IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.11.2017

Pronounced on : 12.12.2017

Coram

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.145 of 2014

G.Aneetchan .. Appellant

/versus/

The State rep.by
The Sub-Inspector of Police,
SPE:CBI:ACB,
Chennai.
(RC MAI 2010 A0011) .. Respondent

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code praying to allow the appeal by setting aside the order of conviction dated 07.03.2014 passed against the appellant in the Special Calendar Case No.4 of 2010 on the file of the Principal Sessions and Special Judge of Puducherry and to set the appellant at liberty.

For Appellant :Mr.V.Manohar
For Respondent :Mr.K.Srinivasan, Spl.PP for CBI Cases

J U D G M E N T

This appeal is preferred by the sole accused in Special C.C. No. 4 of 2010 on the file of Principal Session Judge, (Special Court for Prevention of Corruption Act), Puducherry for being convicted for the offences under Sections 7 and 13

(2) r/w 13(1)(a) of the Prevention of Corruption, Act 1988, by judgement dated 07.03.2014 sentencing him to undergo four years Rigorous Imprisonment and fine of 25,000/- in default, to undergo one year Rigorous Imprisonment for the offence under Section 7 of the Prevention of Corruption Act, 1988 and four years Rigorous Imprisonment and fine of 25,000/-, in default, one year Rigorous Imprisonment for the offence under Section 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution, in brief, is as follows:-

The defacto complainant[PW-2] was one of the garbage cleaning contractor at Villianur Commune panchayat. During the year 2007, he was doing the garbage clearing work by using his Tractor from 21.02.2007 onwards and received the payment for the work done by him for the period from 21.02.2007 to 31.12.2007. For the period from 01.01.2008 to 31.12.2008, the payment for his contract work was not paid. When he approached Mr.Ambigapathi[PW-4], the Sanitary Maistry of Villianur Commune Panchayat and requested for payment, Mr.Ambigapathi[Pw-4] prepared trip sheets for the work done by the defacto complainant[PW-2] and sent the same to Mr.Karuthaiyan[PW-5],Junior Engineer for verification. The apellant/accused, who was the Commissioner of Villianur Commune Panchayat, was asked to give certification of the trip sheets. The accused received the file regarding trip sheets and asked them to come afterwards, but, did not return the trip sheet file. When the defacto complainant[PW-2] approached the accused on 24.02.2010, he demanded a bribe of Rs.5,000/- for certifying the trip sheets for the year 2008. Hence, Mr.J.Puthan, complainant contacted over phone the Superintendent of Police, CBI, Chennai, who he instructed him to meet Mr.Palaniappan[PW- 8] at Railway Guest House, Pondicherry. Accordingly, PW-2 [Mr.J.Puthan] met PW-8 [Mr.G.Palaniappan], Inspector of Police, CBI/ACB/Chennai and gave his complaint marked as Ex.P-3 and same was registered and taken up for investigation.

3. The pre-trap proceedings was arranged by the Trap Laying Officer Mr.G.Palaniappan [PW-8] on 25.02.2010 in the presence of witnesses and the defacto complainant [PW-2] along with accompanying witness Mr.V.A.Elanchetchenni [PW-3] went to the residence of the accused at Mannadipet at about 8.00 am, followed by the trap team. PW-2[Mr.Puthan] and PW-3[Mr.V.A.Elanchetchenni] met the accused and requested him to sign the trip sheets. The accused demanded and accepted the tainted money of Rs.5,000/- from PW-2[Mr.Puthan] and thereafter, signed the trip sheet, without date. After receiving the money, the accused kept it under the bedsheet on the table. On receiving the pre-arranged signal from PW-2[Mr.Puthan], the trap team led by PW-8[Mr.G.Palaniappan] went to the house of the accused and conducted phenolphathelein test on the right and left hand fingers of the accused with sodium corbonate solution. The colourless solutiion turned pink, thereafter, the tainted money kept under the bedsheet spread on the table was recovered. The hand wash solution samples were sent to chemical analysis and found postive for

the persence of phenolphathelien and sodium corbonate. After completion of investigation, the final report was filed, after obtaining the sanction from the competent authority to prosecute the accused.

