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IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 9th February, 2022

BEFORE

THE HON'BLE MR. JUSTICE V. SRISHANANDA

CRIMINAL APPEAL NO.200043/2015

BETWEEN:

PADMANABHA

... APPELLANT

(BY SRI ANIL KUMAR NAVADAGI, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH LOKAYUKTA POLICE VIJAYAPUR
DIST.VIJAYAPUR.

... RESPONDENT

(BY SRI SUBHASH MALLAPUR, SPL. PP. FOR LOKAYUKTA)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CODE OF CRIMINAL PROCEDURE PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 06.04.2015 PASSED BY THE SPL. JUDGE/PRL. SESSIONS JUDGE VIJAYAPUR IN SPL. CASE (LOK) NO: 11/2010 AND

ACQUIT THE APPELLANT HEREIN FOR THE CHARGES FOR WHICH HE WAS CONVICTED.

THIS CRIMINAL APPEAL COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING :

J U D G M E N T

1. Heard Sri Anil Kumar Navadagi, learned counsel for the appellant and Sri Subhash Mallapur, learned Special PP for Lokayuktha - respondent herein.

2. The present appeal is filed by the accused who has been convicted in Special Case (LOK) No.11/2010 by the Special Judge, Principal Sessions Judge, Vijayapur, for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

3. Brief facts of the case are as under:

Sri Subramanian S/o. Sundaram, lodged a complaint with the Bagalkote Lokayuktha police on 10.12.2008 which was registered by the Lokayuktha Police in Crime No. 14/2008, which was transferred to the Vijayapur

Lokayuktha and renumbered it as Crime No.13/2008. In the complaint, it is contended that complainant is the resident of Seetha Vihar in Chattisgad State and he is working in M/s.KMMI ISPAT Private Limited and incharge of Halavarthi, Koppal. On 2.12.2008, he had purchased equipments for KMMI Ispat factory for a sum of Rs.40 lakhs and he has paid Rs.80,000/- as tax and he was transporting the said equipment from Raipura to Koppal in a lorry bearing CG-04/DA-2645. The lorry reached Dhulkhed commercial tax check post on 7.12.2008 at about 2.00 p.m., The officers of the check post intercepted the vehicle and asked for illegal gratification which was intimated by the driver of the lorry to him. He has told the driver to settle with the officers by paying Rs.1,000/- or Rs.2,000/-. But, the driver replied that the officers are not agreeing for the small sum and they have told him to visit the check post. Accordingly, the complainant along with the Product Engineer Sri K. Mani visited the check post on 8.12.2008 and met Sri Ananthanarayana. He requested Sri Ananthanarayana but

he demanded a sum of Rs.15 lakhs. Negotiations took place and the Commercial Tax Officer demanded minimum of Rs.5 lakhs and he was not agreeable for the same and therefore, he took the help of one Sabbir Huseni of Koppal. He assured that he would visit the check post and negotiate further. On 10.12.2008, one Padmanabha was the in-charge of the check post. He demanded a sum of Rs.10,20,000/- and intimated the same to Sabbir Huseni. The said Padmanabha intimated the same to Sabbir Huseni over telephone and he also told that the said amount will be shared among himself, Dalwai and Ananthanarayana and he demanded minimum of Rs.5 lakhs. The complaint averments also reveal that immediately, the amount of Rs.5 lakhs is to be arranged, for which Sabbir Huseni replied that he has arranged Rs.3 lakhs and another Rs.2 lakhs he would arrange and pay the same. The accused replied that the amount is to be paid before morning otherwise, things would be different.

4. Since the complainant was not interested in parting away illegal gratification of Rs.5 lakhs, he lodged a complaint initially with Bagalkot Lokayuktha police, which was then transferred to Vijayapur Lokayuktha Police. After understanding the genuineness of the complaint averments, the Lokayuktha Police arranged for the trap. The police secured two independent witnesses for the purpose of trap and explained the contents of the complaint and collected Rs.5 lakhs, the currency notes consisting of Rs.500/- and Rs.1,000/- and smeared the phynopthelene powder and explained the panch witnesses about the intended trap and also shown the reaction of the phynopthele powder with the colour less sodium corborate solution. Experimental mahazar was drafted and thereafter, the complainant and shadow witness were sent to the office of the accused.

5. On 10.12.2008 at about 5.00 a.m., the raid party along with complainant and shadow witness were sent to Dhulkhed Check post, the office of the

accused. After handing over the tainted money to the accused and after accused kept the same in the almirah in the office, the complainant came out at about 5.20 a.m., and gave a pre-designated signal to the raid party. Immediately, raid party entered the office of the accused and enquired about the tainted money and accused shown that he has kept the amount in the almirah. The amount of Rs.5 lakhs was taken out by the accused and colour test was conducted. The colour less liquid turned into pink after the accused washed his hands in the colour less liquid. The samples were collected and tainted money was seized and it was compared with the details mentioned in the experimental/entrustment panchnama and accused was arrested. Accused gave an explanation on the spot itself in writing, stating that the said money was collected by him towards the part penalty levied in respect of the equipment being carried in the lorry. Raid party was not satisfied with the explanation.

6. Police thereafter, produced the accused before the jurisdictional Special Judge and conducted detailed investigation. After thorough investigation the police laid charge sheet against the accused for the aforesaid offences.

7. Presence of the accused was secured by the Special Judge and necessary charges were framed. The accused having understood the substance of the charge, denied the charge and pleaded not guilty. Therefore, trial was held. In order to establish the case of the prosecution, in all 8 witnesses were examined as PWs.1 to 8. 35 documents were relied on by the prosecution which were exhibited and marked as Exs.P-1 to P-35. 13 Material objects were also marked on behalf of the prosecution as MOs.1 to 13.

