



Crl.A.No.541 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 06.06.2023

Pronounced on: 15.06.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.541 of 2016

State represented by:
The Public Prosecutor,
High Court, Madras – 600 104.
[V & AC, Cuddalore]
(Crime No.01/2006)

... Appellant/Complainant

/versus/

R.Natarajan,
S/o.Rajamanickam,
Formerly Firka Surveyor,
Taluk Office,
Gingee,
Villupuram District.

Residing at:
Mandapam Street,
Gingee Town & Taluk,
Villupuram District.

... Respondent/Accused

Prayer: Criminal Appeal has been filed under Section 378 of Cr.P.C., pleaded to set aside the judgment passed in Special Case No.14/2013, dated 30.04.2015 by the Special Court for Prevention of Corruption Act Cases at Villupuram and convict the respondent/accused.



Crl.A.No.541 of 2016

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

For Respondent : Mr.S.Saravana Kumar

J U D G M E N T

The Criminal Appeal under consideration is preferred by the State being aggrieved by the order of acquittal holding the respondent R.Natarajan, Firka Surveyor not guilty of offence under section 7 and 13 (2) read with 13 (1)(d) of the Prevention of Corruption Act, by the Special Court for Prevention of Corruption Act Cases in Villupuram in Spl.Case.14/2013 *vide* judgement dated 30/04/2015.

2. The case of the prosecution is that, the defecto complainant Mr.Jayalingam is a farmer having agricultural land around 5 acres in Mattapaarai and Thiruvathikunnam Villages. To measure his land and fix boundaries, he made applications twice to the Tahsildar at Chengi. After his earlier two attempts ended in vain, for the third time, he paid Rs.50/- as fees for survey and made application on 23/06/2006 enclosing the challan for payment of fees. On the same day, he met the accused, who was working as Firka surveyor and requested him to measure his land. The respondent demanded Rs.3000/- to survey the land and told the defecto



Crl.A.No.541 of 2016

complainant that, unless the money is paid, he will not visit the field and measure the land; and his application will see the same fate of his earlier two applications.

3. The defecto complainant had again met the accused on 31/07/2006 and requested the accused to consider his application for measuring his land without bribe. For which, the accused as a concession reduced his demand from Rs.3000/- to Rs.1,500/-. The defecto complainant, who was not inclined to give bribe had gone to the Cuddalore Vigilance and Anti Corruption Office and gave a written complaint on 01/08/2006.

4. Based on the complaint, the Inspector of Police Mr.Venkatesan after conducting preliminary enquiry and being satisfied about the genuineness of the complaint registered case in Crime No.1/2006 and proceeded to lay a trap while the accused receive the bribe money. He arranged two official witnesses by name Shridar and Rajendran to be witnesses for the trap proceedings. After conducting pre-trap proceedings in the Vigilance and Anti Corruption Office, demonstrating the significance of phenolphthalein and sodium carbonate test, and noting the numbers found in the currency notes, the marked currency of two



Crl.A.No.541 of 2016

Rs.500/- notes and five Rs.100/- notes smeared with phenolphthalein were entrusted to the defecto complainant, who kept the money in his shirt pocket.

Thereafter, the trap team proceeded to the Taluk Office, Chengi and reached the Office at about 4 p.m. Their vehicle was parked near KVK Theatre, Chengi. The defecto complainant and the shadow witness were asked to go to the Taluk office and give the tainted money, if the accused demands and to come out and give the prearranged signal, so that the trap team will catch the accused red handed. The defecto complainant and the shadow witness came out from the Taluk Office at about 4:20 PM and told the Trap Laying Officer that the accused has gone to Sub-Collector Office at Tindivanam and they were informed, he is expected to return after 6.00 p.m or he may not come to the Office. After waiting for the accused till 6.15 p.m, the trap team returned back to the Vigilance Office. The proceedings of the day was recorded and thereafter, the defecto complainant was asked to come on the next day. The trap money was left with the defecto complainant with an instruction to bring it back on the next the day.

5. Accordingly, on 02.08.2006 at about 7.30 a.m the defecto



Crl.A.No.541 of 2016

complainant reported to the Inspector. The shadow witnesses were called again.

