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GURUVIAH

v.

THE STATE REPRESENTED BY THE INSPECTOR OF POLICE
(Criminal Appeal No. 1208 of 2019)

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AUGUST 20, 2019

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

- Prevention of Corruption Act, 1988 – ss.7, 13(1)(d), 13(2) and 12 – Appellants (accused nos. 2 & 3) were village assistants in the office of the village administrative officer – PW-2 lodged complaint that the village administrative officer-since deceased (accused no.1) demanded Rs.600/- for signing the necessary papers to facilitate transfer of electric connection in his name – Village administrative officer came to the office along with accused no.3 while accused no.2 waited at the office for both of them – Money was handed over to accused no.2 on the instructions of the village administrative officer – Appellants apprehended by the trap officials immediately thereafter and the money was recovered – Appellants convicted u/ss. 13(1)(d), 13(2) and 12, however acquitted u/s.7 of the 1988 Act and s.109, IPC – On appeal, held: Significance of accused no.2 counting the money before handing it over to accused no.3 who put it in his shirt pocket, lay in the confirmation that the amount was in consonance with the demand, of which naturally the appellants were aware of – It was only after the money as demanded was paid that the accused no.3 filled up the form for transfer of the electric connection in the name of PW-2 and placed it before the village administrative officer who then signed and put his seal on the same – PW-10, Inspector Crime Branch proved the trap proceedings and recovery – Defence of the appellants that they received the money in the bonafide belief that it was towards arrears of land tax is belied by the fact that land tax for the period in question had already been cancelled by the State Government – Taking of a false defence is a further aggravating circumstance against the appellants – Evidently the appellants were in league with the village administrative officer – Prosecution was therefore able to establish prima facie case against the appellants – Acquittal of the appellants u/s.7 of the 1988 Act, in the facts of the present case, is*

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inconsequential and cannot negate the presumption drawn against them – Fact that PW-2 in his chief may not have named accused no.2 is inconsequential – Appellants to surrender forthwith for serving out their remaining sentence – Penal Code, 1860 – ss.7, 109.

Prevention of Corruption Act, 1988 – s.20 – Presumption under – Discussed.

Dismissing the appeals, the Court

HELD : 1.1 The significance of accused no.2 counting the money before handing it over to accused no.3 who put it in his shirt pocket, lay in the confirmation that the amount was in consonance with the demand, of which naturally the appellants were therefore aware of. It was only after the money as demanded was paid that accused no.3 filled up the form for transfer of the electric connection in the name of P.W.2 and placed it before the village administrative officer who then signed and put his seal on the same. At this moment, they were apprehended. The money was handed over to the trap officials by the village administrative officer after taking it back from accused no.3. Their hands were dipped in the sodium carbonate solution, including the shirt of the third accused, leading to change of colour of the solution confirming that they were the same notes which were given to P.W.2 by the trap officials. P.W.1 proved the sanction for the prosecution. The mere absence of any specific statement by P.W.2 and the trap witness P.W.4 of any demand and acceptance by the appellants, attributing the same only to the village administrative officer can be of no avail to the appellants. P.W.10, Inspector Crime Branch proved the trap proceedings and recovery. The defence of the appellants that they had received the money in the bona fide belief that it was towards arrears of land tax is belied by the fact that land tax for the period in question had already been cancelled by the State Government. The taking of a false defence is a further aggravating circumstance against the appellants. The second contention that it is improbable that a demand of Rs.600/- would have been made for a subsidy benefit of Rs.625/- only, ignores the fact that it entitled P.W.2 for a subsidy of Rs.625/- every six months. Evidently the appellants were in

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- A league with the village administrative officer. The contention that there was no demand or acceptance by the appellants or that it was in a bonafide belief merits no consideration. The prosecution was therefore able to establish a *prima facie* case against the appellants. Section 20 of the Prevention of Corruption Act, 1988 provides that if an accused public servant has accepted or obtained for himself or for any other person any undue advantage from any person, there shall be a presumption unless the contrary is proved that he accepted or obtained that undue advantage as a motive of reward for performance of a public duty improperly or dishonestly either by himself or by another public servant. The acquittal of the appellants under Section 7 of the Act, in the facts of the present case, is inconsequential and cannot negate the presumption drawn against them. The fact that P.W.2 in his chief may not have named accused no.2 is considered inconsequential. The appellants are directed to surrender forthwith for serving out their remaining sentence. [Paras 5-7, 10] [751-A-H; 752-A; 753-D]

T. Shankar Prasad v. State of A.P. (2004) 3 SCC 753 : [2004] 1 SCR 419 – relied on.

Virendranath v. State of Maharashtra (1996) 11 SCC 688 – held inapplicable.

