IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2016	Delivered on : 23.12.2016

CORAM

THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.661 of 2004

The State
by Inspector of Police
SPE, CBI, ACB,
Chennai ..Appellant/Complainant

vs.

1.R.Gopalasamy
Superintendent, Customs Department
Chennai

2.T.Senthil Murugan
Preventive Office
Customs Departement, Chennai

3.K.Pushpa, Preventive Office
Customs Department, Chennai

4.A.Biswas, Superintendent
Customs Department, Chennai ..Respondents/Accused 1 to 4

Criminal Appeal filed under Section 378 of Cr.P.C., against the order or acquittal of the respondents passed by Additional Special Judge for CBI Cases, Madras, in his order dated 21.11.2003 in C.C.No.26/2001.

For appellant : Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases.

For respondents : Mr.G.Walter Solomon for R1
Mr.K.R.Ramesh Kumar for R2 and R3
Mr.N.Gandhi for R4.

JUDGMENT

This Criminal Appeal has been directed against the order of acquittal passed in Calendar Case No.26 of 2001 by the Additional Special Judge for CBI Cases, Chennai.

2. The crux of the case of the prosecution is that during the relevant period, the accused A1 and A2, who were working in Counter Nos.11 and 12 in the Anna International Airport as Superintendent of Customs, Baggage Superintendent and Air Customs Officer, respectively, demanded an illegal gratification of Rs.15,000/- and subsequently reduced the same to Rs.10,000/- from P.W.4-Swaminathan and 2 others viz., Devadas and Saravanan, who arrived at Air Port, Chennai, from Singapore, for releasing their baggage, containing 3 DVD players each one without paying customs duty. A3 accepted the illegal gratification of Rs.10,000/- from P.W.4-Swaminathan and also informed P.W.4 that A1 and A2 instructed to receive the amount. A4 also directed Swaminathan to pay the amount to A3 for releasing the three baggages, without paying customs duty. The complaint given by the defacto complainant/Swaminathan, before the Inspector of Police, SPE:CBI:ACB: Chennai, has been registered in Crime No.RC MA 1-2000 A 0007 and marked as Ex.P.18.

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 after obtaining Sanction Order from the Office of the Commissioner of Customs (Seaport) Customs House, Chennai, laid a final report on the file of the trial court and the same has been taken on file in Calendar Case No.26/2001, and the same had been marked as Exs.P.2 and P.3.

4. The trial court, after hearing arguments of both sides and upon perusing the relevant records has framed three charges against the accused A1 to A4 and accordingly, first charge under Sections 120-B of IPC r/w. 7 & 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988 (hereinafter called as “Act”); second charge under Section 7 of the Act and third charge under Section 13(2) r/w.13(1)(d) of the Act and the same have been read over and explained to them. The accused have 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.25 and M.Os.1 to 4 have been marked.

6. 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 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 not guilty of offences under Section 120B IPC r/w Section 7 and 13(2) r/w.13(1)(d) of the Act, Section 7 and 13(2) r/w.13(1)(d) of the Act, and they were acquitted of all the charges levelled against them. Against the said order of acquittal passed by the trial court, the present criminal appeal has been preferred at the instance of the State.

8. The Prosecution contends that the trial court failed to take into consideration that enough evidence was placed before it regarding the criminal conspiracy entered into between A-1 to A-4 and also failed to appreciate properly the evidence regarding the demand of bribe made by A-1 with A-4. The prosecution also assailed the finding of the trial court regarding the registration of the FIR. Likewise, the prosecution contends that the trial court failed to appreciate the evidence of P.W.4 and 5 properly and the finding that their evidence is contradictory is incorrect. It is also pointed out that the trial court failed to appreciate properly the materials placed before it and disbelieved the evidence of P.W.4 for no valid reason. The trial court also failed to invoke the legal presumption available under Section 20 of the Prevention of Corruption Act, 1988 against the accused A-1 to A-4 and the same is not correct.

9. It is further contended by the Prosecution that the trial court failed to appreciate the evidence relating to the demand and acceptance regarding the illegal gratification by the accused from P.W.4 and the intention to clear the goods brought by him and his party, without paying normal custom duty attracted. In such circumstances, the appellant/state, pleads for the reversal of the finding of the trial court and to hold accused guilty of the offence alleged against them and convict them accordingly.

