

Ganesan and Another Vs. State by Deputy Superintendent of Police, Vigilance and Anti-Corruption

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Court : Chennai

Decided On : Nov-03-2016

Judge : R. Subbiah

Appeal No. : Criminal Appeal Nos. 783 & 784 of 2015

Appellant : Ganesan and Another

Respondent : State by Deputy Superintendent of Police, Vigilance and Anti-Corruption

Judgement :

(Prayer: Crl.A. No. 783 of 2015:- Appeal filed under Section 374 read with Section 386 of Criminal Procedure Code against the Judgment dated 30.11.2015 passed in C.C. No. 13 of 2002 on the file of the Special Judge, Special Court for Cases instituted under the Prevention of Corruption Act, 1988.

Crl.A. No. 784 of 2015:- Appeal filed under Section 374 of Criminal Procedure Code against the Judgment dated 30.11.2015 passed in C.C. No. 13 of 2002 on the file of the Special Judge, Special Court for Cases instituted under the Prevention of Corruption Act, 1988.)

1. These Criminal Appeals are filed against the common judgment dated 30.11.2015 passed by the learned Special Judge, Special Court for CBI Cases

instituted under the Prevention of Corruption Act, 1988. There are two accused in the Criminal Case. The appellant in Criminal Appeal No. 783 of 2015 is the second accused and the appellant in Criminal Appeal No. 784 of 2015 is the first accused. After trial, both the accused were convicted for the offence punishable under Section 7 and sentenced to undergo one year rigorous imprisonment each and shall pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment. The appellants were also convicted for the offence punishable under Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act and sentenced to undergo two years rigorous imprisonment and a fine of Rs.1,000/- in default to undergo three months simple imprisonment and also a fine of Rs.1,000. However, the sentences were ordered to run concurrently.

2. For the sake of convenience, the appellants are referred to as 'accused' as they were arrayed before the trial court.

3. The gist of the case is as follows:-

(i) The first accused was serving as Inspector of Factories, Circle-II in the office of the Inspector of Factories at Bharat Kumar Bhavan, No.617, Annasalai, Chennai from 03.06.2006 to 09.07.2010. The second accused was working as Deputy Chief Inspector of Factories in the same office. Both the accused are public servants within the meaning of Section 2 (c) of Prevention of Corruption Act.

(ii) According to the prosecution, during the course of such employment, it was alleged that the first accused had conducted an inspection on 16.04.2010 at Hanumanth and Company, brick Chamber owned by one Ramarao (PW8). After such inspection, the first accused issued a show cause notice dated 07.05.2010 indicating certain irregularities found during his inspection and called upon the company to submit explanation and/or reply within a period of 7 days. On receipt of the show cause notice, Tr. Markandayan, the defacto complainant, who is working as Manager in the said Company owned by PW8, has submitted his reply 21.06.2010. On receipt of such reply, the first accused called upon the defacto complainant - Tr. Markandeyan over phone on 06.07.2010 and directed him to meet him at his office on the next day.

(iii) Accordingly, the defacto complainant met the first accused at his office at Annasalai, Chennai on 08.07.2010 at 17.30 hours. At that time, the first accused is alleged to have demanded a sum of Rs.20,000/- as an illegal gratification for himself and also for his superior, the second accused - Deputy Chief Inspector of Factories for not launching prosecution against the company owned by PW8. In spite of the fact that the defacto complainant informed the first accused that such a demand is excessive, the first accused reiterated his demand and took the defacto complainant to the chambers of the second accused, who is his immediate superior. The defacto complainant also pleaded before the second accused to reduce the bribe amount demanded by first accused by stating that such an amount demanded is huge. The second accused therefore reduced the demand amount from Rs.20,000/- to Rs.15,000/-. The second accused also instructed the defacto complainant to meet the first accused on 09.07.2010 at about 20.30 hours near "Kanchi Bakery" at 18th Main Road, Anna Nagar, Chennai to handover the amount of Rs.15,000/-. The defacto complainant informed his owner - Ramarao (PW8) about the alleged demand made by the accused towards illegal gratification for not launching prosecution against the company. As they were not willing to pay the bribe amount, as per the instruction of PW8, the defacto complainant lodged a complaint dated 09.07.2010 to PW7, Deputy Superintendent of Police, Vigilance and Anti-Corruption.

(iv) On receipt of the complaint, PW7 registered a case in Crime No. 13 of 2010 for the alleged offences punishable under Sections 7, 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988. Thereafter, PW7 arranged two official witnesses Tr. J. Bagaval Krishnadoss (PW2) and K. Rajendran (PW3). PW7 also introduced the two official witnesses to the defacto complainant. Thereafter, the bribe amount of Rs.15,000/- in the denomination of Rs.1,000 X 15 notes was made ready bearing Serial No. (i) 0 AN 440452 (ii) 0 AV 581605 (iii) 0 IBF 212760 (iv) 2 BD 239663 (v) 3 CU 101924 (vi) 3 AG 598514 (vii) 3 AM 125033 (viii) 5 AC 372842 (ix) 6 AG 992728 (10) 6 AT 992155 (11) 6 CE 191225 (xii) BQ 814400 (xiii) 8 AQ 866141 (xiv) 8 CD 723505 and (xv) 9 CE 689228 and they were handed over by the defacto complainant to PW7. PW7 prepared sodium carbonate solution in two glasses and the official witnesses were asked to count the currency notes produced by the defacto complainant. A chemical test with normal hands

was done and thereafter phenolphthalein powder was smeared on the currency notes. The official witness K. Rajendran, PW3 was again asked to count the same and when his hands were dipped into the sodium carbonate solution, it turned into red colour dusted with the phenolphthalein powder and it was demonstrated to the official witness and the defacto complainant. PW7 also explained the importance of the test to the defacto complainant. PW7 also informed the defacto complainant to give the money only on demand by the first accused. PW7 also informed the defacto complainant to give them signal once the first accused received the bribe amount by removing and wearing his spectacles. PW7 asked the official witness Bhagavandoss, PW2 to accompany the defacto complainant and to observe the conversation and happenings in between the defacto complainant and the first accused. Thereafter, an entrustment mahazar was prepared by PW7 - Trap Laying Officer under Ex.P4 in the presence of the official witnesses and the defacto complainant at 6.45 pm.

