IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2025
PRONOUNCED ON : 16.09.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1094 of 2022

P.Baskarsuresh Kumar ... Appellant

Vs.

State Rep. by
The Deputy Superintendent of Police,
Chennai City-I Detachment,
Vigilance and Anti Corruption.
Chennai.
(Crime No.19 of 2008). ... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction and sentence imposed by the learned Special Judge under Prevention of Corruption Act/The Special Court for the Cases under Prevention of Corruption Act at Chennai-104 in C.C.No.13 of 2011 dated 30.08.2022 for the offences under Section 7 of Prevention of Corruption Act and sentenced to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months Simple Imprisonment and 13(2) r/w 13(1)(d) of Prevention of Corruption Act and sentenced to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months Simple Imprisonment and to run the sentences concurrently and acquit the appellant from the above case.

For Appellant	:	Mr.Abudu Kumar Rajaratinam, Senior Counsel for Mr.S.Ashok Kumar
For Respondent	:	Mr.S.Udaya Kumar, Government Advocate (Crl. Side)

JUDGMENT

The appellant was convicted by judgment dated 30.08.2022 in C.C.No.13 of 2011 by the learned Special Judge, Special Court for the cases under Prevention of Corruption Act, Chennai and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Simple Imprisonment for offence under Section 7 of Prevention of Corruption Act, 1988 and further he was convicted and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Simple Imprisonment for offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Challenging the same, the present criminal appeal is filed.

2.Case of the prosecution is that the appellant employed as Assistant Lecturer/State Drug Licensing Authority (Indian Medicine), Government Siddha Medical College, Chennai is a public servant as per Section 2(c) of the Prevention of Corruption Act. 1988. The defacto complainant in this case is Dr.S.Marimuthu Elakkuvan, a qualified Doctor in Ayurvedic Medicine and Surgery and running a pharmacy in the name of M/s.Nithya Ayurvedic Pharmacy in Virudhunagar District. The defacto complainant submitted an application under the Drugs and Cosmetic Rules 1945 for grant of License in Form 25D for manufacture of 14 Ayurveda Products to the Director, Drug Control, DMS Campus, Teynampet, Chennai on 16.10.2007. One Mr.C.Rajendran received the application, assigned a number to the file in No.15050/D2/1/2007. After getting approval from the Director, the application with enclosures was sent to the Assistant Director, Drugs Control, Virudhunagar District for inspecting the Manufacturing Unit and sent another related enclosures to Ayurvedic Scrutiny Committee consisting of Dr.Athiyasaraj and Dr.Ravi Selvam for their opinion and recommendation. The Assistant Director Mr.S.A.Govinda Kumar forwarded the inspection report pertaining to M/s.Nithya Ayurveda Pharmacy vide R.C.No.3983/E/2007, dated 12.12.2007 to Mr.K.U.Chandra Sekar, Drugs

Inspector who has inspected the Manufacturing Unit on 04.12.2007 and sent his recommendation for grant of license in Form 25D for the manufacture of 14 products on 12.12.2007. The Government in G.O(D)No.420, Health and Family Welfare (IM-2)2) Department, dated 07.11.2007 issued a notification ordering the appointment of the appellant officer in charge to Drugs Testing Laboratory (Indian Medicine), Arignar Anna government Hospital for Indian Medicine Chennai as the Licensing Authority for the wholesale of Tamil Nadu for the purpose of XVI of Drugs and Cosmetic Rules 1945 and the State Government also constituted an Expert Committee under the provisions of Rule 154(2) of Drug Cosmetic Rules 1945 and advising the State Licensing Authority before issuance of license to any patent and proprietary Ayurveda, Siddha and Unani Medicine for production of any manufacturing unit vide G.O.D.No.752, Health and Family Welfare (IM-2)2) Department, dated 25.06.2008.

3.After the appointment of the appellant as in charge for the Drug

Testing Authority and State Licensing Authority, the file of the defacto complainant was sent to the appellant. Dr.Athisayaraj and Dr.Ravi Chelvan, Members of the Scrutinizing Committee scrutinized the application of the defacto complainant recommended for modification on three occasions. After compliance by the defacto complainant, the Scrutinizing Committee recommended for placing the application before the Expert Committee for approval. The defacto complainant's application was placed before the Expert Committee and the committee gave approval for proposal of the production of 14 Ayurvedic Medicine and recommended for issuance of license to M/s.Nithya Ayurveda Pharmacy for manufacturing 14 Ayurvedic Medicine.

