

D.Pugazhendhi Vs. State

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Court : Chennai

Decided On : Dec-19-2011

Judge : Aruna Jagadeesan, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 7, 13(2), 13(1)(d), 20; Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : CrI.A.No.479/2011

Appellant : D.Pugazhendhi

Respondent : State

Advocate for Def. : Mr.N.Chandrasekaran, Adv.

Advocate for Pet/Ap. : Mr.P.Kumaresan, Adv.

Judgement :

The Appellant, who is the sole accused in CC.No.39/2009, has filed this Criminal Appeal against the judgement dated 19.07.2011 passed by the learned XII Additional Special Judge for CBI Cases, City Civil court, Chennai, convicting and sentencing him for the offence under Sections 7 and 13(2) read with 13(1)(d) of the [Prevention of Corruption Act, 1988](#) to undergo two years Rigorous Imprisonment for each offence and to pay a fine of Rs.10,000/- for each offence, in default to undergo to undergo three months Rigorous Imprisonment and ordering the sentences to run concurrently.

2. The case of the Prosecution is as follows:-

a. PW.2 L.P.Shanumugasundaram is an Advocate, practising at High Court Premises, Chennai dealing with the cases of motor accidents and other cases and PW.5 V.P.Balaji is his Junior Advocate. A case in MCOP.NO.71/2006 was filed, claiming compensation on behalf of one Mayakrishnan before the Court of Small Causes, Chennai and the said case was settled in the Lok Adalat for a sum of Rs.3,25,000/- on 25.4.2009 and an award was also passed to that effect. The United India Insurance Co. Limited was directed to deposit the award amount within a period of eight weeks from the date of receipt of a copy of the said order. On nearing completion of eight weeks, since the amount was not deposited, PW.2 contacted the accused, who was the Divisional Manager, United India Insurance Co. Limited, Saligramam, through his mobile phone on 11.06.2009, to which the Appellant/accused asked him to come and contact him in person. Therefore, he sent his junior PW.5 on 12.6.2009, who met the Appellant in his Office at Saligramam and enquired about the deposit of the award amount. Since the accused had asked his senior to come in person, the same was intimated to PW.2 by PW.5 over phone. Thereafter, on 13.6.2009, PW.2 after attending the cases in the Lok Adalat, he contacted the accused through his mobile phone and enquired about the issuance of cheque for the award amount to Mayakrishnan. The accused replied that at least 1% of the award amount is spent, the cheque would not be made ready and further asked him to come and contact him in person. Again on 15.6.2009, at about 4.00 p.m., PW.2 contacted the accused through mobile phone of his senior colleague one Lobamuthira and the accused asked him to come and meet him in person. Thereafter, on the same day, he went and met the accused and at that time, the accused demanded a sum of Rs.3000/- as bribe amount to obtain the cheque and on payment of such amount, he would deposit the cheque in the court. PW.2 contacted his client Mayakrishnan and apprised him of the fact, but Mayakrishnan was not willing to pay any bribe amount and therefore, requested PW.2 to take any action, for which he would agree. b. On 16.6.2009, after finishing all the cases, PW.2 went to CBI Office at Shastri Bhavan at about 2.30 p.m. and gave a written complaint Ex.P3 to the Superintendent of Police, CBI Chennai. At about 2.45 p.m. the Superintendent of Police called PW.4 R.Purushotham, the Inspector of Police, CBI, Chennai and introduced him to

PW.2. The Superintendent of Police handed over the complaint to the Inspector for verification and Registration of the case, who in turn caused verification of the complaint and after satisfying himself registered a First Information Report in RC.No.34/A/2009 at about 3.15 p.m. Ex.P11. He made arrangements for two independent witnesses, namely, Jagadesh Prasad, Manager, Vijaya Bank and PW.3 Rengaraj, Inspector of Central Excise. They were summoned to the CBI Office and they were given a copy of the complaint. PW.4 asked PW.2 to produce the bribe amount and PW.2 gave Rs.3000/-, two currency notes of Rs.1000/- denomination and two currency notes of Rs.500/- denomination. The numbers of the said notes were noted down in the First Mediation Report Ex.P4. Thereafter, PW.4 demonstrated the phenolphthalein test and also explained the significance of the test to PW.2 and the other witnesses PW.3 Rengaraj and Jagadesh Prasad. The currency notes were kept in the left hand side shirt pocket of the complainant. PW.4 instructed PW.2 not to touch the currency notes, until the accused demanded it and he also instructed PW.3 to accompany the complainant PW.2 and to listen the conversation between PW.2 and the accused and to watch the happenings. c. Before leaving the CBI Office, as per the instructions, PW.4 and PW.2 called the accused from his mobile phone by putting speaker on, so as to enable the others to hear the conversation between PW.2 and the accused, where the accused informed him to come to his office on that day itself. All the proceedings were recorded in Ex.P4 and it was concluded at 4.15 p.m.

