BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.07.2025

PRONOUNCED ON : 07.10.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.A.(MD)No.268 of 2018

M.Natarajan ... Appellant/sole accused

Vs.

State rep. by Inspector of Police

Vigilance and Anti-Corruption,

Tiruchirappalli.

Crime No.35 of 2009 ...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374 of Criminal Procedure Code against the Judgement of the learned Chief Judicial Magistrate cum Special Judge for trial of Prevention of Corruption Act Cases, Karur dated 23.05.2018 in Spl.C.C.No.9 of 2014.

For Appellant : Mr.R.Shanmugasundaram,

Senior Counsel

for Mr.V.MuthuKamatchi

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

JUDGEMENT

This appeal has been filed challenging the Judgement of the learned Chief Judicial Magistrate cum Special Judge for trial of Prevention of Corruption Act Cases, Karur dated 23.05.2018 in Spl.C.C.No.9 of 2014.

2. The appellant is the sole accused, who has been found guilty for the offences under secs. 7 and 13(2) r/w 13(1)(d) of the P.C. Actand convicted and sentenced to undergo one year Simple Imprisonment and a fine of Rs.500/- in default to undergo one week simple Imprisonment for the offence under sec.7 and convicted and sentenced to undergo 2 years Simple Imprisonment and a fine of Rs1000/- and in default to undergo one week Simple Imprisonment.

3. Prosecution Case:-The accused was serving as a Village Administrative Officer of Poyyamani Village, Kulithalai Taluk, Karur District from 01.02.2009 to 22.12.2009. He is a public servant within the meaning of Sections 2(c)(i) and 2(c)

(viii) of the Prevention of Corruption Act, 1988 [hereinafter referred to as 'the Act'].

3.1. The defacto complainant is a farmer. He has been cultivating plantain in and around 9 acres of his lands and that of his wife. As he was in need of agricultural loan, he approached the Manager, Indian Bank, Kulithalai on 18.12.2009. The Manager directed him to get Chitta and Adangal for his lands. As he had Chitta and not the Adangal, he approached the accused on 18.12.2009, at about 13.00 hours and requested him to issue Adangal copy for his lands. The accused directed the complainant to meet him at his residence the next day morning.

3.2. On 19.12.2009 morning, the complainant met the accused at his house and the accused demanded Rs.1,000/- as bribe for issuing the Adangal copy. On 21.12.2009, at about 18.00 hours, the complainant reported the matter to the Inspector of Police, Vigilance and Anti-Corruption, Trichy and a case was registered on 21.12.2009, at about 19.00 hours, in Crime No.35 of 2009 under Section 7 of the Act.

3.3. Trap Proceeding was arranged on 22.12.2009, between 11.15 hours and 11.30 hours in the office of the VAO, Poyyamani Village, Karur District. When the complainant met the accused in his office, the accused reiterated his earlier demand for gratification of Rs.1,000/-, apart from the remuneration and obtained the same from the complainant in the presence of an independent official witness for doing his official duty of issuing a copy of Adangal for the complainant and his wife's lands.

3.4. After the conclusion of the investigation, the charge sheet has been filed against the accused. After completing the legal mandate of furnishing copies and all other legal formalities, charges have been framed against the accused for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Act. When the accused was questioned, he denied his involvement and claimed to be tried.

3.5. Before the Trial Court, on the side of the prosecution, PW1 to PW9 have been examined and Exs.P1 to P23 have been marked. On the side of the accused, DW1 to DW5 have been examined and Exs.D1 to D6 have been marked. Material Objects M.O.1 and M.O.2 have been marked. Court Evidence CW1 has been examined and Ex.C1 has been marked.

3.6. At the conclusion of trial, the trial court found the accused guilty and convicted and sentenced him by imposing the punishment imposed as *supra*. Aggrieved over that, the appellant/sole accused has preferred this appeal.

