BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD) No.496 of 2017

Ponnangan .. Appellant/Sole Accused

Vs.

State rep. by,
The Inspector of Police,
Vigilance and Anti Corruption Wing,
Madurai.
(Crime No.7 of 2009) .. Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records and the judgment in Special Case No.30 of 2011 dated 30.11.2017 on the file of the learned Special Court for Prevention of Corruption Act Cases, Madurai and set aside the same.

For Appellant : Mr.M.Jegadeesh Pandian

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

JUDGMENT

The sole accused in Special Case No.30 of 2011 on the file of the learned Special Judge for the Prevention of Corruption Act Cases, Madurai, filed this appeal challenging the judgment dated 30.11.2017 passed by the learned Special Judge for the Prevention of Corruption Act Cases, Madurai. By the said judgment, 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 two years simple imprisonment and a fine of Rs.1,500/-, in default, to undergo 3 months 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.1,500/-, in default, to undergo three months simple imprisonment for the offence under Sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act.

2. Case of the prosecution:

The husband of P.W6 is one Rajamani and he is one of the co-owners of the land situated in Survey Nos. 143/1 and 144/2 to the extent of 4 acre 37 cents in Konappatti Village, Vadipatti Taluk. They wanted to obtain loan from Canara bank to renovate their house, for which, the bank authorities asked to produce the adangal of the said land. Since M.Rajamani was afflieted by paralysis and was bed ridden and, the deceased complainant/Murugan who was none other then the brother of P.W.6 was asked to help to get patta and adangal. He along with P.W.6 went to the office of the appellant on 26.03.2009 and asked the appellant to issue separate patta and adangal. On that day, the appellant demanded a sum of Rs.1,500/- as illegal gratification other than legal remuneration for taking action to issue separate patta and adangal. They replied that they did not bring the said amount. Therefore, the appellant instructed the complainant to bring the land documents and Rs.1,500/- on 27.03.2009. The defacto complainant was not inclined to give bribe and hence, on the evening of 26.03.2009 itself, he preferred a complaint to P.W.8 who registered a case in Crime No.7 of 2009 under Section 7 of the Prevention of Corruption Act and made arrangement as per procedure by calling two official witnesses and on 27.03.2009, the defacto complainant and the official witness P.W.3 went to the appellant's office and the appellant reiterated the demand and accepted the same and thereby the appellant committed offence under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

Thereafter, he was prosecuted as per law before the learned Special Judge for Prevention of Corruption Act Cases and convicted under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to undergo two years rigorous imprisonment and pay a fine of Rs.1,500/- in default to suffer three months simple imprisonment and also sentenced to undergo two years rigorous imprisonment and to pay fine of Rs.1,500/- in default to suffer three months simple imprisonment. Both the sentences were ordered to run concurrently by passing the impugned judgment dated 24.10.2017. Challenging the same, the appellant filed the present appeal before this Court.

3. The learned counsel for the appellant submitted that the sanctioning authority granted sanction without application of mind. In Ex.P1, sanction order and in the evidence of P.W.1/sanctioning authority, following three dates are mentioned: (i) in the front portion of Ex.P1, the date is mentioned as second month of 2010. (ii) in the last page, it is stated as 17.05.2010 and (iii) in the cross examination as well as in the chief examination, it is stated that on 14.03.2010, he granted sanction to prosecute the appellant. From the above divergent evidence, it is clear that P.W.1 did not apply his mind and mechanically granted the sanction.

According to the appellant, sanction is sacrosanct act and to be given after due application of mind. But in this case sanction has been mechanically given. Hence, the sanction is not a valid one and consequently, cognizance taken by the Special Judge itself is illegal and he seeks for acquittal.

4. The learned counsel for the appellant further submitted that the ingredients of Section 7 of the Prevention of Corruption Act is not proved and also not averred in the complaint as well as in the prosecution documents. The learned counsel for the appellant brought to the knowledge of this Court that there is a material contradiction in Ex.P2 as well as the evidence of P.W6, ie., in Ex.P2, it is stated that all the documents were handed over at the time of the complaint. Per contra, P.W6 stated that no such documents were handed over. Further, in the complaint, there was no mention about the word bribe. He simply demanded the money for processing the issuance of separate Patta. The learned counsel for the appellant further submitted that in this case the defacto complainant, namely, Murugan died during the trial and hence in the absence of the evidence of the defecto complainant, the burden is upon the prosecution to prove the offence under Section 7 and 13(1)(d) of the Prevention of Corruption Act and the burden is heavy and the same was not proved in accordance with law. He further submitted that the remaining evidence is not sufficient to hold that the appellant demanded and accepted the amount as bribe, more particularly, at the time of the recovery itself the appellant gave the explanation that the amount was meant only for paying kist due of Rajamani. Therefore, in the absence of the evidence of defacto complainant, the conviction imposed by the Court below on the basis of the shadow witness as well as P.W6 to prove the demand, is not sustainable. The learned counsel further submitted that there are lot of discrepancies between the evidence of P.W2 as well as PW.8 regarding the preparation of the entrustment mahazar. According to the learned counsel for the appellant, at page No.16 of the typed set, ie., in Ex.P2, it is written in black colour, but in the document available before this Court, it is written in blue colour and the same was elicited in the cross-examination of P.W8 and P.W2. Therefore, this creates doubt over the preparation of the entrustment mahazar-Ex.P2 and hence, benefit of doubt is to be given to the accused.

