BAIL SLIP

T.Seetharaman appellant, accused, was directed to be released on bail as per the order of this Court dated 15/09/2011 and madein Crl.M.P.1/2011 in Crl.A.No.565/2011 on the file of the Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRIMINAL APPEAL NO.565 OF 2011

T.Seetharaman (M/64 year)
Formerly Inspector of Police,
H-3, Manali New Town Police Station,
Thiruvallur District. .. Petitioner

Vs

The State, Represented by
The Inspector of Police,
Vigilance and Anti-Corruption,
Kancheepuram District. .. Respondent

Prayer : The Criminal Appeal has been filed under Section 374 Cr.P.C., to set aside the conviction and sentence imposed on the appellant in Special Case No.23 of 2006 on the file of the Learned Special Judge and Chief Judicial Magistrate, Thiruvallur dated 06.09.2011.

For Petitioner : Mr.V.Krishnamoorthy

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

JUDGMENT

The appellant has come up with this criminal appeal challenging the conviction and sentence imposed on him by the learned Special Judge and Chief Judicial Magistrate, Thiruvallur, in in Special Case No.23 of 2006.

2. The facts leading up to the filing of this criminal appeal are as follows :-

(a) It is the case of the prosecution that the defacto complainant was a dealer in Iron scraps and waste materials. While so, the accused, who was working as Inspector of Police at Manali New

Town Police Station, Thiruvallur District, demanded a sum of Rs.2,000/- per month as bribe, failing which, the defacto complainant was threatened that a false case would be foisted against him, that he was receiving stolen goods and properties. The defacto complainant has lodged a complaint before the Inspector of Police, Vigilance and Anti-Corruption, alleging that the appellant has demanded bribe. Hence, a trap was arranged by the respondent police on 18.10.2004. But, however, it foiled. Again, on 20.10.2004, the appellant demanded bribe money and asked to meet the accused at the police station.

(b) Under these circumstances, the vigilance and Anti Corruption team laid trap on 26.10.2004. PW2 along with PW3/ S.Punniyakethu, working as Sub Inspector of Police, had gone to the police station. As per the prosecution witness, PW2 went inside the police station, met the appellant, gave the entire money as demanded and left the station to give the pre-arranged signal of the lighting cigarette. Thereafter, the trap team has gone to recover the tainted money from the wooden rack. The trial Court has framed charges for the offences under section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, against the accused/appellant. On behalf of the prosecution, 8 witnesses were examined, 11 exhibits were marked and 3 material objects were produced through the prosecution witnesses. On behalf of the defense, two exhibits were marked.

(c) On going through the entire evidence and other materials, the trial Court found the appellant guilty and sentenced him to undergo sentence of one year rigorous imprisonment and to pay a fine of Rs.2,000/- in default, to undergo 3 months simple imprisonment, for offence under section 7 of Prevention of Corruption Act and 1 year rigorous imprisonment and fine of Rs.3,000/- in default, to undergo 3 months simple imprisonment for offence 13(2) read with 13(1)(d) of Prevention of Corruption Act. Challenging the conviction and sentence imposed on him, the appellant has preferred this criminal appeal.

3. The short point involved in this case is that whether the finding of the trial Court suffers from infirmity, and whether the prosecution has cogently proved the alleged demand and acceptance of bribe money by the appellant.

4. The learned counsel for the appellant submitted that PW2 had motive to fix the appellant. When the appellant was serving as Inspector of Police at Manali Town New Police Station, he booked the de facto complainant's son for the offence under section 41 of the Madras City Police Act for the suspicious movements on the wee hours of 7/8.10.2004. Just to help his son escape from the criminal prosecution, the de facto complainant has foisted a false complaint of alleged demand of bribe and on 24.10.2004, when the appellant was standing outside of the police station and talking with other police personnel, the defacto complainant got into the police station and planted the tainted money in the open rack next to the seat of the appellant. The trapping team, thereafter, entered into the police station and recovered the money from the open rack. Thus, neither

demand nor recovery from the possession of the appellant by prosecution was established. But, however, the trial Court just relying upon the motivated witness, viz., PW2, as held the appellant guilty of the charges.

5. The learned Government Advocate (Crl. Side) appearing for the State submitted that the complaint Ex.P-3 and deposition of PW2 are cogent and unimpeachable and recovery of money will fully establish the guilt of the appellant. The Seizure mahazar, Ex.P6, which is contemporary document prepared on the spot immediately after the recovery of the tainted money from the appellant is a clinching evidence. When the prosecution has proved the demand and acceptance, prosecution under section 20 of the P.C. Act gets attracted and the accused has to rebut that presumption that he did not demand or accept bribe. When the appellant has failed to discharge the said presumption, the trial Court is correct in convicting and sentencing the appellant.

6. A perusal of the evidence of the witnesses shows that there is no direct evidence linking the accused with demand of bribe. Even the accompanying witness Punniyakethu, admits that he did not go inside the police station and see PW2 handing over money to the appellant. Therefore, the sole testimony of PW2 that the appellant demanded bribe money on 07.10.2004 at 2.15 hours has to be looked with suspicion. It is also claimed by the defence side that the son of the defacto complainant was arrested by the appellant on 7/8.10.2014 and therefore, the defacto complainant had grudge against him. P.W.3 has clearly stated in his evidence that he did not see P.W.2 handing over money to the accused. Therefore, the evidence of P.W.3 is not helpful to the prosecution. It is peculiar to note that the accompanying witness to said to have accompanied PW2 as decoy witness had stood outside the police station and had not gone inside the police station and he has not supported the prosecution case of demand and acceptance by the appellant. PW 4, independent witness, has only said that after receiving the pre-arrange signal, along with trap team, he went inside the police station. However, he do not know whether the appellant received money directly from P.W.2. The Inspector has directed the accused to take money from the wooden rack and hand over it. Accordingly, the accused took out the money from the rack. Thereafter, the fingers of the accused had been subjected to phenolphthalein test by dipping hands in the solution containing in the sodium Carbonate solution. The evidence of PW4, independent witness is contrary to the content of seizure mahazar marked as Ex.P-8. Therefore, the recovery itself comes suspicious.

7. In a case tried under the Prevention of Corruption Act, the main criteria for convicting a public servant is proving the demand and acceptance of bribe. In the case on hand, the prosecution has miserably failed to prove either demand or acceptance of bribe by the appellant. There is no concrete proof that the accused demanded bribe and again there is no eye witness to prove that the appellant accepted the bribe in furtherance of such demand. Phenolphthalein test alone cannot be the basis for convicting a public servant under this Act. Since the prosecution has failed to prove the case against

the appellant beyond all reasonable doubts, this Court has no hesitation to set aside the conviction and sentence imposed on the appellant.

8. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant by the Special Judge and Chief Judicial Magistrate, Thiruvallur, in Special Case 23 of 2006 are set aside. Fine amount paid by the accused is ordered to be refunded to him. Bail bonds are ordered to be cancelled.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

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To
1.The Special Judge and Chief Judicial Magistrate,
Thiruvallur.

2.The Inspector of Police,
Vigilance and Anti-Corruption,
Kancheepuram District.

3.The District Collector,
Kancheepuram District.

4.The Director General of Police,
Myalapore, Chennai.

5.The Public Prosecutor, High Court, Madras.

1 cc to Mr.Krishnamoorthy,Advocate Sr.69290

CRL.A.NO.565 OF 2011

ssi(co)
pmk.29/11/2017