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A. Baskaran. Vs. State Represented by Deputy Superintendent of Police

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Court : Chennai

Decided On : Jul-02-2012

Judge : P.R.Shivakumar, J.

Acts : Prevention of Corruption Act 1988 - Sections 7, 13(1)(d), 13 (2); Indian Penal Code(IPC) - Sections 147, 294, 506(1), 451, 379

Appeal No. : CRIMINAL APPEAL (MD) No.550 of 2007

Appellant : A. Baskaran

Respondent : State Represented by Deputy Superintendent of Police

Advocate for Def. : Mr. T.Mohan, Adv.

Advocate for Pet/Ap. : Mr. Andiraj, Adv.

Judgement :

Criminal Appeal filed under Section 374 of Criminal Procedure Code to set aside the judgement and conviction of the Chief Judicial Magistrate/Special Judge under the Prevention of Corruption Act, 1988 at Nagercoil in Special Case No.7 of 2003, dated 23.10.2007 and acquit the appellant herein.

JUDGEMENT

1. The sole accused in Special Case No.7 of 2003 on the file of the Special Judge under the Prevention of Corruption Act 1988 (Chief Judicial Magistrate), Nagercoil is the appellant in this appeal and he has preferred this Criminal Appeal challenging the conviction and sentence imposed on him by the judgement of the trial court dated 23.10.2007. For the sake of convenience, the appellant will be referred to as accused.

2. The learned Special Judge under the Prevention of Corruption Act 1988 (Chief Judicial Magistrate), Nagercoil framed charges under Sections 7 and 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act 1988 against the accused and after trial, found him guilty of the said offences, convicted him and sentenced him to undergo Rigorous Imprisonment for a period of 5 years and to pay a fine of Rs.10,000/- with a direction to undergo default sentence of rigorous imprisonment for a further period of one year in case of default in payment of fine in respect of each one of the offences. The learned trial Judge has directed the sentences to run concurrently. The said judgement of the trial Court dated 23.10.2007 is challenged in this appeal by the accused regarding the conviction as well as sentence.

3. The case of the prosecution, as could be discerned from the oral and documentary evidence adduced on its side, can be, briefly, stated as follows:

One Latha, the proprietress of T.L.J. Complex, Marthandam had lodged a complaint on the file of Kulithurai Police Station against PW2-Giri and his friends Nissanth, Johny and Selvaraj. Based on the said complaint of Latha, a case had been registered against them in Crime No.1066 of 2002 on the file of the said Police Station. PW2 got an order of anticipatory bail in the said case subject to a condition for his daily appearance in Kulithurai Police Station at 10.00 a.m. The other accused in the said case had also got regular bail subject to similar conditions. In compliance of the conditions imposed in the order granting anticipatory bail, PW2-Giri went to Kulithurai Police Station on 27.12.2002 at 10-00 A.M. and his signature was obtained in the condition bail note book by PW6-Iyappan, a Head Constable attached to the said Police Station. The other three accused in the said case were also signing in the said Police Station in compliance of the conditions imposed on them in the orders granting them bail. Johny was signing Ex.P12 condition bail note book, whereas PW2 and the other accused in the said case (Crime No.1066 of 2002) were signing Ex.P13 condition bail note book. On 27.12.2002, when Pw2 was about to leave the Police Station after signing Ex.P13 condition bail note book, accused Baskaran, who was there as Inspector of Police in the said Police Station, called PW2 into his room, informed him that he knew that the case against him was not true and hence he was not going to file a charge sheet and asked PW2 to meet him after two weeks. Again when PW2-Giri met the accused in his office room in the Police Station on 18.1.2003 at 20.45 hours, the accused Baskaran demanded a sum of Rs.10,000/- as illegal gratification for dropping the name of PW2 from the said case. When PW2 informed the accused that he did not have that much of amount, the accused Baskaran wanted PW2 to give him Rs.5000/- at the first instance on 22.1.2003 and the balance amount of Rs.5000/- after the work would be over. Not willing to pay the amount demanded by the accused as illegal gratification, PW2- Giri went to the office of the Vigilance and Anti Corruption Wing at Nagercoil and lodged oral complaint which was reduced into writing by PW14 Mr.Spurgeon Rajan Roy, the then Inspector of Police in the Vigilance and Anti Corruption Wing, Nagercoil. Based on the said complaint, Ex.P30 First Information Report was prepared in the printed format and a case was registered in Crime No.2 of 2003 on the file of the said Vigilance and Anti Corruption Wing for an offence under Section 7(1) of Prevention of Corruption Act 1988. After the registration of the case on 22.1.2003, PW3-Balakrishnan and one Pichaiya, who were respectively employed as Horticulture Officer at Pechiparrai and Handloom Officer at Nagercoil, were invited to the office of the Vigilance and Anti Corruption Wing, Nagercoil. On their arrival at 3.30 PM, in their presence, a demonstration was made to show how phenolphthalein test would be used in trap cases. PW2-Giri was asked to hand over 10 Nos. of currency notes of 500 rupees denomination, which he had brought with him, to the said witness Pichaiya who counted the same and informed that there was Rs.5000/-. During demonstration, the said currency notes were coated with phenolphthalein powder. After demonstration, the phenolphthalein coated currency notes were entrusted to PW2 Giri with instructions to hand over the same to the accused only in the event of the accused making a demand. PW3-