(v) As per the directions of PW7, the defacto complainant and the official witness went to the occurrence spot namely Kanchi Bakery on 18th Main Road, Anna Salai, Chennai. The trap laying officer and other official witnesses positioned themselves at a distance and monitored as to what is happening. When the defacto complainant and the official witness were waiting at the platform, at 8.30 p.m. the first accused came there and met the defacto complainant. The first accused demanded the defacto complainant to pay the bribe amount. Accordingly, the defacto complainant paid the amount (MO.5 series) which was received by him in his right hand and was kept in his right pant pocket. On receipt of the amount, the first accused informed the defacto complainant that he would handover the amount to the second accused and informed the defacto complainant to appraise his employer that they would not launch prosecution against their company. PW2 also witnessed the occurrence. As the first accused received the amount, the defacto complainant gave signal by removing and wearing his spectacles. On receipt of such signal, PW7 along with another official witness came to the occurrence spot and by then the first accused left the occurrence spot by walk. PW7 went near the first accused and informed him about the manner in which the trap was laid. The defacto complainant also identified the first accused as the one who received the tainted amount. PW7 also introduced the two official witnesses

whom he had arranged during the course of trap. On hearing the same, the first accused became panic-ridden and restless. The first accused informed PW7 that he is suffering from diabetics and has to immediately attend to natural call. PW7 permitted the first accused to attend to his natural call. Thereafter, the first accused was asked to dip his hands in the solution which he has got ready and it proved positive. Immediately, PW7 prepared a seizure mahazar and recovered the tainted amount from the first accused. PW7 therefore arrested the first accused in the presence of defacto complainant and the two other official witnesses namely PWs 2 and 3. PW7 thereafter proceeded to the residence of the second accused at No.B-3, Labour Officers Quarters, B-Block, 6th Avenue, Anna Nagar, Chennai and reached the residence of the second accused at 8.50 p.m.

(vi) Upon reaching the residence of the second accused, the first accused identified the second accused to PW7. The first accused also informed PW7 that only as per the instructions of the second accused he received the amount from the defacto complainant. PW7, after completing the formalities, arrested the second accused. PW7 also conducted a search of the house of the second accused which led to seizure of a sum of Rs.1,43,000/-. The second accused could not satisfactorily account for the amount of Rs.1,43,000/- seized from his residence. The amount was recovered by PW7 and a seizure list and seizure report were prepared under Ex.P2 and Ex.P6 in the presence of official witnesses. Thereafter, the right side pant pocket of the first accused was subjected to phenolphthalein test (MO2) and the same also proved positive. To that effect, PW7 prepared a seizure mahazar under Ex.P5 in the presence of PWs 2 and 3. Thereafter, the house of the second accused at No.B-3, Labour Officers Quarters, Anna Nagar, Chennai - 600 040 was also searched. PW7 prepared a search list under Ex.P3 and Inventory Mahazar under Ex.P7. During the course of such search, the file relating to the company where the defacto complainant was employed was also recovered under a recovery mahazar Ex.P9 and P11. Thereafter, PW7 sent the solution bottles collected during the trap to the chemical analysts.

(viii) The investigation was thereafter taken over by PW9, the Deputy Superintendent of Police. PW9 examined the witnesses, recorded their statement.

PW9 also obtained a sanction order from PW1. After completing all the formalities, PW9 has filed the Charge sheet against the accused 1 and 2 for the offences punishable under Sections 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act.

4. In order to substantiate the case of the prosecution, 10 witnesses were examined as PWs 1 to 10 and Exs. P1 to P18 were marked. Apart from the documentary evidence, the prosecution also marked MO1 to MO5 to fortify their case. On behalf of the accused, no one was examined and neither have they marked any documentary evidence. The trial Court, on consideration of the oral and documentary evidence made available, has passed the common judgment dated 30.11.2015 convicting both the accused and sentenced them for various duration morefully mentioned in the preceding paragraph of this judgment.

5. Mr. Ar.L. Sundaresan, learned Senior counsel appearing for the appellant/A-1 would vehemently contend that the sanction order relied on by the prosecution under Ex.P1 dated 27.03.2012 is defective and it vitiates the entire case of the prosecution. To fortify this submission, the learned senior counsel for the appellant/A-1 brought to the notice of this Court that the prosecution has produced Ex.P1, sanction order dated 27.03.2012. In the cross-examination of PW1, who is the Principal Secretary to the Government, Labour and Employment Department, he has stated that even one year prior to the issuance of Ex.P1 dated 27.03.2012, a sanction order was issued in G.O. (2D) No.15 dated 26.04.2011 and therefore, according to the learned Senior counsel for the appellant/A-1, Ex.P1 is nothing but a revised sanction order or a second sanction order, which is legally impermissible. Even PW1 did not produce the original sanction order dated 26.04.2011 before the Court for consideration. According to the learned senior counsel for the appellant/A-1, even as per the evidence of PW1, subsequently, a letter of requisition was given and considering the same, the revised sanction order was granted under Ex.P1 dated 27.03.2012. Therefore, only on the basis of the revised sanction order dated 27.03.2012, the prosecution has launched the case against the appellant/A-1 and therefore, the entire case of the prosecution is vitiated. In fact, PW1 in his cross-examination admitted that Ex.P1 is the outcome of institutional decision taken by him and it is not an individual decision, which

would only go to show that Ex.P1, sanction order, has not been passed by following the due procedure and it vitiates the entire case projected by the prosecution.

6. The learned Senior counsel for the appellant/A-1 would further invite the attention of this Court to the evidence of PW9, investigation officer who has admitted that he has not recorded the statement of Mr. Prabhakar Rao, I.A.S., who was the successor of PW1 and who is said to have issued the original sanction order dated 26.04.2011. There was no investigation conducted during the 11 months period between the original sanction order dated 26.04.2011 and the revised sanction order dated 27.03.2012, which was marked as Ex.P1. Thus, it is clear that without any additional material evidence, the revised sanction order has been mechanically issued by PW1

7. In this regard, the learned Senior counsel for the petitioner brought to the notice of this Court the decision of the Honourable Supreme Court in (State of Himachal Pradesh vs. Nishant Sareen) reported in (2011) 1 MLJ (Cri) 806 (SC) to contend that when once the sanctioning authority refused to accord sanction, it is not permissible for the sanctioning authority to either review or re-consider the matter on the same materials again. In other words, without any additional materials, the revised sanction order passed by the sanctioning authority would vitiate the case of the prosecution. By placing reliance on the above order, the learned Senior counsel for the appellant/A-1 would pray for setting aside the judgment of conviction recorded by the trial Court.