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Case Law Reference

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| (1996) 11 SCC 688 | held inapplicable | Para 3 |
| [2004] 1 SCR 419 | relied on | Para 4 |

- CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
F No. 1208 of 2019.

From the Judgment and Order dated 05.18.2018 of the Madurai Bench of Madras High Court in Crl. A (MD) No. 188 of 2008.

With

G Criminal Appeal No. 1209 of 2019.

S. Nagamuthu, Sr. Adv., M. P. Parthiban, Maniprabu, Santosh Parameshwaran, A. S. Vairawan, K. Pragadeesh, R. Sudhakaran, Hardik Gautam, Advs. for the Appellant.

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M. Yogesh Kanna, S. Partha Sarathy, S. Raja Rajeshwaran, Advs. A
for the Respondent.

The Judgment of the Court was delivered by

NAVIN SINHA, J.

1. The appellants, who are village assistants, challenge their conviction under Sections 13(1)(d), 13(2) and 12 of the Prevention of Corruption Act, 1988 (hereinafter called as "the Act") with fine and a default stipulation, sentencing them to one year of rigorous imprisonment. The appellants have been acquitted of the charge under Section 7 of the Act and Section 109 of the Indian Penal Code. The village administrative officer, accused no.1, was convicted under Sections 7, 13(1)(d), 13(2) and 12 of the Act. He has since been deceased during the pendency of his separate appeal. B

2. The appellants were village assistants in the office of the village administrative officer, arrayed as accused 2 and 3. On 17.12.2003, P.W. 2 lodged a written complaint before the Additional Superintendent of Police (Vigilance and Anti-Corruption) that the village administrative officer had demanded a sum of Rs.600/- for signing the necessary papers to facilitate transfer of electric connection in the name of the complainant. The illegal gratification is stated to have been handed over to one of the appellants on the instruction of the village administrative officer, and who after counting it handed it over to the other appellant. They were apprehended by the trap officials immediately thereafter and the money recovered. D

3. Learned senior counsel Shri S. Nagamuthu, appearing for the appellants, submitted that according to P.W.2 the demand had been exclusively made by the village administrative officer alone. The latter alone was competent to sign the necessary papers to facilitate transfer of the electric connection. The appellants were menial assistants in his office. There was no occasion for them to demand any illegal gratification as they were incompetent to grant any favour to P.W.2. The appellants had never made any demand for illegal gratification from P.W.2. They had only received the money from P.W.2 on the instructions of the village administrative officer in the bonafide belief that it was payment towards demand of arrears of land tax, for which a receipt had already been issued earlier without actual payment. In the absence of any proof for E

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- A demand and acceptance by the appellants, they cannot be convicted on assumptions and presumptions. There is no proof of any conspiracy. Mere recovery from the appellants was not sufficient for conviction. It is unlikely that a demand of Rs.600/- would be made to facilitate a subsidy of Rs.625/-. Reliance in support of the submissions was placed on *Virendranath vs. State of Maharashtra*, 1996 (11) SCC 688.
- B 4. Shri M. Yogesh Kannan, learned counsel for the State, submitted that evidently the appellants were in league with the village administrative officer. Mere absence of direct evidence for demand and acceptance or conspiracy was irrelevant in view of the circumstantial evidence available and which unhesitatingly points towards the appellants as being part of design for obtaining illegal gratification. The demand undoubtedly was made by the village administrative officer alone. The money was handed over to accused no.2 on his instructions. After counting the amount, accused no.2 handed over the money to appellant no.3 who put it in his shirt pocket. The application form was then filled up by accused no.3 after which the village administrative officer signed and put seal. The transfer of electric connection would have facilitated P.W.2 to obtain a subsidy of Rs.625/- every six months. The defence of the appellants that the money was received bonafide in the belief that it was towards arrears of land tax for *Fasli* years 1412 and 1413 is falsified by the fact that taxation for the years in question had already been cancelled by the State Government. Relying upon *T. Shankar Prasad vs. State of A.P.*, (2004) 3 SCC 753, it was submitted that the conviction and sentence of the appellants calls for no interference.
- C 5. We have considered the submissions and perused the materials on record. P.W.2 was desirous for transfer of the electric connection on the land in question in his own name to facilitate a subsidy of Rs.625/- every six months. The village administrative officer was required to sign the necessary documents for the purpose. P.W.2 lodged a written complaint on 17.12.2003 against the village administrative officer alone for having demanded a sum of Rs.600/- as illegal gratification for the purpose. P.W.2 lodged a written report regarding the same. Necessary *mazhar* was prepared. The appellants were village assistants in the office of the village administrative officer. The village administrative officer came to the office along with accused no.3 while accused no.2 waited at the office for both of them. The money was handed over to accused no.2 on the instructions of the village administrative officer.
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The significance of accused no.2 counting the money before handing it over to accused no.3 who put it in his shirt pocket, lay in the confirmation that the amount was in consonance with the demand, of which naturally the appellants were therefore aware of. It was only after the money as demanded was paid that accused no.3 filled up the form for transfer of the electric connection in the name of P.W.2 and placed it before the village administrative officer who then signed and put his seal on the same. At this moment, they were apprehended. The money was handed over to the trap officials by the village administrative officer after taking it back from accused no.3. Their hands were dipped in the sodium carbonate solution, including the shirt of the third accused, leading to change of colour of the solution confirming that they were the same notes which were given to P.W.2 by the trap officials.