Balakrishnan was advised to accompany PW2 as a shadow witness. At about 7-00 P.M. on the same day PW2 and PW3, along with the other witness Pichaiya and the Police party, were taken in a Jeep by PW14 to a place near Kulithurai Police Station where Pw2 and PW3 were dropped and were asked to go to the Police Station for the purpose of execution of the trap. The other witness Pichaiya, PW14 Inspector of Police of the Vigilance and Anti Corruption Wing and the other Policemen in his party were hiding in the nearby places. PW2-Giri and PW3-Balakrishnan went to the Police Station and made enquiries with PW4-Wilson, who was on para duty about the whereabouts of the accused. PW4 informed PW2 that the accused had informed him over phone at 5-00 P.M. that he would be taking rest at his residence as he was not feeling well; that he should be informed of the receipt of any important phone call and that his availability at residence could be informed to any important person who might come to the Police Station. On getting such information from PW4, PW2- Giri, PW3-Balakrishnan and the Police party went in the Police jeep to Tamil Nadu Police Quarters situated on Marthandam- Kulasekaram Road. Except PW2 and PW3 all others stopped at a distance of 50 ft., from the residential quarters of the accused and PW2 and PW3 alone went to the official residence of the accused at about 7.30 P.M. The accused Baskaran, who was standing in the portico at that point of time, asked PW2 whether he had brought the money and PW2 replied in the affirmative. Thereafter, the accused took both PW2 and PW3 into the office room at his residence and again asked PW2 about the money for which the reply of PW2 was that he had brought only a sum of Rs.5000/-. As the accused was satisfied and he agreed to receive the said amount, PW2 handed over the phenolphthalein quoted currency notes to the accused. The accused received it with his right hand, placed it under the table fan atop a wooden stool and informed PW2 that he would take care of his case. The accused also instructed PW2 that the balance amount Rs.5000/- should be paid on the following Saturday either in the office or at his residence. Then PW2 came out along with PW3 and gave a signal as per the pre-arrangement by changing his wrist watch from his left hand to right hand. After PW2 and PW3 came out of the residential quarters of the accused, PW8 went inside, met the accused and made enquiry about his health condition. At that juncture the Police Officers of the Vigilance and Anti Corruption Wing came there. PW2 identified the accused to be the person to whom he had made payment and after such identification PW2 left that place as instructed by PW14. The accused, who appeared to be perplexed was asked by PW14 about the money received from PW2. As per the information furnished by the accused, the phenolphthalein quoted currency notes to the value of Rs.5000/- (10 Nos. of 500 rupees notes marked as M.O.1 series) were recovered after ascertaining that their serial numbers tallied with the serial numbers of the currency notes entrusted with PW3 under the entrustment mahazaar Ex.P4. Phenolphthalein test was conducted for the right hand of the accused and the same gave a positive result.

4. After the execution of the trap was over, information was given to PW16 through Maluk Mudali, the Deputy Superintendent of Police, Vigilance and Anti Corruption Wing, Nagercoil. On receipt of such information from PW14, PW16 came there at 9-00 p.m, took up the investigation of the case and arrested the accused at 9.10 p.m. During investigation PW16 prepared Ex.P6-observation mahazar and conducted a house search under the search list-Ex.P7, after despatching an advance intimation to the trial court under Ex.P31. But no incriminating material could be seized. PW16 also prepared Ex.P6 observation mahazaar in the presence of witness and Ex.P32 rough sketch. Thereafter PW16 altered the case by adding Section 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act. PW16 continued the investigation, examined the witnesses and recorded their statements and recovered material objects. After completion of investigation he submitted the file to PW-1, got his order sanctioning prosecution and after the receipt of sanction order Ex.P1 for prosecution from PW1, submitted a final report alleging commission of offences punishable under Sections 7 and 13(1)(d) and read with Section 13(2) of the Prevention of Corruption Act 1988 by the accused.

