

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.10.2017

Pronounced on : 23.10.2017

Coram

The Hon'ble Dr.Justice G.Jayachandran

Criminal Appeal No.358 of 2017

and

CrI.M.P.No.7824 of 2017

K.Pugazhendhi

.. Appellant

/versus/

State Rep.by Inspector of Police,
Vigilance and Anti-Corruption Trichy,
Crime No.17/2007

.. Respondent

Criminal Appeal has been filed under Section 374(2) of the Code of Criminal Procedure Code, 1973 praying to call for the records from the Trial Court in Special Case No.10 of 2012 from the file of the learned Chief Judicial Magistrate/Special Judge at Ariyalur District, hear the counsel for the appellant/accused and set aside the conviction and sentence passed in Spl.Case No.10 of 2012 dated 13.06.2017 by the learned Chief Judicial Magistrate/Special Judge at Ariyalur District.

For Appellant :Mr.P.Ganapathisubramanian

For Respondent :Mr.C.Iyyaparaj,
G.A.(CrI.Side)

J U D G M E N T

This Criminal appeal is directed against the judgment of the learned Judicial Magistrate/Special Judge, Ariyalur, in Special Case No.10 of 2012, convicting the appellant/accused to undergo sentence of 5 years Simple Imprisonment for an offence under Section 7 of the Prevention of Corruption Act and to pay a fine of Rs.10,000/- in default, to undergo Simple Imprisonment for one year and 7 years Simple Imprisonment for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 in default to undergo one year Simple Imprisonment.

2. The case of the prosecution, as found proved by the trial Court, is that the appellant while functioning as Firka Surveyor at Ariyalur Taluk Office, had demanded Rs.2000/- on 04.10.2007 from one Kannadasan, the defacto complainant [PW2] to measure his property, sub-divide it and to give separate patta in the name of his parents. On a complaint by PW-2, PW-11 has registered the First Information Report [Ex.P-19] on 08.10.2007 at 09.00 hours, prepared pre-trap arrangement and recorded it by way of mahazar and then proceeded to Taluk Office with PW2[Kannadasan]., PW-3 [Radhakrishnan] along with his trap team. At about 16.30 hours, PW-2 [Kannadasamn] and PW-2 [Radhakrishnan]

went to the accused, who was chatting with two persons near a TVS-50 two wheeler parked at staircase to the new building of Taluk Office. The accused demanded money and received the same from PW-2[Kannadasamn]. On receipt of pre-arranged signal, the trap laying officer PW-11 and his team went to the accused and enquired him and asked to dip his hand fingers to the sodium carbonate solution. On seeing the changed colour of the solution, the police team enquired the accused about the receipt of bribe money. The accused took out Rs.2000/- (M.O.1 series) from the shirt pocket and handed over to the Investigating Officer. After preparation of seizure mahazar (Ex.P8), the accused was arrested. The chemical analysis report opined the present of phenolphthalein in the sample solution collected from each of the hands wash and shirt pocket. Based on the evidence let in by the prosecution, the appellant was found guilty and sentenced as stated above.

3. Feeling aggrieved, the accused has questioned the reasoning and legality of the judgment on the ground that the sanction to prosecute was accorded without perusing the entire file regarding investigation, which is contra to the dicta laid in *CBI v. Asokhkumar Agarwal case* and the guideline of the CBI manual, which says that the CBI should forward all material records to the sanctioning authority.

4. PW8[Rajendran] has deposed in his evidence that the application

for survey of land was handed over to the appellant/accused only on 25.08.2007 and on receipt of the said application, the appellant has surveyed the land on 28.8.2007. While so, there is no delay on the part of the appellant/accused as alleged by the prosecution and the defacto complainant. But the trial Court has failed to consider the evidence of P.W.8.

5. The application filed by the defacto complainant to get his land sub-divided immediately for availing loan has prompted him to file a false complaint, which could be seen from the sequence of events. However, the trial Court has failed to look into the evidence in this angle and has convicted the appellant erroneously. The complainant has paid the necessary charges only on 17.09.2007. Thereafter, the appellant has preferred the report and sent it to the Higher Officials on 27.09.2007. While so, the demand of bribe on 04.10.2007 does not arise. Since the appellant has already discharged his duty promptly, he has nothing to do further in the matter.

