

BAIL SLIP

The Appellant/Accused viz., Kaliyaperumal was directed to be released on bail as per the order of this court dated 20.11.2008 and made in MP No.1 of 2008 in CrI Appeal No.801 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.29.07.2011

CORAM:

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

CrI.A.No.801 of 2008

And

M.P.No.1 of 2008

N.Kaliyaperumal, (Deceased)
Smt. Saradhadevi,
W/o. Late N.Kaliyaperumal Petitioner/Accused

Vs.

The State Rep. by its,
Deputy Superintendent of Police,
(V & AC) Cuddalore Police Station,
Cuddalore District. Respondent/Complainant

Prayer: Appeal is filed under Section 374(2) of Cr.P.C. against judgment dated 23.10.2008 and made in Special Case No.4 of 2004 on the file of the Learned Special Judge/Chief Judicial Magistrate, Cuddalore District.

For Petitioner : Mr.Sugendran

For Respondent : Mr.A.N.Thambidurai
Additional Public Prosecutor.

J U D G M E N T

The appellant (since deceased) stood convicted under Section 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act and sentenced to suffer 6 months and 1 year of rigorous imprisonment for each count and to pay a fine of Rs.500/- for each count in default to suffer further 3 months of rigorous imprisonment in the judgment dated 23.10.2008 and made in Special Case No.4 of 2004 on the file of the learned Special Judge/Chief Judicial Magistrate, Cuddalore District.

2. Challenging the conviction and sentence, the appellant (since deceased) had preferred this appeal before this court after invoking the proviso to Section 374(2) of Cr.P.C. During the pendency of the appeal he had passed away on 26.05.2010 leaving behind his wife who is the petitioner in the Criminal Miscellaneous Petition No.3 of 2010 and his son and daughter as his legal representatives. After his demise, his wife Smt. Saradhadevi, has filed the petition in CrI.M.P.No.3 of 2010, under Section 482 of Cr.P.C. to permit her to continue the appeal in CrI.A.No.3 of 2008. This petition was allowed on 30.04.2010. In pursuant to the order of this Court Mrs.Saradhadevi, wife of N.Kaliyaperumal (original appellant) has been permitted to prosecute the appeal.

3. Mr.N.Kaliyaperumal (deceased) former Deputy Tahsildar (Certificate) Taluk Office, Cuddalore District was charge sheeted on 18.11.2004 by PW 13, The Deputy Superintendent of Police attached to Vigilance And Anti Corruption Department, Cuddalore District alleging that on 25.06.2003, he had demanded a sum of Rs.50/- from PW 2, Tmt P.Sumathi for issuing income tax certificate as bribe other than his legal remuneration. That on 27.06.2003, he had received the amount from PW 2 by misusing his official position as Special Deputy Tahsildar (Certificate) Taluk Office, Cuddalore.

4. The Learned Special Judge/Chief Judicial Magistrate has framed charges under Sections 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act 1988, against Mr.N.Kaliyaperumal. When the ingredients of the charges were explained and questioned he had pleaded innocent and claimed to be tried. He therefore, was put on trial. The prosecuting agency in order to establish their case had totally examined as nearly as 13 witnesses and during the course of their examination Exs.P1 to P16 and MO's 1 to 4 were marked. On appraising the evidences both oral and documentary, the Learned Special Judge/Chief Judicial Magistrate had found him guilty under Sections 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act 1988, convicted and sentenced as detailed above.

5. The facts in brief;

5.1. PW 2, Tmt.P.Sumathi is the resident of Karamanikootam Village. PW 9 Tmt.Sathyawati is her daughter. In the year 2003 PW 9 had got through the +2 examination and applied for admission to Government Arts College at Devanampattinam at Cuddalore. Whiles, a letter under Ex.P2 was received by PW 9 from the said college directing her to produce the educational certificates along with income tax certificate.