A fresh entrustment mahazar was prepared and the team left to the Taluk office at about 9.00 a.m and reached the Taluk Office at 11.00 a.m. The defecto complainant and the shadow witness went to the Taluk Office. The accused was not in his seat. They waited for the accused outside the Taluk Office. At about 6.50 p.m in the evening, the accused came in a two Wheeler TVS-50 bearing Registration No.TN-32-A-2293. The defecto complainant and the shadow witness met him and when the accused asked why they are waiting, the defecto complainant asked the accused when he will come and measure the land. He have with him the money demanded and offered it to the accused. The accused initially refused to receive the money saying, he is in the habit of receiving money only after completing the work. So, will get the money after completing the work. However, the defecto complainant insisted the accused to receive the money saying that, if the money is left with him, he may spend the money. Then, the accused received the money in his right hand, transferred it to his left hand and kept inside his left side pocket of his pant. Thereafter, the defecto complainant came out and gave the prearranged signal to the trap team. The trap team lead by the Inspector, after accused being identified by the defecto complainant, conducted sodium carbonate



test of the hands of the accused. The solution colour changed into light red. Being satisfied that, he has handed the tainted money, the accused was asked to hand over the money received from the defacto complainant. From the left side pant pocket, the accused produced the marked currency. The numbers in the currency were compared with the number noted in the entrustment Mahazar and being satisfied that they tally, the accused was asked to produce the files pertaining to the application given by the defacto complainant for measuring his land.

6. The accused given his explanation to the Trap Laying Officer that, he did not receive the money from the defacto complainant. The money was thrust inside his pocket while he was preparing receipts for the Flag Day donation offered by the defacto complainant. The receipts for Flag Day donation recovered by the Trap Laying Officer. During the trial, they were marked as exhibits by the defence. D.W.1 who was present at the time of trap and a colleague of the accused was examined by the accused to prove his explanation.

7. The prosecution to prove the charges, examined 12 witnesses marked 20 exhibits and three material objects. In defence, the accused examined



Crl.A.No.541 of 2016

he will receive the money only after completion of work, but later accepted the money. The possession of the money recovered from him is also not denied by the accused. While so, the trial Court ought not to have held that there was no demand by the accused.

11. The defence theory that, the accused, throw away the money which the defacto complainant thrust it in his left side pocket is unnatural and unbelievable in the light of the fact that, both his hands were tested positive for the presence of phenolphthalein. The accused has not probalised his defence by preponderance of probability, however, the trial Court accepted the defence and erroneously acquitted the accused.

12. The contention of the accused that the money was offered under the pretext of contributing the Flay Day collection also not probable since according to the accused, he had prepared three receipts for Rs.10/- each in the name of the defacto complainant. Whereas, two Rs.500/- currency and five Rs.100/- currency as a bunch given to the accused, who received it in his right hand, checked with his left hand and kept it in his left side pocket as per the



Crl.A.No.541 of 2016

prosecution witness. The presence of phenolphthalein in both his hands and pant pocket corroborates the evidence of defacto complainant, shadow witness and the Trap Laying Officer. Contrary to the proved fact, the trial Court has acquitted the accused.

13. Per contra, the Learned Counsel appearing for the respondent/accused submitted that the prosecution case on a whole is bundle of contradictions which has been exposed during the cross examination of the prosecution witnesses and disproved through the defence evidence. The trial Court has rightly accepted the defence theory and acquitted the accused.

14. While the specific case of the prosecution is that, the accused initially demanded Rs.3,000/- as a bribe to measure the defacto complainant's land and strictly told the defacto complainant that, unless the money is paid to him, he will do the work and his application will see the same fate of the earlier two applications and the same prosecution witness had deposed that when the money was offered to the accused, on the day of trap, he refuse to receive it and told that, he will collect the money only after completing the work. However, the accused



received the money on his insistence. Therefore, the contradiction in the case of the prosecution that, there was demand of bribe as per-condition to do an act, later turn down to be an promise to receive the money after completing the act but soon after acceptance after insistence to receive the money. This contradiction is fundamental and material which renders the prosecution case highly unbelievable.