8. On conclusion of the prosecution evidence, accused statement as contemplated under Section 313 Cr.PC. was recorded. Accused denied all the incriminatory circumstances but has furnished the written submissions

stating his version about the incident. Written submissions reads as under:

"I, B.M. Padmanabha, CTO take an oath in the name of God and affirm as under:

I was working as Commercial Tax Officer at Sales Tax Check post, Dhulkhed, Indi Taluk, Vijayapura Distict from June-2007 to December 2008. I was on duty in the above check post on 09/12/2008 and 10/12/2008. My other colleague Sri. K.G. Ananthanarayana, CTO was on duty on 07/12/2008 and 08/12/2008. He had detained one vehicle bearing No.CG-04/DA-2645 by issuing GC Endorsement bearing No. CTO/STCP/KGA-824/2008-09, dated: 07/12/2008. The said officer has sought Certain clarification and confirmation from the consignee.

Sri. K.G. Ananthanarayana, CTO was on duty on 07/12/2008 and 08/12/2008 and notice was issued by him and I am not aware as to what went on between him, the lorry driver and Sri. K. Mani, Project Engineer who had met Sri. K.G. Ananthanarayan on 07/12/2008 and 08/12/2008. The reason for demanding Rs.15,00,000/- or Rs.5,00,000/- is not known to me, since the notice issued by him and I am in no way connected in this case.

I was on duty on 09/12/2008 and 10/12/2008 and as an officer on duty I was bound to Clear pending cases as per instructions of my colleague officers and collect penalty and release vehicles accordingly.

The brief facts of the present case are as under:

Every dealer or every non-resident dealer who is willing to carry on business or works contract is required to obtain registration under section 22 of the Karnataka Value Added Tax Act, 2003 and file returns and pay taxes accordingly. In the present Case the consignor M/s. Industrial Technical Consultancy located at Raypur, Chattisgarh was awarded turnkey project worth Rs. 40,00,00,000/- to procure, erect maintain and transfer certain industrial machinery by M/s. KMM Ispat, Halavarti, Koppa Districtl. In partial fulfillment of this project M/s.Industrial Technical Consultancy Raypur was transporting machine worth Rs.40,80,000/- including CST @ 2%. In fact, M/s. Industrial Technical Consultancy had to obtain registration under the KVAT Act, 2003 before executing any works contract in the State of Karnataka and liable to pay Tax as per entry No. 5 of the 6th schedule of the Act. But, they have failed to do so, in the context of which GC endorsement referred above was issued by Sri. K.G. Ananthanarayana, CTO for seeking conformation either by the consignor M/s. Industrial Technical Consultancy or consignee M/s.

KMM Ispat, Halavarti. But, none of them came forward to confirm the transaction and to admit tax liability by producing relevant document. On the contrary the driver of the vehicle and Sri Subramanyan project Engineer sought to solve the problem and in trying to bribe the officers working in the check post and they have tried to evade payment of taxes due to the State of Karnataka.

In the instant case, as per Section 53(12) of the KVAT Act, 2003, penalty at double the rate of tax was payable on the value of the goods in the event of failure to confirm the transaction as detailed below:

- a) Value of the goods Rs. 40,80,000=00*
b) Penalty (@ 12.5 X 2 = 25% Rs. 10,20,000=00

I have told this amount to be paid as per law if the consignee fails to confirm the transaction by producing relevant documents. It may kindly be noted that, the amount of Rs. 10,20,000/- was proposed to be paid as penalty only and not otherwise as it was left to Sri. K.G. Ananthanarayana, CTO who had issued notice either to levy penalty, reduce penalty or release the vehicle without any penalty and all discretion was vested with him as an authority to issue notice and pass orders deemed fit by him. Therefore, I once again reiterate that, I am not involved in this case in any way and I have proceeded to dispose off the notice as per the instruction of Sri. K.G.

Ananthanarayana, CTO who had issued notice. It is best known to Sri Ananthanarayana, CTO as to why only Rs.5,00,000/- was to be collected when the liability was Rs. 10,20,000/-.

The complainant came to the check post in the early hours of morning on 11.12.2008 and requested me to release the vehicle after collecting Rs.5,00,000/-. I asked him if they are filing any objections to the notice issued by Sri. K.G. Ananthanarayana CTO and he replied that, they have already filed papers. I checked the file and found no papers filed. At this juncture the complainant kept the money on the table and ran away outside for the reasons best known to him and I was forced to keep the amount of Rs. 5,00,000/- in the Amirah, for safe custody since the Sales Tax check post, Dhoolked is an open check post and any amount kept on the open table is likely to be taken away very easily. Therefore, in the interest of safe guarding Government money it was kept in the almirah. After this the Lokayuktha authorities came to the check post and informed me that, I was trapped in anti corruption case against the complaint filed by one Mr. Subramanya and proceeded to conduct the other procedures.

It may kindly be noted that, in this case notice was issued by Sri. K.G. Ananthanarayana, CTO and vehicle was released by Sri. C.S. Dalawai, CTO and K

G. Ananthanarayana, CTO who was in Vijayapur on 11/12/2008 absconded for about 20 days and he did not turn-up to duty until he got anticipatory bail.

I have worked in Sales Tax Check Post, Dhulkhed from June 2007 to December 2008 and during this period and in my shifts only the Superintendent of Police Lokayukta, Vijayapur has visited the check post for three time and the Dy.S.P., Lokayukt,a Bagalkot who has investigated this case also visited once and Conducted thorough check and found no discrepancies as such. This itself shows that during my shifts no omissions were committed in discharge of my duties.

What is stated above is true to the best of my knowledge and belief and understanding the correctness of my statement I have signed below."

9. The learned trial judge heard the parties in detail and considering the oral and documentary evidence on record and also the explanation offered by the accused referred to supra passed an order of conviction.

