

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on :22.09.2017

Pronounced on :12.10.2017

Coram

The Hon'ble Dr.Justice G.Jayachandran

Criminal Appeal No.168 of 2011

State represented by:

The Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore.

(Cr.No.12/2006/AC/CB) ... Appellant (Complainant)

/versus/

1.K.A.Palanisamy

2.S.Kumaresan

3.P.Selvaraj

4.K.Ramasamy

... Respondents (A1 to A4)

Criminal Appeal has been filed under Section 378 of Criminal Procedure Code praying to set aside the judgment of acquittal passed in Spl.C.C.No.3 of 2008 dated 23.11.2010 by the Chief Judicial Magistrate Court and Special Judge, Coimbatore and convict the respondents/accused(A1-A4) as charged.

For Appellant :Mr. R.Ravichandran, GA(crl.side)

For Respondents :Mr.ARL.Sundaresan, SC for
AL.Ganthimathi for R1
Mr.K.R.Sankaran for
Mr.K.S.Karthik Raja for R2
Mr.B.Kumarasamy for
Mr.S.Gunalan for R3
Mr.V.Anandamurthy for R4

J U D G M E N T

This Criminal appeal is preferred by the State aggrieved by the judgment of the trial Court in Special C.C.No.3 of 2008 acquitting the accused from the charges under Section 7 and 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 as

against the public servants accused 1 and 2 and under Section 12 r/w 7 of the Prevention of Corruption Act, 1988 and Section 109 of Indian Penal Code r/w 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 as against the private individuals accused 3 and 4.

2. The history of the case:

On 07.08.2006, one Kandasamy lodged a written complaint to the Inspector, District Vigilance and Anti-Corruption, Coimbatore alleging demand of illegal gratification by K.A.Palanisamy[A1], Bill Collector to assess property tax to his property situated at No.89, Kattabomman Street, P.N.Palayam, Tiruppur. Based on the complaint, First Information Report was registered at 14.30 hours on 07.08.2006 and a trap was laid. On 07.08.2006 evening, when the defacto complainant went to the Tiruppur Municipal Office at about 6.30 hours, K.A.Palanisamy [A1] was not in his seat. When the defacto complainant contacted K.A.Palanisamy[A1] over phone, he was asked to come on 09.08.2006. Accordingly, the second entrustment mahazar was prepared on 09.08.2006. The trap team followed the decoy witnesses Kandasamy[P.W.2] and Karthikeyan[P.W.4] to the Tiruppur Municipal Office. On receiving, a pre-arranged signal from Kandasamy[P.W.2], the trap laying officer and his team entered into the Tiruppur Municipal Office and tainted money of Rs.3,000/- was recovered from Ramasamy[A4].

3. According to the written complaint [Ex.P2], on 31.07.2006 Kandasamy[PW-2] met Palanisamy[A1], Bill Collector and gave application for assessment of his property. A1[Palanisamy] received the application and has asked PW-2[Kandasamy] to come on next day with bribe of Rs.5,000/- so as to process his application. A1[Palanisamy] has told PW-2[Kandasamy] that the said money is to be shared by Kumaresan[A2] and his Assistant Selvaraj[A3]. Again on 01.08.2006, when Kandasamy[P.W.2] met A1 [Palanisamy], he was informed by A1[Palanisamy] that he has assessed the tax at the rate of Rs.210/- per annum. When PW-2 [Kandasamy] told A1[Palanisamy] that he is son of an Ex-service man, A1[Palanisamy] gave his cell phone number and asked to contact him the next day. On 02.08.2006 and 03.08.2006, PW-2 [Kandasamy] contacted A1[Palanisamy] over phone and on 04.08.2006 he went in person to the Municipal Office and met A1 [Palanisamy]. On that day, A1[Palanisamy] told PW2[Kandasamy] to bring Rs.3,000/- and come on 07.08.2006. When PW-2 [Kandasamy] went to Tiruppur Municipality office on 07.08.2006, A2[Kumaresan] was not in his seat. When he enquired the clerk, he informed that A1[Palanisamy] was gone out. When PW-2 [Kandasamy] contacted A1[Palanisamy] over phone, after confirming with A2[Kumaresan] as to whether he was brought the

money demanded, A1[Palanisamy] asked PW2 [Kandasamy] to come with money between 04.30 to 06.00 p.m. on that day and he will issue house tax assessment order. Since PW-2[Kandasamy] was not inclined to give bribe, he has given the written complaint as narrated above.

