BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	16.12.2024
Pronounced on	:	15.05.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).No.365 of 2018

Sivagamasundari ... Appellant/ Accused No.1

Vs.

State represented by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Pudukkottai.
(Crime No.56 of 2002) ... Respondent/ Complainant

PRAYER: Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment of conviction dated 24.07.2018 by the learned Chief Judicial Magistrate, Special Judge, for PC Act cases Pudukkottai in Spl.C.C.No.2 of 2003 and acquit the appellant.

For appellant : Mr.C.Arul Vadivel @ Sekar
Senior Counsel for
Mr.D.Ramesh Kumar

For respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

JUDGMENT

Accused No.1 in C.C.No.2 of 2003, on the file of the learned Chief Judicial Magistrate, Special Judge (Constituted under the Prevention of Corruption Act), Pudukkottai has filed this appeal challenging the conviction and sentence imposed against her by the impugned judgment dated 24.07.2018.

2.The appellant was working as Sub Registrar in Perungallur Sub-Registrar Office, Pudukkottai District. P.W.2 was a promotor of lay out of plots. He promoted a lay out in the name of Nithya kalyani lay out and he sold one plot to P.W.4/Iyyasamy. P.W.5 Thiru.Periyasamy was the document writer. Both approached P.W.5 and prepared the document and presented before the Sub Registrar Office of the appellant on

04.12.2002 after paying Rs.1,320/- as stamp duty and also paying of other required charges. At the time of presentation of the document, the appellant received the document and she and the accused No.2 (deceased accused), namely, the clerk of the said office demanded a sum of Rs. 10,000/- as bribe to register the document and also for fixing the stamp duty as Rs.7.50/- per sq.ft. instead of fixing as Rs.22/- per Sq.Ft., otherwise they will keep the document as pending document. The appellant and the deceased accused asked P.W.2 to meet them on 09.12.2002 and demanded a sum of Rs.10,000/- as bribe and the same was reiterated on 13.12.2002 and also on 16.12.2002. On 16.12.2002, P.W.2 agreed to pay Rs.5,000/- as part payment of Rs.10,000/- at the time of the registration of the said document and agreed to pay the balance amount on the subsequent date of the registration of remaining plots. P.W.2 was not willing to give bribe to the appellant and the other accused and hence, P.W.2 approached the vigilance department on 16.12.2002 and preferred a complaint to P.W.11 and P.W.11 received the complaint and registered the case under Section 7 of the Prevention of Corruption Act, 1985 and called P.W.3 and another official witness and demonstrated the phenolphthalein test to P.W.2 and other witnesses with the amount of Rs.5,000/- brought by P.W.2 and thereafter, he smeared the phenolphthalein powder on the currency notes and handed over to P.W.2 to hand over to the appellant upon her demand and also instructed to give signal upon receipt of the said amount. P.W.3 was directed to accompany him and keep an eye on the transaction taking place between them. Thereafter, he prepared the entrustment mahazar and proceeded to the office of the appellant and P.W.2 and P.W.3 went into the office of the appellant and the appellant reiterated the demand and thereafter P.W. 2 handed over the amount to the appellant. The appellant asked A2 to receive the amount. A2 received the amount, counted the same and placed the amount on the table of the appellant. Thereafter, P.W.2 came out and gave the signal to P.W.11 and his team. P.W.11 and his team went into the office and conducted the test in the hands of A2 and found that the amount was received by the deceased accused as per the direction of the appellant/A1 and thereafter, the amount was recovered from the table of A1, namely, the appellant. In view of the above circumstances, A1 and A2 were arrested for receipt of the bribe amount.

The recovery mahazar was prepared and thereafter, he conducted search of the house of A1 and A2 and remanded them. He handed over all the collected materials to P.W.12. P.W.12 conducted the investigation, examined the remaining witnesses and obtained sanction and chemical analysis report and filed the final report before the learned chief Judicial Magistrate, Special Judge, Pudukkottai and the same was taken on file in Spl.C.C.No.2 of 2003.

3. Therafter, learned Judge summoned the accused and served the copies under Section 207 of Cr.P.C., and thereafter, he framed the necessary charges and explained to the accused and they pleaded not guilty and stood trial.

4. During the course of trial A2 died and the charge got abated. Therefore, trial was proceeded against the appellant alone.

5. The prosecution to prove the case, examined P.W.1 to P.W.13 and marked Ex.P1 to Ex.P34 and also marked M.O.1 to M.O.20.

6. The learned trial Judge questioned the accused by putting the incriminating material available on records and the accused denied them as false. The appellant filed a detailed written explanation during questioning under Section 313 of Cr.P.C. On the side of the defence, D.W.1 was examined and Ex.D1 and Ex.D2 were marked. D.W.1 was the erstwhile Sub Registrar of the said office and he deposed that P.W.2 already had registered two documents and the same were pending on account of deficiency of the stamp duty and there was a reference under Section 47(A) of the Tamil Nadu Stamp Act. In the said circumstances, the value of the said land was Rs.7.50 per sq.ft and the appellant demanded to pay correct stamp duty of Rs.7.50 per sq.ft.

