IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 28.2.2024

CORAM

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

Criminal Appeal No.807 of 2019

B.Senthil Kumar ... Appellant

vs.

State rep. by its
Deputy Superintendent of Police,
Vigilance and Anti-Corruption Department,
Chennai City-4,
Alandur. ... Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. against judgment of conviction in C.C.No.11 of 2012 dated 14.11.2019 by the Special Judge for the Cases under Prevention of Corruption Act, Chennai.

For Appellant : Mr.M.Santhanaraman

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

JUDGMENT

Challenging the judgment of conviction and sentence rendered by the Special Judge for the Cases under Prevention of Corruption Act, Chennai in C.C.No.11 of 2012, the first accused has come up with the present Criminal Appeal.

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

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

3. At the relevant point of time viz., from 6.7.2009 to 24.3.2010, the appellant was serving as Inspector of Police, Crime Branch, Chennai Police, Egmore, Chennai and thereby he was a Public Servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988. The allegation levelled against the appellant is that he had demanded various amounts from the de facto complainant V.Selvam on various dates from 4.12.2009 to 22.12.2009 and received the same as illegal gratification for registering a case on the basis of his complaint and proceed on the same and thereby, he was liable to be punished for the offences under Sections 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. A2, Tr.Brahmanandam, who

stands discharged by the Trial Court, is the father-in-law of A1 and he was alleged to have abetted A1 in committing the offence punishable under Section 12 of the Prevention of Corruption Act.

4. The case of the prosecution elicited from the evidence of the prosecution witnesses is as under:-

i) PW2, Tr.Selvam was doing Textile Export Business in the name and style of M/s.Sri Ramana Garments. He had exported Textile goods worth around 1 crore 50 Lakhs to a company called as Serenity Global Incorporation in Dubai, owned by one Raman Moorthy. Though PW2 had exported the garments to the said person, he has made only part payments and the balance amount was not paid by him in spite of several demands made by PW2. Hence, PW2 had given Ex.P2, complaint before the Commissioner of the Police, Chennai against the said Raman Moorthy and his wife R.Sujatha.

ii) The said complaint was forwarded to the Deputy Commissioner of Police, who, in turn, forwarded the same to the accused officer for investigation. The accused officer, after receipt of the said complaint, is said to have demanded a sum of Rs.1,00,000/- from PW2 for registering a case. As PW2 was not having that much amount demanded by the accused officer, while sparing a sum of

Rs.12,000/-, he had received a sum of Rs.15,000/- from his friend Rangarajan, PW3, a sum of Rs.23,000/- from one Ganesh and thereby total a sum of Rs.50,000/- was made ready and the said amount was given to the accused officer.

iii) In the course of Investigation, the accused officer had arrested the wife of the said Raman Moorthy viz., Kalpana Iyer @ Sujatha, PW21 and had taken her to judicial custody. For investigation, the accused officer had gone to Mumbai at the cost of PW2. However, the accused officer had not conducted the investigation fruitfully. Furthermore, PW2 had a discussion with the brother of PW21 Kalpana Iyer viz., Raymond Kumar. In the course of such mutual talks, it had been agreed by the said Kalpana Iyer that they would settle the amount to PW2 by executing the sale deed in favour of PW2 in respect of the Velachery property that belongs to them.

iv) Whileso, on 22.12.2009, the accused officer has requested PW2 to come to the CCB office and in the said office, he had demanded a sum of Rs.30,00,000/- as bribe. When the said fact was questioned by PW2, the accused officer has justified his demand stating that as PW2 was going to receive 1.5 crores, he could part away a sum of Rs.30,00,000/- to him.

v) As PW2 had already entered settlement with Kalpana Iyer PW21, PW2 has endorsed no objection before the Hon'ble XI Magistrate Court for releasing the said Kalpana Iyer on bail. After release on bail on 23.12.2009, PW21 had executed Ex.P3, Indemnity Bond, Ex.P4, Memorandum of understanding, Ex.P5 unregistered sale deed in favor of PW2 with regard to the Velachery property. Furthermore, the said person had handed over the possession of the property in favour of PW2. As the said property was mortgaged with the Bank, the registration of the said property could not take place though PW2 and PW21 had settled the dispute amicably with themselves. But, the accused officer had been continuously demanding a sum of Rs.30,00,000/- from PW2.

vi) Furthermore, when PW2 had stated his inability to pay the said amount in cash, the accused officer had demanded that the said amount shall be paid by way of cheque. Hence, PW2 had given a cheque bearing No.577106 Ex.P6, which belongs to his friend R.Rangarajan, PW3 on the instruction of the accused Officer in favour of the father-in-law of the accused officer viz., Bramanandam.

vii) Further, on instruction of the accused officer, a further sum of Rs.5,00,000/- was also transferred in the account of the father-in-law of the accused viz., Bramanandam through Ex.P18 by way of

RTGS from PW2's Company by name M/s.Ramana Fitness Center. In spite of receipt of the said amount, the accused officer has prevented the said Kalpana Iyer, PW21 from executing the sale deed and further demanded the balance amount from PW2. Hence, PW2 has preferred Ex.P8, complaint before the Commissioner of Police.

viii) The said complaint was forwarded by the Commissioner of Police to PW17, Mohammed Shakkel Akthar, Additional Commissioner of Police to inquire and submit his report with regard to Ex.P8, complaint. PW17 had furnished Ex.P25, report to the Commissioner of Police stating that the allegation stated in Ex.P8, complaint is true and further recommended the suspension of the accused officer.

