



Crl.A.No.427 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 08.09.2023

Pronounced on: 20.09.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.427 of 2016

1. Mrs.Kanniyammal,

2. Mrs.Ezhilarasi,

3. Mr.J.Anbarasan,

(1 to 3 are legal heirs of
Mr.E.Jayabalan the accused in
S.C.No.6 of 2013. They have been granted
leave to file the appeal by this Hon'ble
Court in Crl.M.P.No.4639 of 2016
by order dated 09.06.2016.)

... Appellants/Legal heirs of accused

/versus/

The State,
Rep. by the Inspector of Police,
Vigilance and Anti Corruption Wing,
Cuddalore.
(Crime No.2 of 2014).

... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973, pleaded to allow this appeal and set aside the order of conviction and sentence against the deceased accused in S.C.No.6 of 2013 of the Special Court Anti Corruption Cases, Villupuram, dated 29.02.2016 and direct the refund of the fine amount if any paid by the deceased accused to the



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appellants herein.

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For Appellant : Mr.T.N.Rajagopalan,

For Respondents : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side)

J U D G M E N T

The appellants 1 to 3 are wife, daughter and son of the deceased E.Jayapalan. On 22/01/2004, for demand and receipt of Rs.1000/- from one Mr.T.Ramesh as illegal gratification for surveying his land, Jayapalan the Firka Surveyor of Olakkur Firka, Taluk Office, Tindivanam was arrested and tried for offences under Sections 7 and 13(2) r/w 13(1)(d) of PC Act. He was found guilty and sentenced to undergo 1 year R.I and to pay fine of Rs.1000/- in default, 3 months S.I for offence under Section 7 of Prevention of Corruption Act and to undergo 1 year R.I and to pay fine of Rs.2000/-, in default 3 months S.I for offence under Section 13(2) r/w 13(1)(d) of P.C Act, in Special C.C.No.06/2013 by the Special Court for Prevention of Corruption Act cases, Villupuram.



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2. The trial Court pronounced its judgement on 29/02/2016 and the sentence was suspended for a period of one month. During that period, Jayabalan was died. Hence, his legal heirs sought leave of this Court to prefer the appeal and same was granted by this Court on 09/06/2016 in Crl.O.P.No.4639 of 2016. Thus, C.A.No.427 of 2016 preferred by the Legal heirs of the deceased is for consideration.

3. Background facts of the case in Brief:-

P.W-2 Mr.Ramesh is the defato complainant. On 15/11/2001 under a registered sale deed Ex.P-2, he purchased 10½ cents of vacant site from Baktavatsala Reddiar and his son Venkatesan. To get the patta of the land transferred in his name, Ramesh gave request letter dated 02/01/2004 (Ex.P-15) to the Tahsildar, Tindivanam Taluk. He was asked to pay Rs.40/- in the Treasury toward fees. Accordingly, Ramesh paid Rs.40/- in the Sub treasury and enclosed the receipt (Ex.P-12) along with the application and other documents, gave it to the Surveyor (Accused) as instructed by the Tahsildar. On reading the application, the accused told P.W-2, that before transfer of patta, the land has to be measured soon he will visit the land and measure it. However, A-1 did not came for spot inspection till 20/01/2004. Hence, P.W-2



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went to the Tahsildar Office on 21/01/2004 and met the accused and enquired when he will come for inspection and survey the land. At that time, the accused demanded Rs.1200/- for survey the land. After bargain, he reduced his demand to Rs.1000/- and told P.W-2 to bring the money next day. P.W-2 came out from the Surveyor room and enquired the name of the surveyor. He came to know his name is Jayabalan. Since P.W-2 had no intention to give bribe had went to V&AC Office at Cuddalore and informed about the demand of illegal gratification.

4. The oral complaint of Ramesh, at 18.00 hrs on 21/01/2004 was reduced into writing (Ex.P-3) and F.I.R (Ex.P-18) got registered in Crime No.02/2004 by Mr.Rajendran, Inspector of Police, DV&AC, Cuddalore. The complaint was taken up for investigation and trap was arranged on 22/01/2004. At request of the Trap Laying Officer, two official witnesses Mr.Thenkumaran (P.W-3) and Nataraju (not examined) were requested to be present at Vigilance Office at 8.00 a.m. In their presence, after demonstrating the significance of phenolphthalein – sodium carbonate test, the bribe money of Rs.1000/- (M.O.1) smeared with phenolphthalein was entrusted to PW-2. The currency numbers were noted and same has been recorded in the entrustment mahazar (Ex.P-4).