4.Mrs.Usha, Superintendent on receiving approval note and after getting approval from the appellant on 30.07.2008 prepared the license in the name of M/s.Nithya Ayurveda Pharmacy and obtained the signature of the appellant and handed over the same to him. The appellant knowing the approval by the Expert Committee had contacted the defacto complainant on 15.08.2008 and asked him to meet in person in Chennai. The defacto complainant on 18.08.2008 came to the office of the appellant requesting for issuance of license, at that time, the appellant demanded a sum of

Rs.1,20,000/- as illegal gratification for issuance of license. Again on 20.10.2008, the defacto complainant contacted the appellant and the appellant insisted to bring Rs.1,00,000/- for issuance of license. On 24.10.2008, the defacto complainant had met the appellant and requested for issuance of license and the appellant reiterated the demand for Rs.1,00,000/- bribe amount. Not willing to pay the bribe amount, the defacto complainant lodged a complaint to the respondent and FIR registered after verifying the veracity of the complaint. Two official witnesses namely Mr.Mohammed Valliyullah Sharif and Mr.Samuvel Arulraj enlisted and in presence of them, the bribe amount of Rs.1,00,000/- was produced by the defacto complainant. The numbers of the currency notes were recorded in the Entrustment Mahazar, thereafter, the official witness Mr.Samuvel asked to handle the currency notes dipped in the glass tumbler containing water mixed with Sodium Carbonate. Thereafter, pre-trap proceedings recorded, thereafter, on the advice of the Trap Laying Officer, the defacto complainant/decoy, accompanying witnesses along with the trap team had gone to the office of the appellant. At about 06.15 p.m., the defacto complainant and Mr.Mohammed Valliyullah Sharif had come to the office of the appellant and defacto complainant requested for issuance of license, at that time, the appellant demanded by the bribe amount of

Rs.1,00,000/-. The amount kept in the brown bag handed over to the appellant who received the same, counted the same and kept it in the right side drawer of the table, handed over the license and received acknowledgment, thereafter, the defacto complainant came out, gave signal, Trap Laying Officer and trap team entered, identified the appellant, phenolphthalein test conducted, turned positive, the accompanying witness confirmed the demand, acceptance, recovery proceedings recorded, appellant arrested, and thereafter handed over the investigation to the Investigating Officer/PW15, who conducted investigation, collected materials, seized the files, examined the witnesses, recorded the statements, completed investigation, obtained sanction (Ex.P1) under Section 19 of Prevention of Corruption Act, and after obtaining sanction, charge sheet filed in this case.

5.During trial, on the side of the prosecution, PW1 to PW15 examined and Exs.P1 to P34 marked and MO1 to MO3 produced. On the side of the defence, the appellant examined himself as DW1 and Exs.D1 to D22 marked. On conclusion of trial, the trial Court convicted the appellant as stated above.

6.The learned Senior Counsel appearing for the appellant submitted that the State Drug License Authority post for entire Tamil Nadu was created for the first time and the appellant was appointed for the said post by G.O(D)No.420, Health and Family Welfare (IM-2)2) Department, dated 07.11.2007, hence, there was some animosity within the Department for the appellant getting the post. In fact there was Writ Petitions filed against the appointment of the appellant in W.P.No.37869 of 2007 and this Court by order, dated 28.01.2009 dismissed the same confirming the appellant's appointment which had further infuriated the animosity against the appellant. He further submitted that as far as defacto complainant is concerned, he is an aggrieved person due to rejection of his application for three times, hence, using defacto complainant a false complaint lodged against the appellant and trap thrusted and projected as though the appellant demanded and received the bribe amount. There are serious infirmities in the investigation and unfair investigation conducted. The investigating is tainted, biased, one sided and bolstered by PW14 and PW15 with malice. The conviction has been recorded glossing over the materials and explanation of the appellant and brushing aside the truth of the case. It is the specific case of the defacto complainant who belongs to Madurai who is said to have travelled from Madurai to Chennai on 24.10.2008, met the appellant in his office at 10.00 a.m and requested for license, at that time, the demand of Rs.1,00,000/- bribe amount reiterated. In this case, the complaint came to be lodged at 02.00 p.m on 24.10.2008 and FIR registered immediately without verifying the antecedents and the genuineness of the complaint.