5. The learned trial judge took it on file as Special Case No.7 of 2003, framed necessary charges, recorded the plea of the accused and conducted a trial since the accused pleaded, not guilty. In the trial, in order to substantiate the prosecution case, 16 witnesses were examined as PWs 1 to 16, 34 documents were marked as Exhibits P1-P34 and 2 material objects were produced as MOs 1 & 2, on the side of prosecution. After completion of recording of evidence adduced on the side of prosecution, the accused was questioned under Section 313(1)(b) Cr PC

regarding the incriminating of the material found in the evidence of prosecution and also generally in respect of the charges framed against him. The accused denied such evidence as false and reiterated his stand that he was innocent. On the defence side the accused figured as sole witness (DW1) and 4 documents were marked as Exs. D1 to D4. Thereafter, the learned trial Judge heard the arguments on both sides, considered the evidence, both oral and documentary, in the light of the points urged in the arguments and upon such consideration, found the accused guilty of the offences with which he stood charged, convicted him as per the charges and sentenced him as indicated supra.

6. The point that arises for consideration in this appeal is

"Whether the judgment of the trial court convicting and sentencing the appellant for the offence under Sections 7 and 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act 1988, suffer from any defect or illegality, capable of being interfered with in exercise of the appellate powers of this court?"

7. The arguments advanced by Mr.Andiraj for Mr.A.Edwin Prabhakar, the learned counsel for the appellant and by Mr. T.Mohan, the learned Additional Public Prosecutor were heard and the materials available on record were also perused.

8. The accused was prosecuted on two charges. The first one is under section 7 of the Prevention of Corruption Act 1988 and the second one is under section 13(1)(d) r/w 13(2) of the said Act. The case of the prosecution is that the accused, who was the Inspector of Police in Kuzhithurai Police Station, wherein PW2 had to appear and sign his name daily in respect of a case registered against him and others in Crime No.1066 of 2002 as per the condition imposed by the Court while granting anticipatory bail, invited PW2 to his office room in the police station on 27.12.2002 and informed that he could relieve PW2 of the botheration of the case and asked PW2 to meet him after two weeks; that PW2 again went to the said police station and met the accused on 18.01.2003 and the accused demanded a sum of Rs.10,000/- as illegal gratification for dropping PW2's name from the said case; that when PW2 informed the accused that he could not arrange such an amount, the accused agreed to get Rs.5000/- as initial payment on condition that the balance amount of Rs.5000/- should be paid when the work would be over and

asked PW2 to make the initial payment of Rs.5000/- on 22.01.2003; that not willing to make payment of the said amount as illegal gratification, PW2 approached the Vigilance and Anti Corruption Wing at Nagercoil and lodged a complaint under Ex.P2 on 22.01.2003; that based on the complaint a case against the accused was registered in Crime No.2 of 2003 on the file of Vigilance and Anti Corruption Wing, Nagercoil and a trap was arranged to catch the accused red handed; that the trap was successfully executed, in which the accused received phenolphthalein coated currency notes from PW2 and that based on the same, the accused was charge sheeted and prosecuted after getting necessary sanction from PW1. Regarding the alleged demand made by the accused on 18.01.2003, there is no other evidence excepting the testimony of PW2, the defacto complainant. Pointing out the same and contending that even in respect of the alleged execution of the trap, the evidence adduced on the prosecution admit improbabilities besides exhibiting contradictions, learned counsel for the accused (appellant) argued that the court below failed to consider the said aspects in proper perspective and arrived at an erroneous conclusion that the charges against the accused (appellant) were proved. The learned counsel for the appellant contended further that the court below did not appreciate properly the fact that the accused (appellant) was not the investigating officer of Cr.No.1066 of 2002, the case registered against PW2 and hence it was highly improbable for him to have demanded illegal gratification for dropping PW2's name from the said case; that the court below failed to note that even prior to the alleged occurrence PW2 had made a complaint to the Superintendent of Police of the district requesting that the cases against him should not be investigated by the accused Baskaran (appellant); that the execution of the trap was only a stage managed show which escaped the notice of the learned Trial Judge, leading to an erroneous finding holding the accused guilty of the offences for which he was prosecuted; that the court below failed to consider the explanation offered by the accused as to how the tainted money came to be found in his office room at his residence; that the court below also failed to consider the implication of the failure to conduct phenolphthalein test for the left hand of the accused when the main witness PW2 himself chose to state that the accused on receipt of the phenolphthalein coated currency notes counted them using both hands and then only placed it under the table fan atop a wooden stool; that the numerous contradictions which would make improbable the case of the prosecution and the probabilities of the theory of innocence of the accused were simply brushed aside by the trial court and that the court below would have arrived at a conclusion that the charges against the accused were not proved beyond reasonable doubt, had it properly appreciated the evidence adduced in this case. The learned counsel for the accused (appellant) also contended that despite the presence of such contradictions and improbabilities, the trial court gave perverse finding holding the accused guilty of the offences with which he stood charged resulting in miscarriage of justice by the conviction of an innocent person and that hence the impugned judgement of conviction pronounced by the trial court should be interfered with and set aside and the accused (appellant) should be acquitted, holding him not guilty of any of the offences for which he was prosecuted.

