

KABC010298352017



IN THE COURT OF THE XXIII ADDL.CITY CIVIL & SESSIONS
JUDGE & SPECIAL JUDGE (P.C. Act) BENGALURU
(C.C.H.No.24)

Dated: This the 19th day of November, 2022

:PRESENT:

LAKSHMINARAYANA BHAT K.
XXIII Additional City Civil and Sessions Judge
and Special Judge (P.C. Act),
Bengaluru Urban District, Bengaluru City.

Special C.C.No.625/2017

Complainant: The State of Karnataka represented
by Police Inspector, Anti Corruption
Bureau, Bengaluru Urban Police
station, Bengaluru.

(By the Public Prosecutor)

Accused : 1 V/s
H.Omkarappa
S/o.Kadirappa,
aged 59 years,
Commercial Tax officer,
(Enforcement) 20,
Commercial Tax Additional
Commissioner Office,
Commercial Tax Department,
Koramangala,
Bengaluru.

(By Sri. S.V. Vadavadagi, Advocate)

2 Manikyam R.
 S/o.M.Ramaswamy,
 aged 59 years,
 Driver of accused No.1,
 Additional Commissioner Office,
 Vigilance, South zone Enforcement,
 Koramangala,
 Bengaluru.

(By Sri Venkatramana Naik, Advocate)

JUDGMENT

The Police Inspector, the then Anti Corruption Bureau, Bengaluru Urban (presently the Karnataka Lokayukta Police Wing, Bengaluru Urban) has filed the charge sheet against the accused Nos.1 and 2 for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of The Prevention of Corruption Act, 1988 (in short the 'PC Act').

2(a). The short facts of the prosecution case leading to the filing of the charge sheet are that Cw.1 - Mr.Mahendra Kumar is the Proprietor of M/s.Bright Road Logistics Transport Company. The accused No.1 is working as the Commercial Tax Officer and on 13-10-2016 he had seized the lorry bearing registration No.TN

42 M 3814 along with consignment from the transport office premises of Cw.1 for non-production of e-transit permit. After seizure, the accused No.1 has levied the penalty of Rs.1,17,900/-. In pursuance, Cw-1 had deposited the penalty amount and got released the vehicle along with the seized consignment. Being aggrieved by the said order, Cw.1 is intended to challenge the levy of penalty and claimed to have demanded with the accused No.1 to furnish copy of the K-notice and penalty order. According to his contention at that time, the accused have demanded Rs.20,000/- as the bribe and received part payment of Rs.3,000/- on 25.10.2016.

2(b). It is further case of the prosecution that on 28-10-2016, the accused No.2 has demanded Rs.30,000/- bribe from Cw-1 the informant not to seize the vehicle loaded with scrap materials found in the transport office premises. However the informant was not interested to make payment of the bribe amount, and hence he has lodged the first information statement before the police. The concerned police registered the case, laid the trap,

and the tainted currency notes were recovered from the possession of the accused No.1. After completion of the investigation and on securing the prosecution sanction, filed the charge sheet against the accused.

3. After taking cognizance of the offences, presence of the accused was secured. The copy of the charge sheet and other documents were supplied, and the charges were framed against them. They pleaded not guilty and claimed to be tried.

4. In order to bring home the guilt of the accused, the prosecution has examined Pw-1 to 13 witnesses, produced Ex.P1 to P-69 documents and MOs.1 to 7 material objections were identified. The accused were examined as required under Section 313(1)(b) of the Cr.P.C. regarding the incriminating circumstances appearing in the evidence against them. The accused No.1 in his defence has got examined two witnesses as Dw.1 and 2 and produced Ex.D1 to D6 documents.

5. Heard the arguments of both side. The learned advocate appearing on behalf of the accused No.1 has also filed memorandum of written argument.

6. After analyzing the documentary and oral evidence produced by the prosecution, on hearing the arguments the points that would arise for the determination of the Court are :

1. Does the prosecution prove the fact that it has obtained valid sanction to prosecute the accused Nos.1 and 2 as required under Section 19 of the P.C. Act?
2. Does the prosecution beyond reasonable doubt prove the fact that the accused No.1 and 2 being the public servants working as the Commercial Tax Officer and the driver in the Commercial Tax department on 25-10-2016 have demanded bribe of Rs.20,000/- for the purpose of issuing K-notice and penalty order and on 28-10-2016

the accused No.2 has demanded Rs. 30,000/- for the release of scrap loaded vehicle and on 6.11.2016 at about 00.25 a.m. midnight, the accused No.1 has demanded and accepted illegal gratification of Rs.47,000/- from Pw.2 and thereby they are guilty of the offence punishable under Section 7 of the PC Act?

3. Does the prosecution beyond reasonable doubt prove the fact that on 6.11.2016, the accused No.1 near Bannerghatta road, Bengaluru abused his position as such public servant obtained pecuniary advantage of Rs.47,000/- from Pw.2 – Mr. Mahendra Kumar without any public interest and thereby committed an offence of criminal misconduct defined under Section 13(1)(d) punishable under Section 13(2) of the P.C. Act?
4. Does the prosecution beyond reasonable doubt prove the fact that on 25.10.2016, the accused

No.2 being public servant abused his position as such public servant obtained pecuniary advantage of Rs.3,000/- from Pw.2 without any public interest and thereby committed an offence of criminal misconduct defined under Section 13(1)(d) and punishable under Section 13(2) of the P.C. Act?

5. What order?

7. The aforesaid points are answered as:

Point No.1	:	in the affirmative
Point No.2	:	in the negative
Point No.3	:	in the negative
Point No.4	:	in the negative
Point No.5	:	as per the final order for the following

REASONS

Point No.1 :

8(a). As per Section 19 of the PC Act, to prosecute the accused, it is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority. The object underlying the provision is to protect the public servant from false and frivolous

implications. As per the facts of the case, the accused No.1 is working as the Commercial Tax Officer, and the accused No.2 is working as the driver in the department of Commercial Tax and they are the public servants as defined under Section 2(c) of the PC Act.

8(b). In the instant case in order to prove the sanction, the prosecution has examined Pw.1 - Ms. S.V.Kalavathi, who is working as the Under Secretary to the Government of Karnataka and produced Ex.P-1 sanction order. As per the evidence of Pw.1, the requisition received from the Investigating Officer has been placed before the Honorable Chief Minister and he has accorded the sanction to prosecute the accused No.1. It is her evidence that in pursuance of the sanction accorded by the Honorable Chief Minister, she has proceeded to issue Ex.P-1 order in the name of Honorable Governor of Karnataka by intimating the factum of according of the sanction.

8(c). Pw.3 - Mr.Hrithvik Pande examined on behalf of the prosecution is working as the Commissioner in the Commercial Tax Department, Bengaluru. In his evidence

he deposed regarding receipt of requisition with documents from the investigating agency seeking sanction to prosecute the accused No.2. After verifying the documents he has found that there is prima-facie allegation against the accused No.2 regarding the demand of the bribe. Therefore he deposed that he has proceeded to pass Ex.P6 order by according the sanction.

8(d). During cross-examination Pw-1 has admitted that before she took charge as the Under Secretary, the previous Under Secretary had already submitted the file by recommending to the higher authority. It is the contention of the accused No.1 that there was no demand and acceptance of the bribe, however he has been falsely implicated in the case. Secondly the sanctioning authority without verification of all the required documents mechanically proceeded to accord the sanction. Therefore it is contended that Ex.P-1 order is not valid in the eye of law.

8(e). It is proper to mention here that at the time of considering the requisition seeking sanction for the prosecution, there is no scope for the disciplinary

authority to consider the defence of the accused on merits of the case. The accused is required to present his proposed defence during the course of trial and not before the sanctioning authority. Hence it is not necessary for the disciplinary authority to appreciate the contention of the accused No.1 raised during the trial in the cross-examination of Pw-1.