ix) Based on the said recommendation, suspension order of the accused officer, Ex.P26, had been passed. Further, the report of PW17 in Ex.P25 was forwarded to the Vigilance and Anti-Corruption to initiate necessary action.

x) Based on the said report, Ex.P29, FIR was registered against the accused officer in FIR No.4/2010, Dated 01.04.2010 by PW29, K.Alibasha. After Registering the case, PW29 had commenced the investigation and in order to make a search of the house of the accused officer, he had requested the witnesses from the Family Welfare Department viz., PW4, Tr.S.Giridharan and PW5, Tr.M.Kalimuthu to be present and in the presence of the said witness, the accused officer, his wife PW22, Tmt.Aruna Senthil the search was conducted and the Search Mahazar and Inventory Mahazar were filed in Ex P9 and Ex P10.

xi) Further, PW29 had requested Mr.Rajenderan the Deputy Superintendent of Police to conduct a search in the house of father-in-law of the accused officer and the Seizure Mahazar and Inventory Mahazar were filed in Ex.P.11 and Ex P12. Thereafter, PW29 had examined PW2, Selvam and recorded his statement.

xii) On 03.04.2010, PW29 had examined PW4, Tr.S.Giridharan, PW5, M.Kalimuthu, PW6, A.R.Muralidaran, PW7 A.Shanmugam and PW22, Tmt.Aruna Senthil. Thereafter, PW29 had taken the wife of the accused officer PW22 to bank, where she was having locker, opened the locker and weighed the gold jewelery available in the locker by the Appraiser Shanmugam, PW7 and prepared a mahazar in Ex.P13. With regard to the search made, PW29 had sent a report in Ex.P31 and P32 to the Hon'ble Court. Further, PW29 had collected the bank statement of the accused officer, his wife Aruna Senthil PW22 in Ex.P14 and the accused officer in Ex.P16 and father-in-law of the accused in Ex.P15 and also the cheque issued by PW3 in favour of Bramanandam for Rs.5,00,000/- in Ex.P17 and the RTGS statement in Ex.P18. Further, with regard to the said fact, he recorded the statement of PW6 A.R.Muralidharan, Assistant Manager of Syndicate Bank. PW29 had requested to furnish the bank details of PW3, Rangarajan from IDBI Bank where he was holding the account. The statement of bank account of PW3, Rangarajan was furnished in Ex.P19 and the Manager of the said bank viz., M.Visveswaran was examined as PW8. Similarly, PW29 had requested the HDFC Bank to furnish the statement of account of Sri Ramana Fitness Centre and the same was also furnished by PW9, the Bank Manager in Ex.P20.

xiii) With the complaint furnished by the PW2, he had annexed a CD containing the voice recording of the accused officer and PW3. With regard to the said aspect, PW29 had seized the cell phone belonging to PW3 and the memory card in the presence of PW18, E.Mani and one M.Ravi in Ex.P27 the seizure mahazar.

xiv) In order to verify the contents in the memory card, Phone and the conversation in the CD, which were annexed with the complaint, the same were forwarded to Forensic Department for analysis and obtained the Forensic Report in Ex.P35 and Ex.P36 and examined PW30 and PW31 the Forensic Expert. Further, PW29 had collected the call details in Ex.P37 and Ex.P38 and also the CD file of

Crime No.595/2009 and examined PW16, C.Sridhar, the Assistant Commissioner of Police.

xv) Thereafter, with regard to the investigation conducted by the accused officer in Crime No.595/2009, PW29 had examined the team of Police officials PW11, Hariomnamachivaya, PW12, Sekaran, PW13, Syed Jainulapudeen, PW14, Sardhar, and PW15, Tmt.Tamilselvi. PW29 had also examined the accused in Crime No.595/2009 namely Kalpana Iyer, PW21. Further, PW29 had examined the friend of PW2 Rangarajan-PW3. Further, PW29 had also examined the friend of the accused officer namely N. Ameennavasakan-PW10 , PW19, Tr.Kandasamy, Additional Superintendent of Police in connection with awarding contract to J.P.Krishna Companies for decorating the Vehicle for Republic Parade, PW20, Faiyaz Ahamed in respect of purchase of the Leather Bag for police official, PW23 Palani with regard to agreement of sale entered by Bramandam for purchase of house and PW24, Balamurgan, the employee of J.P.Krishna and Company. After recording the statement of all the said witnesses and collection of all the said documents, PW29, having satisfied that the said accused has committed an offence, forwarded all the files and records to PW1 Tr.J.K.Tripathy, IAS for obtaining sanction.

xvi) PW1, after considering the materials and records, has accorded the sanction order, Ex.P1 to prosecute the accused. As PW29 was transfered, PW32 has taken the investigation and recorded the statement of PW1. After considering all the evidence collected by PW29, PW32 has come to a conclusion that A1 has committed the offence and laid the final report against him under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and under Section 12 of the Prevention of Corruption Act, 1988 as against A2.

xvii) The final report was taken cognizance by the Trial Court against A1 and A2 u/s.7, 12, 13(2), r/w.13(1)(d) of Prevention of Corruption Act, 1988 and issued summons to the accused. On issuance of summons, the accused appeared before the Trial Court and counsel for A1 and A2 filed Memo of Appearance. In compliance of Section 207 Cr.P.C. A1 and A2 were furnished with the copies of the final report and the documents.

xviii) Whileso, A2, Tr.Brahmanandam, father-in-law of A1 had filed a petition in Crl.M.P.745 of 2012 to discharge him from this case. The said application was allowed by the Trial Court on 28.12.2012. Aggrieved against the said order, the prosecution has preferred the Criminal Revision Case before the Hon'ble High Court in

