



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2024.

Delivered on : 19.03.2024.

CORAM

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

Criminal Appeal No.708 of 2018

N.V.Nagarajan

Accused

vs.

State represented by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Krishnagiri,
Krishnagiri District.
(Crime No.1/AC/2011/KG)

Respondent

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., against the judgment of conviction and sentence imposed on him by the Hon'ble Special Judge/Chief Judicial Magistrate, Krishnagiri District, Krishnagiri in Special Calender Case No.2 of 2012, dated 31.10.2018 and to set aside the conviction and sentence.

For Accused :Mr.C.R.Malarvannan

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



JUDGMENT

This Criminal Appeal has been filed to set aside the judgment of conviction and sentence imposed on the accused by the Special Judge/Chief Judicial Magistrate, Krishnagiri District, Krishnagiri in Special Calender Case No.2 of 2012, dated 31.10.2018.

2. The case of the prosecution is as follows:-

The accused was working as a Record Clerk at Government Head Quarters Hospital, Krishnagiri. The defacto complainant is a resident of Bangalore. He, along with PW-4 [Mr.Fiyaz], PW-5 [Mr.Sheik Mohideen] and PW-6 [Mr.Thanigaivel], were travelling in a Maruti Van on 23.12.2010. They were returning from Chennai to their respective place of residence. While the van was nearing Anginayanapalli Village, it met with an accident and got capsized. All the four persons got injured. On 31.12.2010, PW-2[Mr.Nisar Ahmed] applied for a copy of his wound certificate in order to claim insurance. The said application is Ex.P2. PW-2 [Mr.Nisar Ahmed] was asked to come on 03.01.2011 by the hospital authorities. However, he was not able to go to the hospital on 03.01.2011. On 05.01.2011, PW-2 [Mr.Nisar Ahmed] went to the hospital and met the accused, who demanded Rs.250/- for each wound certificate i.e. totally Rs.1000/- for four wound certificates. PW-



2 [Mr.Nisar Ahmed] had no money and hence, he returned. On 06.01.2011 at 11.00 a.m., PW-2 [Mr.Nisar Ahmed] again met the accused and at that time, the accused alleged to have reiterated his demand and said that he would be able to get the certificate only if the money demanded by him was given.

3. On the same day at 06.00 p.m., PW-2 [Mr.Nisar Ahmed] went to the Vigilance Office at Krishnagiri and gave a complaint, which is Ex.P3. On 07.01.2011 at 08.00 a.m, an FIR was registered in Crime No.1/AC/2011/KG against the accused, which is Ex.P4. A trap was organized by PW-23 [Mr.Sathish], Inspector of Police, Vigilance and Anti Corruption pursuant for which he summoned PW-3 [Mr.Saravanan] and PW-15 [Mr.Stalin], the Government Servants to participate in the trap proceedings. PW-23 [Mr.Sathish], after completing the preliminary formalities for trap proceedings had reduced the happenings in an Entrustment mahazar, which is Ex.P5.

4. The trap party reached the Krishnagiri Government Hospital at 10.15 a.m., PW-2 [Mr.Nisar Ahmed] and PW-3 [Mr.Saravanan] went to the hospital and met the accused. The accused went inside, brought a



file and had taken PW-2 [Mr.Nisar Ahmed] and PW-3 [Mr.Saravanan] to the Doctor, but, the Doctor was not there and hence, they came back to the room of the accused. At that time, the accused in the presence of PW-3 [Mr.Saravanan] asked PW-2 [Mr.Nisar Ahmed] whether he had brought money as instructed by him. PW-2 [Mr.Nisar Ahmed] said in the affirmative, took the money and handed the over the same to the accused. The accused received money and counted it with both hands. Thereafter, he put the money in his right side pant pocket. The accused asked PW-2 [Mr.Nisar Ahmed] to come on the next day. PW-2[Mr.Nisar Ahmed] came out and signalled the trap team. The trap team went into the hospital and asked PW-2 to wait outside. Thereafter, the accused was tested with sodium carbonate solution. Both his hands turned pink. A recovery mahazar was prepared which is Ex.P14.

