

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2015

CORAM:

THE HONOURABLE MS. JUSTICE R.MALA
Criminal Appeal No.693 of 2012

Date of Reserving the Judgment 26.03.2015	Date of Pronouncing the Judgment 30.03.2015
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The State
Rep by Inspector of Police,
Special Investigation Cell
Vigilance & Anti Corruption
Chennai - 28

[Crime No.40/2009/AC/HQ]

.. Appellant/Complainant

v.

D.Janakiraman
S/o.Dheenadayalu

.. Respondent/Accused

Prayer: Criminal appeal filed under Section 378 of Cr.P.C., to set aside the order of the Trial Court acquitting the respondent in C.C.No.6 of 2011 [Old C.C.No.40/2010], dated 22.06.2012 on the file of the Special Court for the Cases under Prevention of Corruption Act, Chennai.

For Appellant : Mr.V.Arul, Govt. Advocate (Criminal Side)

For Respondent : Mr.Arun Anbumani,
for Dr.R.T.John Suresh

J U D G M E N T

This appeal has been preferred by the appellant/CBI challenging the judgment of acquittal passed against the respondents on 22.06.2012 in C.C.No.6 of 2011 [Old C.C.No.40/2010] on the file of Special Court for the Cases under Prevention of Corruption Act, Chennai.

2. The case of the prosecution based on the prosecution witnesses is as follows:

(a) P.W.2/Arul, the de facto complainant was allotted plot No.125, Gandhi Nagar under financially weaker welfare scheme and for

that a sale deed was given to him by the Tamil Nadu Slum Clearance Board on 19.03.2009. Since, the sale deed was not registered at the Sub-Registrar office within the prescribed time limit, the same was returned. Hence, P.W.2/Arul gave an application dated 19.08.2009 for revalidation.

(b) While the said application was pending, the respondent/accused who was working as Revenue Inspector in Tamil Nadu Slum Clearance Board, Vyasarpadi visited the house of P.W.2/Arul and after making inspection demanded bribe of Rs.1,000/- as illegal gratification to recommend the said application and asked him to bring the money on 17.09.2009 to his office. Hence, P.W.2/Arul preferred Ex.P.2/Complaint.

(c) On receiving the complaint, the Deputy Superintendent of Police, Vigilance and Anti-Corruption forwarded the same to P.W.9/Shankar, Inspector of Police. P.W.9, Trap Laying Officer, after registering the complaint in Crime No.40/2009/AC/HQ recorded the statement of the complainant, P.W.2/Arul. Thereafter, on making necessary arrangements, the trap party went to the office of the respondent/accused along with the witnesses.

(d) After reaching the office of the respondent/accused when P.W.2/Arul and P.W.3/Divyanathan, shadow witness went inside the office to meet the accused, the accused took them to the tea shop nearby and received the tainted money from P.W.2/Arul and put it into his pant pocket. After receiving the amount, the accused took them again into his office. At that time, P.W.2/Arul made a signal to the trap party and immediately, P.W.9/Shankar rushed into the scene of occurrence and seized the tainted money in the presence of the official witnesses. Immediately, the respondent/accused was arrested and phenolphthalein test was conducted. Thereafter, P.W.9/Shankar seized the money under Ex.P.6/Seizure Mahazar and he also prepared Ex.P.12/Rough Sketch and Ex.P.13/Inspection Mahazar. P.W.9/Shankar, Trap laying officer also recorded the statements of the witnesses. Thereafter, as per the direction of the Superior Officer, P.W.9/Shankar handed over the investigation to P.W.10/Balasubramaniam.

(e) P.W.10/Balasubramaniam also examined the witnesses and recorded their statements. After obtaining sanction order from P.W.1/Duraikannu, Secretary, Tamil Nadu Slum Clearance Board and after completing the investigation filed the charge sheet under Section 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act.

3. Even though charges were levelled against the respondent under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, the Trial Court after considering oral and documentary

evidence had acquitted the accused from the charges levelled against him.

