IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.03.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.741 of 2010

Judgment reserved on:11.03.2015
Judgment pronounced on:16.03.2015

State represented by
The Inspector of Police
Vigilance and Anti-Corruption
Chennai Special Unit-1
(Crime No.1/AC/2001/CC-1) .. Appellant/complainant

v.

1.G.Namasivayam
2.V.K.Srinivasan .. Respondents/Accused 1 and 2

Prayer:Criminal Appeal filed under Section 378 Cr.P.C. against the judgment of acquittal dated 27.08.2010 in Spl.Case No.04/2002 on the file of the learned Chief Judicial Magistrate-cum-Special Judge, Chengalpet and convict the respondents/accused 1 & 2 as charged.

For Appellant : Mr.V.Arul
Government Advocate (Crl.side)
For R1 : Mr.R.Vijaya Kumar
For R2 : Mr.K.G.Senthil Kumar

JUDGMENT

This Criminal Appeal arises out of the judgment of acquittal dated 27.08.2010 in Spl.Case No.04/2002 on the file of the learned Chief Judicial Magistrate-cum-Special Judge, Chengalpet.

2.The case of the prosecution is as follows:

(i)P.W.2/Buvaneswari is the wife of P.W.3/Shankar, who is doing construction business. P.W.2 has in possession of vacant land in Adambakkam village. On 30.01.2000, to construct a building in that vacant land, P.W.2 has applied for getting approval from Chennai Metropolitan Development Authority and that application was marked as Ex.P2. She has also given an application Ex.P3 for getting approval from Alandur Municipality. But Alandur Municipality has returned

Ex.P3 stating that some particulars have not been mentioned vide Ex.P4 letter dated 15.12.2000. P.W.3/Shankar has paid Rs.22,200/- before State Bank of India for getting approval. The challan was marked as Ex.P5 and the receipts for Rs.3,800/- and Rs.3,030/- respectively were marked as Exs.P11 and P12. Ex.P9 is the receipt for the payment made by P.W.3 before Alandur Municipality office. One Rajasekar is the relative of P.W.3 and through him, P.W.3 came to know that he has paid excess amount of Rs.11,100/-. On 23.01.2001, P.W.2 has given an application Ex.P6 before CMDA stating that she has paid Rs.11,100/- as excess. On 01.02.2001, at about 10.30 a.m., P.W.3 went to the office of Alandur Municipality and asked the respondents 1 and 2 herein for getting refund of the said excess amount,. At that time, A1/building Inspector and A2/Junior Assistant, Special Grade demanded Rs.1,000/- and Rs.500/- respectively. They also told that the said amounts were handed over to them between 5.00 to 5.30 p.m. on the same day in the office of Alandur Municipality. Therefore, P.W.2 went to Vigilance and Anti-corruption office on 01.02.2001 and preferred a complaint Ex.P8.

(ii)P.W.8/Barani Kumar, Inspector, Vigilance received Ex.P8 complaint and registered a case in Crime No.1/AC/2001/CC-1 under Section 7 of the Prevention of Corruption Act. The signature of P.W.3 in F.I.R. was marked as Ex.P13. Then P.W.8 made an arrangement for trap proceedings and P.W.4/Narayanan and one Jayakumar are the two witnesses from Government office and trap proceedings was explained to them. P.W.8 in the presence of P.W.3, P.W.4 and Jayakumar prepared Ex.P14/entrustment mahazar.

(iii) On 01.02.2001, at about 5.00 p.m., as per the instructions of P.W.8, P.W.3, P.W.4 along with Jayakumar went to Alandur Municipality office. P.W.8 had already directed P.W.3 to give signal to the police, after demand made by the accused and amount was given by him. Since the first accused had gone out side, second accused received both Rs.1,000/- and Rs.500/- from P.W.3. P.W.3 after giving money to the second accused, came outside and made signal to the police. Immediately, they went to the accused office and followed the procedures and from the second accused, P.W.8 seized M.O.1 series and M.O.2 series - Rs.1,000/- and Rs.500/- and tallied with Ex.P14/mahazar. Thereafter, P.W.8 seized the files pertain to the office of Alandur Municipality and the same were marked as Exs.P15 to P18 and the seizure mahazar was marked as Ex.P19. Then he went to the house of the second accused and made search and the search warrant was marked as Ex.P22 and arrested the second accused. Since the first accused is not present in his house, P.W.9 prepared Ex.P20 interim mahazar.

(iv)P.W.7/Karthikeyan, Assistant in Forensic Science Department, conducted chemical analysis on the material objects and gave Ex.P21/chemical analysis report.