d. Thereafter, PW.2, PW.3 and the other independent witnesses, PW.4 proceeded to the Branch Office of the said Insurance Company at Saligramam in PW.2' s Car and the other members followed in their own office vehicle and they reached the Office of the accused at 5.30 p.m. As soon as they entered into the cabin of the accused, PW.2 introduced PW.3 as his clerk to the accused. The accused asked them to be seated in the seats in front of him and told PW.2 that he had verified the file and if he pays Rs.3000/- as bribe amount, he will deposit the cheque on the next day. PW.2 told the accused that he will pay the amount on that day itself and asked the accused to deposit the cheque on that day itself, but, the accused told PW.2 that the cheque would be ready only on the next day and asked PW.2 to collect the cheque through him or through his clerk and deposit the same into the court and bring the acknowledgment. Then, PW.2 took the bribe amount from his

left hand side shirt pocket and handed over the same to the accused, who, after receiving the same with right hand, kept it in his right pant pocket. PW.2 and PW.3 came out and PW.2 gave the pre-arranged signal by removing his spectacle and the accused also followed them and came out of the cabin. On seeing the pre-arranged signal, PW.4 and other team members rushed to the cabin of the accused and PW.2 identified the accused to PW.4, the Inspector of Police, who asked the accused to come into the cabin of the accused. PW.2 and PW.3 remained outside the cabin. PW.4 introduced himself as the CBI Officer. Immediately, the accused fell on the feet of PW.4 and asked him to excuse him and he will not receive any bribe amount in future and he also pleaded that he is having a family. Further, he took the money from his right pant pocket and kept it on the table. e. As per the instructions of PW.4, sodium carbonate solution was prepared and accused was asked to dip his right hand fingers in the said solution and the solution turned into pink in colour, which was collected in a bottle, sealed, labeled and marked as 'A', which is MO.1. Another solution was prepared and the accused was asked to dip his left hand fingers, which also turned into pink in colour and the said solution was collected in a bottle, sealed, labeled and marked as 'B', which is MO.2. One of the independent witnesses, Jagadesh Prasad compared the numbers of the currency notes with that of the numbers entered in the First Mediation Report Ex.P4, which tallied. Then, the accused was provided with a lungi and he handed over his pant to the Officers, which was also subjected to phenolphthalein test and his right side pant pocket was subjected to sodium carbonate solution test and it also proved positive. This solution was transferred into a bottle, sealed, labeled and marked as 'C' marked as MO.3 The seized currency notes were marked as MO.4. The pant was seized, labeled and marked as MO.5. PW.4 arrested the accused at about 7.30 p.m. and a search was conducted at the office premises of the accused and Ex.P7 search list was prepared. He also drew Ex.P8 and Ex.P9 sketches of trap spot and took specimen impression of the brass seal used for sealing the MOs in a separate white sheet, which was marked as Ex.P10. The entire happenings at the Insurance Company at Saligaramam were recorded in Ex.P5 Second Mediation Report, which was concluded at 9.45 p.m. f. After the accused was remanded to judicial custody, the case was handed over to Kumaresan, Inspector of Police, CBI, Chennai for further

investigation as per the orders of the Superintendent of Police. A memo was filed on 12.09.2009 before the Principal Special Judge for CBI cases, Chennai to permit PW.8, Vijaya Vaishnavi, Sub Inspector of Police, CBI/ACB/Chennai to investigate the case further. Then, the case was transferred to PW.8 for further investigation. As per the orders passed by the Principal Special Judge for CBI Cases, Chennai dated 15.07.2010, PW.8 examined Jagadesh Prasad and others witnesses. In the mean while, the material objects were sent to the forensic department for chemical test. On receipt of Ex.P21 chemical analysis reports and after completing investigation, PW.8 sent the entire file to the Superintendent of Police and forwarded the same to the competent authority for obtaining sanction for prosecution of the accused. g. PW.1 M.Elango, who was working as Deputy General Manager in the Regional Office, UIIC Limited, Chennai, was the competent authority for initiating disciplinary action against the persons working as Divisional Manager in the Office of UIIC Limited and he accorded sanction Ex.P1. PW.8, after completing investigation, filed the charge sheet against the accused under Section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act on 13.11.2009 before the Principal Special Judge for CBI Cases, Chennai.

3. The case was taken on file in CC.No.392/2009 by the learned Principal Special Judge for CBI Cases, Chennai and necessary charges were framed. In order to bring home the charges against the accused, the prosecution examined as many as 8 witnesses (PW.1 to PW.8) and also relied on Exs.P1 to P22 and marked five material objects (Mos.1 to 5).

4. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of the Prosecution's witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case.

5. On the side of the defence, one Nithya Ranjani, who was working as the Administrative Officer, UIIC Limited, Divisional Office 26, Saligramam, Chennai was examined as DW.1 and the accused examined himself as DW.1 and Ex.D1 was marked.