4. Challenging the judgment of acquittal passed by the Trial Court, the learned Government Advocate (Criminal Side) appearing for the appellant would submit that P.W.2/Arul was allotted plot No.125, Gandhi Nagar under financially weaker welfare scheme and for that a sale deed was given to him by the Tamil Nadu Slum Clearance Board on 19.03.2009. Since, the sale deed was not registered at the Sub-Registrar office within the prescribed period, the same was returned. Hence, P.W.2/Arul gave an application dated 19.08.2009 for revalidation. While the said application was pending, the respondent/accused who was working as Revenue Inspector in Tamil Nadu Slum Clearance Board, Vyasarpadi visited the house of P.W.2/Arul and alleged to have demanded bribe of Rs.1,000/- as illegal gratification to recommend the said application and asked him to bring the money on 17.09.2009 to his office. Hence, P.W.2/Arul preferred Ex.P.2/Complaint. On the basis of the said complaint, the trap proceeding was initiated and after following the procedure, the respondent/accused was arrested and after completing the investigation, the chargesheet has been levelled against the accused. However, the Trial Court has acquitted the respondent/accused stating that P.W.1/Duraikannu, who is the competent authority to accord sanction of the respondent/accused, had not applied his mind and so, the non-application of mind had vitiated the entire prosecution. But, the learned Government Advocate would submit that P.W.1/Duraikannu in his evidence has categorically stated that he has perused the entire documents submitted before him and only thereafter, he had accorded sanction. So, the sanction is valid. The Trial Court has further held that the evidence of P.W.2/Arul, P.W.3/Divyanathan, P.W.4/Jesudoss and P.W.9/Shankar are contradictory to one another. But the learned Government Advocate would submit that the evidence of P.W.2/Arul and P.W.3/Divyanathan, shadow witness are corroborating with one another. The first demand was proved by the evidence of P.W.2/Arul and P.W.4/Jesudoss. In respect of the second demand made on 17.09.2009, the evidences of P.W.2/Arul and P.W.3/Divyanathan corroborate with each other. This factum was not considered by the Trial Court. Furthermore, the recovery was proved by the evidence of P.W.9/Shankar, Trap Laying Officer. The evidence of P.W.7/Kirubakaran and Ex.P.9/Forensic Report has proved that the phenolphthalein test is found to be positive. So, in view of all the above facts, the Trial Court ought to have convicted the respondent/accused, whereas the Trial Court had acquitted the respondent/accused. So, the learned Government Advocate would contend that the judgment of acquittal passed by the Trial Court is perverse and he prayed for setting aside the impugned order.

5. Resisting the same, the learned counsel appearing for the respondent/accused would submit that the evidence of P.W.1/Duriakannu and P.W.10/Balasubramaniam has clearly proved that P.W.1/Duraikannu has not applied his mind while according sanction. P.W.1/Duraikannu in the Ex.P.1/Sanction Order, dated 02.09.2010 has clearly stated that he had referred to the report of the Director, Vigilance and Anti-Corruption, Chennai in RC.No.376/2009/TNSCB/SIC, dated 16.06.2010. However, P.W.1/Duraikannu in his oral evidence has stated on 22.10.2009, he had received only the FIR and on 16.06.2010 he received the other documents viz., Statement of Witnesses, Recovery Mahazar and Lab Report. Whereas, P.W.10/Balasubramaniam in his deposition has stated that he received the Ex.P.9/Forensic Report on 16.12.2009 and on the very same day, he examined P.W.7/Kirubakaran. P.W.8/Shivasubramaniam was examined on 18.11.2009. While so, the documents could not have been furnished on 22.10.2009. Hence, the learned counsel for the respondent/accused would submit that P.W.1/Duraikannu, the sanctioning authority has not applied his mind. The learned counsel further submitted that there is contradiction in the oral evidence of P.W.3/Divyanathan, P.W.4/Jesudoss and P.W.9/Shankar in respect of the trap proceeding. Further, there is also contradiction in the oral evidence of P.W.2/Arul, P.W.4/Jesudoss and P.W.9/Shankar in respect of preferring the complaint. So, the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, the learned counsel for the respondent prayed for dismissal of the appeal.

6. Considered the rival submissions made by both sides and perused the typed set of papers.

7. Now this Court has to decide whether the judgment of acquittal passed by the Trial Court is sustainable ?

It is also a well settled dictum of the Hon'ble Apex Court that unless the judgment of acquittal is found to be perverse or suffer any material irregularity, the appellate Court cannot interfere with the finding of the Trial Court. Furthermore, it is also a well settled dictum of the Hon'ble Apex Court that if two views are possible, then the view favouring the accused has to be taken into consideration.

8. In the light of the above dictum, now this Court has to decide whether the sanction is valid ?

Admittedly, P.W.1/Duraikannu is the competent person to accord sanction. The competency of P.W.1/Duraikannu to accord sanction is also not questioned. The only issue raised is that he has not applied his mind while according sanction. P.W.1/Duraikannu in his evidence has stated that he received all the papers pertaining to the matter only on 16.06.2010 and after perusing the same, he had accorded sanction. However, during the course of his cross-

examination, P.W.1 has stated that he received only the FIR on 22.10.2009 and all the other documents were received by him only on 16.06.2010. He has further stated that on 16.06.2010, the appellant herein has sought for sanction order. It is his candid admission that except the documents submitted by the appellant, he has not examined any other witness. At this juncture, it is appropriate to consider Ex.P.9/Forensic Report, dated 19.10.2009. P.W.10/Balasubramaniam in his evidence has deposed that he had received the Ex.P.9/Forensic Report on 16.12.2009 and on the very same day, he had recorded the statement of P.W.7/Kirubakaran. P.W.10/Balasubramaniam had further stated that he had sent the records only to the Director and the Director alone had transmitted the records to the sanctioning authority.

