

Bail slip

The Appellant/Accused viz. M.Ravichandran, S/o.Munisamy in Crl.A.No.748/06 was directed to be released on bail as per order of this Court dt.11.9.06 made in Crl.MP.1/06 in Crl.A.No.748/06.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.748 of 2006

Judgment reserved on :03.03.2015

Judgment pronounced on : 09.03.2015

M.Ravichandran .. Appellant/Accused

v.

State rep. by
Inspector of Police
Vigilance and Anti-Corruption
Madras City-II Detachment
Chennai-600 028.
(R.C.No.3/AC/2001/CC1)

.. Respondent/Complainant

Prayer:Criminal Appeal filed under Section 374(2) CrPC. against the judgment of conviction and sentence dated 28.08.2006 in C.C.No.60 of 2003 on the file of the learned VII Additional Sessions Judge (Special Judge), Chennai.

For Appellant : Mr.K.Shankar

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 28.08.2006 in C.C.No.60 of 2003 on the file of the learned VII Additional Sessions Judge (Special Judge), Chennai, whereby the appellant/accused was convicted for an offence under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced to undergo one year rigorous imprisonment and

to pay a fine of Rs.5,000/- in default in payment to undergo three months simple imprisonment.

2.The case of the prosecution is as follows:

(i) P.W.2/Arokiaraj was working in Armed Reserve Police and he was punished for desertion of duty and later the Director General of Police ordered to cut two increments and reappointed in the Department as per Ex.P3. After joining duty, he gave petition on 02.02.2001 to fix and regularise his pay. Because of long delay, he came and contacted the accused with whom his file was pending. On 28.02.2001, to speed up the process of file, the accused demanded Rs.1,000/- as bribe. P.W.2 told that on 02.03.2001, he would come back and give money. On 02.03.2001, at about 9.30 a.m., P.W.2 lodged Ex.P5 complaint to Vigilance and Anti-Corruption Wing.

(ii) On 02.03.2001, P.W.10/Mohan, Inspector of Police, Vigilance received Ex.P5 complaint and registered a case in R.C.No.3/AC/2001/CC1 for offence under Section 7 of P.C. Act and prepared Ex.P14 F.I.R. Then he laid trap with the official witnesses namely, P.W.3/Durai and one Gurudakshinamurthy and prepared Ex.P6/Entrustment mahazar and phenolphthalein tests were explained.

(iii) After explaining trap proceedings, P.W.2, P.W.3 and other officials along with P.W.10 went to Commissioner's office on 02.03.2001, at about 1.50 p.m. The accused came out of the office and at Pantheon road, 50 feet away from Commissioner's office, the accused demanded the amount of Rs.1,000/- and P.W.2 gave the money (i.e.) M.O.1 series (100 rupees notes ten in number). The accused got the same with his right hand and put it in his left side shirt pocket. When P.W.2 has made signal, police came and conducted enquiry. The amounts seized from the accused were checked with the entrusment mahazar and found correct and M.O.2 to M.O.6 were seized.

(iv) P.W.4/Rajendran is the Personal Assistant in Commissioner's office. P.W.5/Sivasubramanian, Superintendent took the files relating to the accused and gave it to P.W.4 and the same were marked as Exs.P7, P8, P10 and P11.

(v) At first, P.W.6/Saraswathy is dealing with the files relating to P.W.2 and then she entrusted the same to the accused.

(vi) P.W.7/Narayanasamy working in C Section received the files of P.W.2 with the notes prepared from Punishment section to pay section on 01.03.2001 and the accused has also signed.

(vii) On 12.04.2001, P.W.8/Amirthalingam, Superintendent in the pay section took action on the files of P.W.2 and files were sent back to punishment section.

(viii) P.W.9/Sundararajan, Assistant Director in Forensic Science Department tested the solutions under M.Os.2, 3, 5 and 7 and

found the presence of Sodium Carbonate and gave chemical report Ex.P12.