5. PW-23[Mr.Sathish] asked the accused about the money for which, the accused took it out and handed over the same to PW-23[Mr.Sathish]. PW-15 [Mr.Stalin] was asked to verify the serial numbers of the currency notes mentioned in the Entrustment Mahazar Ex.P 5 with the recovered notes. The serial numbers tallied. The



appellant/accused pleaded that out of ignorance he had received the money. The accused was arrested by PW-23[Mr.Sathish] in the presence of PW-8 [Mr.Manivel, Office Superintendent].

6. PW-24 [Mr.Ramachandran], Deputy Superintendent of Police] took up the investigation and after investigation, he filed charge sheet against the accused for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

7. On appearance of the accused the trial Court framed charges against the accused under Section 7 of the Prevention of Corruption Act, 1988 and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

8. To prove the charges, the prosecution examined 24 witnesses; produced 26 documents, which were marked as Ex.P1 to Ex.P26 and produced seven material objects, which were marked as M.O.1 to M.O.7. When questioned in respect of the incriminating evidence under section 313 of Cr.P.C the accused denied the charges. On the side of the defence, one Masilamani was examined as DW-1



and two documents were marked as Ex.D1 and Ex.D2.

WEB COPY

9. The trial Court, after hearing the arguments of both sides, found the accused guilty and convicted him for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced him to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo one month Simple Imprisonment for the offence under Section 7 of the Prevention of Corruption Act, 1988, to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo one month Simple Imprisonment for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Challenging the same, the present Criminal Appeal has been filed.

10. Mr.C.R.Malarvannan, learned counsel appearing for the accused, after taking this court through the evidence on record, assailed the judgement of the trial court and submitted as follows:-

(a) Mere recovery of money in the absence of any proof of demand and acceptance cannot be said to be sufficient to convict the accused for the offences alleged. Though the prosecution has the



advantage of Section 20 of the Prevention of Corruption Act, 1988 against the accused if he is found to be in possession of bribe money, before raising the presumption against the accused/accused, the prosecution is bound to prove the foundational facts by letting in evidence beyond all reasonable doubts.

(b) The trial Court failed to take into consideration the material contradictions in the evidence of the witnesses regarding the trap proceedings.

(c) The prosecution has wilfully suppressed the presence of PW-4 [Mr.Fiyaz] at the time of trap, creating a doubt in respect of the recovery proceeding; the presence of PW-4[Mr.Fiyaz] would prove the fact that the money was dropped on the table and later, the accused was threatened to take the money and phenolphthalein test was conducted thereafter.

(d) The trial Court failed to take into consideration the material contradictions between the witnesses PW-2[Mr.Nisar Ahmed] and PW-15[Mr.Stalin] with regard to the place from which the money was recovered; The non-summoning of PW-8[Mr.Manivel] Office Superintendent, at the time of recovery of money by PW-23 [Mr.Sathish] creates a dent in the prosecution; when an independent



witness is available in the same place, the prosecution not calling him to be a witness for recovery is fatal; hence, the case projected by the prosecution is wholly unreliable and unbelievable.

(e) The non-conducting of preliminary enquiry and discreet enquiry against the accused before the trap and non-recording of the statement of the accused immediately after the trap as required under the DVAC Manual also creates a doubt.

(f) The trial Court failed to take note of the fact that the amount demanded by the accused was Rs.50/- towards charges fixed by the Government for issuance of wound certificate, whereas, it was wrongly construed by PW-2[Mr.Nisar Ahmed] as bribe; in support of the same, the accused examined DW-1 and by marking Ex.D1-instructions regarding issuance of wound certificates obtained under Right to Information Act and Ex.D2-Government Order prescribing Rs.50/- as charges for issuance of wound certificates.