10. Being aggrieved by the same, the accused has preferred this appeal.

11. In the appeal memorandum, following grounds have been raised:

"GROUNDS

➤ *The impugned Judgment of conviction and order of sentence passed by the trial court for offences U/Sec. 7 and 13(2) of P.C. Act is manifestly illegal, arbitrary and against the facts and evidence on record and also against the well established principles governing the P.C. Act and the code of Criminal procedure hence deserves to be set aside.*

➤ *The court below has failed to appreciate that, the prosecution case and the evidence adduced on behalf of it is riddled with bristling inconsistencies, discrepancies and contradictions. In fact, there is not even an iota of evidence, let alone prima-facie evidence to connect the appellant with the alleged incident and the trial court has failed to appreciate the evidence in its right perspective and hence the Judgment of the trial court below has resulted in grave miscarriage of justice.*

➤ *That, the Trial Judge failed to see that the charge that the appellant demanded Rs.5,00,000/- and in furtherance thereof accepted Rs.5,00,000/- as illegal gratification from PW1 as a motive or reward for doing an official act in his favour and thus abused his position as a public servant is not at all proved as required under law.*

Hence the conviction and sentence cannot be sustained. It is humbly submitted that it is a definite case of the prosecution that it was one Narayan CTO who intercepted the vehicle that was carrying the equipment's of the complainant and it was he who put a demand of Rs. 10,20,000/- to the driver of the said vehicle and he was infact insisting to talk to PW1. It is borne out from the records that on that date i.e., on 08-12-2008, the present appellant was not on duty at Dhulkhed Check Post, so the question of demanding bribe by the present appellant herein in the first place doesn't arise at all and secondly it is the version of the prosecution that it was one Shabbir Hussain who talked to the accused on phone on behalf of PW1 for the release of the vehicle that was seized and the accused demanded Rs.5 lakhs as bribe to the said Shabbir Hussain. Very shockingly the trial court has neither examined Shabbir Hussain nor the investigating authority produced any telephonic records to prove the said conversation between Shabbir Hussain and the accused and the prosecution has not produced even iota of material let alone credible to substantiate that accused at ay point of time put a demand for bribe from the complainant. Such being the case the prosecution has miserably failed to prove the basic ingredients of Sec.7 and 13(2) of Prevention of Corruption Act that the accused demanded and accepted illegal gratification to do an official favour.

➤ *That, the testimonies of PW1 the complainant and PW3, the so called pancha to the alleged trap*

panchanama Ex.P-19, in fact destroy the very fabric of the prosecution case. PW2 the shadow witness has in unambiguous terms say that ExP-19 the trap panchanama and ExP8 entrustment panchanama were prepared and signed in Lokayukata office at Bagalkot on 11-12-2008. Furthermore, the inherent contradictions between PW1 and 2 as regards to the raid, the trap and preparation of documents cast's a serious doubt regarding the credibility of the prosecution case as regards to the recovery of alleged tainted currency notes from the office of accused. Furthermore, the trial court infact in one breath says that the PW1 and PW2 are credible witnesses and in another breath says that the major contradictions appearing in their evidence is because of the fact that the accused had won over these witnesses. In fact the very presence of PW2 at the time of alleged trap is highly doubtful and there is nothing on record to show that notice /letter was issued to their office to depute them for such purpose. Under the Circumstances and in the absence of the crucial witnesses PW2 admitting that PW1 not producing notes, the say of PW1 & PW2, the panch witness as well as statement in Panchanama regarding production of such notes and washing of hands of the complainant and others cannot be believed and acted upon. The trial court ought to have rejected the testimonies of PW1 and PW2 and given a clean chit to the accused as these two witnesses destroy the entire fabric of the prosecution case.

➤ *It is very pertinent to mention here that the ExP25 the so called sanction order to prosecute the appellant herein is vitiated illegal and bad in law as it is an admitted case of the prosecution, that PW5 Chandrashekhar, the sanctioning authority has admitted in an un-ambiguous terms that the original sanction order dated 25-08-2010 was modified at the request of PW8 the investigating officer and thereon he issued a fresh sanction order on 04-10-2010. It reflects a clear non application of mind by the sanctioning authority and it could very easily made out that PW5 a senior most officer of the Department who was given the responsibility of a sanction authority was acting at the peck and call of the investigation officer of this case and thus ExP-25, the sanction order ought to have been thrown out of the court at the very out Set and it is crystal clear that a concerted effort was made by PW8 Somappa Kumbar, the IO to some how fix up this accused by dropping the other two officers who demanded the bribe and who were named as prime accused in the FIR and thus the Judgment of the trial court on all counts is vitiated and liable to be set aside.*

➤ *That, the trial court has proceeded on assumptions, surmises and conjectures to base its judgment and the court below has given a complete goby to the basic concept of proof beyond the reasonable doubt and this has resulted in grave miscarriage of justice.*

➤ *That, viewed from any angle, the impugned Judgment and order of sentence recorded by the Spl. Judge*

/Prl. Sessions Judge Vijayapur in Spl. Case (LOK) No.11/2010 convicting the appellant for the offences with which he was charged, is even otherwise illegal, improper and deserves to be set aside.

12. Reiterating the above grounds, Sri Anil Kumar Navadagi, learned counsel for the appellant vehemently contended that the learned trial judge has grossly erred in convicting the accused for the aforesaid offences and sought for allowing the appeal.

13. He further pointed out that the explanation offered by the accused that the tainted money recovered by the investigating agency was in fact paid by the complainant towards the part penalty amount of Rs.10,20,000/- which was in accordance with law and accused has been falsely implicated in the case.

14. He also pointed out that the notice came to be issued marked at Ex.P-31 by another officer Sri Ananthanarayana on the date of withholding the lorry of the complainant company. The lorry carried the equipment mentioned in the complaint was actually

intercepted by Sri Ananthanarayana, who was in-charge of the check post. Though Dalwai and Ananthanarayana were also initially shown as accused persons in the FIR, the Lokayuktha Police have dropped the names of Dalwai and Ananthanarayana and charge sheet came to be filed only against this accused who had no role in intercepting the lorry. Actually, he has been made as scapegoat in the whole incident though he is no way connected with the incident or issuance of Ex.P-31 notice and as a dutiful officer, he only collected the part of penalty amount from the complainant and sought for allowing the appeal.

15. He also pointed out that when there is no demand made by the accused in a sum of Rs.5 lakhs, the question of acceptance of Rs.5 lakhs by the accused would not arise at all. Therefore, the prosecution has not established the demand and acceptance of the illegal gratification which is a *sine qua non* for convicting the accused for the offence punishable under Sections 7,

13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and sought for allowing the appeal.

