

CRL.A(MD).No.1 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated: 10.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.1 of 2019

State Represented by
Special Public Prosecutor,
Inspector of Police,
CBI,ACB, Chennai @ Madurai.

...Appellant/Complainant

..Vs..

1.S.Chandran,
Senior Audit Officer,
S/o.S.Subbiah,
R/o.North Kannankulam,
Edalakudy Post,
Nagarcoil.

2.P.B.Ramasamy,
Assistant Audit Officer,
S/o.Shri PIR.Balakrishnan,
R/o.No.6/1, Narmanathi 3rd Street,
Mahatma Gandhi Nagar,
Madurai.

... Respondent/Accused No.1 & 2

Prayer : This Criminal Appeal has been filed under Section 378 (2) of Cr.P.C., to admit this appeal and call for record of the Trial Court and set aside the judgment of acquittal dated 27.09.2017 of the Ld. Special Judge for CBI Cases, Madurai in C.C.No.16 of 2013.



WEB COPY



CRL.A(MD).No.1 of 2019

For Appellant : C.Muthu Saravanan,
Special Public Prosecutor for CBI

For Respondents : Mr.Gopalakrishna Lakshmana Raju,
Senior Counsel for Mr.J.Jawahar
for R1

: Mr.R.Shunmuga Sundaram,
Senior Counsel for Mr.T.Balakrishnan
for R2

JUDGMENT

The CBI has filed the appeal challenging the acquittal Judgment passed in CC No. 16 of 2013 by the learned special judge for CBI cases holding that the allegation of demand and acceptance of bribe by the appellants has not been proved.

2.The 1st respondent was working as a Senior Audit Officer and the second respondent was working as an Assistant Auditing Officer in the Madurai Wing of AG Office, Theynambet, Chennai. They made the inspection in the Dindigul office from 15-05-2013 to 31-05-2013, and found that P.W.2 company has got the refund of an amount around Rs. 43,44,330/- without any entitlement. Therefore, they made the audit



CRL.A(MD).No.1 of 2019

endorsement to recover the said amount with interest. The same was intimated by P.W.8 to P.W.2. P.W.2 contacted A1 through his phone and asked to withdraw the said recommendation of recovery. A1 asked P.W.2 to meet him at Madurai office on 04.05.2013. Then P.W.2 met A1 at his Madurai office. At that time, A1 demanded bribe of Rs.5 lakhs to revoke the order of payment of the amount. P.W.2 was not inclined to give the bribe amount, and hence he made a complaint before the CBI and upon receipt of the complaint P.W.13 registered a case and after verification of the bribe amount brought by P.W.2, he called two official witnesses P.W.3 and another witness and arranged a trap. P.W..3 demonstrated the significance of the phenolphthalein test in the presence of the official witnesses to Defacto-complainant. After the demonstration of the phenolphthalein test to P.W.2, the Trap laying officer prepared the entrustment mahazar after noting the currency note numbers in the presence of P.W.3 and P.W.2. After the preparation of the entrustment Mahazar, they reached the accused's office and P.W.2 and P.W.3 were asked to meet A1 and they met A1, A2 was in his cabin. At that time, P.W.9 also was present in the said cabin. At that time, A1 asked P.W.3 to go out of the cabin and discussed with P.W.2 and P.W.2 is said to have handed over the bribe amount to A1. A1 after receipt of the amount, handed over the



CRL.A(MD).No.1 of 2019

money to A2 and A2 placed the amount on the table. After that, P.W.2 came out of the cabin of the accused and gave signal to P.W.13. P.W.13, after receipt of the signal entered into the cabin of A1 and A2 and conducted the phenolphthalein test in the hands of the A1, A2 and P.W.9. After the positive result of hand wash of A1 and A2, they arrested the accused and prepared the recovery Mahazar. Thereafter, he handed over the investigation to P.W.15. P.W.15 collected all the incriminating documents, examined the witnesses, obtained sanction and filed the final report before the special court constituted for the CBI cases, Madurai. The Learned Special Judge after receipt of the final report took cognizance in C.C.No. 16 of 2013 and issued the summons to the accused. After the appearance of the accused the learned Judge furnished the copies under Section 207 Cr.P.C., and after receipt of the copies of 207 Cr.P.C, he questioned the accused and the accused pleaded not guilty and hence they stood for trial.

