



Crl.A.(MD).No.87 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.12.2023
Delivered on : 12.03.2024

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD)Nos.87 and 94 of 2017

CRL.A(MD)No.87 of 2017:

Mayavadharan (died) .. Appellant/Accused No.2

1.Vijaya

2.Krishnaveni

3.Selvaraja .. Appellants 1 to 3/Legal heirs of
the Deceased Appellant

Vs.

State rep. by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption Wing,
Sivagangai District.
(Crime No.12/2005)

.. Respondent/Complainant

(Appellants 1 to 3/Legal heirs of the Deceased Appellants are granted leave to proceed with the Appeal by Order dated 09.06.2023 in Crl.M.P(MD)No. 7724 of 2023 in Crl.A(MD)No.87 of 2017)

Prayer : This Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to set aside the judgment passed in Special Case No.17 of 2014, dated 09.03.2017 on the file of the Special Court for Prevention of Corruption Act Cases, Sivagangai.



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CRL.A(MD).No.94 of 2017:

C.Nagarajan

.. Appellant/Accused No.1

Vs.

State rep. by the
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Sivagangai.
In Crime No.12/2005

.. Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to call for the records from the file of the learned Special Judge, Sivagangai in Spl.S.C.No.17 of 2014 dated 09.03.2017 and set aside the conviction and sentence passed against him.

For Appellants : Mr.N.Mohideen Basha
in CrI.A.(MD)No.87 of 2017

: Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu
in CrI.A.(MD)No.94 of 2017

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor
(in both cases)

COMMON JUDGMENT

Since these appeals are arising out of the same crime number, these appeals are taken up together for hearing and disposed of by way of this common judgment.

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2. Accused Nos.1 and 2 in the Special Case No.17 of 2014 on the file of the Special Court for the Prevention of Corruption Act cases, Sivagangai, filed these appeals challenging the conviction and sentence of imprisonment imposed against them under Section 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 and Section 109 IPC.

3. The appellant in Crl.A(MD)No.87 of 2017 was arrayed as accused No.2 and the appellant in Crl.A(MD)No.94 of 2017 was arrayed as A1 and they were convicted for the offence under Section 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act and Section 109 IPC and sentenced as follows:

Accused Rank	Conviction under Section	Sentence of Imprisonment
A1	7 of the Prevention of Corruption Act	3 years R.I, to pay a fine of Rs.1000/- in default, to undergo 6 months S.I
A1	13(1)(d)r/w13(2) of the Prevention of Corruption Act	3 years R.I, to pay a fine of Rs.1000/- in default, to undergo 6 months S.I
A2	13(1)(d)r/w13(2) of the Prevention of Corruption Act	3 years R.I, to pay a fine of Rs.1000/- in default, to undergo 6 months S.I.

4. P.W2 is the husband of Papammal-P.W7. They are residing at Senkadai village. She had four brothers and four sisters. Except one sister



Rakkammal, all expired before the year 2016. After the demise of her mother, all the sisters and brothers relinquished their right in respect of the house, by written document. She has been residing in the said house. Therefore, P.W2 approached the accused officer/A1 to grant separate Patta in her name. When P.W2 approached A1, he demanded bribe to grant separate Patta. At that time, the second accused-Village Assistant was in-charge of the said village. At the time of approaching A1 on 30.09.2005, P.W3 was available in A1's office. On noticing the demand made to P.W2, P.W3 advised P.W2 to meet A1 in person in order to reduce to the demand. Thereafter, the Village Administrative Officer, namely, A1 reduced the amount from Rs.1500/- to 800/-. After reducing the amount, he handed over the paper to obtain the signature of P.W7. Therefore, not willing to give the bribe amount, he approached the respondent police. P.W11, after receiving the complaint from P.W2, registered a case in Crime No.12 of 2005. After that he called the two official witnesses, Srinivasan and Kathamuthu-P.W4 and in the presence of the official witnesses, he demonstrated the significance of the phenolphthalein test to P.W2. After the demonstration, the currency smeared with the phenolphthalein powder was put by Head Constable into the left packet of P.W2 and instructed him to give it to the



Village Administrative Officer on his demand and also instructed to give signal immediately if the Village Administrative Officer received the amount. Thereafter, he prepared the entrustment mahazar-Ex.P4 by noting down the number of the currency. After that P.W11 and P.W4 along with the trap team reached the nearby place of the office of the Village Administrative Officer/A1. P.W2 and P.W4 entered into the office of the Village Administrative Officer/A1 and after seeing them, A1 reiterated the demand of the bribe amount. Immediately, P.W2 handed over the bribe amount to A1. The same was received by the Village Administrative Officer/A1 and he handed over the said amount to the Village Assistant-A2. The Village Assistant-A2 received the amount and counted and put it in his packet. Immediately, P.W2 gave signal to P.W11. On receiving the signal P.W11 and his team entered into the office of the Village Administrative Officer, and after entering into the office, P.W2 identified A1 and disclosed that he handed over the money to A2. Thereafter he asked P.W2 to leave the office of the Village Administrative Officer. P.W11 conducted the phenolphthalein test in the hands of A1 and the same turned into pink colour. Thereafter he enquired about the bribe money. The Village Administrative Officer/A1 admitted the fact and disclosed the fact that the



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money was with A2. Immediately, phenolphthalein test was conducted in the hands of A2. A2's hands also turned into pink colour and hence the trap team asked about the receipt of the money. He disclosed the place, where he kept the amount, ie., the amount was kept beneath the 'S' type chair placed on the left side of the A2's chair, which belongs to another Village Administrative Officer. Thereafter, the investigating officer directed the accused officer to hand over the money and completed the formalities by recovering the Document No.Exs.P5, P6, P7, P8 and P9 and obtained the signature of the accused officer in the Recovery Mahazar apart from the preparation of the phenolphthalein test. After preparation of the recovery mahazar under Ex.P10, he prepared the observation mahazar and sketch. Thereafter, he brought the accused officers to the vigilance office and the accused officers were arrested and investigation was continued by P.W12. The investigation officer-P.W12 conducted the investigation by examining the witnesses and collected the documents and filed the final report before the Special Court and the same was taken on file in S.C.No.17 of 2014. After that the learned trial Judge served the copies to the accused/appellants under Section 207 Cr.P.C and framed the necessary charges. After framing the necessary charges, he questioned the accused/appellants and the



accused/appellants denied the involvement and pleaded not guilty and they stood for trial.