9. Per contra, Mr. T. Mohan, learned Additional Public Prosecutor contended that the well considered judgement of the trial court did not deserve any interference in this appeal by the Appellate forum; that the accused relying on some minor and trivial contradictions found here and there in the evidence adduced on the side of the prosecution had approached this Court for getting the well considered judgement of the trial Court set aside and that hence the appeal must be dismissed as having no merit in it. The learned Additional Public Prosecutor contended further that though the accused (appellant) was not the investigating officer of Crime No. 1066 of 2002, the criminal case in which the PW2 figured as an accused, the accused wanted PW2 to make payment of illegal gratification on the promise that he would see that the case against him was dropped; that the same was brought to light by the evidence of PW5-Mr. Jose, Sub Inspector of Police who was the investigating officer in the said case as he had deposed that the accused Baskaran (appellant) was insisting him to refer the above said case against PW2 namely Crime No.1066 of 2002; and that the accused himself admitted that there was no enmity between himself and PW5 and hence the said testimony of PW5 would show that though the accused Baskaran was not the investigating officer in the said case, hoping to exert his influence and get the case referred, he had demanded illegal gratification from PW2. The learned Additional Public Prosecutor pointed out the evidence of PW4 (the Grade I police attached to

Kuzhithurai Police Station at the relevant point of time) to the effect that while he was on the para duty on 21.01.2003, the accused Baskaran contacted him over phone, informed him that he was at his residence since he was not feeling well and instructed him to inform him if any phone message would come and to give the information about his whereabouts to any important person who would come there to meet him and that when PW2 and another came to the police station at 7.00 p.m on 22.01.2003 (the date of occurrence) to meet the Inspector of Police, he gave the information about the availability of the Inspector of Police in the quarters and informed them that they could go and meet him at his residence. Pointing out the said part of evidence, learned Additional public prosecutor contended that the said evidence of PW4 would provide corroboration to the evidence of the other witnesses; that upon proper appreciation of evidence, the Court below had arrived at a correct conclusion and that hence the conviction and sentence should be confirmed.

10. This Court paid its anxious consideration to the above said submissions made on both sides and the materials available on records were also taken into consideration.

11. One Latha had lodged a complaint on the file of Kuzhithurai Police Station against PW2-Giri and other persons, based on which a case was registered against them in Crime No.1066 of 2002. Though the prosecution case is that for dropping the name of PW2-Giri from the said case a demand of illegal gratification was made by the accused Baskaran (appellant), the First Information Report registered in the said case is found in the file marked as Ex.P10. According to the same and according to the evidence of PW5, who was the investigating officer of the said case, it was registered for alleged offences punishable under sections 147, 294, 506(i), 451 and 379 IPC against PW2-Giri, Nishanth, Johny, Selvaraj and 10 others. As rightly contended by the learned counsel for the accused (appellant) when as many as 13 persons had been arraigned as accused in the said case which was investigated by PW5, it is highly improbable for the accused to have demanded illegal gratification from PW2 alone and insisted that PW5 should refer the case. Further, it is seen from the evidence of PW5 and the documents found in Ex.P10-file relating to the said case, that the said case came

