

**Vellaichamy Vs. State Represented By**

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**SooperKanoon Citation :** [sooperkanoon.com/48637](http://sooperkanoon.com/48637)

**Court :** Chennai

**Decided On :** Feb-27-2015

**Judge :** M.Sathyannarayanan

**Appellant :** Vellaichamy

**Respondent :** State Represented By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

27. 02.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal No.815 of 2004 Vellaichamy ... Appellant/ A-2 Vs. State represented by The Deputy Superintendent of Police, Vigilance and Anti Corruption, Virudhunagar. (Cr.No.1 of 1996) ... Respondent/ Complainant Prayer : Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment passed in C.C.No.113 of 1998, dated 10.06.2004, by the learned Chief Judicial Magistrate, Virudhunagar, at Srivilliputtur. !For Appellant : Mr.R.Babu Rajendran for Mr.K.Baalasundaram ^For Respondent : Mr.P.Kandasamy, Government Advocate (Crl.Side) Date of reserving the Judgment :

12. 02.2015 Date of delivering the Judgment :

27. 02.2015 :

JUDGMENT

The second accused in C.C.No.113 of 1998 on the file of the Court of Chief Judicial Magistrate/Special Court for Prevention of Corruption Act Cases, Virudhunagar District at Srivilliputtur, is the appellant.

2. The appellant/A-2 along with A.1, namely, Perumalsamy, stood charged and tried for the following offences: A.1 U/s.7 of Prevention of Corruption Act, 1988.(in short "P.C. Act). A-2/appellant U/s.7, 13(2) r/w 13(1)(d) of P.C.Act.

3. The trial Court, vide judgment dated 10.06.2004, has acquitted A.1 and convicted A-2/appellant herein for the commission of the above said offences and imposed the sentences, thus: Accused Conviction Sentence A-2 U/s. 7 of P.C.Act To undergo six months rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months rigorous imprisonment. U/s. 13(2) r/w 13(1)(d) of P.C. Act To undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months rigorous imprisonment. The trial Court ordered the sentences of imprisonment imposed on the appellant/A-2 to run concurrently and also ordered set off under Section 428 Cr.P.C.

4. The appellant/A-2 who was convicted and sentenced as stated above, has filed the present Criminal Appeal.

5. The facts narrated in brief and necessary for the disposal of this appeal, are as follows:

5. 1. A.1, namely, Perumalsamy, was working as Revenue Inspector and the appellant/A-2, namely, Vellaichamy, was working as Revenue Assistant/Bill Collector, at the relevant point of time, in Sivakasi Municipality and they are public servants. 5.2. The appellant/A-2, on 05.03.1996, at about 11.00 a.m., visited the office of P.W.4, namely, A.K.Arumugasamy and told him that he has to meet A.1 - Perumalsamy, for the purpose of assessment of property tax for the new construction put up by him at Door No.31A, A.V.T. Middle street, Sivakasi. 5.3. P.W.4 - A.K.Arumugasamy, has deputed his son, namely, P.W.2 - Sureshrajn for that purpose and P.W.2 accompanied by his friend, namely, P.W.3 - Kumar, met both the accused at Sivakasi Municipality, at about 04.00 p.m., on 06.03.1996. A.1 - Perumalsamy informed P.W.4 that if a sum of Rs.1,500/- is paid to him, he would

arrange to assess the property tax for the newly constructed house of P.W.4 at a reduced rate and at that time, the appellant/A-2 also made a demand that he should also be paid a sum of Rs.1,000/- for the above said purpose and directed him to bring and pay the said amounts at about 04.00 p.m., on 08.03.1996. 5.4. P.W.2 returned and met his father - P.W.4, who asked him to lodge a complaint to the Department of Vigilance and Anti-Corruption, and in this regard, P.W.2 has lodged a complaint to P.W.12 - Inspector of Police, Department of Vigilance and Anti-Corruption, Virudhunagar Detachment, on 08.03.1996 and P.W.12, on receipt of the complaint, marked as Ex.P.2, registered an F.I.R. at about 09.15 hours on 08.03.1996 in Virudhunagar DVAC Cr.No.1 of 1996, for the commission of the offence under Section 7 of the P.C. Act, against both the accused. 5.5. P.W.12, on the same day, made a requisition to the office of the Assistant Director of Fisheries as well as Fire Services Department, to depute their officials to act as independent witnesses. The independent witnesses were present in the office of the Department of Vigilance and Anti-Corruption, Virudhunagar, at about 14.00 hours on 08.03.1996 and P.W.12 introduced P.W.2 to the above said independent witnesses, namely, Rajendran and sundaram (P.W.5). 5.6. P.W.12 asked the independent witnesses to read the contents of the F.I.R and after reading the same, the witnesses asked P.W.2 as to whether the contents of Ex.P.2 - complaint, are true and he also answered in affirmative. P.W.12 asked P.W.2 as to whether he will co-operate to trap A.1 and the appellant/A-2 at the time of receiving the illegal gratification and P.W.2 has answered that he will co-operate with P.W.12. 5.7. P.W.12 asked P.W.2 as to whether he has brought the amount to be given as bribe to the accused and P.W.2 produced a sum of Rs.2,500/- in the presence of the independent witnesses, with denominations containing one, five hundred rupees note and twenty, one hundred rupees notes and the numbers were also noted in a slip. P.W.12 made the Sodium Carbonate solution and asked one of the independent witnesses, namely, Rajendran, to dip his fingers in each hand separately and there was no change of colour. Thereafter, P.W.12 applied Phenolphthalein powder on both sides of the currency notes produced by P.W.2 and asked Rajendran to handle the same and thereafter, asked him to dip in the Sodium Carbonate solution and the witness Rajendran did so. Immediately, the solution turned pink in colour. 5.8. P.W.12 explained the importance of the said

