

Balakrishnan Vs. the State by Special Police Establishment Madras Branch

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Court : Chennai

Decided On : Sep-14-1992

Reported in : 1994CriLJ1258

Judge : K. Swamidurai, J.

Appeal No. : Criminal Appeal No. 56 of 1988

Appellant : Balakrishnan

Respondent : The State by Special Police Establishment Madras Branch

Advocate for Def. : P. Rajamanickam, Spl. Public Prosecutor

Advocate for Pet/Ap. : N. Natarajan, Sr. Counsel for M/s ;D. Subbarayan & Ravikumar

Judgement :

1. The accused in C.C. No. 11 of 1986 on the file of the learned Special Judge (First Additional Sessions Judge), Tiruchirapalli is the appellant. He was charged for offences under Section 161 IPC and under section 5(1)(d) punishable under Section 5(2) of the Prevention of Corruption Act and he was found guilty, convicted under section 161 IPC and sentenced to undergo rigorous imprisonment for six months and under section 5(1)(d) read with S. 5(2) of the Prevention of Corruption Act, he was convicted and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 250/- in default to undergo rigorous imprisonment for

three months. The sentences were however directed to run concurrently.

2. The prosecution has examined eleven witnesses and marked Exs. P. 1 to P. 25 and M.Os. 1 to 6. The accused was the Chief Catering Inspector, Southern Railway, Trichy Division at Trichy. The charge against the accused is that on 6-3-1986 at 9.30 a.m. he had accepted a sum of Rs. 1,000/- from M. Balraj alias Balu as gratification other than legal remuneration as a motive or reward for issuing orders for the supply of plantain leaves and thereby committed an offence under section 161 I.P.C. The second charge is that the accused being a public servant employed as Chief Catering Inspector, Southern Railway, Trichy Division, by corrupt or illegal means or by otherwise abusing his position as such public servant obtained for himself pecuniary advantage to the extent of Rs. 1,000/- from the said Balraj and thereby committed an offence under section 5(1)(d) read with 5(2) of the Prevention of Corruption Act, 1947.

3. P.W. 1 B. K. Nair is the Chief Commercial Superintendent, Southern Railway, Madras. He was examined for the purpose of proving the sanction order Ex. P. 1 issued by him for prosecuting the accused. According to him, he is the competent authority to remove the accused from the office. His evidence is that he went through the complaint and other necessary documents, namely, F.I.R., complaint, copies of mahazar, statement of witnesses, search list etc. and he came to the conclusion that there was substantive case made out for prosecuting the accused. It is admitted by him that he was not examined by the investigating officer in the case and that no statement was recorded from him. P.W. 2 Balraj was supplying plantain leaves to the refreshment stalls at Trichy junction. He had employed one Bhaskaran for supplying the plantain leaves to the refreshment stalls. He was supplying plantain leaves at the rate of Rs. 3.50 per hundred leaves and as the price paid by the railways was very low, he gave an application to the accused for supply of plantain leaves at the rate of Rs. 4/- per hundred leaves and P.W. 2 did not get any reply. Again he gave another requisition on 19-8-1985 through the Store Clerk Suresh. In that letter he has claimed a sum of Rs. 5/- per hundred leaves. That letter is marked as Ex. P. 2. It is the evidence of P.W. 2 that the accused stopped purchasing plantain leaves from P.W. 2 about seven months prior to the occurrence. P.W. 2 again went and represented to the accused to

renew the supply of plantain leaves from him as before. But the accused seem to have replied that he could not renew the supply until he would get consent from the Assistant Commercial Superintendent. P.W. 2 again met the accused and requested him to renew the supply of plantain leaves from him some how or other and at that time, the Catering Inspector Sattanathan was also present. P.W. 2 met the accused on 5-3-1986 and requested to renew the supply. At that time another Catering Inspector Sunny was also present. At that time, there was some misunderstanding between the accused and P.W. 2. P.W. 2 was then working as a supplier in the Vegetarian stall at Trichy junction. The accused went there the told P.W. 2 that P.W. 2 should pay money and that he should not trouble the accused. P.W. 2 replied to him that he would return the sum of Rs. 1,000/- on 6-3-1986. P.W. 2 deposed that he owed a sum of Rs. 1,200/- to the accused and that the accused told him that P.W. 2 should pay a sum of Rs. 1,000/- on the next day. At that time, Muthiah a C.B.I. Police was also standing by their side. But P.W. 2 did not know that he belonged to C.B.I. Police force. P.W. 2 also deposed that Parthasarathy, Vigilance Inspector took him to the side at the junction premises and asked him whether he was going to pay the money asked by the Inspector (accused). P.W. 2 replied him that he would pay the money on the next day at 6.00 p.m. Parthasarathy threatened P.W. 2 that P.W. 2 should not pay the money to the accused without the permission of Parthasarathy. P.W. 2 went to room No. 1 in the upstairs of the railway junction. Even then Parthasarathy threatened him that he should pay the money to the accused as per his direction. P.W. 2 admitted that he used to borrow money in a sum of Rs. 50/- or Rs. 100/- and on one occasion, P.W. 2 had borrowed a sum of Rs. 750/- and on another occasion he had borrowed a sum of Rs. 600/- and totally he had to pay a sum of Rs. 1,500/- to the accused. P.W. 2 also admitted that he told the accused that he would first pay Rs. 1,000/- to the accused and thereafter the balance of Rs. 500/- by doing business. P.W. 2 had stated that Parthasarathy threatened him that P.W. 2 should pay money to the accused as per his direction and if P.W. 2 did not pay as instructed by him, P.W. 2 should not come to railway canteen premises. P.W. 2 was told that Parthasarathy was in the Vigilance Department. According to P.W. 2 he was threatened to give a report by Parthasarathy. Ex. P. 3 is the report. At one place, P.W. 2 has stated that as per his dictation Velliangiri, the Inspector of

