BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	20.12.2023
Pronounced on	:	19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.372 of 2017

Balakrishnan .. Appellant / Sole Accused

Vs.

State rep. by
Inspector of Police,
Vigilance and Anti Corruption,
Tiruchirappalli.
(Crime No.23 of 2008) .. Respondent / Complainant

Prayer : This Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to call for the records relating to the judgment passed by the Chief Judicial Magistrate Court/Special Judge, Karur in Spl.C.C.No.18 of 2014 dated 31.08.2017 and set aside the same and allow the Criminal Appeal.

For Appellant : Mr.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

JUDGMENT

The accused in the Special C.C.18 of 2014 on the file of Chief Judicial Magistrate Court/Special Judge, Karur, filed this appeal challenging the conviction and sentence passed by the learned trial Judge. The learned trial Judge convicted the appellant for the offence under Sections 7 and 13(1)(d) r/w13(2) of the Prevention of Corruption Act and sentenced him to undergo one year simple imprisonment and a fine of Rs.2,000/- in default, one month simple imprisonment for the offence under Section 7 of the Prevention of Corruption Act and to undergo two years simple imprisonment and a fine of Rs.3000/- in default, to undergo one month simple imprisonment for the offence under Section 13(1)(d) r/w13(2) of the Prevention of Corruption Act .

2. Case of the prosecution:

The appellant was working as Junior Engineer in the P.WD Department, Karur. The house of P.W2 is situated in Door No.2/410, Main Road, Opposite to Paramathi, Government Higher Secondary School, Karur District near Karur-Coimbatore National Highways-67. The Highways Authorities marked for acquisition to an extent of 1225 square feet of his house property for the expansion of the said National Highways in the month of May, 2008. The accused officer is entrusted with the duty of submitting the report of the valuation of the property to be acquired. The accused officer contacted P.W.2 through phone and demanded bribe for sending the valuation report with the estimation of the amount. The accused officer contacted P.W2 through phone many times and asked to meet him. On 02.06.2008, P.W2 personally met the accused officer, at that time, the accused officer demanded Rs.10,000/- to send the report to the competent authority namely District Revenue Officer and the National Highways Department. But, he was not inclined to give the bribe amount and hence he preferred a complaint before the respondent police. P.W18 received the complaint from P.W2 and registered a case-Ex.46(FIR) under Section 7 of the Prevention of Corruption Act, 1988. After obtaining the signature in the FIR, he called two official witnesses, namely P.W3 and one Sudhakar. After arrival of P.W3 and said Sudhakar, P.W18 demonstrated the significance of the phenolphthalein test to P.W2. Thereafter, he received the amount from P.W2 and smeared phenolphthalein powder. In continuation, P.W18 instructed the P.W2 to hand over the said money if the accused made any demand. He further instructed to give signal upon receipt of the bribe amount. Finally, he prepared the entrustment mahazar after making entry of the numbers of the currency notes handed over to P.W2. Thereafter, the trap team, viz., P.W18, P.W3 and P.W2 went to the appellant's office. When they entered into the office, the appellant enquired P.W2 and reiterated the demand and also accepted the bribe amount and after counting the same, he put the said amount in his pant pocket. Thereafter, he assured that the entire papers would be sent to the competent authority. Immediately, P.W2 gave signal to the trap laying officer. On receipt of the signal, the trap laying officer went to the office of the appellant Village Administrative Officer and conducted the test in the hands of the appellant and the same turned into pink. Thereafter, the trap laying officer enquired about the handling of money and the accused officer admitted the receipt of the amount and he had taken the money from his pant pocket and handed over the same to the trap laying officer. Subsequently, the trap laying officer conducted phenolphthalein test in his pant packet and the same also turned into pink colour. After completing all the formalities, he also recovered the documents which were in the custody of the accused officer/appellant relating to P.W2. After that he arrested the accused and the subsequent investigation was conducted by P.W19 by collecting all the documents and final report was filed before the Special Court.

