



Crl .A.(MD).No.134 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	20.12.2023
Pronounced on	:	.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A.(MD)No.134 of 2017

K.Sivaraman

... Appellant

vs.

State represented by
The Inspector of Police,
Vigilance and Anti Corruption,
Sivagangai District.
(in Cr.No.10 of 2005)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to set aside the judgment passed in Spl.Case No.25 of 2014 dated 20.04.2017 on the file of the Special Court for Prevention of Corruption Act, Cases, Sivagangai and to acquit the appellant herein.

For Appellant :Mr.R.Rajarathinam
Senior Counsel
for Mr.N.Mohideen Basha
For Respondent :Mr.T.Senthil Kumar
Additional Public Prosecutor



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JUDGMENT

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The sole accused in Special Case No.25 of 2014 on the file of the Special Court for Prevention of Corruption Act, Cases, Sivagangai, filed this appeal challenging the judgment dated 20.04.2017 passed by the Special Court, Sivagangai, whereby, the learned trial Judge convicted the appellant for the offence under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and sentenced him to undergo three years rigorous imprisonment and a fine of Rs.1,000/-, in default, to undergo 6 months rigorous imprisonment for the offence under Section 7 of the Prevention of Corruption Act; and to undergo three years rigorous imprisonment and a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment for the offence under Sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act.

2.PW-2 is the owner of the property situated in the Ilayanthangudi North Group comprised in Patta No.3040 to the extent of 1½ acre of land. He applied for a loan in the State Bank of India, Thirupathur Branch. For that purpose, they requested him to produce Adangal extract



for ten years. Hence, he approached the accused/appellant, who was the Village Administrative Officer of the said village and for which, he initially demanded Rs.6,000/-. Thereafter, he reduced to Rs.4,500/- and he insisted to pay the amount on 10.05.2005 at 11.00 am in his office. Again, he and his brother-in-law, PW-3, approached the appellant and he reiterated the demand and also instructed to give the amount on 11.08.2005.

3.On 11.08.2005, PW-2 gave a complaint to PW-15, the Trap Laying Officer (hereinafter called as “TLO”). The TLO after receipt of the complaint from him, ascertained the allegation through secret enquiry, registered the case under Section 7 of the Prevention of Corruption Act, 1998 in Cr.No.10 of 2005. After registration of the case, he called the two official witnesses, namely, PW-4 and one Mariyappan. After their visit to the office of the PW-15, he introduced the de-facto complainant, namely, PW-2 to the said officers. They read the copy of FIR and asked about the contents of the FIR with PW2. He affirmed the same and thereafter, PW-15 explained about the significance of the phenolphthalein test by conducting a demonstration of phenolphthalein



test before PW-2. After demonstration of the phenolphthalein test, PW-15 put the phenolphthalein dabbed money in the shirt pocket of PW-2 and specifically instructed him to give the amount to the appellant, if he made any demand and he completed the preparation of the Entrusted Mahazar, Ex-P6. PW-15 specifically instructed P.W.2 that after the appellant demanded and accepted the amount, he should give the signal.

4. With the said instructions, the team proceeded towards the office of the appellant and PW-15 instructed PW-4 to go along with PW-2 and watch the communication between PW-2 and the appellant. When PW-2 and PW-4 entered into the office of the appellant, the appellant enquired about the bribe amount, immediately PW-2 handed over the said amount to the appellant. He received the amount and placed the same in a weekly magazine available on his table and he stated that he would get the signature from the Tahsildar and furnish the same on the following Monday.



5. Thereafter, PW-2 gave signal to PW-15. PW-15 on noticing the signal, reached the Village Administrative Office and conducted the phenolphthalein test in the hands of the appellant. Both the hands of the appellant turned into pink colour. Thereafter, PW-15 asked about the receipt of the money from appellant. The appellant accepted the receipt and disclosed the place of money. On the disclosure of the accused/appellant, the tainted money was recovered from the weekly magazine on his table. Thereafter, he completed the remaining formalities and recorded the statement of the appellant and he stated that he received the amount for the arrears of tax and PW-2 gave the remaining amount to purchase stamp paper. After recording the same, he arrested the accused and completed the preparation of the Recovery Mahazar. They went to the appellant's house and made a search and completed the search without finding any incriminating materials. After that, he prepared the rough sketch and brought the accused to the office of the respondent. Thereafter, after completion of the formalities, produced him before the Special Court and the Special Court remanded the accused.



6. Thereafter, he entrusted the investigation to PW-16 and PW-16 completed the investigation and he entrusted the further course of the investigation to PW-17 and PW-17 completed the investigation and filed the final report before the Special Court and the Special Court took the case on file in Spl. Case No. 25 of 2015 and summoned the appellant and furnished the copies under Section 207 Cr.P.C., and framed necessary charges and questioned the accused. He denied the charges and stood for trial. The prosecution, to prove the charges, examined PW-1 to PW-17 and exhibited Ex-P1 to Ex-P31 and marked MO-1 to MO-4.