10.1. As per the case of the prosecution, on 12.03.2000, at about 10 a.m., P.W.4 along with his father and brother arrived at Chennai Airport from Singapore and on completion of immigration placed the baggage for scanning. At that point of time, A-3 collected the Passport and asked them to go to counter Nos.11 and 12, where, A-1 and A-2 were present. When they informed A-1 and A-2 about the contents of the baggage including 3 DVDs, they were asked by A-1 and A-2 to give Rs.15,000/- for releasing the baggage, without paying customs duty for which P.W.4 and his party was not prepared. Thereafter, A-1 reduced the demand of Rs.15,000/- to Rs.10,000/- and the same was supported by A-2. When P.W.4 informed them that he was not having that much amount, A-1 stated that unless the amount is paid before lunch, the articles will not be released. Thereafter, P.W.4 informed A-1 and A-2 that after arranging the amount, he will come back, to which A-1 agreed.

10.2. Subsequently, P.W.4/Swaminathan informed P.W.5 Parthiban,, who was at the Airport to receive them at about 11 a.m., and he advised P.W.4 to inform the police accordingly. P.W.4 after getting the Phone Number from P.W.5 contacted CBI office at about 11.45 a.m., and the call was attended by P.W.7 who asked P.W.4 to make a call after 10 minutes. When P.W.4 called again, he was informed by P.W.7, V.K.Ragukumar, DSP, CBI., to go and wait at Trisulam Railway Station and also informed that he will be coming in Maruthi Omni Van bearing Reg.No.TN-01-Q-2295. While so, on 12.03.2000, P.W.4 and P.W.5 met P.W.7 and also P.W.6, Inspector of Police and other persons accompanying P.W.7 at Trisulam Railway Station at about 1 p.m., and narrated the entire facts to P.W.7 and the same was recorded by him. The said recording is produced before trial court under Ex.P.4. The telephonic conversation was reduced into writing, which was marked as Ex.P.19 and the same was sent along with Ex.P.4 to the CBI office through Police Constable one Viveki for registering FIR, marked as Ex.P.18. Thereafter, P.W.7 instructed P.W.6-Syed Bazullah, Inspector of Police, to lay trap proceedings.

10.3. According to the prosecution, formalities relating to trap proceedings was demonstrated to P.W.4 and Entrustment Mahazar in Ex.P.15 was prepared between 1.30 to 1.50 p.m., thereafter the members of Trap Team as well as P.W.4 entered the Airport through customs exit gate. 10.4. According to the Prosecution, P.W.4 and 5, went to counter Nos.11 and 12 at the Airport and at that point of time, A-3 and A-4 were present there. When P.W.4 enquired about A-1, he was informed by A-3 that A-1 has gone for lunch and A-4 told P.W.4 that he was instructed by A-1 to clear the goods after receiving the amount from P.W.4. Thereafter, P.W.4 took the amount from his left side pocket and handed over the same to A-3. After receiving the same, A-3 returned the passport and told A-3 to take the baggage and get the cash in the counter. Immediately, P.W.4 signalled the CBI Officers as instructed earlier and the trap team members including P.W.6 rushed to the counter Nos.11 and 12 and questioned A-3. It is stated that A-3 admitted receiving the bribe amount and stated that she was asked by Air Customs Officer to collect the money from 3 passengers. According to the prosecution, immediately, phenolphthalein test was conducted and the same proved to be positive. The bribe amount recovered under Recovery Mahazar under Ex.P.9 was produced before the trial court as M.O.4.

11. It is stated that on 12.03.2000, at about 2 p.m., P.W.9

Inspector of Police, registered the case and took up investigation. The said FIR is produced before the trial court as Ex.P.18. After completion of investigation and obtaining sanction orders from the competent authority and the chemical examination report, which is marked as Ex.P.23, final report was filed. Thus, the prosecution contends that the charge against the accused was categorically established and proved beyond doubt with appropriate oral and documentary evidence and the same has not been appreciated and accepted by the trial court properly, which resulted in the acquittal of the accused.

12. On the other hand, it is contended by the defence that the accused have been falsely implicated in the case as they did not accede to the demand and request of the complainant to allow him to take away the baggage without paying customs duty. The trial court has categorically stated that the evidence placed before it does not establish the guilt of the accused. The trial court found that the complaint marked as Ex.P.4 and the FIR marked under Ex.P.18 only mentions the name of A-1 and A-2 stating that they demanded illegal gratification from the complainant for clearing baggages. It is also pointed out by the learned counsel that A-3 and A-4's name was not mentioned in the FIR.