8(f). As per the evidence of Pw.1 the Government is the competent authority to remove the accused No.1 from his post. Therefore according to the prosecution as per Section 19(1)(b) of the PC Act, the Chief Minister being the head of the Government is the authority competent to grant sanction and accordingly he has accorded the sanction. In pursuance of the sanction accorded by the Hon'ble Chief Minister, Pw.1 has issued Ex.P1 order by communicating the order in the name of Honorable Governor of Karnataka.

8(g). It is forthcoming from the cross-examination Pw-1 and 3 that both the accused have not disputed the Hon'ble Chief Minister and Pw-3 are the competent authorities to accord the prosecution sanction. Hence,

Pw.3 is legally empowered to accord the sanction and having the authority to remove the accused No.2 from the office is proved. Pw-3 has specifically denied that the IO had sent the draft sanction order along with the documents and requisition letter. From the analytical reading of Ex.P-1 and Ex.P-6 orders produced by the prosecution, it could be inferred that the sanctioning authority on ascertaining the facts of the case from the materials placed on record and after recording prima-facie satisfaction had proceeded to accord the sanction.

8(h). In regard to the contention of the accused it is necessary to refer the decision of the Honorable Supreme Court reported in (2013) 8 SCC 119 in the case of State of Maharashtra Vs. Mahesh G Jain. In the said decision the Apex Court held that the court does not sit in appeal over the sanction order and prima-facie satisfaction of the sanctioning authority is sufficient. The sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity. This analogy is aptly applicable to the facts and circumstances of the case.

8(i). In another judgment of the Honorable Supreme Court reported in (2012) 3 SCC 64 in Subramanian Swamy Vs. Dr. Manmohan Singh held that the sanctioning authority is not expected to ascertain the truthfulness or otherwise of the allegations made against the accused in prosecution papers and the decision to grant or refuse sanction is not quasi judicial function but it is an administrative order. Hence the accused is not required to be heard before the authority takes any decision. In the result the contention of the accused No.1 that the sanctioning authority has not considered the absence of demand for the bribe is also not tenable under law.

8(j). The accused No.1 has relied upon the judgment reported in AIR 2014 SC 827 in the case of CBI Vs Ashok Kumar Aggarwal. In the said case the Hon'ble court held that grant of sanction is solemn and sacrosanct act which affords protection to the public servant against frivolous prosecution. The Hon'ble Supreme Court in AIR 2008 SC 108 in State of Karnataka vs Ameer Jaan held that the sanctioning authority is the best person to judge whether the public servant require protection under the Act. In

Babappa vs State reported in 2010(2) Kar.L.J. 1, the Hon'ble High Court held that the object behind sanction is to avoid spurious prosecution not based on the material. However in the case on hand the prosecution is able to satisfy the court that at the time of sending the matter for grant of sanction, all the materials were made available to the sanctioning authority. Secondly the accused have failed to make out any error, omission or irregularity in the sanction order or non-application of mind. Hence the ratio of the judgments relied by the accused No.1 are not applicable to the facts and circumstances of the case.

8(k). The sanction can be proved by producing the original sanction order or by adducing evidence to show that the documents were placed before the sanctioning authority. As per Section 19 of the PC Act, mere error, omission or irregularity in the sanction is not fatal unless it has resulted in failure of justice. The sanction order must be demonstrative of the fact that there had been proper application of mind on the part of sanctioning authority. The grant of sanction is an administrative

function intend to protect the public servant against false, frivolous and vexatious prosecutions.

8(I). Therefore after considering the law laid down in the aforesaid judgments, from the facts of the case the prosecution by examining Pw.1 and Pw.3 and by producing Ex.P-1 and Ex.P-6 documents has proved that after conscious scrutiny of the records placed before them, the sanctioning authority had proceeded to accord the sanction. The oral evidence of Pw.1 and 3, Ex.P-1 and Ex.P-6 documents would satisfy the requirements of law. In the above circumstances, this court arrived to the conclusion that the prosecution has secured valid sanction order to prosecute the accused No.1 and 2 as per Ex.P-1 and 6. In the result point No.1 is answered in the 'affirmative'.

Point No.2, 3 and 4:-

9. Since all these points are inter connected with each other, in order to avoid repetition of facts and reasons, they are taken up together for determination.

10. The prosecution in order to prove the charge against the accused has examined following witnesses and placed oral and documentary evidence:

- Pw.2 – Mr.Mahendra Kumar is the informant who has lodged Ex.P-2 first information statement and he is the witness to the entire pre-trap and post trap proceedings.
- Pw.4 – Mr. R.Madan Kumar and Pw.5 – Mr. Ravi kumar N.who are working in the Rural Development and Panchayath Raj Department are the witnesses to Ex.P4 and P.5 pre-trap and the trap mahazar.
- Pw.6 – Mr. Srikanth Babu who is working as the Commercial Tax Inspector, Pw.7 – Mr. Narayana Swamy who is working as the attender, Pw-8 Mr. Srinivas working as the driver in Commercial Tax Department are the eye witnesses to the alleged trap incident.
- Pw.9 – Mr. Jagadeesha C. who is working as an assistant in the transport office under Pw.2. examined to prove seizure of vehicle by the accused.
- Pw.10 – Mr. Srikanth K.G. who is working as DGM, B.S.N.L., Bengaluru has issued Ex.P-20 call data register

of mobile phone pertaining to the accused No.1 and the informant Pw-2.

- Pw.11 - Mr. Chandrappa S.M. who has conducted further investigation of the case deposed regarding collection of the voice sample, chemical examination report and filing of the charge sheet.
- Pw.12 - Ms. Soumya N. who is the Police Inspector and the trap laying officer has deposed regarding registration of the case, the entire pre-trap and trap proceedings.
- Pw.13 - Ms. Chandrika G. who is the Expert deposed regarding issuance of Ex.P-67 voice analysis report.

11(a). In order to bring home the guilt of the accused, the prosecution is required to prove following ingredients of Sections 7, of the PC Act:

- (i) The accused are the public servants at the time when the offence was committed;
- (ii) They accepted, or obtained, or agreed to accept or attempted to obtain illegal gratification from Pw-2,
- (iii) For themselves or for some other person
- (iv) Such gratification was not a remuneration to which they are legally entitled.

- (iv) They accepted the gratification as a motive or reward for
 - (a) doing or forbearing to do an official act,
 - (b) doing or forbearing to show favour or dis-favour to Pw-2 in the exercise of their official functions; or
 - (c) rendering or attempting to render any service, disservice to Pw-2,

11(b). In order to establish the guilt of criminal misconduct of the accused under Section 13(1)(d) read with Section 13(2) of the PC Act, the prosecution is required to prove the following factors.

- i) The accused being the public servants obtained for themselves or for any other person any valuable thing or pecuniary advantage,
 - a) by corrupt or illegal means or
 - b) by abusing their position as public servants or
 - c) without any public interest.

12. **Demand and Acceptance**

12(a). The demand of illegal gratification is sine qua non to constitute the offence under the PC Act. Therefore the requirement to constitute an offence and the essential ingredients to be proved by the prosecution are

the demand and acceptance of the bribe. In this regard among the prosecution witnesses examined, Pw.2 - Mr. Mahendra Kumar is the informant and in his evidence he deposed that he is doing transport business in the name and style M/s.Bright Road Logistics at Chamarajapete, Bengaluru. In connection with his business on 12.10.2016 the lorry bearing registration No. TN-42 M-3814 was loaded with ready made garments proceeded from Thirupur of Tamilnadu State towards Delhi. But the said vehicle was not having the permit to travel to Delhi and hence it reached to the transport office. He was making arrangement to unload the consignment in order to transport it in another vehicle having the valid permit to reach Delhi. However on 13.10.2016 when they were loading the goods to another vehicle, the accused No.1 and 2 came to the transport premises of M/s.Bright Logistics, Bengaluru and seized the lorry bearing NO. TN.42 M -3814 along with the goods.

