IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.11.2015

DELIVERED ON : 18.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.1623 of 2003

State by Inspector of Police
SPE/CBI/GOW/Madras
... Appellant/ Complainant

vs.

D.Sathyamurthy ... Respondent / Accused

Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the order acquitting the respondent passed by the Special Judge, Pondicherry in Special C.C.No.2 of 1986 dated 27.9.2002.

For appellant : Mr.B.Mohan,
Special Public Prosecutor for CBI Cases

For Respondent : Mr.S.Sivakumar for
Mr.T.Mohan

JUDGMENT

This Criminal Appeal has been directed against the order of acquittal dated 27th day of September 2002 in Special Calendar Case No.2 of 1986 by the Special Judge at Pondicherry.

2. The case of the prosecution is that during the relevant period, the accused has served as Assistant Engineer in Electricity Department, Karaikal. One Nageswara Rao has served as Junior Engineer. The accused, as Assistant Engineer, has had jurisdiction over Yanam. The accused has demanded and accepted an illegal gratification of Rs.4,500/- from the complainant and thereby committed the offences punishable under section 120-B of IPC and also under sections 5(1)(a) and 5(1)(d) r/w 5(2) of Prevention of Corruption Act, 1947.

3. The trial court, after hearing arguments of both sides and upon perusing relevant records, has framed necessary charges against the accused and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

4. On the side of the prosecution, P.Ws.1 to 25 have been examined and Exhibits P.1 to P.107 and M.O.1 have been marked.

5. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime.

6. On the side of the accused, Exhibits D.1 to D.8 have been marked.

7. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has acquitted the accused. Against the order of acquittal, present Criminal Appeal has been filed at the instance of the complainant as appellant.

8. The learned Special Public Prosecutor has elaborately and repeatedly argued to the effect that during the relevant period, the present accused has served as Assistant Engineer in Electricity Department, Karaikal, having jurisdiction over Yanam and he demanded an illegal gratification of Rs.4,500/- and accepted the same. The other accused by name Nageswara Rao, who has been examined as P.W.23 has served as Junior Engineer in Electricity Department, Karaikal and both of them have hatched conspiracy. Under the said circumstances, they have committed offences punishable under sections 120-B of IPC and also under sections 5(1)(a) and 5(1)(d) r/w 5(2) of Prevention of Corruption Act, 1947 and for the purpose of proving the charge framed against the accused, one G.Krishnamurthy, Enquiry Officer, has been examined as P.W.3 and other witnesses, namely P.Ws.13, 14, 17, 19 and 23 have given clear evidence about the signature of the accused and they have also spoken about receipt of Demand Drafts towards illegal gratification on the part of the accused. Further, P.W.23 has especially spoken about demand and receipt of part of illegal gratification amount and the prosecution has filed relevant Exhibits, namely Exs.P.65, P.66, P.71, P.72, P.91, Ex.P.92 and Ex.P.99 and the trial court, without considering the voluminous evidence adduced on the side of the prosecution, has erroneously acquitted the accused and therefore, the order of acquittal passed by the trail court is liable to be set aside and the accused is liable to be sentenced in accordance with the provisions of law mentioned in the charge.

9. In support of his contention, he has drawn the attention of the Court to the following section of law as well as decisions:

(A) In Section 4 of the Prevention of Corruption Act, 1947, it is stated like thus:

4. Presumption where public servant accepts gratification other than legal remuneration:-

(A) Where in any trial of an offence punishable under section 161 or Section 165 of the Indian Penal Code, 1860 (Act XLV of 1860) (or of an offence referred to in clause (a) or clause (b) of sub-section (1) of Section 5 of this Act punishable under sub-section (2) thereof) it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned, in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

(B) In 2007 KHC 3953 SC, (Girija Pradas (dead) by Lrs. v. State of Madhya Pradesh), it is held that once it is proved that money has been accepted, one cannot escape from criminal liability.

(C) In 2005 KHC 185 Sc (Hashim v. State of Tamil Nadu), it is held that essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed.

(D) In 2011 KHC 4453 (Satyavir Singh Rathi v. State), it is held that as already observed, Section 315 of Cr.P.C now makes an accused a competent witness in his defence.

10. From a cumulative reading of Section 4 of the said Act as well as decisions referred to supra, a presumption can be drawn where public servant accepts gratification other than legal remuneration.