3.The prosecution, in order to prove the case examined P.W.1 to P.W. 15 and marked Ex.P1 to Ex.P36 and also produced 7 material objects M.O. 1 to M.O.7. The Learned Trial Judge questioned the accused under section 313 Cr.P.C., by putting the incriminating materials available against the accused in evidence and the accused denied all the questions and A1 gave



CRL.A(MD).No.1 of 2019

a detailed explanation that he unearthed the illegality in the refund of amount and hence false case was registered against him. Similarly, A2 also stated that a false case was registered against him. On the side of defence DW1 was examined and defence documents D1 to D4 were marked. DW1 deposed that there was a variation between the calculation of the audit report and justified the action of A1 in the audit objection and also the recommendation to recover the amount of Rs.43 lakhs. The documents Ex.D1 to Ex.D4 were marked and from the said documents it is clear that the action taken by A1 for recovery of refund of amount was justified.

4.The Learned Trial Judge after considering the evidence by both sides, acquitted the accused by passing the impugned judgement. Challenging the same, the CBI has filed this appeal.

5.The Learned Special Public Prosecutor appearing for CBI made the following submission.

5.1.The P.W.2 clearly deposed about the demand and the acceptance by A1 and A2 namely respondent No.1 and 2. The Learned Public Prosecutor further submitted that the acceptance and the demand was



CRL.A(MD).No.1 of 2019

clearly proved. The same was materially corroborated by the evidence of the independent official witness namely P.W.3. Even though, P.W.3 was standing outside the cabin of the accused officers, he has stated that he along with P.W..2 entered into the cabin of accused and he was asked to stay out of the cabin by the accused and after sometime P.W.2 came out and informed about the payment of amount to the accused. All these show the corroboration of P.W..2's evidence. But the learned Judge has not properly considering the above legal evidence acquitted the accused erroneously and also rendered perverse finding as if the prosecution has not proved the fundamental facts namely demand and acceptance beyond resonable doubt.

5.2.The Learned Public Prosecutor also submitted that the audit report was made intentionally. Earlier, the company filed Writ petition before this court. This court remanded the matter to conduct the enquiry and fix the liability. Without ascertaining the same, the accused found that there was a error in the refund of the amount. Hence, he intentionally conducted audit inorder to receive the bribe amount and the same was established through the collection of the documents namely “Ex.P.19 and Ex.P.20”. From perusal of the Ex.P19 and Ex.P20, it is clear that earlier



CRL.A(MD).No.1 of 2019

there was a clear adjudication of the refund of the amount by the competent person. In the said circumstances reopening file for the purpose of auditing shows criminal intention on the part of the accused to receive bribe amount from P.W.2. Hence, the prosecution proved the demand, acceptance and recovery through evidence. The same was not properly considered by the learned trial judge and the accused were acquitted on the basis of the irrelevant consideration and hence he seeks to set-aside the acquittal order. He further submitted that the learned trial judge in paragraph 35, 36 gave a perverse finding and the reasoning is totally against the contents of the record. Hence he seeks to set aside the acquittal judgment.

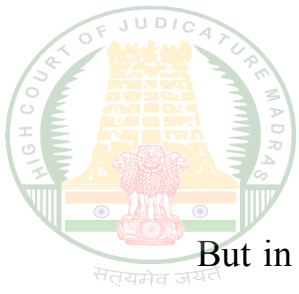
6.The Learned Senior Counsel appearing for A1 made the following submissions, demand is an essential ingredient to constitute the offence under section 7, read with Section 13(1)(d) with 13(2) of the prevention of corruption act as per Hon'ble Constitution Bench judgment reported in **“Neeraj Dutta case”**. In the said circumstances, the learned trial judge rightly has held that demand was not proved. According to the Learned Senior Counsel, as per the complaint and the FIR, the demand was made through telephone. But during the course of the chief examination, P.W.2



CRL.A(MD).No.1 of 2019

entirely made a totally different allegation as if he met the accused officer on the date of the demand, date of the trap and the accused officer demanded Rs.5 lakhs and even after his request he was not inclined to reduce the demanded amount of Rs.5 lakhs rupees to strike off the earlier audit report. To prove the demand, except the evidence of P.W..2, there is no corroborative evidence. Even though the P.W..2's evidence does not require corroboration generally, in view of lot of inconsistency and the contradictions between the evidence, his evidence requires corroboration for demand and acceptance. In the said circumstances, there is a material contradiction in the evidence and the complaint. This shows that his evidence is unbelievable.