7.The learned Senior Counsel further submitted that the accompanying witness Mr.Mohammed Valliyullah Sharif and other witness Mr.Samuvel Arulraj were immediately enlisted on the same day and pre-trap proceedings said to have conducted in the DVAC office between 05.00 p.m and 06.00 p.m, thereafter, reached the appellant's office at 06.15 p.m and the appellant received the bribe amount at 06.45 p.m. According to the prosecution, the Crime No.19 of 2008 came into existence on 24.10.2008 and the investigation started only on 24.10.2008. On the contrary, the Crime No.19 of 2008 was registered by the respondent on 23.10.2008. Ex.D5, the confidential report and Ex.D7, a letter of office staff Gunasekaran will confirm the same and the case now projected is a false and fabricated case. Exs.D21 and D22 are requisition letters dated 23.10.2008 sent to the official witnesses for deputation namely PW3 and Mr.Samuvel Arulraj which is not seriously disputed. In these requisition letters Crime No.19 of 2008 is recorded. The suppression of registering of Crime No.19 of 2008 on 23.10.2008 and ... of printed serial numbers proved by Exs.D19 & D20 would clearly establish how investigation is unfair and biased.

8.The learned Senior Counsel further submitted that on the evening on 24.10.2008, at the time of arrest of the appellant, there was commotion and protest by the staff in the office of the appellant. The Principal Secretary and Director, Indian Medicine and Homeopathy/PW12 was informed who enquired and sent confidential report (Ex.D5) to PW1/Principal Secretary, Health and Family Welfare Department narrating the sequence and incident happened in the office and PW12 briefed Deputy Superintendent of Police and V & AC sleuths present in the scene of occurrence. This facts confirmed by PW1 and PW12 and Ex.D5 marked. Contrary to the same, the trial Court not considering the same stating that it is an intra-governmental communication is not proper. In this case, one Dr.Prince is said to be involved in the alleged incident, he is neither a witness nor an accused in this case. Infact, Dr.Prince was detained and taken by the PW14/Trap Laying Officer are recorded in contemporary documents which were not considered. The altercation during the arrest of the appellant and staff members of the Indian Medicine and

Homeopathy Department who were threatened by the DVAC officials that they would also be implicated as abettors of the crime will confirm to what extent the respondent would go to ensure success of trap and to implicate an accused person. One Office Assistant was assaulted by V & AC officials who lodged a complaint to PW12 on 24.10.2008 and the same is marked as Ex.D7. Ex.D7 confirms the assault to Gunasekaran. PW15/Investigating Officer was present with the V & AC team during trap proceedings on 24.10.2008 will confirm the illegality committed while arresting the appellant and no free and fair investigation conducted in this case. Further, the prosecution in this case fabricated Exs.D19 & D20 which were marked through PW14/TLO confirming that FIR registered by the respondent in Crime No.20 of 2008 and Crime No.18 of 2008 is supplied with printed FIR book in triplet form and the same contains continuous serial numbers. If any antidate, postdate or any other tampering is done during registration of FIR, the discontinuity in Serial Number would reveal the same. The Serial Numbers are strictly to be adhered by the Investigating Officer so that there cannot be any false implication or fabrication of records. In this case, it is proved FIR in Crime No.19 of 2008 is a doctored one.

9.He further submitted that call details of PW2 marked as Ex.P33 confirms PW2/decoy was in Chennai even on 23.10.2008 whereas on the contrary to the documentary evidence adduced PW2/decoy evidence is that he came to Chennai only on 24.10.2008, hence, the foundational fact of the prosecution proved false. In this case, the demand, acceptance is not proved. Further, the trap money recovered from the table drawer of the appellant's office. Further, the specific case of the appellant is that he was forced, manhandled to handle the trap amount to confirm the phenolphthalein power test. The commotion and beating of the staff in the Department, detention of Dr.Prince and the report (Ex.D5) of PW12 confirms the trap had not taken place as projected and the trial Court had not considered the evidence and materials in this regard. In this case, the trial Court failed to consider PW1 and PW12 are Senior I.A.S Officers and they have no axe to grind against the prosecution and they have nothing to support the appellant who have given true and correct facts of the incident, not considered. Added to it, there have been fabrication of records. These factors not considered by the trial Court. Further, the sanctioning authority PW1 admits that based on the legal opinion given by the Public Prosecutor, High Court of Madras, he accorded sanction. Further, there is inordinate delay of 1 year and 4 months in according sanction.

