Bail Slip

The petitioner/accused K.Sundaram, was released on bail as per the order of this court dated 30.09.2008 and made in M.P.No. 1 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.02.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.710 of 2008

K.Sundaram ...Appellant/Accused

vs.

Inspector of Police,
Vigilance and Anti Corruption
Chennai-II Detachment,
Chennai City,
Chennai-20. ...Respondent/Complainant

Prayer:Criminal Appeal filed under Section 374 CrPC. against the judgment of conviction and sentence, dated 18.09.2008 made in C.C.No.30 of 2004 on the file of the learned IV Additional Sessions Judge, Chennai.

For Appellant : Mr.N.R.Elango
Senior Counsel
for Mr.B.Mahendran

For Respondent : Mr.V.Arul
Government Advocate (Crl.side)

J U D G M E N T

This Criminal Appeal arises out of the Judgment of conviction and sentence, dated 18.09.2008 made in C.C.No.30 of 2004 on the file of the learned IV Additional Sessions Judge, Chennai, whereby the appellant/accused was convicted for an offence under Sections 7 of Prevention of Corruption Act and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.5,000/- in default in payment, to undergo six months rigorous imprisonment and for an offence under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act and sentenced to undergo one year rigorous imprisonment and imposed a fine of Rs.5,000/- in default in payment, to undergo six months rigorous imprisonment. The sentences are ordered to run concurrently.

2.The case of the prosecution is as follows:

(i)P.W.2/A.K.Akbar Basha, is a resident of N.S.K.Nagar, 14th Street. Plot No.2/ 104-2, Madhuravoil Extension Scheme was allotted to one Ramasamy by the Tamil Nadu Housing Board. One Abdul Saleem is the father-in-law of P.W.2/A.K.Akbar Basha. The said Abdul Saleem entered into a contract with the said Ramasamy to purchase the plot. Since, Abdul Saleem was sick, he requested P.W.2/A.K.Akbar Basha to pay the amount due to the Tamil Nadu Housing Board payable by the allottee Ramasamy. P.W.2/A.K.Akbar Basha contacted the said office and he was asked to meet the accused Sundaram/the appellant herein, who is looking after the section. When P.W.2 enquired about the dues payable by the allottee Ramasamy, the accused Sundaram replied that he want to pay Rs.34,700/-. Then, P.W.2 paid the amount i.e. Rs.34,700/- in Indian Bank, Madhuravoil Branch. On the next day, when P.W.2 approached the accused Sundaram, again he said that he want to pay a sum of Rs.300/- as penalty. P.W.2/A.k.Akbar Basha paid the said amount and met the accused Sundaram on the next day. Again, the accused Sundaram stated that he want to pay a sum of Rs.12,000/-. P.W.2 paid the said amount also and approached the accused Sundaram and by showing the receipt, asked him to prepare the Sale Deed in favour of Ramasamy. For which, the accused Sundaram asked P.W.2 to come after two days. When P.W.2 approached the accused Sundaram after two days, the accused Sundaram/the appellant herein demanded a sum of Rs.1,000/- as gratification for preparation of Sale Deed and further he informed that if the said amount is not given, problem would arise. As there was no alternative, P.W.2 again on 24.10.2001 went to the office of the accused Sundaram and requested the Sale Deed to be executed in the name of Ramasamy. On 24.10.2001 also, the accused reiterated the earlier demand of Rs.1,000/-. Aggrieved by that, P.W.2 lodged a complaint/Ex.P.2 to P.W.7/R.Vedarathinam attached with Vigilance and Anti Corruption Department.

(ii)P.W.7 received the complaint and registered a case in Cr.No.4/AC/2001/HB/CC-II under Section 7 of Prevention of Corruption Act and prepared the printed FIR/Ex.P.8. Thereafter, trap was organised by P.W.7/Vedarathinam.

