Bail Slip

Crl.A. Nos.933 & 943/2007

The Accused namely K.Devarajan(Accused in crl.A.No.933/2007) A.Patchirajan (Accused in Crl.A.No.943/2007) were directed to be released on bail as per order of this court dated 12.20.2007 made in MP Nos.1 & 1/2007 in Crl.A Nos.933 & 943/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:23.11.2015

Delivered on:10.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal Nos.933 and 943 of 2007

K.Devarajan ... Appellant in Crl.A.No.933 of 2007

A.Patchirajan ... Appellant in Crl.A.No.943 of 2007

vs.

The State by
Deputy Superintendent of Police,
Special Committee of Vigilance & Prevention of Corruption,
Krishnagiri ... Respondent in both the appeals



Criminal Appeals filed under Section 374(2) of Cr.P.C., against the judgment dated 17.09.2007, made in C.C.No.03 of 2002, on the file of the Chief Judicial Magistrate, Court, Dharmapuri at Krishnagiri.



For Appellants : Mr.R.Singaravelan in Crl.A.No.933/07
Mr.A.Thiyagarajan in Crl.A.No.943/07

For Respondent in both Crl.As. : Mr.P.Govindarajan, Additional Public Prosecutor in both

COMMON JUDGMENT

These criminal appeals have been directed against the convictions and sentences, dated 17.09.2007, passed in Calendar Case No.3 of 2002, by the Chief Judicial Magistrate Court, No.I, Krishnagiri.

2. The case of the prosecution is that the defacto complainant, by name, Samraj, is a resident of Narasipuram Village. For the purpose of augmenting his agricultural income, he decided to purchase a tractor and he applied for getting loan, from Dharmapuri Agricultural Bank. The concerned authority has directed him to execute a mortgage deed in respect of his lands. After making initial arrangements, he approached the first accused by name, Pachirajan, the then Sub-Registrar, Pennagaram, on 11.01.2001. The first accused has demanded a sum of Rs.1000/- as illegal gratification from the defacto complainant and also directed him to come to office on 12.01.2001 at about 2.00 p.m. The defacto complainant has met the Inspector of Police (P.W.11) and lodged a complaint. The Inspector of Police has made initial arrangements and subsequently directed the defacto complainant and the decoy witnesses, namely, Parthasarathy and Chinnappan, to go along with the defacto complainant to the office of the first accused and accordingly, on 12.01.2001, the defacto complainant has met the first accused in his office. The first accused has demanded Rs.1000/- from him for registering the mortgage deed. The first accused has also directed the defacto complainant to give tainted money to the second accused and accordingly, he has given the same. Further, the second accused has demanded an illegal gratification of Rs.50/- from the defacto complainant and the same has also been given to him. After such occurrence, the defacto complainant has given pre-arranged signal and subsequently, the Inspector of Police and others have entered into the office of the accused and observed legal formalities and also seized tainted money. The Deputy Superintendent of Police, viz., P.W.12 has conducted investigation, examined connected witnesses and after his transfer, his successor in office, viz., P.W.13 has completed investigation and laid a final report on the file of the trial Court and the same has been taken on file in Calendar Case No.3 of 2002.

3. The trial Court, after hearing arguments of both sides and also after considering the relevant materials, has framed first charge against both the accused under Section 7 of the Prevention of Corruption Act, 1988, read with Section 34 of the Indian Penal Code. The trial Court has framed second charge against them under Section 13(2) r/w.Sec.13(1)(d) of the Prevention of Corruption Act, 1988 and the same have been read

over and explained to them. The accused have denied the charges and claimed to be tried.

4. On the side of the prosecution, P.Ws.1 to 13 have been examined, Exs.P1 to P48 and M.Os.1 to 10 have been marked.

5. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

6. The trial Court, after hearing arguments of both sides and after perpending the available evidence on record, has found the first accused guilty under Section 7 of the Prevention of Corruption Act, 1988 and sentenced him to undergo two years rigorous imprisonment and also imposed a fine of Rs.2500/- with usual default clause. The first accused has also been found guilty under Sections 13(2) r/w.13(1)(d) of the said Act and sentenced to undergo two years rigorous imprisonment and also imposed a fine of Rs.2500/- with usual default clause. The trial Court has found the second accused guilty under Section 7 of the said Act and sentenced him to undergo one year rigorous imprisonment and also imposed a fine of Rs.500/- with usual default clause. Likewise, he has also been found guilty under Section 13(2) r/w.13(1)(d) of the said Act and sentenced to undergo one year rigorous imprisonment and also imposed a fine of Rs.500/- with usual default clause. Against the convictions and sentences passed by the trial Court, the first accused has preferred Criminal Appeal. No.943 of 2007. Likewise, the second accused has preferred Crl.A.No.933 of 2007.

