BEFORE THE MADURAI BENCH OF MA DRAS HIGH COURT

Reserved on : 30.07.2025

Pronounced on : 07.10.2025

CORAM :

THE HONOURABLE Dr. JUSTICE R.N.MANJULA

Crl.A(MD)No. 449 of 2017

L.Durairaj ... Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
Vigilance and Anti-Corruption,
Madurai

(Crime No.29 of 2009) ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, against the judgment of the Special Court for Cases under the Prevention of Corruption Act, Madurai District in Special C.C.No.79 of 2011 dated 24.10.2017.

For Appellant : Mr.T.Lajapathy Roy,Senior Counsel

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

**JUDGMENT**

This Criminal Appeal has been preferred by the sole accused challenging the judgment dated 24.10.2017 passed in Spl.C.C.No.79 of 2011 on the file of the Special Court for Cases under the Prevention of Corruption Act, Madurai District .

2. The appellant is the sole accused, who has been found to be guilty for the offences under Sections 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act and

convicted and sentenced to undergo 2 years Simple Imprisonment and a fine of Rs. 2500/- in default to undergo 4 months S.I for the offence under sec.7 and to undergo 2 years Simple Imprisonment and a fine of Rs.2,500/- in default toundergo 4 months Simple Imprisonmentfor the offence under sec.13(1)(d) r/w 13(2) of P.C.Act.

3. The case of the prosecution is that the accused was working as a Commercial Tax Officer/Assistant Commissioner (i/c) from the year 2009 and, therefore, falls within the definition of "public servant" under Section 2(c) of the Prevention of Corruption Act, 1988. The complainant, a resident of Vanniyampatti Village, was engaged in selling electrical equipment and domestic appliances under the name and style of "Aravindh Marketing," situated at Door No. 9/1/20B, RamuniNagar, T. Kallupatti, Thirumangalam Taluk, Madurai. As he intended to shift his shop to another location and start two new branches at T. Kallupatti and Mamsapuram, he submitted three petitions at the office of the Assistant Commissioner (Commercial Tax Officer) on 10.11.2009. The accused, in his official capacity, received the petitions and assured the complainant that permission would be granted to shift the shop and open the two branches, provided a bribe of Rs.5,000/- was paid. When the complainant expressed his inability to pay the said amount immediately, the accused insisted and collected Rs.1,000/-, which the complainant had kept for his personal expenses. The accused further demanded that the complainant should pay the balance of Rs.4,000/-, and only upon such payment the necessary orders would be issued.

4.(i)While so, on 13.11.2009, at about 12.45 p.m., when the complainant met the accused at his office and enquired about the orders, the accused once again demanded the balance amount of the bribe. After some negotiation, the balance demand was reduced from Rs.4,000/- to Rs.3,000/-. Actually, the complainant was unwilling to pay any bribe to the accused. Therefore, he approached the Vigilance and Anti-Corruption Office at Madurai and submitted a petition against the accused, pursuant to which a case was registered in Crime No.29 of 2009.

4.(ii)Subsequently, the respondent–Police made arrangements to conduct trap proceedings. On 13.11.2009, at about 5.20 p.m., the complainant, accompanied by the witness Hariharan, went to the office of the accused and enquired about the orders. The accused once again asked the complainant about the money, upon which the complainant handed over Rs.3,000/-, as previously demanded. The accused then received the amount in his right hand, counted it, and kept it in the left-side pocket of his shirt.

4.(iii)On receiving the pre-arranged signal from the complainant, the Inspector of Police (Trap Laying Officer) immediately rushed to the spot and conducted the phenolphthalein test on the accused. The test yielded positive results, confirming the handling of the tainted currency notes by the accused. Thereafter, the bribe amount and other related documents were recovered from the accused, and the solution used for the test was forwarded for chemical analysis. As per the analysis report, the phenolphthalein solution tested positive for the presence of sodium carbonate particles.

4.(vi)Since the accused had unlawfully demanded bribe for performing an official act and had thereby intended to obtain illegal gratification, he was charged for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Upon completion of investigation, a charge sheet was filed and the case was taken on file by the competent Court.The accused appeared pursuant to summons.

5. Before the Trial Court, on the side of the prosecution PW1 to PW11 have been examined and Exs.P1 to P17 have been marked. M.O.1 to M.O.7 have been marked. On the side of the accused, no oral or documentary evidence has been marked.