6.1.The Learned Senior Counsel further submitted that the source of the amount is not established by the prosecution. Even as per the prosecution, he met the accused officer A1 in the office at 11.30 am. But immediately at 11.40 am he reached the CBI office. In the interregnum period, it is strange as to how he arranged the bribe amount of Rs.1 lakh and the same not been explained. Even though he was the director of the said company, the source of money has to be proved. Apart from that, according to the prosecution, the demand was made through the phone.

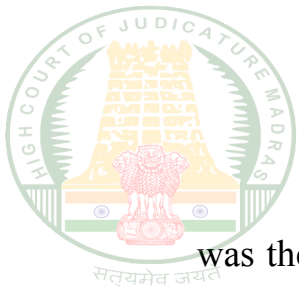


CRL.A(MD).No.1 of 2019

But in the evidence he says that the demand was made in person. Further, there is a material contradiction relating to the evidence of P.W.9 and P.W.

2. According to P.W.9, after the audit objection raised by the A1 officer, P.W..1 Thiru. Ravi, CTO made a call to P.W.2 and asked the accused officer to withdraw the said audit objection and furnished the number of the A1. Thereafter, P.W.2 contacted A1. Quite contrary to the said evidence, the P.W.2 stated that A1 contacted P.W.2 and demanded the money for closure of the said audit report. The said contradiction is material in this case because there was no corroborative evidence to prove the demand.

6.2. There is contradiction about the demand of amount whether it is Rs.1 lakh or 5 lakhs He further emphasized that the accused officer A1 was not inclined to reduce the amount of Rs.5 lakhs. In the said circumstances, the case of P.W.1 in the complaint, that A1 had demanded Rs.1 lakh shows that the evidence is not believable. In the said circumstances, according to the learned senior counsel, that the explanation made by A1, under Section 313 Cr.P.C proceedings that P.W.2 falsely implicated him since he found out the error of refund of amount and recommended for recovery is more probable. In the said circumstances, the alleged motive is proved. The learned senior counsel further submitted that P.W.2 is from Chennai and he



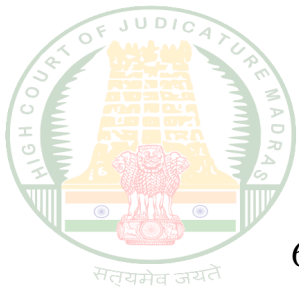
CRL.A(MD).No.1 of 2019

was the coordinator for the company and he is no way connected with the refund of the amount.

6.3 After inspection, the audit report was prepared and the report of recommendation was submitted to the officer namely P.W.6, and his role is over and he has no power to withdraw or recall the said report and the superior officer alone has power to carry out any modification or any change and he has no role to play after submission to P.W.6. Hence, the learned Senior Counsel submitted that no official duty existed on the date of the demand as alleged by P.W.2. His evidence is motivated. The learned senior counsel further submitted that the writ petition proceedings was not brought to the knowledge of A1. Apart from that, one material witness namely Ashok Kumar was not examined. The counsel further submitted that before laying the trap, P.W.3 received the information from the CBI, Chennai relating to the trap. This shows that the trap is illegitimate. In the said circumstances, he seeks to confirm the acquittal judgment.

6.4 Apart from that, he meticulously narrated the time and the sequence of events happened on the date of trap:-

10/25



CRL.A(MD).No.1 of 2019

6.5 According to P.W.9, when he reached the office, P.W.2 was in the office of the accused at “1.30” pm on the date of the occurrence. Per contra, there is evidence on the side of the P.W.2 that he was present in the CBI office at that time for lodging the complaint and other trap arrangements. But this evidence of P.W..9 and P.W..2 is quite contrary. The said time confusion can be also inferred from P.W.3's evidence and the P.W.13's evidence. From the conjoint reading of all the evidences, it is clear that there are two versions relating to the presence of P.W.2 in the accused's office as well as in the company of the other witnesses. In the said circumstances, the genesis of the demand itself is suspicious . The learned counsel further submitted that the amount was recovered from the “Floor of the occurrence place”. The said “Floor” was not subjected to the swab test. The learned senior counsel also submitted that P.W.3's evidence can not be used to support the demand and acceptance because he was asked to go out of the cabin of the accused. Hence, his evidence no way corroborated with the versions of P.W.2.