7. The learned Trial Judge, asked the questions under Section 313 Cr.P.C., on the basis of the evidence of the prosecution regarding his involvement and the accused denied the same as false. Thereafter, the case was posted for examination of the defence witnesses. The accused neither examined any witness nor marked any documents.

8. The learned Trial Judge, after considering the evidence, convicted the appellant under Section 7 of Prevention of Corruption Act, and sentenced him to undergo rigorous imprisonment of three years and a



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fine of Rs.3,000/- with default sentence of six months simple imprisonment and further convicted him under Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, and sentenced him to undergo rigorous imprisonment of three years and a fine of Rs.3,000/- with default sentence of six months simple imprisonment. Both sentences were ordered to run concurrently. Challenging the same, the appellant filed this appeal.

9.Mr.R.Rajarithnam, learned Senior Counsel for Mr.N.Mohideen Basha, learned Counsel for the appellant made the following submissions:

(1)PW-2 was in need of ten years Adangal for which, the appellant has no jurisdiction and only the Tahsildar has the powers to issue ten years Adangal and hence, the entire prosecution case that the appellant demanded and accepted the bribe amount for issuance of ten years Adangal is false.



(2) False allegations were made for the reasons that the appellant made a complaint against PW-2 for his alleged act of cutting village trees. Hence, the foundational allegation that the appellant demanded bribe to issue ten years Adangal and accepted the amount for the issuance of ten years Adangal is false. The same was not properly considered by the learned Trial Judge. In the background of the above motive, the delay of twenty days in preferring the complaint is material one and the prosecution never explained the delay in preferring the complaint.

(3) The learned Trial Judge failed to consider the fact that according to PW-2, he made request to the Tahsildar Office and thereafter, he approached the appellant. During the course of trial, the application submitted to the Tahsildar office was not marked and hence, there is sufficient circumstance to disbelieve the evidence of PW-2 that he has not approached the appellant to issue ten years Adangal.

(4) The further case of PW-2 that he met the appellant twenty days before the occurrence and the appellant demanded Rs.6,000/- for ten



years Adangal is without any evidence. Even on 04.08.2015, the appellant reduced his amount to Rs.4,500/-. That also lacks evidence. On 10.08.2005, the accused demanded Rs.1,000/- is without any evidence and hence, in this case, the pre-trap demand as alleged by the prosecution has not been proved through acceptable evidence. The post-trap demand also not proved.

(5)PW-4 never stated that on the alleged date of trap the appellant made any demand. He only stated that the appellant questioned him whether he had come with the necessary particulars. This does not amount to demand and according to the learned Senior Counsel, the same was not properly considered by the learned Trial Judge. Hence, according to the learned Senior Counsel, the Trial Court failed to consider the fact that the pre-trap demand and post-trap demand have not been proved by the prosecution.

(6)Even though PW-3 stated that the accused demanded bribe amount, his evidence is not trustworthy on the ground that he did not mention the date and month of the first meeting with the accused and he



only has given evidence regarding the demand made by the appellant on 04.08.2005 and 08.08.2005 and only on 10.08.2005, the appellant agreed to receive a sum of Rs.1,000/-. His evidence about the writing of the complaint Ex-P4 as dictated by PW-2 because of his illiteracy is not believable one. Hence, in all aspects, the evidence of PW-3 is not acceptable.

(7)The learned Trial Judge ought not have considered the evidence of PW-5, who speaks about the recovery of the bribe amount and preparation of the Recovery Mahazar as the same is not acceptable for the reason that there is unbelievable version in the evidence of prosecution that she was present at that time. It is not probable that in the presence of the higher official, the Village Administrative Officer demanded and accepted the amount and placed the amount in the weekly magazine. Further, PW-5's presence is a doubtful and PW-5 in chief-examination, stated that she went to the appellant's office to verify the accounts of the Keeranipatti Village but, Keeranipatti village records have not been recovered to prove ancillary facts that PW-5 was present in the scene of occurrence. The said fact is essential one on the ground



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that PW-5 has a separate office and if she wants to verify the same, she could have asked her subordinate, namely, the Village Administrative Officer to furnish the copies. Without doing so, she went to the office of the Village Administrative Officer to verify the Keeranipatti Village accounts is highly improbable one. Hence, her presence in the scene of occurrence at the time of preparation of Recovery Mahazar itself is doubtful. The learned Trial Judge has not considered the evidence of PW-5 in proper manner. She has given different versions in chief and cross examination and hence, her evidence is to be disbelieved.

(8)The learned Senior Counsel further submitted that as per the evidence of PW-5, PW-6 and PW-7 only three year Adangal is available in the Village Administrative Office and to obtain the Adangal beyond three years, the same must be obtained from the Tahsildar office and the said procedure is spoken to by PW-5, PW-10 and PW-15. In the said circumstances, the case of PW-2 that he approached the Village Administrative Officer by-passing the entire procedure and submitted the application to the Tahsildar Office creates a doubt over the entire prosecution case.