(ix) On 08.03.2001, P.W.11/Ramasubramanian, Inspector of Police, Vigilance took up the case for further investigation and examined the witnesses and recorded their statements.

(x) P.W.1/Ganeshmurthy, the Superintendent of Police, Thiruvarur, was the appointing authority and after perusing entire records, he applied his mind and issued Ex.P1 sanction order for prosecution of the accused.

(xi) P.W.11 after completing investigation, filed a charge sheet against the accused under Sections 7 and 13(2) read with 13(1) (d) of P.C.Act, 1988.

3.The learned Special Judge after following the procedure, framed necessary charges. Since the accused pleaded not guilty, the Special Court examined the witnesses P.W.1 to P.W.11 and marked the documents Exs.P1 to P17 and material objects M.O.1 to M.O.7 and placed the incriminating evidence before the accused and the accused denied the same in toto. The Special Court after considering the oral and documentary evidence, convicted and sentenced the appellant/accused as stated above.

4.Challenging the judgment of conviction and sentence passed by the Special Court, learned counsel for the appellant/accused has submitted that the appellant/accused was working as an Assistant in Commissioner's office, Police Department, Chennai. P.W.2 is the defacto complainant and he was dismissed from service and subsequently, he was reappointed. P.W.2 has approached the accused to regularise his service and also for pay fixation, at that time, it is alleged that the accused demanded a sum of Rs.1,000/- as illegal gratification. It is further submitted that the first demand was made on 28.02.2001 and second demand was made on 02.03.2001, whereas the files relating to P.W.2 were moved to salary section on 01.03.2001. The evidence of P.W.5 and P.W.7 shows that work has been completed on 01.03.2001 itself. So there is no necessity for the appellant/accused to demand money on 02.03.2001 that too after completing the work and hence, the prosecution has failed to prove the demand made by the appellant. But the Special Court without considering the above aspects, erroneously convicted the appellant/accused. Therefore, he prayed for acquittal of the accused and allowing this appeal.

5.Resisting the same, learned Government Advocate (Crl.side) submits that as per the evidence of P.W.8/Amirthalingam and Ex.P13, the work was not completed till 11.04.2001 and the file was sent to punishment division only on 12.04.2001. It is further submitted that as per the evidence of P.W.2, work was not completed on 01.03.2001 and P.W.2's evidence was corroborated by the evidence of P.W.3/shadow witness. The Special Court after considering all the aspects in

proper perspective, rightly convicted the appellant/accused and therefore, he prayed for dismissal of the appeal.

6.Sanction:

(i)The appellant/accused was working as an Assistant in punishment division, in Chennai City Police, Commissioner's office. P.W.1/Ganesh Murthy, Superintendent of Police, has accorded sanction for prosecuting the accused and Ex.P1 is the sanction order. In his cross-examination, a suggestion was posed to him that he does not apply his mind while according sanction, he denied the same. But he fairly conceded that he is not a competent person to appoint a clerical staff like the accused and he does not remember as to when did the accused get transfer from Chennai Commissioner's office to Police Department, Thiruvarur District.

(ii)The case of the prosecution is that while the appellant/accused was working in Punishment Division, Chennai City Police, Commissioner's Office, has committed the offences by misusing his official position, demanded illegal gratification for doing his official duty. During February 2002 - July 2003, P.W.1 was the Superintendent of Police, Thiruvarur District and at that time, he accorded sanction. It is true, at that time, the accused was transferred from Chennai to Thiruvarur District and working as clerical staff. As already stated above, P.W.1 in his cross-examination itself, fairly conceded that he is not a competent person to appoint a clerical staff. In such circumstances, I am of the view, sanction is not accorded by competent authority and P.W.1 is not a competent person to accord sanction. Hence, sanction itself is invalid and non-est in the eye of law.

Demand and Acceptance:

7.According to the learned counsel for the appellant, there is no necessity for the appellant to demand money, since he completed the work relating to P.W.2 on 01.03.2001 itself.