Crl.R.C.No.919/2013. The said revision was dismissed by this court on 25.11.2013 confirming the discharge ordered passed by the Trial Court. Aggrieved by the said order, the prosecution has preferred a Special Leave petition before the Hon'ble Supreme Court in Crl.M.P.No.10687/2014 and the same was also dismissed by the Hon'ble Supreme Court on 02.07.2014.

xix) After discharge of A2 from this case, charges were framed as against A1 u/s.7, 13(2), r/w.13(1)(d) of Prevention of Corruption Act, 1988. A1 denied the charges and pleaded not guilty. Hence, the trial commenced. On the side of the Prosecution witnesses, PW1 to PW32 were examined and Ex.P.1 to Ex.P.39 Documents were marked and M.O.1 and M.O.2 were marked.

xx) On conclusion of the prosecution evidence, the A1 was examined under Section 313 of Cr.P.C. pertaining to the incriminating evidence tendered against him by the prosecution witnesses and the accused denied the same as false case. The first accused has filed the written Statement along with documents. On the side of the defence, three documents were marked as Exs.D1 to D3 while no witness was examined.

xxi) 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.

5. The submissions of the learned counsel Mr.M.Santhanaraman appearing for the appellant are as under:-

i) The genesis of the case against the appellant being the complaint, Ex.P2 lodged by PW2 against one Raman Moorthy and his wife Kalpana Iyer @ Sujatha and the demand of illegal gratification alleged to have been made by the appellant/accused for registering such a complaint and to proceed with the same, there is a contradiction with regard to the date of its lodgment itself. According to PW2, it was lodged only on 4.12.2009 with the Commissioner of Police, who had forwarded the same to the Deputy Commissioner of Police, who, in turn, had forwarded the same to the accused officer on the same day, whereas, the complaint, Ex.P2 itself it carries the date 23.11.2009 and the appellant/accused had proved by cross examining the prosecution witnesses that it was lodged on 23.11.2009 itself with the Commissioner of Police.

ii) The proforma for registering a case in Ex.P21 prepared in the case registered by the appellant, columns 13, 15 and 16 would indicate that the appellant had recorded the statement of the complainant, the appellant had suggested on 3.12.2009 itself for registration of the case under Section 406 and 420 IPC and on 4.12.2009, the then Deputy Commissioner of Police, PW16 recommended to the Commissioner of Police for registering a case and that the Commissioner of Police had approved the registration of the case in Column 17 and returned the file to the appellant through PW16 and on the same day, the case was registered by the appellant. Further, on the complainant, the appellant had signed with the date 30.11.2009 indicating his knowledge about the complaint on that date. The progress made in the case even prior to 4.12.2009 at the instance of the appellant indicates that there was no motive or need for the appellant to demand any illegal gratification and the version of PW2, de facto complainant is thereby falsified.

iii) The demand being two fold, one being Rs.1,00,000/- on 4.12.2009 and the other being Rs.30,00,000/- on 22.12.2009, PW3 deposed that he was not aware of the demand made by the appellant. The recording of telephonic conversation allegedly pertaining to the conversation of demand and email filed to prove the demand being Exs.P7, P35 to P38 were disbelieved by the Trial Court having found on playing the record of conversation that there was no demand at all in the conversation. Thus, except the version of PW2, no other evidence either oral or documentary is available to prove the alleged demand and payment of Rs.50,000/- by PW2 to the appellant, however, the Trial Court has erred in convicting the appellant by holding that the prosecution has proved the demand and payment of Rs.50,000/-.

iv) So far as the demand of Rs.30,00,000/- is concerned, the case of the prosecution itself is that wife of the said Raman Moorthy, viz., Sujatha @ Kalpana Iyer, PW21 was arrested and remanded to judicial custody and next day of her release on 23.11.2009, she was taken to Ashoka Hotel and signatures were forcefully obtained from her. The appellant had no role to play in the entire episode of facilitating execution of certain documents in favour of PW2 by PW21 as evident from the fact that immediately after the release of PW21 on bail on 23.12.2009, Exs.P3 to P5, indemnity bond, memorandum of understanding and xerox copy of sale deed were executed, for which, the stamp papers were purchased on 27.11.2009 and 6.11.2009, much prior to lodging of the complaint, Ex.P2, indicating that PW2 and PW21 had already arrived at an agreement for the above transactions, much prior to the appellant's coming into the picture and thereby, the demand and obtainment of bribe alleged against the appellant are falsified.

v) The alleged demand of Rs.30,00,000/- on 22.12.2009 is not proved by the prosecution with any legal evidence beyond reasonable doubts. It is only PW2, who says that the appellant had demanded the said amount as bribe. The only other witness Rangarajan, PW3 an employee of PW2, who deposed about the alleged demand made by the appellant, has admitted before the court in his cross examination that he had no direct knowledge about any demand of money by the appellant. Though he had issued a cheque, Ex.P6 on 6.1.2010 for Rs.5,00,000/- to PW2, he was not an eyewitness to the same being handed over to the appellant. Therefore, he is not an eyewitness for either the demand or the acceptance. However, the Trial Court, ignoring/overlooking the above aspects, erred in convicting the appellant/accused by misleading itself and relying much upon the evidence of PW2 that a cheque for Rs.5,00,000/- obtained from PW3 was given to the appellant and that the name of father-in-law of the appellant was written by PW2 as per the advice of the appellant.