6. At the conclusion of trial, the Trial Court found the accused guilty for the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and convicted and sentenced him to undergo 2 years SI and a fine of Rs.2,500/-, in default to undergo 4 months SI for the offence under Section 7 of Prevention of Corruption Act and sentenced him to undergo 2 years SI and a fine of Rs.2,500/- in default to undergo 4 months SI for the offence under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. Aggrieved over that the accused has preferred the present appeal.

7. Mr. T. Lajapathy Roy, learned Senior Counsel appearing for the appellant, submitted that the defacto complainant himself had stated that the demand was made on 10.11.2009 and, pursuant thereto, a part payment of Rs.1,000/- was made as bribe; however, the complaint was lodged only on 13.11.2009, and no explanation has been offered for the delay. It was further contended that, as on 13.11.2009, the accused had

already become functus officio in respect of the complainant's application, since he had already recommended the grant of licence, which fact was spoken to by P.W.4 and P.W.5 through Ex.P8. Ex.P8, issued by the accused, is dated 10.11.2009. Therefore, once the appellant had already discharged his official duty, there was no necessity for the complainant to pay any bribe. It was also pointed out that the shadow witness, P.W.3, had admitted that he was standing at a distance of 10 to 12 feet and had only seen the complainant speaking to the appellant, but could not overhear the conversation between them. The contradictions between the evidence of P.W.2 and P.W.3 were not properly appreciated by the learned Trial Judge. Further, the shirt of the appellant, alleged to have contained traces of phenolphthalein,was not sent for chemical examination.

8. The learned Additional Public Prosecutor submitted that the trial court has rendered judgment after having considered the matter thoughtfully and both oral and documentary evidence in this case are sufficient enough to bring home the guilt of the appellant.

9. I gave my anxious consideration to the submissions made on either side and perused the materials available on record.

10. The defacto complainant, P.W.2 Aravindhan, was engaged in selling electronic household goods under the name and style of "Aravind Marketing," having obtained a licence from the office of the Deputy Commissioner of Commercial Taxes, Thirumangalam. As he intended to expand his business, he submitted three petitions on 10.11.2009 at the said office, one seeking transfer of his shop from T. Kallupatti

and two others for opening new branches, one at Mamsapuram and another at T. Kallupatti Main Road. The requisite fees were enclosed along with the petitions. It is the allegation of the prosecution that the accused, who was then working as Commercial Tax Officer and holding full additional charge of Assistant Commissioner, Commercial Tax Office, Thirumangalam, demanded a bribe of Rs. 5,000/- to process the complainant's applications and to issue the necessary licences. On the same day, the complainant, who was examined as P.W.2 has paid Rs.1,000/- as advance gratification, as directed by the accused, who further instructed him to pay the balance amount of Rs.4,000/-. On 13.11.2009, when the complainant again approached the accused regarding the licence, the accused reiterated his demand andafter negotiation, he reduced the balance demand from Rs.4,000/- to Rs.3,000/-. As the complainant was unwilling to pay the bribe, he approached the Inspector of Police, Vigilance and Anti-Corruption, Madurai, lodged a complaint, and consequently, P.W.9, the Trap Laying Officer, organised trapon thesameday.

11.The learned Senior Counsel appearing for the appellant submitted that although P.W.2 was aware of the alleged demand on 10.11.2009, when he submitted the applications, he did not choose to lodge any complaint at that point of time. Instead, he preferred to give the complaint only after a delay, which, according to the learned counsel, creates a doubt as to the genuineness of the complaint itself and thereby entitles the accused to the benefit of doubt.

12.Reference was made to the earlier judgment of this Court in Meganathan v. State of Tamil Nadu, reported in 2010 SCC OnLine Mad 2967. In that case, this

Court referred to the judgment of the Hon'ble Supreme Court in V. Venkata Subbarao v. State represented by Inspector of Police, A.P., reported in 2007 AR SCW 9, wherein it was held that, in the absence of any explanation for the delay in preferring the complaint, the case of the prosecution would require to be doubted. On perusal of the facts in Meganathan's case, it appears that though the defacto complainant had prepared the complaint on 05.09.1995, it was handed over to the police only on 12.09.1995. In the present case, however, it cannot be strictly said that there is any delay. The defacto complainant has narrated the demand made on two occasions when he met the accused. On the first occasion, when he submitted his applications on 10.11.2009, he was allegedly demanded to pay a sum of Rs.5,000/- as an illegal gratification, out of which he paid Rs.1,000/- as advance. For reasons best known to him, he did not lodge a complaint with the police at that stage. Again, on 13.11.2009, when he approached the accused to ascertain the progress of his applications, the accused reiterated the demand. Only thereafter the defacto complainant considered it appropriate to lodge a complaint with the police. Since the complaint was lodged on 13.11.2009, the very day on which the demand was repeated, I do not find any delay that casts doubt upon the prosecution case. The kind of delay that would ordinarily require an explanation to dispel suspicion does not arise in the present facts.

