

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Reserved on : 21.09.2017****Pronounced on : 12.10.2017****Coram****The Hon'ble Dr.Justice G.Jayachandran****Crl.A.No.38 of 2011**

State represented by:

The Inspector of Police,
Vigilance and Anti-Corruption,
Chennai City Special Unit-I,
Chennai-28.

(Crime No.5/A.C./2007/CC-I)

.. Appellant

/versus/

Tr.L.Mahendran

Selection Grade Revenue Inspector,
Office of the Special Tahsildar(L.A)ORR,
Project Unit-V,
Koyambedu, Chennai-92.

सत्यमेव जयते.. Respondent

Criminal Appeal has been filed under Section 378 of the Code of Criminal Procedure praying to allow the appeal and set aside the acquittal judgment dated 03.11.2010 in C.C.No.1 of 2008 on the file of the learned 4th Additional Special Judge, Chennai and convict the respondent/accused as charged.

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

For Respondent :Mr.K.M.Balaji

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 C.C.No.1 of 2008, dated 03.11.2010 acquitting the accused from the charges under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 against the respondent accused.

2. The case of the prosecution is that the accused Mahendiran Assistant Grade Revenue Inspector, CMDA, Koyembedu, while in-charge of Land Acquisition Wing, demanded Rs.1,000/- to give cheque for Rs.1,02,503/- towards the compensation money for land acquired to the erstwhile land owner T.Gopi[PW-2]. On 21.05.2007, based on the complaint given by T.Gopi [PW-2], a trap was laid. At about 1.30 p.m., the accused issued the cheque to T.Gopi [PW-2], in the presence of accompanying witness P.W.3[Varadarajan]. Thereafter, came out from his seat and received the tainted money from T.Gopi[PW-2].

3. On receiving the pre-arranged signal from T.Gopi[PW-2], the trap team headed by K.Syed Razak[P.W.7], Inspector of Police, went to the accused introduced themselves and tested his right and left hands by dipping it in the sodium carbonate solution. The colourless solution turned into pink. The solutions were collected for analysis in the presence of

witnesses. On enquiry about the receipt of money from T.Gopi[PW-2], the accused admitted and produced two five hundred rupees currency from his shirt pocket. The currency numbers tallied with the currency number found in the entrustment mahazar prepared earlier on that day at the office of District Vigilance and Anti-Corruption. After obtaining the sanction for prosecution from the District Revenue Officer, Tiruvallur a final report was filed. The accused was charged for the offence under Section 7 and 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

4. To prove the case, the prosecution has examined 8 witnesses, marked 10 exhibits and 5 materials objects. The trial Court, pointing out the delay in forwarding the First Information Report to the Court, discrepancies and contradictions in the evidence of PW.2[Gopi] and P.W.3[Varadarajan] about the place of receipt of the tainted money and the contradicting version about the sequences of event, whether the accused received the money and gave the cheque, or first the accused gave the cheque and then, received the money, has held that the prosecution has failed to prove the guilt of the accused and acquitted him.

5. Questioning the said judgment, the appeal is laid contenting that the trial Court has given undue weightage to minor discrepancies and contradiction, which are not material to the core facts of demand and

acceptance of illegal gratification by the accused. Mere delay of 6 ½ hours in forwarding the First Information Report to the Court cannot be a ground to disbelieve the entire prosecution case, when the factum of recovery of tainted money from the accused is proved. The observation of the trial Court that the case has been foisted for statistical purpose, is baseless and unwarranted. This clearly shows the perversity of the trial Court.

6. The improper way of evidence appreciation has caused grave injustice enabling a public servant/accused, who has misconducted himself by demanding illegal gratification as reward to do his duty go scotch free. The trial Court failed to draw the presumption under Section 20 of the Prevention of Corruption Act, 1988, when the accused has failed to give plausible explanation for receipt of money from Gopi [P.W.2].

7. The learned counsel appearing for the respondent/accused contended that, when the very basis of the prosecution case that the accused demanded illegal gratification and accepted the same, has not been proved through cogent and acceptable evidence, the trial Court judgment cannot be faulted. The sanction to prosecute itself bristles with non application of mind by Sanctioning Authority [PW-1]. He admits that he received model sanction order from the District Vigilance and Anti-

Corruption and based on the model, he issued Ex.P1. The First Information Report has not been forwarded to the Court immediately after its registration but only after completion of trap proceedings, which cast doubt upon its veracity. The three difference versions about the place, in which the tainted money was given to the accused, warrants acquittal and the trial Court has rightly acquitted the accused.

8. In the judgment of the Hon'ble Supreme Court in ***State of Punjab v. Madan Mohan Lal Verma*** reported in **[CDJ 2013 SC 665]**, wherein paragraph Nos.6 and 7 reads as under:

"6.It is a settled legal proposition that in exceptional circumstances, the appellate court for compelling reasons should not hesitate to reverse a judgment of acquittal passed by the Court below, if the findings so recorded by the Court below are found to be perverse, ie., if the conclusions arrived at by the Court below are contrary to the evidence on record; or if the Court's entire approach with respect to dealing with the evidence is found to be patently illegal, leading to the miscarriage of justice; or if its judgment is unreasonable and is based on an erroneous understanding of the law and of the facts of the case. While doing so, the appellate Court must bear in mind the presumption of innocence in favour of the accused, and also that an acquittal by the Court below bolsters such presumption of innocence. (Vid: *Abrar v. State of U.P.*, AIR 2011 SC 354; *Rukia Begum v. State of Karnataka*, AIR 2011 SC 1585; and *State of Madhya Pradesh v. Dal Singh & Ors.*, AIR 2013 SC 2059).