11. In order to controvert the arguments put forth on the side of the appellant/complainant, the learned counsel appearing for the respondent/accused has also equally contended that in the instant case, the essential features of illegal gratification, namely demand and acceptance have not been proved on the side of the prosecution and in fact, no evidence is available in respect of direct demand as well as acceptance on the part of the accused and the trial court, after considering the overall evidence available on record, has rightly found that the prosecution has failed to prove its case and therefore, the order of acquittal passed by the trial court does not require interference.

12. The learned counsel appearing for the respondent/accused has drawn the attention of the Court to the decision reported in 2006 (1) SCC (Cri) 401 (T.Subramanian vs. State of T.N.), wherein the Hon'ble Supreme Court has held that if two views are possible from the same evidence, prosecution cannot be said to have proved its case beyond reasonable doubt.

13. With these legal backdrops, the Court has to analyze the alleged demand and receipt of illegal gratification of Rs.4,500/- on the part of the present accused.

14. It is true that P.W.3 G.Krishnamurthy has been appointed as Enquiry Officer and he conducted enquiry and he identified the signature, initial of the accused in Exhibits P.65, P.66, Demand Drafts for Rs.1,000/- each.

15. One S.Jeyaraman has been examined as P.W.13 and his specific evidence is that during the relevant period, he has served as Cash Officer in State Bank of India, Karaikal and Exhibits P.65, P.66 have been presented by the accused and encashed on 6.8.1982. Likewise one K.Kumudam has been examined as P.W.14 and he would say that on 29.4.1982, one Demand Draft for a sum of Rs.1,000/- has been presented by the accused and to that extent, he marked Ex.P.91.

16. The vital witnesses, namely Kanchala Lakshminarayana and Jaganatha Rao have been examined as P.Ws.17 and 19.

17. At this juncture, the Court has to look into the evidence given by P.W.19. The specific evidence given by P.W.19 during the course of chief examination is that on 24.11.1982, he informed to Nageswara Rao that they have applied for high tension service connection and for that he demanded a sum of Rs.2,000/- as illegal gratification and he paid Rs.2,000/- on the same day. On 8.1.1983, the said Nageswara Rao and the accused came to their mill and inspected the same and Nageswara Rao told him that another Rs.1,500/- has to be paid towards illegal gratification for granting HT Connection and the said amount has to be paid to the accused and accordingly he has given the same to the said Nageswara Rao. Further, he would say that during second week of July 1983, the said Nageswara Rao has come to their mill and told him that the accused has demanded Rs.1,000/- more as illegal gratification and he refused to pay any amount further and ultimately he has taken a Demand Draft in the name of the accused. Further, he would say that another sum of Rs.2,000/- has been sent to the accused through Demand Drafts. Likewise, P.W.17 has given specific evidence to the effect that two Demand Drafts each for a sum of Rs.1,000/-, viz., Exs.P.65 and P.66 have been given to Nageswara Rao.

18. From the evidence given by P.Ws.17 and 19, the Court can come to a conclusion that the case of the prosecution as per their evidence is that P.W.19 has given the sum of Rs.2,000/- to Nageswara Rao for keeping the same by himself as illegal gratification. The said Nageswara Rao has demanded Rs.1,000/- by way of saying that the accused has demanded the same and he has also received it from P.W.19. Further, Demand Draft for a sum of Rs.1,000/- has been taken initially in the name of the accused and subsequently two Demand Drafts each for a sum of Rs.1,000/- have been taken in the name of the accused and the same have been encashed by him. Therefore, the case of the prosecution is that the accused has received an illegal gratification of Rs.4,500/-.

19. In fact, this Court has analyzed the entire evidence adduced by the relevant witnesses who have been examined on the side of the prosecution and ultimately found that even an iota of evidence is not available on the side of the prosecution for the purpose of proving the alleged demand of illegal gratification made by the accused either from P.W.17 or P.W.19.

20. The initial amount of Rs.1,500/- demanded and received from P.W.19 is only by the said Nageswara Rao. Even though P.W.23, Nageswara Rao, has given evidence to the effect that he received the same as demanded by the accused and subsequently handed over to him, the Court cannot believe his evidence. Therefore, with regard to receipt of Rs.1,500/-, accepted evidence has not been forthcoming. Now the Court has to look into the alleged 3 Demand drafts each for a sum of Rs.1,000/- taken in the name of the accused. The said Demand Drafts have been marked as Ex.P.26, P.65, P.66.

