IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.10.2017

PRONOUNCED ON : 31.10.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.469 of 2017
and
Crl.M.P.Nos.9704 & 9705 of 2017

R.Rajendran .. Appellant/ Accused

Vs

State by: Inspector of Police,
Vigilance and Anti-Corruption Department,
Namakkal District,
(Crime No.15/AC of 2003) .. Respondent/ Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to allow this appeal by setting aside the conviction and sentence passed in SPL.C.C.No.14 of 2004 on the file of the Special Judge/Chief Judicial Magistrate, Namakkal by Judgment dated 13.07.2017.

For Appellant : Mr.A.Rajakumar

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

J U D G E M E N T

This Criminal Appeal is filed against the judgment dated 13.07.2017 passed by the learned Special Judge/Chief Judicial Magistrate, Namakkal District, in SPL.C.C.No.14 of 2004.

2. Aggrieved by the Judgment of conviction and sentence slapped on him by the learned Special Judge/Chief Judicial Magistrate, Namakkal District, in SPL.C.C.No.14 of 2004, dated 13.07.2017, the appellant namely Thiru.Rajendran, who was working as Village Administrative Officer at Gundurnadu Village, Namkkal District, is before this Court with this appeal.

3. The case of the prosecution is that the appellant was working as a Village Administrative Officer at Gundurnadu Village, Kollihills, Namakkal District from 01.08.2002 to 03.12.2003. One Thiru.V.Chinnathambi S/o. Vellaiyan made an

application for transfer of patta in his name, in connection with the property which stood in the name of his father, who died 12 years ago. On 12.11.2003, the said Chinnathambi met the appellant/accused Rajendran and requested him to arrange patta transfer in his name. The appellant/accused/Rajendran demanded Rs.7,000/- (Rupees Seven thousand only) as bribe. Since the said Mr.V.Chinnathambi expresed his inability to pay that much of amount, there was negotiation in respect of bribe amount.

4. On 25.11.2003 application for patta transfer was submitted before the Tashildar, who in turn made an endorsement to the Revenue Inspector for further action and gave the application to the said Chinnathambi. On the same day, the said Chinnathambi met the appellant/Rajendran, Village Administrative Officer and handed over the application after taking a photocopy of it for his reference. On the request made by the said Chinnathambi, the appellant/accused reduced the bride amount from Rs.7,000/- to Rs.4,000/- and told him that if the said money is paid, he will arrange for patta transfer. On 01.12.2003, Chinnathambi went to the Taluk Office and met the appellant/accused and enquired about the patta transfer order. The appellant/accused had reiterated the amount and told Chinnathambi to come on 03.12.2003 with the bribe money. Since Chinnathambi was not inclined to give any bribe, he has lodged a complaint before the Inspector of Police, Vigilance and Anti-Corruption Department, Salem District.

5.Based on the complaint dated 03.12.2003, the Inspector of Police proceeded to lay a trap and arranged independent witnesses and after explaining the content of the complaint, he demonstrated the significance of the Phenolpthalein test. Then, the Inspector of Police smeared Phenolpthalein powder on the currencies (500 x 4 + 100 x 20) totally Rs.4,000/-. At about 8.15 hrs, the defacto complainant viz., Chinnthambi along with Mr.Don Bosco, the Decoy witness proceed to the office of the Village Administrative Officer followed by the trap laying team and reached the office at 11.30 hrs. The defacto complainant, Chinnathambi and the decoy witness, Mr.Don Bosco entered into the office of the appellant/accused. The appellant has enquired the defacto complainant whether he has brought the money and why there was delay to bring the money. There again, the appellant/accused has demanded the money from the de facto complainant. In response to the demand, the defacto complainant has given Rs.4,000/- (smeared with Phenolpthalein powder) to the appellant/accused. After receiving the said amount, the appellant/accused kept the said bribe amount in the left side shirt pocket and handed over the patta transfer order to the defacto complainant.