test to P.W.2 as well as the independent witnesses who are present and asked the witness, namely, Rajendran to put the currency notes coated with Phenolphthalein powder on the right side pant pocket of P.W.2. P.W.12 asked P.W.2 and Sundaram (P.W.5) - one of the independent witnesses, to go to Sivakasi Municipality and meet A.1 and the appellant/A-2 and asked them to prepare a tax receipt for assessment and if the accused asked for the bribe money, he should take out the currency notes from the right side pant pocket and hand over the same to them and after coming out the office, asked him to give a pre-arranged signal by removing the chain put on his neck. 5.9. P.W.5 was asked to accompany P.W.2 to watch the happenings. P.W.12 further asked P.W.2 that if any amount is asked for tax, he should take out the currency notes which were on put on his shirt pocket not coated with Phenolphthalein powder and hand over the same. The above said events which took place at the of office of the Department of Vigilance and Anti- Corruption, Virudhunagar, were reduced into writing and was marked as Ex.P.4 and the said mahazar was signed by the independent witnesses, namely, Rajendran, Sundaram (P.W.5), P.W.2 and P.W.12. 5.10. The serial numbers of the currency notes were noted and a mahazar was prepared and was signed by the above said persons, marked as Ex.P.5. 5.11. As per the instructions of P.W.12, P.W.2 and P.W.5 went to Sivakasi Municipality in the afternoon hours on 08.03.1996 and they went inside the room of Bill Collector and the appellant/A-2 was sitting facing south. P.W.2 asked about the whereabouts of A.1 and the appellant/A-2 replied that A.1 has gone to the Court at Srivilliputtur and will be back soon and on non-availability of bus, he has not come. The appellant/A-2 asked about the amount payable to him and P.W.2 gave the money coated with Phenolphthalein powder as well as a sum of Rs.500/- payable towards tax and asked him to come on Monday and pay the money to A.1 - Perumalsamy and get the receipt. 5.12. P.W.2 along with P.W.5 came out of the office and P.W.2 gave the pre-arranged signal and immediately, P.W.12 and the police party and Rajendran, the other independent witness, went inside the office of the appellant/A-2 and introduced himself. Afterwards, the appellant/A-2 became restless and panic. 5.13. P.W.12 asked the appellant/A-2 as to whether he has received the illegal gratification/bribe from P.W.2 and he responded the same that he did not receive the same by way of bribe, but as per the request made by

P.W.2 that he required the receipt as per the requirement of the bank and wanted it urgently, he received a sum of Rs.1,500/- and further stated that since it is a newly constructed house, tax assessment has not been made. The appellant/A- 2 also told him that in respect of the old house, first half yearly tax payable is Rs.54/- and for the new house, assessment is yet to be made and that a sum of Rs.1,500/- received from P.W.2 is kept in his pocket. P.W.12 prepared the Sodium Carbonate solution in two tumblers and asked the appellant/A-2 to dip his fingers in each hand separately and the solution had turned pink/positive. The solutions kept in two glass tumblers were put into two bottles and were sealed and the labels were put and on the same, the witnesses namely, P.W.2, Rajendran, the appellant/A-2 and P.W.12 had signed. 5.14. P.W.12 asked the appellant/A-2 about the money given by P.W.2 and the appellant/A-2 responded that it was kept on the left side of the shirt pocket and produced it and the serial numbers of the currency notes were verified and the mahazar was prepared, marked as Ex.P.4 and the numbers of the currency notes tallied with the details of the currency notes mentioned in the said mahazar. 5.15. P.W.12 provided the appellant/A-2 with another shirt and subjected the pocket of the shirt to the chemical analysis and it also turned positive and the solution was put in a separate bottle and the seal was put, wherein the witnesses, the appellant/A-2 and P.W.12 signed it. P.W.12 asked the whereabouts of A.1 and he told that he went to Srivilliputtur to attend the Court. P.W.12 seized the bill book number 31 (Ex.P.17) and Tax Register and Building Licence Register (Ex.P.18) under a cover of mahazar, marked as Ex.P.9 and it was signed by P.W.5, P.W.7, P.W.12 and P.W.8. 5.16. P.W.12 served him a notice for search of his office, marked as Ex.P.23 and also seized 10, hundred rupees notes under a cover of mahazar, marked as Ex.P.5 and the search of the office of the appellant/A-2 and the inventory report of search made in the office of the appellant/A-2 was marked as Ex.P.10. 5.17. P.W.12 served a notice of search of the house of the appellant/A- 2, marked as Ex.P.24 and nothing was recovered in spite of the search conducted in the house of the appellant/A-2. P.W.12, effected the arrest of the appellant/A-2 and immediately, released him on bail. 5.18. P.W.7, the Commissioner, in-charge of Sivakasi Municipality produced the service particulars of A.1 and the appellant/A-2, marked as Ex.P.13 and P.14 respectively and the personal diary of the appellant/A-2 was seized, marked as Ex.P.16. P.W.12 also

