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Crl. A. No.285 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.10.2024

Pronounced on : 08.11.2024

CORAM : **JUSTICE N.SESHASAYEE**

Criminal Appeal No.285 of 2020

1.K.Rajendiran

2.M.Mani

... Appellants

Vs.

State represented by
the Inspector of Police
V&AC, Villupuram
(Crime No.5/2006)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment and order of conviction and sentence dated 30.06.2020 passed in Special Case No.10 of 2014 on the file of the learned Special Judge, Special Court for Prevention of Anti-Corruption Act Cases, Villupuram and acquit the appellants.

For Appellants : Mr.R.Natarajan for 1st Appellant
Mr.S.Anbalagan for 2nd Appellant

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl. Side)



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JUDGMENT

The appellants herein challenge the judgment of the Special Court for V&AC cases, Villupuram dated 30.06.2010 made in Special Case No.10 of 2014, by which the Special Court had convicted the first appellant (A1) for offences under Section 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and imposed a sentence of four years rigorous imprisonment and a fine of Rs.5,000/- in default of which to undergo six months simple imprisonment and the second appellant (A2) was convicted for offences under Section 12 of the Prevention of Corruption Act and imposed a sentence of three years rigorous imprisonment and a fine of Rs.3,000/- in default of which to undergo three months simple imprisonment.

2. The prosecution case may be stated as below:

- (a) The first appellant was working as Assistant in Audit Section in the office of the Executive Engineer, PWD(WRO) at the time of commission of crime in December 2006. A2 is an Office Assistant.
- (b) PW2 had earlier applied for an electricity connection for agricultural purposes vide Ext.P2, application dated 01.08.2002. These applications would be processed by the Electricity Board based on seniority. One of the



requirements for granting free electricity connection to agriculturists is to produce a NOC from PWD (WRO).

- (c) Sometime in October, 2006, in connection with obtaining a NOC for vis-a-vis the electricity connection, PW2 met A1 at the office of Executive Engineer at Villupuram, and the latter is stated to have told PW2 to meet him after two days.
- (d) Accordingly, two days later PW2 met A1 again. He would now require PW2 to carry a communication from the office of PW1 to the office of the Assistant Executive Engineer (AEE) at Tirukkivilur. On the same day PW2, dutifully took this communication to the office of AEE and delivered it to him. The AEE would then give another communication from his side to the office of PW1, and required PW2 to do the job. (in the process, PW2 literally was reduced to a courier boy by the officials. After all it is he who requires a NOC from the PWD office).
- (e) It is in these circumstances, on 12.12.2006, PW2 had again visited the office of the Executive Engineer (WRO) for the NOC. A1 would now make a demand of Rs.1,000/- for doing the favour. After negotiation, the demand for money was brought down to Rs.800/-.
- (f) PW2 would now prefer Ext.P3, complaint with the respondent, receiving



which at 4 p.m, PW15, registered Ext.P4, FIR (and also marked as Ext.P22).

(g) On the following day i.e. 13.12.2006, PW15 organised the trap. After completing the pre-trap procedures, he led the trap team which included PW2, and two official witnesses, namely PW3 and one Subramanian, for the event. It may have to be stated here that PW15 had planted 8 x Rs.100 notes, all smeared with phenolphthalein powder. The plan was executed to perfection with PW2 tendering the money to A1 which A1 received. Upon receiving the money A1 would give it to A2.

(h) On being alerted about it, PW15 arrived at the scene, seized the planted notes from A2, and proceeded to complete the remaining procedures. The trap was successful, since both A1 and A2 have touched the tainted money.

(i) The investigation was then taken over by PW16, and he laid the final report.

3. The trial court framed appropriate charges and proceeded to try them. During trial, the prosecution examined PW1 to PW16, produced Ext.P1 to Ext.P37 and MO1 to MO5. On appreciating the evidence before it, the trial court found both



the accused guilty of the offences that they were charged with, and convicted them as has been outlined in the opening paragraph. The said judgment is now under challenge in this appeal.

4. The learned counsel for the second appellant submitted that there is no case for the prosecution that A2 either demanded money for and on behalf of A1 nor has he received the money from PW2 to either for himself, or for and on behalf of A1. Nor is there an accusation against A2 that he, as an ordinary Office Assistant, would be doing any official favour to PW2 on receipt of the money. The only accusation is that he had received the money which A1 has given to him. The case as projected by the prosecution nowhere shows that A2 had committed an offence within the meaning of Section 12 of the PC Act.

