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CRL A.No.702 of 2



Order QR

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on : 18.09.2026

Pronounced on : 16.10.2026

CORAM:

**THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR**

**CRL.A.No.702 of 2019**

*CNR: {HCMA011787682019}*



Case QR

P.Ganesan

... Appellant / Accused

Vs.

State Rep.by  
The Inspector of Police,  
Vigilance & Anti-Corruption,  
Villupuram  
(Crime No.01/2012)

... Respondent / Complainant

**PRAYER:** Criminal Appeal is filed under Section 374(2) of the Cr.P.C., against the Judgment passed in Special Case No.39 of 2019, dated 30.09.2019, by the learned Special Judge for Prevention of Corruption Act Cases, Villupuram.

For Appellant : Mr.K.Sukumaran

For Respondent : Mr.Leonard Arul Joseph Selvam  
Additional Public Prosecutor



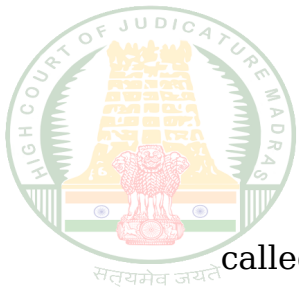
## **JUDGMENT**

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This appeal is directed against the judgment, dated 30.09.2019, in Spl.C.C.No.39 of 2014, on the file of the learned Special Judge, Special Court for Prevention of Corruption Act Cases, Villupuram ('the trial Court'), by which the appellant, sole accused, was found guilty of the offences under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 ('the Act'). For the offence under Section 7, he was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months. For the offence under Section 13(2) read with Section 13(1)(d), he was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months.

2. The case of the prosecution, in brief, is as follows:-

(a) The appellant, P.Ganesan, was working as Assistant Agricultural Officer, Somandargudi, Kallakurichi Block, Villupuram District, from 17.05.2010 to 02.03.2012 and was a public servant within the meaning of Section 2(c) of the Act. PW2 is the de facto complainant, A.Palaniappan, registered himself as a small farmer with the appellant. During third week of January 2012, the appellant obtained the signature of PW2 in an application under the Coconut Subsidy Scheme, and it was the official duty of the appellant to process and recommend the application for subsidy.



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(b) On 17.02.2012, PW2 met the appellant at his office on being called over phone, and the appellant handed over a State Bank of India cheque for Rs.17,500/-, being the subsidy amount, and, it is alleged that the accused demanded Rs.10,000/- as illegal gratification under the guise of 'office expenses'. Again on 19.02.2012, the appellant is said to have demanded Rs.10,000/- over phone. The demand was allegedly reiterated over phone on several dates thereafter, in person at the house of PW2 on 27.02.2012 at about 8.30 a.m., and again over phone on 28.02.2012 and 29.02.2012, when the appellant said to have reduced the demand to Rs.7,500/-, to be paid within two days.

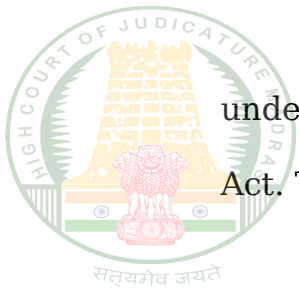
(c) Unwilling to pay, PW2 approached the Vigilance and Anti-Corruption Police, Villupuram, on 02.03.2012 and lodged a written complaint (Ex.P7). The Inspector of Police (PW10) registered Ex.P.24 FIR in Crime No.1/2012, under Section 7 of the Act at about 9.00 a.m. Two official witnesses, including Krishnaraj (PW3) as the shadow witness, were secured; the phenolphthalein demonstration was conducted; the currency notes of Rs.7,500/- (fifteen notes of Rs.500/- denomination) produced by PW2 were smeared with phenolphthalein powder and an entrustment mahazar (Ex.P9) was prepared. PW2 was instructed to hand over the money only if the appellant demanded it.



(d) The trap party reached the Agricultural Extension Centre at Kallakurichi. At about 12.55 p.m., PW2 and PW3 entered the office of the appellant. PW2 said to have handed over the tainted money on being asked whether he had brought the money, and the appellant said to have counted and retained it. PW2 gave the pre-arranged signal on coming out. The trap party entered; the finger-wash solutions of both hands of the appellant turned pink in sodium carbonate solution; the solutions were sealed in two bottles; and the tainted money was recovered. The appellant was arrested at about 1.20 p.m.

(e) PW11, Deputy Superintendent of Police conducted further investigation on 03.03.2012. After obtaining the report of the Forensic Science Department (Ex.P23) and the order of sanction for prosecution dated 31.12.2012 (Ex.P1) from the Joint Director of Agriculture, Villupuram (PW1), he laid the final report for the offences under Section 7 and Section 13(2) read with Section 13(1) (d) of the Act.