5. The learned counsel for the appellant further submitted that it is the case of the prosecution that during the trap proceedings, the Village Assistant, Paramasivam was present. The non-examination of the said Paramasivam to prove the trap proceedings, affected the veracity of the prosecution witnesses, more particularly, Ex.P5-recovery mahazar. The presence of Paramasivam was spoken by the witnesses but there was no explanation as to why they failed to obtain the signature of the Village Assistant in Ex.P5 and other proceedings. To prove the case, it is the bounden duty of the trap laying officer to obtain the signature of the Village Assistant in the recovery mahazar apart from all the interested witnesses namely, P.W2 and P.W3.

6. The learned counsel for the appellant submitted that there is a contradiction between the evidence of P.W3 and other witnesses in the preparation of the recovery mahazar. According to the appellant, P.W3 deposed that he has signed in Ex.P8 at the VAO office. He also deposed that in Ex.P8, he put his initial at the Madurai vigilance office. Therefore, the said inconsistency affected the veracity of P.W3 and his evidence of recovery of money from the accused, is also doubtful and hence, he seeks for acquittal.

7. The learned counsel for the appellant further submitted that the explanation was furnished by the appellant immediately after the recovery of money. The explanation of the appellant is that he received the said amount from the diseased defacto complainant only for the purpose of the payment of kist due of Rajamani. The said Rajamani is the uncle of the defacto complainant and the husband of P.W6. It is the case of the prosecution that he was bed ridden and hence the complaint was lodged through the defacto complainant. In the said circumstances, the investigating officer has not conducted any investigation regarding the defence of the accused. It is not the defence taken at the time of the 313 Cr.P.C questioning or after the completion of the investigation. This was taken even before. Hence, the failure on the part of the investigating agency to disprove the statement of the accused in the recovery mahazar that there was no kist due to the said Rajamani is fatal to the prosecution. He further elaborated that as per Rule 47 of the Vigilance Manual, it is the duty of the trap laying officer to record his statement in order to conduct the investigation relating to the defence of the accused. The said purpose did not materialize due to the failure on the part of the investigating officer. It is the duty of the investigating officer atleast to produce the records to prove that there was no due on the part of Rajamani. Hence, the defence of the appellant is proved on the touch stone of the preponderance of probability. To prove that principle, the learned counsel for the appellant drew the attention of this court to evidence including the evidence of P.W2, P.W3, P.W8, P.W9 and Ex.P5. He also brought to the knowledge about the 313 Cr.P.C proceedings. In the above circumstances, it is the specific case of the appellant that the accused only received the payment of kist due of Rajamani. The prosecution did not disprove the same by adducing the evidence. As per the Rule 43 of the Vigilance Manual, the trap laying officer should get the concurrence of the higher officials and the same was not done by the trap laying officer.

8. The learned counsel for the appellant further submitted that in the complaint as well as in the evidence of the prosecution, it is nowhere stated that the amount was demanded as bribe. The absence of the word "லஞ்சம்" is significant in this case because the defacto complainant is dead and hence he seeks for the acquittal since the amount was received only towards the payment of kist due.

9. The learned Additional Public Prosecutor submitted that the defacto complainant died but as per the judgment of the Hon'ble Supreme Court, the demand and acceptance were proved through the other oral evidence and also circumstantial evidence.