21. It is an admitted fact that Ex.P.26 has been taken in the name of P.V.Subramanian of Kakinada and the said amount has been credited in the account of the accused on 25.7.1983 and subsequently withdrawal slip has also been issued by the accused.

22. The specific evidence given by P.W.21, Officer of Indian Bank is that he received a letter from the accused and kept Rs.1,000/- under suspense account. The specific defence of the accused is that he has to receive a sum of Rs.1,000/- from Rengasamy at Kakinada. He received a Demand Draft from Kakinada, but he presumed that the same has been sent by Rengasamy and therefore, he has deposited in his account and after receipt of another Demand Draft for a sum of Rs.1,000/- from Kakinada, he has enquired the said Rengasamy and found earlier Demand Draft has not been sent by him and therefore, directed bank authorities to send back the said amount to drawer.

23. Considering the evidence given by P.W.21 and other relevant entries in the bank account of the accused, the Court

can easily come to a conclusion that the accused has mistakenly put the Demand Draft in question in his account and subsequently he has made suitable arrangements to send back the money to the concerned drawer. Therefore, the court cannot come to a conclusion that the accused has received the said sum of Rs.1,000/- as illegal gratification.

24. Now the Court has to look into Exs.P.65 and P.66. The specific evidence given by P.W.13 is that Ex.P.65 and P.66 have been presented by the accused on 6.8.1982 and he received the amounts mentioned therein.

25. The specific answer given by the accused to one of the questions put to him under section 313 of the Code of Criminal Procedure, 1973 is that during the relevant period, he has had no connection with the State Bank of India, Karaikal. But, to disprove the same, on the side of the prosecution, Ex.P.91 has been marked. Ex.P.99 is a copy of the bank account, which stands in the name of D.Sathyamurthy, the accused, wherein it is stated that Rs.2,000/- have been deposited by way of 2 Demand Drafts. The first Demand Draft has been deposited during August 1983. The second Demand Draft has been deposited during February 1984.

26. The specific evidence given by P.W.13 is that on 6.8.1982, the accused has deposited Ex.P.65 and P.66. Likewise, the specific evidence given by P.W.17 is that under Exhibits P.65 and P.66, Rs.2,000/- have been sent to the accused. But, in Ex.P.99, entries have been made with regard to 2 Demand Drafts on different dates. Under the said circumstances, the Court cannot come to a conclusion that the amounts mentioned in Ex.P.65 and P.66 have been encashed by the accused. Further, the specific evidence given by P.W.19 is that Exhibits P.65 and P.66 have been handed over to Nageswara Rao. After receipt of the same, the said Nageswara Rao might have done some thing. Therefore, absolutely there is no evidence on the part of the prosecution that the amounts mentioned in Exhibits P.65 and P.66 have been received by the accused, by way of illegal gratification. It has already been pointed out that absolutely there is no evidence on the side of the prosecution with regard to alleged demand of illegal gratification on the part of the accused. Further, the prosecution has miserably failed to prove that the entire amount of Rs.4,500/- has been accepted by him.

27. It is true that as per Section 4 of the Prevention of Corruption Act, 1947, a presumption can be drawn with regard to demand and acceptance. Simply on the basis of allegation of demand and acceptance of illegal gratification, presumption available under the said section cannot be invoked, but at the same time, some piece of evidence should be available on the part of the prosecution with regard to demand as well as acceptance. In the instant case, even for the initial stage of alleged demand

of illegal gratification, no evidence is available as against the accused.

28. Even at the risk of repetition, the court would like to point out that on the side of the prosecution, no evidence is available with regard to demand of illegal gratification and also acceptance of the amount alleged to have been sent by P.Ws.17 and 19. Since the essential ingredients of demand and acceptance have not been proved on the side of the prosecution, the Court cannot come to a conclusion that the accused has committed the offences mentioned in the charge.

29. The trial court, after considering the available evidence on record, has rightly found the accused not guilty under the sections mentioned in the charge. In view of the discussions made earlier, this Court has not found any error nor infirmities in the order of acquittal passed by the trial court and therefore the present Criminal Appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The judgment passed in Special C.C.No.2 of 1986 by the trial court is confirmed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

ajr

To :

1.The Special Judge,
Pondicherry

2. The Special Public Prosecutor for CBI Cases.

3. The Section Officer
Criminal Section,
High Court, Madras

1 cc to Mr. Mohan, Spl.PP for CBI, sr. 68511
1 cc to Mr. T.Mohan, Advocate, sr. 68543

Crl.A.No.1623 of 2003

PVR (CO)
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