Bail Slip

The Appellant/Accused namely M. Sivakumar, S/o. Manickam, was directed to be released on bail as per the order of this Court dt. 26.4.2004 in Crl.M.P.No.5099/04 in Crl.A.No.611 of 2004 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.10.2015
Delivered on : 29.10.2015

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THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.611 of 2004

M.Sivakumar ..Appellant/Accused

vs.

State through
Inspector of Police
Nilagiris Police Station
Vigilance and Anti
Corruption Department
Udhagamandalam
Crime No.2 of 2002 ..Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., against the order passed by Special Judge for Vigilance and Anti Corruption Cases and Chief Judicial Magistrate at Udhagamandalam in C.C.No.4 of 2002 on 31.03.2004.

For appellant : Mr.N.R.Elango, Senior Counsel
for Mr.A.Edwin Prabakar

For respondent : Mr.P.Govindarajan,
Addl Public Prosecutor

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JUDGMENT

This Criminal Appeal has been directed against the convictions and sentences passed in Calendar Case No.4 of 2002 by the Special Court for Vigilance and Anti Corruption Cases/ Chief Judicial Magistrate Court, Udhagamandalam.

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2. The nubble of the case of the prosecution is that during the relevant period, the accused has served as an Assistant Field Surveyor in Taluk Office, Kothagiri. The defacto complainant by name Prakasam has given an application to sub-divide 3 cents of land which situates in S.F.No.153/5A1A1, which stands in the name of his wife by name Rajeswari. On 26.06.2001, the accused, Surveyor (Thangamani) have measured the same. The accused has demanded a sum of Rs.1500/- from the defacto complainant for issuing sub division order and subsequently he reduced quantum of amount to the tune of Rs.1000/-. On 24.09.2001, at about 4 p.m., the defacto complainant has met the accused and asked sub division order. But the accused has directed him to give a sum of Rs.1000/- by way of bribe on 01.10.2001 and accordingly on 01.10.2001, at about 4.20 p.m., the defacto complainant has given the said sum of Rs.1000/- by way of bribe to the accused. The complaint given by the defacto complainant has been registered in Crime No.2 of 2002 and marked as Ex.P.4.

3. On receipt of Ex.P.4, the Investigating Officer (P.W.9) has taken up investigation and made all arrangements to conduct trap. After conducting the same, he made further investigation and after his transfer, his successor in office (P.W.10) has completed investigation and laid a final report on the file of the trial court and the same has been taken on file in Special Calendar Case No.4/2002.

4. The trial court, after hearing arguments of both sides and upon perusing the relevant records has framed first charge against the accused under Sections 7 and second charge under Sections 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

5. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exhibits P.1 to P.21 and M.Os.1 to 7 have been marked.

6. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

7. The trial court, after hearing arguments of both sides and after pondering the available evidence on record has found the accused guilty under Section 7 of the said Act and sentenced him to undergo 1 year rigorous imprisonment and imposed a fine of Rs.1,000/- with usual default clause. Further, he has been found guilty under Sections 13(2) read with 13(1)(d) of the said Act and sentenced to undergo 2 years rigorous imprisonment and

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imposed a fine of Rs.1,000/- with usual default clause. Against the convictions and sentences passed by the trial court, the present criminal appeal has been preferred at the instance of the accused as appellant.

8. The consistent case put forth on the side of the prosecution is that on 25.06.2001, the defacto complainant, by name Prakasam has given an application so as to make sub division in respect of 3 cents comprised in S.F.No.153/5A1A1, which stands in the name of his wife and accordingly, on 26.06.2001, the accused and others have surveyed the same and after making survey, the accused has demanded a sum of Rs.1,000/- by way of bribe from the defacto complainant and subsequently, reduced the quantum of bribe amount to the tune of Rs.1000/- and on 24.09.2001, the defacto complainant has met the accused in Taluk Office, Kothagiri and the accused has directed him to give a sum of Rs.1000/- by way of bribe on 01.10.2001 and accordingly on 01.10.2001, at about 4.20 p.m., the defacto complainant has given a sum of Rs.1000/- as bribe to the accused. Under the said circumstances, the accused is said to have committed offences punishable under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

9. On the side of the prosecution, the defacto complainant has been examined as P.W.2. The decoy witness Janarthanan has been examined as P.W.3. On the basis of their evidence coupled with other evidence adduced on the side of the prosecution, the trial court has found the accused guilty under the sections mentioned in the charges and imposed punishments as stated supra.

