

**M.Patties Vs. The State, By**

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**SooperKanoon Citation :** [sooperkanoon.com/60994](http://sooperkanoon.com/60994)

**Court :** Chennai

**Decided On :** Jul-22-2015

**Judge :** P.R.Shivakumar

**Appellant :** M.Patties

**Respondent :** The State, By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 22.07.2015 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR Criminal Appeal(Md.No.240 of 2006 M.Patties ..Appellant/Sole Accused versus The State, by The Deputy Superintendent of Police, Vigilance and Anti-corruption Department, Ramanathapuram, Ramanathapuram District..Respondent/Complainant PRAYER Criminal Appeal filed under Section 374 of Criminal Procedure Code against the Judgement made in Special C.C.No.9/01, dated 23.05.2006 on the file of the learned Special Judge-cum-Chief Judicial Magistrate, Ramanathapuram.

Reserved on : 23.09.2014 For Appellant :Mr.R.Singaravelan for M/s.J.Nisha Banu  
For Respondent :Mr.T.Mohan Additional Government Pleader :

**JUDGMENT**

M.Patties, the sole accused in Special C.C.No.9 of 2001 on the file of the Special Judge under the provisions of the Prevention of Corruption Act, 1988(Chief

Judicial Magistrate).Ramanathapuram is the appellant in the present appeal.

He was prosecuted in the said case for offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2.The trial Court found him guilty of both the offences, convicted him and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.500/- with a default sentence of simple imprisonment for one month, for each one of the said offences, by a judgement dated 23.05.2006.

The substantive sentences were directed to run concurrently.

As against the judgement, the present appeal has been filed under Section 374 of the Criminal Procedure Code.

3.For the sake of convenience, the appellant is referred to as the "accused" and the respondent shall be referred to as "the prosecution".

4.The case of the prosecution as discerned from the oral and documentary evidence can be briefly stated as follows: During the relevant point of time, the accused Patties was functioning as Divisional Fire Officer at Ramanathapuram and he was a public servant.

P.W.2-Selvaraj, P.W.6-Pandi and P.W.7-Balasubramanian were working as Light Motor Vehicle Drivers in the Fire Service Department and they were posted at the Fire Station, Ramanathapuram.They had undergone training in driving heavy motor vehicle at the State Level Driving School, Chennai and were granted Heavy Motor Vehicle licence by the Regional Transport Officer.

They had also undergone Pump-Operator training which was one of the requirements for being appointed as Heavy Motor Vehicle Driver in the Fire Service Department and they had become fully eligible to be promoted as Heavy Motor Vehicle DriveRs.The accused, who was the competent authority to issue promotion orders to the drivers of the light motor vehicle as drivers of heavy motor vehicle, demanded a sum of Rs.5,000/- from each one of the said persons for promoting them as heavy motor vehicle driveRs.The demand was made through

P.W.4-Ramachandran at the fiRs.instance and then through P.W.5-Jamal Abdul Nazar.

On 27.08.1999 P.W.2-Selvaraj met Jamal Abdul Nazar who was working as Station Writer at Ramanathapuram Fire Station and requested him to make a recommendation to post P.W.2 as heavy motor vehicle driver at Ramanathapuram itself.

Thereafter, P.W.5-Jamal Abdul Nazar met Selvaraj- P.W.2 on 30.08.1999 and informed him that the accused was demanding at least a sum of Rs.3000/-.

On 05.09.1999 at about 9.30 A.M, P.W.5 met P.W.2 again and informed him that the accused wanted P.W.2-Selvaraj and P.W.7- Balasubramanian to make payment of Rs.3,000/- each for their retention at Ramanathapuram on their promotion as heavy motor vehicle driveRs.On the same day at 10.00 a.m., both P.W.2 and P.W.5 met P.W.7 Balasubramanian at his residence and conveyed the message.

Balasubramanian informed them that he could not afford to pay the amount and requested P.W.2 and P.W.5 not to reveal the fact of their meeting him.

On the same day, at about 12.00 noon, P.W.2-Selvaraj and P.W.5-Jamal Abdul Nazar met the accused at his residence whereupon P.W.2-Selvaraj requested the accused to post him at Ramanathapuram itself as he had been recently transferred to Ramanathapuram after much efforts.

The accused insisted upon payment of Rs.3,000/- for his retention at Ramanathapuram.

P.W.2 informed that he would make payment the next day and the accused informed P.W.2 that he would issue the posting order the next day itself.

As P.W.2 was not willing to pay the amount demanded by the accused as illegal gratification, he met the Deputy Superintendent of Police,Vigilance and Anti-Corruption Wing, Ramanathapuram and lodged a complaint in writing under Ex.P2 at 06.09.1999 at about 12.00 noon.

P.W.12- Balashanmugam was the Deputy Superintendent of Police, Vigilance and Anti- Corruption Wing, Ramanathapuram.

He received the complaint, prepared Ex.P21- FiRs. Information Report and registered a case in crime No.21 of 1999 on the file of the Vigilance and Anti-Corruption Wing, Ramanathapuram for an offence under Section 7 of the Prevention of Corruption Act, 1988.

