

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 19.09.2017

Pronounced On : 22.09.2017

CORAM:

THE HON'BLE JUSTICE DR.G.JAYACHANDRAN

Criminal Appeal No.498 of 2011
and M.P.No.1 of 2011

1.S.Palanimuthu,(A1)
2.B.Harisudhan,(A2)

.. Appellants

Vs.

State rep.by
Inspector of Police
Department of Vigilance and
Anti Corruption,
Salem

.. Respondent

PRAYER: This Criminal Appeal is filed under Section 374 of Cr.P.C., against the order dated 14.07.2011 in Special C.C.No.44 of 2003 on the file of the learned Chief Judicial Magistrate, Salem.

For Appellants : Mr.R.Rajan

For Respondent : Mr.R.Ravichandran
Govt.Advocate (Crl.Side)

JUDGMENT

The history of the case is, one P.Periyasamy, S/o.Pachamuthu Pillai, Kichipalayam, Salem District, gave a written complainant

dated 19.11.2002 to the Inspector of Police, Department of Vigilance and Anti Corruption, Salem, alleging that he borrowed a sum of Rs.90,000/- from S.Gnanasekaran during the month of February 1999, for business purpose and executed two signed blank promissory notes promising to repay the said sum on demand. It was agreed between him and S.Gnansekar and that the principal and interest will be repaid in 40 equal monthly instalment at the rate of Rs.4,500/- per month. Accordingly, he paid 30 instalment, thereafter due to loss in business, he could not pay the remaining 10 instalment.

2. Hence, S.Gnansekar demanded the balance amount and took three post dated cheques each for Rs.30,000/- and presented the same for collection. The cheques got bounced for want of funds. Meanwhile S.Gnansekar gave a complaint, to Kitchipalayam Police Station alleging that Periyasamy has borrowed money and refusing to pay the sum on demand and also threatening to kill him. Based on the said complaint given by the S.Gnansekar, Periyasamy was called for enquiry by S.Palanimuthu/A1, Head Constable. After negotiation the Periyasamy gave a letter of undertaking and sought time till 15.11.2002 to clear the debts. However, he could not pay the money to S.Gnansekar has

promised.

3. On 13.11.2002, S.Palanimuthu/A1 called Periyasamy over phone and enquired whether he has paid the money to S.Gnansekaran as promised. Periyasamy has said that there is disputed in re-conciliation of account so he need some more time to settled the loan, for which S.Palanimuthu/A1 demanded as Rs.4,000/- to negotiate with S.Gnansekaran and get extension of time for payment and if the money demanded not given, he will arrest him, based on the complaint given by S.Gnansekaran. Fearing consequence, Periyasamy the de-facto complainants had gone to Police Station on 14.11.2002 and met S.Palanimuthu/A1 at 6.p.m.

4. At that time, S.Palanimuthu/A1 again demanded Rs.4,000/- and promised to settle entire dispute for Rs.60,000/- and close the complaint of S.Gnansekaran. Against on 15.11.2002 and 19.11.2002 S.Palanimuthu/A1 had called the de-facto complainant to the Police Station and reiterated the demand. Since, the de-facto complainant was not inclined to give any bribe to S.Palanimuthu/A1, Head Constable, he has lodge the complaint Ex.P.3 before the Vigilance and Anti Corruption Police, Salem.

5. Based on the complaint, FIR was registered by the respondent Police. After smearing phenolphthalein on the currency (Rs.500 * 5 and Rs.100 * 15), the same was entrusted to the de-facto complainant and he asked to meet S.Palanimuthu/A1 at Police Station and give the tainted money if he demands it.

6. Accordingly, the de-facto complainant along with the accompanying witnesses M.Sathyamurthy/P.W.3, went to Police Station by 7.30 a.m. met S.Palanimuthu/A1. He told them to wait. After ten minutes S.Palanimuthu/A1 come out the Police Station and demanded money. Immediately the de-facto complainant P.W.2 took out money from his packet and gave it to S.Palanimuthu/A1, who received it and kept it in his packet. S.Palanimuthu/A1 went to the medical shop near the Police Station and came back to the Police Station. By the time, on receiving the pre-arranging signal from P.W.2. the trap team surrounded S.Palanimuthu/A1 and interrogated him. He admitted the receipt of bribe from P.W.2, the fingers of the S.Palanimuthu/A1 was tested with Sodium Carbonate Solution which had turned into Pink turbid liquid indicating the presence of phenolphthalein. On further interrogation,