to be registered in 2002 itself. PW5 would say that on 08.11.2002 and 14.11.2002 the accused Baskaran (appellant) asked him to refer the case. The evidence of PW5 is to the effect that on 08.11.2002 and 14.11.2002 i.e. a few months prior to the alleged date of first demand, the accused Baskaran had insisted him to refer the above said case in Cr.No.1066 of 2002. There is no evidence that PW5 agreed to refer the case. When the accused was not the investigating officer and the Investigating Officer PW5, despite the insistence made by the accused herein, did not give any assurance for referring the said case, the pertinent question that arises to be answered is "whether the accused would have ventured to demand the illegal gratification from PW2 for referring the said case?" It gives rise to a doubt as to whether the accused could have made such a demand. Apart from that, the said case had been registered in May 2002 and in November 2002 itself the accused was said to have instructed PW5 to refer the case. But, when PW2 presented himself on 27.12.2002 for signing his name in the police station in compliance with the condition on which he had been granted bail in the said case, the accused could have very well made the demand on that date itself. However the case of the prosecution is that, on 27.12.2002 at about 10-00 a.m, when PW2 was about to leave the police station after signing the condition bail note book, the accused Baskaran (appellant) called PW2 to his room and informed that he was not going to file a charge sheet in the said case as he knew that the case was not true. On the other hand, the evidence of PW2 and his statement in the complaint are to the effect that the accused wanted PW2 to meet him after two weeks from 27.12.2002; that on 18.01.2003 at about 20.45 hours, PW2 met the accused Baskaran (appellant) in his office room in the police station and that at that point of time the accused (appellant) demanded a sum of Rs.10,000/- as illegal gratification for dropping the name of PW2 from the said case. The same sounds incredible because admittedly the accused Baskaran (appellant) was not the investigating officer in Crime No.1066 of 2002 and from the date of registration of the case, investigation of the said case was conducted by the Sub Inspector of Police namely PW-5 and the accused had not become the investigating officer and taken over the investigation from the Sub Inspector of Police even on 27.12.2002 or on 18.01.2003. For the offences alleged in the said case, the Sub Inspector of Police who was the investigating officer need not get the approval of the Inspector of Police for filing a positive final report (charge sheet) or a negative final report (referred charge sheet). As such, it is improbable that the accused would have informed PW2 that he was not going to file a charge sheet in the said case. PW2 was very much aware of the fact that the accused was not the investigating officer of the said case and hence the accused would not have informed PW2 that he was not going to file a charge sheet. PW2 himself could have asked the accused how he was going to save him from the case when he was not the investigating officer. It is not the evidence of PW2 that the accused informed PW2 that he would influence PW5 the Investigating officer and make him refer the case. The evidence of PW5 is to the effect that long prior to the alleged demand, the accused wanted him to refer the said case. On the other hand the evidence of PW2 is to the effect that the accused wanted money from him not for referring the case but for dropping his name from the said case.

12. It is also pertinent to note that even prior to 27.12.2002, PW2 had sent a petition to the Superintendent of Police stating that the case had been registered against him on a false complaint and that in view of the same an enquiry should be conducted against the accused Baskaran (Inspector of Police) and PW5-Jose (Sub Inspector of Police). It is his further evidence that based on his complaint submitted to the Superintendent of Police, the case was transferred to the file of Inspector of Police, All Women Police Station and that before such transfer was ordered the accused Baskaran (Inspector of Police) and PW5-Jose (Sub Inspector of Police) interrogated him in the said case, in the office room of the accused in the police station. It is his further evidence that such an interrogation was made by the accused and PW5 before 27.12.2002 and that even before the date of such interrogation he had given a complaint against them to the Superintendent of Police. When such is the case, it is highly improbable that the accused would have asked PW2 on 27.12.2002 to meet him after two weeks and on 18.01.2003 would have informed him that he was not going to file a charge sheet. It has also been admitted by PW2 that the investigation of the said case in Crime No.1066 of 2002 had been transferred to the file of Inspector of Police, All Women Police Station, Kuzhithurai and a charge sheet came to be filed in the said case. However, he was not able to say when charge sheet was filed in the said case. If all these aspects are taken into consideration, the alleged demand made by the accused on

18.01.2003 could not be true.

