BAIL SLIP

The Appellant here in 1.N.Srinivasan, S/o.Narasimhachari, 2.G.Yoganathan, S/o.KM.Gopal Mudhaliar were released on bail by the Order of this Court dated 29/09/2011 made in MP.1/2011 in Crl.A.No.593/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.11.2017

Pronounced on : 28.11.2017

Coram:

The Hon'ble Dr.Justice G.Jayachandran

Crl.A.Nos.593 of 2011 and 219 of 2013

1.N.Srinivasan
2.G.Yoganathan .. Appellants in Crl.A.No.593/2011

State represented by:

The Inspector of Police,
Vigilance and Anti Corruption,
Vellore.
Crime No.2 of 2002. .. Appellant in Crl.A.No.219 of 2013

/versus/

State by
Inspector of Police (V & AC)
Vellore, Vellore District.
Crime No.1 of 2001 .. Respondent in Crl.A.No.593 of 2011

1.V.Muralidharan
2.N.Srinivasan
3.G.Yoganathan .. Respondents in Crl.A.No.219 of 2013

Prayer in Crl.A.No.593 of 2011: Criminal Appeal is filed under Section 374 of Cr.P.C., praying to call for the records of the Special and Chief Judicial Magistrate, Vellore in Spl.C.No.2 of 2002 and set aside the conviction and sentence imposed on 12th September 2011 and allow the appeal.

Prayer in Crl.A.No.219 of 2013: Criminal Appeal is filed under Section 378 of Cr.P.C., praying to set aside the judgment of acquittal of the respondent/accused[A-1] for offence under Section 7 r/w 12 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 and 120(b) IPC and A2 and A3 for an offence under Section 120(b) IPC passed by the learned Special Judge/Chief Judicial Magistrate, Vellore in Spl.Case No.02/2002 dated 16.09.2011 and convict the respondents/accused[A1 to A3] of the charges framed against them.

For Appellants :Mr.V.Karthick, Sr.C. For M/s T.S.Gopalan & Co. in Crl.A.No.593/2011
Mr.P.Govindarajan APP for Sole affidavit in Crl.A.219/2013

For Respondent : Mr.P.Govindarajan, APP for (Crl.Side) for respondents in Crl.A.593/2011

Mr.R.John Sathyan for M/s T.S.Gopalan & Co., in Crl.A.No.219 of 2013 for Respondents 1 to 3

COMMON JUDGMENT

Crl.A.No.593 of 2011 This appeal by A2 and A3 against the judgment of conviction in Spl.Case No. 2/2002 for offences under Section 7 r/w 12 of the Prevention of Corruption Act, 1988 and Section 13 (1) (d) r/w 13(2) of the Prevention of Corrutpion Act, 1988.

Crl.A.No.219 of 2013 This Appeal by the State against order of acquittal against A-1 to A-3 for offence under Section 120(b) IPC and for offence against A1 under Section 7 r/w 12 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

2. Facts leading to these appeals:

On 30.01.2001 at about 17.00 hrs, while PW-23[Tr. Sankar], Inspector of Police, Vigilence and Anti-corruption, Vellore, on duty, he received a complaint from one Aladiyar[PW-2] that on 25.01.2001, he went to EB office at Gudiyatham to enquire about electrical connection to the hut of his sister-in-law Kamala. He was asked to contact Muralidharan of Commercial Section. He met

Muralidharan at EB Store and enquired him about the procedure for getting service connection. Muralidharan asked him to submit application along with VAO certificate, house tax receipt and a 10/- rupees stamp paper and should give a sum of Rs.2,100/ which includes caution deposit of Rs.1,550/- and bribe of Rs.550/- for him. On 29.01.2001. he again met Muralidharan and submitted all the documents required for service connection. On 30.01.2001 Muralidharan inspected the house of Kamala and was satified. Then, asked him to bring Rs.2,100/- next day and he will take care of every thing and he will arrange for service connection. Since he is not inclined to give bribe, take action against Muralidharan, when he receive the bribe money on 31.01.2001, when he give money to him.

