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**(1992) 11 MAD CK 0056**  
**In the Madras High Court**  
**Case No : Criminal Appeal No. 854 of 1986**

S. Narayana Pillai

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

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**Date of Decision :** 09-11-1992

**Acts Referred:**

Prevention of Corruption Act, 1988 — Section 5(1)(d), 5(2)

**Citation :** (1993) LW(Cri) 107

**Hon'ble Judges :** Swamidurai, J

**Bench :** Single Bench

**Advocate :** K. Kulandaivelu, for the Appellant; P. Govindarajan, Government Advocate, for the Respondent

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## Judgement

Swamidurai, J.—The accused in Special Case No. 2 of 1985 on the file of the learned Chief Judicial Magistrate and Special Judge, Nagercoil, is the Appellant. The accused was working as Revenue Inspector in Nagercoil Municipality. He was charged for offences u/s 161 of the India Penal Code and also u/s 5(2) read with S. 5(1)(d) of the Prevention of Corruption Act.

2. The case of the prosecution is that the accused had received a sum of Rs. 100/- by way of illegal gratification from Narayanan, P.W.1 (Rs. 50/- for himself and Rs. 50/- for the Bill Collector, in all Rs. 100/-) by misusing his position as a public servant, promising to P.W.1 that he would not raise the house tax. The accused denied the charges and pleaded not guilty. The prosecution has examined P. Ws.1 to 11 and marked Exs.P.1 to 17 and M.Os. 1 to 3. The accused has examined one Shanmugham as D.W.1 and marked Exs.D.1 to D.3 on his side. After considering the oral and documentary evidence, the trial Court found the accused guilty u/s 161 of the Indian Penal Code and u/s 5(2) read with 5 (1)(d) of the Prevention of Corruption Act. The lower Court convicted and sentenced the accused under Sections 5(2) read with 5 (1)(d) of the Prevention of Corruption Act to undergo R.I. for one year. The lower Court has not imposed any sentence u/s 161 of the Indian Penal Code. Aggrieved by the judgment of the lower Court,

the accused has filed this appeal.

3. P.W.1, Narayanan, is an advocate at Nagercoil and he was living at No. 18/6/89 at Krishnan Koil area, P.W.1 has let out his upstairs to Ramakrishnan and the eastern portion to one Sivasubramaniam, P.W.3, on a monthly rent of Rs. 50/- each. According to P.W.1 the half-yearly tax for the house is Rs. 58-80. After the father of P.W.1 had expired, demand notice was issued to P.W.9, Boothalingam, elder brother of P.W.1. But P.W.1 alone was paying the house tax for the said house and at the end of November 1983, Muthuraj, the Bill Collector of Nagercoil Municipality, went to P.W.1 and told him that they were going to raise the house tax from Rs. 58-80 to Rs. 300/- since P.W.1 had let out the house to tenants. When Muthuraj, the Bill Collector told him definitely that the house tax would be raised by the Municipality and P.W.1 asked him as to what was the remedy for not raising the house tax. According to P.W.1, the Bill Collector told him that if P.W.1 would pay a sum of Rs. 50/- for himself and another sum of Rs. 100/- for the accused, then the problem could be solved. After four or five days, P.W.1 went to the Municipal office, met the accused and asked him about the proposed increase of house tax and for which the accused is said to have told P.W.1 that if P.W.1 would pay a sum of Rs. 50/- for himself and Rs. 50/- to Muthuraj, the Bill Collector, then the problem could be solved. P.W.1 deposed that he met the Bill Collector on 13.12.1983 at Municipal office and the said Bill Collector asked him whether he had brought the money. P.W.1 told him that he had no money then and he was having only Rs. 25/- and he paid to the Bill Collector the sum of Rs. 25/- and by accepting the said money, the Bill Collector told him that P.W.1 should pay the balance of Rs. 25/- before the 15th of that month as otherwise the tax should be increased and he also advised P.W.1 to go and meet the accused. On 15.12.1983 at 7.30 A.M., P.W.1 went to the house of the accused and according to him, the accused enquired whether he had brought the money. P.W.1 replied that he had no money then and he would bring the money in the evening. It is also the evidence of P.W.1 that the accused told him that the sum of Rs. 100/- should be paid in the evening at the office as otherwise the tax would be increased. P.W.1 thought that the bribe should not be given to the accused and so he wanted to give a report to the Police. Accordingly, he prepared Ex.P.1 and went to the Anti Corruption Office at Nagercoil at 3.00 P.M., and gave the same to P.W.11, Balasubramaniam, Inspector of Police. P.W.11 the Inspector of Police received Ex.P.1 report submitted by P.W.1 at 3 P.M., on 15.12.1983 and registered the case in Cr. No. 4/83. Then P.W.11 went for two official witnesses and he made arrangement through Bharathan, Inspector of Police, for the trap. Vincent and Abdul Hameed, the officials from the Sub Treasury Office at Nagercoil were sent for that purpose by P.W.11 and P.W.11 introduced the two officials to P.W.1 and gave Ex.P.1 to them for perusal and they read over the same. P.W.1 produced the currency notes to the value Rs. 100/- to P.W.11. He made arrangement for preparation of Sodium Carbonate solution through his subordinate and he explained the significance of the test to P. Ws. 1 and 2 and Vincent. He prepared a mahazar for the proceedings under ExP.2 and