6.The defacto complainant and the decoy witness left the office room of the Village Administrative Officer and gave pre arranged signal to the trap laying team. Immediately, after receipt of the signal, the trap laying team have gone inside the office room of the Village Administrative Officer and thereafter, Sodium Carbonate solution was prepared and the hands of the accused was dipped in the colourless Sodium-carbonate solution. When he did so, the colourless solution turned into pink in colour indicating the appellant/accused has handled the currencies tainted with Phenolpthalein powder. The samples, which were drawn from the hand wash solution, were kept separately. The bribe money received by the Village Administrative Officer from the defacto complainant was seized through a Seizure mahazar and after providing a alternate shirt, the shirt worn by the appellant/accused was removed and the left pocket portion of the shirt was dipped in the Sodium-carbonate solution and the sample was taken separately. The handwash solution and the shirt wash solution were sent to Forensic Laboratory. After obtaining the lab report as well as the sanction order to prosecute the appellant/accused, final report has been laid before the learned Special Judge/Chief Judicial Magistrate at Namakkal.

7.On a perusal of the final report along with the FIR, the trial Court has charged the accused for the offences under Section 7 of the Prevention of Corruption Act and under Section 13 (2) r/w 13 (i) (d) of the Prevention of Corruption Act, 1988. The appellant/accused came to be tried. To prove the charges, the prosecution has examined 15 witnesses and marked 28 Exhibits and produced 7 Material Objects. On bahalf of the defence, 2 Exhibits namely, Photographs and the negatives of Village Administrative Office have been marked.

8.The trial Court, on appreciating the evidence let in by the prosecution as well as the defence, has held that both the charges were proved and held the accused guilty of offences under section 7 of the Prevention of Corruption Act and under Section 13 (2) r/w 13 (i) (d) of the Prevention of Corruption Act, 1988 and convicted the accused under section 7 of the Prevention of Corruption Act 1988 and sentenced to undergo two years simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month simple imprisonment and further, he was convicted under section 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act 1988 and sentenced to undergo two years simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment. The Trial Court ordered to run both the sentences concurrently.

9.The reasoning of the trial Court is challenged on the ground that the prosecution has failed to establish the demand as well as the acceptance of Rs.4,000/- by the appellant/accused as bribe for patta transfer. The alleged application dated 25.11.2003 is marked as Ex.P6 and the same is inadmissible in evidence since it is not the original application but a photocopy. Further, PW1 has admitted in his deposition that in respect of transfer of patta, there is no need to apply. While so, the theory projected by the prosecution through PW2 that the appellant/accused demanded bribe for grant of patta transfer order belied and the prosecution failed to prove the demand of bribe and hence, the appellant/accused is entitled for acquittal.

10.Further, the learned counsel appearing for the appellant/accused has contended that the de facto complainant, an agricultural coolie has no source to mobilize Rs.4,000/- and he admits the same in his evidence. On 02.12.2003, he had no money with him. Therefore the money, which was seized from the appellant on 03.12.2003, was not the money of the defacto complainant and somebody has arranged the money and the de facto complainant/PW2 has given a false complaint against the appellant/accused.

11.Though PW2, in his deposition, has stated that the appellant/accused demanded bribe amount on 12.11.2003, 02.12.2003 and 03.12.2003, there is no material evidence available to prove the demand on none of these occasions. Even PW3, the decoy witnesss, Mr.Don Bosco has admitted in his evidence that on 03.12.2003 when he went along with PW2, he did not went to the office room of the Village Administrative Officer and he waited outside the room and he did not see the demand and acceptance of the bribe amount. Mere recovery of the tainted money from the appellant/accused will not be taken as proof for acceptance of illegal gratification.

12.In support of the submission, the learned counsel appearing for the appellant/accused relied upon the Judgment in the case of C.Sukumaran Vs. State of Kerala reported in (2015) 11 Supreme Court Cases 314. The other submission made by the learned counsel for the appellant is that the investigation done by the Inspector of Police itself is contrary to the Government Order as well as the statute and the Vigilance Manual Rule.

13.The learned counsel submitted that under Section 17 of the Prevention of Corruption Act, the Superintendent of Police is authorised to investigate the offences under the provisions of Corruption Act. Whereas, in this case, admittedly, the Inspector of Police has registered the complaint and investigated the case and arrested the appellant/accused which is on the face of it contrary to section 17 of Prevention of Corruption Act as well as the Vigilance Manual. Therefore, the appellant/accused is entitled for acquittal.