S.Palanimuthu/A1 informed that he has entrusted money to B.Harisudhan/A2 who is running the medical shop near the Police Station. Hence, the trap team went to Sri Senthil Medical Store, run by B.Harisudhan/A2 and recovery the tainted money kept in the show case drawer. After completion of investigation, the respondent/police has filed charge sheet against S.Palanimuthu/A1, Head Constable and B.Harisudhan/A2, medical shop owner based on the charge sheet, the Trial Court have framed charge under Section 7 and 13(1)(d) r/w 13(2) of PC Act against A1 and Section 7 r/w 12 and 13(1)(d) r/w 13(2) of PC Act against A2. To prove the charges the prosecution has examined 13 witnesses and marked 12 Exhibits and 8 material objects. On the side the accused the second accused has examined himself as D.W.1. Marked as Exs.D1 and D2 during cross examination of P.W.4 and P.W2 respectively.

7. P.W.2 is the defacto complainant/P.Periyasamy and P.W.3/M.Sathyamurthy is the accompanying witnesses. P.W.4/S.Gnanasekaran is the person, who lent money to the defacto complainant and he who gave complaint to the Police alleging that the defacto complainant P.Periyasamy borrowed Rs.90,000/- from him and when he demanded money from P.Periyasamy, he has thrown threat to his life. The said complaint

dated 03.07.2002 is marked as Ex.P.12.

8. The Trial Court on appreciating the evidence placed before it held the accused guilty of the charges and sentenced A1 to under go 3 years R-1 and fine of Rs.2,500/- in default 3 months R.I. for the offence under Section 7 of the PC Act and 3 years R.I., fine of Rs.2,500/- in default 3 months R.I. for offence under Section 13(1)(d) r/w. 12(2) of PC Act. In so far as the second accused B.Harisudhan/A2 is concerned, the Trial Court has held him guilty under Section 7 r/w 12 PC Act and sentenced him to under go R.I. for 1 year and imposed fine of Rs.1,000/- in default 3 months R.I.

9. Though, both the appellants have preferred a common appeal, pending appeal, the first appellant S.Palanimuthu,(A1) died on 15.05.2015 and memo reporting his death was filed by the prosecution and same has been recorded. In view of the death of first accused/ appellant S.Palanimuthu, the case against him got abated.

10. The second appellant who is the private person through his counsel contended that the tainted money of Rs.4,000/- was given to him by S.Palanimuthu/A1 to be handed over to P.W.4. just

before S.Palanimuthu/A1 gave money, he received a call from P.W.4/S.Gnanasekaran who informed him that S.Palanimuthu/A1 will give money to him and requested to receive the same on his behalf. Later, he will come and collect it.

11. From the evidence, relied by the prosecution the receipt of the tainted money by S.Palanimuthu/A1 is well proved. It is also specifically deposed by P.W.2 and P.W.3 that the first accused after receiving the money went to nearby medical shop and immediately return to the Police Station. The recovery mahazar marked as Ex.P.8 reveals that the tainted money was recovered from the shop of second accused.

12. The points for determination is whether the trial Court finding that the said money was received by the second appellant/B.Harisudhan from the first appellant knowing that it is a illegal gratification obtain by A1/S.Palanimuthu and he in order to aid or assist A1/S.Palanimuthu received the tainted money and kept in his custody is supported by valid and acceptable evidence.

13. In this case neither the complainant P.W.2 nor witnesses deposed on behalf of the prosecution said anything incriminating against the second accused/B.Harisudhan that he abated A1/S.Palanimuthu to commit any act punishable under Section 7 or 11 of the PC Act so as to attract Section 12 of the P.C Act.

14. The specific case of the prosecution as spoken through its witnesses is that A1/S.Palanimuthu, after receiving the money from P.W.2, went to the shop of the A2/B.Harisudhan gave the money to him and return back to the Police Station. In the said context, the evidence of P.W.4 become relevant P.W.4/ S.Gnanasekaran is known to the second appellant. P.W.4 has already lodged a complaint against P.W.2 for cheating and intimidation and the complaint was under investigation by the first accused. Ex.P.3 the complaint given by P.W.2/P.Periyasamy discloses about the complaint given by P.W.4/S.Gnanasekaran against him. Wherein he also admit that he agreed to pay balance amount to P.W.4/S.Gnanasekaran by 15.11.2002. But he did not pay the money within the time he agreed to pay. He also in his complaint had stated that A1/ S.Palanimuthu was mediating between him and

P.W.4/S.Gnanasekaran.