10. Insofar as the oral evidence is concerned, P.W6 clearly stated that the accused demanded Rs.1,500/- to issue separate Patta and adangal. P.W2 also corroborated the same that the appellant made the demand and received the amount. Further, the circumstances that the various exhibits relating to the claim of the defacto complainant to give the separate Patta were in the custody of the appellant. Hence, this Court can easily presume the demand on the part of the appellant. It is the case that the receipt of the money is accepted and hence the only question to be decided is whether the explanation given by the accused is plausible and whether the same is to be accepted by this Court. To prove the defence, the appellant has not examined anybody and also not produced any document that there was Kist due to be paid by Rajamani. The prosecution clearly established the fact that the amount is not meant for kist due but it is only the illegal gratification. The learned Additional Public Prosecutor further submitted that with regard to the colour of the ink, Ex.P2 is available and the evidence is concerned, the investigation officer had shown the CD file. In the CD file, only photocopy of the documents are available. Hence, the original Ex.P2 was produced before this Court. In the original Ex.P2, the ink is in the original blue colour. In the said circumstances, the said difference has not diluted the evidence of P.W2. The Village Assistant, is concerned, as per the evidence he was under the influence of alcohol and hence, he was asked to stay outside the office of the Village Administrative Officer. In the said circumstances, the "non-obtaining of signature" of Village Assistant in the recovery mahazar and the non-examination of the said Village Assistant is not fatal to the prosecution.

11. The sanction is concerned, ofcourse the date varied, but the sanctioning authority deposed clearly before the Court that he applied his mind to the facts and circumstances of the case and granted sanction. In the said circumstances, he submitted that the sanctioning authority applied his mind and granted sanction. As per the judgment of the Hon'ble Supreme Court, when the sanctioning authority appeared before the Court and stated that he applied his mind and granted sanction the said evidence can be taken. Hence, there is no impediment to accept this evidence even if some difference is there in the evidence as well as the document Ex.P1. P.W.1 was examined in the year 2012 ie, after two years from the date of sanction and hence, such minor contradiction tend to happen and the same cannot be a ground to disbelieve his evidence.

12. Insofar as the handing over of the document is concerned, it is the specific case of PW.6 that original document was not handed over to the deceased Murugan. It is not the case that the photocopy of the documents is not available with Murugan. Hence, the said discrepancy cannot be taken into consideration. The specific contention of the learned counsel for the appellant is that the investigating officer failed to investigate the defence of the accused. In view of this Court, it is not necessary to investigate the defence of the accused when the defence itself is false one. It is for the accused to prove his defence through legal evidence. There is no legal evidence to prove the version of the accused that the amount was received only for the Kist due.

13. The non-observation of Rule 43 of the Vigilance Manual has not affected the prosecution case when the entire evidence is clear and cogent to convict the accused.

14. The learned Additional Public Prosecutor further submitted that in view of the presumption under Section 20, the prosecution need not adduce the evidence relating to the defence of the accused.

15. This Court has considered the rival submissions made by both counsel and perused the records and the precedents relied upon by them.

16. The following questions arise for consideration of this appeal:

(i) Whether the prosecution proved the case beyond reasonable doubt against the appellant to convict him under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, in the absence of the complainant's evidence?

(ii) Whether the defence of the appellant that he received the amount of Rs.1,500/- as a legal remuneration i.e., towards the payment of the revenue charge is established through the material of the prosecution to the standard of preponderance of the probabilities?

17.Facts of the prosecution case necessary for deciding this appeal

17.1. P.W.6., is the sister of the defacto complainant/deceased Murugan. Her husband is Rajamani. He is one of the co-owners of the land situated in Survey Nos. 143/1 and 144/2 to the extent of 4 acre 37 cents in Konappatti Village, Vadipatti Taluk. He was bed ridden and he wanted to renovate his house and hence, he approached Canara Bank authorities to give loan. They insisted to get patta and adangal. Due to his old age, Rajamani was unable to approach the appellant who was the Village

Administrative Officer of the Konapatti Village. Therefore, the deceased/defacto complainant and P.W.6 went to the appellant's office on 26.03.2009 at 11.30 a.m., and made a request to issue patta and adangal. The appellant perused the joint patta pass book produced by them and directed to bring documents and demanded a sum of Rs.1,500/- as illegal gratification from them other than legal remuneration for taking action to issue separate patta for P.W.6's husband. P.W.6 and the deceased defacto complainant replied that they did not bring the said amount. The appellant directed them to come on 27.03.2009 with specific instruction to bring Rs.1,500/- along with document and he also informed that there was kist due in respect of the Rajamani's land.

17.2.Therefore, the said Murugan approached the respondent police and requested to take action against the said accused officer. P.W8, after receiving the complaint, made enquiry and registered the case in Crime No. 7 of 2009 for the offence under Section 7 of the Prevention of Corruption Act, upon verifying the genuineness of the claim of the said Murugan. Thereafter, P.W8 called the two official witnesses, P.W3 and another person and demonstrated the significance of the phenolphthalein test in the presence of the said official witnesses to the said Murugan. After that

