IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :06.11.2017

Pronounced on :27.11.2017

Coram:

The Hon'ble Dr.Justice G.Jayachandran

Criminal Appeal No.409 of 2017

Tr.V.R.Renga Raju .. Appellant

/versus/

State by Inspector of Police,
Vigilance and Anti-Corruption,
Chennai.
(Crime No.41/2009/AC/HQ) .. Respondent

Criminal Appeal is filed under Section 374(2) of Cr.P.C., praying to set aside the conviction and sentence made in C.C.No.14 of 2011 dated 23.06.2017 on the file of the Special Court for the Cases under Prevention of Corruption Act at Chennai.

For Appellant :Mr.K.Sukumaran
For Respondent :Mr.P.Govindarajan
APP for (Crl.Side)

JUDGMENT

The appellant herein is the accused in C.C.No.14 of 2011 on the file of the Special Court for the Cases under Prevention of Corruption Act, Chennai. Against the judgment of conviction passed by the trial Court holding the appellant herein guilty of offence under Sections 7, 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo 3 months Simple Imprisonment for the offence under Section 7 IPC and to undergo2 years Rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo 3 months Simple Imprisonment under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, the present appeal is filed for the grounds stated in the memorandum of appeal.

2. The case of the prosecution is that Tmt.Thulukanathammal, who is the owner of the house bearing Door No.132, 12th Street, Kannikapuram, Velachery Road, Guindy, gave a requestion letter to the Assistant Engineer, Tamil Nadu Electricity Board(O&M), Raj Bhavan, Guindy, Chennai, on 07.10.2009, to know about the arrears of electricity bill in respect of service connection Nos.212-002-152 and 212-002-153, which were disconnected on 19.12.2006. The grandson of Tmt.Thulukanathammal one Mr.S.Ashok Kumar, when enquired about her

grandmother's application with the Assistant Engineer, Mr.V.R.Rengaraju, who is the appellant herein, it is alleged that the appellant demanded Rs.5,000/- to get report of arrears from the office of the Assistant Divisional Engineer. Since Mr.S.Ashok Kumar[PW2] was not inclined to give any bribe, has made a compliant to the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Chennai on 08.10.2009 at about 12.30 hours. The photography of the First Information Report has been marked as Ex.P15.

3. Thereafter, entrustment mahazar has been preferred regarding pre-trap proceedings. 10 numbers of 500 rupees note smeared with phenolphthalein was given to the defacto complainant[PW2] along with two official witnesses viz., Mr.A.Palani[PW3] and Mr.Ramasamy[PW4]. Both of them were working as Assistants in Directorate of Schedule caste and Schedule Tribe, Chepauk, Chennai. They were called to be witnesses for the trap proceedings and the trap laying team went to the office of the Tamil Nadu Electricity Board (O&M), Guindy, at about 04.15 p.m., on 08.10.2009. One of the officials witness Mr.A.Palani [PW3] was asked to accompany the defacto complainant Mr.S.Ashok Kumar[PW2] and oversee

the transaction and conversation between the accused and the defacto complainant[PW2]. The another official witness Mr.Ramasamy[PW-14] was asked to stay along with the trap laying team.

4. On receipt of the pre-arranged single from the defacto complainant[PW2], the trap laying team entered in to the Sub-Station Operation Room at about 17.00 hours and questioned the accused, whether he received any money from the defacto complainant[PW2]. Thereafter, fingers of left and right hands of the accused was smeared with Sodium Carbonate Solution separately. Both the hands turned into pink in colour. After collecting the sample solution, the accused was asked to produce the tainted money, he received from the defacto complainant [PW-2]. The accused produced the tainted currency beneath the note book kept on the table. Dust from the note book was taken in a cotton swab and tested with sodium carbonate solution, which was also turned into pink in colour. Thus, the tainted currency marked as M.O.1, hands wash solution marked as M.Os. 2 and 3, swab solution marked as M.O.4, cotton marked as M.O.5, blue colour note book marked as M.O.6 were recovered. Seizure mahazar [Ex.P5] was preferred in the presence of PW-4

[Mr.S.Beemaraj], PW-3[Mr.A.Palani], PW-14[Mr.Ramasamy] by the trap laying officer PW-12[Mr.G.Balasubramanian]. The sample solution sent to the Laboratory came with positive and the presence of phenolphthalein has been spoken by PW-10[Mr.P.Kriubakaran] and the chemical analysis report was marked as Ex.P14. Since PW-2 [Mr.S.Ashok Kumar] has informed the trap laying officer immediately after receiving the money, the accused called the Revenue Supervisor PW-9[Mr.V.Ramachandran] over phone and told him to process the application of Tmt.Thulukanathammal marked as ExP2.