On his request, P.W.3-Rajappa, Executive Engineer of Tamil Nadu Water Supply and Sewerage Board, Ramanathapuram and one Natarajan, Additional Assistant Primary Educational Officer, Ramanathapuram came to the office of P.W.12.

In their presence, demonstration as to the importance of phenolphthalein test in trap cases was made and MO.1 Series consisting of one Rs.500/- note and 25, hundred rupees notes were obtained from P.W.2 and were re-entrusted to him after coating the same with phenolphthalein powder with instructions to give the same to the accused, in case the accused would make a demand.

An entrustment mahazar was also prepared under Ex.P4.

Thereafter P.W.2 along with the Police party and the above said official witnesses proceeded towards the residence of the accused.

P.W.2 was proceeding in his cycle a little ahead of the other persons who were coming in a jeep belonging to the Vigilance and Anti-Corruption Wing.

On his way to the residence of the accused, P.W.2 met P.W.5-Jamal Abdul Nazar at Bharathi Nagar Bus Stop and took him along with him.

When they met the accused at his residence at 7.15 p.m the accused, asked P.W.2 whether he had brought the amount and P.W.2 handed over MO.1-currency notes coated with phenolphthalein power.

Thereafter, P.W.2 and P.W.5 came out and gave P.W.2 a signal as per the pre-arrangement.

5. On receiving the signal from P.W.2, P.W.12-Balashanmugam, the Deputy Superintendent of Police, along with police party, entered the house of the accused along with the witnesses and phenolphthalein test was conducted for the fingers of the accused by preparing two separate sodium carbonate solutions and asking him to dip his right hand and left hand fingers in those solutions.

It tested positive for phenolphthalein as the sodium carbonate solutions turned pink.

They were sealed for being sent to the Forensic Lab, for examination.

Thereafter P.W.12 recovered MO.1-currency notes, which was found on a silver plate in one of the rooms under Ex.P5-Mahazar.

The residence of the accused and his office were searched and Ex.P6 and Ex.P7-Search lists were prepared.

The residence of one Ramachandran (P.W.4).driver of fire service, was also searched and Ex.P8-Search List was prepared for the search made at the residence of Ramachandran and no material or document was seized.

During the search made at the residence of the accused, a pass-book issued by Kuberan Finance to P.W.6-Pandi and a receipt dated 01.09.99 for payment of the fiRs.instalment towards loan obtained by Pandi in Kuberan Finance were also seized.

At 10.15 p.m on 06.06.1999, P.W.12 arrested the accused and returned to the Office of the Vigilance and Anti-corruption Wing with the accused and the seized articles.

Thereafter, he sent the accused and the material objects to the Court for remand.

6. The further investigation of the case was taken over by P.W.13- Thangapandian, the then Deputy Superintendent of Police, Vigilance and Anti- Corruption Wing, Sivagangai.

During the course of investigation, M.Os-2 and 3 containing the sodium carbonate solutions used at the time of trap were sent to the Forensic Lab and a positive report was received from the Forensic Lab under Ex.P20.

The chemical analysis was done by P.W.11- Kasturibai, Scientific Assistant, Forensic Lab, Chennai.

After P.W.13, P.W.16-Mohan, Deputy Superintendent of Police, Sivagnagai continued the investigation and submitted a draft final report for sanction for prosecution.

P.W.1-Naresh Gupta, the then Home Secretary accorded sanction for prosecution under Ex.P1.

After receiving the sanction order, P.W.16 submitted a final report and thus the case came to be instituted.

7. On appearance of the accused, charges were framed for the offences under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

The accused pleaded not guilty.

In the trial that followed after recording the plea of the accused, P.W.1 to P.W.16 were examined and Ex.Ps 1 to 23 were marked, besides producing Mos.1 to 3, on the side of the prosecution.

After completion of the recording of evidence on the side of the prosecution, the accused was questioned under Section 313(1)(b) of Criminal Procedure Code, 1973 regarding the incriminating materials found in the evidence adduced on the side of the prosecution.

The accused denied them to be false and contended that he was victimised because he was a strict and straight-forward officer; that one Ramakrishnan who had been transferred from Ramanathapuram as Divisional Fire Officer had instigated persons belonging to his caste to foist a false case against the accused so as to pave the way for his re-transfer to Ramanathapuram and that the prosecution witnesses, who spoke against the accused having been affected by

the strict actions taken by the accused one way or other, joined together and thus the case came to be foisted.

D.W.1 and D.W.2 were examined as defence witnesses and Ex.D1 to D3 were marked on the side of the accused as defence documents.

8.The learned trial Judge, at the conclusion of trial, considered the evidence and held that both the charges framed against the accused were proved beyond reasonable doubt.

Accordingly, the learned trial Judge found the accused guilty of the offences under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, convicting him for the said offences and imposed the sentence of punishment and fine as indicated supra.

As against the same, the present appeal has been filed.