4. Defence Case:-The defacto complainant (PW2) made an oral request for the issuance of an Adangal for his plantation to an extent of 7 acres. PW2 was in actual possession of only 5.7 acres. Hence, the accused could not accede to his demand and informed PW2 that he has not paid tax for the lands in Patta No.350 and Patta No.463 for the Fasli Year 1418 and 1419. The arrears of the tax amounted to a sum of Rs.1,436/-. So, the accused asked PW2 to clear the pending dues and thereafter, he would issue theAdangal. This is in accordance with the instructions given by the Superior Officers of the Revenue Department.

4.2. Enraged over the denial of the Adangal as required by PW2, he had lodged the complaint with malicious intention. The amount of Rs.1,000/- recovered from the accused is a part payment for the tax arrears payable by PW2 and it is not a bribe money as alleged to have been demanded or accepted by the accused.

5. Submissions of learned Senior Counsel for the appellant:-

5.1. In order to establish the allegation that PW2 had requested Adangal, he has not submitted any written application for Adangal. He had not also submitted an application for agricultural loan with PW8, the Manager, Indian Bank, Ramanathapuram. PW2 has himself admitted in his cross examination about the above facts. PW2 did not know the exact extent of his agricultural lands and hence, the appellant cannot be blamed for not issuing Adangal. The evidence of PW2 is self-contradictory as he has stated in the complaint that he could arrange the bribe money of Rs.1,000/- only during the afternoon of 21.12.2009 and has stated in his cross examination that the said amount was available at his house.

5.2. The official witness (PW3) and the defacto complainant PW2 are friends and hence PW3 is not an independent witness. No official request has been sent by PW7 Trap Laying Officer for summoning PW3. This has been admitted by the Investigation Officer PW9 in his cross examination. FIR Ex.P16 has no serial number, which is against Police Standing Orders. The FIR registered in this case was not maintained for the reasons best known to the prosecution and this creates a grave suspicion on the case of the prosecution.

5.3. The fact that PW2 had tax arrears to be paid and the appellant / accused had made the demand only for that same, was not considered by the trial Court though it has been corroborated by the evidence of DW4, a resident of Poyyamani Village. The defence side evidence has not been considered by the trial Judge in a proper perspective. The prosecution has not established 'the demand' which is *sine qua non* in existence.

6. Submissions of learned Additional Public Prosecutor for the respondent Police :-

6.1. The trial Court has rightly appreciated the evidence of the prosecution. The contents of the complaint are well known to the complainant, he has affixed the signature and lodged the complaint before the Inspector of Police, Vigilance and Anti-Corruption, Karur Detachment and that has been properly appreciated by the trial Court.

6.2. The appellant / accused did not instruct PW2 to give any written request. PW2 did not have any arrears of land tax for himself, for his wife or for his mother-in-law. On the day of trap, the appellant / accused had demanded and obtained the bribe amount of Rs.1,000/- and thereafter only issued the Adangal to PW2. He had not entered the amount in the Land Tax Receipt Book. Hence, that would only represent as bribe money. PW2 has clearly stated that he had the money at home and he has no confusion on that. The delay of two days in preferring the complaint was also explained by PW2. There is nothing to suspect in the evidence of PW2, who had given clear and cogent evidence, which is corroborated by the evidence of PW3. The learned trial Judge has rejected the minor inconsistencies as immaterial. The procedural defects and nullities of law should not disturb the object which is sought to be achieved by the Act. The overall social object and public interest is required to be kept in mind while interpreting the various provisions of the Act. Therefore, the trial Court has rightly appreciated the evidence and applied the law to the facts. Hence, the appeal has to be dismissed.

7. The very allegation of the defacto complainant (PW2) is that he was in need of an Adangal for the purpose of availing agricultural loan from the Bank. Even though he had not applied the loan by making an appropriate application, he would have enquired with the bank about the necessary documents to be produced for the purpose of availing the loan. PW8, the Manager, Indian Bank, Ramanathapuram has stated in his evidence that he did not remember the enquiry made by PW2 regarding the loan. In the cross examination, PW8 had clarified that hundreds of people come to the Bank to make enquiries and he cannot distinctly remember each and every one of them by recalling from his memory. So, it could have been quiet possible for PW2 to have made enquiries about the requirements for the loan.