vi) Even with regard to the remittance of Rs.5,00,000/- on 18.1.2010 in the Syndicate Bank Account of the father-in-law of the appellant by PW2 through RTGS from PW2's HDFC Bank Account at Kottivakkam Branch, no witness speaks as to how the account number of the father-in-law of the appellant was made available to PW2 for remitting such a huge amount.

vii) The prosecution has suppressed the acquaintance between the father in law of the appellant, PW2 and PW3 and the monetary transactions existed between them. While PW3 admits in his cross examination that he and PW2 went to the Sadhabishekam of the appellant's father-in-law Brahmanandam, without knowing that such a function pertains to the said Brahmanandam, PW2 abruptly denies to have even seen such a person, however, the Trial Court has simply overlooked such a vital contradiction.

viii) Though the sum of Rs.10,00,000/- is alleged to have been paid as illegal gratification, no attempt has been made to recover the same from the father-in-law of the appellant nor to freeze his bank account as evident from the admission made by PW29, the investigating officer, who would depose that the said amount was immediately withdrawn from the bank account. Whileso, no unaccounted money or valuable were seized either from the residence of the appellant or his father-in-law, which also creates suspicion about the case of the prosecution, especially, when the father-in-law was said to have declared the said sum of Rs.10,00,000/- to the Income Tax Department as his legal income, however, the Trial Court, without considering such aspects, erred in convicting the appellant/accused.

ix) The Trial Court has disbelieved the version of PW2 with regard to the allegation that the appellant had demanded and accepted various amounts towards travel expenses, provision of leather handbags to staff of CCB and towards making of 'float' for Republic Day Parade in all totalling to Rs.2.30 lakhs, however, it had erred in convicting the appellant by merely relying on the uncorroborated version of PW2 with regard to the demand and acceptance of other amounts.

x) The Trial Court failed to appreciate the fact that PW2 was admittedly negotiating with one Mr.Raymond, brother of PW21 Kalpana Iyer for settlement and the stamp papers were purchased even prior to the date of lodging Ex.P2 complaint and in Ex.D2 and D3, the complainant therein namely Kalpana Iyer withdrew the complaint lodged by her vide Case No.10097 of 2009 on the file of the State Human Rights Commission, Chennai. The said Kalpana Iyer, PW-21 has filed a memo through her Advocate before the State Human Rights Commission by contending that she is settling the matter with PW2 Selvam on her volition and the same was recorded in the order passed by the State Human Rights Commission by order dated 11.02.2010. The date of complaint against this Appellant is 27.03.2010. Had the appellant prevented PW21 Kalpana Iyer from executing the sale deed in favour of PW2 without paying the amount allegedly demanded by the appellant, PW21 would not have withdrawn the complaint lodged against the appellant on 11.02.2010. Thus, the Trial Court has simply overlooked this aspect and placed reliance on the version of PW21, which is contrary to the records and PW21's version cannot be trusted as she was arrested by the Appellant and remanded to judicial custody.

xi) The Trial Court simply rejected Ex.D1, final report filed pursuant to Ex.P2 complaint lodged by PW2 against PW21 and her husband. The said final report Ex.D1 clearly states that consignments exported by PW2 to Dubai in the name of husband of PW21 was not cleared and the same were lying in the Port and accordingly the said FIR was closed as mistake of fact. PW2 did not file any protest petition against such closure and this shows that the original complaint lodged by PW2 against PW21 and her husband itself was false.

xii) The fact remains that the sale deed as agreed was not executed by PW21 in favour of PW2 till date. Had there been any iota of truth in the averment that this appellant was preventing the execution of sale deed by PW21 in favour of PW2, PW21 would have executed sale deed after initiation of this proceedings. The Trial Court, in spite of being pointed out about this aspect, has not considered this at all.

xiii) Mr.Brahmanandam, implicated as A-2 in this case on the allegation that he has received money through cheque purportedly paid to this appellant as bribe, was discharged by the Trial Court and the same was confirmed on Appeal by this Hon’ble Court and also by the Hon’ble Supreme Court of India. This is a vital aspect as A2 in this case was discharged on the ground that he had no role at all in demanding, accepting the bribe. The said sum of Rs.10,00,000/- was accounted by late Brahmanandam in his Income Tax Returns and as stated above, admittedly, no steps had been taken to recover the said amount. Thus, after discharging A2, the case as per the evidence projected by the prosecution cannot be sustained at all. However, the Trial Court has overlooked the vital aspects of this case and despite finding that the version of PW2 is inconsistent and false, has proceeded to record conviction against the appellant by relying on mere uncorroborated oral evidence of PW2 by holding that the prosecution has proved the case beyond all reasonable doubts. Thus, the judgment of the Trial Court is contrary to the evidence on record and liable to be set aside.