3. The learned Special Judge taken the same on file in Spl.C.C.No. 18 of 2014. The learned Special Judge framed the necessary charges. After framing of charges, the learned Special Judge questioned the appellant and he denied the charges and pleaded not guilty and stood for trial.

4. To prove the charges, the prosecution examined P.W1 to P.W18 and marked Ex.P1 to Ex.P19 and Ex.B1 to Ex.B58 and M.O1 to M.O6. The learned trial Judge put the incriminating materials available against the appellant from the evidence of prosecution witnesses and documents under Section 313 Cr.P.C and he denied the same as false and filed a written explanation and examined DW1 on his side.

5. The learned trial judge, after considering the above evidence, convicted the appellant for the offence under Sections 7 and 13(1)(d) r/w13(2) of the Prevention of Corruption Act and sentenced him as stated in the first paragraph. Challenging the same he filed the present appeal.

6. The learned Senior Counsel Mr.Ajmal Khan made the following submissions on behalf of the appellant:-

6.1. As per the charge, the appellant is said to have demanded money to send the estimation report to the competent authority namely, the District Revenue Officer. P.W2's house is situated in Door No.2/410, Main Road, Opposite to Paramathi, Government Higher Secondary School, Karur District near Karur-Coimbatore National Highways-67, which is acquired for the extension of the National Highways, Karur. The competent authority entrusted the appellant to submit the valuation report of the building in order to disburse the compensation. For submitting the said valuation report, the appellant is said to have demanded the bribe amount of Rs.10,000/- from P.W2 through phone on 26.09.2008 and when P.W2 met the appellant, he also reiterated the demand. But according to the learned Senior Counsel, even before P.W2 met the appellant, he prepared the estimation on 05.09.2008 and submitted to the higher officials on the same day. Further, the higher officials approved the same on 12.09.2008 and they sent the same to the competent authority and hence, the allegation of demand and acceptance of the amount as illegal gratification to discharge the duty is not made out. In view of the above facts and circumstances, the prosecution case is false and hence he seeks for acquittal.

6.2.The Constitution Bench of the Hon'ble Supreme Court in the judgement of ***Neeraj Dutta*** case held that the prosecution must prove the demand either through the oral or documentary evidence. In this case, there was no other evidence except the evidence of P.W2.

6.3. The learned Senior counsel further submitted that the presence of P.W3-the trap witness is doubtful. The learned Senior counsel would also make the said submissions on the basis of the material contradiction between the evidence of P.W3, P.W5, P.W18. According to P.W2, no staircase is available in the building of the appellant's office. On the other hand, P.W5-the higher officer of the appellant deposed that the building was consisting of two floors. In the ground floor, the office of the appellant is situated. Similarly, P.W18 also stated that the building consists of two floors. In the ground floor, the appellant's office is situated. The said contradiction clearly creating a doubt over the presence of P.W3 in the trap proceedings. In view of the suspicion about the participation of P.W3 in the trap proceedings, the prosecution failed to prove the entrustment mahazar and recovery mahazar and hence, he seeks for acquittal.

6.4. Even as per the evidence of P.W5, P.W6 and P.W14, the appellant already sent the valuation report before 12.09.2018. The same was clear from the evidence of Ex.P11 and other evidence and hence, the prosecution version that the appellant is said to have demanded and accepted the amount for discharge of his official duty is false. When the said foundation is false, the entire edifice would automatically crumble. The learned Senior counsel further submitted that the non-examination of one of the official witness in the peculiar circumstances of the case affects the prosecution case. The learned Senior counsel stated that when the presence of P.W3 is doubtful, the prosecution ought to have examined another official witnesses namely, Sudhakar who was present during the preparation of the entrustment mahazar and recovery mahazar.

6.5. The learned Senior counsel further submitted that according to the evidence of P.W5, M.O5 did not contain any colour change. Hence, the case of the prosecution that the accused received the money and counted the money and put it in his pant packet is not correct.