P. Ws. 1, 2, Vincent and Bharathan have signed in Ex P.2. P.W.11 asked P.W.2, Abdul Hameed, to accompany P.W.1 to the house of the accused and P.W.1 gave instructions to P.W.1 to give the money to the accused if the latter had asked for it and to give signal by rubbing his face with hand kerchief. Accordingly, P. Ws.1 and 2 went in a scooter to the office of the Municipality and there the accused was not present till about 7 P.M., and on instructions of P.W.11, P. Ws.1 and 2 went to the house of the accused and to pay the money to the accused and if the accused had received the money, P.W.1 should give a signal by putting on the torch light and P.W.11 also gave a two-cell torch light to P.W.1 for the said purpose. P.W.2 was instructed to hear the conversation between P.W.1 and the accused and to watch the payment of money to the accused. Accordingly, P.W.2 stood near the outer window of the house of the accused and P.W.1 went to the house of the accused at 7:45 P.M. and the accused asked P.W.1 as to whether P.W.1 had got the money, P.W.1 took the amount from his diary and paid it to the accused and the accused counted the same. The accused is said to have asked P.W.1 as to whether P.W.1 had to pay the balance of Rs. 25/- to the Bill Collector Muthuraj and told him that they would not increase the house tax. P.W.1 came out of the house and the accused came out and saw P.W.2. The accused after receiving the money kept it on a Bench in his room and P.W.1 gave the signal with the torch light as instructed and the Superintendent of Police and his party, P.W.2, P.W.3 and P.W.1 entered the house of the accused and the accused was found perplexed. P.W.11 introduced P.W.2 and other to the accused and he arranged for preparation of Sodium Carbonate solution and he directed the accused to dip his fingers. Accordingly the accused dipped his fingers in the solution and the colour of the solution turned into Pink. Then he took the solution in M. Os.1 and 2 bottles separately and asked the accused about the money received by him from P.W.1. The accused showed the currency notes on the Bench and he directed P.W.1 and Vincent to check the numbers of the currency notes with the mahazar prepared by him already. A mahazar was prepared for the proceedings under Ex.P.3 and P.W.11 arrested the accused and prepared an observation mahazar under Ex.P.4 and searched the house of the accused. Ex.P.13 is the rough sketch of the place of occurrence. P.W.11 sent the mahazars and also the M.O.s. to the lower Court on 17.12.1983 and also gave Ex.P.8 requisition to the Court for sending M.O.S 1 and 2 for chemical examination. P.W.11 examined P.W.4 on 21.12.1983 and also brought the Register regarding the house tax. P.W.12 got Ex.P.5 monthly register from the office of the Municipality and found that the house tax by P.W.1 was not at all recommended for enhancement of tax for P.W.1's house. P.W.8, the Head Clerk of the lower Court received Ex.P.8 requisition given by P.W.11 for sending the M.Os. for chemical examination and accordingly he had done so and P.W.8 received Ex.P.10 report of the Chemical Examiner. On 29.1.1985, P.W.11 went to Madras and obtained Ex.P.12 sanction to prosecute the accused and he examined P.W.10, Personal Assistant to the Director of the Municipality. P.W.11 received Ex.P.11 sanction order signed by P.W.10. Subsequently, P.W.11 came to know that the sanction order should be signed by the Director of Municipality and so he got this

signature under Ex.P.12. Ex.P.15 is the Demand Register and Ex.P.16 is the Property Tax Register. On 14.12.1983 and 15.12.1983, the accused was on casual leave and P.W.7 Ranganathan gave evidence about the leave taken by the accused on those days. P.W.11 found from Ex.P.15 that the tax for the house of Boothalingam was only Rs. 58.80. After examining all the witnesses, P.W.11 filed the charge sheet against the accused on 21.3.1985 before the lower Court.