7. The leared trial Judge after considering the entire evidence on record convicted the appellant under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced her to undergo 1 year RI under Section 7 of Prevention of Corruption Act, 1988 and to pay a fine of Rs.2,000/- in default to undergo 3 months Simple Imprisonment and sentenced to undergo 2 years Rigorous Imprisonment and to pay a

fine of Rs.3,000/- in default to undergo 6 months Simple Imprisonment under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Challenging the same, the appellant filed this Criminal Appeal before this Court.

8. The learned Senior counsel Thiru.C.Arul Vadivel@ Sekar, submitted that the demand was not proved. The alleged demand on 04.12.2002, 09.12.2002, 13.12.2002 and 16.12.2002 are not proved. In the complaint it is stated the demand was made on 05.12.2002, but, in the evidence P.W.2 stated that it was wrongly stated as 05.12.2002, but actually the demand was made on 04.12.2002. On 04.12.2002, the presence of P.W.4 purchaser of the property is highly doubtful and the document writer/P.W.5 also has not stated about the demand made on 04.12.2002. P.W.4 was working as a teacher in the school. He admitted that he did not apply for leave to register the document. In the said circumstances, his presence on 04.12.2002 itself is doubtful and in the absence of any evidence about the demand made by the appellant on 04.12.2002, without any corroborative evidence of P.W.5 and P.W.4, the

demand alleged on 04.12.2002 is not proved. The second demand was made on 09.12.2002. The specific evidence of P.W.5 is that he approached the appellant and the appellant stated that he already informed about the same to P.W.2. P.W.5 further deposed that on that day P.W.2 was not available. In the said circumstances the evidence of P.W.2 that he was called by the appellant and the demand was made on 09.12.2002 is false. Similarly, there was no evidence available on record, to show that P.W.2 approached the appellant on 13.12.2002 on the instruction of the document writer/P.W.5. P.W.5 in his evidence stated that he has no knowledge about the demand said to have been made by the appellant. The reiteration of demand made on 16.12.2002 also is not proved in accordance with law. In the said circumstances, the demand was not proved. Further, no recovery was made from the appellant and the recovery was made only from A2/deceased. The demand is essential in this case and the same was not proved. Therefore, conviction under Section 7, 13(2)r/w13(i)(d) of the Prevention of Corruption Act, 1988 is not legally sustainable. He further submitted that there was bitterness between P.W.2 and the appellant since the appellant was not in favour of

P.W.2 for registering various documents for under valuation. P.W.2 not even disclosed about the pendency of two material documents on the ground of the reference under Section 47(A) for insufficiency of the stamp duty. The learned Senior counsel further submitted that on the other hand defence marked documents Ex.D1 and Ex.D2 and D.W.1 was also examined to prove the said fact. When P.W.2 intended to register the document for under valuation for which the appellant was not willing to oblige and demanded the correct stamp duty, a false case was registered, as it would cause hardships to P.W.2 for registering the remaining documents. Therefore, a false case was registered. The other department officials examined on the side of the prosecution would state that the guideline valuation of the property was Rs.7.50/- per sq.ft. It is the admitted case of P.W.2, he paid only Rs.1,320/- at the rate of Rs.5/- per sq.ft. Therefore, the appellant demanded to pay the remaining amount and kept the document as a pending document, which is permissible as per law. In the said circumstances, she demanded Rs.10,000/- as bribe is false and she demanded the correct value of stamp duty for the documents at the rate of Rs.7.50/- per sq.ft. Hence, he would submit that in view of the above circumstances the conviction and sentence imposed on her is not legally sustainable. He would also submit that even after the alleged trap, the document was registered and the returned to P.W.2 only upon the receipt of balance amount of stamp duty computed at the rate of Rs.7.50/- per sq.ft. In the said circumstances, the prosecution miserably failed to prove the case against the appellant. The learned senior counsel also submitted that sanctioning authority has not properly applied his mind to the above circumstances and granted sanction mechanically and he would also submit that the evidence of defence witness was not properly considered by the learned trial Judge, in result, the entire prosecution case is bristled with infirmities and hence, he seeks for acquittal.

9. The learned Additional Public Prosecutor countered the above submission that the amount was not received by the appellant is not correct. The deceased accused A2 received the amount on the direction of A1. Hence, the case of the prosecution that A1 directed A2 to receive the amount and he placed it on the table of A1 is the fact to be

