



WEB COPY



Crl.A.No.745 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.06.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.745 of 2016

P.M.Vijayachandran,
Formerly Field Worker-CMWSSB,
Mugappair West,
Chennai.

... Appellant/Accused

/versus/

State represented by
Inspector of Police,
Vigilance and Anti-Corruption,
City Special Unit-III,
Nandhanam, Chennai – 35.
Crime No.AC/2008/CC-IV

... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., pleaded to set aside the judgment and order passed by the Learned Special Judge and Chief Judicial Magistrate, Tiruvallur in Special Case No.04 of 2009, dated 13.10.2016 by allowing this appeal.

For Appellant : Mr.P.Ezhilnilavan

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



Crl.A.No.745 of 2016

JUDGMENT

WEB COPY

This Criminal Appeal is preferred by the accused who was found guilty by the trial Court and convicted for the offence under Sections 7 and 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

2. The brief facts of the case is that, the appellant/ P.M.Vijayachandran was working as Field Worker at Chennai Metropolitan Water Supply and Sewerage Board-hereinafter referred as “CMWSSB”, Mogappair West, Chennai. The defacto complainant/P.Kumar is the Manager of an Industry manufacturing PVC pipes in the name and style of M/s.Rainbow Enterprises at Ambattur Industrial estate. P.Sivanandam the brother of the defacto complainant is the owner of the Industry.

3. The case of the prosecution is that, the sewage charges and taxes for the industrial premises was not paid for the years together and the accused during the month of March 2008 demanded the arrears of Sewage taxes from the defacto complainant/P.Kumar. For non payment of the said arrears of Sewage taxes, the appellant/accused threatened the defacto complainant/P.Kumar that he



Crl.A.No.745 of 2016

will disconnect the service since they have not obtained proper permission for letting out sewage waste. To rectify and regularise the service, it will cost more than Rs.1,20,000/- and if he pay bribe of Rs.40,000/-, same will be rectified. Later, the defacto complainant/P.Kumar gave cheque for a sum of Rs.73,101/-, dated 29.03.2008, on realisation of the amount, receipt was generated. However, the appellant/accused did not hand over the receipt and the tax assessment card to the defacto complainant. To hand over the receipts and the tax assessment card the accused demanded Rs.15,000/-. Not inclined to give bribe, P.Kumare lodged a complaint to the respondent police on 02.05.2008. The Trap Laying Officer arranged for two Official witnesses, who were working in the Co-operative Department and in their presence, bribe money of Rs.15,000/- (Rs.1000 x 15 Nos.) smeared with phenolphthalein powder was entrusted to the defacto complainant. Before entrustment, the significance of phenolphthalein and sodium carbonate was demonstrated to the official witnesses, same was recorded by way of mahazar and thereafter, the trap team proceeding to the industrial premises of the defacto complainant. While proceeding the appellant/accused called the defacto complainant over phone to confirm whether he has made ready the money demanded. After getting affirmative answer from P.W.2/the defacto complainant,



Crl.A.No.745 of 2016

the appellant/accused at about 16.10 hours had gone to the industrial premises of the defacto complainant/P.Kumar and collected Rs.15,000/-, at that time, one of the official witness by name Thiru.Govindaraj, who was asked to be a shadow witness for the occurrence was present. The defacto complainant/P.Kumar, after giving the money to the appellant/accused came out and has given pre-arrange signal to the trap team, who had rushed to the industrial premises. The hands of the accused/appellant was dipped in the sodium carbonate solution. The colour of the solution turned light red and same was collected in the bottle for analysis. Thereafter, the tainted money which was kept in the shirt pocket of the accused/appellant was recovered. The serial numbers found in the tainted money compared with the numbers recorded in the entrustment mahazar. Being satisfied that the numbers tallied, the Trap Laying Officer has seized shirt of the accused and the pocket portion was dipped in the sodium carbonate solution. The colour of the solution turned light red and the shirt and the solution was collected in the bottle for analysis. From the accused/appellant, the Tax Assessment card and the receipts were recovered.



Crl.A.No.745 of 2016

4. Based on the complaint, the F.I.R was registered for offence under Section 7 of Prevention of Corruption Act, 1988 and copy of the F.I.R was forwarded to the Judicial Magistrate. After obtaining the Chemical analysis report and sanction order to prosecute the accused the charges were altered and final report was filed by the prosecution. The Chief Judicial Magistrate, Tiruvallur, on perusing the record, has framed charges under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

5. To prove the charges, the prosecution examined 10 witnesses (P.W.1 to P.W.10), marked 16 Exhibits (Ex.P.1 to Ex.P.16) and 4 material objects.

