

CRL.A(MD).No.201 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.12.2024

Pronounced on : 15.05.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD)No.201 of 2018

R.Rajendran

.. Appellant

Vs.

The Inspector of Police,
Vigilance and Anticorruption,
Virudhunagar.

(Crime No.2 of 2009)

.. Respondent

Prayer: This Criminal Appeal has been filed under Section 27 of P.C.Act r/w Section 374 of Cr.P.C. to call for the records and set aside the conviction and sentence passed in Spl.C.C.No.42 of 2014, dated 06.04.2018 by the learned Special Judge for trial of Prevention of Corruption Act Cases ,Chief Judicial Magistrate Virudhunagar District, at Srivilliputhur.

For Appellant : Mr.C.Mayil Vahana Rajendran

For Respondent : Mr.R.Meenakshi Sundaram

Additional Public Prosecutor



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JUDGMENT

The Appellant, who is the sole accused in Special C.C.No.42 of 2014 on the file of the learned Special Judge for trial of Prevention of Corruption Act Cases, Chief Judicial Magistrate Virudhunagar District, at Srivilliputhur, has filed this appeal challenging the conviction and sentence imposed against him in Spl.C.C.No.42 of 2014, dated 06.04.2018, by the learned Special Judge for trial of Prevention of Corruption Act Cases, Chief Judicial Magistrate Virudhunagar District, at Srivilliputhur.

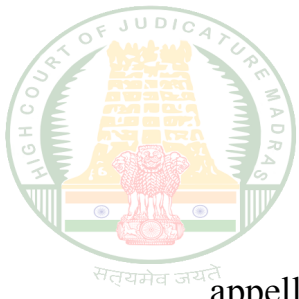
2.P.W.2 is the resident of Tamil Padi village. He purchased a land from one Ramaswamy Nadar on 02.03.2009. To change the patta in his name on the basis of the said sale deed in respect of the Survey No. 338 of 2006 of the Tamil Padi Revenue Village, he approached the appellant on 20.03.2009. When P.W.2 met the appellant on 25.3.2009 at 07.00 p.m., the appellant demanded a sum of Rs.300/- for transfer of the patta and the appellant asked him to come with Rs.300/- on 26.03.2009 and to meet at his office situated in Bose Complex, Thiruchuli. P.W.2 made a complaint before the respondent Vigilance Department and P.W.11



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received the complaint from the defacto complainant/P.W.2 and summoned the official witness/P.W.3 and another official witness and prepared the entrustment Mahazar, after demonstration of the phenolphthalein test to P.W.2 and the official witnesses with the money brought by P.W.2. P.W.11 instructed P.W.2 to give the bribe amount to the appellant if the appellant reiterated demand and P.W.3 was instructed to keep an eye on the transaction taking place between P.W.2 and the appellant. As per the instruction, P.W.2 and P.W.3 went to the said Bose Complex and reached the office of the appellant. P.W.3 was standing outside the room, observing the transaction and P.W.2 entered into the room of the appellant and the appellant reiterated demand and received the bribe amount and assured to give the Patta transfer within a short time. The same was witnessed by P.W.3 and P.W.2 gave the signal to P.W.11. On receipt of the signal, P.W.11, and his team went into the room of the appellant and conducted Sodium Carbonate test in the hands of the appellant and the hand wash turned pink in colour and thereafter, P.W.11 enquired about the receipt of the bribe amount. The appellant stated that he received the amount and disclosed the place of the amount which was kept in the notebook. Thereafter, the amount was recovered and the



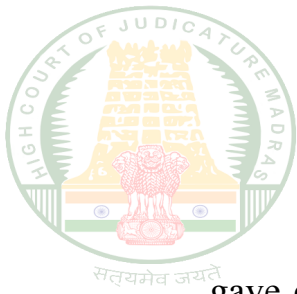
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appellant was arrested and the documents were also recovered from the office of appellant. Thereafter, the investigation was continued by P.W.13 and final report was filed against the appellant after obtaining sanction report and examining number of witnesses and collecting the material documents, before the learned Special Judge for trial of Prevention of Corruption Act Cases ,Chief Judicial Magistrate Virudhunagar District, at Srivilliputhur, and the same was taken on file in Spl.C.C.No.42 of 2014.