12(b). Pw.2 in his evidence has deposed that on 25.10.2016 the accused No.1 has levied the penalty of Rs.1,17,900/- and after payment of the amount he got

released the vehicle along with goods. But he intended to prefer an appeal by challenging the said order passed by the accused No.1. Therefore, he has requested the accused No.1 to furnish the copy of the K-notice and penalty order. It is the evidence of Pw.2 that in this regard the accused No.1 and 2 have demanded Rs.20,000/- bribe on 25.10.2016. Pw-2 further deposed that on the same day he has paid a sum of Rs.3,000/- part payment to the 2nd accused and agreed to pay the balance bribe amount of Rs.17,000/- within 2-3 days.

12(c). According to the evidence of Pw.2, both the accused have demanded Rs.20,000/- bribe to issue K-notice and penalty order and further the accused No.2 has demanded Rs.30,000/- not to seize the tempo loaded with scrap materials. Therefore he has lodged Ex.P2 first information statement on 4.11.2016 before the ACB police, Bengaluru. In pursuance of the said information Pw.12 has registered the case as per Ex.P-35 FIR against both the accused.

13. Pw.12 – Ms. Soumya N., the Police Inspector and she is the trap laying officer (in short the IO) in her evidence has deposed that after receiving Ex.P-2 first information statement from Pw.2, she has registered the case as per Ex.P-35 FIR. She further deposed regarding securing the presence of Pw.4 – R.Madan Kumar and Pw.5 – Ravi Kumar N., the Government servants as witnesses for the proposed trap.

14(a). Pws.2, 4, 5 and 12 in their evidence have deposed during the pre-trap procedure preparation of Ex.P7 transcript of conversation contained in Ex.P39 CD regarding the demand for the bribe made by the accused. The aforesaid witnesses have deposed regarding the production of Rs.47,000/- currency notes by Pw-2, applying of the phenolphthalein powder to those notes, demonstration of chemical hand wash examination, drawing Ex.P4 pre-trap mahazar and the details of instructions given by Pw.12 with regard to the steps to be followed during the proposed trap proceedings.

14(b). Pw.2, 4, 5 and 12 in their evidence further deposed that on the same night at about 11.15 p.m. the entire trap team went to Bannerghatta road toll booth and near the Sharewood school the accused No.1 was inspecting the vehicle plying on the road. As per the evidence when Pw.2 met the first accused he has demanded and accepted the bribe and immediately Pw.2 has given the predetermined signal to the trap laying team. When they went near the vehicle, the accused no.1 has thrown the currency notes inside the vehicle. As per the evidence of Pw.2, 4, 5 and 12, the accused No.1 was subjected to undergo the chemical hand wash test and the tainted currency notes were recovered from the vehicle. They have also deposed that after conducting the chemical hand wash test, accompanied with the 1st accused they went to the Commercial Tax Office and continued the further proceedings of Ex.P5 trap mahazar.

15. The 1st accused in the course of trial throughout his specific defence is that on 25-10-2016 Pw.2 had deposited only Rs.1,00,000/- part of the fine

amount and he was in due for payment of balance fine amount of Rs.17,900/-. It is contended by the defence that on the date of incident 04.11.2016, Pw.2 had made repeated phone calls and has undertaken to make payment of the aforesaid balance fine amount. At the time of the trap Pw-2 has forcibly thrust the tainted currency notes with sole intention to falsely implicate him in the trap proceeding. Both the accused in their defence have specifically denied the alleged demand and acceptance of the bribe from the informant. Therefore, they contended that the prosecution has failed to prove the essential ingredients of the demand and acceptance of the bribe which are the prerequisites in the trap proceeding.

16. In order to ascertain the truthfulness or otherwise of the defence of the accused, before appreciating the oral and documentary evidence adduced by the prosecution it is necessary to refer Ex.P-9 explanation statement of the accused submitted to Pw.12 the IO immediately after the trap. In Ex.P-5 trap mahazar

also there is reference regarding the explanation statement submitted by the accused. The relevant portion of Ex.P-9 reads as under:

".....ನಾನು ಬನ್ನೇರಘಟ್ಟ ರಸ್ತೆಯಲ್ಲಿ ಕಾರ್ಯ ನಿರ್ವಹಿಸುತ್ತಿರುವಾಗ, ಶ್ರೀ ಮಹೇಂದ್ರರವರು ಹಣ ಸಂದಾಯ ಮಾಡಲು ಬಂದಿದ್ದರು. ಸದರಿ ಸಮಯದಲ್ಲಿ ವಾಹನ ಚಾಲಕರಾದ ಶ್ರೀ ಮಾಣಿಕ್ಯಂ ಇರಲಿಲ್ಲ. ನಾನು 25/10/16 ರಂದು ಜೋಶಿ ಹಾಸ್ಪಿಟಲಲ್ಲಿ ಚಿಕಿತ್ಸೆ ಪಡೆದಿರುತ್ತೇನೆ. ಅಂದು ನಾನು ಸುಮಾರು ರೂ.1,17,875 ನು ರಸೀದಿ ಹಾಕಿರುತ್ತೇನೆ. ಸದರಿ ಸಮಯದಲ್ಲಿ ದಂಡ ಪಾವತಿಯವರು ಹಣ ಕಡಿಮೆ ಇರುವುದೆಂದು, ಕಚೇರಿಗೆ ನಿಯಂತ್ರಣ ಕೊಠಡಿಗೆ ಸಂದಾಯ ಮಾಡಲು, ವಾಹನ ಚಾಲಕರು, ದಂಡದಾರರು ಸೇರಿಕೊಂಡು, ಹಣ ಸಂದಾಯ ಮಾಡಿರುತ್ತೇವೆ. ಸದರಿ ಮೊತ್ತವನ್ನು ವಾಹನ ಚಾಲಕರೇ ಸಂದಾಯ ಮಾಡಲು ಬಂದಿದ್ದಾರೆಂದು ತಿಳಿಯದು. ನಾನು ಸದರಿ ಹಣ ನಾನು ಪಡೆಯಲಿಲ್ಲ. ಆದರೂ ಸಹ ಬಲವಂತವಾಗಿ ಶ್ರೀ ಮಹೇಂದ್ರ ಎಂಬುವರು ನನ್ನ ಕೈ ಮೇಲೆ ಹಾಕಿರುತ್ತಾರೆ.....".

17(a). In view of the above explanation now the question to be determined by this Court is whether the accused is succeeded in probably establishing the aforesaid defence from the evidence placed on record, facts and circumstances of the case and from the admission elicited during the cross-examination of the prosecution witnesses.

17(b). As per the contents of Ex.P-2 first information statement and evidence of Pw.2, on 12.10.2016 the vehicle bearing registration No.TN-42 M-3814 loaded with ready made garments from M/s.Raj Hosieries, left Tripur, State of Tamilandu and came to the transport office of Pw-2 at Bengaluru on 13.10.2016. It is also the specific contention of Pw.2 that the said consignment was expected to be transported to Delhi but the said vehicle was not having the permit to go to Delhi. However the grievance of Pw-2 is that the accused No.1 on 13.10.2016 has seized the aforesaid lorry from the premises of M/s.Bright Road Logistic, Bengaluru along with ready made garments loaded in the said vehicle and the vehicle was taken to the premises of the Commercial Tax Office.

