IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :10.11.2017
PRONOUNCED ON: 23.11.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.562 of 2014

State of Tamil Nadu
represented by
The Public Prosecutor,
High Court, Chennai-104. .. Appellant/Complainant

Versus

R.Murugesan
Formerly Inspector of Police,
Central Crime Branch,
Team-XVI, Anti Land Grabbing
Wing, Egmore, Chennai. .. Respondent/Accused

Criminal Appeal filed under Section 378 Cr.P.C., praying to set aside the Order of acquittal of the respondent/accused, passed by the learned Special Court for Cases under Prevention of Corruption Act, Chennai in C.C.No.152 of 2011 dated 30.05.2014 and convict and sentence the respondent/Accused.

For Appellant .. Mr.P.Govindarajan,
Addl.Public Prosecutor (Crl.side)

For Respondent .. Mr.R.Rajaratinam

JUDGMENT

The State has preferred this appeal against the Order of aquittal passed by the learned Special Judge for Prevention of Corruption Act Cases, Chennai, in C.C.No.152 of 2011.

2.The case of the prosecution is that the Respondent/Accused R.Murugesan while working as Inspector of Police, Central Crime Branch, Anti Land Grabbing Wing, at Egmore, Chennai, between February 2010 and November 2010, demanded Rs.2.00 lakhs bribe for not including one Mujibur Rahman in the case registered for land grabbing against one Rameshraj. The said case in Crime No.58 of 2009 had prima facie material through the statement of Rameshraj that from the crime proceeds of the land grabbing Rs.70 lakhs had been shared with Mujibur Rahman. So, based on the said statement, the respondent herein who was investigating the case, had called Mujibur Rahman over phone and asked him to meet at his office. Accordingly, on 11.11.2010 when Mujibur Rahman met the respondent herein it is alleged that he has demanded Rs.2.00 lakhs for excluding him in the case. When Mujibur Rahman has expressed his inability to mobilise such huge amount, the respondent/accused directed him to pay initially Rs.50,000/- on 12.11.2010 and the balance within 10 days. Not willing to give bribe, the defacto complainant lodged a complaint before the Deputy Superintendent of Police, V & AC, Chennai City-III. Based on which a case in Cr.No.1/AC/2010/CC-III for the offence under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 was registered and trap was organized.

3.On 12.11.2010, at about 8.30 hours, when the defacto complainant Mujibur Rahman met the respondent/accused in front of the ironing shop near Rountana on the Model House Road, CIT Nagar, the respondent/accused reiterated his earlier demand and accepted Rs.50,000/- as bribe from the defacto complainant. This has been witnessed by the accompanied witnesses.

4.The trap laying team had caught hold of the respondent/accused after conducting phenolphthalein test by dipping the hand fingers of the respondent/accused, tainted money of Rs.50,000/- was recovered from the respondent/accused which he had kept in his pant pocket. Samples of phenolphthalein solutions collected from the hands wash and the pant wash been sent to chemical analysis. The respondent/accused was charged for the offence under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

5.To prove the charges, the prosecution examined 10 witnesses, exhibited 20 documents and marked 5 Material Objects. The defence neither examined any witness nor exhibited any document.

6.The trial Court after considering the evidence let in by the prosecution, has disbelieved the case of the prosecution and has held that the prosecution has not proved the guilt of the accused beyond reasonable doubt and accordingly, acquitted him.

7.Aggrieved by the Order of acquittal rendered by the trial court, the present appeal is filed by the State on the ground that the trial court has failed to appreciate the evidence of P.W.2 and the Entrustment Mahazar marked as Ex.P4, wherein the tainted money was given to the defacto complainant and the serial numbers of the currency was recorded in the Entrustment Mahazar. The same was subsequently recovered from the respondent/accused under Seizure Mahazar (Ex.P5). While so, non-explanation of the accused person for possession of tainted money leads to a presumption that he received the tainted money from the defacto complainant as a bribe to exclude him from the case of land grabbing.