13.Even if, for extraneous reasons, it is construed that P.W.2 lodged the complaint with a delay of two days, that by itself will not defeat the case of the prosecution, especially when the accused was successfully trapped in the operation organized by P.W.9 pursuant to the complaint of P.W.2. Therefore, the case of the prosecution cannot be rejected at the very threshold merely on the ground that the delay in lodging the complaint has frustrated the entire case.P.W.2, in his evidence, has stated that he went to the police station and met P.W.9 at 2:00 p.m. on 13.11.2009 and orally informed him about the demand for a bribe. As he was instructed to reduce the information into writing, he thereafter prepared a written complaint, had it typed on the computer, obtained a printout, affixed his signature, and then handed over the same toP.W.9.

14. Immediately thereafter, a trap was organized. The trap team arrived at the office of P.W.9 at about 5.20 p.m. On perusal of the FIR, marked as Ex.P.15, it is seen that the FIR has been recorded at about 2.00 p.m. According to the evidence, P.W.2 went to the office of P.W.9 at 2.00 p.m., and thereafter his complaint statement was typed on a computer. Naturally, the FIR could have been recorded only after the complaint was typed and printed copies were taken. This process would have consumed at least one hour; however, the complaint recording time has been shown as 2.00 p.m.The cross-examination of P.W.9 reveals that the trap witnesses arrived at his office at about 3.50 p.m. P.W.9 further stated that, after receiving the complaint and recording a copy, he contacted the Assistant Director of the Fisheries Department and the Joint Director of Health Department to send witnesses forthetrapproceedings.

15. One of the witnesses to the trap proceedings, examined as P.W.3, stated in his evidence that he was working as the Superintendent in the office of the Assistant Director of Fisheries Department. In his cross-examination, P.W.3 deposed that he had started from his office at 3.00 p.m., and that another witness, Alagarsamy, arrived two

minutes thereafter. Until that time, he was not aware that he was going to be a witness for the trap proceedings. The distance between the office of P.W.3 and the office of P.W.9 is said to be 2 kilometres. Since he travelled by two-wheeler, it would have been possible for him to reach the office of P.W.9 within 15 minutes. However, his evidence discloses that he did not sign the movement register to indicate the time at which he left his office.

16. To comply the formalities of preparing the money by smearing it with phenolphthalein powder, preparing and reading over the entrustment mahazar, would have taken at least one hour. The trap team had reached the office of the accused at about 5.15 p.m. The distance between Madurai and Thirumangalam is 20 kilometres. In view of such tight timings, it appears that P.W.9, the Trap Laying Officer, could have interacted with other officers to secure the trap witnesses even before the complaint was formally registered. Therefore, it becomes difficult to believe whether P.W.9 had actually taken sufficient time to verify the genuineness of the complaint, or whether he had already made up his mind that laying a trap was essential.

17. In fact, the complainant himself has reached the office of the Chief Judicial Magistrate only at 5.40 p.m., as evident from the endorsement made by the Chief Judicial Magistrate. It is thus seen that the FIR was received in court only at 5.40 p.m. Had the complaint been registered at 2.00 p.m., such a delay in forwarding the FIR to the court would not have occurred. This circumstance gives rise to the possibility that P.W.9, the Trap Laying Officer, might have interacted with officials of other departments even before the formal registration of the complaint. However, the

crucial question that remains to be considered is whether this deficiency, by itself, is sufficient to vitiate the finding of guilt recorded against the accused.

18. With regard to the demand, the prosecution relied on the evidence of P.W. 2, the defacto complainant, and P.W.3, the trap/shadow witness. P.W.2 has spoken about the demand made during the trap proceedings. With regard to the pre-trap incident, he deposed that the accused demanded a sum of Rs.5,000/- on 10.11.2009 and that, on 13.11.2009, he had taken Rs.10,000/- and proceeded to the office. The evidence of P.W.2 concerning the demand during the trap proceedings is very material.