8.According to P.W.2/defacto complainant, first demand was made on 28.02.2001. He lodged Ex.P5 complaint on 02.03.2001. P.W.2 in his chief-examination deposed that when he enquired about his application, the accused told that he is having that application to take action, for which, he demanded Rs.1,000/-. P.W.2 in his cross-examination deposed that on 28.02.2001, he has not seen any police officials in the Commissioner's office and he has not seen the Superintendent in punishment division. Further he deposed that on that date, he has gone to salary division and enquire about the application filed by him. But he does not disclose the fact that the accused demanded money to any other police official. Except the ipse dixit of P.W.2, no other witness was available to corroborate the same.

9. Furthermore, disciplinary proceedings has been initiated against P.W.2, he was dismissed from service and subsequently, he was reappointed by cutting two increments. In Ex.P2/order, P.W.2 was directed to join duty and it was stated as follows:

".. .. I therefore order the punishment of removal from service, be modified into that of reduction in time scale of pay by two stages for a period of two years with cumulative effect. The effect on pension is considered and is intended. "

10. Considering the aforesaid circumstances of the case, the evidence of P.W.2 is not wholly reliable, which needs corroboration. But except the ipse dixit of P.W.2, no other evidence was available to corroborate the evidence of P.W.2 in respect of first demand. Hence, I am of the view, first demand made by the accused on 28.02.2001 is not proved by the prosecution.

Whether the work has been completed on 01.03.2001?

11. P.W.5/Sivasubramanian in his cross-examination deposed that a letter No.844, dated 01.03.2001, which finds place in page No.21 of Ex.P8, was placed before P.W.5 by the accused after finishing his work. P.W.5 after put his signature with date as 01.03.2001, forwarded to salary division. On that date itself, P.W.7/Narayanasamy, a staff from the salary division received the letter and made an endorsement. In such circumstances, the evidence of P.W.5 clearly proves that on 01.03.2001 itself, the appellant has completed his work and handed over the same to P.W.5, who in turn, made his signature and forwarded to salary division.

12. P.W.7/Narayanasamy in his evidence deposed that Ex.P8 was prepared by P.W.5 and it was signed by the accused. So the evidence of P.W.5 has been corroborated by the evidence of P.W.7. Moreover, there are other divisions in between salary and punishment divisions.

13. P.W.8/Amirthalingam in his evidence deposed that in pursuance of Ex.P8/letter, he has taken action only on 11.04.2001 and it was forwarded to punishment division on 12.04.2001. The report prepared by P.W.8 was marked as Ex.P13 and he made his signature on behalf of the Superintendent. So the evidence of P.W.8 has also clearly proved that the appellant/accused has finished his work by 01.03.2001 itself. In such circumstances, the arguments advanced by the learned counsel for the appellant that since the appellant has completed his work by 01.03.2001 itself, there is no necessity for him to demand money on 02.03.2001, is acceptable one.

Second demand:

14. Insofar as second demand is concerned, P.W.3/Durai and one Gurudakshinamoorthy are the official witnesses for the trap proceedings. The chief-examination of P.W.3 has corroborated the evidence of P.W.2. It is to be noted that evidence of trap witness is not an independent witness and it needs corroboration. On perusing cross-examination of P.W.3 reveals that it is not wholly reliable.

15. It is well-settled that mere recovery of the tainted money itself is not sufficient in the absence of proof of demand for establishing the offences alleged against the accused. Mere recovery is not a sufficient reason for conviction, even though phenolphthalein test was positive.

16. At the time of questioning the accused under Section 313 Cr.P.C., the accused gave a statement that on 02.03.2001, at about 1.40 p.m., P.W.2 approached him stating that he gave an application for pay fixation, but steps have not been taken, at that time, accused told that on 01.03.2001 itself, he completed his work and it was forwarded to salary division, wherein P.W.7/Narayanasamy was the in-charge and he has to pass order.

