

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2017

PRONOUNCED ON : 22.09.2017

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Criminal Appeal No.391 of 2017

State represented by:
The Public Prosecutor,
High Court, Madras – 104.
(Crime No.13/AC2004/ER,
of Erode V & AC)

.. Appellant

Vs

Muthusamy

.. Respondent

Prayer:- Criminal Appeal filed under Section 374 (1)(b) Cr.P.C.,
against the judgment dated 20.12.2016 in Special C.C.No.25/2015 on
the file of the Chief Judicial Magistrate cum Special Court, Erode.

For Appellant : Mr.R.Ravichandran,
Government Advocate (cr.side)

For Respondent : Mr.S.Vijayakumar

JUDGEMENT

This criminal appeal against acquittal is preferred by the State

aggrieved by the judgment of the learned Chief Judicial Magistrate cum Special Court, Erode, in in Special C.C.No.25/2015 dated 20.12.2016.

2.The case of the Prosecution:-

Mr.Muthusamy, the respondent/accused was M3 Assistant at District Supply Office, Erode, during the relevant point of time. On 23.10.1996, a lorry bearing Registration No.TN L 7939 owned by one Tmt.Pushpa was seized by the Civil Supply CID Police for illicit transport of paddy. In the adjudication process, Tmt.Pushpa was directed to deposited Rs.15,000/- for temporary custody of the lorry pending appeal. Accordingly, Tmt.Pushpa deposited Rs.15,000/- on 02.11.96 as per the collectors order and got the vehicle released. Thereafter, the deposit was renewed on 26.08.2002 as instructed by the District Supply Officer. Later, the appeal preferred by Tmt.Pushpa was disposed by the Collector vide his proceedings Na.Ka.6839/99/k3/ dated 01.10.2004 imposing fine of Rs.1000/- for illicit transport of paddy.

3.On 13.10.2014, the Lorry owner Tmt.Pushpa and her husband Mr.S.K.Appusamy met Mr.Muthusamy who was serving as Assisstant in the District Supply Office. As per his instruction, they paid the fine

amount in the Bank and along with the Bank challen gave a request letter for return of the money deposited on 02.11.1996 as condition for temporary release of the vehicle. Mr.Muthusamy directed them to come after 15 days. So on 01.11.2004 Appusamy went to District Supply Office met Muthusamy. At that time, Muthusamy informed him that Rs.15,000/- deposited was earned interest and the matured value is Rs.32,000/- and demanded Rs.5,000/-,as bribe. Next day Appusamy met Muthusamy. He informed that everything is ready and the District Revenue Officer has to sign the refund order and once bribe money is ready, he can immediately arrange for it. Muthusamy after negotiation, reduced the demand to Rs.4,000/-. Since, Appusamy and his wife Pushpa were not inclined to give bribe, lodged the present complaint before the District Vigilance & Anti Corruption Police on 05.11.2004 and same was registered and taken up for investigation.

4.Trap was laid by the Investigating Officer after carrying out the usual pre-trap proceedings. On 08.11.2004, the defacto complaint Kuppusamy his wife Pushpa, the accompanying witness Tmt.Sujatha went to District Supply Office, met the accused/appellant he gave them the refund order of the collector. Asked them to collect money from the Bank and meet him with bribe money. After collecting the money from the Bank again at 1.15 pm, they met Muthusamy and on

his demand, the defacto complaintant has tendered the tainted money as already instructed by the Trap Laying Officer. The accused has directed the defacto complaintant to keep the money inside the table drawer. Thereafter, the Trap Laying Officer at 1.45 pm along with his team, on receipt of the pre-arranged signal held the accused and interrogated the accused. The left hand wash turned light pink while there was no visible colour change to the right hand wash. The tainted money of Rs.4,000/- was recovered from the table drawer.

5.To prove the above version, the prosecution has examined 18 witnesses, marked 29 exhibits and 4 material objects.

6.The trial Court, pointing out that the prosecution failed to prove the alleged earlier demand and also failed to prove the tainted money recovered from the table drawer of the accused was really obtained by the accused as pecuniary advantage for doing any act in discharge of his official duty, the non examination of Tmt.Pushpa who is the person involved in this case cause doubt about the veracity of the prosecution case therefore, acquitted the accused from the charges.