19. According to his version, P.W.3, the trap witness, was standing at the doorstep of the room where the accused was working. At that time, P.W.2 once again enquired about the licence, for which the accused asked him to "settle the office accounts." When P.W.2 further enquired about the licence relating to the establishment of a branch at Munnar, the accused stated that, as it is concerned about things outside the State, he could not help. Nevertheless, he reiterated that P.W.2 should settle the amount agreed to be paid to him.

20. Subsequently, the accused received the phenolphthalein-smeared currency notes amounting to Rs.3,000/-, being six notes of Rs.500/- each. Even after receiving the said amount, the accused is alleged to have demanded an additional sum of Rs. 1,000/-. P.W.2 replied that it would be difficult for him to pay immediately and that he would consider it later and to which the accused retorted that he should not wriggle out by saying so.

21. P.W.2 once again enquired about his three licences and the accused replied that he should meet Inspector Manikandan and if the said Manikandan was free, he could accompany P.W.2 in his car itself for the purpose of verification. It remains to be seen whether this version of events are seen to be corroborated with theevidenceofthetrapwitness,P.W.3.

22.P.W.3, in his evidence, stated that after going to the office of the accused, he was standing at the doorstep of the office. From the position where he had placed himself, he was able to see and hear the conversation between P.W.2 and the accused. According to the oral account of P.W.3, the accused asked P.W.2 to sit on a chair, and P.W.2 sat down. P.W.2 then asked the accused whether he had completed his files and could issue him three certificates. He had further stated that without adding those certificates he could not move his goods. The accused responded that P.W.2 should first settle the matter pending in the office without singing no money song.

23. P.W.2 then enquired as to what should be done to open a branch office at Munnar. The accused replied that it was not possible for him to do so and again asked P.W.2 to give money. At that point, P.W.2 took out Rs.3,000/-, smeared with phenolphthalein powder, from the left side pocket of his shirt and handed it over to the accused. On receiving the amount, the accused remarked that he had been waiting only for that and demanded an additional sum of Rs.1,000/-. He then kept the Rs. 3,000/- in the outer left-side pocket of his shirt.

24.It is trite law that acceptance of the money as illegal gratification alone is not sufficient for constituting an offence under the Prevention of Corruption Act.

Hence, before proving the acceptance, it is obligatory on the part of the prosecution to prove the demand beyond reasonable doubt.

25. When the defacto complainant had stated in his evidence that when he asked about the license, the accused told him to finish the office things. P.W.3 in his evidence had stated that the accused asked him to finish what is in the office. As per the evidence of P.W.3, after the accused demanded money only, P.W.2 asked the accused about his business outside the State. But P.W.2, has stated in his evidence that he asked about the out side State Branch, even before the demand for illegal gratification raised by the accused.

26. While P.W.2 had stated that the accused asked him to "settle the office accounts," P.W.3, on the other hand, deposed that the accused told P.W.2 to "settle at the office without singing no money song." In his explanation under Section 313 Cr.P.C., the accused categorically denied any demand or acceptance of any illegal gratification from P.W.2, and asserted that he had merely discharged his official duties by issuing the necessary orders. He further contended that he had already offered a proper explanation for the amount recovered from his house, as well as from his other pocket and the table.

27.P.W.3 has further stated that the accused, on receiving the money, remarked that he had been waiting only for that and kept the same in his pocket. However, this statement does not find place in the evidence of P.W.2. Thus, there is a contradiction between the evidence of P.W.2 and P.W.3 with regard to the precise timing of the demand made by the accused, when P.W.2 met him during the trap. This contradiction raises a doubt as to whether P.W.3 had actually placed himself in a position where he could properly hear the conversation between the accused and P.W.2.

28. Apart from the sum of Rs.3,000/-, which was recovered from the accused during the trap proceedings, another sum of Rs.14,400/- was also recovered. Thereafter, a search was conducted in the presence of the same witnesses at the house of the accused, where a further sum of Rs.99,000/- was recovered. While P.W.1 has deposed that the accused did not offer any explanation for the said amounts, the defence has contended that the accused did furnish an explanation, but the same was suppressed by the prosecution.

29. The accused in his statement under Section 313 Cr.P.C., stated that he had neither demanded nor received any illegal gratification and that on the application filed by P.W.2, he had passed the requisite orders in due course. He further claimed that the case was a false one and that the money recovered from his house represented his personal savings, kept aside for the purpose of his daughter's marriage.