6. The explanation given by the appellant that there was a wordy quarrel between the defacto complainant and the appellant on 31.08.2007 regarding non-payment of sufficient charges, which has prompted the defacto complainant to make a false complaint and forcibly

planting the tainted money in his pocket. This was explained by the accused to the trap laying officer Mr.Govindasamy, [PW-12]. However, the statement was not recorded as per the manual, which has caused prejudice to the appellant/accused.

7. The learned counsel for the appellant contended that the prosecution has miserably failed to prove their case on all force. While so, the order of conviction is baseless and perverse. The contradiction in the prosecution witnesses regarding the demand and the manner in which the money alleged to have been recovered from the appellant/accused clearly indicates that the complaint is a motivated one due to animosity and therefore, the conclusion of the trial Court is liable to be set aside.

8. Heard the learned counsel appearing for the appellant and the learned Government Advocate(crl.side) appearing for the State and perused the materials available on record.

9. The contention of the appellant/accused is mainly on the procedural lapse, such as, the prosecution has not forwarded the entire case file to the sanctioning authority for him to apply his mind on all material facts and to arrive at just conclusion; that when the alleged

demand of bribe was on 04.10.2007, the complaint alleging demand was made belatedly on 08.10.2007 and that has been forwarded to the Magistrate only on the next day and not forthwith. The Investigating Officer Mr.Govindasamy [PW-12] admitted in his deposition that he has recorded the statement of the accused. The said statement of the accused has not been produced, which is a serious lapse committed by the prosecution in violation of the vigilance manual.

10. From the evidence of PW5[Periyammal] and PW-6[Thangavel], the defence has clearly proved that while working as a Firka Surveyor, the appellant had received the papers on 25.08.2007 and has surveyed the land on 31.08.2007 and forwarded his report to the Higher Official on 27.09.2007. While so, there is no reason for demanding bribe on 04.10.2007 to do any official function. PW2 is the defacto complainant. On 17.08.2007, an application in the name of Periammal, the mother of PW2 has been received in the office of Tahsildar, Ariyalur. In the application, Periammal has sought for sub-division of her land and issued separate patta for the land covered in S.No.23/6C, 24/4C, 24/4e 26/2g. This application has been marked as Ex.P2. From the seal on Ex.P2, this Court finds that the Tahsildar Office at Ariyalur has taken the application on file and has forwarded to the surveyor to carry out the inspection and submit the report within a week's time. This direction with rubber stamp

signed on behalf of Tahsildar is dated 27.08.2007. From Ex.P3, it appears that on behalf of Periammal a charge of Rs.160/- has been remitted on 17.08.2007 along with the application.

11. According to the complaint, which is marked as Ex.P7, in order to avail loan he was advised to sub divide the property, which stands in the name of his father and mother and to get separate patta. So, he gave an application on 17.08.2007 for measuring the land, to sub divide and to issue patta. In the complaint, he has said that he has paid fee of Rs.160 towards the application of his mother and Rs.40 towards the application of his father. After 15 days, the Firka Surveyor Pugazhenth (appellant/accused) visited the land, measured it and informed his parents that the charges paid for sub division is deficit. He told a further sum of Rs.160 has to be paid in the name of Periammal and after paying the charge, he shall come and meet them. Accordingly on 17.09.2009 P.W.2 deposited a sum of Rs.160/- at State Bank of India, Ariyalur and along with the payment challan, he met the accused at his office. Since the accused was not in his office, he returned back. Again on 04.10.2007. he went to Taluk Office and met the accused and enquired about his application whether he had forwarded the papers. The accused after enquiring the appellant as to where he had gone for all these days, has told the defacto complainant that, "without doing anything for him

properly, how he will forward his application?" When the defacto complainant asked him what he meant by "doing properly", then the accused explained that without giving bribe, the work will not be done and demanded Rs.2000/-. Unless he gave bribe of Rs.2000/-, his application will not be forwarded. Since the defacto complainant was not inclined to give bribe for the purpose of re-survey and subdivision, he has enquired with known persons about Vigilance Department and given this complaint on 08.10.2007, which has been received by the trap laying officer at 9.00 'o' clock on the said date and FIR has been registered accordingly.

