

(2011) 09 MAD CK 0115

Madras High Court

Case No: Criminal Appeal No. 992 of 2004

A.S. Kannan

APPELLANT

Vs

State by The Inspector of Police
Vigilance and Anti Corruption

RESPONDENT

Date of Decision: Sept. 22, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161(3), 313(1), 8
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2), 17, 19, 20(1)

Hon'ble Judges: T. Mathivanan, J

Bench: Single Bench

Advocate: P. Wilson for T.K.S. Gandhi, for the Appellant; A.N. Thambidurai, Additional Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

T. Mathivanan, J.

This memorandum of criminal appeal is directed against the judgment dated 20.07.2004 and made in C.C. No. 1 of 2002, on the file of the learned Special Judge, under the Prevention of Corruption Act (I Additional Sessions Judge), Chennai, convicting the Appellant under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentencing to suffer two years of rigorous imprisonment and to pay a fine of Rs. 3,000/-, in default to suffer a further period of three months of rigorous imprisonment for each offence.

2. The highest forum of the land, in the judgment made in State of Madhya Pradesh and Others Vs. Shri Ram Singh, has observed that :

The Prevention of Corruption Act was intended to make an effective provision for the prevention of bribe and corruption, which is rampant amongst the public servants. It is a social legislation defined to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object.

3. As contemplated u/s 20(1) of the Prevention of Corruption Act, 1988 (Hereinafter it may be referred to as the "Act"), wherein, any trial of an offence punishable u/s 7 or Section 11 or Clause (a) or clause (b) of Sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as thecae may be, as motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

4. Hence, it is thus made clear that it is imperative on the part of the prosecuting agency, who launches criminal proceedings against a public servant with an allegation of demand and acceptance of gratification other than the legal remuneration, to prove those allegations beyond the shade of doubt. If it is proved that he has accepted or obtained or agreed to accept or attempted to obtain that gratification or valuable thing as the case maybe or motive or reward such as mentioned in Section 7 of the Act, it shall be presumed that he has accepted or received the gratification. But, this presumption is are buttable one and the person against whom the case of bribe is launched can defend himself to prove the contrary by way of preponderance of probability. It is settled proposition of law that the rigour of proof, which is rested on the prosecution, is not strictly attached on the accused person. On the other hand, if he is able to demonstrate the preponderance of probability to the satisfaction of this Court, it would be sufficient to presume his innocence.

5. It may quite be relevant to note here that Section 20 of the Act provides for raising of a presumption, only if a demand is proved. Furthermore, even in such a case, the burden on an accused does not have to meet the same standard of proof, as is required to be made by the prosecution. This dictum is engraved by the Apex Court in [V. Venkata Subbarao Vs. State, represented by Inspector of Police, A.P.,](#).

6. u/s 17 of the Act, certain police officers are authorised to investigate into the cases under the Act. Section 17 of the Act enacts as follows :

17. Persons authorised toinvestigate.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974.), no police officer below the rank,-

(a) In the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under Sub-section (1)of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974.), of an Assistant Commissioner of Police;

(c) Elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent, rank, shall investigate any offence punishable under this Act without the order of metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant :

Provided that if a police officer not below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of metropolitan Magistrate or a Magistrate of the first class, as the case may be, or take arrest therefore without a warrant :

Provided further that an offence referred to in clause (e) of sub-section referred to in Clause (e) of Sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

7. On coming to the instant case on hand, the occurrence is said to have been taken place at the office of the Assistant Engineer, Shasthri Nagar Section, Adyar, Chennai-600 020. No. doubt, it is clear that the occurrence was taken place at Chennai, which is a metropolitan area. Hence, as defined under Clause (b) to Section 17 of the Act, the Police Officer, who is competent to take up the case, is the Assistant Commissioner of Police. Even, if a Police Officer not below the rank of Inspector of Police happens to take up the case for investigation, he shall be specifically authorized by the State Government in this behalf by a general or special order to investigate the case without the order of a Metropolitan Magistrate or magistrate of the first class and he can also make arrest there for without a warrant.

8. In so far as this case is concerned, P.W.10, who took up the investigation of the case, is an Inspector of Police. He has not been authorized either by a general or special order to investigate the case. He has also not chosen to produce any such order to substantiate his competency to investigate the case.

9. P.W.9, who had registered the case based on the complaint of P.W.2 and laid the trap proceedings, was also functioning as an Inspector of Police at the relevant period. He has also stated that he had examined P.W.2 and recorded his statement. It is significant to note here that he was also not authorized in this behalf specifically.

10. The facts, which led to the filing of this criminal appeal :

11. The Appellant Mr. A.S. Kannan was working as the Inspector of Assessment in the office of the Assistant Engineer, Shasthri Nagar Section, Adyar, Chennai-600 020 and as such he was a public servant. P.W.2 Mr. K.S. Soundararajan was working as the General Manager tam/S. Medicare Disposable Technologies situated at Thiruvanmiur. P.W.4 Mrs. Jayasri Venkatesan is the Proprietrix of that Company. She is residing at No. 19/3C, Coral Samudra Apartments, Valmigi Nagar, Second Seaward Road, Thiruvanmiur, and Chennai-600 041. Her residential premises have been

provided with the electricity service connection bearing No. 202-45-1244. This service connection comes under the jurisdiction of the Assistant Electrical Engineer, Tamil Nadu Electricity Board, Shasthri Nagar Section, which is functioning at the Tamil Nadu Housing Board Complex.

12. That on 22.06.2000, the electricity tariff of the residential premises of P.W.4 Mrs. Jayasri Venkatesan was assessed at Rs. 6,275/-. Hence, P.W.4 had issued a cheque for the value of Rs. 6,275/- dated 04.07.2000 and handed it over to P.W.2 Mr. K.S. Soundararajan. That on 10.07.2000 at about 12.00 noon, P.W.2 had been to the above said Tamil Nadu Electricity Board Office along with the cheque for a sum of Rs. 6,275/- and tendered the same along with the electricity charges card to P.W.5 Mrs. P. Manimegalai who was sitting in the counter where he used to pay the electricity charges.

13. P.W.5 Mrs. P. Manimegalai, Assessor, who was in-charge of the counter had refused to receive the electricity charges as the electricity charges, which was due for the month of April, 2000 was not paid till then and hence she had directed P.W.2 to go to the last counter to pay the previous bill and thereby she had returned the electricity charges card along with the cheque to him. P.W.5 had also told him that the person to be present at the last counter is not available today and hence she instructed him to come and pay the electricity charges on the next day i.e. 11.07.2000.

14. That on 11.07.2000, at about 11.30 a.m. again P.W.2 had been to the said office and tendered the cheque for a sum of Rs. 6,275/- along with the electricity charges card to the Appellant Mr. A.S. Kannan, who was found seated in the last counter. On seeing the electricity charges card, the Appellant Mr. A.S. Kannan had informed P.W.2 that the electricity consumption charges of Rs. 4,079/- for the month of April, 2000 along with the penalty of Rs. 90/-and reconnection charge of Rs. 124/-, totally a sum of Rs. 4,293/-in cash should be paid. Apart from this, he had also demanded a sum of Rs. 100/- for him separately.