15. In the course of the mediation A1/S.Palanimuthu had alleged to have demanded Rs.4,000/- as reward or motive to settle the money dispute. Whereas, P.W.4/S.Gnanasekaran in his evidence after narrating about his complaint dated 03.07.2012 against P.W.2 marked as Ex.P12, had further deposed that when he approached A1/S.Palanimuthu, regarding his complaint, he said he will enquire P.W.2 and revert back. In response to the enquiry, P.W.2 gave a letter of undertaking marked as Ex.P.2 promising to pay the money back by November – 2015. He has further deposed that on 13.11.2002, he contacted A1/S.Palanimuthu and informed that P.W.2 had not paid the money as per the undertaking Ex.P.2 given by him and hence, sought for further intervention.

16. The Cheques given by P.W.2 to P.W.4 are marked as Ex.P.13 series. The letter of P.W.2 promising P.W.2 to give a sum of Rs.7,400/- towards interest is marked as Ex.D1. In the cross examination of P.W.4 it has been elicited that the second accused is his friend, residing back to his house and running the medical shop opposite to Kichipalayam Police Station. He has deposed that on 19.11.2002 about 7.30 p.m., the first accused called him over

phone and informed P.W.2/P.Periyasamy has given Rs.4,000/- towards the interest and called him to come to Police Station and collected it from P.W.2/P.Periyasamy. For which P.W.4/S.Gnanasekaran has informed A1/S.Palanimuthu that presently he in Coimbatore Hospital so asked A1 to collect the money from P.W.2 and hand over it to the B.Harisudhan/A2, medical shop opposite to the Police Station.

17. Accordingly, A1/S.Palanimuthu has handed over a sum of Rs.4,000/- given by P.W.2 to B.Harisudhan/A2. From the explanation elicited through P.W.4 cross examination it is clear that B.Harisudhan/A2 have received the money on behalf of P.W.4 and not as accomplice of A1. The second appellant has mounted the witness box and explained the reason for receiving the money on behalf of P.W.4. He had no knowledge that it is a tainted money or received by A1/S.Palanimuthu as bribe. He had no intention to aid or assist A1/S.Palanimuthu to commit any crime which could fall within the definition of Section 7 or Section 11 of Prevention of Corruption Act 1988. In the absence of evidence against B.Harisudhan/A2 to prove abetment charge framed against him, conviction under Section 12 of Prevention of Corruption Act is liable

to be set aside.

18. The Trial Court without proper appreciation of the evidence, more particularly the deposition of the P.W.4. and D.W.1 and the complaint Ex.P.2, and Exs.D1 and D2 had erroneously held that A2 is liable for punishment under Section 12, 7 r/w Section 13(1)(d) of PC Act.

19. Therefore, this Court allow the Criminal Appeal and set aside the judgment of conviction and sentence passed by the Trial Court as against the second appellant. The fine amount, if any paid by the second appellant shall be refunded. The Bail bond executed shall stand cancelled.