6. The evidence of DW.1 disclosed that she was looking after the third party claims and the accused was overall in-charge of Policy Issuing Department, Claims Department, Accounts Department, Marketing Department and General Administration. Apart from that, he used to attend claims inspection, Lok Adalat and visit clients for getting business. Her evidence further disclosed that on 25.4.2009, the claim in respect of MCOP.No.71/2006 was settled in Lok Adalat for a sum of Rs.3,25,000/- as against the total claim of Rs.8,00,000/-. She was on casual leave from 2.6.2009 to 4.6.2009 and again on 8.6.2009. She attended the office on 1.6.2009, 5.6.2009 and 9.6.2009. She has stated that as per Ex.P19 covering letter, Ex.P13 Lok Adalat order was received in their office on 5.6.2009. Her evidence indicated that it is the normal procedure that Lok Adalat order would be received by the third party claims Department, in which she was in-charge, and would be processed and forwarded to the Divisional Manager for sanction of the amount. After sanction, the file would be sent to the Accounts Department for preparing cheque. Since she was on leave after 5.6.2009, one C.V.Manimuthalagi, the Senior Assistant had processed the file and had prepared the note after verifying the documents. Her evidence further disclosed that the insurance certificate in the present claim was in the name of Gopalakrishnan, as per Ex.P6 and RC Book is in the name of C.Ramesh. Therefore, she has stated that there was discrepancy in the insurance certificate. Before according sanction, legal opinion was obtained from their panel Advocate on 24.6.2009 and cheque was prepared on 1.7.2009 i.e. after the trap.

7. The evidence of DW.2 disclosed that DW.2, assisted by their panel of Advocates in the Lok Adalat, initially agreed for a settlement of Rs.2,25,000/-, but however, through negotiations, the amount was finally settled for Rs.3,25,000/- and Ex.P13 order was passed. The Lok Adalat order was received by their Office on 5.6.2009. As per Ex.P19, eight weeks time expired on 4.8.2009. DW.1 was on encashment leave for 15 days. DW.2 received Ex.P13 order on 5.6.2009 and forwarded it to the third party claim Department for processing. After scrutiny by the Administrative Officer, the file would be sent to DW.2 for sanction. Since DW.1 was on leave, one Manimuthazhagi was processing the said file. DW.2 was informed that there was technical problem and discrepancy in the claim that RC is in the name of C.Rajesh and the Policy is in the name of Gopalakrishnan. DW.2

further stated that when PW.5 Balaji Junior Advocate of PW.2 contacted the accused on 12.06.2009, he told him about the discrepancy in the claim and asked his senior to clarify. But, PW.2 did not come and meet him to clarify the said position. Thereafter, on 16.06.2009 PW.2 entered into the cabin of DW.2 along with another person and introduced him as his clerk. The accused asked PW.2 to clarify the discrepancy in the Insurance Certificate and PW.2 promised to clarify the same on the next day.

8. While leaving the cabin, PW.2 thrust the money into his hand under the pretext of shaking hands with him. The accused got shocked and wanted to return the money and therefore, he came out of the cabin following PW.2 and PW.3. Since his staff were available nearer to the cabin, to avoid embarrassment, the accused put the money into his pant pocket. By that time, CBI Officials came and asked the accused to take out the money. According to the accused, PW.2 was totally unhappy about the settlement, as he wanted the settlement for Rs.5,00,000/- and he had grudge against the accused and he thought that at the intervention of the accused, the amount was settled for Rs.3,25,000/- and not for the amount expected by him. Therefore, in order to wreck vengeance on him, he made a false complaint against DW.2 before CBI.

9. The court below, after hearing the arguments advanced on either side and looking into the materials available on record, found the accused/appellant guilty and awarded punishments as referred to above, which is challenged in this Criminal Appeal.

10. This court heard learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgment of conviction

11. Mr.P.Kumaresan, the learned counsel for the Appellant contended that the evidence of PW.2 cannot be accepted on any reasonable standard and that PW.2 Shanmuga Sundaram, Advocate was inimical towards the Appellant and had a motive to falsely implicate the Appellant, as he was under the impression that the amount settled in the Lok Adalat was considerably reduced at the instance of the Appellant, who participated in the Lok Adalat as the Divisional Manager. The

learned counsel laid much stress and pointed out that one Mayakrishnan the client of PW.2, whose claim was settled in the Lok Adalat and who being the aggrieved person, has not preferred any complaint for the alleged demand of bribe made by the Appellant. He would point out that the said Mayakrishnan has not been examined before the court to lend any corroboration to the version of PW.2. He would submit that there is no semblance of evidence to indicate from PW.5's evidence, who is the junior Advocate to PW.2 and who had met the Appellant on 12.6.2009, that the Appellant was interested in taking a bribe from PW.2 and indicated the same to PW.5 that only in the event of receiving the bribe, he would prepare the cheque for the amount settled. The learned counsel also pointed out that the evidence placed on record clearly indicated that the accused was not in a position to favour the complainant/ PW.2 for the issuance of the cheque and the positive case of DW.1, Administrative Officer of the United India Insurance Company Limited, where the accused worked as the Divisional Manager, is that the file regarding the claim would be processed by her and it would be forwarded to the Divisional Manager only for sanction and thereafter, to the Accounts Department for preparing the cheque. It was also pointed out that DW.1 was on leave and one C.V.Manimuthalagi, a Senior Assistant was placed in charge for processing files and there was no occasion or necessity for the accused to demand any bribe.