(iii)A team comprising of P.W.2/A.K.Akbar Basha, P.W.3/Thomas Jothi and another official witness, namely, Anantharaman and the Police Officers left the office at about Rs.4.15 p.m. The team arrived at the office of Tamil Nadu Housing Board, Anna Nagar at about 5.00 p.m. The police party stood at a distance while P.W.2 and P.W.3 went to the office of the accused situated at second floor of the Tamil Nadu Housing Board Building, Anna Nagar, Chennai. At the office of the accused, P.W.2 wished the accused while P.W.3 stood at a distance and seeing the happenings between them. Immediately the accused came towards him with one of his friends and further went down towards a tea stall situated within the campus of Tamil Nadu Housing Board. P.W.3 also followed him. After that, the accused Sundaram demanded and accepted the illegal gratification of Rs.1,000/- from P.W.2. Then, P.W.2 gave the prearranged signal to the waiting vigilance party. P.W.7 and other police officials rushed towards them and identified their identity to the accused and introduced the official witness to him. Thereafter, the accused was taken to the Office of P.W.4/the Sales Manager and phenolphthalein test was conducted.

(iv) P.W.7 seized the file pertaining to the allottee Ramasamy, which is marked as Ex.P.5. Then, P.W.7 after sending advance intimation to the Principal Sessions Judge, Chennai, went to the house of the accused situated at Door No.15, Thalayari Street, Mylapore, made the search and drew the rough sketch/EX.P.9. Thereafter, as per the direction of the Superior Officer, P.W.7 handed over the documents seized from the office of the accused/Ex.P.10 to P.W.8/Ravichandran for further investigation.

(v)P.W.8/Ravichandran, examined the witnesses, namely, Kesavan, Kannidasan/P.W.5, Anandan, Vijayalakshmi and recorded their statements. The sealed bottles were sent to Forensic Science Laboratory for analysis. P.W.6/Karthikeyan, Assistant Director attached with the Department, after analyzing came to the conclusion that M.O.3 and M.O.5 contained phenolphthalein and Sodium Carbonate and issued Ex.P.7/report. P.W.8 collected the report after collecting the entire materials and the entire records were sent to Directorate of Tamil Nadu Housing Board, Nandanam to accord sanction for prosecuting the accused.

(vi)After obtaining Ex.P.1/Sanction Order from P.W.1 and after completing the investigation, P.W.8/Ravichandran, filed the charge sheet under Section 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act.

3.The learned IV Additional Sessions Judge, Chennai after following the procedure, framed necessary charges. Since the accused pleaded not guilty, the learned Chief Judicial Magistrate examined the witnesses P.W.1 to P.W.8 and marked the documents Exs.P1 to P10 and material objects M.O.1 to M.O.5 and placed the incriminating evidence before the Accused and the accused denied the same and considering the oral and documentary evidence, found the accused guilty of the offences under Sections 7 and 13(2) r/w 13(1)(d) of P.C. Act and sentenced as stated above.

4.Challenging the conviction and sentence passed by the Trial Court, the learned senior counsel appearing for the appellant raised the following points:

1.While according sanction, the sanctioning authority has not applied his mind.

2.The first demand has not been proved.

3.The appellant himself has given a plausible explanation that the amount has been given for purchasing the stamps for registration and make ready the Sale Deed.

4.There is no necessity for the appellant to make any demand since the first demand was alleged to be made on 24.10.2001 and another demand on 08.11.2001 and the complaint has been lodged on 08.11.2001, but whereas the file has been cleared much before the date of first demand, i.e on 10.09.2001 and that file/Ex.P.5 has been placed before the Managing Director for approval.

5.The vital witnesses, namely, Ramasamy and Abdul Saleem were not examined and it is fatal to the case of the prosecution.

6.Admittedly, the allotment has been made in favour of one Ramasamy and P.W.2's father-in-law has entered into a sale agreement. The case of the prosecution is that he approached the appellant for making sale deed in favour of Abdul Saleem. So the charge is different from the evidence of P.W.2 and hence, the evidence of P.W.2 is not trustworthy.

7.As soon as the appellant was arrested, he has given a plausible explanation and that has been find place in the Seizure Mahazar. That factum was not considered by the Trial Court.

8.To substantiate his arguments, he relied upon the decision reported in LNIND 2012 MAD 480 (Thangavel vs. State rep. By Deputy Superintendent of Police, Vigilance and Anti Corruption). Hence, he prayed for setting aside the conviction and sentence passed by the Trial Court.