considered. The receipt of the amount by A2 was admitted by both the appellant and A2 and they stated that they received the amount only towards the payment of the stamp duty and subsequently changed the version stating that the amount was received for the purpose of purchasing computer and other materials for the office. The said explanation was recorded in the recovery mahazar and therefore, the case of the learned Senior counsel that the amount was not received by the appellant is not correct. He directed A2 to receive the amount. Apart from that on 04.12.2002, P.W.4 was available and the document was registered with his signature, and therefore, his presence is proved and his evidence that she demanded Rs.10,000/- as bribe to register the document has to be considered. It is true that the amount was subsequently paid at the rate of Rs.7.50/- per sq.ft., and that is not a ground to disbelieve the evidence of P.W.2 and P.W.3 and P.W.4 who categorically stated that the appellant and A2 demanded and accepted bribe. In view of the above circumstances, the prosecution clearly proved the charge under Sections 7, 13(i)(d) r/w 13(2) of the Prevention of Corruption Act. He also submitted that the explanation offered by the appellant is not plausible and the same was stage managed one and hence, he seeks to convict the appellant and also confirm the minimum sentence imposed by the trial Court. He would also submit that the other discrepancies and inconsistencies are due to the examination of the witnesses after number of years from the date of occurrence, and it is quite natural for such inconsistencies and the same is not a ground to disbelieve the evidence of P.W.2, P.W.3 and P.W.4. Therefore, he seeks to confirm the conviction and sentence.

10. This Court considered the rival submissions made by the learned Senior counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record and the precedents relied upon by them.

11. The question is whether the prosecution proved the case of the demand and acceptance by the appellant so as to sustain conviction and sentence of imprisonment vide impugned judgment against her U/s.7, 13(2) r/w.13 (1) (d) 5 PC Act 1988?

12.Proof of acceptance of illegal gratification:

It is duty of the prosecution to prove the acceptance of the illegal gratification through clinching evidence. The same has been reiterated by the Hon'ble Supreme Court in various decisions and some of the decisions are as follows:

***M.K. Harshan v. State of Kerala*, (1996) 11 SCC 720**	**8.** Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important
***C.M. Girish Babu v. CBI*, (2009) 3 SCC 779**	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.*

***Dashrath Singh .Satvir Singh v. State of Delhi*, (2014) 13 SCC 143**	**35.** In the said case this Court in unequivocal terms has held that mere demand by itself is not sufficient to establish the offence under the Act. The other aspect, namely, acceptance is also very important. There must be clinching evidence with the tacit approval of the accused that money was put by PW 2 on the steel cot as stated by him in his evidence as illegal gratification
***Chauhan v. CBI*, (2019) 17 SCC 509**	**29.** It is for the reason that in order to prove a case against the appellant, it was necessary for the prosecution to prove the twin requirement of "demand and the acceptance of the bribe amount by the appellant". As mentioned above, it was the case of the prosecution in the charge that the appellant did not accept the bribe money but the money was accepted and recovered from the possession of Rajinder Kumar, co-accused (A-1)

12.1. The appellant was Sub Registrar, Perungallur Sub-Registration Office (Documents), Pudukkottai District. The deceased/accused A2 was the head clerk of the said office. P.W.2 is a promoter of Nithyakalayani lay out selling housing plots situated in survey No.97/3 measuring an extent of 2.80 acres. He promotted the layout of the said land by dividing into 36 plots. He decided to sell plot No.17 to P.W.4/ Head Master of a school and sold plot No.17 measuring an extent of 2200 sq.ft of land. On 4.12.2002 P.W.5 document writer prepared the document and presented it before the appellant's registration office for registration calculating the stamp duty at the rate of Rs.5 per sq.ft. The appellant registered the same and kept it as pending document No.31 of 2002 on the ground of inadequacy of stamp duty and appellant threatened and demanded to pay a sum of Rs.10,000/- as bribe, otherwise, she would fix the value as Rs.22 per sq.ft /-. P.W.2 agreed to pay part of the bribe amount of Rs.5,000/- for the registration of the document for the present and agreed to pay the remaining amount at the time of further registration of the plots. On 16.12.2002, P.W.2 made a complaint before the Vigilance Department and trap was arranged. According to P.W.2 and P.W.3 on the date of the trap, she directed P.W.2 to hand over the bribe amount to A2 to fix and Collect the stamp duty at the rate of Rs.7.50/- per sq.ft instead of Rs.22per sq.ft /- and complete the registration. Hence P.W.2 handed over Rs.5,000/- to A2 deceased/accused and A2 received the amount and kept it on the table of the appellant. P.W.3 deposed that Appellant (A1) never received the amount from P.W.2 and P.W.2 never enquired about the document and also the alleged bribe amount also was kept on the table till the trap team arrived to the occurrence place after receipt of the signal from P.W.2. Therefore, the appellant neither handled the bribe amount nor received the bribe amount. The amount was recovered upon disclosure statement of A2. Therefore, there is no evidence available on record to prove that the appellant received the bribe amount and no circumstances was established to presume the receipt of bribe amount by A2 on behalf of A1. PW.3's evidence also materially contradicted the evidence of P.W.2 in respect of the rate of the Stamp duty which reads as follows:

P.W.2	*P.W.3*
சிவகாமிசுந்தரி என்னை பார்த்து ஏன் இவ்வளவு லேட் என்று கேட்டார். **நான் சதுரடி ரூ.7.50க்கே செய்துவிடுவேன்**, பணம் கொண்டு வந்து இருக்கிறீர்களா என்று கேட்டார். நான் எனது பையில் இருந்து ரூ.5000/-த்தை எடுத்து கொடுத்தேன்.	சார்பதிவாளர் சந்திரசேகரனைப் பார்தது ஏன் இவ்வளவு லேட்டா வந்திருக்கிறீர்கள் என்று கேட்டார் தொடர்ந்து சார்பதிவாளர் அவர்கள் **ரூ.5.00/- ரேட்டுக்கு பதிவு செய்கிறேன்** என்று சொன்னேன். மற்ற பத்திரங்களையும் அதே ரேட்டுக்கு பதிவு செய்கிறேன் என்று சொன்னார்.