5. To prove the same, call details of two cell phone Nos.9840662883 and 9445850182 which stand in the names of Mr.V.Ramachandran[PW9] and the accused, Assistant Engineer(O&M), Tamil Nadu Electricity Board, were collected and marked as Exs.P8, P9 respectively through PW7 [Mr.R.Jayakumar] and PW8[Mr.Ramakrishnan]. Relying upon these witnesses, the trial Court has held that the demand and acceptance of illegal gratification has been proved by the trial Court beyond reasonable doubt and sentenced him as stated above.

6. The learned counsel appearing for the appellant submitted that the case of the prosecution bristles with several illegality and infirmity, which were not properly considered by the trial Court. To start with, the sanction for prosecution issued by PW1[Mr.G.Perumal Swamy] and marked as Ex.P1, clearly shows non application of mind before according sanction. The application Ex.P2 alleged to have been given by Tmt.Thulukanathammal is only to ascertain the arrears of tenner. But, her letter dated 07.10.2009 marked as Ex.P2 clearly shows that she had intended to get re-connection of two disconnected services in which she wishes to know about the arrears. On the very same day i.e. 07.10.2009, the accused has forwarded the application to the Revenue Supervisor and the endorsement made in the letter marked as Ex.P11. While so, there is no case of demanding bribe to give reconnection, when neither the application Ex.P2 nor the complaint Ex.P3 discloses that for giving reconnection, the accused has demanded bribe of Rs.5000/-.

7. Further, it is contented by the learned counsel appearing for the appellant that the alleged recovery of tainted money is not from his possession or from his seat. Admittedly, the money was recovered from

the table used and occupied by PW-4 [Mr.S.Beemaraj]. The alleged note book [M.O.6] is not maintained by the accused, but, it is kept in the operator room, where the public have access and the said note book [M.O.6] was called as fuse note book, it is meant for recording any fuse break. The place, where the public can have access, the money was recovered under the note book kept on the table. The alleged recovery from the said table, which admittedly does not belong to the accused, takes no way connected with the case of the prosecution. Further, the contradiction in the evidence of PW2 [Mr.S.Ashok Kumar], PW-3[Mr.A.Palani] and PW-9[Mr.V.Ramachandran] regarding the alleged phone from the accused to PW9 [Mr.V.Ramachandran] clearly shows falsehood of the prosecution witnesses. It is also submitted by the learned counsel for the appellant that PW-3[Mr.A.Palani] could not be cross examined, since he died before he could be cross examined. Hence, his evidence should not be looked into for any purpose.

8. Per contra, the learned Additional Public Prosecutor(crl.side) appearing for the respondent submitted that the trial Court has gone into the evidence let in by the prosecution in detail and has held that the

money demanded by the accused person is for restoration of electricity service connection and for getting arrears report. Both are inter-connected to each other. There is no discrepancy in the evidence of PW-2[Mr.Ashokkuamr] with that of the application Ex.P2 and the complaint Ex.P3. While the demand and acceptance of bribe money by the accused person is spoken by PW-2[Mr.Ashok kumar] and corroborated by the PW-3[Mr.Palani] accompanying witness, it is for the accused to explain for what purpose, he received the money, if it is not as bribe. Having failed to explain the receipt of the money from the defacto complainant, the statutory presumption should be drawn against the appellant. Therefore, the judgment of the trial Court is in accordance with law and facts. Hence, it requires no interference.

9. Regarding the evidence of PW-3[Mr.Palani], who died, without subjecting himself for cross examination, the learned Additional Public Prosecutor (crl.side) appearing for the respondent submitted that his evidence is admissible under Section 33 of the Indian Evidence Act, 1872. Since the adverse party had an opportunity to cross examine, but he failed to avail that opportunity. PW-3 [Mr.Palani] was examined in chief on

18.10.2012. Till his death on 11.02.2014, the accused had not taken any steps to recall him for cross examination. After his demise, the petition under Section 311 Cr.P.C., was filed by the accused. Non cross examination of PW-3 [Mr.Palani] by the defence is his own fault and he cannot take advantage of his own fault. The prosecution through independent witness has proved the demand, acceptance and recovery of tainted money, without any doubt. The accused person, though having office in the first floor, had come down to operator room to meet the defacto complainant and receive the bribe. That is how he happened to be in the operator room near the table of PW-4 [Mr.Beemaraj]. The evidence of PW-4[Mr.Beemaraj] clearly shows that at 5'0 clock on 08.10.2009, the accused came to his table and he saw two persons having conversation with him. He left the table to attend some other work and came back after 15 minutes, then he saw the police officials and others near his table, learnt that the money was recovered for rectifying fuse call note book, which he identified as M.O.6. Therefore, the learned Additional Public Prosecutor (crl.side) appearing for the respondent submitted that the appeal is liable to be dismissed.