3. The final report taken on file by the learned Chief Judicial Magistrate, Villupuram, on 28.10.2013 as Spl.C.No.5/2013 and was transferred to the Special Court on 03.02.2014, where it was re-numbered as Spl.C.C.No.39 of 2014. On the appellant's appearance and after compliance with Section 207 Cr.P.C., charges were framed



under Section 7 and Section 13(2) read with Section 13(1)(d) of the Criminal Procedure Code, 1973. The appellant denied the charges and claimed to be tried.

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4. In order to prove the charges, the prosecution examined PW1 to PW11, marked Exs.P1 to P27 and produced M.O.1 (trap money of Rs.7,500/-) and M.O.2 (two bottles containing the finger-wash solutions). When the incriminating circumstances were put to the appellant under Section 313 Cr.P.C. on 09.08.2019, he denied them. He examined one Gunasekaran, Assistant Salesman, as DW1. No document was marked on the side of the defence.

5. The trial Court answered the first point in favour of the prosecution by holding that PW1 perused the FIR, the statements of the witnesses, the chemical report and the connected records and that the omission of certain words in his chief-examination did not vitiate Ex.P1; that receipt and recovery of the tainted money were not in dispute; that demand was proved by PW2 and PW3; that the money was received towards the price of fertilizer was improbable; and that the presumption under Section 20 of the Act was available against the appellant, which he failed to rebut. Aggrieved, the appellant is before this Court.

6. Mr.K.Sukumaran, learned counsel for the appellant, submitted that PW1 Sanctioning Authority (PW1) did not apply his mind as required by Section 19 of the Act. Ex.P1 does not record a



*prima facie* opinion or satisfaction that the appellant committed offences under the Act. PW1 relied entirely on the report of the Director, Vigilance and Anti-Corruption, Chennai, and on a letter of the Commissioner of Agriculture, dated 05.11.2012 (referred to in Ex.P1 as Reference No.2), neither of which was produced; an adverse inference under Section 114 of the Indian Evidence Act, 1872 ought to have been drawn. Ex.P1 describes a pre-arranged signal of loosening and re-tying the dhoti, whereas PW2 and PW3 speak of scratching the head, which shows that the sanctioning authority was influenced by materials other than those placed before the Court. PW1 admitted that the Director's report did not mention any demand on 17.02.2012. The sanction was granted nearly ten months after the trap without any explanation.

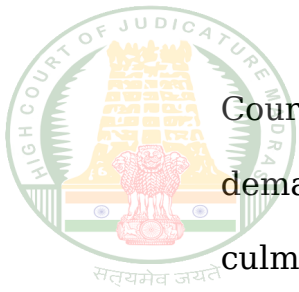
7. Adding further, the learned counsel submitted that the prosecution has failed to prove the demand, which is the *sine qua non* of the offences. Ex.P7 and the FIR do not state that any demand made on 17.02.2012 when the cheque was handed over; PW1 and PW10 admitted this omission. PW2 improved his version in the witness box. There is no corroboration by phone records, independent witness or document of the alleged telephonic demands from 19.02.2012 to 29.02.2012, and PW2 is an interested witness whose evidence requires strict scrutiny. PW2 and PW3 disowned having been examined by the police and denied the statements attributed to them. PW11 began the investigation only on 03.03.2012,



and PW10 admitted that he did not examine PW2 after the trap. The trial Court wrongly used the disowned statements to corroborate the prosecution case. The Vigilance Manual was not followed in the receipt of the complaint and the commencement of the trap.

8. The learned counsel further submitted that there are material contradictions among PW2, PW3 and PW10 regarding the time of registration of the complaint and FIR, preparation of sodium carbonate solution, powdering and counting of notes, entrustment mahazar and finger-wash test. PW2 says the accused retained the money in his hand; PW3 unsure whether it was on the table or in the pocket; PW10 says the appellant produced it from the table; DW1 says the police recovered it from the appellant. PW5, whose presence in the seizure is spoken to by himself, is not mentioned by PW2 and PW3. The money was received by the appellant under the bona fide impression that it was the price of fertilizer which PW2 had been asked to purchase, as it was the duty of the appellant to verify the end-use of the inputs supplied under the scheme. The complaint was lodged out of annoyance. The evidence of DW1 was not shaken, and the explanation, though not required to be proved beyond reasonable doubt, is probable. The learned counsel, therefore prayed that the appeal be allowed and the appellant be acquitted.