6.6. The learned Senior counsel, further stated that as per the Vigilance Manual 44, before registering the case, the trap laying officer has to conduct a secret enquiry and the same was not done in this case. The learned Senior counsel elaborated the argument on the ground that even though appellant submitted detailed explanation during the 313 Cr.P.C., questioning regarding the two facts (ie.,) the receipt of the amount and the change of the colour in the hands, the same was not at all properly considered by the learned trial Judge and hence, he seeks for acquittal of the judgement. By relying the judgement of the Hon'ble Supreme Court reported in 2022 SCC online (SC) 966 and 2002 (10)SCC371, he argued that the appellant gave a plausible explanation and the same was proved through the examination of DW1 and other circumstances as stated above and hence seeks for acquittal.

6.7. The learned Senior counsel further submitted that there was a suggestion during the course of the evidence of P.W2 and P.W3 that is P.W2 shook his hands with the appellant on the date of the occurrence. Hence, due to this, the colour may have changed in the hands of the appellant. Further, the appellant disclosed that before the alleged demand and receipt of the amount, he already discharged his duty of sending the report to the concerned authority much earlier on 02.09.2008.

6.8. The learned Senior counsel placed reliance on Section 7 of the Prevention of Corruption Act. In this case, before the alleged demand, the appellant already completed his duty of sending the valuation report to the competent authority. In the said circumstances, as per Section 7 and 13 of the Prevention of Corruption Act, the offence was not made out, more particularly, the learned Senior counsel submitted that as per Section 7 of the Prevention of Corruption Act, the accused should receive the amount as illegal gratification to do some favour to the any person. But in this case, even before P.W2 approached him, he already despatched the valuation report and hence, the offence under Section 7 of the Prevention of Corruption Act was not made out. Similarly, Section 13(1)(d) of the Prevention of Corruption Act also require that the appellant demanded and accepted the amount to do favour for him or to any other person. In this case, the submission of report has already been done on 05.09.2008. Hence, the case of the prosecution that the appellant received the amount as illegal gratification is not proved beyond reasonable doubt. To substantiate his contention, he placed reliance on the judgement of the Hon'ble Supreme Court reported in **2001 (10) SCC 215 [State of U.P. v. Jagdish Singh Malhotra]**

The learned Senior counsel stated that factually in similar circumstances, the Hon'ble Supreme Court held that the entire version of the prosecution becomes very doubtful.

7. The learned Additional Public Prosecutor submitted that the phone number of the accused is 9842064813. P.W.2's phone number is 9442828068. The appellant made frequent call to P.W2 and P.W2 made some call to the appellant. As per the evidence of P.W3-nodal officer from the phone company, through the Ex.P19, the appellant made call to P.W2 on 08.09.2008 and on various dates and finally on 06.09.2008, he contacted him two times and the accused made call one time. Further, in the 313 Cr.P.C., explanation he has not specifically denied the phone conversation with P.W2, but he stated that the appellant contacted P.W2 to submit the documents for preparing the valuation report. Therefore, the said fact is corroborated with the prosecution case, ie., the accused demanded money and accepted the same as bribe. It is not the case of the appellant that he never contacted P.W2. In the said circumstances, the prosecution proved the official relationship between the appellant and P.W2.

8.The appellant demanded bribe from P.W2 and accepted and the said amount was also recovered from him. In the circumstances, the legal presumption arises and the said legal proposition was not rebutted through the legal evidence. The appellant's explanation under Section 313 Cr.P.C mutually destructed his case. He admitted the contact over phone. and the demand and acceptance is clearly proved through the evidence of P.W2 and P.W3. Even though witness are subjected to lengthy cross examination, no fruitful answer was elicited to disbelieve the testimony of P,W.2 and P.W.3.

9. The learned Additional Public Prosecutor further submitted that the contradiction as argued by the learned Senior counsel relating to the building topography, namely, building with the stair case and the official building is not material one to disbelieve the testimony of P.W.3. According to the learned Additional Public Prosecutor, there is no evidence that the documents already reached the authority’s office. Hence the defence version is not proved.