(v) On 02.02.2001, P.W.9/Sudarsan, Inspector of Police, took up the case for further investigation and examined all the witnesses and recorded their statements. Then P.W.9 obtained sanction from P.W.1/Chakkarapani, Commissioner, Alandur Municipality, who accorded sanction for prosecuting the accused, gave Ex.P1 sanction order. After completing investigation, he filed the charge sheet against the accused persons for offences under Sections 7 of Prevention of Corruption Act read with 34 IPC and 13(2) read with 13(1)(d) of P.C. Act read with 34 IPC.

3.The learned trial Judge after following the procedure, framed necessary charges. The accused pleaded not guilty. The trial Court examined the witnesses P.W.1 to P.W.9 and marked the documents Exs.P1 to P22 and material objects M.O.1 to M.O.4 and placed the incriminating evidence before the accused and the accused denied the same in toto. On the side of the accused, Exs.D1 and D2 were marked. The trial Court after considering the oral and documentary evidence, acquitted the accused from the charges levelled against them.

4.Challenging the judgment of acquittal passed by the trial Court, the learned Government Advocate (Crl.side) submits that the trial Court ought to have accepted the evidence of P.W.4/shadow witness, P.W.5/Selvaraj, Manager, Alandur Municipality and P.W.8 in respect of recovery of tainted money and phenolphthalein test. The trial Court ought to have invoked presumption under Section 20 of the Prevention of Corruption Act. Even though P.W.3 turned hostile, his evidence is admissible in evidence and the same was corroborated by other evidence. P.W.3 has deposed about the demand and acceptance made by the accused and that has been corroborated by P.W.4/shadow witness. The trial Court without considering all the above aspects erroneously acquitted the respondents/accused persons and hence, he prayed for conviction of the accused and allowing this appeal.

5.Resisting the same, learned counsel for the respondents/accused 1 and 2 submits that according to the case of prosecution, P.W.2/Buvaneshwari, who is the wife of P.W.3/Shankar/defacto complainant, has given an application Ex.P2 for getting approval for the building plan before CMDA and during that time, she has paid Rs.22,200/- (i.e.) excess of Rs.11,100/- and she has to pay Rs.11,100/- and hence, she filed an application Ex.P6 before CMDA for refund of the excess amount. It is the further case of prosecution that A1/Building Inspector and A2/Junior Assistant - Special Grade have demanded Rs.1,000/- and Rs.500/- respectively for passing order for refunding the amount. So P.W.2 has given a complaint Ex.P8 before the Vigilance and on that basis, trap proceedings was initiated. Admittedly, at the time of conducting trap proceedings, the first respondent/A1 was not in Alandur Municipality office and he has gone outside. The trial Court has considered the same and rightly acquitted the first accused. It is further submitted that P.W.3 in his evidence fairly conceded that once the amount has been paid in favour of CMDA, CMDA alone is a competent person for passing refund order and the respondents, who are working in the office of Alandur Municipality are not the competent persons to pass such order. There is no evidence to show that the respondents are competent to pass refund order and that factum was rightly considered by the trial Court.

6.Learned counsel further submits that P.W.6/Gunaseela Sundarsingh, who is redressal officer in CMDA, in his evidence deposed that on 31.01.2001, P.W.2 has given an application, in which, she stated that she has paid Rs.11,100/- as excess amount and hence, she wants to refund of that amount. Therefore, P.W.6 wrote a letter to Alandur Municipality to call for the concern file to CMDA and through him Exs.D1 and D2 were marked. So the trial Court has rightly held that the respondents herein are not the competent persons to pass refund order. Further, the appellant herein has not proved that the respondents received the money as if they are knowing fully well that the said money is illegal gratification. Once the prosecution has proved that the respondents received money as illegal gratification, then only the prosecution is entitled to invoke presumption under Section 20 of P.C.Act and the burden is shifted to the accused to rebut the presumption. But in the case on hand, there is no evidence to show that the second respondent has received money as illegal gratification. But whereas the trial Court rightly held that since P.W.3 is doing construction business, he used to pay amount to the staffs. So P.W.3 has paid amount in such a manner and no evidence to show that he paid the amount to the second accused as illegal gratification. Hence, the judgment of acquittal passed by the trial Court does not warrant any interference unless the judgment of acquittal is perverse. Therefore, he prayed for dismissal of the appeal.

7.Considered the rival submissions made on both sides and perused the materials available on record.

