

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :09.10.2017

PRONOUNCED ON:26.10.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.36 of 2011

State rep. by
The Deputy Superintendent of Police,
Vigilance & Anti Corruption,Trichy. .. Appellant/Complainant

Versus

1.Ramamoorthy
2.V.Boominathan .. Respondents/Accused A1 & A2

Criminal Appeal is filed under Section 378 Cr.P.C., against the judgment dated 12.10.2010 in Special Case No.2/2001 on the file of the Chief Judicial Magistrate Court cum Special Court, Perambalur.

For Appellant .. Mr.C.Iyyapparaj,
Addl.Public Prosecutor

For Respondents.. Mr.V.Karthick Sr.Counsel for
Mr.S.Kasirajan-for R1.
Mr.M.A.Rua-for R2.

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JUDGMENT

This State has preferred this appeal, aggrieved by the judgement of acquittal passed by the trial court in Special C.C No. 2 of 2011 dated 12th October 2010.

2. The case of the prosecution as found in the final report is that on 11.04.1999 a complaint was launched by the partners of M/s Krishna Finance of Thuraiyur, against one Saravanan and his brother Kannan alleging that during the month of May 1996 they borrowed rupees 4 lakhs from them for purchase of a tractor and promised to submit the RC book to them once it is registered at RTO office. In spite of several reminder they neither re-paid the loan nor submitted the RC book. They have Cheated the complainant by making a false promise. So actions to be taken against them. This complaint was taken up for enquiry by the District Crime Branch, Perambalur under No.109/DCB/PBLR/1999.

3. The first accused who was at that time serving as Inspector of police attached to DCB, summoned Saravanan to the police station on 29.4.1999 and had forced him by threat to agree to settle the due to M/s Krishna Finance by paying a sum of Rs.2,00,000/- on or before 6.05.99. He also demanded rupees 25,000/- for settling the issue without facing the criminal prosecution. In the course of the said transaction, it is averred that, the first accused along with the second accused who was a constable at Kunnam police station, had also forced the said Saravanan, his brother Kannan and his mother to

execute a document purported to be an agreement to sell their property to the Krishna Finance if they fail to clear off the loan by 06/05/99. Aggrieved by the hi-handedness of the first accused Ramamurthy, Sub-Inspector of Police and second accused Boominathan, Police Constable attached to Kunnam Police Station, Mr.Saravanan has lodged a complaint before Deputy Superintendent of police, Vigilance and anti corruption, Perambalur on 26.5.1999.

4. The complaint was registered at 11.30 hrs. and pre trap proceedings were conducted in the presence of witnesses and the defacto complainant by the trap laying officer Mr. Suresh Kumar. The the defacto complainant along with the shadow witness followed by trap laying team headed by Suresh Kumar, Inspector, DV and AC, proceeded to the residence of Ramamurthy and reached his house at about 16:45 hrs. Saravanan and Muthu Chidambaram, the shadow witness went to the house of Ramamurthy at about 17.00 hrs and meet the first accused. The first accused demanded bribe money from Saravanan and received the tainted currency. After counting it he kept the tainted currency inside a book. Thereafter both the defacto complainant and the Shadow witness left the accused house and gave the prearranged signal to the trap team. On receipt of the trap team

entered the house of the accused enquired him about the acceptance of bribe from Saravanan. Both the hands of the accused were separately dipped into the sodium carbonate solution. The colourless solution turned into pink in colour, confirming presence phenolphthalein. Based on the evidence collected during the investigation after obtaining sanction to prosecute, final report has been filed against both the accused for having demanded and accepted illegal gratification thereby misconducted themselves liable to be tried for offences under section 7 and 13 (1)(d) of the prevention of corruption act 1988.

5. Accordingly the trial court also framed charges for these two offences, and tried the accused. On behalf of prosecution 20 witnesses were examined, 57 exhibits and 4 material objects were marked. On behalf of the defence, one Sivakoteeswaran was examined as DW-1. After appreciating the evidence as well as the argument submitted by the Public Prosecutor as well as the defence counsel, the trial court has held that the prosecution has not proved the case beyond reasonable doubt and hence acquitted both the accused from all the charges.