10. The learned senior counsel appearing for the appellant/accused has raised the following points so as to supplant the convictions and sentences passed by the trial court:-

(a) The accused has had no connection whatsoever with the application given by the defacto complainant and in fact, the accused has served in some other area during the relevant period;

(b) On the side of the prosecution, evidence is available to the effect that the solution taken at the time of trap proceedings from the left hand of the accused does not show pink colour, whereas in chemical examination, it is shown that of solutions are having pink colour and therefore the trap proceedings is highly doubtful and not reliable;

(c) On the side of the prosecution, no evidence is available with regard to demand, alleged to have been made by the accused on 01.10.2001 and therefore demand of bribe has not at all been proved on the side of the prosecution;

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(d) From the evidence of P.Ws.9 and 10, the court can come to a conclusion that the defacto complainant has not spoken about exact date of survey and also previous demands of bribe.

11. In order to buttress the convictions and sentences passed by the trial court, the learned Additional Public Prosecutor has also equally contended that in the instant case, the defacto complainant has given trustworthy evidence with regard to demand of bribe by the accused and also acceptance of the same and his evidence has been clearly corroborated by decoy witness, who has been examined as P.W.3 and apart from their evidence, scientific evidence is also available and the trial court, after considering the replete evidence available on record has rightly invited the convictions and sentences against the appellant/accused and therefore, the convictions and sentences do not require interference.

12. The learned senior counsel appearing for the appellant/accused has drawn the attention of the court to an unreported decision rendered in P.Satyanarayana Murthy Vs. The District Inspector of Police and Another [Criminal Appeal No.31 of 2009 dated 14th September, 2015], wherein, the Honourable Supreme Court has observed as follows:-

> " In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B.Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d) (i) & (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of

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proof of demand, such legal presumption under Section 20 of the Act would also not arise. "

13. It is a settled principle of law that in a case like this, a primordial duty is cast upon the prosecution to prove demand of bribe as well as acceptance; a mere possession and recovery of tainted money would not be sufficient to come to a conclusion that the concerned accused has committed offence punishable under Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

14. With these legal backdrops, the court has to analyse the following aspects:-

(a) Whether the accused has demanded bribe from the defacto complainant on 01.10.2001 or earlier;
(b) Whether the accused has received a sum of Rs.1000/- by way of bribe on 01.10.2001 from the defacto complainant.

15. Even though on the side of the prosecution as many as 10 witnesses have been examined, the evidence adduced by the defacto complainant (P.W.2) and decoy witness (P.W.3) assumes much importance. The defacto complainant has vividly stated in his evidence that on 25.06.2001, he has given an application in Taluk Office, Kothagiri, so as to sub-divide 3 cents of land, situates in S.F.No.153/5A1A1, which stands in the name of his wife Rajeswari and accordingly, on 26.06.2001, the accused and others have measured the same and after taking measurements, the accused has demanded a sum of Rs.1500/- and on his request, he reduced quantum of bribe amount to the tune of Rs.1000/- and on 24.09.2001, he met the accused and the accused has directed him to give a sum of Rs.1000/- by way of bribe on 01.10.2001 and subsequently, he has given a complaint to P.W.9 and P.W.9 has made all arrangements to conduct trap and as per his direction he and P.W.3 have gone to Taluk Office, Kothagiri, where, he met the accused and the accused has demanded a sum of Rs.1000/- by way of bribe and the same has been given to him. The decoy witness (P.W.3) has also given identical evidence as given by P.W.2. Apart from their evidence, the Investigating Officer viz., P.W.9 has also given evidence to the effect that the complaint given by the defacto complainant, has been registered in Crime No.2 of 2002 and after making initial arrangements, he directed the defacto complainant and decoy witness to go to the office of the accused and give tainted money to him and accordingly the same has been given by the defacto complainant and after getting prearranged signal from P.W.2, he seized bribe amount of Rs.1000/- from the accused and also prepared solutions by way of following usual methods. The Scientific Assistant has been examined as P.W.8 and his specific evidence is that in both the solutions, pink colour is found.