8. The defacto complainant while approaching the appellant / accused for the issuance of the Adangal, did not file any application. Since the villagers move with the VAO so closely as he is seen as the guardian of the village, they used to make requests to him. Many among the villagers may not know how to make a proper written application without the help of the VAO. Neither the non-submission of the loan application with the Bank nor the non-submission of the application to the VAO for the Adangal, can be seriously as held against the case of the prosecution.

9. According to the complaint Ex.P2,PW2 had met the appellant / accused at his residence on 19.12.2009, at about 8:00 a.m.and during that time, the appellant /

accused had demanded Rs.1000/-as gratification for issuing an Adangal. PW2 did not intend to givebribe. He could arrange the money only on the afternoon of 21.12.2009 and then he proceeded to give the complaint on 21.12.2009. This demand on the part of the appellant / accused has to be established beyond reasonable doubt.

10. Though FIR has been registered on the complaint Ex.P2, it did not have the computerised serial number. PW9 Investigation Officer has stated that no specific reason for not registering the complaint on a printed book having serial numbers and for non-maintenance of the registered FIR. A callous answer given in this regard was that during the relevant period, such FIR books were not issued. Though the guidelines in Vigilance Manual insisted on conducting certain procedural technicalities, non-compliance of the same cannot be considered so seriously because those instructions are directory in nature. Whatever maybe the case, registering the FIR is very much true and PW7 Trap Laying Officer had stated about the same in his evidence clearly.

11. PW7 has stated that on 21.12.2009, he asked PW2 to stay at his office in order to arrange Trap Proceedings the following day. He has further stated about placing a request to send two officials from Tahsildar Office, Srirangam and Public Works Department / Water Resources Department, Trichy and as per his request, on the next day morning, that is on 22.12.2009, at about 8:00 a.m., the official witnesses Selvakumaran and Madhiazhagan came to his office. Thereafter, he introduced the witnesses to each other, explained them about the Trap Proceedings, prepared the entrustment mahazar by observing all the formalities and got two 500 rupees notes from PW2 and smeared it in phenolphthalein. After obtaining due signature in the entrustment mahazar Ex.P4, at about 10.00 a.m., they started and had reached the VAO office, Poyyambatti Village at about 11:00 a.m. After parking the car at a distance of 1 furlong from VAO office, PW2 and PW3 were asked to remember the instructions given and to go to the office of the accused. At about 11:15 a.m., PW2 and PW3 went to the office of the accused and after 15 minutes, PW2 had passed a pre-arranged signal. Thereafter, PW7 Trap Laying Officer took them to a secluded place and enquired them. After confirming the receipt of the money by the appellant / accused, the trap team went to the office of the appellant / accused and recovered the money after conducting phenolphthalein test on his hands. Apart from the amount kept in the drawer, the appellant / accused had Rs.1000 in his pocket, which he claimed to be the money he had for his personal expenses. In such a case, it is to be presumed that the rest of the amount kept in the drawer should either be the bribe money which was demanded and collected or the land tax revenue collected by the accused from various land owners in the village.

12. During the questioning under Section 313 of Cr.P.C., the accused had given a broad explanation saying that on 18.12.2009 when PW2 met him, the accused told him that PW2 has planted plantations in 5.80 acres of his lands and hence, he cannot make theAdangal for 7 acres of lands and that he had to pay land tax dues, only then, the Adangal could be issued. The accused had also given the details of the amount that has already been paid by PW2 and the amount that is due to be paid by PW2 towards the land revenue. He has further stated that during the Trap Proceedings, only PW2 had come and the other witnesses did not accompany him. PW2 had given Rs.1000/- saying that it is the land tax due and he would pay the balance after sometime. By trusting his words, the accused took the money and kept it in his drawer. Thereafter, PW2 had gone out to write an application seeking Adangal and the accused was preparing the receipts and Adangal by affixing seals. However, even before the accused could write receipts for the amount received, the Police Department had taken the Adangal and recovered the other documents along with the money collected by him towards the revenue payable by the public.