Police, wrote the report Ex. P. 3. But subsequently, P.W. 2 has stated that E.P. 3 was written by Velliangiri himself and that it was not written as per the dictation of P.W. 2. The report was read out to P.W. 2. But P.W. 2 has stated that it was not written as per his instructions and the said Velliangiri had written something of his own accord. P.W. 2 has stated that he has not signed Ex. P. 3 by admitting the contents. His evidence is that his signature was obtained in Ex. P. 3 by threat. P.W. 2 was asked by the Inspector of Police, Velliangiri P.W. 10 to see him with a sum of Rs. 1,000/- at 5.30 a.m. on 6-3-86 at Room No. 1 in the railway junction. Accordingly, P.W. 2 went and paid Rs. 1,000/- to the Inspector Velliangiri at 5.30 a.m. and on receiving the money the Inspector of Police, P.W. 10 smeared a powder on the currency notes and kept them in the pocket of P.W. 2 and also instructed P.W. 2 not to touch the currency notes. P.W. 2 accompanied by Xavier P.W. 3, an official witness for the trap, went to the house of P.W. 2 at Uraiyur and after sometime, they went to the house of the younger brother of P.W. 2 and sat for some time. P.W. 10 and another official witness Muthiah for the trap were hiding themselves in another place. P.W. 2 was given instruction by P.W. 10 to give signal after the money was paid to the accused by touching his head. Accordingly, the accused came to the house of the younger brother of P.W. 2 at 9.00 a.m. and asked him about the amount. P.W. 2 paid the amount of Rs. 1,000/- to the accused and told him to make arrangement for the supply of plantain leaves by him at the rate of Rs. 5/- per hundred leaves. According to P.W. 2, the accused gave a letter addressed to Sattanathan. P.W. 2 came out and gave a signal by touching his head after keeping that letter in his shirt pocket. Immediately P.W. 10 and his party went there and asked P.W. 2 to go out. Accordingly, P.W. 2 went out of the house. P.W. 10 examined the pocket of P.W. 2 and P.W. 2 produced a letter given by the accused also a sum of Rs. 2.55 P. Ex. P. 4 is that letter. P.W. 2 was shown those currency notes given to the accused. But P.W. 2 could not say whether those notes were given by him to the accused. The accused was taken subsequently by P.W. 10 and his party P.W. 10 told P.W. 2 that he would make arrangement for the supply of plantain leaves by P.W. 2 within ten days thereafter. But no arrangements appeared to have been made. P.W. 2 was examined by some other police regarding this and P.W. 2 has stated that he had not given any statement to them. P.W. 2's evidence is that he was threatened by the police in a

hotel and so he had done as instructed by the police. At this stage, after so much of evidence was given by P.W. 2, he was sought to be treated as a hostile witness by the prosecution. Accordingly, permission was granted by the trial court. After this, he was cross-examined by the learned Public Prosecutor in the lower court. In the cross-examination made by the prosecution P.W. 2 denied that he told the accused that Xavier P.W. 3 was related to him. P.W. 2 stoutly denied that he did not pay the sum of Rs. 1,000/- as bribe to the accused for renewal of supply of plantain leaves by P.W. 2. P.W. 2 also denied that the accused asked him any bribe at all. P.W. 2 admitted in cross-examination that he repaid that loan borrowed by him from the accused and denied the suggestion that it was bribe amount. P.W. 2 has deposed that Amalraj, Store Keeper was solely responsible for the supply of plantain leaves to P.W. 2. It was suggested by the learned counsel for the accused in the trial court to P.W. 2 that the Inspector Sunny alone was person who is to decide about the supply of plantain leaves. But P.W. 2 denied the suggestion and stated that the accused also was having that power. P.W. 2 also admitted in cross-examination that the accused told him that the Stores Clerk and the Inspector Sunny had to decide the matter regarding supply of plantain leaves.

4. P.W. 3 Xavier is the Inspector of Central Excise at Trichi. He was instructed by the Assistant Collector of Central Excise to meet the C.B.I. Inspector in the rest house at 5.30 a.m. 6-3-86. At the same time, the Assistant Collector also told him that another Inspector Rajasekaran also would come there and he was instructed to attend to some proceedings. Accordingly P.W. 2 and P.W. 4 Rajasekaran met the P.W. 10 Inspector of Police C.B.I. at 5.30 a.m. On 6-3-86 at Room No. 1, Railway Junction Rest House. Sometime thereafter, P.W. 2 Balraj came and told them that he gave a report to P.W. 10. The Inspector P.W. 10 asked P.W. 2 to give details about the complaint to P.Ws. 3 and 4. P.W. 2 appeared to have told P.W. 3 that he was not willing to pay bribe of Rs. 1,000/- and so that he came and gave a report to P.W. 10. P.W. 2 had brought the money at that time and they were two hundred rupee currency notes, fifteen 50 rupee currency notes and five 10 rupee currency notes and the numbers were noted by P.W. 10 and they were marked as M.O. 1 series in this case. Then the Inspector of Police demonstrated the phenolphthalein test to P.Ws. 2, 3 and 4 and P.W. 2 was instructed not to take

out the money from his pocket till the accused would come to the house of P.W. 2 and ask for the money and P.W. 2 was also given instructions to give signal by touching his head after the money was given to the accused. P.W. 3 was asked to accompany P.W. 2 to the house of P.W. 2 by the Inspector P.W. 10. A mahazar was prepared in Ex. P. 5 in which P.Ws. 3 and 4 has attested. Therefore P.Ws. 3 and 2 left that place at 6.15 a.m. and P.W. 10 C.B.I Inspector accompanied P.Ws. 2 and 3. P.Ws. 2 and 3 went to the house of P.W. 2 at Nadar Street, Uraiyur. Since the house of P.W. 2 was a small one, P.W. 2 told him that they could go to the house of the brother of P.W. 2. The house of P.W. 2 bears door No. 37 and the house of brother of P.W. 2 bears door No. 42, P.W. 2 gave instructions to his wife before they left for the house of P.W. 2's brother that if anybody would come to the house of P.W. 2 in search of P.W. 2 they should be sent to the house of P.W. 2's brother. Accordingly P.Ws. 2 and 3 were waiting for the arrival of the accused. P.W. 10 and the Excise Inspector Rajasekaran were hiding themselves outside the house of P.W. 2's brother at a distance of 40 ft. At about 9.30 a.m. the accused came and P.W. 2 and the accused were talking together. The accused did not notice P.W. 3 at the first instance. The evidence of P.W. 3 is that the accused asked P.W. 2 whether he has brought the money as required by the accused. P.W. 3 also deposed that whether P.W. 2 had brought the bribe amount for making ready the contract and P.W. 2 asked the accused whether the accused would renew the contract definitely. The accused replied that he would renew the contract and asked him to pay the money. At that time, the accused asked P.W. 2 as to who P.W. 3 was and for which P.W. 2 replied that P.W. 3 was his relative. Then P.W. 2 took out the currency notes of Rs. 1,000/- from the shirt pocket and paid the same to the accused and the accused kept the currency notes in the left side shirt pocket. P.W. 2 asked the accused to give him some records to show that the accused would renew the contract. The accused took out a paper from a note book kept nearby and gave a letter under Exs. P. 4. The accused also asked him whether P.W. 2 would require any other attatchi other than Ex. P. 4. As instructed by P.W. 10 earlier, P.W. 2 came out of the house and gave a signal by touching his head and P.W. 2 kept Ex. P. 4 in his pocket. On seeing the signal given by P.W. 2, P.W. 10 and P.W. 4 came to the house and P.W. 2 was standing outside the house. P.W. 10 introduced himself to the accused and asked the accused