17(c). The prosecution case shows that at the time of lodging Ex.P-2 first information statement, Pw.2 himself has produced Ex.P-3 J.C. Endorsement, release order dtd.25.10.2016 and copy of the receipt towards payment of penalty of Rs.1,17,900/- dated 25.10.2016. From these

documents and oral evidence of Pw.2 and Pw.12 it is not in dispute that the vehicle bearing registration No.TN-42 M-3814 was in the custody of the accused No.1 Commercial Tax Officer and after payment of the penalty amount on 25.10.2016, he had released the said vehicle.

17(d). The contents of Ex.P-3 J.C. endorsement dated 13.10.2016 reflects that Cw.13 Mr. Ganesh was the driver of the vehicle and he has produced the receipts along with invoice containing the description of the goods, quantity and the value before the accused No.1 at the time of seizure of the vehicle. It is specifically observed by the accused No.1 in Ex.P3 endorsement that on preliminary verification of the documents tendered by the driver of the vehicle, it was found that the goods in transit are ready made garments sold by Raj Hosieries, Tirupur to Anushka Enterprises, Delhi. But the ready made garments require e-trasit pass from outside the State of Karnataka to be issued by the entry check post located at the border of State of Karnataka. However in the instant case either Cw.13 the driver or

Pw.2 the transport agent have failed to produce the e-transit pass of the said vehicle before the 1st accused and seal has not been affixed in the documents by the entry check post authority. Therefore, the 1st accused has suspected the transaction and for the purpose of physical verification of the goods in transit and for confirmation of the genuineness of the transaction has seized the vehicle under Section 53 (8) of the Karnataka Value Added Tax Act, 2003.

18(a). It is admitted case of Pw.2 that on 25.10.2016 on behalf of the driver of the vehicle he had deposited Rs.1,17,900/- penalty amount and got released the vehicle along with the goods. He has also not disputed that the accused No.1 had issued release order dated 25.10.2016 as per Ex.P3 and at the time of lodging Ex.P2 first information statement, he had enclosed those documents. Ex.P3 document contains the signature of the driver of the vehicle Mr.Ganesh. In Ex.P3 payment receipt there is an endorsement as 'L/C' and according to

the accused and the explanation offered by him in this regard is that it refers to 'late collection.'

18(b). It is vehemently argued on behalf of the accused No.1 that on 25.10.2016, Pw.2 had deposited only Rs.1 lakh penalty amount and assured to make the balance payment of Rs.17,900/- on the same day. Since the accused No.1 was having acquaintance with Pw-2 and the officers of the department of Commercial Tax, they had agreed for his request. But Pw-2 has failed to deposit the balance penalty amount as promised by him. Therefore the accused No.1, and the other officers, the drivers had arranged the balance amount of Rs.17,900/- and remitted the amount to the Government. Pw.2 in his cross-examination has specifically admitted that since the driver of the vehicle was not able to make payment of the penalty, he had deposited the amount of Rs.1,17,900/-. Thus the accused No.1 has submitted that the reason behind making endorsement as 'L/C' in the payment receipt.

18(c). During the cross-examination, Pw.2 in para 11 has specifically admitted that on account of non-

payment of the tax, the accused No.1 had seized the lorry and imposed penalty. He further admitted that there are several similar proceedings were registered against him. Pw.2 has also admitted that he has objected for the application filed by the accused No.1 to obtain documents of those cases under the Right to Information Act since it affects his business. The accused in his defence evidence has produced Ex.D4 document containing the details regarding the cases registered against Pw-2 and his transport business and payment of penalty to the Commercial Tax Department. The prosecution during cross-examination of Dw.2 has not disputed those documents.

18(d). The evidence of Pw.2 elicited during his cross-examination shows that since he has failed to produce e-transit pass, on 25-10-2016 the accused No.1 had proceeded to impose penalty of Rs.1,17,900/-. Therefore, there is every reason to draw an inference that Cw.13 the driver of the lorry by evading the commercial tax check post illegally brought the goods in transit from the State of Tamilnadu in the vehicle

bearing registration No. TN-42 M-3814 to the transport office of Pw.2 situated at Bengaluru, Karnataka. Pw.2 during his cross-examination has specifically admitted this fact.

18(e). In order to appreciate the truthfulness or otherwise of the defence of the accused it is necessary to refer the relevant portion of the transcript of the recorded conversation dated 03-11-2016 produced by Pw-2 contained in Ex.P-7 document. The following conversation throws flood of light on the present case and the relevant portion reads as under:

ಪಿರ್ಯಾದಿ	-----ಅದೇ ಕೆ ನೋಟಿಸ್ & ಆರ್ಡರ್, ಯಾವುದೂ ಕೊಟ್ಟಿಲ್ಲ
ಆರೋಪಿ-1	ಕೊಡುತ್ತೀನಿ, ಕೊಡುತ್ತೀನಿ, ಇಲ್ಲಿ ಯಾವುದೂ ಬೇರೆ ಇನ್ನೆ ಕ್ಷಣಲ್ಲಿ ದ್ದೆನು.
ಪಿರ್ಯಾದಿ	ಹಾ
ಆರೋಪಿ-1	ಕೊಡುತ್ತೀನಿ, ಕೊಡುತ್ತೀನಿ,
ಪಿರ್ಯಾದಿ	ಇವತ್ತು ಕೊಡುತ್ತೀರಾ
ಆರೋಪಿ-1	ಹೇ ಇಲ್ಲ ಸ್ವಲ್ಪ ಇನ್ನೆ ಕ್ಷಣಳು ಇದೆ, ನಾಳೆ ಕೊಡುತ್ತೀನಿ ನಾಳೆ
ಪಿರ್ಯಾದಿ	ನಾಳೇನಾ
ಆರೋಪಿ-1	ಹೇ ಅದರಲ್ಲಿ ಬ್ಯಾಲೆನ್‌ಸ್ ಎಲ್ಲಾ ಕ್ಲಿಯರ್ ಮಾಡೀಪ್ಪಾ
ಪಿರ್ಯಾದಿ	ಬ್ಯಾಲೆನ್‌ಸ್ ಕೊಟ್ಟುಬಿಡ್ತೀನಿ ಸಾರ್, ನಾಳೆ, ಇವಾಗ ನೀವು ಆರ್ಡರ್ ಯಾವಾಗ ನಾಳೆ ಕೊಡುತ್ತೀರಾ, ನಾನ್ ನಾಳೇ ಬ್ಯಾಲೆನ್‌ಸ್ ಕ್ಲಿಯರ್ ಮಾಡಿ ಬಿಡ್ತೀನಿ ಸಾರ್
ಆರೋಪಿ-1	ಹೇ ಕೊಡುತ್ತೀನಿ, ನಾಳೆ ಕೊಡುತ್ತೀನಿ, ನೀ ಫಸಾಟ್ ಬ್ಯಾಲೆನ್‌ಸ್ ಕೊಟ್ಟುಬಿಡು, ಮಾಡಿಬಿಡೋನಾ ಹಾ
ಪಿರ್ಯಾದಿ	ಇವಾಗ ಬ್ಯಾಲೆನ್‌ಸ್ ಯಾರ ಹತ್ರ ಕೊಡಬೇಕು ಸಾರ್
ಆರೋಪಿ-1	ಮಾಣಿಕ್ಕನ ಕೈಯಲ್ಲಿ ಕೊಡಿ

ಪಿರ್ಯಾದಿ	ಮಾಣಿಕ್ಯನ ಕೈಯಲ್ಲಿ ಕೊಟ್ಟು ಬಿಡ್ಲಾ
ಆರೋಪಿ-1	ಹೂಂ ಕೊಟ್ಟಬಿಡಿ
ಪಿರ್ಯಾದಿ	ಓಕೆ, ಓಕೆ, ಸಾರ್-----