12.2. It is the case of the prosecution that appellant asked bribe to register the document at the rate of Rs.7.50/- per sq.ft and not at the rate of Rs.5.00/- per sq.ft. Therefore, the evidence of P.W.3 is full of infirmities on the material particulars. It is the case of the appellant that there was deficit stamp duty and hence she asked to pay the amount at the rate of Rs.7.50/- per Sq.Ft and also it is admitted case of the prosecution that PW.2 paid stamp duty only at the rate of Rs.5.00/- per Sq.Ft. In all aspects, the prosecution miserably failed to prove the acceptance of illegal gratification on the part of the appellant and hence without proof of the receipt of the illegal gratification, conviction under section 7, 13(1)(d) r/w 13 (2) of Prevention of Corruption Act, 1988 cannot be sustained.

13. Proof of Demand:

It is the obligation on the part of the prosecution to prove demand and acceptance of illegal gratification in order to sustain the conviction under section 7 and 13(1)(d)(i) and (ii) of the Act and the Hon'ble Constitutional Bench of Supreme Court in the case of ***Neeraj Dutta v.***

State (NCT of Delhi) reported in ***(2023) 4 SCC 731*** has reiterated the same in para 88.1.(a) and (b) which reads as follows:

88.1. (*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	**88.2.** (*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

13.1. In the earlier judgment reported in following case also the Hon'ble Supreme Court reiterated the same:

***Dashrath Singh Chauhan v. CBI*, (2019) 17 SCC 509**	***Rajesh Gupta v. State*, (2022) 20 SCC 793**
32. Since in order to attract the rigors of Sections 7, 13(2) read with Section 13(1)(*d*) of the PC Act, the prosecution was under a legal obligation to prove the twin requirements of "demand and acceptance of bribe money by the accused", the proving of one alone but not the other was not sufficient.	**18.** For an offence under Section 7 of the PC Act, the demand of illegal gratification is a sine qua non to prove the guilt. Mere recovery of currency notes cannot constitute an offence under Section 7 of the PC Act, unless it is proved beyond reasonable doubt that the accused voluntarily accepted the money, knowing it to be a bribe. The proof of acceptance of illegal gratification can follow only if there is proof of demand.

13.2. In this case, the prosecution has come forward with a case that the appellant demanded bribe amount on 04.12.2002, 09.12.2002 and 13.12.2002.

13.3. On reading of evidence of P.W.2 about the events that had taken place on 04.12.2002, there are two inconsistent versions in chief examination of P.W.2. In the first part of the evidence, he stated that he, P.W.4(purchaser)and P.W.5 document writer approached the appellant to register the document with payment of stamp duty at the rate of Rs.5/- per sq.ft and the appellant demanded Rs.10,000/- as bribe to register the documents at the rate of Rs.7.50/- per sq.ft by threatening him that she would otherwise fix the value of Rs.22/- per sq.ft in the event of failure to pay the bribe amount. In the subsequent portion of the evidence, he deposed that before his arrival, P.W.4 purchaser had informed that he paid registration charges and '*A2 made a demand of Rs.10,000/- and said the document is kept* as pending document in the following words:

> *நாங்கள் வருவதற்கு முன்பே அய்யாச்சாமி பதிவுக்கட்டணமாக ரூ.110/-ம், உட்பிரிவு கட்டணமாக ரூ. 40/- கட்டி ரசீது வாங்கினார். நாங்கள் எழுதிய*

பத்திரத்தை பெண்டிங் டாக்குமெண்ட்டாக வைத்துள்ளோம் என்றும் ரூ.10000/-த்தை கொடுத்துவிட்டு பதிவு செய்துகொள்ளங்கள் என்று எ2 சந்தானகிருஸ்ணன் சொன்னார்.

13.4.From the above inconsistencies in his evidence it is not clear whether A2 made a demand for himself or A2 demanded the said amount as per the instructions of the appellant. Thus the evidence of P.W.2 is extremely shaky and unconvincing. Therefore, in view of two contradictory versions, the benefit of doubt is to be given to the accused, as held by the Hon'ble Supreme Court in the case of ***Suraj Mal v. State (Delhi Admn.),*** reported in ***(1979) 4 SCC 725***:

> *"It is well-settled that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses. .mere recovery by itself cannot prove the charge of the prosecution against the appellant, in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the*

money.”