whether he had received the bribe from P.W. 2 and the accused replied that he had received Rs. 1,000/- as bribe. The accused was found perplexed and he admitted the receipt of money from P.W. 2. The evidence of P.W. 3 is that P.W. 10 prepared sodium carbonate solution in two tumblers and conducted test and both the hands of the accused were dipped into the solution contained in two separate glass tumblers and the colour of the solution turned pink and the solution were taken in sealed covers and they were taken by giving numbers A. 1 and A. 2 and B. 1 and B. 2. The shirt pocket of the accused also was dipped in the solution and the colour of the solution also turned pink and those samples were taken in sealed bottled C. 1 and C. 2. A mahazar was prepared under Ex. P. 6 and a copy of it also was given to the accused with his signature. The samples seals containing the signatures of P.Ws. 3 and 4 is under Ex. P. 7. The seal in Ex. P. 8 P.W. 10 seized the letter given by the accused to P.W. 2 under Ex. P. 4 and Ex. P. 9 is the mahazar for the seizure of Ex. P. 4 letter. After sending away the accused P.W. 3 and others went to Trichi Junction and P.W. 3 went to the catering room at Trichi Railway Junction along with the accused. P.W. 10 enquired whether there was any letter with regard to supply of plantain leaves from the accused and the accused produced the files relating to the same. He also produced the letter addressed to the Commercial Superintendent. P.W. 1 seized the shirt worn by the accused and also seized Ex. P. 2 letter sent by P.W. 2 to the Commercial Superintendent. M.O. 2 is the shirt worn by the accused and Ex. P. 10 is the mahazar of the seizure of M.O. 2. The accused received a copy of Ex. P. 10 by affixing the signature. All these proceedings had taken place till 3-30 p.m. and P.W. 3 was asked to go away by P.W. 10 after that. P.W. 3 denied in cross-examination the suggestion that the accused did not use the word bribe and that the accused asked P.W. 2 whether he had brought the money agreed to be paid to the accused. It was also suggested to P.W. 3 in the cross-examination that P.W. 2 has repaid the amount which he had received from the accused and that P.W. 2 had fraudulently implicated the accused. P.W. 3 denied the suggestion as incorrect.

5. P.W. 4 Rajasekaran is the Inspector in the Central Excise Department, Trichy. He is also a witness for the trap. His evidence is that he was asked to meet P.W. 10 in the retiring room No. 1 in Trichi Railway Junction. Accordingly he went there and he saw P.W. 10 and there P.W. 10 asked P.W. 2 to explain to him about the

bribe amount of Rs. 1,000/- demanded by the accused. It is also his evidence that P.W. 2 had agreed to pay the bribe amount as demanded by the accused in his house at 7-00 a.m. on 6-3-86. He corroborates some portion of the evidence of P.W. 2 and he also admits his signature in the mahazar Ex. P. 5. According to P.W. 4, himself and P.W. 10 and his party were standing at the entrance of some other house and they saw a person entering the house of P.W. 2's brother at about 9.30 a.m. Sometime thereafter, P.W. 2 came out of the house and gave signal by touching his head. On seeing this P.Ws. 4, 10 and his party entered the house and they saw the accused inside that house P.W. 10 introduced himself as Inspector to the accused and P.W. 10 asked the accused whether he has received the bribe amount of Rs. 1,000/- from P.W. 2 and that the accused became perplexed and replied having received the bribe amount of Rs. 1,000/-. P.W. 4 deposed about the preparation of solution and the test conducted by the Inspector of Police. P.W. 4 was examined by P.W. 11 Inspector of Police, five weeks after the occurrence. P.W. 4 admitted in cross-examination that there is no reference with regard to the contract over the supply of plantain leaves in his statement before the police. P.W. 4 admitted in cross-examination that he did not remember whether he had stated before the C.B.I Inspector that the accused had told him, to have received bribe.

6. P.W. 5 is the Catering Supervisor in the Railway Junction at Trichy. The accused is his senior officer and he identified the signature of the accused in Ex. P. 4. At the time when Ex. P. 4 was given, Sunny was the catering Inspector and it is the duty of Sunny to get plantain leaves for refreshment stalls. The accused was the chief Catering Inspector at that time. According to P.W. 5, the accused had no connection at all with respect to purchase of plantain leaves and that the accused had no power to stop purchase of plantain leaves or to order for purchase of same and to fix the price of the leaves and the entire power vested with the Assistant Commercial Superintendent. But P.W. 5 has stated that the accused could give his opinion regarding the same. P.W. 5 has stated further that the accused has no power even to give opinion to P.W. 5. But the accused could give his opinion to the Assistant Commercial Superintendent. Even though Ex. P. 4 was written by the accused, P.W. 5 deposed that he (P.W. 5) has no power to take action on the same.