3. On receipt of the complaint, PW-23[Tr.Sankar] has registered First Information Report Ex.P-47 in Crime No.1/2001 on 30/01/2001 at 17.00 hrs for offence under Section 7 of the Prevention of Corruption Act, 1988 against Muralidharan, Commericial Section, Tamil Nadu Electricity Board, Gudiyatham and had proceeded further arranging for a trap. Two official witnesses were called to DV & AC office on 31.01.2001 at about 6.30 am. In their presence, one five hundred rupees, 15 hundred rupees and 2 fifty rupees were smeared with phenolphathalein power and entrusted to Tr.Aladiyar [PW-2] to give to Muralidharan, if he demand it. The pre-trap proceedings got completed at 7.15am. The defacto complainant, Tr.Aladiyar[PW-2] and Tr.Chittranjan [PW-3] proceeded to Tamil Nadu Electricity Board Office followed by the trap team lead by Inspector, Tr.Sankar [PW.23].

4. At about 12.15 hrs, on receipt of pre-arranged signal from the decoy witness, PW-23[Tr.Sankar] confirmed from PW-2 [Tr.Aladiyar] and PW-3[Tr.Chittranjan] that the tainted money Rs.2,100/- was received by Muralidharan (A-1). He gave back Rs.250/- to PW-2[Tr.Aladiyar] to give it to the Foreman Yoganantham (A-3) and the remaining Rs.1,850/-, he gave to Commercial Inspector Srinivasan (A-2), who in turn retained Rs.250- with him and gave Rs.1,600/- to Tr.Panchatcharam [PW-5] for remittance into bank towards security deposit. When PW-2 [Tr.Aladiyar] offered Rs.250/- to Foreman Yoganantham, he took only Rs.100/- and returned back Rs.150/- to give it to the lineman.

5. The hand fingers wash of Muralidharan (A-1), Srinivasan (A-2) and Yoganantham (A-3) were found positive of phenolphalein presence. Rs.250/- was recovered from (A-2) Srinivasan and Rs.100/- was recovered from Yoganantham(A3). Rs.150/- returned to PW-2[Tr.Aladiyar] by A-2 Srinivasan was subsequently recovered from PW-2[Tr.Aladiyar]. Meanwhile, PW-5

[Tr.Panchacharam], who received the tainted money of Rs.1,600/- went to Indian Bank, Gudiyatham deposit it along with other remittance. The trap team went on trail of the money and from the cashier of the Indian Bank came to know that the money deposited by PW-5[Tr.Panchacharam] was given to one Kumaresan [PW-9] Driver of Bhawarlal, who after withdrawing the money has paid it to Life Insurance Corporation [LIC] for 6 premiums. At last, from Life Insurance Corporation [LIC], Gudiyatham Branch, the marked currencies Rs.1,600/- were recovered and mahazar Ex.P-24 was prepared in the presence of witnesses.

6. On completion of investigation, the accused persons all being public servants within the meaning of Section 2 (c) of the Prevention of Corruption Act, 1988, sanction to prosecute them was obtained from PW-1[Tr.Subramaniam], who is the Competent Authority to grant sanction. Then, the final report has been laid. The trial Court has framed charges for the offence of conspiracy against A-1 to A-3, for abetting under Section 7 r/w 12 of Prevention of corruption Act, 1988 against A-1, for demand and acceptance of illegal gratification against A-2 and A-3 under Section 7 of the Prevention of Corruption Act, 1988 and for misconduct to obtain pecuniary gain for themselves against A-2 and A-3 under Section 13 (1)(d) of the Prevention of Corrutpion Act, 1988. To prove the above charges, the prosecution has examined 25 witnesses, marked 47 exhibits and 14 material objects.

7. The trial Court acquitted A-1 holding that there is no recovery of tainted money from A-1. Whereas A-2 and A-3 were found guilty, since they were in possession of tainted money.