6. Per contra, the submissions of Mr.S.Santhosh, learned Government Advocate (Criminal Side) are as under:-

i) The de facto complainant Tr.V.Selvam(PW2) was doing business in the name and style of Sri Ramana Garments at No.216, Arcot Road, Virugambakkam, Chennai. During the year 2008 and 2009 he had supplied garments worth Rs.1,59,84,410/- on different dates through Tr.M.Raman Moorthy (Blue Bell Incorporation and Serenity Global Incorporation Trading LLC Dubai). The total Goods were sent by 9 Consignments, out of which, 6 consignments were cleared by the said Tr.Raman Moorthy and the remaining 3 consignments were cleared by his wife Tmt.Sujatha @ Kalpana Iyer (PW-21), however, the said Tr.Raman Moorthy evaded payment. The de facto complainant went to Dubai in search of Tr.Raman Moorthy and since he could not be tracked and he was absconding without settling the payment to the tune of Rs.1,59,84,410/-, the de facto complainant had preferred a complaint before the Commissioner of Police, Greater Chennai Police on 23.11.2009, Ex.P.2 against him.

ii) The complaint given by PW2 Tr.Selvam was forwarded to the appellant being Admin. Inspector, CCB, Egmore, Chennai for further action through Deputy Commissioner of Police CCB. Whileso, on 4.12.2009, the appellant had initially demanded Rs.1,00,000/- for registering an FIR based on the complaint given by PW2. PW2 had arranged Rs.50,000/- by contributing his own money to the tune of Rs.12000/-, received Rs.15,000/- from PW-3 Tr.Rangarajan and received Rs.23,000/- from Tr.Ganesh and gave to the appellant for registering the FIR. Further, during the investigation, the appellant had demanded Rs.30,00,000/- and received Rs.5,00,000/- on 7.01.2010 from PW2 by way of cheque issued by PW-3, Tr.Rangarajan and on 18.1.2010 received another sum of Rs.5,00,000/- through RTGS as evident from Ex.P18) from M/s.Sri Ramana Fitness Center run by PW2 as bribe for peaceful registration of the property of PW21, Tmt.Kalpana Iyer @ Sujatha situated at Velacherry.

iii) Frustrated with the demands of the appellant, PW2 had lodged a complaint before the Commissioner of Police Chennai against the appellant on 27.03.2010. After making enquiry on the petition, the Additional Commissioner of Police, Chennai had recommended to the Director General of Police, Tamil Nadu to suspend the appellant and had recommended to transfer the case to DVAC for taking criminal action under Prevention of Corruption Act on

29.03.2010 and accordingly, a case in Crime No.04/2010/AC/CC-IV was registered against the appellant for the offences punishable under Sections 7 & 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988 in DVAC on 1.04.2010.

iv) The prosecution has proved its case against the appellant with cogent evidence adduced by the prosecution witnesses beyond all reasonable doubts and raised a presumption against the appellant/accused by producing oral and documentary evidence and the Trial Court has rightly convicted the appellant/accused, which does not warrant any interference by this court.

7. Heard the learned counsel appearing for the parties and perused the materials available on record including the written arguments and additional written arguments filed on behalf of the appellant.

8. Unlike the trap case in DVAC, it is a case where the demand of illegal gratification is alleged to have been made by a public servant, viz., an investigating officer in Crime Branch for registering an FIR and proceeding with the investigation on a complaint (Ex.P2) lodged by a businessman (PW2) for recovery of his financial dues to

whom, he had supplied the goods.

9. To have a better appreciation of the case, it would be appropriate to have a perusal of the complaint, Ex.P8 dated 27.3.2010 lodged by the de facto complaint/PW2 against the appellant and thereby it is extracted hereunder:-

"I have given a complaint against one Mr.Raman Moorthy to Your Good Office on 04.12.2009. The complaint was referred to the Deputy Commissioner of police CCB on the same day. Based on my complaint a FIR was registered in X 595/2009 on 04.12.09, against the said Mr.Raman Moorthy and investigation was conducted. The investigation was carried out by IO Thiru.B.Senthil Kumar Inspector CCB. On the same day of registering the FIR, the IO had demanded an amount of Rs 1,00,000/- for registering the case. As I was not having that much money, I along with my co-complainant, Mr.Vivek, had paid Rs.50,000/- to IO. On receipt of this amount, the IO had filled a case and FIR was registered.

During the course of investigation, based on the evidences collected, he arrested one Mrs. Kalpana

Iyer W/o the said Mr.Raman Moorthy on 12.12.09. The accused Mrs.Kalpana lyer, as power agent had offered to give the property at Vellachery towards the settlement for the payment due to me. As she had agreed to settle the dues through the property owned by her, the Mr.Senthil Kumar had demanded an amount of Rs.30 lakhs from me to get this agreement executed by her. The IO was also saying that if not for him this deal was not possible and I could not have recovered any amount from the accused. Hence due to his pressure I agreed for this settlement and accepted to offer the amount he demanded. Immediately after her release on bail on 22.10.09, he arranged to get the following documents viz. an unregistered sale deed for the property, a MOU, and an indemnity bond for the property from the said Mrs.Kalpana Iyer. Then he started demanding the amount which I agreed to give. I was telling him that I do not have money now, but agreed to give the amount the moment the property was sold to any other party. In this process the IO had arranged some *parties to purchase the said property so that he can take his amount. The parties whom he got were all offering very less price for the property through which he wanted to benefit from them too. Hence I rejected all his parties offer.*

Apart from Rs.50,000/- being paid for registering FIR, The IO had also collected the following amount in cash during the process of Investigation, Rs.30,000/- towards cost of leather bags given to Staffs of CCB, Rs.1,00,000/- towards cost of Float for Republic Day Parade, Rs.50,000/- towards travelling to Mumbai and Rs.50,000/- towards the cost of travelling to Bangalore.