4. The prosection to prove the charges framed against the accused, examined 9 witnesses, marked 31 exhibits and 3 material objects. On behalf of the defence, one witness and 2 exhibits were marked. After appreciating the evidence, the trial Court held the accused guilty of offences under Sections 7 and 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 and covicted him for the offences under Sections 7 and 13 (2) r/w 13(1)(a) of the Prevention of Corruption, Act 1988.

5. Against the judgment of conviction, the present appeal is filed on the ground that the trial Court has failed to appreciate the vital contradiction in the prosecution evidence, more particularly, regarding narration of incident of demand, acceptance of money, presence of the witnesses at the scene of occurrence and recovery of material object as well as the documents. The plea regarding the competency of authority, who granted sanction to prosecute and the defence version of motive has not been properly considered.

6. The learned counsel appearing for the appellant submitted that, on 24.02.2010 the alleged date of demand of bribe to sign the trip sheets, the appellant was not the Commissioner of Villianur Commune. He was transfered to

Mannadipattu Commune during the month of July 2009. Therefore, the theory of the prosecution that his signature is required in the trip sheets to pass the bill itself is not correct. Further, in the trips sheets, as Commissioner of Villianur, the appellant has affixed his signature long back and files were not with him. Admittedly, the files containing trip sheets were recovered from PW-2[Mr.J.Puthan] and not from the appellant. The file containing trip sheets is expected to be in the custody of PW-6[Mr.P.Seetharaman], Incumbent Commissioner of Villianur Commune Panchayat. While PW-4[Mr.S.Ambigapathy] has deposed that as instructed by the Commissioner[PW-6] he took the file from the office and went to the appellant's house to get his signatures in the trip sheets. PW-5[Mr.Karuthaiyan] has deposed that the accused enquired him about the file over phone. So, he took the files and went to appellant's house to get his signature. The accused told him that he will go through the file and then sign it. Whereas, PW-6[Mr.P.Seetharaman], the Commissioner has deposed that when PW-2[Mr.J.Puthan] met him for clearance of his bills, he enquired PW-4[Mr.S.Ambigapathy] and PW-5[Mr.Karuthaiyan] about it. They informed him that the files are with the previous Commissioner/appellant. The contradictory version of PW-4[Mr.S.Ambigapathy], PW-5[Mr.Karuthaiyan] and PW-6[Mr.P.Seetharaman] regarding the possession of trip sheets file will goes to show that the theory of the prosecution is false and the file and tainted money were planted to fix the appellant.

7. Further, the learned counsel appearing for the appellant pointing

the contradiction between the evidence of PW-2[Mr.J.Puthan] and PW-3[Mr.V.A.Elanchetchenni], regarding the recovery of the tainted money submitted that while PW-2[Mr.J.Puthan] has deposed that PW-8[Mr.G.Palaniappan] Inspector asked the accused to bring the money. So, the accused went inside his house and brought Rs.5,000/-. Whereas, PW-3[Mr.V.A.Elanchetchennai] the accompanying witness has deposed that, the accused took out the money found on the table and handed over it to PW-8[Mr.G.Palaniappan]. The trap laying officer[PW-8] has come out with an entirely different version that when the accused was confronted where he has kept the bribe money, he took them into his house and showed the money found on the table. PW-8[Mr.G.Palaniappan] asked Mr.Rajendiran to take it and verify the numbers with that of the numbers noted in the entrustment mahazar. In the cross examination, PW-8[Mr.G.Palaniappan] has deposed that, when he enquired PW-2[Mr.J.Puthan] what happened inside the house of the accused, PW-2[Mr.J.Puthan] told him that the accused received the money, counted it and kept it on the chair.

8. The learned counsel also contented that apart from the vital contradictions pointed out, the sanction to prosecute itself is not by the authority competent to grant sanction. Therefore, the cognizance taken by the trial Court is bad and vitiate the trial.