5. The prosecution, to prove the case, examined P.W1 to P.W12 and marked Ex.P1 to Ex.P19 and also marked M.O1 to M.O6. On putting the incriminating materials by way of questioning them under Section 313 Cr.P.C, the accused denied the same as false. On the side of the defence, they examined D.W1 to D.W4 and marked Ex.D1.

6. The learned trial Judge, considering the submissions of the accused as well as the prosecution, held that the prosecution clearly proved the case against both the appellants and convicted and sentenced them as stated supra. The same was challenged by the appellants by filing these appeals on the grounds stated in the memorandum of grounds.

7. The learned Senior counsel appearing for the first accused namely the Village Administrative Officer made the following submissions:

7.1. In the charge framed against the accused, there is no charge for demand. Without any charge, the evidence was let in. According to the



learned Senior counsel, there was no proper charge for demand to constitute the offence under Section 7 r/w 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. But the evidence was adduced to prove the demand. Hence, the charge and evidence could not be accepted. The learned Senior counsel further elaborated that as per Section 216 Cr.P.C, the charge must contain the date, place and time. In the charge, there is no details of the date and time of demand. Hence, the charge was not properly framed, which caused serious prejudice to him and he prays for the acquittal.

7.2. The learned Senior counsel further submitted that according to the evidence of P.W2 and P.W4, the appellant/A1 is said to have received the money and handed over to A2. The witnesses have not specifically stated that A1 received the amount and counted the money. Further, there is no clarity as to how A1 received the money either by using his hands or through other persons. The said clarity is important in this case because as per the phenolphthalein test conducted by P.W11, both hands of A1 turned into pink colour. Therefore, the said circumstance is material circumstance and without any clarification on the side of the prosecution, the acceptance on the part of the appellant/A1 cannot be held to be proved.



7.3. The learned Senior counsel further submitted that the evidence of P.W2 in the cross-examination goes against the chief examination since P.W2 gave the contradictory evidence in the chief examination. On 13.09.2005, he never stated about the demand made by the accused/A1 during the course of the investigation, ie., at the time of recording the statement under Section 161 Cr.P.C. He further stated that they were never asked to come with money after 10 days. Similarly, he deposed before the trial Court contrary to the evidence he deposed in chief-examination. Therefore, his evidence is not believable and hence without evidence for the demand, the conviction and sentence imposed against the appellant/A1 and the Village Assistant/A2 is liable to be set aside.

7.4. The learned Senior counsel further submitted that there are many contradictions in the evidence of P.W2, P.W4 and P.W11-trap laying officer. Therefore, this triangular inconsistent evidence leads only to the conclusion that the prosecution never proved the case in cogent manner. The learned Senior counsel further submitted that according to the evidence, Thasildar is the competent authority to give separate patta after making enquiry. In this case, the Village Administrative Officer is not the competent authority to give separate patta and hence, the case of the defacto



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complainant that the appellant/A1 demanded money is not correct. The said aspect is very much important in the case on hand, according to the learned Senior counsel, because no application was pending before the Thasildar office. The said plea was also supported by the version of P.W7, that he never submitted any application to the Thasildar. After the trap proceedings, Thasildar alone granted the patta. Even that patta is not in the name of P.W7 and also it is a joint patta. Hence, the case of the prosecution that he obtained money to issue separate patta in the name of P.W7 is also false. The trap was a motivated one and the same was initiated at the instance of P.W3 and Village President Mr.Ramaswamy. P.W2 was used as a pawn. In this aspect, he relied on the following judgements:

(i) D.Balasubramanian & Another Vs. State reported in CDJ 2011 MHC 5743

(ii) Sundaraj Vs. State in Crl.A.(MD).No.37 of 2007

(iii) V.R.Renga Raju Vs. State in Crl.A.No.409 of 2017

(iv) K.P.Kolanthai Vs. State in Crl.A.No.693 of 2008

(v) A.Deenadayalan Vs. State reported in 2018 1 L.W.(Crl.).699

(vi) S.Palanimuthu and another Vs. State reported in 2017 4 MLJ (Crl) 671

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(vii) Arulraj and another Vs. State reported in 2019 3 MLJ (CrI) 436

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(viii) N. Vijayakumar Vs. State of Tamilnadu reported in 2021 3 SCC

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(ix) K. Shanthamma Vs. State of Telangana reported in 2022 4 SCC

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and seeks indulgence of this Court to acquit the appellant/A1.

7.5. The learned Senior counsel further submitted that Pandi as well as Ramasamy had motive against the Village Administrative Officer/A1 for the reason that they gave complaint against one Pandi for alleged cutting of trees. The said Ramasamy, who was the President of the Village had a independent motive against A1. Hence, they used P.W2 to make the complaint against the Village Administrative Officer and arranged this trap for wreaking vengeance against the Village Administrative Officer/A1 and the Village Assistant/A2.

7.6. In the above factual circumstances, the learned Senior counsel pointed out number of infirmities in the prosecution case and seeks for acquittal. According to the learned Senior counsel, there was no investigation regarding the place where the tainted money was kept.

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According to the evidence, the money was kept beneath the chair which virtually belonged to the another Village Administrative Officer. In this aspect, the investigating officer did not conduct any investigation. Without any investigation in this aspect, the conviction and sentence cannot be sustained. He further submitted that P.W2 stated in his evidence that three times he visited the Village Administrative Officer/A1 and he demanded bribe on all those occasions. But there was no mentioning about the same in the FIR as well as in the charge. The learned Senior counsel further submitted that according to P.W2, he requested the patta in the name of his wife, namely, P.W7. But only joint patta was granted, that too, immediately after the trap. Therefore, the case of the complainant that in order to issue the separate patta, the amount was demanded by the Village Administrative Officer is false. In the said circumstances, considering the overall assessment of the inconsistency and embellishment in the evidence of P.W2 and P.W4 and also the different version in the chief examination as well as in the cross-examination, the conviction and sentence imposed by the Court below is liable to be set aside.



