IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :01.11.2017
PRONOUNCED ON:07.11.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.169 of 2014

State represented by
The Inspector of Police,
Vigilance & Anti Corruption Wing,
Nagapattinam. ... Appellant/Complainant
(Crime No.17 of 2005)

Versus

1.K.Pasupathi
2.K.Murugaiyan ... Respondents/Accused
(A-1 & A-2)

Criminal Appeal filed under Section 378 Cr.P.C., praying to set aside the judgment of acquittal of the respondents/accused (A-1 & A-2) passed by the Court of Chief Judicial Magistrate, Tiruvarur in Special C.C.No.2/2008, dated 22.04.2013.

For Appellant : Mr.A.Govindaraj,
Additional Public Prosecutor
(Crl.side)

For Respondents : Mr.K.M.Subramaniam-R1
Mr.S.V.Karthikeyan-R2

JUDGMENT

This appeal is preferred by the State aggrieved by the judgment of acquittal delivered in Special C.C.No.2 of 2008 on the file of Chief Judicial Magistrate/Special Judge, Tiruvarur.

2. The Prosecution has laid charge sheet against K.Pasupathi (A-1), Assistant Commercial Tax Officer-I and K.Murugaiyan (A-2), Driver, in the office of the Deputy Commercial Tax Officer, Tiruvarur, based on investigation done on the complaint by one M.Sethuraman of Devakandanallur Village, Kudavasal Taluk on 2.9.2005 to the Inspector of Police, Vigilance and Anti-Corruption Wing, Nagapattinam.

3. The complaint which is marked as Ex.P2 runs as under:- Sethuraman who is running the Welding Workshop by name ART Welding Works, involved in manufacturing of tractor trailers and he is an assessee of Commercial Tax. While so, on 23.8.2005 at about 7.00 pm Murugaiyan, Driver in Commercial Tax Office along with 45 year old person wearing spectacle came to his workshop, warned him that the he is carrying on trade without paying tax and started inspecting bills and other records. Thereafter, they told him that the he is liable to pay compound tax of Rs.8,000/- and if he pay the money as bribe they will not tax him further. When Sethuraman pleaded that he is not in a position to pay Rs.8,000/-, and he is having only Rs.2,000/-, asked them to grant a week's time to pay the said amount, they left from his workshop. Thereafter on 31.8.2005 at 12.30 pm A2-Murugaiyan alone came to the defacto complainant's workshop and demanded Rs.2,000/- for which the defacto complainant sought two days time. This was witnessed by Pitchai, the painter working in his workshop. On 2.9.2005 at about 7.30 am the defacto complainant accidentally met Murugaiyan (A2) near Kizhmanali Village, at that time A-2 again demanded money and told him that he is not asking money for himself but for the officer also. The defacto complainant has promised Murugaiyan(A2) that he will give money on that day evening. A2-Murugaiyan has told him that he will come to the workshop by 6 or 7 'O' Clock in the evening to collect the bribe money. If he pay Rs.2,000/- as bribe, the tax problem will be solved for the next one year.

4. Not inclined to give bribe, the defacto complainant has given the complaint which was registered by the respondent police at 12.15 hours on the same day. Acting upon this complaint marked as Ex.P2, two witnesses were arranged namely K.Devaraj, Junior Draughtsman, Office of the Executive Engineer, Agricultural Engineering Department and N.Rajmohan, Superintendent, Fisheries Department. After demonstrating to them, about the significance of phenolphthalein test, tainted currency of Rs.2,000/- (500 x 3 = Rs.1500/- and 100 x 5= Rs.500/-) was entrusted to the defacto complainant-P.W.2, under the supervision of the trap laying officer Mr.Kannan. On 2.9.2005, the trap laying team along with the witnesses went to P.W.2 workshop and were waiting, for A2 to come and collect the money, but he did not turned up in spite of P.W.2 called him over phone. They all had stayed at P.W.2 workshop whole night. On the next day 3.9.2005 at about 9.40 am A2 has come to the workshop of P.W.2. He received the tainted money from P.W.2 in the presence of shadow witness and kept it in his hand bag. Soon after, A2 was apprehended and tainted money was recovered from him. Based on the final report filed by the appellant, the learned trial court has framed charges for the offence under Section 13(1)(d) r/w 13(2) and Section 7 of the Prevention of Corruption Act, 1988.

5. To prove the case, the prosecution has examined 15 witnesses and marked 22 Exhibits and 5 Material Objects. On behalf of the defence two documents were marked during the cross-examination of P.W.15.