5.Resisting the same, the learned Government Advocate (Crl. Side) would submit that while granting sanction, the sanctioning authority has followed the procedure and accorded sanction after considering all the aspects. He would further submit that non-examination of Ramasamy and Abdul Saleem is not fatal to the case of prosecution. He would further submitted that the evidence of P.W.2 and P.W.3 has corroborated the second demand and acceptance on 08.11.2001, recovery has been proved by P.W.4 and phenolthalin test was also positive. So, the Trial Court has correctly held that the accused was guilty under Section 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act. Hence, he prayed for dismissal of the appeal.

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

7.Now, this Court has to decide whether the sanction is valid under law? The competency of P.W.1 has not questioned. The only question raised is that he has not applied his mind while according sanction. It is appropriate to consider the evidence of P.W.1 and Ex.P.1. In the cross-examination itself, he has fairly stated that since the statements recorded are in tamil, his office staff translated the same in English and explained to him and then only, accorded sanction. In such circumstances, I am of the view that the sanction accorded by P.W.1 is in accordance with law after applying his mind. Hence, the argument advanced by the learned senior counsel appearing for the appellant that sanction was accorded with non-application of mind does not merit any acceptance.

8.Now, this Court has to decide is whether there is delay in complaint? The learned senior counsel appearing for the appellant taken me to the complaint/Ex.P.2, wherein it was stated that on 19.04.2001, the complainant paid Rs.34,7000/- and then he approached the appellant and then the appellant stated that he has to pay a sum of Rs.347/- as penalty. On 28.05.2001, the respondent paid the penalty and he approached the appellant/accused and again he was directed to pay a sum of Rs.1,200/- and that was also paid on 26.08.2001. Then, he met the appellant/accused on 26.08.2001 and at that time, it is alleged that first demand has been made. At this juncture, the learned counsel appearing for the appellant would submit that 26.08.2001 falls on Sunday. P.W.2 in his evidence has stated that on that he gone to the Office of the accused and all the staffs are working and at that time, the accused made a demand. By taking judicial notice, it is seen that 26.08.2001 falls on Sunday. So, this Court is forced to accept the arguments of the learned senior counsel that there shall not be any demand on 26.08.2001 since 26.08.2001 falls on Sunday.

9.It is pertinent to note that the plot has been allotted in the name of Ramasamy and after payment of dues due to the Tamil Nadu Housing Board, Sale Deed has to be executed in favour of Ramasamy and then only, Sale Deed could be executed in favour of father-in-law of P.W.2, namely, Abdul Saleem, who has entered sale agreement with the said Ramasamy. But it is appropriate to incorporate that in the charge it was stated "he has requested the appellant to change the patta in the name of his father-in-law and for the reason, he demanded Rs.1,000/-". But, whereas in the cross-examination, he has given a total go-by. He has stated that the appellant herein/accused has demanded Rs.1,000/- for executing the sale deed in favour of Ramasamy and that factum was intimated in the complaint. But the above does not appears to be true. Because in the complaint and charges, it was specifically mentioned that the accused demanded Rs.1,000/- for changing the plot in the name of father-in-law of P.W.2, namely, Abdul Saleem, whereas, in his cross-examination, he has stated that the appellant demanded Rs.1,000/- for executing the sale deed in favour of Ramasamy. So, there is material contradiction between P.W.2's oral evidence and complaint/Ex.P.2 and it is fatal to the case of the prosecution.

10.Even though it is well settled principle of law that it is the duty of the prosecution to prove the demand and acceptance, recovery has been made and phenolphthalein test was also positive. But as already this Court held the first demand alleged to be on 26.08.2001 is not proved since it falls on Sunday. Now, this Court has to decide whether the second demand made on 08.11.2001 has been proved?

11.It is pertinent to note that shadow witness was examined as P.W.3. The evidence of P.W.2 is not fully reliable and it needs corroboration. According to the Trial Court, the evidence of P.W.2 has been corroborated by P.W.3. But on perusal of evidence, it is seen that as soon the appellant herein/accused was arrested, he has given a plausible explanation. He has specifically stated that he has received money only for purchasing stamp paper and also typing charges. Immediately, he handed over the file/Ex.P.5 in respect of Ramasamy and on perusal of the file, it was stated that it was prepared on 10.09.2001 and one V.Vijayalakshmi has verified the same and specifically mentioned as "Certified that the above information are found to be correct. Signature not verified".