14.The learned Additional Public Prosecutor representing the state submitted that the defacto complainant, who is a coolie and was working in Kerala, patta stood in the name of his deceased father. His sister got married and living separately and his brother, who is mentally ill, is taken care by his sister. Therefore, when he returned to his native place, he wanted the patta to be transferred in his name and therefore, he met the appellant/accused, who is serving as a Village Administrative Officer in that area on 12.11.2003. At that time, the appellant/accused, after explaining him about the procedure for transfer of patta, had demanded Rs.7,000/- as bribe to arrange for patta transfer. On 01.12.2003, as directed by the appellant/accused, the defacto complainant has preferred an application for patta transfer and presented it before the Tashildar office and after getting endorsement, he handed over the same to the appellant/accused. On that day also, the appellant/accused reiterated his demand. However, the appellant/accused reduced the bribe amount from Rs.7,000/- to 4,000/-.

15.Patta transfer request along with a small slip written by the appellant/accused containing the patta number and survey number of the property stood in the name of Vellaiyan, father of the defacto complainant is marked as Ex.P6. On 03.12.2003, the trap laying team, after getting signal from the defacto complainant, entered into the office of the Village Administrative Officer and has conducted hand wash test and found when the accused fingers were dipped the colourless Sodium-carbonate solution turned into pink. Thereafter, the tainted money was recovered from the appellant/accused and the procedure observed at the time of recovery was reduced into writing by way of the seizure mahazar and the same has been witnessed by PW3-Don Bosco and PW4-Muthukumar, Revenue Inspector. The recovery of tainted money is proved through the independent witness and his witness stand unimpeached.

16.Hence, the Learned Special Public Prosecutor contended that the omission to mention about the demand on 02.11.2003 in Ex.P26 and in the complaint Ex.P2 have no bearing. The said ommission does not indicate the innocence of the appellant/accused. Whereas the prosecution has proved its case through material objects and ocular evidences regarding the demand and acceptance of bribe money. The evidences of PW2 to PW4 is cogent and the same has been properly appreciated by the trial Court and found the appellant/accused guilty. There is no reason to disbelieve the witnesses for the prosecution. Therefore, the learned Additional Public Prosuecutor submitted that appeal has to be dismissed.

17.Regarding the competence of the Investigation Officer, the learned Additional Public Prosecutor submitted that the State as early as 2001 has passed a Order authorizing the Inspector of Police to investigate the offences under Prevention of Corruption Act, in respect of the public servants other than Group A and B. This Government Order has been reiterated subsequently by the Government Order in G.O.Ms.No.15, Personnel and Administrative Reforms (N) Department dated 19.02.2003. Therefore, there is no merit in the submission made by the appellant's counsel. The case has been investigated by the Inspector of Police, who is the competent person under law to register and investigate offences committed by Officers other than Group A and B. Hence, the investigation conducted by the Inspector of Police is perfectly valid. Further, the evidence of the Investigating Officer clearly indicates that even before proceeding for the trap laying operation, he has informed his higher officials and only after getting the consent and permission, he has proceeded with the registration of complaint and trapped the accused. The said procedue is fully in consonance with the provisions of law.

18.The point for consideration is whether the Judgment of conviction and sentence passed by the trial Court is in accordance with law and based on proper appreciation of evidences?

19.PW2-Chinnathambi, the defacto complainant has spoken about his application for patta transfer and identified his application as Ex.P6 and he has also identified the small slip in the handwriting of the accused, which was given to him by the accused, mentioning the patta number and Survey number in his father's property. According to his evidence, the slip was given to him by the accused on 12.11.2003, when he met him regarding the patta transfer. PW2 has further deposed that, on that day (12.11.2003), the accused demanded Rs.7,000/- to issue patta transfer order. So PW2 came back to his village and discussed with some of his village elders. He was advised to met the Tashildar. Accordingly, on 25.11.2003 he has gone to the Tahsildar office and gave an application for patta transfer. The clerk recorded the same and handed over it to the defacto complainant and told him to give it to the Village Administrative Officer.

