

Needhimanickam Vs. State by Dsp, Vigilance and Anti Corruption, Madras

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Court : Chennai

Decided On : Mar-21-2002

Reported in : [2003]47SCL772(Mad)

Judge : Malai Subramanian, J.

Acts : [Prevention of Corruption Act 1947](#) - Sections 5(1) and 5(2); [Prevention of Corruption \(Amendment\) Act 1988](#) - Sections 19(1) and 30; [General Clauses Act, 1897](#) - Sections 6

Appeal No. : Criminal Appeal No. 513/1990

Appellant : Needhimanickam

Respondent : State by Dsp, Vigilance and Anti Corruption, Madras

Advocate for Def. : O. Srinath, Govt. Adv. (Crl. Side)

Advocate for Pet/Ap. : R. Shanmugasundaram, Senior Counsel for ;S. Chandrasekaran

Disposition : Appeal dismissed

Judgement :

Malai Subramanian, J.

1. The appellant has preferred this Criminal Appeal against his conviction for offences punishable under Secs. 5(2) read with 5(1)(a) and 5(2) read with 5(1)(d) of [Prevention of Corruption Act 1947](#) by the II Additional Special Judge, Chennai. He was sentenced to undergo R. I for one year and to pay a fine of Rs. 1,000/-, in default to suffer R. I for three months for offence punishable under section 5(2) read with 5(1)(a) of the Act. He was also sentenced to undergo R. I for one year and to pay a fine of Rs. 1,000/-, in default to suffer R. I for 3 months for offence under Section 5(2) read with 5(1)(d) of the Act. Both the sentences of imprisonment were ordered to run concurrently. The appellant paid the fine amount.

2. P. W. 1 Suryanarayanamoorthy is a post man, who used to deliver letters in the Slum Clearance Board Office, where the accused was working as an Assistant. P. W. 1 wanted to have a house allotted to him. On enquiry, he was informed that if the accused was approached, the accused would help him in getting the allotment. Therefore, P. W. 1 approached the accused in January 1985 and then sought allotment of quarters in the Slum clearance Board Building. The accused/appellant demanded Rs. 10,000/- and thereafter, it was reduced to Rs. 8,500/-. P. W. 1 paid Rs. 3,000/- in January 1985 in the Office of the appellant. He also paid Rs. 1,500/- in the month of February 1985 and in the month of March 1985, he paid the remaining amount of Rs. 4,000/-. Thereafter, he received an allotment order allotting No. 29, Block-I, Sivalingapuram, Slum Clearance Building in the name of his wife. Since he was a Government Servant, he did not want to have the allotment in his name. Therefore, the application Ex. P. 1 was given in the name of his wife Sampooram. The house was allotted to the wife of P. W. 1 at a monthly rent of Rs. 25/-. He also paid an advance of Rs. 500/- and electricity deposit of Rs. 90/- and on 25th of April 1985, he took possession of the house and came to reside there. He also celebrated his son's first birthday on 27. 4. 1985 in the same house.

3. On seeing P. W. 1 enjoying a house in the Slum Clearance Board, his mother-in-law Thirupurasundariam-P. W. 5 also wanted a similar house for her. Likewise, one Gomathiammal-P. W. 4, who was distantly related as grand mother to P. W. 1 also wanted one house for her. The son of Gomathiammal viz. ,

Sivaramakrishnan-P. W. 2 also looked at the house of P. W. 1 and aspired to have similar house. When the accused was approached in the month of April 1985, he demanded Rs. 10,000/-. Though there was a bargain, and P. W. 1 was willing to give only Rs. 8,500/-, the accused refused, but demanded only Rs. 10,000/-. This information was passed on to P. W. 4-Gomathiammal. She agreed to part with Rs. 10,000/- but said she could give only by way of part payment and she cannot arrange an amount of Rs. 10,000/- at a stretch. Then an application was presented in the name of Gomathiammal and an amount of Rs. 3,000/- was given to the accused by P. Ws. 1 and 2 in the month of May 1985 and Rs. 3,000/- in the month of June 1985 and the remaining Rs. 4,000/- was also paid before the end of that month. Thereafter, a signature was obtained from Gomathiammal in a form. An allotment was received in the name of Gomathiammal and she also paid like P. W. 1, the deposit amount of Rs. 500/- and Rs. 90/- electricity deposit. The house bearing No. J-7, which was allotted originally to one Ramadas, was allotted to P. W. 4-Gomathiammal. All the house hold articles of P. W. 4 were placed in J-7 house and it was locked. The very next day, when P. W. 1 and others went there, they found the lock of the house broken and one Ramadas was present. A complaint was given in K. K. Nagar Police Station.