ಪಿರ್ಯಾದಿ	-----ಇವಾಗ ಅಮೌಂಟ್ ಎಷ್ಟು ಕೊಡಬೇಕು ಸಾರಿ ಮಾಣಿಕ್ಯನಿಗೆ
ಆರೋಪಿ-1	ಹೇ ಅದ್ಯಾವುದೋ ಇನ್ನೊಂದು ಸ್ಟ್ರಾಪ್ ಕೂಡ ಹಿಡಿದನಂತೇ ಆದ್ ಏನಾಯ್ತು ಅದು
ಪಿರ್ಯಾದಿ	ಹಾ
ಆರೋಪಿ-1	ಸ್ಟ್ರಾಪ್‌ದು
ಪಿರ್ಯಾದಿ	ಸ್ಟ್ರಾಪ್‌ದು ಅವತ್ತು ಅವರು ಗಾಡಿ ಬಿಟ್ಟು ಅದಕ್ಕೆ 30 ಸಾವಿರ ಕೊಡಬೇಕು ಅಂತಾರೆ
ಆರೋಪಿ-1	ಹೂಂ ಅದು ರಶೀದಿ ಹಾಕೊಡೂನಂತೆ ಇದು ನಮ್ಮದು ಬ್ಯಾಲೆನ್ಸ್ ಎಷ್ಟು ಇದೆಯೋ ಅದನ್ನ ಕೊಟ್ಟುಬಿಡಿ
ಪಿರ್ಯಾದಿ	ಸಾರ್ ನಿಮ್ಮದು ಎಷ್ಟು ಕೊಡಬೇಕು ಇನ್ನು 17 ಸಾವಿರ ಕೇಳಿತ್ತಾ ಇದಾರೆ ಅವರು
ಆರೋಪಿ-1	ಹೇ 17 ಅಲ್ಲ 18
ಪಿರ್ಯಾದಿ	18 ಆ
ಆರೋಪಿ-1	ಹೂ 18
ಪಿರ್ಯಾದಿ	ಏನ್ 1 ಸಾವಿರ ಜಾಸ್ತಿ ಮಾಡಿಬಿಟ್ಟಿದ್ದೀರ, ಏನ್ ಬಡ್ಡೀನಾ ಸಾರ್
ಆರೋಪಿ-1	17 ಚಿಲ್ಲರೆ ಅದು ಇರೋದು, ಎಂಟುನೂರು, ಒಂಬತ್ತಿನೂರು ಚಿಲ್ಲರೆ ಹಾಕಿರೋದು, ಎಂಟುನೂರು, ಒಂಬತ್ತಿನೂರು ಚಿಲ್ಲರೆ ಹಾಕಿರೋದು ಅದು.
ಪಿರ್ಯಾದಿ	ಹೂಂ ಹೂಂ
ಆರೋಪಿ-1	ರಶೀದಿಯಲ್ಲಿದೆ ನೋಡಿ, ರಶೀದಿ ಇಲ್ಲಾ ನಿಮ್ಮ ಹತ್ರ
ಪಿರ್ಯಾದಿ	ಯಾವ ರಶೀದಿ ಸಾರ್, ರಶೀದಿ ಅಮೌಂಟ್ ಕಟ್ಟಿದ್ದು, ಆಯ್ತು ಸಾರ್
ಆರೋಪಿ-1	ಹೂಂ ಮತ್ತೆ
ಪಿರ್ಯಾದಿ	ಹೂಂ ಮತ್ತೇ 20 ಸಾವಿರ ರೂಪಾಯಿ ಕೊಡು ಅಂತೀರ, 3 ಸಾವಿರ ಅವತ್ತು ಕೊಟ್ಟೆ ಮಾಣಿಕ್ಯನಿಗೆ
ಆರೋಪಿ-1	ಹೌದಾ
ಪಿರ್ಯಾದಿ	ಹೂಂ
ಆರೋಪಿ-1	ನೋಡಿ ಮತ್ತೆ, ಅದೇನೋ ಒಂದು ರಶೀದಿ ಹಾಕೋಡಿ, ರಶೀದಿ ಹಾಕ್ತಾನಂತೆ ಹಾ
ಪಿರ್ಯಾದಿ	ಸಾರ್, ರಶೀದಿ ಯಾವುದೋ, ಮಾಣಿಕ್ಯ ಡ್ರೈವರ್ ರಶೀದಿ ಹಾಕ್ತಾರೆ?

ಆರೋಪಿ-1	ಹೌದಾ ಆಯ್ತು ನೋಡೋನ ತಡಿ, ಆಮೇಲೆ ಮಾತಾಡ್ತೀನಿ, ಒಂದು ನಿಮಿಷಾ ಸಾಹೇಬ್ರು ಇದಾರೆ ಮತ್ತೆ ಮಾಡ್ತೀನಿ ತಡಿ
ಪಿರ್ಯಾದಿ	ಮತ್ತೆ ಮಾಡ್ತೀರ.-----

18(f). In the event the entire aforesaid conversation in Ex.P7 transcript is admitted as it is, the accused No.1 has asked Pw.2 to make payment of the balance amount and the aforesaid demand is not pertaining to the bribe amount can be clearly inferred. Even the accused No.1 has assured to issue receipt for Rs. 30,000/- for the seizure of the scrap materials. In the event the accused had demanded the bribe, there is no question of he is agreeing to issue necessary receipt for the payment.

18(g). The second aspect emerges for consideration in the above referred conversation contained in Ex.P-7 is that at the time of making the conversation through phone, the accused No.1 was not aware of the exact amount due from Pw2. Hence he has expressed that the amount is around Rs.17,800/- or Rs.17,900/- odd amount and hence he had asked Pw.2 to ascertain the exact amount from the receipt. The aforesaid conversation

reflects that the accused No.1 has asked Pw.2 to verify the receipt dated 25.10.2016 marked as per Ex.P3.

18(h). In the above circumstances Pw-2 was in due for payment of balance amount of Rs. 17,900/- in favour of the accused No.1 is proved from his own document Ex.P-7 and P-39. Pw-2 has also made an attempt to pretend that as if he is unaware of any receipt can be made out from the said conversation. However he himself got struck and trapped in his own plan to implicate the accused. Therefore, Ex.P7 conversation contained in Ex.P39 CD clearly proves without any shadow of doubt that there was absolutely no attempt to demand for the bribe on the part of the accused No.1. The facts and circumstances reflects that Pw.2 has tried to implicate the accused in this trap proceedings in the guise of payment of the balance amount as the bribe.

19. During the investigation Pw.12 has secured Ex.D3 Certificate of Pw.2 under Section 65B of Indian Evidence Act. Pw.2 being the informant cannot dispute the admissibility of Ex.P-39 CD containing the recorded

conversation as per Ex.P-7 transcript of conversation between himself and the accused. During cross-examination of Pw.2, Ex.D3 came to be marked and in this regard the learned advocate appearing for the accused No.1 has vehemently argued that the CD containing the conversation is not admissible in evidence for non-compliance of mandatory requirements of Section 65B of the Indian Evidence Act. Pw-2 has given inconsistent and contradictory evidence regarding the process of securing the copy of the recorded conversation in Ex.P-39 CD from the mobile phone. However since the evidence of Pw-2 is not considered against the accused, the admission of Pw-2 in this regard can be ignored.

20(a). As per the prosecution evidence and it is undisputed fact of the case that on 13.10.2016 as per Ex.P3 the accused No.1 had seized the lorry bearing registration No.TN-42 M-3814 from the transport office of Pw.2. Even after lapse of 10 days, Pw.2 has failed to produce the required documents, more particularly e-

transit pass for having legally transported the goods from Tamilnadu to the State of Karnataka and the said vehicle came through entry check post located at the border of the State of Karnataka. Therefore, after lapse of 10 days from the date of seizure of the vehicle, the accused No.1 has levied penalty of Rs.1,17,900/- and Cw.13 driver of the vehicle Mr. Ganesh shown to have deposited the said amount. After deposit of the penalty amount, the accused No.1 had issued release order dated 25.10.2016.