6. P.W.1 Thiru.Shiv Das Meena, the Managing Director, CMWSSB, has accorded sanction to prosecute the accused/Appellant. Being satisfied that, the accused has misconducted himself by receiving bribe of Rs.15,000/- and thereby, liable to be prosecuted. The sanction order is marked as Ex.P.1. P.W.2 Thiru.P.Kumar, is the defacto complainant who has given the complaint dated 02.05.2008 marked as Ex.P.2. P.W.3 Thiru.Sivanandan, is the brother of P.W.2 P.Kumar and the owner of M/s.Rainbow Enterprises. He had spoken about the



Crl.A.No.745 of 2016

sewage tax paid by way of cheque and the demand of illegal gratification by the accused/appellant for giving the receipts and the tax assessment card. P.W.4, Thiru.Govindaraj, who is the shadow witness had accompanied P.W.2 to oversee the transactions.

7. P.W.2 & P.W.4 have spoken about the entrustment mahazar which is marked as Ex.P.3 and the seizure mahazar which is marked as Ex.P.4. P.W.5 Thiru.V.Dilli, who is the Manager of CMWSSB, had deposed about the demand raised for sewage tax and instruction given to the accused/appellant to collect the tax. He had also deposed that, after receipt of the cheque from the assessee, he generated the receipts and made entry in the tax assessment card which are marked as Ex.P.6 and Ex.P.7 and he hand it over to the accused to hand over it to the assessee. P.W.6 Thiru.B.Baskaran, Junior Engineer in CMWSSB and P.W.7 Thiru.N.Nannan, Executive Engineer have spoken about the procedures for collecting the tax.

8. P.W.7. Thiru.N.Nannan, in the course of his Chief examination identified the communication between the Investigating Officer and reply from

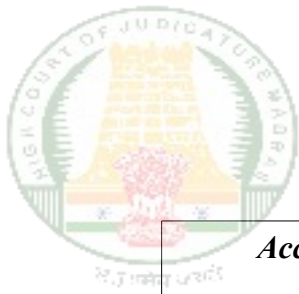


Crl.A.No.745 of 2016

Sewage Board regarding the residential premises bearing No.793, 6th Block, Mogappair West, Chennai, which is a property owned by P.W.3/P.Sivanandan, the brother of the defacto complainant P.W.2. P.W.8, Tmt.I.C.Amudha, Scientific Officer, who has tested the collection of hand wash and shirt wash solution from the accused. She had given her opinion marked as Ex.P.10, stating that, the solution contains both phenolphthalein and sodium carbonate. P.W.9, Thiru.Arulselvam, Trap Laying Officer and P.W.10. Thiru.R.Krishnaswamy, is the Investigating Officer. The First Information Report is marked as Ex.P.11 and the passport given to the Head Constable S.Arul Azhagan (P.W.9) to submit the F.I.R copy to the Judicial Magistrate is marked as Ex.P.14.

9. The Trial Court, after considering the evidence placed before it has held the accused guilty of charges under Sections 7 as well as 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

10. The trial Court convicted the accused and sentenced him to undergo the following imprisonment:-



CrI.A.No.745 of 2016

<i>Accused</i>	<i>Offences under Section</i>	<i>Conviction and Sentence passed by the trial Court</i>
P.M.Vijayachandran	Under Section 7 of P.C Act, 1988	To undergo 1 ½ years R.I and to pay fine of Rs.7,500/- in default to undergo 6 months S.I
	Under Section 13(2) r/w 13(1)(d) of P.C, 1988.	To undergo 2 ½ years R.I and to pay fine of Rs.7,500/- in default to undergo 6 months S.I.

11. The said judgment of the trial Court is challenged by the accused on the ground that the case of the prosecution bristles with improbability. The judgment of the trial Court is against law and contrary to the evidence.