9.The arguments advanced by Mr.R.Singaravelan, learned counsel representing Mrs.J.Nisha Banu, learned counsel on record for the appellant and Mr.T.Mohan, learned Additional Public Prosecutor, appearing on behalf of the respondent/State.

Copies of judgement and material papers produced in the form of typed-set of papers were taken into consideration.

10.The case of the prosecution can be divided into parts dealing with (1) the initial demand of Rs.5,000/- from each one of P.W.1-Selvaraj, P.W.6- Pandi and P.W.7-Balasubramanian, for promoting them as heavy motor vehicle Drivers made on 25.08.1999 through P.W.4-Ramachandran;(2) the second demand made through P.W.5-Jamal Abdul Nazar on 30.08.1999 (3) the third demand made by the accused on 05.09.1999 in the presence of P.W.5-Jamal Abdul Nazar;(4) the lodging of the complaint and the registration of the case on 06.09.1999 at 12.00 noon; (5) the actual occurrence at 7.15 p.m.On 06.09.1999 at the residence of the accused whereupon the accused was trapped; and (6) the investigation, sanction for prosecution and submission of final report.

11. So far as the alleged demand of Rs.5,000/- from each one of P.W.2, P.W.6 and P.W.7 for promoting them as heavy motor vehicle drivers, the evidence of P.W.2-Selvaraj is not direct and it is only a hear-say.

According to him, it was P.W.4-Ramachandran who met him at 5.00 p.m on 25.08.09 at Ramanathapuram Fire Station and informed him that the accused was demanding a sum of Rs.5,000/- as illegal gratification for posting him as heavy motor vehicle Driver at Ramanathapuram itself.

At the relevant point of time, P.W.4-Ramachandran was working as heavy motor vehicle driver at Fire Station, Eruvadi.

He has not supported the case of the prosecution that through him the accused demanded a sum of Rs.5,000/- from each one of P.W.2, P.W.6 and P.W.7 for posting them as heavy motor vehicle drivers at Ramanathapuram itself.

As P.W.4 did not support the case of the prosecution, he was treated hostile and with the permission of the Court, he was cross-examined by the Public Prosecutor.

Even then, nothing useful to the prosecution case was able to be elicited from P.W.4.

P.W.4 was sought to be proved to have close connection with the accused on the premise that a pass-book for availing a loan of Rs.10,000/- in the name of Pandi from Kuberan Finance and a receipt for payment of the first instalment in the name of Pandi were found at the residence of the accused at the time of occurrence and the same were recovered by P.W.12, the Deputy Superintendent of Police under Ex.P6-Search List.

Though Ex.P6-Search list was produced as a document on the side of the prosecution, the pass-book of Kuberan Finance issued in the name of Pandi and the receipt for payment of first instalment by Pandi have not been produced and marked as exhibits.

In this regard, it is the evidence of P.W.4, during cross-examination made by the Public Prosecutor that Pandi had borrowed a sum of Rs.10,000/- from Kuberan Finance on his request and that the pass-book was available with Pandi and he used to pay the amount through Pandi.

It is his further evidence that he did not know how the pass-book came to be found at the residence of the accused.

An attempt was made to project P.W.4 to be the person closely associated with the accused helping him in getting illegal gratification and at times when he could not get such illegal gratification, he used to borrow money from Finance Companies and help the accused.

Such suggestion were stoutly denied by P.W.4.

It is his clear evidence that while he was working at Ramanathapuram as heavy motor vehicle driver before May 1995, P.W.2 was also working there as light motor vehicle driver and that since P.W.2 was not in the habit of doing the works entrusted by P.W.4, he was not in talking terms with him and that after his transfer to Ervadi, he had no contact with P.W.2.

Therefore it is quite obvious that, excepting the evidence of P.W.2, there is no direct evidence to show that the accused made a demand from P.W.2 through P.W.4.

P.W.2's evidence in this regard, besides being hear-say evidence, is not corroborated by any other evidence.

The above said Pandi while deposing as P.W.6 has not spoken to about any such demand made by the accused through P.W.4-Ramachandran.

P.W.7-Balasubramanian also does not speak about any such demand made by P.W.4-Ramachandran on behalf of the accused.

12. So far as the alleged second demand is concerned, it is the evidence of P.W.2 that on 27.08.99, he met P.W.5-Jamal Abdul Nazar and asked him to make recommendation to the accused to post him as heavy motor vehicle driver at

Ramanathapuram itself.

It is his further statement that on 30.08.99, P.W.5-Jamal Abdul Nazar informed him that the accused wanted him to pay at least a sum of Rs.3,000/-.

Regarding the said aspect, the testimony of P.W.2 is not corroborated by P.W.5-Jamal Abdul Nazar.

In fact, in his chief- examination, he did not speak about any such request made by P.W.2 for his posting as heavy motor vehicle driver at Ramanathapuram itself.

Since P.W.5 also did not support the case of the prosecution in this regard, he was treated hostile and was cross-examined by the prosecution with the permission of the Court.