13. It is contended by the prosecution that A-3 and A-4 were included on the basis of criminal conspiracy entered into by all the accused relating to the illegal demand and gratification of the bribe amount from P.W.4. Refuting the same, the learned counsel for the accused contended that none of the prosecution witnesses has spoken about the criminal conspiracy among the accused in any manner. It is also contended by the defence that there is no criminal conspiracy amongst A-1 to A-4 as alleged by the prosecution and if the same was true and P.W.4 was asked by A-3 to go to counter Nos.11 and 12, her name would have been mentioned in the FIR itself and P.W.4 would have also told the name of A-3 in the statement given by him to P.W.7. The learned counsel for the defence also contended that laying of FIR itself is doubtful and the trial court was right in disbelieving the claim of the prosecution in respect of registration of the case. The trial court also found that there is no direct evidence placed before it in respect of the alleged criminal conspiracy entered into by the accused. The trial court went further and stated that there is no circumstantial evidence to prove the allegations of the criminal conspiracy as claimed by the prosecution. The said finding of the trial court even though questioned by the prosecution/appellant/state, there is nothing on record to find fault with such finding of the trial court.

14. As stated above, the case of the prosecution is that A-

1 to A-4 entered into criminal conspiracy at Anna International Airport at 12.03.2000 and in furtherance of the same, demanded illegal gratification of Rs.10,000/- from the complainant P.W.4/Swaminathan, for releasing the bags carried by him. It is pointed out that P.W.9 stated in his evidence that the case was registered on 12.03.2000 at 10.30 a.m., on instruction of the Superintendent of Police and subsequently received the complaint through Police Constable at about 11.30 a.m. The evidence of P.W.9 that the sealed cover addressed to the Superintendent of Police was given to him by DIG. Learned counsel for the defence contended that as per the evidence of P.W.4 and P.W.7, the complaint/statement was recorded only at 1 p.m., at Trisulam Railway Station, in such circumstances, the evidence of P.W.4/Swaminathan, regarding the registration of FIR is totally contradictory and unbelievable. P.W.4 stated in his evidence that after contacting P.W.7 over phone as instructed by him, he reached Trisulam Railway Station at about 1 p.m., and after his statement was recorded, he proceeded with the trap party by 1.30 p.m and reached the Airport by 2 p.m. The learned counsel for the defence contended that it is not possible for P.W.7 to record the statement of P.W.4 marked as Ex.P.19 and then to demonstrate the trap proceedings and to prepare Ex.P.9 recovery mahazar within such short period and that itself is sufficient to discredit the claim of the prosecution. It is also pointed out that the trial court has upheld the contention of the defence in that regard. It is evident from paragraph 27 of the trial court judgment that in considering the evidence placed before it, the trial court, has categorically stated the discrepancy exists between the evidence of P.W.4 and P.W.9, who registered the FIR and upheld the contention of the defence in that regard.. Thus the claim of the defence regarding the above said issues has to be accepted and the challenge by the prosecution to the same has to fail.

15. It is also pointed out by the defence that as per the evidence of P.W.9, immediately after the FIR was registered on 12.03.2000, the same was dispatched to the court. However, in Ex.P.18-FIR, the endorsement found states that the same was received only in court on 13.03.2000. In such circumstances, the finding of the trial court that strong suspicion arises regarding the registration of FIR and veracity of the prosecution case, is justified and the same has to be accepted.

16. The claim of the prosecution that demand for illegal gratification was made by A-1 and A-2 was disputed by the defence. The claim of the prosecution is that the demand of bribe was made in counter Nos.11 and 12 and trap was also conducted in the same place. The case of the prosecution, is that A-2 was posted in those counters and at the time of occurrence, A-3 and A-4 was in-charge of the same. However, on

the basis of evidence, trial court has held that A-1 was in control of counter Nos.17 and 18 and A-3 was also in-charge of the same counters and in such circumstances, it is unbelievable that the complainant and party were directed to go to counter Nos.11 and 12. It is also pointed out that even as per the claim of the complainant, there is no demand made by A-4. The trial court, disbelieved the claim of the prosecution since no amount was recovered from A-1 and A-2 on that day following the trap. It is admitted by the prosecution that A-1 and A-2 were not present when the trap proceedings was conducted. In such circumstances, even assuming that the complainant and party were directed to proceed to counter Nos.11 and 12 as alleged by the prosecution, it is not sufficient to prove the demand of illegal gratification by the accused. Even during the argument before this court, no other material was pointed out by the prosecution, from the available evidence, to prove the fact of conspiracy between A-1 to A-4 and the alleged demand of bribe made by A-1 and A-2 to the complainant. Likewise, the fact that the name of A-4 is not mentioned in the complaint/Ex.P.4 as well as Ex.P.18-FIR is not disputed. There is no evidence to show that any money was recovered from A-4 as mentioned earlier. There is no evidence to show that any demand was made by A-4. In such circumstances, the claim of the prosecution about the involvement of A-1 to A-4 in the alleged criminal conspiracy and the demand of illegal gratification and receipt of the same is unbelievable and the finding of trial court in that regard is just and proper.