20(b). It is not the case of the Pw.2 that the accused No.1 and 2 had demanded the bribe during 13.10.2016 from the date of seizure of the vehicle till 25.10.2016 the date of payment of the penalty. In the event the accused actually had the intention to demand the bribe from Pw-2, they could have made such attempts during the aforesaid intervening period. In this connection this court can draw an inference as provided under Section 114 of Indian Evidence Act from the natural human conduct. As per Section 3 of the Indian Evidence Act a fact is said to be disproved when after considering the matters before it, the Court either believes that it does

not exist or considers its non-existence so probable that a prudent man ought under the circumstances of the particular case, to act upon the supposition that it does not exist. Therefore the alleged demand for the bribe made against the accused No.1 is highly improbable. The facts and circumstances of the case show that there is every reason to suspect that in order to refrain the accused No.1 from seizing the vehicles in connection with the illegal transport business of Pw-2 and evading of the payment of the commercial tax, he tried to implicate the accused No.1 in the trap proceeding is highly probable.

20(c). During cross-examination, Pw.2 has admitted that for all these years he has not challenged the order passed by the accused No.1 levying the penalty of Rs.1,17,900/-. Therefore the contention of Pw-2 that on 25-10-2016 he had intended to obtain K notice and penalty order to challenge the impugned order passed by the accused No.1 imposing penalty is apparently false. During cross-examination Pw.2 has admitted that he is aware of the fact that he can secure the K notice and

penalty order documents under the Right to Information Act. Hence there was no impediment for Pw-2 to obtain the documents even though the accused have demanded the bribe. The prosecution has also not produced any documents to show that Pw-2 had deposited the fine amount under protest as deposed by him in his evidence. In the event Pw.2 was really aggrieved by the impugned order of imposing the penalty, he could have challenged the same as provided under the law. Therefore, the allegations made in Ex.P-2 first information statement against the accused and bonafide of Pw.2 is surrounded by suspicious circumstances.

21(a). According to the prosecution case, Pw.4 – Mr. R.Madan Kumar was nominated by Pw.12 the IO as the shadow witness during the trap. But as per the evidence of Pws.2 and 4, when Pw.2 went to meet the accused No.1, Pw.4 was sitting inside the car. Therefore, he has not heard the conversation between Pw.2 and the accused No.1 during the alleged demand and acceptance of the bribe money. During cross-examination, Pw.4 has

specifically admitted this aspect. It is elicited during the cross-examination of Pw.4 that after receiving the predetermined signal from Pw.2, the police officials and the IO went near the vehicle of the accused and at that time he went to the place of incident with them. Therefore, Pw.4 was not present along with Pw.2 when the accused No.1 stated to have demanded and accepted the bribe as alleged by the prosecution.

21(b). In the above circumstances whether Pw.2 has forcibly thrust the amount in the hands of the accused No.1 or the accused No.1 has demanded and voluntarily accepted the amount, there is absence of reliable evidence. In order to ascertain whether the accused No.1 has counted the currency notes, except the evidence of Pw.2 there is no other evidence.

21(c). In view of the above evidence it is appropriate to refer the relevant portion of conversation during the trap which reads as under:

ಆರೋಪಿ	-----ಎನ್ ಸಮಾಚಾರ
ಪರ್ಯಾಯಿ	ನಾನ್ ಇಲ್ಲೇ ಇದ್ದೀನಿ ಕನಕಪುರ ರೋಡಲ್ಲಿ ದ್ದೀನಿ

ಆರೋಪಿ	ಹೇ ಕಟ್ಟೀಯೇನಪ್ಪ ಅಮಾಂಟ್ ಕೊಡಪ್ಪ
ಪರ್ಯಾದಿ	ಅದೇ ಅಮಾಂಟ್ ಕೊಡ್ಬೇಕು. ಎಲ್ಲಿದ್ದೀರ ಹೇಳಿ ಈವಾಗ್ ಕೊಡ್ -----
ಪರ್ಯಾದಿ	ಇವತ್ತೆಲ್ಲ ಕ್ಲಿಯರ್ ಮಾಡ್ಬಿಡ್ತೀನಿ ಮುಖತ್ ಕೊಟ್ ಬಿಡ್ತೀನಿ ಇದೂನು ಕೊಟ್ ಬಿಡ್ತೀನಿ
ಆರೋಪಿ	ಅಯ್ಯ
ಪರ್ಯಾದಿ	ಯಾಕೆ ಅಂದ್ರೆ ಬೆಳಗ್ಗೆ ರಾಜಸ್ಥಾನಕ್ಕೆ ಹೋಗ್ ಬೇಕು
ಆರೋಪಿ	ಅಯ್ಯ.
ಪರ್ಯಾದಿ	ಒಂದ್ ಮಾತ್ ಹೇಳ್ ಬಿಡ್ತೀನಿ ಈ ತಿಂಗಳು ನನಗೆ ಕಷ್ಟ ಕೊಡಬೇಡಿ
ಆರೋಪಿ	ಈಗ ಹೇ ನಿನಗೆ ಬಾ ಮಾತಾಡಣಾ
ಪರ್ಯಾದಿ	ಹಾಂ
ಆರೋಪಿ	ಬಾ ಬಾ
ಪರ್ಯಾದಿ	ಯಾಕೆ ಅಂದ್ರೆ ನಾನು ರಾಜಸ್ಥಾನಕ್ಕೆ ಹೋಗಿ ಬರೋವರಗೊ ಹದಿನೈದು ದಿನ ಬೇರೆ ಗಾಡಿ ಹಿಡಿಬಾರ್ದು
ಆರೋಪಿ	ಹೂಂ ಸರಿ ಬಾ ಬಾ ಬಾ
ಫಿರಾದಿ	ಸರಿ ಬರ್ತಾಯಿದ್ದೀನಿ

The conversation recorded during the trap shows that the accused No.1 was suffering from ill-health and Pw-2 was aware of this fact. The aforesaid conversation clearly shows that Pw.2 has been doing the illegal transport business transactions by avoiding the payment of commercial tax. Moreover Pw.2 has requested the accused No.1 not to seize any of their vehicles for the next 15 days since he is going to the State of Rajasthan. Therefore he had the intention to implicate the accused No.1 in a trap proceeding is apparently clear. This is also

one of the strong circumstances appearing in support of the case of defence of the accused and against the case of the prosecution to disbelieve the testimony of Pw-2.

21(d). Pw.11 and 12 during their cross-examination have admitted that they have not made any investigation touching the alleged scrap vehicle of Pw.2 and the alleged demand of bribe by the accused regarding the said vehicle. As per the evidence of Pw-2 and contents of Ex.P2 statement in connection with the said vehicle, the accused No.2 has demanded Rs. 30,000/- bribe. Pw-2 has also not produced any documents before the police regarding the said transaction either at the time of lodging Ex.P-2 first information statement or during the investigation. Pw-12 has also not collected any documents regarding the said transaction. Since there is specific allegation against the accused relating to the demand for the bribe in connection with the scrap vehicle, the IO ought to have conducted proper investigation regarding the said aspect.

21(e). Pw12 has specifically admitted that she cannot say in order to falsely implicate the accused, Pw.2 has

taken advantage of the circumstances to implicate them in the trap proceeding. The conversation recorded during the trap shows that Pw.2 was having grievance against the accused No.1 regarding seizure of his vehicles. The witness may lie, but not the circumstances is made out from the documentary and oral evidence produced by the prosecution. Pw.2 had only intention to implicate the accused No.1 in a trap proceeding can be gathered from the entire prosecution evidence. Therefore from the evidence of Pw-2,4,5, and Pw-12 the prosecution has failed to prove the charge of demand and voluntary acceptance of the bribe against the accused No.1.