10. **Point for determination:**

Whether the evidence for prosecution suffice to hold the appellant guilty of receiving the illegal gratification of Rs.2,000/- from the defacto complainant PW.2[Mr.Ashok kumar].

11. Ex.P1 is sanction order for prosecuting the appellant issued by PW.1[Mr.G.Perumalswamy], Superintending Engineer, Chennai[South]. Throughtout the sanction order, he has stated about the facts, reported and concluded that after carefully perusing the materials, he satisfies that the appellant herein should be prosecuted for the offence under Prevention of Corruption Act, 1988. The application of mind by the sanctioning authority need not be in words, but it should be inferred from the order. In this case, PW.1[Mr.G.Perumal Swamy] though has not mentioned that he has applied his mind, the very narration of the fact that he has detailed out in his order, shows application of mind to the subject matter. Therefore, this Court finds no infirmity in his order sanctioning to prosecute.

12. Further more, Section 19 of the Prevention of Corruption Act, 1988 mandates sanction from competent authority for prosecution as a pre-condition to take cognizance. Once cognizance is taken by the competent authority, error, omission or irregularity in the sanction granted by the authority, shall not stand in the way of the trial. Unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice. In this case, this Court could not find any such error, omission or irregularity in Ex.P1. Therefore, the plea raised by the appellant challenging the sanction order is unsustainable.

13. Regarding the alleged improvement in the version of the defacto complainant, this Court finds that on 07.10.2009, Tmt.Thulukanathammal has given the application addressed to the Assistant Engineer(O&M), Tamil Nadu Electricity Board, Raj Bhavan, Guindy, wherein in the concerned column, she has mentioned service connection - details of arrears regarding, wherein she has stated that on 19.12.2006, on her request letter with regard to service connection was disconnected. Now, she wishes to restore the same. Hence, she requires arrears of consumption charges regarding the service connection bearing Nos.212-002-152 and 212-002-153.

14. PW8 [Mr.Ramakrishnan], Assistant Executive Engineer at Raj Bhavan, Gundiy, during the relevant point of time, has said that the accused has received this application and forwarded it to the Revenue Supervisor for seeking advise on the same day. Ex.P1 has been handed over by PW8[Mr.Ramakrishnan] to CBI. PW8[Mr.Ramakrishnan] in the cross examination has stated that he collected Ex.P1 from PW9[Mr.V.Ramachandran] Revenue Supervisor.

15.From the evidence of PW8 [Mr.Ramakrishnan], he has stated that whenever the service is disconnected beyond 6 months, any request for re-connection has to be forwarded to the Assistant Executive Engineer, who after perusal of the application, will send it to the Executive Engineer to check with the Accounts Officer to find out any arrears in payment of consumption charges. After ascertaining the exact arrears amount, on receipt of the arrears, the orders for re-connection will be issued by the Assistant Engineer, after getting concurrence of the Executive Engineer.

16. In the light of this procedure, as spoken by PW8 [Mr.Ramakrishnan], and the words found in the requisition letter Ex.P1 which is marked as Ex.P11, this Court sees that there is no request for re-connection, but only her request to know the arrears of consumption charges. The payment of arrears is pre-condition for re-connection of service. Ex.P2 application of Tmt.Thulukannathammal only indicates her desire to get re-connection and not to request for arrears of consumption charges. In this connection, in the complaint-Ex.P2, PW-2 [Mr.S.Ashokkumar] also alleged that the accused has demanded money for re-connection, but he has specifically stated that after giving the application Ex.P2, he met the accused on the same day at about 4.00 p.m. At that time, he informed him that the arrears will come approximately Rs.48,000/- but the exact amount has to be ascertained from the Additional Divisional Engineer's office. To get the statement of arrears, he must pay Rs.5,000/- as bribe.

17. In his deposition PW2[Mr.S.Ashokkumar] has added the words that the accused, after seeing the application Ex.P2, has to enquire the Additional Divisional Engineer officer to ascertain the exact charges and to

give service connection the accused demanded Rs.5000/-. When he asked, why he should give money, the accused said that he need that money. This addition which is found for the first time in the deposition cannot be simply ignored as inter-changable. Seeking statement of arrears cannot be interchanged with getting re-connection. Further more, PW2[Mr.S.Ashok kumar] has mentioned both for furnishing statement of arrears as well as for re-connection, the accused demanded Rs.5,000/-. Thus, the consistence of fact is that both are distinct action and not interchanged. When the request letter as well as the Ex.P2 and P3 specifically seek for report on arrears, the prosecution witness cannot improve his case and say money was demanded not only for getting report on arrears and also for re-connection.