As he was mounting pressure on me for agreed amount, I told him that I cannot withdraw such a huge amount in cash from my bank account and I offered to give an advance of Rs.10 lakhs through bank payment. Accordingly I have issued a Cheque (No.577107 dated 07.01.09) from my friend Mr.R.Rangarajan's savings account for Rs.5,00,000/- drawn on IDBI Bank, Nelson Manickam Road Branch, *issued in favour of Mr.Brahmanandam, who is Mr.Senthil Kumar's father-in- law. I have also transferred an amount of Rs.5,00,000/- from my current account Sri.Ramana Fitness Centre from HDFC Bank, Kottivakkam Branch to Mr.M.Bramanandam's Syndicate Bank's SB Account on 18.01.10, through RTGS.*

I have identified a buyer for the property who wanted to purchase the said property but the IO is not inclined to release Mrs.Kalpana Iyer from his clutches. Now even after receiving the said amount (Rs.12.80 Lakhs), colluding with the accused Mrs.Kalpana lyer, he is not allowing me to sell the property without receiving his balance amount. I have found that the accused Mrs.Kalpna Iyer is in his clutches and pointed out this to him and requested him to bring her to comply the registration formalities. But, instead of bringing the accused, he used the situation to bargain for his retention in CCB. I am also giving his recorded telephonic conversations with my friend Sri.R.Rangarajan in this regard on various dates *confirming his acceptance of taking money and offering to settle the issue if he was given a chance back in CCB.*

Now I request You to use your good office to recover the said amount (12.80 Lakhs) from Mr.Senthil Kumar and request your good self to help me to register the property."

10. From a bare reading of the complaint, Ex.P8, it is evident that the de facto complainant had met the demand of illegal gratification from the IO on three occasion viz., the first one on 4.12.2009, the second one on 7.1.2010 and the third one being on 18.1.2010, however, the complaint, Ex.P8 has been lodged by him only on 27.3.2010 after about four months from the date of first demand and after more than two months after the third demand. Such a long delay on the part of the de facto complainant in approaching the Police, especially, when he had lodged the complaint, Ex.P2 with the Commissioner of Police himself against one Raman Moorthy and his wife Sujatha @ Kalpana Iyer for recovery of his business dues, has not at all been explained by the prosecution.

11. With such a huge and unexplained delay in filing the complaint, the duty cast upon the prosecution to prove the demand and acceptance becomes heavier. In the present case, the demand of illegal gratification and the payment thereon alleged by the prosecution is not only in cash but also by way of banking transactions in respect of a substantial amount viz., Rs.10,00,000/- out of total acceptance alleged viz., Rs.10,50,000/-. The first and foremost aspect to be noted is that whether it is within the normal prudence that a public servant that too an investigating officer, who must be well versed with the procedures followed in the investigating agencies, would accept any illegal gratification through bank transactions, of course through any account of his relative, leaving his footstep to be tracked, if it is complained by anybody.

12. Such deposits viz., a sum of Rs.5,00,000/- through a cheque issued by PW3 on 7.1.2010 and another sum of Rs.5,00,000/- through RTGS made on 18.1.2010 from the bank account maintained by Sri.Ramana Fitness Centre run by PW2 into the account of one Brahmanandam, father-in-law of the appellant cannot be construed as illegal gratification given by PW2 to the appellant. It is only a suspicion PW2 could raise about such deposits to the effect that he

was constrained to make such payments at the instance of the appellant, whereas, the appellant has taken a defence that his father-in-law Brahmanandam and PW2 and PW3 were already known to each other and PW2 and PW3 were liable to pay such amounts to Brahmanandam and accordingly, they had paid those amounts. He had also taken a stand that such amounts were declared by his father-in- law to the Income Tax Department while filing his Income Tax Returns. The split payments made by PW3 and PW2 in different transactions viz., PW3 by issuance of cheque for Rs.5,00,000/- and PW2 by RTGS for Rs.5,00,000/- probablises the defence theory. Therefore, it is incumbent on PW2, the de facto complainant to establish that both the payments made into the account of Brahmanandam was only to meet the demand of illegal gratification made by the appellant, especially, when PW2 specifically denies the defence theory of acquaintance among the father-in-law of the appellant and P.Ws.2 and 3 and prevalence of financial transactions among themselves and such denial has been controverted by the admission of PW3.

13. It is settled law that demand and acceptance with knowledge that the money so received is the tainted money is the

sine qua non for attracting the offence punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Therefore, what has to be seen is whether the prosecution has proved its case of demand and acceptance of illegal gratification by the appellant/accused.

14. Here in the case on hand, though the prosecution has examined as many as 32 witnesses and marked 39 documents, virtually, PW2, the de facto complainant, being an interested witness alone is available to speak about the demand. Apart from PW2, it is PW3, who speaks about the demands made by the appellant. However, a perusal of the evidence adduced by PW3 makes it clear that PW3 is a friend of PW2 and in that capacity, he was offered a managerial post in the business run by PW2 and thereby his testimony cannot be construed as an independent one.

15. Among other various aspects, PW2 speaks in his evidence that he lodged the complaint, Ex.P2 against one Raman Moorthy and his wife Sujatha only on 4.12.2009, whereas the date typed in the complaint is 23.11.2009 which has been strengthened by the endorsements made thereon and the entries found in Ex.P21, CD file

in respect of Crime No.595 of 2009. A perusal of the said CD file and the endorsements made on the complaint would disclose that the complaint, Ex.P2 lodged by the de facto complainant with the Commissioner of Police, Chennai was forwarded to the Deputy Commissioner of Police, who, in turn, forwarded the same to the appellant for taking action and the same was received by the appellant on 30.11.2009 and after preliminary enquiry, the appellant had suggested for registering a case under Section 406 and 420 IPC on 3.12.2009 itself. Such a suggestion was accepted by the Deputy Commissioner of Police and thereupon, he had recommended for registering a Criminal case and for investigation of the same by his endorsement made on 4.12.2009. When PW2 was confronted with such details during his cross examination, he admitted the same. Whileso, the allegation made by PW2 that the appellant had demanded Rs.1,00,000/- on 4.12.2009 for registering an FIR on the basis of his complaint and thereupon, he had paid a sum of Rs.50,000/- is far fetched and without any scope.