30.Insofar as the sum of Rs.14,400/- found in the right-side pant pocket of the accused and Rs.500/- kept in his handbag are concerned, the same were claimed to be his personal money, and those amounts were subsequently returned to him. Likewise, the sum of Rs.99,000/- recovered from the house of the accused could also reasonably be his personal savings, kept at home for the purpose of his daughter's marriage. Apart from the aforesaid cash, no other property or incriminating documents were recovered from the residence of the accused, and significantly, he has not been charged with the offence of possessing assets disproportionate to his known sources of income. In such circumstances, the amount of Rs.99,000/- kept by the accused, who was serving in an officer's rank, cannot by itself be considered as the proceeds of any crime under the provisions of this Act.

31.The file relating to the petitions submitted by P.W.2 seeking licences was recovered by P.W.9 from one Rajasekaran, who was examined as P.W.4. Rajasekaran was working as Superintendent at the relevant time in the office of the Assistant Commissioner, Tirumangalam. The said file was marked as Ex.P.8. He also produced documents Ex.P.11 and Ex.P.6 to show that the accused was present in the office on 13.11.2009. Ex.P.5, the attendance register, contained the initials of the accused showing his presence, and his signature was marked as Ex.P.11.

32. During his cross-examination, P.W.4 stated that the applications submitted by P.W.2 had been duly registered in the relevant registers on the very same day. In Ex.P.8, the accused had made an endorsement to the effect that the T. Kallupatti Branch certificate could be issued after the Inspector's spot visit. A second endorsement indicated that the Mamsapuram Branch proposed by P.W.2 fell within the jurisdiction of the Srivilliputtur Assessment Area and, therefore, a letter had to be sent to the Srivilliputtur office. The endorsements carried the initials of the accused dated 10.11.2009.

33. The certified copy of the said file, along with other documents, was handed over to P.W.9 by P.W.4 on 13.11.2009. This fact was also admitted by P.W.9 in his evidence, where he stated that Ex.P.5, containing four applications, was recovered

from the Superintendent Rajasekaran, and that he had affixed his signature in Ex.P.8.It is therefore evident that the endorsements in Ex.P.8 could have been made by the accused even prior to the trap proceedings. This suggests that action had already been initiated by the accused on the very day when P.W.2 submitted his applications, which is corroborated by the evidence of P.W.4 and further fortified by the endorsements found in Ex.P.8. The accused has consistently stated that he never demanded any illegal gratification from P.W.2 for processing the said applications.

34.Even when P.W.2 met the accused at his office and enquired about the licence certificate during the trap proceedings, the accused told him to "finish the office things." P.W.3 also corroborated this version in his evidence. The expression "office things," as referred to by P.W.2 and P.W.3, could reasonably be understood as referring to the inspection to be carried out by the competent authority. At the conclusion of the conversation, P.W.2 also asked the accused whether the spot could be inspected, to which the accused replied that he would meet the concerned person and take the car to have the inspection done. Significantly, the endorsements made by the accused on the file also supports this very version.

35. It is submitted by the learned Senior Counsel appearing for the appellant that the files were seized from P.W.4 on 13.11.2009, and hence the endorsements were very much available therein at that point of time itself and that the prosecution cannot contend that the accused had subsequently made those endorsements with the assistance of his colleagues in order to escape from the clutches of the case.

36. This completed action of the accused was not given due credence by the

trial court while appreciating the evidence. The learned trial Judge has observed that, as per the above endorsement, no further consequential action was taken and that P.W. 2 was not issued with the license certificate. However, it is clear that on 13.11.2009 itself, P.W.2 was informed to take the assistance of one of the officials to facilitate the inspection. It is not even the allegation of P.W.2 that the accused had withheld the file without causing the inspection to be done. On a perusal of the complaint (Ex.P.2), it is seen that the allegation is confined only to the demand of Rs.5,000/- for issuance of license. Nowhere in the complaint dated 13.11.2009 it has been stated that the accused retained the file despite making the endorsement or that he showed reluctance in proceeding with the spot inspection. Though P.W.2 claimed to have met the accused again on 13.11.2009 at about 12.45 p.m. and enquired about the license, the accused asked him to settle the money, none of the witnesses examined on the side of the prosecution have corroborated the version that P.W.2 met the accused at 12.45 p.m. on that day.

37.Had PW2 met the accused in the morning of 13.11.2009, when he met him once again in the evening during the trap proceedings and enquired again about the certificate, the accused would have naturally reminded him that he had already stated the detailsin the morning. Likewise, P.W.2 would have also referred to his alleged morning visit in the course of the evening conversation. Absence of such a spontaneity in their conversation, as well as in the testimony of P.W.2, renders his version doubtful. The accused is an Officer and hence the Office Assistants would have invariably been present at the entrance to attend the visitors. If P.W.2 had actually visited the office during the morning hours of 13.11.2009, it would have been possible for at least one of the Office Assistants to confirm the same.