7.The State in the Appeal has raised the several grounds challenging the reasoning given by the trial court for the acquittal.

8.Foremost, the learned special public prosecutor emphatically submitted that, P.W.2 and P.W.3 have clearly deposed about the demand of money by the accused. The money was left in the table drawer as instructed by the accused and same was recovered but the trap laying officer on the information given by the accused. The accused has admitted that he touched the money while arranging the drawer.

9.Thus, the prosecution has established the guilt of the accused beyond reasonable doubt. Non examination of Tmt.Pushpa is not at all significant or fatal for the prosecution since, the entire interaction by the accused was with her husband P.W.2. Further, to prove the demand and acceptance apart from the defacto complainant, P.W.2, the prosecution has also examined P.W.3 an independent witness who has corroborated P.W.2. Hence, the trial Court ought not to have disbelieved the prosecution case.

10.When the demand and acceptance of bribe money by the accused is proved, then the burden falls on the accused to rebut the statutory presumption laid under section 20 of the Prevention of Corruption Act. The accused has not come out with any explanation

for the presence of tainted money in his table drawer and the presence of phenolphthalein in his left hand indicating his handling of tainted money.

11. In support of his submission, the learned special public prosecutor referred the judgment of the Hon'ble supreme court in **T.Sankar prasad -vs- the State of A.P.** reported in 2004 CRLJ 884 (1) wherein, the apex court has held as follows:-

"Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the Court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the Court can draw an inference and that would remain until such inference is either disproved or dispelled.

For the purpose of reaching one conclusion the Court can rely on a factual presumption. Unless the presumption is disproved or

dispelled or rebutted the Court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in [Suresh Budharmal Kalani v. State of Maharashtra](#) (1998 (7) SCC 337) "A presumption can be drawn only from facts and not from other presumptions by a process of probable and logical reasoning".

12.Per contra, the learned counsel for the Respondent/accused submitted that neither the charge framed against the accused nor the witnesses speak about the alleged demand of bribe by the accused prior to 08.11.2004. Though, in the complaint exp.2 given by pw2 Appusamy alleges that the accused made a demand of bribe Rs.5,000/- on 01.11.2004 at 12.00 noon and again he demanded Rs.5,000/- on 01.11.2004 and reduced to Rs.4,000/- on 05.11.2004 at about 11 a.m when he met the accused at his office.

13.The charge as framed against the accused is that he demanded bribe on 08.11.2004 at 1.15 pm. This charge also not proved by the prosecution through its witnesses. The tainted money was not recovered from the possession of the accused but from the table

drawer. Even according to the prosecution, the money was not received by the accused, but was left in the table drawer as instructed by the accused. The trace of phenolphthalein in the left hand wash of the accused cannot be taken as proof of acceptance of tainted money. When P.W.2 offered the tainted money, the accused refused to receive it and pushed the hand of P.W.2. The civil supply CID Police who had animosity over the accused for his note to take action against them for not disposing the 128 bags of paddy seized from the lorry in time as ordered by the District Collector which is subject matter of this case has foisted the case through pw2 and planted the tainted money. While pushing the hand of P.W.2 while he offered money the accused could have contacted phenolphthalein smeared on the currency. The same has been suggested to P.W.3 but denied. In any event, such a flimsy piece of evidence could not be a basis for holding the accused guilty of Section 7 of the Prevention of Corruption Act. The trial Court has rightly considered the evidence and held the prosecution has failed to prove the charges. Hence, no interference warrants the well considered judgment of the trial Court.

14. The perusal of the deposition of P.W.2 and P.W.3 gives a vivid narration of fact what happened on 08.11.2004 at the District Supply Office Erode. To get the refund of the money deposited in respect of vehicle release, Tmt. Pushpa (P.W.2) and the shadow witness Sugatha

(pw3) had gone to the office of the accused and met him at about 10.35 am pw2 has enquired about the refund and the accused has prepared the refund receipt and asked P.W.4 a temporary Junior Assistant of DSO office to accompany P.W.2 and P.W.3 to the Bank and assist them to get the refund. The Bank staff has directed them to get the receipt affixed with revenue stamp and endorsement. Accordingly P.W.2 has purchased revenue stamp and got it affixed in the receipt.