12. Per contra, Mr.N.Chandrasekaran, the learned Special Public Prosecutor, vehemently, submitted that whatever may be the nature of evidence in this case, but, it is an established fact that the money had been recovered from the Appellant and that by itself is sufficient for the conviction of the accused. The learned Special Public Prosecutor would submit that even if it is assumed that the complainant had any grievance against the Official, it only requires that his evidence be scrutinized with care and his testimony cannot be rejected on that score. He would submit that the version of PW.2 and PW.3 would sufficiently establish the fact that the accused accepted the tainted currency notes. It is also duly proved that he had demanded the bribe amount from PW.2. Hence, the learned Special Public Prosecutor would submit that the legal presumption available under Section 20(1) of the Prevention of Corruption Act should be raised and he supported the impugned judgement of conviction and sentence passed by the learned Special

Judge.

13. At the outset, it is relevant to state that the demand of illegal gratification is a sine quo non for constitution of an offence under the provisions of the Act. For arriving at the conclusion whether all the ingredients of an offence, viz. demand, acceptance and recovery of the amount of illegal gratification, have been satisfied or not, the court must take into consideration the facts and circumstances brought on record in their entirety. For the said purpose, no doubt, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration, but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the Prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the Prosecution. Even while invoking the provisions of Section 20 of the Prevention of Corruption Act, the court is required to consider the explanation offered by the accused only on the touchstone of preponderance of probability and not on the touchstone of proof beyond reasonable doubt.

14. The star witness, who had given the complaint to the CBI on 16.6.2009, whereupon the whole process of the trap by the CBI had been schemed out and carried on, is PW.2. In the present case, the Prosecution has essentially relied upon the evidence of PW.2, who is an Advocate, from whom the Appellant is said to have demanded bribe for issuance of cheque for the amount, which was, admittedly already, settled in the Lok Adalat. It is also seen that eight weeks time was granted by the Lok Adalat for deposit of the amount before the Small Causes Court by the Insurance Company. PW.2 admitted that the time for deposit expired only on 25.6.2009, as the settlement was made on 25.4.2009. But, even before the expiry of the time, PW.2 is said to have contacted the Appellant for the issuance of cheque viz. even on 11.6.2009 through phone. According to PW.2, the Appellant asked him to come in person. He had sent his Junior PW.5, to whom also the presence of PW.2 was insisted by the Appellant. Admittedly, no demand was made to PW.5 nor there was an indication from PW.5's evidence to the effect that the Appellant was interested in taking a bribe. In fact, PW.5 has admitted in his evidence that the claim form submitted to the Insurance Company regarding

the policy concerned was not in the name of the claimant. He does not deny the suggestion that only to clarify such position, his senior namely PW.2 was asked to meet the Appellant, but however denies knowledge about the same.

15. The plea of the Appellant consistently throughout the proceedings is that he has been made a victim of the complainant's grudge against him for not getting the amount settled for a higher amount as expected by him due to intervention of the Appellant during the settlement. The evidence revealed that the Appellant participated in the Lok Adalat, in which the claim was settled for a sum of Rs.3,25,000/- as against a claim of Rs.8 lakhs. PW.2 is an interested witness. The image and impression that could be gathered, on reading and appreciating the evidence of PW.2 and his conduct in approaching the Appellant even before the expiry of stipulated time for deposit and persistently asking the Appellant for the issuance of cheque, is that he had some ulterior motive to implicate the Appellant. In such view of the matter, his evidence must be considered with great caution and his evidence can be accepted only when there is corroboration for the demand of bribe made by the Appellant by any other independent evidence.

16. In the present case, it is the categoric version of PW.2 that when a demand was made by the Appellant, he immediately contacted his client, namely, Mayakrishnan over phone and the latter authorised him to take any appropriate action. Admittedly, the complaint is not given by the said Mayakrishnan. It is not the case of PW.2 that decoy amount was paid by the said Mayakrishnan. He was examined by the Police during investigation. For best known such a vital important witness has been withheld by the Prosecution from being examined before the court, particularly, when he is the aggrieved person, to whom PW.2 has informed about the demand and got his tacit approval for taking action against the Appellant. It is no doubt true that the Prosecution is not supposed to examine each witness cited, but a material witness, who is required to be examined, should be examined. That too, when a witness is not to lead evidence, which can be said to be duplication in nature and such a witness is competent to state certain additional relevant facts, then, non- examination of such a witness by the Prosecution makes the Prosecution case infirm. In view of the aforesaid facts and circumstances, no safe reliance could be placed on PW.2's evidence, in the absence of any

corroboration by independent evidence, more so, when such evidence was available in this case, but withheld by the Prosecution from examination before court. Non examination of Mayakrishnan before the court assumes importance, because nothing could be inferred from the Junior of PW.2, namely, PW.5 even to suspect that PW.2 was interested in getting a bribe from PW.2 for issuance of cheque.