38. However, the prosecution has not chosen to examine any of the office staffs in this regard. Further, P.W.2 himself had enquired about the inspection, as the accused had already made a favourable endorsement on the file instructing inspection. In such circumstances, it is difficult to believe that the accused would have still demanded illegal gratification for completing the issuance of the license certificate. In the absence of any corroborative evidence to prove P.W.2's alleged morning visit, it is only probable that the accused had directly accompanied the shadow witnesses of the trap team during the evening of 13.11.2009.

39. Under such circumstances, there cannot be any denial of issuing a license certificate to P.W.2, which can be done only after the spot inspection is carried out. The accused himself has not stated that the file was kept in cold storage. Even when action was initiated but orders are delayed, the Court cannot read more into the disposal of the file than what has been stated by P.W.4, the Superintendent of the office of the accused or what is revealed from the endorsement made by the accused in Ex.P.8 file.

40. It has been pointed out in the earlier part of the discussion that there are contradictions between the evidence of P.W.2/the defacto complainant and P.W. 3/shadow witness with regard to the manner in which the conversation had taken place between the accused and P.W.2 with regard to the demand. Though in normal circumstances, such inconsistencies may be rejected as minor discrepancies, it

assumes significance when the evidence on record discloses an important fact that the accused did not wait to take action on the application of P.W.2 for expecting any illegal gratification. In fact, P.W.2 himself has posed a question to the accused whether verification could be carried out and to which, the accused replied him that he could approach Manikandan, the Inspector and if he was free, he can be taken in the Car of P.W.2 for spot inspection. So, the very question posed by P.W.2 with regard to the verification would also show that he had also knowledge about the file movement and he continued the conversation with regard to the next step of verification. This part of the conversation is linked to the initial question put by P.W.2 as regards the demand for bribe money and the answer of the accused that he should finish his office things. So, the office thing could be the verification process which has to be done before issuance of the certificate.

41.In this extraneous circumstance, the allegation of delay in giving the complaint also assumes relevance. As stated already, the prosecution has not proved that P.W.2 visited the office of the accused at 12.45 hours on 13.11.2009. In the absence of any proof to show that P.W.2 visited the office of the accused in the morning of 13.11.2009, his last visit to the office must be taken as 10.11.2009, on which date he submitted the applications and stated that the accused had demanded Rs.5,000/- for issuing certificates. Since P.W.2 gave the complaint only on 13.11.2009, and not on 10.11.2009, there ought to have been some explanation for the delay. The absence of such an explanation creates a doubt regarding the complaint.

42. In this regard, it is also pertinent to point out the earlier discussion that,

even without affording reasonable time for typing the complaint in the computer ,based on the statement given by P.W.2, and after he had reached P.W.9's office at 2.00 p.m., P.W.9 had already sent information to the Government Departments through phone by 3.00 p.m. itself to depute official witnesses for the trap arrangements. The shadow witnesses, P.W.3 and Alagarsamy, had arrived at the office of the Vigilance Department at 3.15 p.m. Notably, P.W.3 himself had stated that he received information at 3.00 p.m. and left his office immediately thereafter.

43. So, it appears that P.W.9, the Trap Laying Officer, had informed the shadow witnesses even before the complaint was formally registered, and without applying his mind to the contents of the complaint or verifying its genuineness. At any rate, the complaint could not have been registered at 2.00 p.m., since the defacto complainant, P.W.2, admittedly reached the office of P.W.9 only at 2.00 p.m., and he had not brought any written complaint. His complaint was in fact typed on his dictation by the computer assistant in the office of P.W.9. Further, the trap proceedings themselves appear to have been initiated only later, as the trap team, including P.W.2, entered the room of the accused at 5.20 p.m. The FIR was then forwarded, and the Magistrate affixed his initial only at 5.40 p.m. This sequence of events probabilizes the fact that the complaint could not have been registered at 2.00 p.m. immediately upon P.W.2's arrival at the office of P.W.9.