9. Per contra, Mr. Leonard Arul Joseph Selvam, learned Additional Public Prosecutor, supported the judgment of the trial



Court and submitted that PW2 has consistently spoken about the demand commencing on 17.02.2012 and continuing till 29.02.2012, culminating in a reduced demand of Rs.7,500/-, and that the reduction itself shows a real negotiation. PW3, the independent shadow witness, corroborated PW2 on the demand at the time of the trap, the handing over and the acceptance. The recovery of the tainted money, tallying of its serial numbers with the entrustment mahazar, as spoken to by PW5, and the positive phenolphthalein test, supported by the report of the Forensic Science Department (Ex.P23), are not in dispute, and the appellant himself admitted receipt of the money. The sanction order was passed by the competent authority after perusing the entire records and the omission of some words in the chief-examination of PW1 is not fatal. Once demand, acceptance and recovery were established, the presumption under Section 20 of the Act arose, which the appellant failed to rebut by a probable explanation. Hence, he prayed that the appeal be dismissed.

10. The Court heard the submissions made by the learned counsels on either side and carefully perused the materials on record.

11. PW1, Joint Director of Agriculture / Sanctioning Authority deposed that he was competent to remove the appellant from service, that the DVAC report enclosed the FIR, statements of the accused



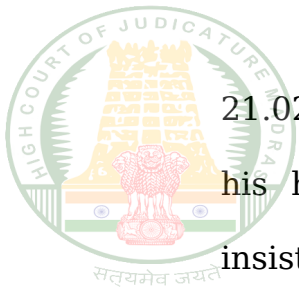
and witnesses, investigation report, mahazar and other documents

and he examined them, applied his mind and granted sanction under Sections 7 and 13(2) read with 13(1)(d), and that Ex.P1 is the order.

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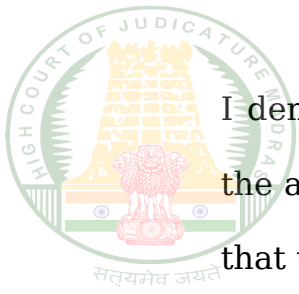
In cross-examination, he admitted that a letter dated 23.10.2012 from the Director, Vigilance and Anti-Corruption, Chennai, reached his office by post, that it was marked 'Confidential', that he personally kept it and passed the order only on 31.12.2012, that Reference No.2 in Ex.P1 is a letter of the Commissioner of Agriculture, Chennai, dated 05.11.2012, and that the sanction was granted on the records and documents received from the Directorate. He admitted that the Director's report did not mention any demand by the appellant from PW2 on 17.02.2012, when PW2 came to collect the cheque, and that, according to the materials he examined, the complainant was instructed to give a signal by loosening and re-tying his dhoti, if the appellant demanded and accepted the bribe, which was also mentioned in Ex.P1.

12.PW2 / Complainant deposed that Ex.P2 is the application filled up by the appellant on the basis of the chitta, FMB sketch and adangal (Exs.P3 to P5) produced by him; that on 17.02.2012 the appellant called him over phone to the office, handed over the cheque for Rs.17,500/-, obtained an acknowledgment (Ex.P6) and asked him for 'some money towards office expenses', to which he did not respond; that the appellant telephoned him on 19.02.2012 demanding Rs.10,000/- and repeated the demand on 20.02.2012;



21.02.2012; 23.02.2012 and 24.02.2012; that the appellant came to his house between 8.00 a.m. and 9.00 a.m. on 27.02.2012 and insisted payment; that the appellant called again on 28.02.2012 and 29.02.2012 reduced the demand to Rs.7,500/-; that he reached the Vigilance office at about 9.00 a.m. on 02.03.2012 and lodged a complaint; that he entered the appellant's office along with PW3 at about 12.55 p.m., appellant asked whether he brought money that was demanded, he took out Rs.7,500/- from his pocket and handed it over, appellant counted it with both hands and retained it in his right hand; and that he gave signal by scratching the top of his head with his right hand.

13.In cross-examination, PW2 admitted that in his complaint he did not mention that appellant asked him for something towards office expenses while handing over the cheque; that it was the appellant's duty to inspect whether the fertilizers supplied under the scheme were properly used, to certify that the technical norms followed and to submit a report; that the appellant spoken to him over phone after 17.02.2012 and came to his house on 27.02.2012; that he had withdrawn Rs.7,500/- from his account before lodging the complaint because he knew he should carry the bribe amount to the Vigilance Police; and that he orally informed Inspector Krishnamoorthy about the matter for about ten to fifteen minutes. He denied having been examined by the police, denied having stated to the police that the appellant asked "Have you brought the Rs.7,500/-

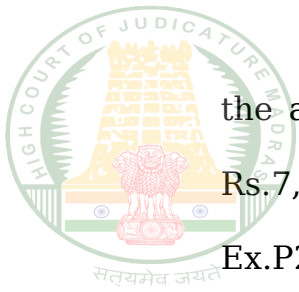


I demanded?”, and denied that he lodged a false complaint because the appellant insisted that he purchase fertilizer from the godown, or that the money was paid towards the price of fertilizer.