collected the sale deed, marked as Ex.P.6, which was executed between P.W.4 and his brother and the said sale deed was executed by P.W.11 and another. P.W.12 also examined P.W.10 and collected the application submitted by P.W.4 for construction of a house on the vacant site, wherein he has enclosed two plans, marked as Ex.P.8 - series. 5.19. P.W.6 was the Assistant attached to Sivakasi Municipality and on the request made, he has produced the service particulars of A.1 and the appellant/A-2, marked as Exs.P.13 and P.14 respectively and their diaries were marked as Exs.P.15 and P.16 respectively. 5.20. P.W.13, Deputy Superintendent of Police, collected the case diaries from P.W.12 and after verifying the case diaries, examined P.W.2, P.W.4, P.W.7, P.W.5, Rajendran and Jeyakumar and recorded their statements under Section 161(3) Cr.P.C., and sent the Phenolphthalein solutions to the jurisdictional Magistrate with a requisition, marked as Ex.P.25, for conducting chemical analysis and in turn, it was sent to the Forensic Lab with a covering letter, marked as Ex.P.20. 5.21. P.W.8, on examining M.O.4 to M.O.6, gave an opinion that the solutions contained Phenolphthalein and Sodium Carbonate and the chemical analysis report was marked as Ex.P.21. On 09.03.1996, A.1 appeared before the office of the Department of Vigilance and Anti-Corruption, Virudhunagar and he was arrested and immediately, was enlarged on bail. On 18.03.1996, P.W.13 examined P.W.9 and P.W.11 respectively and recorded their statements and after receipt of the files, made a requisition to P.W.1 for getting sanction to prosecute A.1 and the appellant/A-2. After obtaining sanction under Ex.P.1, dated 11.03.1998 and after examining the sanctioning authority - P.W.1, on 29.04.1998, P.W.14 has concluded the investigation and filed the charge sheet on 01.05.1998, charging both the accused under Sections 7, 13(2) read with 13(1)(d) of the P.C Act, before the Court of Chief Judicial Magistrate/Special Court for P.C Act Cases, Virudhunagar District at Srivilliputtur. 5.22. The trial Court, on receipt of the charge sheet and documents, issued summons to both the accused and on their appearance, framed the charges under Section 7 of the P.C Act against A.1 and under Sections 7, 13(2) read with 13(1)(d) of the P.C Act against the appellant/A-2 and questioned them and they pleaded not guilty to the charges framed against them. 5.23. The prosecution in order to sustain their case, examined P.W.1 to P.W.14 and marked Exs.P.1 to P.25 and M.O.1 to M.O.6. 5.24. Both the accused were questioned

under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against them in the evidence tendered by the prosecution and they denied it as false. 5.25. On behalf of the accused, no oral evidence was let in, but Exs.D.1 to D.6 were marked. 5.26. The trial Court on consideration of the oral and documentary evidence and other materials, has acquitted A.1 and convicted the appellant/A-2 and imposed the sentences as stated above, vide judgment dated 10.06.2004 and challenging the vires of the same, the appellant/A-2 has filed the present Criminal Appeal.

6. Mr.R.Babu Rajendran, learned Counsel appearing on behalf of Mr.K.Baalasundaram, learned Counsel for the appellant/A-2, made the following submissions:

6. 1. The sanction for prosecution, marked as Ex.P.1, accorded by P.W.1 - the sanctioning authority, was without any due application of mind to the materials placed before him and therefore, the sanction is vitiated and there was a delay in according the sanction also. 6.2. The prosecution has miserably failed to establish as to the date on which the initial demand was made, i.e. whether it was on 05.03.1996 or 06.03.1996. 6.3. The prosecution has miserably failed to prove the demand on 05.03.1996/06.03.1996 and even the sake of argument, on 08.03.1996, the appellant/A-2 has received the sum of Rs.1,000/- by way of illegal gratification, in the absence of demand, mere acceptance of the alleged bribe amount would not satisfy the ingredients of the offences for which, the appellant/A-2 was charged. 6.4. The appellant/A-2 at the relevant point of time, was working as Revenue Assistant (Bill Collector) and he has no power to reduce the property assessment tax and hence, there is no occasion or necessity to demand and accept the alleged illegal gratification. 6.5. P.W.2 as well as P.W.4 have failed to come with clean hands, for the reason that they made out a case as if they put up a new structure and Ex.P.6 executed in favour of P.W.4 proceeds on the footing that it is a vacant site, whereas the superstructures are already existing and the alleged construction put up was only an additional construction and even as per the evidence let in by the prosecution, P.W.4 failed to obtain proper or necessary permission to put up such construction and he had deviated from the planning permission and the said vital aspect has been completely overlooked by the trial

Court. 6.6. The testimony of P.W.5/shadow witness is full of infirmities and in fact, he has also acted as a witness in the earlier traps conducted by the very same Department and therefore, his testimony cannot be taken as gospel truth as to the demand and acceptance of bribe on 08.03.1996. 6.7. The trial Court has failed to take into consideration the defence documents, which probablise the defence of A.1 and the appellant/A-2 and having acquitted A.1, the trial Court, in any event, ought to have awarded the benefit of doubt and acquitted the appellant/A-2.