6. Questioning the reasoning given by the trial court for acquitting the accused, the State has preferred the appeal on the ground that, the trial court has failed to take into consideration that the first accused has demanded bribe from Saravanan PW-2 on different occasions either personally or through the second accused. Finally on 26.05.99 at his residence just prior to obtaining the bribe money he made demand in the presence of shadow witness PW-3. Immediately after obtaining the bribe money the accused was confronted by trap laying team. The evidence of PW-2 the defacto complainant and his brother PW-4 ought to have been accepted by the trial Court. Since, they have given a cogent evidence regarding the prior demand of bribe by the accused persons. However the court below has disbelieved the evidence of PW-2 and PW-4 without any justifiable reason. The evidence of PW-4 reveals about the visit of the A-2 second accused to the residence of the defacto complainant at the wee hours to get signature in the document purported to be an agreement to sell the land if the defacto complainant fails to repay the loan amount by 26.5.1999. This part of the evidence implicating second accused, has not been properly appreciated by the trial court. Though there is no contradiction in the evidence of PW-2 and PW-3 regarding the place where the accused kept the tainted money after he

received it from PW-2, the trial court has wrongly held that there is a grave contradiction in the evidence of PW-2 and PW-3 regarding the site at which the tainted money was kept by the accused after receiving the same from the defacto complainant. The chemical analyst has opined that there was no presence of phenolphthalein on the right-hand wash of the accused will no way nullify the evidence of the prosecution that the first accused received the tainted money, after counting it kept inside a book, since the presence of phenolphthalein found in his left hand and the book in which the money was kept and recovered later.

7. The learned public prosecutor contented that, the accused admits the acceptance of money, his defence is that he received it on behalf of the Krishna Finance towards part payment. PW-11 the Inspector has categorically deposed that the first accused was not entrusted with the investigation of the complaint given by Chinnachamy, Director M/s Krishna Finance, Thuraiyur against PW-2. The second accused was not attached to DV&AC. The evidence of PW-2 and PW-4 clearly establish the fact that the second accused was used by the first accused to mediate with the defacto complainant. Through DW-1, it is admitted by the second accused, that the defacto

complainant sought his help to get rid of the Chinnasamy complainant. Therefore, in spite of proving the guilt of the accused through these witnesses, the trial court has disbelieved the prosecution case.

8. The counsel appearing for the respondents/accused, contented that, the prosecution miserably failed to prove either the demand or acceptance of illegal gratification. The money recovered from the residence of A-1 is not illegal gratification but the money offered by PW-1 towards part payment of money due to PW-5 and PW-6. The first accused refused to receive it on behalf of Krishna Finance. The defacto complainant kept the money inside a book. What the evidence has established is the recovery of tainted money from the book kept in the cupboard of the respondent/accused residence and the presence of phenolphthalein in the left hand wash of the first accused. These evidences are not sufficient to hold the respondents guilty of crime. The defacto complainant PW-2 as well as decoy witness PW-3 had deposed that the first accused had received the tainted money, after counting it with both hands, kept it inside a book in the cupboard. If it is true, the samples collected from both the hands wash of the accused dipped in the sodium carbonate solution should have tested positive of phenolphthalein. Whereas only the left hand wash

prove to be presented with phenolphthalein. This probablise the defence version, that P.W.2 gave 25,000/- towards part payment of his due to Krishna Finance. The first accused refused to take it and pushed it aside with his left hand. Accidentally, he contacted the currency. PW-2 kept the money inside a book kept in the cup-board and went out to call the waiting trap team. Pointing out the discrepancies in the time of visit of the defacto complainant house by the second accused and absence of corroboration about demand of bribe by this accused, the learned counsel appearing for the second accused contented that, the second accused being a Constable attached to police station, Kunnam, he had no role in the crime. Since he is related to Sagunthala, (the mother of-PW2 and PW-4) P.W.2 approached A-2 seeking his help to get rid of the criminal complaint given by Krishna Finance against him and his brother. Since A-2 refused to help them, they vowed to take revenge and consequentially given a false complaint. The said incident has been spoken by DW-1. Therefore, there is no flaw in the reasoning of the trial court acquitting the accused to interfere in the appeal.

9. The point for determination is:

Whether the trial court has misread the evidence leading to miscarriage of justice ?