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(9)According to the prosecution, the application was submitted before the Tahsildar office on 12.08.2005 under Ex-P19. There is no evidence that the same was forwarded to the appellant's office. In the said circumstances, the allegation that the appellant demanded bribe to give ten years Adangal is without any material. Ex-P19 was not recovered from the office of the appellant and hence without availability of Ex.P.19, the allegation that the appellant demanded the amount to furnish Adangal is unbelievable and also the same is false.

(10)The learned Trial Judge also failed to consider the fact that PW-15 (TLO) did not follow the procedure as stated in the Vigilance manual. Firstly, he did not conduct any secret enquiry before registering the FIR. Secondly, he did not record the statement of the accused after the trap proceedings. He also has not followed the other procedures stated in the Vigilance Manual. Hence, cumulative effect of all the lacunae in the trap proceedings creates a doubt, which has not been considered by the learned Trial Judge.



(11)After the trap proceedings, the phenolphthalein test was conducted and the sample was sealed and sent to the chemical analyst in bottles. There is no specific seal on the bottles. There is no mention of the phenolphthalein test. The prosecution has not given explanation for the change of colour in the hand wash of the appellant. It is not the specific case of PW-2, PW-4, PW-5 and PW-15 that the appellant received the currency and counted the notes with both hands. It is the duty of the prosecution to prove the colour change in both hand wash of the appellant. The same was absent and hence, there is no clear proof of narration of the facts by prosecution witnesses.

(12)The learned Senior Counsel further submitted that before invoking the presumption clause, foundation facts, namely, demand, acceptance of bribe amount and recovery of the bribe amount are to be proved in accordance with law. In this case, the trap proceedings are bristled with suspicious circumstances and doubts, and the prosecution failed to prove the case beyond reasonable doubt against the appellant regarding the foundational facts and hence, in the present case, the presumption does not arise.



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10.The following judgments were relied upon by the learned Senior Counsel appearing for the appellant:

- (1)2006 (1) SCC 305 (V.Venkata Subbarao vs State)
- (2)CDJ 2019 MHC 3794 (K.P.Kolanthai vs State)
- (3)2019 (1) LW (Crl.) 65 (Abdul Kathar vs State)
- (4)2005 (12) SCC 576 (Union of India vs Purnandu Biswas)
- (5)2018 (1) LW (Cri) 699 (A.Deenadayalan vs State)
- (6)2005 SCC (Cri) 641 (State of Rajasthan vs Gurmail Singh)
- (7)1990 SCC (Cri) 627 (Tej Bahadur Singh vs State)
- (8)2007 (1) SCC (Cri) 732 (Vikramjit Singh vs Sate)

11.The learned Additional Public Prosecutor per contra submitted that it is not the case of the appellant that the amount is a tax arrears. In the said circumstances, the acceptance of the bribe amount is admitted by the appellant. Hence, whatever contradictions pointed out by the learned Senior Counsel relating to acceptance of the amount is not material. The learned Additional Public Prosecutor further submitted that the demand was clearly established by the prosecution through evidence of PW-2,



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PW-3, PW-4 and the various circumstances available on record, ie., on the date of the trap, the appellant has met PW-2 and he received the amount and placed the amount in the weekly magazine. The TLO recovered the prepared Adangal without signature for the period of 1405 to 1414 Fasli years. In the said circumstances, the prosecution proved the demand in the circumstances. Merely on the basis of some of the insignificant contradictions, variations and irrelevant infirmities in the evidence of witnesses it cannot be projected as material one, as if it affected the prosecution case. In this case the evidence of PW-2, PW-3 and PW5 proved the demand made by the appellant. It is well settled that each accused officer has his own code words to reiterate demand. In some cases, they ask have you brought the money, in some cases, they ask whether you have come with necessary particulars and in some cases, they ask have you come with money. So each officer has own method of reiterating the demand. In this case, the appellant reiterated the demand by asking have you come with materials. Hence, immediately, PW-2 handed over the money and the same was received by the appellant. From the sequence of events, it is clear that the accused demanded bribe amount and accepted the amount. Hence, the learned Additional Public



Prosecutor submitted that the demand is proved.

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12.The learned Additional Public Prosecutor further submitted that the recovery is clearly proved. According to the prosecution, he received the amount and placed the same in the weekly magazine. As per the disclosure made by the appellant, the amount was recovered by PW-15 in the presence of the officials witnesses and PW-5, who are immediate superior of the appellant. In the said circumstances, the acceptance of amount was proved. The prosecution without any delay conducted the phenolphthalein test also in the weekly magazine to prove the factum of placement of the amount in the weekly magazine. Further, the handwash of the appellant also turned into pink. This positive result of the report clearly shows that the prosecution proved the acceptance and receipt of the amount in clear terms.

