IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Criminal Appeal No.60 of 2017

The State represented by:
The Public Prosecutor,
High Court, Madras.
[Crime No.5/2007
of Cuddalore V & AC]

... Appellant/Complainant

Vs

1.Tr.D.Ramasamy, [A-1]

2.Tr.M.Sekar @ Rajasekar [Tout/Private Person] [A-2]

... Respondent/Accused
[A-1 & A-2]

Prayer:- Criminal Appeal filed under section 378 (1) (b) of the Code of Criminal Procedure against the order dated 16.11.2015 and made in Special Case No.3/2008 on the file of the learned Special Judge cum Chief Judicial Magistrate, Cuddalore.

For Appellant : Mr.E.Raja
Additional Public Prosecutor (V & AC)

For Respondent : Mr.V.Krishnamoorthy for R1

JUDGMENT

The order of acquittal dated 16.11.2015 and made in this Special Case No.3/2008 on the file of the learned Special Judge (Chief Judicial Magistrate), Cuddalore, has been challenged in this appeal under the provisions of section 378 of 1(b) of Cr.P.C.

2.The appellant is the State represented by Public Prosecutor, High Court of Madras, whereas the respondents 1st and 2nd are the accused in the above said criminal case.

3.The respondents 1 & 2 were put on trial to face the charges under section 7, 12 r/w 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The appellant State has totally examined 10 witnesses. In order to substantiate their case, during the course of their examination, Ex-P1 - P35 and MOs 1 - 5 were marked. No oral evidence was adduced on behalf of the respondents/accused 1 & 2. However, they have chosen to mark Exs.-D1 - D3 in order to disprove the case of the prosecution.

4.On appreciation of the evidences, both oral and documentary, the learned Trial Judge has found that the prosecution had failed to bring home the guilty of the respondent from all shadows of doubt and therefore the respondent was acquitted from the charges levelled against them as there is no chain of evidences to link the 1st respondent /A1 with the recovery of MO1 series (tainted money), which was said to have been recovered from 2nd respondent/A2. Accordingly, the order of acquittal was recorded by the learned Trial Judge on 16.11.2015, which is impugned in this appeal.

5.Heard, Mr.E.Raja, learned Additional Public Prosecutor (V & AC) and Mr.V.Krishnamoorthy, learned Counsel appearing for the 1st respondent/A1.

The gravamen of the prosecution case is this:

6.PW1-J.Ashok Kumar is the owner of the Motor Vehicle TATA 407 bearing Registration No.TN 31 T 2686. The Fitness Certificate, which was earlier issued in respect of the said vehicle, was expired on 03.08.2007. For the purpose of getting Fitness Certificate renewed, the said vehicle was taken to the Regional Transport Office at Neyveli by PW1. During the material time, the 1st respondent /A1 was the Competent Authority to issue the Fitness Certificate for the said vehicle. That on 13.08.2007, PW1-J.Ashok Kumar had, therefore, made an application

(Ex-P1) for renewal. He had also paid necessary legal fee to the tune of Rs.300/- towards the renewal charges under Ex-P2.

7.At about 12.30 P.M., 1st respondent/A1 had inspected the vehicle TATA 407 (bearing Registration No.TN 31 T 2686) and after the completion of inspection, he had returned to his office along with PW1-J.Ashok Kumar. At about 1.00 P.M., he had called the 2nd respondent /A2 Sekar @ Rajasekar and demanded PW1 to pay a sum of Rs.300/- to the 2nd respondent/A2 as an illegal gratification other than the legal remuneration for doing the official act of renewal of Fitness Certificate for the vehicle belonging to PW1.

8.As per the case of prosecution, PW1 was not in a position on that day i.e. on 13.08.2007 to pay the demanded bribe amount. Unwilling to pay the said gratification, other than the legal remuneration, PW1 had reported the matter to Vigilance and Anti-Corruption, Cuddalore at 11.00 A.M. on 16.08.2007, and in consequence thereof, he had also lodged a complaint before PW8, Inspector of Police attached V & AC, Cuddalore. On receipt of the complaint (Ex-P4), PW8 had a registered a case in Crime No.5/2017 under section 7 of Prevention of Corruption Act, 1988. The First Information Report was prepared by PW8 and marked as Ex-P25.