6.6 According to the learned senior counsel, the call details are material in this case. Prosecution never produced any call details to prove the charge of conspiracy. According to the prosecution, P.W.2 made a call



CRL.A(MD).No.1 of 2019

to the accused's officer. According to P.W.9, he made a call to P.W.2 officer and informed about the demand. The investigating agency failed to collect the CDR report, which is material in this case. Even as per the complaint, the demand was made only through the telephone conversation. In the said circumstances, the CBI neither recorded the telephone conversation nor proved the conversation as per law. Apart from that, the non-prosecution of the CDR report shows that there is no contact between the parties. In the said circumstances, in the absence of the CDR report, the Court must draw adverse inference against the investigating agency. The said lapse is material in this case. Further, the motive alleged by the accused officer is clearly proved from the above sequence of events that there was huge refund of amount without entitlement and same was found out during the statutory audit conducted by A1. Even after the repeated direction of this Court, the enquiry proceeding was not completed and hence, in order to save other officers, the accused was falsely roped in this case by using the CBI. In the said circumstances, he seeks for the confirmation of acquittal judgment

7.The learned senior counsel, appearing for A2 reiterated the above submission and also made a specific submission that there was no demand

12/25



CRL.A(MD).No.1 of 2019

even according to P.W.2. A2 was only seen in the cabin. At that time, A1 received the amount and handed over to A2. From that evidence, there was no case for the inference of demand and acceptance and also knowledge of the bribe amount. In the said circumstances, there was no case of constructive demand and acceptance on the part of A2 officer and hence, he seeks for the confirmation of the acquittal judgment.

7.1. He further submitted that this is a case against the acquittal. When the learned trial judge gave a categorical finding on appreciation of evidence in Para 35 that, demand has not been proved and in Para 36 relating to the other inconsistency in the material evidence, this court's jurisdiction is very much limited to interfere with the acquittal judgment. The learned Judge has pointed out the inconsistencies and improbabilities in the evidence of P.W.2 and hence P.W.2 was disbelieved. In the said circumstances, since there are two views this court's power is very much limited to interfere with acquittal judgment and hence, he seeks to confirm the impugned judgment. Further, the Learned Senior Counsel elaborately made a submission that the authority once had carried out the audit and endorsed the same and entrusted the file with P.W.6, he has no authority to cancel the said report as projected by the prosecution. Once he made the



CRL.A(MD).No.1 of 2019

audit objection, he has no authority to submit another report by deleting the earlier report. In the said circumstances, he seeks that there was no official relationship after the audit report, which was submitted to P.W.6. In the said circumstances, the learned trial judge correctly considered all the aspects in the paragraph Nos.35 and 36 and rightly acquitted the accused and there is no scope for interference in the acquittal judgment.

8.This court considered the rival submission and also perused the records.

9. Admittedly, P.W.2's company received the refund of amount of Rs. 43 lakhs. A1 and A2 have the power to make audit inspection. As per the audit inspection, during the course of the audit inspection, they found that the company received the refund of the tax amount without any basis. In the said circumstances, the accused prepared detailed notes and submitted to P.W.6. The said audit report is dated 30-05-2013. After that, the same was forwarded to the higher officials. As per the evidence of various witnesses, once the audit is made and submitted to P.W.6, then it is the duty of P.W.6 to send the same to the higher officials for further course of action. In the said circumstances, the accused have no role to withdraw the



CRL.A(MD).No.1 of 2019

audit report to do favour to P.W.2. In the said circumstances, the learned trial judge correctly came to the conclusion that there was no official relationship between the accused.