16. Per contra Sri Subhash Mallapur, learned counsel for the respondent Lokayuktha supported the impugned judgment. He further contended that the question of proof of demand in a matter of this nature would not arise as the acceptance of huge sum of money pre-supposes the demand. He further pointed out that if the accused was not at all interested and no way connected with the intercepting the said lorry which was carrying the equipment of the complainant to be delivered in Koppal, why did he deal with the said file, which was actually dealt by Sri Ananthanarayana, is a question that remains unanswered by the defence.

17. Further, Sri Mallapur contended that the explanation offered by the accused cannot be countenanced in law as there was no initiation of penalty proceedings at all under the KVAT Act, 2003 and when there is no proceedings at all, the question of complainant

paying penalty would not arise at all and therefore, the explanation is not only illusory, but to be treated as self serving statement, which is made with an intention to escape away from the clutches of law.

18. He further argued that the learned trial judge considered the explanation offered and assailed appropriate reasons in rejecting the explanation offered by the accused and tainted money having been seized from the custody of the accused and colour test having stood positive, and the work of the complainant was very much pending in the office of the Commercial Tax, all ingredients to attract the offence under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, has been established by the prosecution by placing cogent and convincing evidence on record and sought for dismissal of the appeal.

19. In view of the rival contentions, the following points would arise for consideration:

(i) Whether the prosecution has successfully established all ingredients to attract the offence punishable under Sections 7, 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988, beyond all reasonable doubt?

(ii) Whether the impugned judgment is suffering from legal infirmity or perversity and thus calls for interference?

(iii) Whether the sentence is excessive?

20. In the case on hand, the Trial Court framed the following charges based on the charge sheet materials:

CHARGE

I Ashok S Gadag B.Com.,LL.B. The Special Judge, Bijapur, do hereby charge you:

*Padmanabha
S/o Melagiriappa Bommanahali,
Age: 53 yrs, Occ: Commercial Tax Officer
Dhulkhed Check Post, Vijapur District.*

As follows:

That, you accused Padmanabha, on 10.12.2008 being a public servant, while working

as the Commercial Tax Officer in Dhulkhed Check Post, Bijapur District demanded bribe of Rs.5.00 Lakhs from the complainant for releasing the KMMI Ispat loaded lorry bearing No.CG-04/DA-2645 stopped by you in the said check post and on 11.12.2008 at 5.20 pm., you have received the said bribe amount of Rs.5.00 lakhs from the complainant as gratification other than legal remuneration as a motive of reward for doing the said official favour and thereby committed an offence punishable u/s. 7 of the Prevention of Corruption Act, 1988 and within my cognizance.

That, you on the above said date, time and place, being a public servant committed criminal misconduct by abusing your position as the Commercial Tax Officer in Dhulkhed Check Post, Bijapur District and obtained pecuniary advantage of bribe amount of Rs.5.00 Lakhs from the complainant for releasing the KMMI Ispat loaded lorry bearing No. CG-04/DA-2645 and you thereby committed an offence punishable 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and within my cognizance.

And I hereby direct that, you be tried by me on the aforesaid charges."

21. Accused pleaded not guilty and therefore, the prosecution examined 8 witnesses to establish its case.

22. Among them, PW-1 Subramanian is the complainant. He has deposed before the Court in line with the complaint averments, experimental/entrustment mahazar and Trap mahazar, with graphic details as to how the incident has occurred. He has also deposed that the lorry bearing No.CG-04/DA-2645 was carrying the equipment to be delivered at Koppal from Raipura. The lorry was intercepted on 7.12.2008 by Ananthanarayana which was intimated by the driver of the lorry. Initially he was not interested in getting into any hassles. Therefore, he has told the driver to settle the matter amicably with the office by paying Rs.1,000/- or Rs.2,000/-. However, the matter did not resolved and the driver intimated the complainant to visit the check post and resolve the matter. Accordingly, the complainant along with Sri Mani visited the check post on 8.12.2008 and requested the officers to release the vehicle. However, the request was not heeded

to. Subsequently, the complainant took the help of Sri Shabbir Huseni from Koppal in getting the vehicle released from the check post. When all their attempts failed and when the accused insisted that a sum of Rs.5 lakhs is to be paid as illegal gratification, the complainant approached the Lokayuktha Police and lodged the complaint. These aspects of the matter are borne out by record in the form of complaint averments and also in the form of oral testimony of PW-1. He also deposed about the successful trap.

23. In his cross examination, it is elicited that he is a Science graduate and he is not acquainted with Kannada language. It is further elicited that he does not remember the name of the officers, whom he met on the next day i.e., on 8.12.2008. He admits that his factory does not have 'TIN number' and therefore, they told that they have to pay Rs.40 lakhs as penalty. The project report was demanded by the officials and he has obtained the same from his office through FAX and gave it to the

officers of the Commercial Tax Officer. It is further elicited that the total project cost is Rs.40 crores and on the date of incident, the lorry carried a machine worth Rs.40 lakhs. He also admits that accused told him to pay Rs.10,20,000/- as the penalty. He admits that in this regard, he has spoken to his higher officials, but the higher officials told that there is a valid TIN number to the factory, there is no need to pay Rs.10,20,000/-. He admits having received Ex.P-31 through the driver. He also admits that on the date, when he visited the Commercial Tax Office accused was not present. He admits that he has not spoken to the accused face to face and he has only conversed with the accused over telephone. He admits that he did not know that there was a Lokayuktha office in Vijayapur. He admits that he has met the Lokayuktha office in Koppal and visited Bagalkote Lokayuktha office on the same day at about 4.30 p.m. He admits that Mani is the scribe of the complaint. He admits that he has given a complaint against Padmanabha, Dalwai and Ananthanarayana. He also admits charge sheet is not

filed against Ananthanarayana and Dalwai. Further suggestions are denied by him. He also denied the suggestion that a false complaint has been lodged against the accused.