10. In all aspect, the prosecution proved the case. The learned Additional Public Prosecutor submitted that Section 7 of the Prevention of

Corruption Act stated "the motive or reward". "The reward contains both past, present and future activities". Therefore, in this case, he obtained illegal gratification for the act done earlier. In the said circumstances, his conviction under Section 7 and 13(1)(d) of the Prevention of Corruption Act is correct.

11. The learned Additional Public Prosecutor further submitted that number of documents pertaining to the files of P.W2 are seized from the appellant. Hence, the case of the appellant that there was no relationship between the appellant and P.W2 is not at all correct.

12. This Court has considered the rival submissions and perused the records and also the presidents relied upon by them.

13. The question arises in this appeal is whether the prosecution has proved the case beyond reasonable doubt against the appellant to substantiate the conviction and sentence imposed by the learned trial Judge or not ?

14. P.W3 is the owner of the house situated in Door No.2/410, Main Road, Opposite to Paramathi, Government Higher Secondary School, Karur District near Karur-Coimbatore National Highways-67. The same was acquired for the expansion of the Karur - Coimbatore National Highways for which the appellant was entrusted with the work of sending the valuation report. Therefore, the appellant contacted P.W2 through phone and demanded bribe amount to sent the valuation report of his house property. On 26.09.2008, P.W2 personally met the appellant in his office and he demanded Rs.10,000/- for submitting the valuation report to the competent authority in order to disburse the compensation amount. P.W.2, not acceding to the said demand, gave the complaint to P.W19 and he registered the case under Section 7 of the Prevention of Corruption Act and he entrapped the appellant and recovered the money and added the offence under Section 13(1)(d) of the Prevention of Corruption Act. P.W3 the official witness deposed in line with the evidence of P.W2 in respect of the demand and acceptance of money. According to P.W2 and P.W3, the appellant received the amount and counted the same and put it in his pant packet. After receipt of the signal, the trap laying officer-P.W18 and his team entered into the appellant's office and conducted the phenolphthalein test in the hands of the appellant and also in the pant packet of the appellant, which turned into pink colour and hence the appellant, after recovery of the amount on disclosure by the appellant, under the recovery mahazar collected the documents pertaining to the valuation with regard to the house of P.W2, from the appellant's custody. After completing all formalities, he entrusted the investigation with P.W19. P.W19 conducted investigation and collected number of documents and filed the final report.

14.1.From the above sequence of events, it is clear that P.W2 clearly deposed that the appellant made a call to his phone and he demanded Rs. 10,000/- for the sanctioning of the valuation report. Hence, he approached P.W19 and he arranged for trap. He went to the appellant's office, at that time, the appellant after questioning the presence of P.W3, reiterated the demand and accepted the same from P.W2. The said version of P.W2 is corroborated by P.W3-independent witness, namely, the trap witness. The said witness has no motive against the appellant. He is also working in the Department and deposed before the Court that the appellant demanded and accepted the bribe money. Hence, the prosecution proved the demand and acceptance as required under law. Further material documents relating to the valuation with regard to the house property of the appellant were also recovered from the custody of the appellant. In the said circumstances, the demand was also proved through the circumstantial evidence.

14.2. Further, as per the provision of the Act, once the prosecution established that he received the bribe amount on the basis of the demand, then the presumption arises and it is the duty of the appellant to rebut the presumption and to prove the contrary. The Hon'ble Constitution Bench of the Hon'ble Supreme Court in ***AIR 1960 SC 543*** and ***AIR 1964 SC 575*** clearly stated that once the prosecution proved the receipt of amount other than the legal gratification, it is the duty of the appellant to dispel the said presumption.