13. The appellant / accused has examined DW1 to DW5 and marked Exs.D1 to D6 to prove his contentions and to disprove the case of the prosecution. In this context also, the evidence on the side of the prosecution has to be analysed.

14. As per the statement of the accused, PW3 was not present during the Trap Proceedings and only PW2 had come to his office. PW7 Trap laying officer has stated in his evidence that he did not obtain the statement of the accused separately as per the requirement under section 47 (2) of Vigilance Manual and he has recorded the statement of the accused in the mahazar itself.

15. At this juncture, it is submitted by the learned Additional Public Prosecutor that non-compliance of the requirements will not vitiate the proceedings, when the other evidence on record prove the guilt of the accused. Even though the minor violations cannot be taken so seriously, when the requirement specifically says that the accused has to be enquired before recovering the smeared money under Section 27 of the Indian Evidence Act, it ought to have been complied without any compromise. As the punishment for the offence is very serious and the allegation of receiving bribe would cause serious stigmatic consequence on the life of the accused, the accused should be either informed about his liberty to confess or to give statement about the Trapped money.

16. Even in the Seizure Mahazar Ex.P6, no separate statement of the accused has been recorded. His endorsement alone has been obtained when he received a copy of the magazar. In a Trap Proceeding, when the Police Department enters an office and states that they have arrived there on the allegation of a demand for bribe money, anyone facing the police would become perplexed and will not be conscious enough to ask and know about their rights during such proceedings. Only in order to balance such a situation, manuals are issued with various regulations. If among several requirements, one requirement is inadvertently omitted, it can be understood that it is a human error. When several regulations are not complied with, that would seriously weaken the quality and genuineness of the Trap Proceedings.

17. PW7 Trap Laying Officer has stated in his cross examination that he had recorded the statement of PW2 in the mahazar without recording it separately. However, the statement in the mahazar has been recorded by PW7 just by recalling from his memory whatever PW2 had told him after showing the signal. There is a difference between recording someone's statement when they give it immediately and giving it later by recalling the events from their memory. Even in the Arrest Memo Ex.P20, the signature of the official witnesses have not been obtained in accordance with Section 49 of Vigilance Manual. As per Section 46 (2) of Vigilance Manual, the bottle containing the hand wash solution of the accused has to be wrapped and in the wrapper, the date and time has to be recorded. PW7 has stated in his cross examination that such particulars were also omitted from being entered on the wrapper.

18. With regard to the shadow witness also, there is no written requestproduced to show that they came on request. PW3 is the shadow witness who has stated in his evidence that his Superior Officer has instructed him over phone on 21.12.2009 to go to the Vigilance and Anti-Corruption Department on the next day. Accordingly, on 22.12.2009, at about 8:00 a.m., he went and found other witnesses there. As instructed, he accompanied the trap party to the office of the accused. After nearing the office, he and PW2 alone went to the office of the accused. According to his evidence, when himself and PW2 went and sat, the accused asked PW2 whether he had brought money. After PW2 told that he had brought the money, the accused told him that he could have given the money on Saturday itself and finished the job. Saying so, he received the money on his right hand and kept it on the right side table drawer. Thereafter, the accused enquired the details from PW2 and prepared Adangal and gave it to PW2. Thereafter, PW2 and PW3 took the Adangal and came out and PW3 passed signal to the trap party.

19. After PW3 met PW7 at the office of the VAO, himself and PW2 identified the accused and according to PW3, he was not enquired by PW7 about anything. But PW7 has stated that he had recorded the statement of PW3 in the mahazar by recalling it from his memory. In the chief examination, PW3 has stated that he only affixed the signature after recovery mahazar was prepared and he has not stated anything about the statement given to PW7. When each and every step of the Trap Proceedingsare given regulations by considering its significance and the seriousness of the offence, the prosecution cannot simply say that non-compliance of the requirement cannot be taken seriously.