9.1 Apart from that, various witnesses stated that once A1 has submitted a report under Ex.P19, he has no role at all to recall the same. He became functus officio. In the said circumstances, the Learned Senior Counsel on both sides rightly argued that there was no official relationship.

9.2 The prosecution shall prove the demand beyond reasonable doubt. The demand may either be proved through oral evidence or through circumstantial evidence. In this case, both are lacking. P.W.2 deposed with material infirmities and his evidence is not cogent. He deposed that he made a complaint with an allegation that there was a demand through phone. But he totally changed his version in the chief examination as if there was a demand, in his office at the time he met A1 personally. According to P.W.2, he met the accused officer, in the morning of date of trap and he demanded and insisted to pay Rs.5 lakhs. It is the specific case of the P.W.2 that, in spite of the request made by P.W.2, A1 had refused to reduce the bribe amount and A1 firmly demanded to pay an amount of Rs.



CRL.A(MD).No.1 of 2019

5 lakhs to write off the said audit report in order to avoid further complication. In the said circumstances, the inconsistency between the evidence of P.W.2 and the improvement made by P.W.2 in his evidence shows that his evidence is unbelievable. In this aspect, as per the judgment of the Hon'ble Supreme Court in ***Suraj Mal Vs. State (Delhi Administration)*** reported in ***(1979) 4 SCC 725***, when there are two diametrically opposite version found in the evidence of prosecution witness, benefit of doubt is to be given to the accused. In this case, as stated above, there is a contradiction relating to the demand through the phone and A1 made a call to A1 received the phone number of the P.W.2 and made a call to the A1. P.W.2 met A1 in person and A1 demanded the bribe amount and received the amount. But the evidence of the P.W.9 and 6 is that they informed the above inspection made by A1 and A2 to P.W.2. P.W.2 made a call to the accused officer. In the said circumstances, this contradiction is quite against the evidence of P.W.2. In such circumstances, the evidence of the P.W.2 is not trustworthy and its evidence is inconsistent and, there is material improvement relating to the demand and acceptance. Apart from that, there are no other circumstances to infer the demand “*even the report was not in the custody of the accused officers. The report was already entrusted with P.W.6, who is the competent officer*



to send the report to his higher official for confirmation". In the said circumstances, the case of the Defacto-complainant, that accused officer demanded Rs.5 lakhs to score off the document is a myth. Further, even as per the version of the other witnesses, P.W.2 has motive against A1 officer. Since A1 made the audit report. He prepared a detailed report and recommended for the recovery of the amount. The said fact was clearly explained by A1 under Section 313 Cr.P.C., questioning, the answer is as follows:

அரசாங்கத்துக்கு ஏற்பட்ட இழப்புத்தொகையை எனது தணிக்கை குறிப்பின் மூலம் வெளிக்கொண்டு வந்து Draft Bill Audit report-யை உயரதிகாரிகளுக்கு அனுப்பிவிட்டதால் பாதிக்கப்பட்ட வணிகவரிதுறை அலுவலகங்களும் அ.சா.2-ம் (பாலாஜி) சேர்ந்து, திட்டமிட்டு, என்னை பழிவாங்கும் எண்ணத்துடன் வழக்கில் சிக்க வைத்துள்ளனர். நான் வந்து பணம் கேட்கவும் இல்லை. வாங்கவும் இல்லை. என்னுடைய 32வருட பணி காலங்களில் இதுவரை எந்த Adverse Remissess-ம் கிடையாது.	நான் அ.சா.2 விடம் இலஞ்சப் பணம் கேட்கவோ, வாங்கவோ இல்லை. என்னையும் அ.சா.9 திரு.கண்ணனையும் 1-வது எதிரிக்கு எதிராக பொய்யாக சாட்சி சொல்ல கோ அதிகாரிகள் கூறினார்கள். நான் மறுத்ததால் என் மீது பொய்யாக வழக்கு போட்டுள்ளார்கள்.
---	---

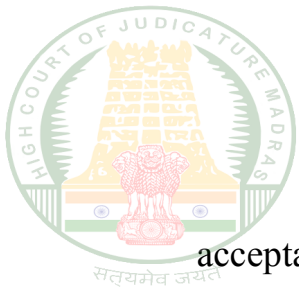
10. As held by the Honourable Supreme Court, the explanation under Section 313 Cr.P.C., has to be considered by every court. In fulfilment of fair trial. The Learned Trial Judge has considered the said explanation and gave a finding that, the complaint was a motivated one



CRL.A(MD).No.1 of 2019

and the trap was illegally laid. Hence, from the above discussion, it is seen that the demand was not proved by the prosecution. Apart from that, the acceptance of amount is concerned, there was no other evidence except the evidence of P.W..2.