8. The learned Senior counsel appearing for the appellant/A-1 would further contend that after the alleged trap, at 08.30 p.m. the first accused was arrested and the second accused was arrested at 8.50 pm. After such arrest, the investigation officer did not record the statement of the accused separately. In fact, it is admitted in the cross-examination of PW9, successor of PW7, that PW7 has not recorded the statement of the accused, which is in violation of Clause 47 of the Vigilance Manual. This is also admitted by PW9 in his cross-examination. Had a separate statement obtained from the accused immediately after the alleged occurrence, at the spot, the existence of the truth would have surfaced or the real

happenings would have come to light. Therefore, the failure to record the statement of the accused soon after the occurrence, which is a mandatory procedure to be followed, vitiates the entire case of the prosecution. To buttress this part of the submission, the learned Senior counsel for the appellant/A-1 would rely on the Judgment dated 15.06.2012 passed by this Court in Criminal Appeal (MD) No. 246 of 2008 wherein it was held as follows:-

"13. It is the bounden duty of the Trap Laying Officer to examine the accused immediately after the arrest at the place of trap and failure in following the rule would vitiate the procedures. PW7, the Trap Laying Officer did not examine the appellant after the arrest as to his explanation for the possession of money. The tainted money was not recovered from the possession of the appellant, but from PW5. In this context, it is advantageous to extract the provision available under Rule 47 of DVAC Manual which reads as follows:-

"47. Questioning of Accused Officer (i) Questioning of the accused officer and recovery of the bribe money should be after the phenolphthalein test. If the test proves positive, arrest of the accused officer may be made and recovery of notes on the basis of accused officer's statement, if any. In this event, the provisions of Section 27 of the Indian Evidence Act, would be available to the prosecution

(2) Immediately after recovery and seizure of the bribe money or article, the Accused Officer must be further interrogated and his detailed statement separately recorded in the case diary under Section 162 of the Code of Criminal Procedure, 1973. If there is any need to examine him still further in the light of any fresh evidence, that might come up later during the investigation of the case, the same can be done at a later stage and further statement of the Accused Officer recorded (DVAC Circular Memo No.33979/VAC-4/76, dated 10th December 1976)

The failure on the part of the Trap Laying Officer to record statement from the accused immediately after the arrest would vitiate the entire proceedings."

9. By relying on the above decision of this Court, the learned Senior counsel for the appellant/A-1 would submit that PW7 has not recorded the statement of the

first accused at the occurrence spot and this is contrary to Rule 47 of the DVAC Manual. The trial court failed to consider this aspect and therefore, he prayed for setting aside the judgment of the trial Court.

10. As regards the merits of the case projected by the prosecution, the learned Senior counsel for the appellant/A1 would submit that the first accused allegedly demanded illegal gratification on 08.07.2010 in his office from the defacto complainant who is working as a Manager of the company owned by PW8. The defacto complainant died during the pendency of trial and there is no other witness made available who has direct knowledge about such demand alleged to have been made by the appellant/A-1. Further, Ex.P14, complaint given by defacto complainant would show that the defacto complainant has informed the first accused that he would discuss the matter with his owner and come back on the next day. Even in the complaint, it has not been stated that either the first accused or the second accused demanded the bribe amount and asked him to come to the occurrence spot on the next day i.e., 09.07.2010. There is no acceptance on the part of the defacto complainant to come to the occurrence spot on the next day to pay the bribe amount to the first accused. Therefore, according to the learned senior counsel for the appellant/A-1, the demand said to have been made by the appellant/A-1 to the defacto complainant has not been proved by the prosecution in a manner known to law and such demand said to have been made by the first accused is highly doubtful. Though the owner of the company namely PW8 was examined, his evidence will not lend support to the case of the prosecution since his deposition is purely hear-say and he has no direct knowledge about the demand said to have been made by the first accused. Further the deposition of PW8 has not been corroborated by any other witness.

11. The next submission of the learned senior counsel for the appellant/ A-1 is that mere acceptance of the amount would not attract the provisions contained under Section 7 or 13 (1) (d) of the Prevention of Corruption of Act. Such acceptance must be preceded by a demand and such demand must be proved during the course of trial. Inviting the attention of this Court to the evidence of PW7, the Trap Laying Officer, the learned Senior counsel for the appellant/A-1 would contend that PW7 or PW9 did not depose that in the complaint given by the defacto

complainant, there is a statement to the effect that the defacto complainant agreed to pay the bribe amount the next day. Further, in the complaint, the defacto complainant did not say that he has received the sum of Rs.15,000/- from his employer - PW8 for the purpose of laying the trap. On the other hand, PW8 would depose that he does not know how many Rs.1,000/- notes or Rs.500/- notes he has entrusted to the defacto complainant which were made available to be used for laying the trap.

12. The learned Senior counsel for the Appellant/A-1 also invited the attention of this Court to Ex. P9, file maintained by the accused with reference to the company owned by PW8, wherein, it is clearly stated that the explanation offered by the defacto complainant to the show cause notice sent by the first accused has been accepted and the first accused was satisfied with the compliances made. In Ex. P9, clear reference has been made to the fact that the first accused has recommended to the superior authorities on 08.07.2010 itself to drop further action against the company owned by PW8. The learned Senior counsel for the petitioner/A-1 also submits that Ex.P9 - file, was seized by PW9 during the course of investigation. During the course of examination of PW9, he has stated that by letter dated 08.07.2010, the first accused has recommended for dropping all further proceedings against the company owned by PW8. Thus, PW9 has admitted the existence of such a recommendatoin made by the first accused in Ex.P9 file. Further, PWs 4 and 5, who are working in the office of Inspector of Factories, in their evidence, also admitted that Ex.P9 contains note sheet to show that the first accused has passed an order dropping all further proceedings against the company owned by PW8. However, the note sheet containing the events relating to the proceedings with reference to the company owned by PW8 were missing. Had it been produced by PW9 before the trial Court, it would disprove the entire case projected by the prosecution against the appellant/A-1. Therefore, according to the learned Senior counsel for the appellant/A-1, the so called demand or acceptance of the bribe amount by the first accused has not been proved by the prosecution in a manner known to law. This vital part of the evidence in Ex. P9 file was grossly ignored by the trial Court while convicting and sentencing the first accused.

