

(2019) 09 KAR CK 0019
In the Karnataka High Court
Case No : Criminal Appeal No. 1001, 1003 Of 2012

Ramaiah

APPELLANT

Vs

State By Lokayuktha Police, Tumkur

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 11, 13, 13(1)(d), 13(2), 13(1)(d)(i), 13(1)(d)(ii), 20, 20(1)
Code Of Criminal Procedure, 1973 — Section 164, 164(5), 313
Evidence Act, 1872 — Section 32, 114, 157

Citation : (2019) 09 KAR CK 0019

Hon'ble Judges : Mohammad Nawaz, J

Bench : Single Bench

Advocate : S.K.Venkata Reddy, S.G.Rajendra Reddy, Venkatesh S.

Final Decision : Allowed

Judgement

1. These appeals are preferred by accused Nos. 1 and 2 in Special Case No.87/2007 on the file of the Court of the II Additional District and Sessions Judge, Tumakuru, whereby the learned Sessions Judge by Judgment dated 31.08.2012 has convicted both the accused for the offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 [hereinafter referred to as "the P.C. Act" for short].

2. I have heard the learned counsel Sri.

A.H.Bhagwan, appearing for accused No.1 in CrI.A. No.1001/2012 and learned counsel Sri. S.K.Venkata Reddy for Sri. S.G.Rajendra Reddy, appearing for accused No.2 in CrI.A. No.1003/2012 and also the learned Spl.P.P. Sri. Venkatesh S.Arabatti, appearing for the respondent/State.

3. The facts of the case emerging from the material on record as set out by the prosecution are as follows:

The complainant by name C.B. Prakash [P.W.2] is the owner of a tempo trax

bearing reg. No.KA-06/A-3087. He had engaged a driver for the said vehicle and the said vehicle was making trips between Tumakuru-Gubbi for transportation of passengers. Accused No.2 was working as a Police Constable in the City Traffic Police Station [East], Tumakuru. He used to collect Rs.120/- every month as 'mamul' from the complainant and out of the said amount, Rs.100/- was being paid to accused No.1, who was working as Sub-Inspector in the said Police Station. Accused No.2 would keep for himself the remaining Rs.20/-. The accused would see that no cases are registered against the vehicle in respect of which 'mamul' is given. In the previous month, for some reason the complainant had not given the 'mamul' and whenever 'mamul' is not given in respect of a vehicle, the accused would issue notice and used to collect Rs.1,000/- to Rs.1,500/- and thereafter cancel the notice or would file a petty case.

On 08.01.2005, at about 10.30 a.m. the driver of the complainant's vehicle had parked his vehicle near the Town Hall Circle. At that time, the said vehicle was taken to the Police Station by a Police by name Satish. A notice was issued to the complainant by accused No.1 in respect of the said vehicle for carrying excess passengers. When the complainant went and requested accused No.1, he scolded him and told him to hand over Rs.1,500/- to accused No.2 and thereafter to take back the vehicle. When the complainant met accused No.2 and requested him to release the vehicle saying that he has not brought the amount, accused No.2 did not agree and told him to leave the vehicle documents with him and then to take the vehicle. Accused No.2 also told him that the fine would have been Rs.5,000/- to Rs.6,000/- if the number of passengers had been mentioned in the notice. When the complainant requested him to reduce the amount, he brought down the demand to Rs.1,300/- and finally to Rs.1,200/- and informed the complainant to bring the money on Monday or else he would refer the matter to the Court.

Not willing to pay the bribe amount demanded by the accused persons, the complainant approached the Lokayukta Police, Tumakuru on 10.01.2005 and lodged a complaint. A case was registered in Crime No.1/2005 against accused Nos.1 and 2 for the offences punishable under Sections 7, 13(1)(d) r/w. Section 13(2) of the P.C. Act.

The panch-witnesses were secured and an entrustment mahazar was prepared. The 12 currency notes of Rs.100/- denomination smeared with phenolphthalein powder was handed over to the complainant by giving instruction to him to handover the said amount to the accused only if he demands bribe. Thereafter, on that day, since the accused were not available in their office and in their house, the complainant and the panch-witnesses assembled at the Lokayukta Police Station on 11.01.2005 at about 8.30 a.m. Thereafter, the raiding team went to the spot. The complainant and the shadow witness went inside the Police Station where the accused were working. The complainant thereafter came out of the Police Station at about 9.50 a.m. and gave the pre-arranged signal and the Lokayukta Police laid the trap and seized the tainted currency notes of

Rs.1,200/- from accused No.1. A trap mahazar was prepared in the presence of panch-witnesses. It is the further case of the prosecution that as per the instructions of accused No.1 and after collecting the notice from the complainant, accused No.2 received the bribe amount from the complainant and handed over to accused No.1 and accused No.1 after counting the money, kept the same in the right side of his pant packet and thereafter, returned the documents of the vehicle to the complainant. It is the case of the prosecution that the trap was successful as the tainted currency notes were recovered from accused No.1.

After completion of the investigation, charge-sheet was submitted to the Court along with the sanction order obtained from the competent authority to prosecute the accused.

The trial Court framed charges against accused Nos.1 and 2 for the offences punishable under Sections 7, 13(1)(d) r/w. Section 13(2) of the P.C. Act. The accused pleaded not guilty and claimed to be tried.

To establish its case, the prosecution got examined P.Ws.1 to 6 and got marked Exs.P1 to 10 and M.Os.1 to 14.