13.In the narration of the evidence by the witnesses, PW-2, PW-3, PW-4, PW-5 and PW-15, the entire trap proceedings is not bristled with any infirmities as projected by the learned Senior Counsel for the appellant. The further submission of the learned Senior Counsel for the



appellant that there is a motive between the appellant and the PW-2 is not acceptable to disbelieve the version of the PW-2, PW-3, PW-4, PW-5 and PW-15. When the evidence is clear, the motive pales into insignificance. Even for the motive, there is no evidence adduced on the side of the appellant that only because of the motive, he has been falsely implicated in this case. In the said circumstances, the learned Additional Public Prosecutor seeks to dismiss this appeal.

14.The learned Additional Public Prosecutor further submitted that in this case, the prosecution clearly proved the demand and acceptance and presumption under Section 20 of the Act automatically comes into play and hence, the appellant did not adduce any evidence to disprove the case of the prosecution. Even in the explanation under Section 313 Cr.P.C., he gave a different version that only due to the instigation of P.R.Palanisamy, a Granite owner and Sivaraman, M.L.A., he was falsely roped in this case. But the argument of the learned Senior Counsel that due to some other motives, he was implicated is not the defence of the appellant and hence, there is no infirmity in the judgment of the learned Trial Judge.



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15.The learned Additional Public Prosecutor further submitted that in view of the lapse of eleven years from the date of trap, it is quite natural that there are some infirmities, contradictions and discrepancies in the evidence of witnesses. In this case, the evidence of PW-2, PW-3, PW-4, PW-5 and PW-15 is cogent, clear and trustworthy. The version of the said witnesses, more particularly, the evidence of PW-4 and PW-5 who are the officials who have no axe to grind against the appellant to falsely implicate him gains much weight.

16.This Court considered the rival submissions and also perused the materials and the impugned order and the precedents relied upon by both parties.

16.1. whether the prosecution proved the case of demand and acceptance to constitute the offence under Section 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act 1988?

17.The appellant is the Village Administrative Officer of



Keelasevalpatti Village. PW-2's father is Murugesan. He owned 1½ acres of land in Aavinipatti Village under Patta No.3040. PW-2 intended to start a poultry farm in the said land. For that purpose, he approached the State Bank of India to avail the loan. They insisted to provide the Adangal particulars for the ten years for the said land. Hence, on 04.08.2005, PW-2 approached the appellant in the Keelasevalpatti Village Administrative Office, who asked to give Rs.6,000/- and thereafter, he reduced to Rs.4,500/- and finally on 10.08.2005, when the PW-2 and the PW-3 met the appellant, he demanded Rs.1,000/- directing to give the said amount on 11.08.2005. PW-2 was not inclined to give the bribe amount to the appellant and hence, he approached PW-15, of the respondent department.

18.PW-15, after ascertaining the truth in the allegations, registered the case and called PW-4 and other official witness and explained about the phenolphthalein test to PW-2 by conducting demonstration of phenolphthalein test. Thereafter, he smeared the phenolphthalein powder on the bribe amount provided by PW-2 and put the same in the pocket of PW-2. PW-15 specifically instructed to give the said bribe amount after



the demand made by the appellant and also instructed PW-4 to go along with the PW-2 and watch the proceedings taking place between the appellant and PW-2. The appellant received the amount and placed the amount in the weekly magazine, namely, Junior Vikatan placed on his table. The appellant, after receipt of the amount, specifically told PW-2 that he would get the signature from the Tahsildar and hand over the same on following Monday.

19. Thereafter, PW-15 and his team entered the appellant's office and seized the tainted currency and also the material documents, namely, ten years of Adangal from the custody of the appellant and after completing the formalities, arrested the accused and also confirmed the acceptance of bribe amount by the appellant by conducting phenolphthalein test in the hands of the appellant. The appellant gave the explanation that he received Rs.400/- as an arrear of tax and Rs.600/- for the purchase of the stamp papers. The said narration of the event has clearly been spoken to by PW-2, PW-3, P.W.4, PW-5 and PW-15.



Proof of demand:-

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20. Even though, it is stated that there is no corroborative evidence for the demand made by the appellant on 04.08.2005 and twenty days prior to the occurrence and on 08.08.2005, but the evidence of PW-2 that the appellant made continuous demand since twenty days prior to the occurrence is confirmed by the evidence of PW-3, who stated that in his presence he demanded the bribe on 10.08.2005. PW-2 has informed about the demand of the amount earlier made by the appellant and the evidence of PW-2 and PW-3 relating to the demand made on 10.08.2005 and the evidence of PW-2 that the appellant demanded bribe amount and the same was informed to PW-3 is cogent and clear. Both their evidence are trustworthy and without any infirmities in the material particulars of the demand. Apart from that, PW-4 clearly stated that the accused reiterated the demand by asking the question “have you brought the material”. Immediately, PW-2 handed over the money and upon receipt of the same, the appellant assured that he would get the signature in the Adangal from the Tahsildar on following Monday and hence, from the above narration of evidence by PW-4, it is clear that pre and post-trap demand also proved and hence, in all aspects, the prosecution clearly



proved the pre-trap and post-trap demand.