13. Of course, PW2-Giri, PW3-Balakrishnan, PW14 -Spurgeon Rajan Roy have given testimony regarding the registration of the case based on Ex.P2-complaint, demonstration conducted in the office of the Vigilance and Anti Corruption Wing to show how phenolphthalein test would be used in trap cases and the entrustment of phenolphthalein coated currency notes numbering 10, each with Rs.500/- denominations to PW2 with instructions to give it to the accused only if he would make a demand and regarding the preparation of Ex.P4-Entrustment Mahazar. No significant defect or contradiction is found in the evidence of the said witness regarding the demonstration, preparation of entrustment mahazar, entrustment of phenolphthalein coated currency notes etc. There is also clear evidence in the form of the testimonies of PW2-Giri, PW3 -Balakrishnan, PW14- Spurgeon Rajan Roy that on the date of occurrence, 27.12.2002 his police party headed by PW14 entered the residential quarters of the accused Baskaran, after receiving the signal of PW2 as per the pre-arrangement and recovered those phenolphthalein coated notes, after comparing the serial numbers of the currency notes entrusted to PW2 in the office of the Vigilance and Anti Corruption Wing as noted in Ex.P4-Entrustment Mahazar and that on conducting phenolphthalein test on the right hand of the accused by asking him to dip his right hand fingers in a glass full of sodium carbonate solution, the said solution turned pink showing the presence of phenolphthalein power in the right hand fingers of the accused. Whether the said fact shall be sufficient to prove the case of the prosecution against the accused, that he had received the said amount from PW2 as illegal gratification?

14. According to the evidence of prosecution witnesses, PW2 the defacto witness was accompanied by the PW3 shadow witness. He was sent to the police station at 7.00 p.m on the date of occurrence, with the phenolphthalein coated currency notes and on reaching the police station they found PW4 on para duty and asked him about the whereabouts of the accused. PW4 informed them that the accused had informed him over phone about his taking rest in his residence and had also instructed him to inform the accused if important phone calls were received and to give information about his availability at his residence to any important person who might come to the police station to see him. Thereafter PW2, PW3 and the police

party went to the police quarters.

15. In this regard, the evidence of PW4 is to the effect that, on 22.01.2003 at about 7-00 p.m when he was in para duty, PW2-Giri came there along with another person and he gave the above said information that they could meet the accused in his residential quarters. In his evidence in chief-examination, PW4 did not mention the name of the witness who accompanied PW2-Giri, but in his evidence in cross examination PW4 stated that the person who was found with PW2- Giri was familiar to him as he had come to the police station on earlier occasions to meet the Inspector of Police. In addition, he would also state that the name of the said person was Selvaraj and not Balakrishnan. It is not his evidence that he asked about his name and he was informed that his name was Selvaraj. On the other hand PW-4 would state that he himself knew that the said person's name was Selvaraj as he had come on earlier occasions to the police station to meet the Inspector of Police in respect of a civil dispute between Arumugam and Darwin. It is also his evidence that the said Selvaraj had very often come to the police station prior to the date of occurrence. If any importance is to be attached to the said evidence to PW4, the case of the prosecution projected through the evidence of PW2, PW3 and PW14 that PW2 was accompanied by PW3-Balakrishnan to the police station is to be disabled. In the light of the same, the credibility of the testimony of PW3 has also become questionable, more so when PW4 was not treated hostile and was not cross examined by the prosecution with the permission of the court to elicit further explanation regarding the identity of the person, who came with PW2 as a shadow witness. Under such circumstances, the other witness Pitchaiya, who also was part of the team, according to the prosecution, could have been examined. But the prosecution, for the reasons best known to them, failed to examine the said Pitchaiya, who also happened to be one of the attestors of the Mahazars.

16. Though PW9-Bolose would have stated that while he was on para duty on 18.01.2003 in Marthandam Police Station at about 8.45 p.m PW2 came there, went to the room of Inspector of Police after informing PW9 that he wanted to meet the Inspector of Police and that he came out after 5 minutes, the same cannot be taken as a piece of evidence for the proof of the alleged demand made

on 18.01.2003. Even regarding the information furnished by PW4 there are some contradictions. PW2 and PW3 would state that when they enquired PW4 about the whereabouts of the accused, PW4 informed them that the accused was at his residential quarters and he had asked them to come there and meet him. This part of evidence of PW2 and PW3 does not get corroboration from the evidence of PW4. The evidence of PW4 is as follows :- "At about 7.00 p.m., on the date of occurrence, PW2-Giri belonging to North street, Marthandam came there along with another person and informed him that they wanted to see the Inspector of Police. PW4, as instructed by the accused over phone, told PW2 and the other person who had accompanied him, that the Inspector of Police was taking rest in his residential quarters as he was not feeling well and if they chose to do so, they could go there and see him." The said evidence is quite contrary to the evidence of PW2 and PW3 which are to the effect that, they were informed by PW4 that the accused wanted them to come and meet him in his residential quarters.