The defence of the accused was one of total denial. However, they did not choose to lead any evidence on their behalf.

The learned Sessions Judge after considering the evidence and material on record, convicted the accused for the charged offences and passed the following sentence:

i) A1 and A2 are sentenced to undergo R.I. for one year and to pay a fine of Rs.5,000/- each, in default, to undergo further imprisonment for three months each for the offence punishable under Section 7 of the P.C. Act, 1988.

ii) A1 and A2 are sentenced to undergo R.I. for three years and to pay a fine of Rs.5,000/- each, in default, to undergo further imprisonment for six months each for the offence under Section 13(1)(d) punishable under Section 13(2) of the P.C. Act, 1988.

4. Assailing the impugned Judgment and Order of conviction and sentence passed by the trial Court, learned counsel Sri. A.H.Bhagawan, appearing for accused No.1 contended as under:

That the prosecution has failed to prove the case against the accused beyond all reasonable doubt. The impugned Judgment is contrary to law and the evidence and material placed on record. The complainant has not at all supported the case of the prosecution and even the shadow witness who is examined as P.W.3 has given a go-by to the prosecution case. There is no convincing evidence regarding demand and acceptance. The accused has specifically taken a contention that what was received from the complainant was fine amount. Mere recovery of tainted currency notes is not sufficient to prove the charge. The evidence of P.Ws.4 and 5, the panch-witnesses to Ex.P4 does not establish that the tainted

currency notes were seized from accused No.1. P.Ws.4 to 6 are hearsay witnesses. The learned trial Judge was not justified in relying upon the statement of the complainant recorded under Section 164(5) of Cr.P.C. in the absence of the said statement before the Court and without giving an opportunity to the accused to controvert the same. The said statement is not confronted to P.W.2 and the learned Magistrate who recorded the said statement was also not examined. The finding of the learned trial Judge holding the accused guilty is based on assumption and presumption and the same is contrary to law. The prosecution has not seized the receipt book. The sanctioning authority is not adduced as a witness and in the absence of such evidence, the sanction order cannot be relied upon. Even in the departmental enquiry the accused has been exonerated. Hence, the impugned Judgment and Order is liable to be set aside.

In support of the contention raised by the learned counsel appearing for accused No.1, he has relied upon the following decisions:

- 1) AIR 2010 SC 1589 [Banarsi Dass Vs. State of Haryana]
 - 2) 1979 CRI.L.J 1087 [Suraj Mal Vs. The State (Delhi Administration)]
 - 3) (2000)5 SCC 21 [Meena (Smt) W/o. Balwant Hemke Vs. State of Maharashtra]
 - 4) (2016)1 SCC (Cri) 11 [P.Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another]
 - 5) AIR 2007 SC 489 [V.Venkata Subbarao Vs.State, represented by Inspector of Police A.P.]
 - 6) 2002 CRI.L.J. 2787 [Subash Parbat Sonvane Vs. State of Gujarat]
 - 7) (2015)2 SCC (Cri) 249 [M.R.Purushotham Vs. State of Karnataka]
 - 8) (2016)1 SCC (Cri) 19 [Selvaraj Vs. State of Karnataka]
 - 9) 2008(2) KCCR 985 [State by Lokayuktha Police, Mandya Vs. K.M.Gangadhar]
5. The learned counsel Sri. S.K.Venkata Reddy, appearing for accused No.2 contended as under:

That there is absolutely no legal and acceptable evidence to establish the guilt of the accused. There is nothing on record to show that there was demand and acceptance by the accused. Both P.W.2 and P.W.3 who are the material witnesses have turned hostile to the case of prosecution. No amount has been seized from accused No.2. The evidence of P.Ws.4 and 5 does not show that the solution turned pink when the hands of accused No.2 were washed in the sodium carbonate solution. P.Ws.4 and 5 have not stated anything regarding recovery of amount from the accused. Even to draw a presumption under Section 20 of the Act, the prosecution is required to prove that there was demand and acceptance. When the initial burden is not proved by the prosecution, the presumption under Section 20 of the P.C. Act does not arise. There is no application of mind by the sanctioning authority and therefore, the prosecution has failed to prove the

existence of a valid sanction. The accused had been exonerated in the departmental enquiry on the same charges. The trial Court totally misguided itself by relying upon the unmarked statement of the complainant which was recorded under Section 164(5) of Cr.P.C. to hold that due to the pressure by the accused persons, the complainant resiled from his statement. Accordingly, the learned counsel sought to set aside the impugned Judgment.

In support of his contention, the learned counsel for accused No.2 placed reliance on the following decisions:

- 1) 1969 CRI.L.J 409 [Koli Trikam Jivraj and another Vs. The State of Gujarat]
- 2) 1982 G.L.H. 977 [Shri Khimji Kurjibhai Vs. The State of Gujarat]
- 3) Crl.A. No.393 and 396/2012 dated 05.02.2014. High Court of Judicature at Madras [R.Murugesan M.Selvam Vs. State, rep. by The Inspector of Police]
6. The learned Spl.P.P. Sri. Venkatesh S.Arabatti, appearing for the respondent/ State by Lokayukta Police, vehemently contended as under:

The complainant has clearly stated regarding the demand made by accused Nos.1 and 2 in the first information report and the same is not challenged. Exs.P3 and 4 supports the demand and acceptance by the accused. The said documents are signed by P.Ws.3 to 6. P.Ws.4 and 5 have supported the case of prosecution. Both the accused have given their explanation in writing stating that the amount was received towards fine, thus accepting the receipt of tainted currency. However, their explanation has been proved to be false. The trap mahazar and the hand-wash of the accused, wherein the solution turning pink in colour has not been disputed. Even then, the accused have denied all the incriminating evidence appeared against them while they were examined under Section 313 of Cr.P.C. The accused have threatened the complainant and thus persuaded him to turn hostile, which is evident from the statement of the complainant recorded before the learned Magistrate under Section 164 of Cr.P.C. Though it is the defence of the accused that the money has been received as fine towards traffic violation, however, the register does not contain having received the said amount of Rs.1,200/- as fine.