20. With regard to the conversation between PW2 and the accused on 22.12.2009 during the Trap Proceedings, PW2 has stated that when he went into the office of the accused, the accused asked him whether he had brought the money or not and enquired about PW3. PW2 told the accused that PW3 is his friend and then he asked for the Adangal. When the accused asked for the money, PW2 gave the money, which was received by the accused in his right hand and he had kept it in the drawer.

21. When PW3 had spoken about the conversation between PW2 and the accused, he had given some extra details that the accused told PW2 that he could have given the money on Saturday itself and could have finished the business, instead PW2 was saying, no rain; no yield etc., and then received the money given by PW2. The above details were notspoken by PW2 in his evidence but they were the contents of the complaint given by PW2. Hence, the extra details offered by PW3 could have been gathered by him from the compliant given by PW2 and not from the actual conversation between PW2 and the accused.

22. PW7 has recovered not only the amount given by PW2 from the drawer of the accused, but also the other amount kept in bundles there. Apart from the amount in the drawer, the accused had also kept thousand rupees in his pocket, which he claimed to be his personal money. In most of the cases, the accused used to receive the money and keep it in his pocket. However, in the instance case, the accused did not keep the money in his pocket, instead, he kept it in the table drawer, where he had other money also. He also had the habit of keeping the money in his pocket, which he claims to be his personal money. This was recorded by PW7 in the Ex.P6 mahazar.

23. In this context, it is relevant to appreciate the evidence of the defence witnesses and their documents. DW1 is the Special Deputy Tahsildar (Election) / Headquarters Deputy Thasildar (Additional Charge), Kulithalai and he has spoken about the Land Tax Accounts for the Fasli year 1419 pertaining to Poyyamani Village which has been marked as Ex.D1. DW2 the Special Tahsildar (Social Security Scheme), Manmangalam and he has produced some documents in respect of Patta No.350 and Patta No.463 for the Fasli Year 1418, which has been marked as Ex.D2. DW3 is the PA to Collector (retired) who has stated that as per Page No. 18 in Ex.D3, for lands in Patta No.350, Rs.1,108/- is to be paid. In Ex.D2, for the Fasli Year 1418 for Patta No.350, a sum of Rs.780/- has been paid and there is a balance of Rs.328. In respect of lands in Patta No.463, as per Page No.24 in

Ex.D3, a sum of Rs.559/- is to be paid. In Ex.D2, for Patta No.463, a sum of Rs. 410/- has been paid and there is a balance of Rs.149/-.

24. These endeavours have been made to show that there were land tax dues for the lands belonging to PW2 and his family members and whenever excess tax is collected, that will be shown as excess tax and it will be credited to the next year tax dues and if the tax collected is deficit, that will also be entered in the accounts as balance tax to be collected. So, the pattadhars did not pay the tax dues until the accused was released on bail. The defence of the accused was that the money paid by the pattadharswere recovered by PW7. On 25.01.2010, the accused had remitted a sum of Rs.9,500/- in the account of land revenue and that could be seen from the challan seen at page No.4 of Ex.D1. So, the amount that was kept in the drawer of the accused apart from Rs.1,000/- given by PW2 could represent the land revenues collected by him from various persons. After PW2 had given him the money, the accused could have prepared the receipts, but even before that he was caughtby the Police.If PW7 had enquired PW2 and PW3 and recorded their statements by that time itself it would have allowed the accused to write receipts for the amount received from PW2. Without giving any due gap and without observing due guidelines, the Trap Laying Officer went into the office of the accused and recovered the money along with other records.

25. DW4 and DW5 who are residents of Poyyamani Village and KottaiyarThottam Village have stated that before the Trap Proceedings, PW2 had met the accused at his office on 18.12.2009 and thereafter, on 19.12.2009 during which time, the accused asked PW2 to pay the land tax dues and that had resulted in a wordy quarrel. Thereafter, PW2 went saying that he would bring the application. Even if the evidence of DW4 and DW5 are dismissed as unworthy for the reasons best known to the learned trial Judge, he ought to have considered other evidences where the Revenue Department witnesses have spoken about the land tax dues to be paid by PW2 and the practice of collecting excess or deficit money than the actual land tax and carrying over the excess payment as the land tax for the succeeding year or the deficit as pending dues by making proper entries.