9. Per contra, the learned Special Public Prosecutor for CBI cases

appearing for the respondent contented that, the fact that PW-2[Mr.J.Puthan] was a registered Contractor for Villianur Commune Panchayat and he has been carrying on the garbage cleaning by using his Tractor for the Villianur Commune Panchayat during the year 2008, is not disputed. The fact that the appellant was the Commissioner of Villianur Commune during that period, is also not disputed. PW-2[Mr.J.Puthan] was not paid the amount for the contract work, he executed, is also not disputed. PW-4[Mr.S.Ambigapathy], PW-5[Mr.Karuthaiyan] and PW-8[Mr.G.Palaniappan] have deposed that the signature of the Commissioner in the trip sheets is mandatory to pass the bill. While so, the appellant to affix his signatures on the trip sheets had demanded the bribe of Rs.5,000/-, saying if he sing the trap sheets, the defacto complainant (Contractor) will be getting about one and half lakh rupees. Narrating all these facts, the defacto complainant[PW-2] had given the complaint Ex.P-3 and after verifying the genuniness of the complaint, the trap was laid and succeeded. The accused/appellant was caught red handed with the tainted money and he had no explanation for receiving money from the defacto complainant [PW-2]. Therefore, having proved the demand and acceptance through cogent evidence, it is to be presumed that the accused has received the money as illegal gratification. The trail Court, after careful consideration of the evidence and following the stare decisis of High Courts and the Hon'ble Supreme Court, has held the accused guilty of the charge. So, there is no ground to interfere with the trial Court judgment.

10. <u>Point for determination:</u>

Whether the contradictions pointed out by the appellant are fatal to the case of the prosecution to hold that the prosecution has failed to prove the guilt of the accused/appellant ?

11. The appellant herein, at the time of trap was functioning as Commissioner of Mannadipet Commune. PW-1[Mr.Vedagiri] had deposed that during the relevant point of time, he was working as Under Secretary to the Government of Pondicherry in the Department of Local Administration and Housing. The Leuitenant Governor is the competent authority to accord sanction to prosecute Group A and Group B gazetted officers in the Union Territory. The requistion from CBI regarding the case of G.Aneethan, Commissioner, Mannadipettu Commune Panchayat was received by him and he submitted the file to the office of the Lieutenant Governor. After duly satisfied, the lieutenant Governor accorded sanction for prosecution under Section 19 of the Prevention of Corruption Act,1988. PW-1[Mr.Vedagiri] as the Under Secretary to the Government, on receipt of the files from the CBI, prepared draft order and placed it before the Lieutenant Governor along with the file and connected documents for his perusal. Sanction order dated 12th July 2010 was issued in the name of Lieutenant Governor and the same is marked as Ex.P-1. The accused has cross examined this witness, but nowhere it is suggested to the witness that he is not the competent person to accord sanction for prosecution or the sanction order is not in accordance with law. In such case, Section 19(3) of the Prevention of Corruption Act, 1988 clearly indicates that any error or legality

in the sanction order cannot be agitated belatedly before the appellate Court unless there is failure of justice due to the said error. Further more, as far as this case is concerned, perusal of Ex.P-1 indicates that it has been issued by the order of the Governor and PW-1[Mr.Vedagiri] has only conveyed the order through Ex. P-1. Therefore, there is no error in the sanction order marked as Ex P-1.

12. As far as the contradictions pointed out by the learned counsel for the appellant, this Court finds that there is patent inconsistency in the case of the prosecution regarding the custody of the disputed file containing trip sheets. PW-2 [Mr.J.Puthan] has deposed that, PW-8[Mr. G.Palaniappan] called Mr.Ambigapathi [PW-4] and asked him to go along with PW-4 and get the signature of the accused in the tripsheets. When he and PW-4 went to the Mannadipattu Commune Commissioner Office and asked the accused signature in the trip sheets, he got the file from PW-4[Mr.Ambigapathi] and gave back to PW-2[Mr.J.Puthan] and told them to come on the next day. This has happened on 23/02/2010. PW-2[Mr.J.Puthan] has gone to the office of the accused on the next day and requested him to sign the trip sheets. On that day,, the accused had demanded bribe of Rs.5,000/- and told PW-2[Mr.J.Puthan] to bring the money on the next day i.e.25.02.2010 by 8.00 a.m. Since he was not inclined to give bribe, he gave complaint Ex.P-3 and the trap has been laid and the accused was caught with the tainted money on 24.02.2010 at about 8.30 am.

13. The case of the prosecution is that the accused, after receiving the bribe money, has signed the trip sheets marked as Ex.P-5 which consists of more than 380 pages. In each page, this Court could find the signature of the accused and rubber seal of the Commissioner Villianur Commune Panchayat. If really PW-2[Mr.J.Puthan] has gone to the accused's house on that day at 8 A.M and had obtained his signature in all these papers, after giving bribe money, it should have taken at least few hours. But the prosecution cases is that PW-2[Mr.J.Puthan] and PW-3 [Mr.V.A.Elanchetchenni] went to the house of the accused at about 8 a.m. gave the bribe and got his signature and came out of his house by 8.30 am. The recovery process started at 8.30 am and completed by 1.30 pm. The impossibility of signing 380 sheets within 30 minutes improbablises the case of the prosecution. To all these witnesses, it has been suggested in the cross examination that the accused had already signed in the trip sheets and his signatures were not affixed on 25. 02.2010 after receiving illegal gratification.