8. The learned counsel for A2/Village Assistant reiterating the above submissions stated that even as per the evidence of P.W2 as well as the complaint, there was no demand. The learned counsel further submitted that the sanctioning authority has specifically stated that he made a discussion with the investigating officer-P.W12 and after discussion, he gave the sanction. Hence, there was no independent application of mind to accord the sanction. The learned counsel further submitted that even as per the evidence of P.W2 and P.W4, A2 never demanded money and hence the demand was never proved against A2. According to the learned counsel for the appellant/A2, no material was adduced by the prosecution to prove that A2 had the knowledge about the nature of the currency, that is, A2 received the money with the knowledge that it is a bribe amount. Even as per the evidence of the witnesses, A2 was not standing close to A1. In the said circumstances, there was no chance for A2 to receive the money knowing it as a bribe amount. The learned counsel further stated that the trap team had taken the phenolphthalein powder along with the kit material which shows that the trap team used the same. The learned counsel further submitted that P.W4 in his cross-examination feigned ignorance to certain questions. The



learned counsel also submitted that P.W4 is bound to disclose the factum of receipt of amount and the place where the appellant kept the money.

9. The learned counsel for A1 submitted that the A1 on seeing the trap laying officer held his hands and said 'Vanakkam'. Therefore, the positive result in the phenolphthalein test in both hands is probable one. The Additional Public Prosecutor submitted that P.W2 is aged about 60 years and he was a layman and his examination was conducted after some years. His Chief examination was conducted at the age of 60 and the cross examination was made at the age of 63. The occurrence took place in the year 2005 and the examination was conducted in the year 2014. Due to the belated examination, ie., nearly after nine years and considering that he is a rustic villager, the evidence of the P.W2 as well as P.W7 are to be taken into consideration. P.W2 in his examination clearly speaks about the material portion of the evidence, ie., the demand made by the Village Administrative Officer/A1 and the receipt of the money by the Village Administrative Officer/A1 and handing over to the Village Assistant/A2. When these material particulars were clearly deposed before the Court and in the said circumstances, some infirmities in the evidence are to be eschewed and



considering the evidence of the witnesses after nine years, it is impossible to disclose the minute details regarding the trap proceedings. Similarly, the evidence of P.W7 also is to be considered. His evidence is concerned he did not make the application to the Thasildar. But his evidence is not that P.W2 obtained the thumb impression from P.W7. Further P.W2 categorically deposed that the Village Administrative Officer/A1 specifically directed to bring the money and also handed over the white paper to obtain the signature of P.W7. As per the evidence of P.W3, the Village Administrative Officer/A1, after receipt of the bribe amount, received the application and the document. In the said circumstances, the case of the appellants on the basis of the statement of the P.W7, that the application was never handed over to A1 is not correct. Further A1 never denied the above fact and the same was recovered from the custody of the A1 under Ex.P10-recovery mahazar in the presence of the official witnesses.

10. The contention of the learned counsel for the appellants that P.W4-official witness feigning ignorance in respect of many questions as against the chief examination clearly showed that the prosecution never proved the receipt of the amount by the accused. The said submission of the



learned counsel for the appellants is without merit. He also specifically deposed about the receipt of the money. He is aged about 61 years and he deposed the evidence after 10 Years. Therefore, the said circumstances to be considered but he specifically deposed about the material portion of the trap and also recovery of the documents from the custody of the accused officer. Hence, the evidence of P.W2 and P.W4 clearly corroborated in respect of the demand and acceptance of money.

11. The learned Additional Public Prosecutor further submitted that as per the law laid down by the Hon'ble Supreme Court, immaterial contradiction and minor discrepancies is not a ground to disbelieve the evidence unless the same goes to the root of the prosecution case. In this case, the above said minor inconsistency cannot be taken into account because of the belated examination of the witnesses. The learned Additional Public Prosecutor further submitted that the contention of the learned counsel for the appellants that the charge was not properly framed regarding the demand, is not correct. In this case, during the questioning of the appellants under Section 235 Cr.P.C it has been explained about the demand as well as the acceptance of Rs.800/-. No prejudice was caused to the



appellants in this aspect. He relied the following judgment of the Hon'ble Supreme Court reported in AIR1956SC116, 2014(2)SCC(Cri)717 etc. The learned Additional Public Prosecutor further submitted that the charge framed against A2 is under Section 7 and 13(1)(d) r/w13(2) of the Prevention of Corruption Act read with Section 109 IPC. For proving Section 109 IPC, the demand on the part of the second accused need not be proved.

12. The learned Additional Public Prosecutor further elaborated this aspect that the presence of A2 along with A1 at the time of the occurrence is proved, A2 received the amount and the same was proved through the evidence of PW2 and PW4 and also PW11-trap laying officer and the evidence of the above witnesses corroborated with the documentary evidence namely recovery mahazar Ex.P10. In the said circumstances, the act of A2 clearly constituted the offence under Section 109 IPC. Hence, the prosecution clearly proved the intentional aid by A2. The learned Additional Public Prosecutor further submitted that as far as Ex.P5 is concerned, the evidence of P.W3 is very clear that after the trap, the same was produced. Neither the accused denied the signature of Pappammal-P.W7 nor they



disputed the existence and recovery. In the said circumstances, the argument of the learned counsel for the appellants that there is a serious dispute on the Ex.P5 and consequently the prosecution case is not valid cannot be accepted. The learned Additional Public Prosecutor further submitted that when Ex.P5 was marked, the same was not objected by the appellants and also they never disputed the thumb impression of P.W7. P.W7 who is a rustic old lady stated that she never gave petition in writing to the appellants. It can be understood in the following lines stated by P.W7 in her evidence:

“நான் எதிரிகளை பட்டா மாறுதல் சம்பந்தமாக பார்க்கவில்லை. நான் மனு எதுவும் எழுதிக் கொடுக்கவில்லை.”

13. The learned Additional Public Prosecutor further submitted that the discrepancy regarding the place of money kept in the 'S' type chair belonging to another Village Administrative Officer does not have any impact on the recovery of the amount on the disclosure by A2. From the evidence of the prosecution witnesses and Ex.P10, it is clear that the money was recovered on the disclosure by A2. The said conduct is admissible under Section 27 of the Indian Evidence Act. In the said circumstances, it is



not necessary to conduct investigation regarding the place of money. He further submitted that the conduct of A2 in not keeping the money and placing the same at the nearby chair itself shows his criminal intention that he knows that the money is bribe amount. Hence the offence under Section 109 IPC is clearly made out against A2. He further submitted that the contradiction as alleged by the learned counsel for the appellants is quite natural in these type of cases where the examination of the witnesses had been done after number of years and more particularly, if no such contradictions are there, the evidence assumes the character of the parrot like version. He further submitted that the evidence of two witnesses may have some embellishments, some improvements and contradictions in their version. For the said purpose, he relied the following judgement of the Hon'ble Supreme Court.