12. The Learned Counsel appearing for the appellant submitted that the complaint Ex.P.2 states that, on 03.04.2008, the accused came to his Company premises and received cheque for sum of Rs.73,101/- drawn at SBI, towards payment of Sewage tax. Thereafter, when P.W.2 the defacto complainant demanded receipt for the payment, there was demand of illegal gratification to pay Rs.40,000/- to rectify and regularise the permission process. Thereafter, on 30.04.2008, the accused/appellant came to his Company and demanded Rs.15,000/- for giving the receipts and the tax assessment card or else there will be problem. It is also stated in the complaint Ex.P.2 that, if the money is not paid on



Crl.A.No.745 of 2016

or before 02.05.2008, he will not get the receipts or tax assessment card but the sewage service will be disconnected. Thereafter, the accused told the defacto complainant P.W.2 that, after the money is ready to inform him over phone. He will come and collect it. Whereas, P.W.2 P.Kumar, in the Court had deposed that, on 30.04.2008, the accused demanded Rs.15,000/- as bribe to give the receipt. P.W.2 was not inclined to give bribe, so he went to the Vigilance and Anti Corruption Office on 02.05.2008, at about 10.30 a.m and gave the complaint Ex.P.2. Soon thereafter, the Trap Laying Officer proceeded with the trap procedures and after completing the entrustment procedures at about 03.00 p.m, P.W.2 P.Kumar along with the Trap Laying Officer and the trap team were proceeding in the jeep towards his Company at Ambattur Industrial Estate. At that time, the accused called him over phone and enquired whether he has made ready the money demanded for which P.W.2 the defacto complainant answered in affirmative.

13. Pointing out the above contradiction in the complaint and the deposition of P.W.2, the Learned Counsel submitted that, when the complaint Ex.P.2 states that, the accused instructed the P.W.2/P.Kumar to inform after



Crl.A.No.745 of 2016

money is made ready. Before the Court, P.W.2/P.Kumar has deposed that, the

accused himself called P.W.2 and enquired whether the money demanded is ready.

The Learned Counsel for the appellant submitted that, either way the prosecution has failed to collect the call details to prove the fact whether there was any telephonic conversation between the accused/appellant and P.W.2/P.Kumar on 02.05.2008.

14. Further, the Learned Counsel for the appellant submitted that the case of the prosecution is that, for giving the tax assessment card and the receipts which are marked Ex.P.6 and Ex.P.7, the accused demanded Rs.15,000/- as bribe. There are contradictions and lapses in the prosecution to prove from where Ex.P.6 (card) and Ex.P.7 (receipts) was recovered. P.W.2 the defacto complainant and P.W.4 the shadow witness have not whispered about the recovery of Ex.P.6 and Ex.P.7. While P.W.9 the Trap Laying Officer say about the recovery of Ex.P.6 and Ex.P.7, is not disclosed from where he recovered these two Exhibits. Further, the Learned Counsel for the appellant submitted that, the Official witness P.W.4 (R.Govindaraj) admits that, he went to the Vigilance and Anti Corruption Office on the oral instruction of his Superior the Registrar. When there is no written



Crl.A.No.745 of 2016

request from Investigating Officer or written order from the Superior Officer of

P.W.4 to participate in the trap proceedings, it is violation of Vigilance manual.

The Learned Counsel for the appellant also submitted that the F.I.R registered on 02.05.2008 had reached the Judicial Magistrate on 06.05.2008 and there is no explanation on the part of the prosecution for the enormous delay.

15. Further, the Learned Counsel for the appellant also contended that the statement of the accused seeking explanation for the money recovered from him not been recorded by the Trap Laying Officer, whereas, the Investigating Officer in the cross examination of the accused had stated that the same version what he has said to the Trap Laying Officer therefore, he did not record the statement of the accused separately. Neither the statement recorded by Trap Laying Officer nor the Investigating Officer produced before the Court. This omission has caused grave prejudice to the accused and also it is in violation of the Vigilance Manual.

16. Also, the Learned Counsel for the appellant pointing out the delay in forwarding the solution for chemical analysis submitted that the solution for



Crl.A.No.745 of 2016

chemical analysis ought to have been forwarded forthwith as per Rule 46 of the DVAC Manual which has been grossly violated in this case. Yet another submission made by the Learned Counsel for the appellant is that the rough sketch which is marked as Ex.P.13 does not indicate where the accused/appellant and the defacto complainant P.W.2 were present in the sketch.

17. In support of his submission, the Learned Counsel for the appellant has cited the following judgments:-

(i). *P.Sirajuddin etc -vs- State of Madras, etc* reported in (1970) 1 SCC 595.