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14. PW3, shadow witness, spoke to demonstration, entrustment mahazar (Ex.P9), journey to Kallakurichi, his entry into appellant's office with PW2 at about 12.55 p.m., handing over and counting of money by appellant, signal by scratching head, finger-wash test, sealing of bottles, seizure of a register (Ex.P10) and preparation of sketch and observation mahazar (Exs.P12 and P13). He deposed that the money recovered from the table and that the appellant admitted before the officer that he received it. In cross-examination, he stated that another person was present in the office and later left; that, apart from signing mahazar, he was not examined by the police and gave no statement; that he denied the suggestion that PW2 voluntarily handed over Rs.7,500/- for purchasing fertilizer without any demand; and that he was initially not sure whether money remained on the table or in the pocket of the appellant until the police arrived, but clarified that it was on the table.

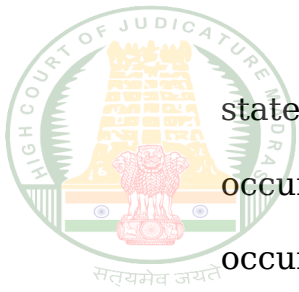
15. PW5, Block Development Officer deposed that he was taken to the Agricultural Extension Office at about 1.10 p.m., that the tainted money was produced by the appellant from his table, its serial numbers tallied with the entrustment mahazar, and that phenolphthalein test positive. In cross-examination, he deposed that



the appellant admitted during police interrogation that he received Rs.7,500/- as bribe. PW8 Forensic Science Department proved Ex.P23, reporting phenolphthalein and sodium carbonate in both the bottles; she was not cross-examined.

16. PW10, Trap Laying Officer) deposed that PW2 appeared before him at about 7.00 a.m. On 02.03.2012, submitted a written complaint, he registered FIR at 9.00 a.m., instructed PW2 to hand over the tainted money only if the appellant demanded it, that on questioning the appellant, he became nervous and admitted receipt, that the finger-wash tests turned pink, the appellant produced the money kept on his table, he arrested the appellant at 1.20 p.m. In cross-examination, he admitted that the statement of the complainant did not mention that on 17.02.2012 the appellant demanded money for the officer while handing over the cheque, that he did not examine the complainant after the trap, and that the Agricultural Extension Centre is within the Block Development Office campus.

17. PW11, Investigation Officer deposed that after taking over the investigation on 03.03.2012 he examined the witnesses, recorded their statements, obtained scientific report and sanction and laid the final report. In cross-examination, he deposed that he examined two witnesses in his office after they appeared, as instructed by the Trap Laying Officer, that there was a separate godown for fertilizers with its own Manager and Watchman, that the Watchman Gunasekaran's



statement was not recorded, as he had no knowledge of the occurrence, and that the Manager was on leave on the date of occurrence. PW4, PW6, PW7 and PW9 deposed on the surrounding circumstances and add nothing on the question of demand.

18.DW1, the Assistant Salesman in the fertilizer godown, deposed in support of the defence that PW2 come to the office on the date of trap in connection with purchase of fertilizer, that the money paid by PW2 to the appellant, and that the police thereafter recovered the amount from the appellant.

19. Upon the above pleadings, evidence and submissions, the following points arise for consideration in this appeal:-

(1) Whether the sanction for prosecution (Ex.P1) was validly granted after due application of mind by the competent authority?

(2) Whether the prosecution has proved, beyond reasonable doubt, the demand of illegal gratification by the appellant from PW2, which is the foundational fact for the offences charged?

(3) Whether the acceptance and recovery of the tainted money are proved to be as illegal gratification, and whether the presumption under Section 20 of the Act could be drawn against the appellant?

(4) Whether the conviction and sentence recorded by the trial Court are liable to be set aside?



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20. The law on the subject is well settled. Proof of demand of illegal gratification is the gravamen of the offence under Section 7 of the Act, and it is equally indispensable for an offence under Section 13(1)(d), and mere possession or recovery of currency notes from a public servant, without proof of a demand, is not sufficient to convict. This has been laid down **Mukhtiar Singh v. State of Punjab (2017) 8 SCC 136**. The Constitution Bench in **Neeraj Dutta v. State (Government of NCT of Delhi) (2023) 4 SCC 731** has reiterated that proof of demand and acceptance is a must, that it may be established by direct evidence or, in the absence of the complainant's evidence, by circumstantial evidence, and that it is only after the foundational facts of demand and acceptance are proved that the statutory presumption under Section 20 can be drawn.