All the suggestions made regarding the alleged demand made through Ramachandran on 25.08.99, the request made by P.W.2 to make the recommendation to the accused for the posting of P.W.2 at Ramanathapuram itself, the alleged meeting of P.W.5 with the accused, the alleged information furnished by P.W.5 to P.W.2 on 30.08.99 that the accused was demanding at least Rs.3,000/- from him and the alleged meeting of P.W.2 and P.W.5 with the accused on 05.09.1999 at 12.00 noon and the demand made by him were categorically denied by P.W.5 as false.

P.W.7-Balasubramanian alone made an attempt to support the prosecution case that P.W.2-Selvaraj and P.W.5-Jamal Abdul Nazar met him on on 05.09.1999 and informed that the accused wanted him to pay a sum of Rs.3,000/- for his posting as heavy motor vehicle driver.

It is pertinent to note that, according to P.W.2's evidence, the demand was made not only for promoting them as heavy motor vehicle drivers but also for posting them at Ramanathapuram itself.

The evidence of P.W.7 deviates from the evidence of P.W.2 insofar as he does not state that he was informed that the amount demanded was for posting him at Ramanathapuram itself.

13. In addition, there is a vital contradiction between the evidence of P.W.2 and the evidence of P.W.7 regarding the place where P.W.2 and P.W.5 met P.W.7-Balasubramanian and passed on the information.

According to the evidence of P.W.2, he and P.W.5-Jamal Abdul Nazar met P.W.7-Balasubramanian at his residence at 10.00 a.m. On 05.09.1999 and both of them informed Balasubramanian that the accused was demanding Rs.3,000/-.

Without stating the approximate time of their meeting P.W.7 stated that P.W.2 and P.W.5 met him on 05.09.1999 in the morning.

But the place of their meeting as furnished by P.W.7 is not his house.

And on the other hand, according to him, they met him on the road near his house.

According to P.W.2's evidence, both P.W.2 and P.W.5 informed Balasubramanian(P.W.7) that the accused wanted him to pay a sum of Rs.3,000/-.

On the other hand, according to the evidence of P.W.7, it was P.W.2 and not P.W.5, who passed on the information to him.

The same will prove to be a suspicious circumstance regarding the alleged demand made by the accused from P.W.2 and P.W.7 through P.W.5.

14. The fourth demand according to the prosecution case was made on 06.09.1999 at about 7.15 p.m. In the meanwhile, P.W.2 had lodged a complaint under Ex.P2 at 12.00 noon on 06.09.1999 based on which Ex.P21-FiRs. Information Report was prepared and the case was registered.

Of course, regarding the preparatory works for the trap proceedings made in the office of the Vigilance and Anti-Corruption Wing, Ramanathapuram, no vital discrepancy is shown to exist in the prosecution evidence.

On the other hand, evidence regarding the execution of the trap in which the accused is alleged to have received Rs.3,000/- as illegal gratification from P.W.2 and regarding the recovery of the same from the residence of the accused, there are a number of suspicious circumstances in the evidence adduced on the side of

the prosecution.

FiRs.of all, in vigilance and Anti-Corruption cases, when a person is sought to be trapped, normally the deCo.witness shall be accompanied by a shadow witness.

This is to ensure that the de-facto complainant does not plant the tainted money at the place of the accused or thrust the same towards the accused so as to trap him with the same.

In cases wherein the Trap Laying Officer feels that the presence of the accompanying witnesses will alert the accused, other methods can be employed.

In any event, evidence of de-facto complainant alone, without being corroborated by any other witnesses, shall not be enough to convict the accused, even though the tainted currency would have been recovered from the person or from his office or from his residence, as the case may be.

In the case on hand, it is obvious from the evidence of P.W.3-Rajappa and Ex.P4-Entrustment Mahazar that though P.W.3-Rajappa was advised to accompany P.W.2 to watch the happenings when P.W.2 would met the accused, it was P.W.2 who made him not to accompany him by stating that the accused would grew suspicion, if any other person would accompany him.

15.However, it is quite surprising to note that P.W.2 on the way met P.W.5-Jamal Abdul Nazar and took him along with him to the residence of the accused without even informing him.

The evidence of D.W.1-Vijayan assumes importance.

He was working as a Fireman at the Fire Station, Ramanathapuram.

According to him, he went to the residence of the accused at 6.45 p.m on 06.09.1999 to hand over a Tapal and at that point of time, after despatching a Tapal to Madurai through Fireman Nagasundaram, the accused gave him Rs.10/- for purchasing tiffin (idlees) for his dinner; that while he was on his way to the hotel, he saw P.W.2-Selvaraj and P.W.5-Jamal Abdul Nazar and that when they asked about the availability of the accused, he informed them that the accused

was available at his residence.

It is his further evidence that when he came back with Idlees, P.W.2-Selvaraj and P.W.5-Jamal Abdul Nazar entered the house of the accused; that following them he entered and placed the tiffin parcel on the table of the accused; that the accused asked P.W.2 and P.W.5 to wait till he would finish his dinner and instructed them to switch of the light and TV in the adjacent room and went for washing hands.