26. Strangely, the Superintendent of Police, Vigilance and Anti-Corruption Department who has been examined as CW1 has stated in his evidence that he was asked to produce the FIR Book pertaining to the year 2009, but he was not able to produce the same because it was not available. As the office was shifted from an old office to a new office, the document got misplaced and hence, he could not produce the FIR Book.

27. The learned counsel appearing for the appellant / accused submitted that the FIR itself is not trustworthy in view of the different procedure adopted for recording the same. It might be possible that the FIR Book might have got misplaced during the shift of the office. Even if the different manner of the registration of the FIR registered alone is taken and considered, it might not cause much impact on the case of the prosecution. However, when every other violation of the requirement along with the above lapse is appreciated, then the weakness it causes on the case of the prosecution cannot be avoided. Even though the learned trial Judge has recorded the evidence of defence witnesses in his Judgement, he did not accept the same.

28. The reasons assigned by the trial Court are that there is no mention in Exs.D1 and D2 that PW2 has land tax dues for Patta Nos.350 and 463 and that the accused has not also taken any recovery initiative during Jamabandi held in the month of June. It was the repeated contention of the accused thathe was given pressure by his superiors to collect the land revenue dues, hence, he asked PW2 to settle them firstbefore getting the Adangal. So, the inaction on the part of the appellant / accused during Jamabandi held in the month of June could have been the reason for him getting pressure from his superiors to collect the revenue dues. Had the submission of the accused was recorded as per the procedure, by the Trap Laying Officer on the spot itself, it could have been easier to understand what was the spontaneous reaction of the accused during the Trap Proceedings.

29. PW2 has stated in his evidence that he had come out of the office of the appellant / accused within 15 minutes and thereafter, the Trap Party had rushed into the office. In such a case, it is not possible for the appellant / accused to prepare the receipts and that was his explanation as well. The learned trial Judge has omitted to appreciate the discrepancies in the evidence of PW2 and PW3 as to the conversation between PW2 and the accused when they met on 22.12.2009. Unless the prosecution proves to the satisfaction of the Court beyond reasonable doubt that the money demanded by the accused was only towards gratification and not land revenue, there cannot be any initial presumption drawn against the appellant / accused under Section 20 of the Act.

30. Further, the excess statements seen in the evidence of PW3 about the conversation between PW2 and the accused are contents of PW2's complaint, and hence it causes doubt whether the shadow witness had really accompanied PW2 on the day of Trap Proceedings. Even if it is admitted to be true that he had accompanied PW2 to the office of the accused, it causes doubt as to his submission about the conversation between PW2 and the accused and eventually 'the demand' that was said to have been made by the appellant / accused.

31. In this regard, it is appropriate to refer the Judgement of the Apex Court in the case of **Aman Bhatia vs. State (NCT of Delhi) reported in 2025 SCC Online SC 1013**. In the said Judgement, after referring various earlier Judgements of the Apex Court, it is held that the prosecution evidencecannot alone be considered for the purpose of coming to the conclusion. The suggestion made by the defence witnesses and the entire witnesses should be considered and only when the total effect of considering the entire evidence can lead to a conclusion that the public servant accepted the amount, it can be held that the prosecution had established the case beyond reasonable doubt. For the sake of clarity, the relevant paragraphs are extracted as below.

"v. Presumption under Section 20 of the PC Act

63. Insofar as the presumption under Section 20 of the PC Act is concerned, such presumption is drawn only qua the offence under Sections 7 and 11 respectively and not qua the offence under Section 13(1)(d) of the PC Act. The presumption is contingent upon the proof of acceptance of illegal gratification to the effect that the gratification was demanded and accepted as a motive or reward as contemplated under Section 7 of the PC Act. Such proof of acceptance can follow only when the demand is proved.