17. According to the prosecution case, after the initial abortive attempt to have the trap executed in the police station, the fact that the Inspector of police was not there and he was available at his official residential quarters was informed to PW14 and thereafter the entire team went to the police quarters and after reaching the police quarters, while others stayed back PW2 and PW3 alone went to the residence of the accused. Both the witnesses, namely PW2 and PW3, would uniformly state that when they went to the residential quarters of the accused, he was standing in the portico. There are some discrepancies and contradictions between the evidences of PW2 and PW3 as to whether any discussion took place in the portico, before they were taken into the office room of the accused in his official residence. According to PW2, as soon as they met the accused in the portico, PW2 asked the accused what happened to his case, pursuant to which the accused asked him whether he had brought the money, evoking an affirmative reply from PW2 and thereafter the accused took both PW2 and PW3 into his office room situated near the portico. The evidence of PW3 in this regard differ from that of PW2. According to his testimony, there was no discussion between PW2 and the accused in the portico and as soon as PW2 and PW3 went there, they were taken into an adjoining room by the accused and only after entering that room, PW2 asked about his case followed by the other discussion. If the said

discrepancy is considered in isolation, the same may be discarded as insignificant. But in the light of the evidence of PW4, that PW3 was not the person who was found with PW2 and on the other hand one Selvaraj was the person who came with PW2, the above said discrepancy assumes importance. Apart from the said discrepancy, there are also other contradictions between the evidence of prosecution witnesses 2 and 3. PW2 and PW3 in their evidence in chief examination did not say that the accused on receiving the money from PW2 counted it. But during cross examination PW2 has stated in clear terms that the accused who got the money with his right hand, held the currency notes in the left hand and counted them using his right hand and that only after counting the same he placed it under the table fan atop the wooden stool. In confirmation of his statement that the accused counted the money using both hands, PW2 has also stated that he did not ask the accused not to count it as he had brought the correct amount. The relevant portion of his evidence in vernacular is extracted hereunder:

PW3, during cross examination, at the first instance stated that the accused after receiving the amount, counted it using both hands and his fingers on both hands came into contact with the currency notes. However, subsequently he retracted from the said part of evidence and stated that the accused kept the amount without counting. The same would show that PW3 is capable of changing his version and he is not a reliable witness.

18. Yet another contradiction found is, as to where from the signal was given by PW2 to the trap organising officer, namely PW14 and the police team accompanying him. The mode of giving signal, according to the prosecution case, was by changing the wrist watch from the left hand to right hand. Ofcourse, both the witnesses have stated that on coming out of the room in which the amount was paid, PW2 gave the signal, by changing the wrist watch from left hand to right hand as per the pre-arrangement. But there is a vital contradiction between the evidence of PW2 and PW3 as to where from the said signal was given. It is the version of PW2 that he had been instructed to come to the portico and give the signal standing in the portico. PW3 would state that before they proceeded towards the official residence of the accused, PW14 did not give any instructions as to how PW2 should give signal. It is also his specific admission that PW2 was

not instructed to give signal standing in the portico. According to the testimony of PW2, he gave the signal from the portico of the residence of the accused, whereas PW3 has given a contrary evidence. According to the evidence of PW3, PW2-Giri did not give the signal from the portico and on the other hand the signal was given by him from the road outside of the house of the accused. The relevant portion of his evidence in vernacular is extracted hereunder:

In this regard, PW14 has also stated that only from road in the front of the residence of the accused, PW2 gave the signal.

19. Regarding the incident that followed the signal of PW2, PW2 would state that, after the vigilance party along with PW2 and PW3 entered the house of the accused, PW2 narrated what happened and identified the accused to be the person to whom he had paid the money; that then PW14 introduced himself and the members of his team and that immediately thereafter as instructed by PW14, PW2 left the place. It is not the evidence of PW2 that he was there at the time of conducting phenolphthalein test to the right hand of the accused and effecting recovery of the phenolphthalein coated currency notes. On the other hand it is the evidence of PW2 that after PW14 and the team entered the house of the accused, phenolphthalein test was conducted for the right hand of the accused and the sodium carbonate solution turned pink; that thereafter PW14 asked the accused about the money received from PW2 and the accused answered he had kept the money under the table fan atop the wooden stool in the corner of the room; that thereafter as directed by PW14 the accused took the currency notes and gave them to PW14, that the said currency notes were seized after verifying the serial numbers found in the entrustment mahazar; that he and the other witness Pitchaiya attested the mahazars and that only thereafter PW2 left the place as instructed by PW14. This is quite contrary to the evidence of PW2.