(g) The case of the accused in defence is that the money was placed on the table and later, he was threatened and compelled to take the money and only thereafter, phenolphthalein test was conducted. The prosecution, in this regard, has wilfully suppressed the presence of PW-4 [Mr.Fiyaz] through whom the money was placed on



the table.

WEB COPY

11. The learned counsel appearing for the accused would ultimately contend that the trial Court failed to take into consideration that it is not the duty of the accused to issue wound certificate and in such circumstances, there is no possibility of the accused demanding, accepting and receiving the money. The sanction has been issued without application of mind and without perusal of the entire documents, thereby, vitiates the trial and therefore, he seeks to set aside the appeal.

12. Mr.Santhosh, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that the appellant/accused was working as a Record Clerk at Government Head Quarters Hospital, Krishnagiri. The defacto complainant (PW-2) and his friends met with an accident and sustained injuries and they were admitted in the Government Hospital, Krishnagiri. PW-2 applied for a copy of the wound certificate for insurance purpose. PW-2 was asked to come later and when he met the accused on 05.01.2011 the accused insisted Rs.1000/- for issuance of four wound certificates



which was Rs 800/- over and above the fixed fee of Rs 50/-per certificate totalling to Rs 200/-. The demand was reiterated on 06.1.2011. PW-2 was not willing to pay the bribe amount and had given a complaint on 07.01.2011 based on which a trap was organised. On 07.01.2011 the accused had reiterated the demand in the presence of the official witnesses and accepted the amount. Later, phenolphthalein test was conducted and the tainted money was recovered from the accused. The prosecution has, by cogent evidence, proved the demand, acceptance and recovery. Though it was claimed by the accused that the amount was only demanded towards charges for issuance of wound certificates and DW1 had been examined and Ex.D1 has been filed, the amount demanded by the accused was Rs.800/- more than the prescribed amount. Further, though it is claimed by the accused in the appeal that the money was thrust, the accused had not offered any explanation at the time of questioning under Section 313 of Cr.P.C. The statutory presumption mandated under Sec 20 of the P.C Act was not rebutted by the accused.

13. The learned Government Advocate (Criminal Side) would further submit that following of the Rules under the DVAC Manual are



only directory in nature and not mandatory. As far as the facts of the present case are concerned, non compliance of the procedure contemplated in the manual has in no way affected or vitiated the prosecution case. Further, there is no illegality or infirmity in the sanction and the Sanctioning Authority after perusing the relevant materials, sanction was granted and nothing on evidence had been let in to show that the alleged irregularity resulted in failure of justice and thereby, he would pray for dismissal of the appeal.

14. Heard the learned counsel appearing for the accused and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

15. The points arise for consideration in this appeal is:-

(i) Whether the prosecution has proved the case of demand, acceptance and recovery by legal evidence?

(ii) Whether the accused had rebutted the presumption as required under Section 20 of the Prevention of Corruption Act, 1988? and

(iii) Whether the trial Court has properly analysed the evidence



in arriving at the guilt of the accused?

WEB COPY

15. PW-1 [Dr.Kalaivani] the Deputy Director of the Medical Department, Krishnagiri District and she has accorded sanction to prosecute the accused. The sanction order is Ex.P1. The defacto complainant[Nizar Ahamad] has been examined as PW-2 and the letter given by him requesting for issuance of wound certificate is Ex.P2; the complaint given by the defacto complainant and the First Information Report are Ex.P3 and Ex.P4 respectively; the currency notes entrusted for laying the trap is M.O.1 the sample sodium carbonate powder is M.O.2, the Phenolphthalein powder is M.O.3, and the Entrustment Mahazar Ex.P5 were marked through PW2. The official/shadow witness Mr. Saravanan was examined PW-3 and through him M.O.4 right hand dipped solution and M.O.5 left hand dipped solution were marked. The bottle containing the wash of the pant of the accused was marked as M.O.6 and the pants worn by the accused was marked as M.O.7. The case sheet of PW-5 was marked as Ex.P6, case sheet of PW-4 was marked as Ex.P7, case sheet of PW-6 was marked as Ex.P8 and the case sheet of PW-2 was marked as Ex.P9. Similarly the X-rays sheets of PW-5, PW-4 and PW-6 were marked as Ex.P10, Ex.P11 and Ex.P12