12. The defacto complainant PW-2, in his deposition, has reiterated the contents of the complaint Ex.P-7, he has identified the applications of his father and mother for sub-division, the receipts issued for payment of charges, as Exs.P-2 to P-6 respectively. Regarding demand of bribe, he has deposed that after paying the deficit charge of Rs 160/- on 17/9/2007, he tried to meet the accused, but he could not, since the accused was not present. Again on 4/10/2007 he went to Taluk office and met the accused. After enquiring why he had not turned up all these days, the accused has told PW-2 that without doing anything properly, how he can forward his applications (Kiwahf vJt[k; bra;ahky; vg;go mDg;g

Koa[k;]) and had demanded Rs 2000/-. When the witness had asked whether he will not forward the application without money, he has replied that without money, even for months, it will not be forwarded.

13. This conversation is very relevant, because, on 8/10/2007, when PW-2 met the accused, first he has enquired whether he has brought the money. Then after receiving the money, he has told him that if he had given the money last Thursday itself, then by this time the work would have been completed. This conversation is heard by the accompanying witness PW-3 [Radhakrishnan] and corroborated in his deposition.

14. Now, on analyzing the explanation of the defence, that PW-8 [Rajendiran] Land Record Draftsman handed over the applications to him on 25/08/2007, he survey the land on 31.8.2007, the deficit charges were paid by the defacto complainant only on 17/09/2007, He completed the work and sent the report to his higher officials on 27.09.2007. Except the fact that he sent the report to his higher officials on 27/09/2007, the other facts are found to be true through Ex P-15 separate register maintained by the accused and Ex P-16 Monthly report of August 2007. But, the report, though prepared, has not been sent to the higher officials, as claimed by the accused. The file pertaining to the applications of the defacto complainant Ex.P-13 were found to be in the possession of

the accused till the day of trap and the same has been seized under mahazar Ex P-10. The recovery of these documents is spoken to by PW-3, who has witnessed the seizure and the trap laying officer PW-11 [K.Ramachandran] Deputy Superintendent of Police.

15. The learned counsel for the appellant referring to the deposition of PW-8 [Rajendiran] a colleague of accused working as Draftsman, submitted that the accused has forwarded the report on 27/09/2007 and the same has been received by the Deputy Thasildar and he has initialled in the report. The Deputy Thasildar has been examined as PW-7[Mani] by the prosecution. The defence has not suggested anything to him about the so called initial of him on the report spoken to by PW-8[Rajendran]. Without drawing the attention of the said intitial to the person who has purported to have made, the evidence of PW-8[Rajendran] goes uncorroborated. Further, even if some initial is found on the report, there is no explanation from the defence why the file was with him till 8/10/2007 even after preparing the report as early as on 27/09/2007. This only indicates and strengthens the version of the prosecution witness PW-2 that the accused has proclaimed that, "without bribe, nothing could be done. Had he given the bribe on last thursday itself, by the time the work would have been completed". Having proved the demand and acceptance through the witnesses PW-2[Kannadhasan] and PW-

3[Radhakrishnan], the recovery of tainted money from the possession of the accused- is established through the phenolphatlein test on the hand wash and the shirt pocket wash which has proved to be positive and same is spoken to by PW-4 and the chemical analyst report is marked as Ex.P-12.

16. Hence under Section 20 of the Prevention of Corruption Act, 1988 the burden has shifted to the accused to rebut the presumption. The explanation as found through the suggestions put forth in the cross examination of PW-2[Kannadhasan] and PW-3[Radhakrishnan] is that, taking advantage of power cut, the tainted money was trusted into the pocket of the accused by PW-2[Kannadhasan] and when the accused came after PW-2[Kannadhasan] to hand over the money, the police has caught him. Earlier, the accused and the defacto complainant had wordy quarrel regarding payment of deficit charge and when the defacto complainant urged for earlier order of sub division so as to get the loan, the accused told him that no out of turn priority can be shown to his case and it will be taken as per his turn. This has infuriated the defacato complainant to lodge a false complaint.