8.The case of the prosecution is that P.W.2/Buvaneshwari is the owner of the land and his husband is P.W.3/Shankar. The first respondent/first accused is the Building Inspector and second respondent/second accused is the Junior Assistant - Special Grade. P.W.2/Buvaneshwari has applied for getting approval to construct a building in the land which stands in her name, for which, she paid Rs.22,200/- before CMDA. But she has paid excess amount of Rs.11,100/- and for refunding the same, she has given an application Ex.P6 before CMDA. For refunding the said amount, P.W.3 went to the office of Alandur Municipality on 01.02.2001 at about 10.30 a.m., where A1 and A2 were working. At that time, it is alleged that A1 and A2 demanded Rs.1,000/- and Rs.500/- respectively. Hence, she has given a complaint Ex.P8 before Vigilance and Anti-Corruption Wing and on the same day, the trap proceedings was conducted.

9.Admittedly, there is no dispute with regard to the sanction accorded by the sanctioning authority. It is true, P.W.3/Shankar turned hostile. As per the dictum of the Apex Court, the testimony of hostile witnesses need not be ignored. The Court should scrutinize the testimony of hostile witnesses and accept the portion of the same which receive corroboration from other evidence on record. In the case on hand, even the evidence of P.W.2 and P.W.3 are not corroborated with each other. P.W.4/Narayanan is the shadow witness. As per the dictum of the Apex Court, shadow witness is not an independent witness and his evidence is not corroborated. P.W.5/Selvaraj, Manager, Alandur Municipality Office, is the attestor of recovery mahazar. But on the date of demand (i.e.) on 01.02.2001, A1 was not present in the office and he has gone out for attending some other official duty. So it clearly shows that the first respondent/A1 has not received any amount and no amount was recovered from him. The trial Court has rightly considered the same and acquitted the first respondent/A1 stating that he is not guilty for offences under Section 7 and 13(2) read with 13(1)(d) of P.C.Act. So the judgment of acquittal passed by the trial Court in respect of first accused is hereby confirmed.

10.It is to be noted that once the amount has been paid before CMDA, it is the duty of CMDA to refund the excess amount if any paid by the applicant. According to the evidence of P.W.6/Gunaseela Sundarsingh, who is redressal officer in CMDA, he received Ex.P6 from P.W.2 on 31.01.2001, in which, she stated that she has paid Rs.11,100/- as excess amount and hence, she wants to refund of that amount. Therefore, P.W.6 called for records from Alandur Municipality and at that time, he came to know that the file was seized by the Vigilance office. In such circumstances, the respondents herein are not competent persons to pass order for refunding excess amount and the same was rightly considered by the trial Court.

11.The case of the prosecution is that the second accused has received Rs.1,000/- and Rs.500/- from P.W.3. But there is contradiction between the evidence of P.W.4 and P.W.5. P.W.4 in his cross-examination deposed that the second respondent received Rs.1,000/- and kept the same in between the papers in the ledger and received Rs.500/- and kept in the table drawer. But P.W.5 in his evidence deposed that he does not know what had happened there. In such circumstances, there is no evidence to show that the accused had received Rs.1,500/-, since P.W.3 has also turned hostile. Once demand, acceptance, recovery and phenolphthalein test have not been proved by the prosecution, the appellant/prosecution is not entitled to invoke presumption under Section 20 of the P.C.Act. It is well settled dictum of the Apex Court that once the prosecution wants to invoke presumption under Section 20 of P.C.Act, they ought to have proved that the accused/respondents have received the money knowing fully well that the money is illegal gratification. But there is no iota of evidence to prove that the second respondent has received the money as illegal gratification. The trial Court has rightly held that the second accused is also not guilty for offences under Sections 7 and 13(2) read with 13(1)(d) of P.C.Act.

12.Considering the aforestated circumstances of the case, I am of the view, the prosecution has miserably failed to prove that the respondents/accused are guilty for offences under Sections 7 of Prevention of Corruption Act read with 34 IPC and 13(2) read with 13 (1)(d) of P.C. Act read with 34 IPC beyond all reasonable doubt. The trial Court has considered all the aspects in proper perspective and rightly acquitted the respondents/accused. So the judgment of acquittal passed by the trial Court does not suffer any perversity and it is hereby confirmed. This appeal deserves to be dismissed and it is hereby dismissed.

13. In the result, this Criminal Appeal is dismissed by confirming the judgment of acquittal dated 27.08.2010 in Spl.Case No.04/2002 on the file of the learned Chief Judicial Magistrate-cum-Special Judge, Chengalpet.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.The Chief Judicial Magistrate
The Special Judge, Chengalpet.

2.The Inspector of Police
Vigilance and Anti-Corruption
Chennai Special Unit-.

3.The Public Prosecutor
High Court, Chennai.

4.The Record Keeper
Criminal Section, High Court, Chennai.

+ 2 ccs to M/s. R. Vijayakumar, Advocate SR.14479

CA(CO)
EU 25.03.2015