(i) ***Jai Prakash v. State of U.P.***, reported in (2020) 17 SCC 632

(ii) ***Rakesh v. State of U.P.***, reported in (2021) 7 SCC 188

(iii) ***Mritunjoy Biswas v. Pranab***, reported in (2013) 12 SCC 796

14. The learned Additional Public Prosecutor further submitted that the prosecution clearly proved the charge under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act against A1. The charge



against A2 under Section 109 IPC is clearly proved through the evidence as well as the circumstances. Hence, the conviction and sentence passed by the Court below is to be sustained.

15. In reply to the argument, the learned Senior counsel submitted that the evidence of P.W3 that the documents were handed over to the Village Administrative Officer/A1 after the receipt of money has to be spoken by P.W2 and hence, the evidence cannot be treated as proved for the genuineness of Ex.P5. The learned counsel for A2 submitted that even Section 109 Cr.P.C is concerned, no evidence is available to prove that A2 intentionally aided A1 in receiving the money. Further, there was no evidence to show that the amount was given as bribe. The learned Additional Public Prosecutor submitted that the motive alleged by A1 and A2 is not relevant to this case when the evidence of P.W4-independent witness disclosed the demand and recovery of amount.

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



17. Whether the prosecution proved the case categorically beyond reasonable doubt to sustain the conviction and sentence of imprisonment?

18. Discussion on demand and acceptance of bribe amount:

It is admitted case that P.W.7 is the owner of the property situated in the Survey No.250/15. The same was in the name of her mother and brothers. According to P.W7, all the brothers and sisters relinquished their right in the said property and she is the absolute owner. In order to get the loan, she wanted to get a separate patta in her name. Therefore, P.W2-husband of P.W7 approached the accused officer-A1 and A1-accused officer demanded the bribe amount of Rs.1500/- on 13.09.2005. At the time, P.W3 was present before the Village Administrative Officer/A1 and he met the Thasildar with the accused officer-A1. P.W2 stated about his inability to pay the amount on account of his poverty. Knowing about the economic status of P.W2,. P.W3 asked the accused officer-A1 to reduce the amount. Hence, A1 reduced the amount to Rs.800/-. A1 further directed P.W2 to get the signature of his wife/P.W7 in a blank paper. P.W2 was not willing to give the bribe amount and hence he preferred the complaint before P.W11. After registration of the case, P.W11 organized the trap in the presence of



P.W4. Accordingly, P.W2 and P.W4 went to the office of the Village Administrative Officer/A1 and the accused officer/A1 demanded the bribe money and accepted the same and handed it over to A2-Village Assistant. Thereafter, P.W2 gave signal to P.W11 and P.W11 entered into the office and conducted the phenolphthalein test in the hands of A1 and after ascertaining the handling of the money, P.W11 enquired about the money. A1 disclosed the fact that he handed the money to A2. Therefore, the test was conducted in the hands of A2 also and the same turned into pink and A2 disclosed the place, where he kept the money, ie., in the nearby chair. After recovery of the amount, P.W11 concluded the trap proceedings upon the receipt of various exhibits including Ex.P5 and prepared the recovery mahazar in the presence of the official witnesses, namely P.W4 and another person.

18.1. From the narration of the events, it is clear that A1 demanded the amount and received the bribe amount. P.W2 and P.W4 clearly deposed before the Court in this aspect. Due to the lapse of years from the date of occurrence, it is quite natural that there were minor contradictions as well as some infirmities, which are not material to disbelieve the evidence of P.W2.



For the said minor contradictions and relevant infirmities, the evidence of P.W2 and P.W4 can not be rejected. The evidence of P.W2 and P.W4 is clear in the aspect of the demand and acceptance of the amount and the prosecution clearly proved the case of the acceptance and hence the presumption under Section 27 of the Indian Evidence Act and Section 20 of Prevention of corruption Act would come into play. As held by the Hon'ble Constitution Bench reported in **2023 4 SCC 731** in the case of **Neeraj Dutta Vs. State (Government of NCT of Delhi)**. If the prosecution proved the demand and acceptance through the oral and documentary evidence, the presumption comes into operation. In this case, the prosecution proved the said aspect of demand and acceptance through the evidence of P.W2 and P.W3 and the documents Ex.P10, Ex.P11, Ex.P5 and other documents recovered from the Village Administrative Officer-A1. Therefore, the demand and acceptance was clearly proved against the Village Administrative Officer-A1 in this case. A2 received the amount from A1, and he, without keeping the amount threw the same beneath the nearby chair and he was also present in the scene of occurrence. Hence, the receipt of the amount by him was clearly proved through the phenolphthalein test. According to the provisions of Vigilance Manual, if the colour turned into



pink, the legal presumption is that the tainted money was handled by the accused persons. It is not the case of A2 that he did not know the character of the amount. As per the provisions contained in Section 109 IPC, the intentional aid to receive the bribe amount is clearly established against A2. He disclosed the place of bribe money and the said money was recovered. As rightly pointed out by the learned Additional Public Prosecutor that if he received the amount other than the bribe amount, there is no necessity to throw the amount beneath the nearby chair. Hence, it is clearly proved from the facts and circumstances and also from the subsequent conduct of A2 that A2 had knowledge about the bribe amount and he intentionally aided the Village Administrative Officer/A1 to receive the bribe amount. Hence, the charges against A2 is also clearly proved.