14. The prosecution case gets more murky, when it is unable to explain how official record went out of the office and in whose possession, it had been till it was recovered from PW-2[Mr.J.Puthan]. The inconsistency regarding the custody is very vital for this case because, the case of the prosecution is that the appellant demanded illegal gratification for affixing his signatures in the trip sheets. Whereas, the accused placed a defence that he had already signed in the

trip sheets and due to previous enemity with PW-6 with regard to issuance of birth certificate by PW-6 and action taken by the appellant, PW-6 has Engineered the complaint through PW-2 and had initiated criminal prosecution. It is humanly impossible to sign on 380 sheets of different size within 30 minutes that too after comparing the log books. Therefore, the case of the prosecution that the appellant signed on the trip sheets after receiving bribe on 25.02.2010 is a total false and the evidence of PW-2 and PW-3 in this aspect is wholly unreliable.

15. If the accused has affixed his signature prior to 25.02.2010, then the necessity for PW-2 to go to the accused house and give bribe does not arise. The very fact that PW-2 was allowed to keep the custody of the official record for days together itself cast serious doubt about the prosecution case, more particularly, the evidence of PW-6, who has given a strange explanation of his own about the custody of the file contrary to that of PW-4 and PW-5 renders the prosecution case unbelievable.

16. Regarding the recovery of tainted money, we see four different versions are spoken by the witnesses for the prosecution. It is not sure, whether the money was kept beneath the bedsheet spread on the table or on the chair or on the table and recovered by the police or the accused went inside his house and handed it over to the police. The said inconsistency clearly indicates the tainted money was not recovered in the manner, as contented by the

prosecution and as found in the recovery mahazaar.

17. Regarding the process of bill, PW-1, in his cross examination, admits that in case of transfer of the offficer, the incumbent can sign the trip sheets based on the records and pass the bills. Therefore , if really the bill could not be passed for want of commissioner signature, based on the records, PW-6 the incumbent could have signed the trip sheets and passed the bills. The prosecution on this point had failed to prove that, because the appellant did not sign the trip sheets, the bill could not be passed. PW-6 also in the cross examination admits that signature of the Commissioner in all the trip sheets is not necessary. On the other hand, the defence has elucidated through the prosecution witnesses in the cross examination that the payments were delayed due to belated release of fund to the local bodies by the Government and not because the appellant failed to sign the trip sheets.

18. In the light of the above facts, when the prosecution has failed to prove demand and acceptance of illegal gratification and the evidence regarding recovery not been corroborated but bristles with inconsistency and contradictions, it is not prudent to hold the appellant guilty of the charges. Admittedly, when the Trap Laying Officer[PW-8] recovered the trip sheets Ex.P-5, it had the signatures of the appellant. By no stretch of imagination, it could have been affixed within 30 minutes on 25/02/2010 between 8.00 am and 8.30 am. Therefore, the prosecution case that the accused received illegal

gratification at 8.00 am and affixed nearly 380 signatures found in Ex.P-5 by 8.30 a.m. does not inspire the confidence of this Court. The trial Court has failed to note the above facts and contradictions, while deciding the case.

19. In the result, **This Criminal Appeal is allowed. The judgment of conviction passed by the learned Principal Sessions and Special Judge of Puducherry in Special Calendar Case No.4 of 2010 dated 07.03.2014 is set aside.** Fine amount paid, if any, shall be refunded to the appellant. The bail bond, if any, executed by the appellant shall stands cancelled. He is set at liberty unless his presence is required with anyother case.

12.12.2017

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Index:Yes/No
Internet:Yes/No
Speaking order/non speaking order

To
1.The Sub-Inspector of Police, SPE:CBI:ACB, Chennai.

2.The Special Public Prosecutor for CBI Cases, High Court, Madras.

Dr.G.Jayachandran,J.

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Pre-delivery judgment made in
Crl.A.No.145 of 2014

12.12.2017