12.It is also pertinent to note that communication has been sent to the Original Allottee, Ramasamy and it was specifically mentioned as follows:

> "Please fine herewith enclosed the draft sale deed. Please contact the Sub-Registrar (concerned) ascertain value of Stamp Paper, engross the contents of draft sale deed on the Stamp Paper and send the same to this Office with Form No.XIII in triplicate under Tamil Nadu Urban Land (Ceiling and Regulations) Act duly signed."

Thus, the draft sale deed was also prepared and in that, the appellant has signed on 10.09.2001 and verified by the said Vijayalakshmi on 13.09.2001. So, on 10.09.2001 itself the entire proceedings has been completed and hence it is clear that the appellant has received the amount from P.W.2 only for purchasing stamps.

13.The learned counsel appearing for the appellant has taken me to evidence of P.W.5/Kannidasan, wherein, he has stated that since the office is at upstairs, they used to come down and collect money from the allottees for purchasing stamps on humanitarian ground. So, the explanation offered by the accused/appellant herein as soon as recovery has been made, has been substantiated and fortified by the evidence of P.W.5. It is also pertinent to note that the appellant has completed the work on 10.09.2001 much prior to the first demand alleged to be made on 24.10.2001. At this juncture, it is appropriate to consider the decision relied upon by the learned counsel appearing for the appellant, wherein it is held as follows:

> " 17.At this juncture, it is appropriate to consider Ex.P9-Application given by P.W.2. Ex.P9 would reveal that the appellant had signed the papers and estimated on 10.02.1999 and it was sanctioned by A.E.E. (Operation and Maintenance) on 15.02.1999. Admittedly, the appellant had prepared all the papers much before 17.02.1999 (i.e.) on 10.02.1999. But it was approved by the higher official only on 15.02.1999. In such circumstances, it is painful to accept that the appellant demanded a bribe on 17.02.1999 for giving service connection. As per the decision reported in 2008 (1) TNLR 224 (S.D.Amalraj vs. State through Inspector of Police), when the accused has prepared all the papers relating to P.W.2 much before 17.02.1999 (i.e) on 10.02.1999, nothing remains to be done thereafter and therefore, the demand and payment of bribe after completion of the official favour is a serious lacuna in the prosecution case."

14.The above citation is squarely applicable to the present case because on perusal of Ex.P.5, it is seen that the appellant has completed his work on 10.09.2001 and that has been verified by Vijayalakshmi on 13.09.2001 and the file has been forwarded to Managing Director of Tamil Nadu Housing Board. So, nothing has been there in the hands of the appellant on 24.10.2001 and 08.11.2001 and hence, the contention that the appellant has demanded money from P.W.2 does not merit any acceptance.

15.As stated supra, even though sanction has been valid, but the prosecution has miserably failed to prove that the appellant has made a demand on 26.08.2001, 24.10.2001 and 08.11.2001, the non-examination of Ramasamy and Abdul Saleem is also fatal to the case of the prosecution and plausible explanation was given by the appellant for receipt of the amount. In such circumstances, I am of the view that the prosecution has miserably failed to prove that the appellant is found to be guilty under Section 7 of Prevention of Corruption Act. Once Section 7 of Prevention of Corruption Act fails, Section 13(1) r/w. 13(1)(d) of Prevention of Corruption Act also fails. This aspect has not been considered by the Trial Court and hence, the conviction and sentence imposed by the Trial Court against the appellant/accused is hereby set aside.

15.In fine,

(a) The Criminal Appeal is allowed.

(b) The Judgment of conviction and sentence, dated 18.09.2008 made in C.C.No.30 of 2004 on the file of the learned IV Additional Sessions Judge, Chennai is hereby set aside.

(c) The fine amount paid by the appellant shall be refunded to him.

(d) Bail bond, if any executed by the appellant shall stand cancelled.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

cse

To

1. Inspector of Police,
   Vigilance and Anti Corruption
   Chennai-II Detachment,
   Chennai City, Chennai-20.

2. The learned IV Additional Sessions Judge,
   Chennai

3. The Public Prosecutor
   High Court, Madras.

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

1 CC to Mr.B.Mahendran Naidu, Advocate SR.No. 2384

1 CC to the Public Proseuctor, SR.No. 7466

Crl.A.No.710 of 2008

VSN (CO)
PSI (12.03.2015)