The requisition from DV & AC received on 06.11.2008 and the sanction (Ex.P1) accorded only on 27.04.2010.

10.He further submitted that though the license was granted to the defacto complainant on 21.07.2008, but corrections and rectifications were to be carried out in the application filed by the defacto complainant and this has not been done and it was later corrected and recorded in the minutes of the third meeting held on 30.09.2008. Thus, in this case, the appellant probablized his defence by cross examination examining himself as defence witness and marking exhibits Exs.D1 to D22 disproved the case of the prosecution and the defacto complainant/PW2 is untrustworthy and accompanying witness/PW3 is an obliging and doubtful witness. The trial Court not considered the defence explanation, not adverted to the evidence produced, just glossed over the same without any justification. Hence, prayed for acquittal.

11.In support of his submissions, the learned Senior Counsel relied on the following decisions:

- ***State of Punjab v. Madan Mohan Lal Verma*** reported in ***(2013) 14 SCC 153*** for the point that when the demand and acceptance were not established mere recovery of the bribe amount would not be sufficient.

- ***Vadivelu Thevar and another v. State of Madras*** reported in ***1957 SCC OnLine SC 13*** for the point that the evidence has to be weighed and not counted. It is a sound and well-established rule of law that the Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. When the evidence is wholly reliable nor wholly unreliable, the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

- ***State of A.P and others v. Goverdhanlal Pitti*** reported in ***(2003) 4 SCC 739*** for the point of malafide investigation.

- ***Mansukhlal Vithaldas Chauhan v. State of Gujarat*** reported in ***(1997) 7 SCC 622 and Central Bureau of Investigation v. Ashok Kumar Aggarwal*** reported in ***(2014) 14 SCC 295*** for the point that the sanction for prosecution to be independent application of mind. In this case, the sanction has been issued after 1 ½ years and more so after getting opinion from the Public Prosecutor office and the sanctioning authority was left with no choice but to mechanically accord sanction.