4. The accused when questioned u/s 313 of the Code of Criminal Procedure about the incriminating circumstances available from the evidence of the prosecution witnesses, the accused denied the accusation against him and submitted that he had not received any bribe from P.W.1 and that P. Ws. 1 and 2 deposed falsely against him. He also examined D.W.1 Shanmugham on his side and he also filed his defence in writing. The lower Court after considering the oral and documentary evidence, found the accused guilty and convicted and sentenced him as stated above.

5. The learned Counsel for the Appellant Mr. K. Kulandaivelu, submitted that the evidence of P. Ws.1 and 2 is contradictory in material particulars and that the evidence is not all reliable. The second contention raised by the learned Counsel for the Appellant is that the Sanctioning Authority had not applied his mind by perusing all the material records in this case and that the sanction order itself is illegal. Yet another argument raised by him that P.W.1 himself is an Advocate, that he has got motive against the accused since the accused wanted to raise the property tax from Rs. 58.80 to Rs. 300/- for the house of P.W.1 as the latter had inducted two tenants in two portions of his house on a monthly rent of Rs. 50/- each. According to the learned Counsel for the Appellant that the tax for the house of P.W.1 remains the same for several years without any enhancement and that the Municipality had to increase the property tax proportionate to the rent collected by P.W.1. Another contention raised by the Appellant is that Abdul Hameed, P.W.2, an official trap witness was a collegemate of P.W.1, that P.W.1 was an Assistant Public Prosecutor for about two months in the Court of Judicial Magistrate of Kuzhithurai, that P.W.11 was then working as Inspector of Police at Kottar and P.W.1 had filed the case falsely against he accused with the help of P. Ws.2 and 11. The learned Counsel for the Appellant also pointed out that the case filed by the Police against the Bill Collector Muthuraj under the Prevention of Corruption Act in C.A. No. 861 of 1986 ended in acquittal by the judgment of this Court on 23.6.1992. Even in C.A. No. 861 of 1986, Narayanan, P.W.1 in this case was P.W.1 and the learned Counsel for the Appellant submitted that the evidence of P.W.1 was not accepted in the other Criminal Appeal No. 861 of 1986. I do not accept that contention since the evidence of P.W.1 might not be reliable in the other case but that should not be a criterion for believing or disbelieving the evidence of P.W.1 in the present appeal. But the fact remains that the Bill Collector Muthuraj was acquitted in C.A. No. 861 of 1986.

6. Now I have to consider the veracity of the evidence of P. Ws.1 and 2. Admittedly P.W.1 is an Advocate and the tax for his house is Rs. 58.80. It is not

disputed that the house tax for the house of P.W.1 was to be raised at that time by Nagercoil Municipality and the accused was the Revenue Inspector and the said Muthuraj was the Bill Collector. It is only P.W.1 who had asked the accused and Muthuraj as to the way by which he could escape the enhancement of tax. According to him it is only the Bill Collector Muthuraj told him that P.W.1 should pay him Rs. 50/- for himself and another sum of Rs. 100/- to the accused and if that was done by P.W.1 the problem could be solved. Thereafter only P.W.1 seemed to have met the accused and asked about the proposed enhancement of the tax. It is the evidence of P.W.1 that the accused also reiterated the same to P.W.1 and the accused asked P.W.1 as to whether he had paid Rs. 25/- to Muthuraj and asked to pay the balance of Rs. 25/- before 15th November 1983, P.W.1 being an advocate is expected to know the provisions of Municipal Act and regarding the payment of tax and he should not have asked the accused and Bill Collector as to how he could escape enhancement of tax. It is the case of P.W.1 that on his enquiry the Bill Collector and the accused alleged to have told him to pay a sum of Rs. 50/- to the Bill Collector and another sum of Rs. 100/- to the accused. There is evidence in this case that Abdul Hameed was a collegemate of P.W.1 and P.W.11 was also a Sub Inspector of Police at Kottar when P.W.1 was the Assistant Public Prosecutor. The learned Counsel for the Appellant had contended that P.W.1 had foisted the case against the accused with the help of P. Ws.2 and 11 falsely. The evidence of P.W.2 is that he was standing at the outer window of the house of the accused by hiding himself from the eye sight of the accused. P. Ws.1 and 2 deposed that the accused was found seated in the front hall of his house. The evidence of P.W.2 that he was standing at the outer window of the house of the accused by hiding himself and that he noticed the payment of currency notes, M.O.3 to the accused cannot be accepted since if P.W.2 was hiding himself from the eye sight of the accused, he could not have noted the receipt of the currency notes by the accused from P.W.1. The further evidence of P.W.2 is that he could hear the accused asking P.W.2 as to whether he had brought the money, cannot be accepted, since P.W.2 without getting into the hall of the house of the accused could not have heard the same. P.W.2 is not speaking the truth. According to P.W.2, the accused had sent P.W.2 standing outside his house and if the accused had seen him standing naturally the accused would have asked P.W.2 as to who was P.W.2, P. Ws. 1 and 2 did not say that the accused asked P.W.1 or P.W.2 as to who P.W.2 was. Normally when the accused had received the bribe from P.W.1 in his house and when he found a stranger standing outside his house and hiding himself, any prudent man would have questioned P.W.2 about his presence and about his identity also P. Ws.1 and 2 were silent in this respect.