15. When questioned, the Appellant had replied that had he thought it fit, he could have imposed penalty more than Rest. 500/- and could have also disconnected the service connection. But, he did not do so and hence he had demanded a sum of Rs. 100/- for him.

16. On hearing this, P.W.2 Mr. K.S. Soundararajan had also replied him that since he had not brought money, he would bring it tomorrow or otherwise he would send it through some other person, who might be sent from their office. When P.W.2 had asked his name, the Appellant had disclosed his name as "A.S. Kannan" and he had also displayed his identity card.

17. After returning back to his office, he had informed the incident to his owner viz.P.W.4 Mrs. Jayasri Venkatesan in the afternoon and she had instructed him to prefer a complaint to the Vigilance and Anti-Corruption Department. Accordingly, on

12.07.2000 at about 03.00 p.m. P.W.2 had been to the Vigilance and Anti-Corruption Office at Adyar and informed about the incident to one Mr. Sethuraman, Deputy Superintendent of Police. He had directed P.W.2 to present a written complaint. Hence, P.W.2 had lodged a written complaint under Ex.P3 before him and he in turn had called P.W.9 Mr. Elango, Assistant Commissioner of Police and instructed him to register a case and to take further action.

18. Based on the complaint under Ex.P3, P.W.9Mr. Elango, Inspector of Police had registered a case in Crime No. 6/AC/CC.2/2000 u/s 7 of the Prevention of Corruption Act, 1988. The printed first information report was marked as Ex.P4. Both Ex.P3 complaint and Ex.P4printed first information report were sent to the Court. Then P.W.9 had examined P.W.2 and recorded his statement. Since P.W.2 had not brought the bribe amount, he was directed him to come on the next day i.e. on 13.07.2000with money. Then, P.W.9 Mr. Elango had also conducted a discreet inquiry about the conduct of the Appellant. A.S. Kannan and thereafter he had sent a letter to the Rural Development Department as well as to the Tourism Department through the Deputy Superintendent of Police to send two government witnesses, on the next day for trap proceedings.

19. On the next day i.e. on 13.07.2000, at about 09.00 a.m. one Mr. Daniel Thomas, Superintendent from Tourism Department and P.W.3 Mr. Thiruvarangam, Superintendent from Rural Development Department had reported before P.W.9 and they were made to read the contents of Ex.P4 first information report. At about 10.45 a.m. P.W.2 came to the Office of the Vigilance and Anti-Corruption along with the cheque for a sum of Rest. 6,275/- for the payment of electricity charges and a sum of Rest. 4,300/- in cash and another sum of Rs. 100/- (with the denomination of one fifty rupee currency note, one twenty rupee currency note and three ten rupee currency notes). Besides this, he had also brought the electricity charge card. He was introduced to the witnesses, who were present there. P.W.2 had also handed over the amount of Rs. 100/- with the denomination of one fifty rupee currency note, one twenty rupee currency note and three ten rupee currency notes to P.W.9 Mr. Elango. Then P.W.9 had asked the witness Mr. Daniel Thomas to count the currency notes. He was also directed to read the numbers of the currency notes and note it separately in a paper. Thereafter, P.W.9 had demonstrated the Sodium Carbonate and Phenolphthalein Test, after smearing the Phenolphthalein powder on the currency notes meant for bribe and explained it's intrinsic value to P.W.2, P.W.3and other witness viz. Mr. Daniel Thomas etc.,

20. P.W.2 Mr. K.S. Soundararajan was also asked to place the tainted currency notes in his pocket and he was instructed to tender it to the Appellant Mr. A.S. Kannan only on his demand.

21. P.W.3 Mr. Thiruvarangam was also instructed to associate with P.W.2 Mr. K.S. Soundararajan and keep keen watch on the happenings. P.W.2 was also instructed by P.W.9 Mr. Elango, Trap Laying Officer to give signal by changing his wrist watch

from his left hand to right hand. Thereafter, P.W.9 had prepared an entrustment mahazar underEx.P5 and all the witnesses including P.W.9 had signed init. Thereafter, P.W.9 and other members of trap team had reached the Office of the Appellant at 12.20 p.m. wherein P.W.9 and the witness Mr. Daniel Thomas were taking position outside the office. As instructed by P.W.9, P.W.2 and P.W.3 had been to the Office of the Appellant.

22. In the office of the Appellant, there were three counters. Mr. A.S. Kannan was found sitting in the last counter. P.W.2 had tendered the electricity charge of Rs. 4,300/-in cash for the month of April 2000 to theAppellant. The Appellant had also prepared a receipt for having received the amount and kept it along with him. Then, the Appellant had asked P.W.2 to come inside the counter. After gaining entry into the counter, the Appellant had asked the cheque for Rs. 6,275/- towards the payment of electricity charge for the month of June, 2000.

23. P.W.2 had also handed over the same to the Appellant. After receiving the cheque, the Appellant had noted the consumer number over the cheque and passed it on to the next counter. After receiving the cheque, the person, who was sitting in the next counter, had passed a receipt to that effect and returned to the Appellant. After keeping the two receipts, the Appellant had demanded the bribe amount by showing signal by his hand. When questioned, the Appellant had also shown the same signal by his hand and reiterated his earlier demand made on the other day. Immediately, P.W.2 had tendered the tainted currency notes to the Appellant.

24. The tainted currency notes viz. one fifty rupee currency note, one twenty rupee note and three ten rupee currency notes, totaling Rs. 100/-, were marked as M.Os.1 to 3.

25. After receiving the amount, the Appellant had counted the same and placed it in his left side table drawer. Then, he had returned the electricity charges card along with the receipts to P.W.2. Thereafter, P.W.2 came out from the office of the Appellant and shown the pre-arranged signal to P.W.9.

26. On noticing the signal, P.W.9 Mr. Elango and other members of trap team had rushed inside the office of the Appellant. P.W.2 had also identified the Appellant and informed P.W.9 that he had received the amount and kept it inside the table drawer and thereafter P.W.9 had informed the concerned officer of the Tamil Nadu Electricity Board about the receipt of the bribe amount by the Appellant and asked him to inform his higher officials. After receiving the electricity charge card from P.W.2, P.W.9 had instructed him to keep outside.

27. P.W.9 had also introduced himself to the Appellant. Thereafter, Sodium Carbonate solution was prepared in two glass tumblers and the Appellant was instructed to dip his both right and left hand fingers into the solution. When he did so, the solution in both the glass tumblers had changed into pink color. They we recollected into two separate glass bottles, sealed, labeled and attested by the

official witnesses.