The trap team along with P.W-2 left Cuddalore at 10.00 hrs on 22/01/2004 and

reached Tindivanam at about 11.30 am. P.W-2 Ramesh and P.W.3

Thenkumaran went to the Survey section. On enquiry with the staff they came to know that, the accused is not in the office, he would be in his private room at Door No.1B, Meenakshi Amman Koil Street, Tindivanam. Therefore, the trap team went there and met the accused at 15.15 hrs who was in the room on the eastern end of the first floor of the building. On seeing P.W-2, the accused enquired whether PW-2 had brought the money he demanded. In response, P.W-2 took out the tainted currency of Rs.1000/- which was kept in his shirt pocket and gave it to the accused. The accused received the money and after counting the money kept it under a blue colour bag lying on the mattress. Then, the accused promised P.W-2 that he will visit the land on Monday and survey it without fail. The demand and acceptance was witnessed by P.W-3 who accompanied PW-2.

5. The trap team lead by Rajendran (P.W-12) entered the building after receiving the prearranged signal. The accused was identified by PW-2. After the test for presence of phenolphthalein by dipping the hands of the accused in the solution of sodium turned pale red, the accused was asked



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whether he received any money from PW-2. The accused answered in affirmative and showed the currency kept under the blue colour rexin bag printed as Lalithaa Jewellery, Tindivanam which was lying on the mattress. The numbers found in those currencies tallied with the number recorded in the entrustment mahazar. Being satisfied that, the accused had received illegal gratification from P.W-2, PW-12 arrested the accused. The file containing the application, Challan, Adangal copy, FM Sketch, sale deed copy (Ex.P-2) and the money (M.O-1 series) was recovered under Ex.P-5.

6. The sample solutions of the hands wash and the rexin bag under which the money kept were recovered and sent for chemical analysis and the report has been marked as Ex.P-17, through P.W-10 Visalakshi, Scientific Asst. Grade-II. The accused being a public servant, before filing the final report, sanction to prosecute the accused been obtained from P.W-1. The sanction to prosecute is Ex.P.1.

7. For prosecution 13 witnesses (P.W.1 to P.W.13), 21 Exhibits (Ex.P.1 to Ex.P.21) and 5 material objects (M.O.1 to M.O.5) were marked. On the side of the accused, two witnesses were examined.



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8. The trial Court held that the prosecution has proved the recovery of tainted money from the possession of the accused. The accused has not discharged his burden against presumption under section 20 of Prevention of Corruption Act. The file Ex.P-2 and the other exhibits found in the file, sufficiently prove that the accused, to survey the land and issue patta had obtained illegal gratification of Rs.1000/- from PW-2 as reward other than legal remuneration.

9. The Learned Counsel appearing for the appellants, referring the cross examination of P.W-3 and the evidence of D.W-1 and D.W-2, submitted that, on close reading of these evidence, the falsity in the prosecution case can be well noticed. The trial Court unfortunately did not consider these evidence in proper perspective. The motive to give the false complaint is well established through the evidence of D.W-2. Though the accused and P.W-2 know to each other for long time, P.W-2 had pretended as if, he known only when he met him for survey the land during the month of January 2004. However, in the cross examination P.W-2 had admitted that, it was the accused, who identified the land to him and helped him to buy the land three years ago.



10. The perfunctory investigation well proved through the material contradiction in the prosecution witnesses. There is no explanation why the Trap Team went to the private room of the accused when the accused did not invite them to his private room. Through the witnesses, the accused had established that, at the time of trap, two others were present in the room. One is the house owner and another one is colleague of the accused. The Trap Laying Officer for reason best known, not mentioned their presence in the mahazar. The deliberate suppression of the presence of eye witnesses, renders the recovery mahazar Ex.P-5 doubtful. The presence of other inmates in the room could be seen from the arrest card, in which one of them had signed. Whereas, the recovery mahazar is silent about his presence.

11. P.W-2 in his complaint had mentioned the accused as a stranger to him and came to know about his name only on 21/01/2004. However, in the cross examination, he admits that, the accused and his maternal Uncle Arumugam are known to each other and they were friends. The accused recommended him to the seller when he purchased the 10 ½ cents land from Venkatesan. Before he purchase the land, the accused identified the land and measured it for him. At that time, he did not demand any money. Thus, PW-2,



is not a worthy witness to rely.

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12. The Learned Counsel for the appellants, argued that there was feud between the maternal uncle (Arumugam) of the Defacto complainant and one Palani regarding a piece of porambokku land. When Arumugam sought for help of the accused to evict Palani from the prombokku land, the accused refused to support his maternal uncle. This motivated Arumugam to give this false complaint through P.W-2 and the Vigilance Police. The fake trap laid and made to believe as if, the accused demanded bribe and received it when P.W-2 came to his private room. The money was not recovered from the possession of the accused. It is alleged to have found under a rexin bag on the mattress.

13. While P.W-2 had deposed that, when he and PW-3 went inside the room of the accused, the accused alone was in the room. Whereas, P.W-3 the shadow witness, in the cross examination admits that, when he and PW-2 went to the room of the accused, he saw another person in that room. The forcible entry into the room and manhandling by the Police on the day of trap been spoken by D.W-1, who was present in the room at that time. While so, the



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trial Court erred by believing the case of the prosecution which is packed with contradictions and falsehood.