44. In this regard, it is relevant to refer the judgment of this Court in Criminal Appeal No.30 of 2012 (in R.Ekambaramvs. State rep. by Inspector of Police, ACB/CBI/Chennai) dated 21.11.2023. In the said Judgment, it is observed that the

conduct of trap laying officer in organizing a trap and taking the witness have been found prior to the registration of case and without verification of genuineness of the case which would make it clear that Trap Laying Officer has predetermined to fix the appellant and implicate him in the case. The very same judgment refers Chapter 8 of General Instructions 9/217 of the CBI Crime Manual, which insists for drawing a sketch of the scene of offence by the Investigating Officer. The above instruction would also enable the Investigating Officer to seek help of any other agency such as the Engineers of the CPWD or Railways, Patwaris etc, which has necessitated in the above instruction that in the trap cases, a sketch of scene of occurrence shall invariably be prepared.

45.In the present case, the rough sketch has been marked as Ex.P.16. Though the room of the accused has been indicated, it is not clear where the shadow witnesses were positioned, since the accused appears to have placed his table facing the entrance. Therefore, it must be satisfactorily established that the shadow witnesses were standing at a place from where, though not in the immediate vicinity of the accused, they could still hear the conversation between P.W.2 and the accused. Hence, the rough sketch, Ex.P.16, cannot be considered sufficient to prove the trap arrangement in the instant case.

46. In this type of cases, it is not sufficient for the prosecution to prove a mere demand for money but a demand for illegal gratification. It is elicited during cross-examination of P.W.2 and from the endorsement made in Ex.P.8 that the accused acted upon the applications given by P.W.2 even on the day when it was presented to

him. It causes a doubt as to the very demand. Even for the sake of argument, if the demand is accepted to have been proved, it creates a doubt whether the demand is for illegal gratification.

47. In this regard, it is worthwhile to refer to the judgment of the Hon'ble Supreme Court of India in N. Vijayakumar v. State of T.N., (2021) 3 SCC 687. In the said case, the Hon'ble Supreme Court held that it must be proved that the accused had consciously and formally accepted the money as illegal gratification, and that mere possession or recovery of money, in the absence of such proof, would not be sufficient to constitute an offence under the Prevention of Corruption Act. The relevant portion of the judgment, as extracted in paragraph 26, reads as follows:

> *"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI- and in B. Jayaraj v. State of A.P.1 In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court".*

48.The learned Additional Public Prosecutor appearing for the respondent submitted that under Section 20 of the Prevention of Corruption Act, a presumption can be drawn in respect of offences punishable under Section 7 or Section 11 of the Act. Once it is proved that a public servant has accepted or obtained illegal gratification from any person, the presumption operates, and it is for the accused to rebut the same. For the sake of clarity, Section 20 of the Prevention of Corruption Act is extracted below:

> "20. - Where, in any trial of an offence punishable under section 7 or under section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11".

49. Though it may be possible to prove acceptance through recovery, the foundational fact of demand, which is a sine qua non for acceptance, must first be established. Therefore, without proving the demand for illegal gratification, a presumption under Section 20 of the Prevention of Corruption Act cannot be straightaway drawn against the accused.

50. In Narendra Champaklal Trivedi vs. State of Gujarat reported in 2012 (7) SCC 80, the Supreme Court has held as under:

*"12. At the outset, we may state that the recovery part has gone totally unchallenged. Though a feeble attempt was made before the High Court and also before us, yet a perusal of the evidence and the test carried out go a long way to show that the amount was recovered from the possession of the accused-Appellants. It is the settled principle of law that mere recovery of the tainted money is not sufficient to record a conviction unless there is evidence that bribe had been demanded or money was paid voluntarily as a bribe. Thus, the only issue that remains to be addressed is whether there was demand of bribe and acceptance of the same. Be it noted, in the absence of any evidence of demand and acceptance of the amount as illegal gratification, recovery would not alone be a ground to convict the accused. This has been so stated in T. Subramanian v. The State of Tamil Nadu MANU/SC/8010/2006 : AIR 2006 SC 836.*

*13. The demand and acceptance of the amount as illegal gratification is the sine qua non for constituting an offence under the Act. It is also settled in law that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than the motive or reward as stipulated under Section 7 of the Act. It is obligatory on the part of the court to consider the explanation offered by the accused under Section 20 of the Act and the consideration of the explanation has to be on the anvil of preponderance of probability. It is not to be proven beyond all reasonable doubt. It is necessary to state here that the prosecution is bound to establish that there was an illegal offer of bribe and acceptance thereof. The same has to be founded on facts. In this context, we may refer with profit to the decision in M. Narsinga Rao v. State of A.P. (2001) 1 SCC 691 wherein a three-Judge*