5.2. That on 25.06.2003 at about 10 am., PW 2 had been to the Taluk office, Cuddalore and presented an application for issuance of income tax certificate for her daughter PW 9. Her application was processed in the Cuddalore Taluk Officer and handed it over back to

her with an endorsement directing to obtain necessary report from the concerned Village Administrative Officer and the Revenue Inspector. Accordingly, PW 2 had been to Varkalpattu along with her daughter PW 9, and obtained a report from the Village Administrative Officer and after sending her daughter to her house she alone had been to Reddychavadi and met the Revenue Inspector in his office and obtained his report also. Thereafter, at about 5pm., she had gone to the Taluk Office, Cuddalore and enquired with a person, who was present there and on his direction she had met Mr.N.Kaliyaperumal, Deputy Talsidar (Certificate) Taluk Office, and handed over the papers to him in his room and requested him to issue the income tax certificate. On seeing her application Mr.N.Kaliyaperumal, had demanded a sum of Rs.50/- for issuing certificate immediately for which PW 2 had put a question to him as to for what purpose the amount of Rs.50/- was required. On hearing this Mr.N.Kaliyaperumal, had cautioned her that she should not advance such questions and told her that the amount was absolutely for him and strictly instructed her to pay the amount otherwise she could not get the certificate. Thereafter, she came out from that place.

5.3. PW 2 was not willing to pay the bribe and hence, she decided to take action against Mr.N.Kaliyaperumal. Since she was not feeling well on 26.02.2003, she went to the office of the Vigilance and Anti-Corruption Department, Cuddalore District on 27.06.2003 at 11.30am., and lodged an oral complaint before PW 12 Mr.Ambihapati Inspector of Police attached to Vigilance and Anti-Corruption Department, Cuddalore District. PW 12, The Inspector of Police had reduced the same into computer typing and based on that complaint, he had registered a case in Vigilance and Anti-Corruption Department, Crime No.6/03/AC/CL under Section 7 of The prevention of Corruption Act 1988 against Mr.N.Kaliyaperumal, Deputy Talsidar (Certificate) Taluk Office, Cuddalore District and taken up the case for investigation.

5.4. Then PW 12 had organised a trap proceeding on the same date and had also arranged two official witnesses viz., PW 3 Tmt.Gowri, an Assistant from Animal Husbandry Department and one Mr.G.Ramalingam Sub-Registrar of Saravanabhava Consumers Cooperative Society, Cuddalore. Then PW 2 Tmt.P.Sumathi had produced one fifty rupee currency note and thereafter, phenolphthalein test was demonstrated by PW 12 in the presence of the trap team. He had also explained the significance of the phenolphthalein test to them and during the demonstration the single currency note of Rs.50/- which was produced by P.Sumathi was smeared by phenolphthalein powder and the number of the currency note was also noted and after demonstration the same was entrusted with PW 2 and she was also instructed to go to the office of the accused along with PW 3 Tmt.Gowri and hand over the tainted currency note only on his demand. She was also instructed to give a signal by wiping her face with the outer end of her saree if the said bribe amount was received by the accused. PW 3 was also instructed

to accompany PW 2 and watch the proceedings closely. Thereafter PW 12 had prepared an entrustment mahazar which was signed by the official witnesses, PW 3 Gowri and Mr.Ramalingam as well as by PW 2 Tmt.P.Sumathi. PW 12 had also signed the entrustment mahazar which was marked as Ex.P6. Then the trap team led by PW 12 had left his office at 04.00pm., in their office jeep along with PW 2 and other witnesses. They had arrived at the trap spot at 04.15pm., and thereafter, PW 12 had stopped his vehicle on the Southern side of the main road at a distance of 100 feet away from the Southern side of the Taluk Office. PW 12 had also reminded his earlier instructions to them.

5.5. Then PW 2, Tmt.P.Sumathi went inside the Taluk Officer along with PW 3 at about 04.20 pm., and met the accused at his room, wherein the accused had questioned as to who PW 3 was and for that PW 2 had replied that she was her relative and she therefore had taken her assistance to come to Taluk Office. Thereafter, the accused had asked PW 2 as to whether she had brought the money demanded, for which PW 2 had replied in affirmative and tendered the tainted currency note to the accused Mr.N.Kaliyaperumal. He had received the amount in his right hand and immediately transferred it to his left hand and put the same in his left outer pocket of his shirt.