15.The accused has got the endorsement of the District supply officer, and has asked. P.W.2 to take a photo copy of the receipt and given it to the accused and then present the original to the Bank. While Tmt. Pushpa was standing in the queue waiting for her turn, the accused has come down to the Bank and had enquired P.W.2 whether he has drawn the money, and directed him to meet him in the office after getting the money. Accordingly P.W.2 his wife Tmt.Pushpa and P.W.3 has gone to the office of the accused at about 1.45 p.m. and had placed the tainted money in the table drawer the tainted money has been recovered under the mahazer Ex.P.10. The tainted money Rs.4000/- (500x8Nos) marked as M.O.1 series, the hand wash are marked as m.o2 and M.O.3 The chemical anlysisist report marked as Ex.P-19 which spoken through P.W.15. Tmt.Banumathi Assistant Director , State Forensic Department, Chennai proves the recovery of

tainted money.

16.However, whether the money was given to the accused as bribe on his demand to do any favour or was planted to fix the accused has to be decided based on the evidence let in by the prosecution and the accused.

17.In the said context, Ex.D2 the proceedings prepared by the accused in respect of the seizure of lorry along with paddy bags is relevant which gives more insight to the case. So, it requires incised appreciation in the light of the accused claim that he never demanded money from the P.W.2, neither he received any money from him. The money recovered from the table drawer was planted by the decoy witness at the instruction of the appellant police to wreck vengeance against the accused who has put note to the collector for initiating action against the civil supply inspector who has failed to confiscate the paddy and remit the sale proceed into treasury as per the order of the District collector dated 06.01.1997.

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18.Ex.D2 reveals that based on the note dated 15.10.2004 prepared by the accused, the District collector has held the Inspector, civil supply CID and the Ananda Rice Mill owner for the loss accrued due to the damage of 101 paddy bags without disposing it from the date of confiscation dated 15.04.2004 despite order of District

Collector as early as 06.01.1997 to confiscate it to the state and deposit the sale proceed. In the same proceedings, the District Collector has ordered refund of Rs.32,600/- to Tmt.Pushpa in view of the order passed by the Government in the appeal preferred by Tmt.Pushpa. In response to the District Collector sanction dated 20.10.2004, Action has been initiated against the Inspector of police civil supplies CID for recovery of costs due to his inaction. Ex.D.2 further indicate that, the proceedings initiated on 13.04.2004 based on Tmt.Pushpa request for refund of money has culminated on 02.11.2004.

19.The reading of Ex.D2 coupled with the fact that pw2 admission about his acquaintance with civil supplies CID Police personals and the fact that tainted money was not recovered by the accused but recovered from the table drawer makes the charge against the accused unnatural.

19.The Hon'ble Supreme Court, in **V.Sejappa -vs- State by Police Inspector Lokayukta, Chitradurga** reported in (2016 CRI.L.J 2589), has held that if the evolution of the evidence and the findings recorded by the trial court does not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not

disturb the order of acquittal if another view is possible .

20.Following the above dicta, this court is inclined to dismiss the Criminal Appeal. Accordingly, the Criminal Appeal is dismissed.