9. At this juncture, it is appropriate to consider the Ex.P.1/Sanction Order wherein in the reference it has been stated as follows:

"Ref: Report of the Director, Vigilance and Anti-Corruption, Chennai in RC.No.376/2009/TNSCB/SIC, dated: 16.06.2010"

Admittedly, the report of the Director, Vigilance and Anti-Corruption, dated 16.06.2010 is not produced before the Court. Further, during the course of his cross-examination, P.W.1/Duraikannu has stated that he received the FIR on 22.10.2009. Admittedly, on the said date, Ex.P.9/Forensic Report was not received and P.W.7/Kirubakaran, Forensic Expert was not examined. Ex.P.9/Forensic report in respect of phenolphthalein test is a vital document. Furthermore, P.W.10/Balasubramaniam, the Investigating Officer, in his cross-examination has fairly conceded that during the course of his investigation, P.W.1 had given a statement that he received the documents on 22.10.2009. If really he had received the entire documents on 22.10.2009, then he could not have received the 161 statement of P.W.5/Ranganathan, P.W.7/Kirubakaran, P.W.8/Shivasubramaniam and Ex.P.9/Forensic Report.

10. It is pertinent to note that P.W.10/Balasubramaniam had further deposed that he had recorded the statement of P.W.5/Ranganathan on 12.11.2009, P.W.8/Sivasubramaniam on 18.11.2009 and the statement of another witness Jeevasadan was recorded on 11.11.2009. P.W.10 had also deposed that the statement of the accused was recorded on 25.11.2009. So, as per the statement of P.W.1/Duraikannu, if he had received the papers for sanction on 22.10.2009, it is automatically understood that the above mentioned documents viz., statement of P.W.5/Ranganathan, P.W.7/Kirubakaran, P.W.8/Shivasubramaniam and Ex.P.9/Forensic Report could not have been placed before him for according sanction. The Trial Court in its order has considered these aspects in proper perspective, after relying on the decision reported in (2007) MLJ (Cri) 253, R.Sundararajan v. State by Deputy Superintendent of Police, S.P.E,

C.B.I, Chennai had come to the correct conclusion. One more adding circumstances is that the report of the Director, Vigilance and Anti-Corruption, Chennai in RC.No.376/2009/TNSCB/SIC dated 16.06.2010 is not produced before the Court.

11. Considering all the above aspects, I am of the view that P.W.1/Duraikannu, the sanctioning authority had not applied his mind while according sanction. So, I do not find any reason to interfere with the finding of the Trial Court that the sanction is invalid for non-consideration of the statement of P.W.5/Ranganathan, P.W.7/Kirubakaran, P.W.8/Shivasubramaniam and Ex.P.9/Forensic Report. Once the sanction itself is vitiated, the entire proceeding goes.

12. Now this Court has to consider the evidence of other witnesses. P.W.2/Arul who is the de facto complainant in his evidence has stated that he does not know to read and write and he had only affixed his signature in the complaint, which was drafted by his brother-in-law P.W.4/Jesudoss, who is a retired Office Assistant in the Commercial Taxes Department, Chepauk. P.W.2/Arul had even gone to the extent of saying that he do not know what was mentioned in the complaint and he had not read the complaint.

13. At this juncture, it would be appropriate to consider the evidence of P.W.4/Jesudoss. P.W.4/Jesudoss in his evidence had deposed that since the respondent/accused had demanded money from P.W.2/Arul, he took P.W.2/Arul to the office of the Vigilance and Anti-Corruption and lodged a complaint against the accused. P.W.4/Jesudoss had denied the suggestion that without the instruction of P.W.2/Arul, he had written the complaint. Per contra, P.W.9/Shankar, Trap Laying Officer in the course of his cross-examination had categorically deposed that P.W.2/Arul came alone to prefer the complaint. P.W.9/Shankar had also denied the suggestion that P.W.2/Arul was accompanied by P.W.4/Jesudoss at the time of preferring the complaint. The Trial Court after considering the contradiction in the evidence of the witnesses had rightly discarded their evidence and I do not find any reason to interfere with the said finding of the Trial Court.