17. At this juncture, it is also relevant to point out to the material contradiction and the serious infirmity in the evidence of PW.2 regarding preparation of Ex.P5 second mediation report (recovery mahazar). It is the evidence of PW.2 that Ex.P5 was signed by him and the other witnesses only in the Office of CBI. He is categorical that they signed Ex.P5 at 10.30 p.m. in the office of CBI. Whereas, PW.3 and PW.4 deposed that Ex.P5 was prepared in the Office of the accused. PW.2 is not an ordinary person and he is an Advocate by profession. It is too difficult to presume that he had stated so due to faint memory, especially when his evidence does not suggest anything to draw such inference. In order to place reliance on a testimony of an important witness, it must be tested for its inherent consistency or inherent inconsistency in reference to the account as stated by the said witness on being cross checked with the account as stated by the other witness. In this case, Pw.2 has contradicted on such a vital aspect of the Prosecution and given an inconsistent version, which cannot simply be brushed aside.

18. Another important factor that needs to be taken note of is the defect in charge framed against the Appellant. The tenor of the charge framed by the Special Judge is to the effect that a demand was made by the accused on 16.6.2009 as a motive for giving the cheque amounting to Rs.3,25,000/- pertaining to 3rd party motor vehicle accident awarded to Sri.V.Mayakrishnan. The 2nd charge also pertains to the demand made on 16.6.2009. Hence, as per the charge, demand was made only on 16.6.2009 and not before. Whereas PW.1's evidence disclosed that 1st demand was made on 13.6.2009 through phone in the form of expenses at one percent of the award amount and the Appellant is said to have expressed that cheque may not be ready, if at least one per cent of the award amount was not paid. Again on 15.6.2009, the Appellant is said to have demanded a specific sum of Rs.3000/- as bribe for the cheque to be deposited in the court. On

16.6.2009, even as per the evidence of PW.2, there was no demand at all, as PW.2 had gone straight to the CBI Office and given the complaint.

19. In that respect, it is relevant to refer to PW.4's evidence, which runs contrary to the evidence of PW.2 regarding first date of demand, as PW.4's evidence indicated that the first demand was made on 12.6.2009, whereas according to PW.2, first demand was made on 13.6.2009. Both PW.2 and PW.4's evidence clearly indicated that there was no demand of bribe on 16.6.2009. Whereas, the charge pertains to demand only on 16.6.2009. As the basis of the charge is entirely different from what is sought to be proved, it cannot be said that the accused was not prejudiced by the frame of the charge. It would have been open to the Prosecution to rely on the presumption under Section 20 of the Act, if the charge was properly framed and the accused was given an opportunity to meet the charge, which the Prosecution was trying to make out against the accused.

20. It is relevant to refer to the decision of the Three-Judge Bench of the Honourable Supreme Court reported in AIR-1978-SC-1672 (Bhupesh Deb Gupta (dead) by Lrs Vs. State of Tripura), wherein it is held that when the basis of the charge was entirely different from what was sought to be made out by the Prosecution, the contention of the accused that he was prejudiced by the defect in charge and that he had no opportunity to meet the case that was put forward against him had to be accepted. The relevant portion is extracted below:- "The wording of the charge framed by the Special Judge is that the money was remitted by Nikhil Chakraborty for showing, in exercise of official function a favour to the said Sachindra Dey on the plea of securing service for the said Sachindra Dey. The High Court understood the charge as meaning that the money was sent by Nikhil Chakraborty on behalf of Sachindra Dey as a gratification for securing service for the said Sachindra Dey. It appears from the charge and from the judgment of the courts below that the courts proceeded on the basis that the gratification was received by the accused for showing favour as a public servant. As the basis of the charge is entirely different from what is sought to be made out now i.e. the gratification was paid to the accused for influencing a public servant, it cannot be said that the accused was not prejudiced by the frame of the charge. It would have been open to the prosecution to rely on the presumption if the charge

was properly framed and the accused was given an opportunity to meet the charge which the prosecution was trying to make out against the accused. On a careful scrutiny of the facts of the case, we are unable to reject the contentions of the learned Counsel for the accused that he was prejudiced by the defect in the charge and that he had no opportunity to meet the case that is put forward against him.”