28. When questioned about the bribe amount, the Appellant had produced the tainted currencies of Rest. 100/- from the right side drawer of his table. The numbers of the tainted currency notes were compared with the numbers noted in the entrustment mahazar. They were found tallied with each other. Subsequently, P.W.9 had seized the petty cash register, which was maintained by the Appellant and when compared an amount of Rs. 12,180/-, which was collected by the Appellant, was found tallied. The register was marked as Ex.P16. The amount of Rest. 4,300/- which was collected from P.W.2 was not given entry in the said register. Then, P.W.9 had entrusted the amount of Rs. 12,180/- along with Rs. 4,300/- with P.W.7 Mr. Ponnurangam, who was the Revenue Supervisor of the said office.

29. In the meantime, at about 12.45 p.m. one Junior Engineer had also arrived at the place of trap. Thereafter, P.W.9 had seized Ex.P8 green colour electricity charge card bearing connection No. 202-45-1244 and Ex.P10 disconnection and re-connection register containing page Nos. 1 to 34 for the purpose of investigation. He had also seized Ex.P11 disconnection list 4 of 2000 containing page Nos. 1 to 46 and Ex.P12 job book register containing page Nos. 1 to 492 and apart from this a sum of Rs. 850/- from the possession of the Appellant. Since the Appellant had claimed as that of his own money, it was returned to him. The petty cash register bearing serial Nos. 02875 and 02876 were handed over to the Assistant Engineer for office proceedings. The Sodium Carbonate and Phenolphthalein solution bottles were marked as M.O.4 and M.O.5 respectively.

30. Subsequently, P.W.9 had prepared a mahazar with regard to the trap proceedings under Ex.P13. He had also drawn a rough sketch under Ex.P17. At about 02.45 p.m. he arrested the Appellant Mr. A.S. Kannan after informing him about the grounds of arrest. During the search of his residential premises, No. incriminating articles were recovered. Then, the Appellant was brought to the office of the Vigilance and Anti-Corruption, examined and his statement was also recorded. Thereafter, P.W.9 had sent him to the Court for being remanded judicial custody.

31. P.W.9 Mr. Elango had also given a requisition to the learned Special Judge, requesting to send the material objects for chemical examination. P.W.8 Mrs. Kasthuri Bai, Scientific Assistant Grade-I had examined M.O.4 and M.O.5 and during the course of her examination both the phenolphthalein and sodium carbonate were detected in the above said two items viz. M.O.4 and M.O.5.

32. As per the order of the Superintendent of Police, the case records were entrusted with P.W.10 for further investigation.

33. P.W.10 had taken up the case for further investigation and examined the witnesses and recorded the irrespective statements. He had also obtained the order of sanction under Ex.P1 from P.W.1 to launch prosecution against the Appellant and

after the completion of his investigation, he had laid the final report against the Appellant on 21.01.2002 under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

34. With the evidence of P.W.10, the prosecution has closed its side.

35. The incriminating circumstances arising out of the testimonies of the prosecution witnesses were placed before the Appellant during the course of his examination u/s 313(1)(b) of the Code of Criminal Procedure. While denying their testimonies as false, he had submitted a written statement, which was received and filed along with the records by the learned Special Judge. In his reply statement, the Appellant had stated as follows :

That on 13.07.2000, after receiving a sum of Rest. 4,300/-and exchequer for Rs. 6,275/-for the electricity charge in respect of June2000 from P.W.2, the Appellant was preparing receipt. While so, the Inspector of Police came to the portion, where the Appellant was seated and asked to give the electricity charge of Rs. 4,300/-, which was received from P.W.2. Thereafter, he was taken to Vigilance and Anti-Corruption Office by the Inspector andmade him to touch the currency notes, which were placed there and forced him to dip his hands in the water.

He has also stated that on 12.07.2000, a person had come to him and shown the E.B. Card connected with this case and he had also given a cheque and asked him to give receipt, for that the Appellant had told him. That the electricity charge for the previous month was left unpaid and hence as per the rules of the Tamil Nadu Electricity Board, the amount should be remitted in cash. Besides this, he had also told a sum of Rs. 90/-for reconnection and another sum of Rs. 124/-towards penalty had to be paid. On hearing this, the said person had picked up quarrel with the Appellant and questioned him angrily as to why he had refused to receive the cheque and why the reconnection charge should be paid?

The Appellant had also replied him that the amount should be paid as per the rules of the Tamil Nadu Electricity Board.

Thereafter, the said person had left the office with angry. The Appellant had also stated that P.W.2 isn't that person. He has also stated that since he had asked to pay the electricity tariff in cash as per the rules and he had also asked to pay there connection charge along with penalty, this case has been foisted against him in order to wreak vengeance.

36. Excepting Ex.D1 Public Notice published in the Hindu newspaper dated 19.07.2000; No. oral evidence was adduced on behalf of the Appellant.

37. On appreciation of the evidences, the Trial Court had proceeded to pronounce the judgment on 20.07.2004convicting and sentencing the Appellant as foretasted.

38. Impugning the judgment of conviction and sentence, the Appellant stands before this Court with this criminal appeal.

39. Heard Mr. P. Wilson, learned Senior Counsel appearing for Mr. T.K.S. Gandhi, learned Counsel on record for the Appellant and Mr. A.N. Thambidurai, learned Additional Public Prosecutor for Respondent.

40. Section 19 of the Prevention of Corruption Act, 1988 enacts as follows :

19. Previous sanction necessary for prosecution.-

Sub-section (1) No. court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,--

Clause (c) to Sub-section (1) enacts that

In the case of any other person, of the authority competent to remove him from his office.

41. P.W.1 Mr. V. Kumar, who was functioning as the Superintending Engineer, CEDC/(South) Chennai has claimed himself that he was the authority competent to remove the Appellant Mr. A.S. Kannan, Inspector of Assessment, Office of the Assistant Engineer, Tamil Nadu Electricity Board, Shastri Nagar, Adyar, Chennai-600 020. He has granted the order of sanction under Ex.P1 to launch prosecution against the Appellant. In Ex.P1, P.W.1 has stated that after carefully considering the materials such as copy of the first information report, statement of witnesses, haphazard and other records and the report of the Director, Vigilance and Anti-Corruption, Chennai in regard to the allegations and circumstances of the case, he was satisfied that the Appellant Mr. A.S. Kannan should be prosecuted in a Court for the offence u/s 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Accordingly, he has accorded sanction for the prosecution of the Appellant.

42. P.W.1 Mr. V. Kumar says that he had received a requisition from the Director of Vigilance and Anti-Corruption on 28.07.2000 along with the first information report, statements of witnesses and mahazars. He would state further that on having satisfied himself after examining the related materials placed before him, he had accorded sanction under Ex.P1 for the prosecution of the Appellant on 05.01.2002 i.e. nearly after 1 1/2 years.