respectively. The Attendance Register was marked as PW-13, the Recovery Mahazar as Ex.P14 and rough sketch as Ex.P5. The Mahazar for house search of the accused was marked as Ex.P16.

16. Now, analysing the evidence of the prosecution witnesses, PW-1 is the sanctioning Authority. She has deposed about the accused working as a record clerk in Krishnagiri Government Hospital and that she had powers of appointing and dismissing the accused and that she had, based on the report of DVAC and after perusing the materials and being satisfied that there was prima facie material for prosecuting the accused, had accorded sanction Ex.P1. PW-2 is the defacto complainant. He had deposed that he is a resident of Bangalore and that he, along with his friends and relatives, while returning from Chennai to Bangalore in a Maruti Van, met with an accident on 23.12.2010 and in the accident, he and 3 other co-passengers sustained injuries. They were admitted in the Krishnagiri Government Hospital for treatment. In order to claim insurance compensation, he had given applications for issuance of wound certificates for him and his friends. On 31.12.2010, PW-2 was asked to come back on 03.01.2011 and since he was unable to go there on 03.01.2011, he



met the accused/accused on 05.01.2011. On that day, the appellant/accused had demanded Rs.250/- each for issuance of four wound certificates, totaling Rs.1000/-. Since PW-2 was not having money, he returned home. Once again, he met the accused on 06.01.2011 and even at that time, the accused had demanded the money and informed him unless the money is paid, the certificates would not be issued. On the same day, PW-2 met the Inspector of Police (PW-23) and had given a written complaint (Ex.P3). The Inspector of Police had asked him to come on the next day at 08.00 a.m. and on the next day, PW-2 met the Inspector of Police and the First Information Report (Ex.P4) was registered. Thereafter, he had summoned the official witnesses (PW-3 and PW-15) and the defacto complainant was introduced to them and in their presence, a mock phenolphthalein test was conducted and the significance of the trap was explained to them and Entrustment Mahazar Ex. P.5 was prepared and the serial numbers of the Trap Money M.O.1 were noted. Thereafter, he, along with the trap team, proceeded to the office of the accused and reached the office of the accused at 10.15 a.m. and that he, along with PW-3, had gone and met the accused and the accused had taken them along with him to meet the doctor and the doctor was



not available there and thereby the accused had brought them back to his room and enquired whether he had brought the money. When PW-2 had affirmed that they brought the money, the accused had demanded the same and accepted it and counted the money with both hands and kept it in his right pocket and had asked them to come on the next day. PW-2 had deposed that during that time, PW-3 was along with him and that they had come out of the room and made the prearranged signal and PW-23 had come near them and enquired them as to what had happened and that they had informed about the accused receiving money and that PW-23 had taken them inside the room of the accused, where they have identified the accused. Thereafter PW-23 asked him to stay outside and after half an hour he was asked to go back home.

17. PW-3[Mr.Saravanan], in his evidence, has deposed that he is working as the Deputy Block Development Officer in the office of the Block Development Officer, Veppannapalli and that on 06.01.2011, on the directions of his Project Officer, he had reported before the Investigation Officer PW-23 (Sathish) at 08.00 a.m, where he was introduced to PW-2 and PW-15, who is working as Junior Assistant in