17.1. Further, it is pointed out by the defence counsel that P.W.4 has given contradictory evidence regarding the accused being present and making demand of bribe and the same fact has been categorically stated by the trial court in the judgment. In view of the contradictory stand taken by P.W.4, about the role played by A-4, who is alleged to be present when the amount was paid by him, as to whether A-4 was involved in the alleged offence is not proved.

17.2. It is pointed out by the defence counsel that A-1 was incharge for counter Nos.15 to 18 on the fateful day and if really he was interested in receiving bribe amount, he would not have instructed P.W.4 to go to counter Nos. 11 and 12 instead of counter Nos.15 and 18, wherein, he was in charge.

17.3. It is also pointed out by defence that, except for P.W.4, no other direct evidence regarding demand made by A-1 was available. Further it is pointed out that A-1 was not present when P.W.4 claims to have returned with the bribe amount. It is admitted by P.W.4 that A-1 was not present at counter Nos.11 and 12, when he returned with money. This according to the defence, will clearly establish the fact that there is no illegal demand made by A-1 as otherwise he would have been present at the counter to receive money from P.W.4. The said contention appears to be just and acceptable.

17.4. The further claim of the prosecution that A-3 has informed P.W.4 to pay the amount as directed by A-1 is also disputed. Admittedly, A-3 was not assigned any role in counter Nos.11 and 12 on 12.03.2000. A-3 was on duty in counter Nos.17 and 18. There is no material placed before the court by the prosecution to prove the fact that A-3 was allowed to work in counter Nos. 11 and 12 as per the direction of Mrs.Vimmi Vaid, or she directed A-1 to allot such work to A-3. The prosecution has not examined the said Vimmy Vaid before the trial court. It is also pointed out that it is clear from the evidence of P.W.6 that he was not informed by Smt.Vimmy Vaid about she asking A-3 to sit in counter Nos.11 and 12 as per the instruction of A-1. It is the evidence of P.W.6 that he was informed by P.W.4 that Vimmy Vaid asked A-3, to look after counter Nos.11 and 12 till she completes her lunch.

17.5. Thus, the above said evidence is not sufficient to prove that the accused were involved in criminal conspiracy and demanded illegal gratification as alleged by the prosecution. The claim of the defence that there is no direction to A-3 by A-1 or other accused to receive illegal gratification given by P.W.4, as claimed by the prosecution. Thus it is clear that the prosecution failed to establish the fact of making the claim of illegal demand. In such circumstances, the conclusion of the trial court that the demand and acceptance of the money/bribe amount by A-1 to A-4 has not been proved is to be accepted as just and correct. It is also pointed out by the defence counsel that normal procedure of phenolphthalein test has not been followed by the prosecution in this case and the same has been found fault by the trial court in its judgment.

18. Learned Special Public Prosecutor also conceded that the phenolphthalein test has been conducted in reverse fashion and he did not dispute the finding of the trial court in that regard.

19. In view of the above said discussion and the fact that the trial court has considered in detail all the materials placed before it and has arrived at just and proper conclusion that the prosecution has to failed to establish the alleged demand of illegal gratification and receipt of the amount by the accused is just and correct and no ground is made out by the prosecution to unsettle the finding of the trial court in any aspect.

20. In such circumstances, this court has no valid ground to entertain the appeal and the appeal has to fail. In fine, this Criminal Appeal is dismissed. The order of acquittal passed by the Additional Special Judge for CBI Cases, Madras, in C.C.No.26 of 2001 stands confirmed.

sd/
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nvsri

To
1.The Additional Special Judge for CBI Cases, Madras.

2.The Inspector of Police,SPE, CBI, ACB,Chennai

3.The special public Prosecutor CBI cases, Chennai.

+1cc to Mr.Srinivasan,Advocate SR No.76065
+1cc to Mr.K.r.Ramesh Kumar, Advocate SR.No.75960

Criminal Appeal No.661 of 2004

TM(CO)
GN(25/01/2017)