43. But, he has not offered any satisfactory explanation for the abnormal delay i.e. nearly 1 1/2 years for according sanction to launch prosecution against the Appellant. It is significant to note here that along with the requisition from the Director of Vigilance and Anti-Corruption dated 28.07.2000 the materials viz. first information report, statement of witnesses, mahazar etc., were tagged for the evaluation and examination of P.W.1. However, he took such an unexplained time to accord sanction, which amounts to lack of devotion to duty on his part in absence of

just and proper explanation for which he is liable not only for the departmental proceedings, but also for the contempt of Court. In [K.V. Joseph Vs. State of Gujarat](#), the Gujarat High Court has dealt with several aspects relating to the issue of sanction and held as follows :

When a legislature in its wisdom has named the authority which is competent to grant the sanction, there is no question or need of any advisory board coming to the aid of such competent authority. For the purpose of that case, the competent authority is exercising the powers of the Government on behalf of the Government. Thus, sanction is not only entirely and exclusively a matter of the subjective satisfaction of the sanctioning authority but it is absolute.

It is also held that :

No authority for that purpose even the Vigilance Commission has any right to advise the sanctioning authority in the matter of granting sanction, as discretion to grant sanction is exclusively and absolutely vested in the sanctioning authority.

Apart from this, the Gujarat High Court has also held that :

Once the proposal to grant sanction u/s 19 of the Corruption Act is forwarded by the Investigating Agency to the competent authorities then to delay the same in passing appropriate order beyond the period of two months amounts to lack of devotion to duty on his part in absence of just and proper explanation for which he is liable to not only departmentally proceeded with, but also for the contempt of this Court for disregarding the direction given by this Court incase of - State of Gujarat v. M.M. Dam 1996 (37) Gum. LR 620.

44. In the instant case on hand, P.W.1 has made huge and abnormal delay i.e. nearly 1 1/2 years in according sanction. But, the Gujarat High Court has observed that the order of sanction should be accorded within the period of two months and if there is a delay beyond the period of two months, it will amount to lack of devotion to duty on the part of the sanctioning authority in the absence of just and proper explanation, for which he is answerable.

45. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. This proposition of law is laid down by the Hon"ble Supreme Court in [State of Karnataka Vs. Ameer Jan](#).

46. Section 19 of the Prevention of Corruption Act, 1988 provides necessary protection to the public servants against irresponsible, frivolous or vexatious proceedings for the acts done in discharge of official duty and to see that No.

prosecution is started unless there is some foundation for the charge brought. The object of the legislature in enacting the Section (Section 6 new Section 19) and the interpretation to be given to the language of the section was examined by the Allahabad High Court in V.D. Jhingan Vs. State, after reviewing the earlier decisions in Sugan Chand v. Narain Das AIR 1932 Sing 177 : 1934 Cri. LJ 171; AIR 1937 293 (Nagpur) , Ram Dhyan Singh Vs. State, and State of Bombay Vs. Vishwakant Shrikant, has held that a public servant would not be protected when he ceased to be so at the time when the prosecution was launched against him, as Section 6 was enacted only for the protection of public servants and not ex-public servants.

47. The Allahabad High Court has also held that :

The object of the Legislature seems to be clear, In enacting Section 6, it accepted the principle that where a public servant is prosecuted for an offence which challenges his honesty and integrity, the issue in such a case is not only between the prosecutor and the offender but the State is also vitally concerned in it as it affects the morale of the public services and also the administrative interests of the State. For these reasons the discretion to prosecute was taken away from the prosecuting agency and was vested in departmental authorities for they could assess and weigh the accusation in a far more dispassionate and responsible manner. The State obviously was only concerned with those offences which were committed by public servants while functioning in that capacity and for which they were sought to be prosecuted while holding such an office.

48. As revealed from the cross-examination of P.W.10, who is the investigating officer, the letter of requisition addressed to P.W.1 by the Director of Vigilance and Anti-Corruption to accord sanction for launching prosecution against the Appellant has not been produced in this case.

49. As per the case of prosecution, the first demand is said to have been made by the Appellant on 11.07.2000. The second demand is said to have been made on 13.07.2000 i.e. on the day of trap. As seen from the testimonies of P.W.2, P.W.4 had issued a cheque dated 04.07.2000 for the value of Rs. 6,275/- . But, he had been to the Office of the Assistant Engineer, Shastri Nagar Section, Adyar, Chennai-600 020 only on 10.07.2000 at about 12.00 noon. In this connection, P.W.2 had not explained as to why there was seven days delay in paying the cheque even though he had received it on 04.07.2000.

50. P.W.4 and P.W.6 have not supported the case of prosecution. P.W.5 Mrs. P. Manimegalai, who was contacted by P.W.2 at the first instance i.e. on 10.07.2000, has not spoken to about the demand.

51. On appreciation of evidence of P.W.1, on 11.07.2000 the Appellant had demanded a sum of Rs. 100/-separately for him in addition to the amount of Rs. 4,079/- towards the electricity tariff for the month of April, 2000 and another sum of Rs. 90/-towards reconnection and Rs. 124/-towards the penalty. He has also stated

that in the afternoon of 11.07.2000, he had informed the demand made by the Appellant for which his owner P.W.4 Mrs. Jayasri Venkatesan had told him that bribe should not be given and instructed him to lodge a complaint before the Vigilance and Anti-Corruption Department.

52. On coming to the evidence of P.W.4, she would state that P.W.2 came to her office in the afternoon and found sitting in perplexity. When questioned, he had replied that there was a problem in the E.B. Office. Since, she was about to move outside, she did not ask more details from him. It is significant to note here that she has not corroborated and supported the evidence of P.W.2 in this respect as she was treated hostile.

53. From the evidence of P.W.4, it could be easily understood that she never instructed or directed P.W.2 to lodge a complaint before the Vigilance and Anti-Corruption Department.

54. P.W.5 Mrs. P. Manimegalai, who was functioning as Assessor in Tamil Nadu Electricity Board, Shasthri Nagar Section, Adyar, Chennai-600 020, has stated that including her totally three assessors viz.P.W.5 Mrs. P. Manimegalai, Mr. Kanagaraj and one Mrs. Vimala had been working in the said office. She would depose further that she would sit in the second counter. Mrs. Vial would sit in the firstcounter. Mr. Kanagaraj (PW6) would sit in the third counterand collect the amount. She has continued to state that atthe relevant period, the Appellant Mr. A.S.Kannan was working as the Inspector of Assessment in their office.

55. Further, P.W.5 Mrs. P. Manimegalai has maintained that on 10.07.2000, she along with Mrs. Vimala, Mr. Kanagaraj electricity charge card, it was found that the tariff for the month of April, 2000 was not paid. In this connection, she had advised him that the electricity tariff for the month of April, 2000 had to be paid along with the penalty before the Inspector of Assessment and hence she had sent him to that particular counter. While so, the Inspector of Assessment Mr. A.S. Kannan (Appellant) was not present there. It is significant to note here that P.W.5 neither identify nor was she made to identify P.W.2 to pinpoint that he waste man, who came to her counter on 10.07.2000.