24. PW-2 Sangamesh is the shadow witness, who has accompanied the complainant at the time of handing over the tainted money to the complainant and at the time of trap. He has deposed in line with the contents of experimental/entrustment mahazar and trap mahazar. He has specifically deposed before the Court that on 11.12.2008, early in the morning, he has accompanied the complainant to the office of the accused. He has specifically stated that there was a cane chair, on which the accused sat in the room and the complainant, Mani and Shabbir Huseni were sitting on a cot which was there in the said room and he stood near the door. The complainant again requested the accused to release the lorry, at that juncture, the accused demanded Rs.5 lakhs and the complainant handed over the tainted currency

notes to the accused. Accused took the same and kept the same in the second shelf of the almirah. Thereafter, the complainant came out and gave a pre-designated signal to the raid party. Raid Party immediately came inside the office along with another co-pancha - Shankar Matt and accused was apprehended and tainted currency notes were recovered from the accused and seized the same.

25. Colour test was conducted and colour less liquid turned into pink as is demonstrated during entrustment mahazar and police seized the same and drafted Trap mahazar.

26. In his cross examination, he has denied that he has given a false evidence as per the instructions of the Lokayuktha Police.

27. Sri Chandrashekar Dalwai another officer of the Commercial Tax, who is one of the FIR named accused, is examined by the prosecution as PW-3. He has deposed that he has worked as Commercial Tax Officer in between 2007 to December 2008 in Dhulkhed check post

and he is acquainted with the accused and also Ananthanarayana. It is his case that on 11.12.2008 at about 8.00 a.m., he had the duty in the Dhulkhed check post and he marked his attendance at about 8.00 a.m., on 11.12.2008. He further deposed that accused was the Commercial Tax Officer on duty from 10.12.2008 till 8.00 am. on 11.12.2008. He has also deposed that Saudatti was the Inspector and IG Medli was the Second division Assistant and AA Kavatekar was the peon. When he went into the check post for duty, the trap proceedings were in progress and apart from the trap amount of Rs.5 lakhs, there was another sum of Rs.1,15,815/- in the almirah shelf. He has specifically deposed that the penalty amount collected would not be kept in the almirah and it would be kept in a separate locker.

28. The Lokayuktha Police collected the attendance register and GC register and other documents and he identified the same and they were marked as Exs.P-20 and P-21.

29. In his cross examination, he admits that his name and the name of Sri Ananthanarayana were also included in the FIR and both of them have obtained bail from the court. He admits that Ex.P-31 is under the signature of Ananthanarayana. He admits that the police have recorded his statement and there is a separate almirah for each of the Commercial Tax Officer in the office. He denies the suggestion that accused has not kept Rs.1,15,815/- in his locker. He denied the suggestions that the penalty amount would not be kept in a safe locker.

30. Sri Sangappa Ramanna Poojari is examined as PW-4. He has deposed that he was worked as Commercial Tax Officer between 13.1.2009 to 26.7.2011 and at the request of the Lokayuktha police, he has handed over the attendance register for the period of 7.12.2008 to 11.12.2008 and he identified the same as Ex.P-22 and P-24. His evidence is formal in nature.

31. Sri M.R.Chandrashekara Aradhya, Retired Under Secretary to Finance Department (Commercial Tax) is examined as PW-5. He is the sanctioning authority who issued the sanction order vide Ex.P-25.

32. In his cross examination, he admits that to accord sanction to prosecute or not, is the discretionary power vested with the Government. He answered that he received the FIR and other documents pertaining to the case and initially, the FIR contained the names of three officers and as per the Government order, the office has kept all the three officers under suspension. He also answered that he gave the sanction order to Lokayuktha to prosecute the accused alone. He admits that he does not know the administrative matters of commercial tax offices. He has answered that he has read the FIR, mahazar and thereafter, accorded sanction.

33. Sri Jagadish Shivaji Narayankar, is examined as PW-6. He is the PWD engineer, who has

prepared the spot sketch vide as Ex.P-26. His evidence is formal in nature.

34. Sri B. Balaraj is examined as PW-7. He is the Police Inspector, who received the complaint, registered a case in Crime No. 14/2008 of Bagalkot Lokayuktha Police with a merno and based on the said memo he registered a case in Crime No. 13/2008 in Lokayuktha office, Vijayapur. His evidence is also formal in nature.

35. Sri Somappa Kambar is examined as PW-8. He is the retired Superintendent of Police and head of the raid party. He deposed about trapping of the accused. He further deposed that after receipt of the complaint, he verified the genuineness of the complaint and thereafter, prepared entrustment mahazar, trap mahazar, and sent PWs.1 and 2 to the office of the accused on 11.12.2008 at about 5.00 am. After receiving the pre-designated signal from the complainant, he raided the office of the accused and accused was trapped. Thereafter, he conducted the

colour test, and arrested the accused and investigated the matter in detail and filed charge sheet against the accused.

36. In his cross examination, suggestions made to him that initially FIR was filed against Ananthanarayana, and Dalwai as well as the accused is admitted by him. He admits that as per Ex.P-20, when the lorry was intercepted, the accused was not on duty and Ananthanarayana was on duty and he is the person who initially demanded the illegal gratification from the complainant. It is further elicited from Ex.P-28 complaint, that it is the Ananthanarayana who demanded the money. On 7.12.2008, it is Ananthanarayana who issued the GC notice vide Ex.P-31. It is also elicited that initially, case came to be registered by Bagalkote Lokayuktha Police and on the same day and at the same time, there was no case registered by Vijayapur police. He denied the suggestion that the raid and trap was a mock raid and trap and a false charge sheet has been filed against the accused. The

above evidence on record is sought to be re-appreciated by the learned counsel for the appellant.

37. This Court considered the above material evidence on record meticulously in order to re-appreciate the same. As could be seen from the above material evidence on record, the prosecution case mainly hinges on the oral testimony of the complainant and shadow witness. It is now well settled principles of law and requires no emphasis that in order to establish an offence under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act, prosecution has to establish the following ingredients:

- Demand and acceptance of bribe money;
- Handling of tainted money by the accused on the day of trap (colour test);
- Work of the complainant must be pending as on the date of trap with the accused.