5. The Learned counsel for the first appellant (A1) made the following submissions:

- a) Ext.P1, sanction accorded by PW1, the Executive Engineer, under Section 19 of the PC Act is invalid inasmuch as he has not applied his mind to it. In his cross-examination he has conceded that he had consulted his colleagues and superior authorities before preparing Ext.P1 sanction, and



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ascertained his own authority and the provision of law etc from PW15, the TLO. This implies that he has not applied his mind independently on the materials placed by the prosecution before according the sanction, but has literally taken instructions from the very TLO for preparing Ext.P1.

- b) So far as PW2 is concerned, he has literally given up his case in his cross-examination, and hence the case of demand, payment and acceptance of bribe stands defeated.
- c) So far as payment of money is concerned, PW2 conveniently suppressed the fact that he had met A1 some time in October, 2006 and when he met the appellants on 12.12.2006, A1 had enquired him as to why he did not appear for several days when the proceedings have already been made ready at the office of the Executive Engineer. Therefore, on that day on 12.12.2006, there was nothing required to be done in the office of the Executive Engineer for PW2 to pay Rs.800/-. Therefore, the alleged payment of money can never be attributed to any illegal incentive which A1 had demanded for doing any favour officially. Indeed, A1 was only working as an Assistant in the Audit section of the Executive Engineer of PWE, and he has no authority to issue a NOC.
- d) So far as receipt of Rs.800/- is concerned, it is towards contribution for the



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Flag Day, which this country celebrates on 5th December of every year. In this regard, the local Tahsildar fixes target for each Government offices in his jurisdiction, and this was spoken to by PW3, one of the official shadow witnesses nominated by the office of the Tahsildar to be part of the trap team. Therefore, the office of the Executive Engineer was under a pressure to achieve the flag day contribution as fixed by the Tahsildar, and hence Rs.800/- was received only for meeting the target so fixed.

6. Refuting the above arguments, the learned prosecutor submitted that:

- a) A1 has no duty to receive any money either as illegal gratification for doing any favours, nor for any other purposes which cannot be justified in law. Indeed the offence under Sections 7 and 13 are two independent offences, and A1 cannot try to expect the sequence to flow from Section 7 offence into section 13(2) offence.
- b) So far as the legality of Ext.P1 sanction is concerned, there is nothing in law that prevents an officer who is required to accord sanction under Sec.19 to get certain inputs from those who are familiar with the process of according sanction. Getting inputs for according sanction is entirely different from one applying one's independent mind to the materials placed



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before him. Therefore, mere getting certain inputs from certain officials *per se* cannot render Ext.P1, invalid.

- c) So far as the argument of the learned counsel for the first appellant suggesting that Rs.800/- was received only towards the flag day collection, there is no official circular to that effect, and if only there was any, nothing precluded the appellants from producing the same on their side. In this regard when it was suggested to PW5, he has denied it.

7.1 Rival submissions are carefully weighed. For establishing every charge under Sec.7 of the PC Act, the prosecution shall produce so much evidentiary facts as would be necessary to establish the triple criteria of demand, payment and acceptance of bribe. The triple criteria must be simultaneously present, and not in the alternative. Accordingly, if the demand for bribe is unaccompanied by any payment or acceptance of bribe, then no offence is constituted. However, demand for bribe can hardly be established through direct evidence, since no sensible person will ever leave a trail to track his demand. Here, the prosecution may have to rely seriously on the payment and receipt of planted currencies, the two of the easily observable facts which can be established through a trap procedure.



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7.2 Of these two provable facts, payment of bribe-money is perhaps the easiest to prove. So far as the proof of acceptance of bribe-money goes, as stated earlier, through a trap procedure the prosecution at the best can only prove the receipt of money planted for trap, and not its acceptance as bribe. Receipt and acceptance are two different acts. A receipt of money involves only an act of receiving it, and it need not be accompanied by any *mensrea* to accept it as bribe. To state it differently, acceptance of bribe surely requires an intent to hold what was received, and hence *mensrea* will be an indispensable factor for proving acceptance. Therefore, proof of receipt of planted currencies cannot be equated to its acceptance as bribe money. In other words, the intent of the bribe-giver in tendering the money must fit in with the intent of the bribe-taker in accepting it as bribe money like two pieces of jig-saw puzzle.