It is his further evidence that when he placed the plate and tumbler on the table, P.W.2-Selvaraj entered the room, switched of the TV and light and came back; that P.W.2 attempted to open the parcel and he was in the process of opening the parcel, he asked him not to do so,pursuant to which P.W.2 place the parcel on the plate; that since they were asked by the accused to wait outside till he would finish his tiffin, he was standing at the edge of the warrandah, whereas the other two went out and that immediately thereafter the police party came there.

In this regard, P.W.5's evidence corroborates the testimony of D.W.1 insofar as both of them stated that P.W.2 and P.W.5 met D.W.1 when they were going towards the house of the accused and not while they were climbing the steps to go to the residential portion of the accused.

On the other hand, it is the evidence of P.W.2 that only when they were climbing the steps to reach the residential portion of the accused, D.W.1 was climbing down the staiRs.In fact, in the chief- examination, P.W.2 did not speak about coming across D.W.1 when they were climbing the staiRs.On the other hand, it was his evidence that after handing over the tainted money to the accused, he left the residence of the accused along with P.W.5, purchased and supplied tea to P.W.5 and returned to the residence of the accused and that at that juncture he saw D.W.1 standing outside the house of the accused.

However, during cross- examination, he made a development that he met him while climbing the stairs and at that point of time, D.W.1 was climbing down the staiRs.The said evidence is quite contrary not only to D.W.1's evidence but also to the evidence of P.W.5.

16. Yet another suspicious circumstance can also be noticed, according to the evidence of P.W.2, he gave a signal before going to the tea shop to get a tea for P.W.5 and for the second time, he gave a signal after P.W.5 drank the tea purchased by P.W.2 for him and left the tea shop.

On the other hand, P.W.12 would state that only after coming out of the tea shop, P.W.2 gave a signal as per the pre-arrangement and thereafter, they rushed to the place of occurrence.

If at all, P.W.12 and his party were waiting for P.W.2 to give a signal, they would not have missed the signal allegedly given by him before entering the tea shop either the version of P.W.2 that he gave the signal twice-one before entering the tea shop and the other after coming out of the tea shop- should be false or P.W.12 and his party were not alert.

The said discrepancy is also a factor which will add to the suspicious circumstances surrounding the prosecution case.

17. P.W.2-Selvaraj chose to state in his evidence in chief examination that on the date of occurrence, when he met the accused at his residence at about 7.15 p.m, the accused asked him whether he had brought money for which he replied in the affirmative that then the accused asked him to hand over the same to him, pursuant to which he handed over the money to the accused and that the accused received it.

But he has not chosen to state in clear terms as to whether the accused received the money using his hands or he received it in any other manner.

It is not the evidence of P.W.2 that the accused, on receipt of the amount from the accused counted the same.

He has also failed to state where the accused kept the amount after receiving the same from P.W.2.

In this regard, the evidence of P.W.5-Jamal Abdul Nazar who accompanied P.W.2 did not support the above said evidence of P.W.2.

In fact, he supported the defence theory and his evidence is in tune with the evidence of D.W.1.

In addition, there are many suspicious circumstances and improbabilities found in the evidence of P.W.2 which will make his evidence is unreliable.

18.FiRs.of all the alleged fiRs.demand made through P.W.4- Ramachandran on 25.08.1999 does not stand proved as the only available evidence is the oral evidence of P.W.2: P.W.4 through whom, the alleged fiRs.demand was made does not support the case of the prosecution and on the other hand, he denied having met P.W.2 after his transfer to Ervadi.

In fact, he has also spoken about the absence of cordial relationship with P.W.2.

The further evidence of P.W.2 that he informed P.W.5 on 27.08.1999 of the demand made through P.W.4 and requested him to recommend for his posting as Heavy Motor Vehicle Driver at Ramanathapuram itself has been belied by the testimony of P.W.5.

Therefore, the only evidence available to prove the alleged fiRs.demand made on 25.08.1999 namely the testimony of P.W.2, can also be construed to be a hearsay evidence.

19.It is the evidence of P.W.2 that on 25.08.1999 itself at 6.00 p.m he met the accused in his office and at that point of time, the accused demanded a sum of Rs.5,000/- for posting him at Ramanathapuram itself.

The same is not found mentioned in Ex.P.2-complaint and it is an improvement made by P.W.2 during the couRs.of trial.

The said part of the evidence of P.W.2 also stands falsified by the evidence of P.W.8-Murugesan, the then Station Fire Officer, Ramanathapuram.

He made a clear admission that a log book was maintained for the staff car used by the accused; that the staff car would be in the office of the accused if the accused was there in the office and that after dropping him at his residence, the same would be parked in the fire station.

It is also his evidence that on 25.08.1999, the staff car used by accused left his office at 5.45 p.m and brought to the fire station, Ramanathapuram at 6.00 p.m after dropping the accused at his residence.

It is also his evidence that the accused could not have been there in his office on 25.08.1999 at 6.00 pm.

Therefore, the evidence of P.W.2 that he met the accused at 6.00 p.m on 25.08.1999 and at that point of time, the accused directly made a demand for payment of Rs.5,000/- as illegal gratification cannot be true.