District Collectorate in Krishnagiri. PW-23, thereafter, handed over a copy of the FIR in Crime No.1/AC/2011/KG and he had read over the same. PW-23 also explained to PW-3 about the procedures involved in laying a trap. PW-23 had also given the currencies handed over by PW-2 and their serial numbers have been read over by PW-3 based on which the Entrustment Mahazar Ex.P5 was prepared. PW-3 was also demonstrated about the phenolphthalein test and its result. As per the direction of PW-23, he accompanied PW-2 to the Government General Hospital, Krishnagiri where the accused was employed. He has specifically deposed that on seeing PW-2, the accused had asked for the money and he had received it and kept in his right side pant pocket. After the accused received the money, as directed, he along with PW-2 gave the pre-arranged signal immediately, PW-23 with his team apprehended the accused and subjected him to phenolphthalein test and the test was proved positive. He had deposed about the recovery of the tainted money and the serial numbers tallying with the numbers in Ex. P5 and had deposed about the recovery of M.O.4 to M.O.7 and the A.R.Register, Case Sheets, X-rays and the Attendance Register and about the preparation of the Recovery Mahazar, Rough Sketch and the house search and the House Search mahazar. In his



cross examination, nothing had been elucidated to substantiate the defence of the accused that the money was thrust. He has specifically deposed in the cross examination that when the accused asked PW-2, he introduced him as his friend. He reiterated that the amount was not kept on the table, as claimed by the accused, but it was received by him in his hand and kept in his right side pant pocket. He also deposed that after apprehending the accused, the Superintendent Mr.Manivel PW-8 was called upon and he was informed about the occurrence. He had also corroborated the evidence of PW-2 with regard to preparation of Ex.P5 and accompanying PW-2 to the office of the accused and also deposed about the accused having demanded and accepted the bribe amount and keeping in his right side pant pocket. He had further deposed about the phenolphthalein test conducted on the accused and the wash of fingers of both hands turning pink and wash of the pant pocket turning pink and the recovery of M.O.4 to M.O.6. He also deposed that he along with PW-15 and the Superintendent of Police, Mr.Manivel have signed the recovery mahazar Ex.P14 prepared by PW-23[Mr.Sathish]. He also denied the suggestion that the accused was threatened to take the money, even though he had refused to receive it.



WEB COPY

18. PW-4[Mr.Fiyaz] is one of the injured, who suffered injuries along with PW-2 on 31.12.2010. He, in his chief examination, has deposed that he, along with PW-2, met the accused in the General Hospital and at the time, the accused had demanded a sum of Rs.250/- for each wound certificate, totalling a sum of Rs.1000/-. As they did not have money, they returned on 31.12.2010. Subsequently on 05.01.2011, he, along with PW-2, once again, met the accused during which time, the accused reiterated the demand of Rs.1000/-. PW-4 also suggested to PW-2 to pay Rs.500/- in total, instead of Rs.1000/- demanded by the accused. Accordingly, PW-2 asked the accused to receive a total sum of Rs.500/- and to reduce the demand. However, the accused did not accede to receive Rs.500/-. According to PW-4, subsequently, he went to Coimbatore to take treatment and on 07.01.2011, while he was taking treatment in Ganga Hospital in Coimtabore. In his cross examination, he has stated that on 05.01.2011, when he went to the hospital along with PW-2, he asked the accused to return the OP sheet and X-ray, but he had refused to return it. He also denied the suggestion that there was a quarrel between him and the accused on 05.01.2011, owing to which, PW-2



has given a false complaint against him. He also denied the suggestion that on 05.01.2011, he has not given any complaint against the accused for having demanded money. He also denied the suggestion that he did not meet the accused on 06.01.2011 and the Vigilance Police official on 07.01.2011.

19. PW-5[Mr.Sheik Mohideen], in his chief examination, has stated that on 24.12.2010, he suffered injury in the accident, while returning in the Omni Van along with PW-2 and PW-4. He has stated that after taking treatment for a few hours, he had gone back to his native place at Gobichettipalayam. He has stated that he was not aware of the complaint given by PW-2 or the trap proceedings resorted to by the Vigilance and Anti-Corruption Officials. In his Cross examination, he has denied that he does not directly know about the illegal gratification said to have been received by the accused.