14.3.According to the appellant, there was no official relationship between the appellant and P.W2. Then there was no necessity to call the appellant through his mobile. It is the case of the appellant that he had already completed the process on 05.09.2008, itself. Then there is no necessity to contact P.W2 through phone and asked to meet him. It is the further version of the appellant that in the course of the 313 Cr.P.C proceedings, he called P.W2 to produce the necessary documents to prepare the valuation report and send to the competent authority. The appellant's case is that he sent the valuation report on 05.09.2008, then there is no necessity to make a phone call to P.W2 on the subsequent dates, more particularly, on 09.08.2008, 06.09.2008 and on the date of trap. He initially made two phone calls and P.W2 made a further phone call. The said call details records produced through the nodal officer of the phone company/ P.W.16 and the call details was marked as Ex.P.19 without objection. The same was perused by this Court. From the perusal, it is clear that the accused/appellant made a telephone call to the P.W.2. In the said circumstances, it is proved that the appellant demanded money from P.W2.

14.4.As per Section 7 of the Prevention of Corruption Act, the meaning of the reward is concerned, it is applicable for the past act also and the same was elaborately interpreted by the various Courts including this Court in the following judgement:

> *14.4.(i).*In the case of ***Venkatasubbiah Vs Emperor*** *reported in* ***AIR 1948 mad 63,*** *the relevant portion reads as follows:*
>
> *Two ingenious arguments are raised by Mr. N. Somasundaram for the petitioner. The first is that the*

phrase "motive or reward" in S. 161 of the Penal Code, 1860 does not cover a case where the payment is made in respect of past favours. The term "reward" in the phrase is manifestly intended to apply to a past service. What is forbidden generally is receiving any gratification as motive to do or a reward for having done any such thing as is described in the definition. Any other construction would lead to an absurdity. In that view the payment would be a bribe when paid before the doing of an official act, but it would not be a bribe if paid after the official act has been done or official favour has been shown. It will be the easiest thing for a person in such a position to stipulate for the payment immediately after the doing of the official act or the showing of the official favour. Such a construction is not in keeping with either the language or the spirit of S. 161 of the Penal Code, 1860.

*14.4.(ii).*In the case of ***Mohinder Lal Bagai v. Delhi Administration,*** reported in ***1970 Cri LJ 793,*** the relevant portion reads as follows*;*

17. *A payment of a sum to a public servant, whether paid before or after the doing of the official act, would constitute bribe within section 161, Penal Code, 1860.*

*14.4.(iii).*In the case of ***Manikrao Abaji Thonge v. State of Maharashtra,*** reported in ***1993 Cri LJ 3796,*** the relevant portion reads as follows:

23. *In my view, to constitute an offence under section 161 of the Penal Code, 1860, it is sufficient that there is an offer of a bribe to a public servant in the belief that he has an opportunity or power in the exercise of his official function to show the offerer a desired favour, although, the public servant has, i**n reality, no such power.** Performance of the act which is the consideration for the bribe is not essential but it is essential that the bribe should be obtained as a motive or reward. Similarly, whether the complainant desires the accused to perform by way of consideration of the bribe whether it is actually performed or not at the time of the acceptance of the bribe, is not relevant. What is relevant is that the amount of bribe has been received by corrupt or illegal means by abusing his position as a public servant. Once it is shown that the amount has been received by a public servant by abusing his position as a public servant and that the amount is received by corrupt or illegal means, the offence is complete. Hence, even if the illegal gratification is received after the official act is done, yet, it will constitute an offence* *under section 161 of the Penal Code, 1860. As far as the wordings of section 5(1)(d) are concerned, the same are wider than the wording of section 161. The said section 5(1)(d) provides that a public servant would be guilty of committing criminal misconduct if he by corrupt or illegal means or by otherwise abusing his position as a public servant obtains for himself or through any other person any valuable thing or pecuniary advantage. In my view, the contention raised that no offence can be said to have been committed since the accused had already performed his official act on the date on which he received the gratification, cannot be accepted either for the offence under section 161 of the Penal Code, 1860 or under section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act.*