64. In that case, the prosecution evidence alone cannot be considered for the purpose of coming to the conclusion. The evidence led by the prosecution and, the suggestions made by the defence witnesses, if any, are also required to be considered. It is then to be seen as to whether the total effect of the entire evidence led before the court is of a nature by which the only conclusion possible was that the public servant accepted the amount. If the answer is in affirmative, then alone it can be held that the prosecution established the case beyond reasonable doubt.

65. Undoubtedly, the presumption under Section 20 arises once it is established that the public servant accepted the gratification. However, in determining whether such acceptance occurred, the totality of the evidence led at the trial must be appreciated. The evidence led by the prosecution, the suggestions made by the defence witnesses, if any, the entire record is required to be considered. Only if the cumulative effect of all the evidence is such that the sole possible conclusion is that the public servant accepted the gratification can it be said that the prosecution has established its case beyond reasonable doubt.

66. On examination of the entire evidence, we are of the opinion that the prosecution has failed to establish beyond all reasonable doubt, the demand of bribe and its acceptance, in a trap laid by the ACB. In such circumstances, there is no question of a presumption under Section 20. Consequently, we find ourselves compelled to conclude that it would be entirely illegal to uphold the conviction of the appellant under Sections 13(1)(d)(i) and (ii) read with Section 13(2) of the Act."

32. As observed in the above Judgement, the presumption cannot be given in favour of the prosecution under Section 20 of the Act, unless the prosecution establishes that the public servant has accepted the money, not as mere money, but as gratification.

33. A five-Judge Bench of the Apex Court in the case of **Neeraj Dutta vs. State (Government of NCT Delhi) reported in (2023) 4 SCC 731**, has held that 'the offer' by the bribe-giver and 'the demand' by the public servant have to be proved by the prosecution for conviction under Sections 7 and 13(1)(d)(i) and (ii) of the Act. If the said fact is not been proved, it will only risk the case of the prosecution. The relevant part of the Judgement is extracted hereunder.

> *"10. "74 (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 Section 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 more would not make it an offence under Section 7 or Section 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 Section 13(1)(d) and (i) and (ii) of the Act.""*

34. As stated already, the contradictions between the evidence of PW2 and PW3 and the exaggerations found in the evidence of PW3 beyond what was stated by PW2 himself in his evidence, cannot be dismissed as minor inconsistencies when their statements relate to prove the important fact in issue, 'the demand'. Apart from the above contradictions, it is also not proved whether PW3 actually participated in the Trap Proceedings. It not only causes doubt as to 'the demand', but also the very presence of PW3 at the office of the appellant / accused on the day of Trap Proceedings.

35. PW7 has also omitted to produce any document to show that he has summoned the officials from the other office. These deficiencies would lead to the conclusion that the prosecution has not proved reasonably about 'the demand'. So, the mere recovery alone cannot presume 'the demand' as it is so alleged by the Apex Court in the case of **BanarsiDass vs. State of Haryana reported in AIR 2010 SC 1589.** The relevant paragraphs are extracted below.

"10. It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstancial evidence if each link of the chain of events is established pointing

towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard. So far as it satisfies the essentials of a complete chain duly supported by appropriate evidence. Applying these tests to the facts of the present case, P-10 and P-11 were neither the eyewitnesses to the demand nor to the acceptance of money by the accused from Smt. Sat Pal Kaur (PW-2). It is unfortunate but true that both PW-2 and PW-4 made statements before the Court which were quite different from the one made by them before the police during the investigation under Section 161 of the IPC. Gurmej Singh (PW-4) completely denied the incident and refused to acknowledge that the sum of Rs. 900/- only was demanded by the accused from PW-2 in his presence and that the money was accepted in the Patwar-khana by the accused. PW-2 obviously has not stated the complete truth before the Court. Though after being declared hostile in her cross-examination she has supported some part of the prosecution case, but she has virtually denied the essential ingredients to bring home the guilt of the accused either under Section 5 (2) of the Act or under Section 161 of the IPC. She seems to have forgiven the accused for making such a demand and made such a statement before the Court that the Court should also ignore the offence. We are not and should not even be taken to have suggested that PW-10 and PW-11 have not made correct statement before the Court or that the Court has disbelieved any part of their statement. But, fact of the matter remains that their statement with regard to demand and acceptance is based on hearsay i.e. what was told to them together by PW-2 and even by PW-4 at that stage. The money was certainly recovered from the pocket of the accused vide memo Ex. P-D. We, therefore, do not accept the contention on behalf of the accused that the amount was not recovered and the recovery is improper in law. Ex. P-D has duly been attested by witnesses. Thus, it cannot be said that the recovery from the pocket of the accused is unsustainable in law and is of no consequence.