7. Therefore, the learned Counsel for the appellant/A-2, prays for setting aside the impugned judgment and for honourable acquittal.

8. In support of his submissions, he placed reliance upon the decision in B.Jayaraj v. State of A.P. reported in 2014(2) MWN (Cr.) 376 (SC).

9. Per contra, Mr.P.Kandasamy, learned Government Advocate (Criminal Side) for the respondent would contend that the initial demand was on 06.03.1996 and the same was amply proved through the testimony of P.W.2 and on 08.03.1996, once again, the appellant/A-2 made a demand and accepted the illegal gratification of Rs.1,000/- from P.W.2 and the Phenolphthalein test conducted on his both hands, turned positive and the chemical analysis report marked as Ex.P.21, coupled with the evidence of P.W.8, has amply proved that the appellant/A-2 has accepted the illegal gratification and the demand and acceptance on 08.03.1996 spoken to by P.W.2 was amply corroborated by the independent/shadow witness, namely, P.W.5.

10. Insofar as the submission by the learned Counsel for the appellant/A-2 that P.W.2 and P.W.4 have not come with clean hands, it is the submission of the learned Government Advocate (Criminal Side) that the same would not mitigate the commission of the offences on the part of the appellant/A-2 for the reason that in spite of the fact that there was a deviation in construction, the appellant/A-2 demanded and accepted the illegal gratification of a sum of Rs.1,000/- and the proposed tax amount was Rs.500/- and it also shows the mens rea on his part to commit the said offences.

11. The testimonies of P.W.6 and P.W.7 and the documents marked as Exs.P.13 to P.19 had substantiated the case of the prosecution that the appellant/A-2 was entrusted with the responsibility of collecting the taxes and in the course of his discharging his official duty, has demanded and accepted the illegal gratification from P.W.2.

12. Lastly, it is submitted by the learned Government Advocate (Criminal Side) for the respondent that the trial Court, on an in-depth analysis of the oral and documentary evidence in a proper perspective, has rightly recorded the conviction and imposed the adequate sentences and though the appellant/A-2 is aged about 64 years, the said fact cannot be cited as a mitigating factor to reverse the conviction and sentence recorded by the trial Court and prayed for the dismissal of the same.

13. This Court has carefully considered the submissions made by the learned Counsel for the appellant/A-2 and the learned Government Advocate (Criminal Side) for the respondent and also perused the oral and documentary evidence and other materials as well as the original records.

14. P.W.4 purchased a vacant site in Ward No.G Block No.13 in T.S.No.69, 12th Ward, 5th street, Sivakasi, along with Municipal water connection, etc. from P.W.11 representing himself and his two minor sons as well as from the brother of P.W.4 representing himself and his minor sons, by means of a registered sale deed dated 17.02.1994, marked as Ex.P.6.

15. P.W.4 submitted an application for alteration in construction and the Town Planning Inspector, Sivakasi Municipality, made a positive recommendation that the planning permission is in order and therefore, permission can be given to put up the construction and it was also granted on 09.03.1995, marked as Ex.D.4 series. It was also noted in Ex.D.4 series that the building construction was on and permission/licence was granted upto 08.03.1998 and file can be kept alive till 31.05.1995.

16. The Town Planning Inspector, Sivakasi Municipality, vide endorsement dated 19.03.1996, which was found in Ex.D.4 - series, noted the deviation in the

construction in the planning permission and recommended for issuance of notice under Section 205 (1) and (2) of the Tamil Nadu District Municipalities Act and made further recommendation that it can be sent to the Revenue Inspector to collect the details of tax to be paid.

17. On completion of the building, it was forwarded to the Revenue Inspector, Sivakasi Municipality, for assessment of tax and as per the counter signature made on behalf of the Commissioner, Sivakasi Municipality, on 21.03.1996, which is found in Ex.D.4 - series, the assessment was made for the first half of 1996-97 and the existing tax amount as per the Annual Rental Value was Rs.54/- and the revised tax assessment as per the Annual Rental Value was Rs.447/- and the door number is shown as 31A, AVT, Middle Street, Sivakasi. As per Ex.D.4, the permission was sought to put put the additional construction and some deviation in construction was noted and the suggestion was made to address the Revenue Inspector with regard to collection of tax details from the Revenue Inspector.

18. P.W.4 is the father of P.W.2, who is the owner of the vacant site and building in question and in the chief examination, deposed that at about 11.00 a.m., on 05.03.1996, the appellant/A-2 met him in his office and told him hat the superstructures should be assessed to tax and asked him to meet A.1 and since P.W.4 was unwell, he deputed his son, P.W.2 to meet the said official and enquire about the same. P.W.2 met P.W.4 at about 07.00 p.m., on 05.03.1996 and told that A.1 and the appellant/A-2 have asked for a sum of Rs.3,000/- for giving the receipt for tax.

