter for mediation and thereby, there was no scope for taking any immediate action against the husband of the de facto complainant and equally, there was no scope for any demand of illegal gratification under the guise of taking immediate action against him. However, the Trial Court, without considering the overall circumstances behind the registration of the case and the suspicious circumstances surrounding the case of the prosecution, has erred in convicting the appellant, which, in the opinion of this court, certainly, warrants interfrence.

37. In the result, the Criminal Appeal is allowed. The conviction and sentence rendered by the Special Judge for the cases under Prevention of Corruption Act, Chennai in C.C.No.79 of 2011 (Old C.C.No.5/2010) is set aside. The appellant, who died pending the Appeal, stands acquitted of all the charges. Fine amout, if any paid by the appellant, shall be refunded to the legal heir of the appellant.

07.6.2024.

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

ssk.

To

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

2. Inspector of Police,
   Special Investigation Cell,
   Vigilance and Anti-Corruption,
   Chennai.

3. Public Prosecutor,
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. JUDGMENT IN
Criminal Appeal No.668 of 2017

Delivered on
07.6.2024.