5.6. Thereafter the accused had taken the income tax certificate from a register which was kept on his table and issued it to PW 2 after obtaining her signatures. At about 04.30pm., PW 2 Tmt.P.Sumathi had come out of the Taluk Office along with PW 3 after receiving the income certificate and exhibited the pre-arranged signal. On seeing this PW 2, Inspector of Police had rushed towards them along with the official witnesses and enquired about the happenings in the office and thereafter he had entered into the room of the accused wherein he was found sitting in the chair. On the identification of PW 2, PW 12 had introduced himself and others to the accused. On seeing them the accused had become perplexed. He was then subjected to the phenolphthalein test and it was proved positive and the test material was preserved in the three bottles after numbering it as NO.3.

5.7. Thereafter PW 12 had seized the test materials preserved in 3 bottles along with the shirt of the accused. The currency note of Rs.50/- was marked as MO 1 whereas the test materials and the shirt were marked as MO2 to MO4 respectively.

5.8. On the information given by PW 12, PW 13 Mr.R.Viswanathan, Deputy Superintendent of Police attached to Vigilance and Anti-Corruption Department, Cuddalore had arrived at the place of trap at 06.00pm and arrested the accused Mr.N.Kaliyaperumal after informing the grounds of arrest. Thereafter PW 12 had prepared a recovery mahazar in respect of the entire trap proceedings and seizure under Ex.P8 between 04.45pm and 06.00pm and it was signed by PW 2, PW 3

and PW 12 and other official witnesses and a copy of the same was furnished to the accused. Thereafter PW 12 had also prepared an observation mahazar and a rough sketch of the trap proceedings which was marked as Ex.P9 and P16 respectively. All the connected records were sent from the office of PW 12 to PW 13 for further investigation.

5.9. Then PW 13 had taken up the case for investigation. He had examined the witnesses and recorded their statements. He had also sent the test materials preserved in 3 bottles for chemical analysis along with the shirt and obtained a chemical analysis report under Ex.14 from PW 11, Tmt. Banumathi, Assistant from FSL Chennai. Then PW 13 had laid a final report against the accused on 18.11.2004 under Section 7 and 13(2) r/w. 13(1)(d) of The Prevention of Corruption Act 1988 before the Learned Special Judge/Chief Judicial Magistrate, Cuddalore District. With the evidence of PW 13, the prosecution had closed its side.

5.10. When the accused Mr.N.Kaliyaperumal was examined under Section 313(1)(b) of the Code of Criminal Procedure to explain the incriminating circumstances arisen out of the testimonies of the prosecution witnesses, he had submitted a written statement which was received and recorded by the Learned Special Judge. On assessing the evidentiary value and the oral and documentary evidences, the Learned Special Judge had found the accused guilty convicted and sentenced as stated above.

6. Impugning the conviction and sentence imposed on him, the accused had preferred the present appeal before this court. Heard Mr.Sugendran learned counsel for the appellant and Mr.A.N.Thambidurai learned Additional Public Prosecutor, appearing for the state.

7. With this background let us delve deep and scrutinize the testimonies of the prosecution witnesses as well as the documentary evidences to explore the real fact to find as to whether the charges under Section 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act have been proved by the prosecuting agency beyond all reasonable doubts. Before we indulge in this exercise it may be quite relevant to refer the proviso to Sub-Section 1 of Section 20 of the Prevention of Corruption Act (hereinafter referred to as Act) which reads as follows;

"Section 20 Sub-Clause (1)

Section 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, without consideration or for a consideration which he knows to be inadequate."

8. As contemplated under Section 20 of the Act, the initial burden rests upon the prosecuting agency to prove that the accused person had accepted the bribe by way of illegal gratification other than his legal remuneration as a motive or reward for doing something in favour of the person from whom he has received the bribe. It shall be presumed that the accused has accepted or obtained or agreed to accept that gratification or that valuable thing as the case may be. This presumption is rebuttable one. The law makers have carefully employed the word "unless the contrary is proved".

9. Hence, it is thus clear that the person who has been accused with the charges of corruption has rebutted the presumption by preponderance of probability then again the burden is shifted to the prosecution to substantiate the charge with clinging proof.

10. The presumption of law contemplated in Section 4(1) [New Section 20(1)] of the Act was in pari materia the same as the legal presumption mentioned in Section 20(1) of the Act enjoins that upon proof of a certain premise it shall be presumed unless the contrary is proved that he accepted the gratification as a motive or reward etc. If the primary condition specified in the sub-section is satisfied by the prosecution the Court is legally bound to proceed on the footing that the public servant/accused has accepted the gratification as a motive or reward for doing any official work in exercise of official functions.