20. PW-6 [Mr.Thanigaivel] is the friend of PW-2. He also stated about the injuries he suffered on 24.12.2010 along with PW-2, PW-4 and PW-5. According to him, after the accident, he was admitted in Government Hospital, Krishnagiri and after initial treatment he has



received the discharge summary from the Hospital. For the purpose of Wound Certificate, according to PW-6, he asked PW-2 to obtain it. He also stated that PW-2 informed him that the accused demanded Rs.1000/- for issuance of four wound certificates. He also stated that he asked PW-2 to give a complaint against the accused for the demand for Rs.1000/- made by him. It is his evidence that he came to know that on 07.01.2011, the accused was apprehended by the Vigilance and Anti-Corruption Officials. In his cross examination, he has reiterated his version made in the chief examination.

21. The Doctor at Krishnagiri Government Hospital, who issued the wound certificates, was examined as PW-7 and duty certificate was marked as Ex.P17. PW-8 is the Office Superintendent who had deposed about the fact of the accused being trapped by the vigilance team and having affixed his signature in the Seizure / Recovery Mahazar Ex.P14. PW-9 is the Sub Inspector of police, who had registered the FIR in the accident case.

22. PW-15 is the other official witness who had assisted PW-23



in the trap. He had corroborated the evidence of PW-2 and PW-3 with regard to the trap proceedings, mock phenolphthalein test, entrustment of tainted money and he had also corroborated the evidence of PW-3 with regard to the phenolphthalein test conducted on the accused after receipt of money by him, recovery of money and other documents and about the preparation of the Seizure/Recovery Mahazar Ex.P14. PW-10 to PW-14 and PW-16 to PW-20 are the office staffs, who have deposed about the trap held on 07.01.2011. PW-21 is the Court Clerk, who had sent the received articles for chemical examination. Form 95 is Ex.P18. PW-22 is the Scientific Expert and the Chemical Analysis Report issued by him is Ex.P19.

23. PW-23 is the Inspector of Police who had laid the trap. He had deposed about having received the complaint from PW-2, registration of the FIR, arrangement of the trap and the receipt of money by the accused and the recoveries thereafter. PW-24 is the Inspector, who had taken up the case for investigation, examined the witnesses and filed the final report.

24. It is the submission of the learned counsel for the appellant



that the Trial Court failed to take into consideration the contradictions in the evidence of the witnesses regarding demand and that the demand by the appellant had not been proved. In this regard, PW2's evidence is cogent and clear as to the purpose of approaching the appellant and the demand made by the appellant to PW2, giving the complaint to the respondent, V&AC resulting in the registration of FIR and the trap being organised by PW15. PW3 and PW23 have spoken about the preparation of the entrustment mahazar. PW3 had corroborated about meeting the appellant, the demand made by the appellant and receipt of money and the subsequent trap. Evidence of PW23 in respect of the registration of the case, trap and recovery is also cogent and convincing.

25. Though the witnesses have been elaborately cross examined by the counsel for the accused, the evidence of PW-2, PW-3, PW-15 and PW-23 remained unimpeached with regard to demand, recovery and acceptance. Certain contradictions between the evidence of the witnesses pointed out by the counsel for the defence were also found to be minor in nature and they are not material contradictions affecting the case of the prosecution.