12.The learned Government Advocate (Crl. Side) strongly opposed the appellant's contention and submitted that the appellant demanded huge bribe amount of Rs.1,20,000/- initially which was reduced to Rs.1,00,000/-. Earlier the appellant was appointed as officer in charge of Drugs Testing Laboratory (Indian Medicine), Arignar Anna Government Hospital for Indian Medicine Chennai as Licensing Authority. Prior to it, the defacto complainant applied for license for 14 Ayurvedic Products to the Director of Drugs Control Tamil Nadu, DMS Complex, Chennai which was forwarded to the Zonal Office and the Inspecting Authorities had visited the manufacturing place, gave instructions, thereafter finding that the defacto complainant is a qualified person and application to be in order had recommended sanction of license. Thereafter, the defacto complainant met the appellant on 18.08.2008 at 01.30 p.m in his office, at that time, the appellant demanded a sum of Rs.1,20,000/- to grant and issue license. Again on 20.08.2008, the defacto complainant contacted the appellant over phone who reiterated the demand. Again on 03.10.2008, the defacto complainant contacted the appellant since he received a missed call from the appellant's mobile phone. Again on 20.10.2008, the defacto complainant contacted the appellant over phone, at that time, the demand reduced to Rs.1,00,000/-. On 24.10.2008, the defacto complainant met the appellant at 10.00 a.m in his office, demand of Rs.1,00,000/- reiterated by the appellant. Not willing to give the bribe amount, the defacto complainant came to the respondent office and lodged a complaint (Ex.P4). PW14/Deputy Superintendent of Police received the complaint (Ex.P4), enquired and later registered FIR (Ex.P26) in Crime No.19 of 2008 at 02.00 p.m. The official witnesses namely PW3 and Mr.Samuvel Arulraj summoned, they appeared before the DV & AC office at 04.00 p.m and they were introduced to the defacto complainant. The official witnesses got acquainted with the facts of the case and asked to clarify any doubt with the defacto complainant, the pre-trap proceedings recorded in the entrustment mahazar (Ex.P5), thereafter, the defacto complainant/PW2, official witnesses PW3 and Mr.Samuvel Arulraj, Trap Laying Officer/PW14 and trap team went to the office of the appellant. PW3 was asked to accompany the defacto complainant/PW2, at the time of giving bribe amount and he was instructed to keenly watch the conversation between PW2 and the appellant. PW2 instructed that only if the appellant demanded the bribe amount, the same to be handed over. PW14/TLO and other team members took position standing near the office of the appellant. At about 06.45 p.m, PW2 came out, gave pre-arranged signal, immediately, PW14/TLO and Mr.Samuvel Arulraj went inside the office room, enquired PW2 who confirmed the appellant's demand for the bribe amount and received the same, counted using both his hands, kept the amount in the right side drawer of the table. PW3/official witness confirmed the same. Thereafter, PW2 identified the appellant and the appellant was questioned and he was perplexed and shivering. PW2 was asked to wait outside. The appellant hand fingers washed with Sodium Carbonate solution which turned pink colour collected in two bottles (MO2 and MO3). Thereafter, the appellant informed that the amount was kept in the drawer which was taken out by PW3, verified the currency note numbers (MO1) with the entrustment mahazar (Ex.P5), thereafter, files pertaining to PW2's license and related files seized, all recorded in the seizure mahazar (Ex.P9). PW3 and Mr.Samuvel Arulraj, official witnesses and PW14/TLO signed the seizure mahazar and the copy of the same handed over to the appellant. The appelant was arrested, taken to the DV & AC office along with the seized articles. In the meanwhile, PW3 and other official witness Mr.Samuvel Arulraj along with one Gajendra Varadhan, Inspector, DV & AC went to the house of the appellant, conducted a search, taken down inventories of the articles, searched completed at about 10.00 p.m. From PW2, Exs.P6 & P8 were collected. After the arrest, appellant produced for remand, PW14/TLO handed over the investigation to PW15 who took up further investigation, examined the witnesses, recorded their statements, collected documents.

13.He further submitted that during investigation, it was found that the appellant after taking in-charge over the licensing authority for Drugs Testing Laboratory (Indian Medicine), Arignar Annar Government Hospital for Indian Medicine though he was aware that the license was already granted to the defacto complainant for 14 ayurvedic products, but appellant not handed over the license to the defacto complainant with ulterior motive, further he instructed PW7/Mrs.Usha, Office Superintendent not to despatch the license, instead he received the license and kept it with him and demanded bribe. PW15 after getting sanction for prosecution (Ex.P1) under Section 19 of Prevention of Corruption Act, 1988 filed charge sheet in this case. During trial, PW1 to PW15 examined and Exs.P1 to P34 marked and MO1 to MO3 produced. On the side of the defence, the appellant examined as DW1 and Exs.D1 to D22 marked. The points and grounds raised which were negatived by the trial Court, are again reiterated and re-agitated in the present appeal, hence, the same to be rejected.

14.This Court considered the rival submissions and perused the materials available on record.

15.In this case, on the day of trap on 24.10.2008, there was some commotion in the office of the appellant which is confirmed as could be seen from the confidential report (Ex.D5) submitted in D.O.No.18250/A2/2008-1, dated 29.10.2008 by PW12 addressed to the Principal Secretary to Government, Health and Family Welfare Department, Chennai/PW1.

