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Crl.O.P.No.4825 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.4825 of 2025
and Crl.M.P.No.3123 of 2025

D.C.Ruskin

... Petitioner

Vs.

State by
The Deputy Superintendent of Police,
Special Investigation Cell,
Vigilance and Anti-Corruption,
Chennai.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to set aside the order passed by the learned Special Court for trial of Cases under the Prevention of Corruption Act, Chennai dated 12.02.2025 made in Crl.M.P.No.758 of 2024 in C.C.No.33 of 2011.

For Petitioner : Mr.S.Karthikeyan

For Respondent : Mr.S.Udayakumar
Government Advocate



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ORDER

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The petitioner/accused in C.C.No.33 of 2021 on the file of Special Court for the Cases under Prevention of Corruption Act, Chennai filed a petition to erase and eschew the evidence of P.W.3/Abineshbabu/defacto complainant. The learned Special Judge by order dated 12.02.2025 dismissed the petition. Against which, the present petition is filed.

2.The contention of the learned counsel for the petitioner is that the petitioner stands prosecuted for the offence under Sections 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act [PC Act]. The case projected against the petitioner is that when the petitioner was working as Inspector of Police, CCB, Team-18, Chennai, P.W.3 was an accused in CCB Crime Nos.341 of 2005 and 765 of 2008 for the offence under Sections 465, 467, 468 r/w. 471, 420 and 120B of IPC. On 16.12.2008, the petitioner is said to have demanded a bribe amount of Rs.2,00,000/- as illegal gratification from the defacto complainant for dropping further action and close the case against the defacto complainant as civil in nature. On 17.12.2008, the petitioner is said to have reiterated the demand and through Mohan/A2,



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Head Constable, received the trap amount of Rs.2,00,000/-. To prove this charge, the prosecution examined P.W.3/decoy, P.W.4/Karthikeyan, who is the accompanying official witness and Mr.Paramasami/Trap Laying Officer (TLO) along with another official witness Mr.Haribhaskar. P.W.3/decoy was examined-in-chief on 20.09.2011 and on the same day, a defer cross petition under Section 243(2) Cr.P.C. in Crl.M.P.No.10572 of 2011 filed stating that the decoy, accompanying witness and TLO speak to the identical facts and if PW3 was cross examined without examining the accompanying witness and TLO, great prejudice would be caused and the defence would get exposed. Considering the same, the Trial Court allowed the petition on 20.09.2011 deferring the cross examination of P.W.3. On 28.08.2012, the petitioner filed a petition under Section 91 Cr.P.C. seeking for summoning certain documents to prove his case. Thereafter, the petitioner filed Crl.M.P.Nos.1492 and 1493 of 2012 to recall the complainant whose cross examination was earlier deferred and others. The Trial Court allowed the same on 27.10.2015 on payment of batta to the witnesses. The prosecution produced the witnesses except P.W.3 and later on 05.08.2016, the death certificate of P.W.3 informing that he died on 30.07.2015. Hence, the



petitioner lost the valuable right of cross examining P.W.3. The evidence is complete only after chief examination and cross examination and the evidence of witnesses are tested by touch tone of cross examination. In this case, due to the death of P.W.3 he was unable to be cross examined. Hence, the petitioner filed the present petition seeking to eschew the evidence of P.W.3 recorded in chief.

3.In support of his contentions, the learned counsel for the petitioner relied upon the Division Bench judgment of this Court in the case of ***Dharmarajan and others vs. The State rep. by the Inspector of Police, Ammapettai Police Station, Thanjavur District [Crl.A.(MD).Nos.277 and 132 of 2017 dated 04.07.2019]***, wherein this Court held that after the chief examination of P.W.2 therein was over and her cross examination was deferred, it was the duty of the prosecution to secure the presence of P.W.2 before the Court for the purpose of cross examination. But since P.W.2 therein did not offer herself for cross examination, the testimony in chief would not come in aid of the prosecution to sustain their case.

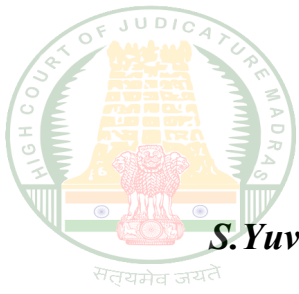


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4.The learned counsel for the petitioner further relied upon the order of this Court in the case of ***Dr.Sunder vs. State of Tamil Nadu, rep. By the Inspector of Police, K-4 Anna Nagar Police Station, Law and Order, Chennai [Crl.O.P.Nos.21519 & 21520 of 2017 dated 18.06.2019]***, wherein this Court held that the evidence of a witness who could not be subjected to cross examination due to his death or his non-availability, before he could be cross examined, is admissible in evidence, though the evidentiary value will depend upon the facts and circumstances of each case and a Court cannot discard the evidence which was duly recorded in judicial proceedings. Further, it held that the Trial Court must bear in mind the nature of testimony, its probative value, the status of the witness, his relationship or connection with the parties to the case, the likely animus which may colour his statement and other factors touching upon the credibility of the witness and the Trial Court can seek for corroboration from the evidence of the other witnesses and these factors will take care of the petitioner's apprehension.