8. The learned Senior Counsel appearing for the convicted appellants, contented that, the trail Court erred in its conclusion by erroneously holding that the recovery of tainted money from A-2 and A-3 is illegal gratification received as reward or motive to discharge their official duty, when there is no complaint against them. The First Information Report is only against A-1 and admittedly there is no evidence that A-2 and A-3 demanded any gratification from PW-2[Tr.Aladiyar]. The trial Court ought not to have held them guilty just because they had in their possession of tainted money Rs.250/- and Rs.100/- respectively. The explanation given immediately after trap has not been recorded by the prosecution. However, the explanation given by the accused persons is spoken by PW-4[Tr.Mani] in his chief examination that, when the trap laying officer enqired about any money received from PW-2[Tr.Aladiyar] by them, A-2 said that PW-2[Tr.Aladiyar] gave Rs.1,850/- to him and asked A-2 to prepare bill for the deposit of Rs.1,570/- and to pay the balance to the electrician, who has carried out wiring. Likewise, A-3 said that, PW-2[Tr.Aladiyar] gave Rs.100/- to him

to pay for EB licensee.

9. Further, the learned Senior Counsel submitted that both the defacto complainant PW-2[Tr.Aladiyar], the accompanying witness PW-3[Tr.Chittranjan], have not supported the case of the prosecution. They both were declared hostile. In the absence of evidence for demand and acceptance, the finding of the trial Court relying the hearsay evidence of PW-11[Tr.Nageswar rao] is improper and liable to be setaside.

10. Per contra, the Learned Additional Public Prosecutor (Crl.Side) appearing for the State, while defending the trial Court judgment of conviction against A-2 and A-3, emphasied that the acquittal of A-1 to A-3 from the charge of conspiracy and A-1 from the charge of Section 7 r/w 12 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 is improper and need to be interfered. Further, the learned Additional Public Prosecutor for Crl.Side appearing for the State contented that though PW-2[Tr.Aladiyar] and PW-3[Tr.Chittranjan] turned hostile to prosecution and failed to support the prosecution in full, the portion of their deposition regarding the demand and receipt of money by these accused is not impeached. The trap laying officer has taken all measures to trace the entire marked currencies Rs.2,100/- and had recovered Rs.250/- from A-2, Rs.100/- from A-3, Rs.150/- from PW-2[Tr.Aladiyar], which was returned by A-3 to give it to the lineman. Rs.1,600/- from the Life Insurance Corporation office, Gudiyatham, which was deposited by PW-5[Tr.Panchacharam] at Indian Bank, paid to PW-9 [Tr.Kumaresan] against the cheque of Bawarlal and later, remitted into Life Insurance Corporation office for payment of LIC premium. During the investigation, it has been elucidated through witnesses that at EB office Gudiyatham, it has been pre-arranged design among the staff that the graft money used to be collected by A-2 from the consumers and at the end of the day, they all used to share the graft money. Thus, the pre-meditation and meeting of mind to constitute offence of conspiracy is proved by the prosecution. Hence, the order of acquittal in Crl.A.No.593 of 2011 ought to be set aside and Crl.A.No.219 of 2013 ought to be allowed.

11. Points of consideration:

(1) Whether the trial Court is right in convicting A-2 and A-3, despite the defacto complainant and the accompanying witness turned hostile and failed to support the case of the prosecution?

(2) Whether the evidence relied by the prosecution is sufficient to prove the charge of conspiracy and abetment as against A-1 ?

12. The prosecution case is that Tmt.Kamala applied for Electric Service Connection for her residence and her sister's husband Tr.Aladiyar PW-2 enquired at EB office and found, he need to give bribe to A-1 Rs.550/- beside caution deposit of Rs.1,550/-. Hence, the complaint and consequential trap. Though the First Information Report discloses about the demand of bribe by A-1, the complainant during the trial has later turned hostile. He has deposed that Rs.550/- was demanded by A-1 for other expenses. The decoy witness sent along with PW-2[Tr.Aladiyar] also turned turtle. PW-11 [Tr.Nageswararao] is not a witness for demand and receipt and he is only witness for recovery and post trap proceedings. What he has deposed about demand and receipt is only hearsay. Recovery of tainted money from A-2 and A-3 is not disputed. Therefore, whether the explanation for receipt of the money is plausible or not is the core point for determination.