8.Further, the learned Additional Public Prosecutor also contended that the solution drawn from the hand fingers wash and pant wash of the accused proved the content of phenolphthalein and the same has been proved through P.W.6-Vishalakshi, Scientific Assistant and her report marked as Ex.P14. Apart from that P.W.3 independent witness has spoken about the acceptance of bribe money by the accused person. When demand and acceptance had been proved beyond doubt presumption under Section 20 of the Prevention of Corruption Act, has to be invoked. The accused/respondent has not discharged his burden that the tainted money he received is not for illegal gratification. Therefore, the Order of acquittal of respondent/accused rendered by the trial court is illegal. The trial court without considering the evidence adduced by prosecution witnesses and the dicta laid down by the Supreme Court, had come to a wrong conclusion, which requires interference of the Court.

9.The learned counsel appearing for the respondent submitted that neither the defacto complainant Mujibur Rahman nor Rameshraj have supported the case of the prosecution and they were treated hostile. When the very basis of the demand of illegal gratification itself is not proved, presumption under Section 20 of the Prevention of Corruption Act cannot be drawn. Further, the learned counsel for the respondent/accused submitted that the entire case of the prosecution bristles with infirmity and illegality which has been rightly consider by the trial court for acquitting the respondent/accused.

10.The respondent herein while discharging his duty as Inspector of Police Anti Land Grabbing Wing, registered the case against Remeshraj in Crime No.58 of 2009 and was investigating the same. In the course of his investigation the said Remeshraj made confession statement that the land which he has grabbed by using the forged document was sold away by him and from out of the sale proceeds, which is proceeds of crime, he has given Rs.70 lakhs to Mujibur Rahman. Therefore, the respondent/accused in the course of investigation summoned Mujibur Rahman for interrogation. Infuriated by the investigation done by the respondent against Mujibur Rahman, Remeshraj has set up Mujibur Rahman to give a false complaint against the respondent as if he demanded bribe of Rs.2.00 lakhs. The said attempt is to divert the investigation against Remeshraj and Mujibur Rahman. False complaint lodged due to ill-motive had been exposed during the course of trial wherein Mujibur Rahman and Remeshraj have turned hostile. The Ironing shop owner Namburajan (P.W.10) had not supported the case of the prosecution.

11.The case of the prosecution is that trap was organized near the Ironing shop and the respondent/accused was caught near the Ironing shop of P.W.10. However, P.W.10 has not supported the case of the prosecution. The only witness speaks about the alleged demand and acceptance of tainted money is P.W.3 which is contradictory to the version of the other prosecution witnesses. According to P.W.3 even in his chief examination itself, has said that the trap team immediately after apprehending the respondent asked him to take money, only after recovering the money, phenolphthalein test was conducted. Whereas the trap laying officer P.W.8-S.Thirunavukkarasu, has deposed that P.W.2 gave money to the accused near Rountana and immediately he was apprehended. After conducting phenolphthalein test the accused was taken to nearby police station at Nandanam and thereafter money was recovered from him.

12.It is also pointed out by the learned counsel for the respondent that immediately after the trap proceedings as per DV&AC Manual statement of the accused person should have been recorded. In this case, P.W.9-R.Valasarajan admits that he had recorded the statement of the accused person. Further, he admits that he did not make any further enquiry with the other prosecution witnesses in respect of the explanation given by the accused person. Thus, the lapse of the prosecution for not making any further enquiry with the other prosecution witnesses in respect of the explanation given by the accused person has lead to acquittal. Since there is no perversity or illegality in the finding of the trial court, no need to interfere with the same.