15. The learned Senior Counsel's made lengthy submission relating to the contradiction between the evidence of P.W3, P.W5 and P.W18 regarding the existence of the staircase in the office of the appellant. In the said compound, their office building are situated. It is not clear from the question of the appellant that in which office there was a staircase which they have to clarify. Further this topographic discrepancy can not affect his credibility when he has no motive against the appellant. P.W3 also is a public servant and he clearly deposed about the demand and receipt of money. He was present all along the preparation of the entrustment mahazar and recovery mahazar. The said contradiction cannot affect the credibility of his evidence. It is not every discrepancy which affects creditworthiness and the trustworthiness of a witness. The discrepancy may arise due to the error of observations, loss of memory due to the lapse of time and the said normal discrepancy does not affect the credibility of the witnesses. In the case of the corruption cases, the witnesses were usually examined after number of years from the date of occurrence. Therefore, there some normal discrepancy usually happen. Unless the said discrepancy, affects the root of the prosecution version, the same cannot be taken into consideration. In this case, P.W.3 clearly deposed about the demand, acceptance and recovery of the amount from the appellant. In the said material aspect, his evidence is cogent and trustworthy. Therefore, this Court finds no merits in the contention of the learned Senior Counsel.

16. In this case, the learned counsel for the appellant never pleaded P.W19-trap laying officer and the official witness-P.W3, made the illegitimate trap. P.W3 is the trap witness, and he belongs to the Government department. He has no motive against the appellant. Hence, as held by the Hon'ble Supreme Court in various Judgements right from the Hon'bel Constitution Bench judgment rendered in ***AIR 1958 SC 500***, unless there is a strong reason to disbelieve the version of the official witness, conviction can be made on the basis of the sole testimony of the official witness.

17. The learned Senior Counsel made a lengthy submission that the learned trial Judge has not considered his explanation given under Section 313 Cr.P.C, for which he placed reliance on the judgment of the Hon'ble Supreme Court reported in ***2022 SCC online SC 966***. Hence, this Court considered the explanation given by the appellant. According to the appellant, in the 313 Cr.P.C proceedings, he called P.W2 to submit the document to prepare the valuation report and for that, he never demanded money and never received money. He submitted his report to the higher officials on 05.09.2008 and the same was clearly deposed by P.W5, P.W6 & P.W14 and Ex.P11 also proved this fact that he had already completed his work. He further stated that P.W2 shook his hands with the appellant. To prove the same, he examined DW1. Hence, the colour was changed in his hands also. To appreciate the said explanation, this Court considered the following facts:

1. It is not the evidence of P.W2 and P.W3 that they had shaken their hands with the appellant. They denied the suggestion.
2. In that event, there was no explanation regarding the change of colour in the pant packet of the appellant and the recovery of money from the pant packet of the appellant.
3. DW1, a retired officer from the said office with phenomenal memory disclosed the fact that P.W2 shook his hands with the appellant. The said evidence is unbelievable one for the reason that he was accidentally present in the scene of occurrence. Even though number of officers were present in the occurrence place, nobody was examined to prove the said fact to corroborate the version of DW1. Hence, DW1 made a false deposition to support his corrupt officer and hence, his evidence is disbelieved to the fact that P.W2 shook the hands of the appellant. The said fact was strengthened from the fact that there was no explanation at all for the recovery of the tainted currency amount from the pant packet of the appellant. In the said circumstances, the prosecution proved the receipt of tainted currency and it is for the appellant to prove the fact that the amount was not received as illegal gratification and in the said circumstances, the defence version that colour change was due to

handshake with P.W2 is not correct and unacceptable. In this aspect, the evidence of P.W3 and P.W19 has to be accepted on the ground that they have no motive and they have no interest to falsely rope the accused/appellant in the above case.