21. The presumption under Section 20 is thus not a substitute for proof of demand. It arises only when the prosecution has first proved that the accused accepted or obtained gratification other than legal remuneration, and in the context of a trap case that means acceptance with knowledge that it is a gratification and in pursuance of a demand. Even when it arises, the accused is not required to prove his explanation beyond reasonable doubt, and it is enough if he establishes a probable defence on the standard of preponderance of probabilities. Equally, the prosecution has to stand on its own legs;



the failure or weakness of the defence cannot supply the gaps in the case of the prosecution.

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22. The trial Court disposed of the question of sanction in a single paragraph. It noted that the sanctioning authority “was not able to answer all those questions” put to him, that in his evidence he did not state that he accorded sanction after being satisfied, and yet held that since Ex.P1 recites perusal of FIR, statements and chemical report, omission of certain words in chief-examination not fatal. The trial Court did not at all examine the admissions elicited in the cross-examination of PW1, which, in the opinion of this Court, go to the root of the matter.

23. The Hon'ble Supreme Court in ***State of Karnataka v. Ameerjan, (2007) 11 SCC 273***, held that the grant of sanction under Section 19 of the Prevention of Corruption Act, 1988, is not an empty formality but an important safeguard against the prosecution of public servants without due consideration. The validity of the sanction depends upon the sanctioning authority applying its mind to the relevant material placed before it and being satisfied that a prima facie case for prosecution exists. The prosecution must establish that the sanction accorded after due application of mind to the relevant materials. Tested on these principles, the sanction in this case suffers from the following infirmities:-

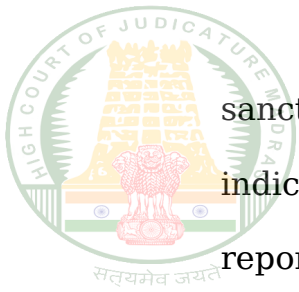


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(i) PW1 candidly stated that sanction was granted on the records and documents received from the Directorate of Vigilance and Anti-Corruption and that DVAC letter dated 23.10.2012 marked as 'Confidential' and kept by him. Ex.P1 also refers, as Reference No.2, to a letter of the Commissioner of Agriculture, dated 05.11.2012. Neither the DVAC report nor the letter of the Commissioner produced. The prosecution, which alone could produce them, withheld the very communications on which sanction rests, and thereby denied the accused an opportunity to test what was placed before PW1 and how far he was guided by it. An adverse inference under Section 114(g) of the Indian Evidence Act is liable to be drawn.

(ii) PW1 admitted that the Director's report did not mention any demand on 17.02.2012. But the charge and the case of the prosecution proceed on the footing that the demand began on 17.02.2012. The material before the sanctioning authority was thus not in accord with the prosecution case that was later put forward.

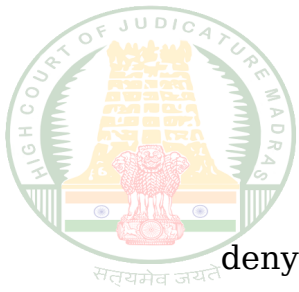
(iii) PW1 deposed that according to the materials he examined, the complainant instructed to give a signal by loosening and re-tying his dhoti, and that this finds a place in Ex.P1. But no prosecution witness speaks to such a signal. PW2 and PW3 say that signal was scratching of the head, and Trap Laying Officer, as recorded in the evidence, spoke of the same instruction. A fact recited in the order of



sanction, which is not borne out by the material of this case indicates that the recital was borrowed from some other file or report, and not drawn from the records of Crime No.1/2012 that PW1 claims to have independently examined. The explanation offered, that he acted on the Director's report, only reinforces the impression that he adopted what was sent to him.

(iv) The sanction accorded on 31.12.2012, nearly ten months after the trap and PW1 admitted receipt of the DVAC letter, dated 23.10.2012 by post within four or five days. Though delay by itself may not vitiate a sanction, in the absence of any explanation, coupled with the reference to the Commissioner's letter of 05.11.2012, it is not possible to rule out that the order was passed on prompting of superior authority rather than on the sanctioning authority's own satisfaction.

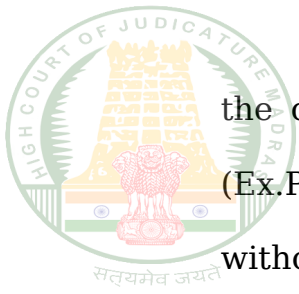
24. The reasoning of the trial Court that omission of a few words in the chief-examination is not fatal misses the real point. The question is not whether PW1 used the expression 'satisfied' but whether the evidence, read as a whole with the order, shows that the authority independently applied his mind to the relevant material. On the record, the prosecution failed to establish that. The sanction under Ex.P1 cannot be held to be a valid sanction.