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21.The learned Senior Counsel pointed out some of the infirmities and discrepancies in the evidence of PW-3 and PW-4 relating to the irrelevant particulars. The occurrence took place in the year 2005 and examination of the witnesses have taken place after eleven years. In the course of such events, such infirmities and the minor contradictions and the material discrepancies would naturally occur. In the said circumstances, when the evidence of PW-2, PW-3 and PW-4 are cogent and trustworthy and they are clear in their versions regarding the pre-trap demand and post-trap demand, this Court has no reason to disbelieve the version of the above witnesses. Further, the learned Trial Judge after considering the evidence of PW-2, PW-3, PW-4 and the other material circumstances, namely, recovery of the Adangal for the ten years from the custody of the appellant categorically gave the finding that the demand has been proved through oral as well as circumstantial evidence.



Acceptance and recovery of bribe amount:-

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22. In this case, according to the prosecution, PW-2 handed over the money to the appellant. The same was witnessed by PW-4. PW-4 is independent official witness, who has no motive against the appellant. In the said circumstances, the prosecution clearly proved the acceptance of bribe amount by the appellant from PW-2. P.W.4's evidence regarding the reiteration of demand and acceptance of the amount by the appellant cannot be disbelieved. PW-15 conducted the phenolphthalein test. The said solution was sent to the chemical analyst. The test report also confirmed the presence of phenolphthalein ie., the appellant handled the tainted currency. In this case, the appellant also admitted the fact that he received the bribe amount and he disclosed the placement of the amount in the weekly magazine book kept on the table. Hence, PW-15 on the disclosure of the appellant, recovered the said amount and ascertained the amount by tallying with the numbers of the notes mentioned in the Entrustment Mahazar. Hence, in all aspects, the prosecution proved the acceptance of the amount by the appellant from PW-2.



Presumption under Section 20 of the Act:-

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23. In view of the above fact that the prosecution clearly proved the demand and acceptance through evidence of the PW-2, PW-3, PW-4 and PW-15, the presumption under Section 20 of the Act automatically comes into play. As per the prosecution, the appellant handled the application Ex.P19 and received tainted currency and demand was also clearly proved through the evidence of the PW-2, PW-3, PW-4 and Ex-5. Hence, the presumption under Section 20 of the Act can be invoked. To dispel the presumption, the accused did not provide any evidence. He only gave the following explanation under 313 Cr.P.C., that on 01.10.1973ல் வேலைக்குச் சேர்ந்தேன். பரம்பரை பரம்பரையாக சேவையாக வேலை பார்த்து வந்தோம். நான் நல்லமுறையில் வேலைபார்த்து வந்தேன். என்னுடைய விரோதிகளான முன்னாள் எம்.எல்.ஏ. சிவராமன் மற்றும் பி.ஆர்.பழனிசாமி கிராணைட் குவாரிக்கு தடையில்லா சான்று கேட்டதற்கு மறுத்ததால் போடப்பட்ட பொய்வழக்கு.

24. This is the explanation furnished by the appellant during 313 Cr.P.C., proceedings. But, during the course of cross examination and submission of the learned Senior Counsel for the appellant that the case



was registered falsely on the ground that he made the complaint against PW-2 for his mischief of cutting village trees. For both the defences, there is no material. Further, this Court does not accept the said motive alleged by the learned Senior Counsel to disbelieve the evidence of PW-4 and 15. It is not unusual to cite unconnected stale motive in the case of corruption by stating irrelevant facts through prolonged cross examination after lapse of number of years from the date of occurrence. The Honourable Supreme Court repeatedly held that even though motive is available, that is not a ground to disbelieve the demand and acceptance made by the appellant, the relevant portion of the judgment is as follows:

State of U.P. v. Zakaullah, (1998) 1 SCC 557

6.The complainant's evidence was jettisoned on the mere ground that since he had a grouse against the delinquent public servant he might falsely have implicated the latter. Such a premise is fraught with the consequence that no bribe-giver can get away from such a stigma in any graft case. No doubt PW 5 would have been aggrieved by the conduct of the respondent. The very fact that he lodged a complaint with the Anti-Corruption Bureau



is reflective of his grievance. Such a handicap in his evidence may require the Court to scrutinise it with greater care, but it does not call for outright rejection of his evidence at the threshold. A pedantic approach rejecting the evidence of a complainant simply on the premise that he was aggrieved against the bribe-taker, would only help corrupt officials getting insulated from legal consequences.