7. Since common questions of law and facts are involved in both the criminal appeals, common judgment is pronounced.



8. The sum and substance of the case of the prosecution is that the defacto complainant is an agriculturists and also a resident of Narasipuram Village and in order to increase his agricultural income, he decided to purchase a tractor by way of obtaining loan from Agricultural Bank, Dharmapuri. Under the said circumstances, he has been directed to execute a mortgage deed in Sub-Registrar Office, Pennagaram and accordingly, on 11.1.2001, at about 3.00 p.m., he met the first accused, the then Sub-Registrar, Pennagaram. The first accused has demanded a sum of Rs.1000/- as illegal gratification from the defacto complainant to register the mortgage deed and also directed the defacto complainant to come on 12.1.2001 at about 2.00 p. m. Since the defacto complainant has not desired

to concede the demand of the first accused, he has given the complaint in question to P.W.11, Inspector of Police and P.W.11 has made all initial arrangements and as per his arrangements, the defacto complainant, the decoy witnesses, namely P.W.3 and P.W.4 have gone to the office of the first accused. The defacto complainant and P.W.4 have met the first accused and he demanded the said sum of Rs.1000/- as illegal gratification and subsequently, directed the defacto complainant to give the same to the second accused and accordingly, he has given the said sum to the second accused and the second accused has also demanded a sum of Rs.50/- as illegal gratification and the same has also been given to him.

9. Before considering the rival submissions made on either side, the Court has to look into as to under what circumstances both the accused have been punished under the Sections mentioned in the charges by the trial Court.

10. The prosecution has set the law in motion only on the basis of complaint marked as Ex.P26, wherein, it has been clearly stated about the alleged demand of illegal gratification to the tune of Rs.1000/- from the defacto complainant, by the first accused. The author of Ex.P26 has been examined as P.W.2. The decoy witnesses have been examined as P.Ws.3 and 4. The trial Court, after considering their evidence and also other connected evidence, has found both the accused guilty under the Sections mentioned in the charges.

11. The learned counsel appearing for the first accused has repletedly contended that during the relevant period, the first accused has served as Sub-Registrar in Sub-Registrar office, Pennagaram. The alleged defacto complainant has been examined as P.W.2 and in fact, the complaint alleged to have been given by him has not been marked through him and the decoy witnesses have been examined as P.Ws.3 and 4. The evidence given by P.Ws.2 to 4 are not at all sufficient for coming to a conclusion that the first accused has demanded illegal gratification from the defacto complainant. Since on the side of the prosecution demand has not been established, the entire case of the prosecution goes out and further, the specific evidence on the side of the prosecution is that initially the first accused has been asked to dip his fingers of both hands in solutions, nothing has had happened and subsequently, the second accused has been directed to do the same and the solutions have become pink colour and all the solutions have been subjected to chemical examination and the chemical examination report has been marked as Ex.P15. When it has been specifically mentioned that in all the solutions pink colour is found and therefore, the phenolphthalein test alleged to have been conducted by P.W.11, trap officer, has not been

proved, the trial Court, without considering the vital infirmities found on the side of the prosecution, has erroneously invited convictions and sentences against the first accused and the same are liable to be set aside.

12. The learned counsel appearing for the second accused has contended that during the relevant period, the second accused has served as a Night Watchman and he has had no connection whatsoever with the alleged registration of mortgage deed and in fact, the second accused has been falsely implicated in the present case and no material evidence are available against him and the trial Court, without considering lack of evidence, has erroneously found the second accused guilty under the Sections mentioned in the charges and therefore, the convictions and sentences passed against the second accused are liable to be set aside.