56. P.W.2 Mr. K.S. Soundararajan has spoken to that on11.07.2000 at about 11.30 a.m. when he had been to the Tamil Nadu Electricity Board, Shastri Nagar Section, the Appellant was present in the last counter. He did not knowhis name by that time. When he presented the electricity charge card, the Appellant had told him that the electricity tariff for the month of April, 2000 (a sum of Rs. 4,079/-) along with the penalty and reconnection charge. Rest. 90/- + Rest. 124/- had to be paid and apart from this he had also demanded a sum of Rs. 100/- separately.

57. P.W.2 would state further that when questioned as to why a sum of Rs. 100/- should be paid to him, he had replied that had he thought it fit, he could impose finemore than Rs. 500/- and could have also disconnected the service connection

and that to avoid disconnection, he demanded a sum of Rs. 100/-. P.W.2 had also maintained that after giving evasive answer that he would come tomorrow with money, he came to his office and informed to P.W.4 in the afternoon.

58. According to P.W.2, the second demand was made by the Appellant on 13.07.2000 at about 10.45 a.m. This time, as per the instruction of P.W.9, he was accompanied by P.W.3 Mr. V. Thiruvarangam, working as the Superintendent in the office of Director of Rural Development Department. P.W.2 had also proceeded to depose that besides the cheque for Rs. 6,275/- he was having a sum of Rs. 4,300/- in cash along with tainted amount of Rs. 100/-, with the denomination of one fifty rupee currency note, one twenty rupee currency note and three ten rupee currency notes, for being paid to the Appellant Mr. A.S. Kannan as bribe.

59. He has also deposed that after gaining entry to the Office of the Appellant along with P.W.3, he had tendered a sum of Rs. 4,300/- for which the Appellant had prepared a receipt and kept along with him. Subsequently, the Appellant had called him inside the counter. After his entering into the counter, the Appellant had asked him to give the cheque for a sum of Rs. 6,275/- towards the electricity tariff for the month of June, 2000. He had also given the cheque. After noting the consumer's number over the cheque, the Appellant had passed it on next counter. After preparing the receipt, the officer, who was sitting in the second counter, had given the same back to the Appellant. After keeping the two receipts viz. for the payment of Rs. 4,294/- and for the remittance of cheque for Rs. 6,275/- with him, the Appellant had asked money for him by giving signal by his hand. Without understanding the signal, P.W.2 had asked him as "What". Again, the Appellant had demanded money by giving signal by his hand and he had also reiterated the earlier demand. While so, P.W.2 had tendered the tainted currency notes with the denomination of one fifty rupees currency note, one twenty rupees currency note and three ten rupees currency notes to the Appellant from his pocket. After receiving the tainted currency notes, the Appellant had counted the same and kept it in his left side table drawer.

60. With regard to the possibility and probability of P.W.2's entering into the counter and indulging in conversation with regard to demand and tendering of money to Appellant inside his counter, it may be quite relevant to refer the evidences of P.W.5, P.W.6 and P.W.7.

61. As observed earlier P.W.5 Mrs. P. Manimegalai and P.W.6 Mr. Kanagaraj were working as Assessors at the relevant period in the Tamil Nadu Electricity Board Shashtry Nagar Section, Adyar Whereas P.W.7 Mr. Ponnurangam was working as Revenue Supervisor. According to P.W.5 she would be sitting along with P.W.6 Mr. Kanagaraj and another assessor Mrs. Vimala. The Appellant Mr. A.S. Kannan would also sit along with them in the same counter.

62. In her cross-examination P.W.5 would depose that usually there would be crowd in the place of remittance from 10th to 15th of every month. In their office, the

assessors would be sitting in a cage made out of wood. The persons, who are coming to remit electricity tariff could see their face only through the hole made for tendering the amount. If they want to convey any message or to speak with them, they could speak only through the said hole. Since money is being transacted, that particular portion would always be kept under lock and key. She has also deposed that the Appellant Mr. A.S. Kannan would also sit along with them in the same cabin. They are not permitted to speak outsiders after calling them inside the cabin. It's also revealed from her cross-examination that while they sitting in the cash counter, there would be 1 feet or 1 1/2feet gap between each other.

63. She has also added that if anybody happens to speak from outside with the electricity board employee, who is present in the counter, it would be heard to other employees. Apart from this, she has also deposed that neither a screen nor a barricade is placed between each other. Since their office is located in a commercial complex and bus stand is also located nearby to the office, there would always be a crowd. She would depose further that if the electricity tariff for the particular month is omitted and if paid in the later stage it must be collected along with the penalty as per the electricity rules.

64. P.W.6 Mr. Kanagaraj has spoken to that he would be sitting in the third counter and in the first two counters one Mrs. Vimla and P.W.5 Mrs. Manimegalai would be sitting. He has also deposed that on 11.07.2000 somebody came to remit the amount. The Appellant was found talking with him about the belated payment. He has also stated that the person, who came to remit the amount, had asked the Appellant as if he had come there to pay the latest bill and demanded the receipt for the same.

65. P.W.7 Mr. Ponnurangam, Revenue Supervisor, has stated in his chief examination that belated payment of electricity charges would be collected by the Inspector of Assessment. He has also ratified that on 13.07.2000, the Appellant Mr. A.S. Kannan was working as the Inspector of Assessment and that a separate table and chair were provided to him and he was not having nexus with the cash counter. In his cross-examination, he would state that in the Shastri Nagar Section, he was also having his seat in the cash remittance counter. He would state further that he would be sitting along with the Appellant and other three assessors in the same counter (cage). The cage, where they are sitting would always remain closed. A board was also made to hung with the letters as "Outsiders wouldn't be allowed inside the counter". Hence, nobody should have access inside the counter. He has also deposed that if the employees, who were sitting in the counter, speaking with each other, it would be definitely heard to others.

66. On a comparative study of the testimonies of P.W.2, P.W.5, P.W.6 and P.W.7, it could be easily understood that it is not so easy for an outsider like P.W.2 to enter into the counter and to speak with an employee like the Appellant, who is sitting inside the counter. It is also very difficult to gain entry into the counter even to remit

the legitimate electricity tariff. It is also revealed from their testimonies that even the employees, who are sitting in the counter happens to speak with other employee, it would be definitely heard to others. When such being the case, the alleged demand of money by the Appellant after calling P.W.2 inside the counter by showing signal by his hand and also reiterating his earlier demand of bribe is quite impossible. Under this circumstance, this Court is left with No. other option excepting to presume that the prosecution has miserably failed to probably its case.

67. P.W.2 Mr. K.S. Soundararajan has deposed that after entering the consumer's number in the cheque, the Appellant had given the same to his neighbour. The employee, who was sitting in the second counter after receiving the cheque had prepared a receipt and returned the same to the Appellant. From this piece of evidence, it is made clear that another assessor was also found sitting very close to the Appellant. Even if it is presumed that the Appellant had called P.W.2 inside the counter and demanded the bribe amount definitely, this could have been witnessed by other employees like P.W.5 and P.W.6, who were sitting next to the Appellant. But, none of them has spoken to with regard to the demand said to have been made by the Appellant.