7. P.W. 6 Jagannathan was the Catering Supervisor in the Railway Junction at Trichy and the accused was his superior officer. Ex. P. 11 is the list prepared regarding the vouchers for the purchase of articles. That list contains 16 vouchers and Ex. P. 12 series are those vouchers. Ex. P. 13 is the voucher regarding purchase of leaves. That voucher was from P.W. 2. Ex. P. 21 is one of the vouchers showing purchase of leaves from Bhaskar and ever since that date Bhaskar was supplying leaves to the Refreshment stalls. P.W. 6 stated in cross-examination that he did not know as to who had stopped Bhaskar from supplying leaves and for what purpose he was stopped. P.W. 7 is the Assistant Commercial Superintendent in the Railway Junction at Trichy. The accused served under him as Chief Catering Inspector during the relevant time. On 6-3-86, the accused came to his office at 4.30 p.m. and wanted leave for three days. Accordingly, leave was granted to the accused by him. The accused did not tell him anything at that time. About half an hour thereafter, C.B.I. Inspector P.W. 10 came to the office of P.W. 7 and informed P.W. 7 about the case and trap made by the Inspector. According to P.W. 7, the administration of Vegetarian Light Refreshment stalls is in the hands of Sunny. P.W. 7 is unable to inform as to what are the nature of duties of the Chief Catering Inspector and that, according to P.W. 7, it can be ascertained only from the Chief Commercial Superintendent in the Head Office.

8. P.W. 8 is the supplier in the Vegetarian Refreshment Stall in the Trichi Railway Junction. He issued the voucher Ex. P. 17 for the purchase of plantain leaves for Rs. 40/- on 23-9-85. But he did not remember from whom he had purchased the plantain leaves under the voucher Ex. P. 17. P.W. 9 is the Translator in the court of Principal Sessions Judge, Trichy. He received a requisition on 16-4-86 from the C.B.I. Police, Madras. He sent the Sodium Carbonate solution for the opinion of Chemical Analyst. Ex. P. 22 is the copy of the letter sent by the court. He received the report of the Chemical Examiner on 18-4-86 under Ex. P. 23 and in the report, there is a finding that the solution contained Phenolphthalein Sodium Carbonate.

9. P.W. 10 is the Inspector of Police, C.B.I. When he was waiting in the retiring room in Trichy railway junction on 5-3-86 at about 4.00 p.m. P.W. 2 Balraj wanted to give a report to him and P.W. 10 asked him about the particulars of his complaint and as P.W. 2 told him that he was unable to put it in writing, P.W. 10

himself wrote the report as per the dictation of P.W. 2 and P.W. 10 read out the contents of the report to P.W. 2 and got his signature. P.W. 10 then sent that report Ex. P. 3 with his endorsement to the Superintendent of Police, C.B.I. at Madras. P.W. 10 has some secret enquiries about the report given by P.W. 2 and also made some enquiries in the railway office. On enquiry P.W. 10, did not get any goods opinion about the accused. He therefore decided to trap the accused for the demanded bribe of Rs. 1,000/- from P.W. 2. P.W. 2 also told P.W. 10 that he would co-operate in the trap. P.W. 2 informed P.W. 10 that he has no desire to pay bribe to the accused. P.W. 10 asked P.W. 2 to see him at 5.30 a.m. the next day with a sum of Rs. 1,000/- and P.W. 10 met the Central Excise Vigilance Officer at Trichy and requested him to depute two of his officials for the purpose of trap. He asked the two officers to meet him at 5.30 p.m. on 6-3-86 and at about 11.30 p.m. on 5-3-86 he telephoned to the Superintendent of Police, C.B.I., told him about the report and the action taken by him on the same. On 6-3-86 P.Ws. 3 and 4, Xavier and Rajasekar respectively came to the retiring room at 5.30 a.m. and P.W. 2 also came there subsequently. P.W. 10 introduced P.W. 2 to P.Ws. 3 and 4 and also informed about the reports given by P.W. 2 to P.Ws. 3 and 4 and also about the bribe amount of Rs. 1,000/- demanded by the accused. P.W. 2 brought a sum of Rs. 1,000/- which are marked as M.O. 1 series. Then P.W. 10 applied phenolphthalein powder on the currency notes and P.W. 4 counted M.O. 1 series and found them to be correct. Then P.W. 10 gave instructions to P.W. 2 to pay money to the accused at his house and give a signal by scratching his head after the money was paid. P.W. 10 also instructed P.W. 3 to note down the conversation between the accused and P.W. 2 and a mahazar Ex. P. 5 was prepared regarding the test and other proceedings. Then P.Ws. 2 to 4 went to the house of P.W. 2 bearing door No. 37, Nadar Street, Uraiyur. Since that house was a small one, P.W. 10 selected the house of P.W. 2's brother which was also in the same street. P.W. 2 was instructed to inform his wife that if anybody would come in search of P.W. 2 to his house, he might be directed to come to the house of P.W. 2's brother's house at No. 42, of the same street. It is the evidence of P.W. 10 that they had asked P.Ws. 2 and 3 to remain in the house of P.W. 2's brother and that he and P.W. 4 were hiding in a room in a house opposite to the house of P.W. 2's brother. The accused came to the house bearing Door No. 42 at about

9.30 a.m. and 15 minutes thereafter P.W. 2 came out of the house and gave a signal by scratching his head. Immediately P.W. 10, his assistants and P.W. 4 went inside the house of P.W. 2's brother and introduced himself to the accused. P.W. 10 asked the accused whether he had received the bribe of Rs. 1,000/- from P.W. 2. The accused who was in a perplexed mood, some time later agreed that he received Rs. 1,000/- from P.W. 2 as bribe. Then Sodium Carbonate test was conducted with the solution. P.W. 10 seized the letter Ex. P. 4 and a sum of Rs. 2.25 P. from the shirt pocket of P.W. 2 who was standing outside the house. Ex. P. 9 is the mahazar for the seizure of Ex. P. 4 letter in which P.Ws. 3 and 4 had attested. Then P.W. 10 took P.Ws. 3 and 4 to the office of the accused situated at Trichy Railway Junction and on the way, he went to the Central Excise Officer and telephoned to the Superintendent of Police, C.B.I. at Madras informing him about the action taken by him. Then P.W. 10 came to the office of the accused and ascertained whether there was any records to show the purchase of plantain leaves and the accused took out a file from the table drawer and from the file, the accused took out an application dt. 19-8-85 given by P.W. 2 and it is marked as Ex. P. 2. The accused was asked to remove his shirt and it is marked as M.O. 2 and this was seized under Ex. P. 10 mahazar. The accused was left in the office and P.W. 10 went to the Railway office and informed P.W. 7 about the trap made by him against the accused. P.W. 7 informed P.W. 10 that the accused came there a little earlier and got leave for three days. The accused did not inform P.W. 7 anything about the occurrence. In cross-examination P.W. 10 admitted that no date has been mentioned in Ex. P. 4. Even the place where it was written is also not written. It was also suggested to P.W. 10 that P.W. 2 did not give the report Ex. P. 3 voluntarily and that it was written by P.W. 10 himself and even without reading out the contents, the signature of P.W. 2 was obtained by him. P.W. 10 denied the suggestion as incorrect.