7.The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised

under Section 20 of the Act, 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the Court may look for independent corroboration before convicting the accused persons. (Vide: Ram Prakash Arora v. The State of Punjab AIR 1973 SC 498; T.Subramanian v. The State of T.N., AIR 2006 SC 836; State of Kerala & Anr. v. C.P.Rao, (2011) 6 SCC 450; and Mukut Bihari & Anr. v. State of Rajasthan, (2012) 11 SCC 642)."

9. This case is to be examined in the light of the above said settled proposition. The evidence of PW-3[Varadharajan] and PW-7[Syed Razak] coupled with the content of the recovery mahazar Ex.P4 and Analysis Report Ex.P8 indicate that the currencies tainted with phenolphthalein were recovered from the accused's shirt pocket. The transfer of the tainted money, which was entrusted to PW-2 between 11.15 a.m., and 12.00noon on 21.05.2007, as per the entrustment mahazar Ex.P3, has been recovered from the accused on the same day at about 2.00 p.m. The cheque Ex.P5 drawn on 16.05.2007 in favour of T.Gopi(P.W.2) was issued to T.Gopi[PW.2] only on the day of trap i.e. 21.05.2007. This fact is reflected in the cheque issue register maintained at the CMDA Office. The said register has been marked as Ex.P5. In the said register, the defacto

complainant has signed on the revenue stamp and affixed the date as 21.05.2006. Therefore, the fact that cheque prepared on 16.05.2006 has been issued PW.2[Gopi] on 21.05.2006, is proved.

10. Regarding the receipt of tainted money by the accused, PW-2[Gopi] has deposed that after issuing the cheque, the accused came out from his seat and while coming down the stairs he demanded and received the bribe money of Rs.1000/- whereas PW-3[Vadharajan] has deposed that on 21.05.2006 he went along with Gopi[PW-2] to the accused office and the accused was in his seat. On seeing [PW-2], the accused enquired, whether he has brought the money, he demanded. PW-2[Gopi] answered in affirmative and gave the tainted money to the accused. The accused thereafter made entry in the register and gave the cheque. The trap laying officer PW-7[Syed Razak] in his chief examination has said that he and Maichel(not examined) saw the accused and PW-2(Gopi) coming near to the office main gate. After while the accused returned back to his seat, then PW-2[Gopi] gave the pre-arranged signal. In this regard, the evidence of PW-5 [Padmanaban], Special Tahsildar at CMDA office, is also relevant. He has categorically deposed that on 21.05.2006, while he was in office at about 12.00 noon, the Inspector of District Vigilance and Anti-Corruption came to his room along with the accused [Mahendiran]. After introducing himself, the Inspector informed him that Mahendiran was

caught for receiving bribe outside the office. After examining the office records, again they brought Mahendiran to him at 3.00 p.m., and got the copy of the cheque issued register and attendance register from him.

11. Now, in the light of the evidence of PW-5[Padmanabhan], independent and responsible officer, one look at the evidence of other prosecution witnesses, this Court finds that the transaction has not been taken place within the CMDA office, but outside the office at about 12 noon. Thus, the evidence of PW-3[Varadharajan] who has deposed that money was given in the office, is not correct. The learned Government Advocate(Crl.Side) attributes this contradiction to lapse of memory and a trivial contradiction deserves no serious consideration.

12. As explanation for presence of phenolphthalein in his hand and shirt wash, it is suggested to the witnesses PW-2[Gopi] and PW-3[Varadharajan] that, PW-2[Gopi] planted the money into the accused shirt pocket and went away before the accused, could realise what happened. As per PW-2[Gopi] evidence, after the accused received the tainted money from him, he removed his cap and signalled the trap laying officer as pre-arranged. Immediately, the trap laying officer and others held that the hands of the accused and took him inside the CMDA office.

Thus contact of phenolphthalein while holding his hand, is possible and

though these explanations may not be true, the probability cannot be ruled out in the light of other circumstances pointed out by the defence.

13. In the absence of corroboration regarding demand of gratification and the contradiction regarding the manner, time and place where the money was given to the accused, leads the prosecution case doubtful. Hence, there is no ground warrants interfere with the judgment of the trial Court.

14. Accordingly, **the Criminal Appeal is dismissed**. The judgment of the trial Court viz., IV Additional Special Court, Chennai, in C.C.No.1 of 2008 dated 03.11.2010 is hereby confirmed.

12.10.2017

Index:Yes/No

Internet:Yes/No

Speaking order/Non speaking order

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To

The Public Prosecutor, High Court, Madras.

G.Jayachandran,J.

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Pre-delivery judgment made in
Crl.A.No.38 of 2011

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