22.09.2017

Index : Yes/No
dm

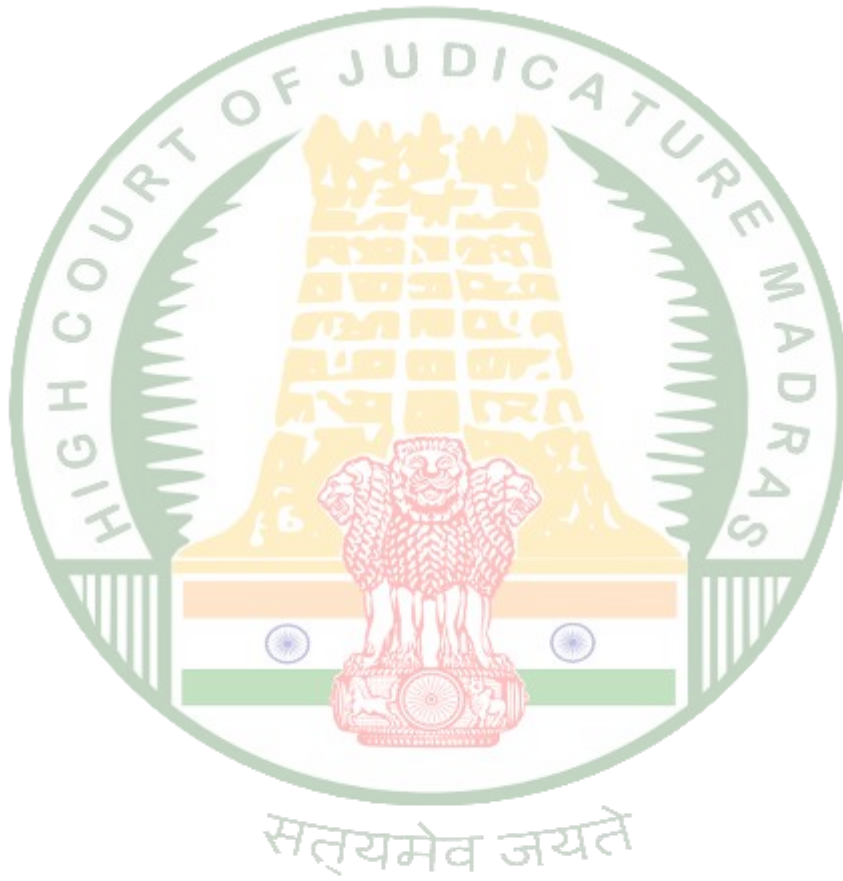
To

1.The Chief Judicial Magistrate,
Salem.

2.The Inspector of Police,
State of Tamilnadu,
Department of Vigilance and

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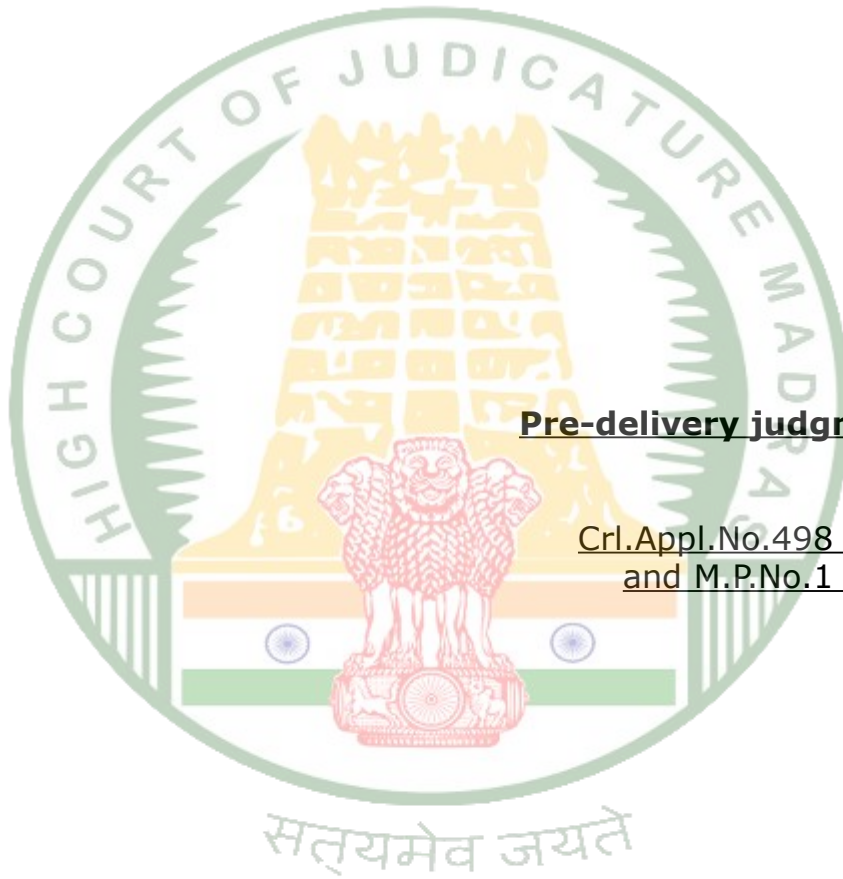
Anti Corruption,
Salem.
3.The Public Prosecutor,
High Court, Madras.



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DR.G.JAYACHANDRAN,J.

dm



Pre-delivery judgment in

Crl.Appl.No.498 of 2011
and M.P.No.1 of 2011

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