The learned Spl.P.P. further contended that the sanction order which is marked as Ex.P10 is issued by the competent authority i.e., the IGP., Central Division, Bengaluru after going through the records and on being satisfied that there are sufficient material against the accused. Examination of the person issuing the sanction order is not contemplated under law and therefore, there is no illegality in the sanction order and there is a valid sanction order issued by the competent authority in the present case.

The learned Spl.P.P. further contended that the prosecution has proved that the accused received illegal gratification from the complainant and therefore, the Court can draw a legal presumption under Section 20(1) of the P.C. Act. The accused have failed to rebut the presumption. Even if the complainant has not

supported the case of the prosecution, yet the prosecution has been able to prove the demand and acceptance of bribe and recovery of the tainted money from the accused. In the facts of the present case, the Court can accept evidence of the investigating officer who laid the trap, without any corroboration. The sole testimony of the investigating officer can be relied upon. Acceptance of illegal gratification can be proved even by circumstantial evidence. Accordingly, he sought to dismiss the appeal.

In support of his contentions, the learned Spl.P.P. relied on the following decisions:

- 1) AIR 2015 SC 1206 [Vinod Kumar Vs. State of Punjab]
- 2) AIR 2001 SC 318 [M. Narsinga Rao Vs. State of Andhra Pradesh]
- 3) (1980)2 SCC 390 [Hazari Lal Vs. State (Delhi Administration)]
- 4) Crl.A. No.1669/2009 [Supreme Court, dated 28.02.2019 [Mrs. Neeraj Dutta Vs. State (Govt. of NCT of Delhi)]

7. Having carefully considered the evidence and material on record and the contentions raised by the learned counsel appearing for the parties, the following questions would arise for consideration:

- 1) Whether the prosecution has established the guilt of the accused for the charged offences punishable under Section 7, 13(1)(d) and 13(2) of the P.C. Act?
- 2) Whether the Judgment and Order of conviction and sentence passed by the trial Court calls for any interference?
- 3) What order?

8. It is the case of the prosecution that as on 08.01.2005, accused No.1 was working as a Police Sub- Inspector and accused No.2 was working as a Head Constable at Traffic [East] Police Station, Tumakuru. The complainant [P.W.2] was the owner of a Tempo Trax bearing reg. No.KA- 06/A-3087. The accused were in the habit of collecting 'mamul' of Rs.120/- from the complainant every month. Out of Rs.120/-, accused No.1 was being paid Rs.100/- and accused No.2 would keep Rs.20/-. The accused would not register cases against the vehicle in respect of which 'mamul' was given. The accused would issue notice and collect Rs.1,000/- to Rs.1,500/- whenever the 'mamul' was not given. Since the complainant had not given the amount in the previous month, his vehicle was taken to the Police Station on 08.01.2005, on the ground of carrying excess passengers and he was served with a notice and a demand was made by the accused to pay Rs.1,300/- for release of the vehicle, which was finally brought down to Rs.1,200/-. When the complainant pleaded his inability to pay the amount on that day, the accused collected the documents of the vehicle and told him to come on Monday and to collect the documents after paying the bribe. The complainant approached the Lokayukta Police and lodged a complaint on 10.01.2005 as per Ex.P2. It is the further case of the prosecution that after

preparing the entrustment mahazar, the Lokayukta Police laid a trap. Since the accused were not present in the Police Station on 10.01.2005, the Lokayukta Police, the panch- witnesses, shadow witness and the complainant again assembled at the Lokayukta Police Station on the next day i.e., on 11.01.2005 and a trap was laid and the accused were successfully trapped.

9. It is the case of the prosecution that accused No.2 received the tainted currency notes from the complainant at the instance of accused No.1 and thereafter handed over the amount to accused No.1, from whom the tainted money was recovered. The hands and the pant of accused No.1 when washed with the sodium carbonate solution, the solution turned pink. Even the hands of accused No.2 when washed in the sodium carbonate solution, the solution turned pink. The accused gave explanation in writing. Thereafter, trap mahazar was prepared.

10. The prosecution has got examined P.Ws.1 to 6 and got marked Exs.P1 to 10 and M.Os.1 to 14 to establish the guilt of the accused.

11. P.W.1 is a Junior Engineer, working in P.W.D., Tumakuru and he has prepared the spot sketch as per Ex.P1.

P.W.2 is the complainant. The complaint has been marked as per Ex.P2. P.W.3 is the shadow witness, who was working in the Social Welfare Department, Tumakuru. P.Ws.4 and 5 are the panch-witnesses to the entrustment mahazar-Ex.P3 and trap mahazar-Ex.P4. P.W.6 is the Investigation Officer, who has registered the case and transmitted the FIR-Ex.P7 to the Court. He speaks about the investigation conducted, the statement of the complainant recorded by the Magistrate under Section 164 of Cr.P.C., obtaining sanction order-Ex.P10 from the Competent Authority and filing of charge-sheet against the accused persons.