P.W8, handed over the tainted money to the said Murugan and directed P.W3 and P.W4 to accompany the said Murugan to meet the accused officer and if he reiterated the demand, he shall hand over the same and give signal. Thereafter, the team reached the nearby place of the accused officer's office and the said Murugan and the official witness P.W3 entered into the office of the accused. At that time, the accused reiterated the demand and received the bribe money and he kept the money in the shirt pocket. Thereafter, the complainant Murugan gave the signal to P.W8 and his team. On receipt of the signal, P.W8 and his team entered into the accused officer's office and conducted the phenolphthalein test in the hands of the accused which turned positive. Therefore, P.W8 enquired about the receipt of the money. The appellant gave the explanation that the money was received for the payment of kist which was already due to be paid by the said Rajamani. He also recovered the money from the shirt packet and the shirt packet was subjected to phenolphthalein test and the same turned into pink colour. Therefore, he prepared the recovery mahazar with all the materials and also collected the documents from the custody of the appellant relating to the claim of the said Murugan. Thereafter, P.W8 conducted the search in the house of the appellant and no incriminating materials were found.

Therefore, P.W8 produced the accused before the Special Court, also prepared the sketch and produced the entire files to P.W9 on the following day. P.W9 after collecting the material, continued the investigation by examining all the witnesses and collecting the documents and obtained sanction and finally he filed the final report before the Special Court. The learned Special Judge also took the final report on file and questioned the accused and the accused pleaded not guilty and stood for trial.

17.3. After examination of P.W1 to P.W9 and marking Ex.P1 to Ex.P18, on the basis of the materials, the learned trial Judge put the incriminating materials available against the appellant under Section 313 Cr.P.C to the appellant. The appellant denied the same and gave the explanation that he received the money only for the purpose of pending kist arrears. No person was examined on the side of the appellant and no document was marked as defence document.

17.4. The trial Court considered the above materials on record and the submission made by the counsel and 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 two years simple imprisonment and a fine of Rs.1,500/-, in default, to undergo 3 months 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.1500/-, in default, to undergo three months simple imprisonment for the offence under Sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act vide impugned judgement dated 30.11.2017 in Special Case No.30 of 2011. Aggrieved over the same, the appellant filed the present criminal appeal.

<u>18.Proof of Demand</u>

18.1. In this case, the defacto complainant died during the pendency of trial. Therefore as per the Hon'ble Constitution Bench Judgment, it is necessary to see as to whether the demand is proved through the remaining evidence or not. It is relevant to note the following portion of the Hon'ble Constitution Bench judgment:

***Neeraj Dutta v. State (NCT of Delhi)*, (2023) 4 SCC 731**

> ***88.6.*** *(f) In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does*

not abate nor does it result in an order of acquittal of the accused public servant.

90. *Accordingly, the question referred for consideration of this Constitution Bench is answered as under:*

In the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution.

18.2. In *Vinod Kumar Garg v. State (NCT of Delhi)*, (2020) 2 SCC 88 at page 97 the Hon'ble Supreme Court has held that the demand and acceptance can be proved through the circumstantial evidence, which reads as follows:

> ***14.*** *It would be sound to be cognitive of the time gap between the date of occurrence, 3-8-1994, and the dates when the testimony of Nand Lal (PW 2) was recorded, 9-7-1999 and 14-9-1999, and that Hemant Kumar's (PW 3) testimony was recorded on 18-12-2000 and 30-1-2001. Given the time gap of five to six years, minor contradictions on some details are bound to occur and are natural. The witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and*

*passage of time. **Picayune** variations do not in any way negate and contradict the main and core incriminatory evidence of the demand of bribe, reason why the bribe was demanded and the actual taking of the bribe that was paid, which are the ingredients of the offence under Sections 7 and 13 of the Act, that as noticed above and hereinafter, have been proved and established beyond reasonable doubt. Documents prepared contemporaneously noticed above affirm the primary and ocular evidence. We, therefore, find no good ground and reason to upset and set aside the findings recorded by the trial court that have been upheld by the High Court. Relevant in this context would be to refer to the judgment of this Court in State of U.P. v. G.K. Ghosh [State of U.P. v. G.K. Ghosh, (1984) 1 SCC 254 : 1984 SCC (Cri) 46] wherein it was held that in a case involving an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, it may be safe to accept the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and inconsistent with his* *innocence, there should be no difficulty in upholding the conviction.*

18.3. In this case, P.W.6 and deceased defacto complainant approached the appellant in his office on 26.03.2009. The appellant demanded Rs.1,500/- and asked to bring the same on 27.03.2009 along with the documents. The said evidence of P.W.6 is cogent. P.W.2 independent official witness clearly deposed that he and the defacto complainant met the appellant in his office on 27.03.2009. The appellant reiterated the said demand and accepted the said amount. After that he also obtained the signature from the said Murugan in the document produced by him. The said fact was immediately disclosed by the deceased Murugan to P.W8-trap laying officer. The trap laying officer also recorded the said narration of the events in the recovery mahazar Ex.P5, particularly, the reiteration of demand made by the appellant. The copy of the said document is also served on him immediately. Further, the documents relating to the issuance of the separate patta and adangal were recovered from the custody of the appellant. The appellant also did not give any explanation relating to the above recovery and above facts. Therefore, the learned trial Judge correctly held that the demand was proved through the other unimpeachable evidence. This Court upon the above discussion also concurs with the said finding. The prosecution has clearly proved the demand as per the above law laid down by the Hon'ble Supreme Court. In view of the above discussion, the contention raised by the appellant that the demand is not proved is not accepted. Therefore, the prosecution proved the demand beyond reasonable doubt.