19. In the cross-examination done on behalf of A.1, P.W.4 denied the suggestion that when P.W.2 went to Sivakasi Municipality regarding the tax assessment, the building was not completed and he asked for permission to put up a new construction and accepted that as per Ex.P.7, permission was sought to alter the tiled portion of the superstructure into one of R.C.C. superstructure and denied the suggestion that if he is stating falsehood, Sivakasi Municipality may take action with regard to the deviation in construction.

20. P.W.4 was also cross-examined on behalf of the appellant/A-2 and he deposed that after the demand was made by the accused on 05.03.1996, he did

not make any complaint to the officials of Sivakasi Municipality and denied the suggestion that for the purpose of getting electricity connection only, he pressurised the appellant/A-2 to assess the building in question for the purpose of levying the tax and since they had not acceded to the same, a false complaint was lodged.

21. It is the submission of the learned Counsel for the appellant/A-2 that as per the charges framed, the initial demand was made on 06.03.1996, whereas P.W.4, the father of P.W.2, has deposed that the appellant/A-2 met him in his office on 05.03.1996 with regard to the levy of tax and he deputed his son to meet him and he returned and informed that both the accused have demanded a sum of Rs.3,000/- towards bribe. Thus, the main plank of the prosecution that the initial demand was made on 06.03.1996, has not been substantiated at all and therefore, the demand of bribe on 06.03.1996, has not been proved.

22. P.W.2 is the son of P.W.4 and in the chief examination, he deposed that the appellant/A-2 met his father on 05.03.1996, for the purpose of levying the tax and asked him to meet A.1 and he was informed by his father - P.W.4 and accordingly, on 06.03.1996, he went to Sivakasi Municipality, along with his friend - Kumar and met both the accused and A.1 told him that he will reduce the tax and he shall pay a sum of Rs.1,500/- by way of illegal gratification and when he was about to leave, the appellant/A-2 called him and also demanded a sum of Rs.1,000/- by way of illegal gratification and asked him to come on 07.03.1996 and he did not go on that day.

23. P.W.2 would further depose that the said fact was informed to his father and he asked him to lodge a complaint to the Department of Vigilance and Anti-Corruption and accordingly, he lodged a complaint on 08.03.1996, marked as Ex.P.2, to P.W.12, who made arrangements for trap and also summoned the services of the independent witnesses, namely, Rajendran and P.W.5 - Sundaram and advised them about the things which they have to do, for payment of bribe to both the accused.

24. In the cross-examination, P.W.2 would depose that what was purchased was only a vacant site and for the superstructure put up only, the tax was demanded

and the construction was commenced in the year 1995 and in between the period, no construction was there and at the time of giving the complaint, construction has already been completed.

25. P.W.2 pleaded ignorance as to the fact that tax was levied for the year 1992-93 in respect of the said property and denied the suggestion that it was already assessed to tax and was very categorical that it was only a vacant site. He would further depose that his father told him about the meeting between the appellant/A-2 and himself, on 05.03.1996 and on that day, the appellant/A-2 met him as well as his father - P.W.4 and on 06.03.1996, at about 04.00 p.m., they met both the accused.

26. P.W.2 would further depose that when he met, the appellant/A-2 asked him to talk to A.1 and the discussion took place as to the payment of money for the purpose of reducing the tax amount. P.W.2 would admit that in the complaint, it has been specifically stated that if the bribe amount is paid, the tax amount will be reduced and while he was conversing with A.1, P.W.3 was with him. P.W.2 would further depose that on 06.03.1996, the appellant/A-2 asked him to come on 08.03.1996 to pay the money and get the receipt and further that the appellant/A-2 did not specify any date for the purpose of bringing the money and further he told him that when he is coming to give the money, he should bring the money for both of them, namely, A.1 and the appellant/A-2.

27. It is further deposed by P.W.2 that the date of payment of bribe as on 08.03.1996 was fixed by him only and the accused did not state so and further stated that if they would have reduced the bribe amount, the complaint would not have been lodged.

28. P.W.2 was cross-examined on behalf of the appellant/A-2 that he has handed over a sum of Rs.1,500/- which was coated with Phenolphthalein powder and a sum of Rs.500/- which was brought for payment of tax and he did not state the said fact during the investigation and when he identified the appellant/A-2 to the police, it was about 05.30 p.m., on 08.03.1996 and he was also aware of the fact that tax amount would be less than Rs.500/-.

29. P.W.2 would admit that the fact of the appellant/A-2 meeting his father - P.W.4 was told to him only by his father and denied the suggestion that the appellant/A-2 met his father on 06.03.1996 and told him that though he has obtained permission for licence to review the existing structure, he has constructed a new structure and hence, tax cannot be levied and he cannot meet the higher officials and aggrieved by the same, he has lodged the complaint and further denied that the accused did not co-operate with the above said illegal act, they developed animosity.

30. P.W.3, who was said to have accompanied P.W.2, when he met the accused on 06.03.1996, turned hostile and even in the chief examination, deposed that on the way to Sivakasi Municipal Office, his stomach became upset and he did not accompany P.W.2.