12. P.W.2 is the first informant in this case. He has not supported the prosecution case. He has admitted the signature in Exs.P2 to P4. However, he has stated that he has not lodged any complaint against the accused. He states that he put his signature at the instruction of Tempo Trax union. He was treated hostile by the prosecution. He has denied having given any statement as per Ex.P5. He has stated that he has given Rs.1,200/- to accused No.2 towards fine amount. In the cross-examination by the defence, it is elicited that since he had committed traffic violation, he was served with a notice. Further, it is elicited that the contents of the complaint was not read over to him and he is not aware as to what is written in Exs.P3 and P4. Since notice was issued to him, he paid Rs.1,200/-.

13. P.W.3 is the shadow witness. According to him on 10.01.2005, at about 5.00 p.m. he went to the Lokayukta Police Station and he was requested to co-operate with regard to the complaint received by the Lokayukta Police. He put his signature on Ex.P3. He was informed to come on the next day morning and accordingly, he went to the Lokayukta Office and he was taken to Tumakuru Town Traffic Police Station. However, he has stated that he could not go inside

the police station and he is not aware as to what happened there.

14. P.W.3 has deposed that when the hands of accused No.1 was washed, the solution turned to red colour. He signed Ex.P4. He denied having given any statement as to what transpired. He was also treated hostile by the prosecution. He has denied of having given any statement as per Ex.P6 to the Police.

15. P.W.4 is a panch-witness to Exs.P3 and P4. He has deposed that on 10.01.2005, at request, he went to the Lokayukta Police Station at around 3.00 - 3.15 p.m. At that time, P.W.2 was present and thereafter P.W.2 and P.W.5 came. He remained there till 8.30 p.m. thereafter, he was relieved. Nothing could be done on that day. On the next day, at 7.30 a.m. again he went to the Lokayukta Office.

P.W.2 gave 12 currency notes of Rs.100/- denomination. Its numbers were noted. He signed in Ex.P3 in the Lokayukta Office. Thereafter, when he was with the Police near the mosque, a mobile call came and he went to the Police Station, which was near the mosque. When the hands of accused No.1 was washed in the solution, the same turned pink in colour. M.Os.1 and 2 were prepared. Thereafter Ex.P4 was drawn and he signed the said document.

16. P.W.5 is another panch-witness to Exs.P3 and P4.

He has deposed that on 10.01.2005, he went to the Lokayukta Office as per request. P.Ws.2 and 4 were in the Police station. He noted the serial number of the currency notes of Rs.100/- denomination. His hands were washed in a liquid and the liquid changed to pink in colour. M.Os.3 and 4 were prepared. Thereafter, they went to the Police Station where the accused were working. However, the accused were not present there. They waited till 8.30 p.m. and returned. On the next day 7.30 a.m., they assembled at the Lokayukta Office and from there they went to the Police Station. At about 9.00 to 9.30 a.m., P.W.2 gave signal. All of them went inside. The shirt of accused No.1 was removed. His hands were washed in the solution and the solution turned pink in color. M.Os.1 and 2 were prepared. Thereafter, the accused were arrested and taken to Lokayukta Office. There the Ex.P4 was typed and he signed Ex.P4. In the cross- examination, he stated that he went to the Lokayukta Office between 11.30 a.m. and 12.00 noon. He has forgotten as to who gave the amount. He counted and gave the money to

P.W.2. He has further stated that at about 200 mtrs. from the Police Station, he got down from the jeep.

17. P.W.6, the Investigating Officer has deposed with regard to receiving the complaint on 10.01.2001 [10.01.2005] at about 4.45 p.m. as per Ex.P2 and preparing FIR-Ex.P7 and sending the same to the jurisdictional Court. Thereafter, conducting the trap mahazar as per Ex.P3. He has deposed that the raiding party went to the Traffic [East] Police Station, where the accused were working for conducting the trap, however, since the accused were not there, he postponed the same to the following day. On 11.01.2005 at about 8.30 a.m., the raiding

team again went to the Traffic [East] Police Station and he sent P.Ws.2 and 3 inside the Police Station. P.W.2 came out of the Police Station and gave signal. P.W.2 showed the accused. Thereafter, the hands of accused Nos.1 and 2 were made to dip in the sodium carbonate solution and the solution turned into pink colour. Accused No.1 removed the currency notes from the right side pant pocket. The said pant near the pocket was dipped in the solution and the solution turned pink in colour. The accused gave explanation in writing. The cassette-M.O.14 containing the conversation between the accused and P.W.2 was seized.

18. P.W.6 has stated that on 29.07.2005, P.W.2 complained that the accused have threatened him, hence, he was taken to the Magistrate and his statement under Section 164 of Cr.P.C. was recorded. After completion of the investigation he filed the charge-sheet.

19. As noted above, P.W.2, who lodged the complaint with regard to the demand and acceptance made by the accused has completely turned hostile to the prosecution case. He has denied of having given any complaint against the accused persons. None of the averments made in the First Information Report has been corroborated. On the other hand, P.W.2 has deposed that he paid the fine amount of Rs.1,200/- to the accused. He has admitted that a notice was issued to him to pay the fine amount towards traffic violation. He has further stated that the contents of the FIR is not read over to him and he is not aware of the contents of Exs.P3 and P4.