38. With the above legal requirements, when the material evidence on record is analyzed, the

prosecution case is dependant on the oral testimony of the complainant and shadow witness.

39. In order to prove that there is demand and acceptance, prosecution has mainly relied on the complaint averments coupled with the oral testimony of the complainant. In the case on hand, admittedly, the lorry bearing No. CG-04/DA-2645 was intercepted at Dhulked check post on 7.12.2008 as a routine checkup. The driver of the lorry was required to furnish necessary documents in respect of the equipment carried in the said lorry which was being transported from Raibagh to Koppal. The driver of the lorry could not furnish necessary document/s. Immediately, the driver of the lorry telephoned to the complainant. The complainant told the driver of the lorry to arrive at an amicable settlement with the Commercial Tax Officer by paying Rs.1,000 or Rs.2,000/-. The driver tried to amicably settle the issue, but the Commercial Tax Officers insisted that the complainant should visit the place and get the lorry

released. Accordingly, the driver telephoned to the complainant. The complainant along with Mani visited the Commercial Tax Office on 8.12.2008. He had a discussion with the Commercial Tax Officer. On record, it is elicited that it is the Ananthanarayana, who is the person, who intercepted the lorry and demanded for illegal gratification in a sum of Rs.15 lakhs at the first instance. Ananthanarayana's duty ended on 8.12.2008 and matter could not be resolved on 8.12.2008 as the demand is to the tune of Rs.15 lakhs. The complainant was unable to meet the demand made by the accused. Subsequently, the complainant took the assistance of Shabbir Huseni from Koppal and they tried to negotiate with the Commercial Tax Officer/s. During such negotiations, the accused came into picture. Shabbir Huseni spoke to the accused in respect of the lorry being released. Sri Ananthanarayana, has also issued a Goods Carrier (GC for short) endorsement as per the Karnataka Value Added Tax Act, 2003, [hereinafter referred to as the 'KVAT Act' for short] seeking the documents supporting the payment of

tax to the equipment that was being carried in the lorry. In the GC endorsement marked at Ex.P-31, it has been specifically mentioned that ten days time was granted to furnish the details.

40. TIN number of the supplier i.e., the complainant company was also requested by the Commercial Tax Office at Dhulked check post. The demand of Rs.15 lakhs was intimated to the higher officials of the supplier i.e., the official superiors of the complainant on the ground that the TIN number is not furnished. The superior officials of the complainant specifically told that since the supplier is having a valid TIN Number, the amount of Rs.15 lakhs need not be paid. After thorough negotiations with the accused by Shabbir Huseni, in respect of releasing of the lorry, it was agreed that if a sum of Rs.5 lakhs, as against the penalty amount of Rs.10,20,000/- as per the Act, is paid the lorry would be released.

41. The complainant was not interested in parting with the said amount of Rs.5 lakhs and therefore, they approached initially Bagalkot Lokayuktha Police and then lodged a complaint vide Ex.P-28. After registering the case, Bagalkot police found that Dhulked checkpost comes under the jurisdiction of Vijayapur Lokayuktha Police and accordingly, they transferred the complaint from Bagalkot to Vijayapur Lokayuktha Police Station. Vijayapura Lokayuktha Police thereafter, re-registered the case in Crime No. 13/2008 and then arranged for the trap. Rs.5 lakhs consisting of Rs.1,000/- denomination and Rs.500/- denomination currency notes were secured and phenolphthaleine powder was smeared on all the notes as detailed in the entrustment mahazar. Thereafter, the chemical reaction of phenolphthalein powder with the sodium carbonate solution was demonstrated in the Lokayuktha office in the presence of panch witnesses. Thereafter, trap was arranged and the complainant and Shabbir huseni, Mani and shadow witness visited the office of the accused on 11.12.2008 at about 5.00 a.m., After

going to the office, the complainant again requested for release of the lorry. At that juncture, accused again demanded a sum of Rs.5 lakhs as illegal gratification. The tainted money was then handed over comprising of totally four bundles to the hands of the accused. Accused after receiving the tainted money, kept the same in the second shelf of the almirah, kept in his office. Complainant came out and gave a pre-designated signal to the raid party. Immediately, raid party arrived on the spot and told the accused to handover the tainted money. Accused then took out the tainted money from the almirah and then handed it over to the police and police received the same and conducted colour test. Colour test stood positive as the colour less liquid turned into pink. The Police after collecting samples and coloured liquid seized the same and arrested the accused. During such process, raid party also seized cash of Rs.1,15,805/- which was also kept in the same almirah. Police seized the said amount also and drafted trap mahazar.

42. The complainant, shadow witness have supported the case of the prosecution in toto.

43. The detailed cross examination of the complainant and the shadow witness did not yield any materials to show that the accused has been falsely implicated in the case. In fact, in the cross examination, the complainant has answered that there was a demand made by the accused in respect of the lorry that was intercepted by Ananthanarayana and the amount was settled at a sum of Rs.5 lakhs. Therefore, the argument put forth on behalf of the accused/appellant that there was no demand made by the accused as the file was pertaining to Ananthanarayana who has been shown as accused initially in the FIR and then not charge sheeted, cannot be countenanced in law.

44. Further, in respect of receipt of Rs.5 lakhs on the spot, the accused gave an explanation which is practically similar to the statement made by him under Section 313(5) Cr.PC. referred to supra.

45. In other words, the accused tried to explain the handling of the tainted money by stating that he presumed that the amount of Rs.5 lakhs is the part penalty amount and kept it in the aimirah.

46. In order to appreciate the said defence, it is necessary for this court to refer to Section 53 of the KVAT Act, 2003 more particularly Section 53(12)(a) to (d) which, for ready reference, the said provision is culled out hereunder:

"53(12)(a) The officer in charge of a check post or a barrier or any other officer in respect of any contravention of, or noncompliance with, the provisions of sub-section (2), for which sufficient cause is not furnished, levy a penalty which, -(i) shall not be less than the amount of tax leviable but shall not exceed one and half of the amount of tax leviable in respect of the goods under transport in contravention of 1[clause (c) or] clause (d) of sub-section (2), if a dealer registered under the Act accepts that he is the consignor or consignee of the goods,1. Substituted by Act 6 of 2005 w.e.f. 19.3.2005.(ii)

in cases other than those falling under item (i), shall not be less than double the amount of tax leviable but not exceed three times the amount of tax leviable in respect of the goods under transport .1[Provided that in respect of any goods on which the rate of tax leviable is less than four per cent, the penalty leviable under sub-clause (ii) shall be equivalent to five times the amount of tax leviable.]

