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KANNAN

v.

STATE REP. BY INSPECTOR OF POLICE

(Criminal Appeal No. 1580 of 2011)

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SEPTEMBER 12, 2018

**[R. BANUMATHI AND INDIRA BANERJEE, JJ.]**

*Prevention of Corruption Act, 1988 – ss.7 and 13(2) r/w. s.13(1)(d) – Prosecution case was that Deputy Commercial Tax Officer (PW-4) along with A-1, who was then working as Assistant Commercial Tax Officer, inspected a grocery shop (owned by father of PW-2) and seized the accounts book – PW-2 approached A-1 to return the accounts book for which A-1 demanded bribe – PW-2 lodged a complaint before Anti-corruption wing – Trap was arranged to catch the accused – Accordingly, PW-2 went to the office of A-1 where A-1 asked him whether he brought the money and when PW-2 stated that he brought the money, A-1 asked PW-2 to pay the money to A-2 and directed A-2 to receive the money – Trap team took the sodium carbonate test, which led to arrest of A-1 and A-2 – Trial Court convicted both accused u/ss.7 and 13(1)(d) of the Act, and sentenced them to undergo rigorous imprisonment for two years – However, High Court reduced the sentence to one year imprisonment – On appeal, held: PW-2 clearly stated in his statement about demand and acceptance of bribe amount by A-1 and A-2 – PW-3, the accompanying witness clearly supported prosecution case – Furthermore, the evidence of PW-6, the office assistant, also corroborated the version of PW-2 – Courts below, rightly found accused guilty on basis of the evidence of PW-2 and test conducted in the sodium carbonate solution.*

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**Dismissing the appeals, the Court**

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**HELD: 1. PW-2 clearly stated about the demand and acceptance of the bribe amount by A-1 and A-2. PW-3, accompanying witness, though turned hostile, in his Chief-Examination clearly stated that he accompanied PW-2 who went and met A-1 and on the direction of A-1, PW-2 paid the money to A-2. To that extent, the evidence of PW-2 is corroborated by the**

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evidence of PW-3. That apart, the evidence of PW-6, the office assistant, also corroborates the version of PW-2. In his evidence PW-6 has stated that PW-2 went inside the room of A-1 and that A-1 told A-2 that PW-2 would give money and that A-2 must take and keep it with him. Accordingly, PW-2 gave money to A-2 who received the same. Thus, the evidence of PW-2 is corroborated by the evidence of PW-6, the Office Assistant. Based on the evidence of PW-2 and test conducted in the sodium carbonate solution the Trial Court and the High Court had rightly found the appellants-accused guilty of the offences. There were no grounds to take a different view. [Paras 4 and 5][652-G; 653-A-C]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1580 of 2011

From the Judgment and Order dated 14.08.2008 of the High Court of Madras at Madurai Bench in Criminal Appeal No. 875 of 2002

WITH

Criminal Appeal No. 1581 of 2011.

Ms. Malini Poduval, Ms. Babita Sant, P. B. Suresh, Vipin Nair, Vikrant Yadav, Anshumaan Bahadur, Karthik Jayashankar, Advs. for the appellant.

M. Yogesh Kanna, S. Partha Sarathi, Advs. for the respondent.

The Judgment of the Court was delivered by

**R. BANUMATHI, J.** 1. These appeals arise out of the conviction of the appellants under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and the appellants were sentenced to undergo rigorous imprisonment for one year.

2. A grocery shop under the name and style “Ambika Stores” was run by father of Sabapathy-(PW-2). On 19<sup>th</sup> October, 1994 Deputy Commercial Tax Officer (PW-4) along with accused no.1, M. Nadimuthu, who was then working as Assistant Commercial Tax Officer, inspected the grocery shop and seized the accounts book. Case of the prosecution is that PW-2 approached A-1 and asked for return of accounts book for which A-1 demanded bribe amount of Rs.2000/-. On 22<sup>nd</sup> October, 1994, PW-2 gave an application for registration and produced a challan for Rs.100/-. On 22<sup>nd</sup> November, 1994 PW-2 again went to the Office

A of the Deputy Commercial Tax Officers and asked A-1 to return of  
accounts book on which A-1 is said to have reiterated the demand for  
Rs.2000/-. On 30<sup>th</sup> November, 1994, PW-2 again approached A-1 who  
stated that the bribe amount of Rs.2000/- which was subsequently  
reduced to Rs.800/-, to be paid on 1<sup>st</sup> November, 1994 failing which the  
application for registration certificate would be rejected. On 1<sup>st</sup> November,  
B 1994, PW-2 lodged a complaint before the Vigilance and Anti-Corruption  
Wing, based on which an F.I.R. was registered and trap was arranged.  
On the same day i.e. 1<sup>st</sup> November, 1994 PW-2 accompanied by PW-3  
went to the office of A-1 where A-1 asked him whether he brought the  
money and when PW-2 stated that he brought the money, A-1 asked  
C PW-2 to pay the money to A-2, Kannan, and directed A-2 to receive the  
money. Accordingly, PW-2 paid the bribe amount of Rs.800/- to A-2.  
PW-5 and the trap team went inside and after completion of the test  
with sodium carbonate solution turning red and other formalities arrested  
A-1 and A-2.

D 3. The Trial Court convicted both accused under Section 7 and  
Section 13(2) and Section 13(1)(d) of the Prevention of Corruption Act  
and sentenced them to undergo rigorous imprisonment for two years. In  
appeal, the High Court maintained the conviction but reduced the sentence  
of imprisonment to one year.

E 4. We have heard Ms. Malini Poduval and Mr. P.B. Suresh, learned  
counsel appearing for the appellants. Both learned counsel submitted  
that the evidence of PW-2 remains uncorroborated and that A-1 was  
not in receipt of money. So far as A-2 is concerned, it was submitted  
that there was no evidence to show that there was any demand by A-2  
and therefore conviction of A-2 is not sustainable. Learned counsel  
F have taken us through the depositions of the witnesses and the relevant  
portion of the judgment. We have considered the submissions and also  
perused the impugned judgment and the materials on record.

G 5. So far as the demand and acceptance of the bribe amount by  
A-1 and A-2 are concerned, PW-2 has clearly stated about the demand  
and acceptance. PW-3, accompanying witness, though turned hostile,  
in his Chief-Examination clearly stated that he accompanied PW-2 who  
went and met A-1 and on the direction of A-1, PW-2 paid the money to  
A-2. To that extent, the evidence of PW-2 is corroborated by the evidence  
of PW-3. That apart, as submitted by Mr. M. Yogesh Kanna, learned  
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counsel for the respondent-State, the evidence of PW-6, the office A  
assistant, also corroborates the version of PW-2. In his evidence PW-6  
has stated that PW-2 went inside the room of A-1 and that A-1 told A-2  
that PW-2 would give money and that A-2 must take and keep it with  
him. Accordingly, PW-2 gave money to A-2 who received the same.  
Thus the evidence of PW-2 is corroborated by the evidence of PW-6, B  
the Office Assistant. Based on the evidence of PW-2 and test conducted  
in the sodium carbonate solution the Trial Court and the High Court had  
found the appellants-accused guilty of the offences. Having regard to  
the concurrent findings of the courts below, we do not find any good  
ground to take a different view.

6. The appeals are accordingly dismissed. C

7. The appellants are to surrender to custody within a period of  
eight weeks to serve the remaining sentence failing which they shall be  
taken to custody.

8. A copy of this order be sent to the concerned trial court for D  
necessary action.