10. P.W. 11 was the Inspector of Police in March 1986 at Madras. He registered a case in R.C. No. 16/86 at about 1.00 p.m. against the accused under section 161 I.P.C. on 6-3-86 on the basis of a complaint preferred by P.W. 2 against the accused which was sent by the Inspector of Police, P.W. 10 to the Superintendent of Police, C.B.I., Madras. The F.I.R. is marked as Ex. P. 24. P.W. 11 took up investigation on the same date. His evidence is that he received a telephonic call

from P.W. 10 from Trichy giving him the residential address of the accused as No. 20/23, Rameswaran Road, T. Nagar, Kamakodi Nagar Flats, Madras. P.W. 11 also stated that P.W. 10 told him over phone that he had trapped the accused while accepting illegal gratification of Rs. 1,000/- and that P.W. 10 asked him to conduct the search of the house of the accused at Madras. Accordingly P.W. 11 searched the house of the accused under Section 165 Cr.P.C. between 4.00 p.m. and 5.30 p.m. in the presence of two independent witnesses. The wife of the accused was stated to be present at that time and Ex. P. 25 is the house search list, a copy of which is also served upon the wife of the accused under acknowledgment. P.W. 11 took over the case records and material objects from P.W. 10 on 7-3-86 and sent them to the court on 11-3-86 and he received back the records for investigation. On 18-4-86 P.W. 11 collected the daily purchase vouchers from the railway authorities. He also examined witnesses P.Ws. 3A, 7, 5, 6 and other witnesses. On 21-4-86 he examined P.W. 10. On 31-7-86 he filed the charge sheet against the accused under section 161 I.P.C. and under section 5(1)(d) read with 5(2) of the Prevention of Corruption Act after obtaining necessary sanction from P.W. 1. In cross-examination P.W. 11 stated that when he perused the records, he could not find out that the accused had abruptly stopped the supply of plantain leaves by P.W. 2. P.W. 11 has not produced the vouchers signed by the accused and he has not verified the railway rules to find out the officer who has power to increase the price of the commodities purchased by the Railway Department.

11. The accused when questioned under section 313 Cr.P.C. with regard to the incriminating evidence of prosecution witnesses appearing against him, he denied the charges and pleaded not guilty. The accused also filed a written statement in the trial court narrating his defence to this case. According to him, he got back the money lent by him to P.W. 2 and that P.W. 2 was worrying him often to renew the contract. The accused has stated in his defence in writing that he had no power at all to get back the contract to P.W. 2 and that he gave Ex. P. 4 letter to Sattanathan as if he was recommending the case of P.W. 2 for getting return of the loan amount from P.W. 2. The accused has also stated that he had no power at all as recommended in Ex. P. 4. Even P.W. 5 had also no such power to change the contract to supply or to pay more amount for the leaves supplied and

according to the accused, it is only a drama he had conducted by writing Ex. P. 4 for getting back his loan amount from P.W. 2 and the evidence rendered by P.Ws. 3, 4, 6 and 7 is not true. He denied stoutly that he has received any bribe from P.W. 2.

12. Ex. P. 1 is the sanction order issued by P.W. 1 B. R. Nair, the Chief Commercial Superintendent, Southern Railway, Madras. His evidence is that he went through the complaint and other documents, namely, FIR., complaint, copies of mahazar, statement of witnesses, search list etc. and that he perused those records very carefully and came to the conclusion that there was substantive case made out for prosecuting the accused and so, he issued sanction for prosecuting the accused.

13. The trial court found the accused guilty as stated above, convicted and sentenced him accordingly. The accused has filed this appeal, aggrieved against the judgment of the trial court.

14. Mr. N. Natarajan, learned Senior Counsel appearing for the appellant contended that the prosecution has not proved its case against the accused beyond reasonable doubt and much less, the prosecution has not even established its case at all under the abovesaid provisions of the Act. The first contention raised by him is that the accused had not received the sum of Rs. 1000/- by way of bribe from P.W. 2 and that he had only got back a portion of the loan amount, namely, Rs. 1,000/- out of Rs. 1,500/- he had lent to P.W. 2 earlier. Learned Central Government Public Prosecutor Mr. P. Rajamanickam contended that once the accused had admitted the receipt of Rs. 1,000/-, the burden shifts upon the accused to prove that it was only a portion of the loan amount and not bribe and the presumption under section 4 of the Prevention of Corruption Act is that it shall be presumed unless the contrary is proved that he accepted or obtained or agreed to accept that gratification. Section 4 of the Act reads as follows :

'4. Presumption where public servant accepts gratification other than legal remuneration :

(1) Where in any trial of an offence punishable under section 161 or Section 165 of the Indian Penal Code (45 of 1860) or of an offence referred to in clause (a) or clause (b) of sub-section (1) or Section 5 of this Act punishable under sub-section (2) thereof, it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 165A of the Indian Penal Code (45 of 1860) or under clause (ii) of sub-section (3) of Section 5 of this Act, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed unless the contrary is proved that he gave or offered to give or attempted to give the gratification or that valuable thing, as the case may be, as a motive or reward such as the case mentioned in Section 161 of the Indian Penal Code or, as the case may be without consideration or for consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn'.