19.Proof of acceptance:

From the above narration of the events, P.W.2 cogently deposed before the Court that he and the deceased/defacto complainant met the appellant on 27.03.2009 and the appellant reiterated the demand and accepted Rs.1,500/-. Thereafter, the deceased defacto complainant gave the signal to P.W.8 Trap Laying Officer, and on seeing the same, the Trap Laying Officer and his team, entered into the office of the appellant and conducted phenolphthalein test and the both hands of the appellant turned into pink and P.W.8 questioned the handling of the tainted currency note, and the appellant accepted the receipt of Rs.1,500/- from the defacto complainant but he gave the explanation that he received as the arrears of revenue charge. In questioning under Section 313 of Cr.P.C., also he reaffirmed the same. Hence, in this case the acceptance was proved through the independent official witness P.W.2 and Ex.P.5 and evidence of the P.W. 8 apart from the admission of the appellant during the course of trap and also under the 313 Cr.P.C., questioning.

20.The presumption under Section 20 of the Prevention of Corruption Act and proof of defence of the appellant:

20.1. In view of the above discussion and finding that the appellant demanded and accepted the amount, the presumption under Section 20 comes into play. The Hon'ble Constitution Bench held that before drawing the presumption under Section 20 of the Prevention of corruption Act, the Court has to see that whether the prosecution proved the foundational facts in the following terms:

> ***Neeraj Dutta v. State (NCT of Delhi), (2023) 4 SCC 731***
>
> ***88.5.****(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been*

proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

20.2. In this case as already held, the prosecution proved the initial demand through the evidence of P.W6 prior to the trap and reiteration of the demand through the evidence of official witness/P.W.3 on the date of the trap and recovery of the documents from the appellant. The prosecution also proved the acceptance of the amount through the evidence of P.W.2 and P.W.3 apart from the admission of the appellant. In view of the above proof with respect to the foundational facts, this Court presumes that appellant received the amount as illegal gratification. Further, Once the prosecution proved the receipt of the amount of Rs.1,500/- as illegal gratification other than legal remuneration, as per the following Hon'ble Constitution Bench judgment and other judgments of the Hon'ble Supreme Court, the accused is presumed to have accepted it as a bribe. Once he fails to dispel the same, when the prosecution established the demand and acceptance, then the presumption under Section 20 of the Act gets attracted. To dispel this presumption, the appellant has to furnish not only the explanation but also has to prove that the explanation is true in the touchstone of preponderance of probability. The Hon'ble Constitution Bench in the case of ***Dhanvantrai Balwantrai Desai v. State of Maharashtra***, reported in **AIR 1964 SC 575** held as follows:

> ***12....***. *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. Of course, it is open to that person to show that though that money was not due to him as a legal remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under Section 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words "unless the contrary is proved" which occur in this provision make*

it clear that the presumption has to be rebutted by "proof" and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted.

21. According to the appellant, he received the money only for the payment of the kist due relating to Rajamani's land. To prove the same the appellant did not produce any evidence. In this case, except the statement of the appellant that he received the amount towards the due of kist for Rajamani's land, no other document was produced on the side of the appellant. The pending due must be proved through the documentary evidence. The prosecution seized the kist book and marked Ex.P.4 and also marked Ex.P17 Citta (kist receipt). Even as per the Ex.P17, the kist comes around Rs.10/-[Rs.4.5+Rs.2.56+Rs.1.20+Rs.2.10=Rs.10/-]. Even in Ex.P16, it is stated that the kist is only Rs.6.10/- paise. Even though he had taken this stand immediately after the trap proceedings, the said defence was not proved in accordance with law. For proving the same, the appellant has not produced any evidence or elicited any material from the prosecution witnesses either to infer or to prove that there was revenue due on the part of Rajamani. Further, the evidence of P.W6 is that they already paid the entire kist amount and she was not aware of the kist due for the year 2009. From the records seized from the custody of the appellant relating to the kist due, there is no such entry in the exhibits. In this case, the evidence of P.W6 is that she was regularly paying the Kist. Hence, from the above Circumstances, the defence of the appellant that he received Rs.1,500/- as a revenue charge is a false one and it is the defence of the appellant to escape from the legitimate prosecution for corruption. Hence, the case of the appellant is not proved. Hence, in the said circumstances, the amount received by the appellant is the illegal gratification and he has not adduced any evidence to disprove the same.