22(a). According to the prosecution case and allegations made in Ex.P2 first information statement, on 25.10.2016 the accused No.2 has demanded Rs.20,000/- bribe on behalf of the accused No.1 to furnish the copy of K-notice and penalty order and he has accepted Rs.3,000/- and on 28-10-2016 again he has demanded Rs.30,000/- in relation to the scrap loaded vehicle. The informant Pw.2 has not recorded the said conversation

made with the accused No.2 containing the alleged demand for the bribe. Moreover, in Ex.P20 call details register extract shows that Pw.2 has made telephone calls to the accused but in turn the accused No.1 and 2 had not made any telephonic calls to Pw.2.

22(b). In support of the aforesaid charge except the interested testimony of Pw.2 as deposed in his examination-in-chief and contents of Ex.P2 first information statement, there is no other corroborative evidence. During the cross-examination, Pw.2 has admitted that he is not doing any scrap business. The non-production of documents regarding the aforesaid transaction and the alleged demand of Rs.30,000/- from Pw.2, is surrounded by suspicious circumstances. In the result there is absolutely absence of evidence placed by the prosecution to prove the charge against the accused No.2. It is not in dispute that as on the date of trap ie. 4.11.2016 the accused No.2 was not present at the place of trap and he was on leave on that day. Therefore, the payment of Rs.3,000/- by Pw.2 in favour of accused No.2 on 25.10.2016 is also highly improbable. Therefore,

payment of Rs.3,000/- in favour of the accused No.2 on 25.10.2016 is not proved by the prosecution.

23(a). In order to prove the defence, the accused No1 has also got examined Dw.1 Mr. Manjunath K.C. working as the Assistant Commissioner, Commercial Tax Department. Ex.D-5 document produced by the accused No.1 shows that on 26.10.2016 he was admitted to the hospital and was under medical treatment. Pw-5 to 7 are the eye witnesses present during the trap with the accused have not supported the prosecution case. During the examination they have been cross examined by the public prosecutor. It is noticed that Pw-2 was reluctant to appear before the court to give evidence. His presence was secured during the trial by issuing non-bailable warrant. This is also one of the circumstances to be considered against him.

23(b). In the case on hand, the prosecution has failed to prove the foundational facts regarding the demand and acceptance of the bribe. It is settled law that under

Section 20 of the P.C. Act there is presumption that once the demand and acceptance of the bribe amount is proved, the accused is required to discharge his onus to rebut the presumption. But in the case on hand, the prosecution has miserably failed to prove the demand and voluntary acceptance of the bribe by the accused. But on the contrary, the accused No.1 has successfully proved that the amount he had agreed to accept is not the bribe amount. In this regard in the judgment relied by the accused reported in AIR 2015 SC 3549 P. Satyanarayana Murthy vs The Dist Inspector of Police the Hon'ble Court held that mere acceptance of the amount and recovery from the accused is not sufficient unless the prosecution proves the demand for illegal gratification. The ratio of the said decision is applicable to the facts of the case.

24(a). In view of the aforesaid contradictory evidence of Pw.2, and the evidence of the police officers Pw.11 and 12, the evidence of Pw.4 and 5 pancha witnesses becomes insignificant. In Ex.P-2 statement

absolutely nothing is whispered against the accused No.1 that he has demanded the bribe except the allegations are made only against the accused No.2. The accused No.1 in his defence has forwarded explanation and probably proved that on account of his ill-health he could not prepare K-notice and penalty order till 04-11-2016. Therefore, the delay was caused in preparing those documents is probable. The evidence on record shows that the accused No.1 has imposed penalty of Rs.1,17,900/- after retaining the vehicle containing goods belongs to Pw.2 and thereafter he had released the vehicle and hence the possibility of the accused No.1 demanding the bribe for furnishing K Notice and penalty order is highly improbable.

24(b). Therefore, from the documentary and oral evidence placed on record, the prosecution has failed to prove that the accused No.1 and 2 had demanded the bribe of Rs.20,000/- and the accused No.2 has received Rs.3,000/- on 25-10-2016 from Pw.2. The prosecution has further failed to prove that on 28.10.2016 the accused No.2 went to the transport office of Pw.2 and demanded

Rs.30,000/- in order to refrain from seizing of 3 wheeler vehicle loaded with scrap materials. The prosecution has further failed to prove that on 3.11.2016 the accused No.1 has demanded the bribe or on the date of trap 4.11.2016 he has demanded and accepted Rs.47,000/- bribe from Pw.2. The presumption under Section 20 of the PC Act arises only after proof of the foundational facts regarding the demand and acceptance of the bribe. In the case on hand, the accused have successfully established the absence of demand and voluntary acceptance of the bribe as alleged by the prosecution.

25(a). Before parting to decide the fate of the case, it is necessary to make some observation regarding the conduct of Pw.2 and his apparent attempt to implicate the public servants in trap have to be deprecated. In the judgment reported in 2011 (1) SCC 694 in *Siddharam Satlingappa Mhetre vs State Of Maharashtra* the Hon'ble Supreme Court in para-87 held that the Court has to thoroughly examine whether the complainant has filed a false or frivolous complaint, reason behind animosity and

if the complaint is found to be false or frivolous, then strict action should be taken against him in accordance with law.

25(b). It is settled fact as held by the Hon'ble Supreme Courts that a criminal trial is meant for doing justice to all, the accused, the society, and a fair chance to prove to the prosecution. Then alone law and order can be maintained in the society. The courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape and both aspects are the public duties of the Judge.

25(c). The Chapter-XIX of the Code of Criminal Procedure deals with the trial of warrant cases by the Magistrate. As per Section 250 of the Cr.P.C. in any case instituted upon information given to a police officer, the accused are acquitted and the Court is of opinion that there was no reasonable ground for making the accusation against the accused, the person upon whose information the accusation was made, call upon him to show cause why he should not pay compensation to such accused. In the case on hand, Pw-2 the informant as per

Ex.P2, has deliberately lodged the false first information statement to the police alleging that the accused had demand and accepted the bribe in order to refrain the accused No.1 from interfering in his illegal transport business of evading the payment of commercial tax to the Government. In the above circumstances it is the bounden duty of the Court to protect the interest of the public servants who have been falsely implicated. Secondly it should also send the message to the like minded informants who are in the habit of falsely implicating the public servants for their self interest by giving false evidence are also cannot escape from the hands of law. Therefore this court is of the definite opinion that it is a fit case to invoke the powers conferred under Section 250 of the Cr.P.C. by calling upon Pw.2 to show cause why he should not be directed to make payment of compensation in favour of the accused No.1 and 2 for false prosecution.

26. For the forgoing reasons this court arrived to the definite conclusion that the prosecution has miserably failed to prove the charges framed against the

accused. In the result, point Nos.2 to 4 are answered in the 'negative.'

27. **Point No.5** :- In view of the above findings on point Nos.2 to 4, the accused No.1 and 2 are deserve to be acquitted for the charges framed against them for offence punishable under Sections 7 and 13(1)(d) read with Section 13 (2) of the PC Act. Thus proceed to pass the following:

ORDER

Acting under Section 248(1) of the Code of Criminal Procedure 1973 the accused No.1 and 2 are hereby acquitted of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of The Prevention of Corruption Act, 1988.

The bail bonds and surety bonds executed by both the accused and their sureties are hereby stand discharged.

Acting under Section 250 of the Cr.P.C. issue summons to Pw-2 calling upon him to show cause why he should not be directed to pay the compensation to the accused No.1 and 2 for false prosecution.

M.O. No.7 cash of Rs.47,000/- (Rupees forty seven thousand) is ordered to be confiscated to the State after expiry of the appeal period.

Office is directed to return M.O. No.1 metal seal to the Karnataka Lokayukta Police Wing, Bengaluru Urban.