31. P.W.5 is the independent/shadow witness and he has spoken about the pre-trap formalities. In the chief examination, P.W.5 further deposed that they reached Sivakasi Municipal Office at 05.45 p.m., on 08.03.1996 and met the appellant/A-2 and asked about the whereabouts of A.1 who told him that on account of bus strike, there is no possibility of A.1 coming back and asked P.W.2 to give a sum of Rs.1,000/- demanded by way of bribe towards assessment of tax, aggregating to a sum of Rs.1,500/- and immediately, P.W.2 took a sum of Rs.1,500/- out of Rs.2,500/- kept in his pant pocket and it was received by the appellant/A-2 and kept in his shirt pocket. He further told P.W.2 that he will prepare the receipt and asked him to meet A.1 on the next day and pay the amount payable to him.

32. P.W.12, on noting the pre-arranged signal, rushed inside the office and asked the appellant/A-2 as to whether he has received the bribe amount and it was denied by the appellant/A-2 and later on, told that since P.W.2 asked for the tax receipt for bank purpose, he has received a sum of Rs.1,500/- and thereafter, Phenolphthalein test was conducted which proved positive.

33. In the cross-examination done on behalf of A.1, P.W.5 would depose that how much amount, P.W.2 had brought on 08.03.1996, he was not aware of the same and pleaded ignorance as to whether the uncoated currency notes were recovered from P.W.2 and denied the suggestion that he did not accompany P.W.2. He would further depose that at about 01.30 p.m., on 08.03.1996, he reached the

office of the Department of Vigilance and Anti-Corruption, Virudhunagar and at about 02.00 p.m., went to Sivakasi Municipal Office.

34. The learned Counsel for the appellant/A-2 has drawn the attention of this Court to the mahazar prepared while conducting the trap, marked as Ex.P.4 and would submit that the said mahazar was prepared at 02.00 p.m., on 08.03.1996 and it was over at about 15.00 hours on 08.03.1996 and thereafter, the trap proceedings were conducted at about 17.50 hours on 08.03.1996, as evidenced under Ex.P.9, the post-trap mahazar and therefore, the evidence given by P.W.2 that he reached the Department of Vigilance and Anti- Corruption, Virudhunagar, at 01.30 p.m., and reached Sivakasi Municipal Office at 02.00 p.m., cannot be correct and it substantiated the defence that he did not accompany P.W.2.

35. P.W.6 was the Junior Assistant of Sivakasi Municipal Office at the relevant point of time and he deposed that A.1 was employed as Revenue Inspector and the appellant/A-2 was employed as Revenue Assistant/Bill Collector and the tax assessment based on Annual Rental Value has been done by the Commissioner and for that purpose, he need not asked for opinion from the Revenue Inspector and the Revenue Inspector has no role to play with regard to the assessment of tax.

36. P.W.7 was the Commissioner, in-charge, of Sivakasi Municipality at the relevant point of time and in the chief examination, he speaks about the post-trap proceedings and he has also produced Ex.P.17 - Bill book, Ex.P.18 - Building Licence Register and would further state that P.W.4 was given permission/licence on 06.03.1995 to put up a construction.

37. In the cross-examination, he would depose that money collected by the appellant/A-2 was kept inside the receipt book and he was not aware that whether P.W.4 had put up a new construction or additional construction and that by getting the licence/permission to alter the old construction, a new construction cannot be put up and Ex.D.4 - series, was also marked, wherein his attention was drawn as to the endorsement made for collection of tax.

38. P.W.7 would further admit that in Ex.P.8 - series, permission was granted to convert the tiled house into one of R.C.C. construction and would further admit that before the end of the financial year, they have to collect the tax in an urgent manner and on 06.03.1996, A.1 was on duty.

39. P.W.10, was the Sub-Registrar, who registered Ex.P.6, sale deed dated 17.02.1994 executed in favour of P.W.4 and in the cross-examination, he would state that from the said document, it cannot be found as to whether it was a vacant site or the site with construction and admitted that it is given a Municipal water supply connection and prior to construction of the house, such connection cannot be obtained.

40. P.W.11, who sold the land under Ex.P.6, would depose that during the course of investigation, they told the police that they have conveyed only a vacant site and there was no superstructure and denied the suggestion that the old house was demolished and a new construction was put up and denied the suggestion that in the sale deed, they have wrongly shown the water tap connection.

41. P.W.12 - Trap Laying Officer, in the chief examination, has spoken among other things that after trap was laid, the explanation of the appellant/A-2 was asked and he denied the suggestion that he received a sum of Rs.1,000/- by way of illegal gratification and further stated that for the old assessment only, he received the said amount. He would further state that advice was given to keep the amount separately to be given to A.1 and the appellant/A-2. In the cross-examination, P.W.12 would state that he has not recorded the statement of the appellant/A-2, however, the statement immediately after trap was found place in Ex.P.9, mahazar and would further state that the appellant/A-2 was also in possession of the currency notes which are not coated with Phenolphthalein powder and he would further state that he did not verify whether P.W.4 put up a new construction or demolished an old structure and put up a new construction.

42. P.W.12 would further depose that P.W.2 also handled the money tainted with Phenolphthalein powder and with regard to the delay in lodging the F.I.R, he would state that it was on account of the act of P.W.2.