20. P.W.3 is the shadow witness. He has also not supported the case of prosecution. He has categorically stated that he could not go inside the Police Station and he has not seen what transpired there. His evidence is not helpful to the prosecution to establish that there was either demand or acceptance of illegal gratification by the accused.

21. P.Ws.4 and 5 are the panch-witnesses to the entrustment mahazar Ex.P3 as well as trap mahazar Ex.P4. The evidence of P.W.4 does not indicate that on 10.01.2005 any mahazar as per Ex.P3 was prepared at all. According to him on 10.01.2005 till 8.30 p.m. he was in the Lokayukta Office. However, nothing could be done and on the next day at 7.30 a.m. he again went to the Lokayukta Office. P.W.2 gave the currency notes to P.W.3 [C.W.4]. His evidence is not in conformity with the prosecution case with regard to drawing up of Ex.P3 on 10.01.2005.

22. According to P.W.5, on 10.01.2005 when he went to the Lokayukta Office, P.Ws.2 to 4 were present and on that day Ex.P3 was prepared. Thereafter, they went to the Police Station, where the accused were working and though they waited till 8.30 p.m., the accused did not come and therefore, they returned. On the next day at about 7.30 a.m. all of them assembled at Lokayukta Office and went to the Police Station. The same is also deposed by P.W.6, the Investigating Officer.

23. It is the definite case of the prosecution that after preparing Ex.P3-entrustment mahazar on 10.01.2005, the raiding party along with the

complainant and panch-witnesses went to the Police Station where the accused were working. The said Ex.P3 is prepared between 5.15 p.m. and 6.30 p.m. on 10.01.2005. It is stated that the currency notes were smeared with phenolphthalein powder. Sodium carbonate solution was prepared and necessary instructions were given to the complainant-P.W.2 and shadow witness-P.W.3. The currency notes were handed over to the complainant. However, strangely, when the trap could not be executed on 10.01.2015, the prosecution is silent as to where the phenolphthalein powder smeared currency notes were kept till the next day. Even the evidence of P.W.6-Investigating Officer is silent about the same. It is the specific case of the prosecution that on 11.01.2005, again the raiding party assembled at the Lokayukta Office and from there, at about 8.30 a.m. they went to the Police Station where the accused were working. However, there is nothing to show as to whether the money was handed over to P.W.2 on that day or as to whether a separate mahazar was conducted by re- applying the phenolphthalein powder to the currency notes. If the prosecution case is to be accepted, then the currency notes which were smeared with phenolphthalein powder which had been handed over to P.W.2 on 10.01.2005, remained with him till next day morning i.e., on 11.01.2005 and the said currency notes are received by the accused as bribe. If that is so, then it is difficult to believe the prosecution case as projected by it.

24. P.W.3, who is a shadow witness was supposed to corroborate the evidence of P.W.2. However, as noted above, both P.Ws.2 and 3 have completely turned hostile to the prosecution case. The evidence of P.Ws.4 and 5, the panch-witnesses to Exs.P3 and P4 does not even remotely indicate that accused Nos.1 or 2 have either demanded or accepted the bribe amount from the complainant. In fact, the entire evidence on record is silent about accused No.2 receiving the bribe amount from the complainant. Though their evidence goes to show that when the hands of accused No.1 and his pant were dipped in the solution, the same turned pink in colour, however, in view of the fact that both P.Ws.2 and 3 have turned hostile, their evidence are not sufficient to hold that accused No.1 received the amount as illegal gratification.

25. The defence of the accused is that in view of the traffic violation, the complainant was issued with a notice and he paid the amount towards fine. The said written explanation though not separately marked in the evidence however, the contents finds a place in Ex.P4. The complainant himself has deposed in his evidence that in view of the traffic violation, a notice was issued to him and he paid the fine amount of Rs.1,200/- to accused No.2.

26. To draw a presumption under Section 20 of the P.C Act, it has to be proved that the accused has accepted or obtained etc. any gratification other than legal remuneration, as a motive or reward. In the absence of a proof of demand and acceptance by legally acceptable evidence, the question of raising the presumption would not arise, especially when the contrary is proved. The defence of the accused that the amount was received towards fine is

substantiated by the complainant himself, who has stated that he gave the fine amount of Rs.1,200/- to accused No.2. In such a situation, a contrary view or adverse inference cannot be taken and it cannot be held that what was received by the accused was illegal gratification, in the absence of any acceptable or reliable evidence to the contrary. The burden on the accused does not have to meet the same standard of proof as is required to be made by the prosecution.

27. In Banarsi Das Vs. State of Haryana [supra] the Hon'ble Apex Court has held that;

"Mere proof of recovery of bribe money from the accused is not sufficient to prove the offence. The conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of event is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard. So far as it satisfies the essentials of a complete chain duly supported by appropriate evidence."

28. In Suraj Mal Vs. State (Delhi Administration) [supra] the Hon'ble Apex Court has held that in a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable.

29. In Meena [Smt] w/o. Balwant Hemke Vs. State of Maharashtra [supra] the Hon'ble Apex Court has held that;

"Mere recovery of the currency note and positive result of phenolphthalein test are not enough in the peculiar circumstances of the case, to establish guilt of the accused on the basis of perfunctory nature of materials and prevaricating type of evidence."

30. In Sri. P.Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and Another [supra] the Hon'ble Apex Court has held that;

"Mere acceptance of amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under Sections 7 and 13 of 1988 Act".