3.The learned trial Judge issued summons to the accused and after his appearance, served the copies under Section 207 Cr.P.C, and framed necessary charges and questioned the accused. The accused pleaded not guilty and he stood trial.

4.To prove the charges against the accused, the prosecution examined P.W.1 to P.W.13 and marked Ex.P1 to Ex.P.16 and marked M.O.1 to M.O.3. The learned trial judge thereafter, questioned the accused under Section 313 Cr.P.C., proceedings by putting the incriminating materials available from the evidence of prosecution witness and documents against him and he denied the same as false and



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gave explanation that he did not receive the amount. Then the case was posted for examination of witnesses on the side of defence. The appellant neither examined any witness nor marked any documents.

5.The learned trial judge, after perusing the entire records and also considering the submission of the both the appellant and the prosecution convicted the appellant for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced the appellant as follows:

Accused	Conviction for the offence under Section	Punishment
Sole Accused	7 of Prevention of Corruption Act, 1988	3 years Rigorous imprisonment and a fine of Rs.20,000/-, in default, to undergo six months simple imprisonment
	13(1)(d) r/w 13(2) of PC Act	3 years Rigorous imprisonment and a fine of Rs.20,000/-, in default, to undergo three months simple imprisonment
		Run concurrently and to pay fine of Rs. 40,000/- (totally)

6. Aggrieved over the same, the appellant filed this appeal.



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7.The learned counsel appearing for the appellant submitted that the appellant already made the recommendation before the date of demand. The appellant is only a recommending authority and he is not the issuing authority. The appellant made his recommendation much earlier to the demand and the allegation that he made a demand is false and there was no official relationship between the appellant and the complainant after his recommendation. The case was foisted against him due to motive. P.W.2 also did not submit any document to prove his sale deed and other documents requiring for the transfer of patta. In the said circumstances, the complaint was motivated since the appellant refused to give the adangal and chitta copy before his purchase of the property from the said Ramaswamy.

7.1.The learned counsel appearing for the appellant further submitted that in the chief examination, the appellant has not supported the case of the prosecution. He stated that he placed the amount of Rs.300/- in the notebook of the appellant/VAO. In the said circumstances, there was no clear evidence for demand and acceptance of the bribe amount. Therefore, he seeks for acquittal.



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7.2.The learned counsel appearing for the appellant further submitted that the registration of the complaint itself is doubtful. According to the counsel, P.W.2 visited the office at 10.30 a.m, according to P.W.10. But in the cross-examination of P.W.2 revealed that he reached the vigilance office only at 12.30 p.m. In the said circumstances, the entire trap proceeding is shrouded with suspicion. According to the appellant's counsel, if the appellant reached only at 12.30 p.m., then the registration of FIR at 10.30 a.m., and the information to the official witness P.W.3 at 10.00 p.m are all false. Therefore, he seeks for acquittal.

7.3.The learned counsel appearing for the appellant further submitted that the admitted case of P.W.2 is that P.W.3 did not enter into the room of the VAO, namely appellant. Hence, his presence is doubtful, and also he is not competent to speak about the reiteration of demand on the date of the trap. Hence, his evidence is liable to be eschewed. He further submitted that none of the documents were recovered from the office. It shows that the document was in the custody of P.W.12. Hence, the role of VAO, namely appellant, is very much limited, and his role is

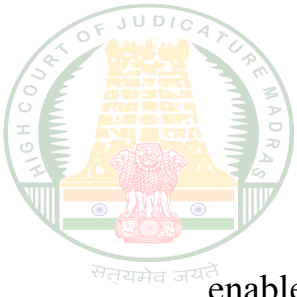


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only to recommend the issuance of Patta and he has already completed his work much earlier to the demand, and the same was forwarded to P.W.12. In the said circumstances, the prosecution case is highly doubtful.