68. P.W.2, in his evidence, has stated that on 12.07.2000 at about 03.00 p.m. he had been to the office of the Vigilance and Anti-Corruption at Adyar, Chennai and met one Mr. Sethuraman, Deputy Superintendent of Police and narrated the incident. He only had instructed him to present a written complaint. Accordingly, P.W.2 had lodged a complaint under Ex.P3 before Mr. Seth Raman, Deputy Superintendent of Police. But, unfortunately, the said Mr. Sethuraman, Deputy Superintendent of Police has not been examined by the prosecuting agency as a witness in this case.

69. It is significant to note here that Ex.P3 complaint was lodged by P.W.2 on 12.07.2000 before one Mr. Sethuraman, Deputy Superintendent of Police. The Deputy Superintendent of Police Mr. Seth Raman had made an endorsement on the reverse of the complaint on the same date i.e. 12.07.2000 stating that

Mr. C. Elango, Inspector of Police Cities Detachment to register a case and investigate.

On the same date i.e. on 12.07.2000 at about 04.30 p.m., P.W.9 Mr. C. Elango, Inspector of Police had made an endorsement beneath the endorsement of Mr. Sethuraman stating that :

Sir registered a case in Crime No. 6/AC/2000 CC 2 of Vigilance and Anti Corruption, Chennai City II Detachment, Chennai-600020 and took up investigation.

70. It is to be remembered that in the opening paragraphs of this judgment we have had elaborate discussion on the competency of P.W.10 Inspector of Police to investigate the case as the Assistant Commissioner of Police alone can be authorized by the appropriate authority u/s 17 of the Act to investigate the case.

Harem. Sethuraman, Deputy Superintendent of Police seems to have authorized P.W.9 to register the case and take up the investigation. In pursuant to this direction, P.W.9 had also endorsed in the complaint stating that a case is registered and he himself had taken up the investigation. Under this circumstance, the following two questions are arisen as to

- i. Can the Deputy Superintendent of Police Mr. Sethuraman authorise P.W.9 Inspector of Police to take up the investigation under the Prevention of Corruption Act, 1988?
- ii. Whether P.W.9 Inspector of Police, who happens to register a case, can also take up the case for investigation?

71. It is settled proposition of law that a police officer, who registered a case, cannot take up the case for investigation. He cannot play a dual role. Even if it is assumed that on the direction of the Deputy Superintendent of Police Mr. Sethuraman P.W.9 has taken up the case for investigation, then how much value could be attached to the investigation conducted by P.W.10 Mr. Ponnusamy, Inspector of Police? In his opening evidence, P.W.10 has stated that on 14.07.2000 as per the Order of his higher officer, he had taken up the case for further investigation. Where is that Order? And who is his higher officer? These questions are left unanswered.

72. On coming to the evidence of P.W.2, he has stated that Mr. Elango, Inspector of Police had registered the first information report and he had also given a copy of the same to him in the evening itself. Besides this, he would state further that he had also examined him and recorded his statement on 12.07.2000. But, the statement of P.W.2 Mr. K.S. Soundararajan, which is said to have been recorded by P.W.9 Mr. Elango, Inspector of Police on 12.07.2000 is not available on record. But, his statement u/s 161(3) of the Code of Criminal Procedure recorded by P.W.10 alone is available.

73. On coming to the evidence of P.W.9 Mr. Elango, traplaying officer, firstly, he would state that he had conducted a discreet inquiry about the conduct of the Appellant Mr. A.S. Kannan. But, that inquiry report is not available on record. He has also not disclosed as to where he had inquired and who are all the people's subjected inquiry and what is the outcome of the inquiry. He has also not disclosed about the previous antecedent of the Appellant Mr. A.S. Kannan.

74. Secondly, he would state that on the same date i.e. on 12.07.2000, a letter was sent to rural development department as well as to tourism development department, through the deputy superintendent of police, to send two government official witnesses on 13.07.2000. But, No. documentary evidence has been produced to substantiate this portion of evidence of P.W.9.

75. Thirdly, it is revealed from his evidence that at about 09.00 a.m. On 13.07.2000 one Mr. Daniel Thomas, superintendent from tourism development department and

one Mr. Thiruvarangam P.W.3, superintendent from rural development department came to his office and reported before him.

76. According to the prosecution, these two witnesses are said to be independent witnesses. In fact these two witnesses have been drawn by P.W.9. They were informed about the contents of the first information report. They were also instructed as to how they have to behave during the trap proceedings and P.W.3 was also duly instructed to associate with P.W.2 and to have keen watch about the happenings and conversation, which may be transpired between the Appellant and P.W.2. When this is the circumstance, how these two witnesses could be considered as independent witnesses? They cannot be the independent witnesses. But, they are dependents of P.W.9. When they're depending upon P.W.9, how they can act independently? They can act only on the chords of P.W.9.

77. P.W.3 Mr. Thiruvarangam has deposed in his cross-examination that their Additional Director one Mr. Chandrasekaran had passed an order and thereby he was directed to be the witness in the trap proceedings. Accordingly, he had submitted a report to his department, the rural development department, with regard to the proceedings, which took place on 13.07.2000 and 14.07.2000 respectively.

78. P.W.3 has also stated that in his office attendance register it had been stated that he was on other duty on 13th and 14th July, 2010. He would state further that on 14.07.2010, he had attended his office, but, he didn't sign in the attendance register. He would again state that on 13.07.2000 he did not go to his office and on 14.07.2000 he had signed in the attendance register to mark his presence in the office. But, in fact he had not gone to the office. Further, he would state that on 14.07.2000 a telephonic message was received to send him as witness. In support of his evidence, the prosecution has not chosen to produce any documentary proof.

79. P.W.2 has also admitted in his evidence that it was the mistake on his part for having failed to pay the electricity tariff within the appropriate time. Ex.D1 is the public notice published in the Hindu newspaper dated 19.07.2000 along with the photograph of P.W.2, wherein it is stated that

Mr. K.S. Soundararajan, son of Mr. K.R. Sankaran, residing at 6, Dr. Vasudevan Nagar, Thiruvanmiyur, Chennai-600 041 is no longer associated in any way with Karunah Trust, Jay Trading Inc., Medicare Disposable Technologies and Axis Business Solution., Ltd., Any person/(s) dealing with the for mentioned is doing so at his/her own risk.

This has also been admitted by P.W.2. Not only that P.W.4, who is the owner of M/S. Medicare Disposable Technologies has also admitted this fact in her cross-examination. In this connection, P.W.4 would state in her cross-examination, that on account of various irregularities committed by P.W.2 he was sent out of their company and hence a public notice was given in the Hindu newspaper dated

19.07.2000.