19. Discussion on mis-joinder of charges:

The learned counsel for the appellant submitted that no proper charge is framed as addressed by the Hon'ble Supreme Court in similar circumstances in number of cases right from the Hon'ble Constitution Bench Judgement reported in *AIR 1956 SC 116*. According to the Hon'ble Constitution Bench judgment, if the accused knows the nature of the case



through the cross examination and the entire proceedings of the case, there is no prejudice caused to the accused. In this case, during the questioning under Section 235 Cr.P.C, it was clearly stated about the nature of the case, acceptance and the nature of the case projected against the appellants. But they denied that the case as false. Further, during cross-examination of the witnesses, they have specifically stated that the accused knew the case projected against them, ie., the demand of the bribe amount and receipt of the bribe amount and the concealment of the bribe amount. In the said circumstances, in the considered view of this Court, no prejudice was caused to them. In this aspect, it is relevant to note the above judgement of the Hon'ble Supreme Court and applying the said principle, this Court considered the circumstances, namely, the accused addressed the questions in cross examination regarding the demand, the acceptance and possession of the document from their custody and denied everything and more particularly, in the 313 Cr.P.C proceedings, they specifically filed the written statement which discloses that they understood the entire case ie., they stated that they never received the money and the money was thrown beneath the nearby chair without handling of the same. Further, under Section 464 of Cr.P.C., the conviction cannot be set aside on the ground of



improper framing of charges. The Section 464 of Cr.P.C., is as follows:

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“464. Effect of omission to frame, or absence of, or error in, charge.—(1) No finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may—

(a) In the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge;

(b) In the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

(c) Provided that if the court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.”



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19.1. The said provision is considered by the Hon'ble Constitution Bench of the Supreme Court reported in ***Willie (William) Slaney v. State of M.P.***, reported in **AIR 1956 SC 116**

5. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial



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prejudice. That, broadly speaking, is the basic principle on which the Code is based.

6. Now here, as in all procedural laws, certain things are regarded as vital. Disregard of a provision of that nature is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the Court is satisfied that there was prejudice. Some of these matters are dealt with by the Code and wherever that is the case full effect must be given to its provisions. The question here is, does the Code deal with the absence of a charge and irregularities in it, and if so, into which of the two categories does it place them? But before looking into the Code, we deem it desirable to refer to certain decisions of the Privy Council because much of the judicial thinking in this country has been moulded by their observations. In our opinion, the general effect of those decisions can be summarised as follows.

If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending



himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.”

After considering the various decisions, the Court further observed:

“The swing of the pendulum has been away from technicality, and a greater endeavour has been made to regard the substance rather than the shadow and to administer justice fairly and impartially as it should be administered; fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered.”

The Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice.



In Kammari Brahmaiah v. Public Prosecutor, High Court of A.P. Reported in, (1999) 2 SCC 522 at page 526

13. .. non-framing of a charge would not vitiate the conviction if no prejudice is caused thereby to the accused. As observed in the aforesaid case, the trial should be fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered. The Criminal Procedure Code is a procedural law and is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities.

In this case, as discussed above, the appellant has not established prejudice caused to him due to the misjoinder of charge. This Court also does not find any failure of justice. The appellant, right from beginning of the framing of charge fully understood the case and subjected the witnesses to undergo the detailed cross examination. Hence the said defence is not sustainable in the circumstances of the present case.

20. Discussion on non-explanation of colour change of the appellant's hand:

In this case, the phenolphthalein test conducted by P.W11 is material



one. The non-explanation of the accused as to why the colour changed in his hands clearly shows that he has handled the money as per Vigilance Manual Rule 46 (1) which reads as follows:

“46. Phenolphthalein Test

(1) Before recovering the tainted money or other articles in the course of trap proceedings, what is known as "Phenolphthalein Test" should invariably be conducted the fingers of both hands of the Accused Officer and on other items such as his pant/shirt pocket, dhoti, etc., with which the notes/articles are known to have come into contact. It will be a corroborative piece of evidence to establish the acceptance of tainted money by the Accused Officer.”

If the hands turned into pink, it is presumed that the accused handled the tainted money. Therefore, the case of the appellants that they never received the money is false. Similarly, after receipt of money A2's hands also turned into pink. Hence, similar presumption also is available against A2 since the amount was recovered at the instance of A2. In such circumstances, the case of the appellants that the amount was never received by them and the same was done at the instance of P.W3 and one Ramasamy is false. In this aspect,



the learned trial Judge considered the evidence of the defence in proper perspective and disbelieved the evidence of the defence witnesses and hence there is no reason to vary from the decision of the trial Court.

21. Discussion on motive:

Further, as per the paragraph No.6 of the judgment of the Hon'ble Supreme Court in ***State of U.P. v. Zakaullah***, reported in (1998) 1 SCC 557 at page 560, “motive against one of the witnesses is not a reason to disbelieve the prosecution evidence when the prosecution evidence is clear, cogent and trustworthy”.

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.

21.1. In this case, there is no reason to disbelieve the evidence of P.W2, P.W3, P.W4 and P.W11. P.W4 independent official witness has no motive against the appellant and hence his evidence has to be believed. There are no material circumstances elicited during the course of the cross examination to disbelieve his evidence. In the circumstances, as per the law laid down by the Hon'ble Supreme Court, if motive alleged is even true, the same cannot be used to disbelieve the evidence of P.W2, P.W3, P.W4 and P.W11 and Ex.P10, more particularly, the recovery of the material documents from the custody of the A1-accused officer.

21.2. According to the statement of A2, the trap laying officer and other persons assaulted A2 and threatened him to pick up the money. His version is extracted as follows:

“கேள்வி: இந்த வழக்கு பற்றி நீங்கள் வேறு ஏதேனும் கூற



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விரும்புகிறீர்களா?

பதில்: நான் அலுவலகத்திற்கு வெளியே தான் நின்று கொண்டு இருந்தேன். அலுவலகத்திற்குள் அதிகாரிகள் நுழைந்து என்னை அடித்து அங்கு கிடந்த பணத்தை எடு என்று சொல்லி எடுக்கச் சொன்னார்கள். வேறு எதுவும் எனக்கு தெரியாது.”

21.3. From the version of A2, it is seen that he has claimed that he was standing outside the office. Thereafter, the officers assaulted him and asked him to pick the money. Even in his version, he did not make it clear, that is, how he was brought inside the office and directed to take the money. In this case, there was no such act. Further, it is not the case of A2 that he made a complaint against the Vigilance Officer to take action against the said officer for assaulting him and fabricated false evidence. In the said circumstances, this Court does not accept the belated version of Section 313 Cr.P.C proceedings.

22. Discussion on the genuineness of Ex.P5:

The learned Senior counsel further submitted that if the case of P.W7 that he never made the application to the Deputy Thasildar is taken into consideration there is doubt about the genuineness of the Ex.P5. The



learned Senior counsel's argument cannot be accepted with regard to the evidence of P.W5.