It is also pertinent to note that P.W.2 stated at the fiRs.instance that he met the accused at 6.00 pm on 25.08.1999 in the office of the accused and he subsequently changed his version and stated that he met him at his residence.

P.W.7-Balasubramanian also did not speak about any information from P.W.2 that the accused demanded Rs.5,000/- from him through P.W.4.

Hence, the alleged fiRs.demand made on 25.08.1999 does not stand substantiated.

20.So far as the averment regarding the second demand made on 30.08.1999 through P.W.5 is concerned, P.W.5 has not supported either the prosecution version or the evidence of P.W.2.

Therefore, the alleged second demand on 30.08.1999 also does not stand substantiated.

However, P.W.7- Balasubramanian was examined in support of the prosecution case and he has stated that both P.Ws.2 and 5 met him on 05.09.1999 and informed him that the accused wanted him to meet the accused with Rs.3,000/- for his posting as Heavy Motor Vehicle Driver.

But he did not give the exact time at which he was met by P.Ws.2 and 5 to convey the said message.

Moreover, his evidence regarding the place of meeting also differs from the evidence of P.W.2.

According to the evidence of P.W.2, they met P.W.7 at his residence but P.W.7 has stated that they met him on the road near his residence.

According to the evidence of P.W.2, both D.Ws.2 and 5 informed P.W.7 about the demand made by the accused.

But the evidence of P.W.7 is to the effect that it was P.W.2 who informed him that the accused demanded a sum of Rs.3000/-.

At the outset, the said difference between the evidence of P.Ws.2 and 7 may look like a minor or trivial contradiction.

But in the light of the fact that P.W.5 has denied having met P.W.7 with P.W.2 and passed on such information, the said contradiction assumes importance and the same proves to be a material contradiction affecting the veracity of P.W.2 and P.W.5 in this regard, till 05.09.1999 none of the persons concerned, namely P.W.2-Selvaraj P.W.6-Pandi and P.W.7-Balasubramanian met the accused.

According to the prosecution version P.W.2 met the accused at 12.10 p.m on 05.09.1999 whereupon the demand was directly made by the accused.

Here again, it is the evidence of P.W.2 that at the time of his meeting at 12.10 p.m on 05.09.1999 P.W.5 Jamal Abdul Nazar was also present.

On the date of occurrence, namely on 06.09.999 P.W.1, after lodging the complaint and making arrangements for the trap, P.W.2 ensured that nobody accompanied him as a shadow witness to note the happenings in the residence of the accused when he would meet him.

After getting the signal from P.W.2, P.W.12 and his party, along with the official witnesses, entered the residence after pressing the calling bell, pursuant to which the accused opened the door.

From the evidence of P.W.12, it is quite obvious that at that point of time the accused had been taking his food and that, using the drinking water kept for the use of the accused, sodium carbonate solution was prepared in two glass tumblers and the accused was asked to dip his fingers of each hand in each one of the solutions.

It is not the case of the prosecution that the accused had finished his dinner and he had washed his hands.

It is also not the case of the prosecution that after taking tiffin and washing his hands he received the money as illegal gratification from P.W.2.

On the other hand, it is the case of the prosecution, as projected through the evidence of P.W.2, that only after the accused received the amount from P.W.2, D.W.1 brought the tiffin parcel.

If at all, the accused handled phenolphthalein quoted currency notes before taking his food, as he washed his hands and then started eating his food, phenolphthalein powder would have been washed out and his fingers would not have tested positive in phenolphthalein test.

Chemical examination does not reveal the presence of food particles in the sodium carbonate solution used for testing the fingers in either of his hands.

All these aspects coupled with the fact that P.W.2 was not able to say where the accused placed the currency notes received from him, will show that the trap itself is a stage managed show and a farce.

Such an inference shall get strengthened by the evidence of defence witnesses and also the admissions elicited from the prosecution witnesses.

21. It seems P.W.12 did not record the statement of the accused immediately after the occurrence.

According to the prosecution case, the whereabouts of the currency notes marked as M.O.1 series were not revealed by the accused and it was found in a room next to the room in which the accused was sitting and taking his night meal.

The explanation of the accused that P.W.2 could have planted the same as a vindictive measure at the instigation of one Ramakrishnan, Divisional Fire Officer who was transferred from Ramanathapuram to Thanjavur.

Admittedly, the said Ramakrishnan's wife was employed in the Electricity Board, Ramanathapuram and he wanted to get back to Ramanathapuram.

22.The following is the statement submitted by the accused when he was examined under Section 313(1) (b) Cr.P.C.?.One V.Ramakrishnan was the Divisional Fire Officer of Ramanathapuram- Sivagangai Division from the creation of the said division ie., from 1992 and he functioned as such till 1997.

On 23.06.1997 on his transfer to Thanjavur, the accused took charge as the Divisional Fire Officer at Ramanathapuram.

Veeralakshmi, wife of the said Ramakrishnan (D.F.O) was employed as an Assistant in the Electricity Board at Ramanathapuram.