80. In this connection, Mr. P. Wilson, learned senior counsel appearing for Mr. T.K.S. Gandhi, learned Counsel on record for the Appellant would argue that since P.W.2, who had lodged the complaint against the Appellant, had committed various irregularities in P.W.4's company, on whose behalf he had been to the Tamil Nadu Electricity Board Office Shastri Nagar Section to pay the electricity charges, he was sent out of the office and in this connection a public notice was also given and therefore the conduct of P.W.2 was not upto the mark. On account of this reason, his evidence has totally become tainted and also become pale into insignificance and could not be attached with much value and hence liable to be discarded.

81. As per the evidence of P.W.3, at the end of trap proceedings, a sum of Rest. 12,000/- and odd was found in the counter of the Appellant and this amount was entrusted with P.W.7. Further, his evidence also reveals that at about 01.55 p.m. an Assistant Engineer had entered the office, where the trap proceedings was going on and he was informed about all the incidents.

82. P.W.9, trap laying officer has also admitted this fact. But, in respect of time of the arrival of the assistant engineer, P.W.9's evidence varies from the evidence of P.W.3. P.W.9 says that at about 12.45 p.m., the assistant engineer had come to that place. Ex.P13 is the recovery mahazar. This can also be termed as post-trapmahazar. In this mahazar one S.D. Mitra Noble, junior engineer has signed. P.W.3 and P.W.9 have ratified the presence of a junior engineer at the conclusion of the trap proceedings and according to P.W.3 the said junior engineer was informed of about all the incidents. However, in support of their testimonies and in support of the case of prosecution, the said S.D. Mitra Noble, junior engineer has not been summoned to be examined as witness here.

83. P.W.7 Mr. Ponnurangam, revenue supervisor was also treated as hostile witness. However, in his cross-examination by the learned Counsel appearing for the Appellant before the trial Court has stated that he had signed in Ex.P13 mahazar as he was asked by the official, to sign. He would state further in his cross-examination that if the electricity charge was omitted to be paid within the prescribed time, the inspector of assessment was not having power to disconnect the service connection. Accordingly, it is crystal clear that the Appellant, who was functioning as the inspector of assessment was not having power to disconnect the service connection. Accordingly, it is crystal clear that the appellant, who was functioning as the inspector of assessment was not authorized to disconnect the service connection if the consumer of electricity fails to pay the electricity charges in due time.

84. As adumbrated supra, the Appellant had denied the total prosecution case and he had also replied during the course of his examination u/s 313(1)(b) of the Code of Criminal Procedure, that he never demanded any amount much less Rs. 100/- as bribe or gratification other than the legal remuneration. He has also stated that

whenever misused his official position as a public servant.

85. In his statement, submitted during the proceedings u/s 313(1)(b) of the Code of Criminal Procedure, he has stated that when he was preparing receipt for the amount received from P.W.2, the Inspector of Police came inside his counter and asked him to return the amount, which was given by P.W.2. Subsequently, the Inspector of Police had taken him to the Office of the Vigilance and Anti-Corruption, wherein he was forced to touch the currency notes, which was placed there and asked to dip his fingers in the water. Further, he would state that on 12.07.2000 a person came to his counter and presented a cheque and asked him to give receipt. For that he had replied that the electricity charge for the previous month was not yet paid and as per the electricity board rules the amount should be paid in cash. He has also replied that apart from the electricity charges, which was omitted to be paid, a sum of Rs. 90/- towards reconnection charge and another sum of Rs. 124/- towards penalty had to be paid.

86. On hearing this, that person had picked up quarrel with him and questioned as to why he could not receive cheque from him and thereafter that person had left the counter angrily.

87. In this connection, he would state that on account of wreaking vengeance this case has been foisted against him. In so far as the case of defense is concerned this Court has to analyze the facts whether the Appellant has established the preponderance of probabilities. As per the evidence of P.W.2, he had given the tainted amount M.Os.1 to 3 series viz. one fifty rupee currency note, one twenty rupee currency note and three ten rupee currency notes totally Rs. 100/- to the Appellant and after receiving the currency notes, he had also counted and kept it in his left side table drawer. Thereafter, on noticing pre-arranged signal, P.W.9 had rushed inside the counter along with his trap team members and recovered the tainted currency notes from him and thereafter the Appellant's fingers were also subjected to sodium carbonate and phenolphthalein test.

88. The case of defense is No. sodium carbonate and phenolphthalein test was conducted inside the counter. Instead, the Appellant was taken to the Vigilance and Anti-Corruption Office and was forced to touch the tainted currency notes and also forced to dip his fingers in the water.

89. As per the case of prosecution, at the time of conducting sodium carbonate and phenolphthalein test, P.W.2 was not available there. P.W.3 alone stated about the test conducted in the E.B. Office. Infact, the evidence of P.W.3 has not been corroborated by any other independent witness to substantiate the fact as to where the test was conducted.

90. On coming to the evidence of P.W.5, she would state that after the completion of her work, when she was sitting in the office at about 12.30 p.m. three persons had come to the counter and caught hold the Appellant, who was sitting in the rear side

and then only she was informed about the incident. But, she did not see any such incident directly. This has also been ratified by her in her evidence. She did not say that sodium carbonate and phenolphthalein test was conducted inside the counter.

91. P.W.6 Mr. Kanagaraj has also stated in his evidence that at about 12.30 p.m. during lunch time when he was about to leave the office, four or five persons came inside. But, he did not know who they were.

92. Similarly, P.W.7 has also stated that at about 12.30 p.m. when the counter was about to be closed for lunch, four persons came inside and enquired the Appellant and that he was only informed in the later stage. He has also not stated anything about the test of sodium carbonate and phenolphthalein said to have been conducted in the said office. Further, he would state that a haphazard was prepared in respect of the occurrence and he was asked to sign in the mahazar. Accordingly, he was also singed. Excepting this, he has not stated anything against the Appellant.

93. As rightly argued by the learned Counsel for the Appellant, when the evidence of P.W.3 is left uncorroborated and the witnesses viz.P.W.5, P.W.6 and P.W.7are not able to speak about the alleged conducting of sodium carbonate and phenolphthalein test in respect of the receipt of the bribe amount, the presumption could be drawn in favor of the Appellant as contemplated u/s 20(1) of the Prevention of Corruption Act, 1988.

94. It is also well settled by the Hon"ble Supreme Court in V.D. Jhangar Vs. State of Uttar Pradesh, that the preponderance of probability would be sufficient to rebut presumption. The extent of the burden of proof placed on the accused person to rebut the presumption has been considered once again and it has-been held that it is sufficient if the accused person succeeds in proving a preponderance of probability in favor of his case. Their Lordships observed as follows :

The next question arising in this case is as to what the burden of proof is placed upon the accused person against whom the presumption is drawn u/s 4(1) of the Prevention of Corruption Act. It is well-established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; butte same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under s.4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favored his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts i.e., that of establishing on the whole case the guilt of the accused beyond a

reasonable doubt. It was observed by Viscount Snaky in Woolmington v. Director of Public Prosecutions 1935 AC 462 that "no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and No. attempt to whittle it down can be entertained.