5.He further relied upon the decision of this Court in the case of



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S.Yuvaraj vs. State rep. By the Inspector of Police, Gobichettipalayam

[Crl.O.P.No.7142 of 2013 dated 01.10.2013], wherein this Court finding

that the evidence of the accused was recorded in the absence of his Advocate where the accused was facing capital charges, had eschewed the evidence recorded. Hence, it is not germane to say that eschewing of evidence is not permitted.

6.The respondent filed a counter stating that the prosecution so far examined P.W.1 to P.W.8, marked Ex.P1 to Ex.P13 and produced M.O.1 to M.O.6. When the case is pending for cross examination of P.W.8/Investigating Officer, at that stage, the petition is filed to eschew the evidence of P.W.3. In this case, P.W.3 was examined-in-chief on 20.09.2011 and an opportunity was given to cross examine the witness. Since a defer cross petition filed and was allowed, the cross examination could not be done on the same day. In the meanwhile, a petition under Section 91 Cr.P.C. filed in Crl.M.P.No.55 of 2011 to call for records from CCB and summons was issued to P.W.3 for cross examination of A1. Hence, P.W.3 was present before the Court on 28.08.2012 but the accused



failed to cross examine him on that day, instead another petition under

Section 91 Cr.P.C. filed calling for some more documents. Hence, P.W.3

was sent back with an instruction to appear on receipt of summons. It is

only at the instance of the petitioner, the cross examination not conducted.

The petitioner was given an opportunity to cross examine P.W.3 on

20.09.2011 and 28.08.2012 but the petitioner for obvious reasons not cross

examined when opportunity was given and now taking advantage of the fact

that P.W.3 is no more, the present petition is filed after the lapse of more

than eight years. The probative value of evidence of P.W.3 can be decided

only at the time of judgment and there is no provision to eschew the

evidence already recorded. The evidence of P.W.3 cannot be eschewed by

citing Section 33 of Indian Evidence Act. Further, the prosecution relied

upon the judgment of Apex Court in the case of ***Vinod Kumar vs. State of***

Punjab reported in ***(2015) 1 SCR 504***, wherein the Apex Court had come

down heavily on the accused in Prevention of Corruption Act cases

adopting all dilatory tactics in cross examining the witnesses then and there

and later making attempts to win over the witness and to make them resile

from the earlier statement. This practice to be deprecated and directions



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issued to the Trial Courts to ensure cross examination of witnesses then and there without any delay except under extraordinary circumstances.

7.The learned Government Advocate (Crl. Side) relied upon the Division Bench judgment of this Court in the case of ***S.Nirmala and others vs. Shanthi Harikrishnan and others [O.S.A.No.187 of 2024 dated 17.10.2024]***, wherein this Court held that in the event of non-availability of the witnesses, their evidence cannot get automatically eschewed and the admissibility and probative value of the evidence can be decided at the appropriate stage in the final evaluation of the case.

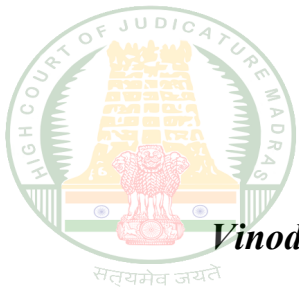
8.Considering the submissions made and on perusal of the materials, it is seen that the admitted fact of this case is that the petitioner, who is the Inspector of Police attached to CCB, Chennai along with Head Constable Mohan was charged and facing trial in C.C.No.33 of 2011. P.W.3 is the decoy, on his complaint a trap was laid and in the presence of P.W.4, the trap amount was demanded and received by the accused. The TLO/Mr.Paramasami laid the trap and it was proved successful. Thereafter,