13. The learned Additional Public Prosecutor has contended that before conducting trap, the defacto complainant, viz., P.W.2 has given the complaint in question and accordingly, subsequent proceedings have been taken and the defacto complainant as well as one of the decoy witnesses, viz., P.W.4 have clearly stated about the demand of illegal gratification by the first accused from the defacto complainant and further sufficient evidence is available so as to come to a conclusion that both the accused have committed offences punishable under the Sections mentioned in the charges and the trial Court, after considering the overall evidence available on the side of the prosecution, has rightly invited convictions and sentences against the appellants/accused and therefore, the judgment passed by the trial Court does not call for any interference.

14. For considering the rival submissions made on either side, the Court has to meticulously analyse the evidence given by the defacto complainant, viz., P.W.2. During the course of chief examination, he has clinchingly stated that on 11.1.2001, he met the first accused in his office and he demanded Rs.1000/- as an illegal gratification. Further he would say that since he has not desired to concede the demand of the first accused, he has gone to the office of P.W.11 on 11.1.2001 and given a complaint. Further he would say that after making initial arrangements, P.W.11 has directed him and decoy witnesses to go to the office of the first accused. The first accused has asked the defacto complainant as to whether he has brought the amount demanded by him and subsequently, the first accused has registered the document and directed him to give the amount in question to the second accused and accordingly, he has given the same to the second accused and the second accused has initially demanded an illegal gratification of Rs.1000/-, but he

has given to him Rs.50/- and after such occurrence, he has given pre-arranged signal and P.W.11 and others have entered into the office of the accused and they observed subsequent formalities.

15. One of the decoy witnesses by name, Chinappan, has been examined as P.W.4 and his specific evidence is that the first accused has demanded Rs.1000/- separately, apart from registration charges, from the defacto complainant. After registration, the defacto complainant has asked the first accused to reduce the quantum. But the first accused has refused and subsequently directed the defacto complainant to give the said amount to the second accused and accordingly, the defacto complainant has given the same to the second accused and the second accused has separately received an illegal gratification of Rs.50/- from the defacto complainant. From the evidence given by P.Ws.2 and 4, the Court can very well come to a conclusion that plethora of evidence are available on the side of the prosecution with regard to demand and acceptance of illegal gratification on the part of both the accused.

16. The learned counsel appearing for the first accused has drawn the attention of this Court to the following decisions:-

(i)2007 SC 489 - V.Venkata Subbarao vs. State, rep.by Inspector of Police, AP, wherein, the Hon'ble Supreme Court has held as follows:

> ". . . . In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved."

(ii) In (2013) 3 M.L.J Crl.565(SC) - State of Punjab vs. Madan Mohanlal Verma, it is held that the complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the Court may look for independent corroboration before convicting the accused person.

(iii) (2014) 13 SCC 55 - B.Jayaraj Vs. State of AP, the Hon'ble Supreme Court has held that it is a settled position in law that demand of illegal gratification is sine qua non to constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe.

(iv) In (2015) (2) SCC Crl.724 - Naragaj vs. State, rep.by Inspector of Police, Salem Town, it is held that the High Court was not correct in drawing an inference against the accused, because of what he has stated or what he has failed to state in his examination under Section 313 of the Code of Criminal Procedure, 1973.

17. From the cumulative reading of the said decisions, the following legal aspects can be culled out:

(a) In a case like this, the prosecution must prove demand as well as acceptance of bribe amount by the accused.

(b) The defacto complainant is an interested witness and his sole testimony cannot be a sole basis for inviting conviction. Therefore his testimony requires corroboration.

(c) The answers given to questions under section 313 of the Code of Criminal Procedure, 1973, have to be scrutinized properly.

18. With these legal backdrops, the points urged on the side of the first accused have to be analysed.

19. The first and foremost point urged on the side of the first accused is that on the side of the prosecution, demand as well as acceptance of bribe, on the part of the first accused, have not been proved and further, the complaint in question has not been marked through the defacto complainant.

20. It has already been pointed out that both the defacto complainant and one of the decoy witnesses, viz., P.W.2 and P.W.4 have consistently stated in their evidence that the first accused has demanded illegal gratification of Rs.1000/- from the defacto complainant on 11.1.2001 as well as on 12.1.2001. Further, their evidence is that on 12.1.2001, the second accused has demanded a sum of Rs.50/- as illegal gratification from the defacto complainant and the same has also been given to him. Further their evidence is that as per direction given by the first accused, an amount of Rs.1000/-, as illegal gratification, has been given to the second accused.