11. The burden then stands shifted to the accused to prove the contrary. But such shifting would not become necessary until prosecution proves that what the accused has accepted was gratification. Of course the Court can draw presumptions on premises even de hors Section 4(1) [new Section 20(1)] of the Act because Section 114 of the Evidence Act empowers that Court to do so. But the difference between the presumption under Section 4(1) [new Section 20(1)] of the Act is that under the former it is only discretionary for the Court to draw presumptions as the Court can as well decline from doing so, under Section 4(1) [new Section 20(1)] it was incumbent on the Court to proceed on the presumption as the burden stands transferred to the accused to prove the contrary. This principle is laid down by the Apex Court in *Dhanvantral Balwantrai*

Desai v. State of Maharashtra reported in AIR 1964 SC 575 : (1964) 1 Cri LJ 437.

12. In Banshi Lal Yadav v. State of Bihar reported in 1981 SCC (Cri) 627 : 1981 (3) SCC 69. The Apex Court has held that;

"Before presumption can be raised, the burden is on the prosecution to prove that the accused has accepted or obtained, or has agreed to accept or attempted to obtain, for himself any gratification other than legal remuneration etc. If the accused when examined under Section 313 of the CrPC with reference to the circumstances appearing against him in evidence, only stated that currency notes were thrust in his pocket, that statement by itself without, anything more is not sufficient to satisfy the necessary ingredients of Section 4(1) that accused accepted or obtained or has agreed to accept or attempted to obtain, any gratification other than legal remuneration so as to be able to raise the presumption. Acceptance or obtaining, or agreeing, to accept or attempting to obtain is a voluntary act. In the statement of the accused, this element of voluntary acceptance is missing. Therefore, the statement of the accused by itself in the facts and circumstances of this case and especially the language used cannot provide the necessary factual basis or fact situation which must exist before presumption can be raised. In fact accused denied having accepted bribe and stated that he was the victim of male violent act of Naushad in thrusting marked currency notes in his pocket. This statement will not show acceptance of illegal gratification and the High Court was in error in raising the presumption under Section 4."

13. In Balusamy v. State reported in 2003(1) Crimes 516 at 521 (Mad) this court has observed that;

"the burden is on prosecution that gratification was paid to accused and then accused has to rebut the presumption by proof and not by way of mere explanation".

14. On coming to the instant case on hand during the time of the proceedings under Section 313(1)(b) of the Code of Criminal Procedure while denying the testimonies of the prosecution Mr.N.Kaliyaperumal former Deputy Talsidar (Certificate) Taluk Office, Cuddalore District had submitted a written statement to put forth his defence case which was received and recorded by the Learned Special Judge where in he has stated that one Mr.Veerasamy, Village Assistant had requested to ask and receive from PW 2 Tmt.P.Sumathi a sum of Rs.50/- which was due to him. The accused has also stated that on the request of the Village Assistant Veerasamy he had told PW 2 Sumathi that he was requested to ask her the amount of Rs.50/- which she had to pay to Mr.Veerasamy Village Assistant. When he had asked this amount from PW 2 in the presence of her relatives in the public place she got

wild and abused him. He has also stated that since he had declared that he was going to lodge a complaint, she had lodged the false complaint before the Vigilance And Anti-Corruption Department in order to wreak vengeance and to inflict revenge. Further he would state that PW 2 had also placed the amount of Rs.50.

15. Thereafter she went away after receiving the income certificate from the Office Assistant. From the written statement submitted by Mr.N.Kaliyaperumal it is revealed that he had not asked any bribe much less Rs.50/- for the issuance of income certificate but he had only asked PW 2 to give Rs.50/- which she had to pay to Mr.Veerasamy Village Assistant. It is also revealed that he was requested by Mr.Veerasamy Village Assistant to ask PW 2 and receive the amount.

16. Unfortunately, the said Village Assistant was not examined in this case on the side of the defence to substantiate the defence case. However, PW 2 who is the complainant in this case though she was examined on behalf of prosecution, has supported the case of the defence and that was why she was declared hostile by the Learned Special Judge and the Learned Special Public Prosecutor was also permitted to cross examine her on this particular issue.