9.After forwarding the complaint (Ex-P4) along with the First Information Report (Ex-P25) to the Court, PW8 had taken up the case for investigation.

10.He had organized a trap laying proceedings in respect of 1st respondent /A1 and he therefore had made a written request to the Superintending Engineer, Highways, Nabard to send an official witness for the trap proceedings. Accordingly, PW3 was deputed to co-operate with PW8 Investigating Officer.

11.PW8 had also made a written request to Deputy Director of Agriculture to depute another official witness for the trap proceedings. Accordingly one Kannan was deputed. Then the contents of the complaint were made known to the witnesses and they were also explained about the case and the proposed plan to lay trap proceedings. Then PW8 had demonstrated the phenolphthalein test and subsequently MO1 series i.e. the amount of Rs.300/- (Three hundred Rupees) was received from PW1. The said money was smeared with phenolphthalein powder and was handed over to PW1. In this connection, PW8 had prepared as Entrustment Mahazar Ex-P5. The denominations as well as serial numbers of currency notes were noted in Ex-P5. The official witnesses viz. PW3 and one Kannan along with PW1 had PW8 signed in the said mahazar.

12.Thereafter, PW8 had given the instructions to PW1 and other official witnesses as to how they had to behave in the office of the 1st respondent after reaching there. PW1 was also instructed to handover the currency notes to the 1st respondent, if demanded as an illegal gratification and to give a signal by scratching his head, if the amount was received by the 1st respondent.

13.As per their plan, Police officials headed by PW8 were hiding outside. PW1 and PW3 had entered the office of the 1st respondent at about 5.00 P.M. on 16.08.2007. While so, PW1 had asked respondent /A1 about the Fitness Certificate. At that time, 1st respondent /A1 had reiterated his earlier demand of Rs.300/- and he had also ascertained as to whether PW1 had brought the money. Since PW1 had replied that he had brought the money, the 1st respondent had rung the bell. On hearing the bell, the 2nd respondent /A2 had come to the Office room of the first accused and thereafter the first respondent had directed PW1 to handover the money to the second respondent/A2 and instructed the 2nd respondent to hand over the Fitness Certificate (Ex-P3) to PW1.

14.On receipt of money (MO1 series), the 2nd respondent had handed over the RC book to PW1. Thereafter, PW1 & PW3 had come out of the office as per their instruction and PW1 has made a signal by scratching his head. Having noticed the signal, PW8 and other officers had rushed the office of the 1st respondent/A1. On seeing the Police, the 1st respondent had become nervous and restless. After his entry, PW8 had asked the 1st respondent about the tainted money given to him. The money was not in the possession of the first respondent but it was with the 2nd respondent. Thereafter, the tainted money was recovered from the Shirt pocket of 2nd respondent/A2 and then phenolphthalein test was conducted on both the hands of 2nd respondent and the sodium carbonate solution had turned pale pink colour. After following all the formalities, PW3 and other official witnesses Kannan had verified M.O.1 series, (tainted money) and found tallied with the Entrustment Mahazar Ex-P5.

15.The collected wash from the hands of A2 were sealed and preserved and the same were marked as MOs 2 & 3 respectively. The wash from the Shirt pocket of 2nd respondent was marked as MO4 and the Shirt of the 2nd respondent was also recovered and the same was also marked as MO5. After the completion of phenolphthalein test, the file relating to issuance of Fitness Certificate was recovered from the office of 1st respondent/ A1 and subsequently the respondents 1 and 2 were arrested. Thereafter, PW8 Inspector of Police had continued his investigation and for further investigation, the file was entrusted with PW9 and finally, PW10, after completion of investigation, had laid the final report.