One Umarani a typist in the Office of Divisional Fire Officer, Ramanathapuram was issued with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and she had been placed under suspension by the said Ramakrishnan.

The accused did not heed to the request of Ramakrishnan to victimize the said Umarani and he took action in accordance with rules.

As per audit report, the Director of Fire Service issued an order for recovery of Rs.10,791/- being the excess telephone charges for the use of Ramakrishnan.

Thinking that the accused was the root cause for the said recovery order, the said Ramakrishnan, using the fire service employees who were close to him, caused false complaints to be made against the accused.

All those complaints/petitions were closed after enquiry holding that the allegations were baseless.

Aggrieved by the same, the said Ramakrishnan had instigated the filing of the case so as to cause a vacancy in the post of Divisional Fire Officer, Ramanathapuram and succeeded in his attempt, whereupon he was again transferred to Ramanathapuram and held the post till he retired in 2005?.<sup>23</sup>. Thus the accused has alleged a motive against P.W.2 and other witnesses, who supported Ramakrishnan, for foisting a false case against him.

The said aspects revealed in the statement of the accused against Ramakrishnan have not been denied by the prosecution witnesses and on the other hand, they are admitted by the prosecution witnesses especially P.W.10- Raju and P.W.13.

It is the clear admission made by P.W.13 that in his enquiry the accused had stated that he was a strict and a upright officer reprimanding his subordinates whenever they committed mistakes; that his predecessor in office was one Ramakrishnan and he had suspended one Umarani typist; that the accused, after enquiry, recommended for the revocation of suspension and that hence the said Ramakrishnan had grievance against the accused.

It is also the admission made by P.W.13 that in his enquiry he was informed by the accused that in order to bring back Ramanathapuram to the post of Divisional Fire Officer, Ramanathapuram, the persons working under the accused foisted the case against the accused at the instigation of Ramakrishnan.

It is also an admitted fact that after the suspension of the accused, the said Ramakrishnan was able to get posted at Ramanathapuram and he was working there.

There is also ample evidence to show that the accused reprimanded his subordinates on various occasions when they show negligence or disinterest in the duty.

Despite such an admission and despite the fact that the suggestions made in this behalf by the learned counsel for the accused were not denied by the prosecution witnesses and they have simply evaded pretending absence of knowledge, the learned trial Judge chose to make an observation that there was no evidence to

show that the accused was strict officer and took severe action against his subordinates which would have turned them against him.

24. Moreover, a more vital aspect had not been noticed by the learned trial Judge.

It is the assertion of P.W.2 that he paid his own money to the accused at the time of occurrence and that he had obtained Deepavali advance from which the said amount was paid to the accused.

The said assertion of P.W.2 has been proved to be false.

D.W.2 Raju has produced the disbursement register for the period between 28.12.1996 to 15.11.2000 and the entry regarding the disbursement of the Deepavali advance in the month of October 1999 has been marked as Ex.D.3.

From the same and from the evidence of D.W.2 and Exs.D2 and D3, it is obvious that P.W.2-Selvaraj did not receive Deepavali festival advance either on 06.09.1999 or before the said date and that the Deepavali festival advance was disbursed only on 13.10.1999.

From the same, it is quite obvious that P.W.2 is not a trustworthy witness and his evidence, which stands uncorroborated, cannot be the basis of conviction.

25. It should also be noticed that P.W.2 in his complaint noted the name of the accused as A.M.Patteeswaran.

The prosecution witnesses clearly admit that the name board was displayed at the residence of accused which read his name as 'Patties' and not Patteeswaran.

If at all P.W.2 had gone to the residence of the accused prior to the occurrence, he would have seen the name board and would have furnished his name correctly as Patties in the complaint.

The accused happened to be the higher official to P.W.2 and the Officer competent to issue orders of promotion as Heavy Motor Vehicle Driver.

Even then, P.W.2 has chosen to mention his name as Patteeswaran instead of Patties.

Where from he got the name of the accused as Patteeswaran is not known.

The same will probablise the defence case of the accused that he had been instigated by some one to foist the case against the accused.

26.Yet another aspect to be noticed is the admission made by P.W.2 himself that on being posted as Heavy Motor Vehicle Driver, his scale of pay could not be different; and that Light Motor Vehicle Drivers and Heavy Motor Vehicle Drivers were on the same scale of pay, except the benefit of Rs.40/- per month as allowance paid to the Heavy Motor Vehicle DriveRs.It is highly improbable that from a person who was drawing a monthly salary of Rs.3,000/- and who would get only an allowance of Rs.40/- per month on being posted as Heavy Motor Vehicle Driver, a sum of Rs.5,000/- or Rs.3,000/- would have been demanded by the accused.

27.The cumulative effect of all the above said aspects will lead to a conclusion that the prosecution failed to prove its case beyond reasonable doubt.

The prosecution theory is surrounded with suspicious circumstances, besides the case being supported only by the unreliable and uncorroborated evidence of P.W.2.

On the other hand through the evidence of D.Ws.1 and 2 and the admissions elicited from the prosecution witnesses, the accused was able to prove his defence theory by preponderance of probabilities.