4. In the meantime, P. W. 1's mother-in-law, P. W. 5 was demanding a similar house to her. She wanted a house on instalment basis so that she would be able to pay the amount in 15 years. The accused demanded Rs. 10,000/-. P. W. 1 alone gave an amount of Rs. 2,000/- to the accused as first instalment and again another Rs. 2,000/- as second instalment and thereafter Rs. 6,000/- as third instalment on behalf of P. Ws. . When P. W. 1 went to the Slum Clearance Office in the month of April 1986, he was informed that the house allotted to P. W. 5 was originally allotted to one Jayavelu-P. W. 7 and that the said Jayavelu has not paid the rent and only in case the remaining rent due is paid, P. W. 5 can occupy the house. P. W. 5 paid the balance rent of Rs. 4,000/- and odd in the month of April 1986 and occupied the house. While so, P. W. 7 came there and asked P. W. 5 as to how they came to occupy the house allotted to him. Thereafter, there was a panchayat and the accused suggested to pay an amount of Rs. 3,000/- to P. W. 7 and it was paid.

5. On 5. 12. 1986 at about 4. 30 p. m. P. Ws. 1 and 2 went to the Office of the accused and asked him to relieve them of the difficulties in occupying the house allotted in the name of Gomathiammal, mother of P. W. 2. Again the accused demanded Rs. 2,500/-. When he was accosted that already Rs. 10,000/- was paid and why Rs. 2,500/- to be given to him, the accused informed P. Ws 1 and 2 that initially they can give Rs. 500/- and after the house was allotted the remaining Rs. 2000/- can be given. On 9. 12. 1986, the accused wanted to come with an amount of Rs. 500/- at 4. 30 p. m. At that stage, when this fact was apprised to Gomathiammal, she did not talk anything. Therefore, P. W. 1 thought that he should take some action against the accused, since the accused was not allotting the house inspite of receipt of Rs. 10,000/- from Gomathiammal. Then he went to the Directorate of Vigilance and Anti Corruption and presented Ex. P. 3-complaint to P. W. 17 -Deputy Superintendent of Police, attached to Vigilance and Anti Corruption.

6. P. W. 18 - Inspector of Police informed P. W. 1 that they cannot taken any action in connection with the amounts already said to have been given, but if P. W. 1 was prepared to pay Rs. 500/-, the accused could be trapped. Thereafter, P. W. 1 took Rs. 500/- having denominations of one hundred rupees note and eight fifty rupees note and went back to the office at about 1. 30 p. m. P. W. 3 and another were introduced to P. W. 1. P. W. 3-Purushothaman was working in the Statistics Department. They were also asked to go through the report given by P. W. 1 and the Inspector took two tumblers of water. P. W. 3 was asked to dip his hand in one tumbler and he did so. There was no change. Then Purushothaman was handedover with an amount of Rs. 500/- by P. W. 1, on the instructions of the Inspector. Thereafter, the Inspector took the amount from P. W. 3 and applied some powder over the notes. Again he handed them over to P. W. 3. P. W. 3 was asked to count the notes with his fingers. After counting notes, he was again asked to dip his fingers in the tumbler. But the water in the tumbler turn towards red colour. Thereafter, the amount of Rs. 500/- was given back to P. W. 1 and P. W. 1 was advised to go and tender it to the accused in Office. A Micro tape recorder was also given to P. W. 1 so as to record the conversation between P. Ws and the accused.