31. In V.Venkatasubba Rao Vs. State [supra], the Hon'ble Apex Court has held that;

"The presumption under Section 20 that money was accepted as motive or reward cannot be raised when demand by the accused has not been proved."

32. In Subash Parbat Sonvane Vs. State of Gujarat [supra] it is held by the Hon'ble Apex Court that;

"Mere acceptance of money is not sufficient for convicting the accused under Section 13(1)(d)(i). There must be evidence on record that the accused

'obtained' any amount by corrupt or illegal means".

It is further held that the statutory presumption under Section 20 of the Act is available for the offence punishable under Section 7 or Section 11 or Clause (a) or Clause (b) of sub-Section (1) of Section 13 and not for Clause (d) of sub-Section (1) of Section 13."

33. In *M.R.Purushotham Vs. State of Karnataka* [supra], the Hon'ble Apex Court at para 7 has observed as under:

"7. In such type of cases the prosecution has to prove that there was a demand and there was acceptance of illegal gratification by the accused. As already seen the complainant PW 1 Ramesh did not support the prosecution case insofar as demand by the accused is concerned. No other evidence was adduced by the prosecution to prove the demand made by the accused with the complainant. In this context the recent decision of a three-Judge Bench of this Court in *B. Jayaraj v. State of A.P.* is relevant and it is held as follows:

"8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext.P-11) before LW9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established."

34. In *Selvaraj Vs. State of Karnataka* [supra], the Hon'ble Apex Court referred to the decision rendered in *State of Kerala Vs. C.P.Rao* reported in (2011)6 SCC 450, wherein it is held that "the recovery of tainted money is not sufficient to convict the accused. There has to be corroboration of the testimony of the complainant regarding the demand of bribe and when the complainant is not available for examination during the trial, Court has to be cautious while sifting the evidence of the other witnesses. Charge has to be proved beyond reasonable doubt. Para 12 of the aforesaid judgment is extracted hereunder;

"12. Those observations quoted above are clearly applicable in this case. In the context of those observations, this Court in para 28 of A. Subair (2009)6 SCC 587 made it clear that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is proved to the contrary by proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case. In view of the aforesaid settled principles of law, we find it difficult to take a view different from the one taken by the High Court."

35. In Koli Trikaram Jivraj and Another Vs. State of Gujarat [Guj. H.C] [supra] relied upon by the learned counsel appearing for accused No.2, it is held that "suggestions put in cross-examination are no evidence at all against the accused and on the basis of such suggestions, no inference could be drawn that he admitted the fact referred to in the suggestions".

36. Similarly in Shri. Khimji Kurjibhai Vs. State of Gujarat [Guj. H.C] [supra] it is held that;

"An interested witness like a complainant in a trap case should be corroborated in some material particulars so as to lend assurance to the Court that his proverbially open-to-doubt testimony is also worthy of credit. Further that the suggestions in cross-examination are no evidence. This proposition of law is good both in the case of the prosecution and the defence. A suggestion denied by the witness remains only a suggestion and has no evidentiary value at all".

37. It is the contention of the learned Spl.P.P. that due to the threat given by the accused, the complainant [P.W.2] resiled from his earlier statement and thus the accused has prevailed upon the complainant to turn hostile to the prosecution case. The learned Spl.P.P. would place reliance on the statement of the complainant recorded under Section 164(5) of Cr.P.C. He submits that the said statement was recorded by the learned Magistrate, wherein the complainant has stated that on 14.01.2005 accused No.1 forced him to withdraw the complaint. About 4 to 5 days thereafter two unknown persons demanded him to sign a bond paper containing statement to the effect that he has not given the complaint on his own and it was given at the instance of the employees of the Traffic Police Station and the money paid by him is not bribe, but it was a fine amount etc. Further, when he refused to sign it, they threatened him with dire consequences.

38. The learned Sessions Judge at para No.39 and 40 of the impugned Judgment has extensively relied upon the said statement of the complainant recorded under Section 164(5) of Cr.P.C. The said circumstance was taken into account to examine the reason as to why the complainant turned hostile to the prosecution case.

39. It is relevant to see that neither the statement recorded under Section 164(5) of Cr.P.C. was marked in evidence nor the said statement was confronted to P.W.2 [complainant]. The said statement which was not marked in evidence, could not have been relied upon by the learned Sessions Judge, especially when

the same was not confronted to the complainant. It is not the case of P.W.2 that he had made such a statement before the learned Magistrate. Even otherwise, the statement under Section 164(5) of Cr.P.C. is not a substantive evidence. The Magistrate merely records the statement of the person on a request made by the Investigating Officer. The said statement should be proved in accordance with law by putting across to the complainant.

40. In the decision rendered in R.Murugesan M.Selvam Vs. State (supra) relied upon by the learned counsel appearing for accused No.2, the High Court of Judicature at Madras at para 13 to 17 has held as follows:

"13. The witness who gave the statement under Section 164 Cr.P.C., should tell the facts known to him again as evidence before the trial Court. After narrating the facts, he should depose that he had already stated the same thing earlier before the Magistrate. Then the trial Court Prosecutor should show him the 164 statement and prove it as an exhibit through him.

14. The narration of the events by the witness in the trial Court is Substantive evidence. Then his further statement before the trial Court that he told the same facts earlier to the Magistrate is also a Substantive piece of evidence. To corroborate and prove that he in fact gave a statement to the Magistrate, his 164 statement should be shown and marked and proved through him. Why should it be shown and marked through him? Because Section 157 Evidence Act states:

"157. Former statements of witness may be proved to corroborate later testimony as to same fact.-- In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."