7.4.The learned counsel appearing for the appellant further submitted that before registration of the FIR, P.W.3 was informed at 10.00 a.m. Therefore, the information received by P.W.11 at 10.30 a.m., is second information. Earlier information was suppressed by the prosecution, which affected the foundation of the prosecution case. According to the prosecution, P.W.11 gave the written requisition to the office of P.W.3. The same was not marked, and hence, the said non-marking of the material document clouds the arrival of P.W.3. The learned counsel also submitted that there was a huge delay in registering the FIR. The conduct of the trap proceedings also creates doubt over the prosecution case. Apart from that, the learned counsel stated that the questioning of accused under 313 of Cr.P.C., extracting the entire evidence of the chief examination of each witness is not proper and the Hon'ble Supreme Court reiterated that the question must be brief to

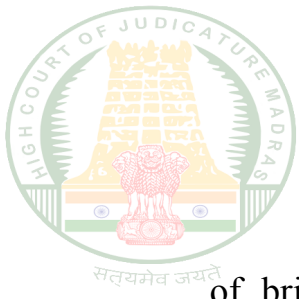


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enable the accused understand the incriminating circumstances available against him. Hence, the framing questioning itself is not legally correct. He further submitted that there was infirmity in framing the charge. In the charge, it is stated that □திருச்சுழி தாலுகா அலுவலகத்தில் உம்மை சந்தித்தபோது□. But, the occurrence took place in Bose complex where the village administrative office was there. In the said circumstances, the charge is misleading, which caused serious prejudice and miscarriage of justice to the appellant and hence, after making the above submission, the learned counsel pointed out the legal issue that when there was no evidence to prove the demand, mere acceptance of the amount is not sufficient to convict the appellant under Sections 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

8.The learned Additional Public Prosecutor on the other hand, submitted that variation of time always occurs in the Prevention of Corruption Act cases since the witnesses are examined in Court after a long time. Even though P.W.2 is declared as hostile, in the re-examination, he affirmed the demand of the bribe by the appellant. He approached the vigilance office and made a complaint about the demand



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of bribe amount and he admitted the entrustment of the amount of Rs.300/- and also the request of patta from the village administrative officer/appellant. Even the chief examination of P.W.2 has not been challenged in the cross examination by the appellant. But, P.W.2 reiterated the demand during the re-examination of the appellant. Hence, the demand was proved in accordance with the law. Apart from that, P.W. 3 also over heard and seen the reiteration of demand on the date of the trap before handing over the amount. Merely because P.W.2 was declared hostile in some aspect, it is not necessary to dispute the entire evidence of P.W.2. In this case, more particularly, the appellant reiterated the prosecution case in the course of further cross-examination. Hence, the prosecution clearly proved the demand and acceptance.

8.1.The learned Additional Public Prosecutor further submitted that there is a clear evidence about recording of the information at 10.30 a.m and also the said report reached the learned Chief Judicial Magistrate, at 01.30 p.m., In the said circumstances, the deposition of P.W.2 during the cross-examination of the accused that he reached the office only at 12.30 p.m. is immaterial. He further submitted that the

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motive projected by the appellant that before the purchase of the property, the request of P.W.2 to give the adangal was declined by the appellant is without any material. Hence, he seeks to confirm the judgment given by the Court below. He also submitted that no prejudice was caused due to the mistake committed in the charge. In the charge, it is stated that □திருச்சுழி தாலுகா அலுவலகம்□, but the cross-examination of P.W.2 and P.W.3 by the appellant, about the topography of the Bose complex clearly shows that the accused understood the place and cross examined ie., he handed over the money to the appellant at Bose complex. Therefore, there was no misleading of charge and also there was no miscarriage of justice. In all circumstances, he seeks for the confirmation of the judgment passed by the trial Court.

9.This Court considered the rival submission made by the learned counsel appearing on either side and also precedents relied upon by them and also perused the materials available on records.

10.Now, the question arising for consideration in this case is whether the conviction and sentence imposed against the appellant under



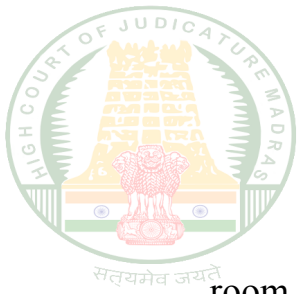
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Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, against the appellant is sustainable?