16.When the incriminating circumstances arising out of the testimonies of prosecution witnesses were put to the 1st and 2nd respondents, and explained they, while denying the evidences of prosecution witnesses, had totally replied that this case was foisted against them. The 2nd respondent/A2 had specifically stated that he did not receive the any amount much less Rs.300/- for and on behalf of the 1st respondent Mr.D.Ramasamy. What he would say is that he had demanded his service charge from the complainant (PW-1) and excepting this, he had nothing to do with the allegations made by the prosecution.

17.Insofar as this case is concerned, Ex-D1 takes the predominant role. Ex-D1 is the endorsement dated 10.08.2007 made on Ex-P1 i.e. the application for renewal of Fitness Certificate. As per the case of prosecution, the entire incident is said to have been taken place on 13.08.2007. When such being the case, how an endorsement dated 10.08.2007 (2152/DR/07) could have been made on the application dated

13.08.2007?. According to the case of defence, as per Ex-D1 'viz' the endorsement found in Ex-P1 Fitness Certificate renewal application, it is very clear that the Fitness Certificate was renewed on 10.08.2007 itself. Apart from Ex-D1, Ex-P6 entries dated 10.08.2007 seems to have been made in the RC book, which was marked as Ex-P3 with reference to renewal of Fitness Certificate on 10.08.2007. Ex-D2 is the Fitness Certificate renewal card. According to the defence, the Fitness Certificate in respect of the vehicle in question was renewed on 10.08.2007 itself. It is also seen that the 1st respondent /A1 had signed with date of renewal as 10.08.2007 in Exs.-D1, D2 & P6.

18.The defence theory is; when the renewal of Fitness Certificate was completed much prior to the registration of the case i.e. prior to 16.08.2007, as evident from Exs.-D1, D2 & P6, the credit worthiness as well as the evidentiary value attached with these exhibits under Exs.-D2, D1 & P6 cannot be doubted.

19.It is significant to note here that the complaint was lodged (Ex-P4) on 16.08.2007 at 11.00 A.M. The alleged demand of bribe was made on 13.08.2007 at 1.00 P.M. Therefore, the complaint was lodged with a delay of 70 hours. The defence case further projects that even prior to the alleged demand, which was said to have been made on 13.08.2007, the purpose of getting the renewal of Fitness Certificate was completed as early as on 10.08.2007 and therefore, there was no occasion for the 1st respondent/A1 to demand any bribe for renewal of Fitness Certificate in respect of the vehicle in question, on 13.08.2007.

20.It is settled principle of law that when two views are possible, the view leaning in favour of the accused shall have to be taken into consideration. In this connection, it may be relevant to extract the observation of the Trial Court made in para 76 of its judgment:-

> "*Mere recovery of tainted money from A2 and phenolphthalein test proved positive will not be safe to convict the A1, against whom absolutely there is no evidence to speak on demand and acceptances of money to do an act of renewal of FC for the vehicle owned by PW-1*".

21.The observation of the Trial Court in paragraph 77 of its judgment is extracted as under:

> *(1)When two views are possible the view favouring the accused have to be given preference and the benefit of doubt is to be given to the accused.*

(2)Mere receipt of money from A2 is not sufficient to hold guilty in the absence of any evidence with regard to demand and acceptances of the amount as illegal gratification.

(3)The accused A1 and A2 were never given an opportunity to put forth their explanation to establish their innocence at the time of laying trap. The denial of opportunity to the accused A1 & A2 in their 313 statement is found to be reasonable and acceptable, A2 has acted as service provider and for his service a sum of Rs.300/- was paid to him by PW-1 is believable.

22.Section 20 of Prevention of Corruption Act, 1988 deals with presumption, where the public servant accepts gratification other than legal remuneration. Section 20 3 sub-section which are extracted as under:

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or,

as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

23.On coming to the instant case on hand, this Court is of view that sub-sections (1) and (3) of section 20 assume importance. In this regard, this Court finds that the alleged gratifications or the alleged demand made by the 1st respondent/A1 seems to be trivial and therefore, no inference of corruption could be fairly drawn as against the respondents 1 and 2.