(b) Where the amount of penalty leviable is more than the value of the goods, the amount of penalty leviable shall be restricted to such value.

(c) In proceedings under sub-section (10), where the penalty levied is not paid, the carrier or bailee or person-in-charge of the goods vehicle shall jointly and severally be liable to pay such penalty.

(d) Before levying any penalty under this sub-section, the officer shall give the person-in-charge of the goods vehicle or boat, ship or similar vessel, the carrier, the bailee, or dealer registered under the Act, as the case may be, a reasonable opportunity of being heard."

47. It is also necessary for this court to cull out Section 12 and 13 of the KVAT Act:

"12. Deduction of input tax in respect of Capital goods.- (1) Deduction of input tax shall be allowed to the registered dealer in respect of the purchase of capital goods [on or after the commencement of this Act] for use in the business of sale of any goods in the course of export out of the territory of India and in the case of any other dealer in respect of the purchase of capital goods wholly or partly for use in the business of taxable goods. (2) Deduction of input tax under this Section shall be allowed only after commencement of commercial production, or sale of taxable goods or sale of any goods in the course of export out of the territory of the India by the registered dealer

13. Pre-registration purchases.- Deduction of input tax shall be allowed to the registered dealer, subject to the restrictions of Section 11, in respect of tax charged to him by a seller on taxable sale of goods made to him for the purpose of the business within three months prior to the date of his registration provided that no input tax shall be allowed in respect of goods which have been sold or otherwise disposed of prior to the date of registration."

48. On conjoint reading of the above provisions, it is crystal clear that in the event of a

particular transporter/carrier is unable to furnish satisfactory documents to show that the tax has not been paid in respect of the goods that has been carried in the lorry, ship, vessel or the boat, the customs authority or the Commercial Tax Officer has got the authority to initiate penalty proceedings.

49. In the case on hand, the GC note, which is marked at Ex.P-31 is issued by Ananthanarayana. It was he, who has been authorised to deal with the said case further. To that extent, there is some force in the arguments put forth on behalf of the accused/appellant that he is no way connected with the intercepting of the lorry and initiating proceedings. But, if that were to be so, why did he negotiate with Shabbir Huseni over telephone and arrived at a sum of Rs.5 lakhs as illegal gratification and that Rs.5 lakhs would be shared among himself, Ananthanarayana and Chandrashekar Dalwai is a question that remains un-answered. Shabbir Huseni is not possessing any previous enmity or animosity against the

accused to depose falsely against him. Further, without initiating any penalty proceedings, there was no occasion for the accused or for that matter, Ananthanarayana to receive any money towards the penalty.

50. From the above discussions, it is crystal clear that after issuance of the GC note and after expiry of ten days, if no documents are furnished as is required under Ex.P-31, then only, initiation of the penalty proceedings would commence. In other words, GC note came to be issued on 7.12.2008 and thereafter, upto 17.12.2008, there could not have been any penalty proceedings at all. Further, even after 17.12.2008, having regard to the fact that the end point of supply of the equipment being at Koppal, which is more than 100 kilometers away from Dhulked check post, another show cause notice was required to be issued as per sub section (13) of Section 53 of the KVAT Act, giving ten days time to pay penalty. In other words penalty proceedings would have commenced in the case only on 27.12.2008 that too,

only in the event of not furnishing satisfactorily replying to the show cause notice. Further, it is Ananthanarayana would get a right to confiscate the equipment and auction it for the purpose of recovery of the penalty.

51. Further, if the penalty/tax amount is Rs.10,20,000/- as contended by the accused himself in the statement referred to supra, why he would receive only Rs.5 lakhs that too at 5.00 a.m., on 11.12.2008 is a question again that remains un-answered by the accused/appellant.

52. On cumulative consideration of the positive evidence placed by the prosecution in establishing the fact that there was a demand and acceptance of tainted money in a sum of Rs.5 lakhs by the accused on account of the lorry of the complainant being withheld in the check post at Dhulked, the prosecution has discharged its initial burden. Accordingly, prosecution would enjoy the presumption as is found in Section 20 of the Prevention of

Corruption Act. Section 20 of the Prevention of Corruption

Act reads as under:

"20. Presumption where public servant accepts gratification other than legal remuneration.—

(1) Where, in any trial of an offence punishable under section 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 the case may be, as a 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.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be

presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a 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.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

53. On careful perusal of the above provision, the prosecution has successfully established its case and discharged its initial burden by placing necessary oral and documentary evidence on record as discussed supra. Accused knew that it is his responsibility to rebut the said presumption. Accordingly, accused did tried to explain the incident perhaps with an intention to rebut the presumption by submitting the written submissions referred to supra.

54. Though the learned trial judge has not expressed in so many words about the consideration of the explanation in the impugned judgment, this court did consider thoroughly the same in juxtaposition with the provisions of the KVAT Act. On such re-consideration, having regard to the discussions made supra, this court is of the firm opinion that the explanation offered by the accused, is not properly established by placing atleast plausible materials. Therefore, the explanation needs to be termed as not only illusory but also moonshine. Further, MO.10 i.e., Rs.1,15,805/- recovered from the very same almirah of the accused is ordered to be confiscated by the trial court as there was no proper explanation by the accused. Therefore, there is no proper rebuttal evidence on record to doubt the case of the prosecution. Hence, there is no rebuttal to prosecution evidence.

55. Appreciation of the oral testimony of the shadow witness is peculiar in nature. His testimony is always intended to somehow inculcate the accused. However, only on that ground, the oral testimony of the shadow witness cannot be doubted.

56. How exactly the oral testimony of a shadow witness in an offence under the provisions of the Prevention of Corruption Act, is to be appreciated is no longer *res-integra*.