11. Discussion on the acceptance of the bribe amount :-

According to P.W.2, he placed the bribe amount on the table of the appellant and he specifically deposed that he had not handed over the bribe amount. Now, the further evidence of P.W.2 is that the official witness, P.W.3 also did not accompany him inside the room of the appellant. But, according to P.W.3 that he overheard the conversation and saw the handing over of money by standing outside the room. This Court perused the evidence of the Trap Laying Officer, P.W.11 and the evidence of P.W.3. In the absence of clear topography picture of the occurrence place, the case of P.W.3 that he had been standing in front of the room is unacceptable. It is duty of the prosecution to prove the factum of receipt of amount beyond reasonable doubt. When P.W.2 deposed that he placed the money, on the table and P.W.3 had not accompanied PW.2 inside the room of the appellant, there is a suspicion relating to the receipt of amount by the appellant. Therefore, this Court finds that in view hostility of P.W.2 and P.W.3 having not accompanied him, and stood outside the



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room of the appellant, the prosecution failed to prove the acceptance of the amount. That apart, even at the time of recovery mahazar, the appellant stated that he never received the amount. Mere change of the colour in the back drop of above mysterious circumstances this Court can not give significance to the colour change to presume the receipt of the bribe amount.

12. Discussion on the demand:-

12.1. P.W.2 was declared hostile on the side of the prosecution. According to the prosecution, P.W.2 purchased a property from one Ramaswamy Nadar to an extent of 59 cents comprised in S.No.338/6 at Tamilpadi Village, Thiruzhuli Taluk, Virudhunagar District. Thereafter, he approached the appellant to transfer patta in his name on 20.03.2009. Since P.W.2 is an illiterate villager, the appellant drafted the application, processed the same and submitted his report to the zonal Tahsildar immediately. The entire file was in the office of the zonal Tahsildar and once it goes to the zonal Tahsildar the accused becomes *functus officio*. As per the evidence of P.W.11, a guidelines have been issued by the government regarding the duties and responsibilities of the village

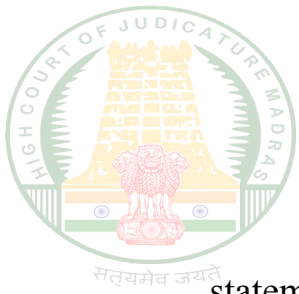


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administrative officer. As per the guidelines, in the case of illiterate persons, the Village Administrative Officer can help to draft the petition and process further. In this case, the same thing has happened. The Village Administrative Officer/the appellant, received the application and scribed the application on behalf of P.W.2 and obtained the signature and processed the same and sent it to the higher officer for further steps. As per the evidence of the department officials, namely, P.W.11 and the others, the appellant is not the competent person to issue patta. He is only a recommending authority.

12.2. In view of the above circumstances that the appellant already submitted a report before the alleged date of demand on 25.03.2006, the allegation of the prosecution that the accused demanded Rs.300/- to issue the patta, which is not in his domain, creates doubt over the prosecution case. It is a settled principle that mere recovery of amount is not a circumstance to convict the appellant under section 13(2) r/w 13(1)(d) of Corruption and Prevention Act. In the said circumstance, without any strong evidence about the demand, this court, is unable to believe the evidence of P.W.2, who was declared as hostile, on the basis of the stray



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statement that appellant had demanded bribe on 25.03.2009 without any corroborative materials to convict the appellant for the grave charge of receipt of bribe amount. It is settled principle as per the Hon'ble Supreme Court judgment in ***Mukhtiar Singh Vs. State of Punjab*** reported in ***2017 8 SCC 136***, that *mere statement of demand without any further proof or attending circumstances, conviction cannot be recorded*. The relevant paragraph of the above said judgment is as follows:-

“24. the bald allegation of the complainant with regard to the demand and payment of Rs 3000 as well as the demand of Rs 2000 has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. Viewed in this perspective, the statement of the complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record



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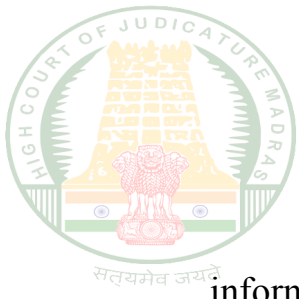


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cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act.”

12.3. In this case, the appellant already recommended and the same was received by the higher officer, who was competent to issue patta much earlier to the demand and the said file was also not recovered from the appellant. P.W.3 also has not accompanied P.W.2 and hence, reiteration of demand without corroborative evidence of P.W.2 on the date of trap raises a reasonable doubt. Hence, as per the judgment of the Hon'ble Supreme Court Constitutional Bench reported in ***Neeraj Dutta Vs. State (Government of NCT of Delhi)*** reported in **2023 4 SCC 731**, without proof of demand, in the backdrop of the hostility of the defacto complainant, the conviction cannot be recorded. The trap is shrouded with some mysterious circumstances.