13. The next submission of the learned Senior counsel for the appellant/A-1 is that there are several contradictions in the evidence made available by the prosecution relating to the place of trap. According to the prosecution, the trap was said to have been laid opposite Kanchi Bakery, near 18th Main Road, Anna Nagar at 08.30 p.m. on 09.07.2010. In this regard, the prosecution claims to have prepared Entrustment Mahazar, Ex.P4 between 5.45 p.m. and 6.45 p.m. on 09.07.2000 in the Police Station. Ex.P5 is the seizure Mahazar said to have been prepared between 9.00 p.m. and 10.30 p.m. in the house of the second accused. Ex.P6 is the seizure mahazar said to have been prepared in the house of the second accused at 11.00 p.m. While Ex.P4 and P5 are computer print outs, Ex.P6 is hand written. According to the learned Senior counsel for the appellant/A-1 there was no occasion to take a print out from the computer at the house of the second accused by the investigating officer. Further, PW2 says that the mahazar which is shown to him was signed by him at 09.00 p.m. in the office of the Directorate of Vigilance and Anti Corruption. But in his cross-examination, PW2 says that he signed one mahazar at 6.45 p.m. which is marked as Ex.P5. According to PW2, he signed Ex.P5 at 9.00 p.m. in the office of the Directorate of Vigilance and Anti-Corruption. On the contrary, PW3 deposes that he has not signed in any computer generated print out and on the date of occurrence, he has not come to the office of the Directorate of Vigilance and Anti Corruption at 9.00 p.m. PW3 further says that he has come to the office and signed Ex.P4 and P5 only at 12 'O' clock in the midnight. Further, in the seizure mahazar, it was not stated that such a document was prepared in the house of the second accused. This is also fortified by the fact that Ex.P7, Seizure Mahazar, has been sent to the Court only on 12.07.2010 with an unexplained delay of 3 days.

14. The learned Senior counsel for the appellant/A-1 would further submit that the chemical analysis report, Ex.P13 would indicate that two glass bottles were tested relating to the case in Crime No. 17 of 2010, whereas, the present case relates to the case in Crime No. 13 of 2010. Even PW6, in her chief examination, would only depose that the component tested by her pertains to Crime No. 17 of 2010. Therefore, the liquid which was tested by PW6 has no relation to the liquid relating to Crime No. 13 of 2010 and this vital contradiction has not been taken note of by the trial Court.

15. By pointing out the above deficiencies, the learned Senior counsel for the appellant/A-1 would contend that the benefit of doubt ought to have been given to the appellant/A-1 inasmuch as the prosecution has not established the case against him beyond reasonable doubt. The prosecution has not proved the motive on the part of the defacto complainant against the accused to lodge the complaint. When the prosecution has not adduced cogent and proper material for consideration which would bring forth the guilt of the accused beyond reasonable doubt, the accused is entitled for acquittal. Accordingly the learned Senior counsel for the appellant/A-1 prayed for allowing the appeal by setting aside the conviction and sentence imposed by the trial court on the appellant/A-1.

16. The learned counsel appearing for the appellant/A-2 would only contend that there is no material at all to implicate the appellant/A-2 in this case. There is no direct evidence made available to implicate the appellant/A-2 in this case. There was no demand on the part of the appellant/A-2 towards the defacto complainant. Equally, there was no acceptance of the alleged tainted money by the appellant/A-2. Consequently, no amount was recovered from the appellant/A-2. The appellant/A-2 was not at all present at the scene of occurrence and the appellant/A-2 has no role to play in this case. None of the prosecution witnesses have deposed anything against the appellant/A-2. As regards the revised sanction order and the non-recording of the statement of the accused soon after their arrest at the occurrence spot as contemplated under Clause 47 of the Vigilance Manual, the learned counsel for the appellant/A-2 would adopt the arguments made by the learned Senior counsel for the appellant/A-1.

17. The learned counsel for the appellant/A-2 would contend that even before commencement of trial, the defacto complainant died. The complaint given by the defacto complainant is not an evidence and it is only to give information to set the law in motion. In such circumstance, when the genuineness of the complaint has not been proved by examining the defacto complainant, it does not have any probative or substantive value in the eye of law. The complaint and the first information report can be used only for the purpose of corroboration or contradiction with the maker only, not with the evidence of other witnesses. Since the defacto complainant died even before commencement of trial, no significance

could be attached to the complaint given by him, hence, the conviction and sentence imposed on the appellant/A-2, in the absence of any evidence against him, is legally not sustainable.

18. As regards the merits of the case, according to the learned counsel appearing for the appellant/A-2, the case projected by the prosecution as against A-1 and A-2 are totally different. A-1 alone went to the occurrence spot and is alleged to have met the defacto complainant and received the tainted amount. In this context, the learned counsel appearing for the appellant/A-2 would place reliance on the decision of the Honourable Supreme Court in the case of (P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another) reported in (2015) 10 SCC 152 to contend that the prosecution did not prove the vital ingredient of demand and acceptance of the illegal gratification on the part of the appellant/A-2 and it is one of the essential ingredient to prove the offence under Sections 7 and 13 of the Act. According to the learned appearing counsel for the appellant/A-2, in the absence of proof of the ingredients of Sections 7 and 13 of the Prevention of Corruption Act, the appellant/A-2 is entitled for acquittal. Therefore, the learned counsel appearing for the appellant/A-2 would pray for setting aside the conviction and sentence imposed against the appellant/A-2.

19. Countering the submissions made by the learned Senior counsel for the appellant/A-1 and the learned counsel for the appellant/A-2, the learned Public Prosecutor appearing for the State would contend that a reading of the first information report would clearly indicate that there was a demand made by the accused to the defacto complainant. The complaint also clearly reveals that the place of acceptance of the demanded amount namely Kanchi Bakery has been fixed by none other than the accused. No doubt, when the accused made a demand for payment of illegal gratification to the defacto complainant at their office, the defacto complainant has only stated that he would consult the owner of the Company - PW8 and would revert back on the next day i.e., 09.07.2010. Since PW8 was not inclined to pay the bribe amount demanded by the accused, PW8 has instructed the defacto complainant, who is working as Manager in his company, to lodge a complaint with the respondent. Accordingly a complaint was given by the defacto complainant based on which the first information report came

to be registered. On 09.07.2010, the first accused came to the occurrence spot mentioned in the first information report. In fact, it is not the case of the first accused that he was not at all present in the occurrence spot. In this context, the learned Public Prosecutor relied on the deposition of PW2, a shadow witness arranged for assisting the trap and another witness namely PW3. According to PW2 and PW3, they have, in unison, deposed that the first accused came to the occurrence spot, had a conversation with the defacto complainant, received the tainted amount and kept it in his right pant pocket. They have also deposed that on receipt of the money, first accused has told the defacto complainant to inform his owner that prosecution will not be launched against their company. PW2 and 3 also would depose that the first accused came to the occurrence spot at 8.30 p.m., demanded and received the tainted amount from the defacto complainant and left the place. Immediately, the defacto complainant has shown a signal by removing and wearing his spectacle. On receipt of such a signal, PW3, who was waiting along with PW7 - Trap Laying Officer went to the occurrence spot where PW7 apprehended the first accused and also recovered the tainted amount. The very same version was given by PW7 in his deposition before the trial Court. Thus, according to the learned Public Prosecutor, the demand and acceptance on the part of the accused have been proved by the prosecution satisfactorily and there is no reason to disbelieve the version of the prosecution witnesses.