22. The Village Administrative Officer, has to produce some evidence at least to show that the said Rajamani is a defaulter in payment of the kist due. Without such evidence, the explanation cannot be held to have been proved and the said explanation is not accepted as it is not established in accordance with law.

23. Insofar as the submission made by the learned counsel for the appellant that the non examination of the Village Assistant during the preparation of the Ex.P5-recovery mahazar is fatal to the prosecution is concerned, according to the evidence of the prosecution witnesses, he was drunk and in an inebriated state and hence he was asked to sit outside the office. In the said circumstances, there is no merit in the contention of the learned counsel for the appellant that he should have been called to witness the occurrence.

24. The further submission of the learned counsel for the appellant that the contradiction between the evidence of P.W6 and Ex.P2 in respect of the documents is concerned, in Ex.P2, there were photocopies of three documents. The evidence of P.W6 is concerned, she only stated that she did not handover any document and also did not furnish the photocopy of any document on 26.03.2009. It is the case of the defacto complainant/deceased Murugan as well as P.W2 and P.W6 that on the date of occurrence, ie., on 27.03.2009, they were entrusted with the photocopy of the documents by the appellant and then the appellant got their initial in each document. Hence, the discrepancy as noted by the appellant is not at all a discrepancy ie., it took place on 26.03.2009, but according to the evidence the occurrence took place on 27.03.2009. Therefore, there is no discrepancy at all. Even assuming that there is some discrepancy, when the records were seized from the appellant on the date of occurrence, he is accountable for the same. It is the specific case of the defacto complainant that the appellant demanded Rs.1,500/- as bribe to issue the Patta. In the said circumstances, the said discrepancy did not cause any infirmity to the evidence of the prosecution witnesses.

25. The learned counsel for the appellant submitted that there is a discrepancy between the documents Ex.P2 and the evidence of P.W8 and P.W2. According to the learned counsel for the appellant, P.W2 stated that in Ex.P2, the signature was put in blue colour ink. But during the cross-examination and from perusal of the CD file, it is revealed as black colour ink and the same was also stated by the trap laying officer and the investigation officer. On the basis of the above discrepancy, the learned counsel for the appellant submitted that Ex.P2 was prepared in the suspicious circumstances and hence, it affects the prosecution case. Insofar as the evidence of P.W8 is concerned, during the cross-examination, the copy of Ex.P2 was shown from the CD file. But the original Ex.P2 had already reached the Court and in that original Ex.P2, the signature of the parties, ie., P.W2 and P.W8 and other witnesses were in blue colour ink. The entire CD file contains the photocopy of the original documents, hence, the signature in the CD file appears in black colour. Hence, this Court does not accept the contention raised by the learned counsel for the appellant that the infirmities create doubt over the prosecution case, when P.W2 an independent witness, without any motive, deposed before the Court against the appellant. It is well settled principle that the evidence of P.W2-official witness is to be accepted on the ground that he has no motive against any government servant.

26. The learned counsel for the appellant contenteded that there was no words in the evidence of P.W6 that the amount was demanded as bribe, hence, the evidence of P.W6 can not be treated as the evidence for the demand of bribe. The said submission of the learned counsel for the appellant is not accepted for the reason that if he received any amount other than the legal gratification, it amounts to bribe. According to Section 7, 13(1) (d) of the Prevention of Corruption Act, any amount received other than the legal renumeration, amounts to illegal gratification. In this case, according to the appellant, he received the amount as a kist due of Rajamani. As stated earlier, the kist due is only Rs.10/-. Hence, in the absence of any explanation on the part of the appellant, this amount is deemed to have been accepted as an illegal gratification and hence the offence under Sections 7, 13(1)(d) of the Prevention of Corruption Act is clearly proved in accordance with law coupled with the evidence of P.W2 and the other circumstances as stated above.

27. Sanction

27.1.The learned counsel for the appellant has stated that the sanctioning authority has not applied his mind and granted sanction in mechanical manner. According to the learned counsel for the appellant, sanction is a sacrosanct act and the sanctioning authority is duty-bound to apply his mind independently and grant the sanction.

27.2. Before Further elaboration on submission of Appellant regarding non application mind while according sanction, this Court has a duty to find out the meaning of “sanction” and precedents relating to the accord of sanction. The word ‘sanction’ has not been defined in the Code of Criminal Procedure.