16. Further, on the aspect of initial demand, though it is claimed by the prosecution that PW2 had received a sum of Rs.15,000/- from his friend Rangarajan, PW3, a sum of Rs.23,000/-

from one Ganesh and totally a sum of Rs.50,000/- was made ready and the said amount was given to the accused officer, it is relevant to note that the prosecution has failed to examine the said Ganesh and PW3 appears to be an interested witness.

17. The further evidence of PW2 is that on the basis of his complaint, Ex.P2, Kalpana Iyer, wife of Tr.Raman Moorthy was arrested and taken police custody by the appellant, however, the brother of Kalpana Iyer had approached him for an amicable settlement by selling the property at Velachery belonging to them and thereby almost a settlement was to be arrived at between themselves as evident from Exs.P3 to P5, indemnity bond, memorandum of understand and the sale deed on 23.12.2009 on release of Kalpana Iyer on bail, but, the appellant had demanded a sum of Rs.30,00,000/- contending that the issue was resolved only at his instance and due to the pressure exerted by the appellant for illegal gratification, PW2 had obtained a cheque dated 7.1.2010 for Rs.5,00,000/- from PW3, a friend of him and Manager of his Company and deposited the same into the bank account of Brahmanandam, father-in-law of the appellant on the instruction of the appellant and transferred Rs.5,00,000/- on 18.1.2010 by RTGS

from the bank account of Sri Ramana Fitness Centre run by him to the account of Brahmanandam.

18. On the aspect of settlement, it is the case of the appellant that the appellant came into the picture only after 30.11.2009 when he received the complaint, Ex.P2 dated 23.11.2009, (claimed by PW2 to have been lodged on 4.12.2009) which had been forwarded by the Deputy Commissioner of Police, however, the settlement between the parties as evident from Exs.P3 to P5, viz., indemnity bond, memorandum of understanding and sale deed were tailored much prior to his receipt of the complaint on 30.11.2009. It has been pointed out that though such documents carry the execution date as 23.12.2009 only after release of the said Kalpana Iyer on bail, the date of purchase of stamp papers enlightens the issue. While the stamp papers for Ex.P3 were purchased on 27.11.2009, the stamp papers meant for Exs.P4 and P5 were purchased on 6.11.2009 itself. This aspect has been admitted by PW2 during his cross-examination. In addition to this, it would be relevant to note that in Ex.P5, sale deed, the last page containing Annexure-I.A, above the signature of the purchaser, the date is specifically mentioned as "**06.11.2009**", which goes to probablise the case of the appellant and falsify the

case of the prosecution, especially, when PW2 specifically denies about preparation of those documents well in advance.

19. At this juncture, it would be relevant to note that in order to With regard to demand of illegal gratification, the prosecution had marked M.O.1, Samsung Mobile of PW3 and M.O.2, Memory card used in the mobile phone, the CD containing the conversation between PW3 and the appellant, which has been enclosed in the Forensic Lab Report Ex.P36 and also the call details, Ex.P37 and P38 without any certification as contemplated under Section 65-B of the Indian Evidence Act. However, the Trial Court had entertained the same and upon playing the conversation in the CD found that the conversation does not prove any demand by the appellant.

20. So far as presumption is concerned, it is the case of the prosecution that the appellant had demanded Rs.30,00,000/- to resolve the issue by getting the sale deed executed by Kalpana Iyer as the said Kalpana Iyer was in the clutches of the appellant and to meet such a demand, PW2, on instruction from the appellant, obtained a cheque dated 7.1.2010 from his friend, PW3 for Rs.5,00,000/- and deposited the same into the account of

Brahmanandam, father-in-law of the appellant and transferred a sum of Rs.5,00,000/- on 18.1.2010 by RTGS from the bank account of Sri Ramana Fitness Centre run by him to the account of Brahmanandam and thereby he had obtained illegal gratification by misusing his official position.

21. In this regard, it is relevant to note that the said Brahmanandam was initially implicated in the case as A2. However, he had filed a petition in Crl.M.P.No.745 of 2012 before the Trial Court seeking discharge from the case and the Trial Court, by its order dated 28.12.2012, considering his case on merits, discharged him from the charges, which was confirmed by this court by order dated 25.11.2013 in Crl.R.C.No.919 of 2013 and the SLP filed by the State was dismissed by order dated 2.7.2014. While granting discharge to A2, the Trial Court had disbelieved the theory of the prosecution with regard to abetment of A2 in the offence alleged against A1. In this case, while there is no legal evidence to establish the demand and acceptance of Rs.50,000/- in cash by the appellant/accused with regard to the substantial amount of Rs.10,00,000/-, it was deposited into the account of Brahmanandam (A2) by PW2 himself. Though PW2 has claimed that such deposits