20. According to the learned Public Prosecutor appearing for the prosecution, even though the defacto complainant died during the course of trial, the contents of the first information report that there was a demand and acceptance of tainted amount by the first accused, which has been proved by examining PW2 and PW3 as well as seizure mahazar. In fact, after recovering the tainted amount, it proved positive by reason of the content of phenolphthalein substance in the currency. Therefore, having been satisfied with the manner in which the case has been proved by the prosecution, the trial Court rightly convicted and sentenced the accused which calls for no interference by this Court.

21. The learned Public Prosecutor also contend that as regards the contradictions pointed out by the counsel for the appellants relating to preparation of Mahazar, the entrustment mahazar was prepared in the office of the Directorate and

Vigilance Department at about 5.45 p.m. This was deposed by PW2 and 3 who have witnessed the occurrence during the course of trial which took place 3 to 4 years from the date of deposing evidence. In fact, PW2 was examined in chief on 07.01.2014 while the occurrence took place on 09.07.2010. PW2 was cross-examined on 07.03.2014. Similarly PW3 was examined in chief on 24.01.2014 and cross-examined on 21.03.2014. Thus, after four years from the date of occurrence, PWs 3 and 4 have entered into the witness box and therefore it is but natural that there may be some inconsistency in the deposition adduced by them. At any rate, such minor inconsistencies with regard to the preparation of mahazar will not, in any way, vitiate the case of the prosecution. When once the prosecution satisfactorily proved the demand and acceptance, then the burden of such proof automatically shifts on the accused to rebut such presumption. In this case, there is no witness examined on the side of the accused to rebut the presumption raised by the prosecution. Therefore, it is clear that the prosecution has clearly raised a presumption which remain unrebutted by the accused.

22. The learned Public Prosecutor would contend that there is no satisfactory explanation offered by the first accused as to why he went to Kanchi Bakery on the date of occurrence at the relevant time. As mentioned above, the place of occurrence namely Kanchi Bakery was fixed by the accused which is clearly indicated in the first information report, which came into existence much prior to the trap at 8.30 p.m. on 09.07.2010. Therefore, the prosecution has clearly proved the presence of the appellant/A-1 at the occurrence spot which has not been rebutted by the accused in a manner known to law.

23. As regards the sanction order, Ex.P1, the learned Public Prosecutor would contend that it is valid in the eye of law. It is clearly deposed by PW1 that the earlier order of sanction contain some typographical error and it necessiated the issuance of the revised sanction order under Ex.P1. The earlier order of sanction accorded by the Department is between the sanctioning authority and the investigating agency. It is a confidential document and therefore it was not filed before the trial Court. Further, there is no need for producing the sanctioned order passed at the first instance inasmuch as it was clearly reflected in the revised sanction order, Ex.P1. The learned Public Prosecutor also would contend that

PW1 in his evidence has clearly stated that after considering the statement of witnesses, mahazars and forensic report and after having consultation with the officials in the department, a final decision was taken to accord sanction to the prosecution. Therefore, the learned Public Prosecutor would contend that if the accused is really prejudiced by reason of Ex.P1, they could have called for the earlier order of sanction for perusal of the trial court during the course of examination of PW1 but they failed to do so. In any event, much credence need not be given to Ex.P1 or on that ground the case of the prosecution will not be vitiated.

24. As regards the contention of the accused that the chemical analysis pertains to the case in Crime No.17 of 2010 and not Crime No. 13 of 2010, the learned Public Prosecutor would vehemently contend that FIR No. 17 of 2010 mentioned in Ex.P13, Chemical Analysis Report is not relatable or referrable to a first information report, rather it is the Serial Number or Register number assigned by the learned Judicial Magistrate. Moreover, in Ex.P13, the name of the first accused is clearly mentioned in the relevant file thereof. Therefore, the chemical analysis report pertains to the present case and it corroborates the case of the prosecution with regard to recovery of the tainted amount from the possession of the first accused.

25. As regards the contradiction relating to Clause 47 of the Vigilance Manual, it is submitted by the learned Public Prosecutor that the provisions contained in the Vigilance Manual are only in the nature of a guideline and they are not mandatory. The learned Public Prosecutor has also invited the attention of this Court to the judgment of the trial Court wherein the trial Court has relied on the decision of the Honourable Supreme Court in (Vineet Narain vs. Union of India (1998) 1 SCC 226 to conclude that non adherence to the procedures contemplated under the Vigilance Manual will not be a ground for rejecting the case of the prosecution. If the respondent failed to follow the Rules in letter and spirit, it is for the concerned department to take action on the official concerned and it will not be a ground for the accused to take advantage of the same. By pointing out the above decision of the Honourable Supreme Court, which was relied on by the trial Court, the learned Public Prosecutor would contend that non-recording of the statement of the

accused soon after the occurrence as provided under Clause 47 of the Vigilance Manual will not be a ground to reject the case of the prosecution or will it be a ground for the accused to seek for acquittal.

26. I have given my anxious consideration to the rival submissions made and I had gone through the material records placed. First of all, let me deal with Ex.P1, sanction order issued by PW1. It is the vehement contention of the counsel for the appellants that a revised sanction order is legally not sustainable. In this context, prosecution examined PW1 to bring forth the necessity to issue the revised sanctioned order. PW1, during the course of his examination as well as cross-examination has clearly brought out that in the original order of sanction dated 26.04.2011, there were typographical error which did not convey the proper meaning. Therefore, in the interest of justice, a revised sanction order has become necessary. Further, PW1 has deposed that before issuing the revised order of sanction, he has considered the statements recorded by the investigating agency, mahazars drawn by the investigating officer and has been fully satisfied that sanction has to be accorded to the prosecution to proceed further in the case. PW1 has clearly stated in his cross-examination made on behalf of the appellant/A-2 that the revised order of sanction is not based on illegal and inadmissible document. He further deposed that the revised sanction order is the result of an outcome of the institutional decision taken by him. Hence, according to the respective counsel appearing for the appellants, Ex.P1 is not an outcome of individual decision of PW1 by applying his mind independently and therefore the order of sanction, Ex.P1 is vitiated. On perusal of the cross-examination of PW1, he has given a clear picture that before issuing the revised order of sanction, he has held consultative process, considered the materials placed before him independently and thereafter accorded sanction for prosecution. Thus, according to PW1, though he had held consultative process, he has considered all the materials placed before him independently and thereafter accorded sanction for prosecution. Therefore, the submission of the counsel for accused that Ex.P1 is an outcome of institutional decision and not an independent decision of PW1 besides it was passed by PW1 without application of mind cannot be accepted. The deposition of PW1 shows that he has applied his mind to the case projected by the prosecution which warrants issuance of an order of sanction. It is not as though