21. In yet another decision of the Honourable Supreme Court reported in 2003-8-SCC-296 (Sou.Vijaya @ Baby Vs. State of Maharashtra) the Honourable Supreme Court held that though defect in charge does not vitiate trial, but where the omission was vital, the substance of accusation was totally different from what was sought to be established by the Prosecution and there was no evidence to establish essential ingredients of relevant section, it can be an additional factor for acquitting the accused.

22. It is rather unfortunate in the present case that the charges framed do not refer to any of the demand made by the accused. The allegation, per se, in the charges framed does not show that the accused made a demand on 13.6.2009 and reiterated the demand on 15.6.2009. The demand said to have been made on 16.6.2009 is not spoken to by PW.2. It is, no doubt, true that the accused cannot complain of any defect in the charge, if he is not prejudiced. As the basis of the charge is entirely different from what was sought to be made out by adduction of evidence, it cannot be said that the accused was not prejudiced by the frame of charge. Therefore, I am unable to reject the contention of the learned counsel for the Appellant that he was prejudiced by the defect in charge and that he had no opportunity to meet the case as put forward against him.

23. Another significant factor in this case is that it is the complainant/PW.2, who approached the Appellant for issuance of cheque even before the period stipulated in the Lok Adalat. The evidence disclosed that the accused received the copy of the award on 5.6.2009. As per the evidence of PW.6, Senior Divisional Manager and DW.1 Administrative Officer of the United India Insurance Company Limited, the award will be received by the Claims Department and DW.1, who is in charge of third party claim, has to process it and after verification, it will be sent to the

Divisional Manager for sanction of the amount. DW.1 has worked on 5.6.2009 and 9.6.2009 and was on leave from 2.6.2009 to 4.6.2009 and on 8.6.2009. When DW.1 had verified the issuance of certificate, she had come across that the vehicle involved in the claim was in the name of K.Gopalakrishnan and RC Book was in the name of one Ramesh.

24. It is the consistent case of the Appellant that in view of the said discrepancy, when PW.5, the Junior of PW.2 contacted him, he asked him to inform PW.2 to be present in order to clarify the said aspect DW.1's evidence clearly indicated that even on 5.6.2009, she found out that discrepancy. The evidence also revealed that DW.1 was in charge of verification and only after it is processed, it will be sent to the Divisional Manager, the accused herein, for sanction of the amount. The case against the accused was that he demanded a bribe from PW.2 for preparing a cheque for the amount settled in Lok Adalat. The evidence indicated that he was not in a position to favour the complainant by issuing any cheque, as the same had to be done in the claims department. Therefore, it cannot be said that the accused was in a position to favour the complainant by issuing cheque for the amount settled in the Lok Adalat.

25. The defence of the Appellant is that he has been made a victim of the complainant's grudge against him, as the claim was not settled to his expectation in the Lok Adalat at the intervention of the Appellant as Divisional Manager. To support his version, he has examined himself as DW.2 and he has reiterated the same in his evidence. The argument advanced by the learned counsel for the Appellant is that this is a case where the Appellant has been implicated in a total false case and that there was neither a demand nor receipt of bribe and the complainant had, deliberately in order to implicate the accused, thrust the money into his hands under the pretext of shaking hands with him, while he left the cabin. The Appellant was shocked and immediately rushed out of the cabin and followed PW.2 and the person accompanied him (PW.3) and by that time, the CBI Officials came in and took him to the cabin.

26. In this case, there is a clear cut evidence that the accused rushed out of the cabin following PW.2 and PW.3. It is the usual practice that as soon as the Police

enters in, on getting pre-arranged signal, the fingers of the accused would be subjected to test to find out if he had received the money. But, in this case, unusually the accused had been asked as to whether he had received money and according to PW.4, the accused placed the money on his table. Only thereafter, the phenolphthalein test had been conducted. In the said circumstances, the theory of forcible thrusting of currency notes into the hands of the accused, while shaking hands with him appears to be probable and acceptable.

27. At this juncture, it has to be pointed out that according to PW.2, he went to the CBI Office at 2.30 p.m. and gave a written complaint to the Superintendent of Police, CBI, who in turn directed PW.4 to lay the trap. In his cross examination, he has stated that it was 3.30 p.m. when he wrote the complaint and presented it to the Superintendent of Police. His evidence indicated that PW.4 summoned PW.3 Rengaraj and another official witness and they arrived at 3.45 p.m. They were introduced to PW.2 and demonstration was shown to them, which was concluded at 4.30 p.m. They started at 5.00 p.m. from the CBI Office. Normally, it would take two to three hours to commence pre-trap proceedings, but in this case, it was arranged within 45 minutes. There is no indication from PW.4's evidence that any preliminary enquiry was made before registering the First Information Report against the accused. In fact, in Ex.P3 complaint, the Superintendent of Police, CBI has made an endorsement directing PW.4 R.Purushothaman to register a R.C. and investigate the case. Therefore, it is evident that no preliminary enquiry has been made to verify whether there is any truth in the allegations and to find out the veracity of the complaint. PW.4 has not made any endeavour to enquire about the conduct and status of the accused.