20.The learned counsel appearing for the appellant/accused submitted that there is no entry regarding the application for patta transfer in the Taluk Office tapal register. The permanent register also does not reflected about the receipt of the patta transfer application. On perual of the application marked as Ex.P6, we find the Village Administrative officer has assigned application No.21216 and written it on the application. The despatch register extract, which was marked as Ex.P14, indicates that on 25.11.2003, the staff of the Taluk office has received the application starting from 21206 to 21203 which includes the application of the defacto complainant which bears No.21216.

21.The learned counsel appearing for the appellant/accused questioned about the admissibility of Ex.P6 it being a photocopy. On a perusal of the deposition of PW2, it could be seen that the application received by the Taluk office was handed over to him after making due entry, to submit the same to the Village Administrative Oficer. PW2 has taken a photocopy and handedover the original to the accused on 25.11.2003. What is available with the defacto complainant has been handedover to the investigating agency and the same has been marked.

22.It is not the case of the appellant that no application was given or no action was taken on the application of the de facto complainant. In fact, based on his application, an order has been passed for name transfer and the said order is marked as Ex.P8. The files relating to the application have been recovered by the Investigating Officer and the same has been marked as Ex.P4, P8, P13 to P15. It would be a ranked false-hood to say that no application was received by the Taluk office or by the appellant, regarding the patta transfer request made by the defacto complainant. The evidence of PW2 coupled with the documentary evidence rendered by the prosecution clearly establish the fact that PW2 has approached the appellant/accused for transfer of patta and the Tahsildar Office has processed his application. It is also proved through the evidences that on 02.11.2003 just before giving the bribe amount, the patta transfer order was given by the appellant/accused to the defacto complainant. Therefore, it is for the appellant/accused to explain about the tainted currency notes, which were seized from his possession by the prosecution.

23.PW3 has stated that on seeing them the appellant/accused/Village Administrative Officer, enquired them whether they have brought the money for transfer of patta. After receiving the bribe money, the Village Administrative Officer had handed over the patta transfer order. There is no substantial evidence to dislodge the credibility of the prosecution witnesses except some vague explanation that the money was planted in the pocket of the appellant/accused. The minor error in the name of the official witnesses, whether it is Muralikrishnan or Muthukrishnan or S.R.Rajagopal may not be much significance to disbelieve the case of the prosecution, which has been proved by clinching direct evidences of the demand and acceptance of the bribe.

24.The learned counsel appearing for the appellant relying upon the Judgment of the Hon'ble Supreme Court in the case of Smt.J.Yashoda vs. Smt.K.Shobha Rani reported in AIR 2007 SUPREME COURT 1721(1) contended that Ex.P6 being a photocopy, it should not be admitted as a evidence without comparing the original. As pointed earlier, based on the application, the Tahsildar office has proceeded the application and the evidences such as Ex.P4, P8, P13, P14, P15 indicate that the application has been acted upon by the Tahsildar office. Since the application has been acted upon and proved throgh records, the admission of Ex.P6 a photocopy has no bearing in proving the case of demand and acceptance of bribe.

25.Similarly, regarding the attack on the competency of Investigation Officer, this Court finds no merit in the said submission. The competency of the officer is defended by the learned Additional Public Prosecutor by producing the relevant Government Order which authorise the Inspector of Police attached to the Directorate of Vigilance and Anti-corruption to investigate the case against the public servants holding position other than Group A and Group B. Therefore, on cummulative assessment of the evidence, the trial Court has held the accused guilty of the charges is beyond doubt and has imposed sentences as stated above. This Court finds no merit in the appeal.

26.Hence, the appeal is dismissed and the judgment of the trial court is confirmed. Bail bond if any shall stand cancelled. The appellant/accused shall surrender before the trial Court to undergo the remaining period of sentence within one month, failing which he shall be secured and remanded to custody to undergo the remaining period of sentence. Period of sentence already under gone shall be set off under Section 428 of the Code of Criminal Procedure.

27.Thus, the appeal dismissed. Connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Special Judge/Chief Judicial Magistrate,
   Namakkal District.

2. The Inspector of Police,
   Vigilance and Anti-Corruption Department,
   Namakkal District,

3. The Public Prosecutor,
   High Court, Madras.

Criminal Appeal No.469 of 2017

NMI(CO)
SP(22/11/2017)