13.5. P.W.5 the document writer also has not deposed about the demand made by the appellant on 04.12.2002. He specifically stated that he had gone away from the registration office. The evidence is as follows:

> *04.12.2002-ல் பெருங்களுர் சார்பதிவாளர் அலுவலகத்துக்கு அந்த பத்திரத்தை பதிவு செய்வதற்காக நான் போய் இருந்தேன். அப்போது என்னோடு சந்திரசேகரன், ஐயாசாமியும் வந்தார்கள். நாங்கள் அங்கு போய் சார்பதிவாளராக இருந்த 1வது எதிரியை பார்த்தோம். அவரிடம் பத்திரத்தை ஐயாசாமி கொடுத்தார். அவர் அப்போது தலைமை எழுத்தராக பணிபுரிந்த சந்தானகிரு'ணனை ஐயாசாமி வாங்கிய நிலத்துக்கு பக்கத்தில் இட மதிப்பு என்ன என்று கேட்டார். 2வது எதிரி அலுவலக ரிக்கார்டுகளை எடுத்துப்பார்த்துவிட்டு அந்த பகுதியில் சதுரடி ரூ.7.50 விற்கு கிரயம் ஏற்பட்டுள்ளது என்றுசொன்னார். அது அந்த நிலத்தின் சர்வே எண்.98. அதன்பிறகு நான் வேறு வேலையாக நான் வெளியே போய்விட்டேன்.*

13.6.Hence the case of P.W.2 that the appellant made a demand of Rs.10,000/- in the presence of P.W.5 and P.W.4 is not believable.

Therefore, the case of the prosecution that on 04.12.2002, the appellant demanded Rs.10,000/- is far from truth.

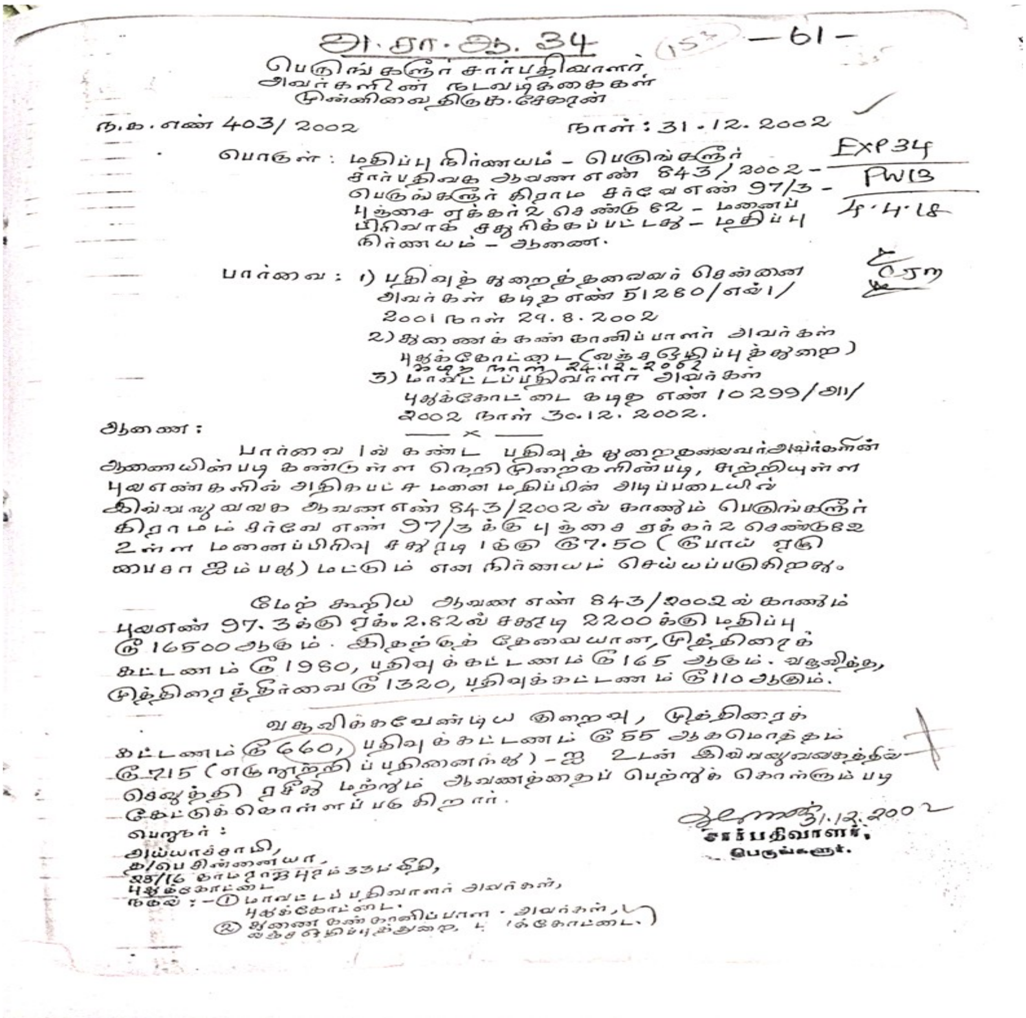
13.7. P.W.2 deposed that on 09.12.2002, the appellant asked to meet her at the office through P.W.5 and he met her and she reiterated the said demand. According to P.W.2, he along with P.W.5 the document writer met P.W.2. But P.W.5 deposed that he had not accompanied him. Quite contrary to the above evidence of P.W.2 and P.W.5, P.W.4 deposed that on 09.12.2002, P.W.2 was not available in the city and he alone met the appellant. The said evidence is as follows:

> *பிறகு 9.12.2002-ம் தேதி சார்பதிவாளர் அலுவலகத்திற்கு நான் மட்டும் போனேன். அப்போது 1வது எதிரியைப் பார்த்தேன். 1வது எதிரி அ.சா.2யிடம் விவரம் சொல்லியுள்ளதாகவும் அவரை போய் பாருங்கள் என்றுசொன்னார். நான் போய் அ.சா. 2ஐ பார்த்தேன் ஆனால் அவர் ஊரில் இல்லை. பின்பு என்னுடைய பள்ளி வேலைக்கு போய்விட்டேன்.*

Hence, the demand on 09.12.2002 as alleged by the prosecution, from P.W.2 in the presence of P.W.5 is also doubtful.

13.8. The last demand on 13.12.2002 also was not proved with corroborative evidence of P.W.2's version. According to the prosecution, the appellant asked P.W.5 to meet P.W.2 and directed to meet her in her office. On the date she reiterated the demand. P.W.5 deposed that he had not accompanied P.W.2 . In the said circumstances, the evidence of P.W. 2 is without any corroboration that the appellant made the demand. The prosecution miserably failed to prove the demand made by the appellant on the said date.

13.9. The purpose of the demand according to the prosecution is that the appellant demanded the bribe amount not to fix the stamp duty at the rate of Rs.22/- and to fix the valuation at Rs.7.50/- per sq.ft. From the documents and other evidence, it is clear that as per the guideline value the stamp duty is Rs.7.50/- per sq.ft and not Rs.22/-. It is not the case of any of the officials from the department examined on the side of the prosecution that the value of the stamp duty is Rs.22/- per sq.ft. In those circumstances, she threatened P.W.2 that she would fix Rs.22/- per sq.ft., is not acceptable one and also false for the reason that, she had already registered two documents for the same lay out and insisted to pay Rs.7.50/- per Sq.Ft. and the guideline value also was produced before this court and the same also revealed Rs.7.50/- per Sq.Ft., PW.13 succeeding officer after the trap, passed the following order under Ex.P. 34 and directed to pay sum of Rs.7.50/- per sq.ft.



அ.சா.ஆ. 34 (15) -61-

பெருங்களூர் சார்பதிவாளர், அவர்களின் நடவடிக்கைகள்
முன்னிலை திரு.க.சேகரன்

ந.க.எண் 403/2002 நாள்: 31.12.2002

Ex P34
PW13
5.4.18

பொருள்: மதிப்பு நிர்ணயம் – பெருங்களூர் சார்பதிவக ஆவண எண் 843/2002 – பெருங்களூர் கிராம சர்வே எண் 97/3 – புஞ்சை ஏக்கர் 2 செண்டு 82 – மனைப் பிரிவாக சதுரிக்கப்பட்டது – மதிப்பு நிர்ணயம் – ஆணை.

பார்வை: 1) பதிவுத் துறைத்தலைவர் சென்னை அவர்கள் கடித எண் 51260/என்1/2001 நாள் 29.8.2002
2) துணைக் கண்காணிப்பாளர் அவர்கள் புதுக்கோட்டை (லஞ்ச ஒழிப்புத்துறை) கடித நாள் 24.12.2002
3) மாவட்டப்பதிவாளர் அவர்கள் புதுக்கோட்டை கடித எண் 10299/அ1/2002 நாள் 30.12.2002.

ஆணை:

பார்வை 1ல் கண்ட பதிவுத் துறைதலைவர் அவர்களின் ஆணையின்படி கண்டுள்ள நெறிமுறைகளின்படி, சுற்றியுள்ள புலஎண்களில் அதிகபட்ச மனை மதிப்பின் அடிப்படையில் இவ்வலுவலக ஆவண எண் 843/2002ல் காணும் பெருங்களூர் கிராமம் சர்வே எண் 97/3க்கு புஞ்சை ஏக்கர் 2 செண்டு 82 உள்ள மனைப்பிரிவு சதுரடி 1க்கு ரூ7.50 (ரூபாய் ஏழு பைசா ஐம்பது) மட்டும் என நிர்ணயம் செய்யப்படுகிறது.

மேற் கூறிய ஆவண எண் 843/2002ல் காணும் புலஎண் 97.3க்கு ஏக்.2.82ல் சதுரடி 2200க்கு மதிப்பு ரூ16500 ஆகும். இதற்குத் தேவையான, முத்திரைக் கட்டணம் ரூ1980, பதிவுக் கட்டணம் ரூ165 ஆகும். வசூலித்த, முத்திரைத்தீர்வை ரூ1320, பதிவுக்கட்டணம் ரூ110 ஆகும்.