15. Now let us consider whether the amount received by the accused was towards bribe or towards the part of the loan amount received by P.W. 2. P.W. 2 is the person who set the law in motion by reporting the matter to P.W. 10. But P.W. 2 turned hostile and he did not support the case of the prosecution in full. He admitted to have borrowed a sum of Rs. 1,500/- totally from the accused and his evidence is that he used to borrow by hand loan of Rs. 50/- or Rs. 100/- at times and on one occasion, he admitted to have borrowed a sum of Rs. 750/- and on

other occasion a sum of Rs. 600/- from the accused and he agreed to return Rs. 1,000/- at the first instance and return the balance of Rs. 500/- in triplet by doing business. Even Ex. P. 3 report said to have been given by him to P.W. 10, it is recorded only by P.W. 10 as per the dictation of P.W. 2. But in another place P.W. 2 has stated that P.W. 10 himself has written the report and that he had not written the report as per dictation. But he agreed that P.W. 10 read out the contents. But the contents were not written as narrated by him and according to P.W. 2, some of the contents were written by P.W. 10 himself. P.W. 2 also has stated that he did not sign in Ex. P. 5 after agreeing with the recitals. P.W. 2 has also stated that his signature was obtained by threat in Ex. P. 3. P.W. 2 has stated that he did not give any statement to the police and that he acted as instructed by the police as he was threatened by them in the hotel. Ex. P. 4 is the letter given by the accused to P.W. 2 and there is no dispute about it. In the cross-examination, P.W. 2 has stated that Amalraj the Store Clerk was responsible for stopping the supply of plantain leaves from P.W. 2. According to P.W. 2, the accused did not ask him to pay bribe of Rs. 1,000/- for renewing the supply of plantain leaves. The evidence of P.W. 3 is that when he and P.W. 2 went to the house of the brother of P.W. 2, the accused asked P.W. 2 whether P.W. 2 had brought the bribe amount asked for renewing the contract and when the P.W. 2 asked the accused whether he would renew the contract the accused asked P.W. 2 to pay the money. P.W. 3 also stated that P.W. 2 wanted some Atthatchi for renewing the contract after paying the money to the accused and that the accused took a note book found nearby and gave a letter in a paper taken from the note book and that letter is Ex. P. 4. Mr. N. Natarajan, learned senior Counsel for the appellant pointed out the evidence of P.W. 3 in his cross-examination that the accused asked P.W. 2 whether the latter had brought the bribe amount asked by him for renewing the contract. This portion of the evidence of P.W. 3, according to Mr. N. Natarajan, Senior counsel, is very strange and quite unnatural. According to him, no ordinary and prudent man especially an officer of the rank of the accused, would have asked P.W. 2 as deposed by P.W. 3 whether P.W. 2 had brought the bribe amount demanded by the accused for renewing the contract especially in the presence of P.W. 3 who was a stranger to the accused. This aspect of the evidence of P.W. 3 is unnatural and I am unable to accept this portion of the evidence of P.W. 3 as true without further corroboration

as pointed out in (1974) SCWR 265 : (1974 Cri LJ 307) and I disbelieve the same. Therefore, from eschewing the portion of the evidence of P.W. 3 stated above, there is no evidence for the demand of bribe as put forth by the prosecution.

16. P.W. 4 Rajasekar is the Central Excise Inspector, Trichy. He did not accompany P.W. 2 inside the house of P.W. 2's brother along with P.W. 2. Therefore, what all had taken place inside the house of P.W. 2's brother between the accused and P.W. 2 could not have been known to P.W. 4. P.W. 4's evidence is that, he, C.B.I. Inspector P.W. 10 and his party were standing at the outskirts of a house waiting for the signal of P.W. 2. Whereas, P.W. 10 the C.B.I. Inspector has stated that he, P.W. 4 and his assistants were hiding in a room in a house opposite to the house of P.W. 2's brother in the same street waiting for the signal of P.W. 2. Therefore, there is material contradiction with regard to the place where P.W. 4, P.W. 10 and others were waiting, awaiting the signal of P.W. 2 on 6-3-86. P.W. 4 was examined by P.W. 11 Manhar, C.B.I. Inspector of Police, five weeks after the occurrence. P.W. 4's evidence is that the accused when questioned by C.B.I. Inspector P.W. 10 whether he had received bribe of Rs. 1,000/- from Balraj P.W. 2 for renewing the contract, admitted with shivering that he had received the bribe amount. But in cross-examination P.W. 4 has stated that he did not remember whether he told the C.B.I. Inspector that when P.W. 10 examined the accused, the accused admitted receipt of the bribe amount. Mr. N. Natarajan, Senior Counsel appearing for the appellant submits that the evidence of P.Ws. 3 and 4 with regard to the alleged demand of bribe and payment of the same to the accused cannot be accepted in the circumstances stated above. Again the evidence of P.W. 7 is worth mentioning to refer in the context that on 6-3-86 the accused came to his office at 4.30 p.m. and wanted leave for three days and P.W. 7, granted leave. P.W. 7 also deposed that the accused did not tell him any further details. According to P.W. 7, about half an hour thereafter, C.B.I. Inspector P.W. 10 came to his office and P.W. 10 appears to have told P.W. 7 that he had trapped the accused in this case. Here also, learned Senior Counsel Mr. N. Natarajan contended that when the accused was already trapped by P.W. 10 in the forenoon itself, would it be possible for the accused alone to go to the office of P.W. 7 and apply for leave for three days. P.W. 10 certainly would not have allowed the accused to go alone to the office of P.W. 7 after he was caught in the trap. P.W.

10 certainly would have arrested the accused by that time, or would not have allowed the accused to go alone to the office of P.W. 7. This aspect of the evidence of P.W. 7 either has to be accepted or has to be rejected in toto for the reason that if P.W. 10 had laid the trap as deposed by him in the forenoon of 6-3-86, he would not have allowed the accused to go to the office of P.W. 7 at 4.30 p.m. on the same date; or the trap would not have been laid at all in the forenoon of 6-3-86 as deposed by P.W. 10. In that case only, the accused could have gone to the office of P.W. 7 and applied for leave. In either way, the case of the prosecution is suspicious.