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16. From the cumulative reading of the evidence given by the prosecution witnesses mentioned supra, there is no incertitude in coming to a conclusion that on the side of the prosecution, demand of bribe as well as acceptance of the same by the accused have been clearly established/proved.

17. The first and foremost contention put forth on the side of the appellant/accused is that during the relevant period, the accused served in different area and he has had no connection whatsoever with the application given by the defacto complainant.

18. The specific evidence given by the defacto complainant is that on 26.06.2001, the land in question has been measured by the Surveyor, accused and another. At this juncture, it would be apropos to look into the evidence given by P.W.6 and his specific evidence is that on the basis of application given by defacto complainant, the land in question is has been measured by him and at the time of measurement, the accused has also been present. If really the accused has had no connection whatsoever with the area in which the land in question is situate, the accused need not be present at the time of surveying. Therefore, the first and foremost point urged on the side of the appellant/accused is totally baseless.

19. The second contention put forth on the side of the appellant/accused is that the entire trap proceedings is highly doubtful/not reliable.

20. The second contention put forth on the side of the appellant/accused is based upon solution taken in respect of left hand of the accused at the time of trap proceedings. The specific evidence given by the Investigating Officer is that the solution in respect of the left hand of the accused does not show pink colour.

21. It is an admitted fact that P.W.8 has scientifically examined solutions taken at the time of trap proceedings and ultimately found pink colour in both the solutions. Since the Investigating Officer has manually inspected the concerned solution, he might not have seen the actual colour of the same. But P.W.8 has analysed both the solutions by way of adopting scientific methods and ultimately found pink colour in both the solutions and that itself would not be a basis for coming to a conclusion that the entire trap proceedings is doubtful. Therefore, the second contention put forth on the side of the appellant/accused is sans merit.

22. The third contention put forth on the side of the appellant/accused is that on the side of the prosecution with regard to acceptance of bribe, evidence is not available so as

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to prove the demand of bribe alleged to have been made by the accused on 01.10.2001.

23. In fact, this court has perused the entire evidence given by P.W.2 and his specific evidence is that even on 01.10.2001, the accused has demanded bribe amount; further, he would say that prior to 01.10.2001, at the time of meeting him, he demanded bribe. Therefore, with regard to demand of bribe, plethora of evidence is available on the side of the prosecution and under the said circumstances, the third contention put forth on the side of the appellant/accused does not hold good.

24. The last contention put forth on the side of the appellant/accused is that with regard to the date of measurement as well as the demand of bribe, earlier to 01.10.2001, no specific materials are available on the side of the prosecution.

25. It is true that both P.Ws.9 and 10 - Investigating Officers have given evidence to the effect that P.W.2 does not say specifically about the date of measurement as well as the demand of bribe alleged to have been made by the accused.

26. It is nothing but an omission on the part of P.W.2. The veritable fact is that the defacto complainant has given an application to measure the land in question and accordingly, P.W.6, accused and others have measured the same and since after measurement sub division order has not been furnished to the defacto complainant, the court can very well presume that sub order division would have been issued only due to intervention of the accused. Therefore, the fourth contention put forth on the side of the appellant/accused also goes out without merit.

27. It is not an adulation to say that in the instant case, replete evidence is available for the purpose of proving demand of bribe as well as acceptance of the same by the accused. The trial court, after considering the overwhelming evidence available on record has rightly invited convictions and sentences against the appellant/accused and in view of the discussion made earlier, this court has not found any force in the contentions put forward on the side of the appellant and altogether this criminal appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The convictions and sentences passed in Special Calendar Case No.4 of 2002 by the Special Court for Vigilance and Anti-Corruption Cases and

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Chief Judicial Magistrate, Udhagamandalam are confirmed. If the appellant/accused is not in duress, the trial court is directed to take appropriate steps so as to immure him in prison.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1. The Judicial Magistrate, Udhagamandalam.

2.The Special Judge for Vigilance
and Anti Corruption Cases
& Chief Judicial Magistrate at Udhagamandalam.

3. The Public Prosecutor, High Court, Chennai.

4.The Inspector of Police
Nilagiris Police Station
Vigilance and Anti corruption Department
Udhagamandalam
Crime No.2 of 2002

+ 1 cc to public Prosecutor, High Court, Madras 59064

Criminal Appeal No.611 of 2004

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