(ii). *State by Inspector of Police -vs- M.L.Rajan, Asst, Educational Officer, Thimiri, Arcot Taluk* reported in MANU/TN/2684/2012.

(iii). *P. Palraj V. State rep by Inspector of Police, Vigilance and Anti Corruption wing Thoothukudi* reported in 2012 (3) MWN (cr.) 380.

(iv). *The State by the Inspector of Police, CBI/ACB/Chennai -vs- V.Vaidiyalingam* reported in 2017 (2) MWN (Cr.) 439.

(v). *S.P.Tamilarasan -vs- State Rep. by the Inspector of Police, Vigilance and Anti Corruption, Cuddalore* reported in 2017 (3) MWN (Cr.) 435.



Crl.A.No.745 of 2016

(vi). *A.Deenadayalan -vs- State* reported in **2018 (1) LW (Crl) 699**.

(vii). *N.Vijayakumar -vs- State of Tamil Nadu* reported in **(2021) 3**

SCC 687.

(viii). *Charansingh -vs- State of Maharashtra and others* reported in

(2021) 5 SCC 469.

(ix). *Neeraj Dutta -vs- State (Govt. of N.C.T of Delhi)* reported in

2023 SCC Online SC 280.

18. Per contra, the Learned Government Advocate (Crl.Side) for the respondent submitted that there is no violation of the procedure as stated in the DVAC Manual and the minor deviations are only in respect of recommendatory Rules and not in respect of mandatory Rules. As far as the permission of the higher Official of the shadow witness P.W.4 Thiru.R.Govindaraj is concerned, the learned Government Advocate (Crl.Side) for the respondent submitted that there is a communication between the Trap Laying Officer and the Registrar of Co-operative Society and only pursuant to that request, P.W.4 and the other shadow witness was deployed by the Registrar. The communication not been marked as Exhibit since it is a confidential communication, P.W.9, Thiru.Arulselvam, the



Crl.A.No.745 of 2016

Trap Laying Officer in his chief examination had deposed that, he made a written request to the Registrar of Co-operative Society to provide two officials witnesses.

P.W.4 and other witnesses were present in his Office.

19. For the submission of the Learned Counsel for the appellant that the F.I.R was registered immediately after receiving the complaint (Ex.P.2) even without making preliminary investigation which is required under the Vigilance Manual.

20. The Learned Government Advocate (Crl.Side) for the respondent submitted that the necessary preliminary investigation been done and only being satisfied that there is a *prima facie* material available to proceed, the Trap Laying Officer, has registered the F.I.R and proceeded.

21. Regarding the delay in forwarding the F.I.R to Judicial Magistrate, the Learned Government Advocate (Crl.Side) for the respondent submitted that, Ex.P.14 is the passport given to the Head Constable by the Trap Laying Officer for forwarding the F.I.R to the Judicial Magistrate. The passport



Crl.A.No.745 of 2016

was given to the Head Constable on the same day i.e., 02.05.2008 itself however, he has not submitted the F.I.R copy to the Judicial Magistrate immediately but it has reached the Office of the Judicial Magistrate on 06.05.2008 but that lapse will no way prejudice the accused/appellant nor render the case of the prosecution unbelievable. The fact that the accused/appellant received the money from P.W.2 on 02.05.2008 at the industrial premises of the defacto complainant P.W.2/P.Kumar is an admitted fact and even under Section 313 of Cr.P.C questioning, the accused has accepted that, he has received the money but the money was for the sewage tax payable by P.W.3 for the residential premises. However, to disprove said explanation, the prosecution examined P.W.7 and marked Ex.P.9 which prove that as on 18.07.2008 even two months after the trap, the premises of P.W.3 bearing No.793, 6th Block, Mogappair West, Chennai, not been assessed for CMWSSB tax. Therefore, the attempt of the accused that, he received the tainted money from P.W.2 only towards Tax payable for the residential premises by P.W.3 been disproved through the testimony of P.W.7 and the letter marked as Ex.P.9.



Crl.A.No.745 of 2016

22. The point for consideration is whether the demand of bribe and acceptance of money is proved through the evidence relied by the prosecution in the light of the guidelines laid by the Hon'ble Supreme Court in *Neeraj Dutta -vs- State (Govt. of N.C.T of Delhi)*.