17. On turning to the evidence of PW 2 she has ratified the state of Mr.Veerasamy. In her cross-examination she would state that she was in need of money to go to Reddychavadi to obtain a report from the Revenue Inspector and therefore, she borrowed a sum of Rs.60/- from a known person belonging to her native who was working in the Taluk Office. She would also state further that at the time of parting with the money that person had told her to return the money in the evening when she submit the application. She has also deposed that at the time of submission of her application, the person was not available and therefore, she had presented her application in the office of Tahsildar but she was instructed to present the application before the accused.

18. It is also revealed that from her cross examination that when the accused had asked her to return the money which was due to Mr.Veerasamy a verbal altercation was erupted between her and him and since she got provoked she had shouted at the accused. But she never reported this matter to the Tahsildar concerned. It is also revealed from her evidence that the accused had stubbornly told her that she could get the income certificate provided the money, which she owed to Veerasamy is paid.

19. On a combined reading of the cross-examination of PW 2 and the written statement submitted by the accused, this court is able to draw the presumption as contemplated under Section 20(1) of the Act in favour of the accused. The evidence in cross-examination of PW 2, and the written statement of the accused have disproved the case of

prosecution and hence, this court finds that there may not be any impediment to presume that the preponderance of probability of the defence case has been unambiguously and convincingly established by the accused.

20. The Learned Special Judge in his judgment in paragraph 17 has referred to the ingredients envisaged under Section 161 of IPC. It is significant to note here that Sections 161 to 165 A have been omitted by Section 31 of Prevention of Corruption Act 1988 with effect from September 9, 1988. However as contemplated under Section 31 of Prevention of Corruption Act, Section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply to such omission as if the said sections had been repealed by a Central Act.

21. Section 6 of General Clauses Act 1897 enacts as follows;

"Section 6:- Effect of repeal - Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect, or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurrent under any enactment so repealed, or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid."

22. On coming to the present case on hand the date of first demand is said to have been taken place on 25.06.2003. The second demand is on 27.06.2003 on which date it is alleged that the accused had accepted the bribe. On the date of the demand the proviso to Section 161 of IPC was not in force as it was repealed. Therefore, we have to invoke the proviso to Section 6 of General Clauses Act. However to add an additional strength, it may be quite relevant to take the assistance of the proviso to Section 161 of IPC. In paragraph 17, the Learned Trial Judge has observed that on mere recovery of certain money from the person of an accused without proof of its payment, or on behalf of, presumption cannot arise.

23. The accused has not denied the fact that PW 2 had come to his office on 27.06.2003. He has also not denied the fact of demanding the amount of Rs.50/- from PW 2 for which he has given

explanation to that effect by way of his written statement during the proceedings under Section 313(1)(b) of Cr.P.C. that he was requested by one Mr.Veerasamy Village Assistant to ask money from PW 2. PW 2 has also answered in harmony with the accused.

24. An argument was advanced on behalf of the accused that from the evidence of PW 2 it was clear that the accused demanded the amount payable by PW 2 to one Mr.Veerasamy Village Assistant and not for any official favour. He has also observed that the learned counsel for the accused had also referred the evidence of PW 2 and submitted that from her evidence it was clear that there was some heated exchange of words between PW 2 and the accused that too in the presence of public and relatives which planted a deep bitter rancour and animosity, in the mind of PW 2 and that the responsible officer in the Taluk Office would not have demanded money to issue a certificate. The story putforth by the prosecution was a hoax. It was also indicated by the learned counsel for the accused at the time of his argument, that PW 2 had deposed in her cross examination that she had never stated before the Deputy Superintendent of Police, PW 13 that the accused had demanded Rs.50/- to issue certificate. PW 2 had also deposed that she did not say anything before PW 13 when she was examined by him that the accused had asked her as to whether she had brought the money demanded, when she had been to his office along with PW 3.

25. It was also brought to the notice of the trial judge that PW 2 had spoken to that she did not remember as to whether she had placed the money on the table or given in the hands of the accused. It was also argued before the trial judge that PW 2 in her cross examination had admitted that PW 3 was standing behind her and that from the evidence of PW 2 and PW 3 it was established that there was no demand or acceptance of illegal gratification on 27.06.2003 by the accused.