24.The learned Additional Public Prosecutor (V & AC), has submitted that the 1st respondent/A1, being the Motor Vehicle Inspector, had inspected the vehicle of PW1 only on 13.08.2007 and as such, he could not have renewed the Fitness Certificate on 10.08.2007, as it is seen from Ex-P1 and that it is merely a case of anti dating of the 1st respondent only for creating confusion over the prosecution case.

25.He has also argued that the defence theory of granting Fitness Certificate on 10.08.2007 by 1st respondent/A1, was not at all possible for the reason that without carrying out inspection of the vehicle which he had done only on 13.08.2007. He has also submitted that the conclusion of the Trial Court that the 1st respondent had completed his official work on 10.08.2007 was absolutely erroneous and was not sustainable in law. He has also maintained that PW1 had given an application on 13.08.2007 for renewal of Fitness Certificate and paid the appropriate fee on the same day i.e. on 13.08.2007 when such being the case, the conclusion of the Trial Court that the 1st accused had completed his official work on 10.08.2007 was not at all possible as the 1st accused could not complete his work without receipt of renewal application.

26.Mr.V.Krishnamoorthy, learned counsel appearing for the respondent has submitted that there were material contradictions between the testimonies to PW1, PW3, PW4 and PW6 and since the evidence of eyewitness was in consonance with other witnesses with reference to recovery of money from the 2nd respondent, it could not be construed that clinching evidence was available as against the respondents to connect them with criminality. He has also placed reliance on the following judgments to support his contention:

(1) Harkirat Singh Vs State of Punjab reported in 1997 SCC (Cri) 1068: AIR 1997 Supreme Court 3231

(2)N.Gunasekaran & others Vs State reported in (2010) 3 MLJ (Crl.) 242.

27.In the decision 1st cited, the Apex Court has held that since there were "*material contradictions in the evidence of two eyewitnesses and no other evidence is available to connect the accused with the offence the accused is entitled to benefit of doubt". In the decision 2nd cited, it is held that "A cumulative effect of the discrepancies, infirmities, contradictions and improbabilities pointed out supra will show that the prosecution has not proved its case beyond reasonable doubt; that there are many pitfalls and improbabilities which shall create a reasonable suspicion regarding the prosecution version".*

28.Admittedly tainted money was not recovered from the 1st respondent. When the tainted money was not seized from the 1st respondent, the burden is heavily rested upon the prosecution to prove that there was a demand by the 1st accused and the same was met out by the complainant and that the tainted money was in fact received by the 2nd accused with tacit approval of the 1st accused.

29.Mr.V.Krishnamoorthy, learned counsel for respondents has submitted that as per rule 47 of the Vigilance Manual, the accused should be interrogated and his statement should be recorded separately, immediately after recovery and seizure of bribe money. Since the respondent was not examined in this case, immediately after trap proceedings, it amounts to denial of opportunity to the respondent to explain about the possession of money and these circumstances would entitle him to get acquitted of all the charges. With reference to the evidence given by PW2, who is the Sanctioning Authority, this Court is view of that the sanction is not in accordance with law as there is no application of mind.

30.It is held by the *Apex Court in State of Karnataka Vs Ameer Jan (2008) 1 MLJ (Crl) 542 (SC)* that the Competent Authority, while granting sanction, orders should consider all the materials collected during investigation in order to show application of mind on the part of Sanctioning Authority. But a cursory perusal of evidence adduced by PW2 it would go to show that he had not considered the mahazars, sketch, house search etc. The Sanction Order seems to have been issued without considering the entire material records, which were said to have been collected against the 1st accused and hence, the order of sanction (Ex-P7) is vitiated on the ground of non application of mind. Having record to all the relevant facts and circumstances, this Court finds that the judgment of acquittal recorded by the Trial Court does not require the interference of this Court.

31.In the result, the appeal is dismissed at the admission stage itself, as devoid of any merit.

18.04.2017

pam

Index: Yes/No

Internet: Yes/No

T.MATHIVANAN,J.

pam

Crl.A.No.60 of 2017

18.04.2017