PW1 did not apply his mind before passing the revised order of sanction. When the earlier order of sanction dated 26.04.2011 contains certain typeographical errors which did not convey the correct and proper meaning for according sanction, PW1 is fully justified in issuing the revised order of sanction. It is not the case of the accused that PW1 is an incompetent authority to issue the revised order of sanction. It is also not the case of the accused that the revised sanction order was issued to fill up the lacuna or shortcomings in the earlier order of sanction. The fact remains that the earlier order of sanction contains certain typeographical mistakes and only to overcome the same, the revised order of sanction came to be issued by PW1. In such circumstance, this Court is of the view that Ex.P1 is a valid order of sanction based on which the investigation officer has proceeded with the investigation in this case. In this context, useful reference can be made to the provisions contained in Section 19 (3) (a) of the Prevention of Corruption Act, which reads as follows:-

"no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal, confirmation or revision on the ground of the absence of or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby,

27. In the present case, on consideration of the evidence of PW1 in its entirety, this Court concludes that there is no error or omission or irregularity in issuing Ex.P1, order of sanction warranting interference of the judgment of the trial Court. The order of sanction issued by PW1 has not occasioned in failure of justice and therefore, I am of the considered opinion that Ex.P1 is valid and proper.

28. The next limb of argument advanced on behalf of the appellants is that soon after arrest of the accused, their statements were not obtained and had it been obtained it could come to light as to what has happened and whether really the first accused was arrested at the place and time indicated by the prosecution. Therefore, according to the counsel for the appellants, the non-recording of such statement from the accused would vitiate the entire case of the prosecution besides it is in violation of Clause 47 of the Vigilance Manual. This submission, in

my considered view, cannot be accepted. As rightly pointed out by the learned Public Prosecutor, the clauses indicated in the Vigilance Manual are all in the nature of guidelines to be followed by the investigation officer while dealing with criminal cases and they have no statutory force. In other words, the guidelines indicated in the Vigilance Manual need not be construed as mandatory and they are intended to assist the investigation officer to follow certain procedures while dealing with criminal cases. In this regard, useful reference can be made to the decision rendered by the Division Bench of this Court in (Duraimurugan vs. State, rep. by Deputy Superintendent of Police, Vigilance and Anti-Corruption, Vellore) reported in 2013 (1) CWC 136 wherein a Division Bench of this Court dealt with a similar issue. In Para No.38 and 39 of the Judgment, the Division Bench held as follows:-

"38. A careful reading of the above cited decision would disclose that the accused cannot make any complaint with regard to the non-following of the procedures contemplated under the Vigilance Manual and as per the decision rendered in Vineet Narain vs. Union of India, 1998 (1) SCC 226, cited supra, any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.

39. Assuming for the sake of argument that the respondent has failed to follow Rule 76 of the DVAC Manual in letter and spirit, it is for the concerned department to take action against the concerned official and it is not open to the Writ Petitioner/Appellant to take advantage of the same. Moreover, the Respondent in the Counter affidavit in the earlier WRit Petition in WP No. 8391 of 2012 as well as the present Writ Petition in WP No. 13788 of 2012 took a specific stand that they had followed the Vigilance Manual and accordingly issued the Final Opportunity Notice as per proforma 28 of the said Manual.....

29. Thus, from the decision rendered by the Division bench referred to above, it is clear that for non-compliance of certain procedural aspects, the prosecution case cannot be vitiated or the accused cannot be permitted to take advantage of the non-compliance of the procedures contained under the Vigilance Manual.

30. In this context, further reliance can also be placed on the decision of the Honourable Supreme Court in (Chief Commercial Manager, South Central Railway, Secunderabad and others vs. G. Ratnam and others) (2007) 8 SCC 212 wherein it was held that administrative rules, regulations and instructions, which have no statutory force, do not give rise to any legal right in favour of the aggrieved party and cannot be enforced in a court of law against the administration. Useful reference of the decision of the Honourable Supreme Court in Para No.20 can be reproduced hereunder:-

20. We have carefully gone through the contents of various chapters of the Vigilance Manual. Chapters II, III, VIII, IX and Chapter XIII deal with Railway Vigilance organization and its role, Central Vigilance Commission, Central Bureau of Investigation, Investigation of Complaints by Railway Vigilance, processing of vigilance cases in Railway Board, suspension and relevant aspects of Railway Servants (Discipline and Appeal) Rules, 1968 as relevant to vigilance work etc. Paragraphs 704 and 705, as noticed earlier, cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. Broadly speaking, the administrative rules, regulations and instructions, which have no statutory force, do not give rise to any legal right in favour of the aggrieved party and cannot be enforced in a court of law against the administration. The executive orders appropriately so-called do not confer any legally enforceable rights on any persons and impose no legal obligation on the subordinate authorities for whose guidance they are issued. Such an order would confer no legal and enforceable rights on the delinquent even if any of the directions is ignored, no right would lie. Their breach may expose the subordinate authorities to disciplinary or other appropriate action, but they cannot be said to be in the nature of statutory rules having the force of law, subject to the jurisdiction of certiorari.

21. It is well-settled that the Central Government or the State Government can give administrative instructions to its servants how to act in certain circumstances; but that will not make such Instructions Statutory Rules which are justiciable in certain circumstances. In order that such executive instructions have the force of

Statutory Rules, it must be shown that they have been issued either under the authority conferred on the Central Government or the State Government by some statute or under some provision of the Constitution providing therefor. Therefore, even if there has been any breach of such executive instructions that does not confer any right on any member of the public to ask for a writ against Government by a petition under Article 226 of the Constitution of India.

31. Further, in my own order dated 23.08.2016 in Criminal Revision Case No. 850 of 2016, while considering the case of an accused for discharge from the criminal case, it has been held in para No.16 that for non-compliance of the provisions contained in the State Vigilance Manual, only disciplinary action could be taken against the official concerned. Therefore, non-compliance of the provisions contained in the Vigilance Manual, in my considered opinion, will not be a ground for acquitting the accused.

32. As regards the merits of the case, detailed submissions have been made on behalf of the counsel for both sides. It is the vehement contention of the counsel for the respective appellants that the demand said to have been made by the accused has not been proved or established by the prosecution beyond any reasonable doubt. In this context, reliance was placed on the complaint given by the defacto complainant wherein he has clearly stated that he will revert back after getting instructions from his employer - PW8. By pointing out this part of the complaint, the learned counsel for the respective appellants would contend that there is no demand made by the appellants for payment of illegal gratification or has it been proved by examining the defacto complainant during the course of trial. According to the counsel for the appellants, the defacto complainant is the only competent person to depose before the trial court as regards the demand said to have been made by the appellants and in the absence of the same, it has to be held that the demand said to have been made by the appellants is not proved by the prosecution in a manner known to law. It is further contended that the contents of the complaint has not been corroborated by any other witness during the course of trial.