7. Thereafter, P. Ws 1 and 3 along with police officers went in one Jeep and two cars. Police were waiting outside and P. Ws 1 and 3 alone went to the office by climbing the stairs. Even at the stair steps, they noticed P. W. 2-Sivaramakrishnan. P. W. 2 went to P. W. 1's house and ascertained that p. W. 1 has gone to Slum Clearance Board. Therefore, P. W. 2 also has come there. Accidentally, they met. P. Ws. 1 and 2 alone entered the room, where the accused was seated along with five or six persons working in the department. P. W. 3 did not enter, since he felt that the room, in which the accused was sitting was very small and he was a little panicky also. P. Ws. 1 and 2 were asked to sit in the stool, opposite to the seat of accused and the accused questioned whether they have brought the amount. Then P. W. 1 picked up Rs. 500/- from his pocket and then gave them to the accused saying that the accused can count them. The accused after receiving the amount with his right hand, placed the same underneath the tray on the table, where there was a table cloth also . Actually it appears the currency notes were placed in between the tray and the cloth over the table. The accused promised P. Ws. 1 and 2 that he will complete the transaction. Thereafter, P. W. 1 went to the corridor and signalled the police officers by wiping his face with the kerchief. P. W. 2 alone was inside the room at that time. Thereafter, the Dy. Superintendent of Police, Inspector and others including P. W. 3 came inside. After the accused was pointed out by P. W. 1, the Inspector-P. W. 18 asked the accused to dip his right hand fingers in a glass of water. The accused did so. The colour of the water became slightly red. When his left fingers were also dipped in another glass of water, there was a slight change of colour towards red. Thereafter, the amount under the tray was handed over to the Inspector by the accused himself. Even when the amount of Rs. 500/- was shown to the Inspector by P. W. 1 in the police Office, the numbers of currency notes were noted and the same was compared in the Office of the accused and the Inspector found them to be correct and tallying. Some water was also dropped on the table cloth and cloth also was turned slightly red. That was also seized . Tape Recorder was also seized from P. W. 1. Bottles were also seized, after the water was dropped.

8. Bottles were sent for chemical analysis and the Chemical Analyst-P. W. 16 found phenolphthalein and Sodium Bicarbonate in the bottle. His report was marked as Ex. P. 27.

9. P. W. 18 after seizing M. Os. 1 to 8 and also seized Rs. 1,800/- from the accused, which belongs to the accused. Thereafter, they went to the house of the accused and there was a house search. Ex. P. 7 is the search list. Thereafter, the accused was taken to the Vigilance office and later on bail at about 11. 30 p. m. P. W. 18 examined P. W. 3 besides P. Ws 1 and 2. On 10. . 12. 86, he sent all the seized materials to the Court with requisition to send them for chemical analysis. On 5. 12. 1987, P. Ws. 1,2,4 and 5 were again examined and P. W. 1's wife was also examined on 7. 12. 1987. P. W. s12,13 and 15 along with P. Ws 10 and 11 were also again examined by P. W. 18. On 18. 12. 1987, P. W. 18 examined the accused and recorded his statement again. After completing the investigation, he sent his final report to his Office on 7. 1. 88. In the meantime, he got transferred and P. W. 19 filed Final report in Court.

10. There are three instances in this case. The first one is allotment of a house belonging to the Slum Clearance Board to P. W. 1 in the name of his wife. The second one is allotment of a house in the name of P. W. 4 - Gomathiammal-the mother of P. W. 2. The third one is the allotment of another house in the name of P. W. 5 - the mother-in-law of P. W. 1. The evidence in this case shows that there was no trouble in the allotment of house to P. W. 1 at all. Even with regard to the house to the mother-in-law of P. W. 1, there was no difficulty. But insofar as the allotment in the name of P. W. 4 - Gomathiammal, one Ramadas intervened and therefore, P. W4 was to give Rs. 3,000/- more to settle the issue. Altogether, five charges were framed against the appellant.

The first charge is the demand and acceptance of Rs. 8,500/- from P. W. 1 for allotment of a house. The second charge was acceptance of Rs. 10,000/- for allotment to P. W. 4. The third charge was acceptance of Rs. 10,000/- for allotment to P. W. 5. The fourth charge was a demand of Rs. 2,500/- and acceptance of Rs. 500/-, insofar as the allotment relating to P. W. 4. In all these four charges, the appellant was said to have committed an offence punishable under Sec. 5(2) read with 5(1)(a) of Prevention of Corruption Act. The fifth charge is that the accused received Rs. 29,000/- illegally towards bribe by using his office as a Public servant. Therefore, he was charged for an offence under Sec. 5(2) read with 5(1) of the Prevention of Corruption Act,1947.