22.1. From the joint reading of the evidence of P.W5 and P.W7, if it is taken that she never went to the Village Administrative Officer/A1's office and never met the Village Administrative Officer/A1 and gave the application, then it is not the case of P.W7 that she never asked her husband to approach the Village Administrative Officer/A1 to obtain patta. It is not the cross-examination of the witnesses that the signature found in the Ex.P5 does not belong to P.W7. The case of P.W3 is that after the receipt of amount, P.W2, handed over the document to the accused officer/A1 to obtain separate patta. Without any denial of the signature in Ex.P5, this Court does not find any merit in the submission of the learned Senior counsel.

23. Discussion on the place of recovery:

The learned counsel for the appellants submitted that the discrepancy regarding the place where the money was kept ie., in the 'S' type bend chair is concerned, the same was not material when the evidence of P.W4 and



P.W11 and Ex.P10 is clear in this aspect. P.W4 and P.W11 have no motive against the Village Administrative Officer/A1 to prepare false documents and no circumstances were brought before this Court to disbelieve the evidence of P.W4 and P.W11.

23.1. The learned Senior counsel's argument that the investigation regarding the place of the amount, that is, the nearby chair belonging to another Village Administrative Officer should have been investigated by the investigating officer cannot be accepted as rightly pointed out by the learned Additional Public Prosecutor that the amount was discovered in consequence of the statement of A2 and the handing over of money was proved through the evidence of P.W2 and P.W4 and the proper recovery mahazar was prepared under Ex.P10 without any suspicion. The Trap laying officer was led to the place where the amount was kept ie., beneath the chair of the another Village Administrative Officer. Further, it is the conduct of A2 to screen the amount he placed it in the nearby chair of the another Village Administrative Officer. It might be taken that in order to save A1, he placed the amount in another chair, where admittedly, the said Village Administrative Officer was not present. In the said circumstances, the disclosure by A2 amounts to incriminating conduct and the same is



admissible under Section 8 of the Indian Evidence Act, as held by the

Hon'ble Supreme Court in the case of Prakash Chand v. State (Delhi Admn.)

reported in **1979 (3) SCC 90** in the following paragraph:

8. It was contended by the learned Counsel for the appellant that the evidence relating to the conduct of the accused when challenged by the Inspector was inadmissible as it was hit by Section 162, Criminal Procedure Code. He relied on a decision of the Andhra Pradesh High Court in D.V. Narasimham v. State [AIR 1969 AP 271 : 1969 Cri LJ 1016 : 1969 MLJ (Cri) 687] . We do not agree with the submission of Shri Anthony. There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which is hit by Section 162 of the Criminal Procedure Code. What is excluded by Section 162, Criminal Procedure Code is the statement made to a Police Officer in the course of investigation and not the evidence, relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of



the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act (vide Himachal Pradesh Administration v. Om Prakash [(1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975]).

The same was reiterated by this Court in **2001(1)LW(Cri)77** in the following paragraph:

There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act and the statement made to a Police Officer in the course of an investigation which is hit by Section 162, Cr.P.C. What is excluded by Section 162 of Cr.P.C., is the statement to a Police Officer in the Course of investigation and not the evidence relating to the conduct of an accused person when



confronted or questioned by a police officer during the course of an investigation.

23.2. When P.W.2, P.W.4 cogently deposed the material portion of the prosecution case regarding the demand and acceptance, their evasive answer such as “தெரியாது” “நியாபகம் இல்லை” to some irrelevant questions is not a ground to discord the testimony of the said witnesses. This Court also accepts the argument of the learned Additional Public Prosecutor that examination was conducted after 9 years from the date of occurrence and hence it is quite natural to depose such as “தெரியாது” “நியாபகம் இல்லை”. The said aspect does not seriously affect the case.

24. Discussion on sanction:

The learned counsel for A2 submitted that sanction was accorded after discussion with the investigation officer. The learned counsel's submission is not correct. The sanctioning authority clearly deposed before the Court both in chief and cross-examination that he applied his mind and granted sanction. He only had discussion with the investigation officer, but



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he did not grant the sanction by substituting the jurisdiction of the investigating officer. It is stated in the following lines:

என்னிடம் கொண்டு வரப்பட்ட ஆவணங்களை பரிசீலனை செய்து அனுமதி வழங்குவதற்கு முழு திருப்தியிருந்ததால் என்னால் ஆணை வழங்கப்பட்டது.

மாதிரி வரைபடம், விசாரணை வாக்குமூலங்கள், ரசாயன அறிக்கை, மகஜர் போன்ற ஆவணங்களை பரிசீலனை செய்து நான் அனுமதி உத்தரவு வழங்கினேன்.

24.1. Further, the word “ஆலோசனை” with the Deputy Superintendent of Police cannot be treated as if he granted the sanction on the direction of the investigating officer. He clearly stated that after the said word “ஆலோசனை” he independently applied his mind to the document furnished by the investigating officer and granted sanction. It is quite natural that after the submission of the file, the sanctioning authority would ask the investigating officer to produce the file. In this case also he directed to produce the file and regarding the documents, and he made discussion. The discussion is different from the application of mind before granting sanction. It does not imply that he granted sanction on the direction of the investigation officer. This Court finds no evidence to prove the same. In this aspect, it is relevant to extract the following portion of the judgment of



the Hon'ble Supreme Court *in the case of C.S. Krishnamurthy v. State of Karnataka*, (2005) 4 SCC 81at page 87

9. Therefore, the ratio is sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order. In the present case, the sanction order speaks for itself that the incumbent has to account for the assets disproportionate to his known source of income. That is contained in the sanction order itself. More so, as pointed out, the sanctioning authority has come in the witness box as Witness 40 and has deposed about his application of mind and after going through the report of the Superintendent of Police, CBI and after discussing the matter with his Legal Department, he accorded sanction. It is not a case that the sanction is lacking in the present case. The view taken by the Additional Sessions Judge is not correct and the view taken by learned Single Judge of the High Court is justified.



24.2. The learned Senior Counsel submitted that the sanctioning authority granted sanction without application of mind and hence taking the cognizance on the basis of the invalid sanction is not legally valid. It is well settled law that the sanctioning authority appeared before the Court and deposed that he applied his mind to give sanction to prosecute the public servant. Any discrepancy if brought during the course of the examination of the witnesses then it can be seen whether it should be considered to set aside the conviction.