4. Based on the above complaint[Ex.P2], V.Gnanasekaran [PW16], Inspector of Police, District Vigilance and Anti Corruption, has registered a case on 07.08.2006. He has prepared the entrustment Ex.P-5. The trap team has gone to the Tiruppur Municipal Office on 07.08.2006 following PW-2 [Kandasamy/defacto complainant] and PW-3[Niranjan], PW-4 [Karthikeyan] accompanying witness. A1[Palanisamy] did not turn up to the office on that day. So, the trap attempt got aborted. Again on 09.08.2006, fresh entrustment mahazar Ex.P-6 was prepared. The trap team has gone to the Tiruppur Municipal Office at about 15.00 hours. A1[Palanisamy] was not in his seat. when PW-2[Kandasamy] enquired Kumaresan [A2] and Mr.Selvaraj [A3] about his tax assessment application and Selvaraj[A3] told that he has brought Rs.3,000/- as demanded by Palanisamy[A1]. Over hearing the same, Kumaresan[A2] told PW-2 [Kandasamy] to give the money to A3[Selvaraj]. Accordingly, PW-2 [Kandasamy] gave the tainted money of Rs.3,000/- to A3[Selvaraj] who received it and counted. A2 [Kumaresan] oversaw it and confirmed whether PW.2[Kandasamy] has given Rs.3000/- to A3 [Selvaraj]. Thereafter gave the money to A2[Kumaresan], who received it, kept in his pant pocket. The trap team caught hold of A3[Selvaraj] and when enquired whether he received the money from PW-2[Kandasamy], A3 admitted the receipt of the money, his hand wash was answered positive to phenolphthalein test. Hand wash of Ramasamy[A4] also answered positive. A4[Ramasamy] took out the tainted money from his pant pocket. His pant wash also found the presence of phenolphthalein, when tested with sodium carbonate solution, seizure mahazar Ex.P9 was drawn on the spot and A2 to A4 were arrested, since A1 and A2 were public servants, sanctioning to prosecute was obtained from PW.1 [Mr.Ashokan] and PW.3[Mr.Niranjan] public servants respectively. The trial Court framed charges under Sections 7 and 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988 against A1 and A2; under Section 12 r/w 7 of the Prevention of Corruption Act, 1988 and Section 109 r/w 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 against A3 and A4 being private persons.

5. After analysing the evidence let in by the prosecution and the defence, the trial Court has found that the charges were not proved and acquitted all the accused. Hence, the present appeal against acquittal by the State are on the following grounds:

(i) The trial Court judgment is perverse and contrary to the settled principle of law, which requires interference. The trial

Court has erred to hold that the defacto complainant has not named the accused, who have demanded bribe. Whereas in Ex.P-2 complaint, dated 07.08.2006, the complainant has clearly mentioned the name of A1, A2 and A3 who were present at the Municipality Office and demanded money to assess property tax. (ii) The non production of phone call details between PW-2[Kandasamy] and A1[Palanisamy] is not fact to the prosecution case as observed by the trial Court. (iii)The demand by A1[Palanisamy] is proved through other cogent and reliable evidence such as, recovery of file related to the tax assessment from the possession of A1[Palanisamy]. (iv)The trial Court totally failed to appreciate the fact that the application for tax assessment was given by PW-2[Kandasamy] on 31.07.2006 as found in the application Ex.P7. Without any material, the trial Court has come to a wrong conclusion that PW-2 [Kandasamy] has given his application only on 17.08.2006. (v)The evidence of PW.4[Karthikeyan] and PW.5[Ravi Raj] are independent and trust worthy witnesses. While so, the trial Court has discredited their evidence for no valid reasons. Thus, the judgment of the trial Court is liable to be set aside.

6. Per contra, the learned respective Senior Counsels appearing for the respondents submitted that for any conviction under Section 7 of the Prevention of Corruption Act, 1988, the evidence must not only prove the demand and acceptance, but also prove it was towards reward or motive to do or forbear to any official functions. Even according to the prosecution, the money was recovered from A4 [Ramasamy], who is a private person and he is not the named accused in the complaint. The demand made by A1[Palanisamy] is not proved through any evidence other than the ocular evidence of PW-2[Kandasamy]. Even on the day of trap i.e on 09.08.2006, admittedly, A1[Palanisamy] was not present. Though PW-2[Kandasamy], in the complaint, has mentioned that he contacted A1[Palanisamy] through phone on 04.08.2006, 03.8.2006 and 07.08.2006, the prosecution has not placed before the Court particular mobile number used by A1[Palanisamy] and on those days, he has contacted PW-3[Niranjan] which was mentioned in the complaint. The tainted money was neither recovered from A1 [Palanisamy] nor recovered from A2[Mr.Kumaresan], who is a public servant. A2[Mr.Kumaresan] never demanded money from the defacto complainant[Kandasamy]. Ex.P2[complaint] does not allege A2[Mr.Kumaresan] demanded money. According to Ex.P2-written complaint dated 07.08.2006, it was A1[Palanisamy], who demanded money and said that it has to be shared between other two accused. The embellishment in the evidence of PW.2 [Kandasamy] by including A2[Kumaresan] and A3[Selvaraj] clearly go to show how untrustworthy PW.2[Kandasamy] is. The trial Court has rightly taken note of lacuna and falsehood in the prosecution case and acquitted the accused. Therefore, the judgment of the trial Court need not be interfered.