17. P.W. 9 is the translator in the court of the Principal Sessions Judge, Trichy and his evidence is that he received a memo dated 16-4-86 from the C.B.I. police with a requisition to send the Sodium Carbonate solution to the Forensic Science Laboratory for opinion. Ex. P. 22 is the copy of the letter sent by the court. P.W. 9 received the report Ex. P. 23 dated 18-4-86. Here also, there is a delay of 40 days in sending the solution to the trial court after P.W. 10 had laid the trap on 6-3-86 itself. There is no explanation on the side of the prosecution for not sending the samples immediately to the court and there is no explanation also as to why they should keep the samples for nearly forty days without sending them to the court. Learned Senior Counsel Mr. N. Natarajan pointed out that the delay of 40 days in sending the sample solution to the court for expert opinion, gives some suspicion about the case of the prosecution. P.W. 10 Velliangiri is the C.B.I. Inspector, who according to him received a oral complaint of P.W. 2 on 5-3-86 at 4.00 p.m. and according to P.W. 10, P.W. 2 told him that he could not write and so he (P.W. 10) himself wrote the complaint as dictated by P.W. 2 and that he read out the contents and obtained the signature of P.W. 2 on the same. It is the evidence of P.W. 10 that he sent the report Ex. P. 3 to the Superintendent of Police, C.B.I., Madras and as P.W. 2 told him about the bribe demanded by he accused, P.W. 10 himself took a decision of taking further action and trapping the accused and P.W. 2 also told P.W. 10 that he would co-operate in the trap. It is the evidence of P.W. 10 that at about 11-30 p.m. he informed the Superintendent of Police, C.B.I. Madras through telephone and also informed him about the further action taken by him on the report. The evidence of P.W. 10 and also the evidence of P.Ws. 3 and 4 is that they had changed the place of trap to Door No. 42, Nadar Street, Woraiyur, being

the house of P.W. 2's brother, since the house of P.W. 2 at Door No. 32 on the same street was a very small one. But the evidence of P.Ws. 3, 4 and 10 with regard to place of trap cannot be admitted to be true since there was no occasion to know about the size of the house of P.W. 2 or that of P.W. 2's brother and that P.W. 2 however told them that the house of P.W. 2 was very small and so that they could change the place of trap to the house of P.W. 2's brother. Only after P.W. 2 went to his house on 6-3-86 there was possibility for others of noting down the size of the house of P.W. 2 and that of his brother in the same street, and therefore, this change of venue of trap on 6-3-86 also cannot be true since there is no occasion for any of the witnesses P.Ws. 3, 4 and 10 to know about the size of the house of P.W. 2. This portion of the evidence also is untrue.

18. The other contention raised by the learned Senior counsel for the appellant Mr. N. Natarajan is that in Ex. P. 4 letter said to have been given by the accused to P.W. 2 there is no date or place mentioned in the same. But the accused admitted that he handed over the same to P.W. 2. Learned counsel for the appellant contended that this letter Ex. P. 4 might have been given by the accused in order to get back the loan amount from P.W. 2. The statement of the accused under S. 313, Cr.P.C. is also to the effect that he had given that letter by way of drama addressed to Mr. Sattanathan P.W. 5, in order to get back the loan from P.W. 2. That letter Ex. P. 4 also does not appear to be genuine one in the sense that it is addressed to P.W. 5 Sattanathan in a piece of paper without day date and place and the evidence of P.W. 5 is that he could not take action on Ex. P. 4. Learned counsel for the appellant also pointed out the evidence of P.W. 10 as unnatural as P.W. 10 is stated to have informed the Superintendent of Police, C.B.I. at Madras through telephone at 11-30 p.m. on 5-3-86 about the complaint and the action taken by him till that time without waiting for a reply (as) order from the superior. It is not his evidence that he was directed to proceed further by the Superintendent of Police.

19. P.W. 1 Mankar, another Inspector of Police, C.B.I. who registered the case as FIR under Ex. P. 24 and filed the charge sheet has stated that he registered the FIR only at 1.00 p.m. on 6-3-86 at Madras. Ex. P. 3 is the report said to have been given by P.W. 2 on 5-3-86 at about 3-30 p.m. at Room No. 1, Railway Retiring

Room, Trichi. P.W. 10 has stated that he forwarded the same to the Superintendent of Police, C.B.I., Madras by post for further action. In the meantime, he took cognizance of the offence and he was taking action according to law. By the time the report Ex. P. 3 was registered as a case at about 1.00 p.m. on 6-3-86, P.W. 10 had almost completed the entire trap. Learned counsel for the appellant pointed out that the trap was laid by P.W. 10 at Trichy before the FIR itself was registered at 1-00 p.m. on 6-3-86 at Madras. Learned counsel also pointed out that it is irregular and illegal since the trap was almost over before the complaint was registered by P.W. 11. That action destroys the value of the F.I.R. as held in 1990. TLNJ CrI 115 (sic). In Ex. P. 1 sanction order issued by P.W. 1, there is mention that the accused Balakrishnan told P.W. 2 that he would be coming to his (P.W. 2) house on the next day i.e. 6-3-86 at 7.00 a.m. for receiving the bribe amount from P.W. 2 for which he also obtained the house address of P.W. 2 at Woraiyur. There is also another reference in Ex. P. 1 sanction order that the Inspector, C.B.I. P.W. 10 forwarded the complaint to C.B.I. Office at Madras by post with endorsement for taking further action as the complaint disclosed cognizable offence and that he was going ahead to take further action. But the complaint Ex. P. 3 shows an endorsement made by P.W. 10 as follows :

'This complaint has been received and recorded by me at 3-30 p.m. on 5-3-86 at room No. 1, Railway Retiring room, Trichy and forwarded the same to Superintendent of Police, C.B.I., Madras by post for further action. In the meantime, I took cognizance of this complaint and I am taking action according to law'.

The endorsement made by P.W. 10 in the complaint Ex. P. 3 does not show that the complaint disclosed a cognizable offence. Therefore, the sanction order Ex. P. 1 gives one other statement that the complaint disclosed a cognizable offence; whereas P.W. 10 has not made such an endorsement in Ex. P. 3 on 5-3-86. Ex. P. 1 sanction order further shows that the Inspector of Central Excise P.W. 4 and the police party took position outside the house. At about 9-30 a.m. Balakrishnan (accused) came to the house and told P.W. 2 that he has come as promised for receiving the bribe of Rs. 1,000/-. Here also, there is some discrepancy in the evidence of P.Ws. 4 and 10. P.W. 4 has stated that himself and the police party

were standing outside the house; whereas P.W. 10 has stated that he and P.W. 4 and his party were hiding in a room in a house opposite to P.W. 2's house. There is also discrepancy in the evidence of P.Ws. 10 and P.W. 11. P.W. 11 has stated in his evidence that P.W. 10 in his telephonic talk told P.W. 11 to search the house of the accused at Madras; whereas P.W. 10 did not state in his evidence that he told P.W. 11 to search the house of the accused at Madras.