Dictionary	***Meaning***
Webster's Third New Internal Dictionary	*Explicit permission or recognition by one in authority that gives validity to the act of another person or body; something that authorizes, confirms, or countenances.*
The New Lexicon Webster's Dictionary	*Explicit permission given by some one in authority.*
The Concise Oxford Dictionary.	*Encouragement given to an action etc., by custom or tradition; express permission, confirmation or ratification of a law etc; authorize, countenance, or agree to (an action etc.)*
Stroud's Judicial Dictionary	*Sanction not only means prior approval; generally it also means ratification.*
Words and Phrases—	*The verb ‘sanction’ has a distinct shade of meaning from ‘authorize’ and means to assent, concur, confirm or ratify. The word conveys the idea of sacredness or of authority.*
The Law Lexicon by Ramanath Iyer	*Prior approval or ratification.*

Rameshwar Bhartia Vs. State of Assam reported in 1952 2 SCC 203, the Hon'ble Supreme Court has stated that	*Sanction is in the nature of permission.*

27.3.In ***Om Prakash v. State of U.P.*****, 2001 SCC OnLine All 818** at page 1248. Hon'ble Mr.Justice G.P.Mathur (as he then was) made detailed discussion on this aspect and finally has held that

> ***6.**.... T**he word 'sanction' has been used as a "verb" and therefore it will mean to assent, to concur or approval**.*

27.4. Therefore, in the considerable opinion of this Court, sanction is the independent act of sanctioning authority with due application of mind over the material forwarded by the investigating agency to prosecute the accused before the Court of law under the penal provision constituting the offence.

27.5.The Hon'ble Supreme Court in ***State of Maharashtra v. Mahesh G. Jain*****, (2013) 8 SCC 119** after considering the earlier various decisions of the Hon'ble Supreme Court reported in ***AIR 1958 SC 124***, ***AIR 1979 SC 677***, ***1995 6 SCC 225***, ***2005 4 SCC 81***, ***2006 12 SCC 749***, ***2007 11 SCC***

273, ***2011 1 SCC 491***, has expounded the following detailed principles of law governing the validity of sanction:

"14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity."

28. In this case, P.W.1 has accorded sanction for the prosecution of the appellant. Ex.P.1 is the sanctioning order. Perusal of Ex.P1, it is clear that P.W.1 has applied his mind into the demand of Rs.1,500/- as a bribe to issue the patta and the receipt of the same by the appellant from the materials submitted by the investigating officer before him. Apart from that, he also deposed before the Court that he granted sanction by applying his mind. But according to the appellant, there are number of discrepancies regarding the sanctioning date. In the evidence also the sanctioning authority stated that he granted sanction on 14.03.2010, but it is signed as 17.03.2010. In vigilance case mostly the examination of witnesses are done nearly after three or four years from the date of the occurrence. In the said interregnum period, the witnesses may forget the dates and the minute particulars regarding the documents. This case also is no exception to the

above fact. In the front page, it is shown as the 2nd month of 2010, but he signed the documents on 17.03.2010. Even though it is stated as 2nd month of 2010, but he applied his mind and gave sanction only on 17.03.2010. Further, the said infirmity is not material when the sanctioning authority came before this Court and deposed before this Court that he applied his mind to the facts and granted sanction in the following words:-

நான் இந்த வழக்கில் முதல் தகவல் அறிக்கை சாட்சிகளின் வாக்குமூலம் மகசர்கள் ரசாயன பரிசோதனை அறிக்கை மற்றும் இதர ஆவணங்களை பார்வையிட்டு எதிரி மீது இசைவாணையை வழங்கினேன். அந்த இசைவாணை அ.சா.ஆ.1

From the above evidence, it is clear that the sanctioning authority has applied his mind and accorded sanction. Further the sanction order itself contained the consideration of the material placed by the investigating agency. Due to the delayed examination, some discrepancies always happen in this type cases either during the course of the chief examination or cross examination. It is relevant to extract following the observation of the Hon'ble Supreme Court in the case ***Kumar Garg v. State (NCT of Delhi)***, reported in **(2020) 2 SCC 88 at page 97**

> *14. ....Given the time gap of five to six years, minor contradictions on some details are bound to occur and are natural. The witnesses are not*

required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time. Picayune variations do not in any way negate and contradict the main and core incriminatory evidence of the demand of bribe, reason why the bribe was demanded and the actual taking of the bribe that was paid, which are the ingredients of the offence under Sections 7 and 13 of the Act, that as noticed above and hereinafter, have been proved and established beyond reasonable doubt. Documents prepared contemporaneously noticed above affirm the primary and ocular evidence....