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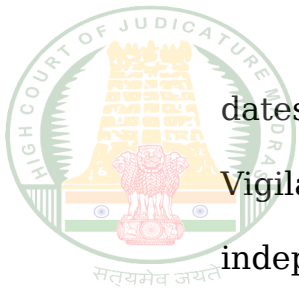
25. It could be seen from the records that accused does not deny that PW2 handed over Rs.7,500/- to him on 02.03.2012. His case is that the money paid towards the price of fertilizer, which he, as the Assistant Agricultural Officer, asked PW2 to purchase. The entire case therefore turns upon whether the prosecution has proved beyond reasonable doubt that money was demanded by the appellant as gratification for the official act of processing and recommending the subsidy. The prosecution relies on a series of alleged demands: (a) on 17.02.2012 while handing over the cheque; (b) over phone from 19.02.2012 to 25.02.2012 and on 28.02.2012 and 29.02.2012; (c) at the house of PW2 on 27.02.2012; and (d) at the time of the trap on 02.03.2012. Each of them is examined below.

26. The alleged demand is on 17.02.2012. In his chief-examination, PW2 deposed that, when cheque was handed over, the appellant asked for 'some money towards office expenses'. But the complaint (Ex.P7), on which the criminal law was set in motion, does not mention this, as PW2 himself admitted in cross-examination. PW10, the officer who received the complaint, admitted the same. PW1 also admitted that the DVAC report did not mention such a demand. This is not a trivial omission, because the prosecution has pleaded this very event as the inception of the demand and it is the one occasion when the appellant, having just handed over the cheque, could be said to have demanded the money as a reward for



the official act. The cheque was handed over, an acknowledgment (Ex.P6) given, and PW2, according to his own version, walked away without a word. A person who asked for a bribe at that very moment would ordinarily have mentioned it at the first opportunity. The trial Court dismissed the omission by observing that a complaint is not an encyclopedia and that a complainant would mention only the most recent grievance. That is a general proposition, which cannot answer the particular difficulty here. The complaint did speak of the earlier demands from 19.02.2012 onwards, which according to PW2 in continuation of the first one, and it is then inexplicable that the first demand alone was left out. It is also noteworthy that in paragraph 22 of the judgment, the trial Court itself recorded the same objection in strong terms, that the evidence of PW2 on this point does not stand scrutiny and that it is an improvement, and then rejected it without any additional reasoning. The reasoning of the trial Court on this aspect is internally inconsistent. This Court finds that the demand on 17.02.2012 is not proved, and that PW2 has improved upon his version in the witness box.

27. The alleged telephonic demands and the visit on 27.02.2012. The demands between 19.02.2012 and 29.02.2012 rest solely on the oral testimony of PW2, an interested witness. PW2 has not stated the number from which or to which the calls were made, and no call detail record or any other document collected by the investigating agency to show that appellant spoke to PW2 on the



dates alleged, even though such records are easily available and t

Vigilance Department was in a position to obtain them. No independent witness examined to speak to the visit on 27.02.2012

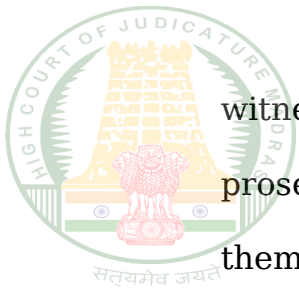
between 8.00 a.m. and 9.00 a.m. at the house of PW2. The appellant's defence is that he did call and visit PW2 in connection with the fertilizer, which PW2 himself in cross-examination admitted, namely that the appellant spoke to him over phone after 17.02.2012 and came to his house on 27.02.2012, and that it was the duty of the appellant to inspect the use of fertilizers. The fact of calls and visit is thus consistent with both the case of the prosecution and the case of the defence. What was said in them remains the word of PW2 alone. The reduction of demand from Rs.10,000/- to Rs.7,500/-, upon which the learned Additional Public Prosecutor placed emphasis, is part of the same oral version, and it cannot, by itself, lend corroboration to it.

28.The alleged demand at the time of trap. PW2 says that appellant asked him whether he brought the money that was demanded. PW3, who sent specifically to overhear the conversation, says that appellant asked whether the complainant had brought the money. The trial Court held that the difference between the two versions is immaterial. Even if the difference is ignored, the words attributed to the appellant, taken at their highest, are 'have you brought the money'. In the context of the case, in which it is common ground that the appellant had been telling PW2 to purchase fertilizer, those words are equally consistent with a reference to the price of



fertilizer as with a reference to a bribe. By themselves, they do not prove a prior demand. They could do so only if the earlier demand were independently established, and the evidence on that is, as discussed, unsatisfactory. The sentence "Have you brought Rs.7,500/- I demanded?", which PW2 attributed to the appellant in the witness box, is the very sentence which PW2 denied having stated to the police, and the trial Court wrongly attempted to prove through an unproved Section 161 statement. The version in the witness box is thus an addition.