7. The evidence of PW-2[defacto complainant/Kandasamy] is that A1[Palanisamy] demanded Rs.5,000/- to process his application, when he gave the application to him on 31.07.2006. On the next day also, he demanded Rs.5,000/- and informed that, he has assessed the tax at the rate of Rs.210/- p.a. On the next day, when he went to the Municipality Office, A1 [Palanisamy] was not in the office. Selvaraj[A3] has given the reliance phone number of A1[Palanisamy] and asked to contact A1[Palanisamy] over phone and also told him, if he give bribe as demanded by A1 [Palanisamy], he will assess the property immediately.

8. The prosecution has not collected any detail about the alleged phone of A1[Palanisamy] or about any conversation between A1[Palanisamy] and PW-2[Kandasamy] during the said date and time. The prosecution witness PW-2[Kandasamy] has not mentioned about his conversation with A2[Kumaresan] on 02.08.2006, or on any other subsequent date in the complaint dated 07.08.2006. While so, the demand made by A1[Palanisamy] or others prior to the complaint is not corroborated by any evidence. Many facts, which are spoken by PW-2[Kandasamy] in his evidence regarding demand of bribe prior to his complaint dated 07.08.2006, do not find place in the written complaint. The embellishment makes his evidence unreliable, since it is not corroborated.

9. From the seizure mahazar [Ex.P9] and the evidence of PW-4 [Karthikeyan], this Court finds that on that day, PW-16 [Gnanasekaran] has recovered lot of unclaimed money from the office of Tiruppur Municipality spread on the floor near the tables of the staff. Rs.15,640/- near the seat of Indirani, Bill Collector, Rs.1,100/- near the seat of Avinasiappan, Rs.8,800/- beneath the table of Thangam, daily wager. Rs.840/- under the table of one Thangaraj. Rs.650/- under the table of Sivakumar. Rs.3000/- under the table of Katiravan. These persons as per mahazar, were privately engaged for daily or monthly wages by the Bill Collectors. None of these persons were examined as witnesses and why the prosecution has not taken note of the spill of currencies on the floor near the tables of Bill Collectors. In this contest, it is relevant to point out that from A4[Ramasamy] apart from the tainted money Rs.3000/-, they have recovered Rs.10,700/- kept in his trouser pocket. According to A4[Ramasamy], he is employed in Tamil Nadu Handloom Silk Weavers Board. He came to the Tiruppur Municipality on 09.08.2006 to pay the property tax for her son-in-law. The money Rs.10,700/- recovered from the defacto complainant was kept by him to pay tax. The tainted money was given to him by the defacto complainant saying it was found on the floor.

10. The main person A1[Palanisamy] against whom the

complaint was lodged, was not present on the day of trap (09.08.2006) and also not in his seat in (07.08.2006), when the earlier trap proceedings failed. If really, A1 demanded illegal gratification and asked PW.2[Kandasamy] to come on a particular day and time, his absence on both the occasions makes the version of the prosecution as against A1 [Palanisamy] doubtful. A2[Kumaresan] has not received the tainted money, how far the uncorroborated evidence of PW-2[Kandasamy] regarding the demand made by A2[Kumaresan] on the earlier occasion could be true, when the same is not reflected in his written complaint, dated 07.08.2006. The persons, who have handled the tainted money, are non-public servants and strangers to the institution.

11. From the prosecution exhibits and evidence of PW.5[Ravi Raj] and PW.16[Mr.Gnanasekaran], this Court finds that nearly Rs.33,300/- was found lying on the floor unclaimed on the day of trap. Money were thrown under seats of Bill Collectors very appalling scene to visualised. The trial Court, from the materials placed before it, has arrived at a conclusion that the accused are not guilty, though the tainted money was recovered from A4[Ramasamy]. The lack of evidence to presume under Section 20 of the Prevention of Corruption Act, 1988 has led to the acquittal. Though from the evidence a different view may be possible, since trial Court has extended the benefit of doubt and acquitted, which reasoning is not perverse, its conclusion need not be interfered with, in the light of the dicta laid down by the Hon'ble Supreme Court in Chandrappa & Others v. Stte of Karnataka reported in [CDJ 2007 SC 163], wherein para 40 reads as under:

"40. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge:

(1)An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2)The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3)Various expressions, such as, 'substantial and compelling reasons', 'goods

and sufficient grounds', 'very strong circumstances', 'distorted conclusion', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

12. For the aforesaid reasons, the Criminal Appeal is dismissed. The judgment of the trial Court viz., Chief Judicial Magistrate Court and Special Judge, Coimbatore in Spl.C.C.No.3 of 2008 dated 23.11.2010 is hereby confirmed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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TO

1.The Chief Judicial Magistrate and
Special Judge,
Coimbatore.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+3cc's to Mr.K.S.Karthik raja, Advocate, S.R.No.73809
+1cc to Mr.Al.Gandhimathi, Advocate, S.R.No.73902
+1cc to Mr.S.Gunalan, Advocate, S.R.No.73929

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