11. Insofar as the payment of an amount of Rs. 8,500/- towards the allotment of a house to P. W. 1, there is evidence of P. W. 1 alone. In the cross examination of P. W. 1, it was stated that the amount was demanded only for the accused and not to be given to anybody else. There was absolutely no cross examination with regard to this incident. P. W. 1 in the cross examination has admitted that wrong details were given in the applications for allotment. Except that, no question was asked with regard to the demand or acceptance of Rs. 8,500/- in several instalments from P. W. 1. Since this evidence of P. W. 1 remain unchallenged, it has to be held to be proved and the prosecution has proved the act of receipt of Rs. 8,500/- by the accused.

12. Insofar as the receipt of Rs. 10,000/- from P. W. 4, which is the second charge in this case, P. W. 4 was examined to corroborate the evidence of P. W. 1. In the cross examination, the question with regard to the demand for an amount of Rs. 2,500/- alone was asked and there was no cross examination with regard to the amount of Rs. 10,000/- parted with by P. W. 4 through P. W. 1. Probably because P. W. 4 was not an eye witness to the handing over of the money to the accused by P. W. 1. Even with P. W. 1 there was no cross examination with regard to this charge. Therefore, this charge also insofar as the receipt of the amount is concerned can be held to be proved in view of the evidence of P. Ws 1 and 4 which remain unchallenged.

13. Coming to the third charge , P. W. 5 has corroborated the evidence of P. W. 1. She would say that P. W. 1 told her that the accused Neethi Manickam demanded Rs. 10,000/- for allotting a house and thereafter, she got Rs. 2,000/- by way of loan from her sister Lakshmi and gave it to P. W. 1. It is the evidence of P. W. 1 that he handed over the amount to the accused. Another amount of Rs. 2,000/- was borrowed from one Meenakshi, another sister of P. W. 5 and the same was also given to P. W. 1, who in turn handed it over to the accused. It is the further evidence of P. W. 5 that she sold some jewels and silver articles for an amount of Rs. 6,000/- and then sent the same through P. W. 1. And it is the evidence of P. W. 1 that the said amount was given to the accused. P. W. 1 was not cross examined on the evidence of handing over the amount of Rs. 10,000/- in three instalments to the accused. But there was some cross examination of P. W. 5 in

the form of suggestions and the witness had denied those suggestions. Therefore, I hold the fact that P. W. 1 gave Rs. 10,000/- to the accused, being the amount given by P. W. 5 stands proved.

14. The fourth charge is the demand of Rs. 2,500/- for allotting a house to P. W. 4 over and above the amount of Rs. 10,000/- paid already. Insofar as this incident is concerned, there is evidence of P. Ws. 1,2 and 4. P. W. 1 would say that J-7 house was allotted to Gomathiammal at the end of the month of June and thereafter, Gomathiammal and P. W. 1 went to the Office of the accused; paid a deposit of Rs. 500/- and also electricity deposit of Rs. 90/- and they occupied the house also. The further evidence of P. W. 1 is that the very next day one Ramadas broke open the lock and entered the premises. This information was passed on to the accused and the accused ultimately advised them to inform the police. Therefore, a complaint was lodged with K. K. Nagar Police Station. But there was no action. When this fact was informed to the accused, the accused pacified and promised that he will settle the issue. Thereafter, on 5. 12. 1986, according to P. W. 1, P. Ws. 1 and 2 went and met the accused in his office and they were asked by the accused to bring Rs. 2,500/-. When they pleaded their inability to the accused, he demanded Rs. 500/-initially and after allotment order, remaining amount can be given to him. This piece of evidence of P. W. 1 is amply corroborated by P. W. 2, who took part in the discussion with the accused. The only discrepancy is P. W. 1 would say that the accused demanded Rs. 2500/- while P. W. 2 would say that he demanded only Rs. 2,000/-. P. W. 4 corroborates P. W. 1 regarding the interference of Ramadas and then lodging a complaint to the Police. But thereafter, the information was passed by P. Ws. 1 and 2 to P. W. 4 regarding the demand of Rs. 2,500/- by the accused. Insofar as the demand is concerned, the fourth charge also stands proved.