14. As regards the next issue raised by the learned counsel for the respondent that there is contradiction in the evidence of the witness regarding the mode of transport from the office of the Director of Vigilance and Anti-Corruption to the office of the accused is concerned, P.W.2/Arul in his chief-examination had deposed that after the entrustment procedure, he along with two witnesses and Inspector proceeded to the office of the accused at Vyasarpadi in a Jeep and reached the office at 3.30 P.M. Whereas in his cross-examination, he had stated that P.W.5/Jesudoss also accompanied them to the office of the accused.

15. On the other hand, P.W.3/Divyanathan, the shadow witness, in his chief-examination had deposed that he proceeded to the office of the accused from the office of the DVAC in a Government Vehicle Bolero along with Devanathan, Inspector Shankar, Arul and constables. He had not spoken anything about the presence of P.W.4/Jesudoss. P.W.3 had further stated that only himself and P.W.2/Arul went into the office of the accused to meet him. However, during the course of his cross-examination, P.W.3/Divyanathan had stated that he proceeded to the office of the accused along with Devanathan and Inspector. He had not spoken as to whether P.W.4/Jesudoss accompanied them or not.

16. Furthermore, P.W.4/Jesudoss in his cross-examination had stated that only himself and P.W.2/Arul went to the office of the accused and handed over the tainted money to the accused. He had further stated that he do not know whether it was witnessed by other witnesses. He also denied the suggestion that the money was thrust into the pocket of the accused. He had also stated that himself and P.W.2/Arul went to the office of the accused in bus, after alighting at Parrys and boarding another bus to Vyasarpadi. P.W.9/Shankar, Trap Laying Officer in his evidence had deposed that they reached the office of the respondent/accused in two Government Vehicles.

17. Thus, there exists the following contradictions in the evidence of the witnesses.

(i) There is contradiction between the evidence of P.W.2/Arul, P.W.4/Jesudoss and P.W.9/Shankar in respect of complaint. It is the candid admission of P.W.2/Arul that he is not aware of the averments made in the complaint. Further, P.W.4/Jesudoss has stated that he went along with P.W.2/Arul to prefer the complaint. However, it is the version of P.W.9/Shankar, Investigating Officer that P.W.2/Arul alone came to the office of Vigilance and Anti-Corruption to prefer the complaint.

(ii) There is contradiction between the evidence of P.W.2/Arul, P.W.3/Divyanathan and P.W.4/Jesudoss in respect of mode of transport.

(iii) There is contradiction between the evidence of P.W.2/Arul, P.W.3/Divyanathan and P.W.4/Jesudoss in respect of second demand. P.W.4/Jesudoss had stated that he accompanied P.W.2/Arul and only in his presence the tainted money was handed over to the respondent/accused. The said statement was also corroborated by P.W.2/Arul. But P.W.3/Divyanathan had deposed that he alone went with P.W.2/Arul when the tainted money was handed over to the respondent/accused. So, there is material contradiction. The said contradictions in the evidences were rightly considered by the Trial Court and it has come to a correct conclusion that their evidences are not reliable.

18. It is also pertinent to consider the submission made by the learned counsel for the respondent that the Entrustment Mahazar and Recovery Mahazar has been prepared at the same time. In the Ex.P.4 it was mentioned as Entrustment Mahazar. In Ex.P.6 also it was mentioned as Entrustment Mahazar. Further in Page 2 of Ex.P.4/Entrustment Mahazar the number of the currency no.3 "2VV 184856" has been corrected. The same correction was also carried out in page number 6 of Ex.P.6/Recovery Mahazar. Further, no explanation has been given for the same. So, it is also a reason for acquittal of the respondent/accused.

19. Considering all the above aspects, I am of the considered view that the Trial Court has considered the matter in proper perspective and came to a correct conclusion. Hence, the judgment of acquittal passed by the Trial Court is a well reasoned one and the same does not warrant interference by this Court.

20. In fine,

(a) The Criminal Appeal is dismissed.

(b) The judgment of acquittal passed by the Special Court for the Cases under Prevention of Corruption Act, Chennai on 22.06.2012 in C.C.No.6 of 2011 [Old C.C.No.40/2010] is hereby confirmed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Judge

Special Court for the Cases under P.C Act, Chennai

2.The Public Prosecutor, High Court of Madras

3.The Record Keeper, Criminal Section,
High Court of Madras

2 ccs to Mr.R.T. John Suresh, Advocate, Sr. 17542

1 cc to Government Pleader, SR. 17723

Cr1.A.No.693 of 2012

SSI (CO)

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