29. Both PW2 and PW3 stated in cross-examination that they were not examined by the police, and PW10 admitted that he did not examine PW2 after the trap. PW2 also denied having made the statement attributed to him. PW11 claims that he examined them in his office on 03.03.2012. The trial Court, in paragraph 28, recorded that the two witnesses "were being examined by the Investigation Officer" because their chief-examination spoke of such an examination, and that the statement attributed to PW2 under Section 161 Cr.P.C. regarding the demands from 19.02.2012 to 27.02.2012, "which is not found in the complaint", corroborated his deposition. This approach is contrary to law. Under Section 162(1) Cr.P.C., a statement recorded by the police during investigation cannot be used for any purpose other than contradicting the witness in the manner provided by the proviso, read with Section 145 of the Indian Evidence Act. It cannot be used as substantive evidence or to corroborate the



witness. Further, the witnesses had disowned the statements, the prosecution neither declared them hostile nor put the statements to them for contradiction, and in the absence of any proof by PW11 in the manner known to law the contents were not before the Court.

30. The evidence regarding the examination of witnesses is also contradictory. PW11 claims to have examined them on 03.03.2012, whereas PW2 and PW3 deny it, and PW10 has not examined PW2 after the trap. The prosecution has thus not been able to show how, and when, the statements of its two principal witnesses were recorded. This casts a doubt in the manner in which the investigation conducted and on the reliability of the records.

31. The prosecution evidence on the time at which the complaint given is irreconcilable. PW10 says that PW2 appeared before him at 7.00 a.m. and gave a written complaint. PW2 deposed he reached the Vigilance office at about 9.00 a.m. and had a conversation of about ten to fifteen minutes with the Inspector, and PW10 registered the FIR at 9.00 a.m. PW3 deposed he reached the Vigilance office at around 10.00 a.m. Each of these may be a minor discrepancy, if viewed in isolation, but taken together with the other circumstances, namely that the complaint is silent on the first demand, that PW2 withdrew Rs.7,500/- from his own account in advance and carried it with him to the Vigilance office, that the written complaint said to have been given two hours before PW2 says



he reached the office, and that the DVAC report to the sanctioning authority stated to have been dated 02.03.2012, a day before PW11 took up the investigation, they leave a lingering doubt about how and when the case was actually set in motion. The prosecution has not clarified this by producing the DVAC report.

32. The defence that money was paid towards the purchase of fertilizer was found improbable by the trial Court because the appellant neither the salesman nor in possession of receipt book, and because he had not specified the quantity or price of the fertilizer. In the opinion of this Court, the approach of the trial Court proceeds on suppositions. PW2 himself admitted that it was the duty of the appellant to verify whether the fertilizers supplied under the scheme were properly used, and that the appellant did insist that he purchase fertilizer; PW11 admitted that there was a fertilizer godown with its own Manager and Watchman, and PW2 further admitted that the appellant was seated opposite the Manager's seat at the time. On the date of trap, the Manager (PW7) was on leave, which is admitted. The conclusion that no official would receive money without fixing the price and without receipt is a general assumption and not a finding supported by evidence; at best it makes the defence doubtful, but the question here is whether the prosecution case is established. The defence need only create a reasonable doubt on the prosecution case or be probable; it is not required to prove its case.

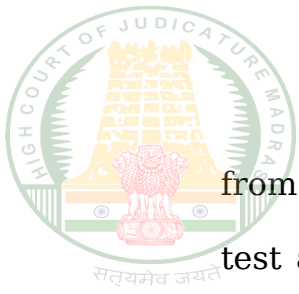


33. The trial Court rejected DW1 evidence because the suggestion put to PW2 was that PW2 called the appellant through DW1, while DW1 deposed that PW2 called the appellant over phone.

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Such a difference between a suggestion in cross-examination and the evidence of a defence witness is not a ground to discard the witness altogether; suggestions are not evidence, and in any case, the rejection of the defence evidence cannot fill up the gap in the prosecution evidence. The trial Court also found fault with the defence for not confronting PW7 with the alleged practice of keeping fertilizer outside the depot, but the burden never shifted to the appellant until the prosecution proved the demand. The further reasoning of the trial Court, in paragraph 29, that because the subsidy was meant to reimburse past expenditure it was impossible to direct the beneficiary to buy fertilizer out of it, is not based on any evidence regarding the terms of the scheme and was not put to the appellant, and cannot be sustained.

34. Having regard to all the above, the evidence of PW2, who is an interested witness, on demand is unreliable in respect of the first demand, is uncorroborated in respect of the subsequent demands, and contains improvements. The evidence of PW3 is confined to what he saw at the time of trap, which is equivocal. The prosecution has therefore failed to prove demand of illegal gratification beyond reasonable doubt. The trial Court failed to appreciate the evidence in the correct perspective, and the finding that demand was proved is perverse.