*Bench referred to Section 20 of the Act and stated that the only condition for drawing the legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept the gratification. Thereafter, the Bench produced a passage from Madhukar Bhaskarrao Joshi v. State of Maharashtra (2000) 8 SCC 571 with approval. It reads as follows:*
*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.*

*14. In Raj Rajendra Singh Seth v. State of Jharkhand and Anr. MANU/SC/7859/2008 : AIR 2008 SC 3217 the principle laid down in Madhukar Bhaskarrao Joshi (supra) was reiterated.*

*15. In State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede*

*MANU/SC/1339/2009 : (2009) 15 SCC 200, it has been held that to arrive at the conclusion that there had been a demand of illegal gratification, it is the duty of the court to take into consideration the facts and circumstances brought on record in their entirety and for the said purpose, undisputedly, the presumptive evidence as laid down in Section 20 of the Act must also be taken into consideration.*

*16. In C.M. Girish Babu v. C.B.I., Cochin, High Court of Kerala AIR 2009 SC 2022, after referring to the decisions in M. Narsinga Rao (supra) and Madhukar Bhaskarrao Joshi (supra), this Court has held thus:*

> *"19. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification".*

> *17. In the case at hand, the money was recovered from the pockets of the accused-Appellants. A presumption under Section 20 of the Act becomes obligatory. It is a presumption of law and casts an obligation on the court to apply it in every case brought under Section 7 of the Act. The said presumption is a rebuttable one. In the present case, the explanation offered by the accused-Appellants has not been accepted and rightly so. There is no evidence on the base of which it can be said that the presumption has been rebutted".*

51.Applying the above position of law to the case on hand, it is clear that the mere recovery of money from the accused is not sufficient to convict him unless the evidence on record establishes that the accused had made a demand for illegal gratification and had accepted the money towards the same. Mere acceptance, proved only by possession and recovery, is not suffice unless the demand is also proved. Since the accused had already made the necessary endorsement in the file pertaining to the petition filed by P.W.2, it can be reasonably inferred that the accused was not awaiting any bribe from P.W.2 as gratification for doing his work. Unless and until such demand is proved beyond all reasonable doubt, no presumption under Section 20 of the Prevention of Corruption Act can be drawn against the accused.

52. Even the presumption under Section 20 of the Act is rebuttable, and it is sufficient for the accused to establish rebuttal proof fitting to the standards of preponderance of probabilities. If the defence is able to point out inadequacies, inconsistencies, or improbabilities in the prosecution case and the evidence available on record, such infirmities can also be inferred as rebuttal proof sufficient enough to negate the initial presumption. Once the initial presumption is rebutted, the prosecution loses the benefit of such presumption, and the burden shifts back upon it to prove the guilt of the accused beyond all reasonable doubt, independent of the presumption under Section 20 of the Act.

53. In the case on hand, there is a delay in lodging the complaint. The trap laying officer appears to have interacted with the shadow witness and others in a speedy manner even without waiting for a reasonable time to scrutinize and verify the genuineness of P.W.2's complaint and the trap team had entered the office of P.W.9 before the copy of the FIR reached the court. Inconsistencies in the evidence of P.W.2

and P.W.3 with regard to the demand coupled with Ex.P.8 endorsement which shows that the accused had acted on the file without waiting to receive the bribe and the Inadequaciesfound in Ex.P.16 rough sketch would only leave an inescapable inference that the prosecution has not proved the guilt of the accused for the offence under 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act beyond all reasonable doubt.

54. As the trial court has not property appreciated the evidence in a proper perspective, the judgment of the trial court finding the accused guilty is liable to be set aside.

55. In fine, this criminal appeal is allowed and the judgment of the Special Court for Cases under the Prevention of Corruption Act, Madurai District, in Special C.C.No.79 of 2011 dated 24.10.2017 is set aside. The appellant is acquitted from charges levelled against him. The fine amount, if any, paid by him, shall be refunded to him. Bail bond, if any, executed by the appellant shall stand cancelled.

07.10.2025

Index : Yes/No

Internet : Yes/No

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Dr.R.N.MANJULA, J

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To,

1.The Special Court for Cases under the Prevention of Corruption Act, Madurai District.

2. The Inspector of Police,

Vigilance and Anti-Corruption,

Madurai.(Crime No.29 of 2009)

3.The Additional Public Prosecutor

Madurai Bench of Madras High Court,

Madurai.

Pre-delivery Judgment made in

Crl.A.(MD)No.449 of 2017

07.10.2025