33. On a perusal of the complaint, Ex.P15 given by defacto complainant based on which the case in Crime No. 13 of 2010 came to be registered against the appellants. Admittedly, the defacto complainant has not been examined during the course of trial as he died even before commencement of the trial. However, in the complaint given by the defacto complainant, it is clearly indicated that it is the accused who have asked the defacto complainant to come to the place of occurrence namely Kanchi Bakery. Thus, it is the accused who have fixed the place of occurrence as well as the date and time. Accordingly, as indicated in the first information report, the first accused came to the occurrence spot. It is not the case of the first accused that he was not present at the place of occurrence on the date and time indicated in the first information report. There is no explanation forthcoming from the first accused as to why he went to the place of occurrence on the date and time indicated in the first information report. In the deposition of the prosecution witnesses namely PWs 2 and 3, it is clearly stated that they have seen the first accused at the occurrence spot, they have also witnessed the defacto complainant demanding the money and receiving the tainted amount from the defacto complainant, which he had received and kept it in the right pant pocket. Further, PW2, a witness arranged by PW7 during the course of laying the trap and who accompanied the defacto complainant to the place fixed by the accused viz., 'Kanchi Bakery' at 18th Main Road, Anna Nagar, Chennai, in his evidence, had stated that he had witnessed the first accused, who, on receipt of the tainted amount, has told the defacto complainant to inform his employer - PW8 that they will not launch prosecution against his company. Therefore, it is clear that the presence of the first accused at the occurrence spot has been clearly established by the prosecution by examining PWs 2 and 3. The first accused also did not examine himself before the trial court to deny his presence at the place, date and time indicated in the first information report. Thus, when the prosecution has adduced evidence to show the presence of the first accused in the occurrence spot, the burden shifts on the first accused to disprove it. However, the first accused did not discharge his burden to falsify the case of the prosecution. Thus, the prosecution has clearly established the demand made by the first accused by examining PWs 2, 3 and 7. Even though the defacto complainant was not examined, as he died during the course of trial, PWs 2, 3 and 7 have corroborated

the contents contained in the complaint that there was a demand and acceptance of bribe amount by the accused at the place of occurrence viz., Kanchi Bakery in their presence. In such circumstances, it has to be held that the prosecution has clearly proved the demand made by the first accused to the defacto complainant for payment of illegal gratification.

34. As regards the burden on the accused to rebut the presumption raised by the prosecution, it has been held by the Honourable Supreme Court in (State of Andhra Pradesh vs. P. Venkateswarlu) (2015) 7 Supreme Court Cases 283 that there has to be evidence adduced by the prosecution that bribe was demanded or amount paid voluntarily as bribe. The demand and acceptance of the amount as illegal gratification is sine qua non for constituting an offence under the Prevention of Corruption Act. In that case before the Honourable Supreme Court, it was held that the respondent-accused has not successfully rebutted the presumption under Section 20 of the Prevention of Corruption Act. On the other hand, the prosecution has established the demand and acceptance of the tainted money. Useful reference to the judgment of the Honourable Supreme Court in para No.15 is reproduced hereunder:-

"15. Thus, the respondent-accused has not successfully rebutted the presumption under Section 20 of the PC Act. The presumption, on the other hand, has established the demand and acceptance of the tainted money. The recovery also has gone unchallenged. Therefore, we strike down the order of acquittal passed by the High Court in P. Venkateswarlu vs. State of A.P.. We restore the judgment and order dated 24.01.2000 rendered by the Principal Special Judge for SPE and ACB Cases, City Civil Court, Hyderabad in CC No. 10 of 1996, convicting the respondent-accused under Section 7 and 13 (1) (d) read with Section 13 (2) of the PC Act and sentence him to suffer one year's rigorous imprisonment under each count and also to pay a fine of Rs.1,000/- under each count, in default, to suffer simple imprisonment for two months under each count. Both the substantive sentence are to run concurrently.

35. In yet another decision of the Honourable Supreme Court in (M. Narsinga Rao vs. State of A.P.) reported in (2001) 1 Supreme Court Cases 69 the Honourable

Supreme Court had an occasion to consider the question of presumption and held that the Court is under a legal compulsion to draw the legal presumption that such gratification was accepted as a reward for discharging public duty. In Para No.25 of the said decision, the Honourable Supreme Court held as under:-

"25. We, therefore, agree with the finding of the trial court as well as the High Court that prosecution has proved that appellant has received gratification from PW1. In such a situation the court is under a legal compulsion to draw the legal presumption that such gratification was accepted as a reward for doing the public duty. Of course, the appellant made a serious endeavour to rebut the said presumption through two modes. One is to make PW1 and PW2 speak to the version of the appellant and the other is by examining two witnesses on the defence side. True PW1 and PW2 obliged the appellant. The two defence witnesses gave evidence to the effect that the appellant was not present at the station on the date when the alleged demand was made by PW1. But the trial court and the High Court have held their evidence unreliable and such a finding is supported by sound and formidable reasoning. The concurrent finding made by the two courts does not require any interference by this Court."

36. The learned Public Prosecutor placed reliance on the decision of the Honourable Supreme Court in the case of (B. Noha versus State of Kerala and another) CDJ 2006 SC 930 to drive home the point that when the accused is in possession of the tainted amount and it was recovered from his possession in the presence of witnesses, then the burden is on the accused to satisfactorily disprove such possession of the amount or such amount is not forming part of any illegal gratification received by him. When such burden has not been discharged, it has to be construed that the prosecution has succeeded in proving the demand and acceptance of illegal gratification on the part of the first accused.

37. As mentioned above, in the present case, prosecution, by examining PWs 2, 3 and 7 has clearly established the demand and acceptance of the tainted amount by the appellant/A-1 and such presumption raised by the prosecution, as contemplated under Section 20 of the Prevention of Corruption Act, has not been rebutted by the appellant/A-1. Therefore, this Court holds that the prosecution has

satisfactorily proved the demand and acceptance on the part of the appellant/A-1.

38. As regards the minor inconsistencies in the evidence of prosecution witnesses projected by appellants, in my considered opinion, it will not be a ground to reject the case of the prosecution or will it be a ground for the accused to seek for acquittal from the criminal case. It is no doubt true that there are certain minor inconsistencies in the evidence adduced by PWs 2 and 3 with regard to the date and time of preparation and/or drawal of recovery mahazar or seizure mahazar. As rightly pointed out by the learned Public Prosecutor, the prosecution witnesses have stepped into the witness box after four years from the date of occurrence and therefore, certain minor inconsistencies with regard to the time of drawal of the mahazar is but natural. It is not the case of the accused that such a mahazar has not at all been drawn on the date of occurrence. At any rate, the evidence adduced by the prosecution witnesses with regard to the time of drawal of the mahazar is minor in nature and it will not materially affect the case put forth by the prosecution. Even assuming that there are inconsistencies with regard to the time of drawal of the seizure mahazar etc., by the prosecution witness, the fact remains that such material evidence namely mahazar produced by the prosecution can still use those evidences against the accused to bring forth the offence committed by them. The entrustment mahazar and seizure mahazar are thus relevant materials for consideration of the case of the prosecution and they cannot be ignored.