11. To constitute an offence under Section 161 of the IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of Section 5 (1) (d) of the Act, the demand and acceptance of the money for doing a favour in discharge of its official duties is sine qua non to the conviction of the accused. In the case of M.K. Harshan v. State of Kerala [1996 (11) SCC 720], this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under :

> "*.......It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the*

accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW-1. Since PW-1's evidence suffers from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence of PW-1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to hold that the accused tacitly accepted the illegal gratification or obtained the same within the meaning of Section 5(1)(d) of the Act, particularly when the version of the accused appears to be probable".

12. Reliance on behalf of the appellant was placed upon the judgment of this Court in the case of C.M. Girish Babu (supra) where in the facts of the case the Court took the view that mere recovery of money from the accused by itself is not enough in absence of substantive evidence for demand and acceptance. The Court held that there was no voluntary acceptance of the money knowing it to be a bribe and giving advantage to the accused of the evidence on record, the Court in para 18 and 20 of the judgment held as under :

"*18. In Suraj Mal v. State (Delhi Admn.) [1979 (4) SCC 725] this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.*

20. A three-Judge Bench in M. Narsinga Rao v. State of A.P.[2001 (1) SCC 691: SCC (Cri) 258] while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p.700, para 24)

"*24. ... we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide Madhukar Bhaskarrao Joshi v. State of Maharashtra [2000 (8) SCC 571]).The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: (Madhukar case, SCC p. 577, para 12)*

'*12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is* *established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."*

36. In the instant case, even if for any extraneous reasons, the trial Judge had got himself convinced that the prosecution has proved 'the demand' and gives the benefit of initial presumption under Section 20 of the Act, he ought to have considered the rebuttal proof offered by the appellant / accused through the evidence of DW1 to DW5 and Exs.D1 to D6. The defence evidence would show that the appellant / accused had land revenue to be remitted. So, this will probabilise the defence of the appellant / accused.

37. It is to be noted that the rebuttal proof offered by the appellant / accused by shouldering the reverse burden can be through 'preponderance of probabilities' and its standards need not be 'beyond reasonable doubt'. But the learned trial Judge has not appreciated the same before arriving at the conclusion of the guilt of the appellant / accused.

38. The consideration of the whole of the evidence available on record would inevitably lead to a conclusion that the prosecution has not proved the guilt of the appellant / accused 'beyond reasonable doubt'. But, the learned trial Judge has not properly appreciated the same before arriving at the conclusion about the guilt of the appellant / accused.

39. In view of the above observations, the Criminal Appeal is **allowed** and the Judgement of the learned Chief Judicial Magistrate cum Special Judge for trial of Prevention of Corruption Act Cases, Karur dated 23.05.2018 in Spl.C.C.No.9 of 2014 is set aside, the appellant / accused is not found guilty for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and acquitted of the charges framed against him. The bail bond, if any, shall stand cancelled and sureties, if any, shall be discharged. The fine amount, if already paid, shall be refunded to the appellant / accused.

07.10.2025

Index: Yes

Speaking Order

Neutral Citation:Yes

mbi

To

1.The Chief Judicial Magistrate/

Special Judge for trial of Prevention of Corruption Act Cases,

Karur.

2.The Inspector of Police,

Vigilance and Anti-Corruption,

Tiruchirappalli.

3.The Additional Public Prosecutor,

Madurai Bench of Madras High Court,

Madurai.

Dr.R.N.MANJULA, J.

mbi

Pre-Deliver Judgement in

Crl.A.(MD)No.268 of 2018

07.10.2025