13. According to P.W.2, he reached the vigilance office only at 12.30 p.m. on 26.03.2009. Thereafter, he gave a complaint to P.W.11. P.W.11 registered the case at 1.30 p.m. Thereafter, he called the official witness. But, before registration of the case, P.W.3 received the

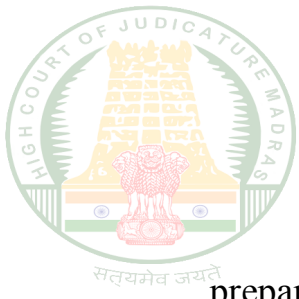


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information on 26.03.2009 at 10 a.m and reached the Vigilance Office on 11.00 a.m. Therefore, there are suspicious circumstances relating to the time of receipt of the complaint and registration of the case. Hence, the presence of P.W.3 before the arrival of the defacto complainant and registration of the case is a strong circumstance to accept the case of the appellant that the trap is shrouded with suspicious circumstances and benefit of doubt has to be given to the accused.

14. As already observed by this court, the appellant forwarded his recommendation on 20.04.2009 and the recommendation reached the Taluk office on 24.03.2009 itself. Therefore, he has no role relating to the issuance of patta and he also is not the competent person to issue Patta. In view of the above circumstances, mere recovery of the tainted money divorced from other circumstances, is not sufficient to record conviction. P.W.2 admitted that he received patta from the Taluk office on the next day of the trap. Therefore, the case of the appellant that he has no authority to issue the patta and there was no necessity to demand bribe amount of Rs.300/- is probable. The learned trial judge has not properly considered the immediate statement furnished by the appellant during the

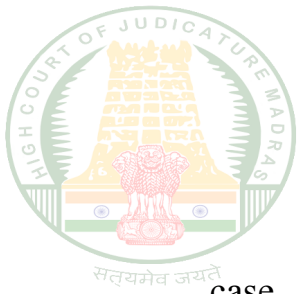


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preparation of the recovery mahazar and questioning under Section 313 Cr.P.C., which corroborated the evidence of the P.W.2 that the appellant did not receive the bribe amount. In view of the above discussion, when P.W.2 was declared hostile and P.W.3 also did not accompany him inside room of the appellant, the case of the prosecution that the appellant demanded and accepted the bribe amount to issue patta in favour of P.W.2 cannot be accepted. More over, the appellant also has no authority to issue patta. Therefore, this court is inclined to acquit the appellant.

15. P.W.2 has been treated hostile. The evidence of hostile witness can be accepted only if some part of his evidence inspires confidence and some corroborative material is available as per the judgment of the Hon'ble Constitution Bench in *Mukhtiar Singh Vs. State of Punjab* reported in **2017 8 SCC 136**. But in this case, not only hostility of P.W.2, the remaining evidence and circumstances are also not sufficient to uphold the conviction of the appellant under sections 7 and 13(1)(d) of the Corruption and Prevention Act. The suspicion, however strong, is not a circumstance to convict the appellant. Before drawing the presumption under Section 20 of the Act, the prosecution must establish the foundational facts of demand and acceptance of the bribe amount. In this



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case, both are not proved. Hence, this court is inclined to acquit the appellant.

16. Accordingly, the appeal is **allowed** on the following terms:-

i) The judgment passed by the learned Special Judge for trial of Prevention of Corruption Act Cases, Chief Judicial Magistrate Virudhunagar District, at Srivilliputhur, in Spl.C.C.No.42 of 2014, dated 06.04.2018, is set aside.

ii) The appellant is acquitted from all the charges in Spl.C.C.No.42 of 2014, by judgment dated 06.04.2018, passed by the learned Special Judge for trial of Prevention of Corruption Act Cases, Chief Judicial Magistrate Virudhunagar District.

iii) Fine amount paid by the appellant shall be refunded to the appellant forthwith.

iv) Bail bond executed by the appellant shall stand cancelled.

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K.K.RAMAKRISHNAN,J.

vsg/dss

To

- 1.The Special Judge for Prevention of Corruption Act Cases/
Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.
- 2.The Inspector of Police,
Vigilance and Anticorruption,
Virudhunagar.
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.

For Judgment made in
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15.05.2025