13. According to the prosecution, PW-2[Tr.Aladiyar] and PW-3[Tr.Chittranjan] went to EB office on 31.01.2001 at about 10.00 am. A-1 asked to come after half an hour. After waiting for half an hour, again they met A-1. He told them to come after 15 minutes. After 15 minutes when they again met A-1, he received Rs.2,100/- from PW-2[Tr.Aladiyar], gave Rs.1,850/- to A-2 and returned Rs.250/- to PW-2]Tr.Aladiyar]. Asked PW-2[Tr.Aladiyar] to get signatures of Kamala and the electrician in the form. Thereafter, PW-2[Tr.Aladiyar] along with one Nagarajan[PW-15] went to Kamala's house got her signature. Nagarajan[PW-15] arranged to get the signature of electrician and then, came back to EB office to submit the filled up form. From the prosecution evidence and exhibits, it appears that PW2 and PW3 went to EB office on 31.01.2001 at 10.00 a.m., to give A1 the tainted money if he demands. Therefore, they were asked to wait for nearly 45 minutes by A1, then he has demanded and received the tainted money. If it is so, why the trap laying team did not act immediately and recover the tainted money but waited till 12.15 p.m., is unexplained by the prosecution.

14. In the said background facts, if one read the deposition of PW-15[Tr.Nagarajan], he say that he, who carried out the electical work of Kamala's house, went along with PW-2 [Tr.Aladiyar] and arranged for Test Report from the licensed electrician PW-4[Tr.Mani]. He has not said, he was paid by PW-2 [Tr.Aladiyar] for these work. Therefore, it is probable that, PW-2[Tr.Aladiyar] could have given A-2 and A-3, Rs.250/- and Rs.100/- respectively to pay for the electrician and for the test report. PW-4 [Tr.Mani], Grade-1, Junior Engineer at EB office, during the trap, had deposed about the above said explanation given by the accused persons. The evidence of PW-2

[Tr.Aladiyar] go with this explanation. When the entire money including the money meant for caution deposit is smeared with phenolphathalein, nothing incriminating in the presence of phenolphalein in the hands of A-1 and A-2, who have recieved the caution deposit money and passed on to PW-5[Tr.Panchacharam] for deposit in the Indian Bank .

15. On the same day, two other customers Tr.D.S.Thiyagarajan [PW-13] and Tr.Sriramulu[PW-14] also deposited Rs.1,570/- for service connection and paid only Rs.1,570/- only. They do not say that they gave any bribe to the staff. So, the evidence of PW-23[Tr.Sankar] that as pre arranged design, A-1 to A-3 used to collect the above the deposit amount and share the same among them, at the end of the day, gets disproved. Further, the applicant Kamala PW-12, in her evidence, has said that she gave Rs.2200/- to PW-2[Tr.Aladiyar] to get Electrical Connection and wiring. Therefore, apart from caution deposit PW-2[Tr.Aladiyar] has incurred other expenses, which has been disbursed through A-2 and A-3.

16. In the absence of evidence to prove demand and acceptance, but contrarily a plausible explanation being put forth by the accused persons for the possession of tainted money with them, it is unsafe to hold that the tainted money found in the possession of the accused persons is illegal gratification and nothing else. In such circumstances, the benefit of doubt extends to the accused.

17. In the result, the trial Court judgment in Spl.C.C.No. 2 of 2002 is set aside and the Criminal Appeal against conviction in Crl.A.No.593 of 2011 preferred by A-2 and A-3 is allowed. The Criminal Appeal against acquittal in Crl.A.No.219 of 2013 preferred by the State is dismissed. In Crl.A.No.593 of 2011 is concerned, Fine amount if any paid shall be refunded to the appellants. Bail bond if any executed by the appellants shall be cancelled.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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

2.The District General of Police,
Vellore.

3.The Director General of Police,
Mylapore, Chennai-4

4.The Superintendent of Central Prison,
Vellore.

5.The Inspector of Police,
Vigilance and Anti Corruption, Vellore.

6.The Public Prosecutor, High Court, Madras.

+3cc to Mr.T.S.Gopalan and Co, Advocate SR.No.84629

Crl.A.Nos.593 of 2011 and
219 of 2013

LRS(CO)
GN(19/12/2017)