26. Yet another ground raised by the counsel for the accused is



that the non observance of the rules under the DVAC Manual had affected the case of the prosecution. No doubt, a Division Bench of this Court in ***Duraimurugan Vs. State, Deputy Superintendent of Police V & AC Vellore*** (2013) 1 CWC 136 has held that following of the rules under the DVAC Manual are directory in nature and not mandatory. However this Court, in certain cases, finding that there were material contradictions in the evidence of witnesses regarding the place of trap and recovery of tainted money, i.e., the place of occurrence had taken note of the discrepancies in the Rough Sketch required to be prepared under Rule 49 of the DVAC Manual for giving benefit of doubt and acquitting the accused. Whereas taking into consideration facts of the present case, the non following of the rules under the DVAC Manual has not created any suspicion or dent in the prosecution case, when especially the evidence of the witnesses is clear and cogent with regard to the place of demand, acceptance and recovery. When there is no doubt regard to the place of occurrence, the non following of Rule 49 of the DVAC Manual has not vitiated the prosecution case.

27. In the case of ***Narendra Champak Lal Trivedi Vs. State***



of Gujarat (2012-7-SCC-80) the Hon'ble Apex Court has held that when once the prosecution succeeds in establishing the foundational facts viz., acceptance or obtainment of gratification by the accused, the court is obliged to draw an inference that the said gratification was accepted as a motive or reward for doing or forbearing to do any official act.

28. As stated above in a case where the demand, acceptance and recovery have been proved by the prosecution, a statutory presumption would arise against the accused as per the mandate of Section 20 of Prevention of Corruption Act. It is trite that the statutory presumption can be rebutted by the accused either by way of discrediting the evidence of prosecution witnesses by way of cross examination or by bringing out a probable or possible defence to show that the money demanded and accepted and recovered from the accused is not an illegal gratification.

29. This court has to now see whether the accused had rebutted the presumption as mandated under Section 20 of the PC Act. It is the case of the accused in defence that the money had been placed by



PW-4 and that the presence of PW-4 has been suppressed by the prosecution. Though such a claim has been made, other than few suggestions put to the witnesses, which were denied by them, nothing favourable has been elucidated by the defence to the presence of PW-4 and the dent it has made to the prosecution case. In the opinion of this court, the presence or absence of PW-4 does not make any remarkable difference in the prosecution case, when the evidence of demand, acceptance and recovery has been proved by the prosecution without any doubt. Further, though a feeble claim had been made by the defence by examining DW-1 and marking Ex.D1, the information received under RTI that Rs.50/- was the charges for issuance of each wound certificate, no other evidence has been let in to prove that Rs.1000/- was not demanded by the accused. The prosecution has proved its case of demand, acceptance and recovery beyond reasonable doubt and the accused has failed to rebut the presumption by adducing evidence. Furthermore, no explanation has been offered by the accused, when questioned under Section 313 of Cr.P.C with regard to such a claim. This Court, perusing the evidence of PW1 and Ex P1, does not find any infirmity in the sanction granted to prosecute the accused. The prosecution has proved its case beyond reasonable



doubt, i.e., the foundational facts have been proved beyond all reasonable doubts and the accused had not rebutted the presumption required under Section 20 of the PC Act. Further the trial court had also after careful analysis of the evidence, found the accused guilty and there is no infirmity in the judgment of the trial court.

29. In the light of the above discussions, this court finds no merit in the appeal and in the result, **this Criminal Appeal is liable to be dismissed.** The judgment of conviction and sentence passed by the Special Judge/Chief Judicial Magistrate, Krishnagiri District, Krishnagiri in Special Calender Case No.2 of 2012, dated 31.10.2018 are hereby confirmed. The trial Court is directed to secure the accused to enable him to undergo the remaining period of sentence, less the period of sentence already undergone by the accused. Fine amount imposed by the trial Court, shall be paid, if not already paid by him.

19.03.2024

Index: Yes/No
Speaking order/non speaking order
ari

To:

1. The Special Judge/
Chief Judicial Magistrate,



Krishnagiri District, Krishnagiri.

2. The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Krishnagiri,
Krishnagiri District.
3. Public Prosecutor,
High Court, Madras.



WEB COPY



28

A.D.JAGADISH CHANDIRA,J.

ari

Pre-delivery Judgment in
Crl.A.No.708 of 2018

Delivered on
19.03.2024