29**.** Further, Section 19 of the Prevention of Corruption Act 1988 and Section 465 of Cr.P.C., specifically state that the conviction cannot be set aside on the ground that there was an error in granting sanction unless accused established failure of justice. For better appreciation, the relevant portion of the Sections are extracted as follows:

Section 19 of the Prevention of Corruption act 1988	***Under Section 465 of Cr.P.C.***

19.3...(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (*a*) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;	465. *Finding or sentence when reversible by reason of error, omission or irregularity.*—(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.

29.1.The Hon'ble Supreme Court has held as follows in ***State v. T. Venkatesh Murthy*, (2004) 7 SCC 763 at page 765,**

> *14. In the instant case neither the trial court nor the High Court appear to have kept in view the requirements of sub-section (3) relating to question regarding "failure of justice". Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice.*

29.2.*In State of M.P. v. Virender Kumar Tripathi*, (2009) 15 SCC 533 at page 536

> ***9.*** *Further, the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of/or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the court a failure of justice has in fact been occasioned thereby.*
>
> *29.3.The Hon'ble Supreme Court in Tshering Bhutia v. State of Sikkim [Ashok Tshering Bhutia v. State of Sikkim, (2011) 4 SCC 402 referring to the earlier precedents has observed that*
> *...A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby...*

30. In this case, this Court finds that the sanctioning authority has applied his mind to the fact that the appellant made a demand and accepted illegal gratification. These two foundational facts to prosecute the appellant under Section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act 1988 are found in the sanctioning order and the deposition. There is no failure of justice to set aside the conviction. Therefore, the argument of the learned counsel that conviction is liable to be set aside on the ground of the non-application of mind on the part of the sanctioning authority while granting sanction cannot be accepted.

31. The learned counsel for the appellant submitted that the investigation officer has not followed the Rule 43 of the Vigilance Manual , i.e., he has not obtained the concurrence of the higher official before laying the trap. As held by a Hon'ble Division Bench of this Court in ***Durai Murugan vs. Deputy Superintendent of Police, Vigilance Department. Viluppuram,*** reported in ***2013 (1) CWC 136,*** the said non-compliance is not a bar to register the case under Section 7 of the Prevention of Corruption Act. In this case, P.W.2 made a compliant about the demand of bribe amount and hence, P.W.8 registered the case and made an arrangement to lay the trap. Therefore, no prejudice was caused to the appellant due to the non-compliance of the above manual. The Hon'ble Division Bench of this Court in the above case has held as follows:

> *38. A careful reading of the above cited decision would disclose that the accused cannot make any*

complaint with regard to the non-following of the procedures contemplated under the Vigilance Manual and as per the decision rendered in Vineet Narain's case, cited supra, any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.

32. The submission of the learned counsel for the appellant that PW. 3 stated that he made the signature in Ex.P8 at the Village Administrative Office, but subsequently, he stated that he signed at the vigilance office and this has no significance. The material documents viz., recovery mahazar- Ex.P5 and Ex.P2 and Ex.P1 are cogent and are clearly spoken to by the remaining witnesses. The said discrepancy has not affected the prosecution case when there is clear evidence of P.W2, P.W6, P.W3 and P.W8 apart from the documents recovered from the appellant which also established the demand and acceptance as required under the Prevention of Corruption Act.

33. Hence, in all aspects, this Court does not find any merit in the contention of the learned counsel for the appellant. Accordingly, the conviction passed under Section 7 and 13(1)(d) read with 13(2) of the

Prevention of Corruption Act against the appellant by the trial court is confirmed. This Court is inclined to modify the sentence alone.

34. Accordingly, considering the age of the appellant and also considering the fact that he was terminated from service after the conviction, this Court is inclined to reduce the sentence imposed by the trial Court to one year.

35. Accordingly this appeal is partly allowed in the following terms:

(i) the conviction passed against the appellant for the offence under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act in Special Case No.30 of 2011 on the file of the learned Special Judge for the Prevention of Corruption Act Cases, Madurai, vide judgment dated 30.11.2017 is hereby confirmed.

(ii) the sentence of imprisonment to undergo two years simple imprisonment and a fine of Rs.1,500/-, in default, to undergo 3 months 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.1,500/-, in default, to undergo three months simple imprisonment for the offence under Sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act

is modified into

"*to undergo one year simple imprisonment for the offence under Section 7 of the Prevention of Corruption Act; and to undergo one year simple imprisonment for the offence under Sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and the said sentences are to run concurrently and the judgment relating to the fine amount is hereby confirmed*".

14.03.2024

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

To

1.The learned Special Judge for Prevention of Corruption Act Cases,
Madurai.

2. The Inspector of Police,
Vigilance and Anti Corruption Wing, Madurai.

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.496 of 2017

14.03.2024