26. The learned trial judge has considered the submissions made on behalf of the accused but he has taken an somer sault based on the decision in Hazarilal vs. The State (Delhi Administration) reported in 1980 L.W.(Crl.) 130 and observed in paragraph 30 that;

"It is true that PW 2 the defacto complainant/witness who supported the case of the prosecution in chief examination has turned hostile during the cross examination. Though PW 2 complainant/trap witness turned hostile it is not fatal to the case of the prosecution in the light of the decision of the Supreme Court."

27. In paragraph No.32 the trial judge has observed that in the chief examination PW 2 had told that the accused had reiterated his

earlier demand as to whether she had brought the money. When it is proved that there was a voluntary and conscious acceptance of money there is no further burden cast on the prosecution to give direct evidence pertaining to the reasons to prove the demand or motive. Therefore, based on the evidence of PW 2 in her chief, he has come to the conclusion that the prosecution has brought home the guilt of the accused beyond all reasonable doubts.

28. Of course PW 2, who has set the law in motion, has at the first instance, supported the case of the prosecution. In her cross examination she has given a complete go by to the evidence in chief and deposed that the accused had demanded an amount of Rs.50 from her which she had to pay to one Mr.Veerasamy Village Assistant. As it appears from the records PW 2 was examined on 19.11.2007. The accused has submitted his written statement on 23.07.2008. As discussed earlier the evidence of PW 2 in her cross examination and the written statement of the accused submitted during the course of the proceedings under Section 313 (1)(b) of Cr.P.C have to be put together and scrutinized deeply.

29. The explanation offered by the accused in his 313 Cr.P.C. Statement immediately after the examination of the witnesses, has clearly probabilises the case of the defence. Having regard to the evidence of PW 2 as well as the written statement of the accused this Court finds that the preponderance of probability of the defence case has been established by the accused. Keeping in view of the observations made above this Court is of considered view that the learned trial judge has not approached the facts of the case with proper perspective and the conclusion of the trial judge is perverse and hence, the conviction and the sentence imposed on the accused are liable to be set aside.

30. During the course of his arguments, the learned counsel appearing for the appellant/accused has brought to the notice of this Court that originally the appellant/accused was working as Deputy Talsidar (Certificate) Taluk Office, Cuddalore District. After recording the conviction and sentence against him viz., Mr.N.Kaliyaperumal he was dismissed from service. After filing of this appeal challenging the conviction and sentence he had passed away on 26.05.2010.

31. On account of his suspension and subsequent dismissal from service he was not able to get his retirement benefits. After his demise the present appellant who is non other than his wife and her children have been brought to street. Now to establish the case of the defence that the original appellant/accused is not guilty and that the case has been foisted against him, she has filed a petition in M.P.No.3 of 2008 and in pursuant to the order of this Court she is allowed to continue the appeal. The learned counsel has also urged that considering the precarious condition of the family and on

considering the case of the defence based on the written submission made by the accused as well as on the evidence given by PW 2, the conviction and the sentence be set aside.

32. Having given due consideration to the submissions made by the learned counsel for the appellant as well as by the learned Addition Public Prosecutor, this court is of view that the case of the prosecution has been shrouded with the shadow of suspicion and hence the benefit of doubt is given to the accused and he is acquitted of the charges under Sections 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act 1988.

33. In the result the appeal is allowed. The conviction and sentence imposed on the appellant/accused are set aside. The fine amount paid if any shall be refunded and the bail bonds executed by and on behalf of the appellant/accused are discharged. Connected miscellaneous petition is closed.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Deputy Superintendent of Police,
(V & AC) Cuddalore Police Station, Cuddalore District.

2.The Special Judge/Chief Judicial Magistrate,
Cuddalore District

3.The Judicial Magistrate No.1, Cuddalore

4.The Chief Judicial Magistrate, Cuddalore

5.The Public Prosecutor, High Court, Madras

1 cc To Mr.S.Sugendran, Advocate, SR.46483

Crl.A.No.801 of 2008
And M.P.No.1 of 2008

UG(CO)
RH (22.11.11)