18. The further explanation of the appellant that he already completed his work based on the reliance of the Hon'ble Supreme Court judgement reported in **2001 (10) SCC 215** is concerned, that case is different from the factual aspects of this case. In that case, to obtain the fitness certificate, the accused demanded money where the follow-up action of the Fitness Certificate, Road Tax was paid. Therefore, the Hon'ble Supreme Court stated that Road Tax was already paid, hence, there was no question for the demand of money for issuing the fitness certificate. Further, in that case, two witnesses were not examined and the Hon'ble Supreme Court had taken one of the circumstances and disbelieved the evidence of P.W3, P.W5 and P.W6 in the peculiar circumstances of the case. In this case, the appellant made two phone calls on the material dates to P.W2's phone and P.W.2 also made a call. In the said circumstances, the only presumption available on record is that the appellant made a call even after the alleged preparation of the report. Hence, as per the Act, even the appellant demanded money for the completion of the work and hence, he made the call frequently even after 05.09.2008. Therefore, this Court hold that the appellant demanded money and accepted the money. In the cited case, the Hon'ble Supreme Court held that the amount was received for the funds of the Union. In this case, no such explanation was given by the appellant for what purpose he received the amount. In all aspects, the relied judgement is not applicable but the appellant received the amount with criminal intention. Hence, in all aspect, the appellant never legally rebutted the presumption raised under Section 20 of the Prevention of Corruption Act.

19. The learned counsel for the appellant submitted that on seeing the pant seized in the year 2008 on the date of examination of the witnesses in the year 2013, the witnesses had stated that there was no colour. It is not the prosecution case that the colour was present in the pant. The test conducted in the pant packet turned pink colour. According to the prosecution, the amount was received by the appellant and he counted the amount and put it in his pant packet. When the test was conducted in the pant packet, the colour changed in the sodium bicarbonate solution.

Therefore, the submission of the learned counsel that the pant wash had not turned into pink is not only material but also relevant one when the chemical examination report is corroborated with the version of the prosecution case. In this case, the hands of the appellant as well as the pant packet turned pink colour and the chemical analysis report also positively corroborated with the version.

19.1.The non-examination of the another official witness in this case as argued by the learned Senior counsel is not accepted. It is well settled principle to prove the fact, it is not necessary to examine all the witnesses. In this case, the prosecution proved his case of the demand, acceptance and recovery of the bribe amount on the basis of the testimony of P.W2 and P.W3 and P.W18. The amount was recovered from the appellant under the recovery mahazar Ex.P.8 and the same tallied with the numbers mentioned in the entrustment mahazar and there was no explanation on the side of the appellant till date. In the said circumstances, it is clearly proved by the prosecution that the amount was demanded and accepted as illegal gratification. In the absence of the any evidence on the side of the appellant to show that the amount was not meant for any illegal gratification, the prosecution case that the appellant received the money as illegal gratification is clearly proved beyond reasonable doubt. Since this Court finds no merit in the contention of the learned counsel for the appellant and also finds no perversity in the finding of the learned trial Judge recording the conviction, except the one fact that the learned trial Judge not considered 313 Cr.P.C statement, this Court considered the same as a final authority of fact.

20.The counsel for the appellant submitted that the appellant lost his job and he is suffering from various illness and also produced his documents to show his health condition and seeks reduction of sentence. Considering the above facts pleaded by the appellant, this Court is inclined to reduce the sentence.

21. In the result, this criminal appeal is partly allowed in the following terms:

21.1.The conviction imposed against the appellant by the Chief Judicial Magistrate Court/Special Judge, Karur in Spl.C.C.No.18 of 2014, dated 31.08.2017, for the offence under Section 7 and 13(1)(d) r/w13(2) of the Prevention of Corruption Act, is confirmed.

21.2. The sentence of imprisonment imposed against the appellant in the above Spl.C.C.No.18 of 2014, for the offence under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act alone, reduced from two years to one year. The sentence of imprisonment imposed against the appellant for the offence under Sections Section 7 of the Prevention of Corruption Act, is confirmed.

21.3. Both sentences shall run concurrently.

21.4. The other portions of the judgment is confirmed.

The bail bond, if any, executed by the appellant/sole accused shall stand cancelled.

19.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
PJL/*sbn*

To

1.The Chief Judicial Magistrate Court/Special Judge,
Karur.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Tiruchirappalli.

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.

K.K.RAMAKRISHNAN,J.

PJL/*sbn*

Predelivery Judgment made in
CRL.A(MD).No.372 of 2017

19.03.2024