14. The Learned Counsel for the appellants referring the evidence of D.W-2 Palani, emphasised that, from the evidence of D.W-2 the defence had established that, PW-2 and his family are under the tutelage of one Arumugam who is the maternal uncle of P.W-2. They all live under one roof and regarding 4 cents of porambokku land opposite to Arumugam house, Palani and Arumugam are at loggerhead and the accused refused to help Arumugam in arranging Patta in his name for the porambokku land which was in possession of Palani. Hence, the case been foisted through PW-2.

15. The Learned Counsel for the appellants further submitted that, the recovery mahazar and the content of the recovery mahazar apparently false and fabricated and it was prepared at the Vigilance Office and not at the private room of the accused as claimed by the prosecution. To substantiate his arguments, the Learned Counsel pointed that, the recovery mahazar Ex.P-5 and the observation mahazar Ex.P-6 are not handwritten but typed manually in a typewriter. The rough sketch of the trap spot is marked as Ex.P-19. In none of



these exhibits, there is reference about availability of typewriter for the Trap Laying Officer to prepare the recovery mahazar and observation mahazar at the trap spot.

16. This Court, to verify whether Ex.P-5 and Ex.P-6 are hand written or typed, called for the original documents from the trial Court. On verification of the records, this Court find that, the arrest memo of E.Jayabalan is witnessed by T.Natarajan S/o.Thandavaraya Pillai. In column No.12 the name, age and address is mentioned and he has signed at the bottom of the arrest memo. The place, date and time of arrest is mentioned as No.1B, Meenakshi Amman Koil Street, Tindivanam, 22/02/2004 at 17.30 hrs. The Judicial Magistrate had seen it and signed at 8.45 pm on 22.01.2004. The name, father's name and the signature of D.W-1 tallies with the details and signature found in the arrest memo. Therefore, the presence of D.W-1 at No:1 B, Meenakshi Amman Koil Street when the recovery mahazar drawn is a fact well supported by a document which had gone to Court within 3 hours. Contrary to the document prepared contemporaneously along with seizure mahazar, both P.W-2 and the Trap Laying Officer had falsely deposed that, at the time of trap in the room except the accused none were present. Their



falsehood further gets deeper from the fact that, recovery mahazar Ex.P-5 and the observation mahazar Ex.P-6 which are typed documents alleged to have drawn at 17.30 hrs and 18.00 hrs respectively. The prosecution witnesses are silent about from which typewriter it was prepared. To add, the observation mahazar Ex.P-6 had reached the Court only on the next day i.e., 23/01/2004 at 2.45 pm.

17. This Court is convinced about the fact that the prosecution witnesses P.W-2 (defacto complainant), P.W-3 (Shadow witness) and P.W-12 (Trap Laying Officer) are not reliable witnesses. Their testimony regarding recovery of tainted money from the floor bristles with infirmity. Contrarily by examining D.W-1, the accused had established that, the trap team headed by P.W-12 had forcibly dragged the accused by holding his hand and manhandled the house owner, who tried to question the violent behaviour of the police. The presence of phenolphthalein in the hands of the accused may be due to that and such planting is probablised through other circumstantial evidence. The evidence of D.W-2 proves the defence that, the trap is a stage managed event motivated by a Politician, who had some grudge with the accused who was his erstwhile associate. The pinnacle of the fabrication of evidence could be seen



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from the typed documents Ex.P-5 and Ex.P-6 which could not have been prepared at the place and time mentioned in the document, since there is no evidence from the prosecution witnesses that, at the place of seizure, type writer was available to prepare the mahazars Ex.P-5 and Ex.P-6.

18. This view also gains strength when the material document indicates that, D.W-1 was present at the time when Trap Laying Officer and his team completed the seizure. The witnesses for prosecution P.W-2 and P.W-12 had deliberately suppressed his presence. Fortunate to the accused, P.W-3 had spill the beans in the cross examination. Further, the arrest memo which is not marked but form part of the record proves the presence of D.W-1 at the trap spot. This evidence fully exposes the falsehood of the prosecution case regarding the recovery. D.W-1 in fact, a chance witness for the event and his testimony is more reliable though he is a colleague of the accused. Fearing he will tell the truth, prosecution had screened his presence.

19. Since the prosecution has not proved beyond doubt about the recovery of the tainted money from the conscious possession of the accused, the appeal is allowed.



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20. In the result, for the reasons stated above, the ***Criminal Appeal***

No.427 of 2016 is allowed. The judgment of the trial Court in Special C.C.No.06/2013, dated 29/02/2016 is hereby set aside. Fine amount paid if any, shall be refunded to the appellants, who are the legal heir of the accused (since deceased).

20.09.2023

Index :Yes/No.

Internet :Yes/No.

Speaking order/Non-speaking order

bsm

Copy to:-

1. The Special Court Anti Corruption Cases, Villupuram.
2. The Inspector of Police, Vigilance and Anti Corruption Wing, Cuddalore.
3. The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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Pre-Delivery judgment made in
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