20. We have seen, supra, that both PW2 and PW3 stated that the accused after receiving the currency notes from PW2 counted them using both hands and thereafter placed it beneath the table fan atop the wooden stool found in the corner of the room. Normally in such trap cases, to find out whether the accused had handled the tainted money with both hands, phenolphthalein test would be

conducted for both hands. In this case, it is quite surprising that the trap organising officer, namely PW14, chose to conduct phenolphthalein test only for the right hand fingers of the accused and omitted to conduct such test for his left hand fingers. No reason is forthcoming for the said lapse on the part of PW14. It is not the evidence of either PW2 or PW3 that they informed PW14 that the money was handled by the accused only with his right hand and that the same was the reason why the right hand fingers of the accused alone were subjected to phenolphthalein test. PW14 could not have assumed that the accused handled the currency only with the right hand and not with the left hand. The said lacuna found in the procedure adopted by the trap laying officer would make the defence theory of the accused probable or atleast would give raise to a reasonable suspicion.

21. The defence story of the accused is that, on the date of occurrence at about 7-00 p.m., when the accused was taking rest in his residence as he was not feeling well, he came out after hearing the calling bell sound, but he could not find anybody; that pursuant to the same he switched on the tube light and the table fan in his office room and was relaxing sitting in the chair; that at the said point of time the vigilance police came and asked him as to whether he had received any amount from PW2, for which he replied in the negative and that somehow or the other, the case has been foisted against him. The said story that someone rang the calling bell and when the accused came out he could not find anybody pursuant to which he switched on the light and table fan and was relaxing, seems to be quite probable. The prosecution witnesses have clearly admitted that the office room has two entrances, one leading to the residential portion and one allowing free access directly from the portico and that anybody can sneak into the room and leave the room without being noticed. This is also evident from the testimonies of PW14. PW2 and PW3 have not stated that they informed PW14 that the accused kept the money under the table fan. On the other hand PW14, during his cross examination, would state that PW2-Giri and PW3- Balakrishnan had informed him that the money had been kept under the table fan. Still PW14, according to his version, chose to ask the accused about the money and made the accused take out the money and give it to him. In this regard, the contention by the learned counsel for the accused (appellant) that the phenolphthalein coated currency notes had been purposely placed under the table fan in such a way that

the phenolphthalein test powder have struck to the base of the table fan and the top surface of the stool and anyone who would venture to switch on the table fan would get their fingers stained with the phenolphthalein powder seems to be probable, especially in the light of the above said discrepancies and contradictions found in the evidence adduced on the side of the prosecution.

22. Further more, the police officials in the Vigilance Wing conducted the trap operation and conducted the investigation of the case, namely prosecution witnesses 14 and 16, seem to have completely ignored the fact that there was a strong motive for PW2 to foist a case against the accused. They have also ignored the fact that, prior to the occurrence, PW2 had made a complaint to the Superintendent of Police that the case against him should not be investigated either by the accused or by PW5. They have either failed to consider or suppressed the fact that the investigation of the case Cr. No. 1066 of 2002 registered against PW2 and others was transferred to All Women Police Station, Kuzhithurai and it was subsequently charge sheeted as spoken to, by PW2. The officials of Vigilance and Anti Corruption Wing, PW14 and PW16, have simply stated that they did not know as to what happened to the case registered against PW2. They have also pleaded absence of knowledge as to whether the investigation of the case was transferred to Inspector of Police of All Women Police Station and whether any charge sheet was filed. When all these aspects are taken into consideration, it will lead to a possible conclusion that the alleged trap looks like a stage-managed show rather than a natural sequence of events. The Court below has failed to consider all the above aspects in a proper perspective and such failure resulted in an erroneous finding that the prosecution proved the charges framed against the accused under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1982, beyond reasonable doubt. Had the Court below considered the above aspects and the evidence adduced in this case in a proper perspective, it would have arrived at a conclusion that the prosecution had failed to prove its case beyond reasonable doubt and that the accused should be held not guilty of the offences, with which he stood charged. In view of the foregoing discussion, this Court comes to a conclusion that the judgement of the trial court convicting the accused for the above said offences is discrepant, infirm and is liable to be set aside and that the accused deserves

acquittal.

23. In the result the conviction recorded and the sentence imposed by the learned Special Judge under the Prevention of Corruption Act 1988 (Chief Judicial Magistrate), Nagercoil in the judgement dated 23.10.2007 pronounced in Special Case No.7 on his file, are set aside and the accused (appellant) is acquitted of both the offences for which he was prosecuted and is set at liberty. Fine amount if any collected, shall be refunded to the accused (appellant). Order regarding disposal of properties is left untouched.

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