11. P.W..9 who had been arrayed as accused No.3 was deleted from the list of accused and later added in the witness list. This court perused the entire evidence and also the other documents and finds that the demand and acceptance was not proved beyond reasonable doubt. it is well settled principle, that mere recovery of amount is not sufficient to convict the accused under sections 7, 13(1) (d) r/w 13(2) of the Prevention of Corruption Act. In this case, the recovery is also not proved as per the manner known to law. No independent witness was examined from the office of A1, where number of persons were working according to the prosecution. In all fairness, the CBI should have conducted the search in the presence of the witnesses present in the office. The same was not done. This shows that there is a suspicion regarding the preparation of Mahazar. The same was fortified from the following discussion of the evidence of P.W. 9 and P.W. 3. According to P.W. 3, he was directed to go out of the cabin of A1. Hence, he has no chance to witness either the demand or the



CRL.A(MD).No.1 of 2019

acceptance. According to the evidence of TLO P.W.13, he conducted test in

both the hands of A2 and there was no change of colour in the left hand.

But the report says that there is presence of phenolphthalein in the wash of left hand of the accused. In the said circumstances there is doubt about the prosecution case of recovery that the amount was recovered from the floor.

The Hon'ble Supreme Court has given guidelines to deal the appeal against acquittal. From the above principle, in this case, this court finds no reason to interfere with the finding of the Learned Trial Judge in Para 35 and 36 where it is observed that the demand was not proved and hence there was no sufficient evidence to show acceptance and recovery. In the said circumstances, going by the available evidence, the view is only in favour of the accused that the demand and acceptance is not proved in accordance with the law.

12.Conclusion:

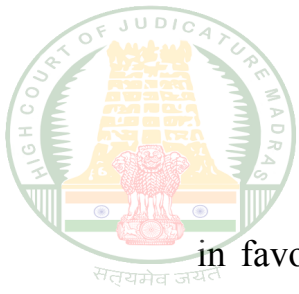
12.1.P.W..2 Chief Co-ordinator of SEW-KCPL (JV). The Reliance Company had awarded tender to the said SEW-KCPL (JV) company to lay the four lane road in NH-45 for certain distance for the value of Rs.420 Crores. The said SEW-KCPL (JV) company gave sub-contract to its sister company SEW Infrastructure Ltd, Hyderabad. As per the terms of the



CRL.A(MD).No.1 of 2019

contract two percentage (2%) of total value of the contract must be paid as

tax to the Government under the head of WCT. The same was paid and subsequently there was refund of the said tax by the Commercial Tax Officer. The 1st Respondent Senior Audit Officer made inspection and found that refund was made without any legal right. Therefore, he completed the audit and sent a report to the higher officer to recover the same. As per the evidence of P.W.5 & P.W.7, once the made the audit and submitted the report, he has no power to recall the same. P.W.5, P.W.6 & P.W.9 also deposed that as per the audit report if A1 P.W.2 company is liable to pay the tax evasion of Rs.26,36,795/- and the same was not paid. Therefore, the case of the accused that P.W.2 entered into corporate conspiracy with the remaining officers who had ordered for refund of the amount which was given in favour of P.W.2 company without any legal right and got back the amount and filed false case against the Respondent No.1 is a probable one. The same is further strengthened from the failure on the part of the CBI to conduct the investigation with regard to illegal refund of huge amount in favour of P.W..2's company. The entire trap was illegitimate to safe guard some officers who had made illegal refund of huge amount of the collected tax. From the record, it is seen that initially there was refund of huge amount of Rs.7.5 Crores without any legal right