35. The acceptance of the money by the appellant, recovered from the Agricultural Extension Centre and positive phenolphthalein test are not seriously in dispute, and indeed the appellant admitted that he received money as price of fertilizer. But in law mere proof of receipt and recovery, without proof of demand, does not constitute the offence. Acceptance of gratification as a motive or reward is a conscious act which has to be considered along with demand, and without the latter, the receipt of money by itself cannot be considered as illegal gratification. The recovery of the money in this case is a fact consistent with both the version of the prosecution and the defence.

36. The manner of trap has also not been proved without contradictions. PW2 deposed that the appellant retained the counted notes in his right hand; PW3 was initially unsure whether the money was on the table or in the pocket of the appellant until the police arrived and only later said it was on the table; PW10 and PW5 deposed that the appellant produced the money from the table when asked, and DW1 deposed that the police recovered it from the appellant. The witnesses also differ as to the preparation of the sodium carbonate solution and the procedure of powdering and counting of the notes. PW5 said to have witnessed the proceedings from about 1.10 p.m., but neither PW2 nor PW3 speaks of his presence, and PW10 in fact deposed that the official, who was to be present, the Assistant Director, away on tour and that PW5 called in to sign the mahazars and the arrest memo. Though these are not



individually decisive, the cumulative effect is to reduce the weight be given to the trap proceedings in a case where demand is not independently established.

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37.The evidence of PW3 and PW10 that the appellant admitted before the Trap Laying Officer that he received the money, and that of PW5 that the appellant admitted during police interrogation that he received it as a bribe, is wholly inadmissible in evidence by virtue of Sections 25 and 26 of the Indian Evidence Act. The recovery of register (Ex.P10) is of no consequence to the question of demand.

38.Since the foundational fact of demand is not proved, the presumption under Section 20 of the Act cannot be raised against the appellant, and the burden of rebuttal did not arise. The trial Court committed an error in invoking Section 20 on the strength of receipt and recovery and in faulting the appellant for failing to establish his explanation. Even otherwise, the explanation of the appellant, that the sum was received towards the price of the fertilizer which PW2 was asked to purchase, is a possible one in the facts of this case and sufficient to raise a reasonable doubt in the prosecution case. The charge under Section 13(2) read with Section 13(1)(d) of the Act, which too rests on the proof of demand and obtaining of a pecuniary advantage by corrupt or illegal means or by abuse of position, also fails for the same reasons.

39. The prosecution has failed to prove a valid sanction for prosecution, demand of illegal gratification, and consequently



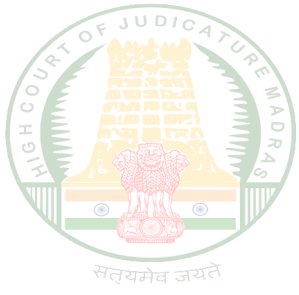
acceptance of the money as gratification, beyond reasonable doubt

The trial Court recorded the conviction by relying on an unproved Section 161 statement, by disregarding omissions in the complaint and the admissions of PW1 and PW10, by drawing the presumption under Section 20 of the Act in the absence of proof of demand, and by rejecting the defence evidence on grounds which did not relate to the case of the prosecution. The findings of the trial Court are not sustainable and the appellant is entitled to the benefit of doubt. As the prosecution has failed on the merits, no question of remand arises, and the appellant has to be acquitted.

40. In the result, this Criminal Appeal is allowed, and the Judgment of conviction and sentence, dated 30.09.2019, passed by the learned Special Judge, Special Court for Prevention of Corruption Act Cases, Villupuram, in Spl.C.C.No.39 of 2014, is set aside. The appellant/accused is acquitted of the charges under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The fine amount, if any, paid by the appellant shall be refunded to him. The bail bond, if any, executed by the appellant shall stand cancelled.

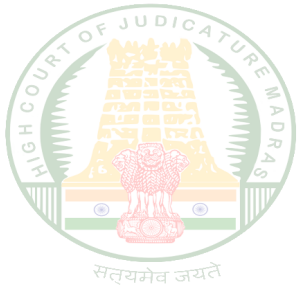
**16.10.2026**

Index : Yes / No  
Internet : Yes / No  
MPK



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1. The Special Judge for Prevention of Corruption Act Cases,  
Villupuram.
2. The Inspector of Police,  
Vigilance & Anti-Corruption,  
Villupuram.
3. The Public Prosecutor,  
High Court, Madras.



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Order QR

**M.NIRMAL KUMAR, J.**

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Pre-Deliver Judgment made in  
**CRL.A.No.702 of 2019**

16.10.2026