43. P.W.13, who continued the investigation, in the cross-examination admitted that P.W.4, the father of P.W.2 has got permission from the Municipality to demolish the old structure and put up a new construction and in Ex.P.6 - sale deed, in the description of the property, it has been shown that the vacant site was purchased and would admit that without showing the superstructure, if the document was registered, then it was wrong.

44. P.W.13 would further depose that during the course of the investigation, it came to light that the new construction was put up and permission was obtained to put up a new superstructure. He would further depose that till 06.03.1996, the accused did not have any criminal antecedents.

45. P.W.14 who completed and filed final report, was questioned with regard to the sanction and prior to getting sanction, the statements of A.1 and the appellant/A-2 were recorded and would further state that the amount was demanded and accepted by way of illegal gratification.

46. The appellant/A-2, apart from denying the incriminating circumstances made out against him in the evidence tendered by the prosecution, has also filed a written statement stating among other things that on 08.03.1996, P.W.2 rushed to his office and immediately, demanded the tax receipt and it was refused by him since the property was not assessed, however, P.W.2 told that he brought a sum of Rs.1,500/- and insisted for the receipt and kept the amount on the table and once again, it was refused by him since it was not assessed by the Revenue Inspector. However, P.W.2 went outside and told that he will be back within a few minutes in spite of his calling P.W.2 and within 15 minutes, the trap party led by P.W.12 came along with P.W.5. P.W.12 asked him as to the money found on the table and he told that P.W.2 kept it for the purpose of getting the tax receipt and he was threatened by P.W.12, who asked him to count the money and accordingly, he counted the money.

47. Ex.P.1 - sanction order, dated 11.03.1998, was given by P.W.1 and P.W.1 was examined and in the cross-examination done on behalf of the appellant/A-2, P.W.1 came to know that the occurrence took place on 06.03.1996 and along with Ex.P.1, no list was enclosed which he has perused and accorded the sanction, but

he has referred to certain documents in Ex.P.1 and to his knowledge, along with the records, the statements of the accused have also been submitted and denied the suggestion that all the vital documents have not been perused and he did not verify the actual tax amount which he has collected.

48. P.W.1 would further state that the accused are not the final authority to reduce or enhance the tax and before fixation of the tax, the accused are not having the right to collect the tax as per the procedures and the collection of a sum of Rs.1,500/- by the appellant/A-2 before fixation of tax, is wrong.

49. It is the primordial submission of the learned Counsel for the appellant that there is a grave discrepancy with regard to the date of initial demand as to whether it is on 05.03.1996 or 06.03.1996 and P.W.4 - father and P.W.2 - son, were categorical that the initial demand was made on 06.03.1996, whereas they deposed that it was made on 05.03.1996.

50. It is pertinent to point out at this juncture that the trap was on 08.03.1996 and P.W.4 was examined on 28.10.2002 and P.W.2 was examined on 24.10.2002 and on account of passage of time of nearly six years, there is bound to be some discrepancies.

51. Even if this Court accepts the submission that initial demand of illegal gratification on the part of the appellant/A-2 was not proved, it is a categorical testimony of P.W.2 corroborated by P.W.5/shadow witness that when P.W.2 made the appellant/A-2, in his office in the evening hours on 08.03.1996, he asked about the bribe amount and a sum of Rs.1,000/- was paid towards the bribe amount and a sum of Rs.500/- was paid towards tax amount and it was accepted by the appellant/A-2.

52. In fact, a suggestion was made to P.W.2 that on 06.03.1996, the appellant/A-2 met his father - P.W.4 and told him that though he obtained the planning permission for demolition of the old construction and to put up a new construction, the fact remains that in violation of the same, he has put up a new construction, the assessment cannot be made.

53. The said suggestion made on behalf of the appellant/A-2 in the cross-examination to P.W.2, would also substantiate and probablise the case of the prosecution that initial demand was made on 06.03.1996.

54. As already pointed out, it is not the case of the defence that on 08.03.1996, the appellant/A-2 merely received a sum of Rs.1,000/- and Rs.500/- and the testimonies of P.W.2 and P.W.4 had clearly established that on that date also, the appellant/A-2 made a demand and accepted a sum of Rs.1,000/- towards illegal gratification.

55. The post-trap mahazar, marked as Ex.P.9, has conclusively established the fact that it was the appellant/A-2 who received the bribe amount of Rs.1,000/- and the Phenolphthalein test conducted on his both hands as well as shirt, proved positive and the chemical analysis report, marked as Ex.P.21, has confirmed the fact of the receipt of the illegal gratification on the part of the appellant/A-2.