10. The complaint dated 11.4.199 given by Chinnasamy, Director of M/s Krishna Finance against PW-2 and PW-4 for cheating is marked as Ex-P-17 which is the genesis for this case. The borrowing of money from Krishna Finance is not disputed. The loan applications of PW-2 and PW-4 are marked as Ex-P-2 to P-4. PW-14 Mr. Shanbagaraman the then Superintendent of Police admits that he received the complaint Ex-P-17 and forwarded it to the Inspector of Police, District Crime Branch for investigation. From the evidence of PW-11, Kaliyaperumal, Inspector of Police, it is evident that when he was on medical leave, the first accused who was serving as Sub-Inspector of Police in DCB has summoned PW-2 and PW-4 through Head Constable Angamuthu. Through PW-11 and Ex-P-15 general dairy, this fact is proved. Thus through these evidence, it is clear that the first accused had been handling the complaint of Chinnasamy given against PW-2 and PW-4. He has summoned them to appear before him for enquiry on 29.04.99.

11. As per the complaint marked as Ex-P-6, on 29.04.1999 when PW-2 alone went to the police station in response to the summon, the first accused threatened him and obtained agreements signed in two 20 rupees stamp papers as if he, his brother and mother owed Rs

2,00,000/- to Krishna Finance, so they agree to repay it by 06.05.1999, failing which agree to sell their land to them. Thereafter, the first accused called him aside and demanded Rs 25,000/- for settling the case. If he does not pay bribe the first accused threatened to foist another case for Rs 4,00,000/- and put him in prison. Thereafter he called A-2 who was present in the station at that time and told him to go along with PW-2 to his house and get the signature of his brother and mother in the document which is marked as Ex-P-5.

12. Except, PW-2 and PW-4 all other witnesses to the document say that it was signed at the DCB office. Whereas PW-2 and PW-4 say, the first accused send the second accused along with PW-2 to his house to get the signature of PW-4 and Sagunthala (mother of PW-2 and PW-4). The trial court pointing out the discrepancy among the evidence of PW 2 and PW -4 regarding the alleged time of the second accused visit to the defacto complainant house to get the signatures of PW-4 and Sagunthala has totally disbelieved the version of prosecution about the manner in which Ex P-5 was alleged to have been executed by PW-2, PW-4 and Smt.Sagunthala.

13. From the evidence of PW-9, R.Subramaniam , Inspector of

Police, Thuraiyur Police Station, it appears that after the trap incident, PW-2 Saravanan has given a complaint against Chinnasamy on 15.07.1999 at Thuraiyur police station alleging that though he has repaid the loan borrowed for purchase of tractor, Chinnsamy of Krishna Finance has demanded more money and refused to give back the documents. This complaint has ended in compromise, after Saravanan paying a total sum of Rs one lakh to Chinnasamy in two instalments. These facts are reflected from Ex P-13, P22 and in P23. This indicates, Saravanan PW-2 after borrowing money failed to clear the debt, hence a complaint has been lodged by Chinnsamy-PW-5 on 11.04.99. Later this dispute has been settled on 20.10.1999 after Saravanan paid Rs. one lakh to Chinnasamy. In between, the first accused, when P.W.11 – Inspector of Police was on medical leave, has dealt the matter and got into the trap. His explanation that Rs. 25,000/- was offered by PW-2 as part payment of his debt to Chinnasamy cannot be ruled out, since Ex P-22 and P23 shows that subsequently, PW-2 has paid one lakh rupees and settled the matter.

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14. The counsel for the respondents submitted that, when two theories are possible, the theory which is favourable to the accused has to be accepted. The trial court has followed this dicta and had

acquitted the accused. While exercising the power under appellate jurisdiction, the appellate court shall bear in mind while interfering any judgement of a acquittal, that there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person is presumed to be innocent until he is found guilty. Secondly the acquittal secured, reinforce and strengthens the innocence.

15. In ***Sheo Swaroop vs R. Emperor AIR 1934 PC 227 (2)***, it has been observed that there was no foundation to the opinion that the High Court has no power of Jurisdiction to reverse an order of acquittal except in cases in which the Lower court has 'obstinately blunder' or has "through incompetence, stupidity or perversity" reached such distorted conclusions as to produce a positive miscarriage of Justice or has some other way so conducted o mis-conducted itself as to produce a glaring miscarriage of Justice or has been tricked by the defence so as to produce a similar result.