21. It is true that the complaint in question has not been marked through P.W.2. But at the same time, in his chief examination, he has given clear evidence only on the basis of the averments made in the complaint. Since P.W.2 has given such kind of evidence only on the basis of allegations made in the complaint, his evidence given in chief examination cannot be eschewed. Further, there is no evidence to the effect that he has not given any complaint to P.W.11. Therefore, the first and

foremost contention put forth on the side of the first accused cannot be accepted.

22. It is seen from the evidence that after receipt of Ex.P.26, complaint, P.W.11, Inspector of Police, has made all initial arrangements and subsequently, directed P.Ws.2 to 4 to go to the Sub-Registrar Office, Pennagaram and accordingly they have gone there and after receipt of prearranged signal, P.W.11 and others entered into the office of the accused and prepared requisite solutions and asked the first accused to dip his fingers, but changes have not happened and the same process has been adopted in case of the second accused and in the solutions, pink colour is found.

23. In fact, the evidence given by P.W.11 has virtually supported the case of the prosecution. Further, one Sidhan, who is none other than the staff of Sub-Registrar Office, Pennagaram, has been examined as P.W.10 and he fairly admitted to the effect that on 12.1.2001, the officials of Vigilance and Anti-Corruption have conducted raid in his office and also checked accused 1 and 2. Therefore, it is needless to say that on 12.1.2001, P.W.11 and others have conducted trap in the office of the accused.

24. It is not an exaggeration to say that in the instant case, enormous evidence is available for the purpose of proving the alleged demand of illegal gratification on the part of the accused as well as their acceptance.

25. The second contention put forth on the side of the first accused is that even the solutions concerned with the first accused, pink colour is found in chemical examination, whereas, at the time of preparation, such colour is not found place.

26. As rightly pointed out on the side of the first accused, in Ex.P.15, it has been specifically mentioned that in all solutions pink colour is found place, whereas, the specific evidence given by P.W.11 and other witnesses is that with regard to solutions made in respect of the first accused, no colour is found place. It is an admitted fact that Ex.P.15 is nothing but a technical evidence and the same cannot be given much weight in the instant case, since on the side of the prosecution, replete evidence is available for the purpose of proving the essential ingredients of illegal gratification, namely, demand and acceptance on the part of both the accused. Therefore, the second contention put forth on the side of the first accused is of no use.

27. Now the Court has to look into the contentions put forth on the side of the second accused. It has been contended on the side of the second accused that the second accused, during the relevant period, has served as a Night Watchman and he has no connection whatsoever with the registration and in fact, he has not demanded money from the defacto complainant as illegal gratification.

28. It has already been pointed out that both P.Ws.2 and 4 have clinchingly stated to the effect that after registration, the first accused has directed the defacto complainant to give the tainted money to the second accused and accordingly, P.W.2 has given the same to the second accused and further, the second accused has demanded a sum of Rs.50/- from P.W.2 as illegal gratification and the same has also been given to him. Further, on the side of the prosecution, it has been positively established to the effect that even though the second accused has served as a Night Watchman, due to administrative reasons, on the date of occurrence, he has been directed to serve in the office. Therefore, viewing from any angle, the contention put forth on the side of the second accused cannot be accepted.

29. It has already been pointed out that in the instant case, abundant evidence is available for the purpose of coming to a conclusion that both the accused have demanded and accepted bribe amount given by the defacto complainant, viz., P.W.2. Under such circumstances, the contentions put forth on the side of the appellants/accused have not impinged the case of the prosecution.

30. The trial Court, after considering the overwhelming evidence available on record, has rightly found the accused guilty under Sections mentioned in the charges and imposed sentences as mentioned supra and altogether these criminal appeals are liable to be dismissed.

In fine, these criminal appeals are dismissed. The convictions and sentences passed in Calendar Case No.3 of 2002 by the Chief Judicial Magistrate Court, Dharmapuri, are confirmed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

To :
1.The Deputy Superintendent of Police,
Special Committee of Vigilance &
Prevention of Corruption,
Krishnagiri

2. The Chief Judicial Magistrate, No.1,
Dharmapuri at Krishnagiri

3.The Public Prosecutor,
High Court, Madras

+1 cc to Mr.A.Thiagarajan, Advocate, sr.66350
+1 cc to Mr.R.Singaravelan, Advocate, sr.66314

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