17. This version of defence can have no takers, because the evidence of PW-2, defacto complainant[Kannadhasan], PW-3

accompanying witness [Rahdakrishanan] and PW-11, trap laying officer [Ramachandran] all in unison had deposed that on 8/10/2007 at about 6.45 pm they went to taluk office. The accused was talking with two persons leaning himself on a TVS motorcycle parked near the staircase. On seeing PW-2 he nodded his head and called him near. The two persons left the place. So, in the said circumstances thrusting money into a persons pocket forcibly sounds highly improbable.

18. Therefore, for the reasons stated above, this court finds no error in the judgment of conviction rendered by the trial court. Hence, **the Criminal Appeal is dismissed.** However, considering the value of the bribe amount and taking into account the age of the accused/appellant, the period of sentence requires modification. Hence, the period of sentence imposed for the offence under section 7 of the Prevention of corruption Act is modified to 3 years simple imprisonment, instead of 5 years of simple imprisonment. The period of sentence imposed for the offence under section 13(2) r/w 13(1)(d) of the prevention of corruption act is modified to 3 years Simple Imprisonment, instead of 7 years Simple Imprisonment and the sentence shall run concurrently. Period of sentence undergone, if any shall be set off. The fine imposed by the trial court is confirmed. The accused shall surrender before the trial court within 45 days from the date of this judgment, failing which, the prosecution shall

secure the accused and remand him to custody to undergo the remaining period of sentence. Consequently, connected Miscellaneous Petition is closed.

23.10.2017

Index:Yes/No

Internet:Yes/No

Speaking order/Non speaking order

ari/gr.

To

1.The Inspector of Police,
Vigilance and Anti-Corruption Trichy,

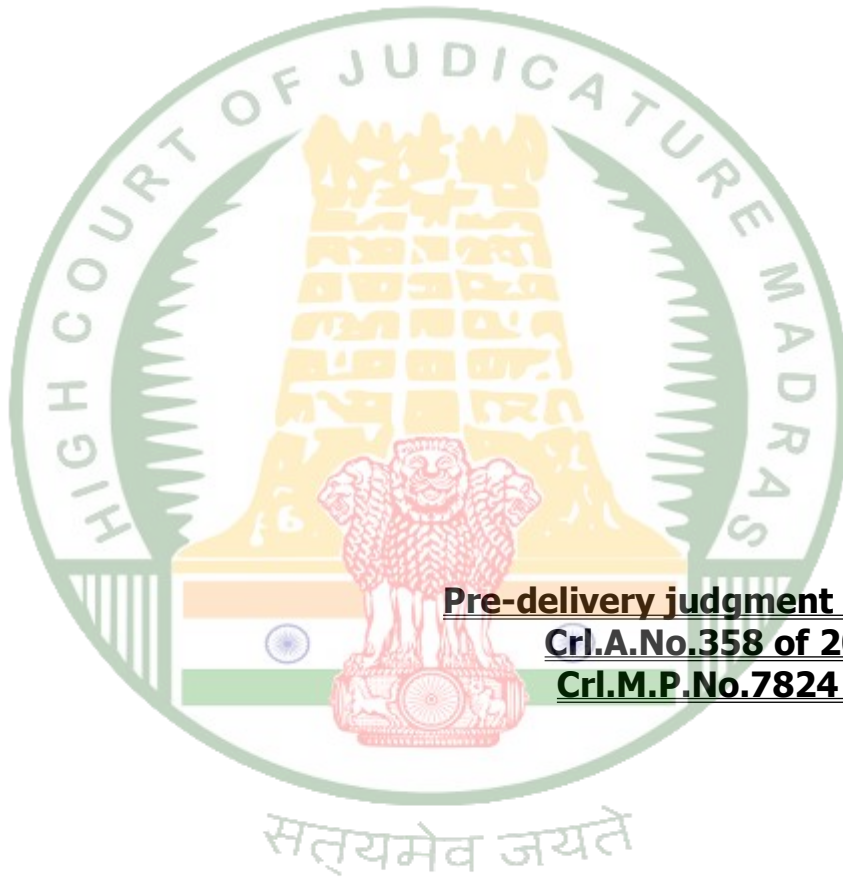
2.The Public Prosecutor, High Court, Madras.



WEB COPY

Dr.G.Jayachandran,J.

Ari/gr.



Pre-delivery judgment made in
Crl.A.No.358 of 2017 and
Crl.M.P.No.7824 of 2017

WEB COPY

23.10.2017