16.In the confidential report (Ex.D5), it is recorded that the complaint (Ex.P4) of the defacto complainant was verified by the respondent by tracking the mobile calls of the defacto complainant and the appellant, thereafter, the trap arranged. The defacto complainant claimed he came to Chennai from Madurai on 24.10.2008 but as per Ex.P33, he was in Chennai for two days on 23.10.2008 and 24.10.2008. On 23.10.2008, the defacto complainant at about 01.00 p.m met the appellant but he was turned out by the appellant and the appellant asked the defacto complainant to appear on the next day on 24.10.2008. On 24.10.2008, again the defacto complainant approached the appellant at about 10.30 a.m and the appellant asked him to wait in the office, in fact lunch provided to the defacto complainant since the appellant had other official works. Later, at about 06.30 p.m., the defacto complainant came back and there was some conversation between the appellant and the defacto complainant, at that time, Dr.Prince, a former employee of TAMPCOL a friend of the defacto complainant had come to the office of the appellant in his two wheeler viz., Honda Activa. On the instructions of the appellant, Dr.Prince received the graft amount of Rs.1,00,000/- and came out of the office and kept the graft amount in his two wheeler and attempted to speed away. The DV & AC sleuths outside the office caught hold of Dr.Prince and recovered the packed amount containing cash. Since there was force used, the Office Assistant Mr.Gunasekaran, an Ex-Service Man intervened and he was beaten up. Dr.Prince and Mr.Gunasekaran and others were threatened that if they interfered with DV & AC sleuths, they will also be added as abettors in the case. Thereafter, one Deputy Superintendent of Police met PW12 and informed about the trap and Dr.Prince was taken along with the appellant and his two wheeler Honda Activa was asked to be detained in the office. Further, the said Mr.Gunasekaran gave a complaint to PW12 informing that on 24.10.2008 at about 06.20 p.m after the office hours when he was cycling home, 10 feet away from the gate four persons surrounded assaulted him using force and he was dragged from the cycle and pulled into Ambassador car, he got hurt, cried for help and he was forcibly taken into the office and thorough search made. Mr.Gunasekaran found Dr.Prince was searched taken inside the office room of the appellant. In the meanwhile, Mr.Gunasekaran heard shout and noise from the office room of the appellant forcing the appellant to receive something. After sometime, Mr.Gunasekaran was let go. All these events recorded by PW12 submitted a confidential report (Ex.D5) to PW1. The copy of the Ex.D5 is available in the office file. This confidential report (Ex.D5) acknowledged by PW1. In fact Exs.D1 to D7 marked through PW1. The prosecution neither objected nor seriously disputed Exs.D1 to D7 in any manner and no re-examination conducted to impeach the documents or any clarification done. These documents Exs.D1 to D7 further reconfirmed by PW12, Director of Indian Medicine & Homeopathy, Arignar Anna Government Hospital Campus, Chennai. It is to be seen that both PW1 and PW12 are Senior I.A.S Officers. The prosecution had not drawn any attention and confronted neither Exs.D1 to D7 nor Exs.D8 to D14. All marked without any objection.

17.Ex.D8 is the minutes of the Expert Committee meeting under the

Chairmanship of the Commissioner between 21.07.2008 to 30.09.2008 wherein the Expert Committee members have met and deliberated the license issue including that of defacto complainant. For six manufactures and the defacto complainant's company M/s.Nithya Ayurvedic Pharmacy, it is recorded that corrections to be carried out in the application. Ex.D10 is the declaration, Ex.D11 is the Ayurvedic Medicines Details and Ex.D12 is the List of Ayurvedic Patent Products.

18.It could be seen that as per Exs.P23 & P24, PW13 confirms that there was some objection with regard to traditional formulations and its ingredients, no authentic reference produced and usage of allopathy terms to be removed and the formula chart to be made in Sanskrit. Further, the specimen reliable formula chart, the date of expiry of the medicine, usage and dosage, not provided. These details were lacking which were only rectified later. In fact, in the final approval, the approval was subjected to correction. Thus, the delay caused was due to non-furnishing of complete details. In the meanwhile, the formation of Inspector of Drugs under Ayurveda, Siddha and Unani has been bifurcated and attached to the Indian Medicine Unit are the reasons for delay and not due to appellant. In the Expert Committee Meeting on 30.09.2008, the defacto complainant was granted license subject to the corrections to be carried out in the application. From the minutes of the meeting (Ex.D8), it is seen that the Member Secretary and Committee Member signed the minutes only on 01.10.2008.