57. The Hon'ble Apex Court in the case of **D. Velayutham Vs. State of Chennai** reported in **(2015) 12 SCC 348** has held at para Nos.8 & 9 as under:

"8. Witnesses who are particeps criminis, on the other hand, correctly carry a lower degree of presumed credibility, their evidentiary motivations sullied by their prior participation in the criminal act precisely where against they subsequently elect to testify. This selfsame distinction and posture may derive sustenance from the decision of a Constitution Bench of this Court in State of Bihar v. Basawan Singh AIR 1958 SC 500, where Their Lordships held that no inflexible rule had been laid down in an earlier Judgment that the evidence of the witnesses of the raiding party must be discarded in the absence of any independent corroboration. Their Lordships opined that:

"if any of the witnesses are accomplices who are particeps criminis in respect of the crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are

not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the Court may even look for independent corroboration before convicting the accused person".

9. It would therefore be a derogation and perversion of the purpose and object of anti-corruption law to invariably presuppose that a trap/decoy witness is an "interested witness", with an ulterior or other than ordinary motive for ensuring the inculcation and punishment of the accused. The burden unquestionably is on the defence to rattle the credibility and trustworthiness of the trap witness' testimony, thereby bringing him under the doubtful glare of the Court as an interested witness. The defence cannot be ballasted with the premise that Courts will, from the outset, be guarded against and suspicious of the testimony of trap witnesses. We are of the opinion that the law hitherto expressed by this Court upholds precisely this exposition."

58. Applying the legal principles enunciated in the above case to the facts of this case, the complainant at the first instance some how wanted to get rid of the

hassles at Dhulkhed check post. Therefore, he directed his driver to pay cash of Rs.1,000/- or Rs.2,000/-. However, when the demand made by Ananthanarayana and the Commercial Tax officials was so high, complainant did not want to be a party for such a demand and therefore, sought the help of Shabbir Huseni. When Shabbir Huseni was also unable to sort out the issue amicably and when negotiations failed, complainant decided to teach a lesson to the commercial tax officials and approached the Lokayuktha Police.

59. Thereafter, trap was laid and trap was successful. Shadow witness being a Government employee did not possess any previous enmity or animosity against the accused, nor did have any special affinity to the complainant party so as to falsely implicate the accused in the case. He has acted as per the direction of the head of the raid party and what transpired in the office of the accused on the date of trap at 5.00 a.m., has been described by him with graphic details. Therefore, his

testimony cannot be brushed aside lightly on the ground of interestedness. Hence, the arguments put forth on behalf of the accused that testimony of the shadow witness cannot be taken into consideration as sacrosanct, and cannot be countenanced in law.

60. It is the common experience that Commercial Tax office, is considered to be one of the the hubs of corruption. Poor and gullible drivers would fell prey for the illegal demands day in and day out. Only when the greed is too high, some cases reach the higher ups or the Lokayuktha. Many cases might have settled amicably. Very few cases of this nature would result in filing of the case and brought to logical end. In some cases, though prosecution is launched with all initial spirit, may not get the required support from the complainant and other prosecution witnesses and the cases end up in acquittal. The statistics published in the National Crime Bureau in respect of the cases filed under the provisions of the Prevention of Corruption Act disappointing. Reasons

may be many. While an innocent needs to be protected by the court of law, it is the equal duty and responsibility of the court of law to punish a culprit. All efforts must be made that real culprit does not escape from the rigors of law.

61. Corruption is a distinct type of offence. It is like a cancer to the society. It eats the social and economical health every second resulting in unimaginable consequences. It is only few officers of the Government misuse their official position forgetting their duty and loyalty to the State, resulting in eroding the economy of the country at large. It is often said that world is not suffering from '**violence of many**'; but is suffering from '**silence of many**'. Therefore, when a true complainant has taken recourse to the legal battle, his testimony cannot be disbelieved on flimsy reasons. The court has to take a pragmatic approach in appreciating the material evidence on record in a particular case.

62. Keeping this in the background when the material evidence on record is analyzed, the prosecution having established that the accused demanded illegal gratification in respect of release of lorry bearing No.CG-04/DA-2645 which was intercepted by Ananthanarayana on 7.12.2008 and the tainted money having been recovered from the custody of the accused, colour test having stood positive coupled with the explanation offered by the accused being not capable of believing, this court is of the considered opinion, that prosecution is successful in establishing all ingredients to attract the aforesaid offences.

63. Therefore, the finding recorded by the learned trial judge that accused is guilty of the aforesaid offences is not suffering from legal infirmity or perversity. Accordingly, Point No.1 is answered in the Affirmative and Point No.2 in the negative.

64. **REG. POINT NO.3:** Learned trial judge has awarded simple imprisonment for 2½ years for Section

7 of the Act and awarded fine of Rs.1 lakh, with default sentence of simple imprisonment for one year; whereas minimum punishment available for Section 7 of the Prevention of Corruption Act is three years. State has not preferred any appeal against the inadequacy of the sentence. Therefore, hands of this court are tied in enhancing the imprisonment period in the appeal filed by the accused.

65. Further, for the offence under Section 13(1)(d) of the Prevention of Corruption Act, the Trial Court has sentenced the accused to undergo simple imprisonment for four years and imposed fine of Rs.1,50,000/-. Since both the sentences are ordered to run concurrently, the mistake crept in while passing the inadequate sentence for the offence punishable under Section 7 of the Act would get into insignificance would only remain on record as an academic in nature.

66. Further, no mitigating circumstances are placed on behalf of the accused to reduce the sentence for the aforesaid offences.

67. Non charge sheeting Ananthanarayana and Chandrashekar Dalwai, who were the FIR named accused would not be a ground to show any mercy for the appellant. Accordingly, Point No.3 is answered in the Negative and following order is passed:

ORDER

The Criminal Appeal is dismissed.

The appellant/accused is granted time till 15.03.2022 to surrender before the Trial Court for serving remaining part of the sentence.

Ordered accordingly.

**Sd/-
JUDGE**

PL*