15. The fifth charge reads that the accused in his capacity as public servant misused his Office and received an amount of Rs. 29,000/-in total from P. W. 1 illegally and therefore, he was to be held liable for offence punishable under Sec. 5(2) read with 5(1)(d) of Prevention of Corruption Act.

16. According to the learned senior counsel appearing for the appellant, there is some discrepancy with regard to the total amount said to have been received by the accused. P. W. 1 in his evidence has stated that he gave Rs. 8,500/- and on behalf of p. W. 4 Rs. 10,000/- and for P. W. 5 Rs. 10,000/- totalling an amount of Rs. 28,500/-. The next amount of Rs. 500/- is nothing but the amount that was used for trapping the accused. If all these amounts were put together, the figure Rs. 29,000/- is reached. There is no discrepancy with regard to the amount said to have been received by the accused, provided the receipt of the trap amount is held to be proved.

17. Coming to the last item of tendering an amount of Rs. 500/- to the accused and his receiving the same, there is evidence of P. Ws. 1 and 2. The Vigilance Department procured P. W. 3 for the purpose of witnessing the demand and receipt of bribe by the accused. P. W. 3 is also a public servant, working in the Statistical Department. In his presence only, tests were conducted in the Vigilance Office and thereafter, he was also taken along with P. W. 1 to the Office of the accused. P. W. 3 did not enter the room where the accused was working. He was specifically invited for that purpose, but he says that P. W. 1 went along with P. W. 2 and the room, in which the accused was sitting and working was small one and he did not enter the room. This explanation does not appear to be plausible. He has also admitted that from the place he stood, the seat of the accused was not visible. Virtually, he is not an eye witness to the occurrence at all. But one thing is true. According to him, he was in a confused state of mind. That is an additional reason given by him for not entering the scene of crime. Whatever it be. P. W. 3 is not an eye witness to the occurrence. P. W. 2 is also a chance witness. There was no consensus between P. Ws. 1 and 2 to go to the Office of the accused and tender the amount of Rs. 500/-. P. W. 1 alone went to the office of the Vigilance, accompanied by P. W. 3. P. W. 2 would say that he went in search of P. W. 1 in his house, but he was informed that p. W. 1 had gone to the Slum Clearance Board Officer. Thereafter, he says he came to the Office and he met P. W. 1 at the stairs, since the office of the accused was situate in the second floor. P. W. 2 is not only a chance witness, but an interested witness too. But on that score, the presence of P. W. 2 cannot be doubted because according to P. W. 3, who is an independent witness, P. Ws 1 and 2 went upstairs at about 4. 15 p. m and when P.

Ws 1 and 2 entered the second floor, he stopped just before the entrance of room No. 301-B. This evidence of P. W. 3 that he saw P. W. 2 along with P. W. 1 remains unchallenged in the cross examination. Therefore, I am unable to doubt the presence of P. W. 2, though he is a chance witness.

18. It is the evidence of P. Ws 1 and 2 that the moment they went inside the office, the accused offered seats to them and they were seated in the stools. Thereafter, according to them, the accused wanted to ascertain whether they have brought money. P. W. 1 picked up Rs. 500/- with the denomination of one hundred rupee note and eight fifty rupees notes and then handed over them to the accused. The accused, after receiving the same, kept it just below the tray over the table cloth. Thereafter, P. W. 1 has signalled the police officers and the amount was seized later. P. W. 18 - the Inspector of Police conducted the phenolphthalein test and as narrated earlier, it proved positive and therefore, the accused was taken to the office of Vigilance. On facts, the evidence of P. Ws. 1 and 2 corroborated by evidence of P. W. 18 could not be doubted. But one suspicion that arises in my mind is that why should the accused keep the money under the tray over the table without keeping it in his pocket. Originally, the prosecution case is that the accused was given Rs. 28,500/- on various occasions by P. W. 1 on his behalf and on behalf of P. Ws. 4 and 5. Those amounts were received by the accused, according to P. W. 1. Nowhere P. W. 1 stated that those amounts were kept over the table or inside the drawer etc. But only this amount of Rs. 500/- was said to have been placed underneath the tray on the table.