15. A statement recorded under Section 164 Cr.P.C.'73 is a former statement given before an authority, namely a Magistrate who is legally competent to record the statement by virtue of the power conferred upon him by Section 164 Cr.P.C.'73 in order to aid the investigation conducted under Chapter XII of the Code. Section 157 Evidence Act says that the former statement must be proved. Therefore the witness who gave the 164 statement should be made to prove it while marking the statement through him. If the witness admits in his evidence before the Court that he gave a former statement to the Magistrate and the statement shown to him is that, then the 164 statement stands proved. In that case the Magistrate who recorded the 164 statement need not be examined.

16. If the witness completely denies that he gave a former statement before the Magistrate, then the Prosecutor should dispute it and suggestions should be put to him that he did give a statement and his signature in the statement should be marked. If he denies the signature also, then that also should be disputed and suggestions that the signature found in the 164 statement is that of his should be put to him. Thereafter the Magistrate should be examined and the 164 statement should be marked and proved. The Investigating Officer should also

say that on his request the Magistrate recorded the statement of that witness on such and such date. Only this will complete the circle in a case where the witness denies everything. Even if this process is completed and the 164 statement is proved, then also the 164 statement cannot be treated as substantive evidence and the accused be convicted based on it. The Court can only give a finding that the witness who gave the 164 statement is a liar and take action against him for giving false evidence. In *State of Delhi vs. Shri Ram* [AIR 1960 SC 490] it has been held:

"Statements recorded under S.164 of the Code are not substantive evidence in a case and cannot be made use of except to corroborate or contradict the witness. An admission by a witness that a statement of his was recorded under S.164 of the Code and that what he had stated there was true would not make the entire statement admissible; much less could any part of it be used as substantive evidence in the case.

A Judge commits an error of law in using the statement of a witness under S.164 as a substantive evidence in coming to the conclusion that he had been won over."

17. A statement u/s 164 is a corroborative piece of evidence. It corroborates the substantive piece of evidence in the Court, namely the evidence of the witness that he told the same facts earlier to a Magistrate. A corroborative piece of evidence can only corroborate a substantive piece of evidence and not another corroborative piece of evidence. In other words the 164 statement of 'A' cannot corroborate the complaint given by 'A' to the Police that formed the basis for registering the FIR."

41. It is also observed in the aforesaid Judgment that it is not necessary to call the Magistrate to give evidence to prove Section 164 Cr.P.C. statement. The trial Court should summon the Magistrate, who recorded the Section 164 Cr.P.C. statement only when the witness denies or disowned the statement. The said statement recorded by the Magistrate is a public document. Thus the contention raised by the learned Spl.P.P. based on the statement of the complainant recorded under Section 164 Cr.P.C cannot be accepted. The learned Sessions Judge was in error in relying upon the said statement. 42. The learned Spl.P.P. by placing reliance on the decision of the Hon'ble Apex Court in *M.Narsinga Rao* [supra] would contend that "presumption under Section 20(1) of the P.C. Act 1988 is compulsory and not discretionary. It is his further contention that passing of money need not be proved necessarily by direct evidence, but it may also be proved by the circumstantial evidence".

43. In the aforesaid decision, in para 18, the Hon'ble Apex Court has observed as under:

"18. For the purpose of reaching one conclusion the court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted, the court can treat the presumption as tantamounting to proof. However, as a

caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This court has indicated so in Suresh Budharmal Kalani Vs. State of Maharashtra (1998)7 SCC 337 "A presumption can be drawn only from facts- and not from other presumptions-by a process of probable and logical reasoning."

44. In the present case, the presumption raised has been rebutted by the defence. The facts of the present case does not lead to draw a presumption under Section 20 of the P.C.Act and the Court cannot legitimately draw a presumption that the accused received or accepted the tainted currency notes towards illegal gratification. It is no doubt true that charges can be proved by direct evidence or by circumstantial evidence. However, when direct evidence is not available and if the prosecution relies on the circumstantial evidence, then it has to lead cogent evidence in that regard to satisfy the essentials of complete chain duly supported by appropriate evidence. In the absence of direct evidence, the rest of the evidence and the circumstances available in the present case are not sufficient to establish that the accused had accepted the amount as illegal gratification.

45. In Vinod Kumar Vs. State of Punjab [supra], relied upon by the learned Spl.P.P, the Hon'ble Apex Court, has held that 'when an Investigating Officer was a member of raiding party and thereafter himself carried formal investigation, the said investigation was not vitiated'. The said position is not disputed by the defence, in the present case.

46. Relying on the decision of the Hon'ble Apex Court in Hazari Lal Vs State [Delhi Administration] [supra], the learned Spl.P.P. contended that in the facts and circumstances of the present case the evidence of the Police Officer, who laid the trap may be accepted without any corroboration. He contends that since passing of money to the possession of the accused can be proved by direct as well as circumstantial evidence, in the present case, the evidence of the Investigating Officer, who is examined as P.W.6 is sufficient to establish the guilt of the accused. He also submits that in view of Section 114 of the Evidence Act and from the events which took place, the only inference that can be drawn is that money was obtained by the accused as illegal gratification.