வசூலிக்கவேண்டிய குறைவு, முத்திரைக் கட்டணம் ரூ660, பதிவுக்கட்டணம் ரூ55 ஆகமொத்தம் ரூ715 (எழுநூற்றி பதினைந்து)-ஐ உடன் இவ்வலுவலகத்தில் செலுத்தி ரசீது மற்றும் ஆவணத்தைப் பெற்றுக் கொள்ளும்படி கேட்டுக்கொள்ளப்படுகிறார்.

31.12.2002
சார்பதிவாளர்,
பெருங்களூர்.

பெறுநர்:
அய்யாச்சாமி,
த/பெ சின்னையா,
38/16 காமராஜபுரம் 33ம் வீதி,
புதுக்கோட்டை

நகல்: 1) மாவட்டப் பதிவாளர் அவர்கள், புதுக்கோட்டை.
2) துணை கண்காணிப்பாளர் அவர்கள், லஞ்ச ஒழிப்புத்துறை, புதுக்கோட்டை.

13.10.Therefore the said amount was paid and document was received by the PW.4 DW.1 also deposed in the similar line through marking Ex.D1 and Ex.D2 PW.4 also admitted that he was prepared to pay the correct stamp duty. But, he did not make the payment. In view of the above discussion the prosecution has not proved demand either through unimpeachable oral evidence or through circumstantial and documentary evidence beyond reasonable doubt

14.<u>Plea and defence and motive</u>

Indian Stamp Act and Tamil Nadu)Registration of documents under Valuation) Rules, casts a duty on the part of the Sub Registrar to collect the proper stamp duty on the basis of the guideline value fixed by the Tamil Nadu Registration Department. As per the evidence of officials and the evidence of P.W.2 and P.W.4 no documents can be registered for undervaluation. The sub registrar has two options, namely, he can register the document and make an endorsement about under Valuation and make reference under Section 47(A) of the Act, to the competent authority, namely, Deputy Collector (Stamp) or give a chance to the parties to make payment of the stamp duty as per the guide line value within a period of 15 days by keeping the document as a pending document and if the party has not paid the correct stamp duty within a period of 15 days he can refer the document under Section 47(A) of the Act.

14.1.In this case, as per the evidence of registration department officers P.W.9, P.W.13 and guideline value marked as Ex.P25, the guideline value was fixed as Rs.7.50/- per sq.ft to the lay out of the property of P.W.2 to the survey number situated in the layout of P.W.2. He had already registered two documents and during that occasion also the appellant directed to pay Rs.7.50/- per sq.ft., and the same has been referred to the Assistant collector (stamps) under Section 47(A) of the Act to adjudicate the stamp duty. To prove the same, the defence has marked the documents as Ex.D1 and Ex.D2 and also examined DW.1 who was the erstwhile Sub registrar of Perungallur Sub Registrar office to show that PW.2 presented two documents without making payment of

Rs.7.50/- per Sq.Ft., which were pending under section 47(A) of the Act, for under valuation. Despite the knowledge of the same, PW.2 clandestinely presented the present document for under valuation with payment of stamp duty of Rs.5/- per Sq.Ft., Therefore appellant registered the doucment as pending document by giving the pending document number P.31/2002 and the appellant asked to pay the difference of amount by keeping the document as a pending document and 16.12.2002 was the last date to receive the difference of amount and complete the registration without making reference under Section 47(A) of the Act. The District registrar, the superior officer of the appellant clearly deposed in his evidence, the balance stamp duty amount has to be paid on 16.12.2002 and the relevant evidence is as follows:

> *அனுமதிக்கப்பட்ட ஆவணம் கட்டாயம் 16.12.2002-க்கு ஒப்பிடப்பட்டு, பதிவுச்சான்று பதிவுச்சட்டப் பிரிவு 60-ன் கீழ் சான்று சேர்க்கப்பட்டு, அன்றே ஆவணதாரருக்கு திரும்ப வழங்கியிருக்க வேண்டும்.*

14.2. Without making such payment, on the last date on 16.12.2002 P.W.2 made the complaint and trap was arranged. As per the evidence of the officers, the trap was completed at 03.00pm. As per the endorsement made in pencil on the document, she was ready with the process of completion of the registration by giving document number on 16.12.2002 before the trap. Before making completion of the reference under section 47(A) of the Act, the trap was conducted and according to the appellant, she had already, started the process of completion of the registration by giving documents number on 16.12.2002 which was not denied by PW.9 in his cross examination and hence, the completion of the process to refer the documents under Section 47 (A) of the Act has been thwarted. Therefore the initial version of the appellant that amount was received as deficit stamp duty and before completion of registration upon issuing the receipt, the trap team entered and seized the document is probable.