25. Similar view was also taken by the Honourable Supreme Court in 1984 (1) SCC 254 Paragraph 10,

State of U.P. v. G.K. Ghosh, (1984) 1 SCC 254 : 1984 SCC (Cri) 46 at page 262

10. It is now time to deal with the criticism urged as a matter of course in the context of the police officer leading the raiding party — namely that he is an interested witness. This is true, but only to an extent — a very limited extent. He is interested in the success of the trap to ensure that a citizen, who complains of harassment by a Government officer making a demand for illegal gratification, is protected and the role of his department in the protection of such citizens is vindicated. Perhaps it can be contended that he is interested in the success of the trap so that



his ego is satisfied or that he earns a feather in his cap. At the same time it must be realised that it is not frequently that a police officer, himself being a Government servant, would resort to perjury and concoct evidence in order to rope in an innocent Government servant. In the event of the Government servant concerned refusing to accept the currency notes offered by the complainant, it would not be reasonable to expect the police officer to go to the length of concocting a false seizure memo for prosecuting and humiliating him merely in order to save the face of the complainant, thereby compromising his own conscience. The court may therefore, depending on the circumstances of a case, feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the police officers even if the trap witnesses turn hostile or are found not to be independent. When therefore besides such evidence there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the prosecution case. The present case appears to be a case of that nature. If the circumstantial evidence is of such a nature that it affords adequate corroboration to the prosecution



case, as held by the learned Special Judge, the appeal must succeed. If on the other hand the circumstantial evidence is considered to be inadequate to buttress the oral testimony, the appeal necessarily must fail.

14. So also it is not possible to believe that all the police officers had from the beginning conspired to rope in the respondent by hook or crook and had carried with them the half complete form which was acquired in a fortuitous manner to the consulting room in order to prepare the fictitious Farad at the time of the raid. It is not possible to believe that nothing had transpired at the raid, and yet, an imagined account of the occurrence and the seizure was incorporated in the Farad with a view to falsely implicate the respondent. The explanation of the respondent as to why the police officers should have falsely implicated the respondent is also not convincing. This is what he says:

“A person by the name of Nathu had died in police lock up Hahi Police Station. In that case Shri R.K. Shukla and other police officials were involved. A vast enquiry was done in that case. The post-mortem of the dead body of Nathu was performed by me. On that day Shri R.N. Pandey met me and pressurised me to give post-mortem report to the effect that no reason



could be ascertained of causing death. I told him that whatever will be right and truth I would be giving the same in my report. Shri R.N. Pandey told me that enmity with police is not good. About 18-20 police employees were suspended on my report. That case is still pending against the police officials. I had performed the post-mortem in December 1974, and the revenge of the same was taken during emergency by Shri R.N. Pandey while having league with Dr B.M. Pandey by laying a trap on me. Babu Lal was made a willing stooge.”

Mukut Bihari v. State of Rajasthan, (2012) 11 SCC 642

10. The courts below considered the facts properly and appreciated the evidence in correct perspective and then reached the conclusion that the charges stood fully proved against the appellants. The explanation furnished by the appellants that they had falsely been enroped due to enmity could not be proved for the reason that no evidence could be brought on record indicating any previous enmity between the complainant and the appellants nor was any evidence available to show that the complainant was not satisfied with the treatment given to his father and he could act with some oblique motive in order to falsely implicate the appellants. Thus, under the garb of donation,



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he had offered the tainted money to the appellants and got them arrested.

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Hence, the defence of the appellant has not been established. In the said circumstances, this Court does not find any evidence to dispel the presumption under Section 20 of the Act.

Delay in registering the FIR:-

26.The learned Senior Counsel appearing for the appellant submitted that there is twenty days delay in registering the FIR. According to PW-2, he approached the appellant twenty days before the occurrence. He approached the Tahsildar office to give the Adangal for ten years. Thereafter, they asked to come one week later. One week later, the Tahsildar office informed PW-2 that the said application was misplaced. Hence, he went to the Tahsildar office. There was no response in the Tahsildar Office. Somebody informed about the fact that he should approach the appellant. Hence, he approached the appellant. At the first instance, he demanded Rs.6,000/-. Thereafter, he again met on 04.08.2005. He reduced the demand to Rs.4,500/-. He reiterated the same on 08.08.2005 and 10.08.2005. On 10.08.2005, he demanded the



money in the presence of the PW-3 and on 10.08.2005, he resolutely instructed to give Rs.1,000/- on 11.08.2005. Hence in the course of such events, there may be some delay in lodging the complaint. There is no intention on the part of PW-2 to give belated complaint. Further, the said delay is immaterial, when there had been a continuous demand of Adangal from the appellant.

26.1. In this aspect, it is relevant to note the judgment of Honourable Supreme Court in the case of ***Mahadev Dhanappa Gunaki v. State of Bombay, (1953) 1 SCC 220***

14. We see no force in this argument, because the police authorities had performed to wait until the appellants made a further move in the matter. It is not reasonable to suggest that the police authorities should go out of their way and actively invite bribes in order to trap the appellants.

26.2. The delay should be questioned through the Investigation Officer and due to the delay, serious prejudice should have been caused to the appellant and the prejudice is to be explained by the accused. None of the above has been established by the appellant and hence, this



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Court has not accepted the submission of the learned Senior Counsel regarding the delay.