17. The following suggestions were posed to P.W.10/Inspector of Police during his cross-examination and the same were denied by him:

(i) Petition given by P.W.2 was properly attended by the accused and the file was moved to salary division on 01.03.2001 itself.

(ii) P.W.10 after knowing fully well that the accused completed his work, conducted trap proceedings to implicate the accused.

(iii) While P.W.2 was trying to thrust the amount into the pocket of accused, P.W.10 came there and told that we can decide the matter in the office.

(iv) Since the accused refused to disclose the truth in the police control room, P.W.10 asked P.W.4/Rajendran to convince him and due to which, there was a delay of 3 ³/₄ hours for preparing mahazar. Even though P.W.10 deposed that the accused admitted his demand, his cross-examination itself shows that with an ulterior motive, trap proceedings has been conducted. In such circumstances, second demand made by the accused on 02.03.2001 is not proved by the prosecution.

18. At this juncture, it is appropriate to consider Rule 47, Manual of the Directorate of Vigilance and Anti-Corruption, Tamil Nadu, which is extracted hereunder:

"47. Questioning of Accused Officer

(1) Questioning of the Accused Officer and recovery of the bribe money should be after the phenolphthalein test. If the test proves positive, arrest of the Accused Officer may be made and recovery of notes effected on the basis of Accused Officer's statement, if any. In this event, the provisions of Section 27 of the Indian Evidence Act would be available to the prosecution.

(2) Immediately after recovery and seizure of the bribe money or article, the Accused Officer must be further interrogated and his detailed statement separately recorded in the case diary under Section 162 of the Code of Criminal Procedure, 1973. If there is any need to examine him still further in the light of any fresh evidence that might come up later during the investigation of the case, the same can be done at a later stage and further statement of the Accused Officer recorded. "

19. It is the duty of the trap laying officer to record the statement of the accused under the above provision. As per the Rule 47(2), immediately after recovery and seizure of the bribe money or article, the Accused Officer must be further interrogated and his detailed statement separately recorded in the case diary under Section 162 Cr.P.C. Admittedly, no statement was recorded, which is fatal to the case of prosecution. As already stated above, mere recovery is not a basis for convicting the accused and that factum was not considered by the Special Court.

20. To sum up,

(i) Sanction is invalid, which will vitiate entire proceedings.

(ii) First and second demand allegedly made by the accused and acceptance are not proved by the prosecution.

21. Considering the aforestated circumstances of the case, I am of the view, the prosecution has miserably failed to prove the guilt of the appellant/accused for the offence under Section 7 of Prevention of Corruption Act beyond all reasonable doubt. Since Section 7 of P.C. Act has not been proved, the offence under Section 13(2) r/w 13(1)(d) of P.C. Act has not been made out. The benefit of doubt is given in favour of the appellant/accused and he is acquitted from the charges levelled against him. Therefore, the Judgment of conviction and sentence passed by the Special Court is hereby set aside.

22.In fine,

- The Criminal Appeal is allowed by setting aside the judgment of conviction and sentence dated 28.08.2006 in C.C.No.60 of 2003 on the file of the learned VII Additional Sessions Judge (Special Judge), Chennai.
- The appellant/accused is acquitted from the charges levelled against him and he is set free.
- The fine amount paid by the accused is ordered to be refunded to him.
- Bail bond executed by the appellant/accused shall stand cancelled.
- Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar
Dated:17.3.15

True Copy

Sub Assistant Registrar

To

1.VII Additional Sessions Judge (Special Judge), Chennai.

2.do thro' The Principal Sessions Judge, Chennai.

3.Inspector of Police
Vigilance and Anti-Corruption
Madras City-II Detachment
Chennai-600 028.

4.The Public Prosecutor
High Court, Madras.

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

+1 cc to Mr.K.Shankar, Advocate, SR.13434.

+1 cc to Public Prosecutor, SR.12900.

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krd 23/3

Pre-delivery Judgment made in
Crl.A.No.748 of 2006