6. The explanation given by A-1 is that on 23.8.2005 he along with Deputy Commercial Tax Officer-Rajalakshmi (P.W.5) went on surprise inspection in Tiruvarur Town. During the inspection they have collected compounding tax from several traders who have failed to pay Commercial Tax. P.W.2 was found trading without proper bill and he was asked to pay compound tax of Rs.8,000/-. Since he expressed his inability to pay Rs.8,000/- as cash one week time was granted to him. Instead of paying compound tax he had lodged a false complaint as if A-1 along with A-2 demanded bribe of Rs.2,000/- on 23.8.2013 and 2.9.2013 and the same has been received by A-2-Driver on 3.9.2013 on behalf of A-1-Assistant Commercial Tax Officer.

7. The trial court has found the case of the prosecution unbelievable for the reason that the defacto complainant though filed self-assessment returns as if his annual turnover is less than 3.00 lakhs, it is elicited through his own month that he used to sell four or five tractor trailers in a year and each trailer costs above one lakh. Thus, admittedly he had been evading tax which has been found during the inspection on 23.8.2005. So he was asked to pay compound tax. Under the pretest of paying the tax the accused person were trapped.

8. The Log Book of the Jeep bearing Registration No. TDO 7603, marked as Ex.P18 lend support to the version of the defence that on 23.8.2005 till 9.30 pm the vehicle was engaged by the Deputy Commercial Tax Officer along with the Assistant Commercial Officer-A.1 and was driven by A-2. This fact coupled with the evidence of Deputy Commercial Officer-P.W.5 that on 23.8.2005 there was tax collection drive for which A-1 who was on deputation was asked to assist her and he was along with her on 23.8.2013 and collected compounding tax from several traders who have failed to pay tax. The tax receipt challans which are marked as Ex.P21 and P22 fortify the case of the defence. For these reasons the trial court has viewed that the accused have given a plausible explanation for the receipt of money and that they cannot be held guilty of the charges under Section 13(1)(d) r/w 13(2) and Section 7 of the Prevention of Corruption Act, 1988.

9. In the grounds of appeal the State has contended that the trial court has failed to appreciate the evidence properly and has erred in acquitting the accused persons. P.W.2-Defacto Complainant, P.W.3-Shadow Witness and P.W.5-Deputy Commercial Tax Officer and P.W.10-Pitchai, painter working under P.W.2, have cogently spoken about the demand and acceptance of illegal gratification and the circumstances under which A-1 demanded

bribe money on 23.8.2005, as a follow up A-2 went to the workshop of P.W.2 and collected bribe money of Rs.2,000/- on 3.9.2005.

10. Heard the learned Additional Public Prosecutor representing the State and K.M.Subramaniam, learned counsel for the first respondent-(A-1) and Mr.S.V.Karthikeyan, learned counsel for the second respondent-(A-2).

11. From the evidence of P.W.2-Defacto Complainant and P.W.5-Deputy Commercial Tax Officer, we find that on 23.8.2005, P.W.5 as Deputy Commercial Officer and A.1 as Assistant Commercial Officer, have gone for inspection of commercial establishments at Tiruvarur Town and A-2 as Driver had accompanied them. From the Log Book marked as Ex.P18 the Jeep bearing Registration No.TDO 7603 had been engaged on that day between 9.00 am and 9.30 pm for the purpose of inspection. P.W.5 in her evidence has stated that after completion of inspection at about 5.30 pm she went to her residence through bus and asked A-1 and A-2 to return to the office. As per the complaint, A-2 has gone to P.W.2 workshop at about 7.00 pm and he was accompanied by 45 year old man wearing spectacle. In the complaint he has not mentioned the name of A-1 and from the evidence of P.W.2 as well as the complaint Ex.P2 it was A-2 who demanded bribe subsequently on 31.8.2005 and 2.9.2005. If really the accused persons were interested in getting any bribe of Rs.2,000/-from the complainant, they would have received it on the same day i.e. 23.8.2013 or either A-1 or A-2 would have turned up to the complainant workshop on 2.9.2005 by 6 to 7 pm as informed and collected it. Admittedly, they did not turn up to P.W.2 workshop in spite of several phone calls from P.W.2.

12. It is quite unnatural to accept the case of the prosecution that the trap laying team along with the witnesses were waiting for A.2 to come and get the bribe and that they had stayed at the workshop for the whole night till A-2 came to P.W.2 workshop on the next day morning at 9.40 am. P.W.2 in the cross-examination admits that on 23.8.2005 when A-1 and A-2 came to his workshop they inspected bills and records and told him that they have reliable information that the defacto complainant is evading tax and he is liable to pay huge tax to the tune of Rs.8,000/- for which he told them he have only Rs.2000/- as cash. P.W.2 in his cross-examination admits that he was having Rs.2,000/- at the time of inspection on 23.8.2013 and he offered to pay the balance tax after sometime. However, A-1 and A-2 have left his workshop leaving all the bills and records inspected by them.