14.3. P.W.11 admitted that on reading the complaint given by P.W. 2 he could understand that there was some problem in registering the document but, he has not conducted any enquiry. The investigating officer also has not conducted any investigation relating to the under valuation. Therefore, both the trap laying officer/P.W.11 and investigating officer committed grave lapse in registering the case and also filing the final report without conducting proper investigation about the guideline value to test the testimony of P.W.2 and his credibility about the presentation of the documents under valuing the property.

14.4.This Court usually will not consider the conduct of P.W.2 to disbelieve his evidence. But, this case is an exceptional case where the complainant himself has suppressed the material fact before the vigilance department about presentation of two earlier documents, with under valuation at the rate of Rs.5/- per sq.ft and the same has been referred under section 47 A to make payment of Rs.7.50/- per Sq.Ft.,

14.5. The same was correctly declined by the appellant and registered the document and kept the document as pending document and before making reference under section 47(A) of the act, as per the Act within the prescribed period, PW.2 made a complaint on the last date as if she demanded Rs.10,000/- as bribe in order to wreak vengeance. The said vengeance was due to the reason that the appellant asked to pay the Rs. 7.50/- per Sq.Ft to register the document. She had already referred two documents marked under Ex.D1 and Ex.D2 under section 47(A) of Stamp Act to pay Rs.7.50/- per Sq.Ft. But he insisted to register document at the rate of Rs.5.00/- which amounts to "undervaluation". Therefore the submission of the appellant that P.W.2 planned to entrap the appellant in the trap proceedings to force the appellant to his terms and register the document for undervaluation of Rs.5.00/- per sq.ft. and attempted to weave a web around the appellant so as get her in to trouble and victimise her is probable one in the present facts and circumstances of the case. Therefore, evidence of the trap witness in this case has to be tested in the touch stone of appreciation of the evidence of *"interested witness"requring independent corroboration before convicting the accused person as held by the* Hon'ble Constition Bench of Supreme Court in case of ***State of Bihar* v. *Basawan Singh*** reported in ***AIR 1958 SC 500.*** This judgment is squarely applicable to the facts of the present case. But, there was no corroboration on material aspect of demand and acceptance and the entire trap proceedings is bristled with mysteries and suspicion and the evidence of P.W.2, P.W.4 and P.W.5 materially contradicted with each other and P.W.2 also has not approached the authorities disclosing the correct facts and the same was also not properly verified. In the above circumstances, this court accepts the argument of the learned senior counsel for the appellant that since appellant repeatedly insisted to pay stamp duty at the rate of Rs.7.50/- per sq.ft. and as she did not yield to accept the request of P.W.2 to register the document at Rs.5.00/- per sq.ft., he made a false complaint with false allegation without disclosing pendency of Ex.D1, Ex.D2 and he is guilty of suppression of material fact. Therefore the prosecution case that appellant had demanded and directed A2 to receive Rs.5,000/- for reducing the stamp duty from Rs.22.00/- per Sq.Ft., to Rs.7.50/- is not only unbelievable story but also seems to be a concocted story to suit his convenience.

14.6. Apart from that, in similar circumstances the Hon'ble Three Judges bench of Supreme Court in the case of ***Meena v. State of Maharashtra*** reported in **(2000) 5 SCC 21** has emphasized about the requirement of the clear evidence to convict the appellant like person under section 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act which reads as follows:

> ***"10.*** *We have bestowed our careful thought on the submissions made on either side, in the light of the evidence on record. We are of the view that neither the quality of the materials produced nor their proper evaluation could, in this case, be held sufficient to convince or satisfy the judicial conscience of any adjudicating authority to record a verdict of guilt, on such slender evidence.*
>
> *The corroboration essential in a case like this for what actually transpired at the time of the alleged occurrence and acceptance of bribe is very much wanting in this case."*

14.7. Hence this court holds that the prosecution case is shrouded with mysterious circumstances and prosecution neither proved the demand nor proved the acceptance of the illegal gratification by the appellant to fix the stamp duty of Rs.750/- per Sq.Ft., instead of fixing the rate of Rs.22.00/- per sq.ft. beyond reasonable doubt and hence, the appellant is entitled to benefit of doubt and therefore this court declines to concur with judgement of the learned trial judge in convicting the appellant under section 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and this court finds no material to hold the appellant guilty under section 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988.

15.Accordingly, this Criminal Appeal stands allowed in the following terms:

15.1.The judgment passed by the learned chief Judicial Magisrate cum Special Judge for PC Act cases, Pudukkottai in Spl.C.C.No.2 of 2003 dated 24.07.2018 is hereby set aside.

15.2.The appellant is acquitted from all the charges made in Spl.C.C.No.2 of 2003, on the file of the learned Chief Judicial Magisrate cum Special Judge for PC Act cases, Pudukkottai.

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

15.4.Bail bond executed by the appellant shall stand cancelled.

15.05.2025

NCC :Yes/No
Internet :Yes/No
Index :Yes/No
sbn

K.K.RAMAKRISHNAN, J.

sbn

Crl.A.(MD).No.365 of 2018

15.05.2025