Office is directed to destroy M.O. No.2 to 6 sodium carbonate solution bottles after completion of the appeal period as the same are worthless.

(Dictated to the judgment writer, transcribed and computerized by him, corrected, signed and then pronounced by me in the open Court on this the 19th day of November, 2022.)

(LAKSHMINARAYANA BHAT K)
XXIII Addl.City Civil & Sessions Judge
& Special Judge (PCA), Bengaluru.
ANNEXURE

List of witnesses examined on behalf of the prosecution:

PW 1 : S.V.Kalavathi
PW 2 : Mahendra Kumar
PW 3 : Hrithvik Pandey
PW 4 : R.Madan Kumar
PW 5 : Ravikumar N.
PW 6 : Srikanth Babu

PW 7 : Narayana Swamy
PW 8 : R.Srinivas
PW 9 : Jagadeesha C.
PW 10 : Srikanth K.G.
PW 11 : Chandrappa S.M.
PW 12 : Soumya N.
PW 13 : Chandrika G.

List of documents marked on behalf of prosecution:

Ex P1 : Sanction order
Ex P1(a) : Signature of Pw.1

Ex P2 : Complaint
Ex P2(a) : Signature Pw.2

Ex P 3 : Copy of documents (4 sheets)

Ex P4 : Pre-trap mahazar
Ex P4(a) : Signature of PW 2
Ex P4(b) : Signature of PW 4
Ex P4(c) : Signature of PW 5
Ex P4(d) : Signature of PW 12

Ex P5 : Trap mahazar
Ex P5(a) : Signature of PW 2
Ex P5(b) : Signature of PW 5
Ex P5(c) : Signature of PW 4
Ex P5(d) : Signature of PW 12

Ex P6 : Sanction order
Ex P6(a) : Signature of Pw.3

Ex P7 : CD conversation transcription sheet
Ex P7(a) : Signature of Pw.5

Ex P8 : Currency details sheet
Ex P8(a) : Signature of Pw.5

- Ex P9 : Explanation of accused No.1
- Ex P10 : Mahazar (CD seizure)
Ex P10(a) : Signature of PW 5
Ex P10(b) : Signature of PW 4
- Ex P11 : CD conversation transcription sheet
Ex P11(a) : Signature of Pw.5
- Ex P12 : Voice sample Mahazar (accused)
Ex P12(a) : Signature of PW 5
Ex P12(b) : Signature of PW 4
Ex P12(c) : Signature of PW 11
- Ex P13 : Voice sample transcription
Ex P13(a) : Signature of Pw.5
- Ex P14 : Seal acknowledgment
Ex P14(a) : Signature of Pw.5
- Ex P15 : Seizure Mahazar of the documents
produced by the accused No.1
Ex P15(a) : Signature of Pw.4
Ex P15(b) : Signature of Pw.11
- Ex P16 : Attested copies of documents
Ex P17 : Voice sample of complainant
Ex P17(a) : Signature of Pw.4
Ex P17(b) : Signature of Pw.11
- Ex P18 : Portion of the 161 Cr.P.C. statement of PW7
- Ex P19 : Portion of the 161 Cr.P.C. statement of PW8
- Ex P20 : 65(B) Certificate of CDR details of BSNL
Ex P20(a) : Signature of PW 10
- Ex P21 : CD containing sample voice of A-1
Ex P21(a) : Cover

- Ex P22 : CD containing sample voice of A-2
Ex P22(a) : Cover
- Ex P23 : Certificate u/S.65-B of Indian Evidence Act
- Ex P24 : Seal receipt acknowledgment dt.21.11.2016
- Ex P25 : Chemical examiner's report dt.22.11.2016
- Ex P26 : Letter dt.20.12.2016 contains service Particulars of A-1
- Ex P27 : Reply Letter dt.28.12.2016 addressed to the IO.
- Ex P28 : Letter dt.24.12.2016 contains service Particulars of A-2
- Ex P29 : CD contains voice sample of complainant
Ex P29(a) : Cover
- Ex P30 : Article-11/Sample voice translation
- Ex P31 : Certificate u/S.65-B of Indian Evidence Act issued by K.Ramesh, H.C., ACB.
- Ex P32 : Certificate u/S.65-B of Indian Evidence Act issued by PW11
- Ex P33 : Seal receipt acknowledgment given by PW5
- Ex P34 : Engineer's sketch
- Ex P35 : F.I.R.
- Ex P36 : Letter dt.4.11.2016 to depute two persons as witnesses addressed to J.D. Rural Development Commissionerate, Bengaluru.
- Ex P37 : Letter dt.4.11.2016 to depute two persons as witnesses.

Ex P38 : Letter dt.4.11.2016 deputing witnesses.

Ex P39 : CD contains conversation held between
the complainant and Accused. (Article-1)

Ex P39(a) : Cover

Ex P40 : CD contains conversation held between
the complainant and Accused. (Article-8)

Ex P40(a) : Cover

Ex P41 to: Photographs

Ex.P62

Ex P63 : House search mahazar dt.5.11.2016

Ex P63(a) : Signature of PW 12

Ex P64 : Seal receipt acknowledgment dtd.5.11.2016

Ex P65 : Certificate u/S.65-B of Indian Evidence Act
given by Prabhakar

Ex P66 : Sample seal

Ex P67 : FSL report with enclosures

Ex P67(a) : Signature of Pw.13

Ex P68 : Sample seal of FSL

Ex P69 : Written explanation given by accused No.2.

List of material objects marked on behalf of the
prosecution:

MO 1 : Metal seal 'd'

MO 2: Bottle containing clear sodium carbonate solution
(Article-2)

MO 3: Bottle containing pink coloured sodium carbonate

solution (prepared at pre-trap mahazar) (Article-3)

MO 4: Bottle containing clear sodium carbonate solution
(Article-4)

MO 5: Bottle containing pink coloured right hand wash of
accused No.1 (Article-5)

MO 6: Bottle containing pink coloured left hand wash of
accused No.1 (Article-6)

MO 7: Cash of Rs.47,000/-

List of witnesses examined on behalf of defence side:

Dw.1 – Manjunatha K.C.

Dw.2 – Yogesh

List of document marked on behalf of defence side

Ex.D1 – Official Memorandum letter dt.4.11.2016 of
Rural Development and Panchayat Raj dept.

Ex.D2 – Portion of the statement of Pw.6 (page-231)

Ex.D3 – Certificate u/Sec.65(B) of Indian Evidence Act
of Pw.2 / complainant

Ex PD3(a) : Signature of Pw.2

Ex.D4 – Copies of document at page 14 to 133
produced by A-1 as per 313(5) of Cr.P.C.

Ex.D5 – Medical Certificate, bill, prescription etc.
produced as Annexure-II

Ex.D6 – Letter dt.12.4.2018 with extract of attendance
register produced as Annexure-VI

XXIII Addl.City Civil & Sessions Judge
& Special Judge (PCA), Bengaluru.

Judgment pronounced in the open Court vide separate Judgment. The operative portion of the Judgment reads as under:

ORDER

Acting under Section 248(1) of the Code of Criminal Procedure 1973 the accused No.1 and 2 are hereby acquitted of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of The Prevention of Corruption Act, 1988.

The bail bonds and surety bonds executed by both the accused and their sureties are hereby stand discharged.

Acting under Section 250 of the Cr.P.C. issue summons to Pw-2 calling upon him to show cause why he should not be directed to pay the compensation to the accused No.1 and 2 for false prosecution.

M.O. No.7 cash of Rs.47,000/- (Rupees forty seven thousand) is ordered to be confiscated to the State after expiry of the appeal period.

Office is directed to return M.O. No.1 metal seal to the Karnataka Lokayukta Police Wing, Bengaluru Urban.

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XXIII Addl.City Civil & Sessions Judge
& Special Judge (PCA), Bengaluru.