28. An important decision that preliminary enquiry was necessary before lodging a First Information Report was rendered by the Honourable Supreme Court in P.Sirajuddin etc. Vs. The State of Madras, etc. (AIR-1971-SC-520) . The important observations are as follows:-

“Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be

some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general.”

29. In *Shashikant Vs. CBI and others* (2007-1-SCC-630), the Honourable Supreme Court observed that it was within the province of CBI to commence a preliminary enquiry and the procedure laid down in the CBI Manual, when it was required to inquire into the allegation of the corruption on the part of some public servants, recourse to the provisions of the manual cannot be said to be unfair.

30. But, in this case, no such preliminary enquiry is made before registering the First Information Report. It appears that the CBI Officers were also in a hurry to register the case, which is evident from the conclusion of pre-trap proceedings within 40 minutes. Neither PW.4, Trap Laying Officer nor PW.8 the Investigating Officer have enquired whether the amount of Rs.3000/- allegedly paid to the accused by the complainant at the first instance was the amount of the aggrieved person Mayakrishnan or was of his personal money. As already discussed, the evidence of the complainant is of such a nature, which cannot be acted upon and accepted without corroboration of independent witness, namely, Mayakrishnan. It is relevant to point out that PW.2 admitted in his evidence that the accused was a strict Officer. On an overall consideration of the evidence placed on record, there is a reason to believe that the trap was laid by the complainant with a view to somehow entrap the accused.

31. The learned counsel for the Appellant laid much stress in his argument that the sanction accorded by PW.1 in this case is bad in law, as the sanctioning authority was not competent to accord sanction and it has been passed without application of mind to the facts. The learned counsel drew my attention to Ex.P1. He would submit that the competent authority to accord sanction in the case of a Divisional Manager is only the General Manager and PW.1, being a Deputy General Manager, is not the competent authority to accord sanction. He drew the attention of this court to the various decisions of the Honourable Supreme Court and the

other High Courts, few of which are stated below:- 1.2001-3-Crimes-171-Karnataka (Ameer Jan Vs. State)

2.2002-2-Crimes-198-Allahabad (Udai Narain Vs. State of UP by CBI)

3.2007-1-SCC-1 (Parkash Singh Badal and another Vs. State of Punjab and others)

4.2006-10-SCC-447 (K.Devassia Vs. State of Kerala)

5.1992-Crl.LJ-3216-AP (A.Venkata Samy Vs. State CBI)

6.1993-Crl.LJ-750-MP (Rajendra Prasad Vs. State of MP)

32. On the other hand, the learned Special Public Prosecutor vehemently contended that mere error, omission or irregularity in sanction is not considered fatal, even if it is assumed that the sanctioning authority was not competent to accord sanction, unless it has resulted in failure of justice. The learned Special Public Prosecutor drew the attention of this court to Section 19(3) and 4 of the Prevention of Corruption Act and would contend that the stress laid is on 'failure of justice and that too in the opinion of the court.' He also pointed out that in Section 19(4), the stress is on raising the plea at the appropriate time.

33. In appreciating the contentions of either side, it is relevant to refer to Section 19 of the Act. The effect of Section 19(3) and (4) of the [Prevention of Corruption Act, 1988](#) is of considerable significance. Section 19(1) is a matter of procedure and does not go to the root of the jurisdiction. Merely because there is omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceedings, unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. In the instant case, admittedly, the Appellant has not challenged the accord of sanction as to have been passed by the incompetent authority before the Trial Court.

34. Section 465 of Code of Criminal Procedure debars a court of appeal or revision from reversing a finding or even an order of conviction and sentence on account of error or irregularity in the sanction for the Prosecution, unless failure of

justice had been occasioned on account of such error or irregularity. It is relevant to state that the failure of justice must be relatable to error, omission or irregularity in the sanction. Therefore, for determining whether irregularity in sanction had occasioned in failure of justice, the sub section (2) of Section 465 enjoins on the court a duty to consider whether the accused had raised any objection on that score at the trial stage. But, the Appellant, who had not raised the objection at the trial stage, cannot possibly sustain such a plea for the first time in the appellate court.

35. The Honourable Supreme Court in the case of State by Police Inspector Vs. T.Venkatesh Murthy (2004-7-SCC-763) , referring to sub section (4) of Section 19 of the Prevention of Corruption Act and to Section 465 of Code of Criminal Procedure, observed that sub section (4) postulates that in determining under sub section (3) whether the absence of or any error, omission or irregularity in the sanction has occasioned or resulted in a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

36. In the instant case, admittedly, the irregularity in the matter of according sanction, has not been raised and in fact, there is not even a suggestion to that effect to PW.1 during the cross examination. Even when the accused examined himself as DW.2, he has not raised any objection with regard to the validity of sanction order passed by PW.1. Therefore, there was no occasion or any opportunity to the Prosecution to produce such materials or point out to the relevant rules to substantiate that the sanction was accorded by a competent authority. Without raising such objection before the Trial Court that, only the General Manager is the competent authority, a mere glance of Ex.P1, would be of no avail to come to a conclusion that only the General Managers are competent to accord sanction. Therefore, I am unable to countenance the arguments advanced by the learned counsel for the Appellant on this aspect.