15. The Learned Counsel for the accused/respondent states that the conscious and wanton omission on the part of the Investigating Officer to suppress the fact that, the accused gave an explanation soon after the trap and the possession Flag day donation receipts prepared in the name of the defacto complainant would clearly show that to maliciously prosecute the accused, the Investigating Officer has suppressed the material evidence which is in favour of the accused. Immediately after the trap, the accused was arrested and let out on bail. M.Ambi, who stood surety was examined as D.W.1 and his evidence stands unimpeached. He had categorically stated that, on the day of trap, the defacto complainant came to the Taluk Office and confirmed with the accused about his day of visit for measuring the land. At that time, the defacto complainant offered to contribute Rs.300/- for the Flay day donation. Therefore, the accused took



Crl.A.No.541 of 2016

receipt book and started preparing receipt. At that time, the money was thrust in the pant pocket of the accused by the defacto complainant. Immediately, on questioning the defacto complainant why he had kept the money in his pant pocket instead of handing it over directly, the accused found that, it is a bunch of Rs.500/- notes. The sequence of event explained to the Trap Laying Officer immediately by the accused.

16. Heard the Learned Government Advocate (Crl.Side) for the appellant and the Learned Counsel for the respondent/accused.

Point for consideration:- *Whether the finding of the trial Court is contrary to the evidence and not a possible view?*

17. The case of the prosecution that, on 23.06.2006, the defacto complainant gave application to measure his land situated in two different villages along with requisite fees is proved through Ex.P.1 and Ex.P.2. However, there is no evidence to show that on that day, he met the accused and the accused demanded gratification of Rs.3,000/- as per condition to visit the land and measure



it. Assuming that, he demanded money as a pre-condition to visit the land then, when the money offered on the day of trap, he would have definitely not refused to receive the money. However, the consistent case of the prosecution as spoken by P.W.2 Jayalingam and the shadow witness P.W.3 Sridhar is that when the defacto complainant offered bribe to the accused, he refused to receive it and told that he will take money only after completion of work. Therefore, the trial Court has rightly found that the prosecution has not proved the demand and acceptance, which are ingredients required to prove the offence under Section 7 of Prevention of Corruption Act 1988.

18. The contention of the prosecution is that, having found in possession of the tainted currency and the obtainment been spoken by P.W.2 and P.W.3, charge under Section 13(2) r/w 13(1)(d) of P.C Act gets proved and therefore, the trial Court judgment of acquittal is bad.

19. Reading of Section 20 of Prevention of Corruption Act, 1988, it is very clear that presumption of acceptance of undue advantage is only in respect of



Section 7 and not for offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act. First, the prosecution is bound to prove the demand and obtainment which is the fundamental fact. The presumption is only in respect of the fact that the demand and obtainment is as “illegal gratification”. The said presumption is the conclusive but rebuttable. The common meaning of term obtainment is conscious receipt of the money.

20. In this case, the accused has probalised his defence by examining D.W.1 M.Ambi and by marking Ex.D.1 to Ex.D.6 which are the communications from the department fixing target to the accused for Flay Day collection and three receipts out of which, two in the name of defacto complainant. These evidence probalised the defacto complainant might have thrust the money in the pocket of the accused and the accused shocked by it, had taken out the money and enquired the defacto complainant why he has thrust money in his pocket. Soon the Trap Laying Officer along with his team members had rushed and caught the accused. This is a near plausible explanation by the accused for the presence of phenolphthalein in both his hands and the tainted money.



Crl.A.No.541 of 2016

21. Since, the view expressed by the trial Court is possible, in the appeal to reverse a possible view with another possible view to convict the accused will not arise, in view of the Hon'ble Supreme Court judgment rendered in *State of Uttar Pradesh v. Banne alias Baijnath* reported in (2009) 4 SCC 271.

22. Hence, this *Criminal Appeal is dismissed*. The judgment of the trial Court in Special Case No.14 of 2013, dated 30.04.2015 is confirmed. The respondent/accused is set at liberty.

15.06.2023

Index :Yes/No.
Internet :Yes/No.
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Speaking order/Non-speaking order
bsm

To,
1. The Special Court for Prevention of Corruption Act Cases, Villupuram.



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Dr.G.JAYACHANDRAN,J.
bsm

Pre-delivery judgment made in
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