27.The learned Senior Counsel vehemently submitted that the appellant has no authority to issue Adangal for more than ten years, ie., the appellant has no power and jurisdiction to issue Adangal for more than three years and hence, the prosecution case itself is false. In this aspect, it is relevant to note that as per Section 7 of the Prevention of Corruption Act, it is not necessary, that he should have power to discharge or he is the only authority to discharge the said duty. If he received illegal gratification giving assurance to discharge his duty, it is enough. Even otherwise, it is not necessary, to constitute the offence under Section 7 and 13(2) of the Prevention of Corruption Act, the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. The Hon'ble Supreme Court has held as follows in the following judgments:

***Bhanuprasad Hariprasad Dave v. State of Gujarat*, reported in AIR 1968 SC 1323:**



“8.... To establish the offence under Section 161 of the Indian Penal Code all that prosecution had to establish was that the appellants were public servants and that they had obtained illegal gratification for showing or forbearing to show, in the exercise of their official functions, favour or disfavour to Ramanlal. The question whether there was any offence which the first appellant could have investigated or not is irrelevant for that purpose. If he had used his official position to extract illegal gratification the requirements of the law is satisfied.

The Constitution Bench of the **Hon'ble Supreme Court** in ***Dhaneshwar Narain Saxena v. Delhi Admn.***, reported in **AIR 1962 SC 195** has held as follows:

“4. It will be observed that the heading of Section 5 is Criminal misconduct in the discharge of official duty. That is a new offence which was created by the Act, apart from and in addition to offences under the Indian Penal Code, like, those under Section 161, etc. The legislature advisedly widened the scope of the crime by giving a very wide definition in Section 5 with a view to punish those who, holding public office and taking advantage of their official position, obtain any valuable thing or pecuniary advantage. The necessary ingredient of an offence under Section 161 of the Indian Penal Code, is the clause “as a



motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant”, but it need not be there in order to bring an offence under Section 5 of the Act home to the accused. The offence under this section is, thus, wider and not narrower, than the offence of bribery as defined in Section 161 of the IPC. The words “in the discharge of his duty” do not constitute an essential ingredient of the offence. The mistake in the judgment of this Court in the aforesaid ruling in State of Ajmer v. Shivji Lal [(1959) Supp. (2) SCR 739] has arisen from reading those words, which are part merely of the nomenclature of the offence created by the Statute, whose ingredients are set out in sub-clauses (a) to (d) that follow, as descriptive of an essential and additional ingredient of each of the types of offence in the four sub-clauses. That that is the source of the mistake is apparent from the erroneous way in



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which the section has been quoted at p. 744 of the Supreme Court Report, in the paragraph preceding the paragraph quoted above. The ingredients of the particular offence in clause (d) of Section 5(1) of the Act are; (1) that he should be a public servant; (2) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant; (3) that he should have thereby obtained a valuable thing or pecuniary advantage; and (4) for himself or for any other person. In order to bring the charge home to an accused person under clause (d) aforesaid of the section, it is not necessary, that the public servant in question, while misconducting himself, should have done so in the discharge of his duty. It would be anomalous to say that a public servant has misconducted himself in the discharge of his duty. “Duty” and “misconduct” go ill together. If a person has misconducted himself as a public servant, it would not ordinarily be in the discharge of his duty, but the reverse of it. That “misconduct”, which has been made criminal by Section 5 of the Act, does not contain the element of discharge of his duty, by public servant, is also made clear by reference to the provisions of clause



(c) of Section 5(1). It is well settled that if a public servant dishonestly or fraudulently misappropriates property entrusted to him, he cannot be said to have been doing so in the discharge of his official duty (vide the case of Hori Ram Singh v. Crown [(1939) FCR 159] . An application for special leave to appeal from that decision was refused by the Privy Council in Hori Ram Singh v. King-Emperor [(1940) FCR 15] . This Court, therefore, misread the section when it observed that the offence consists in criminal misconduct in the discharge of official duty. The error lies in importing the description of the offence into the definition portion of it. It is not necessary to constitute the offence under clause (d) of the section that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is equally wrong to say that if a public servant were to take money from a third person, by corrupt illegal means or otherwise abusing his official position, in order to corrupt some other public servant, without there being any question of his misconducting himself in the discharge of his own duty, he has not committed an



offence under Section 5(1)(d). It is also erroneous to hold that the essence of an offence under Section 5(2), read with Section 5(1)(d), is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage.”