37. However, I have to point out to a disturbing feature in this case that the mandatory provision of Section 17 of the Act has not been followed, inasmuch as there is a violation of the provisions of Section 17 of the Act, as the major part of

the investigation has been conducted by PW.8, who is in the rank of Sub Inspector of Police. The position of law is that provisions regarding investigation as found in Section 17 of the Prevention of Corruption Act are mandatory and not directory and any investigation conducted in violation thereof bears a stamp of illegality.

38. My attention was drawn to the one line order passed by the learned trial judge permitting the Sub Inspector of Police to conduct investigation. If an Officer below the rank of a Deputy Superintendent of Police seeks permission to investigate, the court should not give permission, unless it is proved to his satisfaction that the Deputy Superintendent of Police is unable to take up and conduct the investigation.

39. In the case of State of AP Vs. P.V.Narayana (AIR-1971-SC-811), the Honourable Supreme Court has cautioned that the grant of permission to investigating officer under this section is not a mere mechanical act and the Judge ought to satisfy himself as to why the Deputy Superintendent of Police are not available for doing investigation themselves. It would be against the spirit of the section to grant automatic permission to an officer below the rank of a Deputy Superintendent of Police.

40. Therefore, it is well settled law that granting of permission to an officer lower than the designated rank should not be treated by a Judge as a matter of routine. The Judge should satisfy himself that there are good and sufficient reasons for authorising the lower officer to conduct the investigation. In other words, the Judge should exercise his judicial discretion properly.

41. However, It has been held by the Honourable Supreme Court that an illegality committed in the course of an investigation does not affect the competence and jurisdiction of the court for trial and when cognizance of the case has proceeded to termination, the invalidity of the proceeding investigation does not vitiate the result, unless the miscarriage of justice has been caused thereby.

42. At this juncture, it is relevant to refer to the recent decision of Honourable Supreme Court reported in 2011-4-SCC-402 (Ashok Tshering Bhutia Vs. State of Sikkim) wherein it is held thus:-

“20. The issues raised herein above are no more res integra. The matter of investigation by an officer not authorised by law has been considered by this court time and again and it has consistently been held that a defect or irregularity in investigation however serious, has no direct bearing on the competence or procedure relating cognizance or trial and therefore, where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless a miscarriage of justice has been caused thereby. The defect or irregularity in investigation has no bearing on competence of the court or procedure relating to cognizance or trial. “

43. It is undoubtedly for the Appellant to establish that miscarriage of justice has been occasioned to him and not for the Prosecution to prove that no prejudice had been caused to him, because of the illegality in the investigation and therefore, I am not inclined to delve on that point, as there is no material to show that the said illegality resulted in miscarriage of justice.

44. At the risk of repetition, it is to be reiterated here that the Prosecution has miserably failed to prove the alleged demand of illegal gratification said to have been made by the Appellant prior to the trap and even on the trap. It is well settled by a catena of decisions of the Honourable Supreme Court that mere proof of receipt of money by an accused, in the absence of proof of demand and acceptance of money as illegal gratification will not be sufficient to establish the guilt of the accused. The Honourable Supreme Court has held in the case T.Subramanian Vs. State of Tamil Nadu (2006-1-SCC-Crl-401) thus:- “Mere proof of receipt of money by accused, in absence of proof of demand and acceptance of money as illegal gratification, not sufficient to establish guilt of accused. If accused offers reasonable and probable explanation based on evidence that the money was accepted by him, other than as an illegal gratification, accused would be entitled to acquittal.”

45. In the present case, the conduct of the complainant, smacks of framing Appellant in the trap case. In view of the entire trap proceedings bristled with suspicious circumstances, doubts and improbabilities, this court has no hesitation

to hold that the Prosecution has failed to discharge its burden to prove its case against the Appellant/accused beyond reasonable doubt.

46. For the aforesaid reasons, this court has no hesitation to hold that the Prosecution has miserably failed to prove the charges against the Appellant/accused beyond reasonable doubt and as such, the irresistible and inevitable conclusion of this court is that the impugned judgement of conviction and sentence is unsustainable in law.

47. In the result, this criminal appeal is allowed. The impugned judgement of conviction and sentence is set aside. The appellant is acquitted of all the charges levelled against him. The bail bond, if any executed by him, shall stand terminated and the fine amount, if any paid by him, shall be refunded to him.

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