***State (Anti-Corruption Branch) v. R.C. Anand (Dr.),
(2004) 4 SCC 615 at page 621***

12.... In Kalpnath Rai v. State [(1997) 8 SCC 732 : 1998 SCC (Cri) 134] it was clearly observed by this Court that the sanctioning authority is not required to wait for the report of the experts. The sanctioning authority has only to see whether the facts disclosed in the complaint prima facie disclose commission of an offence or not.

13. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence including the transcript of the tape record have been considered by the sanctioning authority.



Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority.

C.S. Krishnamurthy v. State of Karnataka, (2005) 4 SCC 81 at page 85

7. ... It is no doubt true that sanction is necessary for every prosecution of public servant, this safeguard is against the frivolous prosecution against public servant (sic) from harassment. But, the sanction should not be taken as a shield to protect corrupt and dishonest public servant. When the sanction itself is very expressive, then in that case, the argument that particular material was not properly placed before the sanctioning authority for according sanction and the sanctioning authority has not applied its mind becomes unsustainable.---- When sanction order itself is eloquent enough, then in that case only formal evidence has to be produced by the sanctioning authority or by any other evidence that the sanction was accorded by a competent person with due application of mind.

9. Therefore, the ratio is sanction order should



speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order.

Maharashtra v. Mahesh G. Jain, (2013) 8 SCC 119 : at page 128

18. The learned trial Judge, as it seems, apart from other reasons has found that the sanctioning authority has not referred to the elementary facts and there is no objective material to justify a subjective satisfaction. The reasonings, in our considered opinion, are absolutely hypertechnical and, in fact, can always be used by an accused as a magic trick to pave the escape route. The reasons ascribed by the learned trial Judge appear as if he is sitting in appeal over the order of sanction. True it is, grant of sanction is a sacrosanct and sacred act and is intended to provide a safeguard to the public servant against vexatious litigation but simultaneously when there is an order of sanction by the competent authority indicating application of mind, the same should not be lightly dealt with. The flimsy technicalities cannot be allowed to become tools in the hands of an accused.



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According to the above judgments of the Hon'ble Supreme Court if the sanctioning authority deposed before the Court that he granted sanction after applying his mind, the same is sufficient compliance of the Section 19 of the Prevention of Corruption Act and hence this Court does not accept the contention of the learned counsel for the appellant.

24.3. In this case the sanctioning authority perused the records placed before him and he need not analyse every material to arrive at the satisfaction and accord the sanction. P.W.1 sanctioning authority also deposed before the Court, that he granted sanction after applying his mind. Some discrepancies always happen in this type of the case either during the course of the chief examination or cross examination. But the Court is duty bound to read the entire evidence and if the sanctioning authority granted sanction with the application of mind, the Court has no jurisdiction to set aside the conviction on the ground of non-application of mind in according sanction.



25.Further, the Section 19 of the Prevention of Corruption Act 1988 and Section 465 of Cr.P.C., specifically states 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:

<i>Section 19 of the Prevention of Corruption act 1988</i>	<i>Under Section 465 of Cr.P.C.</i>
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. <i>Finding or sentence when reversible by reason of error, omission or irregularity.</i> —(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.

25.1.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.

25.2.*Sushil Ansal v. State*, reported in (2014) 2 SCC (Cri) 717 at
page 287

160. Mr Jethmalani next argued that the charges framed against the appellant-accused, Sushil and Gopal Ansal were defective inasmuch as the same did not specify the days or period when the offence took place nor even indicate the statutory provisions, rules and regulations allegedly violated by the appellants or accuse the appellants of gross negligence which alone could constitute an offence under Section 304-A IPC. These defects, contended the learned counsel, had caused prejudice to the appellants in their defence and ought to vitiate the trial and result in their acquittal. A similar



contention, it appears, was urged by the appellants even before the High Court who has referred to the charges framed against the appellants at some length and discussed the law on the point by reference to Sections 211, 215 and Section 464 CrPC to hold that the charges were reasonably clear and that no prejudice in any case had been caused to the appellants to warrant interference with the trial or the conviction of the appellants on that ground. Reliance in support was placed by the High Court upon the decision of this Court in Willie (William) Slaney v. State of M.P. [AIR 1956 SC 116 : 1956 Cri LJ 291] and several later decisions that have reiterated the legal position on the subject. There is in our opinion no error in the view taken by the High Court in this regard. Section 464 CrPC completely answers the contention urged on behalf of the appellants. It in no uncertain terms provides that an error, omission or irregularity in the charge including any misjoinder of charges shall not invalidate any sentence or order passed by a court of competent jurisdiction unless in the opinion of a court of appeal, confirmation or revision a failure of justice has in fact been occasioned thereby. The language employed in Section 464 is so plain that the



same does not require any elaboration as to the approach to be adopted by the Court. Even so the pronouncements of this Court not only in Slaney case [AIR 1956 SC 116 : 1956 Cri LJ 291] but in a long line of subsequent decisions place the matter beyond the pale of any further deliberation on the subject. See K.C. Mathew v. State of Travancore-Cochin [AIR 1956 SC 241 : 1956 Cri LJ 444] , Gurbachan Singh v. State of Punjab [AIR 1957 SC 623 : 1957 Cri LJ 1009] , Birichh Bhuian v. State of Bihar [AIR 1963 SC 1120 : (1963) 2 Cri LJ 190] , State of Maharashtra v. Ramdas Shrinivas Nayak [(1982) 2 SCC 463 : 1982 SCC (Cri) 478] , Lallan Rai v. State of Bihar [(2003) 1 SCC 268 : 2003 SCC (Cri) 301] and State (NCT of Delhi) v. Navjot Sandhu [(2005) 11 SCC 600 : 2005 SCC (Cri) 1715] .

161. *In Slaney case [AIR 1956 SC 116 : 1956 Cri LJ 291] Vivian Bose, J. speaking for the Court observed : (AIR p. 121, paras 5-6)*

“5. What it narrows down to is this:

Is the charge to be regarded as a ritualistic formula so sacred and fundamental that a total absence of one, or any departure in it from the strict and technical requirements of the Code, is so vital as to



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cut at the root of the trial and vitiate it from the start, or is it one of many regulations designed to ensure a fair and proper trial so that 'substantial', as opposed to purely technical, compliance with the spirit and requirements of the Code in this behalf is enough to cure departures from the strict letter of the law?

6. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice.

If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is 'substantial' compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the



Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.”