Looking from another angle as held by the Hon'ble Constitution Bench in the case of ***Dhanvantrai Balwantrai Desai v. State of Maharashtra*** reported in ***AIR 1964 SC 575*** Paragraph No.12, if the authority received the amount other than legitimate due, the said receipt of the amount amounts to illegal gratification. The relevant paragraph is as follows:

12.... It is well to bear in mind that whereas under Section 114 of the Evidence Act it is open to the court to draw or not to draw a presumption as to the existence of one fact from the proof of another fact and it is not obligatory upon the court to draw such presumption, under sub-section (1) of Section 4, however, if a certain fact is proved, that is, where any gratification (other than legal gratification) or any valuable thing is proved to have been received by an accused person the court is required to draw a presumption that the person received that thing as a motive of reward such as is mentioned in Section 161



IPC. Therefore, the court has no choice in the matter, once it is established that the accused person has received a sum of money which was not due to him as a legal remuneration

28.Further more, in this case, the Village Administrative Officer, namely, the appellant had the custody of the ten years Adangal and he specifically said that he would get the signature of the Tahsildar on following Monday. In the said circumstances, even though he is not an authority to issue the same, but he is the authority to give Adangal and he prepared the Adangal and hence, in this case, the submission of the learned Senior Counsel cannot be accepted. It is relevant to note the following judgments:

29.The learned Senior Counsel pointed out minor contradictions and infirmities regarding the topography of the place of the occurrence. The incident took place much earlier in the year 2005 and examination of the witnesses took place after 11 years. In the said circumstances, he is not expected to give with accuracy regarding the place, topography and the time and the other events, as if the like a narration of a film story. The



Honourable Supreme Court held in the case of ***Vinod Kumar v. State of Haryana***, (2015) 3 SCC 138 at page 149

24. The next facet relates to the discrepancies in the evidence of the witnesses. The learned trial Judge has found discrepancies with regard to the handing of letter by Santosh to Manphul; the discrepancies relating to the place and time pertaining to various aspects stated by witnesses and the identity of the accused at the time of arrest. The discrepancies which have been noted are absolutely minor. The High Court has correctly observed that the minor discrepancies like who met whom, at what time and who was dropped and at whose place and at what time, etc. have been given unnecessary emphasis. It is well settled in law that minor discrepancies on trivial matters not touching the core of the case or not going to the root of the matter could not result in rejection of the evidence as a whole. It is also well-accepted principle that no true witness can possibly escape from making some discrepant details, but the court should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that it would be justified in jettisoning his evidence. It is expected of the courts to ignore the



discrepancies which do not shed the basic version of the prosecution, for the court has to call into aid its vast experience of men and matters in different cases to evaluate the entire material on record. (See State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105] , Rammi v. State of M.P. [(1999) 8 SCC 649 : 2000 SCC (Cri) 26] and Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559] .)

The minor discrepancies, infirmities and contradictions are not material and only material discrepancies and infirmities, which affected the very foundation of the case alone are to be considered.

30.In the said circumstances, the submission of the learned Senior Counsel regarding variations and infirmities relating to the place of the table, contradictions between the evidence and absence of the Tahsildar office application, etc., is immaterial, when the evidence of PW-2, PW-3, PW-4, PW-15 and the documents and Recovery Mahazar are unshakable and without any doubt. Further, the evidence of the PW-3, PW-4, PW-5 and PW-15 also cogent and trustworthy. In addition, the appellant admitted the receipt of the amount. In the said circumstances, he is duty bound to explain the same. He has not even produced any documents to



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show that he received the amount of Rs.400/- as arrears. There is no evidence in this aspect. Further, he gave an explanation that Rs.600/- is to purchase for stamp papers. He has no duty to purchase stamp papers. Adangal is prepared in the prescribed format and it is not necessary to purchase the stamp papers and hence, in all aspects, the prosecution proved the case beyond reasonable doubt and the learned Trial Judge considered the evidence and also the defence of the appellant and rightly convicted the appellant for the offences under Sections 7 and 13(2) and 13(1)(d) of the Prevention of Corruption Act and hence, this Court finds no infirmity in the findings of the Trial Judge and hence, this Court confirms the findings of the Trial Court in convicting the appellant under the provisions of the Prevention of Corruption Act.

31.The learned Senior Counsel appearing for the appellant submitted that the appellant is suffering from diabetes and hence, his toe was amputated. Further, even on the date of trap, he had illness and hence, due to the above facts and the age of the appellant, and amputation of toe and this Court is inclined to reduce the sentence from three years to one year and confirmed the findings by the learned Trial



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Judge in all other aspects. Accordingly, this appeal is partly allowed with the following terms:

(i)conviction recorded by the Special Court for Prevention of Corruption Act, Cases, Sivagangai, dated 20.04.2017 for the offence under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act is hereby confirmed.

(ii) The concurrent sentence of imprisonment to undergo three years rigorous imprisonment for the offence under Section 7 of the Prevention of Corruption Act and for the offence under Sections 13(1) (d) r/w 13(2) of the Prevention of Corruption Act is reduced to one year.

(iii) The fine of Rs.2,000/-, in default, to undergo 1 year rigorous imprisonment is confirmed.

(iv)Bail bond executed by the appellant herein is hereby cancelled and the Court below is hereby directed to secure the appellant to undergo remaining part of sentence of imprisonment.

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

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To

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- 1.The learned Special Judge for Prevention
of Corruption Act Cases, Sivagangai.
- 2.The Inspector of Police,
Vigilance and Anti Corruption,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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