7. Now let me consider whether P.W.1 is a reliable witness. The Court would expect better evidence from P.W.1 being an Advocate by himself but it appears he is not a truthful witness. I was pointed some instances from the evidence of P.W.1 to show that he is not a truthful witness. When a question was put to P.W.1 as to when lastly the house tax of Rs. 58.80 was levied and when it was

suggested that it was in 1970, P.W.1 replied that he did not know that it was in 1970. To another question put to P.W.1 that it was the Commissioner for the Municipality who is a competent person to increase the tax, P.W.1 replied that he did not know. To another question put to P.W.1 replied that it did not strike him to look into the rules of the Municipality regarding the levy of tax. He knew that there is a provision for appeal in the Municipal Act if tax was raised but according to him the procedure was not at all useful in practice. He admitted that lie knew that enhancement of tax could be done after issue of special notice and that a reply could be given if such a notice was issued to him. But P.W.1 stated that everything in the procedure was, an eye wash. To another question put by the accused to P.W.1 as to whether the proceedings of the court were also eye wash, P.W.1 has replied that he did not know. I am unable to understand as to how P.W.1 being an advocate could reply like that P.W.1 admitted that for his house, house tax was raised from Rs. 20/- to Rs. 58/- and that the appeal filed by his father was dismissed. According to P.W.1 that the enhancement of tax would be made indiscriminately by the Municipal Officers and he came to know of it by experience. P.W.1 decided not to pay any bribe to Muthuraj whatever happened regarding the increase of tax but he himself went to Municipal Office and met Muthuraj and the accused. Even though P.W.1 knew that a person earning an income of Rs. 200/- per mensem should pay profession tax but P.W.1 did not pay the professional tax. P.W.1 admitted that he had no income through his profession. When a suggestion was put to P.W.1 that when P.W.1 was working as an Assistant Public Prosecutor at Kuzhithurai, he knew the Inspector Balasubramaniam, then he was working as Inspector of Police at Kottar, P.W.1 replied that he did not know. This part of evidence of P.W.1 is unreliable since as an Assistant Public Prosecutor, he should have known P.W.11 working at Kottar. P.W.1 was as an Assistant Public Prosecutor for two months in the year 1970. The defence of the accused is that the accused did not know anything about the understanding between P.W.1 and Muthuraj, P.W.1 abused the accused when the latter asked for details of the property tax and P.W.1 came to know that the accused was arranging to gather materials for imposing profession tax and also for raising house tax for P.W.1 and P.W.1 had foisted the case falsely being aggrieved with the proposed action of the accused regarding the tax. It was also suggested to P.W.1 that the latter had misunderstanding with the accused as the accused wanted to levy profession tax on the wife of P.W.1 also because P.W.1's wife was doing business in a profitable manner. The further defence of the accused is that he did not receive money from P.W.1, that P.W.1 had dropped phenolphthalein paper and the accused took out the same and had seen it and in the meanwhile the Police party entered the house and seized the phenolphthalein paper. The learned Counsel for the Appellant submitted that since the accused had touched the Phenolphthalein paper which had been smeared with Phenolphthalein powder, naturally when the fingers of the accused were dipped into the solution, the solution turned into Pink. He had not received the currency notes from P.W.1 and that everything was done fraudulently with the help of P. Ws.2 and 11. The contention of the accused is that P.W.1 is known to P.W.11