22.09.2017

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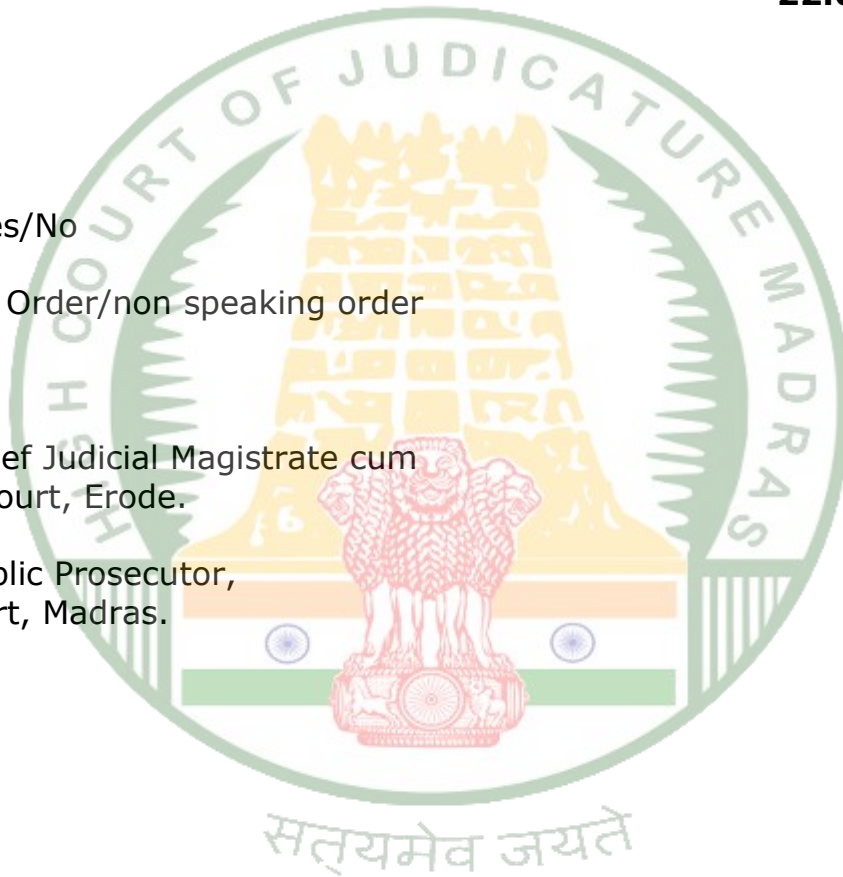
Index: Yes/No

Speaking Order/non speaking order

To

1.The Chief Judicial Magistrate cum
Special Court, Erode.

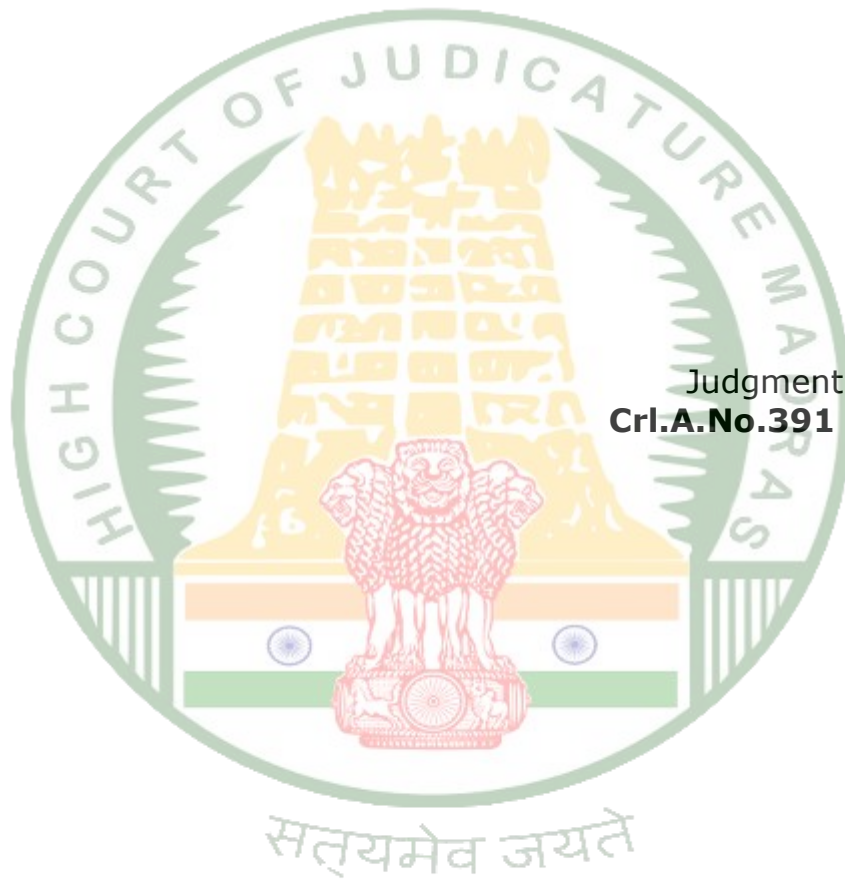
2.The Public Prosecutor,
High Court, Madras.



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G.JAYACHANDRAN.J.,

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Judgment made in
Crl.A.No.391 of 2017

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