7.3 But, whether there has been an intent to hold the money received as bribe will only be within the personal knowledge of the accused-person, where the burden will be on him to explain. It is hence, when the planted money is paid and received, the two facts which are adequate to establish the success of a trap, the presumption under Sec.20 will come to play, because the prosecution may not



know the intent of receiving the planted currencies. And since the intent of the accused person behind receiving the money is within his personal knowledge, he is given an opportunity to rebut the presumption with a believable explanation. Here, the explanation of the accused-person must emanate from evidence, and it must be a plausible and not fanciful explanation once evidence undergoes judicial scrutiny. If however, an accused person could not offer even a plausible and believable explanation as to why he touched the sinned currencies, then his explanation fails, and the presumption under Sec.20 of the PC Act will fix him firmly to the crime alleged against him. And, only after the court is satisfied that the person facing a charge under Sec.7 of the Act has not been able to offer a plausible explanation on evidence to rebut the presumption under Sec.20 of the Act, can the court draw an inference regarding demand for bribe. It is therefore, axiomatic that unless the evidence on record leads to an irresistible conclusion that the intent of the bribe-taker in receiving the planted currencies is towards accepting it as bribe, even an inference of demand cannot be made.

8. The case at hand falls squarely in this slot. There is apparently payment of money by P.W.2 to A1 and A1 has received it, but he relies on P.W.3 to create a plausible explanation that what he received was not with the intent to accept it as



bribe-money, but only towards Flag Day contribution for meeting the target fixed by the Tahasildar.

9.1 The merit of the defence is now required to be assessed. The trap was on 12.12.2006. P.W.3, the shadow witness to the trap from the Taluk Office, has deposed that the Tahasildar had fixed the target for each Government offices, and these Government offices have to meet the target. This Court understands that contrary to the submissions of the prosecutor in this regard, Government itself has issued a circular which finds reference in ***Periyaswamy Vs Inspector V & AC, Tiruchirapalli*** [1999 Cri LJ 2944], to which reference will be made very shortly. Therefore, this circular read along with the evidence of P.W.3 has provided evidentiary space for A1 to offer a plausible explanation that he received the money to meet the target fixed for his office for the Flag Day contribution. Here it is apposite to refer to the judgement of a learned Single Judge of this Court in ***Periaswamy case***. It reads:

" 46. In the instant case, as stated earlier, the plea of the defence is receipt of the money towards Flag Day collection. On consideration of the facts and circumstances of the case, this Court holds that the amount was received only as a bribe and not as a Flag Day collection. I do not propose to hold, in the light of the decisions referred to above, that the appellant



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received the said amount towards the Flag Day collection for showing favour to P.W.1, since the demand towards Flag Day collection has not been established by the defence in this case.

47. But, difficulty arises in these cases in this way. By the circular being issued by the State Government directing the public servants to make collection for Flag Day etc., those public servants are constrained to approach the public. Incidentally, those public servants are making such a request to public, who come to them for showing some favour in discharge of their official duties. Therefore, indirectly the public also are made to make a payment to the public servants towards the Flag Day collection etc., in order to see that they get favour from the public servants in exercise of their official duties. So, ultimately, both public and public servants would suffer in a way through the circulars.

48. This could be viewed in yet another angle. The public servants also would sometimes take the advantage of the circular to take up the defence plea in these corruption case, though the demand of the amount was towards bribe.”

Therefore P.W.3's evidence cannot be ignored by the Court as an irresponsible statement. Acting on the evidence of P.W.3, this Court has to hold that A1 has



been able to provide a plausible explanation, if not a believable explanation that the tainted currencies were received not with intent to accept it as bribe but with an intent to meet the target for contribution of Flag Day Fund. The presumption under Sec.20 of the Ac thus stands rebutted and consequently it has to be held that A1 is not guilty of the charges for which he faced trial.

8.2 Before winding up this Court intends record (with pain):

- a) how even the Flag Day fund which is supposed to be mobilised through public contribution for the welfare of our armed forces during the Flag Day Celebrations on 7th of every December can be visited with an allegation of target-collection, leaves room for being exploited by it and adopt it as a line of defence in criminal trial. An individual may suffer from aberrations of integrity, but the system shall not create a space for it. Here the guilty may manage to sneak away, and the innocent might be victimised. Neither is good for public service. Where a system is put in place by the Executive which paves way for corrupt practices then it should be eliminated. Indeed, it would be appreciable if the Government of the day leaps beyond the politics of its existential demands and propagates a sense of national pride among the citizenry and promotes voluntary contribution by the



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citizenry through net-banking and wallets, then it may eliminate the possibility for the corrupt to sneak through system-bred gaps. This may also be extended to collection of land tax (*kist*), where it is said, that tax-targets are fixed for Village Administrative Officers for a *fasli*. What generally happens is that, without he actually collecting tax from the land-owners, anyone who approaches VAO officially is often fleeced to meet the target. To repeat, an individual may corrupt himself and get victimised, but the system should not enable victimisation of any. These are areas for reforms, and it is not the Court to take a call. Here it is apposite to reproduce the following passage from ***Periasamy case***. The learned single Judge observes:

“49. Therefore, it is, in this context, appropriate for this Court to direct the State Government to take into consideration of the view expressed by this Court with reference to the difficulties experienced by both the public servants and the public due to the circulars issued by the Government. If the State Government, on the strength of the decision of this Court in 1991 CrL LJ 1563 and the Division Bench of the Gujarat High Court in 1977 Cr LJ 626, would take a policy decision not to ask the public servants to make any collection for any purpose, it would be a great service to both the public and the public servants.”



b) Fund raising for Flag Day must be a national movement where society participates with a sense of pride. Several decades back school children were encouraged to participate in the fund raiser, which it might have to be sated, had helped them appreciate that the nation is safe because some among them guard our borders. The children of yesteryears joyfully participated in it, and no parents took any offence to it. There was a pride all around. However, it might be an over ambitious expectation from the contemporary parents and their children that they will feel encouraged to participate in Flag Day Fund raising, as they are seriously seen stuck deep in a confusion in understanding and differentiating empowerment and entitlement. During the course of the arguments this court even checked with many Advocates in the court hall if they had seen any Flag Day Fund collection on the roads or elsewhere around the Flag Day celebration, but the unanimous answer it got was a disappointing 'No'. Should this court take judicial notice of this downfall? In his inaugural address in 1961, John. F. Kennedy thundered, “*ask not what your country can do for you, ask what you can do for your country*” but it ignited the national pride not just for his audience in America but everyone from every nation who prided his country. A Flag Day fund raiser is a minimalistic effort of a



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common citizen towards building the national pride. But in today's India, which is a republic in its adolescence, it might be a difficult proposition to remind the citizenry to stand by our jawans. “*Why should my child do it?*” And, “*why should I do it?*” would be the most likely questions that will fill the social media, and a story will be spun as if the nation cares its children the least, and dignity of the one who advocates will be mercilessly preyed on. *Quo vadis* the national psyche?

9. Turning to A2, there is no case that he had either demanded any bribe, nor money was first paid to him on the instruction of A1. How can he be stated to have abetted the crime? And, if Rs.800/- was received from P.W.2 by A1 for meeting Flag Day contributions, then it would have only shared that intent and hence he cannot be held guilty of offence under Sec.12 of the PC Act.

10. And, finally to Ext.P1 sanction which P.W.1 had accorded under Sec.19 of the Act for prosecuting the appellants. In his cross examination he had deposed that he had consulted others before he gave his sanction which, very surprisingly included the TLO. Close to half a century back, in ***Mohd.Iqbal Ahmed Vs State of A.P.*** [(1979)\$ SCC 172 : AIR 1979 SC 677] the Supreme Court has held that



the sanction for prosecution is not an “idle formality” but is “*sancrosanct which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against public servant.*” A sanction, therefore, must emerge as a pure spring sourced directly from the mind of the sanctioning authority upon he applying it to the materials before it. He need to ask his conscience and none others. Having stated thus, this Court partly accepts the submission of the prosecutor that there is nothing wrong if someone who is unfamiliar with the process of applying one's mind to the facts placed before him from consulting the one who is familiar with the process to learn how to decide on the issue of granting sanction for prosecution. But it is underscored that:

- a) it must be limited to consulting those who might be familiar with the manner of application of mind for according sanction and the materials that are required to be appreciated. It should be to educate oneself as a learning the process as in an in-house training programme, and hence it is necessary to ensure that such consultative exercise should not even give a remotely possible impression that there has been an outsourcing of one's statutory responsibility; and
- b) at no time the sanctioning authority shall take lessons of whatever kind



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from the policemen who investigates a crime. Any consultation of any kind with the prosecuting or investigating agency will taint the sanction with bias, and it is the least recommended practice which no court wedded to neutrality of its conscience can appreciate.

P.W.1 very obviously had walked on the wrong lane, plucked and ate the sinned fruit when he conceded, rather innocently, that he had consulted the TLO for the preparation of Ext.P1. It might have been done unwittingly, but it does affect the sanctity of the sanction he had accorded. Necessarily this court has to hold that the sanction as accorded is no sanction in law. This would imply that irrespective of the merit of the case on evidence, the prosecution still has to lose.

11. In the result, the appeal is allowed and the judgment dated 30.06.2020 in Special Case No.10 of 2014 on the file of the learned Special Judge, Special Court for Prevention of Anti-Corruption Act Cases, Villupuram, convicting and sentencing the appellants, is set aside.

08.11.2024

Index : Yes / No

Neutral Citation : Yes / No

Asr/ds



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To :

- 1.The Special Judge
Special Court for Prevention of
Anti-Corruption Act Cases
Villupuram.
- 2.The Public Prosecutor
High Court, Madras.



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N.SESHASAYEE, J.

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Pre-delivery Judgment in
Criminal Appeal No.285 of 2020

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