19.In this case, the complaint is that there was a demand on 15.08.2008, 18.08.2008, 17.09.2008, thereafter followed by 03.10.2008, 20.10.2008 and 24.10.2008. The demand becomes significant only after 01.10.2008, hence, the demand on 03.10.2008, 20.10.2008 and 24.10.2008 to be considered. The demand said to have taken place on 03.10.2008 by the appellant calling the defacto complainant in his mobile phone and the defacto complainant/PW2 calling the appellant in his mobile on 20.10.2008 and finally on 24.10.2008 when the defacto complainant calling upon the appellant in person. Ex.P33 is the Call Detail Records of the defacto complainant's mobile number 9487180463. This document marked through PW15/Investigaing Officer. Though PW15 stated that one Rajasekar from BSNL gave the CDR of the appellant, but not examined Rajasekar. Non examination of Rajasekar and marking Ex.P33/CDR through PW15 is not acceptable. Added to it, without 65B Certificate, Ex.P33/CDR cannot be looked into in evidence against the appellant. In this case, admittedly, the Customer Application Form (CAF) of PW2 and the appellant not collected. Further, the mobile phone of the appellant in which number PW2 contacted the appellant, there is no details. But as regards the appellant relying on Ex.P33, the same can be considered when Ex.P33 produced as prosecution document. From Ex.P33, it is seen that on 03.10.2008, there is only incoming SMS to the appellant and on 20.10.2008, there is two outgoing calls. The specific case of the defacto complainant is that on 24.10.2008, he came to Chennai and stayed in Hotel Shir Ram Nallamani, Egmore, Chennai and thereafter, at about 10.30 a.m., he went to the office of the appellant. From Ex.P33, it is seen that on 23.10.2008, the defacto complainant was very much in Chennai coupled with the fact that FIR in Crime No.19 of 2008 registered on 23.10.2008 as contended by the appellant, gains significance in view of Exs.D21 & D22 both dated 23.10.2008 in which the Crime No.19 of 2008 is mentioned. Ex.D21 is the requisition letter to PW3 and Ex.D22 is the requisition letter to Mr.Samuvel Arulraj. The Investigating Officer/PW15 not disputed issuance of Exs.D21 & D22.

20.In this backdrop, looking at the confidential report (Ex.D5) of PW12 gains significance and acceptance since PW14/TLO registered the case in Crime No.19 of 2008 on 23.10.2008. Thus, on 23.10.2008, the trap preparation initiated, but for some reasons could not be executed. This fact recorded in Ex.D5 which exposes PW14's/TLO interest to somehow succeed in trap though it might be against the true happenings and facts. It is also confirmed that PW2, a motivated witness and PW3 though an official witness losses its independency since he is an obliging witness is with DSP of V & Ac whenever called but true facts not disclosed. Thus, the trap witness and TLO/PW14 and Investigating Officer/PW15 all focused to somehow succeed in the trap, hence, the entire trap is clouded with mystery.

21.It is to be seen that in this case, the said Gunasekaran, Office Assistant gave the complaint to PW12. In Ex.D7 file, the letter of Dr.Prince dated 29.10.2008 confirms that he had taken possession of his two wheeler Honda Activa bearing Reg.No.TN-20-L-2785 and Dr.Prince detained and taken by the respondent is recorded in Ex.D5 as well as in the letter of Gunasekaran which is also available in Ex.D7 file. The said Dr.Prince is neither examined as witness nor as accused. More so, when the specific allegation against the Dr.Prince is that he was called by the appellant to collect the money on behalf of he appellant and he was caught. Thus, PW2, PW3 and PW14/TLO and sleuths of DV & AC including PW15 were not sure whether at all the appellant had demanded and received the bribe amount.

22.In one stretch it is projected as though the said Gunasekaran was caught, beaten and enquired as though the bribe amount was handed over to him and he took away. On the other side, it is projected that Dr.Prince took the money in his two wheeler and he was caught and searched. The presence of PW15/Investigating Officer is confirmed by Gunasekaran's letter. One thing is certain that the alleged recovery from the right side drawer of the table in the appellant's office room is not true. Since PW2 not only a motivated witness and an untrustworthy witness. PW3 is an obliging witness in view of Exs.D21 & D22 and Ex.P33/CDR exposes the hollowness and denial of bribe by the appellant. In this case, the demand, acceptance and recovery all clouded with mystery. Added to it, fudging of FIR in Crime No.19 of 2008 is proved by Exs.P19 & P20. Both PW14/TLO and PW15/Investigating Officer unable to give any explanation.