since the former was working as an Assistant Public Prosecutor at Kuzhithurai and that he had occasion to know P.W.11, the Inspector of Police in his official work. Even though P.W.1 has denied the suggestion, his evidence cannot be accepted. P.W.1 is not at all a truthful witness as is evident from his deposition. P.W.2 being a friend of P.W.1 was obliged to the Police in the trap and the evidence of P.W.2 is also not natural since he would depose that he had seen the payment of currency notes by P.W.1 to the accused standing and hiding himself at the outer window of the house of the accused. It is not also possible for P.W.2 to witness the receipt of money by the accused from P.W.1. The other aspect that the accused did not ask P.W.2 about his identity is also strange since P.W.2 was a stranger to the accused at that time. There is no satisfactory evidence in the alleged demand of bribe by the accused from P.W.1 and also for the receipt of the bribe from P.W.1. The evidence of P.W.11 regarding the seizure of the currency notes from P.W.1, cannot be accepted since according to the prosecution the accused is alleged to have pointed out the currency notes on a Bench. P.W.1 being an advocate acted in an ingenious manner for trapping the accused in a Police case since P.W.1 thought that the accused and Muthuraj were persons of the Municipality responsible for enhancement of tax. P.W.11 did not know that it was the Municipal Commissioner who is competent to increase the house tax. According to P.W.1 everything was an eye wash and when a question was put to him whether a Court proceedings also was an eye wash, he replied that he did not know about it. Such is the evidence of P.W.1 and he has given evidence in an irresponsible manner in the lower Court, bringing discredit to the proceedings of the Court as if he is the only truthful man in the world.

8. The next contention raised by the learned Counsel for the Appellant is that the sanction order is not valid since the sanctioning Authority had not applied his mind. P.W.10 produced two sanction orders in this case. Ex.P.11 is the first sanction order in which P.W.10 had affixed his signature on behalf of the Director of Municipalities. Subsequently, it was found out that the Director alone should affix his signature of the Director. In cross-examination, P.W.10 has stated that he did not know the details of the records contained in the file and he did not also remember that the Director had examined the materials directly. The learned Counsel for the Appellant read out the entire contents of Ex.P.11 and P.W. 12 and pointed out that the Director has not applied his mind and has not submitted his grounds of satisfaction before granting the sanction for which he relied upon the decision reported in Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, The learned Public Prosecutor brought to my notice of recent unreported decision of the Supreme Court in Criminal Appeal No. 492 of 1990 (State of Tamil Nadu v. Damodaran). This is a case filed u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act 1947 and Section 161 of the Indian Penal Code. It appears that a similar contention that the sanction order was not valid was raised before Their Lordships of the Supreme Court and Their Lordships called for the report given by the Police to the Sanctioning Authority and found that the report of the Police contained every detail and facts relating

to the case and that the Sanctioning Authority had perused that report and that it would be sufficient compliance of the principles of sanction. In this case also, I have called for the report from the Police which they had sent to the Sanctioning Authority for sanction. The report of the Police contained almost all the details of the facts relating to the particular case. But the learned Counsel for the Appellant made a distinction between the judgment rendered in Criminal Appeal No. 492 of 1990 dated 29.11.1991 by the Supreme Court and the judgment in Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, In the judgment rendered in Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, , their Lordships of the Supreme Court held that the Sanctioning Authority has to give his grounds of satisfaction. It appears that this decision has not been brought to the notice of Their Lordship of the Supreme Court in Criminal Appeal No. 490 of 1990.

9. Another decision reported in Suraj Mal Vs. State (Delhi Administration), was relied upon by the learned Counsel for the Appellant for the purpose to show that mere recovery of money from the accused was not sufficient. It is the case of the prosecution that the alleged bribe amount was recovered from the accused. But the explanation offered by the accused is that he had not at all received any amount as bribe from P.W.1. The evidence of P.W.1 with regard to the demand and payment of gratification to the accused is not at all acceptable and in such circumstances, the explanation offered by the accused cannot be thrown away as it is reasonable and probable in the circumstances of the case. In support of this contention the learned Counsel for the Appellant relied upon the judgment reported in (S.V. Kameswar Rao and Anr. v. The State (ACP Police), Kamool District, Andhra Pradesh). In Crimes2 (State of U.P. v. Ram Asrey) Their Lordships of the Supreme Court have held that when there is no acceptable and clinching evidence to show that the accused demanded a bribe and accepted the amount as motive reward and the judgment of the High Court cannot be interfered with. In the circumstances, I am of the view that the prosecution has failed to establish the case against the accused and the evidence of P.W.1 and P.W.2 is totally unsatisfactory and cannot be accepted at all and in the circumstances, the conclusion arrived at by the lower Court is not correct and therefore the conviction and sentence are set aside. The accused is acquitted and this appeal is allowed.