39. On behalf of the appellants, it was contended that the chemical analysis report, Ex.P13 would indicate that two glass bottles were tested relating to the case in Crime No. 17 of 2010, whereas, the present case relates to the case in Crime No. 13 of 2010. By placing reliance on the deposition of PW6, Chemical Analysis Officer, it is submitted that the component tested by her pertains only to Crime No. 17 of 2010 and not the present case in Crime No. 13 of 2010. According to the appellants, this vital contradiction has not been taken note of by the trial Court while passing the judgment of conviction. But it is seen from the records that the chemical analysis only pertains to the case in Crime No.13 of 2010 and what was mentioned in the report, Ex.P13 is not the crime number rather it is a register number or serial number given by the learned Judicial Magistrate. It is further stated that the name of the first accused is clearly mentioned in Ex.P13 and

therefore, there is no doubt that the chemical analysis report only pertains to the present case. In any event, such a difference in the crime number or otherwise is not a material contradiction which warrant rejection of the case put forth by the prosecution. Therefore, this Court holds that Ex.P13, chemical analysis report pertains to the present case and it corroborates the case of the prosecution with regard to recovery of the tainted amount from the possession of the first accused.

40. It is the vehement contention of the learned Senior counsel for the appellant/A-1 that even prior to the so-called demand of the bribe amount on 09.07.2010, the appellant/A-1 has passed an order on 08.07.2010 itself dropping all further action against the company owned by PW8 in which the defacto complainant was employed as Manager. Therefore, the learned Senior counsel for the appellant/A-1 vehemently contended that if Ex. P9 is considered in the proper perspective, it would nullify the case projected by the prosecution with respect to alleged demand and bribe made by the appellant/A-1. I am not inclined to accept such a submission. First of all, as per the complaint given by the defacto complainant, it is clearly stated that on 08.07.2010 at 5.30 p.m. the defacto complainant met the accused and on that day, the accused have demanded illegal gratification of Rs.20,000/- which was subsequently reduced to Rs.15,000/-. The defacto complainant informed the accused that he will putforth the same to his employer-PW8 and would come on the next day. On the next day namely 09.07.2000 the appellant/A-1 came to the occurrence spot and received the tainted amount. In such a situation, the defence that the accused have dropped all further proceedings against the company owned by PW8 by passing orders under Ex. P9 and consequently the demand and acceptance of illegal gratification will not arise, cannot be accepted. Moreover, it is pertinent to note that the date of demand and acceptance of the tainted amount and the date of the order said to have been passed by the first accused dropping all further proceedings against the company owned by PW8 is one and the same viz., 08.07.2010. In my considered view, Ex. P9 would have been prepared for the purpose of escaping from the clutches of law and to make it appear as though there is no need for appellant to make demand or acceptance of illegal gratification. Further, the order under Ex. P9 is said to have been passed on the date when the appellant/A-1 visited the occurrence spot and received the tainted money from the defacto complainant towards illegal

gratification. It is also not known as to whether such order alleged to have been passed by the appellants, have been served on the company owned by PW8. Further, it is asserted by the appellants that the note sheets from the files, Ex. P9, with regard to the passing of orders to drop further action against the company owned by PW8, were missing. But PWs 4 and 5, who were examined on the side of the prosecution, have only deposed that the relevant pages are missing from the file. Further, PW4 during the course of cross-examination before the trial Court had deposed that even at the time of investigation while his statement was recorded by PW9, the investigation officer, the note sheets pertaining to PW8 company were not available in Ex.P9. Therefore, it is clear that the note sheets pertaining to PW8 company went missing from the said file, which was in the possession of the appellants Department at the relevant point of time. In such circumstance, the argument advanced on behalf of the appellants relating to admission of PW9 that he has seen the order dated 08.07.2010 in the file - Ex.P9, said to have been passed by the appellants cannot have any relevance. Similarly, the evidence of PWs 4 and 5 is of no use for the appellants to disprove the case of the prosecution with regard to demand and acceptance of illegal gratification.

41. As regards the appellant/A-2, he has not received the tainted amount and it was recovered only from the possession of appellant/A-1. After recovery of the amount, since the appellant/A-1 complained that he has received such amount at the instruction of appellant/A-2, the investigation officer proceeded to the residence of appellant/A-2 where seizure mahazar has been drawn. Even in the complaint given by the defacto complainant it is stated that the appellant/A-2 has confirmed the demand amount along with the appellant/A-1. However, the defacto complainant has not been examined as he died during the course of trial. Therefore, it is evident that there is no evidence examined on behalf of the prosecution to prove the guilt of the appellant/A-2. It is needless to mention that even though the defacto complainant was not examined and he died during the course of trial, there are adequate evidence made available by the prosecution as against the appellant/A-1 in the form of complaint given by the defacto complainant to prove the demand of illegal gratification, entrustment mahazar to show that amount smeared with phenolphthalein powder has been handed over to the defacto complainant, proof of presence of the appellant/A-1 at the occurrence

spot by examining PWs 2 and 3, receipt of tainted amount by the appellant/A-2 by producing recovery or seizure mahazar etc., However, such material evidences do not help the prosecution to prove the case as against the appellant/A-2. There was also no other evidence made available by the prosecution to connect the appellant/A-2 with the commission of offence. Therefore, this Court is of the view that the prosecution has failed to prove the offence complained of as against the appellant/A-2 beyond reasonable doubt and therefore, the appellant/A-2 is entitled for acquittal.

42. In the result,

(i) Criminal Appeal No. 783 of 2015 is allowed by setting aside the Judgment of conviction recorded against the appellant/A-2. The bail bond, if any, executed by the appellant/A-2 shall stand cancelled and the fine amount, if any, paid shall be refunded.

(ii) Criminal Appeal No. 784 of 2012 is dismissed by confirming the judgment of conviction passed against the appellant/A-1.

(iii) The trial Court is directed to take necessary steps as are necessary to secure the presence of the appellant/A-1 to undergo the remaining period of sentence. It is needless to mention that the sentence already undergone by the appellant/A-1 shall be given set off as contemplated under Section 428 of the Code of Criminal Procedure.

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