23.The appellant during questioning under Section 313 Cr.P.C gave a detailed explanation along with supporting materials to prove that how he was fabricated and implicated with materials in the above case, the evidence of PW2, PW3 are highly doubtful. PW14 and PW15 are the witnesses who are focused only in success of the trap though it might be contrary to the truth. Thus, referring to Exs.D5, D7, D8 & D15 to D20 and Exs.P8, P26, P33 & P34, the appellant probablized his defence. Further, the appellant examined himself as DW1 and he deposed in detail about the happenings. Except for mere suggestions by the prosecution, nothing could be elicited to impeach and discredit the evidence of DW1. Added to it, in this case, the defence exhibits marked through PW1, PW2 and PW14. The prosecution had not raised any objection to these documents and were unable to disprove the documentary evidence in any manner. In this case, the appellant not only probablized the defence but also disproved the case of the prosecution.

24.The trial Court invoking Section 20 and looking the case through that prism is not proper. Though the trial Court stated that Dr.Prince has not been examined, it is not impeached against the prosecution. On the other hand the trial Court questioned the appellant not examining Dr.Prince as witness. Likewise, the trial Court failed to look into the fact that at the earliest point of time even as on 29.10.2008 reference on the role of Dr.Prince and Gunasekaran both mentioned in Ex.D5, a confidential report. All relevant documents are available in Ex.D7 file. PW1 and PW12 both Senior I.A.S Officers confirmed the defence exhibits exposing trap not conducted as projected in the normal manner and use of force confirmed. Further, in this case, request for prosecution to sanction under Section 19 of PC Act received on 06.11.2008. After getting instruction from the Secretary, Health and Family Welfare on 08.01.2010 and opinion from the State Public Prosecutor on 21.01.2010, sanction for prosecution (Ex.P1) issued on 27.04.2010 i.e., one and half years after the request. It is a collective decision and not independent sanction by PW1. According sanction is a sacrosanct act of the sanctioning authority who on study of materials to independently arrive at a satisfaction. In this case, it is not so.

25.The Hon'ble Apex Court in ***State of Karnataka v. Ameer John*** reported in ***(2007) 11 SCC 273*** had held that ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In this case, Exs.D5 & D7 are the official documents which were not referred to while according sanction for prosecution. In ***Neeraj Dutta v. State (NCT of Delhi)*** reported in ***(2022) 5 SCR 104,*** the Hon'ble Apex Court summaries the legal position which is as follows:

> "*(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.*"

26.In ***Soundarajan v. State Rep. By the Inspector of Police, Vigilance***

and Anti Corruption, Dindigul reported in ***2023 Live Law (SC) 314***, the Hon'ble Apex Court had held that Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 cannot be said to be established unless both the demand and acceptance are established.

27.In ***Mukhtiar Singh (since deceased, through his LR) v. State of Punjab*** reported in ***2017 (3) SCC (Crl.) 607***, the Hon'ble Apex Court had held that mere recovery of money is not sufficient to sustain a conviction under Prevention of Corruption Act unless the prosecution proves demand and voluntary acceptance of the bribe amount.

28.In view of serious deficiencies in the case of the prosecution, this Court has no hesitation to hold that the prosecution has failed to discharge its burden of proving demand and acceptance of illegal gratification beyond a reasonable doubt. Further, this Court finds that the sanction order (Ex.P1) was vitiated due to non-application of mind and the prosecution failed to prove the essential ingredients of demand and acceptance of illegal gratification and the presumption under Section 20 of the PC Act cannot be invoked in the absence of proof of demand.

29.In the result, this Criminal Appeal is allowed setting aside the impugned judgment, dated 30.08.2022 in C.C.No.13 of 2011 passed by the learned Special Judge, Special Court for the cases under Prevention of Corruption Act, Chennai. The appellant is acquitted. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

16.09.2025

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No

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To

1.The Special Judge,
Special Court for the Cases under Prevention of Corruption Act,
Chennai.

2.The Deputy Superintendent of Police,
Chennai City-I Detachment,
Vigilance and Anti Corruption.
Chennai.

3.The Public Prosecutor,
Madras High Court.

M.NIRMAL KUMAR, J.

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PRE-DELIVERY JUDGMENT IN
Crl.A.No.1094 of 2022

16.09.2025