13. If the intention of the accused persons is to get illegal gratification then they would have received Rs.2,000/- on 23.8.2005 itself. Further it is pertinent to note that after 23.8.2005, P.W.2 had never met the first accused. The admitted

case of the prosecution is that it was A-2 who met P.W.2 and made subsequent demands on 31.8.2005 and on 2.9.2005. 31.8.2005 is exactly a week after the date of inspection. The defence theory is that when they inspected the workshop of P.W.2 on 23.8.2017, they found that he was liable to pay compound tax to the tune of Rs.8,000/-. Since P.W.2 sought one week time to pay the compound tax they have instructed him to pay it within one week and left the workshop. In the cross-examination P.W.2 admits that every year he used to manufacture 4 or 5 tractor trailers. It is borne by record that P.W.2 has submitted self-assessment return for his turnover and it has not exceeded more than 3.00 lakhs per annum. However, a doubt has been raised that though his turnover is more than 3.00 lakhs he has suppressed his real turnover to escape from payment of tax. Having caught for tax evasion during inspection, P.W.2-Sethuraman has preferred false complaint against the officer who has inspected his workshop and found his tax evasion.

14. Yet another reason stated by the trial court for acquitting the accused is that the recovery of tainted money itself being doubtful since though the left hand fingers of A-2 dipped in the Sodium Carbonate solution did not indicate the colour change, the Forensic Report Ex.P12 indicates the presence of phenolphthalein both left and right hands.

15. To add, this Court finds that P.W.2 has deposed that A-2 came to his workshop on 3.9.2005 at 9.40 hours and demanded Rs.2,000/- from him, when he tendered tainted money A-2 received it from his right hand kept it in a black colour hand bag. Thereafter, the trap laying team came there after receiving pre-arranged signal and recovered the same. P.W.3 the shadow witness also had deposed that money was kept in a black colour rexin bag. The said bag is not identified by P.W.2 and it is marked through P.W.3. The said rexin bag is not subjected to phenolphthalein test, though the case of the prosecution is that the tainted money was kept in that bag.

16. The Hon'ble Supreme Court in (2009) 15 SCC 200 (State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede), has held as follows:-

> "16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken

> into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-`-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt."

17. Mere recovery of tainted currency from the suspect is not sufficient to prove the demand and acceptance of illegal gratification. The explanation put forth by the accused persons for receipt of the money has to be looked into to ascertain whether the acceptance of money is towards illegal gratification. Going by the facts of this case, during the inspection the defacto complainant establishment has found to have evaded tax for which compounding tax has been demanded. The defacto complainant has sought time to pay the same. To this extent, no infirmity could be elicited from the prosecution witnesses.

18. According to P.W.2 the tainted money of Rs.2,000/- which was given to A-2, was towards the demand of bribe. Whereas the defence contends that it was received towards the compound tax which P.W.2 agreed to pay during the inspection held by P.W.5 and A-1 on 23.8.2005. If really A-1 and A-2 have demanded bribe and P.W.2 was not inclined to pay the bribe he could have lodged the complaint immediately on 23.8.2005 and need not have waited till 2.9.2013.

19. As the defacto complainant has deposed that he was having only Rs.2,000/- on 23.8.2005, then the accused persons would have received that money on that day itself as bribe. The manner in which the tainted money transferred from P.W.2 to A-2 also caused doubt upon the prosecution version. Admittedly, A-2 was not gone to P.W.2 workshop on his own, he had been called by P.W.2 over phone since 2.9.2005. Though the police has recovered the cellphone of A-2 and marked it as M.O.5, they have not collected any call details to support their version. So, on appreciation of the prosecution evidence and the defence theory the trial court has taken a view that the prosecution has not proved the case beyond reasonable doubt.

20. The view taken by the trial court is possible and probable. When two views are possible, the view taken in favour of the accused cannot be set aside in the appeal unless such a

view is perverse and totally not in consonance with law. This Court does not find any such perversity or inconsistency in the judgment of acquittal rendered by the trial court.

21. In the result, the appeal is dismissed and the judgment of the trial court is confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Tiruvarur.

2.The Inspector of Police,
Vigilance & Anti Corruption Wing,
Nagapattinam.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.M.Subramaniam, Advocate, S.R.No.79184

CRL.A.No. 169 of 2014

CNR(CO)
CA(17/11/2017)