19. The learned Government Advocate tries to erase this suspicion by saying that there was no necessity for P. W. 1 to give evidence as to where and how the accused kept the amount of Rs. 28,500/- given in several instalments earlier. When the amount of Rs. 500/- was given to the accused for the purpose of trap, the evidence was let in as such. In view of the overwhelming evidence available on record, I am unable to shatter the case of the prosecution only because of this doubt.

20. The learned senior counsel appearing for the appellant relied on a ruling of the Apex Court reported in MEENA (SMT) W/O BALWANT HEMKE VS STATE OF

MAHARASHTRA : 2000 CriLJ2273 .

In that case Their Lordships have held as follows:

'mere recovery of the currency note of Rs. 20 denomination, and that too lying on the pad on the table, by itself cannot be held to be proper or sufficient proof of the acceptance of the bribe, in the peculiar circumstances of this case which lend also credence to the case of the appellant that it fell on the table in the process of the appellant pushing it away with her hands when attempted to be thrust into her hands by P. W. 1'.

But unfortunately in this case, there was absolutely no explanation forthcoming from the accused whatsoever except a complete denial of demand or receipt of bribe. If the accused would have taken a plea similar to that involved in the case before the Apex Court, it is a fit case, where such a plea can be appreciated. But in the absence of any such plea, I am unable to apply this ruling in favour of the accused.

21. Yet another ruling of the Apex Court reported in SURAJ MAL VS THE STATE (DELHI ADMINISTRATION) : 1979 CriLJ1087 was also relied on by the learned senior counsel for the appellant, wherein Their Lordships have held as follows:

'Mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable'.

In that case the evidence of the witness was not found reliable on facts. But so far as this case is concerned, the evidence of the prosecution witnesses is acceptable and inspire confidence and therefore it is reliable. In view of this distinction, this ruling also could not be applied in favour of the accused.

22. Yet another ruling reported in M. O. Shamsudhin v. State of Kerala, 1995 SCC (CRL) 509 relied on by the learned senior counsel is to the effect that the evidence of the trap witness is more or less evidence of accomplice and therefore, it requires the fullest corroboration from the other evidence . The Supreme Court has discussed various rulings on this aspect and finally came to a conclusion that

in the evidence of a particular case, the Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the facts and circumstances of another case the Court may unhesitatingly accept the evidence of such an officer.

23. In Paragraph 21 of the above said ruling Their Lordships have held as follows:

'Normally the Courts may not act on an uncorroborated testimony of an accomplice but whether in a particular case it has to be accepted without corroboration or not would depend on an overall consideration of the accomplice's evidence and the facts and circumstances'.

24. At yet another place in paragraph-22 it has been observed as follows:

'Where a bribe has already been demanded from a man and if without giving the bribe he goes to the police or Magistrate and brings them to witness the payment it will be a legitimate trap and in such cases at the most he can be treated as an interested witness and whether corroboration is necessary or not will be within the discretion of the Court depending upon the facts and circumstances of each case'.

Applying those principles to the evidence of the present case, not only the evidence of P. W. 1 inspires confidence but it receives corroboration from the evidence of P. Ws. 2,4 and 5 besides evidence of the investigation officer-P. W. 18. Therefore, I hold the accused guilty of the offences alleged.

25. With regard to the legal aspect. Sec. 5(1)(a) of [Prevention of Corruption Act 1947](#) reads as follows:

'if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as motive or reward such as is mentioned in Section 161 of the Indian Penal Code'.