56. As per the written statement filed by the appellant/A-2, in his answer to the questions put under Section 313(1)(b) Cr.P.C., it is the version of the appellant/A-2 that since the tax has not been assessed by the Revenue Inspector, he cannot collect the tax. In this regard, it is useful to refer to Ex.D.4 - series, marked on behalf of the accused. Appendix I is the application made by P.W.4 for putting up a construction as per the column 6 and it is stated 'alteration construction' in the terrace and the place of construction is given as 31A, AVT Middle street, Sivakasi. In the endorsement dated 08.03.1995, made by the Town Planning Inspector, Sivakasi Municipality, he has stated that the application has been submitted for alteration construction and as per the plans submitted, the permission can be granted and accordingly, permission was accorded and notices under Sections 200 and 201 of the Tamil Nadu District Municipalities Act was issued on 09.03.1995 and the period before which the construction should be completed, was between 09.03.1995 and 08.03.1998 and an endorsement was also made in the said plan and that the construction activities are going on and permission is in subsistence till 09.03.1998 and the file can be kept pending till 31.05.1995.

57. Further, the endorsement was made by the Town Planning Inspector on 19.03.1995, stating among other things that a deviation in construction was noted

by altering the tiled roof into one of R.C.C. and the additional construction was also made in the form of terrace and therefore, it was suggested that a notice under Section 201 of the Act can be sent and the tax particulars can also be ascertained from the Revenue Inspector.

58. The Commissioner of Sivakasi Municipality, in his Ref. No.L.I>R. 325/95-F2 (BA No.332/95-F2), dated 21.03.1996, has noted the nature of the construction or improvements as "tiled house to be changed as R.C.C. house" and in the bottom of the document, it has been stated as follows: "Resubmitted with particulars called for 1. Assessed in the Half Year. ... 1996-97/I2 Existing tax amount and A.R.V. ... Rs.54.00 3. Revised tax amount and A.R.V. ... Rs.447.00 4. Mutation number/monthly list number... 1996-97/I5 Assessment number ... 20286 6.Door number ... 31A, AVT, eLj;bjU."

59. The Revenue Inspector, as per the noting, has noted that the assessment in the first half year for 1995-96, the assessment was made for the first half of 1996-97 and the existing tax amount as per the Annual Rental Value was Rs.54/- and the revised tax assessment as per the Annual Rental Value was Rs.447/- which aggregated to a sum of Rs.500/-.

60. It is to be remembered at this juncture that Ex.D.4 - series, were marked on behalf of the appellant/A-2 and as per the above said documents, the revised tax amount and the existing tax amount, would aggregate to a sum of Rs.501/- and the appellant/A-2 has collected a sum of Rs.500/- towards tax and the defence taken by the appellant/A-2 that since it was a new construction, the tax cannot be assessed unless and until it was verified by the Revenue Inspector, in the considered opinion of this Court, has not been probablised and as per Ex.D.4 - series, a superstructure has already been in existence and permission was sought and obtained to alter the same.

61. No doubt, in Ex.P.6 - registered sale deed, in the description of the property, it has been shown as vacant site and even assuming that the seller of the property, namely, P.W.11 and the purchaser of the property, namely, PW.4, had suppressed the said fact and managed to pay the lesser stamp duty, the said lapse or wrong committed by them, cannot mitigate the act of accepting the illegal gratification of

Rs.1,000/- from P.W.2 by the appellant/A-2.

62. As already pointed out, the prosecution in the form of testimonies of P.W.2, P.W.4, P.W.5 coupled with the testimonies of Sivakasi Municipality officials and exhibits, had proved the fact of acceptance of illegal gratification by the appellant/A-2 from P.W.2.

63. The judgment rendered by the Honourable Supreme Court in *B.Jayaraj v. State of A.P.* reported in 2014(2) MWN (Cr.) 376 (SC), has laid down the proposition that the demand of illegal gratification sine qua non to constitute the offence and mere recovery alone is not sufficient and proof of acceptance of illegal gratification can follow only if there is proof of demand and in the absence of the same, no presumption can be drawn under Section 20 of the P.C. Act.

64. There cannot be any difficulty in accepting the said proposition which stood the test of times in a catena of decisions rendered by the Honourable Supreme Court, but, in the case on hand, the respondent/prosecution, beyond all probabilities has amply proved the demand and acceptance of illegal gratification of Rs.1,000/- from P.W.2/defacto complainant by the appellant/A-2, for the purpose of assessing the property and issuing the tax receipt and the defence put forth by the appellant/A-2 in that regard, is not convincing and not acceptable.

65. In the considered opinion of this Court, the trial Court has properly appreciated the oral and documentary evidence in proper perspective and rightly reached the conclusion to convict and sentence the appellant/A-2 for the commission of the above said offences.

66. This Court, after carefully going through the entire materials placed before it, is of the view that there is no error apparent or infirmity in the reasons assigned in the impugned judgment.

67. In the result, this Criminal Appeal is dismissed, confirming the judgment passed in C.C.No.113 of 1998, dated 10.06.2004, by the learned Chief Judicial Magistrate, Virudhunagar, at Srivilliputtur. The bail bonds executed by the appellant/A-2 shall stand cancelled. The respondent shall take necessary and

urgent steps to secure the custody of the appellant/A-2 to undergo the remaining part of the sentence. Index :No 27.02.2015 Internet :Yes rsb To 1.The Deputy Superintendent of Police, Vigilance and Anti Corruption, Virudhunagar. 2.The Court of Chief Judicial Magistrate, Virudhunagar, at Srivilliputtur. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN,J.

rsb PRE-DELIVERY

JUDGMENT

MADE IN Criminal Appeal No.815 of 2004 27.02.2015

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