23. It is a case where the accused/appellant admits that, he went to the Company premises of P.W.2 and received money. According to the accused, he received the money believing that, it is for the sewage tax payable for the residential premises owned by the brother of P.W.2. However, the testimony of P.W.7 (N.Nannan) and Ex.P.9 indicates the fact otherwise. When there is no assessment at all for the residential premises of P.W.3, there is no need to pay Rs.15,000/- by his brother P.W.2 to the accused and there is no need for the accused to carry along with him on 02.05.2008 when he visited the industrial premises of P.W.3. Ex.P.6 and Ex.P.7 which are Tax assessment card and the receipts for the industrial premises owned by P.W.3.

24. The only explanation as a defence given by the accused in this regard is that, Ex.P.6 (Card) and Ex.P.7 (Receipts) was not recovered from him



Crl.A.No.745 of 2016

and there is no evidence to prove that, it was with the accused at the time of trap and same was recovered from him. If it is so, there should have been recovery mahazar indicating the recovery of these two documents (Ex.P.6 & Ex.P.7) and the said should have been corroborated by the competent authority and reliable witness.

25. In this case, except Ex.P.4, the seizure mahazar wherein there is a reference about recovery of these two documents (Ex.P.6 & Ex.P.7) and testimony of Trap Laying Officer P.W.9 no other witness particularly P.W.2/P.Kumar and P.W.4 (Govindaraj) have spoken about this. P.W.5 Thiru.V.Dilli, the Manager of CMWSSB though had spoken about these two documents (Ex.P.6 & Ex.P.7) and these two documents were marked through him. P.W.5 was not present at the time of trap and he is not a competent witness to speak about from where these two documents (Ex.P.6 & Ex.P.7) were recovered.

26. This Court accepts the said argument of the Learned Counsel for the appellant. However, the seizure mahazar marked as Ex.P.4 which is a contemporaneous document refers about these two documents (Ex.P.6 & Ex.P.7)



Crl.A.No.745 of 2016

recovered from the accused soon after the trap. From the cross examination of the prosecution witnesses, this Court finds that no suggestion put to any of the witness except the Trap Laying Officer, regarding the recovery of these two documents (Ex.P.6 & Ex.P.7) to suspect that it was not recovered from the possession of the accused at the time of trap. In such circumstances, when the contemporaneous document Ex.P.4 speaks about the recovery of Ex.P.6 and Ex.P.7 and the accused himself a signatory to the mahazar Ex.P.4.

27. P.W.5 the Manager of CMWSSB had categorically deposed that, soon after the realisation of the cheque amount, receipt was generated and hand over to the accused along with the tax assessment card and there is no reason to disbelieve the case of the prosecution.

28. No doubt, mere recovery of tainted money from a person is a proof for demand or acceptance or illegal gratification. The prosecution is bound to prove the fundamental facts regarding the demand as well as acceptance and the money recovered is in respect of the demand and acceptance.



Crl.A.No.745 of 2016

29. As far as the facts of the present case is concern, the demand of illegal gratification been spoken by P.W.2. Acceptance is spoken by P.W.2 and P.W.4. The tainted money recovered from the accused is spoken by P.W.2, P.W.4 and P.W.9 and same is corroborated by the testimony of Scientific Officer and her report. Above all, the accused himself admits that, he received the money from P.W.2, but it is not an illegal gratification but for other purpose. However, he has failed to probabilise the defence.

30. This Court finds that, in the cross examination of P.W.4 it is suggested that this money was received by the accused as a loan from P.W.2, whereas, in a written explanation under Section 313 of Cr.P.C., the accused has said that this money was received towards the sewage tax for the residential premises of Thiru.Sivanandan P.W.3 who is the brother of defacto complainant. The accused/appellant has every right to take inconsistence defence but there must be some material to probabilise though not prove any one or more defence taken by the accused. In this case, neither of the defence supported by any material to probabilise such defence. In the said circumstances, the Court holds that there is no ground to interfere the finding of the trial Court. Accordingly, this ***Criminal***



Crl.A.No.745 of 2016

Appeal is dismissed. The trial Court is directed to secure the appellant/accused and commit him to the prison to undergo the remaining period of sentence. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.

01.06.2023

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

To,

1. The Special Judge and Chief Judicial Magistrate, Tiruvallur.
2. The Inspector of Police, Vigilance and Anti-Corruption, City Special Unit-III, Nandhanam, Chennai – 35.
3. The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.A.No.745 of 2016

Dr.G.JAYACHANDRAN,J.
bsm

Crl.A.No.745 of 2016

01.06.2023