18.Yet another disturbing factor in this case is that, the complaint, as per PW-12[Mr.G.Balasubramanian] was received on 08.10.2009 at 12.30 hours. Thereafter, he has sought for two official witnesses from Adi-dravidar and Schedule Tribe Wellfare Department through her written request. On his request, two Assistants attached to Adi-dravidar and Scheduel Tribe Department by name PW3[Mr.A.Palani] and

PW14[Mr.Ramasamy] were present at Directorate of Vigilance and Anti Corruption Office at 1.45 p.m. Whereas PW14[Mr.Ramasamy] has deposed that as per the instruction of the superior, he and PW3[Mr.A.Palani] went to the Directorate of Vigilance and Anti Corruption Office and met PW12-Mr.G.Balasubramaniam at about 2'0 clock. The procedure for entrustment has started and thereafter completed by 15.00 hours. So, immediately after receiving the complaint from PW2[Mr.S.Ashok kumar], by phone without making any preliminary enquiry, within 1½ hour, the complaint has been registered, official witness has been procured, pre trap arrangement has been made and trap laying team has proceeded to the office of the accused person. They have reached the accused person office by 4.15 p.m. Strangely, having given complaint against the accused person for demanding Rs.5,000/- and accepted to be decoy witness and gone to the office of the accused person with Rs.5,000/- smeared with phenolphthalein, PW2[Mr.S.Ashok kumar] states that he bargained with the accused person and reduced the bribe money from Rs.5,000/- to Rs.2,000/- and gave Rs.2,000/- to him which he received in his left hand and called somebody over his cell phone and told that he has received money so proceed with the application. As a decoy witness with all preparation to give the demanded bribe amount of Rs.5,000/- smeared with phenolphthalein why should the defacto complainant[PW2] bargained with the accused person and gave only Rs.2,000/-, has not been satisfactorily explained by the prosecution.

19.Be that as it may. The prosecution evidence indicates both left and right hands of the accused person were found presence of phenolphthalein besides the cotton swab containing dust collected from the note book marked as M.O.6. As pointed out by the learned Additional Public Prosecutor (Crl.Side) appearing for the respondent/appellant that as how the left hand of the accused person found presence of phenolphthalein causes doubt, in the mind of the court, since the money was not recovered from the accused person but from the table of PW4[Mr.S.Beemaraj]. Interestingly, PW4[Mr.S.Beemaraj] has deposed that between 5.00 to 5.15 p.m., he was not in his seat. But, he is one of the signatory in the seizure mahazar, which narrates the entire fact of the trap and recovery of tainted money. On perusal of PW4[Mr.S.Beemaraj] evidence, he does not support the case of the prosecution in respect of recovery of tainted money. His evidence is only regarding seizure of note book marked as MO6. However, in the last page of the mahazar, he has signed along with the other witnesses. This goes to show that the prosecution in order to cover up PW4[Mr.S.Beemaraj] from whose table the tainted money was recovered, has introduced a theory that during the crucial time he was not present in his seat and the accused whose normal place of work in the first floor, was near the table of A4[Mr.S.Beemaraj], collected the money and kept beneath the note book, which is accessible to the public for recording fuse break.

20. To sum up, when the complaint does not disclose that the accused demanded Rs.5,000/- as bribe for re-connection of electricity service, the defacto complainant has embellished his accusation against the respondent during his examination before the Court that Rs.5,000/- was demanded for re-connection and for furnishing report of arrears. But actually the money alleged to have been given to and recovered from the appellant is only Rs.2,000/-, that too, recovered not from the possession of the appellant, but beneath the note book on the table, which does not belong to the appellant.

21. So, on cumulative assessment of the prosecution witness, lacuna in the prosecution case, does not prove beyond doubt that the appellant demanded and obtained bribe as illegal gratification. When the demand and acceptance was not substantially proved through the witnesses, the presumption of guilt under Section 20 of the Prevention of Corruption Act, 1988, cannot be drawn. Proof of demand and acceptance is *sine qua non* to draw the presumption under Section 20 of the Prevention of Corruption Act, 1988. When the demand and acceptance itself not proved and the evidence let in by the prosecution in this regard suffers infirmity, it is unsafe to conclude that the money Rs.2,000/- marked as M.O.1 was obtained by the accused from the defacto complainant as motive or reward to do his favour by abusing his official position. As a result, this Court constrains to reverse the judgment of the trial court and set aside the conviction and sentence imposed on the appellant.

22. Accordingly, the conviction and sentence imposed on the appellant by the trial Court in C.C.No.14 of 2011, dated 23.06.2017 is hereby setaside and the Criminal Appeal is allowed. Bail bond if any

executed by the appellant/accused is cancelled. Fine amount if any paid by him shall be refunded to him.

27.11.2017

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Index:yes/no
Internet:yes/no
Speaking order/non speaking order
To

1.The Inspector of Police,Vigilance and Anti-Corruption,Chennai.
2.The Public Prosecutor, High Court, Madras.

Dr.G.Jayachandran,J.

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Pre-delivery judgment made in
Crl.A.No.409 of 2017

27.11.2017