Without considering the cardinal principle of criminal jurisprudence that the prosecution is expected to prove its case beyond reasonable doubt, whereas the accused can prove his defence case by preponderance of probabilities, the learned trial Judge, as rightly contended by the learned counsel for the accused (appellant) held the accused guilty of the offences with which he stood charged on suspicion and surmises.

The learned trial Judge very much relied on the fact that the accused did not pass the orders promoting P.Ws.2, 6 and 7 as Heavy Motor Vehicle Drivers after they successfully completed their training and got the Heavy Motor Vehicle Licence, to hold that the accused caused the delay only for demanding illegal gratification for issuing the orders of promotion and posting.

The said approach made by the learned trial Judge is totally erroneous.

28.In S.P.Paulraj Vs.State reported in (2009) 2 MLJ (crl) 105, a learned single Judge of this Court held that the absence of proof of demand either at the time of trap or prior to the time of trap will make the entire trap proceedings bristled with suspicious circumstances, doubts, serious infirmities and inherent improbabilities.

It was also held that suspicion, however strong, could not be substituted for legal proof and that though it could be assumed that the accused was perturbed at the time of trap no adverse inference could be drawn against the accused on such conduct.

29.In Punjabrao versus State of Maharashtra reported in (2002) 10 SCC371 the supreme Court held that the accused can establish his defence by preponderance of probabilities and if the explanation offered by him under Section 313 Cr.P.C could be found to be reasonable, then the same could not be thrown away merely on the ground that he did not offer the said explanation at the time when the amount was seized.

30.In D.Dass Vs.State reported in (2010) 2 MLJ (Crl).a learned single Judge of this Court held that mere proof of recovery of tainted money, divorced from the circumstances under which it was paid was not sufficient to convict the accused, when substantive evidence in the case was not reliable and that in such circumstances, presumption could not be drawn under Section 20 of the Prevention of Corruption Act, 1988.

31.The Supreme Court in BanaRs.Dass versus State of Haryana reported in (2010) 3 MLJ (crl) 132 (SC) held that the conviction of an accused could not be founded on the basis of inference; that the offence against the accused should be

proved by the prosecution beyond reasonable doubt, either direct evidence or by circumstantial evidence providing each link of the chain of events pointing towards the guilt of the accused and that mere recovery of tainted money from the accused by itself would not constitute the offence in the absence of substantive evidence of demand of money and voluntary acceptance of the same.

32. By a catena of decisions, it has also been established that the mere recovery of tainted money from the accused without further proof of demand and voluntary, acceptance of the same as illegal gratification and especially when an explanation is offered by the accused as to how the amount was found at his place, the presumption under Section 20 of the Act will not be attracted.

In those precedents even when the tainted money was recovered from the accused persons and the receipt of the same had been admitted a viable explanation for the money was held to be enough to negative the presumption contemplated under Section 20 of the Act.

The defence case of the accused in the case on hand is better than those cases.

We have seen supra, that the prosecution story relating to demand of illegal gratification has not been proved beyond reasonable doubt as it was spoken to by P.W.2 alone and his evidence is also unreliable.

The material contradictions in the evidence of P.Ws.2 and 7 who alone supported prosecution case regarding the demand and the improbabilities in the evidence of P.W.2 regarding the demand and acceptance of illegal gratification, will lead to the conclusion that the prosecution failed to prove the charges against the accused beyond reasonable doubt.

On the other hand numerous admissions made by the prosecution witness and the evidence adduced through the defence witness probablise the defence theory of foisting the case, will lead to the conclusion that the accused has proved his defence case by preponderance of probabilities.

The learned trial Judge, without adverting to the above said aspects, rendered a finding that the accused was proved to have committed the offences punishable

under Sections 7 and 13(1) (d) read with 13(2) of the Prevention of Corruption Act, 1988 beyond reasonable doubt.

The said finding is quite erroneous, defective and infirm and in fact, the said finding can even be stated to be perverse.

33. In view of the foregoing discussions, this Court comes to the conclusion that the learned trial Judge committed an error in law by holding the accused guilty of the offences punishable under Sections 7 and 13(1) (d) read with 13(2) of the Prevention of Corruption Act, 1988 and convicting him; that the same is liable to be set aside by this Court and that the accused is entitled to be acquitted in respect of both the offences for which he was prosecuted.

34. In the result, the Criminal Appeal is allowed.

The judgment of the trial Court convicting the appellant/accused is reversed and the conviction recorded by the trial Court is set aside.

The appellant/accused is acquitted of the offences with which he stood charged.

The fine amount, if any, paid by him shall be refunded.

As it is reported that the appellant/accused is on bail, the bail bond shall stand cancelled.

To 1. The Deputy Superintendent of Police, Vigilance and Anti-corruption Department, Ramanathapuram, Ramanathapuram District.

2. The Special Judge-Chief Judicial Magistrate, Ramanathapuram 3. The Additional Public Prosecutor, Madurai Bench Madras High Court, Madurai.

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