6. P.W.1 proved the sanction for the prosecution. The mere absence of any specific statement by P.W.2 and the trap witness P.W.4 of any demand and acceptance by the appellants, attributing the same only to the village administrative officer can be of no avail to the appellants. P.W.10, Inspector Crime Branch proved the trap proceedings and recovery. The defence of the appellants that they had received the money in the bona fide belief that it was towards arrears of land tax is belied by the fact that land tax for the period in question had already been cancelled by the State Government. The taking of a false defence is a further aggravating circumstance against the appellants. The second contention that it is improbable that a demand of Rs.600/- would have been made for a subsidy benefit of Rs.625/- only, ignores the fact that it entitled P.W.2 for a subsidy of Rs.625/- every six months. Evidently the appellants were in league with the village administrative officer.

7. The contention that there was no demand or acceptance by the appellants or that it was in a bona fide belief merits no consideration. The prosecution was therefore able to establish a *prima facie* case against the appellants. Section 20 of the Act provides that if an accused public servant has accepted or obtained for himself or for any other person any undue advantage from any person, there shall be a presumption unless the contrary is proved that he accepted or obtained that undue advantage as a motive of reward for performance of a public duty improperly or dishonestly either by himself or by another public servant. The acquittal of the appellants under Section 7 of the Act, in our opinion in the facts of the present case, is inconsequential and cannot negate the presumption

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- A drawn against them. The fact that P.W.2 in his chief may not have named accused no.2 is considered inconsequential.

- B 8. In *Virendranath* (supra), the venue for payment of the illegal gratification was at a restaurant. The illegal gratification on directions of the prime accused was handed over to the owner of the restaurant. The acquittal of the restaurant owner by this Court was based on an entirely different reason which has no application to the facts of the present case. We consider it appropriate to set out the same below:

- C “5. Insofar as A-2 is concerned, we find considerable merit in the contention raised on his behalf that he could have received the money innocently from the complainant at the asking of A-1, without realising that it was bribe money. The argument prevails because the prosecution has nowhere led any other evidence of conduct or consistency of a behaviour from which it could be spelt out that A-2 was a habitual go-between in facilitating acceptance of bribe by A-1. This single instance which has been brought forth does not reveal of any regularity of conduct of this nature. There thus exists an area of doubt, the benefit of which shall go to A-2. Accordingly, the appeal of A-2 is allowed and he is acquitted of the charges.”
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- E 9. In *T. Shankar Prasad* (supra), the prime accused directed the money to be handed over to the co-accused when both of them were caught on the spot and the money recovered from the co-accused. The co-accused took the plea that there was no proof of demand and acceptance against him. A similar defence was taken that he had accepted the same in the bonafide belief towards advance tax. Referring to Section 20 of the Act, noticing that there was no material towards any advance tax liability, it was observed:
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- G “24.An overall consideration of the materials sufficiently substantiates, in the case on hand, the prevalence of a system and methodology cleverly adopted by the accused that the demand will be specified when both the accused were present and thereafter as and when A-1 puts his signature the party has to meet A-2 at his seat for fixing the seal and making entry in the register to make the process complete only after collecting the amount already specified by A-1 in A-2’s presence. The involvement of both of them in a well-planned and cleverly
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managed device to systematically collect money stood sufficiently established on the evidence let in by the prosecution. Further, A-2 did not offer his explanation immediately after the recovery of money. A similar plea of receiving money as advance tax was rejected and affirmed by this Court in *A. Abdul Kaffar v. State of Kerala*. It was noted that such a stand was not taken at the first-available opportunity and the defence was not genuine. In *State of U.P. v. Dr G.K. Ghosh* it was observed that in case of an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, the court may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the conviction.”

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10. We find no merit in the appeals, which are dismissed. The appellants are directed to surrender forthwith for serving out their remaining sentence.

Divya Pandey

Appeals dismissed.