13.The specific case of the prosecution is that on 12.2.2009 one Valluru Lalitha, wife of Dr.Valluru Chandrasekara Reddy had given a complaint against Remeshraj and others alleging that they have grabbed her land taking advantage of her absence and power of attorney deed given by her. In the course of the investigation the accused who was the Investigating Officer in that case has called Mujibur Rahman for interrogation. On 12.11.2010, Mujibur Rahman has given a complaint against the respondent alleging that the respondent/accused under the grab of investigating the case in Crime No.58 of 2009, threatened Mujibur Rahman that he will include him as an accused if he does not pay Rs.2.00 lakhs. Since he was not inclined to give money, lodged a complaint. Further when he was summoned to give evidence P.W.2-Mujibur Rahman had totally gone against his own complaint and he has denied the content found in his complaint Ex.P2. He has implicated Remeshraj as a person who has asked him to give blank signed papers since he was caught in the land grabbing case and in order to escape from the case his signed papers are required.

14.The prosecution has also examined the said Remeshraj as P.W.4. He has also turned hostile. Though the learned Additional Public Prosecutor submitted that even if the witnesses had turned hostile, if there is strong evidence to implicate the accused person, court need not be carried away by the hostility of the defacto complainant.

15.In this case the defacto complainant has turned hostile and the person who is accused for the land grabbing case namely Rameshraj has also turned hostile. In such circumstances if the evidence of other prosecution witnesses is strong enough to prove the demand and acceptance of illegal gratification, there may not be any difficulty for the Court to hold the respondent guilty. But as pointed out by the learned counsel for the respondent/accused there is no such evidence available. The prosecution witness (P.W.3) who alleged to have seen the demand and acceptance of illegal gratification though deposed in his chief examination that the accused person came near the ironing shop at about 8.30 pm in a two wheeler and on seeing the defacto complainant he asked the defacto complainant whether he has brought money. When the defacto complainant tendered the tainted money the accused/respondent received it and kept it in his left side pant pocket, but in the cross-examination he has fumbled. His evidence regarding place and time of drawing of samples and the seal found in the sample solution makes his evidence doubtful. Particularly when there is no prior information that the accused will come near the ironing shop at rountana the trap laying team had waited near the said place and when P.W.3-Gopalakrishnan says that recovery of money from the possession of the accused person was made at the scene of occurrence itself, the trap laying officer (P.W.8-Thirunavukkarasu) has deposed that money was recovered at the police station at Nandanam.

16.Regarding the trap money FIR Ex.P18 reveals that the money was handed over along with the complaint. Whereas P.W.3-Gopalakrishnan has deposed that he was called to be witness for the trap proceedings. Therefore, he went to DV&AC office and in his presence the defacto complainant gave the trap money. Similarly, regarding recovery of the tainted money from the accused P.W.3-Gopalakrishnan has deposed that money was recovered near the Ironing shop at rountana before 9 pm. Whereas the trap laying officer (P.W.8-Thirunavukkarasu) has deposed that after completion of phenolphthalein test the accused was taken to nearby police station and thereafter the money was recovered. Right from the source of money smeared with phenolphthalein this Court finds contradictions and each of the witnesses statement stands aloof without any corroboration.

17.In this regard when there is material to show that there was some animosity between P.W.2, P.W.4 and the accused. So, the explanation given by the accused person as spoken by P.W.9-R.Valasarajan, gains significance. The plausible explanation given by the accused person for the complaint against him and the inconsistency in the prosecution witnesses regarding receipt of tainted money from the defacto complainant as well as the recovery of tainted money from the possession of accused person, fails the prosecution case. Since the prosecution could not prove its case beyond reasonable doubt, the trial court has rightly acquitted the respondent based on the evidence of prosecution witnesses.

18. On re-appreciation of evidence this Court finds no ground to interfere with the Order acquittal passed by the trial court. Accordingly, the Order of acquittal passed by the Special Court for Cases under Prevention of Corruption Act, Chennai in C.C.No.152 of 2011 dated 30.05.2014 is confirmed.

19.In the result, this appeal is dismissed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

gr.
Copy to:-
1.The Special Court for Cases under Prevention of Corruption Act, Chennai.
2.The Public Prosecutor, High Court, Madras.

+2 Ccs to Mr.R. Raja Rathinam, advocate sr 83758.

CRL.A.No. 562 of 2014

PVS(CO)
SP(29/11/2017)