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the accused was arrested in the case and on conclusion of investigation, charge sheet filed. In this case, P.W.3/decoy was examined-in-chief on 20.09.2011, thereafter a defer cross petition was filed in Crl.M.P.No.10572 of 2011 and the Trial Court permitted deferring the cross examination of P.W.3 on 20.09.2011, since P.W.3, P.W.4 and the TLO speak to identical facts. Thereafter, the petitioner filed a petition under Section 91 Cr.P.C., seeking for some records which again lead to some delay. The petitioner filed petitions in Crl.M.P.Nos.1492 and 1493 of 2015 to recall the complainant and other witness and the same was ordered on 27.10.2015. In this case, P.W.4/accompanying witness was examined-in-chief on 03.05.2013 and thereafter cross examined on six occasions starting from 15.11.2016 to 25.05.2017 almost for six months and thereafter, the TLO was also cross examined. The prosecution went to serve summons to P.W.3 and it came to know that P.W.3 died on 30.07.2015 and produced the death certificate on 05.08.2016. The petitioner thereafter filed the present petition in Crl.M.P.No.758 of 2024 seeking to eschew the evidence of P.W.3 for the reason that he is not at fault for not cross examining P.W.3. Further, his submission is that the decision referred by the prosecution in the case of



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Vinod Kumar, wherein the order was delivered on 21.01.2015 and the petitioner was permitted to defer the cross examination as early as on 20.09.2011, hence it may not be applicable, likewise the Division Bench judgment cited by the prosecution pertains to the civil suit. The rights of the accused in the criminal case cannot be denied when there is a specific provision under Section 243(2) Cr.P.C. permits deferring cross examination. His further contention seems to be that the evidence of P.W.3 is untested by the corner stone of cross examination and if chief examination alone taken for consideration, great prejudice would be caused to him.

9.The Constitutional Bench of the Hon'ble Supreme Court Apex Court in the case of ***Neeraj Dutta vs. State (Govt. of N.C.T. Of Delhi)*** reported in (2023) 4 SCC 731 answered whether in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act based on other evidence adduced by the prosecution.



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The Constitutional Bench formulated a question in the absence of the complainant letting in direct evidence of demand owing to the non-availability of the complainant or owing to his death or other reason, whether the demand for illegal gratification could be established by other evidence.

This is because in the absence of proof of demand, a legal presumption under Section 20 of the Prevention of Corruption Act, 1988 (for short “the Act”) would not arise.

Thus, the proof of demand is a sine qua non for an offence to be established under Sections 7, 13(1)(d)(i) and (ii) of the Act and de hors the proof of demand the offence under the two sections cannot be brought home.

Thus, mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof in the absence of proof of demand would not be sufficient to bring home the charge under Sections 7, 13(1)(d)(i) and (ii) of the Act.

Hence, the pertinent question is, as to how demand could be proved in the absence of any direct evidence being let in by the complainant owing to



the complainant not supporting the complaint or turning “hostile” or the complainant not being available on account of his death or for any other reason.

Further, the Apex Court after referring to various decisions summarised as follows:

68.What emerges from the aforesaid discussion is summarised as under:

- (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.
- (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.
- (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.



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(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything



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more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

(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.

(f) In the event the complainant turns “hostile”, or has died or is unavailable to let in his evidence during trial,



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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.

(g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.

69. In view of the aforesaid discussion and conclusions, we find that there is no conflict in the three-Judge Bench decisions of this Court in ***B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543]***



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and P.Satyanarayana Murthy [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] with the three-Judge Bench decision in M. Narsinga Rao [M. Narsinga Rao v. State of A.P., (2001) 1 SCC 691 : 2001 SCC (Cri) 258], with regard to the nature and quality of proof necessary to sustain a conviction for the offences under Sections 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or “primary evidence” of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns “hostile” is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion, we hold that there is no conflict between the judgments in the aforesaid three cases.

70. 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.



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10.Thus, from the above judgment it is clear that the non-availability of primary evidence of the complainant owing to his death or any other reason would encompass the cases where the defer cross petition is allowed, the Apex Court had held as to how his evidence to be considered. Hence death of a witness whose evidence recorded in chief, cross examination deferred and subsequently not available, his evidence cannot be eschewed or erased in toto.

11.In view of the above, this Court finds, impugned order does not suffer any infirmity. Hence the present petition is liable to be dismissed. The Trial Court has to keep in mind the guidelines given by the Constitutional Bench of the Apex Court in this regard.

12.In the result, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking Order/Non-Speaking Order,
Neutral Citation: Yes/No

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Note: Issue order copy on 17.03.2025



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M.NIRMAL KUMAR, J.

cse

To

- 1.The Deputy Superintendent of Police,
Special Investigation Cell,
Vigilance and Anti-Corruption,
Chennai.
- 2.The Special Judge,
Special Court for trial of Cases under
the Prevention of Corruption Act,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

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