20. Learned Senior Counsel Mr. N. Natarajan pointed out that the sanction order Ex. P. 1 appears to be very strange and abnormal in the sense that it gives every minute details of the statement of witnesses and as if the entire report has been prepared by the investigating officer himself and placed before P.W. 1 for his signature. But there are discrepancies even in the report as pointed out by me earlier in Ex. P. 1 also. In Ex. P. 6 Mahazar it is stated 'on seeing the prearranged signal from the complainant Sri M. Balraj alias Balu, the C.B.I. Inspector, his assistant and the witness Sri T. Rajesekar entered into the IV House in a lane having door No. 42, Nadrar Street'. In Ex. P. 9 mahazar it is stated 'Mahazar prepared at 12 noon on 6-3-86 at the 1st house of lane having door No. 42, Nadar Street, Trichy-3'. Again there is another reference 'Sri M. Balraj alias Balu the complainant who was standing near the door step of 1st house of the lane having door No. 42, Nadar Street, Trichy-3 was called in the 1st house and his person was searched by the C.B.I. Inspector'. Again in Ex. P. 10, there is a mention 'At the request of the C.B.I. Inspector Sri S. Balakrishnan, Chief Inspector (catering) removed his slack shirt which was subjected to phenophthalein test at House No. IV, in the lane having Door No. 42, Nadar Street, Trichy-3, by wearing another shirt taken by him from his suit case kept in his office room'. Ex. P. 22 is a letter sent by Special Judge, (Principal Sessions Judge), Trichy to the Director of Tamil Nadu Forensic Science Laboratory. There is a reference like this :

'Requisition from the Inspector of Police, S.P.E./C.B.I., Madras-6 dated 10-4-86 received here on 16.4'

Therefore, when the occurrence is said to have taken place on 6-3-86, the Inspector of Police, C.B.I. sent the requisition on 10-4-86 and the same was received by the trial court on 16-4-86. Therefore, there is an unexplained delay of

nearly 40 days in sending the sample Sodium Carbonate Solution for expert opinion.

21. Mr. P. Rajamanickam, Learned Central Government Public Prosecutor relied upon the judgment reported in *State of Gujarat v. M. Prabhashankar Dwivedi*, 1973 MLJ 397 : 1972 Cri LJ 12478 for the proposition that abuse of position as a public servant is an essential ingredient of an offence under S. 5(1)(d) of the Prevention of Corruption Act and thus a person cannot be held to be guilty under S. 5(1)(d) of the Act when it is not proved that he had abused his position as a public servant although the means employed by him were corrupt and illegal. Here in this case, the accused had abused his position as public servant and that has not been proved by the evidence of prosecution witnesses. He also relied upon the decision reported in *Ramesh v. State* 1986 Cri LJ 1101 for the proposition that the acceptance of bribe need not be for doing something connected with official duty and that the accused in the instant case had no authority to renew the supply of plantain leaves is immaterial and when the accused himself has admitted receipt of a sum of Rs. 1,000/- from P.W. 2 the presumption under S. 4(1) of the Prevention of Corruption Act is attracted and that it is for the accused to disprove and rebut the presumption. This view is also enshrined in the judgment reported in *Trilok Chand v. State of Delhi* : AIR 1977 SC666 wherein the Supreme Court has observed that the degree and character of the burden of proof which S. 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which under S. 101, Evidence Act rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination under S. 342, Cr.P.C. may not be enough, the burden on him to negate the presumption may stand discharged if the effect of the material brought on the record, in its totality, renders the existence of the fact presumed, improbable. In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour, it is not necessary for him to establish his case beyond a reasonable doubt. The Supreme Court has followed the decision *Mahesh Prasad Gupta v. State of Rajasthan* : 1974 CriLJ509 for this proposition. The other decision pointed out by Mr. P. Rajamanickam, learned Central Government Public Prosecutor is *Shiv Raj v. Delhi Administration* : 1969 CriLJ1 wherein Supreme Court observed as follows :

'When a public servant is charged under S. 161, Penal Code and it is alleged that the illegal gratification was taken by him for doing or procuring an official act, it is not necessary for the Court to consider whether or not the accused public servant was capable of doing or intended to do such an act. Thus although the concealment of the birth of an illegitimate child is not an offence under the Penal Code or any other criminal Statute, if a public servant obtains money from anybody on that ground he is guilty of grossly abusing his position as a public servant within the meaning of S. 5(1)(d) of the Prevention of Corruption Act and thereby obtained for himself a valuable thing or pecuniary advantage and he can be charged under this Section.'

Mr. P. Rajmanickam, learned Central Government Public Prosecutor submitted that the story of loan said to have been borrowed by P.W. 2 has not been proved satisfactorily and so that the presumption under S. 4(1) of Prevention of Corruption Act has to be involved and that the prosecution has proved beyond reasonable doubt that the accused has committed the offence. He also relied upon the judgment reported in Rangilal v. State of U.P. for the proposition that the evidence of hostile witness cannot be discarded totally and that it could be used to corroborate the other related evidence on record. In this case, the evidence of P.W. 2 is not at all useful to the case of the prosecution since his evidence is that he himself has not given the report Ex. P. 3 and that it contains some other materials inserted by P.W. 10 of his own accord.

22. As I have already pointed out, P.W. 2 does not support the case of the prosecution and there is no evidence regarding payment of bribe to the accused excepting the unreliable statement of P.W. 3 before P.W. 10 that the accused himself had asked P.W. 2 whether he had brought the bribe amount required by him for renewal of the contract. As already discussed, this part of evidence of P.W. 3 is quite unnatural and improbable and so I am unable to accept his testimony. Therefore, there is no evidence of demand of bribe. In the circumstances, P.W. 2 himself has admitted that he has borrowed money from the accused and that he was making repayment of Rs. 1,000/- and left with a balance of Rs. 500/- to be paid subsequently by doing business. It is sufficient, if the accused gives a satisfactory explanation and in the absence of any acceptable evidence with

regard to payment of bribe. It is sufficient if the accused raised preponderance of probability and that it need not be proved to the hilt beyond reasonable doubt.

23. In view of the discussion made above, I am of the view that the prosecution has failed to establish its case against the accused and in the circumstances, the findings of the lower court cannot be upheld and therefore, the conviction and sentence against the accused are set aside and the accused is set at liberty and the criminal appeal is allowed. The fine amount if paid, is directed to be refunded to the accused.

24. Appeal allowed.

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