95. On the other hand, Mr. A.N. Thambidurai, learned Additional Public Prosecutor has confined his argument only on the evidence of P.W.2, P.W.3, P.W.9 and the statement submitted by the Appellant during the course of proceedings u/s 313(1)(b) of the Code of Criminal Procedure. He would submit that the explanation submitted by the Appellant was not satisfactory and entirely contrary to the evidence of P.W.2 and P.W.3. He would submit further that the prosecution has established, through P.W.2, the first demand made by the Appellant on 11.07.2000 and the second demand and the receipt of bribe amount on 13.07.2000. Apart from this, the testimony of P.W.9 has been corroborated by P.W.2 and P.W.3 and after proper appreciation of the testimonies of the prosecution witnesses the Trial Court has found the Appellant guilty under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and that the conviction and sentence recorded by the Trial Court on the Appellant didn't require any interference of this Court.

96. Mr. A.N. Thambidurai, learned Additional Public Prosecutor has submitted further that P.W.3, who is the official witness as well as the independent witness has unambiguously deposed about the demand made by the Appellant and the receipt of the tainted currency notes, which are adequately corroborated by the evidence of P.W.2.

97. As observed in the earlier paragraphs, P.W.4 Mrs. Jays Venkatesan, who is the owner of the company namely M/S. Medicare Disposable Technologies has turned hostile. Similarly, P.W.6 and P.W.7 have also not supported the case of the prosecution. The testimonies of P.W.2, P.W.3 and P.W.9 are not adequate to lend assurance to the case of the prosecution to bring home the guilt of the Appellant beyond all reasonable doubts.

98. Mr. P. Wilson, learned senior counsel for Mr. T.K.S. Gandhi, learned Counsel on record for the Appellant while advancing his arguments has also drawn the attention of this Court with regard to the electricity rules relating to billing and payment. He has also submitted that the testimonies of P.W.7 and P.W.9 are contradicted with each other and similarly the testimonies of P.W.3 and P.W.7 also contradicted with each other. He would submit further that the Appellant was acted in accordance with the rules laid down in the Tamil Nadu Electricity Abstract in (Permanent) B.P. (FB) No. 189, dated 16.10.1999 and similarly he had also been acting in terms and conditions of supply of electricity and hence No. fault could be attached with the conduct of the Appellant and this case had been foisted only on the personal vendetta by P.W.2.

99. He would also submit that the alleged demand, acceptance of bribe and recovery of the tainted currency notes have not been proved by the prosecuting agency by adducing valid and acceptable legal evidences.

100. In support of his contention, Mr. P. Wilson, learned senior counsel, for Mr. T.K.S. Gandhi, learned counsel on record for the Appellant has also placed reliance upon the decision in State of Kerala and Another Vs. C.P. Rao . In this case, after having reference to the decision in Panalal Damodar Rathi Vs. State of Maharashtra , the Apex Court has held that when there was no corroboration of testimony of complainant regarding demand of bribe by accused, it has to be accepted that complainant's version is not corroborated and, therefore, evidence of complainant cannot be relied on. In Paragraph No. 10 of the said Judgment, the Apex Court has observed that :

10. In C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala , this Court while dealing with the case under the Prevention of Corruption Act 1988, by referring to its previous decision in the case of Suraj Mal Vs. State (Delhi Administration) , held that mere recovery of tainted 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. The mere recovery by itself cannot prove the charge of the prosecution against the accused. In the absence of any evidence to prove payment of briber to show that the accused voluntarily accepted the money knowing it to be bribe conviction cannot be sustained.

In Paragraph No. 12, the Apex Court has held that :

12...In the context of those observations, this Court in paragraph 28 of A. Subair Vs. State of Kerala , made it clear that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is proved to the contrary by proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case. In view of the aforesaid settled principles of law, we find it difficult to take a view different from the one taken by the High Court.

101. Besides this, the learned Counsel for the Appellant has also placed reliance upon the decision in T.M. Shanmughavelu v. State rep. by Inspector of Police, Vigilance and Anti-Corruption, Coimbatore, 2011 (2) MWN (Cr.) 90. In this case, this Court has held that :

The prosecution also cannot place reliance on the evidence of P.W.3, the trap witness, who cannot be considered to be an independent witness as he forms part of the raiding party, to corroborate the version of P.W.2 as held by the Hon'ble Apex Court in Som Parkash Vs. State of Punjab , to the effect that "the witnesses who formed part of the raiding party were not independent.

102. On coming to the instant case on hand, the testimonies of P.W.2 cannot be trusted for the simple reason that his evidence has been abandoned by P.W.4. Further, he has also not a man of prudence as he was sent out of P.W.4's company on account of various charges and irregularities committed by him and apart from this the prosecution has failed to corroborate the evidence of P.W.2 even by making the evidence of P.W.3 to corroborate.

103. In a bribery case, the following three cardinal principles have to be established by the prosecution :

- i. Demand,
- ii. Acceptance of illegal gratification, and
- iii. Recovery of the bribe amount,

In the present case, these three major ingredients are absent and hence it could not be considered or heard to say that the prosecution has proved its case beyond all reasonable doubts. Even if it is presumed that the amount was recovered from the left side table drawer of the Appellant, the mere recovery of it cannot prove the case of the prosecution against the Appellant.

104. It is settled principle of law that to prove the allegations of demand and acceptance of bribe by an accused person, the evidence of the complainant or trap witness cannot be safely acted upon in the absence of some independent corroborative evidence. In such a situation, bribe giver is normally treated as No. better than an accomplice and so his evidence needs corroboration from an independent source. The same value is to be attached to the evidence of the shadow witness especially when he isn't proved to be an independent witness. Independent corroboration to the evidence of such witness is generally required by the Court, if not as a rule of law, then at least as a rule of caution and prudence. This principle is laid down in [Gurcharan Singh Vs. State of Haryana,](#).

105. Having regard to the related facts and circumstances, nature of the case and on securitization of the evidence on both oral and documentary, this Court is of view that the Trial Court has not properly appreciated and analyzed the evidences of prosecution. This Court is also of considered view that the Appellant has established the preponderance of probability as the case of prosecution has not been satisfactorily established by the prosecuting agency. Under this circumstance, there is No. other go for this Court excepting to set aside the order of conviction and sentence recorded against the Appellant by the trial Court.

106. Further, taking into consideration of the discrepancies and infirmities, which are found in the prosecution evidences and since the prosecution has miserably failed to bring home the guilt of accused, the accused is not found guilty under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, because the demand and the receipt of the alleged bribe amount of Rs. 100/- have not been

satisfactorily proved beyond all reasonable doubts.

107. In the result, this criminal appeal is allowed. The conviction and sentence imposed on the Petitioner under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 are set aside and the Appellant is acquitted. The bail bonds executed by and on behalf of the Appellant shall stand be canceled and the fine amount, if any paid, shall be refunded to the Appellant. Consequently connected miscellaneous petitions are closed.