47. In the aforesaid decision, the Hon'ble Apex Court has held that "conclusions of the facts must be drawn on the facts of each case and not on the facts of other cases". On appreciation of the evidence of P.W.6, the Investigation Officer, goes to show that on 10.01.2001 at about 4.45 p.m. when he was in the police station, P.W.2 appeared before him and lodged complaint as per Ex.P2. He prepared the FIR [Ex.P7] and transmitted the same to the Court. Thereafter sent intimation to summon P.Ws.3 to 5. His evidence further discloses that on the same day he handed over the phenolphthalein smeared currency notes to P.W.2 and prepared the entrustment mahazar-Ex.P3. The raiding team went to the Traffic East Police Station, where the accused were working and P.Ws.2 and 3

were sent inside. However, they returned saying that the accused are not available. On 11.01.2005 at about 8.30 a.m. again he went along with the raiding team and sent P.Ws.2 and 3 to the said Police Station where the accused were working. At about 9.45 a.m., P.W.2 came out of the said Police Station and gave a pre-arranged signal and showed the accused. The hands of the accused were dipped in sodium carbonate solution and the solution turned into pink in colour. Accused No.1 removed the amount from the right side pocket of his pant.

48. The evidence of P.W.6 does not indicate as to where the phenolphthalein applied currency notes were kept on the previous day i.e., on 10.01.2001, when the accused were not available and when the trap did not materialize. Admittedly, on 10.01.2001, after preparation of the entrustment mahazar the currency notes were handed over to P.W.2. The prosecution is silent as to whether the currency notes were kept in the safe custody particularly when admittedly no separate mahazar entrusting the currency notes to the complainant was prepared on 11.01.2001, the date on which the trap is alleged to have been conducted. The case of the prosecution cannot be accepted in the manner it is projected. In the absence of direct evidence, therefore the circumstantial evidence put-forth by the prosecution is not sufficient to bring home the guilt of the accused. In the instant case, the evidence of the Investigation Officer alone is not sufficient to establish the guilt of the accused beyond all reasonable doubt.

49. The trial Court has observed that the accused persons have not sent notice to the Court so as to enable the Court to register the case and to proceed against the owner or driver of the vehicle for carrying excess passengers.

M.O.13 are the seized documents. It is observed that the notice book at Sl. No.0144026 refers to the Tempo Trax No.KA-06/A 3087, wherein it is mentioned that the driver was found carrying excess passengers violating the permit. It is observed that the original notice is also found along with the duplicate and triplicate copies and more over, it does not state the number of passengers or the excess number of passengers who were carried and the amount of fine the driver or owner is required to pay. However, in the notice it is stated that 'is required to appear before the II Additional Munsiff and JMFC Court on 10.01.2005 for answering the charges'.

50. The learned Sessions Judge has relied upon the complaint wherein the complainant has stated that when he questioned the accused persons as to why the number of excess passengers are not stated, they replied that, if they mention the number of passengers then the fine amount would be Rs.5,000/- to Rs.6,000/- and in order to help him they have not specified the number of excess passengers. The trial Court proceeds further and observes that the said fact supports and corroborates the contents of the complaint and the charges leveled against the accused persons and the same falsifies the case of the accused that Rs.1,200/- received by the accused persons was towards the fine amount. The trial Court has grossly erred in relying upon the complaint without the same

being corroborated by the complainant. The entire approach of the trial Court and the reasons assigned for convicting the accused for the charged offences are not sound and proper. The evidence led by the prosecution are not sufficient to hold that the accused are guilty of the charged offences. The prosecution has failed to establish the charges leveled against the accused beyond all reasonable doubt.

51. It is also the contention raised by the learned counsel appearing for accused Nos.1 and 2 that there is no valid sanction to prosecute the accused and the trial is vitiated in view of non-examination of the sanctioning authority.

52. Though the question regarding valid sanction remains academic in view of the finding recorded that the prosecution has not established the charges leveled against the accused, however, it cannot be held in the present case that non-examination of the sanctioning authority would vitiate the trial. It is not in dispute that the prosecution obtained sanction order as per Ex.P10 which was issued by the I.G.P., Central Division, Bengaluru. The competency of the said officer to issue the sanction order is not disputed. It is seen that considering the report of the Investigating Officer and the entire investigating paper including the statement of the witnesses, the said Ex.P10 came to be issued. The original sanction order is produced and marked through the Investigating Officer. The trial Court has observed that since the concerned officer who has issued the sanction order was not available and his presence could not be secured without an amount of delay, the sanction order has become admissible under Section 32 of the Evidence Act. The said finding cannot be found fault with. The issue relating to sanction was examined by the trial Court. Perusal of the sanction order marked at Ex.P10 prima facie shows that there has been application of mind and the relevant materials have been examined by the concerned officer. On facts of the present case, it has not been shown that there was any defect in the sanction. Non-examination of the sanctioning authority is not fatal when the sanction order contained details showing application of mind by the concerned authority. Therefore, there was valid sanction issued by the competent authority to prosecute the accused.

53. For the foregoing reasons and the discussion, made above, I pass the following:

ORDER

Both the appeals are allowed.

The impugned Judgment and Order dated 31.08.2012 passed in Spl. Case.No.87/2007, on the file of the II Additional District and Sessions Judge, Tumakuru is hereby set aside.

Accused Nos.1 and 2 are acquitted of the offences punishable under Sections 7, 13(1)(d) r/w. Section 13(2) of the P.C. Act. Their bail bonds stand discharged.