were made by him only to meet the demand of illegal gratification made by the appellant, it is the case of the appellant that PWs2 and 3 were known to his father-in-law and they had been maintaining financial transactions and to settle the dues, they had paid the said amount to his father-in-law and the same has been disclosed by his father-in-law to the Income Tax Department while filing Income Tax Returns. Though PW2 had specifically denied about the acquaintance of Brahmanandam, PW3 had admitted in his cross examination that he attended the Sadhabishekam of Brahmanandam alongwith PW2 without knowing that such function pertains to the said Brahmanandam. The categorical admission of PW3 in his cross examination is that he came to know about the payment of Rs.5,00,000/- made by PW2 to the appellant's father-in-law only on being informed by PW2. With regard to the other sum of Rs.5,00,000/- for which he had issued a cheque, he admits that there were financial transactions between himself and PW2 and on request by PW2, he had given him a signed blank cheque and later, he came to know from the bank that the said cheque was encashed for Rs.5,00,000/- in the name of Brahmanandam. His specific admission is that by that time, his bank account was with a credit of not more than Rs.10,000/- and the said sum of Rs.5,00,000/- was paid into his bank account only by PW2. Ultimately, PW3 admits that he does not know personally about the demand of illegal gratification alleged to have been made by the appellant/accused. The above admission made by PW3 would prove that he had been a puppet at the hands of PW2 to depose in his favour.

22. Further, it is relevant to note that neither PW2 nor PW3 has not taken any steps for recovery of the amount so deposited by them or to freeze the account of the father-in-law of the appellant as it would be the normal conduct of an aggrieved person to initiate such an action, which is missing in this case creating a grave suspicion about the case of the prosecution and it probablises the theory of existence of financial transaction between PW2, PW3 and the father-in-law of the appellant. Rather, PW2 has lodged a complaint against the appellant on 27.3.2010 after a long delay of more than two months after the last payment made on 18.1.2010. Even during the investigation conducted by PW29, though a search was conducted at the house of the appellant/accused as evident from Exs.P9 and P10, no unaccounted money or valuable were seized either from the residence of the appellant nor any search was conducted at the house of his father-in-law, especially, when it is the case of the prosecution that the said amount was immediately withdrawn from the bank

account.

23. Therefore, from the admissions made by PW2 and PW3, this court finds that they not only contradict with each other, but also, they contradict with their own version in the chief examination with regard to demand and their relationship and acquaintance with Brahmanandam/A2, the father-in-law of the appellant. The conduct of PW2 makes him a most untrustworthy witness. While the appellant/accused had proved his case with preponderance of probability, the prosecution has miserably failed to prove its case of demand and acceptance of illegal gratification beyond all reasonable doubts. The Trial Court, though analysed all the aspects, appears to have misled itself even with regard to the settled principle ***falsus in uno, falsus in omnibus.*** When the appellant had confronted both PW2 and PW3 with many instances during their cross examination, elicited the truth and raised doubt about the credibility of their evidence, which goes to the root of the prosecution case, the Trial Court, ignoring those aspects, applied the above principle in favour of the prosecution and convicted the appellant/accused without there being any corroboration to the version of PW2.

24. When the prosecution has failed to prove its case beyond all reasonable doubts, the appellant has proved his case by marking Exs.D1 to D3. Ex.D3 discloses that one M.Sreedharan, Advocate on behalf of the said Kalpana Iyer had lodged a complaint against the appellant/accused through telegram with the State Human Rights Commission and the same having been forwarded by the State Human Rights Commission to the Commissioner of Police, came to be closed observing the settlement that had taken place between the parties. Similarly, Ex.D2 discloses that the said Kalpana Iyer herself had lodged a complaint with the State Human Rights Commission, which, in turn, was forwarded to the Commissioner of Police and thereupon, it came to be closed with the observation that she had lodged a false complaint to escape from the clutches of law. Ex.D1 is the final report filed by the appellant on 2.4.2012 treating the case as mistake of fact having found that consignments exported by PW2 to Dubai in the name of husband of PW21 were not cleared and the same were lying in the Port. PW2 did not file any protest petition against such closure and this shows that the original complaint lodged by PW2 against PW21 and her husband itself was false.

25. The Trial Court, by simply overlooking these aspects, had

proceeded to convict the appellant/accused on inferences. The suspicion, however grave, cannot take place the proof.

26. In ***P.Sathyanarayana Murthy Vs. District Inspector of Police, State AP and another,*** 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.*
>
> *.... ....*
>
> *26. In reiteration of the golden principle which*

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

27. The materials on record when judged on the touchstone of the legal principles adumbrated herein above, leave no manner of doubt that the prosecution, in the instant case, has failed to prove unequivocally, the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly unsafe to sustain the conviction of the appellant under Sections 13(1)(d)(i) and (ii) read *with Section 13(2) of the Act as well.*

27. Though it is not like an usual case of trap, in the case on hand, the prosecution has miserably failed to prove its case with regard to demand and acceptance of illegal gratification by the appellant/accused. There is also no recovery of any unaccounted money or valuable from the possession of the appellant/accused and thereby the prosecution has failed in raising any presumption against the appellant/accused, however, the appellant proved his case by preponderance of probabilities and thereby, this court is of the view that the judgment of conviction rendered by the Trial Court is liable to be set aside and the appellant is entitled to acquittal.

28. In the result, the Criminal Appeal is allowed. The Judgment of conviction dated 14.11.2019 rendered by the Special Judge for the Cases under Prevention of Corruption Act, Chennai in C.C.No.11 of 2012 is set aside. The appellant is acquitted of all the charges and is set at liberty. Bail bond executed by him, if any, shall stand cancelled. Fine amount paid, if any, shall be refunded to him.

28.2.2024.

Index: Yes/No.

Internet: Yes/No.
ssk.

To

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

2. Deputy Superintendent of Police,
Vigilance and Anti-Corruption Department,
Chennai City-4,
Alandur.

3. Public Prosecutor,
High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

ssk.

Criminal Appeal No.807 of 2019

28.2.2024.