162. To the same effect are the subsequent decisions of this Court to which we have referred to above. Applying the test laid down in the said cases we have no hesitation in holding that there was nothing fundamentally wrong with the charges framed against the appellants nor have the appellants been able to demonstrate that they suffered any prejudice on account of the alleged defects. The High Court has in our opinion taken a correct view on the question urged before it which does not call for any interference.

26. Discussion on minor contradiction & discrepancies:

The learned counsel submitted some contradiction in the evidence of the witnesses were elicited during the course of the cross examination and the said contradiction affected the testimony of the witnesses. The said submission is not accepted for the reason that as already stated above, the witnesses were examined after 9 years. In the said circumstances, the minor



contradiction like place of keeping the bribe amount, type of the chair, place of the recovery of the bribe amount are immaterial one and the same do not affect the root of the prosecution case. Therefore, the discrepancy pointed out by the learned counsel for the appellants is not material. The Hon'ble Supreme Court has held that only the contradiction, discrepancy which affect the root of the prosecution case alone is to be considered to disbelieve the testimony of the witness. The Hon'ble Supreme Court in the case of

Rakesh v. State of U.P., (2021) 7 SCC 188 at page 197

14.... One is required to consider the entire evidence as a whole with the other evidence on record. Mere one sentence here or there and that too to the question asked by the defence in the cross-examination cannot be considered stand alone.

Since the delay in recording the evidence is normally caused such contradiction which is not material does not affect the prosecution case as held by the Hon'ble Supreme Court in the following judgement.

Jaiprakash Vs. State of U.P., reported in (2020) 17 SCC 632 at page

640

20... The witnesses who have deposed in the court after considerable lapse of time of course, cannot be



expected to have photographic memory of the case. We are conscious of the well-settled position that the minor discrepancies not touching upon the core of the prosecution case, would not affect the credibility of the witnesses or the prosecution case.

In ***Rakesh v. State of U.P.***, reported in (2021) 7 SCC 188 at page 195

9. ...There may be some minor contradictions, however, as held by this Court in a catena of decisions, minor contradictions which do not go to the root of the matter and/or such contradictions are not material contradictions, the evidence of such witnesses cannot be brushed aside and/or disbelieved.

In ***Mritunjoy Biswas v. Pranab***, reported in (2013) 12 SCC 796 at page 809

28. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs



no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (see Leela Ram v. State of Haryana [(1999) 9 SCC 525 : 2000 SCC (Cri) 222] , Rammi v. State of M.P. [(1999) 8 SCC 649 : 2000 SCC (Cri) 26] and Shyamal Ghosh v. State of W.B. [(2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685]).

In view of the above judgment, the minor contradiction cannot affect the prosecution case. Further, the above contradiction is not at all material one.

27. Discussion on the precedents relied upon on behalf of the appellant:

The learned counsel for the appellants relied upon the case in CrI.A(MD)No.37 of 2007 and as far as the said judgment is concerned, in the complaint, it was specifically stated that there was no acquaintance with



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the appellant and considering the circumstances and also no evidence was there to prove the demand, this Court acquitted the accused. Further in that case, complaint was made by the appellant against P.W2. In that case, P.W2 was a politician and had the intention to falsely implicate. Considering all the circumstances, this Court acquitted the appellant. In that case, FIR was also marked. In this case no such circumstances is available. Ex.P1 in this case is not relating to P.W3-Pandi. Hence, in this case, the above said judgment of this Court is not applicable, but the Supreme Court judgements referred supra are applicable to the present case. Similarly, the judgement reported in 2021 3 SCC 687 N Vijayakumar Vs. State of Tamilnadu, is also not applicable to the facts of this case, as in the said judgement, there was no evidence to prove the demand and acceptance. But in the case on hand, the evidence of P.W2 and P.W4 and other material circumstances, namely, the recovery of the documents from the custody of the appellant are available.

27.1. Similarly, the appeal judgement in CrI.A.(MD)No.409 of 2017, where this Court considered the place where the amount was kept is the notebook not in the chair and only his signature to the seizure mahazar was available. Considering the other circumstances, this Court acquitted the



accused. The judgement related in Crl.A(MD)No.693 of 2008 has no application to the present case, where this Court specifically held that before getting information from vigilance officers, the official witness was present at the vigilance office, that created a serious doubt over the initiation of the trap itself. Further, the complainant's evidence also created doubt. The learned Judge in that case, clearly gave a finding that trap proceedings is concocted one. There was no such circumstances in this case to accept that the trap proceedings is concocted one. In the Judgement reported in **2018(1)LW(cri)6996**, this Court specifically rendered finding that the prosecution failed to prove the marked currency from the appellants. In this case, marked currency was recovered based on the disclosure by A2. The evidence of P.W2, P.W4 and P.W11 is concerned they are cogent, corroborated with each other and trustworthy in respect of A1 that he received the amount and handed over it to A2 and A2 disclosed the place where the amount was kept.

28.Conclusion:

In all aspects, the prosecution clearly proved the case against A1 for the offence under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of



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Corruption Act and proved the case against A2 under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act r/w 109 IPC. Pending appeal, A2 died and his legal heirs are impleaded. Considering the age and other ailments of the appellant in Crl.A.(MD).No.94 of 2017, this Court is inclined to reduce the sentence alone as against the appellants for the offence under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act r/w 109 IPC from three years to one year.

29. Accordingly, these Criminal Appeals are partly allowed in the following terms:

(i) The conviction passed against the appellants for the offence under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act in Special Case No.17 of 2014 on the file of the learned Special Judge for the Prevention of Corruption Act Cases, Sivagangai, vide judgment dated 09.03.2017 is hereby confirmed.

(ii) The sentence of three years Rigorous Imprisonment and a fine of Rs.1000/- to the first appellant, in default to undergo 6 months simple imprisonment for the offence under Section 7 of the Prevention of Corruption Act; and to undergo three years of rigorous imprisonment and to



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pay a fine of Rs.1,000/- to each appellant, in default to undergo 6 months of 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 sentences are to run concurrently and the judgment relating to the fine amount is hereby confirmed”.

12.03.2024

NCC : Yes
Index : Yes
Internet : Yes
PJL/sbn



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To

WEB COPY

1. The Special Judge for Prevention of Corruption Act Cases,
Sivagangai.
2. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Sivagangai.
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.

PJL/*sb*n

Predelivery Common Judgment
made in
CRL.A(MD).Nos.87 and 94 of 2017

12.03.2024