In this case, there is no evidence that the accused demanded and received the amount of Rs. 29,000/- in order to give it to somebody else. The only evidence adduced is that the accused received the amount. According to Sec. 161 IPC that

the gratification should be received as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of the official functions of the accused concerned. It is the evidence of P. Ws. 10 and 11 who are the superior officers of the accused that the accused was not entrusted with the power of issuing allotment orders with regard to Slum Clearance Board houses. But still though there is no positive proof in this case that the accused received the amounts in the exercise of his official functions, still according to the ruling of the Supreme Court reported in *M. Narsinga Rao v. State of A. P.*, 2001 SCC (CRL) 258 a legal or mandatory presumption can be drawn from a factual or discretionary presumption.

26. Yet another ruling reported in *Madhukar Bhaskarrao Joshi v. State of Maharashtra*, 2001 CRL. L. J 175, wherein Their Lordships have held as follows:

' Once the prosecution established that gratification in any form - cash or kind - had been paid or accepted by a public servant the Court is under a legal compulsion to presume that the said gratification was paid or accepted as a motive or reward to do (or forbear from doing) any official act. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the Court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other viz. , 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it. Presumption can be drawn if public servant is found in possession of currency notes smeared with phenolphthalein and the prosecution does not have further duty to prove beyond the fact that prosecution witness had paid the demanded money to the appellant, public servant'.

In view of the above said ruling, the legal requirement also is held to be fulfilled. The accused did not let in any evidence to rebut the presumption; nor did he explain as to how he came to possess the smeared amount of Rs. 500/-

27. The learned senior counsel also urged yet another point on the question of sanction. According to the sanction order, Ex. P. 16, the sanctioning authority has stated that the accused Neethi Manickam, a public servant has obtained himself a total sum of Rs. 31,000/- from the said Thiru. Suryanarayanmoorthy by corrupt or illegal means. According to the learned senior counsel, the amount said to have been received by the accused/appellant was only Rs. 29,000/- as per the charge and also as per the evidence; but the sanction order reads that the accused received Rs. 31,000/- and therefore, there was total non-application of mind in passing the sanction order. In the earlier portion of the order it narrates the demand and receipt of Rs. 8,500/- and then Rs. 10,000/- and then another Rs. 10,000/- and thereafter Rs. 500/-. On facts, there was no error. The total amount received even as per the sanction order amounts to only Rs. 29,000/-. But the only mistake that has crept in is in the calculation of Rs. 2,500/- in the place of Rs. 500/-. The demand of Rs. 2,500/- has been calculated as a receipt of Rs. 2,500/-, whereas the receipt was only Rs. 500/-. This error seems to be only a clerical error and it does not affect the order of sanction.

28. Yet another objection to the sanction is that though the prosecution was initiated under the old Act for offence under Sec. 5(1)(c) and 5(1)(d) read with 5(2) of Prevention of Corruption Act, the sanction order was passed under section 19(1)(c) of the Prevention of Corruption Act, 1988. Investigation was initiated under the old act and the prosecution was also launched under the old Act. Since the sanctioning authority accorded sanction on 8. 5. 1989, after coming into force of the new Act, the sanctioning authority has mentioned Sec. 19(1)(c) of the Prevention of Corruption Act, 1988 in the last portion of the sanction Order. Section 30 of the present Act reads as follows:

(2) 'Notwithstanding such repeal, but without prejudice to the application of Section 6 of the [General Clauses Act, 1897](#) (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts

so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act'.

This saving clause comes to the rescue of the prosecution. In that, the sanctioning authority reference to 19(1)(c) of the Prevention of Corruption Act cannot be held to be violative of the legal principles. The proceedings in granting sanction is the continuance of the prosecution. Therefore, merely because the new Act was referred to in the sanction Order, I am unable to agree with the learned Senior Counsel that the sanction accorded is bad. As a matter of fact, the new Act came into existence one year prior to the date of according sanction, Section 19(1)(c) contains a rider which reads as follows:

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

There is nothing to show that any failure of justice has occasioned in this case.

29. Therefore, I see no reason to dislodge the prosecution case on that score also. Since for a habitual offender like the accused/appellant a punishment of imprisonment of one year and a fine of Rs. 2,000/- in to alone has been imposed, I do not think it is in anyway excessive.

30. In the result, the conviction and sentence passed by the learned II Additional Sessions Judge, Madras stands confirmed and the appeal stands dismissed.

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