16. In ***Chandrappa and others -vs- State of Karnataka, (2007) 4 SCC 415***, when the scope of interference with an order of acquittal under section 378 Cr.P.C fell for scrutiny of the Supreme

Court, it has held that the High court has full power to re appreciate, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to arrive at its own conclusions on such evidence. Both questions of fact and law are open to determination by the High Court in an appeal against an order of acquittal.

17. In ***K.Gopal Reddy vs State of Andhra Pradesh reported in (1979) 1 SCC 355***, the Supreme Court has held, that if two reasonably probable and evenly balanced views on the evidence are possible, one must necessarily conceive the existence of a reasonable doubt. But remote and sensible possibilities must be left out of account. It was reiterated that in order to entitle an accused person with the benefit of doubt arising from the possibility of duality of views, the possible view in his favour must be as reasonable probable as that against him.

18. In the light of the judgements cited above, while deciding this appeal against acquittal, the view taken by the court below does not fall under the category of unreasonable or perverse. No compelling reason for interference is available. On re-appreciation of evidence this

court finds that the theory of defence suggested in favour of the accused is also probable. Therefore the judgement of the trial court has to be sustained.

19. In the result, the appeal is dismissed. The judgment dated 12.10.2010 passed by the Chief Judicial Magistrate Court cum Special Court, Perambalur in Special Case No.2/2001 is confirmed.

Index:Yes
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26.10.2017

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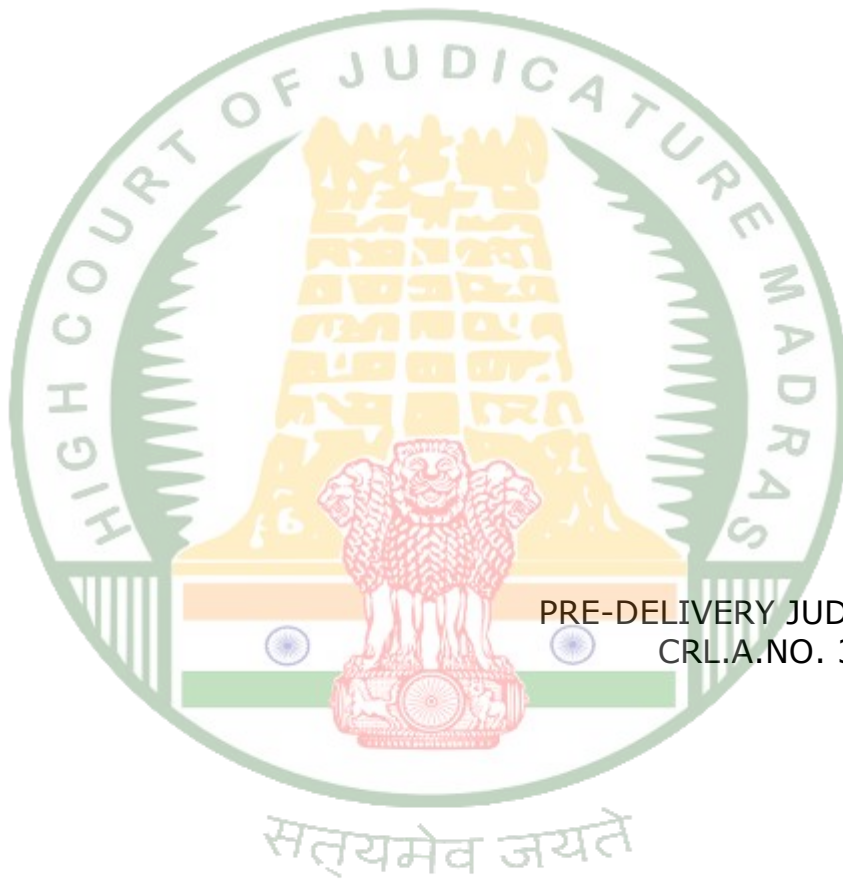
- 1.The Special Judge (Special Court for Trial of Cases under Prevention of Corruption Act), Salem.
- 2.The Special Public Prosecutor for CBI Cases, Chennai.



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G.JAYACHANDRAN, J

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PRE-DELIVERY JUDGMENT IN
CRL.A.NO. 36 of 2011

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