CRL.A(MD).No.1 of 2019

in favour of the SEW KCPL (JV). After that, the Respondent conducted statutory audit inspection and note down the illegality and submitted the report. It is clear from the evidence of the P.W.2 and the Commercial Tax Officer who had granted refund of the amount, that there was a corporate conspiracy to rope the honest officers in order bring them under the control to screen their illegality. In this case admittedly, there was a refund of the huge amount of collected tax amount without any entitlement. Respondent No.1 correctly conducted the auditing and submitted the report and the said report was accepted by the higher authority by reducing the amount from Rs.43,33,334/- to Rs.26,34,795/-. Therefore, the Respondent No.1 has honestly discharged his duty. In order to bring trouble to him, P.W..2 intended to rope him in the trap. The origin of the trap itself is dubitable. There are two contradictory versions relating to the demand i.e., as per complaint, the demand was over phone, but in the evidence, the demand was made where P.W.2 met A1 in person. There was no definite evidence about the quantum of bribe amount either it was Rs.5 lakhs or 1 lakh. The source of money of Rs.1 lakh was not substantiated in the evidence. There was no evidence to prove the demand either before trap or at the time of the trap for the reason that the official witness for the trap was not present in the scene of the occurrence, at the time of the reiteration of demand

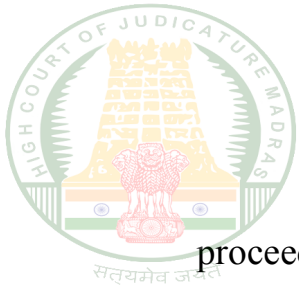


CRL.A(MD).No.1 of 2019

before the receipt of the bribe amount. P.W.9 who was arrayed as third accused in the FIR, added in the list of witness has not deposed about the demand. He specifically stated that A1 stated to P.W.2 that if the refund amount was paid back, the relevant audit para would be withdrawn and never speaks about the demand of bribe amount and his evidence is as follows:

“அவர் சந்திரன் அருகில் உட்கார்ந்திருந்தார். அந்த சமயத்தில் திரு.பாலாஜி Audit Para-ஐ Withdraw பண்ணச்சொன்னார். அப்போது 1-ம் எதிரி சந்திரன் Refund பணத்தை கொடுத்துவிட்டால் Audit Para-ஐ withdraw பண்ணிவிடுவேன் என்று சொன்னார்.”

12.2.The amount according to the prosecution was kept in the file. Thereafter, the same was thrown onto the floor and therefore the amount was not recovered from the body of the person. In the said circumstances, to believe the story of the receipt and recovery of the bribe amount, the swab test was not conducted either in the file or on the floor. The said omission is material in the particular facts of the case, for the reason that the specific evidence of the prosecution is that A2 was directed to take the amount found on the floor. More particularly A2 hand wash never turned pink at the time of the test before recovery. Therefore, the trap is bristled with infirmities. Apart from that, there is inherent improbability in the trap



CRL.A(MD).No.1 of 2019

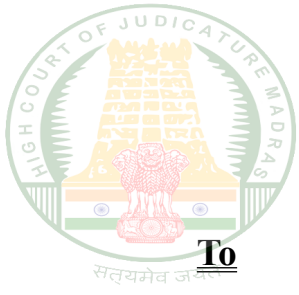
proceedings. Therefore, this court concurs with the view of the Learned Trial Judge that the prosecution failed to prove the case beyond reasonable doubt and finds no ground to interfere with well merited acquittal judgment passed by the Learned Trial Judge.

12.3. Hence, the Learned Trial Judge has correctly acquitted the accused. This court finds no perversity in the finding and hence there is no scope for interference in the order of acquittal. Hence, this court confirms the judgment of the trial court.

13. Accordingly, this Criminal Appeal is dismissed and the judgment passed by the learned Special Judge for CBI Cases, Madurai, in C.C.No.16 of 2013 dated 27.09.2017 is hereby confirmed.

10.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
vsg



CRL.A(MD).No.1 of 2019

To

WEB COPY

1. The Learned II Additional District Judge for CBI Cases,
Madurai.
2. The Special Public Prosecutor for CBI Cases,
Madurai Bench of Madras High Court, Madurai.
3. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



WEB COPY



CRL.A(MD).No.1